

## CHAPTER II

### TAXES ON SALES, TRADE, ETC.

#### 2.1 Tax administration

Levy and collection of Value Added Tax 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the assessment, levy and collection of Sales Tax was governed by the Bombay Sales Tax Act, 1959 (BST Act) which was repealed with effect from 1 April 2005.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 era 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). The criteria fixed by the IAW for audit of refund cases was as under.

- All cases where refund amount assessed by the assessing authorities (AA) is ₹ 10 lakh or more.
- All refund cases where the dealers deal in chemicals, iron and steel, etc.

After the refund orders in the above mentioned cases are passed by the AA, these cases are got audited by the IAW.

In case of the remaining assessments finalised by the AA, audit is conducted on selective basis by the IAW.

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 during the year	Audit observations Pending as on 31 March of the year
2010-11	4,000	4,208	1,356	949	407
2011-12	4,000	3,069	969	674	295
2012-13	6,280	9,682	2,789	2,156	633
2013-14	16,695	18,628	5,808	4,320	1,488
2014-15	13,140	17,209	5,028	2,515	2,513
<b>Total</b>	<b>44,115</b>	<b>52,796</b>	<b>15,950</b>	<b>10,614</b>	<b>5,336</b>

Thus, the facts indicate that:-

- During the last five years, the IAW had conducted the audit of more number of cases than it had selected in that particular year except 2011-12.
- During the last five years, the number of audit observations raised by IAW has increased from year to year, their corresponding settlement has also shown an increasing trend. The Department has settled 67 per cent of the observations raised by IAW. The efforts of the Department are commendable.

### 2.3 Results of audit

In 2014-15, test check of records of 233 units relating to Taxes on sales, trades, etc. showed underassessment of tax and other irregularities involving ₹ 54.16 crore in 1,083 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	Performance Audit on “System of Registration, Assessment and Collection under the Maharashtra Value Added Tax Act, 2002”	1	0.00
2	Non/short levy of tax	215	10.43
3	Incorrect grant/excess set-off	90	17.82
4	Non/short levy of interest/penalty	24	0.80
5	Non-forfeiture of excess collection of tax	4	0.15
6	Other irregularities	749	24.96
<b>Total</b>		<b>1,083</b>	<b>54.16</b>

During 2014-15, the Department accepted underassessment and other deficiencies of ₹ 75.33 lakh in 65 observations which were pointed out during 2014-15 and earlier years. The Department also recovered an amount of ₹ 1.01 crore in 2014-15 in respect of 100 observations accepted during 2014-15 and earlier years.

- In one case of deferred tax the Department recovered the entire amount of ₹ nine lakh in August 2015 after the issue of Draft paragraph in May 2015.

The findings of Performance Audit on “**System of Registration, Assessment and Collection under the Maharashtra Value Added Tax Act, 2002**” and a few audit observations involving ₹ 1.23 crore are mentioned in the succeeding paragraphs.

## 2.4 Performance Audit on “System of Registration, Assessment and Collection under the Maharashtra Value Added Tax Act, 2002”

### Highlights

- Audit noticed decline in the number of the surveys conducted by the Department from 2010-11 to 2014-15 for detection of the unregistered dealers (URD). It fell from 19,568 in 2010-11 to 2,360 in 2014-15.

**(Paragraph 2.4.2)**

- PAN numbers of 1,751 firms having assessable income of ₹ 2,051.21 crore and 17,970 firms having Import licences, were not present in the dealer database of the Sales Tax Department (STD). Thus, the chances of the dealers as having remained outside the tax net could not be ruled out.
- TDS branch of the STD had identified 19,818 works contractors as URD dealers between 2009-10 and 2013-14, but the same had not been forwarded to the Survey branch for ensuring their registration.

**(Paragraph 2.4.3)**

- Though the average number of advisory visits conducted during 2010-11 to 2013-14 was 21,670, it had sharply declined to 6,468 in 2014-15. Of these, the pendency of 25,223 advisory visits pertained to more than two years as on 31 March 2015.

**(Paragraph 2.4.5)**

- As per the information furnished by the Department, 87,068 dealers had not filed their 2,32,305 periodical returns as on 31 March 2015. The penalty/late fee of ₹ 116.15 crore though leviable on the dealers for non-filing of the returns was not levied.

**(Paragraph 2.4.6)**

- In Large Taxpayer Unit, the disposals of the cases were not uniformly distributed throughout the limitation period of five years. The Department therefore had to speed up the process of finalisation at the end of the period to save the cases from being time barred.
- It was noticed that 2,777 i.e. 57 per cent of the cases assessed during 2013-14 were ordered for re-assessment in subsequent years and in 2,393 cases involving an amount of ₹ 8,031 crore, appeals against the assessments were preferred by the dealers. Thus, a major portion of the cases remained undecided.

**(Paragraph 2.4.8)**

- Though the objective of the Business Audit Branch was to close the gap between taxes declared and VAT legally due, we found that the recovery of amounts against the demands raised was very meagre during 2013-14 and 2014-15. The number of cases in appeal also increased from 453 in 2012-13 to 9,771 in 2014-15. Further, the

number of dealers not traceable increased from four in 2012-13 to 858 in 2014-15.

**(Paragraph 2.4.9)**

- In Refund and Refund Audit, the pendency of refund applications persisted/continued during all the periods from 2011-12 to 2014-15. It was found that 20,632 refund applications involving refunds of ₹ 2,438 crore pertained to the year 2011-12. Delay in refund assessments resulted in payment of avoidable interest to dealers amounting to ₹ 143.99 crore.

**(Paragraph 2.4.10)**

- In the Issue Based Audit the actual recoveries against the identified risks stood at 10.25 *per cent* in 2013-14 and 13.58 *per cent* during 2014-15 indicating that though it was an appreciable concept for fast-tracking tax recovery process it did not produce the desired results.

**(Paragraph 2.4.12)**

- In the Investigation Branch scrutiny of reports and records of selected divisions revealed that the delay in finalizing the investigation process resulted in 300 dealers having dues of ₹ 256.79 crore being untraceable, and in 24 other cases involving dues of ₹ 78.14 crore no property was found available for recovery.

**(Paragraph 2.4.13)**

- An amount of ₹ 2,416.02 crore was pending in respect of 1,68,831 short filer cases. Out of this, an amount of ₹ 753.04 crore pertained to more than five years.

**(Paragraphs 2.4.14)**

### 2.4.1 Introduction

The system of Value Added Tax (VAT) has been implemented, in the State of Maharashtra, with effect from 1 April 2005. VAT is levied as per Maharashtra Value Added Tax Act, 2002 (MVAT Act), and the MVAT Rules, 2005 made thereunder. VAT is levied on sale of goods including intangible goods. In addition to granting set-off of tax paid on purchases to the dealers, VAT has various other advantages for both the business and the Government, such as, eliminating cascading effect of double taxation and promoting economic efficiency. It is primarily a self-assessment system with more trust put on the dealers for filing a correct assessment of their tax liabilities.

The procedures pertaining to Registration of dealers, Returns, Levy of Tax and Assessments are briefly mentioned as under:

#### Registration of Dealers

Registration of dealers is compulsory for importers whose gross turnover of sales or purchases exceeds rupees one lakh and for others whose turnover of sales or purchases exceeds rupees five lakh in a financial year as per Section 3 read with Section 16 of the MVAT Act. A dealer has to get himself registered under the Act within 30 days from the date on which he is liable to get registered. There is also a provision for voluntary registration by the dealers. The term dealer includes all person or persons who buys or sells goods in the State whether for commission, remuneration or otherwise in the course of their business or in connection with or incidental to or consequential to engagement in such business.

#### Returns filed by the Dealers

As per Section 20 of MVAT Act, every registered dealer is required to file correct, complete and self-consistent return, in prescribed form, by the due date as per the periodicity determined by the Sales Tax Department (STD). The return period in relation to a dealer may be a calendar month, a quarter (a period of three months; i.e., April to June, July to September, October to December and January to March) or six months (prescribed period of six months; i.e., April to September and October to March). The returns, whether monthly, quarterly or six monthly have to be uploaded in electronic format only.

The MVAT Act also requires certain dealers/persons to get their accounts audited by an accountant, within the prescribed period from the end of the year. The report of such audit is required to be furnished to the STD in a prescribed format electronically.


**Levy of  
Tax**

**Self-assessment:** As per Section 20 of MVAT Act every registered dealer has to file correct, complete and self-consistent returns. These returns are scrutinized by Maharashtra Vikrikar Automation System (MAHAVIKAS), which is the IT system of the Department and follow up action is taken by the return branch. The registered dealer who fails to file the return within the prescribed period shall pay a late fee before filing the return. The non-filers are either unilaterally assessed or prosecuted. The dealers who pay tax less than the tax payable declared in their return are treated as short-filers. The cases of short filers are closed after recovery of tax dues.

**Departmental audit/assessment:** The system of audit or assessment under MVAT Act is of cases selected on the basis of risk analysis. When the findings of the departmental audit under Section 22 of the Act are accepted by the dealer and he files revised returns and pays up the dues, if any, arising out of such audit, the case is treated as closed. The necessity of assessment under Section 23 of the Act arises in case of the audit findings being disputed by the dealers. The dealers' returns will be deemed assessed if no assessment is conducted within time limit prescribed in the Act.

The cases are audited /assessed by the Large Taxpayers unit Branch, Business Audit Branch, Refund and Refund Audit Branch. Further, with effect from March 2012, a new concept called Issue Based Audit (IBA) was introduced, with a view to recover the taxes which were obvious and did not require much verification. From 2013-14, refund cases up to ₹ five lakh were also brought under the scope of IBA.

**Reasons for conducting the Performance Audit:-** VAT is a principal source of revenue receipt of the State Government. Since the introduction of VAT the Government and the STD has been improving the system of registration, assessment and collection of the VAT, still we during our local audit visits had found a number of gaps in these areas that had affected the collection of the revenue adversely. As such, it was desired to conduct a Performance Audit on the "System of Registration, Assessment and Collection under the Maharashtra Value Added Tax Act, 2002".

### Organisational set up

The Sales Tax Department functions under the administrative control of the Additional Chief Secretary, Finance Department (ACS(FD)) at the Government level. At the departmental level, the Commissioner of Sales Tax (CST) heads the STD and is assisted by a Spl. Commissioner of Sales Tax /

Additional Commissioners/Joint Commissioners (JCs)/ Deputy Commissioners (DCs)/ Assistant Commissioners (ACs) and Sales Tax Officers at various levels. There are eight Additional Commissioners, of which three are in Mumbai and remaining five are in zonal offices at Thane, Pune, Kolhapur, Nashik and Nagpur. 58 Joint Commissioners are heading various functional branches such as Survey, Registration, Advisory, Returns, Assessment, Investigation, Recovery etc in the divisions.

### **Audit scope and Methodology**

The Performance Audit (PA) was conducted between January 2015 and June 2015. Four out of twelve<sup>1</sup> divisions i.e. Mumbai, Pune, Nashik and Thane were selected for the PA by adopting Simple Random Sampling without Replacement technique.

During the PA, records for the years 2010-11 to 2014-15 of all the concerned functional wings<sup>2</sup> dealing with the Registration, Assessment and Collection were test-checked.

An entry conference was held in February 2015 with the Principal Secretary, Finance Department, the Commissioner of Sales Tax, Maharashtra State and other officers of the Sales Tax Department, in which the objectives, scope and methodology of the PA were discussed. The departmental authorities explained the various provisions relating to VAT and the procedures adopted for its administration.

The draft Performance Audit Report was forwarded to the Government and the Department in July 2015 and audit findings and recommendations were discussed in the exit conference held in November 2015. The Additional Chief Secretary, Finance Department, Commissioner of Sales Tax and other senior officers from the STD attended the meeting. The replies given during the exit conference and at other points of time have been appropriately included in the relevant paragraphs.

### **Acknowledgement**

We acknowledge the co-operation of the STD in providing necessary information and records to audit.

### **Audit objectives**

The Performance Audit was conducted to ascertain:

- Whether the registration system in place is adequate and effective;
- Whether the audit/assessments are carried out in accordance with the provisions of the Act and Rules and are effective in safeguarding Government Revenue;

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<sup>1</sup> Amravati, Aurangabad, Dhule, Kolhapur, Mumbai, Nagpur, Nanded, Nashik, Pune, Raigad, Solapur, Thane (Thane and Thane Rural combined)

<sup>2</sup> For 'Registration':- The functional wings covered were Survey, Registration and Advisory.  
For 'Assessment':- The functional wings covered were Large Taxpayer Unit, Business Audit, Refund and Refund -Audit and Investigation wings and  
For 'Collection' The functional wings covered were Return and Recovery wing

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- Whether the taxes are recovered/collected as per the provisions of the Act and Rules; and
- Whether an effective monitoring and internal control mechanism is in place.

### Audit criteria

The criteria adopted for PA was:

- The Maharashtra Value Added Tax Act, 2002 (MVAT Act);
- The Maharashtra Value Added Tax Rules, 2005 (MVAT Rules) and notifications there under;
- Departmental circulars/Manuals.

### Audit Findings

The audit findings have been categorized under Registration, Assessment and Collection functions, and are discussed in the following paragraphs:

#### A. Registration - Audit of Survey Branch

With a view to identify the dealers liable to pay tax but not registered, Section 66 empowers the Commissioner to conduct surveys so as to bring such unregistered dealers (URDs) into the tax net. For this purpose the Survey branch of the Sales Tax Department collects information from various sources such as Economic Intelligence Unit (EIU), inputs from departmental authorities, other Government departments and agencies, field visits etc. After gathering the information of the unregistered dealers, the survey branch issues courtesy letter to these URDs and conducts door-to-door visits of such dealers. Dealers who do not respond to such courtesy letters are visited on priority basis. In addition, the dealers whose turnovers are likely to cross the threshold limits during the subsequent year are required to be revisited. Scrutiny of records relating to Survey Branch in four<sup>3</sup> Divisions revealed the following:

#### 2.4.2 Performance of Survey branch

**Non-maintenance of Data Entry Register (DER):** Though the Departmental Manual provides for maintenance of a DER containing the details of the surveys conducted and actions taken thereof, no DER was being maintained and a module for the Survey branch was yet to be implemented in the MAHAVIKAS system. The survey information was being manually compiled at each level. In the absence of the DER, the stage at which the cases were pending and period to which the URDs belong could not be ascertained.

**Decline in surveys:** Each functional wing of the Department prepares periodical reports called Key Key Performance Indicator Reports (KKPIs). Scrutiny of the KKPI reports of the Survey Branch relating to four selected divisions revealed that 6,730 dealers were registered as a result of surveys conducted between 2010-11 and 2014-15. The year-wise position is mentioned in **Table 2.4.2**.

<sup>3</sup> Mumbai, Nashik, Pune and Thane



Table 2.4.2

Year	Surveys conducted	URDs detected	No. of dealers registered
2010-11	19,568	4,059	2,793
2011-12	14,973	2,540	987
2012-13	4,326	1,794	1,319
2013-14	8,777	2,152	1,092
2014-15	2,360	1,056	539
<b>Total</b>		<b>11,601</b>	<b>6,730</b>

It would be seen from the above that as compared to 2010-11, there has been a decline of 88 *per cent* in the number of surveys conducted during 2014-15. The registration of new dealers has gone down from 2,793 to 539 (i.e. decrease by 81 *per cent*) during the same period.

Though 11,601 dealers were detected as URDs, only 6,730 dealers were registered during this five year period. Thus, the remaining dealers are yet to be brought within the tax net. The stage at which the cases were pending for registration could not be ascertained as the DERs were not being maintained.

**Delay in disposal of complaints:** One of the sources identified for survey is complaints which are received in the Department. In Mumbai division we noticed that out of 320 cases of complaints received during the periods 2011-12 to 2014-15, only 28 cases were disposed of. As the survey branch gets information regarding URDs through such complaints, lack of action in these cases may result in closure of businesses in such cases before bringing these dealers under tax net.

In the Exit Conference, the ACS (FD) stated that decline in surveys was on account of priority being accorded to assessments during that period being time barring periods for assessments. The JC (Survey), Mumbai division stated that format for DER has been submitted for approval and the same would be maintained. As regards the disposal of complaints, ACS (FD) accepted the audit contention and stated that action is being taken to dispose of the complaints and 127 cases had been disposed of since being pointed out by audit.

### 2.4.3 Non-obtaining/sharing of information regarding unregistered dealers

The Survey branch, as per the Departmental Manual, is required to obtain information regarding the registration of the URD dealers from different sources of the State /Central Government Departments and also from the sources within its own Department.

The records produced to audit did not indicate that any dealer had been registered by the Department on the basis of cross-verifications or documents obtained from other State/ Central Government Departments. Audit conducted a cross verification of information obtained from two Central Government departments with the data available in the IT system of the STD and found

that a number of dealers were not registered with the department. A few are mentioned in the following paragraphs.

**Information obtained from Central Government Departments:** We obtained information regarding firms assessed by the Income Tax Department and firms who had been issued Import Licences by the Director General of Foreign Trade (DGFT), Mumbai. The information was cross-verified with the dealer database of MAHAVIKAS with reference to the PAN numbers of the dealers. The cross-verification revealed that in respect of 1,751 firms having assessable income of ₹ 2,051.21 crore and 17,970 firms having Import licences, their PAN numbers were not present in the dealer database of the STD. Thus, the chances of the dealers as having remained outside the tax net could not be ruled out.

After this was pointed out, the JC, Nashik accepted the audit observation regarding non-registration of 34 dealers assessed by the Income Tax Department and intimated that action for their registration was in progress. In the Exit Conference, the ACS (FD) stated that the process of identifying more dealers as pointed out by audit was in progress and the exercise of registration of firms assessed by the Income Tax Department will take some time.

**Information found within the Department:** As per the information received from the EIU branch, only 53 cases of URD dealers had been forwarded in 2013-14 by EIU branch to the Survey branch since its formation in 2012.

A branch called the “TDS branch” was formed to monitor deduction and payments of tax deducted at source (TDS) by employers who award works contracts. It had identified 19,818 URD dealers between 2009-10 and 2013-14, but the details of these dealers had not been forwarded to the Survey branch for ensuring their registration.

The ACS (FD) stated in the exit conference that since the TDS information was not in electronic form, the details of URD dealers could not be effectively utilised by the STD to bring them within the tax net. However, since the past one year the TDS information was available in electronic form and would be utilized to register such dealers.

Thus, the above facts indicate that survey which is an essential tool provided in the Act for widening the tax base needs to be strengthened to prevent evasion of tax by the URDs.

**The Government may put in place effective mechanism for obtaining inter and intra departmental data/information for bringing unregistered dealers within the tax net.**

### Registration of dealers

As per Section 3 read with Section 16 of the MVAT Act, registration is compulsory for importers whose gross turnover of sales or purchases exceeds rupees one lakh and for others whose turnover of sales or purchases exceeds rupees five lakh in a financial year. A dealer has to get himself registered under the VAT Act within thirty days from the date on which his turnover crossed the threshold limit. The Act also provides for voluntary registration by the dealers. A dealer is considered as an URD during the period from which

his turnover crossed the threshold limit of registration to the effective date of registration. Scrutiny of records relating to Registration Branch revealed the following:

#### **2.4.4 Re-registration of non-genuine dealers**

As per Rule 8(12) of MVAT Rules, a dealer has to provide his Permanent Account Number (PAN) to the registering authority at the time of making the application for registration. Further, as per the Department's Internal Circular 3A of 2010 dated 12-03-2010 regarding verifications to be carried out before and after granting of registration, it was stated that in case of high risk dealers, a verification visit is to be paid before allotment of registration number (TIN<sup>4</sup>).

The Department identifies non-genuine dealers<sup>5</sup> from time to time and orders for cancellation of their registrations. Till 31 March 2014, 2,214 dealers have been identified as non-genuine dealers by the STD. Audit cross-checked PAN of these dealers with those dealers who had registered themselves after 1 April 2010 and found that seven non-genuine dealers had again voluntarily registered themselves afresh after 1 April 2010. It was noticed that PAN number of these dealers were not frozen at the time of cancellation of their registration and no verification was done by the advisory branch before grant of fresh registration to these dealers. Due to these loopholes seven dealers registered themselves afresh.

Out of these seven dealers, registration certificates (RCs) of five dealers were again cancelled 16 to 45 months after their re-registration date. Thus, the loophole in the system needs to be plugged and it should be ensured that the MAHAVIKAS system flags such issues at the time of registration.

The ACS (FD) stated during the exit conference that the PAN numbers of such dealers had not been frozen at the time of their detection in 2010-12 and hence their re-registration escaped detection. The Department has now blocked the PAN of these dealers and that it would not be possible for such dealers to re-register themselves.

#### **Audit of Advisory branch**

The Advisory branch was formed with a view to verify the information furnished by newly registered dealers, ascertain their revenue reliability and appraise the dealers about tax provisions, filing returns etc.

Up to 31 December 2013, advisory visits were prescribed to be conducted at the place of business (POB) of newly registered dealers within 3-6 months from the date of grant of registration. From 1st January 2014 onwards, advisory branch was restructured and renamed as 'New Registration Follow-up Branch' (NRFB). As per procedure laid down for NRFB, one visit at POB was required to be paid any time within two years from the date of registration in case of dealers registered from 1 April 2012 onwards. Out of dealers registered up to 31 March 2012, dealers selected by EIU were required to be

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<sup>4</sup> Tax payers Identification Number.

<sup>5</sup> Dealers issuing false bills for a commission to other taxpaying dealers to enable the latter to fraudulently claim input tax credit.

visited according to Departmental Manual. Scrutiny of records relating to Advisory Branch revealed the following:

#### 2.4.5 Performance of the Department in conducting advisory visits

Scrutiny of divisional reports of four selected divisions, for the periods from 2010-11 to 2013-14, revealed a pendency ranging up to 80 *per cent* in conducting advisory visit in case of dealers registered up to 31 March 2012, as shown in **Table 2.4.5**.

**Table 2.4.5**

Year	Total cases selected for Advisory visits	Advisory Visits conducted	Advisory Visits Pending at the end of year	Percentage of Col 4 to Col 2
(1)	(2)	(3)	(4)	(5)
2010-11	72,509	21,153	51,356	70.82
2011-12	79,765	21,176	58,589	73.45
2012-13	91,199	21,577	69,622	76.34
2013-14	97,227	22,773	74,454	76.57
2014-15 <sup>6</sup>	31,671	6,468	25,223	79.64

From the above table, it can be seen that:-

- Though the average number of advisory visits conducted during 2010-11 to 2013-14 was 21,670, it had sharply declined to 6,468 in 2014-15 and as on 31 March 2015, the pendency of 25,223 advisory visits pertained to more than 2 years
- The pendency in the advisory visits ranged from 70.82 *per cent* to 79.64 *per cent*.

**Impact of delay in conducting advisory visits:** We called for the advisory visit records of 182 dealers who had obtained registration after 2010-11 and had been identified as non-genuine dealers by the STD in the three<sup>7</sup> divisions. Of these, in 159 cases the Department did not furnish any information and stated that the cases had been closed. Of the remaining 23 dealers, the records/information furnished indicated that in none of the cases advisory visits had been conducted.

As would be seen from the following paragraph (2.4.7.5), there are 87,068 dealers who have not filed their periodical returns as on 31 March 2015. The possibility of closure of their business cannot be ruled out. The Department may consider to get their advisory visits done within the prescribed times so that non-genuine dealers are traced in time

The ACS (FD) stated during the exit conference that due to sharp increase in registrations, it was unable to carry out the advisory visits. Further, most of the

<sup>6</sup> The reasons for sharp decline in the selection of cases for advisory visits in 2014-15 was stated to be due to a decision taken by the Department not conducting the visits of those dealers who were regularly filing their returns.

<sup>7</sup> Mumbai, Pune and Thane.

advisory staff had been assigned assessment work of those cases that were likely to be time barred.

## **B. Audit of Assessments**

### **2.4.6 Lack of departmental action against non-filers**

Under MVAT Act every dealer is required to make an assessment of his turnover and deposit the VAT accordingly. As per the provisions of Section 23(1) of the MVAT Act, the Department is required to pass either Unilateral Assessment Orders (UAO) within three years or initiate prosecution for the periods for which returns have not been filed.

As per the information furnished by the Department, in respect of the four selected division, 87,068 dealers required to file 2,32,305 returns had not filed their periodical returns as on 31 March 2015. Of these, 50,273 returns pertained to the periods 2008-09 to 2010-11. It was further noticed that in 9,751 dealers, RC was cancelled due to closure of business. The penalty at the rate of ₹ 5000 (also called late fee) payable by each dealer for non-filing of the returns in accordance with notification dated August 2012 issued under Sections 29(8)/20(6) of the MVAT Act was not levied. It worked out to ₹ 116.15 crore.

The prolonged pendency in passing of UAO will give an opportunity to the dealers to close down their business; the Government may consider taking timely action for finalisation of the cases so that recovery of tax and penalty is effected. The advisory visits of these dealers may be conducted immediately for detecting the non-genuine dealers.

The ACS (FD) stated during the exit conference that action was being initiated against non-filers.

### **2.4.7 Performance of the Department in disposal of URD periods**

Section 23(4) provided that 'where a commissioner has reason to believe that a dealer is liable to pay tax in respect of any period, but has failed to apply for registration, the Commissioner may assess the dealer to the best of his judgment wherever necessary'. The unregistered periods<sup>8</sup> have to be assessed within eight years from the end of the unregistered period.

Audit examination of departmental reports revealed pendency ranging from 65 *per cent* to 91 *per cent* in disposal of URD periods during 2010-11 to 2014-15 in four test checked divisions mentioned in **Table 2.4.7**.

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<sup>8</sup> The URD periods pertain to the periods prior to the date of registration of the dealers.

Table 2.4.7.

Year	Total URD periods requiring settlement	URD periods pending at end of year	Percentage of Col 3 to Col 2
(1)	(2)	(3)	(4)
2010-11	15,302	13,099	86
2011-12	18,482	11,967	65
2012-13	22,058	19,370	88
2013-14	27,389	21,075	77
2014-15	26,769	24,461	91

It was noticed during test check in Mumbai division that as on 31 March 2015, an amount of ₹ 1.8 crore could not be recovered in case of 91 URD periods as these dealers were stated to be “not traceable”. Thus, if the delay in disposal of cases continued, the possibility of more dealers closing their business before the settlement of their URD periods cannot be ruled out rendering recovery of dues remote.

In the exit conference, the ACS (FD) stated that it was in the process of bringing down the pendency.

**The Government may direct the Department to take measures to ensure that the Government revenue is protected by prioritizing assessments of unregistered periods.**

#### 2.4.8 Delay in assessment in Large Tax Payers Unit (LTU)

LTU branch was formed in 2007 to provide a single window service to dealers having net tax liability above ₹ one crore or who had claimed refunds more than ₹ five crore.

As per information pertaining to the four selected divisions furnished by the Department it was found that 81.30 per cent and 74.37 per cent of the cases were finalised in the year, in which these were likely to be time barred (at the lag end of their limitation period) as mentioned in **Table 2.4.8**

Table 2.4.8

Assessment Year	Total No. of cases disposed	Average number of cases disposed per division	Total No. of cases disposed finalized in limitation year period	Percentage of limitation period cases to total No. of cases
2010-11	824	206	--	--
2011-12	791	198	--	--
2012-13	2,507	627	--	--
2013-14	4,902	1,226	3,986	81.30
2014-15	4,662	1,166	3,467	74.37

Thus, it is seen from the table that the average number of cases disposed of increased from 206 in 2010-11 to 1,166 in 2014-15 and 7,453 cases were disposed of at the end of their limitation periods. Thus, the disposal of cases was not uniform throughout the limitation period of five year. The Department

therefore had to speed up the process of finalisation at the end of the period to save the cases from being time barred.

**Impact on the quality of assessment:** Audit found that 2,777 cases i.e. 57 per cent of the cases assessed during 2013-14<sup>9</sup> were cancelled (ordered again for fresh assessment in subsequent years) and in 765 cases of 2013-14 and in 1,628 cases of 2014-15 involving an amount of ₹ 1,961 crore and ₹ 6,070 crore respectively appeals were preferred by the dealers. Thus, a major portion of the cases remained undecided. Had the Department evenly distributed the disposal of the cases throughout the period, the quality of the assessment could have improved and the chances of re-assessment /going in appeal could have been minimised.

A few illustrative cases of Pune division detailing the impact of such delayed assessments are discussed below:

- A company that was auctioned by a nationalised bank in February 2012, was assessed for the periods 2005-06 and 2008-09 in March 2013 and for the periods 2006-07 and 2009-10 in March 2014 on best judgment basis. The period 2007-08 had not been assessed till March 2014. The periods of assessment were assessed in the time-barring years in spite of the fact that the company had already been auctioned. Thus, due to the delay in the assessment, recovery of the assessed dues amounting to ₹ 10.89 crore could not be made and the chances of its collection now appear remote.
- In another case of a tax defaulter from 2005-06 onwards, the Department initiated assessment proceedings only in 2010. The company was wound up in June 2011. The Department assessed the dealer for the periods from 2005-06 to 2012-13 in June and November 2013 raising the dues of ₹ 263.82 crore. However, the properties had already been taken possession of by the lending banks in April 2012 and the departmental efforts to take over the dealer's properties were challenged by the bank. Thus, due to the delayed assessment and attachment, recovery of tax dues of ₹ 263.82 crore appeared remote.

The ACS (FD) stated during the exit conference that in the initial years after introduction of VAT, very few audits/assessments were carried out and due to subsequent increase in LTU dealers, there were arrears in assessment. However the reply was silent about the future measures likely to be taken to settle all these cases. Since LTU branch covers the major tax-payers of the state and provides single window facility to these tax-payers, it is in the interest of revenue if the assessments are spread evenly in a regular order and are not finalised in haste.

#### **2.4.9 Delay in disposal of cases and poor recovery of tax dues in Business Audit branch**

As per the departmental circulars the objective of the business audit branch was to close the gap between tax declared and VAT legally due and to improve the tax compliance by the dealers.

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<sup>9</sup> Information of 2014-15 not furnished.



Prior to 2012, the cases for Business Audit were selected from the database of the dealers by applying the criteria decided by a designated committee. After the formation of EIU in 2012 and availability of electronic dealer tax data, the cases for audit/assessment have been selected scientifically, based on electronic data received from dealers. Thus, the cases selected for Business Audit is based on the perceived tax risks associated with the dealers.

The details of audit/assessments completed by the Department during 2010-11 to 2014-15 are as indicated in **Table 2.4.9 (1)**.

**Table 2.4.9 (1)**

Assessment Year	Disposal of Total No. of cases
2010-11	6,355
2011-12	5,130
2012-13	7,762
2013-14	34,517
2014-15	48,502

(Source:- information furnished by the Department)

We analysed the tax recovery status of these dealers and found that the percentage of recovery was very small as shown in **Table 2.4.9 (2)**

**Table 2.4.9 (2)**

Assessment Year	Additional demand raised	Amount recovered	per cent of recovery	Appeal	Dealers not traceable
	No. of cases	No. of cases		No. of cases	No. of cases
	Amount (₹ in crore)	Amount (₹ in crore)		Amount (₹ in crore)	Amount (₹ in crore)
2010-11	5,249	3,697	31.08	--	--
	164.34	51.09			
2011-12	4,826	1,425	7.00	--	--
	405.47	28.39			
2012-13	7,745	1,866	28.16	453	4
	269.99	76.03		57.79	0.29
2013-14	33,805	6,409	2.00	2,091	466
	8,002.56	157.05		645.77	239.68
2014-15	41,268	8,879	3.50	9,771	858
	6,123.61	215.62		1,709.30	120.43

(Source:- information furnished by the Department)

The recovery of amounts against the demand raised was very meagre during 2013-14 and 2014-15 and it was less than four *per cent*. The number of cases in appeal also increased from 453 in 2012-13 to 9,771 in 2014-15.

Further, the number of dealers not traceable increased from four in 2012-13 to 858 in 2014-15. Thus, the delayed disposal of cases provided an opportunity to the dealer to escape and evade tax. The ACS (FD) accepted the audit findings during the exit conference.



## Refund and Refund Audit Branch

Refund and Refund Audit Branch (RRA Branch) is entrusted with the task of timely finalisation of the refund claims and to ensure the validity and accuracy of claims.

The process of claiming refund starts from filing an application in Form 501 by a registered dealer. On receipt of such application the RRA Branch verifies the authenticity and correctness of the refund claims with reference to the returns filed by the claimant and the books of accounts furnished. This verification by the RRA Branch is also known as Refund Audit. In case the claimant dealer does not agree with the findings of the Refund Audit, the RRA Branch assesses the claim under Section 23 of the MVAT Act and issues a formal assessment order to the claimant.

The due dates of disposal of refund applications are as stated below:

Period	Due date of disposal
Up to 2008-09	30/09/2011
2009-10	31/03/2013
2010-11	31/03/2014
2011-12	31/03/2015

As per Section 52 of the MVAT Act, where refund of any tax becomes due to a dealer, he shall subject to rules, if any, be entitled to receive, in addition to the refund, simple interest at the rate of 0.5 *per cent* / per month prescribed under Rule 88 of the MVAT Rules on the amount of refund for the period commencing on the date following the last date of the period to which the refund relates and ending on the date of the order sanctioning the refund or for a period of twenty four months, whichever is less. However, as per proviso to the Section 52, such interest shall not be granted towards any refund granted under Section 51.

Under Section 23 (11)&(12) of MVAT Act, if a dealer makes an application for cancellation, within thirty days of service of the assessment order, the same may be cancelled (F-317) and a fresh assessment order has to be passed within 18 months from the date of service of cancellation order. During scrutiny of reports relating to four selected divisions the following issues were noticed:

### 2.4.10 Non-granting of refunds within prescribed period

Under Section 51 of the MVAT Act, the Commissioner, on receipt of the refund application (Form 501) as per the return filed by the dealer, may grant refund within 18 months (as amended from 1 May 2011).

Before granting refunds, the assessing authorities are required to visit the premises of the dealers. The Commissioner of Sales Tax fixes the targets for such visits and for granting of the refunds. The target and achievement for number of visits to be conducted during 2011-12, refund audits completed etc. furnished by the Department is as shown in **Table 2.4.10 (1)**.

**Table 2.4.10(1)**

No. of Visits		Refund audits completed		Pendency of Refund Applications	
Target	Achievement	Target	Achievement	No. of cases	Refund amount involved
6,726	2,463	9,348	2,532	20,632	₹ 2,438 crore
36 per cent		27 per cent			

Analysis of the above information revealed that as against the prescribed audit visits to be completed (up to March 2012) for grant of refunds, the divisions were able to achieve only 36 per cent of visits and 27 per cent of refund audits were completed against their targeted refund audits, resulting in non-disposal of 20,632 applications of refunds involving refunds amounting to ₹ 2,438 crore.

Thereafter, from 2012-13 the refunds were granted predominantly through assessment. However, the pendency of refund applications persisted and their age-wise pendency from 2011-12 to 2014-15 after the prescribed time limit is as shown in **Table 2.4.10(2)**.

**Table 2.4.10 (2)**

Pendency of cases as on	Age-wise pendency	No. of cases	Refund amount involved (₹ in crore)
Cases pending as on 31/03/12 (upto period 2008-09)	0 to below 6 months		
	6 – below 18 months	22,480	1,416.51
	18 – below 30 months		
	Above 30 months		
Cases pending as on 31/03/13 (upto period 2009-10)	0 to below 6 months	11,466	958.70
	6 – below 18 months		
	18 - below30 months	8,191	567.26
	Above 30 months		
Cases pending as on 31/03/14 (upto period 2010-11)	0 to below 6 months	6,618	731.47
	6 – below 18 months	1,037	132.94
	18 - below30 months		
	Above 30 months	7,351	461.41
Cases pending as on 31/03/15 (upto period 2011-12)	0 to below 6 months	4,464	628.29
	6 – below 18 months	2,200	328.68
	18 - below30 months	1,427	179.55
	Above 30 months	4,055	198.84

From the above statistics, it can be seen that pendency of refund applications persisted/continued during all the periods from 2011-12 to 2014-15 even after the prescribed time limit ranging from six months to above 30 months.

The ACS (FD) stated in the exit conference that seventy per cent of the pending refund applications were for amounts below ₹ five lakh. He further

stated that due to huge mismatches in purchaser-supplier transactions, the corresponding input tax credit (ITC) verification process was delayed which contributed to delay in granting refunds and pendency in disposal of refund applications. It was also stated that part refunds had been granted to dealers.

**Avoidable payment of interest:-** Due to delay in processing of refunds, the Department paid an interest of ₹ 143.99 crore in 10,890 cases during the periods between 2012-13 and 2014-15 as shown in **Table 2.4.10(3)**.

**Table 2.4.10(3)**

(₹ in crore)				
Particulars	Year in which Interest paid			Total
	2012-13	2013-14	2014-15	
No. of cases	2,503	3,163	5,224	10,890
Interest Amount	20.164	44.693	79.13	143.99

The payment of interest could have been avoided, had the Department disposed of the refund applications within the stipulated time.

#### 2.4.11 Increase in the cancellation of the Refund assessments

As per the information furnished by the Department the number of cases where assessments of refund cases were cancelled is mentioned in the following **Table 2.4.11**.

**Table 2.4.11**

(₹ in crore)					
2012-13		2013-14		2014-15	
No. of cases	Refund. amount	No. of cases	Refund. amount	No. of cases	Refund. amount
1,504	101	8,276	532	8,007	1,624

It would be seen from the above that the number of assessments cancelled registered an increase of over 500 per cent in 2014-15 as against the assessments cancelled in 2012-13.

The Departmental records further revealed that during 2013-14, 891 cases involving an amount of ₹ 343.75 crore were pending in appeal whereas during 2014-15 the cases in appeal increased to 1,898 involving an amount of ₹ 1,243.29 crore.

From the above observations it is evident that the Department has been unable to grant refunds due to dealers within the prescribed periods, delay in processing refunds has resulted in payment of interest to dealers, restoration of cases for fresh assessments and increase in number of appeals. It is recommended that the Department may strengthen the internal control mechanism for timely payment of refunds.

#### 2.4.12 Meagre recovery of tax dues in Issue Based Audit

EIU is responsible for analysis of electronic data available in the MAHAVIKAS. The deficiencies noticed by it regarding declarations,

concealment of sales/purchases and wrong set-off claims by the dealers are sent to the concerned wings for corrective actions. This audit called Issue Based Audit (IBA) commenced from March 2012 and is conducted as per Sections 22 and 23(5). It should be concluded within three months from the initiation of proceedings.

The details of cases audited under IBA, risk involved and recovery made there under in the four divisions are shown in **Table 2.4.12**.

**Table 2.4.12**

Year	Cases available for IBA		Total Recovery made	Percentage of recovery made
	No. of cases	Risk amount involved		
2013-14	1,24,222	4,427.96	454.08	10.25
2014-15	92,949	3,175.48	431.43	13.58

From the above table it can be seen that actual recoveries against the risks identified was 10.25 per cent and 13.58 per cent during 2013-14 and 2014-15 respectively.

Audit conducted a detailed examination of the selected cases in two divisions to ascertain the extent of recovery in IBA cases as mentioned in the following paragraphs.

- In Business audit wing of Pune division, we selected 334 IBA cases conducted during 2013-14 having tax risk of ₹ 5 lakh and above. We found that in 229 cases out of these cases relating to different periods between 2009-10 and 2010-11, the Department had raised additional demand of ₹ 36.88 crore out of which ₹ 15.82 crore was on account of best judgment basis. As against this, an amount of ₹ 5.07 crore only has been recovered and an amount of ₹ 31.81 crore was still pending for recovery. Thus, recovery was only 14 per cent of the tax dues.
- Scrutiny of 18 IBA cases of Nashik division (for the periods 2008-09 and 2009-10) selected during 2012-13 and 2013-14 revealed that in 15 cases no recovery had been done and in three cases even the process of recovery had not been initiated. Thus, an amount of ₹ 38.18 lakh was still pending for recovery.

Though the concept of IBA is appreciable, the Department needs to enforce measures for affecting more recovery so that the desired results are obtained.

The ACS (FD) stated in the exit conference that it was moving towards a single window system wherein such problems were expected to be resolved.

### Investigation branch

Investigation Branch of the STD is the functional unit for investigating the cases relating to evasion of taxes. The branch, in respect of suspected cases initiates proceedings u/s 64(1) of the MVAT Act wherein it has been empowered to visit such dealers, search their premises, and scrutinize documents and papers involving evasion of tax. In cases where dealer agrees to pay the amount of evaded taxes involved, cases are closed under the order

of the competent authority. However, in cases where the dealer does not pay the taxes, he is assessed under the relevant provision of the Act and demand for payment of taxes is raised.

Amongst the various objectives of the Investigation branch is;

- a) To detect and investigate suppression / tax evasion.
- b) To detect frauds and prevent tax evasion.
- c) To create awareness among the tax evaders and take exemplary action to prevent the possible tax evasion by way of registering offences.

Further as per internal circular No. 24A of 2007, it was instructed that, in respect of periods starting on or after 1st April 2005, the assessment should be completed in the Investigation Branch itself.

### **2.4.13 Inadequate performance of Investigation Branch**

Scrutiny of reports and records of selected divisions revealed that there was pendency at each and every stage of the investigation.

- **Complaints:** KKPI reports are being generated for the complaints received and action taken thereof. As per the information furnished, 720 cases were pending for action as on March 2015 as mentioned in **Table 2.4.13 (1)**.

**Table 2.4.13 (1)**

Year	Opening balance	Additions	Total No. of complaints available during the year	Disposal	Action yet to be taken
2012-13	1,741	1,253	2,994	1,078	1,916
2013-14	1,842	339	2,181	1,260	921
2014-15	911	124	1,035	315	720

It can be seen from the table that the closing balance of any year did not match with the opening balance of the following year, which depicted irregular maintenance of records. The figures need reconciliation. The branch does not prepare age-wise pendency reports of the pending complaints. However, it was found that 596 cases were pending for more than a year and delay in disposal of these complaints may affect the investigation process.

- **Investigation visits:** The visits are required to be made in the cases found suspicious or on receipt of complaints or found otherwise with the approval of the Commissioner. According to Departmental Manual, investigation visits should be made, as far as practicable, within three days or at the most within seven days, after the approval of the Commissioner. A report in this regard is required to be generated and sent to the higher authorities.

Scrutiny of records revealed that during 2013-14 and 2014-15 1,528 cases were approved for investigation visits out of which only 1,072 visits were

conducted as on 31 March 2015. Thus, 456 visits were pending, out of which 410 visits were pending for more than one month as against the maximum prescribed period of seven days.

- **Delay in finalization of the Investigation cases:**

As per the investigation manual if the dealer accepts the investigation findings and pays the tax then investigation should be completed within three months, in the remaining cases the investigation should be completed as far as possible within a year.

Scrutiny of records revealed that the percentage of cases closed<sup>10</sup> during 2011-12 to 2014-15 gradually decreased to 3.24 *per cent* while the increase in cases pending finalization was 79 *percent* as mentioned in **Table 2.4.13(2)**.

**Table 2.4.13(2).**

Year	Opening balance	Addition of cases	Total	Cases closed	Pending cases	Percentage of closed cases
2011-12	2,533	1,076	3,609	207	3,402	5.74
2012-13	3,403	1,052	4,455	261	4,194	5.86
2013-14	4,199	375	4,574	220	4,354	4.80
2014-15	4,354	328	4,682	152	4,530	3.24

**Impact of the delay in finalization of the cases:-** The delay in finalizing the investigation process resulted in non-tracing of 300 dealers having outstanding amounts of ₹ 256.79 crore, and in 24 other cases involving dues of ₹ 78.14 crore no property was available for recovery. A few instances of delays in finalization of investigations are mentioned in the following paragraphs:

- In two units in Mumbai Division, assessments of 55 cases relating to 30 dealers were finalized between April 2012 and March 2014 with delays ranging from 3 months to 27 months after time limit of one year prescribed for finalization of investigation.
- In 16 cases relating to nine dealers it was noticed that their assessments were finalized on the basis of best judgment between April 2012 and March 2014 with delays ranging from 4 months to 22 months after time limit of one year prescribed for finalization of investigation. Thereafter in all these cases, the dealers applied for cancellation of assessment orders and the same has been accepted by the assessing authorities.

Thus, pendency and delay in investigation process noticed at every stage i.e., action taken on complaints, conducting visits and finalization of investigation have provided an opportunity to the dealers to close down the business and escape detection by the tax authorities. The Government may take immediate remedial measures. A few are mentioned as follows:

<sup>10</sup> Closed cases:- The dealer accepted the investigation findings.

- The process of assessment needs strengthening. The assessment of cases may be spread uniformly so that there is no rush of finalization of cases at the fag end of the limitation period of assessment and quality of assessment is maintained.
- Government may direct the Department to take appropriate steps to improve the currency of audits/assessments through proper planning and implementation so as to protect as well as enhance Government revenue, and to provide timely and quality service to the dealers.

### C. Collection of the revenue by Recovery Branch

The objective of the Recovery Branch is to recover arrears by taking recovery actions in the cases referred to it under Act (s) administered by the STD.

#### 2.4.14 Recoveries against short-filers of taxes

Under the MVAT Act, every registered dealer has to file correct, complete and self-consistent returns. The dealers who have paid tax less than the tax payable declared in their return are treated as short-filers.

As per the information furnished by the Department in selected divisions as on March 2015, an amount of ₹ 2,416.02 crore was pending in respect of 1,68,831 returns filed by dealers that had been declared as short filers. Out of this, an amount of ₹ 753.04 crore pertained to more than five years. Age-wise pendency of amounts due from short filers is mentioned in **Table 2.4.14**.

**Table 2.4.14**

Age of pendency	Amount involved (₹ in crore)
5 years and above	753.04
4-5 years	311.38
3-4 years	281.30
2-3 years	181.50
1-2 years	314.25
Up to one year	574.55
<b>Total</b>	<b>2,416.02</b>

The cases were sent to the Recovery branch as discussed in the following paragraphs:

#### 2.4.15 Recovery of the dues raised by the Department

Scrutiny of the reports of selected divisions revealed that 1,63,358 cases were sent to the recovery branch for recovery. Out of these no recovery action had been initiated in 1,27,798 cases and in 35,560 cases recovery was pending at various stages. The division-wise breakup as on March 2015 is mentioned in **Table 2.4.15**.



Table 2.4.15

(₹ in crore)				
Name of the Division	Pending action		Available for recovery	
	No. of cases	Amount	No. of cases	Amount
Mumbai	1,06,275	383.49	7,144	589.74
Thane	4,116	145.16	4,890	178.24
Pune	0	0	1,557	84.15
Nashik	17,407	39.59	21,969	136.28
<b>Total</b>	<b>1,27,798</b>	<b>568.24</b>	<b>35,560</b>	<b>988.77</b>

We also noticed that in 161 cases with recoverable amount of ₹ 20.93 crore, dealers were not traceable. The age wise pendency of the above recoveries which was being reported up to 2011-12 had been discontinued thereafter.

The following lapses were noticed during the test-check of the cases pending for recovery:-

- In Pune division, 11 dealers were assessed during 2013-14 for the periods 2006-07 and 2008-09. The cases were finalised in their time barring year and additional demand of ₹ 4.16 crore was raised. All these dealers were not traceable.
- In Nashik division, it was noticed that seven dealers were assessed for periods from 2005-06 to 2009-10 in fag end of their time-barring period i.e. 2012-13 and 2013-14 and additional demand of ₹ 2.40 crore was raised. Out of these, one dealer was not traceable and in the remaining cases, recovery through arrears of land revenue was in progress.

Had the Department finalised these assessments earlier the chances of the dealers becoming untraceable would have been minimised.

It is recommended that the Department may consider taking measures for prompt finalisation and prompt recovery of dues by initiating action on priority basis.

#### **2.4.16 Non-collection of tax due to finalization of the assessment after the cancellation of RCs**

During scrutiny of records in Mumbai Division, we noticed that in 20 cases, assessments of the dealers were carried out after the cancellations of RCs. The assessments had been carried out after delays ranging from eight months to 82 months and additional demands of ₹ 10.93 crore was raised. In none of the cases the dues could be realized as out of these 20 dealers, two dealers were not traceable, two dealers were not available at their declared place of business, and recovery action had not been initiated in the remaining cases. A few cases are mentioned in Table 2.4.16.



**Table 2.4.16**

Dealers' name & TIN	Assessment period	RC cancellation date	Assessment date	Assessment dues	Delay in assessment
Indu Commercial Corporation 27580000890V	2005-06	01-04-2007	10-06-2013	8,53,30,613	74 months
Adma Engineers & Logistics Private Limited 27850534387V	2009-10	01-04-2011	18-03-2014	59,71,890	36 months
Globe Scientific Surgical 27180260876V	2005-06	01-08-2006	30-05-2013	31,35,594	82 months
Suchitra Packaging Pvt. Ltd 27460006388V	2005-06	01-04-2010	22-04-2013	21,42,806	36 months
Jayesh Enterprises 27160663146V	2009-10	25-02-2010	27-03-2014	13,02,132	49 months
M/S. Ace Inc 27410110351V	2005-06	01-04-2007	26-02-2013	5,21,105	71 months
Rajgiri Metal Corporation 27640069533V	2009-10	01-10-2010	13-03-2014	4,76,194	41 months
M.S.S. Corporation 27570737465V	2009-10	30-09-2010	01-02-2014	4,52,537	40 months

It would be seen from the above table that assessments were made by the assessment wing after a lapse of 3 to 7 years from the date of cancellation of RC by the registration branch. This indicates that there is no co-ordination between the two branches to ensure prompt assessment and collection of taxes and to prevent the dealers from absconding or evading tax.

The Government may direct the Department to protect revenue by strengthening its internal controls and ensure proper co-ordination between the branches so that the assessments are promptly finalized and demands are raised without any delay.

#### **2.4.17 Input tax credit (ITC)**

##### **(a) Allowance of ITC in contravention of tax provisions**

As per Section 48(5) of the MVAT Act, the amount of set-off or input tax credit (ITC) on purchase of goods should not exceed the amount of tax in respect of the same goods, actually paid into the Government treasury. The dealers whose annual turnover of sales or purchases exceeded ₹ 60 lakh had to get their accounts audited by a Chartered Accountant (CA) and had to file an audit report regarding the same in Form 704 electronically. Form 704 includes annexures J (Section 1) (J1) and J (Section 2) (J2) wherein the dealer's customer-wise sales and supplier-wise purchase details respectively along with

the tax involved in these sales and purchases transactions are detailed TIN-wise.

From the financial year 2008-09 onwards, dealers ITC verification is being carried out electronically. For verifying a dealer's ITC claim, his tax paid claim in Annexure J2 is matched electronically with his suppliers tax collected claim in Annexure J1 on the basis of the TINs mentioned in these annexures. The ITC claim was being allowed to the extent of tax amount matched and disallowed to the extent of unmatched tax amount.

The STD vide their Circular No. 1A of 2013 dated 11 January 2013 provided that in case of mismatches,

- If ITC matches in case of top ten suppliers or the suppliers covering at least 50 *per cent* of the ITC (whichever is more), then it would be assumed that rest of the ITC claimed by the dealer was matched.
- If amongst the top ten suppliers, the ITC in respect of top six matched and those of remaining four suppliers did not match then, the unmatched transactions would be verified through the ledgers of the suppliers or through any other method that was satisfactory to the assessing authority. If transactions of those four suppliers are also found to be matching, then it would be assumed that the balance ITC has also matched.

From the above circular instructions it is evident that to address the large number of mismatches, the condition for grant of ITC as laid down in the Act has been contravened as the Act stipulates payment of the entire amount of tax before allowing ITC.

The test-check of assessment cases of 151 dealers in the four selected divisions (out of total 1,996 dealers to whom ITC of ₹ 615.16 crore was granted) revealed that ITC of ₹ 69.89 crore was granted as per the internal circular in contravention of the provisions of the Act to all these dealers, as shown in **Table 2.4.17(a)**.

**Table 2.4.17(a)**

Assessment period	Test-checked cases where ITC granted as per internal circular		
	No of dealers	No of suppliers	ITC amount (₹ in crore)
2008-09	45	88	22.76
2009-10	60	134	31.62
2010-11	33	70	10.51
2011-12	13	25	5.00
<b>Total</b>	<b>151</b>	<b>317</b>	<b>69.89</b>

Since the circular issued involves assumptions and partial verification of remittances which will have financial implications that may affect the Government revenue adversely, **it is recommended that a system may be developed which will address the mismatches and is in accordance with the provisions of the Act.**

**(b) Non-raising of the issues relating to mismatch of ITC**

The EIU identifies the issues for being resolved by the assessing authorities under IBA. During audit in the four selected divisions, we observed that, of the dealers proposed for IBA, 6,807 dealers involving ITC of ₹ 162.06 crore had issues relating to ITC mismatch. Our test-check of 136 such dealers revealed that ITC mismatch amounting to ₹ 43.96 crore had not been flagged by the EIU wing in respect all these dealers. Since ITC mismatch involves a high risk and the chances of excess claim of ITC cannot be ruled out, it should have been flagged and addressed by the STD. The details of ITC mismatches are given in **Table 2.4.17(b)**.

**Table 2.4.17(b)**

Assessment period	Test-checked cases where ITC mismatch not flagged by EIU		
	No of dealers	No of suppliers	ITC amount (₹ in crore)
2008-09	27	33	9.74
2009-10	48	77	17.38
2010-11	36	50	10.27
2011-12	25	32	6.57
<b>Total</b>	<b>136</b>	<b>192</b>	<b>43.96</b>

**(c) Non-raising of the issues relating to mismatch of purchases**

Cross verification of the dealers' purchase details in Annexure J2 with the suppliers sales details given in the suppliers Annexure J1 revealed instances where dealers' have claimed purchases lesser than what their suppliers had shown as sales to these dealers. Though, the ITC is limited to the amount of purchase shown by the dealers in their accounts, the mismatch is fraught with the risk of concealment of purchases by the dealers. The purchase-sale mismatch had not been considered as a risk parameter while assessing the dealers. The mismatch details in respect of assessments and IBA cases are as shown in following **Table 2.4.17(c)**.

**Table 2.4.17(c)**

Assessment period	Assessments			IBA		
	No of dealers	No of suppliers	Difference between purchasers and suppliers VAT (₹ in crore)	No of dealers	No of suppliers	Difference between purchasers and suppliers VAT (₹ in crore)
2008-09	10	24	11.63	4	4	0.68
2009-10	14	15	6.93	9	9	1.04
2010-11	15	21	4.60	13	13	2.33
2011-12	5	6	0.92	11	12	3.99
<b>Total</b>	<b>44</b>	<b>66</b>	<b>24.08</b>	<b>37</b>	<b>38</b>	<b>8.04</b>

**The Government may direct the Department to put in place effective deterrent measures to prevent incorrect/improper submission of**

**information by dealers and risks associated with ITC mismatch be addressed before finalization of cases.**

#### **2.4.18 Conclusion and Recommendations**

Though the Government and the STD has been improving the system of registration, assessment and collection of the VAT constantly still there are gaps in the system that hinder the realization of revenue collection. The Performance Audit revealed a number of such lapses and lack of internal controls that require immediate remedial action. A few important observations and the proposed recommendations are mentioned as below:

We noticed that mechanism for obtaining inter and intra departmental data/information for bringing unregistered dealers within the tax net did not exist. Though 11,601 dealers were detected as URDs, only 6,730 dealers were registered during this five year period. Thus, the remaining dealers are yet to be brought within the tax net.

- **The Government may direct the Department to maintain a database of surveys conducted and put in place effective mechanism for obtaining inter and intra departmental data/information for bringing unregistered dealers within the tax net.**

In the Advisory branch which was formed with a view to verify the information furnished by newly registered dealers, ascertain their revenue reliability and appraise the dealers about tax provisions, filing returns etc.; pendency ranging up to 80 *per cent* in conducting advisory visits in case of dealers registered up to 31 March 2015 was noticed. There was pendency ranging from 65 *per cent* to 91 *per cent* in disposal of URD periods during 2010-11 to 2014-15 in four test checked divisions.

- **The Government may direct the Department to take measures to ensure that genuineness and revenue reliability of the dealers are established at the earliest by conducting advisory visits timely and also ensure that the Government revenue is protected by prioritizing assessments of unregistered periods.**

In LTU Branch which was formed to exclusively assess major taxpayers, there was rush in finalisation of cases at the end of their limitation period. Audit found that 57 *per cent* of the cases assessed during 2013-14 were cancelled and 765 cases of 2013-14 involving an amount of ₹ 1,961 crore and 1,628 cases of 2014-15 involving an amount of ₹ 6,070 crore were in appeal indicating therein that the assessments were finalised in haste.

- **The Government may direct the Department to take appropriate steps to improve the currency of audits/assessments by spreading the assessments uniformly across the years so as to protect and enhance Government revenue, and to provide timely and quality service to the dealers.**

Though the concept of issue based audit is appreciable but actual recoveries against the risks identified was 10.25 *per cent* and 13.58 *per cent* during 2013-14 and 2014-15 respectively.

- **The Department needs to enforce measure for effecting better recovery so that the wing can achieve the desired results for which it was created.**

In the Investigation Branch pendency and delay in investigation process was noticed at every stage i.e., action taken on complaints, conducting visits and finalization of investigation have provided an opportunity to the dealers to close down the business and escape detection by the tax authorities. The process of assessment needs strengthening. The assessment of cases may be spread uniformly so that there is no rush of finalization of cases at the fag end of the limitation period of assessment and quality of assessment is maintained.

- **Government may direct the Department to take appropriate steps to improve the currency of audits/assessments through proper planning and implementation so as to protect as well as enhance Government revenue, and to provide timely and quality service to the dealers.**

Though the objective of the recovery branch was to recover arrears by taking recovery actions in the cases referred to it under the Act administered by the STD, audit noticed that an amount of ₹ 2,416.02 crore was pending in respect of 1,68,831 short filer cases. Out of this, an amount of ₹ 753.04 crore pertained to more than five years. There was lack of co-ordination between the various branches of the Department that delayed the recovery of the Government dues.

- **It is recommended that the Department may consider taking measures for prompt recovery of dues by initiating action on priority basis in accordance with the provisions of the Act.**

During the exit conference, the Additional Chief Secretary accepted all the recommendations.

## **2.5 Other audit observations**

### **Discrepancies noticed in cases finalised under Maharashtra Value Added Tax Act, 2002 (MVAT Act)**

*Our scrutiny of the assessment records finalised under Bombay Sales Tax Act, 1959 (BST Act), Maharashtra Value Added Tax, 2002 (MVAT Act), Central Sales Tax Act, 1956 (CST Act) in the Sales Tax Department revealed cases of non-observance of provisions of Acts/Rules, non/short levy of tax, irregular grant of exemptions and other cases 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.*

### 2.5.1 Short levy of tax

DCST, E-609, LTU, Mazgaon

#### Incorrect computation of tax payable on works contract resulted in short levy of tax of ₹ 70.89 lakh

As per Section 6 of the Maharashtra Value Added Tax Act, 2002, there shall be levied a sales tax on the turnover of sales of goods specified in different schedules at the rates set out in the respective schedule. Cement is Schedule 'E' material which is taxable at 12.5 *per cent*. As per Rule 58(2) of the Maharashtra Value Added Tax Rules, 2005, in case of works contracts, tax is payable on the value of goods involved in the execution of works contracts at the rates applicable to such goods under the Act.

Scrutiny of the records in July 2014, revealed that the sales turnover of a works contractor, during 2008-09 was determined at ₹ 89.71 crore, of these out of sales valued at ₹ 20.03 crore relating to consumption of cement was taxed at the rate of 12.5 *per cent* on and the remaining sales were taxed at the rate of four *per cent*. However, it was seen from Para 10 of the Notes on Account appended to the Balance Sheet for 2008-09 in respect of the dealer that purchase value of cement consumed in works contract alone was ₹ 28.02 crore which was more than sale value of ₹ 20.03 crore shown in the returns. Considering the profit element of 1.25 *per cent* on trading account, the sale value of the consumed cement would be ₹ 28.37 crore. Thus, the turnover of ₹ 8.34 crore was incorrectly taxed at four *per cent* instead of 12.5 *per cent*. This resulted in short levy of tax of ₹ 70.89 lakh.

After this being pointed out in August 2014, the Department did not accept the observation and stated (April 2015) that there was a typographical error in the dealer's account which has been rectified and the tax has been worked out correctly.

The reply furnished by the Department is not correct as the accounts submitted by the dealer were certified by CA. He had claimed ITC in accordance with CA certificate. Besides, no supporting documents of the typographical error were furnished to audit.

We reported the matter to the Government in June 2015; their reply has not been received (February 2016).

### 2.5.2 Non-levy of penalty on *hawala* transactions

Deputy Commissioner of Sales Tax, E-626, LTU, Mazgaon

#### Penalty amounting to ₹ 38.65 lakh was not levied on account of *hawala* transactions

As per Section 29(4) of the MVAT Act 'Where any person or dealer has knowingly issued or produced any document including a false bill, cash memorandum, voucher, declaration or certificate by reason of which any transaction of sale or purchase effected by him or any other person or dealer is not liable to be taxed or is liable to be taxed at a reduced rate or incorrect set-off is liable to be claimed on such transaction, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order

in writing, impose on him in addition to any tax payable by him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission’.

During scrutiny (June 2014) of records, we noticed that while assessing a dealer engaged in manufacture, exporter and importer in medicine, the assessing officer had disallowed set-off amounting to ₹ 38.65 lakh on account of purchases made from *hawala* dealers. Set-off claim from *hawala* dealers was originally pointed out by the investigation branch during their visit of place of business of dealer. However, penalty under 29(4) equal to the amount of tax found due was not levied.

After we pointed out the case (September 2014), the Department stated (April 2015) that penalty under Section 29(4) was leviable by an authority before whom the false documents are produced, which in this case was the investigation authority, and hence, in absence of the documents the assessing officer in this case did not have enough grounds to charge the dealer under Section 29(4).

The reply of the Department is not tenable as the facts of *hawala* transactions were available with the Department in respect of penalty to be levied by the assessing officer who was competent authority to levy it. This resulted in non-levy of penalty of ₹ 38.65 lakh.

We reported the matter to the Government in July 2015; their reply has not been received (February 2016).

### **2.5.3 Short levy of tax due to incorrect allowance of deduction of service tax**

**Dy. Commissioners of Sales Tax –Large Taxpayers Unit E-634 (Mumbai Division) and E-002 (Nashik Division)**

**Incorrect allowance of deduction on account of service tax in composition tax scheme resulted in short levy of tax of ₹ 13.15 lakh**

As per Section 42(3) of the Maharashtra Value Added Tax Act, 2002 (MVAT Act), where a dealer is liable to pay tax on the sales effected by way of transfer of property in goods involved in the execution of works contract, in lieu of amount of tax payable by him under this act, pay in *lump sum* by way of composition equal to eight *per cent* of the total contract value of contracts other than construction contract, after deducting from the total contract value, the amount payable towards a registered sub-contractor.

During test check of records (January and May 2011) in Mumbai and Nashik Divisions, we noticed that two dealers were allowed deductions on account of service tax amounting to ₹ 1.65 crore during 2006-07 and 2007-08 from their turnover of contract receipts. However, as per Section 42(3), only payment towards registered sub-contractor is allowed to be deducted from the total contract receipts and hence, the deduction allowed in respect of service tax was irregular. This resulted in short levy of tax of ₹ 13.15 lakh.

After this being pointed out in February 2011 and May 2011, the Department accepted the observations and raised additional demand of ₹ 13.18 lakh in October 2013 and March 2014. A report on recovery in these cases is awaited.



We reported the matter to the Government in April and May 2015; their reply has not been received (February 2016).

### Discrepancies noticed in cases finalised under the Bombay Sales Tax Act, 1959 (BST Act)

#### 2.5.4 Non-recovery of sales tax dues

##### Sales Tax dues of ₹ 2.14 crore in two cases were in arrears

Under the Bombay Sales Tax Act, 1959 (BST Act), tax was required to be paid by the assessee in a manner and within the time specified in the notice of demand. In case of failure on the part of the assesses to pay the amount within the prescribed time, the Department could under Section 38(B) of the BST Act which empowers the Commissioner of Sales Tax to exercise all the powers and perform all the duties under the Maharashtra Land Revenue Code, 1966 (MLR Code), to recover the amount which remains unpaid as if it were arrears of land revenue. If the defaulters own property outside the State, the concerned assessing authority is required to issue, under the provisions of the Revenue Recovery Act, 1890, a Revenue Recovery Certificate (RRC) to the Collectors of the Districts of the States in which the defaulters possess properties, to recover the arrears of tax.

##### (a) Assistant Commissioner of Sales Tax, C-810, Malegaon, Nashik

During test check of recovery files in Nashik Division in November 2013, we noticed that a co-operative spinning mill was in arrears of tax for the periods from 1987-88 to June 1994. The mill went into liquidation in November 1994, but in order to accommodate nearly 300 workers, the State Government allowed (April 1995) the workers to run the mill on Leave and Licence basis as co-operative society. However, the worker's society also defaulted in payment of sales tax dues of ₹ 1.03 crore for the periods from 1995-96 onwards.

The Government allowed (November 2000) the worker's society to repay the dues in installments of ₹ One lakh per month. Ten installments were paid between November 2000 and August 2001 and thereafter the society defaulted on the payments. The Department issued (March 2003) letters to the Liquidator staking claim on dues from the mill amounting to ₹ 5.19 lakh and ₹ 15.33 lakh for the periods from July 1987 to March 1993 and May 1993 to June 1994 respectively, and on dues from the worker's co-operative society amounting to ₹ 1.03 crore for the period from 1995-96 to December 2002. It would be seen from the above that certain months were missing. In April 2004, the Department issued another letter to the Liquidator staking claim on dues from the mill amounting to ₹ 50.16 lakh for the periods from 1993-94 to 1994-95. The basis on which the above dues were worked out was not available on record.

The Liquidator admitted (April 2004) the claim of the Department only to the extent of ₹ 14.84 lakh which was liability of the mills towards sales tax as appearing in the balance sheet of the mill. The reasons for the depiction of lesser amount and the concerned balance sheet were not made available to audit. However, the Liquidator rejected the claim on the worker's society as it



was running its business from the mill premise only on Leave and Licence basis and hence, did not own the property. No further progress in this regard was available on record.

We reported the matter to the Government in March 2015; their reply has not been received (February 2016).

**(b) Sales Tax Officer, C-014, Borivali Division**

During test check of assessment and other related records (August 2014), we noticed that the registration of a dealer engaged in resale of liquor and beer was cancelled with effect from 15 June 2003 in August 2003. A Sales Tax clearance certificate, that there were no outstanding dues against the dealer as on 31<sup>st</sup> March 2002, was issued on 29 March 2006. However, the fact regarding the pending assessments for the years 2002-03 and 2003-04 was not mentioned on tax clearance certificate. In February 2013 the notices regarding dues of ₹ 44.09 lakh (2002-03) and ₹ 11.94 lakh (2003-04) were issued subsequent to *ex-parte* assessments of the dealer. However, the revenue of ₹ 56.04 lakh was at stake as the dealer was not traceable.

On this being pointed out (September 2014), the Department stated that notice was issued to the dealer in August 2003, to which the dealer did not respond. Further, there was delay in following up of the case due to major changes in the working set-up of Sales Tax Department on account of transition from Bombay Sales Tax Act to Maharashtra Value Added Tax. During the period from July 2007 to January 2013, many notices were issued to the dealer to which no response was received, and finally the *ex-parte* assessments were carried out in February 2013.

The reply is not tenable because the assessments should have been completed before or immediately after the cancellation of the registration or at the most prior to the issue of the clearance certificate. Due to the belated approach of the Department, revenue of ₹ 56.04 lakh was at stake.

We reported the matter to the Government in April 2015; their reply has not been received (February 2016).