

## CHAPTER II

### TAXES ON SALES, TRADE, ETC.

#### 2.1 Tax administration

Levy and collection of Value Added Tax (VAT) receipts is governed by the Maharashtra Value Added Tax Act, 2002 (MVAT Act), Maharashtra Value Added Tax Rules, 2005 (MVAT Rules), notifications and instructions issued by the Government from time to time.

The Sales Tax Department functions under the administrative control of the Additional Chief Secretary, Finance Department (ACS FD) at the Government level. The Commissioner of Sales Tax, Maharashtra State (CST) heads the Sales Tax Department and is assisted by a Special Commissioner of Sales Tax/ Additional Commissioners/Joint Commissioners (JCs)/Deputy Commissioners (DCs)/Assistant Commissioners (ACs) and Sales Tax Officers (STOs) at various levels.

The Government, promulgated an Act called the “Maharashtra Settlement of Arrears in Dispute Act, 2016” (the Settlement Act) on 26 April 2016 for settlement of these arrears. Under the Act, the Nodal officers viz. the DCs, ACs and STOs were entrusted with the job of processing the applications filed for the settlement of arrears in dispute under the supervision of the Additional Commissioners and Nodal Joint Commissioners. The Zonal Additional Commissioners were overall in-charge of the implementation of the Settlement Act throughout their respective Zones.

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the assessment, levy and collection of Sales Tax was governed by the Bombay Sales Tax Act, 1959 (BST Act) which was repealed with effect from 1 April 2005.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

#### 2.2 Internal Audit

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

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

**Table 2.2**

Year	No. of cases selected for audit by IAW	No. of cases audited by IAW	Audit observations raised By IAW	Audit observations settled till date	Audit observations pending as on 31 March of the year
2012-13	6,280	9,682	2,789	2,322	467
2013-14	16,695	18,628	5,808	4,949	859
2014-15	13,140	17,209	5,028	3,807	1,221
2015-16	15,660	17,086	4,312	2,796	1,516
2016-17	15,055	18,197	4,185	1,447	2,738
<b>Total</b>	<b>66,830</b>	<b>80,802</b>	<b>22,122</b>	<b>15,321</b>	<b>6,801</b>

Source: Information furnished by the Department

During the last five years, the number of cases actually audited have exceeded the number of cases planned to be audited. The Department has settled 69 per cent of the observations raised by IAW.

Scrutiny of the records of internal audit wing of the LTU wing revealed shortfall in cases audited by IAW and pendency of audit objections raised by the wing. These are discussed in the following paragraphs.

**2.2.1** The Large Taxpayer Unit (LTU) of the Department was formed in January 2007 to provide single window service to dealers with net tax liability of ₹ one crore and above or who had claimed refunds of more than ₹ five crore during the year.

The Internal Audit Manual (IAM) stipulated that cases where tax liability or grant of refund in a year is more than ₹ one crore, such cases are required to be audited (pre-refund /post-refund) by Deputy Commissioner-Internal Audit. Since each LTU case has more than one crore tax liability each LTU case was required to be audited by the Internal Audit Wing (IAW). However, audit found that only 17 to 27 per cent of the LTU cases were audited by the IAW as shown in the **Table 2.2.1**.

**Table 2.2.1**

Year <sup>1</sup>	No of cases assessed by LTU wing	Internal audits completed cases	Percentage of Col 3 to Col 2	Observations raised		Percentage of Col 5 to Col 3
				Cases	Amount (₹ in crore)	
1	2	3	4	5	6	7
2013-14	6,297	1,044	17	130	360.12	12.45
2014-15	6,077	1,217	20	174	165.29	14.30
2015-16	4,995	1,365	27	152	234.92	11.14
<b>Total</b>	<b>17,369</b>	<b>3,626</b>		<b>456</b>	<b>760.33</b>	

Source: KKPI reports furnished by the Department

<sup>1</sup> LTU wise information.

The Department stated (July 2017), that the shortfall in auditing was due to the increase in the number of LTU cases without corresponding increase in the Internal Audit Officers. It was further stated that instructions had been issued to ensure auditing of all LTU cases by Internal Audit Officers.

**2.2.2 Internal audit of lower number of cases in LTU Units**

The cases finalised in wings other than LTU like Business Audit (BA) and Refund Audit Wing (RA) are having tax liability of less than ₹ 1 crore. It was seen that the IAW conducted audit of more number of cases finalized by RA Wing and BA Wing than that finalized by LTU wings. The comparative data is given in the following **Table 2.2.2**.

**Table 2.2.2**

Year	Section	Internal audits completed	Revenue involved in audit para		Percentage of cases having audit objection
		Cases	Cases	Amount (₹ in crore)	
2013-14	LTU	1,044	130	360.12	12.45
	RA	9,902	773	62.25	7.81
	BA	4,370	223	2.11	5.10
2014-15	LTU	1,217	174	165.29	14.30
	RA	9,106	904	71.81	9.93
	BA	4,260	127	3.07	2.98
2015-16	LTU	1,365	152	234.92	11.14
	RA	8,162	619	93.55	7.58
	BA	4,517	176	11.31	3.90

**Source: KKPI reports furnished by the Department**

The Department stated that refund cases were given priority considering the time limit and sensitivity of the subject for all stake holders. However, the fact remains that the instructions contained in the Internal Audit Manual have not been followed.

**2.2.3 Performance of IAW in disposal of the audit observations raised in LTU cases**

The performance of IAW with respect to audit observations raised and settled in respect of the selected divisions is as given in the **Table 2.2.3**:

**Table 2.2.3**

Audit Year	No. of cases of LTU branch selected for Audit	No. of cases audited by IAW	Audit observations raised by IAW	Audit observations settled till date	Audit observations pending as on 31 March 2017	Percentage of Col 6 to Col 4
1	2	3	4	5	6	7
2013-14	681	681	180	161	19	11
2014-15	1,145	1,145	360	327	33	10
2015-16	1,392	1,392	405	309	96	24
<b>Total</b>	<b>3,218</b>	<b>3,218</b>	<b>945</b>	<b>797</b>	<b>148</b>	<b>16</b>

Source: Information furnished by the Department

The Department had settled 84 *per cent* of the audit observations raised during the last three years. The amount involved in the remaining 16 *per cent* (148 observations) was ₹ 187.42 crore. Since the amount involved is huge, the Department may make efforts to settle all the observations so that recovery could be made timely.

The JC explained the reasons for pendencies in internal audit as being due to delay in furnishing proper compliance by the concerned authorities and due to the cases lying with appellate authorities.

The Department needs to tackle the issues by taking suitable measures for ensuring sufficient manpower for internal audit and ensuring the compliance of the norms set by the Department itself.

### 2.3 Results of audit

In 2016-17, test check of records of 200 units relating to Taxes on Sales, Trade, etc. showed underassessment of tax and other irregularities involving ₹ 57.72 crore in 1,142 observations, which fall under the following categories as shown in **Table 2.3**.

**Table 2.3**

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	Audit of "Maharashtra Settlement of Arrears in Disputes Act, 2016"	1	0.13
2	Non/short levy of tax	139	10.69
3	Incorrect grant/excess set-off of tax	82	1.87
4	Non/short levy of interest/penalty	198	6.79
5	Non-forfeiture of excess collection of tax	18	0.11
6	Other irregularities like non submission of declaration forms, computation errors etc.	704	38.13
<b>Total</b>		<b>1,142</b>	<b>57.72</b>

During 2016-17, the Department accepted underassessment and other deficiencies of ₹ 1.46 crore in 89 observations which were pointed out during 2016-17 and earlier years. The Department also recovered an amount of ₹ 1.07 crore in 2016-17 in respect of 98 observations accepted during 2016-17 and earlier years.

The Department in one case recovered an amount of ₹ 5.21 lakh after issue of the draft paragraph.

A few illustrative cases involving ₹ 6.03 crore including a paragraph on “Maharashtra Settlement of Arrears in Disputes Act, 2016” are discussed in the succeeding paragraphs.

## **2.4 Audit of “Maharashtra Settlement of Arrears in Disputes Act, 2016”**

### **Introduction**

The arrears of revenue locked up in appeals with the Sales Tax Department (STD), Maharashtra Sales Tax Tribunal (MSTT) and Courts as on 31 March 2016 aggregated to ₹ 60,135.26 crore in 1,02,743 appeal cases. The Government, promulgated an Act called the “Maharashtra Settlement of Arrears in Dispute Act, 2016” (the Settlement Act) on 26 April 2016 to unlock these arrears. As per the Settlement Act, arrears in dispute included tax, interest payable and penalty imposed under the provisions of the relevant Act, in respect of any statutory order that pertained to period ending on or before 31 March 2012. The benefit of the Settlement Act was available to the dealers who had filed appeals and stay in full or in part had been granted by the appellate authority under the provisions of the relevant Act, or by the Tribunal or Court not later than 30 September 2016, provided the appeals were withdrawn by the appellants. The applicants who desired to settle the arrears in dispute were required to submit their application to the designated authority of the STD and pay the entire dues of tax in dispute and interest dues of 25 *per cent*. The balance 75 *per cent* interest dues and the entire penalty dues out of the disputed arrears were eligible for waiver.

The Government amended the provisions of the Act from time to time. It extended the last date for submission of applications up to 30 November 2016 and dispensed with the condition of the cases being under stay retrospectively from 26 April 2016. In other words, the applicant was entitled to avail the benefits irrespective of the fact whether the arrears in dispute were pending in appeal were stayed or not.

Earlier to this, settlement of arrears was made under the Bombay Sales Tax Act, 1959 in the form of an Amnesty Scheme in June 2004. Thus, an effort to settle the arrears was made after a gap of 12 years.

Audit of the Settlement of Arrears Scheme was taken up to ascertain the extent to which the scheme had been successful in reduction of arrears of tax pending in appeal with the Departmental authorities; the correctness of the orders passed under the Scheme and whether there were any lacunae/deficiencies in the Settlement Act. The audit was conducted from April to July 2017.

### **Audit scope and methodology**

There are 13 divisions in the Sales Tax Department in the Maharashtra State out of which four divisions namely Mumbai, Pune Thane-City and Thane-Rural (33 *per cent* of total divisions) were selected for the audit. The divisions were selected on the basis of maximum numbers of Settlement Orders passed. The details of the sample size is mentioned in the following table.

Division	Number of Nodal Divisions where Settlement orders passed	Number of Nodal Divisions selected	Number of Settlement Orders passed in the selected Divisions/ Nodal Divisions	Number of units selected/ Total number of units in selected Divisions	Number of Settlement Orders passed in the selected units	Percentage of Settlement Orders covered
Mumbai	18	5	6,255	9/41	1,996	32
Pune	8	2	877	3/9	321	37
Thane-City	1	1	3,006	4/14	1,351	45
Thane-Rural	1	1	1,790	2/14	608	34
<b>Total</b>		<b>9</b>	<b>11,928</b>	<b>18/78</b>	<b>4,276</b>	<b>36</b>

An entry conference was held with the officials of the Department on 19 May 2017, wherein the scope and methodology of the audit was discussed. Thereafter, the draft Report containing the deficiencies noticed during the period of audit was forwarded to the Department/Government in July 2017. The Exit Conference was held on 31 October 2017. The replies received during the exit conference and at other points of time have been appropriately incorporated in the relevant paragraphs of the Report.

### Audit Findings

#### 2.4.1 Planning and Outcome of the Settlement Act

##### 2.4.1.1 Financial implication of the Act

As per records pertaining to the planning for the introduction of the Settlement Act, it was seen that the total arrears as on 5 January 2016 were ₹ 86,450 crore (₹ 36,147 crore under BST Act + ₹ 50,303 crore for VAT Act). The Department expected to settle dues approximately amounting to ₹ 11,793.50 crore.

The recovery of tax arrears (other than interest/penalty) was expected at ₹ 982.52 crore<sup>2</sup>. The information regarding applications received under the Settlement Act during the period from April 2016 to November 2016, the disposals thereof and the arrears recovered and waived as on 14 September 2017 is shown in **Table 2.4.1.1** as under:

**Table 2.4.1.1**

Applications received under the scheme	Applications disposed off			Arrears recovered (₹ in crore)		Arrears waived (₹ in crore)	
	Applications approved	Applications rejected	Pending	Tax	Interest	Interest	Penalty
41,559	40,262	838	459	1,539.57	420.41	1,199.59	841.74
<b>Total</b>				<b>1,959.98</b>		<b>2,041.33</b>	

Source: Information furnished by the Department

<sup>2</sup> The Department applied parameters of earlier Amnesty Schemes and worked out the probable recoverable amount as ₹ 982.52 crore (in the form of tax after excluding interest and penalty and probability of 20 percent of the dealers that could opt for Amnesty Scheme).

It can be seen that the arrears involved in the applications which were approved under the Act worked out to ₹ 4,001.31 crore as against of ₹ 11,793.50 crore expected to be settled. The amount of revenue waived was more than the revenue received under the Act. The recovery of tax was ₹ 1,539.57 crore against ₹ 982.52 crore.

#### **2.4.1.2 Reduction of arrear cases**

A comparison of pending appeal cases with various appellate authorities at the commencement of the Settlement Act and after its expiry revealed that the reduction in the number of appeal cases was not significant as shown in **Table 2.4.1.2** as follows:

**Table 2.4.1.2**

<b>Appellate Authority</b>	<b>No. of cases as on 1 April 2016</b>	<b>Addition during the year</b>	<b>Disposal during the year</b>	<b>No. of cases as on 31 March 2017</b>	<b>Reduction in percentage</b>
DC Appeal	77,938	36,749	52,349	65,345	16
JC Appeal	18,948			15,941	16
MSTT	4,462	3,059	3,451	4,070	9
H.C. Mumbai	1,395	269	298	1,366	2
<b>Total</b>	<b>1,02,743</b>	<b>40,077</b>	<b>56,098</b>	<b>86,722</b>	<b>16</b>

**Source: Information furnished by the Department**

It can be seen from the above table that the reduction in the number of cases in appeal ranged from two to 16 *per cent* only.

In the Exit Conference, the Department stated that there was a 25 *per cent* reduction in appeal cases, and not 16 *per cent*. The Department did not furnish any documentary evidence in support of their claim. However, as per the information furnished by the Department itself indicate reduction in appeal cases ranged between two and 16 *per cent*.

The above facts indicated that neither the expected settlement amount of arrears, nor the recoveries therefrom were properly assessed at the time of framing policy of the Settlement Act.

#### **2.4.2 Lacuna/deficiencies in the Act**

As per the provisions of Section 2(2) of the Settlement Act, “arrears in dispute” includes tax, interest and penalty in respect of any statutory order pertaining to any period ending on or before the 31 March 2012, against which appeal is filed and is subsequently withdrawn. The Act did not mention the date on which the assessments should have been made for the purpose of the Settlement Act.

The Settlement Act provided the cut-off date for filing the appeals as 30 November 2016. Thus, this gave an opportunity to the dealers who had not yet filed appeals as on the date of promulgation of the Act, to enter into a dispute with the Department for payment of arrears, to file appeals and then avail the benefits of the Settlement Act, in terms of waiver of 75 *per cent*



interest and full penalty as applicable. A few cases are discussed in the following paragraphs.

**Cases assessed prior to the promulgation of the Settlement Act**

Audit noticed that 859 assessed cases involving ₹ 48.41 crore were not in appeal before the promulgation of the Act. The dealers simultaneously filed and withdrew the appeals to avail the benefits of the Settlement Act. Thus, the probability that the arrears were disputed only for sake of availing the benefit under the Scheme could not be ruled out. A few cases are mentioned in **Table 2.4.2(a)** below:

**Table 2.4.2(a)**

(₹ in lakh)					
Name of Dealer and period	Date of Assessment	Date of filing of appeal	Date of Settlement Order	Arrears recovered	Arrears waived
Drive India Enterprises Solutions Ltd. 2011-12	27/01/2016	15/06/2016	14/01/2017	16.10	6.15
Apex Metal India 2010-11	10/11/2015	30/05/2016	03/01/2017	20.55	24.01
A.S.Timber 2011-12	31/01/2015	18/08/2016	21/01/2017	15.07	18.01
C & G Extrusion Machine 2009-10	28/12/2015	02/05/2016	15/12/2016	5.82	3.16
M R Dying 2011-12	20/03/2016	25/07/2016	17/01/2017	11.91	7.89
Sahyadri Motors Pvt. Ltd. 2010-11	23/03/2015 Additional Demand order: 26/10/2016	05/11/2016	11/11/2016	0.00	24.51
Kanade Anand Udyog Pvt. Ltd. 2010-11	21/08/2014 Additional Demand order: 02/08/2016	18/10/2016	10/01/2017	0.00	9.58

**Source: Information furnished by the Department**

**Cases assessed after the promulgation of the scheme**

This lacuna also resulted in settlement of the arrears that were assessed after the promulgation of the Act on 26 April 2016. Audit noticed that 358 cases involving arrears of ₹ 30.74 crore were assessed after the promulgation of the Act, wherein the dealers simultaneously filed and withdrew the appeals to avail the benefits of the Settlement Act. A few cases are mentioned in **Table 2.4.2(b)** below:

**Table 2.4.2(b)**

(₹ in lakh)					
Name of Dealer and period	Date of Assessment	Date of filing of appeal	Date of Settlement Order	Arrears recovered	Arrears waived
Shivaum Steel (P) Ltd. 2008-09	11/11/2016	11/11/2016	30/01/2017	37.16	54.76
Greaves Cotton Ltd. 2011-12	07/11/2016	15/11/2016	30/03/2017	84.93	35.32
Rocket Foods Ltd. 2011-12	09/06/2016	16/06/2016	02/09/2016	21.64	22.74
Chetak Trading Co. 2008-09	09/11/2016	11/11/2016	19/12/2016	0.00	6.76
Meghdooth Enterprises 2009-10	23/08/2016	14/09/2016	17/11/2016	21.18	31.15

**Source: Information furnished by the Department**

As per information furnished by the Department, out of 40,262 orders passed under the Settlement Act in the State, 15,309 orders (38 *per cent*) pertained to cases where the appeals had been filed by the assessee dealers after the enactment of the Settlement Act. The net revenue recovered in these cases was ₹ 550.64 crore, after a waiver of ₹ 305.81 crore. In the sample checked by audit, the Department recovered arrears of ₹ 31.19 crore in 1,217 cases and the waiver of interest/penalties was ₹ 47.96 crore.

In the Exit Conference, the Department stated that the Act itself provided for orders for periods in appeal on or before 31 March 2012, hence even appeals filed after the date 26 March 2016 were considered under the Settlement Act, if they pertained to period ending on or before 31 March 2012. In respect of settlement orders which were assessed after the enactment of the Act, Department stated that this has resulted in speeding up the recovery of taxes.

The fact remains that many dealers reaped unintended benefits of current arrears due to deficiencies/lacunae in the Settlement Act, whereas the huge pendency of old appeals/disputes largely remained to be tackled.

### **2.4.3 Non-recovery of arrears from Oil Companies**

The Settlement Act was passed with the objective of reducing the arrears pending before various Appellate forums by way of settlement of arrears in dispute under various Acts administered by the MSTD.

The arrears of tax amounting to ₹ 60,135.26 crore were pending in Departmental Appeals, Maharashtra Sales Tax Tribunal (MSTT), High Court and Supreme Court as on 31 March 2016. Out of these, 31 *per cent* of the arrears (₹ 18,673.47 crore in 131 cases) were pending from four Oil Companies<sup>3</sup>. While framing the policy for the Settlement Act, the

<sup>3</sup> M/s Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd., Bharat Petroleum Corporation Ltd. and Reliance Industries Limited.

Department had mentioned that these Oil Companies were “highly unlikely to come forward for Amnesty”.

The stage-wise pendency of arrears is shown in **Table 2.4.3(a)** as under.

**Table 2.4.3(a)**

(₹ in crore)				
Sr. No.	Stages of recovery of Arrears	Arrears in respect of Oil Companies	Financial Year	Period of appeal
1	Departmental Appeal	11,144.80	1986-87 to 2012-13	2002-03 to 2016-17
2	MSTT	7,280.24	1985-86 to 2004-05	1997-98 to 2016-17
3	High Court/ Supreme Court	248.43	1999-00 to 2004-05	2012-13 to 2013-14
<b>Total</b>		<b>18,673.47</b>		

Source: Information furnished by the Department

Further scrutiny revealed that arrears of ₹ 13,222.77 crore pertained to the assessment periods under the Bombay Sales Tax Act/Motor Spirit Taxation Act, the oldest being the assessment year 1985-86.

Though these Acts ceased to exist after 1 April 2005, the pending cases indicate that the Department had neither expedited the clearance of these appeals nor did they persuade the Oil Companies to come forward to avail the benefits of the Settlement Act. However, one company i.e. HPCL took the benefit of the scheme by partially withdrawing nine appeal cases involving arrears of ₹ 30.89 crore, and paid up arrears of ₹ 17.32 crore (November 2016).

Information furnished by the Department in respect of 28 appeal cases of Oil Companies revealed that these cases were pending with the first appellate authority, the oldest being from 1998-99, as shown in **Table 2.4.3(b)**.

**Table 2.4.3(b)**

(₹ in crore)				
Period of appeal	Number of cases	Number of hearings held	Arrears involved	Remarks
1998-99	2	45	0.07	In one case arrears is nil
2003-04	2	13 to 23	0.75	In one case : 23 hearings
2006-07	2	4 to 12	527.48	In one case dues is nil
2007-08	2	7	2.11	
2008-09	3	3 to 10	695.86	
2009-10	5	7 to 38	693.48	In 2 cases : 38 hearings and in 2 cases : 22 hearings
2010-11	7	2 to 16	4,111.36	In two cases no hearings have been held
2014-15	5	1	161.71	
<b>Total</b>	<b>28</b>		<b>6,192.82</b>	

**Source: Information furnished by the Department**

Thus, it would be seen from the above that seven cases, though the hearings have been held for more than 22 times, the cases have not been decided till date. Similarly, in two cases no hearings were held. This indicated that the Appellate Authorities had not decided the cases and neither planned for disposing off the cases in time. The Companies have, therefore, preferred to keep the cases pending under litigation and not come forward for availing the benefits.

In the Exit Conference, the Department stated that all the four Oil Companies were regularly persuaded for opting under the Settlement Act, however, it was very difficult to settle the issue across the table. This issue has been raised in the meetings with Hon'ble Ministers and Oil Companies, and the Department is examining ways to settle these cases.

It would be in the interest of revenue if the Department could consider issuing appropriate instructions to the Departmental appellate authorities to promptly dispose these appeal cases pending with the Department.

#### **2.4.4 Irregular waiver of interest**

As per Trade Circular dated 3 May 2016 issued under the Settlement Act, interest payable under Section 30(2) of the Maharashtra Value Added Tax Act, 2002 for the period starting on or after 1 May 2010 and ending on 31 March 2012 is treated as undisputed arrear and is not subject to waiver under the Settlement Act, and hence is required to be recovered in full.

Scrutiny of the records of five<sup>4</sup> selected offices revealed that interest payable by the dealer pertained to the undisputed periods and did not fall within the ambit of the Settlement Scheme. However, the dealers applied for the waiver of interest in respect of undisputed periods and also were allowed by the assessing authority. This resulted in incorrect waiver of ₹ 12.83 lakh in respect of five dealers.

After this being pointed out in audit, the Department accepted the observations and raised additional demand of ₹ 11.52 lakh in four cases, out of which recovery of ₹ 7.17 lakh was also intimated in three cases. Further action taken by the Department in one case is awaited. The above irregular waiver has been pointed by audit only in sample cases test checked and the actual interest waived may be more. The Department may make an effort to recheck all the cases to trace out the incorrect waiver of interest.

In the Exit Conference, the Department accepted the observation and stated that corrective action would be taken in the matter.

#### **2.4.5 Absence of wide publicity**

In order to give wide publicity to the scheme, the Department issued various trade circulars and courtesy letters to all dealers having dues, and held seminars with the dealers as well as Chartered Accountants/Sales Tax Practitioners by the Department throughout the State. They also used TV, Radio, Hoarding Boards and Pamphlets for publicity of the scheme, and held 261 programmes throughout the State.

Perusal of the details revealed that the coverage of the scheme in the mainstream print and electronic media was not adequate. It was noticed that no publicity was given through print and electronic media in Pune, Kolhapur Nagpur, Raigad and Jalgaon, which were important charges/centres for the Department. It was noticed that in Pune and Nagpur no seminar was held.

In the Exit Conference, the Department stated that the Scheme had been given enough publicity and more than 500 programmes were held. The reply of the Department was not in consonance with the information furnished which indicated that only 261 seminars were conducted.

The absence of wide publicity to the Scheme in the mainstream print and electronic media may be one of the reasons for poor response to the scheme. The facts indicate that the Department had failed to settle the old arrears through this Act.

#### **2.4.6 Absence of Internal Control and Monitoring Mechanism**

Section 11 of the Settlement Act provides that after an order is passed by the designated authority, the Commissioner may, on his own motion, at any time, within twelve months from date of service of order, call for the record of such order and after notice of error in such order, in so far as it is prejudicial to the

<sup>4</sup> Dy. Commissioner of Sales Tax, Large Taxpayers Unit: E-622 Mumbai, E-609 Pune; Dy. Commissioner of Sales Tax, Business Audit E-005 Kalyan, E-004 Thane; Dy. Commissioner of Sales Tax, Refund and Refund Audit, E-005 Thane.

interest of revenue, may serve on the dealer a notice and pass an order to the best of his judgment, where necessary.

Section 12 of the Settlement Act provides that the Commissioner may, from time to time, issue instructions and directions as he may deem fit to the designated authorities for carrying out the purposes of the Act.

We called for information regarding review of Settlement Orders by the Commissioner and the instructions and directions issued to designated authorities for carrying out the purposes of the Act. The same has not been received.

It was also noticed that plan for implementation of the Scheme to achieve the target prepared by the Sales Tax Department did not yield the desired result of unlocking the old arrears. No efforts were seen to be taken by the Department to analyse the effectiveness of the scheme. Further, it was noticed that 232 applications out of 1,217 applications where appeals were filed after the enactment of the Settlement Act, i.e. during the period from April 2016 to November 2016, details of appeal, details of payments, etc., were not on record. There was also nothing on record to indicate that a report on the achievement of the Scheme had been submitted by the Department to the Government of Maharashtra.

In the Exit Conference, the Department stated that approximately 11,000 cases had been verified till June 2017.

#### **2.4.7 Conclusion and Recommendations**

It was seen that the total arrears of VAT and BST as on 5 January 2016 were ₹ 86,450 crore and dues expected to be settled under the Act was ₹ 11,793.50 crore. However, the applications received under the Settlement Act were for ₹ 4,001.31 crore only, against which the recovery made was ₹ 1,959.98 crore. Thus, the scheme had not succeeded in making a significant dent on the huge arrears of tax, which remained unrecovered.

Though the Settlement Act was announced with the intention of unlocking the huge arrears of ₹ 60,135.26 crore pending before various appellate forums as on 31 March 2016, the Scheme could achieve only 16 *per cent* reduction in number of appeal cases pending with Departmental authorities, i.e. from 96,886 cases as on 31 March 2016 to 81,286 cases pending as on 31 March 2017. Similarly in respect of Sales Tax Tribunal cases, the reduction was nine *per cent* in number of appeal cases i.e. from 4,462 to 4,070, whereas 15,309 applications for appeals were filed and withdrawn after the promulgation of the Act, involving arrears of ₹ 856.45 crore taking unintended benefits of the Scheme due to lacunae in the provisions.

Though 31 *per cent* of the revenue locked up in appeals related to four major Oil Companies, these companies/dealers were not persuaded to avail the benefits of the Settlement Act. As a result, huge arrears of revenue mostly relating to the repealed Bombay Sales Tax Act, 1959, remained locked up before the appellate authorities, without any resolution in sight.

The Department's dissemination of the Scheme in the mainstream print and electronic media was not adequate.

The Commissioner did not review a percentage of the Settlement Orders passed under the Act and neither was any Report on the achievements of the Scheme was submitted to the Government of Maharashtra.

- **The Government may consider directing the Department to carry out a review of the Settlement orders, to identify the leakages of revenue, if any. The effective date for implementation of the scheme be defined carefully in future.**

## **2.5 Other audit observations**

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

### **2.5.1 Disposal of Refund applications and grant of Refunds**

Mention was made in the Comptroller and Auditor General's Audit Report on Revenue Receipts for the year ended 31 March 2014 that refunds granted under Section 52 of the MVAT Act by the Department had resulted in avoidable payment of interest of ₹ 8.18 crore. While discussing the Report, the Public Accounts Committee (PAC) in its 15<sup>th</sup> Report of 2015-16 (placed in the State Legislature on 13 December 2016) had recommended for streamlining the machinery of the Department for timely grant of refunds so that no interest would be payable. Besides the information required from the dealers in grant of refund should be obtained promptly in advance. However, audit found that the Department had continued granting interest on account of delays in grant of the refunds as discussed in the following paragraphs.

#### **2.5.1.1 Disposal of Refund applications**

The status of disposal of Refund applications as per the KKPI<sup>5</sup> reports in the four divisions<sup>6</sup> test checked was as follows in **Table 2.5.1.1**.

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<sup>5</sup> KKPI - Key Key Performance Indicators - monthly return submitted by each unit to the Joint Commissioner.

<sup>6</sup> Mumbai, Pune, Nashik and Raigad.



Table 2.5.1.1

(₹ in crore)							
Year		Total Refund applications <sup>7</sup>	Audit Completed Cases under Section 22	Assessment Completed Cases under Section 23	Pre-Audit Refund Granted <sup>8</sup> Cases	Refund Applications pending at the end of the year	Pendency percentage (Col 7 to Col 3)
1	2	3	4	5	6	7	8
2014-15	Cases	1,527	35	388	62	1,042	68
	Amount	7,305.44	60.41	590.55	1,135.09	5,519.74	76
2015-16	Cases	1,398	21	151	39	1,187	85
	Amount	6,959.50	37.73	413.16	1,153.96	5,354.66	77
2016-17	Cases	963	15	93	198	657	68
	Amount	4,970.98	33.58	360.24	2,100.10	2,477.07	50

Source: KKPI reports furnished by the Department

It would be seen that the percentage of pendency of applications at the end of each year ranged between 68 and 85 *per cent*. Thus, it was evident that the LTU wings have been unable to grant refunds due to dealers within the prescribed period of eighteen months, indicating therein that the Department needed to strengthen its machinery for prompt disposal of the refund applications so as to avoid the payment of interest.

The Department stated (October 2017) that the major reasons for the refund applications not getting processed were the dealer's unmatched input tax credit report generated from the dealers' electronic submissions, differential tax liability due to pending declarations, etc. The Department needs to strengthen its IT system so that the input tax credits of the dealers are matched, and refund applications are processed timely.

### 2.5.1.2 Grant of interest on Refunds

Under Section 51 of the MVAT Act, the Commissioner, on receipt of the refund application (Form 501) may grant refund of VAT claimed by the dealer as per the return filed by the dealer, within 18 months from the date of filing of the application. As per Section 52 of the MVAT Act, where refund of any tax becomes due to a dealer, simple interest at the rate of 0.5 *per cent* per month shall be payable to him. However, as per proviso to Section 52, interest shall not be granted towards any refund granted under Section 51.

Test-check of records in four divisions<sup>9</sup> revealed that in case of 20 dealers there were delays in processing the refund applications resulting in grant of interest of ₹ 28.66 crore under section 52 of the Act, which could have been avoided. A few instances of such grant of interest is mentioned below.

1. M/s Maharashtra State Power Generation Co. Ltd. had applied for refund amounting to ₹ 116.13 crore in January 2014 for the period

<sup>7</sup> Figure has been arrived at after considering the closing balance of the year, the addition of new applications, and after adjusting applications withdrawn, rejected, etc.

<sup>8</sup> The amounts indicated pertain to the refund claimed.

<sup>9</sup> Mumbai, Pune, Nashik and Raigad.

2012-13. However, the dealer was assessed in March 2017 i.e. after 37 months from the filing of refund application and granted a refund of ₹ 122.26 crore which included interest amounting to ₹ 13.10 crore on the refund due.

2. M/s General Motors claimed a refund of ₹ 39.89 crore for the period 2012-13 in June 2014. The STD assessed the dealer in March 2017 i.e. after 32 months of filing of refund application by the dealer. The assessment resulted in total refund of ₹ 44.44 crore including interest on refund amounting to ₹ 4.76 crore.
3. M/s Sun Pharmaceuticals Industries Ltd.'s refund application for an amount of ₹ 11.07 crore for 2012-13 filed in September 2014 was assessed by the STD in March 2017 i.e. after 30 months from filing of the refund application. The assessment resulted in grant of refund of ₹ 11.99 crore including an interest on refund component of ₹ 1.29 crore.

It was observed that in the above three cases, the STD had assessed the dealers in the last month of the limitation year. There was nothing on record to indicate as to why the refund applications were not processed timely under Section 51 which could have saved the payment of interest.

**2.5.2 Non/short realisation of tax due to omissions in assessments by the assessing authorities**

**2.5.2.1 Incorrect allowance of taxable sales as exempted sales**

**Tax was not levied on sale of beverages, etc. of ₹ 3.91 crore made by one dealer to various airlines during 2010-11**

As per the Section 2(24) of MVAT Act, "Sale means a sale of goods made within the state for cash or deferred payment or other valuable consideration". Further, as per explanation (vi) thereunder, sales include "the supply by way of or as part of any service or in any other manner what so ever, of goods being food or any other article for human consumption or any drink, where such supply or service is made or given for cash, deferred payment or other valuable consideration". Sales of goods to airlines in India constitute local sales and are taxable under MVAT Act.

Scrutiny (June 2016) of assessment and related records of a dealer dealing in alcoholic and non-alcoholic beverages and general merchandise items etc., revealed that sales valued at ₹ 3.91 crore during 2010-11 were made to various flights of different airlines. The assessing officer<sup>10</sup> while finalising the assessment in January 2015, incorrectly treated the goods as tax free goods and omitted to levy the tax. This resulted in short levy of tax of ₹ 48.89 lakh. Further, interest under the provisions of the MVAT Act was also leviable.

Audit also found that similar sales of the same dealer during the subsequent period i.e. 2011-12 had been assessed (January 2016) to tax @ 12.5 per cent by another assessing authority.

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<sup>10</sup> Dy. Commissioner of Sales Tax, E-605, LTU, Pune.

After this being brought out to the notice by Audit, the Department stated that the case had been referred (November 2016) for re-examination under the MVAT Act. Further progress in the matter is awaited.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

### **2.5.2.2 Short levy of tax due to irregular allowance of inter-state sales at concessional rate**

#### **Sales of cars amounting to ₹ 6.72 crore was allowed in the course of inter-state trade on production of C forms from dealers who were not likely to use the cars in accordance with the declarations given on C forms**

Under the provisions of Section 8(1) of the Central Sales Tax Act, 1956, (CST Act) every dealer, who sells goods in the course of inter-state trade or commerce to a registered dealer outside the State, is liable to pay tax at the rate of two *per cent* (with effect from 1 June 2008) on such turnover. Section 8(3) of the Act further states that such goods or class of goods should be specified in the certificate of the registration of the purchasing dealer, and should be used by him either for resale or in the manufacture or processing of goods for sale or in the telecommunication network or in mining or in the generation or distribution of electricity or any other form of power or for packing of goods or classes of goods specified in the registration certificate of the purchasing dealer. As per Section 8(4) of the Act, the selling dealer should furnish a declaration in Form C, duly filled and signed by the purchasing dealer, for claiming the concessional rates of tax.

During the test-check (April 2016) of the assessment order and other relevant records it was noticed that a dealer<sup>11</sup>, had claimed concessional rate of tax on inter-State sales of 20 Audi cars valued at ₹ 7.72 crore made to 19 dealers of Chhattisgarh, Uttarakhand, Daman and Diu during the year 2011-12 on the production of declarations in Form C. The assessing authority levied (May 2015) concessional rate of tax of two *per cent* on the sales.

Audit scrutiny revealed that out of these, sales amounting to ₹ 6.72 crore were made to 17 dealers. Of these, 14 dealers had purchased the cars on borrowed capital and the cars were hypothecated to various financial institutions as per on tax invoice found on record. This indicated that these cars were not purchased for resale. The fact that the dealers were not resellers of cars was confirmed by Commercial Taxes Department of Chhattisgarh in respect of five dealers. As such, the sales of these cars on Form C being irregular, was liable to be disallowed for concessional rate of tax. The sales were to be taxed at 12.5 *percent*. Application of incorrect rate of tax resulted in short levy of tax of ₹ 69.16 lakh.

The Department stated (August 2017) that the verification of C forms has been taken up with TINXSYS. Further progress in the matter has not been received.

<sup>11</sup> dealing in resale of motor cars, spare parts and accessories, in the office of the Dy. Commissioner of Sales Tax, E-705, Refund and Refund Audit, Mazgaon.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

- Further test check of records of four divisions<sup>12</sup> revealed that the assessing authorities had incorrectly finalised the assessments of the dealers resulting in short realisation of tax, as discussed in the following paragraphs.

**2.5.2.3** Audit noticed that in seven cases, the assessing authorities incorrectly worked out the tax resulting in short levy of tax of ₹ 79.42 lakh. This was pointed out to the Department between April 2017 and June 2017.

The Department accepted the audit observations in three cases involving ₹ 35.12 lakh, and recovered ₹ 1.76 lakh against ₹ 1.04 lakh pointed out by audit in another case. The excess of ₹ 0.72 lakh was on account of interest. In the remaining three cases the Department stated that the matter was under verification. A few instances are discussed in the following **Table 2.5.2.3**.

**Table 2.5.2.3**

(₹ in lakh)				
Sr. No.	Name of office Assessment Period Date of assessment	Relevant provisions	Audit observation in brief	Short levy of tax and interest
1	2	3	4	5
1	DCST E 630, <u>LTU, Mazgaon</u> <u>2011-12</u> 29/03/2016	Section 8(6) of the CST Act, provides that sales to units in Special Economic Zones (SEZ) are exempted from levy of CST, provided that such goods are used in the SEZ units for manufacture, production, processing, etc. as specified in the certificate of registration held by the purchasing dealer. The purchasing dealer is required to submit a declaration in Form I for this purpose indicating the details of the purchase.	Sales valued at ₹ 1.79 crore to a SEZ were exempted by the assessing authority on the production of certificates in Form I. Scrutiny of these sales (Form I) revealed that these sales pertained to aluminum composite panels valued at ₹ 1.15 crore made to an IT development firm in Tamil Nadu. As per the dealer profile available on the website of the Tamil Nadu Tax Department (tnvat.ctd.gov.in) the purchasing dealer was registered for IT products notified by the Government and not aluminum composite panels. The goods purchased by the dealer were therefore not in any way related to its business. As such, the dealer was not entitled for the exemption on Form I, which was incorrectly allowed by the assessing authority.	23.29
The Department stated that the dealer was in appeal and the matter had been communicated to the appellate authority. It would be in the interest of revenue if the Department takes immediate action for disallowance of exemption on sales made on Form I, rather than routinely forwarding the matter to the appellate authority, when the issue is not related to the appeal filed by the dealer.				

<sup>12</sup> Mumbai, Pune, Nashik and Raigad.

1	2	3	4	5
2	DCST E 633, <u>LTU, Mazgaon</u> 2009-10 13/04/2015	As per the provisions contained in Section 8(1) of the CST Act, every dealer who sells goods in the course of interstate trade or commerce to a registered dealer shall be liable to pay tax @ 2 <i>per cent</i> on his turnover of such sales provided that the sales are supported by the declaration in Form 'C'. Sales not supported by the declaration in Form 'C' are taxable at the rate applicable to sale or purchase of such goods inside the state.  Welding helmets, spectacles, eye wash/safety shower and goggles etc. are covered by Schedule E of the MVAT Act and are taxable @ 12.5 <i>per cent</i> .	A dealer dealing in Welding helmets, spectacles, eye wash/safety shower and goggles etc. had not produced C forms in support of inter-state trade sales valued at ₹ 1.91 crore. However, at the time of assessment the assessing authority levied tax @ four per cent instead of 12.5 <i>per cent</i> on these sales, resulting in short levy of tax. This resulted in short realisation of tax amounting to ₹ 28.56 lakh.	28.56
The Department stated (October 2017) that the issue was under verification.				

#### 2.5.2.4 Short levy of tax on works contract

The notification dated 30 November 2006 issued under Section 42 of the MVAT Act, specifies the contracts that would be eligible for composition tax. The rate of composition tax on construction contracts was five *per cent* while for other contracts it was eight *per cent*. The Government in November 2006, notified the works contract that could be classified as construction contracts. The notified list did not include contract activities dealing with works like erection, installation, construction of electricity transmission lines.

Scrutiny of assessment records in one unit revealed that a dealer<sup>13</sup>, engaged in works contract activities of erection, installation, construction of electricity transmission lines, had undertaken works contract during 2012-13. The business of the dealer did not fall under the construction contract. However, the assessing authority incorrectly treated the works as construction contracts and levied tax at the rate of five *per cent* instead of eight *per cent* on works contracts receipts of ₹ 15.49 crore. This resulted in short levy of tax of ₹ 46.48 lakh.

The Department stated (October 2017), that the issue was under verification.

<sup>13</sup> Assessed by DCST LTU, E 648, Mazgaon on 18/03/2017 for the period 2012-13.

**2.5.3 Non/short levy of interest for delayed payment of taxes under Section 30(2) of the Maharashtra Value Added Tax Act, 2002**

**Interest aggregating to ₹ 71.54 lakh for delayed payment of taxes as per returns was either not levied or was levied short in 12 cases**

Under the provisions of Section 30(2) of Maharashtra Value Added Tax Act 2002, a registered dealer who fails to pay the tax according to the return within the time specified by or under the Act, shall be liable to pay by way of simple interest, in addition to the amount of such tax, a sum calculated at the prescribed rate on the amount of such tax, for each month or part thereof, after the last day by which he should have paid such tax.

Scrutiny of records in nine offices<sup>14</sup> revealed that 12 dealers assessed between July 2014 and March 2016 for the periods from 2007-08 to 2011-12 had delayed payment of taxes ranging from one month to 63 months. Since the dealers had not paid the taxes with their returns, they were liable to pay interest for the period of default. However, the concerned assessing officers either did not levy the interest or levied it short resulting in non/short levy of interest aggregating to ₹ 71.54 lakh. A few illustrative cases are as follows.

**Table 2.5.3**

(₹ in lakh )							
Sr. No.	Name of the Dealer Assessing Officer	Assessment Period Date of assessment	Amount of tax paid with delay	Delay in months	Interest leviable	Interest levied	Difference
1	M/s Benchmark Mutual Fund DC E-606 LTU Mazgaon	<u>2010-11</u> 11/11/2015 <u>2011-12</u> 27/02/15	1,930.00	27 to 38	69.50	59.84	9.66
2	M/s Poonam Skyline Construction DC E-809 BA Mazgaon	<u>2009-10</u> 29/03/2016	1,875.00	30 months	7.10	Nil	7.10
3	M/s Gokuldham Real Estate Development Co. DC E-815 BA Mazgaon	<u>2009-10</u> 31/03/2015	255.10	30 to 31 months	92.33	70.58	21.75

The matter was brought to the notice of the Department and the Government in May 2017 and July 2017. The Department accepted the audit observation in six cases involving ₹ 33.94 lakh and recovered an amount of ₹ 6.41 lakh, the reply in the remaining six cases have not been received.

<sup>14</sup> DCST LTU E-606 and 635, Mazgaon; E-303 Kolhapur: DCST BA E-809, 813, 815 and 825 Mazgaon; E-801 and 808, Pune.

### 2.5.4 Short levy of interest under Section 30(3) of the Maharashtra Value Added Tax Act, 2002

#### Interest on dues payable as a consequence of assessment order was short levied by ₹ 88 lakh in 16 cases

Under the provisions of Section 30(3) of Maharashtra Value Added Tax Act 2002, if any tax remains unpaid up to one month after the end of the period of assessment, then the dealer is liable to pay simple interest at the rates, as specified from time to time, on such tax for each month or part thereof from the date immediately following the last date of the period for which the dealer has been assessed till the date of the order of assessment.

Scrutiny of records in three divisions<sup>15</sup> relating to assessment under MVAT Act in respect of 16 dealers assessed between June 2013 and March 2017 for the periods from 2005-06 to 2012-13 revealed that the dealers had not paid the taxes within the stipulated time. The dealers were liable to pay interest of ₹ 30.29 crore against which interest of only ₹ 29.41 crore was levied while finalising the assessments. This resulted in short levy of interest amounting to ₹ 88 lakh. A few illustrative cases are as follows:

**Table 2.5.4**

(₹ in lakh)						
Sr. No.	Name of dealer Assessing Officer	Assessment Period Date of assessment	Dues after assessment	Interest levied	Interest leviable	Difference
1	M/s Bayer Material Science Pvt. Ltd. DCST E-602, LTU, Mazgaon	<u>2007-08</u> 26/03/2015	142.32	132.11	135.33	3.22
2	M/s. JSW Steel Ltd DCST E-638, LTU Mazgaon	<u>2006-07</u> 31/03/2016	263.59	336.08	339.37	3.29
3	M/s Pawan Steel DCST E-801, BA(I), Mazgaon.	<u>2005-06</u> 14/03/2015	136.82	181.27	184.71	3.43

The matter was brought to the notice of the Department and to the Government in May 2017 and July 2017. The Department accepted the audit observation in seven cases involving ₹ 19 lakh and recovered an amount of ₹ 9.57 lakh. The progress made in the recovery and reply in the remaining cases have not been received.

<sup>15</sup> Mumbai, Pune and Palghar.



### **2.5.5 Non-levy of penalty for furnishing incorrect claims in Audit Report**

**High sea sales were disallowed at the time of assessment of the dealer by the Assessing Authority. However, penalty amounting to ₹ 70.61 lakh was not levied under Section 29(3) of the MVAT Act**

As per Section 29 (3) of the MVAT Act, while or after passing any order under this Act, in respect of any person or dealer, the Commissioner, on noticing that a dealer has knowingly misclassified or concealed any transaction liable to tax may, after giving dealer a reasonable opportunity of being heard, impose upon him, in addition to any tax due from him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

Audit scrutiny of assessment records revealed that one dealer had claimed high sea sales in his Form 704 for the year 2008-09, which was disallowed at the time of assessment as the dealer was unable to produce the declarations and he was taxed at appropriate rate. The total tax effect in this case amounted to ₹ 70.61 lakh as shown in following table.

**Table 2.5.5**

(₹ in lakh)					
Sr. No.	Period of transaction and assessing authority	Date of assessment	Details of transaction	Amount	Tax involved
1	2008-09 DCST E-636, LTU, Mazgaon	April 2015	High sea sales	564.89	70.61 (@ 12.5%)

The reasons for non-levy of penalty despite disallowing the sales as high sea sales were not found on record. Penalty amounting to ₹ 70.61 lakh could have been levied under Section 29(3) of the MVAT Act. The Department stated (October 2017) that the case would be examined for levy of penalty.

### **2.5.6 Non-levy of penalty under Section 61(2) for late filing of Audit Report**

**Penalty aggregating to ₹ 1.07 crore for delayed filing of Audit Report in Form 704 was not levied in 11 cases**

As per provisions of Section 61(1) of the Maharashtra Value Added Tax Act, 2002 read with Rules 65 and 66 of the Maharashtra Value Added Tax Rules, 2005, every dealer having a turnover over ₹ 60 lakh, shall get his accounts in respect of such year audited by a Chartered Accountant within the prescribed period from the end of the year and submit the report of audit (in Form 704) within ten months (nine months and fifteen days vide notification dated 21 November 2012) of the year to which the report relates. Under Section 61(2) of the said Act, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, impose on him, in addition to any tax payable, a sum by way of penalty equal to one tenth percent, of the total sales, for failure to file the audit report. The Commissioner had extended the time limits for



filing the reports of audit for the years 2007-08, 2008-09 and 2009-10 vide circulars issued from time to time.

Scrutiny of records in 14<sup>16</sup> offices between March 2015 and May 2017, revealed that 14 dealers had submitted/uploaded the reports of audit in Form 704 after the due date/extended date prescribed by the Commissioner from time to time. However, the assessing officers had not issued show cause notice for levy of penalty as prescribed under the Act. Thus, penalty leviable in these cases amounting to ₹ 1.07 crore could not be levied. A few illustrations are as follows:

**Table 2.5.6**

(₹ in lakh)						
Sr. No.	Name of dealer Assessing Officer	Assessment Period Date of assessment	Due/ extended date of filing F-704	Actual date of filing F-704	GTO of sales	Penalty leviable under Section 61(2)
1	M/s Vishal Retail Pvt. Ltd. DCST E-608, LTU Pune	2008-09 26/12/2014	30/04/2010	01/06/2010	18,449.75	18.45
2	M/s PBA Infrastructure Pvt. Ltd. DCST E-620, LTU Mazgaon	2009-10 28/09/2015	15/02/2011	15/04/2011	27,185.13	27.19
3	M/s Bafna Motors Ratnagiri Pvt. Ltd. DCST E-003, LTU Kolhapur	2010-11 13/11/2014	31/01/2012	02/03/2012	10,219.07	10.22

The matter was brought to the notice of the Department and to the Government in May 2017 and July 2017. The Department accepted the audit observation in four cases involving ₹ 46.79 lakh and in one case raised a demand ₹ 7 lakh instead of ₹ 27.19 lakh. Scrutiny of three cases revealed that Audit Reports for the periods 2011-12, 2014-15 and 2015-16 were not filed within the stipulated date.

### **2.5.7 Excess allowance of tax credit**

**Tax was credited in excess by ₹ 16.57 lakh resulting in less raising of demand to that extent on account of interest**

Audit scrutiny of assessment records revealed that a dealer had paid tax of ₹ 5.75 crore along with returns as per Form 704. In addition to this, the dealer was required to pay ₹ 16.57 lakh on account of interest on delayed payment of taxes along with returns. This amount of ₹ 16.57 lakh was not paid by the dealer but the assessing authority incorrectly treated this amount has having been deposited by the dealer, and allowed a credit of ₹ 5.92 crore. The

<sup>16</sup> DCST LTU - E-620, E-626, E-633 Mazgaon; E-608, E-615, 623 Pune; E-003 Kolhapur: DCST RRA - E-707, E-709 Mazgaon; E-010 Raigad: DCST BA- E-808, E-813, E-825 Mazgaon: DCST (Inv) E-006 Mazgaon.

omission resulted in excess credit of ₹ 16.57 lakh and less raising of demand to that extent on account of interest.

The Department accepted the observation and stated that rectification order along with demand notice for ₹ 16.57 lakh was served to the dealer in May 2017. The Department further communicated recovery of ₹ 7.63 lakh paid by the dealer in May 2017. Further progress made in recovery of the amount is awaited.