

CHAPTER – II

SALES TAX

2.1 Results of Audit

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

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

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

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

2.2 Review: Working of Enforcement Branch in Sales Tax Department

Highlights

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

(Para 2.2.10)

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

(Para 2.2.12)

Recommendations

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

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

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

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

Introduction

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

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

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

Organisational set-up

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

Scope of audit

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

Audit Objectives

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

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

Audit criteria

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

Audit methodology

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

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

Audit findings

Efficiency of Enforcement Branch: Investigation into complaints

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

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

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

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

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

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

Finalisation of assessment after enforcement proceedings

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

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

(Rupees in crore)

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

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

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

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

Status of provisional assessments

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

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

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

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

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

Delay in assessment hit by limitation of time under Section 44

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

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

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

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

Working of check posts

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

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

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

Rules not framed for provisional attachment of property

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

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

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

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

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

Constraints

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

2.3 Incorrect grant of benefits under sales tax incentive schemes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[^] Range-13 Nadiad and Vadodara

[#] Certificate in form 17 BB, 26.

^{*} Gandhidham, Nadiad and Vyara

2.4 Irregular/excess grant of set-off

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

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

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

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

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

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

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

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

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

(Rupees in lakh)

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

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

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

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

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

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

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

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

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

2.5 Non levy of purchase tax

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

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

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

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

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

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

2.6 Loss of revenue due to incorrect determination of disputed question

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

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

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

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

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

2.7 Short levy of Central Sales Tax

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

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

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

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

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

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

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

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

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

(Rupees in lakh)

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

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

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

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

2.9 Application of incorrect rate of tax

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

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

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

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

(Rupees in lakh)

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

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

2.10 Turnover escaping assessment

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

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

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

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

2.11 Short levy of tax due to computation error

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

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

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

2.12 Incorrect allowance of deduction on Forms

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

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

[⊗] Unit-6 and 9 Surat and Veraval.

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

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

2.13 Non/short levy of turnover tax

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

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

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

2.14 Short/non levy of interest

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

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

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

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

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

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

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

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

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

2.15 Non/short levy of additional tax

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

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

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

2.16 Other irregularities

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

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

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

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

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

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

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

2.17 Levy of purchase tax on sugar cane

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

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

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

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

2.17.2 Short levy of purchase tax

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

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

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

* Ankleshwar and Morbi.

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

2.17.3 Incorrect grant of exemption under incentive scheme to new industries

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

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

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

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

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

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

2.18 Internal Control

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

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

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

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

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