

## CHAPTER – II

### SALES TAX

#### 2.1 Results of audit

Test check of records in various sales tax offices conducted during the year 2005-06 revealed under assessment of Rs.224.78 crore in 393 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	34	3.46
2	Incorrect grant of set-off	84	7.38
3	Incorrect concession/exemption	42	153.90
4	Non/short levy of interest and penalty	146	5.71
5	Other irregularities	86	51.97
6	Review on “Assessments and Collection of Tax”	1	2.36
	<b>Total</b>	<b>393</b>	<b>224.78</b>

During the year 2005-06, the department has accepted under assessment of Rs.7.75 crore in 315 cases and recovered Rs.0.70 crore in 116 cases, of which 17 cases involving Rs.0.22 crore were pointed out during the current year and rest in earlier years.

A few illustrative cases involving important audit observations and review on **Assessment and Collection of Tax** involving Rs.311.89 crore are discussed in the following paragraphs.

## 2.2 Review: Assessments and Collection of Tax

### Highlights

As on 31 March 2005 sales tax arrears of Rs.12,744 crore were pending recovery, out of which, Rs.2,950.72 crore pertained to the period between 1959-60 and 1999-2000.

*(Paragraph 2.2.10)*

Incorrect grant of benefit under the scheme “*Vechan vera samadhan yojna*” to six dealers resulted in short realisation of Rs.43.50 lakh on account of interest and penalty, while under “*Gokul gram yojna*”, contribution including interest of Rs.1.13 crore was not recovered from 12 dealers.

*(Paragraph 2.2.11, 2.2.12)*

The internal controls of the department needed strengthening. Internal inspection and internal audit conducted by the department were found insufficient. Some important registers/returns submitted by AAs to controlling officers were found incomplete.

Out of 35 units, verification of amounts of challans noted in Register six with treasury records was completed only in six units, it was completed partially in 20 whereas the same was not done by nine units indicating therein that revenue realisation reported during assessments was not confirmed with the treasury receipts.

*(Paragraph 2.2.14, 2.2.15)*

### 2.2.1 Recommendations

A perusal of the review would reveal that there was enough scope for strengthening internal controls of the department to ensure that assessments were accounted for and finalised in accordance with the relevant provisions of the GST Act. Government may consider following recommendations:

- A system may be developed to monitor that assessments finalised by AAs are in accordance with the conditions laid down in the circulars issued under the GST Act. Assessment cases that require detailed scrutiny may not be finalised as simple assessments.
- Records need to be maintained properly so that information regarding number of assessments finalised/number of dealers etc. is correctly available with the department. It would be essential for proper planning including fixation of targets for finalisation of assessments.
- The internal audit wing of the department needed strengthening. A long term plan should be chalked out to inspect planned units and thrust may also be laid on internal inspection.

### 2.2.2 Introduction

Under the Gujarat Sales Tax Act, 1969 (GST Act) and Rules made thereunder, registered dealers are required to maintain accounts and submit periodical returns to the respective sales tax units alongwith challans for proof of payment of tax. The Act provides for simple assessments under Section 41(2) and deemed assessments under Section 41(AA). The Act also provides for levy of interest and penalty in case of non/short payment of tax.

In case of inter-state trade or commerce, Central Sales Tax Act, 1956 (CST Act) is applicable and the provisions of GST Act relating to furnishing of returns, payment of tax, assessment and recovery of tax apply *mutatis mutandis* to the dealers under CST Act.

### 2.2.3 Organisational set-up

The Additional Chief Secretary, Finance Department is overall controlling officer of Sales Tax Department at Government level. The Commissioner of Sales Tax (Commissioner) is the head of the Sales Tax Department, assisted by an Additional Commissioner (Administration, Audit and Appeal) and a Special Commissioner (Enforcement and Legal). The department is geographically divided into seven divisions, each headed by a Joint Commissioner (JC). These divisions are divided into 25 circles each headed by a Deputy Commissioner (DC) which are further divided into 103 units, each headed by one Assistant Commissioner (AC), assisted by Sales Tax Officer(s) (STO) and Sales Tax Inspectors (STI).

DC at circle level, and AC, STO and STI at unit level are the assessing officers (AAs). The collection of tax is entirely controlled by the unit offices.

### 2.2.4 Scope of audit

Test check of records maintained by the Commissioner, four out of seven divisions, nine out of 25 circles and 35 out of 103 units for the period 2002-03<sup>#</sup> to 2004-05 was carried out between April 2005 and March 2006. The selection of units was based on maximum revenue earning in each division so as to represent the entire State.

### 2.2.5 Audit objectives

The review was conducted with a view to:

- evaluate the adequacy, reliability and effectiveness of the system for proper assessment and collection of Government revenue;
- ascertain whether statutory provisions of the Acts, rules made thereunder and instructions issued from time to time were being followed and adhered to; and

<sup>#</sup> The department was geographically reorganised with effect from 01.11.2002, hence, the review was conducted for the period from 2002-03 to 2004-05.

- review the efficacy of internal control to ascertain that sufficient internal controls existed in the department to prevent leakage of revenue.

### 2.2.6 Achievement of target fixed for finalisation of assessments

A comparison of targets fixed for finalisation of number of assessments and its achievement for the period between 2002-03 and 2004-05 as furnished by the department was as under:

**(Figures in number)**

Year	Assessing officer	Target per month for each officer	Number of officers in the cadre Sanctioned strength Men-in position	Total target fixed based on sanctioned strength Men-in position	Achievement	Shortfall	Percentage of shortfall with reference to men-in position
2002-03*	DC	6	44 44	1,320 1,320	1,076	244 244	18.48
	AC	18	91 64	8,190 5,760	11,224		
	STO	120	341 177	2,04,600 1,06,200	86,088	1,18,512 20,112	18.94
	STI	90	790 686	3,55,500 3,08,700	3,06,526	48,974 2,174	0.70
	<b>Total</b>		<b>1,266</b> <b>971</b>	<b>5,69,610</b> <b>4,21,980</b>	<b>4,04,914</b>	<b>1,64,696</b> <b>17,066</b>	<b>4.04</b> **
2003-04	DC	6	44 44	3,168 3,168	1,236	1,932 1,932	60.98
	AC	18	91 54	19,656 11,664	13,516	6,140	
	STO	120	341 168	4,91,040 2,41,920	51,834	4,39,206 1,90,086	78.57
	STI	90	790 764	8,53,200 8,25,120	2,21,255	6,31,945 6,03,865	0.73
	<b>Total</b>		<b>1,266</b> <b>1,030</b>	<b>13,67,064</b> <b>10,81,872</b>	<b>2,87,841</b>	<b>10,79,223</b> <b>7,94,031</b>	<b>73.39</b>
2004-05	DC	6	44 40	3,168 2,880	1,293	1,875 1,587	55.10
	AC	18	91 109	19,656 23,544	10,855	8,801 12,689	53.89
	STO	120	341 113	4,91,040 1,62,720	57,479	4,33,561 1,05,241	64.68
	STI	90	790 521	8,53,200 5,62,680	1,13,215	7,39,985 4,49,465	79.88
	<b>Total</b>		<b>1,266</b> <b>783</b>	<b>13,67,064</b> <b>7,51,824</b>	<b>1,82,842</b>	<b>11,84,222</b> <b>5,68,982</b>	<b>75.68</b>

\* The Department was geographically reorganised with effect from 01.11.2002, hence, figures of 2002-03 are for the period between November 2002 and March 2003 only.

\*\* During 2002-03 a scheme for deemed assessment under Section 41(AA) was introduced, hence, the assessments finalised during the year were more.

As could be seen from above, the shortfall in achievement of target when compared with men-in-position ranged between 73.39 *per cent* in 2003-04 and 75.68 *per cent* in 2004-05. The department fixed target for assessment on sanctioned strength and not on men-in-position, and there was a big gap between sanctioned strength and men-in-position. Basis of fixation of target was not made available to audit, hence, its adequacy could not be ascertained.

### 2.2.6.1 Status of assessments

The number of assessments pending finalisation increased from three lakh as on 31 March 2002 to six lakh as on 31 March 2005. The yearwise information on number of dealers and status of assessments for the period 2002-03 to 2004-05, as furnished by the department were as below:

**(Figures in number)**

Particulars	2002-03	2003-04	2004-05
Number of dealers	2,99,881	3,19,774	2,42,753
Opening balance of assessment	13,17,590	6,67,999	5,11,356
New cases due for assessment (including remand cases)	4,37,999	1,31,509	3,18,996
Total assessments due	17,55,589	7,99,508	8,30,352
Assessments finalised	10,87,590	2,88,152	2,42,753
Balance at the end of the year	6,67,999	5,11,356	5,87,599

The above information revealed that:

- The number of assessments finalized differed from the achievement of various assessing officers.
- There was a reduction of 77,021 dealers in 2004-05, *i.e.* by 24 *per cent*, as compared to the number of dealers in 2003-04 which was very huge. Reasons for such reduction were not available on record.
- Compared to 2002-03, there was an increase of 19,893 dealers in 2003-04, however, new cases due for assessment added during the period had decreased by 3,06,490.

After this was pointed out, the department reconciled the information in June 2006 and revised the figures of new cases due for assessment during 2003-04 as 3,04,286 and the number of dealers during 2004-05 as 3,38,953.

The department did not furnish any reason for difference in information furnished and corrective action taken for plugging the loophole.

### 2.2.7 Rush of finalisation of assessments in the month of March

The details regarding total number of assessments finalised during 2002-03 to 2004-05 and assessments finalised during the month of March of each year by nine circles and 35 units covered under the test check were as below:

Sl. No.	Particulars	2002-03	2003-04	2004-05
<b>1</b>	<b>Total assessments finalised during the financial year</b>			
	• Number of assessments	1,09,556	76,552	61,882
	• Average number of assessments per month	9,130	6,379	5,157
<b>2</b>	<b>Assessments finalised during March</b>	14,241	9,976	12,481
<b>3</b>	<b>Assessments finalised during April to February of financial year</b>			
	• Number of assessments	95,315	66,576	49,401
	• Average number of assessments per month	8,665	6,052	4,491

It was noticed that during 2002-03 to 2004-05, assessments finalised in the month of March ranged between 9,976 and 14,241 as against the average of 5,157 to 9,130 for the whole year. This rush may result in errors and omissions.

### 2.2.8 Finalisation of simple assessments

Under Section 41(2) of GST Act, if the return filed by the dealer is correct and complete, assessment order is passed without inviting the dealer to produce further records, and is known as simple assessment. The department issued public circulars in July 2002, August 2003 and June 2005 prescribing various conditions for assessments under this section for the assessment period 2001-02, 2002-03 and 2003-04, respectively. Further, the department by issue of a public circular in October 2002 prescribed that conditions of public circular of July 2002 shall apply to all assessments up to 2001-02.

**2.2.8.1** During test check of records of 68 assessments in 33 units it was noticed that 58 dealers did not fulfil conditions prescribed in public circulars to merit finalisation as simple assessments. These were scrutiny cases. However, AAs incorrectly treated these as simple assessments as detailed below:

Sl. No.	Number of units	Nature of irregularity
1.	12 <sup>♥</sup>	As per public circulars issued from time to time, if tax dues of an assessment exceeded Rs.25,000, it could not be treated as simple assessment.  However while finalising 35 assessments between October 2002 and March 2005 of 34 dealers, tax payable in each assessment was found to be more than the prescribed limit. It ranged between Rs.25,620 and Rs.9.45 lakh. As such these were liable for scrutiny assessment; however, these were incorrectly finalised as simple assessments by the concerned AAs.

<sup>♥</sup> Unit-14 and 21 Ahmedabad, Ankleshwar, Unit-1 and 2 Bhavnagar, Gandhidham, Gandhinagar, Jamnagar, Kadi, Unit-4 Rajkot, Unit-6 Vadodara and Veraval

	<b>Remarks:</b> The department stated in June 2006 that action for <i>suo motu</i> revision (SMR) would be initiated for these assessments.
2.	5 <sup>^</sup> The public circulars envisaged that assessment of dealers availing benefit of sales tax exemption or deferment schemes should not be finalised as simple assessment.  However 11 assessments of six dealers availing exemption/deferment under GST Act were incorrectly assessed between October 2002 and March 2005 as simple assessment instead of scrutiny assessments.
	<b>Remarks:</b> The department stated in June 2006 that SMR has been initiated in all these assessments.
3.	8 <sup>Σ</sup> As per public circulars an assessment involving a refund of more than Rs.5,000 was to be treated as scrutiny case.  In 10 cases of eight dealers assessed between November 2002 and March 2005, refund allowed in each case exceeded Rs.5,000. In each case it ranged between Rs.5,343 and Rs.7.06 lakh. However AAs incorrectly finalised these assessments as simple assessments instead of scrutiny assessments.
	<b>Remarks:</b> The department stated in June 2006 that SMR has been initiated in all these assessments.
4.	6 <sup>∇</sup> As per the public circulars an assessment involving set off of more than Rs.25,000 was to be treated as a scrutiny assessment.  However it was noticed that set off allowed in nine cases of seven dealers between October 2002 and February 2004 exceeded Rs.25,000 in each case. It ranged between Rs.0.44 lakh and Rs.5.31 lakh. However while finalising these assessments, AAs incorrectly assessed these as simple assessments instead of scrutiny assessments which was incorrect.
	<b>Remarks:</b> The department stated in June 2006 that SMR has been initiated in all these assessments.
5.	2 <sup>*</sup> As per public circulars a dealer having a turnover of more than Rs.10 lakh was to be treated as a scrutiny case.

<sup>^</sup> Bharuch, Unit-2 Bhavnagar, Gandhidham, Kadi and Veraval

<sup>Σ</sup> Unit-9 and 21 Ahmedabad, Gandhinagar, Unit-2 and 4 Rajkot, Unit-6 Vadodara, Unit-1 Vapi and Veraval

<sup>∇</sup> Unit-5, 9 and 21 Ahmedabad, Gandhinagar, Kadi and Unit-1 Vapi

<sup>\*</sup> Unit-22 and 23 Ahmedabad

		However it was noticed in three cases turnover of three dealers exceeded Rs.10 lakh. It ranged between Rs.12.86 lakh and Rs.52.10 lakh in each case. However while finalising these assessments between October 2002 and March 2005 for 2002-03, AAs incorrectly assessed these cases as simple assessments instead of scrutiny assessments.
	<b>Remarks:</b>	The department stated in June 2006 that these assessments were finalised under scrutiny assessment and through oversight they were shown as finalised under simple assessment. The reply was not tenable as assessment orders of these cases clearly indicated that they were finalised under simple assessment.

**2.2.8.2** According to clause C(iii) below Rule 44 of the GST Rules, 1970 (GST Rules), set off under the Rule shall not be granted unless a vendor who sold the goods to the claimant dealer credited into Government treasury, the amount of tax on his sales for which set off is claimed.

Six assessments for the period between 1988-89 and 2002-03 of five dealers were finalised by five units\* as simple assessments between October 2002 and February 2004 in which the set off of Rs.19.07 lakh was allowed though there was nothing on records to prove that the vendor had paid the tax in Government treasury. As such, correctness of the assessments could not be ascertained.

The department accepted the audit observation in March 2006 and stated that SMR proceedings have been initiated in these cases.

**2.2.8.3** During test check of records it was noticed that two units# finalised 13 assessments of three dealers affected by flood of July 2001 under simple assessment, though no public circular was issued by the department. Of these, 10 assessments for the period from 1990-91 to 1999-2000 finalised in February 2003 by unit 15, Ahmedabad pertained to a single dealer. Finalisation of these assessments under simple assessment without public circulars was incorrect.

After this was pointed out the department stated in June 2006 that the assessing authority was directed to look into the related records of one dealer covering 10 assessments. However, reasons for finalisation of these assessments without instructions were not furnished (October 2006).

**2.2.8.4** Three assessments for the period between 1995-96 and 2001-02 of three dealers were finalised incorrectly by three units\*\* during the period between March 2003 and October 2004 under simple assessment. This resulted in short levy of Rs.23.09 lakh, due to non levy of tax on sales of

\* Unit-5 Ahmedabad, Gandhinagar, Kadi, Unit-1 Vadodara and Unit-1 Vapi

# Unit-9 and 15 Ahmedabad

\*\* Unit-8 Ahmedabad, Bhuj and Unit-2 Surat



*batasa* (sugar candy) worth Rs.1.41 crore in one assessment and non levy of turnover tax in two assessments.

After this was pointed out, the department issued in July 2005 a rectification order in one case for Rs.4.04 lakh and further stated in June 2006 that instructions for SMR have been issued in remaining two cases. Particulars of recovery have not been received (October 2006).

**2.2.8.5** In one simple assessment for the period from January 1999 to December 1999 finalised in March 2005 by unit-6 Vadodara, the total payment of Rs.29.99 lakh against CST and Rs.6.74 lakh against GST was accepted, of which Rs.26.55 lakh (Rs.19.87 lakh in CST and Rs.6.68 lakh in GST) pertained to another dealer having separate registration number. This resulted in short realisation of tax of Rs.26.55 lakh.

After this was pointed out the department stated in June 2006 that instructions have been issued to initiate SMR proceedings in the case. Particulars of recovery have not been received (October 2006).

### **2.2.9 Finalisation of deemed assessments**

Under Section 41(AA) of GST Act as amended with effect from 1 April 2002, a dealer whose tax liability does not exceed Rs.5 lakh is deemed to be assessed for the period up to 1999-2000, provided he had timely furnished the returns along with tax, and had paid five *per cent* of tax liability for each specified period by 30 September 2002. The deemed assessment shall not apply to a dealer who has availed tax exemption or deferment incentive.

During test check of records, it was noticed that the following assessments finalised under deemed assessments violated the provisions of the Act as detailed below:

**2.2.9.1** Four assessments for the period 1998-99 and 1999-2000 of three dealers were irregularly finalised by two units<sup>♥</sup> between October 2002 and December 2002 though the dealers had paid five *per cent* of the tax in October 2002, *i.e.* after the prescribed date. One assessment for the period 1999-2000 finalised by Valsad unit was irregular, as the dealer was availing deferment incentive scheme.

After this was pointed out, the department accepted the audit observation in June 2006 on payment made after due date and stated that necessary action would be taken in this regard. Reply in remaining observations has not been received (October 2006).

**2.2.9.2** Under Section 15B of GST Act, where a dealer purchases any taxable goods other than declared goods and uses it as raw material, processing material or as consumable stores in the manufacture of taxable goods, purchase tax at prescribed rate is leviable. Purchase tax so levied is admissible

<sup>♥</sup> Gandhinagar and Unit-2 Surat

as set off under Rule 42E of GST Rules, provided the goods manufactured are sold by the dealer in the State of Gujarat.

During test check of records, it was noticed in the assessment of three dealers for the period between 1996-97 and 1999-2000 finalised during September and October 2002 by three units\*\* that the dealers transferred/consigned the manufactured goods either to their branches out side the State or sold through commission agents. However, levy of purchase tax and disallowance of set off thereon was not considered proportionately. This resulted in non levy of purchase tax of Rs.30.11 lakh including interest and penalty, which would have been avoided if the returns submitted by the dealers were scrutinised timely.

### 2.2.10 Collection of tax

As on 31 March 2005 sales tax arrears of Rs.12,744.53 crore were pending recovery, out of which Rs.2,950.72 crore pertained to the period between 1959-60 and 1999-2000. The stages at which these are pending recovery are detailed below:

(Rupees in crore)		
Sl.No.	Particulars	Amount
	<b>A) Stay against recovery</b>	
1.	Stay granted by department appellate authorities	270.69
2.	Tribunal/High Court/Supreme Court	4,725.21
	<b>Sub Total(A)</b>	<b>4,995.90</b>
	<b>B) Non recoverable dues</b>	
1.	Closure of business	384.31
2.	Insolvency, liquidation and writ petition	107.30
3.	BIFR/Sick Textile units	317.55
4.	Untraceable dealers/bogus purchase/paupers	318.14
5.	Impossible recovery awaiting department formalities	70.20
6.	Non recovery certificates	789.33
7.	Enforcement/pending recovery prior to 1981	226.41
8.	Forest co-operative societies	7.17
	<b>Sub Total(B)</b>	<b>2,220.41</b>
	<b>C) Accrued but not due</b>	
1.	Deferment incentive schemes	1,545.22
2.	Dues deferred by Government	11.11
3.	Within grace period	205.81
	<b>Sub Total(C)</b>	<b>1,762.14</b>
	<b>D) Others</b>	
1.	Exparte assessments/non production of forms	467.63
2.	Oil companies	1,130.45
3.	Government department/State Transport/Municipality	26.01
4.	Liquid recovery	2,033.18
5.	Unspecified/other recovery	108.81
	<b>Sub Total(D)</b>	<b>3,766.08</b>
	<b>Grand Total</b>	<b>12,744.53</b>

\*\* Kadi, Kalol and Mehsana

The department had not furnished information regarding action taken for early recovery of above dues (October 2006).

The agewise status of pending recovery as at the end of March 2005 was as follows:

(Rupees in crore)		
Sl.No.	Recovery pertaining to the period	Amount
1.	Upto 1979-80	1.45
2.	1980-81 to 1984-85	4.80
3.	1985-86 to 1989-90	69.34
4.	1990-91 to 1994-95	177.61
5.	1995-96 to 1999-2000	2,697.52
6.	2000-01 to 2004-05	9,793.81
	<b>Total</b>	<b>12,744.53</b>

The agewise analysis of pending recovery revealed that an amount of Rs.2,950.72 crore pertained to the period between 1959-60 and 1999-00. The department may analyse the outstanding recoveries and initiate efforts to reduce the arrears.

#### **2.2.11 Vechan vera samadhan yojna – 2005**

Under Section 47(4B) of GST Act, the dues paid by a dealer were to be first applied towards interest, then towards penalty and balance towards tax. Government introduced a scheme in March 2005 called '*Vechan vera samadhan yojna - 2005*' for remission of interest and penalty involved in assessments finalised upto 28 February 2005, provided the dealers had paid the tax involved in such assessments. According to condition no.4 of the Government order, the remission under the scheme was available only on those cases where the payment of tax was made during the currency of the scheme, *i.e.* March 2005, and if the amount was paid before or after the said period the benefit under the scheme could not be extended. The scheme was also applicable to those cases which were pending before or decided by appellate authorities.

During test check of records of three units<sup>^</sup>, it was noticed that while finalising assessments/appeal orders between July 1997 and January 2005 of six dealers' demand of tax of Rs.70.92 lakh, interest of Rs.45.52 lakh and penalty of Rs.12.66 lakh was raised. The dealers paid Rs.14.68 lakh against the assessed dues before March 2005 which was to be applied towards interest. The dealers thereafter opted for *Vechan vera samadhan yojna - 2005* and paid Rs.53.82 lakh in March 2005. Although the dealers failed to pay entire amount of tax of Rs.70.92 lakh within the currency of scheme (March 2005) the AA incorrectly extended the benefit of scheme and allowed remission of Rs.43.50 lakh on account of interest and penalty. After this was pointed out the department stated in June 2006 that recovery proceedings would be undertaken where irregularities were noticed.

<sup>^</sup> Kalol, Unit-1 and 2 Vadodara

### **2.2.12 Gokul gram yojna (GGY)**

According to Government Resolution (GR) of 20 April 1998 of the Industries and Mines Department, an industrial unit with project costing more than Rs.10 crore and availing sales tax incentive under New Incentive Policy of 1995-2000 scheme 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 GGY by 30 June of subsequent financial year. In case of failure to contribute the amount on due date, the assessing officer was to suspend the incentive with effect from 1 July. Such suspension could be cancelled if the dealer paid interest at the rate of two *per cent* per month on the contribution amount for the period of delay.

#### **2.2.12.1 Delay in recovery of GGY contribution**

During test check of records of one circle and three units<sup>\*</sup>, it was noticed that six dealers had made the GGY contribution of Rs.4.28 crore for the period between 2001-02 and 2004-05 with a delay which ranged between two days and 353 days. However, the assessing officer did not suspend the incentive. The dealers were liable to pay interest of Rs.18.80 lakh for the delay in contribution.

After this was pointed out, the department recovered interest of Rs.13.80 lakh between July and August 2006 from four dealers. Reply in remaining cases has not been received (October 2006).

#### **2.2.12.2 Non/short recovery of GGY contribution**

During the course of audit of two units<sup>♥</sup>, it was noticed that five dealers were required to pay Rs.2.60 crore towards GGY contribution for the period between 1997-98 and 2004-05. However, the dealers paid only Rs.2.09 crore between May 2003 and September 2005. Another dealer of Jamkhambhalia did not pay contribution of Rs.6 lakh at all for the period from January 2005 to March 2005. The AAs neither took any step to recover the contribution nor suspended the incentive granted to the dealers. This resulted in short recovery of Government revenue of Rs.57 lakh. Besides, interest of Rs.37 lakh was also leviable.

After this was pointed out, the department accepted the audit observation in June 2006. Report on further action taken has not been received (October 2006).

### **2.2.13 Internal Inspection**

The internal inspection of various offices of the department *viz.*, divisions, circles, units, check-posts, enforcement, appeal and audit offices are conducted by the internal inspection wing headed by DC (Inspection). The offices, which are not inspected during the year by DC (Inspection) are to be

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\* Circle - Gandhidham and Units - Bharuch, Kalol and 2 Vapi

♥ Unit-6 Vadodara and Bharuch

inspected by the next higher controlling offices, thereby confirming internal inspection of all offices of the department in each year.

**2.2.13.1** After completion of inspection of an office by DC (Inspection), the wing issues an inspection report to the inspected office for its compliance. The Commissioner or an officer appointed by him *viz.*, Additional Commissioner or Special Commissioner or JC holds the spot hearing on the inspection report and compliance made thereon, by visiting the inspected office. The observations in inspection report thereafter are pursued or settled based on his orders.

Against the annual inspection target of 15 offices fixed by the Commissioner, the internal inspection wing had planned and covered 12, 18 and 15 offices during 2002-03, 2003-04 and 2004-05, respectively. Review of records maintained by internal inspection wing revealed that 3,060 observations were outstanding at the end of March 2005. Of these 2,583 observations of 35 offices pertaining to the inspection reports issued between September 2001 and December 2004, were outstanding as spot hearing by higher officer had not taken place. Delay in completion of spot hearing and compliance to the observations would result in delay in taking remedial action.

**2.2.13.2** During 2002-03, 2003-04 and 2004-05, the offices available for inspection by authorities other than DC (Inspection) were 72, 128 and 99, respectively. Against this the controlling officers planned to inspect 43, 89 and 45 offices. However, they covered 29, 39 and 54 offices only, resulting in an incomplete internal inspection circle. To overcome deficiency in covering planned units and to give the required thrust in internal inspection, the wing should chalk out appropriate long term plan.

The department stated in March 2006 that due to administrative reasons, the targets for inspection could not be achieved which would be completed in forthcoming year. The department added in June 2006 that out of 3,060 outstanding observations at the end of March 2005, 1,801 objections have been complied with.

#### **2.2.14 Internal audit**

The internal audit wing of the department is headed by JC (Audit), looking after pre and post audit of assessment records. Department issued instructions on 7 March 2003 envisaging conditions/manner in which audit should be conducted. It stipulated that 150 cases of each division should be audited per month. The information on number of assessments finalised between 2002-03 and 2004-05 vis-à-vis target fixed for audit and achievement as furnished by the department was as under:

Period	Assessments finalised	Target fixed for internal audit	Percentage of target fixed to total assessments	Achievement	Percentage of achievement to target fixed
2002-03	10,87,590*	10,500	0.97	4,602	43.83
2003-04	2,88,152	12,600	4.37	11,637	92.36
2004-05	2,42,753	12,600	5.19	14,743	117.00

\* During 2002-03 a scheme for deemed assessment under Section 41(AA) was introduced, hence, the assessments finalised during the year were more.

It could be seen from above table that the target fixed for audit ranged between 0.97 per cent and 5.19 per cent of assessments finalised during the period 2002-03 to 2004-05.

### **2.2.15 Management information system**

The department, vide circular dated 17 March 1997 prescribed various registers to be maintained by the unit offices. Of these, Registers bearing no.6, 11 and 14 were important from the view point of assessments and collection of tax. Test check of these registers and monthly diaries revealed following deficiencies:

#### **2.2.15.1 Register no.6**

The details of challans as and when received from the dealers by the units are noted in Register no.6 on day-to-day basis. The details of challans noted in the register were to be verified with the treasury schedules by the units, for confirming the authenticity of tax payment. This is known as verification with treasury schedule (VTS) activity.

Of the selected 35 units, six units had completed VTS up to March 2005, 20 units had completed partly whereas the same was not done by nine units. This shows that the revenue realisation reported during assessments was not confirmed with the treasury receipts.

After this was pointed out, the department stated in June 2006 that VTS work was lying incomplete on account of technical error<sup>\*</sup>, and has been restarted.

#### **2.2.15.2 Register no.11**

Dealerwise information on status of assessment is noted in Register no.11, *i.e.* 'P register'. On completion of assessment year, the assessing authority should enter alphabet 'P' against the period of pending assessment of each dealer and on completion of assessment the entry is to be closed by putting date of assessment and signature of assessing authority.

Out of 35 units test checked it was noticed in 21 units that the Register no.11 was incomplete or not updated by the assessing authorities. The name of dealers, address, information on pending and completed assessments *etc.*, was not shown in the register. The register was neither closed nor submitted periodically to the controlling officers.

After this was pointed out in August 2005, the department did not give any reply (October 2006).

#### **2.2.15.3 Register no.14**

The dues required to be collected on completion of assessments are noted in Register no.14 maintained by the units for watching recovery of the same from the dealers. As per existing system the entries in Register no.14 were to be

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<sup>\*</sup> The details of technical error were not defined/clarified by the department.

closed only when the amount was fully recovered with additional interest for delayed payment, if any, or based on judicial/quasi-judicial orders for revising the recovery or on remanding the assessment.

Cross verification of demand raised in assessments finalised by DCs and inter transfer of demand to AAs revealed that in 10 units<sup>▼</sup>, details of recovery of Rs.12.03 crore relating to 100 entries of 58 dealers were not made in the register hence not pursued for recovery. In seven units<sup>\*</sup> 24 entries of 13 dealers for Rs.2.06 crore were struck off from the register without assigning any reasons though the amount was not fully recovered. In unit-6 Ahmedabad, demand raised after assessments of nine dealers, amounting to Rs.28.01 lakh was not entered in register no.14, which was corrected after being pointed out by audit. In two units<sup>\*</sup> demand related to two assessments of two dealers was entered short by Rs.12.71 lakh in register no.14, which was corrected after being pointed out by audit. In unit-2 Vapi, interest for delay in payment of assessed dues amounting to Rs.0.94 lakh against one dealer was not levied, however, entry was closed in register no.14. After this was pointed out, the AAs issued notices for recovery.

The department stated in June 2006 that the entries were made after pointed out by audit and recovery proceedings have been initiated. Further, in July 2006 the department issued a circular prescribing procedure to be followed henceforth in assessments finalised by DC.

**2.2.15.4** In unit-6 Ahmedabad, one assessment for the period from April 2003 to September 2003 finalised in April 2004 resulted in demand of Rs.3.86 crore under GST Act. The details in Register no.14 revealed that the demand notice was issued on 5 April 2004, however, recovery of Rs.54.10 lakh was shown as effected between 21 February 2003 and 5 April 2004, *i.e.* prior to the date of issue of demand notice.

After this was pointed out the department stated in June 2006 that the dealer had made part payment on account of return scrutiny. The reply is untenable as the tax paid was from February 2003 whereas the assessment period was from April 2003. Further, the assessment dues should have been arrived only after considering the tax paid up to the date of assessment.

#### **2.2.16 Deficiencies noticed in monthly diaries**

The monthly diaries on all activities undertaken by the units are submitted by AAs to the controlling officer in the form of statements, which in turn is consolidated by EDP Cell for the use by the Commissioner at the time of monthly meeting held with JCs and DCs. Also DC (Inspection) reviews the monthly diaries received from the seven JCs and intimates the remarks thereon to them after approval from the Commissioner.

<sup>▼</sup> Unit-5 and 8 Ahmedabad, Bharuch, Unit-1Bhavnagar, Gandhidham, Unit-4 Rajkot, Valsad, Unit-1 and 2 Vapi and Veraval,

<sup>\*</sup> Unit-8 Ahmedabad, Ankleshwar, Bharuch, Gandhidham, Unit-1 Junagadh, Unit-1 Vapi and Veraval

<sup>\*</sup> Unit-4 Rajkot and Unit-2 Vapi

The monthly diaries of seven divisions for the month of February 2005 were checked in audit and following deficiencies were noticed.

**2.2.16.1** Opening balance of live dealers as on 1 February 2005 was 3,33,862 in Statement 2A whereas it was 3,33,867 in Statement 3A.

**2.2.16.2** The Closing balance of live dealers as on 28 February 2005 was 3,35,581 in Statement 2A whereas it was 3,31,728 in Statement 3A. Further, as per centralized data kept by the EDP cell, the number of live dealers at the end of February 2005 was 3,46,882.

**2.2.16.3** The opening balance of outstanding enforcement recovery as on 1 February 2005 was Rs.4,854.21 lakh in Statement 6A whereas it was Rs.3,730.61 lakh in Statement 7B.

**2.2.16.4** The closing balance of outstanding enforcement recovery as on 28 February 2005 was Rs.4,858.49 lakh in Statement 6A whereas it was Rs.3,730.20 lakh in Statement 7B.

The difference in information furnished reveals that the information submitted was incorrect and the same was not correlated with the centralised data maintained by EDP cell. Further, test check revealed that uniformity in statements was not maintained by the divisions and information from units was not correctly depicted in the diaries.

After this was pointed out the DC (Inspection) issued instructions in May 2005, directing all divisional officers to take due care while preparing the monthly diary.

### **2.2.17 Acknowledgement**

An entry conference was held with the Commissioner of Sales Tax in September 2005. The objectives of the review were discussed. He assured that full co-operation would be given to audit. The findings of the review were sent to the department and Government in April 2006 with the request to discuss the points in audit review committee meeting to be held in June 2006. The meeting of audit review committee was held in June 2006. Representatives of the department headed by Commissioner attended the meeting. The views of Government have been taken into consideration while drafting the review. Reply from Government has not been received (October 2006).

### **2.3 Incorrect grant of benefits under sales tax incentive schemes**

**2.3.1** Under the sales tax incentive scheme 1986-90, 1990-95 and 1995-2000, eligible units are allowed to purchase raw material, processing material, consumable stores and packing material against declaration on payment of tax at the rate of 0.25 *per cent* 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 is also adjusted against the ceiling limit of exemption. In the event of breach of the recitals of the declaration, purchase tax saved is to be recovered under Section 50 of the GST Act with



interest and penalty. Supreme Court of India, 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 statute 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), natural gas (NG), liquified petroleum gas (LPG) and naphtha used as fuel can not be considered as raw material, processing material or consumable stores in the manufacture of glazed tiles, steel alloys, paper and paper products and ceramic tiles *etc.*

The Commissioner issued a circular in February 2001 envisaging that the ratio of the Supreme Court judgement cannot be applied to the provisions of the GST Act. This view was challenged by audit which was subsequently confirmed by the Gujarat Sales Tax Tribunal<sup>^</sup> in a case decided in 2004. The Commissioner *abinitio* withdrew 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 records of 18\* offices it was noticed in the assessment of 44 dealers for the period between 1995-96 and 2003-04 that furnace oil, lignite, kerosene, natural gas, liquified petroleum gas, naphtha and light diesel oil valued at Rs.893.87 crore purchased against declarations were used as fuel. The assessing authorities (AAs) while finalising the assessments between January 2002 and March 2005 adjusted tax saved of Rs.151.80 crore against the tax exemption limit incorrectly treating the goods as consumable stores. This resulted in incorrect grant of benefit of Rs.280.41 crore including interest of Rs.65.21 crore and penalty of Rs.63.39 crore.

After this was pointed out between January and December 2005, the department accepted between December 2005 and June 2006 audit observations for the entire amount of Rs.280.41 crore and issued instructions for reassessing the cases. Further action taken has not been received (October 2006).

**2.3.2** During test check of records of four<sup>#</sup> offices it was noticed that while finalising assessments of seven dealers between February 2002 and March 2005 for the period between 1993-94 and 2001-02 the AAs applied incorrect rate of tax. Of these, in five cases on purchase of goods of Rs.5.71 crore purchase tax of Rs.10.40 lakh was adjusted short, while in two cases on sale of manufactured goods of Rs.93.79 lakh, sales tax of Rs.5.21 lakh was adjusted short.

After this was pointed out between March and September 2005, the department accepted between September 2005 and June 2006 audit

\* M/s. Coastal Chemicals Ltd. Vs. State of Andhra Pradesh (117-STC-12) dt.14.10.99

<sup>^</sup> Pandesara Ind. Ltd. Vs. State of Gujarat SA No. 682 decided on 28.09.04.

\* DCST: Range-14 Bharuch, Gandhinagar, Range-8 Mehsana, Range-22, 23 Rajkot, Range-17 Surat and Range-12 Vadodara.

ACST: Range-3, 11 Ahmedabad, Range-24 Gandhinagar, Himatnagar, Jamkhambalia, Range-24 Jamnagar, Range-5 Rajkot and Range-1 Surendranagar.

STO: Unit-6 Ahmedabad, Unit-5 Rajkot and Unit-5 Surat.

<sup>#</sup> STO: Gondal, Range 3 Jamnagar, Range 5 Rajkot, and Range 11 Surat

observations for the entire amount of Rs.15.61 lakh and recovered Rs.12.67 lakh in case of four dealers. Particulars of recovery in the remaining cases have not been received (October 2006).

**2.3.3** Under sales tax incentive schemes, in case of exemption certificate holders tax saved on purchases and sales by such units along with additional tax (AT) is required to be adjusted against the ceiling limit of exemption. Adjustment of AT against deferment is not authorised under the resolution issued for the deferment scheme but is required to be recovered in cash.

During test check of records of nine<sup>#</sup> offices it was noticed that AAs while finalising the assessments between April 2000 and March 2005 of 25 dealers holding exemption certificate did not adjust AT of Rs.40 lakh against the ceiling limit. In case of two dealers holding deferment certificate, AT of Rs.7.24 crore was incorrectly adjusted against ceiling limit though required to be recovered in cash. This resulted in short realisation of AT of Rs.10.94 crore including interest of Rs.3.30 crore.

After this was pointed out between January and December 2005, the department accepted between November 2005 and June 2006 audit observations involving an amount of Rs.10.90 crore in case of 26 dealers and recovered Rs.28.63 lakh in case of 19 dealers. Particulars of recovery and reply in the remaining case have not been received (October 2006).

**2.3.4** Under the sales tax incentive schemes, sale of manufactured goods is exempt from payment of tax. Accordingly, deduction from turnover against certificates<sup>♦</sup> under the provisions of the Act shall not be allowed. 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 five<sup>\*</sup> offices it was noticed that five dealers made sales valued at Rs.3.53 crore against certificates for the period 1994-95 to 2002-03. AAs incorrectly assessed the dealers between March 2001 and December 2004 at reduced rate of tax and adjusted it accordingly. This resulted in short adjustment of tax of Rs.11.96 lakh.

After this was pointed out between January and September 2005, the department accepted audit observations involving Rs.11.62 lakh of four dealers in May 2006 and recovered Rs.4.66 lakh from two dealers. Particulars of recovery and reply in the remaining case have not been received (October 2006).

**2.3.5** Under sales tax incentive schemes, the eligible unit shall start payment of tax as soon as aggregate of taxes on the sales or purchase effected by it equals the amount specified in the certificate of exemption or the time limit mentioned in the certificate of exemption, whichever is earlier.

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<sup>#</sup> ACST: Petro-1 Ahmedabad, Range-3 and 4 Ahmedabad, Range-24 Gandhinagar and Range-5 Rajkot.

STO: Gondal, Himatnagar, Unit-5 Rajkot and Unit-11 Surat

<sup>♦</sup> Certificate in form 17 B, 19 and 20

<sup>\*</sup> STO: Unit-6 Ahmedabad, Morbi, Unit-11 Surat and Viramgam

ACST: Range 5 Rajkot

During test check of records of four<sup>#</sup> offices it was noticed in the assessment of four dealers for the period between 1999-2000 and 2002-03 that the dealers availed of excess exemption as against the sanctioned limit. However, while finalising the assessments between September 2003 and March 2005, the AAs failed to detect the mistake. This resulted in excess availment of tax of Rs.29.39 lakh including interest of Rs.4.39 lakh and penalty of Rs.3.45 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Name of office	Assessment Year Date of Assessment	Exemption admissible	Exemption availed	Excess exemption carried forward
1	ACST, Range-2, Nadiad	2001-02 28-02-05	37.06	45.69	8.63
2	STO, Viramgam	2000-01 31-03-05	25.43	34.61	9.18
3	STO, Gandhidham	2002-03 29-09-03	49.19	51.78	2.59
4	ACST, Range-11, Surat	1999-00 27-02-04	48.34	49.49	1.15
	<b>Total</b>		<b>160.02</b>	<b>181.57</b>	<b>21.55</b>

After this was pointed out between March and December 2005, the department accepted audit observations between August 2005 and June 2006 for the entire amount of Rs.29.39 lakh and adjusted an amount of Rs.2.59 lakh in case of one dealer. Particulars of recovery in the remaining cases have not been received (October 2006).

**2.3.6** Under the sales tax incentive schemes, goods manufactured by an eligible unit are to be sold within the state of Gujarat. In the event of transfer of 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 limit admissible.

During test check of records of three<sup>⊕</sup> offices it was noticed between December 2004 and May 2005 that three dealers consigned/transferred manufactured goods worth Rs.6.86 crore to their branches outside the State during 1999-2000 to 2001-02. However, AAs while finalising the assessments between November 2003 and February 2005 did not adjust two/four *per cent* of the sale price of the goods so transferred against the ceiling limit. This resulted in short adjustment of tax of Rs.20.18 lakh.

<sup>#</sup> ACST: Range-2 Nadiad and Range-11 Surat.

STO: Gandhidham and Viramgam.

<sup>⊕</sup> ACST: Range-3 Ahmedabad, Range-25 Gandhidham and Range-2 Nadiad.

After this was pointed out between January and June 2005, the department accepted in April 2006 audit observations for the entire amount of Rs.20.18 lakh and adjusted Rs.11.28 lakh in case of two dealers. Particulars of recovery in remaining case have not been received (October 2006).

**2.3.7** Under sales tax incentive schemes, eligible unit shall remain in production continuously during the period of eligibility mentioned in the eligibility certificate. If the eligible unit contravenes any of the conditions of this entry or any of the conditions of Government resolution of Industries and Mines Department under which eligibility certificate has been granted to it, the exemption under this entry shall cease to operate. The entire amount of tax that would have been payable on sales and purchases effected by the eligible unit but for the exemption given under this entry, shall be paid by the eligible unit into Government treasury within a period of 60 days from the date of contravention. In case of failure the said amount shall be recovered from the eligible unit as arrears of land revenue.

During test check of records of sales tax officer (STO), Unit-12, Surat, it was noticed for the period 1999-2000 finalised in March 2004 that a dealer was granted exemption for the period August 1995 to August 2001 for Rs.29.51 lakh. The dealer availed exemption benefit of Rs.7.94 lakh during August 1995 to March 1998. Thereafter dealer stopped production and failed to file sales tax returns from April 1999 onwards. The dealer was liable to repay the exemption already availed of. However the AA failed to raise demand of Rs.7.94 lakh. This resulted in underassessment of tax of Rs.16.76 lakh including interest of Rs.8.82 lakh.

After this was pointed out in January 2005, the department accepted audit observation in June 2006 for the entire amount of Rs.16.76 lakh. Particulars of recovery have not been received (October 2006).

**2.3.8** Under section 58 of GST Act a dealer is required to maintain correct and complete books of accounts. Further, condition No.5 of entry 69 of the notification issued under section 49 (2) of the Act provides that the eligible unit shall file return and pay the tax within the prescribed time. According to condition No.11 of entry 69, if an eligible unit contravenes any provisions of the Act, certificate of exemption issued to the unit by the competent authority shall be liable, to be suspended for a period not exceeding six months and purchases and sales by the eligible unit shall cease to be exempt under this entry.

During test check of records of STO, Himatnagar, it was noticed that a dealer holding sales tax exemption certificate was raided by flying squad unit of the department on 28 August 2001 and it was found that the dealer was underbilling his sales. The escapement of turnover on account of under billing was estimated at 20 *per cent*. The AA recovered an amount of Rs.1.85 lakh under GST Act and Rs.1.09 lakh under CST Act. Though the dealer contravened provision of Section 58 of the Act by not maintaining proper and correct books of accounts, no action was taken against the dealer to suspend the exemption certificate in terms of condition 11 of entry 69. This resulted in incorrect extension of exemption benefit of Rs.70.56 lakh and short levy of tax

of Rs.2 lakh under CST Act on underbilling of inter state sales. Total under assessment of tax worked out to Rs.72.56 lakh.

After this was pointed out in March 2005, the department accepted the audit observation and made a proposal for SMR under Section 67 of the Act. Final report is awaited (October 2006).

**2.3.9** Under section 56(1) of the GST Act, tax should not be collected by any person on goods on which no tax is payable and amount if collected would be forfeited.

During test check of records of assistant commissioner (AC) unit-11, Ahmedabad, it was noticed that two dealers collected tax of Rs.9.21 lakh while availing sales tax exemption during 1999-2000 and 2000-01. However, AA while finalising the assessments between November 2003 and February 2005 failed to forfeit the tax so collected by the dealers resulting in short realisation of Government revenue to that extent.

After this was pointed out in July 2005, the department accepted audit observation in March 2006 for the entire amount and stated that instructions for SMR revision of assessment are issued.

After this was pointed out to Government in January 2006, the Government accepted audit observations in 87 cases (October 2006).

#### **2.4 Application of incorrect rate of tax**

Under the GST Act, sales tax is leviable at the rates as indicated in schedules to the Act. The goods not covered under any of the specified entries in the schedules are taxed at the general rate.

During test check of records of six<sup>#</sup> offices it was noticed in the assessment of eight dealers for the period between 1995-96 and 2002-03 finalised between April 2003 and March 2005 that sales turnover of Rs.5.35 crore of various goods were taxed at incorrect rates. This resulted in short levy of tax of Rs.36.34 lakh including interest of Rs.6.78 lakh and penalty of Rs.11.51 lakh.

After this was pointed out between February and December 2005, the department accepted between August 2005 and May 2006 audit observations for the entire amount of Rs.36.34 lakh. Particulars of recovery have not been received (October 2006).

This was pointed out to Government in January 2006, Government accepted audit observations in six cases.

#### **2.5 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 the

<sup>#</sup> ACST: 11, 15 Ahmedabad, 25 Gandhidham, Surendranagar and Vadodara.  
STO: Morbi

goods are not covered under any specific entry of the schedule, general rate of tax is applicable.

During test check of records of six<sup>□</sup> offices, it was noticed that six dealers either did not pay tax/at lesser rates due to incorrect classification of goods valued at Rs.25.77 crore during 1999-2000 and 2003-04. AAs while finalising assessments between March 2004 and February 2005 failed to detect the mistake resulting in short realisation of tax of Rs.2.53 crore including interest of Rs.34.65 lakh and penalty of Rs.96.90 lakh. A few instances are given below:

(Rupees in lakh)

Sl. No.	No. of dealers Office	Name of commodity	Value of goods	Rate of tax leviable/levied	Short levy including interest penalty
1	1 Unit 14 Ahmedabad	Sugar candy was treated as sugar	1407	<u>6.6 &amp; 6</u> Nil	175.30
2	1 Unit 1 Surendranagar	Zinc scrap was treated as zinc hydroxide	782	<u>6</u> 4	52.46
3	1 Unit 15 Surat	Sale of plant and machinery treated as used in execution of works contract	357	<u>8.8</u> 4.4	21.95

After this was pointed out between March and December 2005, the department accepted between August 2005 and June 2006 audit observations involving an amount of Rs.2.51 crore in case of five dealers and recovered an amount of Rs.1.17 lakh in case of two dealers. Particulars of recovery and replies in the remaining cases have not been received (October 2006).

After this was pointed out to Government in January 2006, Government accepted audit observations in all cases.

## 2.6 Irregular/excess grant of set off

**2.6.1** 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 Government treasury, the amount of tax on his sales for which set off is claimed. Second proviso below

□ ACST: Range-9 & 14 Ahmedabad, Range-1 Surendranagar and Range-15 Surat  
STO: Unit-1 Vapi and Viramgam.

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 Gujarat Industrial Investment Corporation Limited (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 stating that they hold sales tax deferment certificate issued by the department.

During test check of records of deputy commissioner (DC), Range-17, Surat it was noticed in March 2005 in the assessment of a dealer for the period 2001-02 finalised in April 2003 that set off of Rs.19 lakh was allowed on purchase of goods from dealers holding deferment certificate on production of a simple declaration that they hold certificate of deferment issued by the department as specified in the circular issued (September 1993) by the Commissioner of Sales Tax. 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. Accordingly, grant of set off without satisfying the condition of deeming provision was not in consonance with the provision of the Rule.

After this was pointed out in April 2005, the department contested that, the deferment holder is a normal dealer like other registered dealers and even furnishing of declaration is not necessary.

The reply is not acceptable for the reasons that, Rule 44(C) (iii) with section 47 clearly envisages that, for granting set off under rule 44 proof of payment of tax by the vendor is mandatory and in the case of deferment holder, the tax would be deemed to have been paid by him only if a loan liability equal to tax payable by such dealer has been raised by GIIC or GSFC. In this case, department has failed to produce the proof regarding raising of loan.

**2.6.2** According to clause C (iii) below Rule 44 of the GST Rules, no set off shall be granted where the vendor who has sold the goods to the claimant dealer has not credited in Government treasury, the amount of tax on his sales for which set off is claimed. The department has also issued instructions in June 2004 to verify the fact of proof of payment of tax before grant of set off.

During test check of records of 21\* offices, it was noticed in the assessment of 47 dealers for the periods between 1995-96 and 2002-03 that set off was allowed without obtaining any proof of tax having been paid by them. The AAs while finalising the assessment between May 2003 and March 2005

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\* ACST: Range- 8, 9, 14, 18, 20, 22, 23 Ahmedabad, Range-25 Gandhidham, Range-2 Nadiad, Patan, Range-5, 10 Surat, and Range-6 Vadodara  
STO: Unit-1, 5, 6 and 15 Ahmedabad, Morvi, Unit-12 Surat, Unit-2 Vapi and Veraval.

failed to detect the mistake. This resulted in incorrect grant of set off of Rs.6.52 crore including interest of Rs.1.71 crore and penalty of Rs.1.10 crore.

After this was pointed out between January and December 2005, the department accepted audit observation in May 2006 in all cases and stated action was being taken to reassess one case involving Rs.10.68 lakh. Particulars of recovery and reply in the remaining cases have not been received (October 2006).

**2.6.3** Under Rule 42 of the GST Rules, a dealer who has paid tax on the purchase of goods (other than prohibited goods) to be used as raw or processing materials or consumable stores in the manufacture of taxable goods, is allowed set off at the rate applicable to the respective goods from the tax payable on the sale of manufactured goods subject to fulfillment of general conditions prescribed in Rule 47.

During test check of records of 27\*\* offices, it was noticed in the assessment of 48 dealers for the assessment period between 1996-97 and 2002-03 finalised between May 2003 and March 2005 that excess set off of Rs.1.73 crore including interest of Rs.40.13 lakh and penalty of Rs.14.38 lakh was allowed as detailed below:

**(Rupees in crore)**

Sl. No.	Number of dealers	Excess set-off allowed	Nature of irregularity
1	34	1.52	Set off was incorrectly allowed on LDO/kerosene used as fuel and not as consumable stores.
2	6	0.10	Transformer switching cells, calcite etc. are prohibited goods, not eligible for set off under Rule 42 but were incorrectly allowed.
3	8	0.11	Set off under Rule 42 was required to be allowed after deducting two <i>per cent</i> of purchase price of goods considered for grant of set off. This was not done on the purchases of craft paper, wheel plates, gear box, auto parts etc.
<b>Total</b>	<b>48</b>	<b>1.73</b>	

After this was pointed out between January and December 2005, the department accepted between December 2005 and June 2006 audit observations involving Rs.1.71 crore in case of 46 dealers and recovered an

\*\* DCST: Range-1 Ahmedabad, Gandhinagar, Range-8 Mehsana, Range 22, Rajkot, Range-10 Vadodara and Circle 12 Vadodara.

ACST: Range 3, 9, 11, 14, 15, 21, 22, 23 Ahmedabad, Range-1 Anand, Bhavnagar, Range 24 - Gandhinagar, Kadi, Range-2 Nadiad, Range-3 Rajkot, Range-6, 11 Surat and Range-6 Vadodara.

STO: Gondal, Morbi, Unit-2 Vapi and Unit-4 Vadodara.



amount of Rs.0.35 lakh in case of one dealer. Particulars of recovery and replies in the remaining two cases have not been received (October 2006).

**2.6.4** Under section 15B 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 Rule 42E of 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 15B of the Act on the purchase of raw materials on their use in the manufacture of goods which 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.

During test check of records of six# offices, it was noticed in the assessment of six dealers for the period between 1997-98 and 2001-02 finalised between May 2002 and March 2005 that though the dealers transferred the manufactured goods either to their branches or consigned out side the State, set off was not disallowed proportionately. This resulted in excess grant of set off of Rs.15.78 lakh including interest of Rs.1.55 lakh and penalty of Rs.0.93 lakh.

After this was pointed out between January and December 2005, the department accepted between May and June 2006 audit observations involving an amount of Rs.1.93 lakh in case of three dealers and recovered an amount of Rs.0.37 lakh in case of one dealer. Particulars of recovery and replies in remaining cases have not been received (October 2006).

**2.6.5** During test check of records of AC, Unit-21, Ahmedabad, it was noticed in June 2005 that a dealer purchased raw material valued at Rs.1.36 crore during 2000-01 from a sales tax exemption holder. The dealer made consignment sales valued at Rs.88 lakh out of goods manufactured from the above raw materials. Non-inclusion of above purchase for computation of purchase tax under section 15 B resulted in short levy of purchase tax and consequent excess grant of set off of Rs.8.65 lakh including interest of Rs.2.24 lakh and penalty of Rs.2.40 lakh.

After this was pointed out in July 2005, the department accepted the audit observation in May 2006 for the entire amount of Rs.8.65 lakh. Particulars of recovery have not been received (October 2006).

**2.6.6** Under Rule 44B of GST Rules, set off shall be admissible in respect of purchases of goods which are subsequently sold by the dealer under a lease agreement and, where the vendor who has sold the goods to the claimant

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\* M/s.Madhu Silica (85 STC 258) dated February 28,1991

# ACST: Range-3, 21 Ahmedabad, Range-6, 11 Surat and Range-5 Rajkot.  
STO: Unit-11, Surat.

dealer has credited in Government treasury, the amount of tax on his sales for which set off is claimed.

During test check of records of AC unit-5 Ahmedabad, it was noticed in assessment of a dealer for the period 1999-2000 finalised in January 2003 that set off of Rs.3.94 lakh under Rule 44B was allowed without obtaining any proof of tax having been paid by the vendor and proof for subsequent sale of leased goods under any agreement. This resulted in undue benefit of Rs.6.60 lakh to the dealer including interest of Rs.1.87 lakh and penalty of Rs.0.79 lakh.

After this was pointed in July 2005, the department stated in March 2006 that notice has been issued for reassessment. Further progress made has not been received (October 2006).

After this was pointed out to Government in January 2006, Government accepted audit observations in 102 cases (October 2006).

## **2.7 Short levy of central sales tax**

**2.7.1** Under CST Act, tax is leviable at the rate of four *per cent* on inter-state sale of goods made against declaration in form 'C'. In case of goods other than declared goods, where the sale is not supported by form 'C', tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher. In respect of declared goods where the sale is not supported by form 'C', tax is leviable at twice the rate applicable.

During test check of records of five<sup>⊕</sup> offices, it was noticed in the assessment of nine dealers for the period 1999-2000 and 2002-03 that sales valued at Rs.22.48 crore were not supported by form 'C'. However, AAs while finalising the assessments between March 2003 and March 2005 levied concessional rate of tax between four and eight *per cent* instead of the prescribed rate. This resulted in short levy of tax of Rs.66.34 lakh including interest of Rs.3.30 lakh and penalty of Rs.11.46 lakh.

After this was pointed between March and December 2005, the department accepted between May 2005 and May 2006 audit observations involving an amount of Rs.64.85 lakh in case of eight dealers and recovered an amount of Rs.30.69 lakh in case of two dealers. Particulars of recovery in six cases and reply in remaining case have not been received (October 2006).

**2.7.2** During test check of records of AC, Gandhinagar, it was noticed in the assessment of two dealers for the period 2004-05 that sales of declared goods valued Rs.2.08 crore were not supported by form 'C'. The dealers were liable to pay tax at twice the rate of tax. However, AA while finalising the assessment in December 2004 levied tax at the rate of four or two *per cent*. This resulted in short levy of tax of Rs.9.70 lakh including interest of Rs.0.76 lakh and penalty of Rs.2.28 lakh.

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<sup>⊕</sup> DCST: Petro-1 Ahmedabad.

ACST: Range-11 and 21 Ahmedabad, Range-24 Gandhinagar and Range-24 Jamnagar.

After this was pointed out between September and December 2005 the department accepted between November 2005 and May 2006 audit observation for the entire amount and recovered an amount of Rs.1.07 lakh in one case. Particulars of recovery in other case are awaited (October 2006).

**2.7.3** Under Section 5(2) of the CST Act, sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

During test check of the records of AC, Range-20 Ahmedabad it was noticed in April 2005 in assessments of a dealer for the period between 1995-96 and 1996-97 finalised in June and July 2003 that deduction was allowed as high sea sales under section 5(2). However, it was seen from the profit and loss accounts that the dealer paid customs duty and thereafter sold the goods locally. Hence the deduction allowed was not in order. This resulted in short levy of tax of Rs.5.28 lakh including interest of Rs.1.57 lakh and penalty of Rs.1.54 lakh.

After this was pointed out in June 2005, the department accepted audit observation involving the entire amount of Rs.5.28 lakh. Particulars of recovery have not been received (October 2006).

**2.7.4** Under Rule 12(10) of the CST (Registration and Turnover) Rules, 1957, in support of a claim for export, the dealer has to furnish to the prescribed authority, a certificate in form 'H', duly filled in all details viz., agreement, order number and date relating to such export, particulars of goods, means through which the goods have been exported along with its receipt number and date and signed by the exporter with evidence of export of such goods.

During test check of records of two\* offices, it was noticed in the assessment of two dealers for the period 1998-99 and 2000-2001 finalised between August 2004 and March 2005 that one dealer claimed and was allowed deemed export of CI<sup>#</sup> casting valued at Rs.26.70 lakh against form 'H'. However, copies of bill of lading attached with form 'H' showed that export was of building hardware; parts of brass, aluminum, SS<sup>⊕</sup> parts, paper and CR<sup>⊗</sup> parts and not CI casting. In case of another dealer deduction was allowed for export of goods against form 'H'. However, bill of lading attached with form 'H' disclosed that dealer was other than the one who had issued the form. This resulted in short levy of tax of Rs.6.18 lakh including interest of Rs.2.05 lakh and penalty of Rs.1.04 lakh.

After this was pointed out between September and December 2005 the department accepted in May and June 2006 audit observation for the entire

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\* ACST: Range-15 Ahmedabad and Gandhidham.

# Cast Iron

⊕ stainless steel

⊗ cold rolled

amount of Rs.6.18 lakh. Particulars of recovery have not been received (October 2006).

**2.7.5** Under CST Act, if a purchasing dealer effects any subsequent sales during movement of goods, no tax is payable, provided the dealer claiming exemption produces a declaration in form E-I or E-II secured from his selling dealer and declaration in form C or D from his purchaser.

During test check of records of STO, Himatnagar, it was noticed in the assessment of a dealer for the period 2000-01 that the AA while finalising the assessment in July 2003 allowed deduction of inter state sale of goods valued Rs.76.57 lakh and exempted from payment of tax though the dealer had not furnished the prescribed E1 and C forms. This resulted in short levy of tax of Rs.3.66 lakh.

After this was pointed out in March 2005, the department accepted audit observation in June 2006 for the entire amount. Particulars of recovery have not been received (October 2006).

Above omissions resulted in short levy of central sales tax aggregating Rs.91.16 lakh.

After this was pointed out to Government in January 2006, Government accepted audit observations in 15 cases (October 2006).

## 2.8 Non/short levy of purchase tax

**2.8.1** Under Section 13 of the GST Act, a registered dealer, on production of certificate in form 19, can purchase goods (other than prohibited goods) without payment of tax for use in the manufacture of taxable goods for sale within the State. In the event of breach of condition of declaration, the dealer is liable to pay purchase tax under section 16 at the prescribed rates. Under section 15A of the GST Act, on purchases made against form 19, purchase tax at the rate of 2.4 *per cent* is leviable at the time of filing the return.

During test check of records of seven offices, it was noticed in the assessment of nine dealers for the period 1995-96 and 2002-03 finalised between January 2004 and March 2005 that dealers purchased materials against form 19 and used for a purpose contrary to the conditions of form 19. For the breach of condition, purchase tax though leviable was not levied by the AAs resulting in non levy of purchase tax of Rs.85.79 lakh as detailed below:

Sl. No.	Name of office No. of dealers	Assessment year	Date of assessment	Nature of observation
1	Unit 5 Ahmedabad Unit 1 Surat 2	2001-02 2000-01	06.01.04 30.06.04	Material purchased against form 19 was resold instead of using it in manufacture of taxable goods. For this breach, purchase tax of Rs.12.07 lakh was leviable.

2	Unit 2 Jamnagar <u>Unit 2 Nadiad</u> 3	<u>1999-2000</u> 1996-97 to 2002-03	<u>15.03.05</u> 27.10.04 to 04.03.05	Material purchased on form 19 was used in the manufacture of tax free goods and was liable to PT of Rs.3.48 lakh.
3	Unit 17 Surat Unit 3 and 21 <u>Ahmedabad</u> 3	<u>2002-03</u> 2001-02 to 2002-03	<u>30.10.04</u> <u>19.01.04</u> 04.10.04	LDO purchased was used as fuel though it was not consumables. For this breach, PT of Rs.67.86 lakh was leviable.
4	STO, <u>Viramgam</u> 1	1995-96 1996-97	17.01.04 21.02.04	Purchase tax of Rs. 2.38 lakh at 2.4 <i>per cent</i> under section 15A on purchase of paper and gum against form 19 was not levied

After this was pointed out between January 2005 and December 2005, the department accepted between January and May 2006 audit observations involving an amount of Rs.69.76 lakh in case of five dealers and recovered an amount of Rs.2.38 lakh in case of one dealer. Particulars of recovery and replies in the remaining cases have not been received (October 2006).

**2.8.2** Under section 49(2) of the GST Act, a registered dealer on production of certificate in Form 34 can purchase resins and granules of low density poly ethylene (LDPE), high density poly ethylene (HDPE), linear low density poly ethylene (LLDPE) and poly venyle chloride (PVC) on payment of tax at the rate of three *per cent* for use in the manufacture of taxable goods for sale within the State. In the event of breach of condition of declarations, the dealer is liable to pay purchase tax under section 50 at the prescribed rates.

During test check of records of AC, Range-2 Nadiad it was noticed in the assessment of a dealer for the period between 1995-96 and 1996-97 that he purchased resins and granules of LDPE, HDPE, LLDPE and PVC against form 34. Contrary to the conditions of form 34, the material was used in the manufacture of tax free goods. For breach of conditions, purchase tax of Rs.11.73 lakh was leviable. However the AA while finalising the assessments in September 2004 and October 2004 failed to detect the mistake resulting in short realisation of Government revenue to the extent of Rs.11.73 lakh.

After this was pointed out between January 2005 and December 2005, the department accepted audit observations in March 2006 for the entire amount of Rs.11.73 lakh. Particulars of recovery have not been received (October 2006).

After this was pointed out to Government in February 2006, Government accepted audit observations in eight cases.

### 2.9 Non/short levy of tax on works contract

Under section 55A of the GST Act read with rule 33A of GST Rules a dealer engaged in works contract may opt to pay in lieu of tax, a lump sum amount

by way of composition, at the rate fixed by Government from time to time on the total value of the contract. Such an option is required to be exercised within 30 days from the date of beginning of the works contract.

During test check of the records of two<sup>#</sup> offices, it was noticed between May and June 2005 in the assessment of two dealers for the period 2000-01 and 2001-02 finalised in December 2002 and March 2005 that though the applications for composition of tax were not made within the prescribed time the dealers were assessed to composite tax. This resulted in short levy of tax of Rs.59.29 lakh including interest of Rs.10.19 lakh and penalty of Rs.17.01 lakh.

After this was pointed out between June and July 2005, the department accepted in June 2006 audit observations for the entire amount of Rs.59.29 lakh. Particulars of recovery have not been received (October 2006).

After this was pointed out to Government in February 2006, Government accepted audit observation in six cases.

### **2.10 Non/short levy of turnover tax**

Under section 10A of the GST Act, where the turnover of sales 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<sup>\*</sup> and sales exempted from tax under section 49 were excluded from 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 records of nine<sup>\*</sup> offices, it was noticed in the assessment of 19 dealers for the periods between 1993-94 and 1996-97 finalised between January 2003 and March 2005 that sales valued at Rs.46.82 crore were made against various declarations. The AA did not levy turnover tax of Rs.18.10 lakh in case of five dealers and short levied turnover tax of Rs.24.08 lakh in case of 14 dealers. This resulted in short realisation of turnover tax of Rs.42.18 lakh including interest of Rs.7.39 lakh and penalty of Rs.6.57 lakh.

After this was pointed out between March and December 2005, the department accepted, between October 2005 and June 2006, audit observations involving an amount of Rs.31.47 lakh in case of 10 dealers and recovered Rs.5.53 lakh from five dealers. Particulars of recovery and replies in the remaining cases have not been received (October 2006).

After this was pointed out to Government in February 2006, Government accepted audit observation in 19 cases.

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<sup>#</sup> ACST: Range-16 Ahmedabad and Range-21 Ahmedabad

<sup>\*</sup> Form 1, 20, 26 or 40

<sup>\*</sup> ACST: Range-11 & 15 Ahmedabad, Range-10 Surat and Vyara.  
STO: Gondal, Gandhidham, Unit-1 and 11 Surat and Viramgam.

### 2.11 Incorrect allowance of deduction

Under section 13B of the GST Act, sales made on form 19 are allowed without payment of tax subject to fulfilment of prescribed conditions. Sale of prohibited goods against declaration in form 19 is not permissible.

During test check of records of two<sup>#</sup> offices, it was noticed between December 2004 and June 2005, in the assessment of two dealers for the period 1999-2000 and 2000-01 finalised between October 2003 and January 2005 that deduction was allowed on sales turnover of Rs.1.81 crore of PVC resin and ice cream cone lids effected against form 19 which were prohibited goods. Incorrect allowance of deduction resulted in under assessment of tax of Rs.17.28 lakh including interest of Rs.4.60 lakh and penalty of Rs.4.52 lakh.

After this was pointed out between January and July 2005, the department accepted in May 2006 audit observation involving Rs.1.01 lakh in case of one dealer. While in another case Commissioner stated that matter would be referred to Legal Department for its opinion and side by side recovery proceeding would be started by passing an SMR order. Particulars of recovery have not been received (October 2006).

After this was pointed out to Government in February 2006, Government accepted audit observation in both cases.

### 2.12 Non/short levy of penalty

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

During test check of records of 17<sup>\*</sup> offices, it was noticed between December 2004 and December 2005 in the assessment of 22 dealers for the assessment periods between 1995-96 and 2002-03 that though the difference between tax assessed and tax paid exceeded by 25 *per cent* of the amount of tax paid, the AA while finalising the assessments between June 2001 and March 2005 did not levy penalty in terms of Commissioner's circular of June 1992. This resulted in non/short levy of penalty of Rs.1.46 crore.

After this was pointed out between January and December 2005, the department accepted between November 2005 and June 2006 audit observations involving an amount of Rs.1.32 crore in case of 16 dealers and

<sup>#</sup> ACST: Range-21 Ahmedabad

STO: Unit-6 Ahmedabad

<sup>\*</sup> DCST: Petro-I, Ahmedabad, Range-25 Gandhidham, Range-21 Junagadh, Range-23 Rajkot and Circle-12 Vadodara.

ACST: Range-1, 6, 9, 15 Ahmedabad, Gandhinagar, Range-2 Nadiad, Range-5 Rajkot, Range-5 and 6 Surat and Range-1 Vadodara.

STO: Unit-11 Ahmedabad and Unit-1 Surat

recovered an amount of Rs.0.46 lakh in case of one dealer. Particulars of recovery and replies in remaining cases have not been received (October 2006).

After this was pointed out to Government in February 2006, Government accepted audit observation in 18 cases.

### **2.13 Non/short levy of interest**

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 seven<sup>⊕</sup> offices, it was noticed between January and September 2005 in assessment of seven dealers for the period between 1995-96 and 2002-03 finalised between July 2003 and March 2005 that interest amounting to Rs.11.77 lakh was either not levied or levied short on the amount of unpaid tax.

After this was pointed out between March and September 2005, the department accepted in March and May 2006 audit observations for the entire amount and recovered an amount of Rs.0.56 lakh in case of one dealer. Particulars of recovery in the remaining cases have not been received (October 2006).

After this was pointed out to Government in February 2006, Government accepted audit observation in six cases.

### **2.14 Interest on refund**

**2.14.1** Under Section 54 (1) of the GST Act where refund of any amount becomes due to the dealer by virtue of an order of assessment under section 41, he is entitled to receive in addition to the said amount, simple interest at the rate of 14 *per cent* per annum up to August 2001 and at the rate of nine *per cent* per annum thereafter on the said amount from the date immediately following the date of closure of the accounting year to which the said amount relates to the date of order of assessment.

During test check of records of two<sup>#</sup> offices, it was noticed between July and October 2005 in the assessment of two dealers for the period between 1995-96 and 1999-00 finalised between November 2001 and August 2004 that excess interest on refund was granted in case of one dealer and in the other case the

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<sup>⊕</sup> DCST: 12 Vadodara and 21 Junagadh  
ACST: 15 Ahmedabad, 24 Gandhinagar and 2 Nadiad  
STO: Unit-1 Surat and Viramgam  
<sup>#</sup> DCST: Gandhidham  
ACST: Gandhinagar



dealer was granted interest on refund before adjustment of tax due under the CST Act. This resulted in excess grant of interest of Rs.7.67 lakh.

After this was pointed out between September and December 2005, the department accepted in November 2005 and May 2006 audit observation for the entire amount and recovered an amount of Rs.0.33 lakh in case of one dealer. Particulars of recovery in other case have not been received (October 2006).

**2.14.2** Under section 54 of GST Act interest is payable on delayed payment of refund. The Act provides a minimum period of 35 days from the date of order for payment of refund in case of assessments and 90 days in the case of judicial decisions, during which interest is not payable.

During test check of records of three\* offices, it was noticed in seven assessments of five dealers for the periods 1997-98 and 2001-02 finalised between August 2002 and September 2004 that refund payment was delayed by 69 days to 314 days, on which an interest of Rs.5.31 lakh was borne by the exchequer.

After this was pointed out in July 2005, the department stated in March 2006 that necessary instructions for payment of refund within time limit were being issued. However, copy of instructions issued was not received (October 2006).

After this was pointed out to Government in February 2006, Government accepted audit observation in two cases.

### **2.15 Incorrect adjustment of tax**

Section 47 of GST Act read with rule 31 provides the manner in which the tax due from a dealer according to returns filed by him is required to be paid/credited in treasury. As per existing system, the credit of tax paid by a dealer for a particular year should be adjusted in assessment of the same period only.

During test check of records of DC, Petro-I, it was noticed that a dealer had made payment of Rs.4.50 crore for the period 1997-98 and 1998-99 as *ad hoc* payment against CST. However, the assessing officer had allowed credit of Rs.4.50 crore in the assessment for the period 1999-2000, finalised in June 2003, which was irregular. Audit could not confirm whether credit of Rs.4.50 crore was allowed in the assessments for the period 1997-98 and 1998-99, as relevant documents were not produced.

After this was pointed out in July 2005, the department stated in March 2006 that necessary instructions have been issued to the AA to initiate revision in the case. Further reply has not been received.

This was brought to notice of Government in February 2006. The reply is awaited (October 2006).

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\* DCST: Circle 2 Ahmedabad and circle-Valsad  
STO: Unit-1 Junagadh