

## CHAPTER II

### SALES TAX

#### 2.1 Results of Audit

Test check of assessment records in various Sales Tax Offices conducted in audit during the year 2001-2002 revealed under assessment of Rs.274.65 crore in 745 cases, which broadly fall under the following categories:

Sr. No.	Category	(Rupees in crore)	
		No. of cases	Amount
1	Incorrect rate of tax and mistakes in computation	110	9.14
2	Incorrect grant of set off	73	1.61
3	Incorrect concession/exemption	33	11.41
4	Short levy of interest and penalty	280	10.96
5	Other irregularities	247	33.87
6	Review on "Impact of Incentives on Industrial Growth and recovery of deferred Sales tax".	1	16.39
7	Review on "Recovery of Sales Tax dues as arrears of land revenue".	1	191.27
	<b>Total</b>	<b>745</b>	<b>274.65</b>

During the year 2001-02, the department accepted under assessment of Rs.81.26 lakh in 217 cases and recovered Rs.74.70 lakh in 170 cases, of which 41 cases involving Rs.13.43 lakh were pointed out during the year 2001-02 and the rest in earlier years. A few illustrative cases involving important audit observations and results of reviews on (i) "Impact of incentives on industrial growth and recovery of deferred Sales Tax" (ii) "Recovery of Sales Tax dues as arrears of land revenue" involving Rs.253.13 crore are given in the following paragraphs.

#### 2.2 Impact of incentives on industrial growth and recovery of deferred Sales Tax.

##### 2.2.1 Introductory

The Government in their industrial policy for the periods 1980-1985, 1986-1991, 1990-1995 and 1995-2000 had announced sales tax incentive schemes for new industries, premier and prestigious units, electronics

industries and wind power generation (WPG) units. The schemes framed by the Industries Department aimed at securing balanced development of industries by promoting growth of industries away from cities by giving more thrust on development of backward areas. The eligible units were granted capital investment subsidies and /or allowed exemption from payment of sales tax or to defer the payment of sales tax up to a prescribed monetary limit for a prescribed period.

Under various schemes, Government granted incentives in the form of cash subsidy, sales tax exemption and sales tax deferment of Rs.7,489.33 crore of which Rs.1,042.79 crore pertain to sales tax deferment sanctioned to 3,538 units.

### **2.2.2 Organisational set-up**

Under the incentive schemes, the sanctions/eligibility certificates are issued by the Department of Industries, Government of Gujarat on the approval of the District Level Committees/ State Level Committee. The implementation of sales tax incentive schemes is monitored by the Finance Department through the Commissioner of Sales Tax who is assisted by eight Deputy Commissioners of Sales Tax and 38 Assistant Commissioners of Sales Tax who supervise the work of 138 units(Ghataks). Based on the eligibility certificates issued by the Department of Industries, the Assistant Commissioner of Sales Tax issues Sales Tax exemption/deferment certificates.

### **2.2.3 Scope of Audit**

With a view to examining that adequate machinery was created to monitor recovery of deferred sales tax under the four <sup>€</sup>schemes, records of 21 <sup>#</sup> out of 138 assessing units (Ghataks) falling under the jurisdiction of 10 <sup>\$\$</sup> out of 38 Assistant Commissioners of Sales Tax were test checked between September 2001 and February 2002. To have a comprehensive study of the target versus achievement of industrial growth as a result of incentives granted, files relating to formulation of policies from 1980 to 1995 were scrutinised in audit in Industries Department and in the Office of the Industries Commissioner in May 2002. The results of the review are given in subsequent paragraphs.

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€ 1980-1985, 1986-1991, 1990-1995 and WPG

# Ankleshwar Ghatak 1 & 2, Bhavnagar Ghatak 1,2 & 3 Bharuch Ghatak 1 & 2, Gandhinagar, Godhra Ghatak 1 & 2, Kadi, Kalol, Mehsana, Surendranagar Ghatak 1 & 2, Vadodara Ghatak 10 & 11, Vapi Ghatak 1,2 & 3 and Vijapur.

\$\$ Ankleshwar, Bhavnagar, Bharuch, Gandhinagar, Godhra, Mehsana, Surendranagar, Vadodara 20 and Vapi 29 & 30

### 2.2.4 Highlights

- (1) Departmental action to recover the tax in instalments instead of entire amount of deferred tax from 27 closed units resulted in undue financial accommodation of Rs.4.11 crore. (Para 2.2.7(a))
- (2) As a result of failure to obtain adequate security, tax deferment of Rs.101.47 crore availed by 609 units remained insecure. (Para 2.2.9)
- (3) Failure to enforce security obtained in the form of surety bond from 26 closed units resulted in non-recovery of deferred tax of Rs. 9.67 crore. (Para 2.2.10)
- (4) Interest of Rs. 0.70 crore was not levied on 10 units for default in payment of deferred tax. (Para 2.2.11)
- (5) While formulating the industrial policies the department neither assessed the estimated amount of revenue to be forgone nor the impact of earlier schemes. (Para 2.2.14)
- (6) The objectives of the balanced growth was not achieved as out of 184 talukas, 50 to 55 talukas cornered most of the investments. (Para 2.2.14(iii))

### 2.2.5 Arrears in assessments

The instructions of Commissioner of Sales Tax (October 1984), to complete assessments of assesseees on priority basis, who enjoyed Sales Tax Incentives seemed to be ineffective.

4,362 assessments involving tax deferment of Rs.318.32 crore were pending final assessment as on 31 March 2001 of which 2,268 assessments involving Rs.119.50 crore pertained to the assessment period up to 1995-1996. Yearwise break-up of pending assessment cases is as follows:-

(Rupees in crore)

Assessment Period	Tax deferment schemes								Total	
	1980-1985		1986-1991		1990-1995		Wind Power Generation			
	No. of Assessments	Amount	No. of Assessments	Amount	No. of Assessments	Amount	No. of Assessments	Amount	No. of Assessments	Amount
up to 1995-1996	392	29.93	1520	65.26	344	19.12	12	5.19	2268	119.50
1996-1997	18	3.76	298	10.76	234	19.89	17	19.64	567	54.05
1997-1998	21	6.50	246	5.13	290	32.23	25	12.48	582	56.34
1998-1999	22	0.44	161	4.15	310	36.37	23	8.94	516	49.90
1999-2000	18	0.22	56	4.22	337	30.83	18	3.26	429	38.53
<b>Total</b>	<b>471</b>	<b>40.85</b>	<b>2281</b>	<b>89.52</b>	<b>1515</b>	<b>138.44</b>	<b>95</b>	<b>49.51</b>	<b>4362</b>	<b>318.32</b>

Delay in assessment to determine the correctness of benefits availed by the units on self assessment, may lead to delay in raising demands on excess/incorrect availing of incentive of deferment by the dealers.

### 2.2.6 Recovery of tax deferment under various schemes

The tax deferment availed, recovery of deferred tax due, recovery made and amount outstanding as on 31 March 2001 in respect of various schemes covered in the review is as under :

(Rupees in crore)

Scheme	No. of units	Amount availed	Recovery due	Amount recovered	Amount outstanding	Percentage of recovery outstanding to recovery due. Col. 6 to 4.
1	2	3	4	5	6	7
1980-1985	1276	77.15	56.12	40.77	15.35	27
1986-1991	1302	220.37	89.44	75.59	13.85	15
1990-1995	594	229.18	58.94	43.76	15.18	26
Wind Power Generation Scheme	59	74.51	39.38	33.84	5.54	14
<b>Total</b>	<b>3231</b>	<b>601.21</b>	<b>243.88</b>	<b>193.96</b>	<b>49.92</b>	<b>20</b>

Out of outstanding amount of Rs.49.92 crore, Rs. 40.74 crore pertain to 360 units under different schemes which have closed down their production.

### **2.2.7 Non recovery of deferred tax from the units due to closure/discontinuance of business**

As per the provisions of Finance Department resolutions dated 18 March 1982 and 16 June 1987, if the commercial production of goods is discontinued by a unit availing tax deferment benefit at any time for a period exceeding twelve months within the duration of sales tax deferment or has discontinued the business at any time within such duration, the benefit of the sales tax deferment scheme shall cease to operate forthwith and the entire amount of tax deferred till then shall be paid to Government by such unit within a period of sixty days from the expiry of 12 months or discontinuance of business. Further, as per provisions in Finance Department resolution dated 8 April 1992, the eligible units availing tax deferment under 1990-1995 scheme have to remain in production continuously during the eligibility period prescribed in eligibility certificate plus repayment duration. Failure to do so would result in the stoppage of the benefit of tax deferment forthwith and entire amount of tax deferred till then shall be paid by such unit to Government.

#### **(a) Undue benefit to the defaulters**

Test check of records in 5<sup>S</sup> Ghataks revealed that 27<sup>#</sup> units (10/1980-1985, 14/1986-1991 and 3/1990-1995 ) which had closed down the business during tax deferment period, were issued notices to repay the deferred tax of Rs. 4.11 crore in instalments instead of entire amount forthwith. This resulted in undue financial benefit to the defaulters.

#### **(b) Delay in issue of demand notices**

Test check of the records of 6<sup>α</sup> Ghataks revealed that 11 units (5/1980-1985 & 6/1986-1991) which had availed the benefit of tax deferment under the schemes had closed down their units during the period of tax deferment. The department failed to raise demand against the defaulters immediately after their closing down the business to deposit the entire amount forthwith. The delay ranged between 20 to 214 months. Recovery of Rs. 0.41 crore was outstanding as on 31 March 2001 from these units.

#### **(c) Non maintenance of records.**

The information supplied by 5<sup>##</sup> Ghataks revealed that 34<sup>9</sup> units (27/1980-1985 and 7/1986-1991 ) were closed after availing of tax deferment benefit of Rs. 5.10 crore of which in 18 cases the date of closure of business was not

<sup>S</sup> Ankleshwar 2, Bharuch 2, Vadodara 10, and Vapi 1&3.

<sup>#</sup> 10 units under 1980-85 scheme, 14 units under 1986-91 scheme and 3 units under 1990-95.

<sup>α</sup> Ankleshwar 1, Gandhinagar, Godhra 2, Kalol and Vapi 1 & 3.

<sup>##</sup> Ankleshwar 1 & 2 , Bharuch 2, Godhra 1 and Vapi 1

<sup>9</sup> 27 units under 1980-85 scheme and 7units under 1986-91 scheme

available and in balance cases the department did not have any records to show that whether any action was taken to effect the recovery of the dues or not.

### **2.2.8 Excess availing of tax deferment**

Four units (1/1986-1991, 2/1990-1995 and 1/WPG) were allowed to avail benefit of tax deferment of Rs.2.39 crore between February 1992 and March 2003 against which the units had availed benefit of Rs.3.31 crore between June 1997 and June 1999. This resulted in excess availing of deferment tax of Rs.0.92 crore. Though the units had crossed the monetary ceilings the department failed to recover excess amount availed in time. One unit was closed (June 1997), other was registered as sick unit with BIFR<sup>s</sup> (February 1999) and an official liquidator was appointed (November 2000) for the third one where the claim was preferred in March 2001 by the department.

### **2.2.9 Non- obtaining of securities to ensure effective recovery of deferred sales tax**

As per the Finance Department Resolution June 1991, all the units covered under previous and existing sales tax deferment schemes shall be required to furnish securities to the competent sales tax authority within 120 days from the date of issue of G.R.

During test check of records, it was noticed that security/surety was not obtained from 609 industrial units (294/1980-1985, 275/1986-1991, 38/1990-1995 and 2/WPG) which were sanctioned tax deferment benefit of Rs.933.38 crore of which Rs.101.47 crore was availed of by them by 31 March 2001 and Rs.78.01 crore was due for recovery as on that date as detailed below:

(i) No security/surety was obtained from 193 units (132/1980-1985, 58/1986-1991 and 3/1990-1995) which were functioning upto June 1991 but closed down their business thereafter. Deferred tax recoverable from such units amounting to Rs.20.66 crore not only remained insecure but, could also have been adjusted against their tax liability had security/surety been obtained.

(ii) No security/surety was obtained from 416 units which are still in operation (162 / 1980-1985, 217/1986-1991, 35/1990-1995 and 2/WPG). Deferred tax of Rs.57.35 crore recoverable from such units remains insecure, of which Rs.4.18 crore was due for recovery as on 31 March 2001.

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<sup>s</sup> Board for Industrial and Financial Reconstruction

### **2.2.10 Non enforcing of security to recover deferred tax from closed units**

During test check of 8<sup>#</sup> Ghataks it was noticed that the department obtained the surety bond from 26 units (2 /1980-1985, 15 /1986-1991, 7 /1990-1995 and 2/WPG). But the department failed to recover the deferred tax of Rs. 9.67 crore availed by these units by not enforcing the surety bond as these units were either closed or had discontinued their commercial production.

### **2.2.11 Non levy of interest on delayed payment of instalments of deferred tax**

Under the schemes, the amount of deferred tax is recoverable as per the time schedule prescribed. In case of default, the amount shall be recoverable in accordance with the provision of law alongwith interest for delayed payment.

The Commissioner of Sales Tax clarified ( November 1999), that the amount of tax deferment availed by the units under the WPG scheme is recoverable in six equal annual instalments. The first instalment shall begin on 1<sup>st</sup> April following the financial year in which the unit had exhausted its eligible amount or after the expiry of relevant period of six years during which deferment was available, whichever is earlier.

Scrutiny of records in the Ghataks at Kadi, Kalol, Gandhinagar, Godhra, Bharuch, Vadodara and Vapi revealed that 10 units (WPG Scheme) which had exhausted their eligible amounts earlier than the period of deferment had not repaid the instalments of deferred tax as per the schedule commencing on 1<sup>st</sup> April of next year. For delayed payment of instalments of deferred tax, interest of Rs.0.70 crore though leviable, was not levied.

On this being pointed out the Sales Tax Officer, Vapi accepted the objection while those at Kadi and Gandhinagar stated that Finance Department resolution did not mention the repayment schedule but the units had made advance payments following the instructions of Commissioner of Sales Tax. Reply is not tenable as in view of the clarification (November 1999) of Commissioner of Sales Tax, the recovery of deferred tax was to be made by the department as per the schedule mentioned therein.

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<sup>#</sup> Ankleshwar 2, Bharuch 2, Bhavnagar 3, Gandhinagar, Godhra 1 & 2, Kadi, and Vadodara 10.

### **2.2.12 Interest free sales tax loan in lieu of sales tax deferment to industrial units by Gujarat Industrial Investment Corporation (GIIC)/Gujarat State Financial Corporation (GSFC)**

To obviate adverse effect of Section 43-B of the Income Tax Act, 1961, a scheme for interest free loan in lieu of sales tax deferment availed by the eligible units was introduced by the Government of Gujarat vide Industries, Mines and Energy Department resolution dated 21 March 1988. According to the conditions of this resolution, where certificates of deeming loan<sup>s</sup> from GIIC (for Large and Medium Scale Industries) and GSFC (for Small Scale Industries) have been issued, recovery of deferred tax was to be made by concerned financial institutions and credited to Government account.

Test check of records of Kalol, Ankleshwar and Surendranagar revealed that seven units were issued certificates of deeming loans for Rs. 1.16 crore under deferment schemes 1980-1985 and 1986-1991 by GSFC and GIIC. All the units were closed down between April 1996 and April 1999 but no records were maintained to ascertain whether any recovery was effected from the units by these institutions and credited to the Government account.

No system or procedure has been prescribed to monitor the recovery of the dues made through the financial institutions. The Commissioner of Sales Tax has also not furnished any clarification on the matter though called for.

### **2.2.13 Improper maintenance of register**

The Ghataks are required to maintain a Register No.56 showing the deferment of tax availed by units as per returns furnished and as per assessments made by the department, amount due for recovery and dates on which due.

(i) During test check it was noticed that in 10 % Ghataks the registers were not maintained in prescribed form. In 6 %% Ghataks, benefit of tax deferment availed of as per returns and that as per assessments was not recorded in the register. Due dates of instalments and dates on which payments made were not recorded in 7 ^^ Ghataks. In the absence of these details, monitoring of benefits availed and correctness of recovery of deferred tax was not effective.

(ii) At Ankleshwar, 130 units were sanctioned tax deferment benefit under 1980-1985 scheme. However the register produced to audit contained the

<sup>s</sup> Amount equivalent to tax deferment availed by units considered as loan from GIIC/GSFC.

<sup>%</sup> Ankleshwar 1 & 2, Bhavnagar 2 & 3, Gandhinagar, Kadi, Mehsana, Vadodara 10 & 11 and Vijapur.

<sup>%%</sup> Ankleshwar 1 & 2, Bhavnagar 2 & 3, Godhra 2 and Vadodara 11.

<sup>^^</sup> Bhavnagar 2 & 3, Gandhinagar, Mehsana, Vadodara 10 & 11 and Vijapur.



names of only 53 units with incomplete data on sanction, amount of tax deferred and recovery thereof.

### **2.2.14 Impact of incentives on industrial growth**

A prudent financial management and planning would require that, before granting benefits in financial terms, the quantum of revenue involved should first be estimated. However, study of files in Industries Department (May 2002) revealed that no estimation was made while formulating the industrial policies for 1980-1985, 1986-1991, 1990-1995 and 1995-2000. The proposals did not contain any set goals like number of units to whom the benefit would accrue, total capital inflow that was expected by virtue of grant of such incentives and quantum of incentives that would have to be sanctioned to the proposed units. Before formulating the policies, no comprehensive study of the earlier schemes was made.

Based on recommendations of State Finance Commission (1994), the Industries Commissioner entrusted the study of the impact of incentive schemes on industrialisation in Gujarat to Industrial Extension Bureau (iNDEXTb), a Government of Gujarat undertaking. Report on study carried out by Entrepreneurship Development Institute of India through iNDEXTb, was submitted to Government (1999). Findings of the study are:

- (i) The incentives given were not a very powerful instrument to divert the flow of industrial investment to industrially backward areas.
- (ii) The definition of backward areas was diluted over a period of time. Under one or the other pretext, almost entire State was made eligible for incentives with the result that high concentration of investments took place only in a few pockets of the State which enjoyed proximity with some major industrial centers or located in "Golden Corridor" extending from Ahmedabad to Vapi. None of the 'prestigious' units have gone to any backward taluka which is outside the 'Golden Corridor' or has no natural resource base.
- (iii) Impact of the incentives seemed to be rather limited with reference to the backward area development. As many as 111 talukas during 1986-1991 scheme and 88 out of 184 talukas during 1990-1995 scheme did not receive any major investment. Most of the investment was cornered by 50-55 talukas.
- (iv) The Government did not have exact information on the number of units in operation, their output, employment value addition, etc.

### **2.2.15 Conclusion**

It is evident that a proper analysis of the implications of the scheme to ascertain details like the revenue likely to be forgone, number of units to whom the benefits would accrue, the total capital inflow to the areas covered etc. was not done by the industries department. The role of the field offices in effecting recoveries from the defaulting units was poor. As the department did not obtain securities from the beneficiaries, it was not able to recover the dues from any of the defaulters. Getting easily enforceable securities from the beneficiaries may be made mandatory to overcome the problem. As the department's ability to monitor effectively the implementation of the schemes is being jeopardised due to the absence of reliable and complete data, developing adequate data base through computerization of relevant records may be considered.

The matter was reported to the department and Government in June 2002; their replies have not been received (July 2002).

## **2.3 Recovery of Sales Tax dues as arrears of land revenue**

### **2.3.1 Introductory**

The Gujarat Sales Tax Act, 1969 provides for levy of sales tax, purchase tax, turnover tax, tax on specified sales and composition money in lieu of tax in respect of dealers whose annual turnover of sales or purchases exceed the prescribed limits. All registered dealers are required to submit monthly/quarterly/annual returns to the assessing authorities alongwith proof of tax paid on self-assessment. The cases are then assessed and a demand notice issued directing the dealers to deposit the balance amount of tax, if any, alongwith interest and penalty within a period of 30 days from the date of service of demand notice. In the event of failure to deposit the tax as specified in the notice, it shall be recoverable as arrears of land revenue.

### **2.3.2 Organisational set-up**

The Sales Tax department functions under the control of the Commissioner of Sales Tax assisted by Additional Commissioners, Deputy Commissioners, Assistant Commissioners and Sales Tax Officers. The Deputy Commissioners, Assistant Commissioners and Sales Tax Officers shall have and exercise all the powers and perform the duties of District Collectors, Deputy Collectors and Mamlatdars respectively under Bombay Land Revenue Code, 1879, (LRC) to recover the sales tax dues as arrears of land revenue.

### 2.3.3 Scope of audit

There are 8\*\* Deputy Commissioners in Gujarat to supervise the levy and collection of tax enforced by 138 assessing units (Ghataks). Records of 42\* Ghataks falling under all the Deputy Commissioners with special emphasis on cases where the arrears involved was Rupees one lakh and more in individual cases, were scrutinised between July and November 2001. The results of the review are given in subsequent paragraphs.

### 2.3.4 Highlights

**1. Over the last five years, action was initiated to recover sales tax under the provisions of Land Revenue Code in 18,883 cases involving arrears of Rs.1,247.37 crore but an amount of Rs. 44.16 crore only was recovered in 212 cases which ranged between 1 percent and 6 percent of the dues.**

[Para 2.3.5]

**2. Delay of more than three years in determining the tax dues from 542 dealers in 628 assessments resulted in non-realisation of Government revenue of Rs.395.28 crore.**

[Para 2.3.6]

**3. Non-initiation of recovery proceedings under the provisions of Land Revenue Code in 164 cases resulted in non-recovery of dues of Rs.53.11crore.**

[Para 2.3.7]

**4. Though property was attached in 64 cases where tax dues amounted to Rs.110.34 crore, auction of the attached property was not conducted to realise the Government revenue.**

[Para 2.3.8]

**5. In 108 cases involving tax dues of Rs. 27.45 crore, the offices in charge of recovery did not have the details of date of demand and date of service of demands.**

[Para 2.3.9]

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\*\* 2 each of Ahmedabad and Surat and 1 each of Bhavnagar, Gandhinagar, Rajkot and Vadodara.

\* 11 each of Ahmedabad and Surat, 7 of Rajkot, 6 of Vadodara, 4 of Gandhinagar and 3 of Bhavnagar

**6. Incorrect adoption of due date of payment on the dues after appeal/rectification orders resulted in loss of interest of Rs. 0.37 crore in 10 cases.**

[Para 2.3.10]

### 2.3.5 Position of arrears

Total sales tax arrears pending collection as on 31<sup>st</sup> March of the year during the last five years was as under: -

(Rupees in crore)

Year	No. of Dealers	Sales Tax Collected	No. of defaulters	Amount of Tax pending collection at the end of the year	Percentage of arrears to revenue collected <u>Col. 5 to 3</u>
1	2	3	4	5	6
1996-1997	4,19,283	4,025.69	1,76,611	871.51	22
1997-1998	4,16,357	4,402.39	1,36,000	1,065.34	24
1998-1999	4,03,663	4,795.84	1,51,711	1,101.48	23
1999-2000	4,01,624	5,134.47	1,42,575	3,403.06	66
2000-2001	3,88,362	5,942.74	1,53,441	4,887.20	82

Arrears of Sales Tax revenue to total collection showed an upward trend from 22 percent in 1996-1997 to 82 percent in 2000-2001. Though the position of arrears is reviewed by higher authorities through monthly returns, the overall arrears increased steadily from Rs. 871.51 crore in 1996-1997 to Rs. 4,887.20 crore at the end of 2000-2001 registering an increase of 560.77 percent. Further, the number of defaulters decreased from 1,76,611 to 1,53,441 during the period.

Action initiated under the provisions of the Land Revenue Code (LRC) to recover the arrears of sales tax are as shown below:-

Year	No. of defaulters	Amount of tax pending collection at the end of the year	No. of cases where action under LRC was taken.	Amount involved in LRC cases	Percent-age (Col 5 to 3)	Amount recovered		Percent-age (Col 8 to 5)
						No. of cases	Amount	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1996-1997	1,76,611	871.51	3,769	134.18	15	37	2.14	2
1997-1998	1,36,000	1,065.34	3,895	154.24	14	43	2.04	1
1998-1999	1,51,711	1,101.48	3,953	165.34	15	45	2.05	1
1999-2000	1,42,575	3,403.06	4,910	179.75	5	53	2.10	1
2000-2001	1,53,441	4,887.20	2,356	613.86	13	34	35.83	6
<b>Total</b>			<b>18,883</b>	<b>1,247.37</b>		<b>212</b>	<b>44.16</b>	<b>4</b>

The department had initiated action under the provisions of LRC in 18,883 cases involving tax dues of Rs. 1,247.37 crore only over the last five years which ranged between 5 percent to 15 percent of the total arrears. Whereas an amount of Rs.44.16 crore could be realised in 212 cases by invoking the provisions of LRC which varied between 1 percent and 6 percent. The dismal performance in implementing the special provisions for recovery under the LRC was due to lack of timely action in determining and raising demand of dues.

### 2.3.6 Arrears due to delay in assessment

Under the Gujarat Sales Tax Act, 1969, there was no time limit for completion of assessments relating to cases prior to April 1998. However, no order of assessment for a year commencing on the first day of April 1998 and thereafter shall be made at any time after the expiry of three years from the end of the year in which the last monthly, quarterly or annual return as the case may be, is filed.

Scrutiny of the records of 42 Ghataks revealed that in 628 cases the assessments were not completed in time. As a result, the amount of Rs.395.28 crore on account of sales tax had gone into arrears as detailed below:-

<b>(Rupees in crore)</b>				
Sl. No.	Delay in assessment	No.of dealers	Arrears	
			No.of assess-ments made	Amount
1.	More than 3 years but less than 5 years	318	351	224.28
2.	5 years and above but less than 10 years	198	239	156.64
3.	10 years and above	26	38	14.36
	Total	542	628	395.28

### **2.3.7 Non-initiation of action under the provisions of Land Revenue Code**

According to the provisions of the Gujarat Sales Tax Act, 1969, any tax, penalty or interest which remains unpaid after the dates specified in the notices for payment shall be recoverable as an arrears of land revenue. A notice under LRC is required to be issued directing the dealers to make the payment within 10 days of the date of receipt of notice.

Test check of records of 42 Ghataks revealed that 164 dealers had neither paid the dues of Rs. 53.11 crore by the date as specified in the notice for payment, nor any action was initiated by the department to recover the dues by invoking the provisions of the LRC. This resulted in non-recovery of dues of Rs. 53.11 crore.

### **2.3.8 Non-recovery of dues due to non-disposal of attached property**

Under the provision of LRC, in cases where the dealer fails to pay the dues within 10 days specified in the notice issued, action to attach movable property and/or immovable property could be initiated. To ascertain the details of property proposed to be attached by spot visit, a notice is to be issued with a minimum time limit of 7 days. The Commissioner of Sales Tax is competent to fix the upset price of the property attached, auction the same and adjust the sale proceeds against the tax dues.

Test check of records of 42 Ghataks revealed that attachment orders were issued in 73 cases involving arrears of Rs.114.48 crore out of which in 64 cases involving Rs.110.34 crore, no action for disposal of property was initiated. In the balance 9 cases involving arrears of Rs.4.14 crore, though

auctions were conducted, the properties could not be sold as the offers were far below the upset price. This resulted in non-realisation of Rs.114.48 crore.

### **2.3.9 Cases not pursued for want of assessment particulars with Recovery Officers**

Upto March 1998 the assessment of cases, where documents were seized by the enforcement wing, were done by the Sales Tax Officers of that wing and recoveries if any, watched by them. However, from April 1998, the work of assessment was entrusted to the respective Assistant Commissioner of Sales Tax (ACST). Consequent to this procedural changes, the recovery created and pending with enforcement wing was transferred to Ghataks.

Test check of records of 7 Deputy Commissioners of Sales Tax revealed that in 108 cases involving tax of Rs.27.45 crore, the date of issue/service of demand notices were not recorded in the register of recoveries. The files relating to recoveries also did not indicate these details. In the absence of complete details, computation of the amount of dues against dealers as on date was not ascertainable. Though notices were issued under various clauses, such notices were deficient as the department was not able to mention the necessary details in the notices and the dues had remained unrealised.

### **2.3.10 Loss of interest due to depiction of incorrect date for payment of tax in respect of outstanding dues as per appeal/rectification orders**

Under the Gujarat Sales Tax Act, 1969, a dealer is required to make the payment of dues within 30 days from the date of service of demand notice. For non-payment of tax including penalty and interest as per the demand notice in time, provisions for payment of interest is attracted. The Gujarat State Tax Tribunal while deciding appeal on stay on recovery of dues also specify that stay on recovery would be subject to levy of interest during the period of stay at the rate prevailing at the material time under the provisions of GST Act on the amount of tax ultimately determined as due from the dealer.

Contrary to the above provision and clarification as above, it was noticed in 16 assessments of 10\* dealers that on receipt of appeal / rectification orders, the old entries in the recovery register made as per the original assessment order were deleted and fresh demand notices issued indicating the due date of payment computed with reference to the date of fresh notice. This has resulted in short levy of interest of Rs. 0.37 crore for the period from the date of original demand notice and fresh demand notice.

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\* 3 of Surat, 2 of Vapi and 1 each of Ahmedabad, Ankleshwar, Bharuch, Rajkot and Vadodara.

### **2.3.11 Conclusion**

It is observed that despite the increase in Sales Tax arrears especially during 1999-2000 and 2000-2001, the department did not take adequate action to recover the dues by invoking the provisions of the LRC, which may have adverse effect on State's financial position.

The above facts were brought to notice of department (April 2002) and of Government (April 2002). Reply has not been received (July 2002).

### **2.4 Incorrect grant of benefits under sales tax incentive schemes.**

(A) The benefit is admissible to the eligible industrial unit to whom Sales Tax incentives by way of exemption or deferment is sanctioned, in respect of goods manufactured for sale as specified in the eligibility certificate issued by the Industries Department.

During test check of records of Assistant Commissioner, Ahmedabad and 2<sup>#</sup> Sales Tax Offices, it was noticed (between June and November 2001) in the assessment of 3 dealers for the periods between 1993-1994 and 1997-1998 (finalised between June 2000 and January 2001) that tax of Rs.66.72 lakh on sale of goods was adjusted incorrectly against the ceiling limit of exemption though these goods were not specified in their eligibility certificates. The amount of tax so adjusted was required to be recovered alongwith interest and penalty. Total amount recoverable in these cases work out to Rs.1.76 crore including interest and penalty.

The above facts were brought to the notice of the department between August and December 2001; their reply has not been received.

(B) According to sales tax incentive schemes, a manufacturer is allowed exemption from payment of tax or to defer the payment of tax in respect of goods manufactured by him subject to conditions laid down in the respective schemes. The tax so exempted/deferred is adjusted against the ceiling limit fixed by the competent authority at prescribed percentage of the fixed capital investment (FCI).

During test check of records of 3<sup>\*</sup> Sales Tax Officers, it was noticed (between February and May 2001) that a sum of Rs.9.99 lakh was either carried forward to next year in excess of exemption available or the benefit was allowed in excess of ceiling limit.

The above facts were brought to the notice of the department between March and July 2001. The department accepted the audit observation involving Rs.8.60 lakh in 3 cases and passed rectification orders. Reply in the remaining cases have not been received.

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<sup>#</sup> Bhavnagar and Kadi.

<sup>\*</sup> Kalol, Palanpur and Surat.



(C) According to sales tax incentive schemes, the eligible units holding exemption certificate are allowed to purchase raw materials, processing/packing materials and consumable stores against declarations on payment of tax at the rate of 0.25 *percent* of the tax payable. The balance of purchase tax on such goods is adjusted against the ceiling limit.

During test check of 3\*\* Sales Tax Offices, it was noticed (between February 1998 and February 2001) in the assessment of 3 dealers for the periods between 1990-1991 and 1998-1999 (finalised between December 1996 and January 2000) that the balance of the tax of Rs.11.49 lakh on purchases made against declarations was either not adjusted or adjusted short against the ceiling limit due to application of incorrect rate of tax.

The above facts were brought to notice of the department (between March and December 2001). The department accepted the audit observations for Rs.10.98 lakh in 2 cases and passed rectification orders. Reply in respect of the 3<sup>rd</sup> case has not been received.

(D) According to the condition of incentive scheme on exemption, if the sales of eligible units are wholly exempt from payment of tax, the units will not be eligible to claim deduction from turnover if the goods are sold against the declarations under Section 12, Section 13 or Section 49(2) of the Act.

During test check of records of 2 Sales Tax Offices of Surat and Kalol it was noticed (between February and May 2001) that in the assessment of 2 dealers for the periods between 1989-1990 and 1994-1995 (finalised between August 1999 and September 2000) that tax on sales made against declarations made under the above mentioned sections was adjusted against exemption limit at the reduced rate instead of the rates prescribed. This resulted in short adjustment of tax of Rs.6.37 lakh against the ceiling limit.

The above facts were brought to notice of the department (between February and September 2001) and of Government (March 2002). The details of recovery and reply is awaited ( July 2002).

(E) During test check of records of 2\* Assistant Commissioners and 4# Sales Tax Officers, it was noticed (between August 1998 and November 2001) in the assessments of 5 dealers for the periods between 1993-1994 and 1998-1999 (finalised between May 1997 and March 2001) that excess exemption of tax Rs.8.37 lakh was allowed as detailed below:

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\*\* Mehsana, Surat and Bhavnagar.

\* Ahmedabad and Palanpur.

# Ahmedabad, Khambhat, Petlad, and Surat.

Sr. No.	Place	Excess exemption allowed (Rs. in lakh)	Nature of irregularity.
1.	Palanpur Surat.	5.79	Tax on sale was computed and adjusted at incorrect rate in one case and computation error was found in the 2 <sup>nd</sup> case.
2	Khambhat	0.89	Tax at the rate of four <i>percent</i> of the value of goods transferred outside the State of Gujarat, which was required to be adjusted against the ceiling as per the conditions of scheme, was not adjusted.
3.	Petlad	1.34	Short levy of tax due to excess availing of exemption.
4.	Ahmedabad	0.35	Issue of certificate in Form 26 by an exemption certificate holder before the effective date.
	<b>Total</b>	<b>8.37</b>	

The above facts were brought to the notice of the department (between March and December 2001). The department accepted the audit observations for Rs.7.48 lakh in 4 cases. The position of recoveries and reply in the remaining case has not been received.

(F) According to incentive schemes, the eligible unit has to remain in production continuously during the period of eligibility mentioned in the eligibility certificate. If the eligible unit transfers any of its assets within a period of five years from the date of commencement of production the exemption ceases to operate and the entire amount of tax exemption benefit availed is to be paid within a period of sixty days alongwith interest.

During the test check of records of Sales Tax Office, Gandhinagar, it was noticed (November 2000) that a dealer had availed tax exemption benefit of Rs.1.08 crore between 1 December 1993 and 30 June 1997. The dealer's unit was merged with the other unit on 30 September 1998 i.e within a period of five years of commencement of production. The entire amount of tax exemption availed by the dealer was required to be recovered alongwith interest. The dealer had neither paid the amount of Rs.1.08 crore nor the department had initiated any action to recover the same.

The above fact was brought to the notice of the department (November 2000) and of Government (April 2002). The department stated that a notice for levy of tax for breach of recitals has been issued (3 August 2002). The details of recovery is awaited ( August 2002).

(G) According to incentive schemes, industries carrying out the activity of repacking of edible products was included in the ineligible list and are not entitled to the benefit of the scheme. The activity of blending of tea is not considered a manufacturing process.

During the course of test check of records of Sales Tax Office, Surendranagar, it was noticed (November 2001) in the assessment of a dealer for the period 1997-1998 and 1998-1999 (finalised in June 2000) that the tax deferment benefit was incorrectly allowed to an industry engaged in the activity of blending and repacking of tea. This resulted in incorrect deferment of tax of Rs.15.99 lakh including interest and penalty.

The above fact was brought to the notice of the department (November 2001); their reply has not been received.

## 2.5 Non/short levy of purchase tax

(A) Under the Gujarat Sales Tax Act, 1969, (Act) where a dealer purchases any taxable goods (other than declared goods) and uses them as raw materials in the manufacture of taxable goods, purchase tax at the prescribed rate is leviable. The purchase tax so levied is allowed as refund provided the manufactured goods are sold within the State and tax is paid on its sale.

During test check of records of 4\* Assistant Commissioners and 5\*\* Sales Tax Offices, it was noticed (between February and October 2001) in the assessment of 13 dealers for the periods between 1992-1993 and 1998-1999 (finalised between April 1997 and May 2000) that the dealers had transferred the manufactured goods either to their branches or consigned outside the State, or used the raw material in job work. This resulted in non/short levy of tax of Rs.1.04 crore including interest and penalty.

The above facts were brought to the notice of the department (between March and December 2001) and of Government (March 2002). The department accepted (July 2001) the audit observations involving an amount of Rs.1.19 lakh in one case. Particulars of recovery, if any, and reply in the remaining cases have not been received (July 2002).

(B) Under Section 49(2) of the Act, a registered dealer can purchase granules/resins of PVC, HDPE, LDPE and LLDPE at the concessional rate of tax of 3 percent against Form 34 for the manufacture of taxable plastic goods for sale within the State of Gujarat. The word plastic was deleted with effect from 16 May 1994.

During test check of records of Sales Tax Offices, Ahmedabad and Surendranagar, it was noticed (between February and November 2001) in the assessment of 2 dealers for the periods between 1993-1994 and 1995-1996

\* Ankleshwar, Godhra, Palanpur and Valsad.

\*\* One each of Ankleshwar, Bhavnagar, Godhra, Khambhat and Vapi.

(finalised in February and March 2000) that granules valued at Rs.90.47 lakh purchased against Form 34 were either used in the manufacture of goods other than plastic goods or the goods were sold tax free against Form-1. For breach of recitals of declarations, purchase tax of Rs.14.33 lakh though leviable, was not levied.

The above facts were brought to the notice of the department (March and December 2001) and of Government (March 2002). The department accepted (October 2001) the audit observations involving an amount of Rs.0.51 lakh in one case and recovered the amount. Reply in other case has not been received (July 2002).

(C) Under Section 13 of the Act, a recognised dealer, on production of certificate in Form 19, can purchase goods (other than prohibited goods) without payment of sales tax for use in the manufacture of taxable goods for sale within the State. However, the Act, provide for levy of purchase tax at the rate of 2.4 *percent* on purchases made against such certificate at the time of filing the return. In the event of breach of condition of declarations, the dealer would be liable to pay purchase tax at the prescribed rates.

During test check of records of Assistant Commissioners, Godhra and Himatnagar, Flying Squad, Ahmedabad and 3\* Sales Tax Offices, it was noticed (between June 2000 and September 2001) that as per the assessment of 6 dealers for the periods between 1988-1989 and 1999-2000 (finalised between October 1999 and December 2000) the dealers had purchased raw materials against Form 19 without payment of tax and used the material in the manufacture of goods. Purchase tax was levied at incorrect rate on the purchases (valued at Rs.4.48 crore) in 4 cases or the manufactured goods (valued at Rs.13.74 lakh) were consigned outside the State in 2 cases. This resulted in non / short levy of purchase tax of Rs.9.03 lakh including interest and penalty.

The above facts were brought to the notice of the department (July 2000 and September 2001) and of Government (March 2002). The department accepted audit observations involving an amount of Rs.1.13 lakh in 2 cases and recovered the amount. Particulars of recovery, if any, and reply in the remaining cases have not been received (July 2002).

## **2.6 Application of incorrect rate of tax**

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

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\* 1 each of Godhra, Jamnagar and Vadodara.

During test check of records of Assistant Commissioner, Ankleshwar and 15\* Sales Tax Offices, it was noticed (between June 1999 and December 2001) in the assessment of 18 dealers for the periods between 1989-1990 and 1999-2000 (finalised between April 1997 and March 2001) that sales turnover of Rs.12.96 crore of shamiana, electric panel board, paper waste, 'Babulin' gripe water, machinery, surgical goods, lubricating oil, reprocessed granules, ice cream, deep freezers, HDPE damaged drums, water purifier, pan chatani, floor and wall tiles, forest produce, cinema arc carbons, reprocessed plastic granules, master batch of colour granules were taxed at incorrect rates. This resulted in short levy of tax of Rs.87.95 lakh including interest and penalty.

The above facts were brought to the notice of the department (March 2001 and January 2002) and of Government (March 2002). The department accepted (October 2001 and January 2002) audit observations involving an amount of Rs. 11.52 lakh in 4 cases and recovered Rs. 2.52 lakh in 3 cases. Details of recovery, if any, and reply in the remaining cases have not been received (July 2002).

## 2.7 Incorrect allowance of deduction

Under the Gujarat Sales Tax Act, 1969, the sales made on certain declarations are allowed without payment of tax subject to fulfilment of prescribed conditions. Such sales and purchases are deducted from the gross turnover to compute taxable turnover. Sales of prohibited<sup>§</sup> goods against declaration in Form 19 are not permissible.

During test check of records of Assistant Commissioner Ankleshwar, Godhra and 4\*\* Sales Tax Offices, it was noticed between April and October 2001 in the assessment of 5 dealers for the periods between 1994-1995 and 1998-1999 (finalised during January 1999 and January 2001) that sales of prohibited goods viz. plastic master batch, machinery, machinery parts, craft paper, switch gears and SDMDC<sup>###</sup> bactericides valued at Rs.1.86 crore made against declaration in Form 19 were incorrectly allowed as deductions from the sales turnover. This resulted in non-levy of tax of Rs.17.02 lakh.

The above facts were brought to the notice of the department (September 1999 and November 2001) and of Government (February 2002); their replies have not been received (July 2002).

\* 6 of Ahmedabad, Bharuch , 2 of Godhra, 1 each of Kalol, Surendranagar, Valsad and 3 of Vadodara

§ Goods which are notified as prohibited for certain purposes

\*\* Ahmedabad, Surat and 2 of Vadodara

## Sodium dimethyle – dithio carbonate

## 2.8 Non/short levy of tax due to mis-classification of goods

Under the 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 of the Schedules, general rate of tax applicable from time to time is leviable.

During the test check of records of 3<sup>#</sup> Assistant Commissioners and 7<sup>@</sup> Sales Tax Offices, it was noticed (between January and November 2001) in the assessment of 14 dealers for the periods between 1988-1989 and 1999-2000 (finalised between April 1996 and March 2001) that in spite of specific decisions/orders available for classification, sales of various goods valued at Rs.61.70 crore and purchases valued at Rs.0.85 lakh were misclassified. This resulted in non/short levy of tax of Rs.3.84 crore as detailed below:

(Rupees in crore)					
Sr. No.	No. of Dealers (Location)	Name of Commodity	Rate of tax leviable (percentage)	Rate of tax levied (percentage)	Tax Short levied.
1	3 dealers (Ahmedabad, Godhra and Surendranagar)	Metals, Rubbles Dust, Semigrit, Kapcha and Rubbles	12	4 and 6	0.08
2	2 dealers (Ahmedabad and Vadodara)	Poly coated paper, poly coated craft paper and Poly coated printed poster paper	14 and 12 plus additional tax	10.8 and 5	0.43
3	2 dealers (Ahmedabad and Surendranagar)	Glazed mixture and ceramic glazed mixture	14 and 12	6	1.95
4	1 dealer (Surendranagar)	Briquettes	14 and 12	Tax free	0.24
5	1 dealer (Ahmedabad)	Burnt lignite	14	4	0.003
6	1 dealer (Vadodara)	Floor covering	14 and 12	10	1.10
7	1 dealer (Godhra)	Wire mesh	14	4	0.02
8	2 dealers (Ahmedabad and Vadodara)	Waste and Scrap of rubber conveyer belt, HDPE used bags and plastic tins	12	5.2 and 8	0.02
<b>Total</b>	<b>14</b>				<b>3.84</b>

The above cases were brought to the notice of the department (between March and December 2001) and of Government (March 2002). The department accepted (May 2001) the audit observations involving an amount of Rs.2.32 lakh in one case. Particulars of recovery, if any, and reply in the remaining cases have not been received (July 2002).

# Amreli, Anand and Vadodara

@ 2 of Ahmedabad, Godhra, 2 each of Surendranagar and Vadodara

## 2.9 Non/short levy of turnover tax

Under Section 10A of the 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 records of 6\* Assistant Commissioners and 17# Sales Tax Offices, it was noticed (between September 1998 and September 2001) in the assessment of 49 dealers for the periods between 1990-1991 and 1996-1997 (finalised between November 1997 and March 2001) that turnover tax was either not levied or levied at incorrect rates. This resulted in short/non-levy of turnover tax of Rs.3.49 crore as given below:

(Rupees in crore)

Sr. No.	No. of dealers (location)	Period of assessment	Date of assessment	Taxable turnover	Tax not/short levied	Nature of irregularity
1	5 dealers of Ahmedabad, Ankleshwar, Jamkhabhalia and Vadodara	1992-93 to 1996-97	November 97 to March 2001	91.53	3.05	Turnover of sales of Cotton yarn, artificial silk yarn and plant and machinery was not included for levy of turnover tax.
2	5 dealers of Ahmedabad, Godhra and Kalol	1991-92 to 1996-97	October 99 to December 2000	18.78	0.08	Turnover tax was incorrectly calculated.
3	39 dealers of Ahmedabad, Ankleshwar, Anand, Kalol, Mehsana, Rajkot, Surat and Vadodara	1990-91 to 1996-97	January 98 to March 2001	58.07	0.36	Sales made against declarations, goods exempted from tax, job work were not included for levy of turnover tax in four cases. In other cases, tax was either not levied or levied at incorrect rates.
<b>Total</b>	<b>49</b>				<b>3.49</b>	

\* 2 each of Ahmedabad, Ankleshwar and Surat

# 5 of Ahmedabad, Ankleshwar, Anand, 2 of Godhra, Jamkhabhalia, Kalol, Mehsana, Rajkot, 2 each of Vadodara and Surat

The above facts were brought to the notice of the department (between August 2000 and December 2001) and of Government (March 2002). The department accepted (between February 2001 and January 2002) audit observations involving an amount of Rs.10.80 lakh in 12 cases and recovered Rs.9.98 lakh in 11 cases (February 2002). Further details of recovery and reply in the remaining cases have not been received (July 2002).

## **2.10 Non-levy of tax**

Under the Act, goods of incorporeal or intangible character like patents, trade marks, import licence etc. and sales by transfer of right to use the goods are chargeable to tax at the rates prescribed in the Schedule-II & III respectively.

During the test check of records of 2\* offices of Assistant Commissioner and 9<sup>&</sup> Sales Tax Offices, it was noticed (between October 1997 and October 2001) that no tax was levied in the assessment of 12 dealers for the periods between 1995-1996 and 1999-2000 (finalised between January 1997 and February 2001) on premium/royalty of Rs.12.70 crore on sale of advance licence, import licence, DEPB licence etc. and royalty received by the dealers. This resulted in non-levy of tax of Rs.89.62 lakh including interest and penalty.

The above facts were brought to the notice of the department (between March and November 2001) and of Government (March 2002). The department accepted (April 2001 and January 2002) the audit observations involving an amount of Rs.43.42 lakh in 5 cases and recovered Rs.0.82 lakh in 2 cases. Particulars of recovery, if any, and reply in the remaining cases have not been received (July 2002).

## **2.11 Turnover escaping assessment**

According to the Act, “sale price” includes the amount of valuable consideration paid or payable to a dealer for any sale. Charges for freight or delivery or installation or any other services which are attributable to the stage upto the completion of the sale would be component of the valuable consideration of the goods.

During test check of records of 6<sup>#</sup> Sales Tax Offices, it was noticed (between September 1997 and January 2001) in the assessment of 9 dealers for the periods between 1990-1991 and 1997-1998 (finalised between February 1993 and January 2000) that due to non-inclusion of valuable consideration forming part of the sale price collected by the dealers, the turnover of the dealers was

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\* Himatnagar and Surendranagar  
& 4 of Ahmedabad, Gondal, Rajkot, 2 of Surat and Vadodara  
# Ahmedabad, 2 of Bhavnagar, Godhra, Vadodara and Surat.



determined less to the extent of Rs.2.92 crore. This resulted in short levy of tax of Rs.33.67 lakh including interest and penalty as per details given below:

**(Rupees in lakh)**

Sr. No.	Name of office	Period of assessment	Turnover escaped assessment	Tax short levied	Nature of irregularity
1	Vadodara	1997-1998	3.83	0.48	Instead of reducing the sales of scrap from R.D. sales, it was reduced from taxable turnover.
2	Bhavnagar	1992-1993	96.20	6.39	Income disclosed by the dealer during search operations was not accounted for during assessment.
3	Ahmedabad	1993-1994	4.02	0.33	Cross verification of selling dealer revealed that sales were accounted for less.
4	Surat	1994-1995 1995-1996 1996-1997	11.75	1.56	Sales of machines not considered for computation of turnover.
5	Godhra (4 dealers)	1990-1991 1991-1992 1992-1993	139.59	17.27	Sales of raw material was not accounted for and the sales were under-valued.
6	Bhavnagar	1992-1993	36.32	7.64	Taxable goods were treated as tax free goods.
	<b>Total</b>		<b>291.71</b>	<b>33.67</b>	

The above facts were brought to the notice of the department (October 2000 and July 2001) and of Government (March 2002). The department accepted (November 2000 and June 2001) the audit observations and raised additional demand of Rs.25.82 lakh in 6 cases and recovered an amount of Rs.0.33 lakh. Particulars of recovery, if any, and reply in the remaining cases have not been received (July 2002).

## 2.12 Incorrect/excess grant of set off

(A) Under rule 42 of the Gujarat Sales Tax Rules, 1970, a dealer, who has paid tax on the raw materials 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 provided tax is paid on its sale. Further, no set-off is admissible for tax paid on the purchases of "prohibited goods". As per the conditions prescribed under the Rules, 4 percent of the sale price of the manufactured goods consigned/branch transferred outside the state is to be deducted from the set-off arrived at.

During test check of records of 2\* Assistant Commissioners and 12# Sales Tax Officers, it was noticed (between July 1998 and November 2001) in 16 assessments of 15 dealers for the periods between 1990-1991 and 2000-2001 (finalised between June 1997 and March 2001) that excess set off of Rs.11.96 lakh including interest and penalty was allowed as detailed below:

(Rupees in lakh)

Sr. No.	No. of dealers	Location	Excess set off allowed	Nature of irregularity
1	7	Ahmedabad Godhra Kalol Surendranagar Vadodara	5.36	Set off was allowed on the purchase of prohibited goods.
2	3	Anand Mehsana Surat	2.19	2 percent of purchase price (as per condition of the rule) was not reduced from the amount of tax admissible as set off and calculation error.
3	1	Surat	0.83	Proportionate tax was not reduced in respect of raw material used in the manufacture of tax free goods.
4	1	Jamkhambhalia	1.43	4 Percent of the sale price of goods transferred outside the State not reduced from set off.
5	3	Ahmedabad Himatnagar Surendranagar	2.15	Set off of tax paid on raw material was allowed at incorrect rate.
<b>Total</b>	<b>15</b>		<b>11.96</b>	

\* Anand and Himatnagar

# 4 of Ahmedabad, 2 of Surendranagar, and one each of Godhra, Jamkhambhalia, Kalol, Mehsana, Surat, and Vadodara

The above facts were brought to the notice of the department (between March 2000 and December 2001) and of Government (March 2002). The department accepted (May 2001 and February 2002) the audit observations involving an amount of Rs.3.71 lakh in 7 assessments and recovered. Particulars of recovery, if any, and reply in the remaining cases have not been received (July 2002).

(B) Under Rule 42E, set off of purchase tax levied on raw or processing material or consumable used in the manufacture of goods is admissible when the goods so manufactured are sold in the State. If goods so manufactured are transferred to the branches/consigned outside the State, used in jobwork etc., proportionate set off to the extent of the goods not sold is required to be disallowed. Further, the set off is not admissible if goods purchased are resold in the course of inter-State trade or commerce after six months from purchase.

During test check of records of 3\* Assistant Commissioners and 4# Sales Tax Offices, it was noticed (between September 1999 and November 2001) that in the case of 7 dealers for the periods between 1993-1994 and 1999-2000 (finalised between February 1999 and January 2002) the set off was allowed incorrectly as the dealers had either transferred the goods to their branches outside the state or set off was allowed at incorrect rates or goods were resold in the course of inter-State sales after six months. This resulted in excess grant of set off of Rs.25.87 lakh.

The above facts were brought to the notice of the department (November 1999 and November 2001) and Government (March 2002). The department accepted (September 2001) the audit observations involving an amount of Rs.1.61 lakh in 2 cases and recovered Rs.1.13 lakh. Particulars of recovery, if any, and reply in the remaining cases have not been received (July 2002).

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\* Mehsana, Valsad, Vadodara  
# 2 of Ahmedabad, Anand, Gondal

### 2.13 Short levy of Central Sales Tax

Under the Central Sales Tax Act, 1956, on inter-state sale of declared goods not supported by prescribed declaration (Form 'C'), tax is levied at twice the rate applicable to sale in respect of declared goods and the rate of 10 percent or at the rate applicable for such goods inside the state whichever is higher in the case of other goods.

During test check of records of Assistant Commissioner Ankleshwar, Amreli and 4<sup>@</sup> Sales Tax Offices, it was noticed in the assessment of 7 dealers for the periods between 1993-1994 and 1997-1998 (finalised between October 1993 and March 2000) that on inter-State sales valued at Rs.3.89 crore, tax was levied at concessional rate of 4 percent as the sales were not supported either by 'C' forms or on the basis of Xerox copy of 'C' form/affidavit etc. This resulted in short levy of tax amounting to Rs.18.74 lakh.

The above facts were brought to the notice of the department (March and November 2001) and of Government (February 2002). The department raised (November 2001 and January 2002) the demand of Rs.12.09 lakh in 4 cases and recovered an amount of 0.39 lakh in one case. Recovery details and reply in remaining cases have not been received (July 2002).

### 2.14 Non-levy of penalty

Under Section 45(6) of the 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 percent, there shall be levied on such dealer a penalty not exceeding one and one half times of the difference. Further, as per the Commissioner of Sales Tax's Circular issued in November 1996, penalty, in cases where additional tax liability arises due to seizure of books of accounts by enforcement branch or where evasion of tax is detected, is to be levied after adding 50 percent of penalty so calculated.

During test check of records of 7\* offices of Assistant Commissioner and 27\*\* Sales Tax Offices, it was noticed (July 1999 and December 2001) in the assessment of 51# dealers for the assessment periods between 1989-1990 and 1999-2000 (finalised between August 1995 and March 2001) that the penalty was not levied for difference of tax exceeded by twenty five percent, for breach of recital of condition Form 'C' or penalty at enhanced rate was not levied on the concealed sales tax turnover detected during the raids. This resulted in non-levy of penalty of Rs.28.04 crore.

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@ Ahmedabad, Khambhat, Petlad and Vapi

\* Ahmedabad, Ankleshwar, Baroda, Bharuch, Jamnagar, Palanpur and Surat

\*\* 10 of Ahmedabad, Anand, 6 of Baroda, Bhavnagar, 2 of Godhra, 1 each of Kalol, Mehsana, Modasa, Rajkot and 3 of Surat

# Major cases (1). M/s. Digvijay Cement Co. Ltd, (2). M/s. Mayur Trading Co.

The above cases were brought to the notice of the department (between October 1999 and December 2001) and of Government (February 2002). The department accepted (August 2001 and October 2001) the audit observations involving an amount of Rs.1.51 crore in 9 cases and recovered Rs.4.49 lakh in 3 cases. Reply in respect of remaining cases has not been received (July 2002).

### 2.15 Non/short levy of interest

Under the Act, if a dealer does not pay the amount of tax within the prescribed period, simple interest at the rate of 24 *percent* per annum is leviable on the amount of tax remaining unpaid for the period of default.

During test check of records of 7<sup>@</sup>Assistant Commissioners and 16<sup>##</sup>Sales Tax Offices, it was noticed (between September 1999 and December 2001) in the assessments of 30 dealers for the periods between 1987-1988 and 1998-1999 (finalised between May 1997 and March 2001) that interest amounting to Rs.1.19 crore was either not charged or charged short on the amount of unpaid tax .

The above facts were brought to the notice of the department (between September 1999 and January 2002) and of Government (February 2002). The department accepted (January 2002) the audit observations involving an amount of Rs.1.61 lakh in 3 cases and recovered Rs.0.35 lakh in one case. Reply in respect of remaining cases has not been received (July 2002).

### 2.16 Undue financial accommodation

As per the provision of Finance Department resolution dated 16 June 1987 on sales tax deferment, in the event of transfer of business, the benefits underlying the tax deferment ceases to operate forthwith and the entire amount of tax deferred till then is to be paid within a period of 60 days from the date of transfer of business in whole.

During test check of records of Sales Tax Officer, Vapi it was noticed (February 2002) that a unit (dealer) was sanctioned tax deferment benefit of Rs. 0.16 crore to be availed between 25 January 1990 and 24 January 1995 which was fully availed of by the unit by 31 March 1991. Thereafter, the unit was sold (March 1993) to another dealer, and entire benefit of deferment of Rs. 0.16 crore availed of by the unit was required to be recovered forthwith. This amount was still outstanding (February 2002). This resulted in grant of undue financial accommodation amounting to Rs. 0.16 crore.

The matter was reported to department in February 2002 and Government in April 2002; their reply has not been received (August 2002).

<sup>@</sup> 3 of Ahmedabad, Ankleshwar, Baroda, Godhra and Surendranagar

<sup>##</sup> 7 of Ahmedabad, Amreli, Ankleshwar, Baroda, Godhra, Idar, Kalol, Kadi, Mehsana and Surendranagar

## 2.17 Other Irregularities

The Act and the Rules made thereunder contain detailed provisions for grant of refund, interest on refunds, adjustment of set-off, resale of tax paid purchases and classification of job work vis-à-vis works contract. To enforce uniformity in interpreting certain provisions, Commissioner of Sales Tax issues circulars to be followed as guidelines for assessing officers.

During test check of records of Assistant Commissioner, Bharuch, Vapi and 6<sup>1</sup> Sales Tax Offices, it was noticed (between August 2000 and July 2001) in the assessment of 9 dealers for the periods between 1989-1990 and 1999-2000 (finalised between April 1999 and March 2001) that incorrect grant of interest, incorrect adjustment of set-off, incorrect grant of refund to dealers not holding licence and non levy of tax etc., resulted in non/short levy of tax of Rs.1.26 crore including interest and penalty as detailed below :

(Rupees in lakh)

Sr.No.	Location	Period of assessment	Date of assessment	Tax not/short levied	Nature of irregularity
1	Godhra	Between 1993-94 and 1999-2000	March 2001	87.53	As per Commissioner's Circular (December 1985), if the value of goods, used in the contract is more than 15 percent, such transaction is treated as works contract and tax is leviable. Though the material used by the dealer in the process of electroplating was in excess of 15 percent, no tax was levied.
2	Bharuch and Vapi	Between 1995-96 and 1997-98	Between October 1999 and July 2000	3.30	Interest paid on refund arising as a result of appeal was not admissible under the Act.
3	Vadodara	1999-2000	June 2000	34.36	Incorrect refund was granted to dealers who were not holding licence.
4	Ahmedabad	1995-96	May 1999	0.57	Incorrect deduction was allowed on credit notes of previous year.
5	Ahmedabad	1989-90	August 2000	0.44	Tax and interest payable as per returns were not demanded in the assessment.
	<b>Total</b>			<b>126.20</b>	

<sup>1</sup> 3 of Ahmedabad, 1 each of Godhra, Surendranagar, Vadodara

The above facts were brought to the notice of the department (between September 2000 and September 2001) and of Government (April 2002). The department accepted (April and October 2001) the audit observations involving an amount of Rs.5.88 lakh in 4 cases and recovered Rs.3.27 lakh in 2 cases. Particulars of recovery, if any, and reply in remaining cases have not been received (July 2002).