

## 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 2002-03 revealed under assessment of Rs.101.54 crore in 490 cases, which broadly falls under the following categories:

(Rupees in crore)			
Sr. No	Category	No. of cases	Amount
1	Incorrect rate of tax and mistake in computation	46	3.59
2	Incorrect grant of set-off	48	1.75
3	Incorrect concession/ exemption	28	10.12
4	Non/short levy of interest and Penalty	189	5.98
5	Other Irregularities	178	19.49
6	Review on “Pendency of appeals at various levels and its impact on revenue collection”	1	60.61
	<b>Total</b>	<b>490</b>	<b>101.54</b>

During the year 2002-03, the department accepted under assessment of Rs. 89.57 lakh in 232 cases and recovered Rs.70.71 lakh in 110 cases, of which 25 cases involving Rs. 9.51 lakh were pointed out during the year 2002-03 and rest in earlier years. A few illustrative cases and results of review on “Pendency of appeals at various levels and its impact on revenue collection” involving Rs.114.64 crore, are discussed in the following paragraphs.

## **2.2 Sales Tax pendency of appeals at various levels and its impact on revenue collection**

### **Highlights**

**Tax arrears blocked in appeals with departmental Appellate Authorities increased from Rs.219.26 crore to Rs.995.61 crore between April 1997 and March 2002.**

[Para 2.2.5]

**None of the five Assistant Commissioners whose records were test checked was able to achieve the target fixed for disposal of appeal cases. Percentage of short fall varied between 8 and 85 during 1997-98 to 2001-02.**

[Para 2.2.7]

**Though cases granted stay on recovery were to be disposed off within two months, 121 cases involving tax dues of Rs.30.58 crore were decided with delays between 2 months and 100 months.**

[Para 2.2.12]

**Contrary to Commissioner's instructions to not remand cases to the Assessing Authorities, 221 cases were remanded by 5 Assistant Commissioners between February 2000 and March 2002.**

[Para 2.2.13]

**Fresh assessments in 54 assessments of 19 dealers remanded by Appellate Authorities were not completed within the stipulated period of 3 years resulting in loss of revenue of Rs.10.74 crore due to being time barred.**

[Para 2.2.14]

**Forty assessment orders pertaining to 14 dealers where tax assessed amounted to Rs.2.19 crore were set aside in appeals as the orders were barred by limitation which resulted in loss of revenue.**

[Para 2.2.15]

### **Introduction**

**2.2.1** The Gujarat Sales Tax Act, 1969 (Act) and the Rules made thereunder govern the law relating to levy and collection of tax on purchase and sale of goods. Under Section 65 of the Act, an appeal against any original order

passed can be entertained by the following authorities if made within 60 days from the date of communication of the order of assessment appealed against:

- Assistant Commissioner of Sales Tax (Appeals) if the order is passed by the Sales Tax Officer;
- Deputy Commissioner of Sales Tax (Appeals) if the order is passed by the Assistant Commissioner of Sales Tax;

In the case of an order passed in appeal by the Assistant Commissioner or by Deputy Commissioner, a second appeal can be made to the Gujarat Sales Tax Tribunal.

The appellant is required to deposit the tax demanded in assessment or a lower sum as decided by the Appellate Authority. However, the Commissioner of Sales Tax directed (December 1995) that departmental Appellate Authorities should entertain appeal applications only if 20 *per cent* of the tax demanded in the assessment had been deposited.

The Act provides that where a case is remanded, fresh assessment shall be made within three years from the date of order of remand.

### **Organisational set up**

**2.2.2** The Sales Tax Department functions under the control and supervision of the Commissioner of Sales Tax (Commissioner) who is assisted by Additional Commissioners, Deputy Commissioners, Assistant Commissioners and Sales Tax Officers, eight Assistant Commissioners and eight Deputy Commissioners are entrusted with appellate functions. While Assistant Commissioners exclusively perform appellate functions, Deputy Commissioners perform administrative functions in addition to functioning as Appellate Authorities.

### **Audit Objectives**

**2.2.3** Detailed analysis of pendency of appeal cases at various levels and follow-up thereof after decision by these authorities for the period 1997-98 to 2001-02 was conducted in audit to -

- review the impact on revenue collection;
- ascertain compliance with prescribed norms and procedures;
- review the efficacy of internal controls.

### Scope of audit

2.2.4 A test check of records was conducted in the office of the Commissioner of Sales Tax and 9 out of 16 departmental Appellate Authorities between July 2002 and November 2002. The findings are contained in the succeeding paragraphs:-

### Increase in revenue blocked in appeals

2.2.5 Arrears of revenue under sales tax pending in appeals with the departmental Appellate Authorities at the end of the year from 1997-98 to 2001-02 are given in the table below :

(Rupees in crore)

Year	Opening balance	Additions during the year	Total	Clearance during the year.	Closing balance	Percentage of Col. (5) to (4)
1	2	3	4	5	6	7
1997-98	219.26	192.97	412.23	226.73	185.50	55
1998-99	185.50	274.53	460.93	214.65	245.38	47
1999-00	245.38	256.63	502.01	137.99	364.02	27
2000-01	364.02	1597.04	1961.06	1570.70	390.36	80
2001-02	390.36	1195.03	1585.39	589.78	995.61	37

As on 31 April 1997, tax dues of Rs. 219.26 crore were blocked in appeal with the departmental Appellate Authorities which increased to Rs.995.61 crore as on 31 March 2002. A substantial increase was noticed during 2001-02. As similar information in respect of cases pending with the Tribunal and Courts called for from the department was not received, the over all percentage of revenue involved in appeals vis-a-vis total outstanding revenue could not be analysed.

### Disposal of appeal cases

2.2.6 In the case of assessment orders passed by the Sales Tax Officer, the first appeal lies with the Assistant Commissioner (Appeal). The disposal of appeal cases by Assistant Commissioners (Appeal) ranged between 37 and 54 per cent of total pending appeals during the period from 1997-98 to 2001-02 as shown in the following table:

**Disposal by Assistant Commissioners (Appeal)**

(Rupees in crore)

Year	Outstanding as on 1 April No. of cases/ Amount	Additions during the year No. of cases/ Amount	Total No. of cases/ Amount	Clearance during the year No. of cases/ Amount	Closing balance as on 31 March No. of cases/ Amount	Percentage of Col. (5) to (4)
1	2	3	4	5	6	7
1997-98	<u>11122</u> 219.26	<u>3769</u> 192.97	<u>14891</u> 412.23	<u>8,060</u> 226.73	<u>6,831</u> 185.50	<u>54</u> 55
1998-99	<u>6,831</u> 185.50	<u>9,250</u> 268.78	<u>16,081</u> 454.28	<u>7,623</u> 212.42	<u>8,458</u> 241.86	<u>47</u> 47
1999-00	<u>8,458</u> 241.86	<u>5,460</u> 211.26	<u>13,918</u> 453.12	<u>5,940</u> 130.76	<u>7,978</u> 322.36	<u>43</u> 29
2000-01	<u>7,978</u> 322.36	<u>4,296</u> 502.22	<u>12,274</u> 824.58	<u>4,511</u> 525.78	<u>7,763</u> 298.80	<u>37</u> 64
2001-02	<u>7,763</u> 298.80	<u>4,729</u> 446.83	<u>12,492</u> 745.63	<u>4,592</u> 363.11	<u>7,900</u> 382.52	<u>37</u> 49

According to the norms fixed, each Assistant Commissioner (Appeal) has to dispose of 100 cases in a month. The norm was revised to 120 cases per month from May 2000. Thus as per the norms, 8 Assistant Commissioners should have disposed of 9,600 cases per year upto 1999-2000 and 11,520 cases per year from 2000-01 onward. As against this, the actual disposal ranged between 4,511 and 8,060 cases during 1997-98 to 2001-02 which was far below the norms resulting in accumulation of cases.

**Achievement against norms**

**2.2.7** Test check of records of 5 Assistant Commissioners (Appeal) revealed that none had achieved the target in accordance with norms except Assistant Commissioner, Vadodara during 1997-98 and Assistant Commissioner –II, Ahmedabad in 1998-99 as shown in the following table :

Name of Authority	1997-98		1998-99		1999-00		2000-01		2001-02	
	Total cases #	Cases cleared	Total cases	Cases cleared	Total cases	Cases cleared	Total cases	Cases cleared	Total cases	Cases cleared
<b>Target as per norms</b>	<b>1,200</b>		<b>1,200</b>		<b>1,200</b>		<b>1,420</b>		<b>1,440</b>	
AC I, Ahmedabad	1,273	1,051	2,516	1,054	2,104	1,115	1,829	655	1,827	933
AC II, Ahmedabad	3,035	911	3,213	1,655	1,764	978	1,110	733	508	212
AC V, Vadodara	3,256	1,956	2,271	917	2,352	694	2,387	900	2,334	824
AC VI, Surat	3,684	962	2,537	590	2,196	623	1,882	545	2,094	509
AC VIII, Rajkot	2,398	825	3,037	1,029	2,051	803	1,979	523	2,254	587

# Total cases include opening balance and cases received during the year.

No specific reasons were advanced for non-achievement of targets. As pendency of appeals would result not only in denial of timely legal remedy but also delay in timely realisation of revenue, remedial measures would be required to be taken.

### Disposal by Deputy Commissioners (Appeal)

**2.2.8** In the case of assessment orders passed by the Assistant Commissioner of Sales Tax, the appeal lies with Deputy Commissioner (Appeal). The disposal of appeal cases by Deputy Commissioners (Appeal) ranged between 23 and 60 per cent of the total pending appeals during 1998-99 to 2001-02 as shown in the following table :

(Rupees in crore)						
Year	Outstanding as on 1 April No. of cases/ Amount	Additions No. of cases/ Amount	Total No. of cases/ Amount	Clearance No. of cases/ Amount	Closing balance No. of cases/ Amount	Percentage of Col. (5) to (4)
1	2	3	4	5	6	7
1998-99	9 -	213 5.65	222 5.65	51 2.23	171 3.42	23 39
1999-00	171 3.42	487 45.36	658 48.78	256 7.23	402 41.55	39 15
2000-01	402 41.55	850 1094.82	1252 1136.37	455 1044.92	797 91.45	36 92
2001-02	797 91.45	879 748.20	1676 839.65	1008 226.67	668 612.98	60 27

Since Deputy Commissioners (Appeals) were also to perform administrative duties, no target was set for them for clearance of appeals. Against the average annual receipt of 607 cases during 1998-99 to 2001-02, the average disposal during the period was 443 cases resulting in accumulation of appeals.

**2.2.9** Test check of records of four Deputy Commissioners (Appeals) revealed the disposal of appeal cases between 1998-99 to 2000-01 to be as under:

Name of Authority	No. of cases disposed of during							
	1998-99		1999-00		2000-01		2001-02	
	Total cases	Cases cleared	Total cases	Cases cleared	Total cases	Cases cleared	Total cases	Cases cleared
DC, Vadodara	30	8	133	20	298	77	412	152
DC-5, Surat	38	12	71	30	94	36	99	30
DC-6, Surat	52	11	105	63	178	65	239	131
DC, Rajkot	20	9	90	15	167	32	204	58

The number of cases cleared in a year varied from 8 to 152 pointing to a need to prescribe norms for clearance.

## Tribunal

**2.2.10** There were 5,302 cases pending disposal at the end of 31 March 2002 with the Gujarat Sales Tax Tribunal. The year wise breakup was as under:

Year of filing appeal	No. of cases
Upto 1997-98	2,670
1998-99	840
1999-00	481
2000-01	500
2001-02	811
<b>Total</b>	<b>5,302</b>

The oldest case pending disposal was filed in the year 1985-86. The amount involved in the cases pending before the Tribunal was not furnished by the department.

## Position of appeal cases in Civil Courts, High Court/Supreme Court

**2.2.11** There were 375 cases pending as on 31 March 2002, with various courts as under :

Period	No. of cases received including opening balance			No. of cases disposed of			No. of cases pending		
	Civil Court	High Court	Supreme Court	Civil Court	High Court	Supreme Court	Civil Court	High Court	Supreme Court
1997-98	280	148	13	-	-	-	280	148	13
1998-99	291	151	13	-	--	-	291	151	13
1999-00	296	160	14	31	41	8	265	119	6
2000-01	265	131	6	1	22	-	264	109	6
2001-02	268	133	6	22	10	-	246	123	6

Total amount involved in cases pending before the Courts was not furnished by the department.

## Delay in finalisation of stay cases

**2.2.12** The Appellate Authority under the Act, may direct the dealer to pay such amount of tax as it thinks fit before the disposal of appeal to safeguard government revenue. The Commissioner directed (June 1997) that cases where stay on recovery had been granted, appeal should be disposed of within two months.

Test check of records of 2\* Assistant Commissioners and 3# Deputy Commissioners revealed that in 267 cases where stay on recovery was granted during January 1991 to January 2002, 121 cases involving tax dues of

\* Rajkot and Surat.

# Rajkot Surat and Vadodara.

Rs. 30.58 crore were decided with delays beyond the prescribed period ranging between 2 to 100 months as shown below:

**(Rupees in crore)**

<b>Period of delay</b>	<b>No. of cases</b>	<b>Amount</b>
2 to 12 months	57	24.42
13 to 24 months	49	3.50
25 to 60 months	11	2.54
More than 60 months	4	0.12
<b>Total</b>	<b>121</b>	<b>30.58</b>

This delay, in contravention of the Commissioner's directions, had adversely affected the collection of revenue.

### **Irregular disposal of appeals by remand**

**2.2.13** According to instructions issued (February 2000) by the Commissioner, departmental Appellate Authorities were to decide the cases on merits and not remand cases to the Assessing Authorities.

In violation of the above instructions, 5<sup>&</sup> Assistant Commissioners and Deputy Commissioner, Vadodara remanded 221 cases to the Assessing Authorities during February 2000 to March 2002.

### **Loss of revenue due to time-barred assessments**

**2.2.14** According to procedures prescribed (July 1997) by the Commissioner, the assessing officers were to maintain a register indicating *inter-alia* the date of remand and the date of fresh assessment in respect of cases remanded by Appellate Authorities. Though such registers were maintained, inadequate monitoring of entries resulted in non-completion of fresh assessments within the time limit prescribed as detailed below:

- Test check of records of 8 assessing units revealed that 54 assessments of 19 dealers involving tax amounting to Rs.10.74 crore which were remanded by the Assistant Commissioner (Appeals) between August 1997 and September 1999, were not assessed afresh within three years resulting in these cases becoming time barred.
- In 60 assessments of 20 dealers involving tax effect of Rs. 16.42 crore where cases were remanded between August 1995 and July 1999, neither the records of fresh assessments were made available by the Assessing Authorities nor the Deputy Commissioner of Sales Tax confirm that fresh assessments had been made. As such the possibility of these cases becoming time barred could not be ruled out.

<sup>&</sup> 2 of Ahmedabad, 1 each of Rajkot, Surat and Vadodara.



**2.2.15** Section 42 of the Act as it existed upto 31 March 1994, specified that no order of assessment for any year shall be made under Section 41(3) (scrutiny after calling the dealer) or Section 41(4) (best judgment assessment) at any time after the expiry of 2 years from the end of the year in which the last monthly, quarterly or annual return is filed as the case may be. This provision was re-introduced from 1 April 1998 prescribing time limit of three years. Similarly, time limit prescribed for re-assessment is five years where turnover has escaped assessment or is assessed at lower rate.

Test check of appeal orders passed by the Tribunal and the departmental Appellate Authorities during the period 1997-98 to 2001-02 showed that in 40 assessments of 14 dealers, pertaining to period from 1972-73 to 1993-94, the assessment orders were set aside in appeal, as the original order of assessment/reassessment was barred by limitation of time. Though the system provided for maintaining a pending assessment register to watch timely completion of assessments, inadequate monitoring and consequent delayed completion of assessments within the prescribed time resulted in the assessment orders being struck down in appeal resulting in loss of revenue of Rs. 2.19 crore.

### **Monitoring and Internal Control**

**2.2.16** The performance of the Appellate Authorities is monitored by the Commissioner through monthly returns, followed by monthly meetings. Administrative inspection of appellate offices is conducted by the Assistant Commissioner (Inspection) working under the direct control of the Commissioner. However, information on the system prescribed and followed for review of decision of departmental Appellate Authorities for possible appeal though called for from the Commissioner in October 2002 had not been received (August 2003).

### **Recommendations**

**2.2.17** Audit findings show that though norms were fixed for clearance of appeal cases by Assistant Commissioners, none achieved the norms resulting in accumulation of cases. There was wide variation in disposal of appeals by Deputy Commissioners. Delay in disposal and resultant accumulation of cases resulted in blocking of revenue which had increased manifold during the five years ending March 2002. In many cases, the departmental Appellate Authorities did not follow the instructions of the Commissioner for finalisation of appeals. Monitoring of cases pending assessments and that of cases remanded was not satisfactory.

However, the State Government may consider taking following steps to improve the effectiveness of the system:

- strengthen system to enforce compliance with the norms fixed;

- prescribe norms for disposal of appeals by Deputy Commissioners (Appeals);
- ensure compliance with procedures for timely disposal to avoid loss of revenue through cases becoming time barred;
- devise suitable control mechanism to ensure compliance with all rules and procedures.

The matter was brought to the notice of Department/Government in April 2003; reply was awaited (August 2003).

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

**2.3.1** As per scheme under entry 255 of Section 49(2) of the Gujarat Sales Tax Act, an eligible unit engaged in the activity of manufacture has to obtain an eligibility certificate for sales tax exemption from the Industries Department. Under the scheme there are certain industries which are not eligible for such incentives. The activity of refilling<sup>#</sup> of liquified petroleum gas (LPG) is not considered a manufacturing process.

During the test check of records of Assistant Commissioner, Amreli and Sales Tax Officers, Bhavnagar and Unjha, it was noticed in the assessment of 3 dealers for the periods 1996-97 to 2000-01 (finalised between September 2001 and March 2002) that the tax exemption was incorrectly allowed to the industries engaged in refilling of L.P.G. As these industries were not engaged in the activity of manufacturing, the eligibility certificates issued by the Department of Industries were irregular. This resulted in incorrect exemption of tax of Rs.7.28 crore including interest and penalty.

The above facts were brought to the notice of the Department (between July and December 2002) and of the Government in April 2003; reply was not received (August 2003).

**2.3.2** According to sales tax incentive scheme, the eligible units are allowed to purchase raw materials, processing/packing materials and consumable stores 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. It has been judicially<sup>\*</sup> held in Supreme Courts judgment, that liquified petroleum gas, natural gas and lignite used as fuel are not consumables.

- During test check of records of Assistant Commissioner, Rajkot and Vadodara and Sales Tax Officer, Bharuch, it was noticed in the assessment of 4 dealers for the periods between 1998-99 and 2000-01 (finalised between July 2001 and January 2002) that tax saved on purchases valued at Rs.10.02 crore of liquified petroleum gas , natural gas and lignite used

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<sup>#</sup> State of Gujarat Vs Kosan Gas Company (1992) 87 STC 236.

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

as fuel was incorrectly adjusted against the tax exemption limit treating them as consumables. This resulted in short levy of tax of Rs.1.95 crore including interest.

The above facts were brought to the notice of the Department between November and December 2002 and of the Government in March 2003; reply was not received (August 2003).

- During test check of records of Assistant Commissioner, Ahmedabad and Sales Tax Officers, Bhavnagar and Vadodara, it was noticed in the assessment of 5 dealers for the periods between 1994-95 and 1999-00 (finalised between September 2001 and December 2002) that tax adjusted against ceiling limit was calculated at incorrect rate on purchases of plastic granules, polyester chips, colour master (CM) batch granules and Middle Density Poly Ethylene (MDPE) granules valued at Rs.4.51 crores in 4 cases and on sale of oxygen gas valued at Rs.47 lakh in one case. This resulted in short levy of tax of Rs.36.36 lakh.

The above facts were brought to the notice of the Department between June and November 2002 and of the Government in March 2003. The Department accepted in May 2003 the audit observation involving an amount of Rs.0.94 lakh and recovered the amount in one case. The particulars of recovery, if any, and reply in remaining cases had not been received (August 2003).

**2.3.3** The benefit of sales tax exemption/deferment is admissible in respect of such goods which are specified in the eligibility certificates issued by the Industries Department to the units. Benefit of tax exemption/deferment availed on sale of goods not specified in the eligibility certificate is required to be recovered along with interest and penalty.

During test check of records of Assistant Commissioner, Ahmedabad and Sales Tax Officer, Ahmedabad, it was noticed that while finalising the assessments (April and December 2001) in the case of two dealers between 1996-97 and 1999-00 the Assessing Authorities allowed sales tax exemption of Rs.46.18 lakh and adjusted against ceiling limit in respect of such goods which were not specified in the eligibility certificate issued by the Industries Department. The amount of tax so adjusted was required to be recovered along with interest and penalty which worked out to Rs.1.05 crore.

The above facts were brought to the notice of the Department in June 2002 and of the Government in March 2003; reply was not received (August 2003).

**2.3.4** According to incentive schemes, the eligible unit has to remain in production continuously during the period of eligibility mentioned in the eligibility certificate and till the entire deferred tax is repaid in instalments. If the eligible unit discontinues commercial production at any time within the period of deferment/exemption for a period exceeding 12 months, entire amount of tax exempted/deferred is recoverable within a period of 60 days from the date of expiry of aforesaid period of 12 months. On failure to do so, the said amount shall be recovered from the eligible units as arrears of land revenue.

During test check of records of 4\* Sales Tax Officers, it was noticed that 6 dealers were issued eligibility certificates for the period from May 1993 to May 2002 and availed tax deferment/exemption benefit of Rs.1.39 crore between March 1993 and December 1999. The dealers discontinued commercial production between March 1997 and January 2000. The entire amount of Rs.1.39 crore of tax deferment/exemption availed by the dealers was required to be recovered along with interest.

The above facts were brought to the notice of the Department between April and December 2002 and of the Government in March 2003. The Department accepted the audit observations involving an amount of Rs.51.56 lakh in 2 cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

**2.3.5** According to sales tax incentive schemes, a specified 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.

During test check of records of 3# Assistant Commissioners and 8§ Sales Tax Officers, it was noticed in the assessment of 12 dealers for the periods 1992-93 and 2002-03 (finalised between April 2000 and March 2002) that excess exemption of Rs.11.29 crore inclusive of interest and penalty was allowed as detailed below:

(Rupees in lakh)

Sr. No.	Place	No. of cases	Inadmissible/Excess exemption allowed	Nature of irregularity
1	Surat	1	981.06	Sales of goods against Form 26 at concessional rate was allowed and adjusted against exemption limit during the period in which the dealer was unregistered.
2	Ahmedabad, Bharuch and Surat	4	91.46	Short levy of tax due to computation error, raising less demand and excess availment of deferment benefit in two cases.
3	Unjha	1	35.24	The tax exemption allowed and adjusted against exemption ceiling limit on branch transfer of goods was irregular. Hence, the amount adjusted was required to be recovered.

\* Bhavnagar, Godhra, Junagadh and Surendranagar.

# Ahmedabad, Rajkot and Surat.

§ 2 of Junagadh, 1 each of Ahmedabad, Bharuch, Surat, Unjha, Vapi and Vadodara.

4	Junagadh and Vapi	3	12.74	Short recovery of deferred tax due to incorrect fixation of instalment.
5	Junagadh and Rajkot	2	7.22	Units holding exemption certificate under the incentive scheme were not entitled to purchase or sale of goods without payment of tax on declarations. Further, purchases of raw materials, processing materials and consumable stores were only entitled to the benefit of the exemption. In one case tax saved on purchases of capital goods (i.e. machinery and diesel generating sets) and in another case, cotton sold on declarations were incorrectly adjusted against the exemption ceiling limit.
6	Vadodara	1	1.32	Turnover tax on resale of goods incorrectly adjusted against exemption limit.
	<b>Total</b>	<b>12</b>	<b>1129.04</b>	<b>Say 11.29 crore</b>

The above facts were brought to the notice of the Department between September 2001 and December 2002 and of the Government in March 2003. The department accepted the audit observations involving an amount of Rs.76.28 lakh in 7 cases and recovered Rs.3.58 lakh in 2 cases. The particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

## 2.4 Non levy of purchase tax

**2.4.1** Under Section 15 of the GST Act, 1969, (Act) where a dealer purchases any goods specified in Schedule-II from an unregistered dealer, unless the goods so purchased are resold, a purchase tax is leviable at the prescribed rates. Ginning activity to obtain cotton and cotton seeds (bye product) is not a manufacturing activity as decided by Gujarat Sales Tax Tribunal. However Supreme Court<sup>&</sup> held that where a subsidiary product is continuously processed in the course of manufacture and sold regularly then an intention can be attributed to the manufacturer to manufacture and sale not merely the main item manufactured but also the subsidiary products.

<sup>&</sup> Commissioner of Sales Tax, Bombay Vs. Bharat Petroleum Corporation Ltd. 1995(77)ELT790(SC).

- During test check of records of 14<sup>\$</sup> Assistant Commissioners and 11<sup>#</sup> Sales Tax Officers, it was noticed in the assessment of 104 dealers for the periods between 1994-95 and 2000-01 (finalised between August 1998 and November 2002) that the dealers procured unginning cotton valued at Rs.959.90 crore from farmers (unregistered dealers) to obtain cotton and cotton seeds through ginning process. Cotton seeds were further used to obtain oil and oil cakes which was a manufacturing activity and thus, liable to purchase tax, which was not levied. This resulted in non levy of purchase tax of Rs.13.71 crore including interest and penalty.

On this being pointed out the department replied that since cotton obtained was resold and cotton seed was a bye product which was not purchased by the dealers, no purchase tax was leviable. The contention of the department is not acceptable as the dealers were regularly manufacturing oil and oil cakes from cotton seeds obtained from ginning process. The benefit applicable to a bye product would not be available in view of the Supreme Court Judgment. Hence purchase tax was leviable on the value of unginning cotton on proportionate basis.

- During test check of records of Assistant Commissioner, Palanpur and Sales Tax Officers, Surendranagar, it was noticed in the assessment of 2 dealers for the periods between 1996-97 and 2000-01 (finalised between April 1999 and October 2001) that purchase tax was not levied on cotton purchased from unregistered dealers which were burnt in fire in one case and on purchase of 'Kapas Sathi' used in the manufacture of bio coal briquettes in the other case. This resulted in short levy of tax of Rs.5.07 lakh including interest and penalty.

The above facts were brought to the notice of the Department (between January 2001 and July 2002) and of the Government (April 2003); reply was not received (August 2003).

**2.4.2** Under Section 19 B of the Act, purchase tax at the rate of 4 *per cent* is to be charged if oil seeds purchased by a dealer are not resold. The purchase tax on oil seeds is reduced to one *per cent* for groundnut and 2 *per cent* for other oil seeds if used in manufacture of edible oil for sale within the state of Gujarat. Further, as per the decision of the Supreme Court<sup>@</sup> when an activity carried out on declared goods results in emergence of a new commercial commodity, tax becomes leviable at both the stages of purchase and sale even though the resultant product falls under the category of declared goods.

During test check of records of Assistant Commissioner, Rajkot and 4<sup>#</sup> Sales Tax Officers, it was noticed in the assessment of 7 dealers for the periods between 1994-95 and 1999-00 (finalised between March 1997 and March 2001) that purchase tax was not levied on oil seeds including groundnuts not

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<sup>\$</sup> 3 of Rajkot, 2 each of Ahmedabad, Surendranagar, 1 each of Amreli, Bhavnagar, Himatnagar, Idar, Junagadh, Kadi, and Nadiad.

<sup>#</sup> 3 of Rajkot, 2 each of Ahmedabad, Surendranagar and 1 each of Amreli, Himatnagar, Mehsana and Palanpur.

<sup>@</sup> K.A. K.Anwar & Co. Vs. State of Tamilnadu (108 STC-258).

<sup>#</sup> Patan, Rajkot, Vadodara and Veraval.

resold in 3 cases; the process resulted in emergence of new commercial commodity in 3 cases and manufactured goods were consigned outside the state in one case. This resulted in non/short levy of tax of Rs.28.26 lakh including interest and penalty.

The above facts were brought to the notice of the Department between April 2000 and May 2002 and of the Government in April 2003. In 2 cases, the Department stated that as per Gujarat Sales Tax Rules, if the raw material and final product remain declared goods as a result of any process, it is considered as resale and no purchase tax is leviable. The reply of the department is not tenable in view of the Supreme Court's judgment where as a result of any process on declared goods if new commercial commodity of declared goods emerges, tax is leviable on purchase and sale. In one case, the Department accepted the audit observation involving an amount of Rs.0.76 lakh and recovered Rs.0.58 lakh. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

**2.4.3** Under Section 15 (B) of the Act, where a dealer purchases taxable goods (other than declared goods) and uses them as raw materials in the manufacture of taxable goods, purchase tax at prescribed rate is leviable.

During test check of records of 5<sup>@</sup> Sales Tax Officers, it was noticed in the assessment of 10 dealers for the periods between 1994-95 and 1998-99 (finalised between April 2001 and March 2002) that though the dealers had transferred the manufactured goods either to their branches or consigned outside the State, purchase tax was levied at incorrect rate. This resulted in non/short levy of tax of Rs.11.87 lakh including interest and penalty.

The above facts were brought to the notice of the Department between June and November 2002 and of the Government in April 2003. The Department accepted between June and July 2003 the audit observations involving an amount of Rs.2.42 lakh in 2 cases and recovered Rs.0.65 lakh in one case. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

The matter was reported to Government in April 2003; reply had not been received (August 2003).

## **2.5 Turnover escaping assessment**

Under 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 completion of the sale would be component of the valuable consideration of the goods.

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<sup>@</sup> 2 of Ahmedabad and 1 each of Bhavnagar, Billimora and Nadiad.

During the test check of records of Assistant Commissioner, Bharuch and 2 Sales Tax Officers, it was noticed in the assessment of 3 dealers for the periods between 1996-97 and 1999-00 (finalised between October 1998 and January 2002) that due to non-inclusion of valuable consideration forming part of the sale price collected by the dealers, the turnover of the dealers was determined less to the extent of 67.57 crore. This resulted in short levy of tax of Rs.2.91 crore including interest and penalty as per details given below:

(Rupees in crore)

Sr. No	Name of office	No. of dealers	Period of assessment	Nature of irregularity	Turnover escaping assessment	Tax short levied
1	Bharuch	1	1998-99 1999-00	Turnover of imported steel pipes used in works contract was incorrectly allowed as deduction from sales turnover.	38.16	2.75
2	Ahmedabad	1	1997-98	Outside Gujarat State purchases resold after deducting profit resulted in non-assessment.	29.32	0.15
3	Surat	1	1996-97	Sales of used machinery and generator procured from outside the State were not considered for computation of turnover.	0.09	0.01
	<b>Total</b>	<b>3</b>			<b>67.57</b>	<b>2.91</b>

The above facts were brought to the notice of the Department between October 1999 and November 2002 and of the Government in March 2003. The Department accepted between July and December 2002 the audit observations and raised additional demand in one case. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

## 2.6 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 is applicable.

During test check of records of 7\* Sales Tax Officers, it was noticed in the assessment of 8 dealers for the periods between 1991-92 and 2000-01 (finalised between April 1996 and October 2001) that the assessing officers levied tax at incorrect rates on sales of various goods valued at Rs.29.56 crore due to misclassification of goods. This resulted in non/short levy of tax of Rs.3.77 crore as detailed below:

\* 2 of Ahmedabad, 1 each of Godhra, Surat, Surendranagar, Vadodara and Vapi.



(Rupees in lakh)

Sr. No	No. of Dealers (Location)	Name of commodity	Rate of tax leviable (Percentage)	Rate of tax levied (Percentage)	Tax short levied	Remarks
1	1 dealer (Ahmedabad)	Sugar Candy (Patasa)	12	Nil	255.31	The Department's reply was awaited.
2	1 dealer (Ahmedabad)	Instant print film	15	6	64.06	The Department did not accept the audit observation stating that the goods sold by the dealer was paper roll classifiable under entry 138(2) of Schedule IIA and not film roll. The reply of the department is not tenable as there is a separate entry for 'film' which is rightly classifiable under entry 138(i) of Schedule IIA attracting tax at the rate of 15 percent.
3	1 dealer (Surat)	Doors and Windows	14	7	21.74	The Department accepted the audit observation and raised the demand in July 2002. An amount of Rs.0.90 lakh was recovered.
4	3 dealers (Vadorara)	Low Tension Distribution Box	14.4 and 14	4.8 and 5	20.78	The Department accepted the audit observation and raised the demand in November 2002. The position of recovery was awaited.
5	1 dealer (Surendranagar)	Briquettes	12	Nil	8.97	The Department's reply was awaited.
6	1 dealer (Godhra)	PVC Cushioned Vinyl Flooring	12 and 14	8 and 10	6.20	The Department stated in May 2003 that PVC Vinyl Cushion flooring was an article of plastics and tax was levied at correct rate. The reply is not tenable in view of the fact that the process involved and the raw material of the product was glass-fliss tissues which was different.
<b>Total</b>	<b>8</b>				<b>377.06</b>	<b>(Say 3.77 crore)</b>

The above cases were brought to the notice of the Department between August 1997 and September 2002 and of the Government in March 2003. The

Department accepted in July and November 2002 the audit observations involving an amount of Rs.22.99 lakh in 2 cases (one of Vadodara and other of Surat) and recovered Rs.0.90 lakh in one case. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

## **2.7 Short levy of Central Sales Tax**

**2.7.1** According to Section 6(2) of the CST Act, 1956 where sale of any goods in the course of inter-state trade or commerce has either occasioned the movement of such goods from one state to another or has been effected by a transfer of documents of title to such goods during their movement from one state to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods shall be exempted from tax under the Act, provided the dealer effecting such sale produces a declaration in form E1 or E2 secured from the selling dealer and Form C or D from his purchaser.

During test check of records of Sales Tax Officer, Ankleshwar, it was noticed in the assessment of one dealer for the period 1994-95 finalised in July 2002 that sales turnover of machinery valued at Rs.92.04 lakh was allowed as deduction under the Act. However, scrutiny of the records revealed that the dealer purchased the machinery from a local dealer which was incorrectly treated as inter-state purchase. Accordingly, the transaction could not be classified under Section 6(2) of the CST Act, but should have been treated as an inter-state sale and tax was leviable at the rate of 4 *per cent* for sale being supported by form C. Incorrect deduction from turnover resulted in under assessment of Rs.8.54 lakh including interest and penalty.

**2.7.2** The rate of tax on Outside Gujarat State sales of air conditioning plants, mechanical water coolers, refrigerators and their component parts and accessories without production of C forms is reduced to 8 *per cent* with effect from 1 August 1990. The aforesaid concession is not admissible to sale of air conditioners.

During test check of records of 2\* Assistant Commissioners and Sales Tax Officer, Kalol, it was noticed in the assessment of 3 dealers for the period between 1995-96 and 1997-98 (finalised between June 2001 and March 2002) that reduced rate of tax at the rate of 8 *per cent* was incorrectly levied on sales of air conditioners valued at Rs.3.92 crore. This resulted in short levy of tax amounting to Rs.55.99 lakh including interest and penalty.

**2.7.3** Under the Central Sales Tax Act, 1956, on inter-state sale of declared goods not supported by prescribed declaration (Form C), tax is leviable at twice the rate applicable to sale in respect of declared goods. In the case of other goods tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State whichever is higher. Dealers availing sales tax exemption benefit under entry 255 of notification issued under Section 49(2) of the GST Act, concessional rate of 4 *per cent* without production of C form

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\* Ahmedabad and Mehsana.

would be available only on production of form 29 or tax shall have to be computed at the higher rates as applicable. Further, according to the government notification of 16 June 2000, additional tax at the rate of 10 *per cent* is leviable on the tax levied in the course of inter-state sales.

During test check of records of Assistant Commissioners, Ahmedabad and Sales Tax Office, Vapi, it was noticed in the assessment of 4 dealers for the periods between 1994-95 and 2000-01 (finalised between January 2001 and March 2002) that in two cases on inter-state sales valued at Rs.10.44 lakh, tax was levied at concessional rate of 4 *per cent* though the sales were not supported by C form or form 29 and in two cases additional tax was not levied on inter-state sales. This resulted in short levy of tax of Rs.4.68 lakh including interest and penalty.

The above facts were brought to the notice of the Department between June and December 2002 and of the Government in February 2003. The Department accepted between May and October 2002 the audit observations involving an amount of Rs.0.99 lakh in two cases and recovered an amount of Rs.0.44 lakh in one case. Details of recovery and reply in remaining cases had not been received (August 2003).

## 2.8 Non /short levy of turnover tax

Under Section 10A of the Act, where the sales turnover of a dealer, 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. 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 7\* Assistant Commissioners and 7\*\* Sales Tax Officers, it was noticed in the assessment of 25 dealers for the periods between 1989-90 and 1996-97 (finalised between March 1997 and March 2002) that turnover tax was either not levied or levied at incorrect rates. This resulted in short/non levy of turnover tax of Rs.1.19 crore as given below:

(Rupees in lakh)					
Sr. No	No. of Dealers (location)	Period of assessment	Date of assessment	Nature of irregularity	Tax not/ Short levied.
1	11 dealers of Ahmedabad and Surat	1994-95 to 1996-97	Between March and December 2000	Purchase turnover of processed yarn and sale of life saving drugs not included for levy of turnover tax.	61.73

\* 3 of Ahmedabad 2 each of Rajkot and Surat.

\*\* 2 each of Ahmedabad and Vadodara 1 each of Ankleshwar, Kadi, and Vapi.

2	10 dealers of Ahmedabad, Ankleshwar, Kadi, Rajkot, Surat, Vapi and Vadodara	1989-90 to 1996-97	Between April 2000 and March 2002	Sales made against declarations were not included for levy of turnover tax in two cases. Turnover tax was not levied in other cases.	54.05
3	4 dealers of Ahmedabad and Rajkot	1994-95 to 1996-97	Between March 1997 and March 2002	Turnover tax was incorrectly calculated.	2.86
	<b>Total 25</b>			<b>Say 1.19 crore.</b>	<b>118.64</b>

The above facts were brought to the notice of the Department between April 2002 and January 2003. The Department accepted audit observations involving an amount of Rs.6.72 lakh in 7 cases and recovered Rs.3.34 lakh in 4 cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

The matter was reported to the Government in February 2003; reply was awaited (August 2003).

## 2.9 Incorrect/excess grant of set-off

**2.9.1** Under GST Rules, 1970, set-off would be admissible only if the assessee proves that he has paid the tax under the Act. Further, under Section 47 (4) of the Act, where a dealer to whom incentives by way of deferment of tax have been granted and where a loan liability equal to the amount of such tax payable by such dealer has been raised by the GIIC\* and GSFC\*\*, then such tax shall be deemed to have been paid.

During the test check of records of Assistant Commissioner and Sales Tax Officers, Ahmedabad, it was noticed that in the case of 2 dealers for the periods between 1996-97 and 1999-00 (finalised between August 1998 and February 2001) the set off was allowed on purchases of cotton from dealers holding deferment certificate without obtaining proof of raising loan from GIIC and GSFC. This resulted in incorrect grant of set-off of Rs.1.02 crore including interest and penalty.

The above facts were brought to the notice of the Department between March and May 2002 and of the Government in March 2003; reply had not been received (August 2003).

**2.9.2** Under GST Rules, 1970, a dealer who has paid tax on raw materials used in the manufacture of taxable goods is allowed set off, at the rate

\* Gujarat Industrial Investment Corporation Limited.

\*\* Gujarat State Financial Corporation Limited.

applicable to the respective goods from the tax on the sale of manufactured goods provided tax is paid on its sale. Set-off is not admissible for tax paid on the purchases of “prohibited goods”. According to the conditions prescribed under the Rule, 4 *per cent* of the sale price of the manufactured goods consigned/ branch transferred outside the State is to be deducted from set-off arrived at. Further, as per Supreme Court’s judgment<sup>\$</sup> light diesel oil (LDO) and liquified petroleum gas (LPG) used as fuel are not consumables.

During the test check of records of 3<sup>#</sup> Assistant Commissioners and 8<sup>@</sup> Sales Tax Officers, it was noticed in the assessments of 14 dealers for the periods between 1992-93 and 2001-02 (finalised between July 1993 and March 2002) that excess set-off of Rs.29.80 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 Gandhinagar & Vadodara	20.95	Set-off was allowed on LDO and LPG used as fuel though these were not consumables.
2	4	Ahmedabad	5.16	Set-off was allowed on the purchase of prohibited and tax free goods in two cases. Proportionate tax was not reduced in respect of raw material used in the manufacture of tax free goods in one case and set off was allowed at incorrect rate in other case.
3	1	Kalol	2.06	2 <i>per cent</i> of purchase price (as per condition of the rule) was not reduced from the amount of tax admissible as set-off.
4	1	Ahmedabad	1.16	4 <i>per cent</i> of the sale price of the goods transferred outside the state were incorrectly worked out.
5	1	Godhra	0.47	Set-off was allowed without reduction of turn over involving job work at prescribed rate.
<b>Total</b>	<b>14</b>		<b>29.80</b>	

The above facts were brought to the notice of the Department between December 1999 and December 2002 and of the Government in March 2003. The Department accepted in June and August 2002 the audit observations involving an amount of Rs.0.44 lakh in one assessment. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

<sup>\$</sup> In the case of Coastal Chemical Vs. State of Andhra Pradesh (117-STC-12).

<sup>#</sup> 2 of Ahmedabad and 1 of Gandhinagar.

<sup>@</sup> 4 of Ahmedabad, 2 of Vadodara and one each of Godhra and Kalol.

**2.9.3** 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 the goods so manufactured are transferred to the branches/ consigned outside the state or sold by commission agents, set off to the extent of the goods not sold in the state is to be disallowed.

During test check of the records of 3\* Assistant Commissioners and Sales Tax Officer, Vadodara, it was noticed that in the case of 5 dealers for the periods between 1987-88 and 1997-98 (finalised between June 2000 and March 2002) set off was allowed incorrectly as the dealers had either transferred the goods to their branches or consigned them outside the state or sold goods through commission agents. In one case, excess set off was carried forward to the next year due to calculation mistake. This resulted in excess grant of set off of Rs.79.73 lakh including interest.

The above facts were brought to the notice of the Department between April and November 2002 and of the Government in March 2003; reply had not been received (August 2003).

## **2.10 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.

During the test check of records of 3& Assistant Commissioners and 5@ Sales Tax Officers, it was noticed in the assessment of 8 dealers for the periods between 1993-94 and 2000-01 (finalised between January 1999 and March 2002) that purchase/sales turnover of Rs.33.53 crore of polyester chips and waste thereof, cement, bolts and nuts, washed cotton seed oil, tractor bearings, lime stone, gypsum and bauxite were taxed at incorrect rates. This resulted in short levy of tax of Rs.93.18 lakh including interest and penalty

The above facts were brought to the notice of the Department between October 1999 and December 2002. The Department accepted in January and June 2003 audit observations involving an amount of Rs.40.65 lakh in 2 cases. Details of recovery, if any, and reply in the remaining cases had not been received (August 2003).

The matter was reported to Government in March 2003; reply was awaited (August 2003).

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\* Jamnagar, Mehsana and Rajkot.

& Vadodara, Surat and Valsad.

@ Ahmedabad, Anand, Dahod, Mehsana and Palanpur.

### **2.11 Non/short levy of tax on Works Contract**

Under the Act, a dealer engaged in works contract is permitted to pay in lieu of tax, a lump sum by way of composition at the rate fixed by Government from time to time on the total value of the contract. However, where a dealer does not opt to pay lump sum by way of composition of tax, he shall be assessed as a normal dealer. In case the process involved results in manufacture, the dealer would not be eligible for claiming deduction on account of resale of goods purchased from registered dealer.

During the test check of records of Assistant Commissioner and Sales Tax Officers, Ahmedabad, it was noticed in the assessment of 2 dealers for the periods between 1995-96 and 2001-02 (finalised between May 2000 and March 2002) that the material purchased from registered dealer and used in the works contract was deducted from turnover as resales. However, the activity carried out viz. fabrication, erection of steel structures, construction of cable tray etc. amounted to manufacture and resale allowed was irregular. In another case though the application made by the dealer to pay lump sum by way of composition of tax was not within the prescribed time, the dealer was incorrectly allowed composition of tax. This resulted in short levy of tax of Rs.40.58 lakh including interest and penalty.

The above facts were brought to the notice of the Department between April and August 2002 and of the Government in February 2003; replies had not been received (August 2003).

### **2.12 Non levy of additional tax**

Under Section 4A of the Act, every dealer liable to pay tax on sale or purchase of goods under Section 3 or 3A of the Act, is liable to pay an additional tax at the rate of 10 *per cent* on such tax with effect from 1 April 2000.

During test check of records of Assistant Commissioners, Ahmedabad, and Mehsana and Sales Tax Officer, Vadodara, it was noticed in the assessment of 3 dealers for the period 2000-01 (finalised between June 2001 and March 2002) that additional tax was not levied. This resulted in non-levy of additional tax of Rs.10.04 lakh including interest and penalty.

The above facts were brought to the notice of the Department between June and November 2002. The Department accepted audit observation involving an amount of Rs.0.52 lakh and recovered the amount in one case. Details of recovery, if any, and reply in remaining cases had not been received (August 2003).

The matter was reported to Government in March 2003; reply had not been received (August 2003).

### 2.13 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, Vadodara and Sales Tax Officer, Ankleshwar, it was noticed that no tax was levied in the assessment of 4 dealers for the periods between 1994-95 and 1999-00 (finalised between April 2001 and January 2002) on income of Rs.1.08 crore on sale of import licences DEP licence. This resulted in non levy of tax of Rs.8.42 lakh including interest and penalty.

The above facts were brought to the notice of the Department between July and December 2002 and of the Government in March 2003; reply had not been received (August 2003).

### 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 *per cent*, there shall be levied on such dealer a penalty not exceeding one and one half times of the difference. Where additional tax liability arises due to seizure of books of accounts by enforcement branch or where evasion of tax is detected, penalty is to be levied at one and one half times the amount of tax.

During test check of records 8\* Offices of Assistant Commissioner and 12\*\* Sales Tax Officers, it was noticed in the assessment of 35 dealers for assessment periods between 1991-92 and 2000-01 (finalised between March 1999 and March 2002) that penalty was not levied at prescribed rates for difference of tax exceeding twenty five *per cent* in 26 cases and on the concealed turnover of tax detected during raids in 9 cases. This resulted in non levy of penalty of Rs.3.70 crore.

The above cases were brought to the notice of the Department between March and December 2002. The Department accepted the audit observations involving an amount of Rs.92.60 lakh in 4 cases. Reply in respect of remaining cases had not been received (August 2003).

The matter was reported in February 2003 to Government; reply had not been received (August 2003).

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\* 2 of Ahmedabad, and 1 each of Bhavnagar, Nadiad, Palanpur, Rajkot, Vadodara and Vapi.

\*\* 4 of Ahmedabad, 2 of Junagadh, 1 each of Bharuch, Godhra, Palanpur, Surat, Vapi and Viramgam.



## 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 *per cent* 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 11<sup>§</sup> Sales Tax Officers, it was noticed in the assessment of 29 dealers for the periods between 1991-92 and 2000-01 (finalised between February 1999 and July 2002) that interest amounting to Rs.64.58 lakh was either not levied or levied short on the amount of unpaid tax.

The above facts were brought to the notice of the Department between March and December 2002. The Department accepted the audit observations involving an amount of Rs.17.78 lakh in 14 cases and recovered Rs.2.45 lakh in 4 cases. Reply in respect of remaining cases had not been received (August 2003).

The matter was reported to Government in February 2003; reply had not been received (August 2003).

## 2.16 Non-recovery of interest

To obviate adverse impact on revenue as a result of the judgment<sup>@</sup> of the Supreme Court of India that the existing provisions of the Central Sales Tax Act, 1956, do not provide for levy of interest on non payment or delayed payment of Central Sales Tax, the Government of India amended the provisions of the Act ( 2000 ) to enable levy of interest with retrospective effect. Consequently, the Commissioner issued (June 2000) instructions to all the assessing officers to re-open all appeal cases where interest had been refunded on the basis of the judgment of Supreme Court and raise demand for interest.

Test check of records of 2<sup>§</sup> Assistant Commissioners revealed that demands for interest of Rs.67.67 lakh, which was refunded in the light of the above judgment in 39 assessments, were either not raised by the assessing officers or demands were raised only after being pointed by audit.

The above cases were brought to the notice of the Department and to the Government in April 2003; reply had not been received (August 2003).

<sup>&</sup> 4 of Ahmedabad, 1 each of Bhavnagar, Nadiad and Rajkot.

<sup>§</sup> 3 of Ahmedabad, 2 each of Vadodara and Vapi, and 1 each of Bhavnagar, Junagadh, Nadiad and Valsad.

<sup>@</sup> M/s.India Carbon Ltd., Vs. State of Assam (106-STC-460).

<sup>§</sup> Surat and Vadodara.

## 2.17 Internal Audit System

Review on “Functioning of Internal Audit in Sales Tax Department” was included in Chapter-II of Audit Report (Revenue Receipts) of Government of Gujarat for the year ended 31 March 1999 covering the period upto March 1998.

With the introduction of single tier system of assessment from 1 April 1998, the Assistant Commissioners were entrusted with the assessment work also in addition to administrative work and work of internal audit. The posts of Assistant Commissioners (Admn) in the department were increased to 38. Three posts of Assistant Commissioners (Audit) were created with effect from 1 April 1998 and posted under the Deputy Commissioners of Ahmedabad, Vadodara and Surat considering large scale industrialisation in these areas. In respect of other divisions viz. Gandhinagar, Bhavnagar and Rajkot, the divisional Deputy Commissioners were to carryout internal audit of cases falling under their jurisdiction.

A target of 150 cases per month was fixed for each of the three Assistant Commissioners (Audit), for other Assistant Commissioners (Admn), no norms were fixed. With further restructuring of the department from 1 November 2002, internal audit was assigned to the Assistant Commissioners (Audit) under each of the seven Deputy Commissioners with a target of 150 cases per month.

Revised instructions for internal audit from 1 April 1998 were issued by the Commissioner as late as 27 December 1999 i.e. after a period of one year and nine months. Further, looking at the number of officers entrusted with internal audit and the norms fixed from time to time, it is evident that the department did not have any fixed norms on the quantum of cases to be subjected to scrutiny by internal audit as shown below:

Period	No. of officers	Target per officer per annum	Total cases to be audited	Remarks
Upto March 1998	13	3,000	39,000	--
April 1998 to October 2002	3	1,800	5,400	Does not include officers (Asstt. Commissioners (Admn) for whom no norms have been fixed.
November 2002 onwards	7	1,800	12,600	--

It is evident from the table that the function of internal audit was diluted from April 1998 onwards.

Details as to the number of officers entrusted with the work of internal audit, the targets fixed from time to time, number of cases subjected to scrutiny, number of cases where omissions were noticed in the assessment and additional demands raised in those cases for the period from 1999-00 to 2002-03 though called for from the department had not been received (August 2003).

The above matters were followed up with reminders to the Principal Secretary in May and July 2003 and Chief Secretary in July 2003. However, inspite of such efforts, no reply was received from the Government (August 2003).