

CHAPTER II : Sales Tax

2.1 Results of audit

Test check of records of Sales Tax Department conducted during the year 2004-05 revealed underassessments/short levy/loss of revenue amounting to Rs 211.92 crore in 1,169 cases which broadly fall under the following categories.

(Amount in crore of rupees)

Sl. No.	Category	No. of cases	Amount
1.	Non/short levy of tax	684	5.68
2.	Incorrect allowance of set off	276	2.52
3.	Non/short levy of interest/penalty	55	0.33
4.	Omission to forfeit tax collected in excess	28	0.24
5.	Other irregularities	123	2.55
6.	Pendency of appeals at various levels	1	33.26
7.	Recovery of sales tax dues treated as arrears of land revenue	1	17.70
8.	Review on " Correctness of transactions of branch transfers in sales tax "	1	149.64
	Total	1,169	211.92

During the course of the year 2004-05, the Department accepted underassessments etc. of Rs 30.23 crore involved in 1,200 cases out of which 119 cases involving Rs 1.45 crore were pointed out during the year and the rest in earlier years. The Department recovered Rs 3 crore. In five other cases involving revenue of Rs 0.01 crore, action was stated to be time barred.

A review on "**Correctness of transactions of branch transfers in sales tax**" involving financial effect of Rs 149.64 crore and a few illustrative cases involving financial effect of Rs 25.78 crore are given in the following paragraphs:

2.2 Review on "Correctness of transactions of branch transfers in sales tax"

2.2.1 Highlights

Excess/incorrect allowance of exemptions of Rs 23.47 crore on account of branch transfers to 13 dealers in the assessments for the years between 1998-99 and 2001-02 resulted in underassessment of Rs 5.24 crore including penalty and interest.

(Paragraph 2.2.7)

Non/short accountal of goods valued at Rs 36.46 crore received as branch transfer from outside the State by two dealers resulted in underassessment of Rs 13.73 crore.

(Paragraph 2.2.7)

Acceptance of invalid declarations in Form F covering transactions for periods ranging from two to 12 months in respect of 28 dealers resulted in non realisation of revenue of Rs 51.36 crore including penalty of Rs 23.47 crore and interest of Rs 4.42 crore.

(Paragraph 2.2.8)

Acceptance of incomplete declarations without prescribed particulars from 32 dealers resulted in non realisation of revenue of Rs 78.79 crore including penalty of Rs 34.73 crore and interest of Rs 9.34 crore.

(Paragraph 2.2.8)

2.2.2 Recommendations

Government may consider

- making mandatory the submission of details of individual transactions of branch transfers/ consignment sales above a specified monetary limit by assesseees.
- prescribing issuance of minimum number of cross check memos, for verification of claims and deductions allowed without leaving it to the discretion of the assessing authority.

2.2.3 Introduction

Under the provisions of the Central Sales Tax Act, 1956 (CST Act), goods transferred to other States by dealers in Maharashtra on stock transfer to any place of their business are not liable to tax provided they are supported by declaration in form F/sales note alongwith evidence of dispatch of such goods to substantiate the claim. For contravention of the provisions of the Act, the transferor is liable to pay tax, interest and penalty as prescribed in the State law.

2.2.4 Organisational set up

The Sales Tax Department functions under the administrative control of the Secretary of the Finance Department at Government level. The

Commissioner of Sales Tax, Maharashtra State, Mumbai is the head of the Sales Tax Department who is assisted by three Additional Commissioners in charge of each zone at Mumbai, Nagpur and Pune. There are 16 divisions¹ (excluding two enforcement divisions), each headed by a Deputy Commissioner of Sales Tax (Administration). The assessments are completed by Senior Assistant Commissioners, Assistant Commissioners and Sales Tax Officers.

2.2.5 Audit objectives

Scrutiny of assessment records was conducted to ascertain

- Whether claims of branch transfers were allowed in the assessments as per the provisions of law
- Whether an internal control mechanism was in existence in the Department to monitor that the claims allowed in the assessments were as per the provisions of law/instructions issued by the Department from time to time.

2.2.6 Scope and methodology of Audit

Test check of assessment records for the periods between 1998-99 and 2001-02 (assessments completed between March 2002 and September 2004) of 81 out of 122 dealers maintained by 10 out of 15 Sr. Assistant Commissioners and of 248 out of 341 dealers maintained by 68 out of 96 Assistant Commissioners in 12² out of 16 divisions in the State was conducted between September 2004 and March 2005. The cases selected involved transactions of branch transfers allowed as deductions from the turnover of sales in the assessment orders.

The scrutiny, inter alia, included verification of transactions of goods transferred by dealers in Maharashtra State to branches/agents in Goa, Gujarat, Kerala, Rajasthan and Tamil Nadu with reference to various documents including "F" form declarations available on record.

2.2.7 Incorrect allowance of stock transfer

Under the CST Act and the Rules made thereunder, no tax is payable by a dealer on movement of goods to other States which is not by way of sale but by reason of transfer of stock to other places of his business or to his agent or principal. For claiming exemption, the dealer may furnish to the assessing authority a declaration in Form 'F' duly filled and signed by the principal officer of the other place of business or his agent as the case may be alongwith evidence of dispatch of the goods. However, on verification, if it was found that the goods had not actually moved out of the State or goods received from outside the State are not/short accounted, the dealer is liable to pay taxes at the rates applicable in the State alongwith interest at the rate of two *per cent* per month and penalty not exceeding the amount of tax payable.

¹ Andheri, Aurangabad, Bandra, Borivali, Churchgate, Ghatkopar, Kolhapur, Mandvi, Mazgaon, Nariman Point, Nashik, Nagpur, Pune-I, Pune-II, Thane and Worli.

² Andheri, Aurangabad, Bandra, Borivali, Churchgate, Ghatkopar, Mandvi, Nariman Point, Nashik, Pune-I, Pune-II and Thane.

- Scrutiny of assessment records of 13 dealers in seven³ divisions of Maharashtra revealed that dealers had transferred goods valued at Rs 104.42 crore to their branches in Tamil Nadu, Pondichery, Rajasthan, Goa, Gujarat and Kerala by submitting declarations in Form F. However, cross verification of these forms with the assessment records finalised between March 2002 and September 2004 in these States revealed that the dealers had accounted for only Rs 80.96 crore in their accounts. This resulted in non/short accountal of goods of Rs 23.47 crore. Since no system for cross verification of inter State transactions existed in the Department, the short accountal escaped the notice of the Department. This resulted in underassessment of Rs 5.24 crore including interest of Rs 0.76 crore and penalty of Rs 2.24 crore. A few illustrative cases are given below:

(Amount in lakh of rupees)

Sl. No.	Name of commodity	No. of dealers	Name of <u>division</u> Period/ Month of assessment	Destination of goods	Value of goods			Underassessment			
					Transferred	Accounted for	Non/short <u>accounted</u> Percentage rate of tax	Tax	Interest	Penalty	Total
1.	Electronic goods	1	Aurangabad 1999-2000 2000-01 between March 2003 and July 2003	Chennai	326.95	134.40	<u>192.55</u> 15.3	29.46	10.61	29.46	69.53
2.	Medicines	4	Bandra 1999-2000 & 2000-01 Thane 2000-01 Nariman Point 2000-01 & 2001- 2002 between March 2002 and July 2004	Jaipur, Vapi & Ahmedabad	808.46	31.64	<u>776.82</u> 8	62.15	17.74	62.15	142.04
3.	Alluminium rolled products	1	Ghatkopar 2001-02 January 2004	Ahmedabad	362.93	Nil	<u>362.93</u> 5.4	19.60	7.06	19.60	46.26
4.	Leather goods	1	Nariman Point 2000-01 December 2002	Ahmedabad	2,487.98	2,307.58	<u>180.40</u> 9.8	17.68	6.36	17.68	41.72
5.	Tyres & Tubes	1	Pune-I 2000-01 March 2004	Ahmedabad	4,647.06	4,125.93	<u>521.13</u> 12	62.54	22.51	62.54	147.59

After this was pointed out, the assessing officer in the case of the dealer of leather goods in Nariman Point division stated that the branch transfer was properly accounted for. The reply was not tenable since as per details in Form F the dealer had transferred goods valued at Rs 200.48 lakh to its branch office at Ahmedabad. However as per the assessment

³ Aurangabad, Bandra, Churchgate, Ghatkopar, Nariman Point, Pune-I and Thane.

record of the branch office at Ahmedabad, only Rs 20.08 lakh were accounted for. In five cases, the Department stated (September 2005) that the claims of stock transfers were supported by declaration in Form F and dispatch proof and were allowed after due verification. The reply is not acceptable as on cross verification of records of dealers/branches in other States, the short accountal was noticed, which needs to be verified and confirmed from the records in the respective States. In the remaining seven cases reply has not been received (December 2005).

- In respect of six other dealers in six⁴ divisions of Maharashtra, branch transfers of goods during the period between 1998-99 and 2000-01 valued at Rs 24.16 crore to Tamil Nadu and Kerala could not be verified in the assessment records in absence of details of accountal of transfers in the purchases. The tax involved amounted to Rs 3.08 crore. A few illustrative cases are detailed in the following table.

(Amount in lakh of rupees)

Sl. No.	Name of commodity	No. of dealers	Period/ Month of assessment	Name of Division	Destination of goods	Value of goods transferred	Percentage rate of tax	Amount of tax involved
1.	Engines/ Machinery spares	1	1999-2000 and 2000-2001 February 2003 and March 2003	Aurangabad	Chennai	462.53	15.3	70.77
					Ernakulam	60.29	15.3	9.22
2.	Cornflakes cereals	1	1998-99 December 2002	Bandra	Chennai	434.74	13	56.52
3.	Electrical goods	1	1999-2000 March 2003	Nashik	Chennai	386.65	15.3	59.15
					Ernakulam	129.71	15.3	19.85
4.	Auto parts	1	1999-2000 March 2004	Pune-II	Chennai	847.12	9.8	83.02

In the absence of details in the assessment order, audit was unable to verify the authenticity of the deductions allowed.

The Commissioner of Sales Tax prescribed between May 1983 and August 1994 a system of verifying the authenticity of claims of sales and purchases within the State by issue of cross check memos. However the system is not extended to verifying the claims of inter State transactions.

- In Ghatkopar and Mandvi divisions two dealers received during the period between 1998-99 and 1999-2000 goods valued at Rs 38.92 crore from Chennai and Lucknow by furnishing F forms. It was noticed in the assessment order finalised in February 2003 that only goods worth Rs 2.46 crore were accounted for. This resulted in short accountal of

⁴ Aurangabad, Bandra, Nashik, Nariman Point, Pune-I and Pune-II.

Rs 36.46 crore having a tax effect of Rs 13.73 crore including interest of Rs 4.36 crore and penalty of Rs 4.68 crore.

In one case, the assessing authority stated that point would be examined and compliance furnished. In the absence of a system of cross verification, the correctness of the turnover assessed to tax could not be confirmed in audit.

- According to circular instructions issued by the Commissioner of Sales Tax on 19 December 1985, dealers are required to furnish at the time of assessment, a complete list of all transfers and consignments exceeding Rs 1 lakh in value for each month or quarter. These instructions were applicable to assessments done after 31 December 1985.

In six⁵ divisions exemptions on account of branch transfers between July 1999 and October 2003 of goods valued at Rs 1,853.69 crore were allowed to 13 dealers in the assessments for the years between 1995-96 and 2000-01. However there was no evidence on record including F forms to show that the assessing officers had satisfied themselves about the actual dispatch of goods before allowing the claim of exemption. The tax involved in the transactions worked out to Rs 156.40 crore. A few illustrative cases are detailed in the following table:

(Amount in crore of rupees)

Sl. No.	Name of commodity	No. of dealers	Name of division	Period/ Month of assessment	Value of goods transferred	Percentage rate of tax	Amount of tax
1.	Medicines	2	Andheri, Nashik	1998-99 1999-2000 January 2002 and March 2004	303.68	6	18.22
2.	Plastic granules	1	Bandra	1999-2000 March 2003	1,324.63	9.8	129.81
3.	Bulk drugs	1	Bandra	1998-99 to 2000-01 February 2002 and October 2003	114.27	2, 3.2 & 4	3.07
4.	CR coils, sheets	1	Nashik	2000-01 January 2004	47.33	4	1.89
5.	Water treatment system parts	1	Ghatkopar	1995-96 July 1999	0.48	13	0.06

After this was pointed out, in one case of Ghatkopar Division the Department revised in April 2004 the assessment order and raised additional demand of Rs 18.34 lakh including interest of Rs 11.92 lakh. Of this, the dealer paid Rs 4.86 lakh in January 2005 and Rs 13.43 lakh was waived under amnesty scheme. In respect of the remaining cases, the assessing officers stated that the declaration in Form F was not mandatory or F form would be obtained or that these were technical omissions or claims were allowed after due verification. The reply is not tenable as in

⁵ Andheri, Aurangabad, Bandra, Ghatkopar, Nariman Point and Nashik.

the absence of supporting evidence on record it could not be verified in audit as to how the assessing officers had satisfied themselves before allowing the claims in the assessment orders. Despite instructions issued in December 1985 by the Commissioner of Sales Tax requiring dealers to furnish consolidated details of all transfers and consignments alongwith original F form for each month or quarter exceeding Rs 1 lakh, no details were available on record.

2.2.8 Acceptance of invalid declarations

The CST (Registration and Transfer) Rules, 1957 provide that a single declaration in Form F may cover transfer of goods by a dealer to any other place of his business or to his agent or principal outside the State as the case may be, effected during a period of one calendar month. The declaration in Form F should contain full particulars of the goods, mode of transport and date on which delivery was taken by the transferee. Where the space provided in the form is not sufficient for making the entries, the particulars may be given in separate annexure(s) and attached to the form after mentioning it in the form and every such annexure is to be signed by the person authorised to sign the declaration in Form F.

In eight⁶ divisions in the assessments finalized between August 2002 and May 2004 of 28 dealers for periods falling between 1998-99 and 2001-02, it was noticed that transfer of goods of Rs 205.28 crore was supported by declarations in Form F which covered transactions for periods ranging from two to 12 months. As such, these declarations were invalid and the turnover was liable to tax under the local Act. This resulted in underassessment of Rs 51.36 crore including penalty of Rs 23.47 crore and interest of Rs 4.42 crore.

After this was pointed out, in eight cases the assessing officers stated that F form was not mandatory or it was a technical mistake or provisions in the form issuing State was to be seen or transactions upto a year can be included. In the remaining 20 cases replies had not been received. The replies were not tenable as transactions upto one calendar month only can be included in one form. The forms containing transactions for more than one month were against the provisions of the Act.

- In eight⁷ divisions, transfer of goods valued at Rs 355.34 crore were exempted from payment of tax in assessments of 32 dealers for the periods falling between 1998-99 and 2001-02 on the basis of declarations which did not contain prescribed particulars such as names of transferors/transferees, their registration certificate numbers with effective date, invoice number and date, railway receipt numbers, quantity of goods, particulars of dispatch and acknowledgement thereof etc. Such incomplete declarations were invalid and acceptance of invalid declarations resulted in non realisation of revenue of Rs 78.79 crore including penalty of Rs 34.73 crore and interest of Rs 9.34 crore.

⁶ Andheri, Aurangabad, Bandra, Borivali, Mandvi, Nashik, Nariman Point and Pune-I.

⁷ Andheri, Aurangabad, Bandra, Mandvi, Nashik, Nariman Point, Pune-I and Pune-II.

This shows lacuna/weakness in the system of allowing deductions on account of transfer of goods to any other place of business of a dealer or to an agent or principal outside the State.

2.2.9 Incorrect acceptance of photocopies of declarations

Under the CST Act and the Rules framed thereunder, a registered dealer, who claims exemption from payment of tax under the Act, is required to produce before the assessing authority the 'original' and 'duplicate' of the declaration in Form F.

In Nashik division, photocopies of duplicate/counterfoil of declarations instead of the original Form F furnished by a dealer for goods valued at Rs 2.42 crore transferred to branches /agents outside the State during the year 2000-01 were accepted which was incorrect. This resulted in non realisation of revenue of Rs 0.39 crore including penalty of Rs 0.19 crore.

After this was pointed out, the assessing officer stated that it was a procedural lapse which would be corrected in due course and no corrective action is required as the sales were verified and allowed. The reply is not tenable as the provisions require retention of the original declaration.

2.2.10 Incorrect allowance of transfer of goods to places not included in the registration certificate.

Under the CST Act and the Rules made thereunder, a dealer seeking registration is required to specify in the application for registration, the list of places of business in the other States alongwith the address of every such place and particulars of registration under the CST Act.

In Pune-I division, it was noticed that a dealer was allowed exemption from payment of tax on branch transfers amounting to Rs 1.48 crore effected during the period falling between 1999-2000 and 2000-01 to places other than those specified in the Registration Certificate. This resulted in underassessment of Rs 0.34 crore including penalty of Rs 0.14 crore and interest of Rs 0.05 crore.

After this was pointed out, the assessing officer stated that the point was technical and the defect was noted for future compliance.

2.2.11 Lacuna in monitoring branch transfer transactions

The claims of inter State transactions are admitted on the basis of declaration furnished by the claimant dealers. Instructions issued by Department from time to time did not contain any directions to the assessing officers to issue cross check memos in respect of inter State transactions. In none of the cases referred to above, a cross check memo was issued by the assessing officer on branch transfers to verify the authenticity of the claims. No register has been prescribed by Government/Department to be maintained by the assessing authority for recording and monitoring volume of transactions of branch transfers. Further, despite issue of instructions in December 1985 by the Commissioner of Sales Tax requiring dealers to furnish consolidated

details of all transfers and consignments alongwith original F form for each month or quarter exceeding Rs one lakh, no details were available on record. Non observance of Commissioner's circular coupled with absence of a prescribed system of cross check could result in irregular/false transactions being admitted by the assessing officers leading to loss of revenue.

2.2.12 Acknowledgement

Audit findings as a result of test check of records were reported to Government in June 2005 with a specific request to attend the meeting of the Audit Review Committee for State Revenue Receipts. A meeting of the Committee was held on 29 July 2005 and their view points duly incorporated in the review. The representative of Government stated that production of F form during the period covered by audit was not mandatory and the facts of each case would have to be verified for which time was requested. The plea taken by the Department that since F form was not mandatory it was not kept on record, was not tenable, as in the absence of supporting evidence it could not be verified in audit as to how the assessing officers had satisfied themselves before allowing the claims in the assessment orders. The replies of the Department have been incorporated in each of the paragraphs.

2.2.13 Conclusion

The review revealed that the deficiencies, mistakes and omissions which appeared in the Report of the Comptroller and Auditor General of India for the year ended 31 March 1999 on the same subject persisted in the assessments for the periods between 1998-99 and 2001-02.

2.3 Pendency of appeals at various levels

2.3.1 Introduction

Under the provisions of the Bombay Sales Tax Act (BST Act), 1959, an appeal against an original assessment order passed under the Act can be made if an assessee is aggrieved by the assessment made by the assessing authority. The appeal should be filed within 60 days from the date of communication of the order of assessment appealed against. An application can be entertained by the following authorities.

- If the order is made by a Sales Tax Officer to the Assistant Commissioner of Sales Tax (Appeals) {AC (A)}.
- If the order is made by the Assistant Commissioner of Sales Tax/ Sr. Assistant Commissioner of Sales Tax to the Deputy Commissioner of Sales Tax (Appeals) {DC (A)}.
- If the order is made by a DC/Additional Commissioner or Commissioner to the Maharashtra Sales Tax Tribunal.
- In the case of an order passed in appeal by an AC or by a DC, a second appeal can be made at the option of the appellant, either to the DC (A)/the Commissioner or the Tribunal.

Test check of cases in appeal involving demand of Rs 20 lakh or more in each case and pending for more than two years was conducted in the offices of 16⁸ out of 25 AC (A) and 13⁹ out of 21 DC (A) in the State during the period from November 2004 to March 2005.

2.3.2 Tax arrears blocked in appeals.

The total arrears of sales tax revenue pending in appeals at the end of the years 2000-01 to 2003-04 are given in the following table:

(Amount in crore of rupees)

Year	Total recovery outstanding at the beginning of the year	Addition during the year	Recovery made during the year	Balance outstanding at the end of the year	Amount under appeals out of balance	Percentage of Col.6 to 5
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2000-2001	5,290.75	3,110.41	941.05	7,460.11	3,375.69	45
2001-2002	7,460.11	2,197.17	1,803.44	7,853.84	3,330.07	42
2002-2003	7,853.84	3,006.23	1,862.66	8,997.41	3,575.05	39
2003-2004	8,997.41	2,865.24	1,688.72	10,173.93	3,840.76	37

The amount blocked in appeals varied between 45 and 37 per cent of the total arrears. Though there was marginal decrease in percentage terms, the amount involved increased from Rs 3,375.69 crore as on 31 March 2001 to Rs 3,840.76 crore as on 31 March 2004.

The pendency of appeal cases as on 31 March 2004 with various authorities was as under:

	Authority	No. of cases	Amount in crore of rupees
1.	Supreme Court	9	0.49
2.	High Court	1,092	153.53
3.	Civil Court	1,663	64.64
4.	Maharashtra Sales Tax Tribunal	12,010	1,585.44
5.	Departmental Appellate Authorities	34,942	2,036.66
	Total	49,716	3,840.76

⁸ P-1 & P-2 Nariman Point, P-3 & P-4 Churchgate, P-8 & P-9 Worli, P-11 & P-12 Andheri, P-13 Borivali, P-14 & P-15 Ghatkopar, P-26 & P-27 Thane, P-31 & P-32 Pune-I & II, P-41 Kolhapur Division.

P – indicates Asst. Commissioner of Sales Tax (Appeals)

Dy. Commissioner of Sales Tax (Appeals)

⁹ I & II Nariman Point, III-Bandra Borivali, VI-Andheri, V-Ghatkopar, VII-Worli, VIII-Thane, XIII, XV, XVI-Ghatkopar, I-Pune, II-Pune, Kolhapur

2.3.3 Disposal of pending cases

In accordance with the instructions dated 6 May 1996 issued by the Commissioner of Sales Tax, a monthly return showing details of receipt, disposal and closing balance of appeal cases is being furnished by each appellate authority to the Commissioner of Sales Tax. The data received from appellate authorities is compiled by the Commissioner of Sales Tax.

Scrutiny of information furnished by the Commissioner of Sales Tax indicated that the AC (A) and the DC (A) could dispose of 38.65 to 59.07 per cent and 29.80 to 72.26 per cent respectively of the pending appeal cases during the period from 2001-02 to 2004-05 as detailed in the following tables:

Disposal by Assistant Commissioners of Sales Tax (Appeals)

(Amount in crore of rupees)

Year	Opening balance as on 1 st April		Addition during the year		Total		Clearance during the year		Closing balance		Percentage of Col.5 to 4	
(1)	(2)		(3)		(4)		(5)		(6)		(7)	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2001-02	32,102	N.A.	19,182	N.A.	51,284	N.A.	20,520	N.A.	30,764	N.A.	40.01	--
2002-03	30,764	615.22	15,140	359.10	45,904	974.32	18,200	500.71	27,704	473.61	39.64	51.39
2003-04	27,704	473.61	15,009	365.41	42,713	839.01	16,510	311.62	26,203	527.40	38.65	37.14
2004-05	26,203	527.40	7942	474.20	34,145	1,001.60	20,171	457.24	13,974	544.36	59.07	45.65

Disposal by Deputy Commissioners of Sales Tax (Appeals)

(Amount in crore of rupees)

Year	Opening balance as on 1 st April		Addition during the year		Total		Clearance during the year		Closing balance		Percentage of Col.5 to 4	
(1)	(2)		(3)		(4)		(5)		(6)		(7)	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2001-02	15,959	N.A.	6,571	N.A.	22,530	N.A.	6,552	N.A.	15,978	N.A.	29.80	--
2002-03	15,978	2,109.24	5,596	996.25	21,574	3,105.48	10,762	1,641.54	10,812	1,463.94	49.88	52.85
2003-04	10,812	1,463.94	6,262	1,468.34	17,074	2,932.29	9,388	1,281.49	7,686	1,650.80	54.98	43.70
2004-05	7,686	1,650.80	3,260	990.00	10,946	2,640.80	7,910	1,080.29	3,036	1,560.51	72.26	40.90

N.A. Denotes information not made available by the Department.

As on 31 March 2005, 13,974 cases involving Rs 544.36 crore were pending with ACs (A) and 3,036 cases involving Rs 1,560.51 crore with DCs (A).

It would be seen from the above that number of cases finalised by the DCs (A) during the years showed a declining trend.

2.3.4 Targets and achievements

According to circular instructions issued in November 1993 and February 1994, the target for disposal of appeal cases for ACs (A) and DCs (A) was fixed at 1,000 and 600 cases per annum respectively. Analysis of the data received from appellate authorities revealed that 13 appellate authorities did not achieve the target during the years shown against each as detailed in the following table:

DC (Appeals)

Appellate Authority	Year	Achievement against target	Short fall
DC (Appeal) II, MCD*	2002-03	369	(-) 231
DC (Appeal) III, MCD	2002-03	588	(-) 12
DC (Appeal) V, MCD	2002-03	430	(-) 170
DC (Appeal) VIII, Thane	2001-02	513	(-) 87
DC (Appeal) I, Pune	2002-03 2003-04	534 443	(-) 66 (-) 157

*MCD : Mumbai City Division

AC (Appeals)

Appellate Authority	Year	Achievement against target	Short fall
P-2, Nariman Point	2003-04	750	(-) 250
P-3, Churchgate	2001-02	743	(-) 257
	2002-03	760	(-) 240
	2003-04	694	(-) 360
P-9, Worli	2002-03	806	(-) 194
P-11, Andheri	2000-01	830	(-) 170
	2001-02	888	(-) 112
P-12, Andheri	2000-01	842	(-) 158
	2003-04	888	(-) 112
P-14, Ghatkopar	2001-02	753	(-) 247
P-31, Pune	2002-03	855	(-) 145
	2003-04	742	(-) 258
P-32, Pune	2001-02	638	(-) 362
	2002-03	595	(-) 405
	2003-04	610	(-) 390

2.3.5 Delay in disposal of cases

- There is no provision in the BST Act prescribing a time limit for disposal of appeal cases. Similarly, there is no provision for levy of penalty for non attendance or non co-operation by the appellant. Absence of such a provision results in undue delay in appeal proceedings leading to delay in disposal and consequent pendency of appeals.

Test check of appeal cases in the offices of 13¹⁰ DCs (A) and 16¹¹ ACs (A) revealed that in 8 cases delays due to various reasons resulted in blocking of Rs 33.26 crore for periods ranging from 6 months to 91 months from the date of filing of appeal till the date of appeal order or upto the date of audit as detailed in the following table:

¹⁰ I & II Nariman Point, III Bandra, Borivali, VI-Andheri, V-Ghatkopar, VII-Worli, VIII-Thane, XIII, XV, XVI Ghatkopar, I-Pune, II-Pune, DC-Kolhapur.

¹¹ P-1 & P-2 Nariman Point, P-3 & P-4 Churchgate, P-8 & P-9 Worli, P-11 & P-12 Andheri, P-13 Borivali, P-14 & P-15 Ghatkopar, P-26 & P-27 Thane, P-31 & P-32 Pune and P-41 Kolhapur.

(Amount in lakh of rupees)

Sl. No.	Appellate authority No. of cases	Period Month of AO	Month of filing appeal Month of decision of appellate authority	Amount	Decision of appellate authority	Delay in disposal in months
1.	P-9, Worli 2	1992-93 to 1994-95 March 1997	March 1997 October 2002	367.03	Dismissed for non attendance by the dealer.	68
		1994-95 September 1997	November 1997 March 2002	803.63	Dismissed for non attendance by the dealer.	53
Remarks: In the first case the reminder was issued after 15 months of remand of case by the tribunal. In the second case the hearing notice was issued 25 months after remand of case by the tribunal.						
2.	P-3, Churchgate 1	1992-93 March 2000	April 2000 September 2002	53.55	Dismissed for non attendance by the dealer.	30
		1993-94 February 2001	May 2001 September 2002	83.87	Dismissed for non attendance by the dealer.	16
Remarks: Appeals dismissed in September 2002 were restored in December 2002 and the final decision was pending (December 2004).						
3.	P-9, Worli 1	1989-90 to 1992-93 March 1997	May 1997 August 1997	218.85	Remanded for fresh assessment to assessing officer.	91
Remarks: The appellate authority set aside the assessment in August 1997, January 1999 and August 2001. The appeal filed in November 2004 against 3rd fresh assessment made in September 2004 was pending. Despite repeated remands of the case for fresh assessment, the appellate authority did not decide the case on merit.						
4.	DC-VII, MCD 1	1996-97 March 2000	June 2000 December 2002	154.70	Remanded to assessing officer for fresh assessment	31
Remarks: Against the remand order of appellate authority, the appellant filed an appeal with tribunal who in turn remanded the case to the appellate authority. There was delay of 12 months in communicating the tribunal decision to appellate authority.						
5.	DC-II, MCD 1	1989-90 March 1993	June 1993 August 2000	154.58	Dismissed on merit	87
Remarks: The appeal dismissed in August 2000 was restored in December 2000 and again remanded for fresh assessment in March 2001. Against this remand, the dealer filed appeal with tribunal and tribunal in turn remanded the case in December 2002 to the appellate authority. The final decision of the appellate authority was awaited (December 2004).						
6.	P-2, Nariman Point 1	1995-96 August 2003	October 2003 March 2004	766.72	Remanded to assessing officer for fresh assessment	6
Remarks: Exparte assessment was made in August 2003 after service of notice by pasting it at the premises of the dealer in Mumbai. However the dealer had already shifted his place of business to Bhopal in August 2000. It shows that the notice was not properly served by the assessing officer and the case is still pending for fresh assessment.						
7.	DC appeal VIII, Thane 1	1992-93 March 1996	January 2004 --	139.56	Pending	14
		1993-94 February 2002	January 2004 --	583.68	Pending	14
Remarks: The delay in filing of appeal in respect of the period 1992-93 and 1993-94 was 94 and 23 months respectively. The delays were due to non receipt of demand notice and assessment order by the assessee.						
Total				3326.17		

After this was pointed out, the appellate authorities stated that there is no time limit prescribed in the BST Act / Rules for disposal of appeal cases. It is recommended that Government may consider prescribing a time limit for disposal of appeals for speedy disposal of cases and recovery of dues.

2.4 Recovery of sales tax dues treated as arrears of land revenue

2.4.1 Introduction

Under the BST Act, every registered dealer is required to pay the assessed tax dues as mentioned in the demand notice within 30 days from the date of service of demand notice, failing which the assessing authority is empowered to recover such tax, as arrears of land revenue as per the provisions of the Maharashtra Land Revenue Code, 1966.

All the officers in the Sales Tax Department of the rank of sales tax officer and above are vested with the powers of recovery of sales tax dues as arrears of land revenue.

Test check of revenue recovery certificate (RRC) records in nine¹² out of 16 divisions for the years 2000-01 to 2003-04 was conducted between November 2004 and March 2005 and the results thereof are detailed in the following paragraphs:

2.4.2 Trend of recovery

The details of opening balance, additions, recoveries during the year and the outstanding recovery of sales tax dues in 12¹³ divisions in respect of cases in which RRC proceedings were initiated during the years 1999-2000 to 2001-02 are given in the following table. The position for the State as a whole and for the subsequent periods 2002-03 and 2003-04 though called for from the Department in March 2005 has not been received.

(Amount in lakh of rupees)

Year	Opening balance as on 1 st April		Additions during the year		Total		Clearance during the year		Closing balance		Percentage of Col.4 to 3	
	(1)		(2)		(3)		(4)		(5)		(6)	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	Cases	Amount
Upto 1999-2000	4,428	4,617.96	434	527.63	4,862	5,145.59	198	146.78	4,664	4,998.81	4.07	2.85
2000-01	4,504*	4,759.95	807	594.94	5,311	5,354.89	948	127.76	4,363	5,227.13	17.85	2.39
2001-02	4,377*	5,189.29	429	1,584.28	4,806	6,773.57	479	400.56	4,327	6,373.01	9.97	5.91

* Opening balance changed due to transfer of cases.

The percentage of recovery in RRC cases during these years was between 2.39 and 5.91 *per cent* indicating laxity in pursuance and recovery of dues.

¹² Andheri, Borivali, Churchgate, Ghatkopar, Kolhapur, Nariman Point, Pune-I, Pune-II and Thane,

¹³ Andheri, Borivali, Churchgate, Enforcement A, Ghatkopar, Mandvi, Mazgaon, Nariman Point, Pune-I, Pune-II, Thane and Worli.

2.4.3 Failure to take action/inadequate action for recovery of dues

A scrutiny of cases wherein RRCs were issued for recovery of dues revealed that failure to take action or inadequate action resulted in dues amounting to Rs 17.71 crore remaining to be recovered in 24 cases assessed during 1999-2000 to 2003-04, as detailed in the following table:

(Amount in lakh of rupees)

Sl. No.	Name of Divisions	No. of cases	Period involved	Delay in months	Amount involved	Audit observations
1.	Kolhapur, Nariman Point, Pune-I and Pune-II	7	Between 1990-91 and 2000-01	Between 16 and 60	541.14	Assessing authority failed to lodge claim with proper authority viz. BIFR, DRT, official liquidator etc.
2.	Churchgate, Enforcement (D), Nariman Point and Thane	4	Between 1989-90 and 2000-01	Between 14 and 57	1003.38	Non/ delay in issue of RRC's to appropriate authority by assessing authority.
3.	Nariman Point and Pune-I	2	Between 1993-94 and 1999-2000	Between 42 and 62	21.95	No follow up of RRC's sent to other States/ authorities
4.	Kolhapur, Pune-II and Thane	4	Between 1987-88 and 2001-02	Between 17 and 63	133.45	Non disposal of attached properties by the Sales Tax Department.
5.	Nariman Point and Pune-I	3	Between 1995-96 and 1998-99	Between 25 and 45	51.55	Sales tax appellate authority vacated stay/had not given stay in two cases but the sales tax authority did not initiate action to recover the amount.
6.	Kolhapur	1	1992-93	47	8.12	The assessing officer passed assessment orders after disposal/ transfer of property by dealer as such no recovery could be effected.
7.	Andheri	3	Between 1986-87 and 1992-93	--	10.95	Recovery records not produced to audit. Consequently, correctness of dues and adequacy of action taken for recovery could not be verified
	Total	24			1770.54	

The matter was reported to the Department and Government in June 2005; their reply has not been received (December 2005).

2.5 Underassessment of tax under package schemes of incentives

As per the package scheme of incentives in the BST Act and Rules, an eligible unit is entitled to sales tax incentives such as exemption/deferment of sales tax, purchase tax and central sales tax on purchase of raw materials and/or on sale of finished goods during the period covered by the eligibility and entitlement certificates subject to terms and conditions specified in the schemes. Further, the taxes payable are deferred after reducing set off or refund to which the eligible unit is entitled under the Act or Rules.

2.5.1 In the assessments/appeal finalised between October 1999 and November 2002 of four dealers in three¹⁴ divisions for the periods between 1992-93 and 1999-2000, it was noticed that in one case set off of Rs 5.56 crore was incorrectly refunded instead of being adjusted against the tax to be deferred. In the remaining three cases, either tax payable was incorrectly computed or set off was incorrectly allowed or not adjusted aggregating to Rs 0.11 crore in working out the amount of tax to be deferred. The mistakes resulted in underassessment of Rs 5.73 crore including interest and penalty of Rs 0.06 crore.

After this was pointed out between May 2000 and October 2003, the Department revised the assessment orders between April 2004 and November 2004 raising additional demand of Rs 5.73 crore including interest and penalty of Rs 0.06 crore. The dealers had filed appeal. Report on developments in appeal has not been received (December 2005).

The matter was reported to Government in April 2005 and May 2005; Government concurred with the action taken by the Department (December 2005).

2.5.2 An industrial unit covered under the Package Scheme of incentives could purchase raw materials without payment of tax, by furnishing a declaration in Form BC to the selling dealer. The purchases were exempted from tax provided they were used in the manufacture of finished goods in the unit. For failure to do so, purchase tax at the prescribed rate was leviable for contravention of recitals of declaration.

It was noticed in the assessment in March 2003 for the period 1 April 1999 to 31 March 2000 of a dealer holding eligibility certificate in Aurangabad Division, that purchases made on declaration in Form BC were not used in manufacture in the unit. This resulted in contravention of recitals of declaration rendering the dealer liable to purchase tax which was not levied by the assessing authority. The omission resulted in underassessment of tax of Rs 14.78 lakh including interest of Rs 7.57 lakh.

After this was pointed out in August 2003, the Department reassessed the dealer in August 2003 raising additional demand for Rs 14.78 lakh including interest of Rs 7.57 lakh. The dealer paid Rs 3.99 lakh (August 2004 and September 2004) and balance Rs 10.79 lakh was waived under amnesty scheme (December 2005).

¹⁴ Aurangabad, Ghatkopar and Kolhapur (2)

The matter was reported to Government in April 2005; Government concurred with the action taken by the Department (December 2005).

2.6 Short levy of sales tax

Under the provisions of the BST Act, the rate of tax leviable on any commodity is determined with reference to the relevant entry in Schedule B or C of the Act after deducting from the gross turnover, resales of goods purchased by a dealer from other registered dealers, provided the goods were resold in the same form in which they were purchased. Further, the State Government may by notification, exempt any class of sales or purchases from payment of whole or any part of the tax payable under the provisions of the Act subject to such conditions as may be prescribed. Besides, turnover tax, additional tax and interest are also leviable as per the provisions of the Act.

It was noticed in the assessments finalised between June 1999 and January 2004 of 53 dealers in 14¹⁵ divisions for the periods between 1990-91 and 2000-01 that due to application of incorrect rate of tax/ exemption/ computation of taxable turnover, levy of concessional rate of tax or incorrect allowance of resales, there was underassessment of Rs 4.23 crore including interest and penalty of Rs 1.48 crore. A few illustrative cases are given in the following table:

(Amount in lakh of rupees)

Sl. No.	Division	Period Month of assessment	Name of commodity	Taxable turnover	Percentage rate of tax		Underassessment				
					Leviable	Levied	Tax	TOT	Additional tax/ Surcharge	Interest	Total
1.	Ghatkopar	1998-99 March 2002	Bulk drugs	528.21	13	2	58.10	--	--	10.46	68.56
		1990-91 March 2000	Telephone system/ boards	15.12	15	--	2.27	0.19	0.27	20.31	23.04
2.	Mandvi	1998-99 April 2001	Tea	1768.12	8	4	70.73	--	--	54.93	125.66
3.	Nashik	1999-2000 January 2003	Adhesive	575.56	13	8	28.78	--	2.88	11.30	42.96

After this was pointed out between August 2000 and August 2004, the Department revised the assessments/reassessed the dealers between April 2003 and January 2005 raising additional demand for Rs 4.23 crore including interest and penalty of Rs 1.48 crore. Twenty nine dealers paid Rs 0.84 crore between August 2003 and January 2005 and Rs 1.65 crore was waived in 26 cases under Amnesty Scheme, 2004. In two cases, Rs 0.80 lakh was adjusted against refund due. Six dealers had filed appeal. Report on recovery in the

¹⁵ Andheri (11), Aurangabad, Bandra (3), Borivali (5), Churchgate (3), Ghatkopar (10), Kolhapur (2), Mandvi (4), Nashik (5), Nariman Point, Pune-I, Pune-II, Thane (4) and Worli (2)

remaining cases and developments in appeal has not been received (December 2005).

The matter was reported to Government in April 2005 and May 2005. Government concurred with the action taken by Department in 35 cases; their reply in the remaining cases has not been received (December 2005).

2.7 Excess grant of set off

2.7.1 According to the BST Act and Rule 41D made thereunder, a manufacturer who has paid tax on the purchase of iron and steel, goods specified in Schedule 'C' to the Act and used them within the State in the manufacture of taxable goods for sale or export or in the packing of goods so manufactured, was allowed set off of taxes paid at prescribed rates.

It was noticed in the assessments between October 1999 and January 2004 of 44 dealers in 13 divisions¹⁶ for the periods between 1993-94 and 2000-01 that excess set off was allowed due to mistake in computation resulting in underassessment of Rs 67.20 lakh including interest of Rs 14.27 lakh. A few illustrative cases are detailed in the following table:

(Amount in lakh of rupees)

Sl. No.	Division	Period Month of assessment	Nature of irregularity	Underassessment including interest
1.	Kolhapur	<u>1998-99</u> February 2003	Set off was incorrectly worked out as Rs 19.39 lakh instead of Rs 14.67 lakh due to application of incorrect rate of reduction.	8.26
		<u>1999-2000</u> March 2003	Set off was incorrectly allowed at Rs 19.19 lakh instead of at Rs 11.78 lakh due to mistake in computation.	9.61
2.	Thane	<u>1998-99</u> March 2003	Set off on manufactured goods transferred to branches outside Maharashtra was incorrectly allowed.	6.10

After this was pointed out between June 2000 and July 2004, the Department revised/rectified between July 2003 and October 2005 the assessments/cases and raised additional demand for Rs 67.20 lakh including interest of Rs 14.27 lakh. Department recovered/adjusted Rs 32.50 lakh in 32 cases and Rs 17.59 lakh was waived in 19 cases under the amnesty scheme between February 2002 and January 2005. Four dealers had filed appeal. Report on developments in appeal and recovery in the remaining cases has not been received (December 2005).

¹⁶ Andheri (4), Bandra (3), Borivali (2), Ghatkopar (3), Kolhapur (8), Mazgaon, Mandvi, Nashik (3), Nariman Point, Pune-I (4), Pune-II (3), Thane (8) and Worli (3).

The matter was reported to Government in April 2005. Government concurred with the action taken by Department in 35 cases; their reply in the remaining cases has not been received (December 2005).

2.7.2 Under the provisions of the BST Act, a dealer who purchases goods on a declaration issued under any notification under Section 41 and contravenes the recitals of the declaration is liable to pay purchase tax at the rates set out in the schedule on the turnover of such goods. However if any tax was paid by the dealer on purchases which are liable to purchase tax for contravention of recitals of declaration, the tax paid on purchases shall be remitted as set off against the purchase tax levied.

It was noticed in the assessments finalised in March 2000 and June 2000 of two dealers in Ghatkopar and Kolhapur divisions for the periods 1990-91 and 1998-99 that remission of purchase tax levied was granted in excess of that admissible. This resulted in underassessment of Rs 1.77 crore including interest of Rs 1.11 crore.

After this was pointed out in October 2000 and September 2001, the Department reassessed the dealers in August 2004 and September 2004 raising additional demand for Rs 1.77 crore including interest of Rs 1.11 crore. In one case the dealer paid Rs 8.33 lakh in September 2004 and Rs 14.32 lakh was waived under the amnesty scheme. Report on recovery of the balance amount has not been received (December 2005).

The matter was reported to Government in April 2005 and May 2005. Government concurred with the action taken by the Department in one case; their reply in the other case has not been received (December 2005).

2.7.3 Under the provisions of the BST Act and Rule 42H made thereunder, a dealer having turnover of sales in excess of Rs 1 crore (Rs 50 lakh from 1 October 1996 and Rs 40 lakh from 15 May 1997) was entitled to set off of tax paid on purchases of goods for the period from 1 October 1995 to 31 March 1999. The set off was admissible provided purchase price of the goods was not allowed as deduction from turnover of sales. Set off was also not admissible on purchases sold on declarations in Form 14B preceding the sale occasioning the export of the goods out of the territory of India.

It was noticed in the assessments finalised between August 1999 and September 2002 of 10 dealers in six¹⁷ divisions for the periods between 1996-97 and 1998-99 that set off was incorrectly computed or allowed on goods sold on declaration in Form 14B. This resulted in underassessment of Rs 23.56 lakh including interest of Rs 6.95 lakh.

After this was pointed out between June 2000 and February 2004, the Department rectified/revised between July 2003 and November 2004 the assessments raising additional demand for Rs 23.56 lakh including interest of Rs 6.95 lakh. In the case of two dealers, Department adjusted dues of Rs 4.31 lakh against refund payable. Two other dealers paid Rs 0.66 lakh and the balance of Rs 0.48 lakh was waived under Amnesty Scheme. Five dealers had filed appeal. Report on recovery in the remaining case and developments in appeal has not been received (December 2005).

¹⁷ Andheri, Bandra (2), Borivali, Churchgate (4), Mazgaon and Nariman Point.

The matter was reported to Government in April and May 2005. Government concurred with the action taken by the Department in nine cases; their reply in the remaining case has not been received (December 2005).

2.7.4 Under the provisions of Rule 42L of the BST Rules, a dealer in foreign liquor is entitled to set off of taxes paid on purchases effected from 1 May 2000, in respect of foreign liquor as specified in entry 22 in Part-II of Schedule C. Besides, interest is leviable as per the provisions in the Act.

It was noticed in the assessments finalized between January 2003 and February 2004, of three dealers in Borivali and Pune-II divisions for the period 1 April 2000 to 31 March 2001, that set off was incorrectly allowed on purchase of foreign liquor held in stock or sales effected prior to 1 May 2000. This resulted in underassessment of Rs 26.80 lakh including interest of Rs 10.42 lakh.

After this was pointed out in August 2003 and April 2004, the Department revised in August 2004 and September 2004, the assessments raising additional demand for Rs 26.80 lakh including interest of Rs 10.42 lakh. Two dealers paid Rs 3.38 lakh and the balance Rs 2.28 lakh was waived under the amnesty scheme. Report on recovery in the remaining case has not been received (December 2005).

The matter was reported to Government in April 2005. Government concurred with the action taken by the Department in two cases; their reply in the remaining case has not been received (December 2005).

2.7.5 Under the provisions of Rule 41F of the BST Rules, a manufacturer is entitled to full set off of taxes paid or deemed to have been paid on purchases of goods used by him within the State in the manufacture of specified goods for sale. Set off is not admissible on the purchases used in the manufacture of non-specified goods.

It was noticed in the assessments between September 2000 and August 2002 of five dealers in Andheri and Aurangabad divisions, for the periods between 1995-96 and 1999-2000, that set off was incorrectly granted on purchases used in the manufacture of non-specified goods viz. medicines and drugs, plastic granules and plastic powder and soaps. This resulted in underassessment of Rs 25.87 lakh including interest and penalty of Rs 2.07 lakh.

After this was pointed out between July 2001 and February 2003, the Department revised between January 2004 and October 2004 the assessments raising additional demand of Rs 25.87 lakh including interest and penalty of Rs 2.07 lakh. One dealer paid Rs 19.88 lakh between February 2002 and September 2004 and four dealers paid Rs 2.38 lakh in August 2004 and January 2005 and the balance of Rs 3.61 lakh was waived under the amnesty scheme.

The matter was reported to Government in April 2005; Government concurred with the action taken by the Department (December 2005).

2.7.6 According to the BST Act and Rule 43C made thereunder, a registered dealer is entitled to set off of taxes paid or deemed to have been paid on the goods purchased from other registered dealers provided the goods so purchased are resold within a period of nine months from the date of their

purchase in the same form in which they were purchased either in the course of export or in the course of inter-State trade or commerce. Where the goods are transferred outside the State within India, otherwise than by way of sale, set off is reduced by four *per cent* of purchase price of goods including packing materials. Further, interest is leviable as per the provisions of the Act.

It was noticed in the assessments finalised between March 2000 and February 2003 of seven dealers in five¹⁸ divisions for the periods between 1995-96 and 1999-2000 that set off was incorrectly computed at Rs 43.13 lakh instead of Rs 38.10 lakh resulting in underassessment of Rs 6.59 lakh including interest and forfeiture of tax of Rs 1.56 lakh.

After this was pointed out between June 2000 and August 2003, the Department rectified/revised the assessments between January 2003 and September 2004 raising additional demand for Rs 6.59 lakh including interest and forfeiture of tax of Rs 1.56 lakh. Three dealers paid Rs 1.82 lakh between March 2003 and February 2005 and the balance Rs 1.58 lakh was waived under the amnesty scheme. One dealer had filed appeal. Report on recovery in the remaining cases and developments in appeal have not been received (December 2005).

The matter was reported to Government in May 2005. Government concurred with the action taken by the Department in four cases; their reply in the remaining cases has not been received (December 2005).

2.8 Non/short levy of interest/penalty

Under the provisions of the BST Act, if a dealer does not pay tax within the time he is required to pay it or any tax remains unpaid on the date prescribed for filing of the last return in respect of a period of assessment, he shall be liable to pay simple interest at the rate of two *per cent* of the amount of tax for each month or part thereof from the date following the date of the period of assessment till the date of payment or the order of assessment whichever is earlier. The Act also provides for levy of penalty not exceeding the amount of tax payable for concealment of turnover liable to tax. The provisions are also applicable for levy of interest and penalty under the Central Sales Tax Act, 1956.

It was noticed in the assessments finalised between June 1999 and January 2004 of six dealers in five¹⁹ divisions for the periods between 1996-97 and 2000-01 that interest was either not levied/short levied or penalty action deferred. This resulted in underassessment of interest and penalty of Rs 2.18 crore. A few illustrative cases are detailed in the following table:

¹⁸ Andheri (3), Bandra, Ghatkopar, Mandvi and Mazgaon.

¹⁹ Bandra, Kolhapur, Nashik, Pune-II and Worli (2).

(Amount in lakh of rupees)

Sl. No.	Division	Period Month of assessment	Interest/ penalty		Underassessment	Remarks
			Leviable	Levied		
1.	Nashik	1997-98 March 2001	14.80	7.40	7.40	Interest was levied for 18 months instead of 36 months.
2.	Pune-II	1998-99 March 2002	177.91	5.40	172.51	Interest for delayed payment of taxes was short levied under BST Act and not levied under CST Act.
3.	Worli	1996-97 March 2000	20.83	Nil	20.83	Penalty on assessed dues was deferred.

After this was pointed out between January 2001 and July 2004, the Department levied interest and penalty of Rs 2.18 crore. Two dealers paid Rs 0.78 lakh in November 2004 and balance Rs 3.31 lakh was waived under the amnesty scheme. In two other cases of Worli Division, claims were stated to have been lodged (November 2003 and December 2003) with the official liquidator and BIFR. The remaining two dealers had filed appeal.

The matter was reported to Government in April 2005 and May 2005. Government concurred with the action taken by the Department in five cases; their reply in the remaining case has not been received (December 2005).

2.9 Short levy of tax due to incorrect allowance of deduction

Under the provisions of the Maharashtra Works Contract (Re-enacted) Act, 1989, value of goods, if purchased from registered dealers in the State and used in the same form in which they were purchased was allowed deduction from turnover of sales upto 30 April 1998. Otherwise, tax at the rate of four *per cent* was leviable on value of declared goods and in respect of other goods at the rate of tax applicable under the BST Act or 10 *per cent* depending on whether the goods are covered by the Schedule to the Act or not respectively. The rate of tax applicable to goods manufactured and used in the execution of works contract was as enumerated in the Schedule to the Act.

It was noticed in the assessment of June 1999 of a dealer in Andheri Division for the period 1997-98 that indirect import of goods worth Rs 2.24 crore were incorrectly allowed as deduction. Also, purchases from registered dealers of mild steel pipes and plates *etc.*, valued at Rs 3.13 crore used in the fabrication of goods used in works contracts were incorrectly allowed as deduction. This resulted in underassessment of Rs 1.92 crore including interest and penalty of Rs 1.19 crore.

After this was pointed out in January 2001, the Department reassessed in January 2005 the dealer and raised additional demand of Rs 1.92 crore including interest and penalty of Rs 1.19 crore. Report on recovery has not been received (December 2005).

The matter was reported to Government in May 2005; their reply has not been received (December 2005).

2.10 Underassessment of tax

Under the provisions of the Central Sales Tax Act, 1956, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall be deemed to be in the course of export and is exempt from tax. Provided, the last sale or purchase took place and was for the purpose of complying with the agreement or order for such export and the selling dealer produces a certificate in Form H (Form 14B in case of a dealer within the State) duly filled and signed by the exporter alongwith evidence of export of goods. Further, it has been judicially²⁰ held that packing materials which are used as ordinary mode for packing and transportation of goods are not the subject matter of export and hence not eligible for exemption from tax.

It was noticed in the assessments finalised between June 1999 and March 2002 of 22 dealers in 11²¹ divisions for the periods between 1993-94 and 1999-2000 that sales of goods of Rs 6.21 crore was exempted from tax though not supported by prescribed certificate *viz.*, Form H or Form 14B. The sales were either ineligible or were not supported by documentary evidence in relation to the export or incorrectly exempted eventhough the goods were used in the packing of goods for export. This resulted in underassessment of Rs 62.41 lakh including interest and penalty of Rs 21.82 lakh.

After this was pointed out, the Department raised between February 2004 and December 2004 additional demand for Rs 62.41 lakh including interest and penalty of Rs 21.82 lakh. Ten dealers paid Rs 3.47 lakh in April 2004 and January 2005 and the balance Rs 6.09 lakh was waived under amnesty scheme. Six dealers had filled appeal. In one case, action was time barred resulting in loss of revenue of Rs 7.85 lakh. Report on developments in appeal and recovery in the remaining cases has not been received (December 2005).

The matter was reported to Government in April 2005. Government concurred with the action taken by the Department in 17 cases; their reply in the remaining cases has not been received (December 2005).

2.11 Incorrect determination of taxable turnover

Under the BST Act and Rules made thereunder, sales of goods covered by Schedule C to the Act by resellers exceeding the prescribed turnover limit during the previous year, were not allowed as deduction from the taxable turnover but liable to value added tax in respect of sales during the period from 1 October 1995 to 31 March 1999. When the sales turnover was

²⁰ Packwell Industries Pvt. Ltd, v/s State of Tamil Nadu (51 STC 329)

²¹ Andheri (3), Borivali (2), Churchgate, Ghatkopar, Kolhapur, Mandvi, Mazgaon, Nariman Point, Pune-II, Thane (2) and Worli (8).

subjected to tax, the rules provided for grant of set off of tax paid on the purchases, provided, set off was not claimed under any other rule.

It was noticed in the assessments finalised between June 2000 and March 2002 of 10 dealers in six²² divisions for the periods 1997-98 or 1998-99 that as against turnover of sales of Rs 3.06 crore, turnover of sales of Rs 0.65 crore were subjected to tax due to incorrect deduction of sales from the taxable turnover or incorrect computation of turnover of sales resulting in underassessment of Rs 42.39 lakh including interest and penalty of Rs 14.01 lakh.

After this was pointed out between July 2001 and February 2003, the Department revised between December 2003 and January 2005 the assessment orders or reassessed the dealers raising additional demand of Rs 42.39 lakh including interest and penalty of Rs 14.01 lakh. Four dealers paid Rs 10.45 lakh between July 2004 and February 2005 and the balance of Rs 7.68 lakh was waived under amnesty scheme. One dealer had filed appeal. Report on recovery in the remaining cases and developments in appeal have not been received (December 2005).

The matter was reported to Government in April 2005. Government concurred with the action taken by the Department in five cases; their reply in the remaining cases has not been received (December 2005).

2.12 Short/non levy of central sales tax

Under the provisions of the Central Sales Tax Act, 1956, tax on sales in the course of inter State trade or commerce supported by valid declaration is leviable at the rate of four *per cent* of the sale price. Otherwise, tax at twice the rate applicable to the sales inside the State in respect of declared goods and in respect of goods other than declared goods at 10 *per cent* or at the rate of tax applicable to sale or purchase of goods inside the State under the Sales Tax Act of the appropriate State whichever is higher is leviable. Further, interest is also leviable as per the provisions of the BST Act.

It was noticed in the assessments finalised between March 2000 and September 2003 of six dealers in five²³ divisions for the periods between 1996-97 and 1999-2000 that in respect of inter State sales of Rs 2.40 crore due to incorrect application of rate of tax or turnover of sales being excluded or sales not supported by declaration/supported by invalid declaration there was underassessment of Rs 26.90 lakh including interest and penalty of Rs 9.85 lakh. A few illustrative cases are detailed in the following table:

²² Andheri (3), Aurangabad, Ghatkopar (2), Nariman Point, Pune-I (2) and Worli.

²³ Andheri, Ghatkopar, Kolhapur, Mandvi (2), and Worli.

(Amount in lakh of rupees)

Sl. No.	Division	Period Month of assessment	Taxable turnover	Tax		Underassessment		
				Leviable	Levied	Tax	Interest and penalty	Total
1.	Mandvi	1996-97 March 2000	121.98	15.25	4.88	10.37	7.26	17.63
		1999-2000 May 2001	31.37	3.80	1.26	2.54	0.72	3.26
2.	Worli	1997-98 March 2001	29.33	3.54	1.13	2.41	0.87	3.28

After this was pointed out between July 2000 and January 2004, the Department raised between February 2004 and January 2005 additional demand for Rs 26.90 lakh including interest and penalty of Rs 9.85 lakh. Four dealers paid Rs 4.06 lakh between March 2004 and October 2004 and balance Rs 1.95 lakh was waived in the cases of three dealers under amnesty scheme. In one case, Department granted administrative relief of Rs 3.26 lakh and in another case of Mandvi Division, claim was stated to have been lodged (March 2005) with Debt Recovery Tribunal.

The matter was reported to Government in April and May 2005; Government concurred with the action taken by the Department (December 2005).

2.13 Non levy of tax on packing material

Under the provisions of the BST Act, the rate of tax leviable on packing material was the same as that applicable to the sales or purchases of the goods packed during the period 1 April 1989 to 30 September 1995. Further, the State Government by notification with effect from 1 December 1990 exempted sales tax in excess of six *per cent* on sales of bottles containing Indian made foreign liquor (IMFL). Besides, additional tax, turnover tax and interest was also leviable as per provisions of the Act.

It was noticed in the assessment of a dealer in Nariman Point Division for the period 1 April 1995 to 31 March 1996, that sales tax leviable at six *per cent* on sales of bottles of IMFL purchased from outside Maharashtra State was not levied during the period between 1 April 1995 and 30 September 1995. This resulted in underassessment of Rs 22.92 lakh including interest of Rs 6.07 lakh.

After this was pointed out in January 2000, the Department revised in July 2004, the assessment raising demand of Rs 22.92 lakh including interest of Rs 6.07 lakh. The dealer had filed appeal. Report on developments in appeal has not been received (December 2005).

The matter was reported to Government in April 2005; Government concurred with the action taken by the Department (December 2005).

2.14 Short levy of tax due to incorrect exemption

Under the provisions of the BST Act, the State Government by notification exempted, between 1 October 1995 and 31 March 1999, tax in excess of eight *per cent* on the turnover of sale of goods on which the rate of sales tax was less than 16 *per cent* subject to certain conditions. The conditions required that the dealer file monthly return and pay tax at the rate of eight *per cent* on the difference between sale price and the purchase price, when set-off of tax paid on the purchases is not claimed. Besides, interest and penalty was leviable as per the provisions of the Act.

It was noticed in the assessments finalised in September 2001 and October 2002 of two dealers in Nashik and Worli divisions for the periods 1997-98 and 1998-99 that tax in excess of eight *per cent* was incorrectly exempted though one dealer had neither filed monthly returns nor paid tax. In the other case, tax was incorrectly computed. This resulted in underassessment of Rs 5.10 lakh including interest and penalty of Rs 2.03 lakh.

After this was pointed out in January 2003 and May 2003, the Department reassessed/revised in June 2004 and September 2004 the dealer/the assessment order raising additional demand of Rs 5.10 lakh including interest of Rs 2.03 lakh. One dealer paid Rs 0.24 lakh in September 2004 and balance Rs 0.50 lakh was waived under amnesty scheme. Report on recovery in the remaining case has not been received (December 2005).

The matter was reported to Government in April 2005. Government concurred with the action taken by the Department in one case; their reply in the remaining case has not been received (December 2005).

2.15 Revenue in risk

Under the package scheme of incentives in the BST Act and the Rules made thereunder, an eligible unit is entitled to sales tax incentives such as exemption/deferment of sales tax, purchase tax and central sales tax on purchases of raw materials and/or on sales of finished goods during the period covered by the eligibility and entitlement certificates subject to terms and conditions specified in the schemes.

A manufacturer of chemicals in Kolhapur Division was holding exemption certificate for the period from 15 January 1994 to 31 March 1996 under the package scheme of incentives. The registration certificate of the dealer was cancelled in January 2000. In the assessment (July 1998) for the period 1995-96, sales of Rs 34.82 lakh within the State and inter State sales of Rs 47.89 lakh were exempted from tax even though the nature of goods manufactured and sold and eligible for exemption were not specified in the assessment record. Also, sales of zinc ingot of Rs 27.99 crore were allowed as resales without corresponding purchases from registered dealers on or before the date of sale. Further, other income of Rs 1.77 crore was also not subjected to tax.

After the above omissions were pointed out in September 2000, the Department reassessed the dealer in November 2004 after a lapse of four years

despite the registration certificate having been cancelled in January 2000, raising additional demand for Rs 6.71 crore (Rs 6.60 crore under BST Act and Rs 0.11 crore under the CST Act). The delay in reassessment of the dealer after the closure of business resulted in the Department running the risk of recovery of Rs 6.71 crore.

The Department stated in August 2005 that the Dy. Commissioner of Sales Tax was directed to recover the dues as arrears of land revenue. Report on action taken has not been received (December 2005).

The matter was reported to Government in May 2005; Government concurred with the action taken by the Department (December 2005).