

CHAPTER II : SALES TAX

2.1 Results of audit

Test check of the records of the Sales Tax Department conducted during the year 2005-06, revealed underassessment/short levy/loss of revenue amounting to Rs 40.78 crore in 1,093 cases which broadly fall under the following categories.

(Rupees in crore)

| Sl. No. | Category | No. of cases | Amount |
|---------|--|--------------|--------------|
| 1. | Non/short levy of tax. | 600 | 12.93 |
| 2. | Incorrect allowance of set off. | 275 | 3.61 |
| 3. | Non/short levy of interest/penalty. | 42 | 0.64 |
| 4. | Omission to forfeit tax collected in excess. | 18 | 0.07 |
| 5. | Other irregularities. | 157 | 10.16 |
| 6. | Sales/purchases made against declaration forms under BST/CST Act | 1 | 13.37 |
| | Total | 1,093 | 40.78 |

During 2005-06, the department accepted underassessment etc., of Rs 8.41 crore involved in 860 cases, out of which 49 cases involving Rs 0.11 crore were pointed out during 2005-06 and the rest in earlier years. The department recovered Rs 1.85 crore.

A few illustrative cases involving financial effect of Rs 19.60 crore are given in the following paragraphs:

2.2 Sales/purchases on declarations under BST/CST Act

2.2.1 Introduction:

Under the provisions of the Central Sales Tax Act (CST Act) 1956, every dealer, who in interstate trade or commerce, sells any goods against declarations in form C duly filled in and signed by the authorised person is liable to pay tax at the concessional rate of four *per cent*. Interstate sales not supported by declarations in form C are taxable at twice the rate applicable to sale or purchase of the goods inside the appropriate State in respect of declared goods and in respect of other goods at 10 *per cent* or at the rate applicable to sale or purchase of such goods under the State law, whichever is higher. Further, the last sale or purchase of any goods preceding the sale or purchase, occasioning the export of goods out of the territory of India is deemed to be in the course of export, provided the selling dealer produces a certificate in form 14B/H¹ duly filled along with evidence of export of the goods.

With a view to ascertain the correctness of interstate sales claimed by various dealers against declaration forms, 2,555 assessments of selling dealers for the periods between 2000-01 and 2004-05, completed by six Senior Assistant Commissioners, 39 Assistant Commissioners and 50 out of 163 sales tax officers (Class I) in seven² out of 16 divisions in the State were test checked. Data collected from the assessment records in these offices were crossverified with the records in the sales tax offices located at Daman, Delhi, Ghaziabad, Hyderabad and Silvassa, outside Maharashtra, during August 2005 and April 2006.

2.2.2 Irregular grant of exemption on incomplete 'C' forms.

The Commissioner of Sales Tax, by a trade circular dated 14 October 1998, clarified that details of transactions relating to a financial year between the buyer and seller covered by a declaration in form C are to be furnished, duly authenticated by the signature of the purchasing dealer. Incomplete declarations are to be treated as invalid and differential tax and penalty or interest not less than the differential tax as per provisions of the CST Act read with the Bombay Sales Tax (BST) Act, 1959 is leviable.

Test check of assessment records of 34 dealers in seven divisions for the period between 1999-2000 and 2002-03, assessed between 2001-02 and 2004-05, revealed that tax was levied at concessional rate on declarations in form C which were not authenticated involving transactions of Rs 69.10 crore. These forms were to be treated as invalid and differential tax and penalty levied as per orders of Commissioner of Sales Tax. This resulted in short levy of tax of Rs 5.61 crore. Besides, minimum penalty of Rs 5.61 crore was also leviable.

After this was pointed out, in 31 cases, the assessing authorities (AA) stated that the points would be verified. In two cases, the AA stated that the audit observation was technical in nature. In the remaining case, final reply was

¹ Form H – For deemed export of goods purchased from dealers outside Maharashtra.

Form 14B – For deemed export of goods purchased from dealers in Maharashtra.

² Aurangabad, Bandra, Churchgate, Kolhapur, Mandvi, Pune-II and Thane.

awaited. The reply of the AAs in two cases was not acceptable as the Commissioner's instructions had not been observed and tax should have been levied on turnover not supported by valid declarations.

2.2.3 Incorrect allowance of sales on declarations

2.2.3.1 In six divisions³, in the assessments of 16 dealers for the periods between 2000-01 and 2002-03 assessed between June 2003 and March 2006, concessional rate of tax was levied on interstate sales of Rs 7.03 crore supported by declarations in form C.

Cross verification of transactions with reference to the records maintained by the AAs of the purchasing dealers in Daman, Delhi, Hyderabad and Silvassa, revealed that purchases aggregating Rs 2.99 crore only were accounted for as interstate purchases. The balance sales of Rs 4.04 crore had not been accounted for as purchases but were included in the declaration forms furnished to the selling dealers to avail the concessional rate of tax. This resulted in underassessment of Rs 95.74 lakh, including penalty.

2.2.3.2 In the assessment of two other dealers of Aurangabad and Churchgate divisions for the period 2000-01 assessed in December 2003 and February 2004, it was noticed that as against the interstate sales of Rs 52.34 lakh to New Delhi, the corresponding interstate purchases recorded by the purchasing dealers aggregated Rs 66.73 lakh. Thus, sales of Rs 14.39 lakh were concealed by the selling dealers in Maharashtra, resulting in underassessment of Rs 3.44 lakh including penalty.

2.2.3.3 In case of four dealers in three divisions⁴ assessed between January 2004 and October 2005 for the periods between 2000-01 and 2002-03, interstate sales of Rs 7.59 crore supported by declarations in form C effected to five dealers were subjected to tax at the concessional rate of four *per cent*. Cross verification of records of dealers at Delhi, Hyderabad and Silvassa however, revealed that the dealer in Hyderabad discontinued business in 1995-96 while in the case of the dealers registered in Silvassa, it was noticed that the form C had not been issued by the department. Out of the remaining three cases pertaining to Delhi, in two cases it was noticed that the forms were not issued by the department and in the third case, the form was issued by the purchasing dealer of Delhi to a dealer of Rohtak. The underassessment due to acceptance of these declarations amounted to Rs 96.50 lakh, including penalty.

2.2.3.4 In Aurangabad division, in the assessment of a dealer for the period 2000-01 finalised in June 2003, sale of mixers of Rs 10.71 lakh supported by declaration in form 14B, were exempted from tax. On perusal of the case records of the purchasing dealer, it was however noticed that there was no purchase of mixers supported by declaration in form 14B or export (sale) of the commodity. Incorrect allowance of exemption thus resulted in underassessment of tax of Rs 3.28 lakh, including penalty.

2.2.3.5 Under the provisions of the CST (Delhi) Rules, declaration forms are to cover interstate transactions relating to the year for which they are issued.

³ Aurangabad, Bandra, Churchgate, Mandvi, Pune-II and Thane.

⁴ Ghatkopar, Pune-II and Thane.

In three cases, crossverification of interstate transactions relating to the period 2000-01 and 2001-02 assessed between September 2003 and October 2004 revealed that the AAs allowed exemption/concessional rate of tax on transactions of Rs 66.83 lakh on C/H forms which were issued between 1992-93 and 1994-95 and were thus invalid. This resulted in underassessment of Rs 9.88 lakh, including penalty.

The above cases were reported to Government in June 2006; their reply had not been received (December 2006).

2.3 Incorrect allowance of sales in transit

Under the CST Act, sale in the course of interstate trade or commerce of any goods are to be effected by a transfer of documents of the title to the goods during their movement from one State to another. Subsequent sales to registered dealers made while the goods are in movement are exempt from tax, provided such goods are included in the registration certificate of the dealers and supported by declarations in form E-I/E-II and form C.

During test check of records, it was noticed in the assessments finalised in January and March 2001 of two dealers in Andheri and Nariman Point divisions for the periods 1996-97 and 1997-98 that sale of paper valued at Rs 0.60 crore and Indian made foreign liquor valued at Rs 16.05 crore were made while the goods were in transit. The AA, incorrectly exempted the sales from tax though the goods were not supported by prescribed declarations in form E-I/E-II and form C. This resulted in underassessment of tax of Rs 1.32 crore including interest and penalty.

After this was pointed out, the department revised the assessment orders in December 2004 and January 2006, raising additional demand of Rs 1.32 crore including interest and penalty. Report on recovery had not been received (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

2.4 Irregular allowance of exemption on sales in course of export

Under the provisions of the CST Act, sale of goods is deemed to have taken place in the course of export of goods, only if, the sale is occasioned by such export or is effected by transfer of documents of title to the goods after the goods have crossed the customs frontier of India. Such sales are exempt from payment of CST.

In Aurangabad division, in the assessment of a dealer in January 2002 for the period 1998-99, sales of Rs 1.90 crore were incorrectly exempted from tax as export sales though the sales were not supported by documentary evidence such as bill of lading/customs clearance certificate in relation to the export. This resulted in underassessment of tax of Rs 31.25 lakh including interest.

After this was pointed out, the department rectified the assessment in November 2004 and raised an additional demand of Rs 31.25 lakh including interest. Report on recovery had not been received (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

2.5 Short levy of CST

Under the provisions of CST Act, on sales in the course of interstate trade or commerce supported by valid declaration, tax is leviable at the rate of four *per cent* or lower if notified under the Act. Otherwise, tax is leviable 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 including turnover tax and surcharge applicable to the sale or purchase of such goods inside the State, whichever is higher. Further, interest is also leviable on unpaid amount of tax as per the relevant provisions of the Act.

It was noticed in the assessments finalised between September 2001 and March 2004 of nine dealers in five divisions⁵ for the periods between 1996-97 and 2000-01, that interstate sales of Rs 4.37 crore not supported by declarations in form C were taxed at concessional rates. This resulted in underassessment of Rs 20.80 lakh including interest.

After this was pointed out, the department revised the assessment orders in July 2003 to December 2005 raising an additional demand of Rs 20.80 lakh including interest. Four dealers paid Rs 2.65 lakh between September 2004 and December 2005. Report on recovery in the remaining cases had not been received (December 2006).

The matter was reported to Government in March and May 2006; Government concurred with the action taken by the department in two cases, their reply in the remaining cases had not been received (December 2006).

2.6 Underassessment of tax

Under the provisions of CST Act, 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 is deemed to be in the course of export and 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 and form 14B in case of a dealer within the State duly filled and signed by the exporter, along with evidence of export of the goods.

It was noticed in the assessments finalised between December 2001 and July 2003 of six dealers in five divisions⁶ for periods between 1996-97 and 2000-01, that sale of goods of Rs 43.42 lakh were exempted from tax though the sales were either ineligible as the goods exported were different from the goods purchased or were not supported by certificates in form H/form 14B or other documentary evidence in relation to such export. This resulted in underassessment of Rs 7.71 lakh including interest.

⁵ Bandra (2), Borivali (2), Ghatkopar (3), Mazgaon and Nashik.

⁶ Andheri (2), Bandra, Churchgate, Ghatkopar and Worli.

After this was pointed out between March 2003 and October 2004, the department rectified/revised the assessments between May 2004 and November 2005 or reassessed the dealers raising demands for Rs 7.71 lakh including interest. In one case dealer paid Rs 0.32 lakh. Report on recovery in the remaining cases had not been received (December 2006).

The matter was reported to Government in May 2006; Government concurred with the action taken by the department in one case, their reply in the remaining cases had not been received (December 2006).

2.7 Short levy of sales tax

Under the provisions of 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, resale of goods purchased by a dealer from other registered dealers, provided that the goods are resold in the same form in which they were purchased. Further, the State Government could by a notification, exempt any class of sales or purchases from payment of the whole or any part of the tax payable under the provisions of the Act, subject to such conditions as prescribed. Turnover tax, additional tax and interest are also leviable in addition to tax as per the provisions of the Act.

It was noticed in the assessments finalised between March 2001 and November 2004 of 31 dealers in 12 divisions⁷ for periods between 1993-94 and 2002-03 that there was underassessment of Rs 6.27 crore, including interest and penalty, due to application of incorrect rate of tax, incorrect exemption, incorrect levy of concessional rate of tax and incorrect deduction from turnover of sales on account of resales. A few illustrative cases are detailed in the following table:

| Sl. No. | Division | Period Month of assessment | Name of commodity | Taxable turnover (Rupees in lakh) | Rate of tax/tax | | Underassessment (Rs. in lakh) | | | | Total |
|---------|------------|---|----------------------------------|--|-----------------|--------|----------------------------------|----------------------|-------------------------|----------|--------|
| | | | | | Leviable | Levied | Tax | Turn- over tax | Addl. Tax/ surcharge | Interest | |
| 1. | Andheri | 1999-2000 March 2003 | Indian made foreign liquor | 24.97 | 20 | 8 | 2.99 | -- | -- | 3.70 | 6.69 |
| 2. | Bandra (i) | 1997-98 March 2001 | Wire | 21,235.54 | 310.43* | Nil* | 310.43 | -- | -- | 138.51 | 448.94 |
| | (ii) | 2000-01 May 2003 | Auto parts | 34.70 | 10 | Nil | 3.47 | -- | -- | 0.02 | 3.49 |
| 3. | Nashik | 2000-01 November 2003 | Adhesive | 18.89 | 13 | 8 | 0.94 | -- | 0.10 | 0.90 | 1.94 |
| 4. | Worli (i) | 1993-94 & 1995-96 March 2004 | Plastic raw material | 31.43 | 10 | 8 | 0.63 | 0.39 | 0.43 | 3.25 | 4.70 |
| | (ii) | 1996-97, 1997-98 and 1998-99 February 2003 | Lassi | 764.26 | 10 | Nil | 76.42 | -- | -- | 27.52 | 103.94 |

⁷ Andheri (6), Aurangabad (2), Bandra (2), Borivali (2), Churchgate (2), Ghatkopar (5), Nashik, Nariman Point, Pune-I (2), Pune-II (2), Thane (2) and Worli (4).

* Figures represent net tax leviable and tax levied.

After this was pointed out between June 2001 and October 2005, the department revised/rectified the assessment orders between April 2003 and March 2006 raising additional demand for Rs 6.27 crore including interest and penalty. Eleven dealers paid Rs 9.84 lakh between May 2003 and November 2005. In one case Rs 1.22 lakh was adjusted against the refund due to the dealer in the subsequent year. Report on recovery in the remaining cases had not been received (December 2006).

The matter was reported to Government between March and May 2006; Government concurred with the action taken by the department in eight cases; their reply in the remaining cases had not been received (December 2006).

2.8 Non/short levy of turnover tax/additional tax

Under the provisions of the BST Act, every dealer whose annual turnover of sales or purchases ranged between Rs 12 lakh and Rs 1 crore, was liable to pay turnover tax at the rate of 1.25 *per cent* of the taxable turnover between 13 July 1986 and 30 September 1995. Besides, additional tax at the rate of 15 *per cent* (12 *per cent* upto March 1994) of the tax assessed was also leviable, if the turnover of sales or purchases exceeded Rs 10 lakh. Turnover tax and additional tax were however, not leviable during 1 October 1995 to 31 March 1999. Thereafter from 1 April 1999, turnover tax at the rate of one *per cent* was leviable on taxable turnover of sales and surcharge at the rate of 10 *per cent* of the sales tax levied in cases where the aggregate of taxes levied exceeded Rs 1 lakh in any year.

It was noticed in the assessments finalised between July 2002 and July 2004 of 10 dealers in six divisions⁸ for the periods between 1994-95 and 2001-02 that turnover tax, additional tax or surcharge though leviable were either not levied or levied short. This resulted in underassessment of Rs 1.02 crore including interest and withdrawal of interest allowed on refund.

After this was pointed out between December 2003 and September 2005, the department revised/rectified the assessment orders, raising additional demand for Rs 1.02 crore, including interest and withdrawal of interest allowed on refund. Two dealers paid Rs 4.70 lakh. Report on recovery in respect of remaining cases had not been received (December 2006).

The matter was reported to Government in April 2006; Government concurred with the action taken by the department in three cases; their reply in the remaining cases had not been received (December 2006).

2.9 Incorrect grant of set off

2.9.1 According to the BST Act and Rule 41D made thereunder, a manufacturer who had paid tax on purchases of goods specified in Schedule C and used them within the State in the manufacture of goods for sale or export or in the packing of goods so manufactured is allowed set off of tax paid at the prescribed rates. However, after 1 May 1998, when such manufacture resulted in production of goods other than taxable goods, set off was not admissible on

⁸ Andheri, Bandra (2), Borivali (2), Ghatkopar, Nashik (2) and Pune-II (2).

goods including capital goods purchased prior to 1 April 1998. Further, interest was leviable as per the provisions of the Act.

It was noticed in the assessments finalised between May 2001 and May 2004 of 27 dealers in 12 divisions⁹ for the periods between 1991-92 and 2002-03 that set off was allowed in excess due to mistake in computation or tax paid on purchase of goods including capital assets purchased prior to 1 April 1998 and used in the manufacture of tax free goods resulting in underassessment of Rs 1.43 crore including interest and withdrawal of interest allowed on refund. A few illustrative cases are detailed in the following table:

| Sl. no. | Division | Period Month of assessment | Nature of irregularity | Under assessment including interest (Rs. in lakh) |
|---------|----------|---|---|---|
| 1. | Nagpur | 1991-92, 1994-95 to <u>1997-98</u> December 2003 and May 2004 | Set off was incorrectly allowed on purchases of goods including capital assets used in the manufacture of tax free goods (sugar). | 63.03 |
| 2. | Bandra | 1995-96 and <u>1997-98</u> July 2003 | Set off was incorrectly allowed due to mistake in computation. | 2.24 |
| 3. | Mazgaon | 1999-2000, 2000- <u>01</u> and <u>2001-02</u> October 2002 and November 2002 | Set off was incorrectly allowed due to mistake in computation | 7.59 |
| 4. | Thane | <u>1999-2000</u> September 2003 | Set off on manufactured goods transferred to branches outside Maharashtra was incorrectly computed. | 3.07 |
| 5. | Worli | <u>1998-99</u> March 2002 | Set off including interest was incorrectly computed as Rs 89.92 lakh instead of Rs 60.83 lakh. | 29.09 |

After this was pointed out between July 2001 and March 2005, the department rectified/revised the assessments or reassessed the dealers in 26 cases, raising additional demand of Rs 80.45 lakh including interest and withdrawal of interest allowed on refunds. In case of the dealer in Nagpur division, notice for reassessment was issued in May 2006. Eleven dealers paid Rs 32.33 lakh between July 2004 and May 2006. In four cases, Rs 31.23 lakh was adjusted against refunds due to the dealers in the subsequent years. Report on recovery in the remaining cases and action taken in the case of the dealer in Nagpur division had not been received (December 2006).

⁹ Andheri (5), Bandra, Borivali (3), Ghatkopar, Kolhapur, Mazgaon (3), Nagpur, Nashik, Nariman Point (2), Pune-II (4), Thane and Worli (4).

The matter was reported to Government in April and May 2006; Government concurred with the action taken by the department in five cases; their reply in the remaining cases had not been received (December 2006).

2.9.2 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 a 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 the purchase price of the goods was not allowed as deduction from turnover of sales. Set off was, however, not admissible on purchases of goods sold on declarations in form H, 14B and 15EC¹⁰.

It was noticed in the assessments finalised between March 2001 and May 2003 of four dealers in four divisions¹¹ for the periods between April 1997 and March 1999 that set off was incorrectly computed or allowed on purchases of goods sold on the aforesaid declaration forms resulting in underassessment of Rs 8.96 lakh, including interest and withdrawal of interest allowed on refunds.

After this was pointed out between February 2003 and June 2004, the department revised/rectified the assessments between June 2004 and February 2005 by withdrawing the excess set off allowed and raised additional demand for Rs 8.96 lakh including interest and withdrawal of interest allowed on refund. One dealer paid Rs 0.53 lakh. Report on recovery in the remaining cases had not been received (December 2006).

The matter was reported to Government in April 2006; their reply had not been received (December 2006).

2.9.3 Under the provisions of Rule 41F of the BST Rules, a manufacturer is entitled to full set off of tax paid on purchases of goods used by him within the State in the manufacture of specified goods for sale such as cotton thread, non ferrous metal and iron castings. Where the process of manufacture results in production of the specified goods and other goods, set off is to be apportioned between the specified goods and other goods on the basis of sale price of manufactured goods and allowed to the extent of the specified goods manufactured.

It was noticed in the assessments between August 2001 and March 2003 of four dealers in Andheri, Ghatkopar and Nariman Point divisions for the periods between 1996-97 and 1998-99 that set off of tax paid on purchases used in manufacture of non specified goods such as medicines, fire extinguisher parts, plastic raw materials, oil cakes, hydrogenated vegetable oil and edible vegetable non essential oil was incorrectly granted, treating them as specified goods. This resulted in underassessment of Rs 5.14 lakh including interest.

After this was pointed out, the department revised the assessment order/reassessed the dealers between April 2004 and February 2005 raising additional demands of Rs 5.14 lakh including interest. Report on recovery had not been received (December 2006).

¹⁰ Form 15EC – Sales to units opting for deferral of taxes under package scheme of incentive.

¹¹ Andheri, Mandvi, Nariman Point and Thane.

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

2.10 Incorrect summary assessment

Under the provisions of the BST Act and instructions of the Commissioner of Sales Tax, an assessing officer is empowered, to assess a dealer under summary assessment by accepting the returns filed by him provided the gross tax payable under the BST and the CST Acts before adjustment of set off does not exceed Rs 4 lakh and the dealer is not liable to pay Value Added Tax (VAT).

During test check of records, it was noticed that three dealers in Andheri, Borivali and Mazgaon divisions were summarily assessed between July 2000 and October 2002 for the periods between 1994-95 and 2001-02 even though in two cases, the gross tax payable by the dealers exceeded the prescribed limit while in the third case, the dealer was liable to pay VAT. The department was, therefore, requested to verify the correctness of acceptance of the returns.

After this was pointed out between May 2001 and October 2003, the department revised the assessment orders between March 2004 and March 2006 and raised an additional demand of Rs 57.85 lakh including interest and penalty. Report on recovery had not been received (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

2.11 Non forfeiture of excess collection of tax

Under the provisions of the BST Act, no registered dealer is allowed to collect any amount by way of tax in excess of the amount of tax payable by him. Excess tax collected is to be forfeited to Government.

It was noticed in the assessments finalised in April and June 2003 of a dealer in Bandra division for the periods 1999-2000 and 2001-02 that as against tax payable of Rs 51.53 lakh as determined by the AA, the dealer collected tax of Rs 71.41 lakh. The excess tax collection of Rs 19.88 lakh was to be forfeited to Government account, which was not done.

After this was pointed out in September 2004, the department rectified the assessments in April 2005 raising an additional demand of Rs 19.92 lakh including penalty. Report on recovery had not been received (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

2.12 Non levy of purchase tax

Under the provisions of the BST Act and the Rules made thereunder, during the period 1 September 1990 to 30 September 1995, when a dealer purchased any goods specified in Part-I of Schedule C, he was liable to pay, in addition to sales tax, purchase tax at the rate of two *per cent* on the turnover of such

purchases, unless the goods so purchased were resold by him. Further, with effect from 1 October 1995, purchase tax was leviable on purchases of goods used in the manufacture of taxable goods which were transferred to branches outside the State otherwise than as sale. Additional tax (upto September 1995) and interest were payable as per the provisions of the Act.

It was noticed in the assessments/appeal order finalised between October 2001 and April 2003 of four dealers in four divisions¹², for periods between 1994-95 and 2000-01 that purchase tax though leviable, was not levied/short levied on purchase of non ferrous metals and bulk drugs valued at Rs 6.16 crore used in manufacture of goods transferred to branches outside the State. This resulted in underassessment of Rs 11.74 lakh including interest and withdrawal of interest granted on refund.

After this was pointed out, the department revised between November 2004 and December 2005 the orders raising additional demands for Rs 11.74 lakh, including interest and withdrawal of interest granted on refund. Of this, three dealers paid Rs 8.80 lakh. Report on recovery of the balance amount had not been received (December 2006).

The matter was reported to Government in May 2006; Government concurred with the action taken by the department in two cases; while reply in the remaining cases had not been received (December 2006).

2.13 Incorrect deferment of tax under package scheme of incentives

As per the package scheme of incentives in the BST Act and Rules, an eligible unit is entitled to incentive in the form of deferment of local sales tax and CST on the sales of finished goods and purchase tax on the purchase of raw materials during the period covered by the eligibility and entitlement certificates subject to terms and conditions specified in the schemes. Further, taxes leviable are required to be deferred after reducing set off or refund to which the eligible unit is entitled under the Act or Rules.

In the assessments finalised between May 2001 and January 2002 of a dealer in Nashik Division for the periods between 1998-99 and 2000-01, it was noticed that, instead of adjusting the amount of set off from the gross tax levied before deferment of tax, the same was refunded to the dealer. This resulted in underassessment of Rs 9.89 lakh including interest.

After this was pointed out, department reassessed the dealer in December 2005 and raised additional demand of Rs 9.89 lakh including interest which was paid by the dealer in February 2006.

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

¹² Borivali, Ghatkopar, Pune-II and Thane

2.14 Non/short levy of interest

Under the BST Act, if any tax remains unpaid on the date prescribed for filing of the last return in respect of a period of assessment, the dealer is 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.

It was noticed in the assessments between August 2001 and March 2003 of three dealers in Bandra, Churchgate and Kolhapur divisions for the period 1998-99 or 1999-2000 that interest of Rs 6.83 lakh leviable for delays ranging from 13 to 62 months in payment of tax dues of Rs 18.90 lakh was either not levied or levied short.

After this was pointed out between October 2002 and August 2004, the department rectified/revised the assessments between July 2004 and March 2005 and raised additional demands for Rs 6.83 lakh. In one case, the dealer paid Rs 0.21 lakh. Report on recovery in the remaining cases had not been received (December 2006).

The matter was reported to Government in April 2006; their reply had not been received (December 2006).

2.15 Excess allowance of interest on refund

Under the provisions of the BST Act, in respect of any period of assessment commencing on or after 1 April 1995 and upto 31 October 2004, a registered dealer was entitled to receive in addition to refund of tax due, simple interest at the rate of 12 *per cent* per annum from the date following the period of assessment till the date of the assessment order or for a period of 18 months, whichever was less. The interest was to be calculated on the net refund due after deducting penalty and interest levied and after adjustment of the dues under the BST/CST Act.

It was noticed in the assessments finalised between March 2001 and July 2003 of five dealers in five divisions¹³ for periods between 1995-96 and 1998-99 that interest on refund was incorrectly computed, resulting in excess refund of interest of Rs 5.05 lakh.

After this was pointed out, the department revised/rectified the assessments or reassessed the dealers between June 2004 and November 2005, raising additional demand of Rs 5.05 lakh. In one case, Rs 1.35 lakh was adjusted against the refund due to a dealer in the subsequent year. Report on recovery in the remaining cases had not been received (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

¹³ Aurangabad, Bandra, Nashik, Pune-I and Pune-II