

## CHAPTER II : SALES TAX

### 2.1 Results of audit

Test check of the records of the Sales Tax Department conducted during the year 2007-08, revealed underassessment/short levy/loss of revenue amounting to Rs. 147.08 crore in 763 cases as shown below :

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1.	Loss of revenue under Motor Spirit Taxation Act	2	62.34
2.	Non/short levy of tax	420	47.03
3.	Other irregularities	253	34.43
4.	Incorrect allowance of set-off	88	3.28
<b>Total</b>		<b>763</b>	<b>147.08</b>

In response to the observations made in the local audit reports during the year 2007-08 as well as during earlier years, the department accepted underassessments and other deficiencies involving Rs. 10.73 crore in 594 cases. Out of this, 22 cases involving Rs. 57.50 lakh were pointed out during 2007-08 and rest during earlier years. During the year 2007-08, the department recovered Rs. 1.94 crore in 198 cases out of which Rs. 80,000 in six cases were pointed out during 2007-08 and rest in earlier years.

A few illustrative cases involving Rs. 41.74 crore are mentioned in the succeeding paragraphs, against which an amount of Rs. 4.03 lakh had been recovered upto November 2008.

## **2.2 Loss of revenue under Motor Spirit Taxation Act**

Under the provisions of the Bombay Sales of Motor Spirit Taxation Act, 1958 and the rules made thereunder, tax is leviable on the sale of motor spirit at the stage of first sale by an importer or manufacturer of motor spirit. The Act and rules made thereunder do not provide for any specific percentage of losses on account of leakage/evaporation, transportation etc., to be allowed as deduction in computing the turnover of sales liable to tax. In 1976, the Oil Pricing Committee (OPC) had fixed the norms for permissible loss on account of evaporation/storage of petrol and diesel (including other products) as 0.5 *per cent* and 0.12 *per cent* respectively.

During test check of the records of Nariman Point division in April 2008, it was noticed in the assessments of Hindustan Petroleum Corporation Ltd. and Indian Oil Corporation Ltd., finalised between November 2006 and March 2008 for the periods between 1998-99 and 2002-03, that as against the OPC norms, excess claims of losses was allowed in the assessments in respect of 1,014.78 lakh litres of petrol, diesel and aviation turbine fuel. This resulted in loss of revenue of Rs. 62.34 crore.

After the cases were pointed out in April 2008, the assessing officer (AO) stated in April 2008 that it would be logical to work out the net losses after considering the gains also. The reply is not tenable as the OPC norms specify the permissible losses only, which are applicable to the oil companies. Hence, in the absence of any specific provision in the Act, these norms were required to be adopted.

The matter was reported to the department in May 2008 and the Government in May 2008; their reply has not been received (November 2008).

## **2.3 Short levy of interest**

Under the provisions of the Bombay Sales Tax (BST) Act, 1959 if any tax remained unpaid on the date prescribed for filing of the last return in respect of the period of assessment, the dealer was required to pay simple interest at the rate of two *per cent* (1.25 *per cent* with effect from July 2004) 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 was earlier. Further, by an amendment effective from 15 May 1997, no interest was payable if the dealer had filed all the returns by the due date and if the tax amount remained unpaid was less than 10 *per cent* of his tax liability. Interest was leviable for a maximum period of 18 months provided the dealer had neither concealed the particulars of transactions nor knowingly furnished inaccurate particulars of any transactions liable to tax.

During test check of the records of Nariman Point division in February 2008, it was noticed that a dealer had furnished inaccurate particulars of transactions liable for tax. However, the AO while finalising the assessment of the dealer in March 2007 for the period 1998-99, incorrectly levied interest for 50 months instead of 98 months on the assessed dues of Rs. 15.76 crore. This resulted in short levy of interest of Rs. 11.23 crore.

After the case was pointed out in February 2008, the Deputy Commissioner of Sales Tax (Assessment) stated that it was a best judgment assessment and normally interest was leviable not exceeding the tax liability. The reply is not tenable as there was no enabling provision in the Act to restrict the levy of interest to the extent of tax liability. Hence, the interest was leviable till the date of order of the assessment as per the provisions of the Act. Further report has not been received (November 2008).

The matter was reported to the department in March 2008 and the Government in May 2008; their reply has not been received (November 2008).

## **2.4 Incorrect grant of sales tax exemption under package scheme**

As per the package scheme of incentives under the BST Act and the rules made thereunder, a manufacturer in an eligible unit was entitled to avail of tax incentives under the exemption mode in respect of sales tax, purchase tax, central sales tax and sale of finished goods which were mentioned in the eligibility certificate during the period covered in the eligibility and entitlement certificate within the admissible monetary ceiling. After assessing the dealer, the cumulative quantum of benefits (CQB) availed by the dealer during a year is determined as per the provisions of the relevant BST Rules, 1959. The CQB is then reduced from the available monetary ceiling at the beginning of each year. In case, the CQB exceeds the monetary limit, the excess amount becomes liable to be recovered from the dealer. Besides, interest at the rate of two *per cent* (1.25 *per cent* with effect from July 2004) and penalty as per the relevant provisions of the BST Act were also leviable.

**2.4.1** During test check of the records in Nashik division in December 2005, it was noticed in the assessment finalised in December 2004 for the year 1999-2000, of a dealer manufacturing *vanaspati*, edible oil and oil cakes, that on sale of *vanaspati* valued at Rs. 12.86 crore, the AO had not levied tax on Rs. 11.11 crore and levied tax at lesser rate on Rs. 1.75 crore. This resulted in incorrect determination of CQB and consequential excess availment of incentives of Rs. 24.90 lakh over and above the prescribed monetary ceiling. This resulted in underassessment of tax of Rs. 30.47 lakh including interest of Rs. 5.57 lakh.

**2.4.2** During test check of the records of Kolhapur division in October 2007, it was noticed in the assessments of a dealer finalised in December 2006, for the periods between 2001-02 and 2004-05, that on manufacture and sale of laminated particle board aggregating Rs. 48.87 crore, exemption from payment of sales tax was incorrectly allowed though the exemption from tax was admissible on pre-laminated particle board as per the eligibility certificate issued to the dealer. This resulted in underassessment of tax of Rs. 14.41 crore including interest of Rs. 1.89 crore and maximum penalty of Rs. 6.26 crore.

The matter was reported to the department in January 2006 and November 2007 and the Government in May 2008; their reply has not been received (November 2008).

## **2.5 Irregular grant of exemption on account of export sale**

Under section 5(1) of the Central Sales Tax (CST) Act, 1956, sale or purchase of goods shall be deemed to have taken place in the course of export of goods out of the territory of India only if the sale or purchase either occurs on such an occasion as is effected by a transfer of documents of title to the goods such as bill of lading, dock warrant, railway receipt etc., after the goods have crossed the customs frontiers of India.

**2.5.1** During test check of the records of Andheri and Nariman Point divisions, it was noticed that in respect of three dealers, sales transactions valued at Rs. 9.39 crore, for periods between 2001-02 and 2003-04, assessed during 2005-06, were exempted from tax as export sales, though these sales were not supported by documentary evidence such as bills of lading, dock warrant, railway receipts etc. This resulted in underassessment of tax of Rs. 58 lakh.

**2.5.2** During test check of the records of seven<sup>1</sup> divisions, it was noticed that, in respect of 14 dealers, sales transactions valued at Rs. 219.18 crore, for periods 2001-02 and 2004-05, assessed between 2005-06 and 2007-08, in respect of readymade garments, machinery parts, etc., were allowed as export and exempted from tax. On cross verification of these sales with the export data of the Customs Department, it was noticed that total export sales of only Rs. 81.38 crore had been accounted for. Thus, incorrect exemption of tax allowed on claims of export sales of Rs. 137.80 crore resulted in underassessment of tax of Rs. 7.08 crore.

The matter was reported to the department and the Government in July 2008; their reply has not been received (November 2008).

## **2.6 Short levy of sales tax**

Under the provisions of the BST Act, the rate of tax applicable on any commodity is determined with reference to the relevant entry in Schedule 'B' or 'C' of the Act. Further, the Government, by notification from time to time, exempts certain sales or purchases from payment of tax in full or any part thereof, which are payable under the provisions of the Act, subject to such conditions as are prescribed. Besides, turnover tax (TOT), surcharge (SC) and interest are also leviable as per the provisions of the Act.

**2.6.1** During test check of the records in the office of Sales Tax Officer (STO), C-975, Chandrapur in May 2007, it was noticed in the assessment of a dealer finalised in March 2007, for the periods 2000-01 and 2001-02, that on sales of 'lignite including leco' valued at Rs. 17.52 crore, the STO had levied tax at the rate of four *per cent* instead of at eight *per cent* as was applicable on the commodity during the relevant period. This resulted in short levy of sales tax of Rs. 2.09 crore.

After the case was pointed out, the Joint Commissioner of Sales Tax (Admn.) stated that the STO had reassessed the dealer in December 2007, raising additional demand of Rs. 2.01 crore including TOT, SC, interest and penalty.

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<sup>1</sup> Andheri (2), Churchgate (2), Mandvi (3), Mazgaon (2), Nariman Point (1), Thane (2) and Worli (2).

The scrutiny of reassessment order, however, revealed that the STO had incorrectly worked out demand payable at Rs. 2.01 crore against Rs. 2.09 crore resulting in short demand of Rs. 8.28 lakh. Further report has not been received (November 2008).

**2.6.2** During test check of the records of 13<sup>2</sup> divisions between May 2003 and July 2007, it was noticed in the assessments of 45 dealers finalised between April 2002 and May 2006, for the period between 1993-94 and 2004-05, that due to application of incorrect rates of tax, incorrect grant of exemptions, non-levy of tax, incorrect computation of turnover of sales and error in computation of tax, there was underassessment of tax of Rs. 1.66 crore, including interest of Rs. 72.69 lakh. A few illustrative cases are mentioned below:

(Rupees in lakh)

Sl. No.	Division No. of dealer	Period Month of assessment	Name of commodity	Nature of irregularity	Taxable turnover	Tax leviable levied (per cent)	Under assessment	Total
							Tax/TOT/SC/Interest	
1.	Andheri 1	2002-03 May 2006	Duty entitlement pass book (DEPB) licence	Tax was not levied on sale of DEP licence	117.06	4 Nil	4.68 1.17 0.47 7.08	13.40
2.	Nashik 1	1996-97 December 2003	Indian made foreign liquor (IMFL)	Exemption was incorrectly allowed to unregistered dealer	27.06	20 Nil	5.41 -- -- 12.99	18.40
3.	Nashik 1	1998-99 February 2003	Beverages	Deduction of credit notes were incorrectly allowed from taxable turnover of sales	81.58	20 Nil	16.32 -- -- 1.66	17.98
4.	Andheri 1	1993-94 October 2004	Metal (non-ferrous)	Sales not supported with valid declarations were incorrectly exempted from tax	91.64	4 Nil	3.67 1.50 0.46 10.58	16.21
<b>Total</b>							<b>30.08 2.67 0.93 32.31</b>	<b>65.99</b>

After the cases were pointed out between August 2003 and August 2007, the department rectified/revised the assessment or re-assessed the dealers between May 2004 and December 2007, raising additional demands of Rs. 1.69 crore,

<sup>2</sup> Andheri (5), Aurangabad (1), Borivali (8), Ghatkopar (4), Kolhapur (4), Mandvi (1), Mazgaon (1), Nariman Point (2), Nashik (8), Pune I (1), Pune II (5), Thane (2) and Worli (3).

including penalty of Rs. 2.81 lakh, against which one dealer paid Rs. 1.12 lakh. A report on recovery in the remaining cases has not been received (November 2008).

The matter was reported to the Government in April and May 2008; their reply has not been received (November 2008).

## 2.7 Incorrect grant of set-off

**2.7.1** According to the BST Act and the rules made thereunder, a manufacturer who had paid tax on purchase of goods specified in entry 6 of Schedule 'B' and 'C' to the Act and used those goods 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 tax paid on the purchases at the prescribed rates. Where the manufactured goods were transferred to the branches otherwise than as sale, set-off was to be allowed proportionately. Besides, interest and penalty was leviable as per the provisions of the BST Act.

**2.7.1.1** During test check of the records in the office of the Assistant Commissioner of Sales Tax (ACST), A-26, Nagpur in October 2007, it was noticed in the assessment for the year 2001-02 finalised in March 2007 of M/s. Western Coal Field Ltd., Nagpur that the set-off of Rs. 13.45 crore was allowed without considering coal value as Rs. 376.95 crore supplied free of the cost to the employees for determining total sales. This resulted in incorrect grant of set-off of Rs. 2.21 crore including interest.

After the case was pointed out in November 2007, the department accepted the mistake in March 2008 and stated that the matter has been referred to the Joint Commissioner of Sales Tax (Appeal) Nagpur. Further report has not been received (November 2008).

**2.7.1.2** During test check of the records of eight<sup>3</sup> divisions between October 2002 and July 2006, it was noticed in the assessments of 14 dealers, finalised between February 2002 and November 2005, for the period between 1996-97 and 2004-05, that set-off was incorrectly granted either due to errors in computation or due to purchases which did not qualify for set-off. This resulted in underassessment of tax of Rs. 1.33 crore, including interest of Rs. 5.84 lakh. A few illustrative cases are mentioned below:

(Rupees in lakh)

Sl. No.	Division No. of dealer	Period Month of assessment	Nature of irregularity	Under-assessment including interest
1.	Aurangabad 1	1998-99 April 2002	Set-off was incorrectly allowed on purchase of machinery which did not qualify for set-off.	58.24
2.	Nashik 1	1998-99 February 2003	Set-off was incorrectly allowed on purchases of bottles and crates which were not sold.	38.84

<sup>3</sup> Andheri (1), Aurangabad (2), Churchgate (1), Ghatkopar (5), Nariman Point (1), Nashik (1), Pune II (2) and Worli (1).

3.	Ghatkopar 1	2000-01 October 2004	Set-off was incorrectly allowed on purchases of chemicals (form 31 <sup>4</sup> ) at 13 per cent instead of eight per cent.	14.28
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After the cases were pointed out between November 2002 and August 2006, the department rectified the mistakes/revised the assessments between May 2004 and August 2007 and raised additional demands totalling Rs. 1.46 crore including penalty of Rs. 13.48 lakh, against which one dealer paid Rs. 61,838. A report on recovery in the remaining cases has not been received (November 2008).

**2.7.2** According to Rule 43C of the BST Rules, a registered dealer was entitled to set-off of taxes paid on the turnover of purchases of goods from other dealers registered in Maharashtra, provided the goods so purchased were resold either in the course of export or in the course of interstate trade or commerce within a period of nine months from the dates of their purchases in the same form in which they were purchased. Besides, interest and penalty was leviable as per the provisions of the Act.

During test check of the records of Borivali, Ghatkopar and Mazgaon divisions between January 2005 and November 2006, it was noticed in the assessments of three dealers, finalised between June 2002 and June 2005 for the period between 1999-2000 and 2003-04, that set-off was incorrectly allowed on purchases which either did not qualify for set-off or was incorrectly computed. This resulted in underassessment of tax of Rs. 12.29 lakh including interest of Rs. 5.69 lakh.

After the cases were pointed out between February 2005 and December 2006, the department revised/rectified the assessments between December 2006 and April 2007, raising additional demands totalling Rs. 12.38 lakh, including penalty of Rs. 9,000, against which one dealer paid Rs. 1.80 lakh. A report in respect of the remaining cases has not been received (November 2008).

**2.7.3** According to the BST Act and Rule 42F of the BST Rules, a registered dealer was entitled to set-off of taxes paid on the turnover of purchases of goods notified under the provisions of the BST Act, on their resale, otherwise than in the course of interstate trade or commerce or exports out of the territory of India.

During test check of the records of Nariman Point division in January 2004, it was noticed in the assessment, finalised in April 2002 of a dealer running a five star hotel, for the period 2001-02, that on resale of soft drinks, mineral water and ice creams, set-off was incorrectly allowed on purchases though the sales in the five star hotel was not covered by the notification for grant of set-off under the said rules. This resulted in underassessment of tax of Rs. 7.32 lakh.

After the case was pointed out in February 2004, the department revised the assessment in February 2008 raising additional demand of Rs. 7.32 lakh. A report on recovery has not been received (November 2008).

<sup>4</sup> A certificate issued by the selling dealer confirming that sale price is inclusive of tax leviable.

The matter was reported to the Government in April and May 2008; their reply has not been received (November 2008).

## **2.8 Irregular grant of exemption from payment of tax against form 'H'**

Under the provisions of the CST Act and the rules made thereunder, 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 is exempt from tax, provided, the last sale or purchase took place after, and was for the purpose of complying with the agreement or order for or in relation to such export. Also, the selling dealer is required to produce a certificate in form 'H' duly filled in and signed by the exporter along with the evidence of export of goods.

During test check of the records of 12<sup>5</sup> divisions assessed between 2003-04 and 2006-07, it was noticed that in respect of 29 dealers for the period between 1995-96 and 2004-05, sales transactions valued at Rs. 25.16 crore were exempted from tax on certificates in form 'H'. Scrutiny revealed that the dealers had not furnished the copies of bills of lading, agreement orders from the foreign buyers and purchase orders of the local dealers in support of their claims for export. This resulted in irregular grant of exemption from tax of Rs. 2.67 crore.

The matter was reported to the department and the Government in July 2008; their reply has not been received (November 2008).

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

Under the provisions of the CST Act, tax on sales in the course of interstate trade or commerce, supported by valid declarations in form 'C', is leviable at the rate of four *per cent* of the sale price. Otherwise, in respect of declared goods, tax is leviable at twice the rate applicable on sales inside the State and in respect of goods other than declared goods, at 10 *per cent* or at the rate of tax applicable to the sale or purchase of such goods inside the State, whichever is higher. Besides, interest and penalty is also leviable as per the provisions of the BST Act. Further, the Commissioner of Sales Tax, by a trade circular dated 14 October 1998, clarified that details of transactions between buyers and sellers covered by declarations in form 'C' relating to a financial year were to be furnished, duly authenticated by the purchasing dealers. Incomplete declarations were to be treated as invalid and differential rates of tax as per the provisions of the CST Act, read with the BST Act were to be levied.

**2.9.1** During test check of the records it was noticed that in respect of 24 dealers in 11<sup>6</sup> divisions for periods between 1995-96 and 2004-05, assessed between 2004-05 and 2006-07, tax was levied at the concessional rate on 30 incomplete declarations in form 'C' involving transactions valued at Rs. 18.92

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<sup>5</sup> Andheri (3), Bandra (1), Borivali (1), Churchgate (2), Ghatkopar (4), Mandvi (1), Mazgaon (1), Nariman Point (5), Pune I (1), Pune II (2), Thane (5) and Worli (3).

<sup>6</sup> Andheri (3), Aurangabad (1), Bandra (1), Borivali (1), Churchgate (2), Ghatkopar (1), Mandvi (2), Mazgaon (1), Nariman Point (8), Pune II (1) and Thane (3).



crore which also included three unauthenticated declarations. These forms should have been treated as invalid and differential amount of tax as per the provisions of the CST Act read with the BST Act, should have been levied, which was not levied. This resulted in short levy of tax of Rs. 1.50 crore.

**2.9.2** During test check of the records of three<sup>7</sup> divisions between January 2005 and September 2005, it was noticed in the assessment of three dealers finalised between June 2003 and September 2004, for the periods between 1993-94 and 2000-01, that interstate sales valued at Rs. 75.98 lakh, were subjected to tax at the concessional rate though these sales were not supported by the prescribed declarations. This resulted in underassessment of tax of Rs. 25.68 lakh, including interest of Rs. 16.67 lakh.

After the cases were pointed out between February 2005 and October 2005, the department reassessed one dealer and revised the remaining assessments between December 2006 and September 2007 raising additional demands totalling Rs. 25.88 lakh, including penalty of Rs. 20,000, against which one dealer paid Rs. 48,504. A report on recovery in the remaining cases has not been received (November 2008).

**2.9.3** During test check of the records it was noticed between January and May 2008 that in the assessments of 19 dealers in eight<sup>8</sup> divisions for the periods between 2000-01 and 2004-05, on interstate sales of electrical switchgears, drugs, motor vehicles, chemicals, etc., valued at Rs. 12.59 crore, concessional rate of tax at four *per cent* was levied during 2006-07 on production of form 'C' by the purchasing dealers. Cross verification of these sales transactions with the records maintained by the AOs of the purchasing dealers in Delhi, Gujarat, Goa, Madhya Pradesh and Uttar Pradesh revealed that purchases valued at Rs. 4.90 crore only were accounted for as interstate purchases. Thus, the dealers were incorrectly granted concessional rate of tax at four *per cent* on the differential sales of Rs. 7.69 crore. This resulted in underassessment of tax of Rs. 56.80 lakh.

**2.9.4** During test check of the records, it was noticed that in the assessment of two dealers in Aurangabad and Pune divisions for the period 2001-02 and 2004-05 assessed during the year 2006-07, concessional rate of tax of four *per cent* was levied on sales transactions of medicines valued at Rs. 88.15 lakh, against declarations in form 'C' by the purchasing dealers. Cross verification of these transactions with the records maintained by the AOs of the purchasing dealers in Delhi and Goa revealed that purchases valued at Rs. 1.69 crore were accounted for as interstate sales. Thus, the differential value of sales of Rs. 80.74 lakh not covered by form 'C' was liable to tax at local rates. This resulted in underassessment of tax of Rs. 8.07 lakh.

The matter was reported to the department and the Government between May and July 2008; their reply has not been received (November 2008).

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

Under the provisions of the BST Act, Turnover Tax (TOT) at the rate of 1.25 *per cent* (1.5 *per cent* with effect from 1 April 1993, where, turnover of sales

<sup>7</sup> Andheri (1), Borivali (1) and Mandvi (1).

<sup>8</sup> Andheri (2), Aurangabad (1), Mandvi (2), Nariman Point (3), Nashik (1), Pune (7), Thane (2) and Worli (1).

or purchases exceeded rupees one crore and one *per cent* with effect from 1 April 1999 and 1.5 *per cent* with effect from 1 May 2002 where tax liability of a dealer exceeded rupees one crore in the immediate preceding year or in the current year) was leviable on the turnover of sale of goods specified in Schedule C. TOT was also leviable on the turnover of sales supported by declarations, subject to such conditions as were prescribed in the notification issued by the Government from time to time. Further, with effect from 1 April 1999 Surcharge (SC), at the rate of 10 *per cent* of the tax payable was leviable.

During test check of the records of nine<sup>9</sup> divisions between January 2004 and May 2007, it was noticed in the assessments of 12 dealers, finalised between April 2002 and May 2006 for the period between 1993-94 and 2004-05 that TOT on the turnover of sales of Rs. 71.95 crore and SC on sales tax of Rs. 2.67 crore were either not levied or levied short. This resulted in underassessment of tax of Rs. 1.23 crore including interest of Rs. 10.03 lakh.

After the cases were pointed out between February 2004 and June 2007, the department revised/rectified the assessments in nine cases between October 2006 and February 2008, raising additional demands totalling Rs. 1.09 crore including penalty of Rs. 16.52 lakh. In respect of the remaining three cases, involving Rs. 29.88 lakh, reports on action taken by the department has not been received. A report on recovery in respect of the cases where additional demands were raised has not been received (November 2008).

The matter was reported to the Government in April and May 2008; their reply has not been received (November 2008).

## **2.11 Short levy of tax under the Works Contract Tax Act**

**2.11.1** Under the provisions of the Maharashtra Sales Tax on the transfer of property in goods involved in the execution of the Works Contract Tax (WCT) (Re-enacted) Act, 1989 and the rules made thereunder, every dealer was required to obtain a certificate of registration under the Act if the turnover of sales or purchases exceeded Rs. 2 lakh in a year. Tax at the rates specified in the schedule to the Act was leviable on the turnover of sales involving transfer of property of goods in the execution of works contracts. The Act also provides for payment of a lump sum amount by way of composition as a percentage of the total contract value as notified from time to time. Besides, interest and penalty was leviable as per the provisions of the BST Act.

During test check of the records of four<sup>10</sup> divisions between June 2005 and March 2006, it was noticed in the BST assessments of four dealers finalised between May 2003 and March 2005 for the period between 2000-01 and 2002-03 that sales valued at Rs. 2.86 crore were deducted from the taxable turnover on account of labour charges. Further scrutiny, however, revealed that the dealers were not registered under the WCT Act and no action was taken by the AOs to get them registered and assess the tax payable on the basis of the particulars of sales available on the records of the dealers submitted

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<sup>9</sup> Aurangabad (1), Bandra (1), Borivali (1), Ghatkopar (2), Kolhapur (1), Mandvi (2), Nariman Point (2), Nashik (1) and Pune I (1).

<sup>10</sup> Borivali (1), Nariman Point (1), Nashik (1) and Pune – I (1).

under the BST Act. Thus, sales valued at Rs. 2.86 crore escaped tax of Rs. 26.88 lakh including interest of Rs. 12.85 lakh.

After the cases were pointed out between July 2005 and April 2006, the department accepted the audit observations and assessed the dealers between November 2006 and October 2007, raising additional demands totalling Rs. 27.01 lakh, including penalty of Rs. 13,000. A report on recovery has not been received (November 2008).

**2.11.2** Under the provisions of the WCT Act and Rules made thereunder, a registered dealer is liable to pay tax at the rates specified in the schedule to the Act, leviable on the turnover of sales involving transfer of property of goods in the execution of works contracts. In case the dealer had opted for the composition scheme, tax at the rate of three *per cent* for the year 2000-01 and four *per cent* thereafter was leviable on the total contract value of all types of contracts. Further, no deduction under the scheme whatsoever was admissible after 1 May 1998. Besides, interest and penalty was also leviable.

During test check of the records of four<sup>11</sup> divisions between October 2004 and October 2005, it was noticed in the assessments of five dealers under composition scheme finalised between June 2003 and November 2004 for the period between 1999-2000 and 2002-03, that due to incorrect allowance of resales, labour charges and tax free sales, there was underassessment of tax of Rs. 13.06 lakh including interest of Rs. 2.49 lakh.

After the cases were pointed out between November 2004 and November 2005, the department rectified/revised the assessments between September 2005 and September 2007, raising additional demands totalling Rs. 13.06 lakh including interest. A report on recovery has not been received (November 2008).

**2.11.3** Under the provisions of the WCT Act, any employer or a class of employers, was to deduct tax at source (TDS) from and out of the amount payable by such employer to a dealer to whom a works contract had been awarded, involving transfer of property in goods at the rate of two *per cent* of such amount payable towards such contract subject to the conditions prescribed. Further, as per the notification issued in March 2000 by the Government, no tax was to be levied on the turnover of sales effected on or after 1 April 2000 by a contractor to the State Government. The benefit of the notification was not extended to the Government corporations.

During test check of the records of Kolhapur division in October 2004, it was noticed in the assessments of a dealer finalised in December 2002 for the periods 2000-01 and 2001-02, that TDS collected was incorrectly refunded to the dealer though the works contracts related to the Government corporations. This resulted in incorrect grant of refund of Rs. 5.23 lakh.

After the case was pointed out in November 2004, the department revised the assessments in September 2006, raising additional demand of Rs. 5.23 lakh. A report on recovery has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

<sup>11</sup> Andheri (1), Aurangabad (2), Bandra (1) and Kolhapur (1).

### **2.12 Incorrect summary assessment**

Under the provisions of the BST Act, an assessing officer was empowered to make a summary assessment in respect of a dealer by accepting his returns and satisfying himself that the returns furnished were correct and complete. As per the Government notification issued in March 2001, only sale of packing material was admissible on form 'G'<sup>12</sup>.

During test check of the records of Borivali division in September 2005, it was noticed in a dealer's return, accepted under summary assessment in August 2004, for the period 2001-02, that incorrect exemption from tax of Rs. 29.60 lakh was claimed on the sale of wooden furniture on form 'G'. This resulted in underassessment of tax of Rs. 9.13 lakh including interest of Rs. 4.60 lakh.

After the case was pointed out in October 2005, the department accepted the audit observation and revised the assessment in August 2007, raising an additional demand of Rs. 9.13 lakh including interest. A report on recovery has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

### **2.13 Non-levy of purchase tax**

Under the provisions of the BST Act, if a dealer had purchased any goods specified in Part-I of Schedule C of the Act and used such goods in the manufacture of taxable goods and had dispatched those manufactured goods to his own place of business or to his agent's place of business situated outside the State, then such a dealer was liable to pay purchase tax at the rate of two *per cent* on the turnover of such purchases with effect from 1 October 1995. Besides, SC and interest was leviable as per the provisions of the Act.

During test check of the records of Ghatkopar and Kolhapur division between December 2002 and July 2006, it was noticed in the assessments of two dealers finalised between March 2002 and May 2005, that purchase tax was not levied on purchase of goods valued at Rs. 3.47 crore during the period between 1998-99 and 2001-02. This resulted in underassessment of tax of Rs. 6.83 lakh.

After the cases were pointed out between January 2003 and August 2006, the department rectified/revised the assessments between January and August 2007, raising additional demands totalling Rs. 7.66 lakh including interest of Rs. 84,000. A report on recovery has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

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<sup>12</sup> A declaration form issued by the purchasing dealer for purchase of packing material utilised for packing of goods for exports.