

CHAPTER 2 : Sales Tax

2.1 Results of audit

Test check of records of sales tax conducted during the year 2001-2002 revealed under-assessment/short levy/loss of revenue amounting to Rs 120.29 crore in 1755 cases, which broadly fall under the following categories:

Sr. No.	Category	No. of cases	Amount (Rupees in crore)
1.	Non-levy/short levy of tax	635	19.93
2.	Incorrect allowance of set-off	502	15.57
3.	Non-levy/short levy of interest/penalty	141	31.96
4.	Omission to forfeit tax collected in excess	10	0.15
5.	Other irregularities	466	44.26
6.	Maharashtra Rajya Kar Vivad Nivaran Yojana, 1999	1	8.42
Total		1755	120.29

During the course of the year 2001-2002, the department accepted under-assessments of Rs 4.83 crore involving 588 cases, of which 36 cases involving Rs 8.23 lakh had been pointed out during 2001-2002 and the rest in earlier years. Of these, department recovered Rs 26.14 lakh.

A few illustrative cases involving financial effect of Rs 10.28 crore and a review on Maharashtra Rajya Kar Vivad Nivaran Yojana, 1999 involving financial effect of Rs 8.42 crore are given in the following paragraphs:

2.2 Maharashtra Rajya Kar Vivad Nivaran Yojana, 1999

2.2.1 Introduction

The Maharashtra Rajya Kar Vivad Nivaran Yojana, 1999 (MKNY) was introduced by the Government of Maharashtra vide resolution dated 26 April 1999 with a view to liquidate arrears of taxes, interest and penalties

aggregating to Rs 3990 crore as on 30 September 1998 under various Acts⁶ administered by the Sales Tax Department.

The scheme in respect of sales tax dues was operative in two phases. The first phase was operative from 1 June 1999 to 31 July 1999 and the second phase from 1 August 1999 to 30 September 1999, which was extended upto 30 November 1999.

A separate amnesty scheme for dues under the Works Contract (Re-enacted) Act, 1989 and Lease Tax Act, 1985 was announced vide Government resolution dated 25 November 1998. This scheme was operative from 1 December 1998 to 30 June 1999 and extended from time to time upto 31 March 2000. Dealers desirous of availing of the benefit under the scheme were required to:

- (i) apply within one month after making payment as per amnesty scheme separately for each year and for each enactment, to the assessing authority in the prescribed proforma and
- (ii) submit xerox copy of acknowledgement of the appellate authority alongwith the application for MKNY indicating unconditional withdrawal of the appeal.

2.2.2 Salient features of the scheme

(A) Sales tax and other Acts.

(i) The scheme was applicable to registered dealers as well as unregistered dealers and assessment orders relating to any periods passed upto 31 March 1998 and other statutory orders such as rectification orders, re-assessment orders, revision orders and appeal orders related to those assessment orders passed prior to 1 May 1999.

(ii) The scheme was applicable to outstanding arrears as on 31 May 1999. During the 1st phase of MKNY 1999 the declarant was required to pay tax (not collected separately) at 50 *per cent* and during the 2nd phase at 60 *per cent*.

(iii) Where arrears comprised interest and penalty the declarant was required to pay 10 *per cent* of interest and penalty during the 1st phase and 20 *per cent* during the 2nd phase.

(iv) Arrears on account of post assessment interest and penalty was subject to 100 *per cent* waiver.

(B) Works Contract and Lease Tax Acts

(i) In respect of Works Contract (Re-enacted) Act, 1989 and Lease Tax Act, 1985 the dealers were allowed to avail of the benefits for the assessment

⁶ Bombay Sales Tax Act, 1959 Central Sales Tax Act, 1956, Maharashtra Sugar Cane Purchase Tax Act, 1962, Maharashtra Tax on entry of motor vehicles Act, 1987, Maharashtra Luxury Tax Act, 1987 and Maharashtra Agriculture Income Tax Act, 1962.

periods ending upto 31 March 1998 and assessed before 31 December 1998. This condition was subsequently (October 1999) relaxed and benefit of the scheme was extended to any period for which assessment was completed.

(ii) Dues and demands against an assessee on account of contracts awarded by the departments of the State Government were fully exempt from payment of tax. However, in case of construction contracts, 1 *per cent* of the gross amount of the works contract value was payable and the balance amount of dues or demands were to be waived. Further, in respect of any other type of works, 3 *per cent* of the gross amount of the contract value was payable and the rest of the amount of tax dues or demands were to be waived.

(iii) In respect of interest dues or demands relating to contracts other than contracts assigned by Government departments for assessment periods ending before 1 April 1992, the assessee was liable to pay 15 *per cent* of the interest levied and the balance 85 *per cent* was to be waived. Similarly, for assessment periods starting on or after 1 April 1992, an assessee was to pay 30 *per cent* of the interest levied and the balance 70 *per cent* was to be waived.

2.2.3 Impact of the scheme on clearance of arrears

Sales tax and allied Acts

(i) The title of the scheme indicated that the benefit was admissible to tax in dispute. However the scheme was extended to arrears of tax dues.

The total amount of revenue in arrears (as on 1 June 1999), total number of applications received, amount recovered, amount waived and total arrears cleared are given in the following table:

Sr. No.	Nature of tax	Arrears as on 1/6/1999	No. of cases involved	No. of cases in which applications received	Amount		Total arrears cleared
					Recovered	Waived	
(1)	(2)	Rs. (3)	(4)	(5)	Rs. (6)	Rs. (7)	Rs. (8)
1.	Bombay Sales Tax	1826.62	199941	40238	56.92	145.25	202.17
2.	Central Sales Tax	420.14	47206	10012	19.33	45.63	64.96
3.	Sugarcane Purchase Tax	67.92	723	79	5.11	6.39	11.50
4.	Entry Tax	17.73	3118	374	0.76	1.60	2.36
5.	Luxury Tax	1.64	404	163	0.08	0.38	0.46
6.	Agriculture Income Tax	5.23	9	8	Negligible	Negligible	Negligible
Total		2339.28	251401	50874	82.20	199.25	281.45

The table indicates that while the physical clearance of cases was 20 per cent the clearance of arrears in financial terms was only 12 per cent. It is therefore evident that the scheme could not substantially achieve the primary objective of clearance of arrears.

(ii) The percentage of clearance of arrears during the year 1999-2000 when the scheme was implemented was lower than in earlier years except during 1998-1999 when clearance was marginally less as indicated in the following table:

(Rupees in crore)

Year	Arrears as on 1 April	Addition during the year	Total	Arrears cleared	Closing balance as on 31 March	Percentage of clearance
	Rs.	Rs.	Rs.	Rs.	Rs.	
1996-97	2422.34	1448.57	3870.91	936.63	2934.28*	24.19
1997-98	2953.17	1648.85	4602.02	1046.45	3555.57	22.73
1998-99	3555.57	1935.19	5490.76	991.60	4499.15	18.06
1999-2000	4499.15	1918.13	6417.28	1218.38	5198.90	18.98

Source : Performance Budget of the Finance Department (Sales Tax)

(iii) As per information furnished by twelve divisions, the number of dealers in arrears above Rs 5 lakh, between Rs 50000 and Rs 5 lakh and below Rs 50000 who availed of benefit under the scheme were as under:

Sr. No.	Name of division	No. of dealers in arrears			No. of dealers in arrears who availed of the benefit		
		Below Rs 50000	Between Rs 50000 and Rs 5 lakh	Above Rs 5 lakh	Below Rs 50000	Between Rs 50000 and Rs 5 lakh	Above Rs 5 lakh
1)	Bandra	13638	590	73	5115	330	28
2)	Kolhapur	6052	493	110	3629	89	9
3)	Andheri	5720	680	429	5017	498	26
4)	Pune I	3627	357	67	1327	265	23
5)	Pune II	2963	326	50	1781	156	12
6)	Thane	6563	288	94	3272	266	39
7)	Borivali	10548	703	69	3658	244	16
8)	Nariman point	4055	1073	379	1014	446	120
9)	Mazgaon	12875	803	214	3827	323	13
10)	Ghatkopar	6549	750	261	2576	189	46
11)	Worli	6669	1113	231	2311	318	64
12)	Mandvi	7416	518	95	1849	255	43
Total		86675	7694	2072	35376	3379	439
					(41 %)	(44 %)	(21 %)

* Does not include Luxury Tax and Entry Tax of Rs 2.55 crore and Rs 16.34 crore respectively.

While around 40 *per cent* of the dealers in arrears upto Rs 5 lakh availed the benefit under the scheme, only 21 *per cent* of the dealers with arrears exceeding Rs 5 lakh availed of the benefit. This implied that dealers with arrears above Rs 5 lakh had not come forward for availing of benefit under MKNY.

(iv) Phase wise availing of benefits.

The phase wise clearance of arrears under BST and allied Acts (excluding Profession Tax, Works Contract and Lease Acts) was as under:

(Rupees in crore)				
	No. of dealers	Amount recovered Rs.	Amount waived Rs.	Total clearance Rs.
Phase I and II	40132	70.52	170.30	240.82
Extended period October/November 1999	10742	11.68	28.95	40.63
Total	50874	82.20	199.25	281.45

The Commissioner of sales tax had stated (May 1999) that in no circumstances the duration of the scheme would be extended beyond 30 September 1999. However, the scheme was extended upto November 1999. During the extended period of two months the arrears cleared were Rs 40.63 crore (14.43 *per cent*) which included waiver of Rs 28.96 crore. Thus the extension did not result in appreciable clearance of arrears.

2.2.4 Incorrect computation of tax arrears

Under the provisions of the Bombay Sales Tax Act, 1959 an appeal can be admitted on part payment of dues in respect of which the appeal has been preferred. The scheme did not indicate the method of apportionment of the part payment made in appeal towards tax and penalty/interest for arriving at the dues.

A scrutiny of cases revealed that the part payment made in appeal were entirely adjusted against arrears of tax and the balance of tax dues were considered for working out the payment of 50 *per cent* and 60 *per cent* of tax dues under the two phases without apportioning the part payment towards interest/penalty. As the arrears included interest and penalty leviable as per provisions of the Act, part payment should have been apportioned in the ratio of tax and interest and/or penalty pending recovery and thereafter the arrears of tax and interest/penalty computed for waiver under the scheme. The incorrect adjustment of part payment towards tax alone and computation of the arrears thereafter, resulted in forgoing of revenue to the extent of Rs 1.38 crore in 47 cases as detailed in the following table:

(Rupees in lakh)

Sr. No.	Division No. of dealers	Assessed dues		Part payment	Arrears as on 1/6/1999 after proportionate adjustment of part payment		Amount Payable		Short recovery of tax	Excess payment of Interest	Net revenue forgone
		Tax	Interest		Tax	Interest	Tax	Interest			
1	Nariman point 10	1051.53	929.14	170.39	957.67	851.61	<u>486.51</u> 91.90	<u>453.40</u> 99.73	33.11	(-) 7.83	25.28
2	Andheri 7	66.41	55.01	34.80	46.45	40.31	<u>23.22</u> 4.04	<u>15.96</u> 5.48	7.26	(-) 1.44	5.82
3	Nagpur 2	1475.24	980.14	283.50	1310.25	861.65	<u>655.12</u> 86.16	<u>596.41</u> 97.90	58.71	(-) 11.74	46.97
4	Pune 3	103.18	165.43	42.15	86.14	140.32	<u>43.07</u> 14.04	<u>31.26</u> 16.39	11.81	(-) 2.35	9.46
5	Thane 12	123.13	100.39	33.16	105.20	85.16	<u>52.60</u> 8.50	<u>42.79</u> 11.23	9.81	(-) 2.73	7.08
6	Churchgate 8	279.18	377.96	125.40	221.52	310.20	<u>110.76</u> 31.00	<u>78.06</u> 37.53	32.70	(-) 6.53	26.17
7	Ghatkopar 5	147.50	119.48	118.36	82.32	66.28	<u>41.16</u> 6.70	<u>19.14</u> 11.03	22.02	(-) 4.33	17.69
47		3246.17	2727.55	807.76	2809.55	2355.53	<u>1412.44</u> 242.34	<u>1237.02</u> 279.29	175.42	(-) 36.95	138.47

On being pointed out, the assessing officers stated that for arriving at the outstanding dues as on 1 June 1999 the part payments were appropriated as per Commissioner's trade circular dated 10 May 1999 as under.

- (a) sales tax collected separately
- (b) deduction of tax (under Rule 46 A) claimed in the returns filed by the dealer
- (c) excess collection forfeited
- (d) tax not collected separately and
- (e) interest and penalties

The contention of the assessing officers is not tenable as interest/penalty also being part of the arrears; part payment should have been apportioned to both tax and interest/penalty.

2.2.5 Ineligible cases

(i) As per Government Resolution dated 26 April 1999 a dealer who had collected tax separately was not eligible for benefit under MKNY, 1999. In respect of 4 dealers who had collected tax separately and had either short remitted or delayed remittance of it to Government Account, tax and/or interest of Rs 670.10 lakh was incorrectly waived as detailed in the following table:

Sr. No.	Division	No. of dealers	Assessment period Month of assessment	Arrears as on 1/6/1999		Paid waived	
				Tax	Interest	Tax	Interest
				u/s 36 (3) (a)			
1	Pune	1	1993-94 and 1994-95 January 1997 and March 1998	429.25	432.58	<u>300.65</u> 128.60	<u>43.26</u> 389.32
2	Nagpur	1	1991-92 to 1994-95 July 1996, June 1998, March 1997 and January 1998	30.58	99.21	<u>15.28</u> 15.30	<u>9.93</u> 89.28
3	Thane	1	April 1979 to September 1979 February 1984	42.93	42.70	<u>42.93</u> Nil	<u>4.27</u> 38.43
4	Nariman point	1	1988-89 N.A.	22.92	23.33	<u>13.75</u> 9.17	<u>Nil</u>
Total :		4		525.68	597.82	<u>372.61</u> 153.07	<u>57.46</u> 517.03

2.2.6 Short levy of tax under Works Contract Act

Under the scheme, in respect of works contract 1 per cent of the gross amount of contract value in respect of construction contracts and 3 per cent of the contract value in respect of other type of works was payable. If the outstanding tax dues as on 1 December 1998 was paid as per a prescribed formula the residual assessed tax dues were to be waived.

In respect of four dealers, in respect of contracts other than construction contracts, tax was levied at one per cent instead of three per cent of the contract value or as per formula and in one case there was concealment of

turnover. This resulted in short levy of tax of Rs 21.65 lakh as shown in the following table:

(Rupees in lakh)							
Sr. No.	Division	No. of dealers	Period Month of assessment	Activity and type of works contract	Tax leviable under amnesty	Tax levied under amnesty	Short levy of tax
1	Thane	1	1993-94 to <u>1997-98</u> June 1999	Interior decorator	2.98	0.99	1.99
		1	1990-91 to <u>1991-92</u> March 1999, June 1999	Civil and Electrical Contractor	12.32	4.10	8.22
2	Nariman point	1	1/11/1989 to <u>31/12/1991</u> August 1999	Civil and other contracts	7.04	2.97	4.07
		1	22/4/1988 to <u>31/3/1992</u> November 1995, February 1998	Insulation of pipelines	7.96	2.95	5.01
		1	1994-95 to <u>1996-97</u> March 1998, February 1999 and March 1999	Cement lining to water pipe lines	2.56	0.20	2.36
Total:		5			32.86	11.21	21.65

2.2.7 Incorrect allowance of exemption

According to Government Resolution dated 25 November 1998, contracts awarded by Central Government, Corporations and Under takings of Central and State Government, Local Bodies, Non-Government Organisations *etc.*, were not eligible for exemption from payment of works contract tax.

It was noticed that four contractors who had executed works for the Railways, CIDCO*, MIDC*, PCMC* *etc.*, were incorrectly exempted from payment of taxes amounting to Rs 11.62 lakh.

* CIDCO - City and Industrial Development Corporation
MIDC - Maharashtra Industrial Development Corporation
PCMC - Pimpri-Chinchwad Municipal Corporation
RCF - Rashtriya Chemicals and Fertilisers
Z.P. - Zilla Parishad

(Rupees in lakh)

Sr. No.	No. of dealers	Assessment period Month of assessment	Contracts awarded by	Amount waived		
				Tax	Interest	Total
Nagpur Division						
1	1	<u>1988-89</u>	Central Railway,	0.03	--	0.03
		<u>1990-91</u>	Nagpur improvement trust <i>etc.</i>	0.16	--	0.16
2	1	1989-90 to <u>1991-92</u> October 1999 and November 1999	CPWD, Nagpur	1.10	2.45	3.55
Pune Division						
3	1	1/10/1986 to <u>31/7/1987</u> December 1999	CIDCO, MIDC, PCMC, RCF Ltd. <i>etc</i>	2.03	--	2.03
Thane Division						
4	1	1996-97 and <u>1997-98</u> December 1999	Z.P. Thane, (Irrigation Division)	5.85	--	5.85
Total :				9.17	2.45	11.62

2.2.8 Non-reconciliation of arrears

According to Government Resolution of 26 April 1999, Rs 3990 crore was in arrears as on 30 September 1998 in the sales tax department under different enactments. The State Government promulgated the amnesty scheme to liquidate the arrears of Rs 3990 crore anticipating immediate revenue collection. However, on re-examination, the amount of arrears eligible for benefit under the scheme was computed by the sales tax department as Rs 1825 crore. Thus, a clear picture of arrears was not known to Government before launching the amnesty scheme. Further, as against Rs 1825 crore available for clearance under amnesty, the details of arrears furnished by the divisions to the commissionerate was Rs 2339.27 crore. .

As per information furnished by Thane, Pune-II and Ghatkopar Division's, arrears as on 1 June 1999 aggregated to Rs 183.46 crore. However, as per information collected from the commissionerate the arrears in respect of these divisions were Rs 438.34 crore. This indicated non-reconciliation of the figures of arrears.

2.2.9 Conclusions

Government did not have a clear picture of the arrears before launching of the scheme. The scheme did not achieve the primary objective of clearance of arrears.

The above points were reported to Government in June 2002; their reply has not been received (December 2002)

2.3 Incorrect grant of set-off

(a) According to the Bombay Sales Tax Act, 1959 and Rule 41-D made thereunder, a manufacturer who has paid taxes on the purchases of goods specified in Part II of 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 in excess of four *per cent* of the purchase price (two *per cent* in the case of raw material from 1 October 1995) upto 30 June 1997.

From 1 July 1997 reduction of 2 *per cent* of the purchase price (3 *per cent* from May 1998) is to be made on local and Outside Maharashtra State (OMS) purchases. Where manufactured goods are transferred outside the State otherwise than by way of sale, set-off of taxes paid on purchases of raw materials including packing materials is allowed in excess of 6 *per cent* instead of 4 *per cent*.

Where the manufacture resulted in production of taxable goods as well as goods other than taxable goods, the set-off was apportioned between taxable goods and goods other than taxable goods on the basis of the sale price of manufactured goods and allowed only to the extent of taxable goods manufactured. However, by an amendment dated 1 May 1998 set-off of taxes paid on purchases was admissible to a dealer who manufactured goods for sale or export. When such manufacture resulted in production of goods other than taxable goods, set-off was not admissible on purchases of goods including capital assets effected prior to 1 April 1998 and also in respect of capital assets purchased after 1 April 1998 on which depreciation was claimed in earlier years.

Where the purchase price is inclusive of tax, a formula has been prescribed for calculating the amount to be set-off.

It was noticed (between March 1996 and December 2001) that in assessing 49 dealers in 13 divisions for various periods falling between 1 April 1991 and 31 March 1999 and assessed between October 1994 and November 2001, set-off was incorrectly allowed resulting in under-assessment of Rs 3.97 crore (including interest of Rs 16.36 lakh) as detailed in the following table:

Sr. No.	Name of the Division	No. of dealers	Assessment period Month of assessment	Nature of irregularity	Under-assessment including interest/penalty (Rupees in lakh)
1	Andheri	1	<u>1997-98</u> December 1999	Set-off incorrectly computed	0.58
2	Aurangabad	1	<u>1996-1997</u> February 2000	Set-off was wrongly allowed after deducting 2 per cent instead of 4 per cent of purchase price	0.83
		6	Between <u>1993-94</u> and <u>1997-98</u> Between January 1997 and February 2001	Set-off was incorrectly allowed on purchases of goods including capital assets effected prior to 1 April 1998 and used in manufacture of sugar a tax free commodity	125.81
3	Bandra	1	<u>1993-94</u> April 1997	Set-off incorrectly allowed on purchases of chemicals etc., covered by Part I of Schedule C which was inadmissible	2.00
4	Borivali	1	<u>1995-96</u> January 2000	Set-off was not reduced on account of branch transfers and manufacture of tax free goods	0.37
		1	<u>1996-97</u> October 1998	Full set-off was allowed without retention of 2 per cent of purchase price	0.56
		1	<u>1996-97</u> December 1998	Set-off was incorrectly allowed on purchase of tax free goods	0.71
		1	<u>1995-96</u> April 1998	Set-off was incorrectly worked out at 10 per cent on purchases of notified chemicals taxable at 4 per cent.	0.59
5	Churchgate	1	9 May 1995 to <u>31 March 1996</u> March 1999	Set-off was wrongly allowed after deducting 2 per cent instead of 4 per cent of purchase price	2.01

Sr. No.	Name of the Division	No. of dealers	Assessment period Month of assessment	Nature of irregularity	Under-assessment including interest/penalty (Rupees in lakh)
		2	<u>1998-99</u> December 1999 and November 2000	Set-off was incorrectly allowed after deducting 2 per cent instead of 3 per cent of purchase price	1.91
	Churchgate	1	<u>1994-95</u> August 1998	Set-off was not reduced proportionately in respect of tax exempted goods	0.85
6	Ghatkopar	1	<u>1993-94</u> May 1996	Set-off of Rs 6.08 lakh was incorrectly allowed on purchases of wire rods and other steel materials liable to tax at 4 per cent	10.00
		1	<u>1996-1997</u> April 1999	Set-off was wrongly allowed after deducting 2 per cent instead of 4 per cent of purchase price	3.32
		1	<u>1996-1997</u> March 2000	Set-off was not reduced in proportion to tax free goods sold	0.80
7	Kolhapur	14	<u>1996-97 and 1997-98</u> Between February 2000 and January 2001	Set-off was incorrectly allowed on purchases of goods including capital assets effected prior to 1 April 1998 and used in manufacture of sugar a tax free commodity	146.63
8	Mandvi	1	<u>1995-96</u> June 1998	Set-off was incorrectly computed without the statutory deduction	0.68
9	Mazgaon	1	<u>1991-92</u> October 1994	Set-off incorrectly allowed on purchases used in the manufacture and packing of tax free goods	2.27
10	Nashik	1	<u>1996-97</u> March 1999	Set-off of Rs 8.23 lakh was allowed in full as against set-off of Rs 0.13 lakh (1.61 per cent) admissible	15.71
		1	<u>1997-98</u> August 2000	Set-off was incorrectly computed	0.37

Sr. No.	Name of the Division	No. of dealers	Assessment period Month of assessment	Nature of irregularity	Under-assessment including interest/penalty (Rupees in lakh)
		7	Between 1995-96 and 1997-98	Set-off was incorrectly allowed on purchases of goods including capital assets effected prior to 1 April 1998 and used in manufacture of sugar a tax free commodity	60.67
11	Pune –II	2	Between February 2000 and November 2000	Set-off was incorrectly allowed on purchases of goods including capital assets effected prior to 1 April 1998 and used in manufacture of sugar a tax free commodity	17.76
12	Thane	1	1997-98 January 2001 and February 2001	Set-off was incorrectly allowed on purchases of goods including capital assets effected prior to 1 April 1998 and used in manufacture of sugar a tax free commodity	1.32
13	Worli	1	1996-97 November 2001	Set-off was incorrectly worked out assuming the tax rate as 15 per cent instead of 10 per cent	1.29
Total:		49			397.04

On these cases being pointed out (between March 1996 and December 2001) the department accepted the mistakes in 19 cases and raised additional demands for Rs 44.85 lakh. In respect of 12 cases, department recovered Rs 23.88 lakh and in two cases dealers had filed (January 2000 and March 2000) appeals. Report on recovery and action taken in the remaining cases has not been received (December 2002).

The matter was reported to Government between April and June 2002; Government concurred with the action taken by the department in seven cases. Replies in respect of the remaining cases have not been received (December 2002).

(b) Under Rule 41 E of the Bombay Sales Tax Rules, 1959 a registered dealer is entitled to full set-off of taxes paid on the purchases of raw material falling within the group of iron and steel (specified in Entry 6 of Schedule B to the Act), when such raw material is used in manufacture for sale or export of goods which also fall within the same group (iron and steel), provided, no deduction on account of claim of resale is allowed. When manufactured

goods are used in works contract or manufactured goods are transferred to branches outside the State the set-off is allowed proportionately.

In three divisions⁷ in the assessment of 3 dealers for the periods 1992-93, 1995-96 and 1996-97 set-off was incorrectly computed either due to mistakes in arithmetic calculation or incorrect grant of set-off on branch transfer and works contract. This resulted in under-assessment of Rs 5.32 lakh.

On this being pointed out in audit (January 1997, May 2000 and June 2000), the department revised/rectified the assessment orders (August 1999 November 2000 and January 2001) and raised additional demands for Rs 5.32 lakh. In one case dealer paid Rs 1.91 lakh (October 1999) and in another case an amount of Rs 1.70 lakh was adjusted against the refund due to the dealer. Recovery in the remaining case has not been received (December 2002).

The matter was reported to Government in June 2002; their reply has not been received (December 2002).

(c) Under the provisions of Rule 41 F of the Bombay Sales Tax Rules, 1959 a manufacturer of plastic goods was entitled (upto 30 September 1995) to full set-off of taxes paid on purchases of goods (excluding capital assets and parts components and accessories of such capital assets) provided they were used in the manufacture of plastic goods.

In Mumbai, a manufacturer of plastic cabinets for televisions and audios was allowed (November 1997) set-off of Rs 12.22 lakh on the purchases of plastic granules of Rs 159.74 lakh in the assessment for the period from 1 April 1994 to 31 March 1995. As the manufactured goods fell outside the scope of entry of plastic goods, the dealer was entitled to set-off of taxes paid in excess of 4 *per cent* on the purchase price as admissible to a manufacturer. This resulted in under-assessment of Rs 5.04 lakh (including interest of Rs 0.15 lakh).

On this being pointed out in audit (May 1998) the department revised (July 2001) the assessment order raising additional demand of Rs 5.04 lakh. Report on recovery has not been received (December 2002).

The matter was reported to Government in March 2002; their reply has not been received (December 2002).

(d) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made there under a registered dealer is entitled to set-off of taxes paid on the goods purchased from other registered dealers provided the goods so purchased are sold 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 inter-State trade or commerce or export. Such set-off is not admissible on deemed export under the provisions of the Central Sales Tax Act, 1956.

⁷ Andheri, Aurangabad and Thane

In Mumbai, a reseller of cots and aprons was allowed (October 1997) set-off of Rs 4.55 lakh on the purchase price of sales of Rs 116.27 lakh supported by declarations in Form 14-B allowed as deemed export in the assessment for the period from 1 April 1994 to 31 March 1995. As the set-off is admissible only if the goods purchased are sold in the course of export, the set-off allowed was incorrect. This resulted in under-assessment of Rs 5.65 lakh (including interest of Rs 0.38 lakh and penalty of Rs 0.02 lakh).

On this being pointed out in audit (September 2000), the department reassessed (February 2001) the dealer raising additional demand for Rs 5.65 lakh (including interest and penalty). The dealer has filed (June 2001) an appeal before the Tribunal. Report of developments in appeal has not been received (December 2002)

The matter was reported to Government in March 2002; their reply has not been received (December 2002).

2.4 Short levy of sales tax

Under the Bombay Sales Tax Act, 1959 the rate of tax leviable on any commodity is determined with reference to the relevant entry in the Schedule B or C to the Act. 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 condition(s) as may be prescribed by the Government. Besides, turnover tax, additional tax and interest are also leviable as per the provisions of the Act.

It was noticed (between February 1997 and May 2001) that in assessing (between March 1996 and December 2000) 26 dealers in 15 divisions⁸ due to application of incorrect rate of tax, there was under-assessment of Rs 94.92 lakh.

On the cases being pointed out in audit (between February 1997 and August 2001) additional demands aggregating to Rs 72.13 lakh (including turnover tax of Rs 1.74 lakh, additional tax of Rs 3.93 lakh, interest and penalty of Rs 27.04 lakh) were raised in 23 cases. In four cases department recovered Rs 4.41 lakh (between January 2001 and August 2002) and in one case demand of Rs 3.10 lakh was adjusted against refund due to the dealer. In two cases dealers had filed appeals (December 2000 and November 2001). Report on recovery in the remaining cases has not been received (December 2002).

The matter was reported to Government between August 1998 and June 2002; Government concurred with the action taken by the department in two cases. Replies in respect of the remaining cases has not been received (December 2002).

⁸ Andheri, Aurangabad, Bandra, Borivali, Churchgate, Ghatkopar, Kolhapur, Mandvi, Mazgaon, Nagpur, Nariman point, Nashik, Pune, thane and Worli

2.5 Non-levy of tax on sale of assets

Under the provisions of the Bombay Sales Tax Act, 1959 the rate of tax leviable on sale of a commodity is determined with reference to the relevant entry in the Schedules B or C to the Act. By an amendment on 29 June 1996 (effective from 15 January 1975), any transaction of sale or purchase of a capital asset was deemed to be in the course of business. However, by an amendment (January 1997) to the Act, if a dealer had sold the capital asset before 29 June 1996 and objected to levy of tax on the grounds that no tax was payable but for the amendment, then such dealer was not liable to pay tax in respect of such sale.

In Thane Division, sales of capital assets comprising of plant and machinery, motor vehicles and furniture and fixtures of Rs 11.17 crore effected on 24 September 1996 were incorrectly deducted from the taxable turnover of sales and exempted from tax invoking the saving clause while assessing (March 2000) the dealer for the period from 1 April 1996 to 24 September 1996. The incorrect exemption resulted in under-assessment of Rs 4.04 crore (including interest of Rs 1.20 crore and penalty of Rs 1.42 crore).

On being pointed out in audit, the Dy. Commissioner of Sales Tax stated (February 2002) that according to a judicial⁹ pronouncement sale of entire business as a going concern cannot be regarded as sale in the course of business. The reply of the department was not tenable as the judgment was with reference to the provisions of the Andhra Pradesh Sales tax Act and would not apply to transactions of sale in the State. Moreover, as per Section 2 (5A) of the Bombay Sales Tax Act, 1959 transactions connected with commencement or closures of business are included in the definition of business.

The matter was reported to Government in June 2002; their reply has not been received (December 2002).

2.6 Under-assessment of tax

Under the provisions of the Central Sales Tax Act, 1956 the last sale or purchase occasioning the export of goods out of the territory of India shall be deemed to be in the course of export, if the last sale or purchase took place and was for the purpose of complying with the agreement or order for such export, provided the selling dealer produces a certificate in Form H (Form 14 B in case of a dealer within the State) duly filled and signed by the exporter alongwith evidence of export of the goods.

It was noticed in audit (between May 1998 and March 2001) that in the assessments of 10 dealers (two each in Borivali and Ghatkopar and one each in Andheri, Bandra, Mandvi, Mazgaon, Nashik and Thane Divisions) for

⁹ Coromandal Fertilisers Ltd. v/s State of Andhra Pradesh (112 STC 11-29)

various periods falling between 15 April 1993 and 31 March 1997 (assessed between May 1997 and May 1999), sales of packing material worth Rs 81.96 lakh supported by declarations in Form 14 B/Form H were allowed exemption from tax though they were not as per any specific purchase agreement with the foreign supplier. The materials sold were used as ordinary packing for goods exported out of India. This resulted in under-assessment of Rs 16.48 lakh (including interest of Rs 6.30 lakh).

On this being pointed out (between May 1998 and March 2001) the department revised (between February 2000 and December 2001) the assessments in respect of all the dealers raising additional demands aggregating to Rs 16.48 lakh (including interest). In four cases the dealers had filed appeals and obtained stay against recovery. Report on recovery in the remaining cases has not been received (December 2002).

The above cases were reported to Government in April 2002. In one case Government concurred with the action taken by the department. Replies in the remaining cases have not been received (December 2002).

2.7 Non-levy/short levy of turnover tax/additional tax

Under the provisions of the Bombay Sales Tax Act, 1959 every dealer whose annual turnover of sales or purchases exceeded Rs 12 lakh was liable to pay turnover tax during the period from 13 July 1986 to 30 September 1995. The rate of turnover tax was 1.25 *per cent* of the taxable turnover (1.50 *per cent* with effect from 1 April 1993 where the turnover of sales or purchases exceeded Rs 1 crore. Besides, additional tax at 15 *per cent* (12 *per cent* upto 31 March 1994) of the sales tax / purchase tax payable was leviable where the turnover of sales or purchases exceeded Rs 10 lakh.

It was noticed (between March 1997 and April 2001) that while assessing (between June 1995 and June 2000) 10 dealers in 7 divisions¹⁰ though the gross turnover of sales/purchases of the dealers had exceeded the prescribed limits for levy of turnover tax/additional tax, the same were not levied. This resulted in under-assessment of Rs 10.99 lakh (including interest of Rs 5.21 lakh).

On these being pointed out in audit (between March 1997 and April 2001), the department revised/rectified the mistakes raising additional demands for Rs 10.99 lakh (including interest). In five cases Rs 3.29 lakh was recovered including two cases wherein Rs 4.15 lakh was waived under Amnesty Scheme. Report on recovery in the remaining cases has not been received (December 2002).

¹⁰ Aurangabad, Bandra, Borivli, Churchgate, Ghatkopar, Mazgaon and Pune-I.

The cases were reported to Government in April 2002. In two cases Government concurred with the action taken by the department. Replies in the remaining cases have not been received (December 2002).

2.8 Incorrect determination of taxable turnover

Under the Bombay Sales Tax Act, 1959 sales tax is leviable on the turnover of sales of taxable goods at the rates specified in the Schedules B and C to the Act after deducting from the gross turnover, resales of goods purchased by the dealer from other registered dealers, provided the goods are resold in the same form in which they were purchased.

Further, under the Central sales Tax Act, 1956 inter-State sale of any goods other than declared goods which are not supported by declaration in Form C are liable to tax at 10 *per cent* or at the rate applicable to sale or purchase of goods inside the State under the Sales Tax Law of the appropriate State whichever is higher.

It was noticed in audit (between December 1996 and May 2001) that in assessing (between December 1995 and February 2001) 7 dealers, taxable turnover of sales were determined short to the extent of Rs 122.95 lakh resulting in under-assessment of Rs 20.84 lakh for the reasons stated in the following table:

(Rupees in lakh)

Sr. No.	Name of Division	Assessment year Month of assessment	Name of commodity	Nature of irregularity	Tax short levied	T.O Tax	Add. Tax	Interest /Penalty	Total
1.	Bandra	1994-95 February 1997	Import licence	Sale proceeds of import licence aggregating to Rs 33.60 lakh not supported by declaration in Form C were not included in the taxable turnover.	3.10	--	--	4.22	7.32
2	Mazgaon	September 1991 to March 1992 February 1996	Polythene bags	Taxable turnover was determined less by Rs 6.11 lakh.	0.49	0.08	0.06	0.63	1.26
		1993-94 December 1995	Glass sheets	Taxable turnover was determined short to the extent of Rs 4.81 lakh due to acceptance of incomplete returns.	0.44	0.05	0.05	0.28	0.82
3.	Ghatkopar	1992-93 September 1996	Machine tools	Profit on sale of assets of Rs 8.86 lakh was not included in the taxable sales.	0.89	0.11	0.11	0.73	1.84

4.	Churchgate	1997-98 February 2001	Industrial and medical gases	Rs 3.03 lakh received on account of cylinder deposit was not included in the taxable sales.	0.32	--	--	0.32	0.64
5.	Borivali	1993-94 March 1997	Aluminium casting	Taxable turnover of sales was determined short by Rs 8.07 lakh due to incorrect allowance of resales at Rs 15.88 lakh instead of at Rs 7.81 lakh.	0.57 *	0.10	0.02	0.49	1.18
6.	Nagpur	1994-95 January 1998	Pesticide	Taxable turnover of sales was determined short by Rs 58.47 lakh due to incorrect allowance of resales at Rs 1297.27 lakh instead of at Rs 1238.80 lakh.	3.30	0.83	0.50	3.15	7.78
	Total :				9.11	1.17	0.74	9.82	20.84

On this being pointed out in audit, the department revised (between March 1999 and April 2001) the assessments raising additional demands aggregating to Rs 20.84 lakh (including interest of Rs 9.82 lakh). In one case dealer paid Rs 1.18 lakh (May 2001) and in another case department recovered Rs 0.31 lakh and the balance amount of Rs 0.53 lakh was waived (November 1999) under the amnesty scheme. In a third case the dealer had filed appeal (April 2001). Report of recovery in the remaining cases has not been received (December 2002).

The matter was reported to Government in May 1999 and May 2002; their reply has not been received (December 2002).

2.9 Incorrect deduction of sales on declaration

Under the provisions of the Bombay Sales Tax Act, 1959 and the notification issued (April 1993) there under sales of goods to an entitlement certificate holder for use in manufacture of goods for sale or in the packing of goods so manufactured is allowed as deduction from the taxable turnover provided the purchasing dealer furnishes declaration in Form BC.

In Nariman Point Division it was noticed (March 2000) that a manufacturer of Iron and Steel was assessed (November 1998) *ex parte* for the period from 1 April 1993 to 31 March 1995. However, the claim of sales of Rs 131.27 lakh on declarations in Form BC was incorrectly allowed as deduction from the taxable turnover of sales instead of being disallowed and subjected to tax. This resulted in under-assessment of Rs 11.83 lakh (including interest).

On this being pointed out (March 2000) in audit the appellate authority subjected (September 2001) the sales of Rs 131.27 lakh to tax raising additional demand of Rs 11.83 lakh (including interest). However the dealer had filed (May 2002) second appeal before the Tribunal and obtained stay against recovery

* Includes disallowance of set-off of Rs 0.24 lakh

The matter was reported to Government in May 2002; their reply has not been received (December 2002).

2.10 Short levy of tax under VAT

Under the provisions of the Bombay Sales Tax Act, 1959 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 (VAT) in respect of the sales during the period from 1 October 1995 to 31 March 1999. When the sales turnover was subjected to tax, the rules provided for grant of set-off of tax paid on the purchases. Alternatively, the dealer had the option to pay tax on the differential amount of sale price reduced by the purchase price. By a notification dated 6 March 1996 tax in excess of 8 *per cent* on the taxable turnover of sales excluding turnover of sales made against declarations and goods on which the rate of tax specified in the Schedule was 16 *per cent* or more was exempt subject to fulfillment of certain conditions.

It was noticed in audit (between September 1998 and August 2000) that in respect of 8 dealers in 7 divisions¹¹ for periods falling between 1 April 1995 and 31 March 1997 (assessed between March 1998 and October 1999) tax liabilities were incorrectly computed on account of incorrect application of rates, incorrect allowance of concessional rate of tax, excess grant of discount and mistakes in arithmetic calculation resulting in under-assessment of Rs 9.21 lakh.

On being pointed out in audit (between September 1998 and August 2000) the department raised (between July 2000 and October 2001) additional demands aggregating to Rs 9.21 lakh (including interest and penalty). In three cases department recovered Rs 2.12 lakh (between August 2000 and October 2001). In three cases dealers had filed (August 2000 and January 2002) appeals. Report on recovery in the remaining cases has not been received (December 2002).

The cases were reported to Government in June 2002; Action taken in two cases by the department was concurred by Government (August and December 2002).

2.11 Incorrect deferment of tax

The Bombay Sales Tax Act, 1959 and the rules made thereunder provide for various package schemes to an industrial unit, to whom an eligibility certificate and entitlement certificate is issued by the competent authorities. Such an unit is eligible for sales tax incentives such as exemption/deferment of

¹¹ Andheri, Kolhapur, Mandvi, Nashik, Pune, Thane and Worli.

sales tax, purchase tax and central sales tax on purchases of raw material and/or on sales of finished products during the period covered by the certificate subject to terms and conditions specified in the schemes.

A manufacturer of sugar and spirit in Ahmednagar was holding entitlement certificate for manufacture of goods in the distillery division. While assessing (May 1999) the dealer for the period from 1 April 1997 to 31 March 1998, tax of Rs 8.97 lakh levied on sales of molasses of Rs 69 lakh relating to sugar division not covered by the entitlement certificate, which was payable was erroneously deferred. This resulted in non-raising of demand for recovery of tax of Rs 8.97 lakh.

On this being pointed out (November 2000) in audit the department reduced the tax deferment by Rs 8.97 lakh.

The matter was reported to Government in April 2002; their reply has not been received (December 2002).

2.12 Incorrect assessment of tax dues

Under the provisions of the Bombay Sales Tax Act, 1959 a manufacturer could purchase (upto 31 March 1994) goods specified in part II of schedule C to the Act without payment of sales tax by furnishing a declaration in Form N-15 stating that the goods would be used in the manufacture of taxable goods for sale or in the packing of goods so manufactured. However, the purchases were liable to purchase tax at the rate of 4 *per cent* and set-off of the purchase tax paid was not admissible under Rule 41 F.

Further, with effect from 1 April 1993 sales supported by declaration in Form BC to eligible dealers in the backward regions of the State though exempt from levy of sales tax were liable to turnover tax at the rate of 1.5 *per cent*, if, the turnover of sales or purchases exceeded Rs 1 crore (1.25 *per cent* if the turnover of sales or purchase was below Rs 1 crore).

In Nashik, in the assessment (March 1998) of a manufacturer of plastic films for the period from 1 April 1993 to 31 March 1994 purchase tax of Rs 11.95 lakh was incorrectly levied at 10 *per cent* on the purchases of Rs 119.52 lakh instead of purchase tax of Rs 4.97 lakh leviable at the rate of 4 *per cent* on the total purchases of Rs 124.23 lakh effected by furnishing declaration in Form N-15. Also, set-off of the purchase tax of Rs 11.95 lakh levied, which was inadmissible, was allowed. Further, on the turnover of sales of Rs 26.11 lakh supported by declarations in Form BC during the period from 1 April 1993 to 31 March 1995, turnover tax of Rs 0.39 lakh leviable was not levied. These mistakes resulted in under-assessment of Rs 8.90 lakh (including interest of Rs 4.33 lakh).

On this being pointed out in audit (May 1998) the assessing officer reassessed (January 2000) the dealer raising additional demands aggregating to Rs 8.90 lakh. The dealer had filed (June 2000) an appeal and obtained stay against the

reassessment order. Report on developments in appeal has not been received (December 2002).

The matter was reported to Government in March 2002; their reply has not been received (December 2002).

2.13 Non/short levy of penalty/interest

Under the Bombay Sales Tax Act, 1959 if a dealer does not pay tax within the time he is required to pay it, then, he shall be liable to pay simple interest at the rate of 2 *per cent* of the amount of tax for each month or part thereof after the date by which he should have paid such tax.

Similarly, if any tax remains unpaid on the date prescribed for filing of the last return in respect of a period of assessment, the dealer shall be liable to pay simple interest at the rate of 2 *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 same provisions are also applicable for levy of penalty under the Central Sales Tax Act, 1956.

It was noticed (between February 1998 and March 2000) in the assessment (between June 1996 and June 1998) of 3 dealers in 3 divisions¹² for periods falling between April 1992 and March 1996 that interest was either short levied or not levied (deferred). This resulted in short/non-levy of interest/penalty of Rs 6.56 lakh.

On this being pointed out in audit (between February 1998 and March 2000) the department raised (January 1999 and April 2001) additional demands aggregating to Rs 6.56 lakh. In one case dealer filed (June 2000) an appeal before the tribunal and obtained stay against recovery. Report on recovery in the remaining cases has not been received (December 2002).

The matter was reported to Government in April 2002. In one case Government concurred with the action taken by the department. Replies in the remaining cases have not been received (December 2002).

2.14 Non-levy of purchase tax

Under the provisions of the Bombay Sales Tax Act, 1959 and the rules made thereunder, during the period from 1 September 1990 to 30 September 1995 a dealer purchasing any goods specified in Part I of Schedule C was liable to pay purchase tax at the rate of two paise in the rupee on the turnover of such purchases unless the goods so purchased were resold by him. The purchase

¹² Bandra, Enforcement Mumbai and Mazgaon

tax was in addition to sales tax or purchase tax leviable under the Act. From 1 October 1995 purchase tax is leviable on the purchases of goods used in the manufacture of taxable goods transferred outside the State otherwise than as sale. Besides, additional tax and interest are leviable as per the provisions of the Act.

It was noticed (between March 1998 and October 2000) that while assessing (between October 1996 and January 2000) four dealers one each in Andheri, Borivali, Ghatkopar and Pune Divisions, purchase tax though leviable was not levied on the purchase of goods valued at Rs 262.56 lakh during the periods falling between April 1993 and March 1997. This resulted in under-assessment of Rs 6.06 lakh (including interest of Rs 1.87 lakh)

On this being pointed out in audit (between March 1998 and October 2000) the department revised/rectified (between June 1999 and October 2001) the assessments raising additional demands for Rs 6.06 lakh (including interest of Rs 1.87 lakh). In one case the dealer had filed (March 2001) an appeal. . Report of recovery in the remaining cases has not been received (December 2002).

The matter was reported to Government in May 2002; their reply has not been received (December 2002).

2.15 Short 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 declarations 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 the sale or purchase of such goods inside the State, whichever is higher, is leviable.

It was noticed in audit (June 1999, August 1999 and December 1999) that in assessing (between June 1995 and February 1999) three dealers for the periods falling between April 1991 and March 1994, inter-State sales amounting to Rs 164.76 lakh were incorrectly subjected to tax at the lower rate of 4 *per cent*. This resulted in under-assessment of Rs 11.03 lakh including interest.

On these cases being pointed out in audit (June 1999, August 1999 and December 1999) the department rectified the mistakes (September 2000, November 2000 and April 2001) by raising additional demands amounting to Rs 11.03 lakh. The dealers had filed appeals. Report of developments in appeal has not been received (December 2002).

The matter was reported to Government in July 1999 and June 2002. In one case action taken by the department has been concurred by Government

(August 2002). Replies in the remaining cases have not been received (December 2002).

2.16 Non-forfeiture of excess collection of tax

Under the provisions of the Bombay Sales Tax Act, 1959 a registered dealer liable to pay tax in respect of any sale, may collect on the sale of goods any sum by way of tax from any other person. No registered dealer shall collect any amount by way of tax in excess of the amount of tax payable by him. Excess collection of tax except for the amounts refunded to the purchasers shall be forfeited and after deduction of expenses of collection be transferred to the Consumer Protection and Guidance Fund.

In Mazgaon, Pune and Thane it was noticed in audit (between January 1998 and January 2001) that while assessing (between January 1997 and May 1999) 3 dealers for assessment periods falling between 1 April 1993 and 31 March 1996 as against the tax collection of Rs 15.62 lakh the tax payable was determined at Rs 10.55 lakh. This resulted into non-forfeiture of excess collection of tax worth Rs 5.07 lakh. While the excess collection of Rs 1.61 lakh in two cases was not forfeited, in the third case as against the excess collection of Rs 3.46 lakh only Rs 0.07 lakh was forfeited.

On this being pointed out in audit the department revised/rectified (between June 2000 and January 2001) the assessments raising additional demands for Rs 5.02 lakh (including penalty).

The matter was reported to Government in April 2002. In one case Government granted (October 2000) administrative relief against recovery of Rs 3.39 lakh despite concurring with the action taken by the department. Replies in the remaining two cases have not been received (December 2002).