

CHAPTER II : Sales Tax

2.1 Results of audit

Test check of records of sales tax conducted during the year 2002-2003 revealed under-assessment/short levy/loss of revenue amounting to Rs 379.28 crore in 1,445 cases, which broadly fall under the following categories:

Sr. No.	Category	No. of cases	Amount (In crore of rupees)
1.	Non-levy/short levy of tax	660	15.46
2.	Incorrect allowance of set-off	404	6.64
3.	Non-levy/short levy of interest/penalty	111	3.51
4.	Omission to forfeit tax collected in excess	14	0.04
5.	Other irregularities	256	353.63
Total		1,445	379.28

During the course of the year 2002-2003, the Department accepted under-assessments of Rs 5.95 crore involving 744 cases, of which 92 cases involving Rs 0.53 crore had been pointed out during 2002-2003 and the rest in earlier years. Of these, the Department recovered Rs 0.99 crore.

A few illustrative cases involving financial effect of Rs 358.05 crore are given in the following paragraphs:

2.2 Sales tax incentives under package schemes of incentives

2.2.1 Introduction

Mention was made in para 2.3 of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year ended 31 March 1998 regarding inadequacies in the implementation of the package schemes of incentives. The compliance to the audit observations has not been received from Government. In furtherance of the above, a test check of records maintained in the office of the Deputy Commissioner of Sales Tax (Incentives and Enforcement) in the Commissionerate in Mumbai and by 15 assessing officers in Aurangabad, Ghatkopar (Mumbai) and Pune-II Divisions, relating to dealers holding eligibility/entitlement certificates was conducted during April 2003 and May 2003. The deficiencies/defects pointed out earlier persisted as noticed during the above mentioned test check as also during local audit of units in Kolhapur and Nashik Divisions as detailed in the succeeding paragraphs.

2.2.2 Monitoring of availing of incentives

(i) According to the package scheme of incentives, procedural rules and the Departmental circular instructions, the availing of incentive by the eligible units is required to be monitored by the sales tax authorities through scrutiny of periodical returns filed by the units and completion of assessments of the eligible units. The Act provides that where all returns are filed within 6 months from the end of the year, the assessments are to be completed within three years. However, where returns are not furnished for any period, the Assessing Officer shall at any time within eight years, proceed to assess the dealer. As per the schemes, assessments of eligible units are required to be completed on priority basis. The Department had not prescribed any periodical statement to watch pendency in assessments of units eligible for exemption from payment of taxes. As such, position of pendency of these cases was not available in the Department. The Department had prescribed monthly statement showing progress in assessments of units eligible for deferment of taxes to be submitted by Assessing Officers to the Deputy Commissioner of sales tax of the division.

Scrutiny of monthly statements furnished by three divisions to the commissionerate revealed that assessments of the eligible units were not completed on priority and were in arrears. The pendency of assessments of eligible units under deferment mode as on 31 March 2003 was as under:

Division	No. of assessments pending	Period
Aurangabad	2,182	1994-95 to 2001-02
Pune-II	1,454	1991-92 to 2001-02
Ghatkopar	326	(Not made available)

The pending assessments, included assessments relating to the periods falling between 1992-93 and 1999-2000 of 7 units (6 from Pune Division and 1 from Ghatkopar Division) closed between September 1994 and April 2001 which had availed of sales tax incentives of Rs 1.95 crore.

(ii) The Department had prescribed various registers to be maintained by the Assessing Officers for effective monitoring of the availing of incentives either through returns or assessments. It was noticed that though the prescribed registers were maintained, they were incomplete in as much as entries regarding incentives claimed in returns, incentives allowed in assessments and subsequent modification on account of revision, appeal or rectification were not recorded and brought upto date.

(iii) In Pune, 14 units were closed. However, dates of closure and incentives availed of were not available on record. Consequently, the incentives recoverable and the dates from which amount was due could not be ascertained.

2.2.3 Non-recovery of incentives from closed units.

The package schemes of incentives, the certificates issued thereunder and the procedural rules provide that if a unit is closed during the period of availing incentive or the registration certificate is cancelled, the amount of sales tax incentives availed is recoverable with interest/penalty forthwith.

Test check of records in April 2003 and May 2003 revealed that 87 eligible units which had availed incentives of Rs 238.09 crore were closed during the period between 1987 and 2002 which was within the operative period of the eligibility certificates/agreements as detailed in the following table, which also indicates the position of recovery.

(Amount in crore of rupees)

Division	Exemption		Deferment		Total	
	No. of units	Amount Period of availment	No. of units	Amount Period of availment	No. of units	Amount
Aurangabad	15	5.50 Between 1983-84 and 2000-01	14	15.41* Between 1989-90 and 2000-01	29	20.91
Remarks						
No action was taken for recovery of the amounts in 23 cases; 3 cases were pending finalisation with BIFR, 2 dealers were asked by the Department in July 2001 to pay the incentives; in 1 case factory was attached by implementing agency but no recovery was made.						
The Assessing Officer stated in 20 cases that unless eligibility certificate was cancelled by implementing agencies, the amount could not be recovered. The reply is not tenable as incentives availed of were recoverable as soon as the units were closed. Reply in the remaining cases had not been received (December 2003).						
Ghatkopar	7	31.09# Between 1982-83and 2000-01	20	45.14@ Between 1983-84 and 2001-02	27	76.23

Remarks No action for recovery was initiated in 14 cases involving Rs 4.52 crore; 5 cases were under BIFR of which one case was taken over by SBI for recovery of its dues; 8 cases were under liquidation/taken over by financial institutions, claims being lodged only in 4 cases including one case disposed of by SICOM. Final action taken in the remaining cases was not intimated (December 2003).						
Pune	11	<u>1.94</u> Between 1984-85 and 2000-01	18	<u>84.54</u> Between 1982-83 and 2000-01	29	86.48
Remarks Eligibility certificates in 5 cases were proposed to be cancelled, including one case in which implementing agency unilaterally settled liabilities and recovered its dues however, incentives of Rs 1.21 crore remained unrecovered. No action for recovery was initiated in the remaining cases (December 2003).						
Kolhapur			1	<u>54.04</u> Between 1996-97 and 1998-99	1	54.04
Remarks No action has been taken for recovery (December 2003)						
Nashik	1	<u>0.43</u> Between 1994 and 1998			1	0.43
Remarks Unit closed and labour dispute pending in the Industrial Court (December 2003).						
Total	34	38.96	53	199.13	87	238.09

Notes: *Includes excess availment of deferment of tax of Rs 6.07 lakh by a dealer.

@Includes excess deferment of taxes of Rs 6.22 lakh by a dealer.

#Includes excess availment of exemption of Rs 1.58 lakh by a dealer.

Though, the Bombay Sales Tax Act, 1959 empowers the sales tax authorities to recover tax dues as arrears of land revenue as provided in the Maharashtra Land Revenue Code, 1966, in none of the cases action was so initiated (May 2003)

Section 38C inserted in February 1999 in the Bombay Sales Tax Act, 1959 provides that any amount of tax, interest or any other sum, payable by a dealer or any other person under the Act, should be the first charge on the property of the dealer or any other person as the case may due.

It was noticed in audit in May 2003 that a unit that had closed its business after availing incentives of Rs 12.60 lakh, had been taken over by SICOM in June 2000. SICOM intimated the Department in June 2001 that the assets would be sold for recovery of its dues. Further, it advised the Department to take up the matter with the company for recovery of the incentives; however neither any claim was lodged nor was any recovery made.

Thus, lack of action on the part of department in invoking the provisions of the Act, resulted in non-recovery of the dues.

2.2.4 Incorrect computation of cumulative quantum of benefits

As per the package scheme of incentives and the Bombay Sales Tax Rules, 1959, the cumulative quantum of incentives eligible to an unit for exemption from payment of tax shall include the amount of sales tax, turnover tax,

additional tax and surcharge which would have been payable to the Government, if the dealer was not holding the certificate of entitlement. Moreover, such dealers opting for the incentive scheme cannot avail of full or partial exemption from payment of tax admissible as per Act/Rules/Government notifications.

Test check revealed that the cumulative quantum of benefits was incorrectly worked out in the following cases:

(Amount in crore of rupees)

Sr. No.	Division No. of dealers	Period Month of assessment	Commodity	Sales/ purchases	Amount of incentives	Nature of observations
1.	<u>Aurangabad</u> 3	1994-95 to 1999-2000 Between October 1998 & March 2003	Foreign liquor (beer)	413.33 (sales)	89.92	Tax was incorrectly worked out on local sales of Rs 72.10 crore from October 1995 to 15 January 1997 at 4 per cent and at Nil rate of tax on remaining sales of Rs 341.23 crore as per general exemption, as against schedule rate of 35 per cent upto September 1995 and 20 per cent thereafter.
2.	<u>Ghatkopar</u> 1	1997-98 & 1998-1999 March 2001 and February 2002	Chemicals	73.91 (sales)	2.96	Tax was not worked out on the sales covered by general exemption.
3.	<u>Aurangabad/ Nashik</u> 3	1997-98 to 1998-1999 April 2000 May 2000 and March 2002	Fertilizers	31.71 (sales)	1.27	Tax was not worked out on the sales covered by general exemption.
4.	<u>Pune</u> 1	1997-98 to 1998-1999 November 2000 and October 2001	Automobile tubes & flaps	3.44 (sales)	0.10	The tax on estimated sales turnover of flaps was worked out at 10 per cent instead of 13 per cent
5.	<u>Pune</u> 1	3 July 1997 to 31 March 1998 March 2001	Printed computer stationery	1.33 (sales)	0.04	The tax was worked out at 10 per cent instead of 13 per cent.
6.	<u>Pune</u> 1	1998-99 March 2002	Diapers/ Sanitary napkins etc.	0.79 (Purchases)	0.03	Purchase tax was computed at 2 per cent instead of 6 per cent
10				524.51	94.32	

Thus, incorrect computation of cumulative quantum of benefits resulted in incorrect allowance of incentives under the schemes to the tune of Rs 94.32 crore

Incorrect deferment of taxes

As per the rules, an unit holding certificate for deferment of taxes is permitted to defer the taxes payable after reducing set off or refund to which the eligible unit is entitled under the Act or rules.

2.2.5 In Ghatkopar Division, while finalising assessment of a dealer in June 1998, it was noticed that the dealer was entitled to a set off of Rs 24.83 lakh. This set off was required to be adjusted against his tax liability, however, the Assessing Officer refunded the set off and deferred the entire sales tax liability which was incorrect and resulted in irregular refund of Rs 28.60 lakh including interest.

On this being pointed out, the Department revised the assessment order in March 2002 raising additional demand for Rs 38.90 lakh (including interest of Rs 10.30 lakh). The dealer had filed appeal before the tribunal. Report on development in appeal has not been received (December 2003).

2.2.6 In respect of 2 eligible units in Aurangabad, in the assessments for the years 1996-97 and 1998-99, set off of Rs 5.19 crore was not reduced from the taxes of Rs 57.21 crore which were allowed to be deferred. This resulted in excess deferment of taxes of Rs 5.19 crore.

On this being pointed out in audit, the Assessing Officer stated that the sales tax liability was to be determined after calculating the sales tax and purchase tax payable on purchases of raw material as defined in the rules. The reply is not tenable as the rule provides for reduction of set off or refund due to a dealer for arriving at the amount of tax to be deferred.

2.2.7 Incorrect grant of certificate.

A dealer in Sangli was issued eligibility certificate (EC) under the 1988 scheme by the Western Maharashtra Development Corporation Ltd., despite non-fulfillment of eligibility criteria of ISI registration. Further, as against the authorised sales tax incentives (exemption mode) limit of Rs 45.85 lakh for the period from 1 March 1993 to 28 February 1999, the dealer had availed incentives of Rs 75.85 lakh. This resulted in excess availment of incentives of Rs 30 lakh.

On re-examination of the eligibility of the dealer on receipt of a complaint, the Director of Industries held him ineligible. Consequently, the state level committee decided on 25 September 2002 to recover the incentives availed of by the dealer. However, the incentives of Rs 75.85 lakh availed had not been recovered (August 2003).

On this being pointed out in April 2003, the Deputy Commissioner (Incentives and Enforcement) stated that the Department had nothing to do in the matter of grant of certificates as it merely endorsed the entitlement certificate received from the implementing agency and incorporated the date of effect of the EC. The reply of the Department is not tenable as it did not address the

point regarding excess incentives and action taken to safeguard the interest of revenue.

2.2.8 Non-payment of installments (deferred taxes)

As per the package scheme of incentives and the Bombay Sales Tax Rules, 1959 taxes allowed to be deferred for 12/10 years are payable thereafter in annual installments not exceeding 6/5 installments. A test check of registers maintained by 11 Assessing Officers revealed that 112 dealers had not paid the installments of deferred taxes as shown below:

(Amount in crore of rupees)

Division	No. of dealers	Assessment years in which taxes were deferred between	Due date for payment of installments between	Amount of installments due but not paid
Aurangabad	15	1984-85 and 1991-92	1999-2000 and 2002-03	4.91
Ghatkopar	18	1983 and 1991-92	1996-97 and 2002-03	4.06
Pune-II	79	1982-83 and 1992-93	1996-97 and 2002-03	6.87
Total :	112			15.84

On this being pointed out, the Assessing Officers in Aurangabad stated (May 2003) that two dealers had paid installments of Rs 4.09 crore to implementing agency; in one case claim for Rs 3.79 lakh was lodged with the official liquidator; in yet another case of a closed unit, revenue recovery certificates were issued for recovery of Rs 27.80 lakh and in four cases for recovery of Rs 17.60 lakh, letters had been issued between February 2000 and February 2003. The Assessing Officer in Ghatkopar Division stated that one unit from which installments of Rs 0.01 crore were due was under BIFR and another unit from which installments of Rs 29.46 lakh were due was taken over and disposed of by implementing agency for recovery of their dues and no recovery of deferred taxes was made. Replies in respect of the remaining cases have not been received (September 2003).

Lack of follow up action by the Department resulted in non-recovery of installments to the tune of Rs 15.84 crore.

The matter was reported to Government in June 2003; their reply has not been received (December 2003).

2.3 Tax under the Motor Spirit Tax Act, 1958

The levy and collection of tax on sales of motor spirit is governed by the Bombay Sales of Motor Spirit Taxation Act, 1958 and the Rules made thereunder. Tax is levied at the stage of first sale by an importer or manufacturer of motor spirit.

The results of scrutiny of the records of assessments of four oil companies¹ are detailed in the following paragraphs :

2.3.1 Losses

The Act and Rules do not provide for 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.

The Oil Pricing Committee (OPC) had fixed in 1976 norms for permissible loss on account of evaporation/storage of petrol and diesel as 0.5 *per cent* and 0.12 *per cent* respectively.

On the basis of these norms, the excess claim of losses allowed in the assessments of Bharat Petroleum Corporation Ltd, for the years from 1990-91 to 1994-95 in respect of petrol and/or diesel involved revenue of Rs 14.36 crore as detailed in the following table:

(Amount in crore of rupees)

Year	Product	Total quantity in lakh litres	Loss allowed as per returns in lakh litres	Percentage of loss			Excess claim in lakh litres (3 x 7)	Average sale rate per litre in rupees	Average value of excess claim (8 x 9)	Tax rate %	Tax involved (10 x 11)
				Allowed	Permitted as per OPC norms	Excess claim (5-6)					
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
1990-91	Diesel	52,595.28	382.88	0.72	0.12	0.60	315.57	2.69	8.49	17	1.44
1991-92	Petrol	9,190.47	53.90	0.58	0.50	0.08	7.35	8.02	0.59	20	0.11
	Diesel	79,953.12	1,440.92	1.80	0.12	1.68	1,343.21	2.90	38.95	20	7.79
1992-93	Diesel	49,341.46	382.13	0.77	0.12	0.65	320.72	2.36	7.56	20	1.51
1993-94	Diesel	51,916.86	543.82	1.04	0.12	0.92	477.64	2.02	9.65	20	1.93
1994-95	Petrol	12,115.20	77.85	0.64	0.50	0.14	16.96	5.80	0.98	21	0.20
	Diesel	42,308.10	349.32	0.82	0.12	0.70	296.16	2.22	6.57	21	1.38
Total											14.36

Note : The value is worked out adopting average sale price of the product as per returns

2.3.2 Non-levy of interest

Under the provisions of the Act and the Rules, every trader liable to pay tax is required to furnish a monthly statement of motor spirit sold and purchased during the preceding month and pay tax due before the end of the calendar month. For delay in payment of tax, interest at the rate of 2 *per cent* per month or part thereof is leviable.

On scrutiny of records of two oil companies² it was revealed that taxes payable for the periods falling between 1988-1989 and 1993-1994 were paid late by 1 to 90 days. The Assessing Officer, however, while finalizing the assessments in March 1998 did not levy interest for belated payment of tax. This resulted in under assessment of Rs 24.09 lakh.

The above points were brought to the notice of the Department in November 2002 & March 2003 and to Government in June 2003; their replies have not been received (December 2003).

¹ Indian Oil Corporation, Bharat Petroleum Corporation Ltd, Hindustan Petroleum Corporation Ltd, and Indo-Burma Petroleum Co.

² Indo-Burma Petroleum Co. and Indian Oil Corporation

2.4 Incorrect grant of set-off

2.4.1 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 and used them within the state in the manufacture of taxable goods for sale or export or in packing of goods so manufactured, is allowed set-off of taxes paid in excess of four *per cent* of the purchase price (2 *per cent* in case of raw material from 1 October 1995). From 1 July 1997, reduction of 2 *per cent* of the purchase price (3 *per cent* on outside Maharashtra State purchases from April 1998) is to be made on local and outside the state purchases restricted to 4 *per cent* of the purchase price on which set off is claimed. Where the purchase price is inclusive of tax, a formula has been prescribed for calculating the amount of set-off. Where manufactured goods are transferred outside the state, otherwise than by way of sale, set-off of taxes paid on raw materials including packing materials is allowed in excess of 6 *per cent* instead of 4 *per cent*. Further, interest is leviable as per the provision of the Act.

It was noticed that in assessing 21 dealers between July 1997 and March 2002 in nine divisions³ for periods between 1993-94 and 1999-2000, set-off was allowed in excess due to mistakes in computation resulting in under-assessment of Rs 28.59 lakh including interest of Rs 2.31 lakh. A few illustrative cases are 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/ (In lakh of rupees)
1	<u>Andheri</u> 2	(i) <u>1997-98</u> January 2001	Set off of Rs 20.58 lakh was allowed as against Rs 16.91 lakh admissible.	4.33
		(ii) <u>1997-98</u> February 2001	Set-off reduced on account of branch transfer was incorrect	1.38
2	<u>Mandvi</u> 1	<u>1997-98</u> May 2000	Set-off was incorrectly computed without deduction of 2 <i>per cent</i> of purchases from registered dealer and from outside the state.	1.69
3	<u>Pune</u> 1	<u>1997-98</u> August 2000	As against set off of Rs 12.62 lakh admissible set off was incorrectly worked out at Rs 14.42 lakh.	2.12

³ Andheri, Bandra, Borivali, Churchgate, Mandvi, Nariman point, Pune, Thane and Worli

Sr. No.	Name of the Division No. of dealers	Assessment period Month of assessment	Nature of irregularity	Under-assessment including interest/ (In lakh of rupees)
4	Thane 2	(i) 1996-97 February 1999	Set-off was not reduced proportionately in respect of labour charges and scrap sales	1.99
		(ii) 1998-99 March 2002	Set-off was incorrectly computed	5.50
5	Worli 3	(i) 1996-97 August 2000	Set-off was incorrectly computed without deduction of 2 per cent of purchases from registered dealer's and from outside the state.	1.34
		(ii) 1997-98 December 2000	Set-off was incorrectly computed without deduction of 2 per cent of purchases from registered dealer and from outside the state.	1.06
		(iii) 1998-99 March 2002	Set-off was not reduced on account of branch transfer	1.94

On this being pointed out (between July 1998 and September 2002) the Department rectified the mistakes and raised additional demands for Rs 28.59 lakh including interest. Eight dealers had paid Rs 13.58 lakh and Rs 9.19 lakh was adjusted against the refunds due to seven dealers. Report on recovery in the remaining cases has not been received (December 2003).

The matter was reported to Government in May 2003; Government concurred with the action taken by the Department in eleven cases and their reply in the remaining cases has not been received (December 2003).

2.4.2 By an amendment effective from 1 May 1998, set-off of taxes paid on purchases was admissible to a dealer who manufactures goods for sale or export. However, when such manufacture results in production of goods other than taxable goods, set-off is not admissible on purchases of goods including capital assets effected prior to 1 April 1998.

It was noticed that in assessments between March 2000 and October 2001, in the cases of 11 dealers in three divisions⁴ for various periods falling between 1991-92 and 1997-98, set-off was incorrectly allowed on purchases of goods including capital assets effected prior to 1 April 1998 and used in the manufacture of sugar which is a tax free commodity. This resulted in under-assessment of Rs 32.34 lakh.

On these cases being pointed out between June 2001 and December 2002, in one case in Aurangabad Division, the assessment was rectified raising demand for Rs 1.63 lakh which was adjusted in May 2003 against the refund due to the dealer in the assessment for the year 1999-2000. The Dy. Commissioner of Sales Tax, Nashik stated in September 2002 that though the dealer

⁴ Aurangabad, Nashik and Sangli

manufactures tax free goods i.e. sugar, he also produces taxable goods like industrial alcohol, baggase, molasses etc. As such he was eligible for set-off on purchase of goods including capital assets. The reply is not tenable as the Commissioner of sales tax had clarified in June 1998 that the proviso prohibiting grant of set-off on purchases effected prior to 1 April 1998 would apply to a manufacturing activity resulting in production of taxable as well as tax-free goods.

The matter was reported to Government in May 2003; Government concurred with the action taken in the case of the dealer in Aurangabad Division, their reply in the remaining cases has not been received (December 2003).

2.4.3 Under the provisions of Rule 41 F of the Bombay Sales Tax Rules, 1959, a manufacturer is entitled to full set-off of taxes paid or deemed to have been paid on purchases of goods used by him within the state in the manufacture of specified goods for sale, excluding those which are treated as capital assets and parts, components and accessories of such capital assets. When manufactured goods are transferred outside the state otherwise than as sale, set-off is allowed in excess of six *per cent* of the purchase price.

It was noticed that while assessing between January 1997 and February 2001, 7 dealers in 6 divisions, set-off under rule 41 F was incorrectly granted for reasons stated against each in the following table. This resulted in under-assessment of Rs 34.71 lakh including interest of Rs 5.18 lakh.

Sr. No.	Name of the Division	Assessment period Month of assessment	Nature of irregularity	Under-assessment including interest/penalty (In lakh of rupees)
1.	Churchgate	<u>1996-97</u> February 2000	Incorrect allowance of set-off due to treating dispensing of medicines as manufacturing activity	0.56
2.	Thane	<u>1994-95</u> February 2000	Purchase of battery scrap treated as purchase of non-ferrous metal	1.33
3.	Nashik	(i) <u>1994-95</u> January 1997	Set off was allowed on purchases of goods resold and not used in manufacture.	0.58
		(ii) <u>1996-97</u> December 2000	Set off was not reduced by 6 <i>per cent</i> of purchase price in respect of goods transferred to branches outside the state.	0.51
4.	Bandra	<u>1997-98</u> February 2001	Set-off on purchases of S.S. Strips was worked out at 4 <i>per cent</i> instead of 2 <i>per cent</i> which was the rate of tax applicable.	0.40

Sr. No.	Name of the Division	Assessment period Month of assessment	Nature of irregularity	Under-assessment including interest/penalty (In lakh of rupees)
5.	Pune	<u>1997-98</u> February 2001	Full set-off incorrectly allowed on purchases used in the manufacture of compressors for refrigerators and air conditioners under Rule 41F instead of under Rule 41D in excess of 4 <i>per cent</i>	30.57
6	Ghatkopar	1993-94 1994-95 <u>1995-96</u> January 1999, February 1999	Set-off allowed on purchases used in manufacture of plastic goods in full under Rule 41F instead of under Rule 41D in excess of 4 <i>per cent</i> .	0.76
Total:				34.71

On this being pointed out in audit between December 1997 and March 2002, the Department revised/rectified the assessment orders raising additional demands for Rs 34.71 lakh. In two cases, Department recovered Rs 1.73 lakh between January 2001 and September 2002. Two dealers went in appeal (May 2001 and July 2001). Report on developments in appeal and recovery of the balance amount has not been received (December 2003).

The matter was reported to Government in May 2003; Government concurred with the action taken by the Department in four cases. Replies in respect of the remaining cases have not been received (December 2003).

2.4.4 Under the provisions of Rule 42 H of the Bombay Sales Tax Rules, 1959 a dealer having a 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, for the period from 1 October 1995 to 31 March 1999, set-off of tax paid on the purchases of goods including packing material. The set-off was admissible provided purchase price of the goods was not allowed as deduction from the turnover of sales. Similarly, set-off was not admissible on the purchases sold on declarations.

It was noticed that in the assessments between January 1998 and April 2001, in the case of 9 dealers in 6 divisions for various periods falling between April 1995 and March 1999, set-off was incorrectly allowed resulting in under-assessment of Rs 10.40 lakh, including interest and penalty of Rs 2.28 lakh as detailed in the following table:

Sr. No.	Name of the Division No. of dealer(s)	Assessment period Month of assessment	Nature of irregularity	Under-assessment including interest/penalty (In lakh of rupees)
1.	<u>Churchgate</u> 1	<u>1996-97</u> February 2000	Set-off was incorrectly allowed on purchases allowed as deduction from the turnover of sales.	1.13
2.	<u>Bandra</u> 1	<u>1998-99</u> April 2001	Set-off was incorrectly allowed on purchases allowed as deduction from the turnover of sales and also incorrectly computed.	2.26
3.	<u>Nariman point</u> 1	<u>1995-96</u> January 2001	Set-off of Rs 1.51 lakh was incorrectly allowed on purchases from registered dealers resold prior to 30 September 1995 when VAT was not applicable	2.06
4.	<u>Mandvi</u> 3	(i) <u>1995-96</u> January 1998 (ii) <u>1997-98</u> June 2000 (iii) <u>1997-98</u> November 2000	Incorrect computation of set-off. --do-- Set-off of Rs 0.57 lakh incorrectly allowed on purchases of goods sold on declarations which was inadmissible.	0.91 0.50 0.68
5.	<u>Andheri</u> 2	(i) <u>1998-99</u> January 2001 (ii) <u>1998-99</u> April 2001	Incorrect computation of set-off. --do--	0.63 0.81
6.	<u>Borivali</u> 1	<u>1995-96</u> February 1999	Set-off was incorrectly allowed on purchases allowed as deduction from the turnover of sales.	1.42
Total :				10.40

On this being pointed out between January 2000 and October 2002, the Department revised/reassessed the assessments in 8 cases, raising additional demands for Rs 8.34 lakh and in the remaining case had initiated action for reassessment. Five dealers had paid Rs 3.98 lakh and three dealers had filed appeals. Report on developments in appeal, action taken in the remaining case and recovery of the balance amount has not been received (December 2003).

The matter was reported to Government in May 2003; Government concurred with the action taken by the Department in five cases. Replies in the remaining cases have not been received (December 2003).

2.4.5 Under the provisions of the Bombay Sales Tax Act, 1959 and the rules made thereunder with effect from 1st April 1984, a registered dealer is entitled to set-off of taxes paid on the purchases of goods specified in entry 6 of Schedule B (B-6 goods) to the Act and used in the process of manufacture of goods falling under the same schedule entry for sale or export. Further, where the process of manufacture results in production of B-6 goods as well as other goods, set off shall be allowed to the extent of manufacture of B-6 goods only

on the basis of sale price. Besides, interest is leviable as per the provisions of the Act.

In Nagpur, it was noticed in August 1998, that while assessing in May 1997 a manufacturer of transmission towers for the period from 1 April 1994 to 31 March 1995, set off of taxes paid was allowed at Rs 19.10 lakh on raw materials used in manufacture. As transmission tower is not covered by entry in B-6, set off was inadmissible. This resulted in underassessment of Rs 19.10 lakh.

On this being pointed out the Department stated that additional demand of Rs 43.16 lakh (including interest of Rs 24.06 lakh) was raised. The dealer had filed an appeal in May 2002. Report on developments in appeal has not been received (December 2003).

The matter was reported to Government in May 2003; their reply has not been received (December 2003).

2.5 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 provisions in 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 conditions 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 that in assessing 22 dealers in 10 divisions⁵ between February 1996 and March 2002 for the periods between 1990-91 and 1999-2000 due to application of incorrect rate of tax, there was under-assessment of Rs 56.82 lakh.

On these cases being pointed out between June 1997 and September 2002 the Department revised/rectified the assessments, raising additional demands of Rs 56.82 lakh. An amount of Rs 5.95 lakh was recovered from eight dealers and seven dealers had filed appeals. Report on developments in appeal and recovery in the remaining cases has not been received (December 2003).

The matter was reported to Government in May 2003; Government concurred with the action taken by the Department in six cases. Replies in the remaining cases have not been received (December 2003).

⁵ Andheri, Aurangabad, Bandra, Borivali, Churchgate, Kolhapur, Nariman point, Pune-I, Pune-II and Thane