

## CHAPTER II : Sales Tax

### 2.1 Results of audit

Test check of records of Sales Tax Department conducted during the year 2003-04 revealed under-assessments/short levy/loss of revenue amounting to Rs 311.41 crore in 1,211 cases which broadly fall under the following categories.

Sl. No.	Category	No. of cases	Amount (in crore of rupees)
1.	Non/short levy of tax	713	8.42
2.	Incorrect allowance of set-off	318	4.72
3.	Non/short levy of interest/penalty	56	0.64
4.	Omission to forfeit tax collected in excess	30	0.21
5.	Other irregularities	92	14.58
6.	<b>Review on Levy and collection of sales tax on works contract</b>	1	68.26
7.	Package schemes of incentives	1	214.58
<b>Total</b>		<b>1,211</b>	<b>311.41</b>

During the course of the year 2003-04, the Department accepted under-assessments of Rs 19.60 crore involving 1037 cases out of which 109 cases involving Rs 0.59 crore were pointed out during 2003-04 and the rest in earlier years. The Department recovered Rs 2.77 crore. In eight other cases involving revenue of Rs 0.04 crore, action was stated to be time barred.

A review on **Levy and collection of sales tax on works contract** involving financial effect of Rs 68.26 crore and few illustrative cases involving financial effect of Rs 198.66 crore are given in the following paragraphs:

## 2.2 Internal audit

The internal audit wing in the Department is headed by a Deputy Commissioner who is assisted by four Assistant Commissioners and works under the control of the Commissioner of Sales Tax.

All assessment cases with tax liability of above Rs four lakh assessed by Assistant Commissioners and Sr. Assistant Commissioners and assessments finalised by the enforcement branch are audited by the internal audit wing. Cases involving refund of Rs 25 lakh and above are audited prior to issue of the refund payment order. Cases assessed during a year are subjected to audit in the following year.

According to information furnished by the Dy. Commissioner (Audit), the objections raised, disposed of and outstanding during the periods from 2000-01 to 2003-04 were as follows:

(Amount in crore of rupees)

Year	Opening balance		Additions		Disposal		Closing balance		Percentage of disposal	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	cases	Amount
2000-2001	8,886	126.23	1,479	33.02	4,949	85.91	5,416	73.34	47.14	53.95
2001-2002	5,416	73.34	2,413	12.56	123	4.51	7,706	81.39	2.00	5.25
2002-2003	7,706	81.39	843	12.00	465	9.43	8,284	83.96	4.00	11.57
2003-2004	8,284	83.96	771	14.88	494	13.66	8,561	85.18	5.45	13.82

The table indicates that while the disposal had marginally increased to 5.45 from four *per cent* in 2003, the disposal of objections had drastically reduced from 47.14 *per cent* in 2001. This indicates laxity on the part of the Department in settling internal audit observations.

## **2.3 Review on Levy and collection of sales tax on works contract**

### **2.3.1 Highlights**

**Arrears of sales tax on works contract amounting to Rs 89.93 crore in respect of 8,128 cases in 16 divisions were pending as on 31 March 2003.**

*(Paragraph 2.3.7)*

**Failure to take action for recovery of the differential dues resulted in short recovery of tax of Rs 27.64 crore.**

*(Paragraph 2.3.8)*

**Due to incorrect application of rate of tax or incorrect deduction of turnover or allowing inadmissible deductions there was under-assessment of Rs 10.88 crore (including penalty and interest) in respect of 37 dealers.**

*(Paragraph 2.3.9)*

**Incorrect allowance of deduction of Rs 99.50 crore on account of labour and other charges in the assessments of 69 dealers resulted in under-assessment of Rs 9.54 crore (including penalty and interest).**

*(Paragraph 2.3.10)*

**Excess or incorrect allowance of deduction on account of resale of Rs 20.91 crore in the assessments of 12 dealers resulted in underassessment of Rs 9.83 crore (including penalty and interest).**

*(Paragraph 2.3.11)*

### **2.3.2 Introduction**

The Maharashtra Sales Tax on the Transfer of Property in goods involved in the execution of Works Contract Act, 1985 (Act), was introduced with effect from 1 October 1986. According to the provisions of the Act, every dealer engaged in the execution of works contract in the State and whose turnover of sales/purchases during a year exceeds Rs 2 lakh is liable to obtain a certificate of registration and make payment of tax, at the rates prescribed in the Act.

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.

All the provisions of the Bombay Sales Tax Act, 1959 (BST Act), in relation to assessment, re-assessment, collection and enforcement of payment of tax including levy of penalty and interest are applicable to the Act.

### **2.3.3 Audit Objectives**

A scrutiny of the assessment records was conducted to ascertain:

- whether assessments were completed as per the provisions of the Act and Rules and
- whether internal control mechanism was in existence in the Department to monitor the assessment and collection of sales tax under the Works Contract Act.

### 2.3.4 Organisational set up

The levy, collection and assessment of tax under the Act is under the overall control of the Commissioner of Sales Tax, Mumbai who is assisted by Additional Commissioners at zonal level, two at Mumbai, one each at Nagpur and Pune and Deputy Commissioners of Sales Tax at Division level, Senior Assistant Commissioners, Assistant Commissioners and Sales Tax Officers. The work of assessment and collection of tax under the Act is carried out separately in addition to assessments done under the BST Act. No separate staff is earmarked for assessment and collection of tax under the Act.

### 2.3.5 Scope of audit

A mention was made in paragraph 2.2 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 1998 (Revenue Receipts), Government of Maharashtra regarding various aspects of levy and collection of sales tax under the Works Contract Act. The Audit Report has not yet been taken up for discussion by the Public Accounts Committee (PAC). Action taken by the State Government on the audit observations has not been intimated. With a view to verify action taken by assessing authorities on the audit findings, assessments completed between 1 April 1999 and 31 March 2003 were test checked in 11 divisions<sup>1</sup> between February 2004 and May 2004. Results of test check are mentioned in the succeeding paragraphs.

### 2.3.6 Arrears of Assessments

Under the provisions of the BST Act, where all the returns are filed by a registered dealer for any year by prescribed dates, the assessment shall be completed before the expiry of three years from the end of the said year. Where a registered dealer does not furnish return in respect of any period by the prescribed date, the Commissioner shall, at any time within eight years from the end of the year, proceed to assess the dealer.

The yearwise position of opening balance, additions, disposal and closing balance of assessments under the Act for the years 1998-99 to 2002-03 was as follows:

Year	Opening balance	New cases due for assessment during the year	Total assessments due	Cases disposed of during the year	Balance at the end of the year	Percentage of Col. 5 to Col. 4
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1998-1999	42,339	15,716	58,055	8,663	49,392	15
1999-2000	49,392	18,732	68,124	26,114	42,010	38
2000-2001	42,010	23,542	65,552	4,854	60,698	7
2001-2002	60,698	27,934	88,632	7,770	80,862	9
2002-2003	80,862	28,498	1,09,360	8,325	1,01,035	8

<sup>1</sup> Andheri, Aurangabad, Bandra, Borivali, Ghatkopar, Kolhapur, Nariman Point, Pune-I, Pune-II, Thane and Worli.

It would be seen that assessments completed during the years 1998-99 to 2002-03 ranged between seven and 38 *per cent*. The clearance of 38 *per cent* of the total assessments during the year 1999-2000 was due to the amnesty scheme<sup>2</sup>.

Addition of cases during the last three years was 79,974 leaving a balance of 21,061 assessments pending for more than three years which may become time barred.

### 2.3.7 Arrears of Revenue

As a result of assessments under the Act in the 16 divisions<sup>3</sup>, demands for Rs 89.93 crore raised in respect of 8,128 cases were pending recovery as on 31 March 2003. The year wise break up of the arrears as furnished by the divisions was as under:

Assessment Year	No. of Cases	Amount (in crore of rupees)
upto 1997-1998	1,757	23.18
1998-1999	1,003	13.90
1999-2000	1,651	18.46
2000-2001	699	6.00
2001-2002	999	9.41
2002-2003	2,019	18.98
<b>Total</b>	<b>8,128</b>	<b>89.93</b>

#### Stages of action :

The stages of pendency of the arrears were as under :

Stages	No. of cases	(Amount in crore of rupees)
		Amount
Pendency in appeals	1,664	45.29
Under liquidation	66	3.55
Maharashtra Land Revenue Code (Revenue Recovery Certificate)	311	1.92
Dealers not traceable	834	2.73
Due date for recovery not over	701	3.88
Others	1,501	17.88
Available for recovery	3,051	14.68
<b>Total</b>	<b>8,128</b>	<b>89.93</b>

<sup>2</sup> Amnesty Scheme: With a view to reduce the arrears of assessments and revenue, the Government of Maharashtra vide G.R. dated 25.11.1998 announced an Amnesty Scheme, 1998.

<sup>3</sup> Andheri, Aurangabad, Bandra, Borivali, Churchgate, Ghatkopar, Kolhapur, Mazgaon, Mandvi, Nagpur, Nariman Point, Nashik, Pune-I, Pune-II, Thane and Worli.

### **2.3.8 Short recovery of composition tax**

Under the provisions of the Act and the Rules made thereunder, in respect of un-registered dealers the statement of tax deduction by the employers is to be furnished to the prescribed authority. The statement is to be furnished within 20 days after the end of the month to which it relates. The rate of tax deducted at source is two *per cent*.

Scrutiny of the records maintained by the STO, (E-207) Mumbai revealed that 4,236 statements relating to the period April 2000 to March 2003 for tax deduction at two *per cent* aggregating Rs 34.20 crore by the employers and paid to Government account were received. The rate of composition tax was increased to three *per cent* from 1 April 2000 and four *per cent* from 1 April 2001 onwards. However, follow up action to recover the differential dues was not taken. This resulted in tax amounting to Rs 27.64 crore being short recovered.

After this was pointed out, the Department stated in January 2005 that follow-up action for recovery of the amount short recovered was in progress. Report on demand raised and recovery effected has not been received (February 2005).

### **2.3.9 Short levy of tax due to incorrect application of rate of tax**

- Under the provisions of the Act, value of goods, if purchased from registered dealers in the State and used in the same form in which they were purchased was allowed deduction from the turnover of sales upto 30 April 1998. Otherwise, tax at the rate of four *per cent* was leviable on value of declared goods and in respect of other goods at the rate of tax applicable under the BST Act or 10 *per cent* depending on whether the goods are covered by the schedule to the Act or not respectively. The rate of tax leviable was 15 *per cent* in respect of goods other than declared goods sold in the same form from 1 May 1998. The rate of tax applicable for goods manufactured and used in the execution of works contract was as enumerated in the schedule to the Act. No deduction from the turnover of sales was admissible in respect of value of goods other than declared goods purchased from registered dealers from 1 May 1998.

It was noticed in the assessments between June 1999 and December 2003 of 16 dealers in eight divisions that due to application of incorrect rate of tax or incorrect deduction of turnover of consumables/raw materials from the turnover or allowing inadmissible deductions *etc.* there was under-assessment of Rs 4.92 crore as detailed below:

(Amount in lakh of rupees)

Sl. No.	Division No. of dealers	Period Month/ year of assessment	Nature of objection	Tax, penalty/interest		Under- assessment
				Leviable	Levied	
1.	Andheri & <u>Pune-I</u> 2	1996-97 and 1998-99 February 2000 and February 2002	Rate of tax leviable under the BST Act was 13 <i>per cent</i> as against 10 <i>per cent</i> levied.	423.97	237.77	186.20
<b>Remarks :</b> In one case of Andheri Division, the objection was accepted by the Department. In the other case, the assessing officer in Pune-I Division stated that oil engines do not run on electricity or power and hence spares were not covered by the schedule entry and therefore liable to tax at the rate of 10 <i>per cent</i> applicable to goods other than declared goods. The reply is not tenable as the spare parts were covered by the schedule to the Act attracting tax at the rate of 13 <i>per cent</i> under entry C-II-135 of the BST Act when goods are used in the same form.						
2.	Aurangabad, Kolhapur, Nariman Point, Pune- I, Pune-II & <u>Worli</u> 10	Between 1998-99 and 2000-01 Between August 2001 and December 2003	Incorrect deduction of turnover of consumables and raw materials which was inadmissible.	159.10	1.30	157.80
<b>Remarks :</b> In the cases of seven dealers in Aurangabad, Kolhapur, Nariman Point and Pune-II divisions, the Department accepted the audit objections. In respect of the remaining three cases of Pune-I and Worli divisions the assessing officers stated that tax was not leviable on consumables and hence not levied. The reply is not acceptable as except for declared goods, all other purchases are taxable from 1 May 1998.						
3.	Pune-II & <u>Thane</u> 2	1993-94 and 1997-98 July 1999 and February 2002	Goods not used in the same form.	96.01	6.62	89.39
<b>Remarks :</b> In the case of Pune-II Division, the assessing officer stated that the rate of tax of four <i>per cent</i> levied on declared goods was as per the provision in the Act. The reply is not tenable as declared goods have not been used in the same form. In the other case of Thane Division the Department stated that the tax levied at 10 <i>per cent</i> was correct. The reply is not tenable as tax was levied at 21 <i>per cent</i> treating the goods as machinery spares in the assessment for the year 1995-96.						
4.	<u>Pune-I</u> 1	Between 1993-94 and 1997-98 February 2003 and March 2003	Purchases from dealers outside the State not taxed.	53.06	Nil	53.06
<b>Remarks :</b> The Department accepted the audit objection (February 2005).						
5.	<u>Thane</u> 1	Between 1998-99 and 1999-2000 April 2002	As against tax of 15 <i>per cent</i> leviable, tax was levied at nil, two <i>per cent</i> and 10 <i>per cent</i>	9.79	4.28	5.51
<b>Remarks :</b> The Department accepted the audit objection (February 2005).						
<b>16</b>				<b>741.93</b>	<b>249.97</b>	<b>491.96</b>

- Under the Act the rate of composition tax was four *per cent* in respect of all types of contracts upto 31 March 1992. In respect of contracts entered into between 1 April 1992 and 30 April 1998 but not completed before 30 April 1998, the composition tax was one *per cent* of the total contract value in

respect of construction contracts<sup>4</sup> and three *per cent* of total contract value in case of other contracts. From 1 May 1998, the rate of composition tax was two *per cent* of the total contract value for construction contracts and four *per cent* of total contract value in respect of other contracts received or receivable. The composition tax in respect of all types of contracts was revised to three *per cent* during the year 2000-01 and four *per cent* thereafter. Interest and penalty are leviable as per the provisions of the Act.

In nine divisions<sup>5</sup> in the assessments finalised between June 2000 and March 2004 of 21 dealers for assessment periods falling between 1998-99 and 2001-2002 for the works contracts awarded between 1989-90 and 2000-01, due to incorrect application of the rate of tax there was under-assessment of Rs 5.96 crore (including interest of Rs 1.09 crore and penalty of Rs 1.92 crore).

After this was pointed out the Department accepted in October 2004 and December 2004 audit observations in the cases of 14 dealers and in one case raised demand for Rs 1.03 crore in January 2004. In the cases of six dealers, Department stated that repair works were covered under the term construction as per Commissioner's circular dated 6 January 2000. The reply is not tenable as Government has not notified repair works under construction contracts. In the remaining case Department stated that tax was levied correctly at two *per cent*. The reply is not tenable as the contract was awarded prior to April 1992.

#### **2.3.10 Incorrect allowance of deduction**

Under the provisions of the Act in respect of dealers paying lump sum tax by way of composition of two *per cent* in respect of construction contracts and four *per cent* in respect of other contracts, no deduction whatsoever was admissible with effect from 1 May 1998. However, if composition tax was paid at eight *per cent*, deduction of turnover of purchases of tax-free goods, goods exempt from tax and purchases from dealers registered under the BST Act was admissible.

It was noticed in the assessments between June 2000 and January 2004 of 69 dealers in 11 divisions<sup>6</sup> for periods falling between April 1998 and March 2002 that inadmissible deductions of Rs 99.50 crore were allowed on account of labour and other charges. This resulted in under-assessment of Rs 9.54 crore including penalty and interest.

After this was pointed out, the Department accepted in October 2004 and December 2004 the audit observations in respect of 23 dealers. In the remaining 46 cases, it was stated that the work was purely of labour and did not involve transfer of property in the goods. This reply is not tenable as there was neither any documentary evidence on record nor was it furnished in support of the claim.

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<sup>4</sup> Buildings, Roads, Runways, Bridges, Flyover Bridges, Railway overbridges, Dams, Tunnels, Canals, Barrages, Diversions, Rail Tracks, Causeways, Subways, Spillways, Water supply schemes, Sewerage works, Drainage works, Swimming pools, Water purification plants.

<sup>5</sup> Aurangabad, Bandra, Borivali, Ghatkopar, Nariman Point, Pune-I, Pune-II, Thane and Worli.

<sup>6</sup> Andheri, Aurangabad, Bandra, Borivali, Ghatkopar, Kolhapur, Nariman Point, Pune-I, Pune-II, Thane and Worli.



### ***2.3.11 Incorrect allowance of deduction from turnover***

Under the provisions of the Maharashtra Works Contract (Re-enacted) Act, 1989, with effect from 1 January 1992, resale of declared goods and goods other than declared goods were allowed as deduction from the taxable turnover, if the purchases were from dealers registered under the BST Act and used in the execution of works contract in the same form without doing anything to them. This provision, was however, restricted to purchases of declared goods with effect from 1 May 1998.

It was noticed in the assessments finalised between September 1999 and March 2003 of 12 dealers in six divisions<sup>7</sup> for the periods falling between 1992-93 and 2001-02 that resales of Rs 20.91 crore were either allowed in excess of that admissible in respect of assessments for the periods upto 30 April 1998 or incorrectly allowed in respect of assessments for the periods after 1 May 1998. This resulted in under-assessment of Rs 9.83 crore including interest of Rs 3.61 crore and penalty of Rs 3.11 crore.

After this was pointed out, the Department accepted in October 2004 and December 2004 the objections in eight cases. In four other cases it was stated that the deductions allowed were correct. This reply is not tenable as in two cases of Thane Division the value of purchases from registered dealers were not commensurate with the deductions allowed and in the other two cases no deduction other than the value of declared goods purchased from registered dealers was permissible after 1 May 1998.

### ***2.3.12 Turnover escaping assessment***

Under the provisions of the Act the taxable turnover of the dealer is determined on the basis of returns filed/accounts maintained by the dealer or on the basis of production of further evidence which the Commissioner of Sales Tax may direct to be produced or cause to be produced. The tax is leviable as per provisions of the Act on the taxable turnover so determined.

Cross verification of assessment records under BST Act and the assessments under the Act revealed that in the assessments finalised under the Act between May 2000 and March 2003 of 22 dealers in seven divisions<sup>8</sup> for periods falling between 1998-99 and 2001-02, turnover of Rs 56.03 crore was either determined short or escaped assessment. This resulted in under-assessment of Rs 4.54 crore including interest of Rs 0.83 crore and penalty of Rs 1.86 crore.

After this was pointed out, the Department accepted in October 2004 and December 2004 the audit objections in 18 cases. In the remaining four cases, the Department stated that the works carried out were labour work and purchases were consumables wherein the property in goods does not pass over. The reply is not acceptable as with effect from 1 May 1998 no deduction was admissible except for value of declared goods purchased from registered dealers.

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<sup>7</sup> Aurangabad, Borivali, Ghatkopar, Pune-I, Thane and Worli.

<sup>8</sup> Andheri, Aurangabad, Borivali, Nariman Point, Pune-I, Thane and Worli.

### ***2.3.13 Incorrect grant of refund***

Under the provisions of the Act read with the provisions in the BST Act, a registered dealer who has not collected tax separately may reimburse himself to the extent of tax liability in the sale price and accordingly claim reduction from the sale price. If it is found subsequently that he is not liable to pay tax or it is found that he is liable to pay less tax than the amount of tax so reimbursed, such excess amount shall not be refunded to the dealer but forfeited to Government and transferred to the Consumer Protection and Guidance Fund (CPGF).

It was noticed in the assessments finalised between June 2000 and January 2004 of 10 dealers in five divisions<sup>9</sup> for various periods falling between 1993-94 and 2000-01, that due to excess reduction from the sale price/reimbursement of tax in the returns an amount of Rs 2.04 crore was refunded instead of being forfeited and transferred to the CPGF.

After this was pointed out, the Department accepted in October 2004 and December 2004 the objection in four cases. In six cases the Department stated that the dealers had not collected tax separately from their clients and therefore the question of forfeiture did not arise. The reply is not tenable as the dealers had quantified their tax liability in the returns and accordingly paid tax to the Government.

### ***2.3.14 Allowance of deduction without documents***

Under the provisions of the Act, a contractor may assign execution of works (either in whole or in part) to a sub-contractor and may deduct from his total contract value, the value in respect of works contract executed through sub-contractor. This benefit under the Act is available to the contractor, only if, the sub-contractor is a registered dealer under the Act and the contractor produces a declaration in the prescribed form from such sub-contractor towards payment of tax in respect of works executed by him. Contractor and sub-contractor are jointly and severally liable to pay tax in respect of transfer of property in goods involved in the execution of such works.

In nine divisions<sup>10</sup>, it was noticed in respect of assessments of 17 dealers finalised between February 1999 and September 2003, for periods falling between 1996-97 and 2001-02 that deductions of Rs 54.79 crore were allowed from the turnover of sales towards sub-contract though the deductions were not supported by declarations in the prescribed form or supported by incomplete declarations. Incorrect allowance of deduction resulted in short levy of tax of Rs 1.56 crore.

After this was pointed out, the Department accepted in October 2004 and December 2004 the audit objection in 16 cases. In the remaining case, the Department stated that the dealer was assessed under summary assessment. The reply is not tenable as deduction allowed was not supported by prescribed declaration.

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<sup>9</sup> Andheri, Bandra, Borivali, Ghatkopar and Pune-I.

<sup>10</sup> Andheri, Aurangabad, Bandra, Borivali, Ghatkopar, Kolhapur, Pune-I, Pune-II and Thane.

### ***2.3.15 Incorrect allowance of exemption***

By an amendment effective from 1 April 2000, no tax was leviable on the turnover of sales effected by any contractor who is a registered dealer to the State Government on the works contract executed on or after 1 April 2000.

In three Divisions<sup>11</sup>, it was noticed in the assessments finalised between October 2000 and March 2003 of five dealers for periods falling between 1992-93 and 1999-2000, that turnover of sales of Rs 1.29 crore effected to the State Government prior to April 2000 were incorrectly exempted. This resulted in under-assessment of Rs 37.35 lakh including penalty of Rs 10.95 lakh and interest of Rs 15.45 lakh respectively.

After this was pointed out, the Department accepted in October 2004 and December 2004, the audit objection in the cases of four dealers. In one case of Ghatkopar Division, the Department stated that exemption was correctly allowed. The reply is not tenable as the assessment pertained to the period prior to April 2000 when exemption was inadmissible.

### ***2.3.16 Non/short levy of interest***

Under the provisions of the Act, read with the BST Act, if any tax has remained unpaid, a dealer is liable to pay by way of simple interest, a sum equal to two *per cent* per month of the tax due from the first day after the end of the period for which the dealer has been assessed till the date of the order of assessment.

It was noticed in Andheri, Pune and Worli Divisions, in the assessments finalised between May 2001 and March 2003 of three dealers for the periods falling between 1 April 1996 and 31 March 1999 that interest was either not levied or short-levied which worked out to Rs 17.35 lakh.

After this was pointed out, the Department accepted in October 2004 the audit objection and raised demand for Rs 8.32 lakh in one case. Report on recovery and action taken in the remaining cases has not been received (February 2005).

### ***2.3.17 Non-verification of credits***

Under the provisions of the Works Contract Act, every employer who deducts tax and pays it into Government account is required to furnish a monthly return in the prescribed Form (Form XXXXI) to the Sales Tax Department and also give a certificate of tax deduction at source in the prescribed form to the contractor. According to instructions dated 30 June 1990, issued by the Commissioner of Sales Tax, challans are to be verified from the bank scroll before affording credit for payment in the assessment order.

During test check of records, it was observed in the assessments of five dealers in five divisions<sup>12</sup> that credit for payments amounting to Rs 1.68 crore were afforded in the assessment orders without supporting certificates or on the strength of incomplete certificates issued by the employer. The certificates were not supported by challans. Consequently, the payments made into bank were not susceptible to verification in the scroll received from the bank.

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<sup>11</sup> Ghatkopar, Kolhapur and Thane.

<sup>12</sup> Bandra, Pune-I, Pune-II, Thane and Worli.

Moreover, reconciliation of these admitted payments were not carried out with the treasury/bank records with a view to verify their credit to Government account under the proper head of account.

After this was pointed out, the Department accepted in December 2004 the audit objections in three cases. In the remaining two cases reply has not been received (February 2005).

### **2.3.18 System deficiency**

Under the BST Act, every registered dealer who is liable to pay tax is required to file monthly/annual returns specifying details of sales, purchases, tax liability and pay tax according to the return. The sales tax manual prescribes various registers to be maintained for noting and watching receipt of returns and payment of tax. In Mumbai, this work is assigned to the Returns Branch. On receipt of returns in the Returns Branch they are sent to the Computer Section for entry. On the expiry of the date prescribed for receipt of the periodical return and payment of tax, defaulters list is prepared by the Computer Cell and forwarded to the respective Assessing Officers for follow up and recovery of tax. This system, was however, not extended for watching receipt of returns and recovery of tax under the Act. Consequently, there is no system in place to keep a watch and control over receipt of returns and payment of tax under the Act.

### **2.3.19 Conclusions/recommendations**

The review revealed that the Department has no control mechanism to monitor the receipt of returns and tax. There was no procedure evolved for completion of pending assessments. Government may consider the following suggestions to complete the pending assessments and safeguard the interest of revenue.

- (i) Prepare a time bound programme for completion of pending assessments and ensure its implementation.
- (ii) In respect of tax deducted at source from payments to unregistered contractors, the deduction should be at the rate applicable to registered dealers as per the provisions of the Act and not the flat rate of two *per cent*.
- (iii) The system of verification of payments of tax before allowing credit in the assessment order should be ensured.

The above points were reported to the Department and Government in June 2004. Final reply in the remaining cases from Department and reply from Government has not been received (February 2005).

## **2.4 Sales tax incentives under package schemes of incentives**

### **2.4.1 Introduction:**

In order to achieve dispersal of industries outside the Mumbai-Thane-Pune belt and to attract them to the undeveloped and the developing areas of the State, Government has provided a package of incentives to new units set-up in the underdeveloped/ developing regions of the State since 1964 under the Package Schemes of Incentives as amended from time to time (last amended in 1993). These apply to substantial expansion also.

The schemes are implemented by the Industries, Energy and Labour Department through the implementing agencies such as State Industries and Investment Corporation of Maharashtra Limited (SICOM) in respect of large and medium scale industries and the Regional Development Corporations and District Industries Centres in respect of small scale industries. The units eligible for the incentives under the schemes are required to apply in the prescribed form to the concerned implementing agency who issue the eligibility certificate subject to fulfillment of the stipulated terms and conditions. On the basis of the eligibility certificate, the Sales Tax Department issues an entitlement certificate for availment of sales tax incentives.

A mention was made in paragraphs 2.2 and 2.3 of the Report of the Comptroller and Auditor General of India for the years ended 31 March 1998 and 31 March 2003 (Revenue Receipts), Government of Maharashtra, respectively regarding inadequacies in the implementation of the package schemes of incentives. Action taken by the State Government on the audit observations has not been intimated. With a view to verify the action taken by the Assessing Authorities, a test check of records maintained by the Deputy Commissioners of Sales Tax at Kolhapur, Nashik and Thane Divisions and by 32 Assessing Officers working thereunder relating to dealers, holding eligibility/entitlement certificate was conducted in February 2004 and March 2004.

### **2.4.2 Monitoring of availing of incentives**

According to the package schemes of incentives, procedural rules and the Departmental instructions, availment of incentives by the eligible units is to be monitored by the sales tax authorities through scrutiny of periodical returns filed by the units and by completion of the assessments of the eligible units. The Act provides that where all returns are filed within six months from the end of the year, the assessments are to be completed within three years and in other cases where returns have not been filed within six months at anytime within eight years. Monthly statement detailing progress of assessments of units eligible for deferment of taxes in respect of the division is to be furnished by the Dy. Commissioner of Sales Tax to the Commissionerate. No such return is prescribed in respect of units eligible for exemption from payment of tax. Consequently, the position of pendency of assessments of units availing exemption was not available with the Department.

Scrutiny of monthly statements furnished by three divisions to the Commissionerate and related records 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 relating to the periods between 1998-99 and 2002-03 as on 31 December 2003 was as under:

<b>Division</b>	<b>No. of pending assessments</b>	<b>Period between</b>
Kolhapur	2,270	1998-1999 and 1999-2000
Nashik	3,358 (Upto August 2003)	1998-1999 and 2002-2003
Thane	1,668	1998-1999 and 2002-2003
<b>Total</b>	<b>7,296</b>	

The pending assessments included 42 units (seven from Kolhapur Division, 21 from Nashik Division and 14 from Thane Division), which had availed of incentives of Rs 10.79 crore. Of these, 17 dealers who had availed of incentives of Rs 6.74 crore between 1998-99 and 2002-03 had not been assessed for any period.

In Kolhapur Division, the information in the prescribed proforma was not being regularly called for from the Assessing Officers by the Deputy Commissioner and no periodical statements were furnished from September 2002 onwards to the Commissionerate. Similarly, in Nashik Division, the statements were not furnished from September 2003 onwards.

The Department had prescribed various registers to be maintained by the Assessing Officers for effective monitoring of 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 and incentives allowed in assessments were not recorded and brought up to date.

#### ***2.4.3 Lack of coordination between implementing agencies and sales tax authorities***

The package schemes of incentives provide for monitoring/ periodical review of fixed capital investment and the production activity of the eligible units by the implementing agencies through periodical reports, copies of annual accounts and sales tax returns to be submitted by the eligible units to ensure that the incentives availed of are within the ceilings prescribed and that the units availing of the incentives remained in production during the operative period of the agreement entered into by the units with the implementing agencies. Failure to submit the required information/reports by the units tantamounts to breach of provisions of the schemes entailing cancellation of the eligibility certificate and premature recall of incentives. The sales tax authorities are required to ensure from time to time that the amount of sales tax incentives availed by a unit was within the ceiling and related to eligible products and production capacities. Further, the sales tax authorities shall assess the returns of the eligible units on priority and take appropriate and

timely steps to prevent availment of incentives in excess of the admissibility. The information regarding non-submission of the reports, returns, closure/stoppage of manufacturing activities, cancellation of registration certificate *etc.*, which entails cancellation of certificates, withdrawal of incentives are expected to be intimated by the implementing agencies to the Sales Tax Department and vice versa for taking timely action.

Test check revealed that there was lack of coordination between the implementing agencies and the sales tax authorities. The information regarding non-submission of reports, periodical returns, closure of units *etc.*, was not exchanged amongst the Implementing Agencies and the sales tax authorities. This led to non-recovery of incentives from the closed units, incorrect availment of incentives, *etc.*, as detailed in the succeeding paragraphs.

#### ***2.4.4 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 operative period of agreement or the registration certificate is cancelled, the amount of sales tax incentives availed of is recoverable with interest/ penalty forthwith. BST Act empowers the Sales Tax Authorities to recover tax dues as arrears of land revenue as provided in the Maharashtra Land Revenue Code (MLRC), 1966.

Test check of records of three divisions revealed that 181 eligible units which had availed of incentives of Rs 167.85 crore for various periods between March 1998 and December 2003 were closed during the period between April 1998 and April 2003 which was within the operative period of the eligibility certificates/agreements as detailed in the following table:

(Amount in crore of rupees)

Division	Exemption			Deferment			Total		
	District	Period of availment Between	No. of units	Amount	Period of availment Between	No. of units	Amount	No. of units	Amount
<b>1. Kolhapur Dn.</b>									
Kolhapur	4/84 & 12/01	9	3.08	10/87 & 3/2000	6	0.92	15	4.00	
Satara	4/88 & 3/01	2	0.37	3/83 & 3/02	3	0.46	5	0.83	
Ratnagiri	1/86 & 3/97	6	7.26	4/91 & 3/99	2	49.32	8	56.58	
<b>Total</b>		<b>17</b>	<b>10.71</b>		<b>11</b>	<b>50.70</b>	<b>28</b>	<b>61.41</b>	
<b>Remarks:</b> No action for recovery was taken in 18 cases. In two cases recovery under MLRC was in progress. Reports were sent to implementing agencies in eight cases. The Assessing Officers stated that action under MLRC was taken in one case. Recovery was in progress in two cases. Property of one unit was taken over by SICOM. In one case unit was closed after expiry of entitlement certificate. Reply was awaited in the remaining cases (February 2005).									
<b>2. Nashik Dn.</b>									
Dhule	6/88 & 3/90	14	17.12	1/94 & 3/2000	4	5.41	18	22.53	
Jalgaon	6/90 & 3/01	13	5.74	10/92 & 3/2000	3	3.55	16	9.29	
Nashik	11/83 & 12/03	14	22.10	4/84 & 3/02	18	5.84	32	27.94	
<b>Total</b>		<b>41</b>	<b>44.96</b>		<b>25</b>	<b>14.80</b>	<b>66</b>	<b>59.76</b>	
<b>Remarks:</b> Implementing agency was requested to cancel eligibility certificate in one case and withdraw incentives in two cases. Three units were under BIFR. No action for recovery was taken in the remaining 60 cases. The Assessing Officers stated in six cases, that the incentives availed of would be intimated to the implementing agencies and detailed reply would be furnished in five cases. Reply was awaited in the remaining cases (February 2005).									
<b>3. Thane Dn.</b>									
Thane	9/85 & 3/02	37	14.30	7/87 & 3/03	50	32.38	87	46.68	
<b>Remarks:</b> Two cases were under BIFR. Action under MLRC was taken in six cases and in the remaining cases implementing agencies were intimated for necessary action (February 2005).									
<b>Grand Total</b>		<b>95</b>	<b>69.97</b>		<b>86</b>	<b>97.88</b>	<b>181</b>	<b>167.85</b>	



#### **2.4.5 Incorrect computation of cumulative quantum of benefits**

Dealers opting for the incentive scheme cannot avail of full or partial exemption from payment of tax admissible as per BST Act/Rules and Government notifications issued thereunder.

- In Nashik Division, the cumulative quantum of incentives on sales of fertilizers of Rs 6.47 crore by an eligible unit during the period 1999-2000 was not calculated being sales covered by general exemption. This resulted in short determination of incentives availed by Rs 34.96 lakh.
- In another case of an eligible unit in Aurangabad Division, sales tax incentive on sales of laminated fabrics of Rs 5.05 crore during the years 1988-89 and 1989-90 was worked out at eight *per cent* instead of at 12 *per cent* in the rectification orders passed in February 1999.

Thus, as against the ceiling limit of Rs 50.85 lakh the dealer had availed incentives of Rs 85.10 lakh. This resulted in excess availment of incentives of Rs 34.25 lakh including Rs 10.26 lakh quantified by the Department.

The Assessing Officer stated in July 2003 that the incentives on sales were worked out at the rate of sales tax as reduced by general exemption. The reply is not tenable as the incentives on sales were to be computed ignoring general exemption.

#### **2.4.6 Incorrect availment of incentives**

- As per the Package Schemes of Incentives, an eligible unit is entitled to avail sales tax incentives during the period covered by the certificate within the monetary ceiling prescribed in the certificate. The availment of incentives is to be reviewed/monitored periodically to ensure that the incentive availed is within the prescribed monetary ceiling. Any incentive, incorrectly availed, in excess of the monetary ceiling is recoverable alongwith interest/penalty.

In Nashik and Thane divisions, incorrect deferment of taxes resulted in excess availment of incentives of Rs 14.93 crore by three dealers as detailed below:

(Amount in lakh of rupees)

Sl. No.	Division	Assessment period Month of assessment	Nature of irregularity	Amount of incentives	Remarks
1.	Nashik	1.1.98 to <u>31.12.98</u> December 2001	Incorrect deferment of taxes for the period not covered by entitlement certificate.	47.93	The department revised the assessment order and raised additional demand for Rs 60.25 lakh including interest.
2.	Thane (i)	April 1999	Incorrect deferment of taxes when eligibility certificate was not valid	7.17	--
	(ii)	1996-97 to <u>1998-99</u> December 2001 and March 2001	Tax was incorrectly deferred in the assessments for the years 1996-97 to 1998-99 on sales of co-extruded tubes manufactured which were not covered by the entitlement certificate	1,437.76	The Assessing Officer stated in February 2004 that the matter would be considered in the assessments for the period 1999-2000 and onwards.
<b>Total</b>				<b>1,492.86</b>	

- Under the BST Rules, an industrial unit holding eligibility certificate for deferment of taxes under the Package Scheme of Incentives is allowed to defer taxes payable after reducing set-off or refund to which the eligible unit is entitled under the Act or Rules.

In Nashik and Aurangabad divisions, while finalising assessments of two dealers for the years 1998-99 and 1999-2000 in May 2001 and June 2002 respectively, set-off of Rs 32.13 lakh instead of being adjusted against the tax liability was refunded. This resulted in under-assessment of Rs 32.13 lakh.

After this was pointed out in May 2002 and August 2003, the Department rectified in February 2003 and August 2003 the assessment orders and raised additional demands for Rs 32.13 lakh. Report on recovery has not been received (February 2005).

#### ***2.4.7 Premature repayment of deferred taxes at Net Present Value (NPV)***

As per the provisions of the BST Act and the Rules made thereunder as amended in May 2002 and November 2002, an eligible unit to whom entitlement certificate has been granted for deferment of taxes, may, in respect of any period falling within the validity of the certificate, at its option, prematurely pay in place of the amount of tax deferred by it, an amount equal

to the NPV of deferred taxes as prescribed by the Government and on making such payment, in public interest, the deferred tax shall be deemed to have been paid.

In one case, in Kolhapur, as against the deferment of taxes of Rs 2.57 crore in the returns for the period 1991-92 to 1995-96, the amount of taxes eligible for deferment on assessment in August 2003 was determined at Rs 1.75 crore. This resulted in incorrect deferment of taxes of Rs 0.82 crore by the dealer which was considered for payment at NPV.

#### **2.4.8 Non-payment of instalments**

As per the package scheme of incentives and the BST Rules, taxes allowed to be deferred for 12/10 years are payable thereafter in annual instalments not exceeding six/five instalments.

A test check of registers maintained by 18 Assessing Officers in three divisions<sup>13</sup> revealed that 168 dealers had not paid the instalments of Rs 7.10 crore of deferred taxes for the assessment period between 1985-86 and 1993-94 due for payment between 1998-99 and 2003-04.

Three Assessing Officers from Kolhapur Division stated in March 2004 that action for recovery was in progress and the implementing agencies had been informed. One Assessing Officer from Thane stated that some units were closed. Another assessing officer stated that one case was with the BIFR and two units were making payments to SICOM Ltd. Replies in respect of the remaining cases has not been received (February 2005).

The matter was referred to Government in May 2004; their reply has not been received (February 2005).

## **2.5 Incorrect grant of set-off**

**2.5.1** According to the BST Act, and the Rules made thereunder, a manufacturer who has paid taxes on the purchases of goods specified in Part II of Schedule 'C' to the Act from registered dealers in the State and used them within the State in the manufacture of goods for sale or export or in packing of goods so manufactured was allowed set-off of taxes at prescribed rates.

It was noticed in the assessments between April 1998 and March 2003 of 44 dealers in 14 divisions<sup>14</sup> for periods between 1994-95 and 2001-02 that excess set-off was allowed due to mistakes in computation resulting in under-assessment of Rs 91.78 lakh including interest of Rs 11.82 lakh. A few illustrative cases are detailed below:

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<sup>13</sup> Kolhapur, Nashik and Thane.

<sup>14</sup> Andheri, Aurangabad, Bandra, Borivali, Ghatkopar, Kolhapur, Mandvi, Mazgaon, Nariman Point, Nashik, Pune-I, Pune-II, Worli and Thane.

(Amount in lakh of rupees)

Sl. No.	Division	Period Month of assessment	Nature of irregularity	Under- assessment including interest
1.	Bandra	<u>1998-99</u> March 2002	Incorrect computation of set-off.	20.55
2.	Kolhapur	<u>1999-2000</u> March 2003	Set-off was allowed incorrectly on inter-State purchases.	7.71
3.	Nariman Point	<u>1997-98</u> September 2001	Set-off worked out without reduction of two <i>per cent</i> on inter-State purchases.	7.67
4.	Worli	<u>1997-98</u> March 2001	Incorrect reduction of set-off on manufactured goods transferred to branches outside Maharashtra.	11.19

After this was pointed out between May 1999 and July 2003, the Department raised an additional demand for Rs 91.78 lakh including interest of Rs 11.82 lakh. Fifteen dealers paid Rs 32.41 lakh between March 2003 and August 2004 and Rs 24.53 lakh was adjusted against refund due to seven dealers. In one case Rs 0.35 lakh was waived under amnesty scheme. Nine dealers had filed appeal. Report on recovery in the remaining cases has not been received (February 2005).

The matter was reported to Government between March 2004 and May 2004. Government concurred with the action taken by the Department in 19 cases; their replies in the remaining cases have not been received (February 2005).

**2.5.2** 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 effected prior to 1 April 1998.

It was noticed in the assessments between February 2000 and March 2003 of eight dealers in four divisions<sup>15</sup> for various periods between 1 April 1994 and 31 March 1998 that set-off was incorrectly allowed on purchase of goods including capital assets effected prior to 1 April 1998 and used in manufacture of sugar which is a tax-free commodity. This resulted in under-assessment of Rs 70.35 lakh.

After this was pointed out between May 2002 and December 2003, the Dy. Commissioner of Sales Tax, Aurangabad, Kolhapur and Nashik stated that the dealers manufacture taxable as well as tax-free goods and as such were entitled to set-off. The reply is not tenable as the Commissioner had clarified in June 1998 that the proviso prohibiting grant of set-off on purchases effected

<sup>15</sup> Aurangabad, Kolhapur, Nashik, Pune-I

prior to 1 April 1998 would apply to a manufacturing activity resulting in production of taxable as well as tax-free goods. The Department had reassessed the dealer of Pune and recovered demand of Rs 6.05 lakh (March 2003).

The matter was reported to Government in March 2004 and May 2004. Government concurred with the action taken by the Department in seven cases; their reply in the remaining cases has not been received (February 2005).

**2.5.3** Under the provisions of the BST Rules, a manufacturer is entitled to full set-off of taxes paid or deemed to have been paid on purchases of goods used by him within the State in the manufacture of specified goods for sale. Where the process of manufacture results in production of specified goods as also other goods, set-off is apportioned between specified goods and other goods on the basis of the sale price of manufactured goods and allowed to the extent of specified goods manufactured. When manufactured goods are transferred outside the State otherwise than by way of sale, set-off is allowed in excess of six *per cent* of the purchase price.

It was noticed in the assessments between September 1998 and March 2001 of eight dealers in four divisions<sup>16</sup> for the periods between 1995-96 and 1998-99 that set-off was incorrectly granted for manufacture of non specified goods and incorrectly computed on manufactured goods transferred to branches. This resulted in under-assessment of Rs 19.67 lakh including interest.

After this was pointed out, the Department revised the assessment orders and raised additional demand for Rs 19.67 lakh between November 2002 and February 2004. In two cases, Rs 6.84 lakh was adjusted/recovered between February 2003 and June 2003. Four dealers had filed appeals. Report on recovery in remaining cases and development in appeal has not been received (February 2005).

The matter was reported to Government in March 2004 and April 2004. Government concurred with the action taken by the Department in four cases; their reply in the remaining cases has not been received (February 2005).

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

It was noticed in seven divisions<sup>17</sup>, in the assessment of 12 dealers between June 1999 and December 2001 for the periods falling between 1995-96 and 1998-99 that set-off was incorrectly computed or allowed. This resulted in under-assessment of Rs 34.06 lakh including interest of Rs 6.85 lakh.

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<sup>16</sup> Andheri, Bandra, Kolhapur and Worli.

<sup>17</sup> Andheri, Aurangabad, Bandra, Borivali, Mandvi, Mazgaon and Pune-II.

After this was pointed out, the Department raised between August 2002 and December 2003 demand for Rs 34.06 lakh including interest of Rs 6.85 lakh and recovered Rs 5.08 lakh from four dealers between September 2002 and December 2003. Five dealers had filed appeal. Report on recovery in remaining cases and development in appeals has not been received (February 2005).

The matter was reported to Government between March 2004 and May 2004. Government concurred with the action taken by the Department in six cases; their reply in the remaining cases has not been received (February 2005).

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

Under the provisions of the BST Act, the rate of tax leviable on any commodity is determined with reference to the relevant entry in the Schedule B or C of 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. Besides, additional tax and interest are also leviable as per provisions of the Act.

It was noticed in the assessments finalised between May 1998 and December 2002 of 44 dealers in 13 divisions<sup>18</sup> for various periods between 1989-90 and 1999-2000 that due to application of incorrect rate of tax/incorrect exemption/incorrect computation of taxable turnover/levy of concessional rate of tax/incorrect allowance of resales, there was under-assessment of Rs 71.01 lakh including interest of Rs 24.81 lakh.

After this was pointed out, the Department raised additional demand for Rs 71.01 lakh including interest of Rs 24.81 lakh. An amount of Rs 12.09 lakh was recovered/waived under amnesty scheme/adjusted against refunds due to 18 dealers and six dealers had filed appeals against the demands raised. Report on recovery in the remaining cases and developments in appeal has not been received (February 2005).

The matter was reported to Government between March 2004 and May 2004. Government concurred with the action taken by the Department in 28 cases, their reply in the remaining cases has not been received (February 2005).

## **2.7 Under-assessment of tax**

Under the provisions of the Central Sales Tax (CST) Act, 1956, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall be deemed to be in the course of export, 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 14B in case of a dealer within the State) duly filled and signed by the exporter alongwith evidence of export of goods.

<sup>18</sup> Andheri, Aurangabad, Bandra, Borivali, Churchgate, Ghatkopar, Kolhapur, Mandvi, Nariman Point, Nashik, Pune-I, Thane and Worli.

It was noticed in the assessments between June 1998 and March 2001 of 19 dealers in nine divisions<sup>19</sup> for the periods between 1 April 1993 and 31 March 1999, that sales of goods of Rs 18.19 crore were exempted from tax though the sales were either ineligible or not supported by certificate in Form H/Form 14B or were not duly supported by other documentary evidence in relation to the export. This resulted in underassessment of Rs 1.55 crore including interest of Rs 0.60 crore.

After this was pointed out, the Department raised between September 2002 and January 2004 additional demand for Rs 1.55 crore including interest of Rs 0.60 crore. The Department recovered/adjusted Rs 1.30 lakh in respect of two dealers and 10 dealers had filed appeal. Report on recovery in the remaining cases and developments in appeal has not been received (February 2005).

The matter was reported to Government between March 2004 and May 2004. Government concurred with the action taken by the Department in 13 cases; their reply in the remaining cases has not been received (February 2005).

## **2.8 Incorrect grant of exemption**

Under the CST Act, when the sale of any goods inside the appropriate State is exempted generally from tax or subjected to tax generally at a rate which is lower than four *per cent*, the rate of tax applicable to the inter-State sale or purchase of such goods shall be nil or the lower rate. For this purpose, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State, if under the law, the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions. Sales of Indian made foreign liquor (IMFL) are exempt from sales tax under the local Act subject to the condition that excise duty is paid thereon.

In Pune, while assessing a manufacturer of IMFL in February 1999, inter-State sales of Rs 1.55 crore during the period 1 April 1995 to 31 March 1996 were exempted from tax. Since the exemption under the BST Act, was conditional, it was not applicable to inter-State sales. This resulted in underassessment of Rs 1.56 crore including interest and penalty.

After this was pointed out, the Department revised the assessment order in May 2003 raising demand for Rs 1.56 crore. Report on recovery has not been received (February 2005).

The matter was reported to Government in April 2004; their reply has not been received (February 2005).

## **2.9 Incorrect allowance of sales in the course of import**

Under the provisions of the CST Act, a sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India, only if, the sale or purchase occasions the import of those goods into the

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<sup>19</sup> Andheri, Bandra, Borivali, Ghatkopar, Mandvi, Mazgaon, Mumbai (Enforcement), Thane and Worli.

territory of India or is effected by transfer of documents of title to the goods before the goods have crossed the customs frontiers of India. It has been judicially<sup>20</sup> held that sales of imported goods kept in customs bonded warehouse are sales within the State, liable to sales tax under the State Law. Further, additional tax, turnover tax, interest and penalty are leviable as per provisions of the Act.

It was noticed, in the assessments finalised between May 1998 and June 2001 of four dealers (two in Bandra and one each in Mandvi and Pune Divisions) for the periods falling between 1994-95 and 1998-99, that claims of sales of Rs 3.63 crore were incorrectly allowed as in the course of import though the goods were kept and cleared from the customs bonded warehouse. This resulted in under-assessment of Rs 1.05 crore including interest and penalty of Rs 0.61 crore.

After this was pointed out, the Department revised between May 2003 and December 2003 the assessments, raising additional demand for Rs 1.05 crore including interest and penalty of Rs 0.61 crore. Three dealers had filed appeals against the demands raised. Report on recovery in the remaining case and developments in appeal has not been received (February 2005).

The matter was reported to Government in March 2004. Government concurred with the action taken by the Department in three cases; their reply in the remaining case has not been received (February 2005).

## **2.10 Short levy of Central Sales Tax**

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

In Bandra Division, it was noticed that in the assessment finalised in February 2000 of a dealer for the period 1996-97, inter-State sales of Rs 1.05 crore of electronic medical equipments not supported by declaration in Form C were incorrectly taxed at the rate of four *per cent* instead of 13 *per cent*. This resulted in under-assessment of Rs 12.86 lakh including interest of Rs 3.42 lakh.

After this was pointed out, the Department revised the assessment orders in September 2003 and raised additional demand for Rs 12.86 lakh including interest. The dealer had filed appeal against the additional demand raised. Report on developments in appeal has not been received (February 2005).

The matter was reported to Government in March 2004; Government concurred with the action taken by the Department.

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<sup>20</sup> Fairmacs Trading Co. v/s State of Andhra Pradesh (36 STC 260).



## **2.11 Sales in transit**

Under the CST Act, a sale in the course of inter-State trade or commerce of any goods is effected by a transfer of documents of the title to the goods during their movement from one state to another. Subsequent sales to registered dealers made while the goods are in movement, are exempt from tax, provided, such goods are included in the registration certificate of the vendor and supported by declarations in Form 'C' or Form 'D'. In case of default, interest and penalty is also leviable under the CST Act.

It was noticed in the assessments finalised in April 1999 and October 2000 of two dealers in Bandra Division and Pune-I Division for the periods 1995-96 and 1996-97 that sales either not supported by declaration in Form 'C' or supported by Form 'D' which was inadmissible were exempted from tax. This resulted in under-assessment of Rs 5.88 lakh. Besides interest and penalty was also leviable.

After this was pointed out in February 2001 and December 2001, the Department revised the assessment orders in both the cases in September 2003 and December 2003 raising additional demand for Rs 10.23 lakh including interest and penalty of Rs 4.35 lakh. In one case the appellate authority upheld the revision order. Report on recovery has not been received (February 2005).

The matter was reported to Government in April 2004; Government concurred with the action taken by the Department.

## **2.12 Non/short levy of penalty/interest**

**2.12.1** Under the provisions of the BST Act, if a dealer does not pay tax within the time he is required to pay it or if any tax remains unpaid on the date prescribed for filing of the return in respect of a period of assessment, then he shall be liable to pay simple interest at the rate of two *per cent* of the amount of tax for each month or part thereof after the date by which he should have paid such tax or from the date following the date of the period of assessment till the date of payment or the order of assessment, whichever is earlier, as applicable. The Act also provides for levy of penalty not exceeding the amount of tax payable for concealment of turnover liable to tax.

In five divisions<sup>21</sup>, it was noticed in the assessments finalised between October 1998 and March 2002 of six dealers for the periods between April 1992 and 31 March 1997 that interest was not levied/short levied or deferred. This resulted in under-assessment of Rs 56.14 lakh including penalty.

After this was pointed out, the Department levied between March 2002 and August 2003 interest and penalty amounting to Rs 56.14 lakh. In the case of one dealer, Rs 3.06 lakh was recovered/adjusted against refund due and another dealer had filed appeal. Report on recovery in remaining cases and developments in appeal has not been received (February 2005).

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<sup>21</sup> Andheri, Bandra, Churchgate (2), Ghatkopar and Thane.

The matter was reported to Government in March 2004 and April 2004. Government concurred with the action taken by the Department in three cases; their reply in the remaining cases has not been received (February 2005).

**2.12.2** Under the provisions of the BST Act, (as it stood upto 16 September 2000), if any tax remained unpaid for one month after the end of any period of assessment, then the dealer was liable to pay penalty at the rate of two *per cent* of the amount of tax for each month or part thereof from the date following the date of the period of assessment till the date of payment or the order of assessment whichever is earlier. The provisions are also applicable for levy of penalty under the CST Act.

In Pune-I Division, it was noticed in the assessment finalised in March 2000 of a dealer for the period 1 April 1996 to 31 March 1997 that as against penalty of Rs 20.58 lakh leviable, penalty was levied at Rs 10.29 lakh. This resulted in short levy of penalty of Rs 10.29 lakh.

After this was pointed out, the Department raised in March 2003 additional demand for Rs 10.29 lakh towards penalty short levied. Report on recovery has not been received (February 2005).

The matter was reported to Government in April 2004. Government concurred with the action taken by the Department.

### **2.13 Non/short levy of purchase tax**

Under the provisions of the BST Act, during the period 1 September 1990 to 30 September 1995, when a dealer purchased any goods specified in Part-I of Schedule C, then in addition to sales tax or purchase tax, a purchase tax at the rate of two paise in the rupee on the turnover of such purchases was leviable unless the goods so purchased were resold by the dealer. With effect from 1 October 1995, purchase tax is leviable on purchases of goods used in the manufacture of taxable goods transferred to branches outside the State otherwise than as sale. Further, additional tax (upto September 1995) and interest are payable as per the provisions of the Act.

It was noticed that while assessing between March 1999 and March 2001 two dealers in Worli and one dealer in Nariman Point Divisions, purchase tax though leviable was not/short levied on the purchase of goods valued at Rs 5.85 crore. This resulted in under-assessment of Rs 13.86 lakh including interest of Rs 2.17 lakh.

After this was pointed out, the Department revised the assessments and raised additional demand for Rs 13.86 lakh between May 2003 and October 2003. One dealer had paid Rs 6.38 lakh in December 2003 and another dealer had filed appeal against the demand raised. Report on recovery in the remaining case and development in appeal has not been received (February 2005).

The matter was reported to Government in March 2004 and April 2004. Government concurred with the action taken by the Department in both the cases.

## **2.14 Short levy of tax due to incorrect exemption**

Under the provisions of the BST Act, the State Government by notification exempted between 1 October 1995 and 31 March 1999, tax in excess of eight *per cent* on sale of goods on which the rate of sales tax was less than 16 *per cent* subject to certain conditions. One of the conditions was that the dealer should file monthly returns and pay tax at the rate of eight *per cent*. Besides, interest and penalty was leviable as per the provisions in the Act.

It was noticed in the assessments finalised between April 1998 and July 2001 of eight dealers in five divisions<sup>22</sup> for periods between 1 April 1995 and 31 March 1999 that tax in excess of eight *per cent* was exempted. The dealers had not filed monthly returns or filed monthly returns but had not made payment of tax or had sold goods liable to tax exceeding 16 *per cent* and hence were not eligible for exemption. This resulted in under-assessment of Rs 12.76 lakh including interest and penalty of Rs 4.68 lakh.

After this was pointed out, the Department raised between April 2003 and October 2003 additional demand for Rs 12.76 lakh. Two dealers had paid Rs 3.90 lakh and five dealers had filed appeals. Report on recovery of the balance amount and developments in appeal has not been received (February 2005).

The matter was reported to Government in April 2004. Government concurred with the action taken by the Department in six cases; their reply in the remaining cases has not been received (February 2005).

## **2.15 Non/short levy of turnover tax/additional tax**

Under the provisions of the BST Act, 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, turnover of sales or purchases exceeded Rs one crore). Besides, additional tax at 15 *per cent* (12 *per cent* upto March 1994) of the sales tax/purchase tax payable was leviable where the turnover of sales or purchases exceeded Rs 10 lakh. By an amendment on 31 March 1999, turnover tax on the turnover of sales of goods specified in Schedule C at the rate of one *per cent* after deducting re-sales of goods from such turnover and surcharge at the rate of 10 *per cent* of the tax payable where the aggregate of taxes payable by a dealer exceeded rupees one lakh in any year was leviable. Turnover tax was also leviable on the turnover of sales effected against declarations issued under the BST Act.

It was noticed in the assessments between March 1999 and March 2002 of five dealers in five divisions<sup>23</sup> that turnover tax, additional tax or surcharge though leviable were either not levied or short levied. This resulted in under-assessment of Rs 6.68 lakh including interest of Rs 2.17 lakh.

<sup>22</sup> Bandra (4), Kolhapur, Mandvi, Mazgaon and Nashik.

<sup>23</sup> Mumbai (Enforcement), Nariman Point, Nashik, Thane and Worli.

After this was pointed out, the Department raised between February 2003 and August 2003 additional demand for Rs 6.68 lakh. One dealer had filed appeal. Report on recovery in the remaining cases and developments in appeal has not been received (February 2005).

The matter was reported to Government in April 2004. Government concurred with the action taken by the Department in two cases; their reply in the remaining cases has not been received (February 2005).

### **2.16 Short levy of tax under VAT**

Under the provisions of the BST Act, 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 sales during the period 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.

In Sindhudurg, it was noticed in the assessment finalised in February 2001 of a reseller of medicines for the period 1 April 1997 to 31 March 1999 that sales of Rs 1.11 crore were allowed as resale instead of subjecting them to tax. This resulted in under-assessment of Rs 5.85 lakh including interest and penalty after grant of admissible set-off.

After this was pointed out, the Department reassessed in November 2003 the dealer raising additional demand for Rs 5.85 lakh including interest and penalty of Rs 2.34 lakh. The dealer filed appeal against the demand raised. Report on developments in appeal has not been received (February 2005).

The matter was reported to Government in April 2004. Government concurred with the action taken by the Department.

### **2.17 Incorrect determination of taxable turnover**

Under the BST Act, sales tax is leviable on the turnover of sales of taxable goods at the rates specified in the Schedule 'B' or 'C' to the Act after deducting from the gross turnover, re-sales of goods purchased from other registered dealers, provided, the goods are re-sold in the same form in which they were purchased.

It was noticed in the assessments finalised between August 1998 and March 2002 of four dealers in Bandra, Nariman Point, Worli and Andheri divisions that taxable turnover of sales were determined short to the extent of Rs 62.27 lakh owing to non-inclusion of sales. This resulted in under-assessment of tax of Rs 5.22 lakh including interest of Rs 1.67 lakh.

After this was pointed out, the Department raised additional demand for Rs 5.22 lakh including interest between June 2003 and October 2003. All the dealers had filed appeal against the demand raised. Report on developments in appeal has not been received (February 2005).

The matter was reported to Government in April 2004. Government concurred with the action taken by the Department in three cases; their reply in the remaining case has not been received (February 2005).

## 2.18 Loss of revenue/revenue in risk

Under the BST Act, where all the returns are filed by a dealer for any year by the prescribed date the assessment for that year is to be completed within a period of three years. Any re-assessment proceedings relating to a period is to be initiated within a period of five years.

Where return in respect of any period is not furnished by a registered dealer by the prescribed date, the Commissioner shall at any time within eight years from the end of the year in which such period occurs, after giving the dealer reasonable opportunity of being heard proceed to assess the dealer to the best of his judgment.

**2.18.1** In Ghatkopar Division, a dealer was assessed in October 1999 *ex parte* for the period 1995-96 after the stipulated period of three years. In the assessment order, inter-State sales of Rs 4.47 crore not supported by declarations in Form C were incorrectly taxed at four *per cent* instead of 13 *per cent*. This resulted in short levy of tax of Rs 40.18 lakh.

After this was pointed out in July 2000, the Department reassessed the dealer in December 2002 and raised additional demand of Rs 61.08 lakh including interest of Rs 20.90 lakh. The Appellate Authority in August 2003 set aside the reassessment order on the grounds that the action was barred by limitation. Incorrect assessment of tax on inter-State sales not supported by declaration and delay in assessing the dealer as also initiating reassessment proceedings resulted in loss of revenue of Rs 61.08 lakh.

The matter was reported to Government in April 2004; their reply has not been received (February 2005).

**2.18.2** A manufacturer of chemicals in Tarapur (Thane District) having sales office in Borivali was assessed for the period 1992-93 to 1998-99 with dues as under:

(Amount in lakh of rupees)

Sl. No.	Assessment period Month/year of assessment	Assessed dues under		Total Rs.	Month of lodging claim with official liquidator
		BST Act Rs.	CST Act Rs.		
1.	<u>1992-93</u> June 1998	4.62	0.15	4.77	December 2002
2.	<u>1993-94</u> March 2002	16.06	1.56	17.62	December 2002
3.	<u>1994-95</u> October 2002	1.50	0.80	2.30	December 2002
4.	<u>1995-96*</u> March 2002	492.45 (including interest)	Nil	492.45	October 2003
5.	<u>1996-97</u> October 2002	5.96	Nil	5.96	December 2002
6.	<u>1997-98</u> October 2002	6.50	Nil	6.50	December 2002
7.	<u>1998-99</u> March 2002	2.56	Nil	2.56	December 2002
		<b>529.65</b>	<b>2.51</b>	<b>532.16</b>	

\**Ex parte* assessment order passed by Enforcement Branch.

The Department in response to its notice for recovery of dues relating to 1992-93 was informed in January 1999 by the State Bank of Saurashtra, Borivali that the dealer had closed his bank account eight years ago. Despite the bank account being closed and the assessment proceeding for the year 1995-96 being investigated (May 1998) by the Enforcement Branch, the assessments for periods between 1993-94 and 1998-99 were completed after a delay of three years. Notice for public auction of the movable property for recovery of the dues of Rs 4.77 lakh for the period 1992-93 was published in July 2000, when the premises of the dealer was already in possession of the official liquidator. The dealer was declared insolvent in June 2002. Thus, delay in assessment of the dealer for various periods, lack of follow up action and co-ordination between the enforcement and assessment wings had resulted in the Department running the risk of recovery of Rs 5.32 crore.

After this was pointed out in April 2003, the Dy. Commissioner of Sales Tax (Enforcement Branch) stated in October 2003 that there was no delay in assessing the dealer or follow up in recovery of the dues. The reply is not tenable as the Department was not aware until January 1999 that the dealer had closed his bank account in 1991-92 and assessments were completed thereafter in March 2002 and October 2002. This indicates that the department was not prompt enough in safeguarding the interest of revenue.

The matter was reported to Government in April 2004. Government concurred with the reply furnished by the Department.