सत्यमेव जयते

Report of the Comptroller and Auditor General of India on Revenue Sector for the year ended 31 March 2014

Government of Gujarat

Report No.7 of the year 2014

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PREFACE

This Report of the Comptroller and Auditor General of India for the year ended 31 March 2014 has been prepared for submission to the Governor of Gujarat under Article 151 of the Constitution of India.

The Report contains significant results of the performance audit and compliance audit of the Departments of the Government of Gujarat under the economic services (Revenue Sector). The results of audit of Commercial Tax Department, Revenue Department, Ports and Transport Department, Energy and Petrochemicals Department and Industries and Mines Department have been included in this report.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2013-14 as well as those which came to notice in earlier years, but could not be reported in the previous Audit Reports; instances relating to the period subsequent to 2013-14 have also been included, wherever necessary.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

OVERVIEW

This Report contains 51 paragraphs including two Performance Audits involving ₹ 675.55 crore. Some of the major findings are as mentioned below:

I. General

The total revenue receipts of the Government of Gujarat in 2013-14 were ₹ 79,975.74 crore as against ₹ 75,228.53 crore during 2012-13. The revenue raised by the State from tax receipts during 2013-14 was ₹ 56,372.37 crore and from non-tax receipts was ₹ 7,018.31 crore. State's share of divisible Union taxes and grant-in-aid from the Government of India were ₹ 9,701.93 crore and ₹ 6,883 crore respectively. Thus, the revenue raised by the State Government was 79 *per cent* of the total revenue receipts. The main source of tax revenue during 2013-14 was value added tax/sales tax (₹ 40,976.06 crore) and stamp duty and registration fees (₹ 4,749.35 crore). The main receipt under non-tax revenue was from non-ferrous mining and metallurgical industries (₹ 1,578.34 crore).

(Paragraph 1.1)

II. Value Added Tax (VAT)/Sales Tax

A Performance Audit on "**Return Scrutiny and Self Assessment on VAT"** revealed the following:

- The Department had not made any provision by way of providing space/column in Form 214A/215A and 202A for furnishing the details of the goods purchased and nature of contract respectively. Thus, it could not be ascertained whether the goods were purchased from registered dealers and tax was paid correctly.

(Paragraph 2.4.9)

- The Department had not evolved any mechanism at higher level to monitor initial scrutiny of periodical and annual returns by the Assessing Authority where the cases of the dealers were accepted as 'deemed to have been assessed' under Section 33 of the VAT Act.

(**Paragraph 2.4.11)**

- In 1,082 cases, though inter-State sales were not supported by statutory declaration forms, tax was paid by the dealer at concessional rate resulting in short levy of tax of ₹ 277.62 crore.

(Paragraph 2.4.12)

- In 16 offices, misclassification of goods and incorrect determination of taxable turnover resulted in short realisation of tax of ₹ 45.95 crore in 79 cases.

(Paragraph 2.4.13 and 2.4.14)

- In the inter-State sales valued at ₹ 12.61 crore, the title of the goods had already passed on to the ultimate buyer before the movement of goods and

the dealers were not entitled to concessional rate of tax, but these dealers incorrectly claimed and paid tax at concessional rate. This resulted in short recovery of tax of ₹ 1.31 crore.

(Paragraph 2.4.17)

- In respect of the 18 offices it was noticed that in 1,490 cases, either ITC was carried forward/claimed in excess of that shown in the returns or returns were not filed. Though provisional assessment was required under the Act in these cases, it was not done.

(Paragraph 2.4.18)

- Department had selected only 11 *per cent* cases of dealers for audit assessments. In 16,071 cases selected for audit assessment were having turnover less than ₹ one crore while 4,306 cases having turnover in excess of ₹ five crore were accepted as self assessed without scrutiny of the assessment. Though 1,106 cases were required to be selected for audit assessment, these were not selected and six cases selected for audit assessment were not finalised.

(Paragraph 2.4.19)

- Ten assessing authorities furnished a nil report relating to audit of self assessments done by the internal audit wing (IAW) of the department, while in other five offices, audit of only 384 cases out of total 2.09 lakh cases was done by the IAW, despite instructions from the department for audit of 5 *per cent* of the cases.

(Paragraph 2.4.20)

- In 16 offices, VAT audit reports and certified accounts in 329 cases were not furnished even after a lapse of ten months from the end of financial year. The assessing officers had not monitored the submission of these VAT audit reports as such the correctness of the tax payable by the dealers could not be ascertained.

(Paragraph 2.4.21)

Compliance Audit

In 14 cases, there was short levy of VAT/ CST of ₹ 15.98 crore including interest of ₹ 4.72 crore and penalty of ₹ 4.28 crore due to underassessment/ turnover escaping assessment.

(Paragraph 2.5 and 2.6)

The AA had allowed proportionate ITC of ₹ 54.76 lakh to four dealers on purchase of sugarcane/ plant and machinery against the production of molasses which is a by-product of sugar (a tax free item).

(Paragraph 2.7.1)

In three cases, the AA had allowed claim towards RR sale though the original seller had consigned goods directly to the ultimate buyer i.e. the goods were appropriated to their ultimate buyer before the movement of goods commenced resulting in non levy of tax of ₹ 3.73 crore, including interest of

₹ 0.86 crore and penalty of ₹ 0.05 crore.

(Paragraph 2.8)

Misclassification by the AA had resulted in short levy of VAT of ₹ 1.05 crore, including interest of ₹ 0.24 crore and penalty of ₹ 0.49 crore in three cases.

(Paragraph 2.12)

The AA did not levy Entry Tax on motor vehicles in four cases resulting in non levy of entry tax of ₹ 60.56 lakh, including penalty of ₹ 27.50 lakh.

(Paragraph 2.14)

III. Land Revenue

A performance audit on **"Lease of Government Land"** revealed the following:

The system for maintaining the records was not secure, reliable and adequate. The Jamnagar Collectorate had not maintained data of the Government land granted on lease in the LeLIS software developed for the maintenance of data. In eight districts, the data as per LeLIS software did not match with the data as per the records.

(Paragraph 3.2.7)

In certain instances, the grant of Government land on lease was not in accordance with the existing provisions of the concerned Act(s), Rules and Regulations, GRs, etc. and policies framed by the Government from time to time, as noticed in the following cases:

- In case of Solaris ChemTech Ltd., the Government land was granted for installation of plant and machinery on recovery of one-time occupancy price, while in other two similar cases, it was granted on lease at the rate of ₹ 150 per hectare per annum applicable to salt and bromine, though in these cases, the land was leased for construction/ installation of plant and machinery. The different treatment given to these two companies resulted in non-levy of occupancy price of ₹ 130.11 crore had the land been given on one time occupancy price.

  (Paragraph 3.2.8.3)

- In 15 cases, the Government land admeasuring 17.57 lakh sq. mtr. valued at ₹ 69.71 crore granted was in excess of the eligible limit and in other two cases occupancy price of ₹ 2.03 crore though leviable was not levied.

  (**Paragraph 3.2.8.4**)

- Though the area of grazing land was not sufficient with reference to number of cattle of the area, even then grazing land was irregularly granted on lease for industrial purpose.

  (Paragraph 3.2.8.5)

The monitoring mechanism was deficient so far as it relates to ensuring adherence to the terms and conditions of lease of the land/renewal of lease, as noticed in the following cases:

- Out of total 6,587 cases of lease, 4,682 leases had expired between 1933 and 2012 but no action was taken for their renewal or eviction of lessees from the leased land. In five cases, rent at revised rates was also recoverable.

(Paragraphs 3.2.9.1)

- The Government land admeasuring 1,508.69 hectare granted by the Collector, Ahmedabad remained unused and continued to be in the occupation of the Company even after lapse of 10 years from the date of allotment for which lease rent of ₹ 22.63 lakh (2000-10) was not recovered from the Company.

(Paragraph 3.2.10.2)

- In two Collectorate offices, in seven cases, land admeasuring 1,15,402.12 sq. mtr. granted on lease was lying un-utilised for period ranging between 3 and 57 years, but the same had not been resumed by the Government despite breach of conditions of allotment of land.

(Paragraph 3.2.10.2)

- In five Collectorates, in 542 cases, Government land admeasuring 72,206.56 sq. mtr. given on lease was transferred in the name of purchaser based on the sale deeds executed and certified by the City Survey Superintendents (CSS). Neither the permission of Collectors nor proof of payments of any premium by the original lessees for purchasing the Government land was available in the records.

(Paragraph 3.2.10.3)

- In 578 cases of four Collectorates, lease rent for the period after 2 February 2010 was recovered at pre revised annual rent of ₹ 150 instead of ₹ 300 resulting in short levy of lease rent of ₹ 68.96 lakh. In other six Collectorates, interest and services charges of ₹ 2.88 crore were levied in 235 cases.

(**Paragraph 3.2.11.3)**

Compliance Audit

In case of allotment of Government land admeasuring 27,00,838 sq. mtr. of Suva village, Taluka Vagra in District Bharuch to *SRF Ltd.* (a private Company) for industrial purpose, there was short levy of additional occupancy price for *Gaucher* land to the tune of ₹ 11.34 crore.

(Paragraph 3.3.1)

In eight cases, the premium price was either not recovered or was recovered short resulting in non/short realisation of Government revenue of ₹ 3.37 crore in 5 offices.

(Paragraph 3.4)

In 12 cases, conversion tax was either not recovered or was recovered short resulting in non/short realisation of Government revenue of ₹ 14.84 lakh.

(Paragraph 3.6)

Service charge was not recovered in six cases and recovered less in two cases resulting in non/short levy of service charge of ₹ 17.43 lakh in three offices.

(Paragraph 3.8)

IV. Taxes on Vehicles

Operators of 2,369 omnibuses/maxi cabs/staff buses/school buses, who kept their vehicles for use exclusively as contract carriage and 1,999 vehicles used for transport of goods, had neither paid tax nor filed non-use declarations for various periods between 2008-09 and 2012-13. This resulted in non-realisation of motor vehicles tax of ₹ 24.61 crore including interest of ₹ 1.92 crore and penalty of ₹ 2.34 crore.

(Paragraph 4.3)

The fleet owner Ahmedabad Muncipal Transport Services (AMTS) has delayed payment of passenger tax for their CNG/Diesel buses that ranged between five and 281 days. Taxation authority had not demanded interest and penalty for the late payment. This has resulted in non-levy of interest of ₹ 3.30 lakh and penalty of ₹ 68.92 lakh. Total non-levy of interest and penalty worked out to ₹ 72.22 lakh.

(Paragraph 4.4)

V. Stamp Duty and Registration Fees

In 21 instruments, consideration aggregating to ₹ 299.99 crore was either paid in advance or partly paid/agreed to be paid by the developers to the land owners. Besides, the land owners had also given irrevocable powers of attorney to the developers for sale/transfer of the land. These instruments were required to be stamped at the rates applicable to the conveyance deeds instead of one *per cent*. This resulted in short levy of stamp duty and registration fees of ₹ 14.70 crore.

(Paragraph 5.3.1.1)

In one case, it was noticed that developer had been given absolute rights by the owner to dispose off the property, receive the money and transfer the same to prospective buyers. It was required to be stamped at conveyance rates but the assessing authority incorrectly stamped it at the rates applicable to development agreement. This resulted in short levy of stamp duty and registration fees of ₹ 1.67 crore.

(Paragraph 5.3.1.2)

In 10 instruments, 23 owners had in addition to development agreement executed powers of attorney with the developers authorising them to sign and execute the document of conveyance in the capacities as seller as well as developers. The developers had themselves sold the property but the instruments were stamped at the rates applicable to development agreement. This resulted in short levy of stamp duty and registration fees of ₹ 1.84 crore.

(Paragraph 5.3.2)

In 56 instruments, the recitals revealed that in addition to development agreement the powers of conveyance of the properties were given to the developers without charging any stamp duty. This resulted in short levy of stamp duty and registration fees of ₹ 4.96 crore.

(Paragraph 5.3.3)

There was no uniformity in charging of registration fees by the registering authorities on the instruments of development agreement in the absence of clear provision/direction.

(Paragraph 5.3.4)

Incorrect determination of market value of properties in 65 cases resulted in short levy of stamp duty and registration fees of ₹ 2.84 crore in 17 offices.

(Paragraph 5.5)

In seven offices, incorrect classification of nine documents resulted in short realisation of stamp duty and registration fees of ₹ 1.06 crore.

(Paragraph 5.6)

VI. Other Tax Receipts

The Department had not initiated any action to recover unpaid dues aggregating to ₹ 75.47 lakh as arrears of land revenue. This resulted in non-realisation of revenue to that extent.

(Paragraph 6.3)

VII. Non-tax Receipts

Test check of the Demand and Collection Registers of two district geologists for the period 2010-11 revealed non/short levy of surface rent in 258 cases involving ₹ 9.05 lakh.

(Paragraph 7.3)

Test check of the Demand and Collection Registers of office of five District Geologists for the period 2011-13 revealed short levy of dead rent in 80 cases involving ₹ 52.03 lakh.

(Paragraph 7.4)

CHAPTER-I
GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Gujarat during the year 2013-14, the State's share of net proceeds of divisible Union Taxes and duties assigned to the State and Grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are as mentioned in **Table 1.1.1** below:

Table 1.1.1

Trend of revenue receipts

(₹ in crore)

Sl. No.	Particular	2009-10	2010-11	2011-12	2012-13	2013-14
1.	**Revenue raised by the State Government**					
	• Tax revenue	26,740.23	36,338.63	44,252.29	53,896.69	56,372.37
	• Non-tax revenue	5,451.71	4,915.02	5,276.52	6,016.99	7,018.31
	Total	**32,191.94**	**41,253.65**	**49,528.81**	**59,913.68**	**63,390.68**
2.	**Receipts from the Government of India**					
	• Share of net proceeds of divisible Union taxes and duties	5,890.92	6,679.44	7,780.31	8,869.05	9,701.93[1]
	• Grants-in-aid	3,589.50	4,430.55	5,649.87	6,445.80	6,883.13
	Total	**9,480.42**	**11,109.99**	**13,430.18**	**15,314.85**	**16,585.06**
3.	**Total revenue receipts of the State Government (1 and 2)**	**41,672.36**	**52,363.64**	**62,958.99**	**75,228.53**	**79,975.74[2]**
4.	**Percentage of 1 to 3**	**77**	**79**	**79**	**80**	**79**

The above table indicates that during the year 2013-14, the revenue raised by the State Government (₹ 63,390.68 crore) was 79 *per cent* of the total revenue receipts against 80 *per cent* in the preceding year. The balance 21 *per cent* of the receipts during 2013-14 was from the Government of India.

[1] Figures under the Heads "0020 - Corporation tax, 0021 - Taxes on Income other than corporation tax, 0028 - Other taxes on income and expenditure, 0032 - Taxes on wealth, 0037 - Customs, 0038 - Union excise duties, 0044 - Service tax, 0045 - Other taxes and duties on commodities and services", - share of net proceeds assigned to State booked in the Finance Accounts under 'A - Tax Revenue', have been excluded from revenue raised by the State and included in State's share of divisible Union taxes, in this statement.

[2] For details, please see **Statement No. 11**- Detailed Statement of revenue and capital receipts by minor heads of the Finance Accounts of the Government of Gujarat for the year 2013-14.

1.1.2 The details of the tax revenue raised during the period 2009-10 to 2013-14 are given in **Table 1.1.2** below:

Table 1.1.2

Details of tax revenue raised

(₹ in crore)

Sl. No.	Heads of revenue		2009-10	2010-11	2011-12	2012-13	2013-14	Percentage of increase (+) or decrease (-) in 2013-14 over 2012-13
1.	Sales tax/VAT[3]	BE	15,300.00	17,500.00	22,625.00	32,650.00	39,964.00	(+) 22.40
		Actual	15,651.20	20,226.78	27,259.38	34,086.69	35,685.20	(+) 4.69
	Central sales tax	BE	2,915.00	3,500.00	3,375.00	4,850.00	5,336.00	(+) 10.02
		Actual	2,548.59	4,666.68	3,942.93	5,377.98	5,290.86	(-) 1.62
2.	Taxes and duties on electricity	BE	2,430.00	2,753.50	3,200.00	3,700.00	4,500.00	(+) 21.62
		Actual	2,643.65	3,262.64	3,654.56	4,406.60	4,692.77	(+) 6.49
3.	Stamp duty and registration fees	BE	1,745.75	2,750.00	5,000.00	5,000.00	5,000.00	0
		Actual	2,556.72	3,666.24	4,670.27	4,426.93	4,749.35	(+) 7.28
4.	Land revenue	BE	688.50	1,107.50	1,800.00	1,890.00	2,041.20	(+) 8
		Actual	1,161.20	1,788.78	1,477.18	2,207.85	1,727.41	(-) 21.76
5.	Taxes on vehicles	BE	1,450.00	1,675.00	1,900.00	2,090.00	2,200.00	(+) 5.26
		Actual	1,542.64	2,003.68	2,251.03	2,276.26	2,282.81	(+) 0.29
6.	Taxes on goods and passengers	BE	261.70	275.00	280.00	100.15	108.16	(+) 8
		Actual	6.91	6.38	208.34	210.58	833.56	(+) 295.84
7.	State excise	BE	50.00	58.00	66.58	72.50	86.40	(+) 19.17
		Actual	65.94	62.97	72.11	84.91	109.82	(+) 29.34
8.	Other taxes on income and expenditure	BE	175.22	195.00	249.96	262.46	290.00	(+) 10.49
		Actual	196.87	228.22	222.18	207.80	222.22	(+) 6.94
9.	Other taxes	BE	398.37	446.90	549.36	616.10	682.05	(+) 10.70
		Actual	366.51	426.26	494.31	611.09	778.37	(+) 27.37
Total		**BE**	**25,414.54**	**30,260.90**	**39,045.90**	**51,231.21**	**60,207.81**	**(+) 17.52**
		Actual	**26,740.23**	**36,338.63**	**44,252.29**	**53,896.69**	**56,372.37**	**(+) 4.59**

- It would be seen from the above table that the total of actual receipts in each year was more than the total of budget estimates of the respective years except during the year 2013-14.

- Though the overall expected increase in revenue as per budget estimates during 2013-14 over 2012-13 was 17.52 *per cent*, the actual increase in revenue was only 4.59 *per cent*.

[3] Sales Tax/VAT includes tax on sales of Motor Sprit and Lubricants, Trade Tax and Other Receipts.

1.1.3 The details of the non-tax revenue raised during the period 2009-10 to 2013-14 are indicated in **Table 1.1.3** below:

Table 1.1.3

Details of non-tax revenue raised

(₹ in crore)

Sl. No.	Heads of revenue		2009-10	2010-11	2011-12	2012-13	2013-14	Percentage of increase (+) or decrease (-) in 2013-14 over 2012-13
1.	Non-ferrous mining and metallurgical industries	BE	2,099.27	2,425.18	2,020.00	2,357.00	2,084.40	(-) 11.57
		Actual	2,138.98	2,019.31	1,819.64	1,847.16	1,578.34	(-) 14.55
2.	Interest receipts	BE	429.55	594.00	641.52	692.84	748.27	(+) 8
		Actual	419.44	403.88	631.89	1,325.84	1,267.18	(-) 4.42
3.	Major and medium irrigation	BE	498.43	540.00	629.19	726.72	882.34	(+) 21.41
		Actual	504.61	618.14	684.15	714.13	897.51	(+) 25.68
4.	Miscellaneous general services	BE	531.87	670.30	591.48	120.00	80.00	(-) 33.33
		Actual	847.14	62.29	69.65	-334.66[4]	90.62	--
5.	Other administrative services	BE	71.38	113.03	125.00	134.99	81.00	(-) 40
		Actual	110.80	41.11	70.27	102.22	100.32	(-) 1.86
6.	Police	BE	94.75	86.14	93.03	140.00	190.00	(+) 35.71
		Actual	101.45	149.08	138.97	163.84	177.81	(+) 8.53
7.	Medical and public health	BE	85.00	140.72	151.98	164.14	122.62	(-) 25.30
		Actual	62.40	118.11	90.76	126.34	111.88	(-) 11.45
8.	Public works	BE	33.60	35.11	55.00	59.40	43.52	(-) 26.73
		Actual	51.06	36.71	38.07	44.36	54.99	(+) 23.96
9.	Forestry and wild life	BE	42.80	45.04	48.64	52.54	59.40	(+) 13.06
		Actual	39.76	45.22	39.93	54.39	60.04	(+) 10.39
10.	Other non-tax receipts	BE	960.43	1,534.22	1,659.60	2,323.93	2,087.96	(-) 10.15
		Actual	1,176.07	1,421.17	1,693.19	1,973.37	2,679.62	(+) 35.79
Total		**BE**	**4,847.08**	**6,183.74**	**6,015.44**	**6,771.56**	**6,379.51**	**(-) 5.79**
		Actual	**5,451.71**	**4,915.02**	**5,276.52**	**6,016.99**	**7,018.31**	**(+) 16.64**

- It would be seen from the above table that the total of actual non-tax receipts during 2009-10 and 2013-14 was more than the total of budget

[4] Includes ₹ 47,186.68 lakh on account of recovery of debt waiver (write off) granted by Government of India to Government of Gujarat for 2009-10, which remained to be adjusted in the accounts for 2011-12.

estimates while the total of actual non-tax receipts was less than the total of budget estimates during the years from 2010-11 to 2012-13.

- There was an overall increase of 16.64 *per cent* in non-tax receipts during the year 2013-14 as compared to 2012-13, though the budget estimates framed were comparatively less (by 5.79 *per cent*) than the actual.

- There was substantial variation of receipts in 2013-14 over 2012-13 in respect of the head "Non-ferrous mining and metallurgical operations". There was also a gradual decrease of revenue realised from 2010-11 onwards.

1.2 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2014 on some principal heads of revenue amounted to ₹ 19,790.42 crore of which ₹ 12,833.30 crore was outstanding for more than five years, as detailed in the **Table-1.2** below:

Table 1.2

Arrears of revenue

(₹ in crore)

Sl. No.	Head of revenue	Total Amount outstanding as on 31 March 2014	Amount outstanding for more than 5 years as on 31 March 2014
1	VAT/Sales Tax	18,510.17	11,639.11
2	Stamp Duty and Registration Fees	1,140.25	1,130.26
3	Taxes and duties on electricity	140.00	63.93
	Total	**19,790.42**	**12,833.30**

It would be seen from the table that arrears aggregating to ₹ 12,833.30 crore were pending for more than five years under the above three heads of revenue. The concerned departments did not furnish the stages at which the arrears of revenue were pending collection or whether the cases were referred for write off, if any, despite being requested by Audit (June 2014).

The other department like Revenue Department (in respect of Land Revenue), Industries and Mines Department and Ports and Transport Department etc.; did not furnish the details regarding arrears of revenue despite being requested in June/September 2014. As such total arrear of tax and non-tax revenue pending collection could not be ascertained.

1.3 Arrears in assessments

The details of cases pending at the beginning of the year, cases becoming due for assessment, cases disposed off during the year and number of cases pending for finalisation at the end of the year as furnished by the Commercial Tax Department in respect of Value Added Tax/ Sales Tax and Profession Tax was as in the following **Table 1.3**:

Table 1.3

Arrears in assessments

Head of revenue	Opening balance	New cases due for assessment during 2013-14	Total assessments due	Cases disposed off during 2013-14	Balance at the end of the year as on 31 March 2014	Percentage of disposal (col. 5 to 4)
1	2	3	4	5	6	7
Value Added Tax/Sales Tax	1,00,054	1,21,215	2,21,269	69,936	1,51,333	31.61
Profession Tax	33,895	6,613	40,508	4,200	36,308	10.37
Total	**1,33,949**	**1,27,828**	**2,61,777**	**74,136**	**1,87,641**	**28.32**

It could be seen from the above table that percentage of assessments made during 2013-14 was 28.32 *per cent* as against 58 *per cent* during the year 2012-13 indicating therein that the department needs to make more efforts to at least dispose off 58 *per cent* of cases as was done during 2012-13.

1.4 Evasion of tax detected by the Department

The details of cases of evasion of tax detected by the Department, cases finalised and the demands for additional tax raised as reported by the Department are given in **Table 1.4** below:

Table 1.4

Evasion of Tax

(₹ in crore)

Sl. No.	Head of revenue	Cases pending as on 1 April 2013	Cases detected during 2013-14	Total	Number of cases in which assessment/investigation completed and additional demand with penalty etc raised		Number of cases pending for finalisation as on 31 March 2014
					Number of cases	Amount of demand	
1	Value Added Tax/ Sales Tax	394	1,729	2,123	1,402	311.40	721
2	Stamp Duty	61,041	00	61,041	17,950	3.69	43,091
	Registration Fees	5,964	123	6,087	1,285	21.70	4,802
	Total	**67,399**	**1,852**	**69,251**	**20,637**	**336.79**	**48,614**

It would also be seen from the above table that there has been substantial fall in the pendency of cases during the year. However, overall 70 *per cent* cases were still pending finalisation in two Departments.

The other department like Revenue Department (in respect of Land Revenue), Industries and Mines Department and Ports and Transport Department etc.; did not furnish the details regarding evasion of tax/revenue despite being requested in June/September 2014.

1.5 Pendency of Refund Cases

The number of refund cases pending at the beginning of the year 2013-14, claims received during the year, refunds allowed during the year and the cases pending at the close of the year 2013-14 as reported by the Department is given in **Table 1.5** below:

Table 1.5

Details of pendency of Refund Cases

(₹ in crore)

Sl. No.	Particulars	Stamp Duty and Registration Fees		Taxes and duties on electricity	
		No. of cases	Amount	No. of cases	Amount
1	Claims outstanding at the beginning of the year	14	0.89	0	0
2	Claims received during the year	461	4.88	3	093
3	Refunds made during the year	440	3.58	3	0.93
4	Balance outstanding at the end of year	35	2.19	0	0

The Revenue Department (in respect of Land Revenue), Commercial Tax Department, Industries and Mines Department and Ports and Transport Department did not furnish the details regarding claims outstanding at the beginning of the year, claims received during the year, balance outstanding at the end of year and refunds made during the year despite being requested in June/September 2014.

1.6 Response of the Government/Departments towards audit

The Accountant General (Economic and Revenue Sector Audit) Gujarat, Ahmedabad (AG), conducts periodical inspection of the Government Departments to test check the transactions and verify the maintenance of the important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with Inspection Reports (IRs) incorporating irregularities detected during the inspection and not settled on the spot, which are issued to the heads of the offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of offices/ Government are required to comply promptly on the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the AG within one month from the date of receipt of the IRs. Serious financial irregularities are reported to the heads of the Departments and the Government.

Inspection Reports issued upto December 2013 disclosed that 12,846 paragraphs involving ₹ 7,510.40 crore relating to 3,518 IRs remained outstanding at the end of June 2014 as mentioned as follows alongwith the corresponding figures for the preceding two years in **Table 1.6**.

Table 1.6

Details of pending Inspection Reports

Particulars	June 2012	June 2013	June 2014
Number of Inspection Reports pending for settlement	4,519	3,653	3,518
Number of outstanding audit observations	14,423	13,275	12,846
Amount of revenue involved (₹ in crore)	8,814.67	5,736.81	7,510.40

1.6.1 The Department-wise details of the IRs and audit observations outstanding as on 30 June 2014 and the amounts involved are mentioned in the **Table 1.6.1**

Table 1.6.1

Department-wise details of IRs

(₹ in crore)

Sl. No.	Name of the Department	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved
1	Finance (Commercial Tax)	Taxes/VAT on sales, trade etc.	908	4,294	2,347.56
		Profession Tax	35	38	0.05
2	Revenue	Land revenue	190	587	417.95
		Stamp duty and registration fees	922	3,348	933.14
		Valuation of Property	187	414	50.11
		Expenditure[5]	499	1,416	15.33
3	Ports & Transport	Taxes on vehicles and Taxes on goods and passengers	424	1,757	1,117.64
4	Energy & Petrochemicals	Electricity duty	65	99	142.72
		Director of Petroleum	5	36	2,028.98
5	Industries & Mines	Mining Receipts	283	857	456.92
Total			**3,518**	**12,846**	**7,510.40**

Audit did not receive even the first replies from the heads of offices within one month from the date of issue of IRs for 90 IRs issued during 2013-14. This large pendency of the IRs due to non-receipt of the replies is indicative of the fact that the heads of offices and heads of the Departments did not take effective action to rectify the defects, omissions and irregularities pointed out by the AG in the IRs.

1.6.2 Departmental audit committee meetings

The Government sets up Audit Committees to monitor and expedite the progress of the settlement of IRs and paragraphs in the IRs. During 2013-14 six Audit Committee Meetings were held- three on Commercial Tax Department and three on Revenue Department in which 317 paragraphs

[5] Money value of the paragraphs included in IRs pertaining to Revenue Department issued by AG (General and Social Sector Audit), Gujarat, Rajkot has not been considered.

involving ₹ 98.41 crore were settled. The details of the Audit Committee Meetings held during the year 2013-14 and the paragraphs settled are mentioned in **Table 1.6.2**.

Table 1.6.2

Details of departmental audit committee meetings

(₹ in crore)

Sl. No.	Name of the Department	Number of meetings held	Number of paragraphs settled	Amount of settled paragraphs
1.	Finance Department (Commercial Tax Department)	03	230	87.87
2.	Revenue Department (Land Revenue and Stamp duty and Registration Fees)	03	87	10.54
	Total	**06**	**317**	**98.41**

Audit Committee Meetings in respect of Ports and Transport Department, Energy and Petrochemicals Department and Industries and Mines Department were not held. However, it has been noticed there has been a gradual decrease in the number of outstanding audit inspection reports and number of audit observations as mentioned in paragraph 1.6.

1.6.3 Non-production of records to audit for scrutiny

The programme of local audit of Tax Revenue/non-tax Revenue offices is drawn up sufficiently in advance and intimations are issued, usually one month before the commencement of audit, to the Departments to enable them to keep the relevant records ready for audit scrutiny.

During the year 2013-14 as many as 1,250 assessment files, return, refunds, registers and other relevant records, which had become due for audit in the year, were not made available to audit. Break-up of these cases is given in **Table 1.6.3** as follows:

Table 1.6.3

Details of non-production of records

Name of the office/Department	Year in which it was to be audited	Number of cases not audited
Sales Tax/VAT	2013-14	1,123
Land Revenue	2013-14	127
	Total	**1,250**

1.6.4 Response of the Departments to the draft audit paragraphs

The draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India are forwarded by the AG to the Principal Secretaries/Secretaries of the concerned Department, drawing their attention to audit findings and requesting them to send their response within six weeks. The fact of non-receipt of the replies from the Departments/

Government is invariably indicated at the end of such paragraphs included in the Audit Report.

58 draft paragraphs (clubbed into 51 paragraphs) including two Performance Audits were sent to the Principal Secretaries/Secretaries of the respective Department by name between May and September 2014. The Principal Secretaries/Secretaries of the Department did not send replies to 15 draft paragraphs including Performance Audit despite issue of reminders (October 2014) and the same have been included in this Report without the response of the Department.

1.6.5 Follow up on the Audit Reports - summarised position

The internal working system of the Public Accounts Committee, notified in March, 1966, laid down that after the presentation of the Report of the Comptroller and Auditor General of India in the Legislature Assembly, the Departments shall initiate action on the audit paragraphs and the action taken explanatory notes thereon should be submitted by the Government within three months of tabling the Report, for consideration of the Committee. In spite of these provisions, the explanatory notes on audit paragraphs of the Reports were being delayed inordinately. Two hundred eighty eight paragraphs (including performance audit) included in the Report of the Comptroller and Auditor General of India on the Revenue Receipts and Revenue Sector of the Government of Gujarat for the years ended 31 March 2008, 2009, 2010, 2011, 2012 and 2013 were placed before the State Legislature Assembly between July 2009 and July 2014. The action taken explanatory notes from the concerned Departments on these paragraphs were received late with average delay of 15 months in respect of each of these Audit Reports, respectively. Action taken explanatory notes from five Departments (Commercial Tax Department, Revenue Department, Ports and Transport Department, Energy and Petrochemicals Department and Industries and Mines Department) had not been received in respect of 136 paragraphs from the Audit Report for the year ended 31 March 2008 onwards so far (November 2014).

1.7 Analysis of the mechanism for dealing with the issues raised in Commercial Tax Department

To analyse the system of addressing the issues highlighted in the Inspection Reports/Audit Reports by the Departments/Government, the action taken on the paragraphs and performance audits included in the Audit Reports of the last ten years in respect of Finance Department (Commercial Tax Department) is evaluated and included in this Audit Report.

The succeeding paragraphs 1.7.1 and 1.7.2 discuss the performance of the Commercial Tax Department under revenue head VAT/Sales Tax and cases detected in the course of local audit conducted during the last ten years (2004-05 to 2013-14) and also the cases included in the Audit Reports for the years 2003-04 to 2012-13.

1.7.1 Position of Inspection Reports

The summarised position of Inspection Reports issued during the last ten years, paragraphs included in these reports and their status as on 31 March 2014 are tabulated in **Table 1.7.1** below:

Table 1.7.1

Position of Inspection Reports

(₹ in crore)

Year	Opening balance			Addition during the year			Clearance during the year			Closing balance during the year		
	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value
2004-05	1204	4405	426.60	148	548	1772.76	61	287	26.08	1291	4666	2173.28
2005-06	1291	4666	2173.28	101	386	234.23	220	1133	25.1	1172	3919	2382.41
2006-07	1172	3919	2382.41	122	606	461.44	28	163	1184.96	1266	4362	1658.89
2007-08	1266	4362	1658.89	145	667	527.49	33	114	1.59	1378	4915	2184.79
2008-09	1378	4915	2184.79	123	661	238.49	58	506	23.29	1443	5070	2399.99
2009-10	1443	5070	2399.99	110	749	230.16	12	106	4.3	1541	5713	2625.85
2010-11	1541	5713	2625.85	97	770	415.78	4	82	9.73	1634	6401	3031.89
2011-12	1634	6401	3031.89	95	937	249.32	67	364	78.49	1662	6974	3202.72
2012-13	1662	6974	3202.72	84	723	151.32	7	375	15.67	1739	7322	3338.37
2013-14	1739	7322	3338.37	123	693	109.10	887	3344	1024.02	975	4671	2423.45

The Government arranges Audit Committee meetings between the Department and office of the Principal Accountant General/Accountant General to settle the old paragraphs. As would be evident from the above table, against 1,204 outstanding IRs with 4,405 paragraphs as on start of 2004-05, the number of outstanding IRs declined to 975 with 4,671 paragraphs at the end of 2013-14.

1.7.2 Recovery of accepted cases

The position of paragraphs included in the Audit Reports of the last ten years, those accepted by the Department and the amount recovered are mentioned in the **Table 1.7.2**:

Table 1.7.2

Recovery of accepted cases

(₹ in crore)

Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	No. of paragraphs accepted	Money value of accepted paragraphs	Amount recovered during the year 2013-14	Cumulative position of recovery of accepted cases
2003-04	13	258.67	13	10.44	0.00	4.43
2004-05	17	105.38	16	41.43	0.00	2.16
2005-06	14	311.89	13	25.71	0.00	1.60
2006-07	12	27.86	11	11.27	0.00	1.61
2007-08	12	134.90	10	23.72	0.00	1.19
2008-09	17	5,013.96	14	34.85	0.00	2.85
2009-10	15	34.38	14	29.53	0.00	2.53
2010-11	22	76.38	21	59.40	0.00	3.84
2011-12	33	151.90	30	33.99	1.65	2.12
2012-13	24	204.18	24	54.88	2.66	2.66
Total	**179**	**6,319.50**	**166**	**325.22**	**4.31**	**24.99**

It is evident from the above table that the progress of recovery even in accepted cases was very slow throughout during the last ten years. The recovery of accepted cases was to be pursued as arrears recoverable from the concerned parties. No mechanism for pursuance of the accepted cases had been put in place by the Department/Government.

The Department may take immediate action to pursue and monitor prompt recovery of the dues involved in accepted cases.

1.8 Action taken on the recommendations accepted by the Department/Government

The draft Performance Audits conducted by the PAG/AG are forwarded to the concerned Department/Government for their information with a request to furnish their replies. These PAs are also discussed in an exit conference and the Department's/Government's views are included while finalising the PAs for the Audit Reports.

We had conducted four Performance Audits of the Finance Department (Commercial Tax Department) in the last five years in which 32 recommendations were proposed. Of these, one recommendation relating to "providing of access to TINXSYS website to the assessing officers", the Department accepted our recommendation and stated that access to website had been provided to all the unit heads, circles and divisions from 1 June 2011. Hence, Assessing Officers have access to TINXSYS[6] Reports.

1.9 Audit Planning

The unit offices under various Departments are categorised into high, medium and low risk according to their revenue realisation, past trends of audit observations and other parameters. The annual audit plan is prepared on the basis of risk analysis which *inter-alia* include critical issues in Government revenues and tax administration i.e. budget speech, white paper on state finances, reports of the Finance Commission (Central and State), recommendations of the taxation reforms committee, statistical analysis of the revenue earnings during the past five years, features of the tax administration, audit coverage and its impact during past five years etc.

During the year 2013-14, the audit universe comprised 976 auditable entities, of which audit of 224 entities was planned and 208 entities were audited during the year, which is 21 *per cent* of the total auditable entities. Out of the 16 units which were planned but could not be audited during the year 2013-14, nine units would be covered in the audit plan for the year 2014-15.

Besides the compliance audit mentioned above, two performance audits were also taken up to examine the efficacy of the tax administration of these receipts.

[6] Tax Information Exchange System

1.10 Results of audit

Position of local audit conducted during the year

Test check of the records of 177 units of Commercial Tax Department, Revenue Department, Ports and Transport Department, Energy and Petrochemicals Department and Industries and Mines Department conducted during the year 2013-14 revealed under assessment/short levy/loss of revenue amounting to ₹ 1,028.77 crore in 1319 cases.

During the course of the year, the concerned Departments accepted under assessment and other irregularities of ₹ 36.18 crore involved in 302 cases which were pointed out in audit during 2013-14 and earlier years. The Departments recovered ₹ 7.08 crore in 179 cases at the instance of audit.

1.11 Coverage of this Report

This report contains 51 paragraphs, including two Performance Audits on "Lease of Government Land" and "Return Scrutiny and Self Assessment on VAT", relating to irregular/excess allowance of ITC, short/non-levy of VAT/CST/occupancy/premium price/NAA/conversion tax/stamp duty/ registration fees and other irregularities involving financial effect of ₹ 675.55 crore.

The concerned Departments/Government have accepted audit observations involving ₹ 76.09 crore out of which ₹ 4.19 crore have been recovered. The replies in the remaining cases have not been received (November 2014). These are discussed in succeeding Chapters II to VII.

CHAPTER-II
EXECUTIVE SUMMARY

Results of audit

We test checked the records of 89 offices relating to Commercial Tax Offices during 2013-14 and noticed underassessment of tax and other irregularities involving ₹ 446.03 crore in 688 cases.

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 30.70 crore in 221 cases and recovered ₹ 1.60 crore in 98 cases.

What we have highlighted in this Chapter

A Performance Audit on "**Return Scrutiny and Self Assessment on VAT"** revealed the following:

- The Department had not made any provision by way of providing space/column in form 214A/215A and 202A for furnishing the details of the goods purchased and nature of contract respectively. Thus, it could not be ascertained whether the goods were purchased from registered dealers and tax was paid correctly.
- The Department had not evolved any mechanism at higher level to monitor initial scrutiny of periodical and annual returns by the Assessing Authority where the cases of the dealers were accepted as 'deemed to have been assessed' under Section 33 of the VAT Act.
- In 1,082 cases, though inter-State sales were not supported by statutory declaration forms, tax was paid by the dealer at concessional rate resulting in short levy of tax of ₹ 277.62 crore.
- In 16 offices, misclassification of goods and incorrect determination of taxable turnover resulted in short realisation of tax of ₹ 45.95 crore in 79 cases.
- In the inter-State sales valued at ₹ 12.61 crore, the title of the goods had already passed on to the ultimate buyer before the movement of goods and the dealers were not entitled to concessional rate of tax, but these dealers incorrectly claimed and paid tax at concessional rate. This resulted in short recovery of tax of ₹ 1.31 crore.
- In respect of the 18 offices it was noticed that in 1,490 cases, either ITC was carried forward/claimed in excess of that shown in the returns or returns were not filed. Though provisional assessment was required under the Act in these cases, it was not done.

- Department had selected only 11 *per cent* cases of dealers for audit assessments. In 16,071 cases selected for audit assessment were having turnover less than ₹ one crore while 4,306 cases having turnover in excess of ₹ five crore were accepted as self assessed without scrutiny of the assessment. Though 1,106 cases were required to be selected for audit assessment, these were not selected and six cases selected for audit assessment were not finalised.
- Ten assessing authorities furnished a nil report relating to audit of self assessments done by the internal audit wing (IAW) of the Department, while in other five offices, audit of only 384 cases out of total 2.09 lakh cases was done by the IAW, despite instructions from the Department for audit of 5 *per cent* of the cases.
- In 16 offices, VAT audit reports and certified accounts in 329 cases were not furnished even after a lapse of ten months from the end of financial year. The assessing officers had not monitored the submission of these VAT audit reports as such the correctness of the tax payable by the dealers could not be ascertained.

In 14 cases, there was short levy of VAT/ CST of ₹ 15.98 crore including interest of ₹ 4.72 crore and penalty of ₹ 4.28 crore due to underassessment/turnover escaping assessment.

The AA had allowed proportionate ITC of ₹ 54.76 lakh to four dealers on purchase of sugarcane/plant and machinery against the production of molasses which is a by-product of sugar (a tax free item).

In three cases, the AA had allowed claim towards RR sale though the original seller had consigned goods directly to the ultimate buyer i.e. the goods were appropriated to their ultimate buyer before the movement of goods commenced resulting in non-levy of tax of ₹ 3.73 crore, including interest of ₹ 0.86 crore and penalty of ₹ 0.05 crore.

Misclassification by the AA had resulted in short levy of VAT of ₹ 1.05 crore, including interest of ₹ 0.24 crore and penalty of ₹ 0.49 crore in three cases.

The AA did not levy Entry Tax on motor vehicles in four cases resulting in non-levy of entry tax of ₹ 60.56 lakh, including penalty of ₹ 27.50 lakh.

CHAPTER-II
VALUE ADDED TAX/SALES TAX

2.1 Tax administration

Value Added Tax laws and rules framed thereunder are administered at the Government level by the Additional Chief Secretary (Finance). The Commissioner of Commercial Tax (CCT) is the head of the Commercial Tax Department (CTD), who is assisted by one Special CCT, four Additional CCTs, 11 Joint CCTs, 23 Deputy CCTs, 103 Assistant CCTs and Commercial Tax Officers (CTOs). They are assisted by Commercial Tax Inspectors and other allied staff for administering the relevant Tax laws and rules.

2.2 Working of Internal Audit Wing

The Department has an Internal Audit Wing under the charge of the Joint CCT (Audit) who is assisted by seven Deputy CCTs (Audit). This wing was to conduct test check of cases of assessment as per the approved action plan and in accordance with the criteria decided for the purpose so as to ensure adherence to the provisions of the Act and Rules as well as Departmental instructions issued from time to time.

The Deputy CCT (Audit) had monthly target of 125 assessment cases. During the year 2013-14, the seven Deputy CCTs (Audit) audited 3,724 cases as against yearly target of 10,500 cases. No audit was done in Division-7 whereas only 19 and 33 cases were audited in Division-4 and Division-6 respectively. Overall, there was shortfall of 65 *per cent* in terms of target set *vis-à-vis* achievement thereof.

Thus, there was decrease in achievement of target set for internal audit from 52 *per cent* as reported in Audit Report for the year 2012-13 to 35 *per cent* in 2013-14.

The Department attributed the non-achievement of target to shortage of manpower and distance of units from audit wings.

The internal audit wing needs to put in more concerted efforts to achieve the target fixed so that better tax compliance is ensured.

2.3 Results of audit

In 2013-14, we test checked assessment cases (VAT/Sales Tax) and other records of 89 offices. In these offices, 29,027 assessment cases were due for audit in 2013-14. Out of these, the Department produced 27,904 cases, while 1,123 cases remained outstanding at the end of the year. The Department provided partial details of turnover and revenue involved in the unproduced cases. As per information provided by the Department, the turnover involved in 876 cases was of ₹ 16,270.31 crore whereas tax involved was of ₹ 72.92 crore (454 cases). The test check of the above mentioned cases as produced by the Department showed underassessment of tax and other irregularities involving ₹ 446.03 crore in 688 cases, which fall under the following categories as given below:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Performance Audit on "Return Scrutiny and Self Assessment on VAT"	1	337.38
2	Incorrect rate of tax and mistake in computation	26	19.43
3	Incorrect grant of set-off	4	0.09
4	Incorrect concession/exemption	10	0.02
5	Non/short levy of interest and penalty	120	14.98
6	Other irregularities	85	15.10
7	Irregular/excess grant of Input Tax Credit	179	17.49
8	Non/short levy of tax	237	38.83
9	Non/short levy of Purchase Tax	7	2.41
10	Profession Tax and Expenditure Audit	19	0.30
	Total	**688**	**446.03**

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 30.70 crore in 221 cases, which were pointed out in audit during 2013-14 and earlier years. An amount of ₹ 1.60 crore was recovered in 98 cases during the year 2013-14.

A Performance Audit on "Return Scrutiny and Self Assessment on VAT" involving ₹ 337.38 crore and a few illustrative cases involving ₹ 33.77 crore are discussed in following paragraphs.

2.4 Performance Audit on "Return Scrutiny and Self Assessment on VAT"

Highlights

- The Department had not made any provision by way of providing space/column in form 214A/215A and 202A for furnishing the details of the goods purchased and nature of contract respectively. Thus, it could not be ascertained whether the goods were purchased from registered dealers and tax was paid correctly.

(Paragraph 2.4.9)

- The Department had not evolved any mechanism at higher level to monitor initial scrutiny of periodical and annual returns by the Assessing Authority where the cases of the dealers were accepted as 'deemed to have been assessed' under Section 33 of the VAT Act.

(**Paragraph 2.4.11)**

- In 1,082 cases, though inter-State sales were not supported by statutory declaration forms, tax was paid by the dealer at concessional rate resulting in short levy of tax of ₹ 277.62 crore.

(Paragraph 2.4.12)

- In 16 offices, misclassification of goods and incorrect determination of taxable turnover resulted in short realisation of tax of ₹ 45.95 crore in 79 cases.

(Paragraph 2.4.13 and 2.4.14)

- In the inter-State sales valued at ₹ 12.61 crore, the title of the goods had already passed on to the ultimate buyer before the movement of goods and the dealers were not entitled to concessional rate of tax, but these dealers incorrectly claimed and paid tax at concessional rate. This resulted in short recovery of tax of ₹ 1.31 crore.

(Paragraph 2.4.17)

- In respect of the 18 offices it was noticed that in 1,490 cases, either ITC was carried forward/claimed in excess of that shown in the returns or returns were not filed. Though provisional assessment was required under the Act in these cases, it was not done.

(Paragraph 2.4.18)

- Department had selected only 11 *per cent* cases of dealers for audit assessments. In 16,071 cases selected for audit assessment were having turnover less than ₹ one crore while 4,306 cases having turn over in excess of ₹ five crore were accepted as self assessed without scrutiny of the assessment. Though 1,106 cases were required to be selected for audit assessment, these were not selected and six cases selected for audit assessment were not finalised.

(Paragraph 2.4.19)

- Ten assessing authorities furnished a nil report relating to audit of self assessments done by the internal audit wing (IAW) of the Department, while in other five offices, audit of only 384 cases out of total 2.09 lakh cases was done by the IAW, despite instructions from the Department for audit of 5 *per cent* of the cases.

(Paragraph 2.4.20)

- In 16 offices, VAT audit reports and certified accounts in 329 cases were not furnished even after a lapse of ten months from the end of financial year. The assessing officers had not monitored the submission of these VAT audit reports as such the correctness of the tax payable by the dealers could not be ascertained.

(Paragraph 2.4.21)

2.4.1 Introduction

The Gujarat Value Added Tax Act, 2003 (GVAT Act) and the Gujarat Value Added Tax Rules, 2006 (GVAT Rules) framed thereunder govern the levy, assessment and collection of value added tax (VAT) in the State. Under GVAT Act, tax is levied at each stage of sales with allowance of credit of tax paid on purchases (called input tax credit) to nullify cascading effect of multiple taxation. Thus all registered dealers are liable to pay tax only on each value addition. The GVAT Act is administered by the Commercial Tax Department (Department) of the Government of Gujarat.

The GVAT Act stipulates the filing of periodical returns, their scrutiny, filing of annual return in the form of self assessment as well as audit assessment by the Department to ascertain the correctness of levy and payment of tax. The relevant provisions in the GVAT Act are as under:

Section 29	Each registered dealer shall furnish monthly/quarterly returns[1] of the goods in respect of his business and transactions thereof within the period of 30 days from the end of the month.
Section 32	All returns shall be scrutinised and in certain cases (a) where input tax credit (ITC) is carried forward for subsequent returns, (b) refund is claimed by dealers, (c) net tax payable is nil or (d) returns are not furnished within the prescribed time, provisional assessment shall be made by the assessing officer.
Section 33	• Annual return in the form of self assessment accompanied by supporting documents, such as statutory forms and audited accounts in support of claims and concessions shall be furnished by the dealers within a period of nine months from the end of the financial year. • The annual accounts containing profit and loss accounts and balance-sheet along with annual returns shall be uploaded on the website of the Department where annual turnover exceeds ₹ one crore. • The cases of dealers shall be accepted as deemed to have been assessed where the Commissioner is satisfied with the correctness and completeness of periodical returns and annual return.
Section 34	Cases of dealers shall be subject to audit assessment where the Commissioner is not satisfied with the bonafides of any claim of tax credit, exemption, refund, deduction, concession, rebate or genuineness of any declaration or evidence furnished in support thereof.

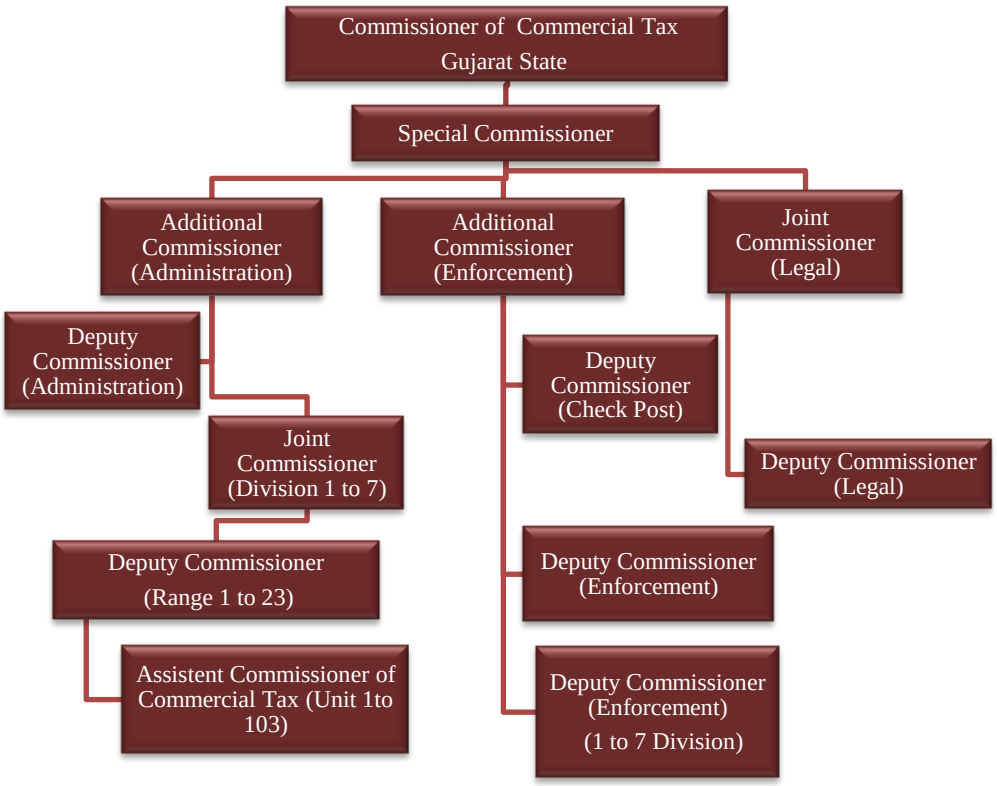
[1] All dealers shall furnish monthly return excluding the dealers where total amount of tax payable does not exceed ₹ 60,000 or involved in trading within the State or granted permission for lump-sum tax.

2.4.2 Reasons for selection of the topic

We noticed that the percentage of the cases selected for audit assessment by the Department ranged from 9 *per cent* to 14 *per cent* during the period 2008-09 to 2010-11. Thus, the balance cases were self assessment cases deemed to have been assessed. During our compliance audit, we also observed a large number of discrepancies in the cases accepted as deemed to have been assessed. In the background of discrepancies noticed by us and a large number of self assessment cases deemed to have been assessed, we considered it appropriate to conduct Performance Audit on "Return Scrutiny and Self Assessment on VAT".

2.4.3 Organisational set-up

The Value Added Tax is administered by the Commercial Tax Department (Department). The Commercial Tax Department of Gujarat functions under the control and supervision of the Additional Chief Secretary, Finance Department, Government of Gujarat. The Department is headed by Commissioner of Commercial Tax. He is assisted by a Special Commissioner and two other Additional Commissioners. The Department has 7 divisions, 23 range offices and 103 unit offices. The following organisational chart explains the set-up of the Department.



2.4.4 Audit Objectives

We conducted the Performance Audit with a view to ascertain whether:

- the provisions of the Act, Rules, notifications and instructions issued by the Department relating to return scrutiny and self assessment were adequate to safeguard the revenue interests of the State and were being followed by the Department;
- the task generation (selection of cases) was done efficiently and effectively so as to cover high risk cases to seek assurance about their correctness; and
- the internal controls of the Department were adequate and effective in scrutiny of returns and self assessment cases.

2.4.5 Audit Criteria

The audit criteria are derived from the following Acts and also the Rules made thereunder to govern the process of scrutiny of returns, challans and acceptance of self assessment made by the dealer:

- Gujarat Value Added Tax Act, 2003;
- Gujarat Value Added Tax Rules, 2006;
- Central Sales Tax Act, 1956; and
- The Notifications/ Circulars/ Orders issued by the Department/ Government.

2.4.6 Scope of Audit and Methodology

The Performance Audit conducted during August 2013 to June 2014 covers the performance of the Department relating to return scrutiny of self assessment cases for the financial year 2008-09 to 2010-11.

2.4.6.1 In a meeting held between the Accountant General and the Commissioner of Commercial Tax on 19 July 2013, the Department expressed their inability to produce the records for the year 2006-07 and 2007-08. Further, the Department stated that the tasks were not generated for the year 2011-12 onwards and as such periodicity of the review was limited to 2008-09 to 2010-11. Thereafter, an Entry Conference was held on 27 August 2013 with the Government/Department. The Principal Secretary, Finance Department, Principal Secretary, Economic Affairs and the Commissioner of Commercial Tax along with the other officers of the Department attended the meeting. The objectives and methodology to be adopted in the Performance Audit was explained to them. The methodology consisted scrutiny of return files, annual returns in the form of self assessment, VAT audit reports along with certified accounts furnished by the dealers, registration files (RC files), etc. in respect of selected unit offices.

2.4.6.2 The selection of units for audit was done based on the maximum revenue collected by the units. We selected 18 Unit offices[2] (i.e. *Ghataks*) each headed by an Assistant Commissioner of Commercial Tax (ACCT), having 42.29 *per cent* share of revenue in the total collection of VAT.

2.4.6.3 The Department in respect of these 18 ACCT offices, accepted 2,08,805 cases out of 2,41,882 cases as deemed to have been assessed under self assessment during the financial year 2008-09 to 2010-11. We had called for the production of details and records of all the 2,08,805 cases accepted by the Department as deemed to have been assessed. But, the Department could produce the details of 57,324 cases only. The selection of the cases for detailed audit scrutiny was made from these 57,324 cases.

The criteria for selection of cases for detailed scrutiny in these 18 offices were as under:

Particulars	Percentage of selection	Number of Cases selected
Cases whose turnover exceeds ₹ 7.5 crore	100	1,710
Cases whose turnover was between ₹ 5 crore and ₹ 7.5 crore	50	889
Cases whose turnover was between ₹ 3 crore and ₹ 5 crore	30	1,547
Cases whose turnover was between ₹ 1 crore and ₹ 3 crore	20	3,217
Cases whose turnover was below ₹ 1 crore	10	387
Total		**7,750**

2.4.7 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation extended by the Department in completing the audit. The Performance Audit report was sent to the Government in August 2014 for their response. The report was discussed with the Department in the Exit Conference held on 10 November 2014. The replies received in the Exit Conference and at other point of time have been appropriately commented in the relevant paragraphs of the Report.

2.4.8 Audit Findings

We observed that in the present GVAT Act/Rules there is inadequate provisions to protect leakage of revenue in self assessment cases. There are absence of provisions for:

[2] ACCT - 5, 9, 11, 21, 22, 23 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 77 Bhavnagar, 104 Gandhidham, 24 Gandhinagar, 25 Kalol, 94 Rajkot, 58 Surat, 41, 45 Vadodara, 74, 75 Vapi

(a) furnishing details of payment of tax on purchases of goods used in lump-sum works contract;
(b) prescribed application form regarding nature of lump-sum works contract; and
(c) uploading of accounts and HSN codes on VATIS.

This has affected successful implementation of VAT by hampering cross verification and transparency. These issues are discussed in subsequent paragraphs.

2.4.9 Deficiency in Forms prescribed in GVAT Act

Absence of provisions for furnishing details of payment of tax on purchase of goods and nature of goods used in lump-sum works contract

2.4.9.1 Under Section 14A of the GVAT Act read with Rule 28(8)(b)(vi-a)(2) of GVAT Rules and Notification dated 17.08.2006, a dealer engaged in execution of works contract may be permitted to pay at his option a lump-sum tax on total value of works contract by way of composition at the rate of *0.6 per cent* for civil works contract and at two *per cent* for the other works in lieu of amount of tax leviable thereon. No input tax credit is admissible to such dealers. The dealers in these cases have to pay tax on purchases made by them for execution of the works contract as per above mentioned rule. Under Rule 19(3), every such dealer shall furnish periodical return in Form-202, appended there with a list of purchases from dealers in Form-202A.

We scrutinised the said forms and observed that the details of purchases from registered dealers against tax invoices are furnished in Form-202A appended to Form-202. However, the Form-202A did not contain any column or place showing the details of purchases of goods from registered dealers against retail invoices. In absence of such details it could not be verified whether the goods were purchased from registered dealers or not and tax payable on goods used in execution of such works contract was actually paid by the contractors or not. A few instances are mentioned below:

- In nine self assessment cases pertaining to five offices[3], goods valued at ₹ 67.01 crore were utilised in the execution of the lump-sum works contract. It could not be ascertained from whom such goods were purchased and whether minimum tax payable of ₹ 3.19 crore[4] was paid or not.

- Section 14A of the Act provides that goods purchased in the course of inter-State trade or commerce/import shall not be used in the execution of lump-sum works-contract and tax at applicable rate under Section 7 of the Act shall be payable on all the goods used in the execution of works contract.

[3] ACCT-5 Ahmedabad, 57 Ankleshwar, 104 Gandhidham, 24 Gandhinagar and 41 Vadodara
[4] (₹ 67.01 crore X 5)/105 (5 *per cent* is the minimum rate of tax in Gujarat in respect of execution of works contract)

In two cases of two offices[5] we observed from the VAT Audit Reports attached with their returns that in execution of lump-sum works contract, the dealers had used the goods valued at ₹ 8.70 crore which were purchased in the course of inter-State trade or commerce/import. As such, the dealers were liable to pay tax of ₹ 1.11 crore on the deemed sale turnover of ₹ 23.22 crore, but the lump-sum tax of ₹ 9.11 lakh was paid treating it as a part of lump-sum contract. This resulted in short levy of tax of ₹ 1.01 crore, in addition to interest of ₹ 64.14 lakh and penalty of ₹ 86.77 lakh leviable thereon.

The facts indicate that the tax payable on goods used in the lump-sum works contract cannot be ascertained due to absence of space/column to this effect in the prescribed Form-202A.

2.4.9.2 Rule 28(8)(bb) of GVAT Rules provides that a works contract dealer shall apply in Form 214A for the permission to pay a lump-sum tax by way of composition for ongoing as well as new works contracts to be executed. Such permission shall be granted within 15 days in Form 215A by the Department.

We scrutinised the said Forms and observed that there was no column/space in the application form for indicating the nature of the works contract. There are mainly two categories of contracts viz. civil contracts and other contracts. Civil contracts relate to construction of buildings, roads, bridges, dams, mining, airports, etc. where dealers have the option for payment of lump-sum tax leviable at the rate of 0.6 *per cent* of the total value of contract. All other contractors are liable to pay lump-sum tax at the rate of two *per cent* of the total value of the works contract. In the absence of depiction of the nature of works contract in the permission form, the Department cannot cross-verify the correctness of the application of rate of tax.

We observed that in two self assessment cases[6], the contractors were exclusively dealing with the work of painting, electrification and interior cum installation. The nature of the contract indicated that the dealers were liable to pay tax at the rate of two *per cent* as they did not fall within the category of civil contracts. The dealers had incorrectly paid the tax at the rate of 0.6 *per cent* on the total receipt of the contract of ₹ 26.51 crore. This resulted in short levy of tax of ₹ 37.12 lakh apart from interest of ₹ 19.66 lakh and penalty of ₹ 55.68 lakh leviable thereon.

It is recommended that the Government may consider inserting space/column in the prescribed Form-202A for furnishing the details of all purchases and in Form-214A/215A for nature of each works-contract to be executed to ensure the payment of lump-sum tax at the correct rates.

[5] ACCT-9, 11 Ahmedabad
[6] Pertaining to ACCT-58, Surat

2.4.10 Deficiency in VATIS system

The Department had computerised the system of computation and submission of returns called the Value Added Tax Information System (VATIS). We observed the following deficiencies in the e-filing of returns and in uploading various documents like annual accounts on the website of the Department:

- The Department had not implemented the Harmonised System of Nomenclature (HSN) code for identification of commodities to ascertain the correctness of rate of tax. The dealers had filed periodical returns and annual returns in the form of self assessment without providing the names of commodities. In the VATIS system, no fields were specified as mandatory to be filled before uploading of such returns on the website. In the absence of mandatory fields for commodity name, the correctness of the application of rates and collection of tax thereon is not verifiable.

- Rule 20(6) provides for uploading of Trading Account, Profit and Loss Account and the Balance Sheet, but there was no provision in the VATIS system for this task. The accounts can not be uploaded on the website due to absence of functionality provision in VATIS.

- The uploading of returns for the dealers having annual turnover less than fifty lakh rupees was not mandatory. However, no system was put in place to capture through VATIS system basic data of these dealers, such as turnover, amount of tax paid, details of purchasing and selling registered dealers, amount of ITC claimed, etc. to aid in the scrutiny of the returns.

It is recommended that the Government may consider modifying the VATIS system to incorporate HSN code, uploading of annual accounts, mandatory fields for ensuring the compliance to the provisions of the Act.

The Department in the Exit Conference accepted the fact that HSN code was necessary to ensure application of correct rate of tax. This was not evisaged in the VATIS but is being considered under the proposed IT system proposed for Goods and Services Tax Act.

2.4.11 System to monitor scrutiny of returns

Under Section 32(1) of the GVAT Act, the scrutiny of each and every return is required to be done. The Department shall scrutinise these returns and supporting documents wherein it would be checked that the returns and annual returns were complete and furnished timely, supporting documents furnished were complete and tax had been paid correctly, exemptions and deductions claimed were regular, etc. The Commissioner of Commercial Tax had also emphasised the need for the scrutiny in his circular dated 07-11-2008 wherein instructions were issued to the assessing authorities for continuous and intensive scrutiny of returns with greater emphasis on top 100 dealers by each jurisdictional Commercial Tax Officer.

During the course of Audit, we called for the information relating to the number of self assessment cases in which return scrutiny was made. However, in 16 out of 18 offices the assessing authorities furnished a nil report to this effect and in remaining two offices, initial scrutiny of 920 cases out of 26,615 cases was done. The Department had not furnished specific reply when we inquired about the existing monitoring mechnism for compliance of the instructions for return scrutiny.

The above facts indicate that the assessing authorities had not followed their own instructions. The Department had not evolved any mechanism at the higher level to monitor the initial scrutiny of periodical returns and annual returns by the assessing officers, where the cases were accepted as deemed to have been assessed under Section 33 of the GVAT Act.

We observed that as a result of non-scrutiny/partial scrutiny of periodical and annual returns at the initial stage, a number of cases of dealers were accepted as deemed to have been assessed even where tax was not paid correctly, irregular and excess ITC was claimed and irregular refunds of ITC were claimed and granted. Some of the cases pertaining to 18 offices are discussed in the succeeding paragraphs from 2.4.12 to 2.4.18.

2.4.12 Irregularity in submission of statutory forms and supporting documents in inter-State transaction under CST Act

2.4.12.1 Short levy of tax due to non-furnishing of statutory forms

Section 8 of the Central Sales Tax (CST) Act, 1956 provides for levy of tax at the rate of three *per cent* between April to May-2008 and at two *per cent* with effect from June 2008 on inter-State sales of goods made against declaration in Form-C. Similarly in respect of transit sale i.e. sales made during the movement of goods, selling dealers are required to furnish Form E-I/II and Form-C in support of such sale for claiming exemption from payment of tax.

- We found that in 727 self assessment cases, the dealers had not furnished C forms in support of inter-State sales. In absence of these forms, the dealers were liable to pay the tax at local rates prescribed in the GVAT Act. However, all the dealers availed concessional rate of tax under CST resulting in short realisation of tax amounting to ₹ 66.91 crore and interest of ₹ 46.46 crore.

- Further, in 67 self assessment cases, sales turnover valued at ₹ 437.51 crore was not supported by Form E-I/E-II/C. The dealers were not entitled for exemption of tax of ₹ 25.56 crore availed by them. For breach of condition of submission of statutory forms, the dealers were also liable to pay interest of ₹ 13.66 crore.

During cross-verification of another 50 self assessment cases whose turnover had exceeded ₹ one crore with the VAT Audit Reports available in the files, we found that the VAT Auditors had found short payment of tax on account of non-receipt of statutory forms. The tax payable in these cases was ₹ 11.36 crore. However, no further action was taken either by provisionally assessing the cases under Section 32 or by audit assessment under Section 34 of the Act. Thus, lack of scrutiny of the returns resulted in short realisation of Government revenue to that extent, in addition to interest of ₹ 7.18 crore and penalty of ₹ 3.60 crore.

2.4.12.2 Incorrect allowance of export deduction for levy of tax

Under Section 5(3) of the CST Act, export sales out of the territory of India are exempt from payment of tax provided they are supported by Form-H and supporting documents confirming the proof of export. In the absence of the statutory forms and supporting documents, the tax on these goods is leviable at the rates prescribed in the Act.

We observed in 103 cases involving export of ₹ 623.19 crore that the exporters had neither furnished Form-H nor any supporting documents confirming the sale in the course of export. The Department had not scrutinised the returns to ascertain the correctness of such claims and whether the documentary evidence in support of such sale was available with the dealers. The dealers had claimed irregular exemption from payment of tax of ₹ 29.12 crore in addition to interest of ₹ 18.18 crore payable thereon.

2.4.12.3 Irregular allowance of deduction as branch transfer

Under Section 6(A) of the CST Act, consignment sale (branch transfer) shall be exempt from payment of tax on production of statutory Form-F. In the absence of the statutory forms and supporting documents, the tax on these goods is leviable at the rates prescribed in the Act.

We observed that in 55 self assessment cases the dealers had claimed the branch transfer of goods valued at ₹ 364.02 crore without submitting Form-F in support of such branch transfer. In the absence of scrutiny of the returns, the omission escaped the notice of the Department resulting in non-levy of tax of ₹ 21.75 crore and interest of ₹ 13.83 crore.

2.4.12.4 Irregular grant of exemption on High Seas Sales

Section 5(2) of the CST Act provides that 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 provided the transaction is supported by documentary evidence to the effect that the sale has occurred before the goods have crossed the customs frontier of India.

We observed that in 31 cases involving High Seas Sales (HSS) of ₹ 193.21 crore, the dealers had not furnished documentary evidence such as agreement of HSS and Bill of Entry in support of such sales. The dealers had claimed irregular exemption from payment of tax of ₹ 10.52 crore in addition to interest of ₹ 6.75 crore leviable thereon.

2.4.12.5 Irregular claim of deduction for SEZ sales

As per Section 8(6) of the CST Act, 1956 read with Rule 12(11) of CST (Registration & Turnover) Rules, 1957 exemption of tax on sales of goods made to Special Economic Zones (SEZ) units or developers is available to the dealers subject to the production of Form-I.

We found that in 49 cases involving sales of ₹ 34.94 crore to SEZ units, the dealers had not submitted Form-I in support of such sales though they had availed exemption from payment of tax of ₹ 1.75 crore. Due to lack of scrutiny of the returns, the omission escaped the notice of the Department resulting in short levy of tax to that extent in addition to interest of ₹ 99 lakh.

The above facts indicate that there was lack of a system to monitor the scrutiny of returns and cases were accepted as deemed to have been assessed under Section 33 without proper scrutiny of periodical and annual returns.

After the above facts were brought to the notice of the Department/Government in June/September 2014, the Department stated (November 2014) in Exit Conference that in cases of non-submission of statutory forms notices have been issued in all these cases. However, further action taken has not been received (November 2014).

2.4.13 Short levy of VAT due to misclassification

Section 7 of the Act provides for levy of tax at the rates as prescribed in the schedules to the Act, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the schedule, general rate of tax given in residuary entry is applicable.

We observed in 19 self assessment cases pertaining to 10 offices that the assessing authorities had incorrectly accepted the returns filed by the dealers where tax was paid at lower rates due to incorrect classification of goods or application of incorrect rate of tax. This resulted in short levy of VAT of ₹ 8.64 crore including interest and penalty as follows:

(₹ in lakh)

Sl. No.	Office (No. of dealers)	Applicable rate of tax (*per cent*)	Rate applied (*per cent*)	Nature of observation	Short levy of VAT including interest and penalty
1	ACCT-22 Ahmedabad (3) ACCT-23 Ahmedabad (2)	12.5 +2.5	4+1	Electrical stamping was incorrectly treated as transformer stamping and tax was levied under entry no. 42(A) instead of entry no.87 residuary entry.	98.06
2	ACCT-5 Ahmedabad (1) ACCT-41 Vadodara (3)	12.5 +2.5	4+1	CNG kits used in motor vehicles were treated as valves of all types under entry no. 42(A).	78.04
3	ACCT-5 Ahmedabad (1)	12.5+2.5	0.6	Sale of Ready Mix Concrete taxable at the rate under entry number 87 treated as works contract.	274.61
4	ACCT-45, Vadodara (1)	12.5 +2.5	4+1	Crane (vehicle) treated as machinery used in manufacture of goods.	43.22
5	ACCT-25, Kalol (1) ACCT-58 Surat (1)	12.5 +2.5	4+1	Soft drink concentrate and cold drinks treated as fruit juice.	120.29
6	ACCT-21 (1), ACCT-23, Ahmedabad (1), ACCT-25, Kalol (1), ACCT-104 Gandhidham (1) ACCT-94 Rajkot (2)	12.5 +2.5	4+1	Incorrect rate of tax on sale of battery operated vehicle, furniture, fire-fighting equipment, vacuum pumps, electrical goods and vehicle parts applied.	249.75
				Total	**863.97**

2.4.14 Short levy of VAT due to incorrect determination of turnover

Section 7 of the Act provides for levy of tax on the turnover of sales, which remains after deducting therefrom the turnover of sales of goods not subject to tax under this Act, at the rates specified in Schedule II or III.

We observed in 60 self assessment cases that the assessing authorities had incorrectly accepted the returns filed by the dealers where the amount of valuable consideration was not included in the sales turnover. This resulted in short realisation of VAT of ₹ 19.21 crore, in addition to interest of ₹ 10.16 crore and penalty of ₹ 7.94 crore as follows:

(₹ in lakh)

Sl. No.	Nature of observation	Short levy of VAT including interest and penalty
1	Under Section 2(24) of the Act, amount of valuable consideration received or receivable by a dealer and any sum charged for anything done in respect of the goods at the time of or before delivery thereof forms a part of the taxable turnover. We found that in 26 cases pertaining to 13 offices[7], the amount of ₹ 220.69 crore received on account of transportation charges incurred before delivery of goods, amount reimbursed for warranty discount, packing expenses and sale of goods purchased from outside Gujarat, was omitted from levy of tax.	2,215.63
Remarks:-The assessing officer in one case stated that ITC was not claimed on packing material. The reply was not relevant as tax is leviable on sale of packing material under Section 7 of the Act while ITC can be claimed under Section 11 of the Act. Reply in the remaining cases has not been received.		
2	Under Section 2(24)(a)(ii) of the Act the amount of valuable consideration received as hiring charges for transfer of the right to use any goods for any purpose forms part of the sale price. We found that in seven cases of three offices[8] amount of ₹ 19.76 crore received in lieu of transfer of rights to use such as lease of tankers, machinery and equipment was not included in the sales turnover for levying tax.	311.54
3	Under Section 8 of the GVAT Act, credit/debit notes are required to be furnished for the claim of deduction towards change in consideration previously agreed or goods or part of the goods sold have been returned and the excess tax has not been borne by the purchaser of the goods. In the absence of credit/debit notes, tax is leviable. We observed that in six cases of six offices[9], deduction of ₹ 34.23 crore from the taxable turnover was claimed as return or price difference without furnishing the credit/debit notes or any other supporting documents. In the absence of debit/credit notes, the claim of deduction from taxable turnover could not be verified.	321.06
4	Under Section 2(30) of the Act, tax is leviable on taxable turnover of sales in relation to works contracts on the amount of sales remaining after deducting therefrom the charges towards labour, service and other like charges. We observed that in 12 cases of four offices[10] deemed sale of the goods involved in the execution of the works contract was either (i) Incorrectly shown as less than the amount of goods consumed in the execution of contract or (ii) Irregular deductions from the turnover as exempted items were claimed. The incorrect exhibition of turnover or irregular deductions of ₹ 38.28 crore led to incorrect determination of taxable turnover.	602.40

[7] ACCT-5, 9, 21, 22, 23 Ahmedabad, 56 Bharuch, 24 Gandhinagar, 25 Kalol, 94 Rajkot, 58 Surat, 41 Vadodara, 74, 75 Vapi

[8] ACCT-9 Ahmedabad, 24 Gandhinagar, 41 Vadodara

[9] ACCT-5, 9, 21 Ahmedabad, 24 Gandhinagar, 74, 75 Vapi

[10] ACCT-9 Ahmedabad, 94 Rajkot, 58 Surat, 41 Vadodara

5	Rule 18AA provides that where the amount of charges towards labour, service and other like charges are not ascertainable or the accounts are not sufficiently clear or intelligible, a lump-sum deduction at the rate of 30 *per cent* shall be admissible in case of civil works contract. We observed that in nine cases pertaining to three offices[11] charges of labour/service were not ascertainable or the accounts maintained by the dealers were found incomplete to determine the correct amount of labour/service charges. However, the dealers in their self assessments claimed excess deductions of charges of ₹ 16.97 crore towards labour/service than allowable under the provisions.	280.81
	Total	**3,731.44**

The Department in the Exit Conference stated that all these cases of short/ non-levy of tax would be examined in detail.

2.4.15 Non-levy of tax on goods involved in execution of construction of flats

Section 2(23)(b) of the Act provides that sale includes transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract. Further, under Section 14A of the Act, lump-sum tax at the rate of 0.6 *per cent* is payable on total value of the civil works contract.

We observed in nine self assessment cases of three offices[12] pertaining to the period 2008-09 and 2009-10 that nine dealers constructed flats and did not pay leviable tax of ₹ 49.13 lakh on goods involved in the construction of flats on the ground that the decision is pending in the case of *M/s M K Raheja Developer Corporation vs. State of Karnataka* in the Hon'ble Supreme Court of India. The case was decided in September 2013 by the Hon'ble Supreme Court of India in the interest of revenue. However, no efforts were made by the Department to recover the payable tax. This resulted in non-payment of VAT of ₹ 49.13 lakh in addition to interest of ₹ 28.25 lakh and penalty of ₹ 68.48 lakh leviable thereon.

The Department in the Exit Conference (November 2014) stated that instruction have been issued to JCCT (Legal) for taking necessary action and also stated that such cases would be taken care of in future also.

2.4.16 Irregular availment of Input Tax Credit

Section 11 of the GVAT Act *inter alia* provides for claim of input tax credit (ITC) equal to the amount of tax paid by a registered dealer who has purchased taxable goods from another registered dealer and such ITC shall not be allowed on the purchase of vehicles of any type other than for resale, of HSD used as fuel, of goods used for captive consumption, of goods used in manufacture of tax free goods and on capital goods not used continuously for five years. Further, the amount of ITC shall be reduced by the amount of tax calculated at the rate of four *per cent* of turnover of purchases of taxable goods

[11] ACCT-5 Ahmedabad, 9 Ahmedabad, 45 Vadodara.
[12] ACCT-24 Gandhinagar, 94 Rajkot, 58 Surat.

consigned or dispatched as such or used as raw material in the manufacture or packing of goods for branch transfer and at the rate of two *per cent* as above if sold/resold in the course of inter-State trade and commerce.

We observed in 40 self assessment cases pertaining to 15 offices[13] that the ITC was availed on ineligible goods or availed on excess amount of purchases than the amount entered in the books of accounts or was not reduced in the proportion to the goods branch transferred or sold in the course of inter-State trade and commerce. This resulted in excess availment of ITC of ₹ 1.49 crore in addition to interest of ₹ 0.92 crore and penalty of ₹ 1.47 crore as shown below:

(₹ in lakh)

Sl. No.	Number of cases and nature of observation	Amount of ITC availed in excess than admissible including interest and penalty
1	In seven cases, ITC irregularly availed on goods used in the manufacture of tax free goods.	100.17
2	In seven cases, ITC was claimed on excess amount of purchases than the amount entered in the books of accounts.	41.47
3	In 15 cases pertaining to period from 2008-09 to 2010-11, the dealers had made purchases from the selling dealers whose registrations were cancelled by the Department before such purchases.	105.41
4	In three cases, ITC was claimed on purchases of vehicle and HSD, goods used in captive consumption and capital goods not used for minimum five years.	43.76
5	In six self assessment cases[14], the ITC was not reduced proportionately of goods which were branch transferred or used in manufacture of goods so branch transferred to other States or sold in the course of inter-State trade and commerce.	88.61
6	In two cases, ITC was incorrectly brought forward in excess than the amount available for carry forward after adjustment against payable tax in the previous year.	8.34
	Total	**387.76**

[13] ACCT-5, 9, 11, 22, 23 Ahmedabad, 77 Bhavnagar, 56 Bharuch, 24 Gandhinagar, 104 Gandhidham, 25 Kalol, 94 Rajkot, 58 Surat, 45 Vadodara, 74, 75 Vapi

[14] This included one case where ITC was carried forward since 2007-08 to 2010-11 continuously and excess amount was also refunded in 2010-11 without scrutinising the admissibility and correctness of such ITC.

2.4.17 Incorrect claim of deduction as Railway Receipts (RR) sale (CST)

Section 6(2) of the CST Act provides that where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of document of title of such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer shall be exempt from tax.

We observed in six self assessment cases pertaining to five offices[15] that the dealers had claimed deduction of an amount of ₹ 12.61 crore from the taxable turnover as sales in the course of inter-State trade and commerce effected by a transfer of document of title of such goods during their movement from one State to another i.e. RR sales. The dealers were not eligible for exemption as the title of the goods had passed to the ultimate buyer before movement of goods commenced. Thus, lack of scrutiny of these returns resulted in non-levy of CST of ₹ 65.06 lakh in addition to interest of ₹ 44.30 lakh and penalty of ₹ 21.40 lakh leviable thereon.

In the absence of initial scrutiny of periodical returns and annual returns the Department could not satisfy itself of correctness of any claim of tax credit, exemption, deduction or genuineness of any declaration or evidence furnished in support thereof with self assessment. It could also result in appropriate cases not being selected for audit assessment under Section 34.

It is recommended that the Department may ensure scrutiny of returns and annual returns at initial stage so that the correctness of levy and payment of tax could be ensured and appropriate cases could be selected for provisional or audit assessment.

2.4.18 Incorrect acceptance of returns as deemed assessments without framing provisional assessments

The Department had neither issued any guidelines for proper implementation of provisions in the categories of cases covered by Section 32 of the Act nor fixed minimum targets for provisional assessment to be made by the officers individually.

In the GVAT Act, provisions for provisional assessment of certain cases of dealers were incorporated as a check to ascertain the correctness of levy and payment of tax and admissibility of claims and concessions. Under Section 32(2) of the Act, where net amount of tax payable is nil, or the amount of tax credit is carried forward for subsequent return, or refund is claimed therein or the dealers have claimed higher amount of tax credit than the admissible amount or the dealers have not furnished the returns within the prescribed time period, such dealers shall be provisionally assessed for the period of such returns.

[15] ACCT-21 Ahmedabad, 25 Kalol, 58 Surat, 74, 75 Vapi

In respect of the 18 offices checked by us, the provisional assessment was done only in the category of cases where refunds were claimed by the dealers. In other categories for which provisional assessment was required under the provisions of the Act, no such assessment was undertaken. A few illustrative cases are shown below:

- In 67 cases, the ITC was carried forward. In all these cases provisional assessment though required to be done were not done.
- In 40 cases, dealers have claimed higher amount of tax credit than the admissible amount. No provisional assessment was made.
- In 1,383 cases, the dealers had not furnished the periodical returns or annual returns or supporting documents. But the Assessing Authorities did not make provisional assessment as required under the Act.

The acceptance of such cases as deemed to have been assessed without scrutiny of returns and provisional assessment was in contravention of the provisions of the Act.

2.4.19 Non-observance of criteria for selection of cases for audit assessment

Section 34(2) of the Act provides for audit assessment where the Commissioner is not satisfied with the bonafides of any claim of tax credit, exemption, refund, deduction, concession, rebate, or genuineness of any declaration or evidence furnished by a dealer in support thereof with self assessment. At the time of audit assessment the dealer shall produce all the basic records viz. books of accounts, annual accounts etc. in support of his returns.

Rule 31(3) of the GVAT Rules provides for different criteria for audit assessment under Section 34 of the Act. Further, audit assessment under Section 34 of the Act may be taken up in a particular case after prior permission of the JCCT, if it is necessary.

We observed that the Department had selected on an average 11 *per cent* cases[16] of dealers for audit assessment based on the criteria such as turnover, tax liability, etc. without initial scrutiny and analysis of returns. Majority of cases selected were that of traders having low turnover. In respect of 18 offices selected by us out of total 33,077 cases, 16,071 cases (48.6 *per cent*) having turnover below ₹ one crore were selected for audit assessment. However, 4,306 cases having turnover in excess of ₹ five crore were accepted as self assessed without scrutiny of return. Further, we observed that a number of cases which were required to be selected for audit assessment remained out of the ambit of the audit assessment as shown as follows:

[16] Total 1,32,604 cases out of 11,63,158 cases were selected during 2008-09 to 2010-11.

Criteria for selection of cases for audit assessment	Nature of observation
Audit assessment under Section 34 may be done by the Commissioner where a dealer is situated in SEZ or is a 100 *per cent* Export Oriented Unit or involved in import/export or inter-State transactions.	We observed that 1,082 cases were not selected for audit assessment though the dealers were situated in SEZ or had made export and inter-State sales. Besides statutory forms and supporting documents were not furnished for claim of concessions. No initial scrutiny of returns was made in these cases.
Audit assessment under Section 34 may be done by the assessing officer only after obtaining the prior permission of the JCCT, if it is necessary in a particular case.	The office had initiated audit assessment in respect of 24 cases[17] which were neither initially selected for the assessment nor the permission of JCCT was obtained for such assessment.
Section 34(9) of the GVAT Act provides that no assessment under Section 34(2) shall be made after the expiry of four years in respect of which or part of which the tax is assessable.	We observed that the asssessing officers had served the notices to six dealers for finalisation of audit assessment for the period 2008-09. However, these were not finalised till 31 March 2014.

Further, despite repeated reminders the Department did not furnish a complete details of cases from which the Department had selected audit assessment cases and therefore the robustness of the process of selection of cases for audit assessment could not be ascertained.

It is recommended that the scrutiny of returns and annual returns at the initial stage may be ensured so that appropriate cases could be selected for provisional or audit assessment based on the results of initial scrutiny and amount of turnover.

2.4.20 Weak internal audit

The Department has an internal audit wing working under DCCT (Audit) and headed by JCCT (Audit). The Commissioner of Commercial Tax (CCT) vide circular dated 01-03-2013 had also emphasised the need for internal audit of self assessment cases wherein instructions were issued for audit of five *per cent* of cases pertaining to the period 2007-08 onwards which were accepted as deemed to have been assessed under self assessed.

During the course of audit, we called for the information relating to number of self assessment cases in which internal audit was initiated. However, in 10 out of 18 offices the assessing authorities furnished a nil report to this effect. In five offices, internal audit of only 384 cases against 46,499 cases was initiated and information in respect of remaining three offices was not furnished. This indicates that the internal audits were not carried out to the desired extent as stipulated in the departmental instructions.

[17] Pertaining to ACCT-57, Ankleshwar

2.4.21 Deficiencies in maintenance of the records of returns

Under Section 29 read with Section 33 of the GVAT Act, all the dealers are required to furnish the periodical returns, annual return in the form of self assessment and supporting documents such as statutory forms, VAT Audit Reports, certified annual accounts etc. However, the Department had not produced to Audit any register indicating the receipt and disposal of such returns and supporting documents. The list of cases was got prepared and furnished at the time of conducting audit. Audit further observed the following deficiencies in the maintenance of records:

- Section 33 of the Act provides for furnishing of annual returns in the form of self assessment by all dealers. However, in 413 cases no annual returns were found on record though the periodical returns were furnished. There was nothing on record to indicate that these dealers had filed their returns as prescribed in the Act. Further, there is no provision for levy of penalty for non filing of annual returns by the dealers within the prescribed time limit. The cases pertaining to the period 2008-09 have since become time barred for taking corrective measures;
- Rule 20(5) provides for furnishing of annual return, where total turnover exceeds ₹ one crore within a prescribed period of three months, by uploading on the website of the Department. We checked 810 cases whose turnover was more than ₹ five crore to ascertain the filing of e-returns on VATIS. However, we observed that e-returns were not filed in 489 cases;
- In 970 cases which were selected for detailed scrutiny pertaining to four offices[18], the Department produced the VAT Audit Reports only. Complete returns and other documents were not available in the assessment files; and
- Section 63 of the GVAT Act provides for furnishing of VAT Audit Report in case of dealers where total turnover exceeds ₹ one crore and imposition of maximum penalty of ₹ ten thousand where a dealer fails to furnish a true copy of such report within a maximum period of ten months from the end of the year. Further, Rule 20(6) provides for furnishing of the annual accounts containing Trading Account, Profit and Loss Account and the Balance Sheet along with uploading on the website within six months from the end of the year.

We observed in 329 cases, each having turnover more than ₹ one crore, pertaining to 16 offices[19] that VAT audit reports and certified accounts were not furnished even after a lapse of ten months from the end of financial year. The assessing officers had not monitored the submission of VAT Audit Reports. With proper monitoring, the Department could have, in addition to ascertaining the correctness of the tax payable by the dealers, levied penalty of ₹ 32.90 lakh.

[18] ACCT-11 Ahmedabad, 57 Ankleshwar, 94 Rajkot & 41 Vadodara

[19] ACCT-5, 9, 11, 21, 23 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 77 Bhavnagar, 104 Gandhidham, 24 Gandhinagar, 25 Kalol, 58 Surat, 41, 45 Vadodara, 74, 75 Vapi

Thus, the above facts indicate that the Department was not maintaining the records comprehensivly that were necessary to ascertain the correctness of levy and payment of tax.

It is recommended that the Department may devise a monitoring procedure to ensure comprehensive maintenance of records and also proivde deterrent measures for non-filing of the Annual Return.

2.4.22 Conclusion

During the Performance Audit, we scrutinised the existing provisions of GVAT Act/Rules and notifications and circulars issued thereunder and compliance thereof. We noticed systematic as well as various compliance deficiencies in the process of return scrutiny and provisional assessment and self assessment. The GVAT Act and Rules made thereunder place more reliance on the return-scrutiny and provisional assessment, instead of audit assessment. However, the Department had not scrutinised the returns properly at the initial stage. Provisional assessment was also not taken up by the Department to the extent envisaged under the GVAT Act. The Department on an average selected 11 *per cent* of cases of dealers for audit assessment without scrutiny of returns, though it was the pre-requisite for selection of such cases for audit assessment. The uniform procedure for furnishing, custody and maintenance of annual accounts, VAT audit reports and statutory forms, in respect of cases accepted as deemed to have been assessed under self assessment, was not followed. As a result, an important control mechanism to prevent/minimise the leakage of revenue was rendered ineffective, resulted in short realisation of tax of ₹ 337.38 crore including interest of ₹ 122.45 crore and penalty of ₹ 16.80 crore.

2.4.23 Summary of recommendations

We recommended that:

- the Government may consider inserting space/column in the prescribed Form-202A for furnishing the details of all purchases and in Form-214A for nature of each works-contract to be executed to ensure the payment of lump-sum tax at the correct rates;
- the Government may consider modifying the VATIS system to incorporate HSN code, uploading of annual accounts, mandatory fields for ensuring the compliance to the provisions of the Act. The Government may also consider for mandatory e-filing of returns and uploading of data for each dealer irrespective of their turnover;
- the Department may ensure scrutiny of returns and annual returns at initial stage so that the correctness of levy and payment of tax could be ensured and appropriate cases could be selected for provisional or audit assessment;
- the scrutiny of returns and annual returns at the initial stage may be ensured so that appropriate cases could be selected for provisional or audit assessment based on the results of initial scrutiny and amount of turnover; and

- the Department may devise a monitoring procedure to ensure comprehensive maintenance of records and also provide deterrent measures for non-filing of the Annual Return.

Compliance audit observations

Our scrutiny of the assessment records revealed several cases of non-compliance with the provisions of the Gujarat Sales Tax Act 1969, the Gujarat Sales Tax Rules 1970, the Central Sales Tax Act 1956, the Central Sales Tax (Registration and Turnover) Rules 1957, the Gujarat Value Added Tax Act 2003, the Gujarat Value Added Tax Rules, 2006 etc., and Government notifications and other cases as mentioned in the succeeding paragraphs in this Chapter. Such omissions on the part of the Departmental officers are pointed out by us each year; however, the irregularities not only do persist, but also remain undetected till our audit is conducted. There is need for the Government to improve the internal control system and internal audit.

2.5 Short levy of VAT due to underassessment/turnover escaping assessment

Section 7 of the GVAT Act, 2003 provides for levy of tax on the turnover of sales of goods specified in Schedule II or Schedule III at the applicable rate. As per Section 2(23) of the Act *ibid* sale includes transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. Further, as per Section 2(24) of the Act *ibid* "sale price" includes the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962.

During test check of the assessment records containing Assessment Files, Registration Certificate files and other records viz. Profit and Loss Account etc. of 10 offices we noticed[20] in 15 assessments[21] of 12 dealers that there was short levy of VAT of ₹ 8.01 crore including interest of ₹ 2.11 crore and penalty of ₹ 2.66 crore, wherever applicable due to underassessment/turnover escaping assessment as detailed below:

(₹ in crore)

Sl. No.	Office (No. of dealers)	Assessment year (Date of assessment)	Nature of observation	Short levy of VAT including interest and penalty
1	DCCT-22 Rajkot (1), DCCT-23 Rajkot(1)	2007-08/ (29.9.11) 2007-08/ (18.10.12)	We noticed that the Central Excise Department had issued Show Cause Notices to the two dealers in September 2008 and May 2009 for suppression of sales turnover of ₹ 18.84 crore by way of under valuation. However, the Assessing Authority (AA) had not assessed the sales turnover so suppressed by the dealers resulting in short levy of VAT of ₹ 78.28 lakh.	2.58

[20] Between June 2010 and October 2013

[21] For the year 2006-07, 2007-08, 2008-09 and 2010-11 finalised between January 2010 and March 2013.

After we pointed this out, the Department accepted (September 2013 and October 2014) our observation in both the cases and raised demand of ₹ 42.96 lakh and ₹ 1.34 crore respectively.				
2	ACCT-73 Navsari (1)	2006-07 (20.3.13) 2007-08 (self assessment under Section 33 of the GVAT Act) 2008-09 (18.3.13)	The AA had not assessed tax of ₹ 77.44 lakh at the rate of 12.5 *per cent* on receipts of ₹ 6.20 crore towards 'vehicle hire charges' for operating CNG buses for Ahmedabad Municipal Corporation during the period from 2006-07 to 2008-09.	2.68
After this being pointed out, the Department accepted (October 2014) our observation and stated that revision proceedings had been initiated.				
3	DCCT-25 Gandhidham (1), DCCT-15 Surat (2)	2007-08/ (8.12.11) 2010-11/ (20.7.12) 2010-11/ (20.7.12)	(i) As per Section 2(24) of the GVAT Act "sale price" includes the amount of duties levied or leviable under the Customs Act, 1962. In case of one dealer of Gandhidham, the AA had not included the intra-zone sales/scrap sales of ₹ 28.59 lakh, including the customs duty amounting to ₹ 4.81 lakh, in the taxable sales turnover. This resulted in short levy of ₹ 2.16 lakh. (ii) As per Section 2(24) of the Act *ibid* "sale price" includes the amount of duties levied or leviable under the Central Excise Tariff Act, 1985. However, in case of two dealers, the AA did not include the central excise duty paid/payable of ₹ 18.74 crore in the taxable purchase turnover. This resulted in short levy of ₹ 1.78 crore.	1.80
After this was pointed out, the Department accepted (October 2014) our observation in all the three cases and initiated revision proceedings. A report of recovery has not been received.				
4	ACCT-56 Bharuch (1)	2007-08 (31.5.11)	The AA had levied tax of ₹ 7.09 lakh on turnover of ₹ 4.51 crore though as per VAT Audit Report[22] turnover of the dealer was of ₹ 7.25 crore and was liable to pay tax of ₹ 18.05 lakh.	0.37
After this being pointed audit, the Department accepted (April 2014) our observation and raised demand of ₹ 36.88 lakh.				
5	ACCT-70 Vyara (1)	2006-07 (7.1.10)	The AA had not assessed the works contract receipt worth ₹ 1.48 crore though the dealer had claimed TDS on such receipt.	0.12
After this being pointed out, the Department, accepted (September 2014) our observation, raised demand of ₹ 12.05 lakh and stated that the dealer had preferred appeal before the Tribunal.				
6	ACCT-103 Bhuj (1), ACCT-66 Surat (1)	2006-07 (13.1.11) 2007-08 (25.11.11)	(i) The dealer was a reseller of lubricants. As per Trading Account of the dealer, the total of opening balance, purchases during the year and direct expenses was of ₹ 16.71 crore whereas the total of closing stock and sales during the year was of ₹ 15.97 crore. Thus, the	0.24

[22] Section 63 of the GVAT Act provides that a dealer whose total turnover has exceeded ₹ one crore shall get his accounts verified and audited by an authority specified for the purpose and obtain a report of such audit to be submitted to the Department.

			turnover of the dealer was ₹ 16.71 crore, but the dealer had reported gross loss of ₹ 7.40 lakh in the Trading Account by undervaluing sales. This resulted in short levy of VAT of ₹ 1.35 lakh. (ii) In the other case, we found that the dealer had shown branch transfer purchases of CNG kit valued at ₹ 7.24 crore. We further observed that that there was no opening and closing stock of CNG kit and the dealer had shown sales of CNG kit at ₹ 6.35 crore only. Thus, the dealers had suppressed sales turnover of ₹ 89 lakh by undervaluing sales which resulted in short levy of VAT of ₹ 11.08 lakh.	
After this being pointed out, the Department accepted (September 2013) our observation in one case involving ₹ 18.93 lakh and initiated reassessment proceedings. In the other case, the concerned JCCT, while accepting (August 2013) our observation, raised demand of ₹ 4.83 lakh.				
7	ACCT-104 Gandhidham (1), ACCT-73 Navsari (1), DCCT-25 Gandhidham (1)	2007-08 (31.3.12) 2008-09 (20.3.13) 2007-08 (1.3.12)	The AA had not considered sale of vehicles/spare parts/plant and machinery of ₹ 81.28 lakh, as shown in the Schedule for fixed assets of the Balance Sheet. This resulted in short levy of VAT of ₹ 7.54 lakh.	0.22
After this being pointed out, the Department accepted (July and October 2014) our observation in all the three cases and initiated revision proceedings.				
Total				**8.01**

We pointed out the cases to the Department between March 2013 and May 2014. A report on recovery in accepted cases and reply of the Department in one case has not been received (November 2014).

We reported the matter to the Government (June 2014). The Government confirmed (October 2014) replies of the Department in nine cases.

2.6 Short levy of CST due to underassessment/turnover escaping assessment

2.6.1 As per Section 2(h) of the CST Act, 1956 read with Section 2(24) of the GVAT Act, 2003 "sale price" means the amount payable to a dealer as consideration for the sale of any goods including the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962.

During test check of the assessment records of office of the DCCT, Range-23, Rajkot we noticed in November 2012 in one assessment case for the year 2007-08 finalised in September 2011 that the AA had not assessed the sales turnover of ₹ 8.66 crore suppressed by the dealer by way of under-valuation, as determined in the Show Cause Notice issued by the Central Excise Department in September 2008. This resulted in short levy of CST of ₹ 3.67 crore including interest of ₹ 0.96 crore and penalty of ₹ 1.62 crore.

After this being pointed out to the Department in May 2014, the Department accepted (October 2014) our observation and raised demand of ₹ 4.50 crore. A report on recovery has not been received (November 2014).

We reported the matter to the Government in June 2014 and their replies have not been received (November 2014).

2.6.2 Section 8 (6) and (8) of the CST Act, 1956 read with Rule 12(11) of the CST (Registration and Turnover) Rules, 1957 provides for exemption from levy of tax on inter-State sale of goods made against declaration in Form 'I' to a registered dealer in any SEZ established by the authority specified by the Central Government. Where the sale is not supported by Form 'I', tax is leviable at the rate applicable on sale of such goods inside the State.

During test check of the assessment records of office of the DCCT, Range-15, Surat we noticed in January 2013 in four assessment cases of one dealer for the year 2006-07 to 2009-10 finalised in October 2011 that the dealer, as a SEZ unit, had purchased plant and machinery, raw materials and consumables worth ₹ 349.78 crore against Form 'I' without payment of CST. Subsequently, the dealer had opted to exit from SEZ in September 2010 on payment of CST of ₹ 15.93 crore saved on above purchases. However, the AA had not included the duties paid/ payable under the Central Excise Tariff Act, 1985 in the taxable purchase turnover against Form 'I' for the levy of CST. Thus, there was short levy of CST of ₹ 4.30 crore including interest of ₹ 1.65 crore.

After this being pointed out to the Department in April 2014, the Department accepted (October 2013) our observation and stated that the concerned authority had been instructed to initiate reassessment proceedings on the basis of purchase invoices.

We reported the matter to the Government in June 2014 and their replies have not been received (November 2014).

2.7 Discrepancies noticed in grant of Input Tax Credit

Discrepancies in grant of ITC noticed by audit are mentioned in paragraph 2.7.1 to 2.7.6.

2.7.1 Irregular allowance of Input Tax Credit on molasses

Section 11 (3) (a) (vi) of the GVAT Act provides for ITC of purchase of taxable raw material/capital goods which are intended for use in the manufacture of taxable goods. Further, as per Section 11 (5) (h) ITC is not admissible of purchases used in manufacture of tax free/exempted goods. The GVAT Act does not provide for allowance of ITC on proportionate basis on taxable by/sub-products emerged during manufacture of tax free goods. Further, as per judgment dated 12.7.2012 of the Tribunal in the case of '*Jayant Agro Agencies*' it was held that ITC could not be reduced on account of tax free by-product.

During test check of assessment records of four offices[23] we noticed[24] in four assessments[25] that the AA had allowed proportionate ITC of ₹ 54.76 lakh on purchase of sugarcane/plant and machinery against the production of molasses which is a by-product of sugar (a tax free item). The AA had allowed ITC on sugarcane on the basis of JCCT (Legal)'s letter No. 113 dated 28.5.2007. Since, the GVAT Act provides for ITC of purchase of taxable raw material/capital goods which are intended for use in the manufacture of taxable goods and there is no provision for allowance of ITC on proportionate basis on taxable by/sub-products emerged during manufacture of tax free goods, the letter of the JCCT was in contravention of the provisions of the GVAT Act. Thus, allowance of ITC of ₹ 54.76 lakh on production of molasses was irregular, besides, interest and penalty were also leviable.

We pointed out the cases to the Department between February and May 2014 and reported the matter to the Government in June 2014. Their replies have not been received (November 2014).

2.7.2 Irregular/incorrect allowance of Input Tax Credit

Section 11(1) (a) of the GVAT Act, 2003 (Act) provides for tax credit equal to the amount of tax collected/ payable from/by the purchasing dealer. Such tax credit shall be allowed to a purchasing dealer on his purchase of taxable goods which are intended for the purpose of use as raw material in the manufacture of taxable goods or in the packing of the goods so manufactured or use as capital goods meant for use in manufacture of taxable goods as per Section 11(3) (a). Further, as per Section 2(5) "Capital Goods" means plant and machinery other than second hand plant and machinery. However, as per Section 11(5), tax credit shall not be allowed for purchases (i) made from any person other than a registered dealer under the Act (ii) made in the course of inter-State trade and commerce (iii) of the goods which are used in manufacture of goods specified in Schedule-I or the goods exempt from the whole of the tax by a notification under Section 5(2) or in the packing of goods so manufactured (iv) of vehicles of any type and its equipment, accessories or spare parts (except when purchasing dealer is engaged in the business of sales of such goods) (v) of petrol, high speed diesel, crude oil and lignite unless such purchase is intended for resale and where original tax invoice is not available with purchasing dealer. Further, Section 12 of the Act provides for tax credit of taxable goods held in stock on the 31 March 2006 which were purchased during the year 2005-06. The dealers were required to claim ITC under Section 12 in Form 108.

During test check of assessment records of 13 offices we noticed[26] in case of 34 assessments[27] of 31 dealers that the AA had allowed ITC which was irregular/ incorrect. A few cases are as follows:

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[23] ACCT: 66 Surat, 46 Vadodara, 71 Valsad
DCCT: 21 Junagadh

[24] Between October 2012 and August 2013

[25] For the year 2007-08 and 2008-09 finalised between November 2011 and May 2012

[26] Between September 2010 and November 2013

(₹ in lakh)

Sl. No.	Name of the office (No. of dealers)	Assessment year Date of assessment	Nature of observation	Excess grant of ITC including interest and penalty
1	ACCT-6, Ahmedabad (1)	2007-08 and 2008-09 30.09.2011 and 20.11.2012	The GVAT Act provides for ITC of purchases of raw/ packing material which are intended for use in the manufacture of taxable goods. The dealer was manufacturer of tax-free goods i.e. cotton yarn and fabrics. However, the AA had allowed ITC of ₹ 22.48 lakh proportionately (for purchase of cotton, yarn, stores and spares, dyes and chemicals, packing materials, etc.) against sale of waste/ scrape arising out of manufacturing activity.	74
After this being pointed out, the Department accepted (September 2014) our observation and stated that revision proceedings had been initiated.				
2	DCCT-Corporate Cell-I Ahmedabad (1), ACCT-52 Anand (6), ACCT-100 Jamnagar (8), ACCT-64 Surat (1), ACCT-41 Vadodara (1)	2007-10 Between July 2011 and May 2013	Section 11 (5) (mmmm) prohibits allowance of ITC for purchases made from a dealer whose certificate of registration (TIN) has been suspended or cancelled by the Department. However, the AA had allowed ITC on purchases made from those dealers whose TIN was cancelled by the Department, as revealed by the VATIS[28].	24
After this being pointed out, the Department accepted (September/October 2014) our observation in 15 cases and raised demand of ₹ 2.21 lakh in two cases while reassessment/revision proceedings had been initiated in the remaining cases. Further, the concerned JCCT accepted (May/July 2014) our observations in case of two dealers and raised demand of ₹ 0.63 lakh on reassessment.				
3	ACCT-47 Godhra (1), ACCT-93 Rajkot (2)	2006-07 and 2009-10 1. 15.12.2010 2. 05.03.2011and 3. 04.12.2012	Section 11 (5) (ll) prohibits allowance of ITC on purchase of diesel unless such purchases are intended for resale. We observed that the dealers were engaged in the business of chemicals/ oil seeds and oil cakes/quarry. However, the AA had allowed ITC on purchase of diesel not intended for resale.	23
After this being pointed out, the Department accepted (May/July/October 2014) our observations in all the three cases and raised demand of ₹ 21.71 lakh in two cases. In the remaining one case, the Department stated that the case had become time barred for the purpose of reassessment/revision resulting in loss of revenue.				
4	ACCT-47 Godhra (1)	2007-08 27.07.2011	Section 11 (3) (a) (vii) provides for ITC of capital goods meant for use in manufacture of taxable goods. However, as per Section 2 (5) capital	21

[27] For the year 2006-07, 2007-08, 2008-09 and 2009-10 finalised between December 2009 and May 2013.

[28] Value Added Tax Information System

			goods does not include second hand (i.e. old) plant and machinery. The AA had allowed ITC on purchase of old plant and machinery.	
After this being pointed out, the Department accepted (September 2014) our observation and stated that revision proceedings had been initiated.				
5	ACCT-20 Ahmedabad (2)	2006-07 31.12.2009 and 03.02.2011	Section 12 of the Act provides for tax credit of taxable goods held in stock on the 31 March, 2006 which were purchased during the year 2005-06. We observed that the dealers were non-localised dealers (NLD) i.e. not having any permanent/principal place of business in Gujarat. However, ITC on opening stock as on 01.04.2006 was allowed.	17
After this being pointed out, the Department accepted (May 2014) our observations in both the cases and raised demand of ₹ 28.25 lakh on reassessment. The Department further stated that the dealers had preferred appeal before the Tribunal against the reassessment orders and the Tribunal had stayed recovery proceedings till finalisation of appeal.				
6	ACCT-87 Porbandar (1)	2006-07 and 2007-08 30.06.2010 and 30.06.2010	Section 11(5) (h) prohibits allowance of ITC for purchases of the goods which are used in the packing of tax free goods. We observed that the AA had allowed ITC on packing materials used in the export of fish, an exempted item falling under entry no. 24 of Schedule I to the GVAT Act.	15
7	ACCT-46 Vadodara (1)	2008-09 21.12.2012	Section 11(5) prohibits ITC of purchases of vehicles of any type and its equipment, accessories or spare parts (except when purchasing dealer is engaged in the business of sales of such goods). However, the AA had allowed ITC on purchase of tyres and parts thereof though the dealer was not engaged in the business of sale of vehicles and its equipment/ accessories/spare parts.	13
After this being pointed out, the Department, while accepting (August 2014) our observation, raised demand of ₹ 13.28 lakh on reassessment and recovered an amount of ₹ 7.31 lakh from the dealer.				
8	ACCT-55 Khambhat (1)	2007-08 11.10.2011	Section 11 (5) (p) of the GVAT Act prohibits allowance of ITC where original tax invoice is not available with the purchasing dealer. The AA had allowed ITC though copy of original tax invoices or specimen copy of original tax invoices were not available in the assessment records to substantiate claim of ITC of the dealer.	13
After this being pointed out, the concerned JCCT accepted (May 2013) our observation and raised demand of ₹ 11.94 lakh on reassessment.				
9	ACCT-47, Godhra (1)	2009-10 10.01.2013	ITC was allowed on purchase of JCB machine purchased from outside Gujarat.	6
After this being pointed out, the Department accepted (May 2014) our observation and raised demand of ₹ 6.62 lakh on reassessment.				
10	ACCT-52	2006-07	Section 12 stipulates that ITC of	6

	Anand (1)	22.12.2009	opening stock of 2006-07 is admissible only on purchases made during 2005-06. The dealer had shown nil sales and purchases during 2005-06 in his annual return. However, the AA had allowed ITC of ₹ 1.78 lakh on opening stock of 2006-07 for purchases made prior to 2005-06 which was incorrect in view of the specific provision of Section 12.	
After this being pointed out, the Department accepted (February 2013) our observation and stated that ITC of ₹ 1.78 lakh had been reduced on reassessment. However, the Department did not offer its comment on levy of interest and penalty.				
11	ACCT-47 Godhra (1)	2009-10 19.08.2012	Rule 19 of the GVAT Rules prescribes Form 201A and Form 201B which shows details of sale/purchase of goods against tax invoice. Cross verification of Form 201A filed by the selling dealer and Form 201B filed by the purchasing dealer with their monthly returns revealed that the purchasing dealer had availed ITC of ₹ 1.47 lakh on purchases which were not shown by the selling dealer in his monthly returns. The AA had also allowed the above ITC to the purchasing dealer.	4
After this being pointed out, the Department accepted (May 2014) our observation and raised demand of ₹ 4.73 lakh on reassessment.				
12	ACCT-94 Rajkot (1)	2007-08 22.11.2011	Section 11 (3) (a) provides for ITC of purchases of raw material which include ingredient, processing material and consumable stores. The AA had allowed ITC on purchases of wax which was used in the patterns for giving shape to castings. Such patterns could be used over a period of years and could not be considered as ingredient/ consumables/ processing material of the final product manufactured i.e. casting. Hence, ITC allowed was irregular.	4
After this being pointed out, the Department accepted (July 2014) our observation and raised demand of ₹ 4.41 lakh on reassessment.				
			34 assessments of 31 dealers	**220**

The aforesaid allowance of ITC was against the provisions cited above resulting in irregular allowance of ITC of ₹ 71 lakh. Besides, interest of ₹ 54 lakh and penalty of ₹ 95 lakh was also leviable, wherever applicable.

We pointed out these cases to the Department between March 2011 and May 2014. Particulars of recovery in accepted cases and replies of the Department in remaining four cases have not been received (November 2014).

We reported the matter to the Government in June 2014 and their replies have not been received (November 2014).

2.7.3 Non/short reduction/reversal of Input Tax Credit

As per Section 11 (3) (b) of the GVAT Act, 2003 the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* on the taxable turnover of purchases within the State of the taxable goods consigned or dispatched for branch transfer or to his agent outside the State or of the taxable goods which are used as raw materials in the manufacture, or in the packing of goods which are dispatched outside the State in the course of branch transfer or consignment or to his agent outside the State or of the fuels used for the manufacture of goods. Further, as per Rule 28 (8) (b) (vi-a) (3) of the GVAT Rules, 2006 if a dealer (who has opted for payment of *lump-sum* tax) has already claimed the tax credit for the goods held in the stock on the date of effect of permission and such goods are going to be used in the works contract for which permission to pay *lump-sum* tax is sought for, he shall reverse such tax credit.

During test check of the assessment records of four offices[29] we noticed[30] in five assessments[31] that the AA had either not reversed/reduced ITC or had reduced ITC less than that was due to the Government side. This had resulted in non/short reduction/reversal of ITC of ₹ 1.03 crore. Besides, interest of ₹ 44 lakh and penalty of ₹ 14 lakh are also leviable, wherever applicable, as detailed below:

(₹ in lakh)

Sl. No.	Name of office (No. of dealers)	Assessment year Date of assessment	Nature of observation	Non/ short reduction/ reversal of ITC including interest and penalty
1	ACCT-26 Himatnagar (2)	2006-07 26.7.2010 and 28.7.2010	Rule 28 of the GVAT Rules provides for reversal of ITC of the goods held in stock on the commencement of permission to pay lump-sum tax. The dealers had opted for payment of lump-sum tax w.e.f. 1.10.2006. However, the AA had not reversed ITC of ₹ 2.11 lakh on stock of 'cement' lying with the dealers on the date of commencement of permission to pay lump-sum tax.	8
After this being pointed out, the Department accepted (August 2014) our observations in both the cases and raised demand of ₹ 9.70 lakh.				
2	DCCT Corporate Cell-3	2007-08 10.2.2012	Section 11 (3) (b) provides for reduction of ITC at the rate of four *per cent* of the purchase	74

[29] ACCT: 26 Himatnagar
DCCT: Corporate Cell III, Petro-I, Range-3, Ahmedabad
[30] Between November 2010 and March 2013
[31] For the year 2006-07 and 2007-08 finalised between August 2009 and February 2012

	Ahmedabad (1)		value of fuel. As per Form 201B, the dealer had purchased fuel valued at ₹ 24.63 crore. Hence, ITC of ₹ 98.53 lakh (four *per cent* of ₹ 24.63 crore) was required to be reduced. Against this, the AA had adopted purchase of fuel at ₹ 14.84 crore only and reduced ITC of ₹ 59.40 lakh. This resulted in short reduction of ITC of ₹ 39.13 lakh.	
After this being pointed out, the Department accepted (September 2014) our observation and stated that the dealer had preferred appeal before the appellate authority for other reasons and the appellate authority had been informed to consider the audit observation during disposal of appeal.				
3	DCCT (Petro-I) Ahmedabad (1)	2006-07 18.8.2009	Section 11 (3) (b) provides for reduction of ITC at the rate of four *per cent* of the purchase value of the goods purchased within Gujarat and branch transferred. The dealer had branch transferred goods valued at ₹ 1,237.29 crore which involved local purchases of ₹ 169.40 crore. Thus, ITC of ₹ 6.77 crore (four *per cent* of ₹ 169.40 crore) was required to be reduced. However, the AA had reduced ITC of ₹ 6.23 crore only. This resulted in short reduction of ITC of ₹ 54 lakh.	54
4	DCCT Range-3 Ahmedabad (1)	2007-08 15.12.2011	Section 11 (3) (b) provides for reduction of ITC at the rate of four *per cent* of the purchase value of the goods purchased within Gujarat and branch transferred. The dealer had branch transferred goods valued at ₹ 220.84 crore which constituted 38.66 *per cent* of the total sales turnover. However, the AA had adopted branch transfer value of ₹ 173.42 crore and arrived at ratio of 32.47 *per cent* for the purpose of reduction in ITC. This resulted in short reduction of ITC of ₹ 7.39 lakh.	25
Total				**161**

We reported the matter to the Government (June 2014). The Government confirmed the replies of the Department (October 2014) in two cases and no replies have been received in remaining two cases (November 2014).

2.7.4 Excess allowance of Input Tax Credit

Section 11 of the GVAT Act, 2003 empowers a registered dealer who has purchased taxable goods to claim ITC equal to the amount of tax paid. The ITC shall be allowed on his purchase of taxable goods in the State.

During test check of the assessment records of three offices[32], we noticed[33] in four assessments[34] that the AAs had allowed excess ITC of ₹ 7 lakh. Besides, interest of ₹ 6 lakh and penalty of ₹ 6 lakh was also leviable, wherever applicable as follows:

(₹ in lakh)

Sl. No.	Office (No. of assessments)	Assessment year (Date of assessment)	Nature of observation	Excess allowance of ITC including interest and penalty
1	CTO-79, Mahuva (2)	2006-07 15.5.2010 and 24.3.2011	1. As per entry no. 15 of Schedule IIA of the erstwhile GST Act, 1969 read with entry no. 158 of Notification issued under Section 49(2) of the GST Act, bullion *(lagdi)* or coin of gold/ silver was taxable at the rate of 0.25 *per cent w.e.f.* 1.7.2004. AA had allowed ITC (u/s 12) of ₹ 1.48 lakh at the rate of one *per cent* on opening stock of bullion of ₹ 1.66 crore as on 1.4.2006. However, the dealer was eligible for ITC of ₹ 0.37 lakh only at the rate of 0.25 *per cent* of the opening stock of bullion. Thus, there was excess allowance of ITC of ₹ 1.11 lakh. The judgment of the High Court is not relevant in this case, as the judgment was delivered under Gujarat Sales Tax Act, which allows set off at 12.5 *per cent* on sales of goods. In this case GVAT is applicable and ITC is admissible on tax paid on the purchase of goods which is four *per cent* and not 12.5 *per cent.* 2. The Department did not accept our audit observation stating that ITC was admissible on ornaments and not on bullion. The reply of the Department is not correct as ITC is admissible	9

[32] ACCT: 76 Bhavnagar and 79 Mahuva
DCCT: 3 Ahmedabad.
[33] Between October 2012 and May 2013
[34] For the year 2006-07 and 2007-08 finalised between May 2010 and December 2011

			on purchase of good (under Section 12 of the Act) as such ITC would be admissible on the tax paid on the purchase of bullion and not on the sale of ornaments. 3. AA had allowed ITC of ₹ 1.87 lakh at the rate of 12.5 *per cent* on purchases of 'couplings' worth ₹ 14.95 lakh though the dealer had paid tax at the rate of four *per cent* at the time of sale of the couplings so purchased. Thus, ITC was required to be allowed at the correct rate of tax of four *per cent* instead of 12.5 *per cent*. This resulted in excess allowance of ITC of ₹ 1.27 lakh.	
After this being pointed out, the Department did not accept (October 2014) our observations in both the cases stating in one case that ITC under Section 12 was allowed on stock of ornaments and not bullion. In the other case, the Department quoted judgments of the Hon'ble High Court of Gujarat/Tribunal which were delivered on allowance of set-off under Sales Tax regime. The Reply of the Department is not acceptable as the dealer, being manufacturer of jewellery, had purchased bullion as raw material during 2005-06 and such purchases (taxable at the rate of 0.25 *per cent*), instead of finished goods, were eligible for ITC under Section 12. Further, the judgments applicable to the allowance of set-off under Sales Tax regime cannot be applied on admissibility of ITC under VAT regime.				
2	ACCT-76, Bhavnagar (1)	2007-08 (20.8.2011)	'Denaturated ethyle alcohol' attracted tax at the rate of four *per cent w.e.f.* 22.5.07 vide Notification No. GHN-17 dated 22.5.2007. The dealer had availed ITC of ₹ 4.89 lakh at the rate of 12.5 *per cent* on purchases affected between 24.5.2007 and 9.6.2007. However, as per the notification the dealer was eligible for ITC of ₹ 1.56 lakh only at the rate of four *per cent* of the purchase affected during the period stated above. Thus, AA had allowed excess ITC of ₹ 3.32 lakh.	6
After this being pointed out, the Department accepted (October 2014) our observation and stated that revision proceedings had been initiated.				
3	DCCT-3, Ahmedabad (1)	2007-08 (13.12.2011)	The AA had allowed ITC of ₹ 1.19 lakh on purchases of goods worth ₹ 41.96 lakh which were used in job-work relating to printing of packing material which was incorrect as per provisions of the GVAT Act.	4
Total				**19**

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in three cases (October 2014). The reply in the remaining case has not been received.

2.7.5 Excess carry forward of Input Tax Credit

As per column No. 22 of Part-V of Annual Return in Form 205 and Assessment Order in Form 304, amount of excess tax paid and/or excess ITC which remains after adjustment against tax payable, is carried forward to the subsequent year. As a prevelant procedure, the amount carried forward in the Annual Return is accepted as correct and allowed in the assesment order also. In case carried forward tax/ITC is less in assessment than claimed in Annual Return, the deficit amount along with interest is treated as demand.

During test check of the assessment records of two offices[35] we noticed[36] in five assessments[37] that the dealers had carried forward ITC of ₹ 17.43 lakh in their Annual Return for 2006-07 against ITC of ₹ 7.22 lakh carried forward by the AA in the assessment orders. The omission occurred due to lack of cross checking of returns filed by the dealers during the year. This resulted in excess carried forward of ITC of ₹ 10.21 lakh.

After these cases were pointed out to the Department in December 2013 and April 2014, the Department accepted (August/October 2014) our observations in all the cases and raised demand of ₹ 5.07 lakh in two cases while revision proceedings had been initiated in the remaining three cases.

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in four cases (October 2014).

2.7.6 Irregular grant of refund of ITC of capital goods

As per Rule 15 (6) of the GVAT Rules, 2006 where the tax credit (other than tax credit on capital goods) admissible in the year remains unadjusted against the output tax as per Section 11, such amount shall be refunded not later than expiry of two years from the end of the year in which such tax credit had become admissible. Thus, the Rule prohibits refund of ITC on purchases of capital goods.

During test check of the assessment records of two offices[38] we noticed[39] in two assessments[40] that AA had incorrectly granted refund with interest of ITC of capital goods which remained unadjusted against tax liability of the dealers. Since, the Rule specifically prohibits refund of ITC on purchases of capital goods, the grant of such refund was irregular. This had resulted in irregular grant of refund of ITC of capital goods of ₹ 18.85 lakh.

[35] ACCT: 52 Anand, 26 Himatnagar
[36] In February and July 2013
[37] For the year 2006-07 finalised between December 2010 and March 2011
[38] ACCT: 47 Godhra, 93 Rajkot
[39] In March and August 2013
[40] For the year 2007-08 and 2008-09 finalised in March and June 2012

After these cases were pointed out to the Department in April and May 2014, the Department accepted (September/October 2014) our observation in both the cases and raised demand of ₹ 7.63 lakh in one case while reassessment proceedings had been initiated in the other case.

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.8 Non-levy of tax due to irregular acceptance of Railway Receipt (RR) sale

As per Section 3(b) of the CST Act, 1956, a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase is effected by a transfer of documents of title (RR/LR etc.) to the goods during their movement from one State to another. Further, as per Section 6 (2) of the Act *ibid* all subsequent inter-State sales to registered dealers by transfer of documents during movement of goods are exempt from sales tax on production of Form 'E-I' (first inter-State sale) or 'E-II' (subsequent sale by the transferors) and Form 'C'. Moreover, in Cinezac Technical Services V/s State of Kerala (2009) 25 VST 165 (Kerala HC DB), it was held that a pre-arranged sale would not be treated as subsequent inter-State sale. Similar view was taken in State of Karnataka V/s A & G Products and Technologies (2008) 13 VST 177=37 MTJ 337 (Kar HC DB) and it was held that goods appropriated to the ultimate buyer even before commencement of movement of goods would not be exempted from CST.

During test check of the assessment records of three offices[41], we noticed[42] in assessments[43] of three dealers that the AA had allowed claim towards RR[44] sale though the original seller had consigned goods directly to the ultimate buyer and there was no endorsement of lorry receipts by the subsequent selling dealers during movement of goods i.e. the goods were appropriated to their ultimate buyer before the movement of goods commenced. Thus, irregular acceptance of claim towards RR sales during assessments by the AA had resulted in non-levy of tax of ₹ 3.73 crore including interest of ₹ 0.86 crore and penalty of ₹ 0.05 crore.

We pointed out the cases to the Department in February and May 2014. The Department accepted (September/October 2014) our observation in all the three cases and initiated revision/reassessment proceedings.

We reported the matter to the Government in June 2014. The Government confirmed the reply of the Department in one case (October 2014).

[41] ACCT: 10 Ahmedabad, 41 Vadodara
DCCT: 24, Jamnagar

[42] Between March and November 2013

[43] For the year 2007-08, 2008-09 and 2009-10 finalised between November 2011 and September 2012

[44] 'RR sale' is the abbreviated form of 'Railway Receipt sale'. Where a subsequent sale (second and so on) is affected by transfer of documents of title to the goods in the course of inter-state trade or commerce, such sale is termed as RR sale.

2.9 Non/short levy of purchase tax

Section 9 of the GVAT Act, 2003 provides for levy of purchase tax on purchases of taxable goods/sugarcane (for the purpose of use thereof in the manufacture of sugar or *khandsari*), made from unregistered dealers. Further, as per Section 11 of the Act *ibid*, a dealer is entitled for input tax credit (ITC) of tax paid on purchase of taxable goods which are intended for the purpose of use as raw material in the manufacture of taxable goods or in the packing of the goods so manufactured. However, as per Section 11 (3) (b) such ITC is required to be reduced by the amount of tax calculated at the rate of four *per cent* of the taxable turnover of goods purchased within the State and consigned as branch transfer. Moreover, the GVAT Tribunal vide its judgment dated 18.3.2009 in the case of 'Green Farm Biotech' held that oil seeds, purchased from farmers (unregistered dealer) and sold as *'biaran'* (seeds for sowing purpose, tax free goods), attracts purchase tax at applicable rate.

During test check of the assessment records of four offices[45] we noticed[46] in assessments[47] of four dealers that there was non/short levy of purchase tax of ₹ 1.57 crore including interest of ₹ 0.38 crore and penalty of ₹ 0.70 crore as follows:

(₹ in crore)

Sl. No.	Office (No. of dealers)	Assessment year (Date of assessment)	Nature of observation	Non/short levy of purchase tax including interest and penalty
1	ACCT, Unit-20, Ahmedabad (1) DCCT, Range-23, Rajkot (1)	2008-09 and 2007-08 3.1.2013 and 12.3.2010	The dealers had purchased cotton worth ₹ 25.14 crore from farmers which attracted purchase tax under Section 9(1) of the GVAT Act. Out of the above purchases, the dealers branch transferred raw/ ginned cotton and cotton seeds worth ₹ 21.33 crore. The dealers had neither paid any purchase tax nor claimed any ITC of purchase tax. Similarly, the AA also did not assess purchase tax on the purchases of cotton from farmers during audit assessment considering that there was no revenue implication as the dealers had not claimed any ITC of purchase tax payable by them. Since, in the event of payment of purchase tax by the dealers and claim of ITC by them, the amount of ITC was required to be reduced	1.34

[45] ACCT: 20 Ahmedabad, 47 Godhra
DCCT: 19 Bhavnagar, 23 Rajkot
[46] Between March and August 2013
[47] For the year 2007-08 and 2008-09 finalised between March 2010 and January 2013

			at the rate of four *per cent* of purchase value of cotton as per Section 11 (3) (b), non-assessment of purchase tax by the AA resulted in non-levy of purchase tax of ₹ 40.51 lakh.	
After this being pointed out, the Department accepted (October 2014) our observations in both the cases and raised a demand of ₹ 1.24 crore in one case while reassessment/revision proceedings had been initiated in the other case.				
2	DCCT, Range-19, Bhavnagar (1)	2008-09 23.11.2011	(i) The AA had considered purchases of sugarcane made during the month of November, December 2008 and January, February 2009 for the levy of purchase tax. However, purchases of sugarcane made during the month of April 2008 were not considered for the levy of purchase tax. (ii) The AA had reduced purchase tax liability by ₹ 8.08 lakh by set-off/allowing/ considering ITC proportionately on sale of molasses (a taxable by-product of sugar, a tax free commodity). Since, GVAT Act does not provide for allowance/ set-off of proportionate ITC on by/sub-product of non-taxable goods, reduction in purchase tax liability was incorrect.	0.19
3	ACCT, Unit-47, Godhra (1)	2007-08 11.10.2011	The dealer had sold *'biaran'*[48], manufactured out of oil seeds viz. Groundnut seeds and *Aranda* (Castor seed) which were purchased from farmers. Hence, as per judgment of the Tribunal, the dealer was liable to pay purchase tax. However, AA did not levy the purchase tax during audit assessment.	0.04
After this being pointed out, the Department accepted (October 2014) our observation and raised demand of ₹ 3.90 lakh.				
Total				**1.57**

We pointed out these cases to the Department between February and May 2014. Particulars of recovery in accepted cases and reply of the Department in remaining one case have not been received (November 2014).

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in two cases (October 2014).

[48] Seeds for sowing purpose

2.10 Non/short levy of CST

As per Section 8(1) read with Section 8 (4) of the CST Act, 1956 every dealer, who in the course of inter-State trade or commerce, sells goods to a registered dealer, shall be liable to pay tax at the rate of two/three/four *per cent* of his turnover or at the rate applicable to the sale or purchase of such goods inside the State under the sales tax law of that State, whichever is lower, provided that the dealer selling the goods furnishes a declaration in Form 'C' in original duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars. In case of non furnishing of Form 'C' or furnishing incomplete forms, the dealer is liable to pay tax applicable to the local sales. Further, as per judgment of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax V/s Rai Bharat Das, CST is leviable on packing material as well as packing charges, even if shown separately. Moreover, as per Section 30 (6) of the GVAT Act 2003, where a dealer is liable to pay interest and he makes payment of an amount which is less than the aggregate of the amount of tax, penalty and interest, the amount so paid shall be first applied towards the amount of interest, thereafter the balance, if any, towards the amount of penalty and thereafter the balance, if any, towards the amount of tax. Further, as per Section 9 (2) of the CST Act, 1956 provisions regarding interest and penalty under GVAT Act are applicable to the CST assessment also.

During test check of the assessment records of four offices[49] we noticed[50] in four assessments[51] that there was non/short levy of CST of ₹ 1.38 crore including interest and penalty of ₹ 0.61 crore as detailed below:

(₹ in crore)

Sl. No.	Office (No. of dealers)	Assessment year (Date of assessment)	Nature of observation	Non/ short levy of CST including interest and penalty
1	ACCT Unit-68 Surat (1)	2008-09 13.6.2012	(i) Sales worth ₹ 3.74 crore made to SEZ were not supported by Form 'I'/ 'C'. Hence, tax was required to be levied at the rate of five *per cent* including additional tax. However, the AA had levied tax at the rate of three/ two *per cent* resulting in short levy of tax of ₹ 7.71 lakh. (ii) Inter-State sales worth ₹ 29.71 crore were not supported by Form 'C' attracting tax at the rate of five *per cent* including additional tax. However, the assessing authority had levied tax at the rate of three/two *per cent*	1.15

[49] ACCT: 49 Nadiad, 54 Petlad, 68 Surat, 32 Vijapur
[50] Between September 2010 and July 2013
[51] For the year 2005-06, 2006-07and 2008-09 finalised between November 2008 and June 2012

			resulting in short levy of tax of ₹ 59.71 lakh.	
After this being pointed out, the concerned JCCT, while accepting (May 2014) our observation, reassessed the dealer and adjusted the additional demand of CST against the ITC available with the dealer.				
2	ACCT Unit-54 Petlad (1)	2006-07 30.11.2010	(i) AA had not levied tax on packing charges (OGS) worth ₹ 17.87 lakh. (ii) Inter-State sales worth ₹ 14.40 lakh which were made against duplicate[52] Form 'C' were assessed at concessional rate of tax of four *per cent* instead of local rate of tax of 12.5 *per cent*.	0.20
	ACCT Unit- 49 Nadiad (1)	2006-07 July 2009	(iii) Inter-State sales valued at ₹ 88.19 lakh were all on duplicate E-1 and C forms. This resulted in non-levy of tax of ₹ 3.53 lakh, interest of ₹ 3.77 lakh and penalty of ₹ 5.29 lakh.	
After this being pointed out, the concerned JCCT, while accepting (October 2013) our observation, raised demand of ₹ 4.22 lakh in revision order by disallowing deduction towards packing charges. However, the authority did not offer his remarks on acceptance of duplicate form 'C' in the assessment order. The Department furnished (May 2014) copies of duplicate Form 'E-I' and Form 'C' in the remaining case. Reply of the Department is not acceptable as it is mandatory to produce original Form 'E-I/II' and Form 'C' in support of claim of RR sale[53].				
3	ACCT, Unit-32, Vijapur (1)	2005-06 30.11.2008	The AA had incorrectly accepted Form 'C' valuing ₹ 42.77 lakh, which was issued against sales effected in May 2006 (2006-07), in the assessment for the year 2005-06.	0.03
We have not received reply of the Department in this case.				
Total				**1.38**

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.11 Non-levy of penalty (VAT/CST)

Section 34 (7) of the GVAT Act, provides for levy of penalty not exceeding one and half times of the tax assessed, if the dealer, in order to evade or avoid payment of tax has failed to furnish, without reasonable cause, returns in respect of any period by the prescribed date or has furnished incomplete or incorrect returns for any period. Section 34 (12) provides for levy of penalty not exceeding one and half times of the difference between the tax paid with returns and the amount assessed or reassessed where the tax assessed or reassessed exceeds 25 *per cent* of the amount of tax already paid. Moreover,

[52] Rule 12 (1) of the CST (Registration and Turnover) Rules, 1957 prescribes three copies of Form 'C' namely *'counter foil', 'duplicate' and 'original'*. Out of the above copies, *counter foil* remains with the purchasing dealer, *duplicate* copy is to be retained by the selling dealer with himself and *original* copy is to be submitted by the selling dealer to the assessing authority at the time of assessment to avail concessional rate of CST.

[53] Judgment of Hon'ble Supreme Court of India in case of India Agencies, Bangalore v/s Additional Commissioner of Commercial Taxes, Bangalore [Appeal (Civil) 1922 of 1999]

as per Section 32(5) the provisions of the GVAT Act apply *mutatis mutandis* to the provisional assessment as if provisional assessment were an audit assessment made under the Act. By virtue of Section 9(2) of the CST Act, the above provisions apply to assessments under the CST Act as well.

2.11.1 During test check of the assessment records of three offices[54] we noticed[55] in three assessments[56] that in two cases the dealers had not paid any tax of ₹ 16 lakh with returns, while in another case the dealer was assessed to tax (₹ 14.60 lakh) but the tax paid was only ₹ 5.33 lakh. Thus, the dealers were liable to pay penalty for non/less payment of tax.

However, the AA had not levied any penalty during audit assessment under Section 34 of the GVAT Act. This resulted in non-levy of penalty of ₹ 32.89 lakh.

We pointed out these cases to the Department in December 2013 and May 2014. The Department accepted (August/September 2014) our observation in two cases and raised demand of ₹ 13.98 lakh in one case and initiated revision proceedings in the other case.

In one case, the concerned JCCT did not accept (August 2013) our observation stating that the dealer had paid tax as per returns before audit assessment, as such the tax assessed did not exceed the tax paid. Hence, no penalty was required to be levied.

The reply of the JCCT is not correct since the dealer had neither filed any returns nor paid tax of ₹ 11.75 lakh though he had collected tax through tax invoices. The dealer had paid tax consequent to a raid by the Department. Further, the AA had not quoted any reasons in the assessment order for non-levy of penalty of ₹ 17.62 lakh.

2.11.2 During test check of the assessment records of two offices[57] we noticed[58] in three assessments[59] of two dealers that in one case the dealer had filed nil returns during 2009-10 and 2010-11. However, during the cross check of claim of ITC of the dealer with other dealers, it was noticed that the dealer had issued sale invoices of ₹ 46.46 lakh during the above years. Hence, the dealer had evaded tax by filing nil returns while the other dealer had evaded tax by not paying tax on warranty income[60]of ₹ 49.15 lakh. However, the AA had not levied any penalty of ₹ 78.91 lakh for non-payment of tax of ₹ 53 lakh

[54] ACCT: 8 Surat, 45 Vadodara
DCCT: 10 Vadodara
[55] Between December 2012 and October 2013
[56] For the year 2007-08 and 2008-09 finalised between December 2011 and September 2012
[57] ACCT: 83 Amreli
DCCT: 1 Ahmedabad
[58] In January and February 2013
[59] For the year 2007-08, 2009-10 and 2010-11 finalised in October and November 2011
[60] The Honourable Supreme Court of India in the case of 'Mohmed Ikram Khan and Sons' has held that amount received from the parent company in respect of warranty claims is to be treated as sale.

during provisional assessment under Section 32. This resulted in non-levy of penalty of ₹ 78.91 lakh.

We pointed out these cases to the Department in May and December 2013. The Department, while accepting (September 2013) our observation in one case, stated that the dealer had filed appeal against the provisional assessment. Hence, decision to levy penalty had been withheld. In the other case, the concerned JCCT stated (July 2013) that penalty of ₹ 58 lakh had been levied during audit assessment under Section 34.

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in two cases.

2.12 Short levy of VAT due to misclassification

As per Section 7 of the GVAT Act, 2003 tax on the turnover of sales of goods shall be levied at the rates specified in Schedule II or Schedule III of the Act. Additional tax at the rate of 2.5/1 *per cent* is also leviable from 1 April 2008. Lubricants fall under entry no. 49B of Schedule II attracting tax at the rate of 15 *per cent* whereas entry no. 58A of Schedule II pertains to machinery used in manufacture of goods, excluding domestic appliances (whether fitted or not with electric motor) such as grinder, mixer, grinder-cum-mixer, juicer, blender, water purifier, flour mill, toaster, oven etc., attracting tax at the rate of four *per cent*. Further, as per entry no. 87 of Schedule II, all goods other than those specified in Schedule I or Schedule III and in the preceding entries of Schedule II attract tax at the rate of 12.5 *per cent*.

2.12.1 As per entry no. 49B of Schedule II, Lubricants are taxable at the rate of 15 *per cent*. We noticed that in case of one dealer in ACCT: 23 Ahmedabad, industrial/automotive lubricants and industrial aluminum rolling oil lubricant valued at ₹ 11.63 crore was taxed at the rate of 12.5 *per cent* instead of 15 *per cent*. This resulted in short levy of tax of ₹ 29.08 lakh, interest of ₹ 21.19 lakh and penalty of ₹ 43.62 lakh.

After this being pointed out to the Department in December 2013, the Department did not accept our audit observation stating (October 2014) that lubricants are leviable at the rate of 12.5 *per cent* as per determination under Section 62 of the erstwhile Gujarat Sales Tax (GST) Act, 1969.

Reply of the Department is not correct as the lubricants are taxable at the rate of 15 *per cent* under entry no.49B of VAT Act and GST Act is not applicable in the present case.

2.12.2 As per entry no. 58 (A), machinery used in the manufacture of goods are taxable at the rate of four *per cent*. Domestic appliances are not covered under this entry. These fall under entry no.87 of Scheduled II of GVAT Act and are taxable at 12.5 *per cent*.

Test check of records of two dealers in ACCT, Godhra revealed that the AA had incorrectly classified food processing machineries such as Grinder, *Roti* making machine, Dough kneading machine, *PaniPuri* machine valued at

₹ 43.29 lakh under entry no. 58A and levied tax at the rate of four *per cent* instead of 12.5 *per cent*. This resulted in short levy of tax of ₹ 3.27 lakh, interest of ₹ 2.72 lakh and penalty of ₹ 4.91 lakh.

After this being pointed out to the Department in December 2013 and April 2014, the Department, while not accepting our observations, stated (October 2014) that the dealers were manufacturers of industrial and commercial food processing machineries which were used in industrial units like hotels and religious institutions. The above machineries cannot be put in domestic use. Thus, the goods were correctly classified under entry no. 58A of Schedule II.

The reply of the Department is not tenable as entry no. 58A of Schedule II covers machinery used in manufacture of goods. The food processing machineries cannot be termed as 'machinery used in manufacture of goods' as hotels and religious institutions cannot be treated as manufacturing units.

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.13 Non-levy of CST on Branch Transfer without Form 'F'

Section 6A of the CST Act, 1956 read with Rule 12(5) of the CST (Registration and Turnover) Rules, 1957 provides for exemption from levy of CST on transfer of goods from one State to another by the dealer to his principal/branch/agent, provided such transfer is supported by declaration in Form 'F'. If the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed to have been occasioned as a result of sale and tax levied accordingly.

During test check of the assessment records of three offices[61] we noticed[62] in three assessments[63] that in case of three dealers the AA had allowed branch transfer worth ₹ 2.90 crore, as deduction from total sales turnover, and no tax was levied in the assessment, though such claim by the dealers was not supported by mandatory Form 'F'[64]. Thus, non-assessment of branch transfer, not supported by Form 'F', resulted in non-levy of CST of ₹ 92.85 lakh, including interest of ₹ 20.83 lakh and penalty of ₹ 40.93 lakh.

We pointed out these cases to the Department in March and May 2012. The Department accepted (in September and December 2012) our observations in two cases and raised demand of ₹ 93.45 lakh. In the remaining one case, the Department did not accept (May 2013) our observation stating that deduction

[61] ACCT: 10 Ahmedabad, 93 Rajkot
DCCT: 19, Bhavnagar

[62] Between November 2010 and January 2012

[63] For the year 2004-05, 2006-07 and 2007-08 finalised between October 2008 and March 2011

[64] Rule 12(4) of the CST (Registration and Turnover) Rules, 1957 prescribes form 'F' which is a declaration issued by the transferee (agent or principal) to the transferor (seller) as an evidence in support of the claim of the seller that such transfer (movement) of goods was not a sale.

of ₹ 1.10 crore pertained to branch transfer/consignment[65]. Reply of the Department is not acceptable since as per provisions of the CST Act the dealer was required to produce Form 'F' in support of its total claim of consignment/branch transfer valued at ₹ 1.10 crore, but had produced forms of consignment transfer of ₹ 70.41 lakh. As such, the remaining goods valued at ₹ 40 lakh were taxable under the Act. Particulars of recovery in accepted cases has not been received (November 2014).

We reported the matter to the Government in June 2014. The Government confirmed (October 2014) the replies of the Department in two cases.

2.14 Non-levy of Entry Tax

As per judgment dated 15.7.2011 of the Honourable Gujarat High Court in the case of Reliance Industries Ltd. V/s State of Gujarat (SCA No. 11848 of 2005) 'crawler cranes, loaders, mobile cranes, motor grader, road roller, fork lift, chain mounted drilling machine, pipe layer and bulldozer' are classified as motor vehicles attracting entry tax at the rate of 12.5 *per cent* till 31 March 2008 and at the rate of 15 *per cent* from 1 April 2008 under Section 3(1) read with Section 2 (k) of the Gujarat Tax on Entry of Specified Goods into Local Area Act, 2001. Further, Section 17 (2) of the Act *ibid* provides for levy of penalty at the rate of 18 *per cent* per annum for non payment of the entry tax.

During test check of the assessment records of three offices[66] we noticed[67] in assessments[68] of four dealers that the dealers had imported J.C.B. Machine/Soil Compactor/Loader Backhoe/Hydraulic Mobile Crane/Excavator-cum-loader/ Vibratory compactor/car/fork lift truck etc. from outside the State. The above goods attracted entry tax as per provisions cited above. However, the assessing authorities did not levy Entry Tax in the assessments. This resulted in non-levy of entry tax of ₹ 60.56 lakh including penalty of ₹ 27.50 lakh.

We pointed out the cases to the Department between December 2013 and May 2014. The Department accepted (May/October 2014) our observation in all the cases and raised demand of ₹ 31.94 lakh in one case.

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in all the cases.

2.15 Short levy of VAT due to incorrect/excess deduction towards labour charges

Section 2 (30) (c) of the GVAT Act, 2003 provides for deduction of the charges towards labour, service and other like charges in relation to works contract from the taxable turnover. Further, where the amount of such charges are not ascertainable or the accounts maintained by the contractor are not

[65] Consignment refers to branch transfer of goods by the dealer to his agent or principal or other branch.
[66] ACCT: 104 Gandhidham, 58 Surat, 46 Vadodara
[67] Between March and September 2013
[68] For the year 2007-08 and 2008-09 finalised between November 2011 and December 2012

sufficiently clear or intelligible, a *lump-sum* deduction shall be admissible in accordance with the percentage mentioned in the table below Rule 18AA of the GVAT Rules, 2006. Moreover, as per Rule 28 (8) (c) of the Rules ibid, a dealer holding permission to pay lump-sum tax under Section 14A of the Act *ibid,* shall pay lump-sum tax on the total turnover after deducting the amount paid to sub-contractors, if any.

During test check of the assessment records of three offices[69] we noticed[70] in four assessments[71] that the AA had allowed incorrect/excess deduction towards labour charges resulting in short levy of VAT of ₹ 15 lakh. Besides in three cases interest of ₹ 9 lakh and penalty of ₹ 9 lakh was also leviable as follows:

(₹ in lakh)

Sl. No.	Nature of observation	Labour charges		VAT		Short levy of VAT including interest and penalty
		Allowable	Allowed	Leviable	Levied	
1	The AA had allowed deduction of ₹ 1.59 crore towards labour income without ascertaining the nature of such income which was realised by cotton crushing/pulling.	00	1.59	0.13	0.07	6
After this was pointed out, the Department, while accepting (April 2014) our observation, reassessed the dealer and stated that the case of the dealer was pending before the Tribunal.						
2	The AA did not levy tax on labour work receipt of ₹ 3.37 crore though the dealer was paying lump-sum tax.	00	3.37	0.19	0.13	21
After this was pointed out, the Department accepted (April 2014) our observation prima facie and stated that the concerned authority had been instructed to initiate reassessment proceedings.						
3	The AA had allowed deduction towards labour at the rate of 30 *per cent* of the gross turnover instead of at the rate of 20 *per cent* applicable to the works contract (electrical), executed by the dealer, as per Rule 18AA.	0.41	0.61	0.12	0.10	3
After this was pointed out, the Department, while accepting (May 2014) our observation, stated that reassessment proceedings had been initiated.						
4	The AA had allowed deduction towards job work from the income received from the works contract for which the dealer had been permitted to pay lump-sum tax.	00	2.71	0.10	0.09	3
After this being pointed out, the Department accepted (October 2014) our observation and initiated revision proceedings.						
Total						**33**

[69] ACCT: 52 Anand, 56 Bharuch, 58 Surat
[70] Between September 2012 and July 2013
[71] For the year 2006-07 and 2007-08 finalised between January and May 2011

We reported the matter to the Government in June 2014. Their replies have not been received (November 2014).

2.16 Short levy of VAT due to application of incorrect rate of tax

As per entry no. 32 of Notification No. GHN-44 dated 29.4.2006 tyres and tubes of bicycle/tricycle/cycle rickshaws etc., covered under entry no. 6 of Schedule II to the GVAT Act, were exempted from VAT in excess of four *per cent*. Moreover, as per explanation, under entry no. 61 of Schedule-II, added by Gujarat Act No. 9 of 2009 dated 1.8.2009, renewable energy devices and components do not include battery operated vehicle.

During test check of the assessment records of two offices[72] we noticed[73] in three assessments[74] of two dealers that the AA had levied tax at the rate of four *per cent* instead of 12.5 *per cent* on sales of 'tyres and tubes of bicycle' valued at ₹ 14.06 lakh, effected prior to 29.4.2006, and 'e-bikes' valued at ₹ 5.79 crore. Thus, application of incorrect rate of tax by the AA had resulted in short levy of VAT amounting to ₹ 28.25 lakh, including interest of ₹ 1.09 lakh and penalty of ₹ 1.53 lakh.

We pointed out these cases to the Department in April/May 2014. The Department accepted (October 2014) our observations in two cases. In case of one dealer, an amount of ₹ 6.24 lakh had been reduced from the tax exemption limit for 2008-09 while reassessment proceedings had been initiated for 2009-10. In the other case, the Department stated that the case had become time-barred for the purpose of revision/reassessment resulting in loss of revenue.

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in both the cases (November 2014).

2.17 Non/short levy of tax/additional tax

Section 7 (1A) of the GVAT Act, 2003, inserted *w.e.f.* 1.4.2008, provides for levy of additional tax at the rate of 2.5 *per cent* on the goods falling under entry no. 87 of Schedule II of the Act *ibid*. As per explanation below entry no. 61 of Schedule II to the Act *ibid* renewable energy devices and components and parts thereof do not include battery operated vehicle, which falls under entry no. 87 *ibid*. Further, as per Section 14A (2) of the Act *ibid*, a dealer who is permitted to pay lump-sum tax, shall not charge any tax in his sales bill or sales invoice in respect of the sales on which lump-sum tax is payable. Moreover, as per Section 30 (6) of the Act *ibid*, where a dealer is liable to pay interest and he makes payment of an amount which is less than the aggregate of the amount of tax, penalty and interest, the amount so paid shall be first applied towards the amount of interest, thereafter the balance, if any, towards the amount of penalty and thereafter the balance, if any, towards the amount of tax.

[72] ACCT: 101 Jamnagar
DCCT: 25 Gandhidham

[73] In April 2013

[74] For the year 2006-07, 2008-09 and 2009-10 finalised between February 2010 and February 2012

During test check of the assessment records of four offices[75] we noticed[76] in five assessments[77] of four dealers that in case of one dealer the AA had not levied additional tax on escalation invoices[78], for the year 2006-07 and 2007-08, which were raised in 2008-09 while in another case the AA had levied additional tax at the rate of one *per cent*, instead of 2.5 *per cent*, on sale of e-bikes[79]. Further, in case of one dealer, whose permission to pay lump-sum tax had been cancelled due to breach of condition, the AA had considered sales turnover inclusive of tax during assessment of the dealer as regular dealer. Since, the dealer was holding permission for paying lump-sum tax; he was not eligible to charge tax in his bills/invoices. Hence, the turnover was required to be considered as exclusive of tax. Similarly, in another case, the AA had adjusted the amount paid by the dealer towards his tax liability instead of adjusting the same first towards interest and penalty, payable by the dealer for late/short payment of tax. This had resulted in non/short levy of tax/ additional tax of ₹ 25.48 lakh including interest of ₹ 8.30 lakh and penalty of ₹ 4.36 lakh.

We pointed out the cases to the Department between May 2012 and May 2014. The Department accepted (between December 2012 and October 2014) our observations in all the cases and raised demand of ₹ 11.92 lakh in two cases while reassessment proceedings had been initiated in the remaining two cases.

We reported the matter to the Government (June 2014). The Government confirmed the replies of the Department in three cases.

2.18 Short levy of VAT due to application of incorrect rate of lump-sum tax

As per Section 14A of the GVAT Act, 2003 the Commissioner may permit every dealer who transfers property in goods involved in execution of a work contract to pay at his option in lieu of the amount of tax leviable from him under this Act in respect of any period, a lump-sum tax by way of composition at such rate as may be fixed by the State Government having regard to the incidence of tax on the nature of the goods involved in the execution of the total value of the works contract. Further, as per Notification No. GHN-88 dated 17.8.2006 read with Notification No. GHN-106 dated 11.10.2006 all kinds of works contract other than those specified in entry no. 2 and 3 of the notifications attracts tax at the rate of two *per cen*t of total value of the works contract.

[75] ACCT: 5 Ahmedabad, 47 Godhra
DCCT: 25 Gandhidham, 17 Surat

[76] Between March 2011 and September 2013

[77] For the year 2006-07, 2008-09 and 2009-10 finalised between August 2010 and May 2012

[78] Escalation invoices are those invoices which are raised subsequently as a result of increase in prices.

[79] E-bike stands for electronic bikes which are battery operated. These bikes are considered as pollution free vehicles.

During test check of the assessment records of ACCT, Unit-104, Gandhidham we noticed[80] in one assessment[81] of a dealer that the AA had levied lump-sum tax at the rate of 0.6 *per cent* on the total turnover by classifying the works executed by the dealer under entry no. 3 of Notification dated 11.10.2006. However, as per Income Tax Audit Report, the dealer was engaged in the business of mechanical contracts viz. fabrication and erection of M.S. storage tanks, falling under entry no. 1 of the notification dated 17.8.2006 attracting lump-sum tax at the rate of two *per cent*. Thus, application of incorrect rate of lump-sum tax resulted in short levy of VAT of ₹ 20.25 lakh, including interest of ₹ 6.07 lakh and penalty of ₹ 8.51 lakh.

We pointed out the case to the Department in April 2014. The Department accepted (October 2014) our observation and raised demand of ₹ 21.41 lakh. Particulars of recovery have not been received (November 2014).

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.19 Short levy of interest (VAT)

As per Section 42 (6) of the GVAT Act, 2003 where the amount of tax assessed or reassessed for any period, exceeds the amount of tax already paid by the dealer for that period, the dealer shall pay simple interest at the rate of eighteen *per cent* per annum on the amount of tax remaining unpaid for the period of default.

During test check of the assessment records of two offices[82] we noticed[83] in two assessments[84] that the AA had calculated interest incorrectly on delayed payment of tax due to incorrect calculation/adoption of period of delay. The AA had levied interest of ₹ 61.18 lakh, instead of correct interest of ₹ 80.08 lakh, resulting in short levy of interest of ₹ 18.90 lakh.

We pointed out the cases to the Department in May 2014. The Department accepted (October 2014) our observations in both the cases and raised demand of ₹ 17.69 lakh in one case.

We reported the matter to the Government (June 2014). Reply of the Government has not been received (November 2014).

2.20 Incorrect allowance of export deduction

Sale during export is not taxable. Rule 12 (10) of the CST (Registration and Turnover) Rules, 1957 provides that the dealer has to furnish a certificate in Form-H duly filled in with all details as an evidence of deemed export, *i.e.* copies of bill of lading, shipping bill, foreign buyer order, etc. Moreover, 'same goods' purchased should be exported. By virtue of Section 9(2) of the

[80] In April 2013
[81] For the period 2006-07 finalised in April 2011
[82] ACCT: 103 Bhuj, 99 Jamnagar
[83] In April 2013
[84] For the year 2007-08 finalised in September and December 2011

CST Act, provisions of interest and penalty as per GVAT Act, becomes applicable to CST assessment also.

During test check of the assessment records of two offices[85] we noticed[86] in assessments[87] of two dealers that the AA had allowed deduction from sales turnover towards indirect export though in one case, evidence in support of export such as bill of lading/ shipping bill were not available on record; while in the other case, there was difference in commodity sold against Form 'H' (organic sesame seeds) and commodity exported (Indian sesame oil) by the ultimate buyer and the dealer was not in possession of foreign buyer order. This resulted in incorrect deduction of turnover involving tax of ₹ 18.43 lakh including interest of ₹ 3.88 lakh and penalty of ₹ 4.31 lakh.

We pointed out the cases to the Department in December 2013 and May 2014. The Department accepted (October 2014) our observations in both the cases and raised demand of ₹ 10.20 lakh in one case. In the other case, the Department stated that the case had become time barred for the purpose of reassessment/revision resulting in loss of revenue.

We reported the matter to the Government in June 2014. The Government confirmed the reply of the Department in one case.

2.21 Excess payment of interest

As per Sub-section 1 of Section 38 of the GVAT Act, 2003 where refund of any amount of tax becomes due to the dealer by virtue of an order of assessment under Section 34, he shall be entitled to receive in addition to the amount of tax, simple interest at the rate of six *per cent* per annum on the said amount of tax from the date immediately following the date of the closure of the accounting year to which the said amount of tax relates till the date of payment of amount of such refund. Provided that where the dealer has paid any amount of tax after the closure of the accounting year and such amount is required to be refunded, no interest shall be payable for the period from the date of closure of such accounting year to the date of payment of such amount.

During test check of the assessment records of three offices[88] we noticed[89] in case of assessments[90] of three dealers that the AA had calculated interest incorrectly in case of two dealers, while in case of one dealer, the AA had granted interest on refund of tax of ₹ 3.20 crore from the closure of the accounting year though the dealer had paid such tax after the closure of the accounting year. Thus, incorrect calculation of interest and non-adherence to the specific proviso under Section 38 (1) by the AA had resulted in excess payment of interest of ₹ 18.15 lakh.

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85 ACCT: 56 Bharuch, 103 Bhuj
86 In February 2011 and September 2012
87 For the year 2004-05 and 2007-08 finalised in September 2008 and May 2011
88 ACCT: 11, Ahmedabad
DCCT: Corporate Cell-II Ahmedabad, 18 Valsad
89 Between February 2012 and June 2013
90 For the year 2006-07 and 2007-08 finalised between March 2011 and March 2012

We pointed out the cases to the Department between October 2012 and May 2014. The Department accepted (between February 2013 and September 2014) our observations in all the cases and stated that rectification proceedings had been initiated in one case while the other two cases had been referred to the appellate authority before whom the dealers had filed appeal against the assessment orders.

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in two cases.

2.22 Non-levy of CST due to irregular exemption to sales to SEZ

Section 8 (6) and (8) of the CST Act, 1956 read with Rule 12(11) of the CST (Registration and Turnover) Rules, 1957 provides for exemption from levy of tax on inter-State sales of goods made against declaration in Form 'I' to a registered dealer in any SEZ established by the authority specified by the Central Government. Where the sale is not supported by Form 'I', tax is leviable at the rate applicable on sale of such goods inside the State.

During test check of the assessment records of ACCT, Unit-68, Surat we noticed in one assessment for the year 2008-09 finalised in June 2012 that the AA had treated sales of glass bottles worth ₹ 3.92 crore made to SEZ as exempted sales though such sales were made against declaration in Form 'C', instead of Form 'I', on collection of tax of ₹ 7.69 lakh. Thus, irregular allowance of exemption from levy of tax on sales made to SEZ unit resulted in non levy of CST of ₹ 13.14 lakh including interest of ₹ 5.45 lakh.

We pointed out the case to the Department in April 2014 and their replies have not been received (November 2014).

We reported the matter to the Government in June 2014 and their replies have not been received (November 2014).

2.23 Irregular permission to pay lump-sum tax

Section 14A and 14B of the GVAT Act, 2003 provides for payment of lump-sum tax by works contractors and Commission Agents engaged in the business of agricultural produce, respectively. The works contractor has to apply in Form 214/215, prescribed under Rule 28(8) of the GVAT Rules, 2006, to obtain permission to pay lump-sum tax. Further, as per Section 14B (3) *ibid*, a commission agent shall not be permitted to pay lump-sum tax if such agent sells goods in the course of inter-State trade or commerce.

During test check of assessment records of two offices[91] we noticed[92] in two assessments[93] that in one case the AA had assessed the works contract sales on lump-sum basis and levied tax at the rate of two/0.6 *per cent* though the dealer had not obtained any permission to pay lump-sum tax, while in the other case, the Department had permitted the commission agent to pay lump-sum tax

[91] ACCT: 14 Ahmedabad, 83 Amreli
[92] In March and May 2011
[93] For the year 2006-07 finalised in June 2009 and January 2010

during 2006-07, though the dealer had made sales in the course of inter-State trade and commerce in the month of May 2006. Thus, assessment of tax on lump-sum basis without permission/despite breach of condition had resulted in short levy of tax of ₹ 11.45 lakh including interest of ₹ 1.70 lakh and penalty of ₹ 5.85 lakh.

We pointed out the cases to the Department in May and July 2012. The Department accepted (July 2013) our observation in one case and raised demand of ₹ 4.62 lakh. However, the dealer preferred appeal before GVAT Tribunal on payment of ₹ one lakh.

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.24 Irregular/excess grant of refund/provisional refund

Rule 37(5) of the GVAT Rules, 2006 provides for provisional refund for an amount not exceeding ninety *per cent* of the amount claimed in the return furnished by a dealer. Further, the Commissioner of Commercial Taxes Circular dated 20.11.2008, stipulates that while granting provisional refund, input tax credit of closing stock is to be reduced from the total claim of refund. Moreover, as per Section 36 of the GVAT Act, 2003 refund due to the dealer shall be first applied towards the recovery of any amount due under this Act and only the balance amount, if any shall be refunded.

During test check of the assessment records of two offices[94] we noticed[95] in two cases[96] that the AA had issued Refund Payment Order (RPO) for ₹ 6.58 lakh in one case instead of adjusting outstanding dues of ₹ 4.81 lakh for the year 2006-07, while in case of the other dealer, provisional refund was granted without reducing input tax credit of closing stock. This resulted in irregular/excess grant of refund/provisional refund of ₹ 7.94 lakh including interest of ₹ 0.08 lakh.

We pointed out the cases to the Department in April 2014. The Department accepted (October 2014) our observations in both the cases and stated that revision proceedings had been initiated in one case. In the other case, task was generated for audit assessment and AA was instructed to consider audit observation during audit assessment.

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

[94] ACCT:52 Anand, 93 Rajkot
[95] In July and August 2013
[96] Assessment for the year 2008-09 finalised in October 2012 and Provisional refund for 2011-12

2.25 Irregular remission of tax/interest

Section 41 of the GVAT Act, 2003 read with Notification No. GHN-9 dated 27.2.2009 provides for remission of whole tax, payable by a certified manufacturer on the sales of specified goods till the sales of such specified goods do not exceed the quantity approved by the appropriate authority and specified as such in the eligibility certificate. The State Government had introduced in April 2007 *Vechan Vera Samadhan Yojana* (*yojana*) for speedy recovery of outstanding tax. The *yojana* allowed for remission of interest and penalty on payment of outstanding tax during the currency of the *yojana* i.e. during 1.4.2007 and 31.5.2007. Thus, interest and/ or penalty, leviable on tax paid prior or after the currency of the scheme, were not eligible for remission.

During test check of the assessment records of two offices[97] we noticed[98] in assessments[99] of two dealers that in one case the AA had remitted interest of ₹ 3.40 lakh payable on the tax for the period April to November 2005 but was paid belatedly between May and November 2006 (i.e. prior to commencement of the amnesty scheme). In the other case, AA had remitted tax of ₹ 17.89 lakh on quantity of specified goods, which exceeded the quantity approved by the authority in the eligibility certificate resulting in irregular remission of tax of ₹ 2.68 lakh. Thus, non-adherence to the specific provisions of the notification/scheme resulted in total irregular remission of tax/interest of ₹ 6.08 lakh.

We pointed out these cases to the Department in March 2011 and April 2012. The Department accepted (July 2011 and October 2014) our observations in both the cases and raised demand of ₹ 2.86 lakh in one case. Particulars of recovery have not been received (November 2014).

We reported the matter to the Government (June 2014). The Government confirmed the reply of the Department in one case.

2.26 Short levy of tax (Sales Tax)

Section 55A of the erstwhile GST Act, 1969 provides for payment of lump-sum tax by way of composition by works contractors. The State Government notification No. (GHN-4) GST-1097 (S) (55) (A) (2) 74 dated 1.4.1997 prescribes rate of composition for different works contract. As per the notification works contract for civil works attracted lump-sum tax at the rate of two *per cent,* while works contracts, not described in the notification, were liable to be taxed at the rate of 12 *per cent*. Further, as per determination dated 19.9.1997, laying of underground polythene pipeline is not a civil work and tax was leviable at the rate of 12 *per cent*. Moreover, goods falling under residuary entry no. 195 of Schedule IIA to the Act ibid attract tax at the rate of 12 *per cent*.

[97] ACCT: 57 Ankleshwar, 29 Prantij
[98] In March 2009 and September 2011
[99] For the year 2005-06 and 2006-07 finalised in December 2007 and March 2011

During test check of the assessment records of office of ACCT, Unit-20, Ahmedabad we noticed[100] in assessments[101] of two dealers that:

- in one case the AA had levied lump-sum tax at the rate of two *per cent* instead of 12 *per cent*, by treating laying of water distribution pipeline as civil work
- in the other case, the dealer had paid tax at the rate of four *per cent* by treating works contract of laying 'glass reinforced polyester pipeline' as 'sale of goods' and same was allowed in the assessment by the AA. Since, 'glass reinforced polyester pipeline' falls under residuary entry no. of Schedule IIA to the Act ibid, tax was required to be levied at the rate of 12 *per cent*.

Thus, application of incorrect rate of tax had resulted in short levy of tax of ₹ 49.78 lakh, including interest of ₹ 11.45 lakh and penalty of ₹ 14.37 lakh.

We pointed out the cases to the Department in April 2012. The Department accepted (November 2012 and October 2014) our observations in both the cases and raised demand of ₹ 49.78 lakh. Further, an amount of ₹ 2.03 lakh had been recovered in one case and recovery proceedings had been initiated under Land Revenue Code in both the cases. Particulars of recovery have not been received (November 2014).

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.27 Short levy of penalty (Sales Tax)

As per Section 45(6) of the erstwhile GST Act, 1969 where in the case of a dealer the amount of tax assessed or reassessed for any period exceeds the amount of tax already paid by the dealer in respect of such period by more than 25 *per cent* of the amount of tax so paid, there shall be levied on such dealer a penalty not exceeding one and one-half times the difference between tax assessed/reassessed and tax paid. Further, Circular dated 3 June 1992, issued by the Commissioner of Commercial Tax, prescribed slab rates for levy of penalty.

During test check of the assessment records of office of ACCT, Unit-7, Ahmedabad we noticed[102] in one assessment[103] that tax assessed exceeded the tax paid by the dealer by more than 100 *per cent*. Hence, as per the circular, the dealer was liable to pay penalty at the rate of 60 *per cent* of the difference (₹ 33.60 lakh) between tax assessed (₹ 54.07 lakh) and tax paid (₹ 20.47 lakh). However, the AA had levied penalty at the rate of 40 *per cent* of such difference. This had resulted in short levy of penalty of ₹ 6.77 lakh.

[100] In December 2009
[101] For the year 2004-05 and 2005-06 finalised in September 2008 and February 2009
[102] In September 2010
[103] For the year 2004-05 finalised in December 2009

We pointed out the case to the Department in May 2012. The Department accepted our observation (July 2012) and raised demand of ₹ 6.77 lakh. Particulars of recovery have not been received (November 2014).

We reported the matter to the Government (June 2014). The Government confirmed the reply of the Department (November 2014).

CHAPTER-III
EXECUTIVE SUMMARY

Results of audit

Test check of records in the offices of the Collectors and *Mamlatdars* (LR) in the State during the year 2013-14 revealed underassessment of tax and other irregularities involving ₹ 403.40 crore in 82 cases.

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 92.44 lakh in 26 cases.

What we have highlighted in this Chapter

A Performance Audit on **"Lease of Government Land"** revealed the following:

The system for maintaining the records was not secure, reliable and adequate. The Jamnagar Collectorate had not maintained data of the Government land granted on lease in the LeLIS software developed for the maintenance of data. In eight districts, the data as per LeLIS software did not match with the data as per the records.

In certain instances, the grant of Government land on lease was not in accordance with the existing provisions of the concerned Act(s), Rules and Regulations, GRs, etc. and policies framed by the Government from time to time, as noticed in the following cases:

- In case of Solaris ChemTech Ltd., the Government land was granted for installation of plant and machinery on recovery of one-time occupancy price, while in other two similar cases, it was granted on lease at the rate of ₹ 150 per hectare per annum applicable to salt and bromine, though in these cases, the land was leased for construction/ installation of plant and machinery. The different treatment given to these two companies resulted in non-levy of occupancy price of ₹ 130.11 crore had the land been given on one time occupancy price.
- In 15 cases, the Government land admeasuring 17.57 lakh sq. mtr. valued at ₹ 69.71 crore granted was in excess of the eligible limit and in other two cases occupancy price of ₹ 2.03 crore though leviable was not levied.
- Though the area of grazing land was not sufficient with reference to number of cattle of the area, even then grazing land was irregularly granted on lease for industrial purpose.

The monitoring mechanism was deficient so far as it relates to ensuring adherence to the terms and conditions of lease of the land/renewal of lease, as noticed in the following cases:

- Out of total 6,587 cases of lease, 4,682 leases had expired between 1933 and 2012 but no action was taken for their renewal or eviction of lessees from the leased land. In five cases, rent at revised rates was also recoverable.
- The Government land admeasuring 1,508.69 hectare granted by the Collector, Ahmedabad remained unused and continued to be in the occupation of the Company even after lapse of 10 years from the date of allotment for which lease rent of ₹ 22.63 lakh (2000-10) was not recovered from the Company.
- In two Collectorate offices, in seven cases, land admeasuring 1,15,402.12 sq. mtr. granted on lease was lying un-utilised for period ranging between 3 and 57 years, but the same had not been resumed by the Government despite breach of conditions of allotment of land.
- In five Collectorates, in 542 cases, Government land admeasuring 72,206.56 sq. mtr. given on lease was transferred in the name of purchaser based on the sale deeds executed and certified by the City Survey Superintendents (CSS). Neither the permission of Collectors nor proof of payments of any premium by the original lessees for purchasing the Government land was available in the records.
- In 578 cases of four Collectorates, lease rent for the period after 2 February 2010 was recovered at pre revised annual rent of ₹ 150 instead of ₹ 300 resulting in short levy of lease rent of ₹ 68.96 lakh. In other six Collectorates, interest and services charges of ₹ 2.88 crore were levied in 235 cases.

In eight cases, the premium price was either not recovered or was recovered short resulting in non/short realisation of Government revenue of ₹ 3.37 crore in 5 offices.

In 12 cases, conversion tax was either not recovered or was recovered short resulting in non/short realisation of Government revenue of ₹ 14.84 lakh.

Service charge was not recovered in six cases and recovered less in two cases resulting in non/short levy of service charge of ₹ 17.43 lakh in three offices.

CHAPTER-III
LAND REVENUE

3.1 Results of audit

Test check of records in the offices of the Collectors and *Mamlatdars* (LR) in the State during the year 2013-14 revealed underassessment of tax and other irregularities involving ₹ 403.40 crore in 82 cases, which fall under the following categories:

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1	Performance Audit on "Lease of Government Land"	1	206.29
2	Allotment of Government Land	1	30.97
3	Non/short levy of occupancy price/premium price	31	104.41
4	Non/short recovery of Non Agricultural Assessment (N.A.A.), non/short levy of N.A.A. at revised rate, non raising N.A.A. demand	5	2.74
5	Non/short recovery of conversion tax	9	30.16
6	Other irregularities	35	28.83
	Total	**82**	**403.40**

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 92.44 lakh in 26 cases.

A Performance Audit on **"**Lease of Government Land" involving ₹ 206.29 crore, and a few illustrative cases involving ₹ 36.37 crore are mentioned in the following paragraphs:

3.2 Performance Audit on "Lease of Government Land"

Highlights

- The system for maintaining the records was not secure, reliable and adequate. The Jamnagar Collectorate had not maintained data of the Government land granted on lease in the LeLIS software developed for the maintenance of data. In eight districts, the data as per LeLIS software did not match with the data as per the records.

(***Paragraph 3.2.7***)

- In certain instances, the grant of Government land on lease was not in accordance with the existing provisions of the concerned Act(s), Rules and Regulations, GRs, etc. and policies framed by the Government from time to time, as noticed in the following cases:

  - In case of Solaris ChemTech Ltd., the Government land was granted for installation of plant and machinery on recovery of one-time occupancy price, while in other two similar cases, it was granted on lease at the rate of ₹ 150 per hectare per annum applicable to salt and bromine, though in these cases, the land was leased for construction/ installation of plant and machinery. The different treatment given to these two companies resulted in non-levy of occupancy price of ₹ 130.11 crore had the land been given on one time occupancy price.

(***Paragraph 3.2.8.3)***

  - In 15 cases, the Government land admeasuring 17.57 lakh sq. mtr. valued at ₹ 69.71 crore granted was in excess of the eligible limit and in other two cases occupancy price of ₹ 2.03 crore though leviable was not levied.

(***Paragraph 3.2.8.4***)

  - Though the area of grazing land was not sufficient with reference to number of cattle of the area, even then grazing land was irregularly granted on lease for industrial purpose.

(*Paragraph 3.2.8.5*)

- The monitoring mechanism was deficient so far as it relates to ensuring adherence to the terms and conditions of lease of the land/renewal of lease, as noticed in the following cases:

  - Out of total 6,587 cases of lease, 4,682 leases had expired between 1933 and 2012 but no action was taken for their renewal or eviction of lessee from the leased land. In five cases, rent at revised rates was also recoverable.

(***Paragraphs 3.2.9.1***)

  - The Government land admeasuring 1,508.69 hectare granted by the Collector, Ahmedabad remained unused and continued to be in the occupation of the Company even after lapse of 10 years from the date of allotment for which lease rent of ₹ 22.63 lakh (2000-10) was not recovered from the Company.

(***Paragraph 3.2.10.2***)

- In two Collectorate offices, in seven cases, land admeasuring 1,15,402.12 sq. mtr. granted on lease was lying un-utilised for period ranging between 3 and 57 years, but the same had not been resumed by the Government despite breach of conditions of allotment of land.

(***Paragraph 3.2.10.2***)

- In five Collectorates, in 542 cases, Government land admeasuring 72,206.56 sq. mtr. given on lease was transferred in the name of purchaser based on the sale deeds executed and certified by the City Survey Superintendents (CSS). Neither the permission of Collectors nor proof of payments of any premium by the original lessees for purchasing the Government land was available in the records.

(*Paragraph 3.2.10.3*)

- In 578 cases of four Collectorates, lease rent for the period after 2 February 2010 was recovered at pre revised annual rent of ₹ 150 instead of ₹ 300 resulting in short levy of lease rent of ₹ 68.96 lakh. In other six Collectorates, interest and services charges of ₹ 2.88 crore were levied in 235 cases.

(***Paragraph 3.2.11.3*)**

3.2.1 Introduction

The leases of the Government land granted for various purposes such as agricultural, residential, educational, production of salt/bromine, wind farm, industrial, commercial, etc. are governed by the Gujarat Land Revenue Code, 1879 (Code) and Gujarat Land Revenue Rules, 1972 (Rules).

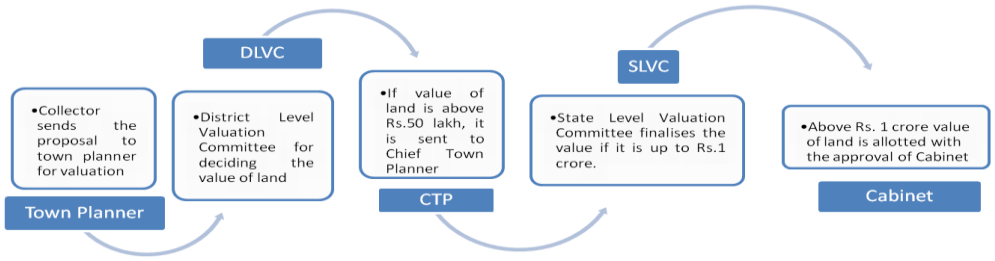
The grant of Government land on lease is made by the Revenue Department (the Department) on an application before the District Collector. On receipt of application from individual/trust/institution/co-operative society etc., for grant of land on lease for any purpose, the Collector initially ascertains the availability of land from the *Mamlatdar*. If the land is available, he prepares a proposal with relevant documents for obtaining approval of the Department. Gujarat Government Rules of Business, 1990 stipulate that where the proposals involving by way of lease of Government property exceeds ₹ 50 lakh upto December 2010 and ₹ one crore thereafter in value or yields an annual income of ₹ 10 lakh or more, these shall be placed before the Cabinet for approval.

After approval of the Cabinet the Department issues a Resolution. Based on this Resolution, the Collector issues a detailed order to the lessee spelling forth the terms and conditions of lease which is followed by execution of lease agreement.

The Code and Rules empower the Collector and other Revenue Authorities (RA) to deal with the grant of Government land on leasehold rights at the rates prescribed by the Government from time to time. Rates of lease rent granted for non- agricultural purpose and the authority under which these have been prescribed by Government from time to time are depicted in **Annexure.**

Government Resolution (January 1998) stipulates the procedure for fixation of market value of Government land for which two committees were constituted (a) District Land Valuation Committee (DLVC) at district level, wherein Collector is the chairman and town planner is the member, and (b) State Land Valuation Committee (SLVC) at the State level, where Principal Secretary, Revenue Department is the chairman and Chief Town Planner (CTP) is the member. In case the value of land as determined by the DLVC exceeds ₹ 50 lakh, the Revenue Department refers the case to SLVC for finalisation of value of the land.

After finalisation of market value of the land by the SLVC, the case is placed before the Cabinet for approval. The monetary limit of ₹ 50 lakh for Cabinet approval was increased to ₹ one crore in 2010. The assessment of the value of the land is made on the basis of reports (called valuation reports) prepared by the concerned Town Planner at district level and the Chief Town Planner (CTP) at State level. The hierarchy of valuation system is as depicted as follows:



3.2.2 Organisational set-up

The administration of Land Revenue Department vests with the Additional Chief Secretary (Revenue). For the purpose of administration, the State is divided into 33 districts. Each district is further divided into *talukas* and villages.

The District Collectors are overall in charge and responsible for the administration of their respective districts. The *Mamlatdars* and Executive Magistrates are in charge of the administration of their respective *talukas* and exercise supervision and control on *talatis* who are entrusted with the work of collection of land revenue and other receipts including recovery of dues treated as arrears of land revenue. In addition, the Revenue Department has delegated powers to the *Panchayat* Officers *viz.* District Development Officers and *Taluka* Development Officers for recovery of dues treated as arrears of land revenue to facilitate the revenue administration.

3.2.3 Audit Objectives

The Performance Audit was conducted with a view to ascertain whether:

- the system for maintaining the records was secure, reliable and adequate; the grant of Government land on lease was in accordance with the existing provisions of the concerned Act(s), Rules and Regulations, GRs etc. and policies framed by the Government from time to time;

- there existed a proper monitoring mechanism to ensure that the process of allotment was transparent and that the suitable terms and conditions of lease of the land/renewal of lease exist and were being followed uniformly;

- action was taken for resumption of non-utilised land allotted on lease and cases of breach of conditions of lease agreements/renewal of leases were dealt with as per the provisions of the GLR code; and

- adequate system and procedures were in place in the Department to ensure correctness of assessment and timely collection of lease rent and renewal of expired leases.

3.2.4 Audit Criteria

The audit criteria were based on the following Laws and the Rules made there under to govern the grant of Government land on lease:

- Gujarat Land Revenue Code, 1879;
- Gujarat Land Revenue Rules, 1972;
- Gujarat Government Rules of Business, 1990; and
- The Notifications/Resolutions/Circulars/Orders issued by the Government/ Department from time to time.

3.2.5 Scope of Audit, Methodology and reasons for selection of the topic

We conducted the Performance Audit (PA) of the records of Government land granted on lease, covering cases of lease finalised by the Revenue Department for the period from 2008-09 to 2012-13 and by the eight[1] out of 33 District Collectorates upto 2012-13. Consolidated data for the number of lease cases finalised by the district Collectors was not furnished by the Department stating that it was not readily available with them. As such, the districts were selected on the basis of their geographical location. One district was selected from each of the East, West, North, South and Central regions. In addition Rajkot and Jamnagar falling in Saurashtra region and Navsari being the district where the Lease Land Information System (LeLIS) data was first initiated were selected. The PA was conducted from October 2013 to June 2014.

[1] Ahmedabad, Jamnagar, Kutch, Navsari, Palanpur, Rajkot, Surat and Vadodara

In the eight Districts, we test checked the records of 32 *Mamlatdar*s and 16 City Survey Superintendent's (CSS) offices and 96 *Talatis*. The selection of these *Mamlatdar*s and the *Talati*s are based on the number of leases, types of lease and amount of rent involved. Number of leases[2] and category wise list of Government land granted on lease during the period 1 January 2008 to 31 December 2013 of selected units as per the information furnished by the Department is given below:

Category wise permission granted for lease of Government land (Area in sq. mtr.)												
Year	**Total cases**	**Area**	**Education**		**Commercial (ST bus stand)**		**Industrial**		**Salt & Bromine**		**Agricultural (Tree plantation)**	
			No.	**Area**	**No.**	**Area**	**No.**	**Area**	**No.**	**Area**	**No.**	**Area**
2008	72	960325	68	448902	3	11423	0	0	0	0	1	500000
2009	35	64502978	27	100448	0	0	1	40470	7	64362060	0	0
2010	69	73007972	66	223712	1	3035	1	36400	1	72744825	0	0
2011	41	838730	40	836230	1	2500	0	0	0	0	0	0
2012	17	174814	17	174814	0	0	0	0	0	0	0	0
2013	4	24886	4	24886	0	0	0	0	0	0	0	0
Total	**238**	**139509705**	**222**	**1808992**	**5**	**16958**	**2**	**76870**	**8**	**137106885**	**1**	**500000**

We had noticed during the course of audit that in a large number of cases, the lease tenure of Government land had expired which was neither renewed nor resumed to Government. In a large number of cases, lease rent was not recovered. Therefore, we decided to conduct a Performance Audit on this subject.

3.2.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation extended by the Department in completing the audit. We had an "Entry Conference" with the Principal Secretary, Revenue Department on 10 October 2013 to appraise the Department about the objectives, scope, criteria and methodology of audit. The Performance Audit report was sent to the Government in September 2014 for their response. The report was discussed with the Department in the Exit Conference held on 3 November 2014. The replies received during Exit Conference and at other point of time have been appropriately commented in the relevant paragraph.

[2] Out of 238 cases, we have checked 235 cases.

Audit Findings

3.2.7 Non/Incorrect maintenance of lease records

Based on Resolution issued by the Department, Collector issues a detailed order to the lessee spelling forth the terms and conditions of lease with a copy to the *Mamlatdars* and *Talatis*. Based on the orders of the Collector, the *Talatis* enters the details of lease in Village Form (VF) -"2"[3].

The Department developed a software called LeLIS in which these details are required to be entered for grant of lease by the Collectors. Thereafter data is entered in the LeLIS software maintained at the *Mamlatdar* level. Comparisons of LeLIS data obtained from seven Collectorates[4] with individual lease records, VF "7/12" [5] and VF "2" maintained at the *Talati* level and orders of the Collector revealed the following deficiencies:

- In 20 cases in five[6] Collectorates, area of land given on lease as per LeLIS data did not tally with individual records. A few instances are given as follows:

Sl. No.	Name of Collectorate	Name of lessee	Area as per VF 2. (in sq.mtr.)	Area as per LeLIS data. (in sq.mtr.)	Variation
1	Kutch	Laxman Salt	40,469	8,09,400	7,68,931 shown excess
2	Kutch	Saguna Transport	81,38,316	13,15,275	68,23,041 shown less
3	Vadodara	Thuvavi Gram Kelvani Mandal	1,922.32	7,730	5,807.68 shown excess
4	Palanpur	Malan Yuvak Pragati Mandal	4,047	14,047	10,000 shown excess
5	Palanpur	Virpur Primary School	1,619	2,671	1,052 shown excess

- As per the order of Collector, in 12 cases of two[7] Collectorates, the land was allotted permanently but it was shown as land granted on lease (Area as per LeLIS data 2,22,494 sq. mtr.).

[3] This form contains details like name of lessee, description of property granted on lease, period of lease, lease rent, amount of rent and Collector's order number and date.
[4] Ahmedabad, Kutch, Navsari, Palanpur, Rajkot, Surat and Vadodara
[5] The Form contains survey number wise ownership/rights of persons.
[6] Kutch, Palanpur, Rajkot, Surat and Vadodara
[7] Rajkot and Surat

- In the 124 lease cases of Collectorate Kutch, Rajkot and Surat involving land of 72,14,983 sq.mtr. were not entered in LeLIS data.

Sl. No.	Name of Collectorate	Purpose of lease	Number of lease	Area in sq.mtr.
1	Kutch	Salt production	122	65,32,789
2	Rajkot	Agricultural	1	8,094
3	Surat	Commercial	1	6,74,100

- In Collectorate, Palanpur the data relating to lease case was entered multiple times. In one case, the lease granted to a person was entered four times, in two cases it was entered thrice and while in another two cases twice.

- In three cases of Surat Collectorate, though land was resumed to Government, LeLIS database was not updated and the land was shown under lease. In another four cases the LeLIS showed that land was granted on lease, but *Talati's* report revealed that no such land was granted on lease.

- In Navsari and Surat Collectorates, in 959 cases the land was owned by private persons as per VF-"2" records, but it was shown as Government land granted on lease in LeLIS database.

- LeLIS software provides for the information such as purpose of lease, period and date of expiry. However, in CSS, Navsari, in 343 cases, these data were not entered and were left blank.

- The Collectorate, Jamnagar had maintained the data in the excel sheet instead of in LeLIS software as a result of which the very purpose of the system was defeated.

The above facts indicated that the data was either not entered correctly or not updated periodically indicating the deficiency in operation and monitoring of the system.

During the Exit Conference, the Department stated that the concerned Collectors will be instructed to carry out the necessary corrections.

3.2.7.1 Incorrect Mutation Entries

The details of land are maintained in VF-"7/12" which consists of two parts. Part I depicts person who owns the land while Part-II depicts the person to whom land has been granted on lease.

In order to amend the Record of Right and Mutation entries, the concerned *Talati*/Circle Officer is required to put up the mutation case with evidence to the Deputy *Mamlatdar* for authorisation who in turn refers the same to

Mamlatdar for final certification, which is done only after verification of documents and giving notice to the party concerned.

We observed in five Collectorates[8] that in 39 cases, land admeasuring 33,52,149 sq. mtr. granted on lease was entered in the first part (shows the ownership details) instead of second part (shows other rights or lease details) of VF- "7'' indicating incorrect mutation entry. Thus, the Government land leased was incorrectly shown as owned by the private persons. Out of these 39 cases, few illustrative cases are discussed below:

Sl.No.	Name of lessee	Description of property	Area in sq.mtr.	Purpose
1	*Gosvardhan and Gopalan Trust*	S.No.120/P Village Bakrol, Taluka Waghodia	25,36,153	Cattle breeding
A lease agreement was executed between the trust and Governor in 1958 for a term of 999 years. The Circle Officer in August 2007 incorrectly mentioned *Gosvardhan and Gopalan Trust* in the Ist part of VF-"7/12" (i.e. as owner of the land) instead of IInd part. Meanwhile, Gujarat State Petronet Ltd. (GSPL) occupied 9,900 sq. mtr. out of the above mentioned land for laying pipeline. Had the entry been made correctly, the Government could have claimed the occupancy price of ₹ 14.84 lakh (10 *per cent* of market value of land as per *jantri* rate).				
2	Hadod Kelavani Mandal High School	S.No 494/P Village Hadod, Taluka Karjan Vadodara	5,284	Educational
As per Collector's order (October 2004) the area of land granted on lease was 5,284 sq mtr. against which mutation entry in VF "7/12" was made 7,284 sq. mtr., thereby showing excess of 2,000 sq. mtr.				
3	Shreeji Kelavani Mandal	Block No.35 (S.No.219) Village Koliyad Taluka Karjan	5,970	Educational
The Collector, Vadodara granted 5,970 sq. mtr. land to the Association for educational purpose. However, the mutation entry in VF "7/12" shows 10,016 sq. mtr. in the name of the Association, thereby showing excess of 4,046 sq. mtr.				

During the Exit Conference, the Department stated that the concerned Collectors would be instructed to carry out the necessary rectifications.

The software called "*E-dhara*" developed by NIC was used in the computerisation of land records (Government as well as private lands) in the Department since 2005. Land records namely Village Forms "6" (i.e. Record of rights) "7/12" (i.e. Mutation entries) and "8A" (land account of land owners) were computerised. Further, in VF "7/12' which consists of two parts, wherein in the first part ownership details are shown and second part shows other rights details wherein the details of lease are entered. The information available in Part II of VF-7/12 of "*E-dhara*" was not linked with the Government land granted on lease available in LeLIS.

[8] Navsari, Palanpur, Rajkot, Surat and Vadodara

Linking of the information available in part II of the of VF-"7/12" maintained in *E -dhara* with LeLIS data would minimise the chances of error(s) in LeLIS.

3.2.8 Government Resolution not adhered to

3.2.8.1 Non-resumption of leased land

Archean Chemical Industries Pvt. Ltd. (the Company) signed an MOU with the Government of Gujarat for setting up a green fertiliser project to produce 3,00,000 metric tons (MT) of fertilisers annually with a capital investment of ₹ 1,200 crore.

The Collector, Kutch sent a proposal (July 2006) for granting Government land admeasuring 40,000 hectare on lease to the Company for production of salt and salt based chemicals. Government issued (December 2007) a Resolution for grant of Government land on lease admeasuring 24,021.78 hectare to the Company for a period of 10 years at an annual rent of ₹ 150 per hectare. The Resolution stipulated that the Company should produce annually 50,000 MT of Potassium Sulphate, 20,000 MT of Magnesium Oxide, 10,000 MT of Salt 2,500 MT of Green Bromine and 1,500 MT of Gypsum within 36 months from the date of handing over possession. The Collector, Kutch issued (February 2008) a detailed order and executed (July 2008) a lease agreement with the lessee. Further, the lease agreement stipulated that in case of breach of any conditions of the lease, the land would be resumed by the Department without payment of any compensation.

We observed that the lessee did not commence production for 54 months from the date of lease agreement/handing over possession (July 2008 to January 2013) and commenced the production of salt only from February 2013. No action was taken against the lessee for resumption of land in accordance with conditions of the Resolution for the non-commencement of production within the stipulated 36 months from the date of taking over the possession of land by the Company.

3.2.8.2 Non-invitation of competitive bid

Government Resolution (May 2006) stipulated that when there is a multiple demand for same piece of land, Government should call for the competitive bid after deciding the market price and grant to the applicant who quotes the highest price.

We noticed that the Government sanctioned (October 1993) 10,000 *acres* land in Kutch, on lease for 20 years to *Agrocel Industries Ltd.* for production of bromine. The lessee requested (March 2003 and October 2005) for additional land admeasuring 18,000 acres for expansion of the project. The Collector, Kutch forwarded the proposal (April 2007) to the Department, stating that three other Companies viz. *Archean Chemical Industries Pvt. Ltd.* (for 1,00,000 *acres*), *Solaris ChemTech Ltd.* (for 30,000 *acre*s) and *ABC & Sons* (for 20,000 *acres*) had also requested for grant of Government land in the same vicinity, which were overlapping with one another as per the report of District

Inspector of Land Records (DILR). A meeting was held between Industries Commissioner and the Companies wherein a mutual understanding was reached at and *Agrocel Industries Ltd.* submitted a revised requisition for 17,975 *acres* of land.

Thus, the decision of the Department to allot the land to by mutual understanding among the applicants and without inviting competitive bid was contradictory to the Government Resolution of May 2006.

3.2.8.3 In the case of *Solaris ChemTech Ltd.,* Government land was granted (May 2009) for installation of plant and machinery to process bromine for an occupancy price of ₹ 62.73 lakh and not on lease. This allotment was made based on the opinion given by the Finance Department (FD) that if the land is vacant, it can be leased out at the rate of ₹ 150 per hectare per annum for production of salt and salt related chemicals and if any construction was to be made on the land it could be granted on recovery of occupancy price or at an annual rent of 15 *per cent* of market value. The Department decided to charge occupancy price for this land.

However, we noticed that there was a different treatment given to cases of *Archean Chemical Industries Pvt. Ltd. and Agrocel Industries Ltd.* In both the cases, neither the occupancy price was recovered nor annual lease rent at the rate of 15 *per cent* of market value levied as the cases are discussed as under

The Collector, Kutch forwarded (May 2009) a proposal of *Archean Chemical Industries Pvt. Ltd.* for grant of land admeasuring 15,978.22 hectare to Revenue Department. Before taking decision, the Revenue Department called for details of utilisation of the land granted in first phase by the Company. The Collector stated (February 2010) that as per the physical verification report of *Mamlatdar*, Kutch, land admeasuring 24,021 hectare was granted to the Company in the first phase of which 500 hectare of land had been kept in reserve by the Company for installation of plant and machinery.

Further, in another case of *Agrocel Industries Ltd* which requested (March 2003 and October 2005) for additional land admeasuring 18,000 *acres* for expansion of the project, the Department called for details of utilisation of land (10,000 *acres*) granted in 1993 in first phase to the Company. In the verification report of *Mamlatdar*, Kutch (April 2003) and letter of Deputy Collector, Kutch (May 2003) to the Collector, Kutch it was stated that in respect of 10,000 *acres* land granted for production of bromine in 1993, 8,000 *acres* was being utilised for production of bromine and 2,000 *acres* for factory, administrative office, canteen, quarters, guest house etc. This fact was mentioned by the Collector in his report (December 2007) to the Department. The Department vide Resolution of 30 January 2010 permitted the Collector, Kutch to grant additional land.

Had the Department levied occupancy price on the portion of land earmarked/ utilised for construction as recommended by the FD in the case of Solaris

ChemTech Ltd., the Department could have claimed ₹ 130.11 crore[9] toward occupancy price in the above two cases.

3.2.8.4 Non-levy of occupancy price for the land granted in excess of the eligible limit

Under the amended Rule 32-A of the GLR Rules, 1972, land may be leased at a nominal rent of ₹ one for playground or other recreational purposes to educational institution recognised by Government or local bodies or for gymnasiums for a term not exceeding 15 years by the Collector when the area and the revenue free value of land do not exceed five *acres* (20,235 sq. mtr.) and ₹ 25,000 in case. When the lease is in favour of a Panchayat, Municipality or any other local authority and 2 ½ *acres* (10,117 sq. mtr.) and ₹ 5,000 when the lease is in favour of any other public body or institution.

We observed in the Revenue Department and the Collector, Ahmedabad that in 13 cases, the Government land was granted during the period 2006-2008 for the purpose of playground on lease to trust and educational institutions at a token rent of ₹ one. However, the land admeasuring 16,49,989 sq. mtr. valued at ₹ 61.59 crore[10] granted was in excess of the eligible limit of 10,117 sq. mtr. contrary to the provisions of Rule 32-A of the GLR Rule.

The Government *vide* GR dated 29 September 2008 resolved to allot the land in rural area upto 8,094 sq. mtr. at a token rent of ₹ one for 30 years and in excess of this at the rate of 25 *per cent* of the market value and in urban area upto 4,047 sq. mtr. at token rent of ₹ one for 30 years and in excess of this at the rate of 50 *per cent* of the market value.

Further, in two other cases finalised after 28 September 2008, lease of land was granted admeasuring 1,22,880 sq.mtr.[11] at a token rent of ₹ one. Thus land admeasuring 1,06,692 sq. mtr. valued at ₹ 8.12 crore were granted in excess of the area as mentioned in the Resolution resulting in non-levy of occupancy price of ₹ 2.03 crore.

During the Exit Conference the Department stated that instructions would be issued to the concerned Collectors to recover the amount.

3.2.8.5 Grant of '*Gauchar*' (grazing) land for industrial purpose

The Government Circular of 30 December 1988 stipulates that for every 100 cattle in a village, there must be 40 *acres* (16 hectare) of *gauchar* land. In case where the *gauchar* land is less, it should not be granted other than for public utility purpose. GR of 27 January 1999 stipulates that *gauchar* land

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[9] For *Archean Chemical Industries Pvt. Ltd. Jantri* rate ₹ 155 per sq. mtr. X area 50,00,000 sq.mtr. i.e. ₹ 77,50,00,000 and for *Agrocel Industries Ltd. jantri* rate ₹ 65 per sq. mtr. X area 80,94,000 sq. mtr. i.e. ₹ 52,61,10,000 aggregating to ₹ 130,11,10,000

[10] Area of the land admissible under Rule to be leased = 13 x 10117 = 1.32 lakh sq. mtr.
Area of that allocated by the Government = 17.82 lakh sq. mtr.
Excess land allocated = 16.50 lakh sq. mtr. valued at ₹ 61.59 crore

[11] Allocated – admissible (122880-16188)

required for industrial use have to pay additional 30 *per cent* market price, which was kept in abeyance by Government (March 1999) till further orders. Government in November 2004 revived Resolution of 27 January 1999 and stated that this Resolution is applicable only in cases where *gauchar* land is available. Hon'ble Supreme Court's judgment of 28 January 2011 prohibits regularisation of cases of encroachment of *gauchar* land other than those required for public utility.

Despite prohibition by the Honourable Supreme Court we noticed that in two cases under Collectorate, Rajkot *gauchar* land was granted on lease as follows:

Sl. No.	Name of the lessee	Description of property	Area in sq. mtr.	Purpose
1	*Theolia Wind Power Pvt.Ltd.*	Village- Sivrajpur, Taluka-Jasdan Dist-Rajkot	1,00,000	Wind farm (industrial)
As per the report of the Panchayats available in the file, though the *gauchar* land was less with reference to cattle and even after the judgment of the Hon'ble Supreme Court (January 2011), possession of the *gauchar* land was handed over (April 2011).				
2	*Enercon India Ltd.*	Village-Parebala, Taluka-Jasdan Dist-Rajkot	15,000	Wind farm (industrial)
As per the report of the Panchayats available in the file, though the *gauchar* land was less with reference to number of cattle, it was granted on lease.				

3.2.9 Lack of transparency in granting of land on lease

The leases of Government land were granted on the application filed by the lessees. We observed that the Revenue Department did not issue any orders/instructions for inviting applications. Further, the status of the applications and proposals received from the District Collectors for grant of land on lease during the period covered under audit was not available with the Revenue Department. The Department had not maintained the record prescribed under rules to establish transparency in granting of land on lease.

These are mentioned in the following paragraph:

Authority	Name and purpose of the register	Nature of Audit observation
Revenue Department Resolution of 10 October 2000	**Priority register**:- Each District Collector was required to maintain a priority register showing the date wise application received for grant of Government land on lease for production of salt. Priority of the applicant should be decided in form of priority as (1) Salt labourers (2) Scheduled Caste (3) Scheduled Tribe (4) Other Backward Class and (5) Other categories and on first come first out basis.	Collectorate Jamnagar started maintaining the priority register only after 17 January 2010. In Collectorates Ahmedabad, Kutch and Surat no priority register was maintained.

Revenue Department's Circular of 20 December 2003	**Declaration register:-** Circular prescribed that each lessee shall furnish on 1 August of every year a declaration form containing the details of lease i.e. name of lessee, area, description of property, purpose, detail of lease rent paid/outstanding, fulfillment of conditions of lease etc. A declaration register in every district was required to be maintained by each Collector. It was also instructed that the Collector should serve a notice to every lessee to submit the declaration form within 30 days, and on receipt of the same, it should be scrutinised, site inspection carried out and reported to the Department by the end of December.	We observed in eight Collectorates that declaration register was not maintained. The report of site inspection carried out and intimated to the Government was also not produced to us. Though the Department provided for monitoring system we observed that Collectorates did not implement the instructions issued in this behalf.
Condition attached in GRs issued for each case by the Department	After issuance of GRs by the Revenue Department, concerned Collectors should issue detailed order within 30 days and send a copy to Revenue Department.	We observed that no detailed order issued by the concerned Collector was available in the individual lease file maintained by the Revenue Department.
The above facts indicate that the Department was not following its own instructions framed to bring out the transparency in the system.		

During the Exit Conference, the Department stated that necessary instructions were being issued to the Collectors to maintain the registers.

3.2.9.1 Non-renewal of expired lease

Rule 39 of GLR Rules, 1979 provided that before six months of the expiry of the lease period where the lessee does not apply for its renewal, the Collector would take decision regarding renewal of the lease or eviction from the leased land under intimation to the lessee. Further, GR of 5 April 2003 stipulates that rent is to be revised at the end of every five years.

We observed in eight Collectorates[12] that out of 6,587 leases selected for audit scrutiny, 4,682 leases of land admeasuring 13,84,41,200 sq. mtr. had expired between 1933 and 2012 as per the LeLIS data. However, the Collectors did not initiate any action to revenue and re-fix the rent or get the leases vacant on these cases before or after the expiry of lease.

Collector office wise break-up of expired leases is as follows:

[12] Ahmedabad, Jamnagar, Kutch, Navsari, Palanpur, Rajkot, Surat and Vadodara

Collectorate	Purpose of use						
	Residential	Commercial	Industrial	Educational	Agriculture	Others	Total
Ahmedabad	931	59	-	6	-	6	1,002
Vadodara	450	-	-	3	19	-	472
Surat	682	-	6	4	43	42	777
Rajkot	580	-	1	-	20	444	1,045
Palanpur	42	2	2	65	3	14	128
Kutch	-	-	-	-	-	391	391
Jamnagar	-	-	4	-	859	-	863
Navsari	-	-	-	-	4	-	4
Total	**2,685**	**61**	**13**	**78**	**948**	**897**	**4,682**

The year wise break-up showing the period of expired lease and its numbers are as below:

Period of expiry (range) in years	Number of expired lease
0-10	1,323
10-30	2,018
30 -50	939
Above 50	402
Total	**4,682**

A few illustrative cases of expired lease where the rent was not revised are given as follows:

Sl. No.	Name of lessee	Date of grant of the land on lease	Purpose	Area in sq. mtr.
1	*Ahmedabad Electricity Corporation* (AEC)	July 1983 and February 1985	Ash dumping	2,05,218 sq. mtr. and 1,24,283 sq. mtr.
We noticed in Collectorate, Ahmedabad that AEC was granted Government land at an annual rent of ₹ 2.83 lakh and ₹ 1.72 lakh, which expired in July 1990 and February 1992, respectively. The *Talati*, Motera intimated (August 2011) the *Mamlatdar* about the continued occupation of the land by AEC even after expiry of the lease period but no effort were found on record for resumption of land. The land remained in occupation by AEC for which lease rent of ₹ 78.37 lakh was payable upto 2008. Thereafter the land was occupied by *Torrent Power Co. Ltd.* (TPL) which requested (October 2011) for allotment of land either on permanent basis or on long term lease of 99 years. The case has not yet been finalised by the Government.				
2	Caltax India Ltd.	November 1976	Petrol Pump	911.15
3	Hindustan Petroleum Corp.	January 1965	Petrol Pump	575.37
The Collector, Kutch granted lease in two cases for land admeasuring 1,486.52 sq. mtr. for the purpose of petrol pump. The lease period expired in July 1972 and July 1977, but the rent was not revised till date. We noticed that neither rent was recovered at old rates nor any action taken to revise rent.				

4	Tata Chemical Ltd.	November 1983	Brine pipe line	1,79,862
We observed in *Mamlatdar*, Dwarka that land was granted on lease (September 1973) for 10 years for laying of brine pipe line for salt production. The lease was renewed for a further period of 10 years in 1983. While seeking further renewals for the subsequent periods, the Collector, Jamnagar (July 2007) ordered for re-fixation of the value of rent for every five years. The DLVC revised the rent (May 2010) which amounted to ₹ 2.35 crore. The Prant Officer, Dwarka in his letter to the Collector, Khambhalia stated (December 2013) that the Company had intimated (December 2013) that the correct amount of rent along with interest payable upto 2011-12 works out to ₹ 3.46 crore and had requested them to pass the orders accordingly, so that they could make the payments and renew the lease. However, no action was taken to pass the order for payment of rent upto 2011-12 and fix the market value as on 12 September 2013.				
5	Indian Oil Corp. Ltd	November 1966	Petrol pump	891.67
GR of 5 April 2003 stipulates that rent is to be revised at the end of every five years and to be recovered in advance. We observed in Collectorate, Jamnagar that the Government land admeasuring 891.67 sq. mtr. (CS No.4767) was granted on lease to *Burmah Shell* now called *Indian Oil Corporation Ltd*. for petrol pump at annual rent of ₹ 360 in 1945. The annual rent was revised to ₹ 750 for the period from 1 August 1986. However, the subsequent periodical revisions of the lease rent which were to be made in 1 August 1992, 1 August 1997 and 1 August 2002 were not made.				

The failure of the Department to renew the leases in time resulted in occupation even after expiry of lease period. Further, there are revenue implications as the rents have neither been revised nor collected.

During the Exit Conference, the Department stated that necessary instructions were issued to the Collectors to fix the rent.

We recommend that the Government may consider developing State level database of the (i) Government land granted on lease (ii) Status of applications received, approved, rejected and pending (iii) Types and purposes of lease (iv) Number of leases continuing and the periodicity of leases with dates of expiry and (v) the consideration received from the lessee. This would help the system in becoming more comprehensive and transparent.

We further recommend that urgent action be taken to either take back the possession of lease expired lands or fix the lease rent and recover the same including arrears.

3.2.10 Non-utilisation of lease land and breach of condition of lease

3.2.10.1 Non-utilisation/utilisation of leased land other than for the intended purpose

Government land is granted on lease subject to certain terms and conditions as may be put forth in the order of the Collector. The term and conditions include that the grantee shall start construction within six months and complete it before two years from the date of order. Further, the grantee shall use the land for the purpose for which it was granted. In case of breach of the said terms

and conditions by the grantee, the Collector is empowered to levy penalty or shall take back the possession of the land so granted.

Government Resolution (December 2003) stipulates that the lessee has to furnish a declaration showing the use of the land and details regarding fulfilment of conditions of lease by him on 1 August every year to the Collector who will scrutinise the declaration by conducting site inspection of the land and sent a report to the Government regarding the action taken in this regard.

It was noticed that the leased land was utilised other than for the purpose for which it was granted as detailed below:

Sl. No.	Name of lessee	Description of property	Period of lease and lease rent	Purpose for which it was granted	Purpose for which used
1	*Swaminarayan Gurukul Sarvajanik Hitavardhak Trust*	Block No-70, 82 & 83 Vill-Khodiyar Dist-Ahmedabad admeasuring 32,477 sq.mtr.	30 years with effect from March 1999 at an annual token rent of ₹ one	Education, Ayurvedic Centre and Hospital	Meditation centre
As per the *Talati's* report (October 2013) it was noticed that land of block No-82 admeasuring 7,183 sq. mtr. valuing ₹ 2.33 crore (*as per jantri rate*) granted for hospital was used by the lessee for meditation centre. No Education/Ayurvedic Center or Hospital was built on the said pieces of land.					
2	*Bhuj Talkies*	TP no-2, FP-736, CS no-2921, Ward-II, Dist-Bhuj admeasuring 180.53 sq.mtr.	10 years with effect from September 1972 at an annual rent of ₹ 510	Booking office and Lavatory	Residential and commercial centre
As per the *Talati's* report (March 2014) it was noticed that a tower viz *N.K. Towers* was constructed on the land valued ₹ 63.18 lakh (*as per jantri rate*) in which lower portion was used for commercial purpose and upper portion for residence. Further, the rent was not revised after every five years and recovery was also not made at pre-revised rate.					

3.2.10.2 Non-utilisation of land granted on lease

- The Collector, Ahmedabad granted (November 2000) Government land admeasuring 1,508.69 hectare to *Rameshwar Salt Works* (the Company) for a period of 10 years at an annual rent of ₹ 150 per hectare for production of salt. The terms and conditions of the sanction order stipulated that the lessee should start production after two years from the date of allotment and has to pay minimum correspondence royalty at the rate of 50 Mt per hectare from third year (season).

  As the Company did not start production within stipulated time, the Collector issued (September 2004) a show cause notice (SCN) for breach of condition of lease. The Company sought extension of time for starting the production. However, in November 2013, the Collector turned down

the request of the Company and granted the land to *Dholera Special Investment Regional Development Authority*.

Thus, the land granted remained unused and continued to be in the occupation of the Company even after lapse of 10 years from the date of allotment for which lease rent of ₹ 22.63 lakh (2000-10) was not recovered from the Company.

- We observed in Collectorate, Rajkot and in Jamnagar that in seven cases land admeasuring 1,15,402.12 sq. mtr. granted on lease was lying un-utilised for period ranging between 3 and 57 years, but the same had not been resumed by the Government for breach of conditions. The details are given below:

Sl. No.	Name of lessee	Collector's order dated	Purpose	Area in sq.mtr.	Currency of lease	Present status of land
1	Damodar Gordandas, Taluka Jetpur	August 1976	Agriculture	8,094	Expired	Vacant for 38 years
2	Kisan Bharati Van Vikas Trust, Taluka Jetpur	September 2001	Agriculture	30,000	Not expired	Vacant for 13 years
3	Sanskar Bharati Trust, Taluka Jetpur	September 2001	Tree Plantation	30,000	Not expired	Vacant for 13 years
4	Aviskar Universal Foundation Trust, Taluka Jetpur	April 2011	Education	1,246	Not expired	Vacant for 3 years
5	Kendriya Vidyalay Taluka Jetpur	December 2008	Education	36,110	Not expired	Vacant for 5 years
6	Bharatiya Seva Samaj Trust	February 1988	Education	8,194	Expired	Vacant for 25 years
7	Shri Meghaji M Gohel	May 1956	Commercial	1,758.12	Expired	Vacant for 57 years

This indicates that the instructions issued by the Government were not followed and the Department also did not monitor that the instructions issued were followed.

During the Exit Conference, the Department stated that instructions would be issued to the concerned Collectors to take necessary action in such cases.

3.2.10.3 Irregular authorisation allowed on the sale of leased Government land

Government Resolution (17 October 1947) stipulates that land granted on lease should not be sold or mortgaged without the written permission of

Collector. Further, the Government may permanently allot the land to the lessee if he held the land for a minimum 15 years on the payment of premium.

We observed in five City Survey Superintendent (CSS) offices, under five Collectorates[13] that in 542 cases, Government land admeasuring 72,206.56 sq. mtr. given on lease was transferred in the name of purchaser based on the sale deeds executed and certified by the City Survey Superintendents (CSS). Neither the permission of Collectors nor proof of payments of any premium by the original lessees for purchasing the Government land under old tenure before the sale of the land to their purchasers was available in the records.

The number of cases and the area involved in each Collectorate are as shown below:

Collector	Total cases checked	Audit observation found in					
		Total		Residential		Commercial	
		No of cases	Area (in sq. mtr.)	No of cases	Area (in sq. mtr.)	No of cases	Area (in sq. mtr.)
Ahmedabad	1,219	263	14,666.08	255	14,335.79	8	330.29
Vadodara	1,309	123	13,499.10	123	13,499.10	0	0
Surat	10	3	184.74	3	184.74	0	0
Rajkot	676	97	32,048.67	97	32,048.67	0	0
Navsari	1,151	56	1,1807.97	56	11,807.97	0	0
Total	**4,365**	**542**	**72,206.56**	**534**	**71,876.27**	**8**	**330.29**

During the Exit Conference, the Department stated that instructions would be issued to the concerned Collectors to take necessary action under rules.

We recommend that the Government may ascertain the stage(s) at which lapses have occurred and take prompt action for rectification to ensure that the Government land is not sold/ transferred.

3.2.10.4 Breach of condition and non-recovery of other charges

Government Resolution (June 2003) stipulates that after handing over possession of land if the construction is not completed within two years from the date of taking over the possession, then it can be extended for period of two years initially and subsequently for another two years by the Collector on the recovery of premium at the rate of 20 times of non-agricultural assessment (NAA) and 50 times of NAA respectively. After extension on two occasions, no further extension is permitted. Prior permission of the Collector is required before mortgaging the Government land to financial institution/nationalised bank for loan.

[13] Ahmedabad, Navsari, Rajkot, Surat and Vadodara

We observed in Collectorate, Ahmedabad that the Department (January 2007) granted Government land admeasuring 22,000 sq. mtr. on lease to Gujarat State Road Transport Corporation (GSRTC) at token rent of ₹ one for a period of 99 years for construction of bus stop. Accordingly, the Collector, Ahmedabad issued detailed order (March 2007) for allotment of the land with the following conditions:

1. 20 *per cent* of concession fee should be paid by GSRTC to the Government.

2. GSRTC would start construction on leased land within six months and complete it within two years from the date of taking over possession of land.

3. GSRTC shall not mortgage, gift, sale the land other than upper portion of commercial complex.

We observed that the GSRTC entered (December 2010) into a development agreement with *Sancube Infra Project Pvt. Ltd.* for development of the above Government land, who in turn had mortgaged the land with Bank of India and obtained loan of ₹ 71.32 crore, for which no prior permission of the Collector was available on the record. The Concession fees of ₹ 4.59 crore (20 *per cent* of total amount of ₹ 22.96 crore) was not recovered. No premium was charged by the Collector for extending completion of construction from two to seven years resulting in non-levy of premium of ₹ 15.40 lakh. Even after grant of extension of seven years, the construction was not completed (October 2013).

3.2.10.5 Lack of monitoring mechanism resulted in non detection of breach of condition

Government land is granted on lease subject to certain terms and conditions as may be put forth in the order of the Collector. The term and conditions include that the grantee shall not sub-lease or earn any profit out of the leased Government land.

Sl. No.	Name of lessee	Description of property	Type of lease	Period of lease	Purpose for which it was granted
1	Surat Municipal Corporation (SMC)	200 hectare at Village Khajod	Token rent of ₹ one	10 years (10/1987 to 09/1997)	Garbage disposal
As per the conditions of grant of lease, SMC would not construct any permanent structure on the leased land. Further, the lessee would not earn any profit out of the land and in case of any breach of condition; land would be resumed to Government without any compensation. On verification of lease records of SMC, we noticed that out of the leased land, SMC had sub-leased (November 2007) land admeasuring 25 hectare to *Hanjer Biotech Energies*, Surat for a period of 30 years and land admeasuring 3.3 hectare in October 2012 to *Rochem Separation Systems (I) Pvt. Ltd.* for 25 years by collecting an annual rent of ₹ one per sq. mtr. for setting up Municipal Solid Waste (MSW) processing plant,					

warehouse and infrastructure, stocking and treatment of waste facilities etc. The lease period expired in 1997 which was not renewed and the lessee not only sub-leased the land valuing ₹ 127.35 crore (calculated as per prevailing *jantri* rate at the rate of ₹ 4,500 per sq. mtr.) but also had earned a minimum royalty of ₹ 22.68 lakh from *Hanjer Biotech Energies* during October 2008 to December 2013.

However, the Department failed to detect the breach of condition in this case and no punitive action has been taken. The above facts also point out the lack of monitoring mechanism in the Department.

3.2.11 Assessment and collection of rent

3.2.11.1 Incorrect fixation of lease rent

i) The Collector, Surat fixed (December 1992) an annual rent at the rate of ₹ 4,063 (at concessional rate of 25 *per cent* of normal rent on 5 *per cent* market value of land amounting to ₹ 3.25 lakh) for ten years, in respect of land admeasuring 3,249.94 sq. mtr. granted on lease to Gymkhana Surat.

The rate of rent was revised from five *per cent* to 15 *per cent* of value of land from October 1982. However, the collector applied per-revised rates. This resulted in short levy of rent of ₹ 1.30 lakh for the period 1992-2008. Moreover, the lease expired on 31 July 2007 for which the lessee neither applied for renewal nor the Collector initiated any action. The land continues to be in the occupation of the lessee. The Collector also did not revise the market value after every five years. This resulted in non-levy of rent of ₹ 2.13 crore[14] (calculated at *jantri* rates ₹ 35,000 per sq. mtr.) for the period 2008-2013.

ii) Government Resolution of 26 April 1962 stipulates that in respect of land given on right to use annual rent at the rate of 2.5 *per cent* of the market value is to be levied.

We noticed that the Collector, Surat granted (April 1995) land admeasuring 87,840 sq. mtr. to *Reliance Industries Ltd*. for laying underground pipeline at an annual rent of ₹ 1,450 per sq.mtr. (0.15 *per cent* of the market value of land) instead of 2.5 *per cent* of the market value of land. Further, as per the condition of the order the rent was required to be revised after every seven year. However, we noticed that neither the rent was revised nor the rent at old rate was being recovered. The rent recoverable for the period 1995-2013 works out to ₹ 1.13 crore[15].

During the Exit Conference, the Department stated that instructions would be issued to the concerned Collectors to take necessary action.

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[14] *Jantri rate* ₹ 35,000 X 3,249.94 sq. mtr. x 15 *per cen*t x 25 *per cent* x 5 years = ₹ 2,13,27,730

[15] At old rate upto 2008 which is ₹ 3,14,028 and from 2008-13 at the rate of ₹ 1,000 as per *jantri rate* which is ₹ 1,09,80,000 aggregating to ₹ 1,12,94,028

3.2.11.2 Short levy of lease rent due to non-revision of market price

GR of 21 October 1982 stipulates that in respect of land granted on lease for non-agricultural purposes, rent is to be collected at the annual rate of *15 per cent* of market value of land. Further, GR of 5 April 2003 stipulates that rent is to be revised at the end of every five years and to be recovered in advance i.e. 1 August every year, otherwise, interest at the rate of 12 *per cent* is leviable after period of 90 days.

We observed in two Collectorates[16] that in three cases, the market value of the Government land admeasuring 6,82,932.80 sq. mtr. granted on lease was not revised as shown below:

Sl. No.	Name of lessee	Date of grant of the land on lease	Purpose	Area in sq.mtr.	Status of lease
1	Jay Fun Park Ltd.	April 1995	Amusement Park	6,74,100	Not expired
The Collector, Surat granted (April 1995) on lease to *Jay Fun Park Ltd.* Government (*gauchar*) land admeasuring 6,74,100 sq. mtr. of S.No. 116/1 paiki in village Dhanka, Taluka-Choriyasi, District Surat for a period of 30 years at an annual rent ₹ 6.07 lakh for commercial purpose (Amusement Park, Water Park etc.) subject to the condition that the rent would be revised at the end of seven years. The lessee requested (October 2002) to allot the leased land permanently because they were not able to take loan by mortgaging the land as the same was granted on lease. The *Panchrojkam* of *Talati*, Dhanka (January 2004) stated that the rent was to be revised after seven years, the rate of land for non-agriculture use in the vicinity was ₹ 225 per sq. mtr. and there was severe protest by the villagers against allotment of the land permanently. Further, the villagers contended that the area of *gauchar* land available in the village was very less compared to cattle population and there was protest even from the neighbouring villages that the *gauchar* land granted on lease to Company should be resumed to Government account. No action was taken by the Collector Surat to revise the rent or resume the land to the Government.					
2	Shri Ratilal A. Patel	January 1967	Saw mill	738.80	Not expired
The Collector, Surat granted (January 1967) on lease for 99 years Government land admeasuring 738.80 sq. mtr. of CSS-No 1037 (RS No-17/paiki) of Moje- Bhestan, Taluka - Chouraysi, Surat at an annual rent ₹ 240 to Shri *Ratilal Alokbhai Patel*. However, no action was taken by the Collector to revise the rent thereafter.					
3	Shri *Bhagwan* Faridabh Gulabbhai	June 2001	Processing plant	8094	Not expired
The Collector Palanpur granted (June 2001) Government land admeasuring 8,094 sq. mtr. to *Shri Bhagwan F Gulabbhai* for the purpose of processing plant for manufacture of perfumes for a period of 30 years subject to recovery of annual rent of ₹ 52,206. No revisions in rent were made thereafter.					

During the Exit Conference, the Department stated that instructions would be issued to the concerned Collectors to fix the market price.

[16] Palanpur and Surat

3.2.11.3 Short levy of lease rent due to non adoption of revised rent

The production of salt: Under the GLR Code and Rules made there under**,** the unoccupied land may be leased out for specific period for production of salt subject to payment of rent fixed by the Government from time to time. The annual lease rent per hectare was revised to ₹ 30 (22 July 1993 effective from 1 August 1993), ₹ 150 (10 October 2000) and ₹ 300 (2 February 2010) with increase of 10 *per cent* on it for every three years from the date of grant of land. Further, as per the GR of 6 June 2003, rent is to be recovered in advance and after 90 days, interest at the rate of 12 *per cent* is chargeable on belated payment of rent.

- In 578 cases of four Collectorates[17], lease rent for the period after 2 February 2010 was recovered at pre revised annual rent of ₹ 150 instead of ₹ 300 resulting in short levy of lease rent of ₹ 68.96 lakh.

- In five cases of two Collectorates[18], no interest was levied on belated payment of rent resulting in non-levy of interest amounting to ₹ 1.35 crore.

Aquaculture: The GR of 2 August 1994 stipulates that the annual rent in respect of land granted on lease for *brackish water aquaculture* would be recovered from individual investor (up to 5 hectare) at the rate of ₹ 100 per hectare and from bigger investors for bigger plots at the rate of ₹ 100 for initial three years and thereafter at the rate of ₹ 500 per hectare. The Government revised (January 2007) the annual rent for land up to 5 hectare from ₹ 100 to ₹ 250 per hectare for first three years and thereafter from ₹ 200 to ₹ 500 per hectare and in the case of land above 5 hectare from ₹ 100 to ₹ 1,000 per hectare for first three years and thereafter from ₹ 500 to ₹ 2,000 per hectare.

We observed that in 272 cases of two Collectorates[19], in respect of land granted for aquaculture, rent was not recovered at revised rate resulting in short levy of rent amounting to ₹ 45.43 lakh.

Processing fee not recovered

The GR of 10 October 2000 stipulates that applicants are required to deposit non-refundable processing fee at the rate of ₹ 50 per hectare along with their application for granting of Government land on lease for production of salt or renewal thereof. Further, as per clause 9(1) of the GR, every lessee shall also deposit an amount equal to minimum production of salt. In this regard, we observed that:

- In 242 cases of two Collectorates[20] and the Department, processing fee was not recovered resulting in non-levy of processing fee of ₹ 4.95 lakh.

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17 Jamnagar, Kutch, Rajkot and Surat
18 Jamnagar and Kutch
19 Navsari and Surat
20 Kutch and Rajkot

- In Collector Dwarka, 16,343.03 acre of land granted on lease for production of salt to Tata Chemicals Ltd. was renewed by the Collector (December 2006) without recovering security deposit of ₹ 26.46 lakh.

Service charge not recovered

The GR of 26 April 2011 stipulates that individual, Company, Boards, Corporations, Municipal Corporations and Department of Central Government are required to pay non refundable service charge at the rate of one per cent of value of land calculated as per prevailing *jantri* rate along with application while applying for allotment/grant of Government land.

We observed in 230 cases of four Collectorates[21] and the Department, applications were processed without recovering service charge of ₹ 1.53 crore.

3.2.12 Conclusion

The Performance Audit revealed that the data on leased land had inaccuracies and was incomplete in the Collectorates. There was no co-ordination between the Department, Collector, *Mamlatdar* and the *Talatis*. Land was granted on lease to other products, plant and machinery etc., at the rate applicable for salt and bromine. Lands granted on lease were sold by the lessee and the names of purchaser were entered in the property card by the CSS. Registers prescribed for land granted on lease were not maintained as such the Collectors were not aware of the lands in the possession of the lessees even after the expiry of the lease period. The market value of the land granted on lease was not revised as such the pre-revised rent/no rent was being recovered and in cases where the rent was revised it was being recovered at pre-revised rates.

The above indicates that the proper system for management of leases of Government land has not yet been established. Therefore, the existing system is exposed to high risk of Government land getting appropriated on deficient assessment and recovery of lease rent.

3.2.13 Summary of recommendations

We recommend that:

- the Government may consider linking the information available in part II of the VF-"7/12" maintained in E -dhara with LeLIS data to minimise the error;

- After taking into account the viability of the Industries, the Government may consider fixing appropriate lease rent in respect of Government land granted to Industries for manufacturing of products other than salt and bromine;

- the Government may consider developing State level database of the (i) Government land granted on lease (ii) Status of applications received,

[21] Ahmedabad, Navsari, Rajkot and Vadodara

approved, rejected and pending (iii) Types and purposes of lease (iv) Number of leases continuing and the periodicity of leases with dates of expiry and (v) the consideration received from the lessee. This would help the system in becoming more comprehensive and transparent.

- Urgent action may be taken to either take back the possession of lease expired lands or fix the lease rent and recover the same including arrears; and

- the Government may ascertain the stage(s) at which lapses have occurred and take prompt action for rectification to ensure that the Government land is not sold/ transferred.

3.3 Audit of Allotment of Government Land

The Gujarat Land Revenue (GLR) Code, 1879 read with the Gujarat Land Revenue (GLR) Rules, 1972 provides for allotment of Government land on occupancy or leasehold rights either as revenue free or at the rates decided by the Government from time to time.

During the 'Performance Audit (PA) of Management of Government Land' included in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2012 (Revenue Receipts) Government of Gujarat, the Department did not produce some files. These files were subsequently made available to audit during April 2013 to December 2013. Some interesting audit observations based on test check of these files are as follows:

3.3.1 Allotment of *Gauchar* land at reduced rate coupled with decline of *Gauchar* land

The Government *vide* Revenue Department Resolution dated 27.01.1999 provided that the industry requiring the allotment of *Gauchar* land would have to pay either 30 *per cent* additional market value over and above the prevailing market value of the land or would have to acquire private or Government waste land for allotment to *Gram Panchayat* to make up for the loss of *Gauchar* land in the village. The Government vide GR of November 2004 instructed that Resolution dated 27.01.1999 is applicable only where *Gauchar* land is in excess of requirement.

The Government allotted (January 2011) land admeasuring 27,00,838 sq. mtr. of Suva village, Taluka Vagra at District Bharuch to *SRF Ltd.* (a private Company) for industrial purpose.

We noticed that initially the market value of land was fixed at the rate of ₹ 315 per sq. mtr. which worked out to ₹ 85.08 crore. The Government through Gujarat Industrial Development Corporation (GIDC) previously acquired private land in the vicinity at the rate of ₹ 175 per sq. mtr. for industrial purpose. Hence, the Department finally fixed the market value of land at the reduced rate of ₹ 175 per sq. mtr. which worked out to ₹ 47.26 crore. The additional occupancy price at the rate of 30 per cent of market value for *Gaucher* land was required to be levied on the market value

of ₹ 85.08 crore, but it was recovered on the reduced market value of ₹ 47.26 crore. The Department levied additional occupancy price of ₹ 14.18 crore instead of ₹ 25.52 crore. This resulted in short levy of additional occupancy price for *Gaucher* land to the tune of ₹ 11.34 crore.

When we pointed this out in audit (January 2014), the Department stated that as *Guacher* land was allotted at the rate of ₹ 175 per sq. mtr., additional 30 *per cent* on it was recovered. The reply is not acceptable. As per the prevailing policy, the industry requiring the *Gauchar* land would have to pay 30 *per cent* additional market value over and above the prevailing market value of the land.

3.3.2 Irregular exemption from payment of stamp duty on allotment of Government land

Section 9 of the Gujarat Stamp Act, 1958 provides that State Government may by rule or order published in the official gazette reduce or remit, whether prospectively or retrospectively the duties with which any instrument is chargeable.

We observed that Government decided (November 2008) to allot land admeasuring 44,51,700 sq. mtr. valued at ₹ 400.65 crore of village North Kotpur, *Taluka* Sanand to *Tata Motors Ltd.* The Revenue Department did not recover stamp duty amounting to ₹ 19.63 crore. The Government had also not notified any order in the official gazette for grant of exemption from stamp duty of ₹ 19.63 crore.

After we pointed this out (January 2014), the Department accepted our observations and stated (June 2014) that instructions had been issued to initiate action for publishing the order in the official gazette for grant of exemption. Further progress in the matter is awaited (November 2014).

3.4 Non/short levy of premium price

As per the Revenue Department's Resolutions[22], in respect of conversion of land under new and restricted tenure to old tenure[23], for agriculture purpose premium equal to 50 *per cent* and for non- agriculture purpose, premium equal to 80 *per cent* of market value of land as per prevalent *jantri*[24] is required to be recovered. The *jantri* rates were revised with effect from 01.04.2011 and again on 18.04.2011. In the Resolution of 18.04.2011, it was mentioned that the cases where old *jantri* rates were higher than the new *jantri* rates, then the old *jantri* rates of Resolution 2008 would be applicable for the valuation purpose.

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22 Dated 13 July 1983 read with the Resolution No NBJ-102006-S 71-J (Part 2) dated 04.07.2008

23 New and restricted tenure means the tenure of occupancy which is non-transferable and impartible without the prior approval of Collector. Old tenure means land deemed to have been purchased by a tenant on Tiller's Day, 1 April 1957 free from all encumbrances. New and restricted tenure land can be converted to old tenure land after payment of premium price.

24 Annual Statement of Rates issued by the Government showing the rates for the purpose of determination of value of immovable properties and levy of stamp duty.

Further, the Government *vide* Resolution dated 03.05.2011 reduced the rate of premium for agriculture purpose in rural area to nil and urban area to 25 *per cent* and for non- agricultural purpose to 40 *per cent* of market value of land as per prevalent *jantri*. All other conditions mentioned in the Resolution dated 04.07.2008 would remain unchanged.

During test check of the records of five Collector offices[25] for the period 2011-12, we noticed in eight cases (February 2013 to April 2013) that premium price of ₹ 3.37 crore was non/short levied as follows:

Sl. No.	Location/ Period of audit	No. of cases / Non/short levy of premium price (₹ in lakh)	Nature of observation
1	Vadodara 2011-12	1 / 221.45	The applicant applied for conversion of new tenure land admeasuring 14,164 sq. mtr. to old tenure in February 2011. The Government decided (March 2012) to recover premium price at old *jantri* rate of ₹ 6,500 per sq. mtr. and intimation in this regard was also received by the Collector in March 2012. Accordingly, the applicant was intimated to pay the premium of ₹ 4.26 crore in April 2012. Since the new *jantri* rate of ₹ 19,750 per sq. mtr. came into effect from 18.4.2011, i.e. prior to the Government's decision to grant the approval for the change of tenure, new *jantri* rates were required to be adopted for levy of premium price at the rate of 40 *per cent* of market value. Non-adoption of new jantri rates resulted in short levy of premium price of ₹ 2.21 crore on 8202 sq. mtr. (2.23 acre) of land.
2	Ahmedabad 2011-12	2 / 60.50	New tenure land was converted (June and July 2012) into old tenure for residential purpose. In these cases, as the old *jantri* rate of ₹ 5,000 in each case effective from 1.4.2008 to 31.3.2011 was higher compared to the new *jantri* rate of ₹ 4,500 per sq. mtr. effective from 18.4.2011, the Revenue Authority (RA) should have adopted the old *jantri* rate for levy of premium price at the rate of 40 *per cent* of market value on 30,251 sq. mtr. of land. This resulted in short levy of premium price of ₹ 60.50 lakh.
3	Anand 2011-12	3 / 47.71	Agriculture land admeasuring 17,401 sq. mtr. classified as new and restricted tenure was utilised for mining purposes, (i.e. to possess, store, sell etc.) without orders of the Collector and without payment of premium price. In this case, the Assistant Geologist had also granted registration certificates to possess, store, sell etc., of minerals in new and restricted tenure

[25] Ahmedabad, Anand, Gandhinagar, Nadiad and Vadodara

			land, but non- agricultural (NA) permission was not obtained by the applicant. Due to unauthorised use of agricultural land for NA purpose, premium price of ₹ 47.71 lakh was chargeable at the rate of 40 *per cent* of market value of ₹ 1.19 crore.
4	Nadiad 2011-12	1 5.71	Land admeasuring 2,100 sq. mtr. was converted from new and restricted tenure to old tenure for non-agricultural (NA) purpose, i.e., Commercial purpose (petrol pump). The land bearing survey number 679/2 falls under value zone R/0/14 of the *jantri*. The applicable rate of premium price was 40 *per cent* of market value of land. While calculating the market value of land, the RA adopted incorrect *jantri* rate of ₹ 840 per sq. mtr. of R/0/14/A value zone instead of the correct rate of ₹ 1,520 per sq. mtr. for levy of premium price. This resulted in short levy of premium price of ₹ 5.71 lakh.
5	Gandhinagar 2011-12	1 1.70	Land admeasuring 4,047 sq. mtr. was converted from new and restricted tenure to old tenure for agricultural purpose. The applicable rate of premium price was 25 *per cent* of market value of land. The RA adopted incorrect *jantri* rate of ₹ 676 per sq. mtr., i.e. *jantri* rate of (Town Planning) TP-15 instead of the correct rate of ₹ 844 per sq. mtr. of TP-14 for levy of premium price at the rate of 25 *per cent* of market value. This resulted in short levy of premium price of ₹ 1.70 lakh.
Total no. of cases: 8, Total amount: ₹ 337.07 lakh			

We reported the matter to the Department/Government in May 2014; their replies have not been received (November 2014).

3.5 Non/short levy of penalty

The Gujarat Land Revenue Code, 1879 and the Rules made there under provide that no land can be used for any purpose other than the purpose for which it is assessed or held without prior permission of the competent authority. For any breach of condition/unauthorised use of land, the occupant shall be liable to pay penalty not exceeding 40 times of non-agricultural assessment (NAA) of the area of land.

During test check (February 2013 and March 2013) of the records of Collector office, Anand and *Mamlatdar* office, Vadodara for the period 2011-12, we noticed that in 18 cases, there was non/short levy of penalty amounting to ₹ 28.46 lakh as shown in the table as follows:

Sl. No.	Name of offices	No. of cases	Nature of observation
1.	Mamlatdar, Vadodara	14	(A) In 12 cases (ten commercial purpose and two residential purpose), land was used for non-agriculture purpose without prior permission of the Collector. The Revenue Authority had levied penalty of ₹ 10.13 lakh for breach of condition for only one year instead of the penalty of ₹ 24.42 lakh for entire period of unauthorised use of land ranging between two and 12 years. The RA had not taken into account the period for which the occupant had been using the said land without permission for levy of penalty. Further, in other two cases there was mistake in calculating the number of years from which the non-agricultural use was commenced. This resulted in short levy of penalty of ₹ 25.17 lakh.
		1	(B) Initially permission for residential use on land was given by competent authority in August 2009. Later, the Collector granted revised permission for educational (i.e. commercial) use after levy of penalty for the area (300 sq. mtr.) of unauthorised construction done for educational use only. No penalty was levied on the total area (13,238 sq. mtr.) of land for which permission for residential use was initially given. This resulted in short levy of penalty of ₹ 1.23 lakh.
2	Collector, Anand	3	Assistant Geologist had granted registration certificates for storage of minerals on new tenure land. The land was used for commercial purpose (i.e., stocking of minerals) without prior permission of Collector. This resulted in non-levy of penalty of ₹ 2.06 lakh.

We reported the matter to the Department/Government in May 2014; their replies have not been received (November 2014).

3.6 Non/short levy of conversion tax

Section 67 A of the Gujarat Land Revenue Code, 1879 provides for the levy of conversion tax on change in the mode of use of land from agricultural to non-agricultural (NA) purpose or from one NA purpose to another in respect of land situated in a city, town or village. Different rates of conversion tax are prescribed for residential/charitable and industrial/other purposes, depending upon the population of the city/town/notified area/ village. The conversion tax shall be paid in advance by a challan in the Government treasury. Rates of conversion tax were revised in April 2003.

During test check (between February 2013 and November 2013) of the records of two Collector offices[26] and two *Mamlatdar* Offices[27] for the period 2009-10 to 2012-13, we noticed that the conversion tax of ₹ 14.84 lakh was non/short levied in 12 cases as follows:

[26] Ahmedabad and Anand
[27] Ahmedabad and Vadodara

Sl. No.	Location / No. of cases Non-levy of conversion tax (₹ in lakh)	Nature of observation
1	Ahmedabad 5 6.15	In four out of five cases, land admeasuring 74,953 sq. mtr. was purchased for commercial purpose, but conversion tax at the rate of ₹ 6 per sq. mtr. was not levied. In the remaining one case, land admeasuring 5,524 sq. mtr. was purchased for commercial purpose but conversion tax at the rate of ₹ 30 per sq. mtr. was not levied. Proper follow-up action was not taken by Revenue Authorities (RA) for recovery of conversion tax at applicable rates.
2	Ahmedabad 2 4.29	In two cases, Government land admeasuring 14,294 sq. mtr. was allotted for non-agriculture purpose. In these cases separate NA permissions were not required. The RA failed to recover conversion tax at the rate of ₹ 30 per sq. mtr.
3	Ahmedabad 1 1.93	Government land admeasuring 32,119 sq. mtr. was allotted to Gujarat State Petronet Ltd., Gandhinagar. The Company was required to take NA permission within six months of the allotment order, but the company has not obtained permission from Collector. The RA had neither taken any action against the Company nor levied conversion tax at the rate of ₹ 6 per sq. mtr.
4	Anand 3 1.24	Agriculture land admeasuring 17,401 sq. mtr. classified as new and restricted tenure was utilised for mining purposes (i.e. to possess, store, sell, etc. of minerals) without orders of the Collector and without payment of premium price. In this case, the Assistant Geologist had also granted registration certificate of possess, store, sell etc of minerals in new and restricted tenure land, but NA permission was not obtained by the applicant. Due to unauthorised use of agriculture land for NA purpose, conversion tax was chargeable.
5	Vadodara 1 1.23	Agricultural land admeasuring 6,171 sq. mtr. was used by the Basil Trust, Akota for educational purpose without prior permission of the Collector. The conversion tax was required to be levied at the rates of ₹ 30 per sq. mtr. applicable to commercial purpose, but it was regularised by levy of conversion tax at the rates of ₹ 10 per sq. mtr. applicable to charitable use.
Total	**12 cases** **₹ 14.84 lakh**	

We reported the matter to the Department/Government in May 2014; their replies have not been received (November 2014).

3.7 Non/short levy of stamp duty

As per Article 20 of the Gujarat Stamp Act, 1958, stamp duty on conveyance is leviable on the market value of the property or consideration stated in the document, whichever is higher. Further, Revenue Department had instructed in April 2002 for inclusion of condition of payment of stamp duty in allotment orders and not to hand over possession of land till proper stamp duty is paid.

During test check of the records of two Collector offices[28] for the period 2011-12, in March 2013, we noticed in one case the stamp duty was levied on market value of property whereas amount paid to the Government in the form of occupancy price was higher than the market value of property. In another case, the Government land was allotted to firm by levying premium price[29], but stamp duty was not levied. This resulted in non/short levy of stamp duty of ₹ 20.78 lakh in two cases as follows:

Sl. No.	Location / No. of cases Non/short levy of stamp duty (₹ in lakh)	Nature of irregularity
1.	Junagadh 1 16.16	Government land admeasuring 44,600 sq. mtr. encroached by M/s Ambuja Cement Ltd. was regularised by the Department by recovering occupancy price[30] of ₹ 5.50 crore. Stamp duty was levied on market value of ₹ 2.20 crore of property instead of occupancy price levied which was higher than market value of property. This resulted in short levy of stamp duty of ₹ 16.16 lakh.
2.	Porbandar 1 4.62	The Government land admeasuring 4,138.80 sq. mtr. was allotted to M/s Narandas Mulji for residential purpose after levying premium price of ₹ 94.20 lakh. However, while finalisation of the case, the RA had neither inserted condition for payment of stamp duty in the allotment order nor the same was levied. This resulted in non-levy of stamp duty of ₹ 4.62 lakh.
Total	**2 cases** **₹ 20.78 lakh**	

We reported the matter to the Department/Government in May 2014; their replies have not been received (November 2014).

3.8 Non/short levy of service charge

The Government decided[31] to impose service charge at the rate of one *per cent* of the market value as per existing *jantri* rate on the date of application from the applicant, seeking for the grant of Government land. The said service charge has to be collected in advance i.e. at the time of submission of application by the applicant and application shall be processed only after payment of service charge by the applicant, which is not refundable. Further, Government *vide* GR dated 15.6.2011 clarified that service charge is also to be collected in advance from the State Government Company/Corporations,

[28] Junagadh and Porbandar

[29] Premium price was required to be paid by the seller for conversion of new and restricted tenure agriculture land to old tenure.

[30] Government can dispose off available land to needy persons for cultivation or for any other purpose on payment of occupancy price, subject to such terms and conditions as may be specified.

[31] GR No.JMN/3910/3519/A.1 dated 26.4.2011

Municipal Corporation, Municipalities and Department of Government of India, who are applying for grant of Government land.

During test check (March 2013 and November 2013) of the records of three Collector offices[32] for the period 2011-12 and 2012-13, we noticed that service charge of ₹ 17.43 lakh was non/short levied in eight cases as follows:

Sl. No.	Location / No. of cases Non-levy of service charge (₹ in lakh)	Nature of irregularity
1	Ahmedabad 1 8.59	Advance possession of Government land admeasuring 9,814 sq. mtr. and valued at ₹ 8.59 crore was given to the Ahmedabad Municipal Corporation. But the Collector failed to levy service charge at the rate of one *per cent* of market value.
2	Junagadh 5 7.48	In 5 cases, the applications for allotment of land valued at ₹ 7.48 crore were processed by the Collector without levy of service charges from the respective applicant.
3	Amreli 2 1.36	In one case, M/s Patidar Industries Pvt. Ltd. had applied for allotment of Government land admeasuring 8,587 sq. mtr. for industrial purpose. The RA decided market value of land at ₹ 14.68 lakh and levied service charge accordingly. However, service charge was collected considering the *jantri* rate applicable for agricultural land instead of industrial land. Further, in another case, the applicant had applied for allotment of Government land admeasuring 4,047 sq. mtr. for industrial purpose, but due to calculation mistake on the part of RA, service charge was short levied.
Total	**8 cases** **₹ 17.43 lakh**	

We reported the matter to the Department/Government in May 2014; their replies have not been received (November 2014).

3.9 Non-observance of Government instruction on PoA

The Government instructed[33] in September 2005 to invariably send copy of power of attorney (PoA) presented as evidence in support of ownership of land for obtaining non-agriculture (NA) permission and authorising the attorney to act for sale of land, receiving consideration, signing the sale deed, etc. to the concerned Deputy Collector (Valuation) for valuation and recovery of stamp duty.

Test check of the records of the *Mamlatdar* (NA), Vadodara for the year 2011-12, in March 2013 revealed that the Revenue Authorities had received the copies of PoA from the applicants (PoA holders) presented as evidence in

[32] Ahmedabad, Amreli and Junagadh

[33] In view of Article 45(f) and (g) of Schedule-I of the Gujarat Stamp Act, 1958

support of ownership of land admeasuring 1,86,471 sq. mtr. for obtaining permission of conversion of land and authorising the PoA holders to act in respect of sale of such land. However, the Revenue Authorities had not forwarded them to the concerned Deputy Collector for valuation and levy of proper stamp duty. The PoAs were required to be registered and stamp duty and registration fees were leviable as per conveyance deed. However, the same were not registered with the concerned registering authorities. This resulted in non-recovery of stamp duty and registration fees of ₹ 1.10 crore on market value of ₹ 18.65 crore based on *jantri* rates.

We reported the matter to the Department/Government in May 2014; their replies have not been received (November 2014).

3.10 Non-levy of non-agriculture assessment

As per Section 48 of Gujarat Land Revenue Code, 1879, the land revenue leviable shall be assessed with reference to the use of land for the purpose of residence/industry/commerce/for any other purpose. The Government *vide* notification of August 2003 revised the rates of non-agriculture assessment (NAA) and classified the areas in three categories i.e. A, B and C for levy of NAA. Further, as per section 48 of the Code, NAA is leviable with effect from the commencement of the revenue year in which the land is used for NA purposes with or without permission of the competent authority. The Code provides for issue of a demand notice and distraint and sale of defaulter's movable/immovable property for recovery of arrears of the land revenue.

During test check of the records of *Mamlatdar* City (West), Ahmedabad for the period 2009-10 to 2011-12, during the month of February 2013, we noticed in two cases that Rajpath Club and HPCL had purchased agriculture land with permission of competent authority under Section 63 of Gujarat Tenancy and Agricultural Lands Act, 1948. However, NAA leviable at prescribed rate was not levied for NA use of land. This resulted in non-levy of NAA of ₹ 6.20 lakh.

We reported the matter to the Department/Government in May 2014; their replies have not been received (November 2014).

3.11 Non-levy of measurement fees

Settlement Commissioner and Director of Land Records, Gandhinagar vide orders dated 31 December 2002 revised the rates of measurement fee from 1 February 2003. Accordingly, measurement fee is leviable at the rate of ₹ 1,200 for each development plan up to four plots and ₹ 300 for each additional plot.

During test check of the records of four Collector offices[34] for the period 2010-11 and 2011-12, between December 2011 and April 2013, we noticed in 21 cases that the Revenue Authorities granted permission to use land for various non-agricultural purposes as per the approved plan. The measurement

[34] Amreli, Bhavnagar, Himatnagar and Mehsana

fee was required to be recovered as per plan and number of plots approved at prescribed rates. However, the measurement fee was not recovered. This resulted in non-levy of measurement fees of ₹ 5.56 lakh[35].

We reported the matter to the Department/Government in May 2014; their replies have not been received (November 2014).

[35] Number of plots X Rate per plot = 1852 X ₹ 300

CHAPTER-IV
EXECUTIVE SUMMARY

Results of audit	Test check of records in the offices of Commissioner of Transport, Regional Transport Offices and Assistant Regional Transport offices in the State during the year 2012-14 revealed under assessment of tax and other irregularities involving ₹ 37.17 crore in 115 cases. During the course of the year, the Department accepted and recovered underassessment and other irregularities of ₹ 3.13 crore in three cases.
What we have highlighted in this Chapter	Operators of 2,369 omnibuses/maxi cabs/staff buses/school buses, who kept their vehicles for use exclusively as contract carriage and 1,999 vehicles used for transport of goods, had neither paid tax nor filed non-use declarations for various periods between 2008-09 and 2012-13. This resulted in non-realisation of motor vehicles tax of ₹ 24.61 crore including interest of ₹ 1.92 crore and penalty of ₹ 2.34 crore. The fleet owner Ahmedabad Muncipal Transport Services (AMTS) has delayed payment of passenger tax for their CNG/Diesel buses that ranged between five and 281 days. Taxation authority had not demanded interest and penalty for the late payment. This has resulted in non-levy of interest of ₹ 3.30 lakh and penalty of ₹ 68.92 lakh. Total non-levy of interest and penalty worked out to ₹ 72.22 lakh. In two cases, tax was recovered only on cost of vehicle of ₹ 1.63 crore and Central Sales Tax of ₹ 20.38 lakh paid was not taken into consideration for the purpose of levy of tax. This resulted in short levy of lump-sum tax of ₹ 3.21 lakh including interest and penalty.

CHAPTER-IV
TAXES ON VEHICLES

4.1 Tax administration

The Commissioner of Transport (CoT) heads the Gujarat Motor Vehicle Department (GMVD) under the administrative control of the Principal Secretary to the Government of Gujarat in the Ports and Transport Department. He is assisted by a Joint Director and two Officer on Special Duty (OSDs) specialising in Enforcement, Administration and Finance in the Head office. There are 14 Regional Transport Offices (RTOs), 12 Assistant Regional Transport Offices (ARTOs) and two Inspector Motor Vehicle Offices (MVIs). There are 13 check posts[1] working under nine RTOs.

4.2 Results of audit

Test check of records in the offices of the Commissioner of Transport, Regional Transport and Assistant Regional Transport Offices in the State during the year 2012-14 revealed under assessment of tax and other irregularities involving ₹ 37.17 crore in 115 cases, which fall under the following categories:

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1	Non/short levy of motor vehicle tax	69	30.55
2	Other irregularities	41	5.90
3	Passenger Tax/MVT & Expenditure audit para	5	0.72
	Total	**115**	**37.17**

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 3.13 crore in three cases.

A few illustrative audit observations involving ₹ 25.93 crore are mentioned in the succeeding paragraphs.

4.3 Non-realisation of motor vehicle tax on transport vehicles

The Gujarat Motor Vehicle Tax (GMVT) Act, 1958 prescribes that owners of contract carriage and goods carriage vehicles are required to pay assessed tax on monthly/half yearly/yearly basis respectively except for the period where the vehicles are not in use. In case of delay in payment, interest at the rate of one and half *per cent* per month and if the delay exceeds one month, a penalty at the rate of two *per cent* per month subject to a maximum of 25 *per cent* of tax is also chargeable. Section 12 of the Act *ibid* authorises the Department to recover unpaid tax as arrears of land revenue. Section 12 B empowers the

[1] Ambaji, Amirgadh, Bhilad, Chhota Udepur, Dahod, Gundari-Thavar, Jamnagar, Samkhiyali, Shamlaji, Songadh, Tharad, Waghai and Zalod

Department to detain and keep in custody of the vehicles of those owners who defaulted in payment of Government dues.

During test check of the Demand and Collection Registers of 12 taxation authorities[2] between April 2012 and March 2014, we noticed that operators of 2,369 omni buses/maxi cabs/staff buses/school buses, who kept their vehicles for use exclusively as contract carriage and 1,999 vehicles used for transport of goods, had neither paid tax nor filed non-use declarations for various periods between 2008-09 and 2012-13. There was no proper monitoring system to trace such vehicles in default. The Departmental officials failed to issue demand notices and take recovery action prescribed in the Act which is indicative of the existence of weak internal control system in the Department. The Department neither invoked provisions of Section 12 nor took action under Section 12B. This resulted in non-realisation of motor vehicles tax of ₹ 24.61 crore including interest of ₹ 1.92 crore and penalty of ₹ 2.34 crore.

After this was pointed out in May 2013 and July 2014, the Department accepted (October 2014) the entire amount and reported recovery of ₹ 3.06 crore in 688 cases. In remaining cases, particulars of recovery had not been received (November 2014).

4.4 Non-levy of interest and penalty on belated payment of passenger tax from AMTS

Section 3 of the Gujarat Motor Vehicles (Taxation of Passengers) Act, 1958 and rules made there under provide for levy of tax on all passengers carried by a stage carriage at prescribed rate from the fleet owners. The Act also provides for levy of interest and penalty not exceeding 25 *per cent* on delayed payments of unpaid tax.

During test check of the records of Commissioner of Transport, Gandhinagar in September 2013 for the period 2011-12 to 2012-13, we noticed that the fleet owner AMTS[3] had delayed payment of passenger tax for their CNG/Diesel buses. The delay ranged between five and 281 days. Taxation authority had not demanded interest and penalty for the late payment. This has resulted in non-levy of interest of ₹ 3.30 lakh and penalty of ₹ 68.92 lakh. Total non-levy of interest and penalty worked out to ₹ 72.22 lakh.

After this was pointed out to the Department in July 2014, the Department accepted (October 2014) audit observation and had issued demand notice. Further, the details of recovery had not been received (November 2014).

[2] Ahmedabad, Bhavnagar, Bhuj, Gandhinagar, Himatnagar, Mehsana, Patan, Rajkot, Surat, Surendranagar, Vadodara and Valsad

[3] Ahmedabad Municipal Transport Service

4.5 Non-recovery of motor vehicles tax on non-transport vehicles

Section 3 and 4 of the Gujarat Motor Vehicle Tax Act, 1958 require owners of non-transport vehicles (cranes, compressors, rigs, excavators and loaders etc) to pay tax six monthly/annually in advance except for the period during which the vehicles are not in use. In case of delay in payment, interest at the rate of one and half *per cent* per month and if the delay exceeds one month, penalty at the rate of two *per cent* per month subject to a maximum of 25 *per cent* of tax is also chargeable. Further, Section 12 of the Act *ibid* authorises the Department to recover unpaid tax as arrears of land revenue. Section 12B empowers the Department to detain and keep in custody of the vehicles of those owners who defaulted in payment of Government dues.

During test check of the records of six taxation authorities[4] between April 2012 and January 2014 we noticed that owners of 228 non-transport vehicles who used or kept for use their vehicles in the State had neither paid tax nor filed non-use declarations for the various periods between 2009-10 and 2012-13. The Departmental officials did not issue demand notices and initiate recovery action as contemplated in the Act. The Department also failed to invoke provisions of Section 12 and 12B of the Act. This resulted in non-realisation of motor vehicles tax of ₹ 34.66 lakh including interest of ₹ 5.02 lakh and penalty of ₹ 4.55 lakh.

After this was pointed out in May 2013 and July 2014, the Department accepted (October 2014) the entire amount and reported recovery of ₹ 6.21 lakh in 41 cases. In remaining cases, particulars of recovery had not been received (November 2014).

4.6 Non-ascertaining of mailing address

As per Rule 47 of Central Motor Vehicles Rules, 1989, an application for registration shall be accompanied by proof of address by way of any one of the documents referred to in Rule 4. As per Rule 75, each State Government shall maintain a State Register of motor vehicles in respect of motor vehicles registered in the State in Form 41 which *inter alia*, includes name and full address of the registered owner of the vehicle. The GMVT Act requires RTOs to issue Revenue Recovery Certificate (RRC) against defaulters after one month of non-payment of MVT. Several instances were noticed in which RRCs were issued after the prescribed time limit and often with improper mailing address. Before issuance of certificate of registration, RTO has to verify evidence of address from one of the documents specified in CMV Rules, 1989.

During test check of the records of two taxation authorities[5] between August 2012 and November 2013 for the period 2011-12 and 2012-13, we noticed that in 40 cases, the demand notices issued to vehicle owners for recovery of outstanding dues were returned due to incorrect address of vehicle owners. Failure on the part of the Department in ascertaining the correct address of the

[4] Bhuj, Himatnagar, Palanpur, Patan, Rajkot and Surendranagar
[5] Palanpur and Vadodara

vehicle owner at the time of registration resulted in non-recovery of MVT of ₹ 12.87 lakh including interest and penalty.

After this was pointed out in May 2013 and July 2014, the Department accepted (October 2014) audit observations in six cases and reported recovery of ₹ 1.40 lakh. In remaining cases, the Department stated effort would be made in ascertaining the correct mailing address of the vehicle owners.

4.7 Short levy of lump-sum tax

As per the Circular of April 2007 issued by Commissioner of Transport under Section 3 and 4 of the GMVT Act, 1958, six *per cent* of sales value is payable as tax on registration of indigenous four wheeled vehicles by individuals, local authorities, universities, educational and social institutions and for others the rate is double. The Circular also stipulated for inclusion of other taxes but exclusion of VAT while arriving at sales price for levying lump-sum tax. Further, as per clarification of Office of Commissioner of Transport's Circular dated 05.07.2011, the Central Sales Tax (CST) is to be included in the value of the cost of vehicle for the purpose of calculation of MVT.

During test check of the registration records of two taxation authorities[6], between April 2012 and August 2012, for the period 2010-11 and 2011-12, we noticed short levy of lump-sum tax of ₹ 11.63 lakh including interest of ₹ 1.48 lakh and penalty of ₹ 1.78 lakh. These are mentioned in the following paragraphs:

In two cases, tax was recovered only on cost of vehicle of ₹ 1.63 crore and Central Sales Tax of ₹ 20.38 lakh paid was not taken into consideration for the purpose of levy of tax. This resulted in short levy of lump-sum tax of ₹ 3.21 lakh including interest and penalty.

In one case of imported vehicle (Range Rover 4.4 TDV8 Diesel) valued at ₹ 98.77 lakh, tax was levied at normal rates at the rate of 6 *per cent* instead of 12 *per cent* as applicable to an imported vehicle. This resulted in short levy of lump-sum tax of ₹ 8.42 lakh including interest and penalty.

This was pointed out to the Department in May 2013 and July 2014. The Department had accepted (October 2014) the audit observations and issued demand notices. Further, particulars of recovery had not been received (November 2014).

[6] Bhuj and Vadodara

CHAPTER-V
EXECUTIVE SUMMARY

Results of audit

Test check of records in the offices of the Additional Superintendant of Stamps and Sub Registrars in the State during the year 2013-14 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 103.94 crore in 363 cases.

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 1.04 crore in 42 cases, of which two cases involving ₹ 3.57 lakh was pointed out in audit during the year 2013-14 and rest in earlier years.

What we have highlighted in this Chapter

In 21 instruments, consideration aggregating to ₹ 299.99 crore was either paid in advance or partly paid/agreed to be paid by the developers to the land owners. Besides, the land owners had also given irrevocable powers of attorney to the developers for sale/transfer of the land. These instruments were required to be stamped at the rates applicable to the conveyance deeds instead of one *per cent*. This resulted in short levy of stamp duty and registration fees of ₹ 14.70 crore.

In one case, it was noticed that developer had been given absolute rights by the owner to dispose off the property, receive the money and transfer the same to prospective buyers. It was required to be stamped at conveyance rates but the assessing authority incorrectly stamped it at the rates applicable to development agreement. This resulted in short levy of stamp duty and registration fees of ₹ 1.67 crore.

In 10 instruments, 23 owners had in addition to development agreement executed powers of attorney with the developers authorising them to sign and execute the document of conveyance in the capacities as seller as well as developers. The developers had themselves sold the property but the instruments were stamped at the rates applicable to development agreement. This resulted in short levy of stamp duty and registration fees of ₹ 1.84 crore.

In 56 instruments, the recitals revealed that in addition to development agreement the powers of conveyance of the properties were given to the developers without charging any stamp duty. This resulted in short levy of stamp duty and registration fees of ₹ 4.96 crore.

	There was no uniformity in charging of registration fees by the registering authorities on the instruments of development agreements in the absence of clear provision/direction.

CHAPTER-V
STAMP DUTY AND REGISTRATION FEES

5.1 Tax administration

The overall control on the levy and collection of stamp duty and registration fees rests with the Revenue Department. The Inspector General of Registration (IGR) and Superintendent of Stamps, Gandhinagar is the head of the Department. The IGR is assisted by the Sub-Registrar (at the district and *taluka* level) whereas the Superintendent of Stamps is assisted by the Deputy Collector (Stamp Duty Valuation Organisation) [DC (SDVO)] at the district level.

5.2 Results of audit

Test check of records in the offices of the Additional Superintendant of Stamps and Sub Registrars (SRs) in the State during the year 2013-14 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 103.94 crore in 363 cases, which fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Misclassification of documents	122	46.56
2	Undervaluation of property	83	17.40
3	Under assessment of stamp duty and instruments of mortgage deeds	6	0.12
4	Other irregularities	17	2.30
5	Short levy of stamp duty and registration fees	135	37.56
	Total	**363**	**103.94**

During the course of the year, the Department accepted and recovered underassessment and other irregularities of ₹ 1.04 crore in 42 cases, of which two cases involving ₹ 3.57 lakh was pointed out in audit during the year 2013-14 and rest in earlier years.

A Paragraph on "Audit of Stamp Duty and Registration Fees on Development Agreement" involving ₹ 23.17 crore and a few illustrative cases involving ₹ 11.28 crore are mentioned in the following paragraphs:

5.3 Audit of Stamp Duty and Registration Fees on Development Agreement

Section 2 of the Gujarat Stamp Act, 1958 (GS Act) defines the various terms/instruments mentioned in the Act. However, the Development Agreement has not been defined in the Act. With effect from1 September 2001, as per Article 5(ga) of Schedule I of the GS Act, the development agreement in the form of agreement, memorandum of records, which gives authority or power to a promoter or a developer for construction on or development of, or sale or transfer of, any immovable property shall be chargeable with stamp duty at the rate of one *per cent* of the market value of the property. Simultaneously, similar provision was also inserted in the GS Act under Article 45(g), where the Power of Attorney (PoA) is given for development of immovable property. However, under Article 45(f), when a PoA is given for consideration and authorising the attorney to sell any immovable property, then stamp duty chargeable shall be as is chargeable on a conveyance deed, i.e., at the rate of 4.9 *per cent* (w.e.f. 01.04.2007) of the amount of consideration or the market value of the property which is the subject matter of such conveyance, whichever is greater.

Accordingly, a document is required to be classified on the basis of the recitals therein and not on the basis of its title. But during compliance audit, we noticed that the documents though styled as development agreements contained recitals so as to classify them as deemed conveyance. Stamp duty is levied either at the rate of one *per cent* of the market value of the property or ₹ 100 only instead of payment of 4.9 *per cent* stamp duty. The developers thus get undue benefit in the disguise of a development agreement. This defeated the intention of the legislation in introducing stamp duty on development agreements for augmenting State revenue as well as benefitting the genuine land owners.

With this background, we examined the system of levy of stamp duty and registration fees on the development agreements/PoAs for development/ documents having reference about development agreements between April 2013 and March 2014 in 52[1] out of 262 Sub Registrar offices. We have checked 267 development agreements/PoA given for development of immovable properties and noticed irregularities in 97 documents. Thus, 36.33 *per cent* of the development agreements were entered into for the purpose of evasion of stamp duty and registration fees. In these test checked cases, there was evasion of stamp duty and registration fees of ₹ 23.17 crore. Our findings are discussed in succeeding paragraphs:

[1] Ahmedabad II to XII, Anand, Anjar, Ankleshwar, Bhuj, Bhachau, Bharuch, Deesa, Gandhidham, Gandhinagar, Ghoga, Himatnagar, IGR office-Gandhinagar, Jamnagar I & II, Junagadh, Kadi, Kalol, Kamrej, Mangrol (SRT), Morbi, Mundra, Navsari, Olpad, Porbandar, Pardi, Rajkot I to IV, Sanand, Savli, Superintendent Of Stamps-Gandhinagar, Surat I to IV, Vadodara I to IV, Waghodia

5.3.1 Short levy of stamp duty and registration fees due to misclassification of deeds of deemed conveyance as development agreements

Under Article 45(f) of Schedule I of GS Act, a PoA when given for consideration and authorising the attorney to sell any immovable property, shall be chargeable with higher rate of stamp duty as is chargeable on a conveyance deed.

5.3.1.1 During test check of the documents registered between March 2010 and September 2012 in the office of 15 Sub Registrars (SRs)[2], recitals of 21 development agreements revealed that the 51 land owners had given irrevocable powers to 21 developers for sale/transfer of the immovable properties or for retaining possession of such properties till all the units are sold.

In all these cases, consideration total aggregating to ₹ 299.99 crore was either paid in advance or partly paid/agreed to be paid by the developers to the land owners as per the details given below:

Sl. No.	Cases where consideration paid fully/ partly paid/agreed to be paid	Rate of stamp duty and registration fees (in *per cent*)	Market value (₹ in crore)	Short levy of stamp duty and registration fees (₹ in crore)
1	In seven cases, total consideration amount of ₹ 31.50 crore was paid.	4.9 and 1	31.50	1.62
2	In six cases, out of total consideration of ₹ 128.74 crore, ₹ 63.45 crore was partly paid.	4.9 and 1	128.74	6.26
3	In eight cases consideration of ₹ 139.75 crore was agreed to be paid.	4.9 and 1	139.75	6.82
	Total (21 cases)		**299.99**	**14.70**

These documents were classifiable under Article 45(f) and stamp duty was leviable at the rate of 4.9 *per cent* on the market value of the property or the consideration which was greater. However, these documents were classified as development agreements and the stamp duty at the rate of one *per cent* only was levied. The misclassification of these documents resulted in short levy of stamp duty and registration fee of ₹ 14.70 crore.

After this was pointed out, the Department (October 2014) stated that in one case, the Deputy Collector (SDVO) had issued demand notice for recovery and in 18 cases, show-cause notices had been issued for recovery.

[2] SR-II, III, IV, VI, VII, VIII, IX, X, XI & XII at Ahmedabad, Anand, Navsari, Sanand, Surat-IV and SR-II Vadodara

5.3.1.2 Under Section 2(g) of the GS Act, Conveyance includes the forms[3] by which property, whether movable or immovable, or any estate or interest in any property, is transferred to, or vested in, any other person, *inter-vivos*, and which is not otherwise specifically provided for by Schedule I of the Act. As per Section 3 of the GS Act, every instrument shall be chargeable with duty at the prescribed rates mentioned in the Schedule I.

We noticed from the recitals of a document styled and registered as Development Agreement executed between M/s. Ahmedabad Victoria Iron Works Co. Ltd. (land owner-referred to as the Company) and M/s. Lilamani Builders (Developer) that :

- Development rights were given in land admeasuring 10,845.44 sq. mtr. situated in Dariapur-Kazipur (Sim), TP Scheme No. 3, Final Plot No. 100 against acquisition of 96.11 *per cent* share holding of the four share holders of the Company.

- The cost incurred by the Developer for acquiring the shareholding from the four share holders of the Company was treated as cost of acquisition of development rights.

- The consideration price for disposal of the premises (without any limitation, land, construction or any other) in the proposed project shall be exclusively decided from time to time by Developer as it may deem fit (condition no. 6 of the development agreement).

- The Developer was empowered to allow on ownership basis or under any other arrangement the structures to be constructed by it to prospective acquirers, to receive, retain and appropriate the same in such manner as it deem fit (condition no. 22 of the development agreement).

- Developer was entitled to receive and retain all the money from the persons to whom the said premises are sold or allotted as the case may be on the scheme constructed by the Developer on the said property and appropriate the same in such manner as he deem fit (condition no. 22 of the development agreement).

- All the money received which shall be received by the Developer from such persons shall belong to the Developer and will be received by them on their own accounts. The Company shall not be liable for or responsible to any such person so far as the said money are concerned (condition no. 22 of the development agreement).

[3] a conveyance on sale, every instrument, every decree or final order of any civil court, every order made by the High Court under Section 394 of the Companies Act, 1956 in respect of reconstruction or amalgamation of companies, or any writing or letter of allotment in respect of the premises, given to its members or allottee by a Co-operative Society registered or deemed to have been registered under the Gujarat Co-operative Societies Act, 1961 or a Corporation or an Association formed and registered under the Bombay Non-Trading Corporation Act, 1959 or the Gujarat Ownership Flat Act, 1973, as the case may be.

- The profit or income or any benefit or loss or deficiency that may arise out of disposal of all the premises (land and construction and infrastructure) of the proposed project or scheme will belong to the Developer (condition no. 26 of the development agreement).

- The said property and said developments thereon shall remain in possession of the Developer and the Developer is entitled to deal with and/or dispose off the same or part thereof in any manner it may deem fit and proper (condition no. 27 of the development agreement).

It becomes evident from the above that the Developer was given absolute right for acquisition and transfer of the property. As such, it was classifiable as deemed conveyance deed. However, the document was classified based on the title of the document and one *per cent* stamp duty on the market value of the property was only levied. This resulted in short levy of stamp duty and registration fees of ₹ 1.67 crore on market value of ₹ 34.05 crore.

After this was pointed out, the Department stated (October, 2014) that the Deputy Collector (SDVO) had examined the issue and treated the instrument as duly stamped. The reply was not correct owing to following reasons:

- The recitals of the deed indicate that the Developer was entitled to receive and retain all the money from the persons to whom the said premises are sold or allotted as the case may be on the scheme constructed by the Developer on the said property and appropriate the same in such manner as he deem fit.

- Further, the recitals of the instrument revealed that all the money received which shall be received by the Developer from such persons shall belong to the Developer and will be received by them on their own accounts.

- The said property and said developments thereon shall remain in possession of the Developer and the Developer is entitled to deal with and/ or dispose off the same or part thereof in any manner it may deem fit and proper

Thus the above facts indicate that the Developer had been given absolute rights to dispose off the property, receive the money and transfer the same to the prospective buyers. As such, it should have been classified as a conveyance deed.

5.3.2 Short levy of stamp duty and registration fees on documents containing distinct matters

As per Section 5 of the GS Act, any instrument comprising of distinct transactions shall be chargeable with aggregate duties with which separate instruments would be chargeable under the Act.

Audit examination of ownership details of the properties sold by way of conveyance deeds registered between November 2011 and December 2012 in

three SR Offices[4] revealed that in 10 cases, the 23 land owners had entered into development agreements/agreements to sell with ten developers between February, 2010 and June, 2011, and the latter were also given PoA authorising them to take possession of the land, make construction thereon and disposed off the property for consideration. With the help of the PoA, the developers/ agreement holders had signed and executed the documents of conveyance in both the capacities as seller as well as developer and none of the land owners had joined or taken part in the execution of the documents. Thus, all the rights, title and interest in the properties were passed on to the developers by way of two documents i.e. development agreements and PoA at the time of execution of these 10 conveyance deeds.

The SRs did not call for the copy of the development agreements and PoAs to ascertain leakage of revenue in these missing transactions of conveyances. Stamp duty and registration fees forgone in the above cases was ₹ 1.84 crore on market value of ₹ 32.72 crore of total land admeasuring 58,962.88 sq. mtr.

After this was pointed out, the Department stated (October, 2014) that in nine cases demand notices had been issued.

5.3.3 Stamp duty on development agreements not ascertained

Under Article 5(ga) of Schedule I of GS Act, stamp duty on development agreements shall be charged at the rate of one *per cent* of the market value of the property. Judgments in the case of *Bhoopati Nath Chakravarti Vs. Basantkumar Dabee, Cal 1098(1106) 3 Bom. HCR 94, Chief Controlling Revenue Authority Board of Revenue, Madras Vs. TV Incs. Cables (Pvt.) Ltd.- 1982 (I) MLJ 137 : 95 LW : AIR 1982 Mad.113)* pertaining to levy of stamp duty clarify that though stamp duty is leviable on the instrument and not on those transactions, it is the substance of the transaction as embodied in the instrument and not to the description at the head of the document.

During scrutiny of the registration records of 20 SR offices[5] for the period 2010 to 2012, we found from the recitals of 56 instruments of conveyance/ agreement to sell executed between the 159 vendors and vendees for purchase of flats/individual plots that there were indication of development agreements executed between January 2010 and October 2012 between the land owners and developers. The recitals of the instruments further revealed that multi-storey flats were constructed by developers on behalf of owners of the land as per terms and conditions of agreements, but due stamp duty on these agreements was not levied as per the details given below:

5.3.3.1 Short levy of stamp duty on unregistered/notarised development agreements

Audit scrutiny of the recitals of 33 instruments relating to conveyance revealed that development agreements had been entered into between the

[4] SR-V and XII Ahmedabad and SR - IV, Vadodara

[5] SR-II to VI, IX and X Ahmedabad, Ankleshwar, Gandhidham, Kadi, Kalol, Palanpur, SR-I, II and IV Surat, Sanand and SR I to IV, Vadodara

77 land owners and developers between October 2004 and April, 2011, neither the executants submitted the copy of the development agreements nor the SRs called for the copy of the agreements to ascertain proper levy of stamp duty on these instruments. In four instruments, recitals showed that the development agreements were not registered, but notarized and in 29 cases, there were no details of registration/payment of stamp duty. The stamp duty involved in these cases at the rate of one *per cent* applicable for development agreement was ₹ 3.38 crore on the land admeasuring 3,65,841.93 sq. mtr. having market value of ₹ 337.99 crore.

5.3.3.2 Non- levy of stamp duty on entire land given for development

Audit scrutiny of the recitals of 23 instruments of conveyance executed between the 82 land owners and developers revealed that there were indications in the recitals about execution of development agreements between the land owners and developers between March 2004 and March 2012. The Sub Registrars did not call for the copy of the development agreements, but levied stamp duty at the rate of one *per cent* applicable for development agreement on the portion of land conveyed through the instruments of conveyance instead of entire land given for development.

As the stamp duty was leviable on the document of development agreements with reference to entire land given for development, the action to levy extra stamp duty of one *per ce*nt on the subsequently executed conveyance deeds was not in accordance with the provisions of the Act. Further, the burden of payment of extra duty on these development agreements stands transferred to fellow purchasers of the constructed properties.

The value of the land unsold was ₹ 157.84 crore involving stamp duty of ₹ 1.58 crore.

After this was pointed out, the Department replied (October, 2014) that they had recovered ₹ 34.24 lakh in four instruments and in remaining cases notices have been issued.

5.3.4 Lack of uniformity in levy of registration fees on development agreements registered in the State

The Gujarat Table of Registration Fees prepared by the Government of Gujarat in exercise of the powers conferred by Section 78(2) of the Registration Act, 1908 provides for levy of registration fees on the instruments of conveyance, release for consideration etc. on *ad valorem* scale on the amount of value of consideration or the property to which the document relates. Whereas, as per Article IV of Table of Registration Fees, a fixed registration fee of ₹ 30 is chargeable for the registration of the agreements. The Government while inserting clause (ga) under Article 5 of Schedule I to the GS Act with effect from 1.9.2001, however, did not issue notification/ clarification or amend the provisions of Registration Act regarding levy of

registration fees on *ad valorem* scale at par with the instruments of conveyance of immovable properties i.e. one *per cent* of the consideration.

Table given below show the inconsistent rates of registration fees adopted by different SR offices in the State on the deeds of development agreements in the absence of a clear provision/direction in the matter:

(A) Instances where ad valorem registration fees levied:

Sl. No.	Name of Office	Document number and date	Market value/ Consideration (₹ in lakh)	Registration Fees levied at the rate of one *per cent* (₹ in lakh)
1	SR-Pardi Dist.Valsad	2293 7.3.2013	279.00	2.79
2	SR-Navagam (Surat)	7899 17.9.2013	558.21	5.58
3	SR-Anand	584 21.1.2013	25.49	0.25

(B) Inconsistencies in levy of registration fees:

Sl. No.	Name of Office	Document number and date	Market value/ Consideration (₹ in lakh)	Registration Fees levied (Amount in ₹)	Short levy of Registration Fees (₹ in lakh)
1	SR-III Memnagar Ahmedabad	2365 25.2.2011	38.08	30	0.38
		3287 16.3.2011	79.26	30	0.79
		12731 29.11.2011	270.63	30	2.71
		1757 11.2.2011	116.88	30	1.17
		11163 04.10.2011	1560.30	30	15.60
2	SR-IV Paldi Ahmedabad	1730 21.3.2012	541.70	30	5.42
		7244 6.12.2012	82.55	30	0.83
3	SR-VIII Sola Ahmedabad	3039 20.4.2012	4224.54	30	42.24
		3007 19.4.2012	415.15	30	4.15
				Total short levy of registration fees	**73.29**

From the above, it was evident that there was lack of uniformity in levy of registration fees on the development agreements registered in the State due to lack of clarity in levy of registration fees. Further, development agreements are not mere agreements but do pass on the developer right, title and interest as far as the construction carried out by him on the land are concerned. Hence, the levy of fixed registration fees as shown in Table (B) above had an impact of short levy of registration fees of ₹ 73.29 lakh at one *per cent* on land valued at ₹ 7,329.09 lakh.

After this was pointed out, the Department stated (October, 2014) that as the development agreements were in the nature of agreements and hence fixed registration fees were only leviable in these documents as per the provisions of Registration Act. The fact, however, remains that inconsistent registration fees are recovered by different offices. The Department may issue necessary clarification to the SR offices for maintaining uniformity in levy of registration fees and also circumvent litigations.

5.4 Undervaluation of property by Deputy Collector (Stamp Duty Valuation Organisation)

Section 31 of the Gujarat Stamp Act, 1958 (GS Act, 1958) provides that the Collector shall determine the duty with which any instrument is chargeable. In case market value determined by the Collector under Section 31 of the Act is less than the market value as per *jantri*, it must be again forwarded to the Collector under Section 32 A of the Act for determination of fair market value. After payment of full duty, the Collector shall certify the same by endorsement on such document.

As per the judgment delivered in case of *CCRA Vs Dr. K. Manjunath Rai*, where the Collector's opinion was sought but the instrument was not presented again for stamping and certification before the Collector, the Collector's opinion cannot be regarded as final and does not preclude other authorities from reopening it under Section 33.

Test check of the records of four Sub Registrar (SR) offices[6] for the year 2011 and 2012, between May 2013 and October 2013 revealed that in 30 cases, market value opined by the DC (SDVO) under Section 31 was much lower than the market value as per *jantri*[7]. Audit scrutiny revealed that though the opinion of the DC (SDVO) was sought but the instruments were not presented again before the DC (SDVO) for certification under Section 32 of the Act, *ibid*. Five illustrative cases are shown as follows:

(₹ in crore)

Name of Sub Registrar	Document Registration Number	Market value as per *jantri*	Market value as opined DC(SDVO)	Undervaluation
SR-II, Danteshwar, Vadodara	252/ 2012	38.60	2.82	35.78
	1699/ 2012	32.74	3.83	28.91
	3028/ 2012	12.90	4.05	8.85
SR-II, Udhana, Surat	10722/ 2012	11.72	7.13	4.59
	12632/ 2012	10.76	3.20	7.56

[6] Olpad (Surat), Surat-II (Udhana), IV(Katargam), Vadodara-II(Danteshwar)

[7] Statement issued by the Government showing the rate for the purpose of determination of value of immovable properties and levy of stamp duty.

The SRs did not calculate the market value as per *jantri* and registered the instruments on the market value as opined by DC (SDVO). In absence of certificate of endorsement on these instruments by DC (SDVO), the SRs were required to refer these cases under Section 32 A of the Act, *ibid*. However, the instruments were not referred by SRs to DC (SDVO) for determination of true market value of the property. In accordance with *jantri* rates, the stamp duty involved in these instruments amounts to ₹ 5.83 crore.

We pointed out these cases to the Department during February to May 2014. The Department stated (September 2014) that in two cases; DC (SDVO) had decided that the document was properly stamped and referred 14 cases to CCRA for adjudication. They had been issued/had been issuing notices in remaining cases.

We pointed out these cases to the Government in June 2014; their replies have not been received (November 2014).

5.5 Short levy of stamp duty and registration fees due to undervaluation of properties

Section 32 A of the GS Act, 1958 provides that if the officer registering the instrument believes that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall refer the same to the DC (SDVO) for determination of the market value of the property. The market value of the property is to be determined as per the Gujarat Stamp (Determination of Market Value of the Property) Rules, 1984 and the orders issued there under.

During test check of the cases/documents finalised/registered in the two Collector offices and 15 SR offices, we noticed that the market value of the properties was determined incorrectly in 65 documents, which resulted in short levy of stamp duty and registration fees of ₹ 2.84 crore as mentioned in the following table:

(₹ in crore)

Sl. No.	Name of office	Number of documents Period of Registration of documents	Short levy of stamp duty and registration fees
1	Collector: Rajkot, SR: Ahmedabad-III and V, Ankleshwar, Bhuj, Kalol(NG), Palanpur, Rajkot-II and III, Surat-I and II, Vadodara-II	37 Between March 2011and December 2012	1.84
The Superintendent of Stamps had instructed the SRs vide his circular of 2 April 2008 that wherever the rates in new *jantri* (Annual Statement of Rates) are lower than that of old *jantri*, it should be referred to the DC (SDVO) under Section 32A of the Gujarat Stamp Act, 1958. Under Article 20(a) of Schedule I to the Act, in case of conveyance deed, stamp duty is leviable at the rate of 4.9 *per cent* of the amount of consideration of such conveyance or the market value of the property, whichever is greater. **Nature of Observation**: **(i)** We observed in 28 conveyance deeds that the SRs adopted			

incorrect *jantri* rates such as rates of another value zone, rates of block number instead of revenue survey number etc. In other three conveyance deeds, though the land conveyed was non- irrigated land, the SR adopted lower *jantri* rates for irrigated land instead of applicable rate of non- irrigated which was higher. These properties were registered for a consideration amount of ₹ 23.85 crore instead of market value of properties of ₹ 61.47 crore. In above mentioned 31 cases, the stamp duty was required to be levied of ₹ 3.01 crore, but was levied of ₹ 1.41 crore resulting in short levy of stamp duty of ₹ 1.60 crore.

(ii) In one case, the agriculture land was converted (February 2011) into non- agriculture land after payment of premium price fixed of ₹ 3.22 crore. The SR while registering (August 2011) conveyance deed executed by the parties calculated the market value of the property treating the land as agriculture land instead of non- agricultural land for the purpose of levy of stamp duty and also did not consider new *jantr*i rates of ₹ 5,250 per sq. mtr. effective from 1 April 2011. The property was registered for a consideration amount of ₹ 3.67 crore instead of market value of property of ₹ 7.05 crore. The stamp duty was leviable of ₹ 34.57 lakh, but was levied of ₹ 20.80 lakh resulting in short levy of stamp duty of ₹ 13.77 lakh.

(iii) Recitals of two conveyance deeds revealed that the SRs adopted lower rates applicable for conveyance of flats for calculating the market value of the property instead of the higher rates applicable for shops. These properties were registered for consideration amount of ₹ 1.08 crore instead of market value of properties of ₹ 2.69 crore. The stamp duty was required to be levied of ₹ 13.20 lakh, but was levied of ₹ 7.85 lakh resulting in short levy of stamp duty of ₹ 5.35 lakh.

(iv) In one sale deed, land admeasuring 499.65 sq. mtr. along with three storey constructed property of 975 sq. mtr was conveyed by the parties. However, while calculating the market value of the property, area of constructed property *i.e.*, 422.62 sq. mtr. of ground floor was only considered. The property was registered for a consideration amount of ₹ 66.10 lakh instead of market value of property of ₹ 126.69 lakh. The stamp duty was required to be levied of ₹ 6.21 lakh, but was levied of ₹ 3.24 lakh resulting in undervaluation of property and consequent short levy of stamp duty of ₹ 2.97 lakh.

(v) In one case of allotment of Government land, stamp duty was levied on the concessional occupancy price of ₹ 12.81 lakh paid by the allottee instead of the market value of the property of ₹ 51.25 lakh decided by the valuation authority. In another case of allotment of *grazing* land, additional occupancy price of ₹ 25.99 lakh collected in the name of "Gauchar Development Fund" was not considered for levy of stamp duty. Undervaluation of properties in these cases resulted in short levy of stamp duty of ₹ 2.20 lakh.

2	SR: Palanpur, Vadodara-IV	2 August 2011 and May 2012	0.33

Jantri rates were revised with effect from 1 April 2008 and again revised with effect from 1 April 2011. As per the guidelines issued for implementation of revised *jantri* rates, developed land includes land which can be used for non- agriculture purpose, land wherein development can take place or which is capable of being developed e.g. land converted into non- agriculture, land included in development scheme (*Vikas Yojana*)/Town Planning scheme, land purchased under Section 63 A and 63 AA of the Gujarat Tenancy and Agriculture Lands Act, 1948 (GTAL Act) and land included in Special Economic Zone and Information Technology Parks. As per Article 26 of Schedule-I of GS Act, 1958 stamp duty on exchange of property is leviable at the rate of 4.9 *per cent* on the market value of the property of the greatest value.

Nature of Observation: **(i)** In one conveyance deed agricultural land valued at ₹ 5.50 crore was purchased by non- agriculturist. SR adopted *jantri* rate of agriculture land of ₹ 2,700 per sq. mtr. instead of non- agricultural land of ₹ 5,100 per sq. mtr. resulting in undervaluation of ₹ 8.02 crore and short levy of stamp duty of ₹ 31.15 lakh.

(ii) Recitals of a document titled as deed of exchange of property revealed that a Trust had exchanged land admeasuring 6,317 sq. mtr., with the land admeasuring 9,513 sq. mtr. of an agriculturist. The Trust was a non- agriculturist, hence they had obtained permission from

competent authority under Section 63A of GTAL Act for conversion of agriculture land for non- agriculture purpose. As per the provisions of the Article 26 of the Gujarat Stamp Act, the SR was required to calculate the market value of the property of the Trust, being of the greatest value, with reference to the *jantri* rates of non- agricultural land of ₹ 530 per sq. mtr. However, SR applied *jantri* rates applicable for agricultural land of ₹ 58 per sq. mtr. This resulted in undervaluation of property and consequent short levy of stamp duty of ₹ 2.20 lakh.			
3	SR: Ahmedabad-IX, Kalol (NG)	5 Between February 2012 and June 2012	0.21
Nature of Observation: Recitals of five conveyance deeds revealed that the land conveyed was included in Town Planning (TP) Scheme and were allotted final plot numbers after deducting a certain portion of the land. The *jantri* rates finalised by the Government for the particular zone was prior to introduction of TP Scheme and hence the rates of survey number were only available in the *jantri* rates. We noticed that in view of the developmental prospects of the area, the rate of final plots allotted subsequent to introduction of TP Scheme will always be higher than that of the rate of survey numbers and hence, the SR while computing the market value of the property should have adopted entire area of land prior to introduction of TP Scheme and applied *jantri* rates available for the respective survey numbers. However, the SR had considered the final plot area and applied rate applicable for survey numbers to work out the market value of the property. These properties were registered for a consideration amount of ₹ 60.74 lakh instead of market value of properties of ₹ 1,068.03 lakh. In above mentioned 5 cases, the stamp duty was required to be levied of ₹ 52.33 lakh, but was levied of ₹ 31.40 lakh resulting in short levy of stamp duty of ₹ 20.93 lakh.			
4	Collector : Rajkot, Surendranagar SR: Kalol (NG)	13 Between November 2007 and December 2012	0.15
Under Article 20(a) of Schedule I to the GS Act, 1958, in case of conveyance deed, stamp duty is leviable at the rate of 4.9 *per cent* of the amount of consideration of such conveyance or the market value of the property, whichever is greater. The Government of Gujarat decided vide Resolution dated 13 July 1983 to allow conversion of land from new and restricted tenure to old tenure for sale/transfer for agricultural purpose or non- agricultural purposes subject to payment of premium price at prescribed rates fixed by the Government from time to time. Government decided that new *jantri* rates as approved by the Government shall be applicable in all the cases for fixation of premium price from 1 April 2008. **Nature of Observation**: Recitals of 13 documents revealed that new and restricted tenure[8] land was conveyed to Companies/ Trust with/without permission of competent authority under Section 63AA of GTAL Act. We observed from recitals of documents that liability for payment of premium price was passed on to purchaser. While calculating the consideration amount, the SR did not consider the premium price payable by the purchaser on behalf of the seller. The stamp duty was levied on market value of the property whereas the consideration amount was higher than the market value of the property. This resulted in short levy of stamp duty and registration fees of ₹ 14.77 lakh.			
5	SR:Vadodara-IV, Ahmedabad-VII	2 Between December 2011 and February 2012	0.12
As per the guidelines of Annual Statements of Rates (ASR) effective from 1 April 2011, the terrace of the flat/ offices should be valued at the rate of 40 *per cent* of the market value of the property covered in the respective zone.			

[8] "New and restricted tenure" means the tenure of occupancy which is non-transferable and impartible without the prior approval of the Collector.

Nature of Observation: Recitals of above documents revealed that rights of terrace were passed on to the developers/confirming party by the land owners at the time of sale of flats to the purchasers, but SR did not consider the terrace rights retained by the developers. This resulted in short levy of stamp duty and registration fees of ₹ 11.59 lakh.			
6	SR: Palanpur	2 August 2011 and September 2011	0.09
IGR in his circular dated 26 November 2007 instructed SRs to include area of common plot, internal road etc., in total area of land for arriving at the market value of property for the purpose of levy of stamp duty. **Nature of Observation**: Recitals of conveyance deeds revealed that the land owners had conveyed non- agricultural plots including common plot and internal road. We observed that for the purpose of levy of stamp duty, the SRs did not include areas of common plots, internal roads, parking plot etc. in the total area of land for calculation of the market value of the property conveyed. These properties were required to be registered for a market value of ₹ 3.35 crore, but were registered for a market value of ₹ 1.47 crore resulting in short levy of stamp duty of ₹ 9.22 lakh.			
7	SR: Ahmedabad-IV, Surat-I	2 August 2012 and September 2012	0.05
Nature of observation:- In one conveyance deed recitals revealed that while calculating the market value of property the SR adopted incorrect area of land of 3,900 sq. mtr. instead of correct area of land of 4,200 sq. mtrs. In another conveyance deed recitals revealed that while calculating the market value of land the SR adopted net area of 1,555.61 sq. mtr. instead of gross area of land of 1,911.50 sq. mtrs. The stamp duty was required to be levied on ₹ 59.18 lakh, but was levied on ₹ 54.29 lakh resulting in short levy of stamp duty of ₹ 4.89 lakh in these cases.			
8	SR : Surat-I	1 July 2012	0.03
As per the guidelines of ASR 2011, where agriculture land is purchased for industrial purpose with the permission of competent authority and total area of such land is more than 10,000 sq. mtr. rebate of 20 *per cent* may be allowed in *jantri* rates for valuation of property. However, the executors have to present copy of the orders of the competent authority at the time of registration of instrument. **Nature of Observation**: Recitals of a conveyance deed revealed that land was purchased for a purpose other than industrial i.e., residential purpose. The SR had incorrectly allowed 20 *per cent* reduction in actual market value for levy of stamp duty. This resulted in short levy of stamp duty of ₹ 2.96 lakh.			
9	SR : Surat-I	1 March 2012	0.02
As per guidelines issued in the new *jantri* rates effective from 1 April 2011, when the conveyed shop is situated in a Mall, Arcade or Multiplex, no rebate for floor or frontage should be given, while calculating the market value of the property for the purpose of levy of stamp duty. **Nature of Observation**: Recitals of documents in the above case revealed that conveyed property was a shop situated in the second floor of an Arcade. The SR while calculating the market value of the property had provided rebate, though was not applicable for this case. The property was required to be registered for a market value of ₹ 141.29 lakh, but was registered for a market value of ₹ 92.19 lakh resulting in short levy of stamp duty of ₹ 2.07 lakh.			
Total		**65**	**2.84 crore**

We pointed out these cases to the Department in February to May 2014. The Department stated (September 2014) that in 20 cases; DC (SDVO) had decided that the document was properly stamped and had referred one case to CCRA for adjudication. They had recovered ₹ 11.79 lakh in 10 cases and had issued/had been issuing notices in remaining cases.

We pointed out these cases to the Government in June 2014; their replies have not been received (November 2014).

5.6 Short levy of stamp duty and registration fees due to misclassification of documents

Under Section 3 of the GS Act, 1958 every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. As per various court judgments, at the time of registration of document, regard should be given to the substance of the document and not to the description at the head of the document.

During test check (August 2012 to October 2013) of documents registered with seven SR offices, we noticed that nine documents registered were classified on the basis of their titles and the stamp duty and registration fees were levied accordingly. Scrutiny of the recitals of these documents revealed that the documents were misclassified. This resulted in short levy of stamp duty and registration fees of ₹ 1.06 crore as mentioned in the following table:

(₹ in lakh)

Sl. No.	Name of office	Number of documents/ Amount of loan or consideration/ market value	Stamp duty and registration fees leviable	Stamp duty and registration fees levied	Short levy of stamp duty and registration fees
1	SR Surat-II	1 12,885.00	90.19	Negligible	90.19
As per Article 36 (c) of Schedule I to GS Act, 1958, in case of mortgage deed, when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above mentioned purpose is given, where the principal or primary security is duly stamped, stamp duty is leviable at the rate of 0.70 *per cent*. **Nature of observation:** Recitals of documents indicated that the mortgagor had taken loan from bank and executed mortgage deed in March 2012 and title deeds of immovable properties were deposited. After three months of execution of mortgage deed, a deed of rectification was executed and immovable properties were brought as additional securities to secure the loan already granted by bank. Stamp duty at the rate of 0.70 *per cent* was required to be levied under Article 36 (c) of Schedule I to GS Act, 1958. However, SR treated the document as rectification deed of original mortgage and levied stamp duty of ₹ 100 only. Misclassification of the deed resulted in short levy of stamp duty of ₹ 90.19 lakh.					
2	SR: Ahmedabad-V and VII, Rajkot-IV, and Sanand.	5 213.83	11.91	0.25	11.66

Under Explanation-I below Section 2 (g) (v) of the GS Act, 1958, an instrument whereby a co-owner of any property transfers his interest to another co-owner of the property and which is not an instrument of partition shall be deemed to be an instrument by which property is transferred *inter vivos*[9]. As per Article 20 of the Schedule-1 of the GS Act, 1958 stamp duty on instrument of conveyance is leviable on the market value of the property or the consideration for such conveyance, whichever is greater. The registration fee is leviable on the amount of consideration mentioned in the document.

Nature of observation:- **(i)** In one case the recital of document indicated that two sisters had released their right, title, interest in favour of four brothers without taking any consideration amount by executing consent deed. The deed was required to be classified as release[10] deed and levied stamp duty and registration fees applicable for a conveyance deed. However, the SR levied stamp duty and registration fees of ₹ 530 only in this consent deed. This resulted in short levy of stamp duty and registration fees of ₹ 4.29 lakh.

(ii) Two documents of declaration cum power of attorney were executed (October 2011) by the minor co-owners of a property through their natural guardians. Recitals of the documents indicated that on behalf of minors the two natural guardians accepted ₹ 35 lakh each as additional consideration in lieu of development agreement cum sale deed executed (May 2010) in favour of the purchaser. However, SR did not levy stamp duty and registration fees on the additional consideration received for release of their right by the recipients. This resulted in short levy of stamp duty and registration fees to the extent of ₹ 4.13 lakh.

(iii) Recitals of a document titled as partition deed indicated that industrial shed valued at ₹ 44.54 lakh was partitioned among four partners along with cash/shares of companies valuing ₹ 20.82 lakh. One partner received entire immovable property as his share, while the other co-owners received cash in *lieu* of their share. We noticed with reference to the definition of partition that there was no division of property in severalty and hence, the transfer of immovable property in favour of a partner would require the document to be classified as release deed, where stamp duty was required to be charged as applicable for a conveyance deed. However, the document was classified as partition deed and levied stamp duty applicable for partition deed which was less than that of a conveyance deed. This resulted in short levy of stamp duty of ₹ 2.01 lakh.

(iv) In one case the recital of the document indicated that four persons had purchased a flat jointly in the year 2010. The three co-owners released their share in favour of one co-owner for consideration of ₹ 26.40 lakh. The document was required to be classified as release for consideration, where stamp duty and registration fees was chargeable as in the case of conveyance deed. However, the SR classified the document as partition deed and levied stamp duty applicable for partition deed which was less than that of a conveyance deed. This resulted in short levy of stamp duty of ₹ 1.23 lakh.

3	SR Jamnagar-II and Sanand	2 4,000.00	8.40	5.40	3.00

Under Article 36 (b) read with Section 3A of the GS Act, 1958, when possession of the property or any part of the property comprised in such deed is not given or not agreed to be given by the mortgagor, stamp duty at the rate of 0.35 *per cent* subject to a maximum of ₹ 1.40 lakh is leviable in case where the loan amount does not exceed ₹ 10 crore. In case the loan amount exceeds ₹ 10 crore, the stamp duty leviable shall be at the rate of 0.50 *per cent* subject to a maximum of ₹ 4.20 lakh.

As per the instructions issued by the IGR in July 1993, if documents styled as deposit of title deed contain recitals such as power of attorney, provision of payment of compound interest, any mention about execution of any writing or document, etc., the documents are classifiable as mortgage deed.

Nature of observation:- **(i)** Recital of document indicated that the borrowers had taken

[9] **inter vivos** adj. Latin for "among the living," usually referring to the transfer of property by agreement between living persons and not by a gift through a will. .

[10] Release that is to say, whereby a person renounces a claim upon another person or against any specified property.

loan of ₹ 20 crore from a bank and executed two documents (December 2010 and September 2012) of memorandum of deposit of title deed and paid total stamp duty of ₹ 1.00 lakh and ₹ 1.40 lakh respectively. We noticed that since the charge has been created for a loan amount of more than ₹ 10 crore, the stamp duty of ₹ 4.20 lakh was required to be levied on the second document executed in September 2012. This resulted in short levy of stamp duty of ₹ 1.80 lakh. **(ii)** Recital of document titled Record of mortgage contained conditions such as to create security in favour of the bank to secure due repayment, discharge and redemption of financial facilities granted to the borrower, by execution of other documents as may be required by bank, etc., which clearly indicate creation of charge over properties. The SR has classified the document as equitable mortgage under Article 6(1) (a) instead of mortgage under Article 36(b) of Schedule-I of GS Act, 1958. Thus, misclassification of document and non- levy of additional stamp duty resulted in short levy of stamp duty of ₹ 1.20 lakh.					
4	SR Jamnagar-II	1 89.78	1.12	Negligible	1.12
Section 2 (m) of the GS Act, 1958 defines an instrument of partition as any instrument whereby co-owners of any property divide or agree to divide such property in severalty. As per Article 43 of Schedule-I to the GS Act, the stamp duty is leviable at the rate of 0.25 *per cent* on the amount of the market value of the separated share or shares of the property subject to maximum of ₹ one lakh where the market value of property is ₹ 10 crore. As per Registration Act, 1908, registration fees on the composition deed, gift deed, and partition deed, etc., shall be levied at *ad valorem* scale on the amount or value of the property. **Nature of observation**: Recital of dissolution of partnership deed indicated that four partners brought their land as capital into the partnership firm and constructed residential apartments/office on the land. On dissolution, the unsold apartments/office was divided among the four partners. Being co-owners of the property, division of the constructed property would tantamount to partition and hence, stamp duty and registration fees as was chargeable as in the case of a partition deed. However, the document was levied with stamp duty and registration fees of ₹ 230 only. This resulted in short levy of stamp duty and registration fees of ₹ 1.12 lakh.					
Total		**9** **17,188.61**	**111.62**	**5.65**	**105.97**

The Department stated (September 2014) that in one case the DC (SDVO) had passed order for recovery of deficit stamp duty. The Department issued notices in eight cases for levy of stamp duty.

We pointed out these cases to the Government in June 2014; their replies have not been received (November 2014).

5.7 Short levy of stamp duty and registration fees on documents comprising several distinct matters

As per Section 5 of the GS Act, 1958, any instrument comprising of several distinct matters or distinct transactions shall be chargeable with aggregate amount of duties with which separate instruments would be chargeable under the Act.

During test check of the records of four SR offices for the period 2011 and 2012, we noticed from the recitals of nine documents that it contained more than one distinct matter or transaction which attracts levy of aggregate stamp

duty and registration fees. However, the SR failed to take cognizance of the recitals of the document and did not levy the aggregate stamp duty and registration fees chargeable on each such distinct matter. This resulted in short levy of stamp duty and registration fees of ₹ 91.36 lakh as mentioned in the table below:

(₹ in lakh)

Sl. No.	Name of office	Number of documents/ Period of registration of documents	Stamp duty and registration fees leviable	Stamp duty and registration fees levied	Short levy of stamp duty and registration fees
1	SR:Ahmedabad -III and Jamnagar-II	7 February 2011 and April 2012	76.99	30.74	46.25
As per Explanation I under Section 2(g) of the GS Act, 1958 an instrument whereby a co-owner of any property, transfers his interest to another co-owner of the property and which is not an instrument of partition as defined in Section 2(m)[11] shall be deemed to be an instrument by which property is transferred *inter-vivos* and is chargeable to duty as conveyance. A conveyance deed is chargeable with stamp duty at the rate of 4.9 *per cent* of the market value of the property or the consideration for such conveyance, whichever is greater. **Nature of observation**:- Recitals of seven conveyance deeds revealed that there were two distinct transactions i.e. (1) relating to the relinquishment of right, title and interest in the property by some co-owners to other co-owner/s of the property, which is tantamount to release deed where stamp duty applicable for a conveyance deed was leviable and (2) sale of the property by the other co-owners in favour of the purchaser. The co-owners who relinquished their right in the property had joined in the document as confirming parties to express their consent for sale, while stamp duty and registration fees were charged on the document only on the sale of property by the co-owners in favour of the purchaser. Thus, not charging aggregate amount of stamp duty and registration fees leviable for release deed and conveyance deed resulted in short levy of stamp duty and registration fees of ₹ 46.25 lakh.					
2	SR : Vadodara-IV	1 March 2012	218.04	175.70	42.34
As per Article 43 of Schedule I of GS Act, 1958 the stamp duty on partition deeds shall be levied subject to maximum of one lakh rupees, at the rate of 0.25 *per cent* for the amount of the market value of the separated share or shares of the property if it does not exceed rupees ten crore and if the same exceeds rupees ten crore the stamp duty is leviable at the rate of 0.5 *per cent*, subject to maximum of three lakh rupees. Similarly, registration fees at the rate of one per cent shall be levied on partition deeds according to Article I (3) read with Note 3 of the Gujarat Table of Registration fees. **Nature of observation**:-. Land admeasuring 33,128.45 sq. mtr. was purchased by registered conveyance deed on 26.9.2008 by two parties jointly having undivided 1/3rd and 2/3rd share on the entire land. Subsequently, a document was executed and registered (28.03.2012) by the parties wherein their respective shares in the property was clearly demarcated and also a portion of the land admeasuring 8,360 sq. mtr. was conveyed by one of the party in favour of a purchaser. We noticed that the deed contained two distinct matters i. e, (1) undivided shares in the land was partitioned between the co-owners, which tantamount to partition deed and (2) conveyance deed between one of the co-owner and the purchaser. The SR levied stamp duty and registration fees only on the conveyance deed which resulted in short levy of stamp duty and registration fees of ₹ 42.34 lakh chargeable on the aspect of partition.					

[11] Instrument of partition means any instrument whereby co-owners of any property divide or agree to divide such property in severalty.

3	SR:Ahmedabad -IV	1 March 2012	9.21	6.44	2.77
As per Explanation I under Article 20, it is mentioned that in case of transfer of possession before, at the time of, or after the execution of agreement of sale or irrevocable power of attorney shall be treated as deemed conveyance and duty shall be chargeable accordingly. **Nature of observation**:-. Recitals of a conveyance deed revealed that original land owner had executed irrevocable power of attorney (IPoA) in favour of two persons after receipt of ₹ 18 lakh from the IPoA holder which was notarised on 30.12.1999 with a stamp of ₹ 100 only. The IPoA holders executed the present sale deed and conveyed the property to the purchaser. We noticed that the PoA executed in 1999 was not levied with proper stamp duty and hence cannot be admissible as evidence. In view of this, the present sale deed contained two distinct matters (i) irrevocable PoA between land owner and power of attorney holders and (ii) conveyance deed between power of attorney holders and present purchaser. The SR levied stamp duty and registration fees only in respect of the present sale deed and did not levy stamp duty and registration fees on the conveyance between the original land owner and the irrevocable PoA holder. This resulted in short levy of stamp duty and registration fees of ₹ 2.77 lakh.					

We pointed out these cases to the Department in February and April 2014. The Department stated (September 2014) that they had issued/had been issuing notices in these cases.

We pointed out the case to the Government in June 2014; their replies have not been received (November 2014).

5.8 Non- levy of stamp duty and registration fees on document of amalgamation of Companies

As per Article 20(d) of Schedule-I to the GS Act, 1958, stamp duty at one *per cent* is leviable in case of amalgamation or reconstruction of Companies by an order of the High Court subject to maximum of ₹ ten crore. The said duty is leviable on market value of shares and consideration, if any, paid for such amalgamation or true market value of the immovable property situated in the State of Gujarat of the transferor Company, whichever is higher.

Test check of the records of SR-IV, Rajkot for the year 2012, in June 2013, we noticed in one document that land admeasuring 8,749.66 sq. mtr. was owned by six Companies who had applied in the High Court for amalgamation with one another Company. The amalgamation scheme was approved by High Court in the year 2012. The aforesaid land was transferred by Transferor Companies to Transferee Company by registering a deed of declaration. We noticed that no stamp duty and registration fee was levied on this deed of amalgamation. This resulted in non- levy of stamp duty and registration fees at one *per cent* each on the value of immovable property of ₹ 18.68 crore aggregating to ₹ 37.36 lakh.

We pointed out this case to the Department in March 2014. The Department accepted (September 2014) our observation and recovered ₹ 26.86 lakh.

We pointed out these cases to the Government in June 2014; their replies have not been received (November 2014).

5.9 Instruments not duly stamped

Section 17 of the GS Act, 1958 prescribes that all instruments chargeable with duty and executed by any person in the State shall be stamped before or at the time of execution or immediately thereafter on the next working day following the date of execution.

Test check of the records of three SR offices[12] for the year 2011 and 2012, between August 2012 and October 2013, we noticed in six documents that the stamps of ₹ 9.78 lakh were used after the prescribed time from the date of execution of the documents. As such the documents were not stamped according to the provisions of the Gujarat Stamp Act, 1958 and therefore, cannot be held as duly stamped. The registering authorities instead of referring the documents under Section 33 of the Gujarat Stamp Act to DC (SDVO) for the validation of stamps used after prescribed time from the date of execution had allowed the registration of such documents in contravention of the provisions of the Act. This resulted in short levy of stamp duty of ₹ 9.78 lakh due to use of invalid stamps.

We pointed out these cases to the Department in February and May 2014. The Department stated (September 2014) that they had issued/had been issuing notices in these cases.

We pointed out these cases to the Government in June 2014; their replies have not been received (November 2014).

5.10 Short levy of stamp duty and registration fees on dissolution of partnership

As per Article 44(3)(a) of Schedule I to the GS Act, 1958 where any immovable property is taken as his share on dissolution of partnership by a partner other than a partner who brought that property as a share or contribution to partnership, stamp duty is chargeable at the rate applicable on a conveyance. As per Article 44(3)(b), stamp duty payable on dissolution of partnership is ₹ 100.

During test check of the records of two SR offices[13] for the year 2012, between June 2013 and October 2013, we noticed that the recitals of the two documents indicated that the immovable properties were taken by person other than the partners who brought their property as share or contribution to partnership. In these cases, the market value of properties was ₹ 1.91 crore. The Department did not levy stamp duty and registration fees on the transfer of property by treating these as conveyance deeds. This resulted in short levy of stamp duty and registration fees of ₹ 9.03 lakh.

We pointed out these cases to the Department in May 2014. The Department stated (September 2014) that they had issued/had been issuing notices in these cases.

[12] Ahmedabad-III (Memnagar), IX(Bopal) and Bhuj
[13] Jamnagar-II and Surat-II (Udhana)

We pointed out these cases to the Government in June 2014; their replies have not been received (November 2014).

5.11 Short levy of registration fees

As per Section 78 of the Registration Act, 1908 registration fees on partnership deed is payable on *ad valorem* scale at the rate of one *per cent* of the consideration amount or value of the property.

During test check of the records of SR-IV, Gorva, Vadodara for the year 2012, in June 2013, we noticed that in one document registered as partnership deed, registration fees was levied on consideration amount mutually decided by the partners instead of market value of property. This resulted in short levy of registration fees of ₹ 8.35 lakh.

We pointed out the case to the Department in May 2014. The Department stated (September 2014) that they had issued notice in the case.

We pointed out the case to the Government in June 2014; their reply have not been received (November 2014).

CHAPTER-VI
EXECUTIVE SUMMARY

Results of audit	Test check of records in the offices of the Chief Electrical Inspectors and Collector of Electricity Duty, Electrical Inspectors/Assistant Electrical Inspectors and O and M Divisions of Electricity Distribution Companies in the State during the year 2012-14 revealed underassessment and other irregularities involving ₹ 17.46 crore in 15 cases. During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 9.53 lakh in four cases.
What we have highlighted in this Chapter	The Department had not initiated any action to recover unpaid dues aggregating to ₹ 75.47 lakh as arrears of land revenue. This resulted in non-realisation of revenue to that extent.

CHAPTER-VI
OTHER TAX RECEIPTS

ELECTRICITY DUTY

6.1 Tax administration

The overall control on levy and collection of electricity duty and fees rests with the Principal Secretary, Energy and Petrochemicals Department. Chief Electrical Inspector (CEI) and Collector, Electricity Duty Gandhinagar (CED) is the head of the Department working under the Principal Secretary. Collector (ED) is assisted by assessment officer and administrative officer at headquarters level and inspectors at field level. Duty Inspectors are responsible for ensuring correctness of levy and collection of duty at billing centres of licensees. These duty inspectors have also been assigned the work of checking of readings in meters of self generating units of electricity and collection of duty thereof.

Chief Electrical Inspector is assisted by four Dy. Chief Electrical Inspectors, nine Electrical Inspectors and 17 Assistant Electrical Inspectors at district level for conducting inspection of electrical installations.

6.2 Results of audit

Test check of records in the offices of the Chief Electrical Inspectors and Collector of Electricity Duty, Electrical Inspectors/Assistant Electrical Inspectors and Operation and Maintenance Divisions of Electricity Distribution Companies during the year 2012-14 revealed underassessment and other irregularities involving ₹ 17.46 crore in 15 cases, which fall under the following categories;

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1	Non/short recovery of inspection fees	11	9.93
2	Other irregularities	4	7.53
	Total	**15**	**17.46**

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 9.53 lakh in four cases.

A few illustrative audit observations involving ₹ 75.47 lakh are mentioned in the succeeding paragraphs.

6.3 Non-realisation of inspection fees

According to the provisions of the Indian Electricity Rules, 1956 read with Regulation 30 of Central Electricity Authority (Measures Relating to Safety and Electricity Supply) Regulations, 2010 and Government notifications issued there under, Inspectors are required to inspect all high tension and extra high tension installations in factory premises and in public places of amusements including cinemas/theatres, etc. once in a year. Whereas, medium/low voltage electrical installations in factory premises have to be inspected once in two years. Inspection fee at prescribed rates is required to be paid prior to or at the time of inspection or can be paid within 10 days of inspection in respect of such inspection carried out by the Departmental officials. Further, Section 170 of the Electricity Act, 2003 authorises the Department to recover unpaid penalty as arrear of land revenue.

During the test check of the records of eight offices of Assistant Electrical Inspectors[1] in July 2012 to December 2013 we noticed that in 720 cases, the inspection had been carried out by the inspectors. Though, the demand notices had been issued, the inspection fee for the period 2008-09 to 2012-13 had not been recovered. Moreover, the Department had not initiated any action to recover unpaid dues as arrears of land revenue as stipulated in the Act *ibid*. This resulted in non-realisation of inspection fee of ₹ 75.47 lakh.

We pointed out these cases to the Department between May 2013 and June 2014. The Department recovered ₹ 6.73 lakh in 76 cases. In remaining cases, their replies have not been received (November 2014).

[1] Ahmedabad, Bhuj, Junagadh, Mehsana, Palanpur, Rajkot, Surat and Valsad.

CHAPTER-VII
EXECUTIVE SUMMARY

Results of audit	Test check of records in the offices of the District Geologists and Director of Petroleum in the State during the year 2012-14 revealed under-assessment and other irregularities involving ₹ 20.77 crore in 56 cases. During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 28.63 lakh in six cases
What we have highlighted in this Chapter	Test check of the Demand and Collection Registers of office of five District Geologists for the period 2011-13 revealed short levy of dead rent in 80 cases involving ₹ 52.03 lakh. In 19 cases of major minerals, though the lessees were liable to pay surface rent annually in respect of land occupied or used, the Department did not levy surface rent on area admeasuring 53.81 lakh sq. mtr. This resulted in non-levy of surface rent of ₹ 5.38 lakh.

CHAPTER-VII
NON-TAX RECEIPTS

INDUSTRIES AND MINES DEPARTMENT

7.1 Tax administration

Two Departments of the Government of Gujarat (GoG), viz. the Industries and Mines Department (IMD) and the Energy and Petrochemicals Department (EPD) control the activities of mining in the State. A separate Directorate of Petroleum was formed in 1997. Thereafter, EPD deals with the oil and natural gas and the IMD with the rest of the mineral wealth of the State. The IMD handles the regulation of general mines and minerals, grant of leases of mines/ quarries and the levy and collection of royalty and dead rent. It is headed at the Government level by a Principal Secretary and at the Department level, by the Commissioner of Geology and Mining (CGM). The CGM is assisted by the Additional Director (Development), Additional Director (Research), Assistant Director (Appeal and Flying Squad) and 24 District Geologists. The EPD handles the regulation of oil and natural gas. At Government level, the EPD is headed by a Principal Secretary and at the Department level by the Director of Petroleum (DoP).

7.2 Results of audit

Test check of records in the offices of the District Geologists and Director of Petroleum in the State during the year 2012-14 revealed under-assessment and other irregularities involving ₹ 20.77 crore in 56 cases, which fall under the following categories:

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1	Non/short levy of dead rent/surface rent	16	1.06
2	Non/short levy of royalty/interest	8	0.44
3	Other irregularities	28	3.29
4	Non/short levy of surface rent	3	2.76
5	Loss of stamp duty and registration fee/Loss of royalty/Non-recovery of royalty, dead rent and surface rent	1	13.22
	Total	**56**	**20.77**

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 28.63 lakh in six cases.

A few illustrative audit observations involving ₹ 61.08 lakh are mentioned in the succeeding paragraphs.

7.3 Non/short levy of surface rent

Rule 27 of the Mineral Concession Rules, 1960 and Rule 22 of Gujarat Minor Mineral Rules, 1966 provide that the lessee shall also pay surface rent to Government at the rate prescribed by the Government from time to time for the surface area leased to him. The rate of surface rent shall not exceed the rate of non-agriculture assessment prescribed by the Government. As per revised rates effective from 1 August 2007, rates of NAA are ₹ 0.40, ₹ 0.25 and ₹ 0.10 per sq. mtr. per annum for Class A, Class B and Class C of cities/villages respectively.

During test check of the Demand and Collection Registers of two District Geologists for the period 2010-11, we noticed non/ short levy of surface rent in 258 cases involving ₹ 9.05 lakh as detailed as follows:

- During test check of the records of the District Geologist Office, Porbandar, in 19 cases of major minerals situated at Class 'C' village, though the lessees were liable to pay surface rent annually in respect of land occupied or used, the Department did not levy surface rent on area admeasuring 53.81 lakh sq. mtr. This resulted in non-levy of surface rent of ₹ 5.38 lakh.

- During test check of the records of the District Geologist Office, Jamnagar, we noticed in 239 cases of minor minerals situated at Class 'C' village that surface rent was being levied at the rate of ₹ 100 per hectare as against the correct rate of the NAA as prescribed by the Revenue Department from time to time which was ₹ 1,000 per hectare. Thus, incorrect application of rate of surface rent in 239 quarry/mining leases during 2011-12 to 2012-13 resulted in short levy of surface rent of ₹ 3.67 lakh.

We pointed out these cases to the Department in May 2013 and July 2014. The Department accepted and recovered ₹ 4.06 lakh in 76 cases. In remaining cases, replies have not been received (November 2014).

7.4 Non/short levy of dead rent

Under Section 9A(I) the Mines and Minerals (Development and Regulations) Act, 1957 if lease holders do not extract any mineral during the year or royalty paid on removal/consumption of minerals extracted is less than dead rent payable, they are liable to pay the difference between dead rent payable and royalty actually paid as dead rent. The Government of Gujarat revised rates of dead rent in respect of minor minerals with effect from 15 January 2010. Default in payment of dead rent attracts simple interest at the rate of 18 *per cent* per annum.

During test check of the Demand and Collection Registers of office of five District Geologists[1] for the period 2011-12 and 2012-13, we noticed non/ short levy of dead rent in 80 cases involving ₹ 52.03 lakh as follows:

[1] Amreli, Bhuj, Himatnagar, Jamnagar and Surat

- In 60 cases, the lease holders did not extract any minerals from the leased area. They were liable to pay dead rent. However, no demand for the same was raised by the Department. This resulted in non-levy of dead rent of ₹ 46.16 lakh.

- In 20 cases, the lessees paid royalty of ₹ 4.60 lakh on the minerals excavated. The dead rent of the area worked out to ₹ 10.47 lakh. However, the Departmental officials did not recover differential amount between dead rent and royalty. This resulted in short levy of dead rent of ₹ 5.87 lakh.

We pointed out these cases to the Department between May 2013 and June 2014. The Department recovered ₹ 14.47 lakh in 26 cases. In remaining cases, their replies had not been received (November 2014).

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Ahmedabad
The

Countersigned

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

New Delhi
The

Annexure

Rates of lease rent

Sl. No.	Nature of lease	Collector's power	Annual Rent
1.	Agricultural purpose	16 acres	One time agricultural assessment
Non Agricultural purpose			
1.	Educational purpose for school playground	Has no power to grant new lease. All the cases are granted with the sanction of the Department.	Token rent of ₹ one upto 29 September 2008 and thereafter two slabs of occupancy price have been prescribed for rural and urban localities.
2.	Production of salt and bromine	GR dated 10 October 2000. Upto 140 hectare and in excess of it with the sanction of the Department.	₹ 150 per hectare upto 01 February 2010 and thereafter at the rate of ₹ 300 per hectare with 10 *per cent* increase after every three years.
3.	Aquaculture purposes (a) Upto 5 hectare (b) Above 5 hectare	GR dated 18 December 2006. In individual case and Cooperative societies land admeasuring upto 50 hectare and no powers in respect of Private/Public Limited Companies.	(a) ₹ 250 per hectare for initial three years and thereafter ₹ 500 per hectare. (b) ₹ 1,000 per hectare for initial three years and thereafter ₹ 2,000 per hectare.
4.	Wind Mill	Annual rent if it does not exceed ₹ 5 lakh.	₹ 10,000 per hectare.
5.	For non agricultural purposes other than above	Where the value of land does not exceed ₹ 50 lakh.	15 *per cent* of the market value.
6.	For right to use	GR dated 30 July 1999	10 *per cent* of the market value
7.	For clubs and gymkhanas for recreational purposes	GR dated 25 March 1965	25 *per cent* of normal rent calculated at five *per cent* of the market value.