Report of the
Comptroller and Auditor General of India
on

Revenue Sector
for the year ended 31 March 2015

Government of Tamil Nadu
Report No.2 of 2016

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PREFACE

This Report of the Comptroller and Auditor General of India for the year ended 31 March 2015 has been prepared for submission to the Governor of the State of Tamil Nadu under Article 151 of the Constitution of India.

The Report contains significant findings of audit of Receipts and Expenditure of major Revenue earning Departments under Revenue Sector conducted under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

The instances mentioned in this Report are those, which came to notice in the course of test audit during the period 2014-15 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 2014-15 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

The report contains 22 paragraphs, including one Performance Audit, relating to non/short levy of taxes, royalty, interest, penalty, etc. involving ₹ 175.90 crore. Some of the major findings are mentioned below:

I General

The total revenue receipts of the State during 2014-15 were ₹ 1,22,420.44 crore, comprising tax revenue of ₹ 78,656.54 crore and non-tax revenue of ₹ 8,350.60 crore. ₹ 16,824.03 crore was received from the Government of India as State's share of divisible Union taxes and ₹ 18,589.27 crore as grants-in-aid. The revenue raised by the State Government in 2014-15 was 71 *per cent* of the total revenue receipts as compared to 77 *per cent* in 2013-14. Sales tax (₹ 57,190.80 crore) formed a major portion (73 *per cent*) of the tax revenue of the State. Interest receipts, dividends and profits (₹ 2,588.83 crore) accounted for 31 *per cent* of the non-tax revenue.

(Paragraph 1.1)

Test check of records relating to commercial taxes, state excise, motor vehicles tax, stamp duty and registration fee, electricity tax, mines and minerals and land revenue during the year 2014-15 revealed under-assessments, short levy, loss of revenue and other observations amounting to ₹ 803.32 crore in 3,951 cases.

(Paragraph 1.9)

II Value Added Tax/Central Sales Tax

Performance Audit on **System of Assessment under Value Added Tax in Tamil Nadu** revealed the following:

- Existing system to monitor the finalisation of assessments by the Assessing Authorities was ineffective.

(Paragraph 2.4.7.1)

- Conditions governing deemed assessment were not adhered to and ineligible cases were also erroneously treated as deemed to have been assessed**.**

(Paragraph 2.4.7.2)

- Selection of cases for detailed scrutiny suffered from deficiencies such as delay in selection, shortfall in selection, selection of low risk group of taxpayers, etc. and the target dates for completion of scrutiny was also not adhered to by the Assessing Authorities**.**

(Paragraph 2.4.7.4)

- Various sources of information, viz., reports of the Data Analysis Wing, audit report in Form WW, details of import uploaded on intranet of Department were not effectively utilised by the Assessing Authorities in assessment process**.**

(Paragraphs 2.4.8.1 to 2.4.8.3)

- Internal control and monitoring system was rendered weak due to lack of continuous and effective monitoring by the higher authorities through inspection, non-conduct of internal audit and improper maintenance of pre-assessment register by the Assessing Authorities**.**

(Paragraph 2.4.10)

Follow-up of Performance Audit on Implementation of Value Added Tax in Tamil Nadu revealed the following:

- Non-amendment of the TNVAT Act to bring timber under the ambit of transit pass system resulted in continued non-monitoring of the transportation of timber to other States.

(Paragraph 2.5.4.1)

- Correctness of claim of exemption/concessional rate of tax could not be ensured as the prescribed format of the returns was not modified.

(Paragraph 2.5.4.2)

- Omission to provide necessary validation checks in the software resulted in continued capturing of incorrect/inaccurate data in the system.

(Paragraph 2.5.4.3)

- Identification of the dealers and their registration status under the TNVAT Act continues to be difficult in the absence of TIN in the bill of entry.

(Paragraph 2.5.4.4)

- Instructions relating to post-registration monitoring of filing of returns by the newly registered dealers and completion of detailed scrutiny were not adhered to by the Assessing Authorities.

(Paragraph 2.5.4.5 and 2.5.4.6)

- Assessing Authorities of the assessment circles and the check post officers failed to initiate action in the cases of non-surrender of transit passes though the information was available in the MIS Module.

(Paragraph 2.5.4.7)

Other Audit Observations

Cross verification of records undertaken by Audit revealed suppression of sale of windmills by four dealers. Tax and penalty leviable on the suppressed turnover amounted to ₹ 2.08 crore.

(Paragraph 2.6.3.1)

Suppression of sales of granite blocks pointed out by Audit resulted in revision of assessment and raising of additional demand of tax and penalty of ₹ 5.15 crore.

(Paragraph 2.6.3.2)

Failure to take into consideration the element of additional sales tax / adoption of incorrect slab rate of additional sales tax for determining the rate of tax applicable on interstate sale of cement not covered by valid declarations resulted in short levy of tax of ₹ 1.92 crore.

(Paragraph 2.6.7.2)

III Stamp Duty and Registration Fee

Audit of "Registration of various Agreement Deeds and relevant Deeds of Power of Attorney" revealed the following:

The Registering Officers failed to link the instruments of Power of Attorney and Sale Agreement when these instruments were registered in respect of the same properties and were between the same or related persons. This resulted in misclassification of instrument of Power of Attorney for Consideration as General Power of Attorney involving short levy of stamp duty and registration fee of ₹ 5.69 crore.

(Paragraph 3.4.2)

Misclassification of Sale Agreement with Possession as one without Possession resulted in short levy of registration fee of ₹ 4.92 crore.

(Paragraph 3.4.4)

Other Audit Observations

Misclassification of instruments resulted in short levy of stamp duty and registration fee of ₹ 6.88 crore in six cases.

(Paragraph 3.5.2)

Undervaluation of properties in 47 instruments resulted in short levy of stamp duty and registration fee of ₹ 2.84 crore.

(Paragraph 3.5.1)

Adoption of incorrect rate resulted in short levy of stamp duty of ₹ 1.14 crore.

(Paragraph 3.5.5)

Misclassification of instrument of Conveyance as Cancellation Deed in 303 cases resulted in short levy of stamp duty and registration fee of ₹ 2.12 crore.

(Paragraph 3.5.7)

Failure of the Department to undertake reconciliation of remittances resulted in non-credit of ₹ 6.40 crore to Government account.

(Paragraph 3.5.8)

There was excess allocation of transfer duty surcharge of ₹ 2.87 crore to local bodies.

(Paragraph 3.5.9)

IV Other Tax and Non-Tax Receipts

Electricity Tax

Audit of "Assessment and collection of Electricity Tax" revealed the following:

- There was no system to monitor the filing of returns by the entities and thus, initiation of action for invoking the provisions of best judgement assessment in a systematic manner in respect of non-filers of monthly returns was rendered impossible.

(Paragraph 4.2.3)

- Omission to consider excess demand and energy charges as current consumption charges for levy of electricity tax resulted in short levy of electricity tax of ₹ 89.30 crore during the period from 2011-12 to 2013-14.

(Paragraph 4.2.5)

CHAPTER I

GENERAL

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GENERAL

1.1 Trend of revenue receipts

1.1.1 Tax and non-tax revenue raised by the Government of Tamil Nadu during the year 2014-15, the State's share of net proceeds of divisible Union taxes and duties assigned to States and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned in Table 1.1.1.

Table 1.1.1

Trend of revenue receipts

(₹ in crore)

Sl. No.	Particulars	2010-11	2011-12	2012-13	2013-14	2014-15
1.	**Revenue raised by the State Government**					
	• Tax revenue	47,782.17	59,517.66	71,254.27	73,718.11	78,656.54
	• Non-tax revenue	4,651.45	5,683.57	6,554.26	9,343.27	8,350.60
	Total	**52,433.62**	**65,201.23**	**77,808.53**	**83,061.38**	**87,007.14**
2.	**Receipts from the Government of India**					
	• State's share of divisible Union taxes	10,913.98	12,714.60	14,519.69	15,852.76	16,824.03[1]
	• Grants-in-aid	6,840.02	7,286.31	6,499.48	9,122.28	18,589.27
	Total	**17,754.00**	**20,000.91**	**21,019.17**	**24,975.04**	**35,413.30**
3.	**Total revenue receipts of the State Government (1 + 2)**	70,187.62	85,202.14	98,827.70	1,08,036.42	1,22,420.44
4.	**Percentage of 1 to 3**	**75**	**77**	**79**	**77**	**71**

Source: Finance Accounts of Government of Tamil Nadu

During the year 2014-15, the revenue raised by the State Government (₹ 87,007.14 crore) was 71 *per cent* of the total revenue receipts as against 77 *per cent* in the preceding year. The remaining 29 *per cent* of the receipts during 2014-15 was from the Government of India.

[1] For details please see Statement No. 14 – Detailed statements of revenue by minor heads of the Finance Accounts of the Government of Tamil Nadu for the year 2014-15. Figures under the head '0021 – Taxes on income other than Corporation Tax – Share of net proceeds assigned to States' booked in the Finance Accounts under 'A – Tax revenue' have been excluded from the revenue raised by the State and included in 'State's share of divisible Union taxes' in this statement.

1.1.2 The following table presents the details of tax revenue raised during the period from 2010-11 to 2014-15.

Table 1.1.2

Details of Tax revenue raised

(₹ in crore)

Sl. No.	Head of revenue	2010-11		2011-12		2012-13		2013-14		2014-15		Percentage of increase (+) or decrease (-) in 2014-15 over 2013-14
		Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	
1.	Sales tax/VAT	25,504.65	28,614.23	33,393.95	36,288.90	44,007.69	44,041.13	52,826.74	53,532.17	65,202.06	57,190.80	(+) 6.83
2.	State Excise	7,508.18	8,115.94	8,935.23	9,975.21	11,473.97	12,125.68	14,469.87	5,034.91	6,483.04	5,731.18	(+) 13.83
3.	Stamp Duty and Registra-tion Fee	4,096.18	4,650.59	5,856.07	6,580.78	8,466.94	7,645.40	9,874.22	8,251.25	10,470.18	8,362.33	(+) 1.35
4.	Taxes on Vehicles	2,396.42	2,660.05	3,033.11	3,101.09	4,141.11	3,928.43	4,881.15	3,683.58	5,147.14	3,828.95	(+) 3.95
5.	Land Revenue	38.79	113.28	70.82	87.21	80.02	131.31	112.38	272.83	171.57	170.54	(-) 37.49
6.	Taxes on immovable property other than agricultural land (urban land tax)	18.84	10.21	12.61	10.89	10.52	16.75	18.09	11.52	18.09	10.06	(-) 12.67
7.	Others	1,875.25	3,617.87	2,480.75	3,473.58	3,280.29	3,365.57	3,882.94	2,931.85	4,343.27	3,362.68	(+) 14.69
	Total	**41,438.31**	**47,782.17**	**53,782.54**	**59,517.66**	**71,460.54**	**71,254.27**	**86,065.39**	**73,718.11**	**91,835.35**	**78,656.54**	

Source: Finance Accounts of Government of Tamil Nadu

The following reasons for variation were reported by the concerned Departments:

State Excise: The increase was mainly due to increase in 'State Excise' under (i) Duty on Wines and Spirits and Beer Manufactured in India including Medicated Wines (ii) Tender amount collected under Rule 9A of Tamil Nadu Liquor retail Vending (in Shops and Bars) Rules, 2003 under 'Foreign Liquor and Sprits' and (iii) Duty on Beer Manufactured in India under 'Malt Liquor'.

Land Revenue: The decrease was mainly due to decrease in revenue under 'Sale Proceeds of Waste Lands and Redemption of Land Tax'.

1.1.3 The following table presents the details of non-tax revenue raised during the period from 2010-11 to 2014-15.

Table 1.1.3

Details of Non-tax revenue raised

(₹ in crore)

Sl. No.	Head of revenue	2010-11		2011-12		2012-13		2013-14		2014-15		Percentage of increase (+) or decrease (-) in 2014-15 over 2013-14
		Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	
1.	Interest receipts, dividends and profits	1,372.64	1,689.78	1,678.33	2,056.89	1,786.87	2,053.88	1,548.98	3,422.77	2,240.28	2,588.83	(-) 24.36
2.	Crop Husbandry	87.77	116.30	99.03	125.32	127.25	125.85	120.04	213.77	93.16	150.00	(-) 29.83
3.	Forestry and Wildlife	90.14	139.22	121.33	105.86	158.57	93.94	98.65	193.87	44.86	141.30	(-) 27.12
4.	Non-Ferrous Mining and Metallurgical industries	634.71	675.87	647.44	943.83	850.96	927.19	1,078.64	933.28	1,094.08	976.59	(+) 4.64
5.	Education, Sports, Art and culture	531.32	518.83	786.99	483.26	911.34	751.88	1,565.12	1,693.29	1,606.33	1,932.01	(+) 14.10
6.	Other receipts	1,384.70	1,511.45	1,511.45	1,968.41	2,197.62	2,601.52	2,353.66	2,886.29	3,005.27	2,561.87	(-) 11.24
	Total	**4,101.28**	**4,651.45**	**4,844.57**	**5,683.57**	**6,032.61**	**6,554.26**	**6,765.09**	**9,343.27**	**8,083.98**	**8,350.60**	

Source: Finance Accounts of Government of Tamil Nadu

The following reasons for variation were reported by the concerned Departments:

Interest receipts, dividends and profits: The decrease was mainly due to decrease in receipts under (i) Interest on belated payment of Electricity Tax, (ii) Interest realised on Investment of Cash Balances, (iii) Interest from Public Sector and other Undertakings under 'Ways and Means Advances to Statutory Corporation, Boards and Government Companies' and (iv) Interest Receipts from Ways and Means Advance to Tiruppur Corporation.

Crop Husbandry: The decrease was mainly due to decrease of revenue under 'Recoveries of over payments in Oil Seeds Department'.

Forestry and Wildlife: The decrease was mainly due to decrease of revenue under 'Sale of Sandalwood' under 'Sale of Timber and Other Forest Produce'.

Education, Sports, Art and Culture: The increase was mainly due to increase in revenue under 'Reimbursement of expenditure under Rashtriya Madhyamik Shiksha Abhiyan' and **'**Receipts for payment of teachers in Government High Schools and Higher Secondary Schools under Sarva Shiksha Abhiyan'.

1.2 Analysis of arrears of revenue

The arrears of revenue, as on 31 March 2015, on some principal heads of revenue amounted to ₹ 25,664.98 crore, of which ₹ 10,322.39 crore was outstanding for more than five years, as detailed in Table 1.2.

Table 1.2

Arrears of revenue

(₹ in crore)

Sl. No.	Head of revenue	Total amount outstanding as on 31 March 2015	Amount outstanding for more than five years as on 31 March 2015	Replies of Department
1.	Sales Tax / VAT	22,214.09	7,690.44	Demands of ₹ 3,286.93 crore were covered by Recovery Certificates. Recovery of ₹ 4,285.15 crore was stayed by High Court and other judicial authorities. The Government stayed the collection of ₹ 28.23 crore. Amount of ₹ 434.45 crore was likely to be written off. Arrears covered by waiver and deferral schemes were ₹ 109.15 crore and ₹ 2,902.91 crore respectively. Amount of ₹ 680.14 crore was proposed to be eliminated. Remaining arrears of ₹ 10,487.13 crore were at various stages of collection.
2.	Stamp Duty and Registration Fee	318.77	213.92	Demands of ₹ 315.93 crore were covered by Recovery Certificates and collection of ₹ 2.84 crore was stayed by High Court and other judicial authorities.
3.	State Excise	35.38	35.38	Demands of ₹ 17.62 crore were covered by Recovery Certificates. Recovery of ₹ 1.25 crore was stayed by High Court and other judicial authorities. Amount likely to be written off was ₹ 5.73 crore. Remaining arrears of ₹ 10.78 crore were at various stages of collection.
4.	Taxes on vehicles	2.07	1.58	Demands of ₹ 1.69 crore were covered by Recovery Certificates. An amount of ₹ 0.22 crore was stayed by High Court and other judicial authorities. Remaining arrears of ₹ 0.16 crore were at various stages of collection.
5.	Non-Ferrous Mining and Metallurgical industries	2,965.53	2,264.82	Demands of ₹ 141.03 crore were covered by Recovery Certificates. Recovery of ₹ 1,550.28 crore was stayed by High Court and other judicial authorities. Arrears of ₹ 231.42 crore were stayed by Government. Recovery stayed by rectification/review application was for ₹ 283.07 crore. Amount likely to be written off was ₹ 13.41 crore. Remaining arrears of ₹ 746.32 crore were at various stages of collection.

6.	Electricity Taxes	129.14	116.25	The various stages of pendency of arrears were not furnished.
	Total	**25,664.98**	**10,322.39**	

Source: Replies of concerned Departments

Recovery of arrears of ₹ 10,322.39 crore was pending for more than five years. However, recovery of some of the arrears has been stayed by judicial authorities. The table further indicates that the amount of uncollected revenue as on 31 March 2015 was about one-third of the total tax revenue raised by the Government during the year 2014-15. Substantial amounts (₹ 3,763.20 crore) were covered by Recovery Certificates.

1.3 Arrears in assessments

As per the provisions of the Tamil Nadu Value Added Tax (TNVAT) Act, the returns filed by the dealers for the year shall be deemed to have been assessed as on 31 October of the succeeding year. The TNVAT Act provides for selection of cases which were deemed to have been assessed for detailed scrutiny. The Department stated that scrutiny of 42,356 cases was yet to be completed as on 31 March 2015. The details of pendency furnished by the Department indicate that 10,793 cases relate to the assessment years 2006-07 and 2007-08, the selection of which was made between August 2008 and September 2010.

1.4 Evasion of tax detected by the Department

The details of cases of evasion of tax detected by the Commercial Taxes and Home (Transport) Departments, cases finalised and the demands for additional tax raised as reported by the Department are given in Table 1.4.

Table 1.4

Evasion of Tax

Sl. No.	Head of revenue	Cases pending as on 31 March 2014	Cases detected during 2014-15	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 2015
					Number of cases	Amount of demand (₹ in crore)	
1.	Sales Tax/VAT	4,584	7,029	11,613	6,766	8,305.16	4,847
2.	Taxes on Vehicles	75	216	291	216	0.84	75

The number of cases pending at the end of the year had increased when compared to that at the beginning of the year in respect of Sales Tax/VAT.

1.5 Pendency of Refund Cases

The number of refund cases pending at the beginning of the year 2014-15, claims received during the year, refunds allowed during the year and cases pending at the close of the year 2014-15 as reported by the Departments are given in Table 1.5.

Table 1.5
Details of pendency of refund cases

(₹ in crore)

Sl. No.	Particulars	Sales tax/VAT		Taxes on vehicles	
		No. of cases	Amount	No. of cases	Amount
1.	Claims outstanding at the beginning of the year	17,548*	693.89*	198	0.10
2.	Claims received during the year	22,356	961.85	348	1.07
3.	Refunds made during the year	10,388	371.76	399	1.09
4.	Balance outstanding at the end of the year	29,516	1,283.98	147	0.08

*The closing balance figures of last year were 19,545 cases involving ₹ 644 crore.

The TNVAT Act provides for payment of interest, at the rate of half *per cent* per month, if the excess amount is not refunded to the dealer within 90 days from the date of the order of assessment or revision of assessment. Due to slow pace of disposal of refund cases, Government may incur liability for payment of interest.

1.6 Response of the Departments/Government towards audit

The Accountant General (Economic and Revenue Sector Audit), Tamil Nadu (AG) conducts periodical inspection of the Government Departments to test check the transactions and verify the maintenance of 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 the offices/Government are required to comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial replies to the AG within one month from the date of issue of the IRs. Serious financial irregularities are reported to the heads of the Departments and the Government.

IRs issued up to 31 December 2014 disclosed that 24,978 paragraphs, involving ₹ 4,699.50 crore relating to 7,070 IRs, remained outstanding at the end of June 2015 as mentioned below along with the corresponding figures for the preceding two years in Tables 1.6 and 1.6.1.

Table 1.6

Details of pending IRs

	June 2013	June 2014	June 2015
Number of IRs pending for settlement	7,524	6,802	7,070
Number of outstanding audit observations	24,237	28,739	24,978
Amount of revenue involved (₹ in crore)	3,622.83	2,768.65	4,699.50

Source: As per data maintained in office of the AG(E&RSA)

1.6.1 The Department-wise details of the IRs and audit observations outstanding as on 30 June 2015 and the amounts involved are mentioned in 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.	Commercial Taxes and Registration	Sales tax/Value added tax	2,298	13,804	1,437.80
		Stamp duty and registration fee	1,691	4,801	1,843.08
		Entry tax	167	299	5.90
		Entertainment tax	64	63	4.16
		Luxury tax	117	136	4.57
		Betting tax	11	22	0.09
2.	Revenue	Land revenue	1,280	2,921	421.53
		Urban land tax	223	576	42.21
		Taxes on agricultural income	61	136	81.01
3.	Home (Transport)	Taxes on vehicles	532	1,205	101.07
4.	Home (Prohibition and Excise)	State excise	231	313	78.63
5.	Industries	Mines and minerals	287	522	297.44
6.	Energy	Electricity tax	108	180	382.01
Total			**7,070**	**24,978**	**4,699.50**

Source: As per data maintained in office of the AG(E&RSA)

The large pendency of the IRs, due to non-receipt of the replies is indicative of failure by heads of offices and departments to initiate action to rectify defects, omissions and irregularities pointed out by the AG in the IRs.

1.6.2 Departmental Audit Committee Meetings

The Government set up Audit Committees (during various periods) to monitor and expedite the progress of the settlement of paragraphs in the IRs. Three meetings of Departmental Audit Committee were held with the Commercial Taxes, Registration and Energy Departments during the year 2014-15. As a follow-up of the meetings, 2,360 paragraphs involving ₹ 141.72 crore were settled.

1.6.3 Non-production of records to audit for scrutiny

The programme of local audit of commercial tax offices is prepared sufficiently in advance and intimated to the Department one month before the commencement of local audit to enable them to keep relevant records ready for audit scrutiny.

During 2014-15, 22,080 sales tax assessment records relating to 119 offices were not made available for audit. Of these, 138 assessments pertain to three special circles where assessments of major dealers are dealt with.

The delay in production of records for audit would render the audit scrutiny ineffective, as rectification of under-assessment, if any, might become barred by limitation, by the time these files are produced to audit.

The matter regarding non-production of records in each office and arrears in assessment is brought to the notice of the Department through the local audit reports of the respective offices.

1.6.4 Response of the Departments to draft Audit Paragraphs

The draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India are forwarded by AG to the Principal 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 replies from the Departments is indicated at the end of each such paragraph included in the Audit Report.

41 draft paragraphs (clubbed into 22 paragraphs, including one Performance Audit) proposed for inclusion in the Report of the Comptroller and Auditor General of India for the year ended March 2015 were forwarded to the Principal Secretaries of the respective Departments between June and October 2015. However, replies to 33 draft paragraphs were not received (December 2015). These paragraphs have been included in the Report without the response of the Principal Secretary of the Department concerned.

1.6.5 Follow-up of Audit Reports

With a view to ensuring accountability of the executive in respect of the issues dealt with in the Audit Reports, the Public Accounts Committee (PAC) laid down in 1997 that after the presentation of the Report of the Comptroller and Auditor General of India in the Legislative Assembly, the Departments shall initiate action on the audit paragraphs and the action taken explanatory notes thereon should be submitted by the Government within two months of tabling the Report, for consideration of the Committee. In spite of these instructions, the explanatory notes on audit paragraphs of the Reports were being delayed inordinately. Reports of the Comptroller and Auditor General of India on the Revenue Receipts of the Government of Tamil Nadu containing 135 paragraphs (including Performance Audit) for the years ended 31 March 2008 to 2012 were placed before the State Legislative Assembly between May 2010 and August 2014. Explanatory notes in respect of 21 paragraphs were received between October 2012 and August 2015 with delays ranging from 9 to 32 months. The explanatory notes in respect of 114 paragraphs were not received from the Departments (December 2015). Review of the outstanding

action taken notes (ATNs) as of 31 March 2015 on paragraphs included in the Report of the Comptroller and Auditor General of India, Revenue Receipts, Government of Tamil Nadu indicated that the Departments had not submitted ATNs for 1,533 recommendations pertaining to audit paragraphs discussed by PAC. Out of the pending 1,533 recommendations, even the first ATN had not been received in respect of 991 recommendations, the earliest of which related to the Audit Report for the year 1986-87.

1.7 Analysis of the mechanism for dealing with the issues raised by Audit

To analyse the system of addressing the issues highlighted in the IRs / Audit Reports by the Departments / Government, the action taken on the paragraphs and Performance Audits included in the Audit Reports of the last 10 years for one Department is evaluated and included in this Audit Report.

The succeeding paragraphs 1.7.1 and 1.7.2 discuss the performance of the Chief Electrical Inspectorate of the Energy Department under revenue head '0043 – Taxes and Duties on Electricity' and cases detected in the course of local audit during the last 10 years and also the cases included in the Audit Reports for the years 2004-05 to 2013-14.

1.7.1 Position of Inspection Reports

The summarised position of the IRs issued to the Chief Electrical Inspectorate of the Energy Department during the last 10 years, paragraphs included in these reports and their status as on 31 March 2015 are tabulated in Table 1.7.1.

Table 1.7.1

Position of Inspection Reports

(₹ in crore)

Year	Opening balance			Additions during the year			Clearance during the year			Closing balance		
	IRs	Paras	Money value	IRs	Paras	Money value	IRs	Paras	Money value	IRs	Paras	Money value
2005-06	51	114	28.43	19	22	1.49	10	15	0.56	60	121	29.36
2006-07	60	121	29.36	11	11	4.67	6	8	0.18	65	124	33.85
2007-08	65	124	33.85	12	27	10.75	6	19	0.40	71	132	44.20
2008-09	71	132	44.20	6	17	0.14	10	20	4.86	67	129	39.48
2009-10	67	129	39.48	18	39	0.21	7	23	0.10	78	145	39.59
2010-11	78	145	39.59	16	34	224.53	6	29	0.02	88	150	264.10
2011-12	88	150	264.10	11	31	14.42	14	38	0.01	85	143	278.51
2012-13	85	143	278.51	12	31	81.71	3	7	0.62	94	167	359.60
2013-14	94	167	359.60	15	42	30.21	2	14	0.05	107	195	389.76
2014-15	107	195	389.76	12	33	6.49	5	26	7.75	114	202	388.50

The above table indicates that as against 114 paragraphs, which were pending at the beginning of 2005-06, the number at the end of 2014-15 had increased to 202. During the year 2014-15, one Audit Committee meeting was held with the Chief Electrical Inspectorate of the Energy Department and six paragraphs involving ₹ 6.83 lakh were settled.

1.7.2 Recovery of accepted cases

During the last 10 years, four draft paragraphs involving ₹ 306.22 crore were included in the Report of the Comptroller and Auditor General of India, Revenue Receipts, Government of Tamil Nadu. The Department accepted three audit observations involving ₹ 285.11 crore and recovered/adjusted ₹ 264.91 crore.

1.8 Audit planning

The unit offices under various Departments are categorised into high, medium and low risk units according to their revenue position, past trends of audit observations, nature/volume of transactions, etc. The annual audit plan is prepared on the basis of risk analysis which, *inter alia*, includes statistical analysis of the revenue earnings during the past five years, features of the tax administration, audit coverage and its impact during the past five years, etc.

During the year 2014-15, the audit universe comprised 1,610 auditable units, of which 484 units were planned and 507 units were audited during the year 2014-15 i.e., 31 *per cent* of the total auditable units. The details are shown in **Annexure-I**.

1.9 Results of audit

Position of local audit conducted during the year

The records of commercial taxes, state excise, motor vehicles tax, stamp duty and registration fee, electricity tax, mines and minerals and land revenue were test checked during 2014-15 and under-assessment, short levy, loss of revenue and other observations amounting to ₹ 803.32 crore were noticed in 3,951 cases. During the year, the Departments accepted under-assessment and other deficiencies in 570 cases involving ₹ 21.79 crore. Out of these, 195 cases involving ₹ 6.87 crore were pointed out in 2014-15 and 375 cases involving ₹ 14.92 crore pertained to objections raised in earlier years. The Departments collected ₹ 16.62 crore during 2014-15.

1.10 Coverage of this Report

This Report contains 22 paragraphs including one Performance Audit relating to non/short levy of taxes, royalty, interest, penalty and other audit observations involving financial effect of ₹ 175.90 crore. The Departments/Government accepted audit observations involving ₹ 113.51 crore; of which, ₹ 3.24 crore had been recovered/adjusted by the Departments. Reply in respect of the remaining cases has not been received (December 2015). These are discussed in succeeding Chapters II to IV.

CHAPTER II

VALUE ADDED TAX/CENTRAL SALES TAX

CHAPTER II

VALUE ADDED TAX / CENTRAL SALES TAX

2.1 Tax administration

Assessment, levy and collection of sales tax, central sales tax and value added tax are governed by the erstwhile Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) and the Rules made thereunder, the Central Sales Tax Act, 1956 (CST Act) and the Rules made thereunder, the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Tamil Nadu Value Added Tax Rules, 2007 (TNVAT Rules) respectively. Administration of the Department is vested with the Commissioner of Commercial Taxes (CCT). The State has been divided into 40 zones, comprising 334 Assessment Circles including four Large Taxpayers[2] units (LTUs) at Chennai and two Fast Track Assessment Circles (FTACs) at Coimbatore. Assessment, levy and collection of tax are done by the Assessing Authorities (AAs) in charge of the Assessment Circles. Monitoring and control at the Government level is done by the Principal Secretary, Commercial Taxes and Registration Department.

2.2 Internal audit

The Internal Audit wing is organised in each Zone and consists of an Assistant Commissioner (AC), Commercial Tax Officer (CTO) and four supporting staff. The assessments finalised and the refunds made in the preceding quarter were to be taken up for audit in the succeeding quarter.

The details of offices programmed for conduct of internal audit and the offices in respect of which internal audit was done during the year 2014-15 were not furnished by the Department. The year-wise break up of outstanding inspection reports was also not furnished by the Department, though 14,863 paragraphs involving ₹ 164.78 crore were pending for settlement as of 31 March 2015. The Department, however, stated that internal audit mechanism was strengthened and vacancies in all the 40 internal audit parties were filled up during 2014-15.

[2] Large taxpayers – Dealers whose taxable turnover for a year exceeds ₹ 200 crore.

2.3 Results of audit

Test check of records of departmental offices conducted during the period from April 2014 to March 2015 revealed under-assessment of tax and other irregularities amounting to ₹ 487.40 crore in 2,696 cases, which broadly fall under the following categories.

Table: 2.1

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Performance Audit on **System of Assessment under Value Added Tax in Tamil Nadu**	1	31.34
2	Follow-up of Performance Audit on Implementation of Value Added Tax in Tamil Nadu	1	---
3	Incorrect exemption of tax	80	17.99
4	Incorrect rate of tax	187	195.03
5	Incorrect computation of taxable turnover	117	3.38
6	Non/short levy of tax	256	22.53
7	Non-levy of penalty/interest	152	24.64
8	Incorrect allowance of input tax credit	1,647	155.38
9	Others	255	37.11
	Total	**2,696**	**487.40**

During 2014-15, the Department accepted under-assessment and other deficiencies amounting to ₹ 9.34 crore in 307 cases; out of which, ₹ 4.91 crore involved in 147 cases were pointed out during the year and the rest in earlier years. Out of the above, an amount of ₹ 5.76 crore had been collected.

A few illustrative cases involving ₹ 43.67 crore are discussed in the following paragraphs.

2.4 Performance Audit on System of Assessment under Value Added Tax in Tamil Nadu

Highlights

- Existing system to monitor the finalisation of assessments by the Assessing Authorities was ineffective.

(*Paragraph 2.4.7.1*)

- Conditions governing deemed assessment were not adhered to and ineligible cases were erroneously treated as deemed to have been assessed**.**

(*Paragraph 2.4.7.2*)

- Selection of cases for detailed scrutiny suffered from deficiencies such as delay in selection, shortfall in selection, selection of low risk group of taxpayers, etc. and the target dates for completion of scrutiny was also not adhered to by the Assessing Authorities**.**

(*Paragraph 2.4.7.4*)

- Various sources of information, viz., reports of the Data Analysis Wing, audit report in Form WW, details of import uploaded in intranet of Department were not effectively utilised by the Assessing Authorities in assessment process**.**

***(Paragraphs 2.4.8.1 to 2.4.8.3*)**

- Internal control and monitoring system was rendered weak due to lack of continuous and effective monitoring by the higher authorities through inspection, non-conduct of internal audit and improper maintenance of pre-assessment register by the Assessing Authorities**.**

(Paragraph 2.4.10)

2.4.1 Introduction

The TNVAT Act and the TNVAT Rules made thereunder govern the assessment and collection of VAT in the State. Under the TNVAT Act, tax is levied at each stage of sale with allowance of credit of tax paid on purchases.

The provisions relating to assessment are contained in Section 22(2) (self assessment/deemed assessment), Section 22(3) (scrutiny assessment), Section 22(4) (best of judgment assessment), Section 25 (provisional assessment) and Section 27 (revision of assessment) of the TNVAT Act.

The word "assessment" in the context of indirect or direct tax enactments means quantification of tax liability. The word "assessment" also includes the whole procedure laid down for imposing the liability on taxpayers. Hence, assessment comprises the provisions relating to the subject matter of taxation, rate of tax, basis on which the quantum of tax is to be arrived at, the exemptions to be given and the authorities for enforcing tax liability.

2.4.2 Organisational Setup

The CCT is the Head of the Department and is assisted by five Additional Commissioners and one Joint Commissioner (Administration). The Department has been organised on functional lines and its various responsibilities are carried out by four different wings, viz., Territorial, Audit, Appellate and Enforcement Wings.

The Assessment Circles are headed by the Deputy Commissioners (DCs)/ACs/CTOs, based on their size and complexity. The 10 Joint Commissioners (JCs) at the Divisional level and 40 Territorial DCs at District/Zonal level exercise direct control and supervision over the functioning of the Assessment Circles. The LTU in Chennai deals with the top 100 taxpayers, who account for almost 60 *per cent* of the taxes collected by the Department. The LTU is headed by a JC and assisted by four DCs, with assessment and other statutory powers. The monitoring and control at the Government level is exercised by the Principal Secretary, Commercial Taxes and Registration Department.

2.4.3 Audit Objectives

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

- the statutory provisions and Departmental instructions regarding system of assessment were complied with and the extent of their compliance;
- effective coordination existed between Assessment Circles and other wings of the Department and external stakeholders, including use of the reports/information in assessment process;
- information technology was effectively used in system of assessment to plug leakage and augment revenue; and,
- sound internal control mechanism existed to monitor assessment activities.

2.4.4 Audit Criteria

The audit criteria are derived from the following:

- Tamil Nadu Value Added Tax Act, 2006;
- Tamil Nadu Value Added Tax Rules, 2007;
- Notifications issued by the Government;
- Instructions/Circulars issued by the CCT; and
- VAT Audit Manual

2.4.5 Scope and Methodology

The Performance Audit was conducted from March to August 2015, covering the transactions pertaining to the period from 2009-10 to 2013-14. The assessment activity carried out by the Department upto March 2015 was also taken up for audit, irrespective of the assessment year. Out of 334 Assessment Circles in the State, 60 Assessment Circles were selected for audit. Out of these, 19 Assessment Circles, considered as high risk, were identified on the basis of revenue generation. The remaining 41 Assessment Circles were selected by random sampling method without replacement. The revenue generated by the 60 Assessment Circles during these five years corresponded to about 70 *per cent* of the total revenue generated by all the Assessment Circles. Some similar observations relating to earlier periods have also been included in the report.

An entry conference was held in February 2015 during which the Department was apprised of the objectives, scope and methodology of audit. The audit observations were reported to the Government in September 2015. The draft Performance Audit report was forwarded to the Government in October 2015 and was discussed with the Principal Secretary, Commercial Taxes and Registration Department in the Exit Conference held in December 2015. The views expressed by the Government/Department during the Exit Conference and reply furnished by the Government (December 2015) have been considered and incorporated in the relevant paragraphs of the report.

2.4.6 Acknowledgment

The Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing the necessary information and records to Audit.

Audit Findings

2.4.7 System of Assessment under the TNVAT Act

Section 22(2) of the TNVAT Act as amended with effect from 19 June 2012 provides that a dealer who has filed the returns accompanied with the prescribed documents shall be deemed to have been assessed on the 31st day of October of the succeeding year. In respect of the years 2006-07 to 2010-11 for which self-assessment orders were not passed, the Section provided that the dealer shall be deemed to have been assessed on 30 June 2012. Section 22(4) of the TNVAT Act provides that if no return is submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed, the AA shall assess the dealer to the best of its judgment after the completion of the year.

2.4.7.1 System to monitor finalisation of assessments

The details of total cases due for assessment, the assessments made and assessments pending finalisation for the period from 2010-11 to 2014-15 were not furnished by the Assessment Circles and also by the CCT. Audit also observed that proper records relating to finalisation of assessments were not maintained in the Assessment Circles.

From the scrutiny of records available, it emerged that the status of deemed assessment was determined by the JC (Computer Systems) on the basis of returns filed by dealers and without taking into consideration the furnishing of the prescribed documents. Thus, ineligible cases were also erroneously treated as deemed to have been assessed as mentioned in Para 2.4.7.2.

The monthly statistics of 'progress on return scrutiny' being furnished by the AAs to the CCT indicated that 1,35,127 notices were issued during the period from 2012-13 to 2014-15. The details furnished by CCT indicated that 12,626 dealers were not eligible for deemed assessment in respect of 2013-14 and there were 4,11,523 non-filers of returns for the period from 2009-10 to 2013-14. However, details of provisional assessment and consequential best judgment assessment made in these cases were not ascertainable in the absence of necessary records in the Assessment Circles and also the possibility of number of cases remaining outside the purview of assessment cannot be ruled out.

During the Exit Conference, the Department stated that the deemed assessment status was accorded by the AAs and the JC (Computer Systems) was only a facilitator in selection of cases for detailed scrutiny. However, when the issue of non-maintenance of requisite registers in Assessment Circles to record the details of various categories of assessments made during the year and non-furnishing of details of assessment coupled with incorrect according of deemed assessment status to cases not covered by prescribed documents was highlighted, the CCT assured that the issue would be examined in detail.

2.4.7.2 Self Assessment/Deemed Assessment

The CCT clarified (May 2011) that the "documents prescribed" under Section 22(2) would denote only the returns in the prescribed form along with annexure and the prescribed declaration forms or certificates in support of the claim of the concessional rate of tax or exemption mentioned in Rules 8(8)(b) and 10(9) of the TNVAT Rules. Failure to furnish the certificates and declaration forms would entail withdrawal of concessional rate of tax availed by the dealers.

As mentioned above, Audit observed that the list of dealers deemed to have been assessed was determined by the office of the JC (Computer Systems), taking into account only the filing of returns for all the months. The existing system did not provide for e-filing of prescribed documents and the same had to be produced in physical form. The filing of prescribed documents along with the returns was not considered for determining the deemed assessed cases, with the result, ineligible cases were also erroneously treated as deemed to have been assessed as mentioned below:

- Audit noticed that in 16[3] Assessment Circles, 64 out of 70 dealers had not submitted the industrial input certificates in support of concessional rate of tax for sales valued at ₹ 24,397.55 crore effected by them during the period 2009-10 to 2013-14 along with the returns filed by them. Further, two dealers of Anna Salai and LTU III Assessment Circles did not submit certificates for

[3] Alandur, Anna Salai, Ekkattuthangal, Guindy, JJ Nagar, Kamarajar Salai, Kelambakkam, Koyambedu, LTU I, LTU III, Manali, Oragadam, Pondy Bazaar, Sriperumbudur, Tiruvanmiyur and Tiruverkadu

availing concessional rate of tax on sale of automobile parts and electronic goods to Government departments. The assessments of the dealers were, however, erroneously treated as deemed to have been assessed.

- Audit observed that 2,010 assessments relating to the years 2012-13 and 2013-14 were erroneously treated as deemed to have been assessed though declarations in Form C and Form F evidencing interstate sale of goods valued at ₹ 76,347.45 crore and stock transfer of goods to other States valued at ₹ 39,261.85 crore respectively were not filed by the dealers. Further, in respect of 148 assessments which were treated as deemed to have been assessed, Audit could not ensure the correctness of the assessments made, due to non-production of files/non-furnishing of details.

- As per the amended provision of the Act (October 2013), the dealers who carry forward input tax credit (ITC) are required to file closing stock inventory in Annexure V along with the monthly return to have an effective check over the accumulation of ITC by the dealers by verifying whether the dealers had adequate stock of goods at the close of the month commensurate with the ITC carried forward by them.

Scrutiny of cases involving carry forward of ITC in excess of ₹ 1 lakh in any of the months (November 2013 to March 2014) after the introduction of the provision revealed that while two dealers of Karur (East) and Rajapalayam II Assessment Circles did not file Annexure V along with the monthly returns though ITC of ₹ 1.88 crore was carried forward by them, 89 dealers of 14[4] Assessment Circles who carried forward ITC of ₹ 16.66 crore had filed Annexure V without any details. The assessments of these dealers who had filed incomplete returns, were, however, treated as deemed to have been assessed.

During the Exit Conference, the Government agreed with the audit observation regarding incorrect according of deemed assessment status to ineligible cases. The Government further stated (December 2015) that provision has been made in the ensuing total solution project (TSP) for online filing of prescribed documents along with the monthly returns to streamline the system of finalising assessments.

2.4.7.3 Provisional Assessment/Best Judgement Assessment

Section 25 of the TNVAT Act provides that if a dealer fails to submit the monthly return within the prescribed time limit, or if the return filed is incorrect or incomplete, the AA may assess the tax payable by the dealer provisionally to the best of its judgement. According to Section 22(4) of the Act, if no return is submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed or proof of payment of tax, the AA shall, assess the dealer to the best of its judgement, after the completion of that year. CCT instructed the AAs (May 2014) that when a dealer is provisionally assessed

[4] Ambasamudram, Arcot, Chokkikulam, Dharapuram, Ganapathy, Kamarajar Salai, Karur (East), LTU I, Nagercoil (Tower Junction), Perundurai, Rajapalayam II, Tirunelveli Junction, Tiruppur Central I and Tiruverumbur

under Section 25 of the Act, after the end of the year, final assessment under Section 22(4), has to be made.

- ***Scrutiny of Returns***

The white paper on State level VAT by the Empowered Committee of State Finance Ministers (January 2005) envisaged cent *per cent* scrutiny of returns to detect mistakes and recover short payment of taxes, if any, from the dealers. The TNVAT Act, however, did not prescribe the procedure, extent and time limit for completion of scrutiny of returns. Different instructions in this regard were issued by the CCT from time to time regarding the extent of coverage of scrutiny of returns by the AAs and monitoring by the higher authorities.

The details of 'progress on return scrutiny' furnished by the Assessment Circles to the CCT in the monthly statistics for the years 2012-13 to 2014-15 are given below:

As on (Year)	No. of defects noticed	No. of notices issued	No. of cases in respect of which notices were yet to be issued	Notices dropped by AAs	Notices confirmed by AAs	Notices pending action
31.3.2013 (2012-13)	27,975	25,937	2,038	NA	NA	NA
31.3.2014 (2013-14)	50,457	48,091	2,366	6,087	27,810	14,194
31.3.2015 (2014-15)	63,077	61,099	1,978	11,295	28,556	21,248

It is seen from the above table that action taken by the AAs in cases where notices were yet to be issued and cases where notices were issued but final action was pending at the end of each year were not monitored by the higher authorities including the CCT.

The cases relating to issue of notices as a result of scrutiny of returns involve passing of provisional assessment under Section 25 and best judgement assessment under Section 22(4) of the TNVAT Act at the end of the year. The AAs were, however, not able to furnish details of best judgement assessments made by them as no register was maintained in the Assessment Circles to record the details of assessments made under the various provisions of the Act.

During the Exit Conference, the Department stated that this aspect would be taken care of in the ensuing TSP.

- ***Compliance Deficiencies***

Scrutiny of the returns filed by the dealers revealed under-assessment of tax involving application of incorrect rate of tax, incorrect allowance of exemption, irregular claim of ITC, non-reversal/short reversal of ITC and other irregularities as discussed below:

- ***Incorrect claim of exemption***

Entry 22(ii) of Part C of First Schedule to the TNVAT Act, inserted with effect from 29 May 2013 provides for levy of tax at the rate of 14.5 *per cent* at every point of sale of disinfectants and germicides within the State. Prior to 29 May 2013, disinfectants were exempted from levy of tax under entry 17 A of Part B of Fourth Schedule.

A dealer of LTU III Assessment Circle sold disinfectants for ₹ 4.22 crore during July 2013 to March 2014 and did not pay tax, claiming it to be exempted from levy of tax. Since the exemption earlier granted was withdrawn and a new entry was introduced prescribing rate of tax of 14.5 *per cent*, the claim of exemption was not in order. The AA also failed to notice the incorrect claim of exemption. This resulted in non-levy of tax of ₹ 61.18 lakh.

Audit pointed this out to the Department in July 2015. Reply was awaited (December 2015).

- ***Application of incorrect rate of tax***

As per Section 3(2) of the TNVAT Act, in the case of goods specified in Part B or Part C of the First Schedule, the tax shall be payable by a dealer on every sale made by him within the State at the rate specified therein. DVDs and CDs are taxable at the rate of 14.5 *per cent* as per entry 13A of Part C of First Schedule introduced with effect from 12 July 2011. Photographic paper, not specified elsewhere in any of the Schedules, was taxable at the rate of 12.5 *per cent* under entry 69 of Part C of the First Schedule until 11 July 2011 and at 14.5 *per cent* thereafter. As per Section 6(1) of the TNVAT Act, works contract other than civil works contract and civil maintenance are taxable at five *per cent* of the total contract value of the works executed effective from 10 March 2012.

During scrutiny of records in five[5] Assessment Circles, Audit noticed (between February 2014 and July 2015) that four dealers paid tax at five *per cent* on the turnover of ₹ 11.85 crore pertaining to sale of DVDs/CDs during the period from 12 July 2011 to 2013-14 instead of at the correct rate of 14.5 *per cent*. Another dealer paid tax at the rates of four/five *per cent* instead of the applicable rates of 12.5/14.5 *per cent* on the sale of photographic paper valued at ₹ 2.16 crore during the year 2011-12. Similarly, two assessees paid tax at four *per cent* on the value of ₹ 8.52 crore relating to interior/electrical works contracts executed by them during the period 2012-13 and 2013-14 instead of the correct rate of five *per cent*. The AAs failed to ensure the payment of tax at the correct rates while scrutinising the monthly returns filed by the dealers. This resulted in short realisation of tax of ₹ 1.41 crore.

After Audit pointed this out (between February 2014 and July 2015), the AAs of T.Nagar and Erode (Rural) Assessment Circles revised the assessments (April/June 2015) in two cases and raised additional demand of ₹ 28.72 lakh, including interest of ₹ 1.90 lakh. The AA of Anna Salai Assessment Circle replied (July 2015) that CDs/DVDs are taxable at five *per cent* under entry 68 of Part B of First Schedule. The reply is not acceptable since only IT software of any media are covered by this entry and all other CDs and DVDs are covered by entry 13A of Part C of First Schedule to the Act involving tax rate of 14.5 *per cent*. The AAs issued notices (between January and June 2015) in the remaining cases. Further report regarding revision of assessment and collection particulars of the additional demand was awaited (December 2015).

[5] Anna Salai, Erode (Rural), Guindy, Madhavaram and T.Nagar

- ***Irregularities in the claim of ITC***

As per Section 19(1) of the TNVAT Act, there shall be ITC of the amount of tax paid or payable under this Act, by the registered dealer, to the seller on his purchase of taxable goods specified in the First Schedule. Provided that the registered dealer, who claims ITC shall establish that the tax due on such purchases has been paid by him in the manner prescribed. Section 2(24) of the TNVAT Act defines 'input tax' as the tax paid or payable under the Act by a registered dealer to another registered dealer on the purchase of goods in the course of his business. As per Section 19(11) of the TNVAT Act, in case any registered dealer fails to claim ITC in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later. Section 27(2) of the TNVAT Act provides that where, for any reason, the ITC has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of ITC, the AA shall reverse the ITC availed and determine the tax due. Section 27(4) provides for levy of penalty, in the case of first detection, at the rate of 50 *per cent* of the ITC wrongly claimed.

During scrutiny of returns filed by the dealers, Audit noticed irregularities in claim of ITC, viz., preference of claim beyond the time limit prescribed in the Act, claim in respect of ineligible goods, claim of ITC in respect of purchase effected from dealers whose registration certificates (RCs) were cancelled, etc. for ₹ 4.46 crore involving 66 dealers of 26[6] Assessment Circles during the years 2010-11 to 2013-14. The incorrect claim of ITC warrants reversal along with levy of penalty of ₹ 2.23 crore at 50 *per cent* of such incorrect claim of ITC. The AAs, however, failed to notice the incorrect claim of ITC by the dealers during scrutiny of returns filed by them.

After Audit pointed this out (between February 2014 and July 2015), the AAs of four[7] Assessment Circles revised the assessments (between April and June 2015) in six cases and raised additional demand of ₹ 33.13 lakh; of which, ₹ 1.71 lakh was collected. The AAs of 16[8] Assessment Circles issued notices in respect of 30 cases between June 2014 and June 2015. Report on recovery of additional demand, action taken after issue of notice and reply in respect of the remaining cases were awaited (December 2015).

- ***Non-reversal/short reversal of ITC***

As per Section 19(2)(v) of the TNVAT Act, ITC shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of sale in the course of interstate trade or commerce falling

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6 Alandur, Amaindakarai, Ambasamudram, Arcot, Avadi, Egmore, Guindy, JJ Nagar, Kaladipet, Karur (East), Kotturpuram, Koyambedu, Manali, Mandaveli, Nandanam, Nungambakkam, Pondy Bazaar, Poonamallee, Sriperumbudur, T.Nagar, Tirunelveli Junction, Tiruppur Central I, Tiruverkadu, Tiruverumbur, Tiruvanmiyur and Tiruvottiyur

7 Amaindakarai, Egmore, Nungambakkam and T.Nagar

8 Ambasamudram, Arcot, Avadi, Guindy, Karur (East), Koyambedu, Manali, Nandanam, Nungambakkam, Pondy Bazaar, Poonamallee, Sriperumbudur, T.Nagar, Tirunelveli Junction, Tiruvanmiyur and Tiruvottiyur

under sub-section (1) of Section 8 of the CST Act. As per the proviso to Section 19(2)(v), effective from 11 November 2013, ITC shall be allowed in excess of three *per cent* of tax for the purpose specified in clause (v) of Section 19(2). As per Section 19(4) of the TNVAT Act, ITC shall be allowed on tax paid or payable in the State, on the purchase of goods, in excess of three *per cent* of tax up to 10 November 2013 and in excess of five *per cent* thereafter relating to such purchases, if goods are transferred to a place outside the State otherwise than by way of sale; or they are used in manufacture of other goods and transferred to a place outside the State, otherwise than by way of sale. Provided, if a dealer has already availed ITC, it should be reversed. As per Section 19(5)(c) of the TNVAT Act, no ITC shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of interstate trade or commerce without declaration in Form C.

During scrutiny of records in 19[9] Assessment Circles, Audit noticed from the CST returns that interstate sale of goods with or without declarations in Form C and stock transfer of goods to other States were effected by 33 dealers during the period from 2009-10 to 2013-14. Scrutiny of the returns filed by the dealers under the TNVAT Act, however, revealed non-reversal/short reversal of ITC availed by them on purchase of goods proportionate to such sales. The amount of non-reversal/short reversal of ITC worked out to ₹ 2.90 crore. The AAs, however, failed to enforce reversal of ITC during scrutiny of returns filed by the dealers.

After Audit pointed this out (between April 2013 and July 2015), the AAs of five[10] Assessment Circles revised the assessment (between July 2014 and June 2015) in six cases and raised additional demand of ₹ 51.68 lakh, of which ₹ 29.73 lakh was collected. Reply in respect of the remaining cases was awaited (December 2015).

- ***Levy of Purchase Tax***

Section 12 of the TNVAT Act provides that every dealer who purchases goods (the sale or purchase of which is liable to tax under the Act) in circumstances in which no tax was payable and consumes or uses such goods in or for the manufacture of other goods for sale, shall pay tax on the turnover relating to the purchase at the rate specified in the schedules to the Act. The CCT clarified in December 2013 that purchase of raw materials such as jelly, sand and bricks from unregistered dealers and use in works contract would attract levy of purchase tax at the rate of five *per cent*.

During scrutiny of records of Udagai (South) Assessment Circle, Audit noticed that two dealers purchased bricks, blue metal, etc from unregistered dealers during the year 2012-13 and used the same in civil works contract. The purchase of these commodities without payment of tax and use in civil works attracted purchase tax at the rate of five *per cent* on the purchase value

[9] Amaindakarai, Alandur, Egmore, Guindy, JJ Nagar, Kaladipet, Karur (East), Kelambakkam, Kilpauk, Kodungaiyur, Manali, Mandaveli, Madurantakam, Nungambakkam, Perundurai, Sriperumbudur, Tiruverkadu, Tiruppur Central I and Vanagaram

[10] Amaindakarai, Egmore, Karur (East), Kilpauk and Nungambakkam

of ₹ 2.56 crore, which worked out to ₹ 12.82 lakh. The AA, however, failed to recover the amount of purchase tax from the dealers.

Audit pointed this out to the Department in July 2015. Reply was awaited (December 2015).

- ***Admissibility of payment of tax at compounded rates***

Section 3(2) of the TNVAT Act provides that in the case of goods specified in Part B or Part C of the First Schedule, the tax shall be payable by a dealer on every sale made by him within the State at the rate specified therein.

Section 3(4)(a) of the TNVAT Act read with Notification dated 1 January 2007 provides that notwithstanding anything contained in sub-Section (2), every dealer who effects second and subsequent sales of goods purchased within the State and whose turnover relating to taxable goods for a year is less than ₹ 50 lakh, may at his option, pay tax at the compounded rate of 0.5 *per cent.* Section 3(4)(b) provides that such dealer whose turnover reached ₹ 50 lakh during the previous year shall not be entitled to exercise such option for subsequent years.

During scrutiny of records in seven[11] Assessment Circles, Audit noticed (between March 2014 and April 2015) that 13 dealers sold goods like cement, paints, ghee, timber, electrical goods, etc. for ₹ 8.06 crore during the years 2009-10 to 2012-13 and paid tax at the compounded rate of 0.5 *per cent* on the sales turnover. Scrutiny of the returns filed by the dealers and cross verification with the check post module of the intranet of the Department revealed that while the turnover of 10 dealers was in excess of ₹ 50 lakh each, three dealers had purchased goods from other States. As the dealers did not fulfill the condition prescribed in Section 3(4) of the Act, they were not eligible for payment of tax at compounded rate. The tax payable, at the scheduled rates applicable to the sale of goods works out to ₹ 85.27 lakh. However, the dealers paid tax of ₹ 4.56 lakh only, which resulted in short payment of tax of ₹ 80.71 lakh.

After Audit pointed this out to the Department (between March 2014 and April 2015), the AA of Chokkikulam Assessment Circle revised the assessment of a dealer in January 2015 and raised additional demand of ₹ 7.62 lakh. Report on recovery of the additional demand and reply in respect of the remaining cases were awaited (December 2015).

- ***Non-levy of interest for belated payment of tax***

Scrutiny of monthly returns filed by a dealer for the year 2013-14 indicated that the dealer had filed revised return for the month of March 2014 on 31 December 2014 and paid additional tax of ₹ 14.67 crore. The payment of tax through the revised return attracts levy of interest under Section 42(3) of the TNVAT Act at the rate of two *per cent* per month for the period from 14 April 2014 to 31 December 2014. The AA, however, failed to levy interest.

[11] Chokkikulam, Ganapathy, Nandanam, Oragadam, Sriperumbudur, Tiruvanmiyur and Tiruppur Central I

After Audit pointed this out, the AA issued notice (July 2015) to the dealer proposing levy of interest of ₹ 2.55 crore. Further report was awaited (December 2015).

The Government stated (December 2015) that reply in respect of the individual cases pointed out above would be furnished after perusal of assessment files and records and after obtaining replies from the Territorial JCs concerned. Further report was awaited (December 2015).

2.4.7.4 Scrutiny Assessment

Section 22(3) of the TNVAT Act provides that not exceeding 20 *per cent* of the total number of assessments made under Section 22(2) shall be selected by the CCT in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and in such cases, revision of assessment shall be made, wherever necessary.

Rule 10(11) of the TNVAT Rules provides that the method of selection by the CCT shall be based on suitable stratified random sampling method and such selection shall not exceed 20 *per cent* of the cases assessed under Section 22(2) and intimate the details of such selection to the AA for detailed scrutiny of accounts. The AA shall call for the accounts of those assessees for detailed scrutiny and pass appropriate orders.

Audit examined the manner and completeness of selection of cases, the extent of completion of the assessments by the AAs in respect of selected cases and the effectiveness of the system of detailed scrutiny; the findings of which are given below:

Deficiencies in selection process

- The TNVAT Act and the Rules made thereunder do not contain provisions regarding the periodicity of selection of cases for detailed scrutiny. Though assessments relating to the years 2006-07 and 2007-08 were selected by the CCT for detailed scrutiny in three batches between August 2008 and September 2010, subsequent selection of cases relating to the years 2008-09 to 2011-12 was made only in April 2014, viz., after a period of three and half years since the previous selection.

- The JC (Computer Systems) submitted in March 2012, two further batches of 24,982 cases relating to the assessment years 2006-07 and 2007-08 for selection by the CCT. The records in the office of the CCT indicated that with selection of cases mentioned in the two batches, the process of selection would be completed in respect of the assessment years 2006-07 and 2007-08. However, no action was taken, with the result all dealers who were due for detailed scrutiny were not covered by the selection process.

- Chapter 4 of the VAT Audit Manual of the Commercial Taxes Department (CTD) regarding 'Desk Audit' provides that the strata for random sampling method be so chosen as to have representative samples in high risk segments and ensure broader coverage and that all the dealers will be covered in a span of five years, which implies that 20 *per cent* of the dealers are required to be selected every year.

Audit, however, noticed that though 20 *per cent* of the dealers in respect of whom self-assessment orders were passed by the AAs were selected for detailed scrutiny in respect of the assessment years 2006-07 and 2007-08, only five *per cent* of the cases were selected for detailed scrutiny in respect of the assessment years 2008-09 to 2011-12. As a result, the possibility of coverage of all dealers within a period of five years appears doubtful.

- Para 4.1.0 of Chapter 4 of VAT Audit Manual of the CTD provides that every circle shall have at least one case for desk audit. However, 11[12] Assessment Circles did not have any case selected in respect of the year 2007-08, four[13] Assessment Circles in respect of the year 2010-11and Coonoor and FTAC II, Coimbatore Assessment Circles in respect of the year 2011-12.

- Analysis of cases selected for detailed scrutiny for the years 2007-08 to 2011-12 revealed that the turnover of 45 *per cent* of cases was less than ₹ 10 lakh and in 29 *per cent* of the cases, the turnover was between ₹ 10 lakh and ₹ 50 lakh. Thus, 74 *per cent* of the cases having turnover of less than ₹ 50 lakh were selected for scrutiny. Further, analysis of cases of top 100 dealers of the State based on tax revenue revealed that for the years 2009-10 to 2013-14, 19 top dealers relating to Chennai and Coimbatore divisions were not selected for VAT Audit, Surprise Inspection or detailed scrutiny. This, indicates that potentially high risk group of taxpayers were not adequately considered for selection.

- As per Para 5.3.2 of Chapter 5 of VAT Audit Manual of the CTD, VAT audit shall unless specified, cover retrospective period upto the previous audit or the last five years whichever is less and the current year of assessment. The selection of dealers for VAT audit is made by the CCT.

As VAT audit/surprise inspection involves verification of books of accounts, dealers in respect of whom either VAT audit or surprise inspection was conducted should have been excluded for the purpose of selection for detailed scrutiny in order to avoid duplication of work.

Audit, however, noticed that the cases selected for detailed scrutiny by the CCT for the years 2008-09 to 2011-12 included 339 dealers in respect of whom VAT audit or surprise inspection had already been conducted. Out of these 339 cases, approval for VAT audit was granted by the CCT in respect of 112 dealers, thus rendering the exercise of detailed scrutiny redundant. Further, the exclusion of 339 cases would have resulted in selection of equal number of other dealers for detailed scrutiny.

During the Exit Conference, the Department accepted the audit observation regarding detailed scrutiny and assured that it would get the issue examined. The Government stated that the observations regarding detailed scrutiny were taken on record and would be utilised for identifying future cases.

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[12] Chitrakara Street, Chokkikulam, FTAC II, Coimbatore, Hosur (North), Kodaikanal, Palacode, Paramakudi, Ramanathapuram, Sivagangai, Theni I and Tiruparankundram

[13] FTAC I, Coimbatore, FTAC II, Coimbatore, Mayiladuthurai II and Sirkazhi

Extent of completion and effectiveness of scrutiny assessment

The CCT issued instructions in April 2014 that detailed scrutiny of self-assessment orders for the assessment years 2006-07 (January to March 2007) and 2007-08 had to be completed before 30 April 2014 and 31 May 2014 respectively. In the same circular, a time limit was fixed to complete detailed scrutiny relating to the years 2008-09 to 2011-12 in a staggered manner, so as to complete all assessments before 31 March 2015.

CCT also instructed that the AAs should issue summons to the dealers selected for random scrutiny to produce the accounts, registers, records and other connected documents and a notice period of fifteen days should be given for submission of the documents. The best of judgement assessment notices/pre-assessment notices should be issued within a period of seven days from the date of detailed scrutiny of accounts called for and a separate assessing officer-wise register shall be maintained for detailed scrutiny of accounts with details such as date of summons, date of pre-assessment notice issued, date of order etc.

Audit examined the compliance by the AAs to the instructions of the CCT regarding finalisation of scrutiny assessment and the effectiveness of the scrutiny assessment exercised by the AAs.

Out of 9,705 cases relating to 31 Assessment Circles, details regarding scrutiny/assessment records in respect of only 5,156 cases were furnished to Audit. The completion or otherwise of scrutiny in the remaining cases could not be ascertained.

Scrutiny assessment had been completed only in respect of 989 cases and the position of the remaining 4,167 cases are as under:

- Though summons were issued in 1,404 cases calling for the production of accounts, further action had not been taken. In 244 cases, even summons were not issued by the AAs.
- In 131 cases, though best judgement notices were issued by the AAs, further action was not taken. In 15 other cases, orders were yet to be passed by the AAs.
- The AAs could not furnish the stage of pendency of the remaining 2,373 cases.
- As revealed from the database of the Department, out of 4,167 dealers, 2,120 assessments related to dealers whose RCs were cancelled and the possibility of initiation of action and realisation of revenue in these cases is remote.

Deficiency noticed in scrutiny case

According to entry 67 of Part B of First Schedule to the TNVAT Act, any goods falling under Part C, but *excluding plant and machinery*, for use in manufacture inside the State are industrial inputs and taxable at four *per cent* up to 11 July 2011 and at five *per cent* thereafter.

Earthmovers and parts and accessories were taxable at 12.5 *per cent* up to 11 July 2011 and at 14.5 *per cent* thereafter, as per entry 13 of Part C of First Schedule to the Act. The CCT also clarified in May 2007 that earthmoving machineries are taxable at 12.5 *per cent* as per the said entry.

Audit observed that the self-assessment of a dealer of T.Nagar Assessment Circle for the year 2007-08 was selected for scrutiny in January 2011 and the same was finalised in October 2011. While finalising the scrutiny assessment, the AA allowed concessional rate of tax of four *per cent* on the sale of earthmoving machinery spares valued at ₹ 1.25 crore on the strength of certificate furnished by the purchasing dealer. As 'industrial inputs' exclude machinery under entry 67 of Part B of First Schedule, the allowance of concessional rate was not in order. The tax due at the differential rate of 8.5 *per cent* works out to ₹ 10.63 lakh. Audit further observed sale of these goods during the period 2008-09 to 2013-14 also, involving short realisation of tax of ₹ 45.33 lakh.

Audit pointed this out to the Department in January 2015. Reply was awaited (December 2015).

2.4.7.5 Revision of Assessment

Section 27(2) of the TNVAT Act provides that where, for any reason, ITC has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of ITC, the AA shall, at any time, within a period of six years from the date of assessment, reverse ITC availed and determine the tax due. Section 27(4) provides that in addition to the tax determined under sub section (2), the AA shall direct the dealer to pay as penalty a sum which shall be, in the case of first such detection, 50 *per cent* of the tax due in respect of such claim.

- During test check of records in eight[14] Assessment Circles, Audit noticed that the assessments of 11 dealers relating to the years 2009-10 to 2013-14 under the TNVAT Act were treated as deemed to have been assessed. The assessments of the dealers under the CST Act finalised between November 2013 and March 2015 involved levy of tax at higher rate for interstate sale not covered by Form C declarations and allowance of exemption in respect of stock transfer of goods to other States. As ITC is not eligible for interstate sale of goods not covered by Form C declarations and ITC in excess of three *per cent* is allowable for stock transfer of goods, reversal of ITC already availed by the dealers was required to be made by the AAs by revision of assessment. The amount of ITC which was required to be reversed worked out to ₹ 1.38 crore. The AAs, however, failed to initiate action for making necessary revision of assessments.

After Audit pointed this out (between November 2014 and July 2015), the AAs of four[15]Assessment Circles revised the assessments (between January and August 2015) in five cases and raised additional demand of ₹ 20.20 lakh.

[14] Kilpauk, LTU IV, Madhavaram, Mandaveli, Mettupalayam Road, Nolambur, Nungambakkam and Vanagaram

[15] Kilpauk, Madhavaram, Mettupalayam Road and Nungambakkam

Further report regarding collection of the additional demand and reply in respect of the remaining cases was awaited (December 2015).

- During test check of records in 11[16] Assessment Circles, Audit noticed that the claim of ITC of 32 dealers during the years 2012-13 and 2013-14, *inter alia,* included claim of ITC of ₹ 6.84 crore in respect of purchases stated to have been effected from dealers whose RCs were subsequently cancelled by the AAs with retrospective effect, i.e. from the date of registration. The AAs of the purchasing dealers, subsequent to such cancellation of RCs of the selling dealers, should have initiated action to reverse the ITC of ₹ 6.84 crore availed by the dealers and recover the same along with penalty of ₹ 3.42 crore.

After Audit pointed this out (between May 2014 and June 2015), the AA of Amaindakarai Assessment Circle revised the assessments in three cases in June 2015 and raised additional demand of ₹ 9.21 lakh (inclusive of penalty). Further report regarding collection particulars and reply in respect of the remaining cases was awaited (December 2015).

2.4.8 Use of reports / information in assessment process

The various sources of information which facilitate the AAs in the assessment process are the audit report in Form WW, the information furnished by the data analysis wing and the details of import which are obtained by the enforcement wing and uploaded on the intranet of the Department. The extent of utilisation of the reports by the AAs in the assessment process and its effectiveness in generating additional revenue was reviewed and the results of such review are as follows:

2.4.8.1 Audit Report in Form WW

In order to ensure the correctness of the accounts furnished by the dealers in the deemed assessment regime, the Government introduced Section 63-A in the TNVAT Act in August 2012 providing for audit of accounts of the dealer by a chartered accountant or a cost accountant.

Section 63-A(1) of the TNVAT Act read with Rule 16-A of the TNVAT Rules provides that every registered dealer whose total turnover including zero rate sale and sale in the course of interstate trade or commerce as specified in Section 3 of the CST Act, in a year exceeds ₹ one crore, shall get his accounts in respect of that year, audited by an Accountant and submit a report of such audit in Form WW duly signed and verified by the Accountant to the AA within nine months from the closure of the financial year. Section 63-A(2) provides for levy of penalty of ₹ 10,000 in case of failure to submit the audit report, in addition to any tax payable in respect of such period. Form WW requires such dealers who are mandatorily required to submit the audit report, to enclose therein, the audited financial statements viz., trading, profit and loss account and balance sheet with relevant schedules.

The CCT instructed (February 2014) the AAs to undertake the exercise of verification of consolidated monthly returns submitted in the financial year

[16] Amaindakarai, Ayyapanthangal, Guindy, Manali, Nungambakkam, Pondy Bazaar, Porur, Ramapuram, Sholinganallur, Tiruvottiyur and Vanagaram

and the extracts of defects noticed in return scrutiny / audit menus available in the MIS package of intranet along with the corresponding audited statement to identify prospective revenue.

Audit examined the extent of utilisation of the audit report by the AAs in assessment process, the findings in this regard are as follows:

- CCT instructed in February 2014 that best judgement notice be issued under Section 22(4) of the TNVAT Act for default in submission of audit report by dealers and the same be confirmed on the failure of the dealer to comply with the statutory provision regarding submission of audit report even after issue of best judgement notice under Section 22(4).

Audit observed in 12[17] Assessment Circles that out of 3,113 dealers who were liable to file audit report in Form WW, 677 dealers did not file the same for the year 2012-13. Similarly, in 24[18] Assessment Circles, out of 6,880 dealers who were liable to file the audit report in Form WW, 1,448 dealers did not file the same for the year 2013-14. Further, Audit noticed in four[19] Assessment Circles, belated submission of the audit report by 19 dealers pertaining to the assessment years 2012-13 and 2013-14.

Despite CCT's instructions, the AAs did not initiate action for invoking the provisions of best of judgement assessment. The AAs also did not initiate action for levy of penalty as envisaged in Section 63-A(2) of the TNVAT Act.

After Audit pointed this out (between November 2014 and September 2015), the AAs issued notice (June 2015) proposing levy of penalty for non-submission of the audit report in 217 cases. Further report was awaited (December 2015).

The Government agreed (December 2015) with the audit observation that quantum of penalty should take into account the turnover of the dealer and also the period of delay in furnishing the audit report in Form WW and stated that necessary amendment proposals would be considered. The Government further stated that instructions were issued in September 2015 and format of best judgement notice was communicated to ensure uniformity across all the Assessment Circles for ensuring compliance in filing of Form WW.

- Scrutiny of the audit reports filed by dealers revealed discrepancy in sales turnover between the trading account and those declared by the dealers in the monthly returns in 11[20] Assessment Circles, the difference being ₹ 24.13 crore in six cases relating to the assessment year 2012-13 and ₹ 33.02 crore in 10 cases relating to the assessment year 2013-14. The AAs, however, did not

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17 Alandur, Ambasamudram, Anna Salai, Arcot, Chokkikulam, Kamarajar Salai, Kilpauk, Madhavaram, Mettupalayam Road, Nagercoil (Tower Junction), Pondy Bazaar and Sivakasi II

18 Alandur, Amaindakarai, Ambasamudram, Anna Salai, Arcot, Chokkikulam, Dharapuram, Egmore, Guindy, JJ Nagar, Kamarajar Salai, Kodungaiyur, Kotturpuram, Koyambedu, Madhavaram, Manali, Mettupalayam Road, Nolambur, Oragadam, Perundurai, Sengottai, T Nagar, Tiruverkadu and Vanagaram

19 Chokkikulam, Madurantakam, Porur and Sivakasi II

20 Chokkikulam, Kilpauk, LTU IV, Mandaveli, Nagercoil (Tower Junction), Nandanam, Oragadam, Perundurai, Sriperumbudur, Tiruverkadu and West Tower Street

initiate action to reconcile the difference in turnover as per the returns furnished by the dealers and as mentioned in the audited annual accounts.

After Audit pointed this out (between December 2014 and July 2015), the AAs issued notices (between December 2014 and August 2015) in 11 cases.

- Scrutiny of the audited accounts enclosed to the certificate in Form WW filed by 31 dealers of 17[21] Assessment Circles indicated miscellaneous income and profit or loss on sale of assets of ₹ 26.74 crore and ₹ 87.03 crore during 2012-13 and 2013-14 respectively. Analysis of these income and opinion of the Accountant regarding the exigibility to tax of the same under the TNVAT Act was not furnished. The AA also failed to issue notices calling for details from the dealers.

After Audit pointed this out (between December 2014 and August 2015), the AAs of six[22] Assessment Circles issued notices (between December 2014 and August 2015) in respect of 17 cases and in two cases, recovered ₹ 0.43 lakh. Report regarding action taken in respect of the remaining 15 cases and reply in other cases was awaited (December 2015).

Non-submission of certified annual financial statements along with audit report

The audited financial statements, viz., trading, profit and loss account and balance sheet with schedules are required to be enclosed to the audit report in Form WW. However, audit reports submitted by 415 dealers of 22[23] Assessment Circles for the year 2012-13 and 686 dealers of 32[24] Assessment Circles for the year 2013-14 did not contain the audited financial statements.

The AAs did not initiate action to call for the audited financial statements, in the absence of which proper return scrutiny could not have been exercised. No registers were maintained to account for the receipt of Form WW in complete shape and to indicate the scrutiny of the audit reports by the AAs. The purpose of obtaining the audit report, viz., to ensure the correctness of the returns submitted by the dealers with reference to the audited financial statements was not achieved.

After Audit pointed this out, the AAs issued notices to 253 dealers. Further report was awaited (December 2015).

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21 Chokkikulam, JJ Nagar, Karur (East), Kilpauk, Kodungaiyur, Kotturpuram, LTU I, LTU IV, Madurantakam, Mettupalayam Road, Nolambur, Perundurai, Pondy Bazaar, Poonamallee, Sriperumbudur, Tiruverkadu and Tiruverumbur

22 Chokkikulam, LTU IV, Nolambur, Poonamallee, Sriperumbudur and Tiruverkadu

23 Ambasamudram, Anna Salai, Chokkikulam, Dharapuram, Kamarajar Salai, Kelambakkam, Kodungaiyur, Madhavaram, Madurantakam, Mettupalayam Road, Nandanam, Nolambur, Sengottai, Sholinganallur, Sivakasi II, T.Nagar, Tiruvanmiyur, Tirunelveli Junction, Tiruverkadu, Tiruverumbur, Udagai (South) and Virudhunagar III

24 Amaindakarai, Ambasamudram, Anna Salai, Arcot, Chokkikulam, Dharapuram, Egmore, Ekkatuthangal, JJ Nagar, Kaladipet, Kamarajar Salai, Karur (East), Kilpauk, Kodungaiyur, Kotturpuram, Koyambedu, LTU I, LTU II, Madhavaram, Madurantakam, Nandanam, Nolambur, Nungambakkam, Oragadam, Poonamallee, Sivakasi II, Sriperumbudur, Tiruvanmiyur, Tiruverumbur, Udagai (South), Vanagaram and Virudhunagar III

Non-utilisation of information contained in Form WW

Audit observed that the Accountant had suggested payment of differential tax, interest and reversal of ITC involving ₹ 1.88 crore in 37 cases relating to the assessment years 2012-13 and 2013-14. However, the AAs of 10[25] Assessment Circles did not initiate any action to recover the amounts due from the dealers on the basis of the suggestion of the Accountant made in Form WW. Audit further noticed that the AAs of seven[26] Assessment Circles failed to utilise the information available in the audit report in Form WW to initiate action for recovery of ₹ 1.55 crore in eight cases. For instance, a dealer of Erode (Rural) Assessment Circle failed to include freight charges to the sale value of ready mix concrete (RMC) for the purpose of payment of tax. The CCT clarified in March 2011 that any expense incurred by the seller till the delivery of RMC at the purchaser's site had to be considered for the purpose of determining the taxable turnover. Though the audited statements enclosed with Form WW indicated collection of ₹ 7.84 crore towards freight charges by the dealer, the AA failed to initiate action for recovery of tax of ₹ 1.14 crore on the same from the dealer.

After Audit pointed this out (between December 2014 and July 2015), the AAs of six[27] Assessment Circles issued notices in respect of 12 cases and recovered ₹ 27.26 lakh in five cases. The AA, T.Nagar Assessment Circle revised (March 2015) the assessment in one case and raised additional demand of ₹ 4.04 lakh. Report regarding collection particulars of the additional demand and reply in respect of the other cases was awaited (December 2015).

2.4.8.2 Non-utilisation of import details uploaded in intranet

The enforcement wing of CTD is responsible for obtaining details of imports from the Customs Department. The information relating to import details obtained from the Customs Department is passed on to the Computer Centre for being uploaded in the intranet of the Department to facilitate cross verification by the AAs. The AAs are required to utilise the details of import available in intranet and verify the same with the details furnished in the returns by the dealers to ensure proper accounting of imports by the dealers and identify evasion of tax, if any. Audit examined the extent of utilisation of import details by the AAs and noticed as under:

Non-reporting/short reporting of imports

Section 21 of the TNVAT Act read with Rule 7(1) (a) of the TNVAT Rules provides that every dealer registered under the Act shall file return, which shall, among other things, include details of purchases including imports in Annexure-I thereto.

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[25] Anna Salai, Chokkikulam, Kilpauk, LTU IV, Madurantakam, Nungambakkam, Porur, Sriperumbudur, Tiruverkadu and Vanagaram

[26] Erode (Rural), Kotturpuram, Kilpauk, LTU IV, Nagercoil (Tower Junction), Perundurai and T.Nagar

[27] Anna Salai, LTU IV, Nungambakkam, Porur, Sriperumbudur and Vanagaram

- Audit noticed from the details uploaded in intranet of the Department that goods valued at ₹ 972.08 crore were imported by 37 dealers of 17[28] Assessment Circles during the year 2013-14. However, the imports disclosed by the dealers in the monthly returns filed by them with CTD was ₹ 243.86 crore only. Thus, there was non-reporting/short reporting of import of goods valued at ₹ 728.22 crore by the dealers.

- Similarly, scrutiny of details uploaded in intranet of Department indicated import of goods valued at ₹ 83,717.32 crore by three dealers of LTU III and Pondy Bazaar Assessment Circles during 2013-14. However, the import mentioned in Form WW filed by them with CTD was ₹ 41,957.96 crore only. Thus, there was discrepancy in value of imports as per the details in intranet of CTD and as per the Form WW filed by the dealers to the extent of ₹ 41,759.36 crore.

The AAs, however, failed to utilise the information available in the intranet of Department and did not initiate action to reconcile the difference in import as per details uploaded in intranet and as per the returns/Form WW filed by the dealers, so as to unearth suppression of sales turnover by the dealers.

After Audit pointed out the above, the AAs issued notices (between May and August 2015) in 13 cases. Further report was awaited (December 2015).

- Scrutiny of details uploaded in intranet of CTD revealed that three dealers of Pondy Bazaar, Madhavaram and Amaindakarai Assessment Circles imported goods, viz., LED TV, fillets and plastic toys for ₹ 1.80 crore during the year 2013-14. The dealers, however, did not file monthly returns with the jurisdictional AAs of the CTD. The AAs also failed to utilise the information available in intranet of Department and, therefore, did not initiate action to bring the suppressed turnover to tax. The tax and penalty leviable on the turnover, which was not disclosed by the dealers after addition of gross profit of 10 *per cent* works out to ₹ 23.92 lakh and ₹ 35.87 lakh respectively.

After Audit pointed this out, the AA issued notice in one case. Further report regarding revision of assessment and reply in respect of the remaining two cases was awaited (December 2015).

The Government stated (December 2015) that reply in respect of the individual cases pointed out above would be furnished after perusal of assessment files and records and after obtaining replies from the Territorial JCs concerned. Further report was awaited (December 2015).

2.4.8.3 Non-utilisation of reports of the Data Analysis Wing

A Data Analysis Wing (DAW) was formed (December 2010) with the objective of providing reports, which are generated with the available data in the Department, in various formats, for utilisation by the AAs to augment revenue as well as plug leakage and abnormal claim of ITC by dealers. This is being done through analysing the returns filed by the dealers through Information Technology (IT). The exception reports which are generated by

[28] Amaindakarai, Anna Salai, Egmore, JJ Nagar, Kilpauk, Koyambedu, Mandaveli, Nandanam, Nolambur, Nungambakkam, Poonamallee, Ramapuram, Saligramam, T.Nagar, Tiruvottiyur, Vanagaram and West Tower Street

use of IT are forwarded to the Assessment Circles for utilisation by them during scrutiny of returns and further follow-up action.

During December 2010 to April 2014, DAW had forwarded 1,43,779 exception reports involving revenue of ₹ 1,791.90 crore in respect of dealers pertaining to 52[29] Assessment Circles; of which 4,895 cases involving revenue of ₹ 893.41 crore were taken up for scrutiny to ascertain the action taken by the AAs in respect of these cases. Scrutiny of records, however, revealed the following:

- In respect of 1,836 cases involving revenue of ₹ 230.22 crore, no action was taken by the AAs. After Audit pointed this out (between April and October 2015), the AAs issued notices (between April and October 2015) in respect of 45 cases involving revenue of ₹ 6.47 crore. Further report was awaited (December 2015).

- Audit could not ascertain the action taken in respect of 1,537 cases involving revenue of ₹ 18.79 crore as the assessment files/details were not furnished to audit. Of these 1,537 cases, 561 cases pertain to newly formed six[30] Assessment Circles and the AAs expressed their inability to furnish details regarding the action taken on DAW reports.

Thus, the objective of establishment of DAW to plug leakage and augment revenue could not be achieved due to ineffective utilisation of IT by the AAs.

2.4.9 Coordination with other wings of the Department

The Territorial Wing receives information from other wings of the Department i.e. Appellate Wing, Enforcement Wing and Business Intelligence Unit (BIU), which are utilised by the AAs for assessment purpose.

The CCT issued instructions in August 2009 that the cases remanded by appellate DCs, Sales Tax Appellate Tribunal and High Court have to be attended to immediately, in order to improve the collection of arrears.

The Enforcement Wing of the Department conducts field audit and surprise inspection at the dealers premises under Section 64 and Section 65 of the Act. After completion of the audit / inspection, the approved VAT audit notes and surprise inspection proposals are communicated to the Territorial wing for implementation by the AAs.

The CCT instructed (June 2010) that the reports should be forwarded by the Enforcement Wing within one month from the date of completion of audit and the same should be implemented by the AAs within three months from the

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[29] Alandur, Amaindakarai, Ambasamudram, Anna Salai, Arcot, Avadi, Chokkikulam, Dharapuram, Egmore, Guindy, JJ Nagar, Kaladipet, Kamarajar Salai, Kelambakkam, Kilpauk, Kodungaiyur, Kotturpuram, Koyambedu, LTU I, LTU II, LTU III, LTU IV, Madhavaram, Madurantakam, Manali, Mandaveli, Mettupalayam Road, Nagercoil (Tower Junction), Nandanam, Nolambur, Nungambakkam, Oragadam, Perundurai, Pondy Bazaar, Poonamallee, Ramapuram, Rajapalayam II, Saligramam, Sengottai, Sivakasi II, Sriperumbudur, T Nagar, Tiruvanmiyur, Tirunelveli Junction, Tiruppur Central I, Tiruverkadu, Tiruverumbur, Tiruvottiyur, Udagai (South), Vanagaram, Virudhunagar III and West Tower Street

[30] Madhavaram, JJ Nagar, Kelambakkam, Poonamallee, Ramapuram and Saligramam

date of receipt of the reports. As per the revised instructions issued (July 2013) by the CCT, notice incorporating the proposals is to be issued by the AA within 30 days from the date of receipt of proposals in case of LTU assessees and within 15 days in case of other assessees. Orders are to be passed within two months from the date of service of notice in case of LTU assessees and proposal involving revenue of more than ₹ 5 crore, and within one month in all other cases.

Audit examined the implementation of VAT audit reports and surprise inspection proposals received by the AAs from the Enforcement Wing, action taken on the reports received from BIU and the finalisation of remanded cases and observed the following:

2.4.9.1 Delay in implementation of VAT Audit Notes/Surprise Inspection Proposals

- Audit observed that in five[31] Assessment Circles, 14 proposals relating to 28 assessments of 14 dealers were implemented belatedly. As a result, the additional demand of ₹ 346.08 crore (inclusive of penalty) was raised with delays ranging from three months to four years.

Examination of an illustrative case of delayed implementation of VAT audit notes and consequent delay in accrual of revenue to Government revealed as under:

- The VAT audit of a dealer of LTU II Assessment Circle for the year 2007-08 was conducted during June-July 2009. The VAT audit notes were partially implemented in October 2014, viz., after a period of five years from the date of audit and additional demand of ₹ 38.15 crore was raised. The VAT audit notes also contained proposal relating to reconciliation of turnover of ₹ 59.92 crore as per check post records and those available in the accounts of the dealer involving tax of ₹ 7.49 crore. The dealer furnished reconciliation statement for a value of ₹ 31.72 crore and had not reconciled the balance turnover of ₹ 28.19 crore till the date of audit. AA also did not prescribe any time limit for submission of reconciliation statement, while passing orders in October 2014.

- Audit noticed that though notices were issued by AAs of six[32] Assessment Circles, 23 proposals relating to 37 assessments and involving revenue of ₹ 2,389.51 crore were not implemented, even after lapse of seven months to four years.

2.4.9.2 Delay in finalisation of remanded cases

The TNVAT Act and the Rules made thereunder provide an assessee the statutory remedy to file an appeal, if he is aggrieved by any order passed by the AA. The appellate authority may, while disposing of an appeal, set aside the assessment and direct the AA to make a fresh assessment after such further inquiry as may be directed. The Act and the Rules made thereunder do not

[31] LTU III, LTU IV, Kodungaiyur, Madhavaram and Perundurai

[32] Alandur, LTU I to IV and Perundurai

specify any time limit for passing orders in respect of remanded cases. Audit noticed delay in finalisation of the remanded cases as detailed below:

- The assessment of a dealer of LTU III Assessment Circle pertaining to the years 2006-07 to 2008-09 was set aside by the Honourable Madras High Court in October 2014 with a direction to the AA to dispose of the case involving revenue of ₹ 9.05 crore within three months from the date of receipt of order. The order was received by the AA on 21 January 2015. However, no action was taken by the AA to finalise the assessment as of August 2015.

- The Honourable Madras High Court remanded the case of a dealer involving claim of ITC on capital goods of ₹ 31.97 lakh with orders to dispose of the case within four weeks. The appeal order was received by the AA, Nandanam Assessment Circle in October 2009 and the dealer was transferred to LTU III Assessment Circle from April 2010. The case was not finalised as of August 2015.

- The order remanding the assessments of a dealer of T. Nagar Assessment Circle was received in May 2014, but the assessments for three years were kept pending (August 2015) as the relevant assessment records were not received by the AA from the Appellate DC.

Further, Audit noticed in nine[33] Assessment Circles that 51 assessments relating to 23 dealers involving revenue of ₹ 21.07 crore were remanded back to the AAs by the appellate authorities for fresh assessment between April 2010 and December 2014. Out of these, though notices were issued in respect of 21 assessments relating to 12 dealers involving revenue of ₹ 2.82 crore between August 2013 and August 2015, no further action was taken, even after lapse of 2 to 27 months. In respect of the remaining 30 assessments relating to 11 dealers and involving revenue of ₹ 18.25 crore, no action was taken as of 31 March 2015.

2.4.9.3 Extent of usage of information from Business Intelligence Unit

In order to improve the revenue collection, check evasion of tax and carry out analysis of various data gathered internally and externally on commodities, dealers, exports and imports etc., BIU was constituted in December 2012, in the office of the CCT, Chennai. The functions of the Unit, among other things, involve verification of the correctness of allowance of concessional rate in respect of interstate transactions, monitoring return scrutiny of the dealers, check of new registrations especially relating to evasion prone commodities, check of excess ITC claims/export refund and preparation of MIS reports, dealer-wise and commodity-wise and furnishing the same to the concerned Assessment Circle for follow-up action.

The BIU communicated to the Territorial Wing in May 2014, details of dealers who filed return in Form K but had effected purchase in excess of ₹ 50 lakh and sought verification of payment of tax at the correct rates by the dealers. The BIU forwarded (November 2014) details of abatement (relating to supply of goods) claimed by works contractors for the purpose of payment

[33] Amaindakarai, Anna Salai, Egmore, LTU I, LTU II, Manali, Nandanam, Nungambakkam and T.Nagar

of service tax for the year 2013-14 and instructed the AAs to verify the correctness of the turnover reported by the works contractors under the TNVAT Act.

However, as per the information furnished by the Assessment Circles, no action was taken by the AA of Nagercoil Tower Junction Assessment Circle, in respect of two dealers, who filed Form K return and were found to have made purchase of more than ₹ 50 lakh. The AAs of four Assessment Circles[34] did not initiate action to verify the correctness of the turnover reported by 14 dealers on the basis of the details furnished by the Unit.

After being pointed out by Audit, the AAs issued notice in 12 cases. Further report was awaited (December 2015).

The Government stated (December 2015) that the workflow mechanism of TSP would ensure that delay is avoided in future. The Government agreed to furnish reply in respect of individual cases after obtaining a report from the Territorial JCs. During the Exit Conference, the Department stated that time limit had been fixed to complete the pending cases before December 2015 so as to ensure revenue generation before March 2016. Further report was awaited (December 2015).

2.4.10 Internal Control and Monitoring System

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. Monitoring is a key component of internal control system. Existence of continuous and effective monitoring system is essential to secure the effectiveness of the internal control system.

- The non-furnishing by the AAs of the Assessment Circles and the office of the CCT regarding the details of assessments made under various provisions of the Act due to non-maintenance of register to record the details of assessments made by the AAs is indicative of ineffective monitoring of the finalisation of assessments.

- As mentioned in Para 2.4.7.3, though details of return scrutiny were being furnished by the AAs to the CCT in the monthly statistics of 'progress on return scrutiny', the final action taken in respect of notices which were pending action at the end of the year were not being furnished and therefore remained unmonitored.

- The instructions contained in the Tamil Nadu Commercial Taxes Manual Volume III, providing for conduct of annual inspection and cursory inspection atleast once in a year to ascertain the quality of assessment undertaken by the AAs were not adhered to. Audit observed that annual inspection and cursory inspection were not conducted for five years in 16[35] Assessment Circles and 14[36] Assessment Circles respectively. Further, annual

[34] Ganapathy, LTU I, LTU III and Nolambur

[35] Alandur, Egmore, Guindy, Koyambedu, LTU I to IV, Nandanam, Nungambakkam, Perundurai, Pondy Bazaar, Porur, Saligramam,T.Nagar and Tiruvanmiyur

[36] Alandur, Egmore, Guindy, Koyambedu, LTU I to IV, Mandaveli, Nungambakkam, Perundurai, Pondy Bazaar, Porur and Saligramam

inspection and cursory inspection of nine[37] new Assessment Circles, which were formed as a result of reorganisation of Assessment Circles of Chennai division were not conducted.

- Non-adherence to the instructions and directions of the higher authorities and non-monitoring of their compliance by the higher authorities concerned regarding target dates for completion of scrutiny in selected cases and implementation of VAT audit reports/surprise inspections indicated weak internal control mechanism.

- As per Tamil Nadu Commercial Taxes Manual Volume III (Chapter XLV), the internal audit is to be conducted on quarterly basis. The internal audit wing is organised in each Zone and consists of an AC, CTO and four supporting staff.

Audit, however, noticed that internal audit was not done on a regular basis and only 22 *per cent* of the total number of 1,591 units planned for audit for the period from 2009-10 to 2012-13 were completed. In six[38] Assessment Circles, only special audit was conducted in respect of retiring officials for periods ranging from two to five years. Audit also noticed that internal audit was conducted belatedly in respect of 13[39] Assessment Circles for various years (2009-10 to 2013-14) with delay ranging from five months to five years.

Audit further noticed that 386 out of 588 defects pointed out by internal audit and 225 out of 638 defects pointed out during special audits were pending settlement (August 2015) due to rectification not being carried out by the AAs. The outstanding position of internal audit defects was not made available by six[40] Assessment Circles.

The Department attributed the reason for non-coverage of internal audit to vacancy in staff strength.

- Though pre-assessment register was required to be maintained AA-wise with effect from April 2014 to monitor the performance of AAs and to put in place a proper mechanism to review the feature of return scrutiny, Audit noticed improper maintenance of register and lack of necessary follow-up action by the AAs in respect of the notices issued by them. For instance, omission to enter the details of notices issued by the AAs was noticed in six[41] Assessment Circles. In Kotturpuram and Koyambedu Assessment Circles, no entries were made for revision notices issued for the observations pointed out by Audit.

In nine[42] Assessment Circles, relevant entries were not made in the columns prescribed in the register, resulting in its improper maintenance. In

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37 Avadi, Ayyappanthangal, JJ Nagar, Kaladipet, Kotturpuram, Nolambur, Ramapuram, Tiruverkadu and Vanagaram

38 Egmore, Guindy, Karur (East), Kotturpuram, Manali and Sriperumbudur

39 Arcot, Egmore, Guindy, Kamarajar Salai, Kodungaiyur, Kotturpuram, Koyambedu, Mandaveli, Nandanam, Nungambakkam, Perundurai, Pondy Bazaar and Virudhunagar III

40 Egmore, Kotturpuram, Mandaveli, Nungambakkam, Pondy Bazaar and T.Nagar

41 Ambasamudram, Chokkikulam, Guindy, Karur (East), Koyambedu and Perundurai

42 Anna Salai, Kamarajar Salai, Kelambakkam, Mettupalayam Road, Perundurai, Sholinganallur, T Nagar, Trichy Road and Tiruvanmiyur

Tirunelveli Junction Assessment Circle, the register was not maintained and in Koyambedu Assessment Circle, no entry was made in the register from September 2014 in respect of CTO section and from October 2014 in respect of AC and Deputy Commercial Tax Officer section.

Audit noticed lack of follow-up action in three[43] Assessment Circles. Audit noticed that 50 notices involving ₹ 37.35 crore were issued between May 2013 and November 2014. However, no action was initiated even after lapse of five to 24 months. After Audit pointed this out, the AA, Amaindakarai Assessment Circle initiated action in respect of 17 cases between July 2014 and May 2015.

In LTU III Assessment Circle, Chennai, though reply was received for 7 out of 25 notices, further action was not initiated.

After Audit pointed this out (between March and August 2015), the AAs agreed (July and August 2015) to maintain the register properly. The AAs of LTU III and Amaindakarai Assessment Circles agreed to take necessary follow-up action.

During the Exit Conference, the Principal Secretary stated that the TSP would take care of almost all the systemic and implementation issues pointed out by audit. The Principal Secretary further stated that steps would be taken to ensure that the observations are acted upon suitably.

2.4.11 Conclusion

Audit noticed that proper records relating to finalisation of assessments were not maintained in the Assessment Circles and thereby the possibility of cases remaining outside the purview of assessment could not be ruled out. The non-consideration of furnishing of the prescribed documents along with the returns filed by the dealers resulted in ineligible cases being accorded the status of deemed to have been assessed. The system of selection of assessments for detailed scrutiny suffered from various deficiencies like delay in selection, shortfall in selection, selection of low risk group of taxpayers, selection of cases in respect of which VAT audit/surprise inspection had already been conducted. The AAs also failed to utilise the information furnished in the audit report in Form WW and the information regarding imports uploaded in intranet of the CTD in the assessment process. Though IT was used by DAW to derive exception reports on the basis of analysis of the returns filed by the dealers, the reports were not effectively utilised by the AAs of the Assessment Circles, to plug leakage and augment revenue. The internal control and monitoring system was rendered ineffective due to lack of continuous and effective monitoring by the higher authorities through annual inspections and cursory inspections, non-conduct of internal audit and improper maintenance of pre-assessment register to ensure due action being taken for completion of assessments by the AAs.

[43] Amaindakarai, LTU III and Perundurai

2.4.12 Recommendations

The Government/Department may institute measures for

- **Streamlining the system of monitoring the finalisation of assessments and ensuring proper adherence to the prescribed conditions before treating the returns filed by the dealers to be deemed to have been assessed;**
- **Strengthening the system of scrutiny assessments by ensuring timeliness in selection, adequacy in number of cases and by enforcing the prescribed time period for completion of scrutiny by the AAs;**
- **Establishing an effective monitoring system to ensure due adherence to the instructions governing implementation of VAT audit notes/surprise inspection proposals;**
- **Ensuring utilisation by the AAs of the information contained in the audit report in Form WW and the details of import uploaded in intranet of the Department; and,**
- **Ensuring timely action to be taken by the AAs on the reports received from DAW so as to achieve effective utilisation of IT in plugging leakage and generating additional revenue.**

2.5 Follow-up of Performance Audit on Implementation of Value Added Tax in Tamil Nadu

2.5.1 Introduction

A Performance Audit on Implementation of Value Added Tax (VAT) in Tamil Nadu was included in the Report of the Comptroller and Auditor General of India on Revenue Sector for the year ended March 2012 and tabled in the State Legislative Assembly in May 2013. During the Performance Audit, analysis was made of various aspects of VAT such as registration of dealers, format of returns prescribed under the TNVAT Act, computerisation in CTD, assessment procedures prescribed under the TNVAT Act, provisions relating to ITC, transactions involving evasion prone commodities, etc. The Performance Audit covered the transactions from 1 January 2007 to 31 December 2011. Audit had suggested 11 recommendations for consideration by the Government, out of which the following eight recommendations were accepted.

- Inclusion of timber under the ambit of transit pass system to check evasion of tax.
- Modifying the prescribed format of the returns in order to make them more compatible with the provisions of the Act/Rules.
- Providing necessary validation checks in the software to ensure error free data base.
- Providing a column in the bill of entry for indicating the Taxpayer Identification Number (TIN) of the importing dealers, in consultation with the Central Government which could enable the Department to easily identify the importers.
- Incorporating a provision in the TNVAT Act to enable the registering authorities to exercise certain basic/vital checks before granting RCs to ensure the authenticity of the application for registration.
- Introducing a suitable provision in the TNVAT Act/Rules for fixing a time limit for completing the detailed scrutiny.
- Putting in place a suitable mechanism to enforce the surrender of transit passes at the 'out' check posts.
- Evolving a system to ascertain the closing stock held by the dealers at the time of cancellation of their RCs, either due to closure of business or otherwise and to reverse the ITC availed thereon.

2.5.2 Audit objective

The objective of this follow-up audit was to assess whether corrective actions had been taken to address the findings and implement the recommendations made in the Performance Audit which had been accepted by the Department.

2.5.3 Scope and methodology

The audit methodology included issue (July 2015) of a questionnaire to the Department to elicit the action taken to implement the eight accepted recommendations. The response of the Department (August 2015) was analysed and verified to ascertain the extent of implementation at various Assessment Circles.

Audit Findings

2.5.4.1 Recommendation 1: Inclusion of timber under the ambit of transit pass system

Section 70(1)(a) of the TNVAT Act provides that the goods vehicle carrying any goods mentioned in the Sixth Schedule shall be accompanied by a transit pass and the same shall be surrendered at the 'out' check post before exit of the goods vehicle from the State.

Timber was identified by the Department as an evasion-prone commodity. As documentary evidence in support of movement of timber to other States was not available, a recommendation was made for including timber under the ambit of transit pass system to check evasion of tax. The State Government assured (September 2015) that it would make necessary amendment in the Act. Although the Government accepted the recommendation, they have not implemented it.

Audit cross verified the details of interstate sale and stock transfer of timber made during 2013-14 by 303 dealers with the check post movement records and observed the following discrepancies:

- 136 dealers effected interstate sale and stock transfer of timber for ₹ 24.84 crore. However, there was no evidence of movement of goods to other State as per check post records.
- The returns filed by 137 dealers under CST Act indicated interstate sale and stock transfer of timber for ₹ 206.72 crore. However, check post records indicated movement of goods to other States for ₹ 78.62 crore only.
- In 30 cases, though returns filed under the CST Act indicated interstate sale and stock transfer of timber for ₹ 4.70 crore, check post records indicated movement of goods to other States for ₹ 18.11 crore.

The above instances indicate continued non-monitoring of the transportation of timber to other States, though the same was identified by the Department as an evasion prone commodity. This was due to non-amendment of the Act to bring timber under the ambit of transit pass system.

2.5.4.2 Recommendation 2: Modifying the prescribed format of the returns

There were deficiencies in the format of the returns and since the filing of correct and complete returns by the dealers is essential for levy and collection of tax, a recommendation was made to make the format of the returns compatible with the provisions of the Act/Rules. The Department stated (September 2015) that all the returns under different tax Acts have been

consolidated and re-engineered with twenty nine annexures as a part of TSP and was awaiting amendment (December 2015).

Audit observed the following discrepancies due to non-amendment of the format of the returns.

- Explanation II under the Second Schedule to the TNVAT Act provides that the sale of petroleum products by one oil company to another oil company shall not be deemed to be the first sale in the State. The return in Form 'J' meant for goods mentioned in the Second Schedule to the Act, however, does not contain provision to indicate the name of the purchasing oil company. Audit noticed that three oil companies claimed exemption on a turnover of ₹ 13,081.70 crore in the returns filed by them during 2013-14. The correctness of the claim of exemption, however, could not be ensured as the return in Form 'J' was not modified.

- Goods mentioned in Part C of the First Schedule to the TNVAT Act have unique commodity code and are taxable at 14.5 *per cent*. If used as industrial inputs, these goods are taxable at the concessional rate of five *per cent*, under entry 67 of Part B of the First Schedule with commodity code 2067. It was noticed that in Annexure I to the monthly return (Form I), instead of mentioning the actual commodity code of the goods purchased, the general code 2067 is being mentioned when they were purchased as industrial inputs. Audit noticed that 9,709 dealers assessed at 313 Assessment Circles had filed 39,593 returns and claimed ITC of ₹ 2,835.39 crore, providing commodity code as 2067. As such, the nature of goods purchased by the assessees and the correctness of purchase of those goods at concessional rate were not ascertainable from the returns.

2.5.4.3 Recommendation 3: Providing necessary validation checks in the software

The Performance Audit identified lack of validation controls in the computer application which led to various deficiencies such as, difference in amount of ITC mentioned in Form I and as per details in Annexure I thereto, difference in the amount of output tax mentioned in Form I and as per details in Annexure II thereto and discrepancy in the amount of ITC carried over to the subsequent month and brought forward in the return of the succeeding month. A recommendation was made that necessary validation checks be provided in the software to ensure error free database. The Department stated (August 2015) that annexure driven returns had been created to ensure automated valuation, consistency and integrity of data as a part of TSP and is awaiting amendment.

Analysis of the returns data for the period from April 2013 to March 2014 provided by the Department indicated the following:

- While entering the details in Form I, the system allows the dealers to enter purchase value and sale value in the column provided for each slab rate of tax. The dealer has to enter the amount of ITC and output tax amount also manually instead of the same being automatically generated by the system. As a result, in 777 returns filed by 609 dealers of 230 Assessment Circles, there was a difference of ₹ 93.53 crore between the ITC availed by the dealers and

as per details entered in the Annexure. Similarly, in 1,378 returns filed by 567 dealers of 252 Assessment Circles, the tax due and the tax manually entered were different, the difference being ₹ 28.58 crore.

- TIN is a unique registration number that is used for identification of dealers registered under VAT. It consists of 11 digit numerals and will be unique throughout the country. The first two digit represent the State code. The States are codified from '01' to '35'. Accordingly, the first two digits cannot be more than '35'. However, Annexure I of 3,475 returns filed by 461 dealers of 224 Assessment Circles included State codes beyond 35 and ITC of ₹ 2.74 crore was claimed by them.

- 1,504 dealers assessed at 300 Assessment Circles had filed 5,642 returns and claimed ITC of ₹ 35.04 crore. However, the purchase details contained invalid seller TIN like '0', '1', '-', etc.,

- Furnishing of invoice-wise information was made mandatory from September 2009. However, in 27,255 returns filed by 6,902 dealers, the invoice-wise details of purchases were not available indicating non-mapping of business rule in the system.

Thus, absence of validation controls resulted in continued capturing of incorrect/inaccurate data in the system and the correctness of claim of ITC/payment of output tax could not be ensured.

2.5.4.4 Recommendation 4: Providing a column in the bill of entry for indicating the TIN of the importing dealers

As the importing dealers were non-accounting/non-reporting the imports, it was recommended that the issue of providing a column in the bill of entry to mention the TIN of importers be taken up with the Union Government, which would enable the Department to easily identify the importing dealers. The Department stated (September 2015) that the matter had been taken up with the Ministry of Finance, Government of India and Chairman, Central Board of Excise and Customs in this regard.

Audit observations regarding large scale evasion of tax by importers were featured in Para 2.13 – "Cross verification of import data obtained from the Customs Department" of the Audit Report of the Comptroller and Auditor General of India for the year ended March 2013, Revenue Sector, Government of Tamil Nadu, involving money value of ₹ 145.58 crore and in the Performance Audit on "Enforcement activities of the Commercial Taxes Department" featured in the Audit Report of the Comptroller and Auditor General of India for the year ended March 2014, Revenue Sector, Government of Tamil Nadu, involving money value of ₹ 766.38 crore.

During registration, the dealer has to furnish Permanent Account Number (PAN) information to the CTD. Audit cross verified PAN available in the Bill of Entry relating to the period 2013-14 with the database of CTD to ascertain the TIN of the importers under the TNVAT Act. Such verification revealed that out of 7,014 cases, in respect of 3,006 cases involving imports of ₹ 18,733.84 crore, details of PAN were not available in CTD database while in 205 cases involving imports of ₹ 11,471.39 crore, more than one TIN was

available in CTD database for a single PAN. In one case, against a single PAN, there were 36 TIN matches.

Thus, the identification of the dealers and their registration status under the TNVAT Act continues to be difficult in the absence of TIN in the bill of entry. Providing information regarding TIN in the bill of entry would enable the Department to identify the importers at the time of import itself, which would facilitate the AA in assessment process.

2.5.4.5 Recommendation 5: Issue of Registration Certificate after exercising basic checks

It was identified that absence of statutory provisions in the Act for necessary enquiry by the registering authorities before the grant of RCs resulted in bill trading activity[44]. Audit, therefore, recommended incorporating a provision in the TNVAT Act to enable the registering authorities to exercise certain basic/vital checks before granting RCs to ensure the authenticity of the application for registration.

The Department issued circular instructions in January 2014 detailing the various checks to be exercised and the documents to be obtained and scrutinised by the registering authorities before grant of RC. The circular covered all aspects pertaining to pre-registration inspection in the declared place of business and related enquiry of the details furnished in the application for registration and post-registration monitoring of filing of returns by the newly registered dealers.

Audit test checked adherence to the instructions in 13[45] Assessment Circles. Out of 4,962 RCs which were granted subsequent to the issue of instructions, Audit scrutinised the records relating to grant of RCs in 1,612 cases and noticed non-observance of certain instructions contained in the circular in 277 cases.

Audit also observed non-adherence to the instructions regarding post-registration monitoring of filing of returns. The AAs of all the 13 Assessment Circles had not referred cases of non-filing of returns or filing of 'NIL' returns by the newly registered dealers to the Enforcement Wing, as stipulated in the circular. After Audit pointed this out (October 2015), the AAs agreed to refer such cases to the Enforcement Wing for investigation.

2.5.4.6 Recommendation 6: Introducing a suitable provision in the TNVAT Act/Rules for fixing a time limit for completing the detailed scrutiny

Due to a very low percentage of completion of scrutiny in cases selected for detailed scrutiny, Audit recommended that suitable provision be introduced in the TNVAT Act/Rules for fixing a time limit for completing scrutiny.

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44 Issue of invoices without actual transfer of goods.

45 Adyar, Alwarpet, Chepauk, Chintadripet, Ekkatuthangal, Hosur (North), Hosur (South), KK Nagar, Kotturpuram, Nanganallur, Pattukottai II, Royapettah and Sirkazhi

The CCT instructed (April 2014) all the AAs that detailed scrutiny of self assessment orders for the assessment years 2006-07 (January to March 2007) and 2007-08 had to be completed before 30 April 2014 and 31 May 2014 respectively. In the same circular, a time limit was fixed to complete detailed scrutiny relating to the years 2008-09 to 2011-12 in a staggered manner, so as to complete all assessments before 31 March 2015.

Audit examined the level of adherence to the instructions fixing target dates for completion of scrutiny and observed from the assessment records/details furnished to audit that scrutiny was completed only in respect of 19 *per cent* of the cases, in disregard of the instructions issued by CCT thereby indicating absence of monitoring system to ensure due adherence to the instructions by the AAs.

2.5.4.7 Recommendation 7: Putting in place a suitable mechanism to enforce the surrender of transit passes at the 'out' check posts

Cross verification of check post records undertaken during the conduct of Performance Audit revealed that transit passes issued by the 'first' check post for transport of rubber during 2009-10 and 2010-11 were not surrendered at the 'last' check post. Audit therefore, recommended a suitable mechanism be evolved to enforce the surrender of transit passes at the 'out' check post.

The Department introduced (February 2014) e-transit pass for sixth schedule goods and stated that the un-surrendered cases in 'out' check posts are monitored in the MIS module created for the purpose by territorial divisions/circles and notices for revision are issued. CCT issued instructions (October 2011) to monitor the issue of revision notices in case of non-surrendered e-transit passes (eTPs) periodically.

Audit, however, observed that though information regarding non-surrender of transit passes at the 'out' check posts can be obtained from the MIS module as stated by the Department, the AAs of the Assessment Circles and the check post officers failed to effectively utilise the information by not initiating action in the cases of non-surrender of transit passes as detailed below:

- Audit observed from the MIS module of seven[46] Assessment Circles that 7,212 eTPs generated by the dealers for movement of goods mentioned in the sixth schedule to other States between 1 April 2013 and 30 September 2015 were not surrendered at the designated 'out' check posts. The value of goods covered by the eTPs which were not surrendered at the 'out' check posts was ₹ 248.60 crore involving tax and penalty of ₹ 13.46 crore and ₹ 20.19 crore respectively.

After Audit pointed this out (October 2015), the AAs of five[47] Assessment Circles stated (October 2015) that notice would be issued to the dealers in this regard and action taken would be intimated in due course. The AA of Alwarpet Assessment Circle had issued notices in respect of 333 eTPs, though 2,765 eTPs generated by the dealers of the circle were not surrendered at the 'out' check posts.

[46] Adyar, Alwarpet, Chepauk, Ekkattuthangal, Guindy, Kotturpuram and Royapettah

[47] Adyar, Chepauk, Guindy, Kotturpuram and Royapettah

- Similarly, Audit observed from the MIS module of Puzhal (Out) check post that 1,389 eTPs involving movement of goods to other States were not surrendered at the check post during the period from 1 April 2013 to 30 September 2015 and the AAs of five[48] Assessment Circles failed to initiate action for non-surrender of eTPs. The value of goods covered by the eTPs was ₹ 707.17 crore involving tax and penalty of ₹ 97.51 crore and ₹ 146.29 crore respectively.

After Audit pointed this out (October 2015), the AAs stated (October 2015) that notices would be issued to the dealers and report regarding action taken would be intimated.

- Test check at Puzhal (In) check post revealed that though 46 transit passes generated between 1 April 2013 and 30 September 2015 by dealers of various other States for transit of goods through Tamil Nadu were not surrendered at the designated 'out' check posts, no action was initiated by the check post officer of Puzhal (In) check post. After Audit pointed this out (October 2015), the check post officer stated that the said details would be referred to the respective States, through Interstate Investigation Cell of Enforcement wing, for further investigation.

2.5.4.8 Recommendation 8: System to ascertain the closing stock held by the dealers at the time of cancellation of their RCs, either due to closure of business or otherwise and to reverse the ITC availed thereon

The Performance Audit pointed out the difficulty in invoking the provisions of Section 19(19) of the TNVAT Act relating to reversal of ITC in respect of goods remaining unsold at the time of stoppage of business, in the absence of non-furnishing of stock account. Audit, therefore, recommended evolving a suitable system to ascertain the closing stock held by dealers.

After presentation of the Audit Report in the State Legislative Assembly in May 2013, the Department introduced (1 November 2013) a provision in Form I requiring dealers who carry forward ITC to file closing stock inventory in Annexure V along with the monthly return to have an effective check over the accumulation of ITC by the dealers by verifying whether the dealers had adequate stock of goods at the close of the month commensurate with the ITC carried forward by them.

Audit noticed that 89 dealers of 14 Assessment Circles who carried forward ITC in excess of ₹ one lakh in any of the months (November 2013 to March 2014) after introduction of the provision had filed blank Annexure V along with the monthly returns and two dealers of two Assessment Circles had not filed Annexure V.

Thus, the intended objective of having an effective check over the accumulation of ITC by dealers could not be achieved.

[48] Egmore, Koyambedu, Nanganallur, Nungambakkam and Vanagaram

Audit reported the matter to the Government in October 2015. The Government stated (December 2015) that report in respect of audit observations relating to individual cases contained in the report would be furnished after obtaining replies from the Territorial JCs concerned. Further report was awaited (December 2015).

2.5.5 Conclusion

Audit scrutiny of the eight accepted recommendations revealed that four recommendations were yet to be implemented. Though measures were put in place for implementation of the remaining four accepted recommendations, necessary follow-up action was required to be taken to ensure due compliance by the AAs of the Assessment Circles. Since Performance Audit and the recommendations contained therein are essentially a means to improving Department's performance, early action may be initiated for full implementation of the accepted recommendations.

2.6 Other Audit Observations

Value Added Tax

2.6.1 Application of Incorrect rate of tax

As per Section 3(2) of the TNVAT Act, in the case of goods specified in Part B or Part C of the First Schedule, tax shall be payable by a dealer on every sale made by him within the State at the rate specified therein. DVDs and CDs are taxable at the rate of 14.5 *per cent* as per entry 13A of Part C of First Schedule introduced with effect from 12 July 2011. Granite blocks were taxable at the rate of 12.5 *per cent* upto 11 July 2011 under entry 36 (iii) of Part C of First Schedule to the TNVAT Act.

Test check of records revealed that five dealers of Alwarpet and Valluvarkottam Assessment Circles paid tax at five *per cent* on the turnover of ₹ 7.48 crore pertaining to sale of DVDs/CDs during the period from 12 July 2011 to 31 March 2013 instead of the correct rate of 14.5 *per cent*, while a dealer of Arisipalayam Assessment Circle paid tax at 4 *per cent* on the turnover of ₹ 47.72 lakh pertaining to sale of granite blocks effected by him during 2009-10 instead of at the correct rate of 12.5 *per cent*. The AAs failed to ensure payment of tax at correct rates while scrutinising the monthly returns filed by the dealers. This resulted in short realisation of tax of ₹ 75.09 lakh.

After Audit pointed this out (between October 2013 and September 2014), the AAs of Valluvarkottam and Arisipalayam Assessment Circles revised the assessments (October and December 2014) in two cases and raised additional demand of ₹ 42.68 lakh, of which ₹ 20.32 lakh was collected. The appeal preferred by the dealers before Appellate Deputy Commissioner was pending (December 2015). The AA of Alwarpet Assessment Circle, in one case, contended (October 2014) that the rate of tax of DVDs/CDs was five *per cent* as per notification[49] issued in July 2011. The reply is not tenable as the said notification related to audio cassettes including pre-recorded cassettes and not DVDs and CDs. Further, as per ruling (July 2012) of the Authority for Clarification and Advance Ruling constituted under Section 48-A of the TNVAT Act, DVDs attracted tax at the rate of 14.5 *per cent* with effect from 12 July 2011. Reply in respect of other three cases was awaited (December 2015).

Audit reported the matter to the Government (April and May 2015). Government accepted (September 2015) the audit observation in two cases pertaining to Arisipalayam and Valluvarkottam Assessment Circles. Reply of the Government in the remaining four cases was awaited (December 2015).

[49] GO Ms No.78, dated 11 July 2011

2.6.2 Incorrect allowance of compounded rate of tax

Section 3(2) of the TNVAT Act provides that in the case of goods specified in Part B or Part C of the First Schedule, the tax shall be payable by a dealer on every sale made by him within the State at the rate specified therein.

Section 3(4)(a) of the TNVAT Act read with Notification dated 1 January 2007 provides that notwithstanding anything contained in Section 3(2), every dealer who effects second and subsequent sales of goods purchased within the State and whose turnover relating to taxable goods for a year is less than ₹ 50 lakh, may at his option pay a tax at the rate of 0.5 *per cent*.

As per Section 3(4)(b) of the TNVAT Act, if the taxable turnover of the dealer in a year reaches ₹ 50 lakh at any time during the year, he is liable to pay tax under Section 3(2) of the Act on all his sales turnover.

2.6.2.1 During test check of assessment records (November 2013 and September 2014) in three[50] Assessment Circles, Audit noticed that three dealers had paid tax at the compounded rate[51] of 0.5 *per cent* during the years 2008-09 and 2011-12 on sale of hardware items, parts of motor vehicles and student note books, amounting to ₹ 1.66 crore. The taxable turnover of all the three dealers during the said years was in excess of ₹ 50 lakh. As their taxable turnover for the year exceeded the threshold limit of ₹ 50 lakh, they were not eligible to pay tax at concessional rate of tax. Despite this, the AAs failed to ensure the payment of tax at the correct rates while scrutinising the monthly returns. This resulted in short payment of tax of ₹ 16.07 lakh.

After Audit pointed this out (November 2013 and September 2014), the AA of Tamil Sangam Road Assessment Circle revised the assessment in respect of an assessee in April 2014 and raised additional demand of ₹ 3.28 lakh including interest of ₹ 1.02 lakh. Report on action taken in respect of two other dealers was awaited (December 2015).

Audit reported the matter to the Government during May-June 2015. Reply of the Government was awaited (December 2015).

2.6.2.2 During test check of records (between April 2014 and January 2015) in three[52] Assessment Circles, Audit noticed that five dealers dealing in goods like timber, ceramic tiles, automobile parts, machinery, etc. had a total sales turnover of ₹ 1.57 crore during the years 2007-08, 2009-10, 2011-12 and 2012-13 and paid tax at the rate of 0.5 *per cent* on the sales turnover. Scrutiny of the Check Post module of the Department's intranet revealed that these dealers had effected interstate purchase of goods. In terms of Section 3(4)(a), dealers engaged in interstate transactions were not eligible for payment of tax at the rate of 0.5 *per cent* and tax at the rates of 12.5 *per cent* upto 11 July 2011 and at 14.5 *per cent* thereafter was leviable, which worked out to ₹ 20.86 lakh. However, the dealers paid tax of only ₹ 0.87 lakh, which resulted in

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50 Lalgudi, Tamil Sangam Road and Tiruppur (Bazaar)

51 Compounded rate of tax – Payment of tax at prescribed rate on the turnover by dealers instead of at the rates applicable to individual items of goods dealt with by them.

52 Anna Nagar, Ice House and Tiruchengode (Town)

short payment of tax of ₹ 19.99 lakh. The AAs failed to rectify the mistake while passing assessment orders/scrutinising the monthly returns.

Audit pointed this out to the Department (between April 2014 and January 2015) and to the Government (May/June 2015). Reply was awaited (December 2015).

2.6.3 Cross verification of records

Standing Order 225 of the Tamil Nadu Commercial Taxes Manual Volume III provides that work of detection of evasion of tax and suppression of turnover by dealers should be attended to systematically by the officers of the CTD to prevent leakage in revenue. For this purpose, the Standing Order envisages collection of statistics, information etc. from other departments of the Government and use of the same for the purpose of assessment.

As per Section 27 (1) (a) of the Act, where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the AA may, at any time within a period of six years from the date of assessment, determine to the best of its judgement, the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary. Section 27 (3) (c) of the Act provides for levy of penalty at 150 *per cent* of the tax due on the turnover that was wilfully not disclosed by the dealer.

Windmills

2.6.3.1 Sale of windmills was assessable to tax at the rate of four *per cent* upto 11 July 2011 and at five *per cent* thereafter. The name transfer records in connection with the transfer of commissioned windmills are maintained by Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO).

Verification of records (between April and August 2014) in connection with the transfer of commissioned windmills maintained by TANGEDCO with the monthly returns/assessment records of the sellers of windmills available in the respective Assessment Circles of CTD revealed that four dealers of three[53] Assessment Circles, who sold windmills valued at ₹ 17.90 crore during the years 2011-12 and 2012-13, either did not file returns or failed to disclose the same in the monthly returns filed by them with CTD. The tax and penalty leviable on the turnover suppressed by the dealers worked out to ₹ 0.83 crore and ₹ 1.25 crore respectively. The officers of the CTD, however, failed to co-ordinate with TANGEDCO and obtain the details of transfer of commissioned windmills.

After Audit pointed this out (between April and August 2014), the AA of Manali Assessment Circle assessed (November 2014) the sales turnover of ₹ 3.60 crore of a dealer and recovered ₹ 45.15 lakh (inclusive of interest of ₹ 9.15 lakh). The AA, Thudiyalur Assessment Circle revised the assessment of two dealers in February 2015 and raised demand of ₹ 58.51 lakh towards tax and ₹ 87.76 lakh towards penalty. The AA, Thudiyalur Assessment Circle, in one case, initiated (August 2015) the process of recovery of arrears under

[53] Koyambedu, Manali and Thudiyalur

the Revenue Recovery Act**.** The AA, Koyambedu Assessment Circle issued notice to the dealer (June 2014); but the same was returned undelivered by the postal authorities. Further report regarding collection of ₹ 1.46 crore and action taken in respect of the case relating to Koyambedu Assessment Circle was awaited (December 2015).

Audit reported the matter to the Government in January 2015. Reply of the Government was awaited (December 2015).

Granite blocks

2.6.3.2 As per entry 36 of Part C of the First Schedule to the Act, on every sale of granite block inside the State, tax was leviable at the rate of 12.5 *per cent* upto 11 July 2011 and at 14.5 *per cent* thereafter.

Audit obtained the details of sales made to dealers in Tamil Nadu for the period from 2008-09 to 2013-14 from Tamil Nadu Minerals Limited (TAMIN) and compared the same with the returns filed by the dealers with the jurisdictional officers of the CTD. Cross verification of the records revealed that a dealer of Valluvarkottam Assessment Circle, who had purchased granite block worth ₹ 27.80 crore during the period from 2009-10 to 2013-14 had not disclosed any turnover of purchase/sales during the said years. Further scrutiny of the Dealer Profile in intranet of CTD revealed that the dealer was registered as an annual return filing dealer, not involving any tax liability. Thus, the sales turnover corresponding to such purchases had escaped assessment from levy of tax.

After Audit pointed this out in July 2014, the AA, Valluvarkottam Assessment Circle forwarded (September 2014) for necessary revision of assessment, the details of purchases made by the dealer during the years 2009-10 and 2013-14 to the concerned AAs of Velacherry Assessment Circle and Dharmapuri Assessment Circle respectively, where the dealer was registered during the said years. In respect of the years 2010-11 to 2012-13, the AA, Valluvarkottam Assessment Circle determined the suppressed sales turnover as ₹ 14.55 crore and raised additional demand of tax and penalty of ₹ 2.06 crore and ₹ 3.09 crore respectively by revising the assessments in May 2015. Further report regarding collection particulars and action taken in respect of the remaining two years was awaited (December 2015).

Audit reported the matter to the Government in April 2015. Reply was awaited (December 2015).

2.6.4 Non-levy of tax

As per Section 3(2) of the TNVAT Act, in the case of goods specified in Part B or Part C of the First Schedule, tax under the Act shall be payable by a dealer on every sale made by him within the State at the rate specified therein. As per proviso to Section 3(2) read with entry 49 of Part C of the First Schedule to the Act, tax was leviable at the rate of 12.5 *per cent* upto 11 July 2011 on every sale of motor vehicles and parts thereof.

During test check of records in Tirupattur Assessment Circle, Audit noticed that a dealer claimed exemption on sale of motor vehicle parts amounting to

₹ 94.70 lakh during the years 2007-08 and 2008-09 and the AA, while finalising the assessment of the dealer for the said years in June 2011 had allowed the same without assigning any reasons. This resulted in non-levy of tax of ₹ 11.84 lakh.

After Audit pointed this out (March 2014), the AA revised the assessment in December 2014 and raised additional demand of ₹ 11.84 lakh. Copy of revision order and particulars of collection of the additional demand were awaited (December 2015).

Audit reported the matter to the Government in August 2015. Reply was awaited (December 2015).

2.6.5 Incorrect claim of input tax credit

As per Section 19 (1) of TNVAT Act, there shall be ITC of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchase of taxable goods specified in the First Schedule. Provided that the registered dealer, who claims ITC shall establish that the tax due on such purchases has been paid by him in the prescribed manner.

As per Section 27(2) of the TNVAT Act where, for any reason, ITC has been availed wrongly, the AA shall reverse the ITC availed and determine the tax due. Section 27(4) of the Act *ibid* provides for levy of penalty in the case of first detection at the rate of 50 *per cent* of the ITC wrongly claimed.

2.6.5.1 As per Rule 7(7) of TNVAT Rules, every registered dealer who is not liable to pay tax under the Act shall file return for each year on or before the 20th day of May of the succeeding year showing the actual total turnover in respect of all goods dealt with by him.

During test check of monthly returns filed by an assessee of Sankari Assessment Circle (March 2014), Audit noticed that the assessee had, *inter alia*, reported in the return for the month of March 2012, purchase of yarn for ₹ 1.53 crore from a selling dealer of Mettur Road Assessment Circle and claimed ITC of ₹ 7.63 lakh.

Verification of seller's 'Dealer profile' (available in intranet of the CTD) indicated the selling dealer to be an annual return[54] filing dealer with no tax liability. The AA, however, failed to ensure the correctness of claim of ITC during scrutiny of monthly returns. The ITC of ₹ 7.63 lakh claimed by the assessee was, therefore, reversible along with levy of penalty of ₹ 3.81 lakh.

After Audit pointed this out (March 2014), the AA revised (October 2014) the assessment and raised additional demand of ₹ 11.44 lakh. The appeal filed by the assessee before the Appellate Deputy Commissioner (CT) Erode after paying 25 *per cent* of the tax amount was stated to be pending (December 2015).

Government, to whom the matter was reported (April 2015), accepted (September 2015) the audit observation.

[54] Annual returns in Form I-1 are meant to be filed by the dealers who are not liable to pay tax under the TNVAT Act.

2.6.5.2 As per Section 19(11) of the TNVAT Act, in case any registered dealer fails to claim ITC in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before 90 days from the date of purchase, whichever is later.

During test check of records (April and December 2014) in Adyar I and Chrompet Assessment Circles, Audit noticed that two dealers who effected purchases of goods during 2011-12, claimed ITC of ₹ 8.34 lakh during the year 2012-13, after lapse of the permissible period of 90 days from the dates of purchase. As the claim of ITC was not preferred within the prescribed time, the same had to be disallowed and the amount recovered from the dealers. The AAs, however, failed to invoke the provisions of Section 19(11) of the Act and allowed the time barred claim of ITC. This resulted in non-reversal of ITC of ₹ 8.34 lakh and non-levy of penalty of ₹ 4.17 lakh.

Audit reported the matter to the Department (June and December 2014) and to the Government (April and June 2015). Reply was awaited (December 2015).

2.6.5.3 During test check of records in Tirupattur Assessment Circle, Audit noticed that a dealer had brought forward ITC of ₹ 9.71 lakh during the year 2008-09 and the same was allowed by the AA while finalising the assessment in April 2011. Audit, however, noticed from the assessment order for the year 2007-08 (February 2011) that the eligible amount of ITC determined to be carried forward to the assessment year 2008-09 was ₹ 4.40 lakh. Thus, there was excess availment of ITC of ₹ 5.31 lakh, which was required to be recovered along with penalty.

After Audit pointed this out (March 2014), the AA revised the assessment for the year 2008-09 in January 2015 and raised additional demand of ₹ 10.60 lakh (inclusive of penalty of ₹ 5.30 lakh). Copy of revision order and particulars of collection of additional demand was awaited (December 2015).

Audit reported the matter to the Government in April 2015. Reply was awaited (December 2015).

2.6.6 Non-reversal of input tax credit

2.6.6.1 As per Section 19(4) of the TNVAT Act, ITC shall be allowed on the tax paid or payable on the purchase of goods in excess of three *per cent* of tax relating to such purchases, if the goods purchased are transferred or used in the manufacture of other goods and transferred to other States otherwise than by way of sale. Provided, that if a dealer has already availed ITC, there shall be reversal of credit against such transfer.

During test check of monthly returns (between April 2013 and June 2014) in three[55] Assessment Circles, Audit noticed that four dealers who claimed ITC of ₹ 4.63 crore on purchases of goods during the years 2008-09 to 2011-12, had transferred goods valued at ₹ 373.49 crore to other States other than by way of sale. Audit, however, observed that while three dealers did not reverse proportionate ITC of ₹ 42.37 lakh applicable to such transfer of goods to other States, in the remaining case, as against ₹ 75.40 lakh which was required to be reversed, reversal of only ₹ 27.03 lakh was made by the dealer in the monthly

[55] FTAC II, Coimbatore, Tiruppur (North) and Vadapalani I

returns filed by him. The AAs, however, failed to detect the non-reversal of ITC of ₹ 90.74 lakh while scrutinising the monthly returns filed by the dealers.

After Audit pointed this out (between April 2013 and June 2014), the AAs revised the assessments (between March and September 2014) and raised additional demand of ₹ 90.74 lakh, the collection particulars of which were awaited (December 2015).

Audit reported the matter to the Government between March 2014 and May 2015. Reply of the Government was awaited (December 2015).

2.6.6.2 As per Section 19(5)(c) of the TNVAT Act, no ITC shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of interstate trade or commerce without declaration forms.

During test check of records (June 2014) in Tiruppur (North) Assessment Circle, Audit noticed that three dealers had claimed ITC of ₹ 35.95 lakh on purchase of goods during the year 2011-12. Audit further observed from the orders passed (between February and April 2013) by the AA under the CST Act, that a turnover of ₹ 6.22 crore had been assessed to tax as interstate sales not covered by valid declaration forms. Though, such sale warranted reversal of ITC of ₹ 9.07 lakh, reversal was neither made by the assessees nor enforced by the AA.

After Audit pointed this out (June 2014), the AA revised the assessments in September 2014 and raised additional demand of ₹ 9.07 lakh**,** the collection particulars of which were awaited (December 2015).

Audit reported the matter to the Government in April 2015. Reply of the Government was awaited (December 2015).

Central Sales Tax

2.6.7 Application of incorrect rate of tax

2.6.7.1 As per Section 8(2) of the CST Act, interstate sale of goods not covered by valid declaration form is assessable to tax at the local rate applicable to sale of such goods inside the State.

As per entry 25 of Part B of First Schedule to the TNVAT Act, capital goods were taxable at the rates of four *per cent* upto 11 July 2011 and at five *per cent* thereafter. Any other goods not specified elsewhere in any of the Schedules were taxable at the rates of 12.5 *per cent* upto 11 July 2011 and at 14.5 *per cent* thereafter. Section 2(11) of the TNVAT Act defines capital goods as plant, machinery, etc. used in the State for the purpose of manufacture.

During test check of CST assessment files (March and September 2014) in three[56] Assessment Circles, Audit noticed that three dealers sold machinery and parts outside the State for ₹ 7.84 crore during the years 2007-08 to 2011-12 and paid tax at the rates of four and five *per cent* as applicable to the sale of such goods for use within the State. As interstate sales of capital goods

[56] FTAC I, Coimbatore, Palladam and Ponneri

do not satisfy the condition "used in the State for the purpose of manufacture" and also these sales were not supported by declaration forms, they were taxable at the rate of 12.5 *per cent* upto 11 July 2011 and 14.5 *per cent* thereafter in terms of Section 8(2) of the CST Act. The AAs, while finalising the assessments (October 2012 and February 2014) failed to adopt the correct rate of tax which resulted in short levy of tax of ₹ 66.93 lakh.

After Audit pointed this out (March 2014 and September 2014), the AA, FTAC I, Coimbatore and Palladam Assessment Circles, taking into consideration the subsequent filing of declaration forms, revised the assessments (April 2014 and May 2015) and raised demand of ₹ 36.38 lakh, of which ₹ 33.37 lakh was collected. Reply in respect of the case pertaining to Ponneri Assessment Circle and collection particulars of the demand in respect of Palladam Assessment Circle were awaited (December 2015).

Audit reported the matter to the Government (January and April 2015). Reply of the Government was awaited (December 2015).

2.6.7.2 Prior to 1 April 2007, Section 8(2)(b) of the CST Act provided that the tax payable by any dealer on his turnover in so far as the turnover related to the sale of goods other than declared goods in the course of interstate trade or commerce, should be calculated at the rate of 10 *per cent* or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever was higher. The elements of surcharge and additional sales tax were to be included in computing the rate for the purpose of levy of tax under the CST Act.

Under Section 3-I of the TNGST Act, surcharge at 5 *per cent* on the tax was leviable with effect from 1 July 2002.

Section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970 provided for levy of Additional Sales Tax (AST) at the rate of 2.5 *per cent* on the taxable turnover, where the taxable turnover of a dealer for the year was in excess of ₹ 100 crore but less than ₹ 300 crore with effect from 1 April 1998.

The Madras High Court has held[57] that the taxable turnover under the TNGST Act has to be considered for reckoning the AST liability under the CST Act.

➢ During test check of records in LTU II Assessment Circle, Chennai, Audit noticed (January 2015) that the AA, while finalising the assessment of a dealer for the years 1998-99 to 2003-04 and 2005-06 under the CST Act did not consider (February 2014) the element of AST for computing the rate of tax applicable on interstate sales of cement not covered by valid declaration forms, though the taxable turnover of the dealer under the TNGST Act for all the years was in excess of ₹ 100 crore. The applicable rates of tax, taking into consideration the element of AST were 18.5 *per cent* (1998-99 to 2001-02 on the turnover of ₹ 73.71 crore) and 19.3 *per cent* (from 2002-03 on the turnover of ₹ 18.67 crore) as against the uniform rate of 16.8 *per cent* adopted by the AA. This resulted in short levy of tax of ₹ 1.72 crore.

[57] Sri Kaliswari Fireworks Vs. Commercial Tax Officer-I, Sivakasi – (2009) 25 VST 384 (Mad)

After Audit pointed this out (February 2015), the AA revised the assessments in August 2015 and raised additional demand of ₹ 1.29 crore. While revising the assessment, in respect of the year 2001-02, the AA erroneously adopted the turnover as ₹ 2.83 crore instead of ₹ 28.28 crore. Report on recovery of additional demand and rectification in respect of the year 2001-02 was awaited (December 2015).

Audit reported the matter to the Government in July 2015. Reply was awaited (December 2015).

➢ During test check of records (February 2015) in LTU I Assessment Circle, Chennai, Audit noticed that the AA, while finalising the assessment of a dealer for the years 2005-06 and 2006-07 failed to adopt the correct slab rate of AST for computing the rate of tax applicable on interstate sales of cement not covered by valid declaration forms. The applicable slab rates of AST were 2.5 *per cent* (on turnover of 2005-06 - ₹ 13.05 crore) and two *per cent* (on turnover of 2006-07 - ₹ 13.73 crore) as against the slab rates of 1.5 *per cent* and one *per cent* adopted by the AA. This resulted in short levy of tax of ₹ 19.91 lakh.

After Audit pointed this out in February 2015, the AA revised the assessment in June 2015 and raised additional demand of ₹ 19.91 lakh, the collection particulars of which was awaited (December 2015).

Audit reported the matter to the Government in August 2015. Reply was awaited (December 2015).

2.6.8 Incorrect computation of tax

As per Section 84 of the TNVAT Act, the AA may, at any time within five years from the date of any order passed by it, rectify any error apparent on the face of the record. As per Section 9(2) of the CST Act, the authorities empowered to assess, re-assess, collect, enforce payment of tax, etc under the general sales tax law of the State, shall assess, re-assess, collect tax, etc. under this Act and the provisions relating to assessment, revision of assessment, etc. under the general sales tax law of the State shall apply accordingly.

Test check of records in Guindy and Sriperumbudur Assessment Circles revealed incorrect computation of tax of ₹ 17.74 lakh as detailed below:

In Guindy Assessment Circle, while finalising the assessment of a dealer for the year 2011-12 under the CST Act (December 2013), the AA assessed the turnover of ₹ 18.26 lakh at 14.5 *per cent* and incorrectly computed the tax as ₹ 0.26 lakh instead of the correct amount of ₹ 2.65 lakh. Similarly, in Sriperumbudur Assessment Circle, while finalising the assessment (February 2014) of a dealer for the year 2007-08 under the CST Act, the AA determined the tax due as ₹ 21.97 lakh and after adjusting ITC of ₹ 0.31 lakh and deducting the amount of ₹ 6.31 lakh paid by the dealer, he arrived at the balance of tax due from the dealer as 'Nil'.

After Audit pointed this out (July 2014 and January 2015), the AA, Sriperumbudur Assessment Circle revised the assessment in February 2015 and after giving credit for input tax and tax paid by the dealer, determined the balance of tax due from him as ₹ 15.08 lakh (as against ₹ 15.35 lakh pointed

out in Audit); the collection particulars of which were awaited (December 2015). Reply in respect of the case relating to Guindy Assessment Circle was awaited (December 2015).

Audit reported the matter to the Government in December 2014 and June 2015. Reply of the Government was awaited (December 2015).

CHAPTER III

STAMP DUTY AND REGISTRATION FEE

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STAMP DUTY AND REGISTRATION FEE

3.1 Tax administration

Receipts from stamp duty and registration fee are regulated under the Indian Stamp Act 1899, (IS Act), the Registration Act, 1908 and the rules framed thereunder as applicable in Tamil Nadu and are administered at the Government level by the Principal Secretary (Commercial Taxes and Registration Department). The Inspector General of Registration (IGR) is the head of the Registration Department who is empowered with the task of superintendence and administration of registration work. He is assisted by the Deputy Inspector General of Registration and District Registrars (DRs) acting as the Registrars and Sub-Registrars (SRs) respectively.

3.2 Internal audit

Internal audit is a vital component of internal controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well. The Department has a system of internal audit to ensure *cent per cent* audit of all the documents registered. There are 45 audit units, each headed by a District Registrar (Audit) and assisted by an Assistant, Junior Assistant and a Typist. The periodicity of audit of all offices is on monthly basis. The details of the number of offices due for internal audit and those completed, as furnished by the Department are detailed in Table 3.1.

Table 3.1

Year	Number of audits due	Number of audits completed	Balance	Percentage of col.3 to 2
1	2	3	4	5
2010-11	991	563	428	56.81
2011-12	935	624	311	66.74
2012-13	1,021	613	408	60.04
2013-14	1,311	831	480	63.39
2014-15	1,721	974	747	56.60

The table indicates an increasing trend in the number of offices in respect of which internal audit was in arrears. The Department attributed the reasons for arrears in audit to vacancy of Audit Registrars and stated that a special team has been formed to clear the backlog.

The Department may consider strengthening internal audit so that audit may be conducted for all the units due for audit.

Year-wise details of the number of objections raised, settled and pending, along with tax effect as furnished by the Department, are detailed in Table 3.2.

Table 3.2

(₹ in crore)

Year	Observations raised		Observations settled		Observations pending	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
Upto 2010-11	41,062	152.75	31,044	125.49	10,018	27.26
2011-12	6,492	5.83	4,344	1.63	2,148	4.20
2012-13	9,509	26.44	6,877	5.18	2,632	21.26
2013-14	11,724	30.47	7,235	21.54	4,489	8.93
2014-15	14,602	92.25	6,770	12.81	7,832	79.44

As at the end of 31 March 2015, 27,119 paragraphs involving money value of ₹ 141.09 crore were outstanding as detailed in Table 3.3.

Table 3.3

As at the end of	Number of paragraphs pending	Amount involved (₹ in crore)
31 March 2013	22,655	124.55
31 March 2014	24,604	121.62
31 March 2015	27,119	141.09

It is suggested that action may be taken for speedy clearance of old outstanding objections.

3.3 Results of audit

In 2014-15, test check of the records of offices of the Registration Department showed non/short levy of stamp duty and registration fee, etc. and other irregularities amounting to ₹ 126.81 crore in 748 cases, which fall under the categories given in Table 3.4.

Table 3.4

(₹ in crore)

Sl.No.	Categories	Number of cases	Amount
1	Audit of Registration of various Agreement Deeds and relevant Deeds of Power of Attorney	1	11.01
2	Undervaluation	147	6.44
3	Misclassification	300	17.11
4	Incorrect exemption	16	9.29
5	Excess/Incorrect allocation of Transfer Duty Surcharge	90	10.50
6	Others	194	72.46
	Total	**748**	**126.81**

During the course of the year 2014-15, the Department accepted under-assessments and other deficiencies amounting to ₹ 8.24 crore in 91 cases, out of which, ₹ 70.98 lakh involved in 25 cases was pointed out during the year and the rest in earlier years. Out of the above, an amount of ₹ 6.64 crore had been collected.

Few illustrative cases involving ₹ 34.69 crore are discussed in the following paragraphs.

3.4 Audit of Registration of various Agreement Deeds and relevant Deeds of Power of Attorney

3.4.1 Introduction

The IS Act, as amended by the Government of Tamil Nadu from time to time, provides for levy of stamp duty on instruments. The rates of stamp duty, which are prescribed in Schedule I to IS Act, are adopted by Government of Tamil Nadu with suitable amendments. Besides, registration fee is leviable in accordance with the Registration Act, 1908.

Under the IS Act, instruments of Power of Attorney (POA) other than those given for consideration to sell immovable property attracts stamp duty only at specified amount, while POA granted on receipt of consideration to sell any immovable property attracts stamp duty at the rate of four *per cent* on the market value equal to the consideration under Article 48(e) of the IS Act.

The agreements to sell are not recognised as separate instruments and hence, there is no specific entry in Schedule I to the IS Act in respect of such agreements and these are charged to stamp duty at ₹ 20 classifying them as agreements not specified elsewhere. As per Table of Fees in the Registration Act, as applicable to Tamil Nadu, registration fee is required to be collected on the intended sale consideration in respect of agreements to sell involving transfer of possession. With effect from 1 December 2012, registration of instruments of agreement relating to sale of immovable property has been made compulsory.

Section 27 of the IS Act provides that the consideration and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. Section 64 of the IS Act provides for penalty on any person, who with intent to defraud the Government, executes any instrument without setting forth therein all facts and circumstances as required under Section 27 or does any act to deprive the Government of any duty. The Apex Court has also directed for conjoint reading of instruments to ascertain true nature of the transaction.

Audit was undertaken to ascertain whether the Registering Officers (ROs) exercised the powers vested in the IS Act and complied with the judicial decisions in linking the instruments of POA and sale agreements for the purpose of levy of stamp duty, when these instruments were registered in respect of the same properties and were between the same or related persons. Audit covered the period from April 2011 to March 2014, involving 40 registering offices, which were identified on the basis of number of documents registered and the revenue earned. The findings are discussed in the subsequent paragraphs.

3.4.2 Misclassification of instrument of Power of Attorney for Consideration as General Power of Attorney

3.4.2.1 Execution of Sale Agreement and Power of Attorney in favour of the same person

As per Article 48(e) of Schedule I to the IS Act, POA given for consideration and authorising the attorney to sell any immovable property attracts stamp duty of four *per cent* on the consideration.

During test check of documents in 12[58] Sub-Registries, Audit observed (between December 2014 and April 2015) that through 22 instruments of POA executed and registered between August 2011 and January 2014, agents were appointed by the vendors to deal with the property including the power to sell. It was also stated in the instruments that no consideration was received. Audit observed that agreements for sale were entered into between the same persons in respect of the same properties and were registered either simultaneously or before registering the POA. Scrutiny of the recitals of the sale agreements revealed that the vendors had received advances. Thus, it is evident that POA was granted only on receipt of consideration and the instruments of POA were required to be classified as POA given for consideration by treating the advance received by the principals as the consideration for the power to sell the immovable properties. However, the ROs failed to do so and this resulted in short levy of stamp duty and registration fee of ₹ 3.05 crore.

3.4.2.2 Execution of Power of Attorney in favour of family members of Sale Agreement holders

It has been judicially held[59] that execution of agreement for sale in favour of the father of POA holder on the same date on which POA was executed makes it abundantly clear that the said agreement and POA were part of the same transaction and the earnest money given under the agreement of sale was the consideration for POA though no mention was made in the instrument of POA about the consideration.

During test check of documents in 10[60] Sub-Registries, Audit observed that through 14 instruments of POA executed and registered between December 2011 and January 2014, agents were appointed by the vendors to deal with the property including the power to sell. It was also stated in the documents that no consideration was received. Audit, however, observed that in respect of same properties, the vendors had entered into agreements for sale with the members of the family[61] of the agents either simultaneously or before executing the instruments of POA and the vendors had received advances through the agreements. On the analogy of the judicial decision mentioned

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58 Avadi, Joint II Chengalpet, Coonoor, Kundrathur, Melur, Periamet, Poonamallee, Selaiyur, Sriperumbudur, Thiruporur, Villivakkam and Yanamalai Othakadai

59 Sri Subhash Chandra vs. Chief Controlling Revenue Authority (Allahabad High Court) (2007)

60 Avadi, Joint II Chengalpet, Joint I Coimbatore, Neelangarai, Padappai, Pallavaram, Poonamallee, Red Hills, Tambaram and Velachery

61 'Family' as defined in Article 58 of Schedule I to the IS Act.

above, the instruments of POA were required to be classified as POA given for consideration to sell the immovable properties as against the classification of general POA. The omission on the part of the ROs to classify these instruments of POA under Article 48(e) of Schedule I to the IS Act resulted in short levy of stamp duty and registration fee of ₹ 74.75 lakh.

3.4.2.3 Deeds of Sale Agreement entered into with the business entity in which the Power Agent has interest and vice versa

The Honourable Supreme Court of India, in the case of Mc Dowell and Company Limited Versus the Commercial Tax Officer while holding that a colourable device cannot be allowed to be part of tax planning, observed that the proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is such that the judicial process may accord its approval to it.

During test check of documents in 11[62] Sub-Registries, Audit observed (between December 2014 and April 2015) that through 17 instruments of POA executed and registered between August 2011 and March 2014, agents were appointed to sell or otherwise dispose of, immovable properties. Audit also observed that the vendors had entered into agreements for sale in respect of the same properties with the individual/business entity having interest in the business of the agents. In nine cases, while the agreement was made with the managing director in his individual capacity, the power to deal with the property was given to the company and in eight cases, while the agreement was made with the company, the power was given to the managing director. The vendors had received advances through the agreements. Therefore, the instruments of POA were required to be classified as POA given for consideration to sell the immovable properties. The ROs, however, failed to do so and the misclassification of the instruments as general POA resulted in short levy of stamp duty and registration fee of ₹ 1.89 crore.

After Audit reported the matter to the Government (August 2015), the Government replied (December 2015) that the terms and conditions of one document cannot be taken into account for the purpose of determining the nature of another document. The Government stated that the Principal can cancel the instrument of POA at any time since it is an unilateral document and the same cannot be clubbed with sale agreement, being a bilateral document. The Government further stated that the decision in Sri Subhash Chandra was rendered in respect of a case where the instrument of POA was irrevocable and therefore the same cannot be applied to the cases pointed out in audit since consideration was not mentioned in the instruments of POA. The Government also stated that the Madras High Court has held[63] that there can be no legal impediment to a party selecting and adopting a particular form of transaction to minimise the expenses of stamp duty.

The reply requires reconsideration for the following reasons.

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62 Ambathur, Joint II Chengalpet, Pallavaram, Perianaickenpalayam, Purasawakkam, Red Hills, Sriperumbudur, Tambaram, Thiruporur, Velachery and Walajabad

63 Board of Revenue Vs N. Narasimhan and Another – AIR 1961 Madras (504)

Conjoint reading is not totally outside the scope and concept of Stamp Law, since Sections 4 and 24 and Articles 32 and 40 empower conjoint reading for the purpose of levy of stamp duty. The Honourable Supreme Court of India, in the case between Mushir Mohammed Khan Versus Smt Sajeda Bano held (March 2000) that more than one document executed almost contemporaneously one after another within a short period should be read together to ascertain true nature of the transaction. Further, the Honourable High Court of Madras in the case of Board of Revenue, Madras Versus Annamalai and Co. Private Limited observed (April 1967) that it would be perfectly legitimate to treat the consideration for the grant of power as traceable to the loan granted earlier. The instrument of POA does not become irrevocable only when consideration is mentioned therein but also on part performance of the authority under the provisions of Sections 203 and 204 of the Indian Contract Act. The instruments of POA though not mentioned as irrevocable, authorised the agents to develop the property and therefore the same should be construed as irrevocable. The decision of the Madras High Court cited in the reply of Government was rendered prior to the decision of the Supreme Court in Mc Dowell and Company Limited Versus the Commercial Tax Officer. The Supreme Court has held that it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. Hence, the instruments of POA and sale agreements entered into between same or related persons in respect of the same properties should be read together and the amount paid as advance through the sale agreement should be treated as consideration received for grant of power, though the passing of consideration was not mentioned in the instruments of POA.

3.4.3 Advances paid through Joint Development Agreement

During test check of documents in Kelamangalam and Purasawakkam Sub-Registries, Audit noticed (between April 2014 and January 2015) that through five instruments registered during 2011-12 to 2013-14, the owners of the land entered into agreements with developers to develop the land as either residential flats or as layout and also given POA to the developers to sell specified portion of the properties after getting proportionate share of constructed area from the developers. The owners received amounts from the developers as advances. Thus, the POA given to the developers by the land owners should have been treated as POA given for consideration, treating the advances as the consideration. Omission on the part of the RO to do so resulted in short levy of stamp duty and registration fee of ₹ 28.64 lakh.

After Audit reported the matter to Government (August 2015), the Government replied (December 2015) that in the instant cases, the consideration was not in terms of money and the instruments of POA cannot be considered as given for consideration as the Honourable High Court of Madras[64] has held that to treat an instrument of POA as POA given for consideration, the consideration must be one, which can be ascertained precisely in terms of money.

[64] Board of Revenue, Madras Vs. Annamalai & Co. Private Limited (April 1967)

The reply requires reconsideration as owners received amounts from the developers as advances and hence, the POA given to the developers by the land owners should have been treated as POA given for consideration, treating the advances as the consideration.

3.4.4 Misclassification of Sale Agreement with Possession as one without Possession

As per Section 27 of the IS Act, the consideration, market value and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth therein.

As per clause (l) of Article 1 of the Table of Fees under Section 78 of the Registration Act, 1908, the registration fee leviable on agreement to sell or resell shall be on the advance or earnest money. However, in the case of an agreement to sell, where possession is handed over or is agreed to be handed over, the fee shall be leviable on the intended sale consideration.

3.4.4.1 Audit noticed (between February and June 2014) from six agreements for sale executed and registered between January and April 2013 in four[65] Sub-Registries, that the vendors entered into sale agreements for total sale consideration of ₹ 10.44 crore. The purchasers paid advance of ₹ 1.55 crore with the remaining sale consideration to be paid at the time of execution of sale deeds. Audit observed from the instruments that the sellers agreed to put the purchasers in absolute and vacant possession of the scheduled property before executing and registering the sale deeds. This implied that the vendors agreed to give possession of the property at any time before executing and registering necessary sale deeds. Therefore, registration fee of ₹ 10.44 lakh was required to be collected at the rate of one *per cent* on the intended sale consideration of ₹ 10.44 crore as against ₹ 1.55 lakh collected by the Department. The omission to do so resulted in short levy of registration fee of ₹ 8.89 lakh.

After Audit reported the matter to Government (August 2015), the Government accepted (December 2015) the audit observation in five cases. Further report regarding collection and reply in respect of the remaining case was awaited (December 2015).

3.4.4.2 Audit noticed (January 2013) from a sale agreement and a lease deed executed and registered in District Registry, Chennai North on the same day on 13 June 2011, that a company entered into an agreement for sale with an intended purchaser in respect of land measuring five grounds and 580 square feet (sqft) (12,580 sqft) with built-up area of 34,000 sqft being used as a multi-specialty hospital with movable properties (equipment) and intangible property for a sale consideration of ₹ 22.10 crore, if the purchase was made within a year.

The vendor company leased out the above said property together with all movable properties and equipment to the purchaser for the purpose of running a hospital for a period of 36 months from July 2011. Registration fee of ₹ one

[65] Coonoor, Red Hills, Thiruporur and Triplicane

lakh was collected on the advance amount of ₹ one crore. Though possession of the property was proposed to be given to the intended purchaser by the vendor through the lease deed and leasing of the property was mentioned in the sale agreement, the RO failed to collect registration fee of ₹ 22.10 lakh on the intended sale consideration of ₹ 22.10 crore agreed as on the date of registration of the deed. This resulted in short levy of registration fee of ₹ 21.10 lakh.

After Audit reported the matter to the Government (August 2015), the Government accepted (December 2015) the audit observation. Further report regarding collection was awaited (December 2015).

3.4.4.3 During test check of records in Sub-Registries, Purasawakkam and Guduvancherry, Audit noticed (May 2014 and January 2015) that instruments of agreement for sale were executed and registered in November 2013 and March 2014 for sale of properties and as against the agreed sale consideration of ₹ 491.34 crore, advance of ₹ 29.02 crore was paid by the purchasers. As the sale agreements specified that possession of property would be handed over on receipt of full consideration, registration fee was collected on the advance amount. In the sale agreements, it was specifically mentioned that the vendors were aware that the purchasers were purchasing the property for development purposes. Further, instruments of POA were also executed and registered between the vendors and the purchasers and the purchasers were allowed to carry on development activities even before payment of entire amount of consideration. Thus, possession of property was handed over to the purchasers, though it was explicitly mentioned in the sale agreement that possession was not handed over and registration fee at the rate of one *per cent* was required to be collected on the intended consideration. The ROs, however, levied registration fee at the rate of one *per cent* on the advance amount of ₹ 29.02 crore, instead of on the intended consideration of ₹ 491.34 crore. This resulted in short levy of registration fee of ₹ 4.62 crore.

After Audit pointed this out, the Government replied (May 2015) that the term "is to be handed over" appearing in Article 1 of the Table of Fees under Section 78 of the Registration Act denotes certainty and hence audit's observation that the intended purchaser agreed to develop the property amounts to handing over the possession of the property is not correct since the intention to develop the property in future does not denote certainty. The Government further stated that as per Section 80 of the Registration Act, the date of presentation of document is deciding factor for levy of registration fee and did not accept the audit observation since the instrument of POA was registered subsequent to the date of registration of sale agreement.

The reply requires reconsideration as the purchasers were allowed to undertake development activities for their own benefit even before payment of full consideration. In the sale agreements, it was specifically mentioned that the vendors were aware that the purchasers were purchasing the property for development purposes and possession was handed over, though the sale agreement provided that possession would be handed over on receipt of full consideration. Therefore, registration fee was required to be collected on the intended consideration.

3.4.5 Other Findings

3.4.5.1 Short levy of Registration Fee in respect of cancellation of Sale Agreement involving transfer of possession

As per clause (l) of Article 1 of the Table of Fees under Section 78 of the Registration Act, 1908, registration fee is leviable on the intended sale consideration in the case of agreement to sell, where possession is handed over or is to be handed over. As per proviso to clause (o), in the case of cancellation of deed of agreement to sell which involves handing over of the possession of the property, the fee is leviable on the consideration expressed in the original deed of agreement to sell.

Audit noticed (April 2014) from a sale agreement executed and registered in December 2012 and its cancellation deed executed and registered in June 2013 in Sub-Registry, Sowcarpet that the vendor entered into an agreement with purchasers for sale of land with building for a consideration of ₹ 5.25 crore. The sale agreement was treated as involving handing over possession of property and registration fee of ₹ 5.25 lakh was collected by the Department. Since the cancellation of the above sale agreement involved handing over of possession of property, registration fee of ₹ 5.25 lakh was required to be collected on the agreed sale consideration of ₹ 5.25 crore instead of ₹ 50 collected by the Department. This resulted in short levy of registration fee of ₹ 5.25 lakh.

Audit reported the matter to the Government (August 2015). Government accepted the audit observation (December 2015). Further report regarding collection was awaited (December 2015).

3.4.5.2 Misclassification of Sale Agreement

During local audit of Sub-Registry, Velacherry, Audit noticed (July 2014) from a sale agreement executed and registered in May 2013 that three individual land owners entered into a sale agreement with two purchasers for sale of land measuring 13,036 sqft situated at various survey numbers in Velacherry village along with building for a consideration of ₹ 5.01 crore. The purchasers paid advance of ₹ one crore, agreed to pay the outstanding bank loan of ₹ 2.86 crore of the vendors and the remaining amount at the time of registration of sale deed. Registration fee of ₹ 3.86 lakh was collected. Scrutiny of the recitals of the agreement revealed that the same also involved handing over of possession of property. Hence, registration fee of ₹ 5.01 lakh was required to be collected at the rate of one *per cent* on the intended sale

consideration of ₹ 5.01 crore. The omission resulted in short levy of registration fee of ₹ 1.15 lakh.

Subsequently, the above sale agreement was cancelled through a cancellation deed executed and registered in January 2014 and registration fee of ₹ 50 was collected. Since the cancellation of the above sale agreement involved handing over of possession of property, registration fee of ₹ 5.01 lakh was required to be collected on the agreed sale consideration of ₹ 5.01 crore. The omission to do so resulted in short levy of registration fee of ₹ 5.01 lakh. Thus, there was a total short levy of registration fee of ₹ 6.16 lakh.

Audit reported the matter to the Government (August 2015). Government accepted the audit observation (December 2015). Further report regarding collection was awaited (December 2015).

3.4.6 Conclusion

Audit of Registration of various Agreement Deeds and relevant deeds of Power of Attorney revealed that the ROs did not exercise the powers vested with them under the IS Act to link two instruments and to conjointly read them as judicially held for the purpose of levy of stamp duty by treating the amounts paid to the principals in any other nomenclature to avoid leakage of Government revenue.

3.5 Other Audit Observations

3.5.1 Short levy due to undervaluation of property

As per Article 23 of Schedule I to the IS Act, in the case of conveyance of immovable property, stamp duty is to be levied at the prescribed rate including surcharge on the market value of property. Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 provides that the RO may also look into the 'Guidelines Register' containing the value of properties supplied to them for the purpose of verifying the market value. As per Section 47-A(1) of the Act, if the RO has reason to believe that the market value of the property conveyed has not been truly set forth in the instrument, he may after registering such instrument, refer the same to the Collector[66] for determination of market value of the property and the proper duty payable thereon. If the order passed by the Collector under Section 47-A(2) is prejudicial to the interest of revenue, the Chief Controlling Revenue Authority (CCRA) may initiate proceedings under Section 47-A(6) of the Act to revise/modify/set aside the same and pass such order thereon as he thinks fit.

3.5.1.1 During test check of documents in Sub-Registry, Avadi, Audit noticed (April 2014) that through an instrument of conveyance executed and registered in December 2013, twelve pieces of land measuring 9.95 acres with a building on one of them were conveyed for a consideration of ₹ 2.50 crore and stamp duty and registration fee of ₹ 20 lakh was collected. The value of the property conveyed as per 'Guidelines Register' was, however, ₹ 6.19 crore for which stamp duty and registration fee of ₹ 49.55 lakh was leviable. The RO, after registering the instrument, failed to refer the same to the District Revenue Officer (Stamps) for determination of correct market value under Section 47-A(1). Thus, there was short realisation of stamp duty and registration fee of ₹ 29.55 lakh.

After Audit pointed this out in May 2014, the RO stated (July 2014) that physical verification revealed the lands to be arable and the adoption of site value for the land comprised in the survey numbers cannot be made merely for the reason that the same finds place in the 'Guidelines Register'.

The reply requires reconsideration as the RO has to adopt the guideline value for the purpose of determination of the amount of stamp duty and registration fee and where, the value quoted in the instrument is less than the guideline value, the RO has to refer the same to the District Revenue Officer (Stamps) for determination of market value. Further report was awaited (December 2015).

Audit reported the matter to the Government in May 2015. Reply of the Government was awaited (December 2015).

[66] The District Revenue Officer (Stamps) and Special Deputy Collector (Stamps) are 'Collectors' for the purpose of Section 47-A of the IS Act.

3.5.1.2 During test check of documents in Sub-Registries, Chokkikulam and Avadi, Audit noticed (March and April 2014) that through 41 instruments of sale executed and registered between April 2012 and March 2014, 40 house sites and one industrial site with building were conveyed. The market value of the properties conveyed as set forth in the instruments was ₹ 1.23 crore and stamp duty and registration fee of ₹ 9.86 lakh was collected. Though the guideline value of the property including the value of building assessed by the Department was ₹ 3.10 crore, the RO failed to refer the documents to the District Revenue Officer(Stamps) for determination of correct market value under Section 47-A(1). This resulted in undervaluation of properties and consequential short levy of stamp duty and registration fee of ₹ 14.91 lakh.

After Audit pointed this out in April and May 2014, the Department accepted the audit observation in the case pertaining to Sub-Registry, Chokkikulam and stated (July 2014) that in respect of 12 sale instruments, the RO was directed to initiate action under Section 47-A(3) to recover the loss. Further action taken to recover the differential stamp duty and reply in respect of the cases pertaining to Sub-Registry, Avadi was awaited (December 2015).

Audit reported the matter to the Government in May 2015. Reply of the Government was awaited (December 2015).

3.5.1.3 During test check of documents in Sub-Registry, Thirumangalam, Audit noticed (April 2014) that through two instruments of conveyance registered in March 2014, land measuring 22 acres and 75 ¾ cents (9.91 lakh sqft) were conveyed for a consideration of ₹ 57.62 lakh and stamp duty and registration fee of ₹ 4.61 lakh was collected. The value of the properties conveyed as per 'Guidelines Register' was, however, ₹ 10.14 crore, for which stamp duty and registration fee of ₹ 81.11 lakh was leviable. The RO failed to refer the documents to the Special Deputy Collector (Stamps) for determination of correct market value under Section 47-A(1). This resulted in the properties being undervalued by ₹ 9.56 crore and consequential short levy of stamp duty and registration fee of ₹ 76.50 lakh.

After Audit pointed this out in May 2014, the RO replied (September 2014) that the documents had since been referred to the Special Deputy Collector (Stamps), Madurai for determination of market value. Further reply was awaited (December 2015).

Audit reported the matter to the Government in May 2015. Reply of the Government was awaited (December 2015).

3.5.1.4 During test check of documents in Sub-Registry, Neelangarai, Audit noticed (October 2014) that through an instrument of exchange registered in March 2013, 12,757 sqft of undivided share of land and building with built-up area of 38,933 sqft valued at ₹ 7.79 crore was exchanged for another property valued at ₹ 7.60 crore and further payment of ₹ 18.66 lakh. Stamp duty and registration fee of ₹ 62.30 lakh was paid in respect of the instrument. Based on field inspection, the RO determined the value of the building at ₹ 3.90 crore as against ₹ 3 crore adopted in the instrument and differential stamp duty and registration fee of ₹ 7.26 lakh was collected by the RO. Thus, in respect of the

deed of exchange, stamp duty and registration fee of ₹ 69.56 lakh was collected.

Scrutiny of the 'Guidelines Register' however, revealed that the value of 12,757 sqft of land, at the guideline rate of ₹ 5,250 per sqft applicable from January 2013, was ₹ 6.70 crore and taking into consideration the value of building, the total value of property exchanged was ₹ 10.60 crore, on which stamp duty and registration fee of ₹ 84.82 lakh was leviable. The RO, however, failed to refer the document to the District Revenue Officer (Stamps) for determination of correct market value under Section 47-A(1). This resulted in undervaluation of property by ₹ 1.91 crore and consequential short levy of stamp duty and registration fee of ₹ 15.26 lakh.

Audit pointed this out to the Department in November 2014 and to the Government in July 2015. Reply was awaited (December 2015).

3.5.1.5 During test check of documents in Sub-Registry, Madhukkarai, Audit noticed (November 2008) that through an instrument of sale executed and registered in November 2007, land measuring 3 acres in Sundakkamuthur village was conveyed for ₹ 27 lakh. As the value of the property was ₹ 3.40 crore[67] as per the guideline rate of ₹ 260 per sqft, the RO, after registering the document, referred the same to the District Revenue Officer (Stamps), Coimbatore for determination of market value of the property. The District Revenue Officer (Stamps), Coimbatore, fixed the market value of the property in March 2008 as ₹ 1.65 crore at the rate of ₹ 55 lakh per acre stating the property was agricultural land and collected differential stamp duty and registration fee of ₹ 12.42 lakh[68]. Though the classification of the land as agricultural land instead of as house site and corresponding fixation of value lesser than the guideline value was prejudicial to revenue, the RO failed to refer the matter to CCRA for determination of correct market value under Section 47-A(6) of the IS Act.

The Department, accepting the audit observation, referred the matter to CCRA for determination of correct market value of the land. The CCRA fixed (May 2014) the market value of the land at ₹ three crore and demanded additional stamp duty and registration fee of ₹ 12.15 lakh[69]; the collection particulars of which were awaited (December 2015).

Audit reported the matter to the Government in December 2014. Reply of the Government was awaited (December 2015).

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67 One acre = 43,560 sqft. The value of one sqft as per 'Guidelines Register' being ₹ 260, the value of three acres works out to ₹ 3.40 crore.

68 Stamp duty at eight *per cent* and registration fee of one *per cent* on ₹ 1,38,00,000 (₹ 1,65,00,000 - ₹ 27,00,000)

69 Stamp duty at eight *per cent* and registration fee of one *per cent* on ₹ 1,35,00,000 (₹ 3,00,00,000 - ₹ 1,65,00,000)

3.5.1.6 During test check of documents in Sub-Registry, Purasawakkam, Audit noticed (January 2005) that through an instrument of sale registered in April 2003, land measuring 2.60 lakh[70] sqft along with building situated in Stephenson Lane at Perambur village was conveyed for ₹ 7 crore. Stamp duty and registration fee of ₹ 0.98 crore was collected. As the value of the property was ₹ 12.48 crore as per the guideline value of ₹ 477 per sqft, the RO, after registering the document, referred the same to the District Revenue Officer (Stamps), Chennai for determination of market value of the property. The District Revenue Officer (Stamps), Chennai, fixed the market value of the property in January 2004 as ₹ 8.59 crore at the rate of ₹ 325 per sqft and collected differential stamp duty and registration fee of ₹ 0.22 crore. Though the fixation of value of property at a value less than the guideline value was prejudicial to revenue, the RO failed to refer the matter to CCRA for determination of correct market value under Section 47-A(6) of the IS Act.

The Department, accepting the audit observation, referred the matter to CCRA for determination of correct market value of the property. The CCRA fixed (June 2014) the market value of the land as ₹ 17.99 crore and demanded additional differential stamp duty and registration fee of ₹ 1.36 crore; the collection particulars of which were awaited (December 2015).

Audit reported the matter to the Government in February 2015. Reply of the Government was awaited (December 2015).

3.5.2 Misclassification of instruments

3.5.2.1 As per the provisions of Article 58 of Schedule I to the IS Act, any instrument of settlement executed in favour of a member or members of a family is leviable to stamp duty at the rate of one *per cent* of the market value of the property subject to a maximum of ₹ 10,000. In any other case, stamp duty is leviable at the rate of eight *per cent* of the market value of the property. In addition, registration fee is leviable at one *per cent* on the market value of the property, which shall, in the case of settlement between family members be subject to a maximum of ₹ 2,000. As per the Explanation under Article 58, family means father, mother, husband, wife, son, daughter, grandchild and also includes adoptive father and mother, adopted son and daughter.

During test check of documents in Sub-Registry, Anna Nagar, Audit noticed (January 2015) that through an instrument of settlement executed and registered in May 2013, the settlor settled 12,481 sqft of land along with building in favour of his minor great-granddaughter represented by her father, as natural guardian. The term 'family' as defined under Article 58 does not cover 'great-grandchild'. The value of land as per guideline rate of ₹ 14,000 per sqft was ₹ 17.47 crore. The RO, while registering the document, erroneously classified it as settlement between family members and collected stamp duty and registration fee of ₹ 0.12 lakh. The erroneous classification resulted in short realisation of stamp duty and registration fee of ₹ 1.57 crore (excluding the value of the building which was to be ascertained by the Department).

[70] 5 acres and 42,122 sqft

Audit pointed this out to the Department in January 2015 and reported to the Government in March 2015. Reply was awaited (December 2015).

3.5.2.2 As per the provisions of Article 40(a) of Schedule I to the IS Act, in respect of a mortgage deed when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given, stamp duty including surcharge is leviable at the rate of four *per cent* on the loan amount. Registration fee is collectable at the rate of one *per cent*, subject to a maximum of ₹ two lakh. In the Explanation under the above Article, it has been stated that a mortgagor, who gives or has given to the mortgagee, a lease of the property mortgaged, is deemed to give possession thereof within the meaning of Article 40.

➢ During test check of documents in Sub-Registry, T.Nagar, Audit noticed (July 2014) that an instrument of mortgage was executed and registered on 29 November 2013 in favour of a partnership firm, mortgaging immovable property consisting of land and building thereon as a security for the re-payment of loan of ₹ nine crore received from the partnership firm. The loan was obtained for a period of five years. The instrument was treated as simple mortgage deed involving maximum stamp duty of ₹ 40,000 and registration fee of ₹ 10,000. However, Audit observed that through a deed of lease executed and registered on the same day, the mortgagor had leased out the mortgaged property to the mortgagee for a period of 25 years from 1 October 2013 to 30 September 2038 for its business purpose for an agreed monthly rent specified in the deed. As the mortgaged property was already in possession of the partnership firm from October 2013, the mortgage deed registered in November 2013 has to be classified as mortgage deed with possession as per the Explanation to Article 40. The instrument was, therefore, chargeable to stamp duty at four *per cent* and registration fee of one *per cent* (subject to a maximum of ₹ two lakh) of the loan amount which works out to ₹ 38 lakh as against ₹ 0.50 lakh collected by the Department. Thus, failure of the RO to classify the document correctly resulted in short realisation of stamp duty and registration fee of ₹ 37.50 lakh.

Audit pointed this out to the Department in August 2014 and reported to the Government in December 2014. Reply was awaited (December 2015).

➢ During test check of documents in Sub-Registry, Mylapore, Audit noticed (December 2014) that a sale agreement was executed and registered in February 2013 for the sale of land with building for a consideration of ₹ 170.17 crore. The possession of the property was given to the purchaser on receipt of advance consideration of ₹ 120.17 crore. In March 2013, a mortgage deed was executed mortgaging the same property to secure the repayment of advance consideration of ₹ 120.17 crore paid to the vendor, in the event of termination of the agreement for sale. The classification of mortgage deed by the RO as mortgage with possession was set aside by the CCRA on a revision petition filed before the CCRA, who held in June 2013 that when a simple mortgage was executed in continuation of the earlier agreement to sell involving handing over the possession of property, it could not be treated as mortgage coupled with possession. The CCRA further held that clubbing of two or more instruments in order to determine the duty is

permissible under limited Articles namely, 32, 40 (a), 45 (c), Section 4, Section 47 (B) etc of the IS Act. Based on the orders of CCRA, the document was registered as simple mortgage in July 2013 and stamp duty and registration fee of ₹ 0.50 lakh was collected instead of treating the same as mortgage with possession involving levy of stamp duty and registration fee of ₹ 4.83 crore. This resulted in short levy of stamp duty and registration fee of ₹ 4.82 crore.

After Audit pointed this out in January 2015, the Department replied (April 2015) that the instrument was only a simple mortgage and this was also confirmed by the CCRA.

The reply of the Department is not tenable for the following reasons.

The vendor handed over possession of the property to the purchaser on the date of execution and registration of sale agreement and agreed to execute a mortgage deed. Thus, the mortgage deed was executed as a part performance of the sale agreement. As the mortgage deed was executed and registered in accordance with the agreement between the parties to secure the advance paid/payable, the possession of the mortgaged property handed over to the mortgagee as purchaser, should also be considered and the mortgage deed was required to be classified as mortgage with possession. Further, CCRA also agreed in his order that clubbing of the documents was permissible under Article 40 (a). Hence, the instrument was to be considered as mortgage with possession.

Audit reported the matter to the Government in April 2015. Reply of the Government was awaited (December 2015).

3.5.2.3 As per the provisions of Article 55 D (i) of Schedule I to the IS Act, release of right by a partner or partners in favour of other partners relinquishing his or their rights over the immovable property attracts stamp duty of three *per cent* of the market value of the immovable property which is the subject matter of release, when the release is between family members who constitute the partnership. In addition, under the Registration Act, 1908, registration fee is leviable at one *per cent* on the market value of the property.

During test check of documents in Sub-Registry, Red Hills, Audit noticed (April 2014) that through three instruments of release executed in April 2013 and registered in May 2013, two partners of a partnership firm released their two-third rights over land and building valued at ₹ 440.12 lakh purchased by the firm in favour of another partner who was their family member. Stamp duty and registration fee of ₹ 11.74 lakh was required to be collected at the rate of four *per cent* on 2/3rd value of the property of ₹ 293.41 lakh. The RO, however, misclassified the instrument as settlement between family members and collected ₹ 0.41 lakh. This resulted in short collection of stamp duty and registration fee of ₹ 11.33 lakh.

After Audit pointed this out in May 2014, the RO stated (August 2014) that action would be taken under Section 33-A of the IS Act and Section 80-A of the Registration Act to recover the differential stamp duty and registration fee respectively.

Audit reported the matter to the Government in December 2014. Reply of the Government was awaited (December 2015).

3.5.3 Short collection of stamp duty and registration fee in respect of partition deed

As per Article 45 (b) of Schedule I to the IS Act, instrument of partition among persons other than family members is chargeable to stamp duty at the rate of four *per cent* on the amount of the value of the separated share or shares of the property. 'Family' as defined under the IS Act includes father, mother, husband, wife, son, daughter and grandchild.

During check of records in Sub-Registry, Kundrathur, Audit noticed (January 2015) that through a partition deed executed and registered in August 2013, ancestral property valued ₹ 4.99 crore, consisting of land and family common fund were partitioned between two sons and legal heirs of two deceased sons including two daughters-in-law. Since 'family' as defined in the IS Act does not include 'daughter-in-law', the shares valued at ₹ 4.36 crore, allotted to daughters-in-law were to be classified as non-family partition and stamp duty and registration fee of ₹ 21.80 lakh was required to be collected. The RO, while registering the instrument, treated the partition as between family members and collected ₹ 0.12 lakh. Thus, failure of the RO to classify the partition as between non-family members resulted in short collection of stamp duty and registration fee of ₹ 21.68 lakh.

After Audit pointed this out (January 2015), the RO replied that as per the circular issued by the IGR in December 2001, legal heir of the deceased family members were also to be considered as family members. The IGR also clarified in 2014 that in the case of inheritance of property, there was no need to verify the relationship and the document could be directly classified under family release. The RO further stated that the Honourable High Court of Madras in the decisions delivered in April 2008 and April 2009 held that the definition of the term 'family' given in the Explanation was only illustrative but not exhaustive and therefore it could not be construed to include only those persons who had been named as 'family members'.

The reply requires reconsideration for the following reasons. The word 'daughter-in-law' is not specifically mentioned in the definition of the term 'family' under the IS Act. The Circular issued by the Department cannot override the specific definition given for the term family in the explanation under Article 58. Further, the Madurai Bench of Honourable Madras High Court[71] held in February 2014 that the definition of the term "family" given in the Explanation under Article 58 was exhaustive and the benefit of Explanation under Article 58 would not be applicable to persons other than those mentioned therein.

Audit reported the matter to the Government in April 2015. Reply was awaited (December 2015).

3.5.4 Short collection of stamp duty and registration fee in respect of release deeds

As per Article 55 C of Schedule I to the IS Act, release of right in favour of co-owner, that is to say, any instrument whereby a co-owner of a property renounces his claim in favour of another co-owner who is not a family member, on any specified property over which they have common right shall attract stamp duty at eight *per cent* of the market value of the property which is the subject matter of release. As per Explanation under Article 55 read with Article 58, 'family' means father, mother, husband, wife, son daughter, grandchild and in case of any one whose personal law permits adoption, shall also include, adoptive father, adoptive mother, adopted son and adopted daughter.

During test check of documents in 10 Sub-Registries[72], Audit noticed (between April 2014 and January 2015) that in respect of 16 instruments of release deed executed and registered between December 2012 and January 2014, properties valued at ₹ 12.25 crore were released in favour of persons other than 'family members'. However, instead of collecting stamp duty and registration fee at the rate of nine *per cent* on the value of the properties, the RO collected stamp duty at the concessional rate of one *per cent* on the market value of the property released subject to a maximum of ₹ 10,000 under Article 55 A of Schedule I to the IS Act and registration fee of maximum of ₹ 2,000 was levied. This resulted in short collection of stamp duty and registration fee of ₹ 1.07 crore.

After Audit pointed this out (between April and December 2014), the ROs replied that the properties in these cases were acquired through inheritance and therefore the instruments were classifiable under Article 55A of the IS Act. The ROs further stated that the IGR had clarified in January 2014 that Article 55A of the IS Act contemplates release in respect of co-parcenary properties, properties jointly inherited, properties devolved by succession and since in

[71] Madurai Bench of Honourable Madras High Court in W.P.No.58 of 2012 in the case of T. Muthu Babu Vs IGR dated 24.02.2014

[72] Joint I SR Coimbatore, Joint II SR Karaikudi, SR Kodambakkam, SR Neelankarai, SR Padappai, SR Periamet, SR Selaiyur, SR Tambaram, SR T.Nagar and SR Walajabad

these cases there existed co-parcenary right over the property among the releasers and the releasees, the documents were classified as family release.

The reply requires reconsideration as the Madras High Court has observed[73] that a document under which a Hindu coparcener purports to give up his right to the family property in favour of the remaining coparceners would be deed of release. The Court had observed that there was no difference in principle between such a document as between members of co-parcenary and a document which is between co-owners and that there can be no release by one person in favour of another who is not already entitled to the property as a co-owner.

Audit reported the matter to the Government between December 2014 and July 2015. Reply was awaited (December 2015).

3.5.5 Short levy of stamp duty

As per Article 23 of Schedule 1 to the IS Act, conveyance of immovable property is chargeable to stamp duty at the rate of seven *per cent* including surcharge on the market value of the property. In addition, registration fee is leviable at one *per cent* on the market value of the property.

During test check of documents in Sub-Registry, Thiruporur, Audit noticed (October 2014) that through an instrument of sale executed and registered in May 2013, four plots situated at SIDCO Industrial Estate and absolutely owned by a private company were sold to another private company on a slump sale basis, without assigning value to any individual assets and liabilities transferred as part of the Business Transfer agreement. The market value of the property assessed by the RO was ₹ 32.55 crore as against ₹ 23.63 crore set forth in the instrument. The instrument was chargeable to stamp duty of ₹ 2.28 crore and registration fee of ₹ 32.55 lakh. Though the RO collected registration fee of ₹ 32.55 lakh, it levied stamp duty at the rate of 3.5 *per cent* on the assessed value of ₹ 32.55 crore instead of at the rate of seven *per cent*. This resulted in short levy of stamp duty of ₹ 1.14 crore.

Audit pointed this out to the Department in November 2014 and to the Government in January 2015. Reply was awaited (December 2015).

3.5.6 Omission to levy stamp duty and registration fee on the agreed sale consideration

As per Article 23 of Schedule I to the IS Act, in the case of conveyance of immovable property, stamp duty is to be levied at the prescribed rate including surcharge on the market value of property. As per Section 27 of the Act, the consideration, the market value and all other facts and circumstances affecting the chargeability of the instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth therein. As per Section

[73] The Board of Revenue and another Vs. V.M. Murugesa Mudaliar (Madras High Court) (1955)

33 of the Act, the RO shall, impound the instrument in case where the stamp duty and registration fee were not paid on the face value.

During test check of documents in Sub-Registry, Thiruvottiyur, Audit noticed (February 2015) that 8.64 acres of land was conveyed on receipt of ₹ 1.14 crore through an instrument of sale executed and registered in March 2014. Audit observed from the recitals of the deed that the agreed sale consideration for scheduled property was ₹ 2.85 crore. Stamp duty and registration fee of ₹ 22.81 lakh was leviable at the rate of eight *per cent* on the agreed sale consideration of ₹ 2.85 crore. The RO, instead of levying stamp duty and registration fee of ₹ 22.81 lakh on the agreed sale consideration, collected stamp duty and registration fee of ₹ 9.12 lakh and referred the instrument to District Revenue Officer (Stamps). Thus, there was short collection of stamp duty and registration fee of ₹ 13.69 lakh.

After Audit pointed this out in February 2015, the RO stated (February 2015) that the original document had been referred to District Revenue Officer (Stamps) for determination of the market value under Section 47-A(1) of the IS Act and a revised report would be sent to the District Revenue Officer (Stamps) to collect the differential stamp duty pointed out by Audit.

The reply is not tenable as the RO should have collected the correct amount of stamp duty on the consideration mentioned therein or in case of failure to pay the amount by the parties to the instrument, the RO should have impounded the same as envisaged under Section 33 of the IS Act, instead of registering it and forwarding it to District Revenue Officer (Stamps) for determination of market value. Further reply was awaited from the Department (December 2015).

Audit reported the matter to the Government in April 2015. Reply of the Government was awaited (December 2015).

3.5.7 Misclassification of instruments of Conveyance as Cancellation Deeds

As per Section 2(10) of the IS Act, conveyance includes a conveyance on sale and every instrument by which property whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for in Schedule I. As per Article 23 of Schedule I to the IS Act, in the case of conveyance of immovable property, stamp duty was leviable at the rate of eight *per cent* (upto 31 March 2012) and at seven *per cent* thereafter including transfer duty surcharge on the market value of the property. Registration fee is leviable at the rate of one *per cent* on the market value of the property. As per Article 17 of Schedule I to the IS Act, for instrument of cancellation, if attested and not otherwise provided for, stamp duty of ₹ 50 is to be levied on the same.

It was judicially held (cf Emperor Vs Rameshardoss 32 All 171 SIC 697) that there can be no such thing as cancellation of a conveyance under which right of property has already been passed. Property can be retransferred only by re-conveyance. Further, it was held (W.A.Nos.592 & 938 of 2009, in Latif

Estate Line India Ltd. Vs. Registration Department) by the Madras High Court that cancellation of a sale deed by a deed of cancellation can be effected only when a condition that title will pass on payment of consideration, was included in the original sale deed.

During scrutiny of records in 32[74] Sub-Registries, Audit noticed (between February 2014 and January 2015) that conveyance of properties effected through 294 sale deeds were cancelled through 'deeds of cancellation' on the grounds that consideration was not received and possession was not handed over, etc. and stamp duty and registration fee of ₹ 0.52 lakh was collected by the Department. As the original sale deeds indicated receipt of consideration and handing over possession of properties, subsequent instruments retransferring the properties to the original vendors were to be classified as conveyance deeds and stamp duty and registration fee of ₹ 2.13 crore was required to be levied on the market value of the property of ₹ 26.41 crore. Thus, misclassification of re-conveyance deeds as cancellation deeds resulted in short levy of stamp duty and registration fee of ₹ 2.12 crore.

After Audit pointed this out (between February 2014 and January 2015), the Department replied that the documents did not indicate re-conveyance of properties by the purchasers to the vendors and the IGR has clarified in December 2011 that unless it was specifically recited in the instrument that the property was re-conveyed, it cannot be treated as re-conveyance. The ownership in property can pass only by virtue of a proper sale deed. The Department further stated that as per Article 17 of Schedule I to the IS Act, instrument by which any instrument previously executed is cancelled is only a cancellation and the deed of cancellation cannot be treated as re-conveyance.

The reply is not tenable as original sale deeds indicated receipt of consideration and handing over possession of properties. The subsequent instruments retransferring the properties to the original vendors are to be classified as conveyance deeds falling under Article 23 of the IS Act.

Audit reported the matter to the Government (March and August 2015). Reply was awaited (December 2015).

3.5.8 Non-credit of revenue to Government Account

As per Rule 7 (1) of the Tamil Nadu Treasury Rules, all moneys received by or tendered to Government servants in their official capacity, should without undue delay, be paid in full into the treasury or into the bank. As per subsidiary rule 1(b) under Rule 10, a cheque received under this rule shall be treated as a final payment, only after it has been met and the amount has been

[74] SR, Alandur, SR, Ambattur, SR, Arni @ Periyapalayam, SR, Avadi, SR, Avalpoondurai, SR, Chekkanoorani, DR, Chennai South, Joint II SR, Coimbatore, Joint IV SR, Kancheepuram, Joint IV SR, Madurai, SR, Gandhipuram, SR, Guduvancherry, Joint II SR, Karaikudi, SR, Kodambakkam, Joint I SR, Kumbakonam, SR, Kundrathur, SR, Pallavaram, SR, Pammal, SR, Poonamallee, SR, Red Hills, SR, Selaiyur, SR, Surampatti, SR, Thirumangalam, SR, Thiruporur, SR, Thiruverumbur, SR, Thiruvottiyur, SR, Vanur, SR, Velachery SR, Virugambakkam, SR, Walajabad, SR, Woraiyur and Joint II SR, Yanamalai Othakadai

actually credited to the Government. As per subsidiary rule 9-A under Rule 10, demand drafts shall not be distinguished from cheques for the purposes of these rules. As per Article 9 of Tamil Nadu Financial Code Volume I, departmental Controlling Officer should obtain regular accounts and returns from his subordinates for the amounts realised by them and paid into the treasury. The Controlling Officer should reconcile any differences as early as possible.

During test check of remittances in Sub-Registry, Thiruporur and District Registry, Chennai South, Audit noticed (October 2014 and February 2015) that 45 demand drafts for ₹ 6.40 crore deposited with State Bank of India during December 2013 and March 2014 were not realised. Audit further noticed that the State Bank of India had addressed (October 2014) the Bank which had issued two demand drafts for ₹ 5.88 crore in March 2014 to revalidate the same and these bank drafts were not received back soon after revalidation till the date of audit. Thus, failure of the Department to undertake reconciliation of remittances with the treasury figures resulted in non-credit of ₹ 6.40 crore to Government account.

Audit pointed this out in November 2014 and March 2015. Reply of the Department was awaited (December 2015).

Audit reported the matter to the Government in January and April 2015. Reply of the Government was awaited (December 2015).

3.5.9 Excess allocation of transfer duty surcharge

As per Section 175 of the Tamil Nadu Panchayat Act, 1994 and Section 94 of the Tamil Nadu Urban Local Bodies Act, 1998, a duty shall be levied and collected on the instruments of sale, exchange, gift, mortgage with possession and lease in perpetuity and subsequently allocated to the concerned Director of Municipal Administration/ Town Panchayats.

Audit observed from the register of transfer duty surcharge in 33[75] Sub-Registries (between March 2014 and February 2015), that though ₹ 69.76 lakh was actually collected towards transfer duty surcharge in respect of 275 documents the Department allocated an amount of ₹ 357.10 lakh. This resulted in excess allocation of ₹ 287.34 lakh out of the revenue due to the Government.

[75] SR, Adayar, SR, Ambathur, SR, Avadi, SR, Bhavani, DR, Chennai South, SR, Chekkanoorani, Joint I SR, Coimbatore, SR, Dharapuram, SR, Kangeyam, SR, Karaikudi, SR, Katpadi, SR, Kelamangalam, SR, Kodambakkam, SR, Kinathukadavu, SR, Namakkal, SR, Neelankarai, SR, Pallavaram, SR, Pammal, SR, Poonamallee, Joint III SR, Salem (West), SR, Selaiyur, SR, Sowcarpet, SR, Thallakulam, SR, Thamaraipatti, SR, Thiruporur, SR, Thiruvarur, Joint II SR, Tenkasi, SR, Thiruvottiyur, Joint I SR, Trichy, SR, Udumalpet, SR, Virugambakkam, SR, Walajabad and Joint II SR, Yanamalai Othakadai

After Audit pointed this out (between March 2014 and February 2015), 13[76] ROs replied (between May 2014 and May 2015) to have subsequently adjusted excess allocation of ₹ 58.36 lakh. Reply from the remaining ROs was awaited (December 2015).

Audit reported the irregularities to the Government between March 2015 and August 2015. Reply was awaited (December 2015).

[76] SR, Adayar, SR, Chekkanoorani, Jt I SR, Coimbatore, SR, Dharapuram, SR, Kelamangalam, SR, Kangeyam, SR, Namakkal, Joint III SR, Salem (West), SR, Sowcarpet, SR, Thamaraipatti, Joint I SR, Trichy, SR, Walajabad and Joint II SR, Yanamalai Othakadai

CHAPTER IV

OTHER TAX AND NON-TAX RECEIPTS

CHAPTER IV
OTHER TAX AND NON-TAX RECEIPTS

4.1 Results of audit

In 2014-15, test check of departmental offices revealed under-assessment of electricity tax, duty, dead rent, seigniorage fee and other observations amounting to ₹ 105.74 crore in 90 cases, which fall under the categories given in Table 4.1.

Table 4.1

(₹ in crore)

Sl.No.	Categories	Number of cases	Amount
	Electricity Tax		
1	Audit of Assessment and collection of Electricity Tax	1	90.48
2	Non-levy/collection of electricity tax, duty and additional tax	9	4.58
3	Others	26	1.84
	Total	36	96.90
	Mines and Minerals		
1	Non/short levy of dead rent, seigniorage fee, royalty	24	7.66
2	Others	30	1.18
	Total	54	8.84
	Grand Total	**90**	**105.74**

During the course of the year, the Departments accepted under-assessment and other deficiencies in 33 cases and recovered ₹ 1.70 crore, out of which ₹ 1.19 crore involved in eight cases were pointed out during the year and the rest in earlier years.

Cases of under-assessment and other deficiencies in levy and collection of Electricity Tax and short collection of royalty in respect of Mines and Minerals involving ₹ 97.54 crore are discussed in the following paragraphs.

ELECTRICITY TAX

4.2 Audit of Assessment and collection of Electricity Tax

4.2.1 Introduction

The assessment, levy and collection of tax on consumption or sale of electricity in the State of Tamil Nadu is governed by the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Act) and the Tamil Nadu Tax on Consumption or Sale of Electricity Rules, 2003 (Rules) made thereunder. The Act came into force on 16 June 2003 after repealing the Tamil Nadu Electricity Duty Act, 1939 and the Tamil Nadu Electricity (Taxation on Consumption) Act, 1962.

The Chief Electrical Inspector to Government (CEIG), Chennai is the Head of the Electrical Inspectorate Service and is appointed as the Director of Electricity Tax for the purpose of the Act. There are 23 Electrical Inspectorates under the control of CEIG.

Section 3 of the Act provides that every licensee and every person other than a licensee shall pay every month to the Government in the prescribed manner, a tax on the electricity sold or consumed during the previous month at the rates prescribed therein. The tax shall be credited into the Government Treasury and a duplicate copy of the treasury challan shall be sent to the Director with a copy to the jurisdictional Inspecting Officer.

The Tamil Nadu Generation and Distribution Corporation (TANGEDCO) is the licensee approved for collection of electricity tax payable by its consumers. The electricity tax is recovered from the consumer by TANGEDCO through the Current Consumption (CC) bills. Government, by issue of orders in December 2010 empowered TANGEDCO to collect electricity tax on energy generated through diesel generator (DG) sets from April 2011.

Audit was undertaken from November 2014 to March 2015 to ascertain the extent of adherence to the prescribed procedures for the purpose of assessment, levy and collection of electricity tax. The records in the office of CEIG and in 10 out of 23 Electrical Inspectorates were scrutinised covering the period from 2011-12 to 2013-14.

4.2.2 Trend of receipts from Taxes and Duties on electricity

The budget estimates and actual receipts of the Department during the period from 2011-12 to 2013-14 are given in Table 4.2.2

Table 4.2.2

(₹ in crore)

Year	Budget Estimates	Actual Receipts	Variation	Percentage of variation
2011-12	532.03	1,040.20	(+) 508.17	(+) 95.52
2012-13	609.89	768.88	(+) 158.99	(+) 26.07
2013-14	670.94	743.56	(+) 72.62	(+) 10.82

(Source: Finance Accounts of the Government of Tamil Nadu)

As seen from the above table, the actual receipts were higher than the budget estimates during the three years, the percentage of variation ranging between 10.82 and 95.52 *per cent*. After Audit pointed this out, the Department stated (August 2015) that the adjustment of electricity tax due from TANGEDCO for the periods 2010-11 and 2011-12 during the year 2011-12 led to increased receipts and also for the large variation between the budget estimates and actual receipts during the year.

4.2.3 System for monitoring filing of returns

Section 8 of the Act and Rule 15 prescribe submission of monthly returns in duplicate, one copy to the Director and another to the Inspecting Officer, before fifteenth day of the month following the month to which the returns relate. Section 9 of the Act also provides for assessing to the best of judgment in case of failure by the licensee to submit returns or if the returns submitted appears to be incorrect or incomplete.

Section 5 of the Act and Rule 5 stipulate that every person, other than a licensee who has installed or proposes to install a generating plant for generation of electricity for his own consumption, shall register his name with the jurisdictional Electrical Inspector.

Audit noticed that, although a register was maintained in each of the Electrical Inspectorates to enter the details of registrations, there existed no system to monitor the filing of returns by the registered entities. The office of the CEIG had not prescribed any register to be maintained by the field offices for watching due submission of returns by the entities. As a result, database of entities who had not filed returns was not available with the Department. The monthly returns (PDL 14) furnished by the Electrical Inspectorates are not designed to report cases of non-filing of returns. Thus, initiation of action for invoking the provisions of best judgement assessment in a systematic manner in respect of non-filers of monthly returns was not possible.

The matter was reported to the Government (July 2015) and it attributed (September 2015) shortage of manpower as a reason for failure to ensure periodical filing of returns by the entities. The Government further stated that once the online system of registration and payment of tax is implemented, the non-filers of tax could be watched by the Department.

4.2.4 Assessment and collection of electricity tax

The Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 came into force on 16 June 2003 after repealing the Tamil Nadu Electricity Duty Act, 1939 and the Tamil Nadu Electricity (Taxation on Consumption) Act,

1962. On a batch of petitions filed against the validity of the Act, the Supreme Court held that in view of the phraseology used in the Act, the right of the appellant acquired by way of exemption granted under the repealed Act cannot be said to have been destroyed. The Government, therefore decided to amend the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 suitably so as to invalidate the exemptions granted from levy of electricity tax under the repealed Act. Hence, an amendment was made in 2007 with retrospective effect.

After passing of amendments to the Act, the Department failed to insist on furnishing of monthly returns by the licensees. Instead, the Department gathered details of electricity captively consumed/sold by the licensees and proceeded to initiate action for levy of electricity tax between May 2011 and December 2014. Audit scrutiny of the details furnished by the Department in this regard revealed the following:

- In three[77] Electrical Inspectorates, only letters were issued to six licensees demanding payment of electricity tax of ₹ 33.67 crore relating to the period from October 2004 to December 2014, instead of following the procedure prescribed under the Act for invoking the provisions of best judgement assessment.

- In four[78] Electrical Inspectorates, in respect of eight licensees, though details were obtained by the Department, further action to assess and demand electricity tax of ₹ 8.02 crore was not taken.

- In five[79] Electrical Inspectorates in respect of 16 cases, though assessment was made between May 2011 and December 2014, electricity tax of ₹ 136.84 crore remained unpaid. However, further action was not taken by the Department to recover the amount by invoking the provisions prescribed under Section 7(1)(b) the Act.

- Audit noticed that 23 sugar mills were in arrears for payment of electricity tax of ₹ 71.67 crore for various periods starting from June 2003.

When the issue of non-collection of arrears was pointed out (March 2015), the Department replied (April 2015) that 10 mills with arrears of ₹ 36.77 crore had filed special leave petition (SLP) before the Supreme Court. Audit scrutiny revealed that the Supreme Court in its orders dated April 2013 had not stayed collection of taxes by the Department. However, the Department had not effected collection of tax from the sugar mills.

4.2.5 Exclusion of excess charges for the purpose of levy of electricity tax

According to Section 3(1)(a) of the Act, every licensee, other than a captive power plant, shall pay tax at 5 *per cent* on the electricity sold or consumed. The Government accorded sanction to TANGEDCO to recover electricity tax from the consumers.

[77] Cuddalore, Namakkal and Ponneri
[78] Chengalpet, Krishnagiri, Trichy and Virudhunagar
[79] Dindigul, Madurai, Namakkal, Salem and Tirunelveli

The Government issued directions in October 2008 for implementing power supply through Restriction and Control (R&C) measures to manage the shortage of energy and distribute the available energy equitably effective from 1 November 2008. Accordingly, 40 *per cent* cut on the base demand and energy for High Tension (HT) industrial and commercial consumers and 20 *per cent* cut on Low Tension Current Transformer (LTCT) industrial and commercial consumers were imposed from the above date. The Tamil Nadu Electricity Regulatory Commission (TNERC) in its order dated 28 November 2008 directed that the excess demand and excess energy consumption be charged at thrice the normal rate.

Scrutiny of the records of TANGEDCO revealed that though TANGEDCO had collected current consumption charges at thrice the normal rate, the amount collected in excess of the normal rate was shown separately in the CC bill of TANGEDCO. Verification of bills indicated that the same was not taken into account for calculation of electricity tax. It was confirmed from TANGEDCO that tax was not collected on excess demand and excess energy consumption charges.

A sum of ₹ 1,786 crore was collected as excess demand and energy charges during the period from 2011-12 to 2013-14. However, electricity tax, due at 5 *per cent* on ₹ 1,786 crore, amounting to ₹ 89.30 crore, was not levied.

On being pointed out (July 2015), Government accepted the audit observation (September 2015) and stated that TANGEDCO has been requested to collect electricity tax on the excess demand and energy charges collected from the consumers. Further report regarding recovery of electricity tax on the excess demand and energy charges was awaited from the Government (December 2015).

4.2.6 Collection of electricity tax on Diesel Generating (DG) sets

The Government of Tamil Nadu issued orders in December 2010 entrusting the work of collection of electricity tax (Gen-Tax on consumption) from DG sets to Tamil Nadu Electricity Board (TNEB, now TANGEDCO) as TNEB had the infrastructure to reach the DG sets located in HT and LT premises and remote location. The order mentioned that CEIG would monitor such revenue realisation on behalf of the Government. Scrutiny of records of the Department and TANGEDCO relating to levy and collection of electricity tax revealed the following deficiencies.

- According to Section 5 of the Act, every person, who has installed or proposes to install a generating plant for generating electricity for his own consumption shall register his name with such officer as the Government may appoint in this behalf. However, registration of DG sets continues to be only on self compliance. Audit noticed that an entity falling under the jurisdiction of the Electrical Inspectorate, Ponneri (November 2014) who commissioned a plant in November 2012 belatedly reported the same to the Department in October 2014. The Department had not devised a system to ensure that all DG sets commissioned in the State are compulsorily brought to registration. Therefore, it did not have information on potential tax base.

- Audit observed that the particulars of registered entities were not being forwarded to TANGEDCO to facilitate collection of tax on DG sets. TANGEDCO also did not forward details of consumer-wise collection of tax by it to the CEIG. Hence, there was no coordination between the Department and TANGEDCO in implementing the Government Order to collect tax on DG sets.

- TANGEDCO stated that all its circles were collecting electricity tax on DG sets from April 2011. However, Audit noticed from the relevant files that 12 TANGEDCO circles did not collect tax on DG sets for the period from April 2011 as on 31March 2014.

- TANGEDCO was already collecting tax on generation of electricity through windmills from its consumers and the same was included in CC bill under the column "Self Generation Tax". The Chief Financial Controller, TANGEDCO issued instructions in April 2011 that collection of tax from DG sets shall be booked separately under the category "E-tax (generation)". Audit noticed that there were no separate clause in the CC bills under the nomenclature "E-tax (generation)" to indicate receipts from tax on DG sets. Though TANGEDCO stated that the account head "Self Generation tax" included tax on windmills and DG sets, since the same were not booked separately, the collection of self-generation tax by TANGEDCO in respect of DG sets could not be ensured.

Government, to whom the matter was reported (July 2015), stated in September 2015 that TANGEDCO has been requested to furnish details of self-generation tax separately and pay the self-generation tax in its relevant head. The Government further stated that the Superintendents of the office of the CEIG, who are designated as Electricity Tax Inspection Officers were instructed to conduct tax inspection in the revenue divisions of TANGEDCO in their respective jurisdiction to verify the number of consumers from whom self-generation tax has been collected.

4.2.7 Other audit observations

4.2.7.1 Omission to raise demand of electricity tax

In exercise of the powers conferred by Section 14 of the Act, the Government, by an order issued in September 2010, extended the exemption in respect of electricity tax on the consumption of electricity for own use by HT consumers using their captive generating plants for the period from 1 April 2010 to 31 March 2011.

A licensee falling within the jurisdiction of the office of Electrical Inspectorate, Ponneri (erstwhile Electrical Inspectorate, Kancheepuram North), paid electricity tax of ₹ 1.44 crore for the period from 1 April 2010 to 31 March 2011. The licensee subsequently claimed exemption as per the above Government Orders and *suo motu* adjusted ₹ 1.44 crore from the tax payable from April 2011 to April 2014. The Electrical Inspector concluded that the licensee, being registered as a captive generating plant, was not eligible for the exemption granted to HT consumers and accordingly, raised demand of ₹ 92.23 lakh in June 2013 towards electricity tax due for the period from April 2011 to March 2012. Audit noticed (February 2015) that demand

of ₹ 92.96 lakh for the subsequent period from April 2012 to April 2014 was not raised by the Electrical Inspector.

After Audit pointed this out (February 2015), the Electrical Inspector issued demand notice (March 2015) and collected (March 2015) electricity tax of ₹ 1.14 crore including interest, due for the period from April 2012 to April 2014.

4.2.7.2 Excess allowance of exemption towards auxiliary consumption

According to Explanation II under Section 2(5) of the Act, where a licensee or other person consumes energy for purposes connected with the construction, maintenance and operation of the generating, transmitting and distributing system, such licensee or person shall not be deemed to be a consumer in respect of the energy so consumed. The energy consumed for such purposes is termed by the Department as auxiliary consumption. Rule 11 provides that where there is a combined installation, where a part of a supply of electricity is taxable and part exempt, the consumer shall install and maintain separate, suitable and correct meters or sub-meters to register the quantities of two kinds of consumption separately. TNERC had fixed[80] the deduction towards auxiliary consumption at a maximum of 10 *per cent* of the total gross generation.

In Namakkal and Vellore Electrical Inspectorates, Audit noticed that in four cases, the gross generation of electricity during the period from May 2013 to March 2014 was 24.44 crore units[81]. The claim of auxiliary consumption of 2.86 crore units was allowed as against 2.44 crore units. Thus, failure to adopt the TNERC order of deduction towards auxiliary consumption resulted in excess allowance of exemption of 41.55 lakh units and consequential non-levy of electricity tax of ₹ 4.15 lakh at the rate of 10 paise per unit.

On being pointed out (July 2015), the Government accepted (September 2015) the audit observation and stated that, in future, auxiliary consumption will be allowed according to the reading of meter and will be restricted to 10 *per cent* of generated electricity in case of non-provision of meters.

4.2.7.3 Misclassification of Receipts

According to Rule 7, interest on belated payment of electricity tax shall be paid into the major Head "0043 Taxes and Duties on Electricity".

Government released ₹ 696 crore in March 2014 and ₹ 74.50 crore in March 2015 to TANGEDCO and debited the amounts under share capital assistance. The book adjustment of the same amount was ordered to be adjusted against the penal interest on Electricity Tax payable by the TANGEDCO under the Major Head "0049-Interest Receipts, which was against the provisions of the Rule. This had resulted in a misclassification of receipts, which otherwise would have been reflected in the revenue of the Department.

After Audit pointed this out (July 2015), the Government replied (September 2015) that the audit observation was under consideration in consultation with the Finance Department. Further report was awaited (December 2015).

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[80] Order No.3 dated 6.5.2009

[81] Section 2(15) of Act- 1 unit is equal to 1 kilowatt hours of energy

4.2.8 Internal control

The monthly returns (Form PDL 14) furnished by the Electrical Inspectorates to CEIG contain only the details of monthly collection of tax. The returns do not contain the details of arrears of tax and list of non-filers. In a reply to the Audit query, CEIG stated (June 2015) that internal audit was being conducted only on the revenue bills received from the division and not on collection of tax. It was confirmed from Department's reply that no internal circular or guidelines were issued to the Electrical Inspector to verify tax compliance of licensees/entities during inspection. This indicates absence of an effective control system in the Department.

The Government accepted the audit observation and stated (September 2015) that internal audit did not check the details of arrears of tax, the list of non-filers and correctness of the amount of tax paid and attributed this to the vacancy of staff.

4.2.9 Conclusion

The Department needs to evolve a system to monitor filing of returns by prescribing maintenance of register in this regard and link it with the register of registered entities, so that timely and effective action can be taken against non-filers. There is a need for instituting a proper coordination system between the Department and TANGEDCO, involving periodical sharing of details of registration, assessment and collection of tax to effectively administer the Act.

MINES AND MINERALS

4.3 Short collection of royalty

According to Section 6-A of the Oilfields (Regulation and Development) Act, 1948 read with Rule 14 of the Petroleum and Natural Gas Rules, 1959, a lessee shall file monthly returns showing the quantity of all crude oil and natural gas obtained during the preceding month from mining operations and pay royalty at the rate for the time being specified in the Schedule to the Act.

As per Article 2 of the Tamil Nadu Financial Code Volume I, every Government servant entrusted with the duty of collecting any revenues due to the Government should assess demands carefully, maintain proper accounts of the collections, watch the progress of the collections against the total demand and take prompt steps to collect all arrears.

Articles 32 to 34 of the Tamil Nadu Financial Code Volume I, regarding refunds of revenue provide that a refund order should be signed by the Government servant authorised to sanction refunds of revenue. The refund amount should be paid to the person entitled to receive it or a proper voucher made payable to that person should be delivered to him for presentation at the treasury for payment. Further, the particulars of refund should be recorded

against the original entry of the receipt in the departmental records so that any further claim of refund of the same amount cannot be entertained.

During scrutiny of records in the offices of Assistant Director of Geology and Mining, Nagapattinam & Thiruvarur and Thanjavur, Audit noticed (May and August 2014) that a holder of mining lease originally paid royalty of ₹ 438.15 crore for the period 2010-11 to 2012-13 but subsequently declared that, on account of revision of price of crude oil, royalty of ₹ 431.09 crore alone was required to be paid. The licensee *suo motu* deducted from the royalty of ₹ 11.76 crore payable for the month of April 2013, ₹ 7.06 crore, being the royalty paid in excess for the period from April 2010 to March 2013 and paid ₹ 4.70 crore as royalty.

As the royalty paid was already credited into Government account, the excess payment was to be claimed as refund by submitting a proper application. The *suo motu* deduction of excess amount paid from the amount due to Government was not in order.

Audit reported the matter to the Government in August 2015. Government accepted the audit observation (October 2015) and requested the licensee to remit royalty of ₹ 7.06 crore. Further report was awaited (December 2015).

Chennai
Dated 10 March 2016

(ALKA REHANI BHARDWAJ)
Accountant General
(Economic and Revenue Sector Audit)
Tamil Nadu

Countersigned

New Delhi
Dated 11 March 2016

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

ANNEXURE

ANNEXURE - I
(Refer to Paragraph 1.8 of Chapter I)

Sl.No.	Name of the Department	Nature of receipts	Auditable units	Units planned	Units audited
1.	Commercial Taxes and Registration	Sales Tax	392	168*	191*
		Stamp duty and Registration fee	696	158	162
2.	Revenue	Urban Land Tax	60	6	2
		Land Revenue	228	64	64
3.	Home (Transport)	Taxes on vehicles	81	29	37
4.	Home	Motor Vehicle Maintenance Organisation	21	5	5
5.	Home (Prohibition and Excise)	State Excise	75	24	16
6.	Industries	Mines and minerals	31	17	17
7.	Energy	Electricity duty	25	13	13
8.	Treasury and Accounts	Asst. Supdt. of Stamps	1	0	0
Total			**1,610**	**484**	**507**

*Due to territorial re-organisation of the Commercial Taxes Department during the audit plan period, additional units were audited.

GLOSSARY

GLOSSARY

AA	Assessing Authority
AC	Assistant Commissioner
AG	Accountant General
AST	Additional Sales Tax
ATN	Action Taken Note
BIU	Business Intelligence Unit
CC	Current Consumption
CCRA	Chief Controlling Revenue Authority
CCT	Commissioner of Commercial Taxes
CEIG	Chief Electrical Inspector to Government
CST	Central Sales Tax
CTD	Commercial Taxes Department
CTO	Commercial Tax Officer
DAW	Data Analysis Wing
DC	Deputy Commissioner
DG	Diesel Generator
DR	District Registrar
eTP	e-Transit Pass
FTAC	Fast Track Assessment Circle
HT	High Tension
IGR	Inspector General of Registration
IR	Inspection Report
IS Act	Indian Stamp Act
IT	Information Technology
ITC	Input Tax Credit
JC	Joint Commissioner
LTU	Large Taxpayers Unit
PAC	Public Accounts Committee
PAN	Permanent Account Number
POA	Power of Attorney
RC	Registration Certificate
RMC	Ready-mix Concrete
RO	Registering Officer
sqft	square feet
SR	Sub-Registrar
TAMIN	Tamil Nadu Minerals Limited
TNERC	Tamil Nadu Electricity Regulatory Commission
TANGEDCO	Tamil Nadu Generation and Distribution Corporation Limited
TIN	Taxpayer Identification Number
TNGST	Tamil Nadu General Sales Tax
TNVAT	Tamil Nadu Value Added Tax
TSP	Total Solution Project
VAT	Value Added Tax

http://www.agtn.cag.gov.in