REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL OF INDIA
FOR THE YEAR 1985-86
REVENUE RECEIPTS
GOVERNMENT OF MAHARASHTRA

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PREFATORY REMARKS

The Audit Report on Revenue Receipts of the Government of Maharashtra for the year 1985-86 is presented in a separate volume. The material in the Report has been arranged in the following order :—

(*i*) Chapter I deals with trend of revenue receipts classifying them broadly under tax revenue and non-tax revenue. The variations between Budget estimates and actuals in respect of the principal heads of revenue, the position of arrears of revenue, etc., are also discussed in this chapter.

(*ii*) Chapters II to VIII set out certain cases and points of interest which came to notice in the audit of Sales Tax, State Excise, Land Revenue, Taxes on Vehicles, Stamp Duty and Registration Fees and Other Tax and Non-tax Receipts.

CHAPTER I

GENERAL

1.1. Trend of Revenue Receipts

The tax and non-tax revenue raised by the Government of Maharashtra during the year 1985-86, the share of taxes and grants-in-aid received from the Government of India during the year and corresponding figures for the preceding two years are given below :

	1983-84	1984-85	1985-86
	(In crores of rupees)		
I. Revenue raised by the State Government—			
(*a*) Tax Revenue	18,22.48	19,66.22	23,77.34
(*b*) Non-tax Revenue	7,08.99	8,45.84	9,75.31
Total ..	25,31.47	28,12.06	33,52.65
II. *Receipts from the Government of India—*			
(*a*) State's share of divisible Union Taxes ..	4,49.93	5,29.77	4,99.67
(*b*) Grants-in-aid	2,70.58	3,26.26	3,21.90
Total ..	7,20.51	8,56.03	8,21.57
III. *Total Receipts of the State*	32,51.98	36,68.09	41,74.22
IV. *Percentage of I to III*	78	76	80

(*a*) The details of tax revenue raisedd uring the year 1985-86, alongside figures for the preceding two years, are given below :—

	1983-84	1984-85	1985-86	Percentage of increase (+)or decrease (—)in 1985-86 over 1984-85
	(In crores of rupees)			
1. Sales Tax	11,94.42	12,52.09	15,04.66	(+) 20
2. State Excise	1,53.18	1,69.01	2,06.69	(+) 22
3. Taxes on Vehicles and Passengers ..	1,44.78	1,56.48	1,82.52	(+) 17
4. Stamps and Registration Fees ..	61.00	71.63	94.08	(+) 31
5. Land Revenue	24.16	29.43	37.57	(+) 28
6. Taxes on Agricultural income ..	0.05	0.36	0.09	(—) 75
7. Tax on Professions, Trades, Callings and Employments.	52.95	60.53	74.94	(+) 24
8. Other Taxes and Duties on Commodities and Services (including Taxes and Duties on Electricity).	1,91.93	2,26.68	2,76.74	(+) 22
9. Taxes on Immovable Property other than Agricultural Land.	0.01	0.01	0.05	(+)400
Total ..	18,22.48	19,66.22	23,77.34	

(*b*) The details of the major sources of non-tax revenue received during the year 1985-86, alongside figures for the preceding two years, are given below :

	1983-84	1984-85	1985-86	Percentage of increase(+)or decrease(—)in 1985-86 over 1984-85
	(In crores of rupees)			
1. Dairy Development ..	2,43.18	3,13.71	3,36.10	(+) 7
2. Interest	1,79.14	2,27.05	2,77.30	(+)22
3. Forest	99.27	99.95	1,25.23	(+)25
4. Medical	16.14	18.19	16.91	(—) 7
5. Power Projects	18.11	17.11	18.48	(+) 8
6. Irrigation, Navigation, Drainage and Flood Control Projects.	13.01	11.12	15.23	(+)37
7. Co-operation	9.07	8.85	11.47	(+)30
8. Police	7.90	11.91	14.58	(+)22
9. Mines and Minerals	7.63	9.90	11.57	(+)17
10. Public Health, Sanitation and Water Supply.	1.78	1.82	2.12	(+)16
11. Housing	3.30	3.66	6.21	(+)70
12. Other Non-tax Receipts ..	1,10.46	1,22.57	1,40.11	(+)14
Total ..	7,08.99	8,45.84	9,75.31	

1.2. Variations between budget estimates and actuals

The variations between the budget estimates and actuals of revenue receipts for the year 1985-86 are given below :—

	Head of Revenue	Budget estimates	Actuals	Variation increase(+) decrease(—)	Percentage of variation
		(In crores of rupees)			
1.	Sales Tax	13,38.60	15,04.66	(+)166.06	12
2.	State Excise	179.64	206.69	(+) 27.05	15
3.	Taxes on Vehicles	90.19	95.76	(+) 5.57	6
4.	Stamps and Registration Fees ..	70.95	94.08	(+) 23.13	33
5.	Land Revenue	25.50	37.57	(+) 12.07	47
6.	Taxes on Agricultural Income ..	0.25	0.09	(—) 0.16	64
7.	Other Taxes and Duties on Commodities and Services.	1,39.53	1,41.96	(+) 2.43	2
8.	Dairy Development	2,68.41	3,36.10	(+) 67.69	25
9.	Interest	2,71.78	2,77.30	(+) 5.52	2
10.	Medical	20.38	16.91	(—) 3.47	17
11.	Power Projects	17.81	18.48	(+) 0.67	4
12.	Irrigation, Navigation, Drainage and Flood Control Projects.	18.83	15.23	(—) 3.60	19
13.	Co-operation	10.53	11.47	(+) 0.94	9
14.	Police	8.41	14.58	(+) 6.17	73
15.	Mines and Minerals	8.83	11.57	(+) 2.74	31
16.	Public Health, Sanitation and Water Supply.	1.53	2.12	(+) 0.59	39
17.	Housing	3.21	6.21	(+) 3	93
18.	Forest	1,11.28	1,25.23	(+) 13.95	13

The increase of Rs. 166.06 crores in Sales Tax receipts during the year 1985-86 compared to Budget estimates was mainly due to general price

rise of taxable commodities. The increase of Rs. 27.05 crores in State Excise was mainly due to an upward revision of fees for licences and duty on Country Liquor in June 1985 and September 1985 respectively. Stamps and Registration fees show increase of Rs. 23.13 crores which is due to increase in sales of stamps owing to increase in property and judicial transactions. Increase of Rs. 67.69 crores in Dairy Development was on account of increased sales of milk .Due to increase in sale of timber and other forest produce the forest receipts showed an increase of Rs. 13.95 crores compared to the Budget estimates.

1.3. Analysis of Collections

Details of Bombay Sales Tax, Central Sales Tax, Motor Spirit Tax, Sugarcane Purchase Tax, Agricultural Income Tax, and Profession Tax collected at pre-assessment stage and after regular assessments as furnished by the department are given in Appendix I.

1.4. Arrears of assessments

The table below indicates the number of assessments relating to Sales Tax, Agricultural Income Tax, Purchase Tax on Sugar Cane and Profession Tax, which were due for completion during the year 1985-86, assessments actually completed during the year and the assessments in arrears at the end of the year (as per information supplied by department).

Head of Account	Number of assessments due for completion		Number of assessments completed		Number of assessments pending finalisation	
	Arrear cases	Current cases	Arrear cases	Current cases	Arrear cases	Current cases
1. Sales Tax ..	4,56,016	5,06,325	3,68,087	1,52,979	87,929	3,53,346
2. Agricultural Income Tax	535	421	264	351	271	70
3. Profession Tax	4,25,795	1,55,640	1,18,904	32,926	3,06,891	1,22,714
4. Purchase tax on Sugarcane.	830	2,296	203	818	627	1,478

1.5. Cost of Collection

Expenditure incurred in collecting the major revenue receipts during the year 1985–86 and the figures for the preceding two years are given below :

Head of Account	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection
		(In crores of rupees)		
Finance Department				
1. Sales Tax	1983–84	11,94·42	12·15	1
	1984–85	12,52·09	13·09	1
	1985–86	15,04·66	15·60	1·04
2. Tax on Professions, Trades, Callings and Employments ..	1983–84	52·95	1·00	2
	1984–85	60·53	1·18	2
	1985-86	74·94	1·38	1·84
Home Department				
3. State Excise	1983–84	1,53·18	0·61	0·40
	1984–85	1,69·01	1·01	1·70
	1985–86	2,06·69	1·87	0·90
4. Taxes on Vehicles	1983–84	74·60	1·24	2
	1984–85	1,56·48*	5·20	3·31
	1985–86	1,82·52*	6·15	3·37

(*) Includes figures relating to passengers tax.

1.6. Uncollected Revenue

The arrears of revenue pending collection as on 31st March 1985 and 31st March 1986 in respect of some of the sources of revenue are given below :—

Source of revenue	Amount pending collection as on 31st March 1985	Amount pending collection as on 31st March 1986	Amount outstanding for more than 5 years as on 31st March 1985	Amount outstanding for more than 5 years as on 31st March 1986
	(In crores of rupees)			
(A) TAX REVENUE—				
1. (*a*) Sales Tax ..	198.46	232.76	21.26	21.10
(*b*) Purchase Tax on Sugarcane	39.88	32.59	3.23	2.72
2. State Excise	2.16	2.38	1.46	1.45

Source of revenue	Amount pending collection as on 31st March 1985	Amount pending collection as on 31st March 1986	Amount outstanding for more than 5 years as on 31st March 1985	Amount outstanding for more than 5 years as on 31st March 1986
	(In crores of rupees)			
3. (*a*) Tax on Vehicles ..	11.25	14.61	5.62	7.63
(*b*) Further (Goods) Tax and Passengers Tax.	14.15	11.18	2.84	3.00
4. Tax on Professions, Trades, Callings and Employments.	14.41	16.35	5.14	4.75
5. Tax on Agricultural Income ..	2.51	2.39	1.63	1.57
Industries, Energy and Labour Department				
6. (*i*) Fees under Indian Electricity Rules and Fees for Inspection of Cinemas.	1.33	*	0.29	*
(*ii*) Receipts under Minerals Concession Rules (Major Minerals)	0.76	0.79	0.47	0.48
Housing and Special Assistance Department				
7. (*i*) Recovery of Bombay Building Repair and Reconstruction Cess.	14.20	*	2.79	*
Agriculture and Co-operation Department				
8. *Co-operation*—				
(*i*) Audit Fees	3.91	*	0.57	*
(*ii*) Supervision Charges ..	1.47	*	0.06	*
Education and Employment Department				
9. Vocational Education and Training	0.14	0.13	0.02	0.03

Note.—*Information awaited from department.

The following departments of the State Government had not furnished till February 1987 complete information in respect of arrears of revenue

(in respect of taxes/receipts indicated thereunder) pending collection as at the end of March 1986.

(*I*) *Revenue and Forests Department*

(*a*) Land Revenue

(*b*) Stamp duty and Registration fees

(*c*) Entertainments duty

(*d*) Betting Tax

(*e*) Receipts under Minerals Concession Rules (Minor Minerals)

(*f*) Forest

(*II*) *Irrigation and Power Department :*

(*a*) Irrigation dues

(*b*) Non-irrigation dues

(*III*) *Housing and Special Assistance Department/Public Works Department.*

(*a*) Recovery of compensation, service charges, administrative charges and licence fees from hutment dwellers.

(*b*) Receipts from Bombay Development Scheme (Rent from Development Department *Chawls*)

(*c*) Rent of residential Government buildings

(*d*) Recovery of Bombay Building Repair and Reconstruction cess.

(*IV*) *Agriculture and Co-operation Department*

(*a*) Receipts on account of sale of seeds; Sale/hire of agricultural implements; receipts from horticulture plant protection.

(*b*) Audit fees and Supervision Charges

(*V*) *Medical Education and Drugs Department :*

(*a*) Tuition fees, hospital fees in respect of medical education and research.

(*b*) Receipts from Employees State Insurance Corporation of 7/8th share of expenditure incurred by State Government.

(*c*) Sale of medicines by the Directorate of Ayurved.

(*d*) Prevention of food adulteration etc.

(*VI*) *Industries, Energy and Labour Department*

Fees under Indian Electricity Rules and Fees for inspection of cinemas.

1.7. Frauds and evasions of tax

The number of cases of evasion of tax detected by the Sales Tax and Motor Vehicles Tax Departments, cases finalised and the demands for additional tax raised are given below :

		Sales Tax Department	Motor Vehicles Department
1.	Number of cases pending finalisation as on 31st March 1985	1899	NIL
2.	Number of cases detected during 1985–86	2037	1,85,484
3.	Number of cases investigated—		
	(*a*) Out of cases at 1 above	920	...
	(*b*) Out of cases at 2 above	1522	1,85,484
4.	Number of cases pending finalisation as on 31st March 1986		
	(*a*) Out of cases at 1 above	979	...
	(*b*) Out of cases at 2 above	515	...
5.	Number of cases in which prosecutions/penal proceedings were launched.	...	1,85,484
6.	Number of cases in which penalties were imposed ..	...	1,85,484
7.	Total demands (including penalties) raised (in lakhs of rupees)	535.93	603.16
8.	Amount of demands actually collected out of (7) above (in lakhs of rupees).	266.47	603.16

1.8. Writes-off and waivers of revenue

During the year 1985–86, demands for Rs. 186.09 lakhs (in 5,123 cases) relating to Sales Tax and Rs. 17.55 lakhs (in 211 cases) relating to Motor Vehicles Tax, Further (Goods) Tax and Passengers Tax were written off by the departments as irrecoverable. Reasons for the write-off of these demands are as under :

	Reasons for write-off	Sales Tax		Motor Vehicles Tax	
		Number of cases	Amount (Rs. in lakhs)	Number of cases	Amount (Rs. in lakhs)
1.	Whereabouts of defaulters not known	3,914	84.85	177	15.14
2.	Defaulters no longer alive ..	154	14.88	11	1.09
3.	Defaulters did not have any property	914	47.51	23	1.32
4.	Defaulters adjudged insolvent ..	45	14.14	...	...
5.	Other reasons	96	24.71	...	...
	Total ..	5,123	186.09	211	17.55

1.9. Outstanding Inspection Reports and Audit Objections

Audit observations on incorrect assessments, short levy of taxes, duties, fees and other revenue receipts, as also defects in initial accounts noticed during the local audit and not settled on the spot are communicated to the heads of offices and to the departmental authorities through audit inspection reports. The more important irregularities are reported to the heads of departments and Government. Government have prescribed that first replies to inspection reports should be sent to audit within one month from the date of receipt of the inspection reports.

As at the end of September 1986, 14,220 objections (in 5,692 inspection reports) involving receipts amounting to Rs. 54.19 crores issued upto 31st March 1986 were still to be settled, as detailed below. The corresponding figures in the earlier two years have also been indicated alongside for comparison.

	As at the end of September 1984	As at the end of September 1985	As at the end of September 1986
Number of inspection reports	4,421	4,972	5,692
Number of audit objections	12,871	13,718	14,220
Amount of receipts involved (in crores of rupees).	31.37	39.67	54.19

Year-wise break-up of the outstanding inspection reports as on 30th September 1986, together with amounts of receipts involved, are given below :—

Year	Number of inspection reports	Number of objections	Amount of receipts involved (In crores of rupees)
1981-82 and earlier years	2,216	5,723	14.96
1982–83	635	1,561	10.56
1983–84	688	1,613	3.24
1984–85	904	2,241	8.89
1985–86	1,249	3,082	16.54
Total ..	5,692	14,220	54.19

In respect of 1,532 objections (in 627 inspection reports) involving receipts amounting to Rs. 14.39 crores, even the first replies had not been received. The yearwise details of outstanding audit objections in respect of the various types of receipts are given in Appendix II. The departmentwise break-up of the outstanding inspection reports and audit objections is given below :—

Name of Department	Number of inspection reports	Number of objections	Amount of receipts involved (In crores of rupees)
1. Revenue and Forests	2,788	6,981	46.98
2. Finance	1,784	4,679	2.41
3. Home	753	1,628	3.07
4. Industries, Energy and Labour ..	64	109	0.04
5. Housing and Special Assistance ..	51	151	0.96
6. Other Departments	252	672	0.73
Total ..	5,692	14,220	54.19

CHAPTER II

SALES TAX

2.1. Results of Audit

Test check of sales tax assessments and other records conducted in audit during the year 1985-86, revealed under-assessments of tax amounting to Rs. 157.47 lakhs in 1265 cases, which broadly fall under the following categories:—

	Number of assessments	Amount (In lakhs of rupees)
1. Incorrect allowance of set-off	424	61.22
2. Non-levy or short levy of tax	497	49.87
3. Non-levy or short levy of penalty	149	18.28
4. Omission to forfeit tax irregularly collected	52	10.12
5. Other irregularities	143	17.98
	1,265	157.47

Some of the important cases are mentioned in the following paragraphs:—

2.2. Incorrect grant of set-off

Under the provisions of the Bombay Sales Tax Act, 1959 and the rules made thereunder, a manufacturer who has paid taxes on raw materials used in the manufacture of taxable goods, is allowed to set-off, from the

tax payable on the sale of manufactured goods, an amount based on the taxes paid. Where the purchase price of raw materials is inclusive of taxes, the set-off to be allowed is worked out according to a prescribed formula, based on the purchase price. The set-off is admissible to the extent the tax paid on purchases exceeds 4 per cent (3 per cent prior to July 1981).

A manufacturer of declared goods is entitled to full set-off on the purchase of raw materials specified in Schedule B to the Act (declared goods) which are used by him in manufacture of goods specified in the same entry of Schedule B, for sale or export. A manufacturer, who also manufactures goods, the sale of which is not taxable, is allowed set-off only proportionately in respect of manufactured goods, on the sale of which tax is leviable. Where manufactured goods are transferred to branches or agents outside the State of Maharashtra otherwise than as sale, set-off allowable in respect of taxes paid on purchases of raw materials is required to be reduced in the proportion which the value of goods so transferred to branches bears to the total value of manufactured goods, sales of which is taxable.

A registered dealer is also entitled to set-off of taxes paid or deemed to have been paid on his purchases made from other registered dealers, provided the goods are resold by him within nine months of the purchases in the same form in which they were purchased, either in the course of export or in the course of inter-State trade or commerce or the goods are despatched by him outside the State with the intention of reselling the goods or for using them in manufacture.

Further , a manufacturing dealer is allowed set-off of tax paid or payable by him on purchases of any goods specified in Part II of Schedule ' C ' of the Act, which are used in the manufacture of taxable goods for sale but no set-off is admissible if the goods are covered by Part I of this Schedule.

The rules also provide that the set-off worked out can be further reduced by the assessing officer upto one third thereof, if he is satisfied that the average price of similar goods sold by manufacturers, importers or producers was less than the purchase price paid by the dealer by an amount more than ten per cent of the purchase price or for any other adequate reasons to be recorded in writing by the assessing officer.

(*i*) In Bombay, a manufacturer of plastic containers was allowed a set-off of Rs. 1,47,850 on purchase of raw materials valued at Rs. 35,48,413 made during the period 1st October 1980 to 30th September

1981 and again a set-off of Rs. 1,25,983 on purchases valuing Rs. 30,27,792. It was noticed that the above purchases valued at Rs.30,27,792 had already been considered in the set-off on goods valuing Rs. 35,48,413 and hence this amount was considered twice while computing set-off. The mistake resulted in set-off being allowed in excess by Rs.1,33,730 (inclusive of additional tax of Rs. 7,570).

On the mistake being pointed out in audit (September 1985) the department revised (July 1986) the assessment order by raising an additional demand of Rs. 1,72,957 (including additional tax of Rs. 6,394 and penalty of Rs. 60,000). Report on recovery is awaited (February 1987).

(*ii*) In the case of a manufacturer of medicines and pharmaceuticals at Bombay, the set-off admissible in respect of the tax paid during the calendar year 1981 on purchase of raw material which was used in the manufacture of medicines was, due to an arithmetical mistake, computed at Rs. 14,48,041 instead of Rs. 13,48,041, resulting in set-off being allowed in excess by Rs. 1,00,000. On the mistake being pointed out in audit (September 1985), the department rectified (September 1985) the assessment order and raised an additional demand for Rs.1,06,000 (including additional tax of Rs. 6,000) which was paid by the dealer in September 1985. Government to whom the case was reported in May 1986 confirmed (December 1986) the recovery.

(*iii*) In Nasik, a manufacturing dealer ' A ' purchased during the year 1978-79, oil seeds valuing Rs. 5,07,487 on which tax of Rs.20,299 was payable by him separately to the selling dealer ' B '. The manufacturer did not pay the tax of Rs. 20,299 during the year 1978-79 but he paid this amount during 1979-80 to the selling dealer ' B ' on receipt of debit note for Rs. 20,299 from him. The assessment records for the year 1978-79 showed that set-off amounting to Rs. 20,299 on the above purchase was granted to the dealer ' A '. A scrutiny of the assessment records of the same dealer for the period 1979-80 also showed that he was again allowed set-off of Rs. 20,299 during that year. Thus the dealer ' A ' was allowed set-off twice on the same amount of tax paid.

On the mistake being pointed out in audit (November 1984), the department rectified (December 1985) the assessment for the period 1979-80 by raising an additional demand of Rs.22,199 (including penalty of Rs. 900) which was paid by the dealer in February 1986.

(*iv*) In Bombay, a manufacturer of paints and reseller of methanol purchased during the year 1981-82, methanol valued at Rs.8,02,967 after

paying a tax of Rs. 1,20,445 thereon separately, methanol valued at Rs. 3,31,304 was resold and the balance was stated to have been used in the manufacture of other products. Set-off was, therefore, to be allowed only in respect of the tax paid on methanol used in the manufacture of other products. While calculating the set-off the assessing officer, however, erroneously computed the set-off at Rs.73,083 instead of Rs.51,883 resulting in set-off being granted in excess by Rs. 21,200.

On the mistake being pointed out in audit (October 1985) the department rectified (October 1985 and August 1986) the mistake by raising an additional demand of Rs.22,090 (inclusive of additional tax) after further check of the records. Details of recovery are awaited (February 1987).

(*v*) At Bombay, net purchases of raw material made by a manufacturer of engineering goods during 1981-82 amounted to Rs.4,41,645. Based on the tax paid by him on the purchases, he was entitled to set-off, from the tax payable on sale of manufactured goods, a sum of Rs. 17,690 i.e. Rs. 35,666 being tax paid on purchases minus Rs. 17,666 on account of statutory deduction of 4 per cent of net purchase price. The dealer was, however, erroneously allowed a set-off of Rs.33,690. Set-off amounting to Rs, 16,350 was, thus, allowed in excess to the dealer.

On this being pointed out in audit (April 1985) the department rectified (June 1985) the mistake and raised an additional demand for Rs. 610 and cancelled orders of refund of tax amounting to Rs. 16,350 due to the dealer. Report on recovery of Rs. 610 is awaited (February 1987).

(*vi*) A manufacturer of wrapping paper and boxes was allowed set-off of Rs. 25,710 on his purchases of wax valuing Rs. 8,90,316 and adhesives valuing Rs. 10,064 during the year 1982-83, treating these goods as covered by Entry 102 of Schedule C-II. Wax, being petroleum product was covered by Entry 30 of Schedule C-I, no set-off was admissible thereon. This resulted in irregular set-off of Rs. 25,430 (including calculation mistake of Rs. 700).

On the omission being pointed out in audit (January 1985) the department rectified the assessment (January 1986) and raised an addtional demand of Rs. 27,642 (including additional tax of Rs. 2,212). Report on recovery is awaited (February 1987).

(*vii*) At Bombay, in the case of a manufacturer of tooth brushes, who had purchased cellophane paper for Rs.3,85,441 (1979-80) and Rs. 2,56,988 (1980-81), the set-off to be allowed from the tax payable by

him on sale of manufactured goods, was erroneously computed, taking the rate of tax paid by him on the aforementioned purchases as 8 per cent instead of 5 per cent. The mistake resulted in tax being realised short by Rs.17,953.

On the mistake being pointed out in audit (February 1983), the department revised the assessment orders (October 1985) and raised an additional demand for Rs. 17,953 which was paid by the dealer in December 1985.

(*viii*) In Bombay, a manufacturer of paints was allowed a set-off on purchases of mineral turpentine valued at Rs. 9,42,372 without ascertaining full details of the taxes paid on the purchases. Set-off on turpentine was calculated for the whole period at the rate of 8 per cent (instead of at 5 per cent upto June 1981 and 4 per cent thereafter). As the set-off was admissible only on the taxes paid in excess of 3 per cent upto June 1981 and 4 per cent thereafter, no set-off was admissible in this case for the purchases effected after June 1981.

On this being pointed out in audit (December 1984), the department raised (April 1986) an additional demand of Rs. 19,921 (inclusive of additional tax of Rs. 1,128) which was paid by the dealer. Government confirmed (January 1987) the recovery.

(*ix*) At Bombay, in the case of a manufacturer of chemicals, who had purchased paraffin wax for Rs. 1,89,978 during November 1980 to June 1981 and for Rs. 3,47,365 during July 1981 to March 1982, the set-off to be allowed from the tax payable by him on sale of manufactured goods, was computed as Rs.17,565, taking the rate of tax paid by him on the aforementioned purchases as 8 per cent. Actually, on sale of paraffin, tax was leviable at the rate of 5 per cent upto 30th June 1981 and at 4per cent thereafter. Based on these rates, the set-off admissible to the manufacturer (after making the statutory deduction) amounted to Rs. 3,257. The set-off was thus allowed to the dealer in excess by Rs. 15,167 (including additional tax of Rs. 859).

On the mistake being pointed out in audit (July 1985) the department revised the assessment order and raised an additional demand for Rs. 15,167 which was paid by the dealer in August 1985.

Government to whom the case was reported in July 1986; confirmed (October 1986) the recovery.

(*x*) The set-off admissible to a reseller of auto parts at Bombay in respect of his purchases of Rs. 3,01,554 during the year 1980-81 which were resold

in the course of inter-State trade was uniformly allowed at 12 per cent as applicable to auto parts. Since the sales made by the dealer comprised rough castings, semi-mechanised blocks, crank shafts, carn shafts etc., which attracted tax at 4 per cent, the set-off should have been allowed with reference to the rate of tax actually paid by the dealer on these purchases.

On this being pointed out in audit (April 1983), the department, on verification, revised (May 1986) the assessment order by raising an additional demand of Rs. 18,640. Report on recovery is awaited (February 1987).

(*xi*) A dealer of Bombay was assessed as a manufacturer in iron and steel upto 31st December 1982 and as a reseller thereafter. As the manufacturing activity of the dealer had ceased on 31st December 1982, it was pointed out in audit (July 1985) that (i) stock of raw materials and stores on that date did not constitute the raw materials used in the manufacture of taxable goods for sale and hence set-off was not admissible on the tax paid on purchases of such raw materials and that (*ii*) stock of purchases made on that date on the strength of recognition certificate at concessional rate attracted purchase tax for contravention of the recitals of the declaration (Form 15) as there was no manufacturing activity.

On this being pointed out in audit (July 1985), the department revised the assessment order (January 1986) and disallowed set-off to the extent of Rs. 29,386 on the purchases of raw materials and stores valuing Rs. 9,83,416 which were in stock. As regards contravention of recitals of declaration (form 15) in respect of purchases made on the strength of recognition certificate purchase tax of Rs. 45,376 was also levied on goods valuing Rs. 7,56,271 which were in stock or were purchased after 31st December, 1982. Report on recovery is awaited (February 1987).

(*xii*) In Bombay, in the assessment of a manufacturer and reseller of iron and steel for the year ending 31st August 1983, a set-off of Rs. 39,880 had been allowed on account of tax-paid purchases valuing Rs. 10,44,376 attributed to goods consumed in the manufacture. Since the dealer was assessed as a reseller from 26th November 1982 the set-off on tax paid goods in stock as on 25th November 1982 was not admissible.

On this being pointed out in audit (August 1985), the department revised the assessment order (November 1985) by creating an additional demand of Rs. 13,294. Report on recovery is awaited (February 1987).

(*xiii*) An advertising agent and supplier of painting material of Bombay was allowed set-off in excess by Rs. 20,341 in respect of the years 1978 to 1980 due to mistake in computation of proportionate reduction on account of manufactured goods, on sale of which tax was not leviable.

On the mistake being pointed out in audit (January 1985), the department revised (September 1985) the assessments and raised an additional demand for Rs. 20,341. Report on recovery is awaited (February 1987).

(*xiv*) In Nagpur, a manufacturer of mild steel pipes and tubes made from mild steel skelp, was incorrectly allowed during the year 1981-82, a set-off of Rs. 15,000 (carried forward from the year 1980-81 and which formed part of the turnover for the year 1981-82) in respect of goods manufactured in that year (1981-82) even though the manufactured goods were allowed by the assessing authority only as resale of mild steel skelp in the State.

On the mistake being pointed out in audit (June 1985), the department raised (September 1985) an additional demand of Rs. 15,000. Report on recovery is awaited (February 1987).

(*xv*) In assessing a manufacturer in Hinganghat, set-off of tax was allowed even in respect of raw material used in the manufacture of non-taxable goods. The set-off incorrectly allowed amounted to Rs. 11,784.

On this being pointed out in audit (November 1985) the department recovered (July 1986) the entire amount.

Government to whom the case was reported in May 1986 accepted (January 1987) the omission.

(*xvi*) In Jalgaon, a manufacturer of edible oils, soap etc., had transferred manufactured goods valuing Rs. 14.21 crores to his branches outside the State, otherwise than by way of sale. Proportionate reduction in set-off of tax in respect of the goods so transferred was made at 41 per cent although the value of goods transferred to the branches was nearly 45.46 per cent of the total value of goods manufactured. This resulted in set-off being allowed in excess by Rs.27,907.

Further, on inter-State sales of solvent groundnut oil amounting to Rs. 9,07,787 made by him, the same dealer had collected central sales tax at 4 per cent, instead of at the prescribed rate of 3 per cent. Central sales tax collected by the dealer in excess amounted to Rs. 9,078.

On these mistakes being pointed out in audit (January 1985), the department revised (June 1985) the assessment order and raised an additional demand for Rs. 27,907 and also compounded the offence regarding

excess collection of central sales tax for Rs. 9,500. The additional demand and the composition money were paid by the dealer in June 1985 and September 1985 respectively.

(*xvii*) In Bombay, the gross amount of set-off of Rs. 5,45,854 admissible to a manufacturer of canned foods, jams, jellies, syrups, squashes etc., during the year 1980-81 was reduced by 43 per cent on account of raw materials used in the manufacture of taxable goods transferred to branches outside the State of Maharashtra which were determined at Rs. 1,41,19,576. The value of branch transfers actually worked out to Rs. 1,54,52,341 instead of Rs. 1,41,19,576 and the set-off was, therefore, required to be further reduced in porportion to the value of raw material used in the manufacture of goods amounting to Rs. 13,32,765 transferred to branches.

On this being pointed out (March 1984), the department revised (July 1985) the assessment order and raised an additional demand for Rs. 21,293. Report on recovery is awaited (February 1987).

(*xviii*) In Bombay, a supplier of hardware and machinery spares, was allowed set-off of Rs. 4,50,022 on his purchases of Rs. 76,65,321 made between 1976-77 and 1981-82 and sold in the course of inter-State trade and commerce as per his assessments for the respective years. As per administrative instructions issued by the department in February 1978 the list of purchases above Rs. 10,000 was, however, not kept on record and the transactions had also not been cross-checked by the department to ascertain the correctness of the set-off admitted, with reference to the assessment of the vendors.

On this being pointed out (February 1983) in audit, the department undertook cross verification of the transactions for Rs. 63,41,287 for the years 1977-78 to 1981-82 covering a set-off of Rs. 4,09,442 and revised the assessment order after disallowing set-off of Rs. 1,24,295 incorrectly granted and also levied penalty of Rs. 12,000. Details of recovery of Rs. 1,36,295 and reply regarding action taken in respect of set-off of Rs. 40,580 allowed during 1976-77 is awaited (February 1987).

(*xix*) In Bombay, a reseller in oil extractions was allowed a set-off of Rs. 27,433 during the year 1980-81 on his *bardana* purchases of Rs. 9,61,452 which were used for packing of oil extractions valuing Rs. 2,55,66,793 exported out of India. It has been judicially* held that in the absence of any specific or implied contract for sale of packing material as such, the set-off on *bardana* purchases is inadmissible.

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* In the case of Messrs Faiz and Company (S.A. No. 1285 of 1977 dated 25th April 1980) decided by the Maharashtra Sales Tax Tribunal.

On this being pointed out in audit (July 1985) the department revised the assessment order (February 1986) and raised an additional demand of Rs. 27,433. Report on recovery is awaited (February 1987).

(*xx*) A manufacturer of steel wire ropes and chemicals was allowed full set-off of tax amounting to Rs. 50,038, which formed part of the purchase price of wire rods amounting to Rs. 62,84,862 (manufactured out of iron and steel) while calculating the tax payable by him on the sales of steel wire ropes during the year 1975-76, without ascertaining the profit margin of the vendor of wire rods. The price of wire rods was required to be compared with price of similar goods sold by manufacturers, producers and importers and the set-off computed was to be reduced. This was, however, not done. Further, purchase tax was levied at 5 per cent instead of at 8 per cent on account of contravention of the declarations furnished by him for purchases of wooden reels valuing Rs. 1,09,285 by paying the tax at reduced rate of 3 per cent.

On these mistakes being pointed out in audit (December 1982), the department verified the records of the assessee and revised the assessment by raising additional demand of Rs. 49,468 (including purchase tax of Rs. 3,279 and additional tax of Rs. 2,800). Report on recovery is awaited (February 1987).

(*xxi*) In Bombay, a manufacturer in carbon black and chemicals was allowed to set-off from the tax payable by him on sale of certain manufactured goods, a sum of Rs. 55,176 in respect of tax paid by him on purchase of a computer valuing Rs. 4,13,820 during the year 1980-81. This was irregular as such set-off was admissible only in respect of tax paid on raw material, used in the manufacture of taxable final products and not in respect of tax paid on purchase of computer which was used for maintaining the firm's accounts.

On the irregularity being pointed out in audit (August 1985), the department recovered Rs. 58,487 (inclusive of additional tax of Rs. 3,311) from the dealer.

Government to whom the case was reported in July 1986 confirmed (January 1987) the recovery.

The above cases were reported to Government between May 1986 and October 1986; their reply is awaited (February 1987) save where otherwise stated.

(*xxii*) Under the Bombay Sales Tax Act, 1959, and rules made thereunder, a registered manufacturer who owns not more than two bullock

ghanies and who is certified as such by the Maharashtra State Khadi and Village Industries Board, is entitled to set-off of taxes paid by him on purchases of specified oil seeds which are used by him, within the State, in the manufacture of oil. Further as per the provisions of Bombay Sales Tax Rules 1959, a registered dealer who owns not more than two power *ghanies* and who is certified as such by the Maharashtra State Khadi and Village Industries Board is entitled, with effect from 1st April 1979, to 50 per cent of set-off of taxes paid by him on purchase of specified oil seeds which are used by him, within the State, in the manufacture of oil.

As per the certificate issued by the Maharashtra State Khadi and Village Industries Board, a manufacturer in Khamgaon was having two power *ghanies*. He was, however, allowed (Rs. 13,720) full set-off of taxes on the purchases of specified oil seeds amounting to Rs. 3.43 lakhs made during the periods from October 1976 to 31st March 1979 and from 1st April 1979 to November 1980 although he was not entitled to any set-off on the purchases made till March 1979 and could claim such set-off at the rate of 50 per cent only from 1st April 1979 onwards. The irregular set-off granted during October 1976 to November 1980 resulted in tax being levied short by Rs. 13,720.

On the mistake being pointed out in audit (August 1983), department stated (June 1984) that the enquiry conducted (January 1984) by the department revealed that the manufacturer never had power *ghanies* and he ran only two bullock *ghanies*.

The reply of the department is not relevant to the point under consideration. In terms of the Bombay Sales Tax Act, 1959 and the rules made thereunder, the manufacturer should have been allowed set-off of taxes on purchases made after 1st April, 1979 at the rate of 50 per cent while he was not entitled to any set-off of taxes on purchases made before that date. As the orders allowing set-off of taxes at incorrect rates were passed between February 1982 and December 1982, no action is now possible, on account of the case having become time-barred.

The case was reported to Government in September 1986; their reply is awaited (February 1987).

2.3. Non-levy or short levy of tax

(*i*) In terms of a notification issued by the Government in October 1979 under the Bombay Sales Tax Act, 1959, sale or re-sale of duty-paid potable foreign liquor manufactured in India which had borne excise duty levied

under Government notification of July 1949 (as amended in October 1979) issued under the State Excise Act, are exempt from levy of sales tax. Any quantity of foreign liquor lying in stock on the date of issue of the notification, which had not borne excise duty as per this notification, was however, on its subsequent sales, liable to sales tax.

In the assessment of a reseller of liquor in Thane District, subsequent sale of foreign liquor lying in stock as on 11th October, 1979 i.e. the date of issue of the notification, and valued at Rs. 1,39,346 was not subjected to sales tax. Besides, additional tax of Rs. 780 collected in contravention of the provisions of the Act was not also forfeited. The mistakes resulted in tax amounting to Rs. 17,446 (including additional tax) not being realised.

On these omissions being pointed out in audit (July 1984), the department intimated (February 1986) that the assessment order was revised (January 1986) by raising an additional demand of Rs. 17,446. Report on recovery is awaited (February 1987).

(*ii*) Under the Bombay Sales Tax Act, 1959, business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any such transactions in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern.

In Sangli, a dealer engaged in the distribution of electrical energy, sold fixed assets for Rs. 21,399 and Rs. 34,821 during the years 1977-78 and 1980-81 which were not assessed to tax.

On this being pointed out in audit (March 1985), the department intimated (December 1985) that the assessments were revised by raising additional demands aggregating Rs. 16,512 which was paid by the dealer in October 1985.

(*iii*) In the assessment records for the calendar year 1977 relating to a manufacturer of dies, structural fabrications and transformer parts, the nature of commodities sold and taxed at various rates was not available. However, as per statement of sales filed by the dealer, it was seen that on sales of goods valuing Rs. 3,66,530 tax of Rs. 28,861 at 8 per cent had been collected by him. Further, the dealer had not disclosed any sales attracting tax at 4 per cent. Inspite of this, sales of Rs. 3,66,530 were assessed to tax at 4 per cent instead of at 8 per cent. The mistake resulted in short levy of tax amounting to Rs. 14,661.

On this being pointed out in audit (June 1984), the department revised the assessment order (December 1985) by raising an additional demand of Rs. 15,541 (including additional tax). Report on recovery is awaited (February 1987).

(*iv*) Under the Bombay Sales Tax Act, 1959, if a dealer purchases goods from sources other than dealers registered in the State, the resales of such goods are taxed in the hands of the reselling dealer. When such resales are not identified, the sale of taxable goods in the gross turnover of sales is determined in the ratio of purchases from other than registered dealers to total purchases.

In the assessment for the years 1980-81 and 1981-82 of an importer and reseller in cloth and silk sarees who was unable to identify the sales of goods liable to tax, the turnover of sales liable to tax was determined by the above mentioned method. However, during 1982-83 the turnover of sales liable to tax was determined by a different method with reference to the books of accounts of the dealer. While doing so, the opening stock of taxable purchases of Rs. 3,75,227 was excluded from the taxable sales which resulted in non-levy of tax on sales corresponding to purchases of Rs. 3,75,227 included in the opening stock.

On this being pointed out in audit (April 1985), the department intimated (May 1986) that the assessment order had since been revised (March 1986) by raising an additional demand of Rs. 57,978. Report on recovery of additional demand raised and penal action is awaited (February 1987).

(*v*) In the assessment for the years 1976-77 and 1977-78, the taxable turnover of sales of an importer-*cum*-reseller in millstores in Kolhapur district, was determined by addition of gross profit at 25 per cent to the purchases of Rs. 1,34,403 (1976-77) and Rs. 2,67,400 (1977-78) made by him from outside the State of Maharashtra. The *adhoc* gross profit of 25 per cent was far less than the rate of profit emerging from his trading accounts for these years. This led to determination of lower value of turnover.

On this being pointed out in audit (July 1984) the department redetermined the sales by adding gross profit of 47 per cent in 1976-77 and 33 per cent in 1977-78 and revised (June 1985) the assessment by raising additional demand for Rs. 14,32 7 (including penalty of Rs. 8,700). Report on recovery is awaited (February 1987).

(*vi*) As per departmental instructions issued in April 1968 to all assessing officers individual transactions for Rs. 10,000 and above should be cross checked with reference to assessee's records.

At Bombay, a manufacturer of chemicals purchased machinery valuing Rs. 2,18,619 from another registered dealer who initially charged sales tax at the concessional rate of 3 per cent subject to assessee (purchaser) furnishing the prescribed declaration (Form 15). As the assessee (purchaser) did not furnish the declaration, the selling dealer reportedly recovered the tax at the differential rate of 5 per cent (8 per cent *minus* 3 per cent) from the assessee by issue of a debit note for Rs. 10,942. On this basis, the assessing authority allowed a set-off of Rs. 11,138 to the assessee (purchaser) while completing his assessment for the calendar year 1979. It was suggested in audit (June 1983) that the assessment of the selling dealer should be cross checked as per departmental instructions to verify whether on the above sale of machinery tax at full rate of 8 per cent had been levied.

After verification the department found that the sale had been assessed at the concessional rate of 3 per cent only and revised (January 1986) the assessment of the selling dealer by raising an additional demand of Rs. 11,637 which was also recovered (March 1986).

(*vii*) In assessing a manufacturer and reseller of iron and steel at Bombay for the year 1977-78, the sales of manufactured goods was determined by the assessing authority at Rs. 6,90,024 and a set-off of Rs. 89,948 was allowed. It was seen in audit that this was not commensurate with the purchases of Rs. 25,71,495 reckoned as consumed in the manufacture of goods. In the absence of manufacturing account, it was suggested (June 1982) to the department to verify whether the value of sales of manufactured goods and set-off allowed in respect of taxes paid on raw materials purchased (Rs. 2 5,71,495) had been correctly worked out.

On verification, the department stated (May 1986) that (*i*) taxable sales correctly worked out to Rs. 28,39,559 as against Rs. 6,90,024 considered by the assessing officer, (*ii*) set-off of Rs. 3,495 allowed on machinery purchased from outside Maharashtra State was inadmissible, and (*iii*) purchase tax of Rs. 1,882 leviable on plant and machinery valued at Rs. 37,642 purchased from unregistered dealers had not been levied. These mistakes were rectified (October 1985) by the department by raising an additional demand of Rs. 96,363 (including penalty of Rs. 5,000). Report on recovery is awaited (February 1987).

(*viii*) Inter-State sales and intra-State sales are required to be assessed to tax separately under the Central Sales Tax Act, 1956 and the State Sales Tax Act respectively.

In assessing a dealer in Khamgaon (November 1981 and June 1982) under the Bombay Sales Tax Act, 1959, his inter-State sales amounting to Rs. 2.08 lakhs relating to the period 1974-75 to 1977-78 were excluded from his total taxable turnover by the assessing authority for being assessed separately under the Central Sales Tax Act, 1956. However, these inter-State sales were omitted to be assessed by the assessing authority while making assessment under the Central Sales Tax Act.

On the omission being pointed out in audit (December 1984), the department raised (June 1985) an additional demand of Rs. 20,780. Report on recovery is awaited (February 1987).

Government to whom the case was reported in May 1986, accepted (November 1986) the omission.

The above cases were reported to Government between August 1986 and October 1986; their replies are awaited (February 1987) save as indicated above.

2.4 Application of incorrect rates of tax

(*i*) As per Entry 20 of Schedule E of the Bombay Sales Tax Act, 1959, on sales of stainless steel articles, tax is leviable at 11 per cent (8 per cent as sales tax and 3 per cent as general sales tax).

In Bombay, on sales of Rs. 17.09 lakhs made by a dealer during 1976-77 to 1978-79, tax was levied at the rate of 8 per cent, instead of at the correct rate of 11 per cent. The mistake resulted in tax being levied short by Rs. 51,263.

On this being pointed out in audit in July 1981, the department revised (January 1986) the assessment orders by raising an additional demand of Rs. 1,02,526 including penalty of Rs. 51,263. Report on recovery is awaited (February 1987).

(*ii*) Under the Bombay Sales Tax Act, 1959, the rate of tax leviable on any commodity is determined with reference to the entry in the schedule applicable to that commodity. In respect of commodities which are not classified under any of the entries in the schedule, tax is leviable at rate indicated against the residual entry.

In the assessments of a manufacturer of chemicals and drugs, sales tax at 3 per cent was levied on his sales of chemicals valuing Rs. 2,69,734 (1975-76) and Rs. 4,32,907 (1976-77) as applicable to medicines described as patent or proprietory or pharmacopical medicinal formulations or preparations made up ready for use, internally or

externally, for the diagnosis, treatment, mitigation or prevention of disease in human being or animal. As the goods sold fell into the category of chemicals, these were classifiable under the residual entry and tax was leviable at 8 per cent.

On this being pointed out in audit (February 1984), the department admitted (March 1986) the short levy of tax of Rs. 37,867 but stated that rectification of assessment was barred by limitation. The assessment orders for the periods 1975-76 and 1976-77 were open for rectification till 1st July 1984 and 1st July 1985 respectively. Had the department taken prompt action as soon as the omission was brought to their notice by audit in February 1984, the assessments could have been rectified and loss of revenue amounting to Rs. 37,867 avoided.

(*iii*) Under the Bombay Sales Tax Act, 1959, the rate of tax applicable to sale of electric motors is 10 per cent, while that in respect of sale of residuary goods (which are not specified in any schedule to the Act) is 8 per cent.

On sale of electric motors made by a dealer of Buldhana district during the year 1981-82, tax was incorrectly levied at 8 per cent instead of at 10 per cent, resulting in tax being levied short by Rs. 17,995 (including additional tax).

On the mistake being pointed out in audit (June 1985), the department revised the assessment (June 1986) and raised an additional demand for Rs. 17,995. Report on recovery is awaited (February 1987).

(*iv*) Under the provisions of Bombay Sales Tax Act, 1959, sales or purchases of agricultural machinery and implements (other than tractors, oil engines and electric motors) and component parts and accessories thereof are taxable at a concessional rate of 2 per cent.

In the assessments for the year 1979-80 and 1980-81 of a manufacturer of diesel oil engines at Sangli, sales of Rs. 85,597 (1979-80) and Rs. 30,000 (1980-81) of crank shafts of oil engines were incorrectly assessed to tax at the concessional rate of 2 per cent applicable to agricultural machinery instead of at 8 per cent.

On the mistake being pointed out in audit (March 1985), the department revised the assessment (July 1985) raising an additional demand of Rs. 16,145. Report on recovery is awaited (February 1987).

(*v*) Under the Bombay Sales Tax Act, 1959, the rate of tax applicable on the sale of electric motors is 10 per cent while on the sales of agricultural implements it is 2 per cent.

On the sale of electric motors valuing Rs. 1,86,811 made by a dealer in Khamgaon during the year 1980-81, tax was incorrectly levied at 2 per cent instead of 10 per cent resulting in tax being levied short by Rs. 16,065 including additional tax.

On the mistake being pointed out in audit (October 1985), the department recovered (September 1986) the short levy.

Government to whom the case was reported in September 1986, accepted (January 1987) the omission.

(*vi*) As per entry 7-A of Schedule E to the Bombay Sales Tax Act, 1959, on sales of incandescent lanterns and lamps including component parts and accessories thereof, sales tax was leviable at 6 per cent and general sales tax at 3 per cent upto 30th June 1981.

Sales of tungsten filaments amounting to Rs. 12,08,259 made by a Bombay manufacturer during 1980-81 were taxed at 8 per cent under entry 22 of Schedule E as a residuary item. Tungsten filament being a component of incandescent lamp, sales tax at 6 per cent and general sales tax at 3 per cent was leviable on these sales. The mistake resulted in tax being levied short by Rs. 12,808.

On this being pointed out in audit (November 1984), the department revised the assessment order (July 1986) by raising additional demand for Rs. 12,808 including additional tax.

Government to whom the case was reported in August 1986, confirmed (January 1987) the full recovery.

(*vii*) As per entry 20 of Schedule 'C' to the Bombay Sales Tax Act, 1959, on sales of electrical goods, sales tax is leviable at 10 per cent. Under Entry 22 of Schedule E as it existed upto 30th June 1981, on sales of machinery and component, parts and accessories thereof and dyes and chemicals, sales tax at 5 per cent and general sales tax at 3 per cent was leviable. However, in terms of notification issued by Government in April 1964, under the Bombay Sales Tax Act, 1959, the sale of these goods were exempted from levy of general sales tax, when made by a registered dealer to another registered dealer manufacturing textile fabrics etc., subject to the prescribed certificate being furnished by the purchasing dealer.

In the assessment for the year 1980 of a manufacturer of electrical goods at Thane, on the sales of electrical goods, valuing Rs. 2,00,332 sales

tax at 10 per cent was leviable under entry 20 of Schedule C, but was levied at 5 per cent on the ground that the sales were covered by notification issued in April 1964.

On the mistake being pointed out in audit (May 1985), the department revised (October 1985) the assessment order by raising an additional demand for Rs. 11,148 (including additional tax).

Government to whom the case was reported in August 1986 confirmed (January 1987) the full recovery.

(*viii*) The rate of tax in respect of goods covered by entry 102 of Schedule C appended to the Bombay Sales Tax Act, 1959, was revised from 8 per cent to 10 per cent from 1st December 1982.

In the assessment for the calendar year 1984 of an unregistered dealer at Bombay, the sales of Rs. 3,00,000 and purchases of Rs. 2,25,000 of goods covered by entry 102 of Schedule C were taxed at 8 per cent instead of 10 per cent.

On this being pointed out in audit (November 1985), the department admitted (February 1986), the short levy of tax of Rs. 10,500 but intimated that revision was not feasible as the dealer was not available on disclosed address.

The above cases were reported to Government between July 1986 and October 1986; their replies are awaited (February 1987) save as indicated above.

2.5. Non-levy of purchase tax

(*i*) Under the Bombay Sales Tax Act, 1959, a registered dealer purchasing raw materials required for manufacture of taxable goods is required to pay sales tax at 3 per cent only (upto 30th June 1981) provided he furnishes a declaration that the goods would be used by him within the State in the manufacture of goods, sale of which is taxable. If the manufactured goods are despatched outside the State otherwise than by way of sale, it amounts to breach of the declaration and attracts levy of purchase tax. Such purchase tax is leviable in proportion to the purchase of raw material used in the manufacture of goods despatched outside the State otherwise than by way of sale.

(*a*) The gross turnover of sales of a manufacturer of concrete mixers and other construction machinery during the year 1980-81 was Rs. 32,42,640 which comprised sales of taxable goods of Rs. 22,90,164 and job work receipts of Rs. 9,52,476 for services rendered. The dealer

claimed that he had purchased goods valuing Rs. 28,21,227 which included purchases of Rs. 13,94,344 made on payment of tax at concessional rate. As the sales of Rs. 22,90,164 were not commensurate with the purchases of Rs. 28,21,227, it was pointed out in audit (March 1985) that the department should verify whether part of the purchases of raw materials at concessional rate of tax were consumed in his job work. On verification, the department stated (January 1986) that 30 per cent of purchases made at concessional rate of tax were *prima-facie* used in the job work and accordingly revised the assessment order (October 1985) by raising an additional demand of Rs. 60,290.

Government to whom the case was reported in September 1986, stated (January 1987) that the dealer had made part payment of Rs. 10,000 and had gone in appeal.

(*b*) In Akola, a manufacturer of cotton yarn purchased during the period from 1st July 1979 to 30th June 1980, raw materials valuing Rs. 173.13 lakhs from registered dealers. Purchases valuing Rs. 170.56 lakhs (98.52 per cent) were made on payment of tax at 3 per cent only and were supported by the prescribed declarations. Of these purchases (Rs. 170.56 lakhs) goods valued at Rs. 24.34 lakhs were transferred out-side the State otherwise than by way of sale. On the goods transferred out of the State, purchase tax amounting to Rs. 28,374 was leviable but was not levied.

On this being pointed out in audit (November 1984), the department accepted the omission and raised (March 1986) a demand for Rs.30,607 (including set-off allowed in excess). Report on recovery is awaited (February 1987).

(*c*) At Bombay, the gross turnover of sales of Rs. 27,15,88,856 of a manufacturer of plastic powder for the year 1980-81 included transfers of Rs. 8,26,32,290 to his branches outside the State. It was noticed in audit (September 1984) that no purchase tax was levied on purchases of Rs. 6,90,72,158 made by the dealer at concessional rate which were used in the manufacture of goods valuing Rs. 8,26,32,290 transferred to branches.

On this being pointed out in audit (September 1984), the department, after verification, admitted that purchase tax of Rs. 2,21,180 had remained to be levied and raised (July 1986) an additional demand of Rs. 1,90, 245, (after adjusting the set-off of Rs. 41,704 short allowed earlier) including additional tax of Rs. 10,769. Report on recovery is awaited (February 1987).

The case was reported to Government in October 1986; their reply is awaited (February 1987).

(*ii*) Under the provisions of Bombay Sales Tax Act, 1959 and rules made thereunder, a registered dealer holding a recognition certificate can purchase raw materials at a concessional rate of 4 per cent, on furnishing a declaration that these goods would be used by him within the State in the manufacture of taxable goods. The Act also provides for levy of penalty not exceeding one and one half times of the tax, assessed if the dealer conceals particulars of any transactions liable to tax.

In Nagpur, a dealer holding a recognition certificate purchased on a concessional rate of tax, goods valuing Rs. 13.76 lakhs by furnishing prescribed declarations as per assessment records of both selling and purchasing dealers, cross verified in audit. However in his returns, he accounted for purchases valuing Rs. 7.35 lakhs only. The concealment of remaining purchases valuing Rs.6.41 lakhs which remained undetected by the department, resulted in tax being levied short by Rs. 27,181.

On this being pointed out in audit (June 1985), the department raised (March 1986) an additional demand and recovered (May 1986) Rs.67,781 (including penalty of Rs. 40,600) from the dealer.

(*iii*) Under the Bombay Sales Tax Act, 1959, a dealer is liable to pay purchase tax whenever he purchases goods from an un-registered dealer unless the goods so purchased are resold by him.

A dealer engaged in building of tunnels and dams in Bombay purchased in 1978-79 some machinery worth Rs. 7,56,687 from a State Government department which was not registered under the Bombay SalesTax Act. Purchase tax was not levied, although the said goods were not resold by the dealer.

On this being pointed out in audit (May 1982), the department revised (January 1986) the assessment order and raised a demand for Rs. 60,105 including additional tax of Rs. 2,270 and penalty of Rs. 20,000.

Government to whom the case was reported in June 1986, stated (November 1986) that the dealer had made part payment of Rs. 10,000 and had gone in appeal.

(*iv*) Under the provisions of Bombay Sales Tax Act, 1959, where a registered dealer holding recognition under Section 25 of the Act purchases any goods covered by Part II of Schedule ' C ' of the Act, by furnishing a declaration in Form N 15 (Form 15 upto 30th June 1981) declaring

inter alia that the goods purchased will be used by him within the State of Maharashtra in the manufacture of other taxable goods for sale or in the packing of goods so manufactured and that such manufactured goods will, in fact, be sold by him, then he is liable to pay purchase tax on such purchases at the rate of 4 per cent. If the goods so purchased are used in the manufacture of goods the sale of which is not taxable purchase tax is payable on the proportionate amount of purchases used in the manufacture of goods the sale of which is taxable.

(*a*) In Bombay, on purchases of dyes and chemicals valuing Rs. 3,89,001 made by a manufacturer (holding recognition) during 1981-82 by furnishing declaration in Form N 15, tax amounting to Rs. 16,494 (including additional tax) was leviable, but was not levied by the assessing authority, although the manufacturer, in his returns, had shown his liability to pay the purchase tax.

On this omission being pointed out in audit (May 1985) the department revised (July 1985) the assessment orders and raised an additional demand for Rs. 16,494 which was recovered.

Government to whom the case was reported in July 1986 stated, (January 1987) that the entire amount had since been recovered.

(*b*) In Bombay, in the case of a manufacturer of medicines, while deciding the appeal filed by the assessee against purchase tax levied in his assessment for the year 1976, the proportionate purchases used in manufacture of goods, the sale of which was not taxable, was incorrectly computed at 28.34 per cent instead of at 40 per cent due to non-observance of the departmental instructions.

On the mistake being pointed out in audit (May 1983), the department intimated (November 1985) that the appellate order was revised (October 1985) by raising an additional demand of Rs. 14,449. Report on recovery is awaited (February 1987).

(*v*) Under the Bombay Sales Tax Act, 1959, where a dealer, who is liable to pay tax, purchases any goods from a person or a Government who or which is not a registered dealer, there shall be levied a purchase tax on the turnover of such purchases. The Maharashtra Sales Tax Tribunal* have interpreted the supply of materials like iron and steel, cement etc., by Government departments to contractors as sale of material by Government departments to contractors. As most of the Government

*In the case of Messrs. Eagle Cement pipes and contract works (Appeal No. 69—70/1980) decided on 9th September 1981.

departments, are not registered under the Bombay Sales Tax Act, 1959, such purchases attract purchase tax. However, as per departmental circular (March 1984), if the contractor furnishes at the time of assessment, a certificate from the concerned Government department to, the effect that the materials supplied by Government to the contractor were actually purchased by Government from registered dealers in Maharashtra, no purchase tax is leviable on such materials supplied to the contractor, otherwise, purchase tax is leviable.

At Kolhapur, a works contractor received during 1979-80 an amount of Rs. 1,94,03,481 from various public works divisions on account of works executed by him for these divisions. Since controlled items like iron and steel and cement are generally supplied by Government departments, it was pointed out in audit (January 1984) that supplies so made were required to be verified and subjected to purchase tax if the materials supplied to the contractor were not purchases from registered dealers in Maharashtra and had not borne the local sales tax in Maharashtra.

The department intimated (January 1986) that, on verification, it was found that the contractor could not produce the requisite certificate from Government departments in respect of materials valued at Rs. 2,08,552 received by him and accordingly, the assessment was revised by raising an additional demand of Rs. 10,274.

The cases were reported to Government between June 1986 and October 1986; their reply is awaited (February 1987) save as otherwise stated.

2.6. Non-levy or short levy of additional tax

Under the provisions of Bombay Sales Tax Act, 1959, with effect from 1st April 1975, a registered dealer whose turnover either of all sales or of all purchases exceeds ten lakh rupees in a year is liable to pay additional tax calculated at the rate of 12 per cent (6 per cent prior to 1st December 1982) of the sales tax payable by him for that year. According to the departmental instructions issued in March 1983, the additional tax upto March 1983 is to be calculated on the net amount of tax payable after deducting the amount of set-off admissible and thereafter on the gross amount of tax payable. For this purpose, the amount of tax payable as well as the set off admissible on vanaspati, vegetable and non-essential oils etc., is not to be taken into consideration while the additional tax is to be calculated on the net amount of tax payable on other commodities.

(*i*) In the assessment of a dealer who is a manufacturer in oil and vanaspati and reseller in oil cakes and chemicals, while calculating the additional tax, the set-off admissible on vegetable non-essential oil and vanaspati etc., was wrongly taken into consideration. This resulted in additional tax being incorrectly computed on the basis of a tax liability of Rs. 4,82,307 instead of Rs. 7,83,298 in the calendar year 1980 and Rs. 1,76,552 instead of Rs. 3,94,903 in the calendar year 1981.

On the mistakes being pointed out in Audit (February 1985), the department stated that assessments had been revised (November 1985) by raising an additional demand of Rs. 31,161 (Rs. 18,060 for calendar year 1980 and Rs. 13,101 for 1981). Report on recovery is awaited (February 1987).

(*ii*) In the assessment for the year 1983, a manufacturer of paper at Aurangabad was assessed to additional tax on the net amount of tax payable for the period beyond 31st March 1983. The mistake resulted in under-assessment of tax by Rs. 28,882.

On the mistake being pointed out (July 1985) in audit, the department revised the assessment order (July 1985) by raising an additional demand of Rs. 28,882 which was recovered in August 1985.

Government to whom the case was reported in October 1985 confirmed (April 1986) the facts.

(*iii*) In the assessment for the year 1982-83, of a dealer manufacturing fluorescent fittings and transformers, the gross turnover of sales and purchases exceeded ten lakh rupees and the dealer had, in fact, deposited an additional tax of Rs. 26,035 alongwith his returns. However, no additional tax was levied in the assessment order.

On this omission being pointed out in audit (July 1985), the department revised the assessment order (June 1986) by raising an additional demand of Rs. 27,035. Report on recovery is awaited (February 1987).

(*iv*) In the assessment for the period 1st July 1982 to 30th June 1983 of a manufacturer of pressure cookers in Bombay, additional tax was calculated at uniform rate of 6 per cent for the entire period. This mistake resulted in short levy of additional tax of Rs. 20,616 for the period from 1st December 1982 to 30th June 1983.

On this mistake being pointed out in audit (September 1985), the department rectified (September 1985), the assessment order by raising an additional demand of Rs. 20,616 which was paid by the dealer in October 1985.

Government to whom the case was reported in September 1986, confirmed (January 1987) the recovery.

(*v*) In the assessment of a manufacturer in gold jewellery at Bombay for the period 11th November 1982 to 4th November 1983, additional tax was calculated on the net amount of tax payable even after 31st March 1983 instead of on the gross tax. The mistake resulted in short assessment of additional tax by Rs. 18,735.

On the mistake being pointed out in audit (November 1985), the department revised the assessment order (April 1986) by raising an additional demand of Rs. 18,735.

Government to whom the case was reported in August 1986 stated (January 1987) that the amount had been recovered in June 1986.

(*vi*) In the assessment for the years 1975-76 and 1977-78 of a reseller in Bombay, additional tax of Rs. 11,379 due at 6 per cent of the tax of Rs. 1,89,647 was not levied.

On the mistake being pointed out in audit (July 1983), the department revised the assessments (April 1986) by raising additional demand for Rs. 11,379.

Government to whom the case was reported in August 1986 stated (January 1987) that the dealer had made part payment of Rs. 2,348 and had gone in appeal.

(*vii*) In assessing a dealer in Chandrapur, additional tax for the period from 1st December 1982 to 31st March 1983 was levied at the rate of 8 per cent instead of at 12 per cent, resulting in short levy of Rs. 11,506.

On the mistake being pointed out in audit (November 1985), the department recovered (June 1986) the entire amount.

Government to whom the case was reported in May 1986, accepted (January 1987) the mistake.

2.7 Mistakes in computation of tax

Under the Bombay Sales Tax Act, 1959, and the rules made thereunder, dealers are required to file their returns periodically and pay tax on the basis of these returns. On finalisation of the assessment, demand for sales tax due is raised, after giving credit for the tax already paid.

In the case of 3 dealers (one each of Amravati, Aurangabad, and Thane) tax was realised short either by wrongly computing the net tax due or

by overstating the refund due or by giving excess credit of tax deposited with returns. These mistakes resulted in short realisation of tax aggregating Rs. 30,000 during different periods falling between November 1977 and November 1982.

On the mistakes being pointed out in audit during May 1985, July 1985 and January 1986, the department accepted the objections (September 1985, February 1986 and April 1986) and raised additional demands of which Rs. 20,000 was recovered (August and November 1985). Report on recovery of balance amount is awaited (February 1987).

Government to whom the cases were reported during May 1986 and August 1986, confirmed (November 1986 and January 1987) the facts in two cases relating to Amravati and Thane districts.

2.8. Irregular grant of concession from tax

(*i*) As per Government notification issued in April 1985 under the Bombay Sales Tax Act, 1959, sales of any goods made by a registered dealer to the Maharashtra Water Supply and Sewerage Board, Bombay, for their official use were exempted from levy of sales tax to the extent such tax exceeded 4 per cent provided the sales were supported by a declaration in the prescribed form from an authorised officer of the Board. The concession was admissible in respect of sales made upto 31st March 1982 only.

At Bhandara, a dealer had sold asbestos cement pipes valuing Rs. 20 lakhs to the Board during the period April 1982 to December 1982. As the sales were made after the stipulated date of 31st March 1982, no concession in tax was admissible and the sales were taxable at the rate of 8 per cent. But the assessing authority incorrectly levied tax at the concessional rate of 4 per cent on it. The irregular grant of concession resulted in tax being realised short by Rs. 75,879.

On this being pointed out in audit (November 1985), the department raised (March 1986) an additional demand of Rs. 75,879, out of which the dealer had already paid Rs. 40,000 in December 1985. Report on recovery of the balance amount is awaited (February 1987).

(*ii*) As per Government notification issued on 25th June 1981 under Section 41 of the Bombay Sales Tax Act, 1959, where any sales of machinery and component parts or accessories thereof or of dyes and chemicals are made by a registered dealer to another registered dealer, the selling dealer is exempted from payment of sales tax to the extent to which this

tax exceeds 6 per cent of the sale value of the goods. For obtaining this concession, the selling dealer is required to furnish to the assessing authority a declaration in Form 'TT' from the purchasing dealer, declaring *inter alia* that the goods would be used by the purchasing dealer within the State of Maharashtra in the process of bleaching, dyeing or printing of fabrics etc.

A manufacturer-*cum*-reseller of chemicals purchased dyes and chemicals valuing Rs. 9,03,120 (purchase price: Rs. 8,21,018 and tax Rs. 82,102) during the calendar year 1983. He sold these goods to a textile mill for Rs. 14,06,450 *plus* sales tax at the rate of 6 per cent, after obtaining a declaration in Form 'TT' from the mill. As the rate of sales tax charged on these sales was only 6 per cent and not more, no exemption from payment of tax was admissible to the selling dealer. However, the assessing authority allowed exemption from sales tax to the extent of Rs. 32,841.

On the mistake being pointed out in audit, the department stated that the assessment order had since been revised and an additional demand for Rs. 32,841 raised.

Government to whom the case was reported in July 1986, confirmed (February 1987) the recovery.

(*iii*) Under the provisions of Central Sales Tax Act, 1956, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of *those goods* out of the territory of India shall also be deemed to be in the course of such export if such last sale or purchase took place after and for the purpose of complying with the agreement or order for or in relation to such export.

But the goods exported should be the same goods as those purchased in the preceding sale or purchase. In support of such a claim, a dealer is required to furnish, to the assessing authority, a certificate in the prescribed form signed by the exporter and evidence of export of such goods.

(*a*) In Nagpur and Khamgaon, five dealers sold raw hides and skins to dealers in Tamilnadu, and claimed exemption on the strength of certificates obtained from the dealers in Tamilnadu as exporters but the goods sold by the dealers in Maharashtra were raw hides and skins, whereas the goods exported by the dealers in Tamilnadu were dressed hides and skins (i.e. leather). The goods were processed in Tamilnadu before they were exported. The Supreme court had held* that raw hides

*Haji Abdul Shukoor and Co. *versus* State of Madras (1964) 15 STC 719 (SC).

and skins and dressed hides and skins (i.e. leather) were commercially different commodities even if they were grouped together under one entry for purposes of taxation. In the result, inter-State sales tax, amounting to Rs. 3.04 lakhs was not levied on the sales made by the five dealers during the years 1980 to 1984.

On this being pointed out in audit between January 1985 and November 1985, the Assessing Officer, Khamgaon stated (October 1985) that raw hides and skins and dressed hides and skins fell under the same entry and were, therefore, to be treated as same goods. He, further stated that production of prescribed certificate signed by the exporter was the conclusive proof for claiming the exemption. The reply was not correct as according to the Supreme Court decision the raw hides and skins were different from leather. The Assessing Officer, Nagpur, however, accepted (January 1985) the audit objection in two cases. Rectificatory action taken by him is awaited. Reply in the remaining two cases is also awaited (February 1987).

(*b*) The assessments for the years 1978-79 and 1979-80 of a dealer engaged in slaughtering of cattles and exporting the meat, were revised by the department as the local cash sales of bones, hoofs, hides and skins and mutton tallow had remained to be taxed owing to the dealer not revealing these cash sales in his taxable turnover. While doing so, the assessment for the year 1980-81 was, however, omitted to be revised.

On the omission being pointed out in audit (December 1983), the department, after verification, found that cash sales of Rs. 2,79,090 for the year 1980-81 had remained to be taxed and revised (August 1985) the assessment by raising an additional demand of Rs. 34,645 (including penalty of Rs. 15,000). Report on recovery is awaited (February 1987).

Government to whom the matter was reported in September 1986; confirmed (January 1987) the omission.

(*iv*) The Central Sales Tax Act, 1956, provides that if sale of any goods is generally exempt from levy of tax under the State Sales Tax Law, inter-State sale of such goods is also exempt from levy of tax under the Central Sales Tax Act. Under the Bombay Sales Tax Act, 1959, sale of fertilisers is exempted from levy of tax. As clarified by the Commissioner of Sales Tax in March 1957 and again in July 1982, decomposed bones are used as fertilisers while crushed bones are used in the manufacture of gelatine and glue. Therefore, on intra-State sales of crushed bones, tax is leviable at the rate of 8 per cent under the Bombay Sales Tax Act, 1959

and on their inter-State sales, at 4 per cent, if supported by prescribed declaration and at 10 per cent if not supported by such declarations under the Central Sales Tax Act, 1956.

In Nagpur, on intra-State sales and inter-State sales of crushed bones valuing Rs. 9.24 lakhs and Rs. 9.12 lakhs made by a dealer during the period November 1978 to November 1980, tax amounting to Rs. 1.29 lakhs and Rs. 0.83 lakh respectively was leviable but was not levied, treating the goods as fertilisers, which was not correct.

On the mistake being pointed out in audit (February 1985) the department raised (August 1985 and October 1985) additional demands for Rs. 2.18 lakhs and Rs. 1.43 lakhs under the State Act and Central Act respectively including penalties. Report on recovery is awaited (February 1987).

(*v*) Under the provisions of Central Sales Tax Act, 1956, transactions of sales effected by transfer of documents of title to the goods while the goods are on the high seas (outside the customs frontier of India) are not taxable.

In Bombay, a sale of Rs. 3,37,155 of non-ferrous metal scrap made by a dealer during the year 1978-79 was not assessed to tax as it was deemed to have been made on the high seas. As the transfer of documents of title to the goods was effected only after the ship had taken berth at Bombay Port, it should have been treated as a local sale subject to tax.

On this being pointed out in audit (June 1983), the department, on investigation, found that the transaction was not a transaction which took place when the goods were on the high seas and was only a local sale liable to tax. The assessment was accordingly revised (October 1984) by raising an additional demand for Rs. 42,869 (including penalty of Rs. 25,000 and additional tax of Rs. 1,011). Report on recovery is awaited (February 1987).

The cases were reported to Government in July 1986 and October 1986; their reply is awaited (February 1987), save as stated above.

2.9. Incorrect grant of concessional rate of tax

(*i*) Under the Bombay Sales Tax Act, 1959, prior to 30th June 1981, a registered dealer was liable to pay tax at a concessional rate of 3 per cent in respect of his sales to a registered dealer holding a recognition certificate provided the sales were supported by declarations in the prescribed form

from the purchasing dealer, declaring *inter alia* that the goods purchased by him would be used in the manufacture of taxable goods which would be sold or used in the packing of manufactured goods.

In Bombay, a manufacturer of steel wire, ropes sold during the year 1977–78, goods valuing Rs. 2,26,622 to a dealer at the concessional rate of tax of 3 per cent. Subsequently, however, the purchaser who did not hold a valid recognition certificate, paid to the seller, a sum of Rs. 11,331 on account of the difference between the full rate of tax (8 per cent) and the concessional rate (3 per cent). Although the seller had collected tax at 8 per cent and he was also liable to pay, to Government, tax at the same rate, the assessing officer levied tax at the lower rate of three per cent, resulting in tax being realised short by Rs. 11,331.

On this being pointed out in audit (May 1984), the department revised the assessment (December 1984) and raised an additional demand for Rs. 12,011, which was recovered.

Government to whom the case was reported, confirmed (February 1987) the recovery.

(*ii*) In terms of Government notification issued in May 1973 under section 41 of the Bombay Sales Tax Act, 1959, sales tax is leviable at a concessional rate of 6 per cent on sales of scientific instruments made by a registered dealer to the educational institutions, if such institutions furnish to the dealer a declaration in the prescribed form.

In Thane district on the sales of school benches valuing Rs. 1,28,693 (1981-82) and Rs. 1,01,587 (1982-83) made by a manufacturer of furniture to educational institutions, tax was levied at the concessional rate based on the declaration in form A. P. issued by the educational institutions. Since the concessional rate of tax was applicable only to the sales of scientific instruments and not wooden furniture, the concessional rate of tax allowed against AP forms was incorrect.

On this being pointed out in audit (July 1985), the department revised the assessment orders (November 1985) and raised an additional demand for Rs. 29,922 (including penalty of Rs. 11,500) which was recovered.

Government to whom the case was reported in September 1986, confirmed (February 1987) the full recovery.

(*iii*) Under the provisions of Bombay Sales Tax Act, 1959, sales by a registered dealer to electrical undertakings, of goods capable of being used within the State in the generation or distribution of electrical energy are taxable at a concessional rate of 4 per cent.

In Kolhapur, on sales of furniture amounting to Rs. 2,07,869 made by a manufacturer to an electrical undertaking engaged in the distribution of electrical energy during the year 1978-79 to 1980-81, tax was levied at the concessional rate of 4 per cent. As furniture was not required for use in the generation or distribution of electricity, the sales attracted tax at 10 per cent. The mistake resulted in tax being levied short by Rs. 10,902.

On the mistake being pointed out in audit (May 1984), the department revised the assessment (August 1985) raising an additional demand of Rs. 21,910 (including penalty). Report on recovery is awaited (February 1987).

The above cases were reported to Government between July and September 1986; their reply is awaited (February 1987) save as indicated above.

2.10. Excess allowance in computing taxable turnover

Under the Bombay Sales Tax Act, 1959, the taxable turnover of a dealer is determined after deducting therefrom, the resale of goods purchased by him from a registered dealer, provided the goods are resold in the same form in which they are purchased and evidence is produced to show that the registration certificate of the original selling dealer was in force on the date of sale to the reseller. Sales of goods purchased from sources other than registered dealers are liable to be taxed in the hands of the reseller. The claim for resale is allowed either on identification of sales with purchases and in the absence of such identification, on the basis of a proportion which the total purchases bear to the purchases from the registered dealers. Where the claim is based on identification, it is allowed by the assessing officer after satisfying himself that the claim is objectively in order.

In Nagpur, a dealer whose purchases from registered dealers amounted to Rs. 18,00,102 was allowed, in the year 1981-82, a claim on account of resale of goods to the extent of Rs. 38,28,194. The accounts of the dealer disclosed an overall profit of 25 per cent only whereas in respect of transactions relating to the resales as allowed by the department, the profits were more than 100 per cent as resale value was Rs. 38,28,194 against purchase value of Rs. 18,00,102. This resulted in deduction of an exaggerated amount towards resales from the turnover.

On the irregularity being pointed out in audit (June 1985), the department, on re-examination of accounts of the dealer, reduced the claim

for resales by Rs. 6,54,323 and raised (May 1986) an additional demand of Rs. 28,498 (including additional tax). Report on recovery is awaited (February 1987).

The case was reported to Government in September 1986; their reply is awaited (February 1987).

2.11. Non-levy or short levy of penalty

(*i*) Under the Central Sales Tax Act, 1956, a registered dealer can purchase goods of the class specified in his certificate of registration at a concessional rate of tax, by furnishing a declaration in the prescribed form to the selling dealer. The goods purchased under such a declaration have to be resold or used in the manufacture or processing of goods for sale or in mining or in the generation/distribution of power or in packing of goods for sale or resale. If the dealer fails to utilise the goods purchased at the concessional rate of tax for any of the purposes mentioned above, he is liable to pay penalty for contravention of the recitals of declaration.

(*a*) In assessing a dealer in Nagpur who had purchased goods valuing Rs. 3,50,812 at the concessional rate of tax but had utilised them for purposes other than those mentioned above, no penalty was levied by the assessing officer. Penalty not exceeding Rs. 52,621 could be imposed in this case under the Act.

On this being pointed out in audit (February 1985), the department levied (August 1985) penalty amounting to Rs. 27,640. Report on recovery is awaited (February 1987).

The case was reported to Government in May 1986, their reply is awaited (February 1987).

(*b*) A dealer in Bombay had purchased goods on production of form 'C' but had utilised the goods in his job works during the assessment years 1974–75 and 1975–76. It was noticed in audit (August 1983) that while making assessments (March 1980 and June 1981) for the years 1974–75 and 1975–76 of the dealer, penalty for contravention of recitals of declaration in form 'C' was not levied.

On this being pointed out, the department levied (August 1985) penalty of Rs. 11,225 for the year 1975–76 and intimated (October 1985) that action to levy penalty for the year 1974–75 was barred by limitation.

In another case, action to levy penalty for the year 1980–81 having been initiated in February 1984, no follow up action was taken till the

date of audit (August 1984). On this being pointed out in audit (October 1984), the department levied (January 1986) a penalty of Rs. 20,000. Report on recovery in both the cases is awaited (February 1987).

The case was reported to Government in September 1986, their reply is awaited (February 1987).

(*ii*) The Bombay Sales Tax Act, 1959 provides that if a dealer does not pay tax due alongwith his returns by the prescribed date, penalty should be levied at the prescribed rate after affording the dealer an, opportunity of being heard. The amount of tax assessed or reassessed on the basis of the return is required to be paid before the date specified in the demand notice. On default, the assessing authority may impose penalty at the prescribed rate for the duration of delay.

Penalty is also leviable if a dealer conceals the particulars of any, transaction liable to tax or does not furnish any return. If the amount of tax paid by the dealer is found to be less than 80 per cent of amount of tax assessed, reassessed or found due on revision of assessment, he is deemed to have concealed the turnover or knowingly furnished inaccurate particulars of turnover liable to tax and penalty is leviable not exceeding one and one half times the amount of tax.

As per the Central Sales Tax Act, 1956, penalty is leviable as per the corresponding provisions of the respective State Act.

(*a*) At Bombay, Kolhapur, Pune and Thane is 34 cases action to levy penalty for late payments or penalty for concealment of turnover had been initiated between March 1980 and February 1985 but no, follow up action was taken by the department.

On this being pointed out in audit (between March 1982 and February 1986), the department raised additional demands for Rs. 9,50,362. Report on recovery is awaited (February 1987).

(*b*) In two cases of concealment of turnover, eventhough the tax paid for the assessment years 1976-77 and 1977-78 was less than 80 per cent of the tax assessed action to levy penalty was not considered.

On this being pointed out in audit (November 1984 and January 1985), the department levied penalty by raising an additional demand for Rs. 30,998. Report on recovery is awaited (February 1987).

(*c*) In Bombay and Kolhapur in 5 assessment cases where penalty for belated payment of tax was attracted it was either not levied or incorrectly levied.

On this being pointed out in audit (between August 1983 and March 1985) the department levied penalty raising additional demands for Rs. 1,05,427. Report on recovery is awaited (February 1987).

(*d*) In assessing (December 1984) two dealers in Yeotmal for the year 1981-82, penalty for non-submission of returns under the Bombay Sales Tax Act, 1959, was not levied but deferred. No action was taken subsequently also to levy penalty.

On the omission being pointed out in audit (July 1985), the department levied penalties amounting to Rs. 28,000 and Rs. 49,200 in September 1985 and October 1985 respectively. Report on recovery is awaited (February 1987).

(*e*) In the case of a dealer of Dhamangaon, proceedings for levy of penalty for non-payment of tax alongwith his returns for the period 22nd October 1979 to 7th November 1980 under the Central Sales Tax Act, 1956, were initiated but imposition of penalty was deferred. However, no action was taken subsequently to levy the penalty.

On the omission being pointed out in audit (January 1985), the department levied (March 1985) penalty amounting to Rs. 16,000. Report on recovery is awaited (February 1987).

The above cases were reported to Government between May 1986 and October 1986; their reply is awaited (February 1987).

CHAPTER III

STATE EXCISE

3.1. Results of Audit

Test check of records relating to State Excise, conducted in audit during the year 1985-86, revealed short levy of excise duty amounting to Rs. 8.68 lakhs in 77 cases, which broadly fall under the following categories.—

		Number of cases	Amount (In lakhs of rupees)
(*i*) Short recovery of licence fees and privilege fees	..	34	1.62
(*ii*) Non-levy of excise duty on excess loss of spirit	..	5	0.04
(*iii*) Short levy of supervision charges and escort charges	..	23	1.62
(*iv*) Other irregularities	..	15	5.40
		77	8.68

Some of the important cases are mentioned in the following paragraphs.

3.2. Non-reconciliation of departmental receipts

The Maharashtra Treasury Rules, 1968 require that after the end of a month, the head of office should obtain from the treasury a consolidated receipt for all remittances made during the month, which should be compared with the postings in his office books and discrepancies, if any, reconciled promptly. As per Government instructions issued in September

1980 in pursuance of recommendations made by the Public Accounts Committee on paragraph 72 of the Audit Report for the year 1973-74 on Revenue Receipts, all heads of offices are required to send to the head of the department concerned a quarterly return in regard to reconciliation of receipts by 15th of the month following the quarter under report. The heads of departments are to send to the administrative department of Government every six months, a certificate regarding completion of reconciliation work in their departments. In the Excise and Prohibition department, excise duties, licence fees, supervision and escort charges etc. are being credited directly into Government treasury by various licensees after getting the chalans countersigned by the concerned excise officer. As per departmental circular issued in August 1981, the district Superintendents of Prohibition and Excise are required to do monthly reconciliation of departmental receipts with the treasury figures and initiate prompt action for settlement of discrepancies :

A test check of records of the Superintendent of Prohibition and Excise, Nagpur, revealed the following irregularities.

(*i*) As per the Register of Debonding and copies of the chalan submitted by a licensee, an amount of Rs. 22,842 had been deposited by him on 17th September 1983 in the Reserve Bank of India, Nagpur, but according to treasury records Rs. 2,842 only had been credited to Government account. The department could not detect the short credit of Rs. 20,000 during reconciliation of figures of receipts with treasury records stated to have been completed upto February 1984.

On this being pointed out in audit (May 1984) the department stated (March 1985) that the short remittance of Rs. 20,000 had since been recovered from the licensee in June 1984.

(*ii*) In three similar instances, while the amounts credited to Goverment account as per treasury records totalled to Rs. 6,494.20, the credits afforded to the licensees by the department on the basis of chalans, aggregated to Rs. 1,16,494.20. The matter was reported to Government in November 1985. It was also suggested that desirability of conducting a detailed check of all remittances into Nagpur Treasury relating to this office over a number of years might be considered.

While confirming the short credits amounting to Rs. 1,10,000 Government stated (April 1986) that during departmental inspection conducted in December 1985, at the instance of audit, similar discrepancies in nine more remittances made between April 1980 and March 1984 involving

revenue loss of Rs. 2,06,000 were noticed which had since been recovered from the concerned licensees. It was also stated that the case had been handed over to police and their report was awaited (February 1987).

3.3. Irregular retention of excise duty by licensee

As per the provisions of Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, no duty shall be collected on medicinal preparations, containing alcohol, manufactured in India and supplied direct to Government hospitals or dispensaries or the Medical Stores Depots of the Central or State Governments.

A medicine manufacturing unit in Aurangabad whose final product (Elixir Choliphylline Forte) contained alcohol, supplied its product to a Government hospital in New Delhi (through the Director General of Supplies and Disposals, New Delhi) during March 1982 to November 1984. The supply rates charged included *inter alia* excise duty at the rate of Rs. 1.50 per bottle of 110 ml and the total duty thus, collected by the licensee in respect of the supplies made amounted to Rs. 1,91,700 which was irregular. The excise duty was retained by the licensee and was not deposited into Government treasury.

On this being pointed out in audit (December 1984), the department stated (June 1986) that the entire amount had since been recovered from the licensee.

The Government to whom the case was reported (May 1986) confirmed (July 1986) the recovery.

3.4. Non-recovery or short recovery of licence fee

Under the Bombay Foreign Liquor Rules, 1953, no licence shall be granted for a period beyond the 31st of March next following the date of commencement of the licence. On its expiry, a licence is required to be renewed. If a trade or import licence is not renewed on its expiry, the licensee shall forthwith surrender the entire stock of unsold foreign liquor to the Collector.

(*i*) A licensee (FL-I) in Pune city neither got the licence renewed after its expiry on 31st March 1985, nor surrendered the unsold stock of foreign liquor to the Collector.

On the omission being pointed out in audit (July 1985), Government stated (February 1986) that licence for the year 1985-86 had since been

renewed and renewal fee of Rs. 10,000 recovered from the licensee and credited to Government account in August 1985.

(*ii*) Under the Bombay Foreign Liquor Rules, 1953, the licence fee prescribed is for the entire year and part payment on proportionate basis is not permissible. As per the notification issued by Government in November 1981, fee payable for each licence under categories FL-I and FL-II is Rs. 10,000.

A licensee holding two licences, viz. FL I (whlole sale) and FL II (retail sale) in Sangli City paid only Rs. 7,500 as licence fee for the year 1982–83 on proportionate basis (as against Rs. 20,000 payable), on the ground the he had no transactions for part of the year. This resulted in short recovery of licence fees of Rs. 12,500.

On the omission being pointed out in audit (September 1985), the department recovered (May 1986) the entire amount of Rs. 12,500.

The matter was reported to Government (August 1986); their reply is awaited (February 1987).

(*iii*) Under the provisions of Maharashtra Country Liquor Rules, 1973, a fee is payable on grant of licence to sell country liquor in retail. The rate of fee payable is based on the population of the town or village in which the shop is located.

In Raigad district, is respect of one shop (located in Raigad) for selling country liquor in retail, licence fee was not worked out based on the population, as per 1981 census. The mistake resulted in short recovery of licence fee amounting to Rs. 2,000 for the period from 1981-82 to 1984–85

On the mistakes being pointed out in audit (March 1985), the department recovered (May 1985) the amount of Rs. 2,000 from the licensee. On a suggestion made by audit the department also reviewed other cases and recovered a further sum of Rs. 12,000 between April 1985 and October 1985 from six licensees.

The case was reported to Government (August 1986); their reply is awaited (February 1987).

3.5. Short realisation of transfer privileges fees

Under the Bombay Prohibition (Privilege Fees) Rules, 1954, for the privilege of transferring his licence to another person, a licensee is required to pay a fee equal to the fee prescribed for grant of the licence. The privilege fee payable for admission of a partner into or withdrawal of a partner

from the licensee's partnership business is fifty per cent of the fee payable for the grant of licence. However, on change of a proprietory concern into a partnership firm or *vice versa*, privilege fee equal to full licence fee is payable, as the status of the licensee is changed.

In the offices of Superintendents of Prohibition and Excise, Akola, Beed, Parbhani and Thane, in 17 cases where there was transfer of licence from one name to another and also where there was conversion of a proprietory concern into partnership or *vice versa*, privilege fee was erroneously realised at the rate of fifty per cent of the annual licence fee, instead of at hundred per cent of that fee. The privilege fee realised short amounted to Rs. 1,12,000.

On the short realisation being pointed out in audit (between April 1983 and February 1986), the Excise Department, after consulting the Law and Judiciary Department, recovered (between October 1985 and September 1986) Rs. 98,750 in 15 cases. Report on recovery of the balance amount is awaited (February 1987).

The matter was reported (between May 1986 and October 1986) to Government. Government confirmed (July 1986) the recovery in five cases relating to Akola and Beed districts; their reply in respect of other cases is awaited (February 1987).

3.6. Short levy due to incorrect calculation.

In Maharashtra, Indian made foreign liquor is stored in bonded warehouses for eventual sale to the consumers, Excise duty and vend fee is collected at the time of releasing the liquor to trade. Under departmental instructions issued on 19th April, 1980, if any loss of spirit occurs due to breakage or shortage during storage in bonded warehouse, the licensee is required to pay full excise duty in respect of the quantity of spirit so lost.

On 285.70 proof litres of Indian made foreign liquor lost due to shortage and breakage of bottles in a bonded warehouse in Thane district during September 1984 to March 1985, excise duty recoverable at the rate of Rs. 47 per proof litre was incorrectly worked out as Rs. 1,343 instead of as Rs. 13,428. The mistake resulted in short recovery of excise duty by Rs. 12,085.

On the mistake being pointed out in audit (March 1986), the department recovered (April 1986) the entire amount.

The matter was reported to Government (June 1986); Government confirmed (July 1986) the recovery.

3.7. Short recovery of escort and supervision charges due to application of incorrect rates

(*i*) The Bombay Foreign Liquor Rules, 1953, require that conveyance of foreign liquor consignments from the licensed premises of one licensee to that of another licensee be made under excise supervision. Whenever excise staff supervises such movements, escort charges are recoverable from the licensee, for the days, the escort is provided, at the prescribed rates. The departmental instructions require that the escort charges should be recovered in advance from the licensee before the escort is provided by the department.

Escort charges in respect of staff provided to various excise licensees in Nasik and Solapur districts for supervising movement of goods during the period from January 1983 to March 1984 were recovered short by Rs. 18,483 because of application of incorrect rates.

On the mistake being pointed out in audit (January 1985 and June 1985), the department recovered the full amount (between October 1985 and January 1986) from the licensees.

The matter was reported to Government (in July 1986), Government confirmed (November 1986) the recoveries.

(*ii*) As per provisions of the Bombay Prohibition Act, 1949, prohibition and excise staff is required to supervise the storage, import, manufacture and vending of foreign liquor. The cost of deputing the departmental staff at the premises of the licensees is recoverable from them in advance at the rates prescribed by Government.

Supervision charges were realised short by Rs. 1,35,493 from 6 licensees (in Aurangabad, Akola, Buldhana and Sangli district for different periods falling between April 1981 and June 1985) as the recovery was made at incorrect rates.

On the mistake being pointed out in audit (between November 1984 and August 1985) the department recovered (between December 1984 and January 1986) Rs. 1,25,127 from the licensees. Report on recovery of the balance amount is awaited (February 1987).

The above cases were reported to Government in June and July 1986. Government confirmed (July 1986 and September 1986) the recoveries and stated that details of recovery of the balance amount of Rs. 10,366 were awaited from the Superintendent of Prohibition and Excise, Aurangabad.

CHAPTER IV

LAND REVENUE

4.1. Results of Audit

Test check of land revenue records, conducted in audit during the year 1985-86 in 228 offices, out of 386 offices in the State, disclosed non-levy and short levy of land revenue amounting to Rs. 5.26 crores.

Some of the important cases are mentioned in the following paragraphs.

4.2. Failure to assess land revenue

Under the Maharashtra Land Revenue Code, 1966, land revenue is assessed at different rates (in respect of the revenue year commencing from 1st August and ending with 31st July next), on the land used for agricultural, residential, industrial, commercial or any other purposes. Under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974, as amended from 1st August 1975, a tax called 'increase of land revenue ' became leviable on all holdings of an assessee in excess of prescribed limits.

Under the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961, a cess at prescribed rate is leviable on land revenue recoverable from every tenant or lessee in the areas covered by the Act. However, with the amendment of the Act in 1974, the cess on land revenue hitherto levied, ceased to be leviable on lands within a municipal area with effect from 1st April 1974. Cess on land revenue is also leviable at 20 paise per rupee under the provisions of Bombay Village Panchayat Act, 1958.

(*i*) In the following cases, land was put to non-agricultural use such as commercial, industrial, residential etc., by the Maharashtra State

Electricity Board, Maharashtra State Road Transport Corporation, Housing Board, etc. but it was not assessed to land revenue at all, thereby, resulting in revenue amounting to Rs. 26.08 lakhs not being realised.

(*a*) In Haveli tahsil (Pune district), land admeasuring 7.53 hectares and 16.82 hectares situated in village Lonikalbhor, was put to commercial use by Hindustan Petroleum Corporation Limited from January 1982 and December 1984 respectively, but the lands were not assessed to land revenue. The Corporation was also holding another piece of land measuring 16,300 square metres which was under commercial use since the year 1966 and was assessed to land revenue from time to time. However, increase of land revenue was not levied on this land even though the total holdings of the Corporation exceeded the prescribed limits since the year 1981-82. The omissions resulted in non-realisation of revenue amounting to Rs. 12.15 lakhs, including increase of land revenue and local cess, for the years 1981-82 to 1985-86.

On the omissions being pointed out in audit (March 1986), department accepted (August 1986) the audit objection. Report on action taken is awaited (February 1987).

(*b*) In Nashik tahsil (Nashik district), a piece of land admeasuring 35,710 square metres situated within the municipal limits of Nashik municipality was acquired and handed over to the Maharashtra State Road Transport Corporation in May 1956. Out of the aforesaid land, the Corporation put land admeasuring 22,521 square metres to commercial use from August 1977, which was not assessed to land revenue. The omission resulted in revenue amounting to Rs. 4.85 lakhs, including increase of land revenue, not being realised for the years 1977-78 to 1985-86.

On the omission being pointed out in audit (September 1984), the department raised demand for Rs. 4.85 lakhs (August 1986). Report on recovery is awaited (February 1987).

(*c*) In Mahabaleshwar tahsil (Satara district), possession of land admeasuring 3,370 square metres, situated in Panchgani urban area, was handed over to the then Bombay State Road Transport Corporation (now Maharashtra State Road Transport Corporation) in the year 1955-56, but the land was not assessed to land revenue.

The omission resulted in the revenue amounting to Rs. 20,243 not being realised, including increase of land revenue, for the years 1955-56 to 1985-86.

On the omission being pointed out in audit (March 1986), the department accepted (July 1986) the audit objection. Report on action taken is awaited (February 1987).

(*d*) In Baramati tahsil (Pune district), lands admeasuring 16,100 square metres and 23,300 square metres situated in village Jalochi were put to commercial use from June 1972 and July 1977, respectively, but revenue amounting to Rs. 1.97 lakhs, including increase of land revenue and local cess, was not realised for the years 1971-72 to 1985-86.

On the omission being pointed out in audit (June 1984), the department recovered (between July 1985 and February 1986) Rs. 1.77 lakhs. Report on recovery of balance amount is awaited (February 1987).

(*e*) In Beed tahsil (Beed district), land admeasuring eight acres, and two acres and 18 gunthas, situated within the limits of Municipal Council, Beed, was put to commercial use from August 1965 and August 1970 respectively, but land revenue amounting to Rs. 86,341, including increase of land revenue, was not realised for the years 1965-66 to 1985-86.

On the omission being pointed out in audit (June 1984), the department raised (March 1986) demand for Rs. 86,341. Report on recovery is awaited (February 1987).

(*f*) In Nashik tahsil (Nashik district), possession of land admeasuring 16,200 square metres situated in village Dasak was handed over to Maharashtra State Electricity Board (June 1964) for commercial use, but the land was not assessed to land revenue. The omission resulted in non-realisation of revenue amounting to Rs. 56,168 including increase of land revenue and local cess, for the years 1963-64 to 1985-86.

On the omission being pointed out in audit (September 1984), the department accepted (January 1986) the audit objection. Report on action taken is awaited (February 1987).

(*g*) In Mangrulpir tahsil (Akola district), land admeasuring 11,400 square metres situated in urban area of Mangrulpir town was put to residential and office building use by the Maharashtra State Electricity Board from August 1978, but the land was not assessed to land revenue. The omission resulted in non-realisation of land revenue amounting to Rs. 41,724, including the increase of land revenue, for the years 1978-79 to 1985-86.

On the omission being pointed out in audit (June 1985), the department assessed (November 1985) the land to land revenue and recovered (January 1986) the entire amount of Rs. 41,724.

(*h*) In Risod tahsil (Akola district), land admeasuring 16,300 square metres and 32,000 square metres situated in class I village Risod was put to non-agricultural use by Maharashtra State Electricity Board and Maharashtra State Road Transport Corporation from the year 1977-78 and 1978-79 respectively but the lands were not assessed to land revenue. The omission resulted in non-realisation of land revenue amounting to Rs. 28,189 including increase of land revenue and local cess for the years 1977-78 to 1985-86.

On the omission being pointed out in audit (January 1984), the department recovered (January 1986 and February 1986) the entire amount of Rs. 28,189.

(*i*) In Karanja tahsil (Akola district), land admeasuring 16,182 square metres situated in class I village Kamargaon was put to non-agricultural use by Maharashtra State Electricity Board from April 1975, but the land was not assessed to land revenue. The omission resulted in short realisation of land revenue amounting to Rs. 12,869, including increase of land revenue and local cess for the years 1974-75 to 1985-86.

On the omission being pointed out in audit (January 1985), the department assessed (December 1985) the land and recovered the land revenue in full.

(*j*) In Nandurbar tahsil (Dhule district), land admeasuring 5 acres and 33 gunthas situated within the limits of Municipal Council, Nandurbar was put to commercial use by Maharashtra State Warehousing Corporation from the year 1964-65. The land was, however, not assessed to land revenue. When this was pointed out in audit in December 1980, the department assessed the land and recovered (October 1982) an amount of Rs. 24,768 upto the year 1980-81. However, assessment for the years 1981-82 and onwards again escaped the notice of the department which resulted in non-realisation of land revenue amounting to Rs. 1,11,655 including increase of land revenue for the years 1981-82 to 1985-86. In addition, failure to assess increase of land revenue from 1975-76 to 1980-81 resulted in non-levy of Rs. 27,460.

On the omission being pointed out in audit (November 1984) the department recovered (August 1986) an amount of Rs. 52,332. Report on recovery of balance amount is awaited (February 1987).

(*k*) In Pachora tahsil (Jalgaon district), land admeasuring 12,100 square metres situated in urban area of village Krishnapuri was put to commercial

use from August 1981 by a Co-operative Milk Federation, but the land was not assessed to land revenue. The omission resulted in land revenue amounting to Rs. 1.10 lakhs, including increase of land revenue and local cess, not being realised for the years 1981-82 to 1985-86.

On the omission being pointed out in audit (September 1982), the department recovered (January 1983) an amount of Rs. 16,646. Report on recovery of balance amount is awaited (February 1987).

(*l*) In Rajura tahsil (Chandrapur district), possession of land admeasuring 61.55 hectares situated in village Chunala was handed over to a cement factory on 30th July 1983 but the land was not assessed to land revenue. The omission resulted in non-realisation of land revenue amounting to Rs. 62,781, including increase of land revenue and local cess, for the years 1983-84 to 1985-86.

On the omission being pointed out in audit (October 1985), the department assessed (February 1986) the land revenue. Report on recovery is awaited (February 1987).

(*m*) In Kurla tahsil in Bombay suburban district, a party sold a piece of land admeasuring 13,121.06 square metres, out of the land admeasuring 25,192.46 square metres held under industrial use and situated within the limits of Bombay Municipal Corporation, to a company in October 1973. The party approached the department in April 1982 for reassessment of only the retained land admeasuring 12,071.40 square metres. The competent authority, while revising the assessment (December 1982), mentioned specifically in the assessment order that in respect of the area of 13,121.06 square metres sold by the party to the company, a separate order was being issued in due course. However, no order was issued till the omission was pointed out by audit in May 1985. The omission resulted in land revenue amounting to Rs. 53,549 not being realised for the years 1973-74 to 1985-86.

On the omission being pointed out in audit (May 1985), the department accepted (June 1986) the audit objection. Report on action taken is awaited (February 1987).

(*n*) In Mangrulpir tahsil (Akola district), land admeasuring 16,000 square metres, situated within the municipal limits of Mangrulpir town, was put to commercial use by a co-operative society on 24th July 1981. The land was, however, not assessed to land revenue. The omission

resulted in non-realisation of land revenue amounting to Rs. 42,240 for the (revenue) years 1980-81 to 1985-86.

On the omission being pointed out in audit (June 1985), the department recovered an amount of Rs. 38,400 upto April 1986. Report on recovery of the balance amount is awaited (February 1987).

(*o*) In Mangrulpir tahsil (Akola district) possession of land admeasuring 50,714 square metres was handed over by Government to the Vidarbha Housing Board (now Nagpur Housing and Area Development Board) in August 1976. The Board had put the land admeasuring 33,261 square metres to non-agricultural use in October 1983 leaving 17,453 square metres for roads and gardens. The land (33,261 square metres) was, however, not assessed to land revenue at all. Increase of land revenue leviable under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974 was also not levied and demanded. The omissions resulted in land revenue amounting to Rs. 29,935 not being realised for the years 1983-84 to 1985-86.

On the omissions being pointed out in audit (June 1985), the department recovered (February 1986) an amount of Rs. 14,967. Report on recovery of the balance amount is awaited (February 1987).

(*p*) In Karvir tahsil (Kolhapur district), land admeasuring 23,045 square metres situated within the municipal limits of Kolhapur was put to non-agricultural use by Maharashtra Housing Board from April 1961, but land revenue was not levied and demanded. Increase of land revenue leviable with effect from 1st August 1975 was also not levied. Land Revenue not realised for the years 1960-61 to 1985-86 amounted to Rs. 27,232(including local cess leviable in municipal areas upto 31st March 1974).

On the omission being pointed out in audit (September 1984), the department raised (March 1986) demand for Rs. 18,230. Report on recovery and action taken for realisation of the balance amount of Rs. 9,002 is awaited (February 1987).

The above cases were reported to Government between July 1986 and September 1986; their reply is awaited (February 1987) except in respect of sub-paragraph (*g*) above, wherein Government intimated (September 1986) that the Collector, Akola had been requested to fix the responsibility for not recovering the amount in time and to take suitable action against the defaulter. Further report is awaited (February 1987).

(*ii*) In Shirala tahsil (Sangli district), land admeasuring 69,500 square metres including *potkharab* land situated in village Chikhali was unauthorisedly put to non-agricultural use by a co-operative sugar factory from the year 1969-70. The area under unauthorised non-agricultural use was gradually increased and from the year 1981-82, 3,38,600 square metres of land (including 20,600 square metres of *potkharab* land) were brought under such non-agricultural use. However, while regularising the non-agricultural use of the land, at the request of the factory in August 1983, *potkharab** area (20,600 square metres) was not assessed to land revenue by the department. Increase of land revenue under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974, as amended with effect from 1st August 1975, was also not realised on the entire land. The omissions resulted in land revenue amounting to Rs. 83,780 not being realised for the years 1969-70 to 1985-86.

On this being pointed out in audit (April 1984), the department raised (May 1986) demand for Rs. 83,780. Report on recovery is awaited (February 1987).

The matter was reported to Government in July 1986; their reply is awaited (February 1987).

(*iii*) With a view to encourage establishment of industrial units throughout the State and checking the concentration of industries in certain areas, Government granted various concessions in September 1964, (further modified in April 1969 and October 1973), including exemption from payment of non-agricultural assessment in respect of lands in specified areas outside the developed areas used by industries, for a period of six to ten years from the date of commencement of production in the unit. This exemption was subject to the production of eligibility certificate from the State Industrial and Investment Corporation of Maharashtra Limited. However, no exemption from cesses leviable under the Village Panchayat Act, 1958 and Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961, was granted.

In Shirol tahsil (Kolhapur district), land admeasuring 42,200 square metres in village Shirol which was situated in the specified areas outside the developed areas used by industries was used by a private limited company for industrial purposes from December 1976. Production in the

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* *Potkharab* land is normally not arable or fit for cultivation and is excluded from agricultural assessment. However, if such land is converted for non-agricultural use, it becomes subject to land revenue.

unit commenced from 1st February 1978 and the State Industrial and Investment Corporation of Maharashtra Limited granted eligibility certificate for exempting the industry from payment of, *inter alia,* non-agricultural assessment for a period of 10 years from 1st February 1978 to 31st January 1988. However, the department neither issued any formal orders exempting the company from payment of non-agricultural assessment nor levied land revenue for the period from December 1976 to January 1978. The local cesses leviable from the year 1976-77 onwards under the Village Panchayat Act, 1958 and Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 were also not demanded. The omissions resulted in non-realisation of revenue amounting to Rs. 1,688 for the years 1976-77 and 1977-78 and local cesses amounting to Rs. 18,568 for the years 1976-77 to 1985-86.

On this being pointed out in audit (April 1981), the department recovered (April 1986) the full amount.

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

(*iv*) Under the Maharashtra Land Revenue Code, 1966, and the rules framed thereunder, co-operative housing societies holding building sites, which are not built upon, are exempted from non-agricultural assessment in respect of such land for a period of three years, from the date on which possession of the land is handed over to the societies or till the date on which non-agricultural use of the land begins, whichever is later.

In Haveli tahsil (Pune district), land admeasuring 3,400 square metres and 4,600 square metres was in possession of a co-operative housing society from January 1970 and June 1970 respectively. The lands were not assessed to land revenue though the society had put it to residential use from December 1972 and assessment was required to be done from January 1973 and June 1973 respectively. The omission resulted in non-realisation of revenue amounting to Rs. 23,198 for the years 1972-73 to 1985-86.

On the omission being pointed out in audit (February 1982), the department recovered the amount in July 1986 and November 1986.

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

(*v*) The Maharashtra Land Revenue Code provides that except for land wholly exempted from payment of land revenue under the provisions

of any special contract with the State Government or by any law for the time being in force or by special grant of the State Government, land revenue is payable in respect of all lands in the State.

(*a*) In Koregaon tahsil (Satara district), land admeasuring 4.22 hectares situated in village Koregaon was unauthorisedly put to non-agricultural use by the Maharashtra Agro Food Preservation Corporation Limited (MAFCO) from the year 1973-74 but the land was not assessed to land revenue.

On the omission being pointed out in audit (March 1979), the department referred (August 1981) the matter to Government for a decision whether MAFCO was liable for payment of land revenue. Government directed (December 1982) the department to recover expeditiously the non-agricultural assessment due from MAFCO as per rules. The unauthorised use was, however, regularised and the land assessed for land revenue only in February 1986 for the period 1973-74 to 1985-86. The initial omission and subsequent delay in taking prompt action resulted in non-realisation of revenue amounting to Rs. 2.51 lakhs, including increase of land revenue and local cess, for the years 1973-74 to 1985-86.

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

(*b*) (*i*) By a resolution dated 20th January 1975, Government established Maharashtra Tourism Development Corporation Limited and transferred the entire assets of the Tourism Department to the Corporation with immediate effect.

In Mahabaleshwar tahsil (Satara district), land admeasuring 29.06 hectares situated in Mahabaleshwar city, and two pieces of land admeasuring 23,097 square metres and 2,023 square metres situated in Panchgani urban area, were transferred to Maharashtra Tourism Development Corporation Limited as per Government resolution referred to above. The land situated in Mahabaleshwar city was already under use for holiday homes from the year 1974-75, and lands situated in Panchgani were put to use for holiday homes from February 1980 and February 1981, respectively. But these lands were not assessed to non-agricultural assessment after their transfer to the corporation (these lands were not liable to assessment prior to their transfer, being the property of a Government department). The omissions resulted in revenue amounting to Rs. 17.46 lakhs, including increase of land revenue, not being demanded for the years 1974-75 to 1985-86.

On the omissions being pointed out in audit (March 1986), the department raised (July 1986) demands for Rs. 8.61 lakhs. Report on recovery and action taken to realise the balance amount is awaited (February 1987).

(*ii*) In tahsil Panhala (Kolhapur district) in the year 1974, Government acquired land admeasuring 13,621 square metres situated within the municipal limits of Panhala for the Tourism Department and immediately commenced the work of constructing holiday homes thereon. The aforesaid land was also transferred to Maharashtra Tourism Development Corporation Limited as per Government resolution referred to above. However, the land was not assessed to non-agricultural assessment from the date of its transfer to the Corporation, mistaking the Corporation as Government Department. The mistake resulted in revenue amounting to Rs. 20,400 including increase of land revenue for the years 1975-76 to 1985-86 not being demanded.

On this being pointed out in audit (March 1984), the department raised (April 1986) demand for Rs. 20,400. Report on recovery is awaited (February 1987).

The above cases were reported to Government in June 1986 and September 1986; their reply is awaited (February 1987).

4.3 Failure to reassess land revenue

Under the Maharashtra Land Revenue Code, 1966, land revenue is assessed at different rates for land used for agricultural, residential, industrial, commercial or any other purpose. On a change in the mode of use of land, land revenue is required to be re-assessed. Assessment or re-assessment of non-agricultural land when done, remains in force for the guaranteed period mentioned therein. On the expiry of the guaranteed period, the assessment is liable to be revised. The Code further provides that except in cases where guarantee period has been specified beyond 31st March 1979 expressly in the order or *sanad* issued in that behalf, the assessment of non-agricultural lands done prior to 31st March 1979, shall become liable to revision from 1st August 1979, with reference to the standard rates fixed under the provisions of the Act. In cases, where such lands are situated within the municipal corporation and municipal council ("A" and "B" classes only) areas, conversion tax equal to three times the amount of non-agricultural assessment is also leviable when permission for non-agricultural use or change in use of land from one non-agricultural purpose to any other

non-agricultural purpose is granted or unauthorised non-agricultural use is regularised by the revenue authorities on or after 31st March 1979. Under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974 (as amended from 1st August 1975), a tax called Increase of Land Revenue is also payable on all lands above the prescribed limits.

Under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, a cess at prescribed rate is leviable on land revenue recoverable from every tenant or lessee in the areas covered by the Act. With the amendment of the Act in 1974, the cess on land revenue hitherto levied, ceased to be leviable on lands within the municipal areas with effect from 1st April 1974. Cess on land revenue is also leviable at 20 paise per rupee under the provisions of Bombay Village Panchayat Act, 1958.

In the following cases, the omissions to assess and re-assess land revenue resulted in revenue amounting to Rs. 16.29 lakhs not being realised.

(*i*) In Karvir tahsil (Kolhapur district), a company had unauthorisedly diverted land admeasuring 65,070 square metres situated within the municipal corporation limits of Karvir, from agricultural to industrial use from August 1970. The land, however, was not assessed to land revenue. The company was also holding another piece of land admeasuring 20,547 square metres under industrial use and non-agricultural assessment in respect of the same was guaranteed upto 31st July 1973, whereafter it was liable to be revised with reference to the revised standard rates. But no action was taken to revise the assessment, eventhough standard rates were revised from 1st August of 1970 and again from 1st August 1979. Increase of land revenue under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974 (as amended from 1st August 1975) was also not levied. The omissions resulted in land revenue amounting to Rs. 4.06 lakhs (including conversion tax leviable on regularisation of unauthorised use of land), not being realised for the years 1970–71 to 1985–86.

On the omissions being pointed out in audit (September 1984), the department recovered Rs. 1,26,650 in March 1985. Report on recovery of balance amount is awaited (February 1987).

(*ii*) In Umarkhed tahsil (Yavatmal district), an unauthorised diversion of agricultural land measuring 28,625 square metres situated within the municipal limits of Umarkhed, for commercial use by Maharashtra State Road Transport Corporation from the Year 1971-72 was regularised in November 1982 and non-agricultural assessment was done as per the

standard rates in force prior to 1st August 1979. By a gazette notification issued in October 1983, the standard rates of land revenue for Umarkhed tahsil were revised with retrospective effect from 1st August 1979. But the assessment of the land referred to above was not revised from 1st August 1979. The omission resulted in the revenue amounting to Rs. 2.70 lakhs, including increase of land revenue, being realised short for the years 1979-80 to 1985–86.

On being pointed out in audit (September 1985), the Tahsildar accepted (August 1986) the omission. Report on action taken is awaited (February 1987).

(*iii*) In Borivali tahsil of Bombay suburban district, agricultural land admeasuring 48,668 square metres situated within the limits of Municipal Corporation, Bombay, was diverted for industrial purpose by a company. The land was not re-assessed to land revenue resulting in short realisation of revenue amounting to Rs. 1.88 lakhs (including conversion tax) for the years from 1983–84 to 1985–86.

On the omission being pointed out in audit (August 1984), the department recovered the amount between March 1986 and October 1986.

(*iv*) In Additional Collectorate, Bombay (Bombay suburban district), in four cases, lands situated within the limits of Bombay Municipal Corporation were put to residential and commercial use between September 1979 and October 1980 and land revenue was assessed as per prevailing standard rates applicable prior to 1st August 1979. By a notification dated 30th July 1981, standard rates of land revenue for Bombay suburban district were revised with retrospective effect from 1st August 1979. But the assessments in the above four cases were not revised. The omission resulted in revenue amounting to Rs. 1.17 lakhs, including conversion tax, being realised short for the years 1979–80 to 1985–86.

On the omission being pointed out in audit (December 1983), the department revised (August 1985 and January 1986) the assessments. Report on recovery is awaited (February 1987).

(*v*) In Nashik tahsil (Nashik district), a company purchased (April 1975) land admeasuring 33,000 square metres, situated in village Dasak, from another company and used the same for industrial purposes but the village records were not corrected. It was noticed in audit that while the land revenue payable by the selling company was reduced from the year 1974–75 in respect of area sold, land revenue was not assessed and demanded at all from the purchasing company. The assessment, if made,

would have also required revision, after revised standard rates had been notified in September 1977 and August 1983 (effective from 1st August 1979). The omission resulted in non-realisation of land revenue amounting to Rs. 1.09 lakhs (including local cess) for the years 1974–75 to 1985–86.

On the omission being pointed out in audit (September 1984), the department recovered (March and September 1986) the full amount.

(*vi*) The revised standard rates of land revenue for Nawapur village in Nawapur tahsil (Dhule district), effective from February 1978, were notified in November 1977. These rates were further revised and notified in September 1980, effective from August 1979.

Out of 20,200 square metres of land under industrial use in Nawapur village prior to November 1977, land admeasuring 10,100 square metres was put to commercial use from August 1979. The land revenue was neither reassessed on account of the revision of the rates effective from February 1978 and August 1979 nor assessed on account of change in the use from August 1979. The omissions resulted in the revenue amounting to Rs. 99,280 being realised short, including local cess, for the years 1977–78 to 1985–86.

On being pointed out in audit (July 1985), Tahsildar accepted (July 1986) the omissions. Report on action taken is awaited (February 1987).

(*vii*) In Umarkhed tahsil (Yavatmal district), in three cases, unauthorised diversion of land from agricultural to industrial use prior to 31st March 1979 was regularised in January 1980 (in one case) and December 1980 (in two cases). Non-agricultural assessment was made from the commencement of the industrial use and revised from 1st August 1979 as per prevailing rates. By a gazette notification dated 20th October 1983, the standard rates of land revenue for Umarkhed tahsil were revised with retrospective effect from 1st August 1979, but the assessment in the above cases was not revised from 1st August 1979. The omission resulted in revenue amounting to Rs. 84,064 being realised short for the years 1979-80 to 1985–86.

On being pointed out in audit (September 1985), the department accepted (August 1986) the omission. Report on action taken is awaited (February 1987).

(*viii*) In Khamgaon tahsil (Buldana district), land admeasuring 9,900 square metres situated within the limits of the Municipal Council, Khamgaon which was originally assessed to land revenue as agricultural land

was put to commercial use by the Municipal Council from 1st August 1981. But the land was not reassessed to land revenue accordingly. Conversion tax for diversion of land was also not levied. The omissions resulted in land revenue, conversion tax and increase of land revenue amounting to Rs. 66,909 not being realised during the years 1981-82 to 1985–86.

On this being pointed out in audit (June 1985), the department recovered (March 1986) the full amount of Rs. Rs. 66,909.

(*ix*) In Nandurbar tahsil (Dhule district) a piece of land admeasuring 2,700 square metres situated within the limits of Municipal Council, Nandurbar, was put to commercial use from August 1971 but the land was not assessed to land revenue. Another piece of land measuring 6,067 square metres was put to commercial use from August 1975 and assessed to land revenue but the assessment was not revised after the revised standard rates effective from 1st August 1979 had been notified in September 1980. Increase of land revenue was also not levied on the two pieces of land from the year 1975-76. The omissions resulted in short realisation of revenue amounting to Rs. 40,845 for the years 1971-72 to 1985-86.

On the omissions being pointed out in audit (April 1984), the department recovered (August 1986) the full amount.

(*x*) In Digras tahsil (Yavatmal district), assessment of the land admeasuring 24,823 square metres and 14,165 square metres situated in Digras city and put to residential use, was done in April 1981 as per the prevailing standard rates prior to 1st August 1979. By a gazette notification issued in January 1985, standard rates of land revenue for Digras tahsil were revised with retrospective effect from 1st August 1979. But the assessment in the above cases was not revised. The omission resulted in revenue amounting to Rs. 36,429 being realised short for the years 1979-80 to 1985-86.

On the omission being pointed out in audit (November 1985), the department revised (May 1986) the assessment and recovered Rs. 5,177. Report on recovery of the balance amount of Rs. 31,252 is awaited (February 1987).

(*xi*) In Nandgaon tahsil (Nashik district), the Maharashtra State Road Transport Corporation purchased land admeasuring 6,500 square metres, which was under residential use and put it to commercial use from August 1976. But land revenue was continued to be recovered as for residential use. The assessment was also not revised after

notification of the revised standard rates of non-agricultural assessment effective from 18th November 1977 and 1st August 1979. Increase of land revenue leviable under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974, as amended on 1st August 1975 was also not levied. The omissions resulted in short realisation of revenue amounting to Rs. 30,488 for the years 1976-77 to 1985-86.

On the omissions being pointed out in audit (November 1982 and November 1984) the department recovered Rs. 23,694. Report on recovery of the balance amount is awaited (February 1987).

(*xii*) In Nashik tahsil (Nashik district), in four cases test checked in audit, permission for use of lands for non-agricultural purpose was granted between October 1980 and April 1983 and the non-agricultural assessment was done with reference to the prevailing standard rates. By a Government notification dated 7th July 1983, the standard rates for assessment of lands in Nashik tahsil were revised with retrospective effect from 1st August 1979. But the non-agricultural assessment in these four cases was not revised with reference to the standard rates effective from 1st August 1979. Also, conversion tax on change in mode of use of land was not re-assessed. The omission resulted in land revenue and conversion tax being recovered short by Rs. 24,363 for the years 1979-80 to 1984-85.

On the omission being pointed out in audit in September 1984, the department proposed revision (December 1985) of the non-agricultural assessment and conversion tax in 219 similar cases, including the above-mentioned four cases, involving a total short levy of Rs. 3,47,081. Further report is awaited (February 1987).

(*xiii*) In Collectorate, Beed (Beed district) permission for residential use of land admeasuring 25,200 square metres, situated within the limits of Municipal Council, Beed (A class), was granted in January 1983 and non-agricultural assessment was fixed with reference to the prevailing standard rates; the land holder commenced the use of land for non-agricultural purposes from 1st August 1983. By a Government notification dated 15th September 1983 standard rates for assessment of lands in Beed tahsil were revised with retrospective effect from 1st August 1979, but the non-agricultural assessment in this case was not revised. Also, conversion tax on change in the mode of use of land, was not re-assessed. The omission resulted in land revenue and conversion tax being recovered short by Rs. 22,680 for the years 1983-84 to 1985-86.

On being pointed out in audit (June 1985), the department accepted (May 1986) the omission. Report on action taken is awaited (February 1987).

(*xiv*) In Igatpuri tahsil of Nashik district, the Maharashtra State Electricity Board was permitted (September 1964) to use agricultural land admeasuring 50,718 square yards in village Bortembhe for commercial purposes. However, no entry regarding the change of user was made in the relevant records and hence the revision of assessment at the rates for land used for commercial purpose, escaped the notice of the department. The omission resulted in short realisation of revenue amounting to Rs. 20,966 (including increase of land revenue and local cess) for the years from 1965-66 to 1985-86.

The omission which was pointed out by audit in September 1984, was accepted by the department and an amount of Rs. 15,614 was recovered in September 1985. Report on recovery of the balance amount is awaited (February 1987).

(*xv*) By a notification issued in July 1981 standard rates of land assessment for Kurla tahsil (Bombay suburban district) were revised with retrospective effect from 1st August 1979. However, in one case where permission for non-agricultural use of land admeasuring 23,294 square metres situated within the limits of Bombay Municipal Corporation was granted in August 1981, conversion tax was levied (August 1981) and recovered (June 1984) at rates applicable prior to 1st August 1979. This resulted in short realisation of revenue amounting to Rs. 20,964.

On the mistake being pointed out in audit (May 1983), the department recovered (October 1986 and November 1986) the full amount.

(*xvi*) In Yeola tahsil (Nashik district), land admeasuring 3,940 square metres situated in village Yeola was put to commercial use by Maharashtra State Road Transport Corporation from June 1958 but the department continued to recover land revenue as for agricultural use. The omission resulted in short realisation of revenue amounting to Rs. 20,899, including increase of land revenue and local cess, for the years 1957-58 to 1985-86.

On the omission being pointed out in audit (November 1982), the department recovered an amount of Rs. 18,010 between August 1983 and May 1985. Report on recovery of the balance amount is awaited (February 1987).

(*xvii*) In Karad tahsil (Satara district), permission for use of lands situated within the municipal limits of Karad was granted, in seven cases,

for residential and commercial purposes between August 1979 and May 1980 and the lands were assessed as per prevailing standard rates. By notification dated 31st July 1980, standard rates of non-agricultural assessment in Karad tahsil were revised with retrospective effect from 1st August 1979 but the assessments in the above cases were not revised. The omission resulted in short realisation of revenue amounting to Rs. 18,225, including conversion tax leviable on change in the mode of use of land, for the years 1979-80 to 1985-86.

On being pointed out in audit (February 1983), the department accepted (July 1986) the omission. Report on action taken is awaited (February 1987).

(*xviii*) In Collectorate, Bombay suburban district, Bombay, permission was granted in October 1980 for use of the land situated within the limits of Municipal Corporation of Greater Bombay, for non-agricultural purposes, and conversion tax was levied and recovered as per the prevailing standard rates. By a gazette notification issued in July 1981, standard rates of land assessment for Bombay suburban district were revised with retrospective effect from 1st August 1979. But the conversion tax in the aforesaid case was not revised. The omission resulted in revenue amounting to Rs. 15,089 being realised short.

On the omission being pointed out in audit (December 1983), the department recovered (November 1985) Rs. 7,120. Report on recovery of the balance amount is awaited (February 1987).

(*xix*) By Notification dated 30th July 1981, the standard rate of assessment for residential land in Kurla tahsil (Bombay suburban district), was revised with retrospective effect from 1st August 1979, but the assessment of such land admeasuring 4,866 square metres held by a co-operative housing society was not revised. The omission resulted in short realisation of revenue amounting to Rs. 13,625 for the years 1979-80 to 1985-86.

On the omission being pointed out in audit (May 1985), the department revised (June 1986) the assessment. Further report is awaited (February 1987).

(*xx*) By a gazette notification issued in August 1982, the standard rates of land assessment for Patur tahsil (Akola district) were revised with retrospective effect from 1st August 1979. However, the assessment done prior to August 1982 in respect of two lands admeasuring 14,900 square metres and 17,300 square metres situated in the urban area of

Patur village and used for residential purposes since 1981-82 was not revised. The omission resulted in revenue amounting to Rs. 12,880 being realised short for the years 1981-82 to 1985-86.

On the omission being pointed out in audit (October 1985) the department recovered Rs. 9,076 upto February 1987. Report on recovery of the balance amount is awaited (February 1987).

(*xxi*) In Shegaon tahsil (Buldhana district), land admeasuring 4,046 square metres within the limits of Shegaon Municipal Council which was diverted from residential to industrial use by a ginning factory was continued to be assessed as for residential use. The failure to reassess the land resulted in short realisation of land revenue amounting to Rs. 11,716 including conversion tax for the years 1979-80 to 1985-86.

On this being pointed out in audit (October 1985), the department accepted (March 1986) the omission. Further progress is awaited (February 1987).

The above cases were reported to Government between April 1986 and September 1986; their reply is awaited (February 1987).

4.4. Short levy of " increase of land revenue "

Under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974, as amended with effect from 1st August 1975, a tax called " Increase of Land Revenue " became leviable on agricultural lands and non-agricultural lands in the State. The increase of land revenue is payable at 50 per cent of land revenue by persons holding land in excess of 8 hectares and at 100 per cent by persons holding land in excess of 12 hectares in the State. The term ' holding ' includes agricultural as well as non-agricultural lands. The tax measure was intended to raise additional resources to finance the ' Employment Guarantee Scheme '.

(*i*) In Khamgaon tahsil of Buldana district, land exceeding 12 hectares was put to non-agricultural use by the Municipal Council, Khamgaon, prior to 1st August 1975. However, increase of land revenue was levied (with effect from 1st August 1975) based on rates applicable to agricultural lands instead of the rates for non-agricultural assessment. The mistake resulted in short realisation of revenue amounting to Rs. 79,353 for the years from 1975-76 to 1985-86.

On this being pointed out in audit (June 1985), the department accepted (February 1986) the mistake. Report on action taken is awaited (February 1987).

The matter was reported to Government in May 1986; their reply is awaited (February 1987).

(*ii*) In ten tahsils, the increase of land revenue was not assessed and recovered for the year 1975-76 and onwards in 25 cases. The omission resulted in revenue amounting to Rs. 8,00,462 not being realised upto the year 1985-86.

On the omission being pointed out in audit, the department recovered a sum of Rs. 5,58,105 upto July 1986. Report on recovery of the balance amount of Rs. 2,42,357 is awaited (February 1987).

The above cases were reported to Government in August 1986 and September 1986; their reply is awaited (February 1987).

4.5. Non-recovery of penal occupancy price of the land and non-agricultural assessment.

Under the Maharashtra Land Revenue Code, 1966, and the rules made thereunder, the land encroached upon may be granted to the person making the encroachment, if he so desires, on the condition *inter-alia* that (*i*) the encroacher shall pay penal occupancy price not exceeding five times the value of the land [as determined under the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971] and (*ii*) he shall be assessed to land revenue with reference to the use of land, at a rate not exceeding five times the ordinary land revenue. The penal occupancy price and the land revenue shall, however, be subject to a minimum of two and half times the value of the land and assessment respectively.

Government granted 6 hectares of land to a co-operative sugar factory for construction of its factory in Ashti tahsil (Beed district) in November 1982, on the condition that payment of the occupancy price at 50 per cent of the market value fixed at Rs. 6,000 per hectare would be paid by the factory in addition to the regular payment of non-agricultural assessment as fixed from time to time. Out of the 6 hectares, the factory was already in un-authorised possession of 4 hectares of land from January 1978. This encroachment was regularised (November 1982) on the condition that the factory would pay (*i*) penal occupancy price equal to five times the ordinary occupancy price; (*ii*) penal non-agricultural assessment equal to five times the ordinary non-agricultural assessment; (*iii*) ordinary non-agricultural assessment from the date of encroachment; and (*iv*) a fine of Rs. 2,000. The Collector was asked (November 1982) to recover the

occupancy price within one month from the date of issue of the orders and to take further action to assess the land to land revenue etc. The penal occupancy price and the non-agricultural assessment was reduced (July 1984) from five times to two and a half times. The department recovered (December 1982) only the ordinary occupancy price but did not recover the penal occupancy price and the fine imposed by Government nor did it assess the penal land revenue and ordinary land revenue (including increase of land revenue and local cess). The omissions resulted in revenue amounting to Rs. 1.24 lakhs not being recovered for the years 1977-78 to 1985-86.

On the omission being pointed out in audit (March 1983), the department raised (October 1985 and October 1986) the demand for Rs. 1.24 lakhs. Report on recovery is awaited (February 1987).

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

4.6. Irregular grant of exemption

Under the Maharashtra Land Revenue Code, 1966 and rules made thereunder, land *inter alia* set apart for roads, parks, gardens etc. in layouts for the benefit of all citizens is exempt from levy of non-agricultural assessment.

In Umarkhed tahsil (Yeotmal district), a co-operative sugar factory had held land admeasuring 1,79,179 square metres situated in village Pophali and used the same for industrial purposes from the year 1973-74. However, two-third land admeasuring 1,19,453 square metres under parks, roads, etc. was exempted (March 1980) from levy of non-agricultural assessment by the Tahsildar (assessing authority), even though the land was within the compound of the factory and was not open to public. The irregular exemption resulted in revenue amounting to Rs. 1.09 lakhs, including increase of land revenue and local cess, being realised short for the years 1973-74 to 1985-86.

On the mistake being pointed out in audit (September 1983), the department revised (December 1986) the assessment order rectifying the error. Report on recovery is awaited (February 1987).

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

4.7 Short levy due to publication of incorrect rates

Under the Maharashtra Land Revenue Code, 1966, rate of assessment in respect of land in urban areas (a) used for purpose of residential buildings shall be the standard rate of non-agricultural assessment; (b) used for the purpose of industry shall be one and one half times the standard rate of non-agricultural assessment; and (c) used for purpose of commerce shall be thrice the standard rate of non-agricultural assessment, *inter alia* in the areas within the limits of Greater Bombay.

By a Government notification dated 30th July 1981, revised standard rates of land assessment, with retrospective effect from 1st August 1979 in respect of village Mohili in Kurla tahsil (Bombay suburban district) situated within the limits of Bombay Municipal Corporation, were fixed and published but these rates were incorrectly indicated as Re. 0.37, Re. 0.36 and Rs. 1.01 per square metre for residential, industrial and commercial uses instead of Re. 0.37, Re. 0.56 and Rs. 1.11 per square metre, respectively.

Accordingly the incorrect rate of Re. 0.36 instead of Re. 0.56 per square metre, was applied to lands measuring 32,865 square metres put to industrial use in four cases. This resulted in short realisation of revenue amounting to Rs. 55,883 for the years 1979-80 to 1985-86, including short levy of conversion tax in two cases where industrial use had commenced after 1st August 1979.

On the mistake being pointed out in audit (May 1985), the department stated (June 1986) that the printing error in the rates is being investigated and necessary orders would be issued after the original papers are traced out. Further report is awaited (February 1987).

The matter was reported to Government in August 1986; their reply is awaited (February 1987).

4.8 Short levy due to incorrect revision

Under the Maharashtra Land Revenue Code, 1966, an assessment or reassessment of non-agricultural land, when done, remains in force for the guaranteed period, if any, mentioned in the assessment orders or *sanad* or upto the date of general revision notified in the Gazette. Thereafter, the land revenue is liable to be reassessed in accordance with the standard rates of non-agricultural assessment notified in the

Gazette from time to time. On revision, the assessment has to be restricted to twice the amount of land revenue payable immediately before revision, if the land is used for residential purposes and to six times that amount, if the land is used for any other non-agricultural purposes.

(*i*) In Murtizapur tahsil (Akola district), land admeasuring 25,596.3 square metres used for industrial purposes was reassessed (March 1972) on general revision of standard rates effective from 23rd December, 1971, but the reassessment was limited to twice the land revenue assessed immediately before the revision, instead of limiting it to six times that assessment. The mistake resulted in further incorrect revision, when it was done with reference to revised standard rates which came into force from 1st August 1979. Also, no recoveries were actually effected even at the incorrect rates right from 1976-77 onwards. The mistakes and omissions resulted in short realisation of land revenue amounting to Rs. 23,021 during the years 1971-72 to 1985-86.

On being pointed out in audit (January 1985), the department accepted (February 1986) the omission. Further report is awaited (February 1987).

(*ii*) In Kurla tahsil (Bombay suburban district), in four cases land admeasuring 4,243.7 square metres situated in village Hariyali, within the municipal corporation limits and used for commercial purposes was reassessed after expiry of the guarantee period in July 1970 (in one case) and July 1971 (in three cases) as per revised standard rates effective from 29th July 1971 and again from 1st August 1979 (in all the four cases) after notification of revised standard rates in July 1981 with retrospective effect. The revised assessment was, however, restricted to twice the amount of the earlier assessment in all the three cases in 1971 and again in two cases from August 1979, instead of restricting the same to six times the earlier assessment. The incorrect revisions resulted in short realisation of revenue amounting to Rs. 29,543 for the years 1971–72 to 1985–86.

On the omission being pointed out in audit (May 1985), the department revised (January 1986) the assessments in all the cases. Report on recovery is awaited (February 1987).

(*iii*) In Nandurbar tahsil (Dhule district), lands admeasuring 3,400 square metres and 3,100 square metres situated within the limits of Nandurbar Municipal Council, under commercial use were reassessed in February 1976 but the revised assessment was limited to twice the amou nt of previous assessment, instead of limiting it to six times. The

mistake resulted in short realisation of revenue amounting to Rs. 15,291 for the years 1975–76 to 1985–86.

On being pointed out in audit (November 1984), the department accepted (July1986) the mistake. Report on action taken is awaited (February 1987).

The above cases were reported to Government in June 1986 and September 1986; their reply is awaited (February 1987).

4.9. **Incorrect assessment of revenue**

Under the Maharashtra Land Revenue Code, 1986, lands used for different purposes, such as agricultural, residential, industrial, commercial or any other purpose are assessed to land revenue at different rates. Under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974 (as amended on 1st August 1975) a tax called " increase of land revenue " is also leviable.

(*i*) In Nashik tahsil of Nashik district land admeasuring 9,000 square metres within the municipal limits of Bhagur Municipality was acquired and handed over to the Maharashtra State Electricity Board in the year 1979–80. The Board put 2,640 square metres of land to residential use and 6,360 square metres to commercial use. The entire land was, however, incorrectly assessed to land revenue at rates applicable to the land used for any other purpose instead of at rates applicable to residential/commercial purposes. Further, by a notification dated 25th August 1983, the standard rates for assessment of lands in Nashik tahsil were revised with retrospective effect from 1st August 1979, but the assessment of the aforesaid land was not revised. ' Increase of land revenue ' leviable under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974, was not also levied. The omissions resulted in short realisation of revenue amounting to Rs. 36,819 for the years 1979–80 to 1985–86.

On the omissions being pointed out in audit (September 1984), the department recovered (March 1985) Rs. 19,305. Report on recovery of the balance amount is awaited (February 1987).

(*ii*) In Collectorate Dhule (Dhule district), permission was granted (April 1982) to use land admeasuring 27,100 square metres, situated in Zone I of ' A ' class Municipal Council, Dhule, for residential purposes. The land was, however, assessed incorrectly as per the standard rates

applicable to Zone II of the City. The mistake resulted in short levy of revenue amounting to Rs. 27,127 for the years 1982–83 to 1985–86, including conversion tax leviable on the change in mode of use of land.

On the mistake being pointed out in audit (August 1985),the department issued (May 1986) rectificatory orders. Report on recovery is awaited February 1987).

(*iii*) In Mangrulpir tahsil (Akola district), land admeasuring 19,200 square metres situated within the limits of Municipal Council, Mangrulpir was put to commercial use from October 1977 but was assessed (December 1980) to land revenue from the year 1979-80 instead of from 1977–78. Further, the revised standard rates applicable from 1st August 1979 were notified in October 1982, but the assessment made in December 1980 was not revised. The mistakes resulted in short realisation of revenue amounting to Rs. 21,028 for the years 1977–78 to 1985–86.

On the mistake being pointed out in audit (June 1983), the department raised (July 1986) the demand of Rs. 21,028. Report on recovery is awaited (February 1987).

The above cases were reported to Government in April 1986 and September 1986; their reply is awaited (February 1987).

(*iv*) Under the Maharashtra Land Revenue Code, 1966, villages in non-urban areas are divided into two classes viz; Class I and class II, on the basis of market value of lands. The lands falling in class I villages and used for non-agricultural purpose are assessed at a rate not exceeding two paise per square metre per year and those falling in class II villages at a rate not exceeding one paisa per square metre per year. Under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974 (as amended on 1st August 1975), a tax called " Increase of Land Revenue " is also leviable.

In Ashti tahsil (Beed district), by a notification issued in December 1972, Jalgaon was classified as class I village and rate of assessment for land used for non-agricultural purpose was fixed at Rs. 1.65 paise per square metre per annum. While regularising (January 1980 and January 1982) the unauthorised use of land admeasuring 46 hectares put to non-agricultural use by a co-operative sugar factory in January 1978, the assessment was incorrectly fixed at the rate of Rs. 3,347.60 per annum as against Rs. 7,590 per annum worked out as per rates mentioned above.

The mistake resulted in short realisation of revenue amounting to Rs. 1.55 lakhs including local cess and increase of land revenue leviable for the years 1977–78 to 1985–86.

On the mistake being pointed out in audit (August 1984), the department raised (February 1985) a demand for Rs. 92,000. Reports on demand for balance amount and on recovery are awaited (February 1987).

The matter was reported to Government in August 1986; their reply is awaited (February 1987).

CHAPTER V

TAXES ON VEHICLES

5.1. Results of Audit

Test check of records relating to assessment and collection of motor vehicles tax, further tax and passengers tax, conducted in audit, during the year 1985-86, revealed short levy of taxes and losses of revenue amounting to Rs. 5.00 lakhs in 1,151 cases, which broadly fall under the following categories :—

	Number of Cases	Amount (In lakhs of rupees)
(*i*) Non-levy or short levy of tax due to incorrect application of rates.	102	1.89
(*ii*) Short levy of tax due to incorrect assessments ..	56	0.50
(*iii*) Irregular grant of exemption from payment of tax ..	12	0.88
(*iv*) Miscellaneous	981	1.73
	1,151	5.00

Some of the important cases are mentioned in the following paragraphs :

5.2. Incorrect grant of exemption from payment of tax

Under the provisions of the Bombay Motor Vehicles Tax Act, 1958, motor vehicles belonging to Government of India and Government of Maharashtra are exempt from payment of road tax. The exemption is not available in respect of vehicles belonging to autonomous bodies, public sector companies or corporations. By a notification issued on

1st April 1980, Government is also empowered to exempt from payment of tax, either wholly or partially, any motor vehicle used solely in furtherance of any educational, charitable and agricultural purpose.

(*i*) In Bombay, two vehicles belonging to the Reserve Bank of India, were irregularly exempted from payment of tax for various periods falling between November 1981 and October 1985.

On the irregularity being pointed out in audit (September 1984) the department stated (December 1984 and January 1986) that an amount of Rs. 19,757 (including interest amounting to Rs. 4,008) in respect of these vehicles for various periods falling between October 1983 and October 1985 had since been recovered.

The matter was reported to Government in May 1986; their reply is awaited (February 1987).

(*ii*) In Satara district, two trailors registered in September 1982 and belonging to a private firm, were exempted from levy of tax, accepting the firm's claim that the trailors would be utilised only for transporting grass grown on their land to their factory at Kasarani for use as cattle feed. The exemption allowed was irregular as transportation of grass does not constitute use of vehicle for agricultural purposes. The irregular grant of exemption resulted in motor vehicles tax and goods tax amounting to Rs. 11,938 (for the period from September 1982 to July 1984) not being realised.

On the omission being pointed out in audit (September 1984), the department stated (October 1985) that an amount of Rs. 15,230 due for the period from September 1982 to February 1985 had since been recovered in June 1985.

Government to whom the case was reported in June 1986 confirmed (February 1987) the recovery.

5.3. Short recovery of motor vehicles tax

Under the Bombay Motor Vehicles Tax Act, 1958, read with the instructions contained in the departmental manual, registered laden weight in respect of a tractor and trailor combination is to be computed by adding the maximum laden weight of the trailer to the unladen weight of the tractor as notified by Government for the particular type of trailor. This will be the registered laden weight to be assigned to the basic articulated unit. The Bombay motor vehicles tax is to be levied on the registered laden weight thus assigned.

(*i*) In Raigad district, in case of ten tractor-trailor combinations registered in September 1984, the unladen weight of the tractors was not added to the maximum laden weight of the trailors for the purpose of arriving at the registered laden weight of the vehicles. The omission resulted in short levy of tax amounting to Rs. 22,052 for the periods between September 1984 and February 1986.

On the mistake being pointed out in audit (January 1986), the department recovered (February 1986) Rs. 22,052 from the owners of vehicles.

The case was reported to Government in June 1986; their reply is awaited (February 1987).

(*ii*) In Bombay, in the case of eight articulated vehicles, the registered laden weight was not worked out correctly. The omission resulted in short recovery of tax of Rs. 12,462 during the period from January 1984 to December 1985.

On the omission being pointed out in audit (October 1985), the department stated (June and July 1986) that a sum of Rs. 10,769 had been recovered during November 1985 and January 1986. Report on recovery of the balance amount of Rs. 1,693 is awaited (February 1987).

The matter was reported to the Government (September 1986); their reply is awaited (February 1987).

5.4. Non-recovery of motor vehicles tax and further tax (goods tax)

The Bombay Motor Vehicles Tax Act, 1958, and the rules made thereunder, provide for levy and collection of motor vehicles tax and further tax (goods tax) at precribed rates on all vehicles used or kept for use in the State. The departmental manual also provides that demand notice should be issued in each case of default in payment of tax. The Act further provides for levy of interest at prescribed rates, in addition to the tax payable, if the tax is not paid in time, the amount of interest payable being limited to the amount of tax in default.

In the District Transport Office, Nanded in respect of 6 vehicles, motor vehicles tax and further tax (goods tax) amounting to Rs. 12,750 for various spells between 1st March 1984 and 31st March 1985 was not levied and demanded although tax due from the vehicle owners for the earlier and subsequent periods were levied and recovered.

On the omission being pointed out in audit (July 1985), the department recovered (between August 1985 and April 1986) from the owners an amount of Rs. 16,980 (including interest of Rs. 4,230).

The matter was reported to Government (August 1986); their reply is awaited (February 1987).

5.5. Non-raising of demands due to incorrect grant of exemption

Under the Bombay Motor Vehicles Tax Act, 1958 and the rules made thereunder, a registered owner of a motor vehicle not intending to use or keep for use such vehicle in the State and desirous of being exempted from levy of tax is required to make, before the commencement of such period, a declaration in the prescribed form specifying the period of non-use and the place where the vehicle would be kept during that period. The exemption from payment of tax is granted by the department after satisfying itself that the vehicle in respect of which declaration has been made, was not used during the period specified in the declaration.

In Akola, intimations in respect of five motor vehicles declaring their non-use during the period between 1st January 1983 and 31st March 1985, were received after the commencement of the declared period. But no action was taken to recover tax for the period from the declared dates of commencement of non-use of vehicles to the date of receipt of declarations.The incorrect grant of exemption resulted in tax of Rs. 20,963 not being levied.

On the omission being pointed out in audit (February 1986), the department raised (February 1986) and recovered (July 1986) Rs. 6,322 (including interest) in case of one vehicle. Report on recovery of the balance amount in respect of the remaining vehicles is awaited (February 1987).

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

5.6. Short recovery of passengers tax

Under the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958, passengers tax is leviable at the rate of 17.5 per cent of the amount of fare (inclusive of tax collected by the operator from the passengers). By a notification issued in May 1976, Government exempted certain operators from payment of passengers tax in excess of 3.5 per cent of the amount of fare (inclusive of tax) in respect of vehicles plying exclusively on certain specified routes.

In Thane district, a public limited company engaged two vehicles for transport of their staff between Borivali and Belapur (New Bombay).

where the factory of the company was situated, by a route which was not a specified route. Though the passengers tax for the period from January 1985 onwards was being recovered at 17.5 per cent,it was recovered only at the rate of 3.5 per cent for the period from March 1984 to December 1984. The mistake resulted in passengers tax being levied short by Rs. 39,200.

On the mistake being pointed out in audit (March 1986) the department stated (August 1986) that a sum of Rs. 39,200 had since been recovered (July 1986).

The matter was reported to Government (September 1986); their reply is awaited (February 1987).

5.7. Arrears of motor vehicles tax

5.7.1. *Introductory.*—The position of arrears of motor vehicles tax was mentioned in Audit Reports on Revenue Receipts for the year 1974–75, 1978–79 to 1980–81 and 1982–83. A further review of these arrears for the period 1982–83 to 1985–86 conducted in audit (June to August 1986), in the Offices of Transport Commissioner and Regional Transport Officer (Central) Bombay revealed the following position.—

5.7.2. *Trend of arrears.*—The arrears of Taxes on vehicles, including further tax (goods tax) and passengers tax, at the end of each year from 1982–83 to 1984–85, as per the departmental records, were as under.—

As on		In crores of rupees
31st March 1983	..	33.25
31st March 1984	..	28.13
31st March 1985	..	25.39

Out of the arrears of Rs. 25.39 crores as on 31st March 1985, an amount of Rs. 23.49 crores was outstanding at the end of December 1985 which included Rs. 10.40 crores (43 per cent of the total arrears) outstanding for more than 5 years, and Rs. 4.98 crores (21 per cent of the total arrears) for more than 10 years.

Government granted a loan of Rs. 20 crores to the Maharashtra State Road Transport Corporation in October 1982 which was adjusted, against the accumulated arrears of passengers tax (Rs. 20.59 crores)

due from the Corporation for the period upto 1980–81. Out of the, passengers tax of Rs. 28.68 crores due for the year 1981–82, the Corporation had paid Rs. 13.68 crores during 1982–83 and Government approved (June 1983) the payment of the balance amount of Rs. 15 crores in 5 equal instalments of Rs. 3 crores each commencing from 1983–84. The Corporation had paid 4 annual instalments of Rs. 3 crores each and the 5th annual instalment is due for recovery in 1987–88.

5.7.3. *Steps taken for the clearanc of arrears.*—With a view to reducing the arrears, the department drew up an action programme in 1979 which envisaged the grouping of arrears into three groups namely, (*a*) arrears relating to period prior to 31st March 1976, (*b*)arrears due from 1st April 1976 to 31st March 1979, and (*c*) current arrears. A detailed procedure and drill was drawn up for tackling the arrear cases falling in these groups. It was also envisaged that while making efforts to clear the arrears of earlier years, the current arrears should not be allowed to accumulate.

The department contended that the old arrears pertaining to the years upto 1966–67 were fictitious as neither the concerned vehicles nor the owners thereof could be traced. It was, therefore, decided (July 1979). to evolve a procedure for examination/investigation of each case of default in the payment of taxes with the object of finding out whether the taxes were recoverable or required to be written-off. For this purpose Government sanctioned in 1980, additional posts of 116 Tax Investigators 13 Senior Clerks and 4 Head Clerks, for a period of two years and the staff was posted in different Road Transport Offices from December 1980.

The clearance of arrear tax is made by the department in two ways, (*i*) by actual recovery, and (*ii*) by other means, such as tracing payments, cancellation of registration, noting of non-use of vehicle and by write-off.

It was noticed that on an average, arrears to the extent of 18 per cent were cleared every year during 1981–82 to 1985–86, 7 per cent by actual recovery (Rs. 1.26 crores out of Rs. 17.69 crores) and 11 per cent by other means (Rs. 1.95 crores out of Rs. 17.69 crores).

5.7.4. *Clearance of tax arrears in the Regional Transport Office, (Central) Bombay.*—The records in the office of the Regional Transports Officer (Central) where major portion of additional staff of investigators (39 tax investigators, 4 senior clerks and 2 head clerks) had been appointed in December 1980, revealed that the position of arrears of motor vehicles

tax (BMV) under the 3 groups envisaged in the action programme drawn up in 1979, was as under. :—

(Figures in lakhs of rupees).

	Group A Arrears upto March 1976	Group B Arrears from April 1976 to March 1979	Group C Current Arears					
			April 1979 to March 1980	April 1980 to March 1981	April 1981 to March 1982	April 1982 to March 1983	April 1983 to March 1984	April 1984 to March 1985
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Arrears	456.41	104.77	37.81	21.32	19.26	36.01	28.10	74.52
Clearance between April 1981 and March 1986.	316.96	53.43	Nil	0.21	1.04	19.88	3.59	8.20
Arrears as on 31st March 1986	139.45	51.34	37.81	21.11	18.22	16.13	24.51	66.32

(*Note.*—Current arears indicate arrears and corresponding clearance for the respective years during the period April 1981 to March 1986).

From the above, it will be seen that as on 31st March 1986, the arrears under ' group A ' had been reduced by 70 per cent and in ' group B ' by 50 per cent , but the current arrears under ' group C ' for the year 1979-80 onwards had more or less remained stagnant except those relating to the year 1982-83. Thus, the object of achieving the clearance of old arrears without accumulation of current arrears as contemplated in the action programme, had not been achieved. The expenditure incurred on the additional staff upto 31st March 1986 amounted to Rs. 20.42 lakhs.

(*ii*) As soon as a vehicle is registered, a separate folio is allotted to it and basic details required for the purpose of taxation are noted in a register called ' Cash Balance Review Register'. The amount of tax paid from time to time and period of non-use accepted and exemption granted, if any, are noted in this register under proper attestation. Separate, registers are maintained for transport and non–transport vehicles and for vehicles which migrated from other regions/States.

During test check of the ' Cash Balance Review Registers ' in the office of Regional Transport Officer (Central) Bombay, delays ranging from one year to over 5 years were noticed in the issue of demand notices for the tax in arrears. Out of 68 cases test checked, it was noticed that the demand notices were delayed upto one year in 6 cases, between one year and 5 years in 53 cases and over 5 years in 9 cases. It was also seen that the revenue recovery certificates in 86 cases pertaining to the

years 1972-73 to 1982-83 involving an amount of Rs. 7.37 lakhs were issued between 1982-83 and 1984-85. In respect of 7,038 cases pertaining to the years 1966-67 to 1979-80 involving an amount of Rs. 25.91 lakhs, the revenue recovery certificates were issued only during 1985-86.

The department stated (June 1986) that demand notices upto 1983 were issued manually and thereafter bills and notices were being sent by the computer branch; the delay in issue of notices during the earlier period was stated to be due to shortage of staff. In regard to issue of revenue recovery certificates, it was stated that scrutiny of old cases was time consuming; investigation/reinvestigation of each case had to be done and the work involved reference to old records.

5.7.5. *Non-pursuance of demand drafts, returned to other States for revalidation.*—Demand drafts are received in the office of the Transport Commissioner from other State Governments in payment of Bombay Motor Vehicles Tax, Passengers Tax, Further Tax and Composite Fee due in respect of vehicles visiting Maharashtra State under temporary permits, bilateral agreements, zonal permit scheme and national permit scheme.

It was noticed that 1147 demand drafts for an amount of Rs. 3.46 lakhs pertaining to the period 1981-82 to 1985-86, which were returned to the transport authorities of other States for revalidation, had not been received back (July 1986) duly revalidated. No action was taken by the department to obtain the revalidated demand drafts and credit the amount to Government account. The procedure in vogue had not been streamlined with a view to keeping a close watch on receipt and encashment of such demand drafts even though the omission was brought to the notice of Government in paragraph 5.14 of the Audit Report (Revenue Receipts) for the year 1980-81.

To sum up, (*i*) the arrears of taxes cleared during the years 1981-82 to 1985-86 by actual recovery and by other means such as linking of payments etc. was not significant as compared to the total arrears, (*ii*) arrears for the period upto 1978-79 had been substantially cleared but those pertaining to the perod from April 1979 onwards had remained stagnant till the end of 31st March 1986 and (*iii*) the follow up of demand drafts, received towards payment of taxes but returned to the concerned States for revalidation was not effective.

The foregoing was reported to the department and to Government in October 1986; their replies are awaited (February 1987).

CHAPTER VI

STAMP DUTY AND REGISTRATION FEES

6.1. Results of Audit

Test check of instruments and other records relating to stamp duty and registration fees, conducted in audit in 208 offices during the year 1985-86, revealed under-assessment amounting to Rs. 96.09 lakhs, which broadly fall under the following categories :—

	Amount (In lakhs of rupees).
(*i*) Non-levy of duty and fee on instruments executed by co-operative societies.	32.17
(*ii*) Incorrect grant of exemption from duty and or fee	21.27
(*iii*) Short levy due to misclassification of documents	38.23
(*iv*) Short levy due to undervaluation of property ..	0.81
(*v*) Other irregularities	3.61
Total ..	96.09

Some of the important cases are given in the following paragraphs.

6.2. Irregular grant of remission

(*i*) By a notification issued in November 1972, Government remitted stamp duty payable on mortgage deeds securing loans advanced by specified financial agencies for the purpose of acquisition of fixed assets

such as land, buildings and machinery for starting or expanding industrial undertakings or small scale industries in certain areas.

(*a*) In sub-registry Latur, on seven mortgage deeds registered in the year 1983, levy of stamp duty was remitted even though the loans were given to meet " working capital " requirements or " for business " or as a " cash credit " facility and not for acquisition of fixed assets. The irregular grant of remission resulted in stamp duty and registration fee amounting to Rs. 74,010 not being realised.

On this being pointed out in audit (December 1985), the Inspector General of Registration accepted (May 1986) the audit objection and directed the sub-registry to recover the registration fees and to refer the documents to the Collector for recovery of stamp duty. Report on recovery is awaited (February 1987).

(*b*) In sub-registry Ambad, stamp duty and registration fee was remitted on the mortgage deed executed in the year 1983 by a limited company for securing repayment of loan of Rs. 18.63 lakhs advanced by a specified financial agency even though the loan granted was not wholly for acquisition of fixed assets. The mistake resulted in short realisation of stamp duty and registration fee amounting to Rs. 55,890.

On the mistake being pointed out in audit (November 1985), the Inspector General of Registration, Pune, accepted the objection and directed (July 1986) the sub-registry to initiate action for recovery of stamp duty and registration fee. Report on recovery is awaited (February 1987).

(*c*) In sub-registry Aurangabad, stamp duty and registration fee was remitted on three documents registered in the year 1983, even though the loans were given as " over draft and cash credit facilities " and were not for acquisition of fixed assets. Stamp duty and registration fees not realised amounted to Rs, 17,020.

On the omissions being pointed out in audit (July 1985), the department accepted (January 1986) the omissions. Further report is awaited (February 1987).

The above cases were reported to Government between April 1986 and September 1986; their reply is awaited (February 1987).

(*ii*) By a Government notification issued in March 1939 read with notification issued in March 1980 under the Co-operative Societies Act, 1960, superseding the existing notifications on the subject, in respect of instruments executed by members of housing societies formed by persons

other than agriculturists or backward communities, remission of stamp duty and registration fee was withdrawn where the value of loans or advances, exceeded Rs. 5,000.

In sub-registries at Aurangabad and Latur, in respect of 174 mortgage deeds securing loans exceeding Rs. 5,000 in each case, which were executed by members of co-operative housing societies formed by persons other than agriculturists and backward communities, between January 1983 and December 1983, stamp duty and registration fee was remitted. The incorrect remission of registration fee and stamp duty resulted in non-realisation of revenue (registration fee Rs. 1.17 lakhs and stamp duty Rs. 2.33 lakhs) amounting to Rs. 3.50 lakhs.

On the mistake being pointed out in audit (July 1985 and December 1985), Inspector General of Registration, accepted (August 1986 and May 1986) the mistake in regard to registration fee and directed recovery of the short levy. Further progress is awaited (February 1987).

As regards non-levy of stamp duty it was stated (April 1986), that notification of March 1980 issued under the Co-operative Societies Act, 1960 did not supersede the rule under Hyderabad Stamp Rules,1345 Fasli, which was still in vogue in Marathwada region and under which all such documents were exempt from payment of stamp duty. It was also stated that Government was being requested to issue separate notification superseding the relevant rule of the Hyderabad Stamp Rules to ensure uniformity throughout the State. Further developments are awaited (February 1987).

It may be mentioned that during discussion of paragraph 6.2.8. of Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year 1978-79, the Public Accounts Committee was informed (4th March 1983) by Government that with the issue of Government notification dated 24th March 1980, the entire State became subject to one and the same notification, so far as remissions of stamp duty and registration fees to co-operative housing societies were concerned.

Failure to foresee implications of the prevalent rule in a region has resulted in unintended remission of stamp duty on such instruments (involving Rs. 2.33 lakhs) and has also defeated the intention of the Government to bring the entire State under a single notification for uniform treatment.

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

(*iii*) By a notification issued in March 1939, under the Bombay Co-operative Societies Act, 1925 Government remitted stamp duty payable on all instruments executed by or on behalf of any co-operative society or by any officer or member of any such society and relating to the business of such society.

In sub-registry Bombay, stamp duty payable on a conveyance deed for a consideration of Rs. 19,57,500 was remitted. The remission allowed was incorrect, as the document was executed by a trust and not by or on behalf of the co-operative society or by any member of the society. The incorrect remission resulted in duty amounting to Rs. 1,95,750 not being realised.

On this being pointed out in audit (October 1983), the department accepted (July 1985) the mistake.

The case was reported to Government in May 1986. Government stated(August 1986) that the matter had been referred to the Collector of Bombay for recovery. Report on recovery is awaited (February 1987).

(*iv*) By a notification issued on 30th October 1972, read with notification issued on 19th October 1977, grant of remission of stamp duty and registration fee in respect of conveyance, relating to lease of lands, executed by or on behalf of co-operative housing societies, was withdrawn.

In sub-registry Haveli-I (Pune), an instrument of conveyance, relating to lease of land, executed in April 1979 by a co-operative housing society, was exempted from levy of stamp duty and registration fee. The irregular grant of exemption resulted in non-realisation of stamp duty and registration fee amounting to Rs. 11,033.

On this being pointed out in audit (June 1982), the Inspector General of Registration, Pune, accepted (July 1985) the mistake and instructed the concerned Sub-Registrar to effect recovery of deficit stamp duty and registration fee. Report on recovery is awaited (February 1987).

The matter was reported to Government in July 1986; their reply is awaited (February 1987).

(*v*) As per Government notification issued in March 1980, co-operative sugar factories fall in the category of processing societies and stamp duty and fee was not to be remitted on instruments executed by such societies.

In the sub-registry, Savda, 10 conveyance deeds relating to purchase of land, for a total consideration of Rs. 2,27,150, were executed by

a co-operative sugar factory between December 1981 and June 1983. The deeds were erroneously exempted from levy of stamp duty and registration fee resulting in non-realisation of stamp duty and registration fee amounting to Rs. 10,956.

On this being pointed out in audit (April 1984), the department recovered Rs. 8,017 (July 1985). Report on recovery of balance amount is awaited (February 1987).

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

(*vi*) As per provisions in the Bombay Stamp Act, 1958 with effect from 1st August 1978, Government remitted stamp duty and registration fee payable on mortgage deeds executed by small and marginal farmers as well as certain other agriculturists for securing repayment of loans advanced for agricultural purposes by commercial banks.

In Indapur sub-registry, five mortgage deeds executed by agriculturists between January 1981 and April 1981 were exempted from levy of stamp duty and registration fee even though as per the details available in the documents, the executants did not satisfy the necessary conditions for eligibility as small or marginal farmers or other agriculturists specified in the Government order. This resulted in stamp duty and registration fee being levied short by Rs. 10,320.

On the mistake being pointed out in audit (August 1983), the department accepted (July 1985) the short levy of Rs. 9,300 in respect of four documents. Report on the remaining one document and action taken for rectification is awaited (February 1987).

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

6.3. Short levy due to misclassification of a document

(*i*) As per the Registration Act, 1908, on leases, registration fee is leviable on an *ad valorem* scale, on the amount or value of the consideration or of the property to which the document relates.

In a sub-registry, Bombay, on a document, whereby a period of lease was extended by six months on payment of a security deposit of Rs. 60 lakhs by the confirming party *ad valorem* fee amounting to Rs. 60,000 was chargeable but a fixed fee of Rs. 20 only was charged, treating the document as a simple agreement, which was not correct.

On the mistake being pointed out in audit in March 1984, the department directed (October 1984) the Sub-Registry to recover the deficit fee.

The matter was reported to Government in May 1986. Government intimated (August 1986) that the deficit fee of Rs. 59,980 had been recovered in May 1986.

(*ii*) Under the Bombay Stamp Act, 1958, every instrument mentioned in Schedule I to the Act is chargeable with duty at the rate indicated in the Schedule. Separate rates of duty have been prescribed for different types of instruments. The classification of the instrument depends on the nature of the transaction recorded therein.

In Bombay, eight instruments which related to conveying of right, title and interest in properties for considerations amounting to Rs. 6.27 lakhs, were chargeable with stamp duty at higher rates as applicable to conveyance deeds, but were charged with stamp duty at lower rates applicable to agreements. The mistake resulted in stamp duty being levied short by Rs. 73,635.

On this being pointed out in audit (between March 1984 and September 1985) the Inspector General of Registration, Pune accepted (April 1985, January 1986 and April 1986) the mistake and directed the Sub-Registrar to refer the documents to the Superintendent of Stamps, Bombay, for recovery of the deficit stamp duty. The Superintendent of Stamps, recovered (December 1986) short levy of Rs. 15,200 in respect of one document. Further report in respect of remaining seven cases is awaited (February 1987).

The matter was reported to Government between April 1986 and September 1986; Government accepted (August 1986) the omission in respect of six documents. Report on the remaining two documents and rectificatory action is awaited (February 1987).

6.4. Non-levy due to misclassification of document

Under proviso 2 to Section 3 of Bombay Stamp Act, 1958, no stamp duty is chargeable on any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise of any ship or vessel or any part, interest, share or property of or in any ship or vessel registered under the Bombay Coasting Vessels Act, 1838, or the Indian Registration of Ships Act, 1841.

In Bombay, a company, by a deed executed in December 1980, mortgaged a marine vessel named ' Prerana ' for securing a loan of Rs. 15

lakhs from a bank for its purchase. The deed also provided that in case of insufficiency of the above security, another vessel of the company, named ' Pragati ', already mortgaged with the bank to secure another loan, may be treated as an additional security. The Superintendent of Stamps, Bombay, however, incorrectly held the document as a further charge on the vessel ' Pragati ' already mortgaged with the bank and exempted (December 1980) the instrument from levy of stamp duty as the vessel ' Pragati ' was registered under the Bombay Coasting Vessels Act, 1838. However, by the deed in question, as a new vessel, ' Prerana ' had been mortgaged for a fresh loan, its classification as ' further charge ' instead of as mortgage was incorrect. Moreover, the vessel ' Prerana ' was not even registered either under the Bombay Coasting Vessels Act, 1838 or Indian Registration of Ships Act, 1841; hence exemption from stamp duty under Section 3 of the 1958 Act was not applicable in this case and the document was chargeable to stamp duty. The incorrect exemption resulted in non-levy of stamp duty amounting to Rs. 30,000.

On the mistake being pointed out in audit (December 1982), Superintendent of Stamps, Bombay, accepted (June 1984) the non-levy and recovered the amount (July 1986).

The matter was reported to Government in August 1986; their reply is awaited (February 1987).

6.5. Short recovery of registration fees

As per Maharashtra Registration Manual, agreements, which are executed under Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion Construction, Sale, Management and Transfer) Act, 1963, are agreements to sell. The Table of fees appended to the Registration Act was amended from 1st April 1977. Documents falling under Article I of the Table, attract fee at an *ad valorem* scale, while those falling under Article IV are liable to fixed fee. Agreement to sell falls under Article-I and is liable to *ad valorem* fee and not fixed fee and is to be based on the amount of consideration set forth in the agreement, irrespective of whether the possession of property contracted to be sold had been delivered or not.

In September 1978, the Inspector General of Registration issued orders to the effect that agreements executed under Section 4 of the 1963 Act were simple agreements and not agreements for sale and that fixed fee will be chargeable thereon under Article IV of the Table of fees. The

erroneous nature of these orders was pointed out (August 1979) in audit. The Inspector General of Registration, thereupon, revised his orders and instructed (October 1980) the field officers that the agreements in question were chargeable with fee under Article I of the Table of fees as was done prior to 1st April 1977.

In Sub-registry, Bandra (Bombay), on 194 agreements for sale, registered during the years 1978 to 1980 (photo copied documents which were not produced earlier), registration fee was levied at the rate applicable to simple agreements (fixed registration fee of Rs.20) instead of charging *ad valorem* rates. The irregularity resulted in registration fee being realised short by Rs. 1.56 lakhs.

On this being pointed out in audit (between March 1984 and February 1985), the Inspector General of Registration, Pune accepted the audit objection (April 1985 and June 1985) and directed the sub-registry to recover the deficit fee. Report on recovery is awaited (February 1987).

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

CHAPTER VII

OTHER TAX RECEIPTS

7.1. Results of Audit

Test check of the records of departmental offices conducted in audit during 1985–86 revealed short realisation or losses of revenue amounting to Rs. 64.79 lakhs in 1,007 cases as listed below :

	Number of cases	Amount (In lakhs of rupees)
(*a*) Bombay Building Repairs and Reconstruction Cess ..	56	15.30
(*b*) Maharashtra Education and Employment Guarantee Cess..	100	1.06
(*c*) Tax on Professions, Trades, Callings and Employments ..	641	4.31
(*d*) Electricity Duty	24	35.69
(*e*) Entertainments Duty	174	2.78
(*f*) Tax on luxuries (In Hotels and Lodging Houses) ..	8	4.74
(*g*) Agricultural Income Tax	4	0.91
Total ..	1,007	64.79

Some of the important cases are mentioned in the following paragraphs.

SECTION-A THE BOMBAY BUILDING REPAIRS AND RECONSTRUCTION CESS.

7.2. Short levy of repair cess

Under the Maharashtra Housing and Area Development Act, 1976, a cess on land and building called the ' Bombay Building Repairs and Reconstruction Cess ' is leviable at rates prescribed in the Second Schedule

to the Act. The cess is being collected on behalf of State Government by the Bombay Municipal Corporation in the same manner as property tax is collected under the Bombay Municipal Corporation Act, 1888. The cess is levied at different rates depending upon the cost of repairs carried out to properties by the Maharashtra Housing Development Board.

(*i*) In respect of 15 properties of 'B' ward of Bombay, repaired during the periods between August 1972 and December 1979, and in respect of 16 properties where the structural repairs were completed in October 1980, the Bombay Municipal Corporation did not recover the repair cess at the enhanced rates from the owners of these buildings from the date of completion of repairs by the Board. This resulted in short recovery of cess amounting to Rs. 10.57 lakhs for the periods ranging between August 1972 and March 1984.

On the omission being pointed out in audit (August 1983 and September 1984), the Corporation stated (August 1986 and September 1986) that repair cess had since been enhanced in respect of 24 properties and demands for Rs. 10,86,834 (for the period upto March 1985) had been raised, out of which an amount of Rs. 5,06,390 had been recovered. In respect of the remaining seven properties report on action taken was awaited (February 1987).

(*ii*). In respect of another 15 properties repaired during the period between April 1974 and October 1980, the Bombay Municipal Corporation did not enhance the rate of repair cess from the date of completion of repairs by the Maharashtra Housing Development Board, but continued to recover the cess at the lower rates. This resulted in short recovery of the cess amounting to Rs. 4,20,632 for the period 1st April 1974 to 1st October 1980.

On the omission being pointed out in audit (August 1982), the Bombay Municipal Corporation stated (August 1986) that out of the demands of Rs. 4,20,632 on account of enhanced rates raised during 1985-86 in respect of 14 properties, an amount of Rs. 1,36,219 had since been recovered and that recovery proceedings for the balance amount were in progress. In respect of one property, it was stated that correct particulars were being ascertained for raising the demand.

(*iii*) In respect of repairs to 9 properties carried out by the Maharashtra Housing Development Board during May 1984 to March 1985 cess was levied at incorrect rates resulting in cess being realised short by Rs. 17,133.

On the mistake being pointed out in audit (February 1986), the Bombay Municipal Corporation stated (March 1986) that bills at enhanced rates were issued and action of recovery was in progress. Report on recovery is awaited (February 1987).

The above cases were reported to Government (between July 1986 and September 1986); their reply is awaited (February 1987).

SECTION B—THE MAHARASHTRA EDUCATION AND EMPLOYMENT GUARANTEE (CESS)

7.3. Short assessment of State education cess

As per provisions of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962 the State education cess is leviable on lands and buildings in a municipal area. The Schedule to the Act prescribes separate rates of education cess on properties used for residential and non-residential purposes and it is leviable on the annual letting value of the properties. The rates of education cess on properties used for non-residential purposes are double the rates prescribed for residential purposes. The employment guarantee cess is also leviable on lands and buildings used for non-residential purposes with effect from 1st April 1975.

(*i*) In Bombay, two properties were used partly for residential and partly for non-residential purpose. However, as the annual letting value of these two properties was not correctly bifurcated into residential and non-residential rateable value, State education cess and employment guarantee cess were short assessed (on non-residential portions of the properties) for the period April 1975 to March 1985 by Rs. 29,167.

On the omission being pointed out in audit (November 1985, the department raised a demand for Rs. 28,567 (July 1986). Report regarding recovery is awaited.

The matter was reported to Government (August 1986); their reply is awaited (February 1987).

(*ii*) In Bombay in respect of 14 properties used partly for residential and partly for non-residential purposes, though the bifurcation of the annual letting value into residential and non-residential rateable values was available with the department, the entire property was treated as residential in each case and State education cess was levied at lower rates. This resulted in short levy of State education cess and non-levy of employment guarantee cess amounting to Rs. 25,683 for the period from April 1975 to March 1982.

On the omission being pointed out in audit (March 1983), the department stated (July 1986 and February 1987) additional demand for Rs. 32,937 for the period April 1975 to March 1982 had been issued. Report on recovery of demand issued is awaited (February 1987).

The matter was reported to Government (September 1986); their reply is awaited (February 1987).

SECTION C—TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS

7.4. Short levy of interest on belated payments

Under the provisions of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 and the rules made thereunder, every employer registered under the Act shall furnish a monthly return in the prescribed form on or before the last day of every month showing therein the salaries and wages paid by him in respect of the month immediately preceding that month and the amount of tax deducted by him from the said salaries and wages and every such return shall be accompanied by a treasury chalan in proof of payment of the full amount of tax due according to the return. A return filed without such proof of payment shall not be deemed to have been duly filed. The Act also enjoins on the employer to pay the tax irrespective of the fact whether such deduction has been made or not. If the employer fails to pay the tax as required under the Act, he shall be liable to pay simple interest at two per cent of the amount of tax due for each month or part thereof for the period for which tax remains unpaid.

It was seen from the assessment records of an employer in Bombay, that he did not make the payments of profession tax in the manner prescribed in the Act, and consequently the assessing officer found him to be an assessee in default and levied interest of Rs. 53,071 for the belated payments made during the period 1976-77 to 1981-82. Penalty of Rs. 400 was also levied for not filing the returns in the manner prescribed.

The assessee went in appeal and the Assistant Commissioner of Profession Tax (Appeals) II, Bombay reduced the interest from Rs. 53,071 to Rs. 6,508 and also deleted in toto the penalty amount of Rs. 400 levied in the assessment order. The employer was deducting profession tax in respect of a particular month not from the salary of that month but from the salary paid for subsequent month e.g. tax for the month of April which is to be deducted from that month's salary was deducted from the

salary of May (paid in June) and remitted to Government in June and so on. The employer pleaded before the appellate authority that if there was delay it would be for one month only and thereafter the payments were regular and in time in view of the procedure followed by him. This stand, which was accepted by the appellate authority was *prima facie* incorrect as payment of profession tax was, in fact, postponed by one month regularly for all the months. Further, as per provisions of the Act, though the employer did not deduct Profession tax for each month from the same month's salary, he is liable to pay the tax due irrespective of whether such deductions have been made or not. It was also noticed that the employer started paying the tax within the prescribed time from April 1982 onwards by deducting the tax in respect of a particular month from the salary of that month. The method followed by the assessee upto the end of 1981–82 was not covered by the provisions of the Act. Further, as per provisions of the Act, interest for delayed payments is to be levied in terms of a month or part thereof and not in terms of days of delay. Even if the delay is just for one day, the interest is leviable for one month and not for one day. However, it was seen from the calculations of interest kept on record that periods of delay were reckoned in terms of days and interest was levied with reference to the exact number of days of delay as opposed to month or part thereof. The amount of interest of Rs. 53,071 levied in the original assessment orders was itself short by Rs. 69,309 and the correct amount of interest for belated payments during 1976–77 to 1981–82 worked out to Rs. 1,22,380.

On these mistakes being pointed out (April 1985) in audit, the Deputy Commissioner of Profession Tax revised the orders passed by the Assistant Commissioner of Profession Tax (Appeals) and levied interest of Rs. 1,22,380 for the belated payments of tax. Department stated (January 1987) that the assessee has preferred an appeal before the Maharashtra Sales Tax Tribunal against the revision orders.

The case was reported to Government (July 1986); their reply is awaited (February 1987).

7.5. Non-levy of profession tax on the employers of Video Centres

Under the provisions of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 and the rules made thereunder, the employer of theatres as defined in the Bombay Shops and Establishments Act, 1948, are liable to pay profession tax at the rate of Rs. 250 per annum. The word ' theatre ' as defined in the Bombay Shops

and Establishments Act, 1948 includes any premises intended principally or wholly for the exhibition of picture or other optical effects by means of a cinematograph or other suitable apparatus. The expression " exhibition " includes any exhibition by cinematograph including "Video" exhibition as per the Bombay Entertainments Duty Act, 1984 which came into force from 1st January 1984. The Act also provides that the proprietors of the exhibitions shall apply for and obtain a certificate of enrolment.

In five Profession Tax Offices in Amravati, Chandrapur, Gondia, Latur and Parbhani districts proprietors of 272 video centres for which licences had been issued by the Collectors, neither applied for a certificate of enrolment nor paid the tax due. This resulted in non-realisation of profession tax amounting to Rs. 1.86 lakhs during the period from 1983-84 to 1985-86.

On the omissions being pointed out in audit (between May 1985 and September 1985), the department stated (February 1986 and April 1986) that notices in respect of 90 video centres functioning in Latur and Parbhani districts have since been issued, liability to pay tax in respect of 18 video centres had since been fixed and action to recover the dues was in progress. Action taken by the department in respect of cases relating to Amravati, Chandrapur and Gondia districts is awaited (February 1987).

The matter was reported to Government (July 1986); their reply is awaited (February 1987).

SECTION-D: ELECTRICITY DUTY

7.6. Incorrect continuance of exemption from payment of electricity duty

Under the Bombay Electricity Duty Act, 1958, no duty is payable on the electricity consumed by the State Government. But such exemption is not available for electricity consumed by non-Government organisations like autonomous bodies.

The different divisions and sub-divisions of Pune Environmental Engineering Circle were transferred to the Maharashtra Water Supply and Sewerage Board (an autonomous body) in November 1979 but duty on electricity consumed by these sub-divisions was not levied. Four divisions and seven sub-divisions of this circle were functioning in Pune City, while some other sub-divisions were located at various places in Ahmednagar, Satara and Solapur districts. The location of these divisions and sub-divisions as well as the details of electricity consumed by them from

1st November 1979 onwards were not available in the Office of the Electrical Inspector, Pune and hence, the amount of electricity duty payable but not paid could not be ascertained in audit.

On the omission being pointed out in audit (December 1981), the department, after verification, stated (November 1986) that duty of Rs. 33.80 lakhs on electricity consumed by all the divisions/sub-divisions pertaining to the period from 1st November 1979 to 31st March, 1983 had since been recovered.

The matter was reported to Government (October 1986); their reply is awaited (February 1987).

7.7. Short levy of electricity duty

By Government notification issued in September 1984, under the Bombay Electricity Duty Act, 1958, with effect from 1st October 1984 the rate of electricity duty payable by consumers having generating sets installed before 1st April 1972 and consuming energy for industrial purposes was revised from 1 paisa to 3.5 paise per unit.

An industrial consumer in Kolhapur district having generating sets installed before 1st April 1972 was, charged electricity duty at the pre-revised rate in respect of 14,38,500 units of electricity consumed by it during the month of January 1985. This resulted in short recovery of electricity duty amounting to Rs. 35,963.

On this being pointed out in audit (November 1985), the department stated (May 1986) that the differential duty of Rs. 35,963 had since been recovered from the consumer.

The case was reported to Government (June 1986); their reply is awaited (February 1987).

7.8. Non-levy of interest on belated payments

Under the Bombay Electricity Duty Act, 1958 and the rules made thereunder every licensee is required to pay into Government Treasury, electricity duty in respect of energy supplied to consumers during a billing month on or before the last date of the succeeding calendar month. Similarly, a person registered as a generator of electrical energy for his own use is liable to pay electricity duty for the energy consumed by him in a month within the first ten days of the succeeding month. If duty is not paid to Government by the due date, interest is chargeable on the amount

of duty in default at the rate of 18 per cent per annum for first three months of default and at 24 per cent per annum for any period thereafter till the date of payment of duty.

(*i*) In Kolhapur district a licensee paid the electricity duty due for the period from October 1981 to October 1982 late. The delay in payment ranged between 8 and 14 months. The interest leviable for such delayed payments but not levied worked out to Rs. 1,16,793.

On this omission being pointed out in audit (May 1983), the department issued demand notices in July 1983 and September 1983 for Rs. 64,906 and Rs. 51,887 respectively. Details of recovery are awaited (February 1987).

The case was reported to Government (August 1986); their reply is awaited (February 1987).

(*ii*) Two consumers in Kolhapur who had generated energy for their own use, delayed payment of electricity duty between October 1984 and January 1985; the delay ranged between 168 days and 302 days. The department did not charge any interest on the belated payments. Interest not charged amounted to Rs. 17,292.

On the omission being pointed out in audit (November 1985), the department recovered (December 1985 and January 1986) the entire amount from the consumers.

Government to whom the case was reported in July 1986 confirmed (September 1986) the recovery.

SECTION E—ENTERTAINMENTS DUTY

7.9 Non-recovery or short recovery of entertainments duty and surcharge and non-recovery of composition fee on belated payments

Under the Bombay Entertainments Duty (Amendment and Retrospective Levy of Duty)Act, 1984 and the rules framed thereunder, the organisers of entertainments are required to submit returns and pay entertainments duty within 10 days from the dates of entertainment. In the event of their failure to do so, the organisers are liable to be prosecuted but the offence may be compounded on payment of composition fee, which may not exceed Rs. 500 for each offence. In December 1975, Government issued instructions to levy penal interest at the rate of 7 paise per day per Rs. 100 (or part thereof) of entertainments duty which was not paid, for each day of default.

(*i*) It was noticed that proprietors of two theatres in Satara district had neither filed their returns for certain periods during May 1984 to April 1985 nor paid the entertainments duty and surcharge due to Government. Proprietors of three other cinemas in Akola and Jalgaon districts had paid entertainments duty and surcharge for the period from January 1984 to March 1984 short by Rs. 8,958. Total amount recoverable from these five cinemas, by way of entertainments duty, surcharge and interest, amounted to Rs. 20,199 for the recovery of which no action was taken.

On the omission being pointed out in audit (February 1983, November 1985 and December 1985), the department recovered (between October 1985 and March 1986) the full amount (including penalty) from the proprietors.

The case was reported to Government in June 1986; their reply is awaited (February 1987).

(*ii*) A proprietor of a cinema theatre in Nanded district did not pay entertainments duty and surcharge amounting to Rs. 21,176 for the second fortnight of March 1985 and no action was also initiated by the department to recover the dues.

On the omission being pointed out in audit (April 1985), the department recovered (June 1985) the entire amount from the proprietor. Action taken towards recovery of composition fee on belated payment of entertainments duty/surcharge is awaited (February 1987).

The omission was reported to Government (September 1986); their reply is awaited (February 1987).

(*iii*) It was noticed from the returns filed by the proprietors that three cinema theatres in Parbhani and Nanded districts, had paid entertainments duty and surcharge short by Rs. 8,012 for the period from January 1984 to December 1984. Another theatre in Dhule district had collected entertainments duty and surcharge amounting to Rs. 2,617 for the period from January 1985 to March 1985 but had not deposited the same into Government Treasury till April 1985. The total amount of entertainments duty and surcharge recoverable from the four theatres amounted to Rs. 10,629.

On the omission being pointed out in audit (between April and June 1985), the department recovered (between May 1985 and December 1985) the entire amount from the proprietors of the theatres.

The matter was reported to Government (October 1986); their reply is awaited (February 1987).

(*iv*) In Thane district, proprietor of a cinema theatre did not pay entertainments duty within the prescribed period of 10 days during the year 1984-85 on a number of occasions. The amount of composition fee recoverable in this case worked out to Rs. 14,440 which was neither demanded nor recovered.

On the omission being reported in audit (March 1986), Government stated (July 1986) that the entire amount had since been recovered (May 1986) from the proprietor of the cinema theatre.

(*v*) In Kolhapur, proprietors of three cinema theatres did not pay entertainments duty within the prescribed period of 10 days during the period between April 1984 and March 1985. The amount of composition fee, recoverable amounted to Rs. 43,650. But the amount was neither demanded nor recovered.

On the omission being pointed out in audit in February 1986, the department stated (December 1986) that the composition fee had since been recovered from the proprietors.

The matter was reported to Government (August 1986); their reply is awaited (February 1987).

Section F—Tax on Luxuries (In Hotels and Lodging Houses)

7.10. Failure to file returns of luxury tax and non-payment of luxury tax

As per provisions of the Maharashtra Tax on Luxuries (in Hotels and Lodging Houses) Act, 1974, every proprietor of a hotel or a lodging house, who is liable to pay luxury tax, has to pay the tax as per returns within a period of 5 days after the expiry of the month to which the return relates and to submit a monthly return within eight days after the end of the month to which the return relates, alongwith a receipted copy of the treasury chalan. Non-submission of the return within the prescribed time is an offence for which the proprietor can be prosecuted in the court of law. The assessing authority is also empowered to assess the amount of luxury tax payable by the proprietor who failed to file the returns or pay the tax within the prescribed period on the basis of his best judgement after giving the proprietor a reasonable opportunity of being heard and the tax so assessed is payable within ten days of service of demand notice.

The Act, however, does not provide for levy of penalty for failure to file returns or for non-submission of returns within the prescribed time.

A hotel in Bombay did not pay the luxury tax amounting to Rs. 1,53,419 collected during the period January 1983 to August 1983 nor did it file any returns after August 1983. The department also did not take action to recover the tax from the proprietor for the period upto August 1983 and to assess the tax for the period from September 1983 onwards on the basis of best judgement.

On the omission being pointed out in audit (May 1985), the department stated that the proprietor of the hotel did not file the returns due to family property dispute which was before the High Court and that the Court Receiver appointed in July 1984, was being approached to recover the arrears of luxury tax.

The matter was reported to Government (September 1986); Government stated (January 1987) that the Collector of Luxury tax has since assessed, on an average basis, tax dues of Rs. 3,13,073 for the period September 1983 to the date of appointment of Court Receiver and the Court Receiver was being approached for the payment of all Government dues. Details of recovery are awaited (February 1987).

SECTION G—AGRICULTURAL INCOME TAX

7.11. Tax not levied due to irregular transfer of agricultural lands

As per provisions of the Maharashtra Agricultural Income Tax Act, 1962, in computing the total agricultural income of an individual for the purposes of assessment, there shall be included, so much of the total agricultural income of a spouse or minor child of such individual as may arise directly or indirectly from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with any agreement to live apart. Under the Indian Registration Act, 1908, the agricultural lease for any term exceeding one year, when reduced to writing, cannot be received as evidence of any transaction affecting such property unless it is registered.

In Khamgaon (Buldhana district), taxable income of Rs. 54,840 relating to the previous years 1980-81 to 1982-83 derived from part of the land owned by a Hindu undivided family (H.U.F.) was erroneously excluded and assessed separately in the hands of the wife of the *Karta* of the(H.U.F.) on the ground that part of the land had been given to her on

lease for a period of four years from July 1980. Since separate income of the Hindu Undivided Family and the wife of *karta* was below the exemption limit of Rs. 36,000, no tax was levied on any income. However, as the lease deed was not registered and was also not duly stamped according to the provisions of the Bombay Stamp Act, 1959, there was no legal and operative transfer. Thus, the document should not have been relied upon and entire income should have been treated as belonging to the (H.U.F.). The omission resulted in non-levy of agricultural income tax amounting to Rs. 10,150.

On this being pointed out in audit (October 1985), the assessing officer stated (August 1986) that the case was being sent to the Assistant Commissioner of Agricultural Income Tax for revision. Further report is awaited (February 1987).

The matter was reported to Government (September 1986). Reply is awaited (February 1987).

CHAPTER VIII

NON-TAX RECEIPTS

Education and Employment Department

8.1. Un-intended benefit to a society

The canteen block admeasuring 208 square metres in Government Engineering College, Amravati was allotted on receipt of a request, by the Principal of the College to the Student's Consumers Co-operative Society in December 1982 on a nominal rent of Re. 1 per month (without consulting the State Public Works Department) for running a canteen. In the absence of any restriction imposed while making the allotment, the Society sublet the accommodation to private contractors for running the canteen and collected rent from them (at rates ranging between Rs. 905 and Rs. 1,600 per month), aggregating Rs. 40,107 during the period from January 1983 to March 1986. The Society neither remitted the rent collected to Government nor did the authorities take any action to recover the rent or to resume the accommodation. The allotment of the canteen block to the Co-operative Society without ensuring that it was used for running the canteen on ' no profit no loss basis ' as was intended, enabled the society to derive an unintended benefit of Re. 0.40 lakh with corresponding loss to the Government (excluding water and electricity charges which in the absence of any stipulation in the allotment letter, were borne by Government but have not been assessed so far).

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

8.2. Loss of rent and irregular payment of house rent allowance

29 residential quarters were constructed by Government in 1959 for the staff of an Educational Institution in Washim (Akola district).

However, due to abolition of courses in phases between 1972 and 1976, 20 quarters remained vacant for periods ranging from 1 year to more than 12 years.

On this being pointed out in audit in March 1979, the Principal proposed (September 1979) to the Deputy Director of Education, Amravati that these vacant quarters should be allotted to the needy staff of another government educational institution in the town but the proposal was rejected (September 1982) for want of Government orders. Subsequently, however, the matter was taken up by the Director of Technical Education in November 1982 with the Government, whose decision is awaited (September 1986).

Delay in taking a decision for alternative use of the vacant quarters has resulted in loss of rent of Rs. 24,572 and unnecessary payment of house rent allowance amounting to Rs. 17,037 (approximately) for the period from June 1982 to March 1986.

The matter was reported to Government in September 1986; their reply is awaited (February 1987).

Bombay,

The 12 NOV 1987

(D. SUBRAMONY IYER)

Accountant General (Audit)-I, Maharashtra.

Countersigned

T. N. Chaturvedi

New Delhi,

The 23 NOV 1987

(T. N. CHATURVEDI)

Comptroller and Auditor General of India.

APPENDICES

APPENDIX

Analysis of Sales Tax

Reference

Serial No.	Sources of Revenue	Amount collected at pre-assessment stage (A)			Amount collected after regular assessment (B)	
		1983-84	1984-85	1985-86	1983-84	1984-85
1	Bombay Sales Tax ..	740.76	804.38	981.75	97.89	97.72
2	Central Sales Tax ..	218.51	236.91	271.90	24.71	29.03
3	Motor Spirit Tax ..	96.26	103.82	121.33	0.05	0.03
4	Sugar Cane Purchase Tax	30.85	18.41	6.62	5.10	2.15
5	Agricultural Income Tax	0.03	..	0.08	0.02	0.20
6	Profession Tax ..	44.46	54.41	57.15	8.52	6.02
		1,130.87	1,217.93	1,438.83	136.29	135.15

(Figures are as furnished by the department).

I

collection (Finance Department)

Paragraph No. 1.3

(In crores of rupees)

	Amount refunded			Net collection of tax		
	(C)			(D)		
1985-86	1983-84	1984-85	1985-86	1983-84	1984-85	1985-86
70.89	22.31	36.21	39.56	816.34	865.89	1,013.08
24.29	2.00	1.92	2.84	241.22	264.02	293.35
0.04	....	....	0.05	96.31	103.85	121.32
3.56	....	....	Negligible	35.95	20.56	10.18
0.01	....	....	....	0.05	0.20	0.09
3.31	0.02	Negligible	0.03	52.96	60.43	60.43
102.10	24.33	38.13	42.48	1,242.83	1,314.95	1,498.45

APPENDIX

Yearwise details of Outstanding Audit

(*As on 30th*

Reference :

Serial No.	Nature of Receipt	1981-82 and earlier years			1982-83			
		I. Rs.	Objection	Amount in Lakhs of rupees	I.Rs.	Objection	Amount in Lakhs of rupees	I.Rs.
1	2	3	4	5	6	7	8	9
1	Sales Tax ..	194	420	23.64	123	294	39.04	190
2	Agricultural Income Tax	19	29	1.71	6	10	0.52	6
3	Land Revenue ..	745	1946	1,079.20	129	410	923.54	146
4	Stamp duty and Registration fees	267	783	200.46	108	235	70.52	90
5	Forest receipts ..	142	248	..	23	85	..	22
6	Taxes on Vehicles ..	120	284	93.93	32	55	5.18	33
7	Entertainments Duty	112	191	0.12	45	72	0.33	46
8	State Excise ..	201	425	1.70	54	100	0.48	51
9	Electricity Duty ..	18	29	0.55	12	16	..	9
10	Tax on Profession	137	544	18.31	47	145	4.41	51
11	State Education Cess	42	192	11.17	20	51	0.19	22
12	Repair Cess ..	17	70	65.32	7	17	11.60	9
13	Non-Tax receipts other than Forest receipts	189	538	..	22	51	0.27	8
14	Tax on building with larger residential premises	..	..	..	4	11	..	1
15	Luxury Tax ..	..	..	..	1	5	..	1
16	Lottery ..	13	24	..	2	4	..	3
	Grand Total ..	2,216	5,723	1,496.11	635	1,561	1,056.08	688

I.Rs. : Inspection Reports

II

Objections under various receipt heads

September 1986)

Paragraph 1.9 Page 9

1983-84			1984-85			1985-86			Total	
Objection	Amount in Lakhs of rupees	I.Rs.	Objection	Amount in Lakhs of rupees	I.Rs.	Objection	Amount in Lakhs of rupees	I.Rs.	Objection	Amount in Lakhs of rupees
10	11	12	13	14	15	16	17	18	19	20
417	13.13	349	856	25.25	519	1,180	106.95	1,375	3,167	208.01
8	0.35	4	4	1.27	5	5	0.59	40	56	4.44
404	147.12	150	405	511.35	183	484	1,433.51	1,353	3,649	4,094.72
173	79.45	85	161	141.14	105	195	94.27	655	1,547	585.84
73	..	25	95	..	37	187	..	249	688	..
93	9.89	37	88	192.16	37	157	2.81	259	677	303.97
64	0.12	90	146	0.16	110	201	0.82	403	674	1.55
74	..	83	134	0.54	105	218	0.25	494	951	2.97
11	..	12	28	3.16	13	25	0.74	64	109	4.45
183	1.53	30	236	2.44	81	309	0.15	346	1,417	26.84
64	0.13	17	42	0.76	27	74	4.69	128	423	16.94
25	0.03	13	28	10.09	5	11	8.85	51	151	95.89
14	72.12	4	4	0.28	14	20	0.93	237	627	73.60
3	..	3	6	..	3	7	..	11	27	..
5	..	2	8	..	..	..	..	4	18	..
2	..	..	..	..	5	9	0.02	23	39	0.02
1,613	323.87	904	2,241	888.60	1,249	3,082	1,654.58	5,692	14,220	5,419.24

ERRATA

to the

Report of the Comptroller and Auditor General of India for the year 1985-86
Revenue Receipts—Government of Maharashtra

Page	Reference		For	Read
	Para	Line		
1	2	3	4	5
14	2.2(*vi*)	6th from bottom	addtional ..	additional
41	2.11(*ii*)(*a*)	16th from bottom	Thane is 34 cases ..	Thane in 34 cases
46	3.4(*ii*)	11th from top ..	the he had ..	that he had
46	3.4(*iii*)	21st from top ..	is respect of one shop ..	in respect of one shop
71	4.9	9th from top ..	1986 ..	1966
75	5.3	5th from bottom	trailer ..	trailor
76	5.4	14th from bottom	precribed ..	prescribed
78	5.7.1	14th from top ..	for the year ..	for the years
79	5.7.4	4th from bottom	Transports ..	Transport
80	5.7.4	Table ..	Group C Current Arears ..	Group C Current Arrears
80	5.7.4	Note ..	Current arears ..	Current arrears

H 1809 (1400—12-87)