

**REPORT OF THE
COMPTROLLER AND AUDITOR
GENERAL OF INDIA**

on

REVENUE SECTOR

for the year ended March 2013

**Government of Kerala
Report No. 1 of the year 2014**

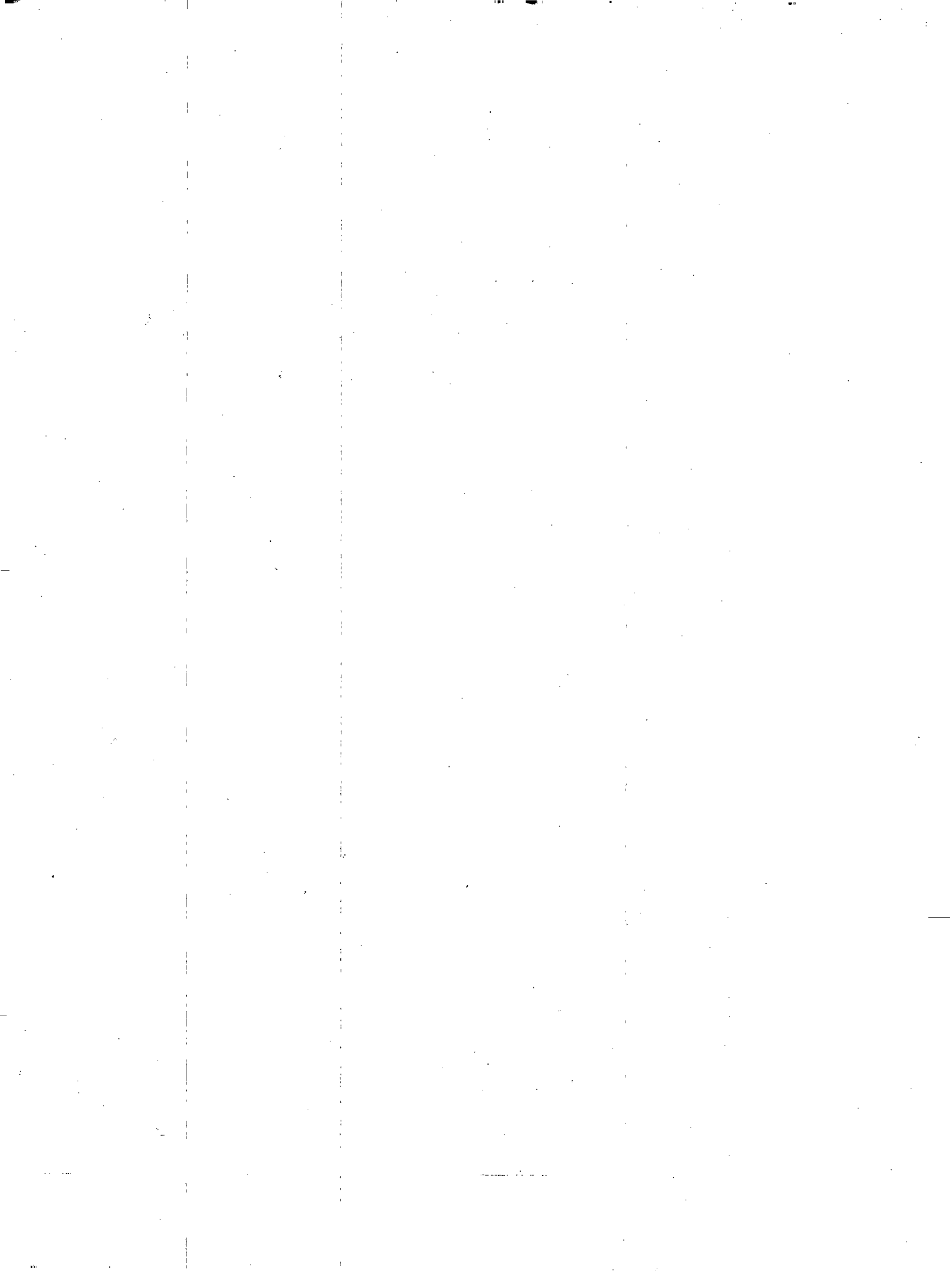
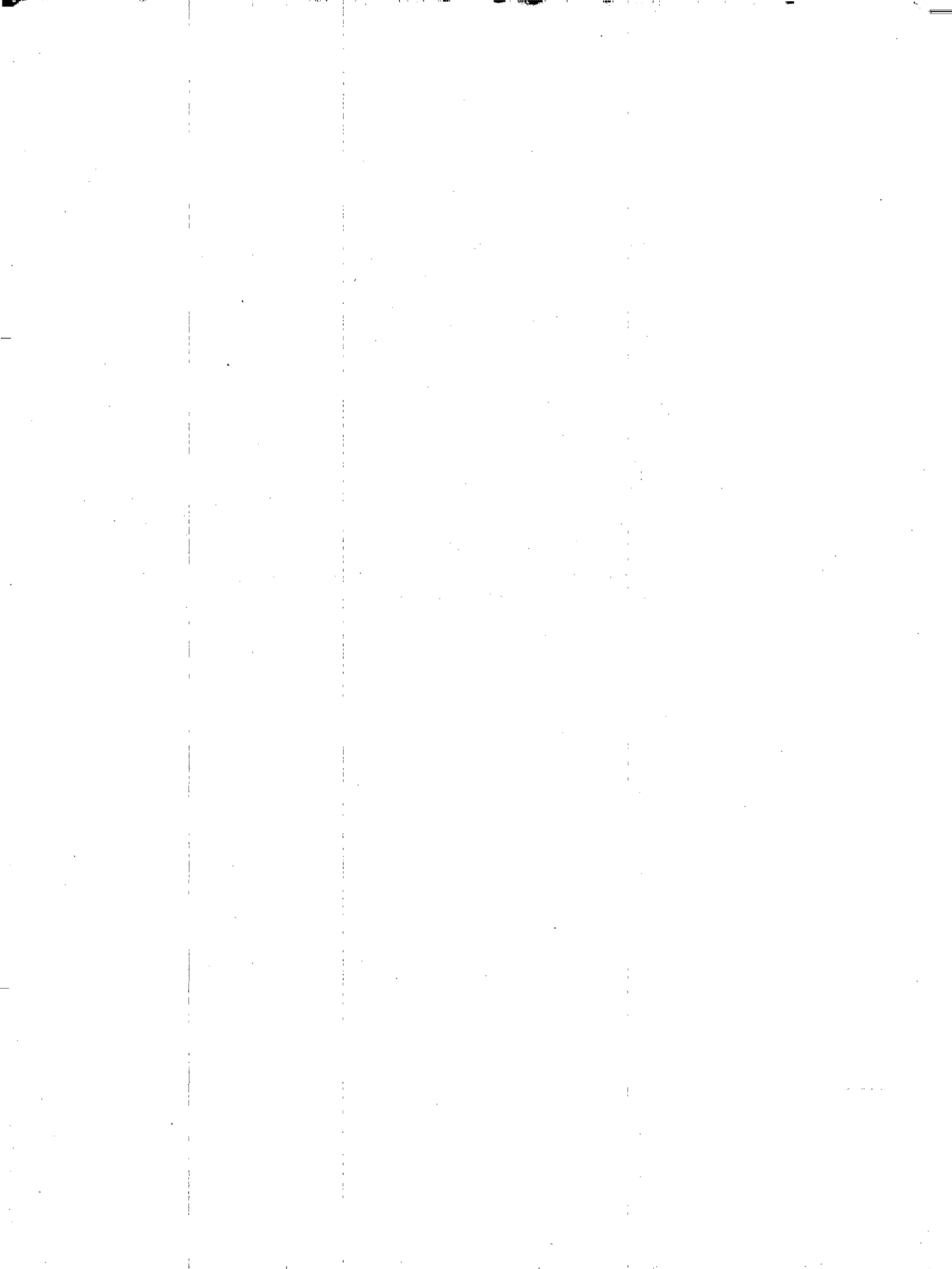


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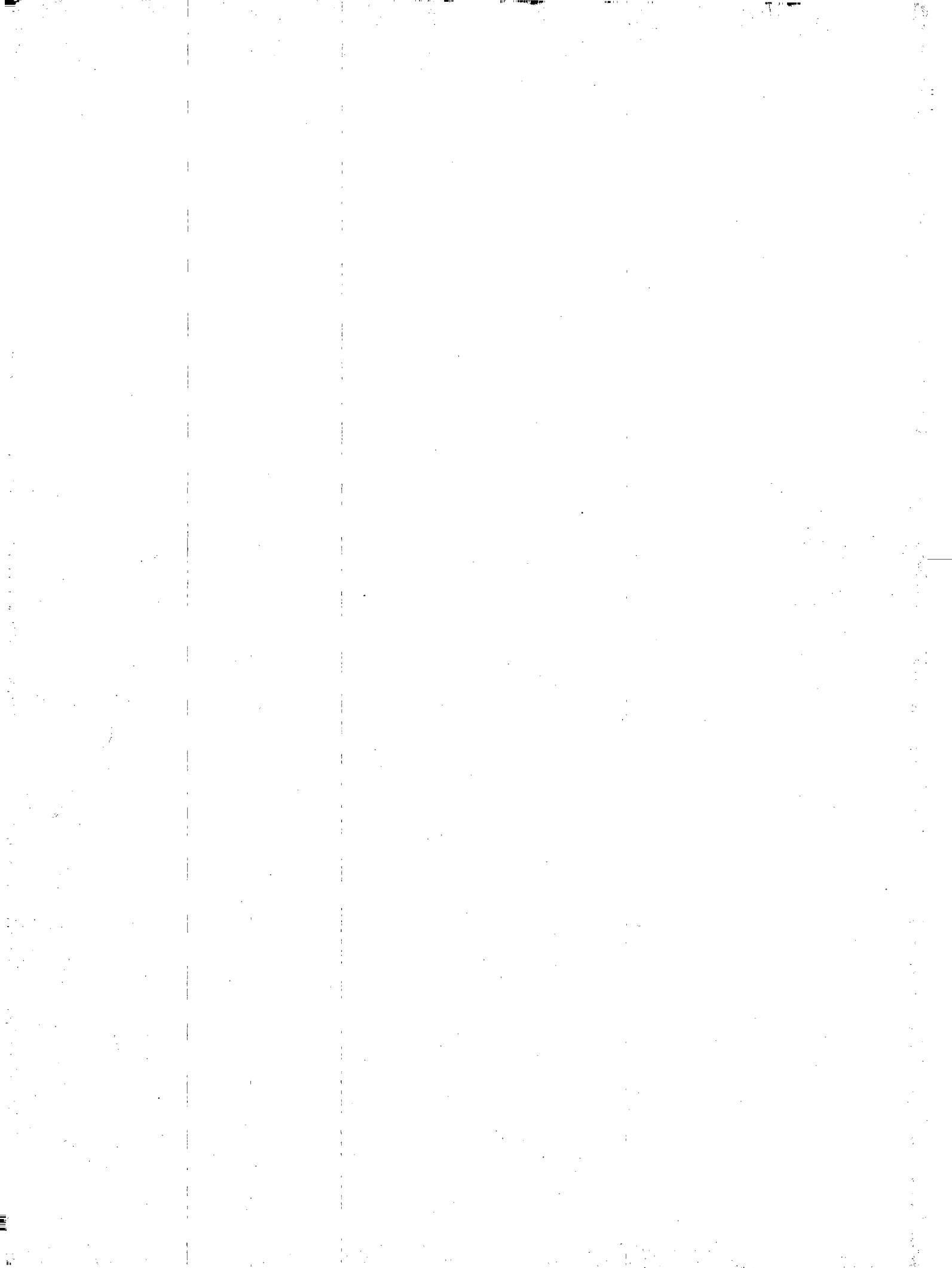
Preface

This Report of the Comptroller and Auditor General of India has been prepared for submission to the Governor under Article 151 of the Constitution of India for being laid before the State Legislature.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. The Report, covering the year 2012-13 contains results of audit comprising of taxes on sales, trade etc., taxes on agricultural income, taxes on vehicles, land revenue and building tax and other tax receipts of the Government of Kerala.

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 2012-13 as well as those which had come to notice in earlier years but could not be reported in previous Audit Reports; matters relating to the period subsequent to 2012-13 have also been included wherever necessary.

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



Overview

Overview

The Report contains 28 paragraphs including one performance audit on 'Assessment, levy and collection of VAT on transfer of goods involved in the execution of work/supply contract' and a study done by Audit on 'Levy of stamp duty and registration fees on development/construction agreements' relating to non/short levy of tax, interest and penalty etc., involving ₹ 643.41 crore. Some of the major findings are mentioned below:

I. General

Total revenue receipts of the State Government for the year 2012-13 amounted to ₹ 44,137.30 crore against ₹ 38,010.36 crore for the previous year. 78 per cent of this was raised by the State through tax revenue (₹ 30,076.61 crore) and non-tax revenue (₹ 4,198.51 crore). The balance 22 per cent was receipt from the Government of India as State's share of divisible Union taxes (₹ 6840.65 crore) and grants-in-aid (₹ 3,021.53 crore).

(Paragraph 1.1.1)

As on 30 June 2013, 2,906 Inspection Reports (IRs) in respect of various departments containing 22,189 observations involving money value of ₹ 2,794.17 crore were outstanding. The number of outstanding audit observations increased by 7.56 per cent during the period of one year.

(Paragraph 1.3.1)

II. Tax on sales, trade etc.

A Performance Audit on 'Assessment, levy and collection of VAT on transfer of goods involved in the execution of works/supply contract' revealed the following:

- ❖ There was no separate sub head for classifying/crediting of VAT receipts received from works contractors.

(Paragraph 2.11.8)

- ❖ Form 10 C showing the details of works contracts awarded was not furnished to the CTD by the Public sector undertakings /Government Departments and by private sector.

(Paragraph 2.11.10)

- ❖ No survey was conducted in the five districts for identifying unregistered works contractors. Audit cross verified the details collected from other departments with KVATIS and found that 484 contractors were not registered under the KVAT Act.

(Paragraph 2.11.11)

- ❖ A difference of ₹ 630.21 crore was noticed between the contract amounts awarded to the subcontractors and that depicted by them in their returns. The tax effect involved in these cases amounted to ₹ 124.51 crore.

(Paragraph 2.11.12.2)

- ❖ Audit noticed that in three cases, the developers accepted the advance payment from the prospective buyers without paying VAT of ₹ 63.03 crore.

(Paragraph 2.11.13.2)

- ❖ Application of incorrect rate of tax resulted in short levy of tax of ₹ 7.26 crore in two cases.

(Paragraph 2.11.19)

- ❖ Audit observed that contractors were allowed to pay tax at a compounded rate of three *per cent* in contravention of the provisions of the Act.

(Paragraph 2.11.20.2)

Transaction Audit

Misclassification of goods sold and consequent application of incorrect rate of tax resulted in short levy of tax, cess and interest of ₹ 6.16 crore in two cases.

(Paragraph 2.13)

Application of incorrect rate of tax on the taxable turnover resulted in short levy of tax, cess and interest of ₹ 1.34 crore in 11 cases.

(Paragraph 2.14)

In seven offices, Input tax credit/special rebate was either availed in excess in the case of interstate sales/stock transfer or inadmissible input tax/special rebate was availed in 16 cases resulting in short levy of tax, cess and interest of ₹ 2.64 crore.

(Paragraph 2.15)

In five offices, the turnover conceded in the annual returns was less than the turnover certified in the audited accounts resulting in escape of turnover from assessment and short levy of tax, cess and interest of ₹ 1.93 crore in seven cases.

(Paragraphs 2.16.1 to 2.16.3)

Non-reckoning of discount/incentive received as turnover resulted in escape of turnover from assessment and consequent short levy of tax, cess and interest of ₹ 1.38 crore in 20 cases in 15 offices.

(Paragraph 2.16.4)

In three offices, discount offered to customers were deducted from the taxable turnover which resulted in short levy of tax, cess and interest of ₹ 1.11 crore in four cases.

(Paragraph 2.16.5)

Reckoning of sales incorrectly as works contract to avail inadmissible deduction resulted in short levy of tax, cess and interest of ₹ 66.73 lakh.

(Paragraph 2.17)

In three offices, incorrect reckoning of taxable turnover in works contract resulted in short levy of tax, cess and interest of ₹ 66.72 lakh in five cases.

(Paragraph 2.18)

Application of incorrect rate of tax on the taxable turnover resulted in short levy of tax, additional sales tax and interest of ₹ 3.22 crore and ₹ 72.80 lakh in two cases.

(Paragraphs 2.23.1, 2.23.2)

In two offices, interest of ₹ 1.20 crore and ₹ 1.14 crore respectively, leviable for delayed payment of tax were not levied in two cases.

(Paragraph 2.24.1)

Failure to levy interest on tax due on the escaped turnover and appropriate remittances first towards interest resulted in short demand of balance tax and non-levy of interest of ₹ 52.21 lakh.

(Paragraph 2.24.2)

Non-utilisation of information available in the crime files in finalisation of assessment resulted in short levy of tax, penalty and interest of ₹ 54.03 lakh.

(Paragraph 2.25)

III. Taxes on Agricultural Income

Actual loss of ₹ 7.39 lakh conceded by the assessee was incorrectly reckoned as ₹ 73.93 lakh resulting escape of turnover and consequent short levy of agricultural income tax of ₹ 33.27 lakh.

(Paragraph 3.7.1)

Assessing Authority allowed replantation allowance in excess of what was admissible resulting in short levy of agricultural income tax of ₹ 27.18 lakh.

(Paragraph 3.7.2)

IV. Taxes on Vehicles

In 29 offices, one time tax on vehicles realised was less than those prescribed resulting in short collection of one time tax amounting to ₹ 35.84 lakh in 617 cases.

(Paragraph 4.7.1)

Non-imposition of fine on overloaded vehicles worked out to ₹ 27.97 lakh in 510 cases.

(Paragraph 4.7.2)

The Department at the time of reclassification and assigning new registration of vehicles either did not levy or short levied tax in 622 cases. This resulted in short levy of tax of ₹ 94.82 lakh.

(Paragraph 4.7.5)

V. Land Revenue and Building Tax

In four *taluk* offices, escape of buildings from assessment, though reported for assessment by Village Officers, resulted in non levy of building tax of ₹ 1.23 crore in 169 cases.

(Paragraph 5.7.1)

Non-assessment of building tax of ₹ 8.02 lakh was noticed in 57 cases, of which, files were either missing or misplaced in 39 cases. TR5 receipts produced in proof of remittance were found to be bogus.

(Paragraph 5.7.1)

In 14 *taluk* offices, the Department did not assess and demand luxury tax of ₹ 94.81 lakh, though building tax was assessed in 1,535 cases.

(Paragraph 5.7.2)

VI. Other Tax Receipts

A – State Excise

In three offices, 71,074 permits were issued to licensees for transportation of IMFL without realising fee of ₹ 3.55 crore.

(Paragraph 6.7)

B – Stamp Duty and Registration Fees

A study done by Audit on ‘Levy of Stamp duty and registration fees on development/construction agreements’ revealed the following:

Undervaluation of 820 sale deeds executed by builders resulted in short levy of stamp duty and registration fee of ₹ 13.88 crore.

(Paragraph 6.14.6.2)

Incorrect levy of stamp duty of ₹ 59.04 lakh was noticed in 21 agreements in two offices.

(Paragraph 6.14.6.3)

Chapter I
General

CHAPTER-I: GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Kerala during the year 2012-13, the State's share of net proceeds of divisible Union taxes and duties assigned to States and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned below:

(₹ in crore)

Sl. No.	Particulars	2008-09	2009-10	2010-11	2011-12	2012-13
1.	Revenue raised by the State Government					
	• Tax revenue	15,990.18	17,625.02	21,721.69	25,718.60	30,076.61
	• Non-tax revenue ¹	1,559.29 (1,390.00)	1,852.22 (1,633.22)	1,930.79 (1,739.58)	2,592.18 (2,228.97)	4,198.51 (3,272.25)
	Total	17,549.47 (17,380.18)	19,477.24 (19,258.24)	23,652.48 (23,461.27)	28,310.78 (27,947.57)	34,275.12 (33,348.86)
2.	Receipts from the Government of India					
	• Share of net proceeds of divisible Union taxes and duties	4,275.52	4,398.78	5,141.85	5,990.36	6,840.65
	• Grants-in-aid	2,687.19	2,233.38	2,196.62	3,709.22	3,021.53
	Total	6,962.71	6,632.16	7,338.47	9,699.58	9,862.18
3.	Total revenue receipts of the State Government (1 and 2)	24,512.18 (24,342.89)	26,109.40 (25,890.40)	30,990.95 (30,799.74)	38,010.36 (37,647.15)	44,137.30 ² (43,211.04)
4.	Percentage of 1 to 3	72	75	76	74	78

The above table indicates that during the year 2012-13, the revenue raised by the State Government (₹ 34,275.12 crore) was 78 per cent of the total revenue receipts against 74 per cent in the preceding year. The balance 22 per cent of receipts during 2012-13 was from the Government of India. The major component of the revenue of the State Government came from tax revenue.

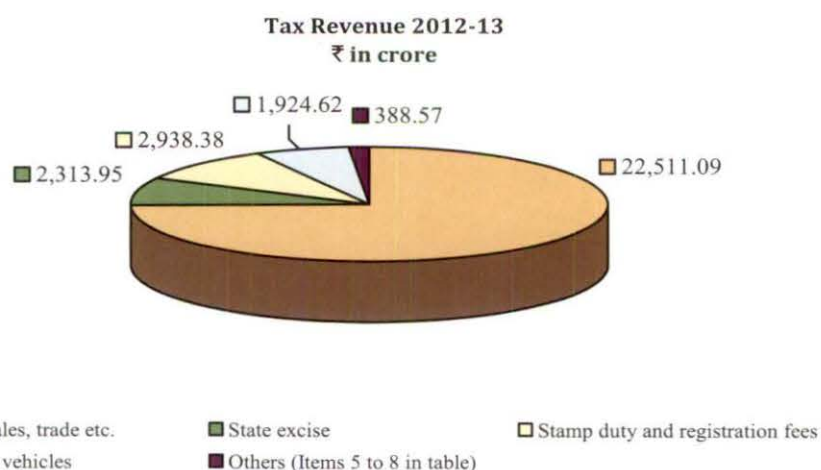
¹ The difference between the figures shown in column and bracket represent expenditure on prize winning tickets of lotteries conducted by the Government.

² For details please see Statement No. 11 – Detailed accounts of revenue by minor heads in the Finance Accounts of Kerala for the year 2012-13. Figures under the major heads 0020 – Corporation tax, 0021 – Taxes on income other than corporation tax, 0028 – Other taxes on income and expenditure, 0032 – Taxes on wealth, 0037 – Customs, 0038 – Union excise duties, 0044 – Service tax and 0045 – Other taxes and duties on commodities and services – Share of net proceeds assigned to states booked in the Finance Accounts under A – Tax revenue have been excluded from revenue raised by the State and included in the State's share of divisible Union taxes in this statement.

1.1.2 The following table presents the details of tax revenue raised during the period from 2008-09 to 2012-13:

(₹ in crore)

Sl. No.	Head of revenue	Head of account	2008-09	2009-10	2010-11	2011-12	2012-13	Percentage of increase(+)/ decrease (-) in 2012-13 over 2011-12
1.	Tax on sales, trade etc.	0040	11,377.13	12,770.89	15,833.11	18,938.83	22,511.09	18.86
2.	State excise	0039	1,397.64	1,514.81	1,699.54	1,883.18	2,313.95	22.87
3.	Stamp duty and Registration fees							
	•Stamps – judicial	0030-01	71.25	83.52	75.30	79.66	76.31	(-)4.21
	•Stamps – non-judicial	0030-02	1,580.94	1,495.26	1,884.01	2,153.80	2,143.97	(-)0.46
	•Registration fees	0030-03	350.81	317.63	593.18	753.09	718.10	(-)4.65
4.	Taxes on vehicles	0041	937.45	1,131.10	1,331.37	1,587.13	1,924.62	21.26
5.	Taxes and duties on electricity	0043	56.00	24.78	20.71	21.28	24.71	16.12
6.	Taxes on agricultural income	0022	11.97	27.73	46.97	42.86	18.92	(-)55.86
7.	Land revenue	0029	47.56	53.93	55.97	60.75	121.58	100.13
8.	Others ³		159.43	205.37	181.53	198.02	223.36	12.80
Total			13,668.95	17,625.02	21,721.69	25,718.60	30,076.61	16.94



³ Taxes on immovable property other than agricultural land, Luxury tax and Entertainment tax

Tax on sales, trade etc., was the main source of tax revenue.

The reasons for variation of receipts during 2012-13 over that of 2011-12 as reported by the departments concerned are as follows:

Taxes and duties on electricity: The increase in revenue was due to collection from new installations.

Stamps and registration fees: The decrease was due to decrease in the number of documents registered during 2012-13.

Taxes on vehicles: The increase in revenue receipts was due to enhanced tax for non-transport vehicles.

Land Revenue: The increase was due to revision of rate of basic land tax.

State Excise: The reason for increase in revenue collection was due to enhancement of licence fees of Abkari shops under foreign liquor rules.

Tax on sales, trade etc.: The reasons for increase in revenue was not furnished by the Commercial Taxes Department (February 2014).

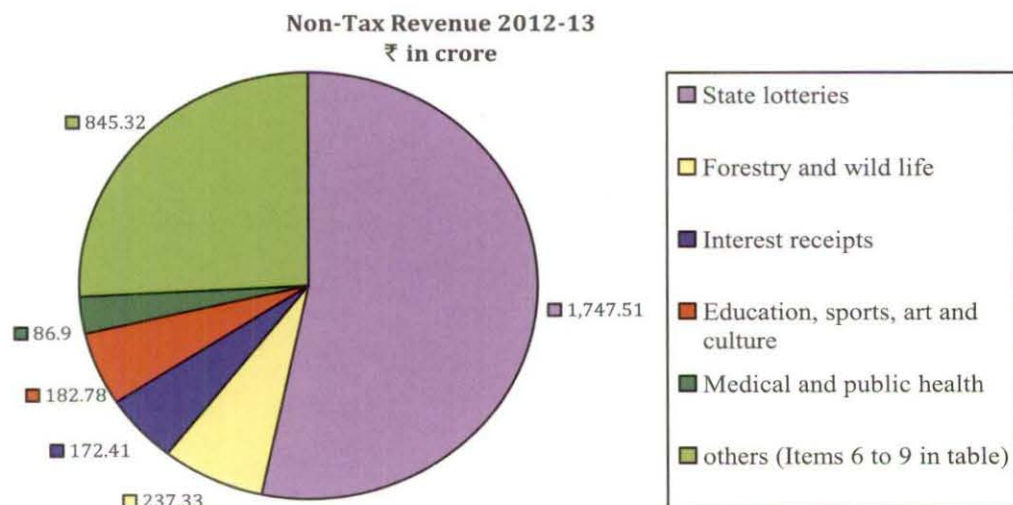
Taxes on Agricultural Income: There was a decrease of 56 per cent of receipts in 2012-13 over 2011-12. The reasons for decrease though called for (July 2013) from the Commercial Taxes Department were not received (February 2014).

1.1.3 The following table presents the details of the non-tax revenue raised during the period from 2008-09 to 2012-13:

(₹ in crore)								
Sl. No.	Head of revenue	Head of account	2008-09	2009-10	2010-11	2011-12	2012-13	Percentage of increase(+)/ decrease (-) in 2012-13 over 2011-12
1.	State lotteries ✓	0075-103	312.10	405.07	380.25	919.53	1,747.51 ⁴	90.04
2.	Forestry and wild life	0406	223.71	272.80	274.10	220.52	237.33	7.62
3.	Interest receipts	0049	83.69	152.50	171.47	136.49	172.41	26.32
4.	Education, sports, art and culture	0202	130.24	130.62	150.83	164.96	182.78	10.80
5.	Medical and public health	0210	38.58	34.43	63.46	65.19	86.90	33.30
6.	Crop husbandry	0401	15.04	7.88	10.03	11.55	10.81	(-) 6.41
7.	Animal husbandry	0403	2.96	3.11	3.97	4.06	4.60	13.30
8.	Public works	0059	3.80	6.54	6.59	4.10	5.20	26.83
9.	Others ⁵		579.88	620.27	678.88	702.57	824.71	17.38
Total			1,390.00	1,633.22	1,739.58	2,228.97	3,272.25	46.81

⁴ From gross receipts of ₹ 2,673.77 crore, expenditure of ₹ 926.26 crore on prize winning tickets has been deducted, but other expenditure like commission to agents (₹ 891.47 crore), establishment expenses (₹ 162.78 crore) etc. have not been deducted.

⁵ Receipts from Police, Judiciary, Jail, Stationery, etc.



The main component of the non-tax revenue was the State lotteries.

The reasons for variation of receipts during 2012-13 over 2011-12 were reported by the departments concerned as follows:

State lotteries: The 90.04 *per cent* increase over previous year was due to the introduction of lotteries on daily draw basis.

Forestry and Wild Life: The increase was due to increase in sale value of timber.

Public works: The increase was due to increase in toll collection, auction amount and other receipts.

Stationery: The reason for increase in revenue receipt was due to increase in sale of tender forms, waste paper and the supply of stationery articles on payment basis.

Crop Husbandry: There was a decrease of six *per cent* of receipts in 2012-13 over 2011-12. Reasons for decrease though called for (July 2013) from the Department were not received (February 2014).

1.2 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2013 in respect of some principal heads of revenue amounted to ₹ 12,243.86 crore of which ₹ 4,388.55 crore were outstanding for more than five years as mentioned below:

(₹ in crore)			
Sl. No.	Department	Amount of arrears as on 31 March 2013	Arrears outstanding for more than 5 years
1.	Commercial taxes	6,160.64	1,714.98
An amount of ₹ 3,523.00 crore was due from individuals, private firms, private companies etc., ₹ 2,398.50 crore from public sector undertakings (PSUs) of Government of India and ₹ 230.08 crore from public sector undertakings of Government of Kerala. The remaining amount of ₹ 9.06 crore was due from Government of India, other State Governments and from local bodies of the State.			

Sl. No.	Department	Amount of arrears as on 31 March 2013	Arrears outstanding for more than 5 years
2.	Forest	251.23	149.59
	An amount of ₹ 234.58 crore was due from PSUs of Government of Kerala, ₹ 12.87 crore was due from individuals, private companies, ₹ 3.23 crore from PSUs of Government of India. The remaining amount of ₹ 0.45 crore was due from Government of India, other State Governments and local bodies.		
3.	Local Fund Audit	25.88	Not furnished.
	The arrears represent audit charge due from various audit entities.		
4.	Stationery	14.71	9.10
	An amount of ₹ 3.00 crore was due from Education Department (Pareeksha Bhavan) which was pending from 1995-96 onwards. ₹ 1.23 crore was pending from Director of Civil Supplies and ₹ 0.91 crore was due from Election Department. The remaining ₹ 0.11 crore was due from Government of India, ₹ 0.71 crore from PSUs of Government of Kerala and ₹ 8.75 crore from other institutions/board under Government of Kerala.		
5.	Electrical Inspectorate	5,564.15	2,514.68
	An amount of ₹ 5,533.57 crore was due from PSUs of Government of Kerala, ₹ 25.89 crore from local bodies and ₹ 4.63 crore was due from individuals, private firms, private companies etc. The remaining amount of ₹ 5.34 lakh was due from Government of India, Government of Kerala and PSUs of Government of India.		
6.	Excise	225.89	Not furnished
	An amount of ₹ 225.39 crore was due from individuals, private firms, private companies etc. The remaining ₹ 50.08 lakh was due from PSUs of Government of Kerala.		
7.	Mining & Geology	1.36	0.20
	An amount of ₹ 0.69 crore was due from PSUs of Government of Kerala, ₹ 0.27 crore from PSUs of Government of India and the remaining ₹ 0.40 crore was due from individuals, private firms, private companies and Co-operative Society.		
	Total	12,243.86	4,388.55

The details of arrears of revenue pending collection, though called for (July 2013) was not furnished by other departments (February 2014).

1.3 Response of the departments/Government towards audit

1.3.1 Response to Inspection Reports

As per Article 63(c) of Kerala Financial Code Vol.I, the first replies to inspection reports should be sent within four weeks from the date of receipt of the inspection report. The first replies should not be delayed on any account. In respect of those particular paras for which final replies could not be furnished to the Accountant General within the time limit, an interim reply should be given indicating the action taken to rectify the defects pointed out.

Audit noticed that out of the inspection reports issued upto December 2012, 22,189 paragraphs involving ₹ 2,794.17 crore relating to 2,906 IRs remained outstanding at the end of June 2013. A table containing figures for the current year and preceding two years are given below:

	June 2011	June 2012	June 2013
Number of outstanding IRs	2,581	2,751	2,906
Number of outstanding audit observations	18,604	20,629	22,189
Amount involved (₹ in crore)	1,522.81	2,102.05	2,794.17

An increase of 7.56 per cent and 32.92 per cent respectively in the number of outstanding audit observations and the amount involved when compared to last year was noticed indicating that the heads of departments had not initiated prompt action to clear audit observations.

The department-wise details of the IRs and audit observations outstanding as on 30 June 2013 and the amounts involved are mentioned below:

Sl. No.	Name of the Departments	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved (₹ in crore)
1.	Taxes	Tax on sales, trade, etc.	1,450	17,106	2,446.47
		Taxes on agricultural income	145	758	75.68
2.	Revenue	Land revenue	331	1,450	172.51
3.	Transport	Taxes on vehicles	279	1,515	37.58
4.	Registration	Stamp duty and registration fees	421	792	11.90
5.	Excise	Excise duty	251	484	34.43
6.	Power	Taxes and duties on electricity	16	67	12.09
7.	Lotteries	Lotteries	13	17	3.51
Total			2,906	22,189	2,794.17

Audit has not even received first replies from the heads of offices for 157 IRs issued up to December 2012.

Non-receipt of first replies and the number of outstanding audit observations indicates that the heads of offices and heads of departments failed to initiate timely action to rectify the omissions pointed out by Audit in the IRs.

Audit recommends that the Government may formulate effective procedures to ensure prompt and appropriate response to audit observations. Government may also institute systems for taking action against officials/officers who fail to send replies to the IRs/paragraphs as per the prescribed time schedules and who do not take action to recover loss/outstanding demand in a time bound manner.

1.3.2 Departmental audit committee meetings

The Government set up audit committees to monitor and expedite the progress of settlement of local audit reports and paragraphs in the local audit reports. The details of the audit committee meetings held during the year 2012-13 and the paragraphs settled are as mentioned in Annexure I.

Audit recommends that the Departments may conduct more number of audit committee meetings so as to clear the long pending IRs.

1.3.3 Non-production of records to Audit for scrutiny

Audit prepares the programme for local audit of Commercial Tax Offices sufficiently in advance and intimate the programme to the Department usually one month before the commencement of audit, to enable them to keep the relevant records ready for audit scrutiny.

However, tax assessment records of 5,564 assessment cases relating to 122 offices were not made available to audit during 2012-13, which included 1,710 files pertaining to 14 special circles, where assessments of major dealers are dealt with, as detailed below:

Sl. No.	Name of Office	Year in which it was to be audited	Kerala General Sales Tax	Value Added Tax
1	Special Circle (Produce), Mattancherry	Upto 2012-13	271	1
2	Special Circle II, Ernakulam	„	10	58
3	Special Circle I, Ernakulam	„	5	78
4	Special Circle, Mattancherry	„	0	2
5	Special Circle III, Ernakulam	„	220	28
6	Special Circle, Malappuram	„	151	121
7	Special Circle, Kottayam	„	0	101
8	Special Circle, Palakkad	„	45	12
9	Special Circle, Kollam	„	0	37
10	Special Circle, Thrissur	„	0	4
11	Special Circle I, Kozhikode	„	0	45
12	Special Circle II, Kozhikode	„	0	4
13	Special Circle, Kottarakkara	„	7	30
14	Special Circle, Thiruvananthapuram	„	86	394
Total			795	915

Non-production of records involving substantial revenue seriously hampers the discharge of constitutional responsibility of Audit and deprives the State of the additional revenue that may accrue as the result of audit.

Audit recommends that the Government may issue strict instructions to officers concerned for ensuring the availability of the files at the time of audit. Punitive action may also be taken against the officers who are regular defaulters.

1.3.4 Response of the departments to the draft audit paragraphs

Draft paragraphs/Performance Audit/Thematic Audit proposed for inclusion in the Audit Report to be presented in State Legislature are forwarded to the Secretaries of the departments concerned through demi-official letters. All departments are required to furnish their remarks on the draft paragraphs/PAs/TAs within six weeks of their receipt as per the instructions issued by the Government. The fact of non-receipt of replies from the Government is indicated at the end of each paragraph included in the Audit Report.

A total of 116 draft paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India (Revenue Sector) for the year ended

31 March 2013 were forwarded (April to October 2013) to the Secretaries concerned to the Government and copies were endorsed to the head of the departments concerned. However, replies/response to 64 draft paragraphs were not received (February 2014).

1.3.5 Follow-up on Audit Reports – summarised position

Instructions have been issued by the Government from time to time for timely follow-up action on the Audit Reports. The Public Accounts Committee (PAC) stipulates submission of action taken notes (ATNs) on paragraphs and reviews included in the Audit Report indicating the remedial action taken or proposed to be taken, within two months from the date of presentation of the Audit Report to the Legislature without waiting for any notice or call from the PAC.

The review of the outstanding ATNs on 145 paragraphs included in five Reports of the Comptroller and Auditor General of India (Revenue Receipts) for the years ended 31 March 2009 to 31 March 2011 disclosed that the departments had not submitted remedial ATNs on all paragraphs within the prescribed time. Out of the 145 paragraphs included in the above five Audit Reports, the departments had not submitted ATNs on 47 paragraphs (December 2013).

The Audit Report (No.1 of the year 2013) for the year ended 31 March 2012 was laid on the table of the Legislature on 19 March 2013. The departments had not submitted ATNs on 36 paragraphs included in the above Audit Report by December 2013 although the prescribed time period was over in May 2013. This indicates that the executive did not take prompt action on the important issues highlighted in the Audit Reports that involved unrealised revenue.

1.3.6 Compliance with the earlier Audit Reports

During the years between 2007-08 and 2011-12 the Departments/Government accepted audit observations involving revenue of ₹ 1,045.56 crore out of which an amount of ₹ 78.02 crore was recovered till December 2013 as mentioned below:

(₹ in crore)				
Sl. No.	Year	Total money value	Money value of accepted cases	Amount recovered
1	2007-08	276.21	250.15	7.43
2	2008-09	675.44	109.60	58.03
3	2008-09 Vol.II	295.24	116.93	0
4	2009-10	1,048.55	327.12	9.39
5	2010-11	1,622.36	8.15	1.26
6	2010-11 Vol.II	253.75	0	0
7	2011-12	304.66	233.61	1.91
Total		4,476.21	1,045.56	78.02

The Departments had recovered only 7.46 *per cent* of the accepted amount. The Departments may make earnest efforts for the recovery of the balance amount.

1.4 Results of audit

During 2012-13, the audit universe comprised of 835 units of which 471 units were audited during 2012-13 on the basis of risk analysis.

As per audit plan, the records of commercial tax, motor vehicles, land revenue and other departmental offices were test checked during the year 2012-13 and underassessment/short levy/loss of revenue aggregating ₹ 941.93 crore in 2,543 cases were noticed. During the course of the year the departments concerned accepted underassessment and other deficiencies of ₹ 26.80 crore involved in 1,356 cases of which 319 cases involving ₹ 6.83 crore were pointed out in audit during 2012-13 and the rest in the earlier years. The departments collected ₹ 10.34 crore in 1,093 cases during 2012-13.

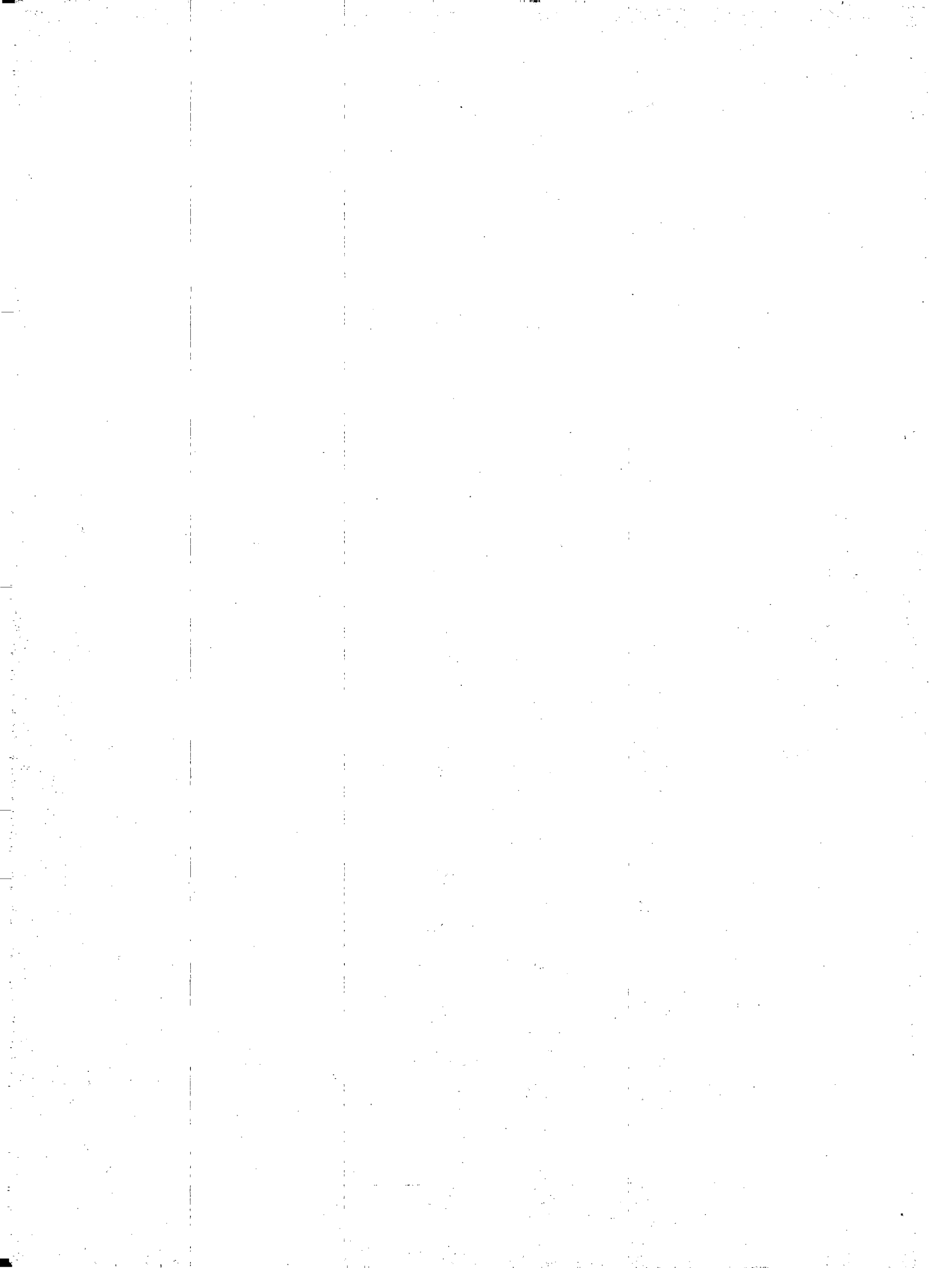
The Department recovered in full ₹ 8.93 lakh in two draft paragraphs which was issued based on the audit observation pointed out in January and June 2013.

1.4.1 Mobilisation of revenue of the State

The Budget Speech for the year 2012-2013 by the Minister of Finance, Government of Kerala on 19 March 2012 included the proposals for mobilisation of additional resources. The measures proposed by Government for augmenting the revenue receipts were doubling of rate of land tax, introduction of registration fee at the rate of two *per cent* of stamp duty on authorisation of power of attorney for sale of immovable properties executed in favour of persons other than family members, reformation of tax structure for motor cars and private service vehicles for personal use, increase of general rates of VAT from 4 *per cent* to 5 *per cent* and that of 12.5 *per cent* to 13.5 *per cent*, increase in rate of VAT on cigarettes, pan masala etc., increase in social security cess on foreign liquor from 6 *per cent* to 10 *per cent*, increase in rate of VAT on crusher metal to 13.5 *per cent* and increase in compounded tax payable etc. The actual revenue realised additionally for the year 2012-13 was ₹ 1,566.82 crore against the estimated revenue of ₹ 1,281 crore. The Government could mobilise additional revenue of ₹ 285.82 crore in excess of estimated additional revenue on account of implementation of various revenue augmentation measures which was appreciable. The total revenue raised by the State increased from ₹ 28,310.78 crore in 2011-12 to ₹ 34,275.12 crore in 2012-13.

1.4.2 This report

This Report contains 28 paragraphs (selected from the audit observations made during the local audit) including one performance audit on 'Assessment, levy and collection of VAT on transfer of goods involved in the execution of works/supply contract' and a paragraph on 'Levy of Stamp Duty and Registration Fee on Development/Construction Agreements' involving financial effect of ₹ 643.41 crore. The departments/Government have accepted audit observations involving ₹ 641.03 crore. The replies in the remaining cases have not been received (February 2014). These are discussed in succeeding Chapters II to VI.



Chapter II
Tax on Sales, Trade etc.

EXECUTIVE SUMMARY – CHAPTER - II

Growth in tax collection	During 2012-13, the increase in tax collection was 18.86 <i>per cent</i> against 19.62 <i>per cent</i> during the previous year. Though the number of dealers shows a substantial increase every year, it was not reflected in VAT collection.
Internal Audit was weak	Internal Audit Wing (IAW) was able to audit only 56 units out of 356 units planned for audit during the year.
Effective follow up of audit observations	The Department accepted ₹ 6.56 crore in 675 cases pointed out by Audit and recovered ₹ 6.51 crore in 673 cases. Efforts made by the Department in realising 99 <i>per cent</i> of accepted cases are appreciable.
Results of audit	In 2012-13, records of 164 units relating to Kerala General Sales Tax (KGST) and Kerala Value Added Tax (KVAT) were test checked and 1,919 observations involving ₹ 237.91 crore were pointed out of which 65 cases involving ₹ 0.53 crore were accepted.
What is highlighted in this Chapter	Cases involving money value of ₹ 595.35 crore were pointed out in the Performance Audit on Assessment, levy and collection of Value Added Tax on transfer of goods involved in works/supply contract. 14 paragraphs involving money value of ₹ 25.14 crore are also presented.
Conclusion	The Department needs to improve the internal control system including strengthening of internal audit so that weaknesses in the system are addressed and omissions pointed out by Audit are prevented or detected and remedied in a timely manner.

CHAPTER-II: TAX ON SALES, TRADE ETC.

2.1 Tax administration

The Commercial Taxes Department contributed 74.85 *per cent* of the revenue of the State during 2012-13. The revenue is derived from the assessment and collection of different taxes like General Sales Tax (GST), Value Added Tax (VAT) and Central Sales Tax (CST) which are regulated by the Kerala General Sales Tax Act (KGST), 1963, The Kerala Value Added Tax Act (KVAT), 2003, the Central Sales Tax Act (CST), 1956 and notifications issued by the Department from time to time. The Department is under the administrative control of the Secretary to Government, Taxes Department. The Commissioner of Commercial Taxes (CCT) administers the Acts and Rules. He is assisted by Joint Commissioners, Deputy Commissioners, Assistant Commissioners and Commercial Tax Officers. The assessment, levy and collection of tax is done by Assistant Commissioners and Commercial Tax Officers.

KGST is leviable on sale of Ganja and opium, foreign liquor and certain petroleum products. VAT is leviable on the intra state sale of remaining commodities and CST on interstate sales.

2.2 Trend of receipts

Budget Estimates (BEs) and actual receipts from tax on sales, trade etc. during the year 2008-09 to 2012-13 along with the total tax receipts during the same period is exhibited in the following table and graph.

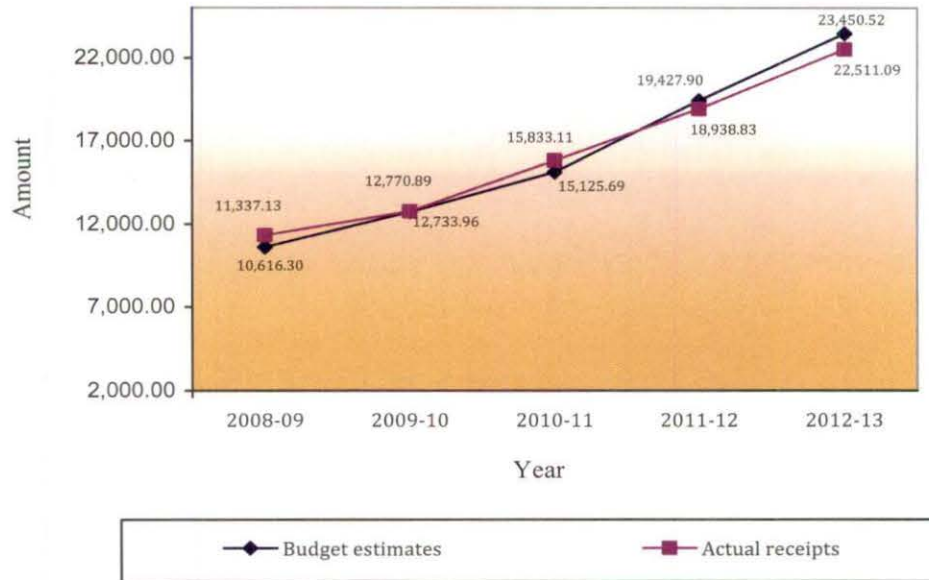
(₹ in crore)

Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts to total tax receipts	Percentage of growth over previous year
2008-09	10,616.39	11,377.13	(+) 760.74	(+) 7.17	15,990.18	71.15	21.39
2009-10	12,733.94	12,770.89	(+) 36.95	(+) 0.29	17,625.02	72.46	12.25
2010-11	15,125.69	15,833.11	(+) 707.42	(+) 4.67	21,721.69	72.89	23.97
2011-12	19,427.90	18,938.83	(-) 489.07	(-) 2.52	25,718.60	73.64	19.62
2012-13	23,450.52	22,511.09	(-) 939.43	(-) 4.01	30,076.61	74.85	18.86

Source : Finance Accounts of relevant years

Budget estimates and actual receipts

(₹ in crore)



Audit noticed that the Department was able to achieve a growth rate of 18.86 per cent during 2012-13. The reason for variation between budget estimates and actual receipts, though called for (July 2013), was not furnished by the Department (February 2014).

2.3 Assessee profile

The number of dealers registered as at the end of 2010-11, 2011-12 and 2012-13 are shown below:

2010-11	1,69,298
2011-12	1,86,987
2012-13	1,98,836

Source : Kerala Value Added Tax Information System

Audit noticed an increase of 11,849 in the number of dealers during 2012-13 over the preceding year. As per the information furnished by CCT, the VAT collection from 50 top dealers in the State was ₹ 3,679.63 crore which is 30.23 per cent of the total VAT collection of ₹ 12,171.70 crore. Out of the total dealers 27,701 dealers constituting 13.93 per cent were paying tax at 0.5 per cent under the category of presumptive tax payers.

Tax collection from KGST during 2012-13 was ₹ 9,921.57 crore as per the Finance Accounts prepared by AG (A&E) Kerala. The tax payable by five¹ major dealers alone comes to ₹ 9,938.19 crore as per their returns, which requires reconciliation so as to rectify the differences, if any.

2.4 Receipt of VAT per assessee

The receipt of VAT/sales tax per assessee during 2012-13 was slightly higher when compared to that of 2011-12 as shown below :

Year	No. of assesseees	Total collection (₹ in crore)	Receipt per assessee (₹ in lakh)
2011-12	1,86,987	18,558.12	9.92
2012-13	1,98,836	22,093.27	11.11

2.5 Arrears in sales tax assessments

The Department furnished the position of arrears of assessment under sales tax which is as shown below:

Opening balance	7,117
Addition during 2012-13 including remanded cases	5,272
Total	12,389
No. of assessments completed	5,347
Arrear cases – 3,794	
Current cases – 1,381	
Remanded cases – 172	
Closing balance	7,042

Department completed 5,347 assessments which was 43.12 *per cent* of arrears outstanding

Audit recommends the Government to give direction to assessing authorities to complete assessments in a time bound manner.

2.6 Cost of collection

The gross collection of revenue receipts under the head, tax on sales, trade etc., expenditure incurred on collection and the percentage of expenditure to gross collection during 2008-09 to 2012-13 along with the All India average percentage of expenditure on collection to gross collection for relevant years are mentioned below:

¹ Kerala State Beverages Corporation (₹ 5,376.33 crore), Indian Oil Corporation (₹ 2,104.42 crore), Bharat Petroleum Corporation (₹ 1,377.27 crore), Hindustan Petroleum (₹ 1,050.39 crore) and Reliance Industries (₹ 29.78 crore).

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure to gross collection	All India average percentage over the preceding year
	(₹ in crore)			
2008-09	11,377.13	102.59	0.90	0.83
2009-10	12,770.89	126.01	0.99	0.88
2010-11	15,833.11	115.61	0.73	0.96
2011-12	18,938.83	166.55	0.88	0.75
2012-13	22,511.09	162.05	0.71	0.83

Source: Finance Accounts and Departmental figures.

Audit noticed that the expenditure on collection was lower than the All India average. The increase in revenue collection by 18.86 *per cent* and the corresponding decrease in expenditure on collection of revenue during the year is appreciated which is significant considering the increase in All India average for the year.

2.7 Analysis of collection

Tax revenue collected on tax on sales, trade etc., during the last three years as recorded in the books of the Accountant General (A&E) Kerala is given below:

Revenue head	(₹ in crore)			Increase in 2012-13 over 2011-12 (Percentage)
	2010-11	2011-12	2012-13	
Sales Tax	7,402.07	8,754.38	9,921.57	13.33
VAT	8,097.15	9,803.74	12,171.70	24.15
CST	310.42	292.66	320.88	9.64

The above table indicates that during 2012-13 collection of VAT increased by ₹ 2,367.96 crore and of sales tax increased by ₹ 1,167.19 crore.

2.8 Impact of audit

During the last four years, Audit pointed out non/short levy, underassessment/loss of revenue, incorrect exemption, application of incorrect rate of tax etc., with revenue implication of ₹ 3,631.66 crore in 12,324 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 796.16 crore and had since recovered ₹ 34.69 crore. The details are shown in the following table:

Year	(₹ in crore)					
	Paragraphs included in the IRs		Paragraphs accepted during the year		Recovery during the year	
	No.	Amount	No.	Amount	No.	Amount
2008-09	2,182	754.35	342	149.70	203	9.40
2009-10	4,451	1,122.54	657	558.60	588	5.02
2010-11	3,152	944.66	797	81.18	522	15.70
2011-12	2,539	810.11	537	6.68	430	4.57
Total	12,324	3,631.66	2,333	796.16	1,743	34.69

The recovery position as compared to the accepted cases during the last four years

was very low being only 4.36 per cent. The insignificant recovery of ₹ 34.69 crore against the money value of ₹ 796.16 crore relating to the accepted cases during the period 2008-09 to 2011-12 highlights the failure of the Department in recovering promptly the Government dues even in respect of cases accepted by them.

2.9 Working of internal audit wing

The internal audit wing (IAW) in the Commercial Taxes Department commenced functioning from 1 June 2009. The wing headed by the Deputy Commissioner is assisted by three Assistant Commissioners and five Commercial Tax Officers. During the year 2012-13, against the target of 356 units, 56 units were audited leaving 300 units in arrears. There were 146 IRs with 2,150 observations involving ₹ 50.10 crore outstanding. The Department has not prepared a separate internal audit manual.

Audit recommends that the IAW may be strengthened so that they could achieve the planned audit target. Besides, a mechanism needs to be installed for timely settlement of the audit observations raised by the IAW.

2.10 Results of audit

In 2012-13, Audit test checked the records of 164 units relating to KGST and KVAT. Audit detected underassessment of tax and other irregularities involving ₹ 833.26 crore in 1,920 cases which fall under the following categories :

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1	Assessment, levy and collection of VAT on transfer of goods involved in the execution of works/supply contract (A Performance Audit)	1	595.35
2	Turnover escaping assessment	841	86.02
3	Grant of irregular exemption	296	42.19
4	Application of incorrect rate of tax	131	25.03
5	Grant of excess input tax credit	216	9.50
6	Incorrect grant of concessional rate of tax	11	1.74
7	Non/short levy of Interest	9	0.38
8	Other lapses	415	73.05
Total		1,920	833.26

The Department accepted underassessment and other deficiencies of ₹ 6.56 crore in 675 cases, of which 65 cases involving ₹ 0.53 crore were pointed out in audit during the year 2012-13 and the rest in earlier years. An amount of ₹ 6.51 crore was realised in 673 cases of which 65 cases involving ₹ 0.53 crore were pointed out during the year 2012-13.

A draft paragraph was issued (June 2013) involving ₹ 5.04 lakh, in which the department had recovered the entire amount.

A Performance Audit on '**Assessment, levy and collection of VAT on transfer of goods involved in the execution of works/supply contract**' with financial impact of ₹ 595.35 crore and a few illustrative audit observations involving ₹ 25.09 crore are mentioned in the following paragraphs.

DP 4280

2.11 Performance Audit on ‘Assessment, levy and collection of VAT on transfer of goods involved in the execution of works/supply contract’

2.11.1 Highlights

- ❖ There was no separate sub head for classifying/crediting of VAT receipts received from works contractors.

(Paragraph 2.11.8)

- ❖ Form 10 C showing the details of works contracts awarded was not furnished to the CTD by the Public sector undertakings /Government Departments and by private sector.

(Paragraph 2.11.10)

- ❖ No survey was conducted in the five districts for identifying unregistered works contractors. Audit cross verified the details collected from other departments with KVATIS and found that 484 contractors were not registered under the KVAT Act.

(Paragraph 2.11.11)

- ❖ A difference of ₹ 630.21 crore was noticed between the contract amounts awarded to the subcontractors and that depicted by them in their returns. The tax effect involved in these cases amounted to ₹ 124.51 crore.

(Paragraph 2.11.12.2)

- ❖ Audit noticed that in three cases, the developers accepted the advance payment from the prospective buyers without paying VAT of ₹ 63.03 crore.

(Paragraph 2.11.13.2)

- ❖ Application of incorrect rate of tax resulted in short levy of tax of ₹ 7.26 crore in two cases.

(Paragraph 2.11.19)

- ❖ Audit observed that contractors were allowed to pay tax at a compounded rate of three *per cent* in contravention of the provisions of the Act.

(Paragraph 2.11.20.2)

DP 4329

2.11.2 Introduction

Tax on Works Contract was governed by Kerala General Sales Tax Act 1963 (KGST) upto 31 March 2005. Thereafter the levy, assessment and collection of tax on works contract is governed by Kerala Value Added Tax (KVAT) Act 2003 and the Kerala VAT Rules (Rules) made thereunder. The inter state purchases relating to Works Contract is governed by Central Sales Tax Act (CST) 1956. Section 2(iv) of the KVAT Act stipulates that Works contract (WC) includes any agreement for carrying out for cash or for deferred payment or other valuable consideration the construction, fitting out, improvement, repair, manufacture, processing, fabrication, erection, installation, modification or commissioning of any movable or immovable property. Government is empowered to issue notifications and Department can issue circulars for the administration of the KVAT Act and Rules. Works contract tax (WCT) is accounted alongwith commercial taxes under major head 0040. Assessment of works contracts is done under Section 6 of the Act. The works contractor can opt for compounding scheme under Section 8 of the Act. In the case of works awarded, tax shall be deducted from the payments made to the contractor by the awardee. In the case of compounding, if the option is accepted, tax due will be calculated by the assessee and remitted monthly. Important terminology/ provisions governing taxation of works contractors under KVAT Act is as explained in the Annexure II.

Reasons for selection of topic for the performance audit

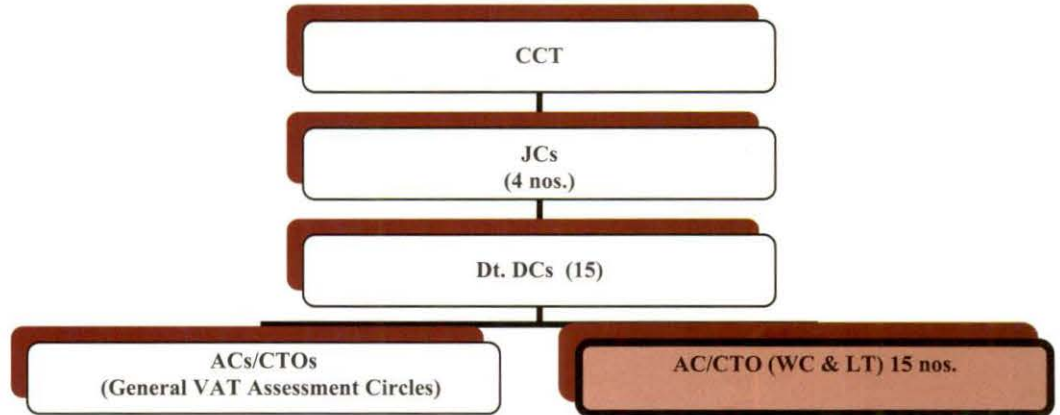
During the local inspections it was found that returns filed by the works contract assesseees were error prone and the Department was not paying enough attention to scrutinise the returns. Compliance deficiencies in the works contract were persisting and reported in previous Audit Reports as mentioned in Annexure III. Hence, it was felt appropriate to audit this area considering the inherent risk and control risk. The observations of Audit are discussed in the succeeding paragraphs.

2.11.3 Organisational setup

The Department of Commercial Taxes is administered at Government level by the Secretary to Government and the Commissioner of Commercial Taxes (CCT) is the head of the Department. There are four Joint Commissioners (JC), namely, JC –I, JC (General), JC(Law) and JC(Audit and Inspection) to assist the CCT. The district level administration of the offices is carried through 15 Deputy Commissioners (DC) in 15 tax districts. DC in each district is the administrative head of the offices in that district. Assessment, levy and collection are done by Assistant Commissioners and Commercial Tax Officers respectively in special circles and ordinary circles. Assessment, levy and collection of tax in respect of works contractors are done in two sets of establishments viz.

- Exclusive works contract circles - 15 numbers. These are attached to the offices of the Deputy Commissioners in 15 tax districts.
- Regular VAT assessment circles along with VAT – 132 numbers.

ORGANOGRAM



2.11.4 Main objectives for Audit

The Performance Audit (PA) was conducted to ascertain whether:

- ❖ the provisions of the KVAT Act and the KVAT Rules governing the registration, assessment, levy and collection of tax from works contractors are adequate and effective;
- ❖ a data bank containing the construction work going on in the state is maintained by the Department and the information is utilised in registration of the dealers and for other purposes;
- ❖ a system exists in the Department to ensure that the turnovers reflected in the returns filed by the dealers agree with the value of the contracts awarded by the major awarders² and also includes the amount of inter-state purchases made for execution of contracts;
- ❖ Internal Audit wing exists and effectively checks timely assessments, levy and collection of revenue to prevent the leakage of revenue.
- ❖ corrective measures are taken to rectify the defects pointed out by statutory audit and Internal Audit wing;

2.11.5 Audit Criteria

The criteria for the PA were derived from the provisions and rules of central and state laws mentioned below and the notifications/orders issued by the Government from time to time thereunder.

² Awarders:- Include Government departments/local authorities/public sector undertakings such as Public Works Department, Local Bodies, Kerala Water Authority, Kerala State Electricity Board, Oil Companies, Cochin Shipyard, Cochin Port Trust, various power projects etc.

State Laws

- The Kerala Value Added Tax Act 2003
- The Kerala Value Added Tax Rules 2005.

Central Laws

- The Central Sales Tax Act 1956
- The Central Sales Tax (R&T) Rules 1957

In addition to above, various decisions promulgated by various courts have also been taken into account while conducting the audit.

2.11.6 Scope and methodology of Audit

Audit conducted the PA as per an approved study design matrix during the period from January to June 2013 covering the period from 2007-08 to 2011-12. Based on VAT collection 14 districts were stratified into 12 strata and six districts³ were selected by stratified random sampling. Subsequently, Thrissur district was included in place of Idukki as suggested by the CCT, Thiruvananthapuram at the entry meeting on the reason that contract works are more in Thrissur district compared to Idukki district. The primary data collected from the Office of the CCT and assessment circles in six selected districts⁴ were cross checked with the secondary data collected from the Directorate of Industries and Commerce, Kerala Water Authority (KWA), Kerala Public Works Department (KPWD), Vikram Sarabhai Space Centre (VSSC), Directorate of Radiation Safety and various Public Sector Undertakings.

Audit conducted an entry conference on 08 March 2013 with the Secretary to Government (Taxes) and the CCT, wherein the scope and methodology of audit were discussed. The draft note was sent (July 2013) to the Department/Government and the Audit findings and recommendation were discussed with the Secretary to Government (Taxes) and the CCT in the exit conference held on 26 September 2013. The deficiencies pointed out in PA were accepted by the Department/Government in the exit conference. The Secretary to Government (Taxes) appreciated the findings of the PA and opined that the report and the recommendations are eye opener to the Department and that the implementation of the same would boost revenue collection from works contract. The response of Department/Government was considered while finalising the PA.

2.11.7 Acknowledgement

Audit acknowledges the co-operation extended by the Commercial Taxes Department, Department of Industries and Commerce, Department of Ports, Directorate of Radiation Safety, Airport Authority of India, KPWD, VSSC and

³ Ernakulam, Idukki, Kottayam, Kozhikode, Palakkad and Thiruvananthapuram.

⁴ Ernakulam, Kottayam, Kozhikode, Palakkad, Thiruvananthapuram and Thrissur.

KWA for providing necessary information and the inputs required for the preparation of the Report.

System deficiencies

2.11.8 Revenue collection for Works Contracts

KVAT is credited in 0040 tax on sales, trade etc. However there was no separate sub head for classifying credit of VAT received under Works Contract. In the absence of sub head the actual collection of Works Contract Tax could not be assessed/analysed *viz-a-viz* the actual receipts of VAT collection.

There are 15 circles responsible for assessment and collection of works contract tax. The year wise position of works contract receipts as furnished by Department was as under:

Year	WC Tax	Total VAT collection	Rate of increase in WCT	Rate of increase in VAT
	(₹ in crore)		(in percentage)	
2007-08	284.00	5,014.80	-	-
2008-09	397.36	5,881.97	15.93	17.29
2009-10	420.17	7,235.26	24.26	23.01
2010-11	473.82	8,097.15	11.86	11.91
2011-12	522.78	9,803.74	25.04	21.08

Source : Finance Accounts and figures of Commercial Taxes Department

Audit however noticed that apart from the above 15 circles, collection of tax from works contracts is also being done by regular assessment circles. Several dealers engaged in execution of works contract were registered and assessed at regular VAT assessment circles. Larsen & Toubro Ltd, Kone Elevator Ltd, Otis Elevator Ltd, Kirloskar Brothers Ltd, Blue Star Ltd, Voltas Ltd etc., are some examples. The receipts from such assesseees were not reckoned as works contract receipts. Instead, receipts from works contract circles alone were being shown as tax collected from works contractors. Thus, the total revenue realised from works contract could not be ascertained.

In the exit conference, the Secretary to Government (Taxes), informed that the feasibility of opening a separate head of account for works contract will be looked into.

Audit recommends that the Department may initiate action to introduce a new subhead under the major head 0040 Tax on sales, trade etc., for identification of the works contract tax.

2.11.9 Absence of a separate TIN number to identify works contract assesses

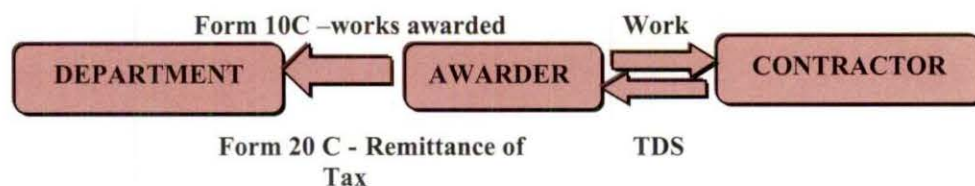
All VAT dealers including works contract dealers are given an eleven digit Tax Identification Number (TIN) on registration. However, the works contractors cannot be identified from other dealers in the roll of Commercial Taxes Department (CTD). Only way to identify the works contractor is to allot a separate identification number for works contractors apart from the general TIN or the general TIN may be prefixed/suffixed with a code.

The general TIN may be prefixed or suffixed so as to identify the works contractors from other dealers.

2.11.10 Failure in identification of works contractors due to non submission of declarations in Form 10C

• Public Sector Undertakings/Government Departments

Rule 32 of the KVAT Act stipulates that every awarder,⁵ including a Department of the State or Central Government, shall forward a return to the assessing authority showing the details of works contract awarded during every quarter, in Form No.10C, so as to reach the assessing authority on or before the 10th day following the quarter ending 30 June, 30 September, 31 December and 31 March every year. Filing of return in Form 10C is a key control instituted in the statute to enable the Department to ascertain the information regarding the construction activities in the State.



Audit found that KPWD was awarding contract to private contractors but did not file the Form 10C to CTD. Same was the case with Kerala State Transport Project (KSTP), Kerala Water Authority (KWA), Kerala State Electricity Board (KSEB) and Bharat Petroleum Corporation Limited (BPCL). As such Audit could not ascertain whether all the contractors have been brought under the tax net.

In the exit meeting (September 2013), the Secretary (Taxes) accepted the views of Audit and stated that filing of return in Form 10C will be ensured in future.

• Private sector in State

Audit noticed that the contract works in the State were also being executed by the private sector. They are also not filing returns in Form 10C. CTD was not maintaining any record of these contractors and as such CTD was unaware of the

⁵ As per Section 2 (vii) of the Act, awarder means any person who awards any works contract to a contractor for execution.

quantum of turnover relating to such works being executed by contractors in the state.

Audit recommends that the Department should develop a system to monitor quarterly/annually, the receipt of declaration in Form 10C filed by awarders both in respect of Government and private awarders.

2.11.11 Absence of a system to detect unregistered works contractors

Section 15A of the KVAT Act 2003, stipulates that where a dealer liable to be registered under this Act has failed to inform the registering authority of his liability to be registered, the registering authority, after conducting such survey, inspection or enquiry, as may be prescribed, proceed to register such person as a dealer. Survey is an important tool to detect unregistered contractors and to widen the tax base. The Department⁶ also has emphasized the importance of conducting survey. Under Section 67(1)(a) of the Act, registering authority may direct that if a person required to register himself as a dealer under the Act, did not get himself registered, he shall be liable to pay by way of penalty, an amount not exceeding twice the amount of tax or other amount evaded or sought to be evaded where it is practicable to quantify the evasion or an amount not exceeding ten thousand rupees in any other case.

- **Failure to conduct street survey**

Audit noticed that no survey for identifying/registering of works contractors was conducted in five⁷ of the six test checked districts during the period from 2007-08 to 2011-12.

Audit collected information of contractors from three⁸ other departments and cross verified the data with the Kerala Value Added Tax Information System (KVATIS). Out of 496 contractors checked, it was observed that only 12 contractors were registered with KVAT Act and 484 contractors were not registered (Annexure IV).

Due to the failure of the Department to conduct adequate survey, the unregistered contractors remained outside the tax net. The extent of tax evaded in this regard could not be quantified in the absence of data. However, the penalty under Section 67(1)(a) of ₹ 48 lakh could have been levied which was also not done.

- **Failure to use data available in the Department for registration of contractors**

Under Section 10 of the Act, every awarder has to deduct tax at source (TDS) and remit to the Department (Rule 42). The awarder while remitting tax shall file a return alongwith a statement in Form 20C. Form 20C contains the details like name of contractors, amount of contract, payments of tax deducted at source etc.

⁶ Circular No.34/2005 dated 12.12.2005 and Circular No.43/2007 dated 19.10.2007.

⁷ Ernakulam, Kottayam, Palakkad, Thiruvananthapuram and Thrissur.

⁸ District Industries Centre, Department of Ports, Department of Tourism.

Audit cross verified the details of tax deduction statement in Form 20C available in the assessment circles /data collected from VSSC with KVATIS in the six districts selected in PA and found that 352 unregistered contractors were executing works contracts valued at ₹ 634.35 crore in 945 cases. Eventhough data was available with the Department itself, it made no efforts to register the dealers. Once the dealers were identified, the data should have been handed over to the intelligence wing for confirmation of facts and registration done accordingly.

During discussion in the exit conference (September 2013), the Secretary to Government (Taxes) informed that a mechanism is being brainstormed to bring the works contractors into the tax net and he assured that all efforts would be taken to gather information from local bodies/implementing agencies for identifying unregistered works contractors.

Audit recommends that

- ***A streamlined system may be evolved by the Department to identify/detect the unregistered works contractors and bring them to the tax net.***
- ***There should be a system for collecting the details of contracts awarded by Government agencies/Departments so as to make the cross verification effective.***

Audit recommends that the Department should insist on filing of Form10C by the awarders and ensure that it was cross checked with the returns filed by the contractors to avoid the suppression of turnover by the assessees.

2.11.12 Internal control mechanism

Internal controls are intended to provide reasonable assurance on proper enforcement of laws, rules, departmental instructions etc., and to pinpoint lapses in the implementation of systems and products with a view to prevent frauds and other irregularities. Internal controls also help in creation of reliable financial and managerial information system for adequate safeguards against evasion of revenue.

2.11.12.1 Lack of control in exempting TDS

The Rule provides that the contractors to whom 20E certificate is to be issued by the assessing authority should be regular tax payers and the final payment to them shall not be made unless contractor produces liability certificate issued by the assessing authority. Liability certificate is the certificate issued by assessing authority showing the dues outstanding against the contractor as on date which should be deducted from payments made to the contractor.

Audit scrutiny of the records in CTO (WC<), Ernakulam revealed that demands ranging from ₹ 1.16 lakh to ₹ 6.71 crore raised against nine contractors to whom Form 20E certificates were issued, are pending for collection. This indicates that final payment was made to the contractors without adjusting the tax

pending against the contractors. One of the cases is discussed here to highlight the nature of deficiency. M/s BPCL, Kochi was the awarder of the contractor, M/s BOC India, a Calcutta based company for executing works contract. The assessing authority issued certificates in Form 20E based on which M/s BOC India received payments amounting to ₹ 25.02 crore without having the value added tax deducted at source during the period upto August 2010. On receiving the major portion of the contract amount, M/s BOC India left the state entrusting the remaining portion of the work with a sub-contractor. Since, the contractor did not pay the VAT, the assessing officer completed (December 2012) their VAT assessment under Section 25 of the KVAT Act and raised (January 2013) a demand of ₹ 3.60 crore. Since the demand was not cleared, the assessing authority issued requisition for revenue recovery to the revenue authorities of West Bengal. The dues could not be realised till date of audit (June 2013).

This could have been avoided if the certificate in Form 20E was not issued by the assessing authority to M/s BOC India as it was not a regular tax payer of the state government. Also, the final payment should have been made by the awarder, M/s BPCL only after ascertaining the balance dues from the contractor as per the liability certificate issued by the assessing authority.

Department/Government may examine the case in detail to see under what circumstances the exemption was allowed to the contractor.

2.11.12.2 Suppression of turnover due to lack of control in sub contracted works

Explanation 1 to section 8(a) of KVAT Act, provides for excluding the amount paid to a registered sub contractor. For this, the contractor has to furnish a certificate in Form 20H issued by such sub contractor. The Form 20H submitted by the sub contractor indicates only the gross amount of the contract but does not indicate the actual amount of payment made to the sub contractor. The Empowered Committee of State Finance Ministers (ECSFM) came out with a unanimously approved white paper on VAT which *inter-alia* emphasized the need for cross verification of data between various implementing and taxation authorities so as to check tax evasion and to ensure growth of revenue.

Audit cross verified the data collected from awarders such as KWA, VSSC, KPWD, Airport authority of India and Kerala Sustainable Urban Development Project with the assessment records of contractors and found that in nine⁹ assessment offices the contractors had further subcontracted part of the work. There was variation between the amount of contract allotted by the contractors and the returns filed by the sub-contractors. As per Form 20H submitted by 21

⁹ Works contract offices Ernakulam, Idukki (selected for sampling at the initial stage, later on the request of CCT, another district Thrissur was taken in its place. Since information was already collected same was included), Kozhikode, Mattancherry, Palakkad, Thiruvananthapuram and Special Circle II, Ernakulam, Special Circle, Thiruvananthapuram, Second Circle, Thiruvananthapuram

assesseees to the awarders, the total amount of contract allotted to sub contractors was ₹ 1,049.58 crore. However, the subcontractors in their returns submitted to the CTD had depicted the amount as ₹ 419.37 crore. Thus, there was a difference of ₹ 630.21 crore which needs investigation. A few instances are given below:

(₹ in crore)

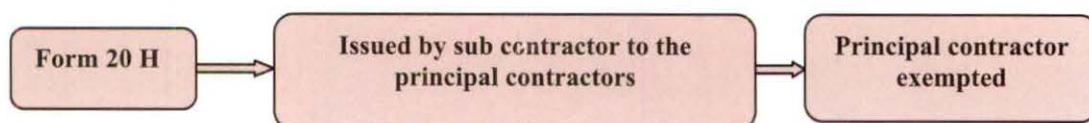
Sl. No.	Name of the Office	Name of the awarder/ name of the assessee	Amount for which the principal contractor availed exemption based on Form 20H	Amount shown in the returns filed by the sub-contractor/ year	Difference in the amount received/ reported
1.	CTO, WC, Ernakulam	IHI Corporation/ M/s Vijaya Tanks & Vessels	72.58	64.60 (2009-10)	7.98
2.	CTO, WC, Ernakulam	M/s Shapoorji Pallanji/ M/s Siemens Building Technology	10.49	0.04 (2009-10)	10.45
3.	CTO, WC, Palakkad	M/s Shapoorji Pallanji/ M/s Hooma Interrial Decoration	14.16	0.00 (2009-10 to 2011-12)	14.16
4.	CTO,WC, Kozhikode	M/s Shapoorji Pallanji/ M/s NJ Constructions	1.13	0.00 (2009-10 to 2011-12)	1.13
5.	CTO, Spl. Circle II, Ernakulam	JBIC, KWA/ M/s Kirloskar Brothers Ltd	111.14	13.00 (2008-09 to 2011-12)	98.14

The reasons for the difference though called for were not furnished by the Department. The tax effect involved in these transactions amounted to ₹ 124.51 crore including interest and penalty as shown in Annexure V.

Audit recommends that the Department should develop a fool proof system to ensure the actual amount of payment made to subcontractors.

2.11.12.3 Deduction of sub contracted work from taxable turnover without Form 20H

Exclusion of subcontracted work from taxable turnover is a high risk area in the assessment of works contract tax under Section 6. The same risks are prevailing in the assessment under compounding (Section 8) due to the deficiencies in Form 20H. In addition, Audit found cases where subcontracted work was excluded without Form 20H.

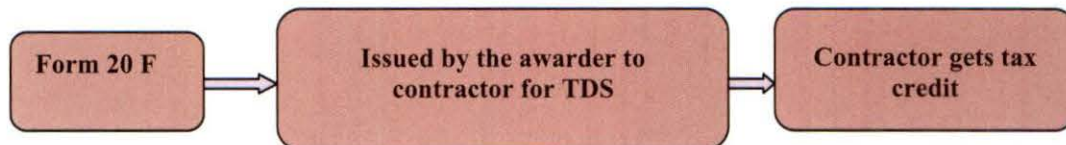


Audit scrutinised 58 assessment files of works contractors who opted for payment of tax under Section 8(a)(i) of KVAT Act and observed that out of the above, 19 assesseees in four¹⁰ assessment circles, availed deduction of a portion of their turnover as amount paid to the sub contractors for that part of works executed through them. But the assesseees did not furnish the certificate in Form 20H required in support of their claims. The assessing authority did not disallow the claim for deduction in the absence of required certificate. This resulted in short levy of tax of ₹ 10.27 crore including interest and penalty as shown in Annexure VI.

During discussion in the exit conference, the Secretary to Government (Taxes), accepted the recommendation insisting the production of valid documents/declaration in support of each claim.

2.11.12.4 Tax credit availed without furnishing details of TDS in Form 20F

As per Section 10 of KVAT Act 2003, every awarder shall deduct from each payment made by him to any works contractor, the tax payable by the contractor in respect of works contract awarded. Rule 42(4) and 42(8) of KVAT Rules 2005 provide that where an awarder deducts tax from the payment due to the contractor, he shall issue a certificate to such contractor in Form 20F and the contractor can adjust the amount deducted by the awarder against his tax dues. If an assessee adjusts the TDS against his tax dues, he shall furnish the copies of Form 20F certificate issued by the awarder.



Audit scrutinised 62 assessment files of works contractors and observed that four assesseees in two¹¹ assessment circles adjusted from their tax dues certain amount as TDS without furnishing the certificate in Form 20F required in support of their claim. In the absence of Form 20F, the correctness of TDS claimed by the contractors is not verifiable. The assessing authority should have taken note and disallowed the claim. However, the claim was allowed without required certificate. This resulted in short levy of tax of ₹ 35.87 crore including interest and penalty as shown in Annexure VII.

Assessing officers should ensure that concessions/exemptions are allowed against valid certificates required as per Act/Rules.

¹⁰ Works Contract offices, Ernakulam, Kottayam, Kozhikode and Thiruvananthapuram.

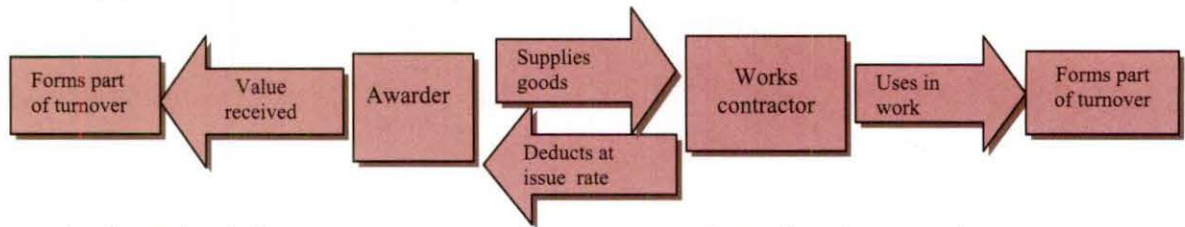
¹¹ Works Contract offices Ernakulam and Thiruvananthapuram.

2.11.13 Turnover escaped assessment

2.11.13.1 Materials supplied to contractor by the awarder

Rule 9 (2A) of the KVAT Rules provides that, if an awarder supplies a portion of the goods involved in the execution of the works contract and deducts the value of such materials from the payment made to the contractor, the turnover of the goods so supplied shall form part of the total turnover of the awarder as well as the contractor. Thus value of goods is liable to tax on two accounts;

- (a) By the works contractor - under works contract tax
- (b) By the awarder – under general VAT assessment



Audit noticed that two assesseees who were awarders of various works contracts, supplied materials to the contractors for use in works contract. The value of material so supplied was exigible to tax.

Audit obtained information from BPCL regarding the supply of Bitumen upliftments by KPWD during the last five years and found that bitumen value at ₹ 1,238.75 crore was supplied to KPWD which in turn supplied to various contractors. As per Section 20(1), KPWD was required to file a return before the commercial taxes department. However, Audit noticed that Public works department had not filed returns during the above period. In the absence of returns, it is not ascertainable whether tax due was paid by them. VAT chain has broken at this stage. The KPWD was required to file Form 10C which was not done.

The KSEB has in its accounts shown that material valued at ₹ 113.12 crore was supplied to contractors against work orders awarded by them. No centralised returns were being submitted by the KSEB. The returns submitted by the various branches were also not produced before Audit. Audit could therefore not ascertain whether the tax was paid correctly.

The tax effect involved in above cases at the rate of 12.5 per cent works out to ₹ 210.59 crore $\{(\text{₹ } 1,238.75 \text{ crore} + \text{₹ } 113.12 \text{ crore}) \times 12.5 \text{ per cent}\}$.

It is therefore recommended that Government may issue instructions to the KPWD for filing the VAT returns and also a consolidated VAT return by the KSEB.

2.11.13.2 Escape of contract receipts of developers

The construction of apartments after accepting advance from prospective buyers on a prior agreement will come under the purview of works contract under

Section 2(iv)¹² of the KVAT Act. This has been established by the decision¹³ of Supreme Court of India and subsequently clarified¹⁴ by the CCT. Since most of the developers/builders undertake to build/develop any immovable property after accepting advance payment, they will come under the purview of the Act.

Audit found that in three cases, the developers accepted advance payments from the prospective buyers after entering into agreement with them. Though the transactions were eligible to be taxed under Section 6(1)(f) of KVAT Act, these developers were not assessed to tax as works contractors. The assessing authority also did not assess to tax the receipts of the developers under the Act. This resulted in short levy of tax, interest and penalty of ₹ 63.03 crore as shown below:

Sl. No.	Office to which related	Name of the assessee	Year	Turnover escaped assessment	Short levy of tax, interest and penalty
				(₹ in crore)	
1	CTO, WC, Kozhikode	M/s Queens Habitat	2011-12	7.58	2.25
2	CTO, WC Ernakulam	M/s DLF Home Developers (P) Ltd	2007-08 to 2011-12	194.48 ¹⁵	60.32
3	CTO, WC, Palakkad	Shri Jayaram CS , Sai Property Developers	2009-10	11.70	0.46
Total					63.03

Since this is a major area for tax collection, Audit recommends that the investigation wing should be vigilant to locate such cases.

2.11.13.3 Permission granted incorrectly to compound the contract receipts by builders/developers

Rule 11(1A) of Kerala Value Added Tax Rules, 2005 stipulates that every dealer in works contract shall file copies of the Agreements executed for construction along with application for compounding. Further, every contractor shall file a declaration in form No 49, containing the details of ongoing projects along with the returns.

Audit scrutinised 567 assessment records in respect of 205 builders for the period from 2008-09 to 2011-12 and observed that the assesseees were allowed to compound their contract receipts amounting to ₹ 3,481.22 crore either without

¹² Works contract includes agreement for carrying out construction etc.

¹³ K. Raheja Development Corporation Vs State of Karnataka, (141 STC 298(SC)2005)

¹⁴ Circular No.3/2010 dated 5.3.2010

¹⁵ Escape of turnover was worked out at the base rate of ₹ 3,500 per square meter for an area of 5,55,650 square meter

production of contract agreements or with the contract agreements which were not valid¹⁶ for the reason that they were executed in stamp paper worth ₹ 50/ ₹ 100.

In the absence of copies of valid agreements and declarations stipulated, the assessing officer should not have granted permission for compounding. Instead the total turnover should have been assessed under Section 6(1)(f), after allowing permissible deductions and input tax credit, which would have fetched additional revenue of ₹ 611.73 crore.

During discussion in the exit conference, the Secretary to Government (Taxes), accepted the recommendation on insisting of production of valid documents/ declaration in support of each claim.

Department should direct the assessing officers to see whether compounding is allowed based on proper application for compounding along with documents required as per provisions of Act/Rules.

2.11.14 Internal Audit

The internal audit wing commenced functioning from 1 June 2009. The details of units audited by the internal audit wing during the year 2009-10 to 2011-12 is as follows:

Year	No. of units to be audited	No. of units audited	Percentage of coverage	No. of cases detected	Amount of objection	
					(₹ in lakh)	Amount realised
2009-10	356	12	3.37	417	452.04	Not available
2010-11	356	46	12.92	919	330.53	
2011-12	356	32	8.99	445	2,738.20	

(Source: Data from Commercial Taxes Department)

Audit observed that the coverage of units audited was very low and the details of amount realised were not made available. As such the effectiveness of the internal audit wing could not be ascertained.

Compliance deficiencies

2.11.15 Sales treated as works contract to reduce tax liability

Adopting wrong classification to reduce tax liability is a major risk area in self assessment. Audit found instances where the assessing officer had accepted this wrong classification. Treating sales as works contract is one such example. Under explanation below the table under Rule 10(2)(b), no deduction in respect of labour shall be allowed out of the total contract amount for the supply and installation of any machinery equipment or any other system, where the goods involved are

¹⁶ Under the Kerala Stamp Act 1959 as amended vide Finance Act 2007, development agreements are to be stamped at the rate applicable to conveyance deeds.

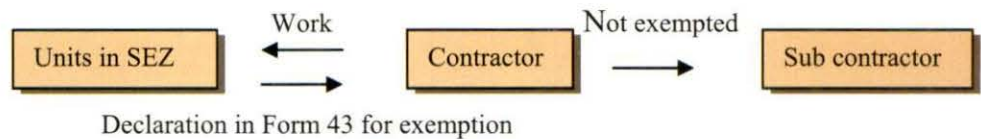
transferred in the ‘knocked down’ condition (unassembled form) and assembled and installed, and the skill and labour employed for installation is only incidental to the supply of such goods.

The supply and installation of commodities like lift/elevator, air conditioner, surveillance camera, bus body etc., were classifiable as sales¹⁷ but not works contract. Thus these items are taxable under the provisions of VAT Act and exemption cannot be given for labour and other charges.

Audit scrutinised the records of 21 contractors who undertake supply and installation of lift, air conditioners and construction of body on chassis of vehicles, and observed from their returns that in respect of 12 cases in six¹⁸ assessment circles, the above works were treated as works contract claiming exemption towards labour and other charges under Rule 10. Short levy of tax in this regard worked out to ₹ 35.62 crore including interest and penalty as shown in Annexure VIII.

During exit meeting (September 2013), the Secretary (Taxes) accepted the Audit observation and assured that action would be taken in the above cases.

2.11.16 Incorrect exemption from payment of tax on sales to Special Economic Zone



Section 6(7)(b) of KVAT Act provides that, works contract to any unit situated in the Special Economic Zone (SEZ) in the State is exempted from tax subject to the production of declaration in Form 43 issued by the unit. The CCT has also clarified¹⁹ that the exemption is for contractor only and sub contractors who execute work for a contractor in SEZ are not eligible for exemption under this Section. Audit checked assessment records in respect of fourteen assesseees in four²⁰ assessment circles, who executed work in SEZ and observed that in six cases, exemptions amounting to ₹ 67.55 crore were allowed without production of declaration in Form 43. In the absence of Form 43, there is no mechanism to ensure that the work has been executed for SEZ units. Further, Audit observed that in one case,²¹ a sub contractor who executed work for a contractor in SEZ was incorrectly granted exemption from payment of tax. Short levy of tax

¹⁷ M/s Kone Elevators (India) Ltd. Vs State of AP (2005) 140 STC 22 and M/s Mckenzie's Ltd. Vs State of Maharashtra (SC) – Supply and installation of lifts and elevators, construction of body on chassis of vehicles are sales, not works contract.

¹⁸ Works Contract Offices Ernakulam, Mattancherry, Thrissur, Special Circle I Ernakulam, Special Circle II Ernakulam, Third Circle, Thrissur.

¹⁹ Order No C3.48469/08/CT dated 08.01.2009

²⁰ Works Contract Offices, Ernakulam, Thrissur, Special Circle I, Ernakulam Special Circle II, Ernakulam

²¹ Works Contract Office, Ernakulam

including interest and penalty amounted to ₹ 14.12 crore. Short levy in these cases amounted to ₹ 81.67 crore (Annexure IX).

A foolproof mechanism should be instituted to ensure that the provisions of the Act/Rules are observed scrupulously while accepting claim for concessions/exemptions admissible in the case of sales to units in SEZ.

2.11.17 Deduction of labour and other charges from turnover which are not ascertainable from the accounts

Under Rule 10(2)(a) of KVAT Rules, the taxable turnover can be determined by allowing the deductions viz., labour charges, charges for planning and designing, charges for machinery and tools used, cost of consumables, establishment and overhead charges and profit earned etc., if they are ascertainable from accounts. Under Rule 10(2) (b), where the actual turnover in relation to a works contract, in which the transfer of goods takes place not in the form of goods but in some other form, is not ascertainable from the books of accounts of the dealer or where the dealer has not maintained any accounts, the total turnover in respect of such works contract shall be computed after deducting labour and other charges from the total amount of contract at the rates prescribed in the Rule.

Audit noticed that, in the case of 16 assesseees in four²² assessment circles, the deduction allowed was more than the permissible limits though the details of labour and other charges are not ascertainable from their accounts. This mistake was not detected and rectified by the assessing authority which resulted in short levy of tax, interest and penalty amounting to ₹ 188.05 crore as shown in Annexure X.

Inadmissible/excess deductions from turnover should invariably be avoided while accepting returns/finalising the assessments.

2.11.18 Variation between accounts and returns

Section 42 stipulates that every dealer whose total turnover in a year exceeds ₹ Sixty lakh shall get his accounts audited annually by a Chartered Accountant and shall submit copy of the audited statements of accounts and certificates. Section 42(2) of the Act provides that where any dealer detects any omission or mistake in the annual return submitted by him with reference to the audited annual accounts, he shall file revised annual return rectifying the mistake or omission along with the audit certificate accompanied by proof of payment of such tax, interest and penal interest.

In four²³ assessment circles, out of 21 test checked, there was difference in the contract receipt returned and the contract receipt accounted in eight cases. But neither the assessee revised their annual return and paid the balance tax due nor

²² Works Contract Offices, Ernakulam and Idukki, Mattancherry Special Circle II, Ernakulam

²³ Works Contract Offices Ernakulam, Thiruvananthapuram and Thrissur, Special Circle II, Ernakulam.

the assessing authority assessed the balance turnover. This resulted in short levy of tax of ₹ 11.08 crore including interest and penalty as shown in Annexure XI.

2.11.19 Application of incorrect rate of tax

Section 6(1)(f) of KVAT Act provides that in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods but in some other form, tax shall be levied at the rate of 12.5 per cent and when the transfer is in the form of goods at the rates prescribed under the respective Schedules. Proviso 9 below Section 6(1)(f) of the Act provides that in respect of transfer of goods other than declared goods²⁴ into works contract if the transfer is not in the form of goods, the rate applicable shall be 12.5 per cent.

Audit noticed in two cases in two assessment circles, that goods other than declared goods were assessed at four per cent instead of 12.5 per cent resulting in short levy of tax at differential rate of 8.5 per cent including interest and penalty amounting to ₹ 7.26 crore as detailed below:

Sl. No.	Office to which related	Name of the assessee	Year	Turnover on which incorrect rate was applied	Short levy
				(₹ in crore)	
1.	CTO, Special Circle II, Ernakulam	M/s Larsen & Toubro Ltd.	2010-11	20.75	5.79
2.	CTO, WC, Ernakulam	M/s Sterling & Wilson	2010-11	5.30	1.47
Total					7.26

2.11.20 Compounding of works contract tax

Compounding is beneficial to assesseees due to the lower rate of tax liability of three per cent. The contractor may either file separate application for compounding for individual work or single option for payment of tax under the scheme in respect of all works undertaken by him during a year. Audit found the following deficiencies/irregularities in this system.

2.11.20.1 Delay in approval of compounding application

Rule 11 of the KVAT Rules stipulates that to exercise the option for compounding, the assesseees have to obtain permission from the assessing authority. The assessing authority may grant permission or reject it as per merits of the case. Audit found that there was a long delay in taking decision by the assessing officers. Thus, out of the 17,423 applications received in 15 offices, approval was granted in 8,980 cases only and 8,443 cases were pending for want of approval. Delay in processing the compounding applications may result in acceptance of returns filed by ineligible dealers as if compounded.

²⁴ Declared goods are goods declared by Section 14 of the Central Sales Tax Act 1956 (Central Act 74 of 1956) to be of special importance in interstate trade or commerce. Sand is not a declared good.

2.11.20.2 Short levy of tax due to inadmissible compounding

Under Section 8(a) of the KVAT Act, contractors can opt for payment of tax at compounded rate of three *per cent*. For availing the facility, conditions specified under the Act are to be satisfied. Audit noticed that in many cases option for compounding was admitted in contravention to the provisions of the Act as illustrated below:

- Under proviso to Section 8(a) of the Act, compounding is not admissible to contracts in which the transfer of materials is in the form of goods.

Audit noticed that out of the 24 assessment circles checked, in four²⁵ assessment circles, six contractors, who were engaged in the supply of poles, doors and windows etc., were permitted to compound. This was not regular since the predominant portion of the contract was for supply.

- Under Rule 11(1A), for compounding, works contractor shall file copies of agreement executed for work along with the application for compounding. In one case²⁶, the assessee was allowed to compound without contract agreements. In another case²⁷, the contractor was allowed to compound without an application as stipulated in Rule.

Inadmissible compounding in above cases resulted in short levy of ₹ 37.99 crore including interest and penalty as shown in Annexure XII.

2.11.21 Conclusion

- The Department does not have a system to identify works contract assessees and the works contract tax collection.
- The Department does not have a macro perspective of the constructional activities in the State. Deficiencies in surveys resulted in non-registration of unregistered contractors.
- The Department does not have an effective system and procedure for inter-departmental cross verification of data with other buying/implementing departments.
- The internal control mechanism existing in the Department was not adequate.

2.11.22 Summary of recommendations

The Government/Department may ensure that

- ❖ separate identification numbers/code are assigned to work contractors

²⁵ Works contract offices, Kottayam, Mattancherry, Thrissur and CTO Wadancherry

²⁶ Works contract office, Kottayam

²⁷ Works contract office, Thiruvananthapuram

- ❖ separate account subhead are provided for accounting receipts under works contracts.
- ❖ regular survey and inter-departmental cross verification of data are conducted to identify the works contractors by strengthening the intelligence wing and suitable measures for registration are taken promptly.
- ❖ valid documents in support of compounding are produced by the applicant timely.
- ❖ internal control mechanism is adequate to plug revenue loss, detecting the defects/deficiencies promptly.
- ❖ various declaration forms in support of claims for concession/exemptions are verified properly.

2.12 Non-observance of provisions of Acts/Rules

The Kerala General Sales Tax/Kerala Value Added Tax/Central Sales Tax Act and Rules made there under provide for:

- (i) levy of tax/interest/penalty at the prescribed rates;*
- (ii) allowing exemption of turnover subject to fulfilment of the prescribed conditions; and*
- (iii) allowance of input tax credit as admissible.*

It was noticed in audit that the AAs while finalising the assessment did not observe some of the provisions which resulted in non/short levy/non-realisation of tax/interest/penalty as mentioned in the paragraphs 2.13 to 2.26.

Value Added Tax**2.13 Short levy of tax due to misclassification****Commodities were misclassified which resulted in short levy of tax****2.13.1** (CTO, Special Circle I, Ernakulam)

As per Sl. No.25 of the notification²⁸ date 2006, Eau-de-cologne (a perfume), detergents, shampoos and cosmetics are taxable at 12.5 per cent under Section 6(1) of KVAT Act.

Sales turnover for 2008-09, 2009-10 and 2010-11 conceded by M/s Procter & Gamble Hygiene & Health Care Ltd., Kochi, a dealer in health care

products, included medicine taxed at four per cent on maximum retail price and napkins and diapers assessed at four per cent. Audit cross verified the details of check post declarations in KVATIS module with the annual returns filed by the assessee for the years 2008-09 to 2010-11. Audit scrutiny revealed that during these years, the assessee stock transferred into the State Eau-de-cologne, detergents, shampoos and cosmetics amounting to ₹ 23²⁹ crore. But the assessee did not concede in their annual returns for the respective years any sale of goods taxable at 12.5 per cent. Thus, sales turnover conceded as medicine included that of Eau-de-cologne (a perfume), detergents, shampoos and cosmetics. The misclassification of corresponding sales resulted in short levy of ₹ 5.49 crore (Tax ₹ 4.28 crore, cess ₹ 0.04 crore, interest ₹ 1.17 crore).

This was pointed out (October 2012) to the Department and reported (January 2013) to Government. Their reply has not been received (February 2014).

2.13.2 (CTO, Special Circle I, Ernakulam)

Under Section 6(d) of KVAT Act 2003, goods not falling under any of the schedules to the Act is taxable at 12.5 per cent. Damp proof or water proof compound of HSN 3824.40.10 is not included in any of the schedules to KVAT Act and hence is liable to be taxed at 12.5 per cent.

M/s Pidilite Industries Ltd., Kochi, a dealer in adhesives, paints etc., self assessed tax on sales turnover of Dr.Fixit Super latex and Dr.Fixit Pedicrete for ₹ 6.63 crore for the year 2010-11 at four per cent applicable to chemicals instead of at 12.5 per cent on

water proofing compound. As per data provided by the manufacturer in internet, Dr.Fixit Super latex and Dr.Fixit Pedicrete are multipurpose SBR latex based product for general repairs and economical waterproofing applications. Incorrect

²⁸ Vide SRO 82/2006

²⁹ Eau-de-cologne amounting to ₹ 5.04 crore, ₹ 9.05 crore and ₹ 8.10 crore during 2008-09, 2009-10 and 2010-11 respectively and detergents, shampoos and cosmetics amounting to ₹ 50.33 lakh and ₹ 30.86 lakh during the years 2008-09 and 2009-10

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application of four *per cent* instead of 12.5 *per cent* resulted in short levy of ₹ 66.62 lakh (Tax ₹ 56.38 lakh, cess ₹ 0.56 lakh, interest ₹ 9.68 lakh).

This was pointed out (October 2012) to the Department and reported (January 2013) to Government. Government stated (May 2013) that notice was issued to the dealer proposing to assess the turnover. Further report has not been received (February 2014).

2.14 Short levy of tax due to application of incorrect rate of tax

Rate of tax applied on the taxable turnover was less than the rate applicable as per the statute

2.14.1 (CTO, Special Circle II, Ernakulam)

As per Section 6(1) (f) of KVAT Act, 2003, in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods but in some other form, rate of tax is 12.5 *per cent*.

M/s HCL Infosystems Ltd., Kochi filed annual returns for the year 2008-09 and 2009-10 showing the following details.

(₹ in crore)

Particulars	2008-09	2009-10
Total turnover	95.10	90.07
Taxable turnover	87.36	80.75
Annual maintenance contract amount received	8.76	10.07
Exemption claimed	7.43	8.55
Taxable turnover conceded	1.32	1.53

The assessee had annual maintenance contract receipt of ₹ 8.76 crore and ₹ 10.07 crore during 2008-09 and 2009-10 respectively. They availed exemption of ₹ 7.43 crore and ₹ 8.55 crore towards labour and other charges. The assessee had not transferred any part of the goods in the form of goods as such remaining turnover was taxable at the rate of 12.5 *per cent*. But balance turnover of ₹ 1.32 crore and ₹ 1.53 crore were assessed to tax at four *per cent*. Application of incorrect rate of tax resulted in short levy of ₹ 30.50 lakh at the differential rate of 8.5 *per cent* (Tax ₹ 24.23 lakh, cess ₹ 0.24 lakh, interest ₹ 6.03 lakh).

After this was pointed out (between November 2011 and January 2012), Government stated (November 2013) that the assessments were revised as pointed out by Audit and the assessee remitted ₹ 7.92 lakh. Further report has not been received (February 2014).

2.14.2 (CTO, II Circle, Thiruvananthapuram)

Bakery products including biscuits sold under brand name, registered under the Trade Mark Act 1999 are liable to be taxed at 12.5 *per cent*, under Sl.No.11 of list of 12.5 *per cent* taxable goods notified under KVAT Act, 2003.

M/s Ambadi Food Products, Thiruvananthapuram was a manufacturer of bakery products selling goods under a brand name

‘Appoos’ registered under Trade Mark Act 1999. It filed annual return for 2008-09 assessing the turnover of ₹ two crore at the rate of four *per cent*. Assessing authority while completing assessment under section 25 (1) fixing the taxable turnover as ₹ 2.07 crore, assessed tax on the entire turnover at four *per cent* instead of the correct rate of 12.5 *per cent* applicable to branded food products. This resulted in short levy of ₹ 23.51 lakh (Tax ₹ 17.63 lakh, cess ₹ 0.18 lakh, interest ₹ 5.70 lakh).

The case was pointed out (December 2011) to the Department and to the Government in June 2013. Government stated (September 2013) that assessment had been completed creating an additional demand of ₹ 17.81 lakh as tax and ₹ 6.41 lakh as interest and revenue recovery steps were initiated against the dealer. Further report has not been received (February 2014).

- (CTO, Special Circle, Kottayam)

M/s Kerala Bakers, a manufacturer and dealer of biscuits with trademark registration under Trademark Act 1999, self assessed to tax their sales turnover relating to biscuits of ₹ 45.02 lakh and ₹ 53.66 lakh for 2005-06 & 2006-07 respectively at four *per cent*. Audit scrutiny of assessment records of the assessee for the years 2005-06 and 2006-07 revealed that the assessee sold biscuits with registered trade mark ‘Thomsons’. However, the assessing authority did not assess to tax the turnover at 12.5 *per cent*. Short levy due to application of incorrect rate worked out to ₹ 10.52 lakh (Tax ₹ 8.39 lakh, interest ₹ 2.13 lakh).

After these cases were pointed out (February 2009) in audit, the Department stated (December 2012) that the assessments had been completed (December 2011) creating additional demand of ₹ 13.63 lakh. Further report has not been received (February 2014).

2.14.3 (CTO, Special Circle, Malappuram)

As per notified list of goods taxable at 12.5 *per cent* under KVAT Act, 2003, cosmetics including hair oil, hair cream etc., are taxable at 12.5 *per cent*. As per proviso 13 to section 6(1) of the Act, tax payable on *ayurvedic* cosmetic products manufactured under a drug license granted under the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940) containing added medicaments having subsidiary therapeutic or prophylactic uses shall be four *per cent* for the period from 1 April 2005 to 12 November 2009.

M/s Santhosh Pharmacy, Kadalundi Nagaram was a manufacturer and dealer in *ayurvedic* products. During 2010-11, they self assessed to tax the turnover of *ayurvedic* cosmetic products for ₹ 2.58 crore at four *per cent* on maximum retail price. Even though *ayurvedic* cosmetic products are taxable at 12.5 *per cent*, the assessing authority did not take any

action to assess the tax at correct rate. This resulted in short levy of ₹ 18.83 lakh (Tax ₹ 16.50 lakh, cess ₹ 0.16 lakh, interest ₹ 2.17 lakh).

This was pointed out (May 2012) in audit to the Department and reported to Government in January 2013. Government stated (August 2013) that notice under Section 25(1) of the Act had been issued to the dealer proposing additional demand of ₹ 13.59 lakh. Reason for shortfall in assessment at differential rate of tax has not been furnished. Further report has not been received (February 2014).

2.14.4 (CTO, (WC), Thiruvananthapuram)

Under section 6(1) (f) of the KVAT Act, transfer of goods involved in the execution of works contract where the transfer is not in the form of goods, but in some other form is liable to be taxed at 12.5 per cent. Tyre retreading contract is a works contract not in the form of goods and is taxable at the rate of 12.5 per cent.

M/s Kerala State Engineering and Transport Development Co-operative Society, Trivandrum is an assessee engaged in tyre retreading and trading of automobile spare parts. As per the VAT abstracts furnished by the assessee, they had turnover of ₹ 30.02

lakh and ₹ 36.93 lakh during 2008-09 and 2009-10 respectively relating to tyre retreading. Though turnover of tyre retreading is taxable at 12.5 per cent, the assessee self assessed the turnover at four per cent. The assessing authority also did not complete the assessments applying the correct rate. Failure to assess the turnover at 12.5 per cent resulted in short levy of ₹ 7.26 lakh (Tax ₹ 5.69 lakh, cess ₹ 0.06 lakh, interest ₹ 1.51 lakh).

The case was pointed out (January 2012) to the Department and to the Government in May 2013. Government stated (July 2013) that assessments for the two years were revised (March 2012) creating total additional demand of ₹ 6.01 lakh. Further report has not been received (February 2014).

• (CTO (WC<), Kollam)

M/s Quilon Tyres and Treads, Kollam was a works contractor engaged in tyre retreading. The assessee had a contract receipt of ₹ 69.07 lakh during 2009-10 from retreading of tyres. The assessee assessed to tax the value of materials transferred amounting to ₹ 52.64 lakh at four per cent after deducting labour and other charges instead of at the rate of 12.5 per cent. Failure to levy tax at 12.5 per cent on the value of goods transferred resulted in short levy of ₹ 5.51 lakh (Tax ₹ 4.47 lakh, cess ₹ 0.04 lakh, interest ₹ 1 lakh).

After this being pointed out (February 2012) in audit, the Department stated (June 2012) that tyre retreading is a composite contract in which VAT was levied on that part of contract receipt after deducting the service. The reply is not correct since the materials transferred were not in the form of goods and the turnover should have been assessed to tax at 12.5 per cent instead of four per cent. The case was reported to Government in September 2012; their reply has not been received (February 2014).

- (CTO, II Circle, Palakkad)

M/s Shreyas Enterprises, Palakkad was a dealer in medicine. During 2009-10, the assessee assessed tax on a turnover of an *ayurvedic* cosmetic product at four *per cent*, though the reduced rate was applicable upto 12 November 2009 only. Though *ayurvedic* cosmetic products are 12.5 *per cent* taxable with effect from 13 November 2009, the assessing authority did not take any action to assess the tax at correct rate. Short levy of tax on the estimated turnover of ₹ 23.20 lakh from 13 November 2009 to 31 March 2010, worked out to ₹ 2.41 lakh (Tax ₹ 1.97 lakh, cess ₹ 0.02 lakh, interest ₹ 0.42 lakh).

When this case was pointed out (January 2012) in audit the Department stated (May 2012) that the assessment had been revised (February 2012) creating additional demand of ₹ 2.58 lakh. Further report has not been received (February 2014).

2.14.5 (CTOs II Circle and III Circle Thiruvananthapuram, Special Circle I, Ernakulam and II Circle, Palakkad)

Mixing machines, cake machines, slicer, roto oven, gas oven, grinder, egg beater are coming under entry 32(1)(a)(b) and 32(3) of notified list taxable at 12.5 *per cent*. Under Section 11(5)(c) of the Act, no input tax credit shall be allowed for the purchases from a dealer paying compounded tax under Section 8 of the KVAT Act.

Audit noticed between September 2011 and October 2012 that, the following assessee assessed to tax whole or part of their turnover at a rate lower than the rate at which they were assessable. The assessing

authority also did not take any action to assess tax at correct rate. This resulted in short levy of tax, cess and interest of ₹ 35.37 lakh in four cases as detailed below:

Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	(₹ in lakh) Short levy of Tax, cess and interest
1.	M/s Sahya Trading Corporation, <u>Thiruvananthapuram</u> CTO, III Circle, Thiruvananthapuram	2009-10 Bakery machines, Kitchen machines 12.5%	The entire local sales turnover of ₹ 1.41 crore was assessed to tax at four <i>per cent</i> though the items dealt in by the assessee were cake machine, slicer, roto oven etc, which included in the notified list of goods taxable at 12.5 <i>per cent</i> . (Tax ₹ 11.99 lakh, cess ₹ 0.12 lakh, interest ₹ 2.42 lakh).	14.53
The Department stated (May 2012) that the assessment has been completed by creating an additional demand of ₹ 17.65 lakh. Further report has not been received (February 2014).				
2.	M/s Trivandrum Metals and <u>Electricals</u> CTO, II Circle, Thiruvananthapuram	2009-10 Electrical goods 12.5%	The assessee conceded in their profit and loss account a gross profit of 86.09 <i>per cent</i> in four <i>per cent</i> taxable items and a gross loss of 41.29 <i>per cent</i> in 12.5 <i>per cent</i> taxable items. The abnormal profit in four <i>per cent</i> taxable goods and abnormal loss in 12.5 <i>per cent</i> taxable goods were due to misclassification of 12.5 <i>per cent</i> items as four <i>per cent</i> taxable items to reduce tax liability. (Tax ₹ 9.33 lakh, cess ₹ 0.09 lakh, interest ₹ 1.89 lakh).	11.31

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Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Short levy of Tax, cess and interest
	The Department accepted the audit observation and revised assessment (February 2012) by creating additional demand of ₹ 16.40 lakh. Further report has not been received (February 2014).			
3.	M/s Asian Paints Ltd., Palarivattom CTO, Special Circle I, Ernakulam	2009-10 Paints 12.5%	The turnover of the assessee was assessable at 12.5 per cent and four per cent. The assessing officer reckoned the turnover taxable at 12.5 per cent as ₹ 399.34 crore while completing assessment for 2009-10 under Section 25. However, audit scrutiny revealed that the turnover taxable at 12.5 per cent was ₹ 399.87 crore. The assessing officer had assessed the difference of ₹ 53.45 lakh at four per cent (Tax ₹4.54 lakh, cess ₹0.05 lakh, interest ₹1.28 lakh).	5.87
	The Department accepted the audit point (September 2012) and revised the assessment rectifying the defect. Further report has not been received (February 2014).			
4.	M/s Quality Machinery Suppliers. CTO, II Circle, Palakkad	2009-10 Machinery, electrical goods etc. 12.5%	As per the annual return filed, the assessee had purchased machinery and electrical goods taxable at the rate of 12.5 per cent taxable goods for ₹ 38.07 lakh. There was no appreciable difference between opening and closing balances as per the profit and loss account. The dealer self assessed to tax ₹ 5.51 lakh at 12.5 per cent and the balance turnover was assessed at four per cent only. Applying the conceded gross profit of 6.93 per cent, the sales turnover of 12.5 per cent taxable goods would have been ₹ 40.71 lakh (Tax ₹ 2.99 lakh, cess ₹ 0.03 lakh, interest ₹ 0.64 lakh).	3.66
	The Department while accepting the audit observation stated (May 2012) that assessment was completed (March 2012) creating additional demand of ₹ 3.72 lakh. Further report has not been received (February 2014).			
			Total	35.37

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2.15 Short levy of tax due to incorrect claim of input tax credit/special rebate

Input tax credit/special rebate was availed in excess in the case of interstate sale resulting in short levy of tax.

2.15.1 (CTO, Special Circle, Perumbavoor)

Under proviso 3 to Section 11(3) read with proviso 3 to Section 12(1) where any goods purchased in the State are subsequently sent outside the State or used in the manufacture of goods and the same are sent outside the State by sale in the course of inter-state trade, which is exempted from tax, input tax credit and special rebate shall be limited to the amount of input tax /purchase tax paid in excess of four per cent on the purchase turnover of such goods sent outside the State.

M/s. E.V Mathai & Sons, Kothamangalam, Ernakulam was a manufacturer of pipes of all kinds. Their exempted interstate sale of rubber sheet and rubber products constituted 72.17 per cent and 73.70 per cent of the total disposal of such goods during 2009-10 and 2010-11 respectively. Total purchase turnover of the assessee for the years 2009-10 and 2010-

11 was ₹ 85.99 crore and ₹ 160.89 crore respectively. Since the assessee had exempted interstate sales, input tax credit/special rebate was admissible only on 27.83 per cent and 26.30 per cent of the value of goods consumed. These amounted to ₹ 23.90 crore and ₹ 42.08 crore respectively during these years. Against these the assessee availed ITC/ special rebate on the turnover of ₹ 26.24 crore and ₹ 50.33 crore respectively as per their annual return for above years. This resulted in availing input tax credit in excess on a turnover of ₹ 2.35 crore and ₹ 8.25 crore during 2009-10 and 2010-11 respectively and consequent short levy of ₹ 49.95 lakh (Tax ₹ 42.40 lakh, cess ₹ 0.42 lakh, interest ₹ 7.13 lakh).

The case was pointed out (July 2012) to the Department and to the Government in December 2012. Government stated (May 2013) that assessment had been completed (January 2013) creating additional demand of ₹ 32.19 lakh and the amount is pending collection. Reason for shortfall in additional demand has not been furnished. Further report has not been received (February 2014).

• (CTO, Special Circle, Malappuram)

M/s Arya Vaidyasala, Kottakkal, Malappuram, filed annual return for 2010-11 conceding total disposal of goods as ₹ 165.35 crore. As per annual returns filed by the assessee, interstate stock transfer amounting to ₹ 37.96 crore constituted 22.96 per cent of the total disposal of goods. Though the assessee should have reversed input tax credit of ₹ 49.54 lakh, being the input tax credit/special rebate availed on the turnover of ₹ 12.38 crore, proportionate to the turnover of stock transfer, they reversed only ₹ 10.69 lakh. This resulted in short levy of ₹ 44.33 lakh (Tax ₹ 38.84 lakh, cess ₹ 0.39 lakh, interest ₹ 5.10 lakh).

The case was pointed out (May 2012) in audit, to the Department and reported to Government in January 2013. Their reply has not been received (February 2014).

- (CTO, Mannarkad)

M/s Associated Agro Machineries, Palakkad, was a dealer in power tillers and spares. During 2010-11, the assessee procured goods valued ₹ 1.44 crore locally and stock transferred the same to other states. Since entire goods purchased locally were stock transferred, four *per cent* input tax credit of ₹ 5.77 lakh on local purchase turnover was liable to be reversed. However, they reversed input tax credit of ₹ 18,784 only. This resulted in short levy of ₹ 6.65 lakh (Tax ₹ 5.58 lakh, cess ₹ 0.06 lakh, interest ₹ 1.01 lakh).

The case was pointed out (November 2012) to the Department and pointed out (July 2013) to the Government. Government stated (December 2013) that the assessment was revised (December 2012) creating additional demand of ₹ 6.76 lakh and an amount of ₹ 4.05 lakh has been collected (February to July 2013) and instalment was granted for the balance amount. Further report has not been received (February 2014).

- Audit noticed between November 2011 and October 2012 that, in the following eight cases, the assessee who stock transferred goods outside the state claimed input tax credit/special rebate more than that admissible as per the Act. The assessing authority also did not disallow the excess claim. This resulted in short levy of tax, cess and interest of ₹ 1.16 crore as detailed below:

(₹ in lakh)				
Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Tax, cess and interest leviable
1	M/s Binani Zinc Ltd, Kochi CTO, Special Circle, Mattanchery at Aluva	2009-10 Zinc, Cadmium etc. 12.5% 4%	As per the annual return filed by the assessee, the total sales turnover was ₹ 418.57 crore for which an input tax credit claimed by the assessee was ₹ 1.58 crore. However, 92.51 <i>per cent</i> of the sales turnover (₹ 387.22 crore) was interstate stock transfer. Hence input tax paid upto four <i>per cent</i> on 92.51 <i>per cent</i> of goods purchased should have been reversed. Against the liability of reverse tax of ₹ 1.05 crore, the reverse tax admitted by the assessee was only ₹ 44.05 lakh. Short levy-(Tax ₹ 61.20 lakh, cess ₹ 0.61 lakh, interest ₹ 14.84 lakh.)	76.65
Department stated (September 2012) that the accounts had been called for from the assessee to verify the points raised in Audit. The assessment is pending finalisation. Further report has not been received (February 2014).				
2	M/s The Highland Produce Co. Ltd. Alappuzha CTO, Special Circle, Alappuzha	2010-11 Tea & spices 4%	As per their annual return interstate stock transfer constituted 40.67 <i>per cent</i> of the total disposal of tea for the	12.83

Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Tax, cess and interest leviable
			year. Local purchase turnover of tea being ₹ 15.58 crore, four <i>per cent</i> tax on the proportionate purchase turnover of ₹ 6.34 crore was to be disallowed. The assessee had not claimed ITC/Special rebate on a purchase turnover of ₹ 3.64 crore. Though input tax at four <i>per cent</i> on the balance turnover of ₹ 2.69 crore had to be disallowed, the assessing authority did not disallow it. Short levy-(Tax ₹ 10.77 lakh, cess ₹ 0.11 lakh, interest ₹ 1.95 lakh.)	
	On this being pointed out (January 2013) in audit, the Government stated (November 2013) that assessment has been completed (July 2013) incorporating the defects pointed out in audit and other defects. Further report has not been received (February 2014).			
3	M/s High Count Marketing Division, Aluva CTO, Special Circle, Mattancherry at Aluva	2009-10 Pipes 4%	Audit scrutiny revealed that the inter state stock transfer of ₹ 1.23 crore constituted 6.90 <i>per cent</i> of the total disposal/sale of goods amounting to ₹ 17.76 crore, The assessing authority did not limit the input tax credit to tax paid in excess of four <i>per cent</i> on purchase turnover of ₹ 1.24 crore proportionate to stock transfer. Short levy-(Tax ₹ 4.94 lakh, cess ₹ 0.05 lakh, interest ₹ 1.10 lakh).	6.09
	Department stated (September 2012) that notice to complete the assessment had been issued to the assessee. Further report has not been received (February 2014).			
4	M/s Accelerated Freeze Drying Company Ltd. Alappuzha CTO, Special Circle, Alappuzha	2010-11 Pepper 4%	The assessee had local purchase of pepper for ₹ 2.99 crore from registered/unregistered dealers during 2010-11 and availed entire tax paid to registered dealers as ITC and special rebate on purchase tax due on purchase from unregistered dealers as per the annual return filed by it. Audit scrutiny of assessment records for the year 2010-11 of the assessee revealed that, interstate stock transfer constituted 38.70 <i>per cent</i> of total disposal of goods. The assessing authority did not disallow four <i>per cent</i> tax on proportionate local purchase turnover of ₹ 1.16 crore. Short levy-(Tax ₹ 4.63 lakh, cess ₹ 0.05 lakh, interest ₹ 0.79 lakh).	5.47
	Government stated (July 2013) that assessment for the year 2010-11 was completed (March 2013) creating an additional demand of ₹ 7.01 lakh. Further report has not been received (February 2014).			

Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Tax, cess and interest leviable
5	M/s Arya Vaidya Pharmacy (CBE) Ltd., Palakkad CTO, Special Circle, Palakkad	2009-10 Ayurvedic medicine 4%	The assessee availed as input tax credit and special rebate, entire tax paid/payable on local purchase turnover of ₹ 3.72 crore. Audit scrutiny revealed that for the year 2009-10 the total sales turnover of ₹ 48.77 crore included stock transfer of ₹ 13.99 crore (28.68 per cent). The assessing authority also did not limit the input tax credit/special rebate to the tax paid in excess of four per cent on the purchase turnover of goods stock transferred to out side the state. Short levy-(Tax ₹ 4.26 lakh, cess ₹ 0.04 lakh, interest ₹ 0.78 lakh).	5.08
Reply has not been received (February 2014).				
6	M/s Victoria Poly Form, Thrissur CTO, Special Circle, Thrissur	2010-11 Plastic articles 4%	As per its annual return for 2010-11 interstate stock transfer constituted 17.59 per cent of the total disposal of goods for the year. Local purchase turnover being ₹ 4.50 crore, four per cent tax on the proportionate purchase turn over of ₹ 79.22 lakh was to be disallowed. The assessing authority also did not disallow the ITC/Special rebate availed in excess. Short levy-(Tax ₹ 3.17 lakh, cess ₹ 0.03 lakh, interest ₹ 0.51 lakh).	3.71
Government stated (October 2013) that assessment had been completed (October 2012) creating additional demand of ₹ 4.45 lakh and RRC was issued to realise the amount. The assessee paid ₹ 1.48 lakh. Further report has not been received (February 2014).				
7	M/s The Nelliampathy Tea and Produce Co. Ltd., Kochi. CTO, Special Circle, Alappuzha	2010-11 Tea, Coffee etc. 4%	Audit scrutiny of trading account of tea and annual return of the assessee for the year 2010-11 revealed that, it stock transferred tea for ₹ 5.01 crore which constituted 38.31 per cent of total disposal of tea of ₹ 13.07 crore. They had purchased locally from unregistered dealers tea leaf valued ₹ 1.97 crore and availed exemption on entire purchase tax due as special rebate. The assessing authority did not limit the input tax credit/special rebate to the tax paid in excess of four per cent on the purchase turnover of goods stock transferred to out side the State. Short levy-(Tax ₹ 3.02 lakh, cess ₹ 0.03 lakh, interest ₹ 0.52 lakh.)	3.57
Reply has not been received (February 2014).				

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Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Tax, cess and interest leviable
8	M/s Wellworth Marketing Enterprise, Aluva CTO, Special Circle, Mattancherry	2009-10 PVC pipes, valves etc. 4%	Out of the total turnover of ₹ 15.31 crore for the assessment year 2009-10, ₹ 52.44 lakh pertained to interstate stock transfer. The assessee had availed input tax credit for the entire local purchase of ₹ 14.78 crore and the assessing authority had accepted it. As per provision of the Act, the input tax credit of four <i>per cent</i> of the purchase value corresponding to stock transfer of ₹ 52.44 lakh had to be disallowed. Short levy (Tax ₹ 2.03 lakh, cess ₹ 0.02 lakh, interest ₹ 0.47 lakh).	2.52
Department stated (September 2012) that notice had been issued to the assessee. Further report has not been received (February 2014).				
Total				115.92

2.15.2 (CTO, Special Circle, Alappuzha)

Under Section 11 (5)(e) of KVAT Act, 2003 no input tax credit shall be allowed for the purchase of goods which are used in the manufacture, processing and packing of goods, specified in the First schedule of KVAT Act. Rubberised coir product is an item specified in entry 23 of Schedule I of KVAT Act.

M/s Kerala Balers (P) Ltd, Alappuzha, a manufacturer of coir products conceded local and interstate sale of rubberized coir products (exempted) which constituted 21.44 *per cent* of their

total sale during 2010-11. Local purchase turnover proportionate to exempted sale was ₹ 1.71 crore on which input tax credit and special rebate of ₹ 13.10 lakh was liable to be disallowed. Failure to disallow the same resulted in short levy of ₹ 15.61 lakh (Tax ₹ 13.10 lakh, cess ₹ 0.13 lakh, interest ₹ 2.38 lakh).

This was pointed out (November 2012) to the Department and reported to Government in January 2013. Government stated (November 2013) that the assessment has been revised (June 2013) and additional demand of ₹ 16.67 lakh including interest created. Further report has not been received (February 2014).

- (CTO, Special Circle, Alappuzha)

M/s Mayithara Home Décor (P) Ltd, Cherthala, a manufacturer of coir products (exempted from payment of tax) conceded local and interstate sale of coir products constituting 12.70 *per cent* of their total sale in the annual return for 2010-11. Local purchase turnover proportionate to exempted local and interstate sale was ₹ 34.28 lakh on which input tax credit of ₹ 3.65 lakh was incorrectly availed. This resulted in short levy of ₹ 4.35 lakh (Tax ₹ 3.65 lakh, cess ₹ 0.04 lakh, interest ₹ 0.66 lakh).

This was pointed out (November 2012) to the Department and reported to Government in January 2013. Government stated (October 2013) that assessment had been completed (May 2013) by disallowing ₹ 4.61 lakh which was the ITC with interest proportionate to the exempted sale and created additional demand of tax of ₹ 2.32 lakh and interest of ₹ 0.14 lakh. Further report has not been received (February 2014).

2.15.3 (CTO, Special Circle, Perumbavoor)

Government by a notification³⁰ *inter alia* excluded building material and fixtures used in construction activity from the purview of capital goods and hence these goods shall not be entitled for input tax credit.

M/s Kitex Childrens wear Ltd. Aluva was a manufacturer and exporter of readymade garments. Audit scrutiny of annual

return of the assessee for 2010-11 revealed that they availed input tax credit of ₹ 7.46 lakh on purchase of building materials costing ₹ 82.28 lakh. Though the assessee had no dealings in building materials which was also not coming under the purview of capital goods, the assessing authority did not disallow the claim. This resulted in short levy of ₹ 8.59 lakh (Tax: ₹ 7.46 lakh, cess: ₹ 0.07 lakh, interest: ₹ 1.06 lakh).

The case was pointed out (June 2012) to the Department in audit and reported to Government in December 2012. Government stated (July 2013) that assessment had been revised (February 2013). Report on recovery is awaited (February 2014).

2.15.4 (CTO, Special Circle, Thrissur)

Section 11(7) of the KVAT Act, 2003 states that if goods in respect of which input tax credit has been availed of are subsequently used, fully or partly, for purposes in relation to which no input tax credit is allowable under the section, the input tax credit availed of in respect of such goods shall be reverse tax.

M/s Modern Sanitary, Thrissur was a dealer in tiles, sanitary wares etc. The assessing authority in May 2011 accorded sanction for deleting the stock of broken and un-saleable goods of the assessee worth ₹ 71.05

lakh subject to the remittance of reverse tax of ₹ 43,795. During 2010-11 the assessee filed annual return recording reverse tax of ₹ 43,796 based on the sanction order of the assessing authority. Out of the total purchase, the local purchase of the assessee from 2008-09 to 2010-11 was 40.89³¹ per cent. Proportionate local purchase component of the disposed stock worked out to ₹ 29.05 lakh and reverse tax due thereon was ₹ 3.63 lakh. However, the assessing

³⁰ SRO No. 324/2005 dated March 2005

³¹ annual average percentage

authority did not fix reverse tax correctly proportional to local purchase involved. This resulted in short levy of ₹ 3.77 lakh (Tax ₹ 3.19 lakh, cess ₹ 0.03 lakh, interest ₹ 0.55 lakh).

The case was pointed out (September 2012) in audit to the Department and reported to Government in April 2013. Government stated (November 2013) that the assessment was revised and the additional demand created of ₹ 2.76 lakh was advised for collection under revenue recovery. Reason for shortfall in additional demand created is not furnished. Further report on recovery has not been received (February 2014).

2.15.5 (CTO, Special Circle, Palakkad)

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Under Section 42(2) of KVAT Act 2003, where any dealer detects any omission or mistake in the annual return submitted by him with reference to the audited figures, he shall file revised annual return rectifying the mistake or omission along with the audit certificate. Where, as a result of such revision, the tax liability increases, the revised return shall be accompanied by proof of payment of such tax, interest due thereon and twice interest as penal interest.

M/s Palakkad Rubber Private Ltd. was a dealer in Crumb Rubber. In the tax return filed for 2005-06, the assessee availed input tax of ₹ 84.98 lakh by conceding purchase turnover as ₹ 20.64 crore. However, audit scrutiny (December

2011) of the P&L account revealed that the purchase turnover was ₹ 19.16 crore only. Thus the assessee availed input tax credit in excess of ₹ 5.92 lakh on a turnover of ₹ 1.48 crore. This resulted in short levy of ₹ 9.88 lakh (Tax: ₹ 5.92 lakh, interest: ₹ 3.96 lakh).

The case was pointed out (December 2011) to the Department and to Government in November 2012. Their reply has not been received (February 2014).

• (CTO, Special Circle, Palakkad)

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M/s Snofield Foods Pvt. Ltd, Palakkad was a dealer in food products, food preservatives etc. In the annual return for 2009-10 the assessee included a purchase of ₹ 2.58 crore from VAT dealers and availed input tax credit of ₹ 15.31 lakh. But audit scrutiny of the P&L account revealed that the purchase turnover was ₹ 1.86 crore only. Thus the assessee availed input tax credit of ₹ 4.35 lakh in excess on a turnover of ₹ 71.99 lakh. This resulted short levy of ₹ 5.23 lakh (Tax: ₹ 4.35 lakh, cess: ₹ 0.04 lakh, interest: ₹ 0.84 lakh).

The case was pointed out (December 2011) to the Department and was reported to Government in November 2012. Their reply has not been received (February 2014).

2.16 Short levy of tax due to escape of turnover from assessment

Turnover conceded in the return was less than the turnover certified by the Chartered Accountants

2.16.1 (CTO Special Circle, Palakkad, Alappuzha, Thrissur and II Circle, Palakkad)

Under Section 42(2) of KVAT Act 2003, if there is omission or mistake in annual return with reference to audited annual accounts, the assessee is required to file revised annual return along with the audited statements and if tax liability increases he shall file proof of payment of balance tax, interest thereon and twice the interest as penal interest. Under Section 11(5) of the Act, no input tax credit shall be allowed for the purchases from a dealer paying compounded tax under Section 8 of the Act.

Section 25 of KVAT Act empowers assessing authorities to assess tax on any turnover which has escaped assessment, within five years from the last date of the year to which return relates.

Audit noticed between November 2011 and September 2012 that the following assessee had conceded in their annual return and assessed to tax only a part of the turnover certified in the audited accounts. The assessing authority also did not take any action to assess the escaped turnover under the Act. This resulted in

short levy of tax, cess and interest of ₹ 1.10 crore in five cases as shown below:

(₹ in lakh)

Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Tax, cess and interest leviable
1	M/s MPS Steel Castings CTO, Special Circle, Palakkad	2009-10 Iron and Steel 4%	In the annual return the local sales turnover was recorded as ₹ 92.84 crore. But in the P&L account (2009-10), the local sales turnover recorded was ₹ 102 crore. Thus there was a difference of ₹ 9.16 crore in sales turnover. Short levy-(Tax ₹ 36.61 lakh, interest ₹ 6.96 lakh).	43.57
Reply has not been received (February 2014)				
2	M/s Arya Vaidya Pharmacy (CBE) Ltd., Palakkad CTO, Special Circle, Palakkad	2009-10 Ayurvedic medicine 4%	As per the annual return total and taxable turnover of the assessee was ₹ 25.94 crore and ₹ 24.96 crore respectively. As per Form 13A ³² , the assessee had interstate sales for	35.15

³² Statement of particulars forming part of certified annual accounts.

Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Tax, cess and interest leviable
			₹ 7.37 crore which was not supported by declaration in Form C ³³ . Under CST Act 1956, as amended by Finance Act 2007, the tax payable by a dealer on his turnover relating to interstate sale not covered by declaration in Form C shall be at the rate applicable to sale within the State. VAT payable on sale of Ayurvedic medicine is four <i>per cent</i> . But the above interstate sales turnover was not included in the annual return. Short levy-(Tax ₹ 29.49 lakh, cess ₹ 0.30 lakh, interest ₹ 5.36 lakh).	
	Reply has not been received (February 2014)			
3	M/s Thieh Ingots (P) Ltd., <u>Kanjikode</u> CTO, II Circle, Palakkad	2009-10 Iron and Steel products 4%	As per annual accounts (Form 13A) closing stock was ₹ 5.97 crore. However, as per closing stock inventory (Form 53 ³⁴) that was ₹ 3.75 crore. The shortage of ₹ 2.22 crore in closing stock was unaccounted sale. Corresponding sales turnover including gross profit of 3.11 <i>per cent</i> escaped assessment. Short levy-(Tax ₹ 9.19 lakh, cess ₹ 0.09 lakh, interest ₹ 1.95 lakh).	11.23
	The Department stated (June 2012) that the assessment under Section 25 had been completed (March 2012) creating additional demand of ₹ 89.90 lakh. Further report has not been received (February 2014).			
4	M/s Hercules Automobiles International (P) Ltd. <u>Alappuzha</u> CTO, Special Circle, Alappuzha	2010-11 Motor Car 12.5%	The assessee recorded in their profit and loss account for the year 2010-11, a purchase turnover of consumables for ₹ 83.92 lakh. But as per annual return filed, the assessee did not assess to tax the corresponding sales turnover of ₹ 90.17 lakh (Based on the profit margin). Short levy-(Tax ₹ 11.27 lakh, cess ₹ 0.11 lakh, interest ₹ 2.05 lakh).	13.43
	Reply has not been received (February 2014)			
5	M/s Manappuram Jewellers Ltd., <u>Valappad, Thrissur.</u> CTO, Special Circle, Thrissur	2010-11 Gold 4%	The assessment for the year 2010-11 was finalised under Section 25, in which the claim of purchase return of ₹ 98.61 lakh was allowed on the strength of credit notes issued by M/s Sunny Diamonds, another dealer in gold. The annual return and accounts filed by M/s Sunny Diamonds did not include any sales return. As such tax credit on sales return availed by the assessee is not in order. Further, the assessee claimed input tax credit of ₹ 1.40 lakh for purchases from another	6.25

³³ Form of declaration to be filed to avail concessional rate of tax under Central Sales Tax Act 1956.

³⁴ Closing stock inventory to be filed along with annual returns

Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Tax, cess and interest leviable
			dealer, who was paying compounded tax under Section 8 for which the assessee is not entitled for input tax credit. Short levy-(Tax ₹ 5.34 lakh, cess ₹ 0.05 lakh, interest ₹ 0.86 lakh).	
The assessing officer stated (September 2012) that the case had been re-opened and assessment completed (September 2012) and demanded tax and interest of ₹ 13.70 lakh. Further report has not been received (February 2014).				
Total				109.63

2.16.2 (CTO, Special Circle, Thrissur)

Under Section 25 of KVAT Act, 2003 if whole or part of business of a dealer escaped assessment to tax in any year the assessing authority may at any time within five years from the last date of the year to which return relates proceed to determine to best of its judgment the turnover which has escaped assessment and assess tax payable on the same.

M/s Saleesh Wood Industries, Venginissery, was a dealer in timber. During 2010-11, the assessee conceded a purchase turnover of ₹ 5.47 crore and sales turnover of ₹ 7.26 crore in the annual certified accounts. As per the

annual return filed, the assessee had procured through interstate stock transfer from other states timber valued at ₹ 4.47 crore during the year. However, this stock transfer was not considered by the assessee for arriving at the aggregate procurement of the year. This suppression of turnover had not been detected by the assessing authority also. This resulted in short levy of ₹ 51.26 lakh (Tax: ₹ 43.38 lakh, cess: ₹ 0.43 lakh, interest: ₹ 7.45 lakh).

The case was pointed out (September 2012) to the Department and reported to Government in April 2013. Their reply has not been received (February 2014).

2.16.3 (CTO, Muvattupuzha)

Timber is classified as evasion prone and floor rate per cubic meter has been specified. CCT directed³⁵ the assessing authority to ensure that selling price of commodities for which floor rate has been fixed is based on valuation adopted for the purpose of advance tax.

M/s M.M Import and Export, a dealer in timber, paid ₹ 81.94 lakh towards advance tax on imported timber during

2010-11 as recorded in the annual return filed by them. Dealer conceded an import purchase of ₹ 3.41 crore and local purchase of ₹ 15.22 lakh only in the

³⁵ Circular No. 3/2008

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annual return. Audit scrutiny of the assessment records revealed that the cost of goods sold would work out to ₹ 8.95 crore as per the rate computed for advance tax. However, tax was assessed on a turnover of ₹ 6.69 crore only. This resulted in short levy of ₹ 32.02 lakh (Tax: ₹ 28.31 lakh, cess: ₹ 0.28 lakh, interest: ₹ 3.43 lakh).

When this was pointed out (May 2012) in audit, the assessing authority replied (May 2012) that notice to assess the escaped turnover had been issued. Further report has not been received (February 2014).

This was reported to Government in November 2012. Their reply has not been received (February 2014).

2.16.4 (15 Offices; 20 cases)

Explanation VII under Section 2(lii) of the KVAT Act 2003, stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods. It was judicially held³⁶ that credit notes issued by the manufacturer to the distributor towards recoupment of additional sale price is for the goods sold by him and such cases clearly attracts Explanation VII.

Audit noticed between September 2011 and October 2012 that in 15 offices, the discount/incentive received in 20 cases were not reckoned as turnover for assessing to tax, though the dealers concerned sold goods purchased by them at price lower than that at which they were purchased. The assessing authority also did not assess to tax the above amount. This resulted in short levy of tax, cess and

interest of ₹ 1.38 crore as detailed in the following table:

(₹ in lakh)

Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Discount, Incentive etc. received subsequent to sale	Tax, cess and interest leviable
1	M/s MV Sons Trading Company, Chelakkara CTO, Special Circle, Thrissur	2010-11 Cement 12.5%	Goods purchased for ₹ 25.35 crore was sold for ₹ 25.09 crore. The P&L account recorded that the assessee received discount of ₹ 2.95 crore subsequently. This was not assessed to tax. Short levy-(Tax ₹ 36.92 lakh, cess ₹ 0.37 lakh, interest ₹ 5.96 lakh).	295.33	43.25
The Government stated (September 2013) that assessment under Section 25(1) had been completed (October 2012) creating additional demand of ₹ 37.29 lakh. Reason for shortfall in additional demand created has not been furnished. Further report has not been received (February 2014).					

³⁶ Cement house Vs State of Kerala (High Court of Kerala)

Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Discount, Incentive etc. received subsequent to sale	Tax, cess and interest leviable
2	M/s Silverstone Speciality Rubber Products Pvt. Ltd, <u>Malappuram</u> CTO, Special Circle, Malappuram	2010-11 Rubber products 4%	As per P&L account of the assessee for the year sales price and purchase value of goods sold during the year were ₹ 77.59 crore and ₹ 78.63 crore respectively. The assessee received ₹ 294.77 lakh by way of 'waste and shortage reimbursement' subsequent to sale. This was not assessed to tax. Short levy-(Tax ₹ 11.79 lakh, cess ₹ 0.12 lakh, interest ₹ 1.55 lakh).	294.77	13.46
Reply has not been received from the Department/Government (February 2014).					
3	M/s Hycount Marketing Division, Aluva. CTO, Special Circle, Mattancherry	2009-10 PVC pipes 4%	As per annual account filed by the assessee the sale price and purchase price were ₹ 16.55 crore and ₹ 17.91 crore respectively. As per P&L account sale price and purchase price including freight were ₹ 17.78 crore and ₹ 19.30 crore respectively. Receipt of discount of ₹ 1.86 crore was also recorded in the P&L account. This was not assessed to tax. Short levy-(Tax ₹ 7.44 lakh, cess ₹ 0.07 lakh, interest ₹ 1.65 lakh).	.185.85	9.16
The Department stated that notice had been issued to the assessee. Further report has not been received (February 2014).					
4	M/s Bright Glass Traders, <u>Kannur</u> CTO, Special Circle, Kannur	2009-10 Glass, Plywood 12.5%	As per P&L account purchase price of goods sold during the year including direct expenses was ₹ 6.98 crore and the sales price was ₹ 6.77 crore. The dealer received from their suppliers an amount of ₹ 57.92 lakh towards purchase rebate which was recorded in the P&L account. This was not assessed to tax. Short levy-(Tax ₹ 7.24 lakh, cess ₹ 0.07 lakh, interest ₹ 1.25 lakh).	57.92	8.56
Department stated (August 2013) that assessment had been completed (November 2012) creating additional demand of ₹ 9.58 lakh. Further report has not been received (February 2014).					
5	M/s High Range Home appliances, Kattappana. AIT & CTO, Kattappana	2009-10 Telephone, Television etc.	As per P&L account of the assessee for the year actual purchase price including direct expenses of goods sold was ₹ 10.05 crore and sales price	63.50	8.55

Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Discount, Incentive etc. received subsequent to sale	Tax, cess and interest leviable
		12.5% 4%	₹ 9.98 crore. Though they recorded in their P&L account the discount received as ₹ 63.50 lakh, same was not assessed to tax. Short levy -(Tax ₹ 6.94 lakh, cess ₹ 0.07 lakh, interest ₹ 1.54 lakh).		
The Government stated (August 2013) that assessment had been completed (March 2013) creating additional demand of ₹ 9.32 lakh. The assessee had paid ₹ 2 lakh and requested for granting maximum number of instalments for payment of balance tax. Further report has not been received (February 2014).					
6	M/s Leo Agencies, Kannur CTO, III Circle, Kannur	2009-10 Electronic goods, air conditioners, washing machines etc. 12.5%	As per the P&L account of the assessee for the year the actual sales and purchase including direct expenses were ₹ 362.98 lakh and ₹ 363.37 lakh respectively. The P&L account also recorded 'scheme incentive' of ₹ 47.01 lakh received subsequent to sale. This was not assessed to tax. Short levy -(Tax ₹ 5.87 lakh, cess ₹ 0.06 lakh, interest ₹ 1.01 lakh).	47.01	6.94
The Government stated (July 2013) that assessment had been completed (February 2013) creating total additional demand of ₹ 7.77 lakh. Further report has not been received (February 2014).					
7	M/s St. Jude Agencies, Kollam CTO, III Circle, Kollam	2010-11 White cement 12.5%	As per the P&L account of the assessee for the year the actual purchase value of the goods sold during the year including freight was ₹ 8.20 crore and sale price ₹ 8.06 crore. The P&L account also recorded discount and price difference of ₹ 42.70 lakh received subsequent to sale. This was not assessed to tax. Short levy - (Tax ₹ 5.34 lakh, cess ₹ 0.05 lakh, interest ₹ 0.70 lakh).	42.70	6.09
The Government stated (July 2013) that assessment had been completed (June 2012) under Section 25(1) of KVAT Act, 2003 creating additional demand of ₹ 5.39 lakh and the same was advised for revenue recovery. Reason for shortfall in additional demand created has not been explained. Further report has not been received (February 2014).					
8	M/s Kizhakkedathu Agencies, Ranni AIT & CTO, Ranni	2009-10 Cement and white cement 12.5%	As per the P&L account of the assessee for the year the actual purchase value of the goods including freight and coolie was ₹ 413.29 lakh which was sold for ₹ 405.21 lakh. The dealer received discount of ₹ 28.01 lakh subsequent to sale from cement supplier. This was not assessed to tax. Short levy - (Tax ₹ 3.50 lakh, cess ₹ 0.04 lakh, interest ₹ 0.81 lakh).	28.01	4.35

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Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Discount, Incentive etc. received subsequent to sale	Tax, cess and interest leviable
The Government stated (March 2013) that assessment was completed (December 2012) creating additional demand of ₹ 4.67 lakh. Further report has not been received (February 2014).					
9	M/s AA Traders, Ayur CTO, Anchal	2008-09 Cement 12.5%	As per the P&L account of the assessee for the years 2008-09 and 2009-10, purchase turnover including loading charges were ₹ 179.92 lakh and ₹ 286.45 lakh respectively which were sold for ₹ 177.53 lakh and ₹ 282.70 lakh respectively. They received ₹ 7.01 lakh and ₹ 20.89 lakh respectively during the years towards discount. These were not assessed to tax. Short levy - (Tax ₹ 3.49 lakh, cess ₹ 0.03 lakh, interest ₹ 0.78 lakh).	7.01	4.30
		2009-10 Cement 12.5%		20.89	
The Government stated (October 2013) that assessment for 2008-09 and 2009-10 had been completed (June 2011 and August 2012) creating additional demand of ₹ 1.08 lakh and ₹ 3.40 lakh respectively. The assessee remitted ₹ 25,000. Further report has not been received (February 2014).					
10	M/s Seethi Oil Mills, <u>Kodungallur</u> CTO, Special Circle, Thrissur	2010-11 Cement 12.5%	During 2010-11, the assessee sold cement to retailers for ₹ 6.01 crore at a price lower than its purchase price of ₹ 6.20 crore. Audit scrutiny revealed that the assessee did not assess to tax incentive and discount of ₹ 27.98 lakh received subsequently by him from the suppliers. Though the amount so received shall form part of the turnover, the assessing authority also did not assess tax on the above turnover. Short levy - (Tax ₹ 3.50 lakh, cess ₹ 0.03 lakh, interest ₹ 0.53 lakh).	27.98	4.06
Reply has not been received from the Department/Government (February 2014)					
11	M/s Vachaparambil <u>Agencies, Pulinkunnu</u> CTO, Haripad	2007-08 Cement 12.5%	As per the P&L account of the assessee for 2007-08 and 2009-10, the purchase price were ₹ 164.93 lakh and ₹ 271.17 lakh respectively which were sold for ₹ 163.97 lakh and ₹ 262.42 lakh respectively. They received trade commission of ₹ 5.99 lakh and ₹ 18.95 lakh respectively during the years but they were not assessed to tax. Short levy - (Tax ₹ 3.12 lakh, cess ₹ 0.03 lakh, interest ₹ 0.80 lakh).	5.99	3.95
		2009-10 Cement 12.5%		18.95	
Reply has not been received from the Department/Government (February 2014).					

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Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Discount, Incentive etc. received subsequent to sale	Tax, cess and interest leviable
12	Shri. Job T Varghese, <u>Kunnamkulam</u> CTO, Kunnamkulam	2009-10 Electrical Items, TV, Refrigerator etc. 12.5%	As per annual return filed by the assessee for the year the sale price and purchase price were ₹ 3.67 crore and ₹ 3.70 crore respectively. The P&L account also recorded discount of ₹ 22.75 lakh received from the suppliers subsequently. This was not assessed to tax. Short levy-(Tax ₹ 2.84 lakh, cess ₹ 0.03 lakh, interest ₹ 0.49 lakh).	22.75	3.36
The Government stated that assessment was completed (May 2012) creating additional demand of ₹ 4.07 lakh. Further report has not been received (February 2014).					
13	M/s Varoor Agencies, Ayoor CTO, Anchal	2009-10 Cement and white cement 12.5%	As per annual return and P&L account of the assessee for the year, the actual purchase price of the goods sold during the year including loading charges was ₹ 2.28 crore which was sold for ₹ 2.25 crore. The P&L account also recorded discount of ₹ 20.59 lakh received from the manufacturer subsequent to sale. This was not assessed to tax. Short levy - (Tax ₹ 2.57 lakh, cess ₹ 0.03 lakh, interest ₹ 0.49 lakh).	20.59	3.09
The Government stated (October 2013) that assessment had been completed (March 2012) creating additional demand of ₹ 3.17 lakh. An amount of ₹ 1.17 lakh has been remitted by the assessee. Further report has not been received (February 2014).					
14	M/s Western IT Distributors, <u>Ernakulam</u> CTO, IV Circle, Ernakulam	2010-11 Computer systems and electronic goods 12.5% 4%	As per annual return and P&L account of the assessee for the year, the actual purchase value of goods sold during the year including freight was ₹ 35.47 crore which was sold for ₹ 35.25 crore. Though the P&L account also recorded discount and incentive of ₹ 60.17 lakh received from the supplier subsequent to sale, same was not assessed to tax. Short levy- (Tax ₹ 2.51 lakh, cess ₹ 0.03 lakh, interest ₹ 0.43 lakh).	60.17	2.97
The Government stated (July 2013) that assessment had been completed (December 2012) creating additional demand of ₹ 4.68 lakh. Further report has not been received (February 2014).					
15	M/s Parali Paints and <u>Hardwares, Aluva</u> CTO, I Circle, Kalamassery	2010-11 Paints and hardwares 12.5%	As per annual return and P&L account, the sale price and purchase price were ₹ 2.14 crore and ₹ 2.16 crore respectively.	20.01	2.96

Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Discount, Incentive etc. received subsequent to sale	Tax, cess and interest leviable
			The P&L account also recorded the discount of ₹ 20.01 lakh. This was not assessed to tax. Short levy - (Tax ₹ 2.50 lakh, cess ₹ 0.03 lakh, interest ₹ 0.43 lakh).		
	The Government stated (August 2013) that assessment had been completed (April 2013) creating additional demand of ₹ 3.13 lakh. Further report has not been received (February 2014).				
16	Shri. K.A. Noushad, Central <u>Electricals, Malappuram</u> CTO, Special Circle, Malappuram	2010-11 Cable, wiring materials, electronic items 12.5% 4%	As per the P&L account of the assessee, they sold goods for ₹ 9.06 crore which were purchased for ₹ 9.09 crore. The P&L account also recorded direct income of ₹ 38.17 lakh received from their suppliers. This was not assessed to tax. Short levy-(Tax ₹ 2.47 lakh, cess ₹ 0.02 lakh, interest ₹ 0.33 lakh).	38.17	2.82
	Reply has not been received from the Department/Government (February 2014).				
17	M/s Jyothis Hardwares, <u>Cherthala</u> CTO, Cherthala	2009-10 Cement and hardwares 12.5%	As per the P&L account of the assessee, they sold goods for ₹ 6.52 crore at a price lower than the purchase price including freight, of ₹ 6.61 crore. The P&L account also recorded discount of ₹ 17.61 lakh received from the cement suppliers. This was not assessed to tax. Short levy-(Tax ₹ 2.20 lakh, cess ₹ 0.02 lakh, interest ₹ 0.38 lakh).	17.61	2.60
	The Government stated (July 2013) that assessment had been completed (January 2012) creating additional demand of ₹ 2.67 lakh. Further report has not been received (February 2014).				
18	M/s Crescent Enterprises, <u>Kalamassery</u> CTO, I Circle, Kalamassery	2010-11 Paints and hardwares 12.5%	As per annual return and P&L account, the actual purchase price of the goods sold during the year was ₹ 210.33 lakh and the sales price was ₹ 204.17 lakh. The P&L account also recorded discount of ₹ 17.46 lakh received from the supplier. This was not assessed to tax. Short levy- (Tax ₹ 2.18 lakh, cess ₹ 0.02 lakh, interest ₹ 0.38 lakh).	17.46	2.58
	The Government stated (August 2013) that assessment had been completed (April 2013) creating additional demand of ₹ 2.73 lakh and RRC issued. Further report has not been received (February 2014).				
19	M/s Kattuvela Agencies, <u>Kollam</u> CTO, II Circle, Kollam	2010-11 Cement 12.5%	The annual return and P&L account disclosed that the actual purchase price of goods sold during the year was ₹ 304.47 lakh and sales price was ₹ 303.89	17.34	2.52

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Sl. No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Discount, Incentive etc. received subsequent to sale	Tax, cess and interest leviable
			lakh. The P&L account also recorded discount of ₹ 17.34 lakh. This was not assessed to tax. Short levy (Tax ₹ 2.17 lakh, cess ₹ 0.02 lakh, interest ₹ 0.33 lakh).		
The Government stated (July 2013) that assessment had been completed (July 2013) under Section 25(1) of KVAT Act, 2003 creating additional demand of ₹ 2.81 lakh and the same was advised for revenue recovery. The assessee remitted ₹ 0.28 lakh (April 2013). Further report has not been received (February 2014).					
20	M/s G.P Cements, <u>Kareelakulangara</u> CTO, Haripad	2009-10 Cements 12.5%	As per annual return and P&L account of the assessee, the actual purchase of goods sold during the year including labour charge was ₹ 2.77 crore which was sold for ₹ 2.68 crore. The P&L account also recorded the discount of ₹ 16.36 lakh received from cement suppliers. This was not assessed to tax. Short levy- (Tax ₹ 2.05 lakh, cess ₹ 0.02 lakh).	16.36	2.07
Reply has not been received from the Department/Government (February 2014).					
Total					137.64

2.16.5 (CTO Special Circle I, Ernakulam, Mattancherry, Kottayam)

Under explanation III(ii) below Section 2(lii) of KVAT Act, discount on the price allowed in respect of any sale can be excluded from the turnover only if it is shown separately in the tax invoice and the buyer pays only the amount reduced by such discount. It was judicially held that discount allowed subsequent to sale through credit note will form part of the turnover. Under Rule 10(b) of KVAT Rules, in respect of goods sold and returned, deduction from turnover will be admissible only if they are returned within a period of 90 days from the date of delivery of goods.

Audit noticed between April 2011 and November 2012 that in the following four cases, the turnover conceded in the annual returns were arrived at after deducting discount offered to customer through credit notes, sales return not proved etc. The assessing authority also did not assess to tax the above turnover. This resulted in short levy of tax, cess and interest of ₹ 1.11 crore as detailed below:

Audit Report (Revenue Sector) for the year ended 31 March 2013

				(₹ in lakh)
Sl No.	Name of assessee Name of the circle	Period/ Commodity/ Rate(%)	Nature of irregularity	Tax, cess and interest leviable
1	M/s Jos Electricals, Kochi CTO, Special Circle, Mattancherry	2009-10 Electrical Goods 12.5%	In their P&L account for 2009-10, the turnover of ₹ 27.58 crore was arrived at after deducting discount offered to customers of ₹ 4.84 crore and sales return of ₹ 49.10 lakh, thus a total deduction of ₹ 5.33 crore. These deductions were not admissible since the discount was allowed subsequent to sale and eligibility for deduction of sales return was not proved. Short levy-(Tax ₹ 35.82 lakh, cess ₹ 0.36 lakh, interest ₹ 8.32 lakh.)	44.50
2	M/s Redington India Ltd., Kochi CTO, Special Circle I, Ernakulam	2010-11 Air conditioners, battery etc. 12.5%	The dealer was allowed tax credit of ₹ 35.21 lakh on account of credit note. However, no sales return was made as per Form 13A i.e. audited statement of accounts furnished by the dealer and sales turnover therein was less than that of annual return by ₹ 7.88 crore. Short levy-(Tax ₹ 35.21 lakh, cess ₹ 0.35 lakh, interest ₹ 6.05 lakh).	41.61
3	M/s Ceyenar Chemicals Pvt. Ltd., Kottayam CTO, Special Circle, Kottayam	2008-09 Chemicals, rubber sheet and rubber products 4%	The assessee had allowed trade discount of ₹ 4.08 crore on local sale. Since the discount allowed by the dealer was not included in the invoice, the discount allowed would form part of the turnover. However, neither the assessee nor the assessing authority assessed to tax the above turnover. Short levy-(Tax ₹ 16.32 lakh, cess ₹ 0.16 lakh, interest ₹ 3.95 lakh).	20.43
4	M/s Focus Corporation Pvt. Ltd, Kochi CTO, Special Circle I, Ernakulam	2010-11 Motor Vehicles, automobile spare parts, computers etc. 12.5%	As per Form 13A, goods valued ₹ 3.12 crore were shown as goods returned within a period of ninety days. Against this the dealer claimed tax credit for ₹ 3.45 crore. The excess sales return of ₹ 33.13 lakh constituted discount allowed through credit notes for which deduction is not admissible. Short levy-(Tax ₹ 4.14 lakh, cess ₹ 0.04 lakh, interest ₹ 0.71 lakh).	4.89
Total				111.43

DP4315

DP4281

DP4261

DP4305

2.16.6 (CTO, III Circle, Ernakulam)

Under Section 6(1) (c) of KVAT Act, transfer of right to use any goods for any purpose is taxable at four *per cent*. Royalty³⁷ received on intangible goods like copyright, patent etc., are also liable to be taxed as right to use.

M/s Sathyam Audios, Ernakulam was a dealer in audio and video CDs, tapes etc. Dealer filed annual return for 2009-10 conceding total and taxable turnover of ₹ 1.95 crore.

Audit scrutiny revealed that the assessee recorded in the P&L account a receipt of ₹ 4.57 crore by way of sales of video rights and royalty received which was not included in the taxable turnover shown in the annual return. This resulted in short levy of ₹ 22.69 lakh (Tax: ₹ 18.27 lakh, cess: ₹ 0.18 lakh, interest: ₹ 4.24 lakh).

The case was pointed out (March 2012) to the Department and reported to the Government in November 2012. Government stated (October 2013) that assessment had been completed (December 2012) creating additional demand of ₹ 24.38 lakh. The assessee remitted ₹ 7.37 lakh. Further report has not been received (February 2014).

2.16.7 (CTO, (WC<), Kannur)

Section 8 of the KVAT Act stipulates that any works contractor, may at his option instead of paying tax in accordance with the provisions of Section 6 of the said Act, pay tax at the compounded rate of three *per cent* of the whole contract amount received during 2009-10. Under Section 25 of the KVAT Act, an assessing authority can proceed to determine, to the best of its judgement, the turnover which has escaped assessment to tax and assess the tax payable thereon.

M/s Zewar Commercial Construction (P) Ltd. a works contractor, opted to pay tax at compounded rate of three *per cent* during 2009-10. They conceded a turnover of ₹ 2.97 crore as per annual return filed for the year 2009-10. But as per the P&L account for the year their income was ₹ 5.72 crore. This resulted in escape

of ₹ 2.75 crore from assessment and consequent short levy of ₹ 9.65 lakh (Tax: ₹ 8.24 lakh, cess: ₹ 0.08 lakh, interest: ₹ 1.33 lakh).

This was pointed out (August 2011) in audit to the Department and reported (April 2012) to Government. Government stated (September 2013) that assessment under section 25 of the Act had been completed (November 2012) by the assessing authority creating additional demand of ₹ 12.61 lakh. Further report has not been received (February 2014).

³⁷ [2009] 24 VST 333(Ker) KREEM Foods Pvt. Ltd Vs State of Kerala

2.16.8 (CTO, Special Circle Thiruvananthapuram)

Under Section 8 of KVAT Act, 2003, any dealer in ornaments or wares or articles of gold may at his option, instead of paying tax in accordance of provisions of Section 6, may pay at prescribed percentage of the highest tax payable or paid whichever is higher during any of the three consecutive years preceding that to which such option relates. Under Section 42(2) of the Act where any dealer detects any omission or mistake in the annual return submitted by him with reference to the audited figures, he shall file, along with the audit certificate, revised annual return rectifying the mistake or omission. Where as a result of such revision, the tax liability increases, the revised return shall be accompanied by proof of payment of such tax, interest due thereon and twice the interest as penal interest. Bullion is taxable at one *per cent* under the Act.

M/s Kalyan Jewellers, Trivandrum a dealer in gold opted for payment of tax under compounding scheme for jewellery items during 2009-10. For bullions and fancy items they had to pay tax at the full rate of one *per cent* and 12.5 *per cent* respectively. During 2009-10 the assessee conceded the turnover of bullion in the annual return as ₹ 4.36 crore. But as per P&L A/c for the year the turnover of bullion was ₹ 11.77

crore. Escape of turnover of bullion for ₹ 7.41 crore from assessment resulted in short levy of ₹ 8.91 lakh (Tax: ₹ 7.41 lakh, cess: ₹ 0.08 lakh, interest: ₹ 1.42 lakh).

This was pointed out to the Department in November 2011 and was reported to Government in November 2012. Government stated (October 2013) that assessment for the year 2009-10 had been reopened (June 2013) under Section 25 (1) of the KVAT Act 2003. Further report has not been received (February 2014).

2.16.9 (CTO (WC<), Kannur)

As per Section 8(a)(i) of the KVAT Act 2003, works contractor other than those registered under CST Act, 1956 or an importer can opt to pay compounded tax at three *per cent* of the whole contract amount. Rule 9(1) (c) of the KVAT Rules, 2005 further provides that the total turnover of a dealer shall be the aggregate of contract amount received or receivable.

M/s Udumbanthala Syndicate, Kannur was a works contractor who opted to pay compounded tax during 2009-10. They assessed to tax a turnover of ₹ 2.76 crore at three *per cent*. Audit scrutiny of balance sheet of the assessee revealed that they

received ₹ 4.21 crore as advance for flat during 2009-10. The assessing authority also did not assess to tax the entire turnover. This resulted in escape of turnover of ₹ 1.45 crore from assessment and consequent short levy of ₹ 5.08 lakh. (Tax: ₹ 4.34 lakh, cess: ₹ 0.04 lakh, interest: ₹ 0.70 lakh).

This was pointed out (August 2011) to the Department and reported to Government in April 2012. Government stated (October 2012) that assessment under section 25 of the Act had been completed (October 2012) creating additional demand of ₹ 2.66 lakh. The assessee paid ₹ 0.80 lakh. Further report has not been received (February 2014).

2.16.10 (CTO, Perinthalmanna)

Under Entry 67 of list of 12.5 per cent taxable goods notified³⁸ under KVAT Act, sale of bodies built on chassis of motor vehicles attracts tax @ 12.5 per cent. Hon. Supreme Court of India held³⁹ that construction of motor bodies on chassis supplied, is a contract for sale of goods and not a contract for work and labour.

M/s Taaz Tech, Kootilangadi is a dealer engaged in the construction of body on motor vehicles. They filed annual return for 2010-11 conceding a total and taxable turnover of ₹ 1.16 crore. They also recorded in their P&L account ₹ 31.68

lakh as labour charges received during the year. Since the construction of motor bodies on chassis supplied cannot be considered as works contract, the labour charges received should have been included in the annual return as taxable turnover. Failure to include labour charges received in the taxable turnover resulted in short levy of ₹ 4.64 lakh (Tax: ₹ 3.96 lakh, cess: ₹ 0.04 lakh, interest: ₹ 0.64 lakh).

When the case was reported (October 2012), Department replied (December 2012) that assessment had been modified (October 2012) creating an additional demand of ₹ 4.75 lakh. Further report has not been received (February 2014).

DP4303

³⁸ SRO 82/2006

³⁹ MC Kenzies Ltd. Vs The State of Maharashtra 16 STC 518 (SC)

2.16.11 (CTO, Special Circle, Thrissur)

Under Section 2(xliv) of KVAT Act 2003, sale price includes any sum charged for anything done by the dealer in respect of the goods or service at the time of or before delivery thereof. Under Section 31(5) of the Act, failure to pay tax or any amount assessed or due, within the time prescribed attracts simple interest at the rate of twelve *per cent per annum*. Further, it was judicially held⁴⁰ by the Hon. Supreme Court of India that if the seller is under obligation to transport goods to the place of the buyer any incidental or transportation expenses charged will form part of the sale consideration.

M/s Best Ready Mix Concrete, a dealer of ready mix concrete conceded a total and taxable turnover of ₹ 16.72 crore⁴⁰ for 2010-11 as per the annual return filed by them. As per the assessment records of the assessee, they had an income of ₹ 23.95 lakh and ₹ 3.33 lakh towards concrete freight and pump charges respectively as recorded in their profit and loss accounts for the year 2010-11. But they did not

include in their sales turnover, freight and pump charge, though they were received in respect of services provided before delivery of goods. Escape of turnover of ₹ 27.28 lakh from assessment resulted in short levy of ₹ 4.03 lakh (Tax: ₹ 3.41 lakh, cess: ₹ 0.03 lakh, interest: ₹ 0.59 lakh).

The case was pointed out (September 2012) to the Department and was reported to Government in February 2013. Government stated (September 2013) that assessment had been completed and RRC issued (December 2012) for realising the additional demand of ₹ 4.13 lakh. The assessee paid ₹ 1.91 lakh. Further report has not been received (February 2014).

• (CTO, Special Circle, Perumbavoor)

M/s Vellackamattathil Industries, Kothamangalam was a manufacturer of pre stressed concrete poles. As per the annual return for the year 2010-11, the assessee self assessed to tax a turnover of ₹ 9.15 crore. As per the certified P & L accounts for 2010-11, the assessee received ₹ 83.05 lakh towards transportation charges. In the agreement with KSEB, it was stipulated that contract is for manufacture and supply including transportation to various electrical circles. As such the amount received towards transportation charges should form part of the turnover under the Act. But neither the assessee nor the assessing authority assessed to tax the above turnover. This resulted in short levy of ₹ 3.79 lakh (Tax: ₹ 3.32 lakh, cess: ₹ 0.03 lakh interest: ₹ 0.44 lakh).

The case was pointed out (July 2012) to the Department and to the Government in December 2012. The Government stated (May 2013) that the assessment had been completed (October 2012) creating an additional demand of ₹ 3.96 lakh and RRC

⁴⁰ 34 VST 2010(SC) India Meters Vs State of Tamil Nadu.

was advised for collecting the amount. Further report has not been received (February 2014).

2.17 Reckoning of sales as works contract and consequent short levy of tax

The assessee reckoned sales as works contract to reduce tax liability.

(CTO, Special Circle I, Ernakulam)

Explanation to Rule 10(2)(b) of KVAT Rules 2005 stipulates that no deductions shall be allowed out of the total contract amount for the supply and installation of any machinery equipment or any other system where the goods involved are assembled and installed and the labour employed for installation is only incidental to the supply of such goods. It was judicially held⁴¹ that if the major component of the end product is the material consumed in producing the chattel to be delivered and skill and labour are employed for converting the main components into the end products but the skill and labour are only incidentally used then the delivery of the end product by seller to the buyer will constitute a sale and not works contract.

M/s Voltas Ltd. Kochi was a dealer in AC, air cooler etc., and a works contractor for supply and installation of AC and air coolers. They filed a separate return, during 2009-10 conceding ₹ 13.45 crore as works contract receipts. They availed exemption of ₹ 3.15 crore and balance turnover of

₹ 10.30 crore only was assessed to tax. Sale considered incorrectly as works contract to avail inadmissible deduction resulted in short levy of ₹ 66.73 lakh (Tax: ₹ 55.52 lakh, cess: ₹ 0.56 lakh, interest: ₹ 10.65 lakh).

The case was pointed out (November 2011) in audit to the Department and reported to Government in November 2012. The Department stated (June 2012) that notice had been issued to the assessee. Further report has not been received (February 2014).

⁴¹ Kone Elevators (India) Pvt. Ltd. Vs. State of Andhra Pradesh [140 STC 22(SC)]

2.18 Incorrect reckoning of taxable turnover in works contract

Taxable turnover was not arrived at as stipulated in KVAT Rules resulting short levy of tax.

As per rule 10(2)(a) of the KVAT Rules 2005, in relation to works contract, in which transfer of property takes place not in the form of goods but in some other form, the taxable turnover in respect of the transfer of property involved in the execution of works contract shall be arrived at after deducting labour and other charges specified thereunder from the total amount received for the execution of the works contract. However, if the taxable turnover so arrived falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of goods transferred in the execution of works contract together with profit, if any, shall be the taxable turnover in respect of such works contract.

Audit noticed between October 2011 and February 2012 that, in the following five cases the works contractors conceded taxable turnover in their annual returns which were less than the turnover arrived at as per the provisions of KVAT Rules 2005. This resulted in short levy of tax, cess and interest of ₹ 66.72 lakh as detailed below.

(₹ in lakh)

Sl. No.	Name of assessee Name of the circle	Period	Nature of irregularity	Tax, cess and interest leviable
1	M/s Poonam Grah Nirman (Pvt.) Ltd, Ambalapuzha. CTO (WC<), Alappuzha	2009-10	The works contractor filed annual return for 2009-10 conceding a taxable turnover of ₹ 2.99 crore. Cost of goods transferred in the works contract was ₹ 5.11 crore. Gross profit conceded by the assessee being ₹ 1.43 lakh, the taxable turnover as per the provisions would come to ₹ 5.12 crore. However, the assessing authority has not taken any action to determine the taxable turnover as per the above provision. Short levy-(Tax ₹ 26.65 lakh, cess ₹ 0.27 lakh, interest ₹ 4.84 lakh).	31.76
The Government stated (February 2013) that assessment was completed (November 2012) under Section 25 of the KVAT Act. Further report has not been received (February 2014).				
2	Shri. Anas Babu. CTO (WC), Thiruvananthapuram	2008-09 2009-10	The works contractor filed annual return for 2008-09 and 2009-10 conceding taxable turnover of ₹ 88.53 lakh and ₹ 70.70 lakh respectively. Cost of goods transferred to the work during the years were ₹ 1.20 crore and	13.95

DP4287

DP4277

Sl. No.	Name of assessee Name of the circle	Period	Nature of irregularity	Tax, cess and interest leviable
			₹ 1.04 crore respectively. The taxable turnover as per the provisions would come to ₹ 1.32 crore and ₹ 1.15 crore. However, the assessing authority did not assess to tax the balance turnover. Short levy-(Tax ₹ 10.88 lakh, cess ₹ 0.11 lakh, interest ₹ 2.96 lakh).	
Department stated (April 2012) that the assessments for both the years had been revised (March 2012) creating additional demand of ₹ 9.29 lakh and ₹ 8.00 lakh. Further report has not been received (February 2014).				
3	M/s B. Ajith Kumar and <u>K. Kamarudeen</u> CTO, (WC<), Kollam	2009-10	The works contractors filed annual return for 2009-10 conceding taxable turnover of ₹ 32.75 lakh and ₹ 44.72 lakh respectively. Cost of goods transferred to the work of the above contractors during 2009-10 were ₹ 51.59 lakh and ₹ 93.25 lakh respectively. The taxable turnover as per the provisions would come to ₹ 65.40 lakh and ₹ 99.40 lakh (adding GP at the rates conceded as per their accounts). However, the assessing authority has not taken any action to determine the taxable turnover as per the above provision. Short levy-(Tax ₹ 10.92 lakh, cess ₹ 0.11 lakh, interest ₹ 2.42 lakh).	13.45
When this case was pointed out (July 2013) Government stated (December 2013) that assessment was revised creating additional demand of ₹ 6.90 lakh with interest and ₹ 3.50 lakh was collected. Further report has not been received (February 2014).				
4	<u>Shri Anil Kumar G</u> CTO (WC), Thiruvananthapuram	2009-10	The works contractor filed annual return for 2009-10 conceding a taxable turnover of ₹ 38.95 lakh. Cost of goods transferred to the work during the year was ₹ 48.83 lakh. The taxable turnover as per the provisions would come to ₹ 64.57 lakh (including the conceded GP of ₹ 15.74 lakh). However, the assessing authority did not assess to tax the balance turnover of ₹ 25.63 lakh. Short levy-(Tax ₹3.20 lakh, cess ₹ 0.03 lakh, interest ₹ 0.68 lakh).	3.91
Department stated (April 2012) that the assessment for the year had been revised (March 2012) creating additional demand of ₹ 2.01 lakh. Further report has not been received (February 2014).				
5	<u>Shri. Alexander Oommen</u> CTO (WC), Thiruvananthapuram	2009-10	The works contractor filed annual return for 2009-10 conceding taxable turnover of ₹ 83.92 lakh. Cost of goods transferred to the work during the year was ₹ 1.04 crore. The taxable turnover as per the provisions would	3.65

Sl. No.	Name of assessee Name of the circle	Period	Nature of irregularity	Tax, cess and interest leviable
			come to ₹ 1.08 crore including GP of ₹ 4.09 lakh. However, the assessing authority did not assess to tax the balance turnover of ₹ 23.89 lakh. Short levy-(Tax ₹ 2.99 lakh, cess ₹ 0.03 lakh, interest ₹ 0.63 lakh).	
Department stated (April 2012) that the assessment for the year had since been revised (March 2012) creating additional demand of ₹ 3.74 lakh. Further report has not been received (February 2014).				
Total				66.72

2.19 Short levy of tax due to incorrect computation of tax

Tax was levied at lower rate of three per cent against four per cent provided in the KVAT Act.

(CTO (WC<), Kozhikode)

As per first proviso under Section 8(a) (ii) of the KVAT Act, 2003, compounded tax applicable to work contractors having CST registration in respect of works contract awarded by Government of Kerala, Kerala Water Authority and Local Authorities shall be four per cent of the whole contract amount.

M/s Uralungal Labour Contract Co-operative Society, Vadakara an assessee undertaking works contract filed annual return conceding compounded taxable turnover of ₹ 49.52 crore. Audit scrutiny revealed that contract receipts amounting to ₹ 48.73 crore received from

works awarded by Government of Kerala were assessed to tax at three per cent instead of four per cent. This resulted in short levy of ₹ 48.31 lakh (Tax: ₹ 40.88 lakh, cess: ₹ 0.41 lakh, interest: ₹ 7.02 lakh).

This was pointed out (September, 2011) to Department and reported to Government in March 2012. Government replied that assessing authority completed the assessment of the society in April 2012. After adjusting the excess TDS of ₹ 16.96 lakh an additional demand of ₹ 26.69 lakh as tax and ₹ 6.41 lakh as interest had been created. Further report has not been received (February 2014).

DP 4272

2.20 Short levy of interest

The remittances made by the assessee were not appropriated first towards interest as per the provisions of Act resulting in short levy of interest.

(CTO, North Parur)

Under Section 31 (6) of KVAT Act, 2003 where any dealer has failed to include any turnover of his business in any return filed or where any turnover or tax has escaped assessment, interest for delay in payment shall accrue and the tax due on such turnover with effect from such date on which the tax would have fallen due for payment, had the dealer included the turnover in the return. Under Section 91 of the Act, when payment towards tax or any other amount due is made, it shall be appropriated first towards interest accrued, the balance available shall be appropriated towards principal outstanding.

M/s German Physical Laboratory, North Parur was a dealer in Agarbathi, Tea, Bed cover etc. The assessee filed annual return for 2005-06 disclosing total and taxable turnover of ₹ 7.32 lakh. Intelligence wing of the Commercial Taxes Department had conducted an inspection (September

2007) at the business place and detected turnover suppression. The assessee remitted ₹ 8 lakh and ₹ 5 lakh in November 2007 and March 2009 respectively. The assessing authority finalised the assessment in February 2009. However, while furnishing requisition to Revenue Recovery authorities (January 2010) remittances made in November 2007 and March 2009 were appropriated towards principal. Failure to levy interest on the tax due from May 2006 and appropriate remittances first towards interest, resulted in short demand of ₹ 8.28 lakh (Tax: ₹ 7.53 lakh, interest: ₹ 0.75 lakh).

The case was pointed out (February 2012) to the Department and to the Government in November 2012. Government stated (May 2013) that assessment was completed (June 2012) creating additional demand of ₹ 8.51 lakh and revenue recovery proceedings had been initiated against the dealer. Further report has not been received (February 2014).

DP A 290

2.21 Non-levy of surcharge

Surcharge leviable under Kerala Surcharge on Taxes Act was not levied.

(CTO, Aluva)

Under Section 3(1A) of the Kerala Surcharge on Taxes Act, 1957, in the case of national or multinational companies functioning in the state as retail chains or direct marketing chains who import not less than 50 per cent of their stock from outside the state or country, the tax payable under KVAT Act, 2003 on goods shall be increased by a surcharge at the rate of 10 per cent, if 75 per cent of the sales are retail business, and total turnover exceeds five crore rupees.

M/s Alga Marketing (P) Ltd., Aluva, a direct marketing chain, self assessed to tax turnover of nanometer energy cup, magnetic bracelets etc., at four per cent instead of 12.5 per cent during 2010-11. Assessing authority revised the assessment

(June 2011) to set right the

misclassification. Though assessee is importing more than 50 per cent of its stock from outside the state and the items were sold to unregistered customers, the assessing authority failed to assess surcharge of ₹ 17.02 lakh on output tax of ₹ 1.70 crore. This resulted in short levy of surcharge and interest of ₹ 19.23 lakh (Surcharge: ₹ 17.02 lakh, interest: ₹ 2.21 lakh).

When the case was pointed out (May 2012) to the Department, it was stated that assessment had been revised (September 2012) creating additional demand of ₹ 19.61 lakh. The matter was reported to Government in November 2012; their reply has not been received (February 2014).

2.22 Non-assessment of tax on trade discount received

The quantity discount received by the assessee which formed part of turnover was not assessed to tax.

(CTO, Special Circle, Kannur)

As per Section 7 of KVAT Act, 2003 where a dealer allows any trade discount or incentive in terms of quantity in goods in relation to any sale effected by him, the quantity so allowed as trade discount or incentive, shall be deemed to be a sale by the dealer, who allows such trade discount or incentive and a purchase by the dealer who received such trade discount or incentive and such sale shall form part of the sale in relation to which such trade discount or incentive is allowed.

M/s ABC Associates, Kannur, a dealer in sanitary wares and fittings self assessed to tax a turnover of ₹ 11.80 crore during 2009-10. Audit scrutiny revealed that the assessee did not record in its annual

return the quantity discount⁴² amounting to ₹ 32.43 lakh received during the year and corresponding sales turnover was not assessed to tax. Though this discount was part of the turnover, the assessing authority did not assess to tax. This resulted in short levy of ₹ 5.09 lakh (Tax: ₹ 4.42 lakh, cess: ₹ 0.04 lakh, interest: ₹ 0.63 lakh).

This case was pointed out (June 2011) in audit to the Department and reported to Government in October 2012. Government stated (September 2013) that assessment had been completed (June 2013) creating additional demand of ₹ 4.52 lakh as tax and cess and ₹ 1.72 lakh as interest. Further report has not been received (February 2014).

⁴² Discount allowed in terms of goods instead of on price.

Sales Tax

2.23 Short levy of tax due to application of incorrect rate of tax

Rate of turnover tax applied on the taxable turnover was less than the rate applicable as per KGST Act.

2.23.1 (CTO, Special Circle, Palakkad)

Under Section 17 of the KGST Act if the return submitted by the dealer appears to be incorrect or incomplete, the assessing authority shall assess the dealer to the best of its judgement. Under rule 18(5) of Kerala General Sales Tax Rules, scrutiny of accounts is mandatory before final assessment of tax payable.

M/s Malabar cements Ltd., Palakkad, a cement manufacturing company conceded in the revised return 15 per cent taxable turnover for the year 2004-05 as ₹ 92.56 crore. The assessment was finalised (August 2010)

adding discount of ₹ 5.75 crore and freight charges of ₹ 10.46 crore to the 15 per cent taxable turnover. Reckoning proportionate addition made in respect of discount and freight the total turnover taxable at 15 per cent should have been ₹ 103.07 crore. But the turnover assessed to tax at 15 per cent was ₹ 77.73 crore only. The differential turnover was assessed to tax at lower rates of three, five and eight per cent. This resulted in short levy of ₹ 3.22 crore (Tax and AST: ₹ 1.80 crore, interest: ₹ 1.42 crore).

This was pointed out (November 2011) to the Department and reported (November 2012) to Government. Their reply has not been received (February 2014).

2.23.2 (CTO, Special Circle, Palakkad)

Under Section 8(2) (b) of Central Sales Tax Act, 1956 tax on interstate sale of goods other than declared goods not covered by declaration in Form C is 10 per cent or the rate applicable to sale or purchase of such goods inside appropriate state, whichever is higher. Under KGST Act 1963, sale of batteries attracted tax at 15 per cent under Sl. No. 13 of first schedule to the Act. For the year 2001-02 additional sales tax at 15 per cent of the tax is also leviable from 23 July 2001 under Section 5D of KGST Act.

The Central Sales Tax assessment for the year 2001-02 of M/s ITI Ltd., Kanjikode West, Palakkad a dealer engaged in manufacture and sale of batteries, was finalised (July 2010) assessing tax at 15 per cent for the interstate sale turnover of batteries for ₹ 13.09 crore for the period from 23 July 2001 to 31 March 2002

which was not covered by declaration in Form C without considering the additional sales tax of 15 *per cent* during the period. This resulted in short levy of ₹ 72.80 lakh (Tax and AST: ₹ 29.47 lakh, interest: ₹ 43.33 lakh).

This was pointed out (November 2011) to the Department and reported to Government in November 2012. Their reply has not been received (February 2014).

2.23.3 (CTO, Special Circle, Thiruvananthapuram)

Under Section 5(2)(1)(b) of the KGST Act, 1963 in force from April 2005 every dealer in foreign liquor other than bar attached hotel is liable to pay turnover tax at five *per cent* on turnover of foreign liquor. By a notification issued under the Act on 19 August 2005, turnover tax on sales turnover of IMFL by military, naval, air force and NCC canteen and canteen stores department was reduced to one *per cent*.

While finalising (March 2011), the turnover tax assessment of Unit Run (CSD) Canteen, Southern Air Command, Trivandrum a dealer in IMFL⁴³ for 2005-06, the sales turnover of IMFL for the period from 1 April 2005 to 18 August 2005 amounting to ₹ 1.37 crore was assessed to tax only at 0.5 *per cent* instead

of the correct rate of one *per cent*. This resulted in short levy of turnover tax and interest of ₹ 10.32 lakh (Turnover tax: ₹ 6.18 lakh, interest: ₹ 4.14 lakh).

The case was pointed out (November 2011) to the Department and to the Government in June 2013. Government stated (September 2013) that the mistake was rectified (December 2011) under Section 43 of KGST Act and the dealer had remitted turnover tax short levied as pointed out in audit. Details of remittance have not been received. But interest of ₹ 4.14 lakh pointed out in audit has not been realised. The amount of ₹ 6.83 lakh remitted by the assessee should have been adjusted towards interest leviable as on date of remittance. Details of recovery are awaited (February 2014).

DP4292

⁴³ IMFL – Indian Made Foreign Liquor

2.24 Short levy of Interest

Interest leviable under KGST Act for delayed payment of tax was not levied.

2.24.1 (CTO, Special Circle, Thiruvananthapuram)

Under Section 23(3A) of KGST Act, where any dealer has failed to include any turnover of his business in the return filed or any turnover escaped assessment, interest under Section 23(3) shall accrue on the tax due on such turnover with effect from the date on which the tax would have fallen due for payment.

M/s Benoy Marbles and granites, Thiruvananthapuram was a dealer in marble, granites, ceramic tiles etc. When KVAT was introduced in 2005-06, the KGST assessments of Pre-VAT period 2002-03, 2003-04, 2004-05 of the assessee were

pending. These pending KGST assessments of the assessee were completed only in June 2010 under the 'fast track method'⁴⁴. While finalising the assessment, the suppression of turnover of ₹ 1.77 crore detected by the investigation branch (IB) was assessed to tax, but interest on tax due on turnover suppressed by the assessee was not demanded. This resulted in short levy of interest of ₹ 1.20 crore.

When this case was pointed out (December 2011) to Department, the assessing authority replied that as the assessee had not compounded the offence, there was no question of escape of turnover and the dealer was not liable to pay interest under section 23(3A). The reply is not correct as the quantum of suppression detected was established by the IB and the assessee paid tax due on suppressed turnover. As such the assessee is liable to pay interest under section 23 (3A) from the date on which tax was fallen due. The case was reported to Government in November 2012; their reply has not been received (February 2014).

• (CTO, Special Circle, Palakkad)

M/s Premier Agro Products (P) Ltd., Palakkad, was a dealer in wheat products. The original KGST assessment of the dealer for 1997-98 completed in June 2002 was modified on March 2007 and again modified on November 2008. When this assessment was further modified in March 2011 based on order of AC (Appeals), Palakkad, levying tax due of ₹ 48.32 lakh, interest was demanded only for eight months from March 2007 instead of from the date tax had fallen due for payment *i.e.* May 1998. This resulted in short levy of interest of ₹ 1.14 crore.

When this was pointed out (December 2011) in audit, the Department stated in September 2012 that the assessee is liable to pay interest only from April 2007 based on decision reported in 10 KTR⁴⁵ 476. The reply is not correct as the decision relates to interest under Section 23(3) and the objection relates to interest

⁴⁴ As per Kerala Finance Act 2007

⁴⁵ Kerala Tax Reporter

under section 23(3A). The decision in the case of PK Damodaran cannot also be applied here as the assessment was completed subsequent to over ruling of that case.

The case was reported to Government in November 2012, their reply has not been received (February 2014).

2.24.2 (CTO, Special Circle, Thiruvananthapuram)

Under section 23(3A) of the KGST, Act 1963 if any dealer has failed to include any turnover or taxable turnover of his business or to pay the tax due thereon, interest on the tax due on such turnover shall accrue with effect from the date on which the tax due would have fallen due for payment. Under section 55(c) of the Act, where any tax or any other amount due or demanded under the Act is paid, the payments so made shall be appropriated first towards interest accrued on such tax and the balance available shall be appropriated towards principal outstanding.

M/s Muthoot Hotels Private Ltd. (Taj Green Cove Resort), Kovalam was an assessee running a bar attached hotel of five star category. The assessee filed annual return for 2005-06 conceding a total and taxable turnover of ₹ 26.50

lakh. Intelligence wing of the commercial taxes department had conducted an inspection (March 2006) at the business place and detected turnover suppression. The assessee admitted the offence and compounded the same and remitted ₹ 74.09 lakh from October 2008 to December 2010. Audit scrutiny revealed that while finalising the assessment in March 2011 by fixing the total taxable turnover as ₹ 2.16 crore, the assessing authority adjusted these remittances towards principal. Failure to levy interest from May 2006, on tax due on the escaped turnover and appropriate remittances aggregating ₹ 74.09 lakh first towards interest resulted in short demand of balance tax and non-levy of interest thereon aggregating to ₹ 52.21 lakh.

When this case was pointed out (December 2011) in audit, the Department stated in April 2012 that the assessment was revised in April 2012 creating an additional demand of ₹ 53.60 lakh. Government stated (November 2013) that the assessee had paid (July 2012) ₹ 18.75 lakh towards the revised demand. Further report has not been received (February 2014).

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- (CTO Special Circle, Thiruvananthapuram)

M/s Kovalam Hotels Private Ltd, (Now M/s Leela Ventures Kovalam) was a bar attached hotel of five star category. The assessee filed annual returns for 2005-06 conceding a total turnover of ₹ 115.61 lakh. Intelligence wing of the commercial taxes department had conducted an inspection at the business place and detected turnover suppression. The dealer admitted the offence and compounded the same and remitted ₹ 70.14 lakh from November 2008 to March 2009. Audit scrutiny revealed that while finalising the assessment in August 2010 by fixing the total turnover as ₹ 486.44 lakh assessing authority adjusted these remittances towards principal. Failure to levy interest from May 2006, on tax due on the escaped turnover and appropriate remittances aggregating ₹ 70.14 lakh first towards interest resulted in short demand of balance tax and non-levy of interest thereon aggregating to ₹ 32.10 lakh.

This case was pointed out (December 2011) to Department; the Department stated in April 2012 that the assessment was revised in April 2012 creating an additional demand of ₹ 34.14 lakh. Further report has not been received (February 2014).

2.25 Short levy of tax/penalty due to non-utilization of information in crime file for assessment

Details available in the crime files were not made use of while completing the assessments.

(CTO, III Circle, Thiruvananthapuram)

Section 17(4) of the KGST Act, 1963 provides for acceptance of return of some specified category of dealers without formal assessment. Under section 17(5A) if such assessment is reopened for assessment of escaped turnover or otherwise and tax paid by the dealer is found to be less than tax which he is liable to pay, the dealer should pay tax together with thrice the amount as penalty. Under Section 19(1) if whole or any part of a business of a dealer has escaped assessment, assessing authority may within five years from the expiry of the year to which tax relates proceed to determine to the best of its judgment, turnover which has escaped assessment and tax payable on such turnover.

M/s Christ Agencies, Valiyathura was a dealer in coconut oil, coconut cake etc. The KGST assessments of the dealer for the years 2002-03 and 2003-04 were completed under Section 17(4) by accepting the turnover returned by the assessee. The intelligence wing of the Department detected (February 2006) sales suppression of ₹ 1.22 crore and ₹ 22 lakh

respectively in these years by the assessee. Intelligence Officer (IB), determined (July 2010) tax evaded in 2002-03 and 2003-04 as ₹ 5.63 lakh and ₹ 1.05 lakh

respectively and levied penalty of ₹ 11.26 lakh and ₹ 2.11 lakh. Assessing officer reported (November 2010) that as the crime files were received by him only in September 2009, contents of the same cannot be utilised for reopening of assessment as the case had become time barred. Failure of the Department to take prompt action resulted in non-realisation of revenue of ₹ 54.03 lakh. (Tax: ₹ 26.73 lakh, interest: ₹ 27.30 lakh).

The case was reported (January 2012) to the Department and to the Government in June 2013. Government stated (October 2013) that the assessment for 2002-03 and 2003-04 had since been revised on June 2013 and July 2013 respectively. Revenue recovery proceedings were initiated to recover the additional demand of ₹ 63.27 lakh. Further report has not been received (February 2014).

2.26 Short levy due to incorrect computation of compounded tax

While computing the compounded tax, rate was applied on incorrect turnover tax reckoned for previous year.

(CTO, Cherthala)

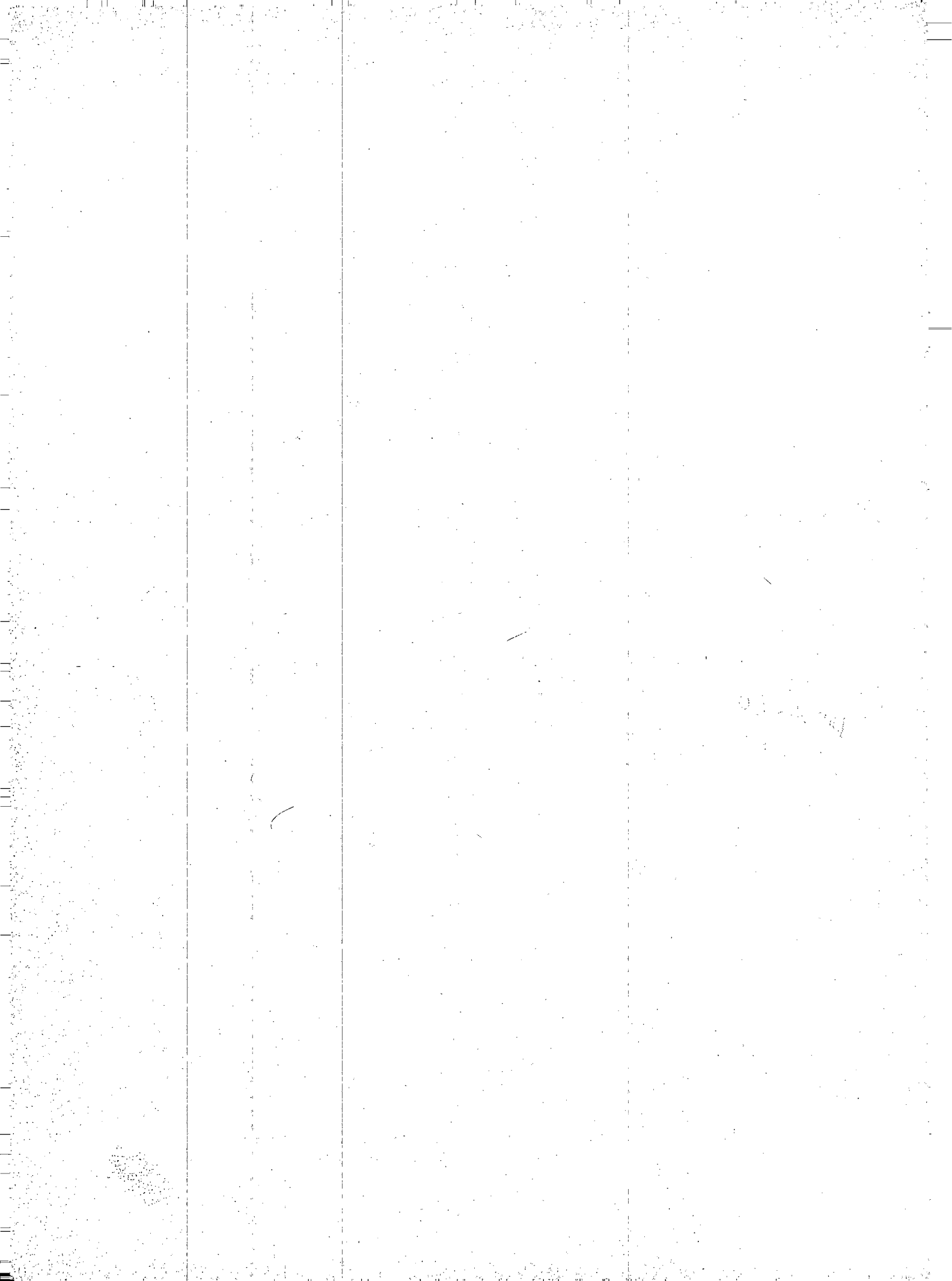
Section 7 of KGST Act, 1963, as amended from July 2006, stipulates that any bar attached hotel not being a star hotel, heritage hotel or club may, at its option pay tax on the turnover of foreign liquor calculated at one hundred and forty percent of the purchase value of such liquor or at one hundred and fifteen *per cent* of the highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid for any of the previous consecutive three years, whichever is higher.

M/s Keerthi Palace, Pattanakkad was an assessee engaged in the business of bar attached hotel. The assessing authority assessed turnover tax of ₹ 14.74 lakh during the year 2006-07. Audit scrutiny revealed that during the year 2007-08 instead of levying turnover tax at

115 *per cent* of ₹ 14.74 lakh, tax levied was only ₹ 14.74 lakh itself. Consequently turnover tax for 2008-09 was levied at 115 *per cent* of tax incorrectly arrived at for 2007-08. Thus for the years 2007-08 and 2008-09 turnover tax was assessed as ₹ 14.74 lakh and ₹ 19.13 lakh respectively instead of ₹ 16.95 lakh and ₹ 19.49 lakh considering 115 *per cent* of the tax paid during previous years. Incorrect computation of compounded tax resulted in short levy of ₹ 2.57 lakh.

The case was pointed out (October 2011) in audit to the Department and to the Government in June 2013. Government stated (September 2013) that assessments were revised creating total additional demand of ₹ 2.84 lakh and the entire demand was collected under revenue recovery. Further report has not been received (February 2014).

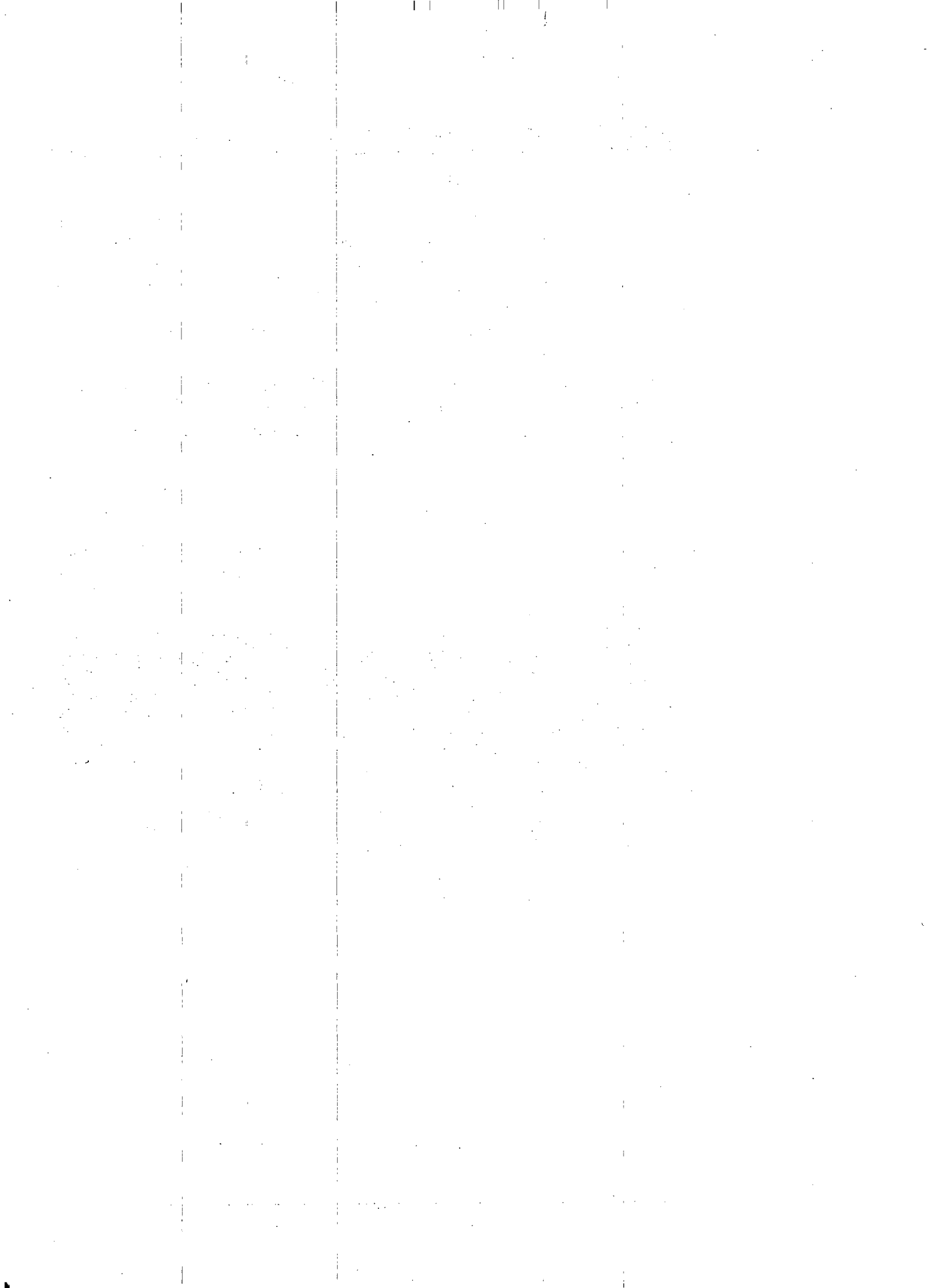
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Chapter III
Taxes on Agricultural Income

EXECUTIVE SUMMARY – CHAPTER - III

Trend of receipts	During 2012-13 the Department collected tax of ₹ 18.92 crore which registered a decrease of 55.86 <i>per cent</i> over the previous year.
Very low recovery by the Department	During the period from 2008-09 to 2011-12, inadmissible expenses, income escaping assessment, incorrect computation of income were pointed out in 178 paras with revenue implication of ₹ 76.28 crore. Of these, the Department accepted ₹ 1.23 crore in 40 cases but recovered only ₹ 0.29 crore in 23 cases.
Results of audit	<p>During 2012-13, records of 31 units relating to agricultural income tax were test checked and noticed underassessments of tax etc., involving ₹ 26.45 crore in 37 cases.</p> <p>The Department accepted five cases involving ₹ 0.55 crore. No amount was realised by the Department during the year.</p>
What is highlighted in this Chapter	In this Chapter illustrative cases of selected observations involving ₹ 69.57 lakh noticed during test check of records relating to Agricultural Income Tax Offices are brought out. It was found that the provisions of the Act/Rules were not observed.
Conclusion	<p>It is recommended that working of Internal Audit Wing may be strengthened. The Department needs to improve the internal control system so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.</p> <p>It also needs to initiate immediate action to recover the inadmissible expenses, income escaping assessment, incorrect computation of income etc. pointed out in audit, more so in those cases where it has accepted the contention of audit.</p>



CHAPTER - III : TAXES ON AGRICULTURAL INCOME

3.1 Tax administration

The levy and collection of taxes on agricultural income is governed by The Kerala Agricultural Income Taxes (KAIT) Act 1991 and is administered by Commissioner of Commercial Tax (CCT). The assessment, levy and collection are looked after by Inspecting Assistant Commissioners (IAC), Agricultural Income Tax and Commercial Tax Officers (AIT & CTO). The Department of Commercial Taxes is under the control of the Secretary to Government (Taxes) at the Government level.

Companies and persons, who derive agricultural income within the State are liable to pay AIT. In respect of Companies, tax is chargeable at the rates prescribed in the Schedule to the Act. From April 2000, persons holding landed property upto 500 hectares may opt to pay tax at compounded rate. No tax is payable on first five hectares.

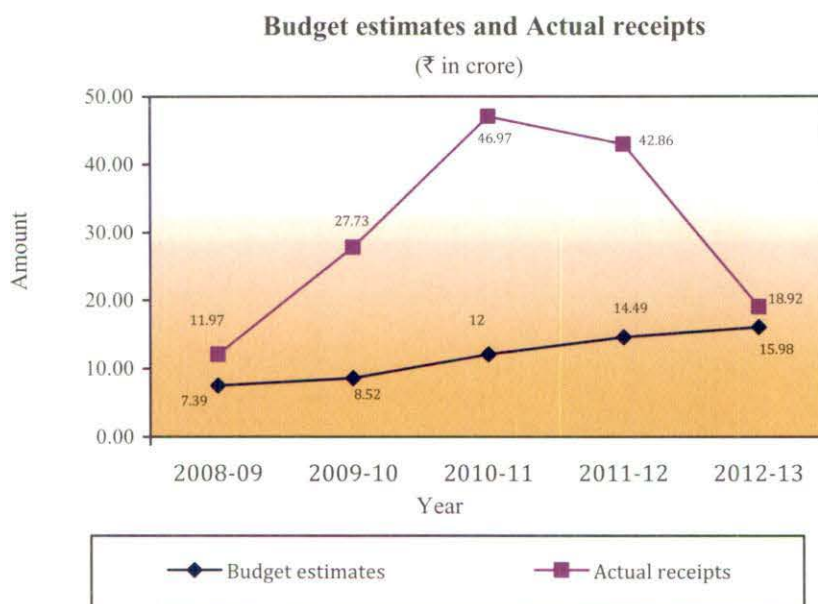
3.2 Trend of receipts

Actual Receipts from AIT during the last five years (2008-09 to 2012-13) along with the budget estimates during the same period are exhibited in the following table and graph.

(₹ in crore)

Year	Budget Estimates	Actual Receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts to total tax receipts	Percentage of growth over previous year
2008-09	7.39	11.97	(+) 4.58	(+) 61.98	15,990.18	0.07	(-) 45.71
2009-10	8.52	27.73	(+) 19.21	(+) 225.47	17,625.02	0.16	131.67
2010-11	12.00	46.97	(+) 34.97	(+) 291.41	21,721.69	0.22	69.38
2011-12	14.49	42.86	(+) 28.37	(+) 195.79	25,718.60	0.16	(-) 8.75
2012-13	15.98	18.92	(+) 2.94	(+) 18.40	30,076.61	0.06	(-) 55.86

Source : Finance Accounts of relevant years



Though the actual receipts showed an increase of 18.40 *per cent* over the budget estimates for the year 2012-13, there was a short fall of 55.86 *per cent* in the actual receipts for 2012-13 when compared to that in 2011-12. Reasons for variation called for have not been furnished (February 2014).

3.3 Arrears in AIT assessment

The Department furnished the position of arrears under AIT which is as shown below :

Opening balance	4,740
Addition during 2012-13 including remanded cases	2,755
Total	7,495
No. of assessments completed	3,022
Arrear cases – 2,129	
Current cases – 885	
Remanded cases – 8	
Closing balance	4,473

The above table shows that the Department completed 3,022 assessments which was 40.32 *per cent* of the arrears outstanding.

Audit recommends the Government to give direction to the Department to complete assessments which are in arrears in a time bound manner.

3.4 Impact of Audit

During the last four years, cases of inadmissible expenses, income escaping assessment, incorrect computation of income, underassessment due to assignment

of incorrect status etc., with revenue implication of ₹ 76.28 crore in 178 paragraphs were pointed out. Of these, the Department/Government accepted audit observations involving ₹ 1.23 crore and had since recovered ₹ 0.29 crore. The details are shown in the following table:

(₹ in crore)

Year	Paragraphs included in the LARs		Paragraphs accepted during the year		Recovery during the year	
	No.	Amount	No.	Amount	No.	Amount
2008-09	67	28.66	9	0.12	4	0.11
2009-10	39	5.57	19	0.95	11	0.12
2010-11	59	17.07	5	0.10	1	0
2011-12	13	24.98	7	0.06	7	0.06
Total	178	76.28	40	1.23	23	0.29

The amount of recovery against the amount accepted was negligible.

3.5 Working of Internal Audit Wing

The internal audit wing (IAW) in the Commercial Taxes Department was constituted in May 2009 and commenced functioning from 1 June 2009. The wing headed by the Deputy Commissioner is assisted by three Assistant Commissioners and five Commercial Tax Officers. The Department has not prepared a separate internal audit manual. During the year 2012-13, only one unit was audited and the amount involved was not calculated.

As details of internal audit conducted were not made available by the Department, Audit could not comment on the performance of the IAW.

3.6 Results of audit

In 2012-13, Audit test checked the records of 31 units relating to AIT and noticed underassessment of tax and other irregularities involving ₹ 26.45 crore in 37 cases which fall under the following categories:

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Income escaping assessment	16	3.40
2.	Incorrect computation of tax	2	0.39
3.	Inadmissible expenses	17	13.07
4.	Others	2	9.59
Total		37	26.45

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 0.55 crore in five cases out of which two cases involving ₹ 0.39 crore were pointed out in audit during the year 2012-13. No amount was realised by the Department during the year 2012-13.

A few illustrative audit observations involving ₹ 69.57 lakh are discussed in the following paragraphs.

3.7 Non-observance of provisions of Act/Rules

Scrutiny of the assessment records of AIT in Commercial Taxes Department revealed several cases of non-observance of provisions of Act/Rules, incorrect determination of income/interest, grant of inadmissible expenses/allowances and other cases as mentioned in the succeeding paragraphs of this chapter. These cases are illustrative and are based on a test check carried out in audit. There is need for the Government to improve the internal control system including strengthening of the internal audit.

Under the KAIT Act and Rules made thereunder, for completing assessments the following aspects should be observed:

- i) tax shall be levied at the prescribed rate on the agricultural income derived by the assessee;
- ii) deductions shall be allowed on income derived subject to certain conditions; and
- iii) interest shall be levied on the balance tax payable.

It was noticed that while finalising the assessment, the Assessing Authorities did not observe certain provisions which resulted in short levy of tax and interest of ₹ 69.57 lakh as mentioned in the paragraphs 3.7.1 to 3.7.3.

3.7.1 Short levy of agricultural income tax due to mistake in computation of agricultural income

While computing total agricultural income, a mistake occurred in taking actual loss

- (IAC (AIT), Kottayam)

Under Section 4 of the KAIT Act, 1991, the total agricultural income of the previous years of any person comprises of all agricultural income derived from land situated within or outside the State. Under Section 12 of the Act, where any person sustains a loss as a result of computation of agricultural income for any year, the loss shall be carried forward to the following year and set off against the agricultural income of that year. Under Section 39(3) of the Act the Agricultural Income Tax Officer after taking into account all relevant information shall by an order in writing make an assessment of the assessee and determine the sum payable by him or refundable to him on the basis of such assessment.

M/s Kerala Forest Development Corporation Ltd., Kottayam filed annual return for the year 2009-10 disclosing a net agricultural loss of ₹ 7.39 lakh. The assessing authority rejected the return and finalised the assessment adding back the inadmissible expenses of ₹ 3.84 crore to the conceded loss and allowing ₹ 2

lakh towards contribution to seminar. But the conceded loss was erroneously

reckoned as ₹ 73.93 lakh against the actual loss of ₹ 7.39 lakh. The mistake in computation resulted in income escaped from assessment amounting to ₹ 66.54 lakh and resultant short levy of AIT of ₹ 33.27 lakh.

The case was pointed out (November 2012) to the Department and reported to the Government in March 2013. Government stated (December 2013) that mistake was rectified (January 2013) creating additional demand of ₹ 33.27 lakh. Further report has not been received (February 2014).

- (IAC (AIT), Kottayam)

M/s Kailas Rubber Company, Kottayam filed annual return for 2009-10 disclosing net agricultural income of ₹ 12.27 lakh. The assessing authority rejected the return and finalised the assessment adding back inadmissible expenses of ₹ 35.44 lakh. The net agricultural income was allowed to set off against the carry forward losses of previous years. But while fixing the net agricultural income, the assessing authority omitted the income of ₹ 12.27 lakh conceded by the assessee and fixed the agricultural income as ₹ 35.44 lakh against the actual income of ₹ 47.71 lakh. The mistake in computation resulted in escape of income of ₹ 12.27 lakh from assessment and in short levy of AIT of ₹ 6.13 lakh.

DP4242

The case was pointed out (November 2012) to the Department and reported to the Government in March 2013. Government stated (December 2013) that mistake was rectified (January 2013) refixing the net agricultural income. Further report has not been received (February 2014).

3.7.2 Short levy of AIT due to excess deduction of replantation allowance

Assessing authority allowed replantation allowance more than what was admissible as per KAIT Rules.

- (IAC (AIT), Kottayam)

As per Section 5(m) of KAIT Act, 1991, agricultural income of a person shall be computed after deducting replantation allowance, subject to such limits, conditions or restrictions as may be prescribed. As per Rule 3 of KAIT Rules, 1991 replantation allowance for rubber and tea shall be limited to actual expenses incurred and not exceeding 2.5 per cent and 1.5 per cent respectively of the agricultural income of the previous year.

DP 4246

As per the P & L accounts of M/s Malankara Plantations, Kottayam, a domestic company, for the previous year 2008-09, the agricultural income derived from rubber and tea were ₹ 8.23 crore and ₹ 4.21 crore respectively.

Hence as per rules, the admissible replantation allowances were ₹ 20.58 lakh (2.5 per cent of ₹ 8.23 crore) and ₹ 6.31 lakh (1.5

per cent of ₹ 4.21 crore) respectively for rubber and tea. They claimed deduction of ₹ 35.93 lakh and ₹ 80.27 lakh respectively in their annual returns towards replantation allowances for rubber and tea during 2009-10. The assessing authority finalised (December 2011) the assessment fixing the net agricultural income of ₹ 1.59 crore allowing the above deduction. The excess deduction of replantation allowance resulted in short levy of AIT of ₹ 27.18 lakh.

The case was pointed out (December 2012) to the Department and reported to the Government (May 2013). Their reply has not been received (February 2014).

3.7.3 Non-levy of interest on belated payment of agricultural income tax

Interest leviable under KAIT Act was not levied on belated payment of advance tax.

- (IAC (AIT), Kottayam)

As per Section 37(1) of KAIT Act, 1991 every person liable to furnish a return under the Act shall pay tax of previous year on or before the end of February of the previous year on the estimated total agricultural income which shall not be less than eighty *per cent* of the total agricultural income as per return. As per Section 37(4) of the Act, any person who fails to pay tax, under the Section is liable to pay interest at the rate of 12 *per cent per annum* for every month of delay or part thereof, on the unpaid balance tax.

M/s Tropical Plantations Ltd., Kottayam, an assessee company conceded net taxable income of ₹ 74.78 lakh for the year 2006-07. The tax due amounting to ₹ 37.39 lakh was remitted on 01 January 2007. While completing the AIT assessments, the assessing authority did not levy interest on the advance tax due amounting to ₹ 29.91 lakh on the agricultural

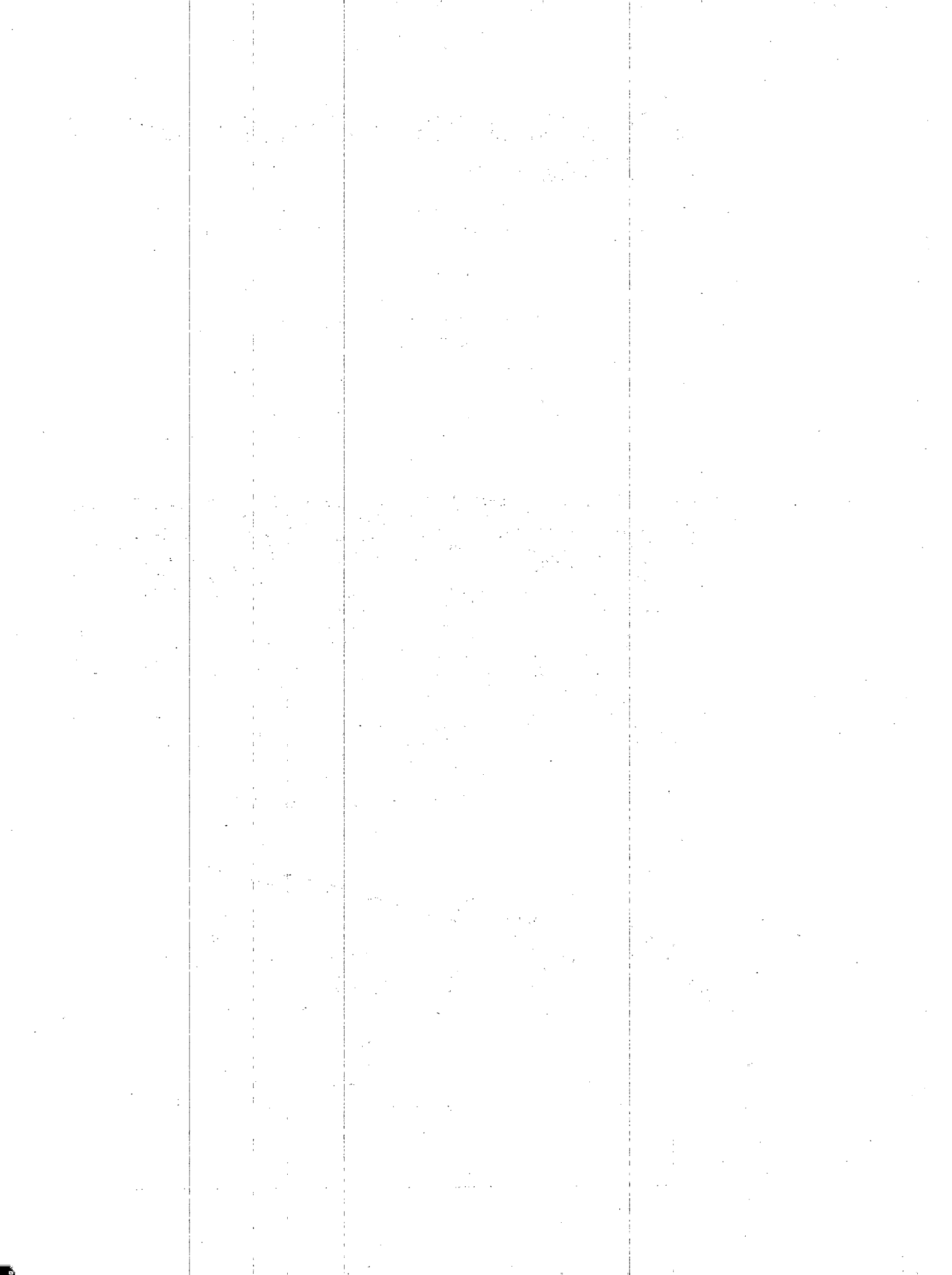
income of ₹ 59.83 lakh (80 *per cent* of ₹ 74.78 lakh) which had to be paid on or before 28 February 2006. Non-levy of interest for the period from 01 March 2006 to 31 December 2006 worked out to ₹ 2.99 lakh.

The case was pointed out (December 2009) to the Department and reported to the Government in March 2010. Government stated (March 2013) that interest due for the above period was demanded during December 2012. Further report has not been received (February 2014).

Chapter IV
Taxes on Vehicles

EXECUTIVE SUMMARY – CHAPTER - IV

Tax collection and budget estimates	The Department collected ₹ 1,924.62 crore during the year 2012-13 which registered an increase of 21.26 <i>per cent</i> over the previous year.
Very low recovery by the Department	During the last four years, non/short levy of tax, incorrect classification, irregular exemption etc. with revenue implication of ₹ 396.74 crore were pointed out in 1,680 paragraphs. Of these, the Department accepted ₹ 19.40 crore and recovered ₹ 7.02 crore which was only 36.18 <i>per cent</i> of the accepted amount.
Results of audit	<p>In 2012-13, the records of 68 units were test checked and irregularities involving ₹ 9.55 crore in 370 cases were detected.</p> <p>The Department accepted 240 cases involving ₹ 5.81 crore and recovered ₹ 1.76 crore in 197 cases.</p>
What is highlighted in this Chapter	<p>This chapter includes a few illustrative cases involving ₹ 1.69 crore selected from observations noticed during the test check of records relating to levy and collection of motor vehicle tax in RTOs/SRTOs where Audit found that the provisions of the Act/Rules were not complied with.</p> <p>It is a matter of concern that similar omissions have been pointed out repeatedly in the Audit Reports for the past several years, but the irregularities persist, and remain undetected till it is pointed out in next audit.</p>
Conclusion	The Department needs to improve the internal control system so that weaknesses in the system are addressed and omissions of the nature detected by Audit are avoided in future.



CHAPTER-IV: TAXES ON VEHICLES

4.1 Tax administration

The Transport Department is under the control of Principal Secretary (Transport) at Government level and the Transport Commissioner is the head of the Department. The levy and collection of tax in the State are governed by the Motor Vehicles (MV) Act, 1988, Central Motor Vehicles (CMV) Rules, 1989 and the Kerala Motor Vehicles Taxation (KMVT) Act, 1976. The activities of the Department include registration of motor vehicles, levy and collection of motor vehicle tax, grant of driving licence and road permits.

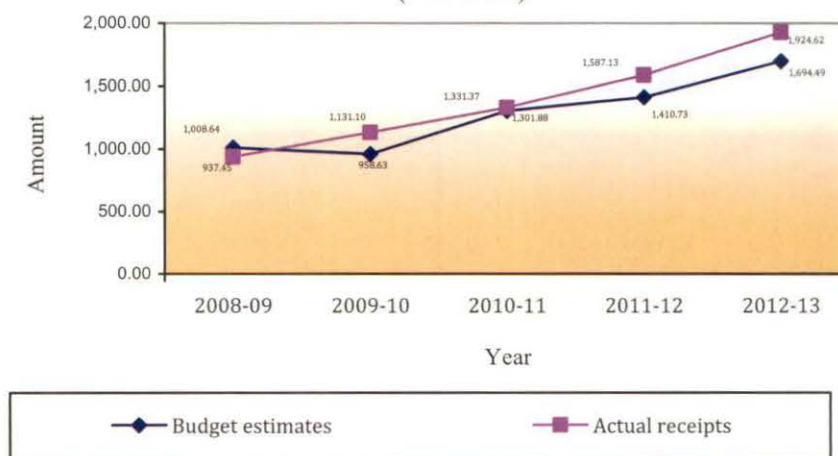
4.2 Trend of receipts

Actual Receipts from taxes on motor vehicles during the years 2008-09 to 2012-13 along with the budget estimates during the same period are exhibited in the following table and graph.

(₹ in crore)							
Year	Budget Estimates	Actual Receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts to total tax receipts	Percentage of growth over previous year
2008-09	1,008.64	937.45	(-) 71.19	(-) 7.06	15,990.18	5.86	9.88
2009-10	958.63	1,131.10	(+) 172.47	(+) 18.00	17,625.02	6.42	20.65
2010-11	1,301.88	1,331.37	(+) 29.49	(+) 2.26	21,721.69	6.13	17.70
2011-12	1,410.73	1,587.13	(+) 176.40	(+) 12.50	25,718.60	6.17	19.21
2012-13	1,694.49	1,924.62	(+) 230.13	(+) 13.58	30,076.61	6.40	21.26

Source: Finance Accounts of the relevant years

Budget estimates and actual receipts
(₹ in crore)



Actual receipts showed a growth rate of 21.26 *per cent* for the year 2012-13, which was the highest during the last five years. Audit noticed variation of 13.58 *per cent* between the budget estimates and actual receipts during the year. The Department stated that the variation was due to collection of arrear amount.

4.3 Cost of collection

The gross collection of revenue receipts under the head Taxes on vehicles, expenditure incurred on collection and the percentage of expenditure to gross collection from 2008-09 to 2012-13 alongwith the All India average percentage of expenditure on collection to gross collection for relevant preceding years are mentioned below:

Year	Collection [*]	Expenditure on collection of revenue [*]	Percentage of expenditure to gross collection	All India average percentage of the preceding year
	(₹ in crore)			
2008-09	937.45	30.05	3.21	2.58
2009-10	1,131.10	33.96	3.00	2.93
2010-11	1,331.37	35.55	2.67	3.07
2011-12	1,587.13	53.26	3.36	3.71
2012-13	1,924.62	58.30	3.03	2.96

* Source: Finance Accounts for the relevant years and departmental figures.

From the table above it is seen that though the revenue collection showed an increasing trend, the expenditure on collection of revenue has also increased consistently from 2008-09 onwards. Percentage of expenditure to gross collection for the year 2012-13 was higher than All India average percentage for the preceding year.

4.4 Impact of audit

During the last four years, non/short levy of tax, incorrect classification, irregular exemption etc. with revenue implication of ₹ 396.74 crore were pointed out in 1,680 paragraphs. Of these, the Department/Government accepted 872 audit observations involving ₹ 19.40 crore and had since recovered ₹ 7.02 crore. The details are shown in the following table:

Year	(₹ in lakh)					
	Paragraphs included in the IRs		Paragraphs accepted during the year		Recovery during the year	
	No.	Amount	No.	Amount	No.	Amount
2008-09	404	398.00	138	604.64	131	77.66
2009-10	453	37,149.00	369	454.78	432	113.00
2010-11	414	698.00	98	227.20	125	59.04
2011-12	409	1,429.00	267	653.00	110	452.00
Total	1,680	39,674.00	872	1,939.62	798	701.70

Though the Department accepted 872 cases involving ₹ 19.40 crore against 1,680 cases featured in the Local Audit Reports, it could recover ₹ 7.02 crore which was only 36.18 per cent of the accepted amount.

4.5 Working of Internal Audit Wing

Finance Officer attached to the office of the Transport Commissioner (TC) conducts annual audit of offices of the Deputy Transport Commissioners and Regional Transport Officers (RTOs). The Senior Superintendents attached to the office of the Deputy TC conduct internal audit of Sub RTOs. Two Accounts Officers, one Senior Superintendent, one Junior Superintendent and three Clerks comprise the Internal Audit team in the office of the Transport Commissioner. The internal audit function of the Deputy TC's offices in four zones is looked after by eight Senior Superintendents and eight clerks (two each in each zones). No special training has been imparted to the personnel of the Internal Audit Wing (IAW). The periodicity of audit of all offices is 'annual' but the Department could not achieve the target due to shortage of staff. Against the target of 86 units, 72 units were audited during 2012-13. The Department has not prepared a separate Internal Audit Manual. 1,347 paragraphs involving ₹ 96.38 lakh relating to 265 IRs remained outstanding at the end of March 2013. The IAW could clear only 6.65 per cent of the outstanding paras during the year.

Audit recommends that the IAW may be strengthened so that the planned audit target is achieved. Besides, a mechanism needs to be installed for timely settlement of the audit observations raised by the IAW.

4.6 Results of audit

In 2012-13 records of 68 units relating to the Motor Vehicles Department were test checked. Non/short levy of tax and other irregularities involving ₹ 9.55 crore were detected in 370 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1	Short/non-levy of tax	161	3.49
2	Incorrect classification	16	0.22
3	Irregular exemption	11	0.06
4	Other lapses	182	5.78
Total		370	9.55

The Department accepted underassessment and other deficiencies of ₹ 11.58 crore in 470 cases, of which 240 cases involving ₹ 5.81 crore were pointed out in audit during the year 2012-13 and the others in earlier years. An amount of ₹ 1.76 crore was realised in 197 cases during the year 2012-13.

A few illustrative audit observations involving ₹ 1.69 crore are discussed in the following paragraphs.

4.7 Non-compliance of provisions of Acts/Rules

The provisions of the MV Act and KMVT Act and Rules made thereunder provide for:

- i) collection of revenue on transport vehicles/stage carriages;*
- ii) levy of tax at the prescribed rates within the due dates; and*
- iii) levy of penalty for various offences.*

It was noticed that the RTOs/SRTOs did not observe some of the above provisions which resulted in non/short levy of tax/fine of ₹ 1.69 crore as mentioned in paragraphs 4.7.1 to 4.7.5.

4.7.1 Short levy of one time tax

One time tax on vehicles realised was less than those prescribed as per the statutes.

(12 RTOs/17 SRTOs)¹

Section 3(1) of the KMVT Act, 1976 as amended by the Finance Act 2010, prescribes levy of one time tax at the time of registration of new vehicles at the rates prescribed in Annexure I of the Finance Act. With effect from 1 April 2010 tax prescribed was eight *per cent* of the purchase value of the vehicle for motorcars and omnibuses used for personal purpose having 1,500 cc or more engine capacity and in respect of motorcycles, motor cars, omnibuses with engine capacity less than 1,500 cc and construction equipment vehicles at the rate of six *per cent*.

A scrutiny of the Registration table and Tax table in the data base of 29 RTOs/SRTOs for the years 2010-11 and 2011-12, during the period from May 2011 to November 2012 revealed short collection of one time tax amounting to ₹ 35.84 lakh in 617 cases due to application of incorrect rate of tax or due to depiction of incorrect value of the vehicle.

After these cases were pointed out to the Department (between May 2011 and November 2012) and to the Government (February 2013), the Department stated (between June and December 2012) that ₹ 1.82 lakh had been collected against 24 cases. Further report has not been received (February 2014).

¹ **RTOs:** Alappuzha, Ernakulam, Idukki, Kannur, Kasargode, Kottayam, Kozhikode, Malappuram, Muvattupuzha, Thiruvananthapuram, Thrissur and Vadakara.

SRTOs: Alathur, Chengannur, Cherthala, Irinjalakuda, Kanjirappally, Kayamkulam, Koduvally, Kothamangalam, Kottarakkara, Ottapalam, Pattambi, Punalur, Thalassery, Thaliparamba, Thiruvalla, Tirur and Vaikom.

4.7.2 Non-levy of fine on overloaded vehicles

Fine as prescribed in the Act, was not realised on overloaded vehicles.

(10 RTOs/18 SRTOs)²

Under Section 79 of the Act, while issuing goods carriage permit, the authority shall mention the maximum gross vehicle weight of the vehicles used in the permit. Under Section 113 of MV Act, 1988, no person shall drive any motor vehicle or trailer, the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration. The power to have a vehicle weighed is entrusted with the officers of the Motor Vehicles Department under Section 114 of the Act. Under Section 194 of the Act, whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention to the provisions of Section 113 shall be punishable with minimum fine of ₹ 2,000 and an additional amount of ₹ 1,000 per tonne of excess load together with liability to pay charges for off loading the excess load.

In 28 RTOs/SRTOs audit scrutiny (between January and December 2012) revealed that as per check reports, vehicles were found carrying weight in excess of limit prescribed in the registration certificate issued under the Act. The officers who inspected the vehicles did not offload and allowed them to proceed without levying the fine prescribed in the Act. This resulted in non-levy of fine of ₹ 27.97 lakh in 510 cases.

On these being pointed out (between December 2011 and November 2012) the Department recovered (between May and December 2012) ₹ 2.34 lakh in 40 cases.

Further report has not been received (February 2014).

The matter was reported (March 2013) to Government; their reply has not been received (February 2014).

² **RTOs** : Alappuzha, Ernakulam, Kannur, Kasargode, Kottayam, Kozhikode, Malappuram, Muvattupuzha, Palakkad and Pathanamthitta.

SRTOs : Alathur, Aluva, Chalakudy, Cherthala, Guruvayur, Irinjalakuda, Koduvally, Koyilandy, Kothamangalam, Mattancherry, Mavelikkara, North Parur, Parassala, Pattambi, Perumbavoor, Punalur, Thalassery and Thaliparamba.

4.7.3 Short collection of tax due to misclassification of vehicles

(RTO, Kozhikode)

Under Section 3 of the KMVT Act, 1976, tax payable on Educational Institution Bus (EIB) is ₹ 1,000 per quarter whereas contract carriages having seating capacity of more than 20 which are registered as EIBs are liable to pay tax at the rate of ₹ 750 per passenger per quarter. EIB means an omnibus which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities as defined under Section 2(11) of the MV Act, 1988.

In RTO, Kozhikode, contract carriages registered in the name of a person was misclassified as EIB and tax realised at the rate of ₹ 1,000 per quarter instead of at ₹ 750 per person per quarter. The misclassification of contract carriage as EIB resulted in short collection of tax of ₹ 4.57 lakh for 2007-2012.

After this being pointed out to Department (November 2012) and to Government in March 2013, the Government accepted (November 2013) the audit observation and issued demand notice for ₹ 4.15 lakh instead of ₹ 4.57 lakh. Variation in the amount has not been explained. Further report has not been received (February 2014).

4.7.4 Short levy of tax on stage carriages with mofussil³ permits

(2 RTOs, September 2012 and October 2012)

Tax shall be levied on stage carriages for use in the State at the rates prescribed in the Schedule which is based on the seating capacity (Section 3 (1) of KMVT Act, 1976). Minimum seating capacity of a stage carriage shall be directly proportional to the wheel base of the vehicle (Rule 269 of Kerala Motor Vehicles Rules, 1989). Under the Rule, the minimum number of seats may be reduced by one fifth in respect of stage carriages operating as city/town service.

Audit observed that RTOs Kottayam and Kannur collected tax on the reduced seating capacity from nine stage carriages with mofussil permits. Those stage carriages with mofussil permits were allowed a reduction of one fifth of the total seats and tax was worked out based on the

seating capacity arrived at as if they were stage carriages operating as city/town service. This resulted in short levy of tax of ₹ 5.49 lakh for the period 2006-2012.

After we pointed out the cases (September and October 2012), both RTOs stated (September and October 2012) that in three cases demand notices were issued and in two cases steps were taken to enhance the seating capacity and collection

³ Places beyond the town/city limits.

particulars would be intimated later. In the remaining cases it was stated that details would be intimated later. Further report has not been received (February 2014).

The matter was reported to Government (March 2013); their reply has not been received (February 2014).

4.7.5 Non/short levy of one time tax on conversion of transport vehicle to non-transport vehicle on percentage basis

(14 RTOs/33 SRTOs)⁴

Section 3(1) of the KMVT Act, 1976 as amended by Finance Act 2007 and Finance Act 2010 stipulates that one time tax shall be levied on the purchase value of certain categories of vehicles at percentage basis depending on the age of vehicle from the month of original registration. The one time tax is leviable in the case of vehicles such as motor cycles, three wheelers, Private Service Vehicles (non transport), construction equipment vehicles and motor cars which are originally registered in other States on or after 1 April 2007 and migrated to Kerala State and vehicles registered on or after 1 April 2007 and reclassified from the category of transport vehicles. The revised rate of one time tax leviable in respect of vehicles having engine capacity above 1,500 cc is eight *per cent* of the purchase value of the vehicle and six *per cent* of purchase value in respect of vehicles having engine capacity below 1,500 cc.

One time tax as stipulated under the Act is levied on new vehicles registered in the State for the first time. It is also leviable on transport vehicles which are reclassified into non-transport vehicles and also on vehicles registered in other States but migrated to the State.

For the vehicles registered in the State on or after 1 April 2007 and re-classified as non-transport vehicle from the category of transport vehicle, the rate of one

time tax payable shall be determined on percentage basis with respect to the age of vehicle from the month of original registration. The details of the vehicles produced for registration and tax levied on them are entered in the registration table and tax table of the data base of RTOs/SRTOs.

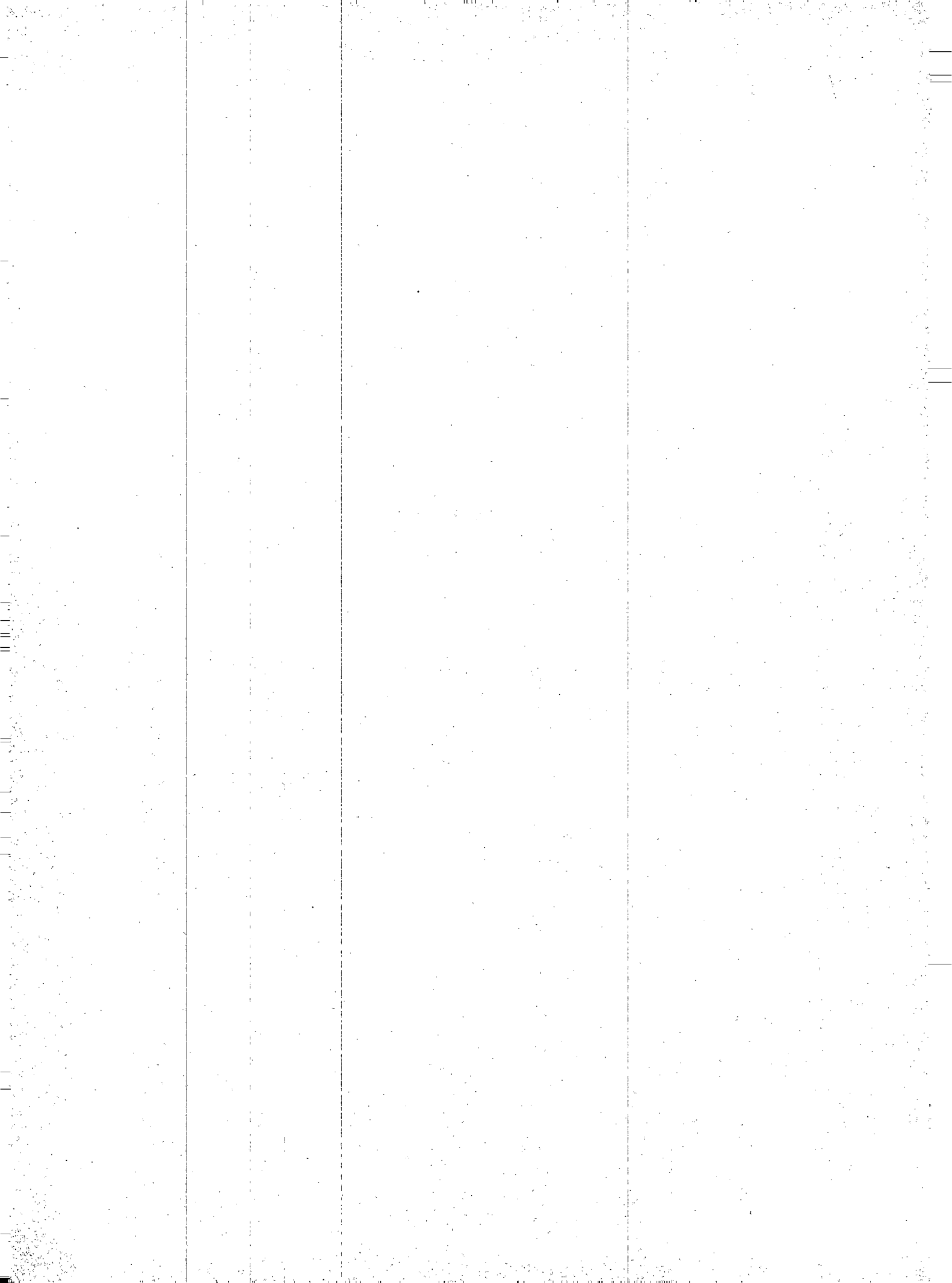
⁴ **RTOs:** Alappuzha, Ernakulam, Idukki, Kannur, Kasargode, Kollam, Kottayam, Kozhikode, Malappuram, Muvattupuzha, Palakkad, Thiruvananthapuram, Thrissur and Vadakara.

SRTOs: Alathur, Aluva, Changanassery, Cherthala, Irinjalakuda, Kanhangad, Kanjirappally, Kayamkulam, Koduvally, Kothamangalam, Kottarakkara, Koyilandy, Kunnathoor, Mallappally, Mannarkkad, Mattancherry, Mavelikkara, North Parur, Neyyattinkara, Ottapalam, Pala, Pattambi, Perumbavoor, Punalur, Ranny, Thalassery, Thaliparamba, Thiruvalla, Thodupuzha, Thripunithura, Tirur, Vaikom and Wadakkanchery.

A scrutiny of the Registration table and Tax table in the data base of 47 RTOs/SRTOs for the years 2010-12 during November 2011 to December 2012 revealed that the registering authority did not levy/short levied one time tax between February 2010 and October 2012 in 622 vehicles migrated from other States/reclassified vehicles due to adoption of incorrect values. This resulted in short levy of tax of ₹ 94.82 lakh.

After this being pointed out to the Department (between November 2011 and December 2012) it was stated that demand notices would be issued to realise the dues. Further report has not been received (February 2014).

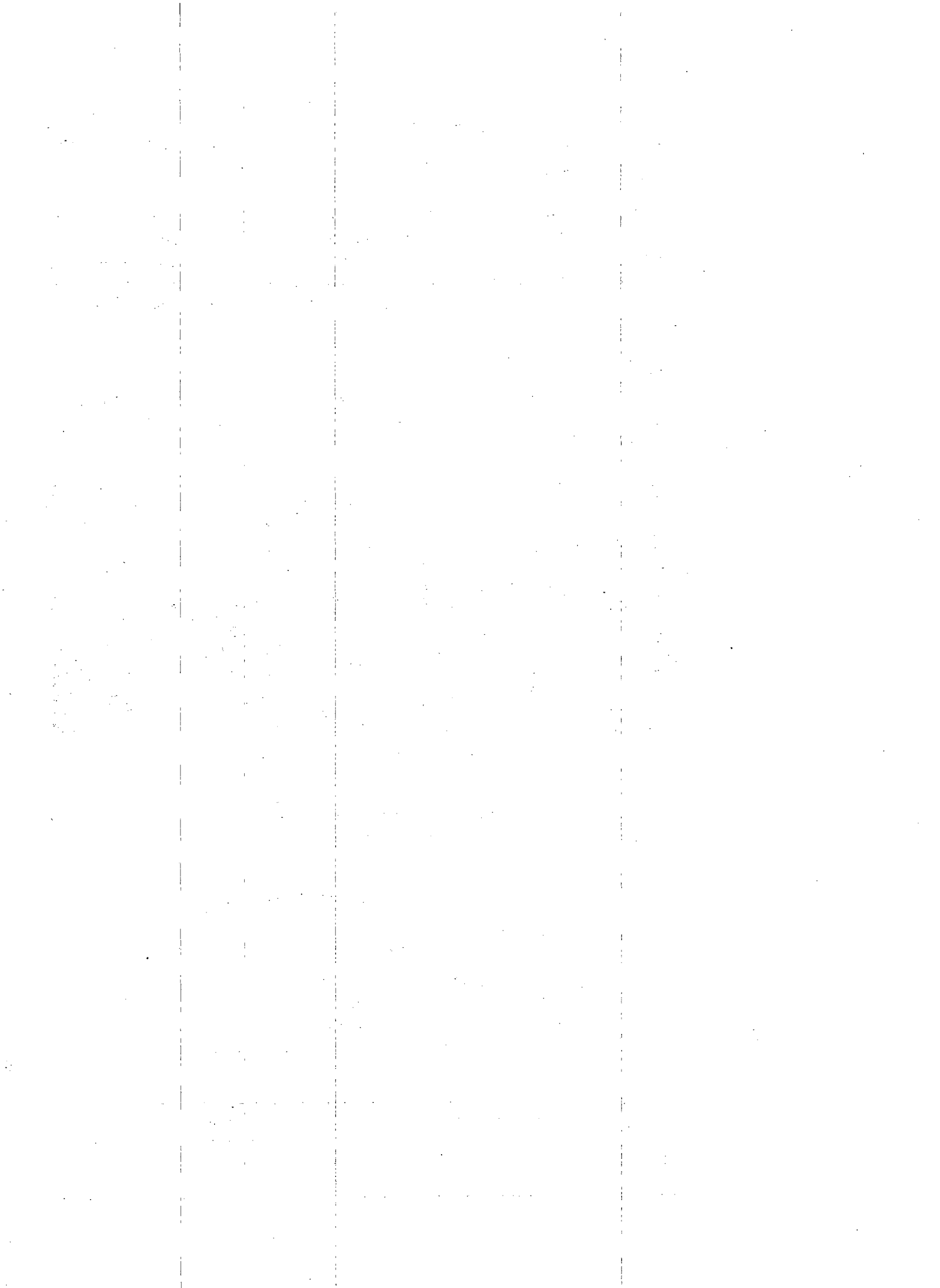
This was reported to Government in February 2013; their reply has not been received (February 2014).



Chapter V
Land Revenue and Building Tax

EXECUTIVE SUMMARY – CHAPTER - V

Tax collection and budget estimates	The Department collected ₹ 121.58 crore during the year, which showed an increase of 100.13 <i>per cent</i> over preceding year.
Very low recovery by the Department	During the last four years, the Department accepted 387 cases involving ₹ 28.90 crore of which ₹ 6.28 crore in 336 cases was recovered.
Internal audit	The Internal Audit Wing (IAW) has to be strengthened by deploying more staff to audit to cover all the units over a reasonable period of time.
Results of audit	<p>In 2012-13, 51 units relating to Land revenue and building tax were test checked and underassessments of tax and other irregularities of ₹ 45.95 crore in 120 cases were noticed.</p> <p>The Department accepted ₹ 7.49 crore in 129 cases and recovered ₹ 1.98 crore in 151 cases of which one case involving ₹ 0.28 lakh was pointed out in audit during 2012-13.</p>
What is highlighted in this Chapter	<p>The Chapter includes illustrative cases of ₹ 2.48 crore selected from observations noticed during test check of records relating to assessment and collection of building tax and land revenue in <i>taluk</i> offices where Audit found that the provisions of the Acts /Rules were not complied with.</p> <p>It is a matter of concern that similar non compliances were pointed out by Audit repeatedly in the Audit Reports for the past several years, but the irregularities still persist and remain undetected till an audit is conducted.</p>
Conclusion	Audit recommends that the IAW be strengthened to cover all the units over a two to three year cycle. An action plan may be drawn up to clear the outstanding audit observations and to recover underassessments pointed out.



CHAPTER - V : LAND REVENUE AND BUILDING TAX

5.1 Tax administration

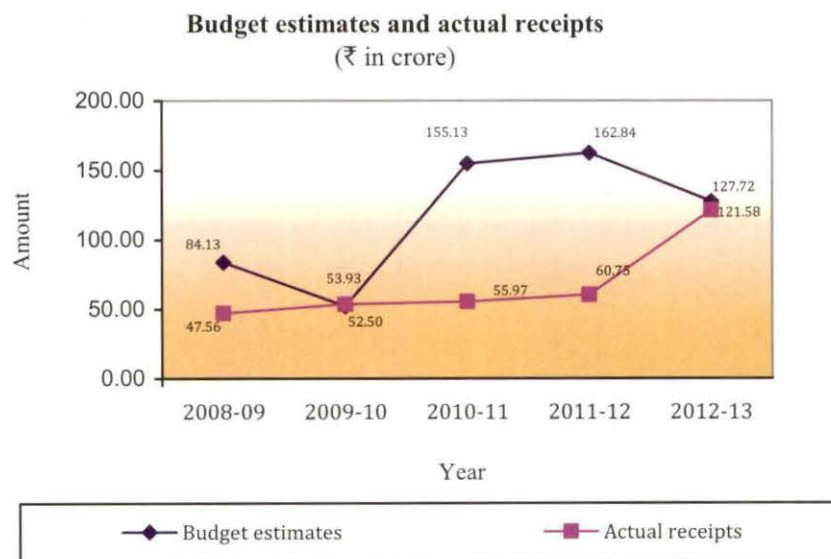
The Revenue Department is under the control of the Secretary at the Government level and the Land Revenue Commissioner is the head of the Department. The revenue collection of the Department includes collection of basic tax, plantation tax, lease rent and building tax. The Department realises arrears of public revenue under the Kerala Revenue Recovery Act with interest and cost of process prescribed.

5.2 Trend of receipts

Actual Receipts from land revenue during the last five years (2008-09 to 2012-13) along with the budget estimates during the same period is exhibited in the following table and graph.

(₹ in crore)							
Year	Budget estimates	Actual Receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts to total tax receipts	Percentage of growth over previous year
2008-09	84.13	47.56	(-) 36.57	(-) 43.47	15,990.18	0.30	0.74
2009-10	52.50	53.93	(+) 1.43	(+) 2.72	17,625.02	0.31	13.39
2010-11	155.13	55.97	(-) 99.16	(-) 63.92	21,721.69	0.26	3.78
2011-12	162.84	60.75	(-) 102.09	(-) 62.69	25,718.60	0.24	8.54
2012-13	127.72	121.58	(-) 6.14	(-) 4.81	30,076.61	0.40	100.13

Source : Finance Accounts of the relevant years



Variation of (-) 6.14 *per cent* was noticed between budget estimates and actual receipts for the year 2012-13. The Department stated that the variation was due to non-realisation of tax on account of stays issued by Court/Government, etc. Audit noticed that growth rate of Department was 100.13 *per cent* during the year, which was the highest for the last five years.

5.3 Arrears in assessment

Building tax and plantation tax assessment

The details though called for (July 2013) was not furnished by the Department (February 2014).

5.4 Impact of audit

During the last four years, audit observations relating to underassessment of building tax, short levy of lease rent, short realisation of collection charges, non-levy of luxury tax etc. with revenue implication of ₹ 453.52 crore were pointed out in 350 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 28.90 crore and had since recovered ₹ 6.28 crore. The details are shown in the following table:

(₹ in lakh)

Year	Paragraphs included in the LARs		Paragraphs accepted during the year		Recovery during the year	
	No.	Amount	No.	Amount	No.	Amount
2008-09	91	32,562.00	16	222.05	16	35.04
2009-10	104	1,722.00	34	86.55	33	59.34
2010-11	38	1,934.00	112	739.90	62	84.27
2011-12	117	9,134.00	225	1,841.00	225	449.00
Total	350	45,352.00	387	2,889.50	336	627.65

Out of 387 cases involving ₹ 28.90 crore accepted, the Department recovered ₹ 6.28 crore in 336 cases which was only 21.72 *per cent* of the accepted cases.

5.5 Working of Internal Audit Wing

The Internal Audit Wing (IAW) of the Land Revenue Commissionerate is supervised by the Senior Finance Officer under the control of the Commissioner of Land Revenue. The audit of *Taluk* offices, Revenue Divisional Offices and Revenue Recovery Offices, Offices of Vigilance Deputy Collectors and Central Stamp Depot are conducted in a period of two to three years. The IAW is manned by one senior superintendent, three junior superintendents and six clerks. Every year, about 23 units were taken up for audit which is not sufficient to cover 120 units even in five years. The Department stated that due to the shortage of staff and ceiling on TA, the sub units could not be audited in a year or two. The Department also stated that there is no regular training programme for the staff of

IAW. During 2012-13, the IAW planned 32 units for internal audit which was covered during the year. During 2012-13, the Department had cleared only 567 paragraphs out of 23,422 paragraphs which is only 2.42 per cent of the outstanding objections as against 2.1 per cent of the previous year. Thus, the functioning of IAW was not effective.

Audit recommends that the functioning of the IAW may be strengthened by deploying more staff if necessary so that all units could be audited over a reasonable period and targets fixed for timely clearance of outstanding paras.

5.6 Results of audit

The records of 51 units relating to land revenue and building tax were test checked during 2012-13 and underassessment of tax and other irregularities involving ₹ 45.95 crore were detected in 120 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1	Underassessment and loss under building tax	79	4.48
2	Underassessment and loss under other items	41	41.47
	Total	120	45.95

The Department accepted underassessments and other deficiencies of ₹ 7.49 crore in 129 cases including one case involving ₹ 0.28 lakh pointed out in audit during the year 2012-13. The Department realised an amount of ₹ 1.98 crore in 151 cases inclusive of the case involving ₹ 0.28 lakh pointed out in audit during the year 2012-13.

A few illustrative audit observations involving ₹ 2.48 crore are discussed in the following paragraphs.

5.7 Non-compliance of provisions of Acts/Rules

The provisions of the KBT Act/Rules, RALMCO and KRR Rules require:-

- i) levy of lease rent on land assigned to various persons at the prescribed rates;*
- ii) levy of collection charges on the amount recovered under RR Act and*
- iii) assessment of building tax and luxury tax at prescribed rates.*

It was noticed that the Tahsildars did not observe some of the above provisions at the time of levying tax. This resulted in short levy of lease rent/building tax/collection charges of ₹ 2.48 crore as mentioned in the paragraphs 5.7.1 to 5.7.3.

5.7.1 Non-levy of building tax due to escape of buildings from assessment

Buildings were not assessed by the assessing authority though reported by Village Officers for assessment

(Taluk offices, Hosdurg, Kanayannur, Thiruvalla and Thiruvananthapuram)

Under the Kerala Building Tax Act, 1975 building tax shall be charged on every building the construction of which is completed on or after 10 February 1992 based on the plinth area of the buildings at the rates prescribed. As per the Kerala Building Tax (Plinth Area) Rules, 1992 every village officer shall transmit to the assessing authority, within five days of the expiry of each month, a monthly list of buildings liable for assessment, together with extracts from building application register of the local authority within whose area the buildings included in the list are situated.

The assessment records namely, building tax assessment register of four taluk offices, were cross verified (between May 2012 and January 2013) with the booking registers and collection registers of eleven¹ village offices and found that 169 buildings completed between October 2007 and March 2012 reported by Village Officers to the assessing authority for assessment were not assessed to building tax. This

resulted in non-assessment of building tax of ₹ 1.23 crore.

After Audit pointed out the matter to the Department (between May 2012 and January 2013), the Department stated (August 2013) that ₹ 19.40 lakh had been realised in 19 cases. Further report has not been received (February 2014).

The matter was reported to Government in May 2013; their reply has not been received (February 2014).

• (Taluk office, Chittur)

The assessment records of taluk office, Chittur were cross verified (February 2012) with the booking registers and collection registers of 19² village offices and found that 57 buildings completed in 2009-10 and 2010-11 reported by Village Officer to the assessing authority for assessment were not assessed to building tax. Out of these, files relating to 39 cases were missing or misplaced in the taluk office. Non-assessment of building tax amounts to ₹ 8.02 lakh.

¹ Bella, Edapally North, Hosdurg, Kanhangad, Kavumbhagam, Kowdiar, Kuttapuzha Sasthamangalam, Thiruvalla, Thycaud and Vanchiyur.

² Chittur, Elavanchery, Kairady, Koduvayur, Kollangode, Kozhinjampara, Kozhipathy, Muthalamada, Nalleppilly, Nelliampathy, Nenmmara, Ozalapathy, Pallasana, Pattancherry, Perumatty, Thattamangalam, Vadavannur, Vallanghi and Vandithavalam.

After Audit pointed out the matter to the Department in February 2012, the Department stated (March 2013) that early action would be taken in pending cases and in the cases where files were missing Village Officers were directed to report the cases afresh. Further, the Department stated that the matter was investigated and bogus TR5 were noticed. Further report has not been received (February 2014).

The matter was reported to Government in May 2013; their reply has not been received (February 2014).

5.7.2 Non-realisation of luxury tax

Luxury tax was not assessed and not demanded though building tax was assessed

(14 Taluk offices³)

Under Section 5A of the KBT Act, 1975 luxury tax at the rate of ₹ 2,000 is leviable each year on all residential buildings completed on or after 1 April 1999, having a plinth area of 278.7 square metres or more. The Act further stipulates that luxury tax is to be paid in advance on or before 31 March every year. Under Section 19 of the Act, in case of default such amount shall be recoverable under the law relating to the recovery of arrears of public revenue due on land. Further, the arrears of tax shall attract interest at six *per cent per annum* from the date of default.

Audit scrutiny (between March 2012 and October 2012) of the luxury tax assessment register of 13 taluk offices, revealed that in 1,515 cases, though the assessing authority levied luxury tax during a year, the assessee did not remit luxury tax during subsequent years as

stipulated in the Act. In one office (Taluk Office, Mukundapuram), in 20 cases, luxury tax was not assessed. The assessing authority also did not take any action to realise the tax dues. Luxury tax not demanded in 1,535 cases resulted in non-realisation of luxury tax and interest of ₹ 94.81 lakh from 1999-2000 to 2012-13.

After Audit pointed out the matter to the Department (between March 2012 and October 2012), the Department stated (August 2013) that ₹ 36.84 lakh had been realised in 906 cases. Further report has not been received (February 2014).

The matter was reported to Government in March 2013; their reply has not been received (February 2014).

³ Ambalapuzha, Cherthala, Ernad, Kanayannur, Kodungallur, Kottarakkara, Kottayam, Kozhencherry, Mukundapuram, Nedumangad, Perinthalmanna, Thalassery, Tirurangadi and Thiruvalla.

- (Taluk office, Thrissur)

On a scrutiny (May 2012) of the luxury tax assessment records of taluk office, Thrissur it was found that in 124 cases, the assessees defaulted payment of luxury tax from 1999-2000 to 2010-11. Failure to take action under Section 19 in 124 cases resulted in non-realisation of luxury tax and interest of ₹ 17.87 lakh.

After Audit pointed out the matter to the Department in May 2012, the Department stated (August 2013) that ₹ 4.53 lakh had been realised in 53 cases. It was also stated that on reassessment, 28 cases were exempted from payment of luxury tax. Further report has not been received (February 2014).

The matter was reported to Government in May 2013; their reply has not been received (February 2014).

5.7.3 Non-realisation of fine and royalty

Fine and royalty were not demanded by the Department while booking cases for unauthorised removal of articles of value

(Taluk office: Thodupuzha)

Under the Kerala Land Conservancy Act 1957, whoever unauthorisedly destroys, removes or appropriates metal, laterite, lime shell or other notified articles of value from any land which is the property of Government, shall pay fine not exceeding fifty rupees and also compensation for damages at the rates prescribed by Government from time to time. Government as per Notification⁴ issued in August 1977 prescribed compensation payable for damages as ₹ 2.50 per metric tonne. Collector shall be the authority for imposing fine and realising the compensation prescribed under the Act. Rule 4 of the Kerala Minor Mineral Concession Rules, 1967 stipulates that while applying for quarrying permit the applicant shall pay royalty in advance for removal of mineral by him from the land from which he is permitted to quarry at the rate of ₹ 16 per metric tonne as specified in Schedule 1 of the Rules.

The Department of Mining and Geology grants quarrying permit to extract and remove from any specified land, any minor mineral not exceeding 10,000 tonnes in quantity under one permit on payment of royalties in advance at the rates specified in Schedule 1 to the Kerala Minor

Mineral Concession Rules, 1967. The royalty shall be remitted in the treasuries to the credit of the Department of Mining and Geology. Taluk Tahsildars are authorised under the Kerala Land Conservancy Act 1957, to exercise the powers of Collector to impose fine and to realise payment towards compensation to damages on unauthorised destruction, removal, appropriation of metal, laterite,

⁴ SRO 868/77

lime shell or other notified articles of value from any land which is the property of Government.

Cases are registered under the Land Conservancy Act/Rules in *Taluk* offices on detection of illegal mining during inspection by officers of Land Revenue Department. A scrutiny (January 2011) of records of land conservancy cases registered between 1992 and 2006 in *Taluk* office, Thodupuzha revealed that in eight cases fine and royalty were not demanded by the Department while booking cases for unauthorised removal of articles of value. This resulted in non-realisation of fine and royalty of ₹ 4.43 lakh.

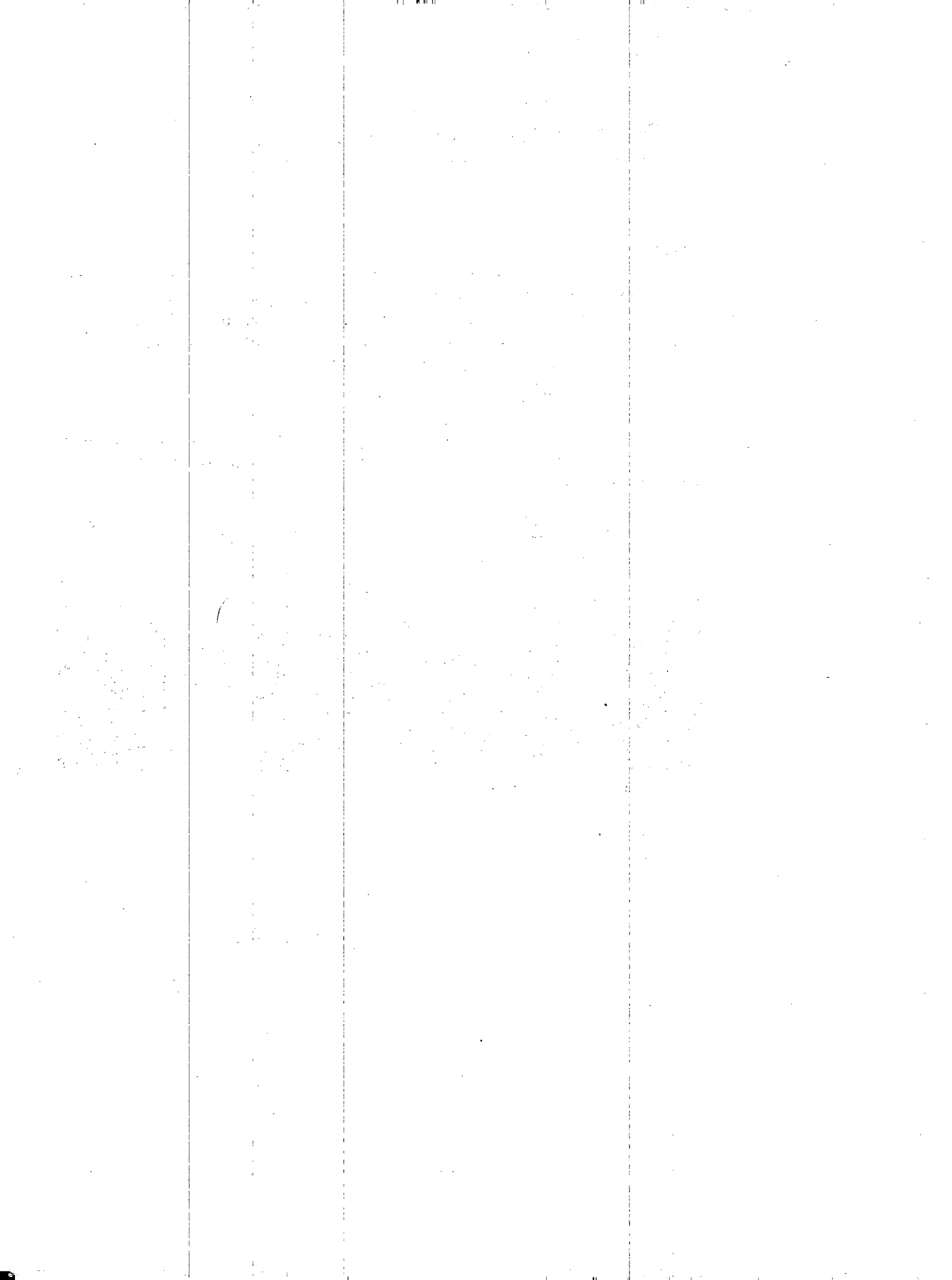
After the matter was pointed out to the Department (January 2011), the Department stated (October 2013) that ₹ 29,024 had been remitted in three cases. Further report has not been received (February 2014).

The matter was reported to Government in May 2013; their reply has not been received (February 2014).

Chapter VI
Other Tax Receipts

EXECUTIVE SUMMARY – CHAPTER - VI

What is highlighted in this Chapter	<p>The Chapter includes an audit on Levy of Stamp Duty and Registration Fees on Development/Construction Agreements involving ₹ 14.47 crore.</p> <p>A para on non-realisation of transport permit fee in the State Excise Department involving ₹ 3.55 crore is also featured in this chapter.</p>
Decreasing tax collection and shortfall compared to budget estimates	<p>In Registration Department, the revenue collection during 2012-13 was ₹ 2,938.38 crore which was 22.18 <i>per cent</i> less than the budget estimate.</p>
Low recovery by the Departments	<p>During the last four years cases of undervaluation of documents, short levy of stamp duty etc., involving ₹ 66.61 crore in 888 cases were pointed out. The Registration Department accepted ₹ 8.50 crore in 407 cases of which ₹ 0.18 crore was recovered which was only 2.12 <i>per cent</i> of the accepted cases.</p> <p>During the last four years the Excise Department accepted 121 cases involving ₹ 32.11 crore, but only 2.60 <i>per cent</i> of the amount accepted was recovered.</p>
Results of audit	<p>In 2012-13 records of 68 units relating to the State Excise Department were test checked and 17 cases involving ₹ 8.54 crore were pointed out, of which two cases involving ₹ 0.05 crore were accepted. One draft para involving ₹ 3.89 lakh was issued in January 2013, which the Department had recovered fully.</p>
Conclusion	<p>The Registration Department needs to initiate immediate action to recover stamp duty and registration fees relating to undervaluation of documents pointed out by Audit, more so in cases where it has accepted the contention of Audit.</p> <p>The Excise Department needs to improve the internal control system so that weaknesses in the system are addressed. The Department also needs to initiate immediate steps to recover the non-levy of import fee, non/short remittance of gallonage fee etc., pointed out by Audit, more so in those cases where it has accepted the contention of Audit.</p>



CHAPTER - VI : OTHER TAX RECEIPTS

A- STATE EXCISE

6.1 Tax administration

Excise department is under the control of Secretary (Taxes) at the Government level and the Excise Commissioner is the head of the department. The Abkari Act 1 of 1077 governs the laws relating to import, export, transport, manufacture, sale and possession of intoxicating liquor and drugs in the State. The receipt is mainly derived from the duty on foreign liquor and spirits.

6.2 Trend of receipts

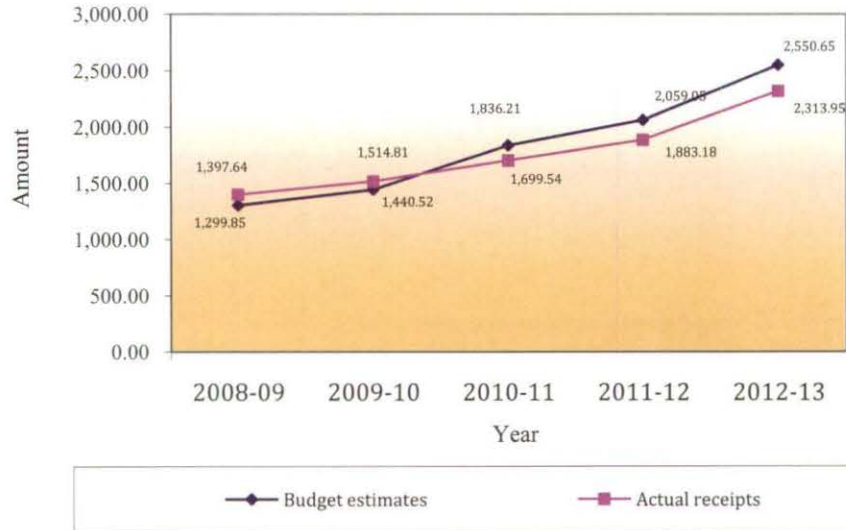
Actual Receipts from excise duties and fees during the last five years (2008-09 to 2012-13) along with the budget estimates during the same period are exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual Receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts to total tax receipts	Percentage of growth over previous year
2008-09	1,299.85	1,397.64	(+) 97.79	(+) 7.52	15,990.18	8.74	19.53
2009-10	1,440.52	1,514.81	(+) 74.29	(+) 5.16	17,625.02	8.59	8.38
2010-11	1,836.21	1,699.54	(-) 136.67	(-) 7.44	21,721.69	7.82	12.19
2011-12	2,059.05	1,883.18	(-) 175.87	(-) 8.54	25,718.60	7.32	10.81
2012-13	2,550.65	2,313.95	(-) 236.70	(-) 9.28	30,076.61	7.96	22.87

Source : Finance Accounts of relevant years.

Budget estimates and actual receipts
(₹ in crore)



Audit noticed that the budget estimates and actual receipts for the year 2012-13 showed a variation of (-) 9.28 per cent. The Department stated (September 2013) that non enhancement of excise duty and other fees resulted in reduction of revenue receipts for the year 2012-13.

6.3 Cost of collection

The gross collection of revenue receipts under the head State excise duties, expenditure incurred on collection and the percentage of expenditure to gross collection from 2008-09 to 2012-13 along with the All India average percentage of expenditure on collection to gross collection for relevant years are mentioned below:

Year	Collection*	Expenditure on collection of revenue*	Percentage of expenditure to gross collection	All India average percentage of the preceding year
	(₹ in crore)			
2008-09	1,397.64	72.84	5.21	3.27
2009-10	1,514.81	83.36	5.50	3.66
2010-11	1,699.54	92.51	5.44	3.64
2011-12	1,883.18	144.69	7.68	3.05
2012-13	2,313.95	146.81	6.33	2.98

*Source: Finance Accounts of relevant years and departmental figures.

Audit noticed an increase in revenue collection and in the expenditure on collection of revenue consistently for the years from 2008-09 to 2012-13. The percentage of expenditure to gross collection was also higher than the All India average percentage during the last five years.

6.4 Impact of audit

During the last four years, Audit pointed out non-levy of import fee, non/short remittance of gallonage fee, delay in crediting rentals of toddy shops etc., with revenue implication of ₹ 75.95 crore in 157 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 32.11 crore and recovered ₹ 83.52 lakh. The details are shown in the following table:

(₹ in lakh)

Year	Paragraphs included in the LARs		Paragraphs accepted during the year		Recovery during the year	
	No.	Amount	No.	Amount	No.	Amount
2008-09	76	5,337.00	40	3,130.00	10	2.30
2009-10	54	2,147.00	39	39.00	39	39.00
2010-11*	27	111.15	32	26.66	32	26.66
2011-12*	0	0	10	15.56	10	15.56
Total	157	7,595.15	121	3,211.22	91	83.52

* No local audit was conducted during the years 2010-11 and 2011-12 as a performance audit of the Department covering period 2006-11 was conducted and Report was presented to State Legislature in March 2012.

The recovery was only 2.60 per cent when compared to the cases accepted by the department.

6.5 Working of Internal Audit Wing

The internal audit wing (IAW) in the State Excise Department commenced functioning from 3 November 1980. The wing is headed by a Joint Commissioner of Excise and is assisted by one Assistant Excise Commissioner, three superintendents, three excise inspectors and six preventive officers. During the year 2012-13, the target of auditing 62 units was achieved. There were 77 IRs with 118 observations involving ₹ 105.43 crore outstanding at the end of March 2013. The Department has not prepared a separate internal audit manual.

Audit recommends that the IAW may be strengthened so that they are able to audit more sub offices. Besides, a mechanism needs to be installed for timely settlement of the audit observations raised by the IAW. It is also recommended to prepare an Internal Audit Manual.

6.6 Results of audit

In 2012-13, Audit test checked the records of 68 units relating to the State Excise Department and noticed non/short levy of tax and other irregularities involving ₹ 8.54 crore in 17 cases which fall under the following categories:

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Non-realisation of transport permit fee	3	3.77
2.	Non-realisation of gallonage fee	2	0.06
3.	Short collection of cost of establishment	6	0.08
4.	Non-levy of import fee on grape spirit/malt spirit	1	0.02
5.	Others	5	4.61
Total		17	8.54

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 0.05 crore in two cases which were pointed out in audit during the year 2012-13. The Department realised during the year 2012-13 an amount of ₹ 0.01 crore in five cases which were pointed out during previous years.

A draft para was issued (January 2013) involving ₹ 3.89 lakh, in which the department had recovered the entire amount.

6.7 Non-realisation of transport permit fee

Permits were issued to licencees for transport of IMFL without realising fee

(Three¹ Offices of the Joint Excise Commissioners)

DP 4327

Under Section 10 read with Section 11 of the Abkari Act 1 of 1077, liquor or intoxicating drug exceeding such quantity as prescribed by Government from time to time, either generally for the whole State or for a local area shall be transported under a permit. Under Sections 6 and 7 of the Act, liquor or intoxicating drugs can be imported or exported by the various licencees for which No Objection Certificates (NOC) are issued under the specific Rules under which licencees were issued.

Liquor or intoxicating drugs exceeding quantity prescribed by Government shall be transported only under permits issued by the Commissioner of Excise. Government by Notification² issued in March 1995 fixed a fee of ₹ 500 with effect from April 1995 on each permit to be

issued for the import, export and transportation of liquor or intoxicating drugs under Sections 6, 7 and 11 of the Abkari Act 1 of 1077.

The non-collection of the permit fee was pointed out in the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2011. But scrutiny (between July 2012 and September 2012) of permit issue registers of 21 FL9³ Warehouses under the offices of the three Joint Excise Commissioners revealed that 71,074 transport permits within the state were issued (between 1 April 2011 and 8 February 2012). Permit fee of ₹ 3.55 crore was not realised while issuing the above transport permits.

After Audit pointed out the matter (between July 2012 and September 2012) the Department stated (between July 2012 and September 2012) that in pursuance of Notification⁴ (February 2012) permit fee leviable under Section 11 is being realised from February 2012 at the rate of ₹ 500. But nothing was mentioned

¹ Central Zone, Ernakulam, North Zone, Kozhikode and South Zone, Thiruvananthapuram.

² SRO 388/95 dated 27 March 1995

³ Bonded warehouses of Kerala State Beverages Corporation

⁴ SRO 85/2012 dated 9 February 2012

about the permit fee relating to the period from April 2011 to February 2012. Further report has not been received (February 2014).

When the matter was reported to Government in March 2013, the Government endorsed the reply of the Department which stated (November 2013) that prior to 9 February 2012 there was no clear provision to levy permit fee from licensees under Foreign Liquor Rules for the transport of IMFL from FL9 Warehouses to other licenced premises. On the basis of SRO 85/2012 dated 9 February 2012, permit fee is being collected.

The reply furnished by Department was not correct. When Government enhanced the fees for each permit issued under section 6 and section 7 to ₹ 1,000 vide notification in March 2004, Government had not withdrawn the permit fee of ₹ 500 under Section 11. However, permit fee under Section 11 was not realised during the period from 01 April 2004 to 8 February 2012.

B – Stamp duty and Registration fees

6.8 Tax administration

The Registration Department is under the control of the Secretary to Government, Taxes at Government level and the Inspector General of Registration is the head of the department. Instruments affecting immovable property are to be presented for registration in the office of sub registrar within whose jurisdiction the whole or some portion of the property is situated. The Registration Department administers the Acts and Rules relating to stamp duty and registration fees.

Non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property and other instruments mentioned under Section 17 of the Registration Act 1908 are to be registered compulsorily and the registration of documents mentioned under Section 18 is optional.

6.9 Trend of receipts

Actual receipts from stamp duty and registration fees during the last five years (2008-09 to 2012-13) along with the budget estimates during the same period is exhibited in the following table and graph.

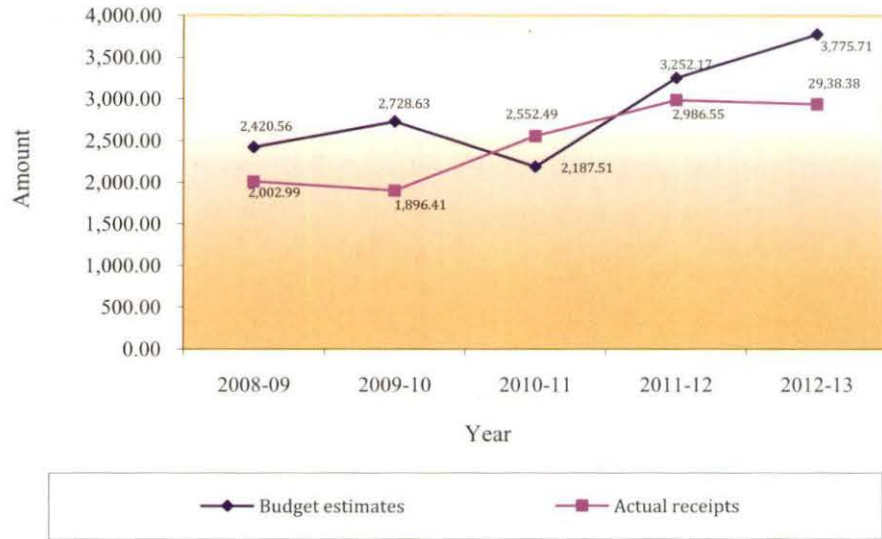
(₹ in crore)

Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts to total tax receipts	Percentage of growth over previous year
2008-09	2,420.56	2,002.99	(-) 417.57	(-) 17.25	15,990.18	12.53	(-) 1.23
2009-10	2,728.63	1,896.41	(-) 832.22	(-) 30.50	17,625.02	10.76	(-) 5.62
2010-11	2,187.51	2,552.49	(+) 364.98	(+) 16.68	21,721.69	11.75	34.59
2011-12	3,252.17	2,986.55	(-) 265.62	(-) 8.17	25,718.60	11.61	17.01
2012-13	3,775.71	2,938.38	(-) 837.33	(-) 22.18	30,076.61	9.77	(-) 1.61

Source: Finance Accounts of the relevant years

Budget estimates and Actual receipts

(₹ in crore)



Audit noticed variation of (-) 22.18 per cent between the budget estimates and actual receipts during the year 2012-13. The revenue collection during 2012-13 showed a decrease of 1.61 per cent compared to the preceding year. The Department stated that the reason for decrease in revenue receipts was due to application of uniform rate of stamp duty for partition deed, gift deed etc., and the reduction in number of documents registered during the year.

6.10 Cost of collection

The gross collection of revenue receipts under the head Stamps and Registration fees, expenditure incurred on collection and the percentage of expenditure to gross collection during 2008-09 to 2012-13 alongwith the All India average percentage of expenditure on collection to gross collection for relevant years are mentioned below :

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure to gross collection	All India average percentage of the preceding year
	(₹ in crore)			
2008-09	1,931.75	82.97	4.30	2.09
2009-10	1,812.89	100.70	5.55	2.77
2010-11	2,477.19	101.56	4.09	2.47
2011-12	2,906.89	144.85	4.98	1.60
2012-13	2,862.07	128.73	4.50	1.89

Source: Finance Accounts and Departmental figures

Audit noticed that the revenue collection and the expenditure on collection of revenue showed a decrease of 1.54 *per cent* and 11.13 *per cent* respectively in 2012-13 over the preceding year. Audit also noticed that the expenditure on collection was consistently higher than the All India Average percentage during the years from 2008-09 to 2012-13.

6.11 Impact of audit

During the last four years, undervaluation of documents, short levy of stamp duty etc. with revenue implication of ₹ 66.61 crore were pointed out in 888 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 8.50 crore and recovered ₹ 0.18 crore. The details are shown in the following table:

(₹ in crore)

Year	Paragraphs included in the LARs		Paragraphs accepted during the year		Recovery during the year	
	No.	Amount	No.	Amount	No.	Amount
2008-09	235	7.02	54	0.38	52	0.03
2009-10	258	9.04	176	3.02	54	0.03
2010-11	235	47.24	87	2.75	74	0.05
2011-12	160	3.31	90	2.35	76	0.07
Total	888	66.61	407	8.50	256	0.18

It is seen from the table that the Department had recovered only 2.12 *per cent* of the total amount accepted during the four years.

6.12 Working of Internal Audit Wing

Inspector General of Registration (IGR), Kerala monitors the functioning of the Internal Audit Wing (IAW) of the Registration Department. The District Registrar (DR) (Audit) and team do the audit in the district. The sub-registry offices are audited annually. The total number of staff deputed for the internal audit work in this Department is sixty two. The team leader is the DR (Audit) who is assisted by his subordinates. There is no separate manual for internal audit in the Department. Training of staff in the audit wing is included in the Department training programme undertaken through the Institute of Management in Government. The auditee offices are selected after giving special preference to those offices where the Registering Officer is due to retire shortly which itself is a risk analysis aimed at avoiding revenue loss. During 2012-13 IAW has audited 245 units out of 297 units planned for audit. They observed that the implementation of fair value has blocked evasion of stamp duty and they noted that non-stipulation of guidelines for the value of buildings is a system deficiency in the fair value reform which may lead to leakage of stamp duty.

6.13 Results of audit

In 2012-13 Audit test checked the records of 135 units relating to the Registration Department and detected undervaluation of documents and other irregularities involving ₹ 18.18 crore in 79 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1	Levy of Stamp Duty and Registration Fee on Development/Construction Agreement	1	14.47
2	Undervaluation of documents	52	0.77
3	Other lapses	26	2.94
	Total	79	18.18

The Department accepted undervaluation and other deficiencies of ₹ 0.57 crore in 75 cases, of which nine cases involving ₹ 0.05 crore were pointed out in audit during the year 2012-13 and the rest in earlier years. An amount of ₹ 0.08 crore was realised in 67 cases during the year of which five cases involving ₹ 0.33 lakh pertained to 2012-13.

6.14 Levy of Stamp Duty and Registration Fee on Development/Construction Agreements

6.14.1 Introduction

The Stamp duty leviable on instruments executed is regulated under Kerala Stamp Act 1959 (KSA)/Kerala Stamp Rules 1960 (KSR). Registration fee leviable on such instruments registered within the state are determined and notified by State Government from time to time.

Stamp duty leviable on all types of agreements was ₹ 100 upto 31 March 2007. The registration fee leviable is at two *per cent* of the consideration set forth in the document.

The rates of stamp duty for sale of flats/apartments/villas were seven *per cent*, eight *per cent* and nine *per cent* respectively on the consideration set forth in the document in *panchayat*, municipality and corporation areas respectively upto June 2013.

Development agreement is an innovative mechanism introduced (April 2007) by the Government to encourage the construction of houses. Under this the land owner retains the ownership of the land and permits the developer to construct and sell buildings/flats in the land. In turn, the land owner may give a lump sum consideration or a share in the property constructed to the land owner. After entering into agreement with land owner, the builder/developer enters into agreements with the prospective buyers for sale of flats that he has proposed to construct in the land in which he has development rights. From 1 April 2007, stamp duty leviable on development agreements is at the rates applicable to sale deeds.

Audit conducted a study on the levy of stamp duty and registration fee on the development/construction agreements executed in the state during the period 2010-11 and 2011-12.

6.14.2 Audit objectives

The Audit was conducted to –

- study adequacy of the system of levy of stamp duty/registration fee in the case of transfer of flat/apartment/villas.
- identify the weakness, if any, in the departmental mechanism, leading to undervaluation of flats/apartments/villas.
- assess the effect of the amendment to KSA to plug tax evasion by developers/builders.
- see whether the departmental mechanism evolved to enforce the provisions of the new amendment was adequate and ascertain its effectiveness.

6.14.3 Audit criteria

The criteria for this audit were derived from provisions of central and state Act/Rules viz.

Central

- i. The Indian Stamp Act, 1899.
- ii. The Registration Act, 1908

State

- iii. The Indian Stamp (Kerala) Rules, 1960
- iv. The Kerala Stamp Act, 1959.
- v. The Kerala Stamp Rules, 1960.

6.14.4 Scope and methodology of audit

Audit was conducted from April 2013 to July 2013 covering the period 2010-11 and 2011-12. Out of 14 districts in the State, five districts, viz., Ernakulam, Kottayam, Kozhikode, Thiruvananthapuram and Thrissur, where large scale construction of flats/apartments/villas have taken place were selected for audit. Audit analysed the activities of seventeen⁵ builders in the State for 2011-12. As per declarations in Form 49⁶ collected from CTOs (WC), they had projects for undertaking construction of 2,244 flats. All of these constructions were located in above five districts.

Sale deeds executed by the builders/developers in favour of the purchasers were cross verified with the construction/sale agreements and Form 49 filed in the respective Commercial Tax Office (Works Contract) to detect undervaluation, if any, and the short levy of stamp duty and registration fees. Evidences were collected from Sub Registry Offices and Commercial Tax Offices (Works Contract) of Commercial Taxes Department.

6.14.5 Limitation of Audit

In the existing system, builders execute agreements with prospective buyers incorporating with the terms and conditions of sale of flat/apartment. Subsequently when the flat is transferred to the buyer conveyance deed is executed. The agreements are not being registered since as per Registration Act registration of agreements is not mandatory. Hence, it is difficult to find out undervaluation, if any, in the conveyance deed registered subsequently.

Development, construction and sale of flat/apartment/villas by developers have been increasing from year to year during the last few years. A scrutiny of the

⁵ Monarch builders, Skyline, Heera, Artech, Cordial, Hoysala, Abad, Asset homes, Almark housing, Galaxy homes, Kent Constructions, Thrissur builders, Unidesign, Creations india, Cheloor, Gopuram and Forus initiative Builders

⁶ Form 49 is a declaration prescribed under Rule 24 B of Kerala Value Added Tax Rules 2005 to be filed along with returns by contractors/ promoters/developers or by what so ever name called who undertakes construction or developments of flats/apartments/villas.

Book 1⁷ register revealed that registration of development agreements between owner of land and the builders being not mandatory, were rarely brought under reports of the registering authority. In the absence of a proper mechanism to monitor the agreements, audit could not ascertain the number of development agreements executed in the State during the audit period and verify whether adequate stamp duty has been levied on them.

6.14.6 System Deficiency

Important deficiencies noticed in the existing system are narrated below:

6.14.6.1 Absence of mandatory provision in the Act resulted in provisions relating to development agreement ineffective

Under KSA, stamp duty leviable on agreements is ₹ 100. Under Act 15⁸ of 2007, stamp duty as applicable to conveyance, on the value or the estimated cost of proposed construction/development of such property is payable on agreements giving authority or power to a promoter or developer for construction, development or sale or transfer of any immovable property was introduced with effect from April 2007 and it was specified that when sale deed is executed, the parties will be granted rebate of stamp duty paid on the agreement.

The registering authorities were not obtaining copies of development/construction agreements at the time of registration of sale deeds executed after 1 April 2007, by builders/developers/promoters in favour of purchasers, in order to ensure that the documents bear proper stamp duty on the consideration which represents the actual transfer value of flats/apartments sold. Moreover, the registration of agreements not being compulsory, the sufficiency in collection of stamp duty on the agreements was not ensured at any point. Audit could not collect the details of development/construction agreements executed in the State since none of the offices in the State including Sub Registry Offices are in a position to furnish such details.

After this was pointed out (September 2013) Government stated (November 2013) that action had been taken to plug the leakage of revenue by way of non-levy of stamp duty by making the registration compulsory for agreements and revising the stamp duty leviable on development agreements at par with that of conveyance deeds.

The registration of development/construction agreements may be made compulsory and the registering authorities be directed to insist the production of such agreements while sale deed is produced before him for registration.

⁷ Book 1 Register in Sub Registry Office.

⁸ Finance Act 2007 published in K.G.Ext.No.1393 dated 28.7.2007 inserting clause 5(c)

6.14.6.2 Undervaluation of sale deeds due to lack of co-ordination between departments

Audit collected copies of 21 Agreements from two⁹ commercial tax offices (CTO) and copies of 5,255 Form 49¹⁰ from six¹¹ CTOs and cross verified with the details of conveyance deeds registered in 22¹² Sub Registry Offices. Test check of Form 49 filed in respect of 17 builders in the five districts selected with reference to records of sub Registry Offices revealed undervaluation in 820 sale deeds executed by the builders involving deficit stamp duty and registration fee amounting to ₹ 13.88 crore as shown in the Annexure XIII.

Audit scrutiny revealed that there was lack of co-ordination between Registration department and Commercial taxes department to ascertain the actual sale value of flats/villas/apartments from Form 49 and sale agreements filed with CTO. A comparison of the sale values appearing in the sale deed registered between April 2010 and March 2012 with the sale agreements filed with the CTO showed undervaluation of sale deeds executed by builders/developers in favour of buyers of flats/villas/apartments.

After this was pointed out, (September 2013) Government accepted the audit observation and stated (October 2013) that necessary directions had been given by the Government for obtaining data from the Commercial Taxes Department.

A system should be evolved by way of inserting provision in the manual in the Department to cross verify the details furnished by the contractors in other departments, to ensure that the value shown in the conveyance deeds are correct and duty levied on them are sufficient.

6.14.6.3 Instruments not duly stamped not impounded by Public officers

The Schedule to Kerala Stamp Act, 1959 provides for levy of stamp duty on instruments which require compulsory registration as well as instruments, the registration of which is optional. In respect of instruments requiring compulsory registration, the sufficiency of stamp duty is ensured by the registering authority when presented before them for registration. In respect of instruments that do not require compulsory registration, the sufficiency of stamp duty cannot be ensured since it is not presented before the registering authority.

Stamp duty leviable on all types of agreements was ₹ 100 upto 31 March 2007. However, from 1 April 2007, in the case of development agreements rates

⁹ CTO (WC) Thiruvananthapuram and Thrissur.

¹⁰ Under Kerala Value Added Tax Rules 2005, every dealer in works contract shall file copies of agreements executed for construction along with application for compounding. Further, every contractor/promoter/developer who undertakes construction or development of flats or apartments or villas shall file a declaration in Form 49 containing the details of ongoing projects, transfer of flats/villas/apartments constructed by him along with returns.

¹¹ Ernakulam, Kottayam, Kozhikode, Mattancherry, Thiruvananthapuram and Thrissur.

¹² Addl. SRO Kottayam, Ayyanthole, Chala, Chalapuram, Chavakkad, Chevayoor, Edappally, Ernakulam, Ettumanur, Fort, Kazhakuttam, Kottappady, Kozhikode, Maradu, Meenchantha, Pattom, Principal SRO Kottayam, Puthen Cruz, Sasthamangalam, Thrikkakara, Thrissur, and West Hill.

applicable were that of conveyance deeds. Section 34 of KSA stipulates that instruments chargeable with stamp duty shall be acted upon by any public officer only if they are duly stamped.

Verification of 21 development agreements submitted before six CTOs revealed that none of the development/construction agreements submitted in commercial tax offices was properly stamped as per article 5(c) of KSA. The agreements were found to be executed on stamp paper worth ₹ 100. Had the agreements been stamped at the same rate as conveyance deed as envisaged in Act 15 of 2007, the Government could have earned additional revenue of ₹ 59.04 lakh as shown in Annexure XIV.

The Commercial Taxes Department as the public office did not ask the contractor for stamping the papers at the correct rate.

When this was pointed out (September 2013) Government stated (November 2013) that the DRs are already empowered to inspect public offices to detect whether instruments are duly stamped.

These were pointed out in the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2011. However, the mistake continues to be committed.

It is recommended that the Government may issue direction to all public officers to ensure that the agreements entered into are duly stamped.



Thiruvananthapuram,
The

24 MAR 2014

(Dr. BIJU JACOB)
Accountant General
(Economic and Revenue Sector Audit)
Kerala

Countersigned



New Delhi,
The

31 MAR 2014

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

Annexure

Annexure – I**Details of Audit committee meetings conducted***(Reference: Para 1.3.2)*

Head of revenue	Number of meetings held	Number of paragraphs settled		Amount of settled paras (₹ in lakh)	Number of audit paragraphs outstanding and percentage of settlement
Tax on sales, trade etc.	2	2000-01	21	655.41	<u>17,227</u> 1.60
		2001-02	16		
		2002-03	45		
		2003-04	91		
		2004-05	39		
		2005-06	39		
		2006-07	12		
		2007-08	12		
		Total	275		
Stamp duty and registration fees	1	2008-09	1	6.01	<u>1,131</u> 0.97
		2009-10	1		
		2010-11	1		
		2011-12	3		
		2012-13	5		
		Total	11		
Taxes on vehicles	6	2005-06	7	326.56	<u>1,635</u> 23.55
		2006-07	12		
		2007-08	20		
		2008-09	61		
		2009-10	87		
		2010-11	136		
		2011-12	62		
		Total	385		
Land Revenue and Building Tax	1	2007-08	1	0.14	<u>1,371</u> 1.17
		2008-09	2		
		2009-10	3		
		2010-11	6		
		2011-12	1		
		2012-13	3		
		Total	16		
State Excise duties	1	2005-06	1	13.26	<u>483</u> 1.66
		2006-07	2		
		2007-08	4		
		2008-09	1		
		Total	8		
Grand Total	11		695	1,001.38	<u>21,847</u> 3.18

Annexure – II

List of important terminology

(Reference: Para 2.11.2)

Subject	Description	Authority
Awarder	Awarder is any person who awards any works contract to a contractor for execution	Section 2 (vii) of the Act
Contractor	Contractor is any person who undertakes any works contract for execution and includes a sub-contractor.	Section 2(xiv) of the Act
Assessee	Any person by whom tax or any sum of money is payable under the Act.	Section 2(iv) of the Act
Registration of contractors	Every contractor shall get himself registered under KVAT Act, 2003 irrespective of the quantum of his total turnover.	Section 15 (2)(ix) of the Act
Levy of tax under regular scheme	Transfer is in the form of goods - at the rates specified in the Schedules for such goods in the KVAT Act.	Section 6(1) (e) of the Act
	Transfer is not in the form of goods - but in some other form, at the rate of 12.5 <i>per cent</i> .	Section 6(1) (f) of the Act
	Transfer of declared goods at the rate of 4 <i>per cent</i>	Proviso to Section 6 of the Act
Levy of tax under compounded method at reduced rate (optional)	Three <i>per cent</i> of the whole amount contract – applicable only if two conditions are satisfied viz.,(i) not registered under CST Act, 1956, (ii) not an importer.	Section 8(a)(i) of the Act
	Three <i>per cent</i> of the contract amount less purchase value of goods – applicable to any contract.	Section 8(a)(ii) of the Act
	Four <i>per cent</i> of the whole contract amount – in case of Government of Kerala works or local body works.	Proviso to Section 8(a) of the Act
Option for payment	Two options for payment – (i) file separate application for compounding for individual work (ii) single option for payment of tax under the Scheme for all works undertaken during the year.	Proviso to Section 8(a)(ii)

Annexure – III**Persistent irregularities (featured in Audit Report (RR) 2009 to 2012***(Reference: Para 2.11.2)*

(₹ in crore)			
Sl No	Nature of irregularities	No. of cases	Amount
1.	Application of incorrect rate of tax - <i>Rate of tax applied on the taxable turnover was less than the applicable rate as per the statute</i>	42	23.66
2.	Difference between accounts and returns – <i>Turnover conceded in the return was less than the turnover certified by the Chartered Accountant</i>	13	17.67
3.	Inadmissible exemption – <i>Exemption was given to dealers which was not admissible to them – Eg:- compounded dealers are not eligible for exemption in respect of labour and other charges</i>	21	110.77
4.	Short levy due to incorrect compounding – <i>Rate of compounded tax applied was less than the compounded rate applicable as per the statute</i>	3	0.46
5.	Turnover escaping assessment – <i>Mistake was committed in arriving taxable turnover; actual transfer of material, material supplied by awarder etc., were not reckoned for assessment</i>	24	315.38
6.	Irregular compounding – <i>Contractors who were engaged in works contract, where transfer is in the form of goods, were allowed to compound</i>	16	6.80
7.	Omission to forfeit illegal tax collection – <i>Compounded works contractors were not entitled for collection of tax for the year upto 31-03-2008. Still they collected tax</i>	7	15.60
8.	Short levy due to incorrect classification – <i>Supreme Court held that supply and installation of lift is sale but the dealers classified it as works contract</i>	5	11.24
9.	Incorrect grant of permission to compound – <i>Dealers failed to file documents such as copies of agreement, application in form IDA, form 49 etc., for compounding</i>	17	6.92
10.	Other observation such as incorrect computation, incorrect credit, local sales treated as export etc	5	55.99
		153	564.49

Annexure – IV

Details of unregistered contractors

(Reference: Para 2.11.11)

Sl. No.	Name of Agency from which data collected	Nature of work done	No. of cases			
			Collected	Checked	Registered	Unregistered
1.	District Industries Centre	Bus body building, Galvanising and Powder coating units				
	(a) Trivandrum		4	4	0	4
	(b) Ernakulam		228	228	3	225
	(c) Kottayam		47	47	1	46
	(d) Kozhikode		43	43	4	39
	(e) Thrissur		35	35	1	34
	(f) Palakkad		113	113	0	113
2.	Department of Ports	Boat building units	21	21	3	18
3.	Department of Tourism	House boat building Units	5	5	0	5
Total			496	496	12	484

Annexure – V

Suppression of turnover in self assessment cases

(Reference: Paragraph 2.11.12.2)

(₹ in crore)

Sl No	Office to which related	Name of the assessee	Year	Awarder details	Amount disbursed by the awarder	Amount reported by the assessee	Turnover escaped assessment	Rate of Tax including cess (%)	Amount leviable	Amount Levied	Short levy of tax	Amount of interest	Amount of penalty	Total Short realisation
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	CTO, WC, Ernakulam	M/s Vijaya Tanks & Vessels	2009-10	IHI Corporation	72.58	64.60	7.98	12.625	6.87	6.12	0.76	0.29	1.51	2.56
2	CTO, WC, Ernakulam	M/s Siemens Building Technology	2008-09 to 2011-12	M/s Shapoorji Pallanji	10.49	0.04	10.45	12.625	1.32	0.01	1.32	0.46	2.64	4.42
3	CTO, WC, Palakkad	M/s Homa Interrial Decoration	2009-10 to 2011-12		0.14	0	0.14	12.625	0.01	0.00	0.01	0.00	0.03	0.04
4	CTO, WC, Kozhikode	M/s NJ Constructions	2009-10 to 2011-12		1.13	0	1.13	12.625	0.11	0.00	0.11	0.04	0.21	0.36
5	CTO, Spl. Circle II, Ernakulam	M/s Kirloskar Brothers Ltd.	2008-09	JBIC, KWA	58.67	7.66	51.01	12.625	5.56	0.73	4.83	2.37	9.66	16.85
			2009-10		28.20	4.08	24.12	12.625	2.67	0.39	2.28	0.85	4.57	7.70
			2010-11		14.80	1.07	13.73	12.625	1.40	0.10	1.30	0.33	2.60	4.23
			2011-12		9.47	0.19	9.28	12.625	0.90	0.02	0.88	0.11	1.76	2.75
6		M/s Larsen & Toubro	2008-09		107.40	3.32	104.08	12.625	10.17	0.31	9.86	4.83	19.71	34.4
			2009-10		27.10	12.39	14.71	12.625	2.57	1.17	1.39	0.52	2.79	4.70
			2011-12		29.45	28.21	1.24	12.625	2.79	2.67	0.12	0.02	0.23	0.37
7	CTO, WC, Thiruvananthapuram	Shri C Sasi	2011-12		1.07	0	1.07	12.625	0.10	0.00	0.10	0.01	0.20	0.31
8		Shri P Rajan	2011-12		1.69	0	1.69	12.625	0.16	0.00	0.16	0.04	0.32	0.52
9		M/s Crescent Construction Company	2010-11		2.21	0	2.21	12.625	0.21	0.00	0.21	0.05	0.42	0.68

(₹ in crore)

Sl No	Office to which related	Name of the assessee	Year	Awarder details	Amount disbursed by the awarder	Amount reported by the assessee	Turnover escaped assessment	Rate of Tax including cess (%)	Amount leviable	Amount Levied	Short levy of tax	Amount of interest	Amount of penalty	Total Short realisation
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10	CTO, WC, Thiruvananthapuram	M/s VT Hormese & Sons	2010-11	VSSC	1.80	0	1.8	12.625	0.17	0.00	0.17	0.04	0.34	0.55
11		M/s K Ramakrishna Contractors (P) Ltd.	2008-09	JBIC, KWA	39.49	0	39.49	4.04	1.20	0.00	1.20	0.59	2.39	4.18
			2009-10		36.8	33.3	3.5	4.04	1.12	1.01	0.11	0.04	0.21	0.36
			2010-11		4.53	0	4.53	4.04	0.14	0.00	0.14	0.03	0.27	0.45
12		M/s We Build (P) Ltd.	2011-12	KSUDP	12.76	4.45	8.31	4.04	0.52	0.18	0.34	0.04	0.67	1.05
13		M/s Degrimont Ltd.	JBIC, KWA	2008-09	33.86	0	33.86	4.04	1.03	0.00	1.03	0.50	2.05	3.58
				2009-10	16.71	0	16.71	4.04	0.51	0.00	0.51	0.19	1.01	1.71
				2010-11	11.17	8.12	3.05	4.04	0.34	0.25	0.09	0.02	0.18	0.30
				2011-12	17.27	8.97	8.3	4.04	0.52	0.27	0.25	0.03	0.50	0.79
14		CTO, Spl.Circle, Thiruvananthapuram	M/s Electro steel castings Ltd.	2008-09	25.17	23.61	1.56	4.04	0.76	0.72	0.05	0.02	0.09	0.17
				2009-10	30.41	24.94	5.47	4.04	0.92	0.76	0.17	0.06	0.33	0.56
				2010-11	6.58	5.34	1.24	4.04	0.20	0.16	0.04	0.01	0.08	0.12
				2011-12	1.78	1.54	0.24	4.04	0.05	0.05	0.01	0.00	0.01	0.02
15	CTO, WC, Idukki	M/s NAPC Ltd.	2009-10	KSTP	33.07	26.88	6.19	12.625	3.13	2.55	0.59	0.22	1.17	1.97
			2010-11	35.27	29.11	6.16	12.625	3.34	2.76	0.58	0.15	1.17	1.9	
			2011-12	31.36	26.11	5.25	12.625	2.97	2.47	0.50	0.07	0.99	1.67	
16	CTO, WC, Thiruvananthapuram	M/s VA Tec Wabag	2008-09		70.33	0	70.33	4.04	2.13	0.00	2.13	1.04	4.26	7.44
			2009-10	42.16	20.55	21.61	4.04	1.28	0.62	0.65	0.24	1.31	2.21	
			2010-11	22.15	8.93	13.22	4.04	0.67	0.27	0.40	0.10	0.80	1.30	
			2011-12	25.97	1.70	24.27	4.04	0.79	0.05	0.74	0.10	1.47	2.30	

(₹ in crore)

Sl No	Office to which related	Name of the assessee	Year	Awarder details	Amount disbursed by the awarder	Amount reported by the assessee	Turnover escaped assessment	Rate of Tax including cess (%)	Amount leviable	Amount Levied	Short levy of tax	Amount of interest	Amount of penalty	Total Short realisation		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
17	CTO, WC, Ernakulam	M/s Subhash Project and marketing Ltd.	2008-09	JBIC, KWA	72.81	49.76	23.05	4.04	2.21	1.51	0.70	0.34	1.40	2.44		
			2009-10		15.44	4.20	11.24	4.04	0.47	0.13	0.34	0.13	0.68	1.15		
			2010-11		9.15	0	9.15	4.04	0.28	0.00	0.28	0.07	0.55	0.9		
			2011-12		7.62	0	7.62	4.04	0.23	0.00	0.23	0.03	0.46	0.72		
18	CTO, WC, Mattancherry	M/s Engineering Project India Ltd.	2008-09		JBIC, KWA	21.46	0	21.46	4.04	0.65	0.00	0.65	0.32	1.30	2.27	
			2009-10			14.25	0	14.25	4.04	0.43	0.00	0.43	0.16	0.86	1.46	
			2010-11			6.73	0	6.73	4.04	0.20	0.00	0.20	0.05	0.41	0.66	
			2011-12			8.23	0	8.23	4.04	0.25	0.00	0.25	0.03	0.50	0.78	
19	CTO, WC, Ernakulam	M/s BESL (Tecpro)	2010-11	JBIC, KWA		1.09	0	1.09	12.625	0.10	0.00	0.10	0.03	0.21	0.34	
			2011-12			17.48	15.82	1.66	12.625	1.66	1.50	0.16	0.02	0.31	0.21	
20	CTO, WC, Mattancherry	M/s GHV (India)(P) Ltd.	2009-10			KSTP	2.48	0	2.48	4.04	0.10	0.00	0.10	0.04	0.20	0.34
			2010-11				5.69	0.95	4.74	4.04	0.23	0.04	0.19	0.05	0.38	0.65
21	CTO, II Circle, Thiruvananthapuram	Sri Balaji Associates	2011-12			4.11	3.53	0.58	4.04	0.17	0.14	0.02	0.00	0.05	0.07	
Total					1049.58	419.37	630.21							124.51		

Annexure – VI

Deduction of sub contracted works without Form 20H

(Reference: Paragraph 2.11.12.3)

(₹ in crore)

Sl. No.	Office to which related	Name of the assessee/TIN	Year	Turnover of deduction claimed	Short levy of tax including interest and penalty
1.	CTO, WC, Thrissur	M/s Unidesign builders & Developers (P) Ltd. 32081617506	2010-11	1.23	0.12
2.		M/s Alukkas Builders 32081670606	2010-11	5.75	0.57
3.			2011-12	4.88	0.46
4.	CTO, WC, Thiruvananthapuram	M/s Muthoot Builders 32011337992	2011-12	0.24	0.02
		M/s Cordial Company 32011316245	2009-10	0.30	0.03
		M/s Shivahari Builders 32011331499	2011-12	1.89	0.18
	CTO, WC, Ernakulam	M/s Olive Builders 32072036332	2008-09	1.98	0.21
		M/s Confident projects 32072009905	2009-10	14.29	1.50
			2010-11	12.79	1.26
			2011-12	15.79	1.50
		M/s Coral Shelters 32072073131	2010-11	1.79	0.18
		M/s Integrated Housing 32072073131	2009-10	0.30	0.03
		M/s Kristal infrastructure 32072061104	2009-10	10.94	1.12
	2010-11		15.13	1.49	
	M/s Seawood Homes 3207209102	2010-11	1.40	0.14	
6	CTO, WC, Kozhikode	M/s Monarch Builders & Developers 32111500893	2008-09	1.20	0.13
		M/s Malabar Highview Builders 32111503007	2011-12	2.68	0.25
		M/s Malabar Builder India Ltd. 32522961115	2011-12	3.69	0.35
7.	CTO, WC, Kottayam	M/s Sreegokulam Housing. 32051671301	2011-12	1.99	0.19
		M/s Shelter Home properties 32051637505	2008-09	2.04	0.22
			2009-10	3.57	0.06
			2010-11	0.78	0.08
			2011-12	0.46	0.04
	M/s Wexco Homes 32051609954	2008-09	1.30	0.14	
Total					10.27

Annexure – VII**Tax credit without furnishing certificate in Form 20F***(Reference: Paragraph 2.11.12.4)*

(₹ in crore)

Sl. No.	Office to which related	Name of the assessee/TIN	Year	Tax credit availed	Short levy of tax including interest and penalty
				(₹ in crore)	
1.	CTO, WC, Thiruvananthapuram	M/s Condour builders. 32011339245	2008-09	0.04	0.16
			2009-10	0.04	0.14
			2010-11	0.07	0.24
			2011-12	0.08	0.26
2	CTO, WC, Ernakulam	M/s SRK Shelters. 32072098522	2008-09	0.42	1.46
3		M/s Choice Construction. 32072007802	2009-10	0.69	2.30
4		M/s Afcons Infrastructure Ltd. 32072033204	2008-09	3.13	10.91
			2009-10	4.53	15.27
			2010-11	1.16	3.77
			2011-12	0.44	1.36
Total					35.87

Annexure – VIII

Sales treated as works contract

(Reference: Paragraph 2.11.15)

(₹ in crore)

Sl. No.	Office to which related	Name of the assessee/TIN	Nature of work	Year	Irregular exemption claimed	Short levy of tax including interest and penalty
1.	CTO, WC, Ernakulam	M/s Johnson lifts (P) Ltd 32072087992	SITC ¹ of Lift	2011-12	8.66	3.40
2.		Kumar M Desai, M/s Omega Elevators 32072045984		2009-10 to 2011-12	2.84	1.16
3	CTO, WC, Ernakulam	M/s Axis Elevators 32072059506		2011-12	0.37	0.15
4.		M/s Escon Elevators 32072014179	2009-10 to 2011-12	2.63	1.09	
5.	CTO, WC, Ernakulam	M/s HRJ Refrigeration 32072023912	SITC of AC	2011-12	0.60	0.24
6.		M/s Sub Zero Refrigeration & Air conditioners 32072011435		2009-10 to 2011-12	0.61	0.25
7.	CTO, Spl. Circle II, Ernakulam	M/s Kone Elevators India Ltd. 32070391244		2010-11 & 2011-12	23.95	7.25
8.	CTO, Spl. Circle II, Ernakulam	M/s Blue Star Ltd. 32070302335		2010-11 & 2011-12	24.37	9.80
9	CTO, WC, Mattancherry	M/s ETA Engineering (P) Ltd. 32151027025		2009-10 to 2011-12	8.92	3.59
10	CTO, Spl. Circle I, Ernakulam	M/s Voltas Ltd. 32070266965		2008-09 to 2011-12	20.12	8.25
11.	CTO, WC, Thrissur	M/s Shillibear Coaches (P) Ltd. 32081601352	Body building on chassis	2011-12	0.10	0.04
12.	CTO, III Circle, Thrissur	M/s PSN Industries (P) Ltd. 32080747432		2011-12	1.02	0.40
Total						35.62

¹ Supply, Installation, Testing and Commissioning

Annexure – IX**Incorrect exemption from payment of tax on sales to SEZ***(Reference: Paragraph 2.11.16)*

(₹ in crore)

Sl. No.	Office to which related	Name of the assessee/TIN	Year	Reason	Turnover exempted	Short levy of tax including interest and penalty
1.	CTO, WC, Thrissur	M/s KAP (India) Projects & Co (P) Ltd. 32081651245	2010-11	Non production of Form 43	12.61	1.24
2.			2011-12		7.63	0.72
3.	CTO, Spl. Circle II, Ernakulam & WC, Ernakulam	M/s Larsen & Toubro Ltd. 32070329245	2009-10 to 2011-12		147.12	44.64
4.		M/s Afcons Infrastructure Ltd. 32072033204	2009-10 to 2011-12		153.70	14.96
5.		M/s Blue Star Ltd. 32070302335	2010-11 & 2011-12		10.12	4.04
6.	CTO, Spl. Circle I, Ernakulam	M/s Voltas Ltd. 32070266965	2008-09 to 2011-12		4.65	1.95
7.	CTO, WC, Ernakulam	M/s Neo Structo Construction Ltd. 32072000782	2010-11	Sub Contractor not eligible for exemption	45.75	14.12
Total						81.67

Annexure – X

Deduction of labour and other charges from turnover which are not ascertainable from accounts

(Reference: Paragraph 2.11.17)

(₹ in crore)

Sl. No.	Office to which related	Name of the assessee/TIN	Year	Labour charges			Short levy of tax including interest and penalty
				Admissible	Allowed	Excess allowed	
1.	CTO, WC, Ernakulam	M/s Gokulam Engineers. 32072082952	2009-10 to 2011-12	1.10	3.02	1.92	0.78
2.		M/s DLF Projects. 32072053803	2008-09 to 2011-12	52.27	135.35	83.08	33.98
3.		M/s Silpa Projects & Infrastructure. 32072013707	2009-10 & 2010-11	18.38	40.61	22.23	9.25
4.		M/s BESL (Tecpro). 32072001175	2008-09 to 2011-12	7.72	26.48	18.76	8.01
5.	CTO, WC, Idukki	M/s NAPC. 32061553064	2009-10 to 2011-12	11.73	26.63	14.90	6.21
6.		M/s Rainbow contractors. 32072001265	2008-09 to 2011-12	5.69	14.37	8.68	3.57
7.	CTO, WC, Ernakulam	M/s CEMEX Engineers. 32072059732	2008-09 to 2011-12	7.91	24.20	16.29	6.90
8.		M/s Abtech Constructions. 32072090602	2008-09 to 2011-12	5.20	17.47	12.27	5.18
9.	CTO, WC, Ernakulam	M/s Soma Enterprises Ltd. 32072067303	2008-09, 2010-11 & 2011-12	24.41	110.27	85.86	37.98
10		M/s Coastal Projects Ltd. 32072078204	2010-11 & 2011-12	2.63	8.79	6.16	2.49
11		M/s ABB Ltd. 32072097464	2009-10 to 2011-12	32.59	82.23	49.64	21.54
12	CTO, Spl. Circle II, Ernakulam	M/s Larsen & Toubro Ltd. 32070329245	2010-11 & 2011-12	22.14	56.81	34.67	13.87
13	CTO, WC, Mattancherry	M/s Sai Engineering. 32151093704	2009-10 & 2010-11	2.58	10.23	7.65	3.17
14	CTO, WC, Ernakulam	M/s Simplex infrastructure. 32072041945	2009-10 to 2011-12	42.62	100.26	57.64	13.14
15		M/s BHEL. 32072043622	2008-09 & 2009-10	38.00	65.47	27.47	11.73
16		M/s Hindustan Door Oliver Ltd. 32072035342	2008-09 to 2011-12	9.53	34.78	25.25	10.25
Total							188.05

Annexure – XI**Variation between accounts and returns***(Reference: Paragraph 2.11.18)*

(₹ in crore)

Sl No	Office to which related	Name of the assessee/ TIN	Year	Taxable turnover as per		Turnover escaped assessment	Short levy including interest and penalty
				Accounts	Returns		
1.	CTO,WC, Ernakulam	M/s Jairaj Properties. 32072015935	2008-09	7.56	4.26	3.30	0.35
			2009-10	4.13	4.06	0.07	0.01
2.	CTO, Spl. Circle II, Ernakulam	M/s Larsen & Toubro 32070329245	2010-11	62.52	61.67	0.85	0.26
			2011-12	107.19	85.05	22.14	6.58
3.	CTO,WC, Thrissur	M/s Unidesign Builders & Developers (P) Ltd. 32081617506	2010-11	4.54	2.90	1.64	0.16
4.	CTO,WC, Ernakulam	M/s Yesoram Builders 32072015294	2010-11	4.97	3.23	1.74	0.17
			2011-12	6.82	3.84	2.98	0.29
5.		M/s NJK Builders 32072032934	2010-11	2.99	1.23	1.77	0.17
6.	CTO,WC, Thiruvanan- thapuram	M/s Shobha developers 32011311565	2009-10	44.74	35.96	8.78	0.90
			2010-11	120.32	118.32	2.00	0.20
7.	CTO,WC, Ernakulam	M/s DLF Projects 32072053803	2009-10	31.53	30.80	0.73	0.07
8.		M/s Silpa Projects & Infrastructure Ltd. 32072013707	2009-10	47.11	43.25	3.87	0.39
			2010-11	45.93	30.27	15.66	1.53
Total							11.08

Annexure – XII

Short levy due to inadmissible compounding

(Reference: Paragraph 2.11.20.2)

(₹ in crore)

Sl. No.	Office to which related	Name of the assessee/TIN	Nature of work	Year	Turnover compounded	Short levy of tax including interest and penalty
1	CTO, WC, Mattancherry	M/s Vijaya Process and Engineers 32151095482	Supply of poles	2011-12	2.22	0.66
2		Shri Sasi, Eloor 32151080924		2009-10 to 2011-12	10.50	0.33
3	CTO, WC, Thrissur	M/s Alan & Co 32081612883	Supply of aluminium doors and windows	2010-11	0.26	0.08
4	CTO, WC, Kottayam	M/s Kunnel Aluminium Works 32051670805		2008-09 to 2011-12	5.18	1.74
5		M/s Vettoor Construction Engineering 32051619764	Contract agreements and accounts not produced	2008-09 to 2011-12	51.65	16.56
6	CTO, Wadakkancherry	M/s Esskay industries 32465300813	Crushed metal	2009-10	2.65	1.13
7	CTO, WC, Mattancherry	M/s Vishal Infrastructure 32151035542	Works not eligible for compounding u/s 8(a)(ii)	2009-10 to 2011-12	59.06	16.49
8	CTO, WC, Thiruvananthapuram	M/s Nikunjam Constructions 32011312184	Compounding application not filed	2010-11	4.77	1.00
Total						37.99

Annexure – XIII

Undervaluation of sales deed due to lack of co-ordination between departments

(Reference: Paragraph 6.14.6.2)

(₹ in lakh)

Sl. No.	District	Builder	Project	No. of cases	Short levy of SD&RF
1	Kozhikode	Monarch Builders	Presentation Heights	7	10.74
2	Thiruvananthapuram	Skyline	SFS Grande	10	49.92
			Cherry	38	131.31
		Heera	I	18	55.07
			II	40	130.13
		Artech	Lakeview	3	6.79
			Retreat	15	7.98
		Cordial	Cordial Estate	19	27.70
3	Ernakulam	Skyline	Lavender	73	126.06
			Palmtop	48	56.18
			River Scape	8	16.59
			Legacy	3	11.09
			Topaz	21	91.09
		Hoyssala	D'zire	1	1.97
		Abad Builders	Blue Chip	105	91.50
			Green Terrace	1	0.43
		Asset Homes	East Thottekatt	3	6.40
			City Bay & Metro Bay	4	2.07
			North Star	12	16.84
			Urban Crest	5	7.75
			Enlive & Enlist	5	2.60
			Vilangadan Residency	16	9.38
			Life Space	3	1.97
			Solitaire	2	12.04
		Almark Housing	Santi Hill View	14	18.63
			Santhi Karthedathu Avenue	18	18.95
			Santhi Prathyusha	3	5.27
		Galaxy Homes	Ebony Grove	16	14.81
			Cherrywood	8	7.02
		Kent Constructions	Palmgrove	38	78.94
			Hail Garden	14	39.78
4	Thrissur	Thrissur Builders	Kalindi Residency	44	56.80
			Indus Avenue	30	55.61
			Pearl Garden	9	11.30
			Krishnaprabha	20	19.77
			Malini	4	6.33
			Aiswarya Garden	16	36.22
			Alakanandha	7	6.60

Sl. No.	District	Builder	Project	No. of cases	Short levy of SD&RF
		Unidesign	Achutham	7	9.44
			Vykundam	5	5.77
		Creations India	Coronet	23	42.21
		Cheloor	Krishnakripa	4	4.79
		Gopuram	Ajantha	24	24.13
		Forus Initiative	Navaneetham	5	5.30
5	Kottayam	Heera	Green Court	51	46.37
Total				820	1,387.64

Annexure – XIV**Instruments not duly stamped but not impounded by public officers***(Reference: Paragraph 6.14.6.3)*

SL. No.	Name of purchaser	Agreement Value	Stamp duty due @ 9%	Stamp duty paid	Short levy of stamp duty	Short levy of registration fee @ 2%	Total short levy
		(₹)	(₹)	(₹)	(₹)	(₹)	(₹ in lakh)
1	Abdul Azeez Saifudeen	23,70,000	2,13,300	50	2,13,250	47,400	2.61
2	Nirmala Venugopal	35,00,000	3,15,000	100	3,14,900	70,000	3.85
3	K M Naveen	77,00,000	6,93,000	50	6,92,950	1,54,000	8.47
4	Sajeevan Menon	21,27,050	1,91,435	50	1,91,385	42,541	2.34
5	Remesh Krishnan	27,44,192	2,46,977	50	2,46,927	54,884	3.02
6	Rajmohan Nair	35,45,664	3,19,110	50	3,19,060	70,913	3.90
7	K.V.Joseph	32,45,164	2,92,065	50	2,92,015	64,903	3.57
8	MR. Jose Joseph	32,51,340	2,92,621	50	2,92,571	65,027	3.58
9	E. Ravindran	32,46,400	2,92,176	50	2,92,126	64,928	3.57
10	Anilkumar S K	17,35,480	1,56,193	100	1,56,093	34,710	1.91
11	Lathika	15,93,250	1,43,393	50	1,43,343	31,865	1.75
12	S. Ganesh Kumar	12,78,000	1,15,020	50	1,14,970	25,560	1.41
13	Dr. Unnikrishnan K	11,64,000	1,04,760	50	1,04,710	23,280	1.28
14	M M Sheikh Hussain	13,38,000	1,20,420	50	1,20,370	26,760	1.47
15	Shaju Jose	21,08,800	1,89,792	50	1,89,742	42,176	2.32
16	B. P Shamsudeen	24,12,000	2,17,080	50	2,17,030	48,240	2.65
17	M N Murali	24,80,000	2,23,200	50	2,23,150	49,600	2.73
18	A A Hariharan	18,15,156	1,63,364	50	1,63,314	36,303	2.00
19	Ani Balachandran	13,00,137	1,17,012	50	1,16,962	26,003	1.43
20	Parameswaran Nampoothiri	24,65,000	2,21,850	100	2,21,750	49,300	2.71
21	Shobha R Nambiar	22,47,500	2,02,275	100	2,02,175	44,950	2.47
Total					48,28,792	10,73,343	59.04

