

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

FOR THE YEAR ENDED 31 MARCH 1994

NO. 2

(REVENUE RECEIPTS)

GOVERNMENT OF MAHARASHTRA

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PREFATORY REMARKS

This Report for the year ended 31 March 1994 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

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. This Report presents the results of audit of receipts comprising sales tax, state excise, land revenue, taxes on motor vehicles, stamp duty and registration fees, other tax and non-tax receipts of the State.

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 1993-94 as well as those noticed in earlier years which could not be covered in previous years' Reports.

OVERVIEW

This report contains 35 paragraphs relating to non-levy/short levy of taxes, duties, interest and penalty etc. involving Rs.11.35 crores. Some of the major findings are mentioned below:

1. General

(i) The revenue raised by the State Government during 1993-94 amounted to Rs.10,079.21 crores comprising Rs.7696.20 crores as tax revenue and Rs.2383.01 crores as non-tax revenue. Rs.1541.36 crores were received from the Government of India as the State's share of divisible Union taxes and Rs.1366.22 crores as grants-in-aid. Sales Tax (Rs.4740.78 crores) formed a major portion (62 per cent) of the tax revenue of the State. Interest receipts (Rs.928.61 crores) formed a major portion (39 per cent) of the non-tax revenue.

(Paragraph 1.1)

(ii) At the end of 1993-94, the arrears in respect of taxes administered by the departments of Finance, Home, Tourism and Industries, Energy and Labour amounted to Rs.1895.62 crores of which sales tax alone accounted for Rs.1517.69 crores.

(Paragraph 1.5)

(iii) In respect of the taxes administered by the Finance Department such as Sales tax, Profession tax and tax on Works Contracts etc., 12.98 lakh assessments were completed during 1993-94 leaving a balance of 17.19 lakh assessments as on 31st March 1994.

(Paragraph 1.6)

(iv) Test check of records of Sales Tax, State Excise, Motor Vehicles Tax, Land Revenue and other departmental offices conducted during the year 1993-94 revealed under-assessments, short levy, losses of revenue etc., amounting to Rs.3907.36 lakhs in 13112 cases. The concerned departments accepted under-assessments, short levy etc. of Rs.675.13 lakhs of which Rs.48.58 lakhs had been pointed out in 1993-94 and rest in earlier years. Departments recovered Rs.66.85 lakhs at the instance of audit.

(Paragraph 1.11)

(v) 3824 inspection reports (issued upto December 1993) containing 9355 audit observations involving revenue of Rs.63.13 crores were pending settlement at the end of June 1994.

(Paragraph 1.13)

2. Sales Tax

(i) Incorrect determination orders and classification of commodities resulted in loss of revenue amounting to Rs.199.85 lakhs.

(Paragraph 2.2)

(ii) Suppression of purchases worth Rs.1286.48 lakhs on declarations resulted in evasion of tax amounting to Rs.102.03 lakhs.

(Paragraph 2.3)

(iii) Suppression of High Sea Purchases worth Rs.158.74 lakhs resulted in evasion of tax of Rs.27.04 lakhs.

(Paragraph 2.4)

(iv) Incorrect grant of set-off resulted in non-realisation of revenue amounting to Rs.11.13 lakhs in 16 cases.

(Paragraph 2.5)

(v) Non-levy/short levy of Sales Tax/Purchase Tax, Additional Tax and Turnover Tax resulted in non-realisation of revenue amounting to Rs.63.74 lakhs in 28 cases.

(Paragraph 2.6, 2.7, 2.8 and 2.9)

3. State Excise

(a) There was short recovery of Licence fees of Rs.98.50 lakhs in nine districts due to misinterpretation of Government stay order by the Excise authorities.

(Paragraph 3.2.2)

(b) Incorrect fixation of rates of excise duty resulted in loss of revenue of Rs.18.72 lakhs.

(Paragraph 3.2.3)

(c) In two breweries, beer was removed without payment of excise duty of Rs.7.53 lakhs.

(Paragraph 3.2.4)

(d) As there is no provision in the Excise Act for levy of interest on belated payments of duties/fees, Government dues were delayed from 45 days to 221 days.

(Paragraph 3.2.5)

4. Land Revenue

(i) (a) Delay in making amendments to Maharashtra Land Revenue Code, 1966 resulted in loss of revenue amounting to Rs.34 lakhs.

(Paragraph 4.2.2(ii))

(b) Non-agricultural assessment amounting to Rs.49.35 lakhs in respect of land acquired for non-agricultural use was not levied.

(Paragraph 4.2.2.(iii))

(c) Assessment of the Inami and special tenures land in Bombay City amounting to Rs.13.78 lakhs was not made.

(Paragraph 4.2.2(iv)(a))

(d) Non-agricultural assessment and fine amounting to Rs.38.85.lakhs in respect of land unauthorisedly used was not levied.

(Paragraph 4.2.3)

(ii) Non-levy/short levy of land revenue, increase of land revenue and cesses resulted in non-realisation of revenue amounting to Rs.10.81 lakhs.

(Paragraph 4.3(a))

5. Taxes on Motor Vehicles

Motor vehicles tax and further tax amounting to Rs.12.51 lakhs in 221 cases remained unrealised as demands were not raised by the department, till they were pointed out in Audit.

(Paragraph 5.3)

6. Stamp duty and Registration fees

Misclassification of instruments resulted in short levy of stamp duty amounting to Rs.14.48 lakhs.

(Paragraph 6.2)

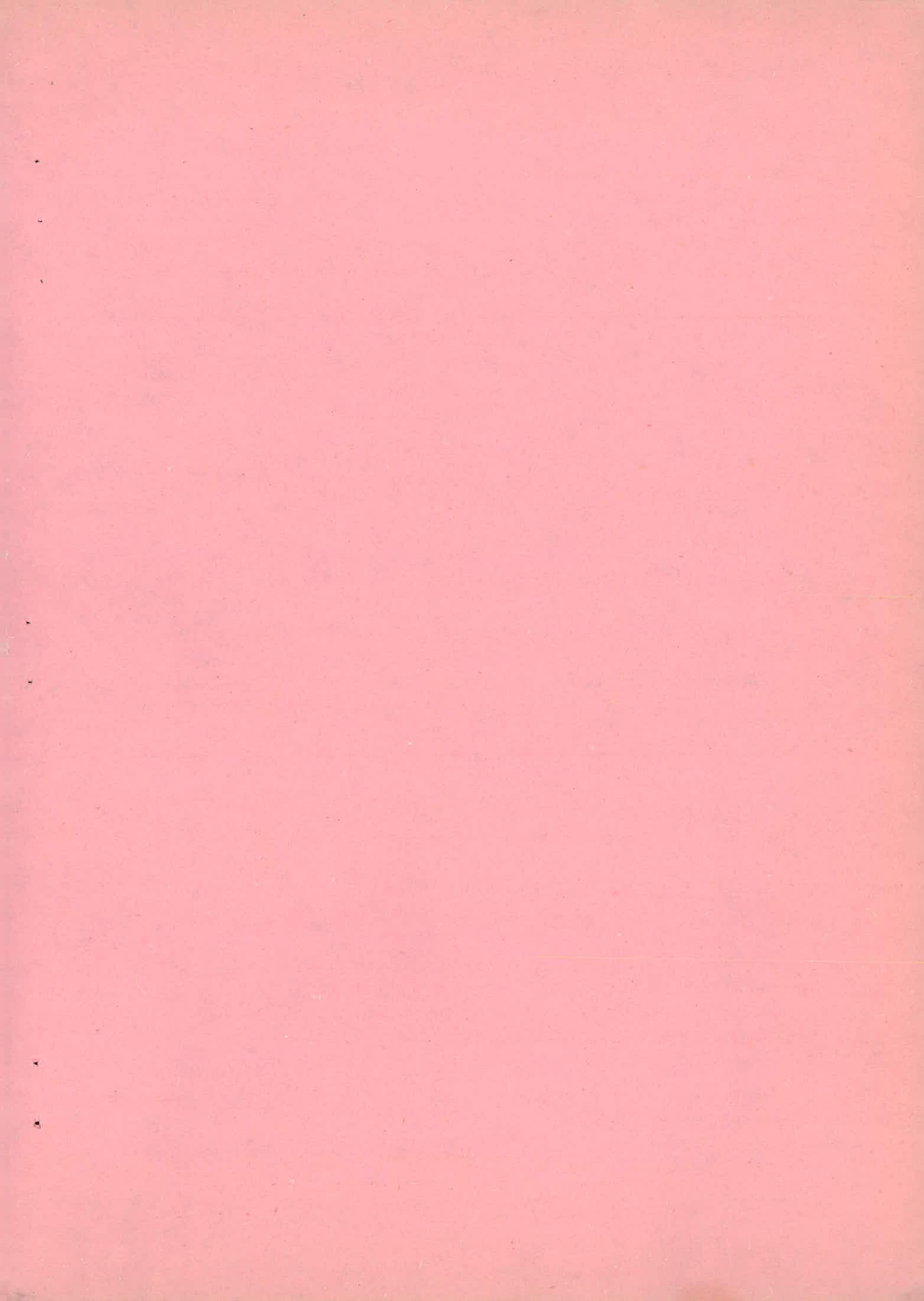
7. Other tax receipts

(i) Entertainments duty collected from public and paid to Government which was exempted retrospectively was allowed to be adjusted against future liability of proprietors of two amusement parks resulting in undue benefit amounting to Rs.123.96 lakhs to them.

(Paragraph 7.2)

(ii) Non-remittance of State Education Cess and Employment Guarantee Cess to Government account collected by a Municipal Corporation resulted in blocking of Government revenue amounting to Rs.235.06 lakhs.

(Paragraph 7.6)



CHAPTER 1

GENERAL

1.1 Trend of Revenue Receipts

The tax and non-tax revenue raised by the Government of Maharashtra during the year 1993-94, the State's share of divisible Union taxes and grants-in-aid received from the Government of India during the year and corresponding figures for the preceding two years are given below and also exhibited in Chart-I.

1991-92 1992-93 1993-94
(In crores of rupees)

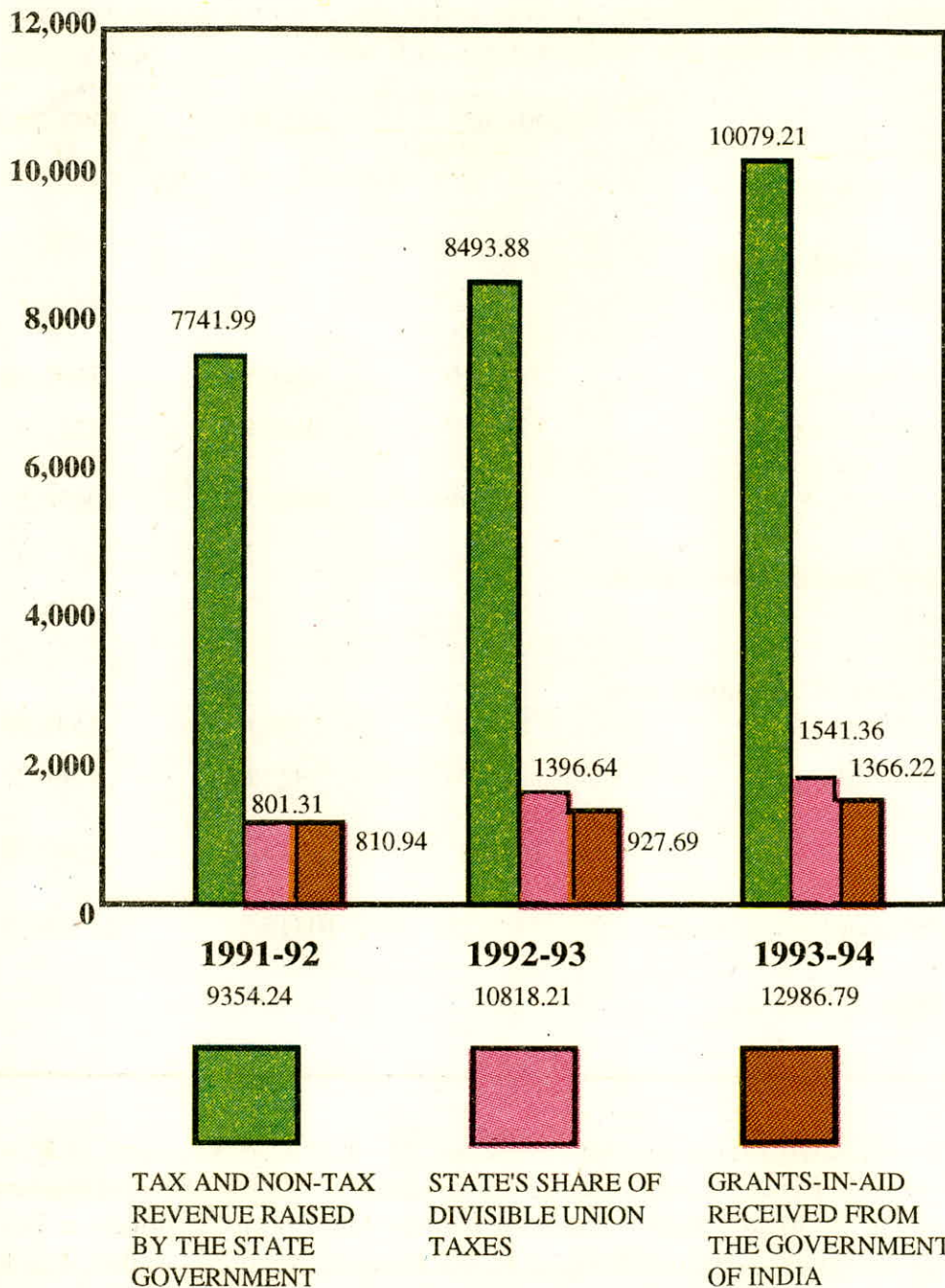
I.	Revenue raised by the State Government			
(a)	Tax revenue	5954.30	6560.93	7696.20
(b)	Non-tax revenue	1787.69	1932.95	2383.01
	Total	7741.99	8493.88	10079.21
II.	Receipts from the Government of India			
(a)	State's share of divisible Union taxes	801.31	1396.64	1541.36
(b)	Grants-in-aid	810.94	927.69	1366.22
	Total	1612.25	2324.33	2907.58
III.	Total receipts of the State	9354.24	10818.21	12986.79
IV.	Percentage of I to III	83	79	78

Note : For details, please see Statement No. 11 - Detailed Accounts of Revenue by Minor Heads in the Finance Accounts of the Government of Maharashtra for the year 1993-94. Figures under the head "0021 - Taxes on Income other than Corporation Tax - share of net proceeds assigned to States" booked in the Finance Accounts under Tax Revenue have been excluded from revenue raised by the State and included in State's share of divisible Union taxes in this Statement.

CHART I

TREND OF REVENUE RECEIPTS

(IN CRORES OF RUPEES)



(a) The details of tax revenue during the year 1993-94 alongwith figures for the preceding two years are given below and also exhibited in Chart-II.

	1991-92	1992-93	1993-94	Percentage of increase (+) or decrease (-) in 1993-94 over 1992-93
	(1)	(2)	(3)	(4)
	(In crores of rupees)			
1. Sales Tax	3808.73	4141.20	4740.78	(+) 14
2. State Excise	600.88	689.74	903.16	(+) 31
3. Stamps and Registration Fees	369.78	484.40	612.66	(+) 26
4. Taxes and Duties on Electricity	296.35	276.33	336.66	(+) 22
5. Taxes on Vehicles	233.25	235.95	270.48	(+) 15
6. Other Taxes on Income and Expenditure -Tax on Professions, Trades, Callings and Employments	212.41	235.85	253.29	(+) 7
7. Taxes on Goods and Passengers	199.07	208.60	251.65	(+) 21
8. Other Taxes and Duties on Commodities and Services	189.70	217.17	250.60	(+) 15
9. Land Revenue	44.11	71.66	76.91	(+) 7
10. Others	0.02	0.03	0.01	....
TOTAL	5954.30	6560.93	7696.20	

It may be seen from the table that there was substantial increase over the previous year under the heads State Excise, Stamps and Registration Fees, Sales Tax, Taxes and Duties on Electricity, Taxes on Goods and Passengers and Taxes on Vehicles. The reasons for variations in receipts in 1993-94 as per Finance Accounts are as follows :

State Excise :- The increase is due to increase in excise duty on various types of liquors and increase of transport fee.

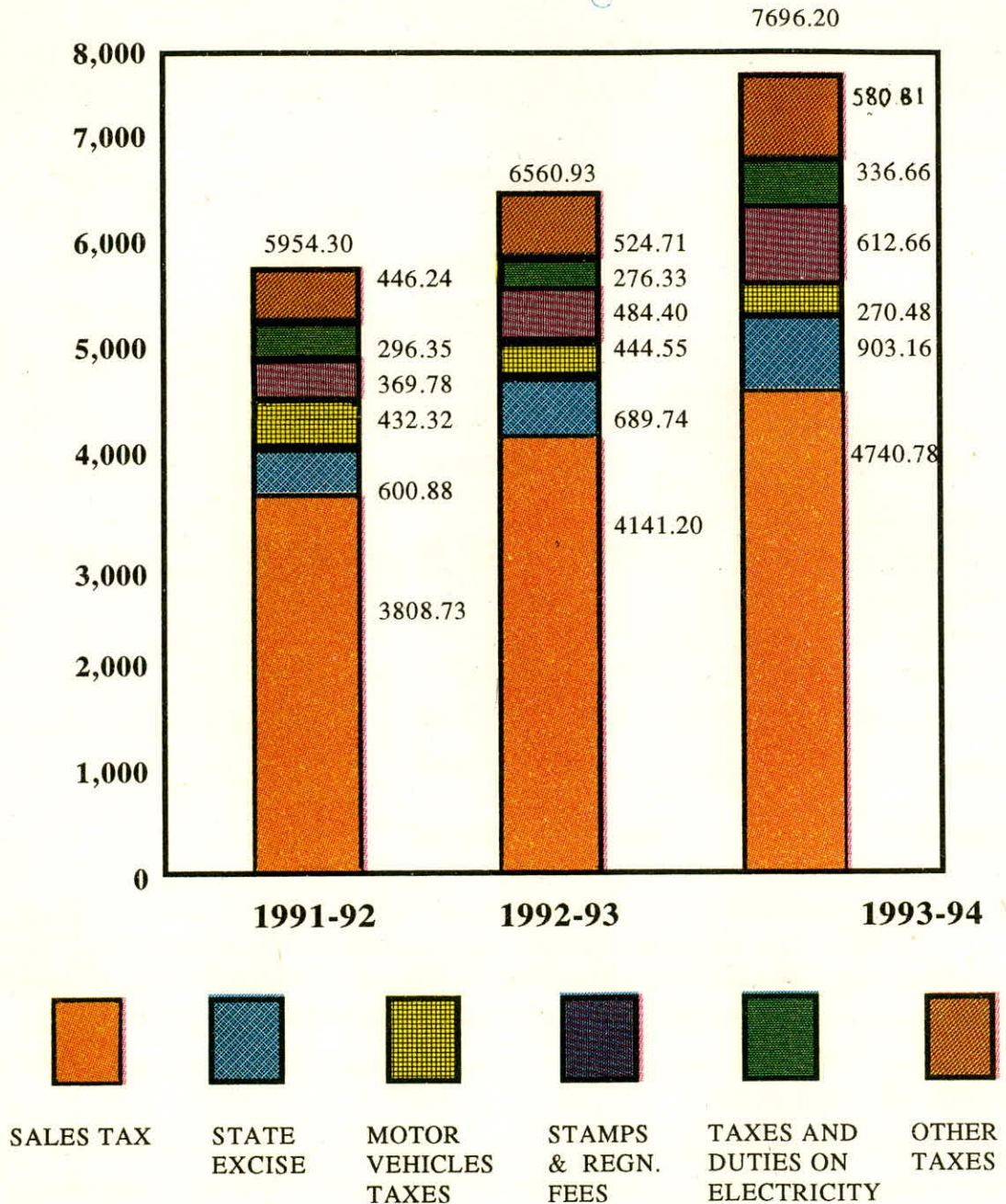
Stamps and Registration fees :- The increase is mainly due to increase in stamp duty on various instruments and increase in number of transactions attracting stamp duties.

CHART II

GROWTH OF TAX REVENUE

DURING THE PERIOD 1991-92 TO 1993-94

(IN CRORES OF RUPEES)



Sales Tax :- Increase was mainly due to upward revision in prices of petroleum products and general rise in prices of taxable commodities.

Taxes and Duties on Electricity :- Increase was mainly on account of more receipts from taxes on consumption and sale of electricity.

Taxes on Goods and Passengers :- Increase was mainly due to upward revision of fare.

Taxes on Vehicles :- Increase was mainly due to more receipts under the Indian Motor Vehicles Act and State Motor Vehicles Taxation Act.

(b) The details of the major non-tax revenue receipts during the year 1993-94 alongwith figures for the preceding two years are given below and exhibited in Chart III.

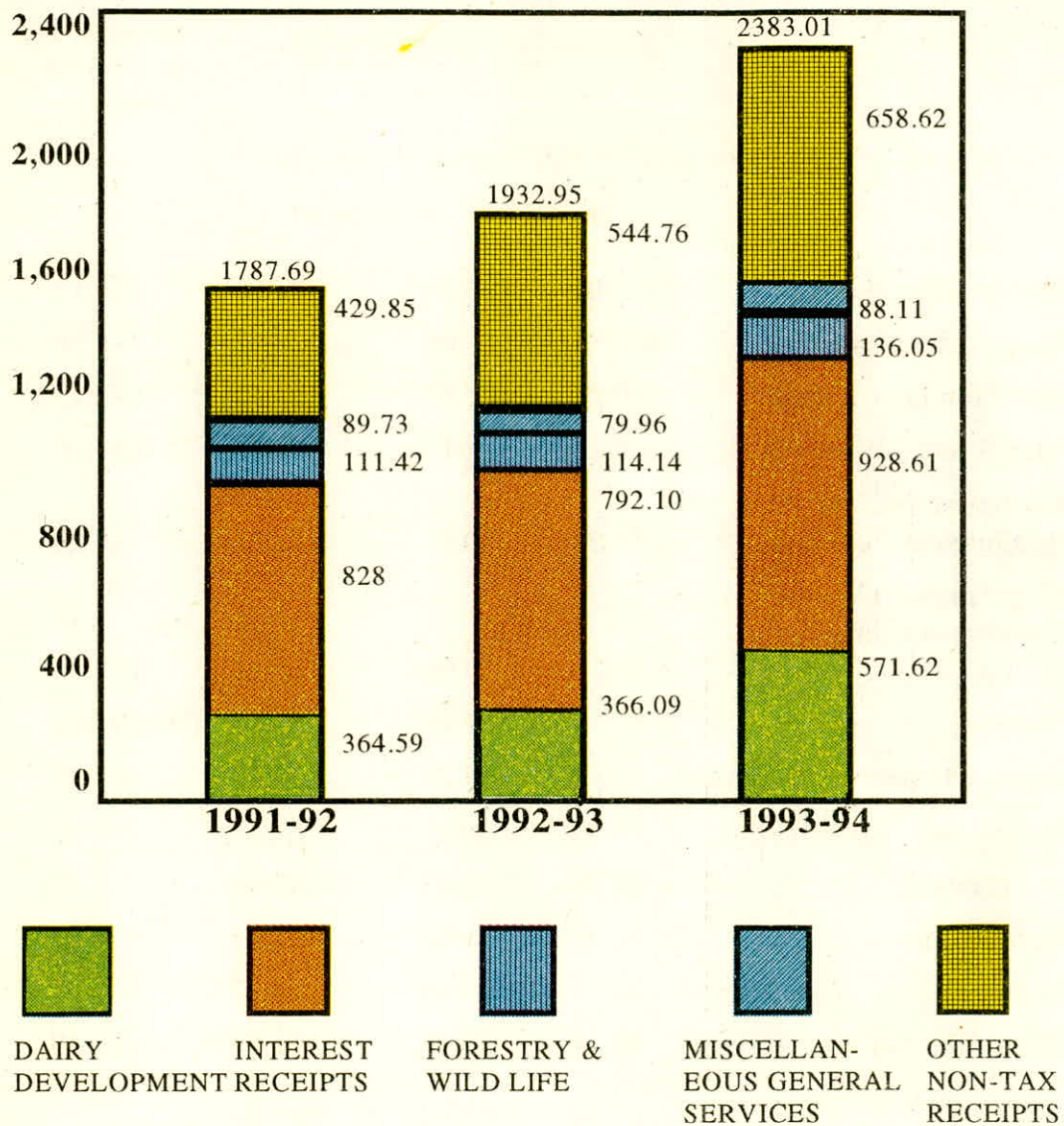
	1991-92	1992-93	1993-94	Percentage of increase (+) or decrease (-) in 1993-94 over 1992-93
	(1)	(2)	(3)	(4)
	(In crores of rupees)			
1. Interest Receipts	792.10	828.00	928.61	(+) 12
2. Dairy Development	364.59	366.09	571.62	(+) 56
3. Other Non-tax Receipts	159.98	171.47	194.10	(+) 13
4. Forestry and Wild Life	111.42	114.14	136.05	(+) 19
5. Non-ferrous Mining and Metallurgical Industries	32.29	110.51	141.61	(+) 28
6. Miscellaneous, General Services (including lottery receipts)	89.73	79.96	88.11	(+) 10
7. Power	51.79	51.96	51.91	Negligible
8. Major and Medium Irrigation	21.42	45.77	78.29	(+) 71
9. Medical and Public Health	39.10	39.26	57.27	(+) 46
10. Co-operation	22.56	33.23	29.42	(-) 11
11. Public Works	29.38	31.82	38.96	(+) 22
12. Police	27.89	31.46	23.17	(-) 26
13. Other Administrative Services	45.44	29.28	43.89	(+) 50
TOTAL	1787.69	1932.95	2383.01	

CHART III

GROWTH OF NON-TAX REVENUE

DURING THE PERIOD 1991-92 TO 1993-94

(IN CRORES OF RUPEES)



The reasons for variations in receipts in 1993-94 as per Finance Accounts are as follows :

Dairy Development :- The increase was on account of more receipts from sale of milk due to more procurement of milk.

Major and Medium Irrigation :- The increase was mainly due to larger receipts on account of sale of water from major and medium irrigation projects.

Non-ferrous Mining and Metallurgical Industries :- The increase was mainly due to increase in royalty on coal and other minor minerals.

Forestry and Wild Life :- The increase was due to more receipts from sale of timber and other forest produce.

Medical and Public Health :- The increase was due to more receipts from Employees' State Insurance Corporation Scheme.

1.2 Variation between Budget estimates and actuals

The variations between the Budget estimates and actuals of revenue receipts for the year 1993-94 in respect of principal heads of tax and non-tax revenue are given below :

Head of Revenue	Budget estimates	Actuals	Variations Excess (+) or shortfall (-)	Percentage of variation
(1)	(2)	(3)	(4)	(5)
(In crores of rupees)				
1. Sales Tax	4648.13	4740.78	(+) 92.65	2
2. Interest Receipts	1016.18	928.61	(-) 87.57	(-) 9
3. State Excise	700.66	903.15	(+) 202.49	29
4. Dairy Development	413.84	571.62	(+) 157.78	38
5. Stamps and Registration Fees	432.00	612.66	(+) 180.66	42
6. Taxes and Duties on Electricity	304.88	336.66	(+) 31.78	10
7. Taxes on Vehicles	265.53	270.48	(+) 4.95	2
8. Taxes on Goods and Passengers	266.82	251.65	(-) 15.17	(-) 6
9. Other taxes on Income and Expenditure -Tax on Professions, Trades, Callings and Employments	240.00	253.29	(+) 13.29	6

(1)	(2)	(3)	(4)	(5)
	(In crores of rupees)			
10. Forestry and Wild Life	134.20	136.05	(+) 1.85	1
11. Land Revenue	48.57	76.91	(+) 28.34	58
12. Power	51.77	51.91	(+) 0.14	Negligible
13. Non-ferrous Mining and Metallurgical Industries	119.97	141.61	(+) 21.64	18
14. Medical and Public Health	41.04	57.27	(+) 16.23	40
15. Police	34.57	23.17	(-) 11.40	(-) 33
16. Co-operation	25.28	29.42	(+) 4.14	16
17. Major and Medium Irrigation	37.87	78.29	(+) 40.42	107

The reasons for variations between Budget estimates and actuals as reported by the concerned departments are as follows :

State Excise :- Increase in receipts of State Excise is due to increase in excise duty on various types of liquor and increase in transport fee.

Medical and Public Health :- Receipts of medical and public health have gone up mainly due to realisation of contribution from Employees' State Insurance Corporation in respect of the earlier years.

Major and Medium Irrigation :- Increase in receipts of major and medium irrigation is due to increase in rates of water.

The reasons for variations in respect of other sources of revenue though called for (April 1994) from the concerned departments have not been received (November 1994).

1.3 Analysis of collections

Break-up of total collections at pre-assessment stage and after regular assessment of Sales Tax, Motor Spirit Tax, Profession Tax, Entry Tax and Luxury Tax for the year 1993-94 and the corresponding figures for the preceding two years as furnished by department are as follows:

Name of Tax head	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Penalties for delay in payment of taxes and duties	Amount refunded	Net collection	Percentage of column 3 to 7
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
(In c r o r e s o f r u p e e s)							
Sales Tax	1991-92	2920.98	340.95	84.89	82.04	3179.89	92
	1992-93	3164.42	395.87	....	72.77	3487.52	91
	1993-94	3406.79	660.01	....	63.86	4002.94	85
Motor Spirit Tax	1991-92	542.57	....	....	....	542.57	100
	1992-93	604.86	....	....	....	604.86	100
	1993-94	673.89	....	....	....	673.89	100
Profession Tax	1991-92	199.46	8.81	....	0.12	208.15	96
	1992-93	205.22	30.64	....	0.01	235.85	87
	1993-94	250.09	3.20	....	0.04	253.25	99
Entry Tax	1991-92	7.76	0.58	....	0.08	8.34	95
	1992-93	3.08	0.51	....	....	3.59	86
	1993-94	7.15	1.29	....	....	8.44	85
Luxury Tax	1991-92	19.50	0.21	....	....	19.71	94
	1992-93	19.83	0.58	....	....	20.41	97
	1993-94	33.00	3.36	....	....	36.36	91

The table above shows that collection of revenue at pre-assessment stage ranged between 92 and 100 per cent during 1991-92, between 86 and 100 per cent during 1992-93 and between 85 and 100 per cent during 1993-94. This indicates awareness for voluntary compliance by tax payers and the limited role of tax collecting machinery in achieving the higher targets of income.

1.4 Cost of collection

The gross collections in respect of major revenue receipts, expenditure incurred on their collection and the percentage of such expenditure to gross collections during the year 1991-92, 1992-93 and 1993-94 alongwith the relevant all India average percentage of expenditure on collection to gross collection for 1992-93 are given below :-

Head of Account	Year	Collection*	Expenditure on collection of revenue**	Percentage of expenditure on collection	All India Average for the year 1992-93
(1)	(2)	(3)	(4)	(5)	(6)
(In crores of rupees)					
1. Sales Tax	1991-92	3808.73	36.63	0.96	1.5
	1992-93	4141.20	34.33	0.83	
	1993-94	4740.78	38.05	0.80	
2. Profession Tax	1991-92	212.41	3.00	1.41	
	1992-93	235.85	3.43	1.45	
	1993-94	253.29	3.59	1.42	
3. Taxes on Vehicles and Taxes on Goods and Passengers	1991-92	432.32	12.13	2.80	2.9
	1992-93	444.55	13.34	3.01	
	1993-94	522.13	14.42	2.76	
4. State Excise	1991-92	600.88	2.29	0.38	2.2
	1992-93	689.74	4.72	0.68	
	1993-94	903.16	5.29	0.59	
5. Entertainments Duty, Advertisement Tax and Betting Tax	1991-92	86.31	1.48	1.71	
	1992-93	90.67	1.62	1.79	
	1993-94	107.58	Awaited		
6. Non-ferrous Mining and Metallurgical Industries	1991-92	32.29	0.32	0.99	
	1992-93	110.51	0.38	0.34	
	1993-94	141.61	0.50	0.35	
7. Taxes and duties on Electricity	1991-92	296.35	5.03	1.70	
	1992-93	276.33	5.11	1.85	
	1993-94	336.66	Awaited		

The details of expenditure on collection of revenue in respect of entertainments duty, land revenue, stamp duty and registration fees and taxes and duties on electricity though called for (April 1994) have not been received (November 1994).

* Figures as per Finance Accounts

** Figures as furnished by the department

1.5 Arrears of Revenue

The arrears of revenue as on 31st March 1994 under principal heads of revenue and details of action taken to recover them as furnished by some of the departments are given below :

Source of Revenue	Amount outstanding as on 31st March 1994	Amount outstanding for more than 5 years as on 31st March 1994	Remarks
(1)	(2)	(3)	(4)
(Amount in crores of rupees)			
1. Sales Tax	1517.69	*	The department has not furnished the details of stages of action in respect of these arrears.
2. Profession Tax	128.20	22.30	The department has not furnished the details of stages of action in respect of these arrears.
3. Purchase Tax on Sugarcane	122.86	*	The department has not furnished the details of stages of action in respect of these arrears.
4. Taxes on Vehicles	52.14	23.04	Out of Rs.52.14 crores, demands amounting to Rs. 24.35 crores were covered by revenue recovery certificates. Recovery of Rs.2.82 crores was stayed by judicial authorities. Demands for Rs. 0.12 crore were likely to be written off and the balance amount of Rs.24.85 crores was under other stages of action.
5. Taxes and Duties on Electricity	8.30	2.08	The department has not furnished the details of stages of action in respect of these arrears.

* Information not furnished by the departments.

(1)	(2)	(3)	(4)
	(Amount in crores of rupees)		
6. Medical and Public Health Department	8.00	4.96	An amount of Rs.8.00 crores was under process of recovery.
7. State Excise	2.06	1.77	Out of Rs.2.06 crores, recoveries of Rs.0.80 crore were stayed by the Government for rectification/review. Demands for Rs.0.33 crore were likely to be written off. The balance amount of Rs.0.93 crore was under other stages of action.
8. Taxes on goods and Passengers	1.65	1.64	Out of Rs.1.65 crores, demands amounting to Rs.1.14 crores were covered by revenue recovery certificates. Recoveries of Rs.0.20 crore were stayed by judicial authorities. Demands for Rs.0.04 crore were likely to be written off. In respect of Rs.0.19 crore, the parties became insolvent. The balance amount of Rs.0.08 crore was under other stages of action.
9. Others			
a) Tax on Works Contract	36.04	*	The department has not furnished the details of stages of action in respect of these arrears.
b) Lease Tax	6.06	*	The department has not furnished the details of stages of action in respect of these arrears.

* Information not furnished by the departments.

(1)	(2)	(3)	(4)
	(Amount in crores of rupees)		
c) Agricultural Income Tax	5.82	*	The department has not furnished the details of stages of action in respect of these arrears.
d) Luxury Tax (Re-enacted)	3.63	*	The department has not furnished the details of stages of action in respect of these arrears.
e) Entry tax	1.86	*	The department has not furnished the details of stages of action in respect of these arrears.
f) Luxury Tax (Repealed Act)	0.78	0.78	Out of Rs.0.78 crore, demands amounting to Rs.0.36 crore were covered by revenue recovery certificates. Demands for Rs.0.41 crore were stayed by judicial authorities. The balance amount of Rs.0.01 crore was under other stages of action.
g) Receipts from Bio-logical and Poultry products	0.53	0.41	Out of Rs.0.53 crore, demands for Rs.0.41 crore were pending for Government orders. The balance amount of Rs.0.12 crore was under other stages of action.
Total	1895.62	56.98	

Other departments have not furnished the details of arrears so far (November 1994).

1.6 Arrears in assessments

The details of assessment cases pending at the beginning of the year 1993-94, cases becoming due for assessment during the year, cases disposed of during the year and number of cases pending finalisation at the end of the year 1993-94 as furnished by the department in respect of sales tax, profession tax, purchase tax on sugarcane, entry tax, lease tax, luxury tax and tax on works contract are given below:

* Information not furnished by the departments.

Name of tax	Opening balance	Cases due for assessment during 1993-94	Total assessments due	Cases disposed of	Balance at the end of the year	Percentage of Column 6 to 4
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales Tax	1213096	1173894	2386990	1115680	1271310	53
Profession Tax	336040	230257	566297	153292	413005	63
Purchase tax on sugarcane	3324	1112	4436	964	3472	78
Entry Tax	1994	2805	4799	2522	2277	47
Lease Tax	2428	3054	5482	2726	2756	50
Luxury Tax	1702	1793	3495	1686	1809	52
Tax on works contract	24678	20530	45208	20968	24240	54
Total	1583262	1433445	3016707	1297838	1718869	58

The above table shows that the arrears in assessments under various Acts mentioned above have gone up from 15.83 lakhs at the end of March 1993 to 17.19 lakhs at the end of March 1994 registering an increase of 9 per cent over previous year. The arrears in assessment of sales tax cases increased from 12.13 lakhs at the end of March 1993 to 12.71 lakhs at the close of March 1994. The pendency in assessment of Profession Tax cases increased from 3.36 lakhs to 4.13 lakhs registering an increase of 23 per cent. No effective steps were taken by the department to arrest the increasing trend in arrears of assessment.

The year-wise break-up of the pending cases as on 31st March 1994 is as under :

Year	Sales Tax	Profession Tax	Purchase Tax on Sugarcane	Entry Tax	Lease Tax	Luxury Tax	Tax on Works Contract
Up to							
1989-90	33308	86164	899	1055	299	66	6791
1990-91	113642	48111	729	524	480	222	4571
1991-92	521264	75001	918	60	975	716	6334
1992-93	603095	116433	902	69	1002	805	6544
1993-94	1	87296	24	569	....	....	....
TOTAL	1271310	413005	3472	2277	2756	1809	24240

1.7 Arrears in appeals

The arrears of revenue at the end of the last three years and revenue locked up in appeals in respect of Sales Tax Department are given below :

As on 31st March	Total Revenue in arrears		Involved in appeals		Percentage of Col. 3 to Col. 2	
	No. of cases	Amount	No. of cases	Amount	Cases	Amount
(Amount in crores of rupees)						
1992	246372	1013.93	30158	408.38	12	40
1993	244714	1267.51	32397	534.70	13	42
1994*	310679	1517.69	38679	360.82	12	24

Though, huge amount of revenue was locked up in appeals, no effective steps were taken to dispose of the appeal cases.

1.8 Frauds and evasion of tax

The details of cases of evasion of tax detected by the Sales Tax, Motor Vehicles Tax and State Excise Departments, cases finalised and the demands for additional tax raised as reported by the departments are given below :

Sr. No.	Name of tax/duty	Cases pending as on 31st March 1993	Cases detected during 1993-94	Total	No. of cases in which assessment/ investigations completed and additional demand including penalty etc. raised		No. of cases pending finalisation as on 31st March 1994
					No. of cases	Amount of demands in lakhs of rupees	
1.	Sales Tax	2212	1512	3724	1150	1329.90	2574
2.	State Excise	24	1	25	10	3.81	15
3.	Motor Vehicles Tax	Nil	486939	486939	486939	2519.28	Nil

* Figures as at 31st March 1994 are unreconciled.

1.9 Write-off and waiver of revenue

During the year 1993-94, demands for Rs.46.30 lakhs (in 637 cases) relating to Sales Tax, Rs.59.88 lakhs (in 1635 cases) relating to Motor Vehicles Tax, Further Tax and Passengers Tax and Rs.0.95 lakh (in 30 cases) relating to State Excise were written-off by the departments as irrecoverable. Reasons for the write-off of these demands as reported by the departments are as follows:

	(In lakhs of rupees)					
	Sales Tax		Motor Vehicles Tax, Goods Tax and Passengers Tax		State Excise	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
1. Whereabouts of defaulters not known	273	4.29	1481	53.32	23	0.22
2. Defaulters no longer alive	....	....	26	1.37	1	0.08
3. Defaulters did not have any property	256	21.96	85	4.19	2	0.27
4. Defaulters adjudged insolvent	2	0.01	....	....	2	0.35
5. Other reasons	75	2.65	43	1.00	2	0.03
6. Remission of penalty	31	17.39	....	....	....	....
Total	637	46.30	1635	59.88	30	0.95

1.10 Refunds

The number of refund cases pending at the beginning of the year 1993-94, claims received during the year, refunds allowed during the year and cases pending at the close of the year 1993-94 as reported by the departments are given below:

	(In lakhs of rupees)					
	Motor Vehicles Tax		Taxes and Duties on Electricity		State Excise	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
1. Claims outstanding at the beginning of the year	1065	9.87	7	8.80	1077	34.40

(In lakhs of rupees)

	Motor Vehicles Tax		Taxes and Duties on Electricity		State Excise	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2. Claims received during the year	3337	45.04	86	787.41	89	38.48
3. Refund made during the year	3435	45.27	53	682.05	71	10.27
4. Balance outstanding at the end of the year	967	9.64	40	114.16	1095	62.61

Details as above have not been received from the Sales Tax department (November 1994).

1.11 Results of audit

Test check of records of Sales Tax, Land Revenue, State Excise, Motor Vehicles Tax, Stamp Duty and Registration Fees, Electricity Duty, Other Tax Receipts, Forest Receipts and other Non-tax Receipts conducted during the year 1993-94 revealed under-assessment/short levy/loss of revenue amounting to Rs.3907.36 lakhs in 13,112 cases. During the course of the year 1993-94, the concerned departments accepted under-assessments etc., of Rs.675.13 lakhs involved in 2073 cases of which 462 cases involving Rs.48.58 lakhs had been pointed out in audit during 1993-94 and the rest in earlier years. Of these, departments recovered Rs.66.85 lakhs.

This Report contains 35 Paragraphs involving Rs.1135.20 lakhs. The department/Government have accepted audit observations involving Rs.285.58 lakhs. No reply has been received in remaining cases.

1.12 Internal Audit

Sales Tax Department

Internal Audit Wing of the department functions under the overall control of the Additional Commissioner of Sales Tax, Maharashtra who is assisted by a Deputy Commissioner (Audit) and 17 Assistant Commissioners (Audit) for auditing assessment cases involving tax of Rs.4 lakhs and above. Other cases are audited by respective Administrative Deputy Commissioners and Assistant Commissioners.

The performance of Internal Audit during the year 1993-94 is as under :-

(a) Target in terms of number of cases	46,150
(b) Number of cases audited	28,121
(c) Shortfall	18,029

(d) Cases in which objections were raised	
(i) Number of cases	10,290
(ii) Amount in crores of rupees	19.15
(e) Demand raised	
(i) Number of cases	288
(ii) Amount in crores of rupees	0.43
(f) Amount recovered	
(i) Number of cases	75
(ii) Amount in crores of rupees	0.10

The department attributed (September 1994) the shortfall in achieving the target to reorganisation of departmental set-up and late filling up of 9 posts of Assistant Commissioners in July 1993.

In respect of Motor Vehicles Tax and State Excise departments, internal audit is functioning but above details have not been furnished by the respective departments.

1.13 Outstanding inspection reports and audit observations

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

At the end of June 1994, 9355 observations (in 3824 inspection reports) involving Rs.63.13 crores issued up to 31st December 1993, were still to be settled as detailed below. The figures as on 30th June 1992 and 30th June 1993 are also indicated alongside for comparison.

	As at the end of		
	June 1992	June 1993	June 1994
Number of inspection reports	4638	3704	3824
Number of audit observations	10245	8423	9355
Money value (In crores of rupees)	59.76	59.68	63.13

In respect of 2124 observations (in 735 inspection reports) involving Rs.23.15 crores, even the first replies had not been received.

Year-wise break-up of the outstanding inspection reports as on 30th June 1994, together with amounts of receipts involved, is given in the Appendix.

The above position was brought to the notice (September 1994) of the Secretaries of the respective Government Departments and was reported to the Chief Secretary in December 1994.

CHAPTER 2

SALES TAX

2.1 Results of audit

Test check of records of sales tax conducted during the year 1993-94 revealed under-assessment/short levy/loss of revenue amounting to Rs.448.07 lakhs in 1975 cases, which broadly fall under the following categories.

Sr. No.	Category	No. of cases	Amount (In lakhs of rupees)
1.	Non-levy or short levy of tax	729	260.71
2.	Incorrect allowance of set-off	396	83.50
3.	Non-levy/short levy of penalty	183	30.02
4.	Omission to forfeit tax irregularly collected	32	7.62
5.	Other irregularities	635	66.22
	Total	1975	448.07

During the course of the year 1993-94, the concerned department accepted under-assessments etc. of Rs.84.13 lakhs involved in 426 cases of which 90 cases involving Rs.6.51 lakhs had been pointed out during 1993-94 and the rest in earlier years and recovered Rs.10.18 lakhs. A few illustrative cases noticed during 1993-94 and in earlier years involving Rs.422.95 lakhs are given in the following paragraphs.

2.2 Loss of revenue due to incorrect determination orders

(i) Aromatic chemicals and natural and synthetic essential oils and their compounds are covered by entry 19 of Part I of Schedule 'C' appended to the Bombay Sales Tax Act with a rate of tax of 4 per cent. In July 1981, a specific entry 78 under Part II of Schedule 'C' with rate of tax at 15 per cent was introduced to cover culinary and flavouring essences. The amendment dated 11th August 1988 whereby culinary and flavouring essences were excluded from entry 19 of Part I of Schedule 'C' of the Act further clarified and confirmed this position. The Commissioner of Sales Tax determined (October 1986, January 1989 and March 1990) that culinary and flavouring essences having industrial use are classifiable under entry 19 of Part I of Schedule 'C' attracting tax at 4 per cent disregarding the provision of entry 78 introduced with effect from July 1981.

It was noticed during test check (July 1993 and January 1994) that two dealers in Bombay were being assessed to tax at 4 per cent on their sales of flavouring essences on

the basis of the above determination orders instead of at the correct rate of 15 per cent. The short levy of tax in respect of these cases during the period July 1987 to March 1990 amounted to Rs.75.69 lakhs (including additional tax of Rs.8.11 lakhs). In addition, interest amounting to Rs.58.94 lakhs was also leviable.

On this being pointed out (May 1994), the department stated (August 1994) that the concerned officers had been instructed to verify the facts and take appropriate action as early as possible. Further report in the matter has not been received (November 1994).

(ii) As per entry 36 of Part II of Schedule 'C' of the Act, with effect from 1st July 1981, tooth powder and tooth paste of all kinds whether medicated or not were taxable at 8 per cent. As per entry 24(1) of Part I of Schedule 'C' of the Act, with effect from 1st April 1984, medicinal preparation excluding tooth paste or tooth powder was taxable at 4 per cent.

Although a specific entry existed in Part II of Schedule 'C' effective from 1st July 1981, the Commissioner by a determination order dated 19th October 1984 incorrectly held the Ayurvedic tooth paste/powder as medicine covered by entry 24 of Part I of Schedule 'C' of the Act with the result that sales worth Rs.99.38 lakhs made by a dealer at Bombay during 11th August 1988 to 31st March 1990 were taxed at 4 per cent instead of 8 per cent. This resulted in short levy of tax amounting to Rs.4.39 lakhs (including additional tax of Rs.0.48 lakh).

On this being pointed out (May 1994), the department stated (August 1994) that the concerned officers have been instructed to verify the facts and take appropriate action as early as possible. Further report in the matter has not been received (November 1994).

(iii) As per entry 46 of Schedule 'A' of the Act effective from 1st May 1982, water other than aerated, mineral, medicinal, tonic, distilled and demineralized water and water for injection was free from all taxes. In a determination order dated 30th December 1991, it was held that when water was being sold as 'Mineral Water' the exemption would not be admissible. As per the citation quoted in the above determination order from a judgement of the Allahabad High Court in the case of M/s. Bishambhar Dayal Shri Nivas Vs. Commissioner of Sales Tax (14 STC 184) if an article is sold as an article belonging to one category, it must be treated as a sale of an article of that category only even though it answers the description of another category.

In the case of a dealer of Bombay manufacturing mineral water which was treated water and marketed as 'Mineral Water', tax on sales of mineral water upto the year 1987-88 was levied at 10 per cent as per residuary entry of Part II of Schedule 'C' of the Act. However, sales worth Rs.537.44 lakhs made during the years 1988-89 to 1992-93 were allowed free from all taxes as per determination order dated 3rd July 1992, disregarding the determination order dated 30th December 1991.

As water manufactured by the dealer was treated water and marketed as mineral water, the determination order of July 1992 resulted in unintended benefit to the dealer amounting to Rs.60.83 lakhs.

The matter was reported to the department (February 1994) and to Government in May 1994; their reply has not been received (November 1994).

2.3 Suppression of purchases on declarations

The Commissioner of Sales Tax issued certain instructions and guidelines (May 1983) regarding verification of transactions by issue of cross check memos where concessions/deductions were claimed. The cross check memos were to be issued at the discretion of the assessing officers. It was, however, made obligatory for assessing officer to record that "No cross check memos were issued as he did not find it necessary to cross check any of the transactions and that he was satisfied about the genuineness of sales and purchases", where it was decided by him not to issue any cross check memo.

Under the provisions of the Bombay Sales Tax Act, 1959, for failure to disclose any transaction of sales and purchases, in addition to the tax, penalty not exceeding the amount of tax found payable may be levied at the discretion of assessing officer. Interest for late payment of dues is also required to be levied.

It was noticed during test check in audit (December 1993 to April 1994) that no cross verification was conducted in the following cases leading to suppression of purchases made on declarations on Form N-14, Form N-15 and Form 'BC'. Although no verification was conducted, requisite certificate was also not recorded by the assessing officers.

(a) Under Section 12 of the Bombay Sales Tax Act, 1959 read with Rule 21 made thereunder, with effect from 1st July 1981, an authorised dealer can purchase goods without payment of tax by furnishing a declaration in Form N-14 to the selling dealer that the goods purchased will be resold in the course of inter-State trade or commerce or in the course of export out of the territory of India or for packing of goods meant for resale within 9 months from the date of purchase.

On cross verification of the transactions of sales on Form N-14 with the corresponding purchases from the assessment records of the selling and purchasing dealers, it was noticed (during December 1993 to March 1994) in audit that though 6 dealers at Bombay had shown sales on Form N-14 to 17 dealers of Bombay, Kolhapur and Raigad to the tune of Rs.1152.63 lakhs, the purchasing dealers had accounted for purchases to the extent of Rs.337.86 lakhs only thereby suppressing purchases worth Rs.814.77 lakhs. The tax (inclusive of additional tax) leviable on the suppressed purchases amounted to Rs.68.79 lakhs (including interest of Rs.26.38 lakhs). Further, penalty under the provisions of the Act for suppression of purchases upto the amount of tax could also be levied.

The department confirmed (December 1993 to March 1994) the facts after verification of assessment records in respect of 10 cases involving financial effect of Rs.15.01 lakhs and final replies have not been received in the remaining cases (November 1994).

(b) Under the provisions of the Bombay Sales Tax Act, 1959 and the rules made thereunder, with effect from 1st July 1981, a manufacturer holding recognition certificate can purchase goods specified in Part II of Schedule 'C' appended to the Act without payment of tax by furnishing a declaration in Form N-15 to the selling dealer that the goods purchased will be used by him within the State in the manufacture of taxable goods for sale. The purchaser, however, has to pay purchase tax at 4 per cent.

Cross verification of the sales aggregating Rs.42.70 lakhs on Form N-15 by 3 dealers in Bombay with the assessment records of the corresponding vendees at Bombay, Nashik and Thane revealed that the purchasers had accounted for purchases worth Rs.13.14 lakhs only thereby suppressing purchases worth Rs.29.56 lakhs. This resulted in short levy of tax (inclusive of additional tax) amounting to Rs.3.95 lakhs (including interest of Rs.1.64 lakhs). Further, penalty upto the amount of tax could also be levied.

On this being pointed out (January 1994 to April 1994), the department confirmed (February 1994 to April 1994) the undisclosed transactions worth Rs.7.64 lakhs in two cases and final reply in the remaining one case has not been received (November 1994). Report on action taken for raising demand and recovery thereof has not been received (November 1994).

(c) Under the provisions of the Bombay Sales Tax Act, 1959 and notification dated 5th July, 1980 issued thereunder, a registered dealer holding a certificate of entitlement can purchase raw materials without payment of tax by furnishing to the selling dealer a declaration in Form 'BC' declaring, inter-alia, that the goods so purchased will be used by him in the manufacture of goods at his industrial unit for sale within the State or in the course of inter-State trade or commerce. Any breach of recitals of declaration attracts levy of tax on such purchases.

On cross verification of the sales on Form 'BC' aggregating Rs.490.70 lakhs of 2 dealers at Bombay with reference to the assessment records of 4 corresponding purchasing dealers at Raigad and Thane districts, it was noticed (February 1994) that the purchasing dealers had accounted for purchases worth Rs.48.61 lakhs only thereby suppressing purchases worth Rs.442.09 lakhs. The tax (inclusive of additional tax) leviable on such undisclosed purchases amounted to Rs.29.29 lakhs including interest of Rs.11.04 lakhs. In addition, penalty upto the amount of tax could also be levied.

The department confirmed (February 1994) the suppressed purchases. Further report in the matter has not been received (November 1994).

2.4 Suppression of High Sea Purchases

Under the provisions of the Central Sales Tax Act, 1956, a sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import of the goods into the territory of India or is effected by transfer of documents of title to the goods before the goods have actually crossed the Customs Frontiers of India. Such sales or purchases are termed as High Sea Sales or High Sea Purchases. Tax is not leviable on such transactions by virtue of Section 5(2) of Central Sales Tax Act, 1956. Such purchases attract tax at the time of their sale, unless otherwise exempted from tax.

In the case of two selling dealers in Bombay, high sea sales worth Rs.158.74 lakhs were allowed (March 1993) in the assessment for the year 1989-90. On cross verification of the assessment records of the purchasing dealers at Bombay and Thane districts, it was noticed (January 1994 and February 1994) that the purchasers suppressed the High Sea purchases resulting in evasion of tax amounting to Rs.27.04 lakhs (including additional tax, turnover tax and interest).

On this being pointed out (January 1994 and February 1994), the department stated (August 1994) that the facts would be verified. Further report in the matter has not been received (November 1994).

2.5 Incorrect grant of set-off

(a) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a manufacturer who has paid taxes on the purchase of goods specified in Part II of Schedule 'C' to the Act and used them within the State in the manufacture of taxable goods for sale or export or in the packing of goods so manufactured is allowed a set-off of taxes paid in excess of four per cent of purchase price. Where the purchase price is inclusive of taxes, the amount of set-off is worked out according to the prescribed formula. If the manufactured goods include goods other than the taxable goods, the set-off is admissible proportionately in respect of taxable goods. In view of the amendment to the Act, with effect from 21st April 1987, the term 'taxable goods' does not include goods which are wholly exempt from payment of tax under notification issued by the Government.

Additional tax at the rate of 12 per cent of the tax payable is also leviable if the turnover either of all sales or of all purchases exceeds Rs.10 lakhs in any year. For failure to disclose in the returns, the appropriate tax liability, a penalty equal to a sum not exceeding the amount of tax found due may also be levied. Further, simple interest at the rate of 2 per cent for each month or part thereof of the tax found due on assessment is also leviable from the first day after the end of the period for which assessment is done till the date of order of assessment.

(i) In respect of 6 dealers (assessed between December 1988 and March 1993) in Aurangabad, Bombay and Thane districts, it was noticed (between November 1989 and October 1993) in audit that though the dealers manufactured taxable goods as well as goods other than taxable goods, the set-off was allowed in full instead of allowing it in the proportion of taxable goods sold within the State. This resulted in under-assessment of Rs.3.87 lakhs as detailed below :

Sr. No.	District in which assessment done	Goods manufactured	Period for which assessment done	Under-assessment including interest/penalty (In lakhs of rupees)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
1.	Aurangabad	Auto parts	1st May 1987 to 31st December 1987	0.47	The department raised (April 1993) additional demand for Rs.47,343 including interest of Rs.22,513.

(1)	(2)	(3)	(4)	(5)	(6)
2.	Bombay	Paints, chemicals and thinners	1st April 1988 to 31st March 1989	0.68	The department initiated (March 1994) action to revise the assessment. Further report has not been received (November 1994).
3.	Bombay	Printed material	1st April 1989 to 31st March 1990	0.78	The department raised (February 1994) additional demand for Rs.78,304.
4.	Bombay	Edible oil and vanaspati	1st January 1988 to 31st March 1989	0.56	Reply of the department has not been received (November 1994).
5.	Thane	Copper conductors and non-ferrous alloys	28th April 1989 to 31st March 1990	0.97	The department raised (October 1993) additional demand of Rs.96,666 including interest of Rs.45,000.
6.	Nagpur	Correction fluid and dilutor	1st April 1989 to 31st March 1990	0.41	The department raised (February 1993) additional demand for Rs.40,760 including interest of Rs.14,965.
Total				3.87	

The above cases were reported to Government between March 1994 and June 1994; their replies have not been received (November 1994).

(ii) By a Government notification dated 30th June 1986, the rate of tax on sale or purchase of chemicals (covered by entry 102 of Part II of Schedule 'C') was reduced from 10 per cent to 4 per cent with effect from 1st July 1986. The Commissioner of Sales Tax determined (December 1987) that gum and fevicol were chemicals covered by entry 102 of Part II of Schedule 'C' with a rate of tax of 10 per cent which by virtue of the notification was reduced to 4 per cent.

Further, by another notification dated 30th June 1986, Government reduced the rate of tax on sales/purchases of components, parts and accessories of T.Vs. from 15 per cent to 2 per cent which was subsequently raised to 4 per cent. Thus, no set-off was admissible without verification of actual tax paid on earlier transactions of purchases of the above commodities.

It was noticed in audit (between May 1993 and March 1994) that in assessing 3 dealers at Bombay, set-off on purchase of chemicals (including Gum and Fevicol) and components of T.Vs. was erroneously allowed though no set-off was admissible as no tax in excess of 4 per cent was paid on purchase of these commodities. This resulted in under-assessment of Rs.2.37 lakhs as detailed below :

Sr. No.	District in which assessed	Goods manufactured	Assessment period	Commodity on which set-off allowed	Under-assessment including interest/penalty (In lakhs of rupees)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Bombay	Medicines	1st April 1989 to 31st March 1990	Chemicals	1.25	Final reply has not been received (November 1994).
2.	Bombay	Printed materials	1st July 1987 to 31st March 1989 and 1st April 1989 to 31st March 1990	Gum and Fevicol	0.57	The department raised (August 1994) and recovered additional demand of Rs.31,431. Further report on recovery of interest of Rs.23,913 has not been received (November 1994).
3.	Bombay	T.V.sets and kits	1st January 1988 to 31st March 1989	Components of T.Vs.	0.55	The department initiated (March 1994) action to revise the assessment. Further report has not been received (November 1994).
Total					2.37	

The above cases were reported to Government between March 1994 and June 1994; their replies have not been received (November 1994).

(b) Under the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a registered dealer is entitled to set-off of taxes recovered from him by other registered dealers on purchase of any goods, provided the goods are resold by him to certain classes of dealers specified in the rule. Canteen Stores Department has been excluded from these specified class of dealers with effect from 22nd October 1988.

In Bombay, in the assessment (January 1993) of a reseller of batteries, washing machines, mixers, T.V. sets etc. for the period 1st April 1990 to 31st March 1991, a set-off of Rs.1.56 lakhs was allowed on the purchases of Rs.13.04 lakhs which were resold to the Canteen Stores Department of Armed Forces against declaration in Form A-I. The allowance of set-off of Rs.1.56 lakhs under the rule after 21st October 1988, was thus erroneous.

On this being pointed out (October 1993) in audit, the department agreed to verify the point (October 1993). Final reply has not been received (November 1994).

The matter was reported to Government in March 1994.

(c) (i) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a manufacturer holding a Certificate of Entitlement issued by the Commissioner of Sales Tax, is eligible to purchase certain specified raw materials without payment of tax, by furnishing a declaration in Form BC. If such goods are purchased by payment of taxes, the manufacturer is entitled to full set-off of taxes paid or deemed to have been paid on these purchases. Where the purchase price is inclusive of tax, the amount of set-off is worked out as per prescribed formula. Further interest and penalty are leviable as per the provisions of the Act.

By a Government notification dated 25th June 1985, the rate of tax on sale or purchase of aluminium metal foils which are coated, covered or laminated (covered by entry 102 of Part II of Schedule 'C') was reduced from 10 per cent to 4 per cent with effect from 25th June 1985. Thus, set-off was admissible at four per cent on purchase of above commodity from 25th June 1985 onwards.

At Ratnagiri, in the assessment (August 1992) of a manufacturer in medicines, holding entitlement certificate, for the period from 1st April 1989 to 31st March 1990 and 1st April 1990 to 31st March 1991, set-off was erroneously allowed at 10 per cent instead of at 4 per cent on purchases of aluminium foils. This resulted in excess allowance of set-off of Rs.60,794. Besides, interest and penalty were also leviable.

On this being pointed out (May 1993), the department revised the assessment (February 1994) for the year 1990-91 raising an additional demand of Rs.51,165 (including interest and penalty of Rs.22,246). The report on revision of assessment for the year 1989-90 and recovery has not been received (November 1994).

The matter was reported to Government in May 1994; their reply has not been received (November 1994).

(ii) In Raigad, in the assessment (June 1991) for the period from 23rd October 1987 to 31st March 1989 of a dealer engaged in manufacture of mosaic tiles, set-off of Rs.39,937 was erroneously granted on the purchase of raw material of Rs.5.86 lakhs in the course of inter-State trade or commerce.

On this being pointed out (August 1992) and again reminded in July 1994 in audit, the department initiated (February 1994) action to revise the assessment of the dealer. Further report has not been received (November 1994).

The matter was reported to Government in April 1994; their reply has not been received (November 1994).

(d) Under the provisions of the Bombay Sales Tax Act, 1959 with effect from 1st July 1981, a manufacturer holding recognition certificate can purchase goods specified in Part II of Schedule 'C' to the Act without payment of sales tax by furnishing a declaration in Form N-15 to the selling dealer that the goods purchased will be used by him within the State in the manufacture of taxable goods for sale or in packing of goods so manufactured. The purchaser is, however, liable to pay purchase tax at a concessional rate of four per cent. If the goods so purchased are used in the manufacture of goods or in packing of goods so manufactured, which are not taxable or when the conditions, recitals and undertakings of such declarations are not complied with or when the manufactured goods are transferred to branches outside the State, purchase tax at prescribed rate for contravention of recitals of declaration is leviable. The dealer is, however, entitled to the set-off of tax paid on purchases at concessional rate of four per cent.

Further, additional tax and interest are leviable as per the provisions of the Act.

In Bombay, a manufacturer of machine tools, purchased raw materials worth Rs.1.15 crores without payment of tax by furnishing declaration in Form N-15 during the period 1st January 1989 to 31st December 1989. In contravention of the conditions of the declaration, goods worth Rs.24.24 lakhs were used in the manufacture of goods transferred to branches outside the State. Accordingly, purchase tax at the concessional rate of 4 per cent was levied in the assessment (March 1993) on the purchase price of the goods (Rs.91.21 lakhs) used in the manufacture of finished goods for sale and at 6 per cent on purchases (Rs.24.24 lakhs) used in the manufacture of goods transferred outside the State. The assessee was erroneously allowed set-off of Rs.96,979 being 4 per cent of purchase price of Rs.24.24 lakhs. Since purchase tax at the concessional rate of 4 per cent was not levied on the purchase price of the goods used in the manufacture of goods transferred outside the State, the assessee was not entitled to set-off of the purchase tax.

On this being pointed out (January 1994) in audit, the department re-assessed (August 1994) the dealer and raised additional demand of Rs. 96,979. Report on recovery has not been received (November 1994).

The matter was reported to Government in June 1994; their reply has not been received (November 1994).

(e) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a registered dealer is entitled to set-off of taxes paid or deemed to have been paid on the purchases made from other registered dealers provided the goods so purchased are resold within a period of 9 months from the date of their purchase in the same form in which they were purchased, either in the course of export or in the course of inter-State trade or commerce.

Further, no set-off is admissible on purchases effected by a dealer prior to his obtaining a certificate of registration.

It was noticed in audit (between September 1988 and May 1993) that in assessing 3 dealers at Nagpur, set-off was incorrectly granted resulting in under-assessment of Rs.1.35 lakhs as detailed below :

Sr. No.	Period of assessment	Commodity resold	Under-assessment including interest/ penalty (In lakhs of rupees)	Remarks
(1)	(2)	(3)	(4)	(5)
1.	December 1986 to March 1990	Auto parts	0.60	The department stated (April 1994) that assessment for the period 1986-87 was time-barred and raised demand of Rs.20,813 for the period 1987-90.
2.	January 1984 to December 1984	Engineering goods and wooden boxes	0.39	The department raised (January 1993) demand for Rs.38,642.
3.	1982-83	Tendu leaves	0.36	The department raised (August 1992) demand for Rs.35,767.
Total			1.35	

Report on recovery has not been received (November 1994).

The above cases were reported to Government (between April 1993 and June 1993); their reply has not been received (November 1994).

2.6 Short levy of tax

Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, the amount of tax due from a dealer liable to pay tax shall be assessed separately for each year during which he is so liable. The rate of tax leviable on any commodity is determined with reference to the relevant entry in the Schedule to the Act. The State Government may, by notification exempt any class of sales or purchases from the payment of the whole or any part of the tax payable under the provisions of the Act subject to such conditions as may be imposed by Government.

Every dealer who is liable to pay tax under the Act and whose turnover either of all sales or of all purchases exceeds Rs.12 lakhs in any year, is also liable to pay turnover tax at the rate of one-and-a-quarter per cent of the taxable turnover of sales of goods specified in Schedule 'C' to the Act.

Additional tax at the rate of 12 per cent of the tax is also payable by a dealer whose turnover of sales or purchases exceeds Rs.10 lakhs in any year.

Further, simple interest at the rate of 2 per cent for each month or part thereof of the tax found due on assessment is leviable from the first day after the end of the period for which the dealer is assessed till the date of such order of assessment.

(i) By a Government notification, sale of food served in a hotel is exempted from levy of tax to the extent of first Rs.3 lakhs of the turnover of sales during a year. Sales exceeding Rs.3 lakhs but not exceeding Rs.10 lakhs are subject to levy of tax at a concessional rate of 2 per cent and sales exceeding Rs.10 lakhs attract tax at 8 per cent.

In Bombay, while assessing (March 1993) a hotelier whose turnover of sales during the year 1988-89 was Rs. 37.56 lakhs, the assessments were erroneously made separately for two broken periods of one financial year viz. 1st April 1988 to 30th June 1988 and 1st July 1988 to 31st March 1989. The taxable turnovers for the two periods were determined as Rs. 7.86 lakhs and Rs. 29.70 lakhs respectively. After allowing sales of Rs.2.25 lakhs as exempt in the assessment of second period, taxable sales of Rs. 14 lakhs (Rs. 7 lakhs each for both the periods) were assessed to tax at concessional rate of 2 per cent instead of assessing sales of Rs. 7 lakhs permissible at concessional rate of tax in a year. Total tax payable for the year was assessed at Rs.2.82 lakhs as against Rs. 3.08 lakhs leviable according to the notification. This resulted in under-assessment of tax of Rs.48,030 including interest of Rs. 22,553.

This was pointed out to the department in January 1994 and reported to Government in June 1994; their replies have not been received (November 1994).

(ii) By a notification issued on 19th May 1988, Government granted exemption from payment of sales tax in excess of ten per cent on sales of electronic goods, if the claimant dealer was certified for that purpose by the Sales Tax Commissioner.

Further, additional tax at the rate of 12 per cent of the gross tax is also payable by a dealer whose turnover of sales or purchases exceeds Rs.10 lakhs in any year.

In Nagpur, a reseller of telephone equipments was allowed concessional rate of tax under above notification though the required certificate was not issued by the Commissioner. In view of this, sales were not eligible for the concessional rate of tax in terms of above notification. This resulted in under-assessment of Rs. 79,185 including interest of Rs. 22,058.

On this being pointed out (October 1992) in audit, the department re-assessed (February 1993) the dealer raising additional demand for Rs.79,185 including interest of Rs.22,058. Particulars of recovery have not been received (November 1994).

The matter was reported to Government in August 1993; their reply has not been received (November 1994).

2.7 Application of incorrect rate of tax

(a) Under the Bombay Sales Tax Act, 1959, the rate of tax leviable on any commodity is determined with reference to the relevant entry in the Schedule to the Act. Besides, additional tax, turnover tax, interest and penalty are leviable under relevant provisions of the Act.

In assessing 9 dealers in different districts it was noticed (between June 1992 and February 1994) that due to application of incorrect rate of tax, the dealers were under-assessed to the extent of Rs.12.23 lakhs as detailed below :

District in which assessed	Period for which assessment is done	Commodity sold	Reason for short levy of tax	Under-asse- ssment (In lakhs of rupees)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
Ahmednagar	1st April 1989 to 31st March 1990	Old machinery	Tax levied at 4 per cent in- stead of at 10 per cent	1.79	The department raised (September 1994) additional demand for Rs.2.45 lakhs. Report on recovery has not been received (November 1994).
Bombay	1st April 1989 to 31st March 1990	Woolen and cotton durries	Tax levied at 2 percent instead of at 10 percent	0.75	The department initiated (March 1994) action to revise assessment. Final reply has not been received (November 1994).
Bombay	1st July 1988 to 31st March 1989	Plastic scrap and HDPE woven bags	Tax levied at 8 percent and 2 percent in- stead of at 10 per cent and 4 per cent respectively	1.33	The matter was re- ported to the depar- tment in April 1993; their reply has not been received (November 1994).
Bombay	1st April 1987 to 30th September 1987	Computers	Tax levied at 4 percent instead of at 6 percent	0.96	The matter was re- ported to the depar- tment in Septem- ber 1992; their final reply has not been received (November 1994).

(1)	(2)	(3)	(4)	(5)	(6)
Bombay	1st April 1989 to 31st March 1990	Steam	Tax levied at 4 per cent instead of at 10 per cent	0.76	The matter was reported to the department in August 1993; their reply has not been received (November 1994).
Bombay	1st August 1986 to 31st July 1987 and 1st August 1987 to 31st March 1989	Wooden handles of steel chairs	Tax levied at 10 per cent instead of at 15 per cent	1.02	The matter was reported to the department in June 1992; their reply has not been received (November 1994).
Pune	1st April 1989 to 31st March 1990	Emulsions	Tax levied at 4 per cent instead of at 15 per cent	2.07	The matter was reported to department in December 1993; their final reply has not been received (November 1994).
Pune	1st January 1986 to 31st December 1986	Plastic auto parts	Tax levied at 8 per cent instead of at 12 per cent	0.48	The department initiated (April 1994) action to revise assessment. Final reply has not been received (November 1994).
Thane	1st January 1988 to 31st March 1989	Steam	Tax levied at 4 per cent instead of at 10 per cent	3.07	The department raised demand (April 1994) for Rs.3.07 lakhs including interest of Rs.1.67 lakhs.
Total				12.23	

The above cases were reported to Government between March 1994 and July 1994; their reply has not been received (November 1994).

(b) Under the Central Sales Tax Act, 1956 and the Rules made thereunder, on inter-State sales of goods, other than declared goods, which are not supported by declaration in Form C (issued by registered dealers) or Form D (issued by Government departments), tax is leviable at 10 per cent or at the rate applicable to sale or purchase of such goods inside the State under the State law, whichever is higher. By a judgement dated 27th June 1991 of the High Court of Gujarat it has been held* that additional taxes leviable on sale or purchase of any goods (whether called tax or fee or by any other name) under the State law, in addition to basic tax on sale or purchase of those goods, would also form part of the rate of tax applicable to inter-State sales of such goods (not supported by Form C or Form D). Besides, interest is leviable as per provisions of Section 9(2) of the Act read with Section 36(3)(b) of the Bombay Sales Tax Act, 1959.

In view of this, on inter-State sales of any goods (other than declared goods) originating from the State of Maharashtra and not supported by Form C or Form D, tax is leviable at 10 per cent or at the rate (inclusive of additional tax and turnover tax) applicable to sale or purchase of such goods inside the State under the Bombay Sales Tax Act, 1959, whichever is higher.

In Bombay, while assessing two dealers (December 1992 and March 1993) for the period from 1st April 1989 to 31st March 1990, the tax on inter-State sales of steel furniture, locks, refrigerators and electrical transformers (not supported by Form C/D) was levied at the schedule rate of 15 per cent and 10 per cent instead of at the higher rate of 18.5 per cent and 12.45 per cent (inclusive of element of additional tax and turnover tax). This resulted in under-assessment of Rs.19.54 lakhs (including interest of Rs.7.78 lakhs).

On this being pointed out (November and December 1993) in audit, the department stated (July 1994) that the department and trade carried the interpretation about non-applicability of additional tax and turnover tax on the transactions of inter-State sale over a period of time. The department further stated that such decision will be implemented prospectively after obtaining the views of the Law and Judiciary department. Further report in the matter has not been received (November 1994).

The matter was reported to Government in May 1994; their reply has not been received (November 1994).

2.8 Non-levy/short levy of additional tax and turnover tax

Under the provisions of the Bombay Sales Tax Act, 1959, with effect from 13th July 1986, every dealer liable to pay tax under the Act and whose turnover either of all sales or of all purchases exceeds Rs.12 lakhs in any year shall pay turnover tax at the rate of one-and-a-quarter per cent of the turnover of sales of goods specified in Schedule 'C' to the Act after allowing permissible deductions from the turnover of sales.

Further, a dealer whose turnover either of all sales or of all purchases exceeds Rs.10 lakhs in any year is liable to pay additional tax at the rate of 12 per cent of the tax payable by him for that year.

* 86 STC -295 State of Gujarat V Meghdoot Laminard Ltd.

A manufacturer who has paid tax on purchase of goods specified in Part II of Schedule 'C' to the Act is entitled to set-off of tax paid on purchase in excess of four per cent.

A registered dealer holding trade mark or patent in respect of any taxable goods (other than declared goods) is entitled to set-off of taxes paid on the purchase of such goods from other registered dealers or on purchase of goods used in packing of these goods provided such goods are sold in the same form in which they are purchased within a period of nine months or within a further period of three months thereafter.

Interest on the tax found due on assessment and penalty are also leviable.

It was noticed in audit (between April 1993 and March 1994) that the gross turnover of 6 dealers in different assessment districts for the years ending between March 1989 and March 1990 had exceeded the prescribed limits for levy of additional tax/turnover tax. However, additional tax/turnover tax was not levied in the assessments completed between November 1990 and March 1993. This resulted in under-assessment amounting to Rs.9.67 lakhs as detailed below :

Name of District in which assessed	No. of cases	Nature of irregularity	Non-levy/short levy including interest, penalty and disallowance of set-off etc. (In lakhs of rupees)	Remarks
Bombay	5	In two cases, sales effected on Form N-14 and Form N-15 were not considered for levy of turn-over tax and excess allowance of set-off	3.14	The department raised (October 1993) demand of Rs.87,983 in one case and agreed to examine other case.
		In two cases, sales exempted from sales tax and purchase tax under notifications but were liable for turnover tax	2.62	The department raised (March 1994) demand of Rs.1.03 lakhs in one case and agreed to examine other case.
		In one case, though turnover exceeded the prescribed limit of Rs.12 lakhs and Rs.10 lakhs, turnover tax and additional tax were not levied	0.76	The department raised (February 1994) demand of Rs.75,679. The dealer paid (February 1994) Rs.41,143 and filed an appeal.

Pune	1	In one case, turnover tax was not levied on taxable sales out of inter-State purchases and set-off incorrectly allowed	3.15	The department has agreed to examine the point. Further report has not been received (November 1994).
		Total	9.67	

The above cases were reported to Government (between March 1994 and July 1994); their reply has not been received (November 1994).

2.9 Non-levy/short levy of purchase tax

Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, with effect from 1st July 1981, a manufacturer holding a recognition certificate can purchase goods specified in Part II of Schedule 'C' to the Act without payment of sales tax by furnishing a declaration in Form N-15 to the selling dealer that the goods purchased will be used within the State in the manufacture of taxable goods for sale or in packing of goods so manufactured. The purchaser is, however, liable to pay purchase tax at a concessional rate of 4 per cent. If the goods so purchased are used in the manufacture of goods or packing of goods so manufactured, which are not taxable or when the conditions, recitals and undertakings of such declarations are not complied with, purchase tax for contravention of recitals of declarations is leviable at the rate specified in Schedule to the Act. The dealer is, however, entitled to set-off of tax paid on purchase at concessional rate of 4 per cent. Further, as per amended definition with effect from 21st April 1987, the term 'taxable goods' does not include goods which are wholly exempted from payment of tax under notifications issued by the Government.

A manufacturer who has paid taxes on purchase of goods specified in Part II of Schedule 'C' to the Act, is entitled to set-off of taxes paid in excess of four per cent of the purchase price.

Besides, additional tax, interest and penalty are also leviable under the provisions of the Act.

It was noticed in audit (between June 1992 and February 1994) that in assessing ten dealers in different assessment districts for the years ending between 31st January 1988 and 31st March 1990, the dealers had effected purchases against declarations in Form N-15 for use within the State in the manufacture of taxable goods for sale or in packing of goods so manufactured but part of these purchases were either used in the manufacture or packing of goods which were wholly exempted from payment of tax by virtue of notifications or were used in job works. As such the dealers became liable to pay purchase tax for contravention of recitals of declaration. However, purchase tax was not levied in the assessments. This resulted in under-assessment amounting to Rs.21.03 lakhs as detailed below :

Sr. No.	Name of the district	Goods manufactured	Assessment period	Short levy of purchase tax/ additional tax and interest/ penalty (In lakhs of rupees)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
1.	Ahmednagar	Spirit and country liquor	1st April 1988 to 31st March 1989 and 1st April 1989 to 31st March 1990	3.81	The matter was reported to the department in February 1994; their reply has not been received (November 1994).
2.	Bombay	Indian Made Foreign Liquor	1st April 1988 to 31st March 1989 and 1st April 1989 to 31st March 1990	2.78	The matter was reported to the department in June 1993; their reply has not been received (November 1994).
3.	Bombay	Medicines	1st April 1989 to 31st March 1990	1.25	The matter was reported to the department in November 1993; their reply has not been received (November 1994).
4.	Bombay	Fruit jam, juices, sauces and syrups	1st April 1989 to 31st March and 1990	1.44	The matter was reported to the department in November 1993; their reply has not been received (November 1994).
5.	Bombay	Tractor parts and resale of chemicals	1st April 1989 to 31st March 1990	1.30	The department reassessed (October 1993 and February 1994) the dealer raising additional demand of Rs. 1.30 lakhs.
6.	Jalgaon	Pickles, jams, sauces, soft drinks etc.	23rd October 1987 to 31st March 1989	1.01	The matter was reported to the department in October 1993; their reply has not been received (November 1994).

(1)	(2)	(3)	(4)	(5)	(6)
7.	Nashik	G.G.R./F.R.P. pipes and tanks	1st July 1988 to 28th February 1989 to 1st March 1989 to 31st March 1990	4.60	The matter was reported to the department in April 1993; their reply has not been received (November 1994).
8.	Pune	Domestic fans and electrical goods	1st April 1989 to 31st March 1990	0.85	The matter was reported to the department in May 1993; their reply has not been received (November 1994).
9.	Satara	Paper	1st February 1987 to 31st January 1988	2.35	The department revised (January 1994) the assessment and raised demand for Rs.62,056. Report on action taken to raise demand for balance amount has not been received (November 1994).
10.	Thane	Electrical goods	1st April 1989 to 31st March 1990	1.64	The department re-assessed the dealer (November 1993) and raised additional demand of Rs.1.64 lakhs.
Total				21.03	

The above cases were reported to Government between March 1994 and July 1994; their reply has not been received (November 1994).

2.10 Incorrect grant of exemption

Under the provisions of Bombay Sales Tax Act, 1959 and by virtue of a notification issued in July 1980, sales by a manufacturer which is an industrial unit set up in the developing regions of the State of Maharashtra and duly certified as an eligible industrial unit by designated authority and to whom a certificate of entitlement has been granted by the Commissioner of Sales Tax are exempt from payment of tax. Such manufacturer holding a Certificate of entitlement may also purchase raw material without payment of tax by furnishing a declaration in the prescribed Form 'BC' declaring inter-alia that raw material so purchased shall be used in his own industrial unit for manufacture of goods for sale. Failure to comply with the aforesaid condition entails levy of purchase tax. Further, additional tax and interest are leviable as per the provisions of the Act.

(i) In Aurangabad, an assessee engaged in the manufacture of generating sets was granted certificate of entitlement for the period 11th August 1982 to 10th August 1987. In the assessment (February 1992) for the period 1st July 1987 to 31st March 1989, sales amounting to Rs.7.64 lakhs effected after 10th August 1987 were exempted from tax even though the validity period of entitlement certificate had expired. This resulted in non-levy of tax of Rs.76,447. Besides, interest of Rs.53,513 was also payable by the dealer.

The matter was reported to the department in August 1993 and to Government in March 1994; their replies have not been received (November 1994).

(ii) Under the provisions of Section 2(17) of Bombay Sales Tax Act, 1959 read with Rule 3 (XIV) of the Bombay Sales Tax Rules, 1959, the process of grinding of chillies, turmeric or other condiments and grinding of masala and its ingredients and mixing and blending of condiments and spices does not amount to manufacture. It has also been held judicially* that if the process does not result in production of new commercial commodity, it would not amount to manufacture.

In Amravati, an assessee engaged in the process of mixing and grinding of various ingredients to prepare masala was granted certificate of entitlement and his entire sales of Rs.11.21 lakhs during 1985-86 and of Rs.18.33 lakhs during 1986-87 were exempted from levy of sales tax. The dealer purchased raw materials valued at Rs.5.81 lakhs without paying any tax by furnishing declaration in Form "BC" during the year 1985-86 and 1986-87. Since grinding of masala is not manufacturing activity, the issue of Form "BC" from time to time based on eligibility certificate was irregular. Incorrect grant of entitlement certificate and further issue of Form "BC" resulted in foregoing revenue on account of purchase tax amounting to Rs.39,033 (including additional tax of Rs.4,184).

On this being pointed out (June 1989) in audit, the department stated (February 1993) that the entitlement certificate was granted on the recommendation of Development Corporation of Vidarbha Limited. Further, Government informed (October 1985) the Commissioner of Sales Tax that entitlement certificate once granted should not be cancelled till the expiry of the period. It further stated that an alternative scheme for providing incentive to the persons who are not manufacturers was under consideration of the Government. The reply of the department is not tenable as there can be no legal obligation to continue a benefit which is not covered under the scheme of exemption of tax under the Act.

The matter was reported to Government in August 1989 and again in January 1993; their reply has not been received (November 1994).

2.11 Incorrect grant of refund

Under the provisions of the Bombay Sales Tax Act, 1959, the amount of tax due from a dealer liable to tax is assessed separately for each year during which he is so liable. Further, the Commissioner may at any time within two years from the date of assessment order passed by him, on his own motion, rectify any mistake apparent from the record. Further, interest is leviable as per provisions of the Act.

* New Nagpur Copra Industries Vs The State of Maharashtra (60 STC 380)

In Bombay, the assessment (March 1992) of a dealer for the period from 1st July 1987 to 31st March 1989 was rectified (April 1992) to withdraw the set-off of Rs.1.62 lakhs wrongly allowed in the original order, resulting in a demand of Rs.34,213. However, instead of raising a demand against the dealer, the assessing authority allowed him refund of Rs.33,819. This resulted in under-assessment of Rs.92,524 (including interest of Rs.24,492).

On this being pointed out (August 1993) in audit, the department stated (June 1994) that the dealer is in appeal and audit point has been communicated to the appellate authority.

The matter was reported to Government in June 1994; their reply has not been received (November 1994).

2.12 Incorrect determination of taxable turnover

Under the provisions of the Bombay Sales Tax Act, 1959, the turnover of sales liable to tax is determined after deducting from the gross turnover of sales, the resales of goods purchased by the dealer from other registered dealers within the State provided that the goods purchased are resold in the same form in which they were purchased. As such, goods purchased in the course of inter-State trade or commerce or from unregistered dealers and resold within the State are liable to tax at the rates prescribed in the Schedule to the Act. When the sales of goods purchased from unregistered dealers and dealers from outside the State are not identifiable, an estimate of taxable turnover is made by adding gross profit to the purchase price. Sales made on declarations are also to be deducted from the gross turnover of sales. Central excise duties levied or leviable shall be deemed to be part of sale price of goods sold. Further, additional tax, turnover tax and interest are also leviable under the provisions of the Act.

(i) In Bombay, in assessing (October 1992) a reseller of paper whose gross turnover of sales for the period 1st April 1989 to 31st March 1990 was Rs.41.91 lakhs, taxable sales were determined at Rs.13.90 lakhs and the rest allowed as resales even though purchases of news print in the course of inter-State trade or commerce amounted to Rs.32.82 lakhs. As there was no closing stock of inter-State purchases, the entire purchases in the course of inter-State trade or commerce were taxable at an estimated sale value of Rs.38.18 lakhs after adding profit margin of 16.34 per cent. This resulted in incorrect determination of taxable turnover of sales to the extent of Rs.24.28 lakhs on which tax of Rs.1.93 lakhs (including additional tax and turnover tax) was leviable. Besides, interest at Rs.1.20 lakhs was also payable by the dealer.

On this being pointed out (May 1993) in audit, the department initiated action (January 1994) to revise the assessment. Final report has not been received (November 1994).

The matter was reported to Government in April 1994; their reply has not been received (November 1994).

(ii) In Bombay, while assessing (March 1993) a manufacturer of machinery parts for the period from 1st April 1989 to 31st March 1990, an amount of Rs.5.18 lakhs was allowed as deduction from turnover of sales on account of central excise duty paid, for arriving at net turnover of sales liable to tax. As central excise duty shall be deemed to be part of

the sale price, its deduction from the taxable turnover of sales was incorrect. This resulted in under-assessment of tax of Rs. 1.01 lakhs (including turnover tax of Rs. 6,472, additional tax of Rs. 6,213 and interest of Rs. 36,462).

The matter was reported to the department in November 1993 and to Government in June 1994; their replies have not been received (November 1994).

2.13 Non-levy of tax due to incorrect allowance of taxable turnover as "Works Contract"

Under the provisions of the Bombay Sales Tax Act, 1959, a registered dealer who sells taxable goods in the State of Maharashtra otherwise than on declaration is liable to pay tax on his sales at the rates specified in the Schedule appended to the Act. However, transactions which do not amount to sale such as 'Works Contract' are not taxable. Further, additional tax and penalty are leviable as per the provisions of the Act.

In Thane, while assessing a dealer (February 1990) engaged in fabrication and manufacture of towers during the period 1st November 1985 to 31st October 1986, a deduction amounting to Rs. 11.16 lakhs for works contract in respect of supply and erection of fabricated and galvanised material was allowed by the assessing authority from the gross turnover of sales of Rs. 1.11 crores. A scrutiny of assessment records (February 1992), however, revealed that the agreement entered into was meant for design, fabrication, galvanising and supply of steel structures etc. and did not contain a clause about 'erection' of the structure as stated in the assessment order. Evidently this was a contract for sale and therefore, the transaction was liable to be taxed to sales tax at 10 per cent instead of being allowed as works contract.

On this being pointed out (February 1992) in audit, the department re-examined the case and revised the assessment (December 1993) raising demand of Rs. 1.68 lakhs (including additional tax of Rs. 12,170 and penalty of Rs. 54,000).

The matter was reported to Government in March 1994; their reply has not been received (November 1994).

2.14 Incorrect allowance of tax free sales

Under the Bombay Sales Tax Act, 1959, no tax is payable on the sales or purchases of any goods specified in Schedule 'A' to the Act. The rate of tax leviable on any commodity specified in Schedule B or C is determined with reference to the relevant entry in the Schedule to the Act. Further, additional tax, turnover tax, interest and penalty are leviable as per provisions of the Act.

(i) On sales of bolting cloth, tax is leviable at 10 per cent under residuary entry 102 of Part II of Schedule 'C' to the Act, not being classified elsewhere.

In Ratnagiri, while assessing (September 1992) a manufacturer of bolting cloth* for the period 1st January 1988 to 31st March 1989, sales of bolting cloth valued at Rs. 14.69 lakhs were erroneously allowed as tax free instead of taxing them at the rate of 10 per cent under the residuary entry C-II-102. This resulted in under-assessment of tax

* Bolting cloth is used for industrial purpose.

of Rs.1.50 lakhs (including additional tax of Rs.16,024). Besides, interest and penalty were also leviable.

On this being pointed out (May 1993) in audit, the department revised the assessment (January 1994) and raised demand of Rs.4.99 lakhs (including interest and penalty of Rs.3.49 lakhs). The report on recovery has not been received (November 1994).

The matter was reported to Government in June 1994; their reply has not been received (November 1994).

(ii) On sales of food and non-alcoholic drinks served for consumption in hotel, tax is leviable at 8 per cent under entry 22 of Part II of Schedule 'C' to the Act. In an appeal case decided on 28th July 1994, it was held by the appellate authority that 'Salad' served in hotels was a taxable commodity.

In Bombay, while assessing (December 1992) a dealer running a hotel where food and drinks were served, for the period 1st April 1989 to 31st March 1990, sales of salad, snacks and jaljira (non-alcoholic drinks) worth Rs.7.36 lakhs were allowed as tax free. These items being food and non-alcoholic drinks respectively, tax at the rate of 8 per cent is leviable under entry C-II/22. Thus, incorrect allowance of these sales as tax free resulted in under-assessment of tax of Rs.1.14 lakhs (including turnover tax of Rs.8,514, additional tax of Rs.6,539 and interest of Rs.44,508).

The matter was reported to Government in May 1994 who directed (August 1994) the department to furnish the reply immediately. Further report has not been received (November 1994).

2.15 Incorrect deferment of tax

Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, an eligible industrial unit, which is a registered dealer under the Act is permitted to defer the payment of purchase tax payable on purchase of raw material as mentioned in Explanation II to Rule 31-B and sales tax payable on sale of finished products for the prescribed period. The rule does not permit deferment of additional tax and turnover tax. Interest is leviable as per provisions of the Act.

In Jalgaon, in the assessment of an eligible industrial unit manufacturing drugs for the period from 1st July 1986 to 30th June 1987, an amount of Rs.73,221 was allowed to be deferred instead of the actual net tax liability of Rs.8,984 after deducting set-off granted. This resulted in excess deferment of tax to the extent of Rs.64,237.

On this being pointed out (September 1990) in audit, the department re-verified and revised the assessment (February 1993) by raising additional demand of Rs.82,361 (including interest of Rs.47,809).

The matter was reported to Government in May 1994; their reply has not been received (November 1994).

2.16 Avoidance of tax by way of under-valuation at the point of first sale

Under Section 8 of the Bombay Sales Tax Act, 1959, the turnover of resale of goods purchased from a registered dealer is exempted from the payment of tax. The Act further provides that no deduction on account of resales by dealers holding registered trademark shall be admissible. There is no provision in the Act to prevent avoidance of payment of tax or payment of very small amount of tax by other dealers by selling the goods at first point, at very low prices though on resale it fetches very high price.

It was noticed that firm 'A' sold ballast stones worth Rs.4.88 lakhs to firm 'B' which resold the goods to Railways at a cost of Rs.32.28 lakhs and paid no tax being resale. Both the firms had a common shareholder with 50 per cent shares. By selling the same goods to firm 'B' at exceptionally low price compared to actual price received from the end user, sales tax to the extent of Rs.2.08 lakhs was avoided.

On this being pointed out in audit, the department stated that there was no bar in the Bombay Sales Tax Act, 1959 in becoming partner in more than one registered firms. The fact remains that the dealer had avoided tax by selling the goods at a very low price at the first stage which fetched very high price on resale to end user.

2.17 Non-levy/short levy of interest

Under the Bombay Sales Tax Act, 1959, if any tax payable is found due from a dealer or a person in respect of any period as a result of an order of assessment or re-assessment passed under the Act, such dealer or person is liable to pay simple interest at the rate of two per cent of such tax for each month or part thereof from the first date after the end of the period for which the dealer or person has been so assessed till the date of such order of assessment. The provision is also applicable to the assessments under Central Sales Tax Act, 1956.

For failure to disclose in the returns, the appropriate liability to pay for the proper and correct quantification of tax liability, penalty equal to a sum not exceeding the amount of tax found due and payable is also leviable.

Further, where a person or dealer purchases any taxable goods under a declaration given by him and fails to comply with recitals of such declaration, such dealer is liable to pay, in addition to tax payable, a sum by way of penalty not exceeding twice the amount of tax.

It was noticed in audit (between June 1993 and September 1993) that while assessing (between March 1992 and March 1993) 2 dealers in Thane and Bombay for the years ending between March 1989 and March 1990, though the assessments resulted in additional dues, the interest and penalty amounting to Rs.2.98 lakhs were not levied in the assessments as detailed below :

District in which assessed	Period for which assessment done	Non-levy/short levy of interest/penalty (In lakhs of rupees)	Remarks
Thane	1st April 1989 to 31st March 1990	2.64	Department raised (February 1994) demand for Rs.2.64 lakhs.
Bombay	1st July 1988 to 31st March 1989	0.34	Department raised (January 1994) demand for Rs.34,098.
	Total	2.98	

Reports on recovery have not been received (November 1994).

The above cases were reported to Government in May 1994 and June 1994; their reply has not been received (November 1994).

2.18 Non-recovery of entry tax

Under the provisions of the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987 (Act administered by Sales Tax Department) and the Rules made thereunder, an importer is required to furnish return for the day on which an entry of motor vehicle into local area is effected by him within 15 days from the entry of such motor vehicle into a local area or before an application is made for registration of the vehicle under the Motor Vehicles Act, 1988, whichever is earlier.

For failure to comply with the aforesaid provisions, the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing impose on him in addition to any tax payable, a sum by way of penalty not exceeding twice the amount of tax.

In Amravati district, an importer who initially purchased a Truck from Madhya Pradesh in March 1989, brought the vehicle into Amravati (Maharashtra State) and got it registered at Regional Transport Office, Amravati in July 1989. However, no Entry Tax was levied at the time of registration in Maharashtra State. This resulted in non-levy of Entry Tax of Rs.37,277 (at 15 per cent of the cost of the vehicle). In addition, interest and penalty were also leviable.

On this being pointed out (February 1993) in audit, the department raised (April 1993) additional demand for Rs.76,677 including interest and penalty of Rs.39,400 and recovered an amount of Rs.20,000 in March 1993. Report on recovery of balance amount has not been received (November 1994).

The matter was reported to Government (January 1994); their reply has not been received (November 1994).

CHAPTER 3

STATE EXCISE

3.1 Results of audit

Test check of records relating to State Excise conducted in audit during the year 1993-94 revealed short levy of excise duty, licence fee etc. amounting to Rs.521.40 lakhs in 446 cases, which broadly fall under the following categories :

Sr. No.	Category	No. of cases	Amount (In lakhs of rupees)
1.	Non-levy/short levy of excise duty	51	339.30
2.	Short recovery of licence fee and privilege fee	261	171.78
3.	Non-recovery/short recovery of supervision charges	69	7.35
4.	Other irregularities	65	2.97
	Total	446	521.40

During the course of the year 1993-94, the department accepted under-assessment etc. in 258 cases involving Rs.32.41 lakhs of which 60 cases involving Rs.10.33 lakhs had been pointed out in audit during 1993-94 and the rest in earlier years and recovered Rs.9.61 lakhs. A few illustrative cases noticed during 1993-94 and in earlier years involving Rs.134.02 lakhs are given in the following paragraphs.

3.2 Levy of excise duty and licence fee on manufacture of liquor from Rectified Spirit

3.2.1 Levy and collection of the excise duty on production, manufacture, possession, transport, purchase and sale of alcoholic liquors for human consumption are governed by the Bombay Prohibition Act, 1949 and the Rules made thereunder. The supply and distribution of molasses was governed by Bombay Molasses (Control) Act, 1956 (before it was decontrolled by the Government in June 1993).

The Acts and Rules and other Government instructions provide for norms on wastages due to transit loss, storage loss, maturation loss and other losses involved in transfer, reduction, blending, bottling etc.

With a view to seeing that the provisions of the Excise Act/Rules were being implemented effectively to prevent evasion of duty, the records maintained in the offices of

10* out of 30 District Superintendents of State Excise and 30 Indian Made Foreign Liquor/ Country Liquor/Beer/Wine manufacturing units (out of 105 units) were test checked for the periods 1990-91 to 1992-93 during November 1993 to May 1994. The results of test check are given below :

3.2.2 Short recovery of licence fee due to application of incorrect rates

The Government of Maharashtra, Home Department vide its notification dated 16th March 1993 revised the licence fee for various licences issued under the Act such as licence in the Form Foreign Liquor I, II, III, Country Liquor I, II, III, Potable Liquor and Form E (Beer Bar) with effect from 16th March 1993. The Government granted stay on 25th March 1993 in respect of licensees applying for renewal in all forms mentioned above except Country Liquor I and Potable Liquor licences.

Revised rates of licence fee were thus required to be recovered on renewal of licences in Form Country Liquor I and Potable Liquor licence and on all fresh licences to be issued for the year 1993-94.

The district Superintendents of State Excise, however, by misinterpretation of the stay order renewed Country Liquor I and Potable Liquor licences at pre-revised rates. This resulted in short recovery of Rs.98.50 lakhs in nine districts test checked.

On this being pointed out (November 1993), Government issued instructions to renew and also issue fresh licences at the revised rates (February 1994). The department has stated (August 1994) that the recovery is in progress except in case of Aurangabad where stay has been granted by the High Court.

3.2.3 Loss of excise duty due to incorrect fixation of rates

Rates of excise duty on Indian Made Foreign Liquor/Wines/Sparkling Wines and Beer imported by Canteen Stores Department for supply to defence force are concessional. They were revised by Government of Maharashtra, Home Department, vide their notification dated 21st June 1992. In the case of ale, beer, porter, cider and other fermented liquor, the revised concession was as follows :-

a) Strength not exceeding 8.75 per cent proof litre	Excise duty in excess of Rs.5 per BULK LITRE
b) Strength exceeding 8.75 per cent proof spirit	Excise duty in excess of Rs.13.50 per PROOF LITRE

The normal excise duty on the beer of strength exceeding 8.75 per cent of proof litres was fixed in terms of bulk litres. Accordingly, the concessional rate applicable to beer of this strength should have been fixed in terms of bulk litres.

However, by mistake it was fixed in terms of proof litres. The incorrect fixation of rates deprived the department of additional excise duty to the tune of Rs.18.72 lakhs in one brewery.

* Ahmednagar, Aurangabad, Bombay City, Bombay Suburban, Nashik, Nagpur, Pune, Raigad, Satara, Thane

The Commissioner stated (August 1994) that matter has been brought to the notice of Government.

3.2.4 Removal of beer without payment of excise duty

The Rules framed under the Bombay Prohibition Act lay down the procedure relating to the time and manner of payment of duty on removal of liquor/beer. The Commissioner of State Excise had, vide a circular issued in 1984 reiterated that a manufacturer of Indian Made Foreign Liquor or Beer shall pay the excise duty before such liquor/beer is removed from the manufactory/brewery.

(i) In Thane district, it was noticed that the department had allowed the agent of the manufacturer instead of the manufacturer to make payment of the excise duty of Rs.4.83 lakhs for the removal of six consignments of beer, the challans of which were subsequently found (November 1992) to be fake. When the act of the agent in cheating and forgery was noticed, the manufacturer paid (November 1992) the amount of duty into the account current. However, instead of debiting this amount against the said consignment the amounts credited were utilised for removal of subsequent consignments of beer, thus resulting in removal of beer without payment of excise duty of Rs.4.83 lakhs.

On this being pointed out (February 1994) in audit, the Excise Officer in charge of the unit stated that the matter regarding adjustments in current account had been referred (April 1994) to the Commissioner.

(ii) As per the Commissioner's circular instructions of 1984 the licensee who is often required to credit large amounts into Government Treasury by way of excise duty may maintain an account current with the department with the permission of the Commissioner. In one distillery at Uran, an amount of Rs.30,000 was paid (July 1990) into the account current; however, the credit thereof was erroneously allowed as Rs.3 lakhs thereby inflating the balance. This was set right after one month, thus resulting in beer being despatched without payment of excise duty of Rs.2.70 lakhs during the intervening period.

3.2.5 Absence of provision in the Excise Act for levy of interest on belated payments of duty/fees etc.

Under the Bombay Prohibition Act, 1949, no intoxicant can be imported, exported or transported except after payment of duty which may be leviable under the Act or after execution of a bond for such payment. However, there is no provision in the Excise Act/ Rules for the levy of interest on belated payments of duty or for levy of penalty. This results in unintended benefits to the licensees who delay payment and is detrimental to the revenues of the Government.

During test check of records of excise duty payments, it was noticed that in respect of thirteen cases of belated payments (ranging between 45 to 221 days) of excise duty, Government had suffered a loss of Rs.0.75 lakh by way of interest at the rate of 18 per cent per annum due to lack of enabling provisions in the Act/Rules. On the contrary, in a case of belated refund payment, the Department was ordered by the Court to pay an interest of Rs.26,564 and the same was paid in April 1991.

3.2.6 Non-finalisation of accident cases

The Bombay Rectified Spirit (Transport in Bond) Rules, 1951 prescribe the procedure for transport of rectified spirit under bond. The rules provide that in case of any wastage of spirit found on arrival of the consignment in excess of the sanctioned wastage of 1/2 per cent per 160 kms., the officer in charge shall report the fact to the Collector for obtaining the orders of the Commissioner as regards the amount of duty to be levied on such excess wastage from the persons liable to pay the same.

During the course of review, it was noticed that in three districts, seven trucks carrying rectified spirit had met with accidents (during the years 1988-89 to 1991-92) and 49,317 proof litres of rectified spirit on which excise duty amounting to Rs.12.33 lakhs was leviable was lost in the accidents. Though the Excise Officers of the units reported the matter to respective Superintendents of State Excise the cases were pending with the Commissioner's office for periods ranging from two to six years (May 1994). In one out of seven cases in which demand notice to pay excise duty of Rs.3.46 lakhs was issued, no recovery had been made (May 1994).

3.2.7 Non-recovery of Composition money

Under the provisions of the Bombay Prohibition Act, 1949, the authority granting any licence, permit, pass or authorisation under the Act may for breach of any of the conditions thereof cancel or suspend the same. In addition the person responsible for such breach is liable for prosecution. The Commissioner may, in lieu of prosecution or suspension or cancellation of licence etc. accept a sum not exceeding rupees ten thousand by way of composition.

In Ahmednagar, Bombay and Pune Districts, in ninety cases an amount of Rs.2.18 lakhs was ordered to be recovered by way of composition during the years 1990 to 1993.

However, recovery thereof was not made nor any follow-up action taken though a period ranging from one to three years had elapsed since the issue of the orders thereby defeating the very purpose of invoking the penal provisions.

3.2.8 Non-recovery of differential amount of excise duty

Excise duty on Indian Made Foreign Liquor is calculated on its alcoholic strength, as determined by the Chemical Analyser to Government. Where the report of the Chemical Analyser is not available, duty based on alcoholic strength declared by the manufacturer is provisionally recovered. On receipt of the report of the Chemical Analyser, the provisional assessment is finalised and additional demand for differential amount raised, if necessary.

In four districts the differential amount of excise duty amounting to Rs.3.63 lakhs, though demanded from licensees (November 1992 to January 1993) was not recovered (May 1994).

3.2.9 Delay in grant of licences

An applicant desirous of obtaining licence for sale of liquor in Form E (Beer Bar), Foreign Liquor II, III and Country Liquor III etc. is required to make an application in the

prescribed form. The office of the Superintendent of State Excise after verifying the details of the information supplied by the applicant regarding his place of business, solvency and police record or any other information considered necessary, submits the applications for approval to the Committee constituted for the purpose vide Government of Maharashtra Notification dated 17th February 1989. On approval of the same by the Committee, the licence is granted provided the licensee completes the requisite formalities.

In four districts of Maharashtra, eighty three applications for licences were lying pending for a period ranging from more than a year to four years for various reasons such as not holding the Committee meetings and for want of completion of other formalities, the details are given below :

Year	Applications received	Applications disposed of	Balance
1990-91	125	104	21
1991-92	174	143	31
1992-93	83	52	31
Total	382	299	83

No monitoring system existed to ensure prompt disposal of applications for licences received in different districts of the State.

3.2.10 Non-reconciliation of Revenue Receipts

The Excise Officer in charge of the unit assesses the dues. The duty assessed is deposited by the licensee into Treasury through challans in triplicate which are attested by the Excise Officer. One copy of the challan is retained by the Treasury Officer, second copy is given to the licensee and the third copy is sent to the Excise Officer in charge.

The Excise Officer maintains a register to record all the details of payments and as per financial rules and instructions of the Commissioner of State Excise, he is required to get the credits verified from the Treasury.

During the review it was noticed that such reconciliation of revenue receipts with the Treasuries had not been done since 1989-90 in three districts i.e. Ahmednagar, Pune and Thane, out of the ten districts test checked.

The matter was reported to Government in June 1994; their reply has not been received (November 1994).

3.3 Non-recovery of toddy instalments

Under the provisions of the Maharashtra Toddy Shops (Grant of licence by Auction or Tender) Order, 1968, licence for sale of toddy in shops for the period from 1st September of a year to 31st August of the following year in the State is issued to the highest bidder

in public auction and every successful bidder or tenderer is required to pay on the spot or on the next working day, one fourth of the amount of the bid and the balance amount is required to be paid in six equal monthly instalments within the time prescribed in the order.

The bidder has also to pay to Government a security deposit equal to one monthly instalment in advance before the commencement of the year for which bid has been accepted. The amount of security deposit thus paid is adjusted towards the payment of the last monthly instalment unless it is forfeited for breach of the terms and conditions of the licence. If any monthly instalment is not paid on or before the last day of the month in which it is payable, the Collector may re-auction the shop at the risk and cost of the defaulting bidder or tenderer. Interest at 18.5 per cent per annum is chargeable on the instalments paid late.

The Government vide their notification dated 19th May 1986 had delegated the powers of collectors to the Superintendents of State Excise for recovering the arrears of excise as arrears of land revenue. It was, however, noticed in audit that arrears to the tune of Rs.7.93 lakhs were still pending for collection in 8 districts test checked for the periods 1990-91 to 1992-93 as per details given below :

Sr. No.	Name of District	Toddy years	No. of cases	Amount outstanding (In lakhs of rupees)	Remarks
1.	Aurangabad	1990-91	1	0.04	
2.	Bombay	1992-93	7	1.62	The department recovered Rs.1.18 lakhs in July/August 1993 from 5 licensees.
3.	Chandrapur	1991-92	11	1.36	
					The department recovered Rs.12,418 from one licensee.
4.	Nashik	1992-93	1	0.15	Cases at Sr.No.1 and 4 to 8 were reported to department in May 1994; their final reply has not been received (November 1994).
5.	Nagpur	1991-92	4	0.85	
		1992-93	5	0.81	
6.	Pune	1990-91	4	0.87	
		1992-93	1	0.15	
7.	Raigad	1991-92	2	0.19	
		1992-93	1	0.06	
8.	Thane	1990-91	4	1.81	
		1992-93	1	0.02	
	Total		42	7.93	

The concerned departments have not taken action to get the revenue realised as arrears of Land Revenue and continue to refer such cases to the Collectors.

The above cases were reported to Government in March 1994 and May 1994; their reply has not been received (November 1994).

3.4 Non-recovery of supervision charges

Under the provisions of the Bombay Prohibition Act, 1949, all transactions relating to the receipts, manufacture, import, export, transport, storage and vending of excisable goods are required to be supervised by the State Excise Staff and the cost of deputing the departmental staff at the premises of the licensee is recoverable from the licensee in advance at the rates prescribed by the Government. The rates of Supervision Charges are revised as and when there is revision in the pay scales/dearness allowance. Bonus sanctioned by the Government to certain categories of staff is also recoverable from the licensee.

In Dhule district, in respect of seven excise licensees supervision charges for the period 1st April 1991 to 31st March 1992 were recovered at pre-revised rates. Besides, bonus for the year 1990-91 was not recovered. This resulted in short recovery amounting to Rs.58,565.

On this being pointed out (March 1993) in audit, the department recovered (September 1993) Rs.15,481 in respect of 3 units. Report on recovery of the balance amount has not been received (November 1994).

The matter was reported to Government in March 1994; their reply has not been received (November 1994).

CHAPTER 4

LAND REVENUE

4.1 Results of audit

Test check of the records of Land Revenue conducted during the year 1993-94 revealed under-assessment/short levy/loss of revenue/non-levy of tax etc. amounting to Rs.927.35 lakhs in 604 cases which broadly fall under the following categories :

Sr. No.	Category	No. of cases	Amount (In lakhs of rupees)
1.	Non-levy/short levy of non-agricultural assessment/Conversion tax/incorrect revision	511	783.65
2.	Non-levy/short levy/incorrect levy of increase of land revenue	61	61.00
3.	Non-levy/short levy of education cess etc.	2	0.21
4.	Non-levy/short levy of occupancy price etc.	19	76.49
5.	Short levy of measurement compensation/ application Transfer fee etc.	11	6.00
	Total	604	927.35

During the course of the year 1993-94, the concerned departments accepted under-assessment of Rs.503 lakhs involved in 482 cases of which 71 cases involving Rs.16.97 lakhs had been pointed out in audit during 1993-94 and the rest in earlier years. An amount of Rs.27.58 lakhs was recovered at the instance of Audit.

A few illustrative cases noticed during 1993-94 and earlier years involving Rs.178.23 lakhs highlighting important audit observations are mentioned in the following paragraphs.

4.2 Assessment and Collection of Land Revenue

4.2.1 The revenue department is responsible for assessment and collection of (i) Land Revenue, (ii) various cesses and (iii) increase in land revenue and special assessment.

Under Maharashtra Land Revenue Code, 1966, land revenue is assessed with reference to the use of land i.e. agricultural, residential, commercial, industrial or for any other purpose. In addition to Land Revenue, Conversion Tax, Education Cess, Employment Guarantee Cess, Zilla Parishad and Village Panchayat Cess at the prescribed rates are also levied under Education and Employment Guarantee Cess Act, 1962, Maharashtra Zilla

Parishads and Panchayat Samities Act, 1961 and Bombay Village Panchayat Act, 1958. 'Increase in land revenue' and 'increase in special assessment' are also payable under Maharashtra Increase of Land Revenue and Special Assessment Act, 1974. Instructions issued by the department from time to time provide for control over the assessment and collection of revenue. Revenue survey, settlement of agricultural land revenue, demarcation of boundaries and maintenance of land records are to be done by the Settlement Commissioner. The Land Revenue settlement was last made in 1930 and was to remain in force for a period of thirty years under the Maharashtra Revenue Code, 1966. On the expiry of that period, the settlement continues to remain in force until the commencement of the term of a fresh settlement. The non-agricultural assessment under residential, commercial, industrial or other purposes is to be done by the Revenue Authorities under the general control and superintendence of the Commissioner of the Division.

4.2.2 (i) Non-recovery of conversion tax

(a) The Maharashtra Land Revenue Code Amendment Act, 1979, provides for levy of conversion tax at thrice the amount of non-agricultural assessment on all lands situated in the areas of municipal corporation and municipal councils A or B classes only including peripheral area thereof when permission for non-agricultural use is granted or change of use is regularised on or after 31st March 1979. Grantee is required to pay conversion tax within 30 days from the date of issue of the permission for non-agricultural use.

The Collector, Yavatmal issued 28 orders granting permission for non-agricultural use for village Yavatmal in the year 1991-92 and 1992-93. However, conversion tax in these cases amounting to Rs.3.95 lakhs was not recovered.

The department stated (September 1994) that notices would be served to the concerned parties and recovery made.

(b) On the basis of permission issued by the Collectors/Sub-Divisional officers non-agricultural assessments are worked out and noted in TF-II and VF-II. The demand is raised on the basis of the entries recorded in Taluka Form No. II at taluka level and Village Form No. II at village level. Omission to make entries in said registers may lead to leakage of revenue.

It was observed in audit that in 18 cases of Tahsil Nagpur City, Borivali, Kurla, Warora, Warud and Nagpur (Rural) the entries were not made in the basic records, resulting in non-raising of demands and consequent non-recovery of non-agricultural assessment of Rs.3.09 lakhs.

(ii) Loss of revenue due to delay in making amendments to Maharashtra Land Revenue Code

According to Section 114 (i)(c) of the Maharashtra Land Revenue Amendment Act (Act No. VIII of 1979), the rate of assessment for commercial use of land shall be thrice the standard rate of non-agricultural assessment in the area within the limits of Greater Bombay excluding the city of Bombay and the cities of Nagpur, Pune, Kolhapur and Solapur and twice the standard rate of non-agricultural assessment in the remaining areas of the State. For the purpose of this clause, "Cities of Nagpur, Pune, Kolhapur and Solapur"

shall have the same meaning, as assigned to them in the explanation below Section 47A. Subsequent to this amendment which inter alia covers A and B class municipal areas, 7 municipal councils were upgraded to Municipal Corporations in the State of Maharashtra i.e. Kalyan (1st October 1983), Thane (1st October 1983), Aurangabad (8th December 1983), Nashik (7th January 1982), Amravati (15th January 1983), Pimpri-Chinchwad (11th October 1982) and New Bombay (1st January 1992).

It was, however, observed that the lands within the limits of above newly constituted municipal corporations in the State had not been assessed at thrice the rates of non-agricultural assessment and continue to be charged at twice the standard rate of non-agricultural assessment for the lands used for commercial purposes. This deprived the Government of the revenue of Rs.34 lakhs for the period between July 1982 and March 1993. The department stated (December 1989) that the proposal for amendments to Section 47 A and 114 (i)(c) of Maharashtra Land Revenue Code, 1966 had already been initiated and suitable legislation was expected to be brought before the Legislature.

(iii) Non-levy of non-agricultural assessment in respect of land acquired for non-agricultural use

Agricultural lands when acquired under the Land Acquisition Act, 1894 and made over to the various bodies under Government for non-agricultural use are assessable at the rates applicable to non-agricultural use from the date on which the possession is handed over to these bodies and is liable for the levy of non-agricultural assessment on them.

The possession of 66 hectares 66 ares of land was handed over to Bombay Municipal Corporation, Bombay Electric Supply and Transport Undertaking, Agricultural Produce Marketing Committee and Indian Oil Corporation between 1st April 1987 and 31st July 1993. It was, however, observed that the revenue authorities did not issue orders levying non-agricultural assessment which resulted in non-realisation of non-agricultural assessment and increase of land revenue amounting to Rs.49.35 lakhs.

The Collector, Pune stated (August 1994) that necessary action to levy non-agricultural assessment was being taken. No reply has been received from the Collector, Bombay Suburban District, Bandra (November 1994).

(iv) Non-levy of assessment on the Inami and Special Tenure lands (Bombay city)

(a) Under the Bombay city (Inami and Special Tenure) Abolition and Maharashtra Land Revenue Code (Amendment) Act, 1969 which came into force with effect from 1st August, 1971, assessment fixed would remain in force for a period of fifty years from the appointed day and shall be levied at graduated scales as provided in Section 8 of M.L.R.Code, 1966. As per the Government circular dated 8th September 1989, no lands in the city of Bombay should remain unassessed after the fixation of standard rates, to avoid any further loss of revenue.

It was seen from the monthly returns that out of 16,667 holdings, 136 holdings situated in 12 Revenue Divisions of Bombay city had not been assessed from 1st August 1971 onwards. In 42 holdings assessment leviable on graduated scales worked out to

Rs.13.78 lakhs for the period from 1971-72 to 1992-93 which is still to be assessed. As the details of the area involved for the remaining 94 holdings were not available, unassessed revenue on this account could not be worked out.

The Collector, Bombay attributed (August 1994) the non-assessment of lands to the non-availability of addresses of superior holders and stated that the details of the area of the remaining 94 holdings would be ascertained and intimated to audit.

(b) Under the provisions of Section 6 of the Bombay City, Land Revenue Assessment Rules, 1989, the standard rates of assessment for land revenue are required to be fixed by the Collectors in accordance with the provisions of sub-section (2) of section 262 (B) of the Maharashtra Land Revenue Code, 1966 on the basis of the average market value of land per square metre. These rates are to be approved by the Government and published in the official gazette. They become effective within 90 days of their publication and remain in force for period of ten years.

It was, however, seen from the records that the rates of assessment were not fixed by the Collector, Bombay in respect of the following tenures :

(i) Toka Tenures (1500 Acres) 60,70,500 square metres; (ii) Lands newly assessed tenures, 436 holdings (8,32,000 square metres), 26 holdings at second Inam and 28 holdings at Antop hills; (iii) Tenancy at will tenure (318 holdings).

The Collector of Bombay City stated (January 1994) that proposals for fixation of standard rates would be submitted in due course.

(v) Failure to levy non-agricultural assessment

Under the Maharashtra Land Revenue Code, 1966, assessment of land revenue is done with reference to the use of land such as agricultural, residential, industrial or commercial. On change in mode of use of land from one purpose to another land revenue is required to be re-assessed. The liability to pay non-agricultural assessment is on the holder of land. Further, under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974 (as amended on 1st August 1975), a tax called increase of land revenue is also payable at 50 per cent on all holdings of 8 hectares and above but less than 12 hectares and at 100 per cent on holdings of 12 hectares and above. The term "holdings" include agricultural as well as non-agricultural lands. Under the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 and Bombay Village Panchayat Act, 1958, a cess at prescribed rate is leviable. In cases, where such lands are situated in the areas of municipal corporations or municipal councils (A and B Class only) or any peripheral area thereof, conversion tax equal to three times the amount of the non-agricultural assessment is also leviable when permission for non-agricultural use or change of use is granted under the Maharashtra Land Revenue (Amendment) Act, 1979.

In test check of records of 6 tahsils, Nagpur, Nagpur (Rural), Vasai, Nashik, Warora, Bhiwandi, it was observed that land measuring 473219 square metres was not assessed for non-agricultural assessment, increase of land revenue, cesses etc. during the period between 1977-78 and 1993-94 resulting in non-realisation of revenue amounting to Rs.8.34 lakhs.

The department agreed (between September 1993 and February 1994) to take necessary action.

4.2.3 Non-recovery of non-agricultural assessment with fine in cases of unauthorised use

During verification of records of Sub-Divisional Officers, Chandrapur and Warora, it was observed that Sub-Divisional Officers passed interim orders in respect of unauthorised non-agricultural use in 856 cases involving revenue of Rs.38.85 lakhs. These orders were forwarded by Sub-Divisional Officer to the respective Tahsildars and Talathis for making entries in the TF II and VF II for recovery. On cross verification of records of Tahsildar and Talathis, it was observed that no action to record the orders in the basic records had been taken and no recoveries were effected. Thus, revenue of Rs.38.85 lakhs remained unrealised.

On this being pointed out (December 1993), the department stated that necessary entries will be made in VF II/TF II and recoveries ensured.

4.3 Non-levy/short levy of land revenue, increase of land revenue and cesses

Under the Maharashtra Land Revenue Code, 1966, land revenue is assessed with reference to the purpose for which the land is used such as agricultural, residential, industrial or commercial. Further, under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974, as amended with effect from 1st August 1975, a tax called "Increase of Land Revenue" (I.L.R.) is payable at 50 per cent of land revenue by persons holding land of 8 hectares and above but less than 12 hectares and at 100 per cent by persons holding land of 12 hectares and above. The term "holdings" include agricultural as well as non-agricultural lands. Under Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 and the Bombay Village Panchayats Act, 1958, a cess at a prescribed rate is also leviable in the areas covered by the Acts.

Further, Maharashtra Land Revenue Code (Amendment) Act, 1979, effective from 31st March 1979, provides for levy of conversion tax at thrice the amount of Non-agricultural Assessment (N.A.A.) on all lands situated in the areas of municipal corporation and municipal councils (A and B classes only) including the peripheral limits thereof, when permission for non-agricultural use or change of use of land is granted or unauthorised non-agricultural use is regularised on or after 31st March 1979.

The Collectors are empowered to fix the standard rates from time to time which remain in force during guarantee period or till they are revised.

(a) In Yawal (Jalgaon district), Miraj (Sangli district) and Dindori tahsils (Nashik district), land measuring 2,14,232 square metres in 4 cases was put to non-agricultural use but the N.A.A., I.L.R. and cesses were not levied. This resulted in non-realisation of revenue amounting to Rs.10.81 lakhs in the cases shown below :

Name of tahsil	Area of land in sq.mtrs.	Purpose	Period	N.A.A.	I.L.R.	Cess	Total non-levy
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
(In lakhs of rupees)							
Yawal	34,328	Industrial	1985-86 to 1993-94	....	1.64	....	1.64
Miraj	16,900	Commercial	1984-85 to 1992-93	0.82	0.82	1.80	3.44
Miraj	42,504	Industrial	1973-74 to 1993-94	2.52	2.45	....	4.97
Dindori	1,20,500	Residential	1979-80 to 1993-94	0.18	0.18	0.40	0.76
Total	2,14,232			3.52	5.09	2.20	10.81

On this being pointed out (March 1993 to October 1993), the department raised the demand in November 1993 in the case at Sr. No. 1 and agreed to raise demands (February 1994 and April 1994) in the remaining 3 cases. The report on recovery has not been received (November 1994).

(b)(i) In Rajura (Chandrapur district) and Shirol tahsils (Kolhapur district), lands measuring 7,60,500 square metres and 92,000 square metres were put to industrial use from 1987 to 1991 respectively. However, the land revenue was assessed at the rate applicable for residential purpose instead of at the rate applicable for industrial purpose. This resulted in short realisation of land revenue amounting to Rs.4.86 lakhs (including Rs.1.37 lakhs towards I.L.R.) for the period 1987-88 to 1992-93 and Rs.2.02 lakhs (including I.L.R. of Rs.0.50 lakh and ZP, VP cesses of Rs.1.11 lakhs) for the period 1990-91 to 1993-94 respectively.

On this being pointed out (May 1993 and September 1993), the department raised the demand in July 1993 and November 1993 respectively. The report on recovery has not been received (November 1994).

(ii) In Andheri tahsil (Bombay Suburban District), land measuring 17,361.60 square metres in 4 cases situated within the municipal corporation limits was put to commercial use unauthorisedly. In three cases which were regularised by the department,

the assessment was made at 6 times the existing residential rate instead of rate applicable to commercial use. In respect of fourth case, the assessment was made at the rate applicable to residential use instead of commercial use.

This resulted in non-realisation of revenue amounting to Rs.7.29 lakhs including conversion tax of Rs.2.12 lakhs as shown below :

Sr. No.	Area of land in sq.mtrs.	Period	N.A.A	Conversion Tax (In lakhs of rupees)	Total non-levy
1.	2,184.30	1986-87 to 1993-94	0.73	0.27	1.00
2.	7,442.10	1980-81 to 1993-94	2.34	1.08	3.42
3.	937.60	1985-86 to 1993-94	0.65	0.29	0.94
4.	6,797.60	1985-86 to 1993-94	1.45	0.48	1.93
Total	17,361.60		5.17	2.12	7.29

On this being pointed out (September 1993), the department raised the demand (February 1994). Report on recovery has not been received (November 1994).

(c) In Wardha tahsil (Wardha district), land measuring 14,067.08 square metres situated within the limits of Municipal Council was put to residential use from 1983-84 onwards. The land was assessed considering the pre-revised standard rates of non-agricultural assessment existing prior to 1st August 1979. Computed at the revised standard rates effective from 1st August 1979, the short realisation of land revenue worked out to Rs.58,257 for the period 1983-84 to 1993-94 including conversion tax of Rs.10,090.

On this being pointed out (November 1993), the department stated (April 1994) that the revised demand would be raised. Report on recovery has not been received (November 1994).

4.4 Unauthorised non-agricultural use of land

Under the Maharashtra Land Revenue Code, 1966*, land revenue is assessed with reference to the purpose for which the land is used such as residential, industrial, commercial or any other purpose. Further, under the Maharashtra Land Revenue Code (Amendment) Act, 1979*, where permission of non-agricultural use or change of use is granted or unauthorised non-agricultural use is regularised by revenue authorities on or

* Section 67 of M.L.R. Code, 1966

after 31st March 1979**, conversion tax equal to three times the amount of non-agricultural assessment is leviable on all lands situated within the areas of municipal corporation and municipal councils (A and B classes only).

In Wani tahsil (Yavatmal district), land measuring 12,100 square metres situated within the municipal limits of Wani was unauthorisedly used for industrial purpose from 1986-87 onwards but the land in question was not assessed. This resulted in non-levy and non-realisation of revenue amounting to Rs.60,984 for the years 1986-87 to 1990-91 (including conversion tax of Rs.22,869).

On this being pointed out (April 1993) in audit, the Tahsildar agreed (April 1994) to assess the land and raise the demand on receipt of the assessment order. Further report in the matter has not been received (November 1994).

The case was reported to Government in July 1994; their reply has not been received (November 1994).

CHAPTER 5

TAXES ON MOTOR VEHICLES

5.1 Results of audit

Test check of records relating to assessment and collection of Motor Vehicles Tax, Further Tax and Passengers Tax, conducted in audit during the year 1993-94 revealed short levy of taxes amounting to Rs.61.12 lakhs in 1154 cases, which broadly fall under the following categories :

Sr. No.	Category	No. of cases	Amount (In lakhs of rupees)
1.	Non-levy or short levy of motor vehicles tax, further tax and passengers tax	1116	44.37
2.	Other irregularities	38	16.75
	Total	1154	61.12

During the course of the year 1993-94, the department accepted under-assessment etc. in 364 cases involving Rs.14.17 lakhs of which 96 cases involving Rs.7.36 lakhs had been pointed out during 1993-94 and the rest in earlier years and recovered Rs.10.88 lakhs. A few illustrative cases noticed during 1993-94 and in earlier years involving Rs.14.54 lakhs are given in the following paragraphs.

5.2 Non-realisation of motor vehicles tax

Under the Bombay Motor Vehicles Tax Act, 1958 and the Rules made thereunder, a registered owner of a motor vehicle not intending to use or keep for use such vehicle in the State for any period and desirous of being exempted from levy of tax is required to make before the commencement of such period, a declaration in the prescribed form specifying the period of non-use and the place where the vehicle would be kept during the period. The exemption from payment of tax is granted by the department after satisfying itself that the vehicle was not used during the specified period. The Transport Commissioner instructed the Regional Transport Officers to invariably verify a continuous non-use period of more than 6 months before expiry of the non-use period. Besides, interest at the rate of 2 per cent of the amount of tax for each month or part thereof is payable in case the tax due is not paid before the prescribed date.

In 2 Regional Transport Offices, it was noticed (November 1992 and July 1993) that intimations in respect of 12 vehicles declaring non-use thereof received in advance but during verification by the departmental officers, the vehicles were not found at the declared places. However, no action was taken by the department to recover taxes from the registered owners of the vehicles for various periods falling between May 1991 and September 1993. This resulted in non-realisation of motor vehicles tax of Rs.2.03 lakhs as detailed below :

Sr. No.	Name of R.T.O.	No. of vehicles	Amount of tax not realised (In lakhs of rupees)	Remarks
1.	Bombay (East)	8	1.32	The department recovered (January 1994) an amount of Rs.26,400 in respect of 3 vehicles.
2.	Bombay (West)	4	0.71	The department recovered (November 1993) an amount of Rs.53,359 in respect of 2 vehicles.
Total			2.03	

The above cases were reported to Government in March 1994 and April 1994; their reply has not been received (November 1994).

5.3 Non-recovery of tax

Under the Bombay Motor Vehicles Tax Act, 1958 and the Rules made thereunder, road tax at the prescribed rate is leviable on all vehicles used or kept for use in the State. In the case of goods vehicles "Further Tax" (Goods Tax) is also leviable in addition to road tax. The departmental manual provides that demand notices should be issued in each case of default in payment of tax. Interest at the rate of 2 per cent of the amount of tax for each month or part thereof is payable in case the tax due is not paid before the prescribed date.

In case, any tax payable in respect of a motor vehicle remains unpaid after issue of demand notice, the same shall be recoverable as arrears of land revenue by issuing revenue recovery certificates to the Tahasildar.

It was noticed (between July 1991 and September 1993) in audit that in respect of 221 vehicles registered in different districts, neither the tax amounting to Rs.12.51 lakhs was paid by the owners nor any demands were raised by the department for the various periods between February 1987 and December 1993 as detailed below :

Sr. No.	Name of District	No. of vehicles	Period of default	Amount of tax not recovered (In lakhs of rupees)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
1.	Ahmednagar	29	1st February 1991 to 31st October 1993)	1.33	The department recovered (between September 1993 and December 1993) an amount of Rs.45,154 including interest in respect of 11 vehicles.

(1)	(2)	(3)	(4)	(5)	(6)
2.	Shrirampur (Ahmednagar)	10	1st March 1989 to 30th November 1992	0.92	The department recovered (between December 1992 and December 1993) an amount of Rs.28,852 in respect of two vehicles.
3.	Bombay (West)	20	1st August 1987 to 30th June 1992	2.70	The department recovered (between July 1992 and May 1993) an amount of Rs.33,442 including interest in respect of 4 ve- hicles. Revenue Recovery Certificates were issued (between May 1993 and September 1993) in respect of 9 vehicles. Proposals for write-off of dues were submitted in respect of 6 vehicles and in respect of one vehicle, demand notice has been issued.
4.	Jalgaon	11	1st June 1989 to 31st August 1991	0.55	The department recovered (between November 1991 and January 1994) an amount of Rs.48,036 (including interest of Rs.12,769) in 6 cases.
5.	Kalyan	16	1st April 1989 to 31st August 1993	0.97	The department recovered (between February 1993 and June 1993) an amount of Rs.52,388. The report on recovery of balance amount has not been rec- eived (November 1994).
6.	Kolhapur	11	1st January 1989 to 29th February 1992	0.46	The department recovered (between November 1991 and March 1993) an amo- unt of Rs.23,493 (includ- ing interest of Rs.2,276) in respect of 8 vehicles.

(1)	(2)	(3)	(4)	(5)	(6)
7.	Nashik	16	1st July 1989 to 28th February 1993	1.67	The department recovered (between March 1993 and November 1993) an amount of Rs.49,049 in respect of 6 vehicles.
8.	Pune	32	1st April 1989 to 30th November 1993	2.43	The department recovered (between September 1993 and November 1993) an amount of Rs.1.36 lakhs in 11 cases.
9.	Solapur	19	1st January 1991 to 30th April 1993	0.92	The department recovered (between September 1992 and August 1993) an amount of Rs.51,039 in respect of 9 vehicles.
10.	Thane	57	1st November 1989 to 31st December 1993	0.56	The department recovered (between February 1993 and September 1993) an amount of Rs.18,764 in 10 cases.
Total		221		12.51	

All the above cases were reported to Government between March 1994 and May 1994; their reply has not been received (November 1994).

CHAPTER 6

STAMP DUTY AND REGISTRATION FEES

6.1 Results of audit

Test check of records of the Stamp Duty and Registration Fees conducted during the year 1993-94 revealed under-assessment/short levy/loss of revenue/non-levy of duty etc. amounting to Rs.348.60 lakhs in 791 cases which broadly fall under the following categories :

Sr. No.	Category	No. of cases	Amount (In lakhs of rupees)
1.	Non-levy of stamp duty and registration fees on instruments executed by Co-operative Societies	2	8.01
2.	Incorrect grant of exemption from duty and fee	481	205.27
3.	Short levy due to misclassification of documents	211	99.81
4.	Short levy due to under-valuation of property	15	12.37
5.	Other irregularities	82	23.14
	Total	791	348.60

During the course of the year 1993-94, the concerned departments accepted under-assessments etc. in 202 cases involving Rs.26.86 lakhs of which one case involving Rs.1.95 lakhs had been pointed out during 1993-94 and the rest in earlier years. The department recovered Rs.0.70 lakh.

A few illustrative cases noticed during 1993-94 and earlier years involving Rs.19.31 lakhs highlighting important irregularities are mentioned in the following paragraphs.

6.2 Short levy of stamp duty due to misclassification of documents

As per Explanation I below Article 25 of Schedule I to the Bombay Stamp Act, 1958, effective from 10th December 1985, an agreement to sell immovable property, the possession of which is transferred to the purchaser before the execution or at the time of the execution of such agreement or after the execution of such agreement without executing the conveyance in respect thereof, shall be deemed to be a conveyance deed and stamp duty thereon shall be levied accordingly.

(a) In Sub-registry, Haveli I and II (Pune), Bandra (Bombay), Aurangabad, Nashik and Nagpur, 105 instruments executed during 1986 to 1991 which related to conveying of right, title and interest in immovable properties for consideration of Rs.254.23 lakhs were

chargeable with stamp duty at the rate applicable to conveyance deed but were erroneously charged with stamp duty at lower rate applicable to "agreement to sell". This resulted in short levy of stamp duty amounting to Rs.12.68 lakhs as detailed below:

Name of Sub-registry office	No. of documents	Year of registration	Consideration	Short levy
(In lakhs of rupees)				
Haveli I, Pune	16	1989-91	44.24	4.43
Haveli II, Pune	23	1991	55.19	0.87
Bandra (Bombay)	11	1986-87	20.38	2.03
Aurangabad	48	1990-92	110.10	3.23
Nashik	05	1987	4.11	0.33
Nagpur	02	1989	20.21	1.79
Total	105		254.23	12.68

On this being pointed out (between August 1991 and September 1992) in audit, the department accepted (between May 1992 and February 1994) the audit observations and directed the concerned sub-registrars to initiate action for levy of deficit stamp duty. Further report in the matter has not been received (November 1994).

The cases were reported to Government (between October 1991 and December 1993); their reply has not been received (November 1994).

(b) According to Bombay Stamp Act, 1958, "conveyance" includes a conveyance on sale and every instrument by which property whether movable or immovable is transferred to or vested in any other person, inter vivos and which is not otherwise specifically provided for by Schedule I to the Act. Stamp duty on a deed of conveyance is leviable on the amount of consideration set-forth in the instrument at the rates prescribed in the Schedule to the Act.

In Sub-registry, Haveli I (Pune district), five instruments executed in the years 1989 to 1991 which related to the conveyance of right, title and interest in properties for consideration of Rs.18.79 lakhs were chargeable with stamp duty at higher rates as applicable to conveyance deed but were erroneously charged with stamp duty at lower rate applicable to agreement. This resulted in short levy of stamp duty amounting to Rs.1.80 lakhs.

On this being pointed out (September 1992) in audit, the Inspector General of Registration, Maharashtra State, Pune directed (October 1993/February 1994) the Sub-Registrar to initiate action for recovery. Report on recovery has not been received (November 1994).

The cases were reported to Government (October 1992/January 1993); their reply has not been received (November 1994).

6.3 Short levy of stamp duty on lease deed

Under the provisions of the Bombay Stamp Act, 1958 and Schedule I thereto, stamp duty on "lease deed" covering period in excess of 30 years is leviable at the same rate as applicable to the "conveyance deed" and based on ten times the average annual rent plus the premium paid. Further, under Section 53-A, the Chief Controlling Revenue Authority may within a period of 6 years from the date of certificate of the Collector under Sections 32, 39 or 41 as the case may be, order the recovery of deficit duty, if any, from the concerned party.

In Sub-registries, Nagpur (Headquarters), Haveli I (Pune) and Bombay, 34 documents of "lease" were registered between 1987 and 1991 for a period exceeding 30 years for Rs.63.19 lakhs as premium and an average annual rent of Rs.4.81 lakhs. Since the lease period exceeded 30 years, the stamp duty was leviable on premium and ten times of the average annual rent. However, the department levied duty amounting to Rs.5.52 lakhs as against leviable at Rs.9.09 lakhs. This resulted in short levy of stamp duty amounting to Rs.3.57 lakhs as detailed below :

Name of Sub-registry	No. of documents	Year of registration	Premium	Annual rent	Stamp duty leviable	Stamp duty levied	Short levy
(Amount in lakhs of rupees)							
Nagpur (Hqrs)	32	1989-91	59.34	2.45	6.73	5.36	1.37
Haveli I	1	1991	3.85	0.38	0.38	....	0.38
Bombay	1	1987	....	1.98	1.98	0.16	1.82
Total	34		63.19	4.81	9.09	5.52	3.57

On this being pointed out (between September 1992 and September 1993) in audit, the Inspector General of Registration, Pune directed the concerned Sub-Registrars (between January 1993 and February 1994) to initiate action for recovery of deficit amount of stamp duty. An amount of Rs.0.31 lakh was recovered till August 1994 in Nagpur sub-registry. In the case of Bombay sub-registry, the time limit for re-examination and recovery of short levy of stamp duty was to expire on 31st December 1992 but the case was submitted to the Chief Controlling Revenue Authority in April 1993 i.e. after prescribed time limit. Further report from sub-registry, Haveli I has not been received (November 1994).

The cases were reported to Government (between December 1991 and February 1993); their reply has not been received (November 1994).

6.4 Short levy of stamp duty due to misclassification of document

As per Explanation below Section 2 (g) of Bombay Stamp Act, 1958 read with Explanatory notes below Article 52 of Bombay Stamp Manual of the Government of

Maharashtra, Revenue and Forests Department, if one of the co-owners relinquishes his right over the joint property in favour of the other in consideration of certain amount, then such release deed shall be deemed to be conveyance deed and stamp duty shall be levied accordingly.

In Sub-registry, Haveli I (Pune district), three documents registered in the year 1989 which related to relinquishment of the right, title and interest in immovable properties by a co-owner in favour of other co-owner for consideration of Rs.4.25 lakhs were chargeable with stamp duty at higher rate as applicable to conveyance deed but were erroneously charged with stamp duty at lower rate applicable to "release deed". This resulted in short levy of stamp duty amounting to Rs.42,300.

On this being pointed out (September 1992) in audit, the Inspector General of Registration directed (February 1994) the sub-registrar to initiate action for recovery. Report on recovery has not been received (November 1994).

The matter was reported to Government in December 1993; their reply has not been received (November 1994).

6.5 Incorrect levy of stamp duty

Under Article 25(d) of Schedule I to the Bombay Stamp Act, 1958, concessional rate of stamp duty is applicable in the cases of documents of sale relating to residential premises covered under the provisions of the Maharashtra Apartment Ownership Act, 1970 provided the Builder and the Owner execute and register a deed of declaration as contemplated in Section 2 of the Maharashtra Apartment Ownership Act, 1970.

In Sub-registry, Haveli I (Pune district), on four documents registered during 1990 which related to conveying the sale of property, concessional rates of stamp duty under Article 25(d) of Schedule I, were levied, even though the deeds of declaration as required under Section 2 of the Maharashtra Apartment Ownership Act, 1970 were not executed and registered. This resulted in short levy of stamp duty amounting to Rs.84,600.

On this being pointed out (September 1992) in audit, the Inspector General of Registration directed (October 1993) the sub-registrar to initiate action for recovery. Report on recovery has not been received (November 1994).

The matter was reported to Government in October 1992; their reply has not been received (November 1994).

CHAPTER 7

OTHER TAX RECEIPTS

7.1 Results of audit

Test check of records of departmental offices, conducted in audit during 1993-94, revealed short realisation or losses of revenue amounting to Rs.386.55 lakhs in 2346 cases as listed below :

Sr. No.	Category	No. of cases	Amount (In lakhs of rupees)
1.	Profession Tax	1360	11.69
2.	Maharashtra Education and Employment Guarantee Cess	334	287.48
3.	Entertainments Duty	109	10.04
4.	Tax on buildings (with larger residential premises)	2	0.03
5.	Electricity Duty/Tax on sale of Electricity	405	30.86
6.	Repair Cess	136	46.45
	Total	2346	386.55

During the course of the year 1993-94, the concerned departments accepted under-assessments etc. in 311 cases involving Rs.12.53 lakhs of which 133 cases involving Rs.3.59 lakhs had been pointed out in audit during 1993-94 and the rest in earlier years and recovered Rs.6.44 lakhs. A few illustrative cases noticed during 1993-94 and in earlier years involving Rs.363.12 lakhs are given in the following paragraphs.

SECTION A

ENTERTAINMENTS DUTY

7.2 Undue benefit to proprietors of amusement parks

Under the Bombay Entertainments Duty Act, 1923, as amended with effect from 1st January 1987, entertainments duty is leviable on all payments for admission to any entertainment at the prescribed rates. Entertainment includes any exhibition, performance, amusement, game or sport to which people are admitted on payment. However, Government may on the application of a proprietor of any entertainment in respect of which duty is payable, allow the proprietor to pay the amount of duty, as a percentage, to be fixed by the Government, of the gross sum received by the proprietor on account of payment for admission to the entertainment.

By a Government resolution dated 23rd August 1990, the proprietor of one amusement park in Bombay was required to pay entertainments duty at concessional rate of 45 per cent (normal rate about 60 per cent) of the gross sum received by the proprietor for first three years from the date of commencement of the park i.e. from 25th December 1989 to 24th December 1992. In addition, surcharge was also leviable according to the provisions of the Act.

Similarly, as per Government resolution dated 7th January 1991, another amusement park at Pune run by municipal corporation was required to pay entertainments duty at concessional rate of 20 per cent (normal rate about 60 per cent) of the gross sum received by the proprietor for first three years from the date of commencement of park i.e. from 9th May 1990 to 8th May 1993. Besides, surcharge was also leviable.

By an ordinance dated 25th December 1992 amending the Bombay Entertainments Duty Act, 1923 retrospectively with effect from 25th December 1989 i.e. date of commencement of the Bombay based amusement park, the amusement parks were exempted from levy of entertainments duty for first three years from the date of their commencement and were to pay entertainments duty at 50 per cent of the entertainments duty for the next two years.

The proprietor of the amusement park at Bombay had paid entertainments duty to the Government amounting to Rs.93.91 lakhs pertaining to the period from 25th December 1989 to 31st August 1990 which was collected from the visitors to the park, through the admission tickets. The proprietor of the amusement park at Pune also paid entertainments duty amounting to Rs.30.05 lakhs collected from visitors to that park from 9th May 1990 to 28th February 1993. In view of the retrospective amendment to the Act, the above amounts lawfully collected from the visitors to the park and paid into Government account became refundable. The Government directed the authorities (March 1993 and June 1993) that the amounts paid by the proprietors be adjusted against future payments of entertainments duty instead of granting refund in cash. Accordingly, an amount of Rs.55.93 lakhs was adjusted against entertainments duty payable by the proprietor of the amusement park at Bombay for the period from 25th December 1992 to 7th October 1993. The amount adjusted against entertainments duty payable by the proprietor of amusement

park at Pune was not intimated. As the entertainments duty which was legally collected from visitors to the parks and paid to Government is sought to be refunded to the proprietors (and not to the persons from whom it was collected) in view of the retrospective amendment to the Act, it would amount to undue benefit to the proprietors amounting to Rs. 123.96 lakhs. It was held by the Supreme Court in *Amrit Banaspati Co. Ltd. Vs. State of Punjab* - 1992 (59) ELT 13 (SC) that "Even a legislature, much less a Government, cannot enact a law or issue an order or agree to refund the tax realised by it from people in exercise of its sovereign powers, except when the levy or realisation is contrary to a law validly enacted. A promise or agreement to refund tax which is due under the Act and realised in accordance with law would be a fraud on the Constitution and breach of faith of the people. Taxes like sales tax are paid even by a poor man irrespective of his savings with a sense of participation in growth of national economy and development of the State. Its utilisation by way of refund not to the payer but to a private person, a manufacturer, as an inducement to set-up its unit in the State would be breach of trust of the people amounting to deception under law".

On this being pointed out in audit (November 1993), the Government stated (June 1994) that in view of the opinion of Law and Judiciary Department, Government was not actually refunding the amount but adjusting it towards duty payable in future and the Supreme Court judgement related to tax on industries and had no bearing on entertainments duty.

The reply of the Government is not tenable since the adjustment of duty against duty payable in future was nothing but a disguised refund of duty lawfully realised which benefited not the people who had paid it but the proprietors who realised it and were allowed to retain it.

The matter was reported to Government in June 1994; their report has not been received (November 1994).

7.3 Acceptance of forged challans

The Maharashtra Treasury Rules, 1968 provide that after the end of a month, the head of the office should obtain from the treasury a consolidated receipt for all remittances made during the month which should be compared with the postings in his office records and discrepancies, if any, reconciled promptly. As per Government instructions issued in September 1980, in pursuance of recommendations made by Public Accounts Committee on paragraph 72 of the Report of the Comptroller and Auditor General of India for the year 1973-74 on Revenue Receipts - Government of Maharashtra, all heads of offices are required to send to the head of the departments concerned, a quarterly return in regard to reconciliation of receipts by 15th of the month following the quarter under report. The heads of the departments are to send to the administrative department of Government every six months, a certificate regarding completion of reconciliation work in their departments. In the District Collectorates and Tahsils, entertainments duty is being credited to Government Treasury by proprietors of cinema theatres after getting the challans countersigned by the concerned officer. The Resident Deputy Collector at the district level and the Tahsildar at Taluka level are responsible for the monthly reconciliation of departmental receipts with treasury figures.

During the test check of entertainments duty records pertaining to Collectorate, Thane it was noticed (September 1992) that reconciliation of departmental receipts for 1991-92 with treasury records was not done. Further, 10 challans, in respect of 2 theatres, aggregating Rs.2.24 lakhs in evidence of having paid entertainments duty for the various periods between 26th July 1991 and 26th March 1992 were not traceable in the records of the treasury.

On this being pointed out (September 1992) in audit, the department recovered (between October 1992 and December 1993) the entire amount of duty of Rs.2.24 lakhs. In addition, penalty of Rs.96,200 in respect of one theatre was recovered. The department further stated that reconciliation work was in progress. The matter regarding imposition of penalty in respect of the other theatre has been referred to Government (April 1994). Further report in the matter has not been received (November 1994).

The matter was reported to Government in May 1994; their reply has not been received (November 1994).

7.4 Short levy of entertainments duty due to incorrect application of compounding rates

Under the provisions of the Bombay Entertainments Duty Act, 1923, as amended with effect from 1st January 1987, a proprietor of a cinema theatre or video parlour in non-municipal areas may opt for payment of entertainments duty weekly at compounded rates as a percentage of the estimated gross collection in lieu of the entertainments duty payable on actual payments for admission. The compounding permit is issued for a calendar year and is effective from the first Friday after the date from which the permission is granted. For the period not covered by permit the entertainments duty is payable on the basis of actual payments for admission. Further, as per Government's circular instructions dated 11th December 1987, compounding permit is not to be granted with retrospective effect and if the permit is not renewed on its expiry, the entertainments duty is payable on the basis of actual payment for admission. Besides, where a proprietor fails to pay the duty within the prescribed period, he is liable to pay in addition to the amount of duty penal interest at 18 per cent per annum for first 30 days and at 24 per cent per annum thereafter till the amount of duty and interest are fully paid.

In Thane district, compounding permit of one theatre for the calendar year 1991 was renewed on 28th August 1991 with retrospective effect from 1st January 1991 instead of from the date of application i.e. 12th April 1991. As the permit is not to be granted with retrospective effect in view of Government orders dated 11th December 1987, it was pointed out (August 1993) in audit that entertainments duty on the basis of actual collection for the period not covered by permit was recoverable.

On this being pointed out (August 1993) in audit, the department raised the demand of Rs.34,988 for the period 1st January 1991 to 11th April 1991. Report on recovery has not been received (November 1994).

The matter was reported to Government in May 1994; their reply has not been received (November 1994).

7.5 Short payment of entertainments duty

The Bombay Entertainments Duty Act, 1923 as amended from time to time and the Rules framed thereunder, provide for submission of weekly returns and challans for payment of entertainments duty within 10 days from the date of entertainment. For failure to pay the duty as per the return within prescribed periods, interest is leviable at the rate of 18 per cent per annum for first 30 days and 24 per cent per annum thereafter till the amount of duty and interest are fully paid.

In Aurangabad, in respect of three theatre owners entertainments duty of Rs.13.10 lakhs was due as per returns for the periods between June 1991 and May 1993. Against this, the theatre owners paid Rs.12.68 lakhs only. This resulted in short payment of entertainments duty of Rs.42,172. Besides, interest of Rs.13,161 was also recoverable till July 1993. No demand notices were, however, issued by the department.

On this being pointed out (August 1993) in audit, the department issued (August 1993) demand notices in respect of two theatres and stated that the demand notice in the third case was being issued. Report on recovery has not been received (November 1994).

The matter was reported to Government in March 1994; their reply has not been received (November 1994).

SECTION B

STATE EDUCATION CESS AND EMPLOYMENT GUARANTEE CESS

7.6 Non-remittance of education cess

Under the provisions of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962, the proceeds of the cess and penalties recovered by a municipality on behalf of State Government shall be credited to the consolidated fund of the State within 7 days from the date of recovery. Further, the Act provides that if any Municipality makes default in collection or payment to the State Government of any sum due in respect of cess, the State Government may, if necessary, fix a period for the collection or payment of such sum.

In Solapur municipal corporation, it was noticed (January 1994) that Government revenue amounting to Rs.235.06 lakhs collected by the Municipal Corporation on account of State Education Cess and Employment Guarantee Cess during the period 1989-90 to 1992-93 was neither remitted to Government account (January 1994) nor was any action taken to report the matter to Government for fixing the period for payment.

On this being pointed out (January 1994) in audit, the department referred the matter to Government (January 1994) requesting for permission to pay the dues in 4 annual instalments after adjustment of Government grants of Rs.23 lakhs to the Municipality. Further report has not been received (November 1994).

The matter was reported to Government in July 1994; their reply has not been received (November 1994).

CHAPTER 8

NON-TAX RECEIPTS

8.1 Results of audit

Test check of the records of non-tax receipts conducted during the year 1993-94 revealed under-assessments/short levy/loss of revenue etc. amounting to Rs.1214.27 lakhs in 5796 cases which broadly fall under the following categories:

Sr. No.	Category	No. of cases	Amount (In lakhs of rupees)
1.	Short recovery/non-recovery of guard charges/rent/licence fee etc.	130	12.81
2.	Non-recovery of establishment charges	1	0.10
3.	Losses of Bamboo sale	2	6.62
4.	Losses of Tendu Leaves	6	160.69
5.	Losses on Forest Revenue	9	115.57
6.	Miscellaneous	5468	918.48
	Total	5796	1214.27

During the course of the year 1993-94, the concerned departments accepted under-assessments etc. of Rs.2.03 lakhs involved in 30 cases of which 11 cases involving Rs.1.87 lakhs had been pointed out in 1993-94 and recovered Rs.1.46 lakhs.

An illustrative case noticed during 1993-94 involving Rs.3.02 lakhs is mentioned in the following paragraph.

8.2 Short recovery of testing fees

According to the orders issued by Government in June 1972, the charges of testing of materials in Government Laboratory were to be levied and collected as per Schedule of rates fixed by Maharashtra Engineering Research Institute (MERI), Nashik. The Schedule of Charges for testing of different materials was revised by MERI from 1st July 1993.

In Regional Laboratories at Kolhapur, Pune and Solapur, it was noticed (January 1994) that charges for testing of materials were recovered at pre-revised rates during the period 1st July 1993 to 24th December 1993. This resulted in short recovery of testing fees amounting to Rs.3.02 lakhs.

On this being pointed out (January 1994) in audit, the department stated that the orders communicating revised rates were received in December 1993. The reply of the department is not tenable as it is also the responsibility of the department to ensure receipt and circulation of revised rates in time.

The matter was reported to Government in May 1994; their reply has not been received (November 1994).

Bombay,
The

16 फरवरी 1995
FEB



(V. SRIKANTAN)
Principal Accountant General (Audit)-I,
Maharashtra

Countersigned



New Delhi,
The

21 फरवरी 1995
FEB

(C. G. SOMIAH)
Comptroller and Auditor General of India

APPENDIX

APPENDIX
YEAR-WISE DETAILS OF OUTSTANDING
AS ON 30TH

Reference : Paragraph: 1.13

Sr. No.	Name of Receipt	Upto 1989-90			1990-91		
		I.Rs	Objs.	Amount	I.Rs	Objs.	Amount
1.	Sales Tax	104	212	111.50	129	252	37.73
2.	Land Revenue	666	1119	2215.32	58	125	57.57
3.	Agricultural Income Tax	31	46	3.30	....	....	....
4.	Stamp Duty and Registration Fee	385	919	642.78	22	41	20.66
5.	Forest Receipts	95	122	....	16	30	....
6.	Taxes on Vehicles	33	51	10.85	16	38	33.39
7.	Entertainments Duty	32	38	6.00	13	21	1.00
8.	State Excise	45	69	3.00	25	36	9.00
9.	Electricity Duty	1	1	....	1	1	....
10.	Tax on Professions	21	58	1.00	29	74	13.00
11.	State Education Cess	22	35	16.00	16	35	34.00
12.	Tax on Residential Premises	....	....	....	....	....	....
13.	Repair Cess	6	8	2.00	4	6	1.00
14.	Other Non-tax Receipts	31	49	119.46	21	30	3.00
Total		1472	2727	3131.21	350	689	210.35

AUDIT OBSERVATIONS UNDER VARIOUS RECEIPTS**JUNE 1994**

Page No. 18

(Amount in lakhs of rupees)											
1991-92			1992-93			1993-94 (upto 31.12.1993)			TOTAL		
IRs	Objs	Amount	IRs	Objs	Amount	IRs	Objs	Amount	IRs	Objs	Amount
252	761	93.50	347	1099	164.43	449	1560	296.21	1281	3884	703.37
45	106	100.71	46	184	192.78	131	347	428.33	946	1881	2994.71
....	....	....	....	....	....	....	....	....	31	46	3.30
50	156	135.00	27	290	262.19	43	180	118.65	527	1586	1179.28
23	51	....	39	109	....	34	109	....	207	421	....
18	44	127.00	19	55	26.08	21	77	48.73	107	265	246.05
31	41	16.00	37	52	0.39	42	58	6.00	155	210	29.39
35	57	4.00	25	46	31.00	38	71	586.00	168	279	633.00
5	6	1.00	10	15	53.00	7	10	30.00	24	33	84.00
40	82	10.00	31	67	5.00	26	60	7.00	147	341	36.00
22	43	32.00	21	46	36.00	28	69	48.00	109	228	166.00
....	....	....	1	1	....	1	3	....	2	4	....
3	5	1.00	8	11	1.00	7	13	35.00	28	43	40.00
17	24	58.71	12	13	7.12	11	18	10.15	92	134	198.44
541	1376	578.92	623	1988	778.99	838	2575	1614.07	3824	9355	6313.54

IRs - Inspection Reports

Objs - Objections

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ERRATA
to the
Report of the Comptroller and Auditor General of India
for the year ended 31 March 1994 (No. 2)
Revenue Receipts
Government of Maharashtra

Page	Reference		For	Read
	Para	Line		
1	2	3	4	5
4	Chapter I	<u>Chart II</u> 1993-94	270.48	522.13
6	Chapter I	<u>Chart III</u> 1991-92	828.00	792.10
6	Chapter I	<u>Chart III</u> 1992-93	792.10	828.00
14	1.6	6th and 7th from bottom	upto 1989-90	upto 1989-90
36	2.9	27th	and	delete
36	2.9	5th from bottom	31st	delete
37	2.9	3rd	1989 to 1st March	1989 and 1st March
56	4.3	24th	1987 to 1991	1987 and 1991
64	6.2	24th	set-forth	setforth

