

REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

For the year ended 31 March 1991 No. 2

(REVENUE RECEIPTS)

GOVERNMENT OF TAMIL NADU

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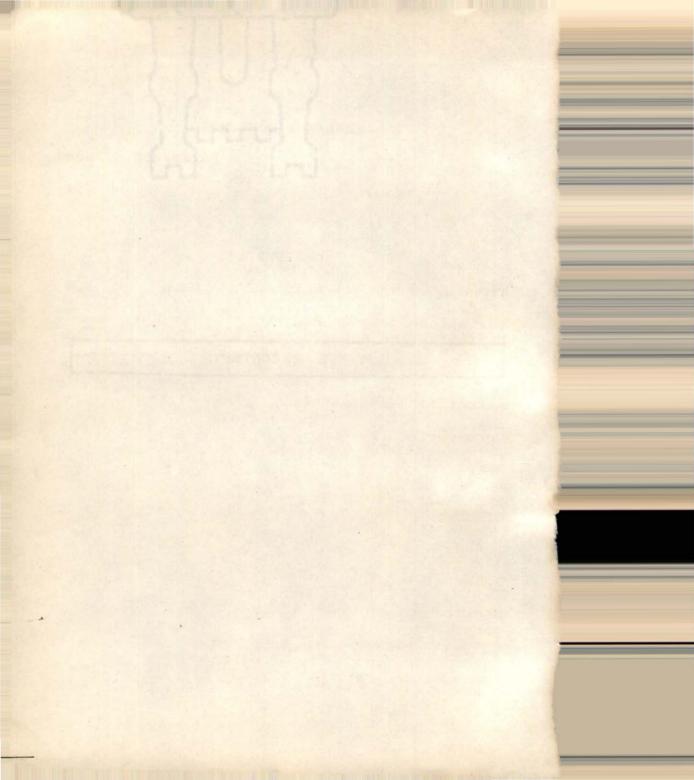


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PREFATORY REMARKS

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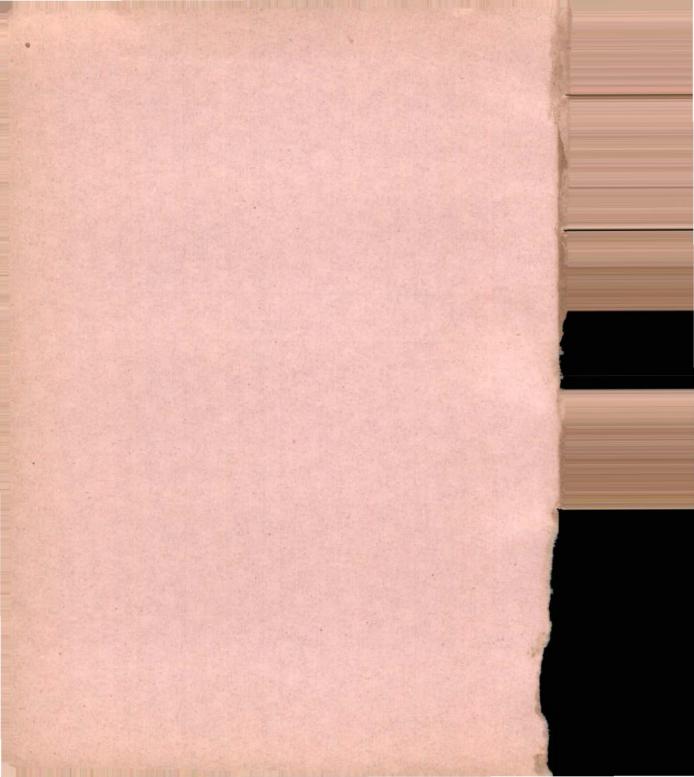
PREFATORY REMARKS

The Audit Report on Revenue Receipts of the Government of Tamil Nadu, for the year 1990-91, is presented in this separate volume. The Report has been arranged in the following order:-

- (i) Chapter 1 refers to trend of revenue receipts classifying them broadly under tax revenue and non-tax revenue, the variation between the budget estimates and the actual receipts under principal heads of collection and the audit objections and inspection reports outstanding for settlement.
- (ii) In Chapters 2 to 7 are set out some of the important irregularities which came to notice during test check of records relating to Sales Tax, Agricultural Income-tax, Land Revenue, Taxes on Vehicles, State Excise, Stamp Duty and Registration Fees and Urban Land Tax.
- (iii) In Chapter 8 the important irregularities relating to non-tax receipts are similarly set out.

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OVERVIEW



OVERVIEW

1. General

(i) The tax and non-tax revenue raised by the Government of Tamil Nadu during the year 1990-91 amounted to Rs.3,506 crores as against Rs.2,882 crores during the year 1989-90 registering an increase of 21.65 per cent over the previous year. In addition, State's share of divisible Union taxes and grants-in-aid received from the Government of India during the year was Rs.1582 crores, as against Rs.1370 crores during the previous year. Sales Tax (2066 crores) continued to be the major source of tax revenue during the year 1990-91.

(Paragraph 1.1)

(ii) Uncollected revenue under important heads of tax and non-tax sources put together amounted to Rs.518.99 crores, of which Sales Tax alone accounted for Rs.390.11 crores.

(Paragraph 1.5)

(iii) Demands totalling Rs.22.25 lakhs under various tax and non-tax revenues were written off during the year, of which, an amount of Rs.21.81 lakhs pertained to Sales Tax.

(Paragraph 1.7)

(iv) As at the end of June 1991, 2,909 inspection reports issued by audit upto December 1990, containing 7,011 objections with money value of Rs.61.36 crores were pending clearance with various Departments.

(Paragraph 1.11)

(v) As a result of test-audit conducted during the year 1990-91, under-assessments and losses of revenue amounting to Rs.27.47 crores were noticed.

These under-assessments/losses of revenue related to Sales Tax (Rs.10.06 crores), Agricultural Income-tax (Rs.0.36 crore), Land Revenue (Rs.1.18 crores), Taxes on Vehicles (Rs. 1.45 crores), Stamp Duty and Registration Fees (Rs.0.81 crore), State Excise Duty (Rs.12.16 crores), Urban Land Tax (Rs.0.39 crore), Entertainments Tax (Rs.0.06 crore), and non-tax receipts (Rs.1.00 crore).

(vi) This report includes details of representative cases of non-levy/short levy of tax, duty, interest, penalty etc., and findings of reviews on (i) Pendency of appeals at various levels and its impact on revenue collections (Sales Tax), (ii) Exemption and reduction in the rate of sales tax, (iii) Working of Internal Audit in Agricultural Income Tax and (iv) Working of Internal Audit in Prohibition and Excise Department involving total financial effect of Rs.29.50 crores noticed during test check conducted in 1990-91 and earlier years (Sales Tax Rs.27.77 crores,

Agricultural Income Tax Rs.0.12 crores, Taxes on vehicles Rs.0.14 crore, Stamp Duty and Registration Fees Rs.0.08 crore, State Excise Duty Rs.0.94 crore, Urban Land Tax Rs.0.03 crore, Land Revenue Rs.0.10 crore, Entertainments Tax and non-tax receipts Rs.0.32 crore).

Out of Rs.29.50 crores, underassessment of Rs.1.95 crores was accepted by the departments of which Rs.0.25 crore was recovered by the departments till January 1992. The Government contested the audit observations having total tax effect of Rs.0.30 crore, for which refutations have been incorporated in the paragraphs. For the balance amount of Rs.27.25 crores, the final replies of the Government have not been received till the finalisation of the Report (February 1992).

2. Sales Tax

(i) The review on "Pendency of appeals at various levels and its impact on revenue collections" disclosed the following:

The Special Appellate Tribunal sanctioned by Act 58 in September 1986 to deal exclusively with appeals and revisions against the orders passed by the Appellate Tribunal was yet to be constituted.

[Paragraph 2.2.5(b)]

Delay in the production of records to the Appellate Authorities by the department

resulted in non-disposal of fifteen appeal cases involving total tax of Rs.29.24 lakhs.

(Paragraph 2.2.6)

Action has not been taken to get the stay/interim injunctions vacated in 111 cases involving total tax of Rs.503.63 lakhs despite judicial pronouncements against grant of stay on collection of dues to the Government.

(Paragraph 2.2.7)

(ii) The review on "Exemption and reduction in the rate of Sales Tax" revealed, inter-alia, the following points:

Despite the recommendations of four committees against grant of exemptions in Sales Tax, the number of exemption/concession notifications has substantially increased in the recent years.

(Paragraph 2.3.5)

The department has no machinery to monitor regularly the revenue effect of exemptions/concessions granted from time to time and realisation of their objectives. In one case, delay in timely renewal of concession intended to boost sales and revenue resulted in loss of tax of Rs.66.12 lakhs.

(Paragraph 2.3.6&7)

Exemption by way of refund of tax paid by the dealers was granted by means of executive orders instead of through notifications as provided in the TNGST Act,1959 involving tax effect of Rs.10.21 lakhs.

(Paragraph 2.3.8)

Defective notification to withdraw concessional levy of tax resulted in the court striking down the orders and consequent loss of revenue of Rs.5.09 lakhs.

(Paragraph 2.3.11)

Refund of tax to dealers amounting to Rs.25.18 lakhs were erroneously paid on sale of palmolein even though the dealers had collected tax from consumers.

(Paragraph 2.3.12)

Tax demand under CST Act amounting to Rs.2,550 lakhs was waived by the Government through executive orders though there were no powers vested in the Central Sales Tax Act, 1956 to the effect.

(Paragraph 2.3.13)

The point of taxation on groundnut was shifted from first sale to first purchase. The closing stock with the dealers on the date of change, however, escaped tax net for want of

an enabling provision in the TNGST Act.

(Paragraph 2.3.19)

(iii) Tax amounting to Rs.6.51 lakhs was omitted to be levied on sales of wire drawn out of tax-suffered wire rods even though these were two distinct commercial commodities and Supreme Court had ruled that tax was leviable in such cases.

(Paragraph 2.4)

(iv) Incorrect application of rate of tax on sales made under registered trade mark of preparations of cereals resulted in short levy of tax of Rs. 1.81 lakhs.

(Paragraph 2.5(i))

(v) Tax and penalty amounting to Rs.2.40 lakhs was omitted to be levied on sale of solvent petroleum product (spirit) on the mistaken ground that it was a second sale.

(Paragraph 2.6(i)(a))

3. Agricultural Income-tax.

A review on the "Working of Internal Audit in Agricultural Income Tax" disclosed the following:

There were no control registers to watch timely issue of internal audit reports,

compliance thereof and follow-up action thereon.

(Paragraph 3.2.5)

The internal audit was ineffective in that under-assessments involving Rs.59.39 lakhs which escaped the notice of internal audit were subsequently pointed out during statutory audit.

(Paragraph 3.2.8)

4. Taxes on Vehicles.

Incorrect levy of concessional rate of fees for issue of temporary permits to vehicles registered in the other States resulted in short collection of fees totalling Rs.3.18 lakhs.

(Paragraph 4.3)

5. Stamp Duty and Registration Fees

A co-operative house building society engaged in the construction and allotment of houses to its members was allowed exemption from stamp duty in the registration of a sale document under a notification of exemption which had no application to the above transaction. This resulted in non-levy of Stamp Duty of Rs.1.29 lakhs.

[Paragraph 5.4.(ii)]

6. State Excise

(i) Review on the "Working of Internal Audit in Prohibition and Excise Department" disclosed that due to reduced strength of internal audit party, audit, particularly of units involving substantial collection of excise revenue were either not done or were in arrears for different periods - the oldest period dating back to 1982-83.

[Paragraph 6.2.6(ii)]

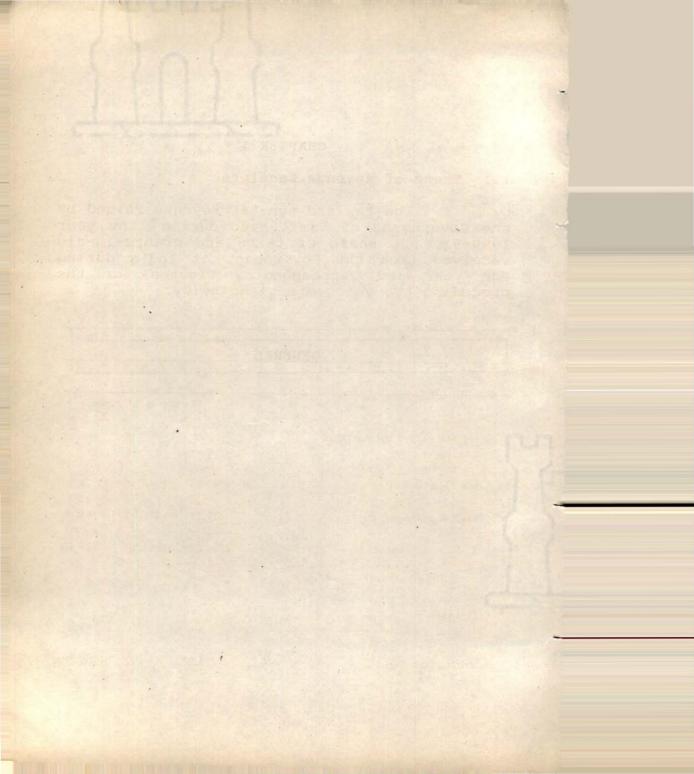
(ii) Administrative delay of nearly five months in the confirmation of licence for an arrack shop in Madras city resulted in loss of revenue of Rs.14.68 lakhs.

(Paragraph 6.4)

(iii) There was omission to levy penalty of Rs.17.96 lakhs as prescribed in the Rules in respect of a blending unit for wastage beyond the permissible limits in the process of distillation of rectified spirit and redistillation of impure spirit. Though the department has since levied the penalty at the instance of Audit, it has not been recovered yet.

(Paragraph 6.6)

GENERAL



CHAPTER 1

1.1 Trend of Revenue Receipts

The tax and non-tax revenue raised by the Government of Tamil Nadu during the year 1990-91, the share of taxes and grants-in-aid received from the Government of India during the year and corresponding figures for the preceding two years are given below:-

		1988-89	1989-90	1990-91
		(1)	(2)	(3)
Letter 4	Control Maria Control	(In	crores of r	upees)
Ι.	Revenue raised by the State Government			
(a)	Tax revenue	1994.23	2489.02	3124.06
(b)	Non-tax revenue	. 335.57	393.00	381.48
	Total	2329.80	2882.02	3505.54
11.	Receipt from the Government of India			
(a)	State's share of divisible Union taxes	722.92	947.28	1002.9

	(1)	(2)	(3)
	(In	crores of r	upees)
b) Grants-in-aid	437.14	422.28	579.43
Total	1160.06	1369.56	1582.34
II. Total receipts			
of State Government			
[(11) + (11)]	3489.86	4251.58	5087.88
V. Percentage of			
I to III	67	68	69

For details please see Statement No.11 - Detailed Accounts of Revenue by minor heads of Finance Accounts of the Government of Tamil Nadu 1990-91.

(i) The details of tax revenue raised during 1990-91, alongside the figures for the preceding two years, are given below:-

	1988-89	1989-90	1990-91	Percentag
				Increase (+) or
				(+) or Decrease
				(-) in
				1990-91
				over
				1989-90
CONTRACTOR OF THE PROPERTY OF	(1)	(2)	(3)	(4)
on zo anestojo sej	(In cr	ores of rup	ees)	
1. Sales Tax	1414.36	1654.98	2065.95	(+) 24.83
2. State Excise	148.03	301.82	434.86	(+) 44.08
3. Taxes on vehicles	162.41	196.01	227.34	(+) 15.98
4. Stamps and Registration				
Fees	164.65	208.34	226.39	(+) 8.66
5. Taxes on Agricultural				
Income	6.78	9.00	17.97	(+) 99.67
6. Land Revenue	15.06	13.82	14.43	(+) 4.41
7. Taxes on Immovable				
property other than agricultural land				
(Urban Land Tax)	1.38	2.60	3.33	(+) 28.08

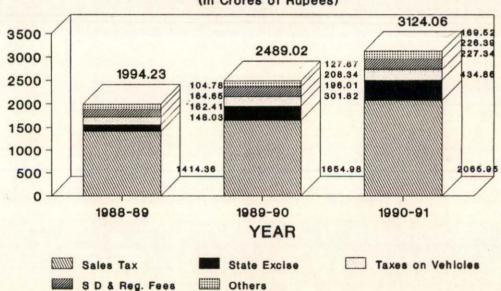
	(1)	(2)	(3)	(4)
	(In cr	ores of rup	ees)	
8. Others	81.56	102.45	133.79	(+) 30.59
	1994.23	2489.02	3124.06	(+) 25.51

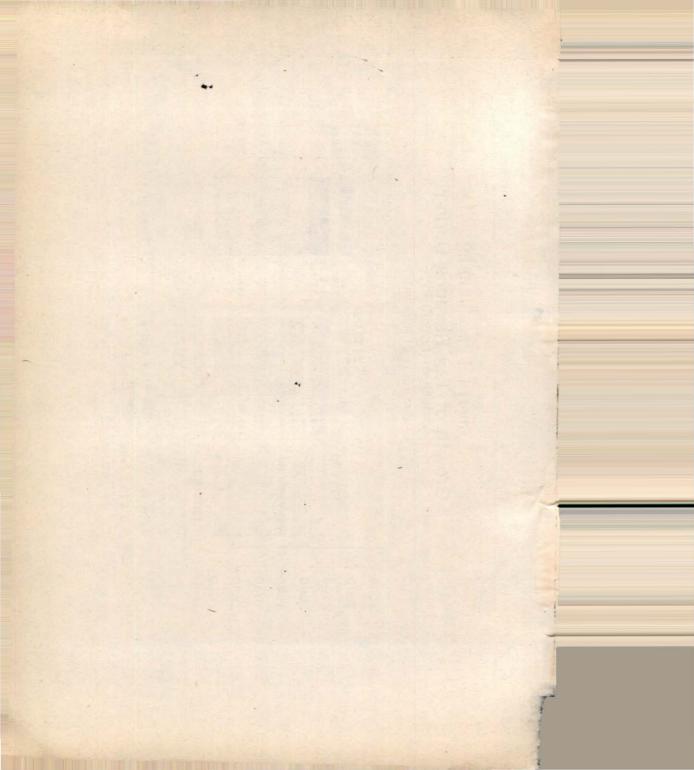
(ii) The details of major sources of nontax revenue received during 1990-91, alongside the figures for the preceding two years, are given below:-

	(1)	1989-90	1990-91	Percentage Increase (+) or Decrease (-) in 1990-91 over 1989-90
		(2)		
	(In crores	s of rupe	es)	
1. Interest Receipt	78.69	87.86	89.70	(+) 2.09
2. Crop Husbandry	38.94	47.75	46.18	(-) 3.28
3. Forestry and Wild life	33.76	49.25	44.35	(-) 9.95
4. Education, Sports, Art and Culture	12.80	14.96	19.09	(+) 27.61

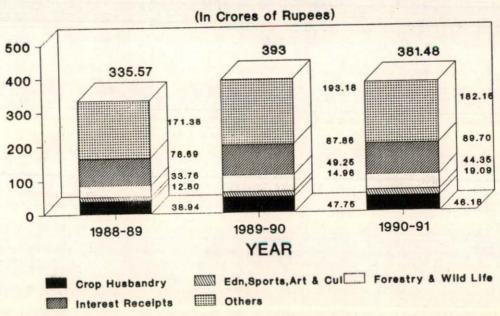
Chart-I [Para 1.1 (i)] Growth of Tax Revenue During

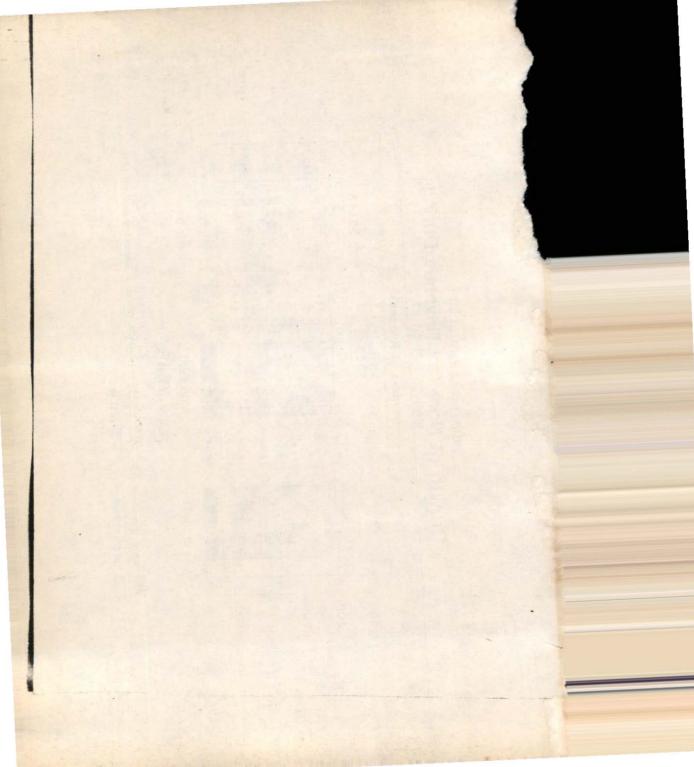
(In Crores of Rupees)





Growth of Non-Tax Revenue During 1988-89 to 1990-91





	(1)	(2)	(3)	(/	4)
	(In crore	es of rupe	es)		
5. Oth <mark>er</mark> s	171.38	193.18	182.16	(-)	5.70
Total	335.57	393.00	381.48	(-)	2.93

1.2 Variations between Budget Estimates and Actuals

The variations between Budget estimates and actuals of some of the major revenue receipts for the year 1990-91 are given below:-

Heads of revenue	Budget Estimates	Actuals	Variation Increase (+) or short- fall (-)	Percentage of variation
(1)	(2)	(3)	(4)	(5)
	(1	in crores of r	upees)	Fire I.
1. Sales Tax	1907.00	2065.95	(+) 158.95	(+) 8.33
2. State Excise	300.00	434.86	(+) 134.86	(+) 44.95
3. Stamps and				
Registration Fees	225.00	226.39	(+) 1.39	(+) 0.62

	(1)	(2)	(3)	(4)	(5)
	TSO TO LEVIEN	(1	n crores of ru	pees)	10
4.	Taxes on Vehicles	200.00	227.34	(+) 27.34	(+) 13.67
5.	Other Taxes and duties on commodi- ties and services and Taxes and duties				
	on electricity	91.50	111.21	(+) 19.71	(+) 21.54
6.	Land Revenue	20.00	14.43	(-) 5.57	(-) 27.85
7.	Taxes on Agricultural Income	6.83	17.97	(+) 11.14	(+) 163.10
8.	Taxes on Immovable property other than Agricultural land				
	(Urban Land Tax)	1.85	3.33	(+) 1.48	(+) 80.00
9.	Interest Receipts	89.04	89.70	(+) 0.66	(+) 0.74
10.	Forestry and Wild Life	42.07	44.35	(+) 2.28	(+) 5.42
11.	Police	9.94	12.67	(+) 2.73	(+) 27.46
12.	Roads and Bridges	7.27	10.54	(+) 3.27	(+) 44.98

1.3 Cost of collection

Expenditure incurred in collecting each of the major revenue receipts during the year 1990-91 is given below. Collection charges as a percentage of the revenue collection for the year and the corresponding All India average for the year 1989-90 have also been indicated.

Item of revenue	Collection	Expenditure on collection	Percentage of expenditure on collection	All India average for the year 1989-90
(1)	(2)	(3)	(4)	(5)
	(In crores	s of rupees)	(Pe	r cent)
1. Sales Tax	2065.95	28.69	1.38	1.5
2. State Excise	434.86	6.42	1.47	3
3. Taxes on				
Vehicles	227.34	5.10	2.24	3
4. Stamp Duty and Registra-				
tion Fees	226.39	16.33	7.21	5

(1)	(2)	(3)	(4)	(5)
	(In crores o	of rupees)	(Pe	er cent)
5. Agricultural				
Income Tax	17.97	1.61	8.95	E2-0
6. Urban Land				
Tax	3.33	1.40	42.04	

1.4 Arrears in assessments

Sales Tax

The number of assessments finalised by the Commercial Taxes Department and the assessments pending finalisation at the end of March for the years 1989-90 and 1990-91 as reported by the department are indicated below:

(Continued)

Year	Number of assessments for disposal	Number of assessments completed	Number of assessments pending at the end of the year	of arrears (Column 4 to Column 2)
(1)	(2)	(3)	(4)	(5)
1989-90	No.			
Arrear cases	11,117	4,650	6,467	58
Current cases	1,69,760	1,66,097	3,663	2
Remanded cases	3,345	2,290	1,055	32
Total	1,84,222	1,73,037	11,185	6
1990-91				
Arrear cases	10,361	3,457	6,904	67
Current cases	1,70,517	1,64,612	5,905	3
Remanded cases	2,809	1,862	947	34
Total	1,83,687	1,69,931	13,756	7.5

The year-wise break-up of pending assessments as on 31st March 1991 was as under:

	Pending for more than five	Pe	ending from	n the year		Total
	years to the end of 1985-86	1986-87	1987-88	1988-89	1989-90	
Arrear and current cases :	1978	1244	1660	1977	5950	12809
Remanded						
cases	430	143	175	182	17	947

1.5 Uncollected Revenue

(i) The arrears of revenue pending collection as on 31st March 1991, in respect of important items of revenue together with stages at which pending as intimated by the respective departments are as follows:-

(Continued)

UNCOLLECTED REVENUE

st.		Amount of	Amount of	Demand	Amount
No.	Heads of	arrears	arrears	stayed	likely
	Revenue	at the end	for more	by	to be
		of March	than five	Courts/	writter
		1991	years	Governments/ pending in Courts	off
	(1)	(2)	(3)	(4)	(5)
		San Line	(1	n crores of rupee	es)
1.	Sales Tax	390.11	46.61	207.85	39.21
2.	Entertainment Tax	4.12	1.35	1.89	0.23
3.	Betting Tax	0.40	0.18		0.15
4.	Luxury Tax	1.07	0.03	0.60	
5.	Local authorities				
	Finance Act	0.60	0.18	0.27	-
6.	State Excise	65.61	62.39	9.64	
7.	Motor Vehicle Tax	1.77	0.15		
8.	Stamp Duty and				
	Registration Fees	6.91	1.40	0.04	
9.	Electricity Duties	1.09	0.08		
10.	Police Receipts	12.24	2.32		-
11.	Forestry and Wild				
	life	12.29	0.35		
12.	Sale of Raffles	0.26	- 10 - 1		-
13.	Motor Vehilces				
	Maintenance	1.22	0.21		-
	Roads and Bridges	19.79	0.01		Tre
15.	Irrigation	1.51	0.05		

Proceedings included in Revenue Recovery Act	Amount covered under Section 24 (2)(b) and 26 of TNGST Act	Amount pending appeals/ revision petitions	Pending due to insol- vency of dealers	Awaiting adjust- ments	Other
(6)	(7)	(8)	(9)	(10)	(11)
(X) In I		In crores o	of rupees)		
60.50	10.46	2.83	4.71	0.93	63.5
0.39			and a second	-	1.6
	Maria San			del serve	0.2
	THE PLANT				0.4
0.09					0.2
	1 TO 1 SA	A Type	Dester		55.9
Villa Hill			17.40		1.7
			1		6.8
0.04	Wall and		154 TH	A LEGISLE	1.0
	MA - LANG				12.2
					12.2
1-1-1			Landy		0.2
			and so		1.2
					19.7
	ALL STATES OF THE STATES	. 9			1.5

(ii) Under the Tamil Nadu General Sales Tax Act, 1959, the Tamil Nadu Entertainments Tax Act, 1939, and the Tamil Nadu Luxury Tax Act, 1981 penal interest at the prescribed rate is leviable if the tax as finally assessed is not paid by the assessee within the due date prescribed. Details of interest levied under these heads during 1990-91 are as under:

1	P. Children	Number of cases	Amount (In lakhs of rupees)
Sales	Tax		
(i)	Demanded	29109	986.63
(ii)	Collected	18099	144.59
(iii)	Balance due	11010	842.04
Entert	ainments tax		
(i)	Demanded	2545	7.35
(ii)	Collected	2368	6.35
(iii)	Balance due	177	1.00

Details for luxury tax were not furnished by the department.

1.6 Refunds

Details of amounts refunded during the year 1990-91 in respect of Sales Tax and Taxes on Vehicles are as under:

Details	Number of cases	Amount (In lakhs of rupees)
(1)	(2)	(3)
Sales Tax	in about	
Claims outstanding at the beginning of the year	16286	222.95
Claims received during the year	30445	870.30
Refunds made during the year	26505	691.61
Balance outstanding at the end of the year	20226	401.64
Taxes on Vehicles		
Claims outstanding at the beginning of the year	479	27.39
Claims received during the year	1512	234.00

(1)	(2)	(3)
Refunds made during the year	1542	182.48
Balance outstanding at the end of the year	449	78.91

1.7 Write-off and waiver of revenue

(A) Tax revenue

Demands for Rs.22.19 lakhs in respect of 5206 cases were written-off during 1991 by competent authorities, as indicated below in respect of Commercial Taxes and Religious Endowments and Home (Transport) Departments:-

Number of cases	Amount written-off (In lakhs of rupees)
(2)	(3)
	of cases

1.Commercial Taxes and Religious Endowments

(i) Sales Tax

5196*

21.81

	(1)	(2)	(3)
(ii)	Entertainments	8	0.33
2.Home	(Transport)		
(i)	Taxes on vehicles	2	0.05
	Total	5206	22.19

This includes 5182 cases involving an amount of Rs.15.39 lakhs written-off for the reasons that the defaulters concerned did not have any property.

(B) Non-tax revenue

In 12 cases relating to Motor Vehicles Maintenance Organisation, Rs.0.06 lakh was written off during 1990-91 by competent authorities.

1.8 Frauds and Evasions

Details of frauds and evasions of sales tax, entertainments tax, luxury tax and taxes on vehicles at the end of March 1991 as reported by the departments are as follows:

		Sales Tax		Enterta Tax		Luxury Tax		Motor Vehicle Tax	
		Number	Amount	Number	Amount	Number	Amount	Number	Amount
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
A.(i)	Number of cases				(In	lakhs of	rupees)		
	pending as on								
	1.4.90	4919	9319.46	96	3.15	2	7.32	-	
(ii)	Number of cases detected from			Es .					
	1.4.90 to 31.3.91	11804	17671.80	68	8.98	3	0.16	1147	5.98
в.	Cases in which investigations/ assessments were completed during the year								
(i)	Out of cases in A (i) above	2684	6530.15	6	1.66	2	7.32		-
(ii)	Out of cases in								
	A (ii) above	6087		48	2.43			1147	5.98

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	
	Will book it	g also	0,261,5		(In la	akhs of	rupees)			
c.	Cases which were pending as on 31st March 1991									
(i)	Out of cases in A (i) above	2235	6998.22	90	1.67					
(ii)	Out of cases in A (ii) above	5717	13462.89	20	6.37	3	0.16	-	•	19
D.	Cases out of B where investigation assessment had been completed									
(i)	Additional demand raised	1788	3453.32	35	0.13					
(ii)	Penalties imposed	1006	1161.50	35	0.15		1 :		1	

1.9 Internal Audit

- (i) (A) It was noticed that Internal Audit system had not been established in the following departments dealing with raising of demands and collection of Government revenue (Non-tax revenue).
- 1. Public Service Commission
- 2. Directorate of Raffles
- 3. Directorate of Sugar
- 4. Directorate of Industries and Commerce
- 5. Directorate of Technical Education
- 6. Directorate of Social Welfare
- 7. Directorate of Survey and Land Reforms
- 8. Highways and Rural Works Department.
- (B) Internal audit is in arrears for several years under State Excise. In respect of 5 Indian Made Foreign Spirit Manufacturing Units, 8 regular distilleries, 27 bonded manufactory units, 1 brewery, 88 Taluk Offices and Assistant Commissioners' Offices and 34 Tamil Nadu State Marketing Corporation (TASMAC) depots internal audit has been in arrears for several years, the earliest of which dates back to 1982-83 vide also para 6.2.6(ii).

(ii) Particulars of objections of the Internal Audit Wing pending settlement as on 31st March 1991 in certain departments are as under:

Name of the Department and head of revenue	Number of inspection reports	Number of paras	Money value (In lakhs of rupees)
(1)	(2)	(3)	(4)

Commercial Taxes and Religious Endowments

Sales Tax	Not furni- shed by the Department	31895	569.07
Stamp Duty and Registration Fees	2397	9678	162.38
Home			
State Excise	364	2330	723.58
Taxes on vehicles	112	9169	123.51

1.10 Non-receipt of statistical particulars

The following departments did not furnish the particulars regarding arrears of revenue as on 31st March 1991, write-off and waiver of revenue and other details called for:

(A) Tax revenue

- 1. Land Revenue
- 2. Urban Land Ceiling and Urban Land Tax
- 3. Agricultural Income Tax

(B) Non-tax Revenue

- 1. Horticulture Department
- 2. Department of Sericulture
- 3. Registrar of Co-operative Societies
- 4. Director of Information and Public Relations
- 5. Fisheries Department
- 6. Department of Animal Husbandry
- Directorate of Civil Supplies and Consumer Protection Department
- 8. Registrar, High Court
- 9. Dairy Development Department

- 10. Director of Agricultural Marketing
- 11. Director of Collegiate Education
- 12. Director of Medical Services
- 13. Director of Agriculture
- 14. Department of Geology and Mining
- 15. Director of Municipal Administration
- 16. Director of Social Welfare
- 17. Director of Legal Studies
- 18. Commissioner of Land Reforms.

1.11 Outstanding inspection reports and audit objections

Audit observations on incorrect assessments and short levy of taxes, duties, fees and other revenue receipts as also defects in the initial accounts noticed during the local audit and not settled on the spot are communicated to heads of offices and to the next higher 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 four weeks in all cases, and as an exception, within two months in respect of sales tax cases.

As at the end of 30th June 1991, 2909 inspection reports (7011 objections involving receipts amounting to Rs.61.36 crores), issued upto December 1990 were pending settlement as detailed below. The figures for the earlier two years, relating to objections issued upto March 1989 (outstanding at the end of June 1989) and those issued upto December 1989 (outstanding at the end of June 1990) have also been indicated alongside.

A another	As at t	the end of	June
enth:	1989	1990	1991
TION SEA STREET	(1)	(2)	(3)
Number of inspection reports	2444	2490	2909
Number of audit objections	5651	6112	7011
Amount of receipts involved	Constant of the second of the	er una del Securio del Seguio de de	
(In crores of rupees)	47.81	51.13	61.36

Year-wise break-up of the outstanding inspection reports as on 30th June 1991, together with the amount of receipts involved are given below:

Number of inspection	Number of audit	Amount of
reports	objections	receipts involved (In crores of rupees)
1312	2370	24.52
486	1203	8.50
605	1828	11.57
506	1663	16.77
2909	7011	61.36
	486 605 506	1312 2370 486 1203 605 1828 506 1663

Rs.5 lakhs each in respect of 150 (out of 7011) objections. The aggregate tax effect of all these 150 objections was Rs.2682.23 lakhs as shown below:-

Year	Number of objections	Amount of receipts involved (In lakhs of rupees)
1987-88 and earlier years	78	1049.82
1988-89	21	354.89
1989-90	29	476.67
1990-91	22	800.85
Total	150	2682.23

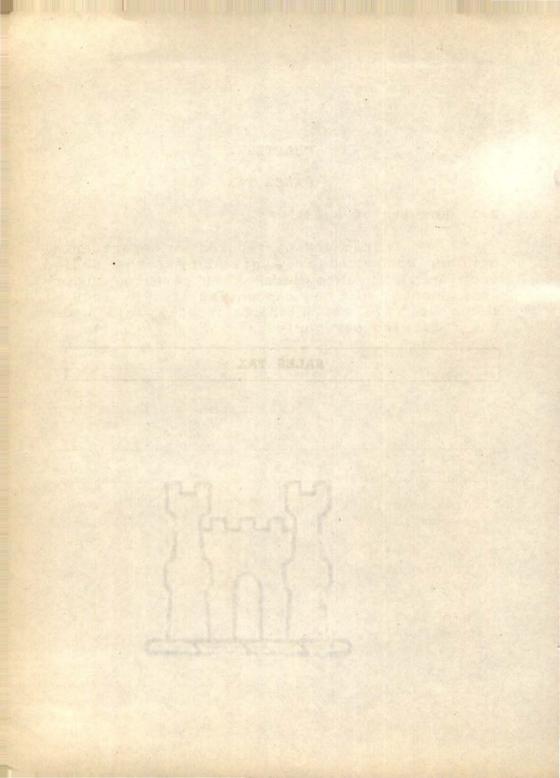
The year-wise details of outstanding audit objections in respect of various types of receipts are given in the Appendix I.

The above position was brought to the notice of the Chief Secretary to the Government in January 1992.

Year Nerbensi Sana Lavelved on Lakhai
Objections Lavelved on Lakhai
187-27
187-27
10 earlier

SALES TAX

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CHAPTER 2

SALES TAX

2.1 Results of Audit

Test check of records in departmental offices conducted in audit during the period from April 1990 to March 1991 revealed underassessments of tax amounting to Rs.1005.51 lakhs in 1276 cases which broadly fall under the following categories:-

	ome Station come	Number of cases	Under- assessments (In lakhs of rupees)
	The second second	(1)	(2)
1.	Incorrect grant of exemption	372	343.39
2.	Application of incorrect rate of tax	387	493.14
3.	Non-levy of penalty	161	44.15

(1)	(2)
20	9.58
336	115.25
1276	1005.51
	20 336

2.2 Pendency of appeals at various levels and its impact on revenue collections

2.2.1 Introduction

The Tamil Nadu General Sales Tax Act, 1959, and the Rules made thereunder provide an assessee a statutory remedy of filing either an appeal or revision against any order by Assessing or any other Competent Authority if he is aggrieved by it. The Act provides for filing by the Department an enhancement petition or petition for restoration of the assessment before the Appellate Tribunal if the orders of the Appellate Assistant Commissioner or Appellate Deputy Commissioner are considered prejudicial to the revenue of the State. Act and the Rules thereunder contemplate that appeal shall be preferred within the prescribed time-limit and in the prescribed form and that no appeal shall be entertained by

an Appellate Authority unless it is accompanied by satisfactory proof of payment of the tax admitted by the appellant to be due as also the prescribed fee. The tax as per the assessment orders appealed against shall also be paid. However, the Appellate Authority may at his discretion stay the payment of tax under dispute or give such other direction if the appellant furnishes security to satisfaction in such form and in such manner as may be prescribed. The Madras High Court prescribed* certain guidelines in regard to grant of stay of payment of tax by the Appellate Authority vide para 2.2.7. The Appellate Authority can, at his discretion, refuse to grant stay or grant any one of the following reliefs:-

- (i) Absolute stay on security of bank guarantee.
- (ii) Conditional stay on payment of portion of tax.
- (iii) Permission to pay in instalments.

The achievement of target in disposal of appeal cases as well as the pendency position of appeals in each office of the Appellate Assistant Commissioner is watched by the Chairman, Sales Tax Appellate Tribunal and by the High Court in respect of Tribunals.

Balaji Trading Company Vs. DCTO (1989) 72 STC 417.

2.2.2 Scope of Audit Review

A review on the system of working of the Appellate wings in the State with special reference to the efficacy of the control mechanism and pendency of appeal cases and its impact on revenue collections was conducted in audit during May and June 1991. The records in twelve out of eighteen offices of the Appellate Assistant Commissioners and in three out of four Benches of the Sales Tax Appellate Tribunal, were test-checked. In addition, certain statistical particulars from the Office of the Principal Commissioner (Commercial Taxes) and Deputy Commissioners in-charge of Central Assessment Circles of the department were also collected and seen in audit.

2.2.3 Organisational set up

The Appellate Wing of the Department is distinct from the assessment and Administrative Wing. The State has eighteen Appellate Assistant Commissioners appointed by the Government and four Benches of the Sales Tax Appellate Tribunal each manned by a Chairman who is a judicial officer not below the rank of District Judge and two other members also appointed by the Government, possessing such qualifications as prescribed by the Government.

The assessing authorities and the corresponding appellate authorities are as under:-

SI.	Assessing Authority		tors of X	Appellate Auth	ate Authority	
			First	Second	Third	Fourth
1.	Assistant	1				
	Commercial	1				
	Tax Officer	1.				
]	Appellate	Appellate	High	Supreme
2.	Deputy]	Assistant	Tribunal	Court	Court
	Commercial]	Commissioner			
	Tax Officer]			Trans	
]				
3.	Commercial]				
	Tax Officer	1 .				
4.	Assistant		Appellate ·	Appellate	High	Supreme
	Commissioner		Deputy	Tribunal	Court	Court
	(Assessments)		Commissioner			

2.2.4 Highlights

- (i) The Special Appellate Tribunal sanctioned in September 1986 by Act 58 to deal exclusively with appeals and revisions against the orders passed by Appellate Tribunal had not been constituted (November 1991).
- (ii) Delay in production of records to the Appellate Authorities by the Department resulted in non-disposal of fifteen appeal cases, involving Rs.29.24 lakhs.

- (iii) Action had not been taken to get the stay/interim injunction vacated in one hundred and eleven cases involving Rs.503.63 lakhs, despite judicial pronouncements against grant of stay on collection of Government dues.
- (iv) There was shortfall in targets fixed for disposal of appeal cases. Despite continuing heavy pendency, there was also no revision of targets to bring down the pendency.
- (v) There were delays on the part of the department in taking follow-up action on cases remanded back by the Appellate Authorities for passing fresh orders.

2.2.5 (a) Trend of receipts and disposal of appeal cases

Year-wise details of receipts, disposal and balance of appeal cases are as follows:

(Continued)

Year	Opening balance	Receipt during the year	Total	Disposal during the year	Percentage of disposal during the year	Closing balance at the end of the year
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Upto				Alter Ve	T GROUP H	10
1987-88	17383	22427	39810	17565	44.12	22245
1988-89	22245	18494	40739	19064	46.80	21675
1989-90	21675	20421	42096	20654	49.06	21442

(b) Position of arrears of revenue locked up in appeals

The trend of Sales Tax Revenue Receipts, arrears of revenue and amount locked up in appeals for the three years 1987-88 to 1989-90 are as follows:-

Year	Total arrears	Receipts during the year	Revenue inve	olved in appeals	Percentage of Column 4 to 3	Percentage of Column 5 to 2
	upto end of year		Pertaining to the year concerned	Cumulative total revenue at the end of the year		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1987-88	202.25	1242.45	58.72	85.29	4.73	42.17
1988-89	273.40	1414.36	2.50	87.79	0.18	32.11
1989-90	338.16	1654.98	106.20	193.99	6.42	57.37

The percentage of revenue locked up in appeals to the total arrears of tax to be collected during 1989-90 is as high as fifty seven per cent thereby indicating substantial locking up of revenue in appeal cases.

Position of appeals pending in High Court as per the Material Record Register as on 31.3.1991 available with the Tribunal (Madras) was as follows:-

Year	Number of cases	Year	Number of cases
(1)	(2)	(3)	(4)
1977	3	1984	166
1978	3	1985	196
1979	8	1986	175
1980	39	1987	203
1981	130	1988	43
1982	120	1989	106
1983	85	1990	185

The Public Accounts Committee in their thirtieth Report (Eighth Assembly -1985-86 - Para 2.4) commented on heavy arrears under Sales Tax as follows:

"..... Twenty one crores of rupees to end of 1980-81 remaining to be collected as in December 1985 cannot be treated as small amount, particularly when the arrears are already four years and more old. If according to the department, the major portion of arrears owe their pendency to Court cases, the Committee feels that special efforts are called for aimed at the guick disposal of these cases.

The Committee recommends that the department should launch a special drive in this direction".

With a view to effectively administer the provisions of the Act with particular reference to assessment, levy and collection of Sales Tax, Act 58 of 1986 was enacted to amend the Act enabling the constitution of Special Appellate Tribunal vested with the same powers as a Civil Court. Under this provision, all the cases pending with the High Court have to be transferred to the Tribunal. Though the legislation received the assent of the Governor on the 8th September 1986, the Tribunal is yet to be constituted (November 1991). A comment on the delay has also been made in Para 2.2.5 of the Report of the Comptroller and Auditor General of India on Revenue Receipts for 1988-89. There was thus delay in setting up the tribunal despite the arrears locked up in appeals as on 31.3.1991 amounting to Rs.184.48 crores which constituted 47.29 per cent of the total arrears of Rs.390.11 crores as on that date.

In respect of the following offices, the pendency on 31.3.1991 is heavy when compared to the total receipts in that office in the respective years as indicated below:-

	1987-88			1988-89			1989-90		
Name of Appellate Authority	Recei- pts	Pen- Tax ding effect (In lakhs of rupees)		Recei- pts	Pen- Tax ding effect (In lakhs of rupees		pts	Pen- Tax ding effect (In lakh ofrupees	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
AAC IV	and the parties of		100 m						E E
Madras	1157	165	NA	833	271	NA	1205	280	NA
AAC									
Tirunelveli	1052	121	22.59	1045	338	79.13	1120	339	408.63
AAC (South)	place.	101	130 770	346	105	43.72	10.1.11	30	M.C.

AAC (South), Madurai - Comment restricted to 1988-89.

N.A.: Not Available.

2.2.6 Delay in sending records to Appellate Authority

Rule 27-A of the Tamil Nadu General Sales Tax Rules contemplates that on a date fixed for hearing, the appellant shall ordinarily be heard first in support of his appeal and that the assessing authority or the Departmental Representative shall be heard next and allowed to file written statement. The Departmental Representative shall obtain the

records of the case from assessing authority and transmit them to the Appellate Assistant Commissioner. As per instruction issued on 18th January 1990, the Special Commissioner fixed the time limit of 60 days for filing such written statement from the date of receipt of first hearing notice from the Appellate Assistant Commissioner.

A test check of appeals pending disposal revealed that in respect of fifteen cases involving an amount of Rs.29.24 lakhs, the cases could not be disposed of due to non-receipt of records from the Departmental authorities within the time prescribed. The delay ranged from eighteen to forty months as at the end of June 1991 as indicated below:

Appellate Assistant Commissioner	Year of appeal	Date of first hearing	Tax involved (Rupees in		
(AAC)		,	lakhs)		
(1)	(2)	(3)	(4)		
AAC I,	1988	29.02.1988	0.31		
Madras	1989	21.03.1989	0.39		
	1989	13.12.1989	0.29		
	1989	20.12.1989	0.56		
AAC, III	1988	28.10.1988	3.85		
Madras	1989	31.03.1989	0.30		
	1989	04.04.1989	0.42		
	1989	21.04.1989	0.28		
	1989	21.04.1989	2.35		
	1989	21.04.1989	9.89		
	1989	28.06.1989	1.09		

(1)	(2)	(3)	(4)
AAC,	1988	27.10.1988	6.16
Erode	1988	27.10.1988	1.05
	1988	27.10.1988	1.63
AAC,			
Salem	1989	10.01.1989	0.67
			29.24

2.2.7 Stay not vacated/modified

The Sales Tax Act and the Rules framed thereunder contemplate that no appeal shall be entertained by an Appellate Authority unless it is accompanied by satisfactory proof of payment of the tax admitted by the appellant to be due. The tax as per the assessment orders appealed against shall also be paid. However, the Appellate Authority may in his discretion stay the payment of tax under dispute if the appellant furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed.

It was judicially* held that Appellate Authority was expected to consider the

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following aspects at the time of passing an order on a stay petition.

- (i) Whether there is a prima facie case in favour of the assessee.
- (ii) The amount of tax and penalty involved in the appeal.
- (iii) The capacity of the assessee to pay the amount.
- (iv) Undue hardship to the assessee.
- (v) Nature of security offered by the assessee.

The adverse effect that would be caused on the public revenue in case absolute stay is granted is also a matter to be considered but this should not be the primary concern.

The Supreme Court of India* has repeatedly deprecated the practice of granting stay on collection of Government dues on acceptance of bank guarantees.

(a) A comment regarding stay not vacated/modified has already been included in

Assistant Collector of Central Excise Vs. Dunlop (India) Limited 1985/SCC/260 Supreme Court

the Report of the Comptroller and Auditor General of India for the year 1988-89 vide paragraph 2.2.10.

Despite specific judicial pronouncements, no action had been taken by the Department to get the stay vacated which would otherwise remain in force till the disposal of the appeal or to get it modified by prescribing cash security. The revenue thus blocked for over one year as on 31.7.1991 in ninety seven cases amounted to Rs.114.09 lakhs as indicated below:-

(i) Stay granted by Appellate Assistant Commissioner

Name of Appellate Assistant Commissioner	Number of Cases for which absolute stay granted	Amount covered by stay (In lakhs of rupees)
(1)	(2)	(3)
AAC I, Madras	2	3.19
AAC II, Madras	3	18.19
AAC III, Madras	2	1.44
AAC, Erode	2	1.30
AAC IV, Madras	2	2.65

.(1)	(2)	(3)
AAC (Main) Coimbatore	4	5.13
AAC (Additional) Coimbatore	5	6.59
	20	38.49

(ii) Stay granted by High Court

Appeal	Number of	Amount covered by
year	Cases	stay
of		(In lakhs of rupees)
(1)	(2)	(3)
1988	1	1.93
1987	1	9.32
1989	1	37.92
1988	1	2.86
1988	1	1.12
1988	1	1.39
1988	1	1.67
1989	1	1.12
1990	1	1.05
1989	1	3.01

(1)	(2)	(3)
1989	1	1.61
1986	47	8.32
1987	16	3.91
1988	3	0.37
		J. J
	77	75.60
	The second of the	

(b) The Act and the Rules thereunder do not specifically provide for grant of stay of collection by the Head of the Department in cases pending before the Appellate Authority. In respect of three cases involving total tax of Rs.83.20 lakhs, as detailed below, the Special Commissioner of Commercial Taxes directed (March 1988 and August 1990) the assessing officers not to enforce collection of the demand:-

Year	of Appeal	Amount covered by stay (In lakhs of rupees)
	1988	1.83
	1989	57.02
	1989	24.35
	YAYIE	83.20

In eleven cases involving a tax effect of Rs.306.34 lakhs, where interim injunctions have been issued by the High Court, action has not been taken so far to vacate the stay. The interim injunctions have been in force for over one year in these cases as indicated below:-

Year of Appeal	Date of interim injunction order	Amount covered by stay (In lakhs of rupees)	
(1)	(2)	(3)	
1989	15.03.89	0.91	
1989	19.12.89	0.74	
1989	19.12.89	0.10	
1989	19.12.89	0.14	
1989	19.12.89	0.43	
1989	19.12.89	0.15	
1989	19.12.89	0.15	
1989	19.12.89	0.09	
1989	12.01.90	2.71	

(1)	(2)	(3)
1989	12.01.90	1.37
1989	15.02.90	299.55
		306.34

2.2.8 Failure to attain targets in disposal of appeal cases

The Chairman, Appellate Tribunal Madras had fixed (June 1971) a target of seventy appeals per month for clearance by each Appellate Assistant Commissioner. In respect of the Tribunal, a target of 250 appeals for a quarter has been fixed.

The target had not been achieved in any of the three years (1987-88 to 1989-90) except in the case of Sales Tax Appellate Tribunal, Main Bench, Madras for 1988-89 vide details indicated below:-

(Continued)

Bench of	Opening	Receipt	Total	Disposal	Closing
Tribunal	balance				balance
(1)	(2)	(3)	(4)	(5)	(6)
1987-88	1 22.5	1437 - 543	d.D	Contract of the Contract of th	-2-24
Main Bench, Madras	. 1235	637	1872	298	1574
Additional Bench,					
Madras	1289	720	2009	743	1266
Additional Bench,					
Madurai	1098	626	1724	774	950
Additional Bench,					
Coimbatore	781	605	1386	676	. 710
1988-89					
Main Bench, Madras	1574	543	2117	1007	1110
Additional Bench,		de m		i	
Madras	1266	817	2083	863	1220
Additional Bench,					
Madurai	950	542	1492	598	894
Additional Bench,					
Coimbatore	710	569	1279	297	982

(1)	(2)	(3)	(4)	(5)	(6)
1989-90					
Main Bench, Madras	1110	683	1793	795	998
Additional Bench,		Spire .			
Madras	1220	614	1834	745	1089
Additional Bench,					
Madurai	894	632	1526	847	679
Additional Bench,				A STATE	
Coimbatore	982	799	1781	948	833

The extent of disposal by the Appellate Tribunal, Main Bench Madras for 1987-88 and Additional Bench Coimbatore for 1988-89 was a meagre thirty per cent only of the target fixed.

The targets so fixed have not been reviewed so far despite heavy pendency of 21442 appeal cases with all the Appellate Authorities as on 31st March 1990.

2.2.9 Follow-up action by assessing officers

Review conducted in audit of action taken by the Departmental officers in passing fresh orders on cases remanded in thirteen appellate offices disclosed that seventy five cases were still pending with them. Fifty six

of these cases related to the years 1985-86 to 1988-89 and pertained to 10 assessment circles as indicated below:-

Assessment Circle	Year in which remanded	Number of cases pending for fresh orders	
(1)	(2)	(3)	
Brough Road (Erode)	1986-87	1	
Guhai (Salem)	1987-88 1988-89	22 7	
Mylamchandai (Trichi)	1988-89 1989-90	2	
Thudiyalur (Coimbatore	2) 1988-89	1 01050 1 800	
Nagapattinam	1988-89	1	
Sivakasi II	1988-89	5	
Uthamapalayam	1989-90	5	
Thanjavur	1987-88 1988-89 1989-90	6 8 9	
Shevapet (Salem)	1988-89 1989-90	2	

(1)		(2)	(3)
Loansquare I (Madras)	93	1985-86	i omit u. X.L
1985-86 to 1988-89 1989-90	613	56 19	buttents with the color of the
Total		75	

In one assessment circle (R.G. Street, Coimbatore), on four cases remanded involving tax amounting to Rs.0.48 lakh fresh orders were passed after delays ranging from 12 to 19 months.

Date of remand orders of	Date of receipt of orders in	Date of assessment	Delay	Tax Rs.
Appellate Authority	assessment	orders		
11.08.1987	11.08.1987	15.03.1989	18 months	21800
12.01.1989	12.01.1989	16.04.1990	14 months	780
02.05.1988	02.05.1988	01.03.1990	19 months	3587
19.07.1989	19.07.1989	03.08.1990	12 months	21415

Reasons for the delay have been called for (December 1991).

2.2.10 Time limit and pendency of appeals

The Commercial Taxes Manual contemplates that the Departmental Representative should move the Appellate Assistant Commissioner for quick disposal of long pending cases. However, the Act does not prescribe any specific time-frame for disposal of cases by the Appellate Authorities. Out of 7049 cases pending in sixteen appellate offices as on 31st March 1991, 1102 cases related to periods prior to 1987-88 as under:

Name of Appellate Authority	Number of pending cases	Amount (In lakhs of rupees)	
(1)	(2)	(3)	
AAC I, Madras	6	NA	
AAC II, Madras	18	NA	
AAC III, Madras	5	NA	
AAC IV, Madras	47	NA	
AAC (Main), Coimbatore	8	2.23	

(2)	(3)
24	3.43
4	1.05
8	2.80
63	12.22
9	23.39
1	0.04
259	33.21
361	NA
284	NA
5	15.29
1102	
	24 4 8 63 9 1 259 361 284

2.2.11 Other points of interest

Under Section 31 A of the Act, appeal against the order passed by the Assistant Commissioner (Assessment) in respect of Central

Assessment Circle should be filed with the respective Appellate Deputy Commissioner. However, in respect of three cases relating to the year 1988 involving tax effect of Rs.12.74 lakhs, appeals were filed before the Appellate Assistant Commissioner, instead of Appellate Deputy Commissioner, Coimbatore resulting in delay in the disposal of appeals for over thirty two months as on 30th June 1991.

The above points were reported to the Government in July 1991. Their reply has not been received (December 1991).

2.3 Exemption and Reduction in the rate of sales tax

2.3.1 Introduction

Sections 8 and 17 of the Tamil Nadu General Sales Tax Act, 1959 (TNGST ACT) provide for exemption and reduction in tax in respect of intra-state sales and purchases. Section 8 absolute exemption to commodities listed in the Third Schedule. Section 17 authorises the Government to issue notification granting exemption or reduction in rate of tax either prospectively or retrospectively on the sale or purchase of any specified goods or class of goods at all or specified points in the series of sales successive dealers or by any specified class of persons in regard to the whole or any part of their turnover or on the sale or purchase of any specified class of goods by specified class of dealers in regard to the whole or part of

their turnover. Such exemption or reduction in tax may extend to the whole State or to any specified area and may be subjected to such restrictions or conditions as may be specified. It also provides for cancellation of such notifications and also for remission of the whole or any part of tax, penalty or fee payable in respect of any period by any dealer under this Act.

Section 18 deals with the cases of contravention and non-observance of restrictions and conditions imposed under Section 17 and provides for levy of tax at appropriate rate.

Section 8(2A) read with Section 8(5) of the Central Sales Tax Act, 1956 (CST ACT) provides for exemption or reduction in the rate of tax in respect of inter-state sales or purchases.

Section 53 of the TNGST Act requires the placing of all notifications on the table of Assembly soon after their issue for approval.

2.3.2 Scope of Audit

A general review of various notifications issued during 1986-87 to 1989-90 under the TNGST and CST Acts with particular reference to the context in which issued, their implementation at the assessment stage and financial implication was conducted during the period November 1990 to July 1991. Though the

list of notifications issued during 1986-87 to 1989-90 was called for (January 1991) this has not been received. However, copies of notifications were collected from Government publications and those available in audit and records to the extent made available by the Government in the Commercial Taxes and Religious Endowment Department, Commissioner of Commercial Taxes and 44 assessment circles were test-checked.

2.3.3 Organisational set up

The Government is the ultimate authority in the matter of grant of exemption, concession, waiver or remission. The annual budget contains proposals for exemption, reduction in tax etc., which are later issued in the form of notifications. Any representations for exemption, concession etc. directly received by the Government are referred to the Commissioner of Commercial Taxes, for examination and recommendation. Notifications giving effect to exemption, reduction in tax, waiver and remission take effect on the day of their publication unless otherwise specified therein - Section 53(4)(b).

2.3.4 Highlights

(i) Department has no machinery to monitor the revenue effect of notifications and the realisation of objectives for which these were issued.

- (ii) Exemption by refund of tax was given by means of executive orders though required to be ordered by issue of notifications under the relevant Act. The tax effect of exemption so given was Rs.10.21 lakhs.
- (iii) Incorrect grant of tax concession under the TNGST Act for inter-state movement of goods resulted in short levy of tax of Rs.13.03 lakhs.
- (iv) Anomalies in the orders issued for reducing or varying the rates of tax on electronic goods and TV sets resulted in short levy of tax amounting to Rs.26.15 lakhs.
- (v) Defective notification to withdraw concessional levy resulted in the court striking down the orders and consequent loss of revenue of Rs.5.09 lakhs.
- (vi) Remission and refund of tax amounting to Rs.25.18 lakhs was incorrectly granted on the sale of Palmolein though the dealers had collected tax from consumers.
- (vii) Waiver of tax amounting to Rs.2549.58 lakhs was ordered retrospectively, though CST Act does not provide for waiver.
- (viii) Steel Rolling Mills purchasing raw materials tax-free under declaration to sell the finished product violated the declaration, but the mills were not assessed to tax of Rs.0.80 lakh.

- (ix) Unconditional exemption was ordered on sale of 3 HP and 5 HP pumpsets as welfare measure to benefit the agriculturists of the State. This gave unintended benefit to the purchasers of other States. The tax effect involved was Rs.8.27 lakhs.
- (x) Though Paper Cones are textile machinery parts these were being treated as packing material and tax was levied short thereon amounting to Rs.3.72 lakhs.
- (xi) Erroneous treatment of Paper Cones as packing material resulted in incorrect exemption on their sales to the exporters resulting in loss of revenue of Rs.0.74 lakh.
- (xii) Though groundnut is an oil seed, it was treated as vegetable seed and allowed exemption on its sale.
- (xiii) The point of taxation on groundnut was shifted from first sale to first purchase in March 1986. However, the closing stock held prior to the change could not be taxed for want of an enabling provision in the Act.

2.3.5 Increasing resort to reduction/exemption notifications

Successive committees appointed by the Government to study the working of the Acts did not favour the grant of exemptions. Recommendations of the Committees are briefly as follows:

Sl. Name of No. Committee

Recommendation of Committee

1.Dr.P.S.Loganathan (1957)

In the interest of smooth administration of sales tax, it would be desirable to find other means of encouragement such as subsidy than exemption from Sales Tax. In any case exemption from sales tax should be avoided if it creates loopholes for evasions.

2.Dr.P.S.Loganathan (1965)

The case for exemption from Sales Tax is rather very weak. It unavoidably creates loopholes for evasion. Government should not enlarge the list of exemptions further.

3.Kaiwar Committee (1977)

The Committee would suggest progressive reduction of exemptions in future. Sl. Name of No. Committee Recommendation of Committee

4. A study of the structural of Sales tax in Tamil Nadu V.Karthikeyan (1990)

Every committee observed that grant of exemptions/reductions in rate should be minimal. The number of notifications have swelled to 600 items. There is a good need to review and prune them or withdraw them if there is no real need to continue exemptions.

However, in actual practice, there has been substantial increase in the number of reduction/exemption notifications issued, especially in recent years. From 61 notifications in force on 1.4.1959, the number increased to about 600 at the end of 1989-90. Statistical details including revenue implication of notifications issued from 1986-87 to 1989-90 though called for from the Government (January 1991) have not been received (February 1992).

2.3.6 Absence of mechanism to systematically review tax concession

Enquiries made in audit (August 1991) with four assessment circles (Mylapore, Guindy, Adyar and Luz) revealed that no Register or Return has been prescribed by the Department for recording on a regular basis the revenue implications of exemption/concession notifications issued from time to time with reference to assessment records. This shows that the department did not have any continuous feedback mechanism to monitor the effects of exemptions/concession on sales turnover and revenue. In the absence of such a mechanism, it was not clear how the department effectively review the need or otherwise for continued exemption or concession in sales tax against the original objective.

The following case in point would show that two conflicting notifications for the same commodity issued in March 1959 still remain in force:

In Notification No.SRO 196 dated 28.3.1959 exemptions were ordered inter-alia as under for two different kinds of transactions in mats:-

- Sl.No.15 Sales of products of the basket making and mat weaving industries by any dealer.
- Sl.No.56: Sales of products of Palm Gur Industry and of articles such as baskets, mats,

brushes, fans etc. manufactured out of palm leaves, effected by any dealer, in the State producing such commodities.

"Palm leaf Mats" was a multipoint item upto 31.3.1990 taxable at 5 per cent for intra-state and 10 per cent for inter-state sale without 'C' form.

The former entry gives total exemption on sales of mats by any dealer. On the other hand, the latter entry allows exemption on sale by the person who produces mats. These two conflicting entries which are still in force have given rise to an anomalous position.

In Ramanathapuram Assessment Circle, a dealer made local purchase of Palm Leaf mats and sold them during 1986-87 outside the State for Rs.12.55 lakhs. This transaction was allowed exemption with reference to the former entry even though as per the latter entry it was taxable at 10 per cent CST, as the seller was not a producer. The tax effect was Rs.1.25 lakhs.

Though these two conflicting entries of exemption had been in force for over 30 years, the inconsistency still remain to be rectified (December 1991).

Only in a very few cases where concession is given for a limited period, the review is done when the renewal of concession is sought for by the concerned dealers.

The trend in sales tax revenue can be co-related to the volume of goods sold, value of goods sold etc., to study the effects of exemptions. Such a study on time series by Audit in respect of 5 commodities viz. iron and steel, vegetable oil, electronic systems, paper and tractor which enjoy concessions in tax (Appendix II), revealed that exemptions/ reductions did not lead to any significant improvement in sales and the consequent revenue inflow. The details are as under:

- (i) Iron and Steel: The rate of growth of revenue from 1983-84 was erratic; the lowest growth of 5 per cent over previous year was recorded in 1988-89 though the wholesale price index number for the commodity rose from 324.20 in 1983 to 606.64 in 1989 (1970-71 100). Steel rolling mills had availed exemption from tax on purchase of raw materials but in cases where the end products were despatched to other States on stock transfer/consignment sale basis, no tax was paid on raw materials though the notification of exemption (March 1986 as amended) stipulated remittance of tax in such cases resulting in loss of revenue (Test case para 2.3.14).
- (ii) Vegetable oil: Trend in revenue was not regular. Illustratively, in 1989-90 the revenue recorded a negative growth of 33 per cent over previous year though the wholesale price index number rose from 327.76 in 1983 to 486.16 in 1989. It may be seen that upto 16th March 1986, concessional rate of 3 per cent multipoint was levied and from 17th March 1986,

the commodity was brought under single point levy of 4 per cent. Further, remission of tax was given (June 1986) on retail sale of Palmolein by co-operative societies from 24th May 1984 to 16th March 1986 though tax at 3 per cent was collected from the consumers. However, the steep fall in revenue (Appendix II refers) had not been adequately investigated.

- (iii) Electronic goods: Concessions in the rate of tax were ordered during March 1986 to March 1990 on electronic goods to "provide the necessary fillip to these developing industries in this State". The tax was reduced to 6 per cent (March 1986), to 4 per cent (March 1987), to 2 per cent (May 1988) and revised to 3 per cent (March 1990) against the rate of 10 per cent/15 per cent prescribed in the Schedule. The extent to which the tax concessions have helped the electronic industries since March 1986 is not known. However, Sales Tax revenue fell by 35 per cent in 1988-89 and rose by a meagre 9 per cent in 1990-91 as compared to the corresponding previous years. Either of the movements in tax revenue was not studied by the department.
- (iv) Paper: The rate of tax was reduced from 8 per cent to 4 per cent single point from May 1988. It was seen that the wholesale price index number for the commodity which was 299.87 in 1983 rose to 592.99 in 1989 but the sales tax revenue in 1990-91 slumped by 22 per cent as compared to the previous year. The revenue in 1990-91 was equal to that in 1985-86.

(v) Tractor: The rate of tax on tractor was reduced to 6 per cent from 9 per cent in February 1987 and again it was reduced to 3 per cent (October 1988) with a view to arrest the declining trend of revenue from the commodity arising from their diversion on consignment sales/stock transfer to other states where the rate of tax is much lower. The trend of revenue from 1984-85 onwards would reveal that Rs.486 lakhs realised in 1985-86 was the highest in 5 years, when the rate of tax was 9 per cent. Since then, there has been steady decline in revenue and in the year 1988-89, it was the lowest at Rs.146 lakhs exhibiting a steep fall of 70 per cent over that of 1985-86. Even though the sale of tractors enjoyed concessional levy from 1986-87, there was no improvement in sales. Consequently, the objective of securing higher revenue through concessional levy had not been realised.

2.3.7 Delay in review and renewal of concession

Tax on earth moving equipments falling under entries 55 and 55 A of the First Schedule to the TNGST Act was leviable at 9 per cent at the point of first sale in the State. A company manufacturing earth moving equipments in the State had requested reduction in rate of tax on certain earth moving equipments manufactured by them since otherwise the purchasers in the State, mostly public sector undertakings and local bodies, preferred to purchase these equipments from neighbouring States where lower rate of tax prevailed. On the recommendation of the Commissioner, the

Government reduced the rate of tax to 4 per cent for one year from July 1984. The exemption was subject to review thereafter. The concession was reviewed and renewed once from 18th February 1987 and again from 29th June 1988 by a notification (June 1988). Orders have not been issued for the period beyond 28 June 1989.

An appraisal done in Audit (July 1991) of the trend in the sales and revenue from 1 April 1984 to 31 March 1991 with reference to assessment records in 2 assessment circles (Mandaveli and Central Assessment Circle III, Madras) showed that during periods totalling 3 years when the concession was in force, the monthly sales averaged Rs.144 lakhs which was nearly 4.5 times more than the monthly sales of Rs.32.50 lakhs during nonconcession periods representing nearly two fold increase in revenue to the State. Though the manufacturer had approached the Government in June 1985 for renewal of the concessional rate, there was delay of one year and seven months between the expiry of the concession and its renewal. As the intention of the department was not only to encourage a State - based industry but also to improve the State's revenue, the delay had resulted in total expected average shortfall of revenue of Rs.66.12 lakhs during the entire intervening non-concession period of nearly 24 months.

2.3.8 Irregular grant of exemption through executive orders

Bodies built on chassis of motor vehicles belonging to others were taxable at 15 per cent single point under entry 3 of the First Schedule to the TNGST Act.

On a representation from a bus body builder, the Government through an executive order (January 1972) ordered that tax paid under the Act on bus bodies built and supplied to chassis manufacturers in India for onward export to foreign countries be refunded subject to production of proof of export. This was in contravention of Section 17(1) read with Section 53(5) of the TNGST Act which specifically provides that grant of exemption or reduction in tax should be only through notification to be placed on the table of the Legislature for approval.

Test check in audit (July 1991) revealed that during the two years 1973-74 and 1975-76, the tax exempted under the above orders to only one dealer was of the order of Rs.10.21 lakhs. The records relating to the other periods/other dealers were not available as these were stated to have been sent to High Court in connection with appeals.

2.3.9 Incorrect assessment arising from notification of concession

Bodies built on chassis of motor vehicles belonging to others are taxable at 15

per cent under Entry 3 of the First Schedule to the Act. The same rate is applicable to inter-State sale without 'C' Form declaration. notification under Section 17 of Tamil Nadu General Sales Tax Act issued in April 1988, the rate of tax was reduced to 5 per cent in favour of a State owned bus body building company for construction of bodies on 250 chassis belonging to a State owned Corporation of another State. The agreement concluded between the buyer and seller, provided for delivery of the finished bus to a local transport agency who was to move the buses to Hyderabad. The agreement also provided for the final settlement of bills after inspection and approval of the buses at Hyderabad. The sale agreement indicated movement of goods out of the State for conclusion of sale. It has been judicially* held that where the purchaser was an outside State purchaser and had no place of business in the State, it could be safely inferred that the parties in fact contemplated even at the time of the sale, the movement of goods from one State to another. In the instant case it was an inter-State sale and the issue Notification under Section 17(1) of the State Act (TNGST) instead of invoking provision of Section 8(5) of CST Act, reducing the tax for inter-State sale was outside the scope of the Act and therefore incorrect. The turnover of Rs.157.91 lakhs in the above

Thavakkal Agencies Vs. State of Tamil Nadu-Madras High Court (47/STC/179)

transaction was assessed in Pollachi East Assessment Circle. The short assessment of tax by applying 5 per cent instead of 15 per cent amounted to Rs.13.03 lakhs.

2.3.10 Anomaly resulting out of reduction in tax on electronic goods

Tax on sale of specified electronic goods including T.V. sets was leviable at the rates prescribed in the relevant entries of the First Schedule to the TNGST Act. Tax on electronic goods, systems, instruments etc. in general other than those specified elsewhere in the Schedule was taxable at 10 per cent under a separate entry 41-C.

By notification dated 5th October 1976, the rate of tax on sale of T.V. sets (entry 5) was reduced from 15 to 10 per cent. By notifications issued in March 1986 and March 1987, the rate of tax on sale of electronic goods manufactured within the State was reduced to 6 per cent and 4 per cent respectively. In the absence of notification under Section 17(3) cancelling or superseding the exclusive orders (October 1976) on T.V. sets, these orders continued to be in force.

By a notification dated 9th May 1988, in supersession of orders of March 1986 and March 1987 the rate of tax on sale of all electronic goods and components was reduced from 10 per cent to 2 per cent. Even then, the earlier orders (October 1976) on T.V. sets were neither cancelled nor superceded under Section

17(3). The rate of levy of tax on T.V. sets therefore continued to remain the same at 10 per cent. As the notification (May 1988) reduced the tax on electronic goods from 10 per cent, this would apply only to those electronic goods, where the rate of tax leviable was 10 per cent as per Schedule. In other words, goods falling under entry 41-C alone were attracted by this notification as the tax leviable thereon under the Act was 10 per cent. Government issued (June 1986) clarificatory instruction that the notification (March 1986) would apply to electronic goods falling under entries 1, 2, 5, 10, 10 A, 11, 41-C and 41-D of the First Schedule. This clarification had no statutory force and the High Court had held* that it would not be in order to extend the scope of the Government order to any other matters which are not expressly governed by the language of the Government order. Government issued notification on 17th March 1990 reducing the rate of tax to three per cent on sale of all electronic goods falling under any of the entries in the First Schedule except 1.B (Teleprinter). This notification, being specific about entries covered T.V. sets also. Thus, the rate of tax on the T.V. sets prior to 17th March 1990 should have been 10 per cent only. As a result of the anomalous position that arose because of the clarification of June 1986, the sales tax on T.V. sets

Commissioner (CT) Vs. P.Gnanambal (46 STC 302)

was being levied at 2 per cent since 9th May 1988, and at 4/6 per cent for the earlier period, instead of 10 per cent. In 4 assessment circles alone (Avadi, Nungambakkam, Amaindakarai and T.Nagar), tax on sale of T.V. sets was levied short by Rs.26.15 lakhs during 1988-89 and 1989-90.

2.3.11 Defective notification of withdrawal of concession resulting in loss of revenue

By a notification issued in March 1967 under the CST Act, the Government withdrew the concessional rate of tax for a number of commodities including white printing paper, aloe fibres etc., given in the earlier notifications listed below:

Reference Number of Notification	Date (2)	
(1)		
1. SRO No.A.3147/1959	27th May 1959	
2. SRO No.A.5929/1959	30th September 1959	
3. II-I No.1606/1960	12th October 1960	
4. II-I No.2665/1960	7th December 1960	
5. II-I No.5376/1961	29th November 1961	

(1)	(2)
6. II-I No.4156/1962	5th September 1962
7. II-I No.5420/1962	21st November 1962
8. III No.118/1963	13th February 1963
9. III No.122/1963	13th February 1963
10. III No.601/1965	24th November 1965

On an appeal by one of the beneficiaries of the concession, which was withdrawn by the above order (March 1967) it was judicially held* that the Notification of withdrawal was not done in the manner in which it shall be done and Notification did not even prima facie disclose that the State Government was satisfied that it was necessary in public interest to withdraw the concession granted earlier. As such the withdrawal Notification was held invalid and without jurisdiction, power and authority.

⁸⁰ STC Part I (1991) dt. 14.8.90 - Sun Paper Mills Ltd. Vs. Union of India and others, High Court, Madras.

In view of the defective notification of 1967, the objective of the Government to restore the original rate of tax was not achieved.

Consequently, in one assessment circle (Mettupalayam) lower rate of tax at 2 per cent was applied instead of 10 per cent in respect of inter-State sale by 2 dealers of Aloe Fibres and Stalks. This resulted in loss of revenue of Rs.5.09 lakhs on a turnover of Rs.63.62 lakhs during 1986-87 to 1988-89.

2.3.12 Incorrect remission and refund

Vegetable oil was subject to multipoint levy at 2 per cent upto 30.11.1983. It was 3 per cent thereafter. From 17.3.1986, it was brought under single point levy of 4 per cent as Entry 170 of the First Schedule. Palmolein is exclusively imported by State Trading Corporation for sale to the Tamil Nadu Civil Supplies Corporation Limited, which acts as wholesaler. The wholesaler in turn sells to various co-operative societies which act as retailer for sale to consumers under Public Distribution System. The State Government (Food and Consumer Protection Department) fix the price for different stages from time to time.

From 1.7.1982 when Palmolein was brought under multipoint levy of two per cent, the retail price of oil to consumers continued to be at Rs.8.90 per kilogram without including the element of tax. Hence, the Co-operative

societies had not collected the tax. But tax was demanded on sale of Palmolein and the Commissioner recommended to the Government the waiver of tax (July 1984). The retail price of Palmolein was also got refixed at Rs.10.55 per kilogram from 24th May 1984 with the approval of Government. The new price included the element of sales tax and surcharge. In June 1986 Government had issued orders waiving the tax for the period from 1.7.1982 to 16.3.1986, subject to the condition that no tax was collected. As the new retail sale price included the element of tax, remission of tax for the period from 24.5.1984 to 16.3.1986 was irregular.

In two assessment circles alone (Harbour III and Lalgudi) the incorrect remission resulted in a tax loss of Rs.14.83 lakhs. Further, in eight assessment circles (Sathyamangalam, Park Road, Nethaji Road (Erode), Perambur II, Maduranthakam, Leigh Bazaar (Salem), Kongu Nagar (Tirupur), Ooty(North)), a sum of Rs.10.35 lakhs levied and collected as tax from 11 societies for the period 1985-86 was erroneously refunded.

2.3.13 Reduction and waiver of tax inconsistent with the provisions of the Act

A Government of India undertaking, manufacturing heavy boilers and other equipments, mostly connected with generation of electricity, had requested grant of exemption from production of 'C' Form on inter-State sales as the company found it difficult to

collect the 'C' Forms from their purchasers, resulting in delay in finalisation of Government had issued Notifiassessments. cations in January 1986 fixing the tax at 4 per cent in respect of sales of boilers, accessories and power generating equipments made to Electricity Boards without 'C' Forms. Subsequently, the manufacturer requested for retrospective effect from the year 1980-81 and this was also conceded by the Government in their waiver order issued in August 1986 covering the period from 1.4.80 to 21.1.86. The Government under Section 8(5) of CST Act had no power to waive the tax. On a turnover of Rs. 42493.02 lakhs for the above period, tax (10 per cent - 4 per cent) waived was Rs.2549.58 lakhs. Unless specifically allowed by the law, it is not the prerogative of the executive to waive a tax leviable by law and thus defeat the legislative intention.

2.3.14 Non-levy of tax for infringement of condition of exemption

Prior to March 1986, the Steel Rolling mills were allowed exemption of tax on end products provided they had paid the tax on raw materials. With a view to securing more revenue, Government by notifications in March 1986, April 1987 and February 1988 exempted from tax the sale of raw materials to steel rolling mills, provided the purchasing steel rolling mills gave declaration to sell the end product either inside or outside the State. The notification provided for remittance of tax

on the raw material purchased in case of violation of the declaration.

The check of assessment records in two assessment circles (Avadi and Thudiyalur) conducted in Audit (February 1991 to June 1991) revealed that tax was not levied on raw materials purchased by steel re-rolling mills free of tax under declaration when the finished products were despatched to other States otherwise than by way of sale. Though levy of tax is contemplated in Section 18 for non-fulfillment of conditions of exemption, tax was not levied on a turnover of Rs.20.10 lakhs resulting in short levy of Rs.0.80 lakh.

On the omission being pointed out, the department contended that as held* by the Supreme Court the tax could not be levied in such cases as it amounted to taxing consignment sales which was ultra vires the State Legislature. The reply of the department is not acceptable for the following reasons:-

The Delhi High Court** while dealing with a case involving similar transaction held

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⁷⁶ STC 72 State of Haryana Vs. Good Year Ltd.

⁸¹ STC Part 2 (1991) Seagull Laboratories (P) Ltd. Vs. Delhi Administration

that the Supreme Court's judgement referred to by the Department was not applicable in such cases because the impugned provisions dealt with by the Supreme Court contained no provision which made it obligatory for the purchasing dealer to furnish any declaration at the time when he purchased the raw material free from tax. When the dealer furnished a declaration that the raw materials purchased by him free from tax were for the purpose of manufacture and sale of end product either locally or outside the State but violated the declaration by despatching the end product outside the State otherwise than on sale, then it would be in order to subject the price of the goods so purchased to tax. As the case decided by the High Court of Delhi is similar to the one under consideration but quite distinct from the one decided by the Supreme Court, the objection was reiterated (August 1991).

2.3.15 Exemption resulting in unintended benefits

Pumpsets are taxable at 8 per cent at the point of first sale in the State under Entry 99 of the First Schedule and at 10 per cent without 'C' Form declaration for inter-State sale. In the State's budget proposals for 1989-90 presented to the Legislative Assembly in March 1989, it was declared that equipments used for agricultural purpose would be exempted from sales tax and most important of these were agricultural pumpsets of 3 HP and 5 HP. Notification issued in March 1989 under

Section 17(1) of the TNGST Act to give effect to the decision was general without any conditions restricting the exemption for agricultural purpose only. The unconditional exemption gave unintended benefit to the purchasers of pumpsets of the other States also, as under Section 8(2A) and explanation thereunder of the CST Act, unconditional exemption ordered under the TNGST Act would apply automatically to inter-State sale as well.

During 1988-89 and 1989-90, inter-State sale of 3 HP and 5 HP motor pumpsets was of the order of Rs.82.72 lakhs, in four assessment circles. The tax effect was Rs.8.27 lakhs. Had the order of exemption been confined specifically to local sales as envisaged in the Budget Speech, the loss of revenue of Rs.8.27 lakhs on inter-State sales could have been avoided.

2.3.16 Incorrect treatment of paper cones as packing materials

By a notification issued on 7.10.1988, the rate of tax on the sale of certain textile machinery parts including 'Cones' was reduced from 8 per cent to 4 per cent single point. Packing materials were subject to multipoint levy of 5 per cent till the system of multipoint levy was abolished from 1.4.1990. The Commissioner clarified (January 1988 and March 1990) that 'Paper Cones' were only packing materials. The description was however changed by the

Commissioner in November 1990 stating that 'Paper Cones' were only textile machinery parts taxable at 4 per cent from 7.10.1988. As a result of erroneous treatment of 'Paper Cones' as packing material tax was levied at 5 per cent instead of 8 per cent till 6.10.1988. In respect of 6 assessees in 2 assessment circles (Thudiyalur and Ambattur), the accounts of which were test checked (January 1991 and September 1990), the short realisation of tax amounted to Rs.3.72 lakhs during 1985-86 to 1988-89.

2.3.17 Incorrect exemption for sale of paper cones to exporters

Under the Notification issued on 20.3.1987 as amended (May 1988), sale by any dealer of packing materials intended to be used for packing of goods for sale in the course of export was exempted, subject to production of the prescribed certificate.

Because of the earlier incorrect clarificatory instructions (January 1988 and March 1990) of the Department, that Paper Cone was packing material the sale of 'Paper Cone' to exporters of yarn was erroneously exempted from tax. The mistake was, however rectified by a clarification (November 1990) that paper cone was a textile machinery part.

In respect of 2 assessees in one assessment circle (Thudiyalur) alone, incorrect exemption on a turnover of Rs.10.23 lakhs of paper cones sold to exporters who were also

manufacturers of cone yarn resulted in loss of revenue of Rs.0.74 lakh including additional tax, surcharges and additional surcharge for the years 1987-88 and 1989-90.

2.3.18 Incorrect exemption from tax on sale of groundnut

Vegetable seeds are exempted from sales tax under notification issued in April 1960. Groundnut is classified under 'Oil seeds' under entry 6 of the Second Schedule, taxable at 3 per cent at the point of first sale if the purchase was made from outside the In one assessment circle (Sirkali), sales turnover of Rs.14.54 lakhs relating 3 dealers during 1988-89, of groundnut purchased from outside the State was allowed exemption from tax by the Appellate Authority on the ground that it was sold by them to Agriculturists for seeding purposes. It was pointed out in Audit (March 1991) that in the absence of specific exemption by the Government and in view of groundnut being classified under separate entry - 'Oil seeds' exemption from tax which amounted to Rs. 0.54 lakh would not be in order and that the assessment would require review under Section 34. This was accepted by the Department (May 1991). Further report has not been received (July 1991).

2.3.19 Lacuna in the Act resulting in exemption from tax

Groundnut was taxable at 3 per cent at the point of first sale up to 16.3.1986.

From 17.3.1986, it was taxable at the point of first purchase within the State. As a result of shifting of taxation to the purchase point, the closing stock held by the dealers on 16.3.1986 out of purchases made from unregistered dealers escaped tax net. happened because of absence of transitory provision in the TNGST Act on the analogy of Sections 60(2) and 60(A) which provide for exemption of or taxing of the closing stock of any commodity shifted from multipoint to single point levy and vice-versa. In respect of only 13 assessees in 2 assessment circles (Thiruchengodu Town and Panruti Rural), it was noticed in audit, that tax including additional tax foregone on the closing stock valued at Rs.20.42 lakhs on 16.3.1986, amounted to This was brought to the notice Rs. 0.86 lakh. of the department (August 1988 and May 1990).

The above points were communicated to the Government (August 1991). Their reply was awaited (December 1991).

2.4 Incorrect grant of exemption from levy of tax

(i) As per entry 4(xv) of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sale of steel wire rods and wires rolled, drawn, galvanised, aluminised, tinned or coated such as by copper, tax is leviable at four per cent at the point of first sale in the State.

It was judicially held* that item 4 of the Second Schedule to the Act is an exhaustive enumeration of the categories of Iron and Steel goods. Each sub item in the entry 4 is a separate taxable commodity for the purpose of sales tax and each of these forms a separate species for each series of sales although they may all belong to the genus, iron and steel. The manufactured goods consisting of steel rounds, flats, angles, plate, bars or similar goods in other forms and shapes could be taxed again even if the material out of which they were made, had already suffered tax. The Madras High Court** held that square bars drawn out of rounds are commercially different from the latter and are exigible to tax though both the categories are classified against the same Entry 4(xv).

In three assessment circles viz. Pudukkottai (Pudukkottai District), Woraiyur (Tiruchirapalli District) and Ashok Nagar (Madras) sales of wire drawn out of wire rods by three dealers amounting to Rs.162.64 lakhs during the years 1986-87, 1987-88 and 1988-89,

State of Tamil Nadu Vs. Pyarelal Malhotra (1976) 37/STC/319

^{**} State of Tamil Nadu Vs. Syam Steel Rolling Mills Limited (1977) 40/STC/156, Madras High Court

were exempted on the ground that wire-rods had already been taxed. The incorrect exemption resulted in tax being levied short by Rs.6.51 lakhs.

On this being pointed out in audit (February 1988, July 1990 and September 1990) the department stated (June 1990, January 1991, April 1991 and May 1991) that wire rods and wires cannot be considered as two different commercial commodities and wires of thinner gauge drawn out of thicker wire rods are one and the same. The clarification issued by the department (March 1990) had been endorsed by the Government (May 1991).

The department's reply was not acceptable since wires drawn out of wire rods is a new commercial commodity as per clarification issued by the department in April 1987 and hence is liable to fresh taxation. This was again pointed out to the department (July 1991 and August 1991) and their reply has not been received (October 1991).

The case was reported to Government (August 1991).

(ii) As per entry 18 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of nylon yarn, tax is leviable at the rate of four per cent at the point of first

sale in the State. It has been judicially held* that nylon fishnet twine is not nylon yarn and on its sale, tax is leviable at the general rate of tax at every point of sale.

In Park Town-I assessment circle, Madras, sales of nylon fishnet twine amounting to Rs.28.69 lakhs made by a dealer, during the year 1982-83 were erroneously exempted from levy of tax treating it as second point sales. The mistake resulted in tax being levied short by Rs.1.79 lakhs (inclusive of surcharge additional surcharge and additional sales tax).

On this being pointed out (July 1989) in audit, the department revised (September 1990) the assessment and raised an additional demand for Rs.1.79 lakhs.

The Government however stated in December 1991, that the High Court had stayed the collection of additional demand. Further, an assessee had also gone in appeal before the Appellate Assistant Commissioner against revised assessment order. Information on further development is awaited (February 1992).

Sales Tax Appellate Tribunal (Main Bench) Madras TA No. 1589/82 TMP No.397/83 dt. 12.3.1984.

(iii) As per notification issued on 30th December 1964 under the Tamil Nadu General Sales Tax Act, 1959, the sales of goods by any dealer to the Canteen Stores Department were exempted from levy of tax.

As per entry 41-B of the First Schedule to the Act, on sales of "Mixies" tax is leviable at twelve per cent at the point of first sale in the State.

In Nanjappa Road assessment circle, Coimbatore, sale of 'Mixies' amounting to Rs.11.18 lakhs during 1987-88, to a canteen at Avadi which was not a registered unit under Canteen Stores Department was erroneously exempted from tax by treating it as a unit coming under the direct control of Canteen Stores Department. The mistake resulted in tax amounting to Rs.1.64 lakhs (inclusive of surcharge and additional surcharge and additional sales tax) not being realised.

This was pointed out (July 1990) to the department. Government to whom the matter was reported (November 1990) stated that the case would be examined.

Further reply has not been received (February 1992).

(iv) As per entry 117 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of paper, tax is leviable at eight percent at the point of first sale in the State. The rate was reduced to four percent with effect from May 1988. It was clarified by the department (September 1988 and August 1990) that sale of standard as well as glazed damaged newsprint is taxable at the general rate of five percent. The department had clarified (June 1989 and August 1989) that continuous computer stationery with holes punched vertically, plain or ruled with or without carbon inter-leaved would not fall under this entry and is liable to tax at the general rate, besides additional sales tax, surcharge and additional surcharge at prescribed rates wherever applicable.

(a) During the audit of the Thyagaraya Nagar (North) assessment circle, Madras it was noticed (August 1990) that sale of damaged newsprint amounting to Rs.22.65 lakhs made by a dealer during 1988-89 was exempted from levy of tax, treating it as second sale of paper. The omission resulted in non-levy of tax amounting to Rs.1.53 lakhs (inclusive of surcharge, additional surcharge and additional sales tax).

On this being pointed out in audit (September 1990) the department revised the assessment (May 1991) and raised an additional demand for Rs.1.53 lakhs (inclusive of surcharge, additional surcharge and additional sales tax). The case was reported to Government (July 1991).

(b) In Mettupalayam Road assessment circle, Coimbatore sales of Computer stationery manufactured out of the paper purchased locally and from outside the State amounting to

Rs.15.41 lakhs during the year 1988-89 were erroneously exempted from tax as second sales. The incorrect exemption resulted in tax being levied short by Rs.1.16 lakhs (inclusive of surcharge, additional surcharge and additional sales tax).

On the mistake being pointed out (December 1990) the department revised the assessment (March 1991) and raised an additional demand for Rs.1.16 lakhs. The assessee is stated to have preferred an appeal and obtained orders for payment of tax in instalments. Collection details called for (October 1991) have not been received (February 1992).

(v) As per Article 286(1)(b) of the Constitution of India, a sale made in the course of export out of the territory of India is exempt from levy of tax. Under sub-Section (3) of Section 5 of the Central Sales Tax Act, 1956 a sale immediately preceding the export of the goods is also deemed to be sale in the course of export and therefore exempted from tax. Under the Tamil Nadu General Sales Tax Act, 1959, on sale of hosiery goods (excluding those made of wool), tax is leviable at the rate of five per cent. This was reduced to three per cent with effect from 7th October The Act also provides that for any wilful non-disclosure of assessable turnover or suppression of facts, penalty not less than fifty per cent but not more than one hundred fifty per cent of the assessed tax be levied.

In Tirupur Bazaar assessment circle, Tirupur, a turnover of Rs.5.35 lakhs was allowed exemption during 1987-88 as sales of hosiery cloth and cutwaste to an exporter within the State. A verification of the monthly returns filed by the assessee, however disclosed that he had made sale of hosiery goods for Rs.5.30 lakhs and not hosiery cloth as claimed. On this being pointed out in Audit (December 1989), the department conducted a verification and found that the assessee had misrepresented the sales turnover of hosiery goods as sale of hosiery cloth, by fabricating the bills and thereby obtained exemption from levy of tax. Further, the transaction was also not supported by relevant export document. The mistake resulted in short levy of tax amounting to Rs.46,881 (including surcharge additional sales tax). Besides, a minimum penalty at the rate of 50 per cent of tax assessed for wilful suppression of turnover amounting to Rs.23,440 was also leviable. minimum penalty of 50 per cent was not levied.

On the mistake being pointed out (February 1990) in audit, the department revised (September 1990) the assessment and raised an additional demand of Rs.93,762 (inclusive of surcharge, additional sales tax and penalty). However, the dealer is reported to have gone in appeal (December 1990). Report on the result of appeal and recovery of tax has not been received (March 1991).

The case was reported to Government (April 1991). Their reply has not been received (February 1992).

(vi) Under Section 5(3) of the Central Sales Tax Act, 1956, the last sale or purchase of any goods preceding the sale or purchase, occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, and is exempted from tax if the last sale or purchase took place after and was for the purpose of complying with the agreement for or in relation to such export.

It has been judicially* held, that to avail of the exemption from levy of tax on such preceding sale, the goods exported should be the same as that purchased as per agreement.

(a) As per entry 3 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of bodies, built on chassis of motor

M/s Mohammed Siddique and Company and others Vs. State of Tamil Nadu. TC 824 of 1980 - High Court of Madras - Commercial Taxes Law Journal - June 1981.

Sterling foods Vs. State of Karnataka - 63 STC 239 (Supreme Court)

vehicles belonging to others, tax is leviable at 15 per cent at the point of first sale in the State.

In Central Assessment Circle-I, Coimbatore, a turnover of Rs.4.07 lakhs relating to the bus bodies built on the chassis supplied by an exporter during the year 1983-84 (assessment finalised in 1988) was exempted from levy of tax, treating it as sale made in the course of export. As the goods involved in the penultimate sale were bus bodies and those exported were buses, the exemption allowed on the penultimate sale was not in order. The sale should be treated as local sales assessable under the Tamil Nadu General Sales Tax Act, 1959. The mistake resulted in non-levy of tax of Rs.66,908 inclusive of surcharge and additional sales tax.

On this being pointed out (May 1990) in audit, the department stated (January 1991) that on recheck of accounts it was found that the actual sales turnover of bus bodies built was Rs.3.72 lakhs only, and the proposals for revision of assessment under Section 32 of the Tamil Nadu General Sales Tax Act has been submitted to Deputy Commissioner (Commercial Taxes) (October 1990). Report on further progress has not been received (February 1992).

The case was reported to Government (August 1991).

(b) As per notification issued by department (December 1980) an inter-state sale

of hosiery goods, tax is leviable at two and a half per cent.

In Tiruppur (II) Assessment circle, Tiruppur sales of hosiery goods amounting to Rs.24.95 lakhs made by a dealer during 1987-88 to an exporter were exempted from levy of tax treating them as the last sale occasioning the export outside the territory of India. It was noticed in Audit from xerox copies of sale bills and export documents kept in the file that the exemption allowed was inadmissible as the nature and quantity of the goods reported to have been sold by the assessee for the purpose of export did not tally with the details furnished in the export document. mistake resulted in tax being levied short by Rs.62,389. On this being pointed out (January audit, the department revised 1990) in (September 1990) the assessment and raised an additional demand for Rs.62,389.

The case was reported to Government (April 1991). The Government replied in (December 1991) that the assessee had gone in appeal before the Appellate Assistant Commissioner (Commercial Taxes). It was also stated that the assessee had been granted the benefit of paying the amount of revised additional tax in instalments. The dealer has not paid the third and subsequent instalments. Report on further development is awaited (February 1992).

(vii) As per entry 4 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959,

sales of all varieties of textiles are exempted from levy of tax. The department had however, clarified on 18th August 1988 that cloth labels are taxable at the general rate of five per cent.

In Woraiyur assessment circle, Tiruchirapalli, sales of cloth woven neck label amounting to Rs.10.40 lakhs made by a dealer during the years 1987-88 to 1988-89 were erroneously exempted from levy of tax treating them as textiles in lengths/woven tapes. The omission resulted in tax being levied short by Rs.54,588 (inclusive of surcharge).

On this being pointed out in audit (May 1990) the department stated (July 1990) that the commodity in question was only cotton woven tapes sold in length and not liable to tax. The reply of the department is not tenable in view of the fact that the goods sold by the assessee are satin printed labels in sizes 1 1/2" X 2 1/2" sold in boxes and the goods sold cannot therefore be treated as textiles.

The case was reported to Government (October 1990) and followed by a reminder (May 1991).

(viii) As per item 3 of First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of (i) motor lorries (ii) chassis of motor vehicles and (iii) bodies built on chassis of motor vehicles belonging to others, tax is leviable at 15 per cent at the point of

first sale in the State. It has been judicially* held that ordinary meaning to be assigned to a taxable item in a list of specified items, is that each item so specified should be considered as a separate taxable item for purpose of single point taxation in a series of sales, unless the contrary is shown. It has also been judicially ** held that once a body has been built, the original character of the engine and the chassis would be lost, since a new commodity viz., a van/lorry or bus comes into existence. In view of Judicial pronouncements even though the sale of chassis for motor vehicles as also the body built on them would have been separately taxed, motor vehicles (bus, lorry as whole) when sold are taxable again.

In Mahal Assessment Circle, Madurai, sale of buses amounting to Rs.2.12 lakhs, made by a dealer during the year 1985-86 was

Pyarelal Malhotra Vs. The State of Tamil Nadu (1976) 37/STC/379 Supreme Court)

^{**} Winsone Commercial Vs. The State of Tamil Nadu in TA 1341 of 1984 dated 16th April 1986 - Sales Tax Appellate Tribunal (Main Bench), Madras reported in Page 275 of Commercial Tax Law Journal for the month of July 1986.

exempted from levy of tax, on the ground that the chassis on which the bus was built had already suffered tax within the State. The exemption granted was incorrect in view of the aforesaid judicial ruling. This resulted in non-realisation of tax amounting to Rs.36,034 (inclusive of surcharge and additional sales tax).

On this being pointed out (June 1987) in audit, the department revised (November 1990) the assessment and raised an additional demand for Rs.36,034.

The case was reported to Government in April 1991. The Government replied in December 1991 that the assessee had gone in appeal against the revision order before the Appellate Assistant Commissioner (Commercial Taxes). Information on further development is awaited (February 1992).

2.5 Application of incorrect rates of tax

In a case involving under-assessment due to adoption of incorrect rate of tax, an amount of Rs.42,741 was recovered on being pointed out in audit. A few other such cases where the department had not fully complied with the audit findings are mentioned below:-

(i) As per entry 103 (x) of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of foods including preparations of vegetables, fruits, milk, cereals, flour, starch, bird's eggs, meat and

meat offals, animal blood, fish crustaceans and molluscs, which are sold under a brand name registered under the Trade and Merchandise Mark Act, 1958, (Central Act 43 of 1958) tax is leviable at 10 per cent at the point of first sale in the State with effect from 1st March 1982. By a notification dated 17th March 1986, rate of tax on sale of milk food including baby milk foods was reduced to 4 per cent. Soyal and Prosoyal being preparation of cereals, are not milk foods and hence are liable to tax at 10 per cent.

In Mannady (East) assessment circle, Madras on sales of 'Soyal and Prosoyal', preparation of cereals with a brand name registered under Trade and Merchandise Mark Act, amounting to Rs.27.50 lakhs made by a dealer during 1987-88, tax was incorrectly levied at the reduced rate of 4 per cent instead of at the correct rate of 10 per cent. The mistake resulted in tax being levied short by Rs.1.81 lakhs (inclusive of surcharge and additional surcharge).

On the mistake being pointed out (November 1989) in audit, the department revised (July 1990) the assessment and raised an additional demand for Rs.1.81 lakhs.

The case was reported to Government (April 1991).

(ii) As per entry 101 B of the Tamil Nadu General Sales Tax Act, 1959, on sale of water supply materials and fittings (other than those specified in the First Schedule or Second Schedule) including pipes, handpumps and other articles used for the supply or distribution of water, tax is leviable at eight per cent at the point of first sale in the State. It was clarified by the department (December 1987) that articles used for the supply or distribution of water would be covered by this entry.

During the audit of Thyagaraya Nagar (North) assessment circle, Madras it was noticed (August 1990) that on sales of water storage tanks, amounting to Rs.30.41 lakhs, made by a dealer during the year 1988-89 tax was erroneously levied at the general rate of five per cent instead of at eight per cent at the point of first sale. The mistake resulted in tax being levied short by Rs.1.00 lakh (inclusive of surcharge and additional surcharge).

In response to the audit point Government stated in January 1992, that the assessment had been revised in September 1991 raising an additional demand of Rs.1.00 lakh. Report on collection is awaited (February 1992).

(iii) Provisions of the Tamil Nadu General. Sales Tax Act, 1959, which have the sanction of Legislature, can be altered or modified only by the Legislature. Neither the Government nor the Head of the Department is vested with powers to give effect to the rate of tax of a

particular commodity on a date other than the one passed by the Legislature.

Under Entry 101-A of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sale of sanitary fittings of every description, tax is leviable at 8 per cent at the point of first sale in the State, with effect from 21st May 1980. It was clarified by the Department in December 1988 that manhole covers are taxable at 8 per cent under entry 101-A and not at the general rate of 5 per cent.

(a) In Harbour IV assessment circle, Madras, on sales of manhole covers amounting to Rs.11.41 lakhs made by one dealer during 1988-89 (upto 28th December 1988) tax was levied at the general rate of 5 per cent instead of at the correct rate of 8 per cent. The mistake resulted in tax being levied short by Rs.37,638 (inclusive of surcharge and additional surcharge).

On this being pointed out (December 1990) in audit, the department stated (April 1991) that as per the clarification issued in December 1988, the commodity is liable to tax at 8 per cent single point under entry 101-A of the First Schedule to the Act from 29th December 1988.

The reply of the department is not tenable as the department is not empowered to alter the date of effect of rate of tax under entry 101-A already approved by the Legislature.

Government to whom the case was reported in June 1991 replied (November 1991) that the assessment was revised and additional demand of Rs.37,638 raised. The report on collection has not been received (December 1991).

(b) In Mandaveli assessment circle, Madras on sales of manhole cover amounting to Rs.16.11 lakhs made by a dealer during the year 1987-88 and 1988-89 (upto 28th December 1988), tax was erroneously levied at general rate of five per cent, instead of eight per cent single point. The mistake resulted in tax being levied short by Rs.53,175 (inclusive of surcharge and additional surcharge).

pointed out to was department (September 1989 and December 1990). The Government to whom the case was reported had stated (September 1990) that the assessment relating to the year 1987-88 was made prior to the clarification issued by the department in December 1988. The Government further stated that since the entire purchase was made from local registered dealers, any revision at this stage would result in loss of revenue. reply of the Government was not accepted as subsequent verification by Audit revealed that the entire purchase was made from outside the State and hence assessable to tax as first sale.

On this being pointed out (July 1989 and October 1990) the department revised (April 1991) the assessments and raised additional demands amounting to Rs.53,175.

The Government to whom the case was reported (July 1991), confirmed the facts (November 1991).

(iv) As per entry 146 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of Galvanised Iron Buckets, tax was leviable at 8 per cent at the point of first sale in the State (from 3rd July 1980 to 16th March 1986).

In Central Assessment Circle- IV, Madras on sales of G.I. Buckets, amounting to Rs.20.67 lakhs, made by a dealer, during the year 1982-83, tax was levied at the general rate of 5 per cent instead of at the correct rate of 8 per cent. The mistake resulted in tax being levied short by Rs.68,197 (inclusive of surcharge and additional surcharge).

The mistake was pointed out to the department in October 1990 and to the Government in March 1991, and June 1991. Their reply has not been received (February 1992).

(v) As per entry 110 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sale of "Finishes for leather", tax is leviable at ten per cent at the point of first sale in the State.

In Harbour V assessment circle, Madras, on sales of "Dye solutions" used for providing the base, middle and top coat finish of all types of leather and designed to produce brilliant dyeing results, fastness of colour and a glossy finish, made by a dealer, during 1988-89 for Rs.9.87 lakhs, tax was levied at the general rate of five per cent instead of at the correct rate of ten per cent at single point. The mistake resulted im tax being levied short by Rs.54,269 (inclusive of surcharge and additional surcharge).

On this being pointed out in audit, the department revised the assessment in May 1991 raising an additional demand for Rs.54,269.

The Government to whom the case was reported in July 1991 replied (January 1992), that the assessee had gone in appeal to the Appellate Assistant Commissioner (Commercial Taxes) and had paid only 30 per cent of tax due and obtained stay from High Court for furnishing bank guarantee for the balance. Report on further development is awaited (February 1992).

(vi) As per entry 81 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of all machinery (power operated) and parts and accessories of such machinery, tax was leviable at 8 per cent from 1st March 1982 to 24th May 1989 and ten per cent thereafter at

the point of first sale in the State. It has been judicially* held that Industrial pipe line valves are machinery parts, and hence liable to tax under the said entry.

In Villivakkam assessment circle on sales of Industrial pipe line valves amounting to Rs.15.79 lakhs made by a dealer during the years 1986-87 and 1987-88, tax was levied at the general rate of 5 per cent instead of at the correct rate of 8 per cent. The mistake resulted in tax being levied short by Rs.52,097 (inclusive of surcharge and additional surcharge).

The omission was pointed out to the department (August 1989) and to Government (April 1990). Government in their reply (November 1990 and February 1991) had stated that the assessment was revised (September 1990) and additional demand of Rs.52,097 raised. However the dealer had preferred an appeal before the Appellate Assistant Commissioner (Commercial Taxes) against the revision and obtained stay for collection of 70 per cent of the additional demand against

STAT (AB) in TA Nos. 840/87, 841/87, 842/87 and 929/87 dated 7th February 1989. Tvl. AUDCO INDIA LIMITED Vs. STATE OF TAMIL NADU (Sales Tax Law Journal for August 1989 Page 223).

security and the balance of 30 per cent was however paid under the orders of Appellate Authority.

The case was reported to Government (June 1991).

(vii) As per entries 21 and 66 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, certain classes of fertilisers, pesticides and insecticides are taxable at three and half per cent at the point of first sale in the State. "Plant growth liquid" a bioagri product is neither a fertiliser nor a pesticide, but only a hormone substance for the growth of the plants and a plant tonic only and is taxable at the general rate of five per cent.

In Royapettah II assessment circle, Madras sale of 'plant growth liquid' for Rs.26.78 lakhs, during the year 1988-89 was taxed at three and a half per cent treating it as pesticide, instead of at the general rate of five per cent. The mistake resulted in tax being levied short by Rs.44,190 (inclusive of surcharge and additional surcharge).

The mistake was pointed out to the department in December 1990 and to Government in March 1991. Government in their reply (July 1991) stated that the assessment has been revised (June 1991) by raising an additional demand for Rs.44,190. Report on recovery has not been received (October 1991).

The case was reported to Government (August 1991).

2.6 Incorrect computation of taxable turnover

In 2 cases of under-assessment due to incorrect computation of taxable turnover, an amount of Rs.5.78 lakhs was recovered on being pointed out in audit. A few other such cases where the department had not fully complied with the audit findings are mentioned below:-

(i) Under Section 16 of the Tamil Nadu General Sales Tax Act, 1959, where the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, at any time within a period of five years from the expiry of the year to which the tax relates, determine the turnover to the best of his judgement, and assess it to tax. Further the assessing authority may, if it is satisfied that the escapement from assessment is due to wilful non-disclosure of assessable turnover by the dealer, direct the dealer to pay by way of penalty a sum which shall not be less than fifty per cent but not more than one hundred and fifty per cent of the tax so assessed.

As per entry 157 of the First Schedule to the Act ibid, on sales of all kinds of mineral oils (other than those falling under item 156 of this Schedule and under 3-A of the Second Schedule and not otherwise provided for in this Act), tax is leviable at 10 per cent at the point of first sale in the State. As per

entry 88 of the First Schedule of the Act ibid, on sales of cashew nut kernel, tax is leviable at 5 per cent at the point of first sale in the State.

(a) In Purasawalkam Assessment Circle, sales of solvent petroleum product (Spirit), a kind of mineral oil amounting to Rs.53.64 lakhs made by a dealer during the year 1984-85 was exempted from levy of tax based on the dealer's claim that they were second point sales.

On a suggestion by audit, the accounts were rechecked and it was revealed that the exempted turnover of Rs.53.64 lakhs included first point sales of solvents amounting to Rs.9.84 lakhs on which tax was leviable. The incorrect exemption resulted in sales tax amounting to Rs.1.20 lakhs (including surcharge, additional surcharge and additional sales tax) not being realised.

On this being pointed out in audit (March 1987) the department revised (December 1989) the assessment and raised an additional demand for Rs.1.20 lakhs, besides levying a penalty of Rs.1.20 lakhs for wilful suppression of the turnover of which Rs.95,021 was collected (January 1990 and March 1990). Report on recovery of balance amount has not been received (April 1991).

The Government to whom the case was reported (June 1991) stated (November 1991) that additional demand of tax of Rs.1.20 lakhs was collected (January to March 1990), but the

penalty of like amount levied was set aside (July 1990) by Appellate Assistant Commissioner (Commercial Taxes).

A scrutiny of the revised assessment orders revealed that the assessing officer had concluded that the assessee had wilfully suppressed the assessable turnover warranting levy of penalty under Section 16(2) of the Act. It has been judicially* held that there is wilfull non-disclosure of turnover when there is something to indicate that the turnover in fact exist and the assessee had wilfully not disclosed the assessable turnover. The Government was therefore requested (December 1991) to consider review of the orders of Appellate Authority under Section 34 of the Act.

(b) In Kuzhithurai, while finalising the assessment of a dealer in cashew kernel, the closing stock and opening stock values for the years 1986-87 and 1987-88 were reckoned as Rs.8.77 lakhs and nil respectively. In the absence of any opening stock for the year 1987-88 the entire closing stock held by the assessee for the year 1986-87 should have been treated as sold and taxed during the year 1986-87. The mistake resulted in escapement of

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State of Tamil Nadu Vs. S.M. Basha Sahib (44 STC 299 of 1989) of High Court of Madras

taxable turnover amounting to Rs.8.77 lakhs, resulting in tax levied short by Rs.43,835.

On the mistake being pointed out (August 1989) in audit, the department revised (November 1990) the assessment and raised an additional demand for Rs.43,835. The Government to whom the case was reported (April 1991) replied (November 1991) that an amount of Rs.25,000 has been collected. For the balance amount action under Revenue Recovery Act has been initiated. Further, the assessee has preferred an appeal before the Appellate Authority. Further report has not been received (February 1992).

(ii) Under Section 10 of the Tamil Nadu General Sales Tax Act, 1959, the burden of proving that he or any of his transactions is not liable to tax, lies with the dealer. Under the Tamil Nadu General Sales Tax Rules, 1959, every dealer is required to (i) keep separate accounts for different goods liable to tax at different rates and different stages maintain a day-to-day register showing the sales of such goods and (ii) maintain stock accounts. In cases, where detailed and separate accounts are not maintained and the return submitted by a dealer appears to be incorrect or incomplete, the assessing officer shall after enquiry, determine to the best of judgement, the taxable turnover.

As per the direction of the Government issued on 21st December 1973, the following formula was to be adopted for

determining the proportionate taxable turnover in all cases involving estimates of taxable turnover of goods taxable at single point rates.

Purchase value of goods which have not suffered tax

X Total Sales

Total purchase value

As per entry 4(x) of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of iron scrap, tax is leviable at four per cent at the point of first sale in the State. As per entry 3 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of parts and accessories of motor vehicles and trailers, tax is leviable at fifteen per cent at the point of first sale in the State (upto 23rd March 1987).

(a) In Srirangam Assessment Circle, Trichy a dealer did not maintain separate stock accounts for the first and second purchase of iron scraps. The taxable turnover of iron scrap for the year 1988-89 was assessed at Rs.20,000 as against Rs.17.27 lakhs worked out as per the formula. The non-adoption of guidelines issued by government resulted in tax being levied short by Rs.68,262.

On this being pointed out (June 1990) in audit the department stated (August 1991) that on the basis of revision orders under Section 32, the assessment was revised (August 1991) and additional demand raised for

Rs.69,054. Report on recovery has not been received (February 1992).

(b) In Anna salai I Assessment Circle, Madras, a dealer in auto parts did not maintain separate stock accounts for inter-State and intra-State purchases. The taxable turnover of auto parts for the year 1985-86 was assessed at Rs.3.23 lakhs as against Rs.5.59 lakhs worked out as per the formula. The non-adoption of the guidelines of the Government resulted in tax being levied short by Rs.41,872 (inclusive of surcharge, additional surcharge and additional sales tax).

On this being pointed out (June 1989) in audit, the department stated (June 1991) that on appeal, the Appellate Authority reduced the taxable turnover from Rs.3.22 lakhs to Rs.2.68 lakhs. However, on suo-motu review of the orders of Appellate Authority, the Joint Commissioner (Commercial Taxes) revised the orders which led to the raising of additional demand of Rs.51,864 (inclusive of surcharge, additional surcharge and additional sales tax). Report on recovery has not been received (October 1991).

The case was reported to Government (August 1991).

(iii) As per entry 64 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of Aluminium Plates, sheets, circles etc., tax is leviable at 6 per cent at the point of first sale in the State.

In Moore Market (North) assessment circle, Madras the taxable first sales turnover, for the year 1988-89 was determined as Rs.55.65 lakhs and tax levied thereon. The sales turnover determined was incorrect. On the basis of consignment purchase, the value of the goods sold by the dealer during the year, after adding a profit margin of 7 per cent thereon, worked out to Rs.63.11 lakhs. Thus the sales turnover has been determined short by Rs.7.46 lakhs resulting in short levy of tax by Rs.60,396 (inclusive of surcharge, additional surcharge and additional sales tax).

On this being pointed out (March 1991) in audit, the department revised (June 1991) the assessment, and raised an additional demand for Rs.60,396. Report on recovery has not been received (February 1992).

The case was reported to Government (August 1991).

(iv) As per entry 2 of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of all kinds of cotton other than cotton waste, tax is leviable at three per cent at the point of last purchase in the State. As per entry 3(b) of the Second Schedule to the Act ibid, on sales of cotton yarn, made for use in powerlooms in the form of cones, tax is leviable at four per cent at the point of first sale in the State. Cotton waste is taxable at four per cent at the point of first sale in the State under entry 16 of the First Schedule. In case a dealer purchases cotton and consumes it

in the manufacture of cotton yarn, he is liable to pay tax on the purchase value of cotton, as that becomes last purchase in the State in his hands.

Under Section 16 of the Tamil Nadu General Sales Tax Act, 1959, where the whole or any part of the turnover of the business of a dealer has escaped assessment, the assessing officer may, at any time within a period of five years from the expiry of the year to which the tax relates, assess such turnover to tax.

In Aranthangi assessment circle, an (a) assessee, a mill, claimed exemption on an amount of Rs.2.80 lakhs, during the year 1984-85 as representing the value of cotton sent to another mill on loan basis. suggestion by audit to ascertain the nature of transaction, it transpired that the assessee at the other end had denied the transaction. While revising the assessment, the department raised an additional demand for Rs.11,761 towards the sale of yarn and cotton waste and penalty of Rs.17,641 for wilful non-disclosure of turnover. The penalty was reduced to Rs.5,617 on appeal and the entire demand was collected (March 1990). However, the last purchase of cotton amounting to Rs. 2.55 lakhs was omitted to be taxed, resulting in non-levy of tax of Rs.10,212 (inclusive of additional sales tax), besides penalty of Rs. 15,318. This was pointed out to the department in June 1991.

The case was reported to Government (August 1991).

(b) In Sivaganga assessment circle, on purchase of cotton amounting to Rs.9.48 lakhs made by a dealer during the year 1983-84 and consumed in the manufacture of cotton yarn, tax was omitted to be levied. The mistake resulted in tax being levied short by Rs.35,093 (inclusive of additional sales tax).

On the omission being pointed out (December 1988) in audit, the department revised (November 1990) the assessment and raised an additional demand for Rs.35,093.

The case was reported to Government (April 1991).

2.7 Non-levy/short levy of additional sales tax/surcharge

Under Tamil Nadu Additional Sales Tax Act, 1970, additional sales tax is leviable at the percentage prescribed from time to time on the taxable turnover of the dealer if it exceeds the prescribed minimum. As per the Tamil Nadu Sales Tax (Surcharge) Act, 1971, a surcharge at the rate of 5 per cent is payable on the sale or purchase of goods made by a dealer within the limits of the cities of Madras and Madurai and the Municipal towns of Salem, Coimbatore and Trichy and any other municipal town or township that may be notified by Government.

In three cases involving under assessment due to non-levy/short levy of additional sales tax/surcharge, an amount of

Rs.3.30 lakhs was recovered on being pointed out in Audit.

2.8 Non-levy/Short levy of tax on sales to non-Government bodies

Under Section 6(2) of the Central Sales Tax Act, 1956, where any dealer claims that he is not liable to pay tax under the Act on the ground of transfer of document of title to such goods to another registered dealer, during their movement from one State to another, the dealer effecting the sale should furnish to the prescribed authority:-

- (i) a certificate prescribed in Form E-1 or E-II as the case may be from the registered dealer from whom the goods were purchased; and
- (ii) if the subsequent sale is made (a) to a registered dealer, a declaration in Form 'C' referred to in Section 8(4)(a) of the Act.
- (b) to the Government, not being a registered dealer a declaration in Form 'D' referred to in Section 8(4)(b) of the Act.

Under Section 8(2)(b) of the Act ibid, on inter-State sale of goods (other than declared goods) which are not covered by valid declarations in the prescribed form (i.e. Form 'C' or 'D') tax is leviable at 10 per cent or at the rate applicable to sale of such goods

inside the appropriate State, whichever is higher.

In Dr.Nanjappa Road Assessment Circle, Coimbatore, inter-State sale of pumps and spares amounting to Rs.18.29 lakhs effected by a dealer during the year 1987-88 to the Kerala Water Authority by transfer of documents were incorrectly exempted from tax on the strength of the declarations produced by them. The Kerala Water Authority being an autonomous body, is not entitled to issue 'D' Forms, and hence the exemption allowed was not in order. The mistake resulted in tax being levied short by Rs.1.82 lakhs.

On this being pointed out (January 1990) in audit, the department revised (October 1990) the assessment and raised an additional demand for Rs.1.82 lakhs. Government to whom the case was reported in May 1990, confirmed the facts in December 1990.

The case was reported to Government (May 1991).

(ii) According to a notification issued under Section 17 of the Tamil Nadu General Sales Tax Act, 1959, from 1st April 1981, on sale of any goods (except petrol, diesel and cement) specified in the First Schedule to the Act, to the departments of the State and Central Governments, including the Railways, tax is leviable at the concessional rate of four per cent whenever tax was leviable at a rate higher than four per cent. However, the

concession is not applicable to sale made to public sector undertakings, Government companies and autonomous bodies.

As per entry 3 of the First Schedule to the Act, on sales of motor vehicles, tax is leviable at fifteen per cent at the point of first sale in the State. By a notification issued on 5th October 1976, the tax on sales of light diesel vehicles manufactured in Tamil Nadu was reduced to ten per cent.

In Central assessment circle II, Madras on local sales of diesel vehicles amounting to Rs.15.45 lakhs made by a dealer during 1982-83 to autonomous bodies like District Rural Development Agencies, International Airport Authority and Tamil Nadu Tubewell Corporation, tax was levied at concessional rate of four per cent instead of ten per cent. This had resulted in tax being levied short by Rs.1.02 lakhs.

This was pointed out to the department in October 1990 and to Government in May 1991.

The case was again reported to Government (August 1991); their reply has not been received (February 1992).

(iii) As per the Central Sales Tax Act, 1956, on sale of goods to Government departments, tax is leviable at a concessional rate of four per cent, if the sales are supported by valid declarations in Form 'D'.

On inter-State sales of goods (other than declared goods), which are not covered by Form 'D', tax is leviable at ten per cent or at the rate applicable to the sale of such goods inside the appropriate State, whichever is higher. However Public Sector Undertakings, Government Companies and Autonomous Bodies are not entitled to issue 'D' Form.

As per entry 2 of the Fifth Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of parts and accessories of motor vehicles and trailers excluding batteries, tax is leviable at 12 per cent at the point of first sale in the State when sold to persons other than registered dealers (upto 6th October 1988).

In Central Assessment Circle-I, Madras on inter-State sales of auto parts amounting to Rs.6.44 lakhs made by a dealer to Haryana Roadways during 1987-88 tax was levied at the concessional rate of 4 per cent based on the Form 'D' furnished by them. As the sale was made to Haryana Roadways which is an autonomous body, and not to a Government department, tax on sales made to them was leviable at the normal rate of 12 per cent, in the absence of declaration in Form'C'. The mistake resulted in tax being levied short by Rs.51,503.

This was pointed out to the department in July 1990 and to the Government in January 1991, followed by reminder in July

1991. No reply has been received (February 1992).

2.9 Non-levy of purchase tax

Under Section 7 A of the Tamil Nadu General Sales Tax Act, 1959, every dealer, who in the course of his business, purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable under Sections 3, 4, or 5 as the case may be, and either (a) consumes such goods in the manufacture of other goods for sale or otherwise, or (b) disposes of such goods in any manner other than by way of sale in the State; or (c) despatches them to a place outside the State except as a result of sale or purchase in the course of inter-State trade or commerce, is liable to pay purchase tax at the prescribed rates. On sale of cashewnut shell liquid, tax is leviable at the general rate of five per cent.

In Panruti (Town) Assessment Circle, on purchase of cashewnut shell liquid amounting to Rs.10.36 lakhs made by a dealer during 1987-88 from unregistered dealers and consumed in the manufacture of synthetic liquid resin, purchase tax under Section 7 A was not levied. This resulted in tax being levied short by Rs.67,328 (inclusive of surcharge and additional sales tax).

On this being pointed out (February 1990) to the department and to Government

(April 1990), the Government stated (December 1990) that the assessment was revised (October 1990) raising an additional demand of Rs. 67,328.

The case was reported to Government (April 1991).

2.10 Non-levy of sales tax

In a case involving under-assessment due to non-levy of sales tax, an amount of Rs.50,852 was recovered on being pointed out in audit.

2.11 Turnover escaping assessment

(i) As per Sub-Section 2 of Section 12 of the Tamil Nadu General Sales Tax Act, 1959, if a dealer fails to submit returns within the prescribed period or if the return submitted by him appears to be incomplete or incorrect, the assessing authority shall, after making such enquiry as may be considered necessary assess the dealer to the best of its judgement. Section 12(3) of the Act, provides for levy of penalty which shall not be less than fifty per cent but which shall not be more than one hundred and fifty per cent of the amount of tax due on the turnover that is determined by the assessing authority.

In Aruppukkottai assessment circle in respect of one assessee the total and taxable turnover for the year 1985-86 were determined by the department as 'NIL' based on the

dealer's declaration that there were no sales during the year. In the course of audit (July 1988), the scrutiny of the assessment files of three other dealers of the same circle, however revealed that they had purchased certain goods liable for tax at the point of first sale amounting to Rs.8.37 lakhs from the said assessees.

It was, therefore, suggested in audit (October 1988) to conduct cross verification of the transactions to ensure sufferance of tax at earlier stage. The investigation made by the department in December 1990 revealed that the goods had not suffered tax earlier. The assessment was accordingly revised (March 1991 and April 1991) by the department by raising an additional demand for Rs.39,635 (inclusive of additional sales tax) besides imposing a penalty of Rs.31,266.

The case was reported to Government (August 1991).

(ii) Section 41 of the Tamil Nadu General Sales Tax Act, 1959, empowers the officers of the Enforcement Wing of the department to inspect and also seize any records with a dealer and to institute inquiry and proceeding under the Act if evasion of tax is suspected. Any suppression of turnover revealed during inquiry is assessed to tax.

In Bodinayakanur assessment circle, Madurai district, it was noticed in audit (March 1989) that out of two proposals

originated by the enforcement wing for revision of assessments relating to 1985-86 and 1986-87 of a dealer in cardamom, the proposal relating 1986-87 alone was implemented by assessing officer. On the omission implement the proposal for 1985-86 involving suppressed inter-State sale of cardamom for Rs.1.80 lakhs which resulted in non-levy of tax of Rs. 18,000 at 10 per cent without 'C' Form declaration and penalty of Rs.13,500 being pointed out in audit in March 1989, department issued (April 1989) notice for revision of assessment. On this being again pointed out (June 1989) in audit, the department revised (November 1989) the assessment and raised additional demand for tax and penalty for Rs.31,500.

The Government to whom the case was reported, stated in January 1992 that there was no loss of revenue or omission on the part of the department as the enforcement proposal was kept alive for revision. However, the fact remains that non-implementation of enforcement proposal for 1985-86 was pointed out in Audit in March 1989, the notice for revision of assessment for 1985-86 was issued in April 1989.

2.12 Non-levy of interest for belated payment of tax

Under Section 24(1) of the Tamil Nadu General Sales Tax Act, 1959, the tax assessed or payable under the Act by a dealer or person and any other amount due from him under the Act shall be paid in such a manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, which will not be less than 21 days from the date of service of notice. Under Sub-Section (3) of Section 24 of the Act ibid, on any amount remaining unpaid after the date specified for its payment, the dealer or person shall pay in addition to the amount due, interest at 2 per cent per month of such amount for the entire period of default. The above provision applies mutatis mutandis to levy of Additional Sales Tax also as per Section 2(i)(b) of the Tamil Nadu Additional Sales Tax Act, 1970.

Under Section 9(2A) of Central Sales Tax Act, 1956, the provisions relating to the Tamil Nadu General Sales Tax Act, shall apply in relation to collection of tax or enforcement of payment.

(i) In 2 assessment circles Mannady (East), Madras and Tiruvanmiyur, Madras, an amount of Rs.20.56 lakhs due from two dealers for the assessment years 1981-82, 1983-84 and 1985-86 to 1987-88 was paid by them belatedly. Interest amounting to Rs.68,109 is leviable for the belated payments but was not levied.

This was pointed out (January and March 1991). The department stated (April 1991) that in one case relating to Tiruvanmiyur assessment circle interest amounting to Rs.30,230 had since been levied (March 1991).

Report on the balance amount of Rs.37,879 has not been received (February 1992).

The case was reported to Government (June 1991).

(ii) In Nungambakkam Assessment Circle, Madras, an amount of Rs.1.72 lakhs, representing additional sales tax, due from a dealer for 1984-85, was paid after a delay of 23 months and 5 days from the date it became due. Interest amounting to Rs.79,865 was leviable for the belated payment, but was not levied.

The omission was pointed out to department in July 1990 and to Government (December 1990/June 1991).

(iii) In Porur assessment circle, Madras, sales tax and additional sales tax for the assessment years 1986-87 and 1987-88 amounting to Rs.1.20 lakhs and Rs.2.68 lakhs respectively due from a dealer were paid belatedly, the delay ranging from 2 months to 17 months, after it became due. Interest amounting to Rs.58,700 was leviable for the late payments but was not levied.

On the omission being pointed out (March 1990) in audit, the department stated (November 1990) that the interest had since been levied. The case was reported to Government (May 1991).

(iv) In Sivakasi IV Assessment Circle, Kamarajar District, tax amounting to Rs.1.54 lakhs, due for the assessment year 1984-85 was paid by the assessee after a delay of 20 months and 23 days. Interest amounting to Rs.63,843 for the belated payment was leviable; but was not levied.

On the omission being pointed out (December 1990) in audit, the Department accepted the mistake and stated (December 1990) that interest would be levied.

Government to whom the case was reported (July 1991) has stated (November 1991) that the interest has since been levied by raising an additional demand for Rs.63,843. Report on recovery has not been received (February 1992).

2.13 Non-levy of penalty for misuse of 'C' Forms

Under the Central Sales Tax Act, 1956, on inter-State sales of goods, tax is leviable, at a concessional rate of 4 per cent, provided the purchaser furnished to the seller, a declaration in Form 'C' certifying that the goods are of the class specified in his certificate of registration and are intended for re-sale or for use in the manufacture or processing of goods for sale. Where the registration certificate does not mention or does not permit the purchase of particular commodity, the dealers concerned are precluded from purchasing those goods at the concessional

rate. When the goods are not specified in the registration certificate but the assessee purchases them and claims the benefit, he is deemed to have falsely represented that the goods were specified in the certificate of registration. Such a violation attracts imposition of penalty not exceeding one and a half times the tax due in lieu of prosecution.

It has been judicially held* that goods cannot be purchased from other states on production of 'C' Forms (availing the benefit of concessional rate of tax) for execution of 'works contract' as this would amount to use of goods for a purpose contrary to the declaration in Form 'C' and that violation of this norm would attract levy of penalty.

In Tirunelveli (Town) assessment circle, a dealer had purchased generators valued at Rs.7.52 lakhs during 1986-87 from other States by issue of 'C' Forms though the item was not covered by his certificate of registration. Misuse of 'C' Forms in this case attracted imposition of penalty upto a maximum of Rs.1.13 lakhs which was not levied.

On the omission being pointed out (April 1990) in audit, the department revised (July 1990) the assessment and imposed penalty

Kottayam Electricals Pvt. Limited Vs. The State of Kerala (1973) 32/STC/535 (Kerala)

of Rs.1.13 lakhs. However, the Government stated in December 1990 that the dealer had preferred an appeal before the Appellate Assistant Commissioner (Commercial Taxes) against the imposition of penalty. The Appellate Authority had granted absolute stay till the disposal of the appeal. Further report has not been received (February 1992).

(ii) In Luz assessment circle, Madras, a dealer purchased Soda-mixer, Carbon Dioxide and Glass bottles, amounting to Rs.6.84 lakhs during 1988-89 from other States by issue of 'C' Forms even though the goods were not covered by his Certificate of Registration. For misuse of 'C' Forms penalty upto a maximum of Rs.1.03 lakhs was leviable; but was not levied.

On this being pointed out (March 1991) in audit, the department stated (October 1991) that the goods in question were already included in their registration certificate prior to their purchase from outside the State. The reply is not acceptable as the department could not produce the relevant original registration records to confirm the position. This was brought to the notice of the department (November 1991).

(iii) In Royapuram assessment circle, Madras, a dealer purchased electrical accessories and telephone accessories, amounting to Rs.4.82 lakhs, during 1985-86 and 1986-87, from other States, by the issue of 'C' Forms even though the goods were not covered by

his Certificate of Registration. For misuse of 'C' Forms, penalty upto a maximum of Rs.88,286 was leviable; but was not levied.

On this being pointed out (July 1988) in audit, the department stated (December 1988) that the goods were purchased only for local resale and a lenient view was taken as per Government's instructions issued in January 1984. The reply of the department was not tenable as the Central Sales Tax Act does not provide lenient view being taken in the matter of levy of penalty for misuse of 'C' Form. The omission was pointed out to department (July 1989) and to Government (June 1991).

In Tiruppur (North) assessment circle, a dealer purchased paper and boards amounting to Rs.2.90 lakhs during the year 1983-84 by producing 'C' Forms and utilised them in the execution of works contracts. This incorrect because his certificate was registration permitted him to use the goods in the manufacture of Banian Boxes, Labels etc., intended for sale. The misuse of 'C' Forms attracted imposition of a maximum penalty of Rs. 43,525 but no penalty was levied.

On the omission being pointed out (May 1989), in audit, the department imposed (February 1991) a penalty of Rs.43,525.

The case was reported to Government (April 1991).

2.14 Incorrect inclusion of goods in the Central Sales Tax Registration Certificate

Under Sub-Section 3 of Section 8 of the Central Sales Tax Act, 1956, a dealer is entitled to purchase goods of the class or classes specified in his Certificate of Registration, by the issue of 'C' Form and avail of the concessional rate of tax, provided the goods had been purchased for resale, used in manufacture or processing of goods for sale, or in mining, or used in the generation or distribution of electricity, or for packing of goods for sale.

Under Rule 13, Central Sales Tax Registration and Turnover Rules, 1957, the goods referred to in Clause (b) of Sub-Section (3) of Section 8 shall be goods intended for use by him as raw material, processing materials, machinery, plant and equipment, tools, stores, spare parts, accessories, fuel or lubricants in the manufacture or processing of goods.

It has been judicially* held that the expression "in the manufacture of goods" in Section 8(3)(b) should normally encompass the entire process carried out by the dealer of

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¹⁶ STC P.563 (Supreme Court) J.K. Cotton and Spinning Mills Limited Vs. Sales Tax Officer, Kanpur

conversion of raw materials into finished goods.

In Trichy Road assessment circle, Coimbatore District, an assessee engaged in the extraction of soya-bean oil, was permitted to include building materials in his Central Sales Tax Registration Certificate and he purchased in 1988-89, A.C. sheets amounting to Rs.5.08 lakhs from outside the State availing the concessional rate of tax for which he issued 'C' Forms. As the commodity could not be categorised to fall under "manufacture or processing connected with extraction of soyabean oil" the permission granted for inclusion in the Central Sales Tax Registration Certificate was incorrect. The injudicious inclusion of the commodity not eligible for inclusion in the Registration Certificate under the Act had resulted in an unintended benefit to the assessee to an extent of Rs.30,478.

The case was reported to Government (August 1991). The Government in reply (January 1992) admitted the wrong inclusion of the building material in the Registration Certificate and intimated that instructions had been issued to delete the ineligible items. However, the incorrect inclusion of ineligible items resulted in unintended benefit to the assessee.

2.15 Non-levy of penalty

In one case involving under assessment due to non-levy of penalty, the

assessment was revised and an additional demand of Rs.39,900 was recovered on being pointed out in audit. A few other such cases where the department had not fully complied with the audit findings are mentioned below:-

As per entry 150 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on sales of food and drink other than those specified elsewhere in the Schedule made to customers in hotels classified or approved by the Department of Tourism, Government of India, tax is leviable at 10 per cent at the point of first sale in the State. By a subsequent notification issued in June 1981 exemption was granted in respect of the tax payable by any hotel or restaurant, on the sale of food and drinks (other than those falling under the First Schedule of the said Act) made by them. Hence, on sales of articles of food and drinks (other than those specified in the First Schedule made by hotels and restaurants, not falling under entry 150) no tax is leviable and tax should not be collected by them.

According to Section 22(2) of the Tamil Nadu General Sales Tax Act, 1959, if any person or registered dealer collects any amount by way of tax or purporting to be by way of tax in contravention of the provisions of the Act, the assessing authority may impose a penalty not exceeding one and a half times, the tax so collected.

(a) In Trichy Road assessment circle, Coimbatore, an assessee hotel had declared total turnover of Rs.19.27 lakhs and taxable turnover as 'NIL' for the year 1984-85. While finalising the assessment, the assessing officer had assessed a turnover of Rs.20,091 (being the sale of empty bottles) as against the 'NIL' taxable turnover reported by the assessee. Further, it was noticed by audit (November 1990) that the dealer had collected sales tax and surcharge amounting to Rs.1.09 lakhs on the sale of food and drinks, though exempted from tax attracting maximum penalty of Rs.1.64 lakhs. However, no penalty was levied.

This was pointed out to the department (February 1991) and to Government (May 1991). Department replied (October 1991) that the assessment was revised (October 1991) and an additional demand for Rs.1.64 lakhs was raised. The Government confirmed the facts in January 1992. Report on recovery has not been received (January 1992).

(b) In Kuzhithurai Assessment Circle, on sales of soft wood amounting to Rs.8.61 lakhs made during the year 1987-88, a dealer had collected Rs.67,880 instead of Rs.43,044. For the excess collection of tax of Rs.24,836 penalty not exceeding Rs.37,254 was leviable on the dealer, but no penalty was levied.

On the omission being pointed out (August 1989), the department imposed (February 1991) a penalty of Rs.37,254.

The case was reported to Government (April 1991).

2.16 Under-assessment of less than Rs.30,000 accepted by the department

In 300 cases (where money value of individual cases was less than Rs.30,000), under-assessments/loss of revenue amounting to Rs.15.88 lakhs pointed out by audit on different occasions were accepted by the department, out of which an amount of Rs.7.41 lakhs was recovered.

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AGRICULTURAL INCOME TAX

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CHAPTER 3

AGRICULTURAL INCOME TAX

3.1 Results of Audit

Test check of records in the Departmental offices conducted in audit during the period from April 1990 to March 1991 revealed under-assessments of tax amounting to Rs.36.27 lakhs in 75 cases, which broadly fall under the following categories:

-	30) 15	Number of cases	Under- assessments (In lakhs rupees)
1.	Short levy due to error in computation	La co	Par In Agriculture
	of income	49	31.72
2.	Incorrect grant of		
	exemptions	2	0.40
3.	Short levy due to error in computation of holdings of agricul-	s	
	tural lands	11	0.62
4.	Other cases	13	3.53
	Total	75	36.27

3.2 Working of internal audit in Agricultural Income Tax

3.2.1 Introduction

Tax on agricultural income is one of the sources of revenue to the Government. The collection of tax under the Tamil Nadu Agricultural Income Tax Act 1955, during the years 1985-86 to 1989-90 was as under:

Year	Total Revenue	Collection of Tax on Agricultural Income	Percentage of Column 3 to 2
(1)	(2)	(3)	(4)
To the latest of	(In crore	es of rupees)	
1985-86	1786.82	19.32	1.1
1986-87	2010.02	10.03	0.5
1987-88	2058.27	6.57	0.3
1988-89	2329.80	6.78	0.3
1989-90	2882.02	9.00	0.3

Internal Audit was introduced in 1957 exclusively for Agricultural Income Tax with a view to checking assessments made by the Agricultural Income Tax Officers to see that loss or leakage of revenue was not caused by way of omissions, short levy of tax or other irregularities.

3.2.2 Scope of review

A review was conducted during January 1991 to study the effectiveness of internal audit to ascertain inter alia;

- (a) Whether the internal audit parties performed the functions assigned to them and whether there was a system in existence for safeguarding the interest of the Department;
- (b) Whether any work study was conducted by the Department for assessing the adequacy of coverage;
- (c) Whether suitable control mechanism had been evolved for scrutiny, issue and follow-up action of internal audit reports.

The review of records for the period 1985-86 to 1989-90 was undertaken in the office of the Commissioner of Agricultural Income Tax, where all the records connected with internal audit were maintained.

3.2.3 Organisational set-up

The Internal Audit Wing functions under the direct control of the Head of the Department viz., the Commissioner of Agricultural Income Tax, Madras. Prior to 1.6.1990 sanctioned strength of staff in the wing consisted of two Superintendents and four Junior Assistants. With effect from 1.6.90 the wing comprises of two audit parties each headed by a Superintendent. The two audit parties each consisting of a Superintendent and an Assistant are given programmes by the Head of the Department. The objective of the programmes is to see that the records of each assessing authority covering the assessments made in the previous year are audited in the following year. The internal audit reports are required to be issued to the assessing authorities concerned after scrutiny by the Head of the Department, who also watches the settlement of all objections raised by internal audit through a register called Special Register maintained for the purpose.

3.2.4 Highlights

- (i) Control Registers to watch timely issue of internal audit reports, compliance thereof and follow-up action regarding settlement of objections were not being maintained.
- (ii) There was no internal audit manual for effective functioning of the internal audit.

- (iii) In 79 cases in 14 assessment circles checked by internal audit, under-assessments involving Rs.59.39 lakhs, which had escaped notice in internal audit, were subsequently pointed out during statutory audit.
- (iv) Cash book and allied records were not checked by internal audit.
- (v) No work study was ever conducted to fix the quantum of party working days for internal audit.

3.2.5 Scrutiny, issue and follow-up action of internal audit reports

Although the Internal Audit Wing was established in 1957 and has been in existence for more than three decades, detailed instructions prescribing the format of internal audit reports, modalities for discussion of the draft internal audit reports with the assessing officers before finalisation, scrutiny of reports in Headquarters, time limit for issue of the audit reports to the assessing officers and for sending replies by them were yet to be issued by the Government.

Internal audit is also conducted in the Circle Offices numbering 25 (2 offices since abolished September 1990). Audit is arranged by the Headquarters at Madras and the reports thereof are also issued by the Headquarters office to the Circle Offices.

However, in the Headquarters office there is no control mechanism or information system providing the names of the units to be audited, duration of audit, date of receipt and issue of internal audit reports, receipt of compliance reports and details settlement and pendency of objections like short levy, errors in computation of income, incorrect grant of exemption, short levy due to errors in computation of holdings of agricultural lands etc. The "Special Register" maintained in Headquarters office does not also contain columns for several of the above important particulars, as its main purpose is only watching the settlement of each objection raised by internal audit through separate files.

3.2.6 Internal Audit Manual

The Department has not brought out any Internal Audit Manual for the guidance of internal audit parties. Even the Tamil Nadu Agricultural Income Tax Manual prepared by the department in 1981 (pending approval of Government) does not contain a chapter on internal audit, detailing inter alia, the functions of internal audit, quantum of checks of all assessment records, collection and refunds and periodicity of audit etc. Absence of a manual deprived the members of the internal audit parties the advantage of clear directions and guidelines for efficient performance of their functions.

3.2.7 Detection of irregularities

According to the information supplied by the department, during the years 1985-86 to 1989-90, the internal audit parties had raised in 25 circle offices (2 offices since abolished from September 1990) 4791 objections with a tax effect of Rs.242.77 lakhs. Year-wise details of the number of objections raised by internal audit, number of objections in respect of which demand had been raised and those dropped and pending rectification by the department together with the amount are given below:

Year		Total objections raised	Demand raised out of Column 2	Objections dropped	Rectificatory action still to be taken
(1)		(2)	(3)	(4)	(5)
		(Amou	nt in lakhs	of rupees)	A TITLE OF THE
1985-86	Number	1000	503	497	NIL
	Amount	43.19	17.15	26.04	NIL
1986-87	Number	1018	631	387	NIL
	Amount	45.72	10.45	35.27	NIL
1987-88	Number	903	555	340	8
	Amount	40.51	9.21	30.92	0.38

(1)		(2)	(3)	(4)	(5)
10 2/100	mand.	(Amo	unt in lakhs o	of rupees)	mark large
1988-89	Number	972	517	427	28
	Amount	66.09	10.75	54.30	1.04
1989-90	Number	898	317	192	389
	Amount	47.26	7.69	11.19	28.38
Total	Number	4791	2523	1843	425
	Amount	242.77	55.25	157.72	29.80

Year-wise percentage of underassessment noticed by internal audit is given below:

(Continued)

Year	Revenue Under Agricul- tural Income Tax	Under assess- ment detected by Internal Audit	Percentage of under assessment noticed in internal audit to total revenue	Demand raised	Percentage of demand raised to under-assessmen detected		Percentage of objections dropped to the under-assessment noticed
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
				(In	lakhs of r	upees)	
1985-86	1932	43.19	2.2	17.15	39.71	26.04	60.29
1986-87	1003	45.72	4.6	10.45	22.86	35.27	77.14
1987-88	657	40.51	6.2	9.21	22.74	30.92	76.33
1988-89	678	66.09	9.7	10.75	16.27	54.30	82.16
1989-90	900	47.26	5.2	7.69	16.27	11.19	23.68
						ubmon Au (15)	
Total	13	242.77	-	55.25	Logical	157.72	Jay 1

The percentage of under-assessment noticed by internal audit in relation to the revenue is meagre. Further, out of the detection made by internal audit, only for a small portion demand is raised (Rs.55.25 lakhs) and majority of the objections are dropped (Rs.157.72 lakhs). In the absence of any system for monitoring collection particulars by internal audit, it could not be verified by Audit whether the Department had actually collected even the meagre demand raised by it after internal audit pointed out the lapses.

3.2.8 Cases detected by Statutory Audit which were not noticed by Internal Audit

A study of the internal audit reports relating to the assessment years 1986-87 to 1988-89 revealed the following interesting features:-

(a) As against cent per cent check conducted by internal audit upto the assessment year 1988-89 the statutory audit conducted only a test-check. Nevertheless, in the course of statutory audit conducted during 1987-88 to 1989-90 in 14 assessment circles, subsequent to the conducting of internal audit, short levy of agricultural income tax was noticed in 79 cases involving a revenue of Rs.59.39 lakhs, which had escaped notice in internal audit. Out of these 79 cases, the audit observations were accepted by the department in 32 cases and revised assessment orders passed for Rs.6.78 lakhs. Of this amount, Rs.1.12 lakhs were

collected by the Department. The remaining 47 cases are under correspondence.

Illustratively, a few cases of short levy of agricultural income tax amounting to Rs.5.48 lakhs noticed in statutory audit conducted subsequent to internal audit, which were accepted by the department and additional demand raised, are given below:

cialca		Date of	Audit					
Assessment	Name of assess-	By Internal Audit	Ву	to	of object		Genera	l Addi- tional demand
26,170		allowence enditure	gxa to	nt 1	08.80, \$3 01 08.80,01		ter Number	
(1)	(2)	(3)	(4)		(5)	47	(6)	(7)
IO JE.	rr aug	MOTI	DB47	9200				
at the	nd. dib	ds wer	inter recor	ted	ed by	ilea na	s ch	Rs.
at the	Nagercoil	07.10.87	21.04.88	be l Incorr	ect exemp	tion!	Mood 5D/Agm	nRs.
1986-87 O	Nagercoil Circle I	07.10.87 to	21.04.88 to	incorr	ect exemp	tion	5D/Agm- 85-86 &	necord designation designation
allied 1986-87 6 111ed tances	Nagercoil Circle I	07.10.87 to 15.10.87	21.04.88 to 13.05.88	ied Inconf sock	ed by d ail qmexe tos of che uracy	tion	5D/Agm- 85-86 & 86-87	Rs. perdua is ed b 22,520
at the being 78-880 78-380 allied tances	Nagercoil Circle I	07.10.87 to 15.10.87	21.04.88 to 13.05.88	ied ied ironi iok iok io	ed by d all ect, exemp of che iracy e cash	tion)	5D/Agm- 85-86 & 86-87	Rs. 1 Rs. 2 Cubject Che ai
at the being 78-880 78-380 allied tances	Nagercoil Circle I	07.10.87 to 15.10.87	21.04.88 to 13.05.88	Incorr No.	ect exemp	tion)	5D/Agm- 85-86 & 86-87	nRs. 1 e dus be 22,520 b 22,520
1986-87 0 0 1 1 6 0 0 0 1 6 0 0 0 1 6 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	Nagercoil Circle I Nagercoil Circle II	07.10.87 to 15.10.87 18.05.87	21.04.88 to 13.05.88 11.11.87	Incorr Nos Nos Omissi subsid	rect exemp	tion el	5D/Agm- 85-86 & 86-87 31V/Kal 86-87	antere
1986-87 constants 1986-87 1986-87	Nagercoil Circle I Nagercoil Circle II	07.10.87 to 15.10.87 18.05.87 to 26.05.87	21.04.88 to 13.05.88 11.11.87 to 01.12.87	Incorr Incorr Missi Subsic	rect exemp	tion:	5D/Agm- 85-86 & 86-87 31V/Kal 86-87	Rs. 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
1986-87 constants 1986-87 1986-87	Nagercoil Circle I	07.10.87 to 15.10.87 18.05.87 to 26.05.87	21.04.88 to 13.05.88 11.11.87 to 01.12.87	Income No. 100 Omissi subsicultion	rect exemp	na tion; o el uppo ind ess dona o a	5D/Agm- 85-86 & 86-87 31V/Kal 86-87	Rs. 1 Rs. 2 Rs. 2 Rs. 2 Rs. 22,520 Region (J Rs. 1,1831 Rs. 1,1831
1986-87 beils econst 1986-87 and y beavis	Nagercoil Circle I Nagercoil Circle II	07.10.87 to 15.10.87 18.05.87 to 26.05.87	21.04.88 to 13.05.88 11.11.87 to 01.12.87	Incorr Incorr Omissi subsid	rect exemp	tion solution solutio	5D/Agm- 85-86 & 86-87 31V/Kal 86-87	Rs. 1 Rs. 2 Rs. 2 Rs. 2 Rs. 22,520 Region (J Rs. 1,1831 Rs. 1,1831

(1)	(2)	(3)	(4)	(5)	(6)	(7)
		N. I Vent				Rs.
1986-87	Coonoor	.02.07.87	08.09.87	Incorrect carry	36s/	
		to	to	forward of loss	84-85	
		10.07.87	30.09.87			23,940
1986-87	Udhaga-	11.06.87	08.09.87	Incorrect adjust-	29M/CNR	
	mandalam	to	to	ment of losses	86-87	
		19.06.87	30.09.87			49,879
1987-88	Madurai	21.10.88	31.10.88	Incorrect adoption	19L/PKM	
		to	to	of income	87-88	
		29.10.88	18.11.88			22,186
1988-89	Madurai	22.08.89	11.10.89	Excess allowance	209S/MN	
		to	to	of expenditure	85-86 to	
		30.08.89	27.10.89		87-88	26,170

⁽b) It was observed from the list of records checked by the internal audit that the cash book and allied records were not being subjected to internal audit till May 1990. In the absence of check of cash book and allied records, accuracy of receipts and remittances entered in the cash book cannot be vouchsafed.

⁽c) Adequacy of action taken by the department for the collection of arrears of tax (vide table below) was not critically analysed and commented upon by the internal audit.

Arrear demand at the begining of the year	Arrears collected	Arrears balance carried over to next year*
(In 1	akhs of rup	ees)
262.50	57.61	204.89
354.09	127.62	226.47
322.42	105.24	217.18
337.59	80.59	257.00
373.04	77.19	295.85
	demand at the begining of the year (In 1 262.50 354.09 322.42 337.59	demand at collected the begining of the year (In lakhs of rupe 262.50 57.61 354.09 127.62 322.42 105.24 337.59 80.59

*

(The arrear demand at the beginning of each year includes the outstanding current demand of the previous year also. The arrear balance at the end of each year does not include current demand for that year)

(d) List of records checked together with the allocation of work among the members of internal audit party was not kept in any internal audit report file. As a result, it could not be ensured whether all the records maintained by the assessing officers were checked by the internal audit. The more important records maintained in circle offices are:-

General Index Registers, Register of demand and collection, Register of daily collection, Cash book, Printed receipts and counterfoils, Cheque register, Register of daily refunds, Register of remanded cases, reconciliation statement for treasury remittances, register of losses etc.

- (e) No questionnaire for the guidance of the internal audit party has been prescribed by the department to ensure that matters relating to assessment of return cases, composition cases, acceptance of partition of holdings, registration of firms and check of accounts records are covered by internal audit in its check so as to know whether the various provisions of the Act and Rules and instructions of the Commissioner of Agricultural Income Tax are followed.
- (f) In the Headquarters, the objections raised by internal audit were treated as settled, when revised orders of assessment were passed by the assessing officers without watching/ensuring actual collection. In such cases, there is no evidence to show that the internal audit party verified during its subsequent visits whether collections were made based on the revised orders of assessment and in cases where the assessee had appealed against the revision, whether the assessing officer had taken appropriate action based on tax laws and judicial decisions to safeguard the interest of revenue. For the internal audit to be effective, collection of the

demands raised as a result of audit and appeals filed would require to be watched.

3.2.9 Check of composition cases

Composition cases (where assessees are allowed to compound the Agricultural Income Tax payable on their income and to pay in lieu thereof, composition fee at the prescribed based on the holding) were checked 100 per cent by the internal audit party upto the assessment year 1988-89. However, from the assessment year 1989-90 only a percentage of the composition cases in nonplantation areas is being checked as indicated below: since plantation

- (a) Cases where composition fee is Rs.1000/- and above 100 per cent
- (b) Cases where composition fee levied is Rs.500/- and above but below Rs.1000/- 50 per cent
- (c) Cases where composition fee levied is below Rs.500/- 10 per cent

As per the general principles of internal audit, all composition cases are to be checked 100 per cent irrespective of the amount of fee levied. The restricted percentage check of composition cases by internal audit would not only result in irregularities remaining

undetected but also render rectificatory action time barred under the Act where irregularities had been detected too late for rectification.

3.2.10 Omission to conduct work study

Nine days (including holidays) were uniformly allowed for internal audit of each assessment circle for each of the assessment years 1986-87 to 1988-89 irrespective of the circles audited i.e., whether plantation or the assessment year non-plantation. For 1989-90 ten working days were allowed for each plantation circle. It was not clear why the time allowed was the same for both plantation and non-plantation circles till the assessment year 1988-89 since plantation circles contributed more than 90 per cent of the total revenue of the department. Though twice the time for plantation circles was allowed for the assessment year 1989-90, it was not based on any work study conducted, taking into account the number of assessees, number of returns and composition cases to be checked in each circle and number of return/composition cases which could be checked by a person in one day and the time required for checking Cash book and allied records. Internal audit system would be more effective if the time allowed for audit. especially in plantations circles, was based on work study.

The foregoing points were brought to the notice of the Government in February 1991, their reply has not been received (February 1992).

3.3 Incorrect computation of taxable income

(i) According to Rule 7 of the Tamil Nadu Agricultural Income Tax Rules, 1955, read with Rule 8 of the Income Tax Rules, 1962, (Central), sixty per cent of income from tea, grown and manufactured by a seller in the State shall be assessed under the Tamil Nadu Agricultural Income Tax Act, 1955. As per proviso under Rule 7 of the Tamil Nadu Agricultural Income Tax Rules, the computation made by the Income Tax Officer shall be accepted by the Agricultural Income Tax Officer for the purpose of levying Agricultural Income tax.

In Pollachi assessment circle, while assessing a company growing and manufacturing tea for the years 1981-82 to 1985-86, the Agricultural Income Tax Officer, did not adopt sixty per cent of the total income computed by the Income Tax Officer, as agricultural income. He independently computed the agricultural income. This mistake resulted in short levy of agricultural income tax of Rs.2.11 lakhs.

Incidentally, it was also noticed that the assessee had adopted different accounting years for the purpose of Income Tax and Agricultural Income Tax assessments, which was not noticed by the Agricultural Income Tax Officer.

The mistake was pointed out in audit (December 1989). The Department revised the assessments (March 1990) and raised additional

demand amounting to Rs.3.68 lakhs after taking into account the revised orders of the Income Tax Officer. Further report on recovery of tax has not been received (February 1992).

(ii) Under the Tamil Nadu Agricultural Income Tax Act, 1955, if an assessee fails to make a return of his income on a notice served on him by the department, the Agricultural Income Tax Officer shall make the assessment to the best of his judgement and determine the tax payable by the assessee on that basis. To enable the Agricultural Income Tax Officers to determine the income in such cases, on best judgement basis, the department had periodically issued guidelines indicating the net income deemed to be accruing per acre of each crop.

In Madurai Assessment Circle, while determining the income of an assessee for the assessment years 1985-86 to 1987-88 on best judgement basis, the assessing officer omitted to assess income from Hill banana crop from 2.09 acres during the years 1985-86 and 1987-88 and from 8.33 acres during 1986-87 as per the guidelines which resulted in the tax being levied short by Rs.46,487 for the three years.

On the omission being pointed out (December 1990) the department revised (March 1991) the assessment raising an additional demand of Rs. 46, 487.

(May 1991). The department intimated (October

The mistake was pointed out in audit

1991) that on a revision petition by the assessee before the Commissioner, total demand was reduced to Rs.38,559. Report on recovery is awaited (February 1992).

nomus was an admissible deduction

3.4 Incorrect allowance of deduction bas (88)

According to Section 5(e) of the Tamil Nadu Agricultural Income Tax Act, 1955, any oup expenditure, sigother than as capital expenditure, incurred in the year of raising the crop from which agricultural income is derived and laid out or expended wholly and exclusively for the purpose of deriving such income is allowable as a deduction in computing the taxable agricultural income for that year. Again in terms of Section 5(1) ibid, any sum actually paid to worker as bonus is allowable deduction computing the taxable in agricultural income. Tt. has judicially* held that provision for bonus is not an admissible deduction. Resolve of bewolfs

In Nagercoil Assessment Circle I, while assessing a company for the assessment year 1988-89, deductions amounting to Rs.1.52 lakhs towards provision for bonus for the year 1987 was incorrectly allowed as an admissible expenditure. Also, rehabilitation allowance of

Vas Annamalai Bus Transport Limited Vs. emo Commissioner of Income Tax, Madras 99 ITR 445 (Supreme Court).

Rs.2775.85 was allowed in excess. This resulted in tax being levied short by Rs.one lakh.

On this being pointed out (August 1989) in audit, the department stated in August 1989 and January 1991 that the provision for bonus was an admissible deduction mercantile system of accounting as per Supreme Court decisions reported in 53 ITR 134* 118 ITR 261**. The judicial decisions quoted were not relevant to the case. The former decision was in respect of allowance of bonus paid in terms of an award. The latter decision was given in respect of the allowance of an amount paid to the terminated employee/director in terms of retrenchment compensation. the objection was reiterated in May 1991. Reply from the Department has not been received till October 1991.

As regards rehabilitation allowance allowed in excess, the department revised the assessment in January 1991 and raised an additional demand of Rs. 1805.

*

^{1. &}lt;u>53 ITR 134:</u> Commissioner of Income Tax, Madya Pradesh Vs. Swadeshi Cotton and Flour Mills (P) Limited.

^{**}

^{2. &}lt;u>118 ITR 261:</u> Saroon J.David and Company Private Limited Vs. Commissioner of Income Tax, Bombay.

The case had been reported to Government in August 1991. Reply is awaited (February 1992).

3.5 Incorrect permission to compound the tax

Under Section 65(3) of the Tamil Nadu Agricultural Income Tax Act, 1955, any partner of a registered firm may apply for permission to compound the Agricultural Income Tax payable by him on the aggregate income derived by him from

- (i) the land held by him individually; and
- (ii) his proportionate share of the land held by the firm.

It has also been Judicially* held that the concept of aggregation under Section 65(3) contemplates plurality of sources and if one source does not exist, there is no scope whatsoever for applying the idea of aggregation of income.

In Pollachi assessment circle, for the assessment year 1988-89, it was noticed in

*

Madras High Court Tax Case Nos.1298 to 1302, 1307 to 1309/88 and 1 to 4 and 75/89 dated 21st March 1989.

Audit (September 1989) that in the cases of partners of two registered firms, aggregation had been allowed even though the partners did not hold any land in their individual capacity. The mistake resulted in short levy of tax amounting to Rs.3.61 lakhs.

On the mistake being pointed out to the Department in December 1989 and to Government in December 1990, the Department initiated suo motu action under Section 34 of the Act for revision. The Commissioner in his revision orders (October and November 1990) set aside the assessment orders for the three years from 1987-88 to 1989-90 with instruction to pass revised orders. Information on further development has not been received (February 1992).

in August 1991. The case was reported to Government in August 1991.

3.6 Incorrect assignment of status as trust

Under Section 4(b) of the Tamil Nadu Agricultural Income Tax Act, 1955, any agricultural income derived from property held under trust, wholly or partly for charitable or religious purposes is exempt from tax to the same extent as its admissibility under the provisions of the Indian Income Tax Act, 1961.

In Tiruchirappalli assessment circle, the agricultural income of an assessee was finalised for the assessment years 1981-82 to 1985-86 on the status of a trust after allowing

common expenditure on trust which had no nexus to the agricultural income. However the Agricultural Income Tax Appellate Tribunal had held* that the properties were not held in trust but by an individual. The Tribunal had also held that the assessee did not satisfy the conditions stipulated for exemption under the Act. It was also pointed out that no exemption was obtained under the Central Income Tax Act in respect of non-agricultural income derived by the assessee.

The incorrect finalisation of the assessments assigning the status of a trust to an individual resulted in tax being levied short by Rs.1.39 lakhs. This was pointed out in audit to the department in July 1987 and to Government in February 1990 and August 1991; their reply has not been received (February 1992).

3.7 Short levy of tax due to incorrect carry forward of loss

Under Section 12 of the Tamil Nadu Agricultural Income Tax Act, 1955, where any person sustains a loss in agricultural income in any year, the loss shall be carried forward

qains of the previous year, shall be assessed

Orders dated 26th August 1986 of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras on Appeal Numbers 8 and 9 of 1986.

to the following year and set off against the agricultural income for that year and if it cannot be wholly set off, the amount of loss not so set off shall be carried forward to the following year and so on but not for more than six years.

In Udhagamandalam assessment circle, the loss determined in respect of a registered firm in the assessment years 1980-81 and 1981-82 was set off against the net income of the firm for the assessment year 1985-86 instead of the income for the earlier assessment year 1984-85, in which year income was available. In addition, the amount calculated as loss for set off purpose was incorrectly calculated. These mistakes resulted in short levy of tax of Rs.43,205. This was pointed out to the department in December 1989 and to Government in February 1991; their reply had not been received (February 1992).

The case was reported to Government (August 1991).

3.8 Loss due to incorrect carry forward of losses

Under the Tamil Nadu Agricultural Income Tax Act, 1955, and the rules made thereunder, the tax payable by a registered firm shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed

and the tax payable by him on the basis of such assessment shall be determined. In arriving at the net income to the partners' account, any expenditure, other than capital expenditure, incurred by the firm in the year of raising the crop from which the agricultural income is derived and laid out or expended wholly and exclusively for the purpose of deriving such income under Section 5 of the Tamil Nadu Agricultural Income Tax Act is allowable as deduction.

In Pollachi assessment circle, the department, while assessing the income of the three partners of a firm for the year 1988-89, allowed deduction from their respective share income one third of Rs.2.09 lakhs towards interest on land ownership account, valuation fees and depreciation which were not proved to be revenue expenditure related to the firm's lands from which the income was derived. assessments for the years 1986-87 and 1987-88 also finalised after making similar deductions from the share income/loss. Since there was no taxable income for 1986-87 1987-88, the losses were carried forward absorbed in the income for 1988-89. The mistake resulted in short levy of tax of Rs.1.71 lakhs for the year 1988-89.

The omission was pointed out in audit to the department in December 1989 and to Government in March 1991. The department stated in September 1990 that a notice had been issued to the partners in June 1990.

assessment shall be determined. . (1991 tangual).

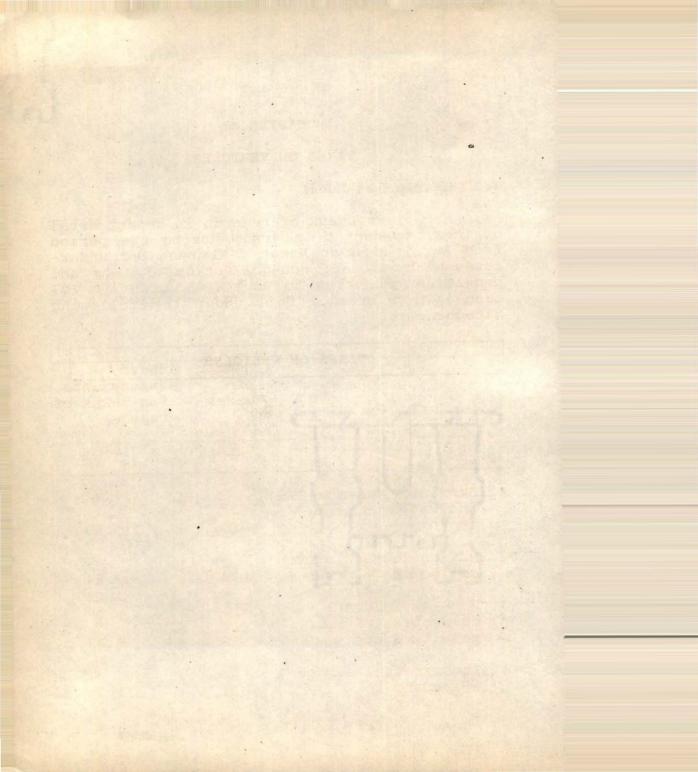
3.9 Under assessment of less than Rs.30,000

value of each item is less than Rs.30,000), under-assessment/losses of revenue amounting to Rs.1.55 lakhs were pointed out in Audit between 1985-86 and 1990-91 and were accepted by the department. Out of these, an amount of Rs.32,305 was recovered.

department, while assessing the income of the three partners of a firm for the year 1988-89, allowed deduction from their respective share income one third of Rs.2 09 lakhs towards interest on land ownership account, valuation fees and depreciation which were not proved to be revenue expenditure related to the firm's lands from which the income was derived. The assessments for the years 1986-87 and 1987-88 were also finalised after making similar deductions from the share income/loss. Since there was no taxable income for 1986-87 and 1987-88, the losses were carried forward and absorbed in the income for 1988-89. The making in the income for 1988-89.

The omission was pointed out in audit to the department in December 1989 and to Government in March 1991. The department stated in September 1990 that a notice had been issued to the partners in June 1990.

TAXES ON VEHICLES



CHAPTER 4

TAXES ON VEHICLES

4.1 Results of Audit

Test check of records in departmental offices, conducted in audit during the period from April 1990 to March 1991 revealed underassessment of tax, non-collection of fees and penalties amounting to Rs.144.65 lakhs in 207 cases which broadly fall under the following categories:-

		Number of cases	Under assessments (In lakhs of rupees)
		(1)	(2)
1.	Short levy due to incorrect assess-ment	102	119.59
2.	Non-collection/short collection of fees	16	. 3.84
3.	Non-levy/short collection of penalties	19	9.33
4.	Incorrect allowance of rebate	12	11.02

end for a large party	(1)	(2)
5. Incorrect/excess	928mi - 26	Television 1
refund of tax	8	0.87
6. Other cases	50	
Total	207	144.65
	LEAT AS THE CALL	

4.2 Irregular grant of rebate

In one case involving under assessments due to irregular grant of rebate, an amount of Rs.1.68 lakhs was recovered on being pointed out in audit.

4.3 Short collection of fees

Under the Tamil Nadu Motor Vehicles Rules, 1940, a fee of Rs.50 is chargeable for issue of a temporary permit in respect of a transport vehicle. However, on a transport vehicle for which permit (other than temporary permit) has already been issued, the fee for issue of a temporary permit is only Rs.25. This concessional rate was not available for vehicle registered in other States. The Transport Commissioner, Madras, had also clarified in October 1986 that a fee of Rs.50 was to be collected for issue of temporary permits in respect of vehicles covered by regular permits issued by other States.

Instances of incorrect levy of Rs.25 in these cases were commented in paragraph 5.3(i), 5.4, 6.4 and 5.6 of the Reports of the Comptroller and Auditor General of India for the years 1983-84, 1985-86, 1986-87 and 1988-89 respectively.

In its 45th Report presented to the Assembly on 5th May 1990, on para 5.3(i) of the Report of the Comptroller and Auditor General of India for the year 1983-84 the Public Accounts Committee recommended as follows "---- as the recurrence of mistakes seems to suggest that there is something more than a lapse, the matter should be thoroughly investigated and action taken against persons responsible for the mistakes. A report in this regard should be submitted to the Committee within three months."

It has again been noticed in audit (November 1987) that in two regions (Kanchipuram and Tirunelveli) lower fee was levied in 12717 cases from April 1986 to December 1986 and total short collection amounted to Rs.3.18 lakhs.

The Cases were pointed out to the department in December 1987; their reply has not been received (February 1992).

The cases were reported to Government in April 1989, March 1990 and August 1991; their reply has not been received (February 1992).

4.4 Short levy of fees

Under Rule 168 of the Tamil Nadu Motor Vehicles Rules, 1940, a fee of Rs.50 is chargeable for issue of temporary permits in respect of a transport vehicle. By a Notification issued in March 1987, an additional fee of Rs.25 over and above the normal fee is leviable, with effect from 1st April 1987, for the grant of permits with State-wide validity in respect of each such vehicle covered by public carrier permit.

In Kanchipuram region, fee at the rate of Rs.50 alone was collected at the time of issue of temporary permits with State-wide validity from 1st April 1987 onwards, as against the correct rate of Rs.75 in respect of 1652 temporary public carrier permits issued with State-wide validity, resulting in short collection of fees by Rs.41,300.

On this being pointed out in audit (November 1986 and May 1989) Government stated (June 1991) that out of Rs.41,300 collectable on 1652 temporary permits, a sum of Rs.31,100 relating to 1244 cases has been collected and collection particulars of the balance amount would be furnished on their receipt from the Department.

The case was reported to Government (August 1991).

4.5 Incorrect fixation of maximum safe laden weight

Under Section 36(1) of the Motor Vehicles Act, 1939, Government of India issued a notification on 25th September 1982 directing that in respect of transport vehicles of all makes and models manufactured on or after 1st April 1983, the maximum safe laden weight to be adopted by the registering authority shall be as per the rating fixed by the manufacturer and respect of transport vehicles in manufactured upto 31st March 1983, the same shall be 125 per cent of the rating given by manufacturer, subject to the prescribed in the schedule to the notification. Under Section 36(2) of the Act, the permit issuing authority shall also adopt increased registered laden weight permitted laden weight in the permit. levied on the basis of such laden weight.

In Nilgiris region the maximum safe laden weight in respect of 142 public carriers and ten private carriers manufactured after 1st April 1983, had not been fixed in accordance with the Government of India notification and it was less than their prescribed weight for the period from 1st April 1987 to 31st March 1988 (Registered laden weight 15660 kilograms, permitted laden weight 15240 kilograms). Non-adoption of the permitted laden weight as per the ratings fixed by the manufacturers in these cases resulted in loss of revenue to the extent of Rs.57,500 by way of short levy of tax.

On this being pointed out (December 1989) to the department and to Government in July 1991, the department stated (June 1991) that the permitted laden weight was increased with effect from 1st April 1991 as per the ratings fixed by the manufacturers and that the short collection of tax prior to 1st April 1991 would not arise since the operators were not allowed to carry the load equal to the registered laden weight. The reply of the department is not tenable as the provisions of Section 36(2) of the Act are clear that the registering authority shall adopt only the increased registered laden weight as the permitted laden weight in the permits.

The case was reported to Government (August 1991).

4.6 Incorrect grant of extension of time for payment of tax

As per Section 8 of the Tamil Nadu Motor Vehicles Taxation Act, 1974, the tax due shall be paid within such period not being less than seven days or more than thirty days from the commencement of the quarter/half-year or year as may be prescribed and different periods may be prescribed for different classes of motor vehicles. Any payment made after the due date would attract penalty under Rule 8 of the Tamil Nadu Motor Vehicles Taxation Rules, 1974. Under Section 20(i) of the Act ibid, Government may, by issue of a notification, make an exemption, reduction in rate of tax and other modification in regard to the tax payable. As

per proviso to Rule 7 of the Tamil Nadu Motor Vehicles Taxation Rules, 1974, made under the Act, Government, may by an order extend the period of payment of tax in respect of any classes of motor vehicles.

Accordingly the Government, by an order issued in October 1986, extended the period of payment of tax for the quarter/half-year commencing from 1st October 1986 permitting the payment of tax in two equal instalments; the first instalment on or before 30th October 1986 and the second instalment on or before 15th November 1986.

The extension of period permitted by Government under the Rules was ultra vires of the provisions of the Act and was not correct since

- (i) The extended period falls beyond the period of 30 days prescribed in Section 8 of the Act;
- (ii) Government is not empowered to extend the period beyond that prescribed in Section 8 by an executive order; and
- (iii) The modification extending the period prescribed in Section 8 of the Act was not made by issue of a notification under Section 20(i).

The incorrect grant of extension of time for payment of tax resulted in non-realisation of revenue amounting to Rs.4.97

lakhs by way of penalty during 1986-87 cases in the Nilgiris region.

On this being pointed out (No 1988) the Government stated (October 1990 a proposal to amend Section 8 of the Tami Motor Vehicles Taxation Act, 1974 to Government with powers to grant extensitime beyond a period of thirty days was the consideration of Government. Freport has not been received (October 199

The case was reported to Gove (July 1991).

4.7 Non-levy of penalty

A sum of Rs.57,086 towards penalty for the belated payment of tax relating to 23 vehicles was recovered from a State owned transport corporation on being pointed out in audit. A few other cases where the department had not fully complied with the audit findings are mentioned below:

According to proviso to Section 8 of the Tamil Nadu Motor Vehicles Taxation Act, 1974, (introduced by Act 55 of 1986), in the case of transport vehicles for which temporary permits are granted under the Motor Vehicles Act, the tax due shall be paid on the date of commencement of the quarter. In other words, in respect of transport vehicles for which temporary permits are granted spreading over two quarters viz. March-April, June-July, September-October and December-January the tax

for the subsequent quarter has to be paid on the first day of the first month of the second quarter. Any payment made after the date would attract penalty under Rule 8 of the Tamil Nadu Motor Vehicles Taxation Rules. This provision is also applicable to stage carriages for which temporary permits for a period not exceeding 45 days are issued.

(a) In Coimbatore and Madras West Regions, in respect of 202 transport vehicles 21-11 issued with short term licences, the tax due R9-90 has been paid after the commencement of the quarter without penalty for the belated 21-19 payment. The non-levy of penalty in these 90-91 cases resulted in Government forgoing revenue to the tune of Rs.1.24 lakhs.

On the omission being pointed out to the department in September 1989 and January 1991, and to Government in July 1991, the department stated (November 1990 and May 1991) that Section 8 of the Tamil Nadu Motor Vehicles Taxation Act, 1974 has been suitably amended to remove penal charges in cases of tax paid after the commencement of the quarter. The amendment took effect only from 1st April 1990. Since the cases pointed out in Audit relate to the period prior to that date, penalty is leviable in those cases.

(b) In Erode and Thanjavur regions in respect of 107 transport vehicles issued with short term licences, the tax due has been paid after the commencement of the quarter without penalty for the belated payment. The non-levy

of penalty in these cases resulted in Government forgoing revenue to the tune of Rs.88,637.

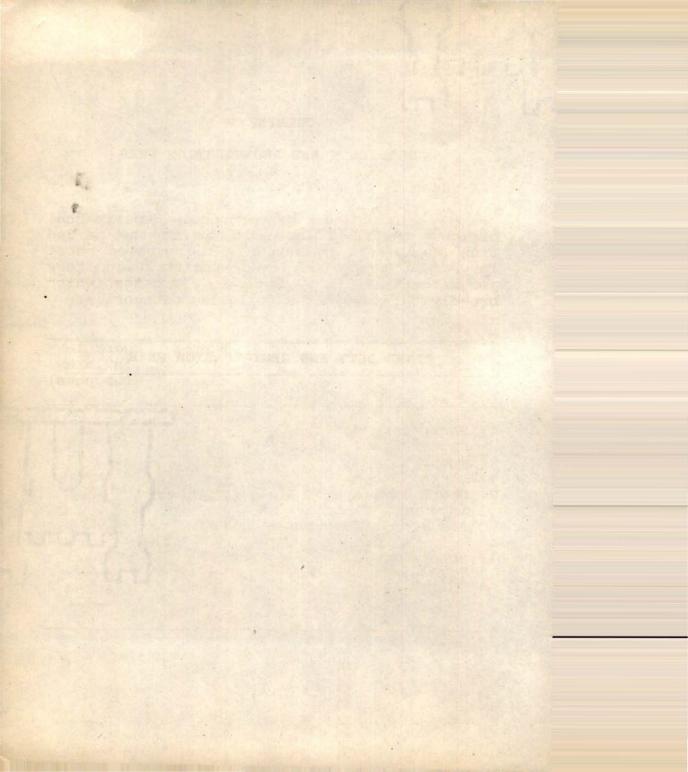
On the omission being pointed out to the department in January 1990 and October 1990 and to Government in December 1990 and January 1991, the department stated (December 1990 and January 1991) that action had been initiated to collect the penalty.

The case was reported to Government (August 1991).

4.8 Under assessment of less than Rs.30,000 accepted by the department

In 24 cases (where money value of each case was less than Rs.30,000), underassessments, losses of revenue amounting to Rs.1.22 lakhs pointed out in audit during the period from 1983-84 to 1989-90 were accepted by the department out of which an amount of Rs.81,549 was recovered.

STAMP DUTY AND REGISTRATION FEES



CHAPTER 5

STAMP DUTY AND REGISTRATION FEES

5.1 Results of Audit

Test check of records in departmental offices conducted in audit during the period from April 1990 to March 1991, revealed short levy of Stamp Duty and Registration Fees amounting to Rs.80.57 lakhs in 250 cases, which broadly fall under the following categories:-

		Number of cases	Short levy (In lakhs of rupees)
1.	Short levy due to undervaluation of properties	78	12.73
2.	Short levy due to incorrect classi-	AND ENGLISHED TO	
	fication of documents	40	2.63
3.	Others	132	65.21
	Total	250	80.57
			THE THE PARTY
-	The state of the s		

5.2 Short levy of Stamp Duty and Registration Fees due to undervaluation of property

Under the Indian Stamp Act, 1899, and the Indian Registration Act, 1908, on instruments of sale, Stamp Duty and Registration Fees are leviable on the market value of the properties sold. Guidelines have been issued by the department to enable the fixation of the market value of the properties sold. Government of Tamil Nadu, had however, in January 1989, issued orders excluding two sector undertakings of the the above Government from the purview of quidelines for sale and lease cum sale of developed plots/sheds to industrialists. The Government order however, did not have any retrospective effect.

(a) In respect of sale deeds registered between April 1988 and August 1988, the Sub-Registry at Ambattur collected Stamp Duty and Registration Fees on the value fixed by the two public sector companies which was less than the market value prevailing at the time of registration. This resulted in short levy of Stamp Duty and Registration Fees to the tune of Rs.2.06 lakhs.

The omission was pointed out to the department in March 1990 and to Government in April 1991; their reply has not been received. It was, however verified from the records of the sub-registry, Ambattur that no action was initiated in the matter. As the statutory period of two years, under Section 47 A(3) of

the Act had elapsed, the department suffered loss of revenue amounting to Rs.2.06 lakhs by way of Stamp Duty and Registration Fees.

The case was reported to Government (August 1991).

(b) In October 1988, the Sub-Registrar, Sowcarpet, incorrectly adopted the amount of Rs.67,700 as the sale value of the property fixed by mutual consent of the parties to suit their convenience instead of the market value of the property as per the guidelines. The non-adoption of the market value had resulted in short levy of Stamp Duty and Registration Fees amounting to Rs.1.13 lakhs.

On this being pointed out in Audit (September 1990) and to Government (January 1991), the department (February 1991) and Government (May 1991) in reply stated that instructions had been issued in February 1991 to the Registering Officer to recover the short levy of Stamp Duty and Registration Fee. The deficit duty and fees have now become irrecoverable as the time-limit for initiating action under Section 47 A(3) of the Stamp Act for the recovery of the dues had elapsed by October 1990. No responsibility had been fixed for the delay in initiating action for recovery of revenue of Rs.1.13 lakhs, within the statutory time limit.

The case was reported to Government (August 1991).

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(c) In the District Registry, Madurai, in respect of an instrument of sale registered in April 1988 under Section 30 (1) of the Indian Registration Act, the Registering Officer adopted the value as set forth in the instrument for the purpose of levy of Stamp Duty and Registration Fees without ascertaining the market value from the Registering Officer under whose jurisdiction the property was located. The incorrect valuation of the property resulted in short levy of Stamp Duty of Rs.34,613 and Registration Fees of Rs.2,660.

On this being pointed out in audit to the department in January 1990 and to Government in April 1990, the department stated (September 1990) that action had been taken to determine the correct market value of the property. The Special Deputy Collector (Stamps), Madurai had also stated (July 1991) that the market value of the property had been determined and that a notice was issued to the vendee to remit Rs.34,613 towards deficit Stamp Duty. The Registration Fees amounting to Rs.2,660 is to be recovered. Report on recovery has not been received (February 1992).

The case was reported to Government (August 1991).

5.3 Non-levy of Stamp Duty

By notification issued on 29th June 1966, Government ordered remission of Stamp Duty in the case of sale deeds executed by registered Co-operative House Construction

Societies in favour of the allottee-members under certain conditions. By a subsequent notification issued in August 1972, Government ordered the levy of Stamp Duty on such deeds on the sale price fixed by the said societies.

In the Sub-Registry, Tiruvallur, in the case of 280 documents relating to sale deeds executed by three Co-operative House Building Societies in favour of their allottees for the conveyance of plots, registered during 1989-90, Stamp Duty was not levied. The omission resulted in the non-levy of Stamp Duty to the extent of Rs.1.61 lakhs. This was pointed out to the department in January 1991 and to Government in May 1991; their reply has not been received (February 1992).

The case was reported to Government (August 1991).

5.4 Incorrect remission of Stamp Duty

(i) In exercise of powers conferred under Section 9 of the Indian Stamp Act, 1899, Government remitted Stamp Duty chargeable in respect of the mortgage deeds executed by a person in the service of the Central Government for securing the repayment of an advance received by him from the Government for the purpose of constructing or purchasing a dwelling house for his own use. In respect of mortgage deeds executed by Government servants which do not satisfy these conditions, Stamp Duty is leviable at three per cent of the advance received.

In Sub-Registry, Virugambakkam the Registering Officer omitted to levy Stamp Duty in respect of eight mortgage deeds executed by Central Government servants in favour of a Government of India undertaking, in respect of house building advances received by them from the said undertaking. This resulted in incorrect remission of Stamp Duty of Rs.36,861.

On this being pointed out in Audit 1990) the department stated (September (September 1990) that the mortgage deeds were executed by Central Government employees on deputation to the Government of India The department further stated undertaking. that the mortgage deeds were executed by Central Government servants with reference to the Rules and Regulations contained in the deputation agreement. This position is not acceptable inasmuch as the advance was received from the Central Government and hence the remission granted was not in order. This was pointed out to Government (November 1990) and again in April 1991; their reply has not been received (February 1992).

(ii) Under notification issued on the 29th June, 1966, stamp duty is not payable in the case of instruments executed by or on behalf of any registered co-operative societies if relating to the business of such society. In the case of conveyance deeds executed in respect of a house, Stamp duty is not payable if the house is constructed by the Co-operative House Construction Societies and allotted to a member of such society and the title of the

house is conveyed to the member after a lapse of five years from the date of original allotment of the house.

In North Madras, a Co-operative House Building Society sold a house property purchased by it in Court auction to a Central Co-operative Bank for a consideration of Rs.9.89 lakhs by a sale deed registered in October 1988. Applying the notification June 1966 no Stamp duty was levied. incorrect because buying house property and selling it to non-members was not the business of the vendor-society. The stamp duty leviable but not levied amounted to Rs.1.29 lakhs. On this being brought to notice, the Department stated (September 1991) that the sale was effected by the vendor-society to raise funds and the purchasing society purchased the property for its use related to the business of the society and that therefore the remission was admissible.

The reply is not acceptable as the exemption of stamp duty for execution of sale deed is available only if the sale is related to the business of the vendor-society. The business of the vendee-society has no relevance. The business of the vendor-society is to construct and sell houses to its members and not buy and sell properties at a profit to raise resources. But, the purchase and sale of property is stated to be to raise funds for the society. The notification is not, therefore, applicable to the transaction in question. The

objection was therefore reiterated (November 1991).

5.5 Under-assessment of less than Rs.30,000 accepted by the department

In 29 cases (where money value of each item is less than Rs.30,000) under-assessments/ losses of revenue amounting to Rs.1.20 lakhs were pointed out in audit. The department accepted the audit objections and collected the amount on different occasions during 1990-91.

STATE EXCISE

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CHAPTER 6

STATE EXCISE

6.1 Results of Audit

Test check of records in departmental offices conducted in audit during the period from April 1990 to March 1991 revealed underassessments of excise duty amounting to Rs.1215.51 lakhs in 91 cases which broadly fall under the following categories:-

Short	Parts.	r bsland
24		52.99
16		1158.84
s 51		3.68
91		1215.51
	on- of 16 s 51	on- of 16 s 51

6.2 Working of Internal Audit in Prohibition and Excise Department

6.2.1 Introduction

State Excise is one of the major sources of revenue to the State Government. The annual revenue from this source ranging from Rs.120 crores to Rs.302 crores during the years 1985-86 to 1989-90 accounted for six to fourteen per cent of the total revenue of the State Government as tabulated below:

Year	Total revenue	Revenue from State Excise	Percentage to total income
	(In cro	res of rupees)	
1985-86	1786.82	241.83	13.53
1986-87	2010.02	286.56	14.25
1987-88	2058.27	120.16	5.83
1988-89	2329.80	148.03	6.35
1989-90	2882.02	301.82	10.47

The internal audit organisation was set up in the department in the year 1981.

6.2.2 Scope of the review

Audit reviewed the working of the audit system in the department in internal general with a view to appraise its functioning, performance, omission/deficiencies and to study the effectiveness and adequacy of the present system with reference to assessment/levy and realisation of revenue. The review covering the period from 1985-86 to 1989-90 was undertaken with reference to the records made available in the Office of the Commissioner, Prohibition and Excise during January 1991. The records maintained by the audit organisation were also internal scrutinised.

6.2.3 Organisational set up

Internal audit wing functions under the control of the Financial Controller who is subordinate to the Commissioner of Excise and Prohibition - the Head of the Department. The Financial Controller is in charge of all matters relating to the levy and collection of excise duties administered by the department. There are no regular sanctioned posts to man the wing since 1st April 1987. The existing personnel consisting of one Superintendent and two Assistants were diverted to the wing from the staff placed at the disposal of Headquarters office.

6.2.4 Highlights

- (i) Staff strength was reduced in February 1987 from six to one party leading to heavy arrears in internal audit.
- (ii) Ever since the commencement of internal audit more than nine years ago, no manual has been brought out by the department for the guidance of the internal audit parties.
- (iii) Certain units involving substantial collection of excise revenue were not subjected to internal audit even once from the date of their formation.
- (iv) Accounts relating to the sale of priced adhesive excise labels were not subjected to internal audit check.
- (v) Monthly reconciliation statements of departmental figures with the treasury figures prepared by the unit offices were not subjected to internal audit scrutiny.
- (vi) The internal audit had not exercised any check of Demand, Collection and Balance statements relating to Excise revenue of the unit offices.
- (vii) No separate record of objections taken in internal audit and their tax effect was maintained.

(viii) Records for watching the settlement of objections and the outstanding objections were not maintained.

6.2.5 Staff position

The table below compares the staff sanctioned in the internal audit organisation vis-a-vis staff in position during the year 1985-86 to 1989-90.

Year	Sanctioned strength			In Position			Shortages
	Suptt.	Assts.	Typists	Suptt.	Assts.	Typists	
1985-86	4	6	2	4	6	2	
1986-87	4	6	2	4	6	2	n
1987-88		A-11		1	2	HERITA	
1988-89	- 1	32		1	2		
1989-90	anciety.	ed t	ens.	1	2	action!	in sala

No staff was sanctioned for manning the internal audit parties from 1st March 1987 onwards. The staff in position from 1st March 1987 onwards represented the personnel diverted from the staff placed at the Headquarters office on rotation to attend to the work of internal audit. The department asked for additional staff of one Assistant Accounts

Officer, one Superintendent, two Assistants and one typist in October 1990 to cope up with the work of internal audit. Orders of Government are reported to be awaited (July 1991). Nonsanction of staff for the internal audit wing resulted in the hampering of the quality and efficiency of the wing.

6.2.6 Performance of Internal Audit

(i) The objective of the system of internal audit is not only to conduct audit before supply of records to the statutory audit but also to ensure that all the duties and levies are correctly levied, realised and properly accounted for. However, no procedure or system has been evolved by the department to ensure check of records before the statutory audit is conducted. No internal audit manual has been prescribed for guidance of the staff indicating inter alia the records to be checked in various offices, the procedure for check, periodicity and quantum of check. The absence of manual deprived the staff of directions and guidelines in the efficient performance of their functions. The objections of the statutory audit are not also being pursued by the internal audit in the absence of clear directions. Government stated (September 1991) that instructions for internal audit staff to serve as a manual would be compiled soon and issued to them.

(ii) Arrears in internal audit

The department has not maintained a comprehensive record indicating the number of units due for audit each year, number of units programmed for audit, number of units for which audit has been completed and number of units not audited. A register maintained for this purpose was not updated after 1985. In the absence of this vital information, it was not possible to verify whether all the subjected to internal audit were actually audited during the year for which it was due and whether the arrears in internal audit were subsequently cleared. It was, however, noticed that the internal audit of nine blending units was not taken up by the internal audit wing for the period from 1st April 1986 to 31st December The units ceased to function with effect 1986. from 1st January 1987. All the thirty three depots under the control of Excise Supervisory relating to the Officers Tamil Nadu State Marketing Corporation (an undertaking of the Government of Tamil Nadu) and accounts relating to the payment of additional vend fee in their Head Office, were not subjected to internal audit since the date of the formation of the Corporation in June 1983. The TASMAC is a wholesale licensee for the entire State to vend IMFL products and the excise revenue relating to this company alone was Rs.79.49 crores in the year 1988-89. In the absence of the internal audit for this important organisation from its inception, it is not clear as to how the department had ensured whether the duties/fees payable by the Corporation

actually been paid, whether the demand is correct with reference to the various rules and whether any system exists for the recovery of arrear demands.

Internal audit was taken up simultaneously for more than three or four years from three days to twenty two days in many cases vide instances below:

		Clare Service Control of the Control	
Sl.	Name of Office	Period of	Dates of
	District Contracts	accounts checked	audit
(1)	(2)	(3)	(4)
1.	A	01.10.81 to	26.06.85 to
		31.03.84	30.06.85
2.	В	01.10.81 to	18.06.85 to
		31.03.84	30.06.85
3.	C	1981-82 to	10.06.85 to
		1983-84	17.06.85
4.	D	1981-82 to	16.04.84 to
		1983-84	18.04.84
5.	E	1987-88 to	10.10.90 to
		1989-90	31.10.90
6.	F	1986-87 to	16.04.90 to
		1988-89	20.04.90

(1)	(2)	(3)	(4)
7.	G	1986-87 to 1989-90	14.05.90 to 23.05.90
8.	H	1986-87 to 1989-90	25.06.90 to 30.06.90
9.	I	1987-88 to 1989-90	18.09.90 to 25.09.90

The time allowed for the check of three to four years' accounts was not on any rational basis considering the revenue involved in the transactions and the check of all the initial records. No time study was conducted for fixing the number of days required for each unit for the check of accounts of each year. In the absence of such a study, the time allowed for internal check would affect the quality and efficiency of internal audit. The number of various units to be audited, the years for which the internal audit is in arrears etc., are furnished below:-

Units	number of office	S	Period from which in arrears	Remarks
. IMFS Manufacturing			1986-87 - 1 unit	
units	5		1987-88 - 4 units	
2. Distilleries	8		1986-87 - 3 units 1987-88 - 5 units	
			1707 00 3 411113	
3. Bonded Manufactory	27		1982-83 - 1 unit	Audit not
Offices			1984-85 - 3 units	taken up
NO SHARE BUT THE STATE OF			1985-86 - 2 units	in 12 units
			1986-87 - 9 units	
4. Breweries	2			Audit of one
				unit not
				taken up so
				far
5. TASMAC Offices	34		1983-84 - ALL	and the state of t
			to units	Star Tonio Let
			1989-90	
6. Taluk Excise	67		;	Number of
Office		1	January	Taluk Excise
		1		Offices
7. Assistant		1	1987	reduced to 67
Commissioner	21]		from 31st
(Excise)	1			March 1990.

Out of a total number of 164 units to be audited annually, the internal audit had been conducted upto 1989-90 only in respect of five IMFL units, one Brewery unit and eight distilleries, thus rendering a large number of units remaining unchecked by internal audit (January 1991). Even in respect of these audited units which contribute substantial revenue to Government, the internal audit was conducted only after March 1990. There had thus been important units such as 27 Bonded Manufactory Offices, 67 Taluk Excise Offices and 21 Offices of the Assistant Commissioners remaining unaudited from 1986-87 by internal audit which could result in the irregularities, if any, remaining undetected and consequent loss of revenue to Government. On the position of arrears being brought to notice, the Government replied (September 1991) that arrears in internal audit were due to dearth of staff and also disbandment of staff from September 1987 onwards.

(iii) Non-checking of accounts of priced adhesive excise labels

The Commissioner of Excise and Prohibition was empowered to print and issue excise labels (priced at Re.1/- per label) to be pasted on the bottles containing Indian Made Foreign Spirits/beer manufactured by IMFL manufacturing units and imported by the TASMAC from other States with a view to prevent the evasion of excise duty and also to detect the

sale of spurious and illicit liquor in the licensed shops. The printing work was entrusted to the TASMAC upto 10.11.1989. From 11.11.1989 the printing of labels is done under the control and supervision of the Commissioner for Excise and Prohibition. As the internal audit party has not checked the accounts of TASMAC from the date of its formation i.e. 23rd May 1983, the accounts relating to the printing of labels year-wise, total number of labels sent to the various manufacturing units, used in the quantity imported etc. and amount realised from the sale etc. were not subjected to internal check. Even after the work was entrusted to the department with effect from 11th November 1989 the internal audit party has not undertaken detailed check of this account. It was stated by the department (August 1991) that adhesive labels were now supplied by the Commissioner, Excise and Prohibition to all IMFS units and a register was maintained in all IMFS units wherein the opening balance, receipt and issue of excise labels together with the details of serial numbers are accounted for. They have not given any categorical reply about the check of this account by the internal audit party.

(iv) Reconciliation of receipts with Treasury figures not checked by internal audit

Monthly figures of excise revenue as the Daily Collection recorded in maintained by the various Excise Officers/Taluk Excise Officers/Bonded Manufactory Officers and Commissioner of Excise Assistant is required to be reconciled District level with those appearing in the treasury accounts department. The internal audit organisation has not independently checked the monthly figures of receipts as reconciled the field offices with those appearing treasury accounts. In reply to audit enquiry the department stated (August 1991) that the internal audit was taken up after a passage of few years and it was not possible to check the details entered in the daily collection chitta with the particulars recorded in the treasury accounts. However, a certificate that departmental figures agree with the treasury figures was being insisted upon from the District and Unit reconciling authority and verified.

(v) Non- Certification of arrear demands

*

Bulk of the arrear demands relate to the recovery of arrear rental for arrack/toddy

⁽a register to record revenue collection as per departmental registers and challans from treasury)

shops, loss of revenue arising on account of closure of shops, resale of shops and penalties levied for the infringement of Act/Rules etc. These statements are prepared by the Taluk Excise Officers and a periodical report is sent to the superior offices highlighting the total demand collection and balance. statements were not subjected to internal audit check right from the year 1982-83. absence of such a check, it was not ascertainable as to how the department ensured the correctness of arrear demands brought over from previous year and the total amount of collections reflected in each month being supported by challans and the fact of agreement of figures of the balance amount with those in the initial records.

6.2.7 Delay in issue of reports

(i) As per the procedure outlined by the department (January 1991) the internal audit notes are reviewed by the Financial Controller by verification of records and the report discussed with the unit officer concerned. The report is then issued after approval by the Commissioner. The internal audit reports are not being reviewed by the Financial Controller immediately after the completion of audit. In respect of cases test- checked, the delay in taking up review ranged from three to twenty nine months as shown below:-

st.	Name of Offi	ce Years of	Dates of	Date of	Date of
No.		accounts	internal	review	issue of
		checked	audit	by the	report
				Financial	
		AND MARKET		Controller	
1.	A	1982-83 to	08.01.87 and	07.07.89	07.06.89
	^	1985-86	09.01.87 and	07.07.09	07.00.09
		1985-86	09.01.87		
2.	В	1986-87	18.01.88 to	01.12.89	21.12.89
			28.01.88		
3.	С	1986-87	17.02.88 to	23.05.89	01.06.89
			25.02.88		
4.	D	01.10.81 to	26.06.85 to	NA	19.03.86
		31.03.84	30.06.85		
5.	E	01.10.81 to	18.06.85 to	NA	21.10.85
		31.03.84	25.06.85	d Sveden	
31		NOW TO THE WAY			
6.	F	1981-82 to	10.06.85 to	NA	08.01.86
		1983-84	17.06.85		
7.	G	1981-82 to	10.06.85 to	NA	08.01.86
		1983-84	17.06.85		
8.	н	1984-85	16.09.85 to	NA	18.02.86
٥.	n	1904-03	22.09.85	NA .	10.02.00
			22.07.03		
9.	1	1984-85	09.09.85 to	NA	04.02.86
			21.09.85		

N.A. :- Not Available

The inordinate delay in review resulted in belated issue of the reports and settlement of objections.

(ii) Pendency of internal audit

As on 31st December 1990, 2330 paragraphs from 364 Internal Audit Reports with a money value of Rs.7.24 crores were reported (January 1991) by the Department to be pending settlement. The year-wise break-up of the pending paras though called for (January 1991) were not available as the department did not maintain a comprehensive record showing the number of paras initiated by internal audit, paras settled and paras pending at the close of each month. It was stated by the department that action is being pursued in separate file for each audit report and the year-wise details of pending audit paras could not be worked out as the audit of the accounts relating to more than three years was taken up on a single occasion. This indicates deficiency in the system of Internal Audit.

(iii) Non-maintenance of control registers/ objection books

No records had been maintained either at the Headquarters of the organisation or in the field offices to keep track of the reports and objections issued, settled and remaining outstanding with year-wise break up so that these could be pursued to finality. No objection book had been maintained to watch the

short collection of duties/fees/levies etc., pointed out by the Internal Audit.

The matter was reported to Government (February 1991 and August 1991). Their reply has not been received (October 1991).

6.3 Non-recovery of Government dues from the defaulters

Under Tamil Nadu Toddy and Arrack (i) Shops (Disposal in Auction) Rules, 1981, licences for vending liquor are auctioned and the successful bidder is required to deposit Rs.1,000 (Rs.2,000 in Madras City) as earnest money and half-a-month's rental of the shop before the close of the day's sale on the day of auction and two-and-a-half month's rental within seven days thereafter. On failure to pay the rentals, the vending licence required to be re-auctioned or otherwise disposed of at the risk and cost of the defaulting bidder. On re-auction of the shop, the resultant loss, if any, i.e. the difference between the total amount payable for the whole period under the terms of the original bid and the amount payable by the successful bidder at re-auction is recoverable from the defaulter.

In the Taluk Office, Egmore-Nungambakkam, the successful bidder of an arrack shop for the excise year 1984-85 failed to deposit with the sale officer, half-amonth's rental amounting to Rs.2.25 lakhs for the shop before the close of the day's sale on

the day of auction. Similarly, the successful bidder of another arrack shop in the same Taluk failed to remit two-and-a-half months' rentals amounting to Rs.5.60 lakhs. As a result, the shops were reauctioned in July 1984. The rentals fetched at the re-auctions were less than those obtained at the original auction by Rs.50.83 lakhs but the losses arising from the reauction were not demanded from the original successful bidders.

On the omission being pointed out (January 1986), in audit the department stated (February 1991) that the amounts have been included in the demand and that action is being taken under Revenue Recovery Act to collect the balance amount after adjusting the solvency amount towards the loss. On the above being brought to their notice (June 1991), the Government replied (November 1991) that the recovery of the loss could not be effected as the whereabouts of the defaulters could not be traced and therefore the department had proposed write-off of the demand and also necessary action was initiated against the officials responsible for the loss. Information on further development has not been received (February 1992).

(ii) In the Taluk Excise Office, Mettur Dam, the successful bidder of a toddy shop for the excise year 1985-86 failed to deposit the prescribed advance rental for two-and-a-half months. On re-auction, (January 1986), the rental fetched for the lease year was less by

Rs.76,559, but the loss arising from the resale was not demanded from the defaulter.

On the omission being pointed out (September 1986) in audit, the department stated (December 1990) that the demand was raised against the defaulter and that the matter was being pursued for collection of the notional loss under Revenue Recovery Act.

The case was reported to Government (May 1991).

The Government replied (July 1991) that a sum of Rs.7,500 was realised on sale of landed property of the defaulter and as he has no other means balance of the loss will be written off.

6.4 Loss of Revenue due to belated confirmation of tenders

The right to sell arrack through shops is sold in auction every year. Under Rule 20 of the Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules, 1981, every bid which is provisionally accepted by the sale officer is subject to confirmation by the District Collector. Under the Rules ibid, a tenderer can withdraw his tender only after the expiry of sixty days from the date of receipt of tender.

During the excise year 1986-87, three shops in Mambalam-Guindy Taluk were reauctioned in June 1986, since there were no bidders in

the original auction. The tenders were confirmed only in October 1986. Since only two months of the lease period were available for sale of arrack, the tenderers refused to run the shops and the shops were finally recommended for closure. This resulted in loss of revenue by way of rentals amounting to Rs.14.68 lakhs for the period August 1986 (the date of expiry of sixty days from the receipt of tender) to December 1986. Had the Collector confirmed the tenders within 60 days, the loss of revenue could have been avoided.

The Government admitted (April 1991) that there was administrative delay in confirming the tender and stated that the Collector had referred the matter to Government, since the amount fetched was less than 80 per cent of the upset price fixed. The Government had issued necessary orders only in October 1986, conferring powers upon the Collector for confirming such low bids.

The case was reported to Government (June 1991). The Government replied in July 1991 that a general decision has to be taken after knowing the position in all districts. Such delay in issuing a general order from Government level keeping in mind more on the concept of total revenue which would have accrued to Government than to incur loss of revenue on speculation was inevitable.

Since receipt of lower bids is not an uncommon feature, the Government should have

taken the general decision well in advance so that loss of revenue had been obviated.

6.5 Loss of revenue due to non running of arrack shop

Under the Tamil Nadu Arrack (Retail Shops) Rules, 1981, responsibility for securing proper site or building for the arrack shop vests with licensee. If at a later date, the shop location of the was found to objectionable, the Assistant Commissioner may, by order, direct the shop to be shifted; any failure to comply with such direction shall entail cancellation of the licence. Under the Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules, 1981, such cancelled licence is required to be resold for the remaining period of the lease or otherwise disposed of or the shop closed at the defaulting bidder's risk and cost.

In Mylapore-Triplicane Division, the successful bidder of an arrack shop failed to select an unobjectionable site during the excise year 1983-84. The department also failed to initiate any action for resale of the shop. This had resulted in loss of revenue of Rs.8.37 lakhs by way of rentals.

On the omission being pointed out (December 1984) in audit, the department stated (June 1990) that the rent for the entire excise year had been included in the demand. The department further stated that the details of collection will be reported in due course.

The details of collection have not been received (February 1992).

6.6 Non-levy of penalty for wastage beyond permissible limits

Under Sub-Rule (3) of Rule 15 A of the Tamil Nadu Indian Made Foreign Spirits (Manufacture) Rules, 1981, an allowance of not more than two per cent is allowed for loss in the process of purification of rectified spirit by distillation. Government have, by a notification issued in June 1990, amended the above rule with retrospective effect from 1st February 1988. As per sub-rule 3(a), an allowance of not more than three per cent per batch shall be allowed for loss in the entire process of distillation of rectified spirit, redistillation of impure spirit and handling loss; provided that the spent feints flowing out of rectified spirit basement shall be practically free from alcohol. As per sub-rule (b) of Rule (3) ibid, the Commissioner shall levy a penalty of Rs.16 per proof litre for the loss in the entire process in excess of the norms laid down in clause (a) of Rule 3. Sub-Rule (c) of Rule 3 ibid also lays down that no allowance will be given for further loss in the reprocess of purification of impure spirit by re-distillation or mixing it with next batch of rectified spirit.

In a distillery in Madras, the loss had exceeded the prescribed percentage of three per cent in the distillation of rectified spirit and impure spirit by mixing it with the

next batch of rectified spirit during the period from 1st February 1988 to 30th November 1989 (excepting March 1989). The penalty leviable for the loss in excess of the permissible limit worked out to Rs.17.96 lakhs which was not levied and demanded from the licensee.

On the omission being pointed out in audit between April 1988 and March 1991 to the department and to Government in December 1990, the department stated (May 1991) that the penalty leviable for the loss in excess of the prescribed percentage was levied and the manufacturers were asked to remit the same in February 1991.

The case was reported to Government (August 1991).

The Government stated (October 1991) that a proposal for fixing the time-frame for review of the excess wastage in the process of purification of rectified spirit at a quarter of a calendar year was under consideration, and that after a decision was taken, the excess loss sustained in the case from 1st February 1988 would be worked out and penalty collected.

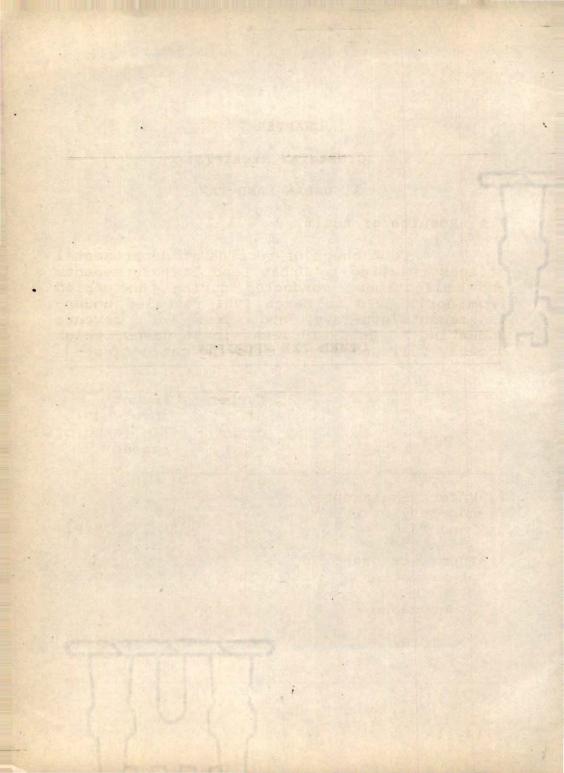
The reply is not tenable since it has already been provided in the rules to work out the excess wastage on batch-basis. Any proposal to work out the excess loss in a time-frame of once in three months is not likely to affect the quantum of losses or the quantum of penalty to be levied. Further, in the instant case,

the department has already worked out the losses and submitted proposal to demand it of the distillery. Also any amendment cannot be applied retrospectively and in special reference to one distillery. Rs.17.96 lakhs was therefore required to be collected (November 1991).

6.7 Under-assessment of less than Rs.30,000 accepted by the department

In 4 cases (where money value of each item is less than Rs.30,000) under assessments/losses of revenue amounting to Rs.1.02 lakhs were pointed out in audit during 1984-85 to 1987-88 and were accepted by the department. Out of these, an amount of Rs.10,525 was recovered.

OTHER TAX RECEIPTS



CHAPTER 7

OTHER TAX RECEIPTS

A. URBAN LAND TAX

7.1 Results of Audit

Test check of records in departmental offices relating to Urban Land Tax assessments and collections, conducted during the period from April 1990 to March 1991 revealed underassessments/non-levy and loss of revenue amounting to Rs.39.15 lakhs in 36 cases, which broadly fall under the following categories:-

100	service duce them of the service of	Number of cases	Amount involved (In lakhs of rupees)
1.	Under assessments/ non-levy of Urban Land Tax	27	33.91
2.	Incorrect grant of exemption	4	0.51
3.	Other cases	5	4.73
	Total	36	39.15
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7.2 Non-levy of tax on urban lands

In a case involving under-assessment due to non-levy of tax on urban lands, an amount of Rs.43,389 was recovered on being pointed out in audit. A few other cases where the department had not fully complied with the audit findings are mentioned below.

Under the Tamil Nadu Urban Land Tax Act, 1966, as amended in 1975, lands lying within sixteen kilometres from the outer limits of the Madras City (Madras City Belt Area) are assessable to urban land tax from the fasli year 1385 (1st July 1975 onwards). The tax is leviable on urban land owned or possessed by any person receiving or entitled to receive rent or profits of the lands.

- (a) In Pocnamallee assessment division, land measuring 9.52 acres lying in different survey numbers and belonging to a brick manufacturing company was not assessed to tax from Fasli 1385(1st July 1975). On the omission being pointed out (September 1989) in audit, the department assessed (October 1990) the land to tax and raised a demand for Rs. 87,142 for 8.02 acres for the fasli years 1385 to 1395 (1st July 1975 to 30th June 1986) at the rate of Rs.7922 per fasli year. Of the remaining extent of 1.50 acres, ownership in respect of 1.43 acres is under dispute and the rest within the exempted limit.
- (b) In the same assessment division, in the fasli year 1396, (1st July 1986 to 30th

June 1987) a distillery purchased the same land from the same brick manufacturing company. The department omitted to assess the purchasing distillery to tax from the **fasli** year 1396. The omission resulted in tax amounting to Rs.39,610 not being levied for the four **fasli** years.

On the omission being pointed out (September 1989) in audit, the department assessed (October 1990) the land to tax and raised a demand for Rs 39,610 for five fasli years from 1396 to 1400 (1st July 1986 to 30th June 1991) at the rate of Rs.7922 per fasli year.

Report on recovery has not been received (February 1992). The case was reported to Government (June 1991).

7.3 Incorrect allowance of concession of tax

Under the Tamil Nadu Urban Land Tax Act, 1966, where a building is occupied by the owner for residential purposes, the tax payable on the land on which the building is constructed and the urban land appurtenant to it will be reduced by 50 per cent.

In T'Nagar (Madras) it was noticed (November 1990) during the audit that the assessing officer had erroneously allowed 50 per cent concession to a non-residential

premises of 84 grounds* and 1538 square feet in extent, owned by a co-operative society. The irregular grant of concession for 15 faslis from 1385 to 1399 (1st July 1975 to 30th June 1990) resulted in tax being levied short by Rs.49,585.

On this being pointed out (December 1990) the department withdrew the concession and raised (December 1990) an additional demand for Rs.49,585.

The Government to whom the case was reported in May 1991 confirmed the facts (December 1991)

7.4 Inordinate delay in revision of assessment

Under the Tamil Nadu Urban Land Tax Act, 1966, as amended in 1975, lands lying within sixteen kilometres from the outer limits of Madras City (Madras City Belt Area) are assessable to Urban Land Tax from the fasli year 1385 (1st July 1975 onwards). The tax is leviable on urban land at different rates according to the size of the land.

In Madhavaram assessment division, an assessment order issued (May 1982) in respect of land admeasuring 48 grounds and 1977 square feet was set aside (July 1985) by the appellate authority who ordered fresh assessment after

^{*}

One ground is equivalent to 2,400 Sq. ft.

due enquiry and issue of notice to the assessee. However, even after five years of remanding the case for fresh disposal, revised assessment orders had not been issued.

On this being pointed out (November 1990) in audit, the department issued (March 1991) fresh assessment orders levying a tax of Rs.2569 per fasli year. The total tax payable from fasli 1385 to 1400 amounted to Rs.41,104. The department intimated in November 1991, that assessee had obtained interim stay from the High Court in the matter. Report on further development is awaited (February 1992).

The case was reported to Government (April 1991).

7.5 Under-assessment of less than Rs.30,000 accepted by the department

A case (where money value was less than Rs.30,000) of under assessment/loss of revenue amounting to Rs.23,584 was pointed out by audit during 1990-91 which was accepted by the department.

B. LAND REVENUE

7.6 Results of Audit

Test check of records relating to Land Revenue assessments and collections in Taluk Offices, conducted in audit during the period from April 1990 to March 1991 disclosed under-assessments and losses of revenue amounting to Rs.118.36 lakhs in respect of 302 cases, which broadly fall under the following categories:-

S1. No.	Number of cases	Amount involved (In lakhs of rupees)	
(1)	(2)	(3)	
1. Non-levy or short levy of local cess and surcharge	17	13.00	
2. Non-levy of water cess and betterment contri- bution	23	21.28	
3. Non-recovery of penalty and interest	47	20.07	

(1)	(2)	(3)
4. Short-recovery of value or rent in respect of Government lands assigned alienated or encroached	46	45.25
5. Other items	169	18.76
Total	302	i18.36
	Charles Saynad	417 35 77 35 39

7.7 Non-recovery of penalty on arrears of land revenue collected

According to an order issued by Government on 3rd July 1974, with effect from Fasli 1384 (1st July 1974), if any land holder failed to pay land revenue in the fasli year in which it fell due and also in the fasli year that followed, then in the third fasli year, he should be charged a penalty at the rate of five per cent per year of default for the period subsequent to the two year period of grace mentioned above.

In Erode taluk, on arrears of land revenue relating to the **fasli** years 1381 to 1393 (1st July 1971 to 30th June 1984) collected during the **fasli** years 1395 and 1396 (1st July 1985 to 30th June 1986 and 1st July

1986 to 30th June 1987), penalty amounting to Rs.10.26 lakhs was leviable (after allowing a grace period of two years) but was not levied.

On the omission being pointed out (October 1987) in audit, the department accepted the mistake and stated (January 1991) that instructions had been issued to the staff to collect the penalty. The collection particulars have not been received (February 1992).

The case was reported to Government (August 1991); their reply has not been received (February 1992).

C. ENTERTAINMENTS TAX

7.8 Results of Audit

Test check of records in departmental offices conducted in audit during the period from April 1990 to March 1991 revealed underassessments of tax amounting to Rs.6.10 lakhs in 13 cases which broadly fall under the following categories:-

of cases	ments (In lakhs of rupees)
4	1.47
9	4.63
13	6.10
	4 9

7.9 Under-assessment of less than Rs.30,000 accepted by the department

In two cases (where money value is less than Rs.30,000 each) under-assessment/loss of revenue amounting to Rs.25,568 pointed out by audit on different occasions, were accepted and the same collected by the department.

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CHAPTER 8

NON TAX RECEIPTS

A. MINES AND MINERALS

8.1 Results of Audit

Test check of records in departmental offices, conducted in audit during the period from April 1990 to March 1991, revealed under assessments of royalty, dead rent, seigniorage fee etc. amounting to Rs.100.38 lakhs in 59 cases, which broadly fall under the following categories:-

	Number of cases	Amount involved (In lakhs of rupees)	
 Non-levy/short- levy of royalty, dead rent and seigniorage fees 	21	58.45	
 Non-levy of local cess, local cess surcharge etc. 	5	1.03	
3. Others	33	40.90	
Total	59 	100.38	

8.2 Short levy of seigniorage fee

In a case involving under assessment due to short levy of seigniorage fee, Local cess and Local cess surcharge, an amount of Rs.39,437 was recovered on being pointed out in audit.

8.3 Under assessment of less than Rs.30,000 accepted by the department

Nine cases (where money value of each item was less than Rs. 30,000) of under assessments/loss of revenue amounting to Rs.41,651 were accepted by the department. Out of these, an amount of Rs. 21,974 was recovered.

B. ENVIRONMENT AND FOREST DEPARTMENT

8.4 Short collection of grazing fees

Under the rules and conditions prescribed by Government for allowing grazing in reserve forest areas, permits are issued by the department to the public for grazing of domestic cattle inside reserve forests after collecting annual grazing fees at rates fixed by Government of Tamil Nadu from time to time.

In May 1989, Government enhanced the rates of annual grazing fees for cattle to Rs.3 per sheep, Rs.5 per cow and Rs.10 per buffalo from Re.1, Rs.2 and Rs.4 respectively. revised rates were to come into effect from 1st July 1989. It was noticed by Audit (February 1990, December 1990 and March 1991) that the Divisional Forest Officers of Sathyamangalam, Tiruchy and Coimbatore Forest Divisions continued to collect grazing fees at the old rates upto September 1989, July 1989 and August 1989 respectively. Non-adoption of revised enhanced rates resulted in short collection of grazing fees to the tune of Rs. 1.75 lakhs (Rs.1.05 lakhs in Sathyamangalam Division, Rs. 0.22 lakh in Tiruchy Division and Rs. 0.48 lakh in Coimbatore Division).

On this being pointed out by Audit in February 1990, December 1990 and March 1991, the Divisional Forest Officers, Sathyamangalam and Coimbatore Divisions stated (March 1991) that due to belated receipt of copies of Government orders the grazing fees at enhanced

2/14-15

rates were not collected and that the amount of short collection would be recovered from the permit holders concerned to the extent possible. The District Forest Officer, Tiruchy stated (December 1990) that the Government Order was received in August 1989 and that the revised rates were given effect to from that month. This was however not acceptable as the recovery of short collection was yet to be effected.

The case was reported to the Government (July 1991); their reply had not been received (October 1991).

C. AGRICULTURE DEPARTMENT

8.5 Loss of revenue due to belated sale of gunny bags

With a view to improving productivity in agriculture, Agriculture Department procures and distributes certified seeds to farmers under various schemes. For this purpose, gunny bags stamped with the name of the seed are purchased and used only once to avoid mixing up of seeds of different kinds. The once-used gunny bags are disposed of periodically in public auction.

During 1982 to 1987, such gunny bags were not disposed of in 17 Agricultural Extension Centres under the Assistant Director of Agriculture (Seed Centre) Ramanathapuram, leading to accumulation of 45,549 gunny bags. Owing to long storage, 28,753 of these became unserviceable. On this being pointed out by Audit in May 1989, the Department disposed of 27,535 of the 28,753 unserviceable bags in June 1989 for Rs.0.14 lakh which worked out to about Re.0.50 per bag. The remaining 1218 unserviceable bags and the 16,796 serviceable bags were not disposed of but retained by the department for use elsewhere.

It was ascertained by Audit that the average sale price of the serviceable gunny bags in other seed centres of the District during 1984-85 to 1988-89 was Rs. 5.42 per bag. Had the 27,535 gunny bags been disposed of at regular intervals, before they became

unserviceable they would have fetched a much higher sale price and the department could have realised a revenue of around Rs. 1.49 lakhs, calculated at the average sale price. Thus the Department's failure to dispose them of in time resulted in a loss of Rs.1.35 lakhs to Government.

The matter was reported to Government in July 1991 and their reply had not been received (October 1991).

D. ANIMAL HUSBANDRY AND FISHERIES DEPARTMENT

8.6 Non-realisation of dues from the Tamil Nadu Fisheries Development Corporation Limited

Government transferred (June 1977) the fishing rights of the following five revenue earning reservoirs to the Tamil Nadu Fisheries Development Corporation (TNFDC) with effect from 1.7.1977.

	Revenue earned during		
	1974-75 (In lakhs o		
Sathanur Dam	2.53	2.97	
Amaravathi Dam	2.49	1.93	
Aliyar Dam	0.25	0.15	

	Revenue ear	ned during
		1975-76 of rupees)
Thirumurthy Dam	0.31	0.23
Bhavani Sagar Dam	1.45	1.06

The terms and conditions of the transfer were as follows:-

- (i) The TNFDC should pay a royalty of Re.0.50 (revised to Re.0.60 from 1987) to the Fisheries Department for every kilogram of fish caught.
- (ii) The infrastructure like fish farm, induced carp spawning centres, field laboratories, walk-in-coolers, ice plants, boats, vehicles etc. would be on outright sale basis.

Government also ordered (August 1977) that the royalty should be paid before 15th August for the preceding year ended 30th June. Government also ordered (June 1978) that the buildings and land (fish farm) in the five reservoirs should be leased out to the Corporation for a period of 30 years and asked the Director of Fisheries to fix lease rent in consultation with Public Works Department and to work out the value of equipments etc. transferred to the Corporation on sale basis.

Six more reservoirs viz. Uppar, Manjalar, Palar-Parandalar, Pillur, Sholayar and Upper Aliyar were transferred to the Corporation on 1.4.1984, of which two reservoirs (Pillur and Sholayar) were transferred to the Department from 1.4.1989. In one reservoir (Upper Aliyar) fishing operations were stopped from July 1988 on the orders of Government to preserve wild life.

TNFDC had been paying only the royalty on fish catch so far. Even this, it was not paying fully every year. Only during 1983-84, 1984-85 and 1985-86 there were no arrears due to Government on this account. As a result, an amount of Rs.5.23 lakhs was due to Government from TNFDC at the end of 1989-90.

The lease rent in respect of assets transferred to the Corporation on lease basis and the cost of assets transferred on sale basis were fixed by the department only in June 1988. Arrears of lease rent amounting to Rs.23.14 lakhs upto March 1991 and the cost of assets transferred on sale basis amounting to Rs.2.95 lakhs relating to the five reservoirs transferred to the Corporation during 1974-75 and 1975-76 were yet to be collected (June 1991).

The lease rent for the other six reservoirs transferred subsequently was not fixed and collected. The assets transferred along with these six reservoirs were also not valued and the cost realised from the Corporation. The matter was brought to the

notice of the department in April 1989, May 1990 and June 1991. The department stated (June 1991) that it had taken up the matter with the Corporation.

The matter was reported to Government in September 1991; their reply has not been received (November 1991).

E. EDUCATION DEPARTMENT

8.7 Non-collection and non-remittance of tuition fees

According to Government orders, tuition fees were to be collected from all the students studying in Standard VI to X in English Medium by Government aided schools and remitted to Government account except those belonging to Scheduled Castes and Scheduled Tribes and in respect of backward classes, to those whose parent/guardian's income did not exceed Rs.12,000 per annum.

It was noticed (June 1991) that an aided Higher Secondary School in Coimbatore which collected a sum of Rs.0.61 lakh during 1990-91 towards tuition fees did not pay the amount to Government. On this being pointed out in Audit (June 1991), the school authorities remitted the amount to Government account in June 1991.

Another aided Higher Secondary School in Coimbatore did not collect and remit to Government account tuition fees amounting to

Rs.0.97 lakh due from 444 students of Standard VI to X not falling under the above exempted category during the academic year 1990-91 resulting in loss of revenue to Government.

The matter was reported to Government in September 1991; their reply has not been received (November 1991).

& Satramore

(S.SATHYAMOORTHY)
Accountant General (Audit) II,

The 20 AUG 1992

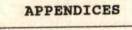
Tamil Nadu

Countersigned

New Delhi, The

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

2 6 AUG 1992



APPENDIX
Reference:
Year-wise details of outstanding Audit
30th June 1991

	1987-88 and earlier years			1988-89		
	No. of	No. of	Amount	No. of	No. of	Amount
Sl. Receipts	Inspec-	objec-	(In	Inspec-	objec-	(In
No.	tion	tions	lakhs	tion	tions	lakhs
	Reports		of	Reports		of
			rupees)			rupees
1. Sales tax	283	498	390.73	150	376	321.57
2. Agricultural						
Income Tax	53	138	111.08	22	73	44.97
3. Electricity duty	6	12		2	2	-
4. Land revenue	178	392	288.27	83	293	106.19
5. Mines and Minerals	15	23	45.02	9	25	0.65
6. Urban Land Tax	24	37	12.71	8	13	•
7. Stamp Duty and						
Registration Fees	295	512	97.83	153	283	116.90
8. Taxes on Vehicles	111	192	587.38	26	74	105.84
9. State Excise	325	490	897.03	28	59	151.70
10.Entertainments Tax	22	23	21.76	5	5	2.75
Total	1312	2317	2451.81	486	1203	850.57

I Paragraph 1.11 (Page 23) Objections under various receipts as on

	1989-90			1990-9	1		Total	
No. of Inspec- tion Reports	No. of objec- tions	Amount (In lakhs of rupees)	No. of Inspec- tion Reports		Amount (In lakhs of rupees)	tion	No. of objec- tions	Amount (In lakhs of rupees)
214	740	738.11	134	622	467.05	781	2236	1917.46
23	135 .	37.85	17	127	23.18	115	473	217.08
4	6		1	2		13	22	THE STATE OF
79	420	183.11	59	261	64.22	399	1366	641.79
12	34	4.34	12	43	12.70	48	125	62.71
20	35	5.57	16	64	9.94	68	149	28.22
201	362	31.43	216	377	43.29	865	1534	289.45
29	71	138.41	25	106	71.34	191	443	902.97
18	20	2.03	22	56	979.87	393	625	2030.63
5	5	16.38	4	5	4.94	36	38	45.83
605	1828	1157.23	506	1663	1676.53	2909	7011	6136.14

APPENDIX

(Reference:

General Sales Tax Revenue for April to September due from assess with annual increase or decrease (-) over previous year

SI.	Commodity	1983-84	1984-85	1985-86	
		Revenue/	Revenue/	Revenue/	
		percentage	percentage	percentage	
(1)	(2)	(3)	(4)	(5)	
1.	Iron and				
	Steel	863/7	1051/22	1354/29	
2.	Vegetable				
	Oil	187/(-)14	403/116	301/(-)25	
3.	Electronic				
	goods	NA	NA	NA	
4.	Paper	385/37	294/(-)24	351/19	
5.	Tractor	NA	403/78	486/21	

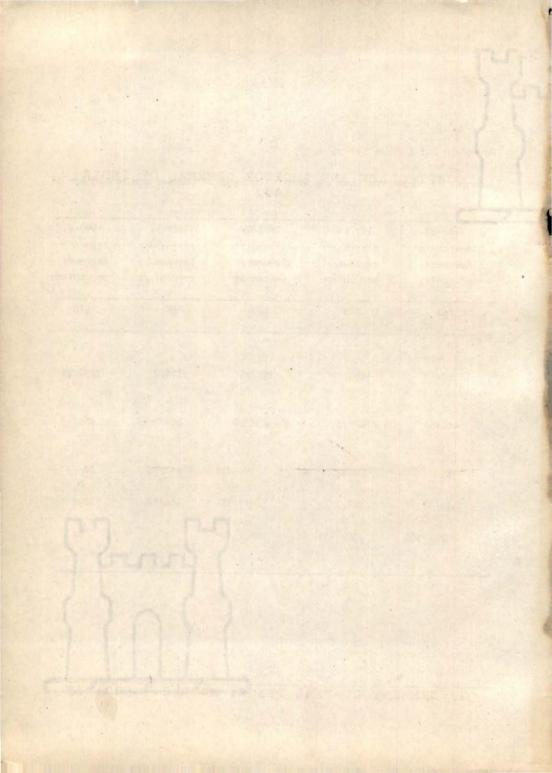
N.A : NOT AVAILABLE

SOURCE: Commercial Taxes Department - At a glance, 1986, 1988 and 1990 compiled by the Statistics and Research Cell of the Commissioner's Office.

II Paragraph 2.3.6 (Page 59)

turnover of rupees one lakh and above (in lakhs of rupees) and percentage of

1986-87	1987-88	1988-89	1989-90	1990-91
Revenue/ percentage	Revenue/ percentage	Revenue/ percentage	Revenue/ percentage	Revenue/ percentage
(6)	(7)	(8)	(9)	(10)
1589/17	1856/17	1947/5	2374/22	2731/15
464/54	479/3	608/27	409/(-)33	685/67
185	236/28	154/(-)35	262/70	286/9
446/27	449/1	309/(-)31	464/50	360(-)22
242/(-)50	200/(-)17	146/(-)27	NA	NA



COMPTROLLER AND AUDITOR GENERAL OF INDIA 1992

