REPORT

OF THE

COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED

MARCH 1997

No. 1

REVENUE RECEIPTS

GOVERNMENT OF WEST BENGAL

CONTENTS

PREFATORY REMARKS

The Report for the year ended 31 March 1997 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This Report presents the results of audit of receipts comprising sales tax, land revenue, state excise, motor vehicles tax, entry tax, amusements tax, other tax receipts, mines and minerals, forest and other non-tax receipts of the State.

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 1996-97 as well as those noticed in earlier years but could not be covered in previous years' Reports.

Overview

Overview

1. General

This Report contains 84 paragraphs including 3 reviews relating to non-levy, short levy of tax, interest, penalty etc involving Rs. 534.83 crores. Some of the major findings are mentioned below:

(i) The State Government's receipts for the year 1996-97 amounted to Rs. 8227.12 crores against Rs. 7376.04 crores for the year 1995-96. While the revenue raised by the Government amounted to Rs. 4676.35 crores (tax revenue Rs. 4258.90 crores and non-tax revenue Rs. 417.45 crores), the balance Rs. 3550.77 crores was received from the Government of India as State's share of divisible Union taxes (Rs. 2420.15 crores) and grants-in-aid (Rs. 1130.62 crores) during the year 1996-97. *[Paragraph 1.01]*

(ii) Test check of records of the Sales Tax, Motor Vehicles Tax, Land Revenue, State Excise, Entry Tax, Amusements Tax, Other Departmental Receipts etc conducted during the year 1996-97, revealed underassessment, short levy of revenue amounting to Rs. 598.39 crores in 1,088 cases. The concerned departments accepted underassessments etc of Rs. 391.05 crores in 729 cases of which Rs. 388.64 crores in 611 cases pertain to the year 1996-97 and rest to earlier years. *[Paragraph 1.07]*

(iii) As on June 1997, 1,106 inspection reports, containing 3,470 audit observations involving receipts amounting to Rs. 318.80 crores, issued up to December 1996 were outstanding in the absence of comments or final action by the concerned departments. *[Paragraph 1.08]*

2. Sales Tax

(i) A review on 'Evasion in sales tax' revealed the following important points:

(a) Evasion of tax amounting to Rs. 867.88 lakhs in 203 cases for non-registration of brickfield owners and stone quarry permit holders as a result of inadequate market survey. *[Paragraph 2.02.06]*

(b) Tax amounting to Rs. 560.16 lakhs was evaded in 521 cases due to non-exit of goods/commodities transported against transit permit and sold within the State. *[Paragraph 2.02.07(a) to (c)]*

(c) Evasion due to non-attachment of bank guarantee within the validity period led to loss of revenue amounting to Rs. 218.97 lakhs in 269 cases. *[Paragraph 2.02.08]*

(d) Non/short payment of tax in 37 deemed assessment cases led to evasion amounting to Rs. 504.84 lakhs. *[Paragraph 2.02.09]*

(e) Evasion of tax of Rs. 475.99 lakhs in respect of suppressed sales. *[Paragraph 2.02.10]*

(ii) Irregular determination of contractual transfer price resulted in short levy of tax amounting to Rs. 38.03 lakhs. *[Paragraph 2.05]*

3. Land Revenue

(i) Non-assessment of market value and capitalised value of land transferred to the Central Government department resulted in non-realisation of revenue amounting to Rs. 7.75 lakhs in 2 cases. *[Paragraph 3.02]*

(ii) Transfer of Government land without execution of lease deed resulted in non-realisation of revenue amounting to Rs. 38.36 lakhs in 2 cases. *[Paragraph 3.03]*

4. State Excise

(i) Non-levy of duty on chargeable wastage due to irregular redistillation in violation of Government order amounted to Rs. 296.06 lakhs in case of 2 big distillers. *[Paragraph 4.02]*

(ii) Additional fee amounting to Rs. 7.79 lakhs on operational increase of country liquor was realised short. *[Paragraph 4.03]*

(iii) Fees amounting to Rs. 1.60 lakhs for registration of labels on consignments of liquor were not realised. *[Paragraph 4.04]*

5. Motor Vehicles Tax

(i) Additional tax amounting to Rs. 10.08 lakhs consequent upon vacation of stay order was not realised in respect of 84 goods vehicles. *[Paragraph 5.02]*

(ii) Additional tax amounting to Rs. 9.58 lakhs on vehicles of other States plying within West Bengal was not levied. *[Paragraph 5.03]*

6. Entry Tax

(i) Tax amounting to Rs. 17.15 lakhs on entry of specified goods into Calcutta Metropolitan Area remained unassessed. *[Paragraph 6.02]*

(ii) Non-assessment of tax and non-imposition of penalty amounted to Rs. 51.29 lakhs in 10 cases. *[Paragraph 6.04]*

(iii) Penalty (besides tax) amounting to Rs. 85.21 lakhs for removal of goods without payment of tax by holders of 2 private railway sidings was not imposed. *[Paragraph 6.05]*

(iv) Undue financial benefit amounting to Rs. 96.08 lakhs was given to a dealer by non-obtainment of bank guarantee. *[Paragraph 6.10]*

7. Amusements Tax

Composition money amounting to Rs. 2.10 lakhs from the defaulting proprietors of cinema houses was not realised. *[Paragraph 7.05]*

8. Other Tax Receipts

(i) Stamp duty and registration fees amounting to Rs. 248.24 lakhs in respect of properties of West Bengal registered in Mumbai and Delhi were evaded. *[Paragraph 8.02]*

(ii) Deficit stamp duty and registration fees amounting to Rs. 300.28 lakhs were not realised due to lack of co-ordination between the registering authorities of the Presidency town and of the State to which the properties belong. *[Paragraph 8.03]*

(iii) Duty amounting to Rs. 6.29 lakhs on consumption of electrical energy in residential complex of the Railways was not realised. *[Paragraph 8.09]*

(iv) Non-initiation of certificate proceedings to recover electricity duty resulted in loss of potential revenue to the extent of Rs. 13.51 lakhs. *[Paragraph 8.10]*

9. Mines and Minerals

A review on 'Assessment and collection of mining receipts' revealed the following important points:

(a) Non-inclusion of penal clause in the event of failure to extract stipulated minimum quantity of minerals resulted in loss of revenue amounting to Rs. 1.17 crores. *[Paragraph 9.02.05(viii)]*

(b) Violation of the terms and conditions of lease by a lessee deprived Government of its due revenue to the extent of Rs. 1.06 crores. *[Paragraph 9.02.05(ix)]*

(c) Ordinary sand when used for stowing purposes is treated as major mineral. Failure to identify such minerals according to their end use resulted in escapement of assessment of revenue to the extent of Rs. 4.28 crores.
[Paragraph 9.02.05(xiii)]

(d) Coal required for excess colliery consumption and boiler consumption is also within the coverage of despatch. Non-assessment of such despatches led to escapement of assessment of cesses to the extent of Rs. 4.81 crores.
[Paragraph 9.02.06(i)(a)]

(e) Quantity or value of coal in the process of excess colliery and boiler consumption is also required to be returned by the lessee for assessment of primary education and rural employment cesses. Non-ascertainment of such quantity/value resulted in evasion of cesses to the tune of Rs. 210.85 crores.
[Paragraph 9.02.06(i)(b)]

10. Forest Receipts

(i) A review on 'Forest offences' revealed the following important points:

(a) Fiftysix offence cases involving loss of produce valued Rs. 43.89 lakhs were not recorded in offence register. *[Paragraph 10.02.07]*

(b) Illicit felling and removal of trees by undetected offenders resulted in loss of revenue amounting to Rs. 388.02 lakhs. *[Paragraph 10.02.08]*

(c) Revenue amounting to Rs. 656.09 lakhs remained blocked due to delay in disposal of seized produce. *[Paragraph 10.02.09]*

(d) Delay in auction/re-auction of seized produce resulted in loss of revenue of Rs. 4.27 lakhs. *[Paragraph 10.02.10]*

(e) Non-disposal of confiscated *sal* timber, vehicles, cycles, rickshaw van etc resulted in blockage of revenue amounting to Rs. 22 lakhs and loss of revenue amounting to Rs. 10.35 lakhs. *[Paragraph 10.02.12(vii)(a) & (b)]*

(ii) Irregular retention of a ropeway by the West Bengal Forest Development Corporation resulted in loss of revenue of Rs. 1.15 lakhs. *[Paragraph 10.06]*

11. Other Non-tax Receipts

(i) Water rate amounting to Rs. 42.52 lakhs for *kharif* season remained unassessed.
[Paragraph 11.02]

(ii) Water rate amounting to Rs. 3.61 lakhs was not assessed due to non-availability of records of plots irrigated. *[Paragraph 11.04]*

(iii) There is a difference in the rate of interest in the tax Act and the tax recovery Act. Non-initiation of certificate proceedings to recover water rate resulted in loss of revenue to the extent of Rs. 12.56 lakhs at the differential rate. *[Paragraph 10.06]*

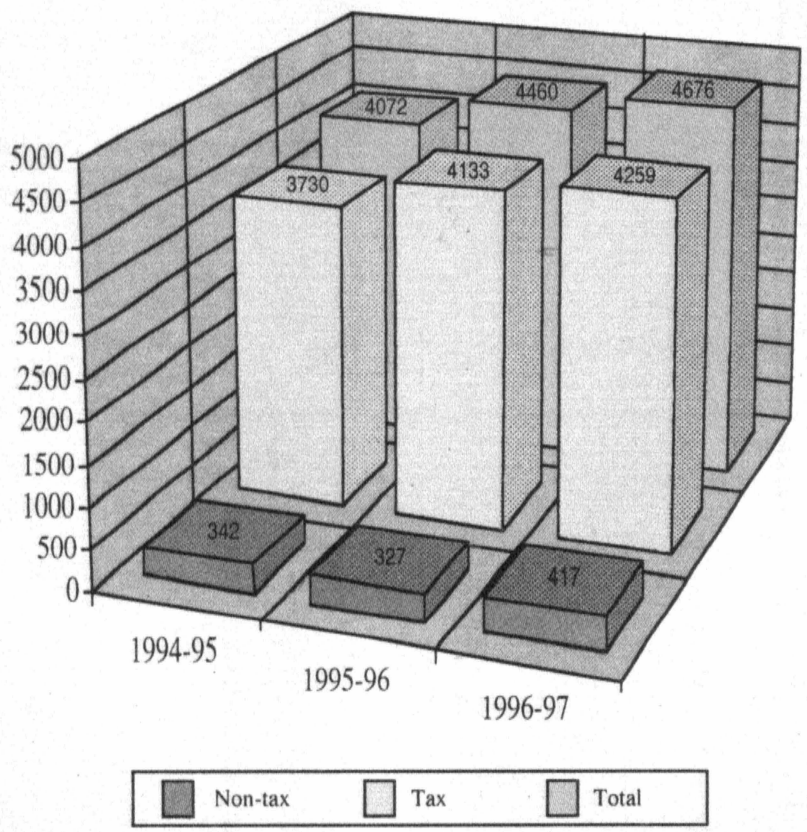
CHAPTER 1

GENERAL

CHART I

Tax and non-tax revenue raised by West Bengal Government

Amount in crores of rupees



GENERAL

1.01 Trend of Revenue Receipts

The tax and non-tax revenue raised by the Government of West Bengal during the year 1996-97, State's share of divisible Union taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding 2 years are given below and exhibited in Chart I:

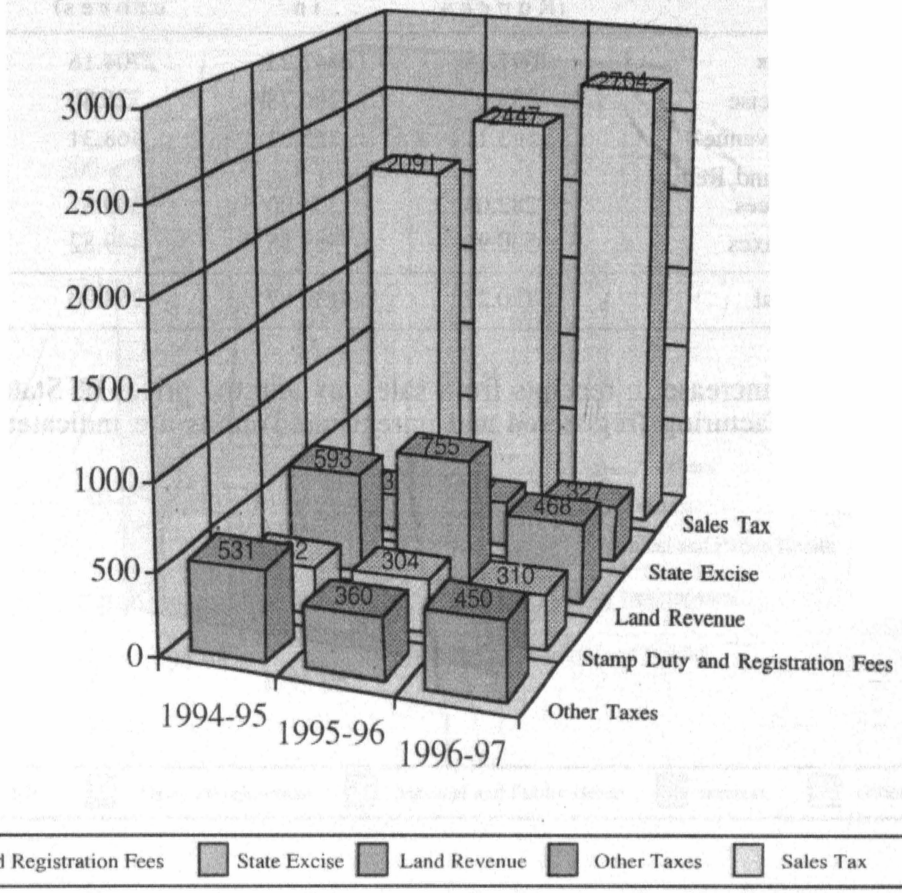
		1994-95	1995-96	1996-97
			(Rupees in crores)	
I.	Revenue raised by the State Government			
	(a) Tax Revenue	3730.27	4132.87	4258.90
	(b) Non-tax Revenue	342.01	327.47	417.45
	Total	4072.28	4460.34	4676.35
II.	Receipts from the Government of India			
	(a) State's share of divisible Union taxes	1798.16	2017.27	2420.15
	(b) Grants-in-aid	993.08	898.43	1130.62
	Total	2791.24	2915.70	3550.77
III.	Total Receipts of the State Government (I+II)	6863.52	7376.04	8227.12*
	Percentage of I to III	59	60	57

*For details please see statement number 11 'Detailed Accounts of Revenue by Minor Heads' in the Finance Accounts of the Government of West Bengal for the year 1996-97. Figures under the head '0021—Taxes on Income other than Corporation Tax—Share of net proceeds assigned to States' booked in the Finance Accounts under A—Tax Revenue have been excluded from revenue raised by the State and included in State's share of divisible Union taxes in this statement.

CHART II

Tax revenue raised by West Bengal Government

Amount in crores of rupees

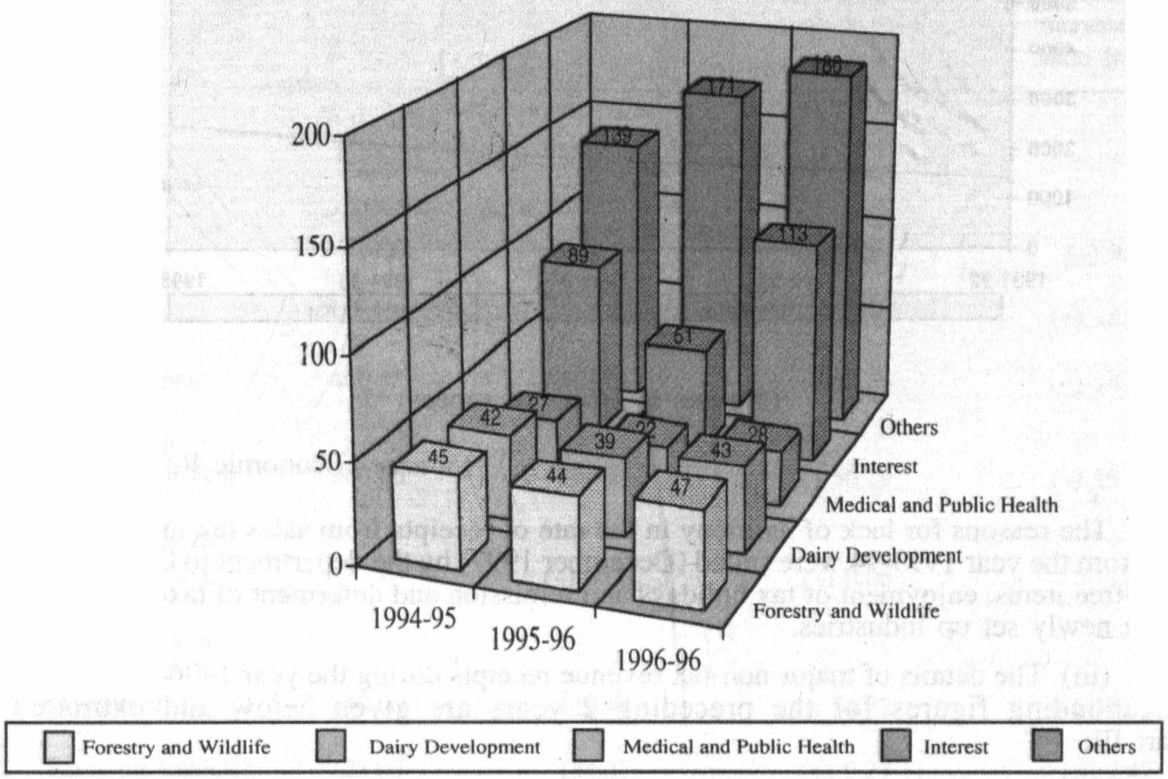


Others also include Taxes on Goods and Passengers, Other Taxes on Income and Expenditure, Taxes on Vehicles, Taxes on Agricultural Income, Taxes and Duties on Electricity, Taxes on Immovable Property other than Agricultural Land and Other Taxes and Duties on Commodities and Services.

CHART III

Non-tax revenue raised by West Bengal Government

Amount in crores of rupees

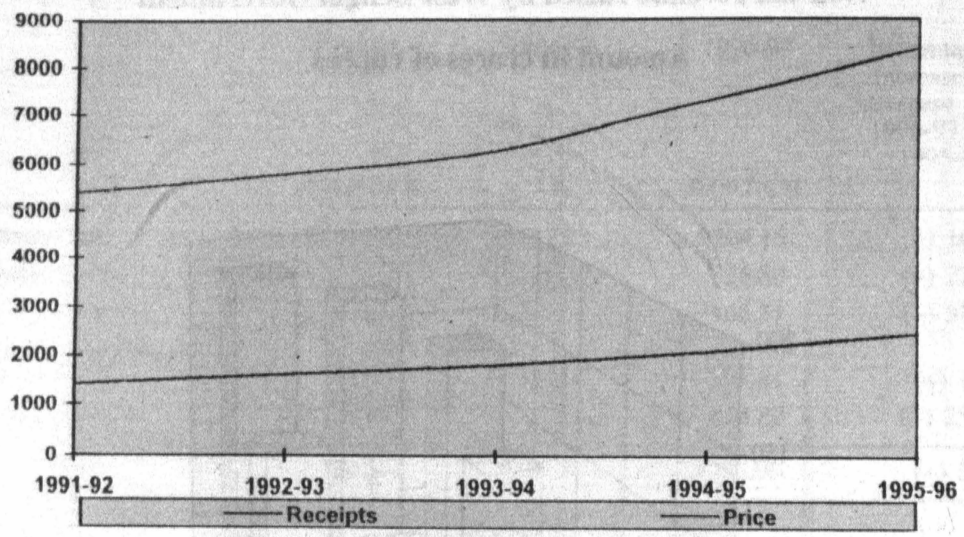


Others also include Police, Education, Sports, Arts and Culture, Industries, Non-ferrous Mining and Metallurgical Industries, Minor Irrigation, Roads and Bridges and Social Security and Welfare.

(i) The details of the tax revenue raised during the year 1996-97, along with corresponding figures for the preceding 2 years are given below and exhibited in Chart II:

	1994-95	1995-96	1996-97	Percentage of increase (+)/ decrease (–) in 1996-97 over 1995-96
	(Rupees	in	crores)	
1. Sales Tax	2091.18	2447.23	2704.16	(+) 10.50
2. State Excise	233.03	266.78	326.80	(+) 22.50
3. Land Revenue	593.11	755.31	468.31	(–) 38.00
4. Stamps and Registration Fees	282.03	304.00	309.81	(+) 1.91
5. Other Taxes	530.92	359.55	449.82	(+) 25.10
Total	3730.27	4132.87	4258.90	(+) 3.05

(ii) The increase in receipts from sales tax and the prices of State Domestic Product (SDP) for manufacturing (registered and unregistered) units are indicated below:



(Figures in crores of rupees)

(*Source* : Economic Review 1996-97)

The reasons for lack of harmony in the rate of receipts from sales tax in relation to the SDP from the year 1993-94 were stated (December 1997) by the department to be the existence of tax free items, enjoyment of tax holidays and remission and deferment of taxes in purchases by the newly set up industries.

(iii) The details of major non-tax revenue receipts during the year 1996-97, along with corresponding figures for the preceding 2 years are given below and exhibited in Chart III:

	1994-95	1995-96	1996-97	Precentage of increase (+)/ decrease (–) in 1996-97 over 1995-96
	(Rupees	in	crores)	
1. Interest	89.01	50.94	112.76	(+) 121.36
2. Medical and Public Health	27.42	22.31	28.31	(+) 26.89
3. Dairy Development	41.66	39.36	43.37	(+) 10.19
4. Forestry and Wildlife	44.61	44.27	47.01	(+) 6.19
5. Others	139.31	170.59	186.00	(+) 9.03
Total	342.01	327.47	417.45	(+) 27.48

The reasons for variation in receipts during 1996-97, compared to those of 1995-96 have been called for (April 1997); their reply has not been received (January 1998).

1.02 Variations between Budget Estimates and Actuals

The variations between the Budget estimates and actual receipts for the year 1996-97 under the principal heads of revenue are given below:

	Heads of revenue	Budget estimates	Actual receipts	Variation increase (+)/ short fall (–)	Percentage of variation increase (+)/ short fall (–)
		(Rupees in crores)			
(A)	**Tax Revenue**				
1.	Sales Tax	3000.00	2704.16	(–) 295.84	(–) 9.86
2.	State Excise	275.00	326.80	(+) 51.80	(+) 18.84
3.	Land Revenue	400.65	468.31	(+) 67.66	(+) 16.89
4.	Stamps and Registration Fees	360.00	309.81	(–) 50.19	(–) 13.94
5.	Taxes on Goods and Passengers	—	(–) 0.06	(–) 0.06	—
6.	Other Taxes on Income and Expenditure*	140.00	115.48	(–) 24.52	(–) 17.51
7.	Taxes on Vehicles	125.00	134.27	(+) 9.27	(+) 7.42
8.	Taxes and Duties on Electricity	100.00	88.29	(–) 11.71	(–) 11.71
9.	Other Taxes and Duties on Commodities and Services**	81.50	107.37	(+) 25.87	(+) 31.74
10.	Taxes on Agricultural Income	3.00	2.18	(–) 0.82	(–) 27.33
11.	Taxes on Immovable Property***	2.00	2.29	(+) 0.29	(+) 14.50
	Total	4487.15	4258.90	(–) 228.25	(–) 5.09

*This head includes receipts under Taxes on Professions, Trades, Callings and Employments.

**This head includes taxes under Entertainment, Betting, Luxury and receipts under Raw Jute Taxation Acts.

***This head includes receipts under the West Bengal Multistoreyed Building Tax Act, 1975.

	Heads of revenue	Budget estimates	Actual receipts	Variation increase (+)/ short fall (–)	Percentage of variation increase (+)/ short fall (–)
		(Rupees in crores)			
(B)	**Non-tax Revenue**				
1.	Interest	80.85	112.76	(+) 31.91	(+) 39.47
2.	Medical and Public Health	63.15	28.31	(–) 34.84	(–) 55.17
3.	Dairy Development	62.95	43.37	(–) 19.58	(–) 31.10
4.	Forestry and Wildlife	54.00	47.01	(–) 6.99	(–) 12.94
5.	Police	23.16	28.88	(+) 5.72	(+) 24.70
6.	Non-ferrous Mining and Metallurgical Industries	13.57	15.26	(+) 1.69	(+) 12.45
7.	Roads and Bridges	9.27	8.23	(–) 1.04	(–) 11.22
8.	Industries	8.10	8.81	(+) 0.71	(+) 8.77
9.	Education, Sports, Arts and Culture	8.40	3.83	(–) 4.57	(–) 54.40
10.	Minor Irrigation	6.25	5.78	(–) 0.47	(–) 7.52
11.	Social Security and Welfare	3.71	1.09	(–) 2.62	(–) 70.62
12.	Other cases	117.63	114.12	(–) 3.51	(–) 2.98
	Total	451.04	417.45	(–) 33.59	(–) 7.45

The reasons for decrease in respect of sales tax receipts than the budget estimates were stated (December 1997) by the department to be the lowering of tax rates of certain items, existence of some sick industries and changes of tax rates of paints in the middle of the year. The reasons for variations though called for (April 1997) from other departments were not furnished (January 1998).

1.03 Cost of collection

Expenditure incurred on collection of revenue under some principal heads of revenue during the year 1996-97 and the preceding 2 years is given below:

Heads of revenue	Year	Collection	Expenditure on collection	Percentage of expenditure to collection	All India average (percentage for the year 1995-96)
		(Rupees in crores)			
1. Sales Tax	1994-95	2091.18	24.98	1.19	
	1995-96	2447.23	31.79	1.30	1.29
	1996-97	2704.16	35.03	1.30	
2. State Excise	1994-95	233.03	13.12	5.63	
	1995-96	266.78	15.45	5.79	3.20
	1996-97	326.80	18.61	5.69	
3. Stamps and Registration Fees	1994-95	282.03	16.08	5.70	
	1995-96	304.00	17.91	5.89	3.46
	1996-97	309.81	19.66	6.35	

1.04 Arrears of revenue

The details of arrears of revenue at the end of March 1997, as furnished by some of the departments, are indicated below:

Department	Revenue Head	Arrears at the end of March 1997	Arrears more than 5 years old	Remarks
		(Rupees in crores)		
1. **Finance**	Sales Tax	309.00	198.60	—
	Electricity Duty	106.37	Nil	Arrears were mainly due from the Calcutta Electric Supply Corporation and the West Bengal State Electricity Board. In Burdwan district alone it was noticed (August 1996) that arrears amounting to Rs. 1.56 crores (appx) pertaining to the years 1975-76 to 1995-96 were covered under certificate proceedings.
	Agricultural Income Tax	29.10	7.07	Arrears amounting to Rs. 9.74 crores were covered under certificate recovery proceedings while Rs. 2.92 crores were stayed either by the High Courts and judicial authorities or by the Govenment departments in their judicial capacity. Of the arrears, Rs. 12.02 crores were shown as unencumbered outstanding and Rs. 4.42 crores as amount set aside and unrealisable till reassessment.
	Rural Employment Cess	36.69	—	Yearwise break up of arrears was not available. Arrears amounting to Rs. 2.59 crores and Rs. 0.61 crore respectively were stayed by High Courts and other judicial authorities.
	Primary Education Cess	6.80	—	
	Amusements Tax	19.75	—	Arrears of Rs. 1.79 crores were covered by certificate proceedings. The arrears included an amount of Rs. 7.32 crores in respect of dues for the inter-State betting.
	Multistoreyed Building Tax	0.44	0.18	Arrears were from the year 1979-80. Demands raised during the period from 1975-76 to 1978-79 became invalid and unenforceable on the basis of an amendment of the Act because of a judgement of the High Court.

Break up of figures covered under certificate recovery proceedings and recovery stayed by different judicial and Government authorities in respect of Electricity Duty was not available. Information in respect of other receipt heads was not received from the concerned departments (January 1998), though called for in April 1997.

1.05 Arrears in assessment

The details of information regarding arrears in assessment at the end of March 1997 from the departments though called for in April 1997 were not received (January 1998) except those mentioned below:

Revenue Head	Assessments due for completion during 1996-97	Assessments pending at the end of March 1997				Arrears in percentage
		Arrear cases	Current cases	Remand cases	Total	
1. Sales Tax	4,24,016	1,11,113	1,54,266	—	2,65,379	62.57
2. Agricultural Income Tax	3,774	1,171	273	762	2,206	58.45
3. Amusement&Tax	1,506	625	461	—	1,086	72.11
4. Electricity Duty	475	471	4	—	475	100.00

As is obvious from the above table, urgent remedial action to overcome these arrears is called for.

1.06 Internal audit

Internal audit is in vogue in the Directorates of (a) Entry Tax, (b) Excise and (c) Commercial Taxes. The internal audit in the Directorates of Commercial Taxes, State Excise and Entry Tax mainly concentrates on checking that the assessments are made accurately and the demands are raised and collected promptly. The findings of reviews on internal control in the Entry Tax Directorate, in the Excise Directorate and in the Commercial Taxes Directorate have been incorporated in the Audit Reports for the years 1992-93, 1993-94 and 1994-95 respectively. The Entry Tax Laws in the State stand repealed with effect from 1st day of April 1995.

1.07 Results of audit

Test check of records of Sales Tax, Land Revenue, State Excise, Motor Vehicles Tax, Taxes on Agricultural Income, Forest and other departmental offices conducted during the year 1996-97 revealed underassessment, short levy, loss of revenue etc amounting to Rs. 59838.81 lakhs in 1,088 cases. During the course of the year 1996-97, the concerned departments accepted underassessment etc of Rs. 39104.73 lakhs involved in 729 cases of which 611 cases involving Rs. 38863.94 lakhs were pointed out in audit during 1996-97 and the rest in earlier years.

This Report contains 84 paragraphs including 3 reviews involving financial effect of Rs. 53483.28 lakhs which illustrate some of the major findings of audit. The Government/ department have accepted audit observations involving Rs. 38001.56 lakhs. Recovery made in 41 cases amounted to Rs. 157.30 lakhs. Audit observations with a total revenue effect of Rs. 129.06 lakhs have not been accepted by the Government/department but their contentions, having been found at variance with facts or legal provisions have been appropriately commented upon in the relevant paragraphs/reviews. Replies/final replies have not been received in respect of the balance amount.

1.08 Outstanding inspection reports and audit observations

1.08.01 Audit observations on incorrect assessments, underassessments, non-levy or short levy of taxes, duties and other revenue receipts as well as on irregularities and deficiencies in initial records of assessments noticed during local audit, which are not settled on the spot, are communicated to heads of offices and to higher authorities through inspection reports for prompt settlement. The important financial irregularities are also brought to the notice of heads of departments and Government for taking prompt corrective action. Government have prescribed that first replies to the inspection reports should be sent by heads of offices to heads of departments within three weeks from the date of receipt of the inspection report. The heads of departments, in turn are required to transmit the replies, along with their comments, to the Accountant General within two months from the date of receipt of the replies from their subordinate offices. Half-yearly statements of audit observations, pending settlement for want of final replies from the departmental authorities are also forwarded to Government in June and December every year for expediting clearance of outstanding observations.

1.08.02 The number of inspection reports and audit observations with money value, issued up to December 1996 which were pending settlement by the departments as on 30 June 1997, along with figures for the preceding 2 years, are given below:

	As on 30th June		
	1995	1996	1997
1. Number of outstanding inspection reports	1,753	1,285	1,106
2. Number of outstanding audit observations	6,644	3,637	3,470
3. Amount of receipts involved (Rupees in crores)	343.90	196.55	318.80

1.08.03 Receipt-wise break up of the inspection reports and audit observations (with money value) issued up to December 1996, but pending settlement as on 30 June 1997, is given below:

Head of receipts	Number of inspection reports	Number of audit observations	Amount (Rupees in crores)
1. Sales Tax	338	1,572	90.05
2. Motor Vehicles Tax	120	277	5.02
3. Entry Tax	96	167	20.02
4. Departmental Receipts	118	247	88.62
5. Land Revenue	82	432	27.27
6. Amusements Tax	57	112	3.59
7. Forest Receipts	55	138	6.44
8. State Excise	20	40	15.30
9. Professions Tax	57	96	4.61
10. Mines and Minerals	65	244	16.79
11. Stamps and Registration Fees	37	44	1.61
12. Electricity Duty	35	59	30.72
13. Agricultural Income Tax	20	35	1.93
14. Non-judicial Stamps	6	7	6.83
Total	1,106	3,470	318.80

1.08.04 Out of 1,106 inspection reports pending settlement as on June 1997, even the first reply had not been received in respect of 817 reports containing 2,782 audit observations. Department-wise details of such outstanding inspection reports and audit observations are given below:

Department	Number of inspection reports	Number of audit observations	Earliest year to which inspection reports relate
1. Finance			
(a) Sales Tax	338	1,572	1988-89
(b) Entry Tax	95	164	1981-82
(c) Professions Tax	52	89	1984-85
(d) Stamps and Registration Fees	36	39	1983-84
(e) Aggricultural Income Tax	20	35	1982-83
(f) Amusements Tax	32	71	1989-90
(g) Non-judicial Stamps	6	7	1982-83
(h) Electricity Duty	3	8	1995-96
2. Forest			
Forest Receipts	44	112	1987-88
3. Commerce and Industries			
Mines and Minerals	32	152	1988-89
4. Land and Land Reforms			
Land Revenue	53	284	1984-85
5. Excise			
State Excise	4	9	1992-93
6. Transport			
Motor Vehicles Tax	14	45	1995-96
7. Others			
Departmental Receipts	88	195	1983-84
Total	817	2,782	

The above unsatisfactory position was reported to Government of West Bengal.

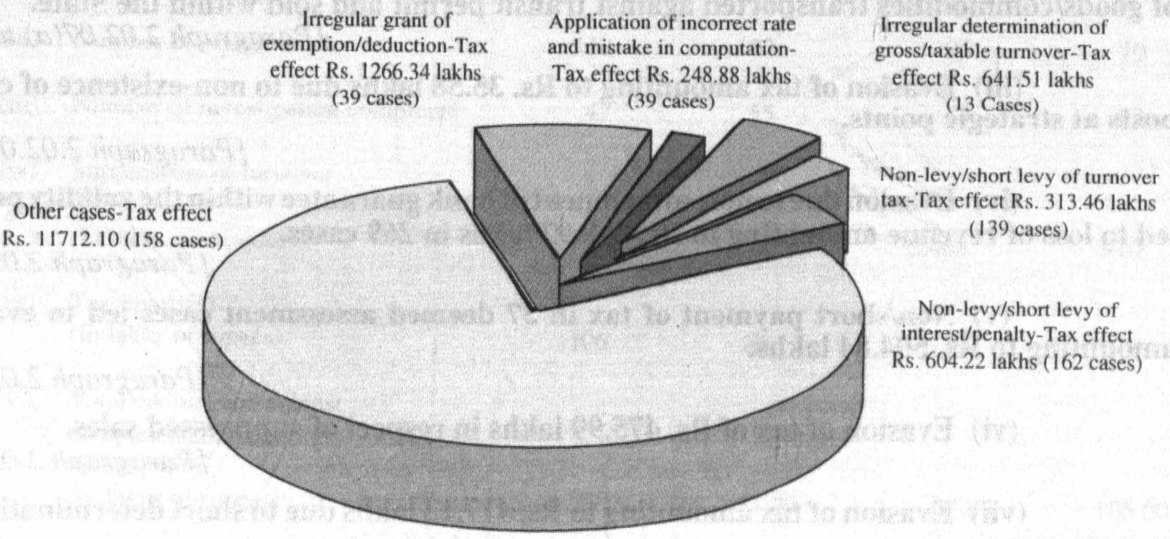
CHAPTER 2

SALES TAX

SALES TAX

2.01 Results of audit

Test check of records of the offices of the Commercial Taxes Directorate conducted in audit during the year 1996-97, revealed underassessments of tax and other irregularities involving Rs. 14786.51 lakhs in 550 cases, which broadly fall under the following categories:



Total tax effect Rs. 14786.51 lakhs (550 cases)

During the course of the year 1996-97 the concerned department accepted underassessments etc of Rs. 1277.68 lakhs in 338 cases of which 304 cases involving Rs. 1133.86 lakhs had been pointed out in audit during the year 1996-97 and the rest in the earlier years. The results of a review on 'Evasion in sales tax' and a few illustrative cases of important irregularities involving financial effect of Rs. 11966.39 lakhs are given in the following paragraphs.

2.02 Evasion in sales tax

2.02.01 *Introduction*

Evasion in sales tax means illegal avoidance of payment of due tax by a dealer by suppression of sales, mis-statement of facts in return, non-registration etc with an intent to eliminate or reduce his tax liability.

2.02.02 *Organisational set up*

The Directorate of Commercial Taxes, West Bengal, is headed by the Commissioner of Commercial Taxes who is assisted by one Special Commissioner, 8 Additional Commissioners, 69 Deputy Commissioners, 261 Assistant Commissioners and 558 Commercial Tax Officers posted over 18 districts for the purpose of administering the provisions of the Sales Tax Acts and the Rules made thereunder. For checking evasion of tax by dealers, the Directorate of Commercial Taxes has preventive, investigation and inter-State verification wings under a Deputy Commissioner of Commercial Taxes, Central Section besides the Bureau of Investigation.

2.02.03 *Scope of audit*

A review was conducted between March and June 1997 to highlight the extent of evasion in sales tax on account of non-registration of dealers, suppression of sales, deemed assessment cases and other irregularities in assessments. For this purpose records of 16 out of 67 charges, records of the Central Section and the Bureau of Investigation were test checked for the period from 1992-93 to 1995-96. Some points noticed during such audit in earlier years are also included in this review.

2.02.04 *Highlights*

(i) Evasion of tax amounting to Rs. 867.88 lakhs in 203 cases for non-registration of brickfield owners and stone quarry permit holders as a result of inadequate market survey.

[Paragraph 2.02.06]

(ii) Tax amounting to Rs. 560.16 lakhs was evaded in 521 cases due to non-exit of goods/commodities transported against transit permit and sold within the State.

[Paragraph 2.02.07(a) to (c)]

(iii) Evasion of tax amounting to Rs. 35.58 lakhs due to non-existence of check posts at strategic points.

[Paragraph 2.02.07(d)]

(iv) Evasion due to non-attachment of bank guarantee within the validity period led to loss of revenue amounting to Rs. 218.97 lakhs in 269 cases.

[Paragraph 2.02.08]

(v) Non/short payment of tax in 37 deemed assessment cases led to evasion amounting to Rs. 504.84 lakhs.

[Paragraph 2.02.09]

(vi) Evasion of tax of Rs. 475.99 lakhs in respect of suppressed sales.

[Paragraph 2.02.10]

(vii) Evasion of tax amounting to Rs. 417.13 lakhs due to short determination of gross turnover.

[Paragraph 2.02.11]

(viii) Grant of irregular exemption to newly started small scale industries and consequential evasion of tax of Rs. 172.83 lakhs.

[Paragraph 2.02.12]

(ix) Evasion by non/short payment of tax and additional tax amounting to Rs. 144.73 lakhs.

[Paragraph 2.02.13]

(x) Grant of irregular exemption/concessional rate of tax led to evasion of tax amounting to Rs. 876.82 lakhs.

[Paragraph 2.02.14 and 15]

(xi) Evasion due to non-imposition of penalty of Rs. 138.40 lakhs.

[Paragraph 2.02.16]

(xii) Allowance of undue benefit of tax amounting to Rs. 6889.47 lakhs by way of concession in deemed assessment cases.

[Paragraph 2.02.17]

(xiii) Evasion of tax of Rs. 11.18 lakhs by dealers due to non-registration.

[Paragraph 2.02.18]

2.02.05 *Trend of search and seizure to control evasion of tax*

The Bureau of Investigation has been set up under the Directorate of Commercial Taxes with power to conduct raid into the business places of suspected dealers and to send their reports of investigation to the respective charge offices for taking necessary steps against the dealers. It was, however, noticed that no system exists in any of the charge offices checked in audit to record the cases referred to by the Bureau and watch the follow-up action and hence no feed back is sent by the charge offices to the Bureau regarding results of follow-up action. Absence of such a system resulting in evasion of tax due to delay in assessment and levy of tax and short determination of tax are discussed in paragraph 2.02.10 of the review.

Trend of search and seizure by the Bureau of Investigation and the Central Section to control evasion of tax is indicated below:

A. Search and seizure by the Bureau of Investigation

	Search and seizure	1992-93	1993-94	1994-95	1995-96
(a)(i)	Number of raids conducted against dealers	135	151	140	145
(ii)	Number of seizure made	118	153	95	70
(iii)	Number of investigation completed	47	55	84	82
(iv)	Suppression of turnover detected (In lakhs of rupees)	1,750	1,121	2,468	910
(v)	Tax involved (In lakhs of rupees)	106	86	159	79
(vi)	Total tax realised against completed and pending investigation (In lakhs of rupees)	57.21	71.29	47.64	105.00
(b)(i)	Cases of seizure and detention of goods	16	22	45	22
(ii)	Amount of penalty realised (In lakhs of rupees)	5.68	7.36	22.02	3.29

B. Search and seizure by the Central Section of the Directorate

(i)	Number of raids conducted	107	124	101	85
(ii)	Number of seizure made	87	68	66	56
(iii)	Number of investigation completed	82	83	85	58
(iv)	Amount of suppressed turnover detected (In lakhs of rupees)	12,220	8,706	4,401	4,509
(v)	Amount detected per seizure (In crores of rupees)	1.14	0.70	0.44	0.50
(vi)	Amount of tax realised on suppressed turnover (In lakhs of rupees)	51.50	130.01	135.59	83.60

The above table shows that the rates of completion of investigation vary between 33 per cent and 60 per cent in respect of number of raids conducted by the Bureau during 1992-93 to 1995-96 and it was between 67 per cent and 84 per cent in respect of raids conducted by the Central Section. The department has no system of recording age-wise pendency of the cases. It also shows that values are coming down and hence a lot of small ponds are being raided while big fish are ignored.

2.02.06 *Inadequate market survey*

Sales Tax Laws require the registration of a dealer when his gross turnover exceeds the taxable quantum prescribed under the Act. The quantum of turnover is different for the importer, manufacturer and reseller. To bring all the dealers whose gross turnover exceeded the prescribed quantum under registration, the department conducts surprise raids in vigilance operation on the basis of information received.

Test check of 16 charge offices out of 67 revealed that there was no regular market survey system to bring the prospective/errant dealers within sales tax net. Out of 16 charge offices only one charge (Durgapur) submitted a market survey report, 4 offices stated that they did not maintain any records in this respect and 11 offices offered no reply.

No permanent machinery for carrying out regular surveys was found working. Instead, drives were launched as and when advance information was available.

Under the Sales Tax Laws of the State where gross turnover of a manufacturer dealer exceeds Rs. 50,000 in any year, he shall obtain registration certificate from the appropriate commercial tax authority for carrying on his business. Under the West Bengal Minor Mineral Rules, 1959 read with the Commerce and Industries Department notification issued in September 1969, 100 cft of brick earth is equal to 1,382 bricks and wastage of 282 bricks has been allowed for processing loss.

(a) During cross-verification of the records of registration of dealers of the Assistant Commissioners, Commercial Taxes, with the information available from the District Land and Land Reforms Offices, it was noticed (between April and June 1997) that 162 dealers under 7 charge offices* manufactured 4427.35 lakhs bricks between April 1992 and March 1996. The dealers engaged in the manufacture and sale of bricks had not been registered and consequently they were not paying taxes in spite of their turnover being in excess of taxable quantum based on the quantum of extraction of brick earth. The evasion was made possible by the absence of regular market surveys leaving these dealers out of the registration network. This resulted in sales escaping assessment and consequent evasion of tax amounting to Rs. 462.44 lakhs calculated on the sale value of bricks based on the price fixed by the Directorate of Brick Production, Housing Department, Government of West Bengal.

On this being pointed out (May and June 1997) in audit, the department stated (September 1997) that a survey wing under the Central Section conducted regular market survey in Calcutta in the year 1995-96 and that regular survey work would again be taken up in the districts by range offices. It was also stated that most of the brickfield owners under Krishnanagar charge were registered.

(b) Cross-verification of records of registration of dealers of the Assistant Commissioners, Commercial Taxes with the information available from the District Land and Land Reforms Offices, it was noticed (between April and June 1997) that 41 stone quarry permit holders under 4 charge offices† extracted and despatched 11.14 lakhs cum of stone between 1990-91 and 1995-96. The quarry permit holders did not get themselves registered in spite of turnover being exceeded the taxable quantum. In the absence of regular market survey system in the charge offices the dealers could not be brought under registration network. This resulted in non-registration of dealers and consequent evasion of tax amounting to Rs. 405.44 lakhs calculated on the basis of the schedule of rates of the Public Works Department.

On this being pointed out in audit, the department stated (September 1997) that proceedings in respect of cases under Asansol charge had been started. Their reply in respect of the remaining cases has not been received.

2.02.07 *Sale of goods brought against transit permits*

(a) Under the Sales Tax Laws of West Bengal, when a transporter, carrying notified goods/ commodities in excess of prescribed limit from any place outside West Bengal passes through West Bengal with the ultimate destination for any place outside the State is required to furnish declaration in triplicate at the entry point check post to the effect that such goods will not be unloaded or sold inside the State. The importer, as a proof of exit of his goods vehicle from West Bengal, has to get one copy of such declaration known as 'transit permit' duly endorsed by the exit check post of such goods from West Bengal, otherwise the transporter shall be deemed to have sold such goods inside the State and shall be liable to pay tax and penalty.

*Durgapur, Asansol, Midnapur, Tamluk, Barasat, Siliguri and Krishnanagar.

†Durgapur, Asansol, Suri and Siliguri.

In a test check of the records of 4 check posts under 4 charge offices*, it was noticed that there was no system of cross-verification of transit permits by the permit issuing check post with the endorsed copies of the exit check post to ensure the exit of the goods out of the State; the system has been introduced in Chichira check post only from 1 April 1995 and in Jaigaon and Dalkhola from 1 January 1996 at the instance of an earlier audit. Duburdih check post had not introduced any such cross-verification.

As there was no system of cross-verification of transit permits prior to 1995-96, it could not be ascertained in audit whether goods brought against transit permits during that period were despatched out of West Bengal or sold in West Bengal. In case of sale of these goods in West Bengal, the evasion of tax worked out to Rs. 456.70 lakhs in 317 cases in 4 charge offices.

(b) Cross-verification of transit permit issued by the check posts of Chichira and Dalkhola with the exit check posts of Baxirhat and Baravisha revealed that in 198 cases the exit check posts did not confirm the exit of goods brought against transit permits between 1 April 1995 and 14 January 1996. The goods were construed to have been sold in West Bengal resulting in evasion of tax of Rs. 93.78 lakhs.

(c) Cross-verification of 25 transit permits issued by Duburdih check post with the records of exit check post of Chichira was made and in 6 cases despatch of the goods out of the State could not be ascertained though a period of 1 to 3 years had elapsed when the goods entered West Bengal between 21 January 1994 and 24 March 1996. The goods were deemed to have been sold in West Bengal resulting in evasion of tax of Rs. 9.68 lakhs.

On this being pointed out in audit, the Department stated (September 1997) that a system of cross-verification of transit permits had been started in all the check posts and that adequate steps to further streamline the process were being taken up.

(d) In the check posts of Duburdih and Dalkhola vehicles containing notified goods/ commodities coming from Bihar and bound for Bihar were allowed to pass on the strength of transit permit. After entering into West Bengal such vehicles are to cover 15 km before re-entering Bihar at Mihijam and 25 km before Kishanganj. But there was no check post at the exit point, the transit permits were stamped at the same entry point check post as evidence of exit.

Test check of records revealed that 121 such transit permits were issued between June 1994 and January 1996 for transportation of goods through West Bengal without any check whatsoever at the final exit point. Absence of exit check post has reflected lack of vigilance and inadequate checking at the inter-State border. Had there been adequate vigilance at the inter-State border, evasion of tax of Rs. 35.58 lakhs involved in 121 cases could have been avoided.

On this being pointed out in audit, the department stated (September 1997) that vigilance was being geared up at all existing check posts so as to prevent, as far as possible, any further evasion resulting from misuse of transit permits.

2.02.08 *Non-realisation of the amount of tax covered by bank guarantees*

Under the Sales Tax Laws of West Bengal, notified goods/commodities can be imported from outside the State against special permits issued by the Commercial Taxes Directorate. The taxing authority may for good or for sufficient reasons, demand from such importers, to furnish bank guarantees as may indemnify the loss of revenue or to pay the amount equivalent to tax that may become payable on sale. Such bank guarantee may be released if evidence is produced within six months of import that the goods have not been sold in West Bengal.

*Midnapur, Raiganj, Jalpaiguri and Asansol.

(a) It was noticed in review that in 213 cases, the importers had imported notified goods/ commodities between August 1991 and September 1996 against special permits issued by the Directorate by furnishing bank guarantees. These bank guarantees were, however, released by the department without insisting on evidence of utilisation of these commodities. The goods were construed to have been sold in West Bengal. The department did not encash the bank guarantees within the validity period in each case for realisation of the guaranteed amount. The validity of the bank guarantees expired between August 1992 and December 1996. This resulted in non-realisation of tax of Rs. 184.80 lakhs in 213 cases of 4 charges*.

On this being pointed out in audit, 2 charge offices (Central Section and Siliguri) did not furnish any reply while Midnapur and Jalpaiguri charge offices agreed to take action.

(b) In Central Section, Calcutta, in 56 cases of bank guarantees amounting to Rs. 34.17 lakhs furnished against special permits and issued between November 1991 and August 1995, attachment orders had been issued to different banks between May 1992 and November 1995 immediately before expiry of the validity of bank guarantee in each case. But, neither the guaranteed amount could be realised by the department nor any follow-up action was taken for transfer of attached amount to Government account resulting in evasion of tax of Rs. 34.17 lakhs.

On this being pointed out is audit, the department stated (September 1997) that a sum of Rs. 3.08 lakhs had been realised from the invoked bank guarantees. Report on realisation of the balance amount has not been received.

2.02.09 *Evasion of tax by non-payment/short payment of tax in deemed assessment cases*

(a) *Non-payment/short payment of admitted tax*

Under the Bengal Finance (Sales Tax) Act, 1941, returns furnished by a registered dealer in respect of the periods commencing on and from the day immediately following the latest period for which assessment has been made and ending on or before 1 December 1992, shall be accepted as correct and complete and all assessments in respect of such period, shall be deemed to have been made on 30 June 1993.

To prevent misuse of benefits of deemed assessments, the Act prescribes that the Commissioner shall take steps to select at random such proportion of deemed assessments as he deems fit for scrutiny. Non-initiating any steps to select proportionate cases at random for scrutiny resulted in evasion of tax as detailed below.

A review of the deemed assessment records of 6 charge offices** revealed that in 11 cases the dealers had not paid admitted tax or made short payment of admitted tax for the years ending between March 1989 and March 1992. This resulted in evasion of tax of Rs. 332.89 lakhs including penalty.

On this being pointed out (between February 1995 and April 1997) in audit, Durgapur charge office agreed to investigate the case. Salkia and Lalbazar charges agreed to look into the matter. Suri charge stated to have sent proposal for revision of the case. Assessment Wing and Salt Lake charge furnished no reply.

(b) *Non-payment/short payment of turnover tax*

Under the provisions of the Bengal Finance (Sales Tax) Act, 1941 and the West Bengal Sales Tax Act, 1954, with effect from 1 June 1987, a dealer whose aggregate gross turnover during last year ended on or after first day of June 1987 exceeds Rs. 25 lakhs is liable to pay turnover tax at the prescribed rates from first day of the year immediately following such year.

A review of deemed assessment cases of 9 charge offices*** revealed that in 20 cases the dealers incurred the liability to pay turnover tax for the years ending between March 1989 and March 1992 but they did not pay such tax. This resulted in evasion of turnover tax of Rs. 77.77 lakhs including penalty.

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*Central Section, Midnapur, Jalpaiguri and Siliguri.

**Durgapur, Salt Lake, Suri, Salkia, Lalbazar and Assessment Wing.

***Durgapur, Asansol, Esplanade, Barasat, Salt Lake, Naren Dutta Sarani, Bhowanipur, Lalbazar and Siliguri.

On this being pointed out (between March 1995 and April 1997) in audit, Barasat, Esplanade and Naren Dutta Sarani charge offices agreed to look into the matter while Durgapur charge in one case stated (April 1997) that reply would follow and in another case stated that audit observation would be considered. Siliguri and Lalbazar charge offices realised a sum of Rs. 1.11 lakhs in 2 cases and Bhowanipur charge stated that one case was under appeal. Asansol and Salt Lake charges furnished no reply.

(c) *Non-payment of additional sales tax*

Under the Bengal Finance (Sales Tax) Act, 1941, additional sales tax at the rate of fifteen per cent on the total amount of sales tax payable by a dealer is leviable with effect from 16 August 1991.

A review of deemed assessment cases of 3 charge offices* revealed that in 6 cases the dealers had evaded additional sales tax amounting to Rs. 31.40 lakhs. Failure to pay additional sales tax attracted penalty which amounted to Rs. 62.78 lakhs for the years ending between March 1989 and March 1995.

On this being pointed out (between February and April 1997) in audit, Durgapur charge office agreed to consider the audit point, while other 2 charges** did not furnish any reply.

2.02.10 *Lack of follow-up action in cases of suppressed sales*

The Bureau of Investigation on information from charge offices or its own motion holds enquiry into any case of alleged or suspected evasion of tax and report in respect thereof to the Commissioner of Commercial Taxes, West Begnal. A total number of 232 cases were investigated into and reported to the Commissioner of Commercial Taxes, West Bengal between April 1992 and March 1996. The Commissioner sent his reports to the concerned charge offices to take action against the dealers/persons in the light of report of the Bureau in each case. A review of these cases revealed:

(a) *Lack of follow-up action*

In 17 charge offices reports in 26 cases were sent between February 1993 and March 1996 but no follow-up action was taken by the charge offices. The evasion of tax including penalty, based on these reports worked out to Rs. 324.93 lakhs.

On this being pointed out (between March and June 1997) in audit, 3 charge officers *** did not furnish any reply; one charge officer stated (November 1997) that case records had been sent to the appellate authority for revision and other charge officers agreed to look into the matter.

(b) *Non-imposition of penalty for suppression of sales*

The Sales Tax Act provides for levy of penalty for suppression of sale with the intent to reduce the amount of tax payable by a dealer which shall not be less than one and a half times and not more than thrice the amount of tax that would have been avoided by the dealer if the concealment had not deen detected. The Commissioner of Commercial Taxes, West Bengal, instructed in June 1991 that where the assessing officer did not initiate penal proceedings in any case, he should record the reasons for not doing so.

A review of records of 11 charge offices**** in Calcutta and Howrah revealed that in 26 cases the assessing officers had completed assessment of tax for the years ending between March 1988 and March 1996 on the basis of the reports of the Bureau of Investigation but penal measures for suppression of sales in all these 26 cases had not been taken. This resulted in non-imposition of penalty to the tune of Rs. 65.48 lakhs.

On this being pointed out (between March and June 1997) in audit, in 15 cases the department stated that imposition of penalty was not mandatory, in 5 cases they agreed to look into the matter and in remaining cases no reply was furnished. The reply is not tenable as reasons for not initiating penal proceedings were not recorded despite specific instructions of the Commissioner of Commercial Taxes.

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*Durgapur, Suri and Asansol.

**Suri and Asansol.

***Park Street, Monoharkatra and Ballygunj.

****Amratala, Shibpur, Bally, Ballygunj, Chandney Chowk, Bowbazar, Jorabagan, Ezra Street, Jorasanko, Naren Dutta Sarani and Park Street.

(c) *Non-completion of assessments*

A review of records of 3 charge offices* revealed that assessment of 3 unregistered dealers for the period between March 1987 and March 1993 had not been completed though the cases were referred to the assessing officers between August 1995 and March 1997. This resulted in evasion of tax of Rs. 53.69 lakhs including penalty.

On this being pointed out (between April and May 1997) in audit, the charge officer of Fairlie Place did not furnish any reply. The charge officers of Chinabazar and Howrah stated that assessments were under progress.

(d) *Short determination of tax*

A review of records of Rajakatra charge in Calcutta revealed that the Bureau of Investigation had reported evasion of tax of Rs. 1.26 lakhs by a dealer during the years ending between March 1993 and March 1994 but the assessing officer assessed the dealer to tax for Rs. 40,379 leading to short assessment of tax by Rs. 86,442. Penalty was also not imposed for the evasion of tax. Thus, there had been loss of revenue of Rs. 2.76 lakhs including penalty.

On this being pointed out (April 1997) in audit, the charge officer, Rajakatra furnished no reply.

(e) *Blocking up of revenue due to pendency in appeal*

A review of assessment records of 4 charge offices** revealed that in 5 cases assessments for the years ending between March 1989 and March 1995 were completed on the basis of reports obtained from the Bureau of Investigation and revised demands for Rs. 29.13 lakhs were raised. But, realisation of tax could not be made due to preference of appeal by dealers against the assessment orders. This resulted in blockage of revenue to the tune of Rs. 29.13 lakhs.

On this being pointed out (between March and April 1997) in audit, all the charge officers confirmed the matter.

2.02.11 *Evasion of tax due to incorrect determination of gross turnover*

(a) Under the Bengal Finance (Sales Tax) Act, 1941, turnover means the aggregate of the sale prices or parts of sale prices receivable/received by a dealer after deducting the amount, if any, refunded by the dealer in respect of any goods returned by the purchaser.

A review of records of 4 charge offices*** revealed that in assessing (between June 1992 and June 1995) 5 cases for the assessment years ending between March 1986 and March 1993, short exhibition of gross turnover in the returns was erroneously accepted by the assessing officers. This resulted in evasion of tax to the tune of Rs. 281.46 lakhs.

On this being pointed out in audit, in one case department did not furnish any reply while in remaining 4 cases they agreed to take action.

(b) *Non-inclusion of hire charges, meter rent etc in gross turnover*

Under the Bengal Finance (Sales Tax) Act, 1941, sale means any transfer of property in goods for cash or deferred payment or other valuable consideration and includes any delivery of goods on hire charge or any payment by instalments.

A review of records of 5 charge offices† revealed that in assessing (between May 1992 and May 1996) 7 dealers for the years ending between March 1986 and March 1992 their receipts on account of hire charges of bulldozer, dumper, road roller, trailer, movable property (plant and machineries), rental charges of containers etc were erroneously not assessed to tax by the assessing officers. This resulted in evasion of tax of Rs. 102.12 lakhs.

On this being pointed out in audit, the department stated (September 1997) that the cases under Asansol charge had been brought to the notice of the appellate authority for consideration at the time of finalisation of the case. Report on further development in respect of the remaining cases has not been received.

*Fairlie Place, Chinabazar and Howrah.

**Shibpur, Chandney Chowk, Jorabagan and Salt Lake.

***Asansol, Assessment Wing, Postabazar and Salt Lake.

†Salt Lake, Assessment Wing, Lyons Range, Asansol and Jalpaiguri.

(c) *Non-inclusion of sale of import replenishment licence in gross turnover*

Under the Bengal Finance (Sales Tax) Act, 1941, goods include all kinds of movable property other than actionable claims, stocks, shares, or securities. Import replenishment licence which is granted by the Chief Controller of Imports and Exports in recognition of export of certain products can be transferred by way of sale without endorsement by the licensing authority.

A review of records of 5 charges offices* in Calcutta revealed that in assessing (between March 1993 and June 1995) 14 dealers for the years ending between March 1989 and March 1993, their receipts on sales of import replenishment licence aggregating Rs. 336.77 lakhs were not included in the gross turnover. This resulted in evasion of tax of Rs. 33.55 lakhs.

On this being pointed out in audit, the department stated that Rs. 7.02 lakhs had been realised in 5 cases, in 5 cases proposal for revision had been sent, in one case assessment had been revised and referred to the certificate officer for realisation, in 2 cases demand notice had been issued and in the remaining case action would be taken.

2.02.12 *Evasion of tax due to grant of irregular exemption to small scale industries*

Under the Bengal Sales Tax Rules, 1941, a newly set up small scale unit shall be eligible for exemption of sales tax for a period of three to five years according to its location, since the date of its first sale of such manufactured goods. The eligibility certificate (EC) shall be valid for a period not exceeding twelve months subject to renewal for the same period. The EC shall not be granted or renewed if the dealer sells capital assets otherwise than in ordinary course of business. Investment limit of fixed capital assets in respect of newly set up small scale industry is Rs. 35 lakhs up to 31 May 1990 and Rs. 10 lakhs thereafter.

During the course of review of records of 4 charge offices, it was noticed (between November 1996 and June 1997) that 5 industrial units were allowed irregular sales tax exemption amounting to Rs. 172.83 lakhs for the period between 1988-89 and 1993-94 though their investment in fixed capital assets exceeded the aforesaid limit on the date of commencement of first production and their ECs either had expired or were not renewed by the competent authority. They also violated the provisions by selling the capital assets during the period of eligibility.

On this being pointed out (between November 1996 and June 1997) in audit, the charge officer in one case agreed (June 1997) to review the matter. In other 3 cases the charge officers did not furnish any reply. In the remaining one case renewal was pending. Report on further action taken has not been received.

2.02.13 *Non-levy of additional sales tax*

Under the Bengal Finance (Sales Tax) Act, 1941, additional sales tax is leviable with effect from 16 August 1991 at the rate of fifteen per cent on the total amount of sales tax payable by a dealer on sale of goods other than those falling under exempted categories. As per judicial pronouncement** the levy of additional sales tax applicable on certain inter-State sales of goods where the rates of tax under the Central Act are fixed is also made under the provisions of the State Acts i.e., below 4 per cent and above 10 per cent as the case may be.

(a) A review of records of Asansol charge in Burdwan district revealed that while assessing (December 1994) a dealer for the year ended March 1992, additional sales tax at the rate of 15 per cent was not levied on sales tax of Rs. 742.50 lakhs. This resulted in evasion of additional tax of Rs. 111.30 lakhs.

On this being pointed out (April 1997) in audit, the department stated (September 1997) that the case had been brought to the notice of the appellate authority for consideration at the time of finalisation of the case. Report on further development has not been received.

(b) During test check of assessment records of 12 charge offices in 2 districts it was noticed that in assessing dealers for various periods during June 1993 to June 1995 additional sales tax at the appropriate rate was not assessed and levied. This led to evasion of tax of Rs. 33.43 lakhs in 16 cases as indicated in the table below:

* Fairlie Place, Park Street, Assessment Wing, Princep Street and Ballygunj.

**Deputy Commissioner of Sales Tax (Kerala) *Vs.* M/s. Aysha Hosiery Factory (P) Ltd. [85 STC 106(SC)].

Sl. No.	Name of the charge	Assessment year ending/month of assessment/ re-assessment	Taxable amount on which additional tax leviable	Additional tax leviable but not levied/ short levied	Reply of the department
1	2	3	4	5	6
			(Rupees in lakhs)		
1.	Naren Dutta Sarani	March 1992 December 1994	71.21	6.68	The department stated (April 1997), *inter alia*, that the dealer filed a revision petition before the appellate authority with whom the case was lying pending.
2.	Assessment Wing	March 1993 September 1994	34.89	5.23	The department stated (July 1997) that a proposal for *suo motu* revision had been sent to the higher authority requesting him to consider the matter of non-levied additional sales tax at the time of passing appellate order.
3.	Ultadanga	Between March 1992 and March 1993 Between June 1994 and June 1995	30.91	4.64	The department stated (April 1997) that in one case of a dealer, the case was under appeal while in 2 cases of other dealer, notice had been issued (December 1996) for review.
4.	Salt Lake	March 1993 June 1995	16.75	2.51	The department stated (April 1997) that revision proposal had been sent to the higher authority.
5.	Lyons Range	Between March 1993 and March 1994 Between March 1994 and April 1995	15.19	2.28	The department stated (June 1997) that a proposal for *suo motu* review of the cases was being sent (June 1997) to the higher authority.
6.	Park Street	Between March 1993 and March 1994 Between June 1995 and February 1996	14.60	2.19	The department stated (April 1997) that in respect of one dealer permission had been sought (April 1997) from the higher authority to re-open the case while in respect of other dealer, a proposal for review of the case had been sent (February 1997) to the higher authority.
7.	Park Street	March 1993 May 1995	14.81	2.00	The department stated (April 1997) that the content of the audit observation had been informed to the appellate authority with whom the case was lying pending.
8.	Lyons Range	Between March 1993 and March 1994 Between December 1993 and March 1995	13.05	1.96	The department stated (April 1997) that in respect of both the dealers, proposal for review of all the cases had been sent to the higher authority.

1	2	3	4	5	6
9.	College Street	March 1993 May 1995	13.36	1.23	The department stated (April 1997) that the case had been sent (July 1996) to the higher authority for revision.
10.	Midnapore	March 1992 June 1993	7.76	1.16	The department stated (August 1996) that the case would be re-opened with the permission of the concerned authority.
11.	Taltala	March 1993 June 1995	6.55	0.98	The department stated (June 1997) that a sum of Rs. 65,002 had already been realised from one dealer and in respect of another dealer the demand had been referred (June 1997) to the certificate officer for realisation.
12.	Manoharkatra	March 1993 June 1995	3.80	0.57	The department stated (June 1997) that the case was under appeal.
13.	Lyons Range	March 1993 April 1995	14.81	0.56	The department stated (June 1997) that proposal for *suo motu* review of the case had been sent (June 1997) to the higher authority.
14.	Fairlie Place	Between March 1992 and March 1993 Between December 1994 and May 1995	3.30	0.50	The department stated (July 1997) that a proposal had been sent to the higher authority for revision of the assessment order.
15.	Chadney Chowk	March 1992 December 1994	3.43	0.51	The department stated (April 1997) that the matter had been brought to the notice of the appellate authority with whom the case was lying pending.
16.	Sealdah	March 1992 February 1994	2.85	0.43	The department stated (April 1997) that the dealer had moved before the Hon'ble Tribunal for appeal.
	Total		266.95	33.43	

Government, to whom the above cases were reported between December 1994 and January 1997, endorsed (July 1997) the views of the department in respect of cases at Sl. 2, 7, 10 and 12; their reply in respect of other cases has not been received.

2.02.14 *Excess allowance of concessional rate*

Under the Bengal Finance (Sales Tax) Act, 1941, sales of goods to registered dealers in West Bengal and sales of goods to registered dealers for use by him in the manufacture in West Bengal are taxable at the concessional rates of one and two per cent respectively, if such sales are suported by prescribed declarations obtainable from the purchasing dealers, if not supported by declaration such sales are taxable at the rate of eight per cent. Under the Central Sales Tax Act, 1956 and the rules made thereunder, inter-State sales of goods other than declared goods to registered deaier and Government departments are taxable at the concessional rate of four per cent if such sales are supported by prescribed declaration obtainable from the purchasing dealers and prescribed certificates obtainable from the Government departments, otherwise such sales are exigible to tax at the normal rate of ten per cent or the State rate whichever is higher.

During the course of review of the assessment records of the Assistant Commissioner, Commercial Taxes, it was noticed (between April and June 1997) that in assessing 7 dealers of 4 charge offices* for the years between March 1983 and March 1993, claim for concessional rate of tax of 1, 2 and 4 per cent instead of the correct rate of 4 per cent was allowed on Rs. 2,450 lakhs being sales to registered dealers and Government departments. The assessing officers assessed tax of Rs. 760.28 lakhs instead of assessable amount of Rs. 1,567.46 lakhs resulting in evasion of tax amounting to Rs. 807.18 lakhs.

On this being pointed out in audit, the department stated that 2 cases were under appeal, declaration form stated to have been produced in one case, a sum of Rs. 22 lakhs had been realised (October 1997) in one case and offered no specific comments in respect of the remaining cases. Report on further action taken has not been received.

2.02.15 *Grant of irregular exemption*

A review of records of 2 charge offices viz. Assessment Wing and Lyons Range in Calcutta revealed that in assessing (between June 1992 and April 1994) 2 dealers for the years ending between March 1988 and March 1990, their claims of irregular exemption on the following grounds were accepted by the assessing officers:

(i) sales of aviation turbine fuel after 14 May 1987;
(ii) deducting freight and delivery charges twice;
(iii) treating sales of taxable goods (HDPE woven socks, fibre tapes) as non-taxable goods etc.

This led to evasion of tax amounting to Rs. 69.64 lakhs.

On this being pointed out (between October 1993 and February 1995) in audit, the Assessment Wing stated (August 1995) in one case that the matter would be looked into and in another case the recovery of tax of Rs. 10.88 lakhs had been made (February 1996) at the instance of audit. Lyons Range charge stated (November 1993) that the matter was being looked into.

2.02.16 *Non-imposition of penalty on concealment of sales*

Under the Bengal Finance (Sales Tax) Act, 1941, if in the course of assessment proceedings, the Commissioner is satisfied that a dealer has concealed any sales or furnished any incorrect particulars thereof with an intent to reduce the amount of tax payable by him, the Commissioner may impose by way of penalty a sum which shall not be less than one and a half and not more than thrice the amount of tax that would have been avoided by him if the concealment had not been detected. The Commissioner of Commercial Taxes, West Bengal, instructed in June 1991 that where the assessing officer did not initiate penal proceedings in any case, he should record the reasons for not doing so.

(a) During review of records, it was noticed that in assessing 7 dealers (between December 1991 and February 1996) under 7 charge offices**, concealed sales aggregating Rs. 2242.55 lakhs detected by the department were charged to tax. But the assessing officer did neither initiate penal proceeding nor did record any reason for not doing so. The minimum amount of penalty of Rs. 135.22 lakhs could have been imposed upon the dealers for such concealment of sales.

*Durgapur, Asansol, Jorasanko and Assessment Wing.

**Jalpaiguri, Lalbazar, Taltala, Monoharkatra, Colootola, Ballygunj and Assessment Wing.

On this being pointed out (between February 1993 and October 1996) in audit, 5 charge offices stated that the matter was under process and 2 charge offices (Jalpaiguri and Taltala) stated that imposition of penalty was not mandatory. The reply is not tenable in audit in view of the instruction of the Commissioner of Commercial Taxes of June 1991.

(b) *Evasion due to non/short imposition of penalty in seizure cases*

Under the Bengal Finance (Sales Tax) Act, 1941, the Commissioner may, for the purpose of verifying whether notified goods are being transported in contravention of the provisions, intercept, detain and search any road vehicle, river craft etc. The Commissioner or any officer authorised by him may seize any notified goods which, he has reason to believe were being transported in contravention of the provisions. If any notified goods are seized, the authorised officer may, by an order in writing impose upon the person from whom such goods are seized or the owner of such seized goods, a penalty of a sum not exceeding twentyfive per cent of the value determined by him.

During the course of review of the seizure cases at Chichira check post under the Assistant Commissioner, Commercial Taxes, Midnapur charge it was noticed (July 1994 and May 1997) that in 3 cases the authorised officers seized the imported notified goods transported into West Bengal in contravention of the provisions without proper permit. But no penalty was imposed in 2 cases and a token penalty was imposed in one case before the vehicles were released. This resulted in non/short imposition of penalty amounting to Rs. 3.18 lakhs.

On this being pointed out (July 1994 and May 1997) in audit, the department stated (September 1997) that it was not obligatory on the part of the Commissioner to impose penalty if he considered it otherwise depending upon the facts and circumstances of the case. The reply is not tenable as because the reasons for non-imposition of penalty were not recorded in the case records.

2.02.17 *Benefit by way of concession in deemed assessment cases*

(a) Under the Bengal Finance (Sales Tax) Act, 1941, assessments of eligible registered dealers in respect of the year/years, commencing from the next day following latest year for which assessments have been completed and ending on or before the 31 December 1992, shall be deemed to have been assessed on 30 June 1993 provided that he had submitted all his returns for the eligible period along with the challans for payment of tax within 30 June 1993. Such dealers were required to collect all the declaration forms against sales made at concessional rate of tax and to pay difference of tax in case of subsequent detection of the omission and non-collection of declaration forms within the extended period up to 31 December 1995. Failure to pay difference of tax attracts penalty at a rate not less than twice and not more than thrice the amount of tax remaining unpaid. The Act or the Rules nowhere prescribe anything for submission of declaration forms/certificates by the dealer in support of his claim for concessional rate of tax or exemption.

A test check of records of deemed assessment cases in respect of 6 charge offices* revealed that 49 assessments of 22 dealers for different years ended between March 1987 and March 1992 were deemed to have been completed on 30 June 1993. The concerned dealers had availed of the benefit of concessional rate of tax on a turnover of Rs. 1967.32 lakhs under various provisions of the Acts and the Rules. But, in not a single case scrutiny was conducted by the department to ensure that the dealers were actually eligible for concessions of tax as claimed by them. The total tax benefit not supported by documents worked out to Rs. 941.29 lakhs.

(b) Under the Central Sales Tax Act, 1956 and the rules made thereunder, inter-State sales of goods other than declared goods to registered dealer and Government departments are taxable at the concessional rates of four per cent if such sales are supported by prescribed declarations obtainable from the Government departments otherwise such sales are exigible to tax at the normal rate of ten per cent or the State rate whichever is higher.

*Durgapur, Asansol, Salt Lake, Siliguri, Midnapur and Krishnanagar.

A review of records of deemed assessment cases of 4 charge offices* revealed (between April and May 1997) that in 10 cases the dealers preferred claims of concessional rate of tax at 4 per cent on Rs. 1070.78 crores without being supported by prescribed declarations. The tax benefit on this account would work out to Rs. 5948.18 lakhs.

On this being pointed out (between December 1994 and May 1997) in audit, the department stated (September 1997) that the instant cases stemmed from absence of provisions in law regarding subsmission of documentary evidence in support of concessional claim. The reply is not tenable in audit. Though there is no specific provision to submit declaration forms, the Commissioner had the power to reopen cases under section 11E(2) of the Act. Since such a huge concession was granted to the dealers likelihood of evasion of tax cannot be ruled out and hence the Commissioner could have test checked a few cases to safeguard revenue.

2.02.18 *Evasion of tax due to non-registration of dealer*

Under the Central Sales Tax Act, 1956, a dealer effecting sales of goods in course of inter-State trade and commerce or business is liable to get himself registered under the Act irrespective of the quantum of sales.

In a test check of records of the Assistant Commissioner, Commercial Taxes, Jorasanko charge, Calcutta, it was noticed that a jewellery dealer was granted registration under the State Act with effect from 12 August 1992. The dealer was assessed to tax for the pre-registration period ending March 1992 where a sum of Rs. 101.63 lakhs was allowed deduction as sales at exhibitions held outside West Bengal. However, scrutiny of assessment records for the same period under the Central Sales Tax Act, 1956 revealed that his sales turnover was determined at 'Nil'. Thus, the dealer's sales at exhibitions in different places outside West Bengal escaped taxation under the Central Sales Tax Act, 1956, though he was liable to be registered under the Act and to pay tax on such inter-State sales. This resulted in inter-State sales of Rs. 101.63 lakhs escaping assessment with consequent non-levy of tax amounting to Rs. 11.18 lakhs calculated at the rate of 11 per cent being sales of jewellery studded with stones.

On this being pointed out (January 1996) in audit, the department stated (May 1997) that the case related to merely a transfer of stock from one State to other by the dealer which was not occasioned by an agreement to sell. The reply is not tenable as there is no provision in the Act for exemption of exhibition sales made outside the State. Further, this was not a case of stock transfer but was of outright sale.

Government, to whom the cases were reported between January 1993 and July 1997, endorsed the views of the department in 4 cases; their reply in the remaining cases has not been received (January 1998).

2.03 Turnover escaping assessment

(a) Under the Central Sales Tax Act, 1956, a dealer is liable to pay tax at the prescribed rates on all his sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce.

During test check of assessment records of the Assistant Commissioner, Commercial Taxes, Assessment Wing, Calcutta, it was ascertained on cross-verification of records of a purchasing dealer that sales amounting to Rs. 2,160 lakhs made to him were not included in the turnover of the dealer for the year ending March 1988 resulting in short determination of turnover with consequent short levy of tax by Rs. 83.07 lakhs.

*Salt Lake, Durgapur, Suri and Asansol.

On this being pointed out (December 1994) in audit, the department stated (February 1997) that the dealer had paid the entire amount of Rs. 83.07 lakhs and preferred an appeal which was still pending.

(b) Under the Bengal Finance (Sales Tax) Act, 1941, turnover means the aggregate of the sale price or part of sale prices receivable/received by a dealer during such period after deducting the amount, if any, refunded by the dealer in respect of any goods returned by the purchaser within such period.

(i) During test check of assessment records of the Assistant Commissioner, Commercial Taxes, Fairlie Place charge, Calcutta, it was noticed that in a deemed assessment (June 1993) case of a dealer for the year ending March 1992 his gross turnover as per his returns was Rs. 393.31 lakhs, but scrutiny of the annual financial statements revealed that his gross sales were Rs. 456.57 lakhs and not Rs. 393.31 lakhs. Besides, the dealer had also sales of assets aggregating Rs. 14.93 lakhs which were not taken into account for payment of self-assessed tax. The omissions resulted in turnovers escaping assessment by Rs. 78.19 lakhs with consequent short levy of tax by Rs. 4.88 lakhs including additional sales tax and turnover tax.

On this being pointed out (September 1996) in audit, the department stated (December 1997) that the appellate authority had directed for fresh assessment of the case. Report on further action taken has not been received (January 1998).

(ii) During test check of records of the Assistant Commissioner, Commercial Taxes, Lyons Range charge, Calcutta, it was noticed that in assessing (February 1995) a dealer for the year ending March 1993 his miscellaneous sales of Rs. 18.40 lakhs included in other income of Rs. 67.32 lakhs and sales of fixed assets of Rs. 4.61 lakhs, as revealed from his certified accounts were not included in the gross turnover. This resulted in escapement of turnover by Rs. 23.01 lakhs in aggregate from taxation with consequent short levy of tax by Rs. 2.31 lakhs including additional sales tax and turnover tax.

On this being pointed out (October 1995) in audit, the department stated that a proposal for *suo motu* review of the case had been sent to the higher authority. Report on further development has not been received (January 1998).

The cases was reported to Government between December 1995 and December 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(iii) During test check of assessment records of the Assistant Commissioner, Commercial Taxes, Ballygunj charge, it was noticed that in assessing (June 1995) a dealer for the year ending March 1993 his sales turnover of Rs. 14.20 lakhs being sales of tea waste, motor car and premium scripts against export of tea and machinery hire charge of Rs. 33,660 were not included in the gross turnover resulting in turnover of Rs. 14.54 lakhs escaping assessment with consequent short levy of tax by Rs. 1.39 lakhs including turnover tax and additional sales tax.

On this being pointed out (June 1996) in audit, the department stated (April 1997) that a proposal for *suo motu* revision of the case had been sent (March 1997) to the higher authority. Report on further development has not been received (January 1998).

The case was reported to Government in August 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(iv) During test check of assessment records of the Assistant Commissioner, Commercial Taxes, Park Street charge, Calcutta, it was noticed that in assessing (May 1995) a dealer for the year ending March 1993 his sales of cast iron mould scrap for Rs. 19.77 lakhs were not included in his gross turnover. This resulted in exclusion of turnover of Rs. 19.77 lakhs from taxation with consequent short levy of tax by Rs. 76,048.

On this being pointed out (May 1995) in audit, the department stated (April 1997) that the case records had been sent (April 1997) to the appellate authority with whom the case lying pending. Report on further development has not been received (January 1998).

Government, to whom the case was reported in July 1996, endorsed the views of the department.

(v) During test check of assessment records of the Assistant Commissioner, Commercial Taxes, Salt Lake charge, Calcutta, it was noticed that in assessing (June 1995) a dealer for the year ending March 1993, his taxable turnover was determined at Rs. 239.46 lakhs. However, tax was erroneously levied on Rs. 231.95 lakhs. This resulted in escapement of turnover by Rs. 7.51 lakhs with consequent short levy of tax by Rs. 75,265 including additional sales tax and turnover tax.

On this being pointed out (July 1996) in audit, the department stated (April 1997) that a proposal for revision had been sent to the higher authority. Report on further development has not been received (January 1998).

The case was reported to Government in August 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(c) Under the Central Sales Tax Act, 1956, a dealer is liable to pay tax at the prescribed rates on all his inter-State sales after allowing admissible deductions.

During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Lyons Range charge, Calcutta, it was noticed that in the reassessment (January 1995) case of a dealer for the year ending December 1985 his taxable turnover was arrived at Rs. 490.23 lakhs after allowing admissible deductions of Rs. 339.43 lakhs from the gross turnover of Rs. 829.66 lakhs. However, tax at different rates was computed on Rs. 461.34 lakhs instead of Rs. 490.23 lakhs. This resulted in escapement of turnover by Rs. 28.89 lakhs in the assessment with consequent short levy of tax by Rs. 2.63 lakhs.

On this being pointed out (November 1996) in audit, the department stated (December 1997) that a proposal for revision of the case had been sent to the higher authority. Report on further development has not been received (January 1998).

The case was reported to Government in December 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

2.04 Short payment of tax in deemed assessments

Under the provisions of the Bengal Finance (Sales Tax) Act, 1941 and the rules made thereunder, registered dealers are required to pay tax on the basis of self-assessment and submit returns of their sales to the concerned assessing officers in respect of the periods commencing on and from the day immediately following the latest period for which regular assessment had been made and ending on or before 31 December 1992. Assessments in such cases will be deemed to have been made on 30 June 1993 subject to fulfilment of certain conditions such as submission of complete returns along with tax paid challans. Under the deemed assessment procedure the assessment is completed on the basis of the returns filed by the eligible dealer up to the period of eligibility without calling for books of accounts or any other evidence. The provisions are also applicable in case of assessments under the Central Sales Tax Act, 1956.

During test check of assessment records of the Assistant Commissioner, Commercial Taxes, Assessment Wing, Calcutta, it was noticed that in 2 deemed assessment (June 1993) cases of a dealer, tax of Rs. 645.01 lakhs was paid against the self-assessed tax of Rs. 669.84 lakhs as admitted in the returns. For non-fulfilment of the conditions of deemed assessment the dealer was not eligible for the same. Thus, this irregular assessment resulted in short payment of tax by Rs. 24.83 lakhs.

On this being pointed out (March 1995) in audit, the department stated (May 1997) that both the cases had been re-opened on instruction from the higher authority of which demand had been satisfied in one case. Report on further development in the remaing case has not been received (January 1998).

The cases were reported to Government in January 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

2.05 Irregular determination of contractual transfer price of works contracts

Under the Bengal Finance (Sales Tax) Act, 1941, if the transfer price of property in goods in the execution of a works contract of a contractor/dealer during a year ended on or after 1 April 1984 exceeds Rs. 2 lakhs, he is liable to pay tax at the rate of four per cent on his contractual transfer price from the first day of the year immediately following such year. As per judicial decision* value of materials supplied by a contractee in the execution of works contract forms part of contractual transfer price of the contractor/dealer unless such goods are supplied free of cost.

(a) A review of records of Durgapur and Fairlie Place charges revealed that while assessing (between April 1992 and February 1994) 4 dealers in 5 occasions for the years March 1991 and March 1993 the assessing authorities determined the contractual transfer price of the dealer, without taking into account the dealers' inter-State purchases cost of electrodes, paints, excess deduction of labour charge and cost of materials supplied by principal contractor. The omission resulted in non-determination of contractual transfer price to the extent of Rs. 576.47 lakhs resulting in non-levy of tax of Rs. 22.77 lakhs.

On this being pointed out (between September and December 1994) in audit, Durgapur charge in one case stated (April 1997) that after enquiry result would be communicated, in another case it was stated (April 1997) that audit point would be considered but in one case demand notice was issued (April 1997), while Fairlie Place charge agreed to take action. Report on further action taken has not been received (January 1998).

The matter was reported to Government in July 1997; their reply has not been received (January 1998).

(b) During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Fairlie Place charge, Calcutta, it was noticed that in assessing (November 1995) a dealer for the year ending March 1994, value of materials worth Rs. 264.26 lakhs supplied by a contractee for the execution of works contract was not included in the contractual transfer price. The irregular exclusion of the value of materials from the contractual transfer price resulted in short levy of tax by Rs. 10.57 lakhs.

On this being pointed out (September 1996) in audit, the department stated (July 1997) that a revised demand notice had been issued (February 1997).

Government, to whom the case was reported in December 1996, endorsed the views of the department.

(c) During the course of audit of assessment records of the Deputy Commissioner, Commercial Taxes, Assessment Wing, Calcutta, it was noticed that in assessing (December 1995) a dealer for the year ending December 1993 no tax was levied on his contractual transfer price of Rs. 51.41 lakhs. This resulted in non-levy of tax on contractual transfer price to the tune of Rs. 2.06 lakhs.

On this being pointed out (August 1996) in audit, the department stated (June 1997) that the case was under appeal before the appellate authority. Report on further development has not been received (January 1998).

Government, to whom the case was reported in January 1997, endorsed the views of the department.

*Nepal Chandra Banerjee *Vs.* State of West Bengal and others (24 STA 247).

(d) During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Assessment Wing, Calcutta, it was noticed that in assessing (August 1993) a dealer for the year ending March 1989 his contractual transfer price aggregating Rs. 22.07 lakhs was not charged to tax. The omission resulted in non-levy of tax on contractual transfer price by Rs. 88,269.

On this being pointed out in audit (January 1995), the department stated (September 1997) that on a fresh demand the dealer had paid (June 1997) the entire amount.

(e) During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Beliaghata charge, Calcutta, it was noticed that in assessing (February 1996) a dealer for the year ending March 1994, his contractual transfer price was determined at Rs. 3.65 lakhs after allowing his claim for deduction of Rs. 20.70 lakhs as delivery charges and sales of declared goods in the execution of works contracts. But, scrutiny of records revealed that the contracts were of supplying non-declared goods made out of declared goods and as such allowance of claim for deduction as sales of declared goods from contractual transfer price was irregular. Such irregular deduction resulted in short determination of contractual transfer price by Rs. 15.07 lakhs with consequent short levy of tax of Rs. 60,273.

On this being pointed out (April 1996) in audit, the department stated that they had taken initiative to retrieve the dues. Report on further development in the matter has not been received (January 1998).

The case was reported to Government in June 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(f) During the course of audit of assessment records of the Commercial Tax Officer, Alipore charge, Calcutta, it was noticed that in assessing (June 1991 and March 1992) a dealer for the years ending April 1987 and April 1988 value of consumable and non-consumable goods aggregating Rs. 14.83 lakhs used in the contract job had not been included in determining the contractual transfer price. The mistake resulted in short determination of contractual transfer price with consequent short levy of tax by Rs. 59,328.

On this being pointed out (August 1992) in audit, the department stated (November 1997) that the case had been revised (April 1997) assessing the tax short levied earlier. Report on realisation has not been received (January 1998).

The case was reported to Government in January 1993 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(g) During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Park Street charge, Calcutta, it was noticed that in assessing (November 1994) a dealer for the period ending 20 August 1991, no tax was levied on his contractual transfer price (CTP) of Rs. 14.11 lakhs although his CTP during the previous year had exceeded Rs. 2 lakhs. This resulted in non-levy of tax of Rs. 56,444.

On this being pointed out (May 1996) in audit, the department stated (May 1997) that a proposal for revision of the case had been sent to the higher authority. Report on further development has not been received (January 1998).

The case was reported to Government between July 1996 and June 1997; their reply has not been received (January 1998).

2.06 Irregular exemption

(a) Under the Central Sales Tax Act, 1956 and the rules made thereunder, a dealer, claiming exemption from his turnover on account of transfer of goods outside the State, is liable to furnish declarations in prescribed form (Form F) duly filled in and signed by the principal officer or his agent of the other place of business as a proof of such transfer. A single such declaration is required to cover transfer of goods effected during the period of one calendar month. Otherwise such transfer of goods is liable to be taxed at the normal rate applicable to inter-State sales of such goods.

During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Park Street charge, Calcutta, it was noticed that in assessing (June 1995) a dealer for the year ending March 1993, his claim for exemption from tax on goods valued at Rs. 522.86 lakhs being stock transfer outside the State was allowed on the strength of declarations in Form F furnished by him. However, scrutiny of statement of declaration forms revealed that 10 declaration forms included an amount of Rs. 20.96 lakhs which covered transactions for more than one calendar month. The irregular exemption of this amount resulted in short levy of tax by Rs. 2.10 lakhs including additional sales tax and turnover tax.

On this being pointed out (May 1996) in audit, the department stated (April 1997) that the case was lying with the higher authority for revision since July 1996. Report on further development has not been received (January 1998).

Government, to whom the case was reported in July 1996, endorsed the views of the department.

(b) Under the Bengal Finance (Sales Tax) Act, 1941, sales of audio cassettes included in the Schedule II annexed to the Act *ibid*, are chargeable to tax at the rate of eleven per cent whereas goods included in the Schedule I are exempt from sales tax.

During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Alipore charge, Calcutta, it was noticed that in assessing (June 1995) a dealer for the year ending March 1993, he was allowed exemption on Rs. 32.17 lakhs as sales of Schedule I goods which included sale of audio cassettes valued at Rs. 5.33 lakhs. The allowance of irregular exemption on sale value of audio cassettes resulted in short levy of tax by Rs. 68,684 including additional sales tax and turnover tax.

On this being pointed out (November 1996) in audit, the department stated (June 1997) that revised demand had been raised (March 1997). Further report on realisation has not been received (January 1998).

The case was reported to Government in January 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(c) Under the Bengal Finance (Sales Tax) Act, 1941 and the rules made thereunder, sales of cotton yarn are exempt from tax but cotton waste is taxable at normal rate from 10 July 1978.

During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Esplanade charge, Calcutta, it was noticed that in assessing (June 1992) a dealer for the year ended June 1988 his sales of soft cotton waste and hard cotton waste aggregating Rs. 6.86 lakhs were allowed exemption treating the goods as tax free cotton yarn. The mistake resulted in short levy of tax of Rs. 50,846.

Government, to whom the case was reported in June 1994, stated (July 1997) that demand had been raised.

2.07 Incorrect determination of gross turnover

Under the Bengal Finance (Sale Tax) Act, 1941, a dealer is liable to pay tax at the prescribed rate on the amount of turnover that remains after allowing the permissible deductions.

(a) During the course of audit of the assessment records of the Assistant Commissioner, Commercial Taxes, Burdwan charge in the district of Burdwan, it was noticed (August 1996) that in the absence of books of accounts the gross turnover of a dealer in an *ex parte* assessment for the year ended March 1993, was determined by the assessing officer at Rs. 75 lakhs though the gross turnover of the dealer as per returns actually worked out to Rs. 99.44 lakhs. This resulted in short determination of gross turnover by Rs. 24.44 lakhs with consequent short levy of tax amounting to Rs. 2.33 lakhs including turnover tax.

On this being pointed out (August 1996) in audit, the department stated (May 1997) that a proposal for *suo motu* revision of the case had been sent (April 1997) to the higher authority. Report on further development has not been received (January 1998).

The case was reported to Government in September 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(b) During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Burtala charge, Calcutta, it was noticed that in assessing (April and December 1994) a dealer for the periods ending March 1990 and March 1992 his gross turnover for the period ending March 1990 was determined at Rs. 1781.85 lakhs instead of Rs. 1802.03 lakhs as revealed from annexure to the final accounts of the dealer while his taxable turnover for the period ending March 1992 was determined at Rs. 1252.22 laks instead of Rs. 1257.73 lakhs as disclosed from his quarterly returns. This resulted in short determination of gross turnover by Rs. 20.18 lakhs and short determination of taxable turnover by Rs. 5.51 lakhs respectively with consequent short levy of tax by Rs. 1.96 lakhs including additional sales tax.

On this being pointed out (March 1996) in audit, the department stated (April 1997) that proposal had been sent (February 1997) to the higher authority for revision of the case. Report on further development has not been received (January 1998).

The case was reported to Government in May 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(c) During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Beliaghata charge, Calcutta, it was noticed that in assessing (June 1995) a dealer for the year ending March 1993, his sales of Rs. 4.97 lakhs were not taken into account and in another case sale price was understated by Rs. 25,659. Further the dealer deducted from his gross sales, an amount of Rs. 2.24 lakhs as credit notes to parties to arrive at the sales as per Profit and Loss Account. But a sum of Rs. 1.08 lakhs representing credit notes was claimed by the dealer and allowed by the assessing officer in course of assessment. Thus, a deduction of Rs. 1.16 lakhs in excess of claim on this account was made from the gross sales as per Profit and Loss Account while determining the gross turnover of the dealer. These resulted in short determination of gross turnover by Rs. 6.39 lakhs with consequent short levy of tax by Rs. 63,969 including additional sales tax and turnover tax.

On this being pointed out (April 1996) in audit, the department stated (April 1997) that revised demand had been raised (April 1996). Further report on realisation has not been received (January 1998).

The case was reported to Government in June 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

2.08 Loss of revenue due to delay in assessment

Under the Bengal Finance (Sale Tax) Act, 1941, a fresh assessment in pursuance of an order of the appellate authority is required to be completed within a period of four years from the date of passing such order and hence assessment made thereafter becomes time-barred. This provision is also applicable to the assessments made under the Central Sales Tax Act, 1956.

During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Lyons Range charge, Calcutta, it was noticed (October 1995) that in disposing of 2 appeal petitions of a dealer for assessment under the Central Act for the years ending December 1979 and December 1980, the appellate authority directed (29 June and 24 July 1991) the assessing officer to make fresh assessments. However, scrutiny of records revealed (October 1995) that no fresh assessments were made by which time the assessments were barred by limitation of time. This resulted in loss of revenue to the extent of Rs. 85,390 in 2 cases based on original tax demands.

On this being pointed out (October 1995) in audit, the department stated (June 1997) that arrangements were being made to realise the assessed dues in both the cases by sending requisitions to certificate officer. Report on further development has not been received (January 1998).

The case was reported to Government in December 1995 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

2.09 Non-levy of purchase tax

Under the Bengal Finance (Sales Tax) Act, 1941 and the rules made thereunder, a dealer is liable to pay purchase tax at the rate of three per cent on all his purchases at concessional rate of tax against declaration forms from other registered dealers for use directly in the manufacture of goods in West Bengal, if such manufactured goods are transferred by him to any place outside West Bengal or disposed of otherwise than by way of sale within the State.

(a) During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Burtala charge, Calcutta, it was noticed that in assessing (April 1994) a manufacturer dealer for the period ending March 1990 purchase tax was not levied for transfer of goods manufactured out of materials purchased against declarations valued at Rs. 1330.05 lakhs to his branches outside the State of West Bengal. The mistake resulted in non-levy of purchase tax by Rs. 10.78 lakhs.

On this being pointed out (March 1996) in audit, the department stated (April 1997) that a proposal had been sent (February 1997) to the higher authority for revision of the case. Report on further development has not been received (January 1998).

The case was reported to Government in May 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(b) In assessing (December 1994) a dealer of Asansol charge in the district of Burdwan, for assessment years ended March 1991 and March 1992, the assessing authority levied no purchase tax on his purchase (bamboo) from unregistered dealers amounting to Rs. 66.50 lakhs. This resulted in non-levy of purchase tax of Rs. 2.66 lakhs.

On this being pointed out (September 1996) in audit, the department stated (May 1997) that the matter had been brought to the notice of the appellate authority with whom the case was lying pending. Report on further development has not been received (January 1998).

Government, to whom the case was reported in December 1996, endorsed the views of the department.

2.10 Mistake in computation of tax

Test check of assessment records of different sales tax charge offices revealed short realisation of tax amounting to Rs. 91.01 lakhs due to mistake in computation of tax in 6 cases as mentioned below:

Sl. No.	Name of the charge	Assessment year ending/month of assessment/ re-assessment	Turnover liable to tax	Tax assessable	Tax assessed	Tax assessed short	Reply of the department
1	2	3	4	5	6	7	8
			(Rupees in lakhs)				
1.	Asansol	March 1993 June 1995	3000.00	90.00	9.00	81.00	The department stated (May 1997) that the matter was brought to the notice of the appellate authority with whom the case was lying pending.
2.	Park Street	March 1993 May 1995	261.47	32.68	28.76	3.92	The department stated (April 1997) that the contents of the audit observation were being communicated to the appellate authority with whom the case was lying pending.
3.	Bhowanipore	March 1993 June 1995	590.00	22.69	19.23	3.46	The department stated (April 1997) that the dealer had preferred an appeal before the higher authority with whom the case was lying pending.
4.	Assessment Wing	March 1991 July 1994	154.55	1.53	0.53	1.00	The department stated (July 1997) that the case was lying for revision with the higher authority.
5.	Park Street	March 1993 April 1995	—	4.11	3.11	1.00	The department stated (April 1997) that a proposal had been sent (December 1997) to the higher authority for review of the case.
6.	Park Street	March 1994 January 1996	70.00	0.70	0.07	0.63	The department stated (April 1997) that higher authority had been moved for re-opening the case.
	Total					91.01	

Government, to whom the above cases were reported between July 1996 and January 1997, endorsed the views of the department in respect of cases at Sl. 1 and 4; their reply in respect of the remaining cases has not been received (January 1998).

2.11 Short realisation due to allowance of wrong credit

(a) Under the Central Sales Tax Act, 1956 and the rules made thereunder, a dealer is required to pay tax on the basis of self-assessment before furnishing return of his sales. The amount of tax so paid is adjusted against the tax assessed at the time of regular assessment.

During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Fairlie Place charge, Calcutta, it was noticed that in assessing (June 1995) a dealer for the year ending March 1993 an amount of Rs. 19.71 lakhs was adjusted against the assessed tax instead of the correct amount of Rs. 18.71 lakhs deposited by the dealer. This resulted in short levy of tax by Rs. 1 lakh.

On this being pointed out (October 1996) in audit, the department stated (July 1997) that a proposal had been sent to the higher authority for revision of the assessment order. Report on further development has not been received (January 1998).

Government, to whom the case was reported in December 1996, endorsed the views of the department.

(b) Under the Bengal Finance (Sales Tax) Act, 1941 and the rules made thereunder, a dealer is required to pay tax on the basis of self-assessment before furnishing return of his sales. The amount of tax so paid is adjusted against the tax assessed at the time of regular assessment.

During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Burdwan charge in the district of Burdwan, it was noticed (July 1996) that while completing (June 1995) the assessment of a dealer for the year ended March 1993, adjustment towards advance payment of tax was erroneously made for an amount of Rs. 2.40 lakhs instead of Rs. 1.88 lakhs actually paid by the dealer. This resulted in short realisation of tax to the extent of Rs. 51,380.

On this being pointed out (July 1996) in audit, the department stated (May 1997) that proposal for *suo motu* revision was being sent to the higher authority. Report on further development has not been received (January 1998).

The case was reported to Government in September 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(c) Under the West Bengal Sales Tax Act, 1954 and the rules made thereunder, a dealer is required to pay tax on the basis of self-assessment before furnishing return of his sales. The amount of tax so paid is adjusted against the tax assessed at the time of regular assessment.

During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Alipore charge, Calcutta, it was noticed that in assessing (June 1995) a dealer for the year ending March 1993, he was afforded credit of Rs. 16.41 lakhs as payment of tax in 17 tax paid challans. However, scrutiny of tax paid challans revealed that he was allowed credit of Rs. 50,000 vide challans dated 30 March 1992 which had already been credited in his favour for the assessment year ending March 1992. This resulted in short realisation of tax of Rs. 50,000 due to allowance of wrong credit for the instant assessment year.

On this being pointed out (November 1996) in audit, the department stated (June 1997) that proceeding for review of the assessment had been initiated (February 1997). Report on further development has not been received (January 1998).

The case was reported to Government in January 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

2.12 Short levy due to application of incorrect rate of tax

Under the Sales Tax Laws in West Bengal, rate of tax depends, *inter alia*, on the nature of sales like, sales to registered dealer or registered manufacturing dealer and others and also on the kind of commodities.

During the course of audit of assessment records of 2 charge offices in Calcutta, it was noticed that in 2 cases, due to application of incorrect rate of tax, there was short levy of tax amounting to Rs. 61.79 lakhs as detailed below:

Sl. No.	Name of the charge	Year of assessment/ month of assessment	Taxable amount	Rate of tax applicable	Rate of tax applied	Short realisation of tax	Reply of the department
			(Rupees in lakhs)	(P e r c e n t)		(Rupees in lakhs)	
1	2	3	4	5	6	7	8
1.	Assessment Wing	October 1993 October 1994	1000.00	10	4	57.69	The department stated (July 1997) that the case was pending for *suo motu* revision before higher authority.
2.	Naren Dutta Sarani	March 1990 April 1994	40.45	15	3	4.10	The department stated (April 1997) that demand notice had been issued (April 1997).
	Total					61.79	

Government, to whom the above cases were reported between April 1996 and January 1997, endorsed the views of the department in respect of case at Sl. 1; their reply in respect of the remaining case has not been received (January 1998).

2.13 Underassessment due to irregular deduction

Under the Central Sales Tax Act, 1956, in determining the taxable turnover of a dealer, a deduction on account of tax collected by him is allowed from the aggregate of sale prices in accordance with the prescribed formula provided the tax collected has not otherwise been deducted from the agregate of sale prices. As per judicial decision*, the deduction is to be admissible, if the dealer could prove that the turnover included Central sales tax. However, the deduction is restricted to the amount of tax collected and included in the gross turnover of the dealer.

During the course of audit of assessment records of 8 charge offices in 2 districts, it was noticed that in 9 cases excess allowance of such deduction resulted in underassessment of tax amounting to Rs. 12.37 lakhs as detailed below:

*Rallis India Limited *Vs.* State of Andhra Pradesh (1988) 53 STC 267 (AP).

Sl. No.	Name of the charge	Assessment year ended in respect of which turnover under the CST Act was disallowed and the month in which assessment/ re-assessment completed	Tax collected on the disallowed turnover	Deduction allowed towards tax elements	Under-assessment of tax	Reply of the department
1	2	3	4	5	6	7
			(Rupees in lakhs)			
1. (a)	Park Street	June 1993 June 1995	3.14	23.49	2.03	The department stated (April 1997) that the cases were under appeal.
(b)	Ballygunj	March 1993 June 1995	3.72	18.39	1.47	The department stated (April 1997) that in respect of one dealer the appellate authority had been requested to consider the audit observation and in respect of another dealer the final reply has not been received.
(c)	Beliaghata	March 1993 June 1995	0.16	3.64	0.35	The department stated (April 1997) that revised demand had been sent (June 1996) to the dealer
2. (a)	Lalbazar	March 1993 Between April 1995 and June 1995	10.00	40.36	2.50	The department stated (April 1997) that the case was lying under appeal.
(b)	Chinabazar	March 1993 August 1994	3.64	8.61	0.50	The department stated (December 1996) that the case was lying before the appellate authority.
3.	Barrackpore	March 1992 December 1994	21.75	45.82	2.64	The department stated (May 1997) that revised demand had been raised (January 1997).
4.	Suri	March 1993 June 1995	11.10	33.80	2.27	The department stated (May 1997) that the case was lying pending with the appellate authority to whom the dealer preferred (October 1995) an appeal.
5.	Rajakatra	March 1987 and March 1988 Between June 1992 and December 1992	—	6.09	0.61	The department stated (April 1997) that proposal for revision of the cases had been sent (December 1995) to the higher authority.
	Total				12.37	

Government, to whom the above cases were reported between August 1993 and August 1996, endorsed the views of the department in respect of cases at Sl. 1, 2 and 4; their reply in respect of the remaining cases has not been received (January 1998).

2.14 Non-raising/short raising of demands of tax and interest

(a) Under the Sales Tax Laws in West Bengal, a dealer is liable to pay additional amount of tax and interest found due on final assessment, as determined in the demand notices served upon him.

During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Strand Road charge, Calcutta, it was noticed that in assessing (December 1994) a dealer for the year ending March 1992, his tax and interest dues were determined at Rs. 1.67 lakhs and Rs. 1.33 lakhs respectively. But no demand notice was served on him till the date of audit, resulting in non-realisation of tax and interest aggregating Rs. 3 lakhs.

On this being pointed out (May 1996) in audit, the department stated (December 1997) that the case had been referred to the certificate officer for realisation. Further report on realisation has not been received (January 1998).

The case was reported to Government in July 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(b) Under the Sales Tax Laws in West Bengal, a dealer is liable to pay additional amount of tax demand including penalty found due on final assessment.

During the course of audit of assessment records of the Assistant Commissioner, Commercial Taxes, Lalbazar charge, Calcutta, it was noticed that in assessing (December 1994 and June 1995) a dealer for the years ending between March 1992 and March 1993 demand notices for tax and interest dues were issued to him for Rs. 50,241 and Rs. 3.39 lakhs in palce of Rs. 1.50 lakhs and Rs. 3.89 lakhs for the years ending March 1992 and March 1993 respectively. The mistake resulted in short raising of demand of tax and interest dues aggregating Rs. 1.50 lakhs.

On this being pointed out (May 1996) in audit, the department stated (May 1997) that the matter was lying with the appellate authority to whom the dealer had preferred an appeal. Report on further development has not been received (January 1998).

The matter was reported to Government in August 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(c) Under the Bengal Finance (Sales Tax) Act, 1941 and the rules made thereunder, a dealer is liable to pay additional amount of interest found due on determination of interest as per demand notice served on him.

During the course of audit of assessment records of the Commercial Tax Officer, College Street charge, Calcutta, it was noticed that in re-assessing (March 1994) a dealer for the year ending June 1986 interest of Rs. 80,908 determined in the original assessment (December 1990) for non-payment of turnover tax of Rs. 71,724 was omitted for inclusion in the reassessment case and no demand was raised accordingly. The mistake resulted in non-realisation of interest of Rs. 80,908.

On this being pointed out (April 1994) in audit, the department stated (April 1997) that proposal for revision of the case had been sent (July 1996) to the higher authority. Report on final action taken has not been received (January 1998).

The case was reported to Government in June 1994 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

2.15 Short levy/non-levy of turnover tax

A dealer whose aggregate of the gross turnover under the Bengal Finance (Sales Tax) Act, 1941 and the West Bengal Sales Tax Act, 1954, during any year ending on or after 1 April 1979 exceeds Rs. 50 lakhs, becomes liable to pay turnover tax at the prescribed rate from the first day of the year immediately following such year on that part of his turnover which remains after allowing admissible deduction therefrom. With effect from 1 June 1987, a dealer whose aggregate gross turnover under the Acts during last year ended on or after first day of June exceeds Rs. 25 lakhs is laible to pay turnover tax at the prescribed rates from the first day of the year immediately following such year. Once a dealer becomes liable to pay turnover tax, he continues to be so liable until the expiry of three consecutive years irrespective of whether or not the aggregate of his gross turnover under both the Acts during these years exceeds Rs. 50 lakhs or Rs. 25 lakhs as the case may be.

During the course of audit of assessment records of 20 charge offices in 7 districts, it was noticed in audit that the gross turnover in 25 cases for the years ending between October 1984 and March 1994 had exceeded the prescribed limit in each case. The dealers, therefore, became liable to pay turnover tax on their turnover in the subsequent years. However, turnover tax amounting to Rs. 79.18 lakhs in the above cases was not levied/levied short as detailed below:

Sl. No.	Name of the charge	Assessment year ended in which turnover had exceeded Rs. 50 lakhs/Rs. 25 lakhs	Subsequent assessment year(s) in respect of which turnover tax was leviable but not levied/ assessment or re-assessment completed	Turnover liable for turnover tax	Turnover tax leviable but not levied/ short levied	Reply of the department
1	2	3	4	5	6	7
				(Rupees in lakhs)		
1.	Lalbazar	March 1992	March 1993 May 1995	1000.00	13.50	The department stated (April 1997) that revised demand had been raised (June 1996).
2.	Park Street	Between March and December 1992	March 1993 Between June and July 1995	783.34	11.75	The department stated (April 1997) that in case of one dealer Rs. 2 lakhs had been realised (October 1996) while in case of the remaining dealer revised demand had been raised (October 1996).
3.	Assessment Wing	March 1987	March 1988 June 1992	7410.80	8.65	The department stated (August 1995) that notice had been issued to the dealer to ascertain the facts.
4.	Bally	March 1990	March 1991 March 1991 and March 1992	645.10	6.93	The department stated (April 1997) that the cases had been re-opened (January 1997) by the higher authority for review.
5.	Birbhum	March 1992	March 1993 June 1995	400.00	6.00	The department stated (March 1997) that demand had been raised and the case referred to the certificate officer for realisation.
6.	Bhowanipore	March 1992	March 1993 June 1995	300.00	4.50	The department stated (April 1997) that the relevant case records had been sent (August 1996) to the appellate authority with whom the case was lying pending.
7.(a)	Ultadanga	Between March 1990 and March 1994	Between March 1991 and March 1995 Between March 1994 and December 1995	246.50	2.12	The department stated (April 1997) that additional demand had been raised.

(b)	Park Street	Between March 1990 and March 1992	Between March 1993 and June 1995 Between June 1993 and June 1995	410.01	2.05	The department stated (April-May 1997) that a sum of Rs. 85,377 had been realised in respect of 2 dealers and proposals for review were being sent in respect of other 2 dealers and in the remaining case the department had agreed to look into the matter.
8.	Rajakatra	April 1987	March 1988 June 1992	226.90	3.40	The department stated (April 1997) that the case records had been sent (January 1997) to the higher authority for revision.
9.	Alipore	Between July 1985 and December 1986	Between July 1986 and December 1987 Between November 1990 and December 1991	338.55	2.87	The department stated (December 1997) that the cases had been revised (September 1997) directing the concerned charge office to issue demand notice.
10.	Lyons Range	March 1992	March 1993 June 1995	185.00	2.78	The department stated (April 1997) that revised demand had been raised in respect of both the dealers.
11.	Barasat	Between March 1990 and March 1992	Between March 1991 and March 1993 Between March 1993 and September 1994	291.89	1.93	The department agreed (March 1996) to realise tax in one case and to take action in the remaining cases.
12.(a)	Alipore	March 1992	March 1993 May 1995	100.00	1.00	The department stated (June 1997) that demand notice had been issued (March 1997).
(b)	Salt Lake	March 1992	March 1993 May 1995	46.76	0.47	The department stated (June 1997) that proposal for revision of the case had been sent (August 1996) to the higher authority.
(c)	Taltala	March 1988 and March 1989	Between March 1989 and March 1992 Between October 1992 and November 1994	86.80	0.43	The department stated (June 1997) that proposal for revision of the case had been sent (September 1996) to the higher authority.
13.	Bally	March 1993	March 1994 October 1995	156.57	1.69	The department stated (December 1997) that the entire amount had been realised.

1	2	3	4	5	6	7
				(Rupees in lakhs)		
14.	Raiganj	March 1993	March 1994 September 1995	99.95	1.50	The department stated (July 1996) that action was being taken.
15.(a)	Lyons Range	March 1991	March 1992 December 1994	99.32	0.50	The department stated (June 1997) that a proposal for revision of the assessment order had been sent to the higher authority.
(b)	Bhowanipore	March 1992	March 1993 - June 1995	92.25	0.46	The department stated (May 1997) that a proposal for re-opening the case had been sent to the higher authority.
(c)	Sealdah	Between March 1992 and March 1993	Between March 1993 and March 1994 Between May 1994 and June 1995	99.36	1.12	The department stated (June 1997) that a sum of Rs. 63,911 had been realised (March 1997) in one case and no further action had been taken in the remaining case.
16.	Bankura	June 1988	Between June 1989 and June 1994 Between December 1994 and February 1996	198.03	0.99	The department stated (June 1997) that a proposal for *suo motu* revision had been sent (November 1996) to the higher authority.
17.	Alipore	Between October 1984 and November 1985	Between November 1985 and November 1986 Between December 1990 and December 1991	160.00	0.97	The department stated (April 1997) that revised demand had been raised (February 1997).
18.	Shibpur	March 1991	Between March 1992 and March 1993 Between October 1994 and March 1995	115.00	0.93	The department stated (November 1997) that revised demand had been raised.
19.	Barrackpore	March 1989	Between March 1990 and March 1992 June 1993	246.20	0.84	The department stated that an amount of Rs. 65,898 had been recovered (April 1996).

20.	Berhampore	March 1992	March 1993 June 1995	70.00	0.70	The department stated (May 1997) that the case records alongwith audit observation had been sent (November 1996) to the higher authority for re-opening the case.
21.	Howrah	March 1992	March 1993 May 1995	42.00	0.63	The department stated (April 1997) that action had been taken (April 1997) for review of the case.
22.	College Street	December 1986	December 1987 July 1991	47.43	0.47	The department stated (April 1997) that the case records had been sent to the higher authority for revision.
	Total				79.18	

Government, to whom the above cases were reported between May 1992 and December 1996, endorsed the views of the department in respect of cases at Sl. 1, 2, 4, 5, 6, 7, 8, 15, 18, 19, 21 and 22; their reply in respect of the remaining cases has not been received (January 1998).

2.16 Non-levy/short levy of interest

(i) Under the Sales Tax Laws in West Bengal, a dealer who furnishes return in respect of any period by the prescribed date or thereafter but fails to make full payment of tax payable in respect of such period by such prescribed date, is liable to pay a simple interest at two per cent for each English calendar month of default reckoned from the first day of the month next following the prescribed date for submission of return up to the month preceding the month of full payment of tax for such period or up to the month prior to the month of assessment whichever is earlier.

During the course of audit of assessment rocords of 12 charge offices in 4 districts, it was noticed that in 13 cases interest amounting to Rs. 75.69 lakhs though leviable for non-payment of admitted tax, was not levied or levied short as detailed below:

Sl. No.	Name of the charge	Year of assessment ended in/month of assessment	Period of default for which interest was leviable	Amount on which interest was leviable	Interest leviable but not levied/ short levied	Reply of the department
1	2	3	4	5	6	7
			(Between)	(Rupees in lakhs)		
1.	Asansol	March 1993 June 1996	August 1992 and May 1995	81.00	47.79	The department stated (May 1997) that the matter had been brought to the notice of the appellate authority with whom the case was lying pending.
2.	Salkia	March 1992 December 1994	August 1991 and November 1994	6.21	4.97	The department stated (July 1997) that a proposal for *suo motu* revision had been sent to the higher authority.
3.	Ultadanga	Between March 1991 and March 1994 Between June 1994 and July 1995	August 1990 and November 1994	26.00	4.79	The department stated (April 1997) that in respect of 3 dealers the case records were lying pending with the appellate authority while in respect of one dealer revised demand had been referred to the certificate officer for realisation and in the remaining case the dealer had been asked to pay the dues.
4.	Budge Budge	March 1992 December 1994	November 1991 and April 1994	6.48	4.18	The department stated (April 1997) that the case was referred (August 1996) to the certificate officer for realisation.
5.	Rajakatra	March 1988 June 1992	August 1987 and May 1992	3.40	3.64	The department stated (April 1997) that proposal had been sent (January 1997) to the higher authority for revision.
6.	Purulia	Between March 1989 and March 1992 June 1993	May 1989 and July 1989	39.18	2.61	The department stated (July 1997) that permission for re-opening the case had been sought for.
7.	Asansol	November 1985 March 1992	January 1986 and February 1992	1.26	1.86	The department stated (May 1997) that revised demand had been referred to the certificate officer for realisation.

1	2	3	4	5	6	7
			(Between)	(Rupees in lakhs)		
8.	Park Street	Between March 1991 and March 1992 December 1994	June 1990 and November 1994	1.54	1.28	The department stated (May 1997) that a proposal for review of the assessment was being sent to the higher authority.
9.	Bally	March 1990 June 1993	May 1990 and May 1992	2.95	1.27	The department stated (May 1997) that the case was pending for hearing after re-opening.
10.	Jalpaiguri	Between March 1991 and March 1992 December 1994	August 1990 and January 1995	2.52	1.16	The department stated (May 1997) that additional demand had been raised and Rs. 30,000 realised.
11.	Sealdah	April 1988 June 1992	September 1987 and June 1988	23.25	0.86	The department stated (April 1997) that the case had been referred to the certificate officer for realisation.
12.	Amratala	March 1991 December 1994	August 1990 and November 1994	1.06	0.71	The department stated (April 1997) that the case had been referred to the higher authority for necessary action.
13.	Radhabazar	June 1987 June 1991	November 1986 and May 1991	0.81	0.57	The department stated (March 1997), *inter alia*, that proposal for *suo motu* revision of the case had been sent (January 1997) to the higher authority.
	Total				75.69	

Government, to whom the above cases were reported between June 1992 and December 1996, endorsed the views of the department in respect of cases at Sl. 1, 2, 4, 6, 7 and 13; their reply in respect of the remaining cases has not been received (January 1998).

(ii) Under the Sales Tax Laws in West Bengal, a dealer who fails to furnish a return in respect of any period by the prescribed date or thereafter before assessment in respect of such period and on such assessment full amount of tax payable for such period is found not have been paid by him by such prescribed date, is liable to pay a simple interest of two per cent for each English calendar month of default reckoned from the first day of the month next following the prescribed date for submission of return up to the month preceding the month of full payment of tax for such period or up to the month prior to the month of assessment whichever is earlier.

During the course of audit of assessment records of 17 charge offices in 5 districts, it was noticed that in 19 cases interest amounting to Rs. 121.72 lakhs though leviable for non-payment of due tax was not levied or levied short as detailed below:

Sl. No.	Name of the charge	Year of assessment ended in/month of assessment	Period of default for which interest was leviable	Amount on which interest was leviable	Interest leviable but not levied/ short levied	Reply of the department
1	2	3	4	5	6	7
			(Between)	(Rupees in lakhs)		
1.	Bhowanipore	March 1993 June 1995	August 1992 and May 1995	80.15	45.78	The department stated (June 1997) that a proposal for review of the case had been sent (June 1997) to the higher authority.
2.	Chandney Chowk	Between March 1991 and March 1993 Between December 1994 and June 1995	August 1990 and May 1995	21.60	16.52	The department stated (April 1997) that the matter had been brought to the notice of the appellate authority with whom the case was lying pending.
3.	Ultandanga	Between March 1992 and March 1993 Between December 1994 and June 1995	August 1991 and May 1995	18.36	11.26	The department initiated (December 1996) action for review of the case.
4.	Naren Dutta Sarani	Between March 1989 and March 1992 December 1994	June 1988 and November 1994	9.16	10.16	The department agreed (April 1997) to take action.
5.	Alipore	Between July 1986 and June 1987 Between November 1990 and June 1991	December 1985 and May 1991	9.36	9.62	The department stated (December 1997) that one case had been lying for revision with higher authority and the assessing authority had been directed to issue demand notice in the remaining case.
6.	Siliguri	December 1991 December 1994	February 1991 and November 1994	8.63	6.16	The department stated (May 1997) that a proposal had been sent to the higher authority for review of the case.
7.(a)	Bhowanipore	December 1988 September 1988	November 1988 and August 1992	3.87	3.44	The department stated (April 1997) that action was being taken.

Sl. No.	Name of the charge	Year of assessment ended in/month of assessment	Period of default for which interest was leviable	Amount on which interest was leviable	Interest leviable but not levied/ short levied	Reply of the department
1	2	3	4	5	6	7
			(Between)	(Rupees in lakhs)		
(b)	Bowbazar	March 1988 June 1992	August 1987 and May 1992	1.49	1.59	The department stated (May 1997) that the case had been referred (April 1997) to the certificate officer for realisation.
(c)	Strand Road	June 1988 April 1992	November 1987 and March 1992	0.58	0.56	The department stated (July 1997) that the case had been referred (July 1996) to the certificate officer for realisation.
8.	Suri	March 1993 June 1995	August 1992 and May 1995	6.00	3.54	The department stated (May 1997) that demand had been referred to the certificate officer for realisation.
9.	Barasat	March 1992 November 1994	February 1992 and October 1994	8.83	3.38	The department stated (May 1997) that demand had been sent to the certificate officer for realisation.
10.	Salkia	Between March 1991 and March 1992 October 1994	June 1990 and March 1992	3.65	2.63	The department stated (April 1997) that the case records had been sent to the higher authority for re-opening the case.
11.	Park Street	March 1992 October 1994	August 1991 and September 1994	8.52	2.04	The department stated (March 1997) that the case had been referred (August 1996) to the certificate officer for realisation.
12.	Salt Lake	Between March 1989 and March 1990 Between September 1994 and December 1994	August 1988 and November 1994	1.51	1.92	The department stated (April 1997) that in all cases revision proposals had been sent to the higher authority.
13.(a)	College Street	March 1986 December 1990	August 1985 and November 1990	0.74	0.89	The department stated (May 1997) that the case had been referred (April 1997) to the certificate officer for realisation.
(b)	Ballygunj	March 1992 September 1993	August 1991 and August 1993	1.64	0.61	The department stated (December 1997) that revised demand notice had been issued.

1	2	3	4	5	6	7
			(Between)	(Rupees in lakhs)		
14 (a)	Rajakatra	Between March 1989 and March 1993 December 1994	August 1988 and November 1994	6.36	0.72	The department stated (April 1997) that revised demand had been raised.
(b)	Amratala	Between March 1992 and March 1993 December 1994	August 1991 and November 1994	1.45	0.40	The department stated (April 1997) that a sum of Rs 15,000 had been realised and the dealer had been directed to deposit the balance amount.
15.	Alipore	December 1987 November 1991	March 1987 and October 1991	2.06	0.50	The department stated (April 1997) that revised demand had been raised (April 1997).
	Total				121.72	

Government, to whom the above cases were reported between May 1992 and August 1996, endorsed the views of the department in respect of cases at Sl. 8, 11, 12, 13 and 15; their reply in respect of the remaining cases has not been received (January 1998).

(iii) Under the Sales Tax Laws in West Bengal, a dealer who fails to make payment of any tax demanded after asessment by the date specified in the demand notice, is liable to pay a simple interest at two per cent for each English calendar month of default reckoned from the first day of the month next following the date specified in such notice up to the month preceding the month of full payment of tax or up to the month preceding the month of commencement of certificate proceedings, whichever is earlier.

During the course of audit of assessment records of 6 charge offices in 2 districts, it was noticed that in 6 cases interest amounting to Rs. 17.26 lakhs though leviable for non-payment of assessed tax within specified date, was not levied or levied short as detailed below:

Sl. No.	Name of the charge	Year of assessment ended in/month of assessment	Period of default for which interest was leviable	Amount on which interest was leviable	Interest leviable but not levied/ short levied	Reply of the department
1	2	3	4	5	6	7
			(Between)	(Rupees in lakhs)		
1.	Chandney Chowk	Between March 1982 and March 1993 Between March 1986 and June 1995	July 1986 and April 1996	22.85	5.58	The department stated (April 1997) that in the case of one dealer the matter had been brought to the notice of the appellate authority with whom the case was lying pending while in case of other dealers the matter was referred to the certificate officer for realisation.
2.	Ultadanga	Between October 1989 and March 1992 December 1994	May 1995 and December 1995	27.30	4.37	The department initiated (December 1996) action to review the case.
3.	Amratala	June 1988 June 1992	October 1992 and February 1995	15.80	2.79	The department re-assessed (April 1997) the interest and referred the case to the certificate officer for realisation.
4.	Baruipur	Between December 1981 and December 1983 Between February 1986 and December 1987	March 1986 and June 1995	0.99	1.99	The department stated (May 1997) that the matter had been referred (May 1997) to the certificate officer for realisation.
5.	Alipore	Between April 1987 and April 1988 Between May 1991 and May 1992	August 1991 and January 1994	5.51	1.95	The department stated (May 1997) that revised requisition had been sent to the certificate officer for realisation.
6.	Lyons Range	Between March 1982 and March 1983 Between March 1986 and January 1987	June 1986 and April 1993	0.37	0.58	The department stated (May 1997) that fresh requisitions were being issued to the certificate officer for realisation.
	Total				17.26	

Government, to whom the above cases were reported between November 1994 and December 1996, endorsed the views of the department in respect of cases at Sl. 4 and 5; their reply in respect of the remaining cases has not been received (January 1998).

2.17 Loss of revenue due to non-realisation of sales tax on price recovered for unauthorised extraction of minerals

Under the Bengal Finance (Sales Tax) Act, 1941 and the West Bengal Sales Tax Act, 1994, sales of goods, unless otherwise exempted, are taxable at the prescribed rates. The price so recovered for minerals unlawfully extracted and despatched is nothing but sale price and as such, is subject to sales tax.

In course of scrutiny of records in 5 District Land and Land Reforms offices* relating to assessment and demand of price for unauthorised extraction of minerals it was noticed that no sales tax as prescribed had been assessed and demanded on the price of minerals. This resulted in non-realisation of sales tax on the price of minerals which ultimately led to loss of Government revenue to the extent of Rs. 4.90 lakhs on a price of Rs. 37.15 lakhs recovered in 3,724 cases of unauthorised extraction during the period from April 1988 to March 1997.

On this being pointed out (February-June 1997), the Commissioner, Commercial Taxes while admitting (November 1997) the observation in general made no specific reply in respect of the instant cases.

The matter was reported to Government in August 1997; their reply has not been received (January 1998).

*Bribhum, Hooghly, Bankura, Midnapur and Purulia

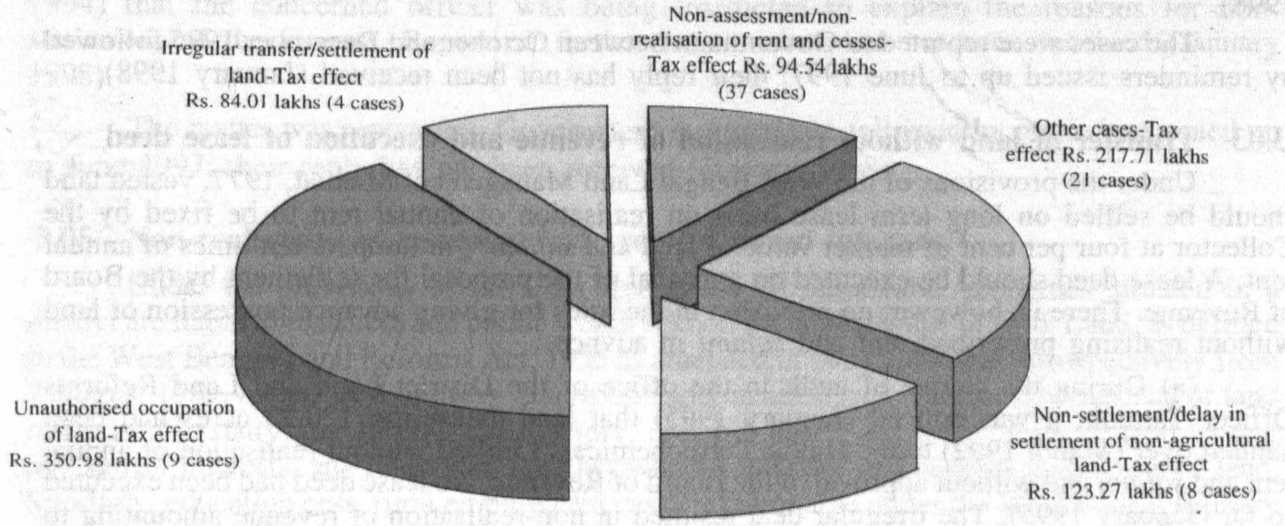
CHAPTER 3

LAND REVENUE

LAND REVENUE

3.01 Results of audit

Test check of land revenue records in the district land reforms offices conducted in audit during the year 1996-97, revealed non-realisation/short realisation of revenue amounting to Rs. 870.51 lakhs in 79 cases, which broadly fall under the following categories:



Total tax effect Rs. 870.51 lakhs (79 cases)

During the course of the year 1996-97 the concerned department accepted underassessments etc of Rs. 435.81 lakhs in 72 cases of which 56 cases involving Rs. 416.06 lakhs had been pointed out in audit during the year 1996-97 and the rest in the earlier years. A few illustrative cases of important irregularities involving Rs. 111.59 lakhs are given in the following paragraphs.

3.02 Non-assessment and non-realisation of market value and capitalised value of land transferred to the Central Government department

Under the provisions of the West Bengal Land Management Manual, 1977, in case of transfer to the Central Government of land in occupation of State Government, a compensation would have to be paid to the State Government by the Central Government. The amount of compensation payable by the Central Government would ordinarily be the market value of the land and also the capitalised value of the land revenue assessable thereon if the transfer causes actual loss of revenue to the State Government. The market value of land should be the current sale price of land obtainable from the registration records and capitalised value is to be determined at twentyfive times of annual rent.

(a) During the course of audit in the office of the District Land and Land Reforms Officer, Tamluk, it was noticed (January 1995) that land measuring 0.30 acres was transferred to the Postal department in April 1984 by the Land and Land Reforms department without assessment and realisation of market value and capitalised value of land. This led to non-realisation of Government revenue amounting to Rs. 4.46 lakhs.

On this being pointed out (January 1995) in audit, the district authority stated (June 1997) that action would be taken on receipt of reply from the concerned block offices. Report on further action taken has not been received (January 1998).

(b) During the course of audit in the office of the District Land and Land Reforms Officer, Burdwan, it was noticed (September 1995) that vested non-agricultural land measuring 2.61 acres was under unauthorised use and occupation of the Central Government department (Railways) on or before the date of vesting of land under the West Bengal Estates Aquisition Act, 1953. No steps were taken by the department to transfer the said land to the Central

Government department (Railways) after realisation of current sale price and capitalised value of the land. The non-settlement of land resulted in non-realisation of market value and capitalised value of the land amounting to Rs. 3.29 lakhs calculated on the basis of market value for the year 1980.

On this being pointed out (September 1995) in audit, the district authority stated (May 1997) that the Railway authority had been requested to communicate the basis of possession of the said plots. Report on further development has not been received (January 1998).

The cases were reported to Government between October and December 1995 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

3.03 Transfer of land without realisation of revenue and execution of lease deed

Under the provisions of the West Bengal Land Management Manual, 1977, vested land should be settled on long term lease basis on realisation of annual rent to be fixed by the Collector at four per cent of market value of land and *salami**, in lump, at ten times of annual rent. A lease deed should be executed on approval of the proposal for settlement by the Board of Revenue. There is, however, no provision in the rules for giving advance possession of land without realising prescribed rent and *salami* in advnce.

(a) During the course of audit in the office of the District Land and Land Reforms Officer Tamluk, it was noticed (January 1995) that land measuring 120.23 acres had been handed over (March 1992) to the Haldia Petrochemicals Limited without realisation of annual rent and *salami* and without approval of the Board of Revenue. No lease deed had been executed so far (January 1995). The irregular deal resulted in non-realisation of revenue amounting to Rs. 35.84 lakhs for the years 1992-93 and 1993-94.

On this being pointed out (January 1995) in audit, the district authority stated (June 1997) that the matter was being taken up with the Sub-Divisional Officer, Contai. Report on further development has not been received (January 1998).

(b) During the course of audit in the office of the District Land and Land Reforms Officer, Tamluk, it was noticed (January 1995) that possession of land measuring 6.36 acres was handed over to Thakra Regulated Market Committee in 1972 by the Land and Land Reforms department without settlement of long term lease and collection of *salami* and lease rent. No lease deed had been executed so far (January 1995). This irregular deal resulted in non-realisation of revenue amounting to Rs. 2.52 lakhs for the years from 1972 to 1994.

On this being pointed out (January 1995) in audit, the district authority stated (June 1997) that the matter was being taken up with the Sub-Divisional Officer, Contai. Report on further action taken has not been received (January 1998).

The cases were reported to Government in October 1995 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

3.04 Loss of revenue due to non-leasing of *sairati*** interests

Under the provisions of the West Bengal Land Management Manual, 1977, all *sairati* interests, like fisheries should be leased out on year to year basis, but not exceeding seven years. The Collector has to fix the economic rent and realise twentyfive per cent of the annual lease rent at the time of settlement of *sairati* interests and the balance before the beginning of the year. Rents for the successive years are to be deposited by the lessee in full before the beginning of the respective year and a lease agreement is required to be executed beforehand. Under the Cess Acts, the cesses are leviable on lease rent.

**Salami* means a present, usually presented at the first interview as marks of subjection and respect. Here it is a premium paid for the grant of a settlement of non-agricultural land on long term basis.

***Sairati* is derived from the word *sair*. The duties which the owners of *hat, bazar,* markets, ferries, fisheries etc used to levy on commodities sold or benefits derived in those places were designated as *sair* collection.

During the course of audit in the office of the District Land and Land Reforms Officer, North 24-Parganas for the year 1991-93, it was noticed (January 1994) that 23.28 acres of *Khal** fisheries (*sairati* interests) were not leased out from the year 1977-78 to 1992-93 and another 5.6 acres in the year 1978-79 resulting in loss of revenue amounting to Rs. 2.35 lakhs (lease rent Rs. 1.44 lakhs and cess on lease rent Rs. 91,348).

On this being pointed out (January 1994) in audit, the district authority stated (January 1994) that the concerned officer was being instructed to explain the reasons for non-settlement of the interest. Report on further action taken has not been received (January 1998).

The matter was reported to Government in June 1994 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

3.05 Non-realisation of cesses on lease rent of *sairati* interests

Under the provisions of the Cess Act, 1880, all immovable properties situated in a district are liable to road cess and public works cess on the annual value of land. Land, as defined in the West Bengal Land Reforms Act, 1955 as amended in 1981, effective retrospectively from 7 August 1969, means land of every description and includes tank, fisheries, homestead or land comprised in dairy, tea garden, mill, factory, orchard, *hat***, *bazar****, ferry or land having any *sairati* interests, any other land together with all interests and benefits arising out of land. Similarly, education cess, rural employment cess and surcharge under the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976 respectively are also leviable where the Cess Act, 1880, is applicable.

(a) During the course of audit in the office of the District Land and Land Reforms Officer, Purulia, it was noticed (March 1995) that in 11 cases the assessing officer did not raise demand or realise cesses on lease rent of *sairati* interest from the lessees between the years 1980-81 and 1991-92. This resulted in non-realisation of cesses on lease rent of *sairati* interests amounting to Rs. 20.75 lakhs.

On this being pointed out (March 1995) in audit, the district authority, Purulia stated (April 1997) that highest offered bid money realised from the *ijaradars*† could not be termed as annual lease rent; hence, the amount was not lease rent and question of collecting cess did not arise. The reply is not tenable in view of the fact that the Board of Revenue in their order of January 1994 instructed to levy cess prospectively.

(b) It was noticed (September 1995) from the records of 10 land reforms blocks in Burdwan district that in 38 cases of *sairati* interests no cesses were assessed and levied during the various periods between 1400 BS (1992-93) and 1401 BS (1993-94). This resulted in non-levy and non-realisation of revenue amounting to Rs. 1.94 lakhs.

On this being pointed out (September 1995) in audit, the Divisional Commissioner stated (October 1997) that action had been taken to realise the cesses on *sairati* interests. Report on realisation has not been received (January 1998).

The matter was reported to Government between August and December 1995 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

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* *Khal* means a canal.

** *Hat* is local market, a movable market, one generally held once or twice a week.

*** *Bazar* means a regular market.

† *Ijaradar* means a lessee of *sairati* interest as distinguished from other kinds of leases of land.

3.06 Non-realisation/short realisation of cesses on lands distributed to *patta**-holders

Under the provisions of the West Bengal Land Reforms Act, 1955 and the rules framed thereunder, persons owning no land or having less than one acre of land are eligible to get settlement of *khas***/vested land on *raiyati**** basis. The *patta*-holders of such land are not liable to pay any land rent on the lands as these are within the exempting limit prescribed by the Act. Such *patta*-holders are liable to pay road cess, public works cess and education cess at the rate of fortyone paise per rupee of notional rent in respect of lands settled with them as *raiyati* since the date of settlement.

In 13 land reforms blocks of Birbhum district, it was noticed (February 1994) that a total area of 19731.47 acres and 20270.70 acres of vested agricultural land was settled with landless persons on *raiyati* basis and for which *pattas* were given up to 1398 BS and 1399 BS (1991-92 and 1992-93) respectively. Under the Cess Laws in West Bengal, the *patta*-holders are liable to pay various cesses on the notional rent of Rs. 10 per acre per annum fixed on these land for 1398 BS and 1399 BS (1991-92 and 1992-93) amounting to Rs. 1.63 lakhs out of which a sum of Rs. 47,547 was realised. This resulted in non-realisation/short realisation of cesses amounting to Rs. 1.16 lakhs.

On this being pointed out (February 1994) in audit, the district authority stated (May 1997) that a sum of Rs. 10,651 had since been realised and the concerned block authorities had been requested to realise the balance amount. Further report on realisation of the balance amount has not been received (January 1998).

The matter was reported to Government in June 1994 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

3.07 Non-realisation of damage fee from unauthorised occupiers of Government land

Under the provisions of the West Bengal Estates Acquisition Act, 1953 as amended in 1975, damage fee is realisable from unauthorised occupiers of Government land at a flat rate of rupees ten per acre per annum up to 29 June 1975 thereafter at ten per cent of market value of land per annum in respect of non-agricultural land and twentyfive per cent of the gross value of the yield per annum for agricultural land.

(a) It was noticed (September 1995) from the records of the District Land and Land Reforms Officer, Burdwan that an area of 15.45 acres of vested non-agricultural land was unlawfully occupied by one person from the year 1956 to 1995 for commercial purpose. The Land and Land Reforms department did not take any action to recover damage fee from the unauthorised occupier. This resulted in non-assessment and non-realisation of damage fee amounting to Rs. 9.27 lakhs.

On this being pointed out (September 1995) in audit, the district authority agreed to examine the case in the light of audit observations. Further report on action taken has not been received (January 1998).

(b) During the course of audit in the office of the District Land and Land Reforms Officer, Tamluk, it was noticed (January 1995) that in 75 cases of unauthorised occupation of Government land for various periods from the year 1975 to 1994 no action was taken by the department to realise the damage fee from the unauthorised occupiers of Government land. This resulted in non-realisation of damage fee amounting to Rs. 30.01 lakhs.

On this being pointed out (January 1995) in audit, the district authority stated (June 1997) that the matter was taken up with the concerned block officers for necessary action. Report on further development has not been received (January 1998).

The cases were reported to Government between October and December 1995 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

**Patta* is a deed of lease by the landlord to the tenant. Here it is a document conferring title to a landless to hold certain land on payment of specified rate of rent and on fulfilling certain conditions attached thereto.

***Khas* means belonging to the State.

****Raiyati* is a derivative of *raiyat* which means a person or an institution holding land for any purpose whatsoever.

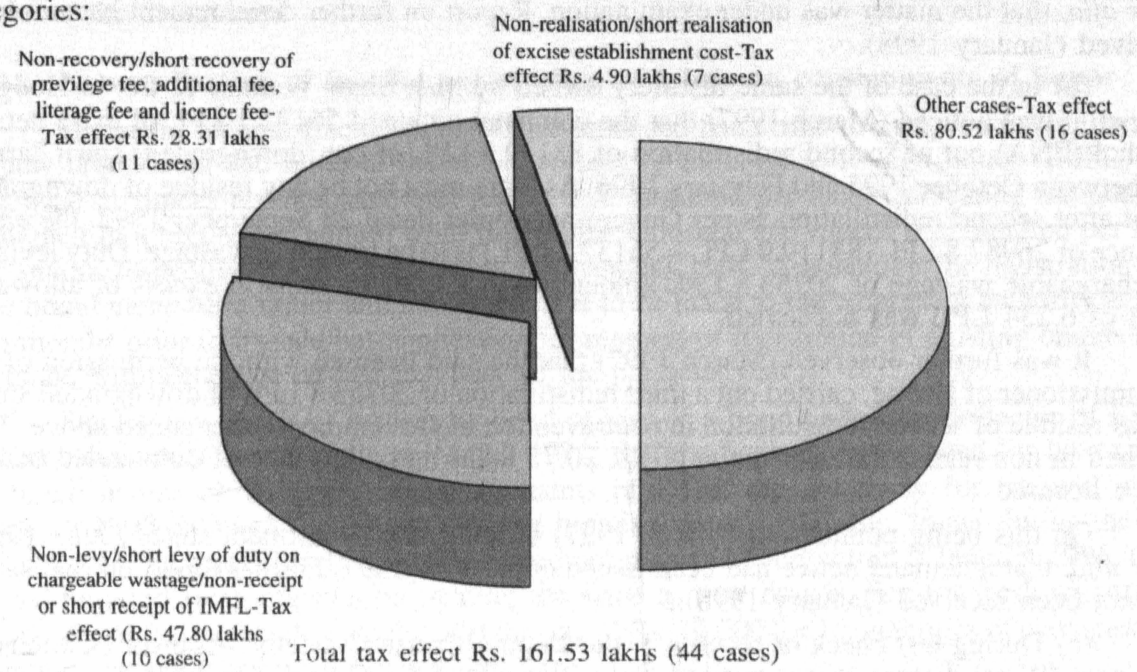
CHAPTER 4

STATE EXCISE

STATE EXCISE

4.01 Results of audit

Test check of records of State Excise revenue in district revenue wings, conducted in audit during the year 1996-97, revealed non-realisation/short realisation of Excise duty amounting to Rs. 161.53 lakhs in 44 cases, which broadly fall under the following categories:



Total tax effect Rs. 161.53 lakhs (44 cases)

During the course of the year 1996-97 the concerned department accepted underassessments etc of Rs. 38.38 lakhs involved in 15 cases of which 11 cases involving Rs. 33.57 lakhs were pointed out in audit during the year 1996-97 and the rest in the earlier years. A few illustrative cases involving Rs. 309.83 lakhs highlighting important irregularities are given in the following paragraphs.

4.02 Non-levy of duty on chargeable wastage due to irregular redistillation in violation of Government order

Under the provisions of the Excise Rules, framed under the Bengal Excise Act, 1909, with effect from 19 June 1992, for the purpose of manufacture of spirit for potable purposes, the licensee of a distillery may undertake redistillation operation from silent/head cut spirit obtained from primary distillation with the permission of the Excise Commissioner, West Bengal, provided that such second redistillation shall be so made that no further feint spirit or cut spirit is left as residue. The rule indicates that the residue, if any, should not further be used in any way and as such there is no scope for third redistillation of the residue, if any. Allowable limit of wastage during such second redistillation is 7.5 per cent and wastage, if any, in excess of allowable limit is chargeable to duty at the highest rate of Rs. 100 per London proof litre (LPL).

(a) M/s. Shaw Wallace & Co., a distiller under the Superintendent of Excise, Hooghly district, obtained 771573.5 LPL of potable spirit out of second redistillation of 1130458.6 LPL of silent/cut (downgraded) spirit in 9 cases carried out between June 1993 and September 1995. As there must not be any residue of downgraded spirit after second redistillation as per Government order dated 28 September 1992, the entire balance of 358885.1 LPL (1130458.6 LPL – 771573.5 LPL) is to be treated as wastage. Duty leviable on chargeable wastage of 274100.7 LPL amounting to Rs. 2.74 crores in excess of allowable limit of 84784.4 LPL was not levied.

It was further observed (April 1996) that the said licensee with the permission of the Commissioner of Excise, carried out a third redistillation of 150464.1 LPL of downgraded spirit, left as a part of residue of second redistillation in contravention of Government order stated above. Non-levy of duty of Rs. 2.74 crores on chargeable wastage and allowance of third redistillation by the Commissioner to the licensee in violation of Government order resulted in non-realisation of Rs. 2.74 crores and allowance of unintended benefit to the licensee.

On this being pointed out (April 1996) in audit, the department stated (June 1997), *inter alia*, that the matter was under examination. Report on further development has not been received (January 1998).

(b) In the case of the same distillery owned by M/s. Shaw Wallace & Co. in Hooghly district, it was noticed (March 1997) that the company obtained 56132.1 LPL of extra neutral alcohol (ENA) out of second redistillation of 83119.9 LPL of cut (downgraded) spirit carried out between October 1995 and February 1996. As there must not be any residue of downgraded spirit after second redistillation as per Government order dated 28 September 1992, the entire balance of 26987.8 LPL (83119.9 LPL – 56132.1 LPL) is to be treated as wastage. Duty leviable on chargeable wastage of 20753.8 LPL amounting to Rs. 20.75 lakhs in excess of allowable limit of 6,234 LPL was not levied.

It was further observed (March 1997) that the said licensee with the permission of the Commissioner of Excise, carried out a third redistillation of 20753.8 LPL of downgraded spirit, left as residue of second redistillation in contravention of Government order stated above. This resulted in non-realisation of revenue of Rs. 20.75 lakhs and allowance of unintended benefit to the licensee.

On this being pointed out (March 1997) in audit, the department stated (June 1997), *inter alia*, that a demand notice had been issued on 17 June 1997. Further report on realisation has not been received (January 1998).

(c) During test check of records of the Deputy Excise Collector, Asansol Distillery in Burdwan (West) district, it was noticed (July 1996) that M/s. Carew Phipson & Co. obtained 77198.3 LPL of spirit (extra neutral alcohol—ENA) for potable purpose after second redistillation of 84873.3 LPL downgraded residual spirit, conducted between 14 March and 8 April 1996, resulting in wastage of 7,675 LPL. Duty amounting to Rs. 1.31 lakhs leviable on chargeable wastage of 1309.5 LPL in excess of allowable wastage of 6365.5 LPL was neither levied nor realised.

On this being pointed out (July 1996) in audit, the department stated (March 1997) that the matter was being examined. Report on further development has not been received (January 1998).

Government, to whom the cases were reported between May 1996 and May 1997, endorsed (July 1997) the views of the department.

4.03 Short realisation of additional fee on operational increase of country liquor

Under the provisions of the Payment of Additional Fees (for the supplies of spirit for the manufacture of country liquor) Rules, 1992 as amended from time to time, the additional fee payable for different kinds of spirit, with effect from 10 May 1994, shall be the difference between the ex-warehouse price in force and the ex-distillery price fixed by the competent authority. Accordingly, in case of net increase in operation of country liquor in bottling plant-cum-warehouse, the ex-distillery price of alcohol is nil whereas the ex-warehouse price of country liquor is rupees twentyfive per London Proof Litre (LPL) attracting levy of additional fee at the same rate of rupees twentyfive per LPL.

During test check of records of the Deputy Excise Collector attached to a bottling plant-cum-warehouse in Siliguri in Darjeeling district, it was noticed (November 1995) that, while processing country liquor from rectified spirit during 1994-95, there was a net operational increase of 38369.7 LPL of country liquor which was sold by the licensee at a price of Rs. 9.59 lakhs calculated at the rate of Rs. 25 per LPL against mere payment of additional fee of Rs. 1.80 lakhs instead of Rs. 9.59 lakhs, being total additional fee leviable in case of

ex-distillery price of alcohol being nil. Allowance of such unintended benefit resulted in short realisation of additional fee of Rs. 7.79 lakhs.

On the omission being pointed out (November 1995) in audit, the department stated (March 1997) that the matter had been referred to Government for decision. Report on further development has not been received (January 1998).

Goverment, to whom the case was reported in January 1996, endorsed (July 1997) the views of the department.

4.04 Non-realisation of fees for registration of labels on consignments of liquor

Under the Bengal Excise Act, 1909 as amended from time to time, fee for registration of new brand/label and renewal thereof in respect of India-made foreign liquor (IMFL) was enhanced to rupees ten thousand and rupees five thousand per label (indicating the quantity contained in a bottle) per annum from rupees one thousand and rupees five hundred per label per annum respectively with effect from 5 November 1994. Application for registration of a new brand name for a liquor and label thereof is to be made to the competent authority at least two months prior to its sale but application for renewal of registration of existing brands shall be made within the last day of February of the previous year.

During test check of records of bond officer of a bond under the Collector of Excise in Calcutta district, it was noticed (March 1996) that the licensee of the bond for his existing 10 brand names of 16 labels of consignments of IMFL did not apply for renewal within February 1995 although the liquors of those brands were issued to the 'trade' during the year 1995-96. As the brands of 16 quantities were not renewed even within 9 January 1996, those brands required fresh registration treating the same as new brands. Fee for fresh registration amounting to Rs. 1.60 lakhs calculated at the rate of Rs. 10,000 for 16 quantities of consignments of liquor was neither levied nor realised.

On this being pointed out (May 1996) in audit, the department realised Rs. 1 lakh. Report on realisation of the balance amount has not been received (January 1998).

Government, to whom the case was reported in May 1996, endorsed (June 1997) the views of the department.

4.05 Non-realisation of duty and literage fees on destruction of India-made foreign liquor

Under the provisions of the Rules (May 1940) regulating the compounding, blending, reduction and bottling of foreign liquor, India-made foreign liquor (IMFL) stored in a bond is required to be taken out within three months from the date of entry. IMFL stored for indefinite period in a bond and destroyed for becoming unfit for human consumption subsequently will make the licensee of the bond liable to pay duty and literage fee at the prescribed rates.

During test check of records of bond officer attached to a bond under the Collector of Excise, Calcutta district, it was noticed (February 1996) that 3189.9 London proof litres (LPL) of IMFL were stored in the bond for various periods before destruction of the same on 23 March 1994, after being found unfit for human consumption, under the orders of the competent authority. But duty and literage fee consolidating Rs. 3.30 lakhs on 3189.9 LPL of IMFL were neither levied nor realised.

On this being pointed out (February 1996) in audit, the district authority stated (June 1997) that duty and literage fee were being realised in instalments. Report on realisation of the full amount has not been received (January 1998).

Government, to whom the case was reported in May 1996, endorsed (June 1997) the views of the department.

4.06 Non-recovery of bonus paid to Excise personnel posted in the bonds

Under the Excise Rules framed under the Bengal Excise Act, 1909 read with the West Bengal Service Rules, Part I, cost of excise establishment deployed in foreign liquor manufactory/ bond is to be recovered from the licensees for whose benefit the excise personnel is sanctioned and posted in the bonds. The cost of excise establishment, *inter alia,* includes pay, all kinds of allowances and concessions and the contribution towards leave salary and pension. Accordingly, bonus being an additional expenditure incurred by the Government for the personnel posted in the bond shall be included in the gross sanctioned cost of the service and recovered from the licensees.

During test check of records of 7 bonded warehouses in Burdwan (West) district, it was noticed (August 1996) that bonus in respect of 16.75 posts of constables sanctioned and posted in the bonds for the 5 years between 1991-92 and 1995-96 had not been included in the demand and recovered from the bonders. This resulted in non-recovery of bonus amounting to Rs. 1.08 lakhs calculated at the ceiling rate of Rs. 1,290 per head per annum.

On this being pointed out (August 1996) in audit, the department admitted the facts and agreed to make rules for recovery in subsequent cases but stated that there is no scope for realisation of the amount in the present case.

Government, to whom the case was reported in September 1996, endorsed (June 1997) the views of the department.

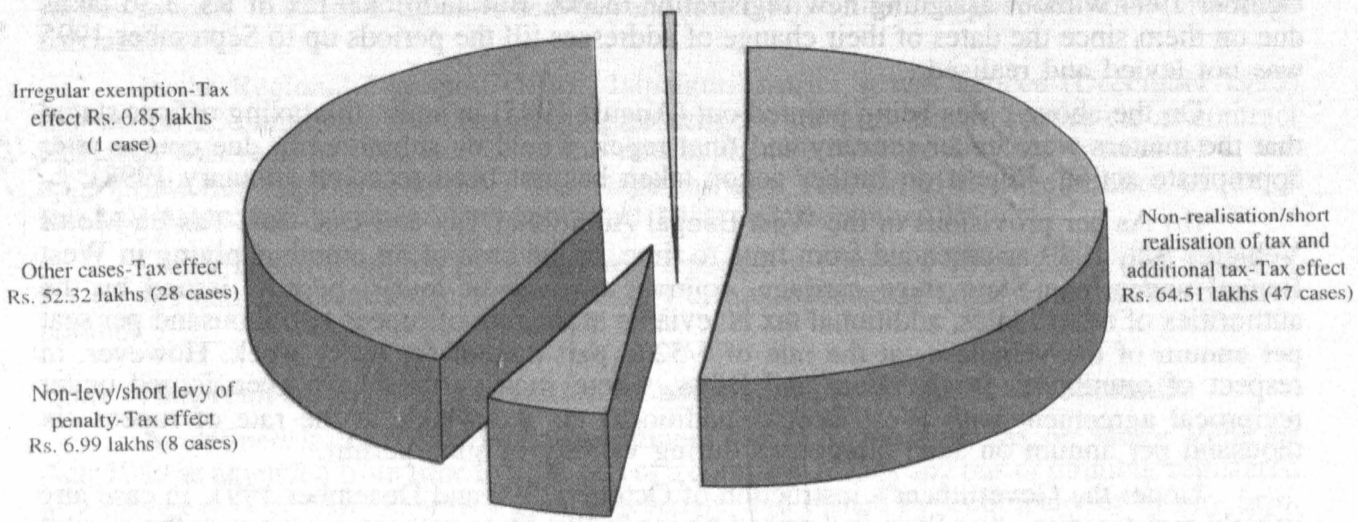
CHAPTER 5

MOTOR VEHICLES TAX

MOTOR VEHICLES TAX

5.01 Results of audit

Test check of records in the offices of the Transport department, conducted in audit during the year 1996-97, revealed non-realisation/short realisation of revenue amounting to Rs. 124.67 lakhs in 84 cases, which broadly fall under the following categories:



Total tax effect Rs. 124.67 lakhs (84 cases)

During the course of the year 1996-97 the concerned department accepted underassessments etc of Rs. 139.71 lakhs in 117 cases of which 77 cases involving Rs. 110.17 lakhs were pointed out in audit during the year 1996-97 and the rest in the earlier years. A few illustrative cases involving Rs. 42.08 lakhs highlighting important observations are given in the following paragraphs.

5.02 Non-realisation of additional tax consequent upon vacation of stay order

Under the provisions of the West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989 as amended from time to time, registered owners of certain categories of motor vehicles, as described in the schedule, are liable to pay additional tax on their vehicles with effect from 1 April 1989.

In the Additional Regional Transport Office, Durgapur in Burdwan district, it was noticed (September 1995) that owners of 90 goods vehicles, registered in other States and plying in this region on change of addresses, moved the Hon'ble High Court against imposition of additional tax and got stay order. Consequent upon all the court cases being vacated in April 1994, the Government instructed in May 1994 for realisation of additional tax with all arrears from the petitioners within 30 September 1994 without penalty. While owners of only 6 goods vehicles cleared off their dues within due date, no payment from the rest 84 owners was made till March 1995. This resulted in non-realisation of additional tax of Rs. 10.08 lakhs due between 1 April 1989 and 31 March 1995.

Government, to whom the case was reported in November 1995, stated (November 1997) that a sum of Rs. 68,737 had been realised and necessary efforts were being taken to realise the rest of the amount.

5.03 Non-levy of additional tax on vehicles of other States plying within West Bengal

(a) Under the provisions of the Additional Tax and One-time Tax on Motor Vehicles Act, 1989 read with the instructions issued by Government in October 1989, any motor vehicle registered in any State other than West Bengal and plying in West Bengal on change of address shall have to pay additional tax till assignment of new registration mark on it.

In the Additional Regional Transport Office, Asansol in Burdwan district, it was noticed (August 1995) that West Bengal registration marks were allotted to 5 omnibuses (minibuses) between October 1989 and June 1995, plying in this State on change of addresses from other States. But additional tax of Rs. 58,334 due against the vehicles up to the dates prior to the dates of their assignment of new marks was not realised.

Similarly, it was noticed (August 1995) that 22 omnibuses (minibuses) registered in other States were plying in the same region on change of addresses between April 1989 and October 1994 without assigning new registration marks. But additional tax of Rs. 3.36 lakhs due on them since the dates of their change of addresses till the periods up to September 1995 was not levied and realised.

On the above cases being pointed out (August 1995) in audit, the taxing officer stated that the matters were under scrutiny and final report would be submitted in due course after appropriate action. Report on further action taken has not been received (January 1998).

(b) As per provisions of the West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989 as amended from time to time, in the case of an omnibus plying in West Bengal under inter-State stage carriage, contract carriage or tourist permits issued by the authorities of other States, additional tax is leviable at the rate of rupees two thousand per seat per annum of the vehicle or at the rate of 1/52nd part thereof for every week. However, in respect of omnibuses from Assam and Bihar, where such permits have been issued under reciprocal agreement with West Bengal, additional tax is leviable at the rate of rupees six thousand per annum on such omnibuses during validity of such permit.

Under the Government's instruction of October 1990 and December 1991, in case any vehicle registered in other State is detected plying in this State without permit or without valid permit and without payment of tax and additional tax, requisite amount of tax and additional tax for seventeen weeks from the date of detection shall have to be realised with hundred per cent penalty. Where such a vehicle of other State has been detected with permit but without payment of taxes, both the taxes for the period covered by the permit has to be realised with hundred per cent penalty. Any permit issued by the authority of other State, but not countersigned by the authority of this State shall not be treated as valid.

(i) In the Regional Transport Office at Uttar Dinajpur district and in the Additional Regional Transport Office at Siliguri, it was noticed (between August and December 1995) that 5 omnibuses of other States were detected plying in these regions between February and March 1995 without any permit as well as without payment of taxes. Additional tax for 17 weeks was realised at the rate of Rs. 6,000 per annum for each vehicle instead of at the rate of Rs. 2,000 per seat per annum of each vehicle. This resulted in short realisation of Rs. 3.22 lakhs including penalty.

On the cases being pointed out (between August and December 1995) in audit, the taxing officers of Uttar Dinajpur and Siliguri stated (between August 1996 and July 1997) that demand notices for realisation of additional tax had been issued. Report on further action taken has not been received (January 1998).

(ii) In Jalpaiguri district, it was noticed (December 1995) that 5 omnibuses from Assam were detected plying between May 1994 and March 1995 with inter-State tourist permits but without any countersignature from the authority of this State. As the permits were to be treated as invalid, additional tax was to be realised at the rate of Rs. 2,000 per seat per annum of each vehicle during the periods covered by the permits. Instead, it was realised at the rate of Rs. 6,000 per annuam on each vehicle. This resulted in short realisation of revenue of Rs. 2.42 lakhs including penalty.

On the cases being pointed out (December 1995) in audit, the taxing officer stated (December 1996) that demand notices had been issued for realisation of additional tax. Report on further action taken has not been received (January 1998).

All the above cases were reported to Government between October 1995 and February 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

5.04 Short realisation of tax on contract carriage vehicles

Under the provisions of the West Bengal Motor Vehicle Tax Act, 1979 as amended from time to time, motor vehicles tax on all public service vehicles carrying passengers on hire or reward is levied on its seating capacity at the rate applicable to (i) stage carriage and (ii) other than stage carriage. The rate of tax payable on vehicles under the category other than stage carriage was revised to rupees eight hundred from four hundred seventy with seating capacity up to five including driver (ID) and additional rupees one hundred (from rupees seventy five) for each extra seat beyond five (ID), which is higher than that on a stage carriage.

In the Regional Transport Office, Jalpaiguri district, it was noticed (December 1995) that tax on 22 omnibuses used for carrying passengers, students, tourist parties etc as contract carriages was realised erroneously at the rate applicable to stage carriage instead of at the appropriate rate applicable to other than stage carriage. This led to short realisation of tax of Rs. 1.01 lakhs for the period between April 1989 and December 1996.

Government, to whom the matter was reported in February 1996, stated that a sum of Rs. 64,899 had been realised and that necessary efforts were being taken to realise the balance amount.

5.05 Non-realisation/short realisation of additional tax on buses of companies

As defined in the West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989 as amended from time to time, bus of a company means any bus or omnibus registered as a private service vehicle or as a contract carriage and owned by a company or by any firm, society, trust, educational institutions, organisations etc, whether registered or not. A motor vehicle not registered in the name of an individual shall be deemed to be a bus of a company. Additional tax is leviable on a bus of a company at the rate of rupees four thousand per annum up to 24 November 1991 and thereafter at varying rates between rupees two thousand per annum and rupees five thousand per annum depending on seating capacity of vehicles.

(a) During test check of records in the Additional Regional Transport Office, Durgapur and the Regional Transport Office of Jalpaiguri district, it was noticed (between September and December 1995) that in respect of 29 buses owned by different companies, educational institutions, organisations etc (Durgapur 20 and Jalpaiguri 9) no additional tax was realised in 15 cases (Durgapur 11 and Jalpaiguri 4) and it was realised short in 14 cases (Durgapur 9 and Jalpaiguri 5). This resulted in non-realisation/short realisation of additional tax of Rs. 3.07 lakhs due between 1 April 1989 and September 1996.

On these cases being pointed out (between September and December 1995) in audit, the taxing officer of Durgapur stated that a sum of Rs. 24,622 had been realised and further course of action was being taken in respect of the remaining cases while the taxing officer of Jalpaiguri stated that Rs. 38,400 had been realised out of Rs. 86,204. Report on further action taken for realisation of the balance amount has not been received (January 1998).

(b) Similarly, in the Regional Transport Office, Darjeeling and in the Additional Regional Transport Offices, Kalimpong and Siliguri, it was noticed (between November and December 1995) that in respect of 26 omnibuses registered in the names of different educational institutions, societies, corporations, companies, boards etc no additional tax was levied on 15 vehicles while it was realised short on 11 other vehicles for various periods between April 1989 and November 1996. This resulted in non-realisation/short realisation of additional tax of Rs. 2.32 lakhs.

On the cases being pointed out (between November and December 1995) in audit, the taxing officer, Darjeeling stated that a sum of Rs. 12,542 had been realised and immediate necessary action was being taken in respect of other vehicles. The taxing officer, Kalimpong stated that the registered owners did not turn up to the office for payment, while the taxing officer of Siliguri stated (January 1997) that Rs. 10,000 had so far been realised and efforts were being made to realise the balance amount. Report on further action taken has not been received (January 1998).

Government, to whom the above matters were reported between November 1995 and February 1996 followed by reminders issued up to June 1997, endorsed (November 1997) the views of the taxing officers of Durgapur, Jalpaiguri, Darjeeling and Kalimpong.

5.06 Non-realisation/short realisation of additional tax on bus of company—contract carriage

Under the West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989 as amended from time to time, read with the clarificatory order issued by Government in October 1989, any omnibus owned by an individual and used under contract to carry office-goers, school students, other parties on hire basis are treated as bus of a company, and accordingly additional tax on them is realisable at the rate of rupees four thousand per annum from 1 April 1989. However, under the said Act amended from 25 November 1991, additional tax is to be levied on such omnibuses as contract carriage at the rate of rupees six thousand per annum.

During the course of audit in the Regional Transport Offices of Burdwan and Jalpaiguri districts, it was noticed (between September and December 1995) that in respect of 10 omnibuses (3 in Burdwan and 7 in Jalpaiguri) owned by individuals and used under contract to carry office-goers, school students, other parties on hire basis, no additional tax was realised in 6 cases (Jalpaiguri) and it was realised short in 4 other cases (3 in Burdwan and 1 in Jalpaiguri). This resulted in non-realisation/short realisation of additional tax of Rs. 2.32 lakhs during April 1989 to February 1996.

On these cases being pointed out (between September and December 1995) in audit, the taxing officer of Burdwan stated that a sum of Rs. 15,642 had been realised and that efforts were being taken for realisation of the balance amount, while the taxing officer of Jalpaiguri stated that a sum of Rs. 82,165 had been realised out of Rs. 1.69 lakhs and necessary efforts were being taken to realise the balance amount. Report on realisation of the balance amount has not been received (January 1998).

Government, to whom the cases were reported between November 1995 and February 1996, endorsed (November 1997) the views of the department.

5.07 Non-realisation/short realisation of additional tax on express buses

Under the West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989 as amended from time to time, an additional tax is leviable on the express buses at the rate of rupees four thousand per annum from 1 April 1989 and at the rate of rupees six thousand per annum from 25 November 1991 onwards in addition to usual motor vehicle tax.

In the Regional Transport Office of Burdwan district, it was noticed (September 1995) that out of 10 express buses, no additional tax was levied and realised from 4 buses and it was realised short against other 6 buses. This resulted in non-realisation/short realisation of tax by Rs. 2.23 lakhs due between April 1989 and October 1995.

On these cases being pointed out (September 1995) in audit, the taxing officer stated that a sum of Rs. 1.77 lakhs had been realised and demand notices in respect of the remaining cases had been issued. Report of realisation of the balance amount has not been received (January 1998).

Government, to whon the matter was reported in November 1995, endorsed (November 1997) the views of the department.

5.08 Non-realisation of additional tax on transfer of ownerships of vehicles

Under the provisions of the West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989 as amended from time to time, in case the additional tax in respect of a motor vehicle remained unpaid by any person liable for payment thereof and such person, before making payment of the due additional tax, transfers the ownership of such vehicle, the person to whom the ownership of the vehicle has been transferred should be liable to pay the additional tax.

In the Regional Transport Office, Burdwan district, it was noticed (September 1995) that ownerships of 3 express buses and one contract carriage bus were transferred between 1 August 1994 and 19 May 1995 with additional tax of Rs. 88,401 remaining unrealised from the previous owners up to the dates prior to transfer of ownerships. But the due amount was not realised from the transferee.

On this being pointed out (September 1995) in audit, the taxing officer stated that a sum of Rs. 21,653 had been realised out of total dues of Rs. 88,401 and efforts were being taken for realisation of the balance amount. Report on realisation of the balance amount has not been received (January 1998).

Government, to whom the matter was reported in November 1995, endorsed (November 1997) the views of the department.

5.09 Non-levy of additional tax on tractors and articulated vehicles*

Under the provisions of the West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989 as amended from November 1994, additional tax on tractors, breakdown vans, articulated vehicles is leviable from 1 November 1994 at the rate of fifty per cent of motor vehicles tax payable on them under the West Bengal Motor Vehicles Tax Act, 1979.

In the Additional Regional Transport Office, Siliguri and in the Regional Transport Offices at Jalpaiguri and Purulia districts, it was noticed (between December 1995 and February 1996) that no additional tax was levied on 14 articulated vehicles and 2 tractors since the date from which such tax became payable. This resulted in non-realisation of additional tax of Rs. 1.41 lakhs due between November 1994 and February 1996.

On the cases being pointed out (between December 1995 and February 1996) in audit, the taxing officer of Jalpaiguri stated that a sum of Rs. 36,750 had been realised and taxing officer, Siliguri stated that a sum of Rs. 32,500 had been realised and necessary steps were being taken for realisation of the balance amount, while taxing officer, Purulia stated that the entire amount had been realised.

Government, to when the cases were reported between February and May 1996, endorsed (November 1997) the views of the department.

5.10 Short realisation of tax due to application of incorrect rate

Under the West Bengal Motor Vehicles Tax Act, 1979 as amended from 25 November 1991, motor vehicles tax on a goods vehicle is levied on its gross vehicle weight at different rates prescribed for the categories, (i) rigid chassis, (ii) articulated vehicles and (iii) trailers. Tax on a rigid chassis goods vehicle having gross vehicle weight of 26,400 kgs is Rs. 16,750 per annum, while that on an articulated vehicle of same gross vehicle weight is Rs. 15,000 per annum.

In the Additional Regional Transport Office, Barrackpore in North 24-Parganas district, it was noticed (March 1996) that tax on 54 rigid chassis goods vehicles having gross vehicle weight of 26,400 kgs each, was levied and realised at the lower rate applicable to articulated vehicles. This resulted in short realisation of tax of Rs. 1.20 lakhs due during the period between June 1994 and March 1995.

On these cases being pointed out (March 1996) in audit, the taxing officer stated (February 1997) that demand notices had been issued for realisation of short payment of tax. Report on further action taken has not been received (January 1998).

The matter was reported to Government in May 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

*Articulated vehicle meaus a tractor to which a trailer is attached in such a manner that a part of the trailer is superimposed on, and a part of the weight of the trailer is borne by the tractor.

5.11 Short realisation of additional tax due to registration of vehicles under inappropriate category

(a) Under the Motor Vehicles Act, 1988, a private service vehicle means a motor vehicle constructed or adopted to carry more than six persons excluding the driver and ordinarily used by the owner for carrying the persons in connection with his trade or business otherwise than for hire or reward. As per the West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989, additional tax on a private service vehicle is lower than that on a contract carriage having seating capacity exceeding six including driver. The West Bengal Motor Vehicles Rules, 1989 prohibit plying of motor vehicles having seating capacity below twentyfive passengers as stage carriages in any region other than Calcutta and Howrah. Hence, these vehicles can be registered only as contract carriages in all the regions.

In the Additional Regional Transport Office, Asansol in Burdwan district, it was noticed (August 1995) that 5 omnibuses having seating capacities between 10(ID) and 22(ID) were registered as private service vehicles in personal names and in transport vehicles category. Since the owners had no trade or business, these omnibuses should have been registered only as contract carriages in this region instead of as private service vehicles. Failure to register these vehicles under appropriate category resulted in short realisation of additional tax amounting to Rs. 59,690 for the period between February 1992 and June 1995.

On the cases being pointed out (August 1995) in audit, the taxing officer stated that demand notices were issued to the owners of the motor vehicles and final reports of realisation would be submitted in due course. Report on further action taken has not been received (January 1998).

(b) Under the provisions of the West Bengal Motor Vehicles Tax Act, 1979 as amended from time to time, motor vehicles tax on a goods vehicle is levied on its registered laden weight/ gross vehicle weight, whereas the same on a tractor/breakdown van used for towing a disabled vehicle is leviable on its unladen weight as prescribed under clause D of the schedule to the Act read with the Government's instructions of July 1972.

In the Additional Regional Transport Office, Siliguri, it was noticed (December 1995) that tax on 4 breakdown vans was being realised on their gross vehicles weights instead of on their respective unladen weights. This resulted in short realisation of tax of Rs. 52,665 during the period between January 1989 and December 1995.

On these cases being pointed out (December 1995) in audit, the taxing officer stated (January 1997) that demand notices were served on the owners and that Rs. 19,825 had been realised. Report on further action taken to realise the balance amount has not been received (January 1998).

The cases were reported to Government between October 1995 and February 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

5.12 Short realisation of tax due to irregular exemption

The West Bengal Motor Vehicles Tax Act, 1979, empowers the Government to exempt any motor vehicle or classes of motor vehicles from payment of motor vehicles tax either fully or partially. Government by a notification exempted from 1 April 1989 certain classes of motor vehicles from payment of tax. Any motor vehicle which was hitherto granted exemption by earlier order and not covered by the notification of July 1989 was not eligible for further exemption from April 1989. Owners of goods vehicles plying in the hilly portion of Darjeeling district, which were so long granted fifteen per cent exemption of tax by an order of April 1977, but were not included in the notification of July 1989, thus, became liable to pay full tax from 1 April 1989.

During the course of audit in the offices of Darjeeling, Siliguri and Kalimpong regions in Darjeeling district, it was noticed (November and December 1995) that 15 per cent

exemption of tax was sitll being enjoyed by the owners of goods vehicles plying in the hilly portions of Darjeeling district even after April 1989. This resulted in irregular exemption of tax of Rs. 3.83 lakhs during the period between April 1989 and October 1996 in respect of 200 vehicles.

On the cases being pointed out (November and December 1995) in audit, the taxing officers of all the 3 regions stated (November and December 1995) that the matter was being referred to higher authority for necessary instructions. Report on further action taken has not been received (January 1998).

Government, to whom the cases were referred (December 1995 and February 1996), stated (July 1996) that 15 per cent tax exemption granted by earlier order of April 1977 has already been suspended by a notification of July 1989 and tax at full rate had to be realised.

5.13 Non-levy/short levy of fines for plying of the vehicles without registration

Under the provisions of the Motor Vehicles Act, 1988, no owner of a motor vehicle shall permit the vehicle to be driven in a public place or in other place without its valid registration. The Central Motor Vehicles Rules, 1989 prohibit any dealer to deliver a vehicle to the purchaser without its registration. Production of a vehicle for final registration to the registering authority of one region without its temporary registration after purchase from a dealer of other region is an offence punishable with compounding fine at the rates prescribed for different categories of vehicles under the notification of July 1989.

In the Public Vehicles Department, Calcutta, it was noticed (June 1995) that in case of 76 vehicles of different categories brought by the owners for final registration in this region on different dates between February and November 1994 after expiry of validity of temporary registrations on purchase from dealers of other regions/other States, fines payable for non-possession of temporary registration were either not levied or levied short. This resulted in non-realisation/short realisation of fines of Rs. 58,800.

On the cases being pointed out (June 1995) in audit, the taxing officer stated (July 1995) that action was being taken. Report on further action taken has not been received (January 1998).

The matter was reported to Government in August 1995 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

5.14 Irregular exemption of penalty

Under the West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989 as amended in November 1991, additional tax on a motor vehicle is payable within prescribed period of fifteen days reckoned from the date from which such tax becomes payable. Penalty for failure to pay tax within prescribed period is to be levied at the rate of ten per cent of total tax due for delay in payment of tax by every fifteen days or part thereof after the said grace period subject to maximum of hundred per cent of arrear additional tax. However, after vacation of the Hon'ble Court's stay order against operation of the said Act in April 1994, Government instructed in May 1994 to exempt penalty for payment of arrear additional tax only in respect of the petitioners provided that arrear tax was paid within 30 September 1994.

During test check of case records in the Additional Regional Transport Office, Durgapur in Burdwan district, it was noticed (August 1995) that arrear additional tax for the periods between April 1989 and June 1994 was realised from 10 owners between July and October 1994 without any penalty, although none of the said owners was involved in the court case. This resulted in irregular exemption of penalty of Rs. 1.04 lakhs.

On the cases being pointed out (August 1995) in audit, the taxing officer stated that a sum of Rs. 11,477 had been realised. Report on realisation of the balance amount has not been received (January 1998).

Government, to whom the cases were reported in November 1995, endorsed (November 1997) the views of the department.

5.15 Non-realisation of special fees on heavy goods vehicles

The West Bengal Motor Vehicles Rules, 1989 prohibit plying of any articulated vehicle, tractor-trailer combination or regid chassis goods vehicle having gross vehicle weight above 22,542 kgs within the State of West Bengal, provided that such restriction may be relaxed by order on payment of such fees/taxes and on such condition as may be specified in that order. Government vide their orders issued between 28 December 1990 and 5 June 1991 permitted the plying of such heavy goods vehicles on payment of special fees per annum at varying rates depending upon the gross vehicle weight of these vehicles and subject to fulfilment of prescribed conditions laid down therein.

(a) In the Regional Transport Office, Jalpaiguri district, it was noticed (December 1995) that no special fee was realised in respect of 7 such vehicles plying in the State for various periods between December 1991 and December 1995. This resulted in non-realisation of special fees of Rs. 76,000.

On this being pointed out (December 1995) in audit, the department stated that Rs. 50,400 had already been realised and that necessary action was being taken for realisation of the balance amount.

(b) In the Additional Regional Transport Office, Siliguri in Darjeeling district, it was noticed (December 1995) that no special fee in respect of 5 scuh articulated vehicles was levied and realised. This resulted in non-realisation of revenue of Rs. 63,000 for the period between December 1990 and December 1995.

On this being pointed out (December 1995) in audit, the taxing officer stated (January 1997) that demand notices had been issued and an amount of Rs. 45,000 had been realised. Report on realisation of the balance amount has not been received (January 1998).

The cases were reported to Government in February 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

CHAPTER 6

ENTRY TAX

ENTRY TAX

6.01 Results of audit

The West Bengal Taxes on Entry of Goods into Local Area Act, 1962 and the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 stand repealed from the 1st day of April 1995 under the provisions of the West Bengal Finance Act, 1995. According to the repealing Act anything done or any action taken, including any order made, proceeding commenced or obligation or liability incurred, under the Acts so repealed shall be valid and effective as if the provisions of the Act of 1995 have not come into force.

A few illustrative cases involving Rs. 1015.80 lakhs highlighting important observations pertaining to the implementation of the Act and relating to the earlier years are given in the following paragrahs.

6.02 Non-assessment of entry tax

(a) Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, tax on entry of specified goods into Calcutta Metropolitan Area (CMA) for consumption, use or sale therein, from any place outside that area is leviable at the prescribed rate.

(i) During audit in the office of the Entry Tax Officer at Mourigram Oil check post in Howrah district, it was noticed that 2 dealers had brought 1,08,55,500 litres of aviation turbine fuel (a petroleum product) into CMA valued at Rs. 5.43 crores between October 1992 and November 1994. But no tax was assessed by the assessing authority on their entry into CMA. This resulted in non-assessment of entry tax to the tune of Rs. 10.86 lakhs calculated at the rate of 2 per cent *ad valorem.*

On this being pointed out (December 1995) in audit, the department stated that necessary action was being taken to assess and realise due tax. Report on action taken has not been received (January 1998).

(ii) During audit in the office of the Entry Tax Officer at Kalyani Railway check post in Nadia district, it was noticed that a dealer had brought 34,085 MT of sugar into CMA between December 1992 and March 1995, but no tax was assessed. This resulted in non-assessment of tax of Rs. 5.11 lakhs calculated at the rate of Rs. 15 per MT.

On this being pointed out (December 1995) in audit, the department accepted the lapse and agreed to take action to assess and realise tax from the dealer. Further report has not been received (January 1998).

(iii) During audit in the office of the Entry Tax Officer at Banitabla Road check post in Howrah district, it was noticed that a dealer had brought 65 consignments of carbon blacks into CMA valued at Rs. 77.86 lakhs during the period from May 1989 to August 1991. On a writ petition the Hon'ble High Court, Calcutta passed (July 1991) an interim order of injunction restraining the respondent from levy and collection of entry tax on carbon blacks. Though the stay order was vacated on 22 July 1991, the authorities at the check post did not initiate any action to assess tax amounting to Rs. 77,862 calculated at the rate of one per cent *ad valorem.*

On this being pointed out (December 1995) in audit, the Entry Tax Officer accepted the observation and agreed to refer the matter to the higher authorities. Report on further development has not been received (January 1998).

All the cases were reported to Government between January and March 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(b) Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, entry tax is leviable at prescribed rates on the entry of goods specified in the schedule to the Act for consumption, use or sale within Calcutta Metropolitan Area (CMA) on production of prescribed declarations made by the person bringing the goods from outside the area and assessment is made after necessary verification. For the purpose of determination of value of goods, where the tax is leviable *ad valorem*, every dealer is required to declare the value of the goods in a prescribed form. If the assessing authority is satisfied about the reasonableness of such value, he shall accept the same and levy tax accordingly. If the assessing authority is not satisfied about the reasonableness of the value declared by the dealer, he shall determine the approximate saleable value of such goods in the CMA to the best of his judgement and shall levy tax accordingly. Television sets are taxable at the rate of four per cent *ad valorem*.

In Hansgara Road check post in Hooghly district, it was noticed (December 1995) that a dealer had brought a number of colour television sets with remote control system valued at Rs. 10.07 lakhs in February 1995. The assessing authority at the check post was not satisfied about the reasonableness of the declared value as it seemed to be very low and accordingly the dealer was asked to produce supporting documents for the declared price. The dealer did neither submit any further documents nor he was assessed to tax by application of best judgement method. The department took no initiative to assess the goods even on the declared value. This resulted in non-assessment of tax of Rs. 40,280 calculated at the rate of 4 per cent.

On this being pointed out (December 1995) in audit, the department stated that the matter was being looked into and that action would be taken with the approval of higher authority. Report on further action taken has not been received (January 1998).

The matter was reported to Government in February 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

6.03 Underassessment of tax

(a) Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, a dealer or his agent bringing specified goods into Calcutta Metropolitan Area (CMA) shall pay tax at the rates specified in the schedule to the Act. Entry tax on horlicks powder is leviable at the rate of seven per cent *ad valorem*. The value of commodity is determined by the department at the beginning of each year, for the purpose of assessment of tax, in consultation with the manufacturer's cost sheet and other relevant records. Its value for the year 1994-95 was fixed at Rs.91.60 instead of Rs. 75.30 per kg prevailing in the previous year.

Test check of records of the office of the Entry Tax Officer at Hansgara Road check post in Hooghly district, revealed (December 1995) that 10 consignments of horlicks powder weighing 90,528 kg were brought into CMA by a dealer in December 1994. The commodity was assessed to tax taking the value thereof at Rs. 75.30 per kg instead of Rs. 91.60 per kg fixed for the year 1994-95. This resulted in underassessment of tax amounting to Rs. 1.03 lakhs.

On this being pointed out (December 1995) in audit, the department stated that the matter was being looked into. Further report has not been received (January 1998).

(b) Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, a dealer or his agent bringing specified goods into Calcutta Metropolitan Area (CMA) for purpose of consumption, use or sale therein, shall pay tax at prescribed rate specified in the schedule to the Act. Lehar Pepsi and soda water were specified goods attracting entry tax at the rate of eight per cent *ad valorem*.

In an interim order in December 1992, the West Bengal Taxation Tribunal determined the assessable value of Lehar Pepsi and soda water per crate of 24 bottles at Rs. 61.56 and Rs. 36 which represented fiftyseven per cent and fifty per cent of Rs. 108 and Rs. 72 respectively being the retail price of the commodities. It was further directed therein that till the final disposal of the case, any variation in selling prices of the commodities would necessitate proportionate increase in the value thereof for the purpose of assessment of tax.

During audit in the office of the Entry Tax Officer at Hansgara Road check post in Hooghly district, it was noticed that 30,925 crates of Lehar Pepsi and 2,900 crates of soda water were brought into CMA on various dates between December 1994 and January 1995. The dealer bringing the goods declared increase in the retail prices of the commodities to Rs. 132 and Rs. 96 respectively in January 1994, which necessitated proportionate increase in the assessable value thereof. But the goods were assessed to tax on pre-revised prices. This resulted in underassessment of tax to the tune of Rs. 36,628.

On this being pointed out (December 1995) in audit, the department stated that the matter was being looked into and that action would be taken with the approval of higher authority. Report on action taken has not been received (January 1998).

The cases were reported to Government in February 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

6.04 Non-assessment of tax and non-imposition of penalty

(a) Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, every dealer of specified goods shall, on or before the entry of such goods into Calcutta Metropolitan Area (CMA) deliver a declaration in prescribed form, relating to such goods. Where any dealer has omitted or failed to make the declaration, the prescribed authority shall, after inspection and examination of the goods assess the tax leviable on such goods and it may also impose on the dealer a penalty not exceeding twice the amount of tax assessed by it.

During audit in the office of the Entry Tax Officer at Hansgara Road check post in Hooghly district, it was noticed that 3 consignments of specified goods valued at 10,17,800 US Dollars (equivalent to Rs. 3.46 crores) were brought by a dealer into CMA in February 1995. Though the dealer bringing the goods failed to make declarations relating to such goods, the department did not initiate any action for assessment of tax and imposition of penalty. This resulted in non-assessment of tax and non-imposition of penalty to the tune of Rs. 6.92 lakhs and Rs. 13.84 lakhs respectively taking the exchange value of US Dollar at a minimum of Rs. 34 prevailing at that time.

On this being pointed out (December 1995) in audit, the department stated that the matter was being looked into and that action would be taken with the approval of higher authority. Report on action taken has not been received (January 1998).

(b) Under the Entry Tax Laws in West Bengal, every dealer of specified goods shall, on or before the entry of such goods into Calcutta Metropolitan Area (CMA) deliver to the prescribed authority a declaration in prescribed form relating to such goods. The prescribed authority on receipt of such declaration shall after making such verification as it may consider necessary assess tax leviable on the entry of such goods into CMA and shall communicate such assessment to the dealer demanding immediate payment thereof. If the dealer omits or fails to pay the whole or any part of the assessed dues forthwith, the prescribed authority may seize the goods in relation to which payment has been so evaded. A penalty not exceeding ten times the assessed tax may also be imposed on the dealer for entry of goods into CMA without payment of tax.

(i) During audit in the office of the Entry Tax Officer at Banitabla Road check post in Howrah district, it was noticed (January 1996) that 5 consignments of specified goods valued at Rs. 39.33 lakhs were brought into CMA by some dealers on 21 March 1995 a period just on the eve of abolition of entry tax in West Bengal. The commodities were assessed to tax, but demand notices for immediate payment of the assessed tax were not issued. No seizures were also made for realisation of the tax amounting to Rs. 95,886. Maximum amount of penalty that could be imposed on the dealers for removal of the goods without payment of tax worked out to Rs. 9.59 lakhs.

On this being pointed out (January 1996) in audit, the department accepted the realisability without any specific comments as to its realisation.

(ii) During audit of the assessment records of the Entry Tax Officer at Budge Budge Railway check post in South 24-Parganas district, it was noticed that a dealer had brought into CMA 356.9 MT of specified goods in February 1988 valued at Rs. 86.19 lakhs. The goods were assessed to tax and demand notice for immediate payment thereof was issued. The dealer, however, was allowed to lift the goods without payment of the assessed tax. But the department did not initiate any action to recover the assessed tax amounting to Rs. 1.72 lakhs. Maximum amount of penalty that could be imposed on the dealer for removal of the goods into CMA without payment of the assessed tax worked out to Rs. 17.23 lakhs.

On this being pointed out (January 1996) in audit, the department stated that the matter would be examined and reply would follow. Report on further development has bot been received (January 1998).

(c) Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, where any specified goods have been brought into Calcutta Metropolitan Area (CMA) without payment of tax the prescribed authority shall assess the tax leviable on such goods and may also impose on the dealer in the prescribed manner, a penalty not exceeding ten times the tax assessed by it.

(i) During audit in the office of the Entry Tax Officer at Hansgara Road check post in Hooghly district, it was noticed (December 1995) that 2 dealers while fleeing away with the specified goods valued at Rs. 11.15 lakhs without payment of tax, were intercepted in CMA by the personnel of the check post in February and March 1995. The goods were released without payment of tax and penalty which worked out to Rs. 2.45 lakhs (tax Rs. 22,295 and penalty Rs. 2.23 lakhs).

On this being pointed out (December 1995) in audit, the department stated that the matter was being looked into and that action would be taken with the approval of higher authority. Further report on action taken has not been received (January 1998).

(ii) During audit in the office of the Entry Tax Officer at Banitabla Road check post in Howrah district, it was noticed that one dealer had brought into CMA 13,770 kg HR coil of aluminium in 4 coils on 20 March 1995 valued at Rs. 11.46 lakhs without payment of tax. Tax at the rate of 1 per cent *ad valorem* was leviable but no action was taken to assess tax including penalty. This resulted in non-assessment of tax and non-imposition of penalty to the tune of Rs. 1.26 lakhs.

On this being pointed out (January 1996) in audit, the Entry Tax Officer stated that the dealer had no intention to pay tax right from 20 to 30 March 1995 and stranded at the check post just to kill time till 31 March 1995 and afterwards escaped. The reply is not tenable in audit. Lack of timely action on the part of the entry tax officer, assessment and collection of tax could not be made possible.

The matter was reported to Government between February and March 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

6.05 Non-imposition of penalty for removal of goods without payment of tax by a holder of private railway sidings

Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, entry tax is leviable at prescribed rate on entry of goods specified in the schedule to the Act for consumption, use or sale within Calcutta Metropolitan Area (CMA) on production of declaration in prescribed form made by the dealer bringing the goods from outside the area and assessment is made after necessary verification. A dealer bringing specified

goods may be allowed to make an advance deposit of tax assessed and payable by him, from time to time, is adjustable. Penalty not exceeding ten times the assessed tax may be imposed on the dealer who brings in specified goods into CMA without payment of tax. In December 1981, the department issued instructions that the dealers, who owned private railway sidings and who were unable to produce their relevant document necessary for assessing tax at the time of delivery of goods, should be asked to make advance deposit of tax. In such cases, the dealers were to submit the relevant records within one month from the date of release of the goods. In case of default, maximum penalty provided under the Act was to be imposed.

(a) During audit in the office of the Entry Tax Officer at Sankrail Railway check post in Howrah district, it was noticed that a dealer holding private railway sidings brought several consignments of specified goods into CMA between December 1993 and March 1995 without depositing advance tax to cover the amount of tax payable and without submitting relevant documents required for assessment of tax. The dealer was subsequently assessed (January 1996) to tax to the tune of Rs. 48.45 lakhs when a sum of Rs. 40.28 lakhs was found standing to the credit of the advance deposit account and thus the dealer was allowed to enjoy an unintended financial benefit of Rs. 8.17 lakhs for a period ranging between 12 and 24 months. Maximum amount of penalty of Rs. 81.76 lakhs that could be recovered from the dealer for not depositing requisite advance tax and not submitting relevant records within the prescribed period of one month was not imposed.

On this being pointed out (January 1996) in audit, the department stated that necessary action was being taken with the approval of the higher authority to whom the matter was being referred to. Report on further development has not been received (January 1998).

(b) During audit in the office of the Entry Tax Officer at Naihati Railway check post in North 24-Parganas district, it was noticed (November 1995) that a thermal power station holding private railway sidings brought 34,473 MT of coal into CMA between April 1988 and November 1989 without payment of tax. The dealer neither made any advance deposit to cover the amount of tax nor was the tax subsequently assessed and realised. Tax amounting to Rs. 34,473 was leviable on the goods at the rate of Re. 1 per MT. Maximum amount of penalty that could be imposed on the dealer for not depositing advance deposit and not submitting relevant records within the prescribed period of one month worked out to Rs. 3.45 lakhs.

On this being pointed out (November 1995) in audit, the department stated that the dealer was asked to submit necessary documents for assessment of tax in November 1990. The department did not initiate any further action although a period of 5 years had since elapsed.

The cases were reported to Government between January and March 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

6.06 Non-assessment of tax and penalty on deemed sale of horlicks

Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, specified goods not intended to be consumed, used and sold in Calcutta Metropolitan Area (CMA) are exempted from tax provided the goods are imported into CMA under the strength of a Transport Pass (TP) issued by the assessing officer posted at the entry point check post, on the basis of requisite documents. In case, the whole or any part of such goods is subsequently consumed, used or sold within CMA, tax shall be levied and collected by the assessing officer at the prescribed rate on so much of such goods as is consumed, used or sold within CMA.

A TP is treated as settled on receipt of original copy duly endorsed by the outgoing check post as a proof of conveyance of goods outside CMA within 7 days from the date of actual conveyance of goods. The Acts and Rules, however, do not mention any specific time limit within which goods are to be conveyed out, although in case of Inventory Transport Pass it is 6 months with effect from 5 May 1990. A dealer obtaining TP is required to submit a

return in prescribed form indicating storage, disposal and stock in hand within 15 days of entry of goods. Further, under amended provisions of the Act with effect from 1 April 1992, if any dealer fails to submit the above return within the prescribed time limit, the entire goods brought into CMA under the coverage of a TP shall be deemed to have been consumed, used or sold within CMA and shall be exigible to tax besides penalty.

During audit in the office of the Entry Tax Officer at Hansgara Road check post in Hooghly district, it was noticed that a dealer of horlicks brought 87.34 MT horlicks between 5 March 1993 and 23 September 1993 through 97 TPs. But, the dealer did not furnish any returns of goods brought into CMA for ultimate conveyance out of CMA through the said TPs. Tax amounting to Rs. 45.96 lakhs and penalty for the equivalent amount was recoverable but no assessment proceeding was initiated. This resulted in non-assessment of entry tax to the tune of Rs. 91.92 lakhs including penalty.

On this being pointed out (September 1995) in audit, the Entry Tax Officer stated that the matter was being looked into and action would be taken. Report on further action taken has not been received (January 1998).

The matter was reported to Government in February 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

6.07 Non-raising of demand

Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, a dealer or his agent bringing specified goods into Calcutta Metropolitan Area (CMA) for purposes of consumption, use or sale, shall pay entry tax at the rate specified in the schedule to the Act.

(i) During audit in the office of Entry Tax Officer at Banitabla Road check post in Howrah district, it was noticed (December 1995) that a dealer had brought several consignments of acetylene black* between June 1984 and September 1987. In terms of an interim order passed by the Hon'ble High Court, Calcutta, the said commodities were allowed entry into CMA on realisation of 50 per cent of the assessed tax. By issue of a circular in July 1993, the department directed that full tax with all arrears on acetylene black might be realised as the dealer bringing the goods failed to obtain extension of the interim order from the West Bengal Taxation Tribunal. But the authorities at the check post made no attempt to raise demand for recovery of the arrear dues amounting to Rs. 46,952.

On this being pointed out (December 1995) in audit, the Entry Tax Officer stated that formal demand notice would be sent to the dealer. Report on further development has not been received (January 1998).

(ii) During Audit in the office of the Entry Tax Officer at Howrah Railway Goods check post, it was noticed that 5 consignments of specified goods were brought into CMA by a dealer in January 1995. These commodities were duly assessed to tax by the entry tax authorities at the check post. But the Railway authorities released the goods without realisation of the assessed tax amounting to Rs. 35,036.

On this being pointed out (December 1995) in audit, the department stated that the matter was being looked into. Report on further development has not been received (January 1998).

The above cases were reported to Government between February and March 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

*Acetylene black is nothing but carbon black in accordance with the definition given at page 11 of the Condensed Chemical Dictionary (10th Edition).

6.08 Loss of revenue due to non-initiation of certificate proceedings

Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, when any amount of tax and penalty is not paid by the dealer after receipt of the demand, the assessing authority may send a requisition to the certificate officer for recovery of such dues as an arrear of land revenue under the Public Demands Recovery Act, 1913, under which a certificate debtor is liable to pay interest at the rate of six and a quarter per cent per annum on belated payment of certificate demand from the date of signing of the certificate by the certificate officer to the date of realisation. As there is no provision in the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 for levy of interest for belated payment of the dues, the more the delay in sending the case to the certificate officer, the more will be the loss of revenue in the shape of interest leviable under the Public Demands Recovery Act, 1913.

(a) During audit in the office of the Entry Tax Officer at Hansgara Road check post in Hooghly district, it was noticed that demand for payment of assessed tax and penalty amounting to Rs. 11.07 lakhs was issued to 3 dealers between March 1989 and January 1991 but the dues remained unpaid. The department made no attempt to recover the amount by initiating certificate proceedings as a result of which Government had already sustained a loss of revenue in the shape of interest to the tune of Rs. 4.35 lakhs (up to March 1997) that could have been levied on the dealers on assessed dues had the certificate proceedings been initiated immediately after the due dates for payment of assessed tax and penalty.

On this being pointed out (December 1995) in audit, the department stated that the matter was being looked into and action would be taken with the approval of higher authority. Report on action taken has not been received (January 1998).

(b) During audit in the office of the Entry Tax Officer at Banitabla Road check post in Howrah district, it was noticed that demands for payment of assessed tax and penalty amounting to Rs. 2.74 lakhs were issued to 9 dealers in 11 cases between August 1983 and March 1995, but the dues remained unpaid. The department made no attempt to recover the amount by initiation of certificate proceedings, as a result of which Government sustained a loss of revenue in the shape of interest to the tune of Rs. 83,892 that could have been levied on the dealers had the certificate proceedings been initiated immediately after the due dates for payment of assessed tax and penalty calculated at the rate of 6.25 per cent per annum on the assessed dues.

On this being pointed out (December 1995 and January 1996) in audit, the department stated that necessary action would be initiated in 2 cases in due course while they offered no comments for the other cases. Further report on action taken has not been received (January 1998).

The cases were reported to Government between February and March 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

6.09 Irregular exemption of tax

Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, drug and drug intermediaries of IP, BP or USP specified grade (chemical based) except those specified elsewhere are exempted from tax. All other chemicals not specified elsewhere are chargeable to tax at the rate of two per cent *ad valorem*. By an order issued in April 1984, Government directed that drug intermediaries (chemical based) brought by manufacturers of drugs for use in the manufacture of drugs within Calcutta Metropolitan Area (CMA) may be exempted subject to the conditions that (i) the manufacturers of drugs shall submit an application to the assessing officer giving particulars of drug licence for manufacture of drugs with a xerox copy of the licence and (ii) a declaration in writing that such drug intermediaries (chemical based) would be used exclusively in the manufacture of drugs and would not be sold.

During audit in the office of the Entry Tax Officer at Banitabla Road check post in Howrah district, it was noticed that 17 consignments of sorbitol 70 per cent valued at Rs. 36.45 lakhs were brought into CMA between 1 April 1994 and 31 March 1995. The dealers bringing the above goods did not apply for exemption of tax with copies of drug licence of manufacturers of drugs nor did they submit any declarations that the above drug intermediaries (chemical based) would be used exclusively in the manufacture of drugs as contemplated in the Government order. Thus, they were not entitled to exemption from payment of tax. But the authorities at the check post allowed exemption of tax on all the consignments. This resulted in irregular exemption of tax to the tune of Rs. 72,908.

On this being pointed out (January 1996) in audit, the department furnished no specific reply.

The matter was reported to Government in March 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

6.10 Undue financial benefit to a dealer

Under the provisions of the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, where the assessing authority is not satisfied about the reasonableness of the value of goods as declared by the dealer, the approximate saleable value of the goods in Calcutta Metropolitan Area (CMA) shall be determined by him according to the best of his judgement. The assessable value of a specified goods VIP luggage, brought into CMA by M/s. VIP Industries Limited through the Road check posts in Hooghly and Howrah districts was enhanced by 56 per cent and 35 per cent respectively of what was declared by the dealer. On appeal, the Hon'ble High Court, Calcutta in their orders issued in December 1987 directed that the goods should be released on payment of tax on the declared value and rest by bank guarantee. The West Bengal Taxation Tribunal also expressed identical views in their orders of November 1993.

During audit of the records of the Entry Tax Officers at Hansgara and Banitabla Road check posts in the districts of Hooghly and Howrah respectively, it was noticed (December 1995 and January 1996) that several consignments brought into CMA by the dealer through the above check posts between 26 May 1987 and 31 March 1995 involving additional tax of Rs. 96.08 lakhs against which bank guarantee for Rs. 57 lakhs was furnished by the dealer. The validity of such insufficient bank guarantee has also expired on 18 August 1995. The considerations which weighed with the department for extending such undue financial benefits to the dealer leading to loss of Government revenue of Rs. 39.09 lakhs were not on record.

On this being pointed out (December 1995 and January 1996) in audit, the check post authority of Banitabla stated that the entire matter of obtaining bank guarantee from the dealer concerned as per directives of the West Bengal Taxation Tribunal rested with the Director of Entry Taxes while the check post authority of Hansgara stated that the matter was being brought to the notice of higher authority. Report on further action taken by the Director of Entry Tax has not been received (January 1998).

The cases were reported to Government between February and March 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

6.11 Lack of control in settlement of transport passes

Under the Taxes of Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, where no tax is leviable on entry of any specified goods into Calcutta Metropolitan Area (CMA) on the ground that such goods are not intended to be consumed, used or sold in such area, the prescribed authority shall issue a transport pass (TP) certifying non-leviability of tax. The dealer or his agent shall furnish to the authority issuing the TP within fifteen days from the date of such issue, a return in prescribed form, giving address of the place where the goods have been stored and an account of disposal thereof. Conveyance of the goods out of CMA should generally be within a period of six months from the date of entry failing

which report should be submitted to the prescribed authority stating reasons thereof. In case of failure of a dealer to furnish evidence within specified time to prove that the goods have not been consumed, used or sold, the specified goods shall be deemed to have been consumed, used or sold in CMA involving levy of tax.

During audit in the offices of the Entry Tax Officers of 19 check posts in 5 districts*, it was noticed that 736 consignments of specified goods were brought into CMA by some dealers between July 1989 and March 1995 on the strength of TPs. But, there was nothing on record to show that those goods were taken out of CMA even after the expiry of the period ranging between 8 and 76 months. The dealers did neither furnish any return showing addresses of the places where the goods were stored nor any account of disposal thereof. As such the goods might well be construed to have been consumed, used or sold in CMA, but no action was taken by the department against the defaulting dealers for levy and realisation of tax amounting to Rs. 626.72 lakhs as detailed in the table below:

*Calcutta, Hooghly, Howrah, South 24-Parganas and North 24-Parganas.

Sl. No	Name of the check post	Number of consignments	Value/Qty of specified goods	Period of entry into CMA on the strength of transport pass	Non-receipt of proof in support of goods taken out of CMA beyond the period ranging	Tax leviable but not levied	Reply of the department
			(Rupees in lakhs)	(Between)	(Between)	(Rupees in lakhs)	
1	2	3	4	5	6	7	8
1.	Calcutta Jetty	56	24,920	April 1994 and September 1994	15 and 20 months	493 00	The department stated (December 1995) that the matter would be pursued and result thereof would be communicated in due course
2	Netaji Subhas Dock	138	2.789 3,395 MT	April 1994 and March 1995	9 and 20 months	53 89	The department agreed (December 1995) to take action in consultation with the higher authority.
3	Kidderpore Dock Gate No 3	26	1,201	March 1995	8 months	24 93	The department agreed (December 1995) to take action in the matter
4	Calcutta Airport (Cargo)	66	1,015	April 1994 and March 1995	8 and 20 months	20 20	The department agreed (December 1995) to take action in the matter
5.	Hansgara Road	43	307 66	April 1994 and March 1995	9 and 20 months	5 59	The department agreed (December 1995) to look into the matter
6	Basudevpur Road	28	252 25	February 1994	21 months	4 93	The department stated (December 1995) that the dealers would be asked to pay if they failed to settle the case
7.	Hanspukuria Road	98	228	March 1993 and March 1995	9 and 33 months	4 86	The department agreed (January 1996) to take action
8	Noapara Road	124	191 24,000 litres	April 1994 and March 1995	8 and 19 months	3 97	The department agreed (November 1995) to look into the matter.

9.	Kidderpore Dock	26	38803.274 MT	July 1993 and May 1994	.19 and 29 months	3 88	The department agreed (December 1995) to look into the matter.
10.	Calcutta Airport (Domestic)	8	130.77	April 1994 and March 1995	8 and 20 months	2.51	The department agreed (December 1995) to take action in the matter.
11.	Bahirgangarampur Road	4	106.50	December 1994 and February 1995	10 and 12 months	2.13	The department stated (January 1996) that notices had been issued, however, follow-up action would be taken.
12.	Benjanberia Charial Road	20	137.24	March 1993 and March 1995	10 and 34 months	1.49	The department agreed (January 1996) to take necessary action in the matter.
13.	Paschim Barisha Road	22	61.82	March 1993 and March 1995	9 and 33 months	1.41	The department agreed (January 1996) to take action in the matter.
14.	Gopalpur Lauhati Road	17	39.55	August 1993 and March 1995	8 and 27 months	0.96	The department agreed (November 1995) to take action.
15.	Kalighat Railway	6	3572.03 MT	January and April 1993	32 and 35 months	0.83	The department admitted the observation and agreed (December 1995) to take action.
16.	Howrah Railway	16	28.49	April and October 1992	21 and 27 months	0.60	The department agreed (July 1994) to take follow-up action.
17.	Rajarhat-Bishnupur Road	13	23.36	July 1989 and March 1995	8 and 76 months	0.60	The department agreed (November 1995) to take action.
18.	Palashi Road	11	24.64	August 1993 and March 1995	8 and 27 months	0.55	The department agreed (November 1995) to take due action.
19.	Indian Airlines	14	20	March 1994 and March 1995	8 and 33 months	0.39	The department agreed (December 1995) to take action.
	Total	736				626.72	

All the above cases were reported to Government between August 1994 and March 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

6.12 Non-levy of tax on goods brought for repair but not taken out subsequently

Under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, a dealer or his agent bringing specified goods into Calcutta Metropolitan Area (CMA) for purposes of consumption, use or sale, shall pay entry tax at the rate specified in the schedule to the Act. In terms of departmental circulars issued in August 1972 and November 1985, specified goods brought into CMA for purpose of repairs, may be exempted from levy of tax, subject to certain conditions, viz, the dealer causing entry of the goods must (i) certify that the goods were for repairs and not for any other purposes and (ii) undertake that the goods would be taken out of CMA through the same check post within the time allowed for their return. In no case, should the period allowable for return of the goods after repair, exceed one year, but the Director of Entry Tax may extend the period beyond one year on the merit of each case.

During audit in the offices of the Entry Tax Officers of 5 Raod check posts in 3 districts*, it was noticed that 137 consignments of specified goods were brought into CMA for purposes of repair between April 1991 and March 1995. These goods were not taken out of CMA after repair, even after the expiry of the period ranging between 7 and 38 months. There was also nothing on record to indicate that the period of time for taking the goods out of CMA had been extended by the competent authority. Entry tax amounting to Rs. 10.40 lakhs was leviable on those consignments as the commodities were deemed to have been consumed, used or sold in CMA but the department had not initiated any action for realisation of tax as detailed below:

*Hooghly, Howrah and North 24-Parganas.

Sl. No.	Name of the check post	Number of consignments	Period of entry of specified goods taken out of CMA for repairs	Non-receipt of proof in support of goods taken out of CMA after repair beyond the period ranging	Tax leviable but not levied	Reply of the department
			(Between)	(Between)	(Rupees in lakhs)	
1	2	3	4	5	6	7
1.	Hansgara Road	19	April and November 1994	12 and 20 months	2.65	The department stated (December 1995) that the matter was being looked into.
2.	Noapara Road	50	April 1994 and March 1995	7 and 19 months	2.40	The department stated (November 1995) that the matter was being looked into and appropriate action would be taken.
3.	Banitabla Road	16	April and November 1994	13 and 20 months	1.42	The department made (December 1995) no specific reply.
4.	Banitabla Road	4	May and September 1994	15 and 19 months	1.20	The department stated (December 1995) that the matter was being looked into.
5.	Banitabla Road	8	May 1994 and March 1995	9 and 19 months	1.18	The department stated (December 1995) that the Entry Tax Officer was in power to grant further one year extension i.e., up to March 1996, but the levy of tax has been abolished since April 1995. The reply is not tenable as the cases initiated under the erstwhile Act should continue to be pursued under the repealing Act.
6.	Basudevpur Road	10	October 1993 and December 1994	12 and 26 months	0.65	The department stated (December 1995) that the dealers would be asked to pay tax or to show sufficient proof of return of the goods within specified time or extended time limit.

Sl. No.	Name of the check post	Number of consignments	Period of entry of specified goods taken out of CMA for repairs (Between)	Non-receipt of proof in support of goods taken out of CMA after repair beyond the period ranging (Between)	Tax leviable but not levied (Rupees in lakhs)	Reply of the department
1	2	3	4	5	6	7
7.	Palashi Road	6	May 1993 and February 1995	9 and 30 months	0 56	The department admitted (November 1995) the audit observation and stated that action was being taken at their end and the results would be intimated to audit in due course.
8	Howrah Railway	24	April 1991 and December 1992	18 and 38 months	0 34	The department stated (June 1994) that the matter was being followed up.
	Total	137			10 40	

The above cases were reported to Government between August 1994 and March 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

6.13 Non-levy of entry tax on goods brought for immediate export

Under the provisions of the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 and the rules made thereunder, goods meant for immediate export may be allowed entry into Calcutta Metropolitan Area (CMA) without payment of tax subject to the condition that the goods are conveyed direct from the place of entry into CMA to the place of export. In terms of instructions issued by the department in August 1973, the proof of such export is to be submitted by the exporter to the department within sixty days from the date of entry of goods into CMA or such extended time as may be allowed by the prescribed authority failing which tax at prescribed rate shall be payable.

During audit in the offices of the Entry Tax Officers at 7 Road and Railway check posts in 5 districts*, it was noticed that 878 consignments of specified goods were brought into CMA by some dealers between April 1992 and March 1995 for export. There was nothing on record to indicate that these goods were actually exported out of CMA even after the expiry of the period ranging between 8 and 26 months. There was also no record to show that the time limit was extended by the competent authority. No action had been taken by the department for realisation of entry tax amounting to Rs. 85.88 lakhs leviable on those consignments as detailed in the table below:

*Calcutta, Hooghly, Howrah, South 24-Parganas and North 24-Parganas

Sl. No.	Name of the check post	Number of consignments	Period of entry of specified goods into CMA for export	Non-receipt of proof in support of export out of CMA beyond the period ranging	Tax leviable but not levied	Reply of the department
			(Between)	(Between)	(Rupees in lakhs)	
1	2	3	4	5	6	7
1.	Noapara Road	621	April 1994 and March 1995	8 and 18 months	66.75	The department agreed (November 1995) to look into the matter.
2.	Hansgara Road	18	April and July 1994	17 and 20 months	4.08	The department stated (December 1995) that the matter was being looked into and action would be taken wherever necessary with the approval of higher authority.
3.	Howrah Railway	28	April 1992 and March 1993	15 and 26 months	3.14	The department agreed (July 1994) to follow up the matter.
4.	Sealdah Railway	83	April 1994 and March 1995	9 and 18 months	3.08	The department stated (December 1995) that some of the dealers had submitted copy of transport passes along with relevant document and for rest of the dealers follow-up action would be started as early as possible.
5.	Howrah Railway	42	April and November 1994	12 and 20 months	2.62	The department stated (December 1995) that the matter was being looked into.
6.	Banitabla Road	39	April and May 1994	19 and 20 months	2.25	The department stated (December 1995) that in respect of one case a communication was being made to the higher authority, while in other cases constant pursuances were being made with different dealers.

7.	Howrah Railway	24	April and November 1994	13 and 20 months	1 51	The department stated (December 1995) that the matter was being looked into
8.	Hanspukuria Road	16	February and March 1995	10 and 11 months	1 48	The department stated (January 1996) that steps were being taken to collect the relevant documents of export outside India and would be submitted to audit as and when available
9.	Cossipore Road Railway	7	February and March 1995	8 and 9 months	0 97	The department agreed (December 1995) to look into the matter
	Total	878			85 88	

The above cases were reported to Government between August 1994 and March 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

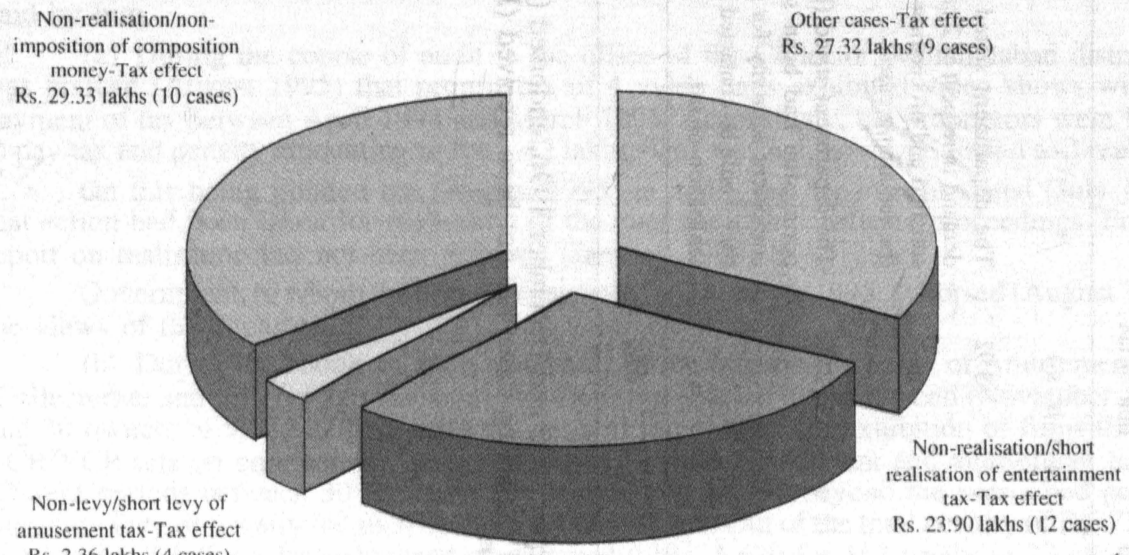
CHAPTER 7

AMUSEMENTS TAX

AMUSEMENTS TAX

7.01 Results of audit

Test check of records of amusements tax maintained at different district revenue wings, conducted in audit during the year 1996-97, revealed underassessments etc of tax amounting to Rs. 82.91 lakhs in 35 cases, which broadly fall under the following categories:



Total tax effect Rs. 82.91 lakhs (35 cases)

During the course of the year 1996-97 the concerned department accepted underassessments etc of Rs. 69.29 lakhs in 31 cases of which 26 cases involving Rs. 61.77 lakhs had been pointed out in audit during the year 1996-97 and the rest in the earlier years. A few illustrative cases involving Rs. 11.29 lakhs highlighting important observations are given in the following paragraphs.

7.02 Non-realisation of entertainment-cum-amusement tax from holders of VCR/VCP sets

Under the West Bengal Entertainment-cum-Amusement Tax Act, 1982 as amended from time to time, the holder of a video cassette recorder/player (VCR/VCP) set is liable to pay luxury-cum-entertainment and amusement tax at the rate as notified by Government from time to time. As per order (10 August 1989) of the Hon'ble High Court, Calcutta, video hall owners would be liable to pay tax for commercial exhibition of films through the VCR/VCP sets at the rate of rupees two hundred and fifty per week per set in respect of rural area and rupees five hundred per week per set in respect of urban area unless a fresh notification was issued by Government. Government revised the rate of tax of rural area from 1 June 1990 and 1 April 1992 at rupees five hundred and rupees six hundred per week per set while that of urban/ municipal area at rupees seven hundred fifty and rupees nine hundred respectively.

During the course of audit in the office of the Amusement Tax Officers in 2 districts, it was noticed (between September 1995 and November 1996) that there was non-realisation of entertainment-cum-amusement tax amounting to Rs. 6.62 lakhs from 20 video hall owners in different areas as mentioned in the table below:

Sl No	Name of the district	Number of licences	Period of exhibition	Amusement tax realisable	Amusement tax realised	Non-realisation of tax	Reply of the department
			(Between)	(Rupees in lakhs)			
1.	Malda	18	April 1994 and 25 September 1995	3 92	—	3.92	The department stated (August 1997) that demand in respect of 2 cases had already been satisfied and proceedings started in respect of the remaining cases
2.	Darjeeling	2	1 July 1992 and 31 October 1996	2 70	—	2.70	The department stated (December 1996) that permission had been sought for from the competent authority for collection of tax and they would be contacted again in the matter of realisation of tax
	Total	20		6 62		6.62	

Government, to whom the above cases were reported between December 1995 and December 1996, endorsed (August 1997) the views of the department in respect of case at Sl. 1; their reply in respect of the remaining cases has not been received (January 1998).

7.03 Non-realisation of tax and penalty for unauthorised exhibition of films by video parlours

Under the provisions of the West Bengal Entertainment-cum-Amusement Tax Act, 1982, a holder of a video cassette recorder/player (VCR/VCP) set shall pay rupees six hundred per week for commercial exhibition of films in rural areas within seven days from the end of such week. If such a holder fails to pay the amount of tax within the aforesaid period, he shall be liable to pay a penalty at the rate of rupees ten per week or part thereof till the tax is fully paid by him.

(a) During the course of audit in the office of the Collector, Murshidabad district, it was noticed (August 1995) that proprietors of 4 video halls exhibited video shows without payment of tax between April 1994 and March 1995. Accordingly, the proprietors were liable to pay tax and penalty amounting to Rs. 1.42 lakhs. This was not, however, levied and realised.

On this being pointed out (August 1995) in audit, the department stated (July 1997) that action had been taken for realisation of the dues through certificate proceedings. Further report on realisation has not been received (January 1998).

Government, to whom the case was reported in December 1995, endorsed (August 1997) the views of the department.

(b) During the course of audit of records of the officers-in-charge of Amusement Tax (Collectorate and Siliguri Sub-division) in Darjeeling district, it was noticed (November 1996) that 30 owners of video halls in different parts of the district, for exhibition of films through VCR/VCP sets on commercial basis, paid luxury-cum-entertainment and amusement tax for different periods between 30 January 1994 and 15 April 1996 beyond the prescribed periods attracting levy of penalty for such belated payment of tax. Out of the total penalty of Rs. 73,670 leviable for 7,367 weeks (calculated cumulatively), Rs. 1,620 for 162 weeks in 23 cases was levied and realised. This resulted in short levy and short realisation of penalty of Rs. 72,050.

On the omission being pointed out (November 1996) in audit, the district authority stated that demand was being raised for realisation while the sub-divisional authority stated that the rate of penalty would be applied. Further report on realisation has not been received (January 1998).

The case was reported to Government in December 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

7.04 Non-realisation of annual tax for possession of VCR/VCP sets

Under the West Bengal Entertainment-cum-Amusement Tax Act, 1982 as amended from time to time, every holder of video cassette recorder/player (VCR/VCP) set is liable to pay luxury-cum-entertainment and amusement tax at the rate of rupees two hundred fifty for each year for every VCR/VCP set held or possessed by him subject to provision that if the holder becomes liable to pay tax after 30th June during a year, he shall be liable to pay during the year one-half of the amount of tax as specified above. Again, if such holder fails to pay the amount of tax within the prescribed period, in addition to payment of tax, he shall be liable to pay penalty at the rate of rupees ten per month or part thereof for every VCR/VCP set depending on the date of payment of tax.

During the course of audit of the records of Amusement Tax Officer under the Collector, Darjeeling district, it was noticed (November 1996) that holders of 32 VCR/VCP sets located in different parts of the district did not pay luxury-cum-entertainment and amusement tax for 173 years (cumulative) between 23 February 1984 and 13 March 1996 for the sets possessed by them. Tax realisable at the annual rate of Rs. 250 for 173 years amounting to Rs. 43,250 was neither levied nor realised.

On this being pointed out (November 1996) in audit, the district authority stated (September 1997) that a sum of Rs. 10,000 had been realised. Report on realisation of the balance amount has not been received (January 1998).

The case was reported to Government in December 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

7.05 Non-realisation of composition money from the defaulting proprietors of cinema houses

Under the Bengal Amusement Tax Act, 1922 and the rules framed thereunder, every proprietor in relation to a cinematograph exhibition shall submit to the assessing authority a return in the prescribed form separately for each week by Tuesday immediately following the week to which the return relates. If the proprietor fails to furnish the prescribed returns within the prescribed period, he shall be punishable by way of composition of such offence with a sum of money not exceeding rupees one thousand or double the amount of tax payable, whichever is greater.

During the course of audit in the office of the Collector, Jalpaiguri district, it was noticed (December 1995) that proprietors of 6 cinema houses defaulted in submitting weekly returns for various weekly periods between October 1994 and May 1995. Accordingly, the proprietors were liable to pay composition money amounting to Rs. 2.10 lakhs equivalent to double the amount of tax. This was not, however, levied and realised.

On this being pointed out (December 1995) in audit, the department stated (August 1997) that concerned cinema halls had already been directed to deposit their outstanding dues. Report on further development has not been received (January 1998).

Government, to whom the case was reported in March 1996, endorsed (August 1997) the views of the department.

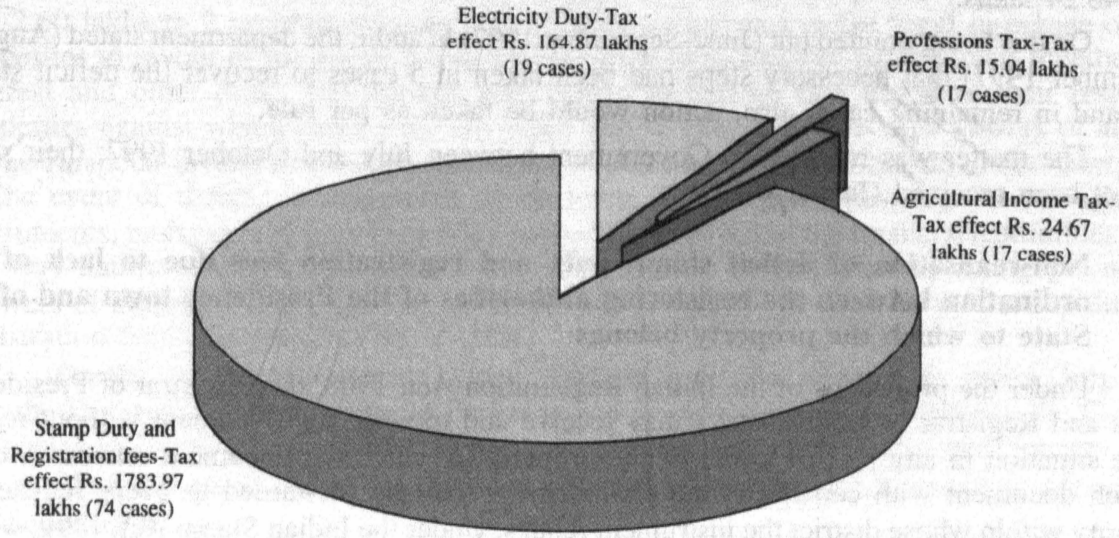
CHAPTER 8

OTHER TAX RECEIPTS

OTHER TAX RECEIPTS

8.01 Results of audit

Test check of records in the offices dealing with assessments, collection and realisation of other tax receipts, namely, Stamp Duty and Registration Fees, Agricultural Income Tax, Professions Tax and Electricity Duty, conducted in audit during the year 1996-97, revealed underassessments/short levy of revenue amounting to Rs. 1988.55 lakhs in 127 cases as indicated below:



Total tax effect Rs. 1988.55 lakhs (127 cases)

During the course of the year 1996-97 the concerned department accepted underassessments etc of Rs. 180.50 lakhs involved in 70 cases of which 54 cases involving Rs. 157.52 lakhs had been pointed out in audit during the year 1996-97 and the rest in the earlier years. A few illustrative cases involving Rs. 584.36 lakhs highlighting important observations are given in the following paragraphs.

A—STAMP DUTY AND REGISTRATION FEES

8.02 Evasion of stamp duty and registration fees of properties of West Bengal registered in Mumbai and Delhi

Under the Indian Registration Act, 1908, the Registrar of a district in which a Presidency town is included and the Registrar of Delhi district may receive and register any document without regard to the situation in any part of India of the property to which the document relates. A copy of such document and of the endorsements and certificates thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situated.

Under the Indian Stamp Act, 1899, where any instrument has become chargeable in any part of India to which this Act applies, other than West Bengal, with duty under this Act or under any other law for the time being in force in any part of India and thereafter becomes chargeable with higher rate of duty in West Bengal, the amount of the duty, chargeable on such instrument, shall be the amount, chargeable on it under schedule I-A, less the amount of duty, if any, already paid on it in the State in which the instrument was registered. In terms of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 1994, the market value in relation to any land shall be determined on the basis of the highest price for which sale of any land of similar nature and area, in a comparable locality, has been settled during the five consecutive years, immediately preceding the date of execution of any instrument setting forth such market value.

In course of cross-verification of 25 deeds registered in Mumbai and 66 deeds registered in Delhi in respect of properties under the jurisdiction of District Registrars, South 24-Parganas, Nothe 24-Parganas and Registrar of Assurance, Calcutta, West Bengal, it was noticed that the value of properties set forth therein was much lower than the market value of properties of similar nature in the respective areas in West Bengal as determined by the local registering authority. The net undervaluation of properties (Rs. 1833.61 lakhs) and registration of the same in Mumbai and Delhi resulted in evasion of stamp duty and registration fees to the extent of Rs. 248.24 lakhs.

On this being pointed out (June-September 1997) in audit, the department stated (August-September 1997) that necessary steps had been taken in 5 cases to recover the deficit stamp duty and in remaining cases also, action would be taken as per rule.

The matter was reported to Government between July and October 1997; their reply has not been received (January 1998).

8.03 Non-realisation of deficit stamp duty and registration fees due to lack of co-ordination between the registering authorities of the Presidency town and of the State to which the property belongs

Under the provisions of the Indian Registration Act, 1908, the Registrar of Presidency towns and Registrar of Delhi district may receive and register any document without regard to the situation in any part of India, of the property to which the document relates. A copy of such document with certificate and endorsement shall be forwarded to every registering authority within whose district the instrument relates. Under the Indian Stamp Act, 1899, where any instrument has become chargeable in any part of India, to which this Act applies, other than West Bengal, with duty under this Act and thereafter becomes chargeable with higher rate of duty in West Bengal, the amount of the duty, chargeable on such instrument, shall be the amount, chargeable on it under the schedule less the amount of duty, if any, already paid on it in the State in which the instrument stands registered.

In course of cross-verification of 1,748 deeds registered in Mumbai, Delhi and Chennai in respect of properties situated in 3 districts* of West Bengal, it was noticed that the copies of 1,657 such deeds were not received by the District Ragistrars up to August 1997. The prescribed authorities in West Bengal could not thus realise the dificit stamp duty and registration fees amounting to Rs. 300.28 lakhs owing to non-receipt of copies of the deeds from the registering authorities of Mumbai, Delhi and Chennai. Further, undervaluation of property, if any, in such deeds and consequential short realisation of stamp duty and registration fees could also not be ascertained.

On this being pointed out (May 1997) in audit, the department stated (August 1997) that the Inspector General of Registration, Mumbai had been requested to send the copies of the documents for necessary action in respect of 7 cases. Report on further action taken in respect of the remaining cases has not been received (January 1998).

The matter was reported to Government in July-September 1997; their reply has not been received (January 1998).

8.04 Loss of revenue due to mis-classification of deeds

Under the Indian Stamp Act, 1899, different rates of stamp duty and registration fee are prescribed for different kinds of deeds. A deed of power of attorney includes any instrument empowering a specified person to act for and in the name of a person executing it, while mortgage deed includes any instrument whereby, for the purpose of securing money advanced or to be advanced by way of loan, or an existing or future debt, or the performance of an

*Calcutta, South 24-Parganas and North 34-Parganas.

engagement, one person transfers to, or creates in favour of another a right over or in respect of a specified property. It has been judicially held* that an instrument evidencing an agreement to secure the payment of a loan on the deposit of a title deed and to give the mortgagee a right to call upon the mortgagor at any time to execute a mortgage in favour of the mortgagee, is a mortgage deed.

According to the recitals in 2 separate instruments registered in Kakdwip Sub-Registry office in the district of South 24-Parganas between 1991 and 1993 as powers of attorney, the United Bank of India and the Peerless Abasan Finance Limited agreed to advance loans of Rs. 2.60 lakhs to 2 separate persons. The loanees agreed to execute legal mortgage of their properties in favour of the above 2 financial institutions as security for the loans together with interest and other dues. The loanees also agreed to deposit title deeds of their respective properties against which loans were advanced and to execute irrevocable powers of attorney to the financial institutions authorising them to execute for and on behalf of the mortgagees in the event of default in repayment of the loans. The loanees thus, created through these instruments, mortgages of their respective properties in favour of the financial institutions. From the very nature of the recitals the deeds were as such to be classified as 'mortgage' and not 'powers of attorney'. Mis-classification of the deeds resulted in short levy of stamp duty and registration fees amounting to Rs. 37,924.

On this being pointed out (August 1994) in audit, the department stated (July 1997) that the District Registrar, South 24-Parganas had already referred the matter to the Collector for realisation of deficit stamp duty. Report on realisation has not been received (January 1998).

Government, to whom the case was reported in February 1995, endorsed the views of the department.

8.05 Evasion of stamp duty and registration fees

Under the provisions of the Indian Stamp Act, 1899 as applicable in West Bengal, the consideration money, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable, shall be fully and truly set forth therein. In terms of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 1994, the market value in relation to any land shall be determined on the basis of the highest price for which sale of any land of similar nature and areas, in a comparable locality, has been settled during the five consecutive years, immediately preceding the dates of execution of any instrument setting forth such market value.

During the course of audit in the office of the Sub-Registrar, Chandrakona in Midnapur district, it was noticed that 17 deeds were registered between January 1995 and March 1996, wherein the executants declared the value of properties, which varied widely with the sale price of land of similar nature and area settled during last 5 years, immediately preceding the dates of execution of the instant cases of deeds. Such undervaluation of properties resulted in evasion of stamp duty and registration fees to the tune of Rs. 45,212.

On this being pointed out (July 1996) in audit, the department stated (July 1997), *inter alia*, that all cases had been referred to the Collector for taking necessary action and 3 cases had been disposed of by collecting deficit stamp duty and registration fees. Report on realisation of the balance amount has not been received (January 1998).

Government, to whom the case was reported in October 1996, endorsed the views of the department.

8.06 Non-levy of penalty for payment of too low a court-fee before grant of probate

Under the provisions of the West Bengal Court-fees Act, 1970, where any person applying for probate has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Board

*Kumar Kamala Ranjan Roy, In re. A9 ILR (1937)2 Cal 486:41 CWN 961 (FB).

of Revenue may on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate to be duly stamped on payment of full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate is produced within one year from the date of the grant, of five times, or if it is produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee orginally paid on such probate. Penalty may, however, be remitted if the authority is satisfied that lesser amount of fee was paid in consequence of a mistake without any intention of fraud on the part of the person applying for probate.

During the course of audit in the office of the Collector of Calcutta, it was noticed (July 1996) that in 6 cases, persons applying for probate paid lower court-fee by undervaluing the estates of the deceased before grant of probate by the High Court between January 1989 and October 1991. The court-fee originally paid represented only 18 per cent to 64 per cent (aggregating 43 per cent) of court-fee ultimately found payable. The Probate Deputy Collector on behalf of the Board of Revenue assessed and realised the deficit court-fee but penalty proceedings were not initiated. The aggregate penalty leviable in those cases stood at Rs. 9.45 lakhs.

On this being pointed out (July 1996) in audit, the department stated (May 1997) that all the cases had been re-opened and necessary steps to impose penalty in respect of 4 cases had been taken. Report on realisation has not been received (January 1998).

The matter was reported to Government in September 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

B—AGRICULTURAL INCOME TAX

8.07 Non-levy of interest for non-payment of advance tax

Under the provisions of the Bengal Agricultural Income Tax Act, 1944, an assessee whose agricultural income tax exceeds two thousand rupees, shall pay advance tax equal to the agricultural income tax of the latest previous year in respect of which he has been assessed. If no such advance tax is paid, the assessing officer at the time of regular assessment, shall levy interest at the rate of two per cent for each English calendar month from the first day of January in the financial year in which the advance tax is payable up to the month of such regular assessment.

During the course of audit (January 1996) in the office of the Agricultural Income Tax Officer, Nadia, it was noticed that in 9 cases, no advance tax was paid by the assessees though the agricultural income tax payable by them exceeded Rs. 2,000. The assessing officer also did not levy interest at prescribed rate at the time of regular assessment made between October 1994 and March 1995. The omission resulted in non-levy of interest amounting to Rs. 71,304 for the period ranging between 38 and 74 months.

Government, to whom the cases were reported in February 1996, endorsed (July 1997) the reply of the department that interest for non-payment of advance tax had been charged in all the cases pointed out by audit.

C—PROFESSIONS TAX

8.08 Non-realisation of profession tax due to non-enrolment of video halls/parlours

Under the West Bengal State Tax on Profession, Trades, Callings and Employment Act, 1979, owners of video halls/parlours are required to enrol themselves and to pay profession tax at the rate prescribed in the schedule appended to the Act as required from time to time. The rate of such tax is rupees nine hundred per annum from 1 April 1989 to 31 March 1992 and rupees two thousand five hundred per annum thereafter.

(a) During the course of cross-verification of records of the Collector, Purulia district, relating to amusement tax with the records of the Profession Tax Officer, Purulia district, it was noticed that 37 video halls/parlours were running their business for various periods falling between the years 1990 and 1994 without enrolment and payment of tax under the Act. This resulted in non-realisation of tax to the tune of Rs. 1.68 lakhs.

On this being pointed out (February 1995) in audit, the department stated (July 1997) that 33 out of 37 video hall owners had already been assessed *ex parte* and referred to the Certificate Officer, Purulia for recovery of assessed dues and that the remaining 4 video hall owners were paying tax regularly.

(b) During the course of audit of the records of the Profession Tax Officers in 2 districts* it was noticed that 17 video parlour owners were running their business for various periods between the years 1989-90 and 1994-95 without enrolment and payment of tax under the Act. This resulted in non-realisation of tax of Rs. 73,600.

On these cases being pointed out (between February and March 1995) in audit, the Profession Tax Officer, Howrah stated (May 1997) that in respect of 2 video parlours, enrolment numbers had been allotted and tax realised and in the case of remaining 6 video parlours, demands had been sent to the certificate officer for realisation while the Profession Tax Officer, Barasat stated (May 1997), *inter alia*, that all the video owners were non-income tax payer and they paid tax at the rate of Rs. 250 per annum. The reply of the Profession Tax Officer, Barasat is not tenable because realisation of tax at the rate of Rs. 250 is not covered by the provisions of the Act.

Government, to whom the cases were reported between April and July 1995, endorsed (July 1997) the views of the Profession Tax Officer, Purulia; no comments have been furnished in respect of the remaing cases.

D—ELECTRICITY DUTY

8.09 Non-realisation of duty on consumption of electrical energy in residential complex of the Railways

Under the Bengal Electricity Duty Act, 1935, while consumption in Railways is exempt from duty, energy consumed for lights and fans etc in the residential complex of the Railways is liable to duty at the prescribed rates. The West Bengal State Electricity Board supplied energy to the N F Railway for residential consumption in different railway stations in Jalpaiguri district. The Collector of the district should collect duty on the basis of assessment made by the competent authority.

It was noticed (December 1996) from the records of the Collector, Jalpaiguri district that the Inspecting Officer, Electricity Duty, Jalpaiguri, assessed such duty between December 1995 and August 1996 at Rs. 6.29 lakhs in respect of the period from April 1994 to December 1995 and forwarded to the Collector, Jalpaiguri for realisation. There was nothing on record to indicate that demands were raised for realisation of the dues. This resulted in non-raising of demand for and non-realisation of duty of Rs. 6.29 lakhs.

On this being pointed out (December 1996) in audit, the district authority stated (December 1997) that the Railway authority had deposited a sum of Rs. 2.65 lakhs out of Rs. 6.29 lakhs. Reports on realisation of the balance amount has not been received (January 1998).

The matter was reported to Government in March 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

8.10 Loss of revenue due to delay in/non-initiation of certificate proceedings

Under the Bengal Electricity Duty Act, 1935, any sum due on account of electricity duty, if not paid at the prescribed time and in the prescribed manner, shall be recoverable with six and a quarter per cent interest as a public demand under the Public Demands Recovery Act, 1913. As there was no provision for charging interest for delayed payment of electricity

*Howrah and North 24-Parganas.

duty under the Act of 1935 prior to 1 April 1995, any delay in requisition of certificate or drawing of certificate proceedings for recovery of electricity duty as an arrear of land revenue will result in loss of revenue on account of interest under the Public Demands Recovery Act, 1913.

(a) In Burdwan district it was noticed (August 1996) that in 5 cases electricity duty due for the various periods during April 1972 to June 1987 had not been paid by the parties but certificate cases were initiated for recovery of revenue after a lapse of 4 to 57 months. Delay in initiation of certificate cases resulted in loss of revenue on account of interest to the tune of Rs. 10.88 lakhs.

(b) In Darjeeling district it was noticed (November 1996) that in 13 cases electricity duty due for the various periods ranging from March 1978 to September 1992 had not been paid by the parties but no certificate case was initiated for recovery of revenue even after lapse of 7 to 12 years. This resulted in loss of revenue on account of interest to the tune of Rs. 2.63 lakhs.

On this being pointed out (August 1996) in audit, the district authority, Burdwan stated that every steps would be taken to gear up the system to check loss of revenue while the district authority, Darjeeling stated (November 1996) that action was being taken to initiate certificate proceedings. Report on further action taken has not been received (January 1998).

These cases were reported to Government in January 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

8.11 Underassessment of electricity duty

Under the Bengal Electricity Duty Act, 1935, the rate of electricity duty is ten per cent of net charge of energy consumed with effect from 1 February 1993. Prior to that date the rate was five paise per unit in connection with residential consumption out of supply from the West Bengal State Electricity Board.

(a) In Darjeeling district, it was noticed (November 1996) that assessment of electricity duty in respect of the N F Railway was made (February 1994 and February 1995) for the period from 1 October 1992 to 30 November 1993 at Rs. 65,673 calculated at the rate of 5 paise per unit instead of at 10 per cent of the net charge for energy consumed. Due to application of pre-revised rate there was an underassessment of electricity duty of Rs. 89,513.

(b) Similarly, in Jalpaiguri district, it was noticed (December 1996) that electricity duty for the period from 1 October 1992 to 30 June 1993 in respect of the N F Railway was assessed on 16 February 1994 at the rate of 5 paise per unit instead of revised rate applicable from 1 February 1993. This resulted in underassessment of electricity duty of Rs. 52,191.

On this being pointed out (November-December 1996) in audit, the Collector, Darjeeling district stated that action was being taken to raise demand for realisation while the Collector, Jalpaiguri district stated (December 1996) that the competent authority was being asked to re-assess the duty for realisation. Report on further action taken has not been received (January 1998).

The cases were reported to Government in January and March 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

8.12 Non-raising of demand for interest for delayed payment of duty

In terms of notification dated 31 March 1995 issued under the Bengal Electricity Duty Act, 1935, where a licensee fails to pay electricity duty by the prescribed date, he shall pay a simple interest at the rate of two per cent for each English calendar month upon so much amount of duty payable by him remains unpaid at the end of each month of default from 1 April 1995.

In Darjeeling district, it was noticed that the district authority issued demand notices (September-November 1996) to the N F Railway in respect of residential consumption for the period from 1 January to 31 December 1995 amounting to Rs. 3.84 lakhs for payment of electricity duty. But no demand for payment of interest was assessed and raised against the licensee as per the provisions of the Act. This resulted in non-raising of demand for interest to the tune of Rs. 1.22 lakhs calculated at the prescribed rate on average consumption of electricity duty up to 31 October 1996.

On this being pointed out (November 1996) in audit, the district authority agreed to take action to raise demand for realisation. Report on further action taken has not been received (January 1998).

The case was reported to Government in January 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

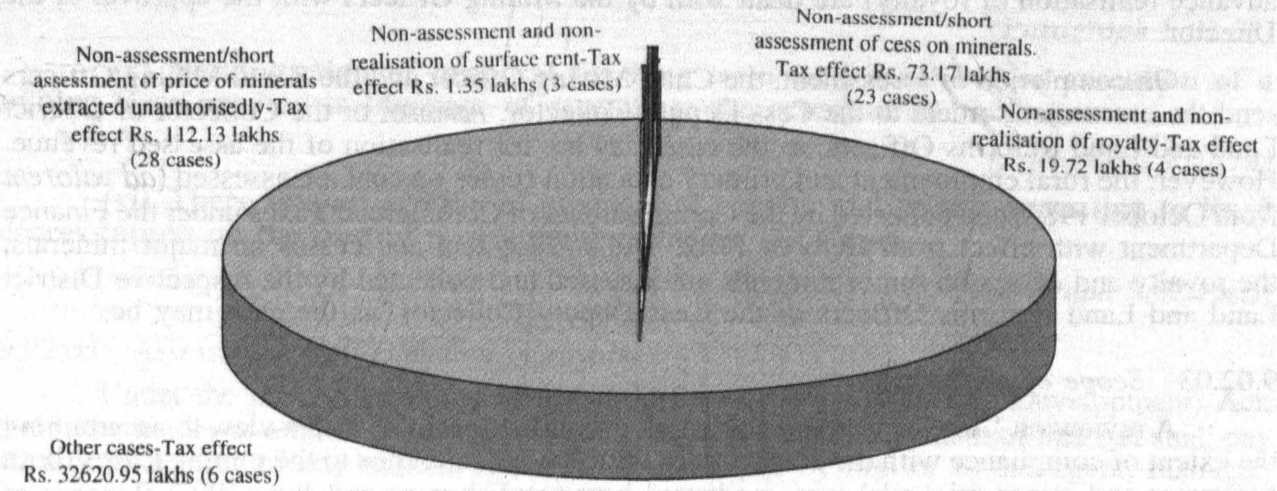
CHAPTER 9

MINES AND MINERALS

MINES AND MINERALS

9.01 Results of audit

Test check of records relating to mines and minerals under the different land reforms block offices and offices of the Cess Deputy Collector, Chief Mining Officer and other mining officers conducted in audit during the year 1996-97, revealed underassessments, non-realisation and short realisation of revenue amounting to Rs. 32827.32 lakhs in 64 cases, which broadly fall under the following categories:



Total tax effect Rs. 32827.32 lakhs (64 cases)

During the course of the year 1996-97 the concerned department accepted underassessments etc of Rs. 32050.11 lakhs in 55 cases of which 52 cases involving Rs. 32037.80 lakhs had been pointed out in audit during the year 1996-97 and the rest in the earlier years. The results of a review on 'Assessment and collection of mining receipts' and a few illustrative cases of important irregularities involving financial effect of Rs. 32640.87 lakhs are given in the following paragraphs.

9.02 Assessment and collection of mining receipts

9.02.01 *Introduction*

The important major minerals available in West Bengal are coal, dolomite, chinaclay, fireclay, calcite, wolfram, quartz, felspar, limestone, rock phosphate, moulding sand etc. The minor minerals available are stone, gravel, *morrum**, ordinary sand and brick earth. Sand used for stowing purposes is considered as a major mineral.

The extraction of mineral is governed by the Mines and Minerals (Regulation and Development) Act, 1957 and the Mineral Concession Rules, 1960. The Government of West Bengal have framed the West Bengal Minor Minerals Rules, 1973 to regulate the mineral concessions in respect of minor minerals within the State of West Bengal.

Receipts from mines and minerals comprise, royalty, dead rent, surface rent (governed under the West Bengal Estates Acquisition Act, 1953) application fee for quarry permit, prospecting licence fee, price for unauthorised extraction, interest for delayed payment, water rates and different kinds of cesses (road, public works, primary education and rural employment) regulated under (i) the Cess Act, 1880, (ii) the West Bengal Primary Education Act, 1973 and (iii) the West Bengal Rural Employment and Production Act, 1976 both as amended in 1992. Security deposit is also realisable for due observation of the provisions of the mineral rules.

**Morrum* is laterite hard soil found naturally in rock or loose form.

9.02.02 *Organisational set up*

The Director of Mines and Minerals under the control of the Commerce and Industries Department (Mines Branch) is the administrative head of the Mining Estates Branch of the State. He is assisted by the Chief Mining Officer at Asansol, Burdwan and 4 Zonal Mining Officers at Siliguri, Suri in Birbhum, Chinsura in Hooghly and Purulia. The grant of mining leases, licences etc of mineral bearing areas and assessment of royalty, dead rent etc, for both major and minor minerals (excepting cases of quarry permits for minor minerals which are granted by the mining departments under the District Collector on advance realisation of royalty) are dealt with by the Mining Officers with the approval of the Director.

On completion of assessment, the Chief Mining Officer and the Zonal Mining Officers send the assessment orders to the Cess Deputy Collector, Asansol or the Collector or District Land and Land Reforms Officers, as the case may be, for realisation of the assessed revenue. However, the rural employment and primary education cesses on coal are assessed (*ad valorem* from October 1983) and collected by the Commissioner of Commercial Taxes under the Finance Department with effect from October 1982. The surface rent and cesses on major minerals, the royalty and cesses on minor minerals are assessed and collected by the respective District Land and Land Reforms Officers or the Cess Deputy Collector, as the case may be.

9.02.03 *Scope of audit*

A review on 'Assessment and collection of mining receipts' with a view to ascertaining the extent of compliance with the current rules with special reference to the mining leases (both for major and minor minerals) was conducted between February and June 1997. Records of 17 offices* were test checked covering revenue period from 1991-92 to 1995-96. Some interesting points noticed during the local audit inspection during earlier years are also included in the review.

9.02.04 *Highlights*

(i) Non-inclusion of penal clause in the event of failure to extract stipulated minimum quantity of minerals resulted in loss of revenue amounting to Rs. 1.17 crores. *[Paragraph 9.02.05(viii)]*

(ii) Violation of the terms and conditions of lease by a lessee deprived Government of its due revenue of Rs. 1.06 crores. *[Paragraph 9.02.05(ix)]*

(iii) Ordinary sand when used for stowing purposes is treated as major mineral. Failure to identify such minerals according to their end use resulted in escapement of assessment of revenue of Rs. 4.28 crores. *[Paragraph 9.02.05(xiii)]*

(iv) Coal required for excess colliery consumption and boiler consumption is also within the coverage of despatch. Non-assessment of such despatches led to escapement of assessment of cesses of Rs. 4.81 crores. *[Paragraph 9.02.06(i)(a)]*

(v) Quantity or value of coal in the process of excess colliery and boiler consumption is required to be returned by the lessee for assessment of primary education and rural employment cesses. Non-ascertainment of such quantity/value resulted in evasion of cesses amounting to Rs. 210.85 crores. *[Paragraph 9.02.06(i)(b)]*

(vi) Inaction to assess cess in a district resulted in escapement of assessment of cesses amounting to Rs. 1.37 crores. *[Paragraph 9.02.06(ii)(a)]*

*Director of Mines and Minerals, 5 Zonal Mining Offices (including one Chief Mining Officer), 9 District Land and Land Reforms Offices (including 2 Sub-divisional offices—Hooghly, Birbhum, Jalpaiguri, Darjeeling, Purulia, Bankura, Midnapur and Sub-divisional offices at Asansol and Siliguri), Cess Deputy Collector, Asansol and Assistant Commissioner, Commercial Taxes, Asansol.

(vii) Owners of coal mines are required to submit returns of coal despatched and value thereof simultaneously for assessment of royalty and primary education and rural employment cesses. Non-disclosure of existence by such a owner resulted in evasion of payment of cesses to the tune of Rs. 71.15 crores. *[Paragraph 9.02.06(iii)]*

(viii) The erstwhile Board of Revenue upheld (November 1993) the audit findings that cesses were leviable on dead rent. In spite of this, the department did not levy cesses amounting to Rs. 1.87 crores in 3 districts. *[Paragraph 9.02.06(vi)]*

(ix) Surface rent and cesses amounting to Rs. 6.85 crores escaped assessment.

[Paragraph 9.02.08]

(x) Non-initiation of proposal for long term settlement before execution of a mining lease resulted in blockage of revenue to the extent of Rs. 3.30 crores.

[Paragraph 9.02.14]

(xi) There was an evasion of payment of royalty and cesses amounting to Rs. 5 crores (appx) on the plea of a case pending before the Court.

[Paragraph 9.02.16(i)]

9.02.05 *Assessment and collection of royalty*

Under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, the holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mine. The extraction of minerals is regulated by grant of leases for mining. Up to 31 December 1993, 'year' for determining the royalty denoted the calendar year and thereafter the pattern of financial year of April to March of next year had been followed.

The check of mining records disclosed loss of revenue of Rs. 8.86 crores due to non-collection/short collection of royalty due to various reasons as detailed below:

(i) *Non-levy/short levy of revenue due to unauthorised extraction of mines*

Under the provisions of Mines and Minerals Act, no person is entitled to undertake any mining operation in any area except under the authority of a lease or the authority of a valid quarry permit. In the event of unauthorised extraction of minerals, apart from other penal action, the State Government is empowered to recover either the minerals raised unlawfully or where such minerals have already been disposed of, the price thereof and rent, royalty or tax as the case may be.

(a) Test check of records of the Cess Deputy Collector, Asansol revealed that the Eastern Coalfields Limited extracted 13.92 lakhs MT of stowing sand beyond their permitted quantity in 10 cases during 1990-91 to 1995-96. Instead of realising price at 10 times of royalty, only actual royalty involved was recovered. This resulted in short recovery of royalty of Rs. 50.25 lakhs and cesses of Rs. 34.81 lakhs.

(b) Test check of records of District Land and Land Reform Officer, Jalpaiguri revealed that a supplier of sand to a Gram Panchayat was found guilty of extracting sand unauthorisedly and raising fake bills of royalty thereagainst. But no action was taken for realisation of the price of the sand extracted. This resulted in non-realisation of price of minerals of Rs. 12.61 lakhs and cesses amounting to Rs. 1.01 lakhs.

(c) Test check of records of the District Land and Land Reforms Officer, Midnapur revealed that 5 persons unauthorisedly extracted and supplied 42,000 cft of boulders during 1994-95 to the Public Works Division, Midnapur without payment of royalty. However, the price of the mineral was not recovered from this which resulted in loss of revenue of Rs. 1.01 lakhs.

On this being pointed out (June 1997) in audit, the district authority stated that in such cases the PWD realised the price as per instructions. The reply is not tenable as the documents in support of payment of royalty could not be produced to audit.

(d) Test check of records of the District Land and Land Reforms Officer, Purulia revealed that a lessee raised 48,000 cft (1,920 MT) of mineral (fireclay) during July 1993 to August 1994 beyond the leasehold area. But no action was taken to recover the price of unauthorisedly extracted mine. This resulted in non-realisation of revenue of Rs. 2.50 lakhs.

(e) In a test check of records of the District Land and Land Reforms Officer, Midnapur, it was noticed (December 1994) that in 60 cases no action was taken by the department to realise the price of minor minerals, brick earth, sand, morrum, boulder etc of 14.40 lakhs cft extracted without authority during 1992-94 resulting in non-realisation/short realisation of revenue amounting to Rs. 9.10 lakhs being the price of minor minerals extracted and disposed of.

On this being pointed out (December 1994) in audit, the district authority stated (July 1997) that in respect of 2 cases royalty for 12,000 cft had already been realised and action was being taken to realise the balance amount in respect of the remaining cases as per porvisions of the Acts. Report on further realisation has not been received.

(ii) *Short levy of royalty due to application of incorrect conversion factor*

Test check of records of the Cess Deputy Collector, Asansol revealed that the Eastern Coalfields Limited was issued temporary working permits from time to time for extraction of stowing sand from Bankola and Sodepur area during 1990-91 to 1995-96. But while charging royalty the conversion factor between 0.83 and 1.66 MT per cum was applied instead of 1.164 MT per cum in terms of notification issued in September 1985. This resulted in short determination of quantum of stowing sand and consequent short realisation royalty to the tune of Rs. 2.73 lakhs on 6.82 lakhs MT of stowing sand found short in conversion.

On this being pointed out (March 1997) in audit, the Cess Deputy Collector stated that the matter was being taken up with the ECL and short realisation if any, would be recovered.

(iii) *Short levy of royalty due to incorrect gradation of coal*

Test check of records of the Chief Mining Officer, Asansol revealed that a colliery under Bharat Coking Coal Limited submitted returns showing despatch of mixed coal of A, C and D grades instead of showing the quantities of each grade separately during the period from April 1992 to December 1994. Royalty was also assessed treating the coal of 'mixed coal' of D grade which was not correct as 91 per cent of the despatches made were of C grade coal as per records of subsequent despatches made. This resulted in short assessment of royalty of Rs. 19.09 lakhs.

(iv) *Evasion of royalty due to non-disposal of stock of coal*

The Mines and Minerals Act provides that the accounts as well as the weight of the minerals in stock may be checked by an officer authorised by the Central or State Government.

Test check of records of the Chief Mining Officer, Asansol relating to a colliery under the Bharat Coking Coal Limited revealed that 9.16 lakhs MT of coal was lying in stock since 1 April 1994 and no despatch was found to have been made during 1 April 1994 to 31 December 1996. The stock was also not checked either by verifying account or by weight by the mining officer. Due to vagaries of the nature and also from long stacking of the coal in open, the coal had lost its quality and quantity both. Even if the coal is treated of D grade, the non-sale of this has resulted in blocking of revenue of Rs. 48.54 lakhs (royalty Rs. 39.38 lakhs and cesses Rs. 9.16 lakhs).

(v) *Loss of royalty on handling charges*

In course of scrutiny of records of the Mining Officer in-charge, Purulia Zone, it was noticed that a huge quantity of handling loss of rock phosphate shown by the West Bengal Mineral Development and Trading Corporation Limited in their returns was allowed while assessing royalty on rock phosphate despatched by the lessee. Since despatches of rock phosphate had already been occurred according to the Mines and Minerals (Regulation and Development) Act, 1957, the entire quantity of handing loss claimed by the lessee should have been rejected and brought under the purview of assessment of royalty. But this was not done. This thus, resulted in an escapement of assessment of royalty to the extent of Rs. 56,235 on 5577.75 MT of rock phosphate shown as handling loss during the period from April 1993 to November 1996. The consequent escapement of assessment of cesses would be to the extent of Rs. 13,944.

(vi) *Loss of royalty due to non-raising of demand*

In a test check of records of the District Land and Land Reforms Officer, Hooghly and Jalpaiguri, it was noticed that in 44 cases though assessments were made but recovery orders were not sent to the concerned District Land and Land Reforms Officer by the respective mining officers between December 1990 and December 1996 for realisation. This resulted in non-raising of demand to the extent of Rs. 18.24 lakhs in 44 cases during the period from April 1990 to July 1996 (Hooghly 42 cases Rs. 15.69 lakhs and Jalpaiguri 2 cases Rs. 2.55 lakhs).

On this being pointed out (February-May 1997) in audit, the district officer, Hooghly stated that necessary action was being taken while the district officer, Jalpaiguri stated that action would be taken shortly.

(vii) *Loss of royalty due to incorrect classification of minerals*

Under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, the rates of royalty on chinaclay and fireclay are rupees eight and rupees five per MT of despatch thereof respectively. Since chinaclay and fireclay are extracted from the same mine and from the same place and their basic chemical properties are almost same [$Al_2Si_2O_5(OH)_4$ and $Al_2O_3SiO_2$], it is essential that royalty is to be charged thereon after ascertaining the exact nature of the mineral on the basis of chemical examination report from proper authorities approved by Government in the matter.

In course of scrutiny of records in the office of the Mining Officer in-charge, Suri Zone, it was noticed that royalty on chinaclay and fireclay was assessed on the basis of returns furnished by the lessees (extracting both chinaclay and fireclay simultaneously during the same period) without supported by any chemical examination report as to the exact nature of minerals from them. In the absence of any such document being produced by the lessees the entire quantity should have been assessed to royalty at the rate applicable to chinaclay ignoring/ rejecting the claims of the lessees in their returns. But this was not done. This resulted in evasion of royalty to the extent of Rs. 1.27 lakhs calculated at the differential rate of Rs. 3 per MT on 42194.52 MT of despatches of fireclay along with chinaclay made by 3 lessees during the period from 1990-91 to 1995-96. The evasion could have been detected by the department by inspection of records of mining operation by initiating independent chemical examination.

On this being pointed out (April 1997) in audit, the mining officer while accepting the tenets of audit observation, stated that he had no knowledge of any Government agency who might help in detecting the nature of mineral. The reply is not tenable in view of the facts stated above.

(viii) *Loss of royalty due to non-extraction of minimum quantity of minerals*

Under the provisions of the Mineral Laws, the holder of a mining lease shall pay either royalty or dead rent whichever is greater. In terms of the lease deeds executed for mining operation, the lessees shall during the period of the demise raise and extract a certain minimum quantity of minerals every year and satisfy the State Government about their compliance with the provisions of this clause. There is, however, no penal clause in the lease deed enforcing the lessees to adhere to this minimum extraction.

In a test check of assessment records with the relevant lease deeds in 3 mining offices at Purulia, Suri and Hooghly, it was, however, noticed that in a number of cases the concerned lessees extracted much below the minimum extraction stipulated in the lease deeds or extracted no minerals at all for years together, when a simple dead rent was assessed on them. The dead rent assessed was very meagre and insufficient in relation to the shortfall in extraction. Thus, for making no provisions for penalty for non-extraction of the minimum quantity of minerals, Government had to suffer a loss of revenue to the extent of Rs. 116.50 lakhs in the form of royalty (Rs. 78.24 lakhs) and cesses (Rs. 38.27 lakhs) in 40 cases noticed for the period from April 1990 to March 1997 on a shortfall in minimum extraction of 15.31 lakhs MT of minerals (sand, chinaclay, fireclay etc).

On this being pointed out (February-May 1997) in audit, all the 3 mining offices agreed to take up the matter with higher authorities including Government for a decision.

(ix) *Loss of royalty due to sub-letting of lease*

Under the provisions of the Minerals Concession Rules, 1960 read with the Model Form of Mining Lease, the lessee shall not without the previous consent in writing of the State Government, assign, sublet, mortgage, or in any other manner transfer the mining lease or any right, title or interest therein, or enter into or make any arrangement, contract or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertaking will or may be substantially controlled by, any person or body of persons other than the lessee provided that the State Government shall not give its written consent unless, *inter alia*, the lessee has furnished an affidavit along with his application for transfer of the mining lease specifying therein the amount that he has already taken or proposes to take as consideration from the transferee.

In a test check of records of the Director of Mines and Minerals and the Chief Mining Officer, Asansol, relating to exploitation and development of coal-bed methane gas in the leasehold areas of the Coal India Limited/the Eastern Coalfields Limited in the district of Burdwan, over an area of 225 sq km, it was, however, noticed that M/s Modi McKenzie Methane Limited (since renamed as the Great Eastern Energy Corporation Limited) started (July 1996) exploration work on the basis of an MOU (Memorandum of Understanding) entered into with the Coal India Limited in terms of clearance given by the Ministry of Industry (Foreign Collaboration Wing), Government of India, in their letter dated 28 December 1992. From the Government of West Bengal, Commerce and Industries Department memo dated September 1996 it transpired that no prior consent was obtained either by the CIL/ECL or by M/s MM Limited nor any licence/lease had been taken by them from the State Government as required under the rules.

According to the MOU and Licence entered into between the CIL and M/s MM Limited (renamed as the GEEC Limited) on 15 December 1993 for 5 years, a fixed amount of rupees one crore, as 'signature bonus' was paid to the CIL by M/s MM Limited at the time of signing the MOU i.e., 15 December 1993 in terms of the GI letter dated 28 December 1992.

The 'signature bonus' was nothing but 'consideration' as contemplated in the rules *ibid.* As the land in question belongs to the State Government and the mining lease was deemed to have been executed between the ECL and the Government, the entire 'signature bonus' of rupees one crore should have been paid to the State Government instead of to the CIL. This resulted in depriving of the State Government of its due revenue of rupees one crore, besides a prospecting licence fee to the extent of Rs. 5.63 lakhs (for 225 sq km at Rs. 5 per hectare per annum for 5 years) in term of the Mineral Concession Rules, 1960.

On this being pointed out (March-April 1997), the Director of Mines and Minerals just referred the matter to Government and to the Chief Mining Officer, Asansol. The mining officer stated that action could be taken only after hearing from the Government in Commerce and Industries Department.

(x) *Loss of royalty due to unlawful winning of minerals not specified in the lease*

Under the provisions of the Mineral Concession Rules, 1960, if any mineral, not specified in the lease, is discovered in the leased area, the lessee shall not win and dispose of such mineral unless such mineral is included in the lease or a separate clause is included in the lease or a separate lease is obtained therefor. According to the Model Form of Mining Lease, the lessee shall report to the State Government the discovery of any mineral therefrom other than the one specified in the instrument of lease deed. Any such winning, despatch and disposal will be contemplated as raising without any lawful authority and the lessee shall be liable to be charged with price thereof under the Mines and Minerals (Regulation and Development) Act, 1957.

(a) In a test check of records of the District Land and Land Reforms Officer, Purulia, it was noticed that a mining lessee for extracting limestone reported to the district authority with an intimation to the mining officer concerned the fact of the discovery of calcite in place of limestone within his leasehold area. In support of his statement, he also furnished chemical

analysis report from a laboratory. But the lessee was not charged with the price of minerals as he was unlawfully raising the mineral, knowing fully well the change of the mineral continuously since April 1991. The department also did not take any action for (1) modification of the contents of the lease as to the nature of mineral to be dealt with and (2) revision of the assessments made taking the mineral accordingly into consideration for levy of price instead. This resulted in escapement of assessment of price to the extent of Rs. 7.69 lakhs calculated at Rs. 190 per MT (appx) on the basis of rates as confirmed by the Director of Mines and Minerals, on 4,048 MT of calcite extracted and despatched during the period from 5 May 1987 to 30 September 1995.

On this being pointed out (May 1997) in audit, the district office stated that necessary action was being taken in consultation with higher authority and final reply would follow while the Mining Officer, Purulia did not furnish any reply.

(b) Government of West Bengal in Commerce and Industries Department in their order dated 23 December 1986 accorded approval to the disposal of quartz (appx 2,000 MT per month) on advance payment of royalty and clearance of Government dues at the rate of Rs. 5 per MT of despatch by a lessee of wolfram.

In a test check of records of the District Land and Land Reforms Officer, Bankura, it was noticed that a quantity of 20,000 MT of quartz was mined by the aforesaid lessee in course of minig of wolfram during and up to the year 1980-81. It was also noticed from records (a letter of 28 April 1994 from the lessee) that he had not paid the royalty in terms of Government order of December 1986 on the gound of non-renewal of his earlier lease although he requested Government time and again for renewal. This was done by the lessee in complete violation of the Government order resulting in evasion of payment of revenue to the extent of Rs. 6.11 lakhs (royalty at Rs. 5 per MT on 20,000 MT Rs. 1 lakh, cess at Rs. 2.50 per MT, interest at 24 per cent per annum on reyalty and interest at 6.25 per cent per annum on cess for 17 years). No action was taken by the district office to realise the revenue in pursuance of the Government order issued as back as in December 1986.

On this being pointed out (June 1997) in audit, the district authority stated that the matter was being examined and necessary action would be taken in consultation with the higher authority.

(xi) *Blocking up of royalty*

In a test check of records of the Mining Officer, Siliguri Zone, it was noticed that only the quantity of dolomite despatched outside, to different steel plants in the country was taken into consideration for the purpose of assessment of royalty and not the quantity of dolomite actually extracted from the quarry or mines by the North Bengal Dolomite Limited. The difference in the quantity shown by the lessee as closing stock should have been assessed to royalty under the Mineral Laws. But this was not done. This resulted in underassessment of royalty to the extent of Rs. 10.40 lakhs claculated at Rs. 8 per MT on 1.26 lakhs MT shown as closing stock in March 1996 returns by the lessee. The consequential underassessment of cesses would be to the extent of Rs. 3.14 lakhs.

On this being pointed out (April 1997) in audit, the mining officer stated that assessment of royalty on the entire raising would be made after necessary amendment of the Act of 1957. The reply is not tenable since the provisions of the Act are sufficient enough for assessment of royalty on the whole quantity of raising.

(xii) *Loss of royalty due to overstocking of minerals*

In a test check of records of the Mining Officer, Purulia Zone, it was noticed that while assessing royalty on despatch of minerals, the quantity of closing stock as shown by the lessees concerned in their returns were not taken into account for the purpose of assessment of royalty thereon although the closing stocks were nothing but extracted minerals, despatches of which had already taken place when these were extracted from the quarries or mines. This resulted in escapement of assessment of royalty to the extent of Rs. 5.72 lakhs in the case of 13 lessees of chinaclay and one lessee of rock phosphate on a closing stock of 60429.678 MT of minerals lying at the end of March 1991 to March 1997. The consequent escapement of assessment of cesses thereon would be to the extent of Rs. 1.51 lakhs.

On this being pointed out (May 1997) in audit, the mining officer stated that the assessments were ongoing process and the closing stock if any remained on the expiry of lease would be taken into consideration for computing the final assessment. The reply is not tenable inasmuch as assessment cannot await indefinite period.

(xiii) *Loss of royalty due to use of stowing sand as ordinary sand*

Under the provisions of the Mineral Concession Rules, 1960, issued under the Mines and Minerals (Regulation and Development) Act, 1957, ordinary sand when used for stowing purposes is treated as major mineral and royalty is chargeable at forty paise per tonne of despatch thereof. Under the provisions of the West Bengal Minor Minerals Rules, 1973, royalty at rupees fifteen per hundred cft (five MT appx) is payable on despatches of ordinary sand.

In a test check of records of the Cess Deputy Collector, Asansol, it was noticed that the Eastern Coalfields Limited extracted 231.66 lakhs MT of stowing sand during the years from 1991-92 to 1995-96. But while assessing cesses (road, public works, primary education and rural employment) thereon, despatches of stowing sand were accepted and taken as 147.82 lakhs MT for those years on the basis of returns submitted by the company for the above periods indicating deviation/difference of 83.84 lakhs MT for those years. These differences were not reconciled at all at the time of assessment of cess nor was the company asked to explain the reasons for such a huge difference year after year. As the cesses were assessed on the basis of returns/statements furnished by the company showing actual stowing i.e., despatches at the bunkers, these discrepancies might well be construed to have been diverted from stowing sand and being used for other purposes than stowing attracting levy of royalty at higher rate as ordinary sand under the West Bengal Minor Minerals Rules, 1973. The details of information as to the stowing sand available in the records for assessment of both royalty and cesses were not properly examined, reviewed and reconciled. Inaction to classify properly the sand according to the use thereof resulted in evasion of royalty to the extent of Rs. 217.98 lakhs (at the differential rate of Rs. 2.60 per MT, Rs. 3 minus 40 paise) besides cesses amounting to Rs. 209.59 lakhs during the period from 1991-92 to 1995-96.

On this being pointed out (April 1997), the Cess Deputy Collector stated that necessary action was being taken.

9.02.06 *Assessment and collection of cesses*

The road cess and public works cess, education cess and rural employment cess are assessed and ralised under the provisions of the Cess Act, 1880, on mines and quarries other that coal on the annual net profits thereof up to May 1987. All the aforesaid cesses become leviable on each MT of minerals despatched with effect from June 1987 at Rs. 2.50 on the basis of returns furnished by the mining lessees including the holders of quarry permits. The education cess and rural employment cess on coal are assessed *ad valorem* with effect from October 1983. Primary education and rural employment cesses with effect from April 1973 and April 1976 respectively are leviable on 'annual value of coal bearing land', which means one-half of the value of coal produced from such coal bearing land during the two years immediately preceding that financial year. Cesses are also leviable on dead rent and surface rents realisable from mines.

Cases of non-levy/short levy of cesses involving revenue of Rs. 291.77 crores noticed during review are given in the succeeding paragraphs.

(i) *Non-payment of cesses on excess consumption of coal in colliery*

(a) Test check of records of the Cess Deputy Collector, Asansol revealed that the despatches of coal made during the period from 1973-74 to 1995-96 included the excess colliery consumption and boiler consumption of coal (150.67 lakhs MT). But, cesses were neither assessed nor realised on this excess quantity of coal. This resulted in non-realisation of revenue of Rs. 480.71 lakhs.

On this being pointed out (April 1997) in audit, the Cess Deputy Collector, Asansol stated that action would be taken accordingly.

(b) Under the provisions of the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976, in the cases of despatches, other than despatches of coal as a result of sale thereof, the price chargeable by the owner of a coal mine for such coal, if they were despatched as a result of sale thereof, shall be the value of coal for the purpose of assessment and collection of primary education cess and rural employment cess thereon. From the records of the Chief Mining Officer and the Cess Deputy Collector, Asansol, it was noticed that the Eastern Coalfields Limited had been assessed to royalty on the excess colliery consumption and boiler consumption of coal.

In a test check of records in the office of the Assistant Commissioner, Commercial Taxes, Asansol charge relating to assessment and collection of primary education and rural employment cesses from the ECL, it was, however, noticed that while making assessment in the case of despatches as a result of sale thereof, the value of coal involved in excess colliery consumption and boiler consumption by the assessee for the period from 1 October 1982 to 31 March 1996 chargeable as if they were despatched as a result of sale thereof, was not ascertained and written back for the purpose of assessment and collection of PE and RE cesses thereon. As the assessee did not furnish any return/information as to the volume of coal involved in excess colliery consumption and boiler consumption, there resulted an evasion of payment of PE and RE cesses to the minimum extent of Rs. 21084.55 lakhs calculated at the prescribed rates for the period from October 1982 to March 1996 based on average value of 76.02 lakhs MT of coal required for excess colliery consumption and boiler consumption besides interest for non-payment of the dues.

On this being pointed out (April 1997) in audit, the ACCT, Asansol charge agreed to look into the matter.

(ii) *Escapement of cesses*

(a) Test check of records of the District Land and Land Reform Officer and that of Royalty Collection check post of Pursurah, Hooghly revealed that in a number of cases (54.65 lakhs MT of sand) cesses were not assessed during January 1993 to October 1996. Non-levy of cess resulted in non-realisation of revenue of Rs. 136.62 lakhs.

On this being pointed out (May 1997) in audit, the district office stated that the matter was to be reconciled. The check post authority stated that there was no such order of the District Land and Land Reforms Officer.

(b) Test check of records of the District Land and Land Reforms Officer, Purulia revealed that though the mining officer assessed royalty on 88392.770 MT of stowing sand despatched during July 1991 to March 1993 by the Tata Iron and Steel Company Limited, cesses were assessed on 7087.97 MT without assigning any reason for non-levy of cess on the balance quantity of 81304.90 MT. This resulted in escapement of assessment of cesses of Rs. 2.03 lakhs.

On this being pointed out (May 1997) in audit, the district authority stated that necessary action was being taken to raise the demand and further reply would follow.

(iii) *Evasion of primary education and rural employment cesses*

Test check of records of the Assistant Commissioner, Commercial Taxes, Asansol revealed that the Indian Iron and Steel Company Limited did not furnish any return of despatches of coal showing primary education and rural employment cesses payable by them although they had furnished returns for payment of royalty and road and public works cesses to the Chief Mining Officer and the Cess Deputy Collector, Asansol respectively for the period from 1 October 1982 to 31 March 1996. Consequently the company was not assessed to primary education and rural employment cesses at all for the said period by the Assistant Commissioner, Commercial Taxes, Asansol. This resulted in evasion of payment of primary education and rural employment cesses to the minimum extent of Rs. 7114.59 lakhs calculated at the prescribed rates on the average value of Rs. 17803.63 lakhs on 26.57 lakhs MT of coal despatched during the said period besides interest.

On this being pointed out (April 1997) in audit, the ACCT, Asansol charge stated that the matter was being looked into.

(iv) *Underassessment of primary education and rural employment cesses due to mistake in calculation*

In a test check of records of the Assistant Commissioner, Commercial Taxes, Asansol, relating to assessment (February 1994) of primary education cess and rural employment cess in respect of the Bharat Coking Coal Limited for the year 1991-92, it was noticed that there was a totalling mistake of Rs. 1 crore in the statement of total sale in West Bengal furnished by the company. In the statement total sales of coal in West Bengal were shown at Rs. 35.58 crores instead of the correct figure at Rs. 36.58 crores. This resulted in underassessment and short realisation of Rs. 40 lakhs (35 per cent rural employment cess plus 5 per cent primary education cess on Rs. 1 crore) as primary education cess and rural employment cess, besides interest of Rs. 48 lakhs (calculated at 24 per cent up to March 1997).

On this being pointed out (April 1997) in audit, the Assistant Commissioner, Commercial Taxes, Asansol charge stated that the matter was being looked into.

(v) *Underassessment of cesses due to discrepancy in returns*

(a) Cross-verification of returns submitted by the collieries under the Eastern Coalfields Limited during 1991-92 to 1995-96 to the Chief Mining Officer and to the Cess Deputy Collector, Asansol for the purpose of assessment of cesses revealed discrepancies in quantum of despatch of coal between the return filed by the company for the purpose of assessment of royalty and for cess in 3 occasions. This resulted in short assessment of cess to the tune of Rs. 20.79 lakhs due to short accountal of despatched quantity of 20.79 lakhs MT of coal.

On this being pointed out (March 1997) in audit, the Cess Deputy Collector stated that necessary action would be taken after review from the mining office.

(b) Cross-verification of 3 returns submitted by the Ramnagar Colliery of the Indian Iron and Steel Company Limited to the Chief Mining Officer and to the Cess Deputy Collector, Asansol revealed that there was discrepancy of 54,608 MT of coal during 1991-92 to 1995-96. This resulted in non-assessment of cesses to the extent of Rs. 54,608.

On this being pointed out (March 1997) in audit, the mining officer stated that action would be taken after review.

(vi) *Non-levy of cesses on dead rent*

Under the Cess Laws, cesses (road, public works, primary education and rural employment) at the rate of 86 paise per rupee of dead rent with effect from April 1976 are realisable (up to March 1976 the rate was 41 paise).

Mention was made in paragraph 3.2.9(b) of the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year 1991-92 of non-levy of cess on dead rent. The Board of Revenue in reply, upheld (November 1993) the audit findings and stated that cesses were leviable on dead rent.

In 3 offices* test checked in audit cesses on dead rent amounting to Rs. 186.81 lakhs in 11 cases were not levied during the period between May 1973 and January 1997.

On these cases being pointed out in audit, concerned district authorities and the Cess Deputy Collector agreed to raise demand.

(vii) *Non-realisation of cesses on surface rent*

Under the provisions of the Cess Act, 1880, the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976, road cess, public works cess, primary education cess and rural employment cess and surcharge are leviable on all immovable properties in actual use and occupation of any person, or company other than a cultivating *raiyat* on the annual value of land which means total rent as defined in the Cess Act, 1880. Such rent includes surface rent payable by the lessees of mines and minerals. The rate of cesses and surcharge applicable was fortyone paise per rupee of rent up to March 1976 and eightysix paise per rupee of rent thereafter.

*DLLROs, Purulia and Bankura and Cess Deputy Collector, Asansol.

Mention was made in paragraph 3.2.9(a) of the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year 1991-92 of non-levy of cess on surface rent. The Board of Revenue in reply, upheld (November 1993) the audit findings and stated that cesses were leviable on surface rent.

During the course of review of relevant records in 2 offices* it was noticed that in 30 cases, surface rent, though assessed and realised, no cesses thereon were assessed and realised. This resulted in non-assessment and non-realisation of cesses amounting to Rs. 49.75 lakhs for the period from April 1972 to March 1996.

On this being pointed out in audit, the district authorities agreed to raise demand.

(viii) *Non-levy of cess on unauthorised extraction of minerals*

Under the Cess Laws, cesses (road, public works, primary education and rural employment) at the rate of 50 paise, 50 paise, Re. 1 and 50 paise respectively per MT of despatches of minerals are realisable from 1 June 1987. Minerals unauthorisedly extracted and despatched are also subject to cesses at Rs. 2.50 paise (total) per MT of despatches.

In a test check of records of the District Land and Land Reforms Officers, Murshidabad, Bankura and Purulia relating to recovery of prices on unauthorised extraction and despatch of minerals, it was noticed that no such cesses at the prescribed rates were at all realised for unauthorised extraction and despatch of minerals. This resulted in non-levy and non-realisation of cesses to the tune of Rs. 12.39 lakhs on despatches of minerals in 2,235 cases during the period from 1992-93 to 1996-97.

On this being pointed out (May-June 1997) in audit, the district offices stated that action would be taken to realise cesses after taking up the matter with the higher authorities.

9.02.07 *Assessment and collection of dead rent*

The holder of a mining lease, shall, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate as may be specified for the time being, in the Third Schedule, for all the areas included in the instrument of lease. Provided that where the holder of such mining lease becomes liable to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty or the dead rent in respect of that area, whichever is greater.

Review of mining records revealed non-assessment and blocking up of dead rent of Rs. 36.63 lakhs in some cases as detailed below:

(a) Test check of records of the Chief Mining Officer, Asansol revealed that dead rent in respect of leasehold area of 7,926 acres for the year 1995-96 was not assessed in the case of lessee of fireclay. This resulted in non-assessment and non-realisation of dead rent and cesses of Rs. 22.11 lakhs calculated at Rs. 150 per acre per annum.

On this being pointed out in audit, the mining officer stated that the lessee had filed a petition before the Assistant Director of Mines, Asansol praying for exemption from payment of dead rent since he had stopped the mining operation. The reply is not acceptable as dead rent is payable even if there is no extraction from mines.

(b) In another case, test check of records of Chief Mining Officer, Asansol revealed that in the absence of any return made up to the year 1989-90, no assessment of dead rent was made for the period from 1990-91 to 1995-96. This resulted in non-assessment of dead rent to the extent of Rs. 6.59 lakhs on 3,430 acres of leasehold area of stone quarry. Cesses amounting to Rs. 5.66 lakhs though leviable, were also not levied.

(c) In a test check of records it was noticed from the 'Collieries of Birbhum District' Volume I issued by the District Land and Land Reforms Officer, Birbhum that the Eastern Coalfields Limited regrouped their collieries. The act of regrouping of such collieries were not made with the approval of the State Government and by such regrouping of non-functioning collieries with the living collieries the Eastern Coalfields Limited was avoiding payment of

*Cess Deputy Collector, Asansol and DLLRO, Purulia.

statutory dead rent without extracting coal from some collieries. This resulted in loss of revenue to the tune of Rs. 1.26 lakhs in the shape of dead rent besides cesses amounting to Rs. 1.01 lakhs for the period from 1987-88 to 1995-96 in respect of 3 collieries (134.38 hectares) thus regrouped.

On this being pointed out in audit, the district authority stated that as the matter was related with coal, the case would be referred to the Chief Mining Officer, Asansol for his comment. Further report from the CMO has not been received.

9.02.08 *Assessment and collection of surface rent*

Under the provisions of the West Bengal Estates Acquisition Act, 1953 as amended in 1977, read with the Mineral Concession Rules, 1960, a mining lessee shall pay surface rent at rupees fortyfive per acre per annum in respect of all parts of surface land used or occupied by him for the purpose of mining operation. Cesses at appropriate rates are also leviable thereon.

Test check of records of 6 district offices* revealed that in 61 cases assessment of surface rent escaped resulting in non-realisation of surface rent and cesses of Rs. 685.24 lakhs for the period from May 1973 to March 1996.

On this being pointed out in audit, 2 district authorities agreed to issue demand notice, 2 of them agreed to take action while in respect of the remaining 2, it was stated that the matter was being referred to the Government for decision. Further report on action taken has not been received.

9.02.09 *Assessment and collection of water rates*

According to the terms of the Model Form K, the lessee shall pay water rate which shall from time to time be imposed by the authority of the State Government. Under the provisions of the West Bengal Irrigation (Imposition of Water Rate) Act, 1974, the water rate has been fixed at Rs. 54 per acre per annum.

Review of records of water rates recoverable from the lease holder of mines revealed that water charges amounting to Rs. 11.74 lakhs were neither assessed nor realised in some cases as detailed below:

(a) Scrutiny of a lease deed executed between the Government of West Bengal and the Indian Iron and Steel Company Limited (IISCO) on 12 April 1984 for a period of 20 years for the purpose of extracting coal over an area of 505.05 acres of land, revealed that no provision for payment of water rate was mentioned in the lease deed. This resulted is non-realisation of water rates to the tune of Rs. 5.30 lakhs for the period from April 1984 to March 1997.

On this being pointed out (March 1997) in audit, the Chief Mining Officer, Asansol stated that the matter did not relate to his office as the lease deed was executed by the Government and the matter might be taken up with the Government.

(b) In a test check of records of the Cess Deputy Collector, Asansol, it was noticed that in 4 lease deeds executed after the year 1960 but between April 1977 and June 1987, rate of water rate payable by the lessee had not been specified although the terms for payment of water rate was specified therein. The water rate payable by the lessees was not assessed and levied at the rate specified in the West Bengal Irrigation (Imposition of Water Rate) Act, 1974. This resulted in escapement of assessment and realisation of water rate to the tune of Rs. 1.75 lakhs calculated at the rate of Rs. 54 per acre per annum up to March 1997 besides interest of Rs. 3.36 lakhs calculated at prescribed rates.

On this being pointed out (April 1997) in audit, the Cess Deputy Collector stated that the demand notice was being issued shortly.

(c) In terms of the mining lease deed the lessee shall pay rent and water rate to the State Government in respect of all parts of surface area held at the rates specified therein. But no such water rate was paid by the lessees although rates at which water rate was payable were specifically stipulated therein.

*CDC, Asansol and DLLROs, Bankura, Jalpaiguri, Hooghly, Birbhum and Midnapur.

In 3 offices* test checked, it was noticed that payment of water rate amounting to Rs. 1.33 lakhs (including interest) was not paid by 11 lessees from August 1976 to March 1997.

On this being pointed out in audit, the district authorities of Bankura and Jalpaiguri agreed to take action while the Cess Deputy Collector, Asansol stated that demand notice was being issued.

9.02.10 *Non-levy/short levy of interest*

Under the provisions of the Cess Act, 1880, if any instalment of road or public works cess or part thereof shall not be paid within thirty days from the date on which the same becomes due, the amount may be recovered at any time within six years after it becomes due with interest at the rate of six and a quarter per cent per annum calculated from the date on which such instalment became due. Assessment of cesses for the cess year, that is, current year shall have to be completed within the cess year on the basis of last three years average despatch.

Further, the rate of interest fixed (in the year 1939 at 6.25 per cent per annum under the Bengal Rates of Interest Act, 1939) for delay in payment of cess instalments needs revision as it is very low in comparison to the rates applicable in other tax laws.

Mention was made in paragraph 3.2.10(b) of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year 1991-92 of underassessment of interest due to adoption of an irregular procedure.

These irregularities were still prevalent in interest calculations. Some of the observations involving interest of Rs. 129.56 lakhs are detailed below:

(i) *Short levy of interest on cesses*

(a) Scrutiny of records of the Cess Deputy Collector, Asansol revealed that assessments of despatches of coal during 1990-91 to 1995-96 by the Eastern Coalfields Limited, were made long after the relevant years on the basis of 3 years (including current years) average of despatch and interest was calculated from the date(s) of assessment order/date of issue of demand notice, instead of from the first day after the close of the relevant cess year for which the cesses became due, the delay being between 93 and 515 days. This resulted in short levy and short realisation of interest to the extent of Rs. 12.12 lakhs.

(b) In a review of the records of the District Land and Land Reforms Officer, Purulia it was noticed that in 8 cases interest though leviable, was not levied. The amount of interest worked out to Rs. 11.27 lakhs pertaining to the period from October 1984 to March 1996.

On this being pointed out (May 1997) in audit, the district authority stated that necessary demand was being raised and realisation would be reported in due course.

(ii) *Non-inclusion of interest in certificate demand*

Under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 read with the West Bengal Minor Minerals Rules, 1973, any rent, royalty, tax, fee or other sums due to Government be recovered in the same manner as an arrears of land revenue under the Public Demands Recovery Act, 1913. According to the Board of Revenue's instructions issued under the Act, *ibid,* interest from the date when the debt became due to the date of filing the certificate will be included by the certificate requiring officer in the certificate demand. There is, however, no provision in the Act of 1913 for revision of certificate demand once made except upon the application made by the certificate holder.

(a) Scrutiny of records in the office of the Cess Deputy Collector, Asansol revealed that in a certificate demand filed in the office of the Certificate Officer, Asansol on 31 August 1990 by the Additional District Magistrate, Asansol, against the certificate debtor Chairman-cum-Managing Director, Eastern Coalfields Limited, the element of interest of Rs. 382.51 lakhs charged up to March 1988 on royalty on excess colliery consumption and boiler consumption of coal amounting to Rs. 408.62 lakhs pertaining to the period from the year 1973 to March 1986, was short by Rs. 11.17 lakhs due to mistake in calculation. The actual amount of interest worked out to Rs. 393.69 lakhs instead of Rs. 382.52 lakhs on the average quarterly royalty

*CDC, Asansol, DLLROs, Bankura and Jalpaiguri.

at prevalent rate of interest thereon for non-payment. This resulted in short inclusion of interest in the certificate demand leading to a loss of revenue on account of interest of an equivalent amount of Rs. 11.17 lakhs.

On this being pointed out (April 1997), the Cess Deputy Collector stated that the certificate officer is being informed accordingly.

(b) In course of scrutiny of the records in the office of the District Land and Land Reforms Officer, Hooghly, it was noticed that in a case of certificate requisitioned in respect of a mining lessee of sand on 21 June 1996 for recovery of arrears of cesses amounting to Rs. 2.74 lakhs pertaining to the period from 21 September 1985 to 20 September 1990, the element of interest had not been included in the certificate demand. This resulted in a loss of revenue on account of interest to the extent of Rs. 1.26 lakhs calculated at 6.25 per cent per annum up to June 1996.

On the cases being pointed out (May 1997) in audit, the district authority stated that rectification was to be made.

(c) In course of scrutiny of records in the office of the District Land and Land Reforms Officer, Hooghly, it was noticed that a requisition for certificate amounting to Rs. 1.44 lakhs was made against a person on 18 May 1993 on account of arrears of royalty on sand extracted and despatched during the period from 15 October 1990 to 16 June 1992. But no element of interest for non-payment of royalty was included in the requisition for certificate amounting to Rs. 48,614 calculated at the prevalent rate at 15 per cent per annum up to May 1993. This non-inclusion of interest in the certificate demand resulted in loss of revenue to the extent of Rs. 48,614.

On this being pointed out (February 1997) in audit, the district authority stated that action was being taken accordingly.

(iii) *Non-levy of interest for delayed payment of mining dues*

Under the provisions of the Mineral Concession Rules, 1960, mining dues from minerals other than minor minerals including royalty etc relating to the quarters ending March, June, September and December every year are required to be paid by the first day of the respective succeeding month. If the quarterly dues remain unpaid on the expiry of the sixtieth day from the due date, simple interest at twentyfour per cent per annum (from 1 April 1991) is chargeable till the date of payment.

Test check of records in 3 offices* revealed that in 36 cases of delayed payment of royalty/surface rent, interest though leviable but not levied worked out to Rs. 93.25 lakhs for the period from April 1973 to March 1996.

On this being pointed out in audit, the district authorities agreed to raise demand.

9.02.11 *Security deposits*

Under the provisions of the Mineral Concession Rules, 1960, an applicant for mining lease, shall before the deed is executed, deposit as security for the due observance of the terms and conditions of the lease, a sum of two thousand rupees (enhanced from one thousand rupees) in terms of a notification issued by the Central Government on 18 October 1986. According to the Model Form of Mining Lease whenever the security deposit of Rs. 1,000/2,000 shall be applied by the Government the lessee shall deposit such further sum as may be sufficient to bring the amount of deposit up to the sum of Rs. 1,000/2,000.

Test check of records in 4 mining offices (Chief Mining Officer, Asansol and the Mining Officers of Suri, Purulia and Siliguri Zones) dealing with major mines, revealed that the security deposit in question was obtained from the concerned lessees of major mines at Rs. 1,000 or less as per the deeds instead of at Rs. 2,000 as required under the rules. No further amount was obtained from the lessees in terms of the notification dated 18 October 1986. This resulted in short realisation of security deposit to the minimum extent of Rs. 1.19 lakhs in respect of 119 lease deeds of major mines.

*CDC, Asansol, DLLROs, Bankura and Purulia.

9.02.12 *Non-levy/short levy due to non-determination of a mining lease*

Under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, where the holder of a mining lease fails to undertake any mining operation during a period of one year after the date of execution of the lease or having commenced mining operation, has discontinued the same for a period of one year, the lease shall lapse on the expiry of one year from the date of execution of the lease or discontinuance of the mining operations.

In a test check of records of the Chief Mining Officer, Asansol, it was noticed that a mining lessee of moulding sand had not been carrying out mining operation in the leasehold area since 15 April 1955 (the lease expired on 23 December 1992). The mining office had, however, suggested to determine the lease which was a reiteration of the suggestion made as long as back in the year 1977. In the absence of any decision in the matter, the mining office calculated dead rent from 15 April 1955 to 31 March 1992. It was also stated (July 1977) that in the event of determination of the mining lease, a large area of land consisting of minerals would be available and fresh lease could be granted to the skilled and willing lessees. As no decision as to the determination of the lease could be taken on the part of the Government there was blocking up of revenue to the extent of Rs. 11.05 lakhs pertaining to the said period with an uncertain fate of realisation as no payment has been made towards it in the form of dead rent and surface rent and cesses thereon, for not leasing out the valuable mines. The entire amount being of the nature of ineffective demand has turned to be a loss of revenue.

9.02.13 *Non-levy/short levy of stamp duty and registration fees*

The Indian Stamp Act, 1899, provides for levy of stamp duty and registration fee on execution and registration of lease deeds of mines. It further provides that where such share of royalty cannot be ascertained on the date of execution, it shall be sufficient if the royalty is estimated by the Collector.

(a) Test check of mining lease deeds in the office of the Chief Mining Officer, Asansol revealed that a mining lease deed was executed between the Government of West Bengal in the Commerce and Industries Department (lessor) and the Indian Iron and Steel Company Limited (lessee) on 12 April 1984. The deed was executed for the purpose of mining coal for a period of 20 years over an area of 505.05 acres of land. It was stipulated in the deed that the lessee would extract annually a minimum quantity of 3 lakhs MT of coal. But there was no mention of royalty for the purpose of the stamp duty as well as registration fees. On a detailed scrutiny of the deed, it was noticed that the instrument was not properly stamped and proper registration fee was not levied. Stamp duty of Rs. 5 and registration fee of Rs. 307.50 were paid. This resulted in loss of revenue to the extent of Rs. 53.07 lakhs in the shape of stamp duty (Rs. 49.45 lakhs) and registration fee (Rs. 3.63 lakhs) on the estimated royalty of Rs. 330 lakhs.

On this being pointed out (March 1997) in audit, the mining office stated that the matter did not relate to their office.

(b) In a test check of records of the Cess Deputy Collector, Asansol, it transpired that the Eastern Coalfields Limited (ECL) as a unit of the Coal India Limited was extracting stowing sand since a long time and they were liable to pay royalty from the date of nationalisation i.e., May 1973 to the Government of West Bengal by executing a lease from that date. But instead of executing the lease deed, the Company was allowed provisionally to extract the mineral in terms of a Government Order dated 3 February 1979, by means of temporary working permits. Such working permits were issued by the Chief Mining Officer, Asansol up to the year 1990-91 and thereafter by the Additional District Magistrate, Asansol in the matter. A considerable time had elapsed and the ECL had given undertaking time and again for execution of lease deed, which was evident from their memo of 9 July 1990 that their application for grant of permanent lease had been ready and would be submitted to the Chief Mining Officer, Asansol within a week. But no application had been made and no lease deed was executed. The department also did not take any effective action to get the deed executed in the interest of revenue. Non-execution of lease deed, thus, resulted in evasion of stamp duty to the extent of Rs. 35.13 lakhs at least and registration fee of Rs. 2.42 lakhs if it was executed within the period of 6 months after application in terms of the Mineral Concession Rules, 1960.

On this being pointed out (April 1997) in audit, the Cess Deputy Collector stated that the matter was being referred to Government.

(c) Government of West Bengal, in Commerce and Industries Department in their memo dated 16 June 1995 permitted the Tata Iron and Steel Company Limited on the basis of their application made in February 1992 for extraction of stowing sand of 5 lakhs MT per annum from an area of 244.85 acres in different *mouzas** under Purulia district subject to fulfilment and observance of the terms and conditions in the Minerals Laws.

In a test check of records of the Director of Mines and Minerals, it was noticed that no lease deed was, however, executed by the company. Since the lease deeds for mining operation are chargeable with stamp duty under the Indian Stamp Act, 1899 and registration fees under the Indian Registration Act, 1908, the company, by not executing the deed, evaded stamp duty amounting to Rs. 4 lakhs calculated on the anticipated minimum annual extraction over the lease period of 20 years and registration fees amounting to Rs. 43,989 computed as per prevailing prescribed rates of registration fees.

On this being pointed out (May 1997) in audit, the Director of Mines stated that the matter might be taken up with the Government, as it is within their jurisdiction.

(d) In a test check of records of the Mining Officer, Purulia Zone, it was noticed that the West Bengal Mineral Development and Trading Corporation Limited was mining rock phospate in Purulia district from 14 June 1975 without executing any mining lease. Instead of execution of the lease deed, Government of West Bengal under their memo dated May 1977 intimated the Chief Mining Officer, Asansol, that due to some legal difficulties, the corporation could not be granted mining lease. The lease deed when executed would be sent to the Chief Mining Officer. But the lease deed was not executed even though the corporation was continuing mining operation regularly since then. This action of allowing the corporation to continue mining operation was in violation of the provisions of the Act and the Rules. This was highly irregular. No further action appeared to have been taken to get the deed executed. Besides, the corporation by not executing the deed, evaded stamp duty and registration fees. The revenue evaded on this account amounted to Rs. 2.83 lakhs (stamp duty Rs. 2.63 lakhs and registration fees Rs. 19,666 calculated on the basis of annual average extraction of rock phosphate for 20 years).

On this being pointed out (May 1997) in audit, the mining office stated that the execution of deed is done by the Government in Commerce and Industries Department.

9.02.14 *Non-initiation of proposal for long term settlement before execution of a mining lease*

Under the provisions of the West Bengal Land Management Manual, 1977, while giving non-agricultural land on long term lease for the first time, rent shall be fixed at four per cent of the current market value of the land proposed for settlement and *salami* charged at ten times the rent equalling forty per cent of the market price. According to the standard form for Application for Mining Lease, it is an implied pre-requisite that the applicant for mining lease should have (an existing) surface right over the area of land for which he is making application for grant of a mining lease. There is, however, no provision in the rules for giving possession without realising prescribed rent and *salami* in advance, even if the land is transferred for mining purposes.

In a test check of records of the Sub-Divisional Land and Land Reforms Officer and the Chief Mining Officer, Asansol, it was noticed that an area of land for 505.05 acres was handed over to the Indian Iron and Steel Company Limited on 29 January 1991 while the mining lease deed for the said land was executed in favour of the company on 12 April 1984 for 20 years. In spite of clear instruction (April 1992) from the district authority, no proposal for long term lease on realisation of prescribed rent and *salami* was initiated before execution of the mining lease deed. This resulted in escapement of realisation of revenue to

**Mouza* means a village usually identified by a jurisdiction list (JL) number.

the extent of Rs. 143.43 lakhs as lump sum *salami* and rent to the extent of Rs. 186.46 lakhs for the period from 12 April 1984 to 31 March 1997 computed on the basis of market value of land in the vicinity at that time.

On this being pointed out (April 1997) in audit, the sub-divisional office stated that the long term proposal would be initiated in consultation with higher authority.

9.02.15 *Lack of co-ordination between assessment and collection authorities*

Under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 read with Government of West Bengal order issued in April 1969 in the matter of assessment of royalty payable on account of mines and minerals, the Chief Mining Officer of the Mining Estate Branch may direct the lessees to furnish such returns and accounts as may be necessary to find out the quantum of minerals raised and despatched and also to furnish such other documents and returns which shall be necessary for verification of right title in respect of property and assessment on account of mines and minerals.

Mention of lack of co-ordination between the assessing and the collecting authorities was made in paragraph 10.2.5 of the Audit Report (Revenue Receipts) for the year 1989-90. This was still continuing resulting in underassessment of royalty, cesses, other taxes etc in a number of cases. Some of the cases are detailed below:

(a) In a cross-examination of the returns submitted by the collieries under the Eastern Coalfields Limited for Burdwan district to the Chief Mining Officer, Asansol and the Cess Deputy Collector, Asansol for the purpose of assessment of royalty and cess (road and public works) respectively for the year 1993-94, it was noticed that despatches of coal as shown in the return for the purpose of assessment of cesses was 143.34 lakhs MT whereas returns furnished to the Chief Mining Officer, Asansol for the purpose of assessment of royalty was to the tune of 142.38 lakhs MT. Thus, there was a shortfall of despatch of coal of 95,829 MT for the purpose of assessment of royalty. This resulted in short assessment of royalty of Rs. 6.23 lakhs computed at the rate of Rs. 6.50 per MT due to furnishing of incorrect returns. This was also rendered possible owing to lack of co-ordination between the 2 offices and also non-scrutiny of books of accounts of the ECL as per instructions issued by Government in April 1969.

On this being pointed out (March 1997) in audit, the mining office stated that this office was not aware of any returns for purpose of assessment of road and public works cess and was not in a position to comment on the correctness of such returns.

(b) In terms of a Government order issued in July 1969, all assessment communicated to the district authorities by the mining officers is required to be realised by the district authorities under intimation to the assessing authority.

In a test check of records of the District Land and Land Reforms Officer, Hooghly, it was noticed that one person applied for mining lease in May 1985. But the lease was not granted. The Hon'ble High Court, Calcutta allowed the petitioner to extract sand on payment of Government dues. The person extracted and despatched 6.09 lakhs cft of sand and the Mining Officer, Hooghly assessed royalty and forwarded the assessment orders to the district authority between January and June 1992 for realisation. On further scrutiny of records it was noticed that no demand notice was found to have been issued by the district office for realisation of royalty of Rs. 91,318 as assessed by the mining officer, instead, the district office ignoring the assessment orders of the mining officer assessed royalty at Rs. 31,112 and realised the same. This resulted in short realisation of royalty of Rs. 60,206.

On this being pointed out (February 1997) in audit, the district office stated that necessary action was being taken.

9.02.16 *Blocking up of revenue due to laxity on the part of the department*

(i) *Blocking up of revenue on the plea of Court case*

In test check of records of the Mining Officer, Suri Zone and the District Land and Land Reforms Officer, Birbhum, it was noticed that a lessee for mining stone quarry was continuing mining work by virtue of 2 permanent lease deeds. The lessee obtained a civil rule against a demand of royalty amounting to Rs. 26,821 in respect of assessment for the period from 30 January to June 1974. The lessee had alleged in the case that the demand was made at an enhanced rate of royalty (Rs. 10 per 100 cft in place of nominal rate of Re. 1 per 100 cft). The High Court of Calcutta, pending disposal of the case passed an interim order on 9 September 1975 as 'There will be an interim order till the disposal of the rule on condition that the petitioner will furnish a security deposit to the tune of Rs. 20,000 within two weeks after re-opening of the Court after the long vacation. In default, the order will stand vacated.'. It was noticed in audit that the security deposit was not furnished in compliance of the Court's order. Thus, the interim order stood automatically vacated and the department was at liberty to make assessment and to realise revenue. The lessee did not furnish any return on and from November 1976 and the department also did not take any action to get the same. The lessee had been evading payment of revenue for long 22 years (1974 to 1996). However, in the meantime the business of the lessee was extended to a great extent. The minimum average yearly revenue payable by the lessee worked out to Rs. 22 lakhs. Thus, the total estimated payment evaded for the last 22 years worked out to the extent of Rs. 5 crores (appx). But the department did not take any action towards realisation of the revenue.

On this being pointed out (April 1997) in audit, the mining officer stated that the matter was being looked into.

(ii) *Loss of revenue due to inaction on the part of the department on a Court case*

Under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the West Bengal Minor Minerals Rules, 1973, a mining lessee is required to furnish monthly/quarterly returns showing therein the quantity extracted, the quantity despatched and closing stock, if any, to the mining officer concerned for assessment of royalty thereof and subsequent collection of revenue.

In a test check of records of the Mining Officer, Suri Zone, it was noticed that a lessee for extraction of stone minerals obtained a civil rule in 1980 in a challenge of the rate of royalty, demand and renewal of the lease executed on 16 March 1964 for 20 years. From the expiry of the lease period the lessee regularly furnished returns showing extraction as well as despatch of minerals for the period from 16 March 1984 to 28 February 1989. Since the mining officer was not aware of the present position of the case as well as action on the renewal application of the party, he made (July 1992) a reference to the Director of Mines and Minerals seeking instructions as to the assessment of royalty and requesting for taking proper steps for discharging the said rule and settling the pending renewal application in the interest of revenue. No action was taken at any level. This resulted in non-assessment and non-realisation of revenue to the extent of Rs. 7.38 lakhs in the form of royalty and cess for the period from March 1984 to February 1989. Further, the lessee was evading payment of revenue for continued extraction thereafter and this was due to lack of follow-up action on the part of the department.

On this being pointed out (April 1997) in audit, the mining officer stated that in the absence of instructions from any end, he could not make assessment for the period from 15 March 1984 onwards.

(iii) *Failure to realise demand in pursuance of Court judgement*

Under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 as amended in 1972, the holder of mining lease is required to pay royalty in respect of any minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leasehold area at the rates prescribed by Government from time to time.

In a test check of records of the District Land and Land Reforms Officer, Hooghly, it was noticed that a civil rule of 1987 was discharged in favour of Government and the interim order was vacated on 7 December 1995. In terms of the order of December 1995 the petitioner was directed to deposit Rs. 5.25 lakhs towards royalty with interest and Rs. 2.41 lakhs as cesses aggregating Rs. 7.66 lakhs within 7 days from the date of receipt of the demand notice failing which appropriate civil/criminal action would be taken against him. Besides, contempt petition would also be moved against him as per liberty given by the High Court for non-compliance.

On this being pointed out (May 1997) the district office stated that the matter was in the knowledge of the authority; demand notice was issued in January 1996 but no payment was made. Court's order, as such, was found to have been disobeyed and no action against the lessee was taken by the department.

9.02.17 *Arrears of revenue*

The Act provides for recovery of arrears of mining and other dues as public demand by issue of recovery certificates.

Test check of records relating to demand and collection of mining dues of the Cess Deputy Collector, Asansol and the District Land and Land Reforms Officers, Birbhum and Hooghly revealed that in 43 cases due to lack of pursuance and close monitoring of realisation procedure, mining dues to the extent of Rs. 729.64 lakhs had fallen into arrears for various periods between 1973-74 and 1995-96.

9.02.18 *Documentation*

In most of the mining offices and the district land and land reforms offices, lease register, assessment register, return register and demand and collection register required to be maintained under the provisions of the Mineral Laws, besides a certificate register, to watch proper and timely assessment and collection of mining dues, were either not maintained or maintained perfunctorily.

On this being pointed out in audit, all the authorities admitted the lapses generally and agreed to maintain the registers.

9.02.19 *Lack of monitoring*

From a close study of some of the observations it would be apparent that the irregularities pointed out could have been minimised had there been an internal audit, proper co-ordination between the departments and a well-established monitoring system.

There is, however, ample scope particularly for evolving a self-sufficient monitoring system to ensure proper co-ordination for the purpose of levy and collection of revenue, to provide reasonable assurance for prompt and efficient service, for adequate safeguards against evasion of revenue and generally for augmentation thereof as well.

All the foregoing points were reported to Government between October 1992 and August 1997; their reply has not been received (January 1998).

9.03 Short realisation of revenue from minor minerals extracted unauthorisedly

Under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 as amended in 1972, read with the West Bengal Minor Minerals Rules, 1973 and clarifactory orders issued by the State Government in May and August 1979, no person is entitled to undertake any mining operation in any areas except under the authority of a valid quarry permit. In the event of unauthorised extraction of minor minerals, apart from other penal action, the State Government is empowered to recover either the minerals raised unlawfully, or, where such minerals have already been disposed of, the price thereof. Government clarified (August 1981) that quantity of minor minerals extracted or removed in excess of the quantity permitted should be treated as unauthorised extraction and price thereof should be realised. By an order issued in September 1984, the Board of Revenue, West Bengal fixed the market price of brick earth at Rs. 30 per 100 cft. for 1981 with an increase of Rs. 1.50 per 100 cft each year till a new price is fixed by the Director of Mines and Minerals, West Bengal.

It was noticed (September 1995) from the records of the District Land and Land Reforms Officer, Burdwan, that in 64 cases, unauthorised extraction of brick earth of 58.50 lakhs cft was made during the period from 1993 to 1995 for which no price was realised. In some cases royalty instead of price of minerals was recovered. This resulted in short realisation of revenue amounting to Rs. 21.89 lakhs calculated as per guidelines of price issued by the Board of Revenue.

On this being pointed out (September 1995) in audit, the district authority stated that necessary action in the matter would be taken. Report on further action taken has not been received (January 1998).

The matter was reported to Government in January 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

9.04 Short/non-realisation of cesses on despatch of minor minerals

Under the provisions of the Cess Act, 1880, as amended in 1984 read with the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976, holders of quarry permits and mining leases under the West Bengal Minor Minerals Rules, 1973, are liable to pay public works cess, road cess, education cess and rural employment cess at the rate of 50 paise, 50 paise, Re. 1 and 50 paise respectively per MT of minor minerals extracted and despatched from the quarries or mines from 1 June 1987.

It was noticed (September 1995) from the records of District Land and Land Reforms Office, Burdwan district, that in 30 cases, the quarry permit holders extracted and despatched minor minerals (brick earth) of 18.41 lakhs cft. during various periods from 1987-88 to 1994-95 but the department had not realised/short realised different kinds of cesses. This resulted in short/non-realisation of revenue of Rs. 1.72 lakhs.

On this being pointed out (September 1995) in audit, the district authorities agreed to realise the amount. Report on realisation has not been received (January 1998).

The matter was reported to Government in January 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

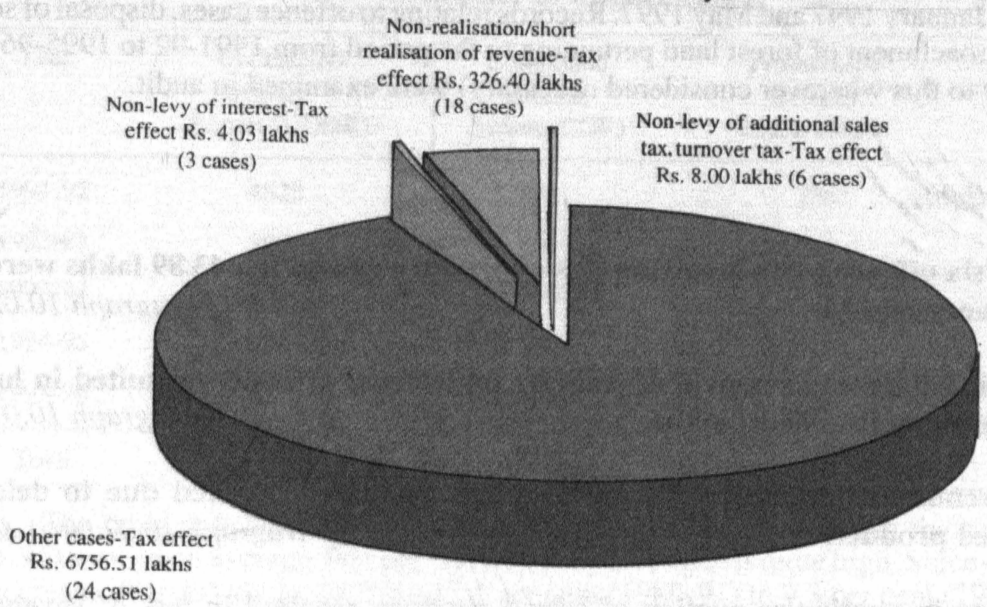
CHAPTER 10

FOREST RECEIPTS

FOREST RECEIPTS

10.01 Results of audit

Test check of records of forest receipts maintained at different divisional forest offices, conducted in audit during the year 1996-97, revealed non-realisation/short realisation of revenue amounting to Rs. 7094.94 lakhs in 51 cases, which broadly fall under the following categories:



Total tax effect Rs. 7094.94 lakhs (51 cases)

During the course of the year 1996-97 the concerned department accepted underassessments etc of Rs. 4160.76 lakhs involved in 13 cases which had been pointed out in audit during the year 1996-97. The results of a review on 'Forest offence' and a few illustrative cases of important irregularities involving financial effect of Rs. 6737.62 lakhs are given in the following paragraphs.

10.02 Forest offence

10.02.01 *Introduction*

Under the Indian Forest Act, 1927, any act of cutting, felling, sawing, removing, breaking up, dragging trees or timber, quarrying stones or boulders, collection, removal and transportation of any forest produce in and from the protected forest areas and cultivation of forest land for non-forestry purposes including use and occupation of forest land without any valid authorisation constitutes a forest offence. Under the West Bengal (Establishment and Regulations of Saw Mills and other wood based Industries) Rules, 1982, running of saw mills without registration and renewal of licence thereof is also an offence. Forest offences can be compounded by the forest officer on accepting a compensation from the offender who expresses his willingness to have the offence compounded and the forest produce may be released to the offender on realisation of royalty at the prescribed rate. Alternatively, the offender can be prosecuted in a Court of law. The cases brought to the Court are punishable with imprisonment and or with fine or both. When the offender is not traceable, the case is treated as undetected offence and the materials found/ recovered, if any, are transported to the nearest depot. The seized produces, after confiscation by the prescribed authority are disposed of through public auction.

10.02.02 *Organisational set up*

The overall administrative control of the Forest Department rests with the Principal Chief Conservator of Forests (PCCF) who is also ex-officio Secretary to the Government assisted by Conservators of Forests in charge of administrative circles. Under each circle there are two types of Forest Divisions, territorial and non-territorial. The Forest Divisions are divided into Ranges which are further subdivided into Beats. Offence cases are mainly dealt with by the forest officers at the levels of beat, range and division.

10.02.03 *Scope of audit*

With a view to ensuring proper accountal and disposal of the property seized in the forest offence cases in accordance with relevant statutory and codal provisions and also to examine the effectiveness of the system adopted for prevention of forest offence and protection of forest, a review was conducted in 11* forest divisions out of 23 divisions along with the Directorate of Forests between January 1997 and May 1997. Records relating to offence cases, disposal of seized produce and encroachment of forest land pertaining to the period from 1991-92 to 1995-96 (and the periods prior to this wherever considered necessary) were examined in audit.

10.02.04 *Highlights*

(i) Fiftysix offence cases involving loss of produce valued Rs. 43.89 lakhs were not recorded in offence register. *[Paragraph 10.02.07]*

(ii) Illicit felling and removal of trees by undetected offenders resulted in loss of revenue amounting to Rs. 388.02 lakhs. *[Paragraph 10.02.08]*

(iii) Revenue amounting to Rs. 653.61 lakhs remained blocked due to delay in disposal of seized produce. *[Paragraph 10.02.09(i) & (ii)]*

(iv) Delay in auction/re-auction of seized produce resulted in loss of revenue of Rs. 4.27 lakhs. *[Paragraph 10.02.10]*

(v) Non-disposal of confiscated *sal* timber, vehicles, cycles, rickshaw van etc resulted in blockage of revenue amounting to Rs. 22 lakhs and loss of revenue amounting to Rs. 10.35 lakhs. *[Paragraph 10.02.12(vii)(a) & (b)]*

(vi) Seized produce valued Rs. 21.45 lakhs was not accounted for in the stock account. *[Paragraph 10.02.13]*

(vii) Delay in disposal of seized *Khair* resulted in loss of revenue of Rs. 5.93 lakhs. *[Paragraph 10.02.14]*

(viii) Non-eviction of encroachers of forest land resulted in loss of forestry income amounting to Rs. 2,028 lakhs. *[Paragraph 10.02.18]*

(ix) Non-regularisation of leases of fixed demand holdings in forest under the Forest (Conservation) Act, 1980, resulted in non-realisation of revenue of Rs. 5.40 lakhs. *[Paragraph 10.02.19]*

(x) Non-compounding of offences on unauthorised extraction of minor minerals from forest land resulted in non-realisation of revenue of Rs. 50.12 lakhs. *[Paragraph 10.02.20]*

(xi) Revenue amounting to Rs. 3,400 lakhs was appropriated by unauthorised occupiers who converted forest into orchard. *[Paragraph 10.02.25]*

*Burdwan, Bankura (North), Bankura (South), East Midnapur, West Midnapur, Purulia, Sundarban Tiger Reserve, Jalpaiguri, Buxa Tiger Reserve, Baikunthapur and Darjeeling.

10.02.05 *Trend of offence cases*

(a) The position of offence cases in respect of 10 divisions out of 11* divisions selected for review is indicated below. Particulars in respect of East Midnapur Division were not available since the relevant records were not maintained properly by the division.

Number of offence cases

Year	Undetected Offence** Report (UDOR)	Compound Offence Report (COR)	Prosecution Offence Report (POR)	Total
1991-92	4528	4901	254	9683
1992-93	3989	4568	244	8801
1993-94	4351	5265	269	9885
1994-95	3824	5090	310	9224
1995-96	3238	4334	242	7814
Total	19,930	24,158	1,319	45,407

The table indicates that the number of offences occurred during the period (1991-92 to 1995-96) was, on an average, 908 per division per year which is quite high. Since one of the reasons for decrease of forest coverage from 13.4 per cent (1989-91) to 9.3 per cent (1995-96) was illicit felling, this needs to be arrested. The figure does not include the offence cases like encroachment of forest land and unauthorised extraction of boulders, shingles, gravels etc from forest land as those cases are not usually recorded in the offence registers maintained by the divisions.

(b) In course of review of offence records from 1991-92 to 1995-96 it was noticed that in 4 divisions of north Bengal, the incidence of undetected offence was very high. The position of total offence cases and undetected offence cases (UDOR) is indicated in the table below:

Sl. No.	Name of the Division	No. of total offence cases	No. of UDOR cases	Percentage of UDOR cases to total offence cases
1.	Darjeeling	625	294	47
2.	Jalpaiguri	7643	4635	61
3.	Baikunthapur	7177	4789	67
4.	Buxa Tiger Reserve (BTR) East Division	4382	3099	71
5.	Buxa Tiger Reserve (BTR) West Division	5283	3209	61
	Total	25,110	16,026	64

It appears from the above table that percentage of undetected offence cases varied between 47 per cent (Darjeeling) and 71 per cent (BTR East). In 64 per cent of offence cases on the average the offenders could not be detected either by the departmental staff or by the member of the Forest Protection Committee.

The fact stated above indicated lack of vigilance for prevention of illicit felling.

*Burdwan, Bankura (North), Bankura (South), East Midnapur, West Midnapur, Purulia, Sundarban Tiger Reserve, Jalpiguri, Buxa Tiger Reserve, Baikunthapur and Darjeeling.

**Undetected offence means an offence in which the goods are detected or the loss of goods ascertained but the offenders remain undetected.

10.02.06 *Inspection of beats*

Protection of forests is one of the main functions of the Forest Department. For this purpose, the forest is divided into territorial divisions which are subdivided into ranges and the ranges are further divided into units known as beats. Beats are placed under watch and wards of the forest guards for protection of their wealth. Therefore, forest guards and foresters should constantly perambulate the beats in their charges to ensure that there is no destruction of forest. In north Bengal the Conservators of Forests, Northern Circle, Hill Circle and the Field Director, Buxa Tiger Reserve in their circulars issued between January 1992 and January 1995 instructed the beat officers to maintain movement registers showing brief description of movement of forest guards and foresters in different parts of beats and also a separate register for his own movement. Detection of stumps of illicitly felled trees should be marked as undetected offence and to be reported to range officer within 24 hours of detection for taking remedial measures. But no such instruction was issued to the territorial divisions in south West Bengal. The Forest Department has not prescribed any norm for inspection of beats by the range officer.

This lacuna in inspection of beats and consequential loss of forest wealth is discussed below:

(a) *Non-inspection of beats*

Test check of records of 11 divisions* out of 23 territorial divisions revealed that inspection of beats by the range officers was not conducted at all in 5 divisions** comprising 143 beats during the period between 1992-93 and 1995-96 and movement registers were also not maintained.

Such non-inspection of beats by the range officers for more than 3 years would give scope for the smugglers to resort to illicit felling and destruction of forest wealth.

(b) *Non-detection of offence*

(i) In Buxa Tiger Reserve, beats were never inspected by the range officers since inception of the division (27 April 1992). When Par beat under Nimati Range was inspected in October 1996 by the Field Director along with the Deputy Director of Buxa Tiger Reserve, they found 133 logs of *sal, champ*, teak and *gamar* trees measuring 154.616 cum timber were illicitly felled by the miscreants. The produces were, however, brought to the depot and the market value of them was determined at Rs. 7.73 lakhs by the divisional office. No action had been taken to fix up the responsibility of the officer for non-inspection and non-detection of offence.

(ii) In another case while conducting surprise check on 9 August 1996 in Targhera beat under Apalchand Range by the Divisional Officer, Baikunthapur, it was found that 18 *sal* trees consisting of 36.482 cum timber were illicitly felled and removed by the miscreants. The value of the produce as per average auction price was determined at Rs. 2.86 lakhs by the Divisional Officer and the beat officer was placed under suspension by framing charge sheet, wherein the loss of the property was shown as Rs. 1.71 lakhs based on the schedule of rates.

(c) *Wide spread illicit felling*

Scrutiny of records of 3 divisions [Jalpaiguri, Burdwan and Midnapur (East)] revealed that 10,018 trees (*sal*, teak, *khair* and *sissu*) and 15 cum of *sal* timber were illicitly felled and looted in diferent beats on 11 occasions during the period between April 1988 and December 1996 by offenders in mass scale and the offence cases were detected immediately after occurrence either by range officer or beat officer. The value of the mass-looted forest property as per schedule of rates worked out to Rs. 7.76 lakhs. The divisional offices had not taken any action to concentrate vigil either at the time of offence or thereafter except lodging of FIRs to the local police stations.

*Burdwan, Bankura (North), Bankura (South), East Midnapur, West Midnapur, Purulia, Sunderban Tiger Reserve, Jalpaiguri, Buxa Tiger Reserve, Baikunthapur and Darjeeling.

**Burdwan, Jalpaiguri, Sundarban Tiger Reserve, Buxa Tiger Reserve and Midnapur (East).

In all the above cases, such large scale illicit felling and mass-looting of forest wealth leading to loss of revenue could have either been prevented or minimised, if the system of regular inspection of beats at the range officer level was in vogue.

10.02.07 *Non-drawal of offence report and non-estimation of loss or damage to forest*

Under the provisions of the Indian Forest Act, 1927, when a forest offence is committed and the offender is unknown an offence report is drawn in a prescribed form and the same is recorded in a prescribed offence register maintained in the ranges.

In course of scrutiny of offence files maintained in different ranges, it was noticed that in 56 cases of 9 divisions* offences like 'mass-looting' of trees, illicit felling and removal of trees and damage done to plantation by unknown offenders during 1991-96, no offence report had been drawn and recorded in offence registers. On the contrary the offence cases were simply either reported to local police station through FIR or brought to the notice of Range Officer/Divisional Forest Officer. Value of loss of forest produce and damage done to forest as per estimates of the department in 17 cases worked out to Rs. 2.35 lakhs. In the remaining cases loss/damage worked out to Rs. 41.54 lakhs as per estimate in audit.

In the absence of any recording of the events in the offence register, no action could be taken for follow-up of the cases for recovery of the produce and damage of plantation and as such no responsibility was fixed on such serious lapse on prescribed procedure.

On this being pointed out in audit, 8 divisions** admitted the lapse and stated (between January and March 1997) that offence reports would be drawn in future in all cases. Bankura (North) Division stated (February 1997) that as FIRs had been treated as police case, no separate offence report was drawn. The contention is not, however, tenable as under the provisions of the Indian Forest Act, 1927, offence report is to be drawn in each and every case even if FIR is lodged.

10.02.08 *Loss of revenue due to illicit felling and removal of trees by undetected offenders*

In terms of a standing order of the Conservator of Forests, Northern Circle, issued in December 1992, range officers were required to report to the Divisional Forest Officer, offence cases involving theft of produce exceeding Rs. 1,000 in each case within 2 days of offence. DFOs were also required to furnish fortnightly reports of UDOR cases involving loss of Rs. 5,000 or more to the Conservator of Forests, Northern Circle indicating action taken or proposed to be taken against the staff responsible for the lapse. The object of the standing order was to ensure strict vigilance over forest protection by minimising illicit felling which had been gradually depleting forest cover.

In course of review of offence registers maintained in the divisions it was noticed that in a good number of cases standing trees in the reserve/protected forest had been illicitly felled and removed by unknown offenders. In such cases stumps of felled trees were seized and recorded in offence register showing girth measurement of stumps. But the estimated volume of timber lost and their value were not worked out. The quantum of estimated loss of timber found on test check of offence register of 10 divisions for the period from 1991-92 to 1995-96 worked out to Rs. 388.02 lakhs in 1,093 cases.

It was further observed that in Buxa Tiger Reserve, Jalpaiguri, Baikunthapur and Darjeeling Divisions no fortnightly report of UDOR cases was furnished to the Conservator of Forests (April 1997). Had the standing order of the Conservator been strictly followed in spirit, by ensuring strict vigilance in forest protection, the loss of timber pointed out above could have been minimised. Further, no such standing order was issued for observance by the divisions under Western Circle viz. Burdwan, Bankura (North), Bankura (South), Midnapur (East) and Midnapur (West) and Purulia Divisions. No effective steps were also taken by any division to recover the stolen produce by usual method of executing search warrants and raids.

*Bankura (North), Bankura (South), East Midanpur, Burdwan, Purulia, Buxa Tiger Reserve, Jalpaiguri, Baikunthapur and Darjeeling.

**Purulia, Bankura (South), East Midnapur, Burdwan, Buxa Tiger Reserve, Jalpaiguri, Baikunthapur and Darjeeling.

Though called for in audit, none of the divisions could furnish the figures of total number of search warrants executed and produce recovered as no record was maintained for watching follow-up action and recovery of stolen produce.

On this being pointed out in audit, West Midnapur Division stated (March 1997) that valuation of lost produce was not possible as those were in non-recoverable stage. Other divisions admitted the lapse and agreed (between January and March 1997) to record value of produce in future. As regards issue of search warrants, Bankura (South) Division and West Midnapur Division stated that the matter was being examined. Other divisions did not furnish any specific comments and stated that search warrants were generally issued as and when necessary.

10.02.09 *Blocking up of revenue due to delay in disposal of seized produce*

(i) Under the provisions of the Indian Forest Act, 1927, forest produce seized and confiscated in connection with offence cases is required to be sold in public auction. Where a prosecution offence case is pending in a Court of Law and the seized produce involved in it is of perishable nature, the produce may be disposed of with the permission of the Court.

It was noticed that in 5 divisions [Jalpaiguri, Darjeeling, Buxa Tiger Reserve, Midnapur (West) and Sundarban Tiger Reserve] a sizeable quantity of timber, poles and firewood (timber 4944.203 cum plus 311 quintals, firewood 469.879 cum plus 874 quintals and 7,232 poles) seized and confiscated in connection with UDOR and COR cases was lying undisposed of since 1991-92. In Sundarban Tiger Reserve, no auction was held during 1991-96.

As a result of this, delay on the part of the divisions to dispose of these stock, revenue amounting to Rs. 454.01 lakhs calculated at the average auction rate/schedule rates remained blocked. Further as a result of prolonged storage in open stockyards and exposed to elements the produces were deteriorating fast to render them unsaleable.

On this being pointed out in audit, Field Director, Sundarban Tiger Reserve stated (February 1997) that the unsold lots would be put to next auction for disposal. The Divisional Forest Officer, Midnapur (West) stated (March 1997) that the produce would be disposed of after checking of stock by a gazetted officer. While the Divisional Forest Officer, Jalpaiguri stated (March 1997) that action was being taken for disposal of unsold stock.

The Field Director, Buxa Tiger Reserve and the Divisional Forest Officer, Darjeeling did not furnish any reply.

(ii) It was further noticed that property [timber 2520.331 cum, pole 1,803, firewood 335.50 quintals, *khair* 50.90 kg, mechanised *dinghee* (boats) 26] valuing Rs. 199.60 lakhs which included mainly perishable items like eucalyptus poles, *khair*, firewoods etc had been seized in connection with 1,250 POR cases were lying in the depots of 10 divisions since 1991-92.

The divisional level offices had not initiated any action for obtaining order for disposal of the seized goods from the respective Courts. Apart from blocking up of revenue, this might result in loss to Government due to deterioration of timber beyond any use owing to their prolonged storage and exposure to vagaries of nature.

On this being pointed out in audit, the Divisional Forest Officers, Bankura (South), Jalpaiguri, Sundarban Tiger Reserve, Buxa Tiger Reserve stated (between February and March 1997) that action was being taken to obtain permission from the respective Civil Courts while Midnapur (West) Division stated (March 1997) that the Assistant Public Prosecutor was being requested to pursue the cases and to settle them up as early as possible. Burdwan Division stated (January 1997) that the permission for disposal of the produce was awaited from the Civil Court. Other 4 Divisional Officers [Darjeeling, Baikunthapur, Bankura (North) and Purulia] had not furnished any reply.

(iii) Similarly, scrutiny of records of Sundarban Tiger Reserve revealed that as many as 166 offence cases (POR) consisting of huge quantity of timbers (1,174 quintals), firewood (211 quintals), poles (1,883) and *dinghee* (boats) (114) seized between 1966-67 and 1990-91 were pending in the Court of Law. The value of the seized produce worked out to Rs. 2.48 lakhs determined on the basis of fixation of value in similar cases. Examination of records, however, revealed that the produce during the passage of time had deteriorated and become unfit for sale or auction. Inaction on the part of the division to pursue the cases and obtain order from the Court for timely disposal resulted in a loss of revenue amounting to Rs. 2.48 lakhs.

On this being pointed out, the Field Director stated (February 1997) that actions were being taken to obtain orders from the concerned Courts.

10.02.10 *Loss on re-auction of depot lots*

In terms of Government order issued in January 1977, disposal of all kinds of forest produce is required to be made through public auction with reference to the reserve price determined on the basis of average price of auctions previously held.

(a) Scrutiny of auction records of Purulia Division revealed that 2 lots of seized *sissu* timber measuring 18.9495 cum were put to auction on 24 February 1994 fixing the reserve price of Rs. 1.65 lakhs. Since there was no bidder the lots were withdrawn and put to re-auction held on 6 December 1995 after conversion of 2 lots into 14 lots measuring volume of 21.4272 cum increased due to re-measurement at the time of re-lotting and the reserved price was fixed at Rs. 90,500. All the lots were sold to highest bidders at a price of Rs. 99,300. The reduction of upset price even on inclusion of increased volume of timber at the time of re-auction resulted in a loss of revenue of Rs. 74,500 (Rs. 1.65 lakhs minus Rs. 90,500).

On this being pointed out in audit, the Divisional Forest Officer stated (March 1997) that reduction in reserve price was made as it was higher than the market price and conversion of 2 lots into 14 lots was made considering purchasing power of the timber merchants of the locality. The contention is not tenable in audit as the upset price is the average auction price of previous auctions and it indicates minimum quantum of market price.

(b) Similarly, scrutiny of records of Bankura (South) Division revealed that 6 depot lots of 1987-88 of seized timber having total reserve price of Rs. 74,500 were withdrawn from auction held on 8 January 1988 as there was no bidder. The lots were not put to subsequent 4 auctions held between 1988-89 and 1989-90. After a lapse of about 3 years when the lots became old, rotten and unfit for sale due to exposure to nature's elements the reserve price was re-fixed at Rs. 15,600 and the lots were finally disposed of at Rs. 15,850 through auction held in March 1991. Thus, due to delay in re-auction Government suffered a loss of revenue amounting to Rs. 58,900.

On this being pointed out in audit, the Divisional Forest Officer stated (February 1997) that the lots were not put to subsequent auctions as there was no local demand and to avoid further loss the lots were disposed of at lower price. The reply of the Divisional Forest Officer is not tenable as the local demand was not ascertained by putting those lots in the immediate next auction as per Government order of January 1997.

(c) Further at Bankura (South) Division and Buxa Tiger Reserve, 17 lots of 1986-87 and 1989-90 and 6 lots of 1990-91 and 1992-93 were put to auction between September 1986 and December 1992 and the highest bids of Rs. 1.01 lakhs and Rs. 2.02 lakhs respectively were obtained. The successful bidders having failed to lift the produce on payment of full revenue those lots were put to re-auction between January 1988 and July 1993 and the revenue of Rs. 53,900 and Rs. 46,735 respectively was realised. After forfeiture of the security deposit of Rs. 17,918 obtained from the first bidders the loss in both the divisions worked out to Rs. 1.85 lakhs which was recoverable from the original bidders. But the division had not initiated any action for recovery of loss.

On the matter being pointed out in audit, the Divisional Forest Officer, Bankura (South) and the Deputy Field Director, Buxa stated (February-March 1997) that action was being taken to recover the dues by instituting certificate cases.

(d) In another case in Jalpaiguri Division, 5 lots of *veenerpati* measuring 125.625 cum seized at check post point during the period between 1991-92 and 1992-93 were put to auction on 1 September 1993. As no bidder turned up the lots were again put to auction on 27 September 1993 and the highest and second highest bid of Rs. 1.45 lakhs and Rs. 1.20 lakhs respectively were offered. Accepting the highest bid a demand notice of Rs. 1.45 lakhs was issued on 6 December 1993 specifying the payment of royalty within 20 days. Having failed to make payment within the specified time, the highest bidder was declared as defaulter but no offer was given to second highest bidder by the department. Instead in September 1994, for disposal of *veenerpati*, a

committee of 3 Divisional Forest Officers was set up and their report revealed that the quality had deteriorated and the quantity was also reduced. The lots were ultimately disposed of at Rs. 11,050 by an open tender. Non-offering of lots to second highest bidder resulted in loss of revenue of Rs. 1.08 lakhs.

On this being pointed out in audit, the Divisional Forest Officer stated (March 1997) that offer was not given to second highest bidder considering that his offer was low; but in course of time the produce had been partially soiled and disposed of on open auction. The reply of the Divisional Forest Officer is not acceptable as the loss could have been avoided if the lots were offered to the second highest bidder of auction held in September 1993 as per standard agreement of the West Bengal Forest Manual.

10.02.11 *Short realisation of revenue in compounding offence cases*

Under the provisions of the Indian Forest Act, 1927, if the offender is willing to compound any forest offence, Forest Officer of a rank not inferior to that of Ranger may compound the offence on realisation of a compensation money up to a maximum of Rs. 1,150 in each case. When any forest produce has been seized as liable to confiscation, the produce so seized may be released on realisation of double the market value thereof.

In the course of scrutiny of offence records of Purulia, Burdwan and Midnapur (East) Divisions, it was noticed that in 187 cases compounded between 1991-92 and 1995-96 forest produces were released, on realisation of their value at double the schedule of rates instead of at double the market value of the seized produce. This resulted in short realisation of revenue amounting to Rs. 1.11 lakhs.

On this being pointed out in audit, the Divisional Forest Officers, Burdwan and Midnapur (East) admitted the observation of audit and agreed (between January and February 1997) to realise the value at double the market price in future. The Divisional Forest Officer, Purulia, however, stated (March 1997) that in Purulia the market price was lower than that in other place and even below the schedule of rates. The contention was not tenable as average auction price of Western Circle was higher than the schedule of rates.

10.02.12 *Prosecution of offence report (POR)*

Under the Indian Forest Act, 1927, every officer seizing any property shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which seizure has been made. The position of pending prosecution of offence report and the irregularities thereon are mentioned in the following paragraphs.

(i) *Pendency of cases in the Courts*

The position of the offence cases pending in the different Civil Courts in respect of 10 divisions* for the various periods between 1991-92 and 1995-96 is given below:

Year	No. of POR cases sent to the Court	No. of POR cases pending in the Court	Seized Produce					Value (Rupees in lakhs)
			Timber (in cum)	Pole	Firewood (in quintals)	Mechanised *dinghee* (boat)	*Khair* (processed/ semi-processed)	
1991-92	273	220	558.823	18	135.00	10	—	27.98
1992-93	271	250	517.931	927	22.00	4	3.85 kg	48.75
1993-94	240	227	195.737	816	22.50	3	—	14.26
1994-95	319	290	230.655	576	—	4	1.05 kg	20.51
1995-96	276	263	1017.185	66	156.00	5	46 kg	88.10
								199.60

*Burdwan, Sundarban Tiger Reserve, Midnapur (West), Bankura (South), Bankura (North), Purulia, Buxa Tiger Reserve, Darjeeling, Jalpaiguri and Baikunthapur.

It would be seen from the above that number of pending cases increased in each subsequent year with reference to those of 1991-92 for lack of proper pursuance by the offices and as such there was huge accumulation of seized produce awaiting disposal as the department failed to develop a proper monitoring system to watch and pursue such cases.

(ii) *Non-monitoring of Court cases and consequential deterioration of produce*

Cross-verification of records on POR cases of 2 divisions (Jalpaiguri and Darjeeling) with those of the concerned Civil Courts revealed that as many as 28 cases seized between 1991-92 and 1996-97, involving 163.04 cum of timber which included 90 per cent soft timber *Dhupi* (Pine) had been disposed of by the Trial Magistrates between April 1993 and March 1997 by confiscation of the produce valued as per schedule of rate at Rs. 13.55 lakhs in favour of the State. The divisional offices had neither taken any action to ascertain the position of those cases nor initiated any action to dispose of the produces. *Dhupi* (Pine) being soft resinous wood is susceptible to rapid deterioration during long storage in open yards and would fetch hardly any price in market, if not disposed of within a year.

On this being pointed out in audit, the Divisional Forest Officer, Jalpaiguri stated (March 1997) that the particulars of POR cases disposed of by the Court were being collected, while Divisional Forest Officer, Darjeeling had not furnished any reply.

(iii) *Inordinate delay in submission of prosecution of offence report (POR)*

Under section 52 of the Indian Forest Act, 1927, reporting of offence cases showing details of produce seized is required to be made to the Magistrate as soon as possible after detection of offence. Under Criminal Law (468 CrPC) where offence is punishable with fine and imprisonment it is provided that the period of limitation of drawing up of report on prosecution of offence is one year and as such drawing up of report thereafter is invalid.

Test check of records of Purulia, Burdwan, Jalpaiguri, Bankura (North) Divisions revealed that in 22 cases involving produce valued at Rs. 5.30 lakhs reports on POR cases were submitted delaying from 13 to 36 months.

On the matter being pointed out in audit, the Divisional Officer, Purulia stated (March 1997) that delay in submission was due to time spent for collection of all relevant records. Jalpaiguri Divisional Officer stated (March 1997) that all the POR cases were being reviewed in order to submit the cases in time in future. Divisional Officers, Burdwan and Bankura (North) had not furnished any specific reply.

(iv) *Non-submission of POR cases*

Test check of records of Sarugara Range under Baikunthapur Division revealed that an accused person was arrested in March 1989 for illicit felling of 57 teak trees containing 3.793 cum value of which was determined at Rs. 1 lakh by divisional office and the case was recorded in the offence register. But the report on prosecution of offence had not been submitted to the Court of the Trial Magistrate even after 8 years. The Chief Judicial Magistrate, Jalpaiguri disposed of the case in February 1997 after releasing the accused for non-submission of POR and also directed the Divisional Officer for intimating the Court the reasons for non-submission of POR during last 8 years on proper enquiry. The divisional office had not taken any action to ascertain the reasons as directed by the Court. The produce so seized was still lying undisposed of and deterioration of the same cannot be ruled out due to exposure to elements during this long period.

On this being pointed out in audit, the divisional office had not furnished any reply.

(v) *Submission of POR cases barred by limitation*

Scrutiny of the records of Jalpaiguri Division further revealed that in as many as 69 cases, reports on prosecution of offence were not submitted to the Civil Court between 1988-89 and 1995-96. The volume and value of seized property could not be ascertained since the offence register was not maintained properly and in the meantime those cases had become barred by limitation of time.

On this being pointed out, the Divisional Forest Officer stated (March 1997) that all the POR cases were being reviewed and action was being taken so that PORs were submitted timely in future.

(vi) *Non-determination of volume of produces of POR cases decided in favour of State by the Court*

Furhter verification of records of Civil Court of Jalpaiguri revealed that 18 cases had been disposed of by the Trial Magistrate in favour of the State between March and December 1996 but the volume and value of the disposed of cases could not be identified due to improper maintenance of offence register and as such it could not be ascertained whether those produces were disposed of or not.

On this being pointed out in audit, the divisional office stated (March 1997) that particulars of all the disposed of cases were being collected from the Court for disposal of produce.

(vii) *Non-disposal of confiscated vehicles*

(a) Under section 52 of the Indian Forest Act, 1927 read with sections 59A and 59D of the West Bengal Amendment Act, 1988, Forest Officer is empowered to seize and confiscate vehicles which have been used for transportation of forest produce in respect of which forest offence has been committed and to sell the vehicles through public auction after allowing thirty days time for appeal from the date of confiscation.

Test check of records of Darjeeling Division revealed that 11 vehicles were seized at the check post point between August 1989 and December 1996 and were confiscated by the Divisional Forest Officer between August 1995 and December 1996. After confiscation, the vehicles were kept in different ranges' compound and no action had been taken to dispose of the confiscated vehicles through auction by determining the reserve price. The minimum value of the vehicles was estimated at Rs. 22 lakhs on the basis of average price of old vehicles available from the Automobile Association of India.

On this being pointed out in audit, the divisional office had not furnished any reply.

(b) Similarly, test check of records of 2 ranges (Sarughara and Ambari) under Baikunthapur Division, Siliguri revealed that 1,045 seized cycles, 510 rickshaw vans and 2 boats confiscated between 1982 and 1985 were lying either in broken or in unserviceable condition in the ranges' compound. Non-disposal of these items in time resulted in loss of revenue to the extent of Rs. 10.35 lakhs computed on the basis of 50 per cent of the average market price.

On this being pointed out in audit, the Divisional Forest Officer, Baikunthapur had not furnished any reply.

10.02.13 *Non-accountal of seized produce*

Under the provisions of the West Bengal Forest Manual, Part II, outturn of illicit felling and other seized property and disposal thereof are required to be shown in the prescribed form (Form 17). All timber and other property so seized are to be brought to forest depot for safe custody and entered in the depot register. The Conservator of Forests, Northern Circle directed (November 1986) that stock accounts of forest produce shuld be maintained in monthly quantitative statement similar to that maintained by the West Bengal Forest Development Corporation from the year 1986-87 in 3 divisions*. No order was, however, issued by the Government. The stock at each depot must be physically verified periodically. A few instances of the irregularities on accountal and custody of seized produces are mentioned as under:

(i) Scrutiny of records of quantitative statement of Teesta Bridge check post under Jalpaiguri Division revealed that 9 trucks loaded with *sal* timber measuring 134.503 cum were seized at check post point on the ground of irregular transit pass and due to shortage of accommodation in the check post compound, those vehicles with timbers were diverted to different ranges' depot. A cross-verification of the transfer records with the depot register of the receiving depots of the ranges revealed that the produces were not entered in the depot register although the vehicles were released by the order of the authorised officer against bond. The value of timber worked out to Rs. 13.33 lakhs calculated on the basis of average auction price was neither accounted for nor shown in the monthly quantitative statement.

On this being pointed out in audit, the Divisional Forest Officer stated (March 1997) that the matter was under examination, final report would be submitted after measurement of the seized produce lying in the depots.

*Cooch Behar, Baikunthapur and Jalpaiguri.

(ii) At Nimati Range under Buxa Tiger Reserve, huge quantity of timber measuring 154.616 cum which included more than 50 per cent non-*sal* timber illicitly felled was recorded in the offence register. Scrutiny of records, however, revealed that the entire volume of timber was handed over in March 1997 to the West Bengal Forest Development Corporation Limited (WBFDC) instead of taking into stock account and showing in the quantitative statement. The value of timber was Rs. 7.73 lakhs as furnished by the divisional office. But the said WBFDC had not paid any royalty nor the divisional office preferred any claim by raising bills.

On this being pointed out in audit, the Deputy Field Director, Buxa Tiger Reserve stated (March 1997) that the produces were handed over to the WBFDC as per order issued by the Principal Chief Conservator of Forests in March 1997. The reply is not tenable as the said order specifically indicates the allotment of seized *sal* timber and not non-*sal* timber to the WBFDC.

(iii) At Darjeeling Range under Darjeeling Division, scrutiny of outturn statement for 1995-96 revealed that 79.191 cum of *sal* timber illicitly felled during the period between 1986-87 and 1987-88 when the division was under the control of the WBFDC (reverted to the Forest Directorate in December 1992) were found scattered in the range. The divisional office had neither brought the timber to the depot nor entered into the stock account nor any offence report was drawn.

On this being pointed out in audit, the divisional office had not furnished any reply.

(iv) A cross-verification of records of seizure case with those of the Siliguri Railway Station office revealed that Government Railway Police Force (GRPF) in different occasions between January 1991 and September 1992 seized 5.91 cum of timber which included teak logs and *sal* timber involving value of Rs. 39,000 calculated on average auction price either in course of search and seizure operation in different trains or found to have been lying as unclaimed in the Railway premises. The fact of seizure having been reported repeatedly by the Railway authority, the divisional office had not taken any action to bring the seized produce to their depot and as such those unclaimed seized produces were lying at Railway custody for years together.

On being pointed out in audit, the divisional office had not furnished any reply.

(v) At Asansol Range under Durgapur Social Forestry Division, a truck loaded with 4 MT of boulders without any valid document was seized by the local police station (Salanpur Police Station) and a case was filed to the District Civil Court. In disposing the case the Civil Court remanded the case to the Divisional Forest Officer for taking proper action. The Divisional Forest Officer issued an order of confiscation of the vehicle in August 1991 but the vehicle was not brought to the custody of the divisional office nor initiated any action for disposal through auction.

On this being pointed out in audit, the Divisional Forest Officer, Social Forestry stated (August 1997) that action was being taken to dispose of the seized truck lying in dilapidated condition in the premises of the local police station.

Non-accountal of forest produce in above cases is fraught with the risk of pilferage/theft and as such it affects revenue.

10.02.14 *Loss of revenue due to delay in disposal of seized* khair

(a) Under section 58 of the Indian Forest Act, 1927, seized forest produce involved in prosecution offence case which are perishable in nature may be disposed of with the permission of the Court.

In course of scrutiny of Offence Register and Depot Register of Buxa Tiger Reserve, it was noticed that 14.15 quintal processed and semi-processed *kahir* and 104.562 cum *khair* logs seized under different offence cases (POR) between 1991-92 and 1993-94 were lying undisposed of in different depots since April 1991. *Khair* being a perishable forest produce required immediate disposal to avoid deterioration. No action appeared to have been taken by the division for disposal of the seized *khair* by sale in public auction. Subsequently in October 1995 the produce was allotted to the WBFDC but they refused to accept the produce as it was unfit for use. Delay in disposal of seized *khair* thus resulted in loss of revenue to the extent of Rs. 4.87 lakhs on the basis of value calculated at the rates fixed by the State Price Fixation Committee.

On this being pointed out in audit, the divisional office stated (March 1997) that the matter was being taken up with the WBFDC.

(b) In another case in Jalpaiguri Division, the Conservator of Forests ordered (June 1995) disposal of 12 quintals of slimy and raw catechu and manufactured *khair* (in cake form) which were seized on different earlier occasions between December 1994 and April 1995, in public auction. But it was noticed that no auction was held and only 512 kg of processed *khair* was allotted to the WBFDC in March 1996. Balance produce (688 kg) thus became unfit for use.

Apart from this, 19.22 cum *khair* log seized between 1982-83 and 1994-95 were also lying in decomposed stage. Delay in disposal of seized *khair* thus resulted in loss of revenue to the extent of Rs. 1.06 lakhs.

On this being pointed out in audit, the Divisional Forest Officer, Jalpaiguri stated (March 1997) that due to scattered condition of the seized *khair* the exact quantity and condition was not readily available and as such auction of the processed/semi-processed *khair* could not be conducted. The DFO further stated that action was being taken to ascertain the actual quantity of such produce for disposal.

10.02.15 *Loss of revenue due to theft of seized produces from depots*

Under the provisions of the Indian Forest Act, 1927, a Forest Officer or Police Officer is empowered to seize any forest produce when there is reason to believe that a forest offence has been committed in respect of such produce. Seized produces are brought to the beat depots for safe custody and is kept in the depots till disposal through auction.

In course of scrutiny of offence files of different ranges under Baikunthapur, Darjeeling Divisions and Buxa Tiger Reseve, it was noticed that in 11 cases seized produces valued at Rs. 99,211 were stolen from beat depots between June 1990 and July 1996. The Range Officer/ Beat Officer either lodged an FIR to the local police station or brought the matter to the notice of the DFO. No follow-up action for recovery of the stolen produces was taken and no departmental enquiry was found to have been held fixing the responsibility for the loss as required under the provisions of the West Bengal Forest Manual, Part II. This resulted in loss of revenue to the extent of Rs. 99,211.

On this being pointed out in audit, the divisional office furnished no specific reply.

10.02.16 *Non-raising of demand for supply of seized produce to the WBFDC*

As per Government order issued in January 1977, forest produce may be allotted to any Government Undertaking or other agency on the basis of cash and carry system.

(a) On scrutiny of Bid Register of Jalpaiguri Division it was noticed that 31 depot lots consisting of 169.609 cum of seized timber (*sal*) were withdrawn from public auction held between 1992 and 1996 and subsequently allotted to the WBFDC. But no demand was raised against the allottee. This resulted in non-realisation of revenue to the extent of Rs. 5.62 lakhs calculated on the basis of price fixed by the State Price Fixation Committee.

On this being pointed out (March 1997) in audit, the department stated (April 1997) that action was being taken to raise the demand.

(b) Similarly in Buxa Tiger Reserve, it was noticed that 205 kg of dry and paste *khair* valued approximately at Rs. 50,000 was seized in December 1994. As the produce was perishable it was allotted to the WBFDC in January 1995 with the permission of the Court. But no demand was placed with the allottee. This resulted in non-realisation of revenue amounting to Rs. 50,000.

On this being pointed out in audit, Deputy Field Director, BTR stated (March 1997) that the matter was being taken up with the WBFDC.

(c) In another case of MPP Range of Jalpaiguri Division, it was noticed that 512 kg of seized processed *khair* (*katha*) valued approximately at Rs. 51,200 was handed over to the WBFDC in March 1996. But neither any bill was raised by the department nor any payment was made by the WBFDC. This resulted in non-realisation of revenue amounting to Rs. 51,200.

On this being pointed out in audit, the Divisional Forest Officer stated (March 1997) that action was being taken for realisation of revenue.

10.02.17 *Non-assessment and underassessment of damage to forest by offenders*

(a) Under the provisions of the Indian Forest Act, 1927, any act of clearing or breaking up any forest land for cultivation or any other purpose is an offence punishable with fine or imprisonment or with both in addition to such compensation for damage done to the forest as may be directed. Further, under the Forest (Conservation) Act, 1980, use of any forest land for non-forestry purpose by any State Government or any other authority without prior approval of the Central Government is an offence. Accordingly, illegal mining operation in forest area is an offence under both the above Acts and the offenders are liable to pay fine and compensation for damage done to forest.

In course of scrutiny of records of Burdwan Division, it was noticed that owing to rampant illegal mining by erstwhile private collieries in the area an underground fire broke out and as a result of this fire old plantations over 10 hectares of forest in Sarishatola Beat under Asansol Range comprising mainly *sal* and its other associates had been badly damaged. The Eastern Coalfields Limited (ECL) who took over the private collieries had not been able to extinguish this large scale underground fire. The quantum of damage done to plantation apart from environmental loss as estimated in audit worked out to Rs. 5.25 lakhs on the basis of estimated produce in 10 hectares and their value at the rates fixed by the State Price Fixation Committee. The division, however, did not assess any damage compensation for recovery from the ECL although the damage was detected in July 1992.

On this being pointed out in audit, the division stated (January 1997) that the matter was referred to Durgapur Social Forestry Division where Asansol Range had been transferred and the Social Forestry Division stated (August 1997) that the entire area was under consideration of captive coal mining by the Calcutta Electric Supply Corporation Limited pending final clearance by the Government of India. The said corporation had agreed to pay loss of forestry income including environmental loss.

(b) In another case, it was noticed from offence report of Ukhra Range under Burdwan Division that 9 hectares of forest area have subsided forming deep long crevices due to illegal mining operation by the ECL in the forest area and about 2,000 trees namely, red sandal, *piasal*, *mahul* etc were badly damaged and died. The offence was compounded by the Divisional Forest Officer on realisation of Rs. 50,000 in May 1995 (Rs. 1,150 as maximum compounding fee and Rs. 48,850 as damage).

Scrutiny of enumeration list of damaged trees prepared by the Range Officer, Ukhra Range in August 1995, revealed that the minimum damage amounted to Rs. 1.14 lakhs on the basis of value calculated at the schedule of rates and the rates fixed by the State Price Fixation Committee. Thus, the damage done to forest was underassessed and short realised to the extent of Rs. 65,299.

On this being pointed out in audit, the Divisional Forest Officer, Durgapur Social Forestry stated (August 1997) that 50 per cent (approximate) of trees had sprouted fresh leaves and were alive. The contention was not, however, acceptable since damage report was drawn in August 1993 while growing of fresh leaves, if any, was a post-damage phenomenon.

(c) In a third case of Burdwan Division, it was noticed that the ECL authority damaged forest over 3.5 hectares of land in Mangalpur *mouza* of Asansol Range (now under Durgapur Social Forestry Division) by using bulldozer over the land. The Range Officer, Asansol Range estimated the damage at Rs. 1 lakh per hectare and placed a demand for damage amounting to Rs. 3.5 lakhs with the Manager, ECL, Kunustoria area in December 1992. But it was noticed from Offence Register and COR case that the ECL authority had paid only Rs.1 lakh. The demand was settled without recorded reasons for short recovery. This resulted in short realisation of damage to the tune of Rs. 2.50 lakhs.

On this being pointed out in audit (May 1997), the DFO, Durgapur Social Forestry stated (August 1997) that no reason in writing for reduction of demand could be ascertained from the records.

(d) In a fourth case under Darjeeling Division, it was noticed that due to illegal clearing of forest by setting fire to the leaves by the Gorkha Regiment Eastern Frontier (GREF) in April 1995, 37 hectares of plantation in the Teesta Valley Range created between 1990-91 and 1994-95 were destroyed by fire. But no action was taken by the division to estimate the damage done to forest and claim the compensation from the GREF authority. The quantum of damage as estimated in audit worked out to Rs. 1.92 lakhs being the cost of creation of plantation (advance work and creation work).

On this being pointed out in audit, the division furnished no reply.

10.02.18 *Loss of forestry income due to non-eviction of encroacher of forest land*

In course of scrutiny of encroachment files it was noticed that in most of the divisions selected for review, a sizeable quantum of forest land had been under encroachment by unauthorised persons since long. Division-wise break up of encroachments with area and period of encroachment is given in the table below:

Sl. No.	Name of the Division	Year of encroachment	Area encroached (In hectares)
1.	Burdwan	Since 1993	348.64
2.	Purulia	Since 1960	307.42
3.	Bankura (North)	Since 1987	3730.42
4.	Bankura (South)	Since 1965	5336.85
5.	East Midnapur	Since 1970	931.89
6.	West Midnapur	Since 1960-70	501.30
		1970-77	447.47
		1977-80	528.41
		1980-87	671.62

As per judicial pronouncement of Kerala High Court in SA No. 308 of 1982 encroachers of forest land are self proclaimed offenders of the Constitution of India. The Principal Chief Conservator of Forests, West Bengal in his circular issued in September 1990 observed that eviction of encroachment should be given top priority and impressed upon the DFOs to take appropriate action in evicting the encroachers. But it was noticed that no remarkable eviction could be made. As a result of non-eviction of encroachers Government suffered a loss of revenue in the shape of forestry income which might have accrued to Government by raising plantation in the encroached area. The estimated loss of revenue worked out to Rs. 2,028 lakhs.

The loss was in respect of the divisions under Western Circle viz, Burdwan, Bankura (North), Bankura (South), East Midnapur, West Midnapur and Purulia, which was calculated on the basis of outturn of pulpwood (*akashmoni* and eucalyptus) in the traditional rotation cycle of 10 years. Loss of forestry income in respect of Buxa Tiger Reserve and Baikunthapur Division under Northern Circle and Darjeeling Division under Hill Circle could not be estimated in the absence of relevant data regarding plantation and estimated yield.

On this being pointed out in audit, the DFO, Burdwan stated (January 1997) that as per policy decision of the Government encroachers prior to 1977 could not be evicted in view of the 'New Directives on Forest Management in Tribal Areas' issued by the Government on 15 September 1980, without screening as to the eligibility of persons to have the assignment under

the West Bengal Land Reforms Act, 1955; as no screening committee was formed evictions in previous encroachment cases were pending. Similar replies were furnished (February 1997) by the DFO, Bankura (North). The DFO, Bankura (South) stated (February 1997) that unauthorised occupation by ST and SC community had been marked and yet to be identified.

On this being pointed out in audit, the DFO, East Midnapur stated (February 1997) that present position of encroachment was being ascertained while the DFO, West Midnapur stated (March 1997) that eviction would be done gradually with the help of Panchayat authorities while the DFO, Purulia stated (March 1997) that in some cases title suit had been pending. No replies were furnished by the DFO, Darjeeling and the DFO, Baikunthapur.

10.02.19 *Non-regularisation of fixed demand holding leading to non-recovery of rent*

(a) Under section 2 of the Forest (Conservation) Act, 1980, which came into force from 25 October 1980, no forest land can be diverted for non-forestry purpose or leased out to any person without prior approval of the Central Government.

Accordingly, leases for fixed demand holding of forest land which were in vogue prior to this date are required to be approved by the Central Government. Till such approval is not received occupation of fixed demand holdings constitutes an offence under the Act.

In course of scrutiny of records in Buxa Tiger Reserve, it was noticed that as many as 229 fixed demand holdings in forest land were being used for houses, shops, depots, godowns, garage, petrol pump and saw mill. But no renewal of lease agreements as required under the provisions of the West Bengal Forest Manual, Part II were made although the leases had expired between 1960-61 and 1993-94 as no approval of Central Government was obtained. As a result rents amounting to Rs. 4.02 lakhs calculated up to 1995-96 remained unrealised.

On this being pointed out in audit (March 1997), the Field Director, BTR stated (March 1997) that a proposal was being sent to the higher authority for getting approval of Government of India.

(b) Similarly in Darjeeling Division, it was noticed that leases of 229 fixed demand holdings covering 5 ranges expired between 1958-59 and 1994-95. But no renewal of lease agreement was made after getting it regularised under the Forest (Conservation) Act, 1980. This resulted in non-realisation of rent amounting to Rs. 1.38 lakhs calculated up to 1995-96.

On this being pointed out in audit, the Divisional Forest Officer stated (April 1996) that a proposal for renewal of lease agreements would be submitted to appropriate authority and realisation of rent would be effected.

10.02.20 *Non-compounding of offence on extraction of minor minerals from forest land*

(a) Under the provisions of the Forest (Conservation) Act, 1980, no State Government or other authorities except with the prior approval of the Central Government can permit any individual, agency or undertaking to extract and remove stones, boulders, sand, shingles etc from river beds or any part of the forest areas. Under the Indian Forest Act, 1927, such acts constitute an offence which can be compounded and the produce released on realisation of a sum equivalent to double the market value of the produce illicitly extracted and removed.

On scrutiny of files maintained in office of the Principal Chief Conservator of Forests, West Bengal (PCCF) it was noticed that huge quantity of boulders, sand and shingles measuring 115123.4 cum involving royalty of Rs. 24.31 lakhs had been extracted from the river beds of Kalimpong Division during the period from 1993-94 to 1995-96 by the WBFDC without any prior permission from the Central Government. The WBFDC committed a forest offence which could have been compounded on realisation of Rs. 48.62 lakhs being double the amount of royalty which may be taken as minimum market value. But the Forest Directorate had neither compounded the offence nor taken other legal action to stop illegal extraction.

On this being pointed out in audit (March 1997), the PCCF stated (June 1997) that boulders etc were collected by the WBFDC for prevention of floods on the basis of Stage I Clearance from the Ministry of Environment and Forests, Government of India and hence no illegal collection was made. The contention is not tenable as it was clearly stated (November 1994) by the Ministry of Environment and Forest, Government of India that collection of boulders from the river bed on the basis of Stage I Clearance only amounts to serious violation of the Forest (Conservation) Act, 1980.

(b) It was noticed from records of Purulia Division that the Comprehensive Area Development Corporation (CADC), Ajodhya Hill Project, Ajodhya Hills, Purulia started work of widening (2 feet on both sides) Ajodhya Sirkabad Road (8.5 km) early in 1983 as an agent of Purulia Zilla Parishad under the NREP Scheme. For this purpose the CADC had felled trees on both sides and collected huge quantity of boulders from the forest land for use in the road without any permission from the Forest Directorate. Scrutiny of records further revealed that for extraction of boulders and gravels (boulders 785 cum and gravel 5,400 cum) a demand for royalty amounting to Rs. 75,071 was raised in May 1984, which was not also paid by the CADC.

The offence could have been compounded at Rs. 1.50 lakhs being the double of royalty i.e. minimum market price. But the division did not draw any offence report nor compounded the case. This resulted in non-realisation of revenue to the tune of Rs. 1.50 lakhs. Further, no damage for illicit felling of trees on both sides of the road was estimated and recovered.

On this being pointed out in audit, DFO, Purulia did not furnish any specific replies and stated (March 1997) that a reminder had again been issued for payment of royalty as billed for.

(c) In course of scrutiny of records regarding unauthorised extraction of gravel maintained by Durgapur Social Forestry Division, it was noticed that an area of forest land measuring 1199.19 acres was leased out to one contractor for extraction of gravels for 20 years from 14 May 1963. The lease expired on 14 May 1983 and the prayer for renewal of lease was refused by Government on the ground that it was hit by the Forest (Conservation) Act, 1980.

After refusal of lease, the lessee continued extraction of gravel from the demise land on the basis of a *status quo* order of High Court dated 11 December 1987 and finally interim order of Court was vacated on 11 September 1989. After vacation of interim order the Forest Department had not taken possession of the land. On the contrary, it was noticed that till May 1994 the lessee had continued extraction of gravel from the above forest land illegally. The produce thus extracted and removed along with vehicles was liable to seizure and confiscation. But no action had been taken to draw any offence report and claim compensation for demage done to forest although the offender illegally extracted gravel from 15 May 1983 to 14 May 1994. Further under the West Bengal Minor Mineral Rules, 1973, for unauthorised extraction of gravel (minor minerals) price of minerals was due to be recovered from the offender. Details of gravels (quantity and value) extracted during this period though called for in audit, could not be furnished by the division. As a result the extent of damage could not be calculated in audit.

On this being pointed out in audit, the divisional office did not furnish any reply.

10.02.21 *Non-registration and non-renewal of licence of saw mills*

Under the West Bengal Forest (Establishment and Regulations of Saw Mills and other wood based Industries) Rules, 1982, owners of all existing saw mills as well as new are required to get them registered by taking licence which is to be renewed every year on payment of prescribed fees on registration and renewal of licence. Running of saw mills without registration and renewal of licence is an offence which is punishable with imprisonment which may be extended to six months or with maximum fine of five hundred rupees or with both. A few cases of irregularities on the matter detected in course of audit are mentioned below:

(a) Scrutiny of records of Midnapur (East) Division out of 12 divisions revealed that as many as 300 saw mills were running under the jurisdiction of the division without obtaining registration and the divisional office either at the level of the division or at the range level had not initiated any action against the offenders. The maximum penalty of Rs. 1.50 lakhs could have been levied on those cases.

On this being pointed out in audit, the Divisional Forest Officer stated (February 1997) that all the range officers had been directed to enquire into the matter and to submit report on unauthorised running of saw mills.

(b) Scrutiny of records of the said division revealed that owners of 112 saw mills out of 159 registered mills had not renewed their licences for the various periods between May 1983 and August 1996. The divisional office had not initiated any action to prosecute the owners of the unauthorised mills. This led to non-realisation of Rs. 86,700 on account of renewal fee including application fee apart from imposing penalty of Rs. 56,000.

On this being pointed out in audit, the Divisional Forest Officer stated (February 1997) that action was being taken to issue notices for renewal of licence.

10.02.22 *Non-formation of Forest Protection Committee*

Forest Protection Committees have been set up with a view to preventing/reducing forest offence by mobilising peoples' support as well as their active participation for protection of forests.

Scrutiny of records revealed that out of total forest areas of 11,72,753 hectares in the State, 4,40,000 hectares which represent 38 per cent had been covered by the Forest Protection Committees formed from time to time. Non-coverage of areas of 62 per cent by the Forest Protection Committees would give ample scope for the offenders to resort to illicit felling and removal of trees from the forest areas.

On the matter being pointed out (April 1997), the department stated (June 1997) that major portion of south West Bengal had been covered by Forest Protection Committees except Sundarban Tiger Reserve area. In north Bengal, area of forests brought under the Forest Protection Committee was relatively low because formation of the Forest Protection Committee started long after that in south Bengal; attempts were, however, being made to increase the number of the Forest Protection Committees.

10.02.23 *Inadequate follow-up action on newspaper clippings*

Reports on destruction of forest wealth featured in the leading newspapers are generally brought to the notice of the Principal Chief Conservator of Forests, West Bengal by the newspapers clipping section of the Directorate.

Scrutiny of the records revealed that specific action taken reports were wanted by the Principal Chief Conservator of Forests, West Bengal on the destruction of forests reported in 4 paper clippings as under:

Brief subject of paper clipping	Name and date where reported	Place of occurrence	Money value reported (Rupees in lakhs)
1. Illicit felling of trees in Garbeta, Salboni and Godapiasal forest areas	The Jugantar dt. 20 April 1996	East Midnapore Division	26.00
2. Destruction of Jhauban at Digha	The Anandabazar dt. 07 August 1996	-do-	Not mentioned
3. Illicit felling of trees in Kakdwip	The Pratidin dt. 05 August 1996	24-Parganas South Division	-do-
4. Recovery of illicit timber from the house of the Municipal Commissioner, Cooch Behar	The Bartaman dt. 01 August 1996	Cooch Behar Division	A few lakhs

None of the concerned divisions initiated any action to investigate the matters.

On the matter being pointed out (March 1997), the department stated (June 1997) that action was being taken.

10.02.24 *Deficiency in internal control mechanism*

Under section 52 of the Indian Forest Act, 1927, an offence register is required to be maintained at the divisional level for effective control and speedy disposal of offence cases.

(i) Test check of records revealed that in Darjeeling and Baikunthapur Divisions no offence register was maintained. In West Midnapur and Bankura (North) Divisions though such registers were opened, entries therein were not uptodate and continuous. Further, the column for estimated value of theft or stolen produce were not filled in any of the divisions and no cross-reference viz, lot number and year of disposal of seized produce was kept in the register to watch their dispoal.

Further, the standing order issued in December 1992 by the Conservator of Forests, Northern Circle, regarding reporting offence cases to the respective higher authorities as mentioned before (paragraph 10.02.08) was not followed by any of the divisions under the Circle. The conservators of other circles have not even issued any such order.

On this being pointed out in audit, the DFO, Jalpaiguri and Deputy Field Director, Buxa Tiger Reserve agreed to comply with the standing order in future. Darjeeling and Baikunthapur Divisions furnished no replies.

(ii) It was noticed that in none of the divisions Form 17 showing quantitative position of stock and disposal of seized produce was maintained. Further, no periodical special report of stock-taking of seized produce was submitted by the divisions to the Conservator of Forests. As a result, position of the produce actually lying in stock/depot could not be verified in audit.

On this being pointed out in audit, the DFO, Jalpaiguri and Deputy Field Director, Buxa Tiger Reserve stated (March 1997) that a system of submission of monthly quantitative statements was introduced which served the purpose of Form 17. East Midnapur, West Midnapur and Bankura (South) Divisions admitted the lapse and agreed to maintain Form 17. Bankura (North) Division stated that depot register was being maintained in lieu of Form 17. Darjeeling and Baikunthapur Divisions furnished no replies.

From the foregoing observation it appeared that the provisions of departmental manual and standing order which provided for internal control mechanism of the department was not followed properly. Though use of Form 17 was discontinued in the divisions in south West Bengal, no system of submission of monthly quantitative statements was introduced under the order of concerned Conservator of Forests. As a result, internal control system in the Directorate was not effective enough to monitor offence cases and proper accountal of seized produce. The Directorate had not set up any Internal Audit Wing so far.

Other topic of interest

10.02.25 *Unauthorised occupation and conversion of forest land into orchard*

In course of scrutiny of records of the Field Director, Buxa Tiger Reserve (BTR) it was noticed that 700 acres of land within the reserve forest under Rajabhatkhawa Range had been under unauthorised occupation of encroachers since the year 1980. The encroachers mostly local people with the support and help of political leaders had illicitly felled the plantations on the area and converted it into orchard by cultivating orange over 600 patches.

Since the act constituted a forest offence, the Deputy Field Director, BTR in his notice asked (August 1984) the occupiers of the orchard to submit documents, if any, in support of their ownership before taking any legal action. But none turned up with documents. Accordingly, the illegal crops (orange) and vehicles involved in its carriage were liable to confiscation. But it was noticed that neither the produce and vehicles were seized and confiscated nor any action was taken for eviction of the encroachers. On the contrary the encroachers had enjoyed a sizeable revenue by illegal cultivation of orange amounting to Rs. 34 crores (approx) calculated up to the year 1996 on the basis of facts and figures ascertained from Buxa Duar Range Officer. Though called for, the division could not furnish the figures of loss of forestry income due to illicit felling of plantation and diversion of forest land for non-forestry purpose.

On this being pointed out in audit, the division stated (March 1997) that the matter had been reported to the Principal Chief Conservator of Forests, West Bengal.

The foregoing points were reported to Government in June 1997; their reply has not been received (January 1998).

10.03 Non-realisation of price of forest produce from the West Bengal Forest Development Corporation

According to a Government order issued in January 1997, supply and delivery of forest produce to any person or undertaking should be made either on pre-payment of price or on the basis of cash and carry system. Further, in case of sale of produce to the West Bengal Forest Development Corporation (WBFDC) on allotment basis, royalty should be realised at the rates fixed by the Price Fixation Committee after deduction of harvesting cost, service charges etc.

In East Midnapur Division, it was noticed that on the basis of allotment order of the Forest Directorate, the WBFDC had lifted 3,274 cum of pulpwood during 1994-95 without payment of royalty. This resulted in non-realisation of net revenue amounting to Rs. 14.59 lakhs.

On this being pointed out (September 1996) in audit, the Divisional Forest Officer stated (June 1997) that an amount of Rs. 13.04 lakhs had already been realised. Report on realisation of the balance amount has not been received (January 1998).

The matter was reported to Governent in November 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

10.04 Non-realisation of capitalised value of loss of forestry income

Under the provisions of the Forest (Conservation) Act, 1980, in the case of diversion of forest land for other purpose, a compensatory afforestation is required to be raised over the equivalent area of forest land. In case the forest land is not available, such compensatory afforestation is to be raised over double the area of non-forest land. In either case, the cost of afforestation is to be paid by the user agency i.e., the organization for whose benefit the forest land is diverted. Further, as per circular of the Principal Chief Conservator of Forests issued in February 1989, capitalised value of loss of forestry income is also to be realised from the user agency.

During test check of records of the Divisional Forest Officer (DFO), Darjeeling, it was noticed that 3.78 hectares and 2.7 hectares of forest land had been diverted in December 1989 and June 1991 respectively for use of the West Bengal State Electricity Board. The West Bengal Forest Development Corporation (WBFDC), the erstwhile lessee of the division estimated the capitalised value of the loss of the forestry income at Rs. 42.22 lakhs but no demand for the loss was raised either by the WBFDC or by the present DFO. This resulted in non-realisation of revenue amounting to Rs. 42.22 lakhs.

On this being pointed out (April 1996) in audit, the department stated (May 1997) that the matter had been referred to Government. Further report on action taken has not been received (January 1998).

The matter was reported to Government in May 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

10.05 Non-realisation of cess on minor minerals extracted from forest area

Under the provisions of the Cess Act, 1880 as amended in 1984, the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976, public work cess, road cess, education cess and rural employment cess are recoverable at the rates prescribed from time to time. Public work cess, road cess, education cess and rural employment cess are assessed and levied on each MT of minor mineral despatched from the quarry site at rupees two and fifty paise from 1 June 1987. In a notification issued by the Commerce and Industries Department, Government of West Bengal, in May 1990, it was clarified that surface collection of minerals from forest area is also mining operation and it was decided that for collection of boulders

from forest areas the intending persons are required to apply for quarry permits through the concerned DFO to the concerned district authority. The district authority may issue the permit on advance payment on royalty and subject to subsequent realisation of other statutory charges at his end.

In Buxa Division, Alipurduar, it was noticed that 19,613 cum of minor mineral (boulder) weighing 46482.81 MT was extracted and despatched from different river beds in the forest area during the year 1994-95, but no cesses had been assessed and realised. This resulted in non-realisation of revenue amounting to Rs. 1.16 lakhs.

On this being pointed out (December 1995) in audit, the department stated (May 1997) that the matter had been referred to the Principal Chief Conservator of Forests, West Bengal for finalisation. Further report on action taken has not been received (January 1998).

The matter was reported to Government in March 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

10.06 Loss of revenue due to irregular retention of management of a ropeway by the West Bengal Forest Development Corporation

As per agreement executed on 12 January 1976 between the State Government and the West Bengal Forest Development Corporation (WBFDC), forest areas of Darjeeling Forest Division were transferred to the WBFDC. As per Government order issued on 11 May 1992 the forest area was reverted to the Forest Department with immediate effect. Terms and conditions of this reversion were lock, stock and barrel.

During test check of records of the Divisional Forest Officer (DFO), Darjeeling, it was noticed (March 1995) that the WBFDC continued to enjoy the management of a passenger ropeway even after reversion of Darjeeling Forest Division to the Forest Directorate from 1 December 1992 although the salary of the staff engaged for running the ropeway was paid by the Forest Directorate. Due to non-observation of the order of May 1992 Government sustained loss of revenue of Rs. 1.15 lakhs.

On this being pointed out (March 1995) in audit, the DFO stated (July 1997) that the ropeway was not reverted in view of the order of the Managing Director of the WBFDC dated 29 October 1992. The reply is not tenable in view of Government order cited above.

The matter was reported to Government in May 1995 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

10.07 Non-realisation of sales tax on sale of forest produce

Under the provisions of the Sales Tax Laws of the State, sales tax is leviable on all sales of forest produce at the rate of eight per cent unless the buyers claim concessional rate of tax under coverage of prescribed declaration form. Further, additional sales tax at the rate of fifteen per cent is also leviable on sales tax with effect from 16 August 1991. Besides, a turnover tax is leviable at the prescribed rates varying between half per cent and two per cent.

In East Midnapur Division, it was noticed that the West Bengal Forest Development Corporation had effected total sale of pole and firewood of Rs. 42.19 lakhs during 1992-93 on behalf of the Forest Directorate, a registered dealer. But no sales tax, additional sales tax and turnover tax had been realised on these sales and paid to Government. This resulted in non-realisation of sales tax, additional sales tax and turnover tax to the extent of Rs. 3.81 lakhs.

On this being pointed out (September 1996) in audit, the department stated (June 1997) that the matter had been sent to the Divisional Forest Officer, Silvicultural Division (South) Midnapur, for taking necessary action. Further report on action taken has not been received (January 1998).

The matter was reported to Government in November 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

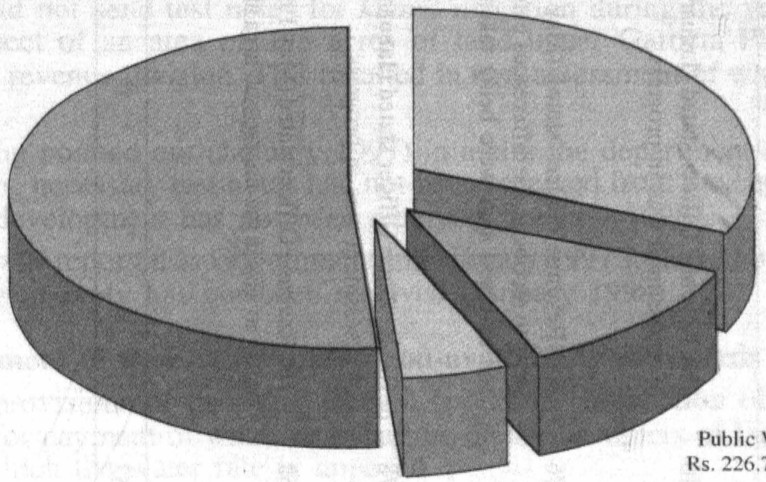
CHAPTER 11

OTHER NON-TAX RECEIPTS

OTHER NON-TAX RECEIPTS

11.01 Results of audit

Test check of records relating to revenue of Irrigation and Waterways, Public Works, Police and Public Undertaking departments, conducted in audit during the year 1996-97 revealed non-realisation/short realisation of revenue amounting to Rs. 1901.87 lakhs in 54 cases as indicated below:



Total tax effect Rs. 1901.87 lakhs (54 cases)

During the course of the year 1996-97 the concerned departments accepted non-realisation/ short realisation of revenue of Rs. 752.43 lakhs in 18 cases. All the cases were pointed out in audit during the year 1996-97. A few illustrative cases of important irregularities involving Rs. 63.45 lakhs are given in the following paragraphs.

A—IRRIGATION AND WATERWAYS

A preview on the position of collection of water rate conducted in audit revealed under-assessment, non-levy etc amounting to Rs. 60.04 lakhs which appeared to be a tip of the iceberg of the whole affairs.

11.02 Non-assessment and non-realisation of water rate for *kharif** season

Under the provisions of the West Bengal Irrigation (Imposition of Water Rate) Act, 1974, as soon as possible after a notification imposing or revising a water rate in any notified area is published, the revenue officer of the division shall prepare and publish in the prescribed manner an assessment list containing the names of all persons who are liable to pay water rate and the amount of such water rate payable for the *kharif* season, *rabi*** season or summer season*** as the case may be at such rates as may be specified by Government from time to time.

During test check of records of 2 revenue divisions in Midnapur and Birbhum districts it was noticed between September 1996 and February 1997 that revenue to the extent of Rs. 42.52 lakhs remained unrealised due to non-assessment of water rate in different areas irrigated as mentioned in the table below:

**Kharif* means the season of autumn, the autumanal harvest; here the part of the year from July to October.

***Rabi* means the season of spring, the spring harvest; here the part of the year from November to February.

***Summer season means the part of the year from March to April.

Sl. No.	Name of the Revenue Division	Year for which assessment due/season	Area irrigated as per test notes	Area assessed	Area of land unassessed	Revenue involved	Reply of the department
		(Between)	(In acres)			(Rupees in lakhs)	
1.	Kangasbati Division I	April 1994 and March 1996 (*Kharif*)	609534.36	406438.22	203096.14	30.46	The Revenue Officer stated (January 1997) that the work of assessment was in progress.
2.	Mayurakshi Division I	1993-94 and 1994-95 (Mayurakshi Reservoir Project) (*Kharif*)	595065.00	556648.00	38417.00	5.76	The Revenue Officer stated (May 1997) that necessary steps to reconcile the differences between the irrigated area and assessed area were being taken.
3.	Kangasbati Division I	April 1974 and March 1996 (*Rabi*)	51900.34	33000.00	18900.34	3.78	The Revenue Officer stated (January 1997) that the work of assessment was in progress.
4.	Mayurakshi Division I	1993-94 and 1994-95 (Hinglow Reservoir Project) (*Kharif*)	44051.80	27267.28	16784.52	2.52	The Revenue Officer stated (May 1997) that septs had been taken to assess the unassessed area after due reconciliation.
	Total					42.52	

The above cases were reported to Government between September 1996 and February 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

11.03 Non-assessment of water rate due to non-receipt of test notes

Under the provisions of the West Bengal Irrigation (Imposition of Water Rate) Act, 1974, assessment is made on receipt of test notes from the engineering division. Such test notes are required to be sent to the revenue division within two months from the end of a particular watering season.

In course of scrutiny of records of the Revenue Officer, Kangsabati Revenue Division I in Midnapur district, it was noticed (January 1997) that the Executive Engineer, Canal Division I did not send test notes for *kharif* irrigation during the years from 1977-78 to 1995-96 in respect of an area of 295 acres of land under Garbeta PS despite repeated reminders from the revenue division. This resulted in non-assessment of water rate amounting to Rs. 84,075.

On this being pointed out (January 1997) in audit, the department stated that in spite of several reminders, necessary test notes had not been received from the engineering division. Report on further development has not been received (January 1998).

The matter was reported to Government in February 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

11.04 Non-assessment of water rate due to non-availability of records of plots irrigated

Under the provisions of the West Bengal Irrigation (Imposition of Water Rate) Act, 1974, the liability for payment of water rate shall be on the occupiers of lands included in the notified areas in which the water rate is imposed.

In the course of scrutiny of records of the Revenue Officer, Kangsabati Revenue Division I, it was noticed (January 1997) that an area of 1,268 acres of land situated in Raipur PS of Bankura district, had not been assessed to water rate although the land was shown as irrigated by the engineering division since the year 1977-78 during *kharif* season. This resulted in non-assessment of water rate amounting to Rs. 3.61 lakhs up to the year 1995-96.

On this being pointed out (January 1997) in audit, the Revenue Officer stated that assessment could not be completed as the records of present plot holders were not made available timely in spite of several visits and correspondences made with the concerned block land and land reforms office. Report on further development has not been received (January 1998).

The matter was reported to Government in February 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

11.05 Non-realisation of interest due to delay in publication of final assessment lists

Under the provisions of the West Bengal Irrigation (Imposition of Water Rate) Act, 1974, an assessee shall be liable to pay up the water rates first time within three months from the date of publication of the final assessment list and thereafter within fifteen days from the date of commencement of the particular season for which such water rate is payable. An arrear of water rate shall bear interest at the rate of six per cent per annum.

In course of scrutiny of records relating to collection of water rate of 7 *Zilla* offices under Kangsabati Revenue Division I, it was noticed (January 1997) that in 87 cases no interest was levied and realised on arrears of water rates amounting to Rs. 1.05 lakhs collected between March 1991 and March 1996, for various periods from the year 1977-78 to 1995-96. This resulted in non-levy and non-realisation of interest to the extent of Rs. 51,086.

On this being pointed out (January 1997) in audit, the Revenue Officer stated that interest could not be collected as the publication of final assessment list had not been made, though the publication of the draft assessment list was made in the year 1977-78 and that steps were being taken for the publication of the final assessment list to avoid recurrence of the loss in future. Report on further action taken has not been received (January 1998).

The matter was reported to Government in January 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

11.06 Loss of revenue due to non-initiation of certificate proceedings

Under the provisions of the West Bengal Irrigation (Imposition of Water Rate) Act, 1974, all arrear of water rate together with interest, if any, shall be recoverable as public demand i.e., under the provisions of the Bengal Public Demands Recovery Act, 1913 (PDR). According to the Act of 1974, an arrear of water rate shall bear interest at the rate of six per cent per annum. Since the rate of interest under the PDR Act, 1913 is six and a quarter per cent per annum, any delay in instituting certificate proceedings will result in loss of revenue on account of interest at the differential rate of quarter per cent per annum on the arrears of demands.

In course of scrutiny of records of the Revenue Officer, Kangsabati Revenue Division I, it was, however, noticed (January 1997) that certificate proceedings had not been instituted on the arrears of water rate amounting to Rs. 4.48 crores from the year 1974-75 to 1995-96. This resulted in non-realisation of revenue of an equivalent amount. Further Government suffered a loss of revenue in the form of interest to the tune of Rs. 12.56 lakhs calculated at the differential rate of 0.25 per cent per annum up to March 1996.

On this being pointed out (January 1997) in audit, the Revenue Officer stated that the matter was being brought to the notice of higher authorities. Report on further action taken has not been received (January 1998).

The matter was reported to Government in February 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

11.07 Non-levy of interest on licence fee on hoarding

For display of hoarding on roadsides and other public places, the advertising agency is required to pay a licence fee at the rates as may be determined by the executive engineer under whose jurisdiction the place of hoarding is located. As per standard terms of agreement executed in this connection, the advertisement agency is liable to pay interest at the rate of six and a quarter per cent per annum for delayed payment of licence fee beyond the specified dates.

During test check of records of the Executive Engineer, Canal Division, Calcutta, it was noticed that 2 advertisement agencies made payment of licence fee of 9 hoardings for various periods between January 1991 and April 1996 after a delay ranging between 1 and 14 months. But the concerned authority did not levy any interest for delayed payment. This resulted in non-realisation of interest amounting to Rs. 52,112.

On this being pointed out (June 1996) in audit, the Executive Engineer stated (July 1996) that the matter was under scrutiny. Report on further development has not been received (January 1998).

The matter was reported to Government in August 1996 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

B—PUBLIC WORKS

11.08 Non-assessment and non-realisation of lease rent from the occupiers of roadside Government land

Under the provisions of the West Bengal Land Management Manual, 1977, the rent payable for short term leases shall be fixed by the Collector/District Land and Land Reforms Officer at four per cent of the market value.

In a test check of records of the Executive Engineer, Tamluk Highway Division, it was noticed that an area of 3.7028 acres of Government land was under unauthorised use and occupation by constructing approach road and culvert by a large number of persons since 1987-88. According to the average valuation obtained from the Special Land Acquisition Officer, Haldia, rent at the rate of 4 per cent per annum of the value of land worked out to Rs. 32,077 per acre per annum. But no action was taken by the division to assess/raise demand and realise annual rent. This resulted in non-assessment and non-realisation of rent of Rs. 2.89 lakhs up to the year 1995-96.

On this being pointed out (February 1997) in audit, the Executive Engineer stated that steps were being taken to assess/realise the rent. Report on further development in the matter has not been received (January 1998).

The matter was reported to Government in February 1997 followed by reminders issued up to June 1997; their reply has not been received (January 1998).

(A. GANGULY)
Accountant General (Audit) II
West Bengal

Calcutta,
The 18 MAR 1998

Countersigned

(V. K. SHUNGLU)
Comptroller and Auditor General of India

New Delhi,
The 31 MAR 1998

ERRATA

Sl. No.	Para No	Page No	Line	For	Read
01.	2.02.05	21	36th from top	ponds	people
02.	2.04	35	3rd from top	remaing	remaining
03.	2.14 (b)	45	20th from top	palce	place
04.	5.09	79	2nd from below (footnote)	meaus	means
05.	5.12	81	1st from top	sitll	still
06.	5.15	82	8th from below	scuh	such
07.	8.08	115	24th from top	remaing	remaining
08.	9.02.05	123	9th from top	The check	Test check
09.	9.02.05	124	15th from top	porvisions	provisions
10.	9.02.05	127	38th from top	Rs. 10.40	Rs. 10.04
11.	10.02.12	152	3rd from top	Furhter	Further
12.	11.02	166	9th in (Reply of the department)	septs	steps