REPORT

OF THE

COMPTROLLER

AND

AUDITOR GENERAL OF INDIA

For the year ended 31st March 1990

No.2
(REVENUE RECEIPTS)

GOVERNMENT OF KARNATAKA

TABLE OF CONTENTS

PREFATORY REMARKS

The Audit Report on Revenue Receipts of the Government of Karnataka, for the year 1989-90, is presented in this separate volume. The Report has been arranged in the following order:-

(i) Chapter 1 refers to trend of revenue receipts classifying them broadly under tax revenue and non-tax revenue, the variations between the Budget Estimates and the actual receipts under principal heads of revenue, the revenue in arrears for collection and the audit objections and inspection reports outstanding for settlement.

(ii) In Chapters 2 to 9 are set out some of the important irregularities, which came to the notice of Audit during test check of records relating to Sales Tax, State Excise Duties, Taxes on Motor Vehicles, Taxes on Agricultural Income, Land Revenue, Stamp Duty and Registration Fees, Forest Receipts and other Tax and Non-tax Receipts.

OVERVIEW

1. GENERAL

(i) Tax and non-tax revenue raised by the Government of Karnataka during the VII Plan Period 1985-86 to 1989-90, is given below:

TABLE 1

Years	Tax Revenue	Non-Tax Revenue (In crores of rupees)	Total	Percentage of increase over preceding year
1985-86	1075.57	357.49	1433.06	14
1986-87	1205.98	415.36	1621.34	13
1987-88	1414.66	436.14	1850.80	14
1988-89	1698.78	445.41	2144.19	16
1989-90	1932.24	502.29	2434.53	14

The total of tax and non-tax revenue had increased by 70 per cent in 1989-90 compared to 1985-86. But the annual rate of growth both in tax and non-tax revenue was uneven - varying from 12 per cent to

20 per cent and 2 to 16 per cent respectively as would be evident from the following table.

TABLE II

Years	Rate of growth of tax revenue (Per cent)	Rate of growth of non-tax revenue (Per cent)
1985-86	18	3
1986-87	12	16
1987-88	17	5
1988-89	20	2
1989-90	14	13

While the total tax revenue had increased by about 80 per cent during the 5 years 1985-86 to 1989-90, the non-tax revenue had increased by 40 per cent. The reasons for wide fluctuations in non-tax revenue were mainly on account of (i) increase in interest receipts and (ii) fluctuations in receipts under Miscellaneous General Services.

The major source of revenue from tax and non-tax sectors were from Sales Tax and Interest Receipts respectively as indicated in the charts at Pages 3 and 8.

(ii) The total revenue raised by the State

Government during the year 1989-90 amounted to Rs.2434.53 crores of which Rs.1932.24 crores represented tax revenue and Rs.502.29 crores non-tax revenue. The State Government also received from the Central Government Rs.632.90 crores as State's share of divisible Union taxes and Rs.269.05 crores as grants-in-aid. While Sales Tax (Rs.1081.21 crores) and State Excise (Rs.327.57 crores) were major sources under tax revenue, Interest (Rs.246.78 crores) was the major source under non-tax revenue during the year 1989-90.

(Paragraph 1.1)

(iii) As at the end of March 1990, uncollected amounts in respect of certain important sources of revenue amounted to Rs.304.75 crores, of which sales tax alone accounted for Rs.175.52 crores.

(Paragraph 1.4)

(iv) Out of 5,69,942, 20,551, 1,04,491 and 1,02,757 assessments of Sales Tax, Agricultural Income-tax, Entertainments Tax and Entry Tax due for completion during the year 1989-90, only 3,58,751, 11,630, 71,659 and 64,106 assessments respectively were completed during the year.

(Paragraph 1.6)

(v) 1,681 local audit reports (issued

up to December 1989) containing 5,064 objections with money value of Rs.161.39 crores were still to be settled as at the end of June 1990. Out of these, even first replies had not been received in respect of 300 local audit reports containing 901 objections involving an amount of Rs.26.23 crores.

(Paragraph 1.8)

(vi) Test audit conducted during the 1989-90 disclosed under-assessments and losses of revenue amounting to Rs.53.63 crores which relate to Sales Tax (Rs.7.47 crores), State Excise Duties (Rs.14.09 crores), Taxes on Motor Vehicles (Rs.0.24 crore), Taxes on Agricultural Income (Rs.0.41 crore), Land Revenue (Rs.22.81 crores), Stamp Duty and Registration Fees (Rs.1.78 crores), Forest Receipts (Rs.6.13 crores) and Other Tax and Non-tax Receipts (Rs.0.70 crore).

(vii) The report includes representative cases of non-levy/short levy of tax, duty, interest, penalty, water rates etc. and findings of 4 reviews involving a financial effect of Rs.13.91 crores. Of this, a sum of Rs.0.29 crore only was recovered, though the department accepted the audit findings to the extent of Rs.0.83 crore. Audit Objections with a total revenue effect of Rs.0.02 crore have not been accepted by the departments/Government and their contentions having been found to be contrary to the facts or legal provisions, the replies of the department have been appropriately refuted in the relevant paragraphs. For the balance amount of Rs.13.06 crores, comments/final replies

of the departments/State Government have not been received (November 1990).

2. SALES TAX

(i) Review on "Collection of sales tax by Government Departments" revealed, **inter alia**, that non-observance of the provisions of Sales Tax Act and Government/departmental instructions resulted in (a) erroneous transfer of sales tax collections of at least Rs.31.22 lakhs to the Forest Development Corporation instead of being credited to Government during 1976-77 to 1988-89 and (b) non-realisation of sales tax amounting to Rs.1.84 crores in the State Excise Department due to non-inclusion of State excise duty in sale price of arrack sold during April 1986 to June 1987 alone because of giving belated effect to the Supreme Court Judgement of 1985.

(Paragraph 2.2.)

(ii) Incorrect classification of fatty acids as general goods instead of as chemicals resulted in short levy of tax amounting to Rs.3.11 lakhs.

(Paragraph 2.3(ii))

(iii) In 11 cases involving short levy due to application of incorrect rates of tax an amount of Rs.63,832 was recovered in two cases while in the remaining 9 cases involving a tax effect of Rs.3.22 lakhs, rectificatory action was initiated/

completed by the department, at the instance of Audit.

(Paragraph 2.4(A))

(iv) In 20 cases where under-assessment of Rs.8.85 lakhs due to incorrect grant of concession was noticed, an amount of Rs.3.01 lakhs was recovered in 7 cases and revised orders passed in 6 cases (Rs.2.52 lakhs) at the instance of Audit. In the remaining 7 cases, short levy due to incorrect grant of concession amounted to Rs.3.32 lakhs.

(Paragraph 2.5(i))

(v) As per a judicial decision, sale of packing materials which are not the subject matter of a contract for export does not qualify for exemption. Incorrect grant of such exemption in one case resulted in tax of Rs.4.45 lakhs not being realised.

(Paragraph 2.6(ii))

(vi) Tax leviable in one case was erroneously worked out at Rs.45,000 instead of Rs.4.50 lakhs resulting in short levy of Rs.4.05 lakhs.

(Paragraph 2.12A(i))

(vii) Surcharge and cess omitted to be levied in three cases amounted to Rs.11.48 lakhs.

(Paragraph 2.13(i)(b))

(viii) In 11 cases involving short levy of turnover tax, an amount of Rs.3.33 lakhs was recovered and in 10 other cases involving tax effect of Rs.3.82 lakhs, rectificatory action was initiated/completed, at the instance of Audit.

(Paragraph 2.14(i))

(ix) Penalty for belated payment of tax, excess collection of tax and misuse of 'C' forms though leviable up to Rs.43.43 lakhs was not levied.

(Paragraph 2.15)

3. STATE EXCISE DUTIES

(i) Review on "Manufacture and distribution of Indian made liquor" revealed, inter alia,

(a) wastages during maturation permitted at higher rates than the maximum prescribed rate led to a loss of potential revenue of Rs.27.85 lakhs;

(b) differential duty not demanded on liquor exported in respect of which verification certificates from the consignees were not received after the expiry of the prescribed period amounted

to Rs.15.17 lakhs;

(c) that excess wastage of rectified spirit during the manufacture of Indian made liquor led to a loss of potential revenue of Rs.56.92 lakhs by way of excise duty realisable on the liquor that could have been produced out of the spirit excess wasted; and

(d) non-issue of separate licences to distributors for dealing with products of different distilleries resulted in short levy of licence fee to the extent of Rs.58 lakhs per annum, in 14 cases.

(Paragraph 3.2)

(ii) Short levy of interest on belated payment of shop rentals by arrack/toddy contractors amounted to Rs.13.48 lakhs.

(Paragraph 3.5)

(iii) Cost of establishment working at distilleries is required to be recovered. Short collection/non-collection in this regard in respect of 21 distilleries amounted to Rs.5.87 lakhs.

(Paragraph 3.6)

4. TAXES ON MOTOR VEHICLES

(i) Additional sum of the one per cent

of tax payable amounting to Rs.3.76 lakhs was not recovered from a State-owned Road Transport Corporation although the prescribed final declarations for 1986-87 and 1987-88 were submitted late.

(Paragraph 4.2)

(ii) Non-collection or short collection of composite fee under National Permit Scheme amounted to Rs.3.09 lakhs.

(Paragraph 4.3)

5. TAXES ON AGRICULTURAL INCOME

(i) Short levy of tax due to incorrect adoption of status in 4 cases amounted to Rs.4.44 lakhs.

(Paragraph 5.4)

(ii) Short levy of tax due to computation mistakes in 6 cases amounted to Rs.3.60 lakhs.

(Paragraph 5.6)

6. LAND REVENUE

(i) Omission to raise demand or demand raised short for water rate in 9 taluks alone amounted to Rs.1.43 crores.

(paragraph 6.2)

(ii) Non-levy of penal water rate for unauthorised use of water from Government Irrigation Works and for changing crop pattern in one taluk amounted to Rs.83.42 lakhs.

(Paragraph 6.3)

(iii) Maintenance cess on land benefited by irrigation works maintained by Government not levied or levied short amounted to Rs.14.53 lakhs.

(Paragraph 6.4)

(iv) Non-levy of land revenue and fine for unauthorised occupation of Government lands amounted to Rs.3.41 crores.

(Paragraph 6.5)

7. STAMP DUTY AND REGISTRATION FEES

(i) Review on "Determination of market value of properties for levy of stamp duty and registration fees" disclosed, **inter alia**, that

(a) incorrect fixation of valuation of properties in 152 instruments resulted in short levy of duty and fees amounting to Rs.4.83 lakhs;

(b) omission on the part of the Deputy Commissioner to call for instruments for **suo motu** determination of market value within the prescribed limit of two years resulted in loss of revenue of Rs.5.65 lakhs; and

(c) 10,945 cases of under-valuation of properties to the extent of Rs.357.75 lakhs and involving a revenue of Rs.44.31 lakhs by way of stamp duty and registration fees, were pending final settlement in the five DISTRICT Registry offices test-checked.

(Paragraph 7.2)

(ii) Irregular grant of exemption/concession resulted in short collection of stamp duty and registration fees to the extent of Rs.6.77 lakhs.

(Paragraph 7.3)

8. FOREST RECEIPTS

(i) On belated remittance of Government dues, interest upto Rs.1.06 crores should have been charged, but was not charged from a State Forest Corporation.

(Paragraph 8.2(i)(a))

(ii) Differential seigniorage value due to retrospective revision of seigniorage rate amounting to Rs.7.44 lakhs and interest thereon amounting to Rs.5.65 lakhs due up to 31st March 1989 were not realised in 4 forest divisions.

(Paragraph 8.2(ii))

9. OTHER TAX AND NON-TAX RECEIPTS

(i) Short levy of entry tax of Rs.7.71 lakhs on account of application of incorrect rate of tax was recovered in 3 cases, at the instance of Audit.

(Paragraph 9.2(i))

(ii) Review of "Rent receipts in respect of Government buildings/lands" disclosed, **inter alia**, that

(a) penal rent of Rs.1.04 crores in cases of overstayal of allotment to ineligible officials, in respect of 280 quarters, was not levied;

(b) Non-fixation of standard licence fee in 151 cases in three divisions resulted in short recovery of rent of Rs.4.31 lakhs;

(c) non-revision/incorrect fixation of rent for non-residential buildings and lands resulted in annual loss of rent of Rs.6.04 lakhs in three cases;

(d) rent from occupants in General Hostel, amounting to Rs.11.41 lakhs pertaining to period from 1974 to 1985 remained unrecovered, and

(e) failure to obtain adequate security from the lessees resulted in non-recovery of rent amounting to Rs.1.32 lakhs.

(Paragraph 9.3)

CHAPTER 1

GENERAL

1.1. Trend of revenue receipts

The tax and non-tax revenue raised by the Government of Karnataka during the year 1989-90, the share of Union taxes and grants-in-aid received from the Government of India during the year, the percentage of revenue/receipts to total receipts during the year and the corresponding figures for the preceding two years are given below:

		1987-88	1988-89	1989-90 (*)	Percentage of revenue receipts to total receipts 1989-90
		(In crores of rupees)			
(1)		(2)	(3)	(4)	(5)
I	Revenue raised by the State Government				
(a)	Tax revenue	1414.66	1698.78	1932.24	58
(b)	Non-tax revenue	436.14	445.41	502.29	15
	Total	1850.80	2144.19	2434.53	73

(*) For details, see Statement No.11 - Detailed account of revenue by minor heads in the Finance Accounts of the Government of Karnataka 1989-90.

	(1)	(2)	(3)	(4)	(5)
II	Receipts from the Government of India				
(a)	State's share of divisible Union taxes	451.11	498.67	632.90	19
(b)	Grants-in-aid	254.98	320.71	269.05	8
	Total	706.09	819.38	901.95	27
III	Total receipts of the State Government (I + II)	2556.89	2963.57	3336.48	

(i) The details of tax revenue raised during the year 1989-90, alongside figures for the preceding two years are given below:

	Heads of revenue	1987-88	1988-89	1989-90	Percentage of increase (+) or decrease (-) in 1989-90 over 1988-89
		(In crores of rupees)			
	(1)	(2)	(3)	(4)	(5)
1.	Sales Tax	776.09	987.24	1081.21	(+) 10
2.	State Excise	243.67	256.53	327.57	(+) 28

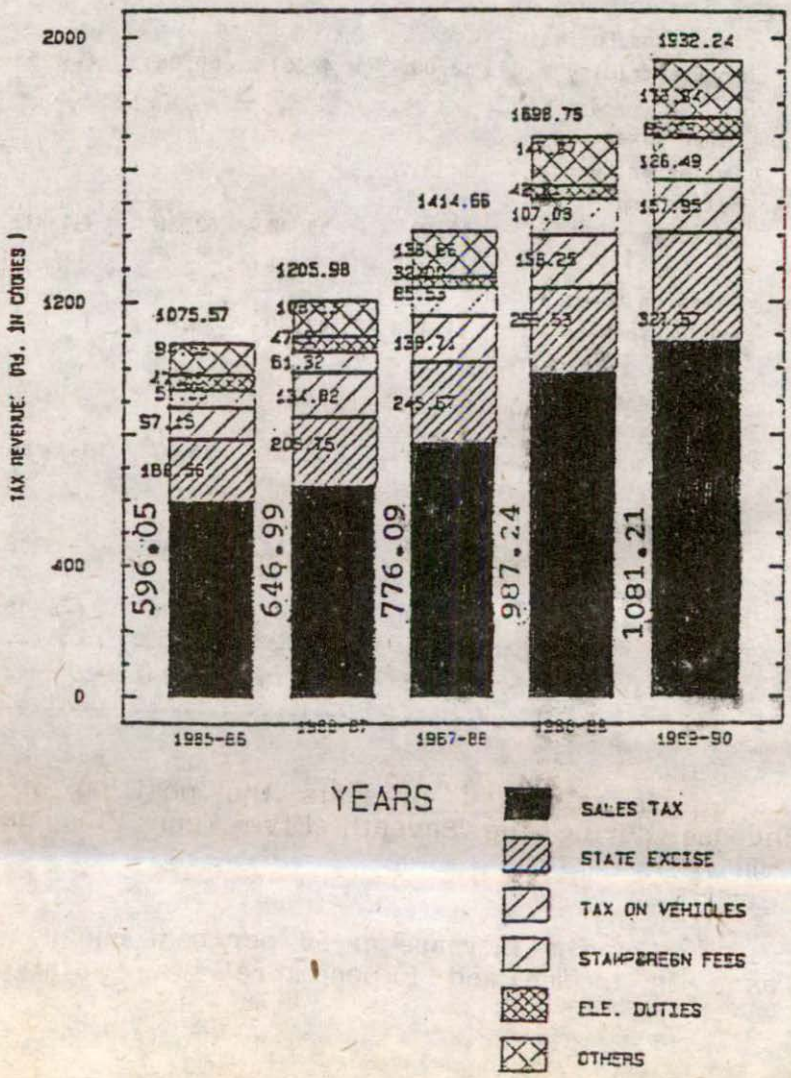
(1)		(2)	(3)	(4)	(5)
3.	Taxes on Vehicles	138.71	158.25	157.95	(negligible)
4.	Stamps and Registration Fees	85.53	107.08	126.49	(+) 18
5.	Taxes and Duties on Electricity	32.00	42.61	65.08	(+) 53
6.	Other Taxes and Duties on Commodities and Services	56.09	55.48	62.38	(+) 12
7.	Taxes on Goods and Passengers	41.47	47.40	56.91	(+) 20
8.	Other Taxes on Income and Expenditure	12.37	15.32	23.97	(+) 56
9.	Taxes on Agricultural Income	11.42	10.46	15.52	(+) 48
10.	Land Revenue	17.31	18.41	15.16	(-) 18
	Total	1414.66	1698.78	1932.24	(+) 14

The Chart I presents the position of Tax Revenue during the Seventh Five Year Plan period (1985-90).

(1) The increase of 56 per cent under 'Other Taxes on Income and Expenditure' was mainly due

CHART I [Para 1.1(i)]

GROWTH OF TAX REVENUE DURING THE VII PLAN PERIOD FROM 1985-86 TO 1989-90



to enhancement of profession tax in respect of certain class of persons and better tax administration.

(2) The increase of 48 per cent under 'Taxes on Agricultural Income' was mainly due to change in definition of "Previous year" with effect from 1.4.89, resulting in tax receipts during 1989-90 being more than 12 months in several cases.

(3) The increase of 28 per cent under 'State Excise' was mainly due to increase in consumption of country spirit, increase in arrack and toddy rentals, increase in sale of Indian made foreign liquor and increase in collection of arrears.

(4) The increase of 20 per cent under 'Taxes on Goods and Passengers' was due to normal growth rate and better tax administration and conclusion of old assessments.

(5) The increase of 10 per cent in Sales Tax receipts is mainly due to (i) recovery by adjustment of arrears of purchase tax due from sugar factories (Rs.31 crores) (ii) normal growth rate and (iii) better tax administration.

(6) The increase of 18 per cent under 'Stamps and Registration Fees' is mainly due to more sale of non-judicial stamp paper due to rise in value of property and more registrations with high value transactions resulting in increase in stamp duty (Rs.10.06 crores) and registration fees (Rs.6.75 crores) and also due to more sale of judicial stamps (Rs.2.58 crores).

(7) The increase of 53 per cent under 'Taxes and Duties on Electricity' is mainly due to (i) collection of arrears of tax, (ii) increased consumption of electricity, (iii) more number of installations and (iv) adjustment of credit of electricity duty of a company taken over by Steel Authority of India.

(ii) The details of non-tax revenue received during the year 1989-90, alongwith figures for the preceding two years, are given below:

Heads of revenue	1987-88	1988-89	1989-90	Percentage of increase (+) or decrease (-) in 1989-90 over 1988-89
	(In crores of rupees)			
(1)	(2)	(3)	(4)	(5)
1. Interest Receipts	187.10	205.82	246.78	(+) 20
2. Forestry and Wild Life	52.51	46.40	51.57	(+) 11
3. Power	17.67	25.33	27.23	(+) 8
4. Village and Small Industries	16.44	15.70	23.80	(+) 52
5. Miscellaneous General Service	19.56	21.41	22.36	(+) 4
6. Major and Medium Irrigation	13.35	14.31	16.14	(+) 13

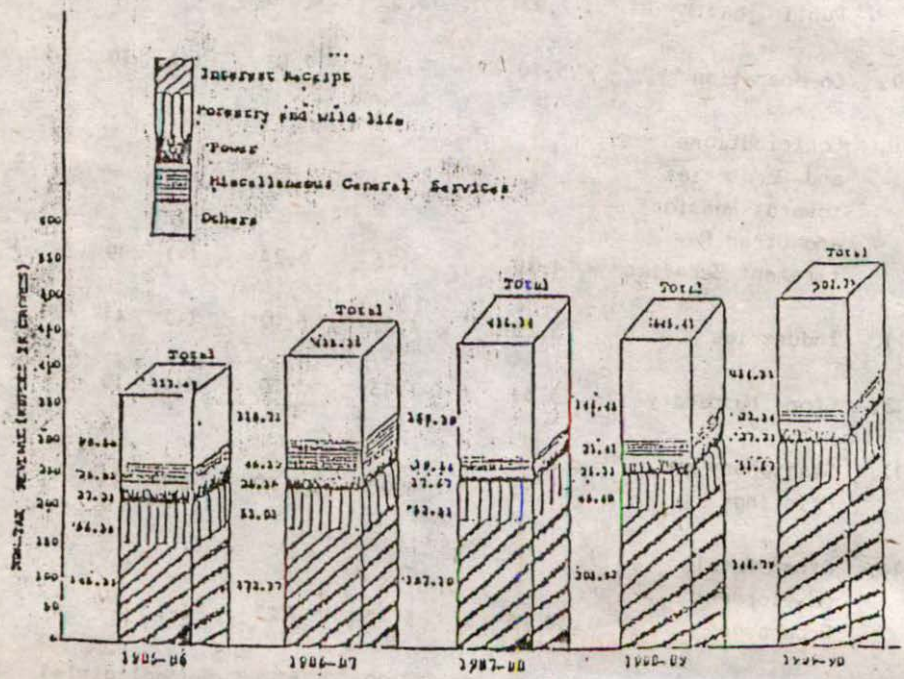
(1)		(2)	(3)	(4)	(5)	
7.	Non-ferrous Mining and Metallurgical Industries	10.77	12.79	14.39	(+)	13
8.	Medical and Public Health	2.92	13.55	12.16	(-)	10
9.	Co-operation	5.70	7.78	7.02	(-)	10
10.	Contributions and Recoveries towards Pension and Other Retirement Benefits	4.90	5.23	6.24	(+)	19
11.	Industries	5.25	4.32	6.09	(+)	41
12.	Crop Husbandry	3.31	3.13	3.59	(+)	15
13.	Stationery and Printing	1.29	1.90	1.70	(-)	11
14.	Other Rural Development Programme	30.25	5.75	1.22	(-)	79
15.	Others	65.12	61.99	62.00	(negligible)	
	Total	436.14	445.41	502.29	(+)	13

The Chart II presents the position of Non-tax Revenue during the Seventh Five Year Plan Period (1985-90).

CHART II [Para 1.1(ii)]

GROWTH OF NON-TAX REVENUE

DURING THE VII PLAN PERIOD 1985-86 TO 1989-90



Scale 1 CM : Rs 87 crores

(1) The increase of 20 per cent under 'Interest Receipts' is mainly due to more receipts from interest on irrigation works (Rs.10.94 crores), interest from Karnataka Power Corporation (Rs.9.50 crores), interest from debentures (Rs.1.26 crores) and account adjustment of interest payable by an undertaking (Rs.19.07 crores) written off on the transfer of the undertaking to Steel Authority of India.

(2) The increase of 11 per cent under 'Forestry and Wild life' is mainly due to sale of more timber (Rs.3.00 crores) and firewood and charcoal (Rs.1.20 crores).

(3) The increase of 52 per cent under 'Village and Small Industries' is mainly due to more receipts from 'sericulture industries' on account of increased quantity of cocoons transacted in the markets (Rs.3.72 crores) and reimbursement by the Government of India of subsidy for industrial units in selected areas (Rs.4.10 crores).

(4) Increase of 41 per cent under 'Industries' is mainly due to more receipts from Government silk filatures (Rs.1.02 crores) and from other receipts (Rs.0.72 crore).

(5) Decrease of 79 per cent under 'Other Rural Development Programme' is mainly due to change in procedure of reimbursement to account for the value of foodgrains. Till 1988-89, Government of India assistance for foodgrains in the form of cash and foodgrains passed through the State

Government. During 1989-90, the Government of India gave assistance directly to Zilla Parishads.

1.2. Variation between Budget estimates and actuals

1.2.1. The variations between the Budget estimates and the actual receipt for the year 1989-90 are given below:

	Budget Estimates	Actuals	Variation Increase(+) or Decrease(-)	Percentage of variation
		(In crores of rupees)		
1. Tax revenue	1890.45	1932.24	(+) 41.79	(+) 2
2. Non-tax revenue	562.68	502.29	(-) 60.39	(-) 11
3. State's share of divisible Union taxes	573.74	632.90	(+) 59.16	(+) 10
4. Grants-in-aid from the Government of India	402.37	269.05	(-) 133.32	(-) 33
Total	3429.24	3336.48	(-) 92.76	(-) 3

The shortfall of 33 per cent under Grants-in-aid from Government of India is mainly due to less receipt from the Government of India than anticipated under Non-plan schemes (Rs.34.03 crores), Central Plan schemes (19.82 crores) and Centrally Sponsored Programmes schemes (Rs.28.16 crores) as also due to direct payment to Zilla Parishads by the Government of India under National Rural Employment Programme schemes (Rs.17.22 crores) and Rural Labour Employment Guarantee Programmes schemes (Rs.28.98 crores).

1.2.2. The variations between Budget estimates of principal heads of revenue for the year 1989-90 and actual receipts are indicated below:

Heads of revenue	*Budget Estimates*	*Actuals*	*Variation Increase(+) or Decrease(-)*	*Percentage of variation*
	(In crores of rupees)			
(1)	*(2)*	*(3)*	*(4)*	*(5)*
1. Sales Tax	1050.00	1081.21	(+) 31.21	(+) 3
2. State Excise	320.00	327.57	(+) 7.57	(+) 2
3. Interest Receipts	271.68	246.78	(-) 24.90	(-) 9
4. Taxes on Vehicles	170.00	157.95	(-) 12.05	(-) 7
5. Stamps and Registration Fees	110.00	126.49	(+) 16.49	(+) 15

(1)	(2)	(3)	(4)	(5)
6. Taxes and Duties on Electricity	80.00	65.08	(-) 14.92	(-) 19
7. Taxes on Goods and Passengers	52.00	56.91	(+) 4.91	(+) 9
8. Forestry and Wild Life	55.00	51.57	(-) 3.43	(-) 6

(1) The shortfall under 'Taxes and Duties on Electricity' with reference to budget estimates is mainly due to inflating estimated collections to conform to the figures furnished to the Planning Commission.

(2) The increase under 'Stamps and Registration Fees' is due to rise in the value of property and more registration of high value transactions.

1.3. Cost of collection

Expenditure incurred in collecting the major revenue receipts during the year 1989-90, along with figures for the preceding two years as also compared with the All India average in 1988-89 in respect of

some of the heads, is indicated below :

Heads of revenue	Year	Gross collection (*)	Expenditure on collection	Percentage of expenditure to gross collection	All India average (percentage)
		(In crores of rupees)			
(1)	(2)	(3)	(4)	(5)	(6)
1. Sales Tax	1987-88	780.90	10.37	1	
	1988-89	993.31	12.41	1	2
	1989-90	1087.32	15.25	1	
2. State Excise	1987-88	243.71	8.38	3	
	1988-89	256.67	8.44	3	5
	1989-90	328.02	9.80	3	
3. Taxes on Vehicles	1987-88	139.06	3.63	3	
	1988-89	158.40	3.78	2	4
	1989-90	158.12	4.76	3	
4. Stamps and Registration Fees	1987-88	87.25	4.91	6	

(*) The figures represent gross collection before deduction of refunds.

(1)	(2)	(3)	(4)	(5)	(6)
	1988-89	108.98	5.82	5	6
	1989-90	141.69	6.44	5	
5. Taxes on Agricultural Income	1987-88	11.51	0.58	5	NA
	1988-89	10.57	0.57	5	
	1989-90	15.92	0.30	2	
6. Forestry and Wild Life	1987-88	52.60	13.38	25	
	1988-89	46.61	14.57	31	NA
	1989-90	51.75	14.94	29	

1.4 Uncollected revenue

The arrears of revenue pending collection as on 31st March 1990 in respect of certain important sources of revenue, as reported by the department concerned, and corresponding figures for the preceding two years are indicated below:

Source of Revenue	Amount pending collection as on 31st March 1988	31st March 1989	31st March 1990	Arrears pending due more than 5 years
	(In crores of rupees)			
(1)	(2)	(3)	(4)	(5)
1. Sales tax	178.28	202.75	175.52	35.01

(1)	(2)	(3)	(4)	(5)
2. State excise duties	65.56	73.50	64.89	20.38
3. Motor vehicles tax	7.54	5.55	2.62	*
4. Agricultural income-tax	4.51	4.64	4.55	0.89
5. Forest receipts	25.02	25.58	28.82	*
6. Entry tax	5.25	12.69	18.86	0.49
7. Entertainments tax	1.55	14.80	1.81	0.91
8. Profession tax	6.81	7.11	7.68	1.15

(1) Out of Rs.175.52 crores outstanding as on 31st March 1990 under 'Sales Tax', there were 50 cases amouting to Rs.47.99 crores in which arrears exceeded Rs.25 lakhs in each case. Fourteen cases in two Bangalore City Divisions alone accounted for Rs.27.25 crores. These 50 cases included 6 cases of Government of Karnataka companies, Corporations, autonomous bodies (Rs.14.65 crores), one Government of India autonomous

(*) Figures not received from the departments

body (Rs.4.11 crores), 4 sugar factories where conversion of purchase tax on sugarcane into interest free loans was pending (Rs.4.29 crores), 3 cases referred to Official Liquidator on the liquidation of the company (Rs.3.04 crores), 7 cases covered by stay orders of High Court (Rs.3.95 crores) and one case outstanding for verification of payments made by the assessee (Rs.28.10 lakhs).

(2) Out of Rs.64.89 crores of State excise duty outstanding as on 31st March 1990, 31 cases (Rs.38.25 crores) represented cases of arrears above Rs.25 lakhs in each case out of which in 11 cases (Rs.29.57 crores) the arrears exceeded Rs.one crore in each case. Of the 11 cases, in 7 cases stay from High Court was obtained and in 2 cases action under Land Revenue Act was reported to have been taken. In one case action taken was not reported and in the remaining one case Government had fixed 20 instalments for recovery of old arrears in the orders issued in March 1988.

1.4.2. The various stages at which the uncollected revenue is pending as on 31st March 1990, are indicated in the

following table:-

Sl. No.	Nature of action taken	Sales tax	State Excise duty	Agri-cult-ural income tax	Forest recei-pts	Motor vehi-cles tax	Entry tax	Enter-tain-ments tax	Profes-sion tax
				(In crores of rupees)					
1.	Amount certified for recovery under various sections of the respective Acts	80.03	-	1.33	11.88	-	2.79	0.74	1.07
2.	Amount covered by stay order of courts	24.26	24.62	2.01	-	0.17	9.16	0.16	-
3.	Amount for which write off proposals are sent	2.01	1.58	-	2.12	-	-	-	-
4.	Amount for which showcause notice issued	22.01	4.42	0.18	-	2.45	4.30	0.12	5.97
5.	Other reasons	37.68	34.27	0.77	4.85	-	2.44	0.78	0.28
6.	Amount not cover-ed by any action	9.53	-	0.26	9.97	-	0.17	0.01	0.36
	Total	175.52	64.89	4.55	28.82	2.62	18.86	1.81	7.68

1.5. Refunds

Position of refund cases, as reported by the State Excise and Motor Vehicles Departments during the year 1989-90 is indicated below:

	State Excise		Taxes on Motor Vehicles	
	Number of cases	Amount (In lakhs of rupees)	Number of cases	Amount (In lakhs of rupees)
1. Claims for refund outstanding at the beginning of the year	361	24.55	407	8.39
2. Claims received during the year	367	63.71	852	14.72
3. Refunds made during the year	366	42.96	827	15.37
4. Balance outstanding as on 31st March 1990	362	45.30	432	7.74

Particulars in respect of Sales Tax, Stamp Duty and Registration and Revenue Departments, though called for, were not received despite reminders issued (March 1991).

1.6. Assessments in arrears

The number of assessments pending finalisation at the beginning of the year 1989-90, number of fresh assessments due for finalisation during the year, number of assessments finalised and the number of assessments pending finalisation (with percentage) at the close of the year in respect of Sales Tax, Agricultural Income-Tax, Entertainments Tax and Entry Tax, as reported by the department concerned, are detailed in Appendix 1.

The number of assessments due for completion and actually completed during the years 1985-86 to 1989-90 in respect of major tax revenues namely, Karnataka Sales Tax, Central Sales Tax and Agricultural Income-Tax are exhibited in Charts III, IV and V.

The year-wise break-up of the pending assessments as on 31st March 1990 is given in Appendix 2.

1.7. Internal Audit

In the Motor Vehicles Department, as at the end of March 1990, 34 out of 46 offices had been internally audited for the year 1988-89. Out of 3,006 objections raised during the period 1985-86 to 1989-90 with money value of Rs.176.05 lakhs, only 1,009 objections with money value of Rs.15,00 lakhs were settled leaving 1,997 items involving Rs.161.05 lakhs pending

CHART III (Para 1,6)

KARNATAKA SALES TAX

ASSESSMENTS DUE FOR COMPLETION AND ACTUALLY COMPLETED

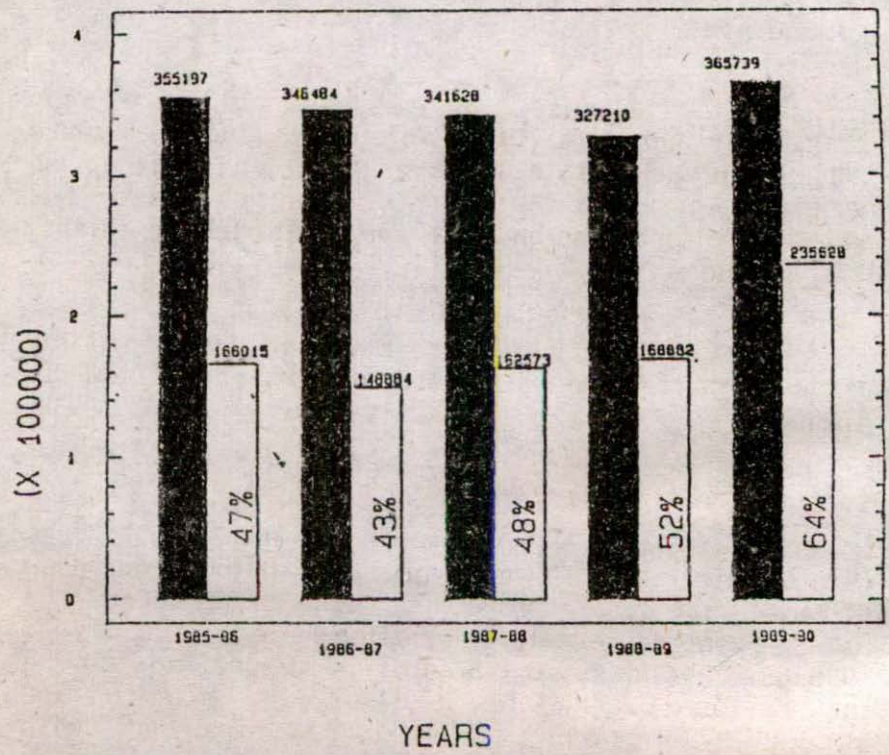


CHART IV (Para 1.6)

CENTRAL SALES TAX

ASSESSMENTS DUE FOR COMPLETION AND ACTUALLY COMPLETED

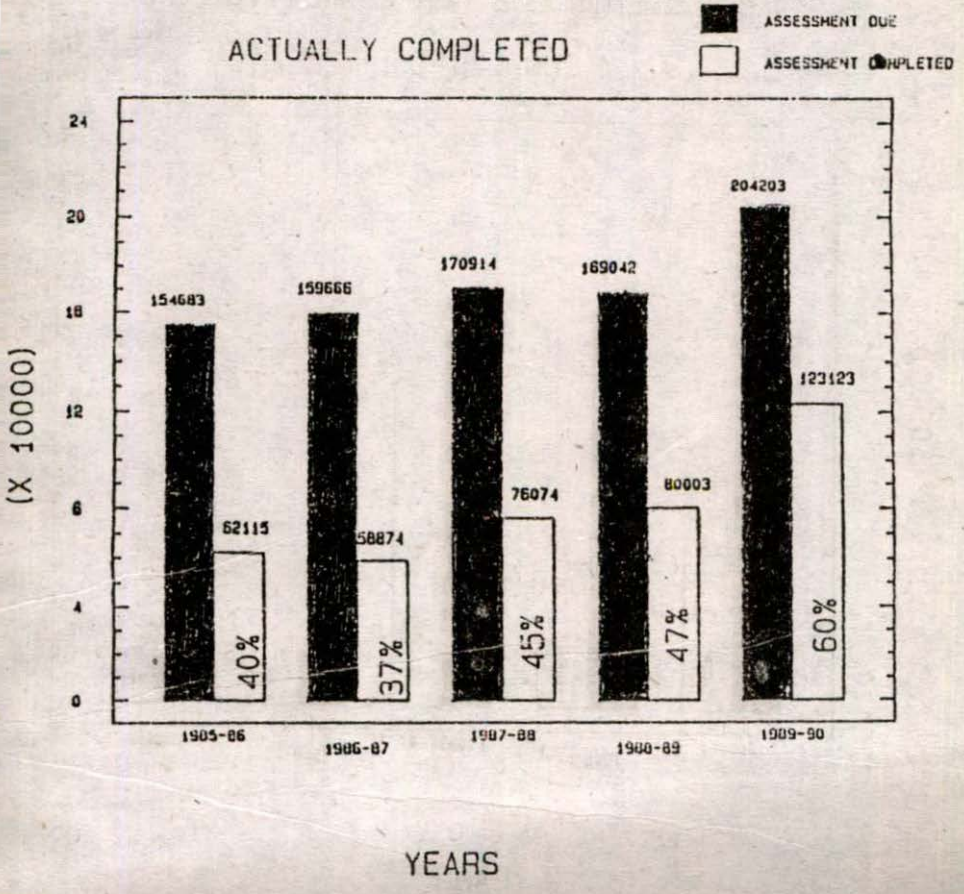
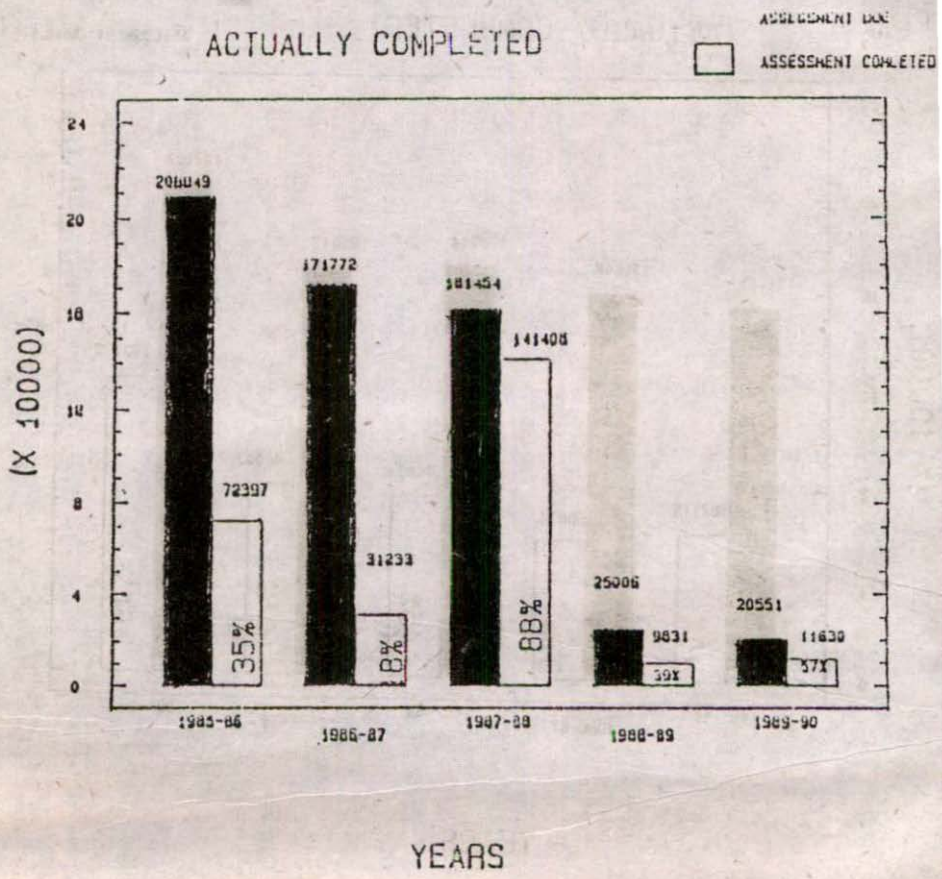


CHART V (Para 1.6)

KARNATAKA AGRICULTURAL INCOME TAX

ASSESSMENTS DUE FOR COMPLETION AND ACTUALLY COMPLETED



as on 31st March 1990.

In the Forest Department, the internal audit system is not functioning effectively. During the year 1989-90, only 17 offices were inspected, the reason given by the Department being inadequacy of staff. For the period 1983-84 to 1989-90 as against 2584 objections raised with money value of Rs.676.37 lakhs only 121 items with money value of Rs.1.41 lakhs were cleared leaving a balance of 2,463 items involving Rs.674.96 lakhs, as on 31st March 1990.

Internal audit system was established in State Excise Department only during April 1990. There is no internal audit system in the Department of Stamps and Registration. The position in respect of Commercial Taxes Department and Revenue Department though called for in June 1990 and followed up by reminders in November 1990 and March 1991 has not been received (August 1991).

1.8. Outstanding Local audit reports and audit objections

Irregularities in assessments of revenue and defects in the accounting of revenue receipts noticed in audit and not settled on the spot are communicated to Heads of offices and to the departmental authorities through local audit reports. The more important and serious irregularities are reported to the Heads of Departments and to the Government. In addition, statements indicating

the number of objections outstanding for over six months are also sent to Government for expediting their settlement. Government have prescribed a time limit of one month for furnishing of replies to audit objections. In respect of cases requiring action at higher levels, a period of three months has been fixed.

At the end of June 1990, in respect of local audit reports issued up to December 1989, 1,681 local audit reports containing 5,064 audit objections involving amount of Rs.163.39 crores were still to be settled as per details given below. The corresponding position in the earlier two years has also been indicated alongside.

	As at the end of		
	June 1988	June 1989	June 1990
Number of outstanding local audit reports	1,385	1,523	1,681
Number of outstanding audit objections	5,414	5,768	5,064
Amount of receipts involved (In crores of rupees)	131.49	147.21	161.39

Year-wise break-up of the outstanding local audit reports, audit objections and amounts involved therein, as at the end

of June 1990, is given below:

Year	Number of outstanding local audit reports	Number of audit objections	Amount of receipts involved (In crores of rupees)
Upto 1987-88	796	2279	93.99
1988-89	426	1239	23.71
1989-90 (upto December 1989)	459	1546	43.69
	1,681	5,064	161.39

Out of 1,681 local audit reports which were pending settlement, even first replies have not been received (December 1990) in respect of 300 local audit reports containing 901 objections involving an amount of Rs.26.23 crores, of which 231 reports containing 813 objections involving an amount of Rs.5.34 crores were pending for over one year. The pendency of these reports has been reported to Government (January 1991).

The receipt-wise break-up of outstanding local audit reports, audit objections and amounts involved therein, as on 30th

June 1990, is indicated below:

Name of receipt	Number of outstanding local audit reports	Number of outstanding audit objections	Amount of receipts involved (In crores of rupees)
1. Sales tax	526	2,229	21.43
2. State excise duties	193	698	69.12
3. Motor vehicles tax	82	491	16.08
4. Land revenue	303	466	29.79
5. Agricultural income-tax	20	374	2.14
6. Forest receipts	120	367	16.97
7. Stamp duty and registration fees	360	318	4.92
8. Entertainments tax	65	99	0.22
9. Entry tax	10	15	0.66
10. Profession tax	2	7	0.06
Total	1,681	5,064	161.39

CHAPTER 2

SALES TAX

2.1. Results of Audit

Test check of records in Sales Tax Offices, conducted in audit during 1989-90, disclosed under-assessments of tax amounting to Rs.747.45 lakhs in 1,404 cases, which broadly fall under the following categories :

	Number of cases	Amount (In lakhs of rupees)
1. Short levy of tax/ surcharge, additional tax/development cess	393	145.21
2. Incorrect computation of taxable turnover	133	106.38
3. Irregular grant of exemption from tax	73	92.67
4. Non-levy/short levy of penalty	121	17.02
5. Other irregularities	684	386.17
Total	1,404	747.45

Some of the important cases noticed in 1989-90 and earlier years and findings of a review on "Collection of sales tax by Government Departments" are mentioned in the following paragraphs.

2.2. Collection of Sales tax by Government Departments

2.2.1. Introduction

Under Section 19 of the Karnataka Sales Tax Act, 1957, the Government of Karnataka, although not a "Dealer" under the Act, shall, on sales of goods effected by them, be entitled to collect by way of tax, any amount, which a registered dealer effecting such sale would have been entitled to collect by way of tax under the said Act. Such collections are required to be accounted for separately in the records maintained by the department effecting sales of goods, under the general provisions of Articles 3 and 4 of the Karnataka Financial Code, 1958. The collections and accountal of sales tax by the departments were, however, not subjected to any check or scrutiny by the Commercial Taxes Department up to May 1970. In order to have a check by the Commercial Taxes Department on such collections, the Government issued circular instructions in June 1970 and August 1971 according to which the departments effecting sales of goods should furnish monthly statements in the prescribed proforma along with treasury challans/cheques/bank drafts to the concerned jurisdictional Commercial Tax Officer, so as to reach by the end of the succeeding month to enable him to check the correctness of the rates of sales tax applied on the goods sold by those departments. According to the instructions issued by the Commissioner of Commercial Taxes in March 1962, the jurisdictional Commercial Tax Officers were also required to take such collections into their records and account for them in the

Demand Register (D.Register) and the Demand and Collection Register (G.2 Register), and Demand, Collection and Balance Statement, treating the same amount as demand and collection. It was further stated in the circular instructions of June 1970 that this procedure was also designed to facilitate verification by Audit during audit of the Commercial Tax Offices concerned. It was also provided in the circular (August 1971) that the challans for remittance were to be duly countersigned by the jurisdictional Commercial tax officers.

2.2.2. Scope of Audit

Among the Government Departments which sell taxable goods and collect sales tax on them, the major departments are Forest and State Excise while the relatively minor ones are the Prisons Department and the Department of Industries and Commerce. With a view to ascertaining the system followed by the Commercial Taxes Department and other departments in the matter of collection and accountal of sales tax by them in the light of Government instructions in this regard, out of 39 offices of Forest, Excise, Prisons, Industries and Commerce Departments, the records of 12 offices pertaining to these departments for the period 1982-83 to 1988-89 were test checked during January 1990 to March 1990.

2.2.3. Organisational set-up

(i) The Commercial Taxes Department which functions as a monitoring department in the matter

of collection of sales tax by other Government Departments, is headed by the Commissioner of Commercial Taxes, assisted by eight Joint/ twenty-three Deputy Commissioners and Assistant Commissioners of Commercial Taxes/Commercial Tax Officers and Assistant Commercial Tax Officers, in the administration of Sales Tax Law in the State.

(ii) The organisational set-up of the major/ minor departments which collect sales tax on sales made by them is as follows:

Name of department	*Head of department*	*Subordinate offices/ staff*
1. Forest Department	Principal Chief Conservator of Forests	Chief Conservator/ Conservators/Deputy Conservators/Assistant Conservator of Forests
2. Excise Department	Commissioner of Excise	Deputy Commissioner/ Superintendents/ Inspectors/ Sub-Inspectors of Excise
3. Prisons Department	Inspector General of Prisons	Deputy Inspector General of Prisons/ Superintendents of Prisons
4. Industries and Commerce Department	Director of Industries and Commerce	Joint Director of Industries and commerce/Assistant Director of Industries and Commerce

2.2.4. Highlights

Non-observance of provisions of the Sales Tax Act and Government/departmental instructions regarding furnishing of monthly statements of sales tax collection, reconciliation, changes in rates etc., by Departments of Commercial Taxes, Forests, State Excise and Prisons resulted in

(a) transfer of sales tax collections of at least Rs.31.22 lakhs to Forest Development Corporation instead of being credited into Government account during 1976-77 to 1988-89;

(b) short levy due to application of incorrect rate of tax/royalty amounting to Rs.1.42 lakhs;

(c) short levy amounting to Rs.93,440 due to omission to include Central excise duty in sale price of sawn-timber despite Tribunal's decision; and

(d) non-levy of sales tax amounting to Rs.1.84 crores on the element of State Excise duty included in the sale price of arrack sold during the period April 1986 to 30th June 1987 due to giving belated effect to a Supreme Court Judgement of 1985.

2.2.5. Year-wise details of collection of tax by Government Departments

The year-wise comparative statement of sales tax collected by the registered dealers and the tax collected by Government Departments is given below:

Year	Registered Dealers	Government Departments
	(In crores of rupees)	
1984-85	479.87	4.72
1985-86	589.41	6.64
1986-87	642.74	4.25
1987-88	769.17	6.92
1988-89	961.37	35.87

From the above table it is apparent that there is substantial variation between the figures of collection of sales tax by the departments during the period 1984-85 to 1987-88 and that collected during 1988-89 which could not be explained by the department since the Commercial Taxes Department had not maintained department-wise details of collection.

2.2.6. Examination of departmental records

A. Commercial Taxes Department

According to circular instructions issued by Government in June 1970 and modified later in

August 1971, it is the responsibility of the Heads of Offices to account for the sales tax collected by them and to remit the same into Government treasury as provided for in the Karnataka Financial Code, 1958 (Vol.I). The remittance had to be made either by drawing a crossed cheque/Demand Draft in favour of the Commercial Tax Officer concerned or by direct remittance into the Treasury after getting the challans duly countersigned by the jurisdictional Commercial Tax Officers. Further, these remittances were required to be intimated to the jurisdictional Commercial Tax Officers through monthly statements in the prescribed form for being checked, accounted and reconciled by the Commercial Tax Officers concerned.

1. Non-observance of Government instructions

Contrary to the instructions of the Government issued in June 1970 and August 1971, none of the jurisdictional Commercial Tax Officers were in receipt of the monthly returns from the departmental officers effecting sales of goods taxable under the Act. Further, no action had been taken to identify the offices from whom such returns were due and where such returns were received from two Forest divisions of one circle (Canara circle), no action was taken to scrutinise and process them as per the aforesaid instructions of Government in the matter.

2. Non-accountal/reconciliation of remittances

(i) According to the departmental instructions issued in March 1962, the jurisdictional Commercial

Tax Officers are required to maintain a separate section in the 'D' Register for noting the remittances made by the departmental officers and to take them into the Demand and Collection Registers (G-2) and the Demand, Collection and Balance Statement treating the amount as demand and collection. No action was, however, taken by the Commercial Tax Officers to account for the remittances reported by the departmental officers. The Commissioner of Commercial Taxes, stated (Februay 1990) that the Government were being addressed in the matter seeking modification of their orders of June 1970 and August 1971 making the Departments themselves responsible for accountal and reconciliation of sales tax collected by them.

(ii) While the remittances made under the Head "040-Sales Tax" in respect of the registered dealers are being accounted for in Demand and Collection Register and reconciled with the figures of the treasury, it was observed that such remittances made by the departmental officers were not being reconciled by the Commercial Taxes Department although these had been accounted for in the above register. The department contended (February 1990) that such a reconciliation need not be done as Government Departments were not required to be assessed as per law and it was added that the Government were addressed in the matter. Since the reconciliation of remittances made by other departments into treasuries is enjoined on the Commercial Taxes Department as per departmental instructions issued in 1962, the replv furnished by the department is not tenable.

B. Forest Department

1. General

Monthly statements showing particulars of sales tax collected by Government offices required to be sent to the jurisdictional Commercial tax officers were not found sent during the period 1982-83 to 1988-89 test checked during this review. Out of 31 forest divisions in the State, in six forest divisions selected for test check, it was found that the prescribed monthly returns were not being rendered by four divisions despite standing instructions of Government, while the returns sent to the jurisdictional tax officers by the other two divisions during the same period did not contain details relating to the commodity sold, sale value, rate of sales tax charged etc., rendering such statements not susceptible to any scrutiny by the Commercial Taxes Department.

2. Results of test check by Audit

(i) Short levy due to non-inclusion of Central excise duty in the sale price of sawn-timber

According to the decision* of the Karnataka Appellate Tribunal, Central excise duty paid on excisable goods forms part of sale price of goods and thus goes into the computation of sale consideration for purposes of levy of sales tax under the relevant Sales Tax law.

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* Coffee Board Vs. State of Karnataka-KLJ. 31.1.1980 Page 1-decision dt.22.6.1979.

It was, however, noticed that in one forest division in Uttara Kannada though Central excise duty to the extent of Rs.14.65 lakhs was paid during the period 18th June 1977 to 28th February 1985 on sawn-timber, the same was not included in the sale price for purposes of levy of sales tax though the fact was known to the Government being the respondent in the case. This resulted in a short levy of sales tax to the extent of Rs.93,440 as detailed below :

Period	*Central excise duty paid (In lakhs of rupees)*	*Rate of sales tax applicable (Percentage)*	*Short levy of sales tax*
18.6.1977 to 31.3.1982	5.94	4	23,748
1.4.1982 to 28.2.1985	8.71	8	69,692
	14.65		93,440

The above mistake could have been rectified had the division concerned forwarded the monthly statements to the Commercial Taxes Department and the same had been checked by the Commercial Taxes Department as per the prescribed procedure.

(ii) Erroneous transfer of sales tax receipts

to Karnataka Forest Development Corporation instead of being credited to Government

In pursuance of Government Order dated July 1976, an area of 87,000 acres of eucalyptus plantations belonging to the Forest Department was transferred to the Karnataka Forest Development Corporation for extraction and removal by the wood-based industries and raising fresh plantations. The actual area to be transferred was physically determined only during 1988 after necessary identification. In the meanwhile, the forest divisions which exercised control over the area transferred, collected the cost price of trees and taxes due from the purchasers through bank drafts and transferred the entire proceeds to the Corporation instead of crediting the tax portion to the Government account. Such transfers included sales tax collection to the extent of Rs.5.76 lakhs in Shimoga division and Rs.25.47 lakhs in Bhadravathi division which was required to be deposited into the treasury as per provisions of Sales Tax Act and instructions issued by Government. No details in this regard were available in respect of Canara Circle where credits to the extent of Rs.2.85 crores were transferred to the Forest Development Corporation during 1976-77 to 1988-89. Credits on account of sales tax collection irregularly transferred to the Corporation amounted to unintended benefit to the Corporation.

(iii) Short levy of tax owing to application of incorrect rate of tax

According to the Government circulars issued in 1970 and 1971 followed by Commissioner of Commercial Taxes circular instructions in October

1979 and November 1988, the departments collecting sales tax were required to send the monthly returns to the Commercial Taxes Department for scrutiny and accountal.

During test-check of records of five forest divisions it was observed that in eleven cases, there was short levy of sales tax to the extent of Rs. one lakh during the years 1984-85 to 1986-87 on sale of timber and tamarind on account of application of incorrect rates of tax as mentioned below :

a) Sales tax on timber was levied at the rate of 8 per cent (and 30 per cent development cess thereon) on sales made after 1st April 1986 although the applicable rate of sales tax was 13 per cent.

b) Development cess at the rate of 30 per cent of sales tax from 1st August 1985 was not levied but surcharge and rural development cess at the rate of 10 per cent each was collected.

c) Rural development cess at the rate of 10 per cent of sales tax leviable from 1st April 1984 (in addition to surcharge at the rate of 10 per cent) was not levied on sales of timber made during 1st April 1984 to 31st July 1985.

The respective District Conservators accepted (February 1990 and March 1990) the short levy pointed out above. Details of recovery have not been intimated (March 1991). The above mistakes

could have been noticed and rectified had the monthly returns due to the jurisdictional Commercial Tax Officers been prepared and sent for scrutiny by the jurisdictional Commercial Tax Officers and also had the Commercial Tax Department intimated the changes in the tax structure to the Forest Department from time to time in accordance with the circular instructions of Government issued in 1970 and 1971 and by the Commercial Tax Department in October 1979 and November 1988.

(iv) Short levy of sales tax on account of restrospective revision of seigniorage rates

The seigniorage rates for timber and other forest produce were revised under Order No.A6-IND-76/80-81/ dated 29th June 1982 of the Chief Conservator of Forests (Gl) in Karnataka, Bangalore with effect from 29th June 1982. By a validation clause introduced by the Karnataka Forest (Amendment) Act, 1984 (Act 11 of 1984), the revised seigniorage rates referred to above were given retrospective effect from 23rd February 1981. Further, the Government in their order No.FFD 224-FDP dated 6th February 1986 provided a facility of paying the arrears due by the wood-based industries for the period from 23rd February 1981 to 28th June 1982 in five equal instalments beginning from the assessment year 1985-86, subject to payment of interest at the rate of 5 per cent during the period 23rd February 1981 to 13th January 1984 and at the rate of 10 per cent thereafter. The revised seigniorage rate fixed in respect of eucalyptus was Rs.205 per tonne under the above mentioned order dated 29th June 1982.

It was, however, seen from the records of one division in Kodagu district pertaining to supply of eucalyptus to a firm that 1,947 tonnes of such wood supplied during May 1981 to November 1981 was charged at the rate of Rs.24 per tonne and supplies of 2,075 tonnes from December 1981 to May 1982 were charged at the incorrect rate of Rs.120 per tonne. Since the actual rate applicable during the above period was Rs.205 per tonne, as aforesaid, there was short realisation of sales price by Rs.5.71 lakhs and short levy of sales tax thereon by Rs.23,266.

C. State Excise Department

1. General omissions and defects

Under the Karnataka Excise (Manufacture and Bottling of Arrack) Rules, 1987, the permit holders are allowed to lift the allotted consignments of arrack after the payment of its price and duties thereon to Government. The sales tax due is directly remitted by them into the treasury under the head "040-Sales Tax" and the challans in support of the remittances are made over to the Inspectors in-charge of the bottling units for verification and release of the bottled arrack. It was, however, observed that the Inspectors in charge of the three bottling units test-checked, were not rendering the prescribed monthly statements during the period 1984-85 to 1988-89 to the jurisdictional Commercial TAx Officers, contrary to Government orders in the matter nor did they reconcile the figures of the challans with the treasury schedules as laid down in the Karnataka

Financial Code, 1958. Similar omissions were noticed in the offices of the Superintendents of Excise also who disposed of the seized goods.

The Commissioner of State Excise stated (June 1990) that since the collection of sales tax on arrack sales did not form part of their departmental revenue (i.e., Excise Revenue) no verification or reconciliation was done by them and it was added that they had apprised the Commissioner of Commercial Taxes in the matter stating that necessary particulars would be furnished to the Commercial Taxes Department regarding the sales tax collections made by them for scrutiny and reconciliation by the Commercial Taxes Department. The reply furnished by the Excise Department is not tenable since it is the primary responsibility of the officer accepting the challans in proof of remittance of Government dues to verify the challan with the treasury accounts as laid down in Karnataka Financial Code, 1958. Failure to adhere to the instructions of Government contained in Government circulars of 1970 and 1971 resulted in non-reconciliation of collections and remittance by the Departmental authorities. Thereby, no means subsists to ensure that all the moneys collected have been credited to Government. Report on action taken by Commercial Taxes Department for reconciliation of amounts remitted through challans by the permit holders with the treasury schedules has not been received (May 1990).

Failure on the part of the Commercial Taxes Department to obtain the monthly return and ensure reconciliation of money collected and remitted to Government in contravention of the circular

of 1970 and 1971 resulted in a failure of the system intended to ensure proper accountal of Government collections.

2. Result of test check by Audit

Non-inclusion of State excise duty in sale price of arrack resulting in non-levy of sales tax

It was seen during test check of office of the Commissioner of Excise that while charging sales tax on arrack, the element of State excise duty payable by the arrack contractor was not considered as part of taxable turnover. It has been judicially held that such 'excise duty' would form part of consideration for sale by whomsoever it is paid. The State Excise Department, however, levied sales tax on the element of excise duty only from 17th August 1987 as per the instructions contained in Government letter dated 7th August 1987. Although the decision of the Supreme Court (January 1985) was brought to the notice of the Government, it was only in August 1987, the Government issued instructions to the Excise Department to levy sales tax on excise duty prospectively. There was, thus, loss of revenue amounting to Rs.184.29 lakhs to Government on account of non-levy of sales tax on the element of excise duty from April 1986 to 30th June 1987. This excludes Rs.140 lakhs

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(*) Mc Dowell & Co. (P) Limited vs. Commercial Tax Officer, Andhra Pradesh (1985) 59 STC 277(SC).

(pertaining to 1985-86) already pointed out in paragraph 4.13.8 of Audit Report (Revenue Receipts) of Government of Karnataka for 1986-87.

D. Prisons Department

1. General

The Department of Prisons were not rendering monthly statements during 1982-83 to 1988-89 to the jurisdictional Commercial Tax Officers concerned contrary to the orders of Government issued in June 1970 and August 1971. Verification of the remittances made towards sales tax collected with those of the treasury schedules were also not being carried out. The department stated (March 1990) that the prescribed procedure would be followed in consultation with the Commercial Tax Authorities.

2. Results of test check by Audit

Short levy due to incorrect application of rates of tax

From a scrutiny of the records in the Prisons Department, it was observed that the departmental authorities were not aware of the revised rates of sales tax applicable from 1st April 1984 and onwards. Non-receipt of clarificatory circulars from the Commercial Taxes Department was stated to be the reason for such omission.

According to the instructions issued by the Commissioner of Commercial Taxes, Bangalore in October 1979 and November 1988 the Commercial Taxes Department was also required to intimate the departments concerned, the changes in the rates of sales tax from time to time on the goods dealt with by those departments. Failure on the part of both the departments resulted in application of incorrect rate of tax on goods and consequent short levy of tax to the extent of Rs.18,593 during the period 1st April 1984 to 28th February 1990.

The foregoing points were reported to Government between January 1990 and March 1990 and followed up by reminder (March 1991); their reply has not been received (August 1991).

2.3 Short levy due to incorrect classification of goods

In 13 cases involving short levy of tax due to incorrect classification of goods sold, an amount of Rs.1.73 lakhs was recovered (March 1990) in 5 cases, while in 8 cases involving Rs.2.63 lakhs, rectificatory action to raise additional demand taken/initiated by the department, at the instance of Audit. A few other cases are mentioned below.

(i) (a) Under the Karnataka Sales Tax Act, 1957, printed materials other than books meant for reading were taxable at the general rate up to 31st March 1984 and at the rate of 6 per cent from 1st April 1984 to 31st March 1986, on insertion of a separate entry.

In Bangalore City, an assessee has sold glamine opaque foils and aluminium foils in strips duly printing on them as desired by customers. Such sales from 1983-84 to 1985-86 amounting to Rs.4.71 lakhs were taxed (between April 1988 and March 1989) at 4 per cent for the years 1983-84 and 1984-85 as 'containers' and at 5 per cent for the year 1985-86 as 'unclassified goods'. Since the printed glamine foils and aluminium foils were sold in the form of strips and not in the form of containers, tax was leviable for the year 1983-84 at 5 per cent as unclassified goods and for the years 1984-85 and 1985-86 at 6 per cent as printed materials. The mistake resulted in tax being levied short by Rs.71,970 (including surcharge and rural development cess).

On this being pointed out to the department in December 1989, they stated (January 1991) that the records for the year 1983-84 have been taken up for **suo motu** revision and for the years 1984-85 and 1985-86 revised orders have been passed in December 1990. Further report has not been received (November 1990).

The case was reported to Government in March 1989; their reply has not been received (November 1990).

(b) The Commissioner of Commercial Taxes has clarified (July 1989) that "Shell grit" was taxable under the State Act at multipoint, as applicable to unclassified goods up to 31st March 1988 (i.e., at 5 per cent up to 31st March 1986 and at 7 per cent from 1st April 1986).

Further, as per the provisions of the Central Sales Tax Act, 1956, on the inter-State sales of goods (other than the declared goods), tax is leviable at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the State under the State Act, whichever is higher. In case such sales are supported by the prescribed declarations, tax is leviable at the concessional rate of 4 per cent.

In Dharwad district, on inter-State sales of shell grit (both supported and not supported by prescribed declarations) amounting to Rs.10.73 lakhs made by two dealers, during the period from 1st March 1984 to 31st December 1986, tax was levied at the rate of 3 per cent treating them as poultry feed instead of treating them as unclassified goods and levying tax at the rate of 4/10 per cent as aforesaid. The mistake resulted in tax being levied short by Rs.49,084.

On the mistake being pointed out (May 1989) in audit, the assessing officer stated that shell grit is poultry feed and taxable accordingly. The reply is not tenable in view of the above mentioned clarification of the Commissioner of Commercial Taxes.

The case was reported to Government in June 1990; their reply has not been received (November 1990).

(ii) Under the Karnataka Sales Tax Act, 1957, on sales of chemicals of all kinds, tax was leviable at the rate of 10 per cent up to 31st March

1986 and at 13 per cent from 1st April 1986 to 31st March 1987 at the point of first or earliest of successive sales in the State. The Commissioner of Commercial Taxes has clarified (June 1988) that "fatty acids" are chemicals.

In Bangalore City, on sales of fatty acids amounting to Rs.51.90 lakhs made by a dealer during the years 1983-84 and 1985-86 (July to June), tax was levied at the rates of 5 and 7 per cent treating the goods as unclassified items instead of levying tax at 10 and 13 per cent as aforesaid. The mistake resulted in tax being levied short by Rs.3.11 lakhs.

On the mistake being pointed out (January 1990) in audit the department stated (November 1990) that revised orders were passed (May 1990) levying the differential tax of Rs.3.11 lakhs.

The case was reported to Government in January 1990.

(iii) Under the Karnataka Sales Tax Act, 1957, on sales of medicinal and pharmaceutical preparations, tax is leviable, with effect from 1st April 1986, at the rate of 10 per cent at the point of first or the earliest of successive sales within the State. Under the provisions of the Central Sales Tax Act, 1956, on inter-State sales of goods (other than declared goods) not covered by prescribed declarations, tax is leviable at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside

the appropriate State, whichever is higher.

The Commissioner of Commercial Taxes clarified (February 1987) that feed supplements, mineral mixture concentrates for use as cattle and poultry feed supplements, are taxable at 3 per cent and all other medicines such as antibiotics, vitamins and the like, would be taxable at 10 per cent applicable to medicinal and pharmaceutical preparations under the Act.

In Bangalore district, while finalising (May 1988 and June 1988) assessments of a manufacturing dealer in feed supplements and medicines, tax on first sales of vitamins and antibiotics amounting to Rs.43 lakhs made during the years 1985-86 and 1986-87 (May to April), was incorrectly levied at the rate of 3 per cent applicable to feed supplements instead of at the correct rate of 10 per cent, as aforesaid, on both intra-State and inter-State sales. The mistake resulted in short levy of tax by Rs.2.99 lakhs.

The mistake was pointed to the department in October 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

(iv) Under the Karnataka Sales Tax Act, 1957, on sales of fibre glass sheets and articles made of fibre glass excluding helmets, tax was leviable at the rate of 10 per cent (up to 31st March 1986), at the point of first sale.

In Bangalore City, on sales of fibre glass rolls amounting to Rs.25.07 lakhs made by a dealer during Deepavali years 1983-84 and 1985-86, tax was incorrectly levied (June 1988 and February 1989) at the general rate of 5 per cent applicable to unclassified goods instead of at 10 per cent as aforesaid, resulting in tax being levied short by Rs.1.54 lakhs.

The mistake was pointed out to the department in December 1989 and was reported to Government in May 1990; their replies have not been received (November 1990).

(v) Under the Karnataka Sales Tax Act, 1957, on sales of electronic goods, typewriters, tabulating machines, calculating machines (including all types of mechanical or electronic calculators) duplicating machines, roneo machines, parts and accessories thereof, tax is leviable at the rate of 20 per cent, with effect from 1st April 1986, at the point of first or earliest of successive sales within the State. Spares and components of electrical plain paper copiers, i.e., duplicating machines are accordingly taxable at the above rate.

By a Government notification issued in March 1986, the basic rate of tax on certain specified items of electronic goods was reduced to 4 per cent, with effect from 1st April 1986.

In Bangalore City, on sales of spares and components of electrical plain paper copiers (i.e., duplicating machines) amounting to Rs.8.70 lakhs,

made by a dealer during the year 1986-87, tax was incorrectly levied (February 1989) at the rate of 4 per cent, treating them as electronic copiers. The mistake resulted in tax being levied short by Rs.1.39 lakhs.

The mistake was pointed out to the department in January 1990 and was reported to Government in May 1990; their replies have not been received (November 1990).

(vi) Under the Karnataka Sales Tax Act, 1957, on sales of rice bran, tax was leviable at the rate of 4 per cent, from 8th September 1976 to 31st March 1984. The Commissioner of Commercial Taxes has clarified in October 1988 that rice bran and de-oiled rice bran are one and the same commodity. Further, under the Central Sales Tax Act, 1956, on inter-State sales of goods, other than declared goods, without 'C' or 'D' forms, with effect from 1st April 1963, tax at the rate of 10 per cent or State rate, whichever is higher, is leviable.

In Shimoga, while concluding (April 1988) the assessments of a manufacturing dealer in rice bran and de-oiled rice bran from the year 1978-79 to 1980-81, the sales turnover of Rs.17.59 lakhs, was taxed at the rate of 2 per cent as applicable to "rice bran oil" instead of at 4 per cent applicable to de-oiled rice bran aforesaid. The misclassification of goods resulted in short levy of tax of Rs.42,447. Further, on inter-State sales of de-oiled rice bran amounting to Rs.9.44 lakhs during the same period without 'C' forms,

tax was levied at 2 per cent instead of at 10 per cent resulting in short levy of Rs.75,528. The total short levy of tax amounted to Rs.1.18 lakhs.

On the above mistakes being pointed out (November 1989) in audit, the department raised (December 1989) demand for the differential tax.

The case was reported to Government in March 1990.

(vii) Under the Karnataka Sales Tax Act, 1957, on sales of non-ferrous scrap, tax was leviable at the rate of 6 per cent up to 31st March 1986 at the point of first or earliest of successive sales within the State. On sales of goods not included in any of the Schedules to the Act, tax was leviable at the rate of 5 per cent up to 31st March 1986 on all points of sale. A cess at the rate of 10 per cent of the tax under section 5 or 6 of the Act was also leviable from 1st April 1984.

(a) In Dharwad district, on auction sales of non-ferrous scrap amounting to Rs.52.25 lakhs made by a department of the Central Government during the year 1984-85, tax was levied (July 1988) at the rate of 5 per cent treating the goods as general goods instead of at 6 per cent applicable to non-ferrous scrap as aforesaid. The mistake resulted in short levy of tax of Rs.62,700.

Rural development cess amounting to Rs.29,420 was also omitted to be assessed (July 1988) in the same case on tax of Rs.2.94 lakhs levied on auction sale of unserviceable goods.

The omissions were pointed to the department in July 1989 and August 1989 and were reported to Government in January 1990; their replies have not been received (November 1990).

(b) Similarly, in Belgaum and Bangalore districts, on the first sale of non-ferrous/aluminium scrap amounting to Rs.49.46 lakhs made by two dealers during the period from 1st Apri 1984 to 31st December 1985, tax was incorrectly levied at the general rate of 5 per cent treating them as general goods instead of at the applicable rate of 6 per cent. The mistakes resulted in tax being levied short by Rs.59,841.

On the mistakes being pointed out in July 1989 and December 1989, the department stated (September 1990) that rectificatory orders were passed and an additional demand, in one case, was raised (August 1990) for Rs.30,640. Reply in the other case (Rs.29,205) has not been received (November 1990).

The cases were reported to Government in January 1990 and April 1990; their reply has not been received (November 1990).

(viii) Under the Karnataka Sales Tax

Act, 1957, on sales of toilet articles except toilet soaps and such other toilet articles as may be specified by the State Government by notification, tax is leviable at the rate of 13 per cent, with effect from 1st April 1986, at the point of first sale. It has been judicially held * that medicated Brahmi oil is a toilet article and that the manufacturer's description that it was a specific remedy for headaches, insomnia etc. does not matter.

In Dakshina Kannada district, on sales of Brahmi oil amounting to Rs.12.17 lakhs made by a dealer during the Co-operative year 1986-87, tax was levied (March 1989) at 10 per cent treating it as a medicinal preparation instead of at the scheduled rate of 13 per cent as applicable to toilet articles. The misclassification of goods resulted in tax being levied short by Rs.40,770.

On the mistake being pointed out (February 1990) in audit, the assessing officer stated that 'Ramtirth' Brahmi oil is not a perfumed oil and therefore, not a toilet article quoting reference to the case of Ramtirth Yogashram vs. State of Maharashtra (1968) 22 STC 76 (Bom). This decision is not relevant in the present context as the question decided in this case was whether Ramtirth Brahmi oil was a "perfumed oil" or not with reference to the relevant entry in the Bombay Sales Tax Act. It was also held that the mode in which

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* D.K. Sandhu Bros. vs. The State of Madhya Pradesh (Board of Revenue) (1953) 4 STC 397 (MP)

a person may choose to advertise his commodity cannot be decisive in determining its real nature.

The case was reported to Government in June 1990; their reply has not been received (November 1990).

(ix) Under the Karnataka Sales Tax Act, 1957, on sales of lubricating oils including grease and furnace oil and coolants, tax was leviable at the rate of 10 per cent from 1st April 1984 to 31st March 1986 and at 13 per cent from 1st April 1986 to 31st March 1987 at the point of first or the earliest of successive sales within the State. With effect from 1st April 1987, furnace oil, transformer oil and coolants are taxable at 13 per cent, under a new entry inserted in the Second Schedule to the Act.

In Bangalore City, on sales of coolants amounting to Rs.5.90 lakhs made by a dealer during the years from 1985-86 to 1987-88, tax was levied at 5 and 7 per cent treating the goods as unclassified items instead of at the applicable rate of 10 and 13 per cent as aforesaid. The misclassification of goods resulted in tax being levied short by Rs.35,550.

The mistake was pointed out to the department in February 1990 and was reported to Government in June 1990; their replies have not been received (November 1990).

(x) Under the provisions of the Karnataka Sales Tax Act, 1957, on sales of powerloom castings, which are parts of textile machinery, tax was leviable at the rate of 8 per cent up to 14th March 1980.

In Bangalore City, on sales by a manufacturer of powerloom castings amounting to Rs.5.80 lakhs, during the assessment year 1977-78, tax was incorrectly levied (June 1988) at the general rate of 4 per cent treating them as rough castings. The misclassification resulted in tax being levied short by Rs.25,534.

The mistake was pointed out (July 1989) in audit to the department and was reported to Government in December 1989; their replies have not been received (November 1990).

(xi) Under the Karnataka Sales Tax Act, 1957, on sales of floor, wall and roofing tiles, not covered by any other entry of the Schedules to the Act, tax is leviable at the rate of 12 per cent (up to 31st March 1986) and at the rate of 15 per cent thereafter, at the point of first or the earliest of successive sales in the State. Marblex tiles and vynaflex tiles are taxable accordingly.

In Bangalore City, on the first sales of marblex and vynaflex tiles (floor tiles) amounting to Rs.23.56 lakhs, made by a dealer during the Co-operative year (1st July to 30th

June) 1985-86, tax was incorrectly levied (January 1989) at 10 per cent treating them as articles made of plastic instead of at the applicable rate of 12 and 15 per cent as aforesaid. The misclassification of goods resulted in tax being levied short by Rs.63,690.

The mistake was pointed out to the department in September 1989 and was reported to Government in April 1990; their replies have not been received (November 1990).

(xii) As per the provisions of the Central Sales Tax Act, 1956, on inter-State sales of goods (other than declared goods) not supported by prescribed declarations, tax is leviable at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the State under the State Act, whichever is higher. The Commissioner of Commercial Taxes clarified (February 1987) that mill spun yarn (blend of synthetic fibre, wool, silk and cotton) falls under entry 24 of the Second Schedule to the Karnataka Sales Tax Act, 1957, applicable to all kinds of mill yarn excluding cotton yarn, spun silk yarn and filature silk on which tax at the rate of 4 per cent was leviable up to 31st March 1986.

In Belgaum City, on inter-State sales of blended cotton yarn not covered by the prescribed declarations (blend of polyster yarn, staple/viscous yarn and cotton yarn) amounting to Rs.2.71 lakhs made by a dealer during the year 1984-85 (July 1984 to June 1985), tax was incorrectly levied (April 1988) at 2 per cent treating it as

cotton yarn (declared goods) instead of at 10 per cent as applicable to mill yarn as aforesaid, which resulted in tax being levied short by Rs.21.694.

The mistake was pointed out to the department in December 1989 and was reported to Government in May 1990; their replies have not been received (November 1990).

2.4. Application of incorrect rates of tax

(A) In 11 cases involving short levy due to application of incorrect rates of tax, an amount of Rs.63,832 was recovered in two cases while in the remaining cases involving Rs.3.22 lakhs, rectificatory action was initiated/completed between October 1989 and June 1990 by the department at the instance of Audit. A few other cases are mentioned below.

(B) (i) Under the Karnataka Sales Tax Act, 1957, 'all machinery and spare parts and accessories thereof' attract levy of tax at the rate of 10 per cent, with effect from 1st April 1986 to 31st March 1987, and at 13 per cent thereafter.

According to the clarification issued by Commissioner of Commercial Taxes, in July 1988, drilling machinery and its spares and accessories attract levy of tax at 13 per cent as machinery part.

In respect of a manufacturing dealer in

Bangalore district, drilling rig accessories, such as H-tank suction manifold, water tank platform ring channel, bit stand, R.M. tray ladder etc., which are machinery parts as aforesaid, sold to an extent of Rs.25.89 lakhs during the years 1986-87 (1st December 1986 to 31st March 1987) and 1987-88, tax at the rate of 4 per cent was incorrectly applied (December 1987 and August 1988) instead of the correct rate of 10/13 per cent (applicable to all machinery and spare parts and accessories thereof). The mistake resulted in tax being levied short by Rs.2.06 lakhs.

The mistake was pointed out to the department in November 1989 and was reported to Government in April 1990; their replies have not been received (November 1990).

(ii) Under the Karnataka Sales Tax Act, 1957, on sale of groundnut oil, coconut oil and all other edible oils but excluding edible oils which are the products of village industries, tax was leviable at the point of first sale as under:

1. Non-refined	1st April 1984 to 31st March 1986	2 per cent
2. Refined	1st April 1984 to 31st July 1985	4 per cent
	1st August 1985 to 31st March 1986	6 per cent

However, by a notification issued in October 1984 (effective from 1st November 1984), the rate of tax on refined oil was reduced to 2 per cent subject to the condition that such oil was manufactured out of non-refined edible oils which had already been subjected to tax under the Act.

In Bangalore City, on first sales of sunflower refined oil amounting to Rs.30.28 lakhs, made by a manufacturing dealer during the period from 1st August 1985 to 31st March 1986, tax was incorrectly levied (March 1989) at the rate of 2 per cent instead of at the applicable rate of 6 per cent as the aforesaid condition was not fulfilled. The mistake resulted in tax being levied short by Rs.1.57 lakhs.

The mistake was pointed out to the department in February 1990 and was reported to Government in May 1990; their replies have not been received (November 1990).

(iii) Under the Karnataka Sales Tax Act, 1957, on sales of articles generally used as parts and accessories of motor vehicles, tax is leviable at the rate of 10 per cent from 1st August 1985 at the point of first or earliest of successive sales within the State. As clarified by the Commissioner of Commercial Taxes (March 1986), bus-bodies are taxable at the above rate. However, with effect from 1st April 1986, a new entry was introduced, according to which bodies built on motor vehicles chassis became taxable at the rate of 6 per cent.

In Bangalore district, on sales of bus bodies amounting to Rs.34.83 lakhs made by an assessee engaged in body building work, during the period from 1st August 1986 to 31st March 1985, tax was erroneously levied (January 1989) at the rate of 6 per cent instead of at the applicable rate of 10 per cent. The mistake resulted in tax being levied short by Rs.1.80 lakhs.

The mistake was pointed out to the department in July 1989 and was reported to Government in June 1990; their replies have not been received (November 1990).

(iv) Under the Karnataka Sales Tax Act, 1957, on sales of chemicals of all kinds, tax was leviable at the rate of 10 per cent during the period from 1st April 1982 to 31st March 1986 at the point of first or the earliest of successive sales within the State.

In Bangalore City, zinc oxide amounting to Rs.30 lakhs sold by a manufacturing dealer during the year 1984-85, was subjected to tax (May 1988) at the rate of 8 per cent, instead of at the correct rate of 10 per cent. The mistake resulted in tax being levied short by Rs.72,000.

The mistake was pointed out to the department in March 1990 and was reported to Government in July 1990; their replies have not been received (November 1990).

(v) Under the Karnataka Sales Tax Act,

1957, on sales of leather goods of all kinds, other than footwear, suit cases, etc., and products of village industries, tax is leviable at the rate of 13 per cent, with effect from 1st April 1986, at the point of first or earliest of successive sales within the State. Further, turnover tax is leviable in case total turnover of a dealer in a year exceeds the specified limit.

In Bangalore City, on sales of leather watch straps amounting to Rs.3.37 lakhs, made by a manufacturing dealer during the calendar year 1987, tax was levied at the rate of 4 per cent instead of at the correct rate of 13 per cent as aforesaid. Further, turnover tax leviable at 1¼ per cent (with effect from 1st April 1987) was also not levied. The above mistakes resulted in tax being levied short by Rs.33,580.

The mistakes were pointed out to the department in February 1990 and were reported to Government in July 1990; their replies have not been received (November 1990).

(vi) Under the Karnataka Sales Tax Act, 1957, on sales of articles made of brass, copper and bronze, other than those falling under any of the entries in the Second Schedule to the Act, tax was leviable at the rate of 8 per cent from 18th November 1983 to 31st March 1986 at the point of first or earliest of successive sales within the State. Handicraft articles made of brass, copper and bronze fall under the above category.

In Bangalore City, on first point sale

of handicraft articles made of brass, copper and bronze amounting to Rs.66.62 lakhs made by a Government undertaking during the period 18th November 1983 to 31st March 1986, tax was incorrectly levied (March 1989) at the varying rates of 5 and 6 per cent instead of at the applicable rate of 8 per cent as aforesaid. The mistake resulted in short levy of tax of Rs.1.59 lakhs.

The mistake was pointed out to the department in November 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

(vii) As per provisions of the Central Sales Tax Act, 1956, on inter-State sales of goods (other than declared goods) to any registered dealer, tax is leviable at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the State under the State Act, whichever is higher. However, in cases where such sales are supported by valid declarations, tax is leviable at the concessional rate of 4 per cent. The declaration in Form 'C' prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957, should be duly filled in with all the prescribed particulars and signed by the registered dealer to whom the goods are sold.

Further, under the State Act, on sale of computers, tax was leviable at the rate of 15 per cent from 1st April 1983 to 31st March 1984.

In Bangalore City, on inter-State sales

of computers amounting to Rs.64.34 lakhs made by a manufacturing dealer during the year 1983-84 and not covered by prescribed declarations, tax was levied (July 1988) at the rate of 10 per cent and forfeited an amount of Rs.2.52 lakhs as penalty for excess collection instead of at the correct rate of 15 per cent. This resulted in tax being levied short by Rs.3,21,685 and after adjusting the forfeited amount of Rs.2.52 lakhs, the net short levy was Rs.69,685 which was recovered (April 1990) on being pointed out in audit.

The case was reported to Government in May 1990.

2.5. Incorrect grant of concession

In seven cases involving under-assessment due to incorrect grant of concession, an amount of Rs.3.01 lakhs was recovered (between March 1989 and March 1990) and in six cases revised orders levying the differential tax of Rs.2.52 lakhs were passed on being pointed out (between December 1986 and October 1989) in audit. A few other cases are mentioned below.

(i) By a Government notification issued in December 1979, under the Karnataka Sales Tax Act, 1957, in respect of sales to the departments or public sector undertakings of Government of India or Government of Karnataka or Government of any other State or Government Companies situated in the State, made by a dealer in respect of goods produced in his manufacturing unit located in

Karnataka, the rate of tax was reduced (with effect from 1st January 1980) to 4 per cent or the prescribed rate in any of the Schedules to the Act if it was lower than 4 per cent. However, by another notification issued (March 1986) in supersession of the above notification, with effect from 6th March 1986, the above concession was made applicable in respect of sales only to departments of Government of India or Government of Karnataka or Government of any other State located in Karnataka. Thus, the above concession is not admissible to non-Government departments and autonomous bodies (including Zilla Parishads as clarified by the Commissioner of Commercial Taxes in December 1988) from 6th March 1986. However, by a subsequent notification issued by Government in July 1986, with effect from 11th July 1986, the rate of tax on goods sold by a registered dealer to certain specified non-Government bodies (including State Electricity Board) for certain specified purposes was reduced to 4 per cent provided the dealer obtains and furnishes a declaration in the prescribed form. The Commissioner of Commercial Taxes, had clarified in August 1987 that RCC and PCC poles sold to State Electricity Board during the period 6th March 1986 to 10th July 1986 were taxable at the general rate of tax.

Further, on sales of goods not included in any of the Schedules to the Act, tax is leviable at the general rate of 5 per cent from 1st April 1982 to 31st March 1986 at all points of sale.

Also, under the Act, every dealer whose total turnover in a year exceeds the specified limits is liable to pay turnover tax at the rates

prescribed from time to time. On the sales tax/purchase tax payable, development cess at 30 per cent of the tax was also leviable during the period 1st August 1985 to 31st March 1986.

In the cases mentioned in the table below, on sales made by various dealers to various non-government bodies, tax was levied at the concessional rate of 4 per cent instead of the rates applicable to the relevant goods from time to time under the act. The incorrect grant of concession resulted in tax being levied short by Rs.3.32 lakhs.

Sl. No.	Name of the commercial tax office	Goods sold	Assessment year	Turnover (in lakhs of rupees)	Differential rate (%)	Tax short levied (including Cess/TOT)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Mysore district	Wooden ventilators	1987-88	3.78	9	34,036
2.	Bangalore City	P.V.C water pipes	1987-88	34.72	2	69,437
3.	Raichur District	Timber logs	1985-86 & 1986-87	3.07	4 and 9	27,594
4.	Bangalore city	Steel furniture corrugated boxes machinery parts	1st April 1986 to 31st December 1988	17.80	11, 4, 6 and 9	1,05,100

(1)	(2)	(3)	(4)	(5)	(6)	(7)
5.	Bangalore City	Betnovita Powder	1984-85	3.67	6	27,872
6.	Gulbarga	R.C.C poles	1st May 1986 to 10th July 1986	3.71	3	26,006
7.	Gulbarga	..do..	6th March 1986 to 10th July 1986	9.72	3	41,840
				Total		Rs.3,31,885

In respect of the above cases, it was reported that notices had been issued in respect of items 3 and 6, and records were submitted to higher authorities in respect of item 4. In the remaining cases reply had not been received (November 1990).

(ii) Under the provisions of the Karnataka Sales Tax Act, 1957, on sales of any industrial input by one registered dealer to another, for use by the latter as a component part or raw material of any other goods which he intends to manufacture inside the State for sale, tax is leviable at a concessional rate of 4 per cent, if the selling dealer produces to the assessing authority a declaration by the purchasing dealer in the prescribed form. For this purpose, the

expression "raw material" excludes wood, bamboo and timber. It also excludes fuels, electrodes, arc carbons and consumable stores of similar type. 'Veneers' being thin sheets of timber continue to be 'timber' only and therefore, not eligible for the concessional rate of tax. Further, on sales of timber in cut or manufactured form, obtained out of timber not already taxed under the Act, tax is leviable at the rate of 13 per cent from 1st April 1986, at the point of first sale. Similarly, lubricating oils/grease being consumable stores are not eligible for the concessional rate. On sale of lubricating oils including grease, tax is leviable at the rate of 15 per cent from 1st April 1987 (13 per cent from 1st April 1986 to 31st March 1987) at the point of first sale.

In Mangalore City, on sales of veneers valued at Rs.8.67 lakhs made by a dealer during the year 1986-87 (October 1986 to September 1987), to other registered dealers, tax was incorrectly levied (September 1988) at the concessional rate of 4 per cent on the strength of the prescribed declarations filed. The grant of inadmissible concession resulted in tax being levied short by Rs.78,057.

On the mistake being pointed out (October 1989) in audit, the assessing authority issued (October 1989) notice for rectification of the same. Further report has not been received (November 1990).

The case was reported to Government in May 1990, their reply has not been received

(November 1990).

(iii) Under the Karnataka Sales Tax Act, 1957, on sales of edible oils, tax is leviable at the rate of 8 per cent, from 1st April 1986. However, by a notification issued in March 1986, the rate of tax payable on the sale of refined cotton seed oil was reduced (from 8 per cent) to 2 per cent, from 1st April 1986, subject to the condition that such refined oil is manufactured out of non-refined oil which has already been subjected to tax under the Act.

In Bangalore City, on sales of refined cotton seed oil amounting to Rs.13.50 lakhs, made by a dealer in edible oils during the period from 1st April 1986 to 31st October 1986, tax was levied at the concessional rate of 2 per cent instead of at the normal rate of 8 per cent. The concessional rate allowed was not admissible as the assessee had not produced any evidence to the effect that the refined cotton seed oil sold was manufactured out of non-refined oil which had already been taxed under the provisions of the Act, as aforesaid. The irregular grant of concession resulted in tax being levied short by Rs.81,000.

On the mistake being pointed out (December 1989) in audit, the assessing officer stated that since the pecuniary jurisdiction exceeded the limits of his office the file was transferred to the appropriate jurisdictional assessing authority. Further report in the matter has not been

received (November 1990).

The case was reported to Government in May 1990; their reply has not been received (November 1990).

(iv) Under the provisions of the Central Sales Tax Act, 1956, on inter-State sales of any goods to any Government department, concessional rate of sales tax at 4 per cent is leviable on production of prescribed certificate in Form 'D' duly filled in and signed by a duly authorised officer of the Government. This concession is not available on sales to autonomous bodies or non-Government institutions in whose case tax is leviable at the rate applicable to the sale or purchase of such goods inside the appropriate State or at the rate of 10 per cent, whichever is higher. Further, on sales of electrical goods, tax at the rate of 10 per cent was leviable up to 31st July 1985 and on sales of fabricated items, tax was leviable at the rate of 5 per cent up to 31st March 1986, under the Karnataka Sales Tax Act, 1957. The Commissioner has also clarified (August 1988) that sales made to Employees State Insurance Corporation (not a Government department) do not enjoy the benefit of concessional rate of tax under the Act **ibid.**

(a) In Bangalore City, a dealer sold electrical goods valued at Rs.4.38 lakhs to autonomous bodies outside the State during the calendar year 1984. Tax on these sales was incorrectly levied at the concessional rate of

4 per cent on the basis of the certificates issued by them, instead of at 10 per cent. The mistake resulted in tax being levied short by Rs.26,307.

On the mistake being pointed out (September 1989) in audit, the department stated (February 1991) that the amount has been recovered. The case was reported to Government in December 1989.

(b) In Bangalore City, on inter-State sales of fabricated items amounting to Rs.5.55 lakhs, made by a dealer during the year 1985-86, to a religious institution, tax was levied (July 1988) at the concessional rate of 4 per cent on the strength of the certificate signed by the officer in charge of the institution, instead of at the correct rate of 10 per cent. The mistake resulted in tax being levied short by Rs.33,300.

On the mistake being pointed out (September 1989) in audit, the assessing officer stated (September 1989) that the records would be sent to higher authorities for **suo motu** revision. Further report has not been received (November 1990).

The case was reported to Government in January 1990; their reply has not been received (November 1990).

(v) By a notification issued in October 1981, the rate of tax on sales of manufactured

goods by all new industrial units was reduced by 50 per cent (with effect from 1st November 1981) for a period of five years from the respective dates of commencement of their commercial production. This concession is subject to the restrictions and conditions laid down under the Karnataka Sales Tax Act, 1957 and the Central Sales Tax Act, 1956 according to which the concession available to a new industrial unit during each accounting year shall be restricted to 10 per cent of the unit's total investment in plant and machinery at the time of commencement of its commercial production and the total concession during the entire five-years period shall not exceed 50 per cent of its total such investment. Such a unit is, however, allowed to carry forward the unavailed portion of the concession, if any, from year to year within the said five years period. The concession is not available for diversification or expansion of an existing industrial unit or to a unit established with a different name after the closure of another pre-existing industrial unit.

In 2 cases involving short levy of tax due to grant of excess/double concession, demand aggregating to Rs.1.29 lakhs were raised on being pointed out (October 1989) in audit. A few other cases are mentioned below.

(a) In Raichur district, in respect of two new industrial units, which started commercial production after 1st November 1981, the concession allowed during the years 1981-82 to 1986-87 was not restricted in one case to 10 per cent of the

total investment in plant and machinery at the time of commencement of commercial production and in the other case, the concession was allowed on the tax payable on the purchase of raw material also. The mistakes resulted in excess allowance of concession amounting to Rs.84,216.

On the mistakes being pointed out (August 1988) in audit, the department levied an amount of Rs.33,875 in respect of one unit for the years 1981-82 to 1983-84. Report on action taken in respect of the other unit has not been received (November 1990).

The case was reported to Government in April 1990; their reply has not been received (November 1990).

(b) In Bangalore City, a new small scale industrial unit had invested Rs.2.40 lakhs on plant and machinery at the time of its commencing commercial production during 1984-85 and the concession by way of tax incentive on sales tax allowable to this unit for a year, had to be restricted to 10 per cent of the investment, i.e., Rs.24,000. However, while finalising the assessments of this unit for the calendar years 1985 and 1986, tax concession was allowed in excess of the above mentioned limit, resulting in excess grant of tax concession by Rs.79,892.

The mistake was pointed out to the department in January 1990 and was reported to Government in June 1990; their replies have not been received

(November 1990).

(c) A new industrial unit in Tumkur district, which had invested Rs.3.14 lakhs on plant and machinery at the time of commencement of commercial production during 1982-83, was allowed the maximum concession of Rs.1.57 lakhs for the entire five years from 1982-83 to 1986-87 being 50 per cent of the value of plant and machinery at the time of commencement of commercial production without restricting it to Rs.1.03 lakhs (50 per cent of Rs.2.06 lakhs being the tax payable on the manufactured goods sold during the period). The incorrect allowance of concession resulted in tax being levied short by Rs.53,646.

On the mistake being pointed out(July 1989) in audit, the assessing officer submitted (July 1989) the records to the Deputy Commissioner of Commercial Taxes for **suo motu** revision of the assessments. Further report has not been received (November 1990).

The case was reported to Government in November 1989; their reply has not been received (November 1990).

(d) In Chitradurga district, in the case of a rice miller, the maximum concession of 10 per cent, of the unit's total investment on plant and machinery for each year amounting to Rs.74,964 was allowed (June 1988 and February 1989) as incentive for the years 1984-85 and

1985-86 though the admissible concession i.e., 50 per cent of the taxes payable under State Sales Tax/Central Sales Tax Act was only Rs.35,492. The mistake resulted in tax concession of Rs.39,472 being allowed in excess.

The mistake was pointed out to the department in October 1989 and was reported to Government in January 1990; their replies have not been received (November 1990).

(e) A new small scale industrial unit in Raichur district had invested Rs.3.05 lakhs on plant and machinery at the time of commencement of its commercial production during 1982-83. while finalising the assessments of this unit for the years 1983-84 to 1986-87, the sales tax concession to the extent of 10 per cent of investment in plant and machinery viz., Rs.30,500 was allowed in full for 3 years even though the actual tax liability at the rate of 50 per cent of the normal rates of tax was far less than the above amount during each year. As a result, while the actual total tax concession admissible for all the 5 years from 1982-83 to 1986-87 was Rs.94,950, the concession actually allowed was to the extent of Rs.1,29,419 resulting in excess allowance of tax concession by Rs.34,469.

The mistake was pointed out to the department in December 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

(f) A new industrial unit in Gulbarga district, which had invested Rs.4.20 lakhs in plant and machinery at the time of commencement of commercial production during 1986-87, was entitled to a tax concession of Rs.10,187 only, being 50 per cent of the tax of Rs.20,374 assessed (March 1989). But a concession of Rs.42,000 was allowed for that year being 10 per cent of the value of plant and machinery, under the mistaken notion, that the industry was eligible for a minimum concession of Rs.42,000. The assessee had actually paid a tax of Rs.8,929 only and as against a further sum of Rs.1,258 due from him towards tax, a sum of Rs.30,555 was irregularly refunded to the assessee by the department. Thus, a total amount of Rs.31,813 is recoverable from the assessee.

On the mistake being pointed out (August 1989) in audit, the assessing officer stated (August 1989) that the connected files had been sent (August 1989) to the Deputy Commissioner for necessary action. Further report has not been received (November 1990).

The case was reported to Government in December 1989; their reply had not been received (November 1990).

(g) In respect of an assessee (a new small scale industry) in Bangalore, as per the certificate of investment issued (March 1988) by the Industries Department, the investment

on plant and machinery at the time of commencement of commercial production in February 1984 was Rs.15,356 and investment after the date of commencement of commercial production amounted to Rs.2.15 lakhs. In the assessments concluded (December 1988) for the years 1984-85 and 1985-86, the tax concession was allowed by considering the investment made after the date of commencement of commercial production also, which resulted in allowance of an excess tax concession of Rs.25,386.

The mistake was pointed out in audit to the department in December 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

(h) In Bangalore district, a new small scale industrial unit had invested Rs.67,927 on plant and machinery at the time of commencement of its commercial production, during 1982-83 and the concession in levy of sales tax available to this unit during the five years period was to be limited to Rs.33,964 (being 50 per cent of Rs.67,927). However, while finalising (between April 1984 and January 1988) the assessments of this unit for the years 1982-83 to 1986-87, a total tax concession of Rs.58,110 was allowed as against the maximum permissible limit of Rs.33,964, as aforesaid, resulting in excess allowance of tax concession by Rs.24,146.

On the mistake being pointed out (January 1990) in audit, the assessing officer stated January 1990) that the assessment records would

be submitted to higher authority for further action. Further report has not been received (November 1990).

The case was reported to government in June 1990; their reply has not been received (November 1990).

(vi) As per explanation 2 below the notification issued in October 1981, the tax incentive mentioned in sub-para (v) above was also applicable to small scale industrial units which started commercial production during the period April 1975 to March 1981, subject to certain conditions. The tax concession was, however, not available if the goods manufactured and sold by any such unit was exempted from levy of tax under the Act.

In Bangalore City, tax concesion to the extent of Rs.35,713 was wrongly allowed (April 1988) under the above mentioned scheme to a Khandasari sugar unit by way of reduction in the purchase tax paid on sugarcane purchase for the year 1982-83. Since the concession was to be allowed on the sale of manufactured goods only, viz., sugar and 'sugar' was exempt from tax under the Act, the concession allowed was irregular.

On the mistake being pointed out (November 1989) in audit, the assessing officer stated (November 1989) that the records would be sent to higher authorities for **suo motu** revision. Further report has not been received (November 1990).

The case was reported to Government in January 1990; their reply has not been received (November 1990).

(vii) According to the notification dated 6th March 1986 referred to in sub-para (i) above, the concessional rate of tax on sales made to Government departments is applicable only where the goods are manufactured by the dealers in Karnataka.

In Bangalore City, in respect of an assessee on sales of motor vehicle parts and accessories amounting to Rs.2.60 lakhs made to a Government department during the year 1987-88, concessional rate of tax was incorrectly allowed although the assessee was not the manufacturer of the said goods, but had purchased from outside the State. The mistake resulted in tax being levied short by Rs.23,401.

On the mistake being pointed out (December 1989) in audit, the assessing officer issued (December 1989) notice to the dealer proposing rectification of the mistake. Further report has not been received (November 1990).

The case was reported to Government in June 1990; their reply has not been received (November 1990).

2.6. Short levy due to incorrect grant of exemption

(i) Under the Karnataka Sales Tax Act,

1957, on sales of goods not included in any of the Schedules to the Act, tax was leviable at the general rate of 5 per cent with effect from 1st April 1982 (7 per cent from 1st April 1986 at all points of sale). Lime which is used for construction purposes is taxable as an unclassified item as clarified (August 1987) by the Commissioner of Commercial Taxes.

In one case, under-assessment of tax due to incorrect grant of exemption on sale of such lime made during the years 1983-84 and 1984-85 as tax suffered goods instead of levying tax at all points of sale as aforesaid, additional tax of Rs.22,088 was recovered (March 1989 and June 1989) on being pointed out (December 1988) in audit.

(ii) Under the provisions of the Karnataka Sales Tax Act, 1957, on sales of corrugated boxes, paper boxes, folding cartons, paper bags etc., tax was leviable at the rate of 4 per cent with effect from 1st April 1984, 6 per cent from 1st August 1985 and 8 per cent from 1st April 1986. Further, under the Central Sales Tax Act, 1956, on inter-State sales of these goods, without 'C' or 'D' forms, with effect from 1st April 1963, tax is leviable at the rate of 10 per cent. Under the Central Act, with effect from 1st April 1976, the last sale or purchase of any goods occasioning the export of such goods out of the territory of India is also deemed to be in the course of export (and is exempt from levy of tax) if such last sale or purchase took place after and was for the purpose of complying with the agreement

or order for or in relation to such export. It has been judicially held * that sale of packing materials which are not the subject matter of the contract for export, cannot be said to have been made after and for the purpose of complying with the agreement or order for or in relation to such export (and hence not eligible for exemption under the said Act).

In Bangalore, while concluding (between July 1988 and December 1988) the assessments for the years 1984-85 to 1986-87 of a manufacturer and seller of 'corrugated boxes', the sales turnover of Rs.44.48 lakhs to exporters of fruit products outside the State was exempted from levy of tax treating the sales as in the course of export. The exemption allowed was not in order, since the goods sold and the goods exported were not the same and also the sale of corrugated boxes was not made after and for the purpose of complying with the agreement or order for or in relation to such export of fruit products. The incorrect exemption resulted in tax being levied short to the extent of Rs.4.45 lakhs.

The omission was pointed out (December 1989) to the department and was reported to Government in March 1990; their replies have not been received (November 1990).

(iii) Under the provisions of the Karnataka Sales Tax Act, 1957, where tax has been levied

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* M/s. Packwell Industries (P) Limited, Vs. The State of Tamil Nadu (1982) 51 STC 329 (Mad.)

in respect of any item of goods of iron and steel referred to in Serial Number 2 of the Fourth Schedule and out of the said goods any other item of goods of iron and steel referred to under said Serial Number is manufactured in Karnataka and sold, the tax on the sale of such manufactured goods shall be reduced by the amount of tax already paid under this Act on the relative items of goods of iron and steel used in its manufacture. Following the ratio of the Supreme Court judgement*, each of the items under Serial Number 2 of the Fourth Schedule, is commercially different and when any item of goods specified in the Serial Number is used in the manufacture of any other item, the item so manufactured is liable to be taxed again on its sale.

(a) In the case of an assessee in Tumkur district manufacturing M.S. Wires out of M.S. Wire Rods purchased locally, sales turnover amounting to Rs.64.87 lakhs of MS wire during the years 1985-86 and 1986-87 was exempted (September 1988) from levy of tax on the ground that it was a second sale. The exemption allowed was not correct on the basis of the ratio of the decision cited above, thus, resulting in short levy of tax amounting to Rs.52,296.

On the mistake being pointed out (July 1989) in audit, the department revised (August 1989) the assessment and raised (August 1989) demand for Rs.52,296.

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* State of Tamil Nadu Vs. Pyare Lal Malhotra (1976) 37 STC 319 (S.C.)

The case was reported to Government in November 1989.

(b) In Bangalore City, a dealer engaged in the business of buying iron and steel billets, blooms and ingots from local registered dealers and converting the same into M.S. rounds, bars, plates etc., was exempted from levy of tax, on a turnover of Rs.69.45 lakhs relating to sales of M.S. bars, plates etc., during the years 1980-81 to 1982-83 instead of taking the entire turnover and allowing set off to the extent of tax already paid on the purchase value of iron and steel used in manufacture, as aforesaid. The incorrect exemption resulted in short levy of tax of Rs.1.31 lakhs for the assessment years 1980-81 to 1982-83.

On the mistake being pointed out in audit (June 1989) the department issued (June 1989) notice to the assessee for assessment of the turnover incorrectly exempted. Further report has not been received (November 1990).

The case was reported to the Government in October 1989; their reply has not been received (November 1990).

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

in relation to such export. According to the Central Sales Tax (Registration and Turnover) Rules, 1957, a dealer may in support of his claim for exemption under Section 5(3) of the Act, furnish to the prescribed authority a certificate in Form 'H' duly filled in and signed by the exporter along with the evidence of export of such goods, indicating the agreement number and date entered into with the foreign buyer.

In Dakshina Kannada district, the sales of fish-oil amounting to Rs.14.43 lakhs, made by an assessee during the year 1984-85 (September 1984 to 31st August 1985) to exporters both within and outside the State, were exempted from levy of tax (July 1988) by treating them as last sales preceding the sale occasioning export out of the country on the basis of prescribed certificates in Form 'H' issued by the exporters. These certificates, however, did not give reference to any prior existing agreement or purchase order between the exporter and the foreign buyer in relation to the said exports. On the other hand, the records indicated that the purchases made by the exporters were meant for general export and not with reference to any particular order or agreement of a foreign buyer. Under these circumstances, the transactions should have been treated as normal inter-State sales and intra-State sales and assessed to tax at the rates of 5 per cent under the Karnataka Sales Tax Act, 1957 (applicable to unclassified goods) and 10 per cent under the Central Sales Tax Act. The incorrect grant of exemption, as aforesaid, resulted in short levy of tax amounting to Rs.1.17 lakhs.

The mistake was pointed out to the department in March 1990 and was reported to Government in June 1990; their replies have not been received (November 1990).

(v) Under the Karnataka Sales Tax Act, 1957, on sales of blasting gun powder and other mechanical explosives, tax was leviable at the rate of 6 per cent up to 31st March 1986 and at 8 per cent thereafter, at the point of first or earliest of successive sales in the State. On sales of goods not included in any of the Schedules to the Act, tax was leviable at the general rate of 4 per cent up to 31st March 1982 and at 5 per cent up to 31st March 1986 and at 7 per cent thereafter, at all points of sale.

The Commissioner of Commercial Taxes had clarified (September 1986) that parts of explosives, such as, detonators, safety fuses and gelatine would be taxable at the general rate.

(a) In Kolar district, on sales of detonators, gelatine and safety fuses amounting to Rs.14.53 lakhs made by a dealer during the years 1984-85 and 1985-86, no tax was levied (December 1987 and August 1988) treating the same as second sales of mechanical explosives although it was taxable at the general rate at all points of sale, as aforesaid. The incorrect exemption resulted in non-levy of tax amounting to Rs.89,285.

On the mistake being pointed out (September 1989) in audit, the department stated (July 1990) that the assessment had since been revised and

additional demand raised but the assessee had gone in appeal to the appellate authority. Report on the result of appeal has not been received (November 1990).

(b) Similarly, in Dharwad district, sales turnover of special gelatine amounting to Rs.3.82 lakhs of a dealer in explosives during the years 1986-87 and 1987-88 was erroneously exempted (August 1988) from levy of tax treating it as second sales of explosives. The incorrect grant of exemption resulted in non-levy of tax amounting to Rs.26,707.

On the mistake being pointed out (November 1989) in audit, the department stated (June 1990) that the assessment was revised and differential tax of Rs.26,707 levied.

The above cases were reported to Government in March 1990.

(vi) Under the Karnataka Sales Tax Act, 1957, for purposes of assessment of tax under the Act, the burden of proving that any transaction or any turnover of a dealer is not liable to tax shall lie on such dealer and he shall be liable to pay tax as first seller or first purchaser of the goods unless he proves that the sale or purchase as the case may be, of such goods had already been subjected to tax under the Act.

Cement was liable to tax at the first point of sale at the rate of 11 per cent up to

31st March 1983 and 15 per cent thereafter.

In Bangalore City, while finalising (July 1988) the assessment of a dealer in cement for the Co-operative year 1982-83 on best judgement basis, exemption was allowed on a turnover of Rs.7.52 lakhs as second sales though there was no proof of the goods having suffered tax earlier. The irregular grant of exemption resulted in non-levy of tax to the extent of Rs. one lakh.

On the omission being pointed out (August 1989) in audit, the department accepted the objection and instructed (December 1989) the assessing officer to initiate action to assess the turnover that escaped assessment. Further report has not been received (November 1990).

The matter was reported to Government in February 1990; their reply has not been received (November 1990).

(vii) Under the Karnataka Sales Tax Act, 1957, on sales of 'all machinery and spare parts and accessories thereof' tax was leviable at the rate of 8 per cent from 1st April 1984, 9.6 per cent from 1st August 1985 and 10 per cent from 1st April 1986 at the point of first or the earliest of successive sales in the State.

In Bangalore City, on the first point sales of cranes, hoists and machinery parts amounting to Rs.8.03 lakhs, made by a manufacturing dealer during the years 1984-85 to 1986-87 (up to 31st

July 1987), no tax was levied treating these as second sales within the State. The incorrect grant of exemption resulted in non-levy of tax amounting to Rs.79,274.

The mistake was pointed out to the department in September 1988 and was reported to Government in August 1989; their replies have not been received (November 1990).

(viii) Under the Karnataka Sales Tax Act, 1957, on sales of goods not included in any of the Schedules of the Act, tax was leviable at the general rate of 5 per cent between 1st April 1982 and 31st March 1986. Further childrens' toys costing not more than twenty rupees per item are exempted from tax. It has, however, been held * that rubber balloons are not toys and are liable to tax at the rates applicable to unclassified goods.

In Bangalore City, sales of rubber balloons amounting to Rs.7.86 lakhs, made by a manufacturing dealer, both within the State and on inter-State trade during the year 1985-86, were erroneously exempted (March 1989) from levy of tax treating them as toys costing not more than twenty rupees. The incorrect exemption resulted in non-levy of tax amounting to Rs.52,737.

The mistake was pointed out in audit to the department in July 1989 and was reported

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* Sri.Venkateshwara Traders Vs. The Commissioner of Commercial Taxes, Bangalore. STA-4 of 1986.

to Government in December 1989; their replies have not been received (November 1990).

(ix) By a notification issued (March 1983) under the Karnataka Sales Tax Act, 1957, goods manufactured in Karnataka and sold by tiny * sector industrial units are exempted from levy of tax for a period of five years from the date of commencement of commercial production. This concession is subject to the condition that the total investment in plant and machinery either at the commencement of commercial production or on any day during the succeeding period of five years does not exceed Rs.2 lakhs. The Commissioner of Commercial Taxes has clarified (January 1986) that "fabricated items" are taxable at the rates applicable to unclassified goods.

In Bidar district, an assessee manufacturing and dealing in Chemical Plant equipments was exempted from payment of tax on a turnover of Rs.7.84 lakhs relating to sale of fabricated items and scrap during the assessment year 1986, even though the investment in plant and machinery exceeded Rs.2 lakhs during the year as per the balance sheet produced. The irregular exemption resulted in non-levy of tax to the extent of Rs.54,875.

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* 'tiny sector industrial unit' means an industrial unit which is registered with the Director of Industries and Commerce, Government of Karnataka as a small scale industry in the tiny sector.

The mistake was pointed out to the department in August 1989 and was reported to Government in November 1989; their replies have not been received (November 1990).

(x) As per the provisions of the Central Sales Tax Act, 1956, and the Rules made thereunder, where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another, or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement, effected by a transfer of documents of title to such goods to a registered dealer, shall be exempt from levy of tax, provided the prescribed certificate/ declaration in Form 'E-I' or 'E-II' and Form 'C' from the seller and the purchaser respectively are furnished to the assessing authority. Further, under the Karnataka Sales Tax Act, 1957, on sales of electrical goods, tax was leviable at the rate of 10 per cent up to 31st July 1985 and at 8 per cent thereafter up to 31st March 1986.

In Bangalore City, transit sales of electrical goods amounting to Rs.2.02 lakhs made by a dealer during the years 1983-84 and 1984-85, were exempted from levy of tax although the requisite certificates/ declarations in Form E-I/C were not furnished to the assessing authority. The mistake resulted in short levy of tax amounting to Rs.20,047.

The irregularity was pointed out to the department in March 1990 and was reported to

Government in July 1990; their replies have not been received (November 1990).

(xi) Under the Karnataka Sales Tax Act, 1957, on the first or earliest of successive sales in the State, of electronic goods and parts and accessories thereof, tax is leviable at the rate of 20 per cent, from 1st April 1986. By a Government notification issued in March 1987, from 1st April 1987, tax on sales of electronic musical instruments and parts and accessories thereof is, however, leviable at the rate of 6 per cent. "Electronic musical instruments" are different from "musical instruments" which are exempt from levy of tax, with effect from 1st April 1987.

In Bangalore City, while finalising (March 1989) the assessment of a dealer in electronic musical instruments and electronic calculators for the year 1987-88, no tax was levied on the sales of electronic musical instruments amounting to Rs.4.79 lakhs treating them as musical instruments and as such exempt from tax. The incorrect grant of exemption resulted in non-levy of tax of Rs.34,744 (including turnover tax).

On the mistake being pointed out (November 1989) in audit, the department stated (May 1990) that the assessment was revised (December 1989) and additional demand of Rs.34,744 raised.

The matter was reported to Government in January 1990.

(xii) By a notification issued in October 1976, the tax payable on sale of pick-axes and **mumties** (unclassified goods) was exempt with effect from 1st November 1976. As per provisions of the Karnataka Sales Tax Act, 1957, as existed from 1st January 1968 to 31st March 1983, if the rate of tax payable under the Act in respect of any goods or class of goods gets modified by an amendment to the Act, notification, if any, issued in respect of such goods or class of goods under any other provisions of the Act, shall, with effect from the date from which such amendment comes into force be deemed to be cancelled to the extent it relates to such goods or class of goods. With the modification of the rate of tax, in respect of unclassified goods with effect from 1st April 1982, the aforesiad notification was deemed to be cancelled with effect from 1st April 1982. By a subsequent notification issued in September 1982, the exemption in regard to pick-axes and **mumties** was restored. Thus, sales of pick-axes and mumties was taxable at the general rate of 5 per cent applicable to unclassified goods from 1st April 1982 to 31st August 1982.

In Bangalore City, on sales of pick-axes and **mumties** amounting to Rs.5.35 lakhs made by a dealer during the period 1st April 1982 to 31st August 1982, no tax was levied (June 1988) holding them as covered by the notification issued in October 1976 although it was deemed to have been cancelled with effect from 1st April 1982, as aforesaid. The omission resulted in tax being levied short by Rs.32,092.

On the irregularity being pointed out (January 1990) in audit, the assessing officer collected (October 1990) the differential tax of Rs.32,092.

The case was reported to Government in June 1990.

(xiii) By a notification issued (June 1985), under the Karnataka Sales Tax Act, 1957, effective from 25th June 1985, Government exempted tax payable on the sale of 'diesel captive generating units' only. The exemption is, thus, not admissible to parts and accessories thereof which are taxable as "spare parts and accessories of machinery" under the Act at the rate of 13 per cent with effect from 1st April 1987 (10 per cent from 1st April 1986 to 31st March 1987).

In Bangalore City, sales of accessories of diesel generating units amounting to Rs.2.56 lakhs, made both locally and inter-State, by an assessee during the years 1986-87 and 1987-88 were exempted from levy of tax instead of levying tax at the rate of 10 and 13 per cent as aforesaid. The mistake resulted in tax being levied short by Rs.31,388.

The mistake was pointed out to the department in April 1990 and was reported to Government in June 1990; their replies have not been received (November 1990).

(xiv) Under the Karnataka Sales Tax Act,

1957, on sales of specified items of iron and steel, with effect from 1st November 1982, tax is leviable at the rate of 4 per cent at the point of first sale in the State. Mild Steel pipes are taxable accordingly.

In Bangalore City, while finalising (January 1989) the assessments of a dealer, on first sales of M.S.Pipes amounting to Rs.6.75 lakhs, made during the Deepavali year 1985-86, tax was omitted to be levied treating them as tax-suffered goods, although the assessment records did not contain any documentary evidence that the goods sold had already suffered tax. The irregularity resulted in tax being realised short by Rs.26,988.

On the mistake being pointed out (March 1990) in audit, the assessing officer stated (March 1990) that the records would be submitted for **suo motu** revision. Report on further development has not been received (November 1990).

The case was reported to Government in July 1990; their reply has not been received (November 1990).

(xv) Under the Karnataka Sales Tax Act, 1957, on sales of all kinds of man-made or synthetic staple fibres or fibres of filament yarn, tax was leviable at the rate of 8 per cent from 1st April 1986 to 31st March 1987 at the point of first or earliest of successive sales within the State. Hand spun woollen yarn is however, exempt from levy of tax under the Act.

In one case in Dharwad district, involving short levy of tax due to incorrect exemption allowed on first sales turnover of acrylic woollen yarn (treating it as hand spun woollen yarn) for the Deepavali year 1986-87, an amount of Rs. 20,490 (including turnover tax) was recovered (May 1990) on being pointed out (November 1989) in audit.

2.7. Incorrect determination of taxable turnover

(i) According to the Karnataka Sales Tax Act, 1957, 'turnover' means the aggregate amount for which goods are bought or sold or supplied or distributed by a dealer whether for cash or for deferred payment or other valuable consideration.

In one case, involving short levy of tax due to incorrect determination of turnover, an amount of Rs.38,175 was recovered (January 1990 and February 1990) on being pointed out (February 1989) in audit.

(ii) Central excise duty payable by a manufacturer is part of purchase/sale price and is to be included in the turnover of an assessee for the purpose of assessment of sales tax. It has also been held* by the Karnataka Appellate Tribunal that "Excise Duty" is a part of the taxable turnover. Therefore, it is not deductible.

In one case, involving short levy of tax

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* M/s.Coffee Board Vs. State of Karnataka (1980 Kar LJ (Tri)(1) STA 123, 354 and 355/79

due to incorrect determination of taxable turnover, an amount of Rs.20,775 was recovered (November 1989) on being pointed out (July 1989) in audit. Another case is indicated below.

Further, under the provisions of the Central Sales Tax Act, 1956, on inter-State sales of goods (other than declared goods), tax is leviable at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the State under the State Act, whichever is higher. However, in cases where such sales are supported by valid declarations, tax is leviable at the concessional rate of 4 per cent.

In Belgaum City, while finalising (April 1988) the Central Sales Tax assessment of a manufacturer dealing in machine castings, a turnover of Rs.5.91 lakhs being the element of Central excise duty, included in inter-State sales turnover, was allowed as a deduction during the year 1985-86 (August 1985 to July 1986). The mistake resulted in tax being levied short by Rs.25,089.

The mistake was pointed out to the department in April 1989 and was reported to Government in November 1989; their replies have not been received (November 1990).

(iii) Under the provisions of the Karnataka Sales Tax Act, 1957 and the Rules made thereunder, amounts collected by way of tax under the Act by a dealer are deductible from the total turnover for determining the taxable turnover. In respect of taxes collected under any other Act, however,

no such deduction is admissible. Further, turnover tax is leviable in case total turnover in a year exceeds the prescribed limits.

In Bangalore division, in respect of a manufacturer and dealer in industrial gases, while finalising the assessments for the calendar years 1986 and 1987, entry tax of Rs.1.42 lakhs collected under another Act viz., the Karnataka Tax on Entry of Goods into Local Areas for Consumption Use or Sale Therein Act, 1979 was incorrectly deducted while arriving at the taxable turnover. The mistake resulted in incorrect determination of taxable turnover and consequent short levy of tax of Rs.20,103. Further, turnover tax of Rs.2,200 at the rate of one per cent on the total turnover of Rs.2.20 lakhs for the year 1986 was also not levied. The total short levy amounted to Rs.22,303.

On the omissions being pointed out (July 1989) in audit, the department stated (March 1990) that the entire amount of Rs.22,303 was recovered.

(iv) Under the Karnataka Sales Tax Act, 1957, and the Rules made thereunder, every dealer is required to maintain commodity-wise accounts separately in respect of taxable, non-taxable and exempted goods. Further, on sales of medicinal and pharmaceutical preparations, tax is leviable at the rate of 10 per cent from 1st April 1986 (8 per cent up to 31st March 1986) at the point of first sale. By notifications issued by Government in July 1985 and March 1986, certain life saving drugs, as specified in the Schedules to the notifi-

cations, are exempt from levy of tax, with effect from 1st August 1985 and 1st April 1986 respectively.

In Bangalore City, an assessee had purchased during the Deepavali year 1985-86 taxable medicinal and pharmaceutical preparations valued at Rs.90.35 lakhs, from outside the State, besides purchase of tax paid drugs and life saving drugs worth Rs.55.90 lakhs and 10.43 lakhs respectively. It was noticed in audit (October 1989) that as per the accounts rendered by the assessee, a loss to the extent of 10 per cent under first dealer (taxable) goods, a marginal profit of 5.6 per cent under second dealer goods and profit to the extent of 226.67 per cent in respect of life saving drugs (exempted goods) were returned by the assessee. This position was accepted by the assessing officer and the assessment concluded accordingly. It was pointed out during audit (October 1989) that exhibition of loss to the tune of 10 per cent under first sales of drugs and earning of huge profits to the extent of 227 per cent under life saving drugs, would be unrealistic inasmuch as the drugs carry fixed sale price exhibited on the containers of each medicine as per Drugs Control Act, 1940. Therefore, in the absence of proper accounts and by adopting a fair profit of 10 per cent normally adopted for this item of trade, the taxable turnover of first dealer drugs (taxable) would be more by Rs.17.78 lakhs attracting a tax of Rs.1.81 lakhs.

The short levy was pointed out to the department in October 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

(v) Under the Karnataka Sales Tax Act, 1957, tax was leviable at the rate of 3 per cent up to 31st March 1983 and at 4 per cent thereafter at the point of last purchase in the State on all kinds of cotton in its un-manufactured state, whether ginned, baled, pressed or otherwise, but not including cotton waste. It has been judicially held * that the (cotton) seed separated by ginning process cannot be said to be cotton itself or part of cotton.

In Dharwad district, while concluding (August 1988) assessments of a textile mill for the three years 1980-81, 1982-83 and 1984-85, purchase turnover of cotton for purpose of levy of tax was determined after deducting the sale price of cotton seeds and cotton waste from purchase value of cotton consumed in the manufacture of cotton yarn. The allowance of inadmissible deduction, as aforesaid, resulted in escapement of taxable turnover of cotton at least to the extent of Rs.36.85 lakhs and consequent short levy of tax amounting to Rs.1.34 lakhs.

On the mistake being pointed out (November 1989) in audit, the department stated (August 1990) that the assessments were revised, creating additional demand of Rs.1.34 lakhs.

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* State of Punjab and Others Vs. Chandulal Kishorilal; State of Punjab and others Vs. Krishna Cotton, Dal and Oil Factory (1970) 25 STC 52 (S.C.)

The case was reported to Government in January 1990.

(vi) Under the Karnataka Sales Tax Act, 1957, "turnover" means the aggregate amount for which goods are bought or sold or supplied or distributed by a dealer whether for cash or for deferred payment or other valuable consideration. The amount for which goods are sold includes any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof. Thus, pre-sale expenses like excise duty, packing charges, bottling charges etc., incurred on goods imported from outside the State form part of sales turnover.

On sales of beer where consideration for the sale or purchase includes the duties of excise payable under the Karnataka Excise Act, 1965, tax is leviable at the rate of 36 per cent (with effect from 1st Apri 1986) at the point of first or the earliest of successive sales within the State.

In Gulbarga, while concluding (February 1989) the assessment of a wholesale liquor dealer for the year 1986-87 (1st July 1986 to 30th June 1987), the assessing authority accepted the taxable turnover as returned by the assessee although it did not compare well with the corresponding purchase of taxable goods (closing stock being nil). Also, while determining turnover the assessing authority did not take into account pre-sale expenses like excise duty, packing charges, bottling charges etc., incurred by the assessee

while determining the taxable turnover of goods imported from outside the State. The adoption of the turnover returned by assessee as such, resulted in short determination of taxable sales turnover to the extent of Rs.2.61 lakhs (by adopting a nominal gross profit of 5 per cent over purchase turnover) and corresponding short levy of tax of Rs.94,005.

The mistake was pointed out to the department in September 1989 and was reported to Government in February 1990; their replies have not been received (November 1990).

(vii) Under the Karnataka Sales Tax Act, 1957, on sales of 'medicinal and pharmaceutical preparations', tax was leviable on the turnover at the rate of 8 per cent up to 31st March 1986 and at the rate of 10 per cent thereafter.

In Bangalore City, while concluding (June 1987) the assessment of a dealer in medicines for the year 1985-86 (June 1985 to May 1986), the taxable turnover of Rs.34.38 lakhs declared by him was accepted by the assessing officer instead of determining the turnover at Rs.40.21 lakhs arrived at by adding a gross profit of 13 per cent (earned by the assessee as per the trading account) to the inter-State purchase value of medicines amounting to Rs.35.59 lakhs sold. The mistake resulted in short levy of tax amounting to Rs.60,696 on the escaped turnover of Rs.5.83 lakhs.

On the mistake being pointed out (February 1988) in audit, the department revised the assessment order (June 1988) levying an additional tax of Rs.60,696.

The case was reported to Government in August 1989.

(viii) Under the Karnataka Sales Tax Act, 1957, on groundnut and peanut including groundnut or peanut seeds, tax was leviable at the rate of 4 per cent at the point of first purchase within the State during the period 18th November 1983 to 31st March 1987.

In Bellary district, while finalising the assessment (February 1989) of an oil miller for the year 1986-87, on the first purchase of groundnuts and groundnut seeds, tax was levied on a turnover of Rs.10.61 lakhs only while the actual purchases amounted to Rs.24.88 lakhs. The mistake resulted in reduction of Rs.14.27 lakhs from taxable purchase turnover and consequent short levy of tax by Rs.57,112.

The mistake was pointed out to the department in December 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

(ix) Under the Karnataka Sales Tax Rules, 1957, every registered dealer shall keep and maintain a true and correct account of his daily transactions of goods bought and sold by him,

showing the value thereof separately together with vouchers and bills. The Karnataka Sales Tax Appellate Tribunal has held* that in the case of toddy contractors, in the absence of proper accounts it is just and reasonable to adopt one-and-a-half times the 'Khist' (i.e., monthly shop rentals) amount to arrive at the possible sales turnover.

In Belgaum district, while finalising the assessment (June 1988) of a toddy contractor (who had not maintained any books of accounts) for the year 1973-74 (July 1973 to June 1974) sales turnover was determined on best judgement basis, as Rs.10.23 lakhs even though the **Khist** amount paid by the contractor was Rs.14.40 lakhs and the turnover could have been determined as Rs.21.60 lakhs, being one-and-a-half times the **Khist** amount. The mistake in computation of the taxable turnover resulted in tax being short levied by Rs.46,788.

The omission was pointed out to the department in November 1989 and was reported to Government in July 1990; their replies have not been received (November 1990).

(x) Under the Karnataka Sales Tax Act, 1957, if the returns submitted by the dealer appears to the assessing authority to be incorrect or incomplete, the assessing authority shall assess the dealer to the best of his judgement, recording the reasons for such assessment.

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* P. Ramesh Vs. State of Karnataka (STA 647/77 dated 19.5.1978) KAT

Further, under the Act, the rate of tax payable on the first or the earliest of successive sales in the State of all liquor (including bottled liquor) other than toddy and arrack where the consideration for the sale or purchase of liquor includes the duties of excise payable under the Karnataka Excise Act, 1965, was 30 per cent during the period from 15th March 1980 to 31st July 1985.

In Mysore City, while revising (November 1988) the assessment order relating to a liquor dealer as per orders of Appellate Authority, the assessing authority determined the taxable turnover of liquor to the best of his judgement, by adding 15 per cent gross profit to the purchases made by the assessee. In this process the sales turnover of taxable liquor was determined at Rs.1,34,674 (by adding gross profit at 15 per cent to purchases of Rs.1,17,107) as against the actual sales turnover working out to Rs.2,18,337 (by adding gross profit at 15 per cent to purchases of Rs.1,89,858 including excise duty, freight and cess). The mistake resulted in determination of taxable turnover short by Rs.83,663 and short levy of tax of Rs.23,174.

On the mistake being pointed out (June 1989) in audit, the department stated (August 1990) that **suo motu** orders had been passed (June 1990) creating an additional demand for Rs.23,174.

The case was reported to Government in April 1990.

(xi) Under the Karnataka Sales Tax Act, 1957, with effect from 1st April 1986, every dealer

in respect of his taxable turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of specified items of works contract, has to pay tax at certain specified rates. 'Supply and fitting of electrical goods, supply and installation of electrical equipments, including transformers' is one specified item of works contract and is taxable at the rate of 8 per cent.

In Bangalore City, while concluding assessment (December 1988) of an electrical contractor for the year 1986-87 (July 1986 to June 1987) who made inter-State purchase of electrical goods amounting to Rs.6.44 lakhs and used them in the execution of works contract, tax was levied on a turnover of Rs.51,700 only. Since, the assessee had not furnished classified details of closing balance, the entire purchase from outside the State was to be treated as used in works contract and tax on Rs.7.09 lakhs (arrived at by adding gross profit to purchases) was leviable. The mistake resulted in tax being levied short by Rs.52,578.

On the mistake being pointed out (February 1990) in audit, the department stated (February 1991) that additional demand of Rs.52,578 was raised against the assessee.

The case was reported to Government in May 1990.

(xii) Under the Karnataka Sales Tax Act, 1957, on sales of pulses (whether whole or separated and whether with or without husk), tax

is leviable at the rate of 4 per cent, with effect from 1st April 1987, at the point of first sale (2 per cent up to 31st March 1987).

In Gulbarga district, while finalising (November 1988) the assessment of a commission agent for the Deepavali year 1986-87, the first sales turnover of pulses (moong and tur) made during 1st April 1987 to 22nd October 1987, amounting to Rs.5.70 lakhs, was omitted to be taxed although the assessee had admitted the tax liability on the said turnover in his returns. The omission resulted in short computation of taxable turnover and consequent short levy of tax by Rs.22,800.

The mistake was pointed out to the department in August 1989 and was reported to Government in January 1990; their replies have not been received (November 1990).

2.8. Escapement of taxable turnover

(i) Under the Karnataka Sales Tax Act, 1957, on sales of all electrical goods, instruments, apparatus and appliances including fans and lighting bulbs and all other parts and accessories but excluding pumpsets with electric motors of not more than 10 H.P., tax was leviable at the rate of 10 per cent up to 31st July 1985.

In one case involving short levy due to escapement of taxable turnover relating to voltage stablisers for the year 1984-85, an amount of Rs.42,647 was recovered (September 1989) on being

pointed out (September 1989) in audit.

(ii) Under the Karnataka Sales Tax Act, 1957, a 'dealer' means any person who carries on the business of selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes a non-resident dealer or an agent of a non-resident dealer, a local branch of a firm or company or an association situated outside the State. Further, under the Act, iron and steel is taxable at the rate of 4 per cent at the point of first sale within the State.

In Bangalore City, a dealer acting as an agent of a non-resident dealer received for sale, iron and steel valued at Rs.30.48 lakhs during the year 1987-88. As per statement of accounts filed, there were no opening and closing stocks of the above goods. While concluding (August 1988) assessment for the aforesaid period a sales turnover of Rs.23.86 lakhs only was subjected to tax instead of Rs.31.09 lakhs (after adding a notional commission at the rate of 2 per cent, on the value of goods received). This resulted in escapement of taxable turnover of Rs.7.23 lakhs and consequent short levy of tax of Rs.28,910.

The mistake was pointed out to the department in January 1990 and was reported to Government in June 1990; their replies have not been received (November 1990).

(iii) Under the Karnataka Sales Tax Act, 1957, on sales of articles of food and drink other than those specified elsewhere in the Act, when sold in places other than in Three Star, Four Star and Five Star Hotels as recognised by Tourism Department of Government of India, tax was leviable at the rate of 4 per cent from 1st April 1984 to 31st March 1986.

In Bangalore City , in respect of van sales of coffee and snacks amounting to Rs.8.57 lakhs made by a Board during the year 1984-85, tax was omitted (July 1988) to be levied. The omission resulted in tax being realised short by Rs.41,133.

The mistake was pointed out to the department in January 1990 and was reported to Government in May 1990; their replies have not been received (November 1990).

2.9. Non-levy of tax at the point of last sale

Under the Karnataka Sales Tax Act, 1957, with effect from 1st August 1985, in respect of certain goods mentioned in the Second Schedule to the Act, which have already been subjected to tax under Section 5(3)(a), a tax at the rate of 2 per cent (3 per cent from 1st April 1986) shall be levied at the point of last sale in the State by the dealer liable to tax under the Act. Liquor (including bottled liquor) other than toddy, arrack, wine, fenny and beer, all electrical goods, instruments, apparatus and appliances including fans and lighting bulbs and all other parts,

accessories but excluding pumpsets with electric motors of not more than 10 H.P. are liable to tax at the last point of sale. From 1st April 1986 to 31st March 1987, on sales of 'Vanaspathi', tax was leviable at the last sale point at the rate of 2 per cent. For purposes of levy of tax, as aforesaid, the last sale point is the point of sale to a consumer and the burden of proving that any such sale is not liable to tax shall lie on the dealer concerned.

In one case of non-levy of tax at the point of last sale, an amount of Rs.32,620 was recovered (August 1989) on being pointed out (August 1989) in audit. A few other cases are mentioned below :

(a) In the following cases, tax at the point of last sale amounting to Rs.1.02 lakhs was not levied :

Name of Commercial Circle	Name of goods sold	Period	Turnover (In lakhs of rupees)	Rate of tax	Amount of short levy (including cess upto 31st March 1986)
(1)	(2)	(3)	(4)	(5)	(6)
1.Bangalore City	Liquor	1st August 1985 to 31st December 1985	8.80	2 per cent	22,880

(1)	(2)	(3)	(4)	(5)	(6)
2.Bijapur Town	Electrical motors, starters and electrical wires	1st August 1985 to 31st December 1986	8.29	2 per cent (upto 31.3.86) 3 per cent (from 1.4.86)	23,374
3.Bangalore City	Tubelights	1st June 1986 to 31st March 1987	7.04	3 per cent	21,133
4.Bangalore City	Vanaspathi	1st April 1986 to 31st March 1987	17.07 (arrived at by adding 1 per cent gross profit to the purchases)	2 per cent	34,136
					1,01,523

On the mistakes being pointed out (between August 1989 and February 1990) in audit, the assessing officers issued notices in 3 cases (Sl.No.1, 3 and 4) to the dealers proposing rectification of the mistakes. Further report in these cases and reply in the remaining case have not been received (November 1990).

The cases were reported to Government between December 1989 and June 1990; their replies have not been received (November 1990).

(b) The Commissioner of Commercial Taxes, Bangalore has clarified (December 1985) that P.V.C. electrical conduit pipes are exigible to tax as electrical goods in view of the judicial decision *. Further, on sales of plastic sheets and all articles made of poly venyl-chloride material, with effect from 1st April 1982 to 31st March 1986, tax was leviable at the rate of 10 per cent at the point of first or earliest of successive sales within the State.

In Bangalore City, on the last sale of P.V.C. electrical conduit pipes amounting to Rs.10.04 lakhs made during the period 1st August 1985 to 31st March 1987, tax was omitted to be levied at the last sale point resulting in a short levy of Rs.28,835. In respect of the same assessee, on the first sale of P.V.C. hose pipes amounting to Rs.5.16 lakhs made during the year 1985-86, tax was incorrectly levied at the rate of 8 per cent instead of at the correct rate of 10 per cent resulting in short levy of tax by Rs.13,118.

The mistakes were pointed out to the department in February 1990 and were reported to Government in May 1990; their replies have not been received (November 1990).

2.10. Non-levy of purchase tax

(i) Under the Karnataka Sales Tax, 1957, on purchase of silk fabrics manufactured either

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* M/s.Avon Industries Vs. State of Karnataka(STRP No.6 of 1975).

wholly or partly from silk, with effect from 1st April 1987, tax is leviable at the rate of 4 per cent at the point of purchase by the last dealer in the State liable to tax under the Act.

In one case involving short levy of purchase tax on silk fabrics, an amount of Rs.34,189 was recovered (July 1989) on being pointed out (April 1989) in audit.

(ii) Under the Karnataka Sales Tax Act, 1957. on purchase and sale of groundnut and peanut including groundnut or peanut seeds and on purchase of honge seeds, tax is leviable as under :

(a)	(i) Groundnuts and peanuts purchased within Karnataka	18th November 1983 to 31st March 1987	First purchase point	4 per cent
	(ii) Obtained from outside Karnataka	18th November 1983 to 31st March 1987	First sale point	4 per cent
(b)	Honge seeds	18th November 1983 and onwards	First purchase point	3 per cent

In Tumkur district, on purchase of groundnut and honge seeds amounting to Rs.58.61 lakhs made

by a dealer during the co-operative year 1985-86, tax was omitted to be levied (September 1988) even though the assessee had accepted tax liability as first purchaser in the State in his returns. The omission resulted in non-levy of tax amounting to Rs.2.26 lakhs.

The mistake was pointed out to the department in March 1990 and was reported to Government in June 1990; their replies have not been received (November 1990).

(iii) Under the Karnataka Sales Tax Act, 1957, a dealer who purchases taxable goods from unregistered dealer in circumstances in which no tax is leviable on the sale price of such goods and uses them in the manufacture of other goods for sale or otherwise or despatches them to a place outside the State, except as a direct result of sale or purchase in the course of inter-State trade or commerce, is liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale of such goods.

On sales of firewood and rice bran with effect from 1st April 1986, tax is leviable at the rates of 6 per cent and 3 per cent respectively.

(a) In Bangalore City, an assessee engaged in the manufacture and sale of agarbathis purchased "raw bathis" worth Rs.4.85 lakhs from unregistered dealers during the year 1985-86 and used them in the manufacture of scented agarbathis. On the above purchase, tax (including surcharge, rural

development cess, development cess and turnover tax) of Rs.33,164 was leviable but was not levied.

On the mistake being pointed out (September 1989) in audit, the department issued (September 1989) notice to the assessee and further reported (April 1990) that the purchases from unregistered dealers included other items like paper tubes, tin tubes etc., and purchase turnover of raw bathis was Rs.1,05,999 only on which an amount of Rs.6,064 being the purchase tax has been collected.

But as per Karnataka Sales Tax (Amendment) Act 1989 (Act 8 of 1989), goods consumed for ancillary purposes in or for such manufacture are also treated as consumed in the process of manufacture. Since agarbathis are released to the market only after packing under a brand name, the process of manufacture would include packing also and hence purchase tax is leviable on other items of purchases like paper tubes tin tubes also.

The case was reported to Government in December 1989; their reply has not been received (November 1990).

(b) In Bangalore City, an assessee purchased "elephant grass" (wild variety of grass grown spontaneously) worth Rs.3.73 lakhs during the co-operative year 1985-86 from unregistered dealers and used it as one of the raw materials in the manufacture of kraft paper. On the purchase turnover of such goods in manufacture, tax was leviable at the rate of 5 and 7 per cent (at the purchase

point) as applicable to unclassified goods but was not levied, thereby resulting in non-levy of tax to the extent of Rs.28,160.

The omission was pointed out to the department in January 1990 and was reported to Government in June 1990 and followed up by reminder (October 1990); their replies have not been received (November 1990).

(c) In Raichur district, while concluding (June 1988) the assessment of a manufacturer of rice bran oil for the period 1st July 1986 to 30th June 1987, purchase tax leviable at the rates of 6 and 3 per cent respectively on the purchase of firewood amounting to Rs.3.75 lakhs and rice bran amounting to Rs.1.69 lakhs from unregistered dealers consumed in the manufacture of rice bran oil was not levied (June 1988). The turnover tax on the above turnover was also not levied. The total tax not levied amounted to Rs.34,357.

On the mistake being pointed out (August 1989) in audit, the department issued notice to the assessee. Further report has not been received (November 1990).

The omission was reported to Government in March 1990; their reply has not been received (November 1990).

(iv) Under the Act, with effect from 1st April 1986, (a) timber, rosewood and sandalwood in log form are liable to tax at the rate of 13

per cent and (b) timber, rosewood and sandalwood in cut or manufactured form of all sizes and shapes are liable to tax as under:-

	Category	*with effect from*	*Rate of tax*
(i)	Obtained from out of material which has already suffered tax	1st April 1986	3 per cent
(ii)	In other cases	1st April 1986	13 per cent

The Commissioner of Commercial Taxes has clarified (August 1987) that since timber and cut sizes are separately categorised under the Act, cutting of timber into sizes would amount to manufacture and hence purchase of timber from unregistered dealers for conversion into cut sizes would be liable to purchase tax. Thus, on timber logs purchased from unregistered dealers and sold in manufactured form as cut sizes, tax is leviable both at the point of purchase (on logs) and sale (cut sizes). The Commissioner of Commercial Taxes has also clarified (May 1986 and February 1988) that 'casuarina' poles are taxable at the rate of 13 per cent applicable to timber.

Further, under the provisions of the Central Sales Tax Act, 1956, on inter-State sales of goods (other than declared goods) to any registered dealer or Government covered by prescribed declarations/ certificates, tax is leviable at the rate of 4 per cent or at the State rate if it is less than 4 per cent. Where such sales are not supported by pre-

scribed declarations, tax is leviable at the rate of 10 per cent or at the State rate if it is more than 10 per cent.

(a) In Dakshina Kannada district, while concluding assessment (July 1988 and February 1989), of four timber dealers, on purchase of timber valued at Rs.20.01 lakhs, made from unregistered dealers during the years 1984-85 (July 1984 to June 1985), 1986-87 (September 1986 to August 1987) (Co-operative year and Deepavali year) and consumed in the manufacture of cut sizes, tax was omitted to be levied at the purchase point as aforesaid. Further, on the sale (Rs.3.96 lakhs) of cut sizes obtained out of such logs, tax was leviable at 13 per cent instead of at 3 per cent only. The irregularities resulted in tax being levied short by Rs.2.06 lakhs.

On the mistakes being pointed out to the department in October 1989 and December 1989, in two cases, the assessing officer submitted (October 1989) the records for **suo motu** revision. Further report in these cases and reply in the other two cases have not been received (November 1990).

The cases were reported to Government in January 1990 and May 1990; their replies have not been received (November 1990).

(b) In Bangalore City, a dealer purchased casurina poles from unregistered dealers during the year 1986-87 and despatched them outside the State on consignment basis. However, on the

corresponding purchase turnover of Rs.1.87 lakhs, purchase tax amounting to Rs.24,356 was not levied. Further, on the local sales of casuarina poles, tax was levied (i) at the rate of 7 per cent as applicable to unclassified goods and (ii) on inter-State sales (not covered by prescribed declarations) at 10 per cent instead of at the correct rate of 13 per cent applicable in both the cases. These mistakes resulted in a further short levy of tax amounting to Rs.10,560.

On the mistakes being pointed out (December 1989), the department stated (December 1990) that revised orders were passed levying the differential tax.

The cases were reported to Government in June 1990.

2.11. Incorrect allowance of set off

(i) Under the provisions of the Karnataka Sales Tax Act, 1957, where tax has been levied in respect of any item of goods of iron and steel referred to in serial number 2 of the Fourth Schedule, and out of the said goods any other item of goods of iron and steel mentioned in that Serial Number is manufactured in Karnataka and sold, the tax on sale of such manufactured goods is to be reduced by the amount of tax already paid under the Act on the relative items of goods of iron and steel used in its manufacture. The burden of proving that the tax under the Act has already been paid and of establishing the exact quantum of tax so paid on such items of goods

of iron and steel shall be on the dealer claiming the reduction. With effect from 1st November 1982, the point of levy of tax on scrap was shifted from first sale point to last purchase point.

Under the Act, tax is leviable at the rate of 4 per cent on specified items of iron and steel. Coal is also taxable at the rate of 4 per cent under the Act **ibid.**

In one case of incorrect allowance of set off, an amount of Rs.40,395 was recovered (July 1989) on being pointed out (July 1989) in audit. A few other cases are mentioned below.

(a) In Bangalore City, while concluding the assessment (May 1987) of a dealer for the years 1982-83 and 1983-84 who had used items of iron and steel including re-rollable scrap as raw materials in the manufacture of other re-rolled items, the tax set off was allowed on the purchase value of raw materials consumed amounting to Rs.75.54 lakhs which also included (i) purchase (scrap) amounting to Rs.10.84 lakhs made after 1st November 1982 on which the dealer had not paid any tax and (ii) an amount of Rs.2.49 lakhs being the tax charged by the selling dealers. As the tax set off is restricted to the quantum of tax paid on purchase of raw materials actually consumed in the manufacture, allowance of set off on the above two items also, resulted in excess set off and consequent short levy of Rs.53,327.

(b) In another case, in Bangalore district, for the year 1983-84 (1st September 1983 to 31st

August 1984), the amount of set off to be allowed to the dealer out of tax leviable on sale of manufactured goods was worked out as Rs.4,93,576. However, taking into account the opening and closing balance and the tax paid on purchases of raw materials, the tax set off admissible works out to Rs.4,64,414 only. The excess allowance of set off resulted in short levy of tax amounting to Rs.29,162.

The mistakes were pointed out to the department in February 1990 and were reported to Government in June 1990 and July 1990; their replies have not been received (November 1990).

(c) In Bangalore district, assessment of a dealer for the Deepavali year 1979-80 was originally made in November 1985. In an appeal order of August 1986, the tax set off on raw materials consumed admissible was determined at Rs.2,73,500 by the Appellate Authority and the case was remanded for fresh disposal. While making fresh assessment (June 1988) although the assessing officer fixed the value of raw materials consumed in the process of re-rolling as Rs.57.98 lakhs and the tax set off admissible thereon as Rs.2,31,907 only, actually allowed tax set off of Rs.2,73,500 as fixed by the appellate authority resulting in short levy of tax amounting to Rs.41,593. The tax set off allowed by the appellate authority was found to be excessive inasmuch as it was allowed on the entire quantity of raw materials purchased by the assessee while under the Act, the set off should have been allowed on the actual quantity of raw material used by the assessee in the manufacture of other items during the relevant

year that is Deepavali year 1979-80. Allowance of tax set off on the entire purchases of raw material, thus, had the effect of reducing the tax liability of the assessee for Deepavali year 1979-80 to the extent of Rs.41,593.

On the mistake being pointed out (January 1990) in audit, the assessing officer stated (January 1990) that the assessment records would be submitted for **suo motu** orders. Further report has not been received (November 1990).

The case was reported to Government in June 1990; their reply has not been received (November 1990).

(d) In Bangalore City, while concluding (March 1989) assessments of a dealer for the Co-operative years 1984-85 to 1987-88, the assessing officer had allowed set off on tax on items of iron and steel purchased and used as raw materials for the manufacture of re-rolled items, to the extent of Rs.278.81 lakhs which, however, included the purchase of coal amounting to Rs.13.12 lakhs. Since the set off is restricted to the quantum of tax paid on purchase of only iron and steel used as raw materials, allowance of set off of tax paid on the purchase of coal was irregular and resulted in excess set off and consequent short levy of tax by Rs.52,473.

In the case of the same assessee, set off was again allowed incorrectly during the years 1984-85 and 1985-86, on the value of iron and steel amounting to Rs.5.01 lakhs sold in the same

form to other registered dealers in the State, on which tax under the State Act had not been paid by the assessee. The set off allowed was irregular since there was no manufacture of goods. This resulted in short levy of tax by Rs.19,648 (calculated at 4 per cent on estimated purchase value of Rs.4.91 lakhs after deducting 2 per cent gross profit).

On the mistakes being pointed out in audit (February 1990), the assessing officer issued (February 1990) notice to the dealer proposing rectification of the mistakes. Further report has not been received (November 1990).

The case was reported to Government in June 1990; their reply has not been received (November 1990).

(e) In Bangalore district, while finalising the assessment (July 1988) of a manufacturer of re-rolled items of iron and steel for the year 1984-85 (July to June), tax set off was allowed on the re-sale turnover of scrap made to registered dealers in the State to the extent of Rs.10.70 lakhs (estimated purchase value Rs.9.63 lakhs). Since the tax set off under the Act is admissible only on purchase of iron and steel actually used in the manufacture of any other item of iron and steel referred to under the serial number 2 of the Schedule **ibid**, as aforesaid, the set off allowed on the re-sale turnover of iron and steel scrap was irregular. The incorrect allowance of set off resulted in short levy of tax amounting to Rs.61.009.

On the mistake being pointed out (January 1990) in audit, the department stated (November 1990) that revised orders were passed (October 1990)

levying the differential tax of Rs.61,010.

The case was reported to Government in June 1990.

(f) In Bellary district, while finalising (April 1988) assessments of re-rolling mill for the calendar year 1979, a set-off of Rs.4.52 lakhs was incorrectly allowed instead of Rs.4.17 lakhs admissible. The mistake resulted in allowing excess set off of Rs.34,722 and short levy of tax to that extent.

The mistake was pointed out in audit to the department in October 1989 and was reported to Government in January 1990; their replies have not been received (November 1990).

(ii) Under the Karnataka Sales Tax Act, 1957, where a tax has been levied in respect of sale or purchase of any paddy, the tax leviable on rice procured out of such paddy, shall be reduced by the amount of tax levied on such paddy. Paddy and rice were taxable at the rate of 4 per cent up to 31st March 1984.

By a notification issued in October 1981, rate of tax on sales of manufactured goods by new small scale industrial units was reduced by 50 per cent (with effect from 1st November 1981) for a period of five years from the date of commencement of commercial production, subject to certain restrictions and conditions mentioned therein.

(a) While concluding (June 1988) the assessment of a rice miller of Dakshina Kannada district for the year 1985-86 (July 1985 to June 1986) an amount of Rs.28,691 representing tax on paddy purchased during the period from 1st August 1985 to 30th June 1986, was erroneously reduced (June 1988) out of the tax levied on the sale value of rice though paddy was exempt from tax during the above period. On this being pointed out (June 1989) in audit, the department recovered the entire amount of short levy in July 1989.

(b) In Raichur, during the year 1980-81, a rice miller had hulled 8,075 bags of paddy valued at Rs.8.16 lakhs on which set off of Rs.32,623 was admissible. As against this, set off of Rs.45,881 was allowed, while finalising the assessment (July 1988) resulting in excess set off of Rs.13,258. Similarly, during the year 1981-82, he had hulled 7,058 bags of paddy valued at Rs.7.41 lakhs on which set off of Rs.29,644 was admissible from the assessed (July 1988) tax of Rs.44,300 on sale turnover of rice procured out of paddy. He was also entitled to tax concession of Rs.7,328 under an incentive scheme of the Government effective from 1st November 1981 and was liable to pay net tax of Rs.7,328. However, a 'nil' demand was made (July 1988). The mistakes resulted in tax being realised short by Rs.20,586.

On the mistakes being pointed out in August 1989, the department stated (January 1991) that the amount short levied had been recovered.

The case was reported to Government in

March 1990.

2.12. A. Incorrect computation of tax

In two cases, involving short levy of tax due to arithmetical mistake, an amount of Rs.86,955 was recovered on being pointed out (July 1989 and December 1989) in audit. A few other cases are mentioned below.

(i) Under the Karnataka Sales Tax Act, 1957, on sales of cement, tax was leviable at the rate of 15 per cent up to 31st March 1987.

In Bangalore City, while assessing a dealer for the Co-operative year 1984-85 on sales turnover of cement of Rs.30.00 lakhs, tax at the rate of 15 per cent was erroneously worked out (September 1988) at Rs.45,000 instead of the correct amount of Rs.4.50 lakhs. The mistake resulted in short levy of tax amounting to Rs.4.05 lakhs.

On the mistake being pointed out (December 1989) in audit, the assessing officer issued (December 1989) notice to the dealer for rectification of the mistake. Further report has not been received (November 1990).

The case was reported to Government in May 1990; their reply has not been received (November 1990).

(ii) Under the Karnataka Sales Tax Act,

1957, every dealer shall pay for each year, tax on his taxable turnover at the rates specified in the Act.

While assessing (March 1989) a dealer in commercial plywood in Bangalore City for the Calendar year 1985, as against a total tax of Rs.2,84,855 leviable on sales amounting to Rs.21.81 lakhs, a tax of Rs.2,63,530 only was levied due to computation mistake resulting in short levy of tax amounting to Rs.21,325.

The mistake was pointed out to the department in September 1989 and was reported to Government in April 1990; their replies have not been received (November 1990).

B. Error in demanding tax due to final assessment

Under the Karnataka Sales Tax Act, 1957, and the Rules made thereunder, on completion of final asessment, for a year, if any amount is found to be due, a notice shall be served upon the dealer indicating the amounts of tax payable, tax paid and balance of tax, if any due to be paid, within the time and in the manner specified in such notice.

In two cases involving short levy due to error in demanding tax due on final assessment, an amount of Rs.1.24 lakhs was recovered and in two other cases revised demand notices were issued for recovery of Rs.66,112 on their being pointed out (between January 1989 and August 1989) in audit.

C. Credits afforded twice

Under the Karnataka Sales Tax Act, 1957 and the Rules made thereunder, every dealer has to file a monthly statement of his turnover and also pay tax in advance on that turnover. These payments are credited to the dealer's account in the Commercial tax office concerned and finally adjusted against the tax demand after conclusion of the assessment.

In one case involving short levy due to affording of credit twice to the dealer, an amount of Rs.22,000 was recovered on its being pointed out (December 1989) in audit.

2.13. Non-levy of surcharge, cess and additional tax

(i) Under the Karnataka Sales Tax Act, 1957, the tax payable under the Act was to be increased by a surcharge at the rate of 10 per cent of such tax from 1st April 1983 to 31st July 1985, a rural development cess at the rate of 10 per cent of such tax, from 1st April 1984 to 31st July 1985 and a development cess at the rate of 30 per cent of such tax, from 1st August 1985 to 31st March 1986.

(a) In two cases involving short levy of surcharge, an amount of Rs.45,994 was recovered (June 1989 and March 1990) by the department on being pointed out (June 1989 and May 1989) in audit.

(b) In Bangalore City, in three other cases, while concluding assessments (between August 1988 and January 1989) for the years 1983-84 and 1984-85 surcharge and cess as aforesaid, amounting to Rs.11.48 lakhs were not levied.

On the omissions being pointed out (November 1989 and December 1989), in two cases involving cess of Rs.11.14 lakhs, the assessing officers issued (December 1989) notices to the dealers proposing rectification. Further report in these cases and reply in the other case have not been received (November 1990).

The cases were reported to Government in February 1990 and May 1990; their replies have not been received (November 1990).

(ii) Under the Karnataka Sales Tax Act, 1957, prior to its amendment in March 1981, in the case of a dealer whose total turnover exceeded Rs.25 lakhs in a year, additional tax was leviable at the rate of 10 per cent of the sales tax or purchase tax or both payable by such dealer upto 14th March 1980 and at 12.5 per cent from 15th March 1980. Under the Act, an auctioneer is also a dealer whose transactions are liable to tax.

(a) In Dharwad district, in the case of a dealer whose total turnover exceeded Rs.25 lakhs, additional tax amounting to Rs.24,025 was omitted to be levied (July 1988) on the auction sale of unserviceable materials during the years 1979-80 to 1980-81.

The omission was pointed out in audit to the department in August 1989 and was reported to Government in January 1990: their replies have not been received (November 1990).

(b) In Bangalore district, additional tax amounting to Rs.74,762 was omitted (June 1988) to be levied on tax of Rs.7,47,619 payable on purchase turnover of copra and sales turnover of steel furniture, etc., effected by two dealers during the period from 1st July 1975 to 30th November 1976.

The omission was pointed out to the department in March 1990 and was reported to Government in July 1990; their replies have not been received (November 1990).

2.14. Non-levy of turnover tax

(i) Under the Karnataka Sales Tax Act, 1957, every dealer other than the Government of Karnataka, the Central Government or the State Government of any other State, whose total turnover in a year exceeds the limits shown below, whether or not the whole or any part of such turnover is liable to tax under any other provisions of this Act, is liable to pay turnover tax at the rates indicated against each on his total turnover less such deductions as are admissible under the Act :

From	When the annual turnover exceeds	Rate of turnover tax
(1)	(2)	(3)
29th March 1981	Rupees one lakh	½ per cent

(1)	(2)	(3)
1st April 1982 to 31st July 1985	Rupees one-and-a-half lakhs	½ per cent
1st August 1985	(i) Rupees five lakhs but does not exceed rupees fifty lakhs	½ per cent
	(ii) Rupees fifty lakhs	1 per cent
1st April 1986	(i) Rupees fifteen lakhs but does not exceed rupees two hundred and fifty lakhs	1 per cent
	(ii) Rupees two hundred and fifty lakhs	1½ per cent
1st April 1987	(i) If it is a body corporate	
	(a) Not less than five lakhs	1½ per cent
	(b) Not less than two hundred and fifty lakhs	1½ per cent
	(ii) If it is other than a body corporate	
	Not less than five lakhs	1½ per cent

However, no turnover tax is payable on the total turnover relating to goods specified in the Fourth Schedule to the Act (declared goods). Further, no dealer shall collect any amount as tax in excess of the total tax (including turnover

tax) payable by him under the Act. Penalty not exceeding one-and-a-half times the excess collection is leviable in case of excess collection of tax.

In eleven cases involving short levy of turnover tax, an amount of Rs.3.33 lakhs was recovered on being pointed out in audit between June 1989 and December 1989. A few other cases are mentioned below.

In 10 other cases relating to Bangalore, Bijapur and Raichur districts, a sum of Rs.3.82 lakhs was either not levied or levied short during the years 1984-85 to 1987-88.

On the omissions being pointed out between July 1989 and February 1990, the department stated (March 1990) that rectificatory orders were passed in two cases (Rs.1.04 lakhs), in 3 cases notices were issued to the dealers proposing rectification of the mistake and in another case an amount of Rs.17,250 was recovered. Further report in these cases and reply in the remaining cases have not been received (November 1990).

The cases were reported to Government between November 1989 and June 1990; their replies have not been received (November 1990).

(ii) With a view to adopting a uniform accounting year commencing from the first day of April, the provisions of the Karnataka Sales

Tax Act, 1957, were amended from 1st April 1987. But, consequent upon the Karnataka High Court judgement, the amended provisions were given effect to from 1st April 1989 only. As per clarification of the Commissioner of Commercial Taxes (August 1989) in respect of dealers where the accounting period commenced after 1st April 1986 and who in the meanwhile closed their account on 31st March 1987 and got assessment also concluded to end of 31st March 1987, the turnover for purposes of turnover tax has to be computed as if they followed their old accounting year.

In Bangalore district, a Public Limited Company adopted 1st August to 31st July as accounting year and closed its accounts for 1986-87 to end of 31st March 1987 While concluding the assessment (January 1989) turnover tax was levied at the rate of 1 per cent on a turnover of Rs.214.56 lakhs relating to the above period instead of counting the turnover to end of July 1987 (old accounting year) and levying turnover tax at 1¼ per cent since the total turnover exceeded Rs.250 lakhs in that case. The mistake resulted in short levy of turnover tax of Rs.40,094.

On this being pointed out (October 1989) in audit, the department collected (April 1989) the amount short levied.

The case was reported to Government in January 1990.

(iii) As per a notification issued by

Government in September 1983, with effect from 1st October 1983, the wholesale turnover of wholesale dealers of drugs and pharmaceutical preparations is exempt from levy of turnover tax. Further, under the Karnataka Sales Tax Rules, 1957, a wholesale dealer is a person who sells goods or keeps goods for sale to dealers for trade. Sales of medicines to hospitals for consumption do not constitute sales of a wholesale dealer.

In Bangalore City, on sales of medicines valued at Rs.152.52 lakhs made by a manufacturing dealer to Government departments for eventual consumption in hospitals during the Deepavali year 1984-85, turnover tax was not levied treating them as covered by notification issued in September 1983 relating to wholesale dealers. The incorrect exemption resulted in tax being levied short by Rs.1.13 lakhs.

The mistake was pointed out to the department in January 1990 and was reported to Government in May 1990; their replies have not been received (November 1990).

(iv) In Chitradurga district, on sales of blended cotton yarn (using polyster staple fibre in its manufacture) amounting to Rs.220.13 lakhs made by a spinning and weaving mills during the period 1st April 1981 to 31st March 1985, turnover tax was omitted to be levied treating them as cotton yarn (declared goods not liable to turnover tax). The omission resulted in tax being realised short by Rs.1.10 lakhs.

The case was pointed out to the department in December 1988 and was reported to Government in February 1989; their replies have not been received (November 1990).

(v) As per the provisions of the Karnataka Sales Tax Rules, 1957, total turnover includes the total amount paid or payable by a dealer as the consideration for the purchase of any goods in respect of which tax is leviable at the point of purchase under the Act.

In Belgaum City, while finalising (August 1988) the assessment of a wholesale Kirana dealer for the Deepavali year 1985-86, the turnover for purposes of levy of turnover tax was determined at Rs.212.62 lakhs, without considering the purchase turnover of Rs.95.43 lakhs in respect of goods liable to tax at the purchase point. This mistake resulted in determining the total turnover for the year at less than Rs.250 lakhs and consequent short levy of turnover tax by Rs.44,925 on the turnover for the period 1st April 1986 to 2nd November 1986.

The mistake was pointed out to the department in December 1989 and was reported to Government in April 1990; their replies have not been received (November 1990).

(vi) By a notification issued (March 1986) under the Karnataka Sales Tax Act, 1957, with effect from 1st April 1986, Government exempted the tax payable (under Section 6 of the Act) by

a manufacturer of **agarbathi** in the State on the purchase of raw **bathi** consumed in the manufacture of **agarbathi** for sale in the course of inter-State trade or commerce. However, the exemption does not cover the turnover tax payable under the Act.

In Bangalore City, a dealer engaged in the manufacture and sale of **agarbathi** purchased raw **bathi** amounting to Rs.31.22 lakhs from unregistered dealers during the calendar year 1986 and used them in the manufacture of **agarbathi**. However, turnover tax amounting to Rs.37,073 was omitted to be levied.

The omission was pointed out to the department in May 1989 and was reported to Government in November 1989; their replies have not been received (February 1990).

(vii) In Dakshina Kannada district, in the case of an Excise Contractor vending arrack in two taluks of Kodagu district, the sales turnover of arrack for the years 1982-83 and 1983-84 (July to June) was incorrectly determined (March 1989) at Rs.150.00 lakhs and Rs.145.00 lakhs instead of Rs.192.60 lakhs and Rs.175.86 lakhs respectively (one-and-a-half times the 'Khist' amount of Rs.128.40 lakhs and Rs.117.24 lakhs as held * by the Appellate Tribunal). This resulted in short levy of turnover tax by Rs.36.730.

The mistake was pointed out to the

* P.Ramesh Vs. State of Karnataka (STA 647/77 dated 19.5.78) KAT

department in October 1989 and was reported to Government in May 1990; their replies have not been received (November 1990).

(viii) By a Government notification issued in December 1979, on sales made to the departments or public sector undertakings of Government of India or Government of Karnataka or Government of any other State or Government Companies located in the State by a dealer in respect of goods produced in his manufacturing unit located in Karnataka, the rate of tax payable under the Karnataka Sales Tax Act, 1957 was reduced to 4 per cent notwithstanding anything contained in any of the Schedules to this Act. If the rate of tax prescribed in any of the Schedules to the Act was lower than 4 per cent, then that would be the prescribed rate. It has been clarified (June 1985) by the Commissioner of Commercial Taxes that turnover tax is leviable in such cases in addition to the concessional rate prescribed.

In Bangalore City, on sales of tyres and tubes of motor vehicles (received from outside the State on stock transfer) amounting to Rs.89.58 lakhs made by a dealer during the calendar year 1982 to public sector undertakings of the Government of India/Government of Karnataka at the concessional rate of sales tax under the aforesaid notification, turnover tax was omitted (October 1987) to be levied. The omission resulted in non-levy of turnover tax amounting to Rs.44,790.

On the omission being pointed out (February 1988) in audit, the department stated (February

1989) that the matter had been referred to the Deputy Commissioner of Commercial Taxes. Further report has not been received (November 1990).

The case was reported to Government in August 1989; their reply has not been received (November 1990).

(ix) Under the provisions of the Karnataka Sales Tax Rules, 1957, the total turnover of a dealer, for the purposes of the Act, includes the turnover relating to any of the goods mentioned in the Third Schedule to the Act, which includes the last purchase of bones and horns.

A Government notification issued in May 1983 exempted, with effect from 1st June 1983, only the basic rate of tax payable under Section 5 of the Act on the purchase of bones and horns, but not the turnover tax leviable under another Section (6-B) of the Act.

In Mandya district, on purchase of bones and horns valued at Rs.34.57 lakhs made by a Bone Meal Industry during the years 1984-85 to 1986-87, turnover tax was not levied (between October 1986 and December 1988) treating them erroneously as exempt from such levy, though tax on their purchases only was exempted, as aforesaid. The mistake resulted in turnover tax not being levied to the tune of Rs.23,202.

On the mistake being pointed out (October 1989) in audit, the department stated (August 1990)

that rectificatory orders were passed levying the differential tax.

The case was reported to Government in January 1990.

2.15 Non-levy of penalty

(i) Under the Karnataka Sales Tax Act, 1957, if a dealer fails to pay the tax demaded from him within twenty-one days from the service of the demand notice, he is liable to pay penalty at the rate of one per cent per month (up to 31st March 1984) of the amount of tax or any other amount due remaining unpaid for the first three months and at two-and-a-half per cent per month of such amount for each subsequent month, so long as the default continues.

Further, a registered dealer shall not collect any amount by way of tax or purporting to be by way of tax, at rates exceeding the rate specified in the Act or in respect of sales of any goods on which no tax is leviable under the Act. If any person contravenes these provisions, the assessing authority may impose upon him, by way of penalty, a sum not exceeding one-and-a-half times the amount of such collection.

The above provisions also apply in respect of collection of taxes under the Central Sales Tax Act, 1956.

Also, under the State Sales Tax Act, on

sales of goods by one registered dealer to another, for use by the latter as component part of any goods (mentioned in the Second Schedule to the Act) which he intended to manufacture inside the State for sale, tax was leviable at the concessional rate of 3 per cent, from 1st April 1976, subject to production of the prescribed declaration by the purchasing dealer. For failure to make use of the goods so purchased for declared purposes, penalty of a sum not exceeding one-and-a-half times the normal rate of tax was leviable upto 31st March 1983. By an amendment to the Act, with effect from 1st April 1983, the tax payable on sale of any industrial input liable to tax under the Act, by one registered dealer to another for use by the latter as a component part or raw material of any other goods taxable under the Act which he intends to manufacture inside the State for sale, tax was leviable at the concessional rate of 4 per cent on the prescribed rate of tax, whichever was lower plus surcharge payable under the Act. For failure to make use of the inputs for the declared purpose, penalty not less than the tax and surcharge leviable under the Act and not more than double the amount of such tax is leviable.

(a) On belated payments of tax dues in 6 cases in the districts of Bangalore, Belgaum and Mysore, for the assessment years falling between 1981-82 and 1988-89, no penalty was imposed by the assessing authority although penalties upto Rs.2.24 lakhs could have been imposed in these cases.

On the omissions being pointed out between

July 1989 and February 1990, the department stated (May 1990 and June 1990) that in one case an amount of Rs.21,270 out of Rs.29,641 due was recovered and in another case, a penalty of Rs.27,787 was levied and action to recover the same as arrears of Land Revenue initiated. Reports of action taken in other cases have not been received (November 1990).

The omissions were reported to Government in December 1990 and May 1990; their replies have not been received (November 1990).

(b) In Bangalore, Belgaum, Bellary, Dakshina Kannada, Gulbarga and Mysore districts, 16 dealers collected tax amounting to Rs.18 lakhs during the years between 1977-78 and 1985-86 either in excess of the prescribed rates or where they were not authorised to collect tax, for which penalty upto Rs.27 lakhs was leviable under the Act. However, no penalty was imposed by the assessing authorities or any reasons for non-imposition of penalty placed on record. In one case, tax amounting to Rs.33,085 collected in excess by the assessee and paid to Government was actually refunded to him instead of being forfeited to Government by way of imposition of penalty under the Act.

On the omissions being pointed out, (between August 1989 and March 1990) in audit, the department stated (May 1990 and July 1990) that in 2 cases an amount of Rs.42,551 had been recovered. Their replies in other cases have not been received

(November 1990).

The cases were reported to Government between February 1990 and July 1990; their replies have not been received (November 1990).

(c) In Bellary district, a public sector undertaking, engaged in execution of works contract involving fabrication to specifications produced the prescribed declarations and purchased electric motors amounting to Rs.9.85 lakhs during the years 1976-77, 1977-78 and 1984-85 at the concessional rates and used them in the works contract and not for manufacture of goods for sale as per the declarations. While finalising the assessments (May 1988) a maximum penalty of Rs.72,999 as stated above was leviable, but was not levied.

The omission was pointed out to the department in October 1989 and was reported to Government in February 1990; their replies have not been received (November 1990).

(ii) As per provisions of the Central Sales Tax Act, 1956, registered dealer is authorised to purchase from outside the State, goods specified in his certificate of registration and intended for re-sale by him or for use in the manufacture of processing of goods for sale. If any person, after purchasing any goods for the specified purposes, fails without reasonable excuse, to make use of the goods for any such purpose a penalty not exceeding one-and-a-half times the tax which would have been levied under the Act,

may be imposed upon him. It has been judicially held * that the goods purchased by issuing 'C' forms (declaration) and used for executing works contract would amount to misuse of such forms and attract levy of penalty under the Act.

(a) In Bellary district, an assessee purchased goods (iron and steel and electrodes) amounting to Rs.216.02 lakhs during 1976-77 and 1977-78 from outside the State by issuing 'C' forms, declaring therein that those goods were intended for re-sale or for use in the manufacture of goods for sale, but the goods valued at Rs.131.52 lakhs were utilised in executing works contracts and job works. For violation of the provisions of the Act, penalty up to Rs.13.02 lakhs though leviable, was not levied (May 1988).

The omission was pointed out to the department in December 1989 and was reported to Government in May 1990; their replies have not been received (November 1990).

(b) A private limited company, in Bangalore City, purchased goods, not specified in the certificate of registration, such as, cement worth Rs.1.08 lakhs and ball point pens and key chains worth Rs.2.93 lakhs, from outside the State after furnishing declarations that those goods were covered in his registration certificate and intended for re-sale or for use in the manufacture of goods for

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* Kottayam Electricals Private Limited Vs. State of Kerala (1973) 32 STC 535 (Kerala)

sale, but actually used them for construction work and as gift articles respectively during the year 1985-86 (July 1985 to June 1986). For failure to comply with the provisions of the Act, penalty up to Rs.44,119 was leviable, but was not levied.

On the omission being pointed out (September 1989) in audit, the department stated (February 1991) that a penalty of Rs.29,413 was levied and adjusted out of the amount payable to the assessee.

The case was reported to Government in April 1990.

2.16 Omission to levy tax

Under the Karnataka Sales Tax Act, 1957, on the last purchase in the State of iron scrap and bauxite ore, tax was leviable at the rate of 4 per cent and 10 per cent (up to 31st March 1986) respectively.

In Bangalore district, while finalising the assessment (March 1988 and July 1988) of a manufacturing dealer in silicon carbide for the years 1983-84 and 1984-85, on the last purchase of iron scrap and bauxite ore, amounting to Rs.6.65 lakhs and Rs.3.29 lakhs respectively, tax was omitted to be levied. The mistake resulted in a non-levy of tax of Rs.65,183.

On the mistake being pointed out (July

1989) in audit, the department recovered the entire amount in November 1989.

CHAPTER 3

STATE EXCISE DUTIES

3.1. Results of Audit

Test check of records in the departmental offices, conducted in audit during the year 1989-90, disclosed short levy of duty and licence fee amounting to Rs.1409.39 lakhs in 56 cases, which broadly fall under the following categories:-

	Number of cases	*Amount (In lakhs of rupees)*
1. Errors in computation	34	1209.27
2. Non-levy/short levy of licence fee	3	10.82
3. Production losses or wastages	7	34.12
4. Other irregularities	12	155.18
Total	56	1409.39

Some of the important cases noticed in 1989-90 and findings of a review on "Manufacture and distribution of Indian made liquor" are mentioned in the following paragraphs.

3.2. Manufacture and distribution of Indian made liquor

3.2.1. Introduction

Indian made liquor (I.M.L.) is manufactured using rectified spirit as the basic raw-material. The procedure regarding production and distribution of I.M.L. by the distilleries is governed by the provisions of the Karnataka Excise Act, 1965 and the relevant Rules framed thereunder. There are thirty-one distilleries in the State manufacturing rectified spirit and Indian made liquors. Redistillation of rectified spirit is done in a few distilleries to obtain spirit of higher strength and purity. The I.M.L. produced in the distilleries are sold to the licenced wholesalers through the distributors. Under the Karnataka Excise (Distilling and Warehousing) Rules, 1967, the distilleries are required to maintain regular accounts in the forms prescribed by the Commissioner of Excise from time to time and such accounts shall be open for inspection at all times by the Distillery officer or any officer duly authorised.

On the wastages of rectified spirit occurring in the process of manufacture of Indian made liquor, limits have been laid down by the Government in May 1980 regarding wastages allowable not only on the quantity of I.M.L. produced but also on the wastages of rectified spirit in excess of the permissible limits.

3.2.2. Scope of Audit

With a view to ensuring that the procedure followed in the manufacture and distribution of I.M.L. is in accordance with the provisions in the Karnataka Excise Act, 1965 and the Rules made thereunder, the records of 11 out of 31 distilleries engaged in manufacture of I.M.L. and those maintained in 7 out of 20 district offices were test-checked (February 1990 and March 1990) for three years from 1986-87 to 1988-89.

3.2.3. Organisational set-up

The Commissioner of Excise being the head of the department is responsible for enforcing the provisions of the Act and Rules, regarding the manufacture and distribution of I.M.L. He is assisted by Deputy Commissioners of Excise at the headquarters, as well as at the district level and by Inspectors of Excise at the taluk level. For enforcing the provisions of the Act/Rules, Superintendents of Excise/Deputy Superintendents of Excise are posted at the distilleries.

3.2.4. Highlights

(i) Government have prescribed a maximum permissible wastage of rectified spirit during redistillation of rectified spirit and of blended/ compounded spirit during maturation. Wastages permitted at higher rates led to a loss of potential revenue of Rs.27.85 lakhs being duty leviable on I.M.L. that could have been produced from the

spirit excess wasted. Despite Public Accounts Committee's recommendations made in 1988, the Technical Committee (constituted in 1982) is yet to revise the norms for the wastages.

(ii) Government have prescribed a maximum wastage of 5 per cent during various manufacturing processes of I.M.L. Non-adherence to the prescribed wastage limit resulted in a loss of potential excise revenue of Rs.56.92 lakhs.

(iii) Under the Excise Rules in respect of exports of liquors to places outside the State at a concessional rate of duty, verification reports are required to be received within ten days of the validity date of export permit. Non-receipt of such reports in eighteen cases even after lapse of two years resulted in non-realisation of differential duty amounting to Rs.15.17 lakhs.

(iv) As per the rules and Government's clarification, a distributor has to obtain separate licences to deal with the product of each distillery. Failure to enforce the above requirement resulted in an annual loss of revenue of Rs.58 lakhs, in 14 cases.

3.2.5. Non-recovery of excise duty on excess wastages

As per standards laid down in Government Order issued in May 1980, the wastage of rectified spirit, during its redistillation should not exceed 3 per cent of the total quantity of the rectified

spirit taken up for redistillation. Similarly, the loss of blended spirit or compounded spirit during maturation in wooden casks, for the manufacture of Indian made liquors was allowed at varying percentages from 2.5 per cent to 22 per cent depending on the period of maturation (from 6 months to 36 months). Although excise duty is leviable on the wastages in excess of the permissible limits referred to above, the existing Rules and departmental instructions do not lay down the action to be taken against excess wastages of rectified spirit claimed by the distilleries during manufacture of I.M.L. which had led to loss of potential excise revenue to Government as cited in the following cases noticed during test check:-

A distillery in Bangalore stored 11,19,089 proof litres of malt spirit and 20,647 proof litres of grape spirit for maturation and claimed wastages of 3,18,413 proof litres of malt spirit and 5,608 proof litres of grape spirit as against the maximum permissible limits, that is, 2,46,199 proof litres and 4,542 proof litres respectively. Thus, the total excess wastage of 73,280 proof litres of spirit could have yielded 92,821 litres of I.M.L. of 25° U.P. which in turn would have fetched a revenue of Rs.27.85 lakhs to Government.

On similar observations made in the Audit Reports for 1980-81, 1982-83 and 1983-84, the Public Accounts Committee recommended (February 1988) that the existing Government order did not provide for loss in storage beyond 36 months. The existing provisions should be followed as they are at present and recoveries effected. The Committee also recommended that the Technical Committee constituted

(1982) for the purpose should examine the question expeditiously so that the revised norms could be followed at least for the prospective periods. In their Action taken Report the Government stated (November 1990) that the matter was under examination in the light of the decision of the Supreme Court in the case of Synthetic Chemicals Ltd. and others vs. State of Uttar Pradesh and others (Writ Petition (Civil) No.182/80) holding that the State Legislature had no authority to levy duty or tax on rectified spirit which is non-potable. In this connection, it is pointed out that the audit comment is not on non-levy of duty on alcoholic liquors which are not meant for human consumption in view of the aforesaid judgement but on loss of potential revenue in the form of excise duty that would have accrued had the non-potable liquor (rectified spirit) excess wasted been converted into potable liquor.

3.2.6. Loss of revenue due to short production of liquor

As per standards fixed by Government in their order issued in May 1980, the maximum wastage admissible in the process of reduction, evaporation, blending, storage and bottling process in the manufacture of Indian made liquors from rectified spirit is 5 per cent.

In a distillery in Belgaum district, in the process of manufacture of I.M.L. of 20,44,890 bulk litres after allowing the maximum wastage of 1,02,245 bulk litres admissible, the short production of liquor amounted to 1,89,719 bulk

litres on which excise duty amounting to Rs.56.92 lakhs was leviable (at the rate of Rs.30 per bulk litre), but was not levied.

3.2.7. Non-receipt of verification report in respect of liquors exported to other States

Under the Karnataka Excise (Excise Duties) Rules, 1968 read with the Karnataka Excise (Possession, Transport, Import and Export of Intoxicants) Rules, 1967, manufacturers are permitted (against export permit) to export liquor, after executing a bond, to other States, in India at a concessional rate of duty. Such bond will be in force till a report of verification of the consignment from the Excise/Authorised officer of the place of import has been received. After receipt of the report of warehousing of the liquor in the importing State, the bond shall be cancelled and a note of the verification shall be kept in the registers of the exporters. However, in cases where the report of verification of the consignment or warehousing the liquor in the importing State is not received within ten days, after the expiry of the period of validity of the export permit issued, the differential duty shall be collected from the exporter and the sureties.

It was noticed, however, that during 1988-89 in respect of eighteen permits involving a duty of Rs.15,17 lakhs, reports of verification of consignments or warehousing of the liquors were yet (November 1990) to be received from the excise authorities of the importing States, as detailed

below, in respect of manufacturers of liquors in Bangalore.

Licensee	Number of permits	Amount of duty involved (In lakhs of rupees)
a. One winery	2	2.75
b. Two distilleries	10	11.90
c. One brewery	6	0.52
Total	18	15.17

Though the verification reports were not received from the excise authorities of the importing States even after a lapse of two years (against a prescribed limit of 10 days) the department had not taken action to invoke bank guarantees furnished by the manufacturers for realising the differential duty amounting to Rs.15.17 lakhs from them or their sureties.

The Government, however, stated in July 1990 that the bank guarantees would be invoked and the differential duty realised.

3.2.8. Irregularities in issuing licences and consequent loss of revenue

a. Short collection of licence fee

According to the amended Rule 3(11) of

the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968, with effect from 1st July 1988, a distributor can deal in any product of the distillery, brewery or winery established within or outside the State for sale of liquor for whole or part of the State. For this purpose the distributor has to obtain licence in Form CL 11 by paying a fee of Rs.1 lakh per annum. On a clarification sought by the Excise Commissioner in August 1988, whether a distributor should obtain separate licences in respect of each of the distilleries/breweries whose products he is dealing with, Government clarified (April 1989) that in view of the specific conditions of the licence in Form CL 11 the licensee shall sell only the products of distillery for which he is an authorised distributor. If a distributor wants to deal with the products of more than one distillery, he shall have to obtain a separate distributor lilcence for each such distillery. It was also stated by Government that the question of amending the existing rules to make provisions for providing separate licence for each distributorship was being dealt with separately.

It was, however, noticed that fourteen distributors were dealing in distillery products. Reckoned on the basis of one licence for every distillery dealt in by a distributor, the distributors should have obtained 72 separate licences by paying the prescribed fee of Rs.1 lakh for each licence. Instead, in the absence of the specific provisions for obtaining separate licences for each distributorship, the distributors dealt in the products of more than one distillery on the strength of a single licence obtained by them leading to an annual

loss of Rs.58 lakhs at the rate of Rs.1 lakh per licence for each of the other 58 licences. The existing rules to make provisions for providing separate licences for each distributorship are yet (August 1990) to be amended.

b. Loss of revenue due to non-issue of CL 9 licences

According to the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968, in respect of hotel and boarding house licences issued in Form CL 7 under Rule 3(7)(b), sale of liquor is restricted to the residents for their own use and for that of their guests requiring liquor with the meals supplied to them, as per the licensing conditions of the licences. However, for sale of liquor to the public in a refreshment room (bar) the licensee should take licence in Form CL 9 on payment of the prescribed licence fee.

It was, however, observed that in respect of 14 licensees in Mysore, six in Bangalore Urban, one each in Kolar, Belgaum and Dharwar, only licence in Form CL 7 under Rule 3(7)(b) was issued even though as per the certificate/licence issued by the Corporation/Municipality/Excise and Revenue authorities and also from the plans and references submitted by the licensees for grant of licence, the licensees were actually running bars open for public and hence should have taken licence in Form CL 9 in addition to the licence in Form CL 7. The omission resulted in non-recovery of licence fee amounting to Rs.28.69 lakhs for the years 1986-87 to 1989-90.

The department stated (August 1990) that the officers concerned in the departments have been addressed to examine and recover the short levy of licence fee, if any, as observed by Audit.

The above points were reported to Government in April 1990; their reply has not been received (November 1990) except in respect of paragraph 3.2.7. above.

3.3. Non-recovery of shop rentals

Under the Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969, the licensee to whom the lease of right to retail vend of liquor is granted has to furnish security in the form of cash deposit, Government securities or other securities recognised by the Government or an irrevocable guarantee given by a Scheduled bank for sum equal to three and one-tenth of the monthly rental payable by him/her.

A licensee in Chickmagalur district to whom the right of retail vend of arrack was entrusted during the year 1988-89 had furnished a bank guarantee for a sum of Rs.12.74 lakhs being three and one-tenth of the monthly rent of Rs.4.11 lakhs payable by her. Clause 7 of the bank guarantee stipulated that "this guarantee can be invoked only once during its currency whether for partial or in full amount and our liability ceases on payment of the amount so claimed". This condition in the bond was inconsistent with the rules and the format of the guarantee bond approved and communicated by Government in their letter

dated 31st December 1982.

When the rental for May 1989 was not remitted by the licensee in time, the department invoked the bank guarantee and realised the rental together with the interest on 10th June 1989. Again, when the rental for June 1989 amounting to Rs.4.11 lakhs fell due, the department addressed the bank to remit the amount. The bank, however, turned down the request of the department quoting reference to clause 7 of the guarantee bond which did not provide for any second payment.

Acceptance of the bank guarantee not consistent with the provisions of the Rules and the approved format and not obtaining a fresh guarantee for the remaining period of the excise year by the department resulted in non-realisation of revenue for June 1989 amounting to Rs.4.11 lakhs (excluding interest).

The matter was pointed out to the department in November 1989 and December 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

3.4. Loss of revenue due to allowance of excess wastage in arrack bottling

Under the powers vested in him vide Rule 19 of the Karnataka Excise (Manufacture and Bottling of Arrack) Rules, 1987, the Excise Commissioner in his letter dated 4th January 1988 fixed the maximum wastage in storage and bottling of arrack at 0.5 per cent and 1.5 per cent respectively

till 30th June 1988.

In a distillery at Bangalore, during the Excise years 1986-87 and 1987-88, the unit had drawn 32,71,850 bulk litres and 93,78,960 bulk litres respectively of arrack for bottling. As against the permissible storage and bottling wastage of 65,437 bulk litres and 1,87,579 bulk litres for 1986-87 and 1987-88 respectively, the distillery had shown a wastage of 78,230 bulk litres and 2,07,923 bulk litres of arrack for those years. The excess wastage of 33,137 bulk litres resulted in a loss of revenue to Government to the extent of Rs.2.53 lakhs, on account of cost of arrack, excise duty and sales tax leviable thereon.

This was pointed out to the department in May 1989 and was reported to Government in June 1990; their replies have not been received (November 1990).

3.5. Short recovery of interest on belated payments

As per Rule 15 of the Karnataka Excise Licences (General Condition) Rules, 1967, on shop rentals which are not paid within the tenth day of the month to which they relate, interest is chargeable from the eleventh day of that month at the rate of eighteen per cent per annum (with effect from 1st July 1983) on the outstanding amount as long as it remains undischarged.

In Raichur and Bangalore districts, interest on belated payments of shop rentals by arrack

and toddy contractors, for various periods falling between September 1987 and June 1989, was charged short by Rs.13.48 lakhs.

The short recoveries were pointed out to the department in September 1989 and were reported to Government in February 1990; their replies have not been received (November 1990).

3.6. Non-recovery or short recovery of establishment charges

The Karnataka Excise (Distillery and Warehouse) Rules, 1967 require that the cost of establishment charges in respect of the excise officers and staff working at the distillery for supervision and securing compliance with the provisions of the Excise Act and these Rules shall be recovered by Government from the distillery in advance in annual, half-yearly or quarterly instalments.

In respect of twenty-one distilleries in Bangalore, the cost of establishment was either not collected or short collected during the period 1st July 1987 to 30th June 1989. The shortfall in recovery in these cases amounted to Rs.5.87 lakhs.

On this being pointed out between April 1989 and November 1989 in audit, the department stated (November 1989) that a sum of Rs.37,986 had since been recovered from one distiller. Report on recovery in the remaining cases has not been

received (November 1990).

The above case was reported to Government in January 1990; their reply has not been received (November 1990).

3.7. Non-levy or short levy of duty and non-collection of licence fee under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955

(i) Short levy of duty

As per the provisions of item No.1(a) of the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, patent or proprietary medicinal (allopathic) preparations including drugs containing alcohol which are not capable of being consumed as ordinary alcoholic beverages attract 20 per cent duty **ad valorem** or at the rate of Rs.6.60 per litre of pure alcohol, whichever is higher.

A licensee in Dharwar district, engaged in the manufacture of certain drugs by using duty paid rectified spirit and other ingredients cleared drugs worth Rs.4.91 lakhs between January 1987 and February 1990 by paying duty on rectified spirit instead of duty at the rate of 20 per cent **ad valorem** payable under the Act. This resulted in short levy of duty amounting to Rs.98,250.

On this being pointed out in June 1990, the department stated (March 1991) that necessary

demand has been raised and demand notice has been issued. Further particulars of recovery have not been received (August 1991).

The matter was reported to Government in June 1990; this reply has not been received (August 1991).

(ii) Non-recovery of licence fee

Under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, Ayurvedic preparations containing self-generated alcohol in which the alcoholic contents do not exceed 2 per cent, shall be deemed to be non-alcoholic and no duty shall, therefore, be levied on such preparations. However, under the Karnataka Excise (Spirituous Preparations, Manufacture Sales and Account) Rules, 1969, every person desiring to manufacture spirituous preparations, has to obtain a licence on payment of prescribed fee of Rs.100 (per annum). However, in cases of manufacture of Ayurvedic preparations in which alcohol not exceeding 2 per cent volume by volume is self-generated, the licence shall be granted on payment of a fee of Rs.25.

There are 52 manufacturers licensed by the Director, Indian Systems of Medicine, Bangalore for manufacture of **'Asavas** and **'Arishtas'** which contain self-generated alcohol, under the Ayurvedic system of medicine. These **'Asavas'** and **'Arishtas'** usually contain self-generated alcohol in the range of 5 to 8 per cent volume by volume and hence these manufacturers should have obtained the prescribed licence from the Excise Department

on payment of annual fee of Rs.100. It was, however, noticed that out of these 52 manufacturers only one manufacturer had obtained the licence and in the remaining 51 cases licences were not obtained since their inception and the licence fee was not paid by them. This was not noticed by the Excise Department due to lack of co-ordination between the aforesaid departments. This resulted in non-realisation of licence fee amounting to Rs.86,700.

On this being pointed out in June 1990, the department stated (March 1991) that the matter would be taken up with the Director of Indian Systems of Medicine whether **Asavas** and **Arishtas** are capable of being consumed as ordinary alcoholic beverages, and action would be taken for levying duty and for licencing such manufacturers. Further reply has not been received (August 1991).

The matter was reported to Government in June 1990; their reply has not been received (August 1991).

(iii) Non-payment of duty on intermediary drugs

Under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, no dutiable goods shall be removed from the factory or any premises appurtenant thereto for consumption, export or for manufacture of any other commodity in or outside such place without payment of excise duty leviable thereon.

In Bangalore City, two licensees consumed various intermediary drugs like tincture and expectorants worth Rs.2.95 lakhs, during the years 1986-87 to 1988-89, in the manufacture of other drugs without payment of duty amounting to Rs.58,982.

Government to whom the matter was reported in June 1990, stated (August 1990) that the observation was not correct since the intermediary drugs were not removed, but other drugs were added to them in the same vessel to obtain the final product.

The reply is not acceptable since in a similar case the Supreme Court has held * that if a commodity which is manufactured in such place or premises and is used for manufacture of another commodity, then it will be a case of removal for the purpose of payment of excise duty.

(iv) Incorrect exemption of duty on discount

As per the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, where any article is chargeable to duty at a rate dependent on value, such value shall be deemed to be the value as determined in accordance with the provisions of the Central Excises and Salt Act, 1944. While determining the value,

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(*) J.K.Spinning and Weaving Mills Limited vs. Union of India and others (1987)(32) ELT 234 (SC)

only the trade discount (which is passed on to purchasers) is not taken into account. Medicinal preparations containing narcotic attract duty at the rate of 20 per cent **ad valorem**.

A licensee in Bangalore City engaged in the manufacture of 'Narcotic Drugs', during the years 1986-87 to 1988-89, claimed a discount of 15 per cent amounting to Rs.1.42 lakhs from the retail price, which was admitted and no duty levied even though the discount was not passed on to the purchasers. This resulted in short levy of duty of Rs.28,453.

Government to whom the matter was reported in June 1990, stated (August 1990) that the discount allowed was in the nature of 'Trade Discount' which was passed on to the purchasers and hence no duty was levied. The reply is not acceptable since the entire lot of drugs manufactured was sold to hospitals at retail price and the discount was not passed on to the purchasers.

CHAPTER 4

TAXES ON MOTOR VEHICLES

4.1. Results of Audit

Test check of records in the Offices of the Motor Vehicles Department, conducted in audit during 1989-90, disclosed under-assessment of tax amounting to Rs.24.43 lakhs in 33 cases which fall under the following categories:

	Number of cases	*Amount (In lakhs of rupees)*
1. Short levy of tax on motor vehicles	7	2.38
2. Non-realisation of tax/fees	14	12.46
3. Non-levy of penalty and other irregularities	12	9.59
Total	33	24.43

Some of the important cases noticed in 1989-90 are mentioned in the following paragraphs.

4.2. Non-recovery of additional sum from a fleet owner

Under the Karnataka Motor Vehicles Taxation Act, 1957 and the Rules framed thereunder, the annual tax payable by a fleet owner is provisionally assessed on the basis of

a preliminary declaration made by the owner before the commencement of any year subject to revision on final assessment after the closing of the annual accounts by the owner. The fleet owner has to furnish the final declaration in the prescribed form along with a certified copy of the audited accounts before 30th June of the succeeding year failing which he shall pay an additional sum of one per cent of the difference of tax payable after final assessment.

In Bangalore City, a State owned Road Transport Corporation (a fleet owner) filed the final prescribed declarations for the years 1986-87 and 1987-88 belatedly in September 1988 and September 1988 respectively. But, the additional sum of Rs.3.76 lakhs due on account of the delay in submission of the final declaration was not levied.

The omission was pointed out to the department in December 1989 and was reported to Government in May 1990; their replies have not been received (November 1990).

4.3. Non-collection or short collection of composite fee

Under the National Permit Scheme, in force from 26th September 1975, the holder of a National Permit for public carrier goods vehicle is authorised to ply the vehicle in not less than five contiguous State/Union Territories including home State. The permit holder, in addition to the motor vehicles tax and annual authorisation fee payable to the home State, is required to

pay a composite fee in respect of each State/Union Territory opted for operation at the rate of Rs.1,500 per annum, with effect from 1st April 1986, (for Union Territories the rate is Rs.150 per annum and for Delhi the rate is Rs.750 per annum). The composite fee is an annual tax and is payable in one or two instalments on or before 15th March and 15th September each year and if the permit holder applies for authorisation during March for the ensuing financial year, he has to pay the annual tax irrespective of the fact whether he operates or not in the second half-year. The Transport Commissioner of the home State is required to collect the composite fee due to other States/Union Territories and remit the same to the concerned State/Union Territory.

A test check of the connected departmental records revealed that instalments of composite fee relating to second half-year were not at all recovered in 355 cases and the fee was recovered short in 278 cases during the years 1987-88 and 1988-89 by the home States resulting in a total short receipt of tax revenue to the extent of Rs.3.09 lakhs.

This was pointed out to the department and was reported to Government in December 1989 and followed up by reminder (May 1990); their replies have not been received (November 1990).

4.4. Short recovery of countersigning fee

As per the reciprocal agreement with the Government of Maharashtra, temporary permits

issued by the Government of Maharashtra to stage carriages, require countersignature of the Transport authorities of Karnataka State without payment of any tax to Karnataka Government. However, the countersignatures are obtainable on payment of fee of Rs.100 per application.

In 20 cases involving short recovery of countersigning fee during 1987-88 and 1988-89, an amount of Rs.60,500 was recovered (November 1989/December 1989) on its being pointed out (September 1989) in audit.

4.5. Short recovery of tax on inter-State stage carriages covered by temporary permits

Under the reciprocal agreement entered into by Government of Karnataka with the State of Andhra Pradesh for regulation of inter-State vehicular traffic, transport vehicles registered in that State can ply in Karnataka on specified routes only against temporary permits issued by the transport authorities of that State, subject to other conditions specified in the agreement.

In Bangalore region, in one case of use of a deviated route in Karnataka by a transport vehicle of Andhra Pradesh State Road Transport Corporation, thereby exceeding the mileage limit covered by the agreement, an amount of Rs.58,800 short realised was collected (October 1989) by the department on its being pointed out (May 1989) in audit.

4.6. Non-levy of penalty for delayed payment

Under the National Permit Scheme and the South Zone reciprocal agreement, relating to inter-State movement of public carrier vehicles the permit holder shall pay the annual tax (composite fee) in one or two instalments (at his option) on or before 15th March and 15th September each year. If the composite fees are not paid on the due dates, an additional sum of Rs.100 as penalty for delay of every month or part thereof shall be recovered from the permit holders.

In respect of 412 cases of delayed payments of fees, during the year 1987-88, penalty amounting to Rs.53,900 was not levied and recovered in the case of permit holders of two States (Tamil Nadu and Kerala).

On the omission being pointed out (December 1989) in audit, the department stated (June 1990) that the Transport authorities of the States concerned were addressed in the matter. Further report has not been received (November 1990).

The matter was reported to Government in May 1990; their reply has not been received (November 1990).

CHAPTER 5

TAXES ON AGRICULTURAL INCOME

5.1. Results of Audit

Test check of the documents in Agricultural Income Tax Offices, conducted in audit during the year 1989-90, revealed under-assessment of tax amounting to Rs.40.50 lakhs in 88 cases, which broadly fall under the following categories:

	Number of cases	Amount (In lakhs of rupees)
1. Errors in computation of income and tax	31	14.59
2. Income escaping assessment	3	0.74
3. Non-levy of penalty and interest	18	7.90
4. Irregular allowance of expenditure	15	8.92
5. Other irregularities	21	8.35
Total	88	40.50

Some of the important cases noticed in 1989-90 and earlier years are mentioned in the following paragraphs.

5.2. Incorrect determination of taxable income

Under the Karnataka Agricultural Income-tax

Act, 1957, a person deriving agricultural income from land on which coffee is grown, may, at his option exercise in writing, in lieu of deductions towards new cultivation of lands, replanting of coffee and maintenance of immature plants, deduct from his agricultural income, with effect from 1st April 1985, a sum of twenty-five rupees for every fifty kilograms of coffee produced and delivered by him to the Coffee Board, subject to a maximum of 15 per cent of the average total agricultural income during the previous year and three years immediately preceding it. However, there is no such provision in respect of income from tea grown on land.

In Bangalore district, in the case of an assessee company, for the assessment year 1988-89, while determining (May 1988) the taxable agricultural income, the income from tea was also taken into account while working out maximum admissible amount of 15 per cent of average total agricultural income during the previous year and three years immediately preceding it towards expenditure for new cultivation, replanting and maintenance of immature plants of coffee. This resulted in short computation of taxable income by Rs.1.07 lakhs and consequent short levy of tax by Rs.69,747.

The mistake was pointed out to the department in April 1989 and was reported to Government in May 1989 and followed up by reminder (March 1990); their replies have not been received (November 1990).

5.3. Short levy due to non-clubbing of income of common partners for the same assessment year

Under the Karnataka Agricultural Income-tax Act, 1957, total agricultural income means the aggregate of all agricultural income derived by a person from land situated in the State of Karnataka and also includes all receipts which he receives as his share out of the agricultural income of a firm.

In Chickmagalur district, a registered firm of six partners on its dissolution (31st March 1978) was reconstituted into a new firm with six partners including three of the old firm. Three separate assessments (two for the old firm and one for the new firm) were concluded (July 1984) for the same assessment year 1979-80. While doing so, the share of income of the common partners were clubbed only for two spells instead of clubbing the income for all the three spells although the assessment year was common in all the cases. The mistake resulted in short levy of tax amounting to Rs.99,048.

The mistake was pointed out to the department and reported to Government in August 1989 and followed up by reminder (March 1990); their replies have not been received (November 1990).

5.4. Short levy due to incorrect adoption of status

(i) The Karnataka Agricultural Income-tax Act, 1957 requires that, on partition of a Hindu

Undivided Family, income of the undivided family received after partition should be assessed to tax as if the Hindu Undivided Family was still in existence. The members whose family has been partitioned are liable to pay tax so assessed.

(a) In Chickmagalur district, an assessee firm was being assessed in the status of Hindu Undivided Family till the assessment year 1978-79 relevant to the accounting year 1977-78. There was a partition amongst the members of the assessee firm on 1st April 1978 and a partnership firm was constituted between the partitioned members of the Hindu Undivided Family from the same day. While concluding (October 1988) the assessment for the year 1979-80 of the newly constituted firm, the assessing authority considered an income of Rs.5.77 lakhs relating to 1977-78 crop season and earlier years for assessment in the hands of the firm instead of in the hands of the erstwhile Hindu Undivided Family resulting in short levy of tax amounting to Rs.2.99 lakhs.

The mistake was pointed out to the department in November 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

(b) In Kodagu district, in respect of a Hindu Undivided Family assessee, there was a partition among its members on 26th March 1986. An income of Rs.2.34 lakhs relatable to the Hindu Undivided Family in respect of crop season 1985-86 and earlier periods prior to partition, and received during

the previous year relevant to assessment year 1987-88 was assessed (March 1989) to tax separately in the hands of its members, instead of being assessed to tax as if the Hindu Undivided Family was in existence. The mistake resulted in tax being levied short by Rs.71,336.

The mistake was pointed out to the department in December 1989 and was reported to Government in February 1990 and followed up by reminder (March 1990); their replies have not been received (November 1990).

(ii) Under the Karnataka Agricultural Income-tax Act, 1957, with effect from 1st April 1987, where any business through which agricultural income is received is discontinued in any year, any sum received after discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the person who carried on business had such sum been received before such discontinuance.

In Chickmagalur district, the agricultural income for the year 1987-88 amounting to Rs.7,06,847 (backpool receipts for 1986-87 and earlier years) of a registered firm received after its dissolution (November 1987) was assessed to tax during the assessment year 1988-89 only to an extent of Rs.6,10,559 (pertaining to the period 1st April 1987 to 31st March 1988) in the firm's hands, although the entire income of Rs.7,06,847 pertained to the period when the firm was in existence.

This under-assessment of the income of the firm by Rs.96,288 resulted in short assessment of tax by Rs.23,109. Further, share of income of Rs.70,514 pertaining to the successor partner though proposed to be assessed in the hands of that partner was omitted to be assessed. By adding the partner's share of income in the firm's under-assessed income of Rs.96,288, the total income not assessed in the hands of the partner works out to Rs.99,845 on which tax amounting to Rs.22,313 was not levied. Thus the total short levy amounted to Rs.45,422.

The omissions were pointed out to the department in June 1989 and were reported to Government in August 1989 and followed up by reminder (March 1990); their replies have not been received (June 1990).

(iii) Under the Karnataka Agricultural Income-tax Act, 1957 and the Rules framed thereunder, the registration granted to any firm for any assessment year, shall have effect for every subsequent assessment year, provided the firm furnishes before expiry of the time allowed under the Act a declaration in the prescribed form for continuance of the registration. Further, it is mandatory under the Act that such a declaration made by the firm, is signed by all the partners (not being minors) personally.

In Chickmagalur district, in the case of an assessee firm, the declaration filed for continuance of registration for the assessment year

1987-88 was invalid inasmuch as it was not signed by all the eight partners and it was not filed before the prescribed due date (31st March 1987). Therefore, the assessment concluded adopting the continued status of a firm instead of treating the status as that of an association of persons was not correct. The mistake resulted in short levy of tax amounting to Rs.28,909 for assessment year 1987-88.

The irregularity was pointed out to the department and reported to Government in March 1990; their replies have not been received (November 1990).

5.5. Income from coffee crop escaping assessment

Under the Karnataka Agricultural Income-tax Act, 1957, the income from coffee crop during the relevant previous year is computed on the basis of valuation of points declared by the Coffee Board in respect of such crop. Any receipt in respect of an earlier season's coffee crop received during the previous year, over and above the amount already considered for assessment in the preceding years, is considered as income of the previous year.

In Chickmagalur district, while computing (June 1989) the taxable agricultural income of an assessee (registered firm) for the previous year relevant to the assessment year 1984-85, coffee income from 1981-82 coffee crop season was determined at Rs.1,05,765 as against the amount of Rs.1,82,812 actually received and declared

by the assessee. This resulted in short computation of taxable income by Rs.77,047 and short levy of tax amounting to Rs.41,199.

The mistake was pointed out to the department and reported to Government in August 1989 and followed up by reminder (March 1990); their replies have not been received (November 1990).

5.6. Short levy due to computation mistake

(i) Under the Karnataka Agricultural Income-tax Act, 1957, depreciation allowance in respect of assets owned by the assessee and required for the purpose of deriving agricultural income is allowed to be deducted from the agricultural income for the purpose of levy of tax. For working out the depreciation allowance, the depreciation already charged to the assessee's accounts, is added back and the depreciation allowable in terms of the Act is deducted separately.

In Chickmagalur district, in the assessment of a registered firm, for the assessment year 1988-89, while withdrawing the book figure of depreciation for giving effect to such an adjustment, the assessing officer added back Rs.30,847 instead of Rs.3,08,472. This resulted in short computation of taxable income by Rs.2,77,625 and consequent short levy of tax by Rs.1.58 lakhs (including that of partners).

The mistake was pointed out to the department in November 1989 and was reported

to Government in March 1990; their replies have not been received (November 1990).

(ii) Under the Karnataka Agricultural Income-tax Act, 1957, agricultural income at the rates specified in the Schedule to the Act is payable on the total agricultural income of the previous year, subject to certain deductions permissible under the Act.

(a) In Chickmagalur district, in respect of an assessee firm, short levy amounting to Rs.48,569, due to mistake in adding back the inadmissible expenditure was recovered (between October 1989 and November 1989) on being pointed out (June 1989) in audit.

(b) In Kodagu district, while computing (March 1987) the taxable income of an assessee (registered firm) for the assessment year 1985-86 the income from coffee (for the previous year relevant to the assessment year 1985-86) was adopted as Rs.11,60,574 instead of Rs.12,60,574 due to an error in totalling. The mistake resulted in short computation of taxable income by Rs.one lakh and short levy of tax of Rs.47,695 in the hands of the partners.

On the mistake being pointed out (December 1989) in audit, the department stated (July 1990) that the assessment was revised and an additional demand of Rs.47,695 adjusted out of the excess tax paid by the assessee.

(iii) In Kodagu district, in determining

(October 1988) the taxable income of an assessee for the assessment year 1981-82, a net profit of Rs.1,19,964 as per the Profit and Loss Account was taken into account as against the correct amount of Rs.1,91,964 although this was brought to the notice of the assessing officer through a letter by the assessee in August 1982. The mistake resulted in short computation of taxable income of Rs.72,000 and short levy of tax amounting to Rs.46.800.

On the mistake being pointed out (December 1989) in audit, the assessing authority issued a notice to the assessee initiating rectificatory action. Further report has not been received (November 1990).

The omission was reported to Government in February 1990; their reply has not been received (November 1990).

(iv) Under the Karnataka Agricultural Income-tax Act, 1957, any expenditure (not being in the nature of capital expenditure) incurred in the previous year wholly and exclusively for the purpose of deriving the agricultural income is to be deducted in computing the taxable income of an assessee. Deductions towards "income-tax paid" is not an admissible expenditure under the Act.

In Chickmagalur district, while computing (October 1988) the taxable agricultural income of an assessee (registered firm) for the assessment

year 1987-88 deduction towards "income-tax paid" amounting to Rs.47,560 was incorrectly allowed. The mistake resulted in short computation of income to the extent of Rs.47,560 for the year 1987-88 with a short levy of tax to the extent of Rs.26,201 (including that of partners).

In respect of the same assessee, while revising (October 1988) the assessment for the year 1986-87, the gross agricultural income from coffee was considered as Rs.53.23 lakhs as against the correct amount of Rs.53.63 lakhs. The mistake resulted in short computation of income by Rs.40,000 with a short levy of tax of Rs.12,000 on the partners.

The mistakes were pointed out to the department and reported to Government in November 1989 and followed up by reminder (March 1990); their replies have not been received (November 1990).

(v) Under the provisions of the Karnataka Agricultural Income-tax Act, 1957, as it existed before 1st April 1987, in the case of a registered firm, the firm itself was not liable to pay tax but the total income of each partner of the firm, including therein his share of the firm's income, was to be assessed and tax payable on the basis of such assessment determined.

In Chickmagalur district, while finalising (June 1987) the case of an assessee firm, for the year 1984-85, the total tax payable by the three partners was incorrectly arrived at Rs.32,202

and demand notice issued accordingly as against the correct amount of Rs.52,202. The mistake resulted in short levy of tax of Rs.20,000.

The mistake was pointed out to the department in June 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

5.7. Incorrect allowance of set off

Under the Karnataka Agricultural Income-tax Act, 1957, where any person sustains a loss in agricultural income in any year, such loss shall be carried forward to the following year and set off against the agricultural income for that year.

In Hassan district, in the case of an assessee firm, though the loss of Rs.1,94,281 for the year 1986-87 was apportioned among the partners for that year it was again set off against the firm's income for 1987-88 resulting in non-levy of tax (on firm) of Rs.35,036, which was collected (June 1989) by the department at the instance of Audit.

5.8. Credits afforded in excess

Under the Karnataka Agricultural Income-tax Act, 1957, where a refund is due to any person, the assessing officer may set off the amount to be refunded or any part thereof against the agricultural income-tax remaining payable by that person.

In Kodagu district, refunds of Rs.2,834 and Rs.17,676 due to an assessee (individual) on account of excess advance tax paid by him in respect of the assessment years 1984-85 and 1986-87 respectively, were set off (April 1988) against the demands payable by him for the assessment year 1987-88. However, when the assessments for the years 1984-85 and 1986-87 were revised in June 1988, the refunds already given (as mentioned above) were overlooked leading to corresponding short demand of Rs.20,510.

The mistake was pointed out to the department and reported to Government in December 1989 and followed up by reminder (March 1990); their replies have not been received (November 1990).

5.9. Non-levy of penalty on belated payments

Under the Karnataka Agricultural Income-tax Act, 1957, if an assessee fails to pay the tax demanded from him within the time mentioned in the demand notice and if a time is not mentioned, then, on or before the first day of the second month following the date of service of notice, he is liable to pay penalty at the rate of one-and-a-half per cent per month of the amount of tax remaining unpaid for the first three months and at two-and-a-half per cent per month of such amount for each subsequent month, so long as the default continues.

Further, if after the final assessment, the advance tax paid by the assessee is found to be less than the tax payable by more than

25 per cent, the assessing authority may direct the assessee to pay, in addition to tax, by way of penalty, a sum calculated at 10 per cent of the amount so paid short.

(a) In Kodagu district, an assessee did not pay the tax due within the time stipulated in the demand notice issued on conclusion of final assessment (August 1988) for the assessment year 1988-89. Although a penalty of Rs.43,603 was leviable for belated payments, it was not levied.

The omission was pointed out to the department and reported to Government in February 1989 and followed up by a reminder (March 1990); their replies have not been received (November 1990).

(b) In Bangalore district, the advance tax paid by an assessee company for the previous year relevant to the assessment year 1988-89 fell short of the tax payable by more than 25 per cent. Penalty up to Rs.23,823 which could have been levied was not levied (May 1988).

The omission was pointed out to the department in April 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

5.10. Non-levy of interest and penalty

Under the Karnataka Agricultural Income-tax Act, 1957 an assessee is required to submit to

the assessing authority an annual return of income within four months of the close of his previous year, setting forth his total agricultural income during the previous year. He is also required to pay, in advance, the full amount of tax payable by him on the basis of such return. However, the assessing authority is empowered to grant extension of time to any assessee to file the return and pay tax beyond the due date, subject to the payment of interest on the tax due at the rates charged by the Scheduled banks for unsecured loans (from 1st April 1985). Further, if an assessee makes an application within the time mentioned in the demand notice for being allowed to pay the tax due in instalments, the assessing officer, may fix or extend the time for payment of the entire tax due, if the assessee undertakes in writing to pay, in addition to the tax payable, interest at the above mentioned rate. If a person fails without reasonable cause or excuse to furnish in due time any of the prescribed returns under the Act, he shall be punishable with fine which may extend to five rupees for every day during which the default continues.

(a) In Bangalore district, 3 assessee companies neither filed the returns nor paid the tax on due dates for the assessment year 1988-89. Interest up to Rs.4.17 lakhs could have been levied in these cases, in addition to penalty for delayed submission of returns without the approval of the assessing authority, but was not levied, while concluding assessments between January 1988 and June 1988.

The omission was pointed out to the

department in April 1989 and was reported to Government in January 1990; their replies have not been received (May 1990).

(b) In Kodagu district, in respect of two assessees who were permitted to file their annual returns and pay tax beyond the due dates, the assessing officers did not charge (September 1988 and March 1989) the interest on the tax for the extended period in respect of the assessment years 1986-87 to 1988-89. The interest not levied in these cases amounted to Rs.52,858.

The omission was pointed out to the department in December 1989 and was reported to Government in March 1990: their replies have not been received (November 1990).

CHAPTER 6

LAND REVENUE

6.1. Results of Audit

Test check of records in taluk offices relating to land revenue, conducted during the year 1989-90, revealed short levy of land revenue and water rate amounting to Rs.2280.87 lakhs in 188 cases which broadly fall under the following categories:

	Number of cases	*Amount (In lakhs of rupees)*
1. Short levy of land revenue and cesses	49	602.92
2. Short levy of water rate	38	827.80
3. Short levy of maintenance cess	48	182.30
4. Other irregularities	53	667.85
Total	188	2280.87

Some of the important cases noticed in 1989-90 are mentioned in the following paragraphs.

6.2. Omission to raise demand for water rate

(i) Under the Karnataka Irrigation Act, 1965

and the Rules made thereunder, at the commencement of each irrigation season, the Irrigation Officer is required to notify the quantity of water to be released from an irrigation work and the areas to be irrigated, as also the kinds of crops to be grown thereon. On the basis of this notification and after the actual release of water an officer of the Revenue Department and another from Irrigation Department jointly inspect and prepare a statement consisting of the survey number to which water was supplied and the crops raised therein. Thereafter, the Irrigation Officer is required to prepare a statement of water rate payable by each land-holder after taking into account objections received, if any, and to forward it to the Revenue Officer concerned for collection.

(a) In one taluk each in Kolar and Mysore districts, in respect of water made available from Government irrigation works during the irrigation season 1987-88 and for the revenue year 1988-89, demands for water rate amounting to Rs.24.39 lakhs were not raised by the Tahsildar concerned though the land-holder-wise statements had been received (between January 1988 and July 1989) from the irrigation officers concerned, on the ground that the demand for the entire taluk was not finalised. The non-adherence to the prescribed procedure resulted in non-realisation of water rate aggregating to Rs.24.39 lakhs.

The omissions were pointed out to the department in June 1989 and December 1989 and were reported to Government in December 1989 and March 1990; their replies have not been received (November 1990).

(b) In one taluk each in Mandya and Gulbarga districts, in respect of water made available from Government irrigation works during the years 1985-86 to 1988-89, against Rs.20.38 lakhs due from the land-holders, demands for water rate were raised by the Tahsildars only for Rs.19.81 lakhs for no valid reasons. This resulted in demand being raised short by Rs.57,143.

The omission was pointed out to the department in December 1989 and was reported to Government in March 1990 and followed up by reminder (April 1990); their replies have not been received (November 1990).

(c) (i) In one taluk in Bellary district, in respect of water made available from Government irrigation works during the year 1988-89, demands for water rate amounting to Rs.91,491 only was raised as against the amount of Rs.25.95 lakhs intimated by Irrigation Department between July 1988 and March 1989 resulting in short demand of water rate of Rs.25.03 lakhs.

(ii) Another taluk office in Mandya district raised demand for water rate to the extent of the amount recovered from land-holders, during the years 1986-87 to 1988-89. Against the amount of Rs.94.80 lakhs intimated by the Irrigation Officers, the amount recovered and taken to demand was Rs.22.75 lakhs only. This resulted in a short demand of water rate of Rs.72.05 lakhs.

The irregularities were pointed out to the department and were reported to Government in

October 1989 and December 1989 and followed up by reminder (March 1990); their replies have not been received (November 1990).

(d) In one taluk in Mysore district, in respect of water made available from Government irrigation works, demands for water rate were not raised by the revenue officer during the years 1985-86 to 1987-88 for the reason that the demand statements for those years had not been received from the irrigation officers concerned. On the basis of information of irrigable areas, the crops grown normally by the land-holders, and also the demand raised during the preceding years, as available in the taluk office, demand not raised estimated to Rs.5.41 lakhs.

The omission was pointed out to the department in June 1989 and was reported to Government in June 1989 and followed by reminder (February 1990); their replies have not been received (November 1990).

(ii) Under the provisions of the Karnataka Financial Code, every Government servant who is responsible for the collection of any moneys due to Government should see that demands are made immediately as payments become due, that effective steps are taken to ensure prompt realisation of all amounts due and that proper records are kept to show in respect of items of revenue whether recurring or non-recurring, the assessments and demands made, the progress of recoveries and the outstanding amounts due to Government.

In one taluk each in Bellary and Mysore districts, in respect of water made available from Government irrigation works, for the years 1987-88 and 1988-89, demands for water rate amounting to Rs.15.52 lakhs were not raised by the Tahsildar, even though the land-holder-wise demand statements had been received between December 1987 and June 1989 from the irrigation officers concerned.

On the omissions being pointed out (September 1989 and October 1989) in audit, the department stated that even though the water rate demands were not taken to the records in the taluk office the demand statements were immediately sent to the concerned village accountants for recovery. This is contrary to the prescribed procedure. Further, the books in the taluk office do not reflect the correct position regarding dues to Government.

The omissions were reported to Government in December 1989 and followed by reminders (March 1990); their reply has not been received (November 1990).

6.3. Non-levy of penal water rate

Under the Karnataka Irrigation Act, 1965, with effect from 1st July 1985, if any person uses water from any irrigation work without obtaining the required permission he shall, in addition to any penalty which he incurs for such unauthorised use of water, be liable to pay water rate at 15 times the normal rate he would otherwise have been required to pay, had he applied

for and obtained the necessary permission. Also, if any crop other than that notified is grown, the grower shall be liable to pay water rate at 10 times the normal rate for violation of the approved cropping pattern.

In one taluk in Bellary district and in 29 villages in a taluk of Chitradurga district, demands for penal water rate amounting to Rs.83.42 lakhs for unauthorised use of water from irrigation works and violation of cropping pattern during the years 1985-86 to 1987-88 levied by the Irrigation Officer and intimated to the Tahsildar for recovery, were not raised by the latter.

Government to whom the cases were reported in December 1989 and February 1990, stated (September 1990) that in the case of Bellary district, the entire amount of Rs.2.26 lakhs had been taken to demand during the month of November 1989. Reply in the other cases has not been received (November 1990).

6.4. Non-recovery of maintenance cess

Under the Karnataka Irrigation Act, 1965, an annual maintenance cess of Rs.4 per acre of land in the area benefited by an irrigation works maintained by Government is leviable. However, no cess is leviable in cases in which no water had been made available during the previous two consecutive years. Further, as per the Karnataka Irrigation (Amendment) Rules, 1972, the Tahsildar concerned is the authority for determining the maintenance cess leviable on such lands.

(i) In ten taluks in six districts, in respect of 1.93 lakh acres of land benefited by irrigation works maintained by Government, maintenance cess amounting to Rs.12.68 lakhs leviable for the years 1985-86 to 1988-89 was not levied.

The omissions were pointed out to the department in June 1989 and were reported to Government in June 1989 and followed up by reminder (February 1990); their replies have not been received (November 1990).

(ii) In three taluks, each in the districts of Kodagu, Mysore and Tumkur, on 1.11 lakh acres of land benefited by Government irrigation works during the years 1987-88 and 1988-89, maintenance cess of Rs.2.58 lakhs only was levied as against the cess of Rs.4.43 lakhs leviable. This resulted in cess being levied short by Rs.1.85 lakhs.

On the omissions being pointed out (between June 1989 and December 1989) in audit, the department stated (September 1989) that in one case non-levy of maintenance cess was due to non-receipt of demand statements from the Irrigation Department even though the Tahsildar himself was the concerned authority for levying the said cess. Replies in the other cases have not been received (November 1990).

The cases were reported to Government between June 1989 and September 1989 and followed up by reminders (March 1990); their replies have not been received (November 1990).

6.5. Short levy of land revenue and fine for unauthorised occupation of Government lands

Under the Karnataka Land Revenue Act, 1964, if any person who unauthorisedly uses or occupies any Government land to the use or occupation of which he is not entitled, he shall pay land revenue at twice the amount of assessment, for every year of his unauthorised occupation. He shall also be liable to a fine not exceeding Rs.500 per acre per year, if such occupation is for the purpose of cultivation and not exceeding Rs.1,000 per acre per year, if such occupation is for non-agricultural purposes, as determined by the Deputy Commissioner. However, as per a Government circular issued in November 1977, in the case of those unauthorised occupants who are poor landless persons, a nominal fine of rupee one per acre per year is leviable. According to another circular issued in May 1988, the maximum permissible fines should be levied except where there are special reasons for not doing so which should be recorded in writing.

(i) In one taluk in Tumkur district, Government lands admeasuring 9,331 acres and 32 guntas were under unauthorised cultivation or occupation during the years 1984-85 to 1988-89, but they were assessed to land revenue and fine of Rs.10.61 lakhs for one year (1988-89) only which was collected in September 1988. Based on the rates for the year 1988-89, the demand not raised for the earlier 4 years viz., 1984-85 to 1987-88, estimated to the extent of Rs.42.46 lakhs.

(ii) In four taluks in Tumkur, Raichur and

Bijapur districts, Government lands admeasuring 9,122 acres were under unauthorised cultivation during various periods falling between the years 1983-84 to 1988-89, but they were not assessed to land revenue nor was any fine levied on the unauthorised occupants. The omission resulted in non-levy of fine amounting to Rs.223.30 lakhs in addition to land revenue leviable at twice the normal rate.

(iii) In one taluk each, in Mandya and Kodagu districts, 2055.41 acres of Government land were under unauthorised cultivation since 1968-69. The land revenue leviable at twice the rate (at a nominal rate of rupee one per acre per year), and the fine (at the rate of Rs.500 per acre per year) not levied during the period 1968-69 to 1988-89 amounted to Rs.20,828 and Rs.52.11 lakhs respectively.

(iv) In one taluk in Kodagu district, Government lands admeasuring 787.04 acres were under unauthorised cultivation and the information regarding the period of such cultivation was not available in the records maintained in the Tahsil Office. Land revenue leviable at twice the rate and fine at the maximum rate of Rs.500 per acre per year had not been levied. The omission resulted in non-recovery of land revenue amounting to Rs.4,722 and maximum fine amounting to Rs.11.80 lakhs during the years 1986-87 to 1988-89 alone.

(v) In one taluk in Gulbarga district, an unauthorised occupation, for agricultural purposes, of Government lands admeasuring 2,792 acres and

22 guntas was noticed during the year 1988-89 but land reveune leviable at twice the rate amounting to Rs.5,585 was not levied and as against maximum fine at the rate of Rs.500 per acre per year amounting to Rs.13.96 lakhs, only a fine of Rs.2.80 lakhs was levied without recording any reason for levying lesser fine. This resulted in short levy of fine of Rs.11.16 lakhs and land revenue amounting to Rs.5,585.

The above omissions/mistakes were pointed out to the department and reported to Government between July 1989 and March 1990 and followed up by reminders. between February 1990 and April 1990; their replies have not been received (November 1990).

6.6. Short recovery of conversion fine

Under the Karnataka Land Revenue Act, 1964 and the Rules framed thereunder, when any land held for the purpose of agriculture (and is assessed as such) is permitted to be used for any purpose unconnected with agriculture, a conversion fine is leviable at the rate of 20 paise per square foot if used for residential purpose and at 50 paise per square foot for non-residential purpose.

In two cases in Bijapur, conversion of agricultural land for non-agricultural purposes was permitted during the months of November 1986 and August 1988. Short levy of conversion fine to the extent of Rs.1.64 lakhs due to application of incorrect rate of conversion fine was noticed

as per details below:

	Extent of land converted	Fee levied at Re.0.20 per sq. foot	Fee leviable at Re.0.50 per sq. foot	Short levy
		(Rupees)		
i)	4,35,600 sq.feet	87,120	2,17,800	1,30,680
ii)	1,54,638 sq.feet (released out of 2,18,000 sq.feet approved for conversion)	43,560 (217800 x 20 ps.)	77,319	33,759
				1,64,439

The mistake was pointed out to the departmen in July 1989 and was reported to Government i September 1989 and followed up by reminders i March 1990; their replies have not been receive (November 1990).

6.7. Non-recovery of fee towards maintenance o Record of Rights

The Karnataka Land Revenue Act, 1964 empowers the State Government to exempt, by notification or an order and subject to suc conditions, if any, as may be specified therein

for reasons to be recorded in writing, either prospectively or retrospectively, any class of lands in any area or any part thereof from the payment of land revenue. By an order issued in October 1980, Government exempted the land revenue payable on holdings of rain-fed dry land up to 4 hectares as well as equivalent rain-fed wet land subject to payment of rupee one per holding per year towards the maintenance of Record of Rights.

In five taluks in Gulbarga district, in respect of 96,503 cases of small holdings of land, no fee towards maintenance of 'Record of Rights' was levied for the years 1986-87 to 1988-89 in terms of the aforesaid order. The omission resulted in non-realisation of fee amounting to Rs.2.65 lakhs. Details regarding the extent of such exempted small holdings and the amount of fee not realised in respect of the remaining 5 taluks of the district were not available in the district office.

The omission was pointed out to the department and was reported to Government in October 1989 and followed up by reminder (March 1990); their replies have not been received (November 1990).

CHAPTER 7

STAMP DUTY AND REGISTRATION FEES

7.1. Results of Audit

Test check of documents registered in the offices of the Registrars and Sub-Registrars, conducted during the year 1989-90, disclosed under-assessments of stamp duty and registration fees amounting to Rs.178.23 lakhs in 96 cases, which broadly fall under the following categories:

		Number of cases	*Amount (In lakhs of rupees)*
1.	Incorrect grant of exemption	81	160.17
2.	Under-valuation of property	04	11.85
3.	Other irregularities	11	6.21
	Total	96	178.23

Some of the important cases noticed in 1989-90 and earlier years and findings of a review on "Determination of market value of properties for levy of stamp duty and registration fees" are mentioned in the following paragraphs.

7.2. Determination of market value of properties for levy of stamp duty and registration fees

7.2.1. Introduction

According to the provisions of the Karnataka Stamp Act, 1957 (Act), the registering officer while registering an instrument of conveyance, exchange or gift shall verify the market value of the property involved in the transaction from such facts as are stated in the instrument and with reference to the statement of market value furnished by the executor and also by calling for such other information from any such records that are kept with any Public Officer of authority. Under Section 45-A of the Act, inserted in 1975, in case the registering officer has reason to believe that the market value of the property which is the subject matter of conveyance, exchange or gift has not been truly set forth in the instrument, he may after registering such instrument refer the same to the Deputy Commissioner for determination of market value of such property and the proper duty payable thereon. Besides, the Deputy Commissioners themselves may **suo motu** call for any such instrument within a period of two years of its registration and determine by order the market value of the property involved and duty payable thereon. The aforesaid provisions were first made applicable to eleven cities/towns from 1st May 1975 and were applicable to forty towns/cities of the State with effect from 8th July 1985.

The Act also provides that where any

instrument chargeable with duty has not been duly stamped, the Chief Controlling Revenue Authority or any other authorised officer can serve notice on the parties concerned within 5 years and within 10 years of its registration where there was an intention to evade payment of duty and recover the differential stamp duty.

Further, under the provisions of the Act, market value of any property shall be estimated to be the price, which in the opinion of the Deputy Commissioner or the appellate authority, as the case may be, such property would have fetched or fetch, if sold in the open market, on the date of execution of the instrument of conveyance, exchange or gift.

The market value of lands of various localities was first fixed by Government/Special Deputy Commissioner in May 1975 and was revised from time to time. The latest such circular issued (July 1985) by Government was quashed by the Karnataka High Court in October 1985 on the ground that there was nothing like general or universal market value that could be pre-determined by the Deputy Commissioners. The Court, however, held that the Deputy Commissioners were free to exercise their powers vested under the Act in individual cases. The Government in their action taken report on the 8th report (VIII Assembly) of the Public Accounts Committee have stated (January 1991) that consequent on the above mentioned judgement of the High Court of Karnataka, a comprehensive amendment to Karnataka Stamp Act, 1957 has been suggested to constitute market valuation committees in all the taluks to prepare and supply guidelines register regarding the valuation of each individual

property on par with the existing system in Tamil Nadu and Andhra Pradesh which curtails the discretionary power of the Registering Officers and be helpful to the Registering public. The proposals have however not yet (August 1991) been finalised. In the meantime, the Inspector General of Registration and Commissioner of Stamps issued instructions in February 1983 and reiterated in ber 1987 according to which the Sub-Registrars required to maintain Sales Statistics Registers and the market value of the properties for the year 1987-88 was to be computed after taking the average of the recorded sale values for the years 1984-85 to 1986-87 and adding ten per cent towards inflation each year. To arrive at the average value of the land on the basis of details noted in the sales statistics register/working sheets are also required to be maintained in sub-registry offices. The Karnataka Stamp (Prevention of under-valuation of Instruments) Rules, 1977 also lay down, inter-alia, the procedure for determining the market value of the properties set forth in the instruments presented for registration.

7.2.2. Scope of Audit

With a view to assessing the extent to which the statutory provisions in respect of determination of market value of the properties are being followed in the sub-registry offices of the State, the records of twelve sub-registry offices (out of 196) for the years 1987-88 and 1988-89 were test-checked during March 1990. Interesting cases noticed in the course of audit were also reviewed.

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7.2.3. Organisational set-up

The Registration and Stamp Duty Department is headed by the Inspector General of Registration and Commissioner of Stamps at the State level, assisted by District Registrars at the district level and Sub-Registrars at the taluk-level.

7.2.4. Highlights

(i) The Sales Statistics Register prescribed by the department for determination of market value of properties was not maintained in seven out of twelve sub-registry offices test-checked.

(ii) Non-compliance of departmental instructions and consequent incorrect fixation of market value of properties resulted in under-valuation of properties to the extent of Rs.36.54 lakhs involving stamp duty and registration fee amounting to Rs.4.83 lakhs, in respect of 152 instruments registered in 7 registries.

(iii) Omission on the part of the Deputy Commissioner to call for and examine the instruments for determining the market value of a property in a sub-registry in a taluk within the prescribed period of two years resulted in a loss of revenue of Rs.5.65 lakhs. The Act/Rules do not prescribe any norms/guidelines in matter of selection of cases for suo motu review.

(iv) 21,776 cases (including 8,776 cases more than 3 years old) referred to the Special

Deputy Commissioner during 1975-76 to 1988-89 for determination of market value of properties were pending disposal as on 31st March 1989. In respect of 10,945 pending cases alone in 5 district offices test-checked, the extent of under-valuation of market value of properties was Rs.357.75 lakhs involving stamp duty and registration fees aggregating to Rs.44.31 lakhs.

7.2.5. Non-observance of departmental instructions

In 7 out of 12 sub-registry offices test-checked, the Sales Statistics Register prescribed under the departmental instructions issued in February 1983 and reiterated in December 1987 and Working Sheets were not maintained. In the absence of this register and the working sheets it could not be ensured that the market value of the properties set forth in the instruments had been correctly determined and all the cases of under-valuation thereof had been referred to the Deputy Commissioner concerned.

7.2.6. Under-valuation of properties

(i) In the sub-registry office, Jayanagar, Bangalore it was noticed that the rates adopted for determination of under-valuation of properties in some cases were less than the rates worked out by the sub-registrar for lands in the same area. In respect of 18 documents registered in 1988-89 test-checked, under-valuation of the properties was noticed to the extent of Rs.8.01 lakhs when compared with the rates adopted for other cases in the same area. This resulted in

short levy of stamp duty and registration fees amounting to Rs.1.12 lakhs.

(ii) In the sub-registry office, Bijapur, in 1988-89, non-inclusion of the percentage towards the element of inflation in arriving at the market value of properties resulted in under-valuation of properties in 8 cases to the extent of Rs.3.54 lakhs involving duty/fees amounting to Rs.45,982.

(iii) In five of the test-checked sub-registries at Gokak, Bangalore (North), Belgaum, Hassan and Tumkur, in respect of 126 instruments registered in 1988-89, though the market value was arrived at as per the departmental instructions issued in December 1987, the market value of similar properties registered in 1988-89 from the same areas were found to be higher than the market value determined on the basis of departmental instructions issued in December 1987. This resulted in under-valuation of properties by Rs.24.99 lakhs and revenue forgone amounted to Rs.3.25 lakhs.

It was stated (February 1990 and March 1990) by the four registering officers that the market value was arrived at as per the instructions of the department while one Sub-Registrar (Gokak) stated (March 1990) that the cases relating to the years 1987-88 and 1988-89 were taken up for **suo motu** determination of market value. The reply of the four sub-registering officers is not acceptable since the registering officers were in the knowledge of higher market values fetched for similar properties in the same area and they should have referred the case(s) to the Deputy

Commissioner for determination of the market value as per the provisions of the Act.

7.2.7. Delay in suo motu revision of market value of land

In Mysore taluk, landed property to an extent of 49 acres and 14 guntas were sold (between July 1985 and September 1985) by different vendors in favour of a single purchaser through 27 sale deeds wherein the market value of the lands sold was indicated uniformly at a rate of Rs.46,000 per acre in all the documents. The documents were registered in Mysore taluk (between July 1985 and September 1985) and they were not subjected to any review or check regarding the valuation of the properties until an alleged under-valuation in these transactions were brought specifically to the notice of the department in December 1988. The Deputy Commissioner, Mysore District, took notice of the case and after conducting necessary investigation, issued show cause notice to the purchaser as to why the market value of the landed properties in the instruments should not be determined at Rs.1,50,000 per acre as against Rs.46,000 per acre showed in the instruments.

The above proceedings could not, however, be concluded and demand raised for the differential stamp duty and fees amounting to Rs.5.65 lakhs since the revisional proceedings were not instituted by the department within 2 years from the date of registration of the instruments as prescribed in the Karnataka Stamp Act, 1957 resulting in a loss

of revenue to the extent of Rs.5.65 lakhs. The situation could have been overcome had the documents in question been selected for **suo motu** examination by the Deputy Commissioner within the prescribed limit of two years. The existing provisions in the Karnataka Stamp Act and Rules regarding selection of documents **suo motu** by Deputy Commissioner make such selections discretionary and no specific norms/guidelines are laid down for selection of instruments for **suo motu** review by the Deputy Commissioner.

7.2.8. Delay in determination of market value

Since the introduction of Section 45-A of the Karnataka Stamp Act, 1957 in the year 1975, 94,374 cases of under-valuation of the properties were referred to the Special Deputy Commissioner during 1975-76 to 1988-89 for determining market value thereof. Notices were issued in these cases, but only 72,598 cases were disposed of till the end of March 1989, leaving 21,776 cases of which 8,776 cases were more than three years old. This heavy pendency in disposal of cases of under-valuation is due to non-existence of suitable provisions in the Act/Rules prescribing a time limit for disposal of such cases by the Special Deputy Commissioner for prevention of under-valuation of the properties. Further, the extent of approximate under-valuation of properties reported by the sub-registrars in respect of 10,945 cases pending (as on 31st March 1989) in five district registrars' offices alone amounted to Rs.357.75 lakhs involving duty and registration fees of Rs.38.44 lakhs and Rs.5.87 lakhs

respectively. The district-wise break-up is as follows:

Period	Under-valuation estimated		Revenue involved	
	Number of cases	Amount	Stamp duty	Registration fees
		(In lakhs of rupees)		
Prior to 1985-86	6721	97,02	8.73	0.97
1985-86	1181	31.12	2.80	0.31
1986-87	535	21.59	1.94	0.43
1987-88	956	108.22	12.99	2.16
1988-89	1552	99.80	11.98	2.00
	10,945	357.75	38.44	5.87

The above points were reported to Government in April 1990 and July 1990; their reply has not been received (November 1990).

7.3. Irregular grant of exemption/concession

(i) As per orders issued by Government from time to time (latest one issued in July 1987), stamp duty on instruments executed by the small and marginal farmers, as defined by National Bank for Agricultural and Rural Development (NABARD) for value up to Rs.15,000 is remitted, while a reduction of fifty per cent in stamp duty is

allowed for consideration beyond Rs.15,000. Government also prescribed that for availing the exemption/concession, a certificate from the credits agency concerned in the prescribed form was essential for the verification of the status of the loanees i.e., small/marginal farmers.

In the following sub-registry offices in respect of 563 documents, the remission/concession of stamp duty, as aforesaid, was allowed during 1987-88 and 1988-89 without insisting on the prescribed certificates regarding the status of the loanees. The omission resulted in non-levy or short levy of duty amounting to Rs.5.09 lakhs.

Name of district	*Number of documents executed*	*Amount exempted/ short levied* Rs.
1. Chitradurga	72	62,478
2. Mysore	121	86,591
3. Tumkur	54	58,365
4. Chickmagalu	23	24,472
5. Belgaum	35	85,515
6. Bangalore	162	81,963
7. Bijapur	23	38,211
8. Gulbarga	12	23,395
9. Kodagu	61	48,000
Total	563	5,08,990

The irregularities were pointed out to the department between April 1989 and March 1990 and were reported to Government in February 1990 and March 1990; their replies have not been received (November 1990).

(ii) Government in their order dated 4th April 1975 and subsequent revised order dated 30th October 1982 accorded full exemption from payment of stamp duty and levy of a concessional rate of registration fees on documents registered by new industrial units in the State, on mortgage deeds executed by them for drawal of loan from authorised financial institutions. This concession is, however, available subject to production of a certificate from the department of Industries and Commerce that the new industrial units have taken up 'effective steps' to obtain the loans/assistance applied for by them.

It was clarified (21st June 1976) by the Government that 'effective steps' included the following:

(a) Sixty per cent or more of the capital issued for the unit has been paid up,

(b) A substantial portion of the factory building has been constructed,

(c) A firm order has been placed for a substantial part of the plant and machinery required for the industrial unit.

It was noticed in audit that four documents in Tumkur and nine in Hassan relating to new

industries were registered during the years 1986-87 to 1988-89 without the levying of stamp duty but collecting the concessional rate of registration fees as aforesaid. It was, however, seen that the 'effective steps' certificate issued by the department of Industries and Commerce did not indicate the fulfilment of the three stipulated conditions as per the Government orders mentioned above.

The grant of exemption from stamp duty and levy of concessional rate of registration fees on the basis of incomplete certificates in respect of these 13 documents was, therefore, irregular and resulted in short levy of duty/fees to the extent of Rs.1.68 lakhs.

The mistake was pointed out to the department in May 1990 and June 1989 and was reported to Government in February 1990; their replies have not been received (November 1990).

7.4. Short levy of stamp duty due to incorrect classification of instrument

Under the Karnataka Stamp Act, 1957, 'conveyance' includes a conveyance on sale and every instrument by which property, whether movable or immovable is transferred **inter-vivos** and which is not otherwise specifically provided for by the Schedule to the Act. According to the Sale of Goods Act, 1930, 'sale' is a process by which the seller transfers the property in goods to the buyer for consideration.

In a sub-registry in Bangalore, a document was erroneously classified as 'agreement for sale' instead of as a 'conveyance deed' despite clear mention in the document that the full consideration of Rs.1.95 lakhs was received by the seller and the property was transferred to the purchaser and possession taken thereof by him. The incorrect classification resulted in short levy of stamp duty of Rs.25,340 (including surcharge).

This was pointed out to the department in November 1989 and was reported to Government in March 1990; their replies have not been received (November 1990).

CHAPTER 8

FOREST RECEIPTS

8.1. Results of Audit

Test check of accounts of the divisions Forest Department, conducted in audit during year 1989-90, revealed non-recovery and sh recovery of forest receipts amounting to Rs.612 lakhs in 70 cases, which broadly fall under following categories:-

	Number of cases	Amount (In lakhs of rupe
1. Non-recovery of royalty	8	19.49
2. Non-recovery/short-recovery of taxes	28	144.04
3. Short collection of lease amount	6	18.50
4. Other irregularities	28	430.67
Total	70	612.70

Some of the important cases noticed 1989-90 are mentioned in the following paragrap

8.2. Short recovery of seigniorage value and interest

(i) By an order dated 30th July 1977, with effect from 1st August 1977, the Government of Karnataka handed over the Government firewood depots in the State to the Karnataka State Forest Industries Corporation with the condition that the Corporation should pay to the Forest Department at the end of every month the cost of firewood sold by them. However, the rate at which the firewood was to be supplied to the Corporation by Government was negotiated only in August 1987 and a rate of Rs.35 per cum. towards seigniorage value, at Rs.50 per cum. towards extraction and delivery charges was agreed to, with effect from 4th July 1985 and the actual cost paid to the contractors was to be adopted for supplies made prior to that date. Further, by an order issued by Government on 29th August 1973, the rates of interest leviable in respect of delay in payment of Government dues (including forest development tax) for the first 90 days and penal interest for the period in excess of first 90 days were fixed at 9 per cent and 13 per cent respectively. The rate of penal interest was raised to 18 per cent with effect from 23rd September 1983.

(a) The Karnataka Forest Development Corporation collected forest development tax amounting to Rs.234.15 lakhs, on sale of rubber from plantations during the period from 1st July 1981 to 15th March 1989 and remitted the collections to Government only on 31st March 1989 by drawing 4 cheques in favour of the Government. One cheque for Rs.84.75 lakhs drawn on the Treasury (Personal

Deposit Account) was not realised till August 1989. Report on realisation of this cheque has not been received (September 1990). On the belated remittance of Government dues as aforesaid, interest up to Rs.1.06 crores should have been charged from the Corporation, for the period up to 31st March 1989, but it was not charged.

The omission was pointed out to the department in September 1989 and was reported to Government in December 1989 and followed up by reminders (May 1990); their replies have not been received (November 1990).

(b) In Karwar district, firewood measuring 664.457 cum. during February 1985/March 1985 and 5,610.061 cum. during the year 1985-86 were supplied to the Corporation against a provisional payment of Rs.2.50 lakhs. After the final rates were negotiated as aforesaid, a further sum of Rs.2.40 lakhs being the differential value of firewood supplied was claimed from the Corporation in January 1988. This differential sum has not been paid by the Corporation so far (August 1989). Interest recoverable on this delayed payment at the rate of 9 per cent from October 1985 to December 1985 and at the rate of 18 per cent from January 1986 (last supply) to December 1988 which works out to Rs.1.35 lakhs was also not demanded by the department. This resulted in non-realisation of total revenue amounting to Rs.3.75 lakhs.

Government to whom the matter was reported in July 1989, ordered (22nd March 1990) the

Corporation to pay the above sum due before March 1990, failing which penal interest at 18 per cent would be levied from 1st April 1990. Further report has not been received (November 1990).

(ii) By a validation clause provided in the Karnataka Forest Act, 1963, the seigniorage rate fixed by Government for various species in their order dated 29th June 1982 was made applicable retrospectively from 23rd February 1981. Hence, many of the wood-based industries who had obtained supplies of wood from 23rd February 1981 onwards had to pay the differential seigniorage value for wood supplied by the Government during the period from 23rd February 1981 to 28th June 1982. The Government by their order dated 6th February 1986, however, permitted those industries to pay the differential seigniorage value in five equal annual instalments commencing from 31st March 1986. Interest at the rate of 5 per cent from the date of supply to 13th January 1984 and at the rate of 10 per cent thereafter up to the due date of payment was leviable. Penal interest at the rate of 18 per cent was also leviable for all outstanding dues from the defaulter.

In four forest divisions, in respect of seven cases involving 6,370.232 tonnes of wood supplied between January 1981 and June 1982, the instalments towards differential seigniorage value amounting to Rs.7.44 lakhs and interest (including penal interest) amounting to Rs.5.65 lakhs due up to 31st March 1989 were not realised (March 1989). This resulted in non-realisation

of revenue to an extent of Rs.13.09 lakhs.

The omission was pointed out to the department between February 1987 and October 1989 and was reported to Government between July 1989 and May 1990; their replies have not been received (November 1990).

(iii) Government in their order dated 14th June 1984 accorded sanction for levy of concessional rate of seigniorage at 50 per cent for supplies of eucalyptus and bamboos made to a Government Company for manufacture of newsprint. Further, the Forest Department by an order dated 3rd June 1988, enhanced the seigniorage rate payable on eucalyptus (without bark) to Rs.490 per tonne effective from 1st April 1987. The seigniorage rate of bamboos was also revised to Rs.176 per tonne (from 1st April 1985) and Rs.220 per tonne from 1st April 1988 by a Government order dated 12th May 1988.

In Koppa division, during the period from 1st April 1987 to 30th June 1988, 3,581 tonnes and 1,674 tonnes of eucalyptus were supplied to a Government company and to a Public Limited Company respectively. The revised rate of Rs.490 per tonne effective from 1st April 1987 was, however, not charged by the department. The mistake resulted in short levy of royalty of Rs.4.31 lakhs (Government Company Rs.2.11 lakhs and Public Limited Company Rs.2.20 lakhs).

Further, during the period from May 1985 to July 1988, 1,587 tonnes and 1,668 tonnes of bamboos were supplied from Koppa and Chickmagalur

ivisions respectively to a Government Company : pre-revised rate and the department had taken ɔ action to collect the differential value, as foresaid, amounting to Rs.90,306 (excluding other ıxes on 1,587 tonnes).

The total short realisation of Rs.5.21 lakhs as pointed out to the department in October 1989 nd December 1989 and was reported to Government ı April 1990 and May 1990; their replies have ɔt been received (November 1990).

.3. Non-remittance of forest development tax

Under the Karnataka Forest Act, 1963, in espect of forest produce disposed of by sale r otherwise, forest development tax shall be evied and paid to the State Government at the ate of 5 per cent up to 31st March 1980 and at per cent thereafter. However, with effect from st April 1983, tax is leviable at the rate of 2 per cent on specified items of forest produce old to certain industries.

In Shimoga district, it was noticed in one orest division, that the said tax amounting to s.92,724, collected by the Forest Development orporation on the sale of eucalyptus wood for the eriod 1976-77 to 1985-86 was not remitted to overnment in respect of 27 cases.

The omission was pointed out to the epartment in June 1989; their final reply has ot been received (November 1990).

The case was reported to Government in February 1990; their reply has not been received (November 1990).

CHAPTER 9

OTHER TAX AND NON-TAX RECEIPTS

9.1. Results of Audit

A. ENTERTAINMENTS TAX

Test check of records in Entertainment Tax Offices, conducted during the year 1989-90, disclosed under-assessment of tax amounting to Rs.2.32 lakhs in 13 cases, which fall under the following categories :

	Number of cases	Amount (in lakhs of rupees)
1. Incorrect computation of tax	1	0.65
2. Other irregularities	12	1.67
Total	13	2.32

B. ENTRY TAX

Test check of records in Entry Tax Offices, conducted during the year 1989-90, disclosed under-assessment of entry

tax amounting to Rs.67.31 lakhs in 46 cases, which fall under the following categories :

	Number of cases	Amount (In lakhs of rupees)
1. Short levy due to escapement of turnover	7	1.41
2. Short levy due to incorrect exemption	6	41.05
3. Other irregularities	33	24.85
Total	46	67.31

Some of the important cases noticed in 1989-90 are mentioned in the following paragraphs.

9.2. Application of incorrect rate of entry tax

(i) Under the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979, on entry of the scheduled goods into local areas for consumption, use or sale therein, tax is levied and collected at such rates as may be specified by the State Government, but not exceeding two per cent.

In three cases, on short levy due to application of incorrect rates of entry tax being

pointed out in audit an amount of Rs.7.71 lakhs was recovered (September 1989).

(ii) Under the aforesaid Act, with effect from 1st April 1982, entry tax on "industrial gases other than LPG" is leviable at the rate of 2 per cent **ad valorem** on their entry into a local area as defined in the Act.

In Bangalore City, entry tax was not levied (January 1986) on industrial gases valued at Rs.50.33 lakhs purchased by an assessee from places situated outside the municipal (Corporation) limits of Bangalore City and brought into the Corporation area during the years 1982-83 and 1983-84. The tax not levied amounted to Rs.1.01 lakhs.

The omission was pointed out (November 1989) to the department and was reported to Government in February 1990; their replies have not received (November 1990).

C. RECEIPTS FROM PUBLIC WORKS

9.3. Rent receipts in respect of Government buildings/lands

9.3.1. Introduction

(a) With a view to providing residential accommodation to its employees, Government have constructed residential buildings in Bangalore

and other places in the State. The allotment of these quarters is made in accordance with the "Karnataka Rental Housing Scheme (Revised) Rules, 1987," in respect of Bangalore City and "Allotment of Government quarters at District and Taluk Headquarters Rules" (issued in 1986) in respect of other places.

These Rules provide for allotment of quarters, only to the officials who are in service under the Government of Karnataka and the allotment is made on an application to a House Allotment Committee constituted by Government. A maximum period of stay of 6 months or 12 months in respect of Group 'A' and Group 'B' officers in Bangalore City (which could be extended by Government up to 12 months or 24 months) respectively and a maximum period of 5 years and 10 years have been prescribed for Group 'B' and Group 'C' officials respectively in other places. The allotment of quarters is deemed to have been terminated when the allottee retires, resigns or ceases to be in Government service for any other reasons or transferred outside the place where he is staying or sublets the quarters etc. Continued occupation of the quarters in contravention of these Rules, attracts a levy of penal rent ranging from two to five times the normal rent payable after 30 days of such unauthorised occupation and the official could also be evicted.

Till 31st December 1986, the licence fee chargeable for the quarters was 10 per cent of 'salary' of the Government servant. From 1st January 1987, the licence fee chargeable for the

quarters is the standard rent fixed by the competent authority under the provisions of Appendix IV of the Karnataka Civil Services Rules, 1958 or the house rent allowance admissible, whichever is higher and shall be deducted from the monthly salary bills. Further, initial deposit ranging from Rs.200 to Rs.1,000 is required to be paid by each allottee according to the Group to which he belongs in service, which is refundable/ adjustable on vacating the quarters.

Government also lease out non-residential buildings and Government lands to private individuals/Government agencies on agreed terms and conditions.

(b) **Trend of receipts**

The rent receipts of the Public Works Department vis-a-vis Budget estimates for the years 1984-85 to 1988-89 are as under:

	Residential buildings		*Non-residential buildings/lands*	
Year	*Budget estimates*	*Actual receipts*	*Budget Estimates*	*Actual receipts*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
	(In lakhs of rupees)			
1984-85	190.40	195.76	10.00	19.21
1985-86	190.40	218.35	11.00	22.90

(1)	(2)	(3)	(4)	(5)
1986-87	200.40	242.30	14.89	19.34
1987-88	300.00	387.96	17.40	26.78
1988-89	440.51	400.89	21.00	20.28

9.3.2 Scope of Audit

In order to examine the extent of administration of the Rental Housing Scheme in the State and the receipts realised from Government buildings/lands, a test check of the records relating to rent receipts for the years 1984-85 to 1988-89 in thirteen (out of forty-one) Public Works Divisions was taken up in audit during March 1988 and May 1990.

9.3.3 Organisational set-up

The administration of the Rules and allotment of quarters, monitoring the collection of rent, maintenance of records and maintenance of buildings vest with the Public Works Department. The Chief Engineers of the Buildings Circle stationed at Bangalore and Dharwar, are the Administrative Heads of the department and are assisted by forty-one Executive Engineers in the field. The Executive Engineer concerned is in-charge of the buildings and is empowered to take action under the rules in regard to maintenanc of buildings, recovery of licence fee, eviction proceedings etc.

9.3.4 Highlights

(i) Non-levy of penal rent of Rs.80.76 lakhs for overstayal in 194 quarters was noticed during test check in seven Public Works Divisions.

(ii) Non-levy of penal rent in 86 cases of allotment of quarters to ineligible officials who were on deputation to autonomous bodies, amounted to Rs.23.09 lakhs.

(iii) Non-fixation of standard licence fee in 151 cases, in three divisions, resulted in short recovery of rent amounting to Rs.4.31 lakhs.

(iv) Delay in revision of rent of a Government building in commercial area in Bangalore, leased out to a Federation, resulted in annual loss of rent of Rs.3.47 lakhs.

(v) Failure to obtain adequate security and non-recovery of rental from 12 shops in Bangalore resulted in a loss of revenue of Rs.1.32 lakhs.

(vi) Rent aggregating to Rs.11.41 lakhs in respect of accommodation provided in General Hostel during the years 1974 to 1985 was not recovered.

(vii) A sum of Rs.1.30 lakhs is due for recovery from an oil company since 1982.

(viii) Fixation of rent without proper basis in respect of 2 Government lands in Bangalore and Belgaum resulted in annual loss of Rs.2.57 lakhs. The land in Belgaum was not taken back from the lessee although he had violated the lease terms.

(ix) Rent records were not maintained properly in ten out of thirteen divisions test-checked.

9.3.5 Residential buildings

(i) Unauthorised retention of Government buildings

194 cases of overstayal ranging from 3 to 116 months which attracted levy of penal rent ranging from 2 to 5 times of normal rent leviable amounting to Rs.80.76 lakhs were noticed in seven divisions of the department. Some of the interesting cases are detailed below :

(a) A senior officer of the Transport Department was allotted quarters in Bangalore in November 1979 for a period of six months. However, the officer continued occupation of the quarters till date (May 1990). Despite Government instructions on the subject, no action had been taken by the department to initiate eviction proceedings and to take possession of the building or to recover penal rent of Rs.2.06 lakhs from 4th June 1980 to the end of January 1990. The official who was a self-drawing officer, neither drew her

salary to avoid recovery nor paid rental dues since January 1981.

(b) An officer belonging to an All India Service, retained beyond the permissible period, a Government quarters in Bangalore from September 1985 to February 1988. The penal rent amounting to Rs.63,799 (up to January 1988) was not assessed and demanded by the department.

(c) In Mysore, an official who was transferred outside Mysore during July 1986 was permitted to retain the quarters till May 1987. However, he continued to occupy the quarters thereafter (May 1990) as he was re-transferred to the City Municipal Corporation, Mysore. As the official was not holding the post eligible for allotment of quarters, his continued occupation of the quarters beyond May 1987 was in contravention of the rules and attracts levy of penal rent amounting to Rs.41,750 (up to March 1990) which had not been demanded by the department (May 1990).

(d) In Tumkur, an official continued to retain possession of the quarters till May 1989, even after his transfer outside Tumkur in November 1987. Penal rent amounting to Rs.18,705 was not recovered (July 1990).

(e) In Mysore district, an official in occupation of quarters since 1974 had not vacated the same even after his transfer to another taluk in October 1986. By a special order of the

Government, he was allowed (December 1989) to retain the quarters. Penal rent amounting to Rs.21,162 (up to March 1990) was not assessed and demanded.

(ii) According to the Rules of allotment of Government residential quarters, Government servants in the service of the Government only shall be eligible for allotment of Government house/ quarters. The officers officials sent on deputation to autonomous bodies are, thus, not eligible for allotment of Government quarters.

In six divisions, in respect of eighty-six cases where officials of State Government were sent on deputation to autonomous bodies and they continued to occupy Government quarters, penal rent leviable amounting to Rs.23.09 lakhs up to March 1990) was not assessed and demanded for periods ranging from 15 to 39 months.

(iii) Short recovery of rent

(a) The department clarified in January 1990 that standard rent could be reckoned for the purpose of recovery only from the date from which it was fixed. Under the rules introduced with effect from 1st January 1987, the licence fee chargeable is either the standard rent fixed or the house rent allowance admissible, whichever is more.

In respect of 151 cases, in three divisions test-checked, the standard rent proposals

for quarters occupied from 1st January 1987 were sent for approval to the Chief Engineer only during April 1990. The delay in fixation of standard rent by the department resulted in short recovery of rent amounting to Rs.4.31 lakhs, even according to the standard rent proposals.

(b) In Dharwad, during the period from January 1987 to June 1987, the standard rent which was lesser than the house rent allowance drawn was recovered from the allottees contrary to the Rules. This resulted in short recovery of rent amounting to Rs.52,922 in 47 cases. The department stated in November 1988 that the recovery was in progress.

(c) In Bangalore, in forty-one cases, he amount of house rent allowance drawn by he officials concerned was more than ten per ent of their salary and rent should have been ecovered at rates equal to the house ent allowance admissible to them. But rent as recovered (between January 1987 and October 987) at 10 per cent of gross salary. This mistake esulted in short recovery of rent to the extent f Rs.20,671.

(iv) Short recovery of deposits

Under the Rental Housing Scheme, every llottee is required to pay initial deposit ranging rom Rs.200 to Rs.1,000 depending on the category f the official and location of the quarters before ccupation of the quarters.

In Mandya, the initial deposits as afore said were not recovered in respect of 330 quarters Even at the minimum rate of Rs.200 per quarter a sum of Rs.66,000 was recoverable from th occupants as initial deposit against which a su of Rs.5,150 only was collected, resulting in sho collection of deposit of Rs.60,850.

(v) Occupation of Government quarter by ineligible persons

(a) The employees of a State owne Corporation are in occupation of 96 quarters (ou of 360 in Bangalore. Agreement regulating term of allotment, period of allotment, rent recoverab etc., was not produced when called for in aud (March 1988). Neither is there a provision fo allotment of Government quarters to officials wh are not in Government employment nor has th rate of rent payable been prescribed in suc cases. In the absence of details, the correctne of the demand raised, rent recovered etc., a not susceptible of verification in audit.

(b) In Bangalore, the Central Silk Boa was allotted (1983) forty-five quarters by t Government, for allotment to the Board's employe for 5 years on its office being shifted from Bomb to Bangalore. Ten per cent of the gross sala of the occupants was to be recovered by the Boa and credited to Government account. Howeve the rent actually paid by the Board w the standard licence fee recovered from i employees under the provisions of the Centr Civil Service (Revised Pay) Rules, 1973 as agair

en per cent of the gross salary.

In the absence of particulars of salaries of the occupants, in the Rent Register of the Division, the extent of dues could neither be assessed nor any demand raised. Further, under the terms of allotment, the maintenance charges of the building are to be reimbursed by the Board to the Government. However, a sum of Rs.49,489 spent on maintenance to the end of 1987-88 had not been demanded by the department. Though the period of lease of quarters for five years had expired (1988), no action had been taken to extend the lease or to take back the possession of these quarters.

(c) Government in their order dated 23rd June 1987 stated that Zilla Parishads would provide rent-free residential accommodation to its Chief Secretaries. Though the accommodation is to be provided by Zilla Parishads, the Government is not under any obligation to provide their quarters to them without recovery of any rent.

In Tumkur and Kolar, two Government residential buildings were occupied by the Chief Secretaries of the respective Zilla Parishads in January 1987/April 1987. Contrary to the Rules, no rent was being recovered from them on the plea that they were entitled for rent-free accommodation. No rent was demanded from the Zilla Parishads or from their Chief Secretaries who are otherwise not eligible for allotment of the quarters. The allotment of rent-free accommodation to the officials had also resulted

in non-realisation of revenue (at the minimum rate of rent) to the extent of Rs.28,300 for the period 1st January 1987 to 31st March 1990. Further, in Mandya and Kolar, two Government residential buildings had been occupied by Zilla Parishads for use as offices stores for which rent had neither been demanded nor recovered till November 1990.

(vi) Vacant quarters

Allotment of quarters in Bangalore is made by a Committee constituted by Government for that purpose to such of the officials who had registered their names. Delay in allotment of quarters results in loss of rent to Government.

Test check of rent registers for the years 1986-87 and 1987-88 revealed that twelve quarters in Yelahanka township in Bangalore were kept vacant for a period ranging from seven to sixteen months. Twelve 'D' Type quarters in Bangalore were also kept vacant for a period ranging from four to twelve months. The delay in allotment had resulted in a loss of rent to Government amounting to Rs.32,100.

9.3.6. Non-residential buildings

(1) A Government building situated in a commercial area in Bangalore was leased out to a consumers Co-operative Federation for a period of thirty years from 1966. Initially, monthly rent of Rs.4,500 was fixed. The lease rent was

to be reviewed after ten years. As verified from the records, a sum of Rs.8,600 per month is being received as rent from the lessee.

The rent fixed when compared to the market value in the area where the building is located is, low. On this being pointed out in audit (March 1988), the department stated that action would be taken to enhance the rent. Accordingly, a proposal was submitted in September 1988 for fixing the rent at Rs.37,509 per month. In the calculation, 7 per cent return on capital cost was anticipated. The proposal was pending approval (April 1990).

The lease agreement when called for in audit (March 1988) was not produced by the division. It was, therefore, not possible in audit to verify the correctness of the proposals sent and also whether the provisions of the lease agreement were enforced from time to time.

The delay in revision of rent resulted in loss of rent of Rs.3.47 lakhs annually, even according to the department's proposals.

(ii) Non-realisation of rent dues from shops

(a) In Bangalore, in respect of shops leased out to 12 private persons by Government, a sum of Rs.1.32 lakhs being rentals due for

recovery for the period from 1984 to 1988 was not recovered till November 1990. A sum of Rs.1.01 lakhs of the outstanding amount of Rs.1.32 lakhs was due from a lessee whose whereabouts were not known (November 1990). Failure to obtain adequate security from the lessees and to collect rent periodically from them resulted in non-realisation of rent amounting to Rs.1.32 lakhs.

(b) In Mysore, three shops were rented out in the year 1938 (2) and 1965 (1). Eviction proceedings of the division to take possession of the premises were stayed by the Government during October 1975 to January 1983 and finally by a court in 1985. A sum of Rs.57,857 was due for recovery from the tenants for the period from October 1985 to March 1990. No action had been taken by the department to get the stay vacated (May 1990) and to realise the dues outstanding.

(c) A Government building, which was under the maintenance of Mandya division, was leased out to a private person in the year 1939, on a nominal monthly rent of Rs.26. Even though the tenant became a defaulter since the year 1950-51, the building continued to be in his occupation and his sub-lessees. The details of recovery were not forthcoming from the divisional records. Eviction proceedings instituted through the Deputy Commissioner, Mandya, in December 1972 and again in August 1974 were stayed by the High Court of Karnataka. The details of action taken by the Government to get the stay vacated or to realise dues were

not forthcoming from the divisional records (May 1990).

9.3.7. Non-recovery of rent for stay General Hostel

The rent payable by Members of Parliament/ Members of Legislative Assembly, Officers of State and Central Government and non-officials are fixed by Government from time to time for occupation of rooms in the General Hostel, Bangalore.

A sum of Rs.8.03 lakhs is due in respect of accommodation provided in "General Hostel" attached to a Buildings Division in Bangalore from Members of Parliament/State Legislature for the period ranging from 1974 to 1985. A sum of Rs.3.38 lakhs due from other private parties as at the end of March 1989 had also not been recovered (November 1990).

9.3.8. Lease rent from Government land

(a) Land belonging to Government in Bangalore was leased to an oil company in 1967 for a period of five years. Lease rent of Rs.400 fixed initially was revised to Rs.800 per month subsequently in 1982. Government in their order dated February 1982 enhanced the lease rent to Rs.2,975 per month retrospectively from September 1977. However, the company continued to pay only Rs.800 per month till April 1982. The differential rent for the period from 22nd September 1977 to 30th June 1982 amounting to Rs.1.30 lakhs demanded by the division was

not paid by the lessee company and no effective steps were taken to recover the same.

(b) Government land of 4,180 square metres along with a building valued at Rs.18.40 lakhs was leased out to the Karnataka Construction Corporation (a Government Company) in 1984 for a period of thirty years on lease rent of Rs.5,000 per annum. Even though the possession of land was taken over in April 1984, lease agreement incorporating various terms and conditions had not been entered into by the Government with lessee till date (November 1990). The basis for fixation of lower rate of rent of Rs.5,000 as against Rs.1.29 lakhs per annum calculated at seven per cent on value of the property as per codal provisions (Rs.18.40 lakhs) was not forthcoming. Further, the lessee (Corporation) had failed to pay for the period from April 1986 to March 1990 even the lease rent fixed (Rs.5,000 per annum). Demand for lease rent amounting to Rs.20,000 due up to March 1990) had not been made so far (May 1990).

(c) Government land admeasuring 170 feet x 180 feet in the divisional forest office compound at Belgaum was leased out to a private person for a period of 99 years by the Government in 1966, on a monthly rent of Rs.86 per month. The rent was revised to Rs.500 per month from 1976. Further revision was done in 1986 as per the condition in the supplemental lease deed executed in June 1976.

In 1986, the department estimated the

market value of the above land as Rs.16.57 lakhs on the basis of which a revised monthly fair rent of Rs.12,068 was arrived at by them and proposed (March 1990) to Chief Engineer for revision of the rent originally fixed. In the absence of final orders revising the rent, there is a loss of revenue to the Government to the extent of Rs.1.33 lakhs annually since 1986.

Further, the objective of the grant of the above land on lease was to enable the lessee to build a cold storage with modern amenities, to establish an oil testing laboratory, a rest house for farmers, to extend the existing storage facilities to them for keeping seeds and fertilizers, etc., within a period of five years, failing which the land would revert back to Government. However, the scheme envisaged in the Government order was not implemented and the land was diverted by the lessee for other purposes viz., hotel, lodge and shops. But, no action was taken by the Government to take back the land for violation of terms and conditions of the lease (November 1990).

(d) Government acquired the properties of Race Course at Mysore on payment of compensation of Rs.20.70 lakhs during the year 1976 and leased out to a club on annual rent of Rs.80,000 for a period of twenty years from April 1976. The rent was due for revision once in every five years by not more than fifty per cent of rent paid. Accordingly, rent was revised to Rs.1.20 lakhs in 1980. The subsequent revision due in 1986 had not yet (May 1990) been considered by the department. Consequently, Government had to forgo

revenue of Rs.2.40 lakhs (maximum) for the period from April 1986 to March 1990.

9.3.9. Improper maintenance of records

The Public Works divisions are required to maintain rent registers as prescribed in the Karnataka Public Works Account Code to watch the recovery of rent of buildings.

However, the register was not kept up-to-date in ten out of thirteen divisions test checked. Details, such as, salary of the allottee, rent paid, dues outstanding, date of vacation, details of recovering the deposit and its refund, name and address of the drawing officers of the allottees etc., had not been duly exhibited in the Register maintained for the years 1984-85 to 1988-89. This resulted in incorrect and unverified exhibition of demand, collection and balance of rent rate and in the absence of such details, correctness of demand was not susceptible to verification.

(b) The monthly rent recovery Schedules required to be sent by the Drawing Officers to the P.W.D. Divisions were not being received regularly in seven divisions during the period 1984-85 to 1988-89 resulting in the records being kept incomplete.

(c) Rent registers in respect of quarters at Jayanagar (18 quarters) and Thimmenahally (54 quarters) in Bangalore required to be maintained as per the codal provisions were not maintained for

the period ending March 1988, in a Buildings Division in Bangalore City. Similarly, in Hassan Division, the rent records in respect of quarters transferred from erstwhile Channarayapatna Division had also not been maintained for the period 1987-88 and 1988-89.

(d) The details, such as lease agreement, recovery of rent etc., in respect of a building constructed at a cost of Rs.1.10 lakhs in the year 1951 were not available in Buildings II Division in Bangalore City.

The above points were reported to Government in February 1989 and September 1990, followed by reminder (March 1991); their reply has not been received (August 1991).

(M.V.BHATT)
Accountant General (Audit)-II
Karnataka

Bangalore
The 31 MAR 1992

COUNTERSIGNED

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

New Delhi
The - 8 APR 1992

APPENDICES

Appen

Assessment in

Sl. No.	Particulars	Sales Tax			
		Karnataka Sales Tax	Percentage of (4) to (3) & (5) to (3)	Central Salex Tax	Percentage of (4) to (3) & (5) to (3)
1.	Number of assessments pending at the beginning of the year 1989-90	1,58,328		89,039	
2.	Number of assessments accrued during the year 1989-90	2,07,411		1,15,164	
3.	Total number of assessments due for completion during the year 1989-90	3,65,739		2,04,203	
4.	Number of assessments completed during the year 1989-90	2,35,628	64	1,23,123	60
5.	Number of assessments pending finalisation as on 31st March 1990	1,30,111	36	81,080	40

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rrears (Para 1.6)

gricultural ncome-tax	Percentage of (4) to (3) & (5) to (3)	Entertainments Tax	Percentage of (4) to (3) & (5) to (3)	Entry Tax	Percentage of (4) to (3) & (5) to (3)
15,375		44.484		48,600	
5,176		60,007		54,157	
20,551		1,04,491		1,02,757	
11,630	57	71,659	69	64,106	62
8,921	43	32,832	31	38,651	38

App

Year-wise details of asse

Year	Karnataka Sales Tax	Percentage of pendency	Central Sales Tax	Percentage of pendency	Agricultura Income Tax
1986-87 and earlier years	11,658	9	8,077	10	3,209
1987-88	39,302	30	25,047	31	914
1988-89	79,151	61	47,956	59	1,603
1989-90	-		-		3,195
	1,30,111		81,080		8,921

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ment in arrears (Para 1.6)

Percentage of pendency	Entertainments Tax	Percentage of pendency	Entry Tax	Percentage of pendency
36	3,974	12	7,840	20
10	3,629	11	10,647	28
18	12,756	39	20,164	52
36	12,473	38	-	
	32,832		38,651	