



सत्यमेव जयते

REPORT
OF THE
COMPTROLLER AND
AUDITOR GENERAL OF INDIA
FOR THE YEAR ENDED
31 MARCH 1995

No. 2

(REVENUE RECEIPTS)

GOVERNMENT OF GUJARAT



REPORT

OF THE

COMPTROLLER AND

AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED

31 MARCH 1954

1954

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PREFATORY REMARKS

This Report for the year ended 31 March 1995 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This report presents the results of audit of receipts comprising sales tax, land revenue, taxes on vehicles, stamp duty and registration fees and other tax and non-tax receipts of the State.

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 1994-95 as well as those noticed in earlier years but could not be covered in previous year's Reports.

PREFACE

The book is for the use of students of the Government of India and is based on the Constitution of India.

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Overview

OVERVIEW

This Report contains 37 paragraphs including 2 reviews relating to non-levy/short levy of tax, penalty and interest etc. involving Rs. 52.81 crores. Some of the important findings are mentioned below:

1. General

(i) The total revenue receipts of the Government of Gujarat in 1994-95 were Rs. 7806.39 crores as against Rs. 7030.01 crores during 1993-94. The revenue raised by the State from taxes during 1994-95 was Rs. 4742.86 crores and from non-tax receipts was Rs. 1488.11 crores. State's share of divisible Union taxes and grants-in-aid from Government of India were Rs. 978.63 crores and Rs. 596.79 crores respectively. The main source of tax revenue during 1994-95 was Sales Tax (Rs. 3185.99 crores). The main receipts under non-tax revenue were from Interest (Rs. 821.69 crores) and Non-ferrous Mining and Metallurgical Industries (Rs. 410.49 crores).

[Paragraph 1.1 and 1.2]

(ii) Cases pending for assessment under Sales Tax Act increased from 18,81,217 as on 31 March 1994 to 23,17,600 as on 31 March 1995. Out of these, 80,011 cases had turnover of above Rs. 1 crore in each case.

[Paragraph 1.6]

(iii) A test check of the records of Sales Tax, Land Revenue, Motor Vehicles and other departmental offices conducted during 1994-95 revealed under assessments and losses of revenue of Rs. 41.54 crores in 2054 cases. During the year the concerned departments accepted under assessments etc. of Rs. 140.79 crores in 1367 cases pointed out during 1994-95 and earlier years.

[Paragraph 1.8]

2. Sales Tax

(i) Test check of the system of receipt, issue and production of 'C' form under the Central Sales Tax Act revealed that:

(a) Printing of 'C' Forms was awarded to a private press without ascertaining whether it had earlier done the printing work of documents with cash value. The job work of printing done by private press lacked adequate care and attention.

[Paragraph 2.2.6]

(b) Absence of verification of receipt of 'C' forms at first stage and failure to maintain any record for accountal of receipt, issue and due to inadequate safe custody there was loss of 5500 'C' forms as a result of theft and pest.

[Paragraph 2.2.7(A) (B) (C) and 2.2.10]

(c) Some dealers had obtained 'C' forms either by getting registration certificate in the name of bogus dealers or by unauthorised means. Irregularities in utilisation of 'C' forms by 68 dealers leading to avoidance of tax of Rs. 229.24 lakhs was noticed by the Department in 1992. However, the police complaint was lodged only in April 1995 against 4 dealers only.

[Paragraph 2.2.8 (A)(ii) and (iii)]

(d) 6 divisions did not observe the provisions of the Act/Rules. Consequently there was short levy of tax of Rs. 143.55 lakhs.

[Paragraph 2.2.12]

(ii) Sales tax exemption of Rs.45.18 lakhs was granted to 17 ineligible industrial units.

[Paragraph 2.3]

(iii) Set off of Rs.85.74 lakhs was irregularly granted under Rule 42-E to 14 dealers though the manufactured goods had been exported outside the territory of India.

[Paragraph 2.5(iii)]

(iv) Purchase tax of Rs. 114.18 lakhs was not levied in the case of five dealers on account of breach of recitals of form 17-A and 19.

[Paragraph 2.6]

(v) As a result of applications of incorrect rate of tax in case of 8 dealers there was a short levy of tax of Rs.23 lakhs.

[Paragraph 2.8]

3. Land Revenue

(i) Non-agricultural assessment of Rs.19.62 lakhs was not/short recovered though the land measuring 28.26 lakhs square metres was already handed over to Gujarat Industrial Development Corporation (GIDC), Gujarat Housing Board (GHB), Rajkot Urban Development Authority (RUDA) and Gas Authority of India Limited (GAIL).

[Paragraph 3.2(a) and (c)]

(ii) Conversion tax of Rs.18.01 lakhs was not/short recovered in 35 cases of Ahmedabad, Bhavnagar, Gandhinagar, Junagadh, Kheda, Surendranagar and Surat Districts.

[Paragraph 3.3]

(iii) In 78 cases of Ahmedabad, Bhavnagar, Bharuch, Gandhinagar, Jamnagar, Junagadh and Surat application of incorrect rate resulted in short/non-levy of non-agricultural assessment of Rs.11.78 lakhs.

[Paragraph 3.4(a) and (c)]

4. Taxes on Vehicles

(i) *Impact of revision of rates of composite tax was not analysed before introduction of the Bill in the Legislature. The bill did not specifically and clearly contemplate any reduction in the existing rates of tax. This resulted in drop of Government revenue of Rs.2350.23 lakhs.*

[Paragraph 4.2.6(A)]

(ii) *The term 'Luxury bus' though existed in Bombay Motor Vehicles Tax Act, 1958 since May 1982, it was defined from April 1994. Thus on these luxury buses for the period 1991-92 to 1993-94, tax was levied at lower rates till March 1994 which resulted in loss of revenue of Rs.662.77 lakhs.*

[Paragraph 4.2.6(D)]

(iii) *Inordinate delay by Government for over 34 months in prescribing the date of payment of tax for owners of designated omnibuses resulted in loss of Rs.874.31 lakhs owing to non-invoking of provisions of penalty on belated payment of tax.*

[Paragraph 4.2.6(F)]

(iv) *Retrospective effect given by ordinance for application of reduced rate of tax was not considered by the Act passed in its ratification resulted in incorrect adjustment of difference of tax Rs.75.04 lakhs, short/non levy of tax Rs.66.43 lakhs.*

[Paragraph 4.2.7(A)]

(v) *Under the provisions of Act, the Government by issue of notification is empowered to change the rates of tax only. Change in the structure of schedule requires enactment. By an amendment to Schedule, the classification of motor vehicles with unladen weight between 751 kgs and 900 kgs had been changed and benefit of lower rate of tax was extended to 617 motor vehicles. Consequently there was loss of revenue of motor vehicle tax of Rs.20.58 lakhs.*

[Paragraph 4.3]

5. Stamp duty and Registration Fees

(i) *Stamp duty of Rs.70.20 lakhs was short levied due to misclassification of "Deeds of Further Charge" as mortgage deeds.*

[Paragraph 5.2]

(ii) *Stamp duty and registration fees of Rs.54.55 lakhs was short levied due to misclassification of documents.*

[Paragraph 5.3]

6. Other Tax and Non-Tax Receipts

A. Entertainment Tax

(i) Entertainment tax and interest thereon aggregating to Rs.50.17 lakhs were not/short levied in respect of 9 cinema houses, 24 video parlours and 52 cable operators in Ahmedabad, Jamnagar and Surendranagar.

[Paragraph 6.2, 6.3, 6.4 and 6.5]

B. Luxury Tax

(i) Penalty of Rs.59.90 lakhs had not been levied, in the case of proprietors of 5 hotels at Ahmedabad and Vadodara on the luxury tax of Rs.39.94 lakhs not paid for the period 1991-92 to 1994-95.

[Paragraph 6.7]

(ii) Luxury tax and interest aggregating to Rs.15.28 lakhs had not been paid by the proprietor of a hotel at Ahmedabad.

[Paragraph 6.8]

C. Mining Receipts

(i) Powers to declare a mineral to be a minor mineral vests in Union Government. Two industrial Units dredged "silt" akin to clay from magdalla channel. Inaction on the part of State Government to seek such clarification from the Government in respect of the mineral resulted in blocking up of revenue of Rs.0.38 crore in one case and loss of revenue of Rs.3.03 crores in another case.

[Paragraph 6.10]

(ii) Dead rent on "Black Trap" amounting to Rs.27.40 lakhs for the lease period 1992-93 to 1993-94 was not recovered from 44 lease holders of Godhra, Junagadh and Surat.

[Paragraph 6.11]

(iii) Interest amounting to Rs.15.79 lakhs had not been levied on belated payment of royalty in 10 cases of Godhra and Junagadh.

[Paragraph 6.12]

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GENERAL

CHAPTER - 1

GENERAL

1.1 Trend of revenue receipts

The tax and non-tax revenue raised by Government of Gujarat and the State's share of divisible Union taxes and grants-in-aid received from Government of India during 1994-95 and the preceding two years are given below and also depicted in Chart-I:

	1992-93	1993-94	1994-95
	(Rupees in crores)		
I. Revenue raised by State Government			
(a) Tax revenue	3456.55	3941.72	4742.86
(b) Non-Tax revenue	1157.97	1398.78	1488.11
Total	<u>4614.52</u>	<u>5340.50</u>	<u>6230.97</u>
II. Receipt from Government of India			
(a) State's share of divisible Union taxes	813.09	983.08	978.63
(b) Grants-in-aid	483.47	706.43	596.79
Total	<u>1296.56</u>	<u>1689.51</u>	<u>1575.42</u>
III. Total receipts of the State Government (Revenue Account)	5911.08	7030.01	7806.39*
Percentage of I to III	78	76	80

* For details, please see Statement No.11 - "Detailed Accounts of Revenue by Minor Heads" in the Finance Accounts of the Government of Gujarat for the year 1994-95. Figures under the head "0021 - Taxes on Income other than Corporation Tax - Share of net proceeds assigned to States" booked in the Finance Accounts under A-Tax Revenue have been excluded from revenue raised by the State and included in State's share of divisible union taxes in the statement.

ANALYSIS OF REVENUE RECEIPTS FOR 1994-95

Total revenue receipts (Rupees in crores)

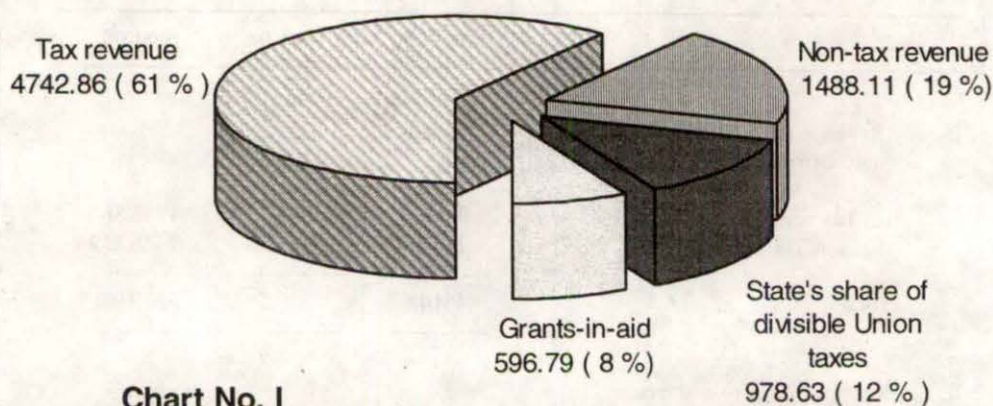


Chart No. I

1.2 Revenue raised by the State Government

(i) Tax revenue contributed 61 per cent of the total revenue receipts of the State Government during 1994-95.

The contribution of sales tax to the total tax receipts during 1992-93 to 1994-95 was as under :

	1992-93	1993-94	1994-95
	(Rupees in crores)		(Percentage in bracket)
Sales Tax	2300.58 (67)	2771.03 (70)	3185.99 (67)
Other Taxes	1155.97 (33)	1170.69 (30)	1556.87 (33)
Total	3456.55 (100)	3941.72 (100)	4742.86 (100)

The details of tax revenue raised from major taxes during the three years up to 1994-95 are given below and also depicted in Chart-II:

	1992-93	1993-94	1994-95	Percentage of increase (+) or decrease (-) in 1994-95 over 1993-94
(Rupees in crores)				
1. Sales Tax	2300.58	2771.03	3185.99	(+)15
2. Taxes and Duties on Electricity	544.19	465.53	791.21	(+)70
3. Stamp Duty and Registration Fees	184.56	210.77	270.68	(+)28
4. Taxes on Vehicles	145.02	174.69	208.17	(+)19
5. Taxes on Goods and Passengers	121.56	117.44	65.40	(-)44
6. Land Revenue	46.00	59.16	60.75	(+)3
7. Other Taxes	114.64	143.10	160.66	(+)12
Total	3456.55	3941.72	4742.86	

There was significant variation in receipt under heads 'Taxes and Duties on Electricity' and 'Taxes on Goods and Passengers'.

Tax revenue (Rupees in crores)

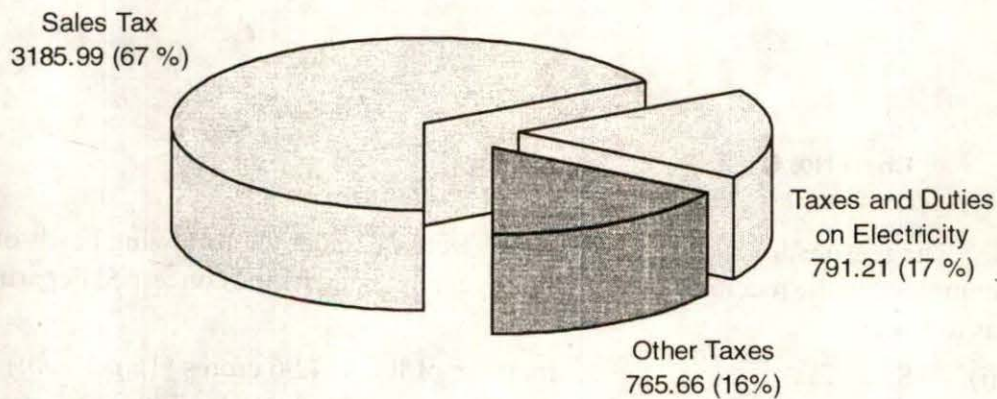


Chart No. II

(ii) Non-Tax revenue

(a) Details of revenue raised from some of the major non-tax receipts during the three years up to 1994-95 are given below and also depicted in Chart-III:

	1992-93	1993-94	1994-95	Percentage of increase(+)or decrease (-) in 1994-95 over 1993-94
(Rupees in crores)				
1. Non-ferrous Mining & Metallurgical Industries	477.28	381.04	410.49	(+)8
2. Interest Receipts	438.37	777.53	821.69	(+)6
3. Major and Medium Irrigation	22.79	30.99	42.59	(+)37
4. Medical and Public Health	20.33	31.77	27.53	(-)13
5. Others	199.20	177.45	185.81	(+)5
Total	1157.97	1398.78	1488.11	

Non-tax revenue (Rupees in crores)

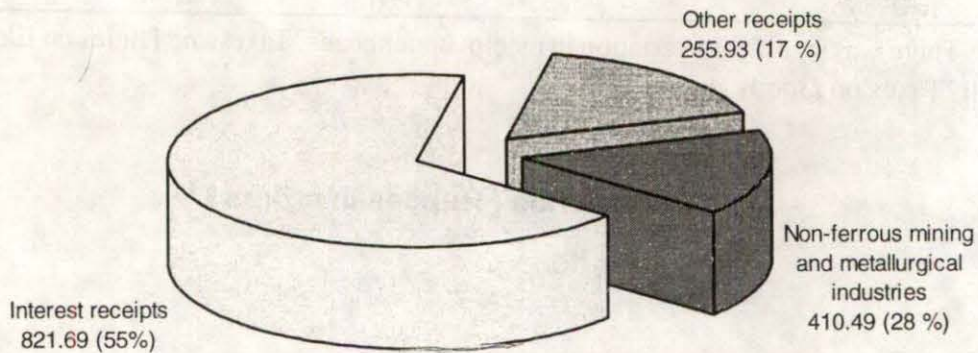


Chart No. III

The reasons for significant increase/ decrease under the following heads of account compared to the receipts of the previous year as stated by the concerned departments are as follows:

- (i) Sales Tax : Increase of Rs. 414.96 crores (15 per cent) was due to more receipts under Sales Tax.

- (ii) Taxes and Duties on Electricity : Increase of Rs. 325.68 crores (70 per cent) was due to more receipt of taxes on consumption and sale of electricity.
- (iii) Stamp Duty and Registration Fees : Increase of Rs. 59.91 crores (28 per cent) was due to more sale of non-judicial stamps.
- (iv) Taxes on Vehicles : Increase of Rs 33.48 crores (19 per cent) was due to more receipts on account of Motor Vehicle Taxation.
- (v) Taxes on Goods and Passengers : Decrease of 52.03 crores (44 per cent) was due to less receipt of passenger tax.
- (vi) Major and Medium Irrigation : Increase of Rs. 11.60 crores (37 per cent) under 'Major and Medium Irrigation' was due to receipts under 'Other Receipts'.

1.3 Variations between Budget estimates and actuals

The variations between Budget estimates and actuals of some major revenue receipts for the year 1994-95 are given below :

Head of Revenue	Budget estimates	Actuals	Variation Increase (+) Decrease (-)	Percentage of variation
(Rupees in crores)				
Tax revenue				
1. Sales Tax	3064.32	3185.99	(+)121.67	(+)4
2. Taxes and Duties on Electricity	614.00	791.21	(+)177.21	(+)29
3. Stamp Duty and Registration Fees	223.41	270.68	(+)47.27	(+)21
4. Taxes on Vehicles	170.00	208.17	(+)38.17	(+)22
5. Taxes on Goods and Passengers	146.00	65.40	(-)80.60	(-)55
6. Land Revenue	46.00	60.75	(+)14.75	(+)32
7. Other Taxes on Income and Expenditure	53.44	44.24	(-)9.20	(-)17
Non-tax revenue				
8. Non-ferrous Mining and Metallurgical Industries	372.12	410.49	(+)38.37	(+)10
9. Interest Receipts	356.22	821.69	(+)465.47	(+)131
10. Major and Medium Irrigation	27.54	42.59	(+)15.05	(+)55
11. Medical and Public Health	35.97	27.53	(-)8.44	(-)23
12. Forestry and Wild Life	20.87	16.75	(-)4.12	(-)20
13. Education, Sports, Arts and Culture	16.59	15.39	(-)1.20	(-)7
14. Police	10.26	16.90	(+)6.64	(+)65
15. Public Works	9.95	9.27	(-)0.68	(-)7
16. Miscellaneous General Services	7.06	17.75	(+)10.69	(+)151

General

The reasons for variation between the Budget estimates and the actuals as made available by some of the departments were as follows :

(a) Under 'Forestry and Wildlife' the decrease (20 per cent) was mainly due to fixation of higher targets, moratorium of coupes from 1987-88, availability of less timber for sale, non-adjustment of royalty on minor forest produces receivable from Gujarat State Forest Development Corporation *etc.*

(b) Under 'Medical and Public Health' the decrease (23 per cent) was mainly attributed to the services being generally rendered free of cost and reduction in revenue from Employees State Insurance Corporation (ESIC)-due to decrease in beneficiaries for closure of certain units.

(c) Under 'Land Revenue' increase (32 per cent) was mainly due to increase in actual receipt on account of increased rates of non agricultural assessment from August 1989, increase in price of Government waste land and the disposal thereof and better recovery due to good agricultural year.

No reply was received from the other departments where there were major variations although requested for by audit and followed up.

1.4 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on their collection and the percentage of such expenditure to gross collections during the years 1992-93, 1993-94 and 1994-95 alongwith the relevant all India average percentage of expenditure on collection to gross collections for 1993-94 are given below:

Head of Revenue	Year	Collection	Expenditure on collection	Percentage of expenditure on collection	All India Average percentage of collection
(Rupees in crores)					
1. Sales Tax	1992-93	2300.58	24.15	1	1.3
	1993-94	2771.03	24.81	1	
	1994-95	3185.99	27.91	1	
2. Stamps and Registration Fees	1992-93	184.56	7.61	4	4.8
	1993-94	210.77	5.16	2	
	1994-95	270.68	5.87	2	
3. Taxes on Vehicles	1992-93	145.02	5.61	4	2.6
	1993-94	174.69	6.24	4	
	1994-95	208.17	7.40	4	

1.5 Arrears of revenue

As on 31 March 1995 arrears of revenue under principal heads of revenue, as reported by the departments were as under:

Head of revenue	Arrears pending collection	Arrears more than five years old	Remarks
(Rupees in lakhs)			
1. Sales Tax	77065.70	17125.44	Out of total arrears of Rs.77065.70 lakhs, Rs.14325.00 lakhs were pending due to deferment scheme, Rs.96.00 lakhs were due to cases pending in liquidated Co-operative Societies, Rs.9628.00 lakhs were due to postponement of recovery due to stay given by the departmental appellate authorities, Rs.19553.00 lakhs were due to enforced recovery appeals filed but same were not entertained for want of 50 per cent payment of dues, Rs.2359 lakhs were due to insolvency transfer of properties and court cases and Rs.31017 lakhs were due to other reasons.
2. Motor Vehicles Tax	1345.45	314.69	Out of Rs.1345.45 lakhs, Rs.454.51 lakhs were due to demand covered by revenue certificates, Rs.3.02 lakhs were pending due to stay granted by High Court and other judicial authorities and Rs.862.86 lakhs were due to other reasons.
3. Profession Tax	1421.63	276.43	Rs. 1421.63 lakhs were pending due to demand covered by recovery certificates.
4. Goods and Passenger Tax	385.34	86.47	Out of total arrears of Rs.385.34 lakhs, Rs.123.77 lakhs were due to demand covered by recovery certificates, Rs.1.37 lakhs pending due to stay granted by High Court and other judicial authorities and Rs.260.20 lakhs were due to other reasons.

1.6 Arrears in Sales Tax assessments

The number of assessments due for assessment, number of assessments completed during the year and the number of assessments pending at the end of the year under report with corresponding figures of the year 1993-94 are as under:

	1993-94	1994-95
(a) Number of assessment due for completion during the year		
Arrear cases	16,69,159	18,81,217
Current cases	6,22,162	7,05,124
Remand cases	953	1,109
Total	22,92,274	25,87,450
(b) Number of assessments completed during the year		
Arrear cases	3,11,175	1,40,566
Current cases	98,954	1,28,175
Remand cases	928	1,109
Total	4,11,057	2,69,850
(c) Number of assessments pending finalisation as at the end of the year		
Arrear cases	13,57,984	17,40,651
Current cases	5,23,208	5,76,949
Remand cases	25	—
Total	18,81,217	23,17,600
(d) Year wise break-up of pending cases are as under:		
Upto 1990-91	5,20,656	4,85,911
1991-92	3,58,800	3,18,316
1992-93	4,78,528	4,18,022
1993-94	5,23,233	5,18,402
1994-95	—	5,76,949
Total	18,81,217	23,17,600

The above table shows that during the year out of 18,81,217 arrear cases, only 7 per cent cases were assessed and out of 7,05,124 current cases, only 18 per cent cases were assessed. As on 31 March 1995, 23,17,600 cases were pending for assessment, out of which 1,40,706 cases involved turnover of over Rs.50 lakhs but not exceeding one crore and 80,011 cases involved turnover of over Rs.1 crore in each case.

Though the system of deemed assessments was introduced in November 1991 as per recommendations of the Sales Tax Study Team (Subba Rao Committee - October 1990), there was no significant improvement in the clearance of arrear cases during 1994-95. The recommendations of the Committee regarding clearance of the pending assessments within one year of the closure of accounting year are yet to be implemented.

1.7 Internal Audit

The internal audit in Sales Tax Department was constituted in May 1960. During 1994-95, assessments of 447 cases were revised at the instance of internal audit and additional demands of Rs.120.22 lakhs were raised.

The internal audit was constituted in Entertainment Tax department in February 1989 and in Motor Vehicles department in April 1992. Information regarding additional demands raised as a result of internal audit, though called for in April 1995, has not been furnished (October 1995).

1.8 Results of audit

Test check of the records of Sales Tax, Land Revenue, Motor Vehicles and other Departmental offices conducted during the year 1994-95 showed under-assessments/short levy/loss of revenue aggregating Rs.41.54 crores in 2,054 cases. During the year the concerned Departments accepted under-assessments *etc.* of Rs.140.79 crores (1367 cases), of which Rs.35.80 lakhs (181 cases) were pointed out during 1994-95 and the rest in earlier years.

This Report contains 37 paragraphs including two reviews involving Rs 52.81 crores which illustrate some of the major points irregularities in audit. Of these, the departments accepted audit observations amounting to Rs.12.46 crores. The departments did not accept audit observations involving an amount of Rs.1.11 crores but their contentions were found to be at variance with the facts or legal position. These have been commented upon in the relevant paragraphs.

1.9 Outstanding inspection reports and audit observations

(i) Audit observations on assessments, collection and accounting of receipts and defects noticed during local audit are communicated to the head of offices and the departmental authorities through audit inspection reports. More important irregularities are also reported to the heads of departments and to the Government.

The details of pending inspection reports and audit observations at the end of June of the last three years are given below:

	At the end of June		
	1993	1994	1995
Number of outstanding inspection reports	1,747	1,645	1,629
Number of outstanding audit observations	5,640	4,963	5,808
Amount of receipts involved (Rupees in crores)	204.86	395.08	296.73

In respect of 137 Inspection Reports issued between January 1994 and December 1994 departments have not even furnished first replies. These Inspection Reports involve

General Officer for the

revenue of 1,99 crores in Revenue Department; Information, Broadcasting and Tourism Department; Finance Department and Industries and Mines Department.

(ii) Year wise break-up of the outstanding Inspection Reports and audit observations as on 30th June 1995 is given below:

Year in which Inspection Reports were issued	Number of outstanding		Amount of receipts involved (In crores of rupees)
	Inspection Reports	Audit Observations	
Upto 1990-91	583	1,429	6.40
1991-92	259	808	218.06
1992-93	247	816	13.86
1993-94	312	1,285	22.74
1994-95	228	1,470	35.67
Total	1,629	5,808	296.73

The above position was brought to notice of Secretaries to Government in the concerned departments from time to time.

CHAPTER - 2

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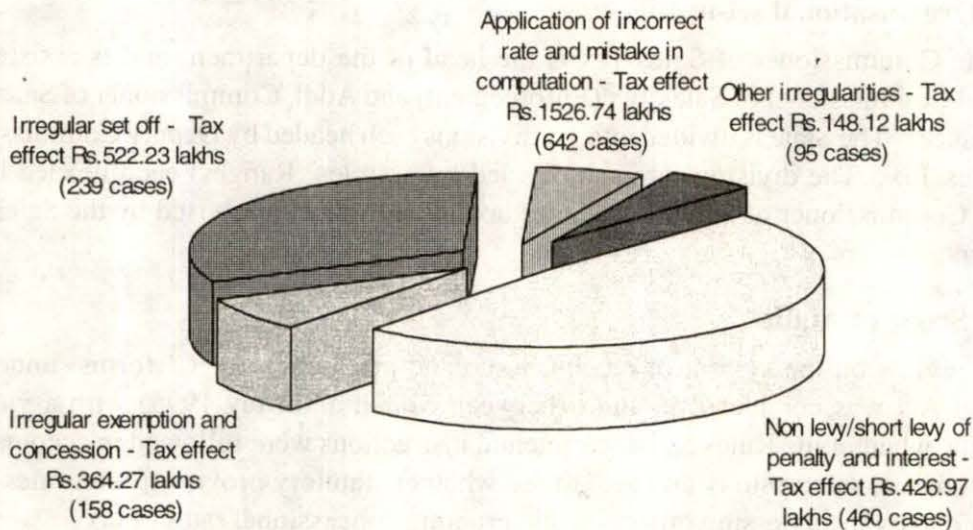
SALES TAX

CHAPTER - 2

SALES TAX

2.1 Results of audit

Test check of assessment records in various sales tax offices conducted in audit during the year 1994-95 revealed under-assessments of Rs.2988.33 lakhs in 1594 cases, which broadly fall under the following categories:



Total cases 1594 - Tax effect Rs. 2988.33 lakhs

During 1994-95 the department accepted under assessment *etc.* of Rs.265.74 lakhs involving 738 cases of which 152 cases involving Rs.13.51 lakhs were pointed out during 1994-95 and the rest in earlier years.

A few illustrative cases and results of a review on 'Receipt, issue and production of 'C' forms under the Central Sales Tax Act, 1956' involving Rs.454.35 lakhs are given in the following paragraphs.

2.2 Receipt, issue and production of 'C' form under the Central Sales Tax Act, 1956

2.2.1 Introduction

With a view to giving tax concessions to purchasing dealers registered under the Central Sales Tax Act, 1956, (hereinafter referred to as "Central Act"), a declaration in

Form C was prescribed by the Central Government under which concessional rate of tax of 4 *per cent* is granted to the dealer to purchase the goods for resale, use in manufacture/processing of goods for sale, use in mining, use in generation/distribution of power or packing of goods for sale/resale on production of Form C. Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, (hereinafter referred to as "Central Rules") and Rule 4 of the Central Sales Tax (Gujarat) Rules, 1970, (hereinafter referred to as "Gujarat Rules") and the departmental instructions issued from time to time prescribe the procedure regarding procurement, furnishing, use, custody and maintenance of records and other incidental matters.

2.2.2 Organisational set-up

The Commissioner of Sales Tax is the head of the department and is assisted by Special Commissioner of Sales Tax (Enforcement) and Addl. Commissioner of Sales Tax (Vigilance). The State is divided into six divisions each headed by Deputy Commissioner of Sales Tax. The divisions are sub-divided into circles (Ranges) each headed by an Asstt. Commissioner of Sales Tax. Sales tax divisions are supervised by the Sales Tax Officers.

2.2.3 Scope of Audit

A review on the system of receipt, issue and production of 'C' forms under the Central Act was conducted in audit (between March and May 1995) with a view to examine whether the Rules and departmental instructions were followed in account of receipt, issue, safe custody and also to see whether statutory provisions and rules were adhered to by the assessing officers while granting concessional rates of tax.

The records maintained at the Commissioner's office, 10 offices of the Asstt. Commissioners of Sales Tax (Admn) (out of 13 offices) and 22 Sales Tax Offices (out of 98 offices) were test checked for the period from April 1990 to March 1995 with reference to 32.36 lakhs entries made in ranges and 14.67 lakhs entries made in divisions, regarding issue and receipt of 'C' forms.

2.2.4 Highlights

(i) Printing work of 'C' form was handed over to a private Press. It was, however, not ascertained whether the press selected had earlier done the printing work of documents with cash value. Job work of printing done by private press lacked adequate care and attention.

[Paragraph 2.2.6]

(ii) Due to absence of first stage verification of 'C' form books received from Press, loss of 'C' form books were noticed only at last stage by the Sales Tax Officer.

[Paragraph 2.2.7(A)]

(iii) Non-accountal and delay in accountal of receipt and issue of 'C' form have been noticed in certain cases.

[Paragraph 2.2.7(B)]

(iv) Due to inadequate safe keeping measures, loss of 'C' forms on account of theft, pests occurred. Physical and surprise verification of stock of 'C' forms is not in vogue.

[Paragraph 2.2.7(C) and (D)]

(v) Cases of issue of 'C' forms to bogus parties have been noticed.

[Paragraph 2.2.8(A)]

(vi) Validity period is not being indicated on 'C' form as was done in the case in other States.

[Paragraph 2.2.8(B)]

(vii) 47328 unused 'C' forms returned by the dealers have not been destroyed.

[Paragraph 2.2.9(A)]

(viii) Registers for accounting the receipt and issue of 'C' forms have not been prescribed by the department.

[Paragraph 2.2.10(i)]

(ix) The internal audit wing has not scrutinised the procedure of printing, receipt, issue and safe custody of 'C' forms.

[Paragraph 2.2.11]

(x) Short levy of tax to the tune of Rs. 143.55 lakhs due to non-observance of provisions of Act/Rules was noticed.

[Paragraph 2.2.12]

2.2.5 Assessment of the requirement of 'C' forms

The annual requirement of 'C' forms is assessed by the Assistant Commissioners of Sales Tax (Admn) for the divisions working under their control on the basis of the consumption of previous year. They intimate the requirement to the Commissioner of Sales Tax. As far as city divisions of Ahmedabad are concerned, Asstt. Commissioner (Admn) Range II, collects the information of consumption of 'C' forms quarterly from them and sends the same to the Commissioner of Sales Tax. On the basis of these, the Commissioner of Sales Tax works out the annual requirement of 'C' forms after adding 10 to 15 *per cent* to take care of the net new registrations.

2.2.6 Printing of 'C' Forms through private press

Consequent upon discontinuance of printing of 'C' forms at Government Press, Nasik, from April 1990, as it was considered a low security item, State Government entrusted the job to the Director General of Printing and Stationery, Gandhinagar. As the numbering of 'C' form was to be done by using eight digit numbering boxes which were not available with any of the five Government presses and it was also not possible to complete the printing work of 'C' form within the time limit prescribed by the Sales Tax Department, the Director General of Printing and Stationery gave it to a private press at Ahmedabad which in his view had adequate security arrangement. This work was, awarded after

inviting tenders and the tender of Sahitya Mudranalaya, Ahmedabad was accepted out of five bidders, being the lowest one. On audit enquiry it was clarified that the printing work was carried out in the presence of private security staff and sufficient control was kept on movement of visitors through security staff and register. Even while delivering the printed 'C' forms, the security guards were accompanying the van. The department collects Rs. 32 per book towards its cost through non-judicial stamp affixed by the dealer on the application for 'C' form book.

'C' Form is a document, with cash value. On audit enquiry it was clarified by the Director General of Printing and Stationery that it was not known whether the press selected had earlier done the printing work of documents with cash value (like cheques, bonds *etc.*). Scrutiny in audit of 22 divisions revealed that job done by the Press lacked adequate care and attention. Supplies received from the Press for the period from April 1990 to March 1995 revealed the following defects.

- (a) 282 'C' form books contained either more or less than 25 leaves,
- (b) 17 'C' form books were having blank pages,
- (c) 1 'C' form book did not bear any serial number and
- (d) 41 'C' form books contained different numbers printed on original, duplicate and counterfoils.

2.2.7 Receipt and stocking of 'C' forms

Based on annual indents received from the Assistant Commissioners of Sales Tax (Admn), the Commissioner's office places orders for printing of forms on the Director General of Printing and Stationery. The 'C' form books are supplied in boxes directly by the Printing Press to the Commissioner's office which supplies them to the concerned Assistant Commissioners of Sales Tax (Admn) who in turn supplies them to the Sales Tax Officer(1) of the divisions falling under his control. He opens the box and distributes the forms to the concerned officer for issue to the dealers. At each stage, the department maintains registers to account for receipt and issue of these forms.

(A) Absence of first stage verification

Boxes of 'C' form books though received by the indenting authority, were never opened by him to verify the contents, locate any misprint or blank pages *etc.* Such verification is done at the last stage by the Sales Tax Officers. The departmental instructions provide for intimation of cases of misprinted forms or books with blank pages to the Deputy Commissioners through respective Assistant Commissioners (Admn) for issuing a notification in Official Gazette declaring such forms as obsolete and invalid. Till then, such forms lie with the Sales Tax Officers. Since the procedure prescribed is time consuming there is risk of misuse of these forms which increases with the length of their retention with the Sales Tax Officers. Hence, the department may evolve a system to reject such forms at the first stage itself. Such last stage verification by Valsad and Ankleshwar offices revealed three and five 'C' form books respectively were missing from sealed

boxes between January and October 1993. The department even did not take up the matter with the press.

(B) Absence of control in accounting of receipt and issue

The department did not exercise any control in the accounting of 'C' forms as the following cases noticed in test checks revealed:

- (i) 320 'C' form books received and accounted for in November 1983 by Asstt. Commissioner (Admn), Circle 10, Surat were not supplied to divisions. The account maintained by him, however, indicated "nil" balance in June 1987. In February 1993, while dusting and arranging the stationery room, the box containing these books was located and again accounted for as receipt.
- (ii) Out of 1500 leaves of 'C' form received by the Sales Tax Officer (I), Division II, Rajkot, in September 1991 the clerk had accounted for only 1200 forms in September 1991 and did not make any entry for 300 forms. The connected registers were also misplaced/destroyed. The facts came to light through departmental investigation in February/March 1993. Police case has been filed and investigation proceedings are in progress. No 'C' forms could be traced.
- (iii) 2 boxes of 'C' forms supplied to District Division IV, Ahmedabad in May 1990 were accounted for only in August 1992 after a lapse of two years.
- (iv) No register was maintained by Division I, Jamnagar for the period from October 1990 to September 1992; consequently 4781 'C' forms issued to dealers during this period remained unaccounted for.
- (v) 80 'C' form books containing 2000 leaves received in November 1984 by the Deputy Commissioner, Rajkot were supplied to Asstt. Commissioner (Admn), Circle 8, Rajkot only in May 1992 after a lapse of 8 years.

(C) Absence of safe keeping

The systems for security of the 'C' forms were noticed to be weak. A thorough review of the system and suitable rectificatory measures thereof need to be taken to eliminate the risk of misuse of the forms. Some instances of the lax security arrangements are cited below:

- (i) 3 boxes of C forms supplied to Asstt. Commissioner (Admn) Range IV, Baroda were lying in a room alongwith other forms. The windows were without grill and the room itself was easily accessible.
- (ii) 'C' forms supplied to Asstt. Commissioner (Admn) Range III, Ahmedabad were lying in the basement with other stationery.
- (iii) 200 'C' form books supplied to Range Officer, Circle 10, Surat, Sales Tax Officers at District Division 4, Ahmedabad, City Division 4, Surat and Sidhpur were damaged by pests.
- (iv) 300 'C' forms kept in a cupboard by Sales Tax Officer(II) City Division II, Ahmedabad and sealed on 19 May, 1990 were found missing after two days.
- (v) 200 'C' forms issued to Sales Tax Officer(V) City division VII, Ahmedabad were found missing on 16 January 1995 from the cupboard. Orders cancelling the above C forms were issued in January 1995. Departmental enquiry against the persons concerned is in progress.

(D) Physical Verification

The 'C' form books received at the Sales Tax division are kept in safe custody of Sales Tax Officer and same are issued to the dealers on demand. It was noticed in audit that although physical verification was an important instrument of control over this cash value documents, a fixed periodicity thereof had not been prescribed by the department. Physical verification of stock was not, therefore, being carried out periodically. Further, no surprise check of stock was also being conducted by higher authorities. Thus this vital control measures for minimising the risk of cash value document viz. physical verification and surprise check of stock were not being effectively used.

2.2.8 Issue of 'C' forms to bogus dealers

As per departmental instructions of March 1979, spot visit by the Sales Tax Officers are necessary only if the bonafides of the dealers are doubtful. Such action is at the discretion of the Sales Tax Officer. Further, departmental instructions of August 1989 and October 1991 direct the Sales Tax Officer to issue 'C' forms to dealers registered under the Central Act, only after verifying the specimen signature of the persons receiving the forms against the authorisations of the dealers. Test check revealed that following irregularities took place due to non-adherence of instructions :

(A) (i) At Vapi, 37 books of 'C' forms having 924 leaves were issued (April and September 1987) to a person who posed himself as an accountant of 17 bogus dealers. This fact came to light between April and September 1988 to the Sales Tax Officer who intimated this to Assistant Commissioner of Sales Tax, Vadodara who in turn investigated the matter and reported it to the Deputy Commissioner in February 1989. All the Registration Certificates were cancelled *ab initio*. None of the 'C' form could be traced/seized with the result revenue involved could not be worked out. Police case was filed against the accountant and investigation proceedings were in progress.

(ii) Certain dealers in Gujarat obtained 'C' forms either by getting registration certificate in a bogus dealer's name or by other unauthorised means and received large consignments of tea from dealers of other States like Assam and West Bengal against those forms. Thereafter, they claimed resales of tea in their assessments on the basis of bogus bills showing these as local purchases and avoided payment of Sales Tax. This matter came to the notice of the department as a result of request for cross-checks received from the States of Assam and West Bengal. A preliminary investigation by the department revealed that as many as 68 dealers were involved and the tax avoided was Rs.229.24 lakhs. Though, the matter came to light in 1992, police complaint has been lodged only against 4 dealers so far (April 1995). Progress in finalising the cases and filing police complaints was very slow. The misuse of forms could have been avoided had the procedure prescribed by the department as mentioned above followed scrupulously.

(iii) During test check it was noticed that 625 'C' forms were issued to bogus dealers by 7 divisions* without adhering to the above instructions. Out of these, police complaint

* (City divisions III, V, VIII, IX, X and XVI of Ahmedabad and Division V Vadodara).

has been filed in respect of 550 'C' forms pertaining to five divisions at Ahmedabad (III, V, VIII, IX and X). In respect of 50 forms pertaining to City division XVI the dealer had made a police complaint against the bogus party. In respect of 25 forms pertaining to Division V Vadodara, no action was taken to lodge a police complaint (April 1995).

(B) Validity period of 'C' forms

According to Sub-Rule 8(a) of Rule 4A of the Gujarat Rules, Commissioner may by a notification declare in advance the validity period of the forms beyond which these shall be deemed as obsolete and invalid. No such notification is being issued by the Commissioner. Incidentally, it may be mentioned that in Tamil Nadu, a rubber stamp is being affixed on 'C' forms indicating the period of validity. Introduction of such system should be considered by the department to keep watch over 'C' forms issued and curb their misuse.

(C) Defects in maintenance of cards

The department had introduced (August 1989) cards providing columns to indicate name of the dealer, person authorised by him to receive 'C' form and his specimen signatures. These were to be maintained by the divisions. Difficulties were experienced by the divisions in respect of filling two columns of the card. Further, the cards are not supplied by the department, with the result that each dealer brings his own card in different sizes, colours and sometimes even loose sheets of paper. Instead of keeping these cards separately, they are filed along with registration certificate files. Consequently they get mutilated, torn and become useless. The matter was considered by the one-man-committee and recommended introduction of system of maintenance of cards prevailing in banks. These recommendations are still to be implemented. No clarification has been issued so far.

2.2.9 Return of 'C' forms

As per departmental instructions issued in February 1979, unused 'C' forms received back from dealers are to be destroyed periodically in the month of April, July and October each year in the presence of another Gazetted Officer. The following irregularities were noticed in the process:

(A) Failure to destroy unused 'C' forms

As many as 47,328 unused 'C' forms returned to 22 divisions between 1982 and March 1995 by dealers were not destroyed so far (April 1995) with consequent risk of their misuse.

(B) Missing unused 'C' forms

In April 1992, Sales Tax Officer (3), Division I, Ahmedabad reported to his Asstt. Commissioner that 104 unused 'C' forms returned by the dealer were not handed over to him by his clerk. The whereabouts of these forms which were declared obsolete

in June 1992 are still not known. The situation is fraught with risk of the forms being misused in some other State where the fact of their having been declared obsolete may not be detected.

2.2.10 Maintenance of records

- (i) No register is prescribed by the department to watch the receipt and issue of 'C' forms. The account is maintained either in exercise books or in small books or in other registers in divisions in improvised form to watch the receipt and issue. There is no uniformity in the maintenance of these registers. The one-man-Committee was appointed to give suggestions on (i) procedure for issue of registration certificate (ii) distribution system of various forms and (iii) amendment to circulars/instructions, if necessary had recommended (November 1993) three registers namely (i) stock register (ii) issue register and (iii) dealer's ledger with prescribed columns to facilitate systematic account of receipt and issue. So far no such registers have been introduced.
- (ii) In division III, Surat receipt and issue register for the period earlier to July 1994 was stated to be missing. Facts of this case were not reported to any higher authority.

2.2.11 Internal Audit

Internal audit wing existing in the department has never undertaken the scrutiny of the procedure for receipt and issue of 'C' forms. Had this been done the deficiencies pointed out in earlier paras could have either been avoided or the department could have taken rectificatory action.

2.2.12 Other points of interest

According to Sections 8(1) and 8 (4) of Central Act, production of 'C' form is mandatory for availing the benefit of concessional rate of tax of 4 per cent or at the lower rate if a notification issued under Section 8(5) of Central Act, provides so. In the event of failure to produce 'C' forms, tax shall be levied at the rates specified in Section 8(2) *ibid*. As per Rule 12(3) of the Central Rules, in the event the 'C' form is lost or destroyed, a duplicate 'C' form may be produced. As per sub-rule 8(b) of Rule 4A of the Gujarat Rules, 'C' form could be considered as invalid if the same is notified by the Commissioner in the Official Gazette.

Table below shows the cases noticed by Audit wherein concessional rates were charged though not admissible

Sr. no.	Division	Brief particulars of the case	Tax effect (Rupees in lakhs)
1.	Bharuch, Division 9 Ahmedabad	In the assessment of two dealers for the period between July 1986 and March 1991, no 'C' form could be produced in support of inter-State sales of Rs.16.27 crores as 'C' forms were destroyed in fire. The dealers could not obtain duplicate forms and produce them. However the sales were taxed at the concessional rate of 4 per cent.	97.82
2.	Division I, Junagadh	As per notification issued under section 8(5) of the Central Sales Tax Act, 1956, vegetable ghee attracts tax of 2 per cent when supported by 'C' forms. The vegetable ghee sold by a dealer between April 1991 and March 1992 for Rs.2,98,72,200 was levied to tax at 2 per cent on production of 'C' forms which were declared by the Commissioner (December 1992) as stolen and issued by a bogus dealer. The assessment was finalised after December 1992.	37.44
3.	Nadiad, Division 6 Ahmedabad	The assessments of 2 dealers for the years 1985-86, 1986-87 and 1989-90 were finalised under Section 41(4) of the Gujarat Sales Tax Act, 1969 read with Section 9(2) of the Central Act. However, inter State sales of Rs.82.21 lakhs were levied to concessional rate of tax of 4 per cent even though said sales were not supported by 'C' forms.	5.80
4.	Dist.Division 4, Ahmedabad	As per notification issued under Section 8(5) of Central Act, detergent powder attracts tax at 1 per cent when supported by 'C' forms. In the assessment for 1988-89 inter-State sales of detergent powder worth Rs.9.90 lakhs not supported by 'C' form were levied to tax at 1 per cent instead of at 10 per cent.	1.39
5.	Division 16 Ahmedabad	Inter-State sales of paper cutting machines valued at Rs.5.28 lakhs and not supported by 'C' form in the assessment for 1986-87 were levied to tax at 10 per cent instead of at 12 per cent.	0.58
6.	A.C (Enft), Baroda	Inter-State sales of gun-metal castings valued at Rs.15.01 lakhs between April 1987 and September 1988 were not supported by 'C' forms. Under local Act, gun-metal castings attract tax at the rate of 12 per cent. Tax in the assessment was levied at 10 per cent instead of at 12 per cent.	0.52

2.2.13 Conclusion

'C' forms are cash value documents and it is necessary for the department to have a detailed look at the systems and procedure with a view to prevent their misuse. In particular, the department should consider ways to prevent the forms being issued to unauthorised or bogus persons. The department should also introduce a stringent systems of physical verification and surprise check of stock besides adequate safe-keeping measures to eliminate the possibility of thefts. Suitable procedures are also required to be evolved to minimise the large number of 'C' forms lying in the divisions after being returned by the

dealers either voluntarily or on cancellation of their registration certificates. Uniformity of procedure is also required to be adopted in the department to account for receipt and issue of 'C' forms.

2.3 Incorrect Exemption

(A) According to condition 12 of the Annexure I to entry 175 of the notification under Section 49 (2) of the Gujarat Sales Tax Act, 1969, the specified manufacturer is not entitled to the benefit of purchasing goods without payment of tax under any of the entries of notification under Section 49(2) of the Act.

In Ahmedabad and Bhavnagar in three assessments for the period between December 1987 and March 1990 (finalised between August and November 1991) relating to two manufacturers of mild steel (m.s.) wires and iron and steel, who were holding exemption certificate under entry 175 of notification, the benefit of purchasing iron and steel valuing Rs.38.56 lakhs without payment of tax Rs.1.54 lakhs had been allowed under another entry of Section 49 of the Act. Thus the tax of Rs.1.54 lakhs payable by the dealers had not been adjusted from their tax exemption limit.

This was brought to the notice of the department in June and August 1994. The department while accepting the observation in one case stated (February 1995) that re-assessment order has been passed raising additional demand of Rs.89,136 which was adjusted towards tax exemption ceiling limit. Reply in respect of the other dealer has not been received (October 1995).

(B) According to the Gujarat Sales Tax Act, 1969 and the Rules made thereunder any activity carried out in relation to any of the declared goods in any entry in Schedule II to the Act, as a result of which the resultant product is not taken out of the entry *ibid* is not a manufacturing process. Similarly, any activity carried out in relation to goods specified in any entry in Schedule I as a result of which the resultant product is not taken out from Schedule I is not a manufacturing activity. Further, twisting of yarn was not regarded as an activity of manufacture till issue of Notification of 2nd December 1989. Accordingly, industrial units carrying out such activities are not eligible for the sales tax exemption benefit under the entry *ibid*.

In the assessment of 4 dealers for the periods between Samvat Year (S.Y.) 2043 (3rd November 1986 to 22nd October 1987) and March 1991 (finalised between July 1990 and January 1993), the benefit of exemption of tax of Rs.4.81 lakhs was incorrectly granted to the dealers who were either not engaged in the activity of manufacturing process or were not eligible for the benefit, the details of which are as follows:

Sr. no.	Name of the office and number of dealer	Nature of business	Assessment period	Date of Assessment	Amount of tax exemption granted (In rupees)
1.	Ankleshwar (1 dealer)	Processing of raw hides and skin	S.Y.2044 (23rd October 1987 to 9th November 1988) to 31.3.89	20.4.1991	1,01,270
2.	Godhra (1 dealer)	Manufacturing of Maida, Suji Rawa out of wheat and Maize.	(1) S.Y.2044 (2) 1989-90	25.7.1990 30.8.1991	36,812 42,226
3.	Ahmedabad (1 dealer)	Sizing of yarn	S.Y.2043 (3rd November 1986 to 22nd October 1987)	9.9.1991	32,426
4.	Vapi (1 dealer)	Twisting of yarn	1989-90 & 1990-91	31.1.1993	2,68,066
Total					4,80,800

This was brought to the notice of the department between February 1994 and March 1995; the department accepted (July 1995) audit observation in the case of a dealer of Ahmedabad and stated that *Suo Motu* revision proceedings were in progress. Reply in respect of remaining cases has not been received (October 1995).

(C) As per condition (iii) of condition (a) of Annexure II appended to entry 175 of notification under Section 49(2) of the Gujarat Sales Tax Act, 1969, an industrial unit which has already obtained any exemption benefit under entry 118 of the notification or has opted for the scheme of sales tax deferment specified in Government Resolution of May 1986 is not entitled to tax exemption benefit under the entry *ibid*.

In Surendranagar and Ankleshwar in the case of two specified manufacturers engaged in the manufacture of dyes and chemicals and crimping of artificial silk yarn who had availed the benefit of tax exemption/deferment under entry 118 were also allowed tax exemption benefit under entry 175 of the said notification to the extent of Rs.1.41 lakhs which was irregular.

This was brought to the notice of the department between April and June 1994; their reply has not been received (October 1995).

(D) According to entry 175 of Notification issued under Section 49(2) of the Gujarat Sales Tax Act, 1969, the quantum of sales tax exemption that can be granted to an industry is based on its location and size as provided in Annexures to the entry. A small scale industry located in an area falling under category III is entitled to exemption of 70 per cent of fixed capital investment.

At Prantij in the case of a manufacturer in Aluminium utensils located at Talod, an area falling under category III eligibility certificate was granted in February 1989 by the Industries department for Rs.12.49 lakhs based on the fixed capital investment of Rs.16.45 lakhs. Sales tax exemption certificate for Rs.12.49 lakhs was also granted by the sales tax department in April 1989 as against the admissible amount of Rs.11.51 lakhs being 70 per cent of fixed capital investment of Rs.16.45 lakhs which resulted in excess exemption of Rs.98,213.

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This was brought to the notice of the department in October 1993; their reply has not been received (October 1995).

(E) According to sales tax incentives scheme 1986 for industries, units set up in eligible areas listed in Annexure "A" to the Resolution of May 1986 of Industries, Mines and Energy department are eligible to sales tax deferment. The Finance department has also approved the scheme vide G.R. of June 1987. On 31 August 1987, with the concurrence of Finance department the Industries, Mines and Energy department amended the list of eligible area adding GIDC Estate Pardi and for chemicals and petrochemical units in GIDC estate Vapi. Though the Industries Mines and Energy department amended the list of eligible areas adding GIDC estate Pardi, chemical and petrochemical units in Vapi to be eligible to get the benefit of sales tax incentives, the Finance department being controlling department has not so far amended the list of eligible areas accordingly.

At Vapi, in the case of three manufacturers in chemicals the sales tax deferment benefit of Rs.19.57 lakhs was allowed though the unit was not located in the eligible area.

This was brought to the notice of the assessing officers in March 1993 and December 1993. In one case he stated that the Range Officer has issued deferment certificate on the basis of the eligibility certificate issued by the industry department and agreed to send the case for *suo motu* revision. This was brought to the notice of the department in June 1993 and March 1995, their reply has not been received (October 1995).

(F) According to entry 116 of notification issued under Section 49(2) of the Gujarat Sales Tax Act, 1969 sales of Biogas plants were leviable to tax at the concessional rate of 1 *per cent* upto 30 May 1988. The said entry was amended with effect from 31 May 1988 and the sales of solar energy equipments only for the period commencing from 1 February 1988 were leviable to tax at the concessional rate of 3 *per cent*.

At Baroda in the case of a manufacturer and fabricator, sales of Gobar Gas plant valuing Rs.3.13 lakhs for the assessment period 1988-89 were incorrectly levied to tax at the concessional rate of 1 *per cent* as applicable to solar energy equipment and Gobar gas plant is not a solar energy equipment therefore its sales are leviable to tax at the rate applicable to entry 13 of Schedule III to the Act as there is no specific entry for gobar gas plant. This has resulted in short levy of tax of Rs.64,391 (including interest).

This was brought to the notice of the department in August 1994; their reply has not been received (October 1995).

(G) According to condition (3) of entry 118 and as per condition 13 of Annexure I of entry 175 of the notification issued under Section 49(2) of the Gujarat Sales Tax Act, 1969 read with Public circular of March 1986, issued by the Commissioner of Sales Tax when the specified manufacturer consigns manufactured goods to its branches

outside the State, 4 per cent or rate of tax, whichever is lower, on the sale value of the goods so consigned should be adjusted from the exemption limit of the unit.

At Vapi in the case of three specified manufacturers for the assessment periods between 1986-87 and 1989-90 (assessed between January 1991 and March 1992) though manufactured goods worth Rs.3.73 crores were consigned outside the State, tax of Rs.14.93 lakhs was not adjusted from the exemption limit.

This was brought to the notice of the department in July 1994; their reply has not been received (October 1995).

(H) According to the exemption scheme under entry 118 of notification issued under Section 49(2) of the Gujarat Sales Tax Act, 1969, the benefit of exemption from the payment of tax is admissible only in respect of certain products manufactured by industries for which eligibility certificate is obtained by the unit from Industries department.

During the course of audit of the records of Sales Tax Office Dhrangadhra it was noticed (November 1993) that in assessment of a manufacturer in lime powder and soil who was holding eligibility certificate for tax exemption for grinding soil, for the period S.Y.2044 (23rd October 1987 to 9th November 1988) to March 31 1989 (assessed on 17 March 1992) tax of Rs.76,560 on sales of lime powder which was not covered by the exemption certificate, was adjusted from the exemption limit. The mistake resulted in short levy of tax of Rs.1.30 lakhs (including interest).

This was brought to the notice of the department in April 1995; their reply has not been received(October 1995).

The above cases were brought to the notice of Government in June 1995; their reply has not been received(October 1995).

2.4 Non-recovery of deferred tax

As per the condition of the scheme relating to sales tax deferment incentives sanctioned in March 1982, if an eligible industrial unit holding the eligibility certificate of sales tax deferment discontinues the commercial production of goods at any time for a period exceeding 12 months, within the duration of sales tax deferment or discontinues the business at any time within the period of deferment, such industrial unit shall be liable to pay the entire amount of tax deferred till then within 60 days from the date of expiry of aforesaid period of twelve months or the date of closure of the business as the case may be.

During the course of audit of the records of the office of the Sales Tax Officer Gondal, it was noticed (May 1993) that a manufacturer in sodium silicate who was holding tax deferment certificate under the scheme of March 1982 had availed tax deferment of Rs.2.15 lakhs upto Samvat Year 2043 (22.10.1989) and his registration was cancelled from July 1990. Action to recover the amount of deferred tax Rs.2.15 lakhs had not been taken. The assessee was accordingly liable to pay Rs.3.52 lakhs (including interest).

This was brought to the notice of the department in June 1994; and to Government in June 1995; their reply has not been received (October 1995).

2.5 Irregular/excess grant of set off

Under the Gujarat Sales Tax Rules, 1970, a dealer who has paid tax on the raw materials used in the manufacture of taxable goods, is allowed set off from the tax payable on the sale of manufactured goods. The set off is not allowed on the tax paid on the purchases of "prohibited goods" as defined in the Gujarat Sales Tax Act, 1969, except on those falling under entry 16(1) or (2) of Schedule II A when used in the manufacture of goods falling under entry 16 of the Schedule II A to the Act.

(i) In the case of 2 dealers, for the assessment periods between October 1987 and March 1989, set off of Rs.85,968 was incorrectly granted on purchase of prohibited goods, the details of which are as under:

Name of the office	Period of assessment	Date of assessment	Goods on which set off granted	Amount of set off including interest (Rupees)
Surendranagar (1 dealer)	S.Y.2044 to 31.3.89	29.6.91	Spare parts and accessories of machinery	44136
Surat (1 dealer)	1987-88 & 1988-89	31.1.92	Packing materials and chemicals	41832
Total				85968

This was brought to the notice of the department between June and July 1994; their reply has not been received (October 1995).

(ii) In the case of 4 dealers, irregular grant of set off resulted in short levy of tax of Rs.2.80 lakhs the details of which are given below:

Sr. no.	Name of the Office	Period of assessment Date of assessment	Goods on which set off allowed	Nature of irregularity	Amount of set off including interest (Rupees in lakhs)
1	Division IV Ahmedabad	21 January 1988 to <u>31 March 1989</u> 2/6/1992	Welding rods.	Registered dealer's purchases were consigned to the branch out side the State	0.42
2	Division IX Ahmedabad	1985-86 to <u>1988-89</u> 29/6/1992	Paper	Set off allowed at incorrect rate on purchases of paper.	0.49
3	Division II Baroda	July 1987 to <u>March 1989</u> 13/9/1991	Electric motors	Biomass gasifiers do not fall under entry 16 of Schedule II-A, set off on purchases of electric motors was allowed.	1.45
4	Division II Surendranagar	<u>1988-89</u> 22/11/1991	Electric motors	Set off of tax paid on purchases of electric motor was granted irregularly as the dealer's sales are exempted by virtue of tax exemption certificate held under entry 175 of Section 49(2) of the Act	0.44
Total					2.80

This was brought to the notice of the department between January 1994 and March 1995 and to Government in June 1995; their reply has not been received (October 1995).

(iii) According to provisions of Rule 42 E of the Gujarat Sales Tax Rules, 1970, set off of purchase tax levied under Section 15 B of the Gujarat Sales Tax Act, 1969, is admissible when the taxable goods manufactured are sold within the State of Gujarat.

During the course of audit of 9[#] sales tax offices it was noticed that in the case of 14 manufacturers for the assessment periods from October 1986 to 1989-90 (assessed between August 1991 and March 1993) though the manufactured goods had been exported outside the territory of India, purchase tax levied under Section 15 B was irregularly allowed as set off under Rule 42 E of the Rules, resulting in irregular grant of set off and interest of Rs.85.74 lakhs.

Relying on the judgement of Gujarat High Court* in the case of Godrej Soap, the department did not accept the audit observation. Their stand is not tenable as the judgement was delivered in 1968 when the Bombay Sales Tax Act, 1959 was applicable to State of Gujarat. Further, the Bombay High Court in another case ## held that Section 4 of the Central Sales Tax Act, 1956 covers only sales made within the country and is not applicable to the sales in the course of export. The Supreme Court of India in its judgement** in another case held that a sale in the course of export of goods and a sale within the State are two distinct events and that sales in the course of export of the goods could not be treated as a sale within the State.

The above cases were brought to the notice of the Government in June 1995; their reply has not been received (October 1995).

2.6 Non-levy/short levy of purchase tax

(A) Under the Gujarat Sales Tax Act, 1969, a recognised dealer on production of certificate in Form 19, can purchase goods other than prohibited goods without payment of tax for use in the manufacture of taxable goods for sale. In the event of breach of conditions of the declaration, the dealer would be liable to pay purchase tax on the goods purchased under such certificate.

Ahmedabad (3 offices), Bulsar, Jamnagar, Nadiad, Surat, Surendranagar and Unjha

* 23-STC-489

Batliboi & Company Private Ltd., V.State of Maharashtra, 47-STC-321

** (1994)-95-STC-Part-I-80 State of Orissa Vs.Mineral and Metals Trading Corporation of India Ltd.

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In case of three recognised dealers of Baroda, there was short levy/non-levy of purchase tax of Rs.52.03 lakhs as detailed in the table below:

Period of assessment Date of assessment	Amount of purchases attracting purchase tax	Name of the commodity	Purchase tax leviable (including additional tax)	Purchase tax levied	Amount of short/non levy (including interest)	Amount (Rupees in lakhs)
S.Y.2043 (3.11.86 to 22.10.87)/30.10.92	(a)139287	Matti	15680	5173	23852	0.37
	(b)47029	Matti	5644	nil	12812	
January 1979 to December 1979/21.10.92	19542107	Chemical fertilizer	1504743	314955	5092293	50.93
11.1.89 to 31.3.89/30.5.92	334000	Plastic granules	50100	8350	72645	0.73
					Total	52.03

This was brought to the notice of the department in March 1995, their reply has not been received(October 1995).

(B) As per provisions of the Gujarat Sales Tax Act 1969, a licensed dealer can purchase goods without payment of tax on Form 17A declaring *inter alia* that the goods so purchased will be resold in the course of inter-State trade or commerce or in the course of export out of the territory of India. In the event of breach of the conditions of declaration, he is liable to pay purchase tax under the Act.

In case of two dealers holding licence, there was non-levy of purchase tax of Rs.62.15 lakhs as detailed in the table below:

Name of the office	Period of assessment Date of assessment	Amount of purchases attracting purchase tax	Name of the commodity	Amount of purchase tax leviable (including additional tax)	Purchase tax levied	Amount of non levy (including interest) (Rupees in lakhs)
Jamkhabhalia (1 dealer)	S.Y.2044 to 31.3.89 19.4.91	463842	Bauxite	66793	nil	0.97
Jamnagar (1 dealer)	S.Y.2040 (5.11.83 to 24.10.84)/30.6.87	77835021	Castor oil	3424740	nil	46.58
	S.Y.2041 (25.10.84 to 12.11.85)/3.88	24404200	Castor oil	1073785	nil	14.60
					Total	62.15

This was brought to the notice of the department in September 1994 and June 1989 respectively. The department accepted the audit observations in case of a dealer of Jamnagar and stated (June 1993) that *suo-motu* revision orders raising demand of Rs.85.92 lakhs had been passed and also added that the dealer had preferred an appeal before the Tribunal and recovery had been stayed.

The above cases were brought to the notice of Government in June 1995; their reply has not been received (October 1995).

2.7 Incorrect classification of goods

According to the classification of goods, tax is leviable at different rates as laid down in the Schedules to the Gujarat Sales Tax Act, 1969. However, where goods are not covered under any of the Schedules, general rate of tax applicable from time to time is leviable. Incorrect classification of the goods in the 6 cases resulted in short levy of tax of Rs. 16.52 lakhs, the details of which are given below:

Sr. no.	Name of the Office	Period of Assessment	Name of the Commodity & nature of irregularity	Amount of turnover (Rs. in lakhs)	Rate of tax leviable (per cent)	Rate of tax levied (per cent)	Amount of short levy including interest (Rs. in lakhs)
1	Himatnagar	S.Y.2044 to 1990-91	Pan Masala(Pan Parag Zarda) considered as tax-free.	1.71	14	Nil	0.34
2	Savarkundla	S.Y.2044 to 1989-90	—do—	3.22	14	Nil	0.92
3	Dist. Dn.III Ahmedabad	S.Y.2043 to 1989-90	Air Valves were considered as parts of machinery	10.31	11 and 12	5 and 6	1.26
4	Vapi	January 1986 to March 1989	Bulk drugs were levied to tax at incorrect rate.	26.66	6	4	0.72
5	Division VII Surat(2 dealers)	1. July 1986 to March 1989 2. S.Y.2044 to March 1989	Twisting machinery considered as machinery used in the manufacture of goods instead of levying tax under general entry.	102.64	12	5 and 6	13.28
Total							16.52

These cases were brought to the notice of the department between March 1994 and January 1995 and to Government in April 1995. Government while accepting audit observation in the case of the dealer at Vapi, stated (October 1995) that *Suo Motu* Revision order was passed and demand of Rs. 0.69 lakh so raised was adjusted against ceiling limit of tax exemption. Reply in remaining cases has not been received (October 1995).

2.8 Application of incorrect rate of tax

According to Gujarat Sales Tax Act, 1969, tax is leviable at the rate prescribed in the Schedules to the Act. However, where goods are not covered under any of the Schedules, general rate of tax applicable from time to time is leviable. Application of incorrect rate of tax in the case of 7 dealers resulted in short levy of tax of Rs. 22.99 lakhs, the details of

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which are given below:

Sr. No.	Name of the office	Period of Assessment Date of Assessment	Amount of Turnover (Rs. in lakhs)	Reference to schedule and rate at which taxable.	Rate at which actually subjected to tax.	Amount of short levy including interest (Rs. in lakhs)
1	Vapi	July 1985 to June 1986 25.8.92	19.23	Entry 12 of Schedule III 15 per cent	10 and 11 per cent	2.56
2	Dist.Dn.I Ahmedabad	1990-91/29.8.92 1991-92/30.9.92	28.82	Entry 9 of Schedule II A 5 per cent	4 per cent	0.39
3	Division IV, Surat (2 dealers)	1)25.11.88 to December 1989/7.3.92 2)August 1987 to March 1989/15.7.91	122.90 27.20	Entry 13 of Schedule III 12 per cent —do—	5 and 6 per cent —do—	13.24 3.37
4	Division VII, Surat	July 1988 to March 1989/15.9.90	10.03	—do	—do—	0.77
5	Vapi(2 dealers)	1)1988-89/31.12.91 2)1989-90/17.8.92 3)S.Y 2044 to 31.3.89 6.10.92	8.04 12.37 6.15	Entry 113 of Schedule II A 8 per cent	5 and 6 per cent	0.35 0.42 0.34
6	Division VIII Baroda	1988-89/14.10.91	9.76	Entry 50 of Schedule II A 7 per cent	Tax free	1.55
Total						22.99

These cases were brought to the notice of the department between March 1994 and January 1995 and to Government in April and June 1995; their reply has not been received (October 1995).

2.9 Non/Short levy of turnover tax

Under the provisions of the Gujarat Sales Tax Act, 1969 with effect from 6th August 1988 where the turnover of either of all sales or all purchases made by any dealer exceeds Rs.99,99,999 in any year, a turnover tax is to be levied on the total turnover of sales of specified goods after allowing permissible deductions. With effect from 1 August 1990, the provision was amended to charge turnover tax on taxable turnover of sales in excess of Rupees Fifty lakhs at the rate of one per cent where taxable turnover exceeds Rupees fifty lakhs but does not exceed Rupees two crores.

In the assessment of 4 dealers (Rajkot, Ahmedabad, Petlad and Baroda) for the assessment period between July 1987 and March 1991, finalised between July 1991 and

January 1993, non-levy/short levy of turnover tax of Rs.3.01 lakhs. was noticed, the details of which are as follows:

Name of the Office	Period of assessment and date of assessment	Sales turnover (Rs. in lakhs)	Taxable turnover	Turnover tax leviable including interest (In rupees)	Remarks
Rajkot (1 case)	April 1990 to March 1991/ 12.8.91	91.28	91.28	41278	Department accepted the audit observation and raised demand of Rs.42,748. The dealer has filed a revision application before the Sales Tax Tribunal and the Tribunal has stayed the recovery, further report has not been received.
Ahmedabad (1 case)	July 1987 to March 1989 28.1.92	203.00	55.64	104613	
Petlad (1 case)	April 1988 to March 1989 18.7.91	698.41	40.93	100080	The Government accepted the audit observation (October 1995) to levy tax on turnover of Rs.11.72 lakhs (other than declared goods) and passed <i>Suo Motu</i> revision order raising demand of Rs.43,071
Baroda (1 case)	January 1988 to March 1989 18.1.93	420.00	104.34	55213	
			Total	301184	

This was brought to the notice of the department between December 1993 and March 1995 and Government in June 1995, their reply in respect of remaining cases has not been received (October 1995).

2.10 Incorrect grant of concessional rate of tax

(A) As per entry 18 of notification dated 29th April 1970 under Section 49(2) of the Gujarat Sales Tax Act, 1969, tax is leviable at a concessional rate of 4 per cent on production of form "D" and "P" on sales made to Central and State Government departments respectively. The Commissioner of Sales Tax clarified in a circular of September 1975 that concessional rate of 4 per cent is not admissible on sales of goods to autonomous bodies and institutions like municipalities, boards etc.

(i) During the course of audit of the records of Sales Tax Office, Himatnagar it was noticed that sale of cement valued at Rs.22.67 lakhs upto 31st July 1989 and Rs.24.97 lakhs between August 1 1989 and 31 March, 1990 made by a reseller in cement to a State Government Company on a declaration, were incorrectly assessed to tax at the concessional

rate of 4 *per cent*. This resulted in short levy of tax of Rs.5.50 lakhs. The assessing officer stated (February 1992) that as the sale was made to a Government department concessional rate was charged. This is not tenable as the organisation is a company and not a Government department.

This was brought to the notice of the department in December 1993; their reply has not been received (October 1995).

(ii) During the course of audit of the records of Sales Tax Office, Ahmedabad it was noticed in the case of a reseller in cement, sales of cement valued at Rs.5.69 lakhs for the assessment period 1989-90 made on a declaration to the Institute of Kidney Disease Research Centre, Ahmedabad were incorrectly assessed to tax at the concessional rate of 4 *per cent*. This resulted in short levy of tax of Rs.69,419. The assessing officer stated (December 1992) that the institution is a State Government organisation. However, as the institute is not a Government department but an autonomous body and as clarified by the Commissioner of Sales Tax, concessional rate of tax was not applicable to such sales.

This was brought to the notice of the department in June 1994, their reply has not been received (October 1995).

(B) As per entry 35 of Schedule I to the Gujarat Sales Tax Act, 1969, no tax is leviable on sales of products of village industries, as defined in Khadi and Village Industries Commission Act, 1956, cotton 'Puni' (a roll of cotton prepared for spinning thread) is not a product of village industries and thus leviable to tax at the rate of 12 *per cent* applicable to entry 13 of Schedule III to the Gujarat Sales Tax Act, 1969.

During the course of audit of the records of Sales Tax Office, Gondal it was noticed (March 1993) that in the case of a dealer, on sales of puni valued at Rs.15.70 lakhs, no tax was levied. This resulted in non levy of tax of Rs.3.84 lakhs (including interest).

This was brought to the notice of the department in June 1994; their reply has not been received (October 1995).

(C) As per entry 116 of notification issued under Section 49(2) of the Gujarat Sales Tax Act, 1969, tax is leviable on the sales of solar energy equipment at the concessional rate of 3 *per cent* with effect from 31 May, 1988. However under an amendment to entry 116 with effect from 31 May 1988, solar water heaters are excluded from this entry and consequently not eligible for concessional rate of tax.

During the course of audit of the records of Sales Tax Office, Bulsar it was noticed (March 1994) that in the case of a manufacturer and reseller of water heater systems, for the assessment periods July 1987 to March 1989 and 1989-90, sales of solar water heater systems were incorrectly subjected to tax at the concessional rate of 3 *per cent* although its sales are leviable to tax at the rate of 12 *per cent* under entry 13 of Schedule III to the Gujarat Sales Tax Act, 1969 resulting in a short levy of tax of Rs.2.98 lakhs.

On this being pointed out in audit the assessing officer, did not agree with the audit observation and stated that solar water heater systems are covered by sub-entry 2 of entry 116 of notification.

The reply is not tenable in view of the fact that the said notification is no more operative following the amendment of May 31, 1988 to entry 116.

This was brought to the notice of the department in March 1995, their reply has not been received (October 1995).

The above cases were reported to Government in May 1995, their reply has not been received (October 1995).

2.11 Non/Short levy of interest

Under the provisions of the Gujarat Sales Tax Act, 1969, if a dealer does not pay the amount of tax within the time prescribed for its payment, simple interest at the rate of 24 *per cent* per annum is leviable on the amount of tax not paid or any amount thereof remaining unpaid for the period of default. This provision also applies to the levy of interest in the case of assessments made under the Central Sales Tax Act, 1956.

In 6 assessments of 6 dealers for the assessment periods between 1982 and 1988-89 (finalised between April 1986 and January 1992) interest was either not levied or was levied short on the amount of tax due and remaining unpaid on finalisation of the assessments which amounted to Rs.2.99 lakhs.

This was brought to the notice of the department between November 1993 and January 1994, the department accepted the observation in three cases involving an amount of Rs.1.14 lakhs. In respect of the remaining three cases reply has not been received (October 1995).

This was brought to the notice of Government in June 1995; their reply has not been received (October 1995).

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LAND REVENUE

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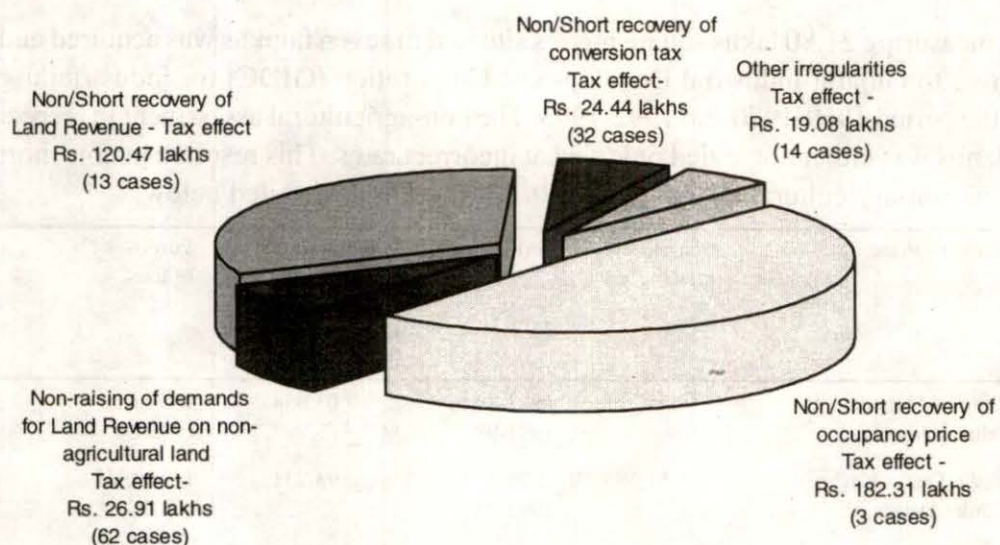
LAND REVENUE

CHAPTER -3

LAND REVENUE

3.1 Results of audit

Test check of Land Revenue records in the Offices of the District Development Officers, Taluka Development Officers and District Inspector of Land Records, conducted in audit during 1994-95, disclosed short recovery and losses of revenue amounting to Rs.373.21 lakhs in 124 cases. These cases broadly fall under the following categories:-



Total cases 124 - Tax effect Rs. 373.21 lakhs

During 1994-95 the department accepted under assessments *etc.* of Rs.195.96 lakhs in 304 cases. Out of these, 5 cases involving Rs.0.52 lakh were pointed out during 1994-95 and the rest in earlier years. A few illustrative cases involving revenue of Rs.53.70 lakhs highlighting important audit observations are given in the following paragraphs.

3.2 Non recovery/short recovery of non-agricultural assessment

Under the Bombay Land Revenue Code, 1879 (as applicable to Gujarat) and the Rules made thereunder, land revenue is payable at the prescribed rates on all lands put to agricultural or non-agricultural use, unless specifically exempted from payment. Land revenue is to be assessed with reference to the purpose for which the land is used such as, agricultural, residential, commercial or industrial.

Land Revenue

An occupant of agricultural land can put his holdings to any non-agricultural use only with prior permission of the Collector. Prior to 1 August 1976, non-agricultural assessment was levied from the date of commencement of non-agricultural use. However, from 1 August 1976, levy of non-agricultural assessment is effective from the commencement of the revenue year in which the land is permitted or deemed to have been permitted to be used for any other purpose or is used without the permission of the Collector. Executive instructions, issued in May 1967, provide that where land is acquired for specific non-agricultural purposes and handed over to the acquiring bodies (Boards, Corporations etc.) no separate permission for non-agricultural use is necessary. In such cases non-agricultural assessment is leviable from the date of handing over possession of land to the acquiring body. In addition to land revenue, local fund cess at the prescribed rates is also leviable.

(a) Land measuring 21.80 lakhs square metres situated in seven talukas was acquired and handed over to Gujarat Industrial Development Corporation (GIDC) for industrial use between the period 1969-1970 and 1992-1993. The non-agricultural assessment in respect of these lands was either not levied or levied at incorrect rates. This resulted in non/short recovery of non-agricultural assessment of Rs.13.67 lakhs as detailed below:

Sr. no.	Name of Place	Area of land in sq.metres	Period	Amount of non-agricultural assessment short levied (In rupees)	Purposes of use
1.	Ramol (Ahmedabad) Taluka Dascroi	12,55,371	1983-84 to 1991-92	9,03,854	Industrial (GIDC)
2.	Nawa Deesa(Kasba) Taluka Deesa	1,51,383	1970-71 to 1992-93	93,731	Industrial (GIDC)
3.	Rajula (Taluka Rajula)	40,469	1969-70 to 1990-91	30,544	Industrial (GIDC)
4.	Babra (Taluka Babra)	60,000	1985-86 to 1990-91	14,400	Industrial (GIDC)
5.	Kotda (Taluka Dhandhuka)	4,01,147	1989-90 to 1992-93	95,143	Industrial (GIDC)
6.	Gondal city (Taluka Gondal)	1,28,276	1970-71 to 1992-93	1,73,999	Industrial (GIDC)
7.	Junagadh city (Taluka Junagadh)	1,43,277	1981-82 to 1992-93	55,466	Industrial (GIDC)
		21,79,922		13,67,137	

This was pointed out to the department between March 1992 and September 1993; their reply has not been received (October-1995).

(b) In respect of land measuring 6.99 lakhs square metres held by various occupants and used for non-agricultural purposes, the non-agricultural assessment was not levied/short levied for the periods between 1972-1973 and 1992-1993. This resulted in non-recovery/

short recovery of non-agricultural assessment amounting to Rs.3.00 lakhs as detailed in the table:

Sr. no.	Name of place	Area in sq.metres	Period	Amount of non agricultural assessment (In rupees)	Purposes of use
1.	Aslali, Kathwada, Dascroi taluka (Ahmedabad)	1,44,767	1976-77 to 1992-93	81,952	Commercial
2.	Dudhrej, Ratanpur (Surendranagar)	1,31,581	1981-82 to 1991-92	73,685	Residential/ Industrial
3.	Katargam (Surat)	53,332	1975-76 to 1992-93	60,145	Industrial
4.	Ucchal (Surat)	84,150 93,300 67,500	1972-73 to 1991-92	20,196 18,660 13,550	Residential
5.	Mahemadabad (Dist. Kheda)	1,11,407 13,254	1988-89 to 1992-93 1991-92 to 1992-93	52,450 31,670	Residential
		6,99,291		2,99,858	

6/94-95

The omission was pointed out to the department between October 1992 and August 1993. The department informed that a sum of Rs.5,357 in respect of Mahemadabad taluka had been recovered. Report on recovery in the remaining cases has not been received (October 1995).

(c) In respect of land measuring 6.46 lakhs square metres situated at three talukas which was acquired and handed over/allotted to Rajkot Urban Development Authority, Gujarat Housing Board and Gas Authority of India Ltd for non-agricultural use, the non-agricultural assessment was not levied/short levied for the period between 1978-79 and 1993-94. This resulted in non-levy/short levy of non-agricultural assessment amounting to Rs.5.95 lakhs as detailed below:

Sr. No.	Name of Taluka	Area in sq.mts.	Name of allottees	Period Purposes of use	Amount of non agricultural assessment (In rupees)
1.	Rajkot	3,86,376	Rajkot Urban Development Authority(RUDA)	1984-85 to 1993-94 Residential	4,63,651
2.	Junagadh	1,04,337	Gujarat Housing Board(GHB)	1978-79 to 1992-93 Residential	81,424
3.	Kalol (Panchmahal)	1,54,857	Gas Authority of India Limited (GAIL)	1987-88 to 1991-92 for laying pipe line.	49,553
		6,45,570			5,94,628

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The omission was pointed out to the department between May 1993 and June 1994; their reply has not been received (October 1995).

The above cases were reported to Government in April 1995; their reply has not been received (October 1995).

3.3 Non recovery/short recovery of conversion tax

Under the Bombay Land Revenue Code, 1879, as applicable to Gujarat, conversion tax is payable on change in mode of use of land from agricultural to non-agricultural purposes or from one non-agricultural purpose to another in respect of land situated in a city or town, including peripheral areas falling within one to five kilometres. Different rates of conversion tax are prescribed for residential, industrial and commercial/other uses depending upon the population of the city or town. A conversion tax is leviable when an acquiring body hands over the possession of land acquired, specifically for non-agricultural purpose, as stated in Government clarification of February 1979.

(a) In Limbdi, Olpad and Nadiad Talukas of Surendranagar, Surat and Kheda Districts respectively 2,22,598 sq. metres of land was acquired and handed over to acquiring bodies between January and December 1990, but conversion tax of Rs. 3.03 lakhs was not levied as detailed below:

Location of land	Name of allottees	Land allotted (sq. metres)	Purpose/ Use	Amount of conversion tax not levied (Rupees in lakhs)
Limbdi	Gujarat Electricity Board	1,72,498	Commercial	1.29
29/04/95 Olpad	Gujarat Industrial Development Corporation	24,304	Industrial	0.97
Nadiad	Gujarat Water supply & Sewerage Board	25,796	For purposes other than agricultural	0.77
		2,22,598		3.03

(b) In 32 cases of Ahmedabad, Bhavnagar, Gandhinagar and Junagadh Districts conversion tax was either not levied or levied at incorrect rates. This resulted in short/non-recovery

of conversion tax amounting to Rs. 14.98 lakhs as detailed below:

Name of Taluka	No. of cases	Area of land (sq.mts.)	Amount of tax not levied or short levied (Rupees in lakhs)	Remarks
Gandhinagar	1	3,29,501	9.89	Industrial purpose
Dascroi (Ahmedabad)	4	74,862	2.92	Change to (1) Residential to commercial (2) Industrial to Commercial (3) Industrial
Botad (Bhavnagar)	12	2,11,032	0.91	Residential
Junagadh city	1	1,04,337	0.52	Residential
Ahmedabad	3	11,316	0.38	Residential & one case of commercial purpose
Dholka (Ahmedabad)	11	1,36,049	0.36	Residential
	32	8,67,097	14.98	

The above cases were reported to the department between January 1991 and June 1994; their reply has not been received (October 1995).

The above cases were reported to Government in April 1995; their replies have not been received (October 1995).

3.4 Application of incorrect rates of non-agricultural assessment

Under the Gujarat Land Revenue Rules, 1972, cities, towns and villages in Gujarat are divided into five classes "A" to "E" for the purpose of determining the rates of non-agricultural assessment. Peripheral areas within five kilometres of the major cities falling in class "A" and the area falling within one kilometre of the cities and towns falling in class "B" and "C" are classified along with respective cities and towns. Certain industrial and allied areas notified by the Government irrespective of the population of the concerned city *etc.* are also classified as class "B".

The classification of areas for the purpose of non-agricultural assessment is done by the collector in respect of the urban areas under jurisdiction of municipalities and by the District Development Officer in respect of other areas under control of panchayats. Different rates of non-agricultural assessment are fixed under the rules for different classes of land depending upon the use of the land. Government revised the rates of non-agricultural assessment with retrospective effect from 1st August 1976, by the notification issued in January 1978, which were further revised from 1st August 1989 by another notification issued in April 1992. In addition to land revenue, local fund cess and education cess at the prescribed rates are also leviable.

(a) According to 1971 and 1981 census Savarkundla (District Bhavnagar) and Jamnagar city were upgraded. It was, noticed in audit that in nine cases non-agricultural assessment

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on land measuring 6,03,239 sq.mts. was continued to be levied at the rates applicable prior to upgrading of town/city. This resulted in short levy of non-agricultural assessment of Rs. 4.55 lakhs for the period 1976-77 to 1992-93.

(b) Villages Chorania and Balgamda fall within the peripheral areas of one kilometre of Limbdi a 'C' class (Surendranagar District). Lands falling within the peripheral area were required to be assessed at the rates applicable to "C" class. However, the land measuring 1,91,817 sq.metres used for non-agricultural purposes was assessed at lower rate. The incorrect application of rate resulted in short levy of non-agricultural assessment of Rs.0.31 lakhs for the period 1981-82 to 1992-93.

(c) In January 1978 and April 1992, Government revised the rates of non-agricultural assessment with retrospective effect from 1st August 1976 and 1st August 1989 respectively. In seven Talukas of Ahmedabad, Surat, Broach, Gandhinagar and Jamnagar Districts, it was noticed (January 1993 to December 1993) that in 69 cases on the land measuring 23.31 lakhs sq.mts. the non-agricultural assessment continued to be levied at the pre-revised rates. This resulted in short levy of non-agricultural assessment amounting to Rs.7.23 lakhs for the period 1976-77 to 1992-93 as detailed below:

Sr. no.	Name of places	No.of cases	Period	Area of land in sq.mts (In lakhs)	Amount short levied (Rs.in lakhs)
1.	Rajpipla	14	1976-77 to 1992-93	1.28	0.62
2.	Dwarka	6	1976-77 to 1992-93	4.71	4.11
3.	Dhrol	22	1989-90 to 1992-93	1.98	0.55
4.	Sanand	3	1989-90 to 1992-93	1.45	0.30
5.	Olpad	9	1989-90 to 1992-93	2.03	0.35
6.	Vyara	1	1989-90 to 1992-93	3.06	0.37
7.	Gandhinagar	14	1983-84 to 1991-92	8.80	0.93
		69		23.31	7.23

(d) In respect of three cases pertaining to Mamlatdar, Jamnagar, the non-agricultural assessment on land measuring 1,66,244 sq.mts allotted to the Gujarat Electricity Board (GEB) and Gujarat State Road Transport Corporation (GSRTC) was not levied at the appropriate rate according to its use. This resulted in short levy of non-agricultural assessment of Rs.97,606 for the period 1976-77 to 1992-93.

The above cases were reported to department between June 1993 and December 1993; their replies have not been received (October 1995).

The above cases were reported to Government in April 1995; their replies have not been received (October 1995).

CHAPTER - 4

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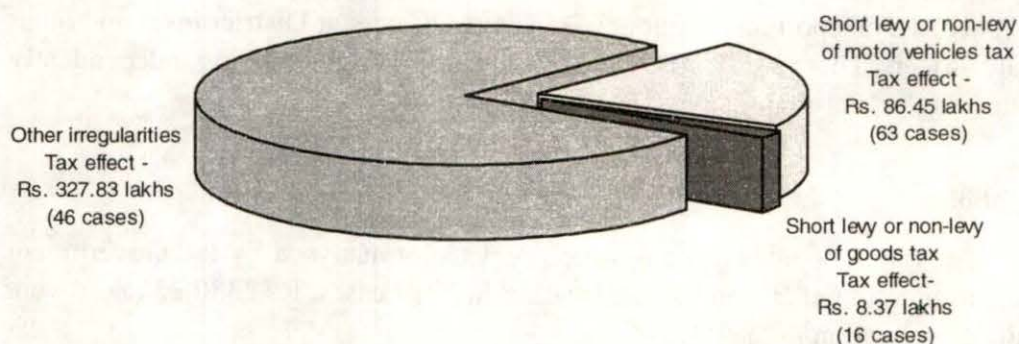
TAXES ON VEHICLES

CHAPTER - 4

TAXES ON VEHICLES

4.1 Results of audit

Test check of records in the offices of the Commissioner of Transport, Regional Transport Offices, Assistant Regional Transport offices and Inspector of Motor Vehicles in the State, conducted in audit during 1994-95, disclosed under-assessments amounting to Rs.422.65 lakhs in 125 cases. These cases broadly fall under the following categories:



Total cases 125 - Tax effect Rs. 422.65 lakhs

During 1994-95, the department accepted under-assessment *etc.* of Rs.40.79 lakhs in 84 cases. Out of these, 3 cases involving Rs.2.52 lakhs were pointed out during 1994-95 and the rest in earlier years. A few illustrative cases highlighting important audit observations and the results of a review on "Levy and collections of additional/composite tax" bringing out cases of short levy and consequent loss of revenue involving Rs.4119.42 lakhs are given in the following paragraphs.

4.2 Levy and Collection of Additional/Composite Tax

4.2.1 Introduction

Under the provisions of the Bombay Motor Vehicles Tax Act, 1958, (BMV Tax Act) as applicable to Gujarat State, Composite Tax on motor vehicles and on passengers was introduced with a view to simplify and rationalise the existing tax structure. This was made effective from 1 April 1991. Prior to introduction of Composite Tax, tax on vehicles and on passengers was levied and collected separately. The Composite tax is levied with reference to number of permitted seating capacity of the vehicle and the rates are revised from time to time. The tax is payable in advance either annually or in monthly instalments.

4.2.2 Scope of audit

The system adopted for levy and collection of additional/composite tax were reviewed in audit to see whether they were adequate, effective and economical for timely and correct collection of the revenue due and also whether the legislative intention of introducing composite tax was fulfilled. Records of the Commissioner of Transport (COT), Ahmedabad and of seven Regional Transport Offices (RTO) (out of 19 Regional Offices) located at Ahmedabad, Rajkot, Mehsana, Godhra, Nadiad, Vadodara and Surat in the State, for the period 1 April 1991 to 31 March 1994 were test checked in audit.

4.2.3 Organisational set-up

The administration of the provisions of the Act and Rules relating to levy and collection of additional/composite tax is vested with the Commissioner of Transport, Ahmedabad who is assisted by the Deputy Commissioner of Transport, Joint Director and Assistant Commissioner of Transport and Regional Transport Officers at District level and other subordinate officers. There are 13 RTOs and 6 Assistant RTOs functioning independently in the State.

4.2.4 Highlights

(i) Impact of revision of rates of composite tax was not analysed by the Government before the introduction of Bill in the Legislature. In 3214 cases, Rs.2350.23 lakhs were forgone due to reduction in the rates of tax.

[Paragraph 4.2.6(A)]

(ii) Nonfulfillment of legislative intention in raising revenue at higher rate of tax on buses on account of failure to define the term luxury bus and in the matter of fixing up the date of payment resulted in loss of revenue of Rs.662.77 lakhs in 1495 cases and Rs.874.31 lakhs respectively.

[Paragraph 4.2.6(D)&(F)]

(iii) Retrospective effect given by the ordinance proclaimed in December 1991 with regard to application of reduced rate of composite tax was not considered by the Act passed in ratification of the ordinance resulted in incorrect adjustment of difference of tax of Rs.75.04 lakhs in 1139 cases, short levy of tax of Rs.41.90 lakhs in 1393 cases and non levy of tax of Rs.24.53 lakhs in 359 cases for the period of non-use.

[Paragraph 4.2.7(A)]

(iv) In 100 cases, non-imposition of restriction on the period of non-use resulted in non-levy of tax of Rs.12.96 lakhs and in 21 cases of tourist buses application of lower rate of tax resulted in short levy of tax of Rs.11.40 lakhs.

[Paragraph 4.2.6(E), 4.2.9(A)]

4.2.5 Trend of revenue

The Budget estimates and actuals relating to collection of additional/composite tax for the period from 1991-92 to 1993-94 were as under:

Sr. no.	Year	Budget estimates	Actuals	Variations (+)Excess (-)Short fall
(Rupees in lakhs)				
1.	1991-92			
	Additional Tax	500.00	1298.54	(+)798.54
	Composite Tax	-	-	-
2.	1992-93			
	Additional Tax	28.65	55.54	(+)26.89
	Composite Tax	1316.05	231.34	(-)1084.71
3.	1993-94			
	Additional Tax	50.00	4.87	(-)45.13
	Composite Tax	1549.00	2154.26	(+)605.26

Additional tax was in force till March 1991. Budget estimates for the year 1991-92 were prepared before the beginning of the financial year. Therefore no separate budget estimate for composite tax for that year was indicated.

The actuals for the year 1991-92 however include collection of composite tax. The excess in 1991-92 was attributed by the Department to introduction of composite tax. Short fall for the year 1992-93 of Rs.1084.71 lakhs, excess/short fall for the year 1993-94 were not analysed by the department to determine the reasons. The very large variations from the budget figures indicate the need for department to analyse the reasons carefully and make the budgetary exercise realistic.

4.2.6 Lacuna in the Act

The provisions relating to levy and collection of composite tax in the Bombay Motor Vehicle Tax Act were amended in April 1991 and in March 1992. It was noticed in audit that some of the amended provisions were at variance with certain other provisions of the Act, beside not-fulfilling the legislature's intent. The lacunae noticed in audit were as under :-

(A) Revision of tax rates resulting in drop in revenue

Prior to the introduction of composite tax, additional tax was leviable at daily or weekly or monthly rates on passengers permitted to be carried by omnibuses used exclusively as contract carriages in addition to motor vehicle tax on such omnibuses. As this procedure led to large volume of administrative work and possible leakage of revenue due to evasion of tax, a bill for a new provision in the Bombay Motor Vehicle Tax Act to levy and collect composite tax at monthly or annual rates on all omnibuses used or kept for use exclusively as contract carriage was enacted and given effect from April 1991.

Taxes on vehicles

A comparative analysis of the existing rate structure and those introduced from April 1991, as made by audit, is given below:

Sr. no.	Periodicity of payment	Rate existing prior to introduction of composite tax		Rate existing after introduction of composite tax	
		Ordinary Omnibus	Luxury or tourist Omnibus	Ordinary Omnibus	Luxury or tourist Omnibus
1.	Annual	No provision existed	No provision existed	Rs. 1500 per seat	Rs.2700 per seat
2.	Monthly	Rs.200 per passenger plus tax on vehicle	Rs.300 per passenger plus tax on vehicle	Rs.125 per passenger	Rs.225 per passenger
3.	Weekly	Rs.65 per passenger plus tax on vehicle	Rs.100 per passenger plus tax on vehicle	No provision existed	No provision existed
4.	Daily	Rs.12 per passenger plus tax on vehicle	Rs. 18 per passenger plus tax on vehicle	No provision existed	No provision existed

It would be seen from the above table, that there was a sharp fall in the monthly rates of tax. This also had an impact on the annual rates as prior to revision a vehicle owner had to pay Rs. 2,400 (Rs. 200 x 12) and Rs. 3600 (Rs. 300 x 12) annually for ordinary and luxury buses respectively which were revised to Rs. 1500 and Rs. 2700 annually. The reduction in the tax rates was not analysed by the Government and the corresponding benefits were also not spelt out for the consideration of the Legislature, in the bill introduced for enactment. An approximate idea of the revenue forgone can be had from the fact that based on the average number of 1,16,061 seats in 3214 omnibuses, the revenue forgone was Rs. 2350.23 lakhs for the period 1991-92 to 1993-94 at the differential rate of Rs 675 *per annum* after allowing a relief of Rs. 325 per seat for maximum period of non-use for three months. Besides above, tax on vehicles realisable on omnibuses had also been forgone. The increase in the revenue was due to the increase in the number of buses registered.

(B) Non-consideration of interest in the case of payment of tax in monthly instalments

Under the provisions of BMV Tax Act, 1958, tax on all motor vehicles was to be levied at prescribed annual rate. The tax was, however, to be paid in advance either annually or in quarterly instalments in the case of vehicles other than designated omnibuses. Considering the facility to pay tax in instalments, the Act provided for fixation of the amount of quarterly instalment after adding 10 *per cent* to one fourth of annual rate of tax. The amount of quarterly instalment therefore consisted of proportionate tax amount and interest thereon.

Provisions under the same Act, relating to levy and collection of composite tax on designated omnibuses permitted the vehicle owners to pay the tax in advance either annually or in monthly instalments at the rate of one-twelfth of annual rate of tax. Since the amount of monthly instalment did not include any interest component the designated omnibus owners preferred to pay tax in monthly instalments. Government may, therefore, consider charging extra amount at suitable rate for the facility of payment of tax at monthly instalment extended to the omnibus owners on the lines of determination of rate for quarterly instalments.

(C) Non-inclusion of interest clause in the Bombay Motor Vehicle Tax Act, 1958

The Bombay Motor Vehicle Tax Act, 1958, as applicable to Gujarat, provides for levy of penalty up to a maximum of 25 *per cent* on belated payment of tax. The Act, unlike the Gujarat Carriage of Goods Taxation Act, 1962 does not provide for charging interest on belated payment of tax at specified rate. This enabled the departmental authorities to levy penalty at varying rates on belated payment of tax. Non-payment of tax usually attracts levy of interest at specified rate. Non-inclusion of interest clause in the Bombay Motor Vehicle Tax Act, 1958 as applicable to Gujarat, has resulted in extending unintended benefit to the owners of the designated omnibuses and loss to Government. It may be mentioned here that the Bombay Motor Vehicle Tax Act, 1958 enacted by the Government of Maharashtra provides for levy of interest.

The department stated that the matter was under consideration of the Government (May 1995).

(D) Loss of revenue on account of abnormal delay in defining the term "Luxury bus"

BMV Tax Act, 1958 provided for levy of composite tax at the rate of Rs.125 per passenger per month permitted to be carried on all ordinary designated omnibuses, used or kept for use in the State exclusively as contract carriages and at the rate of Rs.225 per passenger per month on all luxury or tourist designated omnibuses. While the term tourist bus was defined in the Motor Vehicles Act, 1988 (Central Act), the term "Luxury bus" was not defined till March 1994 either under the M.V. Act, 1988 or under the BMV Tax Act, 1958 (State Act). All omnibuses, other than tourist vehicles, were therefore considered for levy of composite tax at lower rate applicable to ordinary omnibuses. The term "Luxury bus" was existing in the BMV Tax Act, 1958 since May 1982, when a provision to levy tax on passengers permitted to be carried by omnibuses was newly introduced. The Director of Transport had proposed the definition of Luxury bus in November 1982 to the Government. The Report of Administrative Reform Committee (Jaswant Mehta Committee on public oriented administration) published in July 1987 also suggested the need for defining the term "Luxury Bus" for increasing revenue. However, the Government could not define the term "Luxury Bus" till March 1994, the reasons for which were not on record.

The term "Luxury bus" was finally defined and made applicable from April 1994. The abnormal delay in defining the term "Luxury bus" used in the BMV Tax Act, 1958,

resulted in nonfulfillment of the legislative intention of raising revenue at higher rates of tax on luxury buses. This loss was Rs.662.77 lakhs on 1495 buses in seven RTOs for the period 1991-92 to 1993-94 alone. Tax on all these buses was levied as ordinary buses at lower rate till March 1994 and thereafter as luxury buses at higher rate consequent upon these buses falling within the definition of 'Luxury bus'.

(E) Non levy of composite tax on vehicles which exceeded overall limit of non-use

Under the provisions of the Act, tax was leviable on all omnibuses which were used or kept for use in the State exclusively as contract carriages. No tax was levied for the period during which the omnibus was not used and a declaration to that effect was filed by the owner of the omnibus in the prescribed form.

On considering the cases wherein the omnibuses were declared to have been kept under non-use but actually used during such period clandestinely by the owners without payment of tax, the provisions of the Act were amended (March 1992). According to the amended provisions, where the owner of a designated omnibus who has paid tax, has not used or kept for use the omnibus for a continuous period of not less than one month, he shall be entitled to the refund of an amount equal to one twelfth of the annual rate of tax for each complete month of the period subject to restriction of such refund to a total amount equal to three months' tax in a year in normal circumstances. Thus tax is leviable for the total period exceeding three months in a year even if the omnibus is declared to have been kept under non-use and tax is not paid in advance for such period.

It was noticed during the review that in respect of 100 cases where tax was not paid in advance and the non-use period exceeded the overall limitation of three months during 1992-93 and 1993-94, the period of non-use exceeding three months was not subjected to levy of tax resulting in non-levy of tax to the extent of Rs.12.96 lakhs in five districts.

On the matter being pointed out, the Department replied (December 1994) that the rules were being amended suitably.

(F) Non framing of rules relating to fixation of date of payment of tax

A new Section 3-A relating to levy and collection of tax on designated omnibuses used or kept for use in the State exclusively as contract carriages was inserted in the BMV Tax Act, 1958 with effect from 1 April 1991. As per sub-Section (2) of Section 3-A of the Act *ibid*, the annual payment of tax was to be made at any time before the beginning of the year and similarly the monthly instalment payment was to be made before the beginning of each month to which the monthly payment of tax related. However, this sub section was amended in March 1992 providing for annual or monthly payment of tax to be made within such period and in such manner as may be prescribed.

The Government did not, however, prescribe the period for making payment of tax by framing rules, till January 1995. In the absence of such rules the date as existed in the Act should have been adopted. It was, however, noticed in audit that the payment of tax was accepted from the owners of the designated omnibuses up to 10th of the month to which the tax related in pursuance of circulars issued by the Department and Government. The payment of tax made after the expiry of preceding month but on or before 10th of the

month to which the tax related was not considered as belated payments and penalty provision was not invoked accordingly. This resulted in extending unintended benefit to the owners of the designated omnibuses and consequent loss of revenue to Government on account of non-levy of penalty for delay in payment of tax.

Calculated at the rate of maximum penalty of 25 *per cent* of tax, the loss of revenue worked out to Rs.874.31 lakhs for the years 1992-93 and 1993-94.

On the matter being raised in audit, Government framed rules (February 1995), effective from the date of notification, prescribing 10th of the month to which the tax related as date of payment of tax.

4.2.7 Levy of composite/additional tax

Under the provisions of the Motor Vehicle Act, 1988 (Central Act), registration of omnibuses with the RTO is compulsory. When an omnibus is brought for registration, the tax leviable on it is assessed, levied and collected in advance under the provisions of Bombay Motor Vehicle Tax Act, 1958, on the basis of particulars of the omnibuses given in the prescribed proforma by the owner, which are verified by the technical staff of RTO. Any alteration made in the omnibus after registration and having bearing on the tax leviable, is required to be intimated to the RTO by way of a declaration in the prescribed form. On receipt of such declaration and on verification of facts mentioned therein by technical staff of RTO, tax on omnibus is re-assessed and then levied and collected accordingly.

(A) Non-implementation of the provisions of the Act relating to the date of effect to the amended provisions

Every ordinance is to be ratified, with or without altering any provision by an Act passed by the Legislature within six weeks from the date of re-assembly of Legislature. In the case of any discrepancy appearing in the provisions of the ordinance and the Act enacted in ratification of the ordinance, the provisions of the Act shall prevail.

An ordinance proclaimed in December 1991 provided for levy of composite tax at Rs.1500 per seat *per annum* on all ordinary designated omnibuses with retrospective effect from 1 April 1991, as against the existing rate of Rs.1800 per seat *per annum*. Acting on the provisions of the ordinance, the RTOs permitted in January and February 1992, adjustment of the amount of composite tax paid in excess between April and December 1991 towards tax due for subsequent months and levied tax at lower rate from January 1992 onwards. An Act in ratification of the ordinance was, however, passed by the State Legislature in March 1992 and provided for giving effect to the provisions "at once" meaning the date of notification of the Act *viz.* 21 March 1992. Thus the Act did not ratify the provisions relating to giving retrospective effect and hence the rate of composite tax leviable on ordinary designated omnibuses remained at Rs. 1800 per seat *per annum* for the year 1991-92 and was Rs. 1500 per seat *per annum* for subsequent years. Further under the existing provisions, an omnibus was to be kept under non-use for a continuous period of not less than 2 months in a year to secure the benefit of non-payment of composite tax for the period of non-use. This provision was amended by the

ordinance of December 1991 whereby the benefit of non-payment of composite tax for the period of non-use could be availed of even if the omnibus was kept under non-use for a minimum period of one month.

Short realisation of composite tax in 123 cases was pointed out in para 4.2 of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year ended 31 March, 1993. Non-implementation of the provisions of the Act enacted in ratification of the ordinance resulted in non-levy of tax of Rs.141.47 lakhs during 1991-92 due to: (a) incorrect adjustment of composite tax of Rs.75.04 lakhs in respect of 1139 cases and short levy of composite tax of Rs.41.90 lakhs for the period January to March 1992 in 1393 cases in seven districts (b) non levy of composite tax of Rs.24.53 lakhs in 359 cases for the period of non-use less than 2 months during 1991-92 in five districts.

No cognizance of the change in the date of effect to be given to the amended provisions was taken by the departmental authorities and the incorrect implementation remained unrectified.

(B) Short levy of additional tax due to irregular grant of benefits of stay order

The Government introduced levy and collection of additional tax in lieu of passenger tax and fixed the rates thereof effective from May 1982. The rates were, however, revised on 8 June 1987, 14 September 1987 and 1 April 1989. An Association obtained stay orders from the Civil Court, Vadodara on the operation of the rates revised in September 1987 and April 1989 and its members continued to pay additional tax at pre-revised rates.

Scrutiny of records revealed that the benefit of stay orders (delivered on 25 September, 1987 and 31 March, 1989) was irregularly extended in 44 cases to owners/operators of the omnibuses who were either not members of the Association at the time of granting of the stay orders or were registered after the date of stay orders.

Short levy of additional tax in respect of these 44 cases worked out to Rs.7.60 lakhs besides, penalty leviable up to 25 *per cent* of tax due. The department accepted the audit observation and has recovered Rs.20,100 and Rs.56,724 in 3 cases towards tax due. The balance tax of Rs. 6.83 lakhs was yet to be recovered (August 1995).

4.2.8 Collection of composite/additional tax

Collection of tax is done through Government treasury or by the RTO in cash or by cheque or by demand draft. All such collections are entered in the taxation records against each omnibus. The taxation records are required to be reviewed periodically by the RTO with a view to identify cases of non-payment of tax and to initiate recovery proceedings.

Scrutiny of taxation records revealed the following irregularities:-

(A) Allowance of reduction in seating capacity of the designated omnibuses

Section 3A of the BMV Tax Act, 1958 as applicable to Gujarat State, governs levy and collection of composite tax on all omnibuses used or kept for use in the State exclusively as contract carriages. Sub Section (6) below Section 3 A *ibid* provides that provisions of

all other sections of the Act are equally applicable for levy and collection of composite tax except those provisions specifically provided under Section 3A.

Section 7 of the Act *ibid* read with Rule 9 of the Bombay Motor Vehicles Tax Rules, 1959, deals with additions and alterations in respect of motor vehicles governed under Section-3 of the Act and not in respect of designated omnibuses governed under Section 3-A *ibid*.

For making changes in the vehicle falling under Section 3, procedures as prescribed in the Rules made under the Act *ibid* is that the owner shall have to submit declaration of alteration in the prescribed form to the RTO. On receipt of such declaration, the RTO causes to make necessary entries in the registration and taxation records after getting the facts verified by his technical officers.

Review of taxation and registration records maintained in the regional offices revealed that in respect of 86 omnibuses of Ahmedabad, Rajkot, Vadodara, Surat and Nadiad regions, reduction in seating capacity of the designated omnibuses was allowed although no declaration was submitted in the form prescribed under the rules. This resulted in loss of revenue as composite tax of Rs.18.43 lakhs between 1991-92 and 1993-94 only.

In respect of 11 cases of Ahmedabad region, the omnibuses were detected during road inspection with seats permanently fitted in excess of the permitted capacity. Only one month's tax with penalty was found recovered in respect of additional seats. Since excess seats were found fitted permanently in the omnibuses, composite tax in respect of such unauthorised additions in the seating capacity is required to be levied with penalty and collected from the date of detection to the date on which the unauthorised additions were removed. This has not been done so far (August 1995).

The loss of revenue on this account worked out to Rs.1.80 lakhs for the period between January 1992 and March 1994 in 11 cases.

(B) Outstanding tax revenue

The department did not ascertain nor was kept informed of by the RTOs, the exact amount of composite tax/additional tax outstanding at the end of each month in respect of all the omnibuses registered with various RTOs. As ascertained from the selected RTOs during the course of review, an amount of Rs.369.82 lakhs was outstanding in 1644 cases, which included only such omnibuses against which demand notices were issued. Although demand notices were to be issued immediately on the tax becoming due, these were actually issued once in a year to a few omnibuses only; the department was thus unaware of outstanding tax revenue.

(C) Improper maintenance of taxation records

The Bombay Motor Vehicle Tax Rules, 1959 provide that payment of tax shall be made to the taxation authority within whose jurisdiction the omnibus is to be used or kept for use. It was, however, noticed during the review that the monthly instalment of tax was being accepted by the RTO irrespective of the fact whether the vehicle was registered for use in his region or registered in any other region. When an omnibus is

registered for use in one region but payment of tax is made to the RTO of any other region, the details of payment of tax do not appear in the taxation records of registering authority till details are received from the RTO who actually collects the tax. In 419 cases, entries relating to payment of tax in monthly instalments for one whole particular year could not be traced to verify that tax for that year was correctly paid. This leads to the conclusion that tax to the extent of Rs.204.32 lakhs could be in arrears. Besides, in 316 cases, the details regarding the omnibuses had not been recorded in the taxation record. The procedure followed had thus resulted in improper maintenance of taxation records and consequent inability of the RTO to issue demand notices timely to defaulters.

On the matter being pointed out in audit the department stated (May 1995) that instructions were being issued to all RTOs to accept the tax payment in respect of omnibuses registered in their region only.

4.2.9 Internal control and monitoring

Internal controls are intended to promote compliance with laws and departmental instructions with a view to minimise evasion of taxes as well as prevention and detection of frauds and other irregularities. Reliable financial and management information systems are effective tools for exercising such control.

Audit scrutiny revealed that the system of internal control on levy and collection of tax as followed both at the regional and departmental levels was inadequate. A few examples are cited below:-

(A) Under Section 3-A of the BMV Tax Act, 1958, as adopted by Gujarat State, composite tax at the rate of Rs.2700 per seat *per annum* in respect of tourist designated omnibuses, as specified under item 2 of the table, is required to be levied and collected. As defined under Section 2(43) of the Motor Vehicles Act, 1988 (Central Act), tourist vehicle is a contract carriage constructed or adapted and equipped and maintained in accordance with such specification as prescribed under Motor Vehicle Rules, 1989. Issue of all India tourist permit is vested with the Commissioner of Transport, Ahmedabad as per procedure contained under Section 88 (9) of the Motor Vehicles Act, 1988.

Review of All India permits issued by the Commissioner of Transport, Ahmedabad with reference to taxation records of the Regional Transport Offices revealed that in respect of 21 cases of Ahmedabad, Rajkot and Mehsana regions, rate applicable to ordinary designated omnibuses (Rs.1500 per seat *per annum*) was applied for levy and collection of tax as against the higher applicable rate of Rs.2700 for tourist designated omnibuses. All India permits issued in these cases were in force and not got cancelled so far. Short levy of tax on this account worked out to Rs.11.40 lakhs.

The department had no mechanism to ensure whether the All India Tourist Permits issued by the COT were promptly recorded in the registration and taxation records maintained in the respective RTOs. and higher rate of tax was applied in such cases. The leakage of revenue to the extent of Rs. 11.40 lakhs as pointed out above could therefore be attributed to inadequacy in the internal control and monitoring system of the department.

The department accepted (May 1995) the observation in five cases and reported recovery of Rs. 50,625 in three cases.

An endorsement of the fact of grant of all India tourist permit in the Registration Certificate issued to the omnibus owner is presently being made by the COT and the concerned RTO is intimated of the fact separately. Instead, if the concerned RTO is entrusted with the endorsement work on the strength of the intimation received by him in this regard, such incidents of leakage of revenue could be avoided.

(B) The periodicity for grant of non-use certificate nor the number of visits to be made by the technical officers to the declared place of non-use to verify the genuineness of non-use of omnibuses or any other checks, have not been prescribed. Out of 5526 cases of Ahmedabad, Vadodara and Rajkot regional offices, 3255 cases of non-use forms were accepted without verifying the genuineness of non-use of omnibuses.

4.2.10 Other points of interest

(i) Pending departmental action cases

Review of Departmental Action (DA) cases registered and finalised in respect of designated omnibuses of Ahmedabad, Rajkot, Vadodara, Surat, Mehsana, Nadiad and Godhra regions revealed the following:-

Total 24,475 DA cases were initiated up to March 1994 against which 15209 cases were finalised till date (April 1995) leaving a balance of 9266 cases. The pending cases included 1375 cases (of Vadodara, Godhra and Nadiad regions) which were detected and registered prior to 1991-92.

Non finalisation of the pending DA cases was stated to be due to non response to the notices issued by the RTOs for hearing the cases before taking a final decision. Moreover in the absence of any provision in the Act/Rules to take decision *ex parte* and hence these cases were pending.

The RTOs did not work out the financial implication of these pending cases till date (August 1995).

(ii) In Ahmedabad, 8 omnibuses owned by an agency were detected plying on road between August 1984 and February 1986 without payment of additional tax. In these cases additional tax of Rs. 3.95 lakhs was to be recovered. Of these, in 4 cases, though the taxes were in arrears and departmental action was to be finalised, 'no objection' certificates were issued by the department for transfer of the omnibuses to other States. The department could effect recovery of Rs. 23,760 only till date (October 1995). The department has initiated action to recover the remaining dues as arrears of land revenue and the matter is under correspondence with land revenue authorities (October 1995).

The above observations were brought to the notice of the department/Government in June 1995, their comments have not been received (October 1995).

4.3 Change in classification of vehicles according to unladen weight

Under the provision of the Bombay Motor vehicles Tax Act, 1958, as applicable to Gujarat, tax shall be levied and collected on all motor vehicles used or kept for use in the State at a rate not exceeding the maximum rates fixed in first schedule, by a notification in the Official Gazette.

Motor vehicles other than transport vehicles registered in the State of Gujarat owned by an individual, a local authority, a public trust, a university or an educational or social welfare institution falling in Part A of clause III of schedule I of the Act are classified for the purpose of rate of lump sum tax in three categories as under:

- (a) not exceeding 750 kg unladen weight.
- (b) exceeding 750 kg unladen weight but not exceeding 1500 kg unladen weight.
- (c) exceeding 1500 kg in unladen weight but not exceeding 2250 kg unladen weight.

Government notification issued in April 1992 amended the structure of the schedule while revising the rates of lump sum tax as follows:-

- (a) not exceeding 900 kg unladen weight.
- (b) exceeding 900 kg unladen weight but not exceeding 1500 kg unladen weight.
- (c) exceeding 1500 kg unladen weight but not exceeding 2250 kg unladen weight.

Under the provisions of the Act, the Government by issue of notification is empowered to change the rates of tax only within the maximum prescribed rates. Therefore, change in the structure of schedule requires enactment on the lines of section 25 of the Act. However, this was not done.

Thus motor vehicles with unladen weight between 751 kgs and 900 kgs were irregularly extended benefit of lower rate of tax. Due to amendment to schedule, 617 motor vehicles exceeding 750 kgs but not exceeding 900 kgs unladen weight registered in 14 RTO/ARTOs between the period April 1992 and September 1993, were levied to tax at lower rate. This resulted in loss of revenue of Rs.20.58 lakhs.

This was brought to notice of the Department (July 1994). The department did not agree with the audit observation stating that the State Government had inherent power to change the internal classification of vehicles depending upon the unladen weight, and fix the rates of lump sum tax subject to the maximum rate of tax specified. The reply of the department is not tenable in view of the fact that the Government by issue of notification can only revise the rates of tax.

The matter was reported to Government in May 1995; their reply has not been received (October 1995).

4.4 Irregular grant of exemption from payment of tax

By a notification issued in June 1992 under Bombay Motor Vehicles Tax Act, 1958, as applicable to Gujarat, Government withdrew the exemption from payment of motor vehicles tax from 1 July 1992 in respect of the vehicles owned by the Central Government.

In Ahmedabad, Jamnagar, Junagadh and Bhuj, it was noticed (between November 1993 and March 1994) that in respect of 105 vehicles of Central Government the benefit of exemption was allowed even after 30 June 1992. The motor vehicles tax recoverable in these cases for

the period from July 1992 to March 1994 amounted to Rs.7.01 lakhs as shown below:

Sr. no.	Taxation Office	Number of vehicles	M.V.Tax not levied (Rupees in lakhs)
1.	R.T.O.Ahmedabad	57	4.43
2.	R.T.O.Jamnagar	26	1.65
3.	R.T.O.Junagadh	10	0.50
4.	R.T.O.Bhuj	12	0.43
		105	7.01

This was pointed out to the department between December 1993 and May 1994. The department while accepting the facts (April 1995) stated that Rs.61,090 has been recovered in fourteen cases and instructions have been issued to effect the recovery in the remaining cases. Reply in other cases has not been received (October 1995).

The above cases were reported to Government in April 1995; their reply has not been received (October 1995).

4.5 Non-recovery of motor vehicles tax and goods tax

Under the Bombay Motor Vehicles Tax Act, 1958, as applicable to Gujarat State, tax is levied and collected on all motor vehicles used or kept for use in the State. The owner of a motor vehicle who does not intend to use the vehicle or keep it for use in the State and desires to avail of exemption from payment of tax, has to make a declaration accordingly within the period for which tax has been paid. Such a declaration is valid only up to the end of the financial year in which it is made. The declarations of non-use of vehicles, are noted in the tax index cards and registration records after their acceptance by the taxation authority. In addition to motor vehicles tax, goods tax is leviable on goods vehicles, under the Gujarat Carriage of Goods Taxation Act, 1962. For non-payment of tax in time, penalty not exceeding 25 per cent thereof is also leviable besides interest.

At Rajkot, Vadodara and Surat it was noticed (between August 1993 and February 1994) that in 58 cases motor vehicles tax and goods tax were not levied and collected for the period from August 1987 to September 1993, even though the tax index cards and registration records did not show any declaration regarding non-use of the vehicles. Motor vehicles tax and goods tax not levied in these cases amounted to Rs.3.83 lakhs as shown below:

Sr. no.	Taxation Office	No.of vehicles	M.V.Tax not recovered (_____)	Goods tax not recovered (_____ In rupees _____)	Total
1.	R.T.O.Rajkot	19	1,53,637	74,695	2,28,332
2.	R.T.O.Vadodara	10	37,110	15,930	53,040
3.	R.T.O.Surat	29	69,073	32,355	1,01,428
		58	2,59,820	1,22,980	3,82,800

This was pointed out to the department between December 1993 and August 1994. The department stated (between January and March 1995) that Rs.33,568 had since been recovered by R.T.O. Vadodara and Surat in seven cases. Reply in other cases has not been received (October 1995).

The above cases were reported to Government in April 1995; their reply has not been received (October 1995).

Taxes on vehicles

4.6 Short levy of motor vehicles tax on non-transport vehicles

Under the Bombay Motor Vehicles Tax Act, 1958, as applicable to Gujarat with effect from 3 April 1987, the State Government specified rates of one time (lump sum) motor vehicles tax on non-transport vehicles used or kept for use in the State. The rates are based on unladen weight, age of the vehicle, fuel used and ownership of the vehicle. The rates were revised in August 1990 and again in April 1992.

It was noticed (between November 1993 and July 1994) that in respect of 40 non-transport vehicles one time tax was not levied and collected at correct rate. This resulted in short levy of motor vehicles tax amounting to Rs.1.76 lakhs as shown below:

Sr. no.	Taxation Office	Number of Vehicles	Lump sum tax leviable (In rupees)	Lump sum tax levied	Amount of tax short levied
1.	R.T.O. Vadodara	10	92,701	59,281	33,420
2.	R.T.O. Surat	20	97,737	51,597	46,140
3.	R.T.O. Bharuch	7	89,900	38,950	50,950
4.	A.R.T.O. Surendranagar	3	94,000	48,750	45,250
		40	3,74,338	1,98,578	1,75,760

The matter was reported to the department between January and August 1994. The department stated (between January and March 1995) that in 7 cases Rs.34,229 had been recovered. Reply in other cases has not been received (October 1995).

The above cases were reported to Government in April 1995; their reply has not been received (October 1995).

4.7 Non/Short recovery of goods tax

According to the reciprocal agreements entered into between Gujarat, other States and Union Territories *etc.*, the vehicles of other States operating in Gujarat State under such an agreement are exempt from payment of Motor Vehicle Tax under a countersignature permit. However, such vehicle owners operating in Gujarat State are required to pay goods tax under the Gujarat Carriage of Goods Tax Act, 1962.

It was noticed during audit of the office of the Commissioner of Transport (January 1992 and May 1993) that goods tax for the period from December 1986 to March 1993 was either not recovered or recovered at incorrect rates from 72 vehicle owners of Maharashtra, Madhya Pradesh and Rajasthan operating in the State under the above scheme. This resulted in non/short levy of goods tax of Rs.1.32 lakhs.

This was pointed out to the department (February 1992 and August 1993). The department while accepting the observation stated (November 1993 and June 1994) that an amount of Rs.9,395 has since been recovered in 9 cases. Report on recovery in respect of balance amount in other cases has not been received (October 1995).

The matter was reported to Government in May 1995; their reply has not been received (October 1995).

CHAPTER - 5

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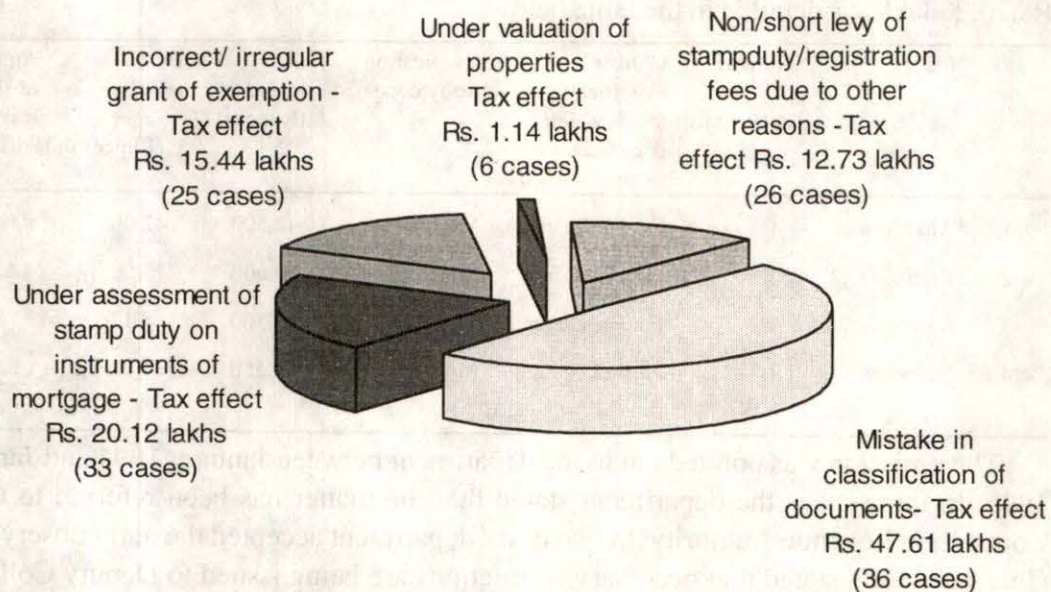
STAMP DUTY AND REGISTRATION FEES

CHAPTER - 5

STAMP DUTY AND REGISTRATION FEES

5.1 Results of audit

Test audit of documents and records in the registration offices in the State conducted during the year 1994-95, disclosed short realisation of stamp duty and registration fees amounting to Rs.97.04 lakhs in 126 cases, which broadly fall under the following categories:



Total cases 126 - Tax effect Rs. 97.04 lakhs

During 1994-95, the department accepted under assessment *etc.* of Rs.13544.13 lakhs in 192 cases, out of which 9 cases involving Rs.2.98 lakhs were pointed out during 1994-95 and the rest in earlier years. A few illustrative cases highlighting important observations involving Rs.140.36 lakhs are given in the following paragraphs.

Stamp duty and Registration fees

5.2 Short levy of stamp duty on documents of further charge

By a notification issued in March 1987 under the Bombay Stamp Act, 1958, as applicable to Gujarat, Government reduced the rate of stamp duty on mortgage deeds executed by an industrial undertaking in favour of certain financial institutions including Life Insurance Corporation of India, from *ad valorem* rates (Rs.8 for every Rs.100 or part thereof) to slab rates varying from Rs.50 (for loan/debt not exceeding Rs.10,000) to Rs.25,000 (for loan/debt not exceeding Rs.30 lakhs). These rates are not applicable to documents of further charge on which the duty at *ad valorem* rate is leviable.

The legal department in the Government opined (May 1991) that since additional burden (charge) was created on a property already mortgaged (to the financial institutions), these instruments would fall within the purview of Article 27 *ibid* and were, therefore, liable to be charged accordingly.

In Ankleshwar (District Bharuch), Kadi and Kalol (District Mehsana) and Vadodara it was noticed that six documents of further charge on the property already mortgaged were classified as mortgage deeds. This resulted in short levy of stamp duty amounting to Rs.70.20 lakhs as detailed in the table below:

Sr. no.	Place	Number of documents	Correct classification under which document was to be classified	Classification already done	Duty levied (Rupees)	Duty leviable (Rupees in lakhs)	Amount of short levy
1	Ankleshwar	1	Further charge	Mortgage	42,500	42.00	41.57
2	Kadi	2	Further charge	Mortgage	62,600	15.00	14.37
3	Kalol	2	Further charge	Mortgage	48,500	8.17	7.69
4	Vadodara	1	Further charge	Mortgage	42,550	7.00	6.57
							<u>70.20</u>

The omission was pointed out to the department between January 1994 and January 1995. In three cases the department stated that the matter has been referred to Chief Controlling Revenue Authority. In two cases department accepted the audit observation (July 1994) and stated that necessary instructions are being issued to Deputy Collector (Valuation) Mehsana to effect recovery. Report on recovery has not been received (October 1995).

The matter was reported to Government in May 1995. The Government confirmed the reply of the department and stated (August 1995) that action for recovery of deficit stamp duty has already been initiated.

5.3 Short Levy of stamp duty and registration fees due to misclassification of documents

(a) Lease treated as agreement

According to Bombay Stamp Act, 1958, as applicable to Gujarat, "lease" means an instrument by which a lessor transfers to a lessee a right to enjoy the movable or immovable or both property in consideration of the price paid or promised to be paid.

During the course of audit of Sub-Registrar, Ahmedabad it was noticed (March 1994) that two documents styled as "Agreement to lease" presented for registration in April 1992, were registered and assessed to stamp duty accordingly. As per the recitals of the documents, the lease was for 90 years commencing from March 1988 in consideration of premium of Rs.2.09 crores paid by the lessee. The lessor had handed over the possession of property and the right to enjoy the same was transferred to the lessee by virtue of these agreements. All future Government and local taxes were also payable by him. The documents were, therefore, required to be classified as "lease deeds". The misclassification resulted in short levy of stamp duty and registration fees of Rs.24.07 lakhs.

This was pointed out to the department in March 1995 and to Government in June 1995; their reply has not been received (October 1995).

(b) Conveyance treated as benami assignments

Stamp duty on conveyance deed is leviable at eight rupees for every hundred rupees or part thereof on the amount of consideration of the conveyance or the market value of the property, whichever is greater.

(i) During the course of audit (August 1992) of the records of Sub-Registrar, Ahmedabad it was noticed that six persons, the proposers of three different associations purchased land measuring 1833 square metres with construction thereon for Rs.113.51 lakhs through a public auction held in January 1990. The land was subsequently assigned to the said associations registered in the month of March 1990 without any consideration. There was nothing on records to indicate that the said property was purchased from the funds of the associations which were then non-registered. In the absence of such a document the deed executed in March 1990 was classifiable as conveyance deed and not benami assignment. The incorrect classification of document resulted in short levy of stamp duty and registration fees of Rs.13.05 lakhs.

This was pointed out to the department in April 1993. The department accepted the observation (July 1993) and stated (June 1994) that the Dy.Collector (Valuation) Ahmedabad had been instructed to take necessary action in the matter. Further report has not been received (October 1995).

(ii) During the course of audit (April 1993) of the records of Sub-Registrar, Anand (Kheda district) it was noticed that a partner of a firm holding power of attorney on behalf of other partners purchased land measuring 3650 square metres for Rs.13.80 lakhs between October 1981 and February 1982. He constructed a shopping complex and godowns thereon and executed between 1986 and 1990, 95 deeds of benami assignments in favour of various members of the complex. The documents were assessed to stamp duty and registration fees accordingly. The documents relating to purchase of land executed in 1981 and 1982 did not indicate that the land was purchased on behalf of the members of the shopping complex and the purchaser held it as benamidar. Even after assignment of land *etc.* the assignee reserved his right over terrace and for future construction thereon. The documents were thus correctly classifiable as 'conveyance'. The incorrect classification of instruments resulted in short levy of stamp duty and registration fees of Rs. 1.62 lakhs.

This was pointed out to the department in August 1994 and to Government in June 1995, their reply has not been received (October 1995).

(c) Mortgage deeds treated as equitable mortgage

The rates of stamp duty on mortgage deed is higher than that on equitable mortgage also known as mortgage by deposit of title deeds. If an equitable mortgage contains provisions creating by its own force a right or interest in the property as in a mortgage deed the document is classifiable as a mortgage and not as a deed of equitable mortgage for the purpose of levy of stamp duty.

(i) In Anand and Nadiad (Kheda district) in 18 cases the mortgagors executed deeds styled as "mortgage by deposit of title deeds" in the year 1991 with Co-operative Banks (the mortgagees) for securing loans granted to them. The deeds were accordingly assessed to stamp duty. Prior to execution of some of these deeds the mortgagors executed loan agreements with the banks offering security which were not registered but retained by the banks for securing the loans sanctioned. The documents presented for registration mentioned that loan agreements had been executed. In some of the deeds mortgagors also executed irrevocable power of attorney by virtue of which the mortgagees were authorised to recover entire loan amount by disposing of the property mortgaged in the event of default. Thus, the loan agreements containing details of the property pledged and execution of irrevocable power of attorney as a sequence of the agreement and subsequent deposit of title deeds together constituted complementary parts of the mortgage deeds. Therefore, these documents were not equitable mortgage deeds but regular mortgage deeds and accordingly attracted stamp duty and registration fees. The incorrect classification of the deeds resulted in short levy of stamp duty and registration fees of Rs.2.65 lakhs.

This was pointed out to the department in August 1994 and January 1995. The department accepted the audit observation (July 1995) in nine cases and for remaining nine cases they stated (May 1995) that these cases have been referred to Dy. Collector (Valuation) to decide the classification of documents.

(ii) In Valsad in 2 cases the mortgagors executed deeds styled as "mortgage by deposit of title deeds" in the year 1992 with mercantile bank (the mortgagees) for securing a loan granted by way of over draft. The deeds were accordingly assessed to stamp duty. However, before granting the loan the bank obtained promissory notes from mortgagors and also an undertaking to the effect that in the event of default in repayment of loan the bank shall have the right to sell the properties with or without notice to the mortgagor. Thus, the undertaking and promissory notes given by the mortgagor constitute complementary parts of the mortgage deeds and therefore the documents styled as equitable mortgage deeds were classifiable as regular mortgage deeds. The incorrect classification of the documents resulted in short levy of stamp duty and registration fees of Rs.3.83 lakhs.

This was pointed out to the department in January 1995; their reply has not been received (October 1995).

(iii) In Rajkot in 9 cases the mortgagors executed deeds styled as "mortgage by deposit of title deeds" in the year 1992 with Co-operative banks (the mortgagees) for securing the loan granted to them. The deeds were accordingly assessed to stamp duty. However, in the recitals of the documents it was stipulated that mortgagors had to give promissory

notes, general power of attorney and also an undertaking to the effect that in the event of default in payment of loan the mortgagee may sell the property. Thus, the undertaking, general power of attorney and promissory notes given by the mortgagors constitute complementary parts of the mortgage deeds and therefore the documents styled as equitable mortgage deeds were classifiable as regular mortgage deeds. The incorrect classification of documents resulted in short levy of stamp duty and registration fees of Rs.1.70 lakhs.

This was pointed to the department in January 1995; their reply has not been received (October 1995).

(iv) In Ahmedabad in 26 cases the mortgagors executed deeds styled as "mortgage by deposit of title deeds" in the year 1989 with Financial corporation and Co-operative Banks (the mortgagees) for securing the loan granted to them. The deeds were accordingly assessed to stamp duty. The loans were sanctioned subject to various conditions imposed by the sanction letter or agreement executed separately between the mortgagors and mortgagees. There was cross reference of the sanction letters and agreements in the said deeds registered subsequently. These sanction letters/agreements thus form complementary parts of the mortgage deeds which though styled as equitable mortgage deeds are classifiable as regular mortgage deeds. The incorrect classification of documents resulted in short levy of stamp duty and registration fees of Rs. 1.02 lakhs.

This was pointed out to the department in October 1993. The department while accepting the audit observation (March 1994) stated that instructions had been issued to Sub-Registrar, Ahmedabad and Dy. Collector (Valuation), Ahmedabad to effect the recovery. Report on recovery has not been received (October 1995).

(v) In Kalol (Godhra district), in 30 cases the mortgagors executed deeds styled as "mortgage by deposit of titled deeds" in the year 1991 with Co-operative banks (the mortgagees) for securing loan granted to them. The deeds were accordingly assessed to stamp duty. Relevant sanction letter and undertaking revealed that the mortgagee was empowered to realise the loan amount with interest thereon in the event of default by disposing off the property. City Survey Superintendent was also asked to keep a note in the property cards to the effect that there was charge on the property. Therefore, the documents styled as equitable mortgage deeds are classifiable as mortgage deeds. The incorrect classification of documents resulted in short levy of stamp duty and registration fees of Rs.87,145.

This was pointed out to the department in August 1994 and to Government in June 1995; their reply has not been received (October 1995).

(d) Conveyance deed treated as agreement

Under the Bombay Stamp Act, 1958, "conveyance" includes every instrument by which property, movable or immovable is transferred, between living persons. An agreement, containing recitals by virtue of which immovable property is transferred *inter vivos*, is also to be classified as conveyance deed. Stamp duty and registration fees on conveyance deed is higher than that on an agreement.

Stamp duty and Registration fees

In Surat, Bardoli (District Surat), Vadodara, Valsad and Junagadh it was noticed that in 22 documents styled as "agreement to sell" the possession of the properties was handed over to the purchasers and all rights, titles and interest in the properties were transferred in favour of the purchasers. The purchasers were also made liable to pay Government taxes *etc.* by virtue of these agreements. In some cases purchasers were authorised to execute mortgage deeds and lease deeds on the basis of agreement to sell and in five cases irrevocable power of attorney was also given to the purchasers authorising them to dispose of the properties and execute documents *etc.* The properties were, thus, transferred by virtue of these agreements. These documents though styled as agreement to sell were, thus, to be classified as conveyance deeds. The misclassification resulted in short levy of stamp duty and registration fees of Rs.4.61 lakhs as detailed below:

Sr. no	Place	Number of documents	Value of properties (Rupees in lakhs)	Duty/ Registration fees levied (Rupees)	Duty/ Registration fees leviable	Amount of short recovery
					(Rupees in lakhs)	
1	Surat	8	17.22	14,170	1.72	1.58
2	Bardoli (District Surat)	3	4.80	60	0.62	0.62
3	Vadodara	1	8.18	30	1.09	1.09
4	Valsad	5	6.75	80	0.72	0.72
5	Junagadh	5	6.02	50	0.60	0.60
		22	42.97			4.61

The above cases were reported to the department between February 1993 and January 1995. The department did not accept the audit observation and stated that no right or interest is created by virtue of "agreement to sell" (February 1995). The reply is not tenable in view of the fact that when possession of the property is given and consideration has been paid, it amounts to transfer and the documents are covered within the definition of term "conveyance" under the Bombay Stamp Act, 1958. Further, on such instances being featured in the Report of Comptroller and Auditor General of India for the year 1992-93, the department accepted the audit observation and amended the definition to bring such instruments under the ambit of the Stamp Act.

The above cases were reported to Government in June 1995; their reply has not been received (October 1995).

(e) Partition deed treated as consent deed

Under the provisions of the Bombay Stamp Act, 1958, as applicable to Gujarat, an "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty and includes when any partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners. The stamp duty on "partition deed" is

leviable on the amount of the market value of the separated share or shares of the property. The largest share remaining after the property is partitioned shall be deemed to be that from which other shares are separated. An instrument of consent is one wherein one gives or passes one's own mere consent for a particular transaction which has already taken place. The consent deeds are classifiable as agreement and assessed to stamp duty and registration fees accordingly. Stamp duty and registration fees on partition is higher than that on consent deed.

During the course of audit of the records of Sub-Registrar, Surat it was noticed (March 1993) that a plot measuring 394 square metres was jointly purchased by three persons and flats were constructed thereon jointly. By virtue of oral partition each one of them got a flat. One of the flat owners sold his flat for Rs.4.51 lakhs in November 1990. The recital in the consent deed included an indirect reference of oral partition of above property. The remaining two owners executed consent deeds in April 1991 stating therein that they had no objection in respect of the conveyance deed of November 1990. Thus the partition of the property was effected without execution of a partition deed. The incorrect classification of document as a consent deed instead of as a partition deed resulted in short levy of stamp duty and registration fees amounting to Rs.58,655.

This was pointed out to the department in January 1994. The department accepted the observation and stated (February 1995) that instructions are under issue to Sub-Registrar and Dy.Collector (Valuation) Surat to take immediate action in the matter. Further report on action taken has not been received (October 1995).

The matter was reported to the Government in May 1995. The Government confirmed the reply of department (August 1995).

(f) Conveyance treated as correction deed

Under the provisions of the Bombay Stamp Act, 1958 as applicable to Gujarat "conveyance" includes every instrument by which property, movable or immovable is transferred, inter-vivos, i.e. between living persons whereas correction deed is executed for correcting the minor errors in original deed and is chargeable to duty as agreement. The rate of stamp duty on "conveyance" is higher than that prescribed for agreement.

During the course of audit of the records of the Sub-Registrar, Vadodara, it was noticed (June 1993) that land measuring 75 square metres was sold for Rs.8,876 in January 1989. Subsequently, it was mutually decided by a correction deed in 1991 that the area of the plot was not 75 square metres but 275 square metres. The correction deed was treated as an agreement and assessed to stamp duty and registration fees. The area of the plot thus increased by 200 square metres and as such stamp duty and registration fees was leviable at the rate applicable to conveyance on the market value of the enhanced area which according to official record was approximately Rs.4 lakhs in 1991. Incorrect classification of document as correction deed instead of as conveyance resulted in short levy of stamp duty and registration fees amounting to Rs.54,035.

This was pointed out to the department (February 1994). The department accepted the audit observation and stated (April 1995) that deficit stamp duty and registration fees

would be recovered after determination of market value of enhanced area. Further report has not been received (October 1995).

The matter was reported to Government (May 1995). The Government confirmed the reply of department (August 1995).

5.4 Short levy of stamp duty due to incorrect application of rates

Under the Bombay Stamp Act, 1958, as applicable to Gujarat, stamp duty leviable on mortgage deed is the same as on a conveyance deed and is based on the amount secured by such deed.

By a notification of April 1987, Government reduced the rate of stamp duty leviable on mortgage deed to Rs.2 for every Rs.100 or part thereof in respect of certain documents specified in the Schedule and executed by Co-operative Societies registered under the Gujarat Co-operative Societies Act, 1961. The reduced rate is applicable only to those documents mentioned in the Schedule. Documents relating to mortgage for securing a loan of Rs.5000 or more executed by registered societies are not included in the Schedule of the said notification and therefore not entitled for reduced rate of duty.

During the course of audit of Sub-Registrar, Ahmedabad it was noticed (June 1993) that two mortgage deeds were executed in March 1991 by two Co-operative Housing Societies in favour of Housing and Urban Development Corporation Ltd. (HUDCO) for securing loan aggregating Rs.113.01 lakhs. Stamp duty on these deeds was levied at the rate of 2 *per cent* instead of the correct rate of 10.8 *per cent* which resulted in short levy of stamp duty amounting to Rs.9.15 lakhs.

This was pointed out to the department in August 1994. The department stated (March 1995) that the matter was under consideration. Further reply has not been received (October 1995).

The matter was reported to Government in May 1995, their reply has not been received (October 1995).

5.5 Non levy/Short levy of stamp duty and registration fees on lease deeds

Under the Bombay Stamp Act, 1958, as applicable to Gujarat where the lease is granted for a premium or for money advanced, in addition to rent reserved, stamp duty is leviable as on deed of conveyance for a consideration equal to the amount or value of such premium or advance, in addition to the duty which would have been payable on such lease if no premium or advance had been paid.

(i) During the course of audit of the records of the Sub-Registrar, Vadodara, it was noticed (June 1993) that a document purporting lease of immovable property for 10 years was executed in 1991. The lessee was required to pay a rent of Rs.31,240 per month and taxes *etc* of Rs.1.13 lakhs *per annum* in respect of the property. The lessee had granted a loan of Rs.15 lakhs to the lessor which was repayable along with interest by adjustment of the rent payable by the lessee. Stamp duty and registration fees was levied on the annual rent and taxes payable by the lessee. The loan amount of Rs.15 lakhs which was of the nature of "money advanced" within the meaning of Article 30 (b) of Schedule

I of the Act had not been taken into account for the purpose of levy of stamp duty and registration fees resulting in short levy of stamp duty and registration fees amounting to Rs.1.73 lakhs.

This was brought to the notice of department in February 1994; their reply has not been received (October 1995).

(ii) It was noticed (February 1992) from cases adjudicated under Section 31 of the Act in the office of the Additional Superintendent of Stamps, Ahmedabad that Gujarat Industrial Development Corporation leased out five plots measuring 72,370 square metres to Ahmedabad Electricity Company for a period of 99 years. Besides rent and taxes, a premium at the rate of Rs.170 per square metre was payable by the company. Stamp duty and registration fee was levied by computing premium at the rate of Rs.136 only per square metre which resulted in short levy of stamp duty and registration fees amounting to Rs.1.65 lakhs.

This was pointed out to the department in October 1993; their reply has not been received (October 1995).

The above cases were reported to Government in June 1995; their reply has not been received (October 1995).

5.6 Short levy of stamp duty

Under the Bombay Stamp Act, 1958, as amended from August 1990, additional duty at the rate of 25 *per cent* was leviable on instrument of sale, exchange, gift and lease *etc.*, of vacant land in urban areas, other than vacant land intended to be used for residential purpose not exceeding 100 square metres.

During the course of audit of Sub-Registrar, Ahmedabad and Dholka it was noticed that in 24 conveyance deeds valued at Rs.95.25 lakhs which were registered between April 1991 and April 1992, the additional duty leviable was not levied though the plots exceeded 100 square metres in each case. This resulted in short levy of stamp duty of Rs.1.89 lakhs.

This was pointed out to the department between August 1994 and March 1995. They accepted (July 1995) the audit observation (8 cases of Ahmedabad and 2 cases of Dholka) and stated that Deputy Collector (Valuation) Ahmedabad, has been requested to decide the cases and recover the deficit stamp duty. Further, report has not been received (October 1995).

This was reported to the Government (June 1995). The Government confirmed the reply of department (August 1995).

5.7 Incorrect exemption from stamp duty and registration fees

By a notification issued in January 1941 under the Indian Stamp Act, 1899, the documents of mortgage executed by Government servants mortgaging their properties in favour of President of India/Governor of the State for securing loan taken for construction/purchase of houses are exempted from payment of stamp duty and registration fees. The exemption is however not available to the employees of the autonomous bodies.

Stamp duty and Registration fees

(i) During the course of audit of the records of Sub-Registrar, Morbi (Rajkot district) it was noticed (October 1993) that in 9 cases of mortgages, executed by the employees of the Gujarat State Water Supply and Sewerage Board during 1991 and 1992 were exempted from payment of stamp duty and registration fees. As the employees of the Board were not Government servants, the exemption granted in these cases was irregular. This resulted in non levy of stamp duty and registration fees amounting to Rs.81,297.

This was pointed out to the department in March 1995; their reply has not been received (October 1995).

(ii) During the course of audit of the records of Sub-Registrar, Rajkot it was noticed (November 1987) that in the case of 9 mortgage deeds executed during 1987 by the employees of the Gujarat Maritime Board were exempted from payment of stamp duty and registration fees. As the employees of the said Board were not Government servants, the exemption granted was irregular. This resulted in short levy of stamp duty and registration fees amounting to Rs.38,401.

This was pointed out to the department in October 1993. The department accepted the audit observation and stated (May 1994) that parties have been asked to produce the original documents. Further report has not been received (October 1995).

The above cases were reported to Government in June 1995; their reply has not been received (October 1995).

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OTHER TAX AND NON-TAX RECEIPTS

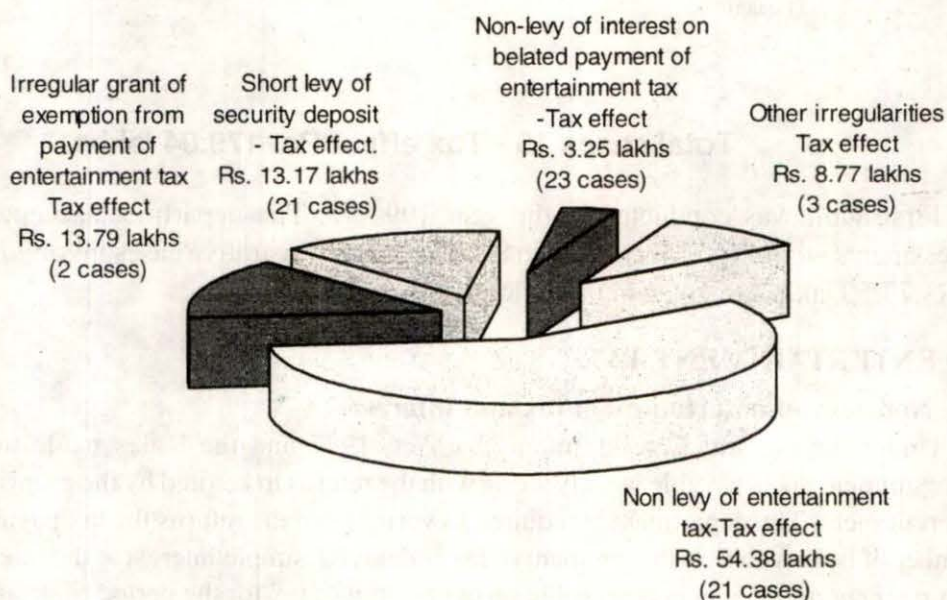
CHAPTER - 6

OTHER TAX AND NON-TAX RECEIPTS

6.1 Results of audit

Test check of assessment records relating to the following receipts conducted during the year 1994-95 revealed under assessment of tax and losses of revenue as detailed below:

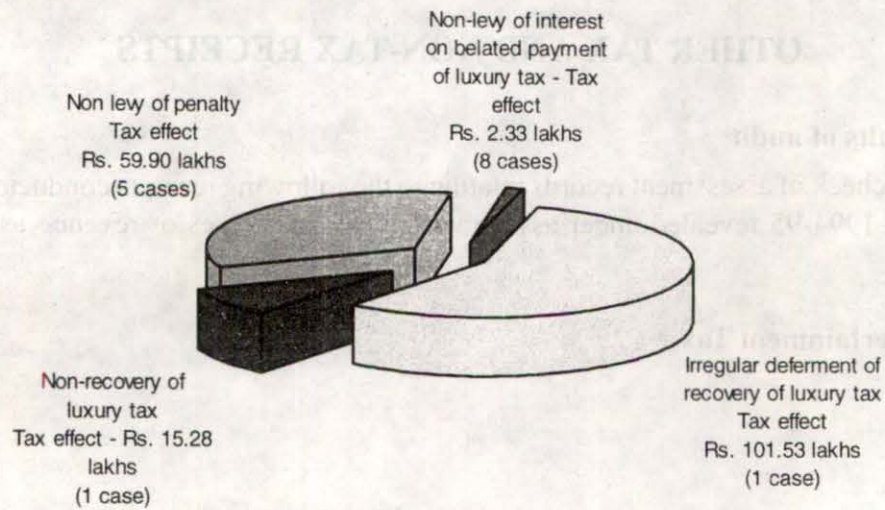
(A) Entertainment Tax:



Total cases 70 - Tax effect Rs. 93.36 lakhs

During the year 1994-95, the department accepted under assessments *etc.* of Rs.15.93 lakhs in 41 cases. Out of these, 4 cases involving Rs.0.30 lakh were pointed out during the year 1994-95 and the rest in the earlier years. A few illustrative cases involving revenue of Rs.50.60 lakhs are given in the following paragraphs.

(B) Tax on Luxuries (Hotels & Lodging Houses):



Total cases 15 - Tax effect Rs. 179.04 lakhs

First audit was conducted in the year 1994-95. The department accepted under-assessments *etc.* of Rs. 15.97 lakhs in 8 cases. A few illustrative cases involving revenue of Rs.77.50 lakhs are given in the following paragraphs.

(A) ENTERTAINMENT TAX

6.2 Non-levy of entertainment tax and interest

Under the Gujarat Entertainment Tax Act, 1977 and the Rules made thereunder, entertainment tax is payable weekly along with the returns to be filed by the proprietor of the entertainment. The department is required to verify from the returns the tax payable for the number of tickets sold. If the payment of tax is delayed, simple interest at the rate of twenty four *per cent per annum* is chargeable on the amount of tax for the period of delay.

In Ahmedabad and Surendranagar it was noticed that proprietors of seven cinema houses did not pay tax for certain periods falling between April 1992 and March 1994. The delay was ranging between 68 days and 435 days. The entertainment tax and the interest recoverable in these cases amounted to Rs.41.65 lakhs as detailed in the following table :

Sr. no.	Name of the place	Number of cases	Period of delay involved	Amount of Entertainment Tax payable (including interest) (Rupees in lakhs)	Remarks
1	Ahmedabad	6	77 to 435 days	41.22	The department accepted the audit observation and recovered Rs.8.16 lakhs.
2	Surendranagar	1	68 to 288 days	0.43	The department accepted the audit observation.
				41.65	

The matter was reported to Government in June 1995. The Government confirmed (August 1995) the reply of the department in respect of cases of Ahmedabad. In the case of a cinema house at Surendranagar the Collector had been asked to adjust the tax and interest amounts from the security deposit.

6.3 Non levy of entertainment tax in respect of video parlours

Under the provisions of Gujarat Entertainment Tax Act, 1977, tax is leviable on entertainment by video cassette recorder/player on television. Rates of tax are based on the seating capacity of the video parlour and population of the area in which the place of entertainment is situated. Every proprietor is required to submit return every month and pay tax in advance along with the return by 15th day of the month preceding the month to which tax relates. In case of delay in payment of tax simple interest at the rate of twenty four percent is leviable on unpaid amount of tax for the period of delay.

In Ahmedabad and Jamnagar it was noticed that proprietors of 24 video parlours did not pay the tax for the period indicated in the table. The entertainment tax recoverable along with interest amounted to Rs.3.47 lakhs as detailed below:

Sr. no.	Name of the place	Number of cases	Period for which Entertainment Tax not paid	Entertainment Tax recoverable (including interest) (Rupees in lakhs)	Remarks
1	Ahmedabad	20	April 1993 to March 1994	2.96	The department accepted the audit observation and stated that Rs.1.09 lakhs had since been recovered.
2	Jamnagar	4	Certain periods between May 1991 and March 1992	0.51 (excluding interest)	The department accepted the audit observation and stated that Rs.39,000 had since been recovered. Action to write off Rs.11,000 is being taken.
		— 24		— 3.47	

The matter was reported to Government in June 1995. The Government confirmed (August 1995) the department's reply.

6.4 Short levy of entertainment tax due to incorrect application of rates

Under the provisions of Gujarat Entertainment Tax Act, 1977 and Rules made thereunder, the rate at which entertainment tax is payable is based on the population of a local area in which place of entertainment is situated. The area is classified as having population of more than one lakh and that not having more than one lakh as per the last census. The rate of tax is higher in the local area where population is more than one lakh.

Other Tax and Non-tax Receipts

In Ahmedabad, in two cases it was noticed (June 1994) that though theaters were situated within the extended municipal limit of Ahmedabad, the entertainment tax was levied and collected at rates which were lower than those applicable. This resulted in short recovery of tax Rs. 3.13 lakhs from the proprietors of two theaters.

This was pointed out to the department in September 1994; they accepted the audit observation and stated (July 1995) that entire amount has since been recovered.

The matter was reported to the Government in June 1995. The Government confirmed (August 1995) the facts.

6.5 Non recovery of entertainment tax and interest from cable operators

Under the provisions of Gujarat Entertainment Tax Act, 1977, tax is leviable from 1 October 1993 for exhibition of films or moving pictures or series of pictures or serials or any other programme with the aid of antenna or cable television. The tax is payable at the annual rate of Rs.120 per cable connection holder in case of urban area and Rs.60 per connection holder in the other areas. Every proprietor shall pay the tax in advance in quarterly instalments and furnish the return along with the proof of payment by 11th of the month from which the quarter begins. In case of delay in payment of tax simple interest at the rate of twenty four *per cent* is leviable on unpaid amount of tax for the period of delay.

In Ahmedabad it was noticed (June 1994) that 52 cable proprietors had not paid tax for the period October 1993 to March 1994. The entertainment tax recoverable along with interest amounted to Rs.1.92 lakhs.

This was pointed out to the department (September 1994). The department accepted the audit observation and stated (November 1994 and July 1995) that out of Rs.1.92 lakhs Rs.86,900 had been recovered and in remaining cases demand notices had been issued. Further report on recovery of balance amount has not been received (October 1995).

The matter was reported to the Government in June 1995. The Government confirmed (August 1995) the department's reply.

6.6 Non levy of interest on belated payment of entertainment tax

Under the provisions of Gujarat Entertainment Tax Act, 1977, and the Rules made thereunder, entertainment tax is payable weekly along with returns to be filed by the proprietor. If the payment of tax is delayed, simple interest at the rate of twenty four *per cent per annum* is chargeable on the unpaid amount of tax for the period of delay.

In Ahmedabad, it was noticed (May 1994) that proprietors of 4 cinema houses did not pay tax within the stipulated period. The delay in payment of tax ranged between 3 and 340 days. Interest of Rs.42,924 was recoverable in these cases but was not levied.

This was pointed out to the department in September 1994. They accepted the audit observation (November 1994) and stated that in three cases an amount of Rs.31,924 had been recovered. Further report on recovery has not been received (October 1995).

The matter was reported to Government in June 1995. The Government confirmed (August 1995) the reply of the department.

(B) Luxury tax

6.7 Non levy of penalty

Under the provisions of Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977, the proprietor of a hotel is required to pay tax within five days and file returns within eight days after the expiry of the month to which tax collected/returns relates. Where any proprietor liable to pay tax fails without sufficient cause or neglects to file returns or pay tax within the stipulated period, the Collector may impose by way of penalty a sum not exceeding one and half times of the amount of tax.

(i) In Ahmedabad it was noticed (July 1994) that proprietors of 4 hotels did not pay the tax of Rs.34.62 lakhs for the period from 1991-92 to 1993-94. Though demand notices were issued to the proprietors for payment of luxury tax, reasons for non levy of penalty were neither recorded nor was action to levy penalty as contemplated in the Act initiated. Maximum penalty leviable in the above cases amounted to Rs.51.93 lakhs.

This was pointed out to the department in November 1994. They did not accept the observation stating (May 1995) that penalty could be levied only on belated furnishing of returns and that belated payment of tax attracted levy of interest only. The reply is not tenable as under Section 7(b) of the Act penalty is leviable where the proprietor of a hotel fails or neglects to pay the whole amount of tax without sufficient cause.

(ii) In Vadodara it was noticed (July 1994) that proprietor of a hotel either did not pay or paid the tax only partly for the period(s) from 1991-92 to 1994-95 (up to June 1994). Tax unpaid amounted to Rs.5.32 lakhs. No action had however been taken by the assessing officer to levy penalty. Maximum penalty leviable in the case worked out to Rs.7.97 lakhs.

This was pointed out to the department in November 1994; their reply has not been received (October 1995).

The matter was reported to the Government in June 1995. The Government accepted (August 1995) the audit observation in principle, ordered recovery of penalty of Rs.12.20 lakhs in three cases of Ahmedabad and issued notices in remaining cases.

6.8 Non payment of luxury tax

Under the Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 and Rules made thereunder, the proprietor of a hotel is required to pay tax within five days after the expiry of the month to which tax collected relates. If the payment of tax is delayed, simple interest at the rate of two *per cent* per month or part thereof is chargeable on the unpaid amount of tax for the period of delay.

Other Tax and Non-tax Receipts

In Ahmedabad it was noticed (July 1994) that proprietor of a hotel did not pay tax of Rs.10.49 lakhs for certain periods falling between April 1991 and March 1994. Failure to pay tax in time had rendered the proprietor liable to pay interest of Rs.4.79 lakhs. The amount of luxury tax recoverable thus worked out to Rs.15.28 lakhs (including interest).

This was pointed out to the department/Government in November 1994/June 1995. They accepted the audit observation and stated (May 1995)/(August 1995) that at the request of the hotel owner, he was allowed to make payment of tax and interest in instalments till March 1996. The owner had paid Rs.3.11 lakhs till the end of July 1995.

6.9 Non levy of interest on belated payment of luxury tax

Under the Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 and the Rules made thereunder, luxury tax is payable within five days after the expiry of the month to which tax collected relates. If the payment of tax is delayed, simple interest at the rate of two *per cent* per month or part thereof is chargeable on the unpaid amount of tax for the period of delay.

In Vadodara it was noticed (September 1994) that proprietors of eight hotels did not pay tax for certain periods falling between 1991-92 and June 1994 within the stipulated period. No interest, however was levied. The interest leviable in these cases worked out to Rs.2.33 lakhs.

The omission was pointed out to the department in November 1994. The department accepted the observation in seven cases and stated (February 1995) that out of Rs.69,276 involved in these cases Rs.16,456 had been recovered. Report on recovery in the remaining cases has not been received (October 1995).

The matter was reported to the Government in June 1995. The Government accepted (August 1995) the audit observation and stated that amount of Rs.68,777 has since been recovered in seven cases. The department has initiated action to recover Rs.1.64 lakhs in remaining one case.

(C) MINING RECEIPTS

6.10 Non levy of Royalty

As per the Mines and Minerals (Regulation and Development) Act, 1957, "minor mineral" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purpose and any other minerals which the Central Government may by notification in the Official Gazette, declare as minor mineral. Power to make Rules for major minerals rests with the Union Government and for minor minerals with the State Government. Royalty or dead rent whichever is more in respect of minor minerals removed or consumed shall be paid at the rate fixed by the State Government. Clarification on whether a particular material is a major or minor mineral, is required to be sought from Government of India.

(i) In Surat it was noticed (August 1994) that a leading industry dredged 93,300 cubic metres of "silt" between November 1991 and September 1992 from Magdalla channel

for the purpose of filling/reclamation of the plot. The royalty payable at the prescribed rate worked to Rs.37.91 lakhs.

The Government in September 1990 had decided that the Company would pay 50 *per cent* of royalty at the time of dredging and remaining 50 *per cent* on receipt of final decision of the Government. The Government in February 1992 permitted the company to dredge the material and directed the company to execute two guarantee bonds each of Rs.30 lakhs in lieu of advance payment of royalty. Accordingly the Company, on 20 March 1992 and 2 January 1993 executed two bonds each with validity of one year. The Company executed a bond of Rs.30 lakhs afresh on 2 January 1994 valid up to 1 January 1995. Another bond of Rs.10 lakhs demanded in February 1994 had not been executed.

It has been judicially held * that entire field of control and regulation of mines and minerals is occupied by the Central Government. The State Government is left with the job to frame rules only and not to enact a law relating to mines and minerals.

The nature of mineral constituted by 'silt' has not been defined under Section 3 of Mines and Minerals (Regulation and Development Act), 1957. However, according to this Section, the power to notify any mineral as minor mineral not specifically finding a mention therein vests in the Union Government. It was noticed in audit that Government of Gujarat had not referred the matter (July 1994) to the Union Government for clarification. Taking a silt to be a minor mineral as it is akin to clay, the inaction has resulted in blocking up of revenue of Rs.37.91 lakhs computed at the rate applicable.

The matter was brought to the notice of department (January 1995); their reply has not been received (October 1995).

(ii) Another Company at Surat had been permitted (May 1989) by the Gujarat Maritime Board to dredge the "silt" from the Magdalla channel subject to payment of royalty as decided by the Government. The Company dredged 100.92 lakhs metric tonnes of silt for the purpose of filling/reclaiming their plot.

In response to Company's request (August 1989) Government in Industries, Mines and Energy Department opined that the silt obtained by dredging, was not covered under the definition of minor mineral and, therefore, royalty was not recoverable from them on material dredged for filling/reclaiming plot. Further where actual navigation is done or where there is scope for it in the sea-route, no royalty is recoverable from this industry when company has with prior approval of Board used the dredged material for filling/reclaiming the plot.

As mentioned in (i) above it was not within the ambit of the powers vested in the State Government to declare the classification of silt. They should have sought clarification from the Union Government which was the competent authority in this regard.

The decision taken by the Government in both the cases is at variance with each other though both the industries had dredged "silt" from Magdalla channel for filling/reclaiming plots.

* A.I.R.-1975 Cal.58

Other Tax and Non-tax Receipts

Company dredged 1,00,91,872 metric tonnes of "silt" on which royalty chargeable at the prescribed rate of Rs.3 per metric tonne works out to Rs.3.03 crores.

This resulted in loss of revenue of Rs.3.03 crores in the case of one Industry and blocking up of revenue of Rs.0.38 crore in other case.

This was brought to the notice of department in January 1995; their reply has not been received (October 1995).

This was brought to the notice of Government in March 1995; their reply has not been received (October 1995).

6.11 Non levy of dead rent and interest

Under the Gujarat Minor Mineral Rules, 1966, the lessee is liable to pay in respect of each mineral the dead rent or royalty whichever is higher. Under notification issued on 1 April 1992, Government revised the rates of royalty and dead rent in respect of minor mineral 'Black Trap'* to Rs.12 per metric tonne and annual rate of Rs.15,000 per hectare respectively and 50 *per cent* dead rent if land granted on lease was less than a hectare. However, no dead rent or royalty is payable if lessee surrenders the lease and authorities accept it. If the payment of royalty or dead rent is not made within thirty days from the date fixed for the payment in the lease deed interest at the rate of twenty four *per cent per annum* is chargeable for the period royalty or dead rent *per annum* remains unpaid.

In Godhra, Junagadh and Surat it was noticed that in 44 cases the lease holders who stopped extraction of 'Black Trap' from the year 1992-93 had not paid dead rent for the period 1992-93 and 1993-94. This resulted in non-recovery of dead rent of Rs.27.40 lakhs as shown below. Beside dead rent interest is also chargeable.

Sr. no.	Place	Number of lease holders	Period	Dead rent recoverable
				(Rupees in lakhs)
1.	Godhra	13	1992-93 to 1993-94	10.84
2.	Junagadh	16	1992-93 to 1993-94	8.87
3.	Surat	15	1992-93 to 1993-94	7.69
		44		27.40

This was pointed out to the department in January and March 1995. The department accepted the audit observation and stated (July 1995) that in eight cases of Godhra an amount of Rs. 7.23 lakhs has since been recovered and for remaining amounts demand notices have been issued. Report on recovery in remaining cases is awaited (October 1995).

* 'Black Trap' -Any of various dark coloured fine grained igneous rocks columnar in structure or in sheet like masses rising like stairs.

The matter was reported to the Government in June 1995; their reply has not been received (October 1995).

6.12 Non levy of interest on belated payment of royalty

(a) Under the Mines and Minerals (Regulation and Development) Act, 1957 and Rules made thereunder simple interest at the rate of 24 *per cent per annum* on any rent, royalty is chargeable from the sixtieth day of the expiry of the date fixed by the Government for payment of dues until the payment of such dues is made. In the event of default in respect of royalty or other sums due to the Government under the Act/Rules or in terms and conditions of licence or mining lease, on a certificate issued by a competent officer the interest can be recovered in the same manner as an arrears of land revenue.

(i) During the course of audit of the records of the office of the Geologist, Junagadh, it was noticed (August 1994) that in one case payment of royalty of Rs.101.39 lakhs was due from the lessee. The department raised the demand for royalty but did not raise demand for interest. Interest chargeable up to March 1994 on the outstanding amount of royalty worked out to Rs.11.79 lakhs.

This was pointed out to the department in March 1995. The department accepted the audit observation and stated (July 1995) that demand notice has been issued to the lessee. Further report on recovery has not been received (October 1995).

(ii) In another case at Junagadh it was noticed (August 1994) that royalty for the period between April 1983 and September 1984 was not paid in time due to natural calamities. Government did not accede to request of lessee for remission of interest demand but ordered to recalculate it and as a result interest amount was reduced from Rs.3.24 lakhs to Rs.2.80 lakhs. Though a period of more than ten years had elapsed, however, the department had not initiated action to recover it as arrears of land revenue.

This was pointed out to the department in March 1995. They accepted the audit observation and stated (July 1995) that Rs.2.72 lakhs has since been recovered from the lessee.

(iii) During the course of audit of the records of the office of the Geologist, Godhra it was noticed that royalty of Rs.1.19 lakhs was due from four lease holders. Though demand of unpaid royalty had been raised interest on unpaid/short paid royalty had not been demanded. Non-levy of interest on the outstanding amount of royalty worked out to Rs.47,397.

This was pointed out to the department in March 1995. They accepted the audit observation and stated (July 1995) that out of Rs.47,397 an amount of Rs.23,058 has since been recovered. Further report on recovery of remaining amount has not been received (October 1995).

The matter was reported to Government in June 1995; their reply has not been received (October 1995).

(b) Non-levy of interest on demand raised through revenue authorities

Under the Gujarat Minor Mineral Rules, 1966, royalty is payable within thirty days next after the due date fixed in the lease agreement. In the event of failure to do so, interest at the rate of twenty four *per cent per annum* shall be charged, on the sum due to Government from the date fixed and until payment of such sum is made. Royalty and interest can be recovered as arrears of land revenue on the basis of a certificate issued by the competent authority.

During the course of audit of the records of the office of the Geologist, Godhra, it was noticed (August 1994) that in four cases Government dues aggregating Rs.51,307 were made good by revenue authorities in March 1992 on the basis of land revenue certificate issued by department. Interest amounting to Rs.72,899 for the period between April 1986 and February 1992 was not included in the certificate issued by the department to the revenue department. This resulted in non-levy of interest to the extent of Rs.72,899.

This was pointed out to the department in March 1995. They accepted the audit observation and stated (July 1995) that demand notices have since been issued to the concerned parties. Further report on recovery has not been received (October 1995).

The matter was reported to Government in June 1995; their reply has not been received (October 1995).

(D) FOREST RECEIPTS

6.13 Short realisation of revenue due to non-disposal of grass

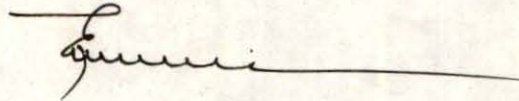
In the grass-growing areas of Saurashtra, grass is procured and preserved for supply to the scarcity effected areas of the State. According to Agriculture, Forest and Co-operation Department Resolution dated 23 December 1968 its preservation period when stored in godowns is three years and in Ganji one year. The grass so preserved is to be sold at the rate fixed by the Government in Forest and Environment Department's Resolution dated 16 September 1993. Grass that remains undisposed within the period of preservation is required to be disposed of by auction only in consultation with the Revenue Department and after obtaining a certificate from the Veterinary Officer regarding its fitness for animal consumption. Where the sale price of such grass is less than the price fixed, it should be around the upset price. Grass which is certified to be unfit for animal consumption will fetch lower price. Weight loss at the rate of 10/25 *per cent* every year by way of driage is allowed in respect of grass stored in godowns/Ganji respectively.

During the course of audit of the records of Dy. Conservator of Forests at Junagadh for the audit period from August 1988 to March 1994, it was noticed that grass weighing 29,932 kgs relating to the period 1988-89 and 1989-90 in three depots and 53,820 kgs relating to 1991-92 lying in Ganji could not be disposed within the prescribed preservation period. Auction sale fetched Rs.3,140 only as against Rs.81,674 realisable on the basis

Other Tax and Non-tax Receipts

of rates fixed by the Government. Thus delay in disposal of grass resulted in loss of revenue of Rs.78,534.

This was brought to the notice of the department in March 1995 and the Government in June 1995 ; their reply has not been received (October 1995).



(B.R.MANDAL)

Accountant General (Audit-I), Gujarat

Ahmedabad
The

2 DEC 1995

Countersigned



(C.G. SOMIAH)

Comptroller and Auditor General of India

New Delhi
The

27 DEC 1995

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Account of General [Name] with [Name]

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Account of General [Name] with [Name]

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Account of General [Name] with [Name]

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