

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

**FOR THE YEAR ENDED
31 MARCH 2012**

(REVENUE RECEIPTS)

GOVERNMENT OF MAHARASHTRA

REPORT NO. 1 OF THE YEAR 2013

TABLE OF CONTENTS

PARAGRAPH HEADINGS	PARA	PAGE
Preface		vii
Overview		ix-xv
CHAPTER I		
GENERAL		
Trend of revenue receipts	1.1	1
Response of the Departments/Government to audit observations	1.2	4
Failure of senior officials to enforce accountability and protect the interest of the State Government	1.2.1	5
Departmental audit committee meetings	1.2.2	6
Non-production of records to Audit for scrutiny	1.2.3	7
Response of the Departments to draft audit paragraphs	1.2.4	7
Follow-up on Audit Reports-summarised position	1.2.5	8
Compliance to the earlier Audit Reports	1.2.6	10
Analysis of the mechanism for dealing with the issues raised by Audit	1.3	11
Position of Inspection Reports	1.3.1	11
Recovery of accepted cases	1.3.2	11
Audit Planning	1.4	12
Results of Audit	1.5	12
Position of local audit conducted during the year	1.5.1	12
This Report	1.5.2	13
CHAPTER II		
VALUE ADDED TAX/SALES TAX		
Executive Summary		15
Introduction	2.1	19
Tax revenue administration	2.1.1	19
Trend of receipts	2.1.2	19
Analysis of arrears of revenue	2.1.3	20
Arrears in assessment	2.1.4	20
Returns filed under VAT	2.1.4.1	21
Assessee Profile	2.1.5	23

PARAGRAPH HEADINGS	PARA	PAGE
Cost of collection	2.1.6	23
Analysis of collection	2.1.7	24
Impact of Audit Reports	2.1.8	24
Results of audit	2.1.9	25
Performance Audit on "VAT on Works Contract"	2.2	26
Other audit observations	2.3	48
Non-observance of the provisions of the Acts/Rules	2.4	48
Non-levy of tax	2.4.1	48
Short levy of Central Sales Tax	2.4.2	49
Non-levy of penalty	2.4.3	50
Incorrect adjustment of MVAT refund against CST dues	2.4.4	51
Non-levy of purchase tax	2.4.5	52
Short levy of interest	2.4.6	53
CHAPTER III		
STAMP DUTY AND REGISTRATION FEES		
Executive Summary		55
Introduction	3.1	59
Tax administration	3.1.1	59
Trend of receipts	3.1.2	59
Cost of collection	3.1.3	59
Impact of Audit Reports	3.1.4	60
Results of audit	3.1.5	60
Performance Audit on "Preparation of annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee"	3.2	62
Audit observations	3.3	81
Non-observance of the provisions of the Act/Rules	3.4	81
Short levy of stamp duty due to incorrect application of rate	3.4.1	81
Short levy of stamp duty due to misclassification of instrument	3.4.2	82
Incorrect exemption of stamp duty	3.4.3	86
Irregular grant of concession on stamp duty	3.4.4	87

PARAGRAPH HEADINGS	PARA	PAGE
Short levy of stamp duty due to undervaluation of property	3.4.5	87
Short levy of stamp duty due to incorrect application of Section 4 of Bombay Stamp Act, 1958	3.4.6	89
Short levy of stamp duty due to non-consideration of material alterations	3.4.7	90
Short levy of stamp duty due to incorrect computation of market value	3.4.8	91
Short levy of stamp duty due to non-consideration of commercial complex in determining the market value	3.4.9	92
Short levy of stamp duty due to incorrect application of market rate	3.4.10	93
Short levy of stamp duty due to incorrect concession of bulk land	3.4.11	93
Escapement of stamp duty on earlier transaction	3.4.12	94
CHAPTER IV		
LAND REVENUE		
Executive summary		97
Introduction	4.1	99
Tax administration	4.1.1	99
Trend of receipts	4.1.2	99
Impact of Audit Reports	4.1.3	99
Results of audit	4.1.4	100
Audit observations	4.2	101
Non-observance of the provisions of the Act/Rules	4.2.1	101
Short levy of unearned income	4.2.2	101
Incorrect levy of occupancy price due to application of agriculture rate instead of non-agricultural rate	4.2.3	105
Incorrect determination and non-raising of demand of lease rent	4.2.4	108
Loss of revenue due to non-adherence to Government norm of registering the agreements	4.2.5	108
CHAPTER V		
SECTION A : TAXES ON MOTOR VEHICLES		
Executive Summary		111
Introduction	5.1	113

PARAGRAPH HEADINGS	PARA	PAGE
Tax revenue administration	5.1.1	113
Trend of receipts	5.1.2	113
Cost of collection	5.1.3	113
Impact of Audit Reports	5.1.4	114
Results of audit	5.1.5	115
Audit observations	5.2	116
Non-compliance of the provisions of the Acts/Rules	5.3	116
Non-recovery of motor vehicle tax	5.3.1	116
Short levy of One Time Tax on imported vehicle	5.3.2	117
Delay in remittances resulting in loss of interest	5.3.3	118
Outstanding fitness fee due to non-renewal of fitness certificate	5.3.4	118
SECTION B :STATE EXCISE		
Introduction	5.4	120
Tax revenue administration	5.4.1	120
Trend of receipts	5.4.2	120
Cost of collection	5.4.3	120
Impact of Audit Reports	5.4.4	121
Results of audit	5.4.5	122
Audit observations	5.5	123
Non-compliance of the provisions of the Acts/Rules	5.6	123
Short recovery of licence fees due to application of incorrect population slab	5.6.1	123
Non-recovery of supervision charges	5.6.2	124
CHAPTER VI		
OTHER TAX AND NON-TAX RECEIPTS		
Executive Summary		125
Results of Audit	6.1	127
SECTION A- ENTERTAINMENTS DUTY		
Audit observations	6.2	128
Non-compliance of the provisions of the Acts/Rules	6.3	128
Non/short recovery of entertainment duty from cable operators	6.3.1	128

PARAGRAPH HEADINGS	PARA	PAGE
Non-recovery of entertainment duty from permit room/beer bar with live orchestra	6.3.2	129
Non-recovery of entertainment duty (ED) in case of dishonoured cheques	6.3.3	129
Non-levy of penal interest on various service providers of Direct to Home (DTH)	6.3.4	130
Non-reconciliation of balances between Personal Ledger Account (PLA) and Bank Scroll	6.3.5	131
Non-forfeiture of Security Deposits	6.3.6	131
SECTION B		
ELECTRICITY DUTY, TAX ON SALE OF ELECTRICITY		
Audit observations	6.4	132
Non-compliance of the provisions of the Acts/Rules	6.5	132
Non/short recovery of Electricity Duty	6.5.1	133
Non/short recovery of tax on sale of electricity	6.5.2	134
SECTION C		
EDUCATION CESS AND EMPLOYMENT GUARANTEE CESS		
Audit observations	6.6	135
Non-compliance of the provisions of the Acts/Rules	6.7	135
Non-recovery of education cess and employment guarantee cess	6.7.1	135
Non-recovery of education cess and employment guarantee cess in case of dishonoured cheques	6.7.2	136
Non-remittance of education cess and employment guarantee cess	6.7.3	137
SECTION D		
TAX ON BUILDINGS WITH LARGER RESIDENTIAL PREMISES		
Audit observations	6.8	138
Non-compliance of the provisions of the Acts/Rules	6.9	138
Non-levy of tax on building with larger residential premises	6.9.1	138

PREFACE

This Report for the year ended 31 March 2012 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This Report presents the results of audit of receipts comprising Sales Tax, State Excise, Land Revenue, Taxes on Motor Vehicles, Stamp Duty and Registration Fees and other 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 2011-12 as well as those noticed in earlier years, which could not be included in previous reports.

OVERVIEW

This Report contains 42 paragraphs including two Performance Audits relating to non/short levy of taxes, duties, interest and penalty, etc., involving ₹ 233.59 crore. Some of the major findings are mentioned below:

I. General

The total receipts of the State during the year 2011-12 were ₹ 1,21,268.54 crore, of which the revenue raised by the State Government was ₹ 95,758.56 crore and receipts from the Government of India were ₹ 25,509.98 crore. The revenue raised constituted 79 *per cent* of the total net receipts of the State. The receipts from the Government of India included ₹ 13,343.34 crore on account of the State's share of divisible Union taxes which registered an increase of 16.84 *per cent* over the previous year and ₹ 12,166.64 crore received as grants-in-aid.

(Paragraph 1.1.1)

At the end of June 2012, 10,860 inspection report paragraphs involving ₹ 2,667.74 crore relating to 4,921 inspection reports issued upto 31 December 2011 remained outstanding.

(Paragraph 1.2.1)

During the period 2001-02 to 2010-11, the Department/Government accepted audit observations involving ₹ 3,536.21 crore, out of which an amount of ₹ 1,135.72 crore was recovered till 31 March 2012.

(Paragraph 1.2.6)

II. VAT/Sales tax

A Performance Audit on "VAT on Works Contracts" revealed as under:

- Seventeen registered contractors had received payments of ₹ 509.98 crore from Konkan Irrigation Development Corporation (KIDC) but had disclosed turnover of sales of ₹ 187.11 crore only in their VAT returns. This resulted in short reflection of turnover of sales of ₹ 322.87 crore.

Four contractors had received payments from KIDC for the work done but they were not found registered with the Sales Tax Department (STD). They were liable to pay tax of ₹ 66.50 lakh but tax of ₹ 33.02 lakh only was recovered. This resulted in short recovery of TDS of ₹ 33.48 lakh.

(Paragraph 2.2.8.1)

- Cross verification of data obtained from Nashik Irrigation Division with the data available with the STD revealed short disclosure of turnover of sales of ₹ 9.14 crore by two registered dealers.

(Paragraph 2.2.8.2)

- Seven contractor dealers received payments aggregating to ₹ 1.48 crore from Nashik Municipal Corporation (NMC) but these were not registered with the STD.

Three registered contractor dealers of NMC had received payment aggregating to ₹ 6.21 crore but disclosed sales turnover of ₹ 5.68 crore in their returns. The tax payable on the differential turnover of sales of ₹ 53 lakh remained unrecovered.

(Paragraph 2.2.8.3)

- Sixty seven contractor dealers of Pimpri-Chinchwad Municipal Corporation (PCMC) were not found registered with the STD. TDS of ₹ 1.13 crore was recovered short in these cases.

(Paragraph 2.2.8.4)

- Short realisation of tax due to less reflection of turnover of ₹ 48.66 lakh was noticed in case of a contractor dealer paid for work done by Central Railway (Dadar Unit), Mumbai.

(Paragraph 2.2.8.5)

- 941 Builders and Developers (B&D) though liable for registration were not registered under MVAT Act. Further 66 registered B&Ds, did not pay tax on turnover of sales of ₹ 733.50 crore.

(Paragraph 2.2.10)

- Non-levy of interest on delayed payment of tax by six employers resulted in non-realisation of revenue of ₹ 17.68 lakh.

(Paragraph 2.2.11.3)

- Selection of dealers for business audit was very low, it was only 17 per cent of the total works contract, out of which, only 12 per cent was completed in departmental audit.

(Paragraph 2.2.13)

- In five divisions deductions under composition scheme, though inadmissible, were allowed to 82 dealers. This resulted in grant of incorrect deductions aggregating ₹ 67.98 crore and consequential short levy of tax of ₹ 4.87 crore.

(Paragraph 2.2.14)

- Twenty four dealers in four divisions had not maintained accounts of the deductions allowed and were entitled to a deduction of ₹ 36.16 crore instead of ₹ 64.18 crore allowed to them. This resulted in excess deduction of taxable turnover of ₹ 28.02 crore with tax effect of ₹ 2.51 crore.

(Paragraph 2.2.15)

- Six dealers engaged in works contract, were allowed incorrect deductions of ₹ 4.58 crore resulting in short levy of tax of ₹ 40.52 lakh.

(Paragraph 2.2.16)

Misclassification of Gutkha (pan masala containing tobacco etc.) as tax free during 2006-07 resulted in underassessment of tax at ₹ 1.15 crore including interest of ₹ 20.07 lakh.

(Paragraph 2.4.1)

"C" forms furnished in support of inter-state sale valued at ₹ 84.66 lakh did not pertain to the period for which concessional rate of tax was claimed. This resulted in short levy of Central Sales Tax of ₹ 8.89 lakh.

(Paragraph 2.4.2)

Penalty of ₹ 9.28 lakh was not levied on sales valued at ₹ 78.44 lakh on tax evaded by a dealer.

(Paragraph 2.4.3)

Purchase tax of ₹ 7.42 lakh was not levied on packing material purchased by a dealer for packing purposes resulting in short realisation of revenue to that extent.

(Paragraph 2.4.5)

Interest was not levied in three cases upto the date of assessments resulting in short levy of interest of ₹ 61.14 lakh.

(Paragraph 2.4.6)

III. Stamp duty and Registration fees

A Performance audit on **“Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee”** revealed as under:

- Registers were not maintained by the DDTP/ADTPs of the Valuation Cell for watching receipt of data required for preparation of Annual statement (ASR) from the Sub-Registrar offices. The data of only a few months and not of the entire year was considered for the preparation of the ASR.

(Paragraph 3.2.7.1 and 3.2.7.2)

- No module was developed in the software “Stamp and Registration Information Technology Administration” (SARITA) for transmitting the data to the Valuation Cell on the transactions where the consideration was higher than the market value as per ASR. No database of such transactions was maintained by the Department to facilitate trend analysis in the ASR.

(Paragraph 3.2.7.3)

- In 2,503 instruments the difference between the market value as per ASR and the consideration mentioned in the deeds was more than 50 *per cent* and in 1,367 instruments the difference between the two values was more than 100 *per cent* indicating the ASRs did not reflect the true market value of the property.

(Paragraph 3.2.7.4)

- The market value of the flats/shop/offices was incorrectly determined by applying the rates of new construction instead of residential/commercial rates prescribed in ASR resulting in short levy of SD of ₹ 2.59 crore.

(Paragraph 3.2.9.2)

- The area occupied by tenants were not mentioned in three instruments but the benefit of tenant property to the extent of ₹ 11.69 crore was allowed while determining market value of the property. This resulted in incorrect benefit of SD of ₹ 58.45 lakh.

(Paragraph 3.2.10)

- Non-adherence of the instructions in ASR for valuation of land, incorrect application of market value and misclassification of the property resulted in short levy of stamp duty of ₹ 12.32 crore.

(Paragraph 3.2.11)

- Unearned income of ₹ 5.52 crore was not considered for levy of stamp duty and registration fee resulting in short recovery of revenue of ₹ 24.16 lakh. Delay in circulation of notification resulted in short realisation of revenue of ₹ 98.21 lakh.

(Paragraphs 3.2.12 and 3.2.13.1)

Incorrect application of rate by not exhibiting the actual date of execution led to short levy of stamp duty of ₹ 8.07 crore.

(Paragraph 3.4.1)

Misclassification of sale agreements as development agreement, power of attorney resulted in short levy of stamp duty of ₹ 2.90 crore.

(Paragraph 3.4.2)

An instrument executed in Palghar was not entitled to exemption from levy of stamp duty but SR incorrectly allowed the exemption resulting in non-realisation of stamp duty of ₹ 18.91 lakh.

(Paragraph 3.4.3)

An instrument executed in Mumbai was incorrectly treated as the first conveyance and was incorrectly granted concession from payment of stamp duty of ₹ 55.86 lakh.

(Paragraph 3.4.4)

Undervaluation of property resulted in short levy of stamp duty of ₹ 1.49 crore.

(Paragraph 3.4.5)

Non-consideration of material alterations in instruments resulted in short realisation of stamp duty of ₹ 43.68 lakh.

(Paragraph 3.4.7)

Incorrect computation of market value resulted in short realisation of stamp duty of ₹ 34.24 lakh.

(Paragraph 3.4.8)

Failure to consider the market value of commercial complex resulted in undervaluation and consequent short levy of stamp duty of ₹ 23.17 lakh.

(Paragraph 3.4.9)

IV. Land Revenue

The Department had not taken into account estimates of land improvement and construction cost as estimated by PWD for revision of unearned income which resulted in short levy of unearned income at ₹ 42.36 crore.

(Paragraph 4.2.2.1)

Non-consideration of market value as on date of order while granting permission for change in use of Government land resulted in short levy of unearned income of ₹ 23.64 lakh.

(Paragraph 4.2.2.2)

Non-application of GR issued in April 2008 prescribing slabs of concession for valuation of bulk land resulted in short levy of unearned income of ₹ 7.73 lakh.

(Paragraph 4.2.2.3)

Government was put to a loss of ₹ 50.04 lakh towards unearned income due to incorrect order passed by Revenue Minister despite the fact that the scheme of construction of house for economically weaker section sanctioned in 1994 was already cancelled and original allottee was allowed to sell the plots in open market by developing the layout.

(Paragraph 4.2.2.5)

Delay in determining and intimating final occupancy price resulted in loss of occupancy price ₹ 5.01 crore at Prime Lending Rate (PLR).

(Paragraph 4.2.3.1)

Levy of occupancy price at agricultural rate instead of non agricultural rate in respect of land allotted for schools, colleges, renewable energy projects, power projects, sugar factory and other commercial purposes resulted in short levy of occupancy price of ₹ 32.11 crore.

(Paragraph 4.2.3.2)

Levy of occupancy price considering market rate of Annual Statement of Rates (ASR) of earlier year than the year of allotment resulted in short levy of occupancy price of ₹ 5.97 lakh.

(Paragraph 4.2.3.3)

Occupancy price amounting to ₹ 1.46 crore was not recovered as Collector had not issued allotment order.

(Paragraph 4.2.3.4)

Occupancy price was short levied at ₹ 11.13 lakh as occupancy price in respect of eight additional members inducted in the society was not demanded by Collector.

(Paragraph 4.2.3.5)

Lease rent at ₹ 28.29 lakh was non/short levied as Prime Lending Rate (PLR) was taken as 10.25 per cent instead of 11.50 per cent applicable to that year.

(Paragraph 4.2.4)

Non-adherence to Government norm of registering the agreement with the allottees in ten collectorates resulted in loss of revenue on account of stamp duty and registration fees at ₹ 6.61 crore.

(Paragraph 4.2.5)

V. Taxes on Motor Vehicles and State Excise

A Taxes on Motor Vehicles

One Time Tax (OTT) was levied at domestic rate instead of rate applicable to imported vehicles resulting in short realisation of ₹ 16.61 lakh.

(Paragraph 5.3.2)

Non-follow up of RBI instructions by banks resulted in loss of interest to the Government at ₹ 10.53 lakh.

(Paragraph 5.3.3)

Fitness certificates of 1,24,960 newly registered transport vehicles that had completed two years of life during 2010-11 were not renewed resulting in non-realisation of fitness certificate fees of ₹ 4.95 crore.

(Paragraph 5.3.4)

B State Excise

Failure of the department to check the correctness of licence fees with the parameters fixed by Commissioner of State Excise resulted in short recovery of licence fees at ₹ 1.15 crore.

(Paragraph 5.6.1)

Non-consideration of revised supervision charges for deployment of the departmental staff at the premises of the licencees for the period from January 2006 to March 2011 resulted in non-recovery of supervision charges at ₹ 27.33 lakh.

(Paragraph 5.6.2)

VI. Other Receipts

A Entertainments Duty

Non-issuance of demand notices by concerned authorities resulted in non-recovery of Entertainment duty of ₹ 92.73 lakh.

(Paragraph 6.3.1)

Entertainment duty from nine permit room/beer bar with live orchestra was not recovered at ₹ 19 lakh.

(Paragraph 6.3.2)

Inaction of concerned authorities resulted in non-recovery of Entertainment duty in case of dishonoured cheques at ₹ 32.24 lakh.

(Paragraph 6.3.3)

Non-issuance of demand notices of interest on late remittances of entertainment duty by various service providers of 'Direct to Home' (DTH) resulted in non levy of penal interest of ₹ 78.25 lakh.

(Paragraph 6.3.4)

B Electricity Duty and Tax on sale of Electricity

Failure of the Department to check the returns in Form C submitted by the licencees resulted in short realisation of electricity duty of ₹ 18.99 lakh.

(Paragraph 6.5.1)

C Education Cess and Employment Guarantee Cess

The Department did not take any action to recover the Education Cess (EC) and Employment Guarantee Cess (EGC) at ₹ 77.36 lakh from the defaulters.

(Paragraph 6.7.1)

Non-initiation of proceedings in respect of dishonoured cheques resulted in non realisation of revenue amounting to ₹ 16.92 lakh and interest thereon.

(Paragraph 6.7.2)

Municipal Corporations did not remit EC and EGC amounting to ₹ 92.73 crore relating to EC and EGC to the Government.

(Paragraph 6.7.3)

D Tax on Buildings with Larger Residential Premises

Tax amounting to ₹ 89.19 lakh was not levied and recovered from 252 property owners by Brihanmumbai Municipal Corporation.

(Paragraph 6.9.1)

CHAPTER-I : GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Maharashtra during the year 2011-12, the State's share of divisible Union taxes, grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are given below:

(₹ in crore)

Sl. no.	Particulars	2007-08	2008-09	2009-10	2010-11	2011-12
I.	Revenue raised by the State Government					
	• Tax revenue	47,528.41	52,029.94	59,106.33	75,027.09	87,608.46
	• Non-tax revenue ¹	16,935.25 (16,947.97)	9,750.77 (9,789.94)	8,263.97 (8,352.61)	8,213.10 (8,225.04)	8,150.10 (8,167.70)
	Total	64,463.66 (64,476.38)	61,780.71 (61,819.88)	67,370.30 (67,458.94)	83,240.19 (83,252.13)	95,758.56 (95,776.16)
II.	Receipts from the Government of India					
	• State's share of divisible Union Taxes	7,597.22	8,018.41	8,248.12	11,419.79	13,343.34
	• Grants-in-aid	7,509.55	11,432.39	11,203.23	11,195.89	12,166.64
	Total	15,106.77	19,450.80	19,451.35	22,615.68	25,509.98
III.	Total revenue receipts of the State Government	79,570.43 (79,583.15)	81,231.51 (81,270.68)	86,821.65 (86,910.29)	1,05,855.87 (1,05,867.81)	1,21,268.54 (1,21,286.14)
IV.	Percentage of I to III	81	76	78	79	79

The above table indicates that during the year 2011-12, the revenue raised by the State Government was 79 *per cent* of the total net revenue receipts (₹ 1,21,268.54 crore). The balance 21 *per cent* of receipts during 2011-12 were received from the Government of India.

1.1.2 The following table presents the details of tax revenue raised during the period 2007-08 to 2011-12:

¹ Figures in brackets indicate gross receipts, the details of which are available in Statement No. 11 - Detailed accounts of revenue by minor heads in the Finance Accounts of the Government of Maharashtra for the year 2011-12. The figures above those in brackets are lower because of netting of expenditure on prize winning tickets from Lottery receipts.

(₹ in crore)

Sl. no	Head of revenue	2007-08	2008-09	2009-10	2010-11	2011-12	Percentage of increase (+)/ decrease (-) in 2011-12 over 2010-11
1.	Sales tax/VAT						
	• State sales tax, VAT etc.	24,368.22	27,805.30	30,170.70	38,934.47	46,796.91	(+) 20.19
	• Central sales tax	2,384.58	2,875.23	2,505.32	3,548.25	3,799.45	(+)7.08
2.	State excise	3,963.05	4,433.76	5,056.63	5,961.85	8,605.47	(+)44.34
3.	Stamp Duty and Registration fees	8,549.57	8,287.63	10,773.65	13,515.99	14,407.49	(+)6.60
4.	Taxes and Duties on Electricity	2,687.87	2,394.86	3,289.32	4,730.26	4,831.09	(+)2.13
5.	Taxes on Vehicles	2,143.11	2,220.22	2,682.30	3,532.90	4,137.42	(+)17.11
6.	Taxes on Goods and Passengers	388.27	891.95	976.60	599.88	574.25	(-) 4.27
7.	Other taxes on Income and expenditure-Taxes on Professions, Trades, Callings and Employments	1,488.26	1,561.17	1,612.35	1,686.20	1,829.94	(+)8.52
8.	Other Taxes and Duties on Commodities and Services	1,043.17	1,013.58	1,325.39	1,422.31	1,662.63	(+)16.90
9.	Land Revenue	512.22	546.22	714.04	1,094.98	963.81	(-)11.98
10	Service Tax	0.09	0.02	0.03	0.00	0.00	
	Total	47,528.41	52,029.94	59,106.33	75,027.09	87,608.46	

The reasons for significant variation in the receipts in 2011-12 from that of 2010-11 in respect of principal heads of revenue as furnished by one department is as under :

Sales Tax, VAT etc. and Central Sales Tax: The increase was on account of better administrative control exercised by the Sales Tax Department, introduction of e-payment and improvement in defaulter follow-up.

The following departments did not inform (January 2013) the reasons for variation, despite being requested (April 2012). However, the reasons for variations analysed by us from the Finance Accounts are as follows (figures in brackets indicate percentage of increase/decrease from the previous year's collections):

State Excise: The increase was mainly due to increase in collections of State excise duty on the sale of country spirits (35 *per cent*), malt liquor (21 *per cent*), foreign liquors and spirits (98 *per cent*) and receipts under fines and confiscations (130 *per cent*).

Taxes on vehicles: The increase was mainly due to increase in receipts under Indian Motor Vehicles Act (16 *per cent*) and State Motor Vehicles Taxation Acts (16 *per cent*).

Other taxes and duties on commodities and services: The increase was mainly due to increase in receipts under Entertainment tax (12 *per cent*), receipts under luxury tax (25 *per cent*) and receipts under Education Cess Act (20 *per cent*).

Land Revenue: The decrease was mainly due to decrease in receipts from management of ex-zamindari estates (64 *per cent*), decrease in sale of Government Estates (59 *per cent*) and decrease in receipts of service and service fees (65 *per cent*).

1.1.3 The following table presents the details of the non-tax revenue raised during the period from 2007-08 to 2011-12:

(₹ in crore)

Sl. no.	Head of revenue	2007-08	2008-09	2009-10	2010-11	2011-12	Percentage of increase (+)/ decrease(-) in 2011-12 over 2010-11
1.	Interest Receipts	1,170.17	1,016.67	1,342.00	1,421.70	1,358.94	(-)4.41
2.	Dairy Development	453.60	471.01	487.30	341.64	265.81	(-)22.20
3.	Other non-tax receipts	953.87	1,200.60	1,681.01	1,296.23	1,430.56	(+)10.36
4.	Forestry and Wild life	195.73	259.76	226.48	238.87	269.78	(+)12.94
5.	Non-ferrous mining and Metallurgical Industries	1,091.19	1,215.67	1,466.73	1,841.19	2,045.47	(+)11.09
6.	Miscellaneous General Services ²	11,509.38	3,913.08	979.89	622.28	556.29	(-)10.60
7.	Power	344.07	413.28	456.61	485.42	725.01	(+)49.36
8.	Major and Medium Irrigation	626.41	631.77	812.58	729.54	583.05	(-)20.08
9.	Medical and Public Health	170.69	131.22	234.30	173.04	274.98	(+)58.91
10.	Co-operation	67.72	87.78	97.28	77.88	66.65	(-)14.42
11.	Public Works	101.91	154.77	162.31	166.38	167.64	(+)0.76
12.	Police	140.20	137.27	163.45	191.99	234.73	(+)22.26
13.	Other Administrative Services	110.31	117.89	154.03	626.94	171.19	(-)72.69
Total		16,935.25	9,750.77	8,263.97	8,213.10	8,150.10	

² Includes net lottery receipts after adjustment of prize money paid.

The reasons for variations in the receipts for 2011-12 from that of 2010-11, in respect of principal heads of revenue though called for (April 2012) from concerned departments were not furnished (January 2013). However, some of the significant variations in the receipts during 2011-12 over those of the previous year as analysed by us from the Finance Accounts were as follows:

Forestry and Wild life : The increase was mainly due to increase in sale of timber and other forests produce (13 *per cent*) and receipts from social and farm foresteries (70 *per cent*).

Non-ferrous, mining and metallurgical industries: The increase was mainly due to increase under the sub head “mineral concession fees, rents and royalties” (11 *per cent*) and “service and service fees” (28 *per cent*).

Power : The increase was mainly due to increase in receipts under the head “Hydel Generation” (90 *per cent*) and “other receipts” under sub-head “General” (912 *per cent*).

Medical and Public Health: The increase was mainly due to increase in the receipts under Urban Health Services (21 *per cent*), rural health services (716 *per cent*), medical education, training and research (40 *per cent*) and public health (251 *per cent*).

Police: The increase was mainly due to increase in receipts under the head “Police supplied to other Government (64 *per cent*), police supplied to other parties (65 *per cent*) and receipts under fees, fines and forfeitures” (44 *per cent*).

Other Administrative Services: The decrease was mainly due to decrease in receipts under the detailed head “Other receipts” of the sub head “60 – Other Services” (93 *per cent*)

Dairy Development: The decrease was mainly due to less receipt from various Government Milk Schemes.

Miscellaneous General Services: The decrease was mainly due to decrease in receipts under the head “guarantee fees” (77 *per cent*).

1.2 Response of the Departments/Government to audit observations

The offices of the Principal Accountant General (Audit)-I, Mumbai and the Accountant General (Audit)-II, Nagpur (AsG) arrange to conduct periodical inspections of the various offices of the Government Departments to test check transactions of the tax and non-tax receipts and verify the maintenance of important accounting and other records as per the prescribed rules and procedures. After inspections by field parties, inspection reports (IRs) are issued to the heads of offices, with copies of the same to the next higher authorities. The Government of Maharashtra, Finance Department’s circular dated 10 July 1967 provides for response by the executive to the IRs issued by the offices of the AsG, within one month, after ensuring action in compliance to the observations made during audit inspections. Serious irregularities are also brought to the notice of the heads of departments by the offices of the AsG. Half yearly reports are sent to the secretaries of the concerned

departments in respect of the pending IRs to facilitate the monitoring of audit observations.

1.2.1 Failure of senior officials to enforce accountability and protect the interest of the State Government

Scrutiny of the inspection reports issued upto 31 December 2011 revealed that 10,860 observations relating to 4,921 IRs involving ₹ 2,667.74 crore, remained outstanding at the end of June 2012 as mentioned below, along with the corresponding figures for the preceding two years.

	30 June 2010	30 June 2011	30 June 2012
Number of outstanding IRs	4,681	4,682	4,921
Number of outstanding audit observations	9,811	10,293	10,860
Amount involved (₹ in crore)	1,419.02	1,722.20	2,667.74

The Department-wise details of the IRs and audit observations outstanding as on 30 June 2012 and the amounts involved are mentioned below:

Sl. no.	Name of the Department	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved (₹ in crore)
1	Home	State Excise	183	385	976.43
2	Home	Taxes on vehicles	244	883	28.47
3	Revenue and Forest	Land Revenue	1,113	2,180	591.59
4	Revenue and Forest	Entertainments Duty	288	504	9.70
5	Revenue and Forest	Forestry and Wild Life	149	240	60.62
6	Revenue and Forest	Education Cess and Employment Guarantee Cess	102	171	179.50
7	Revenue and Forest	Stamp Duty and Registration Fees	1,085	2,420	391.13
8	Finance	Taxes on Sales, trades etc.	1,436	3,655	231.07
9	Finance	Taxes on profession etc.	104	143	1.86
10	Industries, Energy and Labour	Electricity duty	74	111	187.84
11	Urban Development	Residential Premises Tax	71	83	2.11
12	Urban Development	Repair Cess	14	20	2.67
13	Home, Irrigation, Public Works, Revenue and Forest	Other non tax receipts	58	65	4.75
	Total		4,921	10,860	2,667.74

In respect of the above observations, even the first replies required to be received from the heads of offices within one month from the date of issue of the IRs were not received in respect of 1,874 observations relating to 601 IRs,

issued upto December 2011 involving revenue of ₹ 178.49 crore. Huge pendency of the IRs due to non-receipt of the replies is indicative of the fact that the Heads of Offices and Heads of the Departments had failed to initiate action to rectify the defects, omissions and irregularities pointed out by the AsG in the IRs.

It is recommended that the Government take suitable steps to evolve a mechanism for prompt and appropriate response to audit observations. The Government may also consider fixing responsibility for failure to reply to the IRs/paragraphs as per the prescribed time schedule as well as for not taking appropriate and time bound action to recover losses/outstanding demands.

1.2.2 Departmental Audit Committee Meetings

The Government had set up Audit Committees (during various periods) to monitor and expedite the progress of the settlement of IRs and paragraphs in the IRs. The details of the audit committee meetings (ACM) held during the year 2011-12 and the paragraph settled are mentioned below:

(₹ in crore)

Admini- strative Department	Head of revenue	Number of meetings held	Number of paras discussed	Number of paras settled	Amount
Revenue and Forest	Entertainments Duty	1	150	28	0.39
	Non-tax receipts- Forest	2	46	12	1.01
Relief and Rehabilitation	Stamp Duty and Registration Fees	1	407	249	11.23
Finance	Taxes on sales, trade etc.	4	338	145	1.38
Home	Motor vehicle tax	1	343	22	0.13
Industries, Energy and Labour	Electricity duty	1	77	27	39.79
Total		10	1,361	483	53.93

As can be seen from the above, as against 1,361 paras discussed, 483 paras (35 per cent) were settled in the meetings, indicating that the Departments were not adequately prepared with full and final compliance in respect of the audit observations made in the local audit reports. Further, no meeting was held in case of Land Revenue and only one meeting was held for Stamp Duty and Registration Fees even though the pendency of cases was quite high in those Departments. As 10,860 audit observations were outstanding at the end of June 2012, it indicates that the machinery created for this purpose was not put to use effectively.

The Government may take proactive action to send replies in advance so that more number of paras could be settled in the ACM. Special efforts may also be made to comply to the old outstanding paras.

1.2.3 Non-production of records to Audit for scrutiny

The programme of local audit of Sales Tax/VAT receipts offices is drawn up in advance and intimations are issued to the Department, usually much before the commencement of audit, to enable them to keep the relevant records ready for audit scrutiny.

During the audits, tax records of 927 dealers, whose assessments/returns were examined/ accepted by the Sales Tax Department, for the audit periods 2002-03 and 2004-05 to 2011-12, were not made available to audit. Out of this, in respect of 383 cases, tax liability involved was ₹ 34.68 crore and in the remaining 544 cases the tax effect was not available in the departmental records.

Year-wise break-up of such cases are given below:

(₹ in crore)					
Name of Office	Year in which it was to be audited	Number of assessment cases not audited	Number of cases in which revenue involved could not be ascertained	Number of cases in which revenue involved could be ascertained	Revenue involved
(i) erstwhile BST and allied Acts	2002-03	16	11	5	0.04
	2004-05	2	1	1	0.95
	2005-06	1	1	0	0.00
	2006-07	11	2	9	2.86
	2007-08	39	7	32	1.91
	2008-09	81	24	57	2.21
	2009-10	153	63	90	4.67
	2010-11	133	46	87	11.64
	2011-12	423	348	75	9.56
Total (i)		859	503	356	33.84
ii) Value Added Tax	2010-11	36	14	22	0.80
	2011-12	32	27	5	0.04
Total (ii)		68	41	27	0.84
Grand Total		927	544	383	34.68

Though these units are audited annually, 190 out of 927 tax records involving revenue of ₹ 14.36 crore were not made available to audit during the audit of these units in subsequent years, though requisitioned.

The Government/Department may ensure that the tax records are made available to audit during the audit period itself so that any under assessment/short recovery of tax involved in these cases could be pointed out by audit for timely action.

1.2.4 Response of the Departments to draft audit paragraphs

The Finance Department had issued directions to all the Departments in July 1967 to send their responses to the draft audit paragraphs proposed for

inclusion in the Report of the Comptroller and Auditor General of India within six weeks. The draft paragraphs were forwarded by Audit to the secretaries of the concerned Departments through demi-official letters, drawing their attention to the audit findings and requesting them to send their response within the prescribed time. The fact of non-receipt of replies from the Government was invariably indicated at the end of each paragraph included in the Audit Report.

Draft paragraphs (clubbed into 42 paragraphs) included in the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2012 were forwarded to the Secretaries of the respective Departments between April 2012 and October 2012 through demi-official letters. Replies to most of the paragraphs (clubbed into 42 paragraphs) have not been received. These paragraphs have been included in this report.

1.2.5 Follow-up on Audit Reports - summarised position

According to the instructions issued by the Finance Department, all the Departments were required to furnish explanatory memoranda, vetted by Audit, to the Maharashtra Legislative Secretariat, in respect of paragraphs included in the Audit Reports, within three months of their being laid on the table of the House.

A review of the outstanding explanatory memoranda on paragraphs included in the Reports of the Comptroller and Auditor General of India (Revenue Receipts) which were still to be discussed by the Public Accounts Committee (PAC), disclosed that as on 30 September 2012, the Departments had not submitted remedial explanatory memoranda on 86 paragraphs for the years from 1997-98 to 2010-11 (excluding 1999-00)³ as detailed below:

Sl. No.	Name of the Department	1997-98	1998-99	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	Total
1	Home	--	--	--	--	--	--	--	--	--	--	1	2	4	7
2	Revenue and Forests	3	1	--	2	--	2	2	1	5	4	3	4	4	31
3	Urban Development	--	--	1	2	1	--	--	--	--	--	--	2	--	6
4	Finance	--	--	--	--	--	--	--	--	--	1	1	1	14	17
5	Water Resources	--	--	--	--	--	--	--	--	--	--	1	--	--	1
6	Industries, Energy and Labour	--	--	--	1	--	--	--	--	1	--	--	1	--	3
7	Relief and Rehabilitation	--	--	--	1	--	--	--	--	--	--	6	6	7	20
8	Co-operation and Textiles	--	--	--	--	--	1	--	--	--	--	--	--	--	1
Total		3	1	1	6	1	3	2	1	6	5	12	16	29	86

³ 1999-00 – Explanatory memoranda were received and the Audit Report discussed.

With a view to ensure accountability of the executive in respect of all the issues dealt with in the Audit Reports, the PAC lays down in each case, the period within which action taken notes (ATNs) on its recommendations should be sent.

The PAC discussed 248 selected paragraphs pertaining to the Audit Reports for the years from 1986-87 to 2005-06 and its recommendations on 121 paragraphs were incorporated in their Reports as mentioned below:

Report Number and year of PAC	Year of Audit Report	No. of recommendations	No. of ATNs awaited
27 th Report of 1994-95	1986-87, 1987-88, 1988-89	6	3
9 th Report of 1995-96	1989-90, 1990-91, 1991-92	9	9
12 th Report of 1995-96	1990-91	2	2
12 th , 13 th , 14 th and 18 th Report of 1996-97	1989-90, 1990-91, 1993-94	42	17
21 st Report of 1996-97	1992-93, 1993-94	4	2
21 st Report of 1997-98	1992-93	2	2
5 th Report of 2000-01	1994-95, 1995-96	11	2
12 th Report of 2002-03	1996-97, 1999-00	4	1
5 th Report of 2006-07	1997-98	4	4
6 th Report of 2007-08	1998-99	6	5
5 th , 6 th and 7 th Report of 2010-11	2003-04, 2004-05, 2005-06	31	30
Total		121	77

However, ATNs have not been received in respect of 77 recommendations of the PAC from the Departments concerned as mentioned in the following table:

Year	Name of the department								Total
	Home	Revenue and Forests	Finance	Industries, Energy and Labour	Relief and Rehabilitation	Medical Education and Drugs	Co-operation and Textiles	Urban Development	
1986-87	--	1	--	--	--	--	--	--	1
1987-88	--	--	1	--	--	--	--	--	1
1988-89	--	--	1	--	--	--	--	--	1
1989-90	1	4	2	--	--	--	--	--	7
1990-91	7	2	4	--	--	--	--	--	13
1991-92	1	--	--	1	1	--	--	--	3
1992-93	1	1	--	1	--	--	--	--	3
1993-94	3	2	1	--	--	--	--	--	6
1995-96	--	1	--	--	--	--	--	--	1
1996-97	--	--	--	--	1	--	--	--	1
1997-98	--	2	1	--	1	--	--	--	4
1998-99	--	4	1	--	--	--	--	--	5
2002-03	--	--	--	--	1	--	--	--	1
2003-04	--	--	7	--	3	2	1	--	13
2004-05	1	1	4	1	-	-	-	1	8
2005-06	3	2	2	1	1	0	0	--	9
Total	17	20	24	4	8	2	1	1	77

1.2.6 Compliance to the earlier Audit Reports

During the periods from 2001-02 to 2010-11, the Government/Departments accepted audit observations involving ₹ 3,536.21 crore, out of which an amount of ₹ 1,135.72 crore had been recovered till 31 March 2012 as mentioned below:

(₹ in crore)

Year of Audit Report	Total money value	Accepted/recoverable money value	Recovery made
2001-02 to 2006-07	6,481.70	2,406.87	861.92
2007-08	818.90	167.44	85.71
2008-09	3,246.16	857.72	183.22
2009-10	59.67	19.37	4.06
2010-11	399.64	84.81	0.81
Total	11,006.07	3,536.21	1,135.72

Despite the matter being taken up with the concerned secretaries a number of times, the position relating to recovery of dues as pointed out by audit, remains highly unsatisfactory.

The Government may institute a mechanism to monitor the position of recoveries pointed out in the audit reports and take effective steps to recover the amounts early.

1.3 Analysis of the mechanism for dealing with the issues raised by Audit

In order to analyse the system of addressing the issues highlighted in the Inspection Reports/Audit Reports by the Departments/Government, the action taken on the paragraphs and reviews included in the Audit Reports of the last 10 years in respect of one Department is evaluated and included in each Audit Report.

The succeeding paragraphs 1.3.1 and 1.3.2 discuss the performance of the Motor Vehicle Department to deal with the cases detected in the course of local audit conducted during the period from 2003-04 to 2010-2011.

1.3.1 Position of Inspection Reports

The summarised position of Inspection Reports issued during the last eight years, paragraphs included in these reports and their status as on 31 March 2012 are tabulated below:

(₹ in crore)

Year	Opening balance			Addition during the year			Clearance during the year			Closing balance		
	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value
2003-04	109	266	20.43	37	119	2.47	22	88	1.91	124	297	20.99
2004-05	124	297	20.99	34	107	2.14	41	136	3.89	117	268	19.24
2005-06	117	268	19.24	39	130	12.13	36	116	17.09	120	282	14.27
2006-07	120	282	14.27	48	168	7.65	22	102	8.19	146	348	13.73
2007-08	146	348	13.73	42	137	3.60	23	78	0.87	165	407	16.46
2008-09	165	407	16.46	47	238	9.10	22	110	3.73	190	535	21.83
2009-10	190	535	21.83	50	312	4.93	37	174	3.80	203	673	22.96
2010-11	203	673	22.96	47	303	12.16	22	78	2.05	228	898	33.07

The Department may make effective use of the machinery created for settling outstanding audit observations.

In order to obtain speedy compliance to the outstanding para, statements of such paras are forwarded to the concerned Departments of the Government in January and July every year. The outstanding paras are also pursued through periodic references to the concerned offices and also through field parties which visit these offices for audit in the subsequent years. Further, apart from the ACMs regular meetings are also held with heads of offices for discussion of issues wherein the Departmental views do not concur with the audit observation.

1.3.2 Recovery of accepted cases

The position of paragraphs included in the Audit Reports of the last eight years, those accepted by the Department and the amount recovered are mentioned below:

(₹ in crore)

Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted	Money value of accepted paragraphs	Amount recovered during the year	Cumulative position of recovery of accepted cases
2003-04	5	1.39	5	0.54	0.00	0.40
2004-05	3	22.58	1	21.63	0.00	0.30
2005-06	2	0.90	2	0.90	0.00	0.18
2006-07	1	0.60	1	0.60	0.00	0.15
2007-08	2	0.96	2	0.96	0.00	0.16
2008-09	3	1.46	3	1.46	0.01	0.32
2009-10	1	4.50	0	0.98	0.01	0.13
2010-11	2	3.25	1	1.22	0.00	0.25
Total	19	35.64	15	28.29	0.02	1.89

As seen from the above table, out of 19 paras involving ₹ 35.64 crore, 15 paras involving ₹ 28.29 crore were accepted by the Department, whereas the amount recovered in respect of these paragraphs was only ₹ 1.89 crore.

The Government may consider issuing instructions to the Department to recover the amount involved in accepted cases on priority basis.

1.4 Audit Planning

The unit offices under various Departments are categorised into high, medium and low risk units according to their revenue position, past trends of audit observations and other parameters. The annual audit plan is prepared on the basis of risk analysis which *inter-alia* include critical issues in Government revenues and tax administration i.e. budget speech, white paper on state finances, reports of the Finance Commission (State and Central), recommendations of the taxation reforms committee; statistical analysis of the revenue earnings during the past five years, features of the tax administration, audit coverage and its impact during past five years, etc..

During the year 2011-12, out of the audit universe comprising of 2,977 auditable units, 1,081 units were planned for audit and 1,077 units were actually audited which is 36 *per cent* of the total auditable units.

Besides the compliance audit mentioned above, two Performance Audits were also taken up to examine the efficacy of the tax administration and compliance issues.

1.5 Results of audit

1.5.1 Position of local audit conducted during the year

Test check of the records of 1,077 units of Sales Tax, Stamp Duty and Registration Fees, Land Revenue, Motor Vehicles Tax, State Excise, Forest Receipts and other tax and non-tax receipts conducted during 2011-12 revealed under assessments/short levy/loss of revenue amounting to ₹ 1,550.44 crore in 7,439 cases. During the course of the year, the Departments accepted

under assessments, short levy, etc., of ₹ 238.47 crore in 2,550 cases of which 368 cases involving ₹ 26.90 crore were pointed out in 2011-12 and rest in earlier years. Of these, the Departments recovered ₹ 237.41 crore during 2011-12.

1.5.2 This Report

This Report contains 42 paragraphs including two performance audits on (i)“VAT on Works Contract” and (ii)“Preparation of Annual Statement of Rates and its application for determination of market value for levy of Stamp Duty and Registration fee” relating to short/non levy of tax, duty and interest, penalty etc. and involving financial effect of ₹ 233.59 crore. The Departments/Government have accepted audit observations involving ₹ 168.48 crore, out of which ₹ 2.63 crore has been recovered. These are discussed in succeeding Chapters II to VI.

CHAPTER-II

EXECUTIVE SUMMARY

Trend of receipts	The revenue collection under VAT increased by 89 <i>per cent</i> in 2011-12 as compared to 2007-08.
Revenue Impact of Audit Reports	During the last five years, 2006-07 to 2010-11, we had pointed out cases of under-assessments/non/short levy/loss of revenue of Sales Tax, etc., interest and other irregularities with revenue implication of ₹ 1,879.59 crore in 1,217 cases. Of these, the Department had accepted audit observations in 344 cases involving ₹ 510.27 crore and had recovered ₹ 1.07 crore in 59 cases.
Results of audit	<p>We reported underassessment/short levy/loss of revenue and potential tax revenue, etc., amounting to ₹ 41.13 crore in 424 cases on the basis of test check of the records of the Sales Tax Department conducted during the year 2011-12.</p> <p>During the year 2011-12 as well as during earlier years, the Department accepted underassessments/other deficiencies involving ₹ 1.66 crore in 140 cases. Out of this, 19 cases involving ₹ 11.14 lakh were pointed out during 2011-12 and the rest during earlier years. During the year 2011-12, the Department recovered ₹ 59.65 lakh in 34 cases out of which ₹ 7.77 lakh in 10 cases were pointed out during 2011-12 and the rest in earlier years.</p>
What we have highlighted in this Chapter	<p>A performance audit report on "VAT on Works Contract" revealed the following:</p> <ul style="list-style-type: none">Seventeen registered contractors had received payments of ₹ 509.98 crore from Konkan Irrigation Development Corporation (KIDC) but had disclosed turnover of sales of ₹ 187.11 crore only in their VAT returns. This resulted in short reflection of turnover of sales of ₹ 322.87 crore. <p>Four contractors had received payments from KIDC for the work done but they were not found registered with the Sales Tax Department (STD). They were liable to pay tax of ₹ 66.50 lakh but tax of ₹ 33.02 lakh only was recovered. This resulted in short recovery of TDS of ₹ 33.48 lakh.</p>

(Paragraph 2.2.8.1)

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- Cross verification of data obtained from Nashik Irrigation Division with the data available with the STD revealed short disclosure of turnover of sales of ₹ 9.14 crore by two registered dealers.

(Paragraph 2.2.8.2)

- Seven contractor dealers received payments aggregating to ₹ 1.48 crore from Nashik Municipal Corporation (NMC) but these were not registered with the STD.

Three registered contractor dealers of NMC had received payment aggregating to ₹ 6.21 crore but disclosed sales turnover of ₹ 5.68 crore in their returns. The tax payable on the differential turnover of sales of ₹ 53 lakh remained unrecovered.

(Paragraph 2.2.8.3)

- Sixty seven contractor dealers of Pimpri-Chinchwad Municipal Corporation (PCMC) were not found registered with the STD. TDS of ₹ 1.13 crore was recovered short in these cases.

(Paragraph 2.2.8.4)

- Short realisation of tax due to less reflection of turnover of ₹ 48.66 lakh was noticed in case of a contractor dealer paid for work done by Central Railway (Dadar Unit), Mumbai.

(Paragraph 2.2.8.5)

- 941 Builders and Developers (B&D) though liable for registration were not registered under MVAT Act. Further 66 registered B&Ds, did not pay tax on turnover of sales of ₹ 733.50 crore.

(Paragraph 2.2.10)

- Non-levy of interest on delayed payment of tax by six employers resulted in non-realisation of revenue of ₹ 17.68 lakh.

(Paragraph 2.2.11.3)

- Selection of dealers for business audit was very low, it was only 17 *per cent* of the total works contract, out of which, only 12 *per cent* was completed in departmental audit.

(Paragraph 2.2.13)

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- In five divisions deductions under composition scheme though inadmissible were allowed to 82 dealers. This resulted in grant of incorrect deductions aggregating ₹ 67.98 crore and consequential short levy of tax of ₹ 4.87 crore.

(Paragraph 2.2.14)

- Twenty four dealers in four divisions had not maintained accounts of the deductions allowed and were entitled to a deduction of ₹ 36.16 crore instead of ₹ 64.18 crore allowed to them. This resulted in excess deduction of taxable turnover of ₹ 28.02 crore with tax effect of ₹ 2.51 crore.

(Paragraph 2.2.15)

- Six dealers engaged in works contract, were allowed incorrect deductions of ₹ 4.58 crore resulting in short levy of tax of ₹ 40.52 lakh.

(Paragraph 2.2.16)

Recommendations

The Government may consider:

- developing a module with full details of TDS in MAHAVIKAS for filing e-return (Form 405) and for making e-payment compulsory in respect of TDS. TDS certificates may be generated online so that genuineness of the same can be ensured;
 - introducing a system of obtaining information relating to the payments made to the contractors periodically and cross checking the same with the data available in MAHAVIKAS for detecting unregistered dealers to prevent evasion of tax;
 - introducing a mechanism for cross linkage of records relating to the principal and sub-contractors in order to detect cases of evasion of tax; and
 - issuing necessary directions to the Department to draw up an action plan to complete the Business Audit cases as well as set a time frame for completion of the departmental audits so that the under-declaration /short recovery of tax could be detected and recovered early.
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CHAPTER-II : VALUE ADDED TAX/SALES TAX

2.1 Introduction

2.1.1 Tax revenue administration

Levy and collection of receipts under the Sales Tax are regulated by the Maharashtra Value Added Tax (MVAT) Act, 2002 and MVAT Rules, 2005, read with notifications issued by the Government from time to time as well as circular instructions issued by the Sales Tax Department. The Act, Rules and instructions are implemented by the Commissioner of Sales Tax under the overall control of the Principal Secretary to the Government in Finance Department, assisted by the Zonal Additional Commissioners of Sales Tax, Joint Commissioners of Sales Tax in respect of functional branches and Deputy Commissioners of Sales Tax and other officers at divisional level. The Sales Tax receipts mainly comprise of tax on sales, trade, etc. The Sales Tax Department is also in the process of completing the pending assessment under the erstwhile Bombay Sales Tax Act and allied Acts.

2.1.2 Trend of receipts

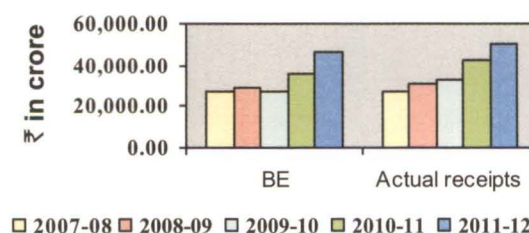
Actual receipts from Sales tax, Value Added Tax (VAT), etc., during the years 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table and graphs:

(₹ in crore)

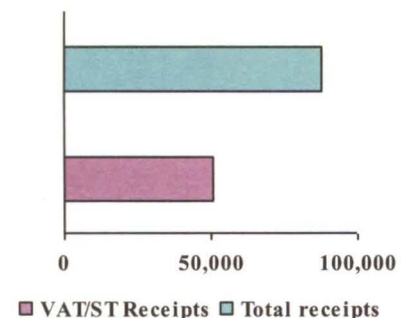
Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2007-08	27,465.00	26,752.80	(-) 712.20	(-) 2.59	47,528.41	56.29
2008-09	29,039.00	30,680.53	(+) 1,641.53	(+) 5.65	52,029.94	58.97
2009-10	27,006.00	32,676.02	(+) 5,670.02	(+) 21.00	59,106.33	55.28
2010-11	35,986.18	42,482.72	(+) 6,496.54	(+) 18.05	75,027.09	56.62
2011-12	46,000.00	50,596.36	(+)4,596.36	(+)9.99	87,608.46	57.75

As can be seen from the above table, the revenue collection under VAT increased by 89 per cent in 2011-12 as compared to 2007-08.

Trend of receipts 2007-08 to 2011-12



Trend of receipts 2011-12



2.1.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2012 in respect of Sales Tax/VAT as furnished by the Department amounted to ₹ 34,694.02 crore, of which ₹ 12,161.13 crore had been outstanding for more than five years, as mentioned in the following table:

(₹ in crore)

Sl. no.	Head of revenue	Amount outstanding as on 31 March 2012	Amount outstanding for more than five years as on 31 March 2012	Remarks
1	Sales Tax, etc.	34,694.02	12,161.13	Stay orders were granted by the appellate authorities for ₹ 22,291.40 crore; recovery proceedings for ₹ 2,543.62 crore were not initiated as the time limit was not over and the remaining amount was in different stages of recovery.

2.1.4 Arrears in assessment

The following table shows the details of pending assessment cases under the Bombay Sales Tax Act, 1959 and allied Acts for the years 2009-10, 2010-11 and 2011-12 as furnished by the Sales Tax Department:

Year	Opening balance	New cases due for assessment	Total assessments due	Cases not to be assessed ¹	Disposal Cases disposed off	Total	Balance at the end of the year	Percentage of column 8 to 4
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Sales Tax								
2009-10	1,83,992	1,20,248	3,04,240	91,524	1,29,990	2,21,514	82,726	27
2010-11	82,726	45,935	1,28,661	24,743	80,877	1,05,620	23,041	18
2011-12	23,041	9,634	32,675	10,982	11,565	22,547	10,128	31
Motor Spirit Tax								
2009-10	4,342	86	4,428	1,037	142	1,179	3,249	73
2010-11	3,249	77	3,326	1,998	199	2,197	1,129	34
2011-12	1,129	142	1,271	478	29	507	764	60
Purchase Tax on sugarcane								
2009-10	881	144	1,025	51	57	108	917	89
2010-11	917	75	992	115	179	294	698	70
2011-12	698	128	826	364	219	583	243	29
Entry Tax								
2009-10	65	308	373	36	259	295	78	21
2010-11	78	175	253	10	193	203	50	20
2011-12	50	264	314	44	247	291	23	7

¹ These cases were not to be assessed according to the Government Resolution dated 5 January 2007.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Lease Tax								
2009-10	4,236	363	4,599	1,015	448	1,463	3,136	68
2010-11	3,136	284	3,420	1,596	600	2,196	1,224	36
2011-12	1,224	1,149	2,373	1,306	127	1,433	940	40
Luxury tax								
2009-10	6,195	2,113	8,308	1,168	2,397	3,565	4,743	57
2010-11	4,743	1,730	6,473	1,030	2,125	3,155	3,318	51
2011-12	3,318	1,828	5,146	2,741	1,146	3,887	1,259	24
Tax on works contracts								
2009-10	1,22,508	13,311	1,35,819	31,833	15,707	47,540	88,279	65
2010-11	88,279	10,424	98,703	41,568	21,238	62,806	35,897	36
2011-12	35,897	3,510	39,407	12,303	5,471	17,774	21,633	55
Total								
2009-10	3,22,219	1,36,573	4,58,792	1,26,664	1,49,000	2,75,664	1,83,128	40
2010-11	1,83,128	58,700	2,41,828	71,060	1,05,411	1,76,471	65,357	27
2011-12	65,357	16,655	82,012	28,218	18,804	47,022	34,990	43

Though seven years have passed since the introduction of VAT, 34,990 assessments pertaining to erstwhile Bombay Sales Tax Act and allied Acts are still pending. Immediate steps may be taken to complete these assessments within a definite time frame so that the recovery of dues does not get difficult with the passage of time.

2.1.4.1 Returns filed under VAT

The VAT system relies on self assessment and envisages departmental audit of returns filed by the dealer, with the necessity of assessment arising only in case of the audit findings being disputed by the dealers. When the findings of the departmental audit are accepted by the dealer, the case is treated as closed after the dealer accepts the findings and pays up the dues, if any, arising out of such audit. This is in complete departure from the process under the erstwhile BST Act, where the assessments were mandatory. In the VAT regime, dealers having tax liability exceeding ₹ One crore are subject to departmental audit (business audit in case of tax liability and refund audit in case of refunds) on an annual basis by the Large Taxpayers Unit (LTU). A percentage of other dealers, selected at random by Maharashtra Vikrikar Automation System or MAHAVIKAS, is subjected to departmental audit by the Business Audit Branch in case of tax liability or the Refund and Refund Audit Branch in case of refunds.

The pendency of cases under the Large Taxpayers Units², Business Audit and Refund and Refund Audit² branches of the Sales Tax Department is shown in the following tables:

² The figures are at variance with the figures of Audit Report (Revenue Receipts) 2010-11. The reasons for variations though called for have not been received (January 2013).

Large Taxpayers Unit

Period	Cases selected	Cases closed	Cases pending	Percentage of column 4 to 2
1	2	3	4	5
2009-10	1,436	1,122	314	21.87
2010-11	1,345	948	397	29.52
2011-12	1,062	969	93	8.76

As seen from the above table the percentage of pending cases showed a sharp decline from 29 *per cent* in 2010-11 to 8 *per cent* in 2011-12.

Business Audit

Period	Cases selected	Cases closed	Cases pending	Percentage of column 4 to 2
1	2	3	4	5
2009-10	38,059	13,774	24,285	63.81
2010-11	41,144	13,330	27,814	67.60
2011-12	36,782	7,593	29,189	79.35

As seen from the above table the percentage of pending cases allotted for business audit increased from 64 *per cent* in 2009-10 to 79 *per cent* in 2011-12. The Department attributed the pendency due to deployment of personnel for completion of Refund Audit cases and in the work of cross-checking of ITC claims.

Refund and Refund Audit

(₹ in crore)

Period	Cases selected	Cases closed	Cases pending	Amount	Percentage of column 4 to 2
1	2	3	4	5	6
2009-10	45,901	17,696	28,205	1,672.87	61.45
2010-11	57,868	26,839	31,029	2,261.48	53.62
2011-12	86,887	54,721	32,166	2,658.32	37.02

As seen from the above table the percentage of pending cases allotted for refund and refund audit decreased from 61 *per cent* in 2009-10 to 37 *per cent* in 2011-12. The Department may make more efforts to decrease the pendency further.

The Department may draw up an Action Plan to complete the business audit cases and expedite the pending refund cases as well as set benchmarks and time frames for sanctioning of refunds.

2.1.5 Assessee Profile

The position regarding number of dealers and the dealers who failed to file returns in time and action taken by the Department during the period from 2009-10 to 2011-12 is as follows:

Year	No of dealers	No of defaulters percentage	Action Taken			Pending Action	No. of cases/ Penalty levied Amount (₹ in crore)
			Show cause notice ³ issued	Unilateral Assessment Order passed	Prosecution lodged		
2009-10	5,74,375	<u>30,485</u> 5	58,995	5,243	98	15	<u>1121</u> 69.04
2010-11	5,67,061	<u>93,344</u> 16	45,289	10,178	21	- ⁴	<u>2,73,172</u> - ⁴
2011-12	6,61,899	<u>2,46,006</u> 37	- ⁵	1,915	5	412	<u>30,333</u> 523.58

It is seen from the above table that the percentage of defaulters increased sharply from five *per cent* in 2009-10 to 37 *per cent* in 2011-12, whereas the number of prosecution cases lodged showed a marked decline from 98 to five during the said period. The Government may review the working of the returns branch with a view to ensure that the defaulter list is kept to the minimum.

2.1.6 Cost of collection

The gross collection in respect of Value Added Tax, the expenditure incurred on their collection and the percentage of such expenditure to the gross collection during the years 2009-10 to 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the year 2008-09 to 2010-11 are given in the following table:

(₹ in crore)						
Sl. no.	Head of revenue	Year	Gross collection ⁶	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the year preceding the year shown in column 3
1	2	3	4	5	6	7
1	Sales tax/ VAT	2009-10	32,676.02	283.65	0.87	0.88
		2010-11	42,482.72	298.08	0.70	0.96
		2011-12	50,596.36	346.02	0.68	0.75

³ Depending upon the periodicity of returns, namely: monthly, quarterly or six monthly.

⁴ Information not furnished by the Department.

⁵ Show cause notice not issued in view of imposition of penalty vide Section 29(8) of the MVAT Act 2002.

⁶ Figures as per the Finance Accounts.

As seen from the above, the cost of collection in the State of Maharashtra, during the periods 2009-10 to 2011-12 is less as compared to the all India average for the corresponding preceding years.

2.1.7 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessments of Sales Tax, Entry Tax and Luxury Tax for the year 2011-12 and the corresponding figures for the preceding two years as furnished by the Department is as mentioned in the following table:

(₹ in crore)

Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand+ penalties)	Amount refunded	Net collection (col 3 + col 4 - col 6)	Percentage of column 3 to 7
(1)	(2)	(3)	(4)	(6)	(7)	(8)
Finance Department						
Sales tax/ VAT, etc.	2009-10	34,438.67	660.30	2,616.14	32,482.83	106
	2010-11	41,572.13	88.93	3,190.30	38,470.76	108
	2011-12	50,157.59	429.98	4,217.73	46,369.84	108
Entry tax	2009-10	6.65	2.66	--	9.31	71
	2010-11	12.77	0.44	--	13.21	97
	2011-12	11.21	1.71	--	12.92	87
Luxury tax	2009-10	211.41	3.27	--	214.68	98
	2010-11	267.86	1.07	--	268.93	100
	2011-12	300.37	17.02	0.25	317.14	95

The above table shows that collection of revenue at the pre-assessment stage in respect of Sales Tax/VAT ranged between 106 and 108 *per cent* during 2009-10 to 2011-12. This indicates that the VAT collection is mainly through voluntary compliance. During the year 2009-10 to 2011-12, the amount collected at the pre-assessment stage was more than the amount due to the Government resulting in refunds aggregating ₹ 4,217.73 crore. The revenue collected after regular assessment was quite low.

2.1.8 Impact of Audit Reports

Revenue impact

During the last five years, i.e. 2006-07 to 2010-11, we had pointed out under-assessments/non/short levy/loss of revenue of Sales Tax, etc., interest and other irregularities with revenue implication of ₹ 1,879.59 crore in 1,217 cases. Of these, the Department had accepted audit observations in 344 cases involving ₹ 510.27 crore and had recovered ₹ 1.07 crore in 59 cases. The details are shown in the following table:

(₹ in crore)

Year	Amount objected		Amount accepted		Amount recovered	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	83	8.97	83	8.97	30	0.54
2007-08	187	41.74	167	9.21	27	0.53
2008-09	577	1,814.22	66	488.46	1	⁷
2009-10	10	0.65	10	0.65	1	⁸
2010-11	360	14.01	18	2.98	-	-
Total	1,217	1,879.59	344	510.27	59	1.07

The Government may consider issuing instructions to the Department to recover the amount involved in accepted cases on priority.

2.1.9 Results of audit

We reported underassessment/short levy/loss of revenue and potential tax revenue, etc., amounting to ₹ 41.13 crore in 424 cases as shown below on the basis of test check of the records of the Sales Tax Department conducted during the year 2011-12:

(₹ in crore)

Sl. no.	Category	No. of cases	Amount
1.	VAT on works Contract (A Performance Audit)	1	12.19
2.	Non/short levy of tax	243	15.79
3	Incorrect grant /excess set off	74	5.31
4.	Non/short levy of interest/penalty	19	1.02
5.	Non-forfeiture of excess collection of tax	16	0.20
6.	Other irregularities	71	6.62
Total		424	41.13

In response to our observations made in the local audit reports during the year 2011-12 as well as during earlier years, the Department accepted under-assessments/other deficiencies involving ₹ 1.66 crore in 140 cases. Out of this, 19 cases involving ₹ 11.14 lakh were pointed out during 2011-12 and the rest during earlier years. During the year 2011-12, the Department recovered ₹ 59.65 lakh in 34 cases out of which ₹ 7.77 lakh in 10 cases were pointed out during 2011-12 and the rest in earlier years.

A performance Audit on “VAT on Works Contract” with total financial effect of ₹ 12.19 crore and a few audit observations involving ₹ 2.04 crore are mentioned in the succeeding paragraphs

⁷ An amount of ₹ 84,071 was recovered. The amount cannot be rounded into crores of Rupees.

⁸ An amount of ₹ 40,000 was recovered. The amount cannot be rounded into crores of Rupees.

2.2 Performance Audit on “VAT on Works Contract”

Highlights

- Seventeen registered contractors had received payments of ₹ 509.98 crore from Konkan Irrigation Development Corporation (KIDC) but had disclosed turnover of sales of ₹ 187.11 crore only in their VAT returns. This resulted in short reflection of turnover of sales of ₹ 322.87 crore.

Four contractors had received payments from KIDC for the work done but they were not found registered with the Sales Tax Department (STD). They were liable to pay tax of ₹ 66.50 lakh but tax of ₹ 33.02 lakh only was recovered. This resulted in short recovery of TDS of ₹ 33.48 lakh.

(Paragraph 2.2.8.1)

- Cross verification of data obtained from Nashik Irrigation Division with the data available with the STD revealed short disclosure of turnover of sales of ₹ 9.14 crore by two registered dealers.

(Paragraph 2.2.8.2)

- Seven contractor dealers received payments aggregating to ₹ 1.48 crore from Nashik Municipal Corporation (NMC) but these were not registered with the STD.

Three registered contractor dealers of NMC had received payment aggregating to ₹ 6.21 crore but disclosed sales turnover of ₹ 5.68 crore in their returns. The tax payable on the differential turnover of sales of ₹ 53 lakh remained unrecovered.

(Paragraph 2.2.8.3)

- Sixty seven contractor dealers of Pimpri-Chinchwad Municipal Corporation (PCMC) were not found registered with the STD. TDS of ₹ 1.13 crore was recovered short in these cases.

(Paragraph 2.2.8.4)

- Short realisation of tax due to less reflection of turnover of ₹ 48.66 lakh was noticed in case of a contractor dealer paid for work done by Central Railway (Dadar Unit), Mumbai.

(Paragraph 2.2.8.5)

- 941 Builders and Developers (B&D) though liable for registration were not registered under MVAT Act. Further 66 registered B&Ds, did not pay tax on turnover of sales of ₹ 733.50 crore.

(Paragraph 2.2.10)

- Non-levy of interest on delayed payment of tax by six employers resulted in non-realisation of revenue of ₹ 17.68 lakh.

(Paragraph 2.2.11.3)

- Selection of dealers for business audit was very low, it was only 17 per cent of the total works contract, out of which, only 12 per cent was completed in departmental audit.

(Paragraph 2.2.13)

- In five divisions, deductions under composition scheme though inadmissible were allowed to 82 dealers. This resulted in grant of incorrect deductions aggregating ₹ 67.98 crore and consequential short levy of tax of ₹ 4.87 crore.

(Paragraph 2.2.14)

- Twenty four dealers in four divisions had not maintained accounts of the deductions allowed and were entitled to a deduction of ₹ 36.16 crore instead of ₹ 64.18 crore allowed to them. This resulted in excess deduction of taxable turnover of ₹ 28.02 crore with tax effect of ₹ 2.51 crore.

(Paragraph 2.2.15)

- Six dealers engaged in works contract, were allowed incorrect deductions of ₹ 4.58 crore resulting in short levy of tax of ₹ 40.52 lakh.

(Paragraph 2.2.16)

2.2.1 Introduction

The assessment and levy of tax on transactions of works contract was governed by the Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989 up to 31 March 2005. Thereafter the Act stood repealed with introduction of Maharashtra Value Added Tax Act, 2002 (MVAT Act) with effect from 1 April 2005. All the intra-state sales relating to works contracts are taxable under the MVAT Act, rules made and notifications issued thereunder while inter-state sales are taxable under the Central Sales Tax Act, 1956 (CST Act) and rules made and notifications issued there under from time to time. Each dealer whose turnover of sales towards tax liability crosses the threshold limit of ₹ 5 lakh in a year is liable to get himself registered with the Sales Tax Department (STD) under the MVAT Act. As per Section 31 of the MVAT Act and Rule 40 of the MVAT Rules, State Government has notified classes of employers (i.e. those awarding contract) who are liable to deduct tax from the contractor. It is two *per cent* in case of registered dealers and four *per cent* in any other case, of the amount payable to the contractor, excluding the amount of tax, if any, separately charged by the contractor to whom a works contract has been awarded.

The STD has got developed and implemented e-governance project called “MAHAVIKAS” (Maharashtra Vikrikar Automation System) for the internal administration, speedy services to tax payers and to stop tax evasion.

2.2.2 Organisational set up

The STD functions under the administrative control of the Principal Secretary, Finance Department at Government level. The Commissioner of Sales Tax, Maharashtra State, Mumbai is the head of the STD and is assisted by four Additional Commissioners in charge of each zone at Mumbai, Nagpur, Nashik and Pune, 13 Joint Commissioners at the divisional level and Deputy Commissioners, Assistant Commissioners and Sales Tax Officers at different levels.

2.2.3 Scope, methodology and reasons for selection of performance audit

The performance audit on levy and collection of VAT on Works Contract transaction was conducted by us from January to May 2012 in respect of assessments completed by departmental audit between April 2006 and March 2011. We selected four⁹ out of thirteen divisions by adopting Simple Random Sampling without Replacement technique. Further, in order to have a proper geographical representation, two more divisions¹⁰, were also selected for audit. Thus in all six out of the thirteen divisions, were selected for the audit. The STD had completed departmental audit in 799 assessment cases of the contract dealers in these six divisions. We checked all these cases in our audit scrutiny. We also obtained information from other Government Departments, Corporations, Local bodies, etc., awarding the contract and compared the same with the data maintained by the department on MAHAVIKAS.

An entry conference for the performance audit was held in January 2012 and the executive was informed about the selection of units and scope and methodology of audit. The departmental authorities explained the various provisions relating to VAT on Works Contract and the procedures adopted for its administration. The draft Performance Audit Report was forwarded to the Government and the Department in August 2012 and audit findings and recommendations were discussed in the exit conference held in November 2012. The Principal Secretary, Finance Department, Commissioner of Sales Tax and other senior officers from the STD attended the meeting. The replies given during the exit conference and at other points of time have been appropriately included in the relevant paragraphs.

Reasons for selection:- We had during our local inspection found that STD was not paying enough attention towards the verification of the returns filed by the contract dealers. We felt it was appropriate to audit this area. It revealed a number of discrepancies which are discussed in the subsequent paragraphs.

2.2.4 Audit objectives

The Performance Audit was conducted to ascertain whether:

- enforcement of provisions under MVAT Act and the instructions issued from time to time at Commissionerate level was effective;
- internal control mechanism was in place and was adequate and effective;
- any gap exists between the provisions of the Act and its implementation which may give rise to any irregularity in relation to payment of tax; and
- proper mechanism exists in the Department to monitor the tax payable by builders and developers.

2.2.5 Audit Criteria

The audit criteria for the Performance Audit are derived from the provisions of the following Central and State laws.

⁹ Mumbai, Nashik, Pune and Thane,

¹⁰ Amravati and Nagpur

Central Laws

- The Central Sales Tax Act, 1956;
- The Central Sales Tax Rules, 1972;

State Laws

- The Maharashtra Value Added Tax Act, 2002;
- The Maharashtra Value Added Tax Rules, 2005;

In addition to above notifications, circulars issued from time to time have also been taken into account while conducting the audit.

2.2.6 Acknowledgement

We acknowledge the co-operation of the STD in providing necessary information and records to audit.

2.2.7 Trend of Revenue

We called for the information regarding the year-wise works contract receipts under MVAT Act from the Sales Tax Department, however, it was stated that the separate tax receipts of works contract transactions were not available as the total VAT receipts were maintained which included the tax on works contract. As such contribution from contract dealers towards the VAT receipts could not be ascertained and analysed.

Audit findings

The system and compliance deficiencies are discussed in the succeeding paragraphs:

System deficiencies

2.2.8 Absence of co-ordination with other public utilities for registration of dealers

We found that there was no co-ordination between the STD and other public utilities to ascertain that the contractors whose turnover had exceeded the threshold limit were registered with the STD and had declared turnover of their sales turnovers correctly in their returns.

The STD had not put in place any mechanism¹¹ for obtaining information from the “Employer” (institutions awarding the contract) and cross verify the same with the data available on MAHAVIKAS to ascertain its correctness. A few deficiencies noticed instances are discussed in the following paragraphs:

¹¹ by way of returns or otherwise

2.2.8.1 Cross verification of data obtained from Konkan Irrigation Development Corporation (KIDC)

Short reflection of turnover of sales: We obtained information from the payment bills of KIDC for the period from April 2005 to March 2011 and found that 17 registered contractors had received payments of ₹ 509.98 crore from KIDC.

Section 16 read with section 3 of MVAT Act provides that each contractor executing work(s) shall get himself registered if his/her turnover of sales exceeds the threshold limit of ₹ 5 lakh during a year. Section 66 of the MVAT Act provides that with a view to identifying dealers who are liable to pay tax under this Act, but have remained unregistered, the Commissioner shall, from time to time, cause a survey of unregistered dealers to be taken so as to bring them into the tax net.

Cross verification of this data with the data available on MAHAVIKAS revealed that eight contractors had not filed their returns for different

periods between April 2005 and March 2011 while the remaining had disclosed less turnovers in their returns.

These contractors had disclosed turnover of sales of ₹ 187.11 crore only in their returns available on MAHAVIKAS. This resulted in short reflection of turnover of sales of ₹ 322.87 crore. Besides, two contractors had claimed TDS credit of ₹ 16.79 lakh as against TDS of ₹ 13.71 lakh recovered from them, resulting in excess claim of ₹ 3.08 lakh.

Dealers not found registered under MVAT Act:- As per the information received from KIDC four contractors had received payments aggregating to ₹ 23.51 crore, during the years 2005-06 to 2010-11. On cross verification with MAHAVIKAS we found that these dealers were not found registered under MVAT Act. The dealers were liable to pay TDS at the rate of four *per cent*, however, TDS was incorrectly deducted at lesser rates (1 to 3 *per cent*) in these cases involving turnover of ₹ 16.62 crore. Thus, as against TDS of ₹ 66.50 lakh, ₹ 33.02 lakh only was recovered, resulting in short recovery of TDS of ₹ 33.48 lakh.

Excess credit of TDS :- Further cross verification of the information received from KIDC with MAHAVIKAS revealed that in case of another contractor, the KIDC had deducted TDS of ₹ 3.80 lakh from the turnover of sales of ₹ 1.90 crore for the month of May 2010. In the original return filed by the contractor in June 2010 with the Department, the contractor had claimed TDS credit at ₹ 3.80 lakh but in his revised return filed in January 2012, he had claimed TDS credit at ₹ 9.80 lakh resulting in excess credit of TDS of ₹ 6 lakh.

2.2.8.2 Cross verification of data obtained from Nashik Irrigation Division (NID)

Short disclosure of sales turnover:- As per MAHAVIKAS two registered contractor dealers had filed their returns for turnover of sales at ₹ 6.93 crore for different periods between 2005-06 and 2009-10. We obtained information

from NID and found the dealers had received payments aggregating to ₹ 16.07 crore. This resulted in short disclosure of turnover of sales of ₹ 9.14 crore.

Excess claim of TDS:- Further, a contractor dealer claimed TDS credit of ₹ 17.93 lakh in his returns during the year 2005-06 as against TDS of ₹ 16.27 lakh deducted by NID during this period. This resulted in excess claim of TDS of ₹ 1.66 lakh.

Non-registration of dealers:- Cross verification of data obtained from NID with the MAHAVIKAS revealed that a contractor dealer received payment of ₹ 2.15 crore, during the years 2009-10 and 2010-11, from which the TDS of ₹ 4.29 lakh was deducted. Further, another contractor had received payment of ₹ 1.08 crore during 2010-11, from which the TDS of ₹ 2.16 lakh was deducted. However, the TIN mentioned against the name of these contractors in the information furnished by NID was shown against the name of different contractors in MAHAVIKAS as shown below:

As per NID		As per MAHAVIKAS
Name of contractor	TIN	Name of contractor
M/s Ask Infrastructure Pvt Ltd., Belapur	27330597820 V	M/s Khilari Infrastructures Pvt. Ltd., Belapur
M/s Enginova Computer, Aurangabad	27120376727 V	M/s Gunjal Babasaheb Maruti, Ahmednagar

Since M/s. Ask Infrastructure Pvt. Ltd., Belapur and M/s Enginova Computer, Aurangabad, did not appear on MAHAVIKAS as registered dealers, the possibility of the tax liability on their turnover not being discharged could not be ruled out and needs verification.

2.2.8.3 Cross verification of data obtained from Nashik Municipal Corporation (NMC)

Dealers not found registered under MVAT Act:- Cross verification of data obtained from NMC with MAHAVIKAS revealed that six contractor dealers received payments aggregating to ₹ 99.18 lakh from NMC during 2010-11, But these were not found registered with the STD. Further, one contractor had received payment of ₹ 48.62 lakh and had applied for registration under MVAT but the application was rejected by the Department as seen from a remark (reasons not given) made in the MAHAVIKAS.

Thus, tax payable on the turnover of sales totalling to ₹ 1.48 crore in respect of all these seven contractors could not be recovered due to non-registration.

Short disclosure of turnover of sales :- Three registered contractor dealers had received payment aggregating to ₹ 6.21 crore but disclosed sales turnover of ₹ 5.68 crore in their returns. The tax payable on the differential turnover of sales of ₹ 53 lakh needs to be recovered.

2.2.8.4 Cross verification of data obtained from Pimpri-Chinchwad Municipal Corporation (PCMC)

Non-registration of dealers :- Cross verification of data obtained from PCMC with MAHAVIKAS revealed that sixty seven contractors received payment aggregating to ₹ 55.24 crore from the PCMC (i.e. employer), during the years 2009-10 and 2010-11, but these were not found registered under

MVAT Act. Of these, in 66 cases involving turnover of ₹ 54.89 crore the TDS was deducted at lesser rates (1 to 3 *per cent*) instead of 4 *per cent*. Thus, ₹ 1.07 crore only was deducted as against TDS of ₹ 2.20 crore, resulting in short recovery of TDS of ₹ 1.13 crore.

2.2.8.5 Cross verification of data obtained from Central Railway (Dadar Unit), Mumbai

Short reflection of turnover :- As per the information obtained from Central Railway (Dadar Unit), Mumbai a contractor dealer was paid ₹ 91.79 lakh and TDS of ₹ 1.84 lakh was deducted in July 2010. However, as per the returns (July 2010) uploaded by the contractor on MAHAVIKAS, the turnover of sales was ₹ 43.13 lakh only. This resulted in short reflection of turnover of ₹ 48.66 lakh.

Thus it would be seen from the above that it is very important for the STD to conduct a cross verification of transactions with other departments. The Commissioner may call for details and particulars regarding the payments made and services provided by public utilities and financial institutions including companies and compare the same with the MAHAVIKAS to verify their correctness and non-registration of dealers. This will also be useful for the purposes of the survey.

In the exit conference, the Department stated that the observations made in the paragraph would get covered after introduction of e-tendering by the Government for the various types of employers who entrusted works to the contractors. As regards the cases referred to in the paragraphs, it was stated that same would be verified and corrective action taken, wherever necessary.

The Government may consider introducing a system of obtaining information relating to the payments made to the contractors periodically and cross checking the same with the data available in MAHAVIKAS for detecting unregistered dealers to prevent evasion of tax.

2.2.9 Absence of co-ordination within the STD

The Commissioner of Sales Tax had issued a Trade Circular in December 2008, designating Deputy Commissioner of Sales Tax (E-810), BA-II for Mumbai Division and Sales Tax Officer, Returns Branch of Maharashtra, as the officer for maintenance of data of unregistered contractors and acceptance of demand drafts, copy of challans relating to payment of TDS for proper accounting of TDS (henceforth called as TDS cell). A Survey Branch which was put in place in January 2008 to collect the list of unregistered dealers from the above designated officer for getting them registered.

We noticed that the data regarding unregistered (URD) contractor dealers was neither sent by the TDS cell to the Survey Branch nor was it collected by the Survey Branch in Nashik, Pune and Thane divisions.

However, the TDS cell had received the annual returns in Form 405, demand drafts and copies of challans relating to payment of TDS but no efforts were made to check the data for verifying the correctness of the TDS amount paid and bring the unregistered dealer into the tax net

As per Section 31 of the MVAT Act and Rule 40 of the MVAT Rules, the Government was required to notify the class(es) of employers who are liable to deduct TDS from the amount payable to the contractors. These employers were required to file annual return in Form 405 (consisting the name and TIN of contractors) within three months from the end of the year to which the returns relate.

Test check of the annual returns in Form 405 in respect of 56 cases relating to nine employers revealed that the TDS was deducted at varying rates from one to four *per cent* from 44 contractors in Nashik division. In none of these cases TIN of the contractors were mentioned in Form 405. Further, our cross verification of this data with the information available on MAHAVIKAS revealed that 25 of these contractors having turnover of sales of ₹ 14.92 crore were not registered with STD as on June 2012. The employers had deducted TDS at lesser rate (1 to 3 *per cent*) instead of the applicable rate of four *per cent*. Due to this, TDS of ₹ 27 lakh was collected as against ₹ 54 lakh, on turnover of sales of ₹ 13.56 crore, resulting in short deduction of TDS of ₹ 27 lakh.

The facts indicate that the Department was not following its own instructions and there was no co-ordination within the Department to bring the unregistered dealers under the tax net.

In the exit conference, the Department stated that the matter would be examined and a special review would also be taken up in respect of Nashik, Pune and Thane divisions in order to ensure that the instructions issued by the CST are followed.

2.2.10 Non-registration of builders and developers

With effect from 20 June 2006, transfer of property in goods involved in execution of an agreement for cash, deferred payment, etc. for the building and construction of immovable property was treated as works contract and attracted VAT at 5 *per cent* under composition scheme. Further, as per notification issued by the Government in July 2010, VAT at the rate of one *per cent* of agreement value or on the value specified for the purpose of stamp duty, whichever was higher was leviable under the composition in respect of construction of flats, dwellings, buildings or premises.

The Commissioner of Sales Tax in a review meeting held in January 2010 had instructed the Survey Branch to obtain data regarding Builders & Developers (B&Ds) from the TDS Cell of BA and/or from Joint Commissioner (Economic and Intelligence Unit).

We called for the information regarding number of B&Ds registered/liable for registration during the year 2010-11 from the Joint Commissioner of Sales Tax, Business Audit-II, Mumbai, but the same was stated to be not available with him, however, a list of B&Ds who had paid tax during 2010-11 under the composition scheme was furnished.

Cross verification of the data¹² relating to dealers¹³ who were involved in construction business during 2010-11 obtained from the offices of the Sub-Registrars of Stamp Duty and Registration at Amravati, Mumbai, Nagpur, Pune and Thane with the data available on MAHAVIKAS revealed that 941 Builders and Developers out of 1,219 whose turnover of sales was ₹ 2,301.12 crore, though liable for registration were not registered under MVAT Act. Further 66 out of 278 registered B&Ds, did not pay any tax on turnover of sales of ₹ 733.50 crore and nine had paid VAT on a part of their turnover i.e. ₹ 57.50 lakh only, as against ₹ 3.08 crore on turnover of sales of ₹ 307.85 crore.

In 2007, the levy of tax on B&Ds was challenged by the Maharashtra Chamber of Housing Industry (MCHI) in the Mumbai High Court by way of a writ petition. The Mumbai High Court in its judgement dated 10 April 2012 held that there is no merit in the challenge to the constitutional validity of the composition scheme introduced by the State Government. Against this judgement a Special Leave Petition was filed in the Supreme Court. In August 2012, the Apex Court gave a stay order towards the coercive process for recovery of tax, interest and penalty and also extended the time period for registration by the B&Ds up to 31 October 2012.

In the exit conference, the Department stated that in view of the interim order of the Supreme Court, 10,227 B&Ds have obtained registration under MVAT. Further information from the Inspector General of Registrations, Pune in respect of builders from 2006 onwards would be obtained and processed which would take some time.

However, whether all the B&Ds were registered by 31 October 2012, which was the cut off date prescribed by the Apex Court, has not so far been confirmed by the Department (January 2013).

Deficiencies in the administration of TDS

2.2.11 Tax Deduction at Source (TDS)

State Government is required to notify classes of employers who are liable to deduct tax at source from the contractors. The amount so deducted should be paid along with challan in Form 210 within 21 days from the end of month for which tax has been deducted, failing which employer would be liable for interest on late payment. Further, if the employer does not deduct or after deducting fails to pay the tax as required under the Act, the provisions relating to interest and penalty shall apply *mutatis mutandis* in respect of the unpaid tax. The employer shall issue a certificate in Form 402 to the dealer, who in turn will get credit of the Tax Deducted at Source (TDS) while computing his liability. Further, the employers were required to file annual return in Form 405 (consisting the name and TIN of contractors) within three months from

¹² The data collected did not reflect the information regarding agreements entered into by the builders during the construction period and after completion of the flats, dwelling, etc., separately.

¹³ Cases of builders and developers wherein the agreements which are registered on or after 1 April 2010 have been taken into consideration.

the end of the year to which the returns relate and maintain an account of the TDS certificates issued to the dealers in Form 404.

2.2.11.1 Grant of TDS credit without verification

During test check of the records of the selected six divisions, for the transaction periods 2005-06 to 2010-11, we noticed that in 145 cases credits on account of TDS were allowed at ₹ 34.60 crore to the contractors merely on the basis of certificates issued to the dealer by the employers in Form 402. The form, however, did not provide for any details of challan, bank/treasury etc., as also the date on which the TDS was deducted by the employer. Copies of challan in proof of payment of TDS were also not found in the departmental records. There was nothing on record to indicate that the correctness of the credit allowed has been verified with respect to the treasury challans or bank remittances. As these details were not available, the correctness of TDS credit allowed during departmental audit could not be verified by us. Division-wise details are as under:

(₹ in crore)		
Division	No. of cases	TDS credit allowed
Amravati	2	0.10
Mumbai	51	23.44
Nagpur	4	0.15
Nashik	39	4.48
Pune	30	5.16
Thane	19	1.27
Total	145	34.60

2.2.11.2 Non-monitoring of TDS and returns of Employers

In respect of the notified class of employers who were required to deduct TDS from the payment made by them to the contractors towards works contract executed, the Department should have a database of such employers in a register which could have been used to detect non-payment of TDS into Government account, non-filing of return by the employers, referring cases to employers regarding short deduction of TDS, identification of unregistered dealers (URD), periodic follow ups, etc.

Information collected from the four test checked divisions revealed that the register were not maintained in Mumbai up to March 2008, in Nashik upto March 2007 and in respect of Pune and Thane Divisions up to January 2009. In absence of a database of notified class of employers we could not ascertain whether all the employers were filing the returns and detect non-payment/short deduction of TDS.

As employers are the primary source for the Department to detect URDs, it was necessary to maintain a database from April 2005 and update it periodically.

2.2.11.3 Non-levy of interest on delayed payment of TDS

As per Section 31(5) read with Section 30 (3) of the MVAT Act, interest on TDS is payable by the employer for delayed payment, non-deduction of TDS or for not crediting the amount into Government account after deduction.

No mechanism was put in place by STD to ascertain the date on which the employer had deducted TDS from the payment made to the contractor. This information was required to be filed in Form 405 by the employer with the Department but it was not done.

A test check of six employers (one in Mumbai, four in Nashik and one in Thane) revealed delayed payment of TDS into Government account. We noticed that in Form 405 the date of deduction of TDS was not mentioned by the employer. The delays¹⁴ ranged from 14 to 629 days on which interest of ₹ 17.68 lakh¹⁵ was leviable. No action was taken to levy the interest.

To sum up, there was no mechanism to identify the correct number of the employers who are liable to pay TDS, employers making the payments and the employers who failed to comply with the provisions of the Act. There is no system for cross-check of TDS receipts and claim of TDS credit in returns by the dealers with Form 404 and records available with TDS cell/treasury respectively.

In the absence of information regarding date on which the deduction was made by the employer in Form 405, the Department could not work out the interest in respect of delayed payments though provided for in the Act.

In the exit conference, the Department in respect of the observations made in paragraphs 2.2.11.1 to 2.2.11.3, stated that Department is taking measures to cross check TDS claims by TDS cell through the register maintained in Form 404 by the employers. Regarding maintenance of the database of all employers who deduct TDS, it is proposed to monitor it through e-tenders from the TDS cell and Economic Intelligence Unit to enhance compliance, as it is not practical to get all the employers/contractors registered. It was further stated that a new Form 435 for return cum challan is being developed wherein details of TDS i.e. Bank/Treasury/Account, etc. would be available. Regarding levy of interest pointed out by us in paragraph 2.2.11.3, reply of the Department is yet to be received (January 2013).

However, we pointed out in the exit conference that at present there is no cross linkage of information between the BA/R&RA branch and TDS cell which may lead to fraudulent/bogus claim of TDS.

The Government may consider developing a module with full details of TDS in MAHAVIKAS, for filing e-return (Form 405) and making e-payment compulsory in respect of TDS. TDS certificates may be generated online so that genuineness of the same can be ensured.

¹⁴ In the absence of this information the month of return mentioned in Form 405 and the date on which cheque was received as per the cheque register and date of remittance of tax as per challan was taken into consideration for working out the delay in crediting the amount into Government account.

¹⁵ The interest amount has been worked out by us determining the period of delay beyond 21 days subsequent to the month in which the employer had deducted the TDS to the date of credit of the amount into the Government treasury as per the cheque register.

2.2.12 Sub-contracts**2.2.12.1 Absence of mechanism for confirmation of tax liability in respect of sub-contracts**

Section 45 of the MVAT Act provides that if the principal or agent (sub-contractor) shows to the satisfaction of the Commissioner that the tax has been paid by the agent or principal and produces a duly signed certificate in the prescribed form then the principal or the agent, as the case may be, shall not be liable to pay tax again in respect of the same transaction. Form 406 is to be issued by the principal contractor to the agent and Form 407 by the agent to the principal contractor. These forms *inter-alia* contain information regarding turnover of sales in respect of which VAT is paid and also details of payment.

In the six test checked divisions¹⁶, our scrutiny of cases covered under departmental audit in respect of 46 dealers (74 periods), for the years 2005-06 to 2010-11, revealed non-availability of forms (406/407) in respect of the part or full value of the sub-contract claim, non-availability of challan number/date etc., in the relevant columns of the forms.

The certificate in Form 406 prescribed under MVAT Act did not provide for a separate identification of tax which is admitted and discharged by the contractors for one or more specific subcontract value. The Department had also not carried out the cross verification of records/returns relating to the principal and the sub-contractors in any of these test checked 46 dealers in which the deduction of subcontract value was claimed and allowed by the Department.

Our cross verification of the returns and the records of the principal contractor/sub-contractor revealed the following:

- In Mumbai division, M/s Gammon (India) Ltd., the principal contractor was allowed deductions of ₹ 147.47 crore and ₹ 202.06 crore by LTU branch during the periods 2006-07 and 2007-08 respectively, from the turnover of sales towards payments made to the sub-contractor, M/s. Sadbhav Engineering Ltd, Nashik for the above two periods. However, M/s. Sadbhav Engineering Ltd of Nashik division had shown receipts of ₹ 86.11 crore and ₹ 165.97 crore only in his returns during the above two periods. This resulted in escapement of turnover of ₹ 61.36 crore in 2006-07 and ₹ 36.09 crore in 2007-08 totalling to ₹ 97.45 crore, with tax implication of ₹ 7.80 crore.
- In Thane division, M/s M K Enterprises, a sub-contractor was allowed deduction of ₹ 18.06 lakh from his turnover, during the year 2007-08, as per Refund Order dated 12 December 2008, on the basis of Form 406 issued by M/s Rashid and Co. (principal contractor). The sub-contractor had also furnished a statement indicating payment of tax of ₹ 77,343 on sales of ₹ 18.06 lakh paid by the principal contractor. Our cross verification with the R&RA records of the principal contractor revealed that principal contractor had shown his tax liability for the year as 'NIL'. Under the circumstances, the authenticity of Form 406 and payment of tax of ₹ 77,343 issued by M/s Rashid and Co. needs verification.

¹⁶ Amravati, Mumbai, Nagpur, Nashik, Pune and Thane.

- In Nashik division, M/s J C Shaikh (principal contractor) was allowed deduction of ₹ 1.10 crore from turnover of sales for payments made to M/s Nidhi Construction (sub-contractor) towards work done by him, during the year 2007-08 (as per the order passed under R&RA in June 2009). Our cross verification of the returns filed by M/s Nidhi Construction with MAHAVIKAS revealed that the turnover of sales of the sub-contractor was ₹ 96.80 lakh only. Thus the claim of payment of ₹ 1.10 crore shown by the principal contractor appears incorrect and needs to be investigated by the Department.

- In another case of Nashik division, in the R&RA order dated 13 December 2010, M/s Balaji Construction Co, the principal contractor was allowed deduction of ₹ 17.97 lakh, for the period 2006-07, on the basis of Form 407 issued to him on 26 May 2008 by the sub-contractor, M/s B.T. Kodlag Construction Pvt. Ltd. However, the principal contractor had also issued Form 406 on 26 May 2008 (same day) for accepting the tax liability towards turnover of sales of ₹ 17.97 lakh. Obviously, both the principal as well as the sub-contractor had mutually absolved themselves from discharging the tax liability of ₹ 71,880 to the Government. Hence the records of the principal as well as the sub-contractor need verification.

These irregularities and any consequential tax evasion could have been avoided had the Department correlated the records of the principal with the sub-contractor or *vice versa*, which were available with the Department.

In the exit conference, the Department stated that additional annexure incorporating details and declarations in Form 406 and 407 will be incorporated in Form 704 prepared by the Chartered Accountants. Further, in respect of the observations made by us, it was stated that same would be verified and corrective action will be taken, if necessary.

The Government may consider introducing a mechanism for cross-linkage of records relating to the principal and the sub-contractors in order to detect cases of evasion of tax.

2.2.12.2 Deduction of sub-contract value in the absence of requisite certificate

Under Rule 58(1) of the MVAT Rules, the value of goods at the time of transfer of property in the goods involved in the execution of the works contract may be determined by effecting certain deductions from the value of the entire contract. Under the said Rule eight items (a to h) are provided which relate to amount on which deductions are admissible.

During test check of the records of Nashik division, we noticed that during the periods between 2005-06 and 2007-08, deductions claimed by three principal contractors in the returns, aggregating to ₹ 2.54 crore, for payments made by them to their sub-contractors were allowed in departmental audit (BA/R&RA) as per the provisions of Rule 58(1)(b). However, the certificates in Form 407 in support of the sub-contractor, having accepted the tax liability on the value of work executed by him, were not kept on record.

Further, the records of the principal contractor also did not confirm whether the deductions claimed were purely for labour and services. Due to this, the

correctness of these deductions and the tax liability worked out in the departmental audits could not be ascertained.

It is recommended that Government may issue directions to the STD for recording in the assessment orders the basis on which deductions were allowed and also provide documentary evidence whenever the demand arises.

Internal control mechanism

2.2.13 Low coverage in departmental audit

The White Paper on VAT envisaged initiation and completion of tax audit within the prescribed time limit for which audit of dealers shall be based on a scientific risk analysis. The MVAT Act does not prescribe any percentage or number of cases to be selected for BA. However, as per the departmental manual issued in October 2007, the dealers are to be selected for BA in such a way that each dealer gets selected for audit once in five years. As per the Manual of BA of the Department, BA shall be completed within three months from its commencement. The number of cases allotted for BA and number of cases assessed/completed as on 31 March 2011 in six test checked divisions are as under:

Division	No. of dealers who filed return in Form 233	No. of Form 233 filers allotted for Business Audit	Audit/ Assessment completed	Percentages		
				Col. 3 to 2	Col. 4 to 3	Col. 4 to 2
1	2	3	4	5	6	7
Amravati	2,032	522	36	26	7	2
Mumbai	10,131	1,682	239	17	14	2
Nagpur	4,302	204	93	5	45	2
Nashik	2,298	310	68	13	22	3
Pune	5,265	1,193	101	23	8	2
Thane	3,950	799	45	20	6	1
Total	27,978	4,710	582	17	12	2

As seen from the above, out of the total works contract dealers in the selected divisions, only 17 *per cent* were allotted for BA, out of which only 12 *per cent* were completed in the departmental audit.

In the exit conference, the Department stated that with the advent of electronic technology and availability of huge electronic data, each and every case is scrutinised on numerous parameters. Over and above, Economic Intelligence Unit (EIU) selects cases for Business Audit or Issue Based Audit for investigation. Thus the coverage of departmental audit/assessment under VAT has increased manifold as compared to earlier BST era.

The Principal Secretary stated that voluntary compliance to the Rules and Regulations of the system is required to be inculcated in the minds of the dealer rather than pursuing every dealer which will result in more productivity.

However the fact remains that though the main feature of the VAT regime was built on the premise of voluntary compliance by the dealers, the mechanism put in place to have an effective check on the dealers through departmental audit remained largely unfulfilled in view of the fact that 88 *per cent* of the dealers allotted for BA were pending for closure as on 31 March 2011. Further, against the works contract dealers of six test checked divisions, only two *per cent* were subjected to BA.

The Government may consider issuing necessary directions to the Department to draw up an action plan to complete the Business Audit cases as well as set a time frame for completion of the departmental audits so that under-declaration/short recovery of tax could be detected and recovered early.

Compliance Deficiencies

2.2.14 Inadmissible deductions under composition scheme

Under the provisions of Section 42(3) of the MVAT Act, composition tax on a contract is calculated at the total value of the works contract after allowing deduction, if any, of amounts payable towards sub-contract involving goods to a registered sub-contractor.

During test check of the records in five divisions, for the periods 2005-06 to 2009-10, we noticed that, in addition to the deductions for amounts payable to the sub-contractor, deductions such as “tax element as inclusive in sale price¹⁷”, “unidentified items/labour receipts” and “service tax” though inadmissible were allowed in respect of 82 dealers (148 periods) who had paid composition tax. This resulted in incorrect deductions aggregating ₹ 67.98 crore and consequential short levy of tax of ₹ 4.87 crore as shown below:

(₹ in crore)				
Type of deduction	Division	No. of Dealers	Deduction allowed	Short levy of tax
Tax element as inclusive in sale price	Mumbai	31	19.71	1.50
	Nagpur	8	2.14	0.11
	Nashik	3	14.13	0.74
	Pune	13	2.07	0.14
	Thane	8	2.86	0.19
Unidentified items/labour receipts, etc.	Mumbai	3	4.08	0.24
	Nashik	3	0.62	0.03
	Pune	2	9.79	0.74
	Thane	1	0.21	0.02
Service tax	Mumbai	9	11.05	1.05
	Thane	1	1.32	0.11
Total		82	67.98	4.87

¹⁷ Amount of tax=SP*[R/100+R] where R is the rate of tax while SP is the sale price.

In the exit conference, the Principal Secretary, Finance and the CST stated that in case of "tax element as inclusive in sale price" under Rule 57(1) does not provide for deduction of composition amount would be examined legally and if necessary a suitable amendment would be made. However, the reply was silent on the other deductions allowed

2.2.15 Excess deduction from turnover of sales

Rule 58 of the MVAT Rules, lays down the procedure for determination of the sale price and purchase price in respect of sale by transfer of property in goods involved in execution of works contract. As per Rule 58(1), deductions such as labour and service charges, amount paid as price for sub-contract, charges for planning, designing and architect fees, cost of consumables, cost of establishment of contractor to the extent relatable to supply of labour, etc., are admissible. As per the proviso below the above rule, where the contractor has not maintained accounts which enable proper evaluation of different deductions or if the accounts are not clear or intelligible, lump sum deduction at the rates provided may be made for determining the sale price for levy of tax.

a) Test check of records of BA/R&RA in four divisions revealed that in respect of 24 dealers, who had undertaken construction contracts for the periods 2005-06 to 2007-08, sale price was determined after deducting expenditure on salary, fuel charges, transportation charges, insurance, labour charges, etc., as shown in the profit and loss account.

Separate statements identifying the expenses actually debitible to the works contract executed by them were not kept on record. In the absence of which, lump sum deductions of ₹ 36.16 crore at 30 per cent [column no.5 of table below Rule 58(1)] should have only been allowed from the turnover of contract of ₹ 109.54 crore. Instead deductions of ₹ 64.18 crore were incorrectly allowed. This resulted in excess deductions from the taxable turnover and consequential short levy of tax of ₹ 2.51 crore on the differential sale price of ₹ 28.02 crore as shown in the following table:-

(₹ in crore)

Division	No of Dealers	Turn-over of W.C	Deduction allowed u/r 58(1)	Deduction allowed @ 30 per cent	Excess deduction allowed col 4 - 5	Short levy of tax as per ratio applicable on excess deduction in col. 6				Total Short levy
						4 per cent		12.50 per cent		
						Amount	Tax	Amount	tax	
1	2	3	4	5	6	7	8	9	10	11
Amravati	6	9.12	5.44	2.74	2.70	1.62	0.06	1.08	0.12	0.18
Nagpur	2	2.51	2.48	0.84	1.64	0.42	0.02	1.22	0.14	0.16
Nashik	14	95.12	54.73	31.89	22.84	5.86	0.23	16.98	1.89	2.12
Thane	2	2.29	1.53	0.69	0.84	0.56	0.02	0.28	0.03	0.05
Total	24	109.54	64.18	36.16	28.02	8.46	0.33	19.56	2.18	2.51

Further, the orders passed by the departmental authorities were not 'speaking orders' to confirm whether deductions were allowed on the basis of verification of facts.

b) Scrutiny of business audit records of one dealer in Amravati Division in June 2012 revealed that the sale proceeds of capital assets were not excluded from the turnover in respect of works contract and the deductions claimed under Rule 58 from the sale price of the contract were neither supported by requisite documents nor the working thereof was available on record. Under such circumstances lump sum deduction was allowable. Further, the sale price was also not apportioned in accordance with the purchase price of the materials involved in the execution of the contract for levy of tax. This resulted in short levy of tax aggregating ₹ 57.42 lakh as shown in the following table.

(₹ in lakh)

Particulars	2007-08				2008-09			
	As per AA		As per Audit		As per AA		As per audit	
GTO	1,134.69		1,134.69		746.63		747.01	
Sale of assets	--		5.62		--		5.60	
Balance	1,134.69		1,129.07		746.63		741.41	
Deduction u/r 58 (per cent)	514.97		338.72 (30)		384.12		222.42 (30)	
Balance	619.72		790.35		362.51		518.99	
Tax Rate (per cent)	4	12.5	4	12.5	4	12.5	4	12.5
Apportion Ratio (per cent)	60.45	39.55	38.90	61.10	66.91	33.09	39.02	60.98
Taxable Turnover	360.19	217.88	307.45	482.90	233.24	106.61	202.51	316.48
Tax	14.41	27.24	12.30	60.36	9.33	13.33	8.10	39.56
Tax on sale of asset	--		0.70		--		0.70	
Total tax	41.64		73.36		22.66		48.36	
Short levy			31.72				25.70	
Total short levy			57.42					

In the exit conference, the Department stated that case wise compliance would be submitted and if necessary, corrective action would be taken.

2.2.16 Incorrect deduction of purchases from units covered by the Package Scheme of Incentive

As per Rule 57(2) of MVAT Act, a registered dealer, in respect of any resale of goods, which is originally manufactured by a unit covered by the exemption mode of any Package Scheme of Incentives (PSI), can deduct from the sale price of the resale of such goods, an amount calculated in accordance with the formula provided.

During test check of records in Amravati, Nagpur and Nashik divisions, we noticed that in respect of six dealers engaged only in works contract, deductions of amounts totalling to ₹ 4.58 crore towards purchases made from dealers covered under the exemption mode of PSI were allowed from turnover

of sales, for various periods between 2005-06 and 2007-08, in the cases closed under BA/R&RA during 2008-09 to 2010-11. Since these purchases were not resold but utilised in works contract, deductions were not admissible under the said rule. This resulted in short levy of VAT of ₹ 40.52 lakh.

In the exit conference, the CST stated that legal opinion would be sought on the issue.

2.2.17 Excess allowance of set off

Under the provisions of Rule 52 of the MVAT Rules read with Section 48(5) of MVAT Act, set-off shall be allowed to the claimant dealer on taxes collected separately from him by the other registered dealer on purchases of capital assets and goods, which are debited to profit and loss account by the claimant dealer. However, in no case the amount of set-off on any purchases of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government treasury.

(i) As per Rule 53(4) of the MVAT Rules, in respect of a construction contracts, if the dealer has opted for composition scheme, the set-off shall be allowed after reduction of four *per cent* of purchase price of goods other than capital goods with effect from 20 June 2006. In respect of other than construction contract, set-off was admissible at 64 *per cent* of the purchase tax prior to and after 20 June 2006.

- During test check of a case closed¹⁸ in BA of Mumbai division, in February 2010, for the period 2006-07, we noticed that a construction contract dealer opted for the composition scheme, set-off was reduced at three *per cent* instead of the applicable rate of four *per cent* of purchase price of ₹ 1.95 crore. This resulted in excess allowance of set-off of ₹ 1.95 lakh.

(ii) As per Section 42(3) of the MVAT Act, 2002, a dealer who pays composition tax, shall pay five *per cent* of the total contract value in the case of construction contracts and eight *per cent* of such value in any other case with effect from 20 June 2006.

Prior to this date, a works contractor dealing in all types of contracts (construction and other than construction), was liable to pay lump sum tax by way of composition equal to eight *per cent* of the total contract value.

- In one case of Mumbai division, closed (July 2009) in BA for the period 2006-07, we noticed that a contract dealer who had paid tax under the composition scheme had collected tax from the customer at eight *per cent* (₹ 32.15 lakh) on turnover of sales of ₹ 4.02 crore instead of the applicable rate of 5 *per cent* (₹ 20.09 lakh). This resulted in excess collection of tax of ₹ 12.06 lakh. This excess collection was required to be forfeited to Government account as per the provisions of Section 29(10)(b) of the MVAT Act, but this was not done.
- Further non-forfeiture of excess tax collected also had implications relating to grant of set-off to the dealer. In this case, set-off of ₹ 6.24

¹⁸ Closed: means that assessment was finalised by the Department in business audit.

lakh was allowed to the dealer after reducing set-off of ₹ 9.78 lakh by 36 *per cent*. However, after 20 June 2006 set-off was required to be allowed after reduction of four *per cent* of the purchase price of ₹ 1.17 crore which worked out to ₹ 5.11 lakh. This resulted in excess grant of set-off of ₹ 1.13 lakh.

(iii) Under Rule 53(1) of the MVAT Rules, set-off on fuel is admissible after reduction of four *per cent* (three *per cent* with effect from 1 April 2007) of purchase price of taxable goods, however as per Rule 54(h), if the property of such goods is not transferred to any other person and is used in the erection of immovable property other than plant and machinery, no set-off is admissible.

- In Mumbai division, a building contractor was allowed set-off of ₹ 25.19 lakh, for the periods 2005-06, 2006-07 and 2008-09, on purchases of furnace oil at ₹ 2.85 crore in BA closed between May 2009 and January 2011. Since the property in furnace oil is not transferred in the works contract executed by him no set-off was admissible to him. This resulted in incorrect grant of set-off of ₹ 25.19 lakh.

(iv) Set-off on tax paid on purchases is admissible to a dealer who utilises the goods in manufacture for sale, works contract, etc. As per Section 48(2), the claimant dealer is required to produce a tax invoice containing a certificate that the registration certificate of the selling dealer was in force on the date of sale by him and the due tax has been paid. Further, in no case the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of same goods actually paid into the Government treasury.

- In Nashik division, M/s Sadbhav Engineering Ltd, a dealer engaged in road construction work was allowed set-off of ₹ 6.89 lakh on purchase of cement pipes valued at ₹ 83.07 lakh, for the periods 2005-06, 2006-07 and 2007-08, in R&RA. The set-off was allowed on the basis of the purchase statement wherein tax paid was shown at 12.5 *per cent*. However, cement pipe was taxable at four *per cent* as per schedule entry C-72 to the Act, in which case set-off of ₹ 89,306 only was admissible.
- Further scrutiny of records, revealed that neither the tax invoices nor verification regarding exchange of credit/debit notes towards excess tax collection by the vendors was kept on record. The records also did not confirm whether the vendors had actually credited the entire tax collected at higher rate into the Government treasury as required in the provisions of the Act. Hence the excess allowance of set-off of ₹ 6 lakh was irregular.

In the exit conference, the Government and the Department stated that the compliance in these cases would be submitted and corrective action would be taken, if necessary.

2.2.18 Misclassification of sale as works contract

Under the provisions of the MVAT Act, the rate of tax leviable on any commodity is determined with reference to the relevant entry in schedule (A to E) to the Act. In case of lifts if it is sold as a chattel, it is covered by the

residual schedule entry E taxable at 12.5 *per cent*. In case the transaction for commissioning of lifts, etc., is treated as works contract it would be taxed either under Rule 58 or under the composition scheme as per section 42(3) depending upon what the dealer has opted for.

Based on the Supreme Court judgment (140-STC-22) in case of M/s Kone Elevators (India) Ltd. the Commissioner of Sales Tax issued a Trade Circular in September 2006 and made this judgement applicable for transaction effective from 1st April 2006 wherein the major component of the end-product is the material consumed in producing the chattel to be delivered and skill and labour are employed for converting the main components into the end-products, the skill and labour are only incidentally used, the delivery of the end-product by the seller to the buyer would constitute a sale of chattel and not works contract.

During test check of records of three dealers of Mumbai Division whose cases were closed in BA during 2009-10 and 2010-11, we noticed that, for periods between 2006-07 and 2008-09, turnover of sales aggregating ₹ 14.10 crore were treated as activity falling under works contract and taxed accordingly. However, detailed scrutiny by us revealed that the agreements between the employers and the dealers were for supply, erection and commissioning of lifts only. Thus the activities of these dealers squarely fall under the Apex Court judgement in the case of M/s Kone Elevators (India) Ltd, and the turnover of sales of ₹ 14.10 crore were liable to tax at 12.5 *per cent* as per Schedule E of the MVAT Act. Treating the transaction as covered by works contract resulted in short realisation of revenue of ₹ 60 lakh.

In the exit conference, the CST stated that the individual contracts would be verified in the light of decision of the Supreme Court judgement.

2.2.19 Incorrect grant of exemption from tax

(A) Works contract commenced prior to 01 April 2005

Under the provisions of Section 96(g) of MVAT Act, contracts awarded under the erstwhile Maharashtra Sales Tax on Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act 1989, but are continued after 1 April 2005 are liable to tax as per the provisions of the repealed Act. In such circumstances, the notification issued by the Government in March 2000 under the repealed Act, exempting works contracts awarded only by the State Government with effect from 1 April 2000 was applicable, hence would not cover works contracts awarded by Central Government, Government institutions, autonomous bodies and statutory corporations.

Scrutiny of R&RA records in Nagpur Division in May 2012 revealed that a dealer was allowed exemption from payment of tax on receipts amounting to ₹ 21.13 crore in respect of two works contracts allotted by the Vidarbha Irrigation Development Corporation (VIDC) prior to 1 April 2005 for the period from 2005-06 to 2007-08.

Similarly, scrutiny of records in Amravati Division in June 2012 revealed that a dealer was allowed exemption from payment of tax on works contract

receipts amounting to ₹ 5.35 crore during 2005-06 on works allotted by VIDC prior to 1 April 2005.

As VIDC is a statutory corporation, exemption of composition tax on the above receipts was irregular in view of the Government notification of March 2000. Non-levy of tax at four *per cent* on the receipts of ₹ 26.48 crore worked out to ₹ 1.06 crore.

In respect of the case relating to Nagpur Division, the Department accepted (September 2012) the audit observation and stated that a notice has been served on the dealer for assessment of the case. Reply in the case of Amravati Division is awaited (January 2013).

(B) Works contracts commenced after 1 April 2005

The Government of Maharashtra exempted tax in excess of four *per cent* on sales to Central/State Governments made on or after 1 August 2006 vide notification dated 28 July 2006. As per explanation (i) of the notification, this exemption is not available to sales made to the local bodies, Government undertaking and statutory corporations.

Scrutiny of R&RA records of one dealer in Nagpur Division in May 2012 revealed that the dealer was allowed exemption of tax in excess of four *per cent* on his contract receipts from VIDC of ₹ 3.05 crore for the period 2006-07. Since VIDC is a statutory corporation, the exemption was not admissible in view of explanation (i) of the notification. The short levy on account of the exemption worked out to ₹ 7.65 lakh.

After we pointed out the case, the Department accepted the observation (May 2012). A report on recovery has not been received (January 2013).

2.2.20 Conclusion

The internal control system to bring unregistered contractor dealers into the tax net by cross linkage of data with the employers, such as other Government Departments/Corporations/Local Bodies was weak. Further, the Departmental instructions for co-ordination between the TDS cell and Survey branch to detect and bring unregistered contractors into the tax net were either non-existent or ineffective. There were deficiencies in administration of MVAT Act, for deduction of tax at source. A number of contractors either remained outside the tax net, or disclosed their turnover of sales short, short recovery of TDS/excess claim of TDS credit and non-filing of returns. Deductions of sub-contract value were allowed by the Department merely on the basis of Form 406/407 without confirming actual payment of tax by the principal or the sub-contractor.

2.2.21 Summary of recommendations

The Government may consider:

- **developing a module with full details of TDS in MAHAVIKAS for filing e-return (Form 405) and for making e-payment compulsory in respect of TDS. TDS certificates may be generated online so that genuineness of the same can be ensured;**

- introducing a system of obtaining information relating to the payments made to the contractors periodically and cross checking the same with the data available in MAHAVIKAS for detecting unregistered dealers to prevent evasion of tax;
- introducing a mechanism for cross-linkage of records relating to the principal and the sub-contractors in order to detect cases of evasion of tax; and
- issuing necessary directions to the Department to draw up an action plan to complete the Business Audit cases as well as set a time frame for completion of the departmental audits so that under-declaration/short recovery of tax could be detected and recovered early.

2.3 Other audit observations

Our scrutiny of the assessment records of eight offices finalised under Bombay Sales Tax Act, 1959 (BST Act), Maharashtra Value Added Tax, 2002 (MVAT Act) and Central Sales Tax Act, 1956 (CST Act) in the Sales Tax Department revealed cases of non-observance of provisions of Acts/Rules, non/short levy of tax, irregular grant of exemptions and other cases as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till we conduct audit. There is need for the Government to improve the internal control system including strengthening of internal audit.

2.4 Non-observance of the provisions of Acts/Rules

The BST/MVAT/CST Acts and Rules empower/provide for:

- (i) levy of tax/interest/penalty at the rates prescribed in the Acts;
- (ii) adjustment of refunds under MVAT Act against dues under CST Act.

We noticed that the AAs, while finalising the assessments, did not observe some of the provisions of the Act/Rules and notification issued thereunder in cases mentioned in the paragraphs 2.4.1 to 2.4.6.

Maharashtra Value Added Tax Act, 2002

2.4.1 Non-levy of tax

Assistant Commissioner, Large Tax Payers Unit (ACLTU) D-002, Nashik Division

As per the provisions of the MVAT Act, all the goods which are not covered by Schedules A, B, C and D to the Act shall be covered by entry 1 of Schedule E and shall be taxable at the rate of 12.5 per cent.

Tobacco is a tax free goods covered by Schedule Entry A-45 of the MVAT Act. However, the explanation given under the entry specifically excludes *pan masala* i.e. any preparation containing betelnuts, tobacco, lime, catechu, etc. from the scope of the said entry.

During test check of the assessment and other relevant records of ACLTU in December 2010, we noticed in the case of business audit (closed in August 2008) of a reseller and commission agent in tobacco items, that sales of 'Gutkha' (*pan masala* containing tobacco etc.) amounting to ₹ 7.56

crore during 2006-07, was allowed as tax-free, treating the goods as covered under schedule entry A-45. In view of the explanation below the said entry, the commodity 'Gutkha' was liable to be covered by schedule entry E-1 instead of A-45, and hence taxable at the rate of 12.5 per cent. Misclassification of the commodity resulted in underassessment of tax at ₹ 114.53 lakh including interest of ₹ 20.07 lakh.

After we pointed out the case, the Department did not accept the audit observation stating that 'Gutkha' is a product covered under schedule entry A-45 of MVAT Act as tobacco and it also appears in 1st Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, hence the sale was correctly allowed as tax- free.

The reply of the Department is not tenable as the dealer has purchased and sold *pan masala* containing tobacco under the brand name 'RMD Gutkha' which is evident from purchase bills as well as sale bills and which is taxable in view of the explanation given under schedule entry A-45.

We reported the matter to the Government in April 2012; their reply has not been received (January 2013).

2.4.2 Short levy of Central Sales Tax

Deputy Commissioner of Sales Tax, E-001, Refund and Refund Audit, Pune Division

Under the provisions of Section 8 of the CST Act and rules made thereunder, with effect from 1 June 2008, tax is leviable at the rate of two *per cent* on sales made in the course of inter-state trade and supported by valid declarations in Form 'C'. Otherwise, tax is leviable at the rate applicable on sales inside the State. Besides, interest and penalty is also leviable as per the provisions of the MVAT Act. As per the circular issued by the Commissioner of Sales Tax in January 2006 a single declaration form covering all transactions in a period of three months is to be issued.

During test check of the Refund and Refund Audit files in September 2011, we noticed that a dealer had claimed concessional rate of tax on inter-

state sales valued at ₹ 84.66 lakh in his return for the quarter ending December 2009. Detailed scrutiny by us revealed that the 'C' form furnished by the dealer related to the inter-state transactions for the period May 2009 to September 2009. Thus the 'C' forms furnished by the dealer did not pertain to the relevant period for which refund audit was conducted and closed by the Department, and therefore, the concessional rate of tax was not admissible. Allowance of sale at concessional rate resulted in underassessment of Central Sales Tax of ₹ 8.89 lakh.

We pointed out the case in December 2011. The Department has not furnished any reply till date.

We reported the matter to the Government in April 2012; their reply has not been received (January 2013).

2.4.3 Non-levy of penalty

Deputy Commissioner, Refund and Refund Audit (DCRRA), E-705, Mumbai Division, Mumbai

Under the provisions of the MVAT Act, while or after passing any order under this Act, in respect of any person or dealer, the Commissioner, on noticing or being brought to his notice, that such person or dealer has concealed the particulars or has knowingly furnished inaccurate particulars of any transaction liable to tax or has concealed or has knowingly misclassified any transaction liable to tax or has knowingly claimed set-off in excess of what is due to him, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose upon him, in addition to any tax due from him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

During test check of the assessment records of DCRRA in April 2010, we noticed that, while accepting the returns filed (August 2009) by the dealer, who is a trader in paintings and sculpture, for the period 2007-08, claim of refund of ₹ 1.68 crore was admitted. Scrutiny of records revealed that the dealer had evaded tax on sales of ₹ 78.44 lakh on which tax of ₹ 9.28 lakh was levied by the Enforcement branch. This fact was also brought to the notice of Refund and Refund Audit branch by the

Enforcement branch. Our scrutiny revealed that neither the Enforcement branch nor the Refund Audit branch levied the penalty equal to the amount of tax evaded which was at ₹ 9.28 lakh. This resulted in non-levy of penalty of ₹ 9.28 lakh.

After we pointed out the case, in April 2010, the Department accepted the audit observation and rectified the mistake by passing order in June 2011 for levy of penalty at ₹ 9.28 lakh against which the dealer has preferred an appeal. The report on the outcome of the appeal is awaited.

We reported the matter to the Government in March 2012; their reply has not been received (January 2013).

2.4.4 Incorrect adjustment of MVAT refund against CST dues

Deputy Commissioner of Sales Tax (DCST), E-023, Business Audit, Pune Division

Every dealer is required to furnish separate returns in respect of the local sales under MVAT Act and interstate transactions under the CST Act. Further, a dealer whose turnover of sales or purchases exceeds ₹ 40 lakh in a year is required to submit an audit report in form 704 prepared by a chartered accountant.

As per rule 55 of the MVAT Rules, 2005, if the dealer has claimed refund under MVAT in the returns and dues in respect of interstate transactions in the CST returns then the refund under MVAT can be adjusted against the dues under CST provided a refund adjustment order for the amount adjustable is issued in respect of that period.

During test check of the business audit files of DCST in November 2011, we noticed that, for the periods 2005-06, 2006-07 and 2008-09, forms in 704 prepared by the chartered accountant indicated refunds of ₹ 48.15 lakh in respect of 14 dealers under MVAT. In all these cases the dealers concerned had shown dues in the CST returns for the corresponding periods. While passing the assessment orders under the CST Act, between March 2009 and March 2011 in respect

of these 14 dealers the Department had adjusted amounts aggregating ₹ 48.15 lakh against the corresponding dues under CST, however, in none of these cases the business audit had been completed or refund adjustment order had been passed as prescribed in the rules. This resulted in incorrect adjustment of refunds aggregating ₹ 48.15 lakh under MVAT Act against the tax payable under the CST Act.

After we pointed out the case, the DCST stated that necessary action would be taken.

We reported the matter to the Government in April 2012; their reply has not been received (January 2013).

Bombay Sales Tax Act, 1959

2.4.5 Non-levy of purchase tax

Deputy Commissioner of Sales Tax (DCST), B-155, Borivali Division

Under the provisions of BST Act, Rules and notifications issued thereunder, certain class of purchases was exempt from payment of tax, subject to conditions prescribed therein. If the conditions were not complied with, purchase tax was leviable on the purchase price of such goods at the rate specified in the schedule to the Act. The amount of tax paid on such purchases was to be set-off against the purchase tax so leviable. Besides, surcharge and interest at the prescribed rates were also leviable under the provisions of the Act.

During test check of the assessment and other records of DCST in June 2008, we noticed in the assessment of a dealer, who was manufacturer-exporter of pharmaceutical goods, for the period 2004-05, (assessed in June 2007), that purchase of packing material valued at ₹ 1.69 crore was exempted from tax on declarations in

Form G-1. However, as per notification entry G-5 under which the Form G-1 was issued, the packing material so purchased was required to be used for packing of goods to be exported to a place outside India and the goods packed are purchased for the purpose of complying with the agreement or order for or in relation to such export. Our scrutiny revealed that even though the above condition was not complied with by the dealer, purchase tax was not levied during assessment which resulted in under assessment of tax of ₹ 7.42 lakh. Besides, interest was also leviable as per the provisions of the Act.

After we pointed out the case, in July 2008, the Department accepted the observation and revised the assessment in May 2011 raising additional demands of tax of ₹ 7.42 lakh along with interest of ₹ 2.61 lakh against which the dealer has preferred an appeal which is still pending. A report on recovery is awaited.

We reported the matter to the Government in March 2012; their reply has not been received (January 2013).

2.4.6 Short levy of interest

Deputy Commissioner of Sales Tax (DCST), B-115, Worli Division

2.4.6.1 During test check of the assessment and other relevant records of DCST in May 2011, we

Under the provisions of Section 33(4) of the Bombay Sales Tax Act, if any dealer fails to comply to notice for producing books of accounts, the assessing officer shall assess, to the best of his judgement (*ex-parte* assessment), the amount of tax due from the dealer. Under the provisions of Section 33D, a dealer can apply in writing for cancellation of any assessment order within thirty days of its service on him on the grounds that he was not able to attend or remain present at the time of the passing of the assessment order and the assessing officer may cancel the assessment including any interest and penalty levied in consequence of the said assessment and issue a fresh order including levy of interest and penalty.

Under the provisions of Section 36(3)(b) of the Bombay Sales Tax Act, 1959, if any tax has remained unpaid for any period of assessment, then the dealer was liable to pay by way of simple interest at the rate of two *per cent* (1.25 *per cent* with effect from July 2004) of such tax for each month or part thereof from the date immediately following the date on which the period for which the dealer has been assessed expires till the date of order of assessment.

noticed that a dealer trading in used assets, bullion and gold coins was assessed *ex-parte*, for the period 2003-04 in February 2009. This *ex-parte* assessment order was cancelled in March 2009 on the basis of application received from the dealer. The dealer was assessed afresh in September 2010. Our scrutiny revealed that the Assessing Authority (AA) had levied interest on the dues of ₹ 1.07 crore arising out of the fresh assessment order till the date of the *ex-parte* order and not till the date of the fresh assessment order. As the *ex parte* order was annulled, the levy of interest till the annulled

assessment order instead of the fresh assessment order was not in order. This resulted in short levy of ₹ 25.47 lakh.

After we pointed out the case in June 2011, the Department stated (January 2012) that the dealer had preferred an appeal against the assessment order and the audit point has been communicated to the appellate authority for consideration while deciding the appeal. A report on recovery is awaited.

2.4.6.2 We made a similar observation in February 2012 during the audit of the Sr. DCST, A-05, Worli Division wherein, a dealer in organic pigments chemicals etc. was assessed *ex-parte* for tax under the BST and CST Acts, for the period 2002-03 in March 2009. These orders were subsequently cancelled in April 2009 on the basis of application received from the dealer. The case was assessed afresh in September 2010 wherein the AA had levied interest on the dues of ₹ 1.19 crore under BST Act and ₹ 39.94 lakh under CST Act arising out of the fresh assessment order, till the date of the *ex-parte* order and not till the date of the fresh assessment order. Thus there was a short levy of interest of ₹ 26.68 lakh under BST Act and ₹ 8.99 lakh under CST Act.

After we pointed out the case, the Department did not accept the observation stating that as per various judgments, interest should be levied till the date of original assessment order hence the interest levied by AA till the date of *ex-parte* assessment order is correct.

The reply of the department is not correct as the fresh assessment order was also passed under the provisions of section 33, under which the original assessment order was passed hence interest should have been levied upto the date of fresh assessment order.

We reported the matter to the Government in March 2012 and May 2012; their reply has not been received (January 2013).

CHAPTER-III

EXECUTIVE SUMMARY

Trend of receipts	The revenue collection of the State under Stamp duty and Registration Fee increased by 68.51 <i>per cent</i> in 2011-12 as compared to 2007-08, it reduced from 18 <i>per cent</i> in 2010-11 to 16.44 <i>per cent</i> in 2011-12 as compared to the total receipt of the State.
Revenue Impact of Audit Reports	During the last five years, 2006-07 to 2010-11, we had pointed out in our Audit Reports cases of under assessments/non/short levy/loss of revenue of stamp duty, etc., interest and other irregularities with revenue implication of ₹ 175.01 crore in 280 cases. Of these, the Department had accepted audit observations in 76 cases involving ₹ 15.62 crore and had recovered ₹ 0.31crore in four cases.
Results of audit	<p>We reported underassessment, short levy, non-levy of stamp duty, loss of revenue etc., amounting to ₹ 147.19 crore in 387 cases on the basis of test check of records of stamp duty and registration fees conducted during the year 2011-12</p> <p>The Department accepted and recovered short levy and other deficiencies in 166 cases involving ₹ 7.20 crore, of which 10 cases involving ₹ 0.87 crore were pointed out during 2011-12 and rest during earlier years. In two cases, after the issue of draft paragraph in May 2012, Department recovered the entire stamp duty of ₹ 21.19 lakh in May 2012.</p>
What we have highlighted in this Chapter	<p>A performance audit report on "Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee" revealed the following:</p> <ul style="list-style-type: none"> • Registers were not maintained by the DDTP/ADTPs of the Valuation Cell for watching receipt of data required for preparation of Annual statement (ASR) from the Sub-Registrar offices. The data of only a few months and not of the entire year was considered for the preparation of the ASR. <p style="text-align: right;">(Paragraph 3.2.7.1 and 3.2.7.2)</p> <ul style="list-style-type: none"> • No module was developed in the software "Stamp and Registration Information Technology Administration" (SARITA) for transmitting the data to the Valuation Cell on the transactions where the consideration was higher than the market value as per ASR. No database of such transactions was maintained by the Department to facilitate trend analysis in the ASR. <p style="text-align: right;">(Paragraph 3.2.7.3)</p>

- In 2503 instruments the difference between the market value as per ASR and the consideration mentioned in the deeds was more than 50 *per cent* and in 1367 instruments the difference between the two values was more than 100 *per cent* indicating the ASRs did not reflect the true value of the property.

(Paragraph 3.2.7.4)

- The market value of the flats/shop/offices was incorrectly determined by applying the rates of new construction instead of residential/commercial rates prescribed in ASR resulting in short levy of SD of ₹ 2.59 crore.

(Paragraph 3.2.9.2)

- The area occupied by tenants were not mentioned in three instruments but the benefit of tenant property to the extent of ₹ 11.69 crore was allowed while determining market value of the property. This resulted in incorrect benefit of SD of ₹ 58.45 lakh.

(Paragraph 3.2.10)

- Non-adherence of the instructions in ASR for valuation of land, incorrect application of market value and misclassification of the property resulted in short levy of stamp duty of ₹ 12.32 crore.

(Paragraph 3.2.11)

- Unearned income of ₹ 5.52 crore was not considered for levy of stamp duty and registration fee resulting in short recovery of revenue of ₹ 24.16 lakh. Delay in circulation of notification resulted in short realisation of revenue of ₹ 98.21 lakh.

(Paragraphs 3.2.12 and 3.2.13.1)

Recommendations

The Department/Government may consider :

- developing a module in “ SARITA” for transmitting the data in respect of the transactions wherein the consideration was higher than the market value as per ASR to the DDTP/ADTP to facilitate trend analysis in preparation of ASR of the next year;
- Set up a system to ensure that ASR rates are based on the rates for entire year by specifying 12 months data for preparation of ASR on uniform basis every year;
- analysing the reasons for variation between the market value as per the ASR and the price realised in open market and initiate steps to minimise such variation; and
- prescribing a uniform system of valuation by preparing the necessary guideline for the ASR to

bring uniformity in determining market value of properties in development agreement and those in MIDC areas so that the valuations made are transparent and correct.

All the above recommendations were accepted by the Government in the Exit conference.

CHAPTER-III : STAMP DUTY AND REGISTRATION FEES

3.1 Introduction

3.1.1 Tax administration

At the apex level, Principal Secretary, Relief and Rehabilitation (R&R) heads the Department. The responsibility for overall administration of stamp duty and registration fee is entrusted with the Inspector General of Registration (IGR), Pune. He is assisted by the Additional Controller of Stamps, Mumbai, ten¹ Deputy Inspectors General of Registration (DIGs), nine² Assistant IGRs, six Collector of Stamps (COS) at Mumbai and Mumbai Suburban District (MSD), 32 Joint District Registrars and Collector of Stamps (JDRs and COS) and 465 Sub-Registrars (SRs) at district and taluka levels.

3.1.2 Trend of receipts

Actual receipts from Stamp Duty and Registration Fee etc., during the years 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table:

(₹ in crore)

Year	Budget estimate	Actual receipts*	Variation of receipt excess (+) / shortfall (-)	Percentage of variation of receipt from Budget	Total tax receipts of the State	Percentage of actual receipts vis-a-vis total tax receipts
2007-08	7,200.00	8,549.57	(+)1,349.57	(+)18.74	47,528.41	17.99
2008-09	9,600.00	8,287.63	(-)1,312.37	(-)13.67	52,029.94	15.93
2009-10	9,600.00	10,773.65	(+)1,173.65	(+)12.23	59,106.33	18.23
2010-11	10,478.86	13,515.99	(+)3,037.13	(+)28.98	75,027.10	18.01
2011-12	15,677.14	14,407.49	(-)1,269.65	(-) 8.09	87608.46	16.44

*Source :- Finance Accounts

As can be seen from the above table, though the revenue collection of the State under Stamp duty and Registration Fee increased by 68.51 *per cent* in 2011-12 as compared to 2007-08, it reduced from 18 *per cent* in 2010-11 to 16.44 *per cent* in 2011-12 as compared to the total receipt of the State.

3.1.3 Cost of collection

The gross collection in respect of Stamp duty and Registration Fee, the expenditure incurred on their collection and the percentage of such expenditure to the gross collection during the years 2009-10 to 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the preceding years are mentioned in the following table :

¹ Including one Dy. IGR, Headquarter at Pune and one Dy. IGR (Computerisation)

² Including one Assistant IGR in Stamp Office, Mumbai

(₹ in crore)

Sl. No.	Head of revenue	Year	Gross collection ³	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage of the preceding year
1.	Stamp duty and Registration Fee	2009-10	10,773.65	105	0.97	2.77
		2010-11	13,515.99	100	0.74	2.47
		2011-12	14,407.49	122.35	0.85	1.60

As seen from the above, the cost of collection in the State of Maharashtra, during the periods 2009-10 to 2011-12 is less as compared to the all India average for the corresponding preceding years.

3.1.4 Impact of audit reports

Revenue impact

During the last five years, 2006-07 to 2010-11, we had pointed out in our Audit Reports cases of under assessments/non/short levy/loss of revenue of stamp duty, etc., interest and other irregularities with revenue implication of ₹ 175.01 crore in 280 cases. Of these, the Department had accepted audit observations in 76 cases involving ₹ 15.62 crore and had recovered ₹ 0.31 crore in four cases. The details are shown in the following table:

(₹ in lakh)

Year	Total observations		Observations accepted		Amount recovered	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
2006-07	212	13,570.00	19	220.00	Nil	Nil
2007-08	9	2,582.00	3	56.00	1	11.00
2008-09	16	335.00	11	272.00	Nil	Nil
2009-10	28	496.84	28	496.84	1	2.70
2010-11	15	517.60	15	517.60	2	16.85
Total	280	17,501.44	76	1,562.44	4	30.55

As would be seen from the above the amount recovered is only two *per cent* of the amount of the accepted cases. The Department needs to take effective steps to recover the amount at least in those cases which have been accepted by the Department.

3.1.5 Results of audit

We reported underassessment, short levy, non-levy of stamp duty, loss of revenue etc., amounting to ₹ 147.19 crore in 387 cases as shown below, on the basis of test check of records of stamp duty and registration fees conducted during the year 2011-12:

³ Figures as per Finance Accounts

(₹ in crore)			
Sr. No	Categories	No. of cases	Amount
1	Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee (A Performance Audit)	1	16.14
2	Short levy due to under valuation of property	261	19.78
3	Short levy due to misclassification of documents	41	95.39
4	Incorrect grant of exemption of stamp duty and registration fees	16	5.90
5	Non-levy of stamp duty and registration fee.	21	2.34
6	Other irregularities	47	7.64
	Total	387	147.19

The Department accepted and recovered short levy and other deficiencies in 166 cases involving ₹ 7.20 crore, of which 10 cases involving ₹ 0.87 crore were pointed out during 2011-12 and rest during earlier years.

In two cases, after the issue of draft paragraphs in May 2012, Department recovered the entire stamp duty of ₹ 21.19 lakh in May 2012

A Performance Audit on “**Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee**” with a total financial effect of ₹ 16.14 crore and few audit observations involving ₹ 14.58 crore are included in the succeeding paragraphs.

3.2 Performance Audit on “Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee”

Highlights

- Registers were not maintained by the DDTP/ADTPs of the Valuation Cell for watching receipt of data required for preparation of Annual Statement of Rates (ASR) from the Sub-Registrar offices. The data of only a few months and not of the entire year was considered for the preparation of the ASR.

(Paragraph 3.2.7.1 and 3.2.7.2)

- No module was developed in the software “Stamp and Registration Information Technology Administration” (SARITA) for transmitting the data to the Valuation Cell on the transactions where the consideration was higher than the market value as per ASR. No database of such transactions was maintained by the Department to facilitate trend analysis in the ASR.

(Paragraph 3.2.7.3)

- In 2,503 instruments the difference between the market value as per ASR and the consideration mentioned in the deeds was more than 50 *per cent* and in 1,367 instruments the difference between the two values was more than 100 *per cent* indicating the ASRs did not reflect the true market value of the property.

(Paragraph 3.2.7.4)

- The market value of the flats/shop/offices was incorrectly determined by applying the rates of new construction instead of residential/commercial rates prescribed in ASR resulting in short levy of SD of ₹ 2.59 crore.

(Paragraph 3.2.9.2)

- The area occupied by tenants were not mentioned in three instruments but the benefit of tenant property to the extent of ₹ 11.69 crore was allowed while determining market value of the property. This resulted in incorrect benefit of SD of ₹ 58.45 lakh.

(Paragraph 3.2.10)

- Non-adherence of the instructions in ASR for valuation of land, incorrect application of market value and misclassification of the property resulted in short levy of stamp duty of ₹ 12.32 crore.

(Paragraph 3.2.11)

- Unearned income of ₹ 5.52 crore was not considered for levy of stamp duty and registration fee resulting in short recovery of revenue of ₹ 24.16 lakh. Delay in circulation of notification resulted in short realisation of revenue of ₹ 98.21 lakh.

(Paragraphs 3.2.12 and 3.2.13.1)

3.2.1 Introduction

Levy and collection of stamp duty (SD) is governed by the Bombay Stamp Act, 1958 (the Act) and registration fees (RF) by the Registration Act, 1908.

The stamp duty and registration fee is leviable on the consideration mentioned in the instrument or on the market value of the property whichever is higher. Market value means the price which such property would have fetched if sold in open market on the date of execution of such instrument. The market values of the properties are determined by the Government in accordance with the rules framed under Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 (DMVR). These rates are published yearly and are known as Annual Statement of Rates (ASR). The rates are arranged in the ASR in ward wise/zone wise manner for urban properties and *taluka* wise, village wise manner for rural properties. ASR also provides guidelines to work out the market value of the property.

The Joint Director of Town Planning and Valuation, Pune (JDTP) under Rule 4 of the DMVR is responsible for preparing the ASR for the properties situated in a *tahsil*, municipal corporation or local body in the state. He is required to submit the same to the Chief Controlling Revenue Authority (CCRA) i.e. Inspector General of Registration (IGR) for approval latest by 31st October of each year.

3.2.2 Organisational set-up

At the apex level, the Principal Secretary, Relief and Rehabilitation (R&R) Department is responsible for overall administration of Registration and Stamps Duty in Maharashtra. The responsibility for levy and collection of stamp duty and registration fee is entrusted to the Inspector General of Registration (IGR), Pune. He is assisted by the Additional Controller of Stamps, Mumbai, ten⁴ Deputy Inspectors General of Registration (DIGs), nine⁵ Assistant IGRs, six Collector of Stamps (COS) at Mumbai and Mumbai Suburban District (MSD), 32 Joint District Registrars and Collector of Stamps (JDRs and COS) and 465 Sub-Registrars (SRs) at district and taluka levels.

Preparation of ASR

A separate cell headed by the JDTP has been formed for preparation of ASR. The state has been divided into seven divisions for preparation of ASR. Mumbai Division is headed by the Deputy Director of Town Planning and valuation (DDTP) and other divisions are headed by Assistant Director of Town Planning (ADTP). The staff/officers in the 'Valuation Cell' are appointed by the Government in Urban Development Department, however, they are under the administrative control of IGR, Pune.

3.2.3 Audit objectives

We conducted the Performance Audit with a view to ascertain whether:

- Data collection, compilation, analysis, validation and inputs from the concerned Departments, local bodies were obtained and were adequate and correctly adopted in the preparation of ASR.

⁴ Including one Dy. IGR, Headquarter at Pune and one Dy. IGR (Computerisation)

⁵ Including one Assistant IGR in Stamp Office, Mumbai

- The rates and instructions in ASR were adequate and complete for determination of market value of all type of properties in all areas of the State.
- The Adjudicating, Registration and Town Planning and Valuation authorities had correctly applied the rates and instructions of ASR were followed for determination of market value of property.
- Effective internal control mechanism existed in the Department for prevention of loss or evasion of the duties and fee.

3.2.4 Audit criteria

The audit criteria for the Performance Audit are derived from the provisions of the following central and state laws:--

Central laws:-

- The Indian Stamp Act, 1908
- The Registration Act, 1908

State laws

- The Bombay Stamp Act, 1958
- The Bombay Stamp (Determination of True market value of property) Rules, 1995
- The Maharashtra Registration Manual Part-II
- Annual Statement of Rates of the selected districts for the period 2007-11
- Development Control Regulation for Greater Mumbai, 1991
- Notifications/Resolutions/Circulars issued by the Department/ Government.

3.2.5 Scope, methodology and reasons for selection of the Performance Audit

The Performance Audit was conducted between January 2012 and August 2012 for the period from January 2007 to December 2011. We selected two districts from Mumbai division and one district from each of the remaining seven divisions⁶ of the State. Thus nine⁷ out of 35 districts were selected. The selected districts consisted of 150 SRs and we selected 37 SRs by using the random sampling technique. Besides, IGR Pune and JDTP Pune, we selected DDTP, six ADTP offices, six COS at Mumbai and MSD, ten JDR and COS.

An Entry conference with the Principal Secretary, Relief and Rehabilitation (R&R), IGR, JDTP was held at Mantralaya, Mumbai on 24 February 2012. The draft Review Report was forwarded to the Government in September 2012 and the audit observations and recommendations were discussed in the

⁶ Amravati, Aurangabad, Latur, Nagpur, Nasik, Pune and Konkan

⁷ Amravati, Aurangabad, Latur, Mumbai, Mumbai Suburban District, Nagpur, Nasik, Pune and Thane

exit conference held in November 2012. The Principal Secretary, Relief and Rehabilitation Department, IGR, Pune and other senior officials from the Department attended the meeting. The replies given during the exit conference and at other point of time have been appropriately included in the relevant paragraphs.

Reasons for selection of the performance audit:- We had found during our local inspections of the Department of Registration and Stamps that the difference between the market value of the property determined as per ASR and the consideration mentioned in the instruments was large. Besides, undervaluation of property due to incorrect application of rates and instructions in ASR was noticed in a number of cases. We had not conducted any Performance Audit on the subject till date. As such we felt it was appropriate to conduct a Performance Audit on "Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee".

The Performance Audit revealed a number of system and compliance deficiencies which have been discussed in the subsequent paragraphs.

3.2.6 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Stamp and Registration Department in providing the necessary information and records to audit.

Audit findings

3.2.7 Preparation of Annual Statement of Rates (ASR)

3.2.7.1 Delay in submission of returns relating to preparation of ASR

During the test check of selected 37 SR offices, we noticed that no register was maintained by the DDTP/ADTPs of the Valuation Cell to watch the receipt of data required for

As per Rule 4(7) of DMVR, all the SRs were required to furnish an extract of the register in respect of the instruments in which the consideration for the subject property was more than the ASR, by 30th of the following month to the ADTP (Valuation Cell) for the preparation of ASR. Further, as per Rule 4(1), JDTP shall prepare ASR showing average rates of land and building situated in every Tahsil, Municipal Corporation or local body area and submit the same for approval to the CCRA latest by 31st October every year. In ASR, separate rates for agriculture land, non-agriculture land and probable non-agriculture land is given for influence area and village area. These returns are used for preparation of ASRs.

preparation of ASR from the Sub-Registrar offices. For preparation of ASR, timely receipt of the data is essential to facilitate trend analysis. Non-receipt or late receipt of the returns has a direct impact on the correctness of the preparation of ASR.

We called for the information regarding submission of returns to

the DDTP/ADTP from 37 selected SRs. The information received from 36⁸ SRs revealed the following:

- 15 SRs had sent the returns of all the months for the period 2007-11 to the ADTP, out of which, only ten SRs had sent the returns within the stipulated date. The delay in submission of returns ranged from one day to 318 days.
- In four SRs information regarding the returns sent to the Valuation Cell was not available with them.
- In 17 SRs, the returns were not sent for all the months to the Valuation Cell.

We cross checked the returns submitted by the concerned SRs to the concerned three⁹ ADTP of the Valuation Cell for the year 2011 which revealed the following:

- The number of returns and the information submitted to ADTP Aurangabad tallied with the information furnished by the concerned SRs.
- In ADTP Nagpur, 30 returns were received against 41 returns sent by the SRs.
- In ADTP Pune, 37 returns were received against 78 returns sent by the SRs.

Since no register was maintained by the concerned DDTP/ADTPs of the Valuation Cell to monitor the receipt of the returns required to be submitted by SRs, their timely/non-submission got unnoticed.

In ASR, separate rates are prescribed for agriculture, non-agriculture and probable non-agriculture land, but the three offices informed that the information was not being received correctly as discussed under:

- Two ADTP offices¹⁰ stated that information is not being received on the conversion of agriculture land to non-agriculture and probable non-agriculture to non-agriculture from the revenue authorities for revising the classification of survey numbers and their rates for preparation of ASR.
- ADTP Aurangabad stated that survey number in non-agriculture zone is included on the basis of information received from *Talathi*. DDTP and three ADTP offices¹¹ did not furnish information.

In the exit conference, Government stated that instructions have been issued to SRs to maintain register for ensuring timely submission of data by the Sub Registrars. Government further stated that instructions have been issued to Collectors to endorse copy of orders granting permission for Non Agriculture use of DDTP and ADTP offices.

⁸ SR II, Ulhasnagar did not furnish the information.

⁹ Aurangabad, Nagpur and Pune; other offices viz. DDTP Mumbai and ADTPs of Amravati, Nashik and Thane did not furnish the information.

¹⁰ Nagpur and Pune

¹¹ Amravati, Nashik and Thane

3.2.7.2 Preparation of ASR on the basis of inadequate data

The DMVR provides for submission of data by SRs of all the months in a year to DDTP/ADTP. Our scrutiny of the information collected from the DDTP/ADTP revealed that data of the entire period of the year was not considered for preparation of ASR as detailed below:

Name of the DDTP/ ADTP	Period of transaction considered for preparation of ASR	
	Urban Area	Rural Area
Amravati	January to July	January to April
Aurangabad	January to August	January to June
Mumbai	January to September	Not Applicable
Nagpur	January to September	January to June
Nasik	Information was not furnished to audit despite being called for in July 2012.	
Pune	January to July	January to May
Thane	January to July	January to April

Thus, data of all the months was not considered by the DDTP/ADTP in the preparation of ASR. Further, there was no uniformity in the period of data considered by the various DDTP/ADTP while preparing ASR. The data for the period from August/September/October to December for urban area and May/June/July to December for rural area was not considered at all in the preparation of ASR.

We recommend that the Government may prescribe specific 12 month's data for considering the preparation of ASR for rural and urban area.

In the exit conference the Government accepted our recommendation and issued instructions (November 2012) prescribing specific 12 month's data to be considered for preparation of ASR for rural and urban area.

3.2.7.3 Absence of database and data analysis

The Department introduced computerised registration of document by developing software "SARITA" (Stamp and Registration Information Technology Administration) in 2002 for registration of documents. However, no module was developed in the software for transmitting the required data¹² to the concerned DDTP/ADTPs of the Valuation Cell. No database of such transactions was maintained by the Department to facilitate trend analysis. In the absence of the necessary module and database, rates of ASR were revised without adequate analysis.

The Government may consider developing a module in "SARITA" for transmitting the data to the DDTP/ADTP in respect of the transactions wherein the consideration was higher than the market value as per ASR to facilitate trend analysis.

In the exit conference, the Principal Secretary agreed to take necessary action at Departmental level as per our recommendation.

¹² transactions where the consideration was higher than the market value as per ASR

3.2.7.4 Difference between consideration and market value as per ASR

In order to ascertain whether the rates prescribed in ASR reflect the true market value of the property, we listed 5,045 instruments wherein the consideration was more than the market value from the Token register¹³ (between 2007 and 2011) maintained by the selected SRs and obtained "Index-II"¹⁴ Statements" of these cases.

District wise analysis of "Index-II Statements" of these 5,045 instruments revealed huge variations between the market value as per ASR and the consideration in the instrument as mentioned in the following table:-

District	Total documents	Number of documents with percentage variation ranging			
		0-10	10-30	30-50	Above 50
Amravati	206	88	20	10	88
Aurangabad	140	18	15	15	92
Latur	306	115	30	12	149
MSD	965	172	174	134	485
Mumbai	839	143	126	119	451
Nagpur	419	115	64	58	182
Nashik	156	86	19	10	41
Pune	1,200	225	214	164	597
Thane	814	144	150	102	418
Total	5,045	1,106	812	624	2,503

As can be seen from above:

- Out of 5,045 'Index- II Statement', in 2,503 (49.61 *per cent*), the difference in market value as per ASR and consideration mentioned in the deeds was more than 50 *per cent* and in 1,367 out of 2,503, the difference between the two values was more than 100 *per cent*.
- In five districts, (Aurangabad, Mumbai, MSD, Pune and Thane) the difference between the two values was more than 50 *per cent* in 50 *per cent* or more of the selected 'Index- II Statements'.
- In three districts, (Amravati, Latur and Nagpur) the difference between the two values was more than 50 *per cent* in more than 40 *per cent* of selected 'Index-II Statements'.
- In Nasik district the difference between the two values was more than 50 *per cent* in 26 *per cent* of selected 'Index- II Statements'.

The above paragraphs indicate that the market value determined as per the ASR prepared does not reflect the true market value of the properties.

¹³ Token register is a register maintained by the SRs, which contains name of the parties, type of transaction, brief description of the property, consideration/market value amount of SD recovered, Document Number, signature, date, time of registration, etc.

¹⁴ Index-II statements is prepared by SRs showing inter-alia the details of parties involved in the transaction, description of the property, type of document, amount of consideration, amount of market value as per ASR, SD and RF recovered.

In the exit conference, the Principal Secretary stated that the variation may be by virtue of some other factors like monopoly value, higher specifications, and high quality infrastructure and so on. Preparation of ASR is a continuous process and refinement to ASR is done every year with the available resources including staff. As preparation of ASR progresses, the variations will be minimised year by year.

We recommend that the Department may analyse the reasons for variation between the market value as per the ASR and the price realised in open market and initiate steps to minimise such variation.

3.2.7.5 Non-implementation of ASR prepared for the year 2009

As per rule 4(3) and 4(4) of the DMVR, the CCRA shall, by an order, issue ASR every year on first day of January. If CCRA is not in a position to issue ASR on first day of January in any year due to any administrative difficulties, the rates mentioned in the ASR for the immediately preceding year may be incremented by the CCRA in consultation with JDTP keeping in view the increase in market rates of immovable properties.

The ASR for the year 2009 was prepared for implementation from first day of January 2009. We noticed that the Minister of State (Revenue) gave an assurance in the Legislative Council to continue the rates of ASR of 2008 in the year 2009. It was decided in a meeting held on 27 December 2008 between the Revenue minister, CCRA and JDTP that for the time

being, ASR of 2008 shall be continued for the year 2009.

Our analysis of documents registered and SD recovered between 1 July 2009 and 31 December 2009 and corresponding period in 2008 revealed that 9,13,448 documents were registered in 2009 as compared to 8,22,962 documents in 2008 and SD and RF of ₹ 5,684.61 crore was realised in 2009 as compared to ₹ 3,970.30 crore in 2008. Though there was increase of 11 *per cent* in number of documents registered and 43.17 *per cent* in revenue realised in the second half of the year 2009, no mid-term review to assess the possibility of application of rates of ASR for the year 2009 was made by the Department.

In the exit conference the Principal Secretary stated that the DMVR do not provide for revision of ASR in mid year as such mid-term review could not be conducted.

We recommend that the Government may consider making provision for mid-term review in a year in the DMVR.

3.2.8 Non-availability of the adequate mechanism in ASR to evaluate the property in MIDC area

Under the DMVR, SD on the instrument such as agreement to lease/ lease

As per Rule 4 (6) of the DMVR, when an instrument is presented for registration, the registering authority shall determine the market value as per the rates prescribed in ASR. However, if the property is sold or allotted by Government, Semi-Government body, a Government undertaking or a local authority on the basis of predetermined price, the value so determined, shall be the true market value of the property.

deed in respect of plots situated in MIDC areas involving transactions between MIDC as a lessor and party as a lessee, is to be levied on predetermined¹⁵ price. However, in case of subsequent transfer of lease by way of assignment with the

permission of MIDC, the market value of the property should have been determined as per rates prescribed in ASR.

We noticed that the market value of the properties for MIDC areas had not been prescribed in ASR, except for Wagle industrial area in Thane district. The market value of the properties in Wagle industrial area was determined as per rates prescribed in ASR. However, due to absence of separate rates in ASR for properties in other MIDC area like Pimpri industrial area, Bhosari industrial area, Latur MIDC area etc, the market value of the properties was worked out at the rate of land prescribed by MIDC and rate of construction as per ASR. We noticed that Chief Executive Officer, MIDC, Mumbai had not revised the rates of land in MIDC area during August 2008 to January 2012 and all the documents registered between August 2008 and December 2011 were valued at the rate in August 2008. Thus, Department was following two methods of valuation of property, one for Wagle and another for other MIDC areas, this was fraught with the risk of loss of Government revenue.

After we pointed out in June 2012, the Principal Secretary in exit conference (November 2012) agreed to incorporate separate zones for properties in MIDC area indicating the rate thereof in the ASR from the year 2013.

3.2.9 Instructions in ASR for valuation of development agreements

During test check of cases, we noticed that different practices were followed for determination of market value of developers share and considerations of the owners in respect of joint venture for development.

Market value of property has been arrived on the basis of cost of construction as per ASR in place of rates of residential/non-residential rates of ASR. These cases are discussed in the succeeding paragraphs.

¹⁵ Predetermined price is worked out by the MIDC on the basis of rates of land in MIDC area prepared by the Chief Executive Officer, MIDC, Mumbai (CEO, MIDC).

3.2.9.1 Lack of uniformity for levy of stamp duty

As per section 27 of the Act, where the amount or value of the subject matter of any instrument cannot be ascertained on the date of its execution, nothing shall be claimable under such instrument more than the highest amount or value of which, the stamp duty has been actually paid on the date of such execution.

During the test check of four development agreements in COS, Kurla and Andheri, we noticed that the owners executed development agreement for development of land.

The executants agreed to develop the property as a joint venture on "revenue sharing basis". We noticed that uniform procedure was not followed by these COS at the time of adjudication of the documents to work out the value of the property and the consideration as stated below:-

Method applied in first case: Two development agreements were examined in COS, Kurla, in one development agreement it was mentioned that the owner shall retain one third of total revenue and balance two third revenue shall be with the developer. In another case, the sharing between the owner and the developer was in the ratio of 43 and 57 *per cent*. The COS determined the permissible built up area on the basis of FSI of 1.4 of the area of land and apportioned it on the basis of ratio of sharing between the owners and the developers.

The market value of developers share was determined by applying the rate of open land prescribed in the ASR. The market value of the owners share was determined by applying the rate of construction and was treated as consideration. SD was levied on the higher of the two values.

Method applied in 2nd case:- In COS Andheri, we noticed that in two development agreements, the sharing between the owner and the developer was in the ratio of 45 and 55 *per cent*. The COS determined the permissible built up area on the basis of FSI of 1.4 of the area of land and determined the market value of permissible built up area as per the rate of land prescribed in ASR.

The market value so determined was apportioned on the basis of ratio of sharing between the owners and the developers. SD was levied on the market value of share of developer being higher than market value of share of owner.

The sharing of revenue is indeterminate at the stage of execution. In such cases, there were no instructions regarding determination of value and different offices were following different methods. The risk of taking undue advantage of such a situation cannot be ruled out.

We recommend that the Department may consider prescribing a uniform system of valuation by preparing the necessary guideline for the ASR to bring uniformity in determining market value of properties in development agreement so that the valuations made are transparent and correct.

In the exit conference the Principal Secretary stated that separate guidelines will be prepared to bring uniformity in determining market value of properties in development agreement.

3.2.9.2 Incorrect valuation of construction components given as consideration by the developer

As per order No. 684 of the Maharashtra Registration Manual Part-II (Manual), where the developer offers to allot residential/non-residential components to the owner in lieu of the development rights, the value of residential/non-residential components should be calculated according to the prevailing rates prescribed in the statistics on the day of execution. The SD and RF should be levied on the higher of the two values i.e.; the value of the property and the value of residential and non-residential components.

During the test check of 27 development agreements adjudicated/registered in COS, Thane City, COS, Pune City and six¹⁶ SR offices, we noticed that the developer had agreed to allot residential/non-residential components like flats/shop/offices to the owners in lieu of grant of development rights of the property. The COS/SR determined the market value

of the flats/shop/offices by applying the rates of new construction prescribed in the ASR and levied SD of ₹ 2.48 crore on ₹ 65.23 crore. The market value of the flats/shop/offices by applying the residential/commercial rates prescribed in ASR along with cash consideration works out to ₹ 129.02 crore on which SD of ₹ 5.07 crore was leviable. This led to short levy of SD of ₹ 2.59 crore.

After we pointed out (between January and July 2012), the Principal Secretary stated (November 2012) that applications of rates in these cases is a debatable matter and the matter has been referred to the Law and Judiciary Department for clarification.

3.2.10 Irregular grant of benefit in valuation of the tenant occupied property

As per instruction number '1' of ASR, where the land situated in Mumbai is sold along with the old building with tenants, the market value is determined by considering permissible built up area (FSI), area occupied by the tenant and total monthly rent of all the tenants.

As per the instructions of ASR, Market value of the area occupied by the tenant is determined on the basis of 112 times the total monthly rent. After deducting the area occupied by tenants from the

permissible built up area, market value of remaining area is determined as per rate of land prescribed in the ASR. Aggregate of both the values is the market value of the property. Further, as per note below instruction 2 of ASR, benefit of tenanted property is available only if tenant gives at least two of the eight prescribed documents to support tenancy for last five years and should form the part of the instrument. Further, area occupied by tenant is required to be stated in detail in the recitals of the instrument.

During the test check of two instruments of conveyance and a deed of assignment in three¹⁷ COS, we noticed that the details of area occupied by tenants were not stated in the recital of the instruments. Statement showing the

¹⁶ SR-IV, SR-XIII, SR-XV and SR Shirur in Pune, SR-II Kalyan and SR-III Kalyan

¹⁷ Andheri, Borivali and Enforcement-II, Mumbai

area occupied by the tenants was obtained by the COS at the time of adjudication but it was not made a part of the instruments. The area of properties mentioned in above instruments was 7,496.92 sq m on which 10,495.69 sq m of FSI was permissible and the area occupied by the tenant as per statement was 5,811.56 sq m. Since the area occupied by tenant was not mentioned in the instrument, the market value should have been determined without considering the area occupied by tenant. Accordingly, the market value of the property works out to ₹ 22.40¹⁸ crore. However, the Department worked out the market value of the property by considering the area occupied by tenant at ₹ 10.71¹⁹ crore. Thus, determination of market value of land without observing the instruction of ASR resulted in grant of irregular benefit of ₹ 58.45 lakh in stamp duty due to incorrect determination of market value to the extent of ₹ 11.69 crore.

In the exit conference the Principal Secretary stated that instructions will be issued to incorporate area occupied by tenants in the instrument and the signed annexure showing details of the area occupied by the tenant shall form the part of the document. However, the reply was silent about the action taken in this case.

Compliance Issues

3.2.11.1 Non-compliance or incorrect interpretation of instructions of ASR

ASR consists of various instructions that are required to be applied for determination of market value by the adjudicating and registering authority.

Our scrutiny in nine offices revealed that the adjudicating and registering authorities have not complied with the instructions of ASR which

led to incorrect determination of market value and consequent short levy of SD and RF of ₹ 1.62 crore in 34 instruments registered/adjudicated between April 2008 and December 2011. A few cases are mentioned in the following table:

¹⁸ Permissible FSI x rate of land for one FSI as per ASR. i.e., $\{(1,960.70 \times ₹ 22,700) + (5,665.55 \times ₹ 20,500) + (2,869.44 \times ₹ 22,100)\} = ₹ 22.40$ crore

¹⁹ Market value = {(Permissible FSI minus area occupied by tenant) x rate of land for one FSI as per ASR} plus (112 times of monthly rent of all the tenants).

That is $\{(1,960.70 - 1,300) \times ₹ 22,700\} + (₹ 2,205 \times 112) = ₹ 1.52$ crore (A)

$\{(5,665.55 - 2,723.80) \times ₹ 20,500\} + (₹ 7,694 \times 112) = ₹ 6.12$ crore (B)

$\{(2,869.44 - 1,787.76) \times ₹ 22,100\} + \{(₹ 1,331 \times 112) + (187.51 \times 1.2 \times ₹ 49,400 \times 0.60)\} = ₹ 3.07$ crore (C).

Out of area occupied by tenant of 5,811.56 sq m the Department disallowed 187.51 sqm due to non-submission of proof of tenancy.

Total (A) + (B) + (C) = 10.71

(₹ in crore)

COS/ SR	No. of instruments and case No.	SD Leviable/ levied/ Short levy	Nature of irregularity
SR Haveli IV Pune.	2 (Doc 12324 and 12325 of 2011)	<u>1.22</u> <u>1.04</u> <u>0.18</u>	Instruction 17 of ASR prescribes five slabs for valuation of bulk land on percentage basis.
SR-I Nashik	2 (Doc 6142 & 5698 of 2011)	<u>0.25</u> <u>0.23</u> <u>0.02</u>	We noticed in four instruments of conveyance deed registered between July 2011 and December 2011 that the SRs incorrectly determined the market value as ₹ 25.57 crore by applying incorrect slab rates. The value of land for areas involving 4,001 sq m to 10,000 sq m was 70% of the rate of land and above 10,000 sq m was 60%, of the rate of land but the SRs incorrectly applied rate of 60% and 50% respectively for these two slabs. The correct market value works out to ₹ 29.51 crore. Application of incorrect slab led to undervaluation of the property and consequent short levy of SD of ₹ 20 lakh.
After this being pointed the Government and the Department accepted the audit observation. A report on recovery has not been received (January 2013).			
COS Thane City	1 (ADJ 642/2011)	<u>1.33</u> <u>1.15</u> <u>0.18</u>	As per instruction 17 of ASR, if land is sold after consolidating different pieces of land, the slab rate for valuation of bulk land shall not be applied on the consolidated area. We noticed that in an instrument of conveyance adjudicated in August 2011, the property sold included seven pieces of land bearing different survey numbers. The aggregate area of land was 30,870 sq m. The market value of ₹ 23 crore was incorrectly determined by applying slabs of concession on aggregate area. The correct market value by applying slabs separately for each piece of land works out to ₹ 26.56 crore. This resulted in short levy of SD of ₹ 18 lakh.

The matter was referred to the Department and to the Government in July 2012; their reply has not been received (January 2013).

3.2.11.2 Incorrect determination of market value of property

As per section 31 of the Act, when an instrument, whether executed or not, is brought to the Collector by one of the parties to the instrument to have the opinion as to the duty with which it is chargeable, the Collector may determine the stamp duty. Further, to determine the duty, the Collector, may require to be furnished, all the facts and circumstances affecting the chargeability of the instrument with duty for determining the market value.

Our scrutiny in four COS and SR XIII Haveli, Pune revealed that the adjudicating and registering authorities have determined the market value of the property sold, leased and given for development incorrectly due to incorrect determination

of area of property/FSI, non-consideration of parking area, application of rates of incorrect zone, valuing the property situated in different floors of the multi storied building by considering the aggregate area instead of valuing

separately considering the floor position etc. This has resulted in short levy of SD of ₹ 3.60 crore. The reply of the Department and reasons for non-acceptance thereof are detailed below:

(₹ in crore)

COS/SR	No. of instruments SD leviable SD levied SD short levied	Nature of irregularity
1	2	3
COS Andheri	<u>1</u> <u>5.17</u> <u>2.39</u> 2.78	An unexecuted lease agreement for grant of lease of a semi finished building having ground plus 10 storey for running a medical and health centre was adjudicated in November 2010. We noticed from the architect report attached to the document that built up area of the building was 6750 sq m out of which area of a hall involving 185.87 sq m was not transferred to the lessee. The market value of 6,564.13 sq m worked out to ₹ 114.89 crore. However, the COS determined the market value at only ₹ 60.32 crore on the basis of built up area of 3,101.66 sq m mentioned in the schedule of property. This resulted in undervaluation of property of ₹ 54.57 crore and consequent short levy of SD.
Remarks: - After this being pointed out COS Andheri stated that the area mentioned in the schedule has been considered for determining the market value, as such it is correct. The reply furnished is not correct as the area mentioned in valuation report of the architect for determining the lease rent of the property was 6,750 sq m and the yearly rent of ₹ 1.50 crore was worked out on this area. Out of this only one hall involving 185.87 sq m was not transferred. Thus the area of remaining property worked out to 6,564.13 sq m. This valuation report attached with the documents should have been taken into account for determination of the correct value of the property.		
COS Mumbai	<u>1</u> <u>2.12</u> <u>2.02</u> 0.10	A leave and license agreement was entered into for lease of office premises situated at four different floors along with 125 car parking area. The market value should have been determined separately for each floor at ₹ 169.80 crore. However, the COS determined the market value of ₹ 162.40 crore by consolidating the areas of all four floors.
Remarks: - After this being pointed out COS Mumbai accepted the omission and stated that steps are being taken to recover deficit SD.		
COS Enf-I, Mumbai	<u>1</u> <u>0.26</u> <u>0</u> 0.26	A development agreement was executed between the MIG Co-operative Housing Society and the developer. Besides cash consideration of ₹ 112.51 crore, the developer agreed to provide carpet area of 20,518.40 sq m to the existing members. The COS determined the cost of construction of carpet area at ₹ 27.08 crore and SD was levied on the total consideration at ₹ 139.60 crore. We noticed from the document that the developer had agreed to provide 336 car parking area admeasuring 4,620 ²⁰ sq m to the members. The cost of construction of car parking areas was not considered by the COS. The cost of construction of car parking area works out to ₹ 5.08 crore which should have been considered for determining the consideration. Thus, non-consideration of car parking area resulted in short levy of SD of ₹ 26 lakh.
Remarks:- After this being pointed out COS Enforcement-I Mumbai stated that the construction cost for new structure for society members and tenants is a liability for the developer which is to be deducted for determination of market value. Reply is not acceptable as the cost of construction of parking spaces given free of cost needs to be included for determination of market value.		

²⁰ As per Development Control Rules standard car parking area for one car is 13.75 sq m

1	2	3
COS Pune (Rural)	<u>1</u> <u>0.13</u> <u>0.09</u> 0.04	Land admeasuring 28,000 sq m along with factory building having constructed area of 1,913.56 sq m was transferred. The market value of ₹ 2.32 crore was determined by considering rate of ₹ 360 per sq m instead of ₹ 665 per sq m prescribed in ASR and by allowing concession of bulk land. The correct market value works out to ₹ 3.31 crore by applying correct rate of ₹ 665 per sq m as per ASR and without allowing concession of bulk land. This resulted in undervaluation of property amounting ₹ 0.99 crore and consequent short levy of SD
Remarks: - After this being pointed out COS Pune (Rural) accepted the omission for levy of incorrect rate but did not accept the disallowance of bulk land concession. Reply is not acceptable since the land sold was along with building, concession of bulk land is not allowed.		
SR-XIII Pune	<u>1</u> <u>0.87</u> <u>0.45</u> 0.42	An agreement for transfer of occupancy rights was made for land admeasuring 4.398 hectares bearing General Land Register (GLR) survey number of 244. SR determined the market value at ₹ 9 crore. We noticed that rate of land bearing GLR survey number 244 has not been mentioned in the ASR. However, by adopting lowest rate of ₹ 6,050 per sq m prescribed for GLR and survey number in zone 37/554 of Khadki cantonment, the market value works out to ₹ 17.54 crore. This resulted in under valuation of the property at ₹ 8.54 crore and short levy of SD
Remarks: - After this being pointed out the SR stated that final reply will be given after ascertaining the correct area of the land from the Khadki cantonment board. Final reply is awaited (January 2013).		

3.2.11.3 Misclassification of instruments

For the purpose of stamp duty, the Collector may determine the article of Schedule I of the Act under which the stamp duty shall be leviable, in cases where an instrument, whether executed or not, is brought to the Collector by one of the parties to the instrument to have the opinion as to the duty with which it is chargeable under section 31 of the Act.

Our scrutiny of records in two COS revealed that title of the property in four instruments was misclassified/ misinterpreted resulting in short/non levy of SD of ₹ 7.10 crore as detailed in the following table:-

(₹ in crore)

COS/ ACOS	No. of Instruments Stamp duty Leviable Levied Short levy	Nature of Irregularity in brief
COS Enf-I Mumbai	3 <u>11.20</u> <u>6.72</u> 4.48	The National Textile Corporation limited (NTC) submitted integrated development scheme (IDS) of seven textile mills. Under the scheme, the entire area of land of seven mills was regarded as one, as per the DCR 1991. On surrender of land of 34,576 sq m to the Municipal Corporation of Greater Mumbai (MCGM) against reservation of recreation ground (RG), the NTC got FSI of 45,987 sq m which can only be utilised on the land within the scheme, out of which the NTC has put 2,00,000 square feet of RG FSI for auction vide e-auction notice dated 21 February 2011 and sold to different parties. The subject matter of the property was treated as Transfer of Development Rights (TDR) as movable property instead of FSI as immovable property. This led to short levy of SD. After we pointed out, COS Enforcement-1, Mumbai stated that the FSI is in two forms, one which is used on the same land and other that may be used on another land in the form of TDR. The purchaser used the FSI in the form of TDR on land other than the RG and hence, it is virtual transfer of FSI in the form of TDR. Thus, the subject matter of the property was TDR and is treated as a movable property. SD at the rate of three <i>per cent</i> was correctly levied on the consideration. The contention of the Department is not acceptable as the entire land under the IDS scheme was treated as one under the provisions of DCR 1991 and the FSI generated by surrender of RG. FSI was to be utilised within the IDS land. Further, the NTC has floated e-tenders for sale of RG FSI hence the transaction was related to sale of FSI and not TDR. It should have been treated as immovable property for levy of SD.
Thane Rural	1 <u>2.62</u> <u>0</u> 2.62	An agreement was executed in 2008 between M/s Evershine Developers as vendor and Enigma Constructions Private Limited as purchaser for sale of FSI of 1,55,628.15 sq m out of land admeasuring 8,83,211 sq m for a consideration of ₹ 200.11 crore on which SD of ₹ 10 crore was levied. Subsequently, conveyance deed was executed in March 2009 between the same parties for sale of one half of the same land. The adjudicating authority levied one <i>per cent</i> cess of ₹ 2 crore on consideration of ₹ 200.11 crore as differential duty since SD of ₹ 10 crore was already levied on agreement of 2008. However, as per the recitals of the documents, the correct subject matter of this conveyance deed was land admeasuring 3,63,341.42 sq m being one half of 8,83,211 sq m after deducting FSI of 1,55,628.15 sq m already sold. The market value works out to ₹ 43.72 crore on which SD should have been levied. After this being pointed out COS, Thane (Rural) stated that earlier deed of sale of FSI and the present deed of conveyance of one half of the property was executed between the same parties, since SD of ₹ 10 crore was recovered on earlier deed, differential cess of one per cent was recovered on the present deed as the same is executed in pursuance of the earlier deed. Reply is not relevant as in the conveyance deed, land admeasuring 3,63,341.42 sq m being one half of 8,83,211sq m after deducting FSI of 1,55,628.15 sq m was transferred and SD should have been charged on this area.

3.2.12 Short realisation due to non-addition of unearned income

As per Section 25 of the Act and explanation thereunder, where the property is sold and is subject to mortgage or other encumbrances, any unpaid mortgage money or money charged shall be deemed to be part of the consideration for the sale, whether or not the purchaser expressly undertakes with the seller to pay the same or indemnify the seller if the seller has to pay the same.

During the test check of cases adjudicated/registered in three offices (COS Nasik, SR XV Pune and SR Niphad) we noticed in the recitals of six out of the seven cases that the landholders have accepted the consideration mentioned in the instrument, as the purchasers have agreed to pay unearned income²¹ of ₹ 5.52 crore. In one instrument, the

purchaser had already made payment of unearned income on behalf of the seller in addition to the agreed consideration. However, while levying SD, the adjudicating/registering authorities have not considered the amount of unearned income in addition to the consideration resulting in short levy of SD of ₹ 24.16 lakh.

This also had an effect on preparation of ASR as the data of cases where the consideration was more than the market value remained unreported.

In the exit conference the Principal Secretary directed the COS/SRs to submit the replies. SR Haveli XV, Pune accepted (November 2012) the omission. Reply from remaining two offices has not been received (January 2013).

3.2.13 Internal control

3.2.13.1 Loss of revenue due to delay in circulation of notification

As per Registration Act, 1908, registration fee (RF) is leviable on registration of instruments at the rate of one *per cent* on the market value of the property or the consideration whichever is higher, subject to maximum of ₹ 30,000. Government in R&FD by notification dated 16 February 2009 deleted the restriction of “subject to maximum of ₹ 30,000” with effect from 17 February 2009.

We found that implementation of the said notification from 17 February 2009 was stayed by the Government from 1 March 2009. Thus, the notification was operative from 17 February to 28 February,

2009. During the scrutiny of information received from 35 out of 37 selected SR offices, we noticed that 19 SRs applied pre-revised rates of registration fee in respect of 137 instruments involving market value/consideration more than ₹ 30 lakh, which were registered between 17 February 2009 and 28 February 2009. This resulted in short realisation of registration fee of ₹ 98.21 lakh.

²¹ As per Government Resolution (GR) of 9 July 2002 issued by Revenue and Forest Department, on granting permission to sell Government land, the occupant of land shall pay unearned income at 50 *per cent* of market value of land as on date of order granting such permission or price realised by way of sale, whichever is higher.

In the exit conference the Principal Secretary accepted the observation. However progress made in recovery has not been received (January 2013).

3.2.13.2 Delay in disposal of revision cases

Information obtained from IGR office revealed that 377 cases were pending for revision at the

As per section 53 of the Act, any person aggrieved by an order of the Collector of Stamps may, file an appeal to the CCRA within sixty days from the date of receipt of such order. Further, when by mistake or otherwise, any instrument is charged with less duty than leviable thereon, or is held not chargeable with duty by the Collector, the CCRA may, within the period of six years from the date of certification under sections 32, 39 and 41, require the party to produce the instrument and after giving a reasonable opportunity of being heard to the party, examine such instrument and order for recovery of duty, if any, which is short levied.

level of CCRA for a period ranging from one year to 20 years as detailed in the table below:

Age of pendency	Number of Cases
11-20 years	64
1-10 years	303
Below 1 year	10
Total	377

Thus, 377 cases were pending due to failure on the part of Department to expedite the disposal of revision cases. Further, there was no system to safeguard the revenue, as the risk of the properties being transferred before finalisation of cases cannot be ruled out. In such an event, recovery of the deficit SD, if any, would never be possible.

3.2.13.3 Inadequate internal audit and internal inspection

As per the instructions issued by IGR, Pune internal audit wing is required to conduct monthly audit of six offices and DIGs/JDRs are required to inspect two offices of SRs per month.

An effective internal audit wing always acts as a deterrent to the occurrence of any major irregularity.

We noticed from the information furnished by IGR that as against yearly target of 72 units, in year 2010, only six audits were conducted and in the year 2011, only 29 units were audited. Information for the period from 2007 to 2009 has not been furnished.

As far as inspection of the SR offices to be conducted by DIG (for offices of SRs in Mumbai region) and JDR (for offices of SRs in other regions) are concerned, we noticed from the information furnished that during the period between 2007 and 2011, only JDR, Latur has achieved the target of 120 inspections. Three JDRs (Thane Urban, Thane Rural and Aurangabad) did not

conduct any inspection. JDR Pune Urban, JDR Pune Rural, JDR Amravati and JDR Nagpur Urban had conducted inspection of 14, 40, 41 and 16 SRs respectively as against 120 SRs each. Information from JDR Nashik and Nagpur Rural is still awaited. Information on inspection to be conducted by DIG has not been received. Thus, though system of internal audit and inspection is in place, it has not been effectively implemented.

3.2.14 Conclusion

The above findings reveal that the department needs to improve its system of preparation of rates for ASR on scientific basis. A reliable data base is essential for which monitoring system needs strengthening. A module needs to be developed for transmitting of data to the DDTP/ADTP. We also noticed different methods for valuations including those in Industrial areas. A uniform system of valuation is required to be prescribed so that the valuations made are transparent and correct. Periodical internal audit and inspection are also required to facilitate better compliance.

3.2.15 Recommendations

The Department/Government may consider;

- developing a module in “SARITA” for transmitting the data in respect of the transactions wherein the consideration was higher than the market value as per ASR to the DDTP/ADTP to facilitate trend analysis in preparation of ASR of the next year;
- set up a system to ensure that ASR rates are based on the rates for entire year by specifying 12 months data for preparation of ASR on uniform basis every year;
- analysing the reasons for variation between the market value as per the ASR and the price realised in open market and initiate steps to minimise such variation; and
- prescribing a uniform system of valuation by preparing the necessary guideline for the ASR to bring uniformity in determining market value of properties in development agreement and those in MIDC areas so that the valuations made are transparent and correct.

All the above recommendations were accepted by the Government in the ecxit conference.

3.3 Audit observations

During scrutiny of records of the various registration offices, we noticed several cases of non-compliance of the provisions of the Bombay Stamp Act, 1958 and Government notifications and instructions and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on our test check of records. The Government/Department need to improve internal control mechanisms so that such cases can be avoided, detected and corrected.

3.4 Non-observance of the provisions of Act/Rules

The provisions of the Bombay Stamp Act, 1958 and Government notifications and instructions require:-

- i. Levy of stamp duty on market value of property;*
- ii. Levy of stamp duty at prescribed rate; and*
- iii. Levy of stamp duty as per the substance and real nature of transaction.*

We observed that the registering authorities did not observe some of the above provisions at the time of registration of documents in cases mentioned in the succeeding paragraphs.

3.4.1 Short levy of stamp duty due to incorrect application of rate

Superintendent of Stamps, Mumbai

As per section 33 of Bombay Stamp Act (BS Act), 1958, if an instrument chargeable with duty is produced or comes in the performance of any person having authority to receive evidence shall impound the instrument, if it appears to him that such instrument is not duly stamped. Further, stamp duty (SD) on development agreement is leviable at the rate of one *per cent* upto 4 June 2008 and thereafter, at the rate of five *per cent* as leviable on conveyance on the market value of the property or the consideration, whichever is higher. The market value of the property is worked out by applying the rates of the ready reckoner applicable to the area in which the property is situated.

During the test check of cases of impounding in November 2009 we noticed that five instruments of development agreement were impounded and the Collector of Stamps levied stamp duty of ₹ 2.03 crore at the rate of one *per cent* on the market value of ₹ 202 crore treating the date of execution of agreement prior to 5

June 2008. We noticed that:

- The date of execution was either not mentioned in the document or mentioned in ink on photocopy without proper attestation by the executors.
- The date of impounding was not recorded in the register.
- The endorsement/certificate under section 32 was given by the Collector of Stamps, Enforcement-II Mumbai on 21 June 2008 but

while putting endorsement as “IMPOUNDED under section 33” he failed to scribe the date at place below his signature.

- No application of submission of document under action of impounding was available on record.
- Subject document bears no date of impounding as mandated for the purpose of chargeability of stamp duty on the document.

Thus, stamp duty on the instruments should have been charged at the rate of five *per cent* amounting to ₹ 10.10 crore. Incorrect application of rate by not exhibiting the date of execution led to short levy of stamp duty of ₹ 8.07 crore.

After we pointed out (December 2009), the Inspector General of Registration (IGR), Pune accepted the omission in September 2011 and directed to recover the deficit stamp duty. While delivering the judgment IGR Pune stated that there was gross negligence on the part of Lower Authority in processing the file and performing official duty and directed to initiate independent administrative enquiry and necessary action. The report on realisation of deficit stamp duty has not been received (October 2012).

The matter was reported to the Government in March 2012; their reply has not been received (January 2013).

3.4.2 Short levy of stamp duty due to misclassification of instrument

Joint Sub Registrar, Haveli-I, Pune, Joint Sub Registrar, Haveli-13, Pune, Joint Sub Registrar-I, Ulhasnagar, District Thane, Collector of Stamps, Borivali, Mumbai and Superintendent of Stamps, Mumbai

As per the provisions of Bombay Stamp Act (BS Act), 1958, stamp duty on instrument of conveyance and development agreement is leviable at the rate of five and one *per cent* respectively on the true market value of the property. Where in the case of agreement to sell an immovable property, the possession of immovable property is transferred or agreed to be transferred to the purchaser, such agreement shall be deemed to be a conveyance. Further, for charging stamp duty, the instrument is not to be treated by the name it appears but by the substance or real nature of the transaction as derived from its recitals. Maharashtra Registration Manual also provides that if the owner agrees to sell the property to the developer in the development agreement it should be treated as an agreement to sell and charged as conveyance.

3.4.2.1 During the test check of registered documents of Joint Sub Registrar Haveli-I, Pune in January 2009, we noticed that an agreement of development was executed and registered in March 2007. The Department levied stamp duty of ₹ 17.50 lakh at the rate of one *per cent* on the consideration

value of ₹ 17.50 crore. We noticed from the recitals of instrument that:

- The owners agreed for absolute transfer of land along with building thereon in lieu of consideration, which includes the cost of construction.

- Developers are entitled to either demolish or make use of the structures as they may deem fit.
- The developers have all the rights of future conveyance of the property etc..

Therefore, the instrument should have been treated not as agreement of development but as an agreement to sale on which stamp duty of ₹ 87.50 lakh at the rate of five *per cent* was leviable. Thus, misclassification of instrument led to short levy of stamp duty of ₹ 70 lakh.

After we pointed out (February 2009), the Joint District Registrar, Grade-I, Pune city accepted the omission in May 2010 and directed to recover the deficit stamp duty. The Sub Registrar stated that note of incumbrance has been made on the property card. The report on recovery has not been received (January 2013).

3.4.2.2 In another case, during the test check of registered documents of Joint Sub Registrar, Haveli-13, Pune in February 2009, we noticed that an agreement of development was executed and registered in May 2007. The Department levied stamp duty of ₹ 2.16 lakh at the rate of one *per cent* on the consideration of ₹ 2.16 crore.

We noticed that the owners transferred the right to develop the land, construct residential/ commercial tenements on it and sell them or sell the vacant land without prior consent/confirmation of the owner. The owners had handed over the possession of land on permanent basis. The instrument should have been treated as an agreement to sale on which stamp duty of ₹ 10.80 lakh at the rate of five *per cent* was leviable. Thus, misclassification of instrument led to short levy of stamp duty of ₹ 8.64 lakh.

After we pointed out (March 2009), the Inspector General of Registration, Pune accepted the omission in June 2011 and directed to recover the deficit stamp duty. The report on realisation of deficit stamp duty has not been received.

The matter was reported to the Government in June 2012; their reply has not been received (January 2013).

3.4.2.3 During the test check of registered documents (November 2009) in Joint Sub Registrar-

The Government of Maharashtra amended the provision of article 48(f) of schedule to Bombay Stamp Act, 1958, by inserting clause ii (b) with effect from 5 June 2008. As per the amended provision, power of attorney when given to person other than close relatives, authorising to sell or transfer immovable property without consideration or without showing any consideration, stamp duty is leviable as is leviable on conveyance at the rate of five *per cent* on the true market value of the property. The market value of the property is worked out by applying the rates of ready reckoner applicable to the area in which the property is situated. Further, registration fee at the rate of one *per cent* of market value is also leviable.

I, Ulhasnagar, District Thane, we noticed that 128 instruments of power of attorney executed on stamp papers of ₹ 100 and ₹ 200 were registered between June 2008 and December 2009. Sub Registrar classified these

instruments as general power of attorney and levied stamp duty aggregating ₹ 0.16 lakh and registration fees aggregating ₹ 0.13 lakh. We noticed from the recitals of document that the power of attorney were executed without consideration in favour of persons other than close relatives authorising them to sign sale agreement or sale deed in favour of any person intending to purchase their immovable properties, execute and register sale deed in favour of any person. The instruments should have been classified under amended article 48(f) (ii) (b) on which stamp duty of ₹ 70.29 lakh and registration fee of ₹ 14.18 lakh was leviable at the rate of five and one *per cent* respectively. Thus, misclassification of instruments led to short levy of stamp duty of ₹ 70.13 lakh and registration fee of ₹ 14.05 lakh.

After we pointed out (December 2009), the Joint District Registrar Class-I, Thane accepted the omission in March 2010 and intimated (December 2011) after reviewing similar cases at our instance that apart from 128 cases noticed by us, short levy of stamp duty and registration fees amounting ₹ 9.21 crore and ₹ 1.65 crore respectively was noticed in 784 such instruments registered in 2008 and 1072 instruments registered in 2009. The report on realisation has not been received.

The matter was reported to the Government in March 2012; their reply has not been received (January 2013).

3.4.2.4 During the test check of adjudicated cases of Collector of Stamps, Borivali, Mumbai in August 2009, we noticed that a power of attorney executed in June

Under the provisions of Bombay Stamp Act, 1958, instrument of conveyance includes instruments by which movable or immovable property or interest therein is transferred to other person and is chargeable under article 25 of schedule I to the Act at the rate of ten *per cent* up to June 2004 and thereafter at the rate of five *per cent* on the true market value of the property. However, as per article 48(g) of the Act, power of attorney when given to a promoter or developer by whatever name called, only for construction, development of or, sale or transfer of any immovable property without transfer of rights, title and interest therein, the stamp duty is chargeable at the rate of one *per cent* on the market value of property upto 4 June 2008 and at the rate of 5 *per cent* thereafter. Further, registration fee at the rate of one *per cent* is also leviable.

2004 and registered in July 2004 stamped with stamp duty and registration fee of ₹ 100 each was presented for adjudication in April 2007. The adjudicating authority classified the instrument as Power of Attorney for development and levied stamp duty of ₹ 4.80 lakh at the

rate of one *per cent* on market value of ₹ 4.80 crore. Penalty of ₹ 0.19 lakh was also levied. We noticed from the recitals of document that the owners have entered into a Memorandum of Understanding to convey and transfer the property to the Attorney and that the right, title and interest in property have been transferred. Hence, the instrument should have been classified as conveyance and levied stamp duty of ₹ 48.05 lakh and registration fee of ₹ 0.30 lakh. Thus, misclassification of instrument led to short levy of stamp

duty of ₹ 43.25 lakh and registration fee of ₹ 0.30 lakh. Penalty of ₹ 35.46 lakh is also leviable.

After we pointed out (September 2009), the Inspector General of Registrations (IGR), Pune accepted the omission in September 2011 and directed the Collector of Stamps, Mumbai to recover the deficit stamp duty and registration fee along with penalty. The report on realisation of deficit stamp duty has not been received.

The matter was reported to the Government in January 2012; their reply has not been received (January 2013).

3.4.2.5 During the test check of records (November 2009) in Superintendent of Stamps, Mumbai, we

noticed that a supplementary agreement executed between the Firm and the Developers in June 2008 was impounded by the Department. The Department levied stamp duty of ₹ 5.85 lakh at the rate of one *per cent* on the market value of ₹ 5.85 crore treating the instrument as development agreement. We further noticed that the firm and the developer had executed a joint development agreement in March 2005. As per this agreement, out of the premises available for sale and disposal to probable purchasers, "The Firm" shall be entitled to 18 *per cent* of the constructed premises and remaining 82 *per cent* shall be of the "Developer". In the supplementary agreement, the firm has agreed to surrender and relinquish their right to acquire the said 18 *per cent* of the constructed premises in favour of the developer. The instrument should have been classified as release deed and levied stamp duty of ₹ 54.19 lakh at the rate of five *per cent* on the correct market value of ₹ 10.84 crore. Thus, misclassification of instrument led to short levy of stamp duty of ₹ 48.34 lakh.

As per the provisions of Bombay Stamp Act (BS Act), 1958, where a person renounces a claim upon other person or against any specified property stamp duty of rupees two hundred is leviable in case of release of ancestral property. In any other case stamp duty is leviable as on conveyance at the rate of five *per cent* on the market value of the property. Further, in case of development agreement, stamp duty is charged at the rate of one *per cent* on the market value of property upto 4 June 2008 and at the rate of 5 *per cent* thereafter.

agreement. We further noticed that the firm and the developer had executed a joint development agreement in March 2005. As per this agreement, out of the premises available for sale and disposal to probable purchasers, "The Firm" shall be entitled to 18 *per cent* of the constructed premises and remaining 82 *per cent* shall be of the "Developer". In the supplementary agreement, the firm has agreed to surrender and relinquish their right to acquire the said 18 *per cent* of the constructed premises in favour of the developer. The instrument should have been classified as release deed and levied stamp duty of ₹ 54.19 lakh at the rate of five *per cent* on the correct market value of ₹ 10.84 crore. Thus, misclassification of instrument led to short levy of stamp duty of ₹ 48.34 lakh.

After we pointed out (December 2009), the Inspector General of Registration, Pune accepted the omission in September 2011 and directed to recover the deficit stamp duty. The report on recovery has not been received.

The matter was reported to the Government in March 2012; their reply has not been received (January 2013).

Incorrect and irregular exemption of stamp duty

3.4.3 Incorrect exemption of stamp duty

Sub Registrar, Palghar, District Thane

The Government of Maharashtra under notification of June 2007 remits stamp duty on instruments of hypothecation, pawn, pledge, deposit of title deeds, conveyance, further charge on mortgage of property, lease, mortgage deed for starting a new industry/ extension of existing industry in group C, D and D+ areas and in no industry district, classified as such area under the package scheme of incentives, 2007 introduced under Government resolution Industries, Energy and Labour Department of March 2007. As per the provisions of Bombay Stamp Act, 1958, stamp duty on conveyance of immovable property within limits of rural area is leviable at the rate of three *per cent* on the true market value of the property.

During the test check of registered documents in August 2009, we noticed that an instrument of conveyance was executed in November 2007 for sale of land together with factory building situated at Tarapur industrial area, Palghar, Thane. The Sub Registrar worked out the market value at ₹ 14.62 crore and levied

stamp duty of ₹ 24.95 lakh after allowing 50 *per cent* concession under notification of June 2007. We noticed from annexure to Government resolution Industries, Energy and Labour Department of March 2007 that Palghar is classified under "Group A" area which is not covered under above notification and consequently not eligible for exemption of stamp duty. The stamp duty of ₹ 43.86 lakh was leviable on market value of property. Thus, irregular grant of exemption led to short levy of stamp duty of ₹ 18.91 lakh.

After we pointed out (September 2009), the Joint District Registrar Class-I, Thane Rural accepted the omission in December 2011 and directed the Sub Registrar to recover the deficit stamp duty. Although year after year similar observations have been pointed out by us, the Department is yet to put in place a mechanism to avoid recurrence of such cases. The report on realisation has not been received.

The matter was reported to the Government in February 2012; their reply has not been received (January 2013).

3.4.4 Irregular grant of concession on stamp duty

Collector of Stamps, Mumbai

The Government of Maharashtra under notification of October 2007 reduces fifty *per cent* of stamp duty chargeable under clause (b) of Article 25 of the Schedule I to the Bombay Stamp Act (BS Act), 1958 on the instrument of first conveyance of land executed for starting of new tourism unit or expansion of existing tourism unit in prescribed areas/zone. A tourism unit shall mean units certified by Maharashtra Tourism Development Corporation Limited. As per the provisions of BS Act, 1958, stamp duty on conveyance and transfer of lease by way of assignment is leviable at the rate of five *per cent* on the true market value of the property.

During the test check of registered documents in May 2011, we noticed that an unexecuted deed of assignment of lease cum conveyance for land along with building situated at Lower Parel, Mumbai for a consideration of ₹ 22 crore was submitted for

adjudication. The Collector of Stamps determined the market value at ₹ 22.34 crore and levied stamp duty of ₹ 55.86 lakh after allowing fifty *per cent* concession under notification of October 2007. We noticed from the contents of instrument that the deed was not an instrument of first conveyance but was transfer of lease by way of assignment which is not covered under the notification. Thus, irregular grant of concession led to short levy of stamp duty of ₹ 55.86 lakh.

After we pointed out (June 2011), the Inspector General of Registration, Pune accepted the omission in December 2011. The report on recovery of realisation has not been received.

The matter was reported to the Government in March 2012; their reply has not been received (January 2013).

3.4.5 Short levy of stamp duty due to undervaluation of property

The market value of the property is worked out by applying the rates of the ASR applicable to the area in which the property is situated.

During the test check (between October 2009 and May 2011) of registered documents (between January 2008 and October 2009), we noticed that undervaluation of property resulted in short levy of stamp duty of ₹ 1.49 crore. The details are mentioned in the following table:

Sl. No.	O/o the SR/ JSR	SD leviable (₹ in lakh)	SD levied (₹ in lakh)	SD short levied (₹ in lakh)	Irregularities in brief
1	Joint Sub Registrar City III, Mumbai	131.21	42.50	88.71	The market value on an instrument of lease of land with building for a period of 99 years, was determined as ₹ 8.50 crore. The correct market value based on ASR for the year 2009 applicable to the area in which the property is situated was ₹ 29.16 crore.
2	Joint Sub Registrar (Class II), No. I, Akola	39.08	20.78	18.30 0.04 ²²	On seven instruments of conveyance registered between February 2009 and October 2009, the SR determined market value of ₹ 4.16 crore. The correct market value based on ASR applicable to the area in which the property is situated was ₹ 7.81 crore.
3	Collector of Stamps, Mumbai	37.17	21.15	16.02	An unexecuted instrument of leave and license for a term exceeding 116 months was adjudicated by the Collector of Stamps. The market value was incorrectly determined as ₹ 16.92 crore instead of ₹ 29.73 crore as per ASR.
4	Joint Sub Registrar Haveli-VI, Pune	16.55	5.36	11.19	On an instrument of development agreement market value of ₹ 5.36 crore was determined instead of ₹ 16.55 crore.
5	Joint Sub Registrar VI, Nagpur	10.78	2.97	7.81	On an instrument of conveyance, the SR determined the market value of ₹ 0.54 crore instead of ₹ 1.96 crore
6	Joint Sub Registrar-III, Jalgaon	15.47	8.55	6.92	On an instrument of conveyance, the SR determined market value of ₹ 1.71 crore. The correct market value based on ASR for the year 2008 works out to ₹ 3.09 crore.
Total		250.26	101.31	148.99	

After we pointed out these cases (between November 2009 and June 2011), the Department accepted (between September 2010 and January 2012) the omissions and directed to recover the deficit SD.

The matter was reported to the Government in May 2012 and June 2012; their reply is awaited. However, the SRs intimated (October 2012) that full recovery has been made in cases at serial number three and four of above table. Further, out of seven cases at serial number two, recovery of ₹ 2.61 lakh has been made in one case and in remaining six cases note of incumbrance has been made in the property card.

²² Short levy of registration fee of rupees four thousand in one conveyance deed.

3.4.6 Short levy of stamp duty due to incorrect application of section 4 of B.S. Act, 1958

During the test check of registered documents of Joint Sub Registrar, Haveli-19, Pune in March 2011, we noticed that

As per section 4 of the Bombay Stamp (B.S.) Act, where, in the case of any development agreement, sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in schedule-I for conveyance, development agreement, mortgage or settlement and each of other instruments shall be chargeable with a duty of one hundred rupees instead of the duty prescribed for it in that schedule. Provided that the parties may determine the principal instrument and the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments. Further, as per section 33A, when through mistake or otherwise any instrument which is not duly stamped is registered, the registering authority may call for the original document and impound it. Stamp duty on sale deed was leviable at the rate of 10 *per cent* upto 30 June 2004 and thereafter, at the rate of five *per cent*. However, where in the case of agreement to sell an immovable property, the possession of immovable property is transferred or agreed to be transferred to the purchaser, such agreement shall be deemed to be a sale. Stamp duty on development agreement was leviable at the rate of one *per cent* on the market value of the property upto 4 June 2008.

a sale deed was executed and registered in April 2009 between owners, purchaser and consenting party for sale of land situated at village Balewadi within the limits of Pune Municipal Corporation for a consideration of ₹ 50 lakh. Prior to execution of this sale deed, the vendors/owners had executed a development agreement in July 2005 with the consenting party referred as developer therein for a consideration of ₹ 50 lakh on which stamp duty of ₹ 0.50 lakh at the rate of one *per cent* was

levied. Thereafter, they decided to sell out the property to the intending purchaser and executed this sale deed in April 2009 with third party namely Nandan Associates. The market value of property as per ready reckoner for the year 2009 works out to ₹ 1.95 crore on which stamp duty of ₹ 9.75 lakh and registration fee of ₹ 0.30 lakh is leviable. However, the Sub Registrar (SR) worked out the stamp duty of ₹ 2.50 lakh at the rate of five *per cent* on the consideration value of agreement made in 2005 and recovered stamp duty of ₹ 2 lakh after adjusting the stamp duty of ₹ 0.5 lakh paid at the time of development agreement. Incorrect application of section 4 of B.S. Act, 1958 resulted in short levy of stamp duty of ₹ 7.75 lakh and registration fee of ₹ 0.30 lakh.

After we pointed out (March 2011), the Joint District Registrar and Collector of Stamps Pune city accepted (January 2012) the short levy. The details of recovery have not been received (January 2013).

The matter was reported to the Government in June 2012; their reply has not been received (January 2013).

3.4.7 Short levy of stamp duty due to non-consideration of material alterations

Joint Sub Registrar Class-II, Nagpur-VI

During the test check of records in November 2010, we noticed that two development

As per the provisions of section 14 of the Bombay Stamp Act (BS Act), 1958, where due to material alterations made in an instrument by a party, the character of the instrument is materially or substantially altered, then such instrument shall require a fresh stamp paper according to its altered character. Further, article 60 of schedule I of the Act provides that in case of transfer of lease by way of assignment, stamp duty is leviable as on conveyance at the rate of five *per cent* on the market value of the property. The market value is worked out by applying the rates of ready reckoner applicable to the area in which the property is situated.

agreements were executed in July and August 1993 for development of 7962.30 sqm leasehold lands situated within the Municipal limits of Nagpur. The development agreements were adjudicated²³ by the Collector of

Stamps, Nagpur in October 1997 by working out market value of ₹ 1.35 crore. Since the development agreements were not registered within the prescribed time limit, confirmation²⁴ deed was executed in March 2009. The Department levied stamp duty of ₹ 6.08 lakh on the market value of ₹ 1.35 crore. On comparing the agreement of August 1993 with the confirmation deed of March 2009, we noticed that material alterations²⁵ were made in the confirmation deed leading it as transfer of lease and not a development agreement. In confirmation deed the society was referred as "party No.1, the Seller society", N. Kumar Construction Company Private Limited as "party No.2, the Purchaser" and Link House Industries Limited as "party No.3 the Consenter" whereas the development agreement of August 1993 was executed between the society (party No.1, the seller), Link House Commercials Limited (Developer/party No. 2) and M/s N. Kumar Construction Company (Confirming party/party No. 3). Further, in confirmation deed it was stated that the seller society by virtue of lease deed is the sole and exclusive owner with leasehold ownership rights of the land and agreed to sell the said entire land to the purchaser company (N. Kumar Construction Company Private Limited "the party No.2"); whereas in agreement of 1993 it was stated that the society/party No.1 agreed to permit and the confirming party/party No.3 (N. Kumar Construction Company) has consented and confirmed to assign and permit the developer/party No.2 (Link House Commercials Ltd) to develop the land. We also noticed that based on the agreement, the society executed sale deed with N. Kumar Construction Company Private Limited, the Purchaser on

²³ **Adjudication** means determining the chargeability of stamp duty on instruments by an authority mentioned in the Act.

²⁴ **Confirmation:** Acceptance of facts of the earlier document by the concerned parties.

²⁵ **Material alteration:** The changes made in the instrument so as to materially or substantially alter the character of the instrument are called material alteration.

March 31, 2009. Further, the clause in the development agreement of 1993 that the developer shall offer 20 *per cent* of the constructed built up area to the consenter was not included in the confirmation deed. The registering authority completely ignored the material alterations made in the confirmation deeds and levied stamp duty of ₹ 6.08 lakh on the market value of ₹ 1.35 crore. The confirmation deed should have been treated as fresh instrument of transfer of lease by way of assignment chargeable with stamp duty ₹ 49.76 lakh on the current market value of ₹ 9.95 crore on the basis of ready reckoner for the year 2009. Thus, non-consideration of material alterations in instruments led to short levy of stamp duty of ₹ 43.68 lakh.

After we pointed out (December 2010), the Collector of Stamps, Nagpur city accepted the omission in December 2011 and directed the Joint Sub Registrar Class-II, Nagpur-VI to initiate the recovery process. The report on recovery has not been received.

The matter was reported to the Government in March 2012; their reply has not been received (January 2013).

3.4.8 Short levy of stamp duty due to incorrect computation of market value

Jt. Sub Registrar, Haveli - XVII, Pune

As per the provisions of Bombay Stamp Act (BS Act), 1958, where the lease including sub-lease is for a period exceeding ten years but not exceeding twenty nine years, with a renewal clause contingent or otherwise, stamp duty is leviable as on conveyance, on 50 *per cent* of market value of the property. The market value of the property is worked out by applying the rates of ready reckoner applicable to the area in which the property is situated. The rate of stamp duty for movable and immovable property is three and five *per cent* respectively.

During the test check of registered documents in March 2011, we noticed that an instrument of lease was executed in January 2009 for lease of premises on first floor at Yashwantrao Chavan Memorial hospital, Pimpri Waghere for a period of twenty years. The Department

levied stamp duty of ₹ 7.70 lakh on market value of ₹ 1.54 crore. The details of working of market value were not available on record. The correct market value as per ready reckoner works out to ₹ 4.39 crore. We noticed from the terms of agreement that the lessor also agreed to provide machinery and equipments valuing ₹ 20.64 crore. Stamp duty leviable at the rate of five and three *per cent* on 50 *per cent* of market value of movable and immovable property works out to ₹ 10.98 lakh and ₹ 30.96 lakh respectively. Thus, incorrect computation of market value led to short levy of stamp duty of ₹ 34.24 lakh.

After we pointed out (April 2011), the Joint District Registrar and Collector of Stamps Pune City accepted the omission in December 2011 and directed the Sub Registrar to recover the deficit stamp duty. The report on realisation has not been received.

The matter was reported to the Government in January 2012; their reply has not been received (January 2013).

3.4.9 Short levy of stamp duty due to non-consideration of commercial complex in determining the market value

Joint Sub Registrar-VII, Nagpur

As per the provisions of Bombay Stamp Act (BS Act), 1958, where the lease including sub-lease is for a period exceeding twenty nine years stamp duty is leviable as on conveyance, on 90 per cent of market value of the property.

During the test check of registered documents in November 2007 we noticed that a supplementary agreement was executed in December 2005 by

Maharashtra Industrial

Development Corporation (MIDC) granting lease of commercial plot situated in industrial area in favour of M/s Surya Enterprises with the consent of original lessee and was registered on 23 February 2006. Another supplementary agreement was executed on 22 February 2006 by MIDC granting lease of same property in favour of M/s Rai Udyog Limited with the consent of M/s Surya Enterprises and was registered on 23 February 2006. The Department worked out the market value of ₹ 1.72 crore on both the documents and levied stamp duty of ₹ 6.47 lakh.

We noticed from the recitals of the document that the land was originally leased by MIDC to M/s VANRAI by an agreement (referred by the parties as principal agreement) in February 1997. As per clause 3 (m) of the agreement, the lessee shall not directly or indirectly transfer, assign, sell, encumber or part with their interest under or benefit of this agreement without the previous consent in MIDC. Based on this clause, M/s VANRAI requested the MIDC to transfer the said plot and execute an agreement in favour of M/s Surya Enterprises which the MIDC agreed to do upon M/s VANRAI joining such execution as confirming party. Accordingly, MIDC executed supplementary agreement in December 2005 with M/s Surya Enterprises on same terms and conditions of principal agreement. Meanwhile, MIDC granted permission to change the use of industrial land for commercial purpose in September 2004 and commercial complex consisting of shops having a built up area of 7396.87 square meters was completed in January 2006. Thereafter, M/s Surya Enterprises requested the MIDC to transfer the said plot and execute an agreement in favour of M/s Rai Udyog Limited for which the MIDC agreed to do upon M/s Surya Enterprises joining such execution as confirming party. Accordingly, MIDC executed supplementary agreement on 23 February 2006 with M/s Rai Udyog Limited on same terms and conditions of principal agreement. We also noticed that in both the agreements of December 2005 and February 2006 the transfer of lease was for the said plot and the commercial complex constructed thereon. However, the registering authority while valuing stamp duty completely ignored the value of commercial complex amounting ₹ 4.29 crore. Thus, failure to consider the market value of commercial complex resulted in undervaluation and consequent short levy of stamp duty of ₹ 23.17 lakh.

After we pointed out in December 2007, the Inspector General of Registration, Pune accepted the omission in July 2011 and directed the Sub Registrar to recover the deficit stamp duty. The report on recovery has not been received.

The matter was reported to the Government in May 2012; their reply has not been received (January 2013).

3.4.10 Short levy of stamp duty due to incorrect application of market rate

Joint Sub Registrar -III, Jalgaon

As per the provisions of Bombay Stamp Act (BS Act), 1958, where the lease including sub-lease is for a period exceeding twenty nine years stamp duty is leviable as on conveyance, on 90 *per cent* of the market value of the property. The rate of stamp duty for non-residential properties situated in rural areas and within the limits of municipal corporation is three and five *per cent* respectively. The market value of the property is worked out by applying the rates of ready reckoner applicable to the area in which the property is situated.

During the test check of registered documents in August 2010, we noticed that a lease deed was executed in June 2007 for lease of land for a period of thirty years for municipal solid

waste plant. The Department levied stamp duty of ₹ 0.89 lakh at the rate of three *per cent* on market value of ₹ 29.75 lakh by applying the market rate prescribed for rural area. We noticed that the survey number of property falls under rural area as well as within the municipal corporation limits of Jalgaon for which different market rate is prescribed. We also noticed from the recitals of document that the property is situated within the municipal limits. The correct market value of land, by applying the rates prescribed for municipal limits, works out to ₹ 1.73 crore on which stamp duty of ₹ 8.64 lakh at the rate of five *per cent* was leviable. Thus, incorrect application of market rate led to short levy of stamp duty of ₹ 7.75 lakh.

After we pointed out in September 2010, the Collector of Stamps, Jalgaon accepted the omission in August 2011. The report on realisation has not been received.

The matter was reported to the Government in April 2012; their reply has not been received (January 2013).

3.4.11 Short levy of stamp duty due to incorrect concession of bulk land

Joint Sub Registrar-VI, Nagpur and Joint Sub Registrar-VIII, Nagpur

As per the provisions of Bombay Stamp Act (BS Act), 1958, stamp duty on conveyance deed is leviable on the true market value of the property. The market value of the property is worked out by applying the rates of the ready reckoner applicable to the area in which the property is situated. The ready reckoner prescribes various slabs of concession for valuation of bulk land.

3.4.11.1 During the test check of registered documents of Joint Sub Registrar VI Nagpur in November 2010, we noticed that an instrument of

conveyance was executed in July 2009 for sale of land situated within the limits of Nagpur Municipal Corporation. The Department levied stamp duty of ₹ 18.82 lakh on market value of ₹ 3.42 crore worked out by allowing the concession of bulk land. We noticed that land under sale consisted of 52 plots of various sizes and hence, allowing the concession of bulk land was incorrect. The correct market value of land works out to ₹ 4.83 crore on which stamp duty of ₹ 26.59 lakh was leviable. Thus, undervaluation of property led to short levy of stamp duty of ₹ 7.77 lakh.

After we pointed out (December 2010), the Collector of Stamps, Nagpur City accepted the omission in October 2011 and directed the Joint Sub Registrar to recover the deficit stamp duty. The Sub Registrar stated that note of incumbrance has been made on the property card. The report on realisation of deficit stamp duty has not been received (October 2012).

3.4.11.2 During the test check of the registered documents of Joint Sub Registrar-VIII, Nagpur in November 2008, we noticed that an instrument of conveyance was executed in January 2007 for sale of plot situated within the limits of Nagpur Municipal Corporation. The Department determined the market value at ₹ 3.96 crore by allowing the concession of bulk land and levied stamp duty of ₹ 21.79 lakh. As the plot under sale is within the sanctioned layout, the concession allowed is incorrect. The correct market value as per ready reckoner for the year 2007 is ₹ 5.20 crore on which stamp duty of ₹ 28.61 lakh is leviable. Thus, incorrect allowance of concession of bulk land resulted in undervaluation of property and consequent short levy of SD of ₹ 6.82 lakh.

After we pointed out (November 2008), the Inspector General of Registration (IGR), Pune accepted the omission in May 2011 and directed the Joint District Registrar, class-I, Nagpur to recover the deficit stamp duty. The Sub Registrar stated that note of incumbrance has been made on the property card. The report on realisation of deficit stamp duty has not been received.

The matter was reported to the Government in January 2012; their reply has not been received (January 2013).

3.4.12 Escapement of stamp duty on earlier transaction

Joint Sub Registrar-VIII, Nagpur

As per the provisions of Bombay Stamp Act (BS Act), 1958, stamp duty on any agreement relating to giving authority or power to a promoter or a developer for construction or development of or sale or transfer of any immovable property, shall be levied at the rate of one per cent on the consideration or market value whichever is higher. As per section 33 of BS Act, 1958, if an instrument chargeable with duty is produced or comes in the performance of any person having authority to receive evidence shall impound the instrument, if it appears to him that such instrument is not duly stamped. Further, as per section 39(b) penalty shall be leviable at the rate of two *per cent* per month on the deficient portion of the stamp duty.

During the test check of registered documents in November 2010, we noticed that a sale deed was executed and registered in March 2009 for sale of land along with 45 years old building standing

thereon between owners and purchaser with the consent of the developer. The registering authority levied stamp duty of ₹ 33 lakh on consideration of ₹ 6 crore. We noticed from the recitals of document that prior to execution of this deed with the purchaser, the owners executed and registered a general power of attorney (POA) in favour of the developer in September 2007 authorising him to perform various acts including development of property for a consideration of ₹ 5.50 crore. On cross verifying this POA, we noticed that the consideration of ₹ 5.50 crore was not mentioned in the document and stamp duty of ₹ 100 was levied treating the document as POA without consideration.

After we pointed out, District Registrar and Collector of Stamps Nagpur accepted our observation and stated that stamp duty of ₹ 5.50 lakh at the rate of one *per cent* on ₹ 5.50 crore should have been levied on the said development agreement. He directed the sub registrar to initiate action under section 33 and 39(b). The report on realisation of deficit stamp duty has not been received (January 2013).

CHAPTER-IV

EXECUTIVE SUMMARY

Trend of revenue	The revenue collection under Land Revenue increased by 88.16 <i>per cent</i> in 2011-12 as compared to 2007-08.
Revenue Impact of Audit Reports	<p>During the last five years, 2006-07 to 2010-11, we had pointed out in our Audit Reports cases of under-assessments/non/short levy/loss of revenue of land revenue, etc., interest and other irregularities with revenue implication of ₹ 511.47 crore in 225 cases. Of these, the Department had accepted audit observations in 160 cases involving ₹ 13.14 crore and had recovered ₹ 7.51 crore in 67 cases. No recoveries have been made from 2008-09.</p>
Results of audit	<p>We reported under assessment, short levy, non-levy of Land Revenue, loss of revenue etc., amounting to ₹ 157.49 crore in 216 cases on the basis of test check of records relating to land revenue conducted during the year 2011-12.</p> <p>The Department accepted and recovered under assessments and other deficiencies involving ₹ 28.47 crore in 258 cases, of which 24 cases involving ₹ 0.46 crore were pointed out during 2011-12 and rest during earlier years.</p>
What we have highlighted in this Chapter	<p>The Department had not taken into account estimates of land improvement and construction cost as estimated by PWD for revision of unearned income resulted in short levy of unearned income at ₹ 42.36 crore.</p> <p style="text-align: right;">(Paragraph 4.2.2.1)</p> <p>Non-consideration of market value as on date of order while granting permission for change in use of Government land resulted in short levy of unearned income of ₹ 23.64 lakh.</p> <p style="text-align: right;">(Paragraph 4.2.2.2)</p> <p>Non-application of GR issued in April 2008 prescribing various slabs of concession for valuation of bulk land resulted in short levy of unearned income of ₹ 7.73 lakh.</p> <p style="text-align: right;">(Paragraph 4.2.2.3)</p> <p>Government was put to a loss of ₹ 50.04 lakh towards unearned income due to incorrect order passed by Revenue Minister despite the fact that the scheme of construction of house for economically weaker section sanctioned in 1994 was already cancelled and original allottee was allowed to sell the plots in open market by developing the layout.</p> <p style="text-align: right;">(Paragraph 4.2.2.5)</p>

Delay in determining and intimating final occupancy price resulted in loss of interest at ₹ 5.01 crore at Prime Lending Rate (PLR).

(Paragraph 4.2.3.1)

Levy of occupancy price at agricultural rate instead of non agricultural rate in respect of land allotted for schools, colleges, renewable energy projects, power projects, sugar factory and other commercial purposes resulted in short levy of occupancy price of ₹ 32.11 crore.

(Paragraph 4.2.3.2)

Levy of occupancy price considering market rate of Annual Statement of Rates (ASR) of earlier year than the year of allotment resulted in short levy of occupancy price of ₹ 5.97 lakh.

(Paragraph 4.2.3.3)

Occupancy price amounting to ₹ 1.46 crore was not recovered as Collector had not issued allotment order.

(Paragraph 4.2.3.4)

Occupancy price was short levied at ₹ 11.13 lakh as occupancy price in respect of eight additional member inducted in the society was not demanded by Collector.

(Paragraph 4.2.3.5)

Lease rent at ₹ 28.29 lakh was non/ short levied as Prime Lending Rate (PLR) was taken as 10.25 *per cent* instead of 11.50 *per cent* applicable to that year.

(Paragraph 4.2.4)

Non-adherence to Government norm of registering the agreement with the allottees in ten collectorates resulted in loss of revenue on account of stamp duty and registration fees at ₹ 6.61 crore.

(Paragraph 4.2.5)

CHAPTER - IV : LAND REVENUE

4.1 Introduction

4.1.1 Tax administration

The administration of Land Revenue Department vests with the Principal Secretary, Revenue Department. For the purpose of administration, the State has been divided into six divisions and each division is headed by the Divisional Commissioner who is assisted by district Collectors. There are 35 district Collectors, 110 revenue sub divisions, 370 Talukas headed by the Tahsildar. The Revenue Inspector and Village Officers (*Talathi*) are responsible at the grass root level for collecting the land revenue and dues recoverable as arrears of land revenue.

4.1.2 Trend of receipts

Actual receipts from Land Revenue during the years 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess(+)/ shortfall(-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2007-08	690.00	512.22	(-) 177.78	(-) 25.77	47,528.41	1.08
2008-09	700.00	546.22	(-) 153.78	(-) 21.97	52,029.94	1.05
2009-10	770.00	714.04	(-) 55.96	(-) 7.27	59,106.33	1.21
2010-11	1,647.74	1,094.98	(-) 552.76	(-) 33.54	75,027.10	1.46
2011-12	1,497.13	963.81	(-) 533.32	(-) 35.62	87,608.46	1.10

As can be seen from the above table, the revenue collection under Land Revenue increased by 88.16 *per cent* in 2011-12 as compared to 2007-08.

4.1.3 Impact of Audit Reports

Revenue impact

During the last five years, 2006-07 to 2010-11, we had pointed out in our Audit Reports cases of under-assessments/non/short levy/loss of revenue of land revenue, etc., interest and other irregularities with revenue implication of ₹ 511.47 crore in 225 cases. Of these, the Department had accepted audit observations in 160 cases involving ₹ 13.14 crore and had recovered ₹ 7.51 crore in 67 cases. The details are shown in the following table:

(₹ in crore)

Year	Amount objected		Amount accepted		Amount recovered	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
2006-07	44	0.91	44	0.91	13	0.50
2007-08	141	365.68	84	9.51	54	7.01
2008-09	26	140.51	25	1.57	Nil	Nil
2009-10	1	2.80	Nil	Nil	Nil	Nil
2010-11	13	1.57	7	1.15	Nil	Nil
Total	225	511.47	160	13.14	67	7.51

It would be seen from the above that no recoveries have been made from 2008-09.

The Government may consider issuing instructions to the Department to recover the amounts particularly in those cases which have been accepted by the Department.

4.1.4 Results of audit

We reported under assessment, short levy, non-levy of Land Revenue, loss of revenue etc., amounting to ₹ 157.49 crore in 216 cases on the basis of test check of records relating to land revenue conducted during the year 2011-12 as shown below:

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	Non-levy/short levy of measurement fees, sanad fees, license fee etc.	8	0.12
2	Non-levy/short levy of fine, non-auction/short recovery of surface rent on account of sand ghats, royalty etc.	34	3.54
3	Non-levy/short levy/incorrect levy of Non-Agriculture Assessment (NAA), ZP/VP cess and conversion tax.	106	5.07
4	Non-levy/short levy of occupancy price, lease rent, unearned income etc.	45	148.14
5	Non-levy/short levy/incorrect levy of increase of land revenue	8	0.15
6	Other irregularities	15	0.47
	Total	216	157.49

The Department accepted and recovered under assessments and other deficiencies involving ₹ 28.47 crore in 258 cases, of which 24 cases involving ₹ 0.46 crore were pointed out during 2011-12 and rest during earlier years.

A few audit observations involving ₹ 89.09 crore are mentioned in the succeeding paragraphs.

4.2 Audit observations

During scrutiny of records of the various land records and land revenue offices we noticed several cases of non-compliance of the provisions of the Maharashtra Land Revenue Code, 1966 (MLR code), Government notifications/instructions as mentioned in the succeeding paragraphs of this chapter. These are illustrative cases and are based on the test check carried out by us. As such cases are pointed out by us repeatedly, there is need on the part of the Government to improve the internal control system so that recurrence of such cases can be avoided.

4.2.1 Non-observance of the provisions of Act/Rules

The provisions of the Maharashtra Land Revenue Code, 1966 (MLR code), Government notifications/instructions provide for:-

- (i) Levy of unearned income on market value as on date of order granting permission to sell Government land or price realised by way of sale, whichever is higher.
- (ii) Levy of occupancy price as per rates prescribed in Annual Statement of Rates with reference to purpose for which the land was allotted.

4.2.2 Short levy of unearned income

Collector, Mumbai Suburban District and Collector Jalgaon

4.2.2.1 During the test check of land grant cases and other related records we

As per the provisions of Disposal of Government land Rules 1971, on disposal of government land along with factory, plant structures and other installations by way of sale, the State Government shall be entitled to half the unearned income. For the purpose of this rule, unearned income means amount equal to the difference between price realised by way of sale and the occupancy price paid to Government at the time of grant.

noticed that land admeasuring 1,25,029.90 sq m situated at village of Nahur of Tahsil Kurla, Mumbai was allotted to Merind Limited Company for industrial use in March 1961 and sanad agreement was executed

in December 1972. The terms and condition of sanad agreement *inter alia* stated that in the event of sale of land, Government will be entitled to receive unearned income from the said land excluding any structure erected thereon by the company. The unearned income shall be half the difference between the net sale proceeds realised on such sale and the cost of acquisition paid by the company to the Government and after making allowances for all outgoing, capital gains and other taxes. Further, written permission of the Government shall be obtained before confirming such sale or executing conveyance after furnishing name and address of purchaser along with the amount of sale price and other particulars necessary for ascertaining the share of Government in the unearned income.

Merind Limited company requested (July 2009) for granting permission to sell an area of 87,532.42 sq m out of the total area of 1,25,029.90 sq m. Collector MSD sent the proposal (November 2009) to the Government by working out

the provisional unearned income of ₹ 27.03 crore after allowing capital gain, land improvement cost and occupancy price paid earlier from market value of ₹ 128.35 crore. Government granted permission for sale in November 2009 and directed Collector to get the land improvement and construction cost again verified from Public Works Department (PWD)/Town Planning Department. Merind limited intimated the Collector MSD that conveyance has been executed in favour of Runwal Homes Private Limited.

We noticed from the conveyance deeds executed between December 2009 and March 2010 furnished by the Merind Company that the sale price realised on sale of land was ₹ 203.19 crore. After allowing deduction¹ of ₹ 64.41 crore from sale price realised of ₹ 203.19 crore, the unearned income (at 50 per cent of net amount) works out to ₹ 69.39 crore. However, the Collector MSD did not raise the demand for the additional amount of unearned income. This resulted in short levy of unearned income of ₹ 42.36 crore.

After we pointed out (September 2011), the Collector MSD accepted the omission (September 2011). However a report on recovery has not been received.

The matter was reported to the Government in June 2012; their reply has not been received (January 2013).

4.2.2.2 During the test check of cases of granting permission for change in

As per Government Resolution (GR) of April 2009, on granting permission for non-agriculture use of Government land, the occupant of land shall pay unearned income at 50 per cent of market value of land as on date of order granting permission.

use of Government land in Collector Jalgaon, we noticed that an occupant of Vatan/Inami agriculture land applied for granting permission for changing the use of land to

non-agriculture. The Collector directed (16 October 2006), the occupant to pay unearned income of ₹ 29.86 lakh based on 50 per cent of market value so that further action in the matter could be taken. The occupant filed appeal against this with the Commissioner, Nasik Division. Commissioner decided appeal in April 2009 cancelling Collector's order of 16 October 2006 and directed to re-verify the case. The Joint District Registrar (JDR) re-verified and intimated (December 2009) market value of ₹ 48.80 lakh as per ready reckoner rates of 2006. JDR had also stated that the market value of the land was ₹ 96.08 lakh as per the ready recknor rates of 2010.

The Collector granted the permission in June 2010 on payment of unearned income of ₹ 24.40 lakh.

Since the permission was granted in June 2010, the unearned income of ₹ 48.04 lakh should have been levied being the 50 per cent of market value as applicable on June 2010. The Collector did not apply the rate of 2010 which resulted in short levy of unearned income of ₹ 23.64 lakh.

¹ Capital gain tax ₹ 40.66 crore, land improvement and construction cost of ₹ 23.66 crore and occupancy price of ₹ 0.09 crore.

After we pointed out (February 2012), the Commissioner, Nasik Division accepted the observation in May 2012 and directed the Collector to recover the amount.

The matter was reported to the Government in June 2012; their reply has not been received (January 2013).

4.2.2.3 Tahsildar Bhiwandi, District Thane

During the test check of cases of permission for change in use of land and other related records

As per Government Resolution (GR) of July 2002, on granting permission for non-agriculture use of Government land or for converting the class of occupancy from class-II to class-I, the occupant of land shall pay unearned income at the rate of 50 *per cent* of market value of land. Further, as per GR issued in May 2006, the market value shall be determined as per ready reckoner as on the date of order granting such permission. The ready reckoner prescribes various slabs of concession for valuation of bulk land. However, for the Government issued a GR in April 2008 for the purpose of valuation of all Government land which replaced the slabs prescribed in the ready reckoner.

in December 2008, we noticed that Tahsildar Bhiwandi granted permission in June 2008 for change in use of land to industrial purpose and converting the class of occupancy from class-II² to class-I³ of two lands having an area of 0.52 hectare and 2.99 hectare situated at Lakhivali village of

Bhiwandi, Thane. The Tahsildar determined the market value of land at ₹ 39.77 lakh on the basis of ready reckoner and levied unearned income of ₹ 19.89 lakh of which ₹ 15.79 lakh was recovered. The correct market value of land as per GR of April 2008 works out to ₹ 47.04 lakh on which unearned income of ₹ 23.52 lakh was leviable. Thus, non-application of the GR issued in April 2008 resulted in short levy of unearned income of ₹ 7.73 lakh.

After we pointed out in January 2009, Collector Thane accepted the audit observation (November 2009) and stated that Tahsildar, Bhiwandi has been instructed to initiate recovery in 0.52 hectare land. In case of 2.99 hectare land, appeal is pending with Deputy Collector (Appeals), Thane and compliance will be submitted after the appeal is decided.

We reported (June 2012) the matter to Government; their reply is awaited (January 2013).

4.2.2.4 Short recovery of unearned income on encroached land

R&FD regularised (December 2007) encroachment on Government land admeasuring 4,600 sq m situated in *mouza* Valiv of Vasai in favour of the encroacher on the condition that the encroacher shall make payment of two and half times of occupancy price along with penalty. Accordingly, the

² Class-II: The land can in these cases only be transferred on the permission of the Collector.

³ Class-I: Persons classified in this class are free to transfer the agricultural land without permission of collector in favour of another agriculturist.

Collector, Thane issued order (December 2007) to make payment of occupancy price of ₹ 35.60 lakh which was paid in January 2008.

We noticed that the encroacher intimated (February 2008) Collector, Thane that payment of unearned income was made from money received on executing an agreement in January, 2008 for development with the developers and requested to record their name in the mutation register. Our cross verification of register of mutation in Tahsil, Vasai revealed that a sale deed for transfer of land was executed in June 2010 and the occupancy of land was transferred in the name of developers and the price realised by way of sale was ₹ 71.87 lakh. The unearned income leviable works out to ₹ 27.20 lakh (being 75 per cent of ₹ 36.27 lakh) after adjusting the occupancy price paid earlier. Though information was available with the Department it did not take any action to work out and recover the correct amount of unearned income. This resulted in short levy of unearned income of ₹ 27.20 lakh. Besides, the transfer of the Government land to the developer was also irregular.

After we pointed out, Collector stated (May 2012) that as there was breach of condition, the Sub Divisional Officer, Bhiwandi will be asked to take appropriate action after obtaining report from the Tahsildar and take action accordingly.

4.2.2.5 Short/non-levy of unearned income

During the test check of cases of granting permission to sell Government land in Commissionerate, Nashik,

As per R&FD GR dated 8 September 1983, permission to sell agriculture land held as class-II occupant shall be granted subject to payment of 50 per cent of net unearned income. In case of permission to sell agriculture land for non-agriculture purpose unearned income shall be 75 per cent. Unearned income means the difference between current market value or the price realised by way of sale, whichever is higher, and the occupancy price paid at the time of allotment plus cost of improvement. Further, as per GR dated 29 May 2006, the rate of ASR as on date on which the permission to sell is granted shall be considered for valuation of market price for recovery of unearned income on transfer of land.

we noticed that the permission was granted (February 2007) to transfer the land, having an area of 3900 sq m held as Class-II⁴ occupant situated in Nashik, for non-agriculture purpose. As per the orders, unearned income at the rate of 75 per cent of the market value was to be levied. The Collector, Nashik issued a notice (March 2007) for depositing unearned income of ₹ 58.08 lakh being 75 per cent of the market value of

₹ 77.44 lakh for the year 2007. However, the land owner appealed to the Revenue Minister against the said notice. The Revenue Minister cancelled the order issued by the Collector and ordered to levy the unearned income at 75 per cent of the market value applicable for the year 1996 in accordance with a

⁴ Class II occupant means persons holding unalienated land in perpetuity subject to restrictions on the right to transfer.

scheme "Construction of Houses for economically weaker section". The scheme was in operation in 1994. The Collector revised the unearned income to ₹ 8.04 lakh.

Scrutiny of records further revealed that the scheme of 1994 on the basis of which revised unearned income was levied, was cancelled in February 2004 by the Additional Collector (Urban Land Ceiling), Nashik. Thus, it was no more in operation and due its incorrect application, the Government was put to a loss of ₹ 50.04 lakh towards unearned income.

Matter was referred (August 2012) to the Government; their reply is awaited (January 2013).

4.2.3 Incorrect levy of occupancy price due to application of agriculture rate instead of non-agricultural rate

Collector, Ahmednagar

4.2.3.1 During the test check of land grant cases and related records we

As per the provisions of Maharashtra Land Revenue (MLR) Code 1966, State Government is empowered to dispose of its property on such terms and conditions as it deems fit. As per Government Resolution of July 8, 1999 interest shall be levied at prime lending rate (PLR) from the date of intimating the final occupancy price till the date of payment. Further, the final occupancy price is to be determined within maximum of 12 months from the date of order allotting the land.

noticed that Padmashri Dr. Vithalrao Vikhe Patil Foundation was given (January 1987) advance possession of land admeasuring 30.6174 hectares situated at Vadgoangupta, Tahsil Ahmadnagar for education purpose. The Government granted sanction (July 2005) for

allotment of land on payment of provisional occupancy price of ₹ 40.09 lakh till the final occupancy price based on current market value was determined by Collector. Collector levied and recovered ₹ 1.19 crore towards the occupancy price along with interest of ₹ 85.64 lakh and issued final order of allotment in July 2010 by applying agricultural rates.

The market value of land at non-agriculture rate for the year 2005 was ₹ 6.20 crore and should have been levied as the land allotted was for non-agriculture purpose. The JDR Ahmednagar had also intimated the value of property as ₹ 6.20 crore but this was not considered by the Collector. This resulted in short levy of occupancy price of ₹ 5.01 crore.

After we pointed out (September 2011), the Department and the Government accepted that the occupancy price should have been levied considering the rate applicable for non-agriculture purpose.

4.2.3.2 During the test check of cases of land allotment in five⁵ Collectorates, we noticed that in 11 out of

As per GR issued in May 2006, for allotment of Government land on occupancy basis or on lease basis and in all cases where valuation of government land is to be done, valuation shall be determined as per rates prescribed in Annual Statement of Rates (ASR) as on date on which order for allotment of government land is passed or other orders consisting of valuation is passed. As per instructions of ASR, if Government land situated in rural area is allotted for non-agriculture purpose, market value shall be determined at 50 per cent of non-agriculture rate prescribed in the ASR for that zone.

77 cases, Government land was allotted for non-agriculture purposes like school, colleges, renewable energy projects, power project, sugar factory and other commercial purposes between January 2007 and June 2010 and the total occupancy price levied was ₹ 7.65 crore on the basis of the agriculture rate prescribed in ASR as on the date of allotment order

instead of applying the non-

agriculture rate. The occupancy price by applying non-agriculture rate works out to ₹ 39.76 crore. Thus, non-following of the instruction resulted in short levy of occupancy price of ₹ 32.11 crore.

After we pointed out, three⁶ Collectors stated that the matter would be verified and two⁷ Collectors stated that the occupancy price was recovered correctly as per the market value was got checked by the allottees from the Sub Registrars before levy of occupancy price. The reply is not correct as the rates intimated by SRs were less than the ASR rates and occupancy price should have levied on the rates mentioned in ASR and rates intimated by Sub Registrars should have been rechecked again with ASR.

We reported the matter to the Government in August 2012; Government stated (October 2012) that in two cases of Nashik district, recovery notice has been issued. In remaining cases, their reply is awaited (January 2013).

4.2.3.3 Incorrect levy of occupancy price due to incorrect application of market rate

Test check of land allotment cases in Collectorate, Akola revealed that in one case land was allotted by Revenue and Forest Department (August 2009) for agriculture purpose to Executive Engineer, Akola Irrigation Corporation for a scheme "Sukali Sangrahaak Minor Irrigation Scheme" on occupancy basis. As per allotment order, occupancy price was to be recovered at prevailing market rate prescribed in ASR 2008 applicable to 2009. The occupancy price of ₹ 33.83 lakh was levied on the basis of market value intimated by Sub-Registrar. However, we noticed that the market value was worked out by applying the rate applicable for the year 2007 instead of the rate applicable for the year 2009 being the allotment year. The correct occupancy price, by

⁵ Jalna, Nagpur, Nashik, Pune and Thane

⁶ Nagpur, Nashik and Pune

⁷ Jalna and Thane

adopting the agriculture rate of ASR for the year 2009, works out to ₹ 39.80 lakh. This resulted in short levy of occupancy price of ₹ 5.97 lakh.

After we pointed out, Collector stated (June 2012) that the matter would be verified and amount recovered, if required. Further action taken report has not been received (January 2013).

4.2.3.4 Non-recovery of occupancy price due to non issue of final allotment order

During the test check of records in Collector's office, Pune, we noticed that R&FD vide memorandum dated 10 March 2010 allotted land admeasuring 8,000 sq m situated at *mouza* Dighi, Pune to Pimpri Chinchwad Municipal Corporation (PCMC) for octroi post on occupancy right on prevailing market value. As per terms and condition of the sanctioned order, Collector was required to collect the occupancy price from the PCMC on the basis of prevailing market rate prescribed in ASR. However, the Collector neither issued allotment order nor occupancy price was recovered.

As per a report submitted by Talathi, Dighi to Collector in March 2011, the land was already being used by PCMC for octroi post. The occupancy price leviable on market value as per ASR of 2010 works out to ₹ 1.46 crore. Thus, non-issue of allotment order resulted in non-recovery of occupancy price of ₹ 1.46 crore.

After we pointed out, Collector, Pune stated (June 2012) that the matter would be verified and appropriate action would be taken.

4.2.3.5 Short levy of occupancy price from Co-operative Housing Society

Government of Maharashtra in R&FD in May 2007 has framed the policy for allotment of land to the Co-operative Housing Societies. As per the policy, occupancy price as on date of allotment shall be recovered from Co-operative Housing Society on market value determined as per carpet area admissible to the members on the basis of their monthly income in case of non-government employee and in case of Government employee, on the basis of their designation as per fifth pay commission.

During the test check of records in Collector, Mumbai Suburban District (MSD), we noticed that R&FD vide memorandum dated 14 March 2008 sanctioned allotment of land admeasuring 1,317.85 square meters (sq m) situated at Charkop, Kandivali,

Mumbai suburb to a Co-operative Housing Society. The Collector issued allotment order on 25 March, 2008 to the Society. The occupancy price of ₹ 14.33 lakh was determined as per ASR for the year 2008 on the basis of carpet area of 729.27 sq.m. admissible to 15 members initially registered with the Society at the time of grant of land. An undertaking was taken from the Society that on completion of full membership of the Society for the balance area of 588.58 sq m, occupancy price on the basis of carpet area admissible to additional members will be paid. Meanwhile, out of 15 members of the Society, eight members resigned their membership. Collector granted (May

2010) permission to induct eight new members in place of outgoing members as well as eight additional members. However, occupancy price of ₹ 11.13 lakh worked out on the basis of carpet area admissible to eight additional members was not demanded by the Collector.

After we pointed out, Collector, MSD accepted (April 2012) the omission and stated that the occupancy price would be recovered from the said Society.

4.2.4 Incorrect determination and non-raising of demand of lease rent

During the test check of cases of land allotment in Collector, Nagpur, we noticed that land

As per GR of July 1999, the annual lease rent shall be calculated at Prime Lending Rate (PLR) declared by the State Bank of India from time to time on full market value of land. Further, as per GR issued in May, 2006 where any Government land is allotted on lease basis, lease rent shall be levied on market value determined as per rates prescribed in Annual Statement of Rates (ASR) as on date on which order is passed. The PLR for the year 2007 was 11.50 per cent.

admeasuring 1,800 sq m situated in mouza Bhankheda in Nagpur was sanctioned (February 2007) for allotment on lease to Mayo Hospital Compound General Merchant Association, Nagpur for construction of 90 shops. The lease rent

worked out to ₹ 6.21⁸ lakh annually. The Collector, levied the lease rent at ₹ 2.76 lakh⁹ annually only on 900 sq m on which shops were constructed instead of ₹ 6.21 lakh on the entire piece of land of 1800 sq m allotted to the hospital. Besides, PLR declared by State Bank of India was 11.50 per cent instead of 10.25 per cent applied by the Collector. Thus, incorrect determination of lease rent resulted in short recovery of lease rent of ₹ 3.45 lakh for the first year. Further, lease rent of ₹ 24.84 lakh for subsequent four years i.e. from 2007 to 2011 were also not demanded by the Department till date.

4.2.5 Loss of revenue due to non-adherence to Government norm of registering the agreement

As per GR dated 31 October 2006, in all cases of allotment of Government land to institutions, local bodies, individuals etc. on occupancy rights or on lease, an agreement shall be executed with the allottee and shall be registered under Mumbai Stamp Act 1958 by levying proper stamp duty and registration fee so that Government could earn revenue. It was also intimated that the possession of land shall not be given unless the agreement is executed and registered.

During the scrutiny of land grant cases in seven¹⁰ Collectorates, we noticed that in 48 cases Government land was allotted on occupancy rights between February 2006 and October

⁸ Area of land x rate of land x PLR i.e. 1,800 sq m x ₹ 3,000 x 11.50% = ₹ 6.21 lakh

⁹ 900 sq m x ₹ 3000 x 10.25% = ₹ 2.76 lakh

¹⁰ Akola, Jalna, Mumbai Sub-urban, Nagpur, Nashik, Pune and Thane

2010. Though the possession was given, the Collectors did not execute and register the agreements with the allottees. The revenue on account of stamp duty and registration fee payable by the allottees works out to ₹ 5.24 crore.

Similarly, in three¹¹ Collectorates, we noticed that in five cases, Government land was allotted on lease basis between September 2006 and December 2007. There leases were not registered resulting in non-realisation of stamp duty and registration fee of ₹ 1.37 crore.

Thus, non-adherence of Government instructions resulted in loss of revenue amounting to ₹ 6.61 crore.

After we pointed out, five¹² Collectorates stated (May 2012) that process of execution of agreement will be initiated. Collector, Pune stated that after verification, necessary action will be taken. Collector, Thane stated that out of eight cases, in three cases agreements were executed and registered and action will be taken in remaining cases. However, no evidence of registration of three cases as stated was furnished to us.

¹¹ Mumbai Suburban District, Nagpur and Pune

¹² Akola, Jalna, Nagpur, Nashik and Mumbai Sub urban District

CHAPTER-V

EXECUTIVE SUMMARY

Trend of revenue in respect of Taxes on Motor Vehicles The revenue collection under motor vehicle increased by 93 per cent in 2011-12 as compared to 2007-08.

Trend of revenue in respect of State Excise The revenue collection under State Excise increased by 117 per cent in 2011-12 as compared to 2007-08

Revenue Impact of Audit Reports in respect of Taxes on Motor Vehicles During the last five years i.e. 2006-07 to 2010-11, we had pointed out cases of under-assessments, loss of revenue, non/short levy/recovery and other irregularities with revenue implication of ₹ 10.73 crore in 6,183 cases. Of these, the Department had accepted audit observations in 5,560 cases involving ₹ 8.74 crore and had recovered ₹ 1.02 crore in 1,254 cases.

Revenue Impact of Audit Reports in respect of State Excise During the last five years i.e. 2006-07 to 2010-11, we had pointed out cases of under-assessments, loss of revenue, non/short levy/recovery and other irregularities with revenue implication of ₹ 102.12 crore in 966 cases. Of these, the Department had accepted audit observations in 826 cases involving ₹ 36.75 crore and had recovered ₹ 3.51 crore in 509 cases.

Results of audit in respect of Taxes on Motor Vehicles We reported under assessments, non/short levy, non-recovery, etc. of revenue and other similar cases amounting to ₹ 25.84 crore in 1,646 cases on the basis of test check of the records of taxes on motor vehicles conducted during the year 2011-12.

During the year 2011-12 as well as during earlier years, the Department concerned accepted the underassessment, short levy, etc. and recovered ₹ 51.24 lakh in 367 cases, out of which 23 cases involving ₹ 3.22 lakh were pointed out during the year 2011-12.

Results of audit in respect of State Excise We reported under assessments, non/short levy, non-recovery, etc., of revenue and other similar cases amounting to ₹ 928.41 crore in 358 cases on the basis of test check of the records of taxes on State excise conducted during the year 2011-12.

The Department accepted the underassessment, short levy, etc. and recovered ₹ 163.54 lakh in 103 cases, out of which 46 cases involving ₹ 19.95 lakh were pointed out during the year 2011-12 and the rest during the earlier years

**What we have
highlighted in this
Chapter**

A. Taxes on Motor Vehicles

- One Time Tax (OTT) was short levied at ₹ 16.61 lakh on imported vehicles.

(Paragraph 5.3.2)

- Non-follow up of RBI instructions by banks resulted in loss of interest to the Government at ₹ 10.53 lakh.

(Paragraph 5.3.3)

- Fitness certificates of 1,24,960 newly registered transport vehicles that had completed two years of life during 2010-11 were not renewed resulting in non-realisation of fitness certificate fees of ₹ 4.95 crore.

(Paragraph 5.3.4)

B. State Excise

- Failure of the department to check the correctness of licence fees with the parameters fixed by Commissioner of State Excise resulted in short recovery of licence fees at ₹ 1.15 crore.

(Paragraph 5.6.1)

- Non-consideration of revised supervision charges for deployment of the departmental staff at the premises of the licencees for the period from January 2006 to March 2011 resulted in non-recovery of supervision charges at ₹ 27.33 lakh.

(Paragraph 5.6.2)

CHAPTER-V

TAXES ON MOTOR VEHICLES AND STATE EXCISE

SECTION A – TAXES ON MOTOR VEHICLES

5.1 Introduction

5.1.1 Tax revenue administration

Levy and collection of taxes and other receipts under the Motor Vehicles sector are regulated by the Central Motor Vehicles Act, 1988, Bombay Motor Vehicle Tax Act, 1958, and the Bombay Motor Vehicles Transportation of Passengers Act, 1958, and the Rules made thereunder. These Acts and Rules are implemented by the Transport Commissioner under the overall control of the Principal Secretary (Transport) to the Government in Home Department, assisted by an Additional Commissioner, a Joint Commissioner, Deputy Commissioners and Regional and Deputy Transport Officers. The motor vehicles receipts mainly comprise of taxes on motor vehicles and taxes on goods and passengers.

5.1.2 Trend of receipts

The actual receipts from motor vehicle tax etc., during the years 2007-08 to 2011-12 and the total tax receipts of the State during the same period is exhibited in the following table:

(₹ in crore)

Year	Budget estimates ¹	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2007-08	2,070.00	2,143.11	(+) 73.11	(+) 3.53	47,528.41	4.51
2008-09	2,426.18	2,220.22	(-) 205.96	(-) 8.49	52,029.94	4.27
2009-10	2,600.00	2,682.30	(+) 82.30	(+) 3.17	59,106.33	4.54
2010-11	2,860.00	3,532.90	(+) 672.90	(+) 23.53	75,207.09	4.70
2011-12	4,000.00	4,137.42	(+)137.42	(+)3.44	87,608.46	4.72

As can be seen from the above table, the revenue collection under motor vehicle increased by 93 *per cent* in 2011-12 as compared to 2007-08.

5.1.3 Cost of collection

The gross collection in respect of motor vehicle tax receipts, the expenditure incurred on their collection and the percentage of such expenditure to the gross collection during the years 2009-10 to 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for

¹ Original budget estimates

the preceding years are mentioned in the following table:

(₹ in crore)

Head of revenue	Year	Gross collection ²	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the corresponding preceding years
Taxes on vehicles	2009-10	2,682.29	76.96	2.86	2.93
	2010-11	3,532.90	90.62	2.56	3.07
	2011-12	4,137.42	92.22	2.28	3.71

As can be seen from the above table, the overall cost of collection of taxes on motor vehicles for the year 2009-10 to 2011-12 is lower than the all India average for the corresponding preceding years.

5.1.4 Impact of Audit Reports

Revenue impact

During the last five years i.e. 2006-07 to 2010-11 we had pointed out under-assessments, loss of revenue, non/short levy/recovery and other irregularities with revenue implication of ₹ 10.73 crore in 6,183 cases. Of these, the Department had accepted audit observations in 5,560 cases involving ₹ 8.74 crore and had recovered ₹ 1.02 crore in 1,254 cases. The details are shown in the following table:

(₹ in crore)

Year	Amount objected		Amount accepted		Amount recovered	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	509	0.60	509	0.60	194	0.15
2007-08	633	0.91	633	0.91	200	0.16
2008-09	1,080	1.47	1,080	1.47	335	0.33
2009-10	3,196	4.50	2,703	4.15	302	0.12
2010-11	765	3.25	635	1.61	223	0.26
Total	6,183	10.73	5,560	8.74	1,254	1.02

The Government may consider issuing instructions to the Department to recover the amount involved in accepted cases on priority basis.

² Figures as per the Finance Accounts.

5.1.5 Results of audit

We reported under assessments, non/short levy, non-recovery, etc. of revenue and other similar cases amounting to ₹ 25.84 crore in 1,646 cases as shown below, on the basis of test check of the records of taxes on motor vehicles conducted during the year 2011-12:

(₹ in crore)

Sl. no.	Nature of receipts	No. of cases	Amount
1.	Non/short levy of tax due to application of incorrect rates	1,464	24.01
2.	Short levy of tax due to incorrect exemption/classification	47	1.60
3.	Excess refund/miscellaneous	135	0.23
Total		1,646	25.84

In response to our observations in the local audit reports during the year 2011-12 as well as during earlier years, the Department concerned accepted the underassessment, short levy, etc. and recovered ₹ 51.24 lakh in 367 cases, out of which 23 cases involving ₹ 3.22 lakh were pointed out during the year 2011-12 and the rest during the earlier years.

A few audit observations involving ₹ 91.54 lakh are included in the succeeding paragraphs.

5.2 Audit observations

Scrutiny of the records of Regional Transport Offices (RTOs)/Dy. Regional Transport Offices (Dy. RTOs) revealed several cases of non-observance of provisions of the Bombay Motor Vehicles Tax Act, 1958, as mentioned in the succeeding paragraphs of this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions are pointed out in audit every year, but not only the irregularities do persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system so that occurrence of such cases can be avoided.

5.3 Non-compliance of the provisions of the Acts/Rules

The Bombay Motor Vehicle Tax Act, 1958, provides for levy and collection of Motor Vehicle Taxes. The vehicle registering authorities did not observe the above provisions and prescribed procedure for maintenance of vehicle records in cases as mentioned in the following paragraphs.

5.3.1 Non-recovery of Motor Vehicle Tax

5.3.1.1 During test check of the records of four³ RTOs and three⁴ Dy. RTOs between July 2008 and November 2011, we noticed from the CBRR, that tax

Under Section 4 of the BMV Act, 1958, and the rules made thereunder, tax at the prescribed rate is payable on all vehicles used or kept for use in the State, as per their registered laden weight (RLW) or seating capacity. The details of recoveries to be made from the vehicle owners, issue of demand notices, etc., is maintained in the cash balance review register (CBRR).

amounting to ₹ 42.73 lakh in respect of transport series vehicles, was not recovered from 317 transport vehicle owners for periods ranging from one to 32 months, between April 2007 and October 2011.

Action was not taken by the Department to recover these amounts by handing over the list of defaulters to the flying squad. This resulted in non-realisation of Motor Vehicle Tax of ₹ 42.73 lakh. Further, interest at the prescribed rate was also leviable.

After we pointed out these cases to the Department/Government, the Department accepted the observations, handed over the list of defaulters to the flying squad and communicated recovery of ₹ 13.08 lakh from 137 vehicle owners, between July 2008 and April 2012. Report on recovery of the balance amount is awaited.

5.3.1.2 During test check of the records of three⁵ RTOs and two⁶ Dy. RTOs between May 2008 and June 2011, we noticed from the CBRR, that tax amounting to ₹ 21.67 lakh in respect of non-transport vehicles such as

³ Aurangabad, Mumbai (Central), Nanded and Pune.

⁴ Hingoli, Kalyan and Ratnagiri.

⁵ Kolhapur, Pune and Thane.

⁶ Satara and Vashi.

excavators, tankers, cranes, trailers, loaders, forklifts, etc., was not recovered from 152 vehicle owners for periods ranging from three to 15 months, between February 2007 and February 2012. Action was not taken by the Department to recover these amounts. This resulted in non-realisation of Motor Vehicle Tax of ₹ 21.67 lakh. Further, interest at the prescribed rate was also leviable.

After we pointed out these cases to the Department/Government, the Department accepted the observations and communicated recovery of ₹ 14.31 lakh from 89 vehicle owners between August 2008 and January 2012. Report on recovery of the balance amount is awaited.

We reported the above matters to the Government in April/May 2012; their reply has not been received (January 2013).

5.3.2 Short-levy of One Time Tax (OTT) on imported vehicles

RTOs Kolhapur, Nashik and Thane

As per the provisions of BMV Tax Act, 1958, the rates of OTT leviable on motor car imported into India and used or kept for use in the state is leviable at twice the rate applicable for domestic vehicles.

During the test check of form 20 and data available on computerized application system (VAHAN) between January 2011 and April 2011, we noticed that nine

vehicles⁷ registered under the non-transport category during the years 2007-08 to 2010-11 and were declared as imported vehicles by the Transport Commissioner. However, the owners of these vehicles paid OTT at domestic rates instead of rates applicable to imported vehicles. This resulted in non-realisation of OTT of ₹ 16.61 lakh. Further, interest at the prescribed rate was also leviable.

After we pointed out these cases to the Department/Government between February 2011 and May 2011, the Department accepted the observation and RTO, Nashik recovered ₹ 6.45 lakh from four vehicle owners (between September 2011 and March 2012). Report on recovery of the balance amount is awaited.

We reported the matter to the Government in April 2012; their reply has not been received (January 2013).

⁷ Two Chevrolet Captive LT, two Honda CRV MT, three Camry ACV 40-R, one BMW X 5.3 D CBU and one Montero.

5.3.3 Delay in remittances resulting in loss of interest

During scrutiny of the Personal Ledger Account (PLA) and cash book of RTO (Central), Mumbai during

As per the Rule 8(1) of the Maharashtra Treasury Rule, 1968, all money received by or tendered to the Government Offices on account of the revenues of Maharashtra State, shall without undue delay and that at any rate within two days of the receipt of the money be paid in full into the treasury or into the Bank and shall be included in the treasury accounts. Further, as per the instructions issued by Reserve Bank of India (February 2006), the banks authorised to collect Government revenue should credit the revenue so collected in the Government Account within three days after its realisation, failing which interest at two *per cent* above bank rate be chargeable annually.

September 2011, we noticed that in 48 instances there were delays ranging from eight to 41 days in remittance of revenue by the State Bank of India on account of motor vehicle tax aggregating ₹ 26.82 crore. Interest at the prescribed rate on such delays was recoverable from the defaulting bank as per RBI instructions.

The interest so recoverable from the bank works out to ₹ 10.53 lakh at the rate of eight⁸ *per cent* during the periods between 2006-07 and 2010-11. The Department did not take any action for the levy and recovery of the amount from the defaulting bank. This resulted in non-recovery of interest of ₹ 10.53 lakh.

After we pointed out the matter in December 2011, the Department in February 2012 requested the State Bank of India, Jacob Circle, Mumbai to scrutinize the matter and send a demand draft for the amount of interest payable. Further reply is awaited.

We reported the matter to the Government in June 2012; their reply has not been received (January 2013).

5.3.4 Outstanding fitness fee due to non-renewal of fitness certificate

RTOs, Amravati, Nagpur Urban, Nagpur Rural and Dy. RTOs, Akola, Bhandara, Buldhana, Chandrapur, Gondia, Wardha, Washim and Yavatmal

As per the provisions of Motor Vehicle Act, 1988 and Maharashtra Motor Vehicles Rules, 1989, (Chapter-IV – Registration of Motor Vehicles), a transport vehicle shall not be deemed to be validly registered unless it carries a certificate of fitness. A fitness certificate granted under the Act in respect of a newly registered transport vehicle is valid for two years and is required to be renewed every year on payment of prescribed fee.

During the test check of records of renewal of certificate of fitness (January 2012 to March 2012) we noticed that fitness certificates of 1,24,960 newly registered transport

⁸ Bank rate considered is six *per cent* + two *per cent*

vehicles (Light Motor Vehicles, three wheeled Light Motor Vehicles and Heavy Motor vehicles) that had completed two years of life during 2010-11 were not renewed. This resulted in non-realisation of fitness certificate fees of ₹ 4.95 crore including minimum compounding fee of ₹ 1.25 crore besides endangering public life.

After we pointed out (January 2012 to March 2012) all the RTOs/Dy. RTOs confirmed the number of vehicles for which fitness certificates were not renewed except RTO Amravati who stated that the number of vehicles for which fitness certificate were not renewed is overstated as it does not include fitness certificates renewed during the camp held from April 2010 to December 2010 and that the number of such vehicles will be intimated later. Dy. RTO, Chandrapur and Akola stated (August 2012) that fitness certificates for 458 vehicles were renewed (between April 2012 and June 2012) and recovered ₹ 21.93 lakh; five⁹ offices stated that action will be taken to recover the outstanding fees and remaining four¹⁰ offices were silent on action proposed.

We reported the matter to the Government in May 2012. Their reply is awaited (January 2013).

⁹ RTO Nagpur Urban and Rural, Dy. RTO Bhandara, Wardha and Yavatmal.
¹⁰ RTO Amravati, Dy. RTO Buldhana, Gondia and Washim.

SECTION B: STATE EXCISE

5.4 Introduction

5.4.1 Tax revenue administration

Levy and collection of state excise and other related receipts are regulated by the Bombay Prohibition Act, 1949 (BP Act), Bombay Prohibition (Privilege Fees) Rules, 1954 (BP(PF) Rules) and Maharashtra Potable Liquor (Periodicity and Fees for Grant, Renewal or Continuance of Licence) Rules, 1996 (MPL(PFGRC) Rules). These Acts and Rules are implemented by the Commissioner of State Excise under the overall control of the Principal Secretary to the Government in Home Department, assisted by Joint Commissioners and Deputy Commissioners. At the district level he is assisted by the Superintendents of State Excise (SSE) working under the Regional Deputy Commissioners. The state excise receipts mainly comprise of excise duty leviable on spirits, fees on licences and privilege fees.

5.4.2 Trend of receipts

The actual receipts from state excise etc., during the years 2007-08 to 2011-12 and the total tax receipts of the State during the same period is exhibited in the following table.

(₹ in crore)

Year	Budget estimates ¹¹	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2007-08	3,500.00	3,963.05	(+)463.05	13.23	47,528.41	8.34
2008-09	4,500.00	4,433.76	(-)66.24	1.47	52,029.94	8.53
2009-10	4,800.00	5,056.63	(+)256.63	5.35	59,106.33	8.56
2010-11	5,800.00	5,961.85	(+)161.85	2.79	75,027.09	7.95
2011-12	8,500.00	8,605.47	(+)105.47	1.24	87,608.46	9.82

As can be seen from the above table, the revenue collection under State Excise increased by 117 per cent in 2011-12 as compared to 2007-08.

5.4.3 Cost of collection

The gross collection in respect of State Excise receipts, the expenditure incurred on their collection and the percentage of such expenditure to the gross collection during the years 2009-10 to 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the preceding years are mentioned in the following table:

¹¹ Original budget estimates.

(₹ in crore)

Head of revenue	Year	Gross collection ¹²	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the corresponding preceding years
State Excise	2009-10	5,056.63	62.62	1.24	3.65
	2010-11	5,961.85	62.68	1.08	3.64
	2011-12	8,605.47	61.58	0.72	3.05

As can be seen from the above table, the overall cost of collection of State Excise Duty for the year 2009-10 to 2011-12 is lower than the all India average for the corresponding preceding years.

5.4.4 Impact of Audit Reports

Revenue impact

During the last five years i.e. 2006-07 to 2010-11 we had pointed out under-assessments, loss of revenue, non/short levy/recovery and other irregularities with revenue implication of ₹ 102.12 crore in 966 cases. Of these, the Department had accepted audit observations in 826 cases involving ₹ 36.75 crore and had recovered ₹ 3.51 crore in 509 cases. The details are shown in the following table:

(₹ in crore)

Year	Amount objected		Amount accepted		Amount recovered	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	232	2.61	232	2.61	232	2.61
2007-08	524	66.07	390	2.33	249	0.55
2008-09	20	0.19	18	0.18	15	0.18
2009-10	189	1.89	185	1.74	13	0.17
2010-11	1	31.36	1	29.89	0	0.00
Total	966	102.12	826	36.75	509	3.51

Thus, the recovery in respect of accepted cases was only ten per cent of the accepted amount. We recommend that **the Government may consider issuing instructions to the Department to recover the amount involved in accepted cases on priority basis.**

¹² Figures as per the Finance Accounts.

5.4.5 Results of audit

We reported under assessments, non/short levy, non-recovery, etc., of revenue and other similar cases amounting to ₹ 928.41 crore in 358 cases on the basis of test check of the records of taxes on State excise conducted during the year 2011-12 as shown below:

(₹ in crore)			
Sl. no.	Nature of receipts	No. of case	Amount
1	Non-recovery of transport fee	59	70.02
2	Non/short recovery of licence/privilege fees/excise duty/application fee	84	6.05
3	Non-recovery of compounding fees/loss of revenue due to reduction in manufacturing costs, etc.	40	848.05
4	Non/short recovery of supervision charges/interest/bonus	86	3.16
5	Non-recovery of toddy instalments	89	1.13
	Total	358	928.41

The Department accepted the underassessment, short levy, etc. and recovered ₹ 163.54 lakh in 103 cases, out of which 46 cases involving ₹ 19.95 lakh were pointed out during the year 2011-12 and the rest during the earlier years.

A few audit observations involving ₹ 1.43 crore are included in the succeeding paragraphs.

5.5 Audit observations

Scrutiny of the records of SSEs/Excise Officers (EOs) revealed several cases of non-observance of provisions of the BP Act, BP(PF) Rules and MPL(PFGRC) Rules as mentioned in the succeeding paragraphs of this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions are pointed out in audit every year, but not only the irregularities do persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system so that occurrence of such cases can be avoided.

5.6 Non-compliance of the provisions of the Acts/Rules

The BP Act, BP(PF) Rules and MPL(PFGRC) Rules provide for levy and collection of licence fees and supervision charges at the rates notified from time to time by the Commissioner of State Excise. The State Excise authorities did not ensure that the correct rates of licence fees and supervision charges were levied and recovered as mentioned in the succeeding paragraphs.

5.6.1 Short recovery of licence fees due to application of incorrect population slab

SSEs, Thane and Pune

- (i) As per the 2001 census the population under the Kalyan Dombivli Municipal Corporation (KDMC) was 11,93,512. In 2002, as per notification of the Rural Development and Water Conservation Department, 27 villages were excluded from the KDMC. The population of these villages as per the 2001 census was confirmed

Under the provisions of the MPL(PGFRC) Rules, the rates of licence fees are notified annually by the Commissioner of State Excise in exercise of the powers conferred by clause (i) of Rule 4 of the said Rules for various licences. The fees payable for the licences are based on the population slabs for the city, town or village in which the liquor shops are located.

to be 1,46,215 by the Tahsildar, Kalyan.

During scrutiny of the licence renewal register of the SSE Thane in September 2010, we noticed that though the population slab of KDMC as per census 2001 even after excluding 27 villages was more than 10 lakh, the licence fees for issue/renewal of licences for the year 2010-11 in respect of 138 licencees (FL II, FL III and CL III, CL/FL/TOD-III FL/BR-II) were recovered corresponding to population slab below 10 lakh. This resulted in short-recovery of licence fees of ₹ 1.10 crore.

- (ii) During scrutiny of the licence renewal register of SSE, Pune in February 2012, we noticed that four licensees holding licences in FL-BR-II had paid licence fees prescribed for a lower slab of population in their area, for licenses renewed during various periods between 2009-10 and 2011-12. As against aggregate licence fees of ₹ 7.62 lakh only ₹ 2.03 lakh was paid. This resulted in short-recovery of licence fees of ₹ 5.59 lakh.

After we pointed out these cases, SSE Thane accepted the observation and stated that demand notices would be issued and recovery of the differential amount would be effected. SSE Pune stated that action for recovery would be taken after verification. The report on the recovery is awaited.

We brought the above matters to the notice of the Government in June 2012; their reply is awaited (January 2013).

5.6.2 Non-recovery of supervision charges

SSEs; Chandrapur, Jalgaon, Nagpur and Yavatmal

As per the provisions of Section 58(A) of the Bombay Prohibition Act 1949, the cost of deputing the departmental staff at the premises of the licensee is recoverable at the rates prescribed by the Government from time to time. The rates of the supervision charges are revised as and when there is revision in pay scale/dearness allowance. The Government vide its G.R. dated 28 February 2009 had adopted the recommendation of the Sixth Pay Commission with effect from 1 January 2006.

During test check of the supervision charges Register maintained in the Excise Offices attached to eight manufacturers and distilleries in four districts between March 2011 and August 2011, we noticed that though the State Government had adopted the revision of pay structure as per the Sixth

Pay Commission in February 2009, the revised supervision charges for deployment of the departmental staff at the premises of the licensees for the period from January 2006 to March 2011 had not been recovered. This resulted in non-recovery of supervision charges amounting to ₹ 27.33 lakh.

After we pointed out the cases, the Department accepted the observation and communicated recovery of ₹ 9.34 lakh from three distilleries between October 2011 and March 2012. A report on the recovery of the balance amount is awaited.

We brought the matter to the notice of the Government in May 2012; their reply is awaited (January 2013)

CHAPTER-VI

EXECUTIVE SUMMARY

Results of audit

We reported short levy, excess grant of refund, loss of revenue etc., amounting to ₹ 250.38 crore in 4,408 cases, on the basis of test check of the records relating to entertainment duty, electricity duty, state education cess, employment guarantee cess, tax on buildings (with larger residential premises), repair cess and profession tax conducted during the year 2011-12.

During the year 2011-12 as well as during earlier years, the concerned Departments accepted underassessment, short levy, etc. and recovered ₹ 198.99 crore in 1,516 cases of which 246 cases involving ₹ 25.22 crore related to 2011-12.

What we have highlighted in this Chapter

A. Entertainments Duty

Non-issuance of demand notices by concerned authorities resulted in non-recovery of Entertainment duty of ₹ 92.73 lakh.

(Paragraph 6.3.1)

Entertainment duty from permit room/beer bar with live orchestra was not recovered at ₹ 19 lakh.

(Paragraph 6.3.2)

In-action of concerned authorities resulted in non-recovery of Entertainment duty in case of dishonoured cheques at ₹ 32.24 lakh.

(Paragraph 6.3.3)

Non-issuance of demand notices of interest on late remittances of entertainment duty by various service providers of 'Direct to Home' (DTH) resulted in non-levy of penal interest of ₹ 78.25 lakh.

(Paragraph 6.3.4)

B. Electricity Duty and Tax on sale of Electricity

Failure of the department to check the returns in Form C submitted by the licencees resulted in short realisation of electricity duty of ₹ 18.99 lakh.

(Paragraph 6.5.1)

Non-levy of tax on sale of electricity to BARC residential premises, assuming such sales as being to Government resulted in non/short recovery of tax of ₹ 22.90 lakh.

(Paragraph 6.5.2)

C. Education Cess and Employment Guarantee Cess

The Department did not take any action to recover the Education Cess (EC) and Employment Guarantee Cess (EGC) at ₹ 77.36 lakh from the defaulters.

(Paragraph 6.7.1)

Non-initiation of proceedings in respect of dishonoured cheques resulted in non-realisation of revenue amounting to ₹ 16.92 lakh and interest thereon.

(Paragraph 6.7.2)

Municipal Corporations did not remit EC and EGC amounting to ₹ 92.73 crore relating to EC and EGC to the Government.

(Paragraph 6.7.3)

D. Tax on Buildings with Larger Residential Premises

Tax amounting to ₹ 89.19 lakh was not levied and recovered from 252 property owners by Brihanmumbai Municipal Corporation.

(Paragraph 6.9.1)

CHAPTER-VI : OTHER RECEIPTS

6.1 Results of audit

We reported short levy, excess grant of refund, loss of revenue etc., amounting to ₹ 250.38 crore in 4,408 cases as mentioned below, on the basis of test check of the records relating to entertainment duty, electricity duty, state education cess, employment guarantee cess, tax on buildings (with larger residential premises), repair cess and profession tax conducted during the year 2011-12:

(₹ in crore)			
Sl. No.	Nature of receipts	No. of cases	Amount
1	Entertainment duty	1,426	4.69
2	Electricity duty, tax on sale of electricity and inspection fees	1,009	11.71
3	State Education CESS and Employment Guarantee Cess	284	195.91
4	Tax on buildings with larger residential premises	219	1.49
5	Profession tax	1,447	0.75
6	Repair cess	7	24.91
7	Non-Tax Receipts	16	10.92
	Total	4,408	250.38

In response to our observations made in the local audit reports during the year 2011-12 as well as during earlier years, the concerned Departments accepted underassessment, short levy, etc. and recovered ₹ 198.99 crore in 1,516 cases of which 246 cases involving ₹ 25.22 crore related to 2011-12 and the rest to earlier years.

A few audit observations involving ₹ 97.21 crore are included in the succeeding paragraphs.

SECTION A ENTERTAINMENTS DUTY

6.2 Audit observations

During scrutiny of records in the offices of the Dy. Collectors(DCs)/Resident Deputy Collectors(RDCs)/Taluka Magistrates(TMs)/Entertainment Duty Officers(EDOs), we noticed cases of non-observance of provisions of the Acts and Rules as mentioned in the succeeding paragraphs in this section. These cases are illustrative and are based on a test check carried out by us. The Government may evolve a suitable mechanism so that mistakes can be avoided, detected and corrected.

6.3 Non-compliance of provisions of Act/Rules

The Bombay Entertainments Duty Act, 1923 (BED Act), provides for –

- (i) levy and collection of entertainment duty (ED) from entertainment providers
- (ii) levy of penalties in cases of non/late remittance

We noticed that the concerned authorities do not observe some of the provisions of the BED Act in cases mentioned in the paragraphs.

6.3.1 Non/short recovery of ED from cable operators

Two¹ DC, seven² RDCs and eight³ TMs

Under section 3(4) of the BED Act, ED was payable by the cable operators at flat rate of ₹ 45, ₹ 30 or ₹ 15 per television set per month with effect from June 2006 depending on whether the area is a Municipal Corporation (MC), 'A' and 'B' class municipality or other area. These cable operators are required to file monthly returns in Form 'E' along with the payment of ED with the Collector. ED is payable on or before the 10th of the subsequent month to which it relates. Interest at the rate of 18 per cent per annum for the first 30 days and 24 per cent thereafter is also to be levied in case of default in payment.

During the test check of Recovery Register of 17 units between December 2009 and January 2012, we noticed that ED amounting to ₹ 92.73 lakh was not paid by 290 registered cable operators during various periods between 2006-07 and 2010-11. These cable

operators had also not submitted the returns in Form 'E'. The concerned officers had neither kept track on non-receipts of returns in Form 'E' nor reviewed the Recovery Register. Due to this, no demand notices for recovery

¹ Mumbai Zone X, Mumbai Zone XI.

² Akola, Amravati, Gadchiroli, Gondia, Mumbai Zone III, Solapur, Yavatmal.

³ Karjat (Raigad), Khamgaon (Buldhana), Mumbai Zone I (Andheri), Mumbai Zone VI (Borivali), Mumbai Zone VIA (Borivali), Mumbai Zone IX (Kurla at Mulund), Mumbai Zone XI (Kurla at Mulund), Telhara (Akola).

of ED from cable operators were made by the concerned DCs, RDCs and TMs. This resulted in non-recovery of ED aggregating to ₹ 92.73 lakh from 290 cable operators. Besides, interest at the prescribed rates was also leviable.

After we pointed out the cases, the Department accepted the observation and communicated recovery of ₹ 28.47 lakh from 92 cable operators between December 2009 and December 2011. Report on recovery of the balance amount is awaited.

We reported the matter to the Government in May 2012; their reply has not been received (January 2013).

6.3.2 Non-recovery of ED from permit room/beer bar with live orchestra

TM - Zone VII, Borivali and Zone-IX Kurla at Mulund, Mumbai

Under the provisions of section 22 of BED Act, read with order dated 17 September 2010 issued by the Revenue and Forest Department, ED is recoverable at the rate of ₹ 50,000 per month from permit room/beer bar with live orchestra located in Municipal Corporation Areas (MC) with effect from 20 January 2010.

During the test check of live orchestra recovery register pertaining to two offices between August 2011 and January 2012, we noticed that ED amounting to ₹ 19

lakh was not recovered from nine permit rooms/beer bars with live orchestra during the year 2010-11. This resulted in non-realisation of ED aggregating to ₹ 19 lakh. Further interest at the prescribed rate was also leviable.

After we pointed out the cases, the Department accepted the observation and TM, Borivali stated that the recovery would be effected and TM, Kurla at Mulund communicated recovery of ₹ 10 lakh against six cases between January and February 2012.

We reported the matter to the Government in March 2012; their reply has not been received (January 2013).

6.3.3 Non-recovery of ED in case of dishonoured cheques

DCs Zone-V and Zone-VII Mumbai; TMs Zones I, III, IV and VIIA, Mumbai

As per the provisions of BED Act, ED can either be paid in cash or through cheque. Further, if the ED paid through cheque is dishonoured by the collecting bank for any reasons whatsoever, Department has to recover in cash, the amount involved immediately along with interest from the defaulters and also initiate action under the provisions of Section 138 of Negotiable Instrument Act (Amended), 1988 (NI Act).

During the test check of the records of six offices, between October 2010 and October 2011, we noticed from the cheque/ dishonoured cheque register that in 82 cases, cheques issued by cable

operators for payment of ED amounting to ₹ 32.24 lakh were dishonoured by concerned banks during various periods between 2009-10 and 2010-11. These amounts were to be recovered in cash along with interest. The concerned DCs

and TMs neither took any action to recover the amount from the defaulters nor initiated proceedings as contemplated under the NI Act. This resulted in non-realisation of ED amounting to ₹ 32.24 lakh and interest thereon.

After we pointed out the cases between October 2010 and November 2011, DCs, Zone V and VII, Mumbai and TM, Zone-VIIA recovered an amount of ₹ 7.17 lakh from 27 defaulters between October 2010 and February 2012. A report on balance recovery is awaited.

We reported the matter to the Government in March 2012; their reply has not been received (January 2013).

6.3.4 Non-levy of penal interest on various service providers of Direct to Home (DTH)

DC DTH Mumbai City

As per the provisions of GR ENT 1006/A.Sl. No. 188/T-1 dated 4 September 2008 issued by Revenue and Forest Department, Government of Maharashtra, the proprietor of authorised service provider has to remit entertainment duty into the Government account on or before 10th of every month. Where a proprietor fails to pay the amount of duty within the prescribed period, he shall be liable to pay to the Government, in addition to the amount of duty, a penal interest at the rate of 18 per cent per annum for the first 30 days and at the rate of 24 per cent per annum thereafter on the amount of duty from the date such amount became or becomes payable till the amount and interest is fully paid.

During the scrutiny of monthly statement of ED along with Bill cum Cheque Register during December 2011, we noticed that Department had not levied the penal interest on the delayed payment of ED amounting to ₹ 78.25 lakh ranging from one to 162 days during various periods between 2006-07 and 2010-11 from six⁴ service providers. The Department had neither levied nor demanded interest which resulted in non-levy of penal interest

amounting to ₹ 78.25 lakh.

After we pointed out the matter in December 2011, the Department accepted the observation and stated that the demand notices would be issued to concerned service providers and recovery of interest would be made. Report on the recovery is awaited.

We reported the matter to the Government in May 2012; their reply has not been received (January 2013).

⁴ Dish TV, Reliance Big TV Ltd., Bharat Business Channel Ltd. (Videocon), Bharat Tele Media Ltd. (Airtel), Sun Direct TV (P) Ltd., Tata Sky Ltd.

6.3.5 Non-reconciliation of balances between Personal Ledger Account (PLA) and Bank Scroll

DC (Exemption), Mumbai

As per para 589 of Maharashtra Treasury Manual (MTM) and Rule 515 of Maharashtra Treasury Rules, 1968 (MTR), Treasury Officers are required to obtain certificates of balances at the end of each year from the administrators of PLA and also the balances shown in the PLA cash book to be reconciled with the treasury records at the end of each month. Differences if any are required to be reconciled with the treasury figures and the certificate are to be submitted to the Accountant General (Accounts and Entitlement)-I Mumbai for confirmation of the balances.

During the scrutiny of the PLA cash book and the scrolls furnished by the Reserve Bank of India in the office of the DC in February 2012, we noticed that the balances shown in the cash book and bank scrolls as of March 2011, the difference of ₹ 11.90 lakh was noticed

(₹ 18,85,93,533.50 – ₹ 18,74,03,480.73 = ₹ 11,90,052.77). Despite a similar observation being pointed out in the Audit Report 2008-09, the irregularity continues to persist. Non-reconciliation may lead to misappropriation.

After we pointed out the case, in March 2012, the Department accepted to reconcile the accounts.

We reported the matter to the Government in May 2012; their reply has not been received (January 2013).

6.3.6 Non-forfeiture of Security Deposits

DC (Exemption), Mumbai

During test check of the PLA and cash book of DC, in February 2012, we noticed that security

As per the provisions under Rule 14 of the Bombay Entertainment Duty Rules, 1958, every organiser shall pay security deposit to the prescribed officer as that officer may decide. If a organiser fails to submit returns under Rule 16 or 21 within ten days of the date of the performance of the entertainment or such extended period not exceeding one month, the prescribed officer may, after giving the organiser a weeks notice, forfeit the security deposit.

deposits of ₹ 15.66 lakh collected from 18 organisers for the events organised between April 2010 and March 2011 are still lying in PLA, outside the Consolidated Fund of the State. Despite the failure on the part of

the organisers to fulfill the prescribed conditions, the DC had neither kept track of non-receipt of the returns nor issued notices for forfeiture of security deposits which resulted in non-forfeiture of security deposit aggregating to ₹ 15.66 lakh from 18 organisers. It may be mentioned here that since the organisers of entertainment had not approached the Department for refund of security deposit in excess of the ED payable, there is room for doubt that the

ED actually payable would have been in excess of the security deposit collected by the Department.

Similar observation was made in paragraph 6.2.19 of the Report of Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2009 wherein it was also recommended that a mechanism may be evolved to ensure that the accounts are submitted by the organisers of special events on time so as to assess the correct amount of ED payable, enhancing the amount of security deposit and having a provision for penalty in case of non-submission of accounts. Action taken in this regard by the Government has not been received till date.

After we pointed out the cases in March 2012, the Department accepted the observation and stated that necessary action would be taken for the forfeiture of the security deposits and credit the same into the Government Account. Their reply is awaited.

This clearly indicates that the control mechanism was weak, as action was not taken till it was pointed by us.

The matter was brought to the notice of the Government (June 2012); their reply is awaited (January 2013).

SECTION B

ELECTRICITY DUTY, TAX ON SALE OF ELECTRICITY

6.4 Audit observations

During scrutiny of records in the offices of the Chief Engineer (Electrical), Public Works Department, Mumbai and Electrical Inspectors at various places in the state, we noticed cases of non-observance of provisions of the Acts and Rules as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. The Government may evolve a suitable mechanism so that mistakes can be avoided, detected and corrected.

6.5 Non-compliance of provisions of Act/Rules

The Bombay Electricity Duty Act, 1958, and the Maharashtra Tax on Sale of Electricity Act, 1963, and rules made thereunder provide for levy and collection of electricity duty and tax on sale of electricity respectively. The concerned authorities did not monitor the returns correctly to detect the short payment and levy the rates of duty as well as tax on sale of electricity as mentioned in the succeeding paragraphs.

6.5.1 Non/short recovery of Electricity Duty

Electrical Inspector (Duty), Mumbai Central and Thane

Under the provision of the Bombay Electricity Duty Act 1958, every licensee which supplies electricity to consumers is required to collect electricity duty from the consumers and credit it to the Government on or before the last date of succeeding month to the month in which the bills are raised. Further as per Notification issued by Industries, Energy and Labour Department dated 30 January 2010, with effect from the billing month of February 2010, the rates of electricity duty for residential, commercial and industrial use was revised to 15 per cent, 17 per cent and 9 per cent of the consumption charges respectively.

During test check of the returns furnished by the dealers of three licencees, between November 2011 and December 2011, we noticed that as per the returns for the periods July 2010 to September 2010 two licencees⁵ had paid electricity duty of ₹ 370.61 lakh for the said period as against ₹ 380.65 lakh payable.

Failure of the Department to check the returns furnished by the dealers submitted by the licencees resulted in short realisation of electricity duty of ₹ 10.04 lakh as shown below:

(₹ in lakh)

Sr. No.	Category of Consumption	Total Consumption Charges (Rs)	Rate of Electricity Duty (%)	Electricity Duty payable	Electricity Duty paid as per C form	Difference
1	Dy. Executive Engineer, Gadkari Sub Division MSEDCL July to September 2010					
	Residential	833.63	15	125.04	124.89	0.15
	Commercial	490.94	17	83.46	77.17	6.29
2	Dy. Executive Engineer, Kharghar Sub Division MSEDCL July to September 2010					
	Residential	761.53	15	114.23	113.10	1.13
	Commercial	332.24	17	56.48	54.07	2.41
	Industrial	15.97	9	1.44	1.38	0.06
	Total	2,434.31		380.65	370.61	10.04

In another case M/s. Tata Power Company Limited has claimed exemption from payment of electricity duty on supply of electricity to the residential premises of Bhabha Atomic Research Centre (BARC) during 2010-11. The electricity duty payable at the rate of 15 per cent on consumption charges of ₹ 59.64 lakh worked out to ₹ 8.95 lakh.

After we pointed out these cases between December 2011 and January 2012, the Department stated that matter would be verified.

The matter was brought to the notice of the Government (June 2012); their reply is awaited (January 2013).

⁵ Dy. Executive Engineer, Gadkari Sub Division, Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) and Dy. Executive Engineer, Kharghar, Sub Division, MSEDCL

6.5.2 Non/short recovery of tax on sale of electricity

- (a) During scrutiny of return furnished by the dealers along with recovery register of the Electrical Inspector (Duty), Mumbai Central Inspection Division in December 2011, we noticed that during the year 2010-11 Tata Power Co. had not levied tax on sale of electricity to Bhabha Atomic Research Centre (BARC) residential premises, assuming such sales as being to Government. This was not admissible as BARC residences do not fall under the meaning of Government. The non levy of tax on sale of 14,91,045 units of electricity at ₹ 0.15 per unit works out to ₹ 2.24 lakh.

The tax on sale of electricity supplied to BARC residences was also not levied during the earlier years.

- (b) Scrutiny of returns furnished by the dealers in the Office of the Electrical Inspector (Duty), Thane revealed that five consumers had paid tax on sale of electricity aggregating ₹ 70.29 lakh as against tax payable at ₹ 90.95 lakh at the rate of eight paise per unit on 11,36,89,241 units. This resulted in short recovery of tax on sale of electricity of ₹ 20.66 lakh. Failure of the Electrical Inspectors to check the details of Form 'C' in respect of these consumers resulted in short recovery of ₹ 20.66 lakh.

Under the provisions of Sections 6 and 9 of the Maharashtra Tax on Sale of Electricity Act, 1963, every bulk licensee shall pay tax on or before last date of the succeeding calendar month in respect of all his sales of energy in bulk during month. In case of failure to pay the tax on sale of electricity collected by the due date, interest at the rate of 18 per cent per annum for first three months and at 24 per cent per annum thereafter is chargeable on the amount of tax for remaining unpaid till the date of payment. The rates of tax payable was revised with effect from 1st May 2008 vide notification dated 15th May 2008 issued by the Industries, Energy and Labour Department.

After we pointed out the cases, the Department accepted the observations and issued notices to the concerned consumers for making the payment. Further progress is awaited (January 2013).

SECTION C

EDUCATION CESS AND EMPLOYMENT GUARANTEE CESS

6.6 Audit observations

During scrutiny of records in the various ward offices in the Brihan Mumbai Municipal Corporation, we noticed cases of non-observance of provisions of the Act as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. The Government may evolve a suitable mechanism so that mistakes can be avoided, detected and corrected.

6.7 Non-compliance of provisions of Act/Rules

The Maharashtra Education Cess and Employment Guarantee Cess Act, 1962, (MECEGC Act) provides for levy and collection of education cess (EC) and employment guarantee cess (EGC) along with property tax by the Municipal Corporation/Councils. The concerned authorities in the Urban Development Department did not monitor the recovery of the cess(es) and its remittance into the Government account.

6.7.1 Non-recovery of EC and EGC

Assistant Assessor and Collector F/N Ward, P/N Ward and R/N Ward

During the test check of the records of three wards between March 2011 and June 2011, we noticed from Bill cum Collection Register, that EC and EGC aggregating to ₹ 77.36 lakh was not recovered from 48 property holders during various periods between 2007-08 and 2010-11. The concerned Department neither took any action to recover the amount from the defaulters nor initiated action as per the provisions of the Act/Rules. This resulted in non-recovery of EC and EGC amounting to ₹ 77.36 lakh.

After we pointed out the cases between April 2011 and July 2011, Department accepted the observations and communicated recovery of ₹ 28 lakh in 15 cases between March 2011 and September 2011. A report on balance recovery is awaited.

We reported the matter to the Government in May 2012; their reply is awaited (January 2013).

6.7.2 Non-recovery of EC and EGC in case of dishonoured cheque

During the test check of cheque/ dishonoured cheque register of six offices⁶ between August

As per the provisions under sections 4 and 6(b) of the MECEGC Act, there shall be levied and collected the EC and EGC along with the property tax at the rates prescribed by the Government and credited to Government Account. As per provisions under Rule 100(b) of the Maharashtra Treasury Rules, 1968, in the event of the cheque being dishonoured by the collecting bank for any reasons whatsoever, the Department has to recover the dues in cash, the amount involved immediately along with interest from the defaulters and also initiate action under the provisions of section 138 of NI Act i.e. imprisonment up to two years and/or fine up to twice the amount of the cheque.

2010 and June 2011, we noticed that in 131 cases, cheques issued amounting to ₹ 16.92 lakh were dishonoured by concerned banks during various periods between 2007-08 and 2010-11. These amounts were to be recovered in cash along with interest. The

concerned Department neither took any action to recover the amount from the defaulters nor initiated proceedings as contemplated under the NI Act. This resulted in non-realisation of revenue amounting to ₹ 16.92 lakh and interest thereon.

After we pointed out the cases between September 2010 and July 2011, the Department accepted the observation and communicated recovery of ₹ 7.60 lakh from 55 defaulters, between March 2011 and June 2012. A report on balance recovery is awaited.

We reported the matter to the Government in May 2012; their reply is awaited (January 2013).

A mechanism needs to be evolved at Government level to ensure that the watch is kept for timely assessment, levy and realisation of revenue by the Corporations.

⁶ Assessor and Collector Pune and Solapur Municipal Corporations; Assistant Assessor and Collector Brihan Mumbai and Pune Municipal Corporations.

6.7.3 Non-remittance of EC and EGC

As per the provisions under sections 4 and 6(b) of the MECEGC Act read with rule 4 of Education (Cess) Tax on Lands and Buildings (Collection and Refund) Rules, 1962, cess and penalty collected by the Municipal Corporations (MC) during any calendar week are required to be credited into the Government account before the expiry of the following week. If any MC defaults in payment of any sum under the Act, Government may, after holding such enquiry as it thinks fit, fix a period for the payment of such sum. The Act also empowers the Government to direct the banks/treasury in which the earnings of the MC are deposited, to pay such sum from the bank account to the Government. There is no provision in the Act to levy interest or penalty on delay in remittance of government revenue by the MC.

During the scrutiny of the Tax Collection Registers of four MCs⁷ between April 2010 and December 2011, we noticed that the MCs did not remit revenue amounting to ₹ 92.73 crore relating to EC and EGC which was collected during the years from 2007-08 to 2009-10. The Government also did not initiate any action either to fix a period for the payment of the dues or direct the bank to pay the amounts due from the accounts of the MCs.

After we pointed out the cases, Solapur MC remitted ₹ One crore into Government account between September 2010 and December 2010. Nagpur MC and Bhiwandi-Nizampur MC stated that the collected amount would be remitted to the Government account. In case of Brihan-Mumbai MC, it was stated that the Corporation had approached the Government for orders to adjust the amounts of cess against the grants due to them from the Government. The fact, however, remains that the amount collected on behalf of the Government was required to be remitted into Government Account and the adjustment of the cases against any dues is not provided in the Rules.

We reported the matter to the Government in May/June 2012; their reply is awaited (January 2013).

⁷ Bhiwandi-Nizampur, Brihan-Mumbai, Nagpur and Solapur Municipal Corporations.

SECTION-D

TAX ON BUILDINGS WITH LARGER RESIDENTIAL PREMISES

6.8 Audit observations

During scrutiny of records in the various ward offices in the Brihan Mumbai Municipal Corporation, we noticed cases of non-observance of provisions of the Acts as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. The Government may evolve a suitable mechanism so that mistakes can be avoided, detected and corrected.

6.9 Non-compliance of provisions of Act/Rules

The Maharashtra Tax on Buildings (with Larger Residential Premises) (Re-enacted) Act, 1979, provides for levy and collection of tax with large residential premises. The concerned authorities in the Urban Development Department did not monitor the assessment of the tax, issue of demand notices and its collection as mentioned in the succeeding paragraph.

6.9.1 Non-levy of tax on building with larger residential premises

Various ward offices of the Brihan Mumbai Municipal Corporation, Mumbai

Under the provisions of the Maharashtra Tax on Buildings (with Larger Residential Premises) (Re-enacted) Act, 1979, tax is leviable at 10 per cent of rateable value on all buildings in Mumbai area with floor area exceeding 125 square metres and whose rateable value exceeds ₹ 1,500 with effect from 1 April 1974.

Our scrutiny of the bill cum recovery register during various periods between June 2010 and July 2011, revealed that tax amounting to ₹ 89.19 lakh was not levied and recovered from 252 property owners between 2007-08 and 2009-10. This resulted in non-realisation of Government revenue aggregating to ₹ 89.19 lakh.

After we pointed out the cases between July 2010 and July 2011, Department accepted the observations and communicated recovery of ₹ 8.45 lakh from 42 property owners between April 2010 and June 2012. Report on recovery of the balance amount is awaited.

We reported the matter to the Government in May 2012; their reply is awaited (January 2013).

A mechanism needs to be evolved at Government level to ensure that a watch is kept for timely assessment, levy and realisation of revenue by the Corporation.



(MALA SINHA)

Principal Accountant General(Audit)-I,
Maharashtra

Mumbai
The 5 March, 2013

Countersigned



(VINOD RAI)

Comptroller and Auditor General of India

New Delhi
The

1-7 मार्च 2013
MAR 2013

