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

**FOR THE YEAR ENDED 31 MARCH 2003**

**(REVENUE RECEIPTS)**

**GOVERNMENT OF TAMIL NADU**

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## **PREFACE**

**This report for the year ended 31 March 2003 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, stamp duty and registration fees, taxes on vehicles, state excise, agricultural income tax, urban land tax, other tax receipts and non-tax receipts.**

**The cases mentioned in this report are among those which came to notice in the course of test-audit of records during the year 2002-2003 as well as those noticed in earlier years, but could not be included in previous years' Reports.**

# LETTER

My dear Mr. [Name],

I have just received your letter of the 10th inst. and am glad to hear from you. I am well and hope these few lines will find you the same. I have been thinking much lately of the old days and the friends we have left behind. It seems so long since we were all together and so much has happened since then. I hope you are all well and happy. I have not much news to write at present. I am still in the same place and doing the same work. I hope to hear from you again soon.

Yours truly,  
[Signature]

## OVERVIEW

This Audit Report contains 30 paragraphs including 3 reviews relating to non levy/short levy of taxes, interest, penalty, etc., involving Rs.1,032.59 crore. Some of the major findings are mentioned below:

### **I. General**

(i) The revenue raised by the State during 2002-03 amounted to Rs.16,202.33 crore comprising Rs.14,341.71 crore as tax revenue and Rs.1,860.62 crore as non-tax revenue. Rs.3,047.57 crore were received from the Government of India as State's share of divisible Union taxes and Rs.1,586.84 crore as grants-in-aid.

Sales tax (Rs.9,589.60 crore) formed a major portion (67 per cent) of the tax revenue of the state. Interest receipts, dividends and profits of Rs.594.70 crore accounted for 32 per cent of the non-tax revenue.

*[ Paragraph 1.1 ]*

(ii) At the end of 2002-03, arrears in respect of taxes administered by the Departments of Commercial Taxes, Revenue, Industries, etc., amounted to Rs.9,424.10 crore of which, arrears under sales tax and mines and minerals together accounted for Rs.9,181.14 crore.

*[ Paragraph 1.5 ]*

(iii) Test-check of records of sales tax, state excise, agricultural income tax, land revenue, urban land tax, taxes on vehicles and other departmental offices conducted during the year 2002-03 revealed under-assessments, short-levy, loss of revenue, etc., amounting to Rs.2,266.63 crore in 3,318 cases.

*[ Paragraph 1.10 ]*

(iv) As at the end of June 2003, 5,627 Inspection Reports issued upto December 2002 containing 21,348 audit observations with money value of Rs.2,053.26 crore were pending settlement with various Departments.

*[ Paragraph 1.11 ]*

## **II. Sales Tax**

A review. **Exemptions under Sales Tax Acts**, revealed the following:

Incorrect grant of exemption of tapioca by treating it as vegetable resulted in non-levy of tax of Rs.82.44 crore.

*[ Paragraph 2.2.4 ]*

Incorrect grant of exemption on inter-state sale of common salt, wheat bran and hand made matches resulted in non-levy of tax of Rs.34.59 crore.

*[ Paragraph 2.2.5 ]*

Irregular allowance of exemption on local sale of wheat bran without satisfaction of the conditions specified in the notification resulted in non-levy of tax amounting to Rs.20.19 crore.

*[ Paragraph 2.2.6 ]*

Failure to amend the Schedule in consonance with Additional Duties of Excise Act, 1957 resulted in notional loss of revenue of Rs.107.64 crore in respect of goods for which additional excise duty is nil.

*[ Paragraph 2.2.7 ]*

A review. **Repayment of deferred sales tax**, revealed the following:

Delay in initiating action in time resulted in non-recovery of deferred tax amounting to Rs.9.17 crore and interest of Rs.6.46 crore

*[ Paragraph 2.3.6 ]*

There was excess availment of deferred tax of Rs.55.96 lakh which had not been recovered so far.

*[ Paragraph 2.3.7 ]*

There was delay in realisation of deferred sales tax of Rs.8.86 crore consequent on the companies being declared sick by Board for Industrial and Financial Reconstruction.

**[ Paragraph 2.3.9 ]**

There was non realisation of Interest Free Sales Tax (IFST) dues of Rs.2.78 crore, where properties of dealers were taken over by state financial institutions.

**[ Paragraph 2.3.10 ]**

Interest of Rs.2.70 crore was not included in the claim petition filed before the official liquidators.

**[ Paragraph 2.3.11 ]**

Action was not initiated against the Directors of companies under liquidation to recover deferred tax of Rs.2.63 crore, even though provision existed in the Act.

**[ Paragraph 2.3.12 ]**

Interest of Rs.64.73 lakh was not levied on belated payment of deferred tax.

**[ Paragraph 2.3.13 ]**

Incorrect exemption granted to 21 dealers on sales made between 1996-97 and 2000-01 resulted in non-levy of tax amounting to Rs.1.48 crore.

**[ Paragraph 2.4 ]**

Application of incorrect rate of tax on sale of various goods in 18 assessment circles during 1995-96 to 2000-01 resulted in short-levy of tax of Rs.40.54 lakh.

**[ Paragraph 2.5 ]**

Incorrect treatment of intra-state sales as inter-state sales resulted in short-levy of tax of Rs.8.36 crore.

**[ Paragraph 2.6 ]**

Non/Short-levy of additional sales tax resulted in short-realisation of tax of Rs.31.82 lakh from 3 dealers.

**[ Paragraph 2.10 ]**

### **III. Land Revenue**

A review, **Encroachments on government lands**, revealed the following:

Inadequate levy of penalty in cases of encroachments resulted in Government not being able to earn a revenue of Rs.524.47 crore in 26 taluks.

**[ Paragraph 3.2.6 ]**

Encroachments by commercial entities resulted in Government not being able to earn a revenue of Rs.11.05 crore, by way of lease rent in 5 taluks.

**[ Paragraph 3.2.7 ]**

In one taluk due to prolonged adverse possession of lands and in another taluk sale of encroached land by dividing them into plots, resulted in loss of revenue to the tune of Rs.26.73 crore.

**[ Paragraph 3.2.8 ]**

Encroached government lands valuing at Rs.45.23 crore in 10 taluks pertaining to 7 districts, were later sold illegally through registered transaction by individuals.

**[ Paragraph 3.2.9 ]**

In Madurai, non-revision of lease rent in respect of a lessee for more than a decade resulted in short collection of revenue of Rs.9.45 crore.

**[ Paragraph 3.4 ]**

#### **IV. Stamp Duty and Registration Fees**

Incorrect exemption of stamp duty in respect of transfer of property between a parent and two of its subsidiary companies resulted in stamp duty of Rs.2.34 crore not being realised.

*[ Paragraph 4.2.1 ]*

Failure of the Department to follow the provisions as envisaged in the Act/ Rules and guidelines, resulted in under-valuation of property and consequent short-levy of stamp duty and registration fee to the tune of Rs.2.10 crore.

*[ Paragraph 4.3.1 ]*

#### **V. Luxury Tax**

Incorrect exemption from levy of luxury tax in respect of rooms occupied by time share holders resulted in non-levy of luxury tax of Rs.1.02 crore.

*[ Paragraph 5.5 ]*

#### **VI. Mines and Minerals**

Short accountal of 3.50 crore metric tons of limestone utilised for the production of clinker, in respect of 12 cement units, resulted in consequent short-levy of royalty amounting to Rs.113.97 crore, for the years 1996-97 to 2001-02.

*[ Paragraph 6.2 ]*

Failure of the Department to collect lease amount within the prescribed time or to cancel the lease or to raise double the rate of lease amount, in respect of a lessee resulted in non-realisation of lease amount of Rs.42.94 crore.

*[ Paragraph 6.3 ]*

Failure of the Department to fix the lease amount in respect of a lessee in Villupuram District, resulted in non-levy of lease rent of Rs.1.74 crore.

**[ Paragraph 6.4 ]**

## **VII. Handlooms, Handicrafts, Textiles and Khadi Department**

Delay on the part of the Department in giving effect to government orders of 1990, resulted in loss due to short-collection of levy by Rs.2.68 crore for the period from 1990-91 upto December 1997. Also levy of Rs.0.88 crore collected was not remitted into government account.

**[ Paragraph 6.7 ]**

## CHAPTER I

### GENERAL

#### 1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Tamil Nadu during the year 2002-2003, the state's share of divisible Union taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are given below:

		(In crore of rupees)				
		1998-1999	1999-2000	2000-2001	2001-2002	2002-2003
I	Revenue raised by the State Government					
	(a) Tax Revenue	9,625.30	10,918.93	12,282.24	13,009.70	14,341.71
	(b) Non-tax revenue*	1,156.70	1,356.85	1,710.78	1,556.73	1,860.62
		(1,128.00)	(1,317.66)	(1,657.10)	(1,499.85)	(1,742.46)
	<b>Total</b>	<b>10,782.00</b>	<b>12,275.78</b>	<b>13,993.02</b>	<b>14,566.43</b>	<b>16,202.33</b>
		<b>(10,753.30)</b>	<b>(12,236.59)</b>	<b>(13,939.34)</b>	<b>(14,509.55)</b>	<b>(16,084.17)</b>
II	Receipts from the Government of India					
	(a) State's share of divisible Union taxes	2,408.98	2,667.00	2,783.75	2,870.07	**3,047.57
	(b) Grants-in-aid	1,069.85	1,384.75	1,539.89	1,381.54	1,586.84
	<b>Total</b>	<b>3,478.83</b>	<b>4,051.75</b>	<b>4,323.64</b>	<b>4,251.61</b>	<b>4,634.41</b>
III	<b>Total receipts of the State [(I) + (II)]</b>	<b>14,260.83</b>	<b>16,327.53</b>	<b>18,316.66</b>	<b>18,818.04</b>	<b>20,836.74</b>
		<b>(14,232.13)</b>	<b>(16,288.34)</b>	<b>(18,262.98)</b>	<b>(18,761.16)</b>	<b>(20,718.58)</b>
IV	<b>Percentage of I to III</b>	<b>76</b>	<b>75</b>	<b>76</b>	<b>77</b>	<b>77</b>
* Figures in brackets representing non-tax revenue include receipts from lotteries net of expenditure on prize winning tickets.						
** For details please see Statement No.11 – Detailed Accounts of Revenue by Minor Heads of the Finance Accounts of the Government of Tamil Nadu for the year 2002-03. Figures under the Head '0021 – Taxes on Income other than Corporation Tax – Share of net proceeds assigned to States' booked in the Finance Accounts under 'A – Tax Revenue' have been excluded from revenue raised by the state and included in 'State's share of divisible Union taxes' in this statement.						

Of the total receipts (Rs.20,836.74 crore) for the year 2002-03, 77 per cent were raised by the State Government and remaining 23 per cent came from the Union Government as state's share of divisible Union taxes and grants-in-aid.

**1.1.2** The details of tax revenue raised during the year 2002-2003 along with the figures for the preceding four years are given below:

(in crore of rupees)

Sl. No.	Head of Revenue	1998-99	1999-00	2000-01	2001-02	2002-03	Percentage of increase (+) or decrease (-) in 2002-2003 over 2001-2002
1	Sales Tax	6,112.94	7,024.23	8,197.15	8,385.59	9,589.60	(+) 14.36
2	State Excise	1,709.81	1,833.70	1,868.68	2,058.22	2,113.61	(+) 2.69
3	Stamp Duty and Registration Fees	672.52	817.58	910.20	1,137.89	1,079.12	(-) 5.16
4	Taxes on Vehicles	518.14	577.98	590.44	648.43	745.62	(+) 14.99
5	Land Revenue	28.29	47.23	55.72	50.47	8.40	(-) 83.36
6	Taxes on Agricultural Income	38.53	17.78	5.23	2.02	1.63	(-) 19.31
7	Taxes on Immovable Property other than Agricultural Land (Urban Land Tax)	14.18	11.47	11.65	14.11	12.69	(-) 10.06
8	Others	530.89	588.96	643.17	712.97	791.04	(+) 10.95
	<b>Total</b>	<b>9,625.30</b>	<b>10,918.93</b>	<b>12,282.24</b>	<b>13,009.70</b>	<b>14,341.71</b>	<b>(+) 10.24</b>

**Sales Tax:** The increase (14.36 per cent) was mainly due to increase of 28.09 per cent under 'Receipts under State Sales Tax'. This increase was partly offset by a decrease of 39.96 per cent under 'Receipts under Central Sales Tax'.

**Taxes on Vehicles:** The increase (14.99 per cent) is mainly due to increased receipts under State Motor Vehicles Taxation Act.

**Land Revenue:** The shortfall (83.36 per cent) was due to remission of land revenue due to severe drought.

**Taxes on Agricultural Income:** The shortfall (19.31 per cent) was due to an all time low price of tea and also due to considerable increase in wage bill of the assesseees.

Reasons for increase/shortfall though called for from other Departments have not been received (October 2003).

**1.1.3** The details of major non-tax revenue raised during the year 2002-2003 alongwith the figures for the preceding four years are given below:

(in crore of rupees)							
Sl. No.	Heads of Revenue	1998-99	1999-00	2000-01	2001-02	2002-03	Percentage of increase (+) or decrease (-) in 2002-2003 over 2001-2002
1	Interest Receipts, Dividends and Profits	409.24	388.74	440.17	535.42	594.70	(+) 11.07
2	Crop Husbandry	73.48	75.13	64.87	79.19	62.22	(-) 21.43
3	Forestry and Wild Life	64.00	130.08	131.18	97.04	157.44	(+) 62.24
4	Non-Ferrous Mining and Metallurgical Industries	101.04	113.25	395.33	160.40	181.09	(+) 12.90
5	Education, Sports, Art and Culture	38.29	44.86	53.75	65.79	89.50	(+) 36.04
6	Other Receipts						
	(a) State Lotteries	53.62	124.41	121.66	126.70	119.50	(-) 5.68
	(b) Others	417.03	480.38	503.82	492.19	656.17	(+) 33.31
	<b>Total</b>	<b>1,156.70</b>	<b>1,356.85</b>	<b>1,710.78</b>	<b>1,556.73</b>	<b>1,860.62</b>	<b>(+) 19.52</b>

**Interest Receipts, Dividends & Profits:** The increase (11.07 per cent) was mainly due to increase in receipts under 'Interest from Departmental Commercial Undertakings' and 'Interest from local bodies'.

**Forestry and Wild Life:** The increase (62.24 per cent) was mainly due to increased sale of timber and other forest produce, increased receipts from social and farm foresteries.

Reasons for increase/shortfall though called for from other Departments have not been received (October 2003).

## 1.2 Variations between budget estimates and actuals

The variation between the budget estimates and actuals of revenue receipts, for the year 2002-2003 in respect of the principal heads of tax and non-tax revenue are given below:

(in crore of rupees)

Sl. No	Heads of Revenue	Budget estimates	Actuals	Variations excess (+) or shortfall (-)	Percentage of variation
1	2	3	4	5	6
1	Sales Tax	9,071.41	9,589.60	(+) 518.19	(+) 5.71
2	State Excise	2,357.98	2,113.61	(-) 244.37	(-) 10.36
3	Stamp Duty and Registration Fees	1,285.30	1,079.12	(-) 206.18	(-) 16.04
4	Taxes on vehicles	700.50	745.62	(+) 45.12	(+) 6.44
5	Land Revenue	44.82	8.40	(-) 36.42	(-) 81.26
6	Taxes on Agricultural Income	5.47	1.63	(-) 3.84	(-) 70.20
7	Taxes on Immovable Property other than Agricultural Land (Urban Land Tax)	13.00	12.69	(-) 0.31	(-) 2.38
8	Taxes and Duties on Electricity	261.13	135.18	(-) 125.95	(-) 48.23
9	Interest Receipts, Dividends & profits	440.80	594.70	(+) 153.90	(+) 34.91
10	Non-ferrous mining and Metallurgical industries	155.43	181.09	(+) 25.66	(+) 16.51
11	Crop Husbandry	80.28	62.22	(-) 18.06	(-) 22.50
12	Roads and Bridges	15.96	26.63	(+) 10.67	(+) 66.85
13	Major and Medium Irrigation	8.28	9.52	(+) 1.24	(+) 14.98
14	State Lotteries	133.00	119.50	(-) 13.50	(-) 10.15

**Land Revenue:** The shortfall (81.26 per cent) was due to remission of land revenue due to severe drought.

**Taxes on Agricultural Income:** The shortfall (70.20 per cent) was due to an all time low price of tea and also due to considerable increase in wage bill of assessees.

**Taxes and Duties on Electricity:** The shortfall (48.23 per cent) was mainly due to consumers challenging the levy of tax in the High Court.

**Interest Receipts, Dividends & Profits:** The increase (34.91 per cent) was mainly due to increase in receipts under 'Interest from Departmental Commercial Undertakings' and 'Interest from local bodies'.

### 1.3 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection, during the years 2000-2001, 2001-2002 and 2002-2003 along with the relevant All India Average percentage of expenditure on collection to gross collection for 2001-2002 were as follows:

(in crore of rupees)						
Sl. No	Heads of Revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India Average percentage for the year 2001-02
1	Sales Tax	2000-2001	8,197.15	104.88	1.28	1.26
		2001-2002	8,385.59	96.93	1.16	
		2002-2003	9,589.60	93.64	0.98	
2	Taxes on Vehicles	2000-2001	590.44	26.70	4.52	2.99
		2001-2002	648.43	27.05	4.17	
		2002-2003	745.62	35.29	4.73	
3	State Excise	2000-2001	1,868.68	20.92	1.12	3.21
		2001-2002	2,058.22	22.44	1.09	
		2002-2003	2,113.61	NF	NF	
4	Stamp Duty and Registration Fees	2000-2001	910.20	61.19	6.72	3.51
		2001-2002	1,137.89	54.15	4.76	
		2002-2003	1,079.12	71.85	6.66	
NF – Not furnished.						

It can be seen from the above that the percentage of expenditure on collection of taxes on vehicle and stamp duty and registration fee was higher than the All India average.

#### 1.4 Collection of sales tax per assessee

(in crore of rupees)			
Year	No. of assessees	Sales tax revenue	Revenue/assessee
1998-1999	1,07,857	6,112.94	0.06
1999-2000	1,09,677	7,024.23	0.06
2000-2001	1,06,242	8,197.15	0.08
2001-2002	1,06,946	8,385.59	0.08
2002-2003	1,45,489	9,589.60	0.07

#### 1.5 Arrears of revenue

The arrears of revenue as on 31 March 2003 in respect of some principal heads of revenue amounted to Rs.9,424.10 crore of which Rs.2,378.63 crore were outstanding for more than 5 years as detailed in the following table:

(in crore of rupees)				
Sl. No.	Heads of Revenue	Amount outstanding as on 31 March 2003	Amount outstanding for more than 5 years as on 31 March 2003	Remarks
1	2	3	4	5
1	Sales Tax	8,718.59	1,898.02	Out of total arrears of Rs.8,718.59 crore, demands amounting to Rs.2,512.33 crore were covered under Revenue Recovery Act. Demands amounting to Rs.1,567.25 crore were stayed by Government, High Court and other judicial authorities. A sum of Rs.116.45 crore was held up due to rectification/review applications. Rs.198.58 crore could not be recovered on account of the assessees becoming insolvent. A sum of Rs.193.08 crore

1	2	3	4	5
				was likely to be written off and a sum of Rs.4,120.44 crore was under various stages of recovery. A sum of Rs.10.46 crore had since been collected.
2	Mines and Minerals	462.55	315.58	Out of the total arrears of Rs.462.55 crore, a sum of Rs.172.39 crore was covered by recovery certificates. Demands amounting to Rs.243.17 crore were stayed by High Court and other judicial authorities. Rs.0.07 crore was stayed by Government. A sum of Rs.0.34 crore was held up due to rectification/ review applications. An amount of Rs.0.04 crore was likely to be written off and Rs.42.34 crore was under various stages of recovery. A sum of Rs.4.20 crore had since been collected.
3	Stamp Duty and Registration Fees	76.10	48.92	The entire arrears of Rs.76.10 crore were covered by recovery certificates.
4	Urban Land Tax	85.04	49.21	Out of the total arrears, Rs.14.03 crore is stayed by High Court; Rs.8.89 crore and Rs.6.28 crore were stayed by Government and Head of the Department respectively. Rs.48.49 crore were covered under various stages of recovery. Rs.7.35 crore has since been collected.
5	State Excise	49.45	49.45	Out of the total arrears of Rs.49.45 crore, Rs.11.13 crore was covered by recovery certificates. Rs.5.76 crore was stayed by High Court and Rs.3.24 crore was held up due to rectification/review applications. Rs.0.04 crore could not be collected on account of assessee becoming insolvent. A sum of Rs.4.66 crore was likely to be written off. Rs.24.62 crore had since been collected.
6	Land Revenue	29.54	15.41	Out of the total arrears, demands amounting to Rs.0.92 crore were covered by recovery certificates. Arrears of Rs.4.25 crore were covered by stay granted by High Court and other judicial authorities. A sum of Rs.3.18 crore was stayed by Government and Rs.4.74 crore was likely to be written off. A sum of Rs.16.27 crore was under various stages of recovery. A sum of Rs.0.18 crore had since been collected.

1	2	3	4	5
7	Taxes on Vehicles	2.83	2.04	Out of the total arrears of Rs.2.83 crore, demands amounting to Rs.1.76 crore were covered under Revenue Recovery Act. Demands of Rs.22.56 lakh were stayed by High Court and other judicial authorities and a sum of Rs.0.21 lakh was held up due to rectification/review applications. A sum of Rs.0.35 lakh could not be collected as the assessee had become insolvent. A sum of Rs.20.64 lakh was likely to be written off and Rs.44.90 lakh was under various stages of collection. An amount of Rs.18.05 lakh had since been collected.
	<b>Total</b>	<b>9,424.10</b>	<b>2,378.63</b>	

## 1.6 Arrears in assessments

The details of cases pending assessment at the beginning of the year 2002-03, cases becoming due for assessment during the year, cases disposed of during the year and number of cases pending finalisation at the end of the year 2002-03, as furnished by the Sales Tax Department in respect of Sales Tax and by Revenue Department in respect of Urban Land Tax and Agricultural Income Tax are as follows:

Heads of Revenue	Opening balance	New cases due for assessment during 2002-03	Total assessments due	Cases disposed of during 2002-03	Balance at the end of the year	Percentage of disposal (col. 5 to 4)
1	2	3	4	5	6	7
Sales Tax	33.208	1,38,048	1,71,256	1,22,757	48,499	72%
Urban Land Tax	3,048	1,421	4,469	88	4,381	2%
Agricultural Income Tax	297	3,911	4,208	4,042	166	96%
<b>Total</b>	<b>36,553</b>	<b>1,43,380</b>	<b>1,79,933</b>	<b>1,26,887</b>	<b>53,046</b>	

The reasons for low disposal of cases in urban land tax as attributed by the department was due to reduction in number of field offices and shortage of field staff.

### 1.7 Evasion of tax

The details of cases of evasion of tax detected by the sales tax Department, cases finalised and the demands for additional tax raised as reported by the Department are given below:

(in crore of rupees)							
Sl. No.	Heads of revenue	Cases pending as on 31 March 2002	Cases detected during 2002-2003	Total	Cases in which assessments/ investigations completed and additional demand including penalty etc., raised		No. of cases pending finalisation as on 31 March 2003
					No.	Amount	
1	Sales Tax						
	i) Enforcement Wing.	2,336	6,355	8,691	5,338	NF	3,353
	ii) Administrative-Wing.	4,323	3,964	8,287	3,920	3.46	4,367
NF – Not furnished.							

### 1.8 Write-off and waiver of revenue

During the year 2002-03, demands of Rs.1.94 crore (in 800 cases) and Rs.3.64 crore (in 785 cases) relating to sales tax and state excise respectively were written off by the Departments as irrecoverable. Reasons for the write-off of these demands as reported by the Departments were as follows:

(in crore of rupees)					
Sl. No.	Reasons	Sales Tax		State Excise	
		No. of cases	Amount	No. of cases	Amount
1	Whereabouts of defaulters not known	639	0.78	131	1.28
2	Defaulters no longer alive	38	0.41	---	----
3	Defaulters not having any property	31	0.39	576	1.98
4	Defaulters adjudged insolvent	30	0.35	78	0.38
5	Other reasons	62	0.01	---	----
	<b>Total</b>	<b>800</b>	<b>1.94</b>	<b>785</b>	<b>3.64</b>

## 1.9 Refunds

The number of refund cases pending at the beginning of the year 1 April 2002, claims received during the year, refunds allowed during the year and cases pending at the close of the year as on 31 March 2003, as reported by the Departments are given below:

Sl. No.	Particulars	Sales Tax		Taxes on Vehicles		Mines and Minerals	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
1	Claims outstanding at the beginning of the year	54.297	64.43	52	0.07	2	0.41
2	Claims received during the year	23.594	86.90	55	0.06	19	0.08
3	Refunds made during the year	22.010	47.07	70	0.07	16	0.17
4	Balance outstanding at the end of the year	55.881	104.26	37	0.06	5	0.32

## 1.10 Results of audit

Test Check of records of sales tax, land revenue, state excise, motor vehicles tax, stamp duty and registration fees, electricity duty, other tax receipts and non-tax receipts conducted during 2002-2003 revealed under-assessment/short levy/loss of revenue amounting to Rs.2,266.63 crore in 3,318 cases. During the year the departments accepted under-assessment of Rs.6.37 crore in 778 cases pointed out in 2002-03 and earlier years and recovered Rs.1.63 crore. No replies have been received in respect of the remaining cases.

This Report contains 30 paragraphs including 3 reviews relating to non/short levy of taxes, duties, interest and penalties etc., involving Rs.1,032.59 crore. The Department/Government have accepted audit observations involving Rs.52.77 crore of which Rs.0.30 crore had been recovered upto August 2003. No reply has been received in other cases.

### **1.11 Failure of senior officials to enforce accountability and protect interest of Government**

Audit observations on incorrect assessments, short-levy of taxes, duties, fees, etc., as also defects in the maintenance of initial records noticed during audit and not settled on the spot are communicated to the Heads of Offices and other departmental authorities through inspection reports. Serious financial irregularities are reported to the Heads of Departments concerned and the Government. The Heads of Offices are required to furnish replies to the inspection reports through their respective Heads of Departments within a period of two months.

**1.11.1** The number of inspection reports and audit observations relating to revenue receipts issued upto 31 December 2002, which were pending settlement by the Departments as on 30 June 2003, along with corresponding figures for the preceding two years, are given below:

	Position as on 30 June		
	2001	2002	2003
Number of inspection reports pending settlement	4,754	5,103	5,627
Number of outstanding audit observations	17,974	19,403	21,348
Amount of revenue involved (in crore of rupees)	633.98	853.49	2,053.26

The increasing trend of outstanding audit reports and objections is indicative of non-compliance with Government's instruction to send replies to initial audit observations, and report on further action taken thereon within the stipulated time. Though various committee such as State Audit Committee, Departmental committee were constituted in March 1993, the objectives of the committees, viz., expeditious settlement of outstanding paras had not been achieved.

**1.11.2** Revenue-headwise breakup of the inspection reports and audit observations outstanding as on 30 June 2003 is given below:

Sl. No.	Revenue Heads	Number of outstanding		Amount (in crore of rupees)	Earliest year to which the report relates
		Inspection Reports	Audit Observations		
1	2	3	4	5	6
1	Sales Tax	2,806	14,979	668.98	1986-87
2	Stamp duty and Registration Fees	1,026	2,014	19.01	1982-83
3	Land Revenue	598	1,639	953.82	1988-89
4	Taxes on Vehicles	307	660	46.11	1983-84
5	State Excise	197	429	97.09	1987-88
6	Taxes on Agricultural Income	74	253	71.87	1986-87
7	Mines and Minerals	179	529	171.56	1989-90
8	Urban Land Tax	217	554	8.56	1983-84
9	Electricity Duty	59	96	7.37	1986-87
10	Entertainments Tax	98	106	8.60	1989-90
11	Luxury Tax	55	67	0.20	1994-95
12	Betting Tax	11	22	0.09	1991-92
	<b>Total</b>	<b>5,627</b>	<b>21,348</b>	<b>2,053.26</b>	

### **1.12 Departmental Audit Committee Meeting**

No Departmental Audit Committee meeting was held during the year 2002-03.

### **1.13 Response of the Departments to Draft Audit Paragraphs**

Government (Finance Department) issued directions in April 1952 to all Departments to send their response 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 are forwarded 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 six weeks. The fact of non-receipt of replies from the Departments are invariably indicated at the end of each such paragraphs included in the Audit Report.

60 draft paragraphs (clubbed into 30 paragraphs) including 3 reviews proposed to be included in the Report of the Comptroller and Auditor General of India for the year ended March 2003 were forwarded to the Secretaries of the respective Departments during April-July 2003, through demi-official letters and followed up with reminders in August 2003.

The Secretaries of the Departments (except Secretary to Commercial Taxes Department) did not send replies to 18 draft paragraphs. These Paragraphs have been included in this Report without the response of the Secretaries of the Departments. This had resulted in non-compliance to above instructions of the Government.

### **1.14 Follow up on Audit Reports – Summarised position**

With a view to ensuring accountability of the executive in respect of all the issues dealt with in Audit Reports, the Public Accounts Committee (PAC) directed that the Departments should furnish remedial/corrective Action Taken Notes (ATN) on all paragraphs contained therein, within the prescribed time frame.

However, a review of outstanding ATNs as of 31 March 2003 on paragraphs included in the Report of the Comptroller and Auditor General of India, Revenue Receipts, Government of Tamil Nadu, disclosed that for 783 recommendations pertaining to 273 audit paragraphs discussed by PAC, the Department had not submitted remedial ATNs. Out of the 783 recommendations pending, ATNs were not submitted by the Department even once in respect of 420 recommendations; the earliest of which relate to Audit Report 1986-87.

Further, PAC has also laid down that necessary explanatory notes for the issues mentioned in the audit report should be furnished to the Committee within a maximum period of two months from the date of placing of the Reports before Legislature. Though the Audit Reports for the year 1998-99, 1999-2000, 2000-2001 and 2001-2002 were placed before the Legislative Assembly in May 2000, September 2001, May 2002 and May 2003 respectively, the Departments are yet to submit Explanatory Notes for 93 paragraphs (including 10 reviews) included in these reports.

## CHAPTER II

### SALES TAX

#### 2.1 Results of Audit

Test check of records of departmental offices conducted in audit during the period April 2002 to March 2003 revealed under assessments/non-levy of tax, etc., amounting to Rs.393.89 crore in 1,986 cases as detailed below:

(in crore of rupees)			
Sl. No.	Categories	No. of Cases	Amount
1	Incorrect grant of exemption	472	37.09
2	Application of incorrect rate of tax	900	59.23
3	Incorrect computation of taxable turnover	170	8.29
4	Non-levy of penalty	145	1.91
5	Non-levy of interest	163	1.25
6	Review : Exemptions under Sales Tax Acts	1	244.86
7	Review : Repayment of deferred sales tax	1	34.33
8	Other irregularities	134	6.93
	<b>TOTAL</b>	<b>1,986</b>	<b>393.89</b>

During the year 2002-2003, the Department accepted under assessments, etc., of Rs.2.35 crore in 614 cases, of which 413 cases involving Rs.1.43 crore were pointed out during 2002-2003 and the rest in earlier years. A sum of Rs.83.85 lakh had been recovered.

Two reviews: **Exemptions under Sales Tax Acts and Repayment of deferred sales tax**, and few illustrative cases involving financial effect of Rs.290.66 crore are mentioned below.

## **2.2 Review : Exemptions under Sales Tax Acts**

### **Highlights:**

- **Incorrect grant of exemption of tapioca by treating it as vegetable resulted in non-levy of tax of Rs.82.44 crore.**

*[Paragraph 2.2.4]*

- **Incorrect grant of exemption on inter-state sale of common salt, wheat bran and hand made matches resulted in non-levy of tax of Rs.34.59 crore.**

*[Paragraph 2.2.5]*

- **Irregular allowance of exemption on local sale of wheat bran without satisfaction of the conditions specified in the notification resulted in the non-levy of tax amounting to Rs.20.19 crore.**

*[Paragraph 2.2.6]*

- **Failure to amend the Schedule in consonance with Additional Duties of Excise Act, 1957, resulted in notional loss of revenue of Rs.107.64 crore in respect of goods for which additional excise duty is nil.**

*[Paragraph 2.2.7]*

### **2.2.1 Introduction**

The Tamil Nadu General Sales Tax Act, 1959 (TNGST Act), provides for exemption, subject to such restrictions and conditions as may be prescribed, from payment of tax in respect of dealers dealing in goods specified in third schedule to the Act. While Part 'A' of the third schedule specifies certain goods as described in the first schedule to the Additional duties of Excise (Goods of Special importance) Act, 1957 (Central Act 58 of 1957), Part B of the schedule specifies certain other goods which are exempted from levy of tax under section 8 of TNGST Act. The TNGST Act also empowers the Government under section 17 to issue notification whether prospectively or retrospectively granting exemption or reduction from payment of tax on the sale or purchase of any specified goods at all point or at specified points in the series of sales by successive dealers; or by any specified class of persons, in regard to the whole or any part of their turnover; or on the sale or purchase of any specified classes of goods by specified classes of dealers in regard to the whole or part of their turnover.

The Central Sales Tax Act, 1956 (CST Act), also empowers the State Government to issue notification, in public interest, exempting any dealer from payment of tax, in respect of any goods or classes of goods sold in the course of interstate trade or commerce.

### **2.2.2 Organisational set up.**

The Secretary to Government, Commercial Taxes Department has the overall control over the Department at the Government level and the Commissioner of Commercial taxes is the Head of Department, who is assisted by Joint Commissioners, Deputy Commissioners and Assistant Commissioners in charge of different wings of the Department. There are 10 territorial divisions and 8 enforcement divisions (including one inter-state investigation cell) in the Department. For the conduct of assessment, levy and collection of taxes payable under the various Acts administered by the Department, there are 10 commercial taxes divisions in the State. Each division is headed by a Deputy Commissioner. These divisions are further divided into 40 commercial taxes districts each headed by a Territorial Assistant Commissioner. There are 323 assessment circles, including 6 fast track assessment circles (4 in Chennai and 2 in Coimbatore headed by Territorial Assistant Commissioners). Out of the 323 assessment circles, 6 are headed by Assistant Commissioners, 236 by Commercial Tax Officers and 81 by Deputy Commercial Tax Officers.

### **2.2.3 Audit Objective**

The records in Commercial Taxes Department at the government secretariat and in the Commissionerate relating to issue of notification/amendment to Third Schedule granting exemption, were scrutinised and the assessment records in 138 out of 323 assessment circles were test checked between December 2001 and June 2003. The audit review was conducted with a view to ascertain whether conditions governing grant of exemption under the Act and Rules were fulfilled and to assess its impact on Government revenue.

The results of test check are discussed in the succeeding paragraphs.

### **2.2.4 Incorrect exemption of tapioca as Vegetable**

As per the TNGST Act, every dealer who purchases from a registered dealer or from any other person, any goods in circumstances in which no tax is payable and consumes or uses such goods in or for the manufacture of other goods for sale or otherwise, is liable to pay purchase tax at the prescribed rates.

As per Entry 3 of Part B of Third Schedule to the TNGST Act 'fresh vegetables and fruits including potatoes and garlic (other than branded packed items)' are exempt from levy of tax.

Tapioca is a tuber crop predominantly used as a raw material for a number of value added industrial products such as starch, sago, liquid glucose, dextrin, gum, fructose syrup etc. Therefore, tapioca is not eligible for exemption from levy of tax as fresh vegetable falling under the above entry.

During a test check of records of nine assessment circles, it was noticed that 617 assessees (sago and starch factory owners) purchased tapioca valued at Rs.778.08 crore from agriculturists during the years 1996-97 to 2000-01 and used it in the manufacture of sago, starch etc. Though tax of Rs.82.44 crore was leviable on the purchase turnover, the Assessing Officers while finalising assessments between October 1997 and December 2002, did not levy the same. This resulted in under assessment of tax of Rs.82.44 crore.

On this being pointed out, the Department replied in April 2003 that as per the clarification of Commissioner of Commercial Taxes, given on 31 May 2000, tapioca was a vegetable falling under Third Schedule. The reply of the Department is not acceptable, since tapioca was predominantly purchased and used by industries as raw material in the manufacture of sago, starch etc., and not used as vegetable. Therefore, purchase tax should have been levied. Moreover, it has judicially<sup>1</sup> been held that vegetable is commonly understood as those class of vegetables, which are used for serving on tables. In these cases, tapioca was used for manufacturing sago and starch.

#### **2.2.5 Incorrect grant of exemption from levy of tax under CST Act.**

Under the CST Act, no tax is leviable on the inter-state sale of any goods, if the sale or purchase of such goods is exempt from tax generally under the sales tax law of the appropriate state. However, sale or purchase of any goods shall not be deemed to be exempt from tax, if the sale or purchase of such goods is exempt only in specified circumstances and under specific conditions. Further, on inter-state sale of goods (other than declared goods) which are not covered by declarations in the prescribed form, tax is leviable at the rate of 10 per cent or at the rate applicable to sale of such goods within the state whichever is higher. If the rate of tax of any goods is lower than 4 percent, then such goods are subjected to tax at such lower rates even without valid declaration. Inter-state sale of handmade matches are taxable at 2 per cent as per the notification issued in June 1962 under the CST Act.

As per Entry 76 of Part B of Third Schedule to the TNGST Act, sale of handmade matches are exempt from levy of tax. As the exemption granted to matches was under specified condition that it should be handmade, the exemption granted was not of a general nature but a conditional one. However, it was noticed that in fifteen<sup>2</sup> assessment circles, interstate sale of handmade matches amounting to Rs.1,551.10 crore made by 1,322 dealers during the years 1996-97 to 2000-01, whose assessments were finalised between June 1997 and October 2002, were erroneously exempted from levy of tax treating the commodity as generally exempted item. This resulted in non-levy of tax of Rs.31.02 crore.

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<sup>1</sup> (1962) 13 STC 1(SC) Motipur Zamindary Co (Pvt) Ltd., Vs. State of Bihar

<sup>2</sup> Dharmapuri, Ettaiyapuram, Gudiyatham (East), Gudiyatham (West), Kovilpatti I & II, Sankarankoil, Sattur, Sivakasi I to IV, Srivilliputhur and Virudhunagar I & III.

Similarly, as per Entries 7, and 57(v) (as amended with effect from 8 September 1998) of the Third Schedule to the TNGST Act, common salt including iodised or vitaminised salt for human consumption, other than salt for industrial use and wheat bran used for cattle feed respectively, are exempt from levy of tax. As the exemptions granted under the local Act were for use for specific purpose, the inter-state sales of these goods were taxable at the appropriate rates under CST Act.

However, it was noticed that in twenty one<sup>3</sup> assessment circles, inter-state sales of these goods viz., common salt/wheat bran not covered by declarations in form 'C', amounting to Rs.16.94 crore made by 50 dealers during 1996-97 to 2000-01 though taxable at appropriate rates, were incorrectly exempted from levy of tax treating the commodities as generally exempted items. This resulted in non-levy of tax amounting to Rs.1.81 crore.

In the case of common salt, Government accepted audit's contention and issued in December 1998 notification under the CST Act, for granting exemption on inter-state sale of common salt from 23 December 1998 onwards and directed the Assessing Officers to submit waiver proposals for the exemption granted on the inter-state sale for the period 1 April 1994 to 22 December 1998.

In the case of wheat bran, on being pointed out in audit, the Commissioner of Commercial Taxes stated in February 2002 that in a similar issue, the case of exemption granted for certified seeds for agriculture purpose, the same was judicially held<sup>4</sup> to be a general exemption, and on the same analogy, exemption on sale of wheat bran used for cattle feed is also general. The Department also contended in November 2000 that as per judicial decision<sup>5</sup> of the Madras High Court, wheat bran is cattle feed. The reply is not tenable because as per the judicial decision, certified and labelled seeds, used for agricultural purpose, were exempt from tax. The expression 'for agriculture purpose' was held as only qualifying the seeds. Therefore, it was held that the requirements of the Government Order were only indicative of the nature of goods which were entitled for exemption and did not specify a condition or circumstance under which the seeds were entitled for exemption. However, wheat bran, is a single commodity and exemption for the same is only for use as cattle feed and not for its other uses. Hence the judicial decisions quoted in reply is not applicable to the instant case. Further, the exemption granted to wheat bran became conditional after the amendment with effect from

<sup>3</sup> Aruppukottai, Avarampalayam, Avinashi, Dharmapuri, Dindigul (Rural), Mettupalayam Road (CBE), Mylam-II (Trichy), Oppanakkara St. (CBE), Palani-I, Palayamkottai, Pollachi (West), Ranipet, Royapuram, Thirumangalam, Thuckalay (Madurai), Tondiarpet (Chennai), Tuticorin I, II and III, Velandipalayam (CBE) and Vengalakadai Street (Madurai).

<sup>4</sup> Pinakini seeds Vs. State of Andhra Pradesh – 98 STC 144  
Venkateswara Hybrid Seeds Co.Vs. State of Andhra Pradesh -- 106 STC 34

<sup>5</sup> Balakrishna Flour Mill and another Vs. State of Tamil Nadu – 80 STC 106

8 September 1998 and the Madras High Court judgement quoted by the Department, being prior to this amendment is not applicable to the instant case.

- As per notification issued on 7 December 1998 under section 8(5) of the CST Act (effective from 23 December 1998), inter-state sale of common salt including iodised or vitaminised salt for human consumption, other than salt for industrial use, is exempt.

However, it was noticed that in 3<sup>6</sup> circles, inter-state sale of common salt valued at Rs.17.61 crore made by 42 dealers during 1998-99 to 2000-01 was allowed exemption by the Assessing Officers without satisfying themselves that the salt sold was solely for human consumption. The incorrect exemption resulted in non-levy of tax of Rs.1.76 crore.

On this being pointed out, the Assessing Officers of two circles stated that the condition for exemption for inter-state sale of salt could not be verified. In case of Tuticorin II, the assessing officer stated that matter would be examined.

#### **2.2.6 Irregular allowance of exemption under TNGST Act**

As per entry 57(v) of Part B of Third Schedule to the TNGST Act as amended with effect from 8 September 1998, cattle feed and wheat bran used for cattle feed including compounded cattle feed other than those falling under item 12 of Part B of I Schedule are exempted from levy of tax. Accordingly, wheat bran used for purposes other than cattle feed is taxable. Therefore, before allowing exemption, it must be clearly established that the wheat bran sold by the dealer is for cattle feed only.

However, on test check of records in thirty eight<sup>7</sup> assessment circles, it was noticed that in the case of 46 dealers, local sale of wheat bran amounting to Rs.182.10 crore made to various dealers during the period 8 September 1998 to 31 May 2001, was allowed exemption by the Assessing Officers without satisfying themselves that the bran sold was for use as cattle feed. Therefore, the exemption allowed on the sale of wheat bran without ensuring that it was for use as cattle feed was in violation of the conditions specified in the notification. The irregular exemption resulted in non-levy of tax amounting to Rs.20.19 crore.

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<sup>6</sup> Tuticorin I, II & III.

<sup>7</sup> Aruppukkottai, Avarampalayam, Avinashi, Ayanavaram (Chennai), Dharmapuri, Dindigul (Rural), Fast Track Assessment Circle III (Chennai), Gudiyatham (East), Harur, Karaikudi, Loansquare I (Chennai), Mettupalayam Road (Coimbatore), Mylapore, Mylam II (Trichy), Nethaji Road (Madurai), Oppanakara Street (Coimbatore), Palayamkottai, Palani I, Ponneri, Pollachi (West), Ranipet, Rattan Bazaar, Royapuram, Salem Town (North), Saligramam, Srirangam, Srivilliputhur, Suramangalam, Tanjore, T.Nagar (East), Tondiarpet, Tirumangalam, Tirupparankundram (Madurai), Tiruthani, Thuckalay, Velandipalayam (Coimbatore), Vengalakadai Street (Madurai) and Vellore (North).

### 2.2.7 Failure to amend the Schedule in consonance with Additional Duties of Excise Act, 1957.

The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (ADE Act), was enacted by the Parliament, on the basis of an agreement between the Central Government and the State Governments by which the levy of sales tax on certain 'Goods of Special Importance' (GSI) like sugar, tobacco and textiles, etc., by states was replaced by levy of additional duty of Central Excise (AED), which is entirely distributable among the states. Consequently, no sales tax is leviable by the state in respect of goods for which AED is levied by Central Government.

The High Court of Madras clarified<sup>8</sup> that, it was not as if the states were deprived of their power to tax transaction in these goods, but if they do so they forfeit their right to share the proceeds of levy under ADE (GSI) Act, 1957. Accordingly, it is open for the State Governments to levy sales tax on goods covered by ADE (GSI) Act, 1957, if they are willing to forego the share of the proceeds of central levy. So sales tax is leviable, wherever duty under AED is not levied by the Central Government. While restructuring the Third schedule with effect from 11 August 1993 by specifying the commodities along with tariff number of Central Excise Schedule for which AED was leviable, the State Government had included certain commodities like unprocessed textile fabrics and un-manufactured tobacco, etc., for exemption of sales tax, where rate of AED is 'nil'.

It was noticed during audit of 14<sup>9</sup> assessment circles that sale of grey cloth amounting to Rs.2,586.90 crore made by 508 dealers during the years 1996-97 to 2000-2001 was incorrectly exempted from levy of tax on the ground that the item was covered under Part A of Third Schedule for which AED was leviable by Central Government, whereas the rate of AED is Nil, as per tariff of Central Excise. A cross verification with Central Excise department revealed that these dealers had not paid AED under Additional Duties of Excise (GSI) Act. The incorrect exemption resulted in notional loss of revenue to the tune of Rs.107.64 crore (including Central Sales Tax).

Thus, failure to amend the Third Schedule to the Act suitably on the lines of other states like Kerala and Gujarat for automatic levy of sales tax on goods of special importance, wherever no AED is levied, resulted in depriving the State Government from collection of revenue by levy of sales tax on these goods.

<sup>8</sup> (1984) 55 STC 47 (Madras) Nemichand Parasmal & Co Vs. DCTO Evening Bazaar Assessment circle, Madras

<sup>9</sup> Brough Road (Erode), Lakshmi Nagar (Tiruppur), Palladam, Mettur Road (Erode), P.N.Palayam (Coimbatore), Sathi Road (Erode), Sankagiri, Sivakasi-IV, Thiruchengode (Town) & (Rural), Thiruparankundram (Madurai), Tiruppur (Rural), Tiruppur (Central-II) and Udumalpet (North).

### **2.2.8 Recommendations**

The Government's failure to amend the Third Schedule for automatic levy of sales tax on goods which had not suffered AED and to prescribe control mechanism for allowing exemption, deprived the Government of substantial revenue. The government may consider the following for action in view of the above.

Whenever exemptions are granted with conditions attached thereto, mechanism should be prescribed by which the Assessing Officers satisfy themselves about compliance thereof, before granting such exemptions.

The Government may consider suitable amendment of Third Schedule so that goods which are actually subjected to AED alone are exempted from levy of tax.

The matter was reported to the Government in June 2003 and followed up with reminder in August 2003; their reply was not received (October 2003).

## 2.3 Review: Repayment of deferred sales tax

### Highlights

- Delay in initiating action in time resulted in non-recovery of deferred tax amounting to Rs.9.17 crore and interest of Rs.6.46 crore.

[Paragraph 2.3.6]

- There was excess availment of deferred tax of Rs.55.96 lakh which has not been recovered so far.

[Paragraph 2.3.7]

- There was delay in realisation of deferred sales tax of Rs.8.86 crore consequent on the companies being declared sick by Board for Industrial and Financial Reconstruction.

[Paragraph 2.3.9]

- There was non-realisation of Interest Free Sales Tax (IFST) dues of Rs.2.78 crore, where properties of dealers were taken over by state financial institutions.

[Paragraph 2.3.10]

- Interest of Rs.2.70 crore was not included in the claim petition filed before official liquidators.

[Paragraph 2.3.11]

- Action was not initiated against the directors of companies under liquidation, to recover deferred tax of Rs.2.63 crore, even though provision existed in the Act.

[Paragraph 2.3.12]

- Interest of Rs.64.73 lakh was not levied on belated payment of deferred tax.

[Paragraph 2.3.13]

### 2.3.1 Introduction

With a view to accelerate industrial development in the state, the Government introduced a scheme of sales tax relief in May 1971, which was further liberalised from time to time. The liberalised scheme introduced from May 1990, envisaged interest free sales tax (IFST) deferral, both for new industries (small, medium and large) and expansion/diversification of existing industries. The deferred amount was treated as interest free loan. The deferred amount of sales tax for 5 years or 9 years as the case may be, had to be paid after the completion of the deferral period along with the current dues of the year i.e., first year dues being payable with the sales tax due in the 6<sup>th</sup> year or 10<sup>th</sup> year, the amount deferred in the second year being payable along with the sales tax dues in the 7<sup>th</sup> year or 11<sup>th</sup> year and so on.

As per Section 17-A of the Tamil Nadu General Sales Tax Act (TNGST Act), 1959, the Territorial Assistant Commissioners (Commercial Taxes) are empowered to sanction interest free sales tax deferral specifying the amount subject to certain conditions and the ceiling fixed on the basis of eligibility certificate issued by the implementing agencies viz., Director of Industries and Commerce in respect of small scale industries, State Industries Promotion Corporation of Tamil Nadu (SIPCOT) for medium and large industries and Tamil Nadu Industrial Investment Corporation Limited (THIC) in respect of industries financed by them.

The salient features of various schemes of deferral of sales tax which was in vogue during different periods are given below:

Sl. No.	Year of Scheme/ Notification No. /date	Type of Industry	Period of deferral
1	2	3	4
1	G O Ms No 905 Industries (SIE)-2/dt. 26.7.88 G O Ms. 116 CT & RE dt.16.8.88.	Small, medium and large scale industries.	Deferral of sales tax for the first 3 years after commencement of production.
2	G O Ms 500 Industries (MIG.II) Department dt.14.5.1990	Industries in backward taluks.  Industries in other areas  Anywhere in Tamil Nadu with investment in fixed assets of more than Rs.50 crore.	New industries – Nine years to the extent of total investment in fixed assets. Existing industries – Nine years subject to ceiling of 80% of additional investment in fixed assets.  New Industries –Five years subject to ceiling of 60% of total investment in fixed assets. Existing Industries – Five years subject to ceiling of 50% of additional investment in fixed assets.  Deferral for nine years to the extent of total investment in fixed assets.

1	2	3	4
3	July 1991 and  February 1992	Large scale industries anywhere in Tamil Nadu.  Investment more than Rs.50 crore but below Rs.100 crore.  Investment more than Rs.100 crore but below Rs.300 crore.	Deferral for 10 years  Deferral for 12 years  Deferral for 14 years
4	January 1996	Super Mega Industries set up any where in Tamil Nadu with investment more than Rs.1,500 crore.	Deferral for 14 years

### 2.3.2 Organisational set up

The Special Commissioner and Commissioner of Commercial Taxes (Commissioner) is the Head of the Department who is assisted by Deputy Commissioner at divisional level and by Territorial Assistant Commissioners at zonal level. The respective Assessing Officers duly taking into account the sanction order of deferral issued by the Territorial Assistant Commissioner, assess the industrial units and monitor the availment and collection of deferred tax.

### 2.3.3 Audit Objectives

Detailed scrutiny of the records of 124 out of 323 assessment circles was conducted between September 2002 and May 2003 to ascertain:

- whether proper monitoring of the implementation of the system was undertaken by the Department.
- whether prompt action was taken to withdraw the concession and to realise the amount already availed in cases of violation of agreement.
- whether prompt and effective action was taken to realise amounts which had fallen into arrears.

#### 2.3.4 Position of deferred sales tax

As per the records of Commissioner of Commercial Taxes, the number of cases where deferred sales tax was availed of, the amount due and collected by the Department as on 31 March 2002 in respect of new industries and expansion/diversification of existing industries is given below:

(in crore of rupees)						
Nature	Total no. of cases	Amount availed	No	Amount due for collection	Amount collected	Balance
New industries	2,533	2,433.43	633	165.13	115.21	49.92
Expansion/ diversification of existing industries	571	912.87	83	21.99	11.94	10.05
<b>Total</b>	<b>3,104</b>	<b>3,346.30</b>	<b>716</b>	<b>187.12</b>	<b>127.15</b>	<b>59.97</b>

### 2.3.5 Variation between DCB Statement and Performance Reports

The performance report as on 31 March 2002 submitted in Form 46 A and 46 B by the Deputy Commissioners to the Commissioner, indicated the amount of deferral recoverable as Rs.59.97 crore. However, the DCB statement for deferral maintained by the Commissioner, revealed the amount collectable as Rs.31.37 crore. Thus, there was a difference of Rs.28.60 crore between the figures furnished by the Deputy Commissioners and records maintained by the Commissioner.

On this being brought to the notice in June 2003 of the Commissioner, he admitted the variation and stated that further report would be sent after receipt of replies from the Deputy Commissioners.

### 2.3.6 Delay in initiating action for recovery of deferred taxes

As per Government Order issued by the Commercial Taxes and Religious Endowments Department in August 1997, the eligible unit availing deferral is to enter into a deed of agreement with the sanctioning authority which inter-alia stipulates that the industrial unit (i) should not stop normal production continuously for a period exceeding six months during the currency of the deferral period; (ii) should adhere to the schedule of repayment of the deferred tax after expiry of the deferral period and (iii) should produce audited balance sheet and profit and loss accounts every year. Any violation of the conditions and cancellation of registration of the dealer would entail cancellation of the deferral and the entire deferral amount availed shall be recoverable immediately in one lumpsum alongwith interest at prescribed rates. In case of default, the amount is to be recovered under the provisions of Revenue Recovery Act.

However, it was noticed in eighteen<sup>10</sup> assessment circles in respect of 31 dealers who had closed down their business during the period of deferral or had defaulted in repayment of deferred tax, that there was delay in recovering the deferral tax arrears under Revenue Recovery Act. This was due to belated issue of distraint orders, sending notices to wrong addresses, incorporating

<sup>10</sup> Alandur, Adyar-I, Annasalai, Chokkikulam, Dharmapuri, Fast Track Assessment Circle-I.(Chennai), Gugai (Salem), Hosur (North), Manali, Mandaveli, Paramakudi, Pollachi (Rural), Ponneri, Saligramam, Singanallur (Coimbatore), Sriperumbudur, Tuticorin-III and Tallakulam (Madurai).

defective/insufficient particulars in Form 30 (ODR) sent to other circles regarding assets to be acquired, delay in publication of notification in the district gazettes. The delay ranged from 1 to 7 years. An amount of Rs.9.17 crore had not yet been realised. Besides interest of Rs.6.46 crore was also recoverable. A few illustrative cases are detailed below:

(in lakh of rupees)

Scheme: IFST Deferral Scheme			
Date of Commencement of Scheme: July 1988 and May 1990			
Name of the assessment circle (Number of dealers)	Period of deferral	Amount availed	Remarks
1	2	3	4
Fast Track Assessment Circle (One)	1 April 1989 to 31 March 1992	363.68	The application by the company for declaration as 'sick' unit, was dismissed by BIFR in October 2000. However, notice for recovery of tax was issued by the Department only in June 2002 i.e., after a delay of two years.
Tallakulam (One)	1 July 1994 to 30 June 2003	107.95	The dealer did not file audited accounts for 1999-2000 and 2000-2001 and Registration Certificate was not renewed from April 2001. However, notices for recovery were issued in February 2002 after a delay of two years.
Alandur (one)	7 March 1991 to 6 March 2000	70.25	The unit was closed and Registration Certificate was cancelled with effect from 1.4.98. However, recovery proceedings were initiated only in October 2001.
Hosur (North) (Two)	1 November 1992 to 31 October 1997	38.45	The dealer failed to abide by the due dates for repayment of deferral from November 1997. However, distriant order was issued in March 2001 only after a delay of three years.
	1 March 1997 to 28 February 2006	46.08	The business was stopped in 1999. However, notices to attach properties were issued to the dealer only in February 2002, after a delay of two years.
Manali (one)	1 August 1993 to 31 July 1998	4.53	The unit stopped business in 1997. Action under Revenue Recovery Act was taken only in 2001, after a delay of three years.

1	2	3	4
Pollachi (Rural) (One)	2 May 1995 to 1 May 2004	12.84	As Registration Certificate was not renewed, it was cancelled with effect from 1 April 2001 during the period of deferral itself. Action had not been taken as of March 2003 to recover the deferral availed.

### 2.3.7 Excess availing of deferral

As per Section 17A of the TNGST Act, 1959, the Territorial Assistant Commissioners (Commercial Taxes) are empowered to issue sanction for deferral specifying the amount, subject to the ceiling fixed in the eligibility certificate issued by the implementing agency.

The duty to monitor availment of deferral by eligible units, in accordance with the conditions stipulated in the Eligibility Certificate, rests on the Assessing Officers and the Territorial Assistant Commissioners concerned. For this purpose, requisite register is to be maintained and the recovery watched regularly until the entire amount of deferral is repaid. Further, the Commissioner has issued instructions for submission of quarterly report to have a close watch over the availment of deferral.

However, audit scrutiny revealed that in seven<sup>11</sup> assessment circles, deferral of sales tax of Rs.2.35 crore was allowed to 8 dealers against eligibility amount of Rs.1.79 crore. The failure of the Assessing Officers and the Territorial Assistant Commissioners concerned to ensure availing of deferral within the prescribed limits resulted in excess availing of Rs.55.96 lakh as detailed below.

(in lakh of rupees)					
Sl. No.	Name of the assessment circle	Period of deferral	Eligible amount	Amount actually availed	Excess availment
1	2	3	4	5	6
1	Ponneri (Two)	January 1993 to December 2000	98.44	135.79	37.35
		December 1990 to November 1999	42.81	48.12	5.31
2	Nandanam	January 1993 to January 1998	8.41	12.84	4.43
3	Sriperumbudur	March 1993 to March 2002	12.74	17.13	4.39

<sup>11</sup> Ambattur, Manali, Nandanam, Ponneri, Singanallur, Sriperumbudur and Tiruvannamur.

1	2	3	4	5	6
4	Singanallur	April 1991 to March 1996	5.76	7.54	1.78
5	Ambattur	August 1991 to March 1999	4.06	5.84	1.78
6	Tiruvanmiyur	April 1993 to March 2002	1.98	2.51	0.53
7	Manali	August 1993 to July 1998	4.53	4.92	0.39
<b>Total</b>			<b>178.73</b>	<b>234.69</b>	<b>55.96</b>

### 2.3.8 Irregular availing of deferral

The conditions of the deed of agreement stipulate that the eligible unit while availing benefit of deferral shall not effect any change in name and/or constitution of unit without prior permission of Government atleast 30 days prior to the contemplated event. In case of violation of these conditions, the amount of deferred sales tax outstanding on the date of occurrence of such event, shall be recoverable immediately alongwith interest at the prescribed rate.

Test check of records however, revealed that in three assessment circles, though change in constitution of the unit/company was effected by three units during May 1997, October 1998 and May 1999, without obtaining prior permission of the competent authority, the units were allowed to avail deferral of Rs.26.05 lakh as detailed below:

(in lakh of rupees)				
Sl. No.	Name of the assessment circle	Period of deferral	Date of change in constitution	Amount
1	Ponneri	1 April 1992 to 31 March 2001	May 1997	17.77
2	Chokkikulam	26 August 1996 to 1 August 2001	October 1998	3.15
3	Perundurai	1 April 1990 to 31 March 1999	April 1999	5.13
<b>Total</b>				<b>26.05</b>

### 2.3.9 Non-realisation of deferred tax from companies declared 'sick' by Board for Industrial and Financial Reconstruction

As per the Sick Industrial Companies (Special Provision) Act, 1985, where a reference for declaration as sick unit is filed and proceedings thereon is pending before the Board for Industrial and Financial Reconstruction (BIFR), no suit for recovery of money or enforcement of any dues against the company shall lie or be proceeded with further, except with the consent of the Board. Where a company has been declared 'sick' by the Board, the Department has not only to ensure the inclusion of IFST arrears pertaining to the period before the company was declared sick in the Rehabilitation Scheme, but also the realisation of the IFST arrears, where rehabilitation packages have been notified.

It was noticed that in six<sup>12</sup> assessment circles involving seven dealers, there was non-realisation of deferral of Rs.8.86 crore for periods ranging from 2 to 6 years as on 31 March 2003. A few illustrative cases are detailed below:

Sl. No.	Name of the assessment circle/No. of dealers	Remarks
1	Tallakulam (One)	A company was declared 'sick' in Board's order dated 12 August 1999. The Board had given two months time to the company to come out with rehabilitation package. The company had not brought to the notice of BIFR, the arrears of IFST loan amount of Rs.69.92 lakh. However, the Department took up the matter with the Board belatedly in February 2002, i.e. after two and half years of the passing of the order.
2	Valluvar-kottam (One)	The company was first declared sick by BIFR in February 1997 with cut off date as 30 June 1997, which was extended to 31 March 2000, in its order dated 23 March 2000. The company had availed deferral of Rs.3.86 crore till March 2000. The company was also allowed to avail deferral of Rs.11.07 lakh subsequent to the date of the order of the Board. The Department was not even aware whether the deferral amount of Rs.3.86 crore had been included by the company in the statement of liability furnished to BIFR, for rehabilitation package. However, the matter was taken up with the Board only in March 2002.
3	Manali (One)	It has been judicially <sup>13</sup> held that the Government has first charge over the properties in preference to other secured creditors. However, when a rehabilitation package was announced by BIFR, the Department failed to secure the interest of Government in preference to other secured creditors, with the result though the amount of Rs.2.00 crore was settled to Jammu and Kashmir Bank, the IFST dues of Rs.16.55 lakh remained outstanding.

<sup>12</sup> Dharmapuri, Fast Track Assessment Circle-III (Chennai), Manali, Tallakulam (Madurai), Tiruparankundram (Madurai) and Valluvar-kottam.

<sup>13</sup> 96 STC 612 (SC) State Bank of Bikaner and Jaipur Vs. National Iron and Steel Rolling Corporation and 120 STC 610 (SC) M/s. Dena Bank Vs. Bhikhabhai Prabhudas Parekh & Co. and others.

### **2.3.10 *Non realisation of Sales tax dues where properties were taken over by State Financial Institutions.***

The TNGST Act, empowers the recovery of arrears of tax or any amount due under the Act, as arrears of land revenue under the Revenue Recovery Act. For the purpose of enforcing the provisions of the Tamil Nadu Revenue Recovery Act, 1864, (Act II of 1864) the Assistant Commissioners have been vested with the powers of Collector under the Act.

However, at a meeting held between Government and State Financial Institutions in May 1997, in case of arrears of tax due from companies financed by State Financial Institutions (SFIs), the SFIs were allowed to conduct auction to ensure better and quicker realisation of arrears. It was also agreed that SFI shall not transfer the title of the property to the purchaser until a clearance certificate is obtained from the Assessing Officer concerned that all dues had been paid. Where sale proceeds are not sufficient to cover the dues to Government as well as to SFIs, full adjustments towards sales tax is to be made first.

However, test check of records revealed that in nineteen<sup>14</sup> assessment circles involving 25 dealers, the IFST arrears of Rs.2.78 crore was not realised, even after a lapse of 1 to 10 years of the properties being taken over during the period October 1992 to April 2001 by SFIs. This was due to non-conducting of auction for want of bidders, or bid amount being less, etc. thus, defeating the very objective of entrusting the work of auction of properties to SFIs.

### **2.3.11 *Non-inclusion of interest in the claim petition filed before the official liquidator.***

The entire amount due from companies which have wound up business is to be recovered by addressing the Official Liquidator with whom the administration of the estate is vested.

Under the provisions of the TNGST Act, on any amount remaining unpaid after the date specified for its payment, the dealer or person shall pay, in addition to the amount due, interest at the prescribed rate for such amount for the period of default. Hence, wherever claims are made to the official liquidator, the claim should include in addition to the amount of IFST arrears, the interest accrued thereon upto the date of winding up of the company.

<sup>14</sup> Adyar-I, Ambattur, Ashok Nagar, Cuddalore Taluk, Dindigul (Rural), Harur, Koyambedu, Mandaveli, Nandanam, Nilakottai, Palani-I, Perambur, Perundurai, Pollachi (Rural), Ponneri, Saligramam, Srirangam, Tiruvanimiyur and Tiruverumbur.

However, test check of records in four<sup>15</sup> assessment circles, in respect of four companies which had gone into liquidation between November 1997 and November 2001, revealed that the claims preferred by the Department before the Official Liquidator did not include interest amount of Rs.2.70 crore which had accrued from the due date of payment of arrear upto the date of liquidation of the company.

### **2.3.12 Failure to invoke Director's liability in cases of winding up of private company.**

The TNGST Act, provides that in cases of winding up of a private company, every person who is a director of such company at the time of such winding up shall, notwithstanding such winding up, be jointly and severally liable for the payment of tax, penalty or other amount payable under the Act by such company.

In Hosur (South) and Chithode assessment circles in respect of three companies, which wound up their business between July 2001 and February 2002, under the orders of High Court of Madras, no action under the above mentioned provisions of the Act was taken by the Department to fix liability of the Directors in respect of the IFST arrears of Rs.2.63 crore.

### **2.3.13 Non-levy of interest**

As per the provisions of the deed of agreement, interest is to be levied in case of belated payment of deferred tax.

It was however, noticed in eight<sup>16</sup> assessment circles, in respect of eight dealers, interest of Rs.64.73 lakh was not levied for belated payment of deferred taxes, the delay ranging from 1 to 24 months during December 1996 and May 2000.

On this being pointed out, the Department agreed to levy interest after checking the payment details. In one case, the Department contended that interest for belated payment of central sales tax could not be levied for the period prior to 12 May 2000, as there was no provision under Central Sales Tax Act. The reply is not tenable as the validating Act provides for retrospective levy of interest for belated payment of central sales tax.

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<sup>15</sup> Chithode (Erode), Fast Track Assessment Circle-II (Chennai), Ponneri and Tiruverumbur (Trichy).

<sup>16</sup> Annasalai-III, Fast Track Assessment Circle-II (Coimbatore), Mandaveli, Mylapore, Shevapet (Salem), Saligramam, Tuticorin-III and Udumalpet (South).

### 2.3.14 Period of repayment incorrectly mentioned in the Eligibility Certificate.

The eligibility certificate is issued by the implementing agencies, specifying therein the eligible amount of deferral, the period during which the same has to be availed and the period of repayment of the deferred taxes.

The Territorial Assistant Commissioners of Commercial Taxes are to scrutinise the eligibility certificate before according sanction of deferral and before entering into agreement with the eligible units.

It was however, noticed that in five cases, pertaining to three<sup>17</sup> assessment circles involving a sum of Rs.65.29 lakh, the repayment schedule had been incorrectly mentioned in the eligibility certificate and the same had been adhered to by the Department, resulting not only in extension of repayment period but also in avoidable financial accommodation to the units, by way of interest amounting to Rs.25.62 lakh.

(in lakh of rupees)							
Sl. No.	Name of the assessment circle/No. of dealers	Period of deferral	No. of years	Period of repayment		Period of delay (No. of years)	Avoidable financial accommodation by way of interest on (Amount availed)
				As mentioned in the EC	As it ought to be		
1	Saligramam (Two)	20 January 1991 to 31 March 2000	9	20 January 2001 to 22 April 2010	1 April 2000 to 31 March 2009	1	4.42/ (18.40)
		April 1994 To April 2003	9	April 2004	April 2003	1	5.92/ (24.66)
2	Hosur (North) (Two)	1 November 1999 to 30 October 2004	5	1 November 2008 to 30 October 2013	1 November 2004 to 31 October 2009	4	5.55/ (5.78)
		1989-90 to 1993-94	5	1995-96 to 2000-01	1994-95 to 1999-00	1	1.05/ (4.38)
3	Nanguneri (One)	1 April 1991 to 31 December 1991	9 (Moratorium period as per ST loans scheme converted into IFST)	On or before 25 March 2003	April 2000	3	8.68/ (12.07)
<b>Total</b>							<b>25.62/ (65.29)</b>

<sup>17</sup> Hosur (North), Nanguneri and Saligramam.

### **2.3.15 Defective maintenance of deferral register**

The dealers claim deferral of sales tax as per their monthly/annual returns which is allowed by the Department initially, the correct tax eligible for deferral determined only on completion of the assessment. Hence, the amount of sales tax deferred each month and at the end of the year, the progressive total and the corresponding repayment details, levy of interest for belated payments are to be properly recorded in the register maintained for this purpose. Postings made in the register are to be properly attested by competent authority.

It was noticed in nine<sup>18</sup> assessment circles, that the registers were not maintained and updated regularly, defeating the very object of maintenance of these records in the assessment circles.

### **2.3.16 Internal control system**

The financial burden in implementing the IFST scheme entirely lies on the Government. While the beneficiaries are allowed to defer payment of sales tax collected on the strength of the eligibility certificate, the Government has to realise the amounts due to it, in cases of default, by way of sale/disposal of assets.

The amount of deferral sanctioned is based on the value of fixed assets created. Though the agreement governing the scheme provides for maintenance of fixed assets at their market value, this is not sufficient to safeguard the interest of revenue as the value of assets gets depreciated due to efflux of time and the assets, even if they are maintained at market value do not cover the entire amount of deferral availed.

The system provides for maintenance of requisite registers to monitor the tax deferred. Further, the Commissioner had also issued instructions for submission of quarterly report to have a close watch over the availing of deferral. However, as assessed in the review, the allowance of deferral over and above the sanctioned amount indicates, that this area of internal control required effective enforcement.

The non existence of management information system was commented upon in Audit Report 1993-94. However, the large variation between the DCB statement maintained by the Commissioner and the performance report submitted by the Deputy Commissioners, in the amount of deferral due for recovery is indicative of the inadequacy or the ineffectiveness of the existing system to generate accurate data.

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<sup>18</sup> Hosur (North), Hosur (South), Mandaveli, Palani-I, Ponneri, Salem Town (North) Singanallur, Srirangam and Tallakulam.

### **2.3.17 Recommendations**

The Department had failed to secure the interest of Government by not initiating action against defaulters violating conditions of agreements, not preferring claim of deferral before the BIFR in time, not preferring first charge for the realisation of Government dues and by not including interest due upto the date of liquidation.

In view of these observations, Government may consider taking following steps:

- 1) With a view to ensuring effective recovery of deferred amount, industrial units availing deferral may be required to furnish security to the extent of deferral sanctioned.
- 2) A well defined system of reporting/monitoring may be kept in place to secure future repayment of deferred taxes.
- 3) Ensure proper maintenance of records to prevent excess availing of deferral by beneficiaries.

The matter was reported to Department/Government and followed up with reminder in August 2003, their reply was awaited (October 2003).

### **2.4 Incorrect grant of exemption from levy of tax**

The Tamil Nadu General Sales Tax Act, 1959, (TNGST) provides that the turnover of a dealer shall not include the proceeds of sale of agricultural produce, except such produce as has been subjected to any physical, chemical or other process for being made suitable for consumption. The Act also provides for exemption of sales tax to certain commodities listed in the Third Schedule to the Act.

Under the Central Sales Tax Act, 1956, (CST) the last sale or purchase preceding the sale occasioning export is deemed to be sale in the course of export and exempt from tax subject to the condition that the goods exported should be the same as that purchased as per agreement with the foreign buyers.

In twenty one assessment circles, exemptions were incorrectly granted to twenty one dealers on the turnover of Rs.26.78 crore pertaining to the years 1996-97 to 2000-2001, assessed between March 1999 and March 2002, which resulted in non-levy of tax of Rs.1.48 crore as detailed below:

(in lakh of rupees)

SL. No.	Name of the assessment circles/No. of dealers	Year of transactions/ Month of assessment	Tax-able turn-over	Nature of irregularity	Amount of tax	Remarks
1	2	3	4	5	6	7
1	Gudalur (1)	1998-99 (December 1999) 1999-00 (February 2001)	792.76	Sale of cured coffee by the assessee (plantation owner) was allowed exemption as sale of agricultural produce.	63.42	On this being pointed out, the Department accepted the audit contention and raised demand in July 2003. The report on recovery is awaited (September 2003).
2	Fourteen <sup>19</sup> (14)	17 July 1996 to 2000-01 (Between March 1999 and March 2002)	1,733.03	Sale of computer stationery was allowed exemption as second sales of tax suffered paper	69.32	The Government stated in March 2003 that conversion of ordinary paper into computer stationery does not amount to manufacture and that the exemption was in accordance with the clarification of the Head of the Department. The Government further stated that as per Andhra Pradesh High Court decision <sup>20</sup> , computer stationery would fall under the category of paper. The reply is not tenable as the entry relating to computer stationery does not provide for exemption where paper had suffered tax and a separate entry for computer stationery indicates the Legislative intent to treat it as commercially different commodity. Further, the Andhra Pradesh High Court decision is not applicable to the TNGST Act, in view of the specific entry for computer stationery.

<sup>19</sup> Alandur, Avinashi, Egmore-I, Gandhipuram, Mettupalayam Road, Porur, Royapettah-I, Salem Town (North), Sattur, Tambaram-II, T.Nagar (South), Tondiarpet, Vadapalani and Woraiyur.

<sup>20</sup> Andhra Pradesh Computer Stationery Manufacturers' Association and others Vs. State of A.P. and another – 115 STC 173 (AP High Court).

1	2	3	4	5	6	7
3	Kamarajar Salai (Madurai)	1999-00 (October 2000).	91.46	Sale of braided cord effected during 1999-2000 erroneously exempted from levy of tax, though exemption was available only from the year 2000-2001.	8.54	In respect of Kamarajar Salai, the Department revised the assessment in May 2002 and stated that waiver proposals had been submitted. In respect of Sowcarpet II, the Department revised the assessment in May 2003 and collected the additional demand of Rs.1.24 lakh. The Department in respect of Palladam, stated in February 2003, that the goods being consumables are eligible for exemption. The reply is not tenable as the goods were not consumables but accessories to textile machinery and as per Commissioner's clarification issued in September 2001 textile machinery spares are not eligible for exemption on sale to 100% EOU. Reply of the Department in respect of Kilpauk is awaited (October 2003).
	Palladam	1999-00 (April 2001) & 2000-01 (February 2002)		Sale of metallic card clothing (textile accessory) to 100 per cent Export Oriented Unit (EOU) was allowed exemption.		
	Sow carpet-II.	2000-01 (January 2002)		Sale of cane and rattans was erroneously allowed exemption.		
	Kilpauk (Chennai) (4)	2000-01 (March 2002)		Sale of 'wedges', erroneously exempted by treating it as fresh vegetable falling under the Third Schedule to the Act, instead of assessing it as food preparation of vegetable.		

1	2	3	4	5	6	7
4	Melur.	1998-99 (March 2001) & 1999-2000 (October 2001)	61.00	Sale of cardamom oil to an exporter was allowed exemption though the commodity exported was tea.	6.48	The department revised the assessment in respect of Melur in January and March 2003 and raised an additional demand of Rs.2.24 lakh; the collection particulars of which were awaited (October 2003).
	Hosur (South) (2)	1999-2000 (November 2001)		Sale of tyre flaps to an exporter was allowed exemption though the agreement entered into by the exporter with the foreign buyer was subsequent to the placing of purchase order with the assessee.		
<b>Total</b>			<b>2,678.25</b>		<b>147.76</b>	

The matter was reported to Government between October 2002 and May 2003 and followed up with reminder in August 2003. Government accepted the audit observation in the case of Hosur (South) in April 2003 and stated that the assessments had been revised. Reply of the Government in respect of the other cases was awaited (October 2003).

## 2.5 Application of incorrect rate of tax

**2.5.1** Under the provisions of the TNGST Act, tax is leviable on sale or purchase as the case may be at the rates mentioned in the relevant Schedules to the Act.

In seventeen assessment circles, tax was levied short, on turnover of Rs.5.53 crore involving twenty dealers, pertaining to the years from 1994-95 to 2000-2001 assessed between October 1997 and March 2002, due to application of incorrect rate of tax. The total short levy of tax in these cases worked out to Rs.31.86 lakh (inclusive of surcharge).

(in lakh of rupees)

Sl. No.	Name of the assessment circle /No. of dealers	Year of transactions/ Month of assessment	Name of goods/ Transactions	Taxable turn-over	Rate of Tax (in %)		Amount short levied	Remarks
					Applicable	Applied		
1	2	3	4	5	6	7	8	9
1	Amain-dakarai .	1998-99 (October 1999). 2000-01 (March 2002)	Catering sales of food and drinks	69.25 (branded food) 96.89 (unbranded food)	16 8	2	15.87	The Department revised the assessment in one case (Amaindakarai) in January 2003 against which, the appeal filed by the dealer before AAC-IV, Chennai is pending. In respect of the other cases, the Department replied between July and October 2002 that the assessment was made in accordance with the clarification of the Head of the Department that food and drinks delivered and served by hotels and restaurants, etc., at customer's place was also eligible for the compounded rate of tax. The reply is not tenable as the assessments had been finalised prior to the issue of clarification and as per the provisions of the Act, compounded rate of tax was eligible only for sale effected in hotels, restaurants, etc. In this case, the sale was effected at the premises of the customers placing orders. Hence, the clarification was not in accordance with the provisions of the Act. Further, catering sales are taxable at the rate of two per cent only with effect from 1 April 2002.
	Anna-salai-III.	1999-00 (July 2001)						
	South Avani Moola Street, Madurai.	1998-99 (August 2000)						
	Brough Road, Erode (Five )	2000-01 (December 2001)						

1	2	3	4	5	6	7	8	9
2	Hosur (South).	1995-96 (October 1997, March 1998)	Emergency light.	131.17	12	3	5.37	The Department revised the assessments in two cases [Royapettah-I and Salem-Town (West)] and raised an additional demand of Rs.2.17 lakh of which a sum of Rs.0.37 lakh was collected (August 2001). Reply of the Department in respect of the other two cases [Hosur (South) and Avinashi Road] and position of recovery was awaited (October 2003).
	Roya-pettah-I.	1998-99 (October 2001)	computer peripherals.		4	2		
	Salem-Town (West).	1998-99 (September 1999)	Sale of medicines to state government department after 6.1.99.		8	4		
	Avi-nashi Road. Coim-batore (Five)	2000-01 (October 2001)	Pay phones and Tele Con-ferences.		12	4		
3	Avi-nashi Road (Coim-batore)	1994-95 (May 1999)	Conde-mned articles	127.76	8	3	5.41	The Department revised between January 2002 and October 2002 the assessments in three cases (Avinashi Road, Velachery and Villi-vakkam) and raised an additional demand of Rs.3.52 lakh which was also collected between February 2002 and October 2002. The Department in the case of Thiruvani-miyur stated in September 2002, that computer printer ribbon was taxable at 4 per cent only. The reply is not tenable as computer printer ribbon as per Entry 62/Part C/I Schedule attracts tax at the rate of 8 per cent. In respect of Udumalpet, the Department replied in December 2002 that revision of assessment under Section 3B would involve additional demand of Rs.0.11 lakh only. The reply is not acceptable, as the dealer had opted to pay tax at compounded rate and the option filed cannot be withdrawn. Reply in respect of other case was awaited (October 2003).
	Nungam-bakkam	1998-99 (April 2001)	Mouth washes		16	8		
	Thiru-vanmiyur	1999-00 (September 2001)	Com-puter printer ribbon		8	4		
	Udumal-pet	2000-01 (March 2002)	Contract for upgra-dation and improve-ment to roads		4	2		
	Vela-chery	2000-01 (Decem-ber 2001)	Sale of RCC troughs to non-government depart-ment		16	4		
	Villi-vakkam (Six)	2000-01 (Decem-ber 2001)	Contract for manu-facture and erec-tion of effluent treatment plant.		4	2		

1	2	3	4	5	6	7	8	9
4	Rasi- puram	1999-00 (Novem- ber 2001)	Poly- pro- pylene sacks	127.62	8	4	5.21	The Department in the case of Rasipuram replied in February 2003 that the product was taxable at 4 per cent only. The reply is not tenable as Entry 32 of Part B covers HDPE. and Polythene woven sacks only. On an earlier occasion, when the rate of tax on HDPE and polythene woven sacks was reduced by issue of notification. Government accepted audit's observation that the same was not applicable to poly-propylene sacks and stated that amendment to the notification was under consideration Reply of the Department in respect of other cases was awaited (October 2003).
	Purasa- wakkam	2000-01 (Decem- ber 2001)	Hawai rubber sheets and pads		11	8		
	Korattur	2000-01 (October 2001)	Sale of electrical transfor- mer to non- Govern- ment depart- ment		16	4		
	Manali (four)	2000-01 (Decem- ber 2001)	P.V.C. lay flat tubings		12	8		
<b>Total</b>							<b>31.86</b>	

The matter was reported to Government between December 2001 and May 2003. Government accepted between July 2002 and June 2003 the audit observations in 8 cases and stated that an amount of Rs.1.33 lakh in respect of four cases had been collected. Reply of the Government in respect of other cases was awaited (October 2003).

**2.5.2** Under the Central Sales Tax Act, (CST Act), 1956, on inter-state sale of goods not covered by declaration in Form 'C', tax is leviable at 10 per cent or at the rate applicable to sale of such goods within the state, whichever is higher.

In Fast Track Assessment Circle-I, Chennai, in case of a dealer of motor vehicle parts, on the turnover of Rs.3.47 crore for the year 1997-98 not covered by declaration in Form C, tax of Rs.8.68 lakh was short levied, due to application of incorrect rate of tax.

On this being pointed out, the Department revised in February 2003 the assessment and raised an additional demand of Rs.8.68 lakh, the collection particulars of which were awaited (October 2003).

Government to whom the matter was reported in December 2002, accepted the audit observations (March 2003).

## **2.6 Intra-state sales taxed as inter-state sales**

As per the TNGST Act, 1959, the sale or purchase of goods shall be deemed for the purpose of this Act, to have taken place in the state, wherever the contract of sale or purchase might have been made, if the goods are within the state in the case of specific goods or ascertained<sup>21</sup> goods at the time the contract of sale or purchase is made. The Supreme Court has held<sup>22</sup> that, if the auction is unconditional and is in respect of specific ascertained goods, the property in the goods would pass to the purchaser upon the acceptance of the bid. It has also been judicially held<sup>23</sup> by Madras High Court, that auction sale of tea at Coonoor is local sale only. Further as per the Rules of the Coonoor Tea Traders Association which governs the auction of tea at Coonoor, sale is concluded at the fall of the hammer.

During audit of the records of the Commercial Tax Officer, Coonoor, it was noticed that, sales of tea amounting to Rs.134.72 crore and which were ex-godown, Coonoor, was effected by six brokers during 1999-2000 and sent outside the state. These sales were erroneously treated as inter-state sales, instead of local sale. This resulted in short-levy of tax of Rs.8.36 crore (inclusive of additional sales tax).

On this being pointed out in audit, the Department stated in September 2002 that there was movement of tea to other states and contended that, as judicially held<sup>24</sup> the sale by the broker-assessees were only inter-state sales. The reply is not tenable in view of the judicial decision of the Madras High Court already cited that, where sale of tea in auction at Coonoor was ex-godown at Coonoor, the sale was to be treated as local sale.

The matter was reported to Government in December 2002 and followed up with reminder in August 2003; their reply was awaited (October 2003).

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<sup>21</sup> ascertained goods – goods which are identifiable and in existence at the time the contract of sale or purchase is entered into.

<sup>22</sup> Consolidated Coffee Ltd. Vs. Coffee Board – 46 STC 164.

<sup>23</sup> Moti and Company Vs. State of Tamil Nadu (1999) 113 STC 51.

<sup>24</sup> A.V.Thomas and Company Vs. Deputy Commissioner of AIT – 14 STC 363.  
Indian Oil Company Vs. Union of India – 47 STC 1  
State of Gujarat Vs. Bombay Metal Alloys and Manufacturers Co. – 54 STC 45

## **2.7 Incorrect assessment involving compounding system of levy**

As per the provisions of the TNGST Act, 1959, the turnover representing value of goods involved in the execution of works contract and which had not suffered tax earlier inside the state is assessable to tax, at the rates specified for such goods in the Schedules to the Act. However, a dealer may, opt to pay tax at compounded rate of four per cent, on the total value of the works executed in respect of contracts, other than civil works contract. The option shall be exercised along with the first monthly return for the financial year.

In Saligramam assessment circle, though a dealer had not exercised option to pay tax at compounded rate for the financial year 2000-2001, tax was levied at the compounded rate of four per cent on the turnover of Rs.2.27 crore of electrical works contract instead of at the rate of sixteen per cent on the deemed sale value of generators amounting to Rs.2.11 crore, involved in the execution of such contract. This resulted in short levy of tax of Rs.24.67 lakh.

On this being pointed out in audit, the Department stated in December 2002 that the dealer had exercised option to pay tax at compounded rate in April 2000. The reply is not tenable as the dealer had got himself registered under the Act, only on 30 August 2000 and hence option could not have been exercised by him in April 2000, when he was not a registered dealer under the Act.

The matter was reported to Government in March 2003 and followed up with reminder in August 2003; their reply was awaited (October 2003).

## **2.8 Non levy of tax**

**2.8.1** Under the CST Act, 1956, on inter-state sale of goods not covered by valid declaration in Form 'C', tax is leviable at the rate of ten per cent or at the rate applicable to the sale of such goods inside the state, whichever is higher.

In Bodinayakanur assessment circle, while finalising the assessment in February 2001 of an assessee for the year 1995-96, the turnover representing export sale and inter-state sale of goods amounting to Rs.72.99 lakh not covered by documentary evidence were omitted to be considered for levy of tax. This resulted in short levy of tax of Rs.7.30 lakh.

On this being pointed out, the Department revised in December 2001 the assessment and raised additional demand of Rs.7.30 lakh. Further reply was awaited (October 2003).

The matter was reported to Government in May 2003 and followed up with reminder in August 2003, their reply is awaited (October 2003).

**2.8.2** Section 3(4) of the TNGST Act, provides that where any dealer after purchasing raw materials at concessional rate of tax, transfers goods so manufactured outside the state, he shall pay, in addition to concessional rate of tax, tax at the rate of one per cent (two per cent upto 31 March 1999) on the value of raw material so purchased.

In three<sup>25</sup> assessment circles, 3 dealers had purchased raw materials at concessional rate during 1998-99 and 1999-2000 and had transferred the manufactured goods outside the state. However, tax on the purchase value of Rs.3.32 crore was omitted to be levied. This resulted in non-levy of tax of Rs.6.08 lakh.

On this being pointed out, the Department revised in February 2000 and June 2002 the assessments in two cases and raised an additional demand of Rs.2.06 lakh, which was also collected. Reply in respect of the other case was awaited (October 2003).

**2.8.3** The TNGST Act provides for levy of tax on certain commodities at the point of last purchase inside the State.

In four<sup>26</sup> assessment circles in respect of four dealers, on last purchase of raw hides and skins, waste paper, raw rubber and glass bottles amounting to Rs.2.25 crore pertaining to the assessment years 1998-1999 to 2000-2001, tax was omitted to be levied. This resulted in non-levy of tax of Rs.9.55 lakh.

On this being pointed out, the Department revised the assessments in April and December 2002 in three cases and raised an additional demand of Rs.9.04 lakh; of which an amount of Rs.1.31 lakh was collected. Reply of the Department in respect of another case was awaited (October 2003).

The matter was reported to Government between March 2003 and June 2003 and followed up with reminder in August 2003. Government accepted the audit observation in September 2003 in one case. Reply in respect of the other cases was awaited (October 2003).

## **2.9 Incorrect grant of concessional rate of tax**

Section 3(5) of the TNGST Act, provides for concessional rate of tax of 3 per cent on sale by one dealer to another of goods mentioned in the Eighth Schedule for installation of, and use in factory, for the manufacture of any good subject to the production of declaration in prescribed form.

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<sup>25</sup> Avinashi, Manali and Trichy Road (Coimbatore)

<sup>26</sup> Panruti (Rural), Pollachi (West), West Veli Street (Madurai) and Trichy Road (Coimbatore).

In 3<sup>27</sup> assessment circles, concessional rate of tax of three per cent was allowed on a turnover of Rs.1.05 crore on sale by four dealers of steam iron boxes, 'O' rings for excavators, hose assembly for earth moving equipments and electrical control panel boards and cable trays not mentioned in the Eighth Schedule, during the years 1998-99 to 2000-01. This resulted in short levy of tax of Rs.7.07 lakh.

On this being pointed out, the Department in two cases revised the assessments between February 2002 and October 2002 and raised an additional demand of Rs.2.98 lakh, which was also collected. In respect of another case, the Department stated in January 2003 that the concessional rate allowed was in order. The reply is not tenable, as Section 3(5) of the Act, precludes the sale of goods, other than those mentioned in the Eighth Schedule at concessional rate.

The matter was reported to Government between March 2002 and May 2003 and followed up with reminder in August 2003. Government accepted in July 2002 and June 2003 the audit observation in two cases and reply in other cases was awaited (October 2003).

## **2.10 Non/short levy of additional sales tax**

Under the Tamil Nadu Additional Sales Tax Act, 1970, additional sales tax is leviable at the rates prescribed from time to time, depending upon the taxable turnover.

In three<sup>28</sup> assessment circles, on the taxable turnover of Rs.97.77 crore in respect of three assesseees representing sale of cars, dairy products and cotton waste during the year 1998-99 and 1999-2000, the Assessing Officers while finalising the assessment between May 2001 and December 2001, either did not levy or levied short the additional sales tax of Rs.31.82 lakh.

On this being pointed out, the Department revised between May and November 2002 the assessment in two cases and raised an additional demand of Rs.7.69 lakh which was also collected. Reply of the Department in respect of the other case was not received (October 2003).

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<sup>27</sup> Adyar-II, Arisipalayam and Avinashi.

<sup>28</sup> Dindigul, Fast Track Assessment Circle-III (Chennai), and Fast Track Assessment Circle-IV (Chennai).

The matter was reported to Government in January/May 2003 and followed up with reminder in August 2003. Government accepted the audit observations in September 2003 in respect of two cases. Reply in respect of the other case was awaited (October 2003).

## **2.11 Loss of revenue due to revision barred by limitation of time**

As per the provisions of Section 16(1)(b) of the TNGST Act, 1959, read with Section 9(2-A) of the CST Act, 1956, the time for revision of assessment is limited to five years from the expiry of the year to which the tax relates.

As per the CST Act, 1956, inter-state sale of declared goods covered by valid declarations in Form 'C' shall be assessed to tax at the rate of 4 per cent or at the rate applicable to sale of such goods inside the state, whichever is lower. The elements of additional surcharge and additional sales tax shall also be taken into consideration for the purpose of determining the local rate of tax.

In Vepery assessment circle, in respect of an assessee for the year 1994-95, the elements of additional surcharge and additional sales tax were not taken into consideration for determining the local rate of tax applicable on inter-state sale of finished leather covered by valid declarations in Form 'C' and as a result, the turnover of Rs.6.65 crore was erroneously assessed (December 1995) to tax at the rate of 1 per cent instead of at the correct rate of 3.30 per cent. This resulted in short levy of tax of Rs.15.30 lakh.

However, necessary revision of assessment could not be made in this case, as the time limit for revision of assessment had elapsed even at the time of production of assessment file to audit (July 2002). This was pointed out to the department (September 2002).

Government, to whom the matter was reported, accepted in March 2003 the audit observation and stated that revision of assessment was barred by limitation of time.

The assessment file which was called for as early as in April 1996 was produced to audit only in July 2002. Thus, the failure of the Department to levy tax at correct rate and to produce the assessment file to audit in time, resulted in revenue loss of Rs.15.30 lakh.

## **2.12 Non-levy of interest for belated payment of tax**

Under the provisions of the TNGST Act, 1959, the tax payable shall become due without any notice of demand to the dealer on the date of receipt of return or on the last due date as prescribed, whichever is later. On any amount remaining unpaid after the date specified for its payment, the dealer or person shall pay, in addition to the amount due, interest at prescribed rates for the period of default.

In seven<sup>29</sup> assessment circles, tax of Rs.26 lakh pertaining to the assessment years 1993-94 to 1999-2000, which were finalised between October 1997 and March 2002, was paid belatedly by eight dealers involving delay ranging from 1 month to 45 months. However, interest of Rs.8.99 lakh though leviable for such belated payment, was not levied.

On this being pointed out, the Department levied interest of Rs.6.22 lakh in seven cases, of which an amount of Rs.4.17 lakh was collected. Collection particulars in respect of the balance amount and reply in respect of other case had not been received (October 2003).

The matter was reported to the Government between March and May 2003 and followed up with reminder in August 2003. Government accepted the audit observations in September 2003 in three cases. Reply in respect of other cases was awaited (October 2003).

## **2.13 Non-levy of penalty**

Under the CST Act, 1956, a registered dealer buying goods from other states is entitled to a concessional rate of tax at four per cent, provided he furnishes to the seller, a declaration in Form 'C' certifying that the goods are of the class specified in his certificate of registration. If the goods indicated in the declaration are not covered by the certificate of registration, it amounts to misuse of Form 'C' and the assessee renders himself liable to penalty not exceeding one and a half times of the tax due.

In Fast Track Assessment Circle-II, Coimbatore a dealer had purchased furnace oil amounting to Rs.48.29 lakh during the years 1996-97 and 1997-98 from other states on the basis of declaration in Form 'C', although the commodity purchased was not covered by his certificate of registration. For misuse of 'C' forms, penalty amounting to Rs.11.37 lakh was leviable, but was not levied.

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<sup>29</sup> Annasalai-III, Dindigul (Rural), Fast Track Assessment Circle-III, Kothagiri, Royapettah-I, Shencottah and Washermanpet-II.

On this being pointed out, the Department raised the additional demand in April 2002, the collection particulars of which were awaited (October 2003).

The matter was reported to Government in June 2003 and followed up with reminder in August 2003; their reply was awaited (October 2003).

## CHAPTER III

### LAND REVENUE

#### 3.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2002 to March 2003, revealed non/short levy of local cess and local cess surcharge, non-levy of water cess and betterment contribution, non-levy of penalty and interest, short recovery of value or rent in respect of government lands assigned/alienated or encroached etc., amounting to Rs.1,471.35 crore in 209 cases which broadly fall under the following categories.

(In crore of rupees)			
Sl. No	Categories	No. of Cases	Amount
1	Non/short levy of local cess and local cess surcharge	13	1.12
2	Non-levy of water cess and betterment contribution	1	0.08
3	Non-levy of penalty and interest	13	0.58
4	Short recovery of value or rent in respect of government lands assigned/alienated or encroached	117	903.68
5	Review : <b>Encroachments on Government Lands</b>	1	562.25
6	Others	64	3.64
	<b>TOTAL</b>	<b>209</b>	<b>1,471.35</b>

During the course of the year 2002-2003, the Department accepted under assessments of Rs.34.91 lakh in 59 cases of which Rs.0.34 lakh involved in 3 cases were pointed out during the year and the rest in earlier years. Out of the above, a sum of Rs.30.56 lakh involved in 59 cases has been recovered.

A review, **Encroachments on Government Lands**; and few illustrative cases involving a tax effect of Rs.571.77 crore are discussed below.

### **3.2 Review: Encroachments on Government Lands**

#### *Highlights*

- **Inadequate levy of penalty in cases of encroachments resulted in Government not being able to earn a revenue of Rs.524.47 crore in 26 taluks.**

*[Paragraph 3.2.6]*

- **Encroachments by commercial entities resulted in Government not being able to earn a revenue of Rs.11.05 crore by way of lease in 5 taluks.**

*[Paragraph 3.2.7]*

- **In one taluk due to prolonged possession of lands and in another taluk sale of encroached land by dividing them into plots resulted in loss of revenue to the tune of Rs.26.73 crore.**

*[Paragraph 3.2.8]*

- **Encroached Government lands valuing Rs.45.23 crore in 10 taluks pertaining to 7 districts were later sold illegally through registered transaction by individuals.**

*[Paragraph 3.2.9]*

#### **3.2.1 Introduction**

The Tamil Nadu Land Encroachment Act, 1905, envisages levy of assessment of land revenue besides penalty in cases of encroachment on government lands. The Act also provides for summary eviction, forfeiture of crops or other products raised on the encroached land, levy of assessment and imposition of penalty as a deterrent measure. The encroachments in the lands classified as assessed/unassessed waste and Natham (house site) are unobjectionable and when occupied by landless poor can be assigned/alienated by collection of the market value of the lands subject to certain conditions.

At the time of annual Jamabandhi, the District Collector/nominated Officer is required to check inter alia, that all the taluk authorities have followed all the procedure envisaged in the Encroachment Act, particularly for prompt eviction of encroachment of lands or for transfer of lands under unobjectionable encroachment.

Under Section 25 of the Limitations Act, 1963, where the enjoyment rights over government lands is for more than 30 years, the right shall be absolute and indefeasible.

### **3.2.2 Organisational Set-up**

The Department is administered by the Commissioner of Land Administration /Commissioner of Revenue Administration, who is assisted by the Collectors at district level. There are 29 districts, each under the charge of District Collector who is empowered to prevent misuse of government land and contain encroachment. He is assisted at taluk/village level by Tahsildars or Deputy Tahsildars who are empowered to implement the various provisions of the Land Encroachment Act and relevant instructions contained in the Standing Orders. All the functions pertaining to each village, including implementation of the Act, are reviewed every year by the District Collector/nominated Officer at the time of annual Jamabandhi.

### **3.2.3 Audit objectives**

Analysis of records of 22 taluks of 9 districts out of 29 districts and of sub-registrar under the jurisdiction of these taluks, covering the period from 1998-99 to 2002-03 was made with a view to:

- assess the efficacy of detection, eviction and regularisation of encroachments on government lands
- examine whether the penal provisions in the Act, were adequate to dissuade encroachers from encroachments and
- ascertain there was adequate internal control mechanism to check encroachments.

### **3.2.4 Failure to implement the recommendations of Public Accounts Committee**

Mention was made in para 5.2 of the Report of Comptroller and Auditor General of India for the year 1986-87, on Encroachment on Government Lands. The Committee on Public Accounts in their 2<sup>nd</sup> Report placed in Eleventh Assembly on 30 August 1996 felt that existing measures adopted by the Department were not effective in dealing with encroachment of government land and speedy enactment of amendments to the Act was needed with a view to bring encroachments under effective control. But no such enactment has been made so far.

It is also pertinent to mention that in neighbouring State of Kerala, a penalty upto a maximum of Rs.200 is leviable in cases of encroachment and if the contravention continues, penalty of Rs.200 is leviable for every day of such contravention. Thus in Kerala penal provision (extant since 1957) for encroachment is stringent which is not so in Tamil Nadu where the penalty is Rs.10 only. This did not have the desired effect of checking encroachment.

### **3.2.5 *Inadequate levy of penalty in cases of encroachments***

Under Section 3 and 5 of the Tamil Nadu Land Encroachment Act, 1905, any person unauthorisedly occupying government lands shall pay, by way of full assessment and penalty, of a sum not exceeding Rs.5 or when ten times the assessment exceeds Rs.5, a sum not exceeding ten times of such assessment if the land is assessed. If the land is unassessed, a penalty of a sum not exceeding Rs.10, or when twenty times of assessment exceeds Rs.10, a sum not exceeding twenty times of such assessment is leviable.

The assessment was fixed sufficiently heavy at the time of enactment of Act in 1905, to compel the encroacher to surrender the land immediately. Though the penalty fixed at the time of enactment in 1905 was a stringent one, it has become insignificant and hardly acts as an effective deterrent thereby defeating the very purpose of the Act.

### **3.2.6 *Encroachment for non-commercial purposes***

As per Board's Standing Order 24A and as per Government Order issued in June 1998, for legal occupation of government land, a person has to pay a lease rent of seven per cent of market value of land for non-commercial purposes and at double this rate for commercial purposes. But an encroacher, who is an unauthorised occupant, is being levied with a meagre penalty of Rs.10 only.

### **Encroachment by individuals for residential purposes**

It was noticed in 621 villages of 22 taluks, 8583 hectares of government lands were under encroachment and used for residential purposes. The figures taken were as at the end of 1994, since no fresh encroachments were booked thereafter. Had the penalty been fixed at 7 per cent, on par with the rate for lease, the Government could have earned a revenue of Rs.516.84 crore by way of penalty during 1998-99 to 2002-03 as detailed below:

(In crore of rupees)

Sl. No.	Name of the Taluk/ (No. of Villages)	Extent Encroached (in hectares)	Market value of land for the year				
			1998-99	1999-00	2000-01	2001-02	2002-03
1	2	3	4	5	6	7	8
1	Tambaram/(61)	527-33-0	288.25	288.25	317.32	388.18	433.74
2	Chengalpet/(74)	1102-90-5	72.12	72.12	83.88	89.20	95.82
3	Sriperumbudur/(176)	1062-35-0	29.49	29.49	30.17	31.74	33.64
4	Poonamallee/(49)	506-32-5	172.43	172.43	192.58	212.13	238.36
5	Ambattur/(76)	674-31-0	193.20	193.20	209.72	228.68	251.86
6	Pollachi and Coimbatore (North & South)/(22)	85-68-0	56.94	56.94	63.38	67.04	70.87
7	Uthama-palayam/(4)	359-65-5	8.08	8.08	8.95	9.21	9.46
8	Sivakasi/(7)	17-94-5	13.88	13.88	15.55	15.55	15.55
9	Madurai (North)/(36)	251-51-0	29.74	29.74	31.23	33.74	37.39
10	Thirumangalam/(21)	90-28-5	0.76	0.76	0.84	0.87	0.91
11	Nathan/(3)	324-78-5	1.37	1.37	1.50	1.50	1.50
12	Kodaikanal/(7)	865-27-5	59.34	59.34	65.93	72.35	79.99
13	Salem and Omalur/(36)	664-26-5	76.52	76.52	98.95	105.75	115.02
14	Yercaud/(45)	780-55-0	22.63	22.63	25.91	25.91	25.91
15	Andipatti/(4)	1175-37-0	12.04	12.04	14.31	14.31	14.31
16	Chennai/(4 Taluks)	94-32-11	266.52	266.52	275.56	297.87	322.88
	<b>Total</b>	<b>8582-86-11</b>	<b>1,303.31</b>	<b>1,303.31</b>	<b>1,435.78</b>	<b>1,594.03</b>	<b>1,747.21</b>
	<b>Penalty at rate of 7 per cent</b>		<b>91.23</b>	<b>91.23</b>	<b>100.50</b>	<b>111.58</b>	<b>122.30</b>
	<b>Total Penalty</b>		<b>516.84</b>				

Had the Government enhanced the rate of penalty to 7 per cent, it would have acted as a stringent deterrent and would have dissuaded encroachers from occupying government land.

Failure on the part of the Government to revise the rate of penalty for more than nine decades has defeated the very purpose of the Act, and has failed to safeguard the interest of Government.

### Encroachment by Educational Institutions

A test check of records in four taluks, revealed that government lands aggregating 134-18-4 hectares were encroached by 19 private educational institutions including engineering colleges and were paying penalty of just Rs.10 per annum. Had the penalty been fixed at the rate of 7 per cent, government could have earned revenue of Rs.7.63 crore during the period from 1998-99 to 2002-03.

### 3.2.7 Encroachment by commercial establishments

The Special Commissioner and Commissioner of Land Administration (SC & CLA) recommended in July 1988 to Government a 'New Land Policy' which would ensure the preservation of the limited extent of government lands available, and their optimum utilisation. Based on the recommendations of the SC & CLA, the Government by an order in December 1988 issued policy guidelines for grant of Government lands under lease to Central Government Department and undertakings, and in all other cases by way of lease of upto 30 years.

Scrutiny of records in 35 villages in 5 taluks revealed that 49.21 hectares of government lands were under encroachment by 55 commercial establishments and were utilised for commercial activities. Had it been given on lease with proper sanction of the competent authority, Government could have levied and collected a lease rent of 14 per cent on the market value of these lands. Omission to take effective action to lease out the lands resulted in loss of revenue of Rs.11.05 crore from 1998-99 to 2002-03 as detailed below:

(In crore of rupees)

Sl. No.	Name of the Taluk (No. of Commercial Entities involved)	Extent Encroached (in hectares)	Market value of land for the year				
			1998-99	1999-00	2000-01	2001-02	2002-03
1	2	3	4	5	6	7	8
1	Ambattur/ (13)	11-95-6	5.04	5.04	5.49	6.02	6.76
2	Chengalpet/ (22)	24-88-0	5.54	5.54	6.44	6.79	6.94
3	Poonamallee/ (9)	4-37-5	0.12	0.12	0.14	0.15	0.17

1	2	3	4	5	6	7	8
4	Sriperumbudur/ (2)	2-08-0	0.01	0.01	0.01	0.01	0.01
5	Tambaram/ (9)	4-45-0	3.06	3.06	3.61	4.19	4.65
	<b>Total</b>	<b>47-74-1</b>	<b>13.77</b>	<b>13.77</b>	<b>15.69</b>	<b>17.16</b>	<b>18.53</b>
	<b>Lease rent at the rate of 14 per cent</b>		<b>1.93</b>	<b>1.93</b>	<b>2.20</b>	<b>2.40</b>	<b>2.59</b>
	<b>Total Lease rent</b>		<b>11.05</b>				

Failure of the Department to implement the government order in respect of the above category resulted not only in potential loss of revenue of Rs.11.05 crore but also defeated the very purpose of the new policy, namely preservation of government lands and ensuring their optimum utilisation by Government.

### 3.2.8 Loss on account of prolonged adverse possession of Government lands.

According to Section 25 of the Limitations Act, 1963, any person enjoying access or other easement benefits towards an immovable property over a period of 30 years acquires a right of possession over the property. Such prolonged encroachment would result in difficulty in resuming the title of ownership of Government at a later date. The Board of Revenue vide Circular No.Perm 296(E) dated 19 March 1971 directed the Collectors/District Revenue Officers to see that all objectionable encroachments are dealt with effectively, without giving room to the encroachers to claim a right over government lands by adverse possession or title of any prescription.

However, it was noticed in Poonamallee Taluk, that an extent of 84.72 acres of land was encroached upon by Food Corporation of India (a Government of India undertaking) and by M/s.Southern Structurals Limited (a Government of Tamil Nadu undertaking) for over 30 years. However, only a meagre penalty was being levied and paid by these institutions. Failure to evict or lease out the lands rendered the lands valued at Rs.25.10 crore (based at the rates of land, as on 1 April 2002 as approved by Registration Department) inalienable to Government as per the provisions of Limitations Act.

Further, it was noticed in Tambaram, that 7.20 acres of government lands were encroached upon by private builders, converted into plots and sold to several persons, and registered by the Sub-Registrar, Tambaram through eleven documents. In view of this, revenue to the extent of Rs.1.63 crore being the value of the land could not be realised by the Government.

### **3.2.9 *Illegal creation of title over Government lands by individuals***

According to Section 27 and 64 of the Indian Stamp Act, 1899, any suppression of facts in the document registered in respect of a property has to be verified by a registering authority, only with regard to the value of the property and levy of stamp duty and registration fee. However, there is no provision in the Act or Rule that provides for the registering authority to verify the legality of ownership of a property by the person executing a deed over a property.

A scrutiny of records of 29 sub-registries of 10 taluks revealed that in 77 villages, documents of sale, mortgage and settlement, etc., were created over government lands to an extent of 172-57-0 hectares valued at Rs.45.23 crore during the years 1991 to 1999. Though these were construed to be illegal and not recognised by the Revenue Department, such illegal transactions could not be curbed due to absence of specific provisions in the Registration Act for verification of ownership of lands by the Registering Authority. Every such illegal transaction could be nullified only by the execution of documents of cancellation by the parties concerned or through a Court of Law.

As continued occupation of government lands by encroachers would entail claim of ownership by them at a later date, appropriate action would have to be taken now to safeguard government interest as survey number is available with each sub-registry. A cross verification of the survey numbers of lands included in the document with the revenue record, before taking up the deed for registration, could prevent such illegal transactions.

The Government in order to curb such illegal creation of title, introduced an amendment to the Registration Act in September 2000, by a notification, under Section 22 A to the Act. The amendment which declared such documents of conveyance were against public policy, had only prospective effect.

On this being pointed out, most of the Sub-Registrars stated that as per Rule 55 of Registration Rules, there was no need to verify the legality of ownership of the property while registering documents. The Revenue Department stated in February 2002 and April 2003 that issue of 'B' memos notice for encroachment on government land had been discontinued in 1995 for new encroachments, as it was felt that the encroachers would use the penalty tax receipt as an evidence of prolonged possession of land in a Court of Law. It is evident that the Department had failed to initiate action in respect of earlier encroachments to evict him which encouraged encroachers to sell government lands. Further, discontinuance of the levy of penalty by Department, as

envisaged in the Act and not acting in accordance with new policy guidelines, as issued by Government in 1988, defeated its main objective viz., preservation of government land.

### 3.2.10 Other points of interest

#### *Encroachment on water courses*

As per Board of Revenue Standing Order, where encroachments are objectionable in nature, the encroachers should be summarily evicted.

However, it was noticed that in five<sup>30</sup> taluks adjoining Chennai city, 1594-78-0 hectares of water courses were under encroachment for over 10 years and the encroachers had constructed huts, terraced houses and other allied structures, which prevented free passage of water to the storages lakes and tanks, thereby reducing the overall storage and distribution of water.

It has been judicially held<sup>31</sup> 'Kanmoi' (Lake) land in Madurai district, under encroachment for over 20 years, and being used by encroachers for dwelling purposes, was kanmoi only in name and not otherwise.

Failure of the Department to summarily evict encroachers and to take suitable action to see that lands were not encroached again would thus also ultimately result in change in character of the land in accordance with the above judgement.

### 3.2.11 Encroachment along sea coast

As per Board Proceeding 163 dated 12 February 1958, the Tamil Nadu Land Encroachment Act, 1905, can be invoked for dealing with encroachments on lands belonging to Central Government as well.

In 3 villages in Tambaram Taluk, extent of 3.00.4 hectares of government lands along the sea coast were encroached upon by individuals by extending their compound walls. Out of the above, only an extent of 1.84.0 hectares was booked as encroachment. Eventhough, the encroachment was objectionable, the Department had not taken any steps to evict the encroachers till date.

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<sup>30</sup> Ambattur, Chingelput, Poonamallee, Sriperumbudur and Tambaram.

<sup>31</sup> WP.14579 of 1992 and WMP 20698 of 1992 - High Court of Madras.

### **3.2.12 Internal control mechanism**

Though, guidelines had been issued in the Act as well as in the Board's Standing Order and in subsequent Government Orders, for eviction of encroachers, it was noticed that records showing actual areas of government lands encroached, government lands protected, whether the encroachment was objectionable or unobjectionable and the nature of encroachment were not maintained effectively. Further, no fresh encroachments were booked from 1994-95 onwards, even though no such instructions had been issued by Government. Thus, information of the extent of Government lands under encroachment, the period and nature of encroachment were not available with the Department.

A Steering Committee at the district level had been formed in March 2001 to look into issues of eviction of encroachments on government lands. To examine whether any effective action was taken after formation of the Steering committee, reports of the committee were called for from the Head of the Department in March/June 2003; the same were not received.

### **3.2.13 Recommendations**

In view of the observations made in the review, government may like to consider the following suggestions:

The Tamil Nadu Land Encroachment Act may be suitably amended to make the penal provision stringent.

As revenue records have been computerised in all the taluks, a system may be evolved for authorities/public to verify on line whether a particular land is owned by Government or some other private party, as has been done in the Registration Department for guideline values.

On this being pointed out in June/July 2003; the Government replied that repeal of the old Act (1905) and re-enactment of a new Act with necessary provisions to meet the existing contingencies in the eviction of encroachment, like levy of high rate of penalty, punishment for land grabbing, simplifying the procedure for eviction, etc., was under their consideration (August 2003).

### **3.3 Omission to levy special rates for lands under Plantation Crops**

According to Board's Standing Orders 15, special rates of Rs.3 per acre for lands under cultivation of coffee/tea etc., and Rs.5 per acre for cardamom and Rs.2 per acre for other crops shall be payable.

In Andipatti taluk of Theni District, it was noticed, that land revenue was incorrectly levied at normal rates as against the special rates fixed for lands under plantation crops. This resulted in short levy of land revenue amounting to Rs.6.79 lakh for the period 1 July 1992 to 30 June 2000.

On this being pointed out, the Department raised demands in June and September 2002 and an amount of Rs.2.44 lakh was collected in March 2003. Report on recovery of the balance amount has not been received (October 2003).

The case was reported to Government in July 2003 and followed up with reminder in August 2003; their reply has not been received (October 2003).

### **3.4 Non-revision of lease rent**

As per Revenue Standing Order 24A, Government lands can be leased out to any private firm for commercial purposes on payment of lease rent at the rate of 14 per cent per annum of the prevailing market rate of land. Further, the lease rent is to be revised periodically once in five years in accordance with the market value. Besides, additional surcharge at the rate of 13 per cent of the land revenue is to be collected alongwith the land revenue.

During the course of audit of the office of Tahsildar, Madurai South Taluk, it was noticed that an extent of 2.64 lakh sq.ft. of government lands in prime locality in Madurai was leased out to M/s.Pandian Hotels Limited in 1963 and 1979 (in two pieces) for a period of 25 years. The Government by an order revised the lease rent from Rs.4,600 to Rs.16,000 per month with effect from 11 February 1988 with a revision once in every five years. Subsequently, government by another order on 7th June 1991 fixed the lease rent at Rs.16,000 per month till the assignment of land, without any time limit for revision. The Department did neither take any steps to assign the land after June 1991, nor revised the lease rent periodically as envisaged in Board of Revenue Standing Order 24A issued in 1971 which allowed unintended benefit to the lessee.

Thus, failure to fix the lease rent at prevailing rates and to revise the same periodically resulted in short collection of revenue for the period 11 February 1993 to 10 February 2003 which worked out to Rs.9.45 crore.

On this being pointed out, the Department replied in December 2002 that fixation of lease rent was in accordance with the G.O. dated 7 June 1991 and there was no necessity to revise the same, till assignment, as assignment proposals were in process. The reply is not tenable as there was inordinate delay in assignment of land. The lessee being a commercial concern running a star hotel, the lease rent should have been fixed at normal rate of 14 per cent with periodical revision to safeguard revenue.

The matter was reported to the Government in July 2003 and followed up with reminder in August 2003; their reply has not been received (October 2003).

## CHAPTER IV

### STAMP DUTY AND REGISTRATION FEES

#### 4.1 Results of Audit

Test check of records of departmental offices conducted during the period April 2002 to March 2003 revealed under valuation of property, misclassification of documents etc., amounting to Rs.24.27 crore in 551 cases which broadly fall under the following categories.

(In crore of rupees)			
Sl. No.	Categories	No. of Cases	Amount
1	Under valuation of property	110	11.61
2	Misclassification of documents	59	0.90
3	Others	382	11.76
	<b>Total</b>	<b>551</b>	<b>24.27</b>

During the year 2002-2003, the Department accepted under assessments of Rs.86.70 lakh in 58 cases out of which Rs.34.26 lakh involved in 14 cases, were pointed out during the year and the rest in earlier years. An amount of Rs.30.74 lakh has been collected (June 2003).

A few illustrative cases involving a financial effect of Rs.5.49 crore are mentioned below.

#### 4.2 Incorrect exemption of stamp duty

**4.2.1** Under the Indian Stamp Act, 1899, Government have remitted in April 1964 levy of stamp duty on instruments evidencing transfer of property between companies limited by shares (as defined in Companies Act, 1956), in cases where the transfer takes place between a parent company and a subsidiary company, one of which is the beneficial owner of not less than 90 per cent of the issued share capital of the other.

In Anaimalai Registry, in a case, where transfer of property valued at Rs.11 crore and Rs.8.5 crore took place between a parent and two of its subsidiary companies, through two documents registered in November and December 2001, no stamp duty was charged on the instruments, even though none of the three companies had beneficial ownership of 90 per cent of the issued share capital of the other. The incorrect grant of exemption resulted in stamp duty amounting to Rs.2.34 crore not being realised.

The Government to whom the case was reported in March 2003, accepted the audit observation in September 2003. Further reply was awaited (October 2003).

**4.2.2** Government of Tamil Nadu, by an order issued in June 1966 remitted the stamp duty leviable for all registered co-operative societies in respect of instruments executed by (or) on behalf of any such society (or) by an officer (or) member thereof, having membership of that society for a period of over two years before the date of execution of the instrument.

According to Indian Stamp Act, 1899, for properties conveyed in places other than urban agglomeration of Coimbatore, stamp duty is leviable at 12 per cent.

In 11 sale deeds, registered in Sub-Registry, Suler during the year 2001, an extent of 2,71,532 sq.ft. land in Kannampalayam Village of Coimbatore district, having market value of Rs.96.77 lakh, was conveyed to Singanallur Industrial Co-operative House Construction Society, by a member of the same society and exemption on stamp duty was allowed. However, the by-laws of the society inter alia include a condition that a person who is a land owner with a house in his name, is not eligible to become a member of the society. Since the executant owned two houses in Coimbatore city at the time of admission as member into the society, he was not eligible to become a member of the society. Therefore, the exemption of stamp duty allowed to the ineligible member was not in order. This resulted in non-realisation of stamp duty amounting to Rs.11.60 lakh.

On this being pointed out in audit, the Department accepted the point in September 2003 and stated that action would be initiated to collect the amount from the concerned society.

The matter was also reported to the Registrar of Co-operative Societies in October 2002 and to the Government in April 2003 respectively. The Government had accepted the audit observation in September 2003. Further reply was awaited (October 2003).

### **4.3 Short-levy due to under-valuation of property**

**4.3.1** Under the provisions of Indian Stamp Act, 1899, the consideration, market value and all other facts and circumstances affecting the chargeability of any instrument with duty, (or) the amount of the duty with which it is chargeable shall be fully and truly set forth therein. If any person, with an intent to defraud the Government, executes any instrument in which all the facts are not fully and truly set forth, he shall be punishable with fine which may extend to five thousand rupees, besides levy and collection of deficit stamp duty. If the Registering Officer has reason to believe that the market value has not been truly set forth, he may refer the document to Special Deputy Collector (SDC) (Stamps) for determination of market value.

In District Registry, Chennai (Central), an extent of 25,710 sq.ft. of undivided share of a site in Anna Salai and V.V.Koil Street, Chennai was conveyed in March 2002 by M/s.Arihant Foundations and Housing Limited to M/s.Sterling Infotech Limited, Chennai, for a consideration of Rs.11 crore. However, it was noticed from the relevant records that the fact of the existence of a multi-storeyed building complex having 90,500 sq.ft. built up area on fourteen floors valued at Rs.15.01 crore in the said lands was suppressed. It was also verified from the balance sheet of M/s. Sterling Infotech Limited, for the year 2000-2001 by audit, that the said building had been included in the fixed assets. Further, the same building was assessed to property tax in the name of M/s. Sterling Infotech Limited in January 2000-2001.

Failure of the Department to follow the provision as envisaged in the Act/Rules and guidelines, resulted in under-valuation of property and short-collection of stamp duty and registration fees of Rs.2.10 crore.

The matter was brought to the notice of the Department in October 2002 and to the Government in May 2003. They accepted the audit observation in September 2003. Further reply was awaited (October 2003).

**4.3.2** As per the provisions of Indian Stamp Act, 1899 and Indian Registration Act, 1908, stamp duty and registration fees are leviable on the market value of the property conveyed. Guidelines have been issued by the Department, to enable the Registering Officers to determine the market value of the properties conveyed. If the market value is not truly set forth in the instruments, the Registering Officer, after registering such instruments may refer to the Collector for determination of market value. If the order of the Collector is prejudicial to the interest of revenue, the Inspector General of Registration, as Chief Controlling Revenue Authority (CCRA) may revise, modify or set aside the order and may pass such order thereon as he thinks fit.

In Sub Registry, Villivakkam, an extent of 2,02,740 sq.ft. land in Korattur Village which falls in industrial area, was conveyed in 2001 at Rs.15 per sq.ft as against the guideline rate of Rs.279 per sq.ft. As the market value of the property was not truly set forth, the documents were referred to the SDC (Stamps), Chennai for determination of same. The SDC (Stamps), Chennai had adopted only Rs.41.66 per sq.ft. to the lands conveyed.

On this being pointed out in audit, the Department referred in June 2001 the matter to CCRA for suo motu review. He refixed in September 2002 the market value of the property at Rs.100 per sq.ft and directed the Sub-Registrar to collect the deficit stamp duty and registration fees of Rs.16.56 lakh. Report on recovery has not been received (January 2003).

The Government to whom the matter was reported in June 2003, accepted the audit observation and also informed that the party had gone in appeal to the High Court.

In Sub-Registry, Neelangarai, an extent of 50,094 sq.ft. of land was conveyed during the year 2001 through 4 sale deeds. Stamp duty and registration fee were not levied on the market value as per guidelines. Instead, the Registering Officer adopted the value, as set forth in the instrument. This incorrect valuation resulted in short levy of stamp duty and registration fees of Rs.16.25 lakh.

On this being pointed out, the Department accepted the audit observation and stated in July 2002 that action would be initiated by referring the documents to SDC (Stamps). Further report was not received (October 2003).

The matter reported to the Government in May 2003, was accepted in September 2003. Further reply was awaited (October 2003).

In Sub-Registry, Thiruvottiyur, through a lease deed registered in November 2001, 45 acres of land were leased out to M/s.Videocon Power Limited, New Delhi, by Tamil Nadu Electricity Board for 35 years, for generation of electricity. However, for the purpose of levying stamp duty, market value of the property was determined in November 2001, adopting the rate applicable to agricultural land, instead of that applicable to land used for other than agricultural activities. This resulted in undervaluation of property by Rs.1.11 crore and consequent short levy of stamp duty to the tune of Rs.12.28 lakh.

On this being pointed out the Department accepted the objection in September 2002 and stated that action had been initiated to collect deficit stamp duty. Report on recovery was awaited (June 2003).

The matter was reported to the Government in March 2003 and followed up with reminder in August 2003; reply was not received (October 2003).

#### **4.4 Loss of revenue due to incorrect fixation of market value**

As per the provisions of Section 47A (as existed prior to 6 March 2000) of the Indian Stamp Act, the orders of SDC (Stamps) in respect of his determination of the market value of a property, may be revised only on an appeal preferred by the concerned party to the Appellate Authority. According to Section 47 A (3) of the Act *ibid*, the SDC(Stamps) may suo-motu determine the market value of the properties conveyed through the documents, which are not already referred to him, within five years from the date of registration of the document.

In the office of the SDC (Stamps), Tuticorin, it was noticed that an extent of 1,128.44 acres of land in four villages of Srivaikundam Taluk was conveyed through 22 documents to M/s Riverway Agro Products (P) Limited, Chennai. These were registered in the office of the District Registrar (Central), Chennai during 1994-95. As the value adopted in these documents was lower than the guideline value, the documents were referred to SDC (Stamps), Tuticorin. The SDC (Stamps), after determining the market value issued demand notices in December 1997 to the party to remit the deficit stamp duty of Rs.39.14 lakh. Since the party did not respond to the demand notices, the demand was stated to have been referred to the revenue authorities for collection under Revenue Recovery Act (February 1998). However, on cross verification of records in Taluk Office, Srivaikundam, it was noticed that no such reference had been made by SDC (Stamps).

Further, the SDC (Stamps), after expiry of five years from the date of registration, made suo-motu revision in November 2001 of the market value of the properties already fixed by him in December 1997. The refixed value was very much lower than the value initially fixed by him, as seen from the fact that the actual deficit stamp duty collected on the basis of the refixation, was Rs.4.61 lakh as against the earlier demand of Rs.39.14 lakh.

The incorrect procedure followed by the SDC (Stamps) for suo-motu revision after expiry of five years from the date of registration, that too in respect of the documents already referred to him resulted in loss of revenue by way of stamp duty of Rs.34.53 lakh.

On this being pointed out, the Department stated in September 2003 that the matter was under examination.

The matter was reported to the Government in June 2003 and followed up with reminder in August 2003; their reply was awaited (October 2003).

#### **4.5 Short levy of stamp duty and registration fees**

**4.5.1** Under the provisions of the Hindu Succession Act, 1956, any property possessed by a female Hindu shall be held by her as a full owner thereof and not as a limited owner. According to Indian Stamp Act, 1899, instrument of partition means any instrument whereby co-owners of any property divide or agree to divide such property in severalty. Thus, the property under the absolute ownership of a female member cannot be divided but could only be settled to other persons.

In Sub-Registry, Mylapore (Chennai), a partition deed in which several properties worth Rs.2.25 crore were divided in August 1999, included two properties valued at Rs.70.03 lakh, which were fully owned by a female member. The said properties were transferred to the sons of the elder brother of her deceased husband, who had no right over the properties. Hence, the said properties could only be settled and could not be partitioned. Misclassification of partition-cum-settlement as partition deed, resulted in short levy of stamp duty and registration fees of Rs.8.55 lakh.

On this being pointed out, the Department directed the District Registrar, Chennai, in June 2002, to recover the deficit stamp duty and registration fees. Report on recovery had not been received (May 2003).

The Government to whom the matter was reported in January 2003 accepted the audit observation in September 2003. Further reply was awaited (October 2003).

**4.5.2** In terms of the provisions of Article 55(C) of Indian Stamp Act, 1899, a co-owner may release his right in favour of another co-owner and for such release of immovable property situated within Chennai Metropolitan area, stamp duty is leviable at 13 per cent on the market value of the property.

In 4<sup>32</sup> Sub-Registry Offices, during the year 2001-2002, it was noticed that in eight release deeds involving Rs.54.44 lakh, besides adopting incorrect value, stamp duty was charged at 4 per cent, instead of at 13 per cent. This resulted in short levy of stamp duty and registration fees of Rs.5.48 lakh.

On this being pointed, the Department accepted all the cases in September 2003 and stated that an amount of Rs.0.90 lakh had been collected. Report on recovery of balance amount was awaited (October 2003).

The Government to whom the matter was reported between February 2003 and May 2003, and followed up with reminder in August 2003, accepted the audit observation (September 2003).

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<sup>32</sup> Adayar, Purasawakkam, Sowcarpet and Villivakkam.

## CHAPTER V

### OTHER TAX RECEIPTS

#### 5.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2002 to March 2003 revealed under assessment/non-levy of urban land tax and luxury tax and incorrect exemption amounting to Rs.21.10 crore in 70 cases which broadly fall under the following categories.

(In crore of rupees)			
Sl. No.	Categories	No. of Cases	Amount
<b>Urban Land Tax</b>			
1	Under assessment/non levy of urban land tax	53	17.75
2	Incorrect exemption	10	2.15
	<b>Total</b>	<b>63</b>	<b>19.90</b>
<b>Luxury Tax</b>			
1	Non levy of luxury tax	4	1.19
2	Application of incorrect rate of tax	3	0.01
	<b>Total</b>	<b>7</b>	<b>1.20</b>
	<b>Grand Total</b>	<b>70</b>	<b>21.10</b>

During the year 2002-2003, the concerned Department accepted under assessments of Rs.69.29 lakh in 11 cases out of which an amount of Rs.4.69 lakh in 5 cases pertaining to earlier years has been collected.

A few illustrative cases involving a financial effect of Rs.1.62 crore are mentioned below.

## URBAN LAND TAX

### 5.2 Non-assessment of urban lands

Under the Tamil Nadu Urban Land Tax Act (TNULT Act), 1966, as amended from time to time, urban lands are assessable to urban land tax from 1 July 1991 on the basis of market value of land, as on 1 July 1981. In such cases, where the revised urban land tax leviable on the basis of market value as on July 1981 exceeds five times the tax already levied, the revised urban land tax shall be limited to five times of the tax already levied.

In three assessment divisions, it was noticed that urban lands measuring 26.40 lakh sq.ft. belonging to 28 assesseees, were not assessed to tax from 1 July 1991 onwards. This resulted in non-levy of urban land tax amounting to Rs.28.29 lakh as detailed below:

(In lakh of rupees)

Sl. No	Name of the assessment division (Name of the village)	No. of assesseees	Total extent not assessed to tax (square feet)	Period	Non-levy of tax
1	Mylapore	2	66,740	1 July 1991 to 30 June 2000	5.72
2	Mylapore & Egmore	2	70,079	Between 1 July 1991 and 30 June 2002	5.73
3	Mylapore	3	3,53,098	1 July 1991 to 30 June 2001	9.06
4	Tambaram	21	21,50,033	1 July 1991 to 30 June 2001	7.78
	<b>Total</b>	<b>28</b>	<b>26,39,950</b>		<b>28.29</b>

On this being pointed out, the Department stated between September 2000 and February 2003, that the lands had since been assessed to tax and a demand for Rs.28.29 lakh raised. Report on recovery was awaited (June 2003).

The matter was reported to the Government between April and June 2003 and followed up with reminder in August 2003; reply had not been received (October 2003).

### **5.3 Short collection of tax due to non revision of demand for tax**

Under the provisions of TNULT Act, 1991, Government by an order, reduced the urban land tax by 50 per cent, in respect of cinema studios both for vacant land and built up land. The concession was applicable, so long as the land was specifically used for the purposes of the institutions concerned and any violation would warrant levy of full tax.

In T.Nagar Assessment Circle, it was noticed that an extent of 9.88 lakh sq.ft. land in Saligramam Village, owned by a cinema studio, was assessed to tax at concessional rate for the period 1 July 1991 to 30 June 2002. As the said land was not fully utilised for the purpose of cinema studio, the concession allowed was cancelled in September 1997. However, no demand for the balance amount of tax was raised. This resulted in short collection of tax of Rs.18.23 lakh for 11 years.

On this being pointed out, the Department assessed the lands and raised additional demand in January 2002. Report on recovery was awaited (October 2003).

The matter was reported to the Government in June 2003 and followed up with reminder in August 2003; reply has not been received (October 2003).

### **5.4 Non-levy of urban land tax due to incorrect exemption**

Under the provisions of Section 27(1) of TNULT Act, 1966, the Government, if satisfied that the payment of urban land tax in respect of any class of urban lands or by any class of persons will cause undue hardship, may by order exempt such lands or persons from payment of urban land tax, or reduce the amount of such tax, whether prospectively or retrospectively.

In Mylapore Assessment Division, it was noticed that an extent of 2.02 lakh sq.ft. of urban lands owned by M/s. Gandhi Nagar Cooperative House Construction Society Limited, was leased out to M/s.Gandhi Nagar Education Society, Kottur for a period of 99 years from 1965. The lessor was exempted from payment of urban land tax vide Government Order issued in June 1988, without indicating any reasons viz., undue financial hardship, etc. The incorrect exemption resulted in non-levy of urban land tax of Rs.13.97 lakh for the period 1 July 1975 to 30 June 2001.

On this omission being pointed out, the Department replied in November 2002, that orders were passed by Government on application from Society, under Section 29(h) wherein automatic exemption was available for lands held by educational institutions. The reply is not acceptable as the Government Order (G.O.) and the exemption granted thereunder, were not in order, since the exemption was granted to M/s.Gandhi Nagar Co-operative House Construction Society Limited (Lessor) which was not an educational society.

Thus, the irregular exemption granted had not only resulted in non-levy of urban land tax of Rs.13.97 lakh but had also extended unintended benefit to the assessee.

The case was reported to Government in April 2003 and followed up with reminder in August 2003; their reply was awaited (October 2003).

## **LUXURY TAX**

### **5.5 Non levy of luxury tax**

As per the Tamil Nadu Tax on Luxuries Act, 1981, luxury tax at the rate of twenty five per cent is to be charged for accommodation for residence provided in a hotel to any person, where such rate is rupees one thousand or more per room per day. Where luxury provided in a hotel to any person (not being an employee of the hotel) is not charged at all, then luxury tax is to be paid by the proprietor of the hotel.

In Ooty (South) Assessment Circle, in respect of cottages/rooms occupied (where the approved tariff was more than rupees one thousand per day) by time share holders of two holiday resorts, for 20,144 room days during the year 2000-2001, luxury tax was neither collected by the proprietor nor levied and collected by the Department as per the provisions of the Act. This resulted in non levy of tax of Rs.1.02 crore.

On this being pointed out in audit, the Department contended in September 2002, that time share holders were owners of the cottages and therefore, levy of luxury tax did not arise. The reply is not tenable since, as per the terms and conditions of this time share scheme, (i) the member shall be liable to pay all levies, taxes, duties, charges, fees etc., that may be imposed by Government and (ii) the relationship of the Company and the unit holder was that of licensor and licensee and did not confer any other right, title or interest to the unit holder in any of the Company's properties. So, the time share holders were not owners of the cottages but were members of the Company which operate the Holiday Unit Scheme and which conferred upon them only the right of residence for specified number of days in holiday resorts, subject to availability of accommodation.

The matter was reported to Government in April 2003 and followed up with reminder in August 2003; their reply was not received (October 2003).

## CHAPTER VI

### NON-TAX RECEIPTS

#### 6.1 Results of Audit

Test check of records of departmental offices conducted during the period April 2002 to March 2003 revealed non/short levy of royalty, dead rent and seigniorage fee etc., amounting to Rs.250.23 crore in 98 cases which broadly fall under the following categories.

(In crore of rupees)			
Sl. No.	Categories	No. of Cases	Amount
1	Non/short levy of royalty, dead rent and seigniorage fee	58	117.93
2	Other cases	40	132.30
	<b>Total</b>	<b>98</b>	<b>250.23</b>

During the year 2002-2003, the concerned Department accepted under assessments of Rs.2.07 crore in 21 cases out of which Rs.1.79 crore involved in 4 cases were pointed out during the year and the rest in earlier years. An amount of Rs.8.49 lakh has been collected (June 2003).

A few illustrative cases involving a financial effect of Rs.163.05 crore are mentioned below.

## MINES AND MINERALS

### 6.2 Short collection of royalty

Under the provisions of Mines and Minerals (Regulation and Development) Act, 1957, royalty on limestone is leviable on the quantity mined and removed.

The raw limestone consumed for production of cement by the licencees undergoes various processes. After initially being crushed, the limestone is fed into kilns for clinkerisation, the resultant clinker then being ground to get cement by addition of gypsum and fly ash.

Test check of records of the offices of the Assistant Director of Geology and Mining in six<sup>33</sup> districts, revealed that there was no mechanism to ensure the correctness of actual quantity of mineral mined and removed. Hence, mere declarations of licencees regarding quantity of mineral mined, furnished by 12 cement units, based on the transport permits issued to them by the Department were relied upon, and royalty was levied accordingly for the period from 1996-97 to 2001-02.

Based on the records made available, such as approved derivative formula as accepted by the licencees, clinker production statements etc., raw limestone put into use for production of clinker was computed, adopting the minimum limestone component at every stage as basis. After considering all aspects including outside purchase of limestone, it was found that, the licencees (12 cement units) had consumed 3.80 crore Metric tons of clinker for manufacture of cement during the period 1996-97 to 2001-02 for which 9.08 crore Metric tons of limestone would be required. As against this, the manufacturers had paid royalty on 5.58 crore Metric tons of limestone only, including limestone purchased by them. This had resulted in short accounting of 3.50 crore Metric tons of limestone and consequent short levy of royalty amounting to Rs.113.97 crore during 1996-97 to 2001-02. The Department, failed to ensure the correctness of quantity of limestone that was consumed before assessment of royalty payable and instead adopted the quantity as declared.

On this being pointed out, the Assistant Director of Geology and Mining, Perambalur intimated in January 2003 that demand in respect of five cement units for Rs.43.54 crore had been raised. Report on recovery and reply in respect of other cases had not been received (September 2003).

The case was reported to the Government in May 2003 and followed up with reminder in August 2003; their reply has not been received (October 2003).

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Coimbatore, Dindigul, Perambalur, Salem, Tirunelveli and Virudhunagar.

### **6.3 Non-realisation of lease amount**

According to Rule 8-E of Tamil Nadu Minor Minerals Concession Rules, 1959, introduced in September 1998, all lessees of granite quarries, granted leases under erstwhile Rule 39, and where the leases were still in force, were to pay one time lease amount fixed by District Collector, besides seigniorage fee or dead rent. In the event of lease amount not being paid within the stipulated time of 60 days, the lease would be deemed to have been cancelled. Any person in possession of lease hold area, thereafter shall be deemed to be in unlawful possession of the said land. The District Collector shall, after giving notice, charge from the person double the rate of lease and evict the lessee from lease hold area.

During audit of the office of Assistant Director of Geology and Mining, Dharmapuri, it was noticed, that M/s.Tamil Nadu Minerals Limited (TAMIN – a public sector undertaking) was granted leases for five granite quarries for a period of 20 years from 1996 to 2016 under erstwhile Rule 39. However, the Department raised the demand for lease amount of Rs.21.47 crore only in April 2001, which had not been paid upto June 2003. The Department had neither taken steps to collect the same nor cancelled the leases for non-payment nor raised demand for double the rate of lease amounts and taken action to evict the lessee. This resulted in non-realisation of the lease amount of Rs.42.94 crore.

On this being pointed out, the Department stated in May 2003 that clarifications were sought for from Government in November 1998, regarding fixation of lease amount. The reply is not tenable as the Government had clarified in July 2000, and the Department had accordingly raised the demand in April 2001, but no action was taken to recover the amount due and to evict the lessees.

The matter was reported to the Government in June 2003 and followed up with reminder in August 2003; their reply had not been received (October 2003).

### **6.4 Non-levy of lease amount**

According to Rule 39 (as existed upto July 1996) of Tamil Nadu Minor Minerals Concession Rules, 1959, Government in public interest may grant quarrying licence to quarry any mineral on terms and conditions different from those laid down in the Rules. As per Rule 8-E (introduced with effect from 17 September 1998) of the Rules *ibid*, all leases granted under erstwhile Rule 39, shall pay one time lease amount, besides seigniorage fee or dead rent. The lease amount shall be paid within sixty days from the date of receipt of demand notice, failing which the lease is deemed to have been cancelled.

In Villupuram District, it was noticed that a lease was granted in December 1995 to M/s Tamil Nadu Minerals Ltd., for quarrying black granite for 20 years from July 1996 to July 2016 over an extent of 20.28 hectares of government land. However, neither the lease amount was fixed nor the lease cancelled, which resulted in non-levy of lease amount of Rs.1.74 crore.

On this being pointed out, the Department directed in April 2003 the Assistant Director of Geology and Mining, Villupuram to raise the demand. Further reply was awaited (October 2003).

The case was reported to Government in May 2003 and followed up with reminder in August 2003; their reply was not received (October 2003).

### **6.5 Short levy of seigniorage fee**

As per the provisions of Rule 8(10)(b) of Tamil Nadu Minor Mineral Concession Rules, 1959, seigniorage fee is leviable on the quantity of minerals removed at the prescribed rates. The seigniorage fee leviable for size reduced (broken or crushed) stones, including metal jelly ballast, milestone and hand chakkais is Rs.7 per 10 cubic feet.

In Kancheepuram and Tirunelveli districts, it was noticed, that in respect of 98 lessees during the period 1998-99 to 2001-02, for removal of 196.88 lakh cubic feet of minor minerals viz., sand, stone, earth, jelly, chakkais, etc. as against correct seigniorage fee of Rs.1.02 crore leviable, the Department levied Rs.90.38 lakh only, due to application of incorrect rates. This resulted in short-levy of seigniorage fee of Rs.11.90 lakh.

On this being pointed out, the Department accepted the audit observation between November 2000 and April 2003 and issued demand notices. An amount of Rs.1.51 lakh had been collected (April 2003). Report on recovery of balance amount was not received (October 2003).

The matter was reported to the Government in January/February 2003 and followed up with reminder in August 2003; reply has not been received (October 2003).

### **6.6 Non-realisation of lease rent**

Under the Tamil Nadu Minor Mineral Concession Rules, 1959, the lease period for quarrying sand shall be three years from the date of commencement of lease and a lessee shall, before the commencement of each year of lease, pay the lease rent for that year without fail.

In three<sup>34</sup> districts, it was noticed that in respect of 13 lessees, lease rent for the years 1996-97 and 1997-98 was not demanded. This resulted in non-realisation of lease rent of Rs.13.10 lakh.

On this being pointed out, the Department stated, between September 1998 and September 2002, that demand notices were issued in respect of Dharmapuri and Madurai District. An amount of Rs.1.51 lakh (Dharmapuri) had been collected. Further report was not received (October 2003).

The matter was reported to the Government in March/April 2003 and followed up with reminder in August 2003; reply has not been received (October 2003).

### **HANDLOOMS, HANDICRAFTS, TEXTILES AND KHADI DEPARTMENT**

#### **6.7 Loss due to short collection of levy and non-remittance of levy into Government Account**

**6.7.1** As per Rule 10 (h) of the Tamil Nadu Silkworm Seed (Production, Supply and Distribution) Rules, 1957, a fee of 10 paise for every kilogram of cocoons transacted in the market shall be recovered from the reeler. Government, without amending the relevant provisions of the Act, approved in May 1990 the proposal of the Director of Sericulture (DOS) to constitute a fund called 'Sericulture Development and Price Stabilisation Fund' with a view to utilising the resources generated for overall improvement of the Sericulture industry and directed that a fee at the rate of 0.75 *per cent* on the value of cocoon and silk transacted both in the silk exchange and cocoon markets be collected from both the buyer and seller and credited to the fund.

It was, however, noticed that the Assistant Director of Sericulture collected the levy from the buyers at cocoon markets, at the rate of 10 paise per kg, during the period from May 1990 to December 1997 and remitted the same into Government account regularly instead of at the revised rates. This resulted in loss of Rs.2.68 crore.

**6.7.2** All moneys received by or on behalf of Government should be credited to government account without delay.

A committee constituted in December 1996 for the purpose of effective utilisation of the 'Sericulture Development and Price Stabilisation Fund' resolved in December 1997 to charge the fee at revised rate (approved by the Government in May 1990) from January 1998, and to keep the amount so collected in savings bank account instead of depositing the same to government account.

<sup>34</sup> Dharmapuri, Madurai and Trichy.

It was, however, observed, that the Anna Silk Exchange, Kancheepuram collected Rs.2.15 crore on account of levy from January 1991 to December 1997 and kept the amount in savings account and earned interest of Rs.1.01 crore. The Exchange remitted a sum of Rs.2.28 crore to the Director of Sericulture, Salem, during the period from 10 September 1998 to July 1999 and balance of Rs.0.88 crore was still retained by it which is a serious irregularity.

**6.7.3** The Government issued instructions in October 1998 and again in October 1999 to the Director of Sericulture, Salem to remit the collection on account of fund in government account.

Scrutiny of records of Director of Sericulture, Salem revealed, that a sum of Rs.5.26 crore, being collection made by the Assistant Director of Sericulture, from cocoon market during the period from January 1998 to August 2000 and by the Anna Silk Exchange, during January 1991 to August 2000 and sent to the Director, was remitted in government account only in September 2000 which is a serious irregularity.

The matter was referred to Government in June 2003; Government in their reply in November 2003 accepted the facts and stated that disciplinary action had been initiated against the officials for diverting the levy collected.

## **PUBLIC WORKS DEPARTMENT**

### **6.8 Short collection of lease rent**

The Government ordered in November 1987, that the lease rent for government lands/buildings be enhanced once in three years.

The Government leased out a piece of land measuring 20,000 sq.ft situated in Tallakulam, Madurai to M/s. Indian Oil Corporation (IOC) in September 1964 on payment of lease rent. In pursuance of above order, Executive Engineer, Public Works Department (PWD) revised the lease rent from 1989. The next revision of lease rent was due in January 1992 and January 1995.

The Chief Engineer, Public Works Department, Madurai submitted proposal to Government only in May/June 1997 for revising the lease rent to Rs.4.40 lakh per annum from January 1992 and to Rs.9.50 lakh per annum from January 1995; but the proposal had not been approved by the Government, so far.

Rent at revised rates was, however, demanded from IOC by EE, PWD, Periyar Vaigai Basin Division in September 1997. However, IOC appealed in May 1998 to the Government for reconsideration of the revised rent on the plea that it was a public service organisation and that the upward revision would adversely affect the viability of its operation. No decision has been taken by the Government on the appeal of the IOC so far (March 2003).

Government's indecision on the proposal made by CE in May 1997 for revision of lease rent resulted in short collection of lease rent to the tune of Rs.57.84 lakh for the period January 1992 to December 2002. Moreover, further revisions had also become due in January 1998 and January 2001.

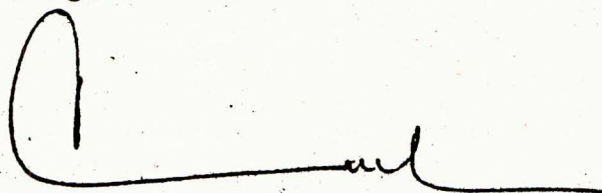
The matter was referred to Government in March 2003; reply had not been received (October 2003).



(T.THEETHAN)  
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The 25 Feb 2004

Countersigned



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Comptroller and Auditor General  
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New Delhi,  
The 10 Mar 2004

THE SECRETARY OF THE ARMY  
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