REPORT

OF THE

COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED 31 MARCH 1999

No.1
(REVENUE RECEIPTS)

GOVERNMENT OF KARNATAKA

CONTENTS

PREFATORY REMARKS

This Report for the year ended 31 March 1999 has been prepared for submission to the Governor under Article 151 (2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act 1971. This Report presents the results of audit of receipts comprising sales tax, state excise, taxes on motor vehicles, taxes on agricultural income, land revenue, stamps and registration fees, entry tax, professions tax, other taxes and duties on commodities and services, guarantee fees, lease rents and urban development 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 1998-99 as well as those noticed in earlier years but could not be included in previous Reports.

OVERVIEW

This Report contains 46 paragraphs including two reviews relating to non-levy/short levy of taxes, duties, rent, fees, interest, penalty, etc. involving Rs.161.76 crore. Some of the major findings are mentioned below:

1. General

(i) The Government revenue receipts for the year 1998-99 amounted to Rs.11230.44 crore against Rs.10613.39 crore for the previous year. 75 per cent of this was raised by the State; Rs.6943.04 crore through tax revenue and Rs.1469.92 crore through non-tax revenue. 25 per cent was received from the Government of India; Rs.1923.92 crore in the form of State share of divisible Union taxes and Rs.893.56 crore grants-in-aid.

(Paragraph 1.1)

(ii) 3776 inspection reports issued up to December 1998 containing 9297 observations involving revenue of Rs.842.05 crore were pending settlement at the end of June 1999.

(Paragraph 1.11)

(iii) Test check of records of sales tax, state excise, taxes on motor vehicles, agricultural income-tax, land revenue, stamps and registration fees, entry tax, professions tax, forest, urban development and other departmental offices, conducted during the year 1998-99, revealed under-assessments, non-levy/short levy of taxes, loss of revenue, etc. amounting to Rs.213.84 crore in 1452 cases. During the year 1998-99, the concerned departments accepted under-assessments, short levy, etc. of Rs.8.55 crore in 1072 cases of which 1063 cases (Rs.7.70 crore) were pointed out in audit in earlier years. The departments recovered Rs.2.34 crore during 1998-99 at the instance of audit.

(Paragraph 1.12)

2. Sales tax

(i) Incorrect allowance of exemptions and concessions resulted in non-levy/short levy of tax of Rs.1550.53 lakh in 264 cases and turnover tax of Rs.75.46 lakh in 64 cases.

(Paragraphs 2.2 and 2.3)

(ii) While application of incorrect rates of tax resulted in short levy of sales tax of Rs.71.16 lakh in 64 cases, incorrect computation of taxable turnover on sale of liquors led to short levy of tax of Rs.88.94 lakh in 23 cases.

(Paragraphs 2.4 and 2.7)

(iii) Apart from the failure to forfeit the excess tax collected, there was non-levy/short levy of penalty for delayed payment/excess collection of tax involving loss of revenue of Rs.73.79 lakh in 51 cases.

(Paragraphs 2.9 and 2.10)

(iv) Exemptions allowed on consignment sales/stock transfers without ensuring actual movement of goods led to non-levy of Rs.1159.76 lakh including penalty for furnishing false declarations.

(Paragraph 2.11)

3. State excise

(i) Incorrect levy of licence fee led to short realisation of Rs.1062.46 lakh in respect of 429 licences issued during the years 1995-96 to 1998-99.

(Paragraph 3.2)

(ii) Delay in finalisation of leases for retail vend of liquors in three districts during 1993-94 and 1995-96 necessitated adoption of other modes for disposal during the intervening period, which resulted in loss of revenue of Rs.88.13 lakh.

(Paragraph 3.3)

(iii) Grant of licences to lessees of distilleries involving immovable properties without insistence of registration of leases resulted in non-realisation of revenue of Rs.34.47 lakh in respect of nine licences issued during 1989 to 1998.

(Paragraph 3.7)

(iv) Differential duty of Rs.170.63 lakh had not been demanded on 11 licensees who had not produced proof of actual export of Indian liquors/beer under concessional rates of duty to civil units situated in other States on 475 permits issued during 1992-93, 1993-94 and 1995-96 to 1997-98.

(Paragraph 3.12)

4. Taxes on motor vehicles

(i) In ARTO, Chickballapur, there was misappropriation of taxes involving Rs.5.24 lakh during 1997-98 alone by altering the amounts in the third copy of the challan used for remittances into the treasury.

(Paragraph 4.2)

(ii) Registration of 62 contract carriages as private service vehicles led to short levy of tax of Rs.153.48 lakh during January 1991 to September 1998.

(Paragraph 4.3)

5. Taxes on agricultural income

Grant of incorrect allowance of expenditure and exclusion of taxable income resulted in short levy of tax of Rs.29.96 lakh in respect of 16 assessees for the years 1994-95 to 1997-98.

(Paragraph 5.2)

6. Land revenue

(i) While application of incorrect rates of fine for conversion of agricultural land for other purposes permitted during 1995-96 and 1997-98 resulted in short levy of Rs.27.05 lakh in respect of 19 cases, non-levy of penal water rates for unauthorised cultivation even after receipt of demand statements from the irrigation officers resulted in non-recovery of Rs.28.90 lakh for the years 1996-97 and 1997-98.

(Paragraphs 6.2 and 6.4)

(ii) Cost of land (in regularised cases only), land revenue and fine aggregating Rs.315.57 lakh had not been collected from unauthorised occupants of Government lands for the period 1991-92 to 1997-98.

(Paragraph 6.5)

7. Other tax receipts

A. Stamps and registration fees

(i) Incorrect computation of consideration for the purpose of levy of stamp duty on a lease deed registered during 1997-98 resulted in short levy of Rs.205.25 lakh.

(Paragraph 7.2)

(ii) Failure to charge stamp duty and registration fee on general powers of attorney involving promoters/developers and dealing with construction, development, sale or transfer of immovable properties as conveyances, resulted in short levy of Rs.51.89 lakh on 34 documents registered during 1995-96 to 1997-98 in five sub-registries.

(Paragraph 7.7)

B. Entertainments tax

Adoption of incorrect ratio for allocating entertainments tax to local authorities resulted in excess payment of Rs.59.57 lakh.

(Paragraph 7.9)

8. Non-tax receipts

(A) Reviews on 'Guarantees and guarantee fees' and 'Leasing of Government lands and buildings' disclosed the following points:

(i) Guarantees and guarantee fees

➢ Against the actual receipts of guarantee fees of Rs.2771.66 lakh only during the years from 1993-94 to 1998-99, the discharge of liabilities by Government due to invocation of guarantees amounted to Rs.3523.45 lakh during these years.

➢ Guarantee fees was either not levied or levied short by Rs.1617.41 lakh in respect of three institutions during 1993-94 to 1997-98.

➢ Guarantee fees of Rs.682.38 lakh for the period 1978-79 to 1997-98 was outstanding from five institutions though they had repaid the borrowed amounts with interest or Government had rejected their requests for waiver.

➢ Despite instructions issued by the Finance department in November 1971 for maintenance of records and furnishing reports at the close of the year, no reports were being furnished by the other departments of Government, with the result there was no effective monitoring by the Finance department.

(Paragraph 8.1)

(ii) Leasing of Government lands and buildings

➢ There was no effective internal control over recovery of rent and other dues under the leases, as even the consolidated position of demand, collection and balance was not available.

➢ Lease rent (including interest) amounting to Rs.79.58 lakh for the period from December 1979 to March 1999 was not demanded from a business enterprise.

➢ Bangalore Turf Club pays Rs.5 lakh per annum for 67.63 acres which is 0.66 per cent of the amount chargeable as per Government norms (Rs.750 lakh per annum).

➢ In respect of lease of a building in Bangalore City to a co-operative federation, periodical revisions as provided in the agreement were not effected and recovery of rent collected by the federation from sub-letting was not enforced resulting in loss of revenue of Rs.51.53 lakh.

➢ In respect of nine forest leases, lease rents (including interest) amounting to Rs.416.51 lakh for the period 1919-20 to 1998-99 had not been realised.

(Paragraph 8.2)

(B) Charges of Rs.36.30 lakh for regularisation of unauthorised constructions in urban areas during 1994-95, 1995-96 and 1997-98 had not been recovered in six districts even though regularisation orders had been issued.

(Paragraph 8.3)

GENERAL

CHAPTER 1

CHAPTER 1 : General

1.1 Trend of revenue receipts

The total receipts of the Government of Karnataka during the year 1998-99 were Rs.11230.44 crore as against Rs.10613.39 crore during the previous year. The details of tax and non-tax revenue raised, the State's share of divisible Union taxes and grants-in-aid received from Government of India during the year along with the corresponding figures for the preceding two years are given below.

(Rupees in crore)

	1996-97	1997-98	1998-99
I. Revenue raised by the State Government			
(a) Tax revenue	5767.84	6411.87	6943.04
(b) Non-tax revenue	1342.31	1264.40	1469.92
Total	7110.15	7676.27	8412.96
II. Receipts from Government of India			
(a) State's share of divisible Union taxes[⊗]	1729.80	2176.33	1923.92
(b) Grants-in-aid	782.23	760.79	893.56
Total	2512.03	2937.12	2817.48
III. Total receipts of State Government (I + II)	9622.18	10613.39	11230.44
IV. Percentage of I to III	74	72	75

(i) The details of tax revenue raised during the year 1998-99 and for the preceding two years are given below.

[⊗] For details, `Statement No.11 - Detailed Account of Revenue Receipts and Capital Receipts by Minor Heads' in the Finance Accounts of the Government of Karnataka for the year 1998-99 may please be referred to. 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 Government' and included in the 'State's share of divisible Union taxes' in this statement.

(Rupees in crore)

Revenue Heads	1996-97	1997-98	1998-99	Percentage of increase (+) / decrease (-) in 1998-99 over 1997-98
1. Taxes on sales, trade, etc.	3510.19	3828.78	4265.17	(+) 11
2. State excise	843.87	863.69	1005.19	(+) 16
3. Stamps and registration fees	487.63	609.39	548.11	(-) 10
4. Taxes on vehicles	325.75	444.31	386.79	(-) 13
5. Taxes on goods and passengers	199.44	234.38	273.13	(+) 17
6. Taxes and duties on electricity	106.50	140.19	140.25	-
7. Other taxes and duties on commodities and services	89.48	113.55	123.63	(+) 9
8. Other taxes on income and expenditure	119.42	102.96	114.27	(+) 11
9. Land revenue	46.03	44.57	38.00	(-) 15
10. Taxes on agricultural income	39.53	30.05	48.50	(+) 61
Total	**5767.84**	**6411.87**	**6943.04**	

Taxes on sales, trade, etc. accounted for 61 per cent of the total tax revenue collected during 1998-99, followed by State excise 14 *per cent.*

Reasons for shortfall in receipts during 1998-99 as compared to 1997-98 as reported by the concerned departments are as under:

Taxes on vehicles: Shortfall was attributed to reduction in rates of tax on fleet owners and collection of lifetime tax on certain vehicles in 1997-98.

Stamps and registration fees: Shortfall was due to reduction in market value rates of immovable properties, slump in real estate market and payment of arrears of surcharge of Rs.55.68 crore to local bodies.

Reasons for variations in respect of other receipts though called for have not been received (October 1999).

(ii) The details of non-tax revenue realised during the year 1998-99 along with figures for the two preceding years are given below.

(Rupees in crore)

Revenue Heads	1996-97	1997-98	1998-99	Percentage of increase (+) / decrease (-) in 1998-99 over 1997-98
1. Interest receipts	674.61	562.52	669.74	(+) 19
2. Other general economic services	24.18	20.10	163.05	(+) 711
3. Forestry and wild life	113.35	113.81	107.35	(-) 6
4. Non-ferrous mining and metallurgical industries	93.40	121.41	106.61	(-) 12
5. Miscellaneous general services	51.89	60.45	78.11	(+) 29
6. Power	94.76	32.78	69.78	(+) 113
7. Social security and welfare	8.03	46.36	38.62	(-) 17
8. Medical and public health	21.04	30.90	33.09	(+) 7
9. Village and small industries	25.41	24.00	24.00	-
10. Major and medium irrigation	17.10	16.37	18.45	(+) 13
11. Education, sports, art and culture	14.68	15.99	17.27	(+) 8
12. Other administrative services	37.53	44.58	14.90	(-) 67
13. Others	166.33	175.13	128.95	(-) 26
Total	**1342.31**	**1264.40**	**1469.92**	

46 per cent of the non-tax revenue collected during the year came from interest receipts, followed by other general economic services 11 per cent.

Reasons for variations in receipts during 1998-99 as compared to 1997-98 though called for have not been received (October 1999).

1.2 Variations between budget estimates and actual receipts

The major variations between budget estimates of revenue and actual receipts under the principal heads of revenue for the year 1998-99 are given below:

(Rupees in crore)

Revenue Heads	Budget Estimates	Actual	Variation Excess (+)/ Shortfall (-)	Percentage of variation
(A) Tax revenue				
1. Taxes on sales, trade, etc.	4634.50	4265.17	(-) 369.33	(-) 8
2. State excise	1050.00	1005.19	(-) 44.81	(-) 4

(Rupees in crore)

Revenue Heads	Budget Estimates	Actual	Variation Excess (+)/ Shortfall (-)	Percentage of variation
3. Stamps and registration fees	760.50	548.11	(-) 212.39	(-) 28
4. Taxes on vehicles	509.00	386.79	(-) 122.21	(-) 24
5. Taxes on goods and passengers	245.60	273.13	(+) 27.53	(+) 11
6. Taxes and duties on electricity	130.00	140.25	(+) 10.25	(+) 8
7. Other taxes and duties on commodities and services	123.10	123.63	(+) 0.53	-
8. Other taxes on income and expenditure	149.50	114.27	(-) 35.23	(-) 24
9. Land revenue	25.00	38.00	(+) 13.00	(+) 52
10. Taxes on agricultural income	36.80	48.50	(+) 11.70	(+) 32

(Rupees in crore)

Revenue Heads	Budget Estimates	Actual	Variation Excess (+)/ Shortfall (-)	Percentage of variation
(B) Non-tax revenue				
1. Interest receipts	682.87	669.74	(-) 13.13	(-) 2
2. Other general economic services	28.23	163.05	(+) 134.82	(+) 478
3. Forestry and wild life	131.25	107.35	(-) 23.90	(-) 18
4. Non-ferrous mining and metallurgical industries	132.03	106.61	(-) 25.42	(-) 19
5. Miscellaneous general services	63.86	78.11	(+) 14.25	(+) 22
6. Power	38.21	69.78	(+) 31.57	(+) 83
7. Social security and welfare	30.25	38.62	(+) 8.37	(+) 28
8. Medical and public health	30.14	33.09	(+) 2.95	(+) 10
9. Village and small industries	29.97	24.00	(-) 5.97	(-) 20
10. Major and medium irrigation	24.00	18.45	(-) 5.55	(-) 23
11. Education, sports, art and culture	12.23	17.27	(+) 5.04	(+) 41
12. Other administrative services	65.63	14.90	(-) 50.73	(-) 77

Reasons for variations between the budget estimates and the actuals as reported by the departments concerned were as under:

(a) Taxes on sales, trade, etc: Decrease was due to rationalisation of tax rates, incentives and concessions to industries and general recession.

(b) Stamps and registration fees: Shortfall was due to reduction in the market value rates of immovable properties, slump in real estate market and payment of arrears of surcharge of Rs.55.68 crore to local bodies.

(c) Taxes on vehicles: Decrease was due to declining trend in registration of new vehicles, reduction in rate of tax on fleet owners.

Reasons for variations in other cases though called for have not been received (October 1999).

1.3 Cost of collection

The gross collection under *Taxes on sales, trade, etc.* and *Taxes on vehicles*, expenditure incurred for their collection and the percentage of such expenditure to gross collections during the years 1996-97, 1997-98 and 1998-99 along with the relevant all-India average percentage of expenditure on collection to gross collection for 1997-98 are given below:

(Rupees in crore)

Revenue Heads	Year	Gross collection	Expenditure on collection	Percentage of cost of collection to gross	All-India average percentage for the year
1. Taxes on sales, trade, etc.	1996-97	3521.81	31.01	0.88	1.28
	1997-98	3843.90	38.24	0.99	
	1998-99	4295.37	41.05	0.96	
2. Taxes on vehicles	1996-97	326.45	10.25	3.14	2.65
	1997-98	444.97	10.97	2.46	
	1998-99	387.69	12.49	3.22	

For other taxes, figures were not furnished by the Government.

1.4 Arrears of revenue

As on 31 March 1999, arrears in collection under State excise as reported by the department were Rs.305.83 crore. Of this, Rs.284.62 crore were pending for over five years. While Rs.39.47 crore had been stayed by courts, the balance was under various stages of action.

Information regarding the arrears of revenue in other departments though called for in May 1999 have not been received (October 1999).

1.5 Arrears in assessments

The details of assessments relating to sales tax, agricultural income-tax, entertainments tax, taxes on goods and passengers, etc. relating to Commercial Taxes Department pending at the beginning of the year, cases disposed of during the year and cases pending finalisation at the end of each year during 1996-97, 1997-98 and 1998-99 are given below:

Year	Opening balance	Cases which became due for assessment during the year	Total	Cases disposed of during the year	Cases pending at the end of the year	Percentage of column (5) to (4)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1996-97	1211719	400303	1612022	721357	890665	45
1997-98	890665	425511	1316176	552780	763396	42
1998-99*	763396	668657	1432053	709974	722079	50

* Provisional

1.6 Arrears in appeals

According to the information furnished (September 1999) by the Commercial Taxes Department, the number of appeals filed under sales tax, entry tax, entertainments tax, taxes on agricultural income, etc. number of appeals disposed of and number of cases pending with the appellate authorities at the end of 1998-99[#] were as under:

Head of revenue	Opening balance	Number of appeals filed during the year	Total	Number of appeals disposed of during the year	Balance at the close of the year	Percentage of cases disposed of to total number of cases
Taxes on sales, trade, etc.	3905	4669	8574	4788	3786	56
Entry tax	732	183	915	480	435	52
Agricultural income tax	255	440	695	239	456	34
Luxury tax	3	-	3	-	3	-
Professions tax	21	26	47	28	19	60

[#] Provisional

1.7 Remissions and write-off of revenue

Details of write-off of arrears of revenue as intimated by departments are given below:

(Rupees in lakh)

Department	Number of cases	Year to which arrears relate	Amount	Reasons for write-off
Commercial taxes	50	1961-62 to 1992-93	68.85	Defaulters not alive, whereabouts of defaulters not known, defaulters not possessing properties or declared insolvent
Taxes on vehicles	1	1995-96 and 1996-97	10100.00	Government has written off this amount due from KSRTC

1.8 Refunds

Position of cases of refunds during the year 1998-99, as reported by the departments, is indicated below:

(Rupees in lakh)

	Commercial Taxes Department		State Excise Department	
	Number of cases	Amount	Number of cases	Amount
Claims for refund outstanding as on 1 April 1998	173	*	439	67.03
Claims received during the year	57	*	288	110.93
Refunds made during the year	1	0.35	289	113.72
Balance outstanding as on 31 March 1999	229	*	438	64.24

* Complete information not received.

1.9 Frauds and evasions

Details of frauds and evasions as reported by the Motor Vehicles department are given below:

(Rupees in lakh)

	Number of cases	Additional demand raised
A. (i) Cases pending as on 1 April 1998	36868	
(ii) Cases detected during the year 1998-99	9742	
B. Cases in which investigations/ assessments were completed during the year 1998-99 (all out of cases at A(i) above)	28892	19.66
C. Cases pending as on 31 March 1999	17718	

1.10 Internal audit

Commercial taxes department

Internal audit wing has been functioning since October 1970. Out of 296 offices in the department, 219 were due for audit during the year 1998-99 of which only 142 were audited.

State excise department

Internal audit wing has been functioning since April 1990. It is headed by a Deputy Commissioner of Excise (Audit and Inspection) who is assisted by an Internal Audit Officer, 2 Assistant Audit Officers and 2 Senior Auditors. Out of 155 offices to be covered by internal audit, 150 offices were audited during 1998-99.

Motor vehicles department

Internal audit wing has been functioning since 1960. During the year 1998-99, 33 offices out of 49 due were audited.

The details of observations made by internal audit and their clearance up to the end of 1998-99 in respect of these three departments are given below:

(Rupees in lakh)

Department	Year	Observations made		Observations settled up to the end of 1998-99		Observations pending as at the end of 1998-99	
		Number	Amount	Number	Amount	Number	Amount
Commercial taxes	Up to 1996-97	8872	1871.86	5791	1285.37	3081	586.49
	1997-98	688	197.32	152	18.92	536	178.40
	1998-99	2643	1654.93	24	1.71	2619	1653.22
	Total	12203	3724.11	5967	1306.00	6236	2418.11
State excise	Up to 1996-97	771	11439.63	176	763.70	595	10675.93
	1997-98	122	622.77	62	254.10	60	368.67
	1998-99	306	1684.68	46	75.33	260	1609.35
	Total	**1199**	**13747.08**	**284**	**1093.13**	**915**	**12653.95**
Motor vehicles	Up to 1996-97	3767	374.90	1756	97.27	2011	277.63
	1997-98	128	23.18	28	14.74	100	8.44
	1998-99	260	59.55	185	12.21	75	47.34
	Total	**4155**	**457.63**	**1969**	**124.22**	**2186**	**333.41**

1.11 Outstanding inspection reports and audit observations

Audit observations on incorrect assessments, short levy of taxes, duties, fees, etc. as also defects in initial records noticed in audit and not settled on the spot are communicated to the heads of offices and to the departmental authorities through inspection reports. Important and serious irregularities are reported to the heads of departments and Government also. In addition, statements indicating the number of observations outstanding for over six months are sent to Government for expediting their settlement. Government have prescribed a time limit of one month for furnishing replies to audit observations.

However, this time schedule had been seldom adhered to, with the result that 3776 inspection reports issued up to end of December 1998, containing 9297 audit observations involving Rs.842.05 crore were to be settled at the end of June 1999, as indicated below, along with the corresponding figures for the two preceding years.

	At the end of		
	June 1997	**June 1998**	**June 1999**
Number of outstanding inspection reports	4022	4287	3776
Number of outstanding audit observations	10561	9658	9297
Amount involved (Rupees in crore)	603.37	765.64	842.05

This would indicate that the money value of the objections pending settlement is steadily on the increase.

Out of the 3776 inspection reports pending settlement, even first replies have not been received (June 1999) for 207 inspection reports containing 658 audit observations involving Rs.17.64 crore. The pendency of these reports was reported to Government in August 1999. The receipt-wise details of inspection reports and audit observations outstanding as on 30 June 1999 and the amount involved are indicated below:

(Rupees in crore)

Department	**Receipts**	**Number of outstanding inspection reports**	**Number of outstanding audit observations**	**Amount of receipts involved**
1. Finance	(a) Taxes on sales, trade, etc., Entry tax, Entertainments tax, Luxury tax and Professions tax	1584	5178	74.99
	(b) Agricultural income tax	64	226	3.74
	(c) State excise	689	933	147.49

Department	Receipts	Number of outstanding inspection reports	Number of outstanding audit observations	Amount of receipts involved
2.Energy	Electricity duty	6	25	52.01
3. Revenue	(a) Land revenue	502	956	105.45
	(b) Stamps and registration fees	462	741	18.89
4. Forest, Ecology and Environment	Forest receipts	232	456	82.68
5. Home and Transport	Taxes on motor vehicles	189	642	341.80
6. Commerce and Industries	Sericulture Industries receipts	16	23	1.26
	Mines and Geology	23	85	12.78
7. Public Works	Public works receipts	9	32	0.96
Total		3776	9297	842.05

1.12 Results of audit

Test check of records of sales tax, state excise, taxes on motor vehicles, agricultural income-tax, land revenue, stamps and registration fees, entry tax, professions tax, forest, urban development and other departmental offices conducted during the year 1998-99 revealed under-assessments, non-levy/short levy of taxes, loss of revenue, failure to raise demands, etc. involving Rs.213.84 crore in 1452 cases. During the course of the year 1998-99, the concerned departments accepted under-assessments, short demands, etc. aggregating Rs.8.55 crore in 1072 cases of which 1063 cases (Rs.7.70 crore) were pointed out in audit in earlier years. A sum of Rs.2.34 crore relating to 172 audit observations was recovered at the instance of audit.

This Report contains 46 paragraphs including two reviews involving financial effect of Rs.161.76 crore. The departments have accepted audit observations involving Rs.16.13 crore, of which Rs.2.50 crore had been recovered up to October 1999. Audit observations with a total revenue effect of Rs.1.97 crore in 625 cases have not been accepted by the departments; but their contentions have been found to be at variance with the facts or legal position and these have been appropriately commented upon in the relevant paragraphs. No reply has been received in the remaining cases (October 1999).

SALES TAX

CHAPTER 2

CHAPTER 2 : Sales Tax

2.1 Results of audit

Test check of records in Sales tax offices, conducted in audit during the year 1998-99, disclosed under-assessments of tax, non-levy of penalty, etc. amounting to Rs.1530.55 lakh in 938 cases under the following broad categories:

(Rupees in lakh)

Sl. No.	Category	Number of cases	Amount
1	Non-levy/short levy of tax	450	610.80
2	Incorrect grant of exemption from tax	107	289.77
3	Short levy due to incorrect classification	6	119.12
4	Non-levy/short levy of turnover tax	174	246.90
5	Non-levy/short levy due to under-assessment of turnover	5	29.98
6	Non-levy of penalty	73	52.01
7	Non-forfeiture of excess tax collected	17	38.53
8	Other irregularities	106	143.44
	Total	**938**	**1530.55**

During the course of the year 1998-99, the department accepted under-assessments of tax amounting to Rs.611.36 lakh involved in 894 cases which had been pointed out in audit in earlier years and recovered Rs.30.29 lakh involved in 32 cases

A few illustrative cases (including certain cases noticed in earlier years which could not be reported in previous Reports) involving Rs.3104.59 lakh are given in the following paragraphs.

2.2 Incorrect grant of exemption/concession

(a)(i) Under the Karnataka Sales Tax (KST) Act 1957, a dealer is liable to pay tax on his taxable turnover, determined after allowing prescribed deductions from the total turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts at rates specified in the Sixth Schedule to the Act. But, he has the option to pay such tax for any year at specified lower rates for each class of works contracts on

the total consideration received or receivable by him in that year. Where such option is exercised, there is no provision for allowing any deduction whatsoever form the total consideration. However, this option is not available to a dealer registered under the Central Sales Tax (CST) Act 1956 who has furnished declarations in Form C under the said Act in respect of goods purchased by him for the purpose of using such goods in the execution of works contracts.

In nine districts, while finalising 60 assessments for the years 1987-88 to 1996-97 (between May 1994 and March 1998) in respect of 33 assessees who were engaged in the execution of various types of works contracts and had opted for payment of tax by way of composition, tax was either not levied or levied at lower rates on a turnover of Rs.1677.28 lakh relating to labour charges, tax-suffered purchases, earth work excavation, goods purchased against declaration Form 'C' by the contractors for use in execution of works and amounts paid to sub-contractors without proof of having included them in their turnover. The tax not levied or levied short worked out to Rs.48.92 lakh as detailed below:

(Rupees in lakh)

Sl. No.	District	Number of assessments	Period (Date) of assessment	Turnover involved	Tax not levied or levied short
1	Bangalore (Urban)	30	1987-88 to 1996-97 (between April 1995 and March 1998)	568.13	23.35
2	Gulbarga	10	1988-89 to 1994-95 (between June 1996 and March 1997)	763.47	15.27
3	Dharwad	7	1990-91 to 1994-95 (between August 1996 and February 1997)	153.24	4.30
4	Belgaum	3	1990-91, 1991-92 and 1994-95 (between December 1995 and July 1997)	28.90	1.35
5	Tumkur	1	1995-96 (August 1996)	12.05	1.11

(Rupees in lakh)

Sl. No.	District	Number of assessments	Period (Date) of assessment	Turnover involved	Tax not levied or levied short
6	Raichur	4	1991-92 to 1993-94 (between April and July 1996)	41.91	1.08
7	Mysore	2	1993-94 and 1994-95 (between April and July 1996)	52.06	1.04
8	Dakshina Kannada	1	1992-93 (May 1994)	44.09	0.88
9	Bangalore (Rural)	2	1993-94 and 1994-95 (between June and December 1996)	13.43	0.54
	Total	**60**		**1677.28**	**48.92**

The cases were pointed out to the assessing authorities (between December 1995 and November 1998) and reported to Government (between December 1997 and July 1999). The department reported (October 1998 and September 1999) revision of assessments in 12 cases involving tax effect of Rs.8.65 lakh and recovery of Rs.8.10 lakh in 10 of them. Reports of action taken in respect of the remaining cases and reply from Government have not been received (October 1999).

(ii) Under the KST Rules 1957, before allowing tax benefit under the composition scheme in respect of works contracts, the assessing authority is required to ensure that the prescribed application by the dealer for the purpose was submitted within 30 days or extended period of 90 days (in case of condonation of delays) from the date of commencement of each year or the business, as the case may be. However, in June 1995, the department extended the benefit of the scheme to civil works contractors who had not been registered under the Act and whose assessments were pending, subject to fulfilment of conditions, furnishing application under the scheme and payment of tax thereunder before 30 June 1995. Contravention of the conditions would attract payment of tax under the normal provisions of the Act.

In four districts while finalising (between April and September 1996) 14 assessments for the years 1989-90 to 1995-96 in respect of six assessees who were engaged in the execution of various types of works contracts, concessional rate of tax under the composition scheme was extended even though the dealers had not submitted the applications in time or the taxes due were not paid under the scheme by 30 June 1995. The incorrect grant of

concession resulted in short levy of tax of Rs.18.32 lakh as detailed below:

(Rupees in lakh)

Sl. No.	District	Number of assessments	Period (Date) of assessment	Turnover involved	Short levy of tax
1	Raichur	4	1992-93 to 1994-95 (between May and July 1996)	172.15	9.92
2	Bangalore (Urban)	1	1992-93 (April 1996)	89.41	5.72
3	Gulbarga	3	1989-90 to 1991-92 (September 1996)	35.01	2.02
4	Chitradurga	6	1990-91 to 1995-96 (August 1996)	17.39	0.66
	Total	**14**		**313.96**	**18.32**

The cases were pointed out to the assessing authorities (between June 1997 and February 1998) and reported to Government (between June 1997 and November 1998). The department reported (between June 1997 and September 1999) revision of assessments in two cases involving tax effect of Rs.6.14 lakh and recovery of Rs.4.43 lakh in one of them. Reports of action taken in respect of the remaining cases and reply from Government have not been received (October 1999).

(b)(i) By notifications issued in July 1986 (as amended in November and December 1986) and March 1994 under the KST Act, with effect from 11 July 1986 and 1 April 1994 (up to 31 March 1996), the tax payable was at a concessional rate of 4 per cent on goods (other than timber, cement, petrol, diesel, lubricants, and other petroleum products) sold to certain specified Central and State Government institutions for use by them for purposes specified therein, subject to production of prescribed declaration as specified in the notification.

In five districts, while finalising the assessments (April 1995 and March 1998) for the years 1993-94 to 1995-96 in respect of six assessees, tax was levied incorrectly on the aggregate turnover of Rs.117.86 lakh at the concessional rate of 4 per cent instead of at the regular rates on sales of goods made to departments of the Government of Karnataka and other institutions as the prescribed declarations were not furnished by them. This resulted in short levy of tax of Rs.8.05 lakh (including surcharge and turnover tax)

as detailed below:

(Rupees in lakh)

Sl. No.	District	Number of dealers	Period (Date) of assessment	Turnover involved	Tax levied short
1	Bangalore (Urban)	2	1993-94 and 1994-95 (between April and September 1995)	35.86	2.76
2	Bellary	1	1993-94 to 1995-96 (between April and May 1997)	39.62	2.34
3	Mysore	1	1995-96 (January 1998)	17.18	1.28
4	Gulbarga	1	1993-94 (May 1996)	14.98	0.90
5	Belgaum	1	1994-95 (March 1998)	10.22	0.77
	Total	**6**		**117.86**	**8.05**

The cases were pointed out to the assessing authorities (between December 1996 and March 1998) and reported to Government (between August 1998 and June 1999); their replies have not been received (October 1999).

(ii) By notifications issued in March 1986 and March 1993, Government prescribed that the tax payable by the dealers supplying goods to the departments of Government of India, Government of Karnataka and the Government of any other State (located in Karnataka) shall be at the rate of 4 per cent or the rate prescribed in the KST Act, whichever was less. This concession was extended from January 1989 to Zilla Parishads located in Karnataka. The concessional rate of tax is admissible to some autonomous bodies of State Government mentioned in the notification.

In two districts (Bangalore (Urban) and Bellary), it was noticed (between June 1997 and July 1998) that while finalising (between July 1996 and January 1998) five assessments for the periods 1987-88, 1993-94, 1994-95 and 1996-97 by five assessing authorities, the concessional rate of tax at 4 per cent was incorrectly granted on a turnover of Rs.89.32 lakh relating to sales made to Zilla Parishads (prior to January 1989) and certain other autonomous bodies which were not covered by the notifications and hence ineligible for the concessional rate. This resulted in short levy of tax of Rs.7.63 lakh.

On these cases being pointed out to the department (between June 1997 and July 1998), the department reported (September 1999) recovery of Rs.0.45 lakh in one case. Replies in respect of the remaining cases have not been received (October 1999). The cases were reported to Government

(between April 1998 and February 1999); their reply has not been received (October 1999).

(c) (i) Vide a notification (March 1987) the Government directed that with effect from April 1987 the tax payable under the CST Act on the sale of silk fabrics is to be calculated at the rate of 4 per cent. However, by another notification (April 1987) under the CST Act, Government exempted the tax payable by any dealer on the sale of silk fabrics which had suffered tax under the KST Act.

In Bangalore (Urban) district, while finalising the assessments (October 1996 and August 1997) of six assessees for the years 1995-96 and 1996-97, inter-State sales turnover of silk fabrics amounting to Rs.874.31 lakh was incorrectly exempted from the levy of CST. These assessees had either not paid tax on the corresponding purchases under the KST Act or had effected corresponding purchases from outside the State and hence they were not eligible for the exemption. This resulted in short levy of tax of Rs.34.97 lakh.

The cases were pointed out to the department (between March and June 1998) and reported to Government (between May and August 1998); their replies have not been received (October 1999).

(ii) Under the CST Act, every dealer who, in the course of inter-State trade or commerce, sells to a registered dealer goods specified in the certificate of registration of the dealer purchasing the goods for resale, is liable to pay tax only at 4 per cent of his turnover. This concession is allowable on production of a declaration in Form C by the selling dealer from the purchasing dealer in the State in which the goods covered by such declarations are delivered. However, by a notification issued in May 1976, the State Government exempted from levy of tax the turnover in respect of inter-State sales of any declared goods on which tax under the KST Act had already been paid subject to production of Form C. If a dealer, after purchasing any goods for resale, fails to do so, he is liable for a penalty not exceeding 1.5 times the tax.

In three[δ] districts, it was noticed (between December 1998 and February 1999) that exemption from or concession in levy of tax was allowed in the case of 11 assessments of nine assessees for the years 1992-93, 1994-95 to 1996-97 finalised (between March 1995 and September 1998) on inter-State sales turnover of Rs.302.78 lakh relating to ghee, metalised paper, coconut and copra.

Audit scrutiny revealed (between December 1998 and February 1999) that the exemptions were granted even though the declarations had not been furnished or the declarations furnished were not issued from the place of delivery or the condition of resale in respect of inter-State purchases made on consignment basis was not fulfilled. The exemption/concession from levy of CST of Rs.20.63 lakh allowed in these cases, was, therefore, incorrect. In one case, penalty of Rs.4.72 lakh being 1.5 times the tax was also leviable since the condition of resale was not satisfied. An illustrative case is detailed below:

[δ] Belgaum, Gulbarga and Tumkur

In Gulbarga district, in the assessments of a company for the years 1994-95 and 1995-96 (finalised between July 1997 and February 1998), the inter-State sales turnover of Rs.210.53 lakh relating to metalised paper was subjected to the concessional rate of 4 per cent on the basis of declarations furnished by the assessee. It was, however, noticed that in these cases though the goods were shown by the assessee as delivered to different States, the declarations were issued by another dealer in Bangalore (Karnataka itself). Hence acceptance of these declarations was incorrect and resulted in short levy of tax of Rs.15.79 lakh.

These cases were pointed out to the department and to Government (July 1999); their replies have not been received (October 1999).

(d) (i) Under the KST Act, where goods liable to tax are iron and steel and oil seeds as mentioned in the Fourth Schedule, every dealer in such goods is required to furnish a declaration in Form 32-B to claim exemption of tax on his subsequent sales or purchase of those goods from April 1995 onwards.

In three districts, while finalising the assessments (August 1996 and March 1998) for the years 1995-96 and 1996-97 in respect of 27 assessees engaged in sale/purchase of iron and steel, groundnut, cotton and other oil seeds, their subsequent sales/purchases amounting to Rs.1435.32 lakh had been exempted without insisting on the production of declarations in Form 32-B to prove that the goods sold /purchased by them had already suffered tax. This resulted in non-levy of tax of Rs.56.04 lakh as detailed below:

(Rupees in lakh)

Sl. No.	District	Number of cases	Period (Date) of assessment	Turnover involved	Tax effect
1	Dharwad	6	1995-96 and 1996-97 (between April 1997 and March 1998)	820.85	31.96
2	Mysore	16	1995-96 and 1996-97 (between April 1997 and March 1998)	420.73	16.33
3	Dakshina Kannada	5	1995-96 (between August 1996 and March 1997)	193.74	7.75
	Total	**27**		**1435.32**	**56.04**

The cases were pointed out to the department (between February and June 1998) and reported to Government (between November 1998 and July 1999); their replies have not been received (October 1999).

(ii) Under the KST Act, where tax has been levied on the sale of any specified items of iron and steel and out of such goods any other items falling under the same class of specified goods are manufactured in Karnataka and sold, the tax on the sale of such manufactured goods is eligible for reduction to the extent of tax already paid, on production of declaration in Form 32/32B issued by the seller of such raw materials and the proof of payment. A dealer issuing or producing a false declaration is liable for penalty at three times the tax due.

In two districts (Bellary and Dharwad), in respect of nine assessments of three dealers for the years 1993-94 to 1995-96 (concluded between December 1996 and September 1998), tax amounting to Rs.300.09 lakh was allowed to be set off on the strength of the declarations furnished by the sellers without proof of payment of tax. Cross verification of the assessments of the suppliers of the raw materials by Audit revealed (January 1999) that they had availed 100 per cent tax exemption and no taxes had been paid. Thus, the declarations furnished by sellers and the set off of Rs.300.09 lakh allowed were incorrect. The penalty leviable in these cases amounted to Rs.900.27 lakh.

On the above cases being pointed out (January 1999), the department stated that the matter would be examined and reply sent in due course. Further reply has not been received (October 1999).

The case was reported to Government (July 1999); their reply has not been received (October 1999).

(e) By separate notifications issued from time to time between October 1981 and August 1993 under the KST Act and the CST Act, sales tax payable in respect of goods manufactured and sold by tiny or small scale industrial (SSI) units were exempted to the extent of the whole or half of the value of their fixed assets of land *and* plant and machinery as on the date of commencement of commercial production, for a specified period depending on the location of the industrial unit.

However, the tax exemption was not admissible on the turnover on which tax had already been collected by the units; claims not made within the stipulated dates; where no manufacturing activity was involved; and in respect of sales effected beyond the eligibility periods.

Similarly, in the cases of exemption claimed by units under expansion schemes, exemption was not allowable on sales effected before expansion. Moreover, the tax exemption was to be limited to the difference between the total tax liability and the average tax liability of the three years immediately preceding the year in which investment for expansion took place. For availing the exemption, the units should produce the prescribed certificate of the Commerce and Industries Department regarding investment on expansion.

In the case of tiny industrial units situated in Growth Centres, the exemption was allowable to the extent of Rs.2 lakh only.

It was, however, noticed (between October 1995 and August 1998) in 13[ω] districts that while finalising (between July 1992 and March 1998) 66 assessments of 31 tiny/SSI units for the period 1988-89 to 1996-97, sales tax exemption was granted without considering these inadmissibility criteria, resulting in short levy of tax of Rs.62.42 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Category (Number of cases)	Assessment years (Date of assessment)	Tax levied short
1	No manufacturing activity was involved (24)	1988-89 to 1996-97 (December 1993 to March 1998)	26.29
2	Tax concession not availed before the specified date (21)	1989-90 to 1995-96 (May 1994 to March 1997)	23.17
3	Tax had been collected by the units (8)	1989-90 to 1991-92, 1993-94 (September 1992 to August 1996)	5.68
4	Others (13)	1989-90 to 1996-97 (December 1994 to March 1998)	7.28
Total (66)			**62.42**

The cases were pointed out to the department (between February 1996 and July 1998) and reported to Government (July 1999). The department reported (between January 1997 and September 1999) revision of assessments in nine cases creating an additional demand of Rs.9.86 lakh and recovery of Rs.7.18 lakh in seven of them. Reports of action taken in respect of the remaining cases and reply from Government have not been received (October 1999).

(f) Under the KST Act, on sales of textiles, sugar and tobacco products not falling under the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act 1957, tax was leviable at the rate of 4 per cent from April 1992 onwards.

[ω] Bangalore (Urban), Bangalore (Rural), Belgaum, Bellary, Bijapur, Dakshina Kannada, Dharwad, Gulbarga, Mandya, Mysore, Raichur, Tumkur, Uttara Kannada

Under the KST Act, on sales (including last sales) of goods included in any of the Schedules, tax was leviable at the rates specified therein. On sales of goods not included in any of the Schedules, tax was leviable at the rate of 7 per cent at all points of sale up to March 1993 and at different rates of tax thereafter as specified from time to time, at the point of first sale within the State.

In 11[ϖ] districts, tax aggregating Rs.62.06 lakh in 53 cases was either not levied or levied short due to granting inadmissible exemption, incorrect computation, etc. of turnover amounting to Rs.1176.87 lakh for the period 1988-89 to 1996-97 as detailed below:

(Rupees in lakh)

Sl. No.	Nature of turnover incorrectly exempted (Number of cases)	Period (Date) of assessment	Turnover involved	Tax not levied or levied short
1	On commodities which did not fall under First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act 1957 (9)	1992-93 to 1995-96 (between December 1993 and February 1998)	218.99	17.81
2	Unscheduled goods (10)	1990-91 and 1992-93 to 1996-97 (between May 1992 and February 1998)	112.24	9.90
3	Goods taxable under Fourth Schedule (11)	1992-93 to 1995-96 (between August 1995 and January 1998)	472.14	9.69
4	Other goods (23)	1988-89 to 1995-96 (between April 1994 and January 1998)	373.50	24.66
	Total (53)		**1176.87**	**62.06**

[ϖ] Bangalore (Urban), Bangalore (Rural), Belgaum, Bellary, Chitradurga, Dharwad, Hassan, Gulbarga, Mysore, Tumkur, Uttara Kannada

On these cases being pointed out (November 1995 and November 1998), the department stated (September 1999) that assessments in 20 cases involving tax effect of Rs.21.16 lakh had been revised and recoveries of Rs.11.64 lakh made in 14 of them. In respect of the other cases, replies have not been received (October 1999).

The cases were referred to Government (between May 1997 and July 1999); their reply has not been received (October 1999).

(g) Under the KST Act, in respect of sale by a registered dealer of any industrial input to another registered dealer for use as a component part or raw material or packing material of any other goods which he intends to manufacture inside the State, the tax payable is at a uniform rate of four per cent. However, in the case of goods chargeable to tax at a higher rate, this reduced rate of four per cent is applicable only if the selling dealer furnishes to the assessing authority a declaration in Form 37 from the buying dealer certifying the intended use. Any person, who purchases any inputs by furnishing a declaration, is liable for penalty equal to thrice the amount of tax, if such goods are used contrary to the declared purposes.

In two districts (Bangalore (Urban) and Bellary), it was noticed (February 1999) in respect of two assessments concluded for the years 1994-95 and 1996-97 that tax at the concessional rate of 4 per cent was levied on the turnover of Rs.34.16 lakh relating to cranes and HSM equipment on the strength of declaration furnished by the purchasers. Since these goods could not be used as component parts or raw materials, they were liable to be taxed at 13 per cent and 8 per cent respectively. The incorrect grant of concession resulted in short levy of tax of Rs.3.51 lakh on the selling dealers. As a result, the purchasing dealers were liable for penalty of Rs.10.53 lakh.

The cases were pointed out to the department and to Government (July 1999); their replies have not been received (October 1999).

(h) Under the CST Act, a dealer is not liable to pay tax on any sale of goods in the course of export of those goods out of the territory of India. For this purpose, the last sale or purchase preceding the sale or purchase occasioning the export of the goods out of the territory of India is also deemed to have taken place in the course of such export. The exemption is allowable on production by the seller, of a declaration in Form H furnished by the exporter, as also evidence of export.

In two districts (Bijapur and Raichur) while finalising five assessments of four dealers in granites for the years 1994-95 to 1996-97, export turnover of Rs.95.31 lakh was exempted from levy of tax accepting the declarations furnished by the dealers. Audit scrutiny (November 1998) revealed that goods mentioned in the declarations were either different from the goods actually exported according to the corresponding bills of lading or the name of the exporter was not genuine. The exemption from levy of tax of Rs.12.37 lakh allowed in these cases was, therefore, incorrect. An illustrative case is detailed below:

In Raichur district, in the assessment of a granite dealer for the year 1996-97, turnover of Rs.53.56 lakh on four consignments of rough granite blocks was exempted from levy of tax as claimed by the assessee as exported through an exporter in Guindy (Tamil Nadu). It was, however, noticed (December 1998) by a cross verification with the records of the Commercial Tax Officer, Guindy that the registration certificate number cited in the export declaration pertained to a garment dealer. Therefore, acceptance of the declarations furnished by the dealer without proper verification resulted in incorrect exemption of tax of Rs.7.39 lakh.

The cases were pointed out to the department and to Government in July 1999; their replies have not been received (October 1999).

2.3 Non-levy/short levy of turnover tax

Under the KST Act, every dealer (other than the Government of Karnataka, the Central Government or the Government of any other State), whose total turnover in a year exceeds the prescribed monetary limits, whether or not the whole or any portion of such turnover is liable to tax under any other provisions of the Act, is liable to pay turnover tax (TOT) at the prescribed rate on his total turnover, after such deductions as are admissible under the Act.

In eight districts, turnover tax of Rs.75.46 lakh in 64 cases was either not levied or levied short due to incorrect exemption of turnover, application of incorrect rate of turnover tax, etc., as detailed below:

(Rupees in lakh)

Sl. No.	District	Number of cases	Period (Date) of assessment	Turnover involved	Tax not levied or levied short
1	Bangalore (Urban)	39	1989-90, 1992-93 to 1996-97 (between February 1993 and March 1998)	5348.04	62.68
2	Belgaum	7	1992-93, 1994-95 to 1996-97 (between July 1996 and March 1998)	662.65	4.53

(Rupees in lakh)

Sl. No.	District	Number of cases	Period (Date) of assessment	Turnover involved	Tax not levied or levied short
3	Dakshina Kannada	5	1994-95 and 1995-96 (between January 1996 and February 1997)	471.67	4.01
4	Bangalore (Rural)	7	1990-91 to 1992-93, 1994-95 and 1995-96 (between April 1996 and March 1997)	124.98	1.66
5	Dharwad	3	1993-94 and 1994-95 (between June and October 1996)	88.15	0.98
6	Raichur	1	1993-94 (June 1996)	51.48	0.64
7	Tumkur	1	1996-97 (February 1998)	45.72	0.57
8	Mandya	1	1996-97 (October 1997)	31.55	0.39
Total		**64**		**6824.24**	**75.46**

On these cases being pointed out (between August 1995 and November 1998), the department stated (September 1999) that assessments in 36 cases involving tax effect of Rs.41.84 lakh had been revised and recoveries of Rs.40.99 lakh made in 34 of them. In respect of the other cases, replies have not been received (October 1999).

The cases were referred to Government (between May 1998 and June 1999); their reply has not been received (October 1999).

2.4 Application of incorrect rate of tax

Under the KST Act, tax is leviable on purchases/sales at the rates mentioned in the relevant Schedules to the Act. Goods not included in any of the Schedules were taxable at the rate of 7 per cent at all points of sale up to March 1993 and thereafter at prescribed rates at the point of first sale within the State. In addition to sales tax/purchase tax, surcharge at the rate of 15 per cent of such tax was leviable from April 1994 to March 1997. Besides, cess at the rate of

5 per cent was also leviable on such tax on goods sold/purchased within the limits of Bangalore City Planning Area. Further, a dealer liable to tax in respect of works contracts has the option to pay tax for each year in lieu of regular tax so computed at the specified compounded rate on his total turnover involved in the execution of such works contracts.

Under the CST Act, on inter-State sale of goods other than declared goods (not covered by valid declarations) tax is leviable at the rate of 10 per cent or at the rate applicable to sale or purchase of such goods inside the State under the KST Act, whichever is higher.

In seven[α] districts, it was noticed (between May 1996 and November 1998) in 64 cases that due to application of incorrect rates, tax was levied short by Rs.71.16 lakh for the period 1991-92 to 1996-97.

On these cases being pointed out, the department stated (September 1999) that assessments in 29 cases involving tax effect of Rs.39.21 lakh had been revised and recoveries of Rs.29.60 lakh made in 24 of them. In respect of the other cases, replies have not been received (October 1999).

The cases were referred to Government (between March 1998 and July 1999); their reply has not been received (October 1999).

2.5 Non-levy/short levy of surcharge

Under the KST Act, a surcharge at the rate of 15 per cent of tax payable on goods (other than declared goods) was leviable for the period from April 1994 to March 1997.

In three[Φ] districts, while finalising (between April 1997 and January 1998) eight assessments of seven dealers for the years 1994-95 to 1996-97, surcharge of Rs.12.11 lakh was either not levied or levied short on the aggregate tax of Rs.81.49 lakh.

On these cases being pointed out to the department (between April and September 1998), the department reported (September 1999) revision of assessments in five cases involving tax effect of Rs.11.15 lakh and recovery of Rs.2.63 lakh in four of them. In respect of the other cases, replies have not been received (October 1999).

The cases were reported to Government (June 1999); their reply has not been received (October 1999).

[α] Bangalore (Rural), Bangalore (Urban), Belgaum, Bellary, Bidar, Dharwad, Raichur

[Φ] Bangalore (Urban), Hassan and Tumkur

2.6 Non-levy of tax at purchase point

Under the KST Act, on purchase of hides and skins (whether in a raw or dressed state), tax is leviable on the last dealer in the State at the rate of 4 per cent.

In Bangalore (Rural) district, an assessee purchased raw skin from local registered dealers and used it in the manufacture of leather garments. Thus, he was the last dealer in the State and hence was liable to pay tax on purchase turnover of raw skin. However, in the assessments for the years 1993-94 to 1995-96 (finalised between January 1996 and June 1997), tax of Rs.6.34 lakh was not levied on the turnover of purchase of raw skin amounting to Rs.158.58 lakh.

The case was reported to the department (December 1998) and to Government (June 1999); their replies have not been received (October 1999).

2.7 Incorrect determination of taxable turnover

Under the KST Act, every dealer is required to pay for each year, tax on his taxable turnover of sales (other than the last sale in the State) relating to all kinds of alcoholic liquors for human consumption (other than toddy, arrack, fenny and wine) at the rate of 35 per cent from June 1988 to March 1990, 45 per cent from April 1990 to March 1994, and at 50 per cent from April 1994 to March 1997. At any point of sale other than the first and the last points of sale, the taxable turnover is to be arrived at by deducting the turnover of such goods on which tax has been levied at the immediately preceding point of sale.

It was noticed (between June 1996 and November 1998) that in eight districts, while finalising 31 assessments (between April 1992 and January 1998) for the years 1989-90 to 1996-97 of 23 dealers, the assessing authorities had incorrectly determined the taxable turnover of liquors at Rs.988.45 lakh instead of at Rs.1152.46 lakh by excluding the profit margin and sales tax at the immediately preceding point of sale. This resulted in escapement of taxable turnover of Rs.164.01 lakh and short levy of tax of Rs.88.94 lakh as detailed below:

(Rupees in lakh)

Sl. No.	District (Number of cases)	Period (Date) of assessment	Taxable turnover	Taxable turnover determined	Escaped taxable turnover	Tax effect
1	Bangalore (Urban) (5)	1989-90, 1992-93 to 1994-95 (between September 1994 and September 1997)	176.20	166.23	9.97	5.09
2	Bangalore (Rural) (1)	1992-93 (May 1996)	26.56	25.87	0.69	0.31
3	Belgaum (3)	1991-92 and 1992-93 1994-95 to 1996-97 (between June 1996 and January 1998)	186.59	175.48	11.11	5.53
4	Bellary (2)	1992-93 and 1993-94 1995-96 and 1996-97 (between April 1994 and March 1998)	35.63	30.16	5.47	2.76
5	Dharwad (1)	1992-93 (September 1995)	20.27	18.88	1.39	0.63
6	Gulbarga (4)	1992-93, 1993-94 and 1996-97 (between December 1995 and February 1998)	365.70	251.56	114.14	62.79
7	Mysore (2)	1993-94 and 1994-95 (between April 1996 and January 1997)	109.31	106.36	2.95	1.57

(Rupees in lakh)

Sl. No.	District (Number of cases)	Period (Date) of assessment	Taxable turnover	Taxable turnover determined	Escaped taxable turnover	Tax effect
8	Raichur (5)	1990-91 and 1994-95 (between April 1992 and March 1997)	232.20	213.91	18.29	10.26
	Total (23)		**1152.46**	**988.45**	**164.01**	**88.94**

The cases were pointed out to the department (between May 1998 and May 1999) and reported to Government (July 1999). The department reported (September 1999) revision of assessments in six cases creating additional demand of Rs.13.15 lakh and recovery of Rs.3.20 lakh in two of them. Reports of action taken in respect of the remaining cases and reply from Government have not been received (October 1999).

2.8 Short demand of tax

After the final assessment under the KST Act/the CST Act, if any amount is due from the dealer, the assessing authority is required to serve upon the dealer a notice demanding payment of the tax due.

In Bangalore (Urban) district, while finalising four assessments (between May 1996 and June 1997) for the years 1992-93, 1994-95 and 1995-96, against the tax of Rs.197.23 lakh assessed, tax of Rs.191.29 lakh only was demanded due to arithmetical error, incorrect implementation of assessment order, clerical mistake, etc. This resulted in short demand of tax of Rs.5.94 lakh.

The cases were pointed out to the department (between May 1997 and August 1998). The department reported (September 1999) creation of

additional demand of Rs.5.94 lakh and out of which recovery of Rs.4.06 lakh in three of them. Report of recovery in the other case has not been received (October 1999).

The cases were referred to Government (June 1999); their reply has not been received (October 1999).

2.9 Short forfeiture of tax collected in excess

Under the KST Act, a registered dealer shall not collect any amount by way of tax or purporting to be by way of tax at a rate or rates exceeding the rate or rates specified in the Act or in respect of sales of any goods on which no tax is payable by him under the Act. Where any collection is made in contravention thereof, whether knowingly or otherwise, the assessing authority is required to forfeit the tax collected in excess. The assessing authority is also empowered to levy penalty not exceeding 1.5 times the amount so collected.

In four[Φ] districts, while finalising 10 assessments (between August 1996 and March 1998) for the years 1993-94 to 1996-97, as against tax of Rs.616.74 lakh assessed by the concerned assessing authorities, the dealers had collected Rs.631.70 lakh. Out of the excess collection of tax of Rs.14.96 lakh, the assessing authorities forfeited Rs.3.15 lakh only. No action had been initiated to forfeit the remaining excess amount of Rs.11.81 lakh. In addition, penalty amounting to Rs.17.72 lakh was also leviable.

On these cases being pointed out (between June 1997 and July 1998), the department reported (September 1999) recovery of Rs.6.62 lakh in six cases. Replies in respect of the remaining cases have not been received (October 1999).

The cases were referred to Government (between June 1998 and May 1999); their reply has not been received (October 1999).

2.10 Non-levy/short-levy of penalty

Under the KST Act, the tax or any other amount due is required to be paid within the prescribed time, which in the case of final assessments, is 21 days from the date of service of demand notice. In case of default in making payments, the assessee would be liable to pay penalty at 2 per cent (1.5 per cent up to 31 March 1997) per month of the amount of tax for the first three months after the expiry of the time prescribed and at 2.5 per cent thereafter. Similar provisions exist for levy of penalty for delayed payment of tax under the CST Act also.

[Φ] Bangalore (Urban), Belgaum, Bellary, Tumkur

In eight districts, though 41 dealers did not pay the sums specified in the demand notices within 21 days of their service, the penalty of Rs.44.26 lakh was not levied/levied short as detailed below:

(Rupees in lakh)

Sl. No.	District	Period (Date) of assessment	Number of assessees	Delay in payment of tax	Penalty
1	Bangalore (Urban)	1984-85 to 1986-87 and 1988-89 to 1996-97 (between March 1991 and May 1997)	22	1 to 80 months	22.64
2	Bangalore (Rural)	1988-89 to 1990-91, 1993-94 and 1994-95 (between October 1993 and January 1996)	4	4 to 27 months	3.66
3	Dakshina Kannada	1989-90 to 1995-96 (between February 1993 and October 1997)	5	1 to 80 months	8.83
4	Belgaum	1982-83 to 1987-88 and 1989-90 (between November 1987 and May 1994)	2	21 to 105 months	1.70
5	Bellary	1990-91 and 1993-94 (between October 1993 and May 1995)	2	1 to 40 months	1.17
6	Gulbarga	1991-92 and 1993-94 (between June 1993 and September 1996)	3	4 to 29 months	2.30
7	Mysore	1980-81, 1981-82 and 1991-92 (between November 1983 and November 1994)	2	15 to 155 months	2.48
8	Tumkur	1984 (August 1989)	1	50 months	1.48
	Total		**41**		**44.26**

The cases were pointed out to the department (between April 1996 and August 1998) and reported to Government (July 1999). The department reported (September 1999) recovery of Rs.6.83 lakh in nine cases. Reports of action taken in respect of the remaining cases and reply from Government have not been received (October 1999).

2.11 Incorrect allowance of consignment sales/stock transfers

Under the CST Act, no tax is leviable in respect of goods moved from one State to another by reason of transfer to any other place of business, or to an agent or a principal. In order to avail this exemption, declarations in Form F certifying that the goods transferred have been received and duly accounted for are required to be produced from the receiver along with the evidence of despatch of such goods. Where movement of goods to the declared destination outside the State is not proved beyond doubt, the goods are deemed to have been sold locally attracting penalty under the provisions of the KST Act. The assessing authorities, on detecting false declarations, are required to direct the dealer to pay penalty equal to three times the tax due on the first occasion and at five times the tax due on subsequent occasions.

(a) During the course of audit (May 1999), it was noticed in Tumkur district that a registered dealer in solvent oils was allowed exemption from levy of tax on movement of rice bran of a total turnover of Rs.2588.51 lakh during the years 1986-87 to 1994-95 to its branches (stock transfer) at Namakkal and Hosur, both in Tamil Nadu. The dealer claimed exemption on the basis of Form F. While rice bran attracted tax of 3 per cent plus turnover tax at prescribed rate in Karnataka, the commodity was exempted from tax in Tamil Nadu. The registration certificate of the dealer revealed that the dealer was dealing in different varieties of solvent oil and not rice bran. The tax effect of these transactions was Rs.258.85 lakh. The penalty leviable at three times the tax for furnishing false declarations was Rs.776.55 lakh.

(b) In two districts (Bangalore and Bijapur), it was noticed (between February and March 1999) that while finalising four assessments of three dealers for the years 1988-89, 1989-90 and 1995-96, turnover aggregating Rs.458.87 lakh relating to inter-State sales of vanaspati, refined oil and neem oil was exempted from levy of tax accepting the declarations furnished by the dealers. It was, however, noticed that either the declaration forms produced were not those issued by the respective States or proof of delivery was not insisted upon before allowing exemption. Non-levy of tax in these cases amounted to Rs.31.09 lakh on which the dealers were also liable for penalty of Rs.93.27 lakh (three times the tax) for furnishing false declarations. An illustrative case is detailed below:

In Bangalore (Urban) district, while finalising (between March and June 1991) the assessments of a dealer in vanaspati for the years 1988-89 and 1989-90, turnover of Rs.230.22 lakh on consignment sales to Goa was exempted from levy of tax on the basis of the report of two police check posts to the effect that the concerned vehicle had passed through them. However, the department's own investigation in February 1990 had revealed that the goods had not passed through sales tax check posts. Moreover, there was nothing on record to prove that the goods had been actually despatched to another State by the dealer. In the absence of conclusive proof of movement of goods, the exemption allowed was not in order and resulted in non-levy of tax of Rs.25.90 lakh and penalty of Rs.77.70 lakh.

These cases were pointed out to the department and to Government in July 1999; their replies have not been received (October 1999).

2.12 Remission of penalty

The amounts of penalty ordered for waiver by the CCT during the period April 1997 to November 1998 amounted to Rs.129.99 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Reasons for waiver	Number of cases	Amount
1	Business closed/financial difficulties/assessee expired	94	125.04
2	Assessee insolvent/not traceable	6	1.66
3	Government of India/State Government company	3	3.29
	Total	**103**	**129.99**

Test check of 40 out of these 103 cases revealed the following:-

(i) In 14 cases, penalty of Rs.44.60 lakh was waived by the CCT on the ground that 11 of these cases related to levy of turnover tax (TOT) on wheat products. Out of Rs.38.34 lakh due in these 11 cases, the CCT collected a paltry amount of Rs.2.52 lakh and remitted the major part (Rs.35.82 lakh) on the ground that belated payment of TOT was due to a number of petitions including 53 relating to Karnataka pending before the Hon'ble Supreme Court of India. The levy of TOT was upheld by the Supreme Court (September 1993). The ground cited for waiver was not justified.

In respect of the remaining three cases involving Rs.8.78 lakh, despite the concerned JCCT (Administration)/assessing authorities reporting that the financial position of the assessees was sound and/or the assessees possessed movable and immovable properties/and were continuing the business, the remission was ordered on the ground that the assessees were facing financial difficulties.

(ii) In three cases, penalty of Rs.15.96 lakh was waived by the CCT on the ground that the business was closed/assessee was not residing in Karnataka/the assessees had no property and some of the partners expired and whereabouts of others were not known. Audit scrutiny, however, revealed that timely

action by the department against the assessees could have recovered the amount before their becoming irrecoverable.

Thus, on account of irregular waiver in the above 17 cases, there was loss of revenue of Rs.60.56 lakh.

The points mentioned above were referred to the department (February 1999) and to Government (May 1999); their replies have not been received (October 1999).

STATE EXCISE

CHAPTER 3

CHAPTER 3 : State Excise

3.1 Results of audit

Test check of records of the Excise department, conducted in audit during the year 1998-99, disclosed non-levy/short levy of duty, licence fee, etc. amounting to Rs.2083.75 lakh in 139 cases under the following broad categories:

(Rupees in lakh)

Sl. No.	Category	Number of cases	Amount
1	Non-levy/short levy of licence fee	41	1124.77
2	Loss of duty due to shortage in production/excess wastage	5	158.57
3	Errors in computation of duty	16	114.72
4	Other irregularities	77	685.69
	Total	**139**	**2083.75**

During the course of the year 1998-99, the department accepted under-assessments of Rs.169.38 lakh involved in 37 cases (including Rs.85.99 lakh involved in 32 cases which had been pointed out in audit in earlier years) and recovered the entire amount.

A few illustrative cases (including certain cases noticed in earlier years which could not be reported in previous Reports) involving Rs.1967.20 lakh are given in the following paragraphs.

3.2 Non-levy/short levy of licence fee

(a) Under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules 1968 (referred to as Rules hereinafter), as amended from February 1997, a licence for distributorship (CL 11) could be granted by the Excise Commissioner to an authorised distributor for any distillery, brewery or winery on payment of licence fee of Rs.1.50 lakh per annum (Rs.1 lakh for 1997-98). Under the Rules, on licences granted within the Bangalore City Planning Area for 1997-98 and the entire State from 1998-99, an additional licence fee at the rate of 15 per cent is chargeable. 21 distributorship licences, one for each Depot, were issued on the basis of authorisations by 17 distilleries within the State for the year 1997-98 to M/s Mysore Sales International Limited (MSIL, a State Government Undertaking) by collecting licence fee of Rs.21 lakh. Similarly, 21 licences, one for each depot, for the year 1998-99 for sale of products of 16 distilleries were also issued by

collecting licence fee of Rs.36.21 lakh. In fact, separate licences were to be issued to each depot for sale of products of each distillery. Licence fee was leviable, in respect of each of the distilleries separately. Accordingly, for the years 1997-98 and 1998-99, the number of licences to be issued were 357 and 336 respectively. The licence fee (including additional licence fee) leviable on these was Rs.944.25 lakh. As only Rs.57.21 lakh was levied, there was a short levy of Rs.887.04 lakh. In fact, for the year 1999-2000, separate licences were issued in respect of each of the distilleries for which MSIL was the distributor.

each distillery

The short levy was pointed out to the Excise Commissioner in December 1998; final reply has not been received (October 1999).

(b) Under the Rules, an additional licence fee at the rate of 10 per cent is chargeable for permitting the licensees to sell foreign liquors. The additional fee was raised to 25 per cent from February 1997 in case of licensees holding CL 11 licence.

It was, however, noticed that in respect of 21 licences (CL 11) issued to MSIL and 4 other licensees (CL 7 and CL 9) of Mysore district, permits for sale of foreign liquors were issued during the years 1995-96 to 1998-99 without collecting the additional licence fee amounting to Rs.139.69 lakh.

These cases were pointed out to the Excise Commissioner/Deputy Commissioner of Excise, Mysore in October 1997/December 1998; their replies have not been received (October 1999).

(c) Under the Rules, the fee for issue of licences for sale of liquors is chargeable at the rates specified therein depending on the type of licences, location of the premises, namely, City Corporation, City Municipal Council (CMC), Town Municipal Council (TMC) and others. By notification issued in November 1995 under the Karnataka Municipalities Act 1964, all the provisions of this Act shall *mutatis mutandis* apply to the Town Panchayats. The Excise Commissioner issued instructions in November 1997 to recover the differential licence fee from 1995-96 since licence fee applicable to TMC was chargeable in respect of licences issued to premises falling within Town Panchayats.

It was however, noticed (March 1997 and November 1998) from test check of records in 15* offices that in respect of 358 licences, demands for the differential licence fee of Rs.35.73 lakh for the years 1995-96 to 1998-99 had not been raised.

On these cases being pointed out (between March 1997 and November 1998), the Excise Commissioner reported (between May and October 1999) recovery of Rs.9.49 lakh in 86 cases. Reports of recovery in respect of the other cases have not been received (October 1999).

* Bangalore (Rural), Belgaum, Bidar, Bijapur, Chickmagalur, Chitradurga, Dakshina Kannada, Dharwad, Gulbarga, Hassan, Kolar, Raichur, Shimoga, Tumkur and Uttara Kannada

The matter was reported to Government in July 1999; their reply has not been received (October 1999).

3.3 Loss of revenue due to delay in finalisation of leases for retail vend of liquors

According to the Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules 1969, the process of lease of retail vend for each year by tender, auction, tender-cum-auction or in any other manner as decided by Government, including entering into agreement with the person in whose favour the lease is confirmed, is required to be completed not later than 30th June of the preceding year.

A test check of records of three Deputy Commissioners of Excise (Bijapur, Dakshina Kannada and Raichur) revealed (between August 1994 and February 1997) that the leases in respect of 15 taluks for the years 1993-94 and 1995-96 were finalised only in July/August 1993 and August 1995 respectively. As a result, the retail vend of liquor till confirmation of leases was arranged either by grant of temporary leases or by departmental vending. As against the rentals of Rs.414.11 lakh that could have been realised in these cases if the leases had been awarded from 1st July of the year itself, only a sum of Rs.325.98 lakh was received from departmental vending or by issue of temporary leases. The delay in finalisation of leases thus resulted in loss of revenue of Rs.88.13 lakh.

These cases were pointed out to the Deputy Commissioners of Excise (between August 1994 and February 1997) and to the department (between February and May 1999) and to Government (June 1999); their replies have not been received (October 1999).

3.4 Loss of revenue due to delay in prescribing statutory limits of maturation/production norms

Government prescribed through an executive order in May 1980 that the permissible wastage of liquor would be between 2.5 and 22 per cent when the period of maturation in wooden casks ranged from 6 to 38 months and that 6500 litres of beer can be produced per 1000 Kg of malt used. But the Honourable High Court of Karnataka quashed (February 1992) a notice of demand issued on a brewery for levying excise duty on shortfall holding that there was no provision for levy of excise duty on shortfall in production on the basis of norms fixed by Government. To remedy this legal infirmity, the Karnataka Excise (Regulation of Yield, Production and Wastage of Spirit, Beer, Wine or Liquors) Rules 1998 were brought into force from August 1998 incorporating the norms fixed earlier by the executive order and also providing for levy of penalty equal to the amount of duty involved on the quantity computed as shortfall in maturation/production. Distilleries and breweries

continued to enjoy benefit of wastage without ceiling during intervening six years.

Test check in audit showed that on the basis of the norms prescribed by the Government, there was excess wastage of 397341 bulk litres (BL) of spirit and short yield of 1847985 BL of beer in two distilleries and one brewery during the years 1994-95 to 1997-98. Excise duty to the extent of Rs.450.19 lakh had been forgone.

On the matter being reported (November 1998/April 1999), the Excise Commissioner attributed (September 1999) the delay in issue of notification to several technicalities involved like opinion of experts committee being taken as also objections received on the draft notification being considered.

Urgency to bring the aforesaid rule could have prevented revenue leakage.

The matter was reported to Government in July 1999; their reply has not been received (October 1999).

3.5 Non-recovery of dues on supplies of rectified spirit for captive consumption

In order to ensure uniformity, Government fixed in May 1992, a price of Rs.6 per litre of rectified spirit obtained for manufacture of arrack by bottling units from captive and non-captive distilleries. In the case of non-captive distilleries, the entire price was to be paid by the bottling units to the distilleries from where rectified spirit was purchased. But in the case of captive distilleries, Rs.5 per litre only was to be paid to the distilleries and the remaining Re.1 per litre credited to Government.

It was noticed (July 1997) that a distillery in Bidar district had supplied 15.14 lakh BL of rectified spirit to three of its arrack bottling units located at different places* in three districts during 1992-93 by charging Rs.5 per BL. The amount of Rs.15.14 lakh due to Government at the rate of Re.1 per BL had not, however, been remitted. The department had also not raised demand for recovery of the dues.

The case was pointed out to the department (November 1997) and to Government (July 1999); their replies have not been received (October 1999).

3.6 Non-levy of duty on shortages

Under the Karnataka Excise (Distillery and Warehouse) Rules 1967, every distiller is required to pay duty on all kinds of spirit found short beyond the permissible wastage, which could not be accounted for to the satisfaction of

* Arasikere, Bellary, Kustagi

the Deputy Commissioner. According to instructions issued (April 1985) by the Excise Commissioner, duty is leviable on losses in transit also.

In five* districts, it was noticed (between February 1996 and January 1999) in the case of seven licensees that in respect of 18429.57 bulk litres (BL) of rectified spirit, 6302.29 BL of neutral spirit, 61213.464 BL of Indian made liquors and 11242 BL of arrack reported as loss in transit or found short by the department on inspections during 1993-94 to 1997-98, duty of Rs.44.79 lakh had not been levied.

These cases were pointed out to the concerned excise officers in charge of the licensed units (between February 1996 and January 1999), reported to the Excise Commissioner (April /May 1999) and to Government (July 1999); their replies have not been received (October 1999).

3.7 Incorrect grant of licences to lessees of unregistered leases

Under the Karnataka Stamp Act 1957 read with the Registration Act 1908, no instrument chargeable with duty is to be acted upon by any public officer unless such instrument is duly stamped and lease of immovable property exceeding one year or reserving a yearly rent is compulsorily registrable. Stamp duty and registration fees on such instruments are levied on the basis of average annual rents reserved in the leases.

During the course of audit of the Office of the Excise Commissioner, it was noticed (December 1998) that licences for sub-lease of nine distilleries had been issued on the basis of unregistered lease agreements executed by the lessees during the years 1989 to 1998. Since the lessees had taken over manufacturing facilities (land, building, plant and machinery, etc.) from the original licensees (lessors), the leases were compulsorily registrable. Failure to ensure that licences were issued only to units holding registered lease deeds resulted in non-realisation of stamp duty and registration fees of Rs.34.47 lakh on the consideration of average annual rent ranging from Rs.3 lakh to Rs.101.76 lakh.

These cases were pointed out to the Excise Commissioner (December 1998) and to Government (July 1999); their replies have not been received (October 1999).

3.8 Loss of revenue on retail vend of arrack

(a) According to the Karnataka Excise Licences (General Conditions) Rules 1967, if the rent for any month is not paid on or before the specified

* Bangalore (Urban), Chitradurga, Dakshina Kannada, Mandya, Shimoga

date, the lease is required to be determined, the licence cancelled and the right to vend liquor disposed of at the risk and cost of the defaulter.

In Hassan district, it was noticed (November 1998) that two lessees, who had been granted the right of retail vend of arrack for the year 1997-98, failed to pay the monthly rents or discontinued their business. Thereafter, the retail vend of arrack was arranged departmentally. As against the total rental of Rs.66.52 lakh due, the total realisation including from departmental vending was only Rs.55.87 lakh. Thus, the loss consequent on termination of the leases, recoverable from the lessees amounted to Rs.10.65 lakh for which demand had not been raised.

The cases were pointed out to the Deputy Superintendent of Excise (November 1998), reported to the Excise Commissioner (April 1999) and to Government (July 1999); their replies have not been received (October 1999).

(b) According to the Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules 1969, the Deputy Commissioner may reject the bid offered in auction if it is too low. However, where the bid offered in auction exceeds the bid obtained during the previous excise year by five per cent and where the Excise Commissioner did not pass an order either confirming or rejecting it, is required to forward the records of the bid to the State Government for consideration.

In Tumkur district, it was noticed (November 1998) that though the bid amounts for vend of arrack in respect of five[>] taluks for the period from August to October 1997 were less than those for the previous year and were liable to be rejected, the Excise Commissioner forwarded the records to the State Government in June 1997 for consideration. Simultaneously, instructions were issued by Government (June 1997) for July 1997 and by the Excise Commissioner (July 1997) for August 1997 to continue the existing contracts at the rates offered for 1996-97 till receipt of orders of confirmation of the new bids. The orders of confirmation of contracts in favour of new bidders were received from the State Government and served on them on different dates during August 1997. However, the rentals due up to August 1997 till the date of such service of confirmation orders were recovered from the earlier contractors at the lower rates accepted for the new contractors for the year 1997-98 instead of at the rates for 1996-97. This resulted in short recovery of rentals of Rs.9.57 lakh.

These cases were pointed out to the Deputy Superintendent of Excise, Tumkur in November 1997, reported to the Excise Commissioner in April 1999 and to Government in July 1999; their replies have not been received (October 1999).

[>] Pavagada, Sira, Tiptur, Tumkur, Turuvekere

3.9 Short collection of label approval fee

Under the Karnataka Excise (Bottling of Liquors) Rules 1967, the bottles filled with liquor are to be corked, sealed and labelled as approved by the Excise Commissioner. The Rules prescribe levy of a fee for approval or renewal of labels of each brand of liquor at Rs.4,000 (Rs.2,000 up to June 1997), if pertaining to the licensees of Karnataka State and Rs.10,000 (Rs.5,000 up to June 1997) for licensees of outside Karnataka.

It was noticed (February/December 1998) that for all the labels approved during the years 1996-97 and 1997-98 for bottling done in Karnataka, fee was levied treating the bottling licensees as belonging to Karnataka even though 148 labels pertained to persons outside the State. The fees for approval in 148 cases was chargeable at the higher rate. The incorrect levy resulted in short levy of fees of Rs.6.55 lakh.

On these cases being pointed out, Government stated (December 1998) that as the entire process of manufacture took place in the excise bonded warehouse of the local licensee, the fee chargeable was only at the rates applicable to Karnataka licensees. This reply is untenable as the levy was dependent on the owner of the label and not on the location of the place of bottling.

3.10 Non-levy of sales tax on short accounting by licensees

Under the Karnataka Sales Tax Act 1957, every dealer is required to pay for each year, tax on his taxable turnover of sales (other than the last sale in the State) relating to all kinds of alcoholic liquors for human consumption (other than toddy, arrack, fenny and wine) at the rate of 45 per cent from April 1990 to March 1994 and at 50 per cent from April 1994 to March 1997. On the last sale of such liquors, tax is leviable at the rate of 5 per cent from April 1990 to March 1996 and at 8 per cent from April 1996 onwards.

It was noticed during the audit (between October 1995 and August 1997) of two offices of Bangalore (Urban) district that the department had noticed short accounting of Indian liquors and beer to the extent of 18465.680 BL and 1,25,763.35 BL respectively valued at Rs.49.99 lakh during 1993-94 to 1996-97. However, sales tax thereon amounting to Rs.8.02 lakh was not levied.

The cases were pointed out to the concerned excise officers (between October 1995 and August 1997) and reported to the Excise Commissioner in November 1995/August 1997. The Excise Commissioner reported (May 1999) recovery of Rs.0.74 lakh in one case. Replies in respect of the remaining cases have not been received (October 1999).

The cases were referred to Government (July 1999); their reply has not been received (October 1999).

3.11 Short recovery of litre fee on toddy sales

Under the Karnataka Excise (Excise Duties and Fees) Rules 1968 read with the Karnataka Excise (Tapping of Trees) Rules 1991, every holder of a licence is required to pay litre fee at one rupee per litre on toddy sold in shops.

In Dakshina Kannada district, it was noticed (November 1997) that an amount of Rs.41.92 lakh was outstanding against 32 societies for toddy tapped during 1991-92 to 1993-94. No action had been taken by the department to recover the fee. The delay in recovery led to notional loss of interest to Government apart from financial accommodation.

On the position being brought to the notice of the department, the Excise Commissioner stated (March 1999) that the matter was under correspondence with Government. Further developments have not been reported (October 1999).

The cases were referred to Government in July 1999; their reply has not been received (October 1999).

3.12 Non-recovery of differential duty

According to the Karnataka Excise (Possession, Transport, Import and Export of Intoxicants) Rules 1967 and instructions issued (December 1989 and March 1990) by the Excise Commissioner, in cases where the reports of verification (EVC) of the consignments or warehousing of the intoxicants in the importing States are not received within 30 days from the date of expiry of the permits in the case of exports to civil units and within 90 days in the case of exports to defence units, the differential duty (between normal and concessional rate applied at the time of issue of export permits) is required to be collected from the exporter/the sureties. There is no provision for allowing any shortages or breakages in transit and as such duty is leviable on full quantities of the liquor consigned for export.

In two districts (Bangalore and Dakshina Kannada), it was noticed (between July 1997 and February 1999) in the case of three breweries and eight distilleries that differential duty of Rs.170.63 lakh leviable on account of non-receipt of verification reports in respect of 24,59,477.52 bulk litres of beer/Indian liquor exported on 475 permits issued during the years 1992-93, 1993-94 and 1995-96 to 1997-98 to civil units outside the State (within India) was not levied.

These cases were pointed out in audit to the Excise Commissioner (between March 1998 and June 1999). The Excise Commissioner replied (August 1999) that since the rules did not specify any time limit for submission of EVCs and in case the exporter had paid the full duty before lifting the material, he was

entitled to rebate and hence insistence of payment of difference of duty on the ground of belated receipt of EVCs would negate the concept of relief. This reply is not tenable as EVCs are meant to ensure that the consignments had reached the intended destination. In the absence of EVCs, the chances of diversion of liquor for local sales, curbing of which was also the intention of the rule could not be ruled out.

The matter was referred to Government in June 1999; their reply has not been received (October 1999).

3.13 Non-recovery/short recovery of cost of establishment

Under the Karnataka Excise (Distillery and Warehouse) Rules 1967, the cost of establishment in respect of the excise officers and staff employed in the premises of licensees for supervision and securing compliance with the provisions of the Excise Act and Rules is to be paid by the licensees in advance in annual, half-yearly or quarterly instalments.

In eight* districts, the cost of establishment for the years 1995-96 to 1998-99 due from 21 licensees on account of unpaid advance payments and arrears on account of retrospective revision of pay and allowances had been either not recovered or recovered short by Rs.24.68 lakh.

These cases were pointed out to the concerned excise officers in charge of the licensed units (between April 1996 and March 1999), reported to the Excise Commissioner (between November 1998 and May 1999) and to Government (July 1999). While the department reported (October 1999) that Rs.12.25 lakh had since been realised, reports of action taken in respect of the other cases and reply from Government have not been received (October 1999).

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* Bangalore (Urban), Bangalore (Rural), Belgaum, Bidar, Chitradurga, Chickmagalur, Mysore, Dharwad

TAXES ON MOTOR VEHICLES

CHAPTER 4

CHAPTER 4 : Taxes on Motor Vehicles

4.1 Results of audit

Test check of records in the Motor Vehicles department, conducted in audit during the year 1998-99, disclosed under-assessments of tax amounting to Rs.178.55 lakh in 84 cases under the following broad categories:

(Rupees in lakh)

Sl. No.	Category	Number of cases	Amount
1	Non-levy/short levy of tax	59	174.13
2	Non-levy/non-collection of fees/penalty	19	3.51
3	Other irregularities	6	0.91
	Total	**84**	**178.55**

During the course of the year 1998-99, the department accepted under-assessments worth Rs.22.16 lakh in 50 cases which had been pointed out in audit in earlier years and recovered Rs.10.57 lakh.

A few illustrative cases (including certain cases noticed in earlier years which could not be reported in previous Reports) involving Rs.200.60 lakh are given in the following paragraphs.

4.2 Misappropriation of taxes collected

According to the procedure prescribed in the Karnataka Motor Vehicles Taxation Rules 1957, payment of tax is made by the vehicle owners in Form 3A required to be prepared in quadruplicate – the original being handed over to the vehicle owner, the duplicate being retained for record with the vehicle file kept by the registering authority, the triplicate being used for purposes of remittances of cash into the treasury and making entries in the cash (day) book, the quadruplicate being forwarded to the computer centre. However, receipt books used by the Department contain only three copies and hence there is no system of making out the quadruplicate copy meant for the computer centre.

During the audit of accounts of the Assistant Regional Transport Officer (ARTO), Chickballapur (Kolar district) for the year 1997-98, it was noticed (March-April 1999) that the amounts entered in some of the triplicate copies, on the basis of which remittances were made into the treasury, were less than those in the corresponding duplicate copies. With reference to the entries in

the register of vehicles, the concerned files and the remittances register, there were short remittances of Rs.5.24 lakh during 1997-98 alone. In the absence of connected records, the exact amount of misappropriation could not be assessed.

On this being pointed out (April 1999), the Commissioner for Transport stated (September 1999) that a special audit of the treasury section of the ARTO, Chickballapur was being done by his office. Further report was still awaited (October 1999).

4.3 Short levy of tax due to incorrect classification of contract carriages

Under the Karnataka Motor Vehicles Taxation Act 1957, the rate of tax leviable in respect of a private service vehicle (PSV) is with reference to the floor area whereas in respect of a contract carriage, it is based on the number of passengers permitted to be carried.

It was noticed (between May and August 1998) during test check of records of four* Regional Transport Offices (RTO) that 62 buses registered as PSVs and owned by three transport operators had been transferred in the names of five companies (Bharat Earth Movers Limited, Hindustan Machine Tools Limited, Infosys Technologies Limited, Motor Industries Company Limited, Widia India Limited) after entering into agreements according to which the companies were to pay the contractors at agreed rates on contract basis to commute their employees from different points to their respective units and back at the prescribed timings on all working days. Since the vehicles were being used as contract carriages by the transport operators, the levy of tax on them as PSVs was incorrect. The short levy of tax in these cases amounted to Rs.153.48 lakh for the period from January 1991 to September 1998.

These cases were reported to the Commissioner for Transport and to Government between June 1998 and November 1998; the Commissioner stated (July 1999) that demand notices had been issued by the concerned RTOs to the vehicle owners to pay the differential tax. Report of recovery and reply from Government have not been received (October 1999).

4.4 Non-levy of tax

Under the Karnataka Motor Vehicles Taxation Act 1957 and the Rules made thereunder, the tax levied is required to be paid in advance by the registered owner or person having possession or control of the motor vehicle, for a quarter, half year or year at his choice, within fifteen days from the date of commencement of such period. Failure to do so would attract penalty at 20 *per cent* on the amount of tax due.

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* Bangalore (Central), Bangalore (North), Bangalore (South), Kolar Gold Fields

During a test check of records of 10[δ] Regional Transport Offices between January 1996 and October 1998, it was noticed that in respect of 113 vehicles, tax amounting to Rs.24.74 lakh (including penalty) had not been paid for different periods from January 1981 to November 1998.

These cases were brought to the notice of the concerned Regional Transport Officers between January 1996 and October 1998, reported to the Commissioner for Transport between March and May 1999; final replies have not been received (October 1999).

The matter was reported to Government in June 1999; their reply has not been received (October 1999).

4.5 Non-realisation of arrears of tax

The Karnataka Motor Vehicles Taxation Act 1957 provides for levy of tax on motor vehicles with tourist permits granted under the Motor Vehicles Act 1988 (later replaced by the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules 1993), plying for hire or reward, permitted to carry more than twelve passengers. The tax leviable per passenger per quarter was Rs.500 up to March 1987, which was enhanced to Rs.2000 per seat per quarter from April 1987, but was reduced to Rs.1000 from April 1990 and restored to Rs.500 from April 1994.

It was noticed (December 1997) in Bangalore (North) region that an operator did not pay the tax at the enhanced rate of Rs.2000 per seat per quarter from April 1987 in respect of four vehicles and challenged the increase of tax in Hon'ble High Court and thereafter Hon'ble Supreme Court but lost the case (April 1994). Even the representation for reduction of enhanced tax of Rs.2000 made by him (August 1994) in pursuance of directions by the Supreme Court was also rejected by the State Government in March 1999, but the vehicle owner did not pay the dues. Though he had furnished bank guarantees in January 1992 for Rs.5.10 lakh (valid up to January 1996) towards 50 per cent of the tax dues as per directions of the Supreme Court (January 1988), they could not be encashed by the department as they had not been got revalidated after their currency of guarantee expired in January 1996.

Thus, failure to revalidate the bank guarantee and delay in taking decision by the Government on the owner's representation, resulted in non-realisation of arrears of tax of Rs.10.20 lakh.

The matter was reported to the Commissioner for Transport in May 1999 and to Government in June 1999. The Commissioner stated (August 1999) that fresh demand notices had been issued and that all efforts for recovery, including recovery as arrears of land revenue, would be made. Reply from Government has not been received (October 1999).

[δ] Bangalore (Central), Bangalore (North), Bangalore (South), Bangalore (West), Bidar, Chamarajanagar, Dharwad, Haveri, Mysore and Raichur

4.6 Short receipt of composite tax

Under the National Permit Scheme, composite taxes due to State of Karnataka at rates notified from time to time from holders of permits originating in other States are initially collected by those States and passed on to this State. From September 1993, the State Government revised the rates of composite taxes payable by National Permit-holders to Rs.3,000 per annum for 17 States and Rs.5,000 per annum for others and notified to the other States for collection. The composite taxes were payable either in lump or in two half-yearly instalments at the discretion of the permit-holders.

It was noticed (January 1999) that in Haryana, Madhya Pradesh and Maharashtra States for the year 1993-94, Rs.3.68 lakh due towards the second instalment of tax was not collected in 140 cases and that collection of tax in 214 cases was made at pre-revised rates resulting in short collection of Rs.3.26 lakh.

On the total short receipt of composite tax of Rs.6.94 lakh being pointed out, the Commissioner for Transport stated in January 1999 that despite continuous reminders, the concerned Regional Transport Authorities had not responded.

The matter was referred to Government in April 1999; their reply has not been received (October 1999).

TAXES ON AGRICULTURAL INCOME

CHAPTER 5

CHAPTER 5 : Taxes on Agricultural Income

5.1 Results of audit

Test check of records in Agricultural income-tax offices, conducted in audit during the year 1998-99, disclosed under-assessments of tax amounting to Rs.94.21 lakh in 70 cases under the following broad categories:

(Rupees in lakh)

Sl. No.	Category	Number of cases	Amount
1	Incorrect computation of income	22	34.93
2	Incorrect set off of losses	10	16.34
3	Non-levy of interest/penalty	24	33.14
4	Other irregularities	14	9.80
	Total	**70**	**94.21**

During the course of the year 1998-99, the department accepted under-assessments worth Rs.17.35 lakh involved in 33 cases (including Rs.15.83 lakh relating to 29 cases pointed out in audit in earlier years) and recovered the entire amount.

A few illustrative cases (including certain cases noticed in earlier years which could not be reported in previous Reports) involving Rs.61.52 lakh are given in the following paragraphs.

5.2 Short levy of tax due to incorrect computation of total agricultural income

Under the Karnataka Agricultural Income Tax Act 1957 (the Act), as amended from time to time, the total agricultural income in a 'previous year' is required to be computed after allowing deductions permissible which include tax as paid in respect of the agricultural produce from the lands from which agricultural income is derived by the assessee, depreciation on capital assets, interest paid on borrowings, etc.

Up to 1993-94, the Act also provided that loss in agricultural income for any year determined in respect of a registered firm was apportionable among the partners for set off against their other income. In case there were no such income, it was allowed to be carried forward and set off against the agricultural income of subsequent year(s). After the amendment of the Act effective from 1994-95, there is no provision for apportionment of losses of

registered firms among the partners. There is also no provision for setting off the losses allocated to partners prior to 1994-95 and pending adjustment in their individual assessments against the firm's income.

In two districts (Chickmagalur and Kodagu), while finalising (between July 1996 and March 1998) the assessments of 16 assessees for the years 1994-95 to 1997-98, the total agricultural income had been computed short by Rs.55.15 lakh due to allowance of inadmissible tax, allowance of depreciation not admissible or in excess of admissible extent, appropriation of profit, set off of losses not provided, etc. This resulted in short levy of tax of Rs.29.96 lakh. A few cases by way of illustrations are as under:

(i) In Chickmagalur district, in the assessments of two firms (M/s Isabella Estate and M/s Thorimalai Estate) for the years 1994-95 and 1996-97 (concluded in September and December 1997), set off of business loss of Rs.7.93 lakh relating to the period 1990-91, 1992-93 and 1993-94 was allowed. Since these losses had already been allocated to their partners in the respective years, the set off allowed was incorrect and resulted in short levy of tax of Rs.3.18 lakh. Similarly, in Kodagu district, in the assessment of a firm (M/s Kayres Estate) for the year 1996-97 (finalised in July 1997), the taxable income was determined after setting off unabsorbed business losses amounting to Rs.4.67 lakh relating to the years 1989-90 to 1994-95. Since these losses of the firm had already been allocated to its partners in the respective years, the set off allowed in the instant case was incorrect and resulted in short levy of tax of Rs.1.87 lakh.

(ii) In Chickmagalur district, while finalising (April 1997) the assessment of a company (M/s Mysore Plantations Limited) for the year 1994-95, purchase tax of Rs.5.06 lakh on coffee seeds purchased by the assessee was allowed as expenditure. Since the tax was incurred on the coffee seeds not grown by the assessee, its allowance was incorrect and resulted in short levy of tax of Rs.3.29 lakh.

(iii) In Chickmagalur district, while finalising (May 1997), the assessment of an assessee (M/s G.E. Thippaiah and others - Association of Persons) for the year 1995-96, the coffee receipts reckoned was Rs.44.91 lakh as declared by the assessee. It was, however, noticed that the coffee receipts actually amounted to Rs.48.63 lakh according to the details furnished by the assessee. On the income of Rs.3.72 lakh thus computed less, there was short levy of tax of Rs.2.05 lakh.

These cases were pointed out to the assessing authorities (between January 1998 and February 1999), to the Commissioner of Commercial Taxes (between March 1998 and May 1999) and to Government (June 1999). The Commissioner reported (August 1999) revision of assessments in two cases involving a total tax effect of Rs.2.12 lakh and recovery of the entire amount. Reports of action taken in the remaining cases and reply from Government have not been received (October 1999).

5.3 Non-levy of interest/penalty

Under the Act, where a person, having taxable agricultural income in a previous year does not furnish the prescribed annual return to the assessing authority within four months from the end of the previous year, interest is leviable at 24 per cent per annum up to date of furnishing the return or if return is not submitted, up to the date of completion of assessment to the best of judgement as the case may be, on the amount of tax payable.

Further, if after the final assessment, the advance tax paid by the assessee on the basis of the return furnished, is found to be less than the tax payable by more than 25 per cent, penalty at 24 per cent per annum of the amount paid short becomes leviable. In case of default to pay the tax demanded within the time mentioned in the demand notice, a penalty at the rate of 1.5 per cent per month of the amount of tax due for the first three months and at 2.5 per cent thereafter is leviable.

In Chickmagalur district, in respect of six assessments concluded during the year 1997-98, interest of Rs.3.34 lakh for delay in furnishing returns for the years 1995-96 to 1997-98 had not been levied; in three other assessments finalised during the year 1997-98, penalty of Rs.2.22 lakh for delay in payment of taxes as demanded for the years 1994-95 and 1995-96 had not been levied. In two circles (Chickmagalur-I and Hassan), in respect of 25 assessments of 18 assessees for the years 1994-95 to 1997-98, proceedings for levy of penalty of Rs.26 lakh for short/non-payment of advance tax had not been initiated.

The total non-levy of interest/penalty in these cases amounted to Rs.31.56 lakh.

These cases were pointed out to the concerned assessing authorities in May 1998/February 1999 and reported to the Commissioner of Commercial Taxes in July 1998/May 1999. The Commissioner reported (September 1999) collection of Rs.1.23 lakh involved in two assessments of an assessee. Reports of action taken in the remaining cases have not been received (October 1999).

The cases were reported to Government in May-June 1999; their reply has not been received (October 1999).

LAND REVENUE

CHAPTER 6

was M/s Leela Scottish Lace Limited and the lessee was M/s Hotel Leelaventure Limited.

The Sub-Registrar levied stamp duty of Rs.40 lakh as under:

(a) Rs.15 lakh as 10 per cent of three years' variable lease rent.

(b) Rs.25 lakh as 10 per cent of Rs.2.50 crore shown as value of improvements in the leased property.

Audit scrutiny revealed the following:

(a) The lease provided payment of Rs.40 crore as an interest-free refundable deposit by the lessor. While determining the value of the lease for levying stamp duty, the Sub-Registrar did not take into account the consideration flowing to the lessor on account of Rs.40 crore deposit bearing no interest. Using a conservative simple post-tax rate of 10 per cent, the value of such consideration in addition to lease rent would be at least Rs.4 crore per annum. Therefore, an additional amount of stamp duty of Rs.120 lakh (10 per cent of Rs.12 crore) is leviable.

(b) The lease deed provides for handing over of 15,000 sq.m. of built up area by the lessee to the lessor on termination of the lease period. According to the project report submitted by the lessee to the Director of Tourism in April 1995, the estimated cost of the hotel building with a built up area of 42,000 sq.m. after deducting cost of land (acquired in January 1996 at a cost of Rs.30.02 crore) was Rs.28.98 crore. Accordingly, the proportionate estimated cost of construction of 15,000 sq.m. to be handed over by the lessee to the lessor would be Rs.10.35 crore. Against this, the value of improvement declared by the lessee and subjected to stamp duty was only Rs.2.50 crore. Consequently, there was short levy of stamp duty of Rs.78.50 lakh.

(c) The lease deed provided for a fixed lease rent at Rs.150 per sq.m. per annum for 15,000 sq.m. of built up area in the hotel to be constructed by the lessee on the leased property and a variable lease rent for the balance area depending on the gross turnover of the hotel subject to a minimum guaranteed amount of Rs.50 lakh per annum. The Sub-Registrar levied stamp duty of Rs.40 lakh on the consideration of variable lease rent only. Stamp duty was, however, not levied for the fixed lease rent of Rs.22.50 lakh per annum. Short levy on this account was Rs.6.75 lakh.

The case was pointed out to the Sub-Registrar (June 1998), the Inspector General of Registration and Commissioner of Stamps (IGR) and to Government (July 1998/October 1999). Their replies have not been received (October 1999).

CHAPTER 6 : Land Revenue

6.1 Results of audit

Test check of records in Land Revenue offices, conducted in audit during the year 1998-99, disclosed under-assessments of revenue amounting to Rs.837.45 lakh in 74 cases under the following broad categories:

(Rupees in lakh)

Sl. No.	Category	Number of cases	Amount
1	Non-recovery of cost of land	10	52.40
2	Non-levy/short levy of conversion fine	20	25.06
3	Non-raising/short raising of demands for water rate	22	498.44
4	Non-levy/short levy of maintenance cess	10	11.17
5	Other irregularities	12	250.38
	Total	**74**	**837.45**

During the course of the year 1998-99, the department accepted under-assessments worth Rs.3.60 lakh involved in six cases which had been pointed out in audit in earlier years and recovered the entire amount.

A few illustrative cases (including certain cases noticed in earlier years which could not be reported in previous Reports) involving Rs.390.10 lakh are given in the following paragraphs.

6.2 Short levy of conversion fine

Under the Karnataka Land Revenue Act 1964 and the Rules framed thereunder, when any land held for the purpose of agriculture (and assessed as such) is permitted to be used for any other purpose, a conversion fine is leviable at the prescribed rates. The rates of conversion fine were revised in July 1994 and again in February 1996.

In eight[δ] districts, in respect of 19 cases involving conversion of 3.74 lakh sq. metres of agricultural land into non-agricultural (residential/non-residential)

[δ] Bangalore (Rural), Bijapur, Chitradurga, Dakshina Kannada, Dharwad, Gulbarga, Koppal, Shimoga.

purposes permitted between 1995-96 and 1997-98 conversion fine was, however, levied short by Rs.27.05 lakh due to application of incorrect rates.

These cases were pointed out to the concerned Tahsildars/Deputy Commissioners (between November 1997 and October 1998) and to the concerned Divisional Commissioners (between June 1998 and December 1998). The Divisional Commissioner, Bangalore reported (September 1999) that in two districts (Bijapur and Dakshina Kannada), Rs.0.68 lakh in respect of three cases had since been recovered and that in respect of three cases of Shimoga district, Rs.4.19 lakh due had been included in the Demand, Collection and Balance Statement for watching its recovery. Reports of recovery in these cases and action taken in the remaining 13 cases have not been received (October 1999).

The cases were reported to Government (between June 1998 and December 1998); their reply has not been received (October 1999).

6.3 Non-raising/short raising of demands for water charges

Under the Karnataka Irrigation (Levy of Water Rate) Rules 1965, in respect of each crop or revenue year, as the case may be, one officer each from the Revenue and the Irrigation departments, should jointly inspect and prepare a statement of survey numbers of lands to which water was supplied, made available or used for irrigation and the crops raised therein. On the basis of this statement, the Irrigation Officer prepares a statement of water charges payable by each landholder and sends it to the Tahsildar concerned for collection.

In four taluks of four districts, omission on the part of the Revenue department to book and raise demand for water charges aggregating Rs.18.58 lakh relating to the years 1995-96 to 1997-98, even after receipt of demand statements from the Irrigation Officers, was noticed as under:

(Rupees in lakh)

Sl. No.	Taluk Office (District)	Year to which demand relates	Water charges demanded		
			To be booked as per Irrigation department	Booked by Revenue department	Amount of non-/ short booking
1	Shimoga (Shimoga)	1995-96 1996-97	7.42 2.41	- -	7.42 2.41
2	H.D.Kote (Mysore)	1996-97 and 1997-98	4.04	Nil	4.04
3	Chincholi (Gulbarga)	1995-96 1996-97 1997-98	0.40 0.33 1.87	Nil	2.60

Sl. No.	Taluk Office (District)	Year to which demand relates	Water charges demanded		
			To be booked as per Irrigation department	Booked by Revenue department	Amount of non-/ short booking
4	Channarayapatna (Hassan)	1996-97 1997-98	7.94 1.04	6.87 -	1.07 1.04
Total			**25.45**	**6.87**	**18.58**

These cases were pointed out to the concerned Tahsildars (between November 1997 and November 1998), to the concerned Divisional Commissioners and to Government (between July and December 1998). Government endorsed (September 1999) the reply of the Divisional Commissioner, Bangalore stating (July 1999) that demand for the entire amount of Rs.18.58 lakh had since been booked by the concerned Tahsildars, out of which Rs.9.83 lakh relating to Shimoga had been recovered. Reports of recoveries in other cases have not been received (October 1999).

6.4 Non-raising of demand for penal water rate

Under the Karnataka Irrigation Act 1965, if any person uses water from an irrigation work without obtaining the required permission, he would be liable to pay water rate at the rate to be determined by the Irrigation Officer, in addition to any penalty for such unauthorised use of water. The rate so determined shall not be less than ten times and not exceeding thirty times the rate he would otherwise have been required to pay, had he obtained the permission. Further, if the crop grown is other than that notified, the grower is required to pay water rate at the rate specified by the Irrigation Officer, which shall not be less than five times and not more than ten times the water rate applicable to the crop grown. Government had fixed (July 1985) the penal water rates for unauthorised use of water at 15 times and for violation of approved cropping pattern at 10 times the normal water rate.

In Sindhanur taluk (Raichur district), demand for penal water rate of Rs.28.90 lakh for the years 1996-97 and 1997-98 had not been raised by the Tahsildar even after receipt of demand statements from the Irrigation Officer.

On this being pointed out in audit (July 1998), Government stated (April 1999) that the entire amount had since been taken to demand for the month of December 1998. Reports of recovery have not been received (October 1999).

6.5 Encroachment of revenue lands

According to the Karnataka Land Revenue Act 1964 (the KLR Act), the use or occupation of the Government land by any person is regarded as an

unauthorised occupation. The Act provides for regularisation of such unauthorised occupation made prior to 14 April 1990 after recovering cost of land (except from SC/ST who are exempt from the levy) and land revenue for the period of unauthorised occupation, fine at Rs.25 (Rs.10 for SC/ST) per acre per annum and measurement fees. Unauthorised occupation of Government land made after this date is required to be summarily evicted by the Deputy Commissioner, and any crop including trees raised in the land forfeited, and construction, if any, thereon removed at the cost of the person. The unauthorised occupier of land is also required to pay twice the land revenue and fine not exceeding Rs.500 per acre per annum if the land was used for agriculture and not exceeding Rs.1000 per acre per annum if used otherwise.

(a) Test check of records (between July 1995 and May 1999) in 33 taluks and information obtained in respect of 34 other taluks revealed that Rs.276.72 lakh towards cost of land and other amounts due as indicated in the notices of demand issued in respect of 112419 cases between 1991-92 to 1997-98 were yet to be recovered from the occupants and hence the process of regularisation had remained incomplete. On being pointed out, the department had since collected Rs.24.35 lakh in six taluks (December 1998).

(b) On a test check of records in 14 taluks (between February and May 1999), it was noticed that 32,110 applications were rejected as ineligible during 1991-92 to 1997-98. In these cases, twice the land revenue and fine amounting to Rs.38.85 lakh had not been demanded.

These cases were pointed out to the department and to Government (July 1999); their replies have not been received (October 1999).

OTHER TAX RECEIPTS

CHAPTER 7

CHAPTER 7 : Other Tax Receipts

A. STAMPS AND REGISTRATION FEES

7.1 Results of audit

Test check of documents registered in the offices of the Registrars and Sub-Registrars, conducted in audit during the year 1998-99, disclosed under-assessments of stamp duty and registration fees amounting to Rs.420.74 lakh in 51 cases under the following broad categories:

(Rupees in lakh)

Sl. No.	Category	Number of cases	Amount
1	Incorrect grant of exemption/concession	7	28.69
2	Non-levy/short levy	39	368.64
3	Other irregularities	5	23.41
	Total	**51**	**420.74**

During the course of the year 1998-99, the department accepted under-assessments amounting to Rs.0.34 lakh in two cases which had been pointed out in audit in earlier years and recovered the entire amount.

A few illustrative cases (including certain cases noticed in earlier years which could not be reported in previous Reports) involving Rs.288.51 lakh are given in the following paragraphs.

7.2 Under-valuation of lease deed

Under the Karnataka Stamp Act 1957, stamp duty on lease deeds is leviable as for a deed of conveyance for a market value equal to three times the average annual rent reserved where the lease purports to be for a period exceeding 20 years but not exceeding 30 years. The Act also provides that where the lessee undertakes to effect improvements in the leased property and agrees to make over the same to the lessor at the time of termination of lease, stamp duty is leviable on the value of improvements contemplated to be made by the lessee.

In a Sub-Registry (Shivajinagar in Bangalore (Urban) district), a deed for lease of land and property measuring 24,404 sq.m. including 15,000 sq.m. of built up area for a term of 30 years was registered in November 1997. The lessor

was M/s Leela Scottish Lace Limited and the lessee was M/s Hotel Leelaventure Limited.

The Sub-Registrar levied stamp duty of Rs.40 lakh as under:

(a) Rs.15 lakh as 10 per cent of three years' variable lease rent

(b) Rs.25 lakh as 10 per cent of Rs.2.50 crore shown as value of improvements in the leased property.

Audit scrutiny revealed the following:

(a) The lease provided payment of Rs.40 crore as an interest-free refundable deposit by the lessor. While determining the value of the lease for levying stamp duty, the Sub-Registrar did not take into account the consideration flowing to the lessor on account of Rs.40 crore deposit bearing no interest. Using a conservative simple post-tax rate of 10 per cent, the value of such consideration in addition to lease rent would be at least Rs.4 crore per annum. Therefore, an additional amount of stamp duty of Rs.120 lakh (10 per cent of Rs.12 crore) is leviable.

(b) The lease deed provides for handing over of 15,000 sq.m. of built up area by the lessee to the lessor on termination of the lease period. According to the project report submitted by the lessee to the Director of Tourism in April 1995, the estimated cost of the hotel building with a built up area of 42,000 sq.m. after deducting cost of land (acquired in January 1996 at a cost of Rs.30.02 crore) was Rs.28.98 crore. Accordingly, the proportionate estimated cost of construction of 15,000 sq.m. to be handed over by the lessee to the lessor would be Rs.10.35 crore. Against this, the value of improvement declared by the lessee and subjected to stamp duty was only Rs.2.50 crore. Consequently, there was short levy of stamp duty of Rs.78.50 lakh.

(c) The lease deed provided for a fixed lease rent at Rs.150 per sq.m. per annum for 15,000 sq.m. of built up area in the hotel to be constructed by the lessee on the leased property and a variable lease rent for the balance area depending on the gross turnover of the hotel subject to a minimum guaranteed amount of Rs.50 lakh per annum. The Sub-Registrar levied stamp duty of Rs.40 lakh on the consideration of variable lease rent only. Stamp duty was, however, not levied for the fixed lease rent of Rs.22.50 lakh per annum. Short levy on this account was Rs.6.75 lakh.

The case was pointed out to the Sub-Registrar (June 1998), the Inspector General of Registration and Commissioner of Stamps (IGR) and to Government (July 1998/October 1999). Their replies have not been received (October 1999).

7.3 Short levy due to incorrect classification

Under the Karnataka Stamp Act 1957 (the Act), 'instrument of partition' means any instrument whereby co-owners of any property divide or agree to divide such property in severalty. On such documents, stamp duty is leviable at five per cent on the value of share or shares of the property which remains after exclusion of the largest share. A 'conveyance' includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred and on such instruments, stamp duty chargeable is at 10 per cent on the market value thereof. Similar provisions exist for levy of registration fees also.

In the Sub-Registry at Jayanagar (Bangalore (Urban) district), an instrument by which an immovable property held by a company with eight directors was divided into two parts consisting of six and two directors was registered in August 1996 as a partition levying stamp duty and registration fees of Rs.1.30 lakh on Rs.18.62 lakh (being the market value of the property of Rs.51.65 lakh less the larger share of Rs.33.03 lakh). Since a company has distinct legal existence and can acquire, hold and dispose of property in its name, the directors could not be regarded as co-owners of its properties and since the property was not divided in severalty but in groups, the instrument could not be classified as a partition but as a conveyance. As such, stamp duty and registration fees of Rs.7.49 lakh was leviable. The incorrect classification resulted in short levy of stamp duty and registration fees of Rs.6.19 lakh.

The case was pointed out to the Sub-Registrar (October 1997), reported to the Inspector General of Registration and Commissioner of Stamps (IGR) in January 1998. The IGR stated (August 1999) that the District Registrar, Detection of Under-valuation of Stamps, Jayanagar had been instructed to initiate proceedings for recovery of stamp duty and registration fees. Report of final orders passed have not been received (October 1999).

The case was reported to Government in January 1998; their reply has not been received (October 1999).

7.4 Short levy due to under-valuation

Under the Karnataka Stamp Act 1957, if the registering officer while registering any instrument of conveyance, exchange, gift, partition, settlement or dissolution of partnership has reason to believe that the market value of the properties has not been truly set forth, he may after registering such instrument, refer the matter to the Deputy Commissioner for determination of the market value of such property and the proper duty payable thereon. The Act further provides that any person who, with intent to defraud the Government executes any instrument in which all the facts and circumstances required to be set forth are not fully and truly set forth, is punishable with a fine which may extend to five thousand rupees.

In two Sub-Registries (Nanjanagud (Mysore district) and Mangalore Taluk (Dakshina Kannada district), eight deeds of sale of 'muli rights' executed in continuation of perpetual lease deeds reserving rents were registered during 1995-96 and 1996-97 as conveyances by levying stamp duty and registration fees of Rs.0.12 lakh on the amounts of consideration ranging from Rs.1000 to Rs.45000 mentioned in the deeds. According to the recitals of these documents, the vendors had fully and completely divested themselves of their right, title and interest in the scheduled immovable properties and vested the same in the purchasers by virtue of these deeds. The aggregate consideration of Rs.0.81 lakh mentioned in these deeds was far less than the market value of Rs.37.68 lakh of the properties as per the valuation list of the Sub-Registrar. Levy of stamp duty and registration fees on the consideration mentioned in the deeds, instead of on the market value as per valuation list of the Sub-Registry, resulted in short levy of Rs.5.20 lakh. Besides, fine of Rs.0.40 lakh at the maximum rate was also leviable.

These cases were brought to the notice of the concerned Sub-Registrars in June 1997/February 1998, reported to the Inspector General of Registration and Commissioner of Stamps (IGR) (between September 1997 and March 1998). The IGR stated (August 1999) that action had been initiated for recovery of stamp duty and registration fees levied short. Reports of final orders passed have not been received (October 1999).

The cases were reported to Government (between January and March 1998); their reply has not been received (October 1999).

7.5 Incorrect exemption/concession

According to an order issued by the Industries and Commerce Department in July 1993, instruments executed by new tiny and small scale industries for availing financial assistance from approved institutions are eligible for exemption from levy of stamp duty, while registration fees is chargeable at a concessional rate of rupee one per thousand. For this purpose, an industrial undertaking in which the investment in fixed assets of plant and machinery does not exceed Rs.60 lakh (Rs.75 lakh in the case of export units) is to be treated as a small scale industry. The benefit of exemption/concession is to be allowed on the basis of eligibility certificate issued by the Industries and Commerce department

In a Sub-Registry (Nelamangala in Bangalore (Rural) district), on an instrument of mortgage executed by an industrial unit for securing financial assistance of Rs.145 lakh from the Karnataka State Financial Corporation and registered in 1995-96, exemption from stamp duty and concession in registration fees was allowed on the basis of the eligibility certificate. A scrutiny of the schedule of fixed assets of the unit in audit revealed that its investment in plant and machinery was Rs.95.05 lakh which exceeded the eligibility limit of Rs.75 lakh. The unit was, therefore, ineligible for the exemption/concession. The incorrect exemption resulted in non-levy/short levy of stamp duty and registration fees of Rs.14.36 lakh.

The case was pointed out to the Sub-Registrar in July 1996 and reported to the Inspector General of Registration and Commissioner of Stamps (IGR) in August 1996. The IGR stated (September 1999) that the certificate of the Commerce and Industries Department was based on a report of the Small Industries Service Institute, Bangalore (SISI) and hence the exemption/concession allowed was in order. This reply is untenable as the computation made by SISI omitted to consider investment in land and building (Rs.27.35 lakh).

The case was reported to Government (August 1996); their reply has not been received (October 1999).

7.6 Short levy of stamp duty and registration fees on a partnership deed

Under the Karnataka Stamp Act 1957, if an instrument is so framed as to fall within two or more of the descriptions in the Schedule to the Act, and where the duties chargeable are different, the higher/highest of such duties is leviable.

On an instrument relating to reconstitution of a 'partnership' firm, where immovable property contributed as share by a partner or partners remains with the firm at the time of outgoing in whatever manner by such partner or partners, stamp duty is chargeable as conveyance on the market value of the immovable property remaining with the firm. On a 'release', involving consideration, stamp duty is chargeable as a conveyance for a market value equal to the amount of consideration.

In a Sub-Registry (Srirampuram in Bangalore (Urban) district), a document was registered in 1996-97 by levying stamp duty of Rs.40,000 and registration fees of Rs.8,000 as for a 'release' on a consideration of Rs.4 lakh. According to the recitals in the document, four out of seven partners of the firm consequent on their retirement had released and relinquished their rights, title and interest and share in the assets of the firm including an immovable property, which had been acquired by the firm in 1990, in favour of the remaining three partners. The recitals further stated that the retiring partners who had contributed Rs.1 lakh each as their capital had been repaid the same amounts in full and final settlement of all their accounts/claims.

Since the document also satisfied the description for being classified as reconstitution of a partnership, the stamp duty and registration fees leviable on the basis of the market value of the property of Rs.47.52 lakh (at rates fixed by Government) was Rs.5.70 lakh against which Rs.0.48 lakh was charged. The incorrect classification resulted in short levy of stamp duty and registration fees of Rs.5.22 lakh.

This was pointed out to the Sub-Registrar in October 1997 and reported to the Inspector General of Registration and Commissioner of Stamps (IGR) in February 1998. The IGR stated (September 1999) that the property was not

contributed by a partner and hence the ingredients for its classification as a reconstitution of a partnership were not fulfilled. This reply is untenable as a partnership firm had no separate legal existence apart from its partners and hence could not acquire, hold and dispose of properties in its name. Thus, the property acquired out of firm's income should be regarded as contributed by its partners.

The case was reported to Government in February 1998; their reply has not been received (October 1999).

7.7 Short levy on general powers of attorney

Under the Karnataka Stamp Act 1957, as amended from April 1995, 'Powers of Attorney', given to a promoter or developer (by whatever name called) for construction on or development of or sale or transfer (in any manner whatsoever) of any immovable property, attract stamp duty as conveyances.

In five* Sub-Registries, 34 documents titled as Power of Attorney were registered as such during 1995-96 to 1997-98. The recitals in these documents empowered the attorneys to construct, develop or sell or transfer the scheduled properties. These documents were, therefore, liable to stamp duty of Rs.52 lakh on the market value of Rs.519.95 lakh (as per valuation list of the Sub-Registries) as against Rs.0.11 lakh levied, resulting in short levy of Rs.51.89 lakh.

These cases were pointed out to the concerned Sub-Registrars (between May and October 1998) and reported to the Inspector General of Registration and Commissioner of Stamps (IGR) (between July and December 1998). The IGR stated (August 1999) that the District Registrars concerned had been instructed to initiate proceedings for recovery of stamp duty and registration fees levied short. Reports of final orders passed and recoveries effected have not been received (October 1999).

The cases were reported to Government (between July and December 1998); their reply has not been received (October 1999).

* Bangalore(South), Basavanagudi, Hosakote, K.R.Puram, Jayanagar

B. ENTERTAINMENTS TAX

7.8 Results of audit

Test check of records in Entertainments tax offices, conducted in audit during the year 1998-99, disclosed under-assessments of tax amounting to Rs.19.49 lakh in 14 cases under the following broad categories:

(Rupees in lakh)

Sl. No.	Category	Number of cases	Amount
1	Short levy of tax	3	1.13
2	Incorrect exemption	9	4.30
3	Other irregularities	2	14.06
Total		**14**	**19.49**

During the course of the year 1998-99, the department accepted under-assessments of Rs.2.08 lakh in three cases and recovered Rs.0.31 lakh in two cases which had been pointed out in audit in earlier years.

A few illustrative cases (noticed in earlier years but which could not be reported in previous Reports) involving Rs.59.57 lakh are mentioned in the following paragraph.

7.9 Excess apportionment of tax to local bodies

Under the Karnataka Entertainments Tax Act 1958 (as amended from April 1979), in the case of entertainments held within the jurisdiction of any local authority, where the proprietor has opted to pay the amount of tax every week, the amount creditable to the State Government and the amount payable as compensation to the local authority are at 64 per cent and 36 per cent respectively.

In Bangalore (Urban) district, out of the entertainments tax of Rs.110.32 lakh collected under this provision in five offices during the period October 1994 to June 1995, instead of apportioning Rs.39.72 lakh (36 per cent) to the local authorities, sanction was made by the Commercial Tax Department for apportioning a sum of Rs.99.29 lakh. This resulted in excess credit to the local authorities by Rs.59.57 lakh.

The cases were reported to the department/Government between August 1998 and May 1999. The department reported (August 1999) that the entire excess allocation of Rs.59.57 lakh had since been adjusted out of subsequent quarterly allocation. Reply from Government has not been received (October 1999).

C. ENTRY TAX

7.10 Results of audit

Test check of records in Entry tax offices, conducted in audit during the year 1998-99, disclosed under-assessments of tax amounting to Rs.60.38 lakh in 49 cases under the following broad categories:

(Rupees in lakh)

Sl. No.	Category	Number of cases	Amount
1	Non-levy/short levy of tax	35	40.29
2	Incorrect exemption	1	8.85
3	Non-levy of penalty	8	2.98
4	Non-forfeiture of excess tax collected	2	0.38
5	Other irregularities	3	7.88
	Total	**49**	**60.38**

During the course of the year 1998-99, the department accepted under-assessments of Rs.28.56 lakh in 44 cases and recovered Rs.2.62 lakh in 10 cases which had been pointed out in audit in earlier years.

A few illustrative cases involving Rs.19.74 lakh are given in the following paragraph.

7.11 Non-levy/short-levy of tax

Under the Karnataka Tax on Entry of Goods Act 1979, on entry of goods into a local area, tax is leviable at the rates notified from time to time.

In 18 cases of five districts, tax on entry of goods into local area had either not been levied or levied short by the assessing authorities concerned, resulting in non-levy/short-levy of tax of Rs.19.74 lakh as detailed below:-

(Rupees in lakh)

Sl. No.	Nature of goods	Number of cases	Assessment Year	Rate of tax leviable (Percentage)	Taxable turnover	Tax levied short/ not levied
			Bangalore (Urban)			
1	Machinery and its parts	2	1993-94 and 1995-96	2	52.15	2.66
2	Lubricant and diesel	2	1994-95	2	239.58	4.48

(Rupees in lakh)

Sl. No.	Nature of goods	Number of cases	Assessment Year	Rate of tax leviable (Percentage)	Taxable turnover	Tax levied short/ not levied
3	Packing materials	1	1993-94	2	21.49	0.43
4	Chemicals	1	1992-93	1	75.46	1.51
			Bangalore (Rural)			
5	Leather as raw material for manufacture of leather goods	3	1993-94 and 1994-95	1	257.27	2.57
6	Textiles as raw materials for manufacture of readymade garments	4	1992-93	1	615.87	6.14
			Hassan			
7	Raw materials for manufacture of sacks	1	1994-95	1	72.60	0.73
			Bidar			
8	Machinery	1	1992-93	2	23.63	0.47
9	Raw materials	1	1992-93	2	9.64	0.19
10	Packing materials	1	1992-93	2	3.11	0.06
			Raichur			
11	Cement	1	1992-93	1	50.01	0.50
	Total	**18**			**1420.81**	**19.74**

The cases were reported to the department between May 1998 and March 1999. The department reported (between August 1997 and September 1999) revision of assessments in four cases by creating an additional demand of Rs.3.52 lakh and recovery of Rs.3.09 lakh in three of them. Report of recovery in the other case and replies in respect of the remaining cases have not been received (October 1999).

The cases were reported to Government between May 1998 and March 1999; their reply has not been received (October 1999).

D. PROFESSIONS TAX

7.12 Results of audit

Test check of records in Professions tax offices, conducted in audit during the year 1998-99 disclosed under-assessments of tax amounting to Rs.16.39 lakh in 30 cases.

During the course of the year 1998-99, the department accepted under-assessments of Rs.0.09 lakh in three cases which had been pointed out in audit in earlier years.

One illustrative case involving Rs.13.06 lakh is given in the following paragraph.

7.13 Short levy of tax

Under the Karnataka Tax on Professions, Trades, Callings and Employments Act 1976, every person who exercises any profession or calling or is engaged in any trade or holds any appointment, public or private or is employed in any manner in the State, is liable to pay professions tax at the rates specified from time to time.

It was noticed (between September 1997 and October 1998) that in nine[@] districts, while finalising the assessments for the years 1992-93 to 1997-98, the assessing officers concerned had levied professions tax short to the extent of Rs.13.06 lakh in 722 cases.

On this being pointed out, the department reported (May and June 1999) recovery of Rs.1.22 lakh. Replies in respect of remaining cases have not been received (October 1999).

The cases were referred to Government (June 1999); their reply has not been received (October 1999).

[@] Bangalore (Rural), Bangalore (Urban), Belgaum, Bijapur, Chitradurga, Dakshina Kannada, Mysore, Tumkur, Uttara Kannada.

NON-TAX RECEIPTS

CHAPTER 8

CHAPTER 8 : Non Tax Receipts

8.1 Guarantees and guarantee fees

8.1.1 Introduction

In exercise of the powers conferred by Article 293 of the Constitution of India, the State Government guarantees the loans obtained by industries, co-operative societies and other bodies in the State from banks and other lending agencies on the security of the Consolidated Fund of the State. In consideration of the guarantees given and to cover the risk in case it is called upon to discharge the guaranteed liability, Government recovers guarantee commission (hereinafter referred to as guarantee fees) from the principal borrowers at rates fixed from time to time. The fees is required to be paid once in six months and is calculated on the actual amount due and outstanding (including interest) at the end of each month. While according sanctions for guarantees, certain institutions are exempt from payment of the fees.

8.1.2 Organisational set up

Sanctions for Government standing guarantee were being accorded by administrative departments concerned on the recommendations received from respective heads of departments. The Finance department being in overall charge of monitoring of the system had issued in November 1971 detailed instructions to the heads of departments to watch the guarantee position and outstanding guarantee fees, etc. at the close of each financial year and send a report to the Finance department by 1st of May of each year. The administrative departments were also required to review the position of the guarantees under their control annually and send reports to the Finance department within two months of the close of each financial year.

8.1.3 Scope of audit

A review on 'Receipts of Guarantee Commission' was included in the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year 1984-85. A further review of the working of the system for watching the recoveries of the guarantee fees was conducted by Audit during November 1998 to January 1999 by a test check of records of the Finance department and concerned administrative secretariat/heads of departments viz., Energy Department, Forest, Ecology and Environment Department and Co-operation Department for the period 1993-94 to 1998-99.

8.1.4 Highlights

The Government had discharged the liability amounting to Rs.3523.45 lakh during 1993-94 to 1998-99 whereas the actual receipt was Rs.2771.66 lakh only during these years.

(Paragraphs 8.1.6 and 8.1.7)

There was non-levy/short levy of guarantee fees of Rs.1617.41 lakh in respect of three institutions for the period 1993-94 to 1997-98.

(Paragraph 8.1.8)

There was non-recovery of guarantee fees of Rs.682.38 lakh from five institutions for the period 1978-79 to 1997-98.

(Paragraph 8.1.9)

Despite instructions issued by the Finance department in November 1971 for maintenance of records and for furnishing reports at the close of year, no reports were being furnished by the other departments of the Government. As such, there was no effective monitoring by the Finance Department.

(Paragraph 8.1.10)

8.1.5 Guarantees given by Government

Details of guarantees issued by Government for repayment of loans, etc. raised by statutory corporations, co-operative societies including banks, Government companies, local bodies including municipal corporations and others and outstanding as on 31 March 1998 were as under:

(Rupees in crore)

Guarantees issued in favour of	**Amount of loans guaranteed by Government**	**Guaranteed loans and interest outstanding as on 31st March 1998**
1. Statutory corporations	5838.93	3127.03
2. Co-operative societies including banks	2507.34	1648.58

3. Government companies	975.49	482.99
4. Joint stock companies	246.99	241.15
5. Local bodies including municipal corporations	145.49	86.46
6. Other institutions	4.83	7.30
Total	**9719.07**	**5593.51**

8.1.6 Trend of receipts

The details of amount of guarantee fees estimated to be received and actual receipts during each of the years 1994-95 to 1998-99 are given below:

(Rupees in lakh)

Year	Budget Estimates	Actual receipts	Difference (+) Excess (-) Shortfall	
			Amount	Percentage of variation
1993-94	300.00	352.12	(+) 52.12	(+) 17.37
1994-95	450.00	298.18	(-) 151.82	(-) 33.74
1995-96	450.00	524.58	(+) 74.58	(+) 16.57
1996-97	400.00	571.87	(+) 171.87	(+) 42.97
1997-98	500.00	165.96	(-) 334.04	(-) 66.81
1998-99	550.00	858.95	(+) 308.95	(+) 56.17

8.1.7 Discharge of liabilities

Test check of records in audit of the Secretary to Government of Karnataka, Co-operation Department revealed that the Government had to discharge guaranteed liabilities amounting to Rs.3523.45 lakh in the following four cases during 1993-94 to 1997-98, due to non-repayment of loans by them.

(Rupees in lakh)

Name of the institution	Nature of loan	Amount/ Year of standing guarantee	Date of honouring the guaranteed liability	Amount paid by Government
1.Karnataka State Silk Co-operative Marketing Federation Limited, Bangalore	Loan from Canara Bank for working capital	50.00 1979-80	July 1993	150.00 (including interest)
2.Karnataka State Co-operative Apex Bank Limited, Bangalore	Loan from NCDC for establishment of spinning mills, oil mills and go-downs	5427.00 1988-89 to 1992-93	September 1995 June 1998	300.00 2170.23 2470.23
3. Dakshina Kannada Sahakari Sakkare Karkhane Limited, Brahmavara	Loan assistance from IDBI, IFCI and ICICI	NA	August 1994	624.64
4. Farmers' Co-operative Spinning Mills Limited, Hulkoti		403.00 1981-82 to 1985-86	August 1997	278.58
Total				**3523.45**

NA: Not available

8.1.8 Non-levy/short levy of guarantee fees

The guarantee fees at the rates prescribed were either not levied or levied short during the period from 1993-94 to 1997-98 in the cases mentioned below resulting in non-levy/short levy of Rs.1617.41 lakh.

(Rupees in lakh)

Sl. No.	Name of the borrower	Rate of fees (Percentage)		Total amount of guaranteed loan outstanding	Guarantee fees not levied/ short levied
		Chargeable	Charged		
1.	**Energy Department**				
	Karnataka Power Corporation Limited	1	0.5	47770.90	793.42

2.	**Finance Department**				
	Karnataka State Financial Corporation	0.5	-	48394.50	788.35
3.	**Forest, Ecology and Environment Department**				
	Karnataka Forest Development Corporation Limited	1	-	891.35	35.64
	Total				1617.41

Government stated (June 1999) that all the proposals for non-levy/levy at a lower rate were routed through the administrative departments to the Finance department and thereafter placed before the Cabinet. It further stated that the decision of the Cabinet was to be construed as policy of the Government and hence the question of non-levy or short levy of guarantee fees did not arise. However, audit scrutiny revealed that approval of the Cabinet was taken only for Government standing guarantee and not for non-levy or reduction of rate of guarantee fees. In respect of sl.no.2, Government had since issued (June 1999) directions to pay the guarantee fees.

8.1.9 Non-recovery of guarantee fees

A test check of the records of the Finance Department (Investment Branch) between November 1998 and January 1999 revealed that in the following cases the guarantee fees amounting to Rs.682.38 lakh was outstanding as on 31 March 1998.

(Rupees in lakh)

Name of the borrower	Period for which guarantee fees is due	Amount due
1.Karnataka Compost Development Corporation Limited	1978-79 to 1994-95	0.52
2.The Hutti Gold Mines Company Limited	1980-81 to 1992-93	11.20
3.The Mahadeswara Sahakara Sakkare Karkhane Limited, Kollegal	NA	13.61
4.Karnataka State Road Transport Corporation	1990-91 to 1997-98	654.52

(Rupees in lakh)

Name of the borrower	Period for which guarantee fees is due	Amount due
5.Jungle Lodges and Resorts Limited	1982-83 to 1997-98	2.53
Total		682.38

NA: Not available

Scrutiny of records further revealed that in the case of sl.no.3, the co-operative society had gone into liquidation (June 1986) and chances of recovery have become remote. While in respect of sl.no.4, the request for waiver was turned down by Government (February 1999), in respect of the remaining cases, guarantee fees due had not been recovered.

Government stated (June 1999) that the administrative departments were pursuing the recoveries with the concerned bodies and details of recovery were awaited.

8.1.10 Internal control and monitoring

Even though detailed instructions for maintenance of records of sanction of guarantees, watching compliance with their terms and recovery of guarantee fees had been issued in November 1971, proper records had not been maintained in any of the seven[Ξ] departments test-checked in audit. As a result, the returns due from heads of departments to the Finance department every year were also not being furnished; the latter had not also called for them. The correctness of the guarantee fees computed as due for each year furnished by the Finance department was, therefore, not susceptible of verification as it relied upon the information furnished by the borrowers to ascertain the extent of Government's liability from time to time. Period-wise, case-wise, department-wise and consolidated demand, collection and balance of guarantee fees on any given date were also not readily ascertainable.

Government stated (June 1999) that instructions were under issue to all the administrative departments to effectively monitor the guarantees and to update the relevant records, besides furnishing the reports/returns due to the Finance Department. Government also stated that a special cell had since been constituted in April 1999 to effectively monitor and place on record the action to be taken by each of the administrative departments to fulfil the Government obligation.

[Ξ] ***Co-operation; Commerce and Industries; Energy; Finance; Forest, Ecology and Environment; Home and Transport; Housing and Urban Development***

8.2 Leasing of Government lands and buildings

8.2.1 Introduction

Government lands and buildings not immediately required for public use are leased out by the Revenue, Public Works and Forest departments. The standard terms for lease of lands by the Revenue Department provide for payment of rent in advance in annual/monthly instalments from the date of commencement. In the Public Works Department, the annual rental should be equal to rent fixed in open auction and should, as a general rule, be recovered in advance. In cases where no auctions are held, the rates should be fixed in consultation with the Deputy Commissioners with reference to those obtainable in similar localities. If these conditions are not fulfilled, the matter should be referred to Government. No standard terms exist for lease of Forest lands.

In case of default in payment of rent, while in the Revenue Department interest at 12 per cent per annum is chargeable, in the Forest department interest at 9 per cent is leviable where dues remain unpaid for 90 days and at penal rate of 18 per cent thereafter. In the Public Works Department, there is no provision in the rules for levy of interest.

In all these three departments, there is provision for recovery of rental dues as arrears of land revenue.

8.2.2 Organisational set up

Leases are sanctioned by Government on the recommendation by the concerned heads of departments (Deputy Commissioner in the Revenue department, Chief Engineer (Communications and Buildings) in the Pubic Works department and the Principal Chief Conservator of Forests (PCCF) in the Forest department) who are also required to maintain proper records of sanction of leases, issue of notices for payment of rent, recoveries effected and balances, if any, due.

8.2.3 Scope of audit

With a view to ascertain the proper and prompt realisation of lease rent on Government lands and buildings leased to various persons, a review for the years 1993-94 to 1997-98 in the above departments was conducted between February and May 1999 by test check of records in 14* taluk offices and

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* ***Anekal, Bangalore (North) (regular and additional), Bangalore (South) (regular and additional), Belgaum, Chickmagalur, Hassan, Karwar, Madikeri, Mangalore, Mysore, Shimoga, Virajpet***

9* district offices of the Revenue and the Forest departments and two* divisions of the Public Works department, besides considering observations made during local audit of forest offices.

8.2.4 Highlights

There was no effective internal control over recovery of rent and other dues under the leases, as even the consolidated position of demand, collection and balance was not available in any of the four departments test checked.

(Paragraph 8.2.5)

Recovery of rent on leasing of land in Bangalore City to a private enterprise for business purposes had not been pursued resulting in accumulation of arrears of Rs.36.77 lakh from December 1979 to March 1999 besides loss of interest of Rs.42.81 lakh.

(Paragraph 8.2.6)

The Bangalore Turf Club pays Rs.5 lakh per annum for 67.63 acres which is 0.66 per cent of the amount chargeable as per Government norms (Rs.750 lakh per annum).

(Paragraph 8.2.7)

In respect of lease of a building in Bangalore City to a co-operative federation, periodical revisions as provided in the agreement were not effected, resulting in loss of revenue of Rs.33.51 lakh for the period from November 1986 to June 1996. Recovery of Rs.18.02 lakh due from sub-letting by the federation had also not been enforced.

(Paragraph 8.2.8)

In respect of nine forest leases, lease rents including interest amounting to Rs.416.51 lakh for the period 1919-20 to 1998-99 had not been realised.

(Paragraphs 8.2.9 and 8.2.10)

8.2.5 Ineffective internal control

The heads of departments in the three departments test checked had not maintained any records showing the leases sanctioned or renewed from time to time, rent realised and balance at the end of every month. Despite requests (February 1999) by Audit, the information had not been received from any of the departments so far (October 1999). The non-availability of consolidated

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* *Bangalore (Urban), Belgaum, Chickmagalur, Dakshina Kannada, Hassan, Kodagu, Mysore, Shimoga, Uttara Kannada*

* *Buildings Divisions No.1 and 2, Bangalore*

position about leases showed total absence of monitoring of recovery of Government dues.

A. Revenue Department

8.2.6 Non-recovery of lease rent

Land measuring 12166 sq. ft. in Bangalore City was leased out to M/s Rajatha Enterprises by Government in December 1979 for a period of 26 years on a rent of Rs.16350 per month for use as business premises. However, an agreement incorporating the terms of the lease was not signed and no demand notice was issued to the lessee for payment of rent. Against the lease rent of Rs.37.77 lakh due up to March 1999, the lessee paid Rs.1 lakh only in April 1998. Besides this, interest of Rs.42.81 lakh up to March 1999 at the rate of 12 per cent per annum was also leviable. On being pointed out in audit (March 1999), the department stated that notice for recovery of the dues would be issued.

B. Public Works Department

8.2.7 Fixation of lower lease rent for race club

Land measuring 67.63 acres comprising main race course, car parking, cycle stand, etc. in Bangalore City was leased out in 1905 to Bangalore Turf Club Limited (BTC) (erstwhile Bangalore Race Club, a public limited company incorporated in 1923) for conducting horse racing. Besides this, the BTC provides services of a Club House and training of amateur riders. Its principal source of income is by collection from 'Totalisators*'.

The latest renewal of the lease for 30 years was made in January 1981 but no change was made in the annual rental fixed at Rs.5 lakh in January 1972. The terms of the agreement (December 1983) provided for revision of annual lease rent at intervals as determined by the State Government. No such interval had been decided so far. The agreement reserved the right of taking over of the premises by Government whenever required for any purpose.

In December 1988, Government issued a notice to the BTC for handing over the premises by March 1989 (later extended to August 1989) for use for public purpose. The premises had not been vacated by BTC (August 1999) and therefore the occupation after this period was to be treated as unauthorised occupation.

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* ***Totalisator means an enclosure which the licensee for horse racing has set apart for enabling any number of persons to make bets with one another.***

However, the department proposed refixing the lease rent under clause 3(a) of the previous lease deed as the fair rent is applicable only when the lease continues to subsist. Government, however, neither invoked the penal provisions for unauthorised occupation after determination of lease nor did it agree to charge the fair rent calculated by the department from August 1989. Instead, it fixed the lease rent (February 1998) at Rs.30 lakh per month, i.e., 50 per cent of the proposed fair rent. The revised rent was made payable only from January 1998 instead of August 1989, the date when the lease was determined. Scrutiny of the relevant files showed that this was done on the ground that the department's proposal was 'unsympathetic'. By this action, Government waived off the liabilities of BTC amounting to Rs.71.87 crore for the period August 1989 to March 1999 if calculated with reference to fair rent prescribed under the lease deed.

It was seen however that BTC continued to pay pre-revised rent of only Rs.5 lakh per annum.

8.2.8 Non-recovery of lease rent from a co-operative federation

The Asiatic Building in Bangalore City was leased out to the Karnataka Co-operative Consumers Federation Limited (KCCF) in March 1967 for running a departmental store. The lease rent of Rs.8,600 per month was required to be revised after expiry of every 10 years of the 30-year lease period, and hence the first revision was due in March 1977. No lease agreement was, however, executed. However, Government revised the rent to Rs.37,508 per month only in October 1993 retrospectively from November 1986. But, on a representation by the KCCF against the revision, the enhanced rent was made effective only from July 1996 by the Government. Since the departmental store was running on commercial basis, the postponement of the revision was not justified and resulted in loss of revenue of Rs.33.51 lakh to Government for the period from November 1986 to June 1996.

Besides this, Government had also directed in October 1993 recovery of rent for ice-cream parlour, cycle stand and other premises sub-let by the KCCF from April 1993. In addition to these, KCCF had also sub-let five sheds from February 1994. The KCCF had collected Rs.18.02 lakh as rent from the above sub-leases from April 1993 to December 1998 but had not remitted it to Government account.

Though the lease period expired in February 1997 and formal sanction for continuation of the same had not been made, KCCF continued to be in possession of the premises (August 1999).

While deliberating on an earlier audit observation in this regard, the Public Accounts Committee had observed (12th Report of 10th Assembly, presented in July 1996) that the land and building was considered to be of prime value and was not being effectively used by KCCF both in terms of utility of space and revenue. The Committee, therefore, suggested that the Government should explore the possibility of constructing a commercial complex for a financial institution or a co-operative federation besides providing a portion

thereof to run the departmental store. Report of action taken by Government on this suggestion is awaited (October 1999).

C. Forest, Ecology and Environment Department

8.2.9 Non-levy of lease rents

(a) Under the scheme of raising fuel wood plantations, 10000 ha of forest lands in five* districts were leased out in July 1989 for a period of 30 years to the Karnataka Cashew Development Corporation Limited (KCDC, a State Government undertaking). According to the agreement concluded in September 1989, KCDC was required to pay to Government lease rent equal to 12.5 per cent of the yield realised from the plantations or the yield, as projected in the project report, whichever was higher.

Similarly, under the programme of Intensive Cultivation of Cashew Plantation, 15998 ha of existing cashew plantations in Mangalore and Kundapur Divisions were leased out to KCDC for a period of 30 years from April 1993 on a rent of 12.5 per cent of the yield of cashew plantation.

It was noticed in audit (December 1997) that though KCDC realised Rs.365.47 lakh by sale of firewood and Rs.209.09 lakh by way of sale of cashew crop during the period from 1993-94 to 1996-97, it did not pay the lease rent of Rs.71.82 lakh due. Besides this, interest amounting to Rs.30.64 lakh at 18 per cent was also leviable.

On this being pointed out (May 1998), the PCCF replied (August 1999) that demand had been raised against KCDC. Report on realisation has not been received (October 1999).

(b) In three cases, 771.76 ha of forest lands in Uttara Kannada district had been leased to Central/State Government agencies for use in connection with projects executed by them. While in the first case, lease rent of Rs.21.61 lakh due had not been demanded at all, in the other two cases, the rent of Rs.26.23 lakh though demanded had not been realised as detailed below.

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* *Chickmagalur, Dakshina Kannada, Hassan, Kodagu, Uttara Kannada*

Interest for non-payment of the dues up to 1998-99 in these cases working out to Rs.22.40 lakh was also leviable.

(Rupees in lakh)

Sl. No.	Name of lessee	Extent of land in hectares (Date of lease)	Annual rent per hectare	Period	Rent due	Interest thereon at 18 per cent per annum	Total dues
1	Atomic Power Corporation	283.44 (February 1988)	Rs.625 up to 1996-97 Rs.2000 for 1997-98	1988-89 to 1997-98	21.61	18.24	39.85
2	Karnataka Power Corporation	404.30 (May 1997)	Rs.2000 for 1997-98 Rs.3500 for 1998-99	1997-98 and 1998-99	22.24	1.46	23.70
3	Konkan Railway Project	84.02 (August 1991)	Rs.625 up to 1996-97 Rs.1000 for 1997-98	1991-92 to 1997-98	3.99	2.70	6.69
	Total	**771.76**			**47.84**	**22.40**	**70.24**

On this being pointed out, the Deputy Conservator of Forests, Karwar Division stated (February 1999) that the agencies would be pressed to pay the dues immediately.

8.2.11 Encroachment of land by lessees and non-payment of lease rent

The Secretary of State for India in Council had leased out 3476 acres of land in Kodagu district to four bodies between 1910 and 1918 for a period of 999 years for raising rubber plantations. In July 1940, the lease period was reduced to 99 years. A review of the available records disclosed the following points:

(a) Though the department had found out (September 1990 and March 1997) that two of the lessees possessed 501.90 acres of land in excess of the area

leased to them as detailed below, no action had been taken to vacate the encroachments.

Name of lessee	Area leased out	Area in possession	Area encroached	Basis for arriving at the area in possession
	(In acres)			
1. Portland Rubber Company Limited	1288.75	1462.24	173.49	Survey conducted by National Remote Sensing Agency in March 1997
2. Sampaje Rubber Company Limited	384.62	713.03	328.41	Latest assessment by the Forest Department
Total	**1673.37**	**2175.27**	**501.90**	

The additional lease rent at the rate of Rs.250 per acre recoverable for the lands encroached worked out to Rs.30.11 lakh from 1974-75 to 1997-98.

(b) The agreements provided for levy of lease rent at the rate of Rs.2 per acre per annum from the ninth year subject to its revision after 30 years. However, the lease rent of Rs.2 per acre fixed prior to 1913 had not been revised. Since no norms for fixing of rents for long term leases were available, considering the lease rent of Rs.250 per acre (Rs.625 per hectare) for 'ek sali'[Ω] leases, the rent due in the four cases and outstanding up to 1997-98 amounted to Rs.213.70 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Name of lessee	Lease rent due		
		Area in acres	Period	Amount
1	Portland Rubber Company Limited	1288.75	1911-12 to 1997-98	87.79
2	Sampaje Rubber Company Limited	384.62	1912-13 to 1997-98	17.76
3	Kadamakal Rubber Syndicate Limited	1089.50	July 1974 to March 1998	65.37*

[Ω] *one year*

(Rupees in lakh)

Sl. No.	Name of lessee	Lease rent due		
		Area in acres	Period	Amount
4	CE Murray Ayusley and CG Maclean	713.03	July 1974 to March 1998	42.78*
Total				213.70

*: Rent due for the period prior to July 1974 was not ascertainable.

On being pointed out (July 1999), the Principal Chief Conservator of Forests stated (August 1999) that the Revenue officials had changed the status of the leased land as 'REDEEM SAGU[Ξ]' against the provisions of the Karnataka Forest Act 1963 and the Forest Conservation Act 1980 and was collecting land revenue instead of lease rent from the lessees. He further stated that Government had been requested to initiate suitable action against the Revenue Department officials who were involved in this case and to explore the possibilities for cancellation of such leases and that orders of Government were still awaited.

The points mentioned above were reported to Government (July 1999); their reply has not been received (October 1999).

8.3 Non-levy of charges for regularisation of unauthorised constructions in urban areas

The Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act 1991 (as amended in October 1995) (the Act), provides for regularisation of any unauthorised constructions made in any urban area prior to January 1995, by any person on a revenue site owned by him. For this purpose, the person concerned is required to make payment of amounts at specified rates for developed and non-developed areas as intimated to him by a provisional order passed by the competent authority. On payment of the amounts specified within two months of the service of the provisional order, a final order was to be passed regularising the unauthorised construction.

In six districts (Bangalore (Urban), Belgaum, Bellary, Chickmagalur, Hassan, Kodagu), though provisional orders were passed for regularisation of unauthorised construction in 668 cases by realisation of Rs.56.01 lakh during

[Ξ] *Land given for cultivation including rights on timber*

1994-95, 1995-96 and 1997-98, only Rs.19.71 lakh were recovered and final orders issued. Neither was the balance amount of Rs.36.30 lakh recovered nor were the unauthorised constructions removed.

The matter was reported to Government in July 1999; their reply has not been received (October 1999).

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Accountant General (Audit) II
Karnataka

Bangalore
The - 2 FEB 2000

COUNTERSIGNED

V. K. Shunglu

(V.K.SHUNGLU)
Comptroller and Auditor General of India

New Delhi
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