



REPORT
OF THE
COMPTROLLER AND
AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED
31 MARCH 1996

No. 1

(REVENUE RECEIPTS)

GOVERNMENT OF GUJARAT

REPORT

COMMISSIONER AND
ATTORNEY GENERAL OF THE

STATE OF

NEW YORK

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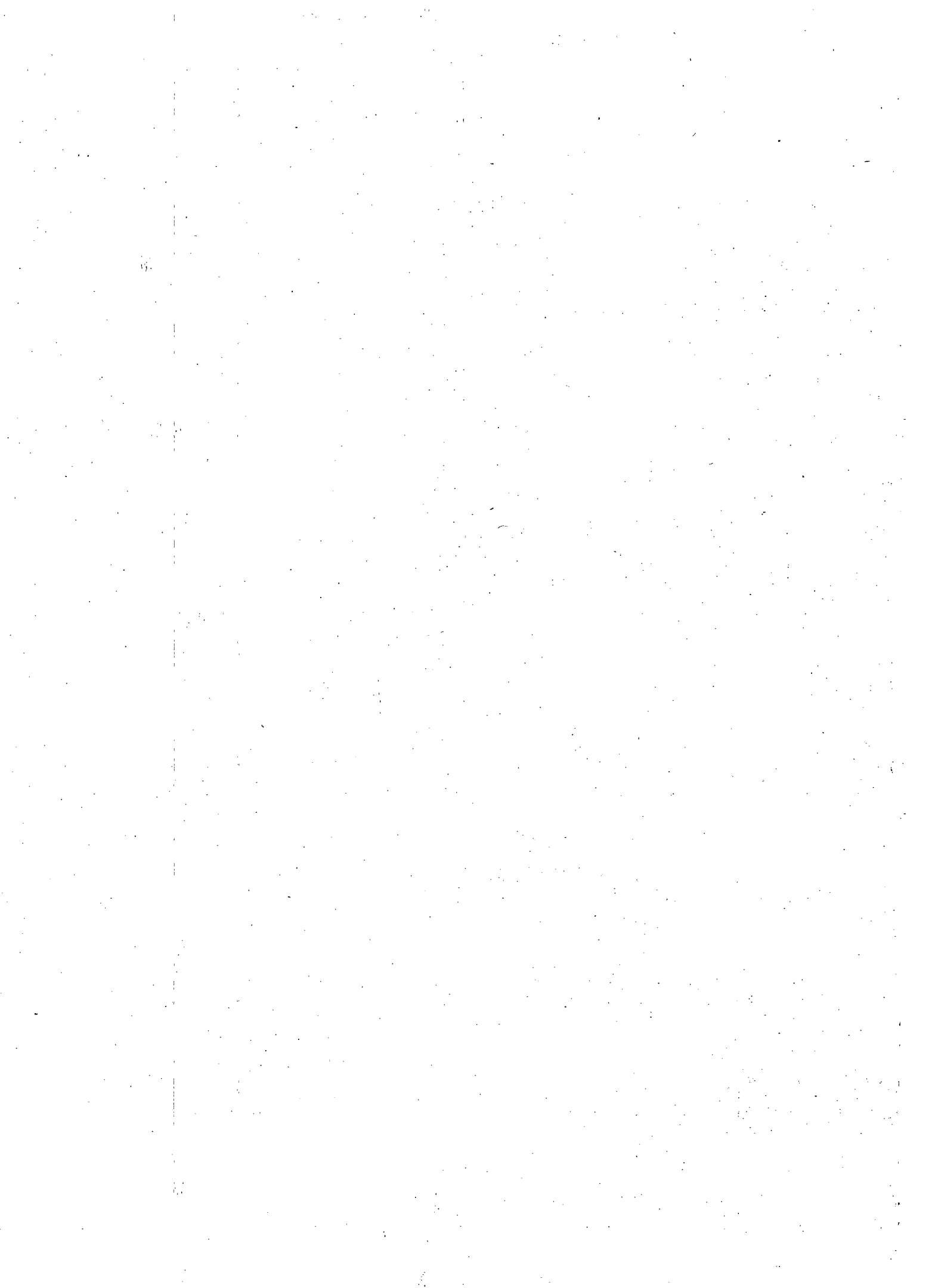
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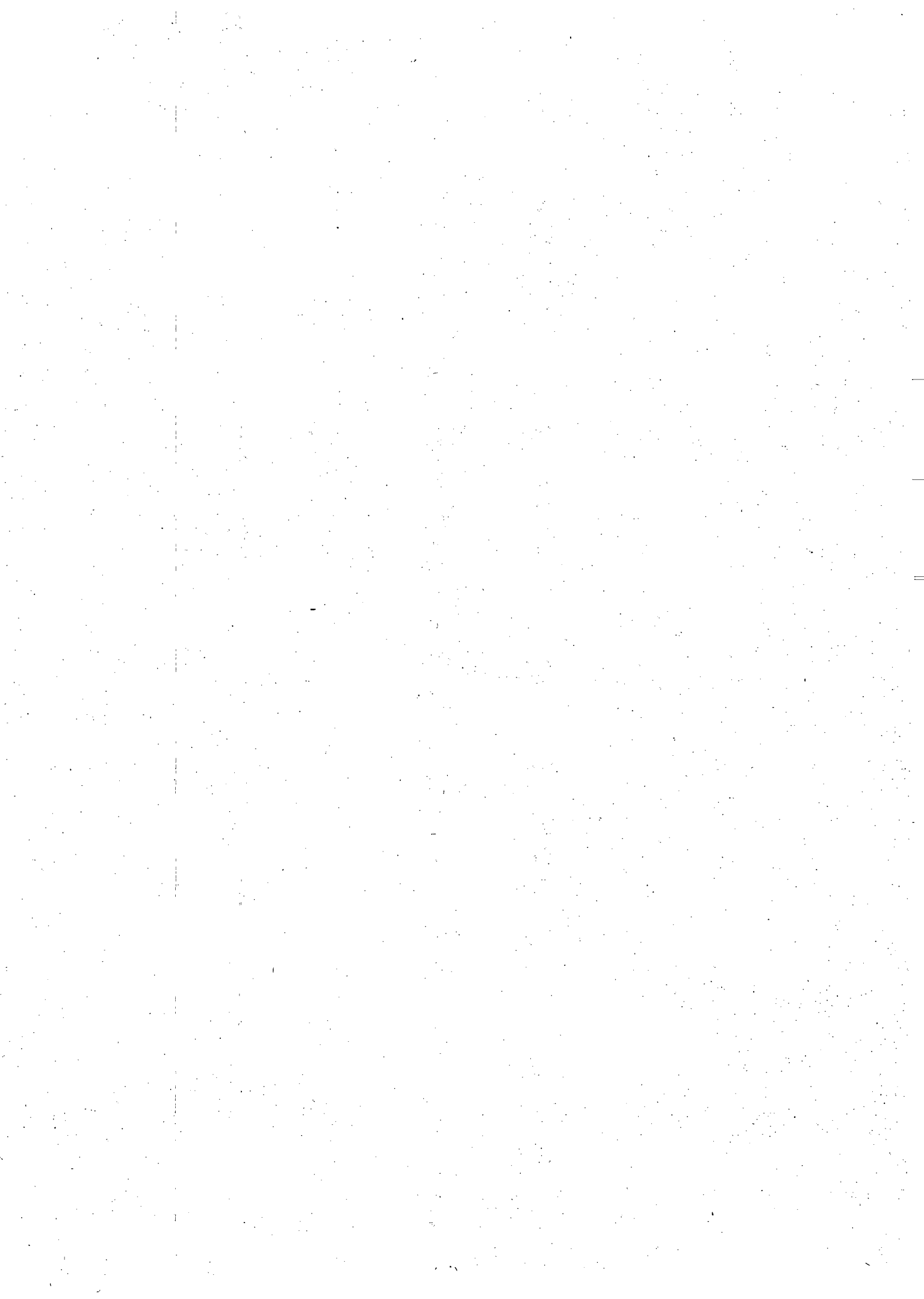


PREFATORY REMARKS

This Report for the year ended 31 March 1996 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

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

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 1995-96 as well as those noticed in earlier years but could not be covered in previous year's Reports.



OVERVIEW

OVERVIEW

This report contains 61 paragraphs including two reviews relating to non-levy/short levy of tax, penalty and interest etc. involving Rs. 84.12 crores. Some of the important findings are mentioned below :

1. General

(i) The total revenue receipts of the Government of Gujarat in 1995-96 were Rs. 8544.04 crores as against Rs.7806.39 crores during 1994-95. The revenue raised by the State from taxes during 1995-96 was Rs.5322.86 crores and from non-tax receipts was Rs.1601.17 crores. State's share of divisible Union taxes and grants-in-aid from Government of India were Rs. 1139.26 crores and Rs. 480.75 crores respectively. The main source of tax revenue during 1995-96 was Sales Tax (Rs. 3593.37 crores). The main receipts under non-tax revenue were from Interest (Rs. 855.63 crores) and Nonferrous Mining and Metallurgical Industries (Rs.426.69 crores).

[Paragraph 1.1 and 1.2]

(ii) Cases pending for assessment under Sales Tax Act increased from 23,17,600 as on 31 March 1995 to 26,94,610 as on 31 March 1996. Out of these 69738 cases had turnover of above Rs.1 crore in each case.

[Paragraph 1.6]

(iii) A test check of the records of Sales Tax, Land Revenue, Motor Vehicles Tax and other departmental offices conducted during 1995-96 revealed under assessment and loss of revenue of Rs.7297.94 lakhs in 1737 cases. During the year the concerned departments accepted under assessments etc. of Rs. 371 lakhs in 1161 cases pointed out during 1995-96 and earlier years.

[Paragraph 1.8]

2. Sales Tax

(i) A review on "Working of enforcement branch in Sales Tax Department" revealed the following :

(a) There was non realisation of tax of Rs.19.78 crores in 74 cases due to delay in finalisation of assessments.

[Paragraph 2.2.8]

(b) There was evasion/loss of tax of Rs.21.62 crores in 8 cases due to billing activity.

[Paragraph 2.2.9 and 2.2.10]

(c) Omission to disallow the declarations/forms used by two bogus dealers resulted in evasion of tax amounting to Rs.3.48 crores.

[Paragraph 2.2.11]

(d) Due to suppression of purchases by two dealers, there was evasion of tax of Rs.2.55 crores.

[Paragraph 2.2.12]

(e) There was a loss of Rs.2.01 crores due to turnover escaping assessment and non-adherence to limitation period.

[Paragraph 2.2.13]

(f) Due to incorrect levy of concessional rate of tax without valid 'C' forms resulted in short levy of tax of Rs.2 crores.

[Paragraph 2.2.18]

(g) Tax demand of Rs.1.25 crores could not be realised due to failure to correlate the sales and purchases made by bogus dealers.

[Paragraph 2.2.19]

(h) Prosecution proceedings were not initiated in two cases involving loss of Rs.67.24 lakhs on unclaimed purchases.

[Paragraph 2.2.23]

(ii) Excess exemption of Sales tax of Rs.122.10 lakhs was allowed to 11 dealers and Rs.76.27 lakhs was allowed to ineligible industrial units.

[Paragraph 2.3.A to H]

(iii) Deferred tax of Rs.45.06 lakhs was not recovered from 11 units although the units have closed their business.

[Paragraph 2.4]

(iv) Set off of Rs. 5.01 crores was irregularly granted to 68 dealers under Rule 42-E, though the manufactured goods were exported.

[Paragraph 2.5]

(v) Purchase tax of Rs.83.14 lakhs was not levied in the case of 21 dealers for breach of recitals of forms.

[Paragraph 2.6]

(vi) There was short levy of tax of Rs.1.08 crores due to incorrect classification of goods.

[Paragraph 2.7]

(vii) Tax of Rs.25.63 lakhs remained to be levied due to incorrect allowance of deduction and Rs.16.68 lakhs due to incorrect application of rate.

[Paragraph 2.9 and 2.10]

(viii) Due to incorrect computation of taxable turnover an amount of Rs.1.93 crores of

turnover tax was short levied in respect of 107 dealers.

[Paragraph 2.11]

3. Land Revenue

(i) Conversion tax of Rs.33.76 lakhs was not/short recovered in 61 cases in 12 districts.

[Paragraph 3.2(a) and (b)]

(ii) In 209 cases of 14 Talukas of 11 districts application of incorrect rate of non-agricultural assessment resulted in short levy of revenue of Rs.32.97 lakhs.

[Paragraph 3.3 (a) and (b)]

(iii) Premium price of Rs.12.92 lakhs was less recovered in three Talukas of Himatnagar, Palanpur and Surat districts due to non-levy of premium on differential amount of sale price.

[Paragraph 3.4]

4. Taxes on Vehicles

(i) Test check of system of internal controls on collection of motor vehicle tax revealed that :

(a) Failure to conduct departmental review for identification of defaulters resulted in non-collection of tax of Rs.81.91 lakhs.

[Paragraph 4.2.5]

(b) Due to delay in fixation of rate of tax there was a potential loss of revenue of Rs.29.43 lakhs to the Government.

[Paragraph 4.2.6]

(c) Failure to observe prescribed internal control relating to exemption to the trailer resulted in irregular exemption of Rs.41.10 lakhs.

[Paragraph 4.2.8(a)]

(d) Failure to initiate action by the taxation authorities in respect of revenue recovery certificates returned by the Mamlatdars resulted in non-collection of tax amounting to Rs.108.49 lakhs.

[Paragraph 4.2.11(b)(ii)]

(ii) Due to non-revision of rates under National Permit Scheme composite fee of Rs. 27.58 lakhs was short/not recovered.

[Paragraph 4.3 (i) and (ii)]

(iii) In nine different Regional Transport Offices motor vehicles tax/goods tax of Rs. 26.32 lakhs in 422 cases was not levied.

[Paragraph 4.4]

5. Stamp duty and Registration Fees

(i) Stamp duty and registration fees of Rs.10.47 lakhs was short levied due to incorrect application of rates.

[Paragraph 5.2 (i) and (ii)]

(ii) Stamp duty and registration fees of Rs.41.04 lakhs was short levied due to misclassification of documents.

[Paragraph 5.3]

6. Other Tax and Non-Tax Receipts

A. Entertainment Tax

(i) Irregular exemption from payment of Entertainment Tax resulted in loss of revenue to the tune of Rs.10.02 lakhs.

[Paragraph 6.2]

B. Mining Receipts

(i) Royalty of Rs.4.28 crores was not levied on the quantity of "Natural Gas" flared up in the atmosphere or otherwise lost.

[Paragraph 6.7]

D. Interest Receipts

(i) Interest of Rs.97.88 lakhs was short levied due to adjustment of principal amount first and interest later.

[Paragraph 6.15 (i)]

(ii) Due to non-payment of loan and interest in terms of Government Resolution, interest of Rs.17.32 lakhs was short levied.

[Paragraph 6.16. (i) and (ii)]

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General

CHAPTER - 1

GENERAL

1.1 Trend of revenue receipts

The tax and non-tax revenue raised by Government of Gujarat and the State's share of divisible Union taxes and grants-in-aid received from Government of India during 1995-96 and the preceding two years are given below and also depicted in Chart-I:

	1993-94	1994-95	1995-96
	(Rs. in crores)		
I Revenue raised by State Government			
(a) Tax revenue	3941.72	4742.86	5322.86
(b) Non Tax revenue	1398.78	1488.11	1601.17
Total	5340.50	6230.97	6924.03
II Receipt from Government of India			
(a) State's share of			
divisible Union taxes	983.08	978.63	1139.26
(b) Grants-in-aid	706.43	596.79	480.75
Total	1689.51	1575.42	1620.01
III Total receipts of the State Government (Revenue Account)	7030.01	7806.39	8544.04*
Percentage of I to III	76	80	81

* For details, please see Statement No. 11 - "Detailed Accounts of Revenue by Minor Heads" in the Finance Accounts of the Government of Gujarat for the year 1995-96. Figures under the head "0021 - Taxes on Income other than Corporation Tax - Share of net proceeds assigned to States" booked in the Finance Accounts under A - Tax Revenue have been excluded from revenue raised by the State and included in State's share of divisible Union taxes in the statement.

ANALYSIS OF REVENUE RECEIPTS FOR 1995-96
Total revenue receipts (Rupees in crores)

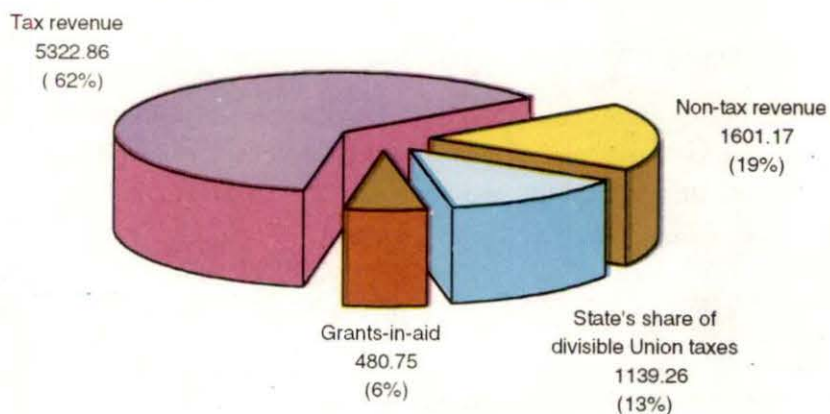


Chart No. I

1.2 Revenue raised by the State Government

(i) Tax revenue contributed 62 *per cent* of the total revenue receipts of the State Government during 1995-96.

The contribution of sales tax to the total tax receipts during 1993-94 to 1995-96 was as under :

	1993-94 (Rs. in crores)	1994-95 (Percentage in bracket)	1995-96
Sales Tax	2771.03 (70)	3185.99 (67)	3593.37 (68)
Other Taxes	1170.69 (30)	1556.87 (33)	1729.49 (32)
Total	3941.72	4742.86	5322.86

The details of tax revenue raised from major taxes during the three years upto 1995-96 are given below and also depicted in Chart-II:

	1993-94	1994-95	1995-96	Percentage of increase (+) or decrease (-) in 1995-96 over 1994-95 (..... Rs. in crores.....)
1. Sales Tax	2771.03	3185.99	3593.37	(+) 13
2. Taxes and Duties on Electricity	465.53	791.21	695.58	(-) 12
3. Stamp Duty and Registration Fees	210.77	270.68	355.48	(+) 31
4. Taxes on Vehicles	174.69	208.17	305.69	(+) 47
5. Taxes on Goods and Passengers	117.44	65.40	107.30	(+) 64
6. Land Revenue	59.16	60.75	77.48	(+) 28
7. Other Taxes	143.10	160.66	187.96	(+) 17
Total	3941.72	4742.86	5322.86	

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

Tax revenue (Rupees in crores)

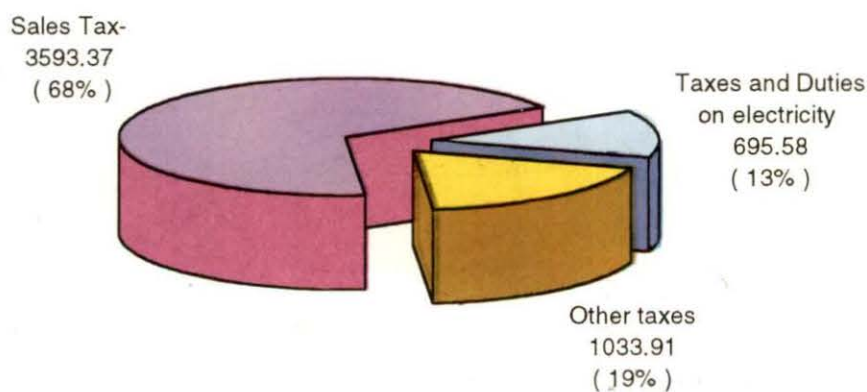


Chart No. II

(ii) **Non-tax revenue**

(a) Details of revenue raised from some of the major non-tax receipts during the three years upto 1995-96 are given below and also depicted in Chart-III:

	1993-94	1994-95	1995-96	Percentage of increase (+) or decrease (-) in 1995-96 over 1994-95
(Rs. in crores)				
1. Non-ferrous Mining & Metallurgical Industries	381.04	410.49	426.69	(+) 4
2. Interest Receipts	777.53	821.69	855.63	(+) 4
3. Major & Medium Irrigation	30.99	42.59	37.22	(-) 13
4. Medical & Public Health	31.77	27.53	27.90	(+) 1
5. Others	177.45	185.81	253.73	(+)37
Total	1398.78	1488.11	1601.17	

Non tax revenue (Rupees in crores)

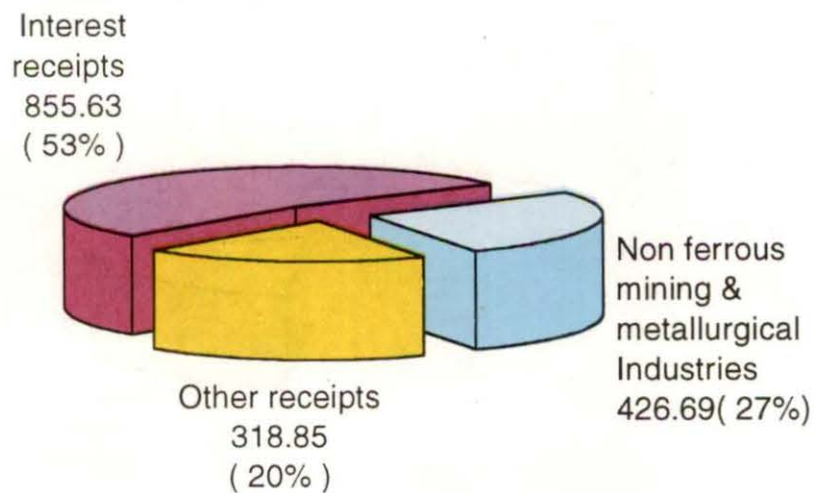


Chart No. III

1.3. Variations between Budget estimates and actuals

The variations between Budget estimates and actuals of some major revenue receipts for the year 1995-96 are given below :

Head of Revenue	Budget estimates	Actuals	Variation Increase (+) Decrease (-)	Percentage of variation
(Rs. in crores)				
Tax Revenue				
1. Sales Tax	3500.00	3593.37	(+) 93.37	(+) 3
2. Taxes & Duties on Electricity	754.49	695.58	(-) 58.91	(-) 8
3. Stamp Duty & Registration Fees	252.43	355.48	(+)103.05	(+) 41
4. Taxes on Vehicles	203.98	305.69	(+)101.71	(+) 50
5. Taxes on Goods & Passengers	134.00	107.30	(-) 26.70	(-) 20
6. Land Revenue	60.00	77.48	(+) 17.48	(+) 29
7. Other Taxes on Income & Expenditure	60.38	45.65	(-) 14.73	(-) 24
Non Tax Revenue				
8. Non-ferrous Mining & Metallurgical Industries	390.32	426.69	(+) 36.37	(+) 9
9. Interest Receipts	433.49	855.63	(+)422.14	(+)97
10. Major & Medium Irrigation	31.12	37.22	(+) 6.10	(+) 20
11. Medical & Public Health	37.77	27.90	(-) 9.87	(-) 26
12. Forestry & Wild Life	18.00	14.72	(-) 3.28	(-) 18
13. Education, Sports, Arts & Culture	17.50	19.74	(+) 2.24	(+) 13
14. Police	11.59	21.14	(+) 9.55	(+) 82
15. Public Works	10.00	8.82	(-) 1.18	(-) 12
16. Miscellaneous General Services	7.11	31.19	(+) 24.08	(+) 339

1.4 Cost of collection

The gross collection in respect of major revenue receipts , expenditure incurred on their collection and the percentage of such expenditure to gross collections during the years 1993-94, 1994-95 and 1995-96 alongwith the relevant all India average percentage of expenditure on collection to gross collections for 1994-95 are given below:

Sr. No.	Head of Revenue	Year	Collection	Expenditure on collection	% of expenditure on collection	All India Average % of collection
(Rs. in crores)						
1.	Sales Tax	1993-94	2771.03	24.81	1	1.25
		1994-95	3185.99	27.91	1	
		1995-96	3593.37	32.73	1	
2.	Stamp Duty & Registration Fees	1993-94	210.77	5.16	2	3.65
		1994-95	270.68	5.87	2	
		1995-96	355.48	10.86	3	
3.	Taxes on Vehicles	1993-94	174.69	6.24	4	2.50
		1994-95	208.17	7.40	4	
		1995-96	305.69	10.32	3	

1.5 Arrears of revenue

As on 31 March 1996 arrears of revenue under principal heads of revenue, as reported by the departments were as under:

Head of revenue	Arrears pending collection (Rs. in lakhs)	Arrears more than five years old	Remarks
Sales Tax	80403.44	16001.97	Out of the arrears of Rs. 80403.44 lakhs, Rs. 15356.63 lakhs were due to deferment scheme, Rs. 12755.02 lakhs were due to postponement of recovery due to stay by the appellate authorities, Rs. 4604.16 lakhs were due to cases pending in liquidation, insolvency transfer of liquidated property and court cases etc., Rs. 3846.10 lakhs were due to grant of instalment for recovery as a measure of relief and Rs. 43841.53 lakhs were due to other reasons.
Motor Vehicles Tax	1219.33	269.24	Out of Rs. 1219.33 lakhs, Rs. 460.74 lakhs were due to demand covered by revenue certificates and Rs. 3.02 lakhs were due to stay granted by High Court and other judicial authorities and Rs. 755.57 lakhs were due to other reasons.
Profession Tax	1116.22	501.81	Arrears were due to non-availability of the addresses of the defaulters.
Goods and Passenger Tax	359.20	161.50	Out of total arrears of Rs. 359.20 lakhs, Rs. 130.33 lakhs were due to demand covered by recovery certificates, Rs. 1.37 lakhs were pending due to stay granted by High Court and other judicial authorities and Rs. 227.50 lakhs were due to other reasons .

1.6 Arrears in Sales Tax assessments

The number of assessments due for assessment, number of assessments completed during the year and the number of assessments pending at the end of the year under report with corresponding figures of the year 1994-95 are as under:

	1994-95	1995-96
(a) No. of assessments due for completion during the year		
Arrear cases	18 81 217	2317600
Current cases	705124	714478
Remand cases	1109	738
Total	2587450	3032816
(b) No. of assessments completed during the year		
Arrear cases	140566	226241
Current cases	128175	111227
Remand cases	1109	738
Total	269850	338206
(c) No. of assessments pending finalisation as at the end of the year		
Arrear cases	1740651	2091359
Current cases	576949	603251
Remand cases		
Total	2317600	2694610
(d) Yearwise break-up of pending cases are as under		
Upto 1991-92	804227	740263
1992-93	418022	353944
1993-94	518402	443570
1994-95	576949	553582
1995-96		603251
Total	2317600	2694610

The above table shows that during the year out of 23,17,600 arrear cases only 9.76 per cent cases were assessed and out of 7,14,478 current cases only 15.56 per cent cases were assessed. As on 31 March 1996, 26,94,610 cases were pending for assessment,

General

out of which 117564 cases involved turnover of over Rs.50 lakhs but not exceeding one crore and 69738 cases involved turnover of Rs.1 crore and above in each case.

Though the system of deemed assessments was introduced in November 1991 as per recommendations of the Sales Tax Study Team (Subba Rao Committee - October 1990), there was no significant improvement in the clearance of arrear cases during 1995-96. The recommendations of the Committee regarding clearance of the pending assessments within one year of the closure of accounting year are yet to be implemented.

1.7 Internal Audit

The internal audit in Sales Tax Department was constituted in May 1960. During 1995-96, assessments of 15311 cases were revised at the instance of internal audit and additional demands of Rs.69.65 lakhs were raised.

The Internal Audit was constituted in Entertainment Tax Department in February 1989 and in Motor Vehicles tax Department in April 1992. Information regarding additional demands raised as a result of internal audit, though called for in April 1996, has not been furnished (September 1996)

1.8 Results of audit

Test check of the records of Sales Tax, Land Revenue, Motor Vehicles and other Departmental offices conducted during the year 1995-96 showed under-assessments/short levy/loss of revenue aggregating Rs. 7297.94 lakhs in 1737 cases. During the year the concerned Departments accepted under-assessments *etc.* of Rs.371 lakhs (1161 cases), of which Rs.18.81 lakhs (158 cases) were pointed out during 1995-96 and the rest in earlier years.

This Report contains 61 paragraphs including two reviews involving Rs.84.12 crores which illustrate some of the major points noticed in audit. Of these, the departments accepted audit observations amounting to Rs. 6.54 crores. The departments did not accept audit observations involving an amount of Rs. 1.46 crores but their contentions were found to be at variance with the facts or legal position. These have been commented upon in the relevant paragraphs.

1.9 Outstanding inspection reports and audit observations

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

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

	As at the end of June		
	1994	1995	1996
No. of outstanding Inspection Reports	1645	1629	1663
No. of outstanding audit observations	4963	5808	6010
Amount of receipts involved (Rs. in crores)	395.08	296.73	398.01

In respect of 127 Inspection Reports issued between January 1995 to December 1995 departments have not even furnished first replies. These Inspection Reports involve revenue of Rs. 23.78 crores in Revenue Department, Information, Broadcasting and Tourism Department, Finance Department, Industries and Mines Department, Home Department and Forest Department.

(ii) Yearwise break-up of the outstanding Inspection Reports and audit observations as on 30th June 1996 is given below:

Year in which inspection reports were issued	Number of outstanding		Amount of receipts involved (Rs in crores)
	Inspection Reports	Audit observations paras	
Upto 1992-93	800	2124	232.65
1993-94	295	1112	21.62
1994-95	253	1474	40.09
1995-96	315	1300	103.65
Total	1663	6010	398.01

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



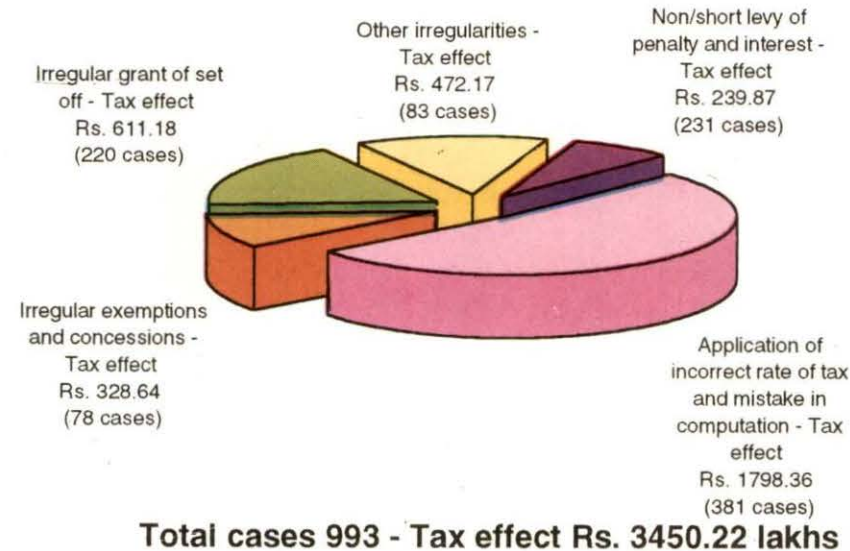
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SALES TAX

2.1 Results of audit

Test check of assessment records in various sales tax offices conducted in audit during the year 1995-96 revealed under-assessment of Rs.3450.22 lakhs in 993 cases, which broadly fall under the following categories:



During 1995-96, the department accepted under assessment *etc.* of Rs.156.83 lakhs in 828 cases, of which 139 cases involving Rs.14.91 lakhs were pointed out during 1995-96 and the rest in earlier years.

A few illustrative cases and result of a review on “Working of Enforcement Branch in Sales Tax Department” involving Rs.7287.45 lakhs are given in the following paragraphs.

2.2 Working of Enforcement branch in Sales Tax Department

2.2.1 Introduction

Generally evasion of sales tax takes place due to suppression of sales/purchases, misrepresentation/mis-statement of facts *etc.* by the dealers. If the Commissioner of Sales Tax has reason to believe that any dealer has evaded or is attempting to evade the payment of any tax due from him, he may for reasons to be recorded in writing seize such accounts, registers and documents of the dealer as may be necessary and carry out inspections and investigations into complaints regarding evasion of tax. These functions are exercised by him under the authority of sections 59 and 80 of the Gujarat Sales Tax

Act, 1969 through enforcement wing of the department which has been created for the purpose.

2.2.2 Organisational set up

Commissioner of Sales Tax is the apex authority who controls the functioning of the enforcement wing. He is assisted by a Special Commissioner of Sales Tax in the task of framing suitable policy relating to various anti-evasion activities viz. seizure, inspection and investigation. Deputy Commissioner of Sales Tax, aided by eight flying squad officers (Flying Squad Units) supervises the enforcement activity. He is also assisted by six independent enforcement divisions created at Ahmedabad (For City and District), Baroda, Bhavnagar, Rajkot and Surat each of which is headed by Assistant Commissioner (AC) of Sales Tax.

2.2.3 Scope of audit

With a view to assessing the effectiveness of the working of the enforcement wing records of five out of seven enforcement divisions including those maintained by one check post and assessments finalised by the enforcement wing during 1992-93 to 1994-95 were reviewed between December 1995 and April 1996.

2.2.4 Highlights

- (i) Inordinate delay in disposing of the complaints.
(Para 2.2.6)
- (ii) Sale Tax demands of Rs.156.26 crores in five enforcement divisions remained unrealised.
(Para 2.2.7-B)
- (iii) Due to delay in finalisation of assessments there was non realisation of tax of Rs.19.78 crores in 74 cases.
(Para 2.2.8)
- (iv) Due to billing activity there was evasion/loss of tax of Rs.21.62 crores in eight cases.
(Para 2.2.9 & 2.2.10)
- (v) Omission to disallow the declarations / forms used by two bogus dealers resulted in evasion of tax amounting to Rs. 3.48 crores.
(Para 2.2.11)
- (vi) Due to suppression of purchases by two dealers, there was evasion of tax of Rs.2.55 crores.
(Para 2.2.12)
- (vii) Due to turnover escaping assessment and limitation period being over there was a loss of Rs.2.01 crores.
(Para 2.2.13)

(viii) Lack of investigation into the source of purchaser resulted into the loss of tax amounting to Rs.27.80 lakhs.

(Para 2.2.15)

(ix) Irregular adjustment against exemption limit resulted in non-realisation of tax of Rs. 9.98 lakhs.

(Para 2.2.16)

(x) Due to non levy of tax on works contracts, tax of Rs.10.19 lakhs could not be realised.

(Para 2.2.17)

(xi) Incorrect levy of concessional rate of tax without valid C Forms resulted in short levy of tax of Rs.2 crores.

(Para 2.2.18)

(xii) Failure to correlate the sales and purchases made by bogus dealers, tax demand of Rs.1.25 crores could not be realised.

(Para 2.2.19)

(xiii) There was short levy/non-levy of penalty, interest and concealment penalty of Rs.1.69 crores in ten cases.

(Para 2.2.20 to 2.2.22)

(xiv) Despite loss of Rs.67.24 lakhs on unclaimed purchases prosecution proceedings were not initiated in two cases.

(Para 2.2.23)

(xv) Lack of efforts to serve the demand notice at proper places resulted in non-realisation of tax of Rs.1.62 crores in three cases.

(Para 2.2.25)

2.2.5 Working of Enforcement Branch

Various enforcement activities carried out in the State are broadly classified as under:-

- (1) Investigation into complaints regarding evasion of tax.
- (2) Check posts.
- (3) Survey operations.
- (4) Miscellaneous vigilance operations.
- (5) Investigation as a result of market intelligence.

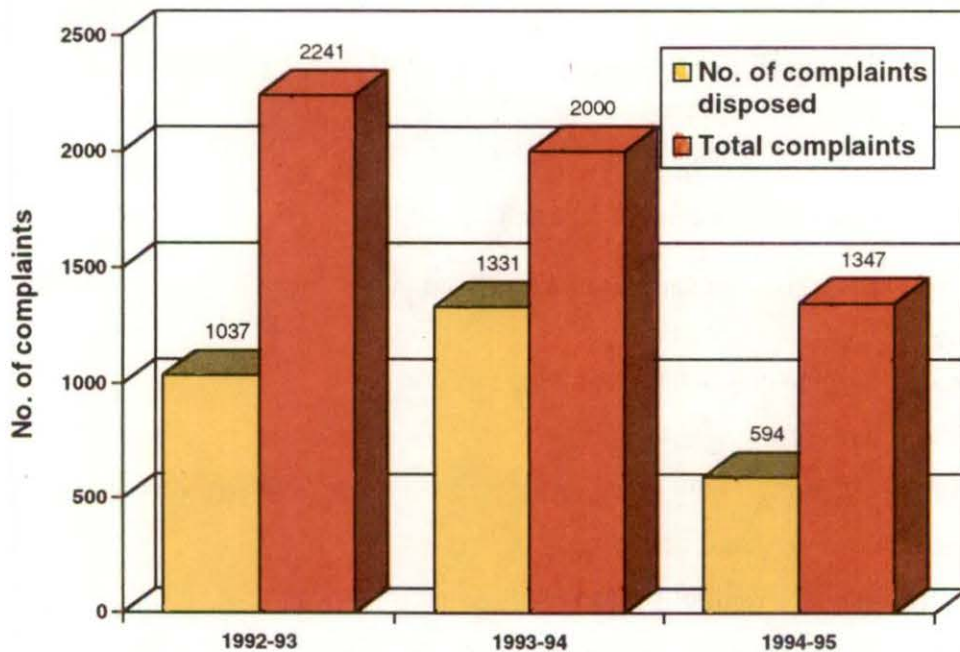
Out of the above survey operations and market intelligence have been discontinued since July 1983 and October 1988 respectively as the department had felt that it did not serve the intended purpose.

2.2.6 Investigation into complaints

On the basis of complaints regarding evasion of tax, surprise visits by the officers of the department at the places of business as well as godowns and residences of the traders concerned are to be made under the supervision of the respective Asst. Commissioner of Sales Tax. Where tax evasion is *prima facie* detected, books of accounts and other records are seized by the sales tax officers. Quantum of suppression is determined to assess the extent of evasion. Assessments are finalised after pre-audit by the Assistant Commissioner of Sales Tax (Enforcement).

Year wise position of complaints received and disposed of in five enforcement divisions are given below and also depicted in chart:

Period	Opening balance	Receipt	Total	Disposal	Pendency
1992-93	1321	920	2241	1037	1204
1993-94	1204	796	2000	1331	669
1994-95	669	678	1347	594	753



The total pendency of the 753 complaints as on 31.03.1995 was as under:-

Periods of pendency	Pending complaints	Level at which pending		
		S.T.O.	A.C.	D.C.
1991-92	74	-	11	63
1992-93	77	8	47	22
1993-94	269	100	119	50
1994-95	333	132	144	57
Total	753	240	321	192

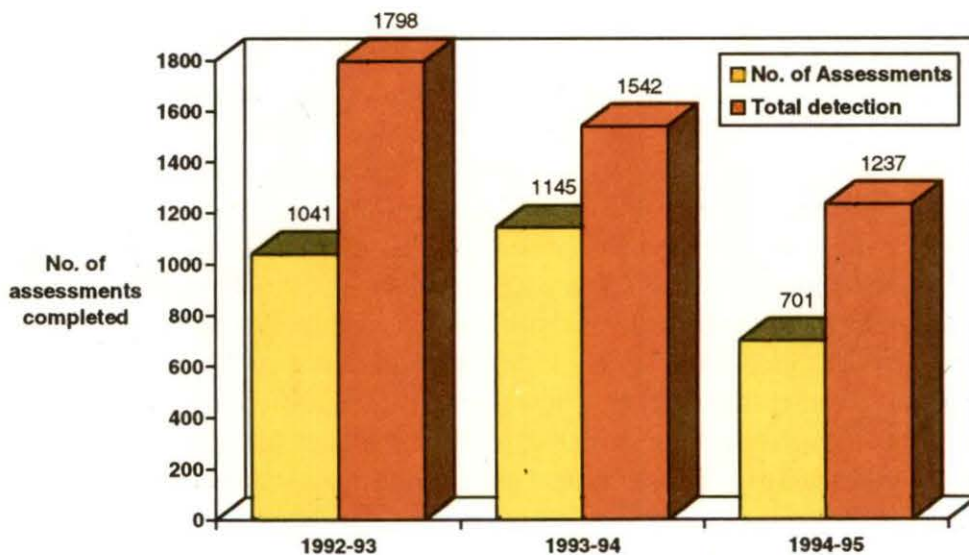
It was seen that there were no targets or time limit fixed for the disposal of complaints. Delay in disposal of complaints hampers the chances of detection of evasion.

2.2.7 (A) Detection and disposal of cases

Cases for assessments in enforcement divisions are detected on the basis of complaints and information received, investigation into by cross-checks of records and the raids conducted as per the instructions of the Deputy Commissioner of Sales Tax (Enforcement).

The position of detection and disposal of cases during 1992-93 to 1994-95 were as follows:-

Year wise position of detection & disposal of cases



Out of 536 cases pending for disposal at the end of 1994-95, 55 cases were pending for more than a year, whereas 20 and 21 cases were pending for more than two years and three years respectively. 45 cases were pending for more than four years.

(B) Arrears of revenue in enforcement divisions

As on 31st March 1995, sales tax demands amounting to Rs. 156.26 crores in five enforcement divisions remained unrealised. Effective steps for recovery are required to be taken in all cases.

2.2.8 Delay in completion of the assessments

The department had issued instructions in October 1982 laying down a time limit of six months for the finalisation of assessments relating to Enforcement Branch. On test check of assessments finalised in five out of seven enforcement divisions it was noticed in seventy four cases that the assessments were delayed for periods ranging between one and fifteen years. Though the enforcement divisions had raised additional demand of Rs.19.78 crores, it could not be realised due to dealers closing down the business and their whereabouts not being known.

In one case (Rajkot) though security of Rs.4 lakhs was obtained in April 1991 it could not be adjusted against tax dues due to transfer of jurisdiction of the case. Failure of the department to adjust the security against the tax resulted in non-realisation to that extent.

2.2.9 Evasion of tax due to billing activities

(a) Issuance of bills either to the seller or to the purchaser without actually effecting the transactions is known as billing activity. Intention of issuing such bills is to accommodate dealers to adjust their sales/purchases of goods in their accounts to escape payment of tax.

A few illustrative cases of billing in which enforcement branch failed to investigate and fix the liability of tax correctly are discussed below:-

(i) From the records of enforcement division, Bhavnagar, it was seen that a dealer depicted in his books of accounts 62538 tonnes of oil cakes valued at Rs. 15.76 crores as purchases from unregistered dealers (during various periods between 1985-86 to 1990-91) for sales made to solvent extraction plants. During raids the enforcement division seized documents of the dealer in April 1986 and December 1989 which indicated that these purchases were not from genuine dealers. The case was also investigated by the Income Tax authorities before whom the dealer had declared, in writing, that he had merely resorted to billing activity. Such large scale purchases of oil cakes could not have been made from any source other than Oil Mills. It was observed in audit that despite having come to know about the activity of the dealer, enforcement branch failed to identify the source of these oil cakes and also did not initiate prosecution against this dealer as per the Sales Tax Law. On the basis of quantity of oil cakes shown to have been purchased, the total quantum of oil seeds consumed and oil extracted would be from 135064.05 tonnes and 42425.52 tonnes respectively. The resultant turnover on this account would be Rs. 222 crores which escaped assessment involving potential tax effect of Rs. 8.26 crores.

(ii) At the instance of the Collector, Rajkot, enforcement division-1, Ahmedabad seized books of accounts of a dealer who had shown purchase of edible oil valued at Rs. 4.88 crores from two closed oil mills. Since no such mills existed, the purchase of Rs. 4.88 crores were considered as purchases from unregistered dealers and the additional demand

of Rs. 43.12 lakhs was raised by the assessing officer. Since the assessee had closed the business after raid, and as no security was obtained from the dealers under rules the demand remained unrealised. The department also did not refer the case for recovery proceedings.

(iii) In enforcement division, Rajkot, *ex-parte* assessment of a dealer was made for the periods of September 1989 to May 1991 and the aggregate demand of Rs. 8.82 crores was raised. On cross verification of transactions by the department, it was noticed that there was concealment of 166.49 lakhs kgs. of groundnut oil cake valued at Rs. 2.68 crores. No action was initiated by the assessing officer to locate the origin of concealed purchases. It was also noticed in audit that neither any action to verify the genuineness of purchases (from Bank, transporters *etc.*) was taken nor was information furnished to the Collector & Dy. Director of Investigation (Income-Tax). Even security was not taken in spite of instructions (May 1993) of the Dy. Commissioner of Sales Tax.

In addition, concealment of sales of rapseed oil valued at Rs. 1.90 crores to NDDDB was found in the case of same dealer in October 1993 on which tax of Rs. 9.13 lakhs was collected separately by him but not paid to the Government. Besides the dealer was liable to turnover tax of Rs. 2.85 lakhs which was also not realised as the enforcement branch did not revise the assessment even after two years. Omission has resulted in non-levy of tax amounting to Rs. 11.98 lakhs, besides interest and penalty.

The assessee disappeared from the market as reported by the Sales Tax Officer Junagadh (February 1996). Lack of proper investigation, failure to take security and delay in assessment (three years) led to the loss of revenue of Rs. 8.94 crores. In spite of huge loss, prosecution against the assessee was not considered.

(iv) In enforcement division, Surat, additional demands of Rs. 27.95 lakhs were raised against two dealers for the year 1991-92. The department while assessing (January 1994 and March 1994) noticed that purchases of Rs. 1.94 crores and Rs. 43 lakhs were shown against the dealer whose registration was cancelled by the Department. In appeal by these dealers the tax levied in the assessments was refunded on the basis of the affidavit of the selling dealer. The department while conducting appeal / assessment, did not conduct the cross examination of the affidavit as required under the department's confidential circular of January 1975. Since no tax was paid by any of the dealers (either seller or purchaser), there was loss of revenue amounting to Rs. 27.95 lakhs. Lack of proper verification regarding the antecedents of the dealer at the time of granting registration and lack of proper investigation led to the above loss.

(v) In enforcement division, Surat, last purchase of oil valued at Rs. 76,125 was made in February 1992 from a dealer whose registration was cancelled *ab initio* (September 1995). In the absence of details of entire purchases from bogus dealer, the extent of tax evasion could not be ascertained.

2.2.10 Loss of revenue due to non-cancellation of Registration

According to section 30 AA of the Gujarat Sales Tax Act, 1969 (inserted with effect from 01/04/1994) if a registered dealer without entering into a transaction of sales issues to another registered dealer a bill with the intention to defraud the Government revenue, the Commissioner may cancel the registration of the dealer issuing or accepting

such bill either prospectively or retrospectively from such date as may be deemed fit. In such a case, a dealer who has been deemed to have purchased goods from the dealer whose certificate of registration is cancelled has to prove that the tax due in respect of goods sold to him has been paid.

Specific cases noticed in test check are commented upon here under:-

(i) In enforcement division, Rajkot there was a tax evasion of Rs.3.19 crores due to billing activity by a dealer where search was conducted in November 1994 but the registration was cancelled in July 1995.

(ii) In five enforcement divisions, orders for cancellation of registration were issued in respect of sixty nine bogus/billing dealers. In enforcement division 1, Ahmedabad, there was a loss of Rs. 50.61 lakhs on account of billing activity. Details of such loss were not furnished by other enforcement divisions.

(iii) In another case, at Surat, tax of Rs.1.25 lakhs could not be levied, as after finalisation in April 1994 it was noticed in September 1995 that the dealer was non-existent and his registration was accordingly cancelled *ab initio*.

Though the registration was cancelled in above cases, the forms issued were not taken back/declared invalid so far, leading to potential loss of revenue due to misuse of these forms.

2.2.11 Misuse of declaration forms

Under the Gujarat Sales Tax Act, 1969, where sales are made by one registered dealer to another licensed dealer, tax is not levied if the purchasing dealer furnishes a declaration in the prescribed form (Form 17A) and certifies that the goods are meant for sales in the course of Inter-State Trade or Commerce or Sale in the course of export of goods out of the territory of India. It has been held by the Gujarat High Court* that the burden of proof regarding genuineness of form 17-A lies on the seller. The Commissioner of Sales Tax, Ahmedabad had also issued instructions in December 1993 for finalisation of assessments keeping the above judicial decision in view while finalising the assessment.

(i) In enforcement division-1 Ahmedabad a dealer was allowed deduction of Rs. 4.40 crores (against form 17 A) and Rs. 57 lakhs (against form 20) on account of sales of electric items between the periods 1989-90 and 1990-91 to six dealers. The assessments were finalised accordingly in February 1994 (a) without waiting for the results of cross checks made in case of three dealers (b) even though result of the cross check proved that other 3 dealers were not genuine and did not pay any tax. Moreover, on verification of records in audit it was found that in a bid to evade tax all the purchasers filed nil returns. Thus, omission to disallow these declarations resulted in evasion of tax amounting to Rs. 1.64 crores. Further prosecution proceedings against the defaulting purchasers were also not initiated.

(ii) In enforcement division-1, Ahmedabad, the books of accounts of a dealer for the year 1989-90 and 1990-91 were seized on 17-01-1994 for verification of sales amounting

* Thakkar Pranjivandas Hargovinddas & Co. v/s State of Gujarat -(1992) Gujarat High Court vol.II-150.

to Rs.5 crores against Form 17A and Inter State Sales. The enforcement division instead of finalising the assessment transferred the case to the District Division without transfer of any proceedings. On finalisation of assessment by District Division sales against Form 17-A were reported to be genuine which was accepted by the enforcement wing. Eventhough the purchasing dealers were the same as mentioned in (i) above, who had resorted to evasion of tax and filed nil returns the cross examination of records was not carried out for the year 1990-91. This resulted in evasion of tax of Rs.1.84 crores.

2.2.12 Short determination of sales turnover

(i) The Assistant Commercial Tax Officer, Jodhpur intimated on 6/3/1992 that a dealer (assessee) purchased oil valued at Rs.93 lakhs between December 1991 and February 1992, but the enforcement division 1 Ahmedabad without considering the above purchases determined the turnover amounting to Rs.20.12 crores on 30/9/1992 for the period June 1991 to December 1991 and levied tax of Rs.2.07 crores. Failure to take cognisance of the intimation given by Assistant Commercial Tax Officer, Jodhpur, by the enforcement branch resulted in short determination of sales turnover by Rs.93 lakhs and under assessment of tax amounting to Rs.25 lakhs. Unused F forms and 24 B forms with the assessee were also not declared invalid.

The dealer is reported to have stopped the business and is absconding. As a result the demand of Rs.2.32 crores remained unrealised. It was noticed that enforcement department has neither cancelled his registration nor initiated prosecution.

(ii) The enforcement division I, Ahmedabad in a raid on 20.08.1993 found that a dealer did not maintain books of accounts and concealed purchases/sales. The quantum of suppression of sales was assessed as Rs.20.13 crores on the basis of information on verification of the bank accounts transport receipts, cross checks *etc.* for the period February 1993 to August 1993 and raised tax demand of Rs.21.36 lakhs. It was found in audit, on cross verification of details of bills and payments received by the assessee, on sales made to another dealer, that assessee had suppressed the sales of Rs.17.78 lakhs between October 1993 and January 1994, filed 'Nil' returns and did not pay any tax. This resulted in escapement of tax of Rs.1.48 lakhs. Despite this, enforcement branch did not cancel the registration. Consequently the demand of Rs.22.84 lakhs remained unrealised.

2.2.13 Turnover escaping assessment

Under section-44 of the Gujarat Sales Tax Act, 1969, the Sales Tax Officer can reopen the assessment within eight years from the end of the period to which the turnover relates if he has reasons to believe that the assessee has concealed sales or purchases or any material particulars relevant thereto or has knowingly furnished incorrect declaration or return.

In enforcement division, Rajkot, it was noticed that a dealer purchased groundnut oil valued at Rs. 13.37 crores between January 1985 and December 1985. The dealer from whom the purchases were made was holding bogus registration and had not done any manufacturing activity. The payment was also made to a person other than from whom the purchase was shown to have been made. Even though the enforcement division came to know this through the letter issued by the Deputy Commissioner of Sales Tax,

Rajkot in July 1986 he instead of levying tax and penalty thereon on the purchasing dealer, issued reference for a cross-check in April 1994, *i.e.* after the limitation period for re-opening the assessment. Thus due to failure on the part of assessing authority to make timely assessment, tax of Rs. 2.01 crores including interest remained to be levied, besides the penalty thereon. Reasons for delay in assessment were not made available.

2.2.14 Cross verification of sales

In order to ensure the genuineness of the transactions and to detect evasion of tax, cross verification of sales and purchases has been made essential. Maintenance of Register No. 40 & 41 has been prescribed by the department for this purpose. However it was noticed that these Registers were not maintained. Following points were noticed:-

(i) In enforcement division I, Ahmedabad, it was noticed that a dealer, whose books of accounts were seized in December 1991, claimed to have closed his business as on 19.12.91. But on cross verification of records of the purchaser it was revealed that he had sold goods valued at Rs. 1.42 crores between December 1991 and February 1992 without paying any tax. Without taking the cognisance of this fact the department treated these sales as purchases from the registered dealer. This resulted in evasion of tax amounting to Rs.24.54 lakhs including interest and penalty.

It was further noticed that the assessing officer also failed to investigate into the complaint of purchase of edible oil amounting to Rs. 2.66 lakhs (Bill No. 531 dt. 03/07/1991) against 'C' form made by the same dealer. Thus, undisclosed sales could not be detected.

(ii) In enforcement division-I, Ahmedabad, out of claim of resales amounting to Rs. 4.17 crores by a dealer the enforcement department issued cross-checks/references to the concerned Sales Tax Officer relating to purchases made from six dealers amounting to Rs. 34 lakhs only. From results of the cross-check, it was noticed in one case that the dealer from whom the purchase of Rs. 2.80 lakhs was made was bogus / absconding. However no tax was levied in the assessment of the above dealer.

(iii) In enforcement division-2, Ahmedabad, the assessments aggregating Rs. 70.45 lakhs for the years 1987-88 to June 1991 of two dealers were finalised in April 1992 and July 1992 without issue of cross-checks involving tax effect of Rs. 3.38 lakhs. It was noticed from the assessment records that these two dealers were found bogus in preliminary investigation by the department in September 1989. In spite of instruction issued in October 1991 by Assistant Commissioner of Sales Tax, the enforcement division neither verified sales nor imposed tax on the dealer.

2.2.15 Loss of revenue due to failure to investigate the detected purchases

According to the circular issued in January 1981 by the Commissioner of Sales Tax Ahmedabad, when cross check is returned with the remarks that the person against whom the cross check memo is issued has not been found, the officer in charge of the check post should initiate prosecution against truck driver, truck owner and the person shown in the cross-check.

In enforcement division-2, Ahmedabad, the concealed inter-state purchase of tea valued at Rs. 90.67 lakhs (5667 bags tea) was noticed on account of cross-check. An

enquiry from transport authority revealed that the business in this case was being done benami by the regular dealer who had taken the delivery of tea. However, no tax was levied as the assessee filed an affidavit stating that purchases were not made by him. No further enquiries were conducted about the genuineness of the affidavit, payment to transport company, octroi and details of purchase orders. Lack of proper verification about the actual dealer resulted in loss of tax amounting to Rs. 27.80 lakhs. The department did not also initiate prosecution proceedings against the truck owner and the person shown in the cross-check.

2.2.16 Irregular grant of exemption

Castor seeds, when used in the manufacture of oil, would attract purchase tax under section 19 B of the Act. As per entry 175 of notification issued under section 49(2) of the Gujarat Sales Tax Act, 1969, a specified manufacturer would not get exemption from payment of said purchase tax.

In enforcement division-2, Ahmedabad, an industrial unit, engaged in the manufacture of castor oil and enjoying the benefit as a specified manufacturer was allowed exemption from payment of purchase tax of Rs.9.20 lakhs in the assessment for the years 1991-92 and 1992-93 respectively. The assessing authority failed to detect the inadmissible exemption from tax. This resulted in non-recovery of tax amounting to Rs. 9.98 lakhs including interest.

2.2.17 Non-levy of tax on works contracts

Under the Gujarat Sales Tax Act, 1969, tax is payable by a dealer on transfer of property in goods involved in execution of works contract at the rate notified by the State Government from time to time. The assessee can also opt to pay the tax at the composite rate of two *per cent* upto March 1993.

In enforcement division I, Ahmedabad, while finalising the assessment of a company for the year 1989-90 to 1991-92, the turnover relating to works contract undertaken by the company for fixing transformers was shown in the books of accounts as Rs.45.69 lakhs, Rs.19.71 lakhs and Rs.7.30 lakhs respectively. The assessing officer assessed the turnover of the company for this work as job work and did not levy tax. It was noticed that the transformers used in the works contracts were not purchased from any other registered dealers but were received from head office (Manufacturing unit) of the company. Hence goods used/transferred in the contracts were liable to be taxed as sales involved in works contracts. It was further noticed in the subsequent assessment for the year 1992-93 on the same type of contract and turnover thereof amounting to Rs.21.13 lakhs, tax at the composite rate of 2 *per cent* was levied instead of 12 *per cent* leviable as the assessee had not given any option for the composite rate of two *per cent*. Failure to levy tax at appropriate rate in all the above assessments resulted in short levy of tax of Rs.10.19 lakhs.

2.2.18 Short levy of Central Sales Tax due to acceptance of invalid declaration

Under the Central Sales Tax Act, 1956, on inter state sales of goods not supported by valid declarations in Form C from the purchasing dealers, tax is leviable at the rate of eight *per cent* on declared goods and at ten *per cent* or at the rate applicable to the sale of

such goods inside the State whichever is higher in respect of other goods. Lost or stolen declaration forms are declared invalid and the fact circulated to all the assessing authorities in the state to prevent concessional rates against such invalid declaration forms being allowed. The department also issued instructions in April 1990 and December 1992 for scrutiny of invalid declaration forms while finalising assessments.

In enforcement division, Baroda, certain inter state sales of goods amounting to Rs. 10.98 crores were effected between January 1987 and March 1990. A test check of documents, however, revealed that Form C furnished/produced by the dealer in support of inter state sales were not issued to the purchasing dealers by the Sales-Tax Officer of Maharashtra State and thus sales were liable to be taxed at the rate of ten *per cent* which was correctly levied by the assessing officer. However the appellate authority finalised the appeal and erroneously allowed exemption and reduced the tax by relying on the circular (January 1995) issued by the Commissioner of Sales-Tax, Ahmedabad. According to the aforesaid circular, C Forms issued by the Sales Tax Department of Maharashtra State were valid. As no such C forms were issued to the assessee by the sales tax department of Maharashtra, concessional rate of tax on stolen/ unauthorised C Forms was not applicable. The mistake resulted in short-levy of tax amounting to Rs. 2 crores.

2.2.19 Deficiencies in finalisation of assessment and appeal

In enforcement division-1, Ahmedabad, *ex parte* assessment of a reseller in edible oil for the period February 1993 to January 1994 was finalised in February 1994 and an additional demand of Rs. 1.25 crores was raised. In spite of opportunity of hearing having been given to the dealer by issue of notice, the dealer did not produce evidence of purchases. The following omissions were noticed in test check:-

- (1) While fixing the tax liability, the books of accounts of selling dealers were not verified and linked though they were seized.
- (2) Though the assessee did not obtain supply licence for his business of Rs.17 crores, omission in obtaining it was not brought to the notice of Collector.
- (3) As instructed in the departmental circular of September 1986 report to the Dy. Director of Income-Tax, Ahmedabad (Investigation) was not made.

The dealer, however, went in for appeal and the Appellate Authority relying on the affidavit furnished by the selling dealers, upheld (July 1995) the dealer's contention and accordingly remanded the case without payment of tax to the assessing authority. The correctness of affidavit was not examined though the Appellate Authority had full details of the transaction and there was a difference of Rs. 2.69 crores between the accounts of the assessee and sales shown in the returns by the dealer from whom the goods were purchased. The enforcement division however did not correlate the transactions resulting in remanding the case by the appellate authority.

After the case was remanded, the assessee had not co-operated in finalisation of assessment and the assessment is pending since July 1995 (March 1996).

2.2.20 Short-levy of interest

Under the provisions of the Gujarat Sales Tax Act, 1969, if a dealer does not pay the amount of tax within the time prescribed simple interest at the rate of 24 *per cent*

per annum is leviable on the amount of tax not so paid or any amount thereof remaining unpaid for the period of default. This provision also applies to the levy of interest in the case of assessment made under the Central Sales Tax Act, 1956.

In enforcement division, Baroda while finalising (April 1995) the C.S.T. assessment of a dealer for the year 01/09/1976 to 31/08/1977 whose books of accounts were seized in February 1983, the assessing officer levied additional demand of Rs.39.03 lakhs on account of Inter State Sales of goods which were incorrectly shown as branch transfer in the returns. The assessee obtained stay from Gujarat High Court against the extension order of time limit for assessment in October 1987 which was vacated in October 1993.

While finalising the assessment of the aforesaid dealer, the assessing authority levied interest of Rs.20.83 lakhs only for delay of 36 months instead of 18 years in payment of tax. The correct amount of interest leviable, however, works out to Rs.1.69 crores. This resulted in short levy of interest of Rs. 1.48 crores.

On this being pointed out, the department contended that interest was not leviable as per circular of January 1993 issued by the Commissioner of Sales Tax, Ahmedabad. The contention of the department is not tenable as the aforesaid circular is applicable to a particular class of dealers in which the department has obtained stay against the judgements and not to an individual case like this.

In addition the assessing officer also failed to credit the payment of Rs. One lakh made on April 1994 towards interest in view of section 47 (4B). Thus there was a short demand of tax of Rs. One lakh. The total short levy works out to Rs.1.49 crores.

2.2.21 Short levy of concealment penalty

Departmental instructions issued in June 1992, do not stipulate the rates of penalty for concealment. In the absence of any instructions for such penalty for concealment, penalty is being levied at *ad hoc* rates at the discretion of assessing officers. It was noticed that these rates of penalty were much less than the prescribed rates of penalty in cases of non payment of tax where minimum penalty of 60 *per cent* per annum (slab rate) has been stipulated when the difference between the tax assessed and the tax paid is more than 100 *per cent*. In the assessments finalised by enforcement divisions at Rajkot and Ahmedabad, the assessing officers considered the case of concealment of taxes and levied penalty of Rs.6.58 lakhs as against Rs.23.07 lakhs at minimum rate of 60 *per cent* applicable for non payment of tax resulting in short levy of penalty of Rs.16.49 lakhs.

2.2.22 Non levy of penalty

As per Section 45(6) of the Gujarat Sales Tax Act, 1969, read with departmental circular dated 3/6/92 when difference between the tax assessed and the tax paid exceeds by more than 25 *per cent* of the tax paid with returns, penalty under Section 45(6) of the Act is leviable at the rates prescribed in the said circular.

While finalising the assessments (April 1993 to March 1995) of seven dealers in three enforcement divisions (Vadodara & Ahmedabad Division 1 & 2) the assessing authorities did not levy penalty to the extent of Rs. 4.69 lakhs.

2.2.23 Failure to initiate prosecution

A test check revealed :

(i) Lapse on the part of the enforcement officers in conducting adequate enquiries as to the identity, financial position and ownership of the business and (ii) failure to obtain proper and adequate security and to take timely action to assess and realise the tax.

A few instances are given below:-

(i) In enforcement division, Rajkot, books of accounts for the year S.Y.2042 (13.11.1985 to 02.11.1986) were impounded in May 1986. The assessment was completed in May 1993 after a period of six years raising a demand for tax of Rs. 11.29 lakhs on turnover of Rs. 97.96 lakhs. In reply to the tax demand notice, the assessee reported (June 1993) that since the business was actually being run by another person the liability of tax should not be fixed on him. No verification of the genuineness of this claim made in the application was made, inspite of provision of prosecution for conducting benami business by the assessee under section 75(ii) of the Gujarat Sales Tax Act, 1969.

(ii) In enforcement division-2, Ahmedabad the books of accounts of a dealer for the period April 1989 to January 1990 were seized in January 1990. The assessment was completed in March 1994 raising demand of tax of Rs. 55.95 lakhs. In the assessment proceedings the assessee filed an affidavit that the business was actually being run by other person in his name and he was working there. It was noticed that the person whose name was specified as owner in affidavit had also filed a counter affidavit that he was not the owner of the business. The assessment was finalised without cross-examinations of both the dealers in person. No further enquiries to decide the ownership of the business/shop, sources of capital and cross-examinations of the customers and sellers were made, and the demand of tax of Rs.55.95 lakhs remained unrealised.

2.2.24 Short-levy of turn over tax

Under the provisions of the Gujarat Sales Tax Act, 1969, with effect from 6 August 1988, where the turn over of either of all sales or of all purchases made by any dealer exceeds Rs. 99,99,999 in any year, turn over tax is to be levied on the total turnover of sales of specified goods after allowing permissible deductions under the Act.

In four assessments finalised by two offices at Rajkot and Bhavnagar short levy of turnover tax to the extent of Rs. 7.04 lakhs was noticed. Respective Sales Tax officers have accepted the short levy.

2.2.25 Lack of efforts to serve demand notice at proper address

According to Rule 74(1) of the Gujarat Sales Tax Rules, 1970, a notice is required to be served by Registered Post or by hand delivery to the assessee (either at residence or business place). When notice can not be served by any of the above mentioned methods, the notice can be served by affixing a copy thereof at the place of the dealer's business or residence as may be known to the sales tax authority.

Enforcement divisions at Ahmedabad had, in three cases served the demand notices involving tax effect of Rs. 1.62 crores by affixing the said notices at the business place of the assessee without making any attempt to serve the same through registered

post or by hand delivery to the residence of the assessee, though the fact that business places of the assessee were closed was within their knowledge.

Thus the demand of Rs. 1.62 crores could not be enforced. This includes a demand of Rs.64.63 lakhs raised in respect of an assessee found to be bogus whose registration was cancelled *ab initio*.

2.2.26 Other topic of interest

On the basis of the information received regarding purchases of tea valued at Rs.62 lakhs between July 1991 and April 1993 from tea dealers located at Siliguri, Calcutta, Guwahati *etc.* a raid was conducted on a dealer by the enforcement division 1 Ahmedabad. During the course of assessment proceedings, the dealer denied to have made these purchases of tea and to have even obtained C form books. He had no bank account from which the payment could be verified. In such cases, further documents pertaining to transportation, delivery of goods, octroi, supply order *etc.* were to be verified. However, the *ex-parte* assessment was finalised without making further enquires and demand of Rs.22.86 lakhs was raised. Failure of the assessing authority to investigate into the transactions in time resulted in evasion of tax of Rs.22.86 lakhs by the dealer who had suppressed purchases of tea.

2.2.27 Check posts

With a view to prevent evasion of government revenue, State Government had established (April 1976) check posts at Bhilad, Palanpur, Dahod and Shamlaji. In addition, the department also sets up seasonal check posts at various points to check movement of seasonal goods such as oil and oil seeds. Section 59 A of the Act prescribes the procedure for inspecting vehicles in transit.

(i) Location of check posts - Road transport is the convenient mode of transport as the distant places are connected by National Highways, State Highways and Village Roads. There is no direct discernible link between the number and location of check post setup by the Department and the movement of traffic. The Sales Tax Department has only four permanent check posts while Motor Vehicle Department has nine permanent check posts.

(ii) Government did not identify inter- State routes and setup permanent check posts at strategic points. Consequently, there was no check on vehicles passing through such strategic points as shown below:-

District	Roads passing through the following strategic points	Leads to
Valsad	2 Road diversions at Vapi	Union territory of D & N H Silvassa and Daman
Vadodara	Chotta Udaipur, Ambadungar Surpaneshwar	Madhya Pradesh and Maharashtra
Panchmahal	Santrampur and Zaribuj	Rajasthan and Madhya Pradesh
Kutch	Lakhpat, Khavda, Lodrani Khader	Rajasthan

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(iii) Working of check post- A test-check at Bhilad check post revealed that replies to the cross-checks issued were not generally received as can be seen from the details given below:-

Period	Nos.of cross checks issued	Nos.of replies received
1992-93	17712	1484
1993-94	14985	568
1994-95	28256	703

Thus, in large number of cases purchases and sales remained unverified at the time of assessment.

(iv) It was also noticed that cross-checks which were sent to enforcement divisions for verification were lying with them unattended . On test check of records in Enforcement division II, Ahmedabad, it was noticed that 87,514 cross checks with them were lying unattended at the end of March 1995. Thus there was non-observance of the prescribed procedure. There were also no reporting and monitoring systems at different levels.

(v) According to section 59 AA of the Gujarat Sales Tax, Act, 1969, inserted with effect from 07/04/1992 a transporter carrying goods from one state to another, through Gujarat, is required to obtain a transit pass for his vehicle from the officer in-charge of the first check-post declaring that such goods will not be sold in Gujarat and deliver the same to the officer in-charge of the last check-post as a proof of exit of his goods/vehicles from Gujarat. In the absence of exit pass from Gujarat, the transporter shall be deemed to have sold such goods inside the State and shall be liable to pay tax as a dealer.

It was noticed that though the requirement of transit pass was made applicable in 1992-93 the corresponding rules have not been framed by the Government so far. Accordingly the system of issue of transit pass remained to be operated in practice.

2.2.28 Miscellaneous vigilance operations

The system of co-ordination between the sales-tax department and other departments was prescribed in July 1983 by the Commissioner of Sales-Tax, Ahmedabad for detecting sales-tax evasion. For this purpose, visits to other offices such as Income-Tax, Central Excise, GEB *etc.* are required to be undertaken. The system also includes collection of information from sources such as railways, octroi nakas, transport companies, municipality/corporation *etc.* Such vigilance operations were not carried out by the enforcement department except in Rajkot Division where additional demands of Rs.65.76 lakhs were raised during 1994-95 as a result of co-ordination with other departments. The reasons for not conducting such activities elsewhere were not furnished.

The review report was sent to the Department / Government in May 1996; their reply has not been received (September 1996).

2.3 Incorrect Exemption

According to incentive schemes of 1981 and 1986 introduced by Government *vide* notifications issued under section 49(2) of the Gujarat Sales Tax Act, 1969, a specified manufacturer is exempted from payment of tax on sales and purchases of goods manufactured by him subject to satisfaction of conditions laid down in the respective schemes. The tax so saved is adjusted against the ceiling limit fixed in respect of each specified manufacturer with reference to capital invested by him. A few illustrative cases where such conditions have been violated are given below :

(A) According to Government Resolution dated 13 March 1981, a unit located outside the corridor of 24-24 Km. on both sides of National Highway from the border of Maharashtra and Gujarat upto Ahmedabad and corridor of 8-8 Km. on both sides of other National Highways passing through the state and first five units set up in the joint sector with OPEC funds, is eligible to special sales tax incentive benefit upto 90 *per cent* of the gross fixed capital investment without any ceiling. Pioneer units not eligible to above special benefits would be governed by the incentive benefits given *vide* Government Resolution dated 27.8.80 and would be eligible to incentive benefit applicable to 'C' grade growth centres. A pioneer industrial unit situated at Palitana is eligible to sales tax deferment benefit of 35 *per cent* of fixed capital investment subject to a maximum of Rs.50 lakhs as admissible to 'C' grade growth centre and in addition to 10 *per cent* of capital investment subject to a maximum of Rs.10 lakhs.

During the course of test check of records of Sales Tax Office, Palitana it was noticed in the case of a manufacturer in "Industrial Alcohol" that eligibility certificate was granted in May 1985 by the Industry Department for Rs.50 lakhs for sales tax deferment. The unit was subsequently declared as pioneer unit and Sales Tax deferment benefit for Rs.163.20 lakhs being 90 *per cent* of fixed capital investment of Rs.185.85 lakhs was sanctioned in September 1991 as against the admissible amount of Rs.60 lakhs (Rs.50 lakhs as per 'C' grade growth centre and Rs.10 lakhs for pioneer unit). This has resulted in excess deferment benefit of Rs.103.20 lakhs.

This was brought to the notice of the department in June 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(B) As per condition (iii) of condition (a) of Explanation appended to entry 118 and Annexure II appended to entry 175 of notification under Section 49(2) of the Gujarat Sales Tax Act, 1969 an industrial unit which has already obtained exemption benefit under entry 94 or entry 118 of the notification or has opted for the scheme of sales tax deferment specified in Government Resolution of May 1986 is not entitled to tax exemption benefit under entry 118 or 175 *ibid*.

During the course of test check of records of Sales Tax Office Himatnagar, Ankleshwar, Mehsana and Junagadh, it was noticed in the case of four specified manufacturers of dyes, chemicals, rubberised hose pipes and cement who had availed the benefit of tax exemption under entry 94 and 118 were also allowed tax exemption benefit under entry 175 of the said notification to the extent of Rs.26.42 lakhs which was irregular.

This was brought to the notice of the department between December 1993 and

April 1995. Relying on the executive instructions issued by Commissioner of Sales Tax *vide* their Public Circular dated 17.9.1990 clarifying the admissibility of second exemption for expansion the department did not accept the audit observation. The department's stand is not tenable as no concessions can be extended on the basis of executive instructions when the original notification did not provide the benefit of exemption. This also infringes a specific recommendation of the Public Accounts Committee (in its Tenth Report) that since there is no legal basis for concessions by executive instructions the practice should be discontinued forthwith.

The above cases were brought to the notice of the Government in May 1996; their reply has not been received (September 1996).

(C) According to Sales Tax Incentive Scheme, 1986 for industries, the units set up in eligible areas listed in Annexure 'A' to the Resolution of May 1986 of Industries, Mines and Energy Department are eligible to sales tax exemption. The Finance Department has also approved the scheme *vide* Resolution of June 1987. On 31 August 1987, the Industries, Mines and Energy Department amended the list of eligible areas adding GIDC Estate at Vapi for getting sales tax incentive only in respect of chemical and petrochemical units. Finance Department being controlling department has not so far amended the list of eligible areas accordingly.

During the course of audit of sales tax office at Vapi, it was noticed that in the case of 6 assessments of 4 manufacturers in P.V.C. tubings, packing materials, latex foam rubber, craft paper and duplex boards, for the periods between August 1988 and March 1992 (finalised between July 1992 and February 1993) the sales tax exemption benefit of Rs.23.81 lakhs was incorrectly allowed whereas the benefit was available only to chemical and petrochemical units.

This was brought to the notice of department in April 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(D) According to the Gujarat Sales Tax Act, 1969, and the Rules made thereunder any activity carried out in relation to any of the declared goods in any entry in Schedule II to the Act, as a result of which the resultant product is not taken out of the entry *ibid* is not a manufacturing process. Similarly any activity carried out in relation to goods specified in any entry in schedule I as a result of which the resultant product is not taken out from Schedule I is not a manufacturing activity. Industrial units carrying out such activities are not eligible for the sales tax exemption benefit under the entry *ibid*.

In the assessment of 5 dealers, the benefit of exemption of tax of Rs.20.17 lakhs was incorrectly granted to the dealers who were either not engaged in the activity of manufacturing process or were not eligible for the benefit, the details of which are as follows:

Sr. No.	Name of the office	Nature of business	Assessment period	Date of Assessment	Amount exempted (Rs. in lakhs)
1.	S.T.O Ankleshwar	Hides and skins	1987-88	20.3.91	14.56
2.	S.T.O. Valsad	C.I.Casting out of pig iron	1988-89	27.8.92	1.79
3.	S.T.O. Vapi	Changing the gauge of wire	S.Y.2043 (3.11.86 to 22.10.87)	13.11.92	2.92
4.	S.T.O. Valsad	Rice out of <i>dangar</i>	S.Y.2044 to 3/89 (23.10.87 to 3/89)	27.11.92	0.50
5.	S.T.O. Kadi	<i>Makai Pauva</i> out of <i>maize</i>	- do	30.4.92	0.40
				Total	20.17

This was brought to the notice of the department between March 1995 and June 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(E) According to provisions of entry 118 of notification issued under section 49(2) of the Gujarat Sales Tax Act, 1969, a specified manufacturer is allowed to avail the benefit of sales tax exemption for a specified amount for a specified period. The amount if any remaining unavailed at the end of the specified period lapses.

During the course of test check of records of Sales Tax Office, Ankleshwar it was noticed in the case of a manufacturer of bleaching powder, holding exemption certificate under entry 118 of notification issued under section 49(2) of the Gujarat Sales Tax Act, 1969, that for the assessment period 1.1.1988 to 31.3.1989 (finalised in January 1992) he was incorrectly allowed to avail of the unutilised balance of Rs.59,553 beyond the specified period. This has resulted in excess grant of exemption benefit of Rs.59,553.

This was brought to the notice of department in January 1994 and to the Government in May 1996; their reply has not been received (September 1996).

(F) According to the exemption scheme under entry 118 and 175 of notification issued under Section 49(2) of the Gujarat Sales Tax Act, 1969, the benefit of exemption from the payment of tax is admissible only in respect of certain products manufactured by industries for which eligibility certificate is obtained by the unit from Industries Department.

In the assessment of 4 dealers for the periods between July 1987 and March 1991 (finalised between December 1992 and March 1993), the benefit of exemption of tax of Rs.5.87 lakhs was incorrectly granted to the dealers in respect of the products which were not included in the eligibility certificate obtained by the unit, the details of which are as follows:

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Sr. No.	Name of office and No. of dealers	Assessment period	Date of assessment	Name of the product for which eligibility certificate was obtained	Name of the product for which exemption was given	Amount of exemption (Rupees in lakhs)
1.	Vapi (1 dealer)	(1) 7/87 to 3/89 (2) 1990-91	14.07.1992 8.10.1992	Man made fibre	Staple fibre waste	2.72
2.	Vijapur (2 dealers)	(1) SY 2044 (23 October 1987) to 3/89 1989-90 (2) 1990-91	27.03.1991 23.09.1991 14.12.1992	Monofilament yarn PVC pipes	<i>Nivar Patti</i> PVC Compound	1.88 0.38
3.	Godhra (1 dealer)	1989-90	31.3.1993	Tubings and films	HIL lines	0.89
Total						5.87

This was brought to the notice of the department between February 1994 and July 1995 and to the Government in May 1996; their reply has not been received (September 1996).

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

During the course of test check of records of Sales Tax Offices Godhra, Ankleshwar, Ahmedabad, Junagadh, Surendranagar and Prantij it was noticed in 6 assessments for the periods between 3 November 1986 and March 1992 (finalised between April 1990 and March 1993) relating to 6 manufacturers of mild steel (M.S.) wires, iron and steel, malleable castings, forgings and silicate, who were holding exemption certificate under entry 175 of notification, the benefit of purchasing iron and steel and soda ash valued at Rs.379.12 lakhs without payment of tax of Rs.15.66 lakhs had been allowed under another entry of Section 49 (2) of the Act. Thus the tax of Rs.15.66 lakhs payable by the dealers had not been adjusted from their tax exemption limit.

This was brought to the notice of the department between April 1993 and September 1995. The department while accepting the observation in two cases stated (February 1994 and 1995) that reassessment order has been passed raising additional demands of Rs.10.36 lakhs which was adjusted towards tax exemption ceiling limit. Reply in respect of other dealers has not been received (September 1996).

This was brought to the notice of the Government in May 1996; their reply has not been received (September 1996).

(H) According to condition 9 of the Annexure-I to entry 175 of the notification under

Section 49(2) of the Gujarat Sales Tax Act, 1969, the specified manufacturer is not entitled to deduction on sales made against any of the certificates under Section 12 or 13 or any of the entries of notification under Section 49(2) of the Act. As per Gujarat Sales Tax Tribunal's decisions dated 24.9.92 and 31.3.93, waste products and by products are also eligible for exemption.

During the course of test check of records of Sales Tax Office, Vapi it was noticed in three assessments for the periods between July 1987 and March 1993 (finalised in April 1994) relating to 3 manufacturers of HDPE fabrics, plastic extrusion machinery parts and copper tubes, who were holding exemption certificate under entry 175 of notification, the benefit of selling the manufactured goods as well as waste products valued at Rs.18.56 lakhs had been allowed on Form 19 without payment of tax. Thus the tax of Rs.2.64 lakhs payable by the dealers had not been adjusted from their tax exemption limit.

This was brought to the notice of the department in March 1995 and to the Government in May 1996; their reply has not been received (September 1996).

2.4 Non recovery of deferred tax

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

During the course of test check of records of Sales Tax Office it was noticed in the case of 8 units of Surendranagar and two of Bhavnagar, which were either closed or had stopped commercial production for a period exceeding twelve months during the tax deferment period, no action was taken to recover the deferred tax of Rs.45.06 lakhs including interest.

This was brought to the notice of the department in June 1995 and November 1995 and to the Government in May 1996; their reply has not been received (September 1996).

2.5 Irregular/Excess grant of set-off

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

(i) During the course of test check of records of five Sales Tax Offices it was noticed in the case of 5 dealers, for the assessment periods between 1985-86 to 1991-92, set-off of Rs.7.31 lakhs (including interest) was incorrectly granted on purchase of prohibited goods, the details of which are as under :

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Sr. No.	Name of the office	Period of Assessment	Goods on which set-off was granted	Nature of irregularity	Amount of set-off (Rs. in lakhs)
1.	Ankleshwar	1990-91 to 1991-92	P.V.10 (Polysobutylene) and heavy alkaline	Being petroleum products no set-off is admissible	4.51
2.	Ahmedabad	1988-89 to 1990-91	Zircon	Being prohibited goods no set-off is admissible	0.97
3	Ahmedabad	1990-91	Electric motors	Manufacturer of switch gear set-off given on electric motor is not admissible	0.86
4.	Ankleshwar	1991-92	Grinding wheels split. wire etc.	Machinery parts being prohibited goods no set-off is admissible	0.51
5.	Ahmedabad	1985-86 to 1988-89	Drug intermediate	Drug intermediate is chemical and prohibited goods. No set-off is admissible.	0.46
Total					7.31

This was brought to the notice of the department between February 1993 and June 1994 and to the Government in May 1996; their reply has not been received (September 1996).

(ii) In the case of four dealers, irregular grant of set-off resulted in short levy of tax of Rs.2.40 lakhs (including interest), the details of which are given below:

Sr. No.	Name of the office	Period of Assessment	Goods on which set off was granted	Nature of irregularity	Amount of set-off (Rs. in lakhs)
1	Anand	1989-90	Machinery parts viz. grinding wheels and aluminium sheets	On machinery parts set-off is admissible at 6% as against 12% allowed	0.77
2.	Ahmedabad	July 1984 to June 1985	Bearings	As per GST Tribunal's decision No. 1988-GST-B-23 bearings of electric motor fall under entry 16(II) of Schedule II A and set off is admissible at the rate of 6 per cent as against 10 per cent allowed.	0.71
3.	Navsari	3 Nov. 1986 to March 1988 1988-89	Aluminium extrusion	Set-off allowed at the rate of 12 % under entry 13 of Schedule III instead of under entry 27 of Schedule II A at the rate of 6 per cent	0.48
4.	Vapi	1989-90	Zinc waste	Set-off was allowed at the rate of 12 per cent instead of restricting it to 6 per cent.	0.44
Total					2.40

This was brought to the notice of the department between January 1994 and March 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(iii) According to the provisions of Rule 42 of Gujarat Sales Tax Rules, 1970, set-off arrived at should be reduced to the extent of 2 per cent of purchase price of the goods considered for grant of set-off.

During the course of test check of records of Sales Tax Office, Surat it was noticed in the case of a manufacturer for the period June 1986 to December 1988 (assessed in May 1990) set-off was allowed without making the statutory deduction of 2 per cent of purchase price from the set-off so arrived at. This resulted in excess grant of set-off of Rs.0.47 lakhs including interest.

This was brought to the notice of the department in September 1994 and to the Government in March 1996. The Government while accepting the audit observation stated (August 1996) that an amount of Rs.1.49 lakhs has since been recovered.

(iv) According to the provisions of Rule 42-E of the Gujarat Sales Tax Rules, 1970 set-off of purchase tax levied under section 15-B of the Gujarat sales Act, 1969, is admissible when the taxable goods manufactured are sold in the State of Gujarat. Unlike in Rule 42 and 44 of the Gujarat Sales Tax Rules, 1970, there is no provision in Rule 42-E to allow set-off if the taxable goods so manufactured are sold in the course of export out of territory of India. Thus in absence of provision in Rule 42-E set-off of purchase tax paid under Rule 15-B is not available if the manufactured goods are exported.

In 121 assessments of 68* dealers relating to periods between April 1986 and March 1992 (finalised between June 1991 and March 1993) it was noticed in 17 sales tax offices that, though the manufactured goods had been exported outside the territory of India, purchase tax levied under section 15-B was irregularly allowed as set-off under Rule 42-E of the Rules, resulting in irregular grant of set-off of Rs.501.07 lakhs including interest.

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

The above cases were brought to the notice of the department between January

* 18 of Ahmedabad, 10 of Baroda, 11 of Unjha, 4 of Petlad 3 each of Nadiad, Vapi, Surendranagar and Jamnagar 2 each of Himatnagar, Anand, Rajkot and Ankleshwar and one each of Bhavnagar, Kalol, Mahuwa, Palanpur and Sidhpur.

(23 STC-489) in the case of Godrej Soap.

Batliboi and Company Private Ltd. Vs. State of Maharashtra (47STC-321)

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

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1994 and February 1996 and to the Government in February and May 1996; their reply has not been received (September 1996).

2.6 Non-levy/short levy of purchase tax

(A) According to entry 172 of notification issued under section 49(2) of the Act the tax leviable on oil seeds is reduced to one *per cent* if the seeds are used in the manufacture of edible oil. Otherwise tax is leviable at the rate of 4 *per cent*. Further, according to the provisions of Section 19 B, oil seeds can be purchased or sold only on Form 24-B; otherwise tax is leviable.

In the assessment of three manufacturers of oil it was noticed that on the purchase of oil seeds valued at Rs. 610.30 lakhs purchase tax of Rs. 32.26 lakhs was found short levied as detailed below :-

Sr. No.	Name of the office	Period of assessment	Date of assessment	Amount of purchase (Rs.in lakhs)	Nature of irregularity	Amount of short levy (Rs.in lakhs)
1.	Gandhidham	10.9.1990 to March 1991	24.2.1993	520.22	Oil seeds purchased on 24 B were exported	30.68
2.	Rajkot	1989-90	27.1.91	77.34	51 <i>per cent</i> of ground nut purchased under entry 172 was utilised for making oil cake etc. viz. other than oil and hence PT at the rate of 4 <i>per cent</i> was leviable.	1.27
3.	Rajkot	1991-92	30.6.93	12.74	Castor seeds used in the manufacture of castor oil were levied to tax at the rate of 2 <i>per cent</i> instead of 4 <i>per cent</i> .	00.31
Total				610.30		32.26

This was brought to the notice of the department between June 1993 and October 1995. Department accepted the objection in one case at Sr. no.3 and stated that demand for Rs.49,208 has been raised (February 1996). In respect of remaining two cases, reply has not been received (September 1996).

This was brought to the notice of the Government in May 1996; their reply has not been received (September 1996).

(B) As per entry 66 of notification issued under Section 49(2) to the Act, the goods purchased on Form CC are to be exported. In the event of breach of recitals of condition of declaration purchase tax under Section 50 of GST Act, 1969, is leviable.

During the course of test check of records of Sales Tax Office, Gandhidham it was noticed in the assessment of two dealers for the periods SY 2042 (13 November 1985) to March 1990 (finalised between October 1989 and March 1993), the purchases of oil seeds on Form CC were used in the manufacture of Oil and Oil cakes. The Oil cakes were sold locally. For breach of recitals of Form CC on the purchases of Oil seeds valued at Rs.313.64 lakhs purchase tax of Rs.16.44 lakhs was leviable.

This was brought to the notice of the department between November 1992 and June 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(C) Under the Gujarat Sales Tax Act, 1969, a recognised dealer on production of certificate in Form 19, can purchase goods other than prohibited goods without payment of tax for use in the manufacture of taxable goods for sale. In the event of breach of conditions of the declaration, the dealer would be liable to pay purchase tax on the goods purchased under such certificate. Further, where a dealer who is liable to pay tax under the Act, purchases any taxable goods (not being declared goods) and uses these goods as raw or processing materials or consumable stores in the manufacture of taxable goods, purchase tax at the prescribed rates would be leviable in addition to any tax levied under other provisions of the Act. As per the Gujarat Sales Tax Rules, 1970, the purchase tax levied under the above provision of the Act would be refunded subject to the condition that the goods so manufactured are sold by the assessee in the state of Gujarat.

(i) During the course of test check of records of three Sales Tax Offices it was noticed in the assessments of 5 dealers (3 of Baroda, one each of Ahmedabad and Jamkhabalia) for the periods between July 1979 and March 1991 (finalised between September 1990 and February 1994) that dealers had purchased raw materials valued at Rs.61.65 lakhs against Form 19 without payment of tax. A portion of the manufactured goods were either branch transferred/consigned to branches or sold without payment of tax which was in contravention of the conditions of the declaration in Form 19. For breach of conditions, the dealers were liable to pay purchase tax of Rs.11.42 lakhs.

This was brought to the notice of the department between December 1993 and 1995; the department accepted the observation in one case involving an amount of Rs.0.46 lakhs. In respect of remaining cases department's reply has not been received (September 1996).

This was brought to the notice of the Government in May 1996; their reply has not been received (September 1996).

(ii) During the course of test check of records of Sales Tax Office it was noticed in the assessment of 4 dealers (2 of Baroda and 2 of Bhavnagar) for the periods between 3 November 1986 and March 1990 (finalised between July 1991 and February 1992) it was noticed that plastic granules valued at Rs.45.65 lakhs purchased on Form 19 were sold after colouring it. The process of colouring of plastic granules is not a manufacturing activity. Hence, for breach of conditions of the declaration of Form 19, the dealers were liable to pay purchase tax of Rs.4.11 lakhs.

This was brought to the notice of the department between February 1994 and August 1994 and to the Government in May 1996; their reply has not been received (September 1996).

(iii) During the course of test check of records of four Sales Tax Offices it was noticed in the assessment of 4 dealers (Ankleshwar, Baroda, Broach and Rajkot) for the periods between January 1986 and March 1990 (finalised between June 1990 and March 1993) purchases of raw materials valued at Rs.467.20 lakhs were used in the manufacture of taxable goods. Either entire or portion of the goods so manufactured were transferred to their branches but no purchase tax was levied. The purchase tax leviable worked out to

Rs.7.96 lakhs including interest.

This was brought to the notice of the department between October 1993 and March 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(D) According to entry 86 of notification under Section 49(2) of the GST Act, 1969, the iron and steel purchased on Form LL should be used in the manufacture of items described under entry 3 of Schedule IIA for sale within the State of Gujarat. In the event of breach of recitals of declaration purchase tax under section 50 of the Act is leviable.

During the course of test check of records of Sales Tax Offices at Ahmedabad and Bhavnagar it was noticed in the assessment of two dealers for the periods between April 1981 and March 1990 (finalised between September 1991 and January 1993) the iron and steel valued at Rs.25.71 lakhs purchased on Form LL were used in the manufacture of goods which were either transferred to their branches or the goods manufactured were not falling under entry 3 of Schedule IIA. For breach of recitals of declarations purchase tax of Rs.7.10 lakhs though leviable, was not levied.

This was brought to the notice of the department in March 1994 and August 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(E) As per the provisions of the Gujarat Sales Tax Act, 1969, a licenced dealer can purchase goods without payment of tax on form 17 B declaring *inter alia* that the goods so purchased will be resold. In the event of breach of the conditions of declaration the dealer is liable to pay purchase tax under the Act. Further, according to a decision of Gujarat High Court all three conditions laid down in section 2 (26) of the Gujarat Sales Tax Act, 1969, are to be satisfied and even if one of the conditions is not satisfied there would be no resale.

During the course of test check of records of Sales Tax Office, Patan it was noticed in the assessment from SY 2044 (23 October 1987) to March 1991 (finalised between December 1990 and 1991) of a manufacturer of *Kuria* (coarse powder or splits) purchased *rai*, *methi* and *sarsav* valued at Rs.84.12 lakhs on Form 17-B and used the same in the manufacture of *Kuria* which was sold. Since the conditions stipulated under section 2(26) of the Act were not fulfilled viz. the goods were not sold in the same form in which it was purchased, the dealer was liable to pay purchase tax of Rs.3.85 lakhs for breach of recitals of Form 17 B.

This was brought to the notice of the department between November 1993 and March 1994 and to the Government in May 1996; their reply has not been received (September 1996).

2.7 Incorrect classification of goods

According to the classification of goods, tax is leviable at different rates as laid down in the schedules to the Gujarat Sales Tax Act, 1969. However where goods are not covered under any of the schedules, general rate of tax applicable from time to time is leviable. Incorrect classification of the goods in 11 cases resulted in short levy of tax of Rs.108.47 lakhs, the details of which are given below. In addition, according to Section 45(6) of the Act, penalty not exceeding one and one half times the difference is also

leviable with effect from April 1990, if the difference exceeds 25 per cent of the tax paid.

Sr. No.	Name of office	Period of assessment	Name of the commodity and nature of irregularity	Amount of turn-over (Rs. in lakhs)	Rate of tax leviable (%)	Rate of tax levied (%)	Amount (Rs. in lakhs)
1.	Broach	1988-89	Semi finished forged rings and rolled rings bearings manufactured as per the specifications of purchaser were incorrectly levied to tax as an item of iron and steel instead of levying tax under general entry.	714.00	12	4	71.57
2.	Vapi	July, 1987 to March, 1989	As per entry 36 of notification issued under section 49(2) of the Act tax is leviable at concessional rate on spare parts of machinery. Parts of spare parts of Textile machinery viz. Aprons and Coats of spinning frames were levied to tax at concessional rate instead of levying tax under general entry.	56.61	12	5 & 6	7.84
3.	Vapi	Jan., 1988 to March, 1990	As per Tribunal's decision (83-3-185 & 82.2-444) Drawing Boards and Set squares were leviable to tax under general entry but were allowed tax free.	37.36	12	Nil	6.60
4.	Vapi	June, 1986 to May, 1987	As per entry 99 of notification issued under section 49(2) of the Act. Synthetic Diamond Powder is exempted from tax but sale of synthetic diamond polishing powder was allowed tax free instead of levying tax under general entry.	19.59	12	Nil	5.56
5.	Baroda	1990-91 to 1992-93	Sewing machine not fitted with electric motor was leviable to tax at concessional rate and fitted with electric motor under general entry. Since the dealer was showing sewing machine and electric motor separately in the invoices tax was incorrectly levied at concessional rate.	16.75	12 & 14	5	4.33
6.	District Div. I Ahmedabad	1986-87	Screen printing machinery considered as machinery used in the manufacture of goods instead of levying tax under general entry.	34.24	11	4	3.93
7.	Ankleshwar	Sep. 1988 to Apr. 1991	PVC Rigid Textile Stick, although not included in entry 12 of schedule II A of the Act, was levied to tax as packing material instead of levying tax as plastic material.	27.04	10	5	3.26
8.	Divn. VIII Baroda	Jan. 1987 to March, 1989	Sales of Control panels, Distribution boards, relay panels etc. were levied to tax as parts of electric motors instead of levying tax as parts of transformers and switch gears	42.73	8	5 & 6	2.52
9.	Vis-nagar	1989-90 to 1990-91	Machinery used for cutting, polishing and reshaping of diamonds considered as machinery used in the manufacture of goods instead of levying tax under general entry.	21.68	12	6	1.28
10.	Rajkot	June 1991 to May 1992	Clamps were levied to tax as an item of iron and steel falling under entry 3 of Schedule II A of the Act instead of levying tax under general entry.	10.17	12 & 14	4	1.19
11.	Dist. Divn. I Ahmedabad	23 Oct. 1984 to March, 1989	Wooden grills for air coolers were levied to tax as per entry 69 of schedule II A of the Act applicable to Air condition plant instead of levying tax as per entry 92 of Schedule II A.	4.71	15	10	0.39
Total							108.47

These cases were brought to the notice of the department between February 1993 and October 1995. The department while accepting audit observations in three cases

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(Broach, Baroda and Rajkot) stated (between February 1995 and August 1995) that *suo motu* revision orders were passed and demand of Rs.158.90 lakhs including interest upto the date of demand and penalty had been raised. Reply in remaining cases has not been received (September 1996).

The matter was brought to the notice of the Government between February 1996 and May 1996; their reply has not been received (September 1996).

2.8 Short levy of Central Sales Tax

According to Sections 8(1) and 8(4) of Central Sales Tax Act, 1956, production of 'C' form is mandatory for availing the benefit of concessional rate of tax of 4 per cent or at the lower rate if a notification issued under Section 8(5) of the said Act provides so. In the event of failure to produce 'C' forms, tax shall be levied at the rates specified in Section 8(2) *ibid*. As per Rule 12(3) of the Central Rules in the event of 'C' form is lost or destroyed, a duplicate 'C' form may be produced.

Table below shows the cases noticed by Audit between July 1991 and January 1994 wherein concessional rates were charged though not admissible. This resulted in short levy of tax of Rs.28.27 lakhs.

Sr. No.	Name of the office	Period of assessment Date of assessment	Brief particulars of the case	Tax effect (Rs. in lakhs)
1.	Kadi	<u>1990-91, 1991-92</u> 31.3.1993	In the assessment for the period 1990 to 1992 no 'C' forms could be produced in support of inter-state sales of Rs.163.71 lakhs as 'C' forms were destroyed in fire. Dealer could not obtain duplicate forms and produce them. However the sales were taxed at the concessional rate of 4 per cent.	24.38
2.	Ahmedabad	<u>1986-87</u> 5.6.1989	As per notification issued under section 8(5) of Central Act inter state sales of vegetable non-essential oil manufactured in Gujarat State is leviable to tax at 1 per cent on form 'C'. In the assessment, palm and rice bran oil purchased from other states and sold in inter state sales were levied to tax at the rate of 1 per cent instead of 4 per cent.	1.12
3.	Ahmedabad	<u>SY 2041(25 October 1984 to 12 Nov. 1985)</u> 16-8-1988	No demand was issued against net dues of Rs.40,939 under CST and excess of Rs.41898 under GST was incorrectly refunded.	0.90
4.	Ahmedabad	<u>SY 2043 (3 Nov. 1986 to 22 October, 1987)</u> 21-3-90	As per notification issued under section 8(5) of Central Act detergent powder attracts tax at 1 per cent when supported by 'C' forms. In the assessment, inter-state sales of detergent powder valued at Rs.5.64 lakhs not supported by 'C' forms were levied at 1 per cent instead of at 10 per cent.	0.79
5.	Dn.III Rajkot	<u>1990-91</u> 10.4.1992	Single 'C' forms cannot cover transactions exceeding Rs.25,000 made on different dates. A single 'C' form covered transactions of different dates for Rs.4.95 lakhs.	0.68
6.	Baroda	<u>1.10.86 to 31.3.89</u> 27.5.92	Since the sales of the dealer were Rs.17,52,708 which exceeded Rs.5,00,000 the assessment done under section 41 (2) of GST Act, 1969, was not correct. Tax was incorrectly levied at the rate of 4 per cent on Inter state sales without 'C' forms.	0.40
Total				28.27

This was brought to the notice of the department between February 1993 and June 1995. Department accepted the audit observation in two cases involving an amount of Rs.1.99 lakhs. In respect of the remaining cases reply has not been received (September 1996).

The above cases were brought to the notice of the Government in May 1996; their reply has not been received (September 1996).

2.9 Incorrect allowance of deduction

(A) Under Section 13 of Gujarat Sales Tax Act, 1969 and as per different notifications issued under Section 49(2) of the Act, goods are allowed to be sold without payment of tax subject to satisfaction of conditions laid down therein.

In the assessment of 4 dealers for the periods between SY 2044 (from 23 October 1987 and March 1991) (finalised between May 1991 and July 1992) sales valued at Rs.167.64 lakhs were incorrectly deducted from the taxable turnover, resulting in short levy of tax of Rs.10.44 lakhs (including interest), the details of which are as follows:

Sr. No.	Name of the office	Period of <u>assessment</u> Date of assessment	Amount of sales turnover (Rs. in lakhs)	Name of the commodity	Nature of irregularity	Amount (Rs. in lakhs)
1.	Rajkot	<u>1990-91</u> 3.7.1992	124.15	Oil seeds	Oil seeds can be sold without payment of tax only on Form 24.B according to section 19 B of GST Act 1969. Sale of oil seeds on Form 17-B was incorrectly allowed to be deducted from the taxable turnover.	5.94
2.	Ahmedabad	Jan.,1988 to <u>March,1989</u> 29-8-92	24.83	Rapseed oil	As per entry 107 of notification under section 49(2) of the Act sale of imported oil (donated by U.S.A./ Canada) by NDDDB directly or through a registered dealer of Gujarat is exempted. Oil purchased from other states were allowed tax free on its sale.	2.23
3.	Bharuch	SY 2044 (23 Oct. 1987 to <u>March, 1989</u> 27-05-91	15.75	Hides & skin	Hides and skin purchased from a specified manufacturer, under entry 119 of notification under section 49(2) of the Act, when sold to a registered dealer is exempt. Such goods sold outside the state were incorrectly allowed tax free.	1.87
4.	Ahmedabad	July 1987 to March, <u>1989</u> 4-6-1992	2.90	Boiler	Raw material, processing material and consumable stores are only allowed tax free on Form I under entry 118 of notification under section 49(2) of the Act. Boiler sold on Form I was incorrectly allowed tax free.	0.40
Total						10.44

This was brought to the notice of the department between January 1994 and July 1995. The department accepted the observation in respect of item at Sr. No.4 above and

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re-assessment order was passed (March 1995). Reply for the remaining cases has not been received (September 1996).

This was reported to the Government in May 1996; their reply has not been received (September 1996).

(B) According to Section 5 of the Gujarat Sales Tax Act, 1969, the sales and purchases of certain goods specified in Schedule-I to the Act are free from all taxes. Such sales and purchases are deducted from the gross turnover to compute taxable turnover.

In the assessment of 4 dealers for the assessment periods between April 1985 and March 1991 (finalised between March 1992 and July 1992) sales of goods valued at Rs.70.49 lakhs were incorrectly allowed as deduction under Section 5 of the Act from sales turnover though such sales were liable to be taxed. This has resulted in non-levy of tax of Rs.10.46 lakhs including interest, the details of which are given below:

Sr. No.	Name of the office	Period of assessment	Date of assessment	Item of goods sold	Value of goods sold (Rs. in lakhs)	Nature of irregularity	Amount (Rupees in lakhs)
1.	Bulsar	23 October 1987 to March 1989	20.4.1992	Agricultural	28.20	Agricultural plastic tank attached to agricultural sprayer which is leviable to tax under Entry 98 of schedule II-A as per section 62 determination No.91/92-3-274-D.	4.91
2.	Ahmedabad	1985-86 to 1986-87	31.3.1992 to 29.7.92	Rubber belting	29.54	As per Gujarat Sales Tax Tribunal's decision No.75-2-185 and 78-2-327-D the item is machinery parts and falls under entry 13 of schedule III with benefit of entry 36 of S/49(2).	4.49
3.	Anand	Jan.,1988 to December 1988	30.5.1992	Skimmed milk	6.65	As per entry 80 of notification under section 49(2) of GST Act. skimmed milk powder is leviable to tax at the rate of 4 per cent.	0.63
4.	Ahmedabad	1989-90 to 1990-91	5.5.1992 to 6.6.1992	Camel fountain pen ink	6.10	As per section 62 determination dt.25.7.81 liable to tax under entry 104 of schedule II A.	0.43
Total					70.49		10.46

This was brought to the notice of the department in March 1995 and December 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(C) Under Gujarat Sales Tax Act, 1969, sale of prohibited goods against declaration in Form 19 is not permissible.

During the course of test check of records of Sales Tax Offices it was noticed in the assessment of 4 dealers for the assessment periods between 13 November 1985 and March 1991 (finalised between October 1989 and October 1993) sales of prohibited goods valued at Rs.36.55 lakhs made against declarations in Form 19 were allowed as deduction from the sales turnover though such sales were liable to be taxed. Tax not levied amounted to Rs.3.69 lakhs, the details of which are given below:

Sr. No.	Name of the office	Period of assessment	Date of assessment	Item of goods sold	Sales turnover	Amount of tax (Including interest)
(Rs. in lakhs)						
1.	Ahmedabad	13 Nov.1985 to Oct. 1987	27.10.1989	Drug intermediate	23.64	2.11
2.	Jamnagar	1990-91	23.12.1992	Cable glands Transformer parts.	5.25	0.71
3.	Ahmedabad	Jan. 1987 to December 1987	18.10.1993	G.M.Castings	1.68	0.50
4.	Baroda	Jan. 1988 to March 1989	30.8.1993	Perforated steel sheets	5.98	0.37
Total					36.55	3.69

This was brought to the notice of the department between February 1993 and December 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(D) It has been judicially held that[@] surgical cotton is a medicine covered by entry 26(1) of Schedule II-A to the Gujarat Sales Tax Act, 1969.

At Kalol, in the case of a manufacturer of surgical cotton, holding licence under Drugs and Cosmetics Act it was noticed in the assessment for the period July 1985 to June 1987 (finalised in March 1993) the sales of surgical cotton was allowed as resale without levying any tax, since the dealer had obtained a determination to the effect that his process of conversion of raw cotton into surgical cotton is not an activity of manufacture. Tax of Rs.1.04 lakhs paid by the dealer was refunded. As the resultant product viz. surgical cotton falls under different entry 26(1) of Schedule II-A, the sale is liable to be taxed at the rate of 6 per cent. Incorrect grant of refund has resulted in short levy of tax of Rs.1.04 lakhs.

This was brought to the notice of the department in June 1995 and to the Government in May 1996; their reply has not been received (September 1996).

2.10 Application of incorrect rate of tax

According to Gujarat Sales Tax Act, 1969, tax is leviable at the rate prescribed in the schedules to the Act. However, where goods are not covered under any of the schedules, general rate of tax applicable from time to time is leviable. Application of incorrect rate of tax in the case of 8 dealers resulted in short levy of tax of Rs.16.68 lakhs (including interest), details of which are given below:

Sr. No.	Name of the office	Period of assessment	Amount of turnover (Rs. in lakhs)	Reference to schedule and rate at which taxable	Rate at which actually subjected to tax	Amount (Rs. in lakhs)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Division-V vadodara	1989-90 to 1991-92	108.82	Entry 13 of schedule III 14.4 per cent	6 per cent	12.03
2	Division-V Ahmedabad	July 1987 to March, 1989	30.84	Entry 113 of schedule II A 8 per cent	6 per cent	1.42

[@] According to the High Court decision given in the case of M/s.Fairdeal Corporation Ltd. (13-STC-750) and Shri Ram Products (52-STC-187)

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(1)	(2)	(3)	(4)	(5)	(6)	(7)
3	Baroda	5 November 1983 to 24 October 1984	11.63	Entry 41 of schedule II A 10 per cent	6 per cent	0.94
4	Baroda	1990-91	21.39	Entry 26(1) of schedule II A 6 per cent	4 per cent	0.71
5	Division I Ahmedabad	23 October 1987 March, 1989	3.70	Entry 136(ii) of Section 49(2) of the Act 8 per cent	3 per cent	0.45
6	Division II Ahmedabad	1989-90	4.51	Entry 136 (I) of Section 49(2) of the Act 8 per cent	3 per cent	0.40
7	Vapi	23 Oct. 1987 to March 1989	7.96	Entry 41 of Schedule IIA 12 per cent	10 per cent	0.39
8	Junagadh	23 Oct. 1987 to March 1991	19.22	Entry 9 A of schedule II A read with entry 183 of section 49(2) 5 per cent	4 per cent	0.34
					Total	16.68

This was brought to the notice of the department between April 1994 and December 1995. The department accepted the audit observation in one case involving an amount of Rs.37780. In respect of the remaining seven cases reply has not been received (September 1996).

The matter was brought to the notice of the Government in April 1996; their reply has not been received (September 1996).

2.11 Short levy of turnover tax due to incorrect computation of permissible deduction

Under the provisions of Gujarat Sales Tax Act, 1969, with effect from 6 August 1988 where the turnover of either of all sales or of all purchases made by any dealer exceeds Rs.99,99,999 in any year, a turnover tax is to be levied on the total turnover of sales of specified goods after allowing permissible deductions under the Act. With effect from 1 August 1990, the provision was amended to charge turnover tax on taxable turnover of sales. Further, if any dealer has changed the year of accounts and adopted a transitional accounting year, the liability to turnover tax was to be calculated on a proportionate basis for the transitional period of assessment involving a period of more than 12 months. Turnover tax is leviable at the rate applicable to different slabs of turnover given in the Act.

(i) During the course of test check of records of 12 Sales Tax Officers it was noticed that in 87 assessments of 76 dealers^{\$} relating to the periods between May 1987 and March 1990 and finalised between June 1991 and March 1994, turnover tax was levied on net turnover of sales after reducing the amount of Sales Tax which resulted in short levy of turnover tax of Rs.137.44 lakhs.

These cases were brought to the notice of the department between January 1994 and December 1995. The Department did not agree with the audit observations and stated that deduction of sales tax was permitted as per the Departmental Circular of 5 August 1988. Reply is not tenable as the amendment of August 1990 provided that

^{\$} (42 of Ahmedabad, 14 of Baroda, 5 of Surat, 4 of Rajkot, 3 of Ankleshwar, 2 of Bhavnagar and 1 each of Mehsana, Vapi, Valsad, Bhuj, Jamkhabalia and Surendranagar)

turnover of sales should include sales tax.

The matter was brought to the notice of the Government in May 1996; their reply has not been received (September 1996).

(ii) In the assessments of 31 dealers for the periods between April 1987 and March 1992 (finalised between February 1990 and March 1993) it was noticed that though the dealers were liable to pay turnover tax of Rs.55.56 lakhs (including interest), the tax was either not levied or short levied as under :

Sr. No.	Location and number of dealers	Period of assessment	Date of assessment	Taxable turnover (Rs. in lakhs)	Nature of irregularity	Amount (Rs. in lakhs)
1.	11 dealers (6 of Ahmedabad, 2 of Upleta and 1 each of Vapi, Jamnagar and Mehsana)	Between 23 October 1987 and August, 1991	Between February, 1990 and June, 1993	2881.18	Turnover tax was levied short due to application of incorrect rate of tax.	37.07
2.	11 dealers (6 of Unjha 1 each of Rajkot, Mehsana, Surendrangar Porbandar and Ahmedabad)	Between April 1987 and March, 1992	Between October, 1991 and March, 1993	1135.95	No turnover tax was levied although leviable due to incorrect computation of taxable turnover.	11.58
3.	5 dealers (4 of Ahmedabad and 1 of Mehsana)	Between July, 1987 and March, 1989	Between March, 1990 August, 1992	809.04	In respect of transitional year involving more than 12 months due to switch over to financial year by the dealer the tax was either not levied or levied short due to application of incorrect lower rate.	4.17
4.	4 dealers (2 of Rajkot 1 each of Ahmedabad and Himatnagar)	1990-91	Between October 1991 and September 1992	302.36	Sales of oil cakes made on form 24 A was allowed as deduction although there is no provision under Section 10 A of GST Act, 1969 resulting in either non-levy or short levy of turnover tax.	2.74
					Total	55.56

The cases were brought to the notice of the department between February 1993 and December 1995 and to the Government in May 1996; their reply has not been received (September 1996).

2.12 Non-Levy of additional tax

Under the Gujarat Sales Tax Act, 1969, an additional tax was leviable upto March 1992 on the sales and purchases of goods leviable to tax under the Sales Tax Act at the appropriate rate on the Sales Tax, General Sales Tax or Purchase tax.

In the assessment of 3 dealers, additional tax was either not levied or short levied. This resulted in short levy of additional tax of Rs.6.94 lakhs (including interest) as detailed below:

Sr. No.	Name of the office	Period of assessment	Date of assessment	Amount of short levy including interest (Rupees in lakhs)
1.	Ahmedabad	7.1.1991 to 31.3.1992	23.11.1992	5.98
2.	Modasa	1989-90	18.10.1991	0.62
3.	Ahmedabad	1.1.1988 to 31.3.1989	29.08.1992	0.34
Total				6.94

This was brought to the notice of the department between June 1995 and December 1995. Department accepted the observation in the case of Modasa and raised an additional demand of Rs.2.01 lakhs. This includes purchase tax leviable at the differential rate on Form 20 purchases since the same was also found short levied. Reply has not been received in respect of remaining cases (September 1996).

This was reported to the Government in May 1996; their reply has not been received (September 1996).

2.13 Short levy of tax due to computation mistake

(i) During the course of test check of records of Sales Tax Office, Ahmedabad it was noticed (July 1993) in the case of a reseller in electrical goods for the assessment period November 1987 to March 1989, that though tax leviable worked out to Rs.24.03 lakhs, tax of Rs.23.03 lakhs only had been levied resulting in short levy of tax of Rs.1 lakh. In addition the dealer was also liable to pay additional tax of Rs.25,000 and interest of Rs.82,500.

This was brought to the notice of the department in June 1995 and to the Government in February 1996; their reply has not been received (September 1996).

(ii) During the course of test check of records of Sales Tax Office, Baroda it was noticed (March 1994) in the case of a dealer running a boarding house for the assessment period April 1990 to March 1991, that though tax leviable actually worked out to Rs.3.30 lakhs, tax of Rs.2.87 lakhs had only been levied resulting in short levy of tax of Rs.85,822 (including interest of Rs.42622).

This was brought to the notice of the department (March 1994). They accepted the audit observation and stated that demand has been raised for additional amount. Further reply regarding details of recovery has not been received (September 1996).

This was brought to the notice of the Government in February 1996; their reply has not been received (September 1996).

2.14 Non-levy of tax on specified sales

(i) According to the Gujarat Sales Act, 1969, charges received in consideration for transferring the right to use any goods specified in Schedule IV to the Act attract levy of tax at the prescribed rate. Electric Meters are electrical goods and tax leviable on specified sale of the same is 4 per cent.

During the course of test check of records of Sales Tax Office, Baroda it was noticed in the case of a local body engaged in distribution of electricity, during August 1985 to May 1988 (finalised between March 1989 and August 1990) tax was not levied on rent of Rs.107.96 lakhs on electric meters recovered from the consumers. This resulted in underassessment of tax amounting to Rs.4.93 lakhs. Non-payment of tax would also attract payment of interest under Section 47(4-A) of the Act *ibid*.

The omission was pointed out to the department in November 1992 and to the Government in May 1996; their reply has not been received (September 1996).

(ii) As per Public Circular No.303 dated 3.12.85, if a movable property attached with immovable property is given on hire and their value has been shown separately and Stamp duty is levied on immovable property alone, then sales tax is payable on rent received on hire charges of movable property at the rates specified in Schedule IV.

In the case of two dealers, for the assessment periods between July 1986 and December 1989 sales tax of Rs.96,775 including interest of Rs.15,317 was not levied on specified sales, details of which are as under:

Sr. No.	Name of the office	Period of assessment	Date of assessment	Goods on which tax not levied	Rent received (In rupees)	Amount
1.	S.T.O., District Division I, Ahmedabad	7/86 to 12/89	25.09.92	Cold storage of plant	618185	62312
2.	S.T.O., Division VII, Surat	7/86 to 6/87	16.10.90	Machinery	478638	34463
					Total	96775

This was brought to the notice of the department in March 1994 and June 1995 and to the Government in May 1996; their reply has not been received (September 1996).

2.15 Incorrect remission of interest

Consequent upon implementation of provision of composition of tax under Section 55-A of the Gujarat Sales Tax Act, 1969 retrospectively from 5 August 1988, the department issued instructions on 6 August 1992 stating that in cases where a works contractor pays full amount of composition of tax payable by him on or before 30 June 1991, interest leviable on this amount from 5 August 1988 to 31 December 1990 is to be waived.

During the course of test check of records of Sales Tax Office, Ahmedabad it was noticed in the case of a works contractor who had opted for composition scheme had paid an amount of Rs.9.49 lakhs on 5 April 1991 being composition of tax for the period from 14 October 1987 to 31 March 1990. In the assessment the entire amount of

interest worked out upto 5 April 1991 was waived instead of restricting the remission to the extent of interest leviable upto 31 December 1990. This resulted in excess remission of interest of Rs.56,941 leviable from 1 January 1991 to 5 April 1991.

This was brought to the notice of the department in July 1995 and to the Government in February 1996; their reply has not been received (September 1996).

2.16 Non-levy/Short levy of penalty

As per the provisions of section 45(6) of the Gujarat Sales Tax Act, 1969, where in the case of a dealer, if the amount of tax assessed or re-assessed exceeds the amount of tax paid by more than 25 *per cent*, penalty at the slab rates as enumerated in the Commissioner of Sales Tax's Circular No.273 dated 30.6.1992 would become leviable.

In 71 assessments of 58 dealers* relating to periods between April 1990 and January 1994 (finalised between June 1992 and March 1994) it was noticed that although the difference between the tax assessed and tax paid with the returns exceeded 25 *per cent*, no penalty under section 45 (6) of the Act *ibid* was levied. This resulted in non-levy/short levy of penalty of Rs.272.42 lakhs.

This was brought to the notice of the department between December 1994 and December 1995. The department accepted the audit observation in 5 cases involving an amount of Rs.2.07 lakhs. In respect of remaining cases reply has not been received (September 1996).

The matter was brought to the notice of the Government in May 1996; their reply has not been received (September 1996).

2.17 Non-levy/short levy of interest

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

In 11 assessments of 10 dealers for the assessment periods between July 1977 and 1991-92 (finalised between November 1988 and February 1994) interest amounting to Rs.7.86 lakhs was either not levied or was short levied on the amount of tax due and remained unpaid on finalisation of the assessments.

This was brought to the notice of the department between October 1993 and December 1995. The department accepted the audit observation in two cases involving an amount of Rs.1.30 lakhs. In respect of the remaining 8 cases reply has not been received (September 1996).

The matter was brought to the notice of the Government in May 1996; their reply has not been received (September 1996).

(ii) Under The Gujarat Sales Tax Act, 1969 and the Rules made thereunder, every dealer, whose total amount of tax payable in the previous year is not less than Rs.25,000, is required to make monthly payments of tax for the first two months of every quarter in

*(20 of Ahmedabad, 12 of Baroda, 11 of Unjha, 7 of Mehsana, 5 of Surat, 2 of Rajkot and 1 of Bhavnagar)

the current year. If the assessee fails to make monthly payments within the prescribed time, interest at the rate of 24 *per cent* per annum is to be levied on the amount of tax not so paid. As per section 9(2) of the Central Sales Tax Act, 1956, provisions relating to advance payment of tax, levy of penalty and interest under the local Act are also applicable to assessments under the Central Act as judicially held.[#]

In 17 assessments of 11 dealers for the assessment periods between 1978 and 1991-92 (finalised between June 1991 and January 1994), it was noticed that the tax paid by the dealers under the Central Sales Tax Act was above Rs.25,000, but they did not make the monthly payments. For non-payment of tax in time, interest of Rs.7.97 lakhs, though chargeable was not charged.

This was brought to the notice of the department between March 1994 and December 1995. The department did not accept the audit point and stated that liability to pay tax monthly in central assessment arises only if tax paid by the assessee under the local Act is not less than Rs.25,000. They also argued that, the quantum of tax payable under the local Act decides the tax liability and the tax payable under the Central Act is not relevant.

The contention of the department runs counter to the aforesaid decision of the Gujarat Sales Tax Tribunal and Section 9(2) of the Central Sales Tax Act and is, therefore, not acceptable.

The matter was brought to the notice of the Government in May 1996; their reply has not been received (September 1996).

[#] In the case of *M/s.Shanti Moulding Works Vs The State of Gujarat* (GSTB 1985) dated 15.1.1993 and in the case of *State Trading Corporation* by the Gujarat Sales Tax Tribunal.

Chapter - 3

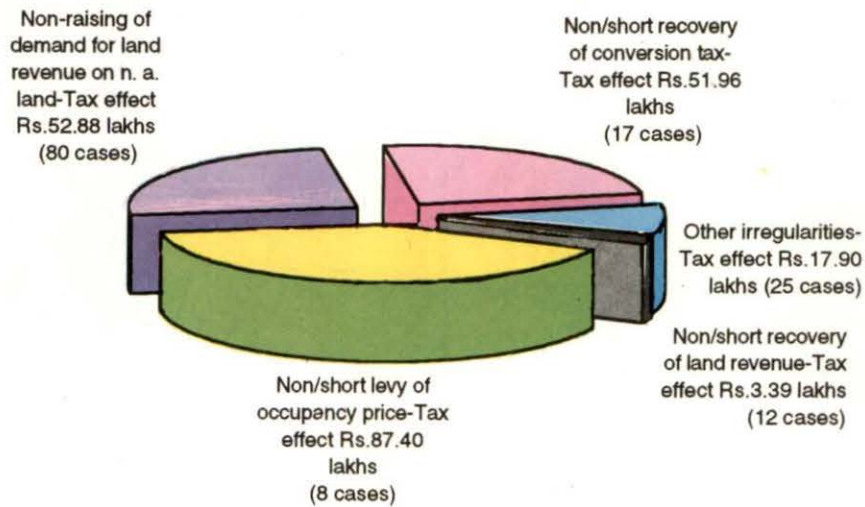
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Land Revenue

LAND REVENUE

3.1 Results of Audit

Test check of Land Revenue records in the office of the District Development Officers, Taluka Development Officers and District Inspector of Land Records, conducted in audit during 1995-96, disclosed short recovery and losses of revenue amounting to Rs.213.53 lakhs in 142 cases. These cases broadly fall under the following categories:



Total cases 142 - Tax effect Rs. 213.53 lakhs

During 1995-96, the department accepted under assessments etc. of Rs.126.32 lakhs in 161 cases. Out of these 6 cases involving Rs.0.87 lakh were pointed out during 1995-96 and the rest in the earlier years. A few illustrative cases involving revenue of Rs.96.70 lakhs highlighting important observations are given in the following paragraphs.

3.2 Short recovery or non-recovery of Conversion tax

Under the Bombay Land Revenue Code, 1879 as applicable to Gujarat, conversion tax is payable on change in mode of use of the land from agricultural to non-agricultural purposes or from one non-agricultural purpose to another in respect of land situated in city or town, including peripheral areas falling within one to five kilometres. Different rates of conversion tax are prescribed for residential, industrial and commercial/other uses depending upon the population of the city or town. In case of Corporations and Boards etc. no formal non-agricultural permission is necessary and conversion tax is leviable in the year in which land is acquired.

(a) In cases of Jamnagar, Dehgam (District Ahmedabad), Vadodara, Gondal and Dhoraji (District Rajkot), Khambhat and Nadiad (District Kheda) it was noticed between October 1993 and December 1994 that conversion tax though leviable was not levied. This resulted in non-recovery of conversion tax amounting to Rs.29.56 lakhs in 12 cases as detailed in the table below:-

Sr. No.	Name of Taluka	No. of cases	Area of land (In sq. mts.)	Short levy (Rs. in lakhs)	Remarks
1.	Jamnagar	4	263142	14.26	No conversion tax was levied on the land falling in the peripheral area of Jamnagar city.
2.	Dehgam (Dist. Ahmedabad)	2	883916	7.33	Conversion tax was not levied on the land allotted to two corporations.
3.	Vadodara	2	40751	4.23	No conversion tax was levied on the land allotted to Gujarat Refinery and Gujarat Industrial Research Development Agency.
4.	Dhoraji (Dist. Rajkot)	1	223111	1.12	No conversion tax was levied on the land allotted to GIDC falling within the peripheral area of Dhoraji.
5.	Gondal (Dist. Rajkot)	1	196160	0.98	Conversion tax was not levied on the land allotted to GIDC within the peripheral area of Gondal.
6.	Khambhat (District Kheda)	1	123546	1.24	Conversion tax was not levied on the land allotted to GIDC within the peripheral area of Khambhat.
7.	Nadiad (District Kheda)	1	40165	0.40	Conversion tax was not levied on the land allotted to Gujarat State Road Transport Corporation.
Total		12	1770791	29.56	

The above cases were brought to the notice of the department between December 1993 and April 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(b) Similarly it was noticed in five Talukas between August 1993 and December 1994 that conversion tax was not levied at correct rates. This resulted in short recovery of conversion tax amounting to Rs.4.20 lakhs as detailed in the table below:

Sr. No.	Name of Taluka	Number of cases	Area of land (In sq. mts)	Short levy (Rs. in lakhs)	Remarks
1.	Ahmedabad	4	34453	1.35	Conversion tax was levied at lower rate.
2.	Navsari	27	405692	1.11	Conversion tax was not recovered as per census of 1981.
3.	Mehsana	14	100993	0.90	Conversion tax was not recovered at revised rates.
4.	Himatnagar	1	71529	0.49	Conversion tax was not recovered as per census of 1991.
5.	Amreli	3	54633	0.35	Conversion tax was recovered at lower rate.
Total		49	667300	4.20	

The above cases were pointed out to the department between October 1993 and February 1995 and to the Government in May 1996; their reply has not been received (September 1996).

3.3 Application of incorrect rates of non-agricultural assessment

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

Different rates of non-agricultural assessments are fixed under the rules for different classes of land depending upon the use of the land. Government revised the rates of non-agricultural assessment with retrospective effect from 1 August 1976, by the notification issued in January 1978, which were further revised from 1 August 1989 by another notification issued in April 1992. In addition to land revenue, local fund cess and education cess at the prescribed rates are also leviable.

(a) In 12 talukas it was noticed (May 1993 to April 1995) that in 164 cases on the land measuring 93.98 lakhs square mts. the non-agricultural assessment continued to be levied at the pre-revised rates. This resulted in short levy of revenue amounting to Rs.31.34 lakhs for the period 1976-77 to 1993-94 as detailed below:

Sr. No.	Name of place	No. of cases	Period	Area of land (Sq.mts in lakhs)	Amount short levied (Rs. in lakhs)
1.	Vadodara	3	1976-77 to 1992-93	33.56	18.66
2.	Waghodia	1	1989-90 to 1992-93	28.71	5.94
3.	Shihor (Dist. Bhavnagar)	29	1989-90 to 1992-93	5.55	1.03
4.	Choryasi (Dist. Surat)	33	1976-77 to 1992-93	2.52	1.05
5.	Nadiad (Dist. Kheda)	10	1989-90 to 1993-94	5.32	0.94
6.	Kalol (Dist. Mehsana)	3	1976-77 to 1992-93	1.64	0.89
7.	Khedbrahma (Dist. Himatnagar)	16	1989-90 to 1993-94	3.54	0.61
8.	Dhari (Dist. Amreli)	27	1989-90 to 1993-94	3.53	0.58
9.	Navsari (Dist. Bular)	19	1976-77 to 1993-94	1.55	0.56
10.	Dholka (Dist. Ahmedabad)	1	1981-82 to 1992-93	2.28	0.44
11.	Kalavad (Dist. Jamnagar)	12	1989-90 to 1993-94	2.18	0.33
12.	Vyara (Dist. Surat)	10	1989-90 to 1992-93	3.60	0.31
	Total	164		93.98	31.34

The above cases were reported to the department between July 1993 and May 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(b) According to 1981 and 1991 census Wankaner, Movaiya (District Rajkot) and Kunkavav (District Amreli) towns were upgraded. It was noticed in audit that in 45 cases non-agricultural assessment on land measuring 12.63 lakhs sq.mts was continued to be made at the rates applicable prior to up-grading of town/village. This resulted in short levy of Rs.1.63 lakhs for the period 1981-82 to 1993-94.

The above cases were reported to the department between December 1993 and March 1995 followed by reminders in November 1994, March 1995 and September 1995; their reply has not been received (September 1996).

The above cases were reported to the Government in May 1996, their reply has not been received (September 1996).

3.4 Short recovery of premium

Government in July 1983 decided to permit the land holders, holding the land under the new and restricted tenure under Bombay Tenancy and Agricultural Land Act, 1948 as applicable to Gujarat, to sell/transfer their land subject to payment of a premium computed on the difference between the estimated sale price of the land and the occupancy price recovered at the time of allotment of land subject to payment of difference on actual sale price later. The rate of premium recoverable was based on the period for which the land was held and the purpose of sale viz. Agricultural or non-agricultural purpose.

In Modasa, Deesa (including New Deesa) and Bardoli it was noticed that land measuring 1.17 lakhs square metres held by agriculturists under new and restricted tenure was permitted to be converted into old tenure for non-agricultural/agricultural use after payment of premium price. Subsequently, land measuring 84,964 sq.mts. was sold at higher price to different persons, but the premium at prescribed rate on differential amount of sale price was not recovered. This resulted in short levy of premium price amounting to Rs.12.92 lakhs as shown below:

Sr. No.	Name of place	Area of land converted into old tenure (Area in sq. metres)	Area of land sold subsequently at higher rate	Differential premium price recoverable (Rs. in lakhs)
1.	Modasa (District Himatnagar)	25495	9987	5.96
2.	Deesa (including New Deesa) (District Palanpur)	43813	38126	3.77
3.	Bardoli	47652	36851	3.19
	Total	116960	84964	12.92

The above cases were pointed out to the department between September 1993 and March 1994 and to the Government in May 1996; their reply has not been received (September 1996).

3.5 Non-recovery/short recovery of non-agricultural assessment

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

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

(a) Land measuring 28.20 lakhs square metres situated in three talukas was acquired and handed over to Gujarat Industrial Development Corporation (GIDC) for industrial use during 1989-90. The non-agricultural assessment in respect of these lands was either not levied or levied at incorrect rates. This resulted in non/short recovery of non-agricultural assessment of Rs.3.70 lakhs as detailed below:

Sr. No.	Name of place	Area of land in sq. mts.	Period	Amount short levied (Rs. in lakhs)
1.	Bharuch	1535159	1989-90 to 1993-94	2.07
2.	Prantij (Dist. Himatnagar)	259575	1989-90 to 1993-94	1.04
3.	Dholka (Dist. Ahmedabad)	1025481	1989-90 to 1993-94	0.59
	Total	2820215		3.70

This was pointed out to the department between October 1994 and February 1995 and to the Government in May 1996; their reply has not been received (September 1996).

(b) In respect of land measuring 11.49 lakhs square metres situated at three talukas which was acquired and handed over/allotted to Gujarat Electricity Board, Gujarat Rural Housing Board, Ahmedabad Urban Development Authority, Oil and Natural Gas Commission and Gujarat Gruh Nirman Board for non-agricultural use, the non-agricultural assessment was not levied/short levied for the period between 1978-79 and 1993-94. This resulted in non-levy/short levy of non-agricultural assessment amounting to Rs.6.13 lakhs as detailed below:

Land Revenue

Sr. No.	Name of taluka	Area in sq. mts	Name of allottees	Period	Use	Amount (Rs. in lakhs)
1.	Dehgam	(i) 820000	Gujarat Electricity Board	1989-90 to 1992-93	Commercial	3.94
		(ii) 42291	Gujarat Rural Housing Board	1982-83 to 1992-93	Commercial	0.18
		(iii) 113919	Ahmedabad Urban Development Authority	1986-87 to 1992-93	Commercial & other purpose	0.74
2.	Gandhinagar	110578	Oil and Natural Gas Ltd.	1989-90 to 1993-94	Other use	0.88
3.	Anand	62423	Gujarat Gruh Nirman Board	1978-79 to 1993-94	Residential	0.39
Total		1149211				6.13

The above cases were pointed out to the department between December 1993 and November 1994 and to the Government in May 1996; their reply has not been received (September 1996).

(c) In respect of land measuring 2.34 lakhs square metres held by various occupants and used for non-agricultural purposes, the non-agricultural assessment was not levied/short levied for the period between 1976-77 and 1993-94. This resulted in non-recovery/short recovery of non-agricultural assessment amounting to Rs.1.56 lakhs as detailed below in the table:

Sr. No.	Name of place	No. of cases	Area in sq.mts	Period	Amount (Rs. in lakhs)	Purpose of use
1.	Ahmedabad	2	31787	1976-77 to 1993-94	0.81	Commercial
2.	Bhavnagar	1	30342	1976-77 to 1992-93	0.38	Industrial
3.	Dholka	4	171458	1991-92 to 1992-93	0.37	Residential/ Industrial/ Commercial
Total		7	233587		1.56	

The omission was pointed out to the department between September 1993 and June 1995 and to the Government in May 1996; their reply has not been received (September 1996).

3.6 Non-recovery of pot-hissa* charges

Under the Bombay Land Revenue Code, 1879, as applicable to Gujarat, Government is empowered to direct the survey of land with a view to settlement of the land revenue and the record and preservation of rights connected therewith or for any other similar purpose. Survey charges are to be borne by the Government if the survey is conducted for the purpose of settlement or revenue, but if it is carried out for updating the record of rights, the entire cost of such survey is recoverable from the beneficiaries of the survey as revenue demand. In accordance with the prescribed recovery procedure, the District Inspectors of Land Records maintain, Khatedar-wise** village-wise and

* 'Pot-hissa' survey means survey of sub-division of original numbers resulting from partition of properties among family members, sales, gifts and other mode of transfer.

** 'Khatedars' means the land holder from whom the land revenue is recovered.

taluka-wise accounts of various survey charges to be recovered while the recoveries are effected by village talaties* ** to whom detailed statement of khatedar-wise demands are sent on completion of survey work.

In Rajkot district, *pot-hissa* survey of Dhoraji and Lodhika was conducted (Between May 1993 and May 1994) for updating the records of rights of beneficiaries in respect of 1962 units of land at the cost of Rs.5.66 lakhs. However, neither unit rates of pot-hissa survey charges were fixed nor demands were raised. This resulted in non-recovery of survey charges amounting to Rs.5.66 lakhs.

This was pointed out to the department in May 1995 and to the Government in May 1996; their reply has not been received (September 1996).

*** 'Talati' is an official at village level who is responsible for maintaining land revenue accounts and for effecting recoveries of land revenue etc.

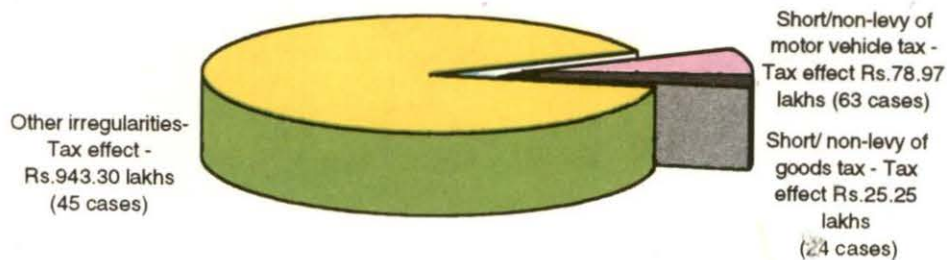
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TAXES ON VEHICLES

4.1 Results of audit

Test check of records in the office of the Commissioner of Transport, Regional Transport Offices, Assistant Regional Transport Offices and Inspectors of Motor Vehicles in the State, conducted in audit during 1995-96, disclosed under-assessments amounting to Rs.1047.52 lakhs in 132 cases. These cases broadly fall under the following categories:



Total cases 132 - Tax effect Rs. 1047.52 lakhs

During 1995-96, the department accepted under-assessment etc. of Rs.81.21 lakhs in 115 cases. Out of these, 6 cases involving Rs.1.97 lakhs were pointed out during 1995-96 and the rest in earlier years. A few illustrative cases highlighting important audit observations and the results of a review on “Internal controls on Collection of Motor Vehicles Tax” bringing out cases of short-levy, non-collection, irregular exemptions and consequent loss of revenue involving Rs.354.98 lakhs are given in the following paragraphs.

4.2 Internal controls on collection of Motor Vehicles Tax

4.2.1 Introduction

Internal controls are intended to provide reasonable assurance for prompt and efficient service and to safeguard against evasion of tax. They are meant to promote enforcement of compliance with law, rules and departmental instructions and help in prevention and detection of irregularities.

The levy and collection of taxes on motor vehicles in Gujarat is regulated under the Bombay Motor Vehicles Tax Act, 1958, and the Bombay Motor Vehicles Tax Rules, 1959, as applicable to Gujarat. For non-payment/ belated payment of tax penalty not exceeding twenty five percent of tax due is leviable. The tax due and not paid in time is recoverable as arrears of land revenue.

Taxes on Vehicles

The department prescribed internal controls on collection of tax *viz.*, (i) to check registered laden weight in respect of goods vehicle (ii) to check unladen weight, fuel, ownership, etc. in respect of non-transport vehicle whose unladen weight does not exceed 2250 kgs (iii) to check exemptions (iv) to review tax index cards, as required to identify the defaulters and (v) to initiate recovery proceedings. Taxation authorities are also required to take adequate action to recover arrears of tax, and to recover tax promptly. Revenue Officers are required to utilise powers delegated to them to recover arrears of tax certified as arrears of land revenue. Internal audit wing required to check concurrently the compliance to prescribed procedures.

4.2.2 Organisational set up

The motor vehicle department is headed by the Director of Transport (DOT) who is assisted by the Joint Director at State level. Thirteen Regional Transport Officers (RTO) and five Assistant Regional Transport Officers (ARTO) work at district level as registering and taxation authorities for their jurisdiction. Twenty Circle Officers work under five Recovery Mamlatdars for recovery of tax dues certified as arrears of land revenue.

4.2.3 Scope of Audit

With a view to assess the efficiency of the internal controls established by the department in collection of tax and ensuring their recovery the records of Director of Transport, six Regional Transport Officers, at Ahmedabad, Vadodara, Surat, Rajkot, Nadiad and Palanpur and two Assistant Regional Transport Officers at Himatnagar and Surendranagar and eleven Circle Officers working for these taxation authorities under Recovery Mamlatdars were test checked for the periods 1992-93 to 1994-95 between November 1995 and April 1996.

4.2.4 Highlights

(i) The departmental review of tax index cards, internal controls prescribed for identification of defaulters and for initiation of recovery proceedings, was not conducted as required. This resulted in non collection of tax of Rs.81.91 lakhs.

[Paragraph 4.2.5]

(ii) The Government lost potential revenue of Rs.29.43 lakhs due to delay in fixation of rates of tax.

[Paragraph 4.2.6]

(iii) Due to non-observance of internal controls prescribed for collection of lumpsum tax resulted in short collection of tax amounting to Rs.12.57 lakhs.

[Paragraph 4.2.7]

(iv) Tractor-cum-trailers belonging to agriculturists were irregularly exempted from payment of tax of Rs.41.10 lakhs due to failure of taxation authorities to observe internal controls prescribed for exemption.

[Paragraph 4.2.8.(a)]

(v) The provision of levy of interest does not exist in the Act. The department has not prepared manual for the guidance of staff.

[Paragraph 4.2.11(a) & 4.2.13(c)]

(vi) The cases handed over for enquiry to Inspectors of Motor Vehicles remained pending between one and seventeen years due to inadequate control of taxation authorities and DOT.

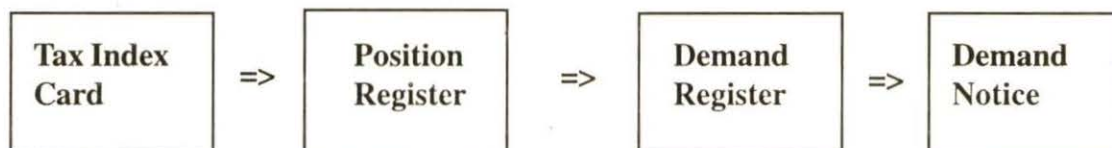
[Paragraph 4.2.11(a)]

(vii) The Recovery Mamlatdars returned revenue recovery certificates to the taxation authorities. Non-initiation of action on these revenue certificates by the taxation authorities has resulted in non collection of tax amounting to Rs.108.49 lakhs.

[Paragraph 4.2.11(b)]

4.2.5 Non-collection of tax due to non review of tax index cards

The tax is collected on all motor vehicles used or kept for use in the State. The taxation branch maintains tax index card for each vehicle. The taxation branch determines and records the rate of tax appropriate to the vehicle. The tax index cards of all vehicles are required to be reviewed twice a year viz., August and February. This review is conducted as a measure of internal controls to identify the defaulters and to initiate recovery proceedings. For this purpose position register is prescribed by the DOT where in information regarding payment of tax, details of non use of vehicles, details of exemption from payment of tax, details of no objection certificates issued for vehicles etc. are required to be noted. After preparation of position register demand register in respect of vehicles, where tax is outstanding, is required to be prepared in prescribed format. From demand register demand notices are required to be issued by the taxation branch to defaulters for recovery of tax. The relationship between various items of departmental review are shown in the diagram as under:



It was noticed during test check that the departmental review of tax index cards, as prescribed, was not conducted during 1992-93 to 1994-95 in Ahmedabad, Rajkot, Vadodara, Himatnagar and Surendranagar at all. In Nadiad and Palanpur departmental review was conducted only in February 1995 for the period from 1992-93 to 1994-95. It was noticed that in these two districts consequent upon the departmental review demand notices in 6600 vehicles were required to be issued immediately. However in respect of none of these vehicles demand notices were issued till March, 1995. In Surat district although departmental review was conducted twice a year during 1992-93 to 1994-95, demand notices in respect of 7503 vehicles involving Rs.142 lakhs were pending for issue (March 1995). Thus due to incomplete exercise, important internal controls intended to identify defaulters and to initiate recovery proceedings by the taxation authorities were not adequately applied. As a result the recovery proceedings could not be initiated by the taxation authorities resulting in non collection of tax of Rs.81.91 lakhs from 835 vehicles test-checked in eight districts for the periods ranging between 1990-91 and 1994-95. However, at the instance of audit demand notices for Rs.63.17 lakhs were issued in 687 cases between December 1995 and March 1996 by six taxation authorities.

4.2.6 Loss of potential revenue due to delay in fixation of rate of tax

The Government of India classified vehicles fitted with equipments like rigs, compressors etc. as non-transport vehicles from June 1992. As there was no prescribed rate of tax in the Act for the vehicles whose unladen weight exceeds 2250 kgs this could have been prescribed by the State Government immediately after June 1992. However, the DOT sent proposals to Government only in May 1993 for approval of tax rates for such vehicles. No action was taken by the Government on this proposal for two years. It was only in the budget proposals of 1995-96 that the Government prescribed these tax proposal to be effective only from 1 August 1995. The tax in the mean time was collected at the basic rate of Rs.540 per annum on these vehicles.

This failure of the DOT and the Government to co-ordinate and to prescribe rates of tax immediately after June 1992 resulted in loss of potential revenue of Rs. 29.43 lakhs in respect of 135 such vehicles test checked in Rajkot and Ahmedabad. The reasons for delay in fixation of rates were not furnished by the Government (September 1996).

4.2.7 Short collection of lump sum tax

Lump sum tax as prescribed under the Act is collected on all non-transport vehicles whose unladen weight does not exceed 2250 kgs. The Government prescribed certain internal controls such as checking of unladen weight, fuel used, ownership and age of vehicle at the time of collection of lump sum tax on these vehicles.

A test check of records of six taxation⁵ authorities disclosed that internal controls such as verification of unladen weight, fuel, ownership and age of vehicle were not fully exercised by these taxation authorities resulting in the tax being collected at lesser rate than realisable. This resulted in short collection of tax of Rs. 12.57 lakhs in respect of 222 vehicles registered between April 1992 and March 1995. Four taxation authorities issued demand notices for Rs.5.72 lakhs in 103 cases at the instance of audit.

4.2.8 Irregular exemption from payment of tax

(a) The tractor-cum-trailers belonging to the agriculturists and used for personal agricultural purposes are exempted from payment of tax. Trailers belonging to person other than agriculturists and used for purpose other than agriculture are liable to tax. Under the BMV Tax Act, 1958, as a measure of internal control it was prescribed that owner claiming exemption from payment of tax shall apply in form 'MT' to the taxation authority either at the time of registration or within seven days of expiry of period of exemption granted earlier. The taxation authority is required to make entries thereof in the certificate of registration and in tax index card.

During test check of records of eight districts it was noticed that 1046 trailer owners did not file 'MT' forms for the period from 1991-92 to 1994-95 after expiry of earlier exemption and the taxation authorities continued to exempt these vehicles from payment of tax. This failure of the taxation authority to enforce a well designed measure of internal control resulted in irregular exemption of Rs. 41.10 lakhs. This is also fraught with the risk of using these trailers for the purposes other than agriculture.

⁵ Ahmedabad, Surat, Vadodara, Nadiad, Palanpur & Junagadh.

(b) Under the BMV Tax Rules, 1959, the vehicles belonging to State Government are exempted from payment of tax but vehicles of autonomous bodies/ boards/ corporations are not exempt from payment of tax. The District Rural Development Agency (DRDA) registered under the Registration of Societies Act, 1860, does not enjoy such exemption.

During test check of records at Ahmedabad, Surat, Vadodara, Nadiad and Palanpur it was noticed that vehicles belonging to DRDA were exempted from payment of tax. The irregular exemption resulted in non-levy of tax to the tune of Rs.2.48 lakhs. The taxation authorities accepted the facts.

4.2.9 Non collection of tax due to non realisation of cheques

Under the BMV Tax Rules, 1959, the tax may be paid by cheque subject to its realisation. If a cheque is dishonoured due to insufficient funds at the credit of the drawer he is responsible for payment of amount of cheque dishonoured. As a measure of internal control the taxation authority has to issue written notice to the drawer within fifteen days from the date of dishonour of cheque. For non-payment of tax maximum penalty upto 25 per cent of the tax due is leviable. Under the Negotiable Instruments Act, 1881 (as amended in 1988) interest at the rate of 18 per cent per annum from the date of dishonour to the date of payment has to be paid by the drawer. Action under Indian Penal Code (treating dishonour of cheque as cognisable offence) can also be taken, if notice is issued to the drawer within one month of the dishonour of cheque.

During test check of records in Ahmedabad and Vadodara 269 cheques amounting to Rs.9.83 lakhs were dishonoured due to insufficient funds at the credit of the drawer. Out of these the department collected payment in cash in 51 cases after issuing notices and levied penalty ranging between one and fifteen per cent of amount of tax. In the remaining 218 cases, pertaining to Ahmedabad, the taxation authority failed to initiate action for recovery of tax amounting to Rs. 8.17 lakhs.

Neither the interest was charged under the Negotiable Instruments Act nor was the notice, which is a prelude to action under the Indian Penal Code, issued in any of these 269 cases as a deterrent measure.

4.2.10 Delay in disposal of AT forms of vehicles of other regions

As a measure of internal controls the BMV Tax Rules, 1959, provides that owner of a vehicle shall file details of vehicle number and period for which tax is to be paid in the AT form. Under the existing procedure tax can be paid by the owner to any taxation authority in the State. When owner makes payment to the taxation authority other than registering authority the taxation authority receiving payment is required to forward AT form alongwith duplicate receipt to concerned registering authority. The latter is required to complete the tax index card of the vehicle concerned.

As a measure of internal control for expeditious disposal of AT forms, the DOT discontinued the practice of sending AT forms by post (June 1990) to avoid delay and instead required all taxation authorities to depute their representatives to RTO Ahmedabad for exchange of such AT forms on prescribed date once in a month.

It was observed that negligible exchange of AT forms was done during 1992-93 to 1994-95 due to absence of representative or due to their insufficient presence. As a result 612 AT forms involving tax revenue of Rs. 10.96 lakhs received in Ahmedabad, Surat and Nadiad remained unposted for the period ranging between 9 and 39 months rendering the internal control measure ineffective.

It is observed that in absence of regular observance of exchange of AT Forms among all the taxation authorities in the State the monthly statistical information sent by the taxation authority to the DOT does not reflect correct figures of arrears of tax in the State. At the same time it does not reduce the hardships to the owner of the vehicle.

4.2.11 Recovery of arrears of tax

(a) Recovery pending at departmental level

Detailed records required to be maintained for recovery of tax are not prescribed in the Act and the Rules. As a measure of internal control all taxation authorities are required to furnish monthly reports regarding arrears of tax to the DOT. Arrears of tax pending for recovery on 31 March 1995 as compiled by the DOT on the basis of monthly reports received from the taxation authorities were Rs.1310.08 lakhs as detailed below:

Period (in years)	Number of cases	Amount (Rs.in lakhs)
Upto 3	57027	868.08
over 3 and upto 5	11465	160.15
over 5 and upto 10	45087	236.72
over 10 and upto 20	9708	45.13

It is observed that the following factors contributed to arrears of tax at departmental level:

- (i) The Bombay Motor Vehicles Tax Act, 1958, does not provide for levy of interest on arrears of tax as a deterrent to the defaulters.
- (ii) As per the Act, penalty not exceeding twenty five per cent of tax not paid is leviable on the defaulters. Such wide ranging discretion to the taxation authority as to the levy of quantum of penalty irrespective of extent of delay did not bring desired effect in collection of tax from the defaulters.
- (iii) If tax is not paid by the defaulter within fifteen days of the demand notice, taxation authority is required to issue revenue recovery certificate (RRC) to recover tax as arrears of land revenue. In 52625 cases demand notices for Rs.575.76 lakhs were issued between 1988-89 and 1994-95 at Ahmedabad, Vadodara, Rajkot, Nadiad and Surendranagar. These taxation authorities did not take action to issue RRC after expiry of fifteen day's period.
- (iv) The Inspectors of Motor Vehicles (IMV) are empowered to stop vehicle and cause it to remain stationary till tax is paid by the defaulters. In all eight districts where records were test checked, not a single instance of exercise of this power by the IMVs for realisation of arrears of tax was noticed.

(v) The DOT fixed target of recovery of arrears of tax of Rs.1 lakh per month per IMV. The achievements against targets in seven districts were not compiled by the taxation authorities. It was observed that in Surat achievements ranged between one per cent and three per cent of targets during 1992-93 and 1994-95. This is indicative of the fact that adequate effort was not made to recover arrears by IMV to achieve the target fixed.

(vi) Taxation authority hands over cases to IMV for enquiry with a view to expedite arrears of tax. In Ahmedabad, Surat and Rajkot 20440 cases involving Rs.101.18 lakhs for the years 1977-78 to 1994-95 were handed over to IMV for enquiry. These cases remain unattended by them for the period ranging between one and seventeen years. The DOT also did not take any suitable actions to get these enquiries completed eventhough there was system of monitoring the progress through monthly reports received from the taxation authorities.

(b) Recovery pending at Mamlatdar level

On receipt of RRC, the Mamlatdar* is required to take following course of action to recover dues certified as arrears of land revenue;

- (i) to serve demand notice to the defaulter,
- (ii) to distrain and sell movable and immovable property of the defaulter and
- (iii) to arrest and send the defaulter in prison.

The tax recoverable by the Mamlatdars for the State as a whole was Rs.597.59 lakhs as on 31 March 1995. It was noticed that the year wise pending cases were not compiled by the DOT. Details of year-wise pendency in seven districts, except Surendranagar, were as under:

Period (in years)	Number of cases	Amount (Rs.in lakhs)
upto 3	6651	313.26
Above 3 and upto 5	5222	149.19
Above 5 and upto 20	7605	87.86
Total	19478	550.31

It was observed that following factors contributed to non-recovery of tax at the Mamlatdar level.

- (i) The Mamlatdar had not taken action to recover dues by distrain and sale of movable/ immovable properties of the defaulters and by arresting and sending the defaulter in prison in eight districts except issuing of routine demand notices.
- (ii) The Mamlatdars could not effect recovery due to incomplete/incorrect addresses of the defaulters. In Ahmedabad and Vadodara 2630 RRC worth Rs.108.49 lakhs for the years 1990-91 to 1994-95 were returned by the Mamlatdars to the taxation authorities due to non-availability of correct addresses of the defaulters but the taxation authorities did not take any action on these cases.

*Mamlatdar is a Revenue Officer entrusted for recovery of arrears of tax certified as arrears of land revenue.

Taxes on Vehicles

(iii) As a measure of internal control for correctness of address the owner is required to furnish proof of address at the time of registration of vehicle *viz.* ration card, electricity bill, telephone bill, house tax receipt, life insurance policy etc.. The number of cases of incorrect and incomplete addresses involving huge amount indicated that no proper checks were exercised through available records as provided in the Central Motor Vehicle Rules, 1989 to verify the correct address.

(iv) Both, the taxation authority and the Mamlatdar are required to forward details of dues outstanding as arrears of land revenue through monthly reports to the DOT. There was huge difference in number of cases as well as in amount outstanding as arrears of land revenue as on 31 March 1995 in three districts as detailed below:

District	As per taxation authority		As per Mamlatdar		Difference	
	No. of cases	Amount (Rs.in lakhs)	No. of cases	Amount (Rs.in lakhs)	No. of cases	Amount (Rs.in lakhs)
Ahmedabad	1280	34.92	3469	358.83	(-)2189	(-)323.91
Palanpur	1212	15.69	346	39.76	(+)866	(-)24.07
Rajkot	4841	20.55	2081	19.76	(+)2760	(+)0.79

Neither does any system exist nor was any attempt made by the DOT either to reconcile the difference or to analyse the correctness of the arrears pending. Hence arrears of land revenue were not ascertainable.

It could thus be seen that the absence of provisions for levy of interest on arrears of tax, wide ranging discretion to the taxation authorities in levy of quantum of penalty, indifferent attitude of IMVs to enforce available means of collecting tax from the defaulters and the absence of appropriate check on proof of address of the owner of the vehicle at the time of registration resulted in cumulative increase in arrears of tax. The primary responsibility of recovery of arrears of tax by the taxation authorities was shifted to the Mamlatdars. The Mamlatdars in turn did not take appropriate action required under the Code. This further contributed to the huge accumulation of arrears of tax.

4.2.12 Internal audit

(a) Internal audit was instituted between April 1982 and September 1985 in seven districts with a view to check correctness of receipts of the various taxes and to check and ensure recovery of arrears. Internal audit wings in remaining districts were however not created. The DOT proposed to create internal audit wings in ten districts in October 1993. The Government replied (May 1996) that due to ban on creation of new posts internal audit wing was not created in these districts.

(b) The internal audit wing was required to perform important functions *viz* totalling and tracing of receipts of cash, demand drafts and cheques with subsidiary cash book, totalling of summary registers and checking with cash book, reconciliation with treasury remittances, assessment of tax, checking of NT forms and non-use registers, checking of refund orders and money value forms etc.

It was observed in audit that certain important functions of internal audit wing viz. assessment of tax, checking of NT forms and non-use registers, checking of refund orders and money value forms etc. were not carried out at all in Ahmedabad, Surat, Rajkot and Nadiad.

4.2.13 Other topics of interest

(a) Non-endorsement of non-use in the certificate of registration

Tax is collected on vehicles used or kept for use in the State. If the owner does not intend to use or keep the vehicle for use he shall make a declaration in form NT for any period not exceeding beyond the financial year concerned alongwith certificate of taxation. The taxation authority if satisfied in this regard, shall make endorsement in the certificate of taxation to that effect.

It was observed in audit that eventhough 3739 owners had filed required NT forms and period of declared non-use was over, action was not taken by the taxation authorities either to accept or to reject them after assigning reasons thereof. No action had been taken by the taxation authorities on these forms pertaining to 1992-93 to 1994-95 in eight districts. As a result of this, correct position of arrears of tax was not ascertainable. Taxation authorities have since agreed to initiate action (April 1996) to make required entries in the tax index card at the instance of audit.

(b) Incomplete register of motor vehicle

According to the Central Motor Vehicles Rules, 1989, a permanent register is required to be maintained by the Registering and Taxation Authority in respect of each vehicle. As an internal control measure this register is required to be maintained to record all relevant records of vehicle, orders of changes made, order of suspension / cancellation of registration etc..

It was observed in Nadiad and Surat that in respect of 67499 vehicles registered between October 1994 and March 1995, entries in registers of motor vehicles were not made mainly on the grounds of shortage of staff and non-availability of registers. This may result in undue hardship to the owner of the vehicle and subsequent changes and levy of tax if any cannot be checked.

(c) Non preparation of departmental manual

The manual setting out the functions and responsibilities of staff of all categories in accordance with instructions issued by the Government/department is an essential control for ensuring proper functioning of the department. The departmental manual has not been prepared by the DOT for guidance of the staff so far.

The observations were brought to notice of the department/Government in May 1996; their reply has not been received (September 1996).

4.3 Non-recovery/short recovery of Composite fee under National Permit Scheme

Under the National Permit Scheme, the permit holders have to pay a composite fee in respect of each State, other than home State in which vehicle will operate. Such fee is payable in addition to the motor vehicle tax and goods tax payable in the home State. The composite fee was payable at the annual rate of Rs.1,500 for each state upto August 1993 and at Rs.4,000 thereafter. The composite fee is payable before 15 March of every year. However, the owner of the vehicle is allowed an option to pay the fee in two equal instalments, before 15 March and 15 September of every year. Under the scheme, it is obligatory for the holder of a National Permit to pay the fee and obtain an authorisation for plying his vehicle in other States. The fee is collected by R.T.O./A.R.T.O. of the home State and remitted to the concerned state through demand draft.

(i) During the course of test check of the records of the Commissioner of Transport, Ahmedabad, it was noticed (August 1994) that R.T.Os/A.R.T.Os of Maharashtra, Bihar, Assam and Rajasthan continued to recover and remit the fee at pre-revised rates up to 31 March 1994. This resulted in short recovery of composite fee to the extent of Rs.27.22 lakhs in 2917 cases.

This was pointed out to the department in November 1994 and to the Government in May 1996; their reply has not been received (September 1996).

(ii) During the course of test check of the records of the Commissioner of Transport, Ahmedabad it was noticed (May 1993) that 48 operators (21 of Rajasthan and 27 of Madhya Pradesh) who had chosen to operate in Gujarat paid the first instalment but did not pay the second instalment for the year 1991-92. This resulted in non-recovery of composite fee to the extent of Rs.36,000.

This was pointed out to the department in June 1993 and to the Government in May 1996; their reply has not been received (September 1996).

4.4 Non-recovery of motor vehicles tax and goods tax

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

During the course of test check of the records of the Regional Transport Offices** it was noticed (between January 1993 and March 1995) that in 422 cases motor vehicles tax and goods tax were not levied and collected for the period from 1982-83 to 1993-94 eventhough the tax index cards and registration records did not show any declaration regarding non-use of the vehicles. Motor vehicles tax, goods tax not levied in these cases amounted to Rs.26.32 lakhs as shown below:

**Jamnagar, Rajkot, Gandhinagar, Nadiad, Godhra, Himatnagar, Bhavnagar, Junagadh and Amreli.

Sr. No.	Taxation Office	No. of vehicles	Goods Tax not recovered (.....Rs in lakhs.....)	M.V.Tax not recovered	Total
1.	RTO Jamnagar	162	12.10	3.51	15.61
2.	RTO Rajkot	47	1.43	0.83	2.26
3.	RTO Godhra	66	1.16	0.75	1.91
4.	ARTO Gandhinagar	39	1.14	0.39	1.53
5.	RTO Bhavnagar	27	0.84	0.55	1.39
6.	RTO. Nadiad	9	0.89	0.34	1.23
7.	RTO Junagadh	28	1.00	—	1.00
8.	ARTO Amreli	36	0.48	0.30	0.78
9.	ARTO Himatnagar	8	0.30	0.31	0.61
	Total	422	19.34	6.98	26.32

This was pointed out to the department between February 1993 and May 1995. The department accepted the audit observation in 51 cases and stated (between August 1994 and March 1996) that Rs.1.21 lakhs had since been recovered. Reply in other cases has not been received (September 1996).

The above cases were reported to the Government in May 1996; their reply has not been received (September 1996).

4.5 Change in classification of vehicles according to unladen weight

Under the provisions of the Bombay Motor Vehicles Tax Act, 1958, as applicable to Gujarat, tax shall be levied and collected on all motor vehicles used or kept for use in the State at a rate not exceeding the maximum rates fixed in first Schedule, by a notification in the Official Gazette. The Government by issue of such notification is empowered to revise the rates of tax within the maximum prescribed rates. However change in the structure of schedule requires enactment in terms of Section 25 of the Act.

Motor vehicles, other than transport vehicles registered in the state of Gujarat falling in Part A of Class III of Schedule I of the Act are classified for the purpose of rate of lump sum tax in three categories as under:

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

Government by issue of the notification in April 1992 amended the structure of the schedule by revising 750 kgs. to 900 kgs. in the above Schedule I without approval of the legislature.

With the result motor vehicles with unladen weight between 751 kgs. and 900 kgs. were irregularly extended the benefit of lower rate of tax. Due to amendment to the Schedule, 117 motor vehicles exceeding 750 kgs. but not exceeding 900 kgs. unladen weight registered with R.T.O., Valsad, Rajkot and A.R.T.O., Bharuch were levied to tax at a lower rate. This resulted in loss of revenue of Rs.6.58 lakhs.

This was brought to the notice of the département between April and August 1994 and to the Government in May 1996; their reply has not been received (September 1996).

4.6 Non-recovery of motor vehicles tax/goods tax on vehicles plying under countersignature permit

According to the reciprocal agreements entered into between Gujarat, other States and Union Territories *etc.*, the vehicles of other States operating in Gujarat under such an agreement are exempted from payment of Motor Vehicles Tax under a countersignature permit. However, such vehicle owners operating in Gujarat State are required to pay goods tax under the Gujarat Carriage of Goods Tax Act, 1962. The vehicle owners who ply in Gujarat on the invalid countersignature permit are required to pay motor vehicles tax as well as goods tax of the State.

(i) During the course of test check of the records of the Commissioner of Transport it was noticed (September 1994) that owner of twenty five motor vehicles continued to ply in Gujarat State upto March 1994 even after the expiry of countersignature permit by paying only goods tax. This resulted in non-levy of motor vehicles tax amounting to Rs.3.46 lakhs.

This was pointed out to the department in November 1994 and to the Government in May 1996; their reply has not been received (September 1996).

(ii) During the course of test check of records of the Commissioner of Transport it was observed (January and September 1994) that goods tax for the period April 1992 and March 1994 was not recovered from 34 vehicle owners of Maharashtra, operating in the State under the above scheme. This resulted in non-levy of goods tax amounting to Rs.1.47 lakhs.

This was pointed out to the department in February and September 1994 and to the Government in May 1996; their reply has not been received (September 1996).

4.7 Non-payment of goods tax for vehicles used for departmental purposes and in respect of accompanied luggage

Under the provisions of the Gujarat Carriage of Goods Taxation Act, 1962, goods tax is leviable on all goods carried by road. The tax is leviable as a percentage of freight when carried in public goods vehicles and on the basis of per metric tonne per kilometre when carried in a private goods vehicle. Goods tax may also be paid in lump sum based on the carrying capacity of the vehicle at the option of the operator. For this purpose the operator of the goods vehicle is to submit return in the prescribed form. A "public goods vehicle" means any motor vehicle constructed or adapted for use of carriage of goods or any motor vehicle not so constructed or adapted when used for carriage of goods solely or in addition to passengers for hire and reward. Thus, goods (luggage) carried in passenger buses, on which freight is charged in excess of free allowance to the passengers, are chargeable to goods tax.

(i) Test check of the returns filed by Mehsana, Bharuch and Valsad divisions of Gujarat State Road Transport Corporation revealed that goods tax was not paid by the Corporation in respect of vehicles used as goods vehicles for departmental work. Goods tax at lump sum rate payable in 52 cases for the year 1991-92 worked out to Rs.1.36 lakhs. In addition penalty and interest was also leviable at appropriate rate.

This was pointed out to the department in June 1993 and to the Government in May 1996; their reply has not been received (September 1996).

(ii) During the course of test check of records of the Commissioner of Transport it was noticed (August 1994) that Ahmedabad Municipal Transport Service issued freight tickets to the passengers for carrying luggage in excess of free allowance in passenger buses, but goods tax was not paid. Goods tax payable on such freight collected by the Corporation for the period 1991-92 to 1993-94 amounted to Rs.75,737.

This was pointed out to the department in November 1994 and to the Government in May 1996; their reply has not been received (September 1996).

4.8 Irregular grant of exemption from payment of tax

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

During the course of test check of records of R.T.Os Vadodara and Godhra it was noticed in July 1994 that in respect of 23 vehicles of Central Government the benefit of exemption was allowed even after 30 June 1992. The motor vehicles tax recoverable in these cases for the period from July 1992 to June 1994 amounted to Rs.1.81 lakhs as shown below:

Sr. No.	Taxation office	Number of Vehicles	M.V. Tax not levied (Rupees in lakhs)
1.	R.T.O.Vadodara	17	0.98
2.	R.T.O.Godhra	6	0.83
	Total	23	1.81

This was pointed out to the department in September and October 1994. The department while accepting the facts (June 1995) stated that Rs.60,759 has been recovered in eleven cases. Reply in other cases has not been received (September 1996).

This was brought to the notice of the Government in May 1996; their reply has not been received (September 1996).

(b) According to the Bombay Motor Vehicles Tax Act, 1958, and Rules made thereunder, as applicable to Gujarat, tractor belonging to agriculturists and used for agriculture purpose is exempted from payment of motor vehicles tax.

During test check of records of the Regional Transport Officers of Nadiad and Ahmedabad it was noticed that a tractor was registered for use as public carrier vehicle in June 1993 in Nadiad and another tractor was registered in the name of a company in January 1995 in Ahmedabad were incorrectly exempted from payment of tax. This resulted in non collection of tax amounting to Rs. 44601.

This observation was brought to notice of the department and to the Government in May 1996. Their reply has not been received (September 1996).

4.9 Delay in revalidation of demand drafts for composite fees

Under reciprocal agreements with other States, the State of Gujarat collects the composite fee from the permit holders in respect of permits issued by other States for operating vehicles within the State. These fees are collected in the form of demand drafts from the respective states by the State Transport Authority and are credited to Government account by the Commissioner of Transport. If the validity of the demand drafts expires, these are sent back to the concerned authorities in the home State for their revalidation.

During the course of test check of records of the Commissioner of Transport, Ahmedabad, it was noticed (April 1993) that 139 demand drafts for Rs.1.04 lakhs received between January 1991 and January 1992 from other states on account of composite fee were not deposited promptly and validity of these drafts expired. Though these drafts were sent for revalidation between April 1991 and March 1992, the same were not received back. Thus, failure to monitor the revalidation of the drafts in time resulted in non-realisation of composite fee of Rs.1.04 lakhs.

The matter was reported to the department in April 1993 and to the Government in May 1996; their reply has not been received (September 1996).

Chapter - 5

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Stamp Duty and Registration Fees

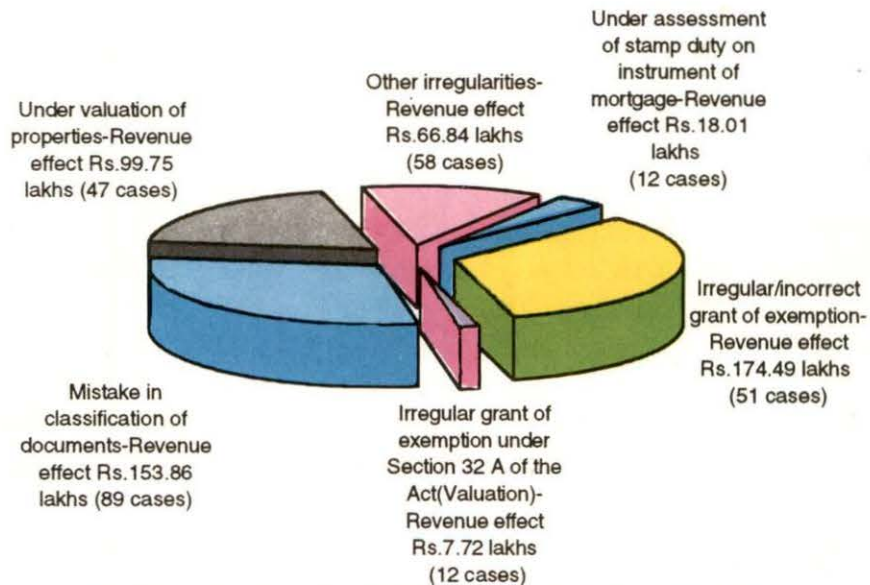
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STAMP DUTY AND REGISTRATION FEES

5.1 Results of audit

Test check of documents and records in the registration offices in the state conducted in audit during the year 1995-96 disclosed short realisation of stamp duty and registration fees amounting to Rs.520.67 lakhs in 269 cases, which broadly fall under the following categories:



Total cases 269 - Revenue effect Rs. 520.67

During 1995-96 the department accepted under assessments etc. of Rs.6.11 lakhs in 52 cases, out of which two cases involving Rs.54,580 were pointed out during 1995-96 and the rest in earlier years. A few illustrative cases involving Rs.68.34 lakhs highlighting important observations are given in the following paragraphs.

5.2 Short levy of stamp duty and registration fees due to incorrect application of rates

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

By a notification dated 8 April 1987, Government reduced the rate of stamp duty leviable on mortgage deed to Rs 2 for every Rs. 100 or part thereof in respect of certain documents specified in the schedule and executed by co-operative societies registered under the Gujarat Co-operative Societies Act 1961. The reduced rates are applicable only to those documents mentioned in the schedule. Documents relating to mortgage for securing a loan of Rs 5000 or more executed by registered Societies are not included in the schedule of the said notification and therefore not entitled to reduced rate of duty.

Stamp duty and Registration fees

During the course of test check of the records of Collector and Additional Superintendent of Stamps, Ahmedabad it was noticed (November 1993) that a mortgage deed was executed by one co-operative Housing society in favour of Housing and Urban Development Corporation (HUDCO) for securing a loan of Rs. 105.83 lakhs. Stamp duty on the deed was levied at the rate of two *per cent* instead of at the correct rate of 10.8 *per cent* which resulted in short levy of stamp duty amounting to Rs. 8.57 lakhs.

This was pointed out to the department in January 1994 and to the Government in March 1996; their reply has not been received (September 1996).

(ii) Under the provisions of Bombay Stamp Act, 1958, stamp duty at conveyance rate is leviable on deeds of dissolution of partnership wherein property brought by one partner as his share is taken away by another partner. However it has been judicially held that the documents whereby property purchased out of firm's capital is taken by its partners on dissolution as their share are also required to be assessed at the rate applicable to conveyance deeds i.e. Rs.8 per Rs.100 of the amount of consideration.

During the course of test check of records of Sub-Registrar, Jamnagar and Jetpur (District Rajkot) it was noticed between November 1994 and July 1995 that stamp duty and registration fees on documents of dissolution of partnership was not levied at the rate applicable to conveyance deed although the properties were purchased from the capital of the firm. The two documents at Jamnagar were assessed to stamp duty and registration fees at the rates applicable to partition deed and remaining four documents were assessed to duty and fees at the rate applicable to dissolution of partnership deeds. Incorrect application of rates resulted in short levy of stamp duty and registration fees of Rs.1.90 lakhs.

The above facts were brought to the notice of department between April and September 1995 and to Government in April 1996; their reply has not been received (September 1996).

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

(a) Mortgage deeds treated as equitable mortgage

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

During the course of test check of records of Sub-Registrar Ahmedabad, Navsari (District Valsad), Mehsana, Chanasma (District Mehsana), Palanpur, Thasra (District Kheda), Gondal (District Rajkot), Olpad (District Surat) and Rajpipla (District Bharuch) in 102 cases styled as equitable mortgage contained provisions creating by its own force a right or interest in the properties and therefore were classifiable as mortgage deeds. The incorrect classification of these deeds as deeds of equitable mortgage resulted in short levy of stamp duty and registration fees of Rs.20.29 lakhs in aggregate as detailed in the following table:-

Stamp duty and Registration fees

Sr. No.	Place	No. of documents	Details of Recitals	Amount short levied (Rs. in lakhs)
1.	Ahmedabad	9	Mortgagors executed separate loan agreements with mortgagee. Mortgagors have also executed blank share transfer application in favour of mortgagee.	14.03
2.	Navsari	62	Mortgagors executed demand promissory notes and separate agreements with mortgagee.	2.38
3.	Mehsana	16	Mortgagors executed separate affidavits with the mortgagee.	1.22
4.	Palanpur	2	In the event of default in repayment of money the mortgagee may recover the amount by disposing the property.	0.95
5.	Olpad (Dist. Surat)	1	In the event of default in repayment of loan the mortgagee may sell the house without intervention of court.	0.52
6.	Thasra (Dist. Kheda)	2	Mortgagor executed separate loan agreement with mortgagee.	0.37
7.	Rajpipla (Dist. Broach)	1	Mortgagor executed separate loan agreement with mortgagee.	0.33
8.	Gondal (Dist. Rajkot)	3	Mortgagors agreed with conditions stipulated in sanction letter and also executed demand promissory notes.	0.29
9.	Chanasma (Dist. Mehsana)	6	Mortgagors executed demand promissory notes and separate loan agreements.	0.20
			Total	20.29

The above cases were reported to the department between October 1993 and March 1995 and to the Government in April 1996; their reply has not been received (September 1996).

(b) Conveyance deed treated as agreement

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

During the course of test check of records of the Sub-Registrar, Vadodara, Broach and Anand it was noticed in 14 documents styled as "agreement to sell" in respect of various properties presented for registration were registered and assessed to stamp duty accordingly. The recitals of documents however indicated that possession of the property has been handed over to the purchasers and all rights, titles, and interest in the property were transferred in favour of them. Irrevocable power of attorney was also executed in favour of the purchasers to get the property transferred in their names. The properties were thus transferred by virtue of these agreements. These documents were therefore required to be classified as "conveyance deed". The misclassification resulted in short levy of stamp duty and registration fees of Rs 7.17 lakhs.

This was pointed out to the department between March 1992 and May 1995 and to the Government in March 1996; their reply has not been received (September 1996).

(c) Exchange deed treated as agreement to sell

Under the Transfer of Property Act, 1882, when two persons mutually transfer the ownership of one thing for the ownership of another, the transaction is called an "exchange", whereas agreement to sell means the document whereby the seller agrees to sell the property at a later date on the terms and conditions settled between them. Stamp duty on exchange deed is leviable at the rates applicable to a conveyance deed.

During the course of test check of records of Sub-Registrar, Vadodara, it was noticed (November 1994) that in two cases owners of old houses agreed to exchange their property valued Rs. 42.83 lakhs in consideration of 3 flats and one room measuring 2700 square feet and cash of Rs. 35 lakhs. The documents were classified as agreement to sell and assessed to stamp duty and registration fees accordingly. As the properties were exchanged in lieu of flats, cash and renovation of room, the documents should have been correctly classified as exchange deeds. Incorrect classification of documents resulted in short levy of stamp duty and registration fees amounting to Rs. 4.93 lakhs.

This was pointed out to the department in May 1995 and to the Government in March 1996; their reply has not been received (September 1996).

(d) Settlement deed treated as release deed

Under the Bombay Stamp Act, 1958 (as applicable to Gujarat) "settlement" means any non-testamentary disposition in writing of movable or immovable property, made for the purpose of distribution of the property of the settler among members of his family or those for whom he desires to provide the property. On the other hand, "instrument of release" means any instrument through which a person renounces a claim in a property upon another person's pre-existing right or claim in that property so as to enlarge the share of the transferee's right or claim. Thus a release of title in a property should necessarily be in favour of someone who already had a title in the same property and the effect of release should be to enlarge that right.

During the course of test check of records of Sub-Registrar, Navsari, it was noticed (December 1994) that a document styled as "release deed" without consideration was assessed to stamp duty as release deed. The recitals of the document however revealed that a person released self earned property in favour of HUF consisting of himself, his wife and two sons. As the wife and sons had no pre-existing right in the property, the document should have been classified as 'settlement'. The incorrect classification resulted in short levy of stamp duty/registration fees amounting to Rs. 2.82 lakhs.

This was pointed out to the department in March 1995 and to the Government in March 1996; their reply has not been received (September 1996).

(e) Transfer of lease treated as surrender of lease

When the leasehold rights of any property held by an individual on lease are subsequently transferred to a third party by way of transfer of lease, the stamp duty and registration fee is leviable as on a "conveyance deed" for the amount of consideration for the transfer or on market value of the property whichever is greater. An instrument of surrender of lease means a document through which a lessee surrenders the unexpired part of a term of lease or portion of the property. Stamp duty and registration fees on transfer of lease is higher than that on a surrender of lease.

During the course of test check of records of Sub-Registrar, Mehsana it was noticed (October 1994) that one industrial undertaking holding the land on lease for 99 years transferred its lease hold rights to three parties by way of surrender of lease with the approval of Gujarat Industrial Development Corporation. The documents were classified as surrender of lease and assessed to stamp duty and registration fees accordingly. The value of the property transferred was Rs. 16,22,941 (approximately) on which deficit stamp duty and registration fees recoverable worked out to Rs. 2.51 lakhs.

This was pointed out to the department in January 1995 and to the Government in March 1996; their reply has not been received (September 1996).

(f) Conveyance deed treated as correction deed

Under the provisions of the Bombay Stamp Act, 1958, as applicable to Gujarat "Conveyance" includes every instrument by which property, movable or immovable is transferred, between living persons whereas correction deed is executed for correcting only minor errors in original deed and is chargeable to duty as agreement. The rate of stamp duty on "conveyance" is higher than that prescribed for agreement. Document whereby area of the property is increased or nature of property and purchaser's name is changed are required to be classified as conveyance deed and stamp duty and registration fees are leviable at the rate applicable to conveyance on the market value of the property of enhanced area or the value of the property as the case may be.

(i) During the course of test check of the records of Sub Registrar Vadodara, it was noticed (December 1994) that in three cases through correction deeds purchaser's name and nature of property were changed. By an another correction deed area of the property was increased from 552 sq. metres to 723 sq. metres. The correction deeds were treated as agreement and assessed to stamp duty and registration fees accordingly. As per the records maintained in the sub registrar's office approximate value of the properties in these cases was Rs. 8.83 lakhs. Incorrect classification of documents resulted in short levy of stamp duty and registration fees amounting to Rs. 1.31 lakhs.

This was pointed out to the department in May 1995, and to Government in March 1996; their reply has not been received (September 1996).

(ii) Similarly, in three cases at Sub Registrar Gandhinagar, it was noticed during test check of records (November 1994) that properties already conveyed to the purchasers through conveyance deeds were reconveyed to the original owners by correction deeds. Property already conveyed through conveyance can be reconveyed only through sale deed. The documents were, thus, incorrectly classified as correction deeds and assessed to stamp duty and registration fees. The approximate value of the properties according to official records was Rs. 7.15 lakhs. Incorrect classification of documents resulted in short levy of stamp duty and registration fees amounting to Rs. 73,584.

This was pointed out to the department in February 1995 and to Government in March 1996; their reply has not been received (September 1996).

(g) Conveyance deed treated as release

Under the provisions of Bombay Stamp Act, 1958, 'conveyance' includes every instrument by which movable or immovable property is transferred *inter-vivos* i.e. between living persons. The property transferred by way of sale or otherwise and not specifically

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provided under any of the article of the schedule are also chargeable as “conveyance”. An instrument of release means any instrument through which a person renounces his right in a property in favour of another person who has pre-existing right or claim in that property. Stamp duty and registration fees on conveyance is higher than that on a release deed.

During the course of test check of records of Sub-Registrar, Bhuj it was noticed (April 1991) that an individual purchased 6 plots in the year 1979 for Rs. 1.25 lakhs. The said plots were merged with partnership property showing the same consideration in the year 1989. The transferrer retired from the firm as partner by taking cash of Rs. 1.25 lakhs in the said document registered in the year 1989. The document registered in 1989 was classified as release deed and assessed to stamp duty and registration fees accordingly.

The above document though styled as “release deed” was required to be classified as a conveyance deed. The approximate market value of the plots as per the records of Sub-Registrar of Bhuj was Rs. 11.50 lakhs. The incorrect classification of documents resulted in short levy of stamp duty and registration fees of Rs. 1.25 lakhs.

This was pointed out to the department in May 1991. The department accepted the audit observation and stated (May 1995) that Dy. Collector stamp duty has passed orders for recovery. Further report on recovery has not been received (September 1996).

The matter was reported to the Government in March 1996, their reply has not been received (September 1996).

5.4 Short levy of Registration Fees

(i) According to the provisions of the Bombay Registration Manual on a deed of cancellation of “agreement to sell” registration fee is chargeable on an *ad-valorem* scale on consideration fixed for agreed sale provided the deed of cancellation is executed by the claimant and executant under the original agreement to sell.

During test check of records of Sub-Registrar, Vadodara and Ahmedabad it was noticed in 25 deeds of cancellation which were executed during 1992 and 1993 by claimants or by both claimant and executant under the original agreements to sell, registration fee was not levied on an *ad-valorem* scale on the consideration fixed for the agreed sale. This has resulted in short levy of registration fees amounting to Rs. 2.25 lakhs.

This was pointed to the department in May 1994 and May 1995 and to Government in March 1996; their reply has not been received (September 1996).

(ii) In accordance with the provisions of a notification issued by the Government of Gujarat in May 1970 as amended in August 1987, the registration fee in respect of the documents styled as “agreement to sell” is leviable on an *ad-valorem* scale on the consideration for which the property is conveyed in case the possession of the property has been handed over to the buyer or there is description to that effect in the recitals of the document.

During the test check of records of Sub-Registrar, Vadodara, it was noticed (February and November 1994) that as per recitals in 35 cases of “agreement to sell” executed during 1992 and 1993, possession of the property was handed over to the buyer. The registration fee was however charged at fixed rate instead of at *ad-valorem*

rates on the basis of full consideration which resulted in short levy of registration fees of Rs. 2.96 lakhs.

This was pointed out to the department in June 1994 and May 1995. The department accepted the observation in one case and in remaining cases their reply has not been received (September 1996).

The matter was reported to the Government in March 1996, their reply has not been received (September 1996).

5.5 Short levy of stamp duty due to non-revision of rates

By a notification of 6 April 1992, Government revised the rates of stamp duty on mortgage deeds executed by industrial undertakings in favour of specified financial institutions. The rate of such stamp duty on such mortgage deeds depends on the amount of loan sanctioned by the institutions.

During the course of test check of the records of the Collector and Additional Superintendent of Stamps, Ahmedabad it was noticed (November 1993) that in two cases involving the loan amounts over Rs. 30 lakhs, the stamp duty was not levied at revised rates. This resulted in short levy of stamp duty amounting to Rs. 1.87 lakhs.

This was pointed out to the department in January 1994 and to Government in March 1996; their reply has not been received (September 1996).

5.6 Short levy of stamp duty due to non-levy of additional duty

Under the Bombay Stamp Act, 1958, as amended with effect from 1 August 1990 additional duty at a rate of 25 *per cent* was leviable on instruments of sale, exchange, gift and lease *etc.* of vacant land in urban areas, other than vacant land intended to be used for residential purpose not exceeding 100 square metres. This additional duty was further enhanced to fifty *per cent* from 8 April 1992 on the above category of documents. Additional duty at a rate of 25 *per cent* was also leviable on non-agricultural land exceeding 100 sq.mts. situated in other than urban areas from 8 April 1992.

(i) During the course of test check of records of Sub-Registrar, Mehsana, it was noticed (October 1994) that land situated in different survey numbers was sold to one corporation. However in the recitals of the document the land was shown as appertinent to the building when actually the plots were separate and as such additional duty was leviable at fifty *per cent* in addition to normal duty. Non-levy of additional duty resulted in short levy of stamp duty amounting to Rs. 41,655.

This was pointed out to the department in January 1995 and to the Government in March 1996; their reply has not been received (September 1996).

(ii) During the course of test check of the records of Sub-Registrar Borsad, (District Kheda) it was noticed (November 1993) that in 13 conveyance deeds valued at Rs. 14.71 lakhs registered during 1992, the additional duty introduced from 1 August 1990 and enhanced from 8 April 1992 was not levied. This resulted in short levy of stamp duty of Rs. 39,260.

This was pointed out to the department in December 1993 and to Government in March 1996; their reply has not been received (September 1996).

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(iii) Similarly, during test check of records of Sub-Registrar Rajkot it was noticed (December 1993) that in 25 conveyance deeds valued at Rs. 13.49 lakhs which were registered between April and May 1992, the additional duty leviable at fifty *per cent* of the stamp duty from 8 April 1992, was not levied though the plots exceeded 100 square metres in each case. This resulted in short levy of stamp duty of Rs. 38,954.

This was pointed out to the department in February 1994 and to Government in March 1996; their reply has not been received (September 1996).

(iv) During the course of test check of the records of Sub Registrar Palanpur, it was noticed (December 1994) that in 11 conveyance deeds valued at Rs. 15.22 lakhs which were registered during 1992 and 1993, the additional duty enhanced from 8 April 1992, was not levied. This resulted in short levy of stamp duty of Rs.34,411.

This was pointed out to the department in February 1995 and to Government in March 1996; their reply has not been received (September 1996).

5.7 Short levy of stamp duty and registration fees on instrument comprising several distinct matters

In accordance with the provisions of the Bombay Stamp Act, 1958, as applicable to Gujarat, any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties for which such separate instrument would be chargeable under the Act *ibid*.

Further, under the Act a "conveyance" includes every instrument by which property, movable or immovable, is transferred *inter-vivos* i.e. between living persons. According to transfer of Property Act, 1882 "Transfer of Property" means an act by which a living person conveys property, in present or in future to one or more other living persons.

During the course of test check of the records of Sub Registrar, Anand it was noticed (February 1995) that one document styled as lease deed was executed in January 1992, according to the recitals of which 428.36 square metres open plot was leased for consideration of annual rent of Rupees 5000 for 50 years and was assessed to duty at the rate applicable to 'lease'. The recitals of the document also indicated that the lessee has to construct a building worth Rs. 10 lakhs on the aforesaid plot within five years and hand over the same to the lessor after expiry of lease period without any consideration and execution of any transfer deed. Thus the building valued at Rs. 10 lakhs would be transferred by the lessee to lessor without any consideration. Therefore the duty and fee for the two distinct matters were to be levied. *viz* lease deed and conveyance of building. However duty and fees were levied only for the lease of the property. This resulted in short levy of stamp duty and registration fees amounting to Rs. 1.43 lakhs.

This was pointed out to the department in May 1995 and to the Government in March 1996; their reply has not been received (September 1996).

5.8 Incorrect exemption from registration fees

As per the notification of 3 August 1987, issued under Indian Registration Act, 1908, registration fee is leviable on all documents unless specifically exempted from payment thereof.

During the course of test check of records of Sub-Registrar, Bardoli (District Surat) it was noticed (December 1994) that in 10 conveyance deeds, properties worth Rs. 78.42 lakhs were conveyed to different persons. However registration fee though chargeable was not charged at all. The omission resulted in short levy of registration fees amounting to Rs. 1.18 lakhs.

This was pointed out to the department in February 1995 and to Government in March 1996; their reply has not been received (September 1996).

5.9 Incorrect exemption from stamp duty and registration fees

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

During the course of test check of the records of Sub-Registrar, Rajkot it was noticed (December 1993) that in 7 cases of mortgages, executed by the employees of the Gujarat Maritime Board were exempted from payment of stamp duty and registration fees. As the employees of the Board are not Government servants, the exemption granted was irregular. This resulted in short levy of stamp duty and registration fees amounting to Rs. 86,160.

This was pointed out to the department in February 1994, and to Government in March 1996; their reply has not been received (September 1996).

5.10 Short levy of stamp duty due to incorrect computation of consideration

'Conveyance' includes a conveyance on sale and every instrument by which property movable or immovable is transferred *inter-vivos* i.e. between living persons. Stamp duty on conveyance is levied on the basis of the consideration for such conveyance or the market value of the property which ever is greater.

During the course of test check of records of Sub-Registrar Surat, it was observed (March 1993) that while assessing stamp duty and registration fees on conveyance deeds the amount deposited by the sellers with the society was not considered in 15 cases. Non-inclusion of deposit amount of Rs.7,50,000 resulted in short recovery of Rs.75,115 towards stamp duty and registration fees.

This was pointed out to the department in May 1993. The department accepted the audit observations and stated (February 1995) that Dy. Collector Stamp Duty Valuation has been asked to take necessary action in the matter. Further report on action taken by the Dy. Collector has not been received (September 1996).

The matter was reported to Government in April 1996, their reply has not been received (September 1996).

5.11 Short levy of stamp duty and Registration fees on Partition deed

As per the Bombay Stamp Act, 1958 as applicable to Gujarat "an instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty. On an instrument of partition, stamp duty is levied on the amount or the market value of the separated share or shares of the property. Further

the largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any other shares, then one of such equal shares) shall be deemed to be that from which other shares are separated.

During the test check of records of Sub-Registrar Sanand (District Ahmedabad) it was noticed in two cases that co-owners released their rights by taking cash in proportion to their share in the property. In one case property was retained by two co-owners and in another case one person retained the entire property. The co-owners released their respective rights in the property in favour of co-owners who retained the property. Since the property was partitioned in equal shares, stamp duty and registration fees were leviable on all shares except one share, which was deemed to be one from which the other shares were separated. In addition to above in one case market value of the property was not adopted. The mistake resulted in short levy of stamp duty and registration fees amounting to Rs.55,169.

This was brought to the notice of department in January 1994. The department stated (May 1995) that documents have been forwarded to Dy. Collector, Valuation, Gandhinagar for necessary action. Further, report on action taken by Dy. Collector has not been received (September 1996).

The matter was reported to Government in April 1996, their reply has not been received (September 1996).

5.12 Short levy of stamp duty

Under the provisions of Bombay Stamp Act, 1958, stamp duty on "Certificate of Sale" granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector etc. is same as leviable on conveyance i.e. Rs.8 per every Rs.100 or part thereof, of the amount of consideration for such conveyance.

(i) During the course of test check of records of Sub-Registrar Palanpur it was noticed (December 1994) that a Bank advanced loan to five persons. The loanees could not pay the loan and interest in time and as such property was auctioned for Rs.6.37 lakhs. Stamp duty on the consideration of Rs.6.37 lakhs works out to Rupees 63,740 against which only Rs.25,500 were recovered. This resulted in short levy of stamp duty of Rs.38,240.

This was brought to the notice of the department in August 1995 and to Government in April 1996; their reply has not been received (September 1996).

(ii) Under the provisions of Bombay Stamp Act 1958, 'Mortgage' includes every instrument whereby, for the purpose of securing money advanced or to be advanced, by way of loan, or any existing or future debt, or the performance of an engagement, on one person transfers or creates to, or in favour of another, a right over or in respect of specified property. Thus, the documents which create by their own force right or interest in the property are classifiable as mortgage deed.

During the course of test check of records of Sub-Registrar Matar (District Kheda) it was noticed (October 1994) that an industrial undertaking was paid subsidy of Rs.25 lakhs subject to fulfillment of certain conditions. As per the terms and conditions agreed mutually, the unit would not dispose off the fixed assets without prior approval of Gujarat Industrial Investment Corporation (GIIC). In the event of breach of any condition the

corporation would recover the aforesaid amount as arrears of land revenue. The recitals of the document further indicated that a separate agreement was also entered into between the parties for the security of the amount. The agreement therefore by its own force created interest in the property and the separate agreement formed complimentary part of the agreement. The document was thus classifiable as mortgage deed instead of agreement. Misclassification of document as simple agreement instead of mortgage deed resulted in short levy of stamp duty and registration fees aggregating to Rs. 3.08 lakhs.

This was brought to the notice of the department in May 1995 and to the Government in April 1996; their reply has not been received (September 1996).

Chapter - 6

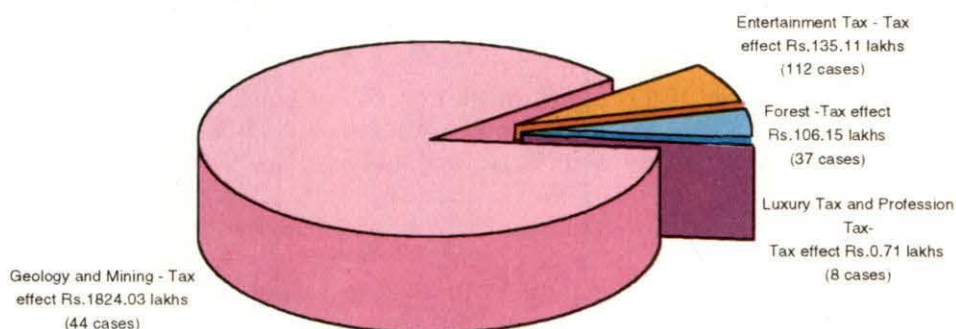
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Other Tax and Non Tax Receipts

OTHER TAX AND NON-TAX RECEIPTS

6.1 Results of audit

Test check of records of departmental offices relating to the following receipts conducted during the year 1995-96 revealed non/short levy of assessments of tax and losses of revenue as detailed below:



Total cases 201 - Revenue effect Rs. 2066 lakhs

During the year 1995-96 the department accepted under assessment etc. of entertainment tax amounting to Rs.52495 in five cases relating to earlier years. A few illustrative cases involving revenue of Rs.604.22 lakhs are given in the following paragraphs.

(A) ENTERTAINMENT TAX

6.2 Irregular exemption from payment of entertainment tax

By a notification issued in July 1979, under the powers conferred by section 29(1) of the Gujarat Entertainment Tax Act, 1977, Government exempted a few Indian Trophy Cricket Tournaments from payment of entertainment tax. This notification which was amended by issue of notification in September 1992 was further amended in November 1993 as under:

- (i) All Ranji Trophy matches, Duleep Trophy matches, Deodhar Trophy Tournament and any other tournament arranged by the Board of Control for Cricket in India (BCCI) or the State Cricket associations, as the case may be.
- (ii) Matches arranged by the Board of Control for cricket in India or the State Cricket associations for the benefit of players who have earned name and fame in the National or International cricket.

This notfn. did not cover international matches.

During the course of test check of records of the Collector Rajkot it was noticed (April 1995) that collector issued orders (January 1994) exempting an international cricket match "One day international cricket match" between India v/s Srilanka played at Rajkot on 15.2.1994. The irregular exemption resulted in non-levy of entertainment tax of Rs 10.02 lakhs.

This was pointed out to the department in October 1995. The department directed the Collector (November 1995) to recover the amount objected by audit. Recovery details have not been received (September 1996).

This was brought to the notice of the Government in March 1996; their reply has not been received (September 1996).

6.3 Short levy of entertainment tax

Under the provisions of Gujarat Entertainment Tax Act, 1977 and Rules made thereunder, the rate at which entertainment tax is payable, is based on the population of a local area in which place of entertainment is situated. The area is classified with reference to the last census. The rate of tax is higher in the local area where population is more than one lakh.

During the course of test check of the records of Collector, Ahmedabad it was noticed (June 1994) that the municipal limit of Ahmedabad Municipal Corporation was extended from February 1986 by a notification dated 5th Feb 1986. One survey number though falling within the extended limit of the Corporation remained to be included in the schedule annexed to the Notification dated 5.2.1986 through oversight. The proprietors of two theaters in the survey number continued to pay entertainment tax at the rate applicable to the area having a population of less than a lakh.

This resulted in short recovery of tax of Rs 3.21 lakhs for the period from 1 April 1993 to September 1993. In addition to this, theater owners are liable to pay differential tax for the period 1986-87 to 1992-93.

This was pointed out to the department in September 1993 and to Government in February 1996. The department accepted the objection and stated (November 1994) that efforts are being made to recover the difference of tax and interest. Further report on recovery has not been received (September 1996).

6.4 Non recovery of entertainment tax from cable operators

Under the provisions of Gujarat Entertainment Tax Act, 1977, tax is leviable from 10 October 1993 for exhibition of films or moving pictures or series of pictures or serials or any other programme with the aid of antenna or cable television. The tax is payable at the annual rate of Rs 120 per cable connection holder in the case of urban area and Rs 60 per connection holder in other areas. Every proprietor shall pay the tax in advance in quarterly instalments and furnish the return alongwith the proof of payment by 11th of the month from which the quarter begins. In case of delay in payment of tax simple interest at the rate of twenty four *per cent per annum* is leviable on unpaid amount of tax for the period of delay.

(i) During the course of test check of records of Collector, Himatnagar, it was noticed (December 1994) that 43 cable operators did not pay the tax for the period from January 1994 to September 1994. The entertainment tax recoverable amounted to Rs.1.32 lakhs. Besides the tax, interest is also leviable.

This was pointed out to the department in February 1995 and to Government in February 1996; their reply has not been received (September 1996).

(ii) During the course of test check of the records of the Collector Rajkot it was noticed (April 1995) that 20 cable operators did not pay the entertainment tax amounting to Rs.52,284 (including interest) for the period January to March 1994.

This was pointed out to the department in June 1995 and to Government in February 1996; their reply has not been received (September 1996).

6.5 Non-recovery of entertainment tax

Under the provisions of the Gujarat Entertainment Tax Act, 1977 and the rules made thereunder, entertainment tax is payable weekly along with returns to be filed by the proprietor of the entertainment. The department is required to check the returns and verify the tax payable on the basis of the number of tickets sold. If no return is furnished, or, if the return furnished is found incorrect or incomplete, the officer so authorised is empowered to assess the tax to the best of his judgement. In case of default in payment within the prescribed period, simple interest at the rate of twenty four *per cent per annum* is chargeable on the unpaid amount of tax.

During the course of test check of records of Collector Rajkot it was noticed that the department did not take any action to realise the tax and interest from the proprietor of a cinema who did not pay tax for the period from 22 September to 31 December 1993. The total amount of entertainment tax recoverable (including interest) amounted to Rs.36,358.

This was pointed out to the department in June 1995. The department while accepting the objection stated (April 1996) that Rs.17274 had been recovered and action to recover remaining amount was in progress. Further report on recovery has not been received (September 1996).

The matter was reported to Government in February 1996; their reply has not been received (September 1996).

6.6 Non recovery of compound tax

Under the Gujarat Entertainment Tax Act, 1977, a proprietor of a cinema hall in a designated or specified area shall have an option of payment of compound tax at prescribed rates. Such option is required to be exercised within ninety days from the commencement of Gujarat Entertainment (Amendments) Tax Act, 1989. The Act also provides that a proprietor who has opted to pay compound tax may, at any time but not before expiry of a period of twelve months from the date of commencement of option, give a notice to the officer so authorised to revoke his option, whereupon the option stands revoked on the expiry of thirty days after the receipt of notice by the authorised officer. In April 1992, Commissioner of Entertainment Tax clarified that the proprietor of a cinema in designated or specified area who has opted for consolidated payment of tax is required to pay tax during the operative period of option even if the cinema remains closed for any reason.

During the course of test check of the records of Mamlatdar Petlad (Kaira District) it was noticed that proprietors of two cinema halls opted for payment of compound tax. The theaters were closed for certain periods between March 1993 and June 1994. The theater owners did not pay any tax during the period of closure. As the option once exercised cannot be revoked before a period of twelve months, the proprietors were liable to pay tax for the periods the cinema houses have remained closed. The tax recoverable for such period amounted to Rs.35,300.

This was brought to the notice of the department in November 1994. The department did not agree with the audit observation and stated (April 1996) that no tax is leviable during the period in which theaters were closed. The reply of the department is not tenable in view of the clarification issued by Commissioner of Entertainment tax in April 1992.

The matter was reported to Government in February 1996; their reply has not been received (September 1996).

(B) MINING RECEIPTS

6.7 Short-levy of Royalty on Natural Gas

Under the provisions of Petroleum and Natural Gas Rules, 1959 a lessee is liable to pay royalty at the rate fixed by the Government of India on the quantity of the gas

obtained from wells. However, no royalty is payable on the gas unavoidably lost or is returned to the reservoir or is used for drilling or other operations relating to the production of petroleum or natural gas or both.

During the course of test check of records of the Geologist, Vadodara it was noticed (July 1994) that during 1993-94 Oil and Natural Gas Corporation extracted 2166 million cubic metres of gas. After allowing 163 million cubic metres for internal use, the Corporation was liable to pay royalty on 2003 million cubic metres of gas. The Corporation, however, paid royalty only on 1727 million cubic metre of gas actually supplied to the customers. No royalty was paid on the quantity of gas flared up in the atmosphere or otherwise lost. This resulted in short levy of royalty of Rs 4.28 crores.

This was pointed out to the department in May 1995. They accepted the audit observation (July 1995) and directed the Corporation to pay differential amount of royalty. Further report on recovery has not been received (September 1996).

The matter was reported to Government in February 1996; their reply has not been received (September 1996).

6.8 Non-recovery of Government dues before acceptance of surrender of lease

Under the Gujarat Minor Mineral Rules, 1966, a lessee can surrender lease once during the lease period by giving notice in writing of not less than six months to the competent officer. However before taking over possession of the leased area, Government dues viz., royalty, dead rent and surface rent etc. should be recovered first from the lessee.

During the course of test check of records of Geologist, Vadodara it was noticed (July 1994) that in thirteen cases of surrender of lease possession of the leased area of land was taken over by revenue authorities between February 1992 and March 1994 without effecting recovery of Government dues first. The acceptance of surrender of lease before recovery of Government dues resulted in non-recovery of royalty and dead rent etc. amounting to Rs 8.60 lakhs.

This was pointed out to the department in October 1994. They accepted the audit observation and stated (May 1996) that out of Rs.8.60 lakhs an amount of Rs.5.88 lakhs has since been recovered. Further report on recovery of balance amount has not been received (September 1996).

The matter was reported to Government in February 1996; their reply has not been received (September 1996).

6.9 Non-levy of interest on demand raised through revenue authorities

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

During the course of test check of the records of Geologist, Himatnagar and Valsad, it was noticed (August 1994 and February 1995) that in nine cases land revenue certificates for Government dues aggregating to Rs.5.01 lakhs were issued by the department to revenue department to effect the recovery as arrears of land revenue. Interest amounting to Rs.8.36 lakhs recoverable on the Government dues for the period between February 1983 and March 1995 was, however, not included in the certificates of recovery issued by the department between March 1987 and November 1991 to the revenue department. This resulted in non-levy of interest to the extent of Rs.8.36 lakhs.

This was pointed out to the department in October 1994 and May 1995. They accepted the audit observation and stated (May 1996) that in seven cases an amount of Rs. 5.88 lakhs has been recovered and in remaining cases certificates have been issued

to revenue authorities to recover the amount as arrears of land revenue. Further report on recovery has not been received (September 1996).

The matter was reported to Government in February 1996; their reply has not been received (September 1996).

6.10 Non-levy of dead rent and interest

Under the Gujarat Minor Mineral Rules, 1966, a lessee is liable to pay in respect of each mineral dead rent or royalty whichever is higher. Under notification issued on 1 April 1992, Government revised the rates of royalty and dead rent in respect of limestone (a minor mineral) to Rs 12 per metric tonne and annual rent of Rs 10,000 per hectare respectively. The rent is payable at the rate of 50 *per cent* if land granted on lease was less than a hectare. However, no dead rent or royalty is payable if the lessee surrenders the lease and authorities accept it. If the payment of royalty or dead rent is not made within the date fixed for the payment in the lease deed interest at the rate of twenty four *per cent per annum* is chargeable for the period royalty or dead rent remains unpaid.

During the course of test check of the records of the office of the Geologist, Palanpur it was noticed (August 1994) that in fifteen cases the lease holders stopped extraction of limestone from the year 1992-93 and had not paid dead rent for the period 1992-93 and 1993-94. This resulted in non-recovery of dead rent of Rs.6.17 lakhs. Besides dead rent interest of Rs 70,110 is also chargeable upto March 1994.

This was pointed out to the department in October 1994. They accepted audit observation in April 1996.

The matter was reported to Government in February 1996; their reply has not been received (September 1996).

6.11 Delay in realisation of Government dues

Under the Gujarat Minor Mineral Rules, 1966, if the lessee fails to pay royalty or dead rent etc. within 30 days next after the date fixed in the lease for payment of the same, the competent officer or any officer duly authorised by him may enter the said premises and take possession of all or any of the minerals or movable property therein, and may carry away, or order the sale of the property or such part of it as will suffice to recover the rent or royalty due together with all costs and expenses occasioned by the non payment thereof. If any rent or royalty, remains at any time unpaid for sixty days after the date on which it is due, the competent officer may terminate the lease.

Under notification issued on 18 June 1981, Government revised the rates of royalty effective with effect from 21.6.1981. While deciding appeals of some lessees against this revision; Supreme Court held the application of revised rate as valid in respect of the appellants and also to other lessees irrespective of the fact whether they approached the court or not.

(i) During the course of test check of the records of Geologist, Valsad it was noticed (January 1995) that in one case royalty of Rs.60110 at the differential rate from 21 June 1981 to 30 June 1985 was due. The department issued demand notice in March 1989 for royalty and thereafter did not initiate any action whatsoever to recover the dues. Inaction on the part of the department to resort to above cited course of action or to issue certificate to revenue authorities resulted in non-levy of royalty and interest to the extent of Rs 2.21 lakhs upto March 1994.

This was pointed out to the department in May 1995, and to Government in February 1996; their reply has not been received (September 1996).

(ii) Similarly Government revised the rates of royalty on red clay used in the manufacture of roofing tiles from April 1992. The lessees with five dye revolving press were liable to pay Rs 8000 *per annum* and with single dye press Rs 2000 *per annum* per press.

During the course of test check of records of Geologist Valsad it was noticed (February 1995) that in five cases the lessees did not pay royalty at revised rates during the period 1992-93 to 1993-94. The department did not issue even demand notices for differential amount of royalty. Inaction on the part of the department to raise demand resulted in non-levy of royalty to the extent of Rs.74,644. Besides royalty interest is also chargeable.

This was pointed out to the department in May 1995 and to Government in February 1996; their reply has not been received (September 1996).

6.12 Non-levy of interest on belated payment of royalty

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

(i) During the course of test check of the records of the office of the Geologist, Himatnagar it was noticed (August 1994) that in thirteen cases payment of royalty/dead rent of Rs 6.38 lakhs was due from the lessees. The department raised the demand for royalty/dead rent but did not raise demand for interest. Interest chargeable upto July 1994 on the outstanding amount of royalty/dead rent worked out to Rs.1.25 lakhs.

This was pointed out to the department in October 1994; they accepted the audit observations and stated (April 1996) that Rs.27,000 have since been recovered. Further report on recovery has not been received (September 1996).

The matter was reported to Government in February 1996; their reply has not been received (September 1996).

(ii) During the course of test check of records of Geologist, Surendranagar it was noticed (March 1995) that in nine cases payment of dead rent of Rs.2.82 lakhs was not made on due date. The department did not raise the demand for interest for the period of delay. Interest chargeable on delayed payment of dead rent worked out to Rs.59977.

This was pointed out to the department in March 1995. They accepted audit observation and stated (April 1996) that in five cases an amount of Rs.25184 has been recovered and in remaining cases demand notices have been issued. Further report on recovery has not been received (September 1996).

The matter was reported to Government in February 1996; their reply has not been received (September 1996).

(b) Similarly, under the Mineral Concession Rules, 1960, for major minerals simple interest at the rate of fifteen *per cent per annum* upto March 1991 and twenty four *per cent* from April 1991 is chargeable on any rent or royalty from the sixtieth day of the expiry of the date fixed by the Government for payment of dues until the payment of such dues is made. In the event of default in respect of royalty or other sums due to the Government under the Act/Rules or in terms and conditions of licence or mining lease, on a certificate issued by a competent officer the interest can be recovered as arrears of land revenue.

(i) During the course of test check of the records of the Geologist, Palanpur, it was noticed (August 1994) that in three cases, royalty of Rs 5.52 lakhs was due. The department raised the demand for royalty but did not raise demand for interest. Interest chargeable on outstanding amount worked out to Rs 1.91 lakhs.

This was pointed out to the department in October 1994. They accepted the audit observation and stated (April 1996) that demand notices have since been issued.

Further report on recovery has not been received (September 1996).

(ii) During the course of test check of records of Geologist, Himatnagar it was noticed (August 1994) that royalty of Rs 1.40 lakhs was due from three lessees. The department raised demand for royalty but did not raise demand for interest. Interest chargeable upto July 1994 on outstanding amount of royalty worked out to Rs.65,273.

This was pointed out to the department in October 1994. They accepted the audit observation (July 1995).

The matter was reported to Government in February 1996; their reply has not been received (September 1996).

(C) FOREST RECEIPTS

6.13 Non-levy of penalty

As per the condition No.3(A) of the agreement entered into with the Forest Labourers Co-operative Societies for forest coupes and selling of forest produce, the annual accounts of the societies closed on 30 September are required to be submitted to the Deputy Conservator of Forest by 15 October of the corresponding year. In case of delay in submission of accounts, the Deputy Conservator of Forests, is empowered to levy penalty, not exceeding Rs 5 per day per coupe for the period of delay in submission of the accounts.

During the course of test check of records of the Forest Divisions, Dangs Ahwa(North) and Rajpipla(East) it was noticed (November 1994 and October 1993) that though twenty three societies had not submitted their annual accounts for the year 1986-87, 1989-90 and 1990-91 by the due dates and the delay ranged from 338 days to 1736 days, no penalty was levied. The maximum penalty leviable at the rate of Rs.5 per day per coupe worked out to Rs. 2.70 lakhs in these cases.

The omission was pointed out to the department in March 1994 and January 1995 and to Government in March 1996; their reply has not been received (September 1996).

6.14 Loss of Revenue due to non-lifting of grass by revenue authorities

As a measure of scarcity relief work, Vyara division (District Surat) of Forest Department, was asked to collect 4 lakh kgs of grass for distribution by the Collector of Kutch district as fodder in the scarcity affected areas of Kutch-Bhuj. Against the target, the division could collect 3.11 lakh kgs of grass. Out of the total quantity of grass collected, revenue department lifted 1.30 lakh kgs of grass, 82602 kgs of grass was disposed off by the division through public auction and the remaining 94700 kgs of grass (cost of collection Rs.56820) became totally unfit for consumption as fodder by cattle due to rains. Due to non-lifting of grass by revenue authorities the Government incurred loss of Rs. 75760.

This was pointed out to the department in March 1994 and to Government in March 1996; their reply has not been received (September 1996).

(D) INTEREST RECEIPTS

6.15 Short recovery of interest

(i) Panchayat Housing and Urban Development Department sanctioned five loans aggregating to Rs. 3.46 crores to Ahmedabad Municipal Corporation for various schemes. The terms and conditions of these loans *inter alia* contained that interest @ 5.5 per cent would be chargeable on Rs. 2.21 crores and on the balance amount @8.5 per cent. In the event of delay in payment of instalment of principal or interest penal interest @2.5 per cent would be charged.

During the course of test check of records of Director of Municipalities, Gujarat State, it was noticed (August 1994) that the above loans including interest were adjusted

against the grants payable to the corporation. However, while adjusting the loan amount against the grant, the principal amount was adjusted first and interest amount later. Due to adjustment of principal amount first and interest amount subsequently, an amount of Rs. 97.88 lakhs was recovered less towards interest/penal interest.

This was brought to the notice of the Government in November 1994; their reply has not been received (September 1996).

(ii) Urban Development Department sanctioned a loan of Rs. 11 lakhs in the year 1985 to the Ahmedabad Municipal Corporation for different purposes. As per the terms and conditions of the loan the Corporation was required to pay interest @ 8.5 per cent per annum and penal interest @ 2.5 per cent in the event of delay in payment of principal and interest. However it was noticed from the records that the corporation paid only Rs.37400 towards interest instead of Rs. 7.26 lakhs payable as interest/penal interest. This resulted in short levy of interest/penal interest to the extent of Rs. 6.88 lakhs.

This was brought to the notice of Government in November 1994; their reply has not been received (September 1996).

6.16 Non-recovery/short recovery of interest/penal interest

(i) The Agriculture and Forest Department purchased the Municipal Dairy of Ahmedabad for Rs. 2.32 crores and handed over to Gujarat Dairy Development Corporation vide Government Resolution of December 1979. It was decided vide Government resolution of April 1983 to treat Rs. 1.61 crores as share capital and balance amount of Rs. 0.71 crore as loan. The terms and conditions of repayment of loan decided vide Government resolution of October 1983 *inter alia* contained that loan is repayable in 5 equal instalments and first instalment would be due after one year from the date of issue of orders and carry interest @ 10 per cent per annum. If the repayment of instalment of principal and interest is not made on due dates, 2 per cent penal interest is chargeable. The interest accumulated upto March 1983 should also be paid along with principal amount in five equal instalments.

During the course of test check of loan records of dairy, it was noticed (August 1994) that the repayment of loan and interest was not made in terms of conditions stipulated in the Government resolution. Non payment of interest and principal on due dates resulted in short recovery of interest to the extent of Rs. 15.97 lakhs.

This was brought to the notice of Government in November 1994; their reply has not been received (September 1996).

(ii) Agriculture and Co-operation Department vide their resolution of March 1982 sanctioned a loan of Rs. 27.06 lakhs to Gujarat State Marketing Federation for establishment of cold storage. The terms and conditions of the loan *inter alia* contained that the interest should be paid in twelve equal instalments commencing after one year from the date of drawal of loan. In the event of default in repayment of loan or interest, interest at higher rate i.e 2.5 per cent above the normal rate should be charged. However Federation paid first instalment of interest in March 1985 instead of March 1983. Interest at higher rate i.e.2.5 per cent above the normal rate was not charged in terms of above Government resolution. This resulted in short levy of interest to the extent of Rs. 1.35 lakhs.

This was brought to the notice of Government in November 1994; their reply has not been received (September 1996).

(iii) Agriculture and Co-operation Department sanctioned a loan of Rs. 27.06 lakhs to Gujarat State Marketing Federation for establishment of cold storage at Amreli. The terms and conditions of the loan *inter alia* contained that the loan would carry interest half per cent more than the rate prescribed by National Co-operative Development Corporation (N.C.D.C.) The N.C.D.C. fixed interest at the rate of 10.5 per cent and as such interest was chargeable at the rate of 11 per cent per annum. Incorrect application

of interest rate at 10.5 per cent instead of at the correct rate of 11 per cent resulted in short levy of interest amounting to Rs.1.12 lakhs upto March 1994.

This was pointed out to the Government in November 1994; their reply has not been received (September 1996).

6.17 Short levy of interest due to incorrect application of rates

Public Works Department sanctioned a loan of Rs 90 lakhs in 1978 to Ahmedabad Municipal Corporation against its share towards the cost of construction of Vasana Barrage. The terms and conditions of the loan *inter alia* contained that the rate of interest would be 10.5 per cent per annum. Penal interest @ 2 per cent would be charged in the event of delay in payment of principal or interest. The amount of principal and interest as and when becomes due was required to be paid simultaneously. However in the event of recovery falling short of total amount recoverable the amount so recovered should be adjusted first against the interest due and the balance amount towards repayment of principal. Since the instalment of principal and interest was not paid on due date penal rate of interest was also leviable. The interest/penal interest for the period April 1978 to March 1979 worked out to Rs. 11.25 lakhs against which the Corporation paid only Rs. 8.69 lakhs. No demand was raised for differential amount of interest. This resulted in short levy of interest amounting to Rs. 2.56 lakhs.

This was brought to the notice of Government in November 1994; their reply has not been received (September 1996).

Ahmedabad
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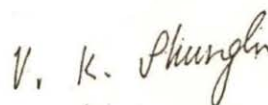
(B.R. MANDAL)
Accountant General(Audit-I), Gujarat

Countersigned

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

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