REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED 31 MARCH 1989

NO. 5

(REVENUE RECEIPTS)

GOVERNMENT OF MAHARASHTRA

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PREFATORY REMARKS

The Audit Report on Revenue Receipts of the Government of Maharashtra for the year 1988-89 is presented in a separate volume. The material in the Report has been arranged in the following order :—

(*i*) Chapter 1 deals with trend of revenue receipts classifying them broadly under tax revenue and non-tax revenue. The variations between Budget estimates and actuals in respect of the principal heads of revenue, the position of arrears of revenue, etc., are also discussed in this Chapter.

(*ii*) Chapters 2 to 8 set out certain cases and points of interest which came to notice in the audit of Sales Tax, State Excise, Land Revenue, Taxes on Vehicles, Stamp Duty and Registration Fees and Other Tax and Non-tax Receipts conducted during the year 1988-89 and in earlier and subsequent years.

OVERVIEW

1. General

(*i*) The revenue raised by the State Government during 1988-89 amounted to Rs. 4970 crores comprising of Rs. 3823 crores as tax revenue and Rs. 1147 crores as non-tax revenue. Rs. 733 crores were received from the Government of India as State's share of divisible Union taxes and Rs. 597 crores as grants-in-aid. A major portion of the tax revenue of the State related to sales tax (Rs. 2387 crores) (Para 1.1).

(*ii*) During the year 1988-89, the State Government introduced new taxation measures and increased the rates of some taxes. These measures were expected to yield a revenue of Rs. 149.50 crores during the year (Para 1.2).

(*iii*) While 6,61,746 assessments were completed during the year, 10,58,768 assessments were reported to be pending finalisation as on 31st March 1989 in respect of sales tax, agricultural income-tax, profession tax, purchase tax on sugarcane, entry tax and luxury tax (Para 1.5).

(*iv*) At the end of 1988-89, the arrears pending collection in respect of some of the sources of revenue for which information was received from the concerned department, amounted to Rs. 522 crores. Arrears in respect of sales tax alone accounted for Rs. 374 crores (Para 1.7).

(*v*) The Sales Tax Department investigated and finalised during 1988-89, 1,838 cases of evasion of tax and raised demands aggregating to Rs. 15.37 crores (including penalty). The Motor Vehicles Department raised demands for Rs. 11.09 crores in 3,42,555 cases investigated by them (Para. 1.8).

(*vi*) 5,451 inspection reports (issued upto December 1988) containing 12,061 objections involving receipts of Rs. 58.13 crores were pending settlement at the end of June 1989 (Para 1.10).

As a result of test audit conducted during the year 1988-89 under-assessments and losses of revenue amounting to Rs. 20.43 crores were noticed. The under-assessments/losses of revenue, relate to Sales Tax (Rs. 3.00 crores), State Excise (Rs. 0.19 crore), Land Revenue (Rs. 14.28 crores), Taxes on Vehicles (Rs. 0.12 crore), Stamp Duty and Registration Fees (Rs. 0.29 crore) and Other Tax Receipts and and Non-tax Receipts (Rs. 2.55 crores).

This report includes representative cases of non-levy, short levy of tax, duty, interest, penalty, etc, involving a total financial effect of Rs. 4.90 crores noticed during test-check in 1988-89 and in earlier years. Of this, under-assessment of Rs. 2.92 crores was accepted by the department of which Rs. 0.60 crore was recovered till May 1990. Replies in respect of the balance amount have not been received.

2. Sales Tax

(*i*) The review on summary assessments disclosed *inter-alia* (*a*) while categorising cases for summary assessment, tax liability under the State Act alone considered ignoring liability under the Central Act, (*b*) admittance of set-off claim without examination to arrive at net tax liability tends to compromise interest of revenue (Para 2.2).

(*ii*) Incorrect/excess allowance of set-off to the extent of Rs. 12.71 lakhs was accepted by the department, out of which demands aggregating to Rs. 12.06 lakhs were raised (Para 2.3).

(*iii*) Purchase tax was not levied/short levied to the extent of Rs. 17.13 lakhs (Para 2.4).

(*iv*) Demands aggregating to Rs. 6.84 lakhs were raised and Government lost revenue to the extent of Rs. 1.30 lakhs owing to incorrect computation of sales turnover (Para 2.5).

(*v*) Application of incorrect rate of tax resulted in under-assessment of Rs. 9.63 lakhs (Para 2.6).

(*vi*) Incorrect treatment of sales as sales in the course of export in the assessments of four dealers, resulted in loss of revenue to the extent of Rs. 16.19 lakhs leviable under Central Sales Tax Act. [Para 2.7 (d)].

(*vii*) Penalty of Rs. 10.98 lakhs was levied in 16 cases on being pointed out in audit (Para 2.18).

3. State Excise

(*i*) Short recovery of licence fees prescribed under the various rules in the cases of 22 licensees amounted to Rs. 2.51 lakhs (Para 3.2).

(*ii*) Privilege fee of Rs. 2.37 lakhs was short realised on licences transferred to other persons or status of licensee firm being changed (Para 3.3).

4. Land Revenue

(*i*) The review on 'Encroachment of Government land' disclosed *inter-alia* (*a*) non-recovery of non-agricultural assessment recoverable on encroached lands (Rs. 21 lakhs), (*b*) non-recovery/short recovery of occupancy price and land revenue (Rs. 4.99 lakhs), (*c*) non-regularisation of encroachment and occupancy price, non-agricultural assessment and fine (Rs. 69.25 lakhs), (*d*) non-levy of non-agricultural assessments (Rs. 26.35 lakhs), (*e*) non-recovery of occupancy price and incorrect assessment of market value (Rs. 13.13 lakhs).

(*ii*) Failure to assess land revenue after commencement of non-agricultural use of land resulted in non-levy of non-agricultural assessment of Rs. 38.11 lakhs (Para 4.3).

(*iii*) Non-levy/incorrect levy of land revenue on use of land for commercial purposes resulted in under-assessment of Rs. 10.41 lakhs (Para 4.4).

(*iv*) Failure to revise the land revenue after expiry of the guarantee period resulted in under-assessment of Rs. 14.94 lakhs (Para 4.5).

(*v*) Incorrect application of the rates for assessment resulted in short levy of Rs. 21.64 lakhs (Para 4.6).

(*vi*) Incorrect revision in the rates of land revenue resulted in short levy to the extent of Rs. 12.94 lakhs (Para 4.7).

(*vii*) Increase of land revenue, to the extent of Rs. 35.48 lakhs (including cess) leviable on agricultural land for raising resources to finance the Employment Guarantee Scheme was not levied (Para 4.8).

(*viii*) Failure to revise the assessment on non-agricultural lands on the basis of standard revised rates applicable after expiry of the guarantee period, resulted in short levy of Rs. 56.78 lakhs (Para 4.11).

5. Taxes on Vehicles

In respect of eleven goods vehicles at Gondia (Bhandara District) demand notice for payment of road tax/further tax amounting to Rs. 2.07 lakhs for the periods between April 1986 and October, 1988 was issued on being pointed out in audit. In addition interest of Rs. 1.55 lakhs at the rate of 2 per cent per month was also leviable for the belated payment of tax [Para 5.6(i)].

6. Stamp Duty and Registration Fee

(*i*) Irregular exemption of stamp duty and registration fees resulted in non-realisation of revenue of Rs. 5.21 lakhs (Para 6.2).

(*ii*) Irregular remission of stamp duty and registration fee in the case of one document resulted in non-realisation of revenue of Rs. 6.29 lakhs (Para 6.5).

7. Other Tax Receipts

(*i*) Incorrect exemption from payment of education cess and employment guarantee cess resulted in non-levy of Rs. 24.84 lakhs in respect of properties belonging to Bombay Municipal Corporation and an Undertaking of the Central Government (Para 7.2).

(*ii*) Non-recovery of entertainments duty and composition fee/penal interest from 22 theatre owners amounted to Rs. 2.92 lakhs (Para 7.7).

(*iii*) Incorrect allowance of deduction on account of weight of binding material to 66 sugar factories resulted in loss of revenue of Rs. 82.50 lakhs (Para 7.9).

8. Non-tax Receipts

(*i*) Non-recovery of bonus in respect of police personnel deputed to 13 organisations for security duty during the years 1985-86 to 1987-88 aggregated to Rs. 14.13 lakhs (Para 8.2).

(*ii*) Loss on account of delay in implementing the enhanced rates for compounding of traffic offences amounted to Rs. 9.24 lakhs in 30,792 offences detected during the period from 11th March 1988 to 14th July 1988 (Para 8.3).

(*iii*) Incorrect application of terms of contract for sale of tendu leaves in four forest divisions resulted in loss of revenue of Rs. 3.27 lakhs (Para 8.4).

CHAPTER 1

GENERAL

1.1. Trend of revenue receipts

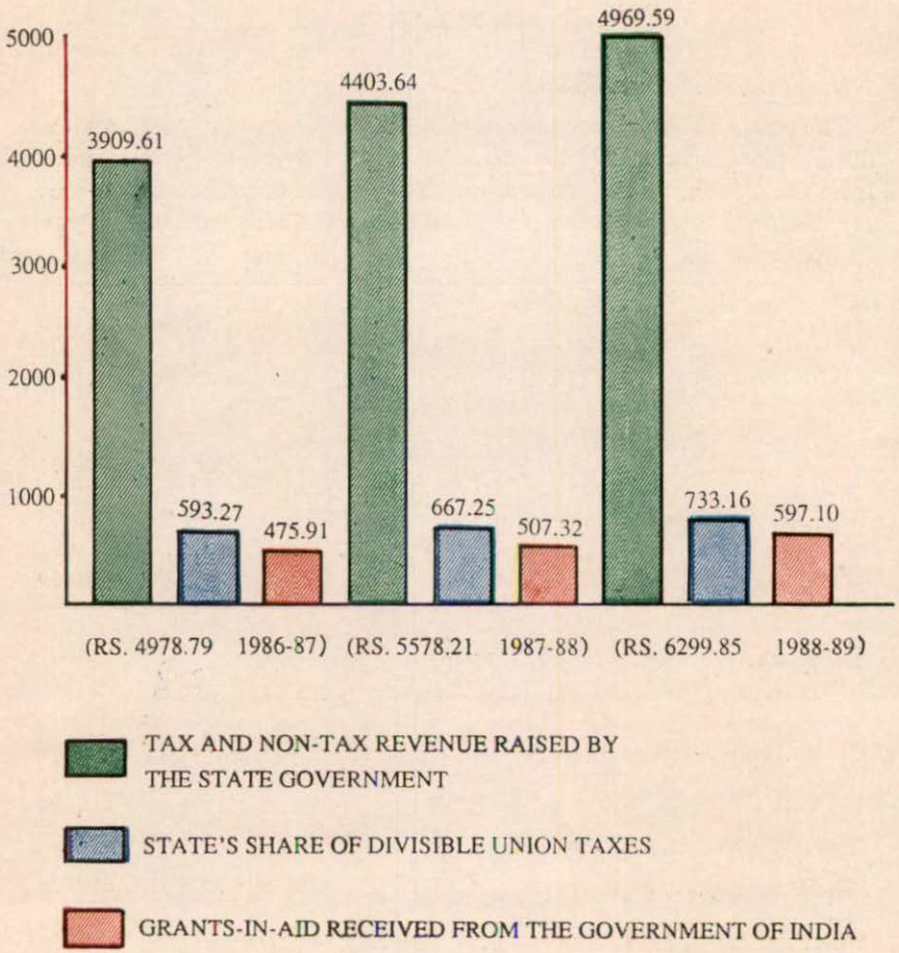
The tax and non-tax revenue raised by the Government of Maharashtra during the year 1988-89, the share of taxes and grants-in-aid received from the Government of India during the year and corresponding figures for the preceding two years are given below (as also indicated in bar chart at page 2).

	1986–87	1987–88	1988–89
	(In crores of rupees)		
I. *Revenue raised by the State Government—*			
(*a*) Tax Revenue	2791.97	3219.04	3822.74
(*b*) Non-tax revenue	1117.64	1184.60	1146.85
Total ..	3909.61	4403.64	4969.59
II. *Receipts from the Government of India—*			
(*a*) State's share of divisible Union Taxes ..	593.27	667.25	733.16
(*b*) Grants-in-aid	475.91	507.32	597.10
Total ..	1069.18	1174.57	1330.26
III. *Total receipts of the State*	4978.79	5578.21	6299.85
IV. *Percentage of I to III*	79	79	79

Note—For details, please see statement 11. Detailed Accounts of Revenue by Minor Heads in the Finance Accounts of the Government of Maharashtra 1988-89.

TREND OF REVENUE RECEIPTS

(IN CRORES OF RUPEES)



(*a*) The details of tax revenue receipts during the year 1988-89 alongside figures for the preceding two years, are given below:—

	1986–87	1987–88	1988–89	Percentage of increase (+) or decrease (—) in 1988–89 over 1987–88
	(In crores of rupees)			
1. Sales Tax	1756.48	2046.97	2386.61	(+) 17
2. State Excise	259.94	309.05	382.16	(+) 24
3. Taxes on Vehicles	113.93	145.64	214.75	(+) 47
4. Tax on Goods and Passengers ..	101.27	116.74	135.58	(+) 16
5. Stamps and Registration Fees ..	133.49	148.46	189.63	(+) 28
6. Land Revenue	29.82	48.74	45.84	(—) 6
7. Taxes on Agricultural Income ..	0.57	1.00	0.32	(—) 68
8. Other Taxes on Income and Expenditure—Tax on Professions, Trades, Callings and Employments.	85.30	93.31	102.92	(+) 10
9. Taxes and Duties on Electricity ..	176.00	173.09	215.47	(+) 24
10. Taxes on Immovable property other than Agricultural Land ..	0.03	0.03	0.01	(—) 67
11. Other Taxes and Duties on Commodities and Services	135.14	136.01	149.45	(+) 10
Total ..	2791.97	3219.04	3822.74	(+) 19

(*b*) The details of the major non-tax revenue receipts during the year 1988-89 alongside figures for the preceding two years, are given below:—

	1986-87	1987-88	1988-89	Percentage of increase (+) or decrease (—) in 1988-89 over 1987-88
	(In crores of rupees)			
1. Dairy Development	357.14	333.33	247.65	(—) 26
2. Interest Receipts	340.75	393.98	464.64	(+) 18
3. Forestry and Wild Life ..	153.35	145.29	117.18	(—) 19
4. Medical and Public Health ..	27.26	22.47	21.51	(—) 4
5. Power	16.69	20.89	0.40	(—) 98
6. Major and Medium Irrigation ..	14.87	18.74	18.73	(Negligible)
7. Co-operation	11.66	11.70	13.77	(+) 18
8. Police	14.89	15.30	15.14	(—) 1
9. Non-ferrous Mining and Metallurgical Industries	13.64	18.17	21.76	(+) 20
10. Public Works	19.91	21.36	26.43	(+) 24
11. Other Administrative Services ..	15.01	24.21	20.42	(—) 16
12. Miscellaneous, General Services (including lottery receipts)	46.95	58.70	58.70	Nil
13. Other Non-tax Receipts ..	85.52	100.46	120.52	(+) 20
Total ..	1117.64	1184.60	1146.85	(—) 3

1.2. Changes in tax structure

During the year 1988-89 the State Government introduced new taxation measures and increased rates of some taxes which were expected to yield a revenue of Rs. 149.50 crores during the year as detailed below:—

(*i*) Withdrawal of exemption of sales against declarations from levy of turnover tax (expected yield Rs. 30 crores).

(*ii*) Levy of tax on sales by auctioneers, pucca adatiyas* and products under brand names, trade marks etc. (Rs. 5 crores).

(*iii*) Tax on sale of goods of incorporeal nature such as copyright, trade marks, patents and import licences (Rs. 5 crores).

(*iv*) Levy of tax on sales of frozen meat, chicken and processed timber (Rs. 4 crores).

(*v*) Withdrawal of exemption of sales tax on sales of high density polyethylene bags (Rs. 3 crores).

(*vi*) Rationalisation of the set-off rules (Rs. 5 crores).

(*vii*) Resumption of levy of sales tax on aviation turbine fuel sold to international airlines (Rs. 10 crores).

(*viii*) Introduction of residuary entry in the schedule to the Maharashtra Tax on Works Contract Act, 1986 (Rs. 5 crores).

(*ix*) Rationalisation of the slabs for levy of profession tax (Rs. 3.50 crores).

(*x*) Enhancement of excise duty and fee for issue of export and import pass on Indian Made Foreign Liquor (Rs. 10 crores).

(*xi*) Revision in licence and application fees charged by the excise department (Rs. 5 crores).

(*xii*) Increase in the excise duty on sale of Indian Made Foreign Liquor to canteen stores department for the defence personnel (Rs. 2 crores).

(*xiii*) Revision in the rates of tax on goods vehicles and motor cars (Rs. 10 crores).

(*xiv*) Reclassification of the categories of consumers and withdrawal of concessions to power intensive industries etc. (Rs. 33 crores).

(*xv*) Rationalisation in rates of levy of Stamp Duty and Registration fees (Rs. 19 crores).

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*A pucca adatiya is a commission agent/broker.

1.3. Variations between Budget estimates and actuals

The variations between the Budget estimates and actuals of revenue receipts for the year 1988-89 in respect of principal heads of tax and non-tax revenue are given below:—

Head of Revenue	Budget estimates	Actuals	Variation Excess(+) or Shortfall(—)	Percentage of variation
	(In crores of rupees)			
1. Sales Tax	2234.90	2386.61	(+) 151.71	7
2. State Excise ..	310.55	382.16	(+) 71.61	23
3. Taxes on Vehicles ..	219.07	214.75	(—) 4.32	2
4. Taxes on Goods and Passengers ..	150.96	135.58	(—) 15.38	10
5. Stamps and Registration Fees ..	152.00	189.63	(+) 37.63	25
6. Land Revenue	32.41	45.84	(+) 13.43	41
7. Taxes on Agricultural Income ..	0.75	0.32	(—) 0.43	57
8. Taxes and Duties on Electricity ..	190.77	215.47	(+) 24.70	13
9. Other Taxes and Duties on Commodities and Services	133.49	149.45	(+) 15.96	12
10. Dairy Development	290.15	247.65	(—) 42.50	15
11. Interest Receipts	415.50	464.64	(+) 49.14	12
12. Medical and Public Health ..	46.18	21.51	(—) 24.67	53
13. Power	58.56	0.40	(—) 58.16	99
14. Major and Medium Irrigation ..	16.71	18.73	(+) 2.02	12
15. Co-operation	12.50	13.77	(+) 1.27	10
16. Police	19.39	15.14	(—) 4.25	22
17. Non-ferrous Mining and Metallurgical Industries	16.65	21.76	(+) 5.11	31
18. Housing	8.68	8.30	(—) 0.38	4
19. Forestry and Wild life ..	159.75	117.18	(—) 42.57	27

The decrease (99 per cent) under 'power' was due to less recovery of lease money from the Maharashtra State Electricity Board for management of power projects.

Reasons for variations in respect of the other receipts have not been received from the departments (May 1990).

1.4. Analysis of collections

Details of Bombay Sales Tax, Central Sales Tax, Motor Spirit Tax, Sugarcane Purchase Tax, Agricultural Income Tax and Profession Tax collected at pre-assessment stage and after regular assessments during the year 1988-89 and preceding two years as furnished by the department are given in Appendix—I.

1.5 Arrears in assessments

The table below indicates the number of assessments relating to Sales Tax, Agricultural Income Tax, Profession Tax, Purchase Tax on Sugarcane, Entry Tax and Luxury Tax, which were due for completion during the year 1988-89, assessments actually completed during the year and the assessments in arrears at the end of the year, as reported by department.

Name of Tax	Number of assessments due for completion		Number of assessments completed		Number of assessments pending finalisation	
	Arrear cases	Current cases	Arrear cases	Current cases	Arrear cases	Current cases
1. Sales Tax ..	5,18,987	5,66,069	3,54,381	96,141	1,64,606	4,69,928
2. Agricultural Income Tax	189	583	90	528	99	55
3. Profession Tax	4,35,512	1,77,801	1,60,507	48,026	2,75,005	1,29,775
4. Purchase Tax on Sugarcane.	2,052	1,571	1,452	391	600	1,180
5. Entry Tax ..	Nil	17,159	Nil	230	Nil	16,929
6. Luxury Tax ..	Nil	591	Nil	Nil	Nil	591
	9,56,740	7,63,774	5,16,430	1,45,316	4,40,310	6,18,458

The year-wise breakup of the pending cases is as under :

Year	Sales Tax	Agricultural Income Tax	Profession Tax	Sugarcane Purchase Tax	Entry Tax	Luxury Tax
upto 1983-84 ..	1,193	7	83,581	6	..	..
1984-85 ..	1,013	35	32,094	111	..	..
1985-86 ..	2,875	14	58,948	145	..	..
1986-87 ..	1,59,525	43	1,00,382	338	..	..
1987-88 ..	4,69,928	55	1,29,775	1,180	8,297	273
1988-89 ..	....	..	....	..	8,632	318
	6,34,534	154	4,04,780	1,780	16,929	591

1.6 Cost of collection

Expenditure incurred in collecting the major revenue receipts during the year 1988-89 and the figures for the preceding two years are given below :—

Head of Account	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection
		(In crores of rupees)		
Finance Department—				
1. Sales Tax	1986-87	1756.48	16.91	0.96
	1987-88	2046.97	19.52	0.95
	1988-89	2386.61	22.40	0.94
2. Tax on Professions, Trades, Callings and Employments	1986-87	85.30	1.70	1.99
	1987-88	93.31	1.97	2.11
	1988-89	102.92	2.29	2.22
Home Department—				
3. Taxes on Vehicles and Taxes on Goods and Passengers.	1986-87	215.20	2.57	1.19
	1987-88	262.38	2.79	1.06
	1988-89	350.33	3.10	0.88
4. State Excise	1986-87	259.94	2.35	0.90
	1987-88	309.05	1.65	0.53
	1988-89	382.16	2.21	0.58

1.7 Uncollected revenue

The arrears of revenue pending collection as on 31st March 1988 and 31st March 1989 in respect of some of the sources of revenue are given below :—

Source of revenue	Amount pending collection as on		Amount outstanding for more than 5 years as on	
	31st March 1988	31st March 1989	31st March 1988	31st March 1989
	(In crores of rupees)			
1. *Finance Department*–				
(*a*) Sales Tax	306.34	374.36	24.56	37.45
(*b*) Purchase Tax on Sugarcane.	58.78	66.64	9.69	11.36
(*c*) Tax on Agricultural income.	5.35	5.83	1.38	1.38
(*d*) Tax on Professions, Trades, Callings and Employments.	24.81	31.47	4.80	5.85
2. *Home Department*–				
(*a*) Tax on Vehicles ..	15.82	17.38	6.96	6.49
(*b*) Further (Goods) Tax and Passengers Tax.	3.93	3.62	3.06	3.09
(*c*) State Excise ..	2.32	2.31	1.52	1.48
3. *Revenue and Forests Department*–				
Receipts under Mineral Concession Rules (Minor minerals).	2.89	11.03	0.62	0.69
4. *Industries, Energy and Labour Department*–				
(*a*) Receipts under Mineral Concession Rules (Major minerals).	0.79	0.85	0.48	0.48
(*b*) Electricity duty and fees under Indian Electricity Rules and fees for inspection of cinema.	1.67	1.72	0.34	0.35

Source of revenue	Amount pending collection as on		Amount outstanding for more than 5 years as on	
	31st March 1988	31st March 1989	31st March 1988	31st March 1989
	(In crores of rupees)			
5. *Agriculture and Co-operation Department–*				
(*a*) Receipts from Biological products.	0.70	0.75	0.04	0.07
(*b*) Receipts from poultry development.	0.12	0.12	....	....
(*c*) Receipts on account of sale of seeds, sale/hire of agricultural implements etc.	5.23	5.14	1.75	4.58
6. *Social Welfare, Cultural Affairs, Sports and Tourism Department–*				
Luxury Tax ..	0.63	0.98	0.23	0.21

The following departments of the State Government have not furnished (March 1990) information in respect of arrears of revenue (in respect of taxes/receipts indicated thereunder) pending collection as at the end of March 1989. The year (s) for which these departments had not furnished the information is also indicated against each department.

I. *Revenue and Forests Department—*

(*a*) Land Revenue .. .. from 1979-80 onwards

(*b*) Stamp duty and Registration fees .. from 1978-79 onwards

(*c*) Entertainments duty .. .. from 1983-84 onwards

(*d*) Betting tax .. .. .. from 1983-84 onwards

(*e*) Forest Receipts .. .. from 1983-84 onwards

II. *Irrigation Department—*

(*a*) Irrigation receipts .. .. from 1977-78 onwards

(*b*) Non-irrigation receipts .. .. from 1977-78 onwards

III. *Housing and Special Assistance Department/Public Works Department—*

(*a*) Recovery of compensation, service charges, administrative charges and licence fees from hutment dwellers.	from 1980-81 onwards
(*b*) Receipts from Bombay Development Scheme (Rent from Development Department Chawls).	from 1982-83 onwards
(*c*) Rent of residential Government Buildings.	from 1980-81 onwards
(*d*) Recovery of Bombay Building Repair and Reconstruction Cess.	from 1987-88 onwards

IV. *Agriculture and Co-operation Department—*

Audit fees and supervision charges .. from 1985-86 onwards

V. *Medical Education and Drugs Department—*

(*a*) Tution fees and hospital fees in respect of medical education and research.	from 1983-84 onwards
(*b*) Prevention of food adulteration etc.	from 1984-85 onwards
(*c*) Receipts from Employees State Insurance Corporation of 7/8th share of expenditure incurred by State Government.	from 1987-88 onwards
(*d*) Sale of medicines by the Directorate of Ayurved.	from 1987-88 onwards

VI *Education and Employment Department—*

Vocational Education and Training .. from 1986-87 onwards

1.8. Frauds and evasions of tax

The number of cases of evasion of tax detected by the Sales Tax, Motor Vehicles Tax and State Excise Departments, cases finalised and the demands for additional tax raised are given below :—

	Sales Tax Department	Motor Vehicles Tax Department	State Excise Department
1. Number of cases pending finalisation as on 31st March 1988.	1,568	Nil	75
2. Number of cases detected during 1988-89	2,109	3,42,555	110
3. Number of cases investigated—			
(*a*) Out of cases at 1 above	698	....	Nil
(*b*) Out of cases at 2 above	1,140	3,42,555	Nil
4. Number of cases pending finalisation as on 31st March 1989—			
(*a*) Out of cases at 1 above	870	....	75
(*b*) Out of cases at 2 above	969	Nil	110
5. Number of cases in which prosecutions/penal proceedings were launched.	859	3,42,555	....
6. Number of cases in which penalties were imposed	417	3,42,555	....
7. Total demands (including penalties) raised (in lakhs of rupees).	1536.62	1108.53	....
8. Amount of demand actually collected out of (7) above (in lakhs of rupees).	248.25	1108.53	....

1.9. Writes-off and waivers of revenue

During the year 1988-89, demands for Rs. 20.57 lakhs (in 524 cases) relating to Sales Tax and Rs. 30.89 lakhs (in 1345 cases) relating to Motor Vehicles Tax, Further (Goods) Tax and Passengers Tax were

written-off by the departments as irrecoverable. Reasons for the write-off of these demands are as under :—

Reasons for write-off	Sales Tax		Motor Vehicles Tax, Goods Tax and Passengers Tax	
	Number of cases	Amount (in lakhs of rupees)	Number of cases	Amount (In lakhs of rupees)
1. Whereabouts of defaulters not known.	388	5.95	1,304	30.03
2. Defaulters no longer alive ..	22	6.71	39	0.84
3. Defaulters did not have any property	50	6.37	1	0.02
4. Defaulters adjudged insolvent ..	51	1.03	....	....
5. Other reasons	13	0.51	1	Negligible
Total ..	524	20.57	1,345	30.89

1.10. Outstanding inspection reports and audit objections

Audit observations on incorrect assessments, short levy of taxes, duties, fees and other revenue receipts, as also defects in initial accounts noticed during the local audit and not settled on the spot are communicated to the heads of offices and to the departmental authorities through audit inspection reports. The more important irregularities are reported to the heads of departments and Government. Government have prescribed that first replies to inspection reports should be sent to audit within one month from the date of receipt of the inspection reports.

As at the end of June 1989, 12,061 objections (in 5,451 inspection reports) involving receipts amounting to Rs. 58.13 crores, issued upto 31st December 1988, were still to be settled as detailed below. The figures

as on 30th September of 1987 and 30th June 1988 are also indicated alongside for comparison.

	As at the end of September 1987	As at the end of June 1988	As at the end of June 1989
Number of inspection reports	5,875	5,669	5,451
Number of audit objections	14,662	13,424	12,061
Amount of receipts involved (in crores of rupees)	48.82	52.89	58.13

Year-wise breakup of the outstanding inspection reports as on 30th June 1989, together with amounts of receipts involved, are given below:—

Year	Number of inspection reports	Number of objections	Amount of receipts involved (In crores of rupees)
Upto 1984-85	2,831	6,019	31.40
1985-86	594	1,245	5.80
1986-87	616	1,262	3.89
1987-88	690	1,629	10.00
1988-89 (Upto December 1988)	720	1,906	7.04
	5,451	12,061	58.13

In respect of 827 objections (in 378 inspection reports) involving receipts amounting to Rs. 2·36 crores, even the first replies had not been received.

The year-wise details of outstanding audit objections in respect of the various types of receipts are given in Appendix II. The department-wise breakup of the outstanding inspection reports and audit objections as on 30th June 1989 is given below :—

	Name of Department	Number of inspection reports	Number of objections	Amount of receipts involved (In crores of rupees)
1.	Revenue and Forests	3,041	6,485	48.10
2.	Finance	1,436	3,586	3.62
3.	Home	658	1,252	3.07
4.	Industries, Energy and Labour	65	109	0.05
5.	Housing and Special Assistance	65	131	0.59
6.	Agriculture and Co-operation	102	344	0.74
7.	Social Welfare, Cultural Affairs, Sports and Tourism.	13	32	1.95
8.	Urban Development	31	55	Negligible
9.	Medical and Public Health	2	2	Negligible
10.	Education and Employment	21	34	0.01
11.	Public Works	8	17	....
12.	Rural Development	6	11	....
13.	Law and Judiciary	3	3	....
	Total ..	5,451	12,061	58.13

CHAPTER 2

SALES TAX

2.1. Results of Audit

Test check of sales tax assessments and other records conducted in audit during the year 1988-89 revealed under-assessments of tax amounting to Rs. 300.05 lakhs in 894 cases, which broadly fall under the following categories :—

		Number of cases	Amount (in lakhs of rupees)
1.	Incorrect allowance of set-off	312	96.08
2.	Non-levy or short levy of tax	454	166.63
3.	Non-levy or short levy of penalty	36	2.57
4.	Omission to forfeit tax irregularly collected	26	4.98
5.	Other irregularities	66	29.79
	Total ..	894	300.05

Some of the important cases noticed in 1988-89 and in earlier and subsequent years are mentioned in the following paragraphs.

2.2. Summary Assessments Under the Bombay Sales Tax Act, 1959

2.2.1. Introduction.—Under the Bombay Sales Tax Act, 1959, if the Commissioner is satisfied that the returns furnished by a registered dealer in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns. However, the scheme of summary assessments was introduced on a regular basis only from November 1980, the scope being limited to cases

with turnover upto Rs. 3 lakhs in Bombay City Division (including Thane), upto Rs. 1.50 lakhs in Pune, Pimpri-Chinchwad and Nagpur and Rs. 75,000 elsewhere in the State.

Government with a view to removing certain difficulties faced by small traders announced (June 1986), that summary assessment was proposed to be delinked from turnover and instead related to tax liability. Accordingly the norms were revised as below and made applicable for the assessment year 1984-85:—

(*i*) tax liability for previous year under the Bombay Sales Tax Act should not have exceeded Rs. 20,000,

(*ii*) there should be an overall minimum tax growth of 12 per cent (liability under the Bombay Sales Tax Act and Central Sales Tax Act taken together) over that of the previous year,

(*iii*) the dealer should have filed all returns,

(*iv*) the case of the dealer should not be under investigation by the enforcement branch.

The condition of 12 per cent tax growth was withdrawn by Government in March 1988 and a further condition that the net refund claimed in the returns should not exceed Rs. 10,000 was introduced (May 1988) and made applicable to the assessments for the period 1986-87 and onwards.

2.2.2. Organisational set-up and procedure of summary assessment.—The Commissioner of Sales Tax is the head of the Sales Tax Department. He is assisted by Additional Commissioners, Deputy Commissioners and Assistant Commissioners. The work relating to assessment is divided into four categories as under :—

Sales turnover	Assessed by
Rs. 1 crore and above ..	Assistant Commissioners of Sales Tax
Between Rs. 50 lakhs and Rs. 1 crore.	Sales Tax Officers, Class I.
Between Rs. 3 lakhs and Rs. 50 lakhs.	Sales Tax Officers, Class I and Class II.
Below Rs. 3 lakhs ..	Sales Tax Officers, Class II.

In addition, there is an Internal Audit Department which is headed by a Deputy Commissioner of Sales Tax. The Deputy Commissioners of Sales Tax and the Assistant Commissioners of Sales Tax in charge of Administration are also required to audit some percentage of the cases assessed by their subordinate officers.

As per departmental instructions, the assessing officers are required to furnish in respect of all cases, information such as turnover, taxes paid and/or refund claimed in the returns under the Bombay Sales Tax and Central Sales Tax Acts for the previous and current years, to the Deputy Commissioner (Administration) concerned for the purpose of selection of eligible cases for summary assessment. After identifying the eligible cases as per the prescribed norms, about 25 per cent of the cases are selected at random for assessment by verification with reference to books of accounts as a safeguard against misuse of the facility by the dealer. The remaining eligible cases are intimated to the concerned assessing officers for summary assessment.

The selection of the cases for summary assessment during the year 1984-85 was entrusted to the Additional Commissioner of Sales Tax. Thereafter, the selections are being made by the respective Deputy Commissioners (Administration) on the basis of guidelines issued, (January 1987) by the Commissioner of Sales Tax.

2.2.3 Scope of Review.—A review of the scheme of summary assessment was conducted in May and June 1989 with a view to examining its operational effectiveness as also to see whether the norms prescribed in the scheme for selection of cases were comprehensive and free from defect, so as to safeguard the interest of revenue of the State. For this purpose, the records of 87 assessing officers dealing with cases of dealers having an annual turnover of Rs. 50 lakhs and above in Bombay City and suburbs like Thane and Kalyan, for the years 1984-85 to 1986-87, were examined. The departmental files relating to the selection of cases for summary assessment in the Office of the Deputy Commissioner (Administration) in Bombay City Division for the years 1985-86 to 1987-88 were also examined. The cases which were initially selected for summary assessment but eventually assessed by actual detailed verification were analysed to see whether the rules framed by the department provided sufficient safeguards against evasion of tax and consequential leakage of revenue.

2.2.4 Highlights.—(*i*) While categorising cases for summary assessment, tax liability under the Bombay Sales Tax Act alone has been considered ignoring liability under the Central Sales Tax Act eventhough the tax liability of sales tax comprises both of Bombay Sales Tax and Central Sales Tax dues.

(*ii*) Allowing the assessee to deduct set-off claimed without examination to arrive at net tax liability for the purpose of summary assessment tends to compromise the interest of revenue.

2.2.5 Liability under the Central Sales Tax not considered material for eligibility.—Sales Tax liability comprises tax payable under the provisions of the Bombay Sales Tax Act, 1959 and the Central Sales Tax Act, 1956 except where the dealer is not registered under the Central Sales Tax Act. The departmental instructions stipulate, *inter-alia*, that only the liability under the Bombay Sales Tax Act, 1959 should not exceed Rs. 20,000 during the previous year. Thus a dealer would get summarily assessed, if his liability under the State Act was within the prescribed limit irrespective of the extent of the tax liability under the Central Act. The department by confining to the tax liability in the previous year under the State Act in the selection process, has widened the scope for summary Assessment and narrowed the scope for assessment by detailed verification.

2.2.6 The results of some of the cases initially selected for summary assessment but actually assessed by detailed verification are mentioned below :

(*a*) *Cases involving non-consideration of liability under the Central Sales Tax Act*—

(*i*) A manufacturer of dyes had a tax liability of Rs. 23.50 lakhs under the Central Sales Tax Act and a set-off claim of Rs. 2.22 lakhs under the local Act for the period 1st July 1983 to 30th June 1984. The returns for the subsequent period viz. 1st July 1984 to 30th June 1985 which disclosed a tax liability of Rs. 27,237 under the Bombay Sales Tax Act and Rs. 21.87 lakhs under the Central Sales Tax Act were selected initially under the summary assessment scheme. However, on detailed verification of the assessment for the period 1st July 1984 to 30th June 1985 the set-off claim was reduced by Rs. 17,000.

(*ii*) In another case, an assessee dealing in electrical goods had a liability of Rs. 1.62 lakhs during the year 1985-86 under the Central Sales Tax

Act, but his case for the year 1986-87 was selected for summary assessment. The assessment after detailed verification resulted in increase of set-off by Rs. 20,000.

(*b*) *Cases involving wide variation in the set-off claimed and allowed.*— (*i*) In the case of an exporter, regular assessment (April 1988) for the period 1st July 1986 to 30th June 1987 resulted in the enhancement of gross liability under the Bombay Sales Tax Act from Rs. 99,414 to Rs. 1.39 lakhs and the disallowance of the entire claim of set-off of Rs. 99,414.

(*ii*) In the case of another dealer, set-off claim of Rs. 1.02 lakhs in the returns for the period 1st July 1985 to 30th June 1986 on regular assessment resulted in disallowance of set-off to the extent of Rs. 47,322.

(*iii*) A dealer in chemicals, who had claimed set-off of Rs. 1.64 lakhs in the returns for the year 1985-86 was allowed on regular assessment a set-off of Rs. 2.57 lakhs.

(*c*) *Other cases involving variation in tax liability.*—

(*i*) A case of a manufacturer of textiles and yarn was selected for summary assessment but was assessed by detailed verification as the turnover involved was substantial. The dealer had disclosed in his returns for the period 1st October 1985 to 30th September 1986 taxable local sales of Rs. 12.60 crores. On verification, taxable sales turnover was determined at Rs. 11.36 crores on account of deductions admissible for sales supported by declarations (viz. Forms N-15, N-14 and B.C.) and resales. Consequently, sales tax liability under the Bombay Sales Tax Act was reduced from Rs. 93.64 lakhs to Rs. 81.28 lakhs. However, the inter-State sales was determined at Rs. 23.15 lakhs as against Rs. 22.97 lakhs disclosed in the returns. This resulted in increase in the tax liability under the Central Sales Tax Act from Rs. 91.88 lakhs to Rs. 92.58 lakhs. Further, out of the set-off claim of Rs. 75.55 lakhs, an amount of Rs. 12.55 lakhs was disallowed on the purchases of yarn worth Rs. 6.99 crores as these purchases had not borne tax, being purchases from mills availing sales tax exemption. Detailed verification also resulted in enhancement of sales subject to concessional rate of tax to the extent of Rs. 1.62 crores. Thus as against the refund claimed at Rs. 34.08 lakhs, the refund allowed on assessment was Rs. 15.88 lakhs resulting in a saving of Rs. 18.20 lakhs to the Government.

(*ii*) In the returns for the year 1986-87 a reseller in electrical goods holding authorisation had not disclosed the purchases effected (on Form 14) for sales in the course of inter-State trade or commerce or export. On verification, of books of accounts, purchases in contravention of declaration in Form 14 were determined at Rs. 6.38 lakhs and purchase tax was levied at Rs. 68,384. Further, as against set-off of Rs. 8.69 lakhs claimed in the returns, set-off allowed was Rs. 9.35 lakhs.

(*iii*) In another case a dealer had indicated in the returns for the year 1985-86 taxable sales of Rs. 38.51 lakhs with a tax liability of Rs. 1.78 lakhs. On detailed verification, the taxable sales were determined at Rs. 56.35 lakhs and the tax liability enhanced to Rs. 2.25 lakhs. There was also increased allowance of set-off of Rs. 0.43 lakh.

(*iv*) Assessment by verification in the case of a dealer for the period 25th October 1984 to 12th November 1985 resulted in the liability under the Bombay Sales Tax Act increasing from Rs. 3.50 lakhs to Rs. 4.66 lakhs. There was also increase in admissible set-off from Rs. 2.55 lakhs to Rs. 3.20 lakhs.

(*v*) In yet another case, a dealer in chemicals had returned local taxable sales of Rs. 2.73 crores with tax liability of Rs. 23.32 lakhs for the Calendar year 1985. On actual verification the taxable turnover was, however, determined at Rs. 2.50 crores but the tax liability rose to Rs. 23.41 lakhs. Purchase tax was levied more to the extent of Rs. 1.13 lakhs in the assessment on verification. Set-off was also granted at Rs. 2.79 lakhs as against Rs. 2.33 lakhs claimed. The total taxes levied were Rs. 32.76 lakhs as against Rs. 31.41 lakhs shown in the returns.

(*vi*) A manufacturer of chemicals had disclosed, in his returns for the year 1986-87 tax liability of Rs. 2.78 lakhs under the Bombay Sales Tax Act and Rs. 86,537 under the Central Sales Tax Act. The case was initially selected for summary assessment based on the previous years tax liability but was eventually subjected to detailed verification and was assessed to tax of Rs. 2.92 lakhs.

(*vii*) A dealer had shown tax liability of Rs. 14,427 and claimed set-off of Rs. 18,456 in his returns for the year 1986. On verification the dealer was assessed to tax of Rs. 39,016 and was allowed a set-off of Rs. 24,670.

(*viii*) A dealer had disclosed in the returns for the period 1st July 1984 to 30th June 1985 under the Central Sales Tax Act, sales turnover of Rs. 3.56 crores. Out of this Rs. 3.51 crores were shown as liable to

tax of Rs. 14.05 lakhs at the concessional rate of 4 per cent and the balance of Rs. 5.26 lakhs at the rate of 10 per cent amounting to Rs. 52,649. However, on detailed verification the sales turnover liable to tax at concessional rate and at full rate were determined at Rs. 3.53 crores and Rs. 6.07 lakhs respectively resulting in a total tax liability of Rs. 14.73 lakhs as against Rs. 14.58 lakhs shown in the returns.

(*ix*) A manufacturer of auto parts, had disclosed a gross liability of Rs. 15.07 lakhs under the Bombay Sales Tax Act and Rs. 7.14 lakhs under the Central Sales Tax Act with a set-off claim of Rs. 3.90 lakhs in the returns for the year 1986-87. The dealer was initially selected for summary assessment even though the liability under the Bombay Sales Tax Act during the previous year was Rs. 11.26 lakhs. The case on regular assessment resulted in additional set-off of Rs. 14,500 and an additional demand aggregating to Rs. 58,729 under the Bombay Sales Tax Act and Central Sales Tax Act.

2.2.7. Ineligible case erroneously selected for summary assessment and mistake noticed therein.—A manufacturer of medicines who was assessed under the summary assessment scheme was granted refund of Rs. 3.84 lakhs claimed in the return for the period 1st November 1985 to 31st October 1986. During the previous year while filing his returns the dealer had not paid purchase tax of Rs. 1.63 lakhs on account of manufactured goods transferred to branches. The dealer had also been granted a refund of Rs. 11.61 lakhs on assessment.

On this being pointed out (January 1989) in audit, the Deputy Commissioner of Sales Tax (Administration) set aside (January 1989) the assessment order passed under the summary assessment. Report on final action taken has not been received (May 1990).

The above points were brought to the notice of the department and Government in August 1989 and followed up by reminder (April 1990); their replies have not been received (May 1990).

2.3. Incorrect grant of set-off

(*a*) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a manufacturer who has paid taxes on the purchase of goods specified in Part II of Schedule 'C' to the Act and used within the State in the manufacture of taxable goods for sale or export by him or in the packing of goods so manufactured, is allowed (with effect from 1st July 1981), a set-off of taxes paid in excess of 4 per cent

of the purchase price (3 per cent upto 30th June 1981). Where the purchase price is inclusive of taxes, the amount of set-off is worked out according to a formula prescribed in the Rules with reference to the rate of tax applicable to the goods purchased.

When the manufactured goods are transferred to branches outside the State, otherwise than by way of sale, set-off on raw materials including packing materials, is to be reduced by 5 per cent instead of 4 per cent as above ,from 1st July 1981 and 6 per cent from 1st July 1982.

A manufacturer, who also manufactures goods the sale of which is not taxable, is allowed set-off only proportionately in respect of manufactured goods, on the sale of which tax is leviable.

If raw materials (including packing materials) purchased for use in manufacture or the manufactured goods, are used in job work or contract work, set-off is required to be reduced proportionately.

No set-off is admissible in respect of goods covered by part I of schedule 'C' and Schedule 'A' to the Act.

No set-off is admissible on purchases effected by a dealer prior to his obtaining a certificate of registration.

Further, additional tax calculated at 12 per cent (6 per cent prior to 1st December 1982) of the tax payable (after reducing the set-off allowed upto 31st March 1983) is leviable, if the turnover of sales or purchases exceeds rupees 10 lakhs in any year.

Further, for failure to disclose in the return the appropriate liability to pay for the proper and correct quantification of tax liability, penalty equal to a sum not exceeding the amount of tax found due and payable is leviable.

In 9 cases involving under-assessment due to incorrect grant of set-off, demands aggregating to Rs. 5,17,418 were raised and recovered by the department on being pointed out in audit. A few other cases are mentioned below.

(*i*) Hessian is covered by entry 25(*i*) of Part I of Schedule 'C' taxable at 4 per cent (3 per cent upto 30th June1981).

In Aurangabad, a manufacturer of paper was allowed set-off of Rs. 2.15 lakhs in the assessment for the Calendar year 1981 (assessed in April 1984) which included set-off on purchases of hessian, the exact quantum

of which was not available on record. Again in the assessment (October 1984) for the Calendar year 1982, set-off of Rs. 29,960 was allowed on purchases of hessian of Rs. 10.79 lakhs. No set-off was, however, admissible on purchase of hessian as the rate of tax thereon was 3 per cent upto 30th June 1981 and it was covered under Part I of Schedule 'C' to the Act thereafter. The set-off allowed during the year 1981 and 1982 was, therefore, erroneous.

On this being pointed out (September 1988) in audit, the department stated (March 1989) that the dealer was reassessed (February 1989) raising additional demand of Rs. 46,257 for the two years.

The matter was reported to Government in August 1989.

(*ii*) High speed diesel oil is not taxable under the Bombay Sales Tax Act, 1959 but is taxable under the Bombay Sales of Motor Spirit Taxation Act, 1958. Consequently no set-off of the tax paid on purchases thereof is admissible.

In Bombay, while assessing (June 1984) a manufacturer of automobile parts etc., set-off of Rs. 34,925 was incorrectly allowed on the purchases of High Speed diesel oil worth Rs. 5.82 lakhs during the assessment periods falling between 1st October 1978 and 30th September 1980.

On this being pointed out (February 1987) in audit, the department revised (February 1989) the assessment order raising additional demand of Rs. 34,925 and further stated (December 1989) that the dealer had gone into liquidation and claim was being lodged with the official assignee.

The matter was reported to Government in July 1989.

(*iii*) In Pune, in the assessment (October 1987) of a manufacturer of washing soap for the period from 13th November 1985 to 2nd November 1986, set-off of Rs. 27,111 was allowed on the purchases of "Palm Fatty Acid" worth Rs. 6,62,738 (inclusive of taxes) treating the goods as covered by residual entry 102 of Part II of Schedule 'C' to the Act (rate of tax 10 per cent) though by a determination order (October 1985) issued by the Commissioner of Sales Tax, it was held that "Palm Fatty Acid" was actually "vegetable non-essential oil" and as such was covered by entry 35 of Part I of Schedule 'C' to the Act (rate of tax 4 per cent). Hence no set-off was admissible on the purchase of this commodity. The mistake thus resulted in excess set-off of Rs. 27,111 with consequent short levy of tax of Rs 27,111.

On this being pointed out (September 1988) in audit, the department revised (March 1989) the assessment order raising additional demand of Rs. 27,111.

The matter was reported to Government in July 1989.

(*iv*) In Bombay, a dealer commenced business on 6th April 1983 and obtained the certificate of registration under the Act effective from 27th June 1983. He was allowed (March 1987) on the basis of an appeal filed by him, a set-off of Rs. 24,562 on purchase of machinery worth Rs. 5,77,500 effected prior to the date of the registration, which was inadmissible.

On this being pointed out (December 1987) in audit, the department revised the appeal order (August 1988) raising an additional demand of Rs. 24,562.

The matter was reported to Government in May 1989.

(*v*) In the assessment (July 1986) of a manufacturer of automobile springs at Raigad for the Calendar year 1982, set-off of Rs. 2.38 lakhs was wrongly allowed on purchases worth Rs. 59.25 lakhs as against Rs. 2.17 lakhs admissible. This resulted in set-off being allowed in excess by Rs. 20,887.

On this being pointed out (July 1988) in audit, the department accepted the mistake (August 1989). Further, the department stated (May 1990) that the dealer had filed an appeal.

The matter was reported to Government in September 1989 and followed up by reminder (April 1990); their reply has not been received (May 1990).

(*vi*) In Raigad District, in the assessment for the year 1982-83 of a manufacturer of chemicals, set-off in respect of purchases of mineral turpentine used in the manufacture of taxable goods was allowed at the rate of 8 per cent upto 30th November 1982 and 10 per cent from 1st December 1982 treating the goods as covered by the residuary entry (C-II-102). As mineral turpentine is covered by Part-I of Schedule 'C' to the Act, no set-off is admissible. This resulted in grant of incorrect set-off.

On this being pointed out (July 1988) in audit, the department stated (May 1990) that the assessment order was revised (August 1989) by withdrawing set-off of Rs. 26,239 allowed on mineral turpentine.

The matter was reported to Government in September 1989 and followed up by reminder (April 1990); their reply has not been received (May 1990).

(*vii*) In Bombay, while assessing a manufacturer of paper for the Calendar year 1984, a set-off of Rs. 80,245 was allowed on the purchase of waste paper valued at Rs. 19.91 lakhs (inclusive of taxes) by applying tax rate of ten per cent treating the goods as covered by the residuary entry in Part II of Schedule 'C' to the Act instead of 6 per cent applicable from 1st April 1984. The incorrect application of rate of tax on purchases effected after 31st March 1984 resulted in grant of excess set-off of Rs. 44,341.

On this being pointed out (January 1989) in audit, the department accepted (April 1989) the mistake. Further report on action taken has not been received (May 1990).

The matter was reported to Government in September 1989 and followed up by reminder (April 1990); their reply has not been received (May 1990).

(*b*) Under the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a manufacturer of declared goods is also entitled to full set-off of taxes paid on the purchase of raw materials specified in Schedule 'B' to the Act (declared goods) which are used by him in the manufacture of goods specified in the same entry of Schedule 'B', for sale or export, provided that no set-off would be admissible if the goods manufactured are allowed as resale in the State.

Further, additional tax calculated at 12 per cent (6 per cent prior to 1st December 1982) of the tax payable (after reducing the set-off allowed upto 31st March 1983) is leviable, if the turnover of sales or purchases exceeds 10 lakhs of rupees in any year.

In one case involving under-assessment due to incorrect grant of set-off, demand amounting to Rs. 50,425 (including additional tax of Rs. 1,278) was raised and recovered by the department on being pointed out in audit. A few other cases are mentioned below :

(*i*) In Palghar, while assessing (January 1986) a manufacturer of declared goods a set-off of Rs. 1.80 lakhs was allowed for the period from 1st July 1983 to 30th June 1984 on the sales of scrap worth Rs. 19.06 lakhs. The set-off allowed was worked out on the proportion of the

weight of the scrap sold to the total weight of the raw materials purchased. The set-off should have been worked out with reference to the purchase value of raw materials of scrap sold for Rs. 19.06 lakhs. This resulted in excess allowance of set-off of Rs. 1.21 lakhs.

On this being pointed out (February 1987) in audit, the department stated (December 1988) that the assessment order has been revised by raising an additional demand of Rs. 1.21 lakhs. Further, the department stated (December 1989) that the dealer had filed an appeal before the tribunal.

The matter was reported to Government in June 1989.

(ii) At Bombay, while assessing a manufacturer-*cum*-reseller for the period from 1st January 1983 to 31st December 1983 set-off of Rs. 68,893 on the opening stock of goods of 1676.518 M. T. as on 1st January 1983 and Rs. 79,177 on the purchases of 657.425 M. T. effected during the assessment year was allowed. As the weight of manufactured goods was to the extent of 922.445 M. T. the set-off was required to be restricted to 922.445 M. T. of raw materials only instead of 2333.943 M. T. of raw materials. This resulted in excess allowance of set-off on 1411.498 M. T. of raw materials.

On this being pointed out (May 1986) in audit, the department revised (December 1988) the assessment of the dealer raising additional demand of Rs. 1.10 lakhs. The department further stated (December 1989) that the dealer being aggrieved by the reduction in set-off allowed, had filed an appeal before the Deputy Commissioner of Sales Tax (Appeals) by making part payment of Rs. 15,000. Report on further developments has not been received (May 1990).

Government to whom the matter was reported in July 1989, confirmed the department's reply (January 1990).

(*c*) Under the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a registered dealer is entitled to set-off of taxes recovered from him by other registered dealers on purchases of any goods, provided the goods are resold by him to the Central or any State Government and the dealer produces a declaration in AF form furnished by an authorised official of the Government to whom the goods have been resold. The set-off is admissible to the extent of the tax paid on purchases in excess of four per cent of the sale price (3 per cent prior to 1st July 1975). If the goods have been resold to a manufacturer/

processor of textiles, set-off is admissible to the extent of the tax paid on purchases in excess of 6 per cent of the sale price. No set-off is admissible, if the purchase price is inclusive of taxes.

Further, for failure to disclose in the return the appropriate liability to pay for the proper and correct quantification of tax liability, penalty equal to a sum not exceeding the amount of tax found due and payable is leviable.

(*i*) In Bombay, a reseller of rubber compounds was allowed a set-off of Rs. 19,714 on the purchases of goods worth Rs. 4.82 lakhs which were resold to the Railways. As the tax on the purchases made by the dealer was not recovered separately by the vendor, the set-off allowed to the dealer was inadmissible. Further, on the purchases of Rs. 1.03 lakhs, where tax was recovered separately, by the selling dealer set-off was calculated at 4 per cent of purchase price instead of at 4 per cent of sale price resulting in excess allowance of set-off of Rs. 1,477. The mistake resulted in an under-assessment of Rs. 21,191.

On the mistake being pointed out (December 1986) in audit, the department stated (February 1989) that the assessment was revised raising additional demand for Rs. 29,191 (including penalty of Rs. 8,000).

Government to whom the matter was reported in June 1989, stated (September 1989) that the dealer had filed an appeal before the Deputy Commissioner of Sales Tax (Appeals) and obtained stay against recovery of the dues by making part payment of Rs. 8,000.

(*ii*) In Bombay, in the assessment of a dealer in chemicals for the period 1982-83, set-off admissible on goods resold against 'T' forms was computed at the rate of 6 per cent of the purchase value of goods instead of 6 per cent of the resale value of the goods. This resulted in grant of excess set-off of Rs. 22,897.

On this being pointed out (March 1989) in audit, the department revised (January 1990) the assessment order raising an additional demand of Rs. 38,391.

The matter was reported to Government in September 1989.

(*d*) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder (prior to 1st July 1981), a licensed dealer was allowed set-off of general sales tax recovered from him, on the sale of goods (except those specified in Part II of Schedule 'B') otherwise than

against a certificate in Form 16, at a time when he held a licence. Further, the set-off was admissible, provided the goods so purchased were resold by him otherwise than in the course of inter-State trade or commerce or of export out of the territory of India and general sales tax had been paid on such resales.

Further, additional tax at the rate of 6 per cent of the net tax payable (after reducing set-off allowed) was also payable by a dealer whose turnover of sales or purchases exceeded ten lakhs of rupees in any year.

In Bombay, while assessing (December 1981) for the period 1976-77 a dealer in petroleum products holding a licence, set-off of Rs. 18,953 was allowed on resales of goods worth Rs. 6.32 lakhs treating them as goods bearing general sales tax of 3 per cent. The goods resold by the dealer were, however, goods purchased on Form 15 at concessional rate of tax for use in the manufacture of taxable goods for sale and the tax paid at 3 per cent was in fact purchase tax in contravention of recitals of declaration and not general sales tax paid by the dealer and hence the dealer was not entitled to the set-off.

On this being pointed out (December 1982) in audit, the department stated (November 1988) that the mistake was rectified raising additional demand of Rs. 20,090 (including additional tax).

Government to whom the matter was reported in September 1989 stated (January 1990) that the dealer had made part payment of Rs. 7,178 and filed an appeal before the Deputy Commissioner of Sales Tax (Appeals).

(*e*) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a registered dealer who manufactures bicycles is entitled to full set-off of taxes paid on the purchases (after 1st July 1981) of raw materials required for use in the manufacture of a bicycle.

In Bombay, a manufacturer of cycle parts was allowed (October 1986) set-off aggregating to Rs. 78,259 in the assessments for the Calendar years 1984 and 1985. As the dealer is a manufacturer of cycle parts and not a manufacturer of bicycles, the set-off allowed to the dealer was inadmissible. This resulted in under-assessment of Rs. 78,259.

On this being pointed out (November 1987) in audit, the department stated (February 1990) that the dealer was reassessed (September 1988) raising additional demand of Rs. 78,179.

Government to whom the matter was reported in September 1989 confirmed the department's reply.

(*f*) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a registered dealer holding Certificate of Entitlement is allowed full set-off of taxes paid or deemed to have been paid on purchases of raw materials which include components, intermediate goods, substances, consumable stores or packing material utilised in the process of manufacture and packing of finished products or goods. In respect of taxes paid or deemed to have been paid on purchases other than raw materials, the dealer is eligible for set-off in excess of 4 per cent of the purchase price.

In one case, involving underassessment due to incorrect grant of set-off demand for Rs. 33,681 was raised and recovered (February 1990) by the department on being pointed out in audit.

(*g*) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a registered dealer is entitled to set-off of taxes paid or deemed to have been paid on his purchases made from other registered dealers provided the goods are resold within nine months of the date of purchase in the same form in which they were purchased, either in the course of export or in the course of inter-State trade or commerce. If however, the goods are despatched to his own place of business or to his agents outside the State for use in manufacture or resale, the set-off is admissible to the extent the tax paid on purchases exceeds four per cent.

In Bombay, a reseller in iron and steel and items fabricated therefrom, was allowed a set-off of Rs. 25,515 on the purchase price of goods resold in the course of inter-State trade or commerce determined at Rs. 8.85 lakhs. The purchase price was determined by reducing profit of 42 per cent from the net sale price of Rs. 15.25 lakhs. However, in audit it was seen from the assessment record that all the goods sold in the course of inter-State trade or commerce consisted of manufactured goods. Thus the set-off of Rs. 25,515 allowed to the dealer was inadmissible.

On this being pointed out (January 1989) in audit, the department stated (August 1989) that the dealer was reassessed (August 1989) raising additional demand of Rs. 25,515.

Government to whom the matter was reported in September 1989 while confirming the demand stated (April 1990) that the dealer had made part payment of Rs. 2500 and filed an appeal.

(*h*) Under the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a registered dealer is entitled to set-off of taxes paid on the purchases made by him which are used by him within the State in the manufacture of certain specified goods or in the packing of such manufactured goods provided the goods manufactured are sold in the course of export out of the territory of India by the claimant dealer or by another dealer to whom the claimant dealer sells the said manufactured goods subject to the production of a certificate in Form 31-E. In case the purchase price is inclusive of taxes, the set-off is calculated in accordance with a prescribed formula.

In one case, involving under-assessment due to incorrect grant of set-off, demand amounting to Rs. 23,522 was raised and recovered by the department on being pointed out in audit.

(*i*) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, a registered dealer is allowed reimbursement of the tax paid on purchases of declared goods resold by him in the course of Inter-State trade or commerce and tax on resales thereof under the Central Sales Tax Act, 1956, has been paid or is payable by him.

It has been judicially held that raw hides and skins and dressed hides and skins are commercially different commodities even if they are grouped together under one entry for purpose of taxation.

In Bombay, a dealer engaged in the activity of processing of raw hides and skins, was allowed, in the assessment for the period 1st July 1983 to 30th June 1984, reimbursement of tax of Rs. 55,475 paid on purchases of raw skins which were sold after processing in the course of inter-State trade or commerce treating the sales as resales. In view of the judicial pronouncement the dealer was not eligible to the reimbursement of tax paid on his purchases of raw hides and skins. This resulted in erroneous allowance of set-off of Rs. 55,475 and consequent loss to Government.

On this being pointed out (May 1988) in audit, the department stated (April 1989) that the reimbursement of tax of Rs. 55,475 allowed in the assessment order was not in accordance with the provisions of the Act and the Rules. However, the department further stated that the legal position on the issue was not very clear in the past and the matter was examined in the light of the various judicial pronouncements on the subject and it was decided to enforce the legal position from 1st May 1987

and therefore no corrective action was called for. The reply of the department is not tenable in view of the judicial decision.

The matter was reported to Government in July 1989, their reply has not been received (May 1990).

2.4. Non-levy/short levy of purchase tax

(*a*) Under the Bombay Sales Tax Act, 1959, purchase tax is payable at reduced rate of 4 per cent by a manufacturing dealer holding recognition certificate on the purchase of raw material with effect from 1st July 1981 by furnishing a declaration to the selling dealer in the prescribed form, that the goods purchased will be used by him within the State in the manufacture of taxable goods for sale. If the goods so purchased are not used in the manufacture of goods, within the State the dealer shall be liable to purchase tax at the rates prescribed in the Schedules.

Further, additional tax at the rate of 12 per cent (6 per cent upto 30th November 1982) of the tax payable is also payable by a dealer whose turnover of sales or purchases exceeds 10 lakhs of rupees in any year.

Further, for failure to disclose in the return the appropriate liability to pay for the proper and correct quantification of tax liability penalty equal to a sum not exceeding the amount of tax found due and payable is also leviable.

In one case purchase tax of Rs. 23,133 was levied and recovered on being pointed out in audit.

(*i*) In Bombay, in the assessment for the period 1981-82 (assessed in June 1984) of a dealer engaged in extraction and refining of oil, purchase tax for contravention of recitals of declaration in Form N-15 was levied on the purchases worth Rs. 246.88 lakhs after taking into consideration the opening stock of Rs. 39.99 lakhs and closing stock of Rs. 70.32 lakhs. A scrutiny of the assessment file for the year 1980-81 to verify the correctness of the opening stock as on 1st April 1981 revealed that the dealer had effected purchases to the extent of Rs. 208.34 lakhs on declarations in Form N-15 and the sales during the year 1980-81were Rs. 59.06 lakhs which included taxable sales of Rs. 5.58 lakhs only. However, no purchase tax for contravention was levied in the assessment for that year. Thus the opening stock of purchases supported by declaration in Form N-15 of Rs. 39.99 lakhs considered for levy of purchase tax during the year 1981-82 was not correct. Action to levy purchase tax on contravention

of Form 15 purchases effected during the year 1980-81 had also not been taken.

On this, being pointed out (June 1987) in audit, the department stated (June 1989) that the assessment for the year 1980-81 was revised (December 1988) raising additional demand of Rs. 15.27 lakhs (including penalty of Rs. 5.00 lakhs).

Government to whom the matter was reported in August 1989, confirmed (January 1990) the additional demand.

(*b*) Under the Bombay Sales Tax Act, 1959, a manufacturer holding a recognition certificate is entitled to purchase goods at the reduced rate of 3 per cent (4 per cent from 1st July 1981) on furnishing a declaration in Form-15 that the goods purchased would be used in the manufacture of goods, the sale of which was taxable. If however, the goods so purchased are used in the manufacture of goods the sale of which is not taxable, it amounts to contravention of recitals of declaration and purchase tax is leviable at the rates prescribed in the Schedules.

It was judicially held *(September 1978) that the service of cooked food or drinks for consumption at or outside any eating house, restaurant, hotel, refreshment room or boarding establishment is not taxable, whether or not a consolidated charge for the service is made. Accordingly, dealers engaged in hotel business were not liable to pay sales tax if they had not recovered tax on the sales effected by them until the 46th amendment to the Constitution (3rd February 1983).

In Bombay, a five star hotel had purchased during the period September 1978 and March 1979, goods valued at Rs. 3.03 lakhs at the concessional rate of 3 per cent for manufacture of food stuffs/drinks, sold in the hotel which were not levied to tax. Thus the assessee contravened the recitals of the declaration and was liable to pay purchase tax on the purchases at the rate of 8 per cent instead of 3 per cent, which amounted to Rs. 25,681.

On this being pointed out (June 1984) in audit, the department stated (February 1989) that the assessment was revised (January 1989) raising additional demand of Rs. 25,681. Further the department stated (December 1989) that the dealer had made part payment of Rs. 5,000 and filed an appeal.

*Northern India Caterers (India) Ltd. *v/s* Lt. Governor of Delhi (42-STC—386)

The matter was reported to Government in July 1989.

(*c*) Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, with effect from 1st July 1981 a manufacturer holding recognition certificate can purchase goods specified in Part-II of Schedule 'C' to the Act without payment of tax by furnishing declaration in Form N-15 to the selling dealer, that the goods purchased will be used by him within the State in the manufacture of taxable goods for sale. However, the purchaser has to pay purchase tax on such purchases at concessional rate of four per cent alongwith returns. If, the manufactured goods are transferred to branches outside the State otherwise than by way of sale, it amounts to contravention of recitals of declaration and the dealer is liable to pay purchase tax at the rate of five per cent (6 per cent with effect from 1st July 1982) on the purchase price of goods used in the manufacture of goods transferred to branches.

In Bombay, in the case of a manufacturer in super-enamelled copper wire holding a recognition certificate, purchase tax of Rs. 36,793 was levied and recovered on being pointed out in audit.

(*d*) Under the Bombay Sales Tax Act, 1959, purchase tax is leviable at a concessional rate of 4 per cent on purchase of goods, covered by Part-II of Schedule 'C' by a manufacturing dealer on the submission of the prescribed declaration.

Further, additional tax at the rate of 12 per cent of the gross tax payable is also payable by a dealer whose turnover of sales or purchases exceeds ten lakhs of rupees in any year.

In one case additional demand due to short levy of purchase tax and additional tax thereon amounting to Rs. 31,769 was levied and recovered on being pointed out in audit.

(*e*) Under the Bombay Sales Tax Act, 1959, and notification dated 5th July 1980 issued thereunder, a registered dealer holding a Certificate of Entitlement, may purchase raw materials free of tax after furnishing to the selling dealer a declaration in Form 'BC' declaring, *inter-alia*, that the goods so purchased will be used by him in the manufacture of goods at his industrial unit for sale within the State or in the course of inter-State trade or commerce. Any breach of the recital of the declaration attracts levy of purchase tax on such purchases.

In Yavatmal, a dealer holding a Certificate of Entitlement, purchased cotton seeds worth Rs. 25.55 lakhs and Rs. 19.07 lakhs during 1984-85 and 1985-86 respectively, on furnishing a declaration in Form ' BC ', for the manufacture of oil for sale. Out of the manufactured products, goods valued at Rs. 14.55 lakhs and Rs. 13.76 lakhs were despatched by the manufacturer to his branches outside the State of Maharashtra during these years " For effecting sales " and as such were not in the course of inter-State trade or commerce. This resulted in contravention of the recitals of his declaration and purchases made by the manufacturer were, therefore, liable to purchase tax under the Act. The department, however, did not levy any purchase tax resulting in non-levy of tax of Rs. 42,418.

On the omission being pointed out (November 1988) in audit, the department stated (July 1989) that action has been initiated for revision of the assessment of the case.

The matter was reported to Government (February 1989) and followed up by reminders (March 1990); their reply has not been received (May 1990).

(*f*) By a notification issued on 30th June 1975, Government granted exemption from payment of sales tax in excess of 4 per cent on the sales of goods by a registered dealer to the Central or any State Government, subject to the production, by an authorised officer of the Government, a declaration in prescribed form ' AF ' declaring that the goods purchased were for official use by Government and not for the purpose of resale or for use in the manufacture of goods for sale. On failure to comply with the conditions of the declaration, the purchasing dealer shall be liable to pay purchase tax.

The Government Milk Scheme, Chandrapur, a registered dealer and reseller of milk and manufacturer of ghee, butter, etc., purchased (between 1981-82 and 1982-83) consumable goods worth Rs. 6.72 lakhs at the concessional rate of sales tax of 4 per cent on production of ' AF ' Forms. The goods so purchased were not used for official purpose, but were consumed in the manufacture of goods for sale. The assessee thus, committed a breach of the conditions stated in the declaration and as such became liable to pay purchase tax. However, while finalising assessment (January 1987 and February 1987) the assessing officer omitted to levy tax amounting to Rs. 26,106.

On this being pointed out (October 1988) in audit, the department accepted (May 1989) the mistake and raised additional demand.

The case was reported to Government in June 1989.

2.5. Incorrect computation of sales turnover

Under the Bombay Sales Tax Act, 1959, the taxable turnover of a dealer is determined after deducting therefrom, the resale of goods purchased by him from a registered dealer provided the goods are resold in the same form in which they were purchased and evidence is produced to show that the registration certificate of the original selling dealer was in force on the date of sale to the reseller. The claim for resale is allowed either on identification of sales with purchases or in the absence of such identification of sale with purchase, on the basis of a proportion which the purchases from registered dealers bear to the total purchases.

With effect from 1st July 1981, the Government of Maharashtra specified the last point of sale at which precious stones, synthetic or artificial precious stones and pearls, whether real, artificial or cultured mentioned in clause (*b*) of entry 60 in Part-II of Schedule ' C ' are to be taxed.

Further, additional tax at the rate of 12 per cent (6 per cent upto 30th November 1982) of the tax payable is also payable by a dealer whose turnover of sales or purchases exceeds ten lakhs of rupees in any year.

Further, for failure to disclose in the return the appropriate liabilities to pay for the proper and correct quantification of tax liability, penalty equal to a sum not exceeding the amount of the tax found due and payable (not exceeding one-and-a-half times of the amount of tax upto 20th April 1987) is also leviable.

(*i*) In Bombay, a manufacturer-*cum*-dealer in gold and silver ornaments, had purchased pearls of Rs. 1.17 lakhs from registered dealers during the period 28th October 1981 to 15th November 1982 (assessed in March 1985) and was incorrectly allowed set-off of Rs. 6,860 on purchase value of Rs. 1.28 lakhs. Thus, excess set-off amounting to Rs. 605 was allowed on purchase value of Rs. 0.11 lakh. In addition, although there was no stock available for resale, the dealer was erroneously allowed deduction on account of resale of pearls valued at Rs. 1.39 lakhs.

Similarly during the subsequent period i.e. from 16th November 1982 to 4th November 1983 (assessed in July 1985), the dealer had purchased pearls for Rs. 1.19 lakhs from registered dealers and set-off of Rs. 5,933 was allowed on purchase value of Rs. 1.11 lakhs leaving a balance of Rs. 0.08 lakh for resale. However, deduction on account of resale was erroneously allowed at Rs. 2.00 lakhs as against the available balance of Rs. 0.08 lakh.

On these omissions being pointed out (March 1987) in audit, the department stated (September 1988) that both the assessments were revised by disallowing set-off of Rs. 605 on purchase value of Rs. 0.11 lakh and also disallowing the entire resale of Rs. 3.39 lakhs and levying tax at the rate of 12 per cent thereon raising additional demand of Rs. 18,455 and Rs. 32,048 (including additional tax and penalty) during the periods 28th October 1981 to 15th November 1982 and 16th November 1982 to 4th November 1983 respectively.

The matter was reported to Government in June 1989.

(*ii*) In Bombay, while assessing (June 1984) a manufacturer of machinery and spares for the period from 1st July 1980 to 30th June 1981, sale of goods valued at Rs. 4.05 lakhs to a sister concern was omitted to be included in the taxable turnover of sales of the assessee. This resulted in short levy of tax of Rs. 32,400.

On this being pointed out (November 1986) in audit, the department stated (April 1989) that the assessment of the dealer was revised (March 1989) raising additional demand of Rs. 34,344 (including additional tax).

The matter was reported to Government in September 1989.

(*iii*) In Bombay, while assessing (April 1986) a processor of iron and steel for the period 1st July 1982 to 30th June 1983, out of the gross turnover of sales of Rs. 81.22 lakhs, sales of Rs. 10.64 lakhs only were subjected to tax and sales of Rs. 70.58 lakhs were allowed as resales. Further, the dealer was allowed set-off on the purchases of Rs. 26.90 lakhs (including an opening stock of Rs. 8.65 lakhs) treating them as having been used in the manufacture of goods. But a scrutiny of the assessment records, however, revealed that out of the purchases of Rs. 26.90 lakhs considered for set-off, the taxable sales determined were only Rs. 10.64 lakhs. This incorrect determination of taxable sales and resales resulted in short demand of Rs. 76,586.

On this being pointed out (December 1987) in audit, the department stated (June 1989) that the assessment of the dealer had been revised (May 1989) resulting in additional demand of Rs. 76,586.

Government to whom the matter was reported in September 1989, stated (February 1990) that the dealer had filed an appeal before the Deputy Commissioner of Sales Tax (Appeals).

(*iv*) Under the Bombay Sales Tax Act, 1959, the sales turnover of goods covered by Schedule ' A ' to the Act is tax free and deducted from the turnover of sales to determine the net taxable turnover.

In one case additional demand of Rs. 45,831 was raised and recovered on being pointed out in audit.

(*v*) In Bombay, while assessing (February 1979, September 1980, August 1981 and March 1982) a manufacturer of varnished fibre glass cloth and tapes for the years 1977-78 to 1980-81, deductions of Rs. 28.38 lakhs were allowed from the gross sales turnover for these periods treating the sales as tax free sales.

According to item 22 of the Central Excise Tariff, as amended from 16th March 1976 fabrics made from mineral fibres or yarn are excluded from the definition of man made fabrics. Consequently, fibre glass cloth and fibre glass tapes were covered by the residual entry, taxable at 8 per cent (5 per cent sales tax and 3 per cent general sales tax) upto 30th June 1981. The Commissioner of Sales Tax had determined (May 1968) that fibre glass cloth was tax free covered by entry 41 of Schedule ' A ' to the Act. Later in July 1981 the Commissioner held that in view of amendment to item 22 of the Central Excise Tariff, unvarnished fibre glass tapes and fibre glass cloth fall within the scope of the residual entry 22 of Schedule ' E ' to the Act taxable at 8 per cent.

Thus the deduction of Rs. 28.38 lakhs allowed as turnover not liable to tax in the assessments for the periods falling between 1st April 1977 and 31st March 1981 resulted in non-levy of tax of Rs. 2.36 lakhs (including additional tax of Rs. 9,000).

On this being pointed out (February 1985) in audit, the department stated (May 1987 and May 1988) that the assessments for the periods 1979-80 and 1980-81 were revised raising additional demands aggregating to Rs. 1.37 lakhs. In so far as the assessments for the years 1977-78 and

1978-79 were concerned the department stated (June 1989) that the assessments were barred by limitation and the revenue of Rs. 1.30 lakhs involved was lost to Government.

The matter was reported to Government in September 1989.

(*vi*) Under the Bombay Sales Tax Act, 1959, if a dealer liable to pay tax purchases goods from dealers outside the State, the resales of such goods are liable to tax at the rate prescribed in the Schedule to the Act.

In one case additional demand of Rs. 21,073 was raised and recovered on being pointed out in audit.

(*vii*) Under the provisions of the Bombay Sales Tax Act, 1959, prior to 1st July 1981 a dealer holding licence could purchase goods without payment of general sales tax on furnishing to the selling dealer a declaration in Form 16 to the effect that the goods purchased would be resold. With the abolition of general sales tax from 1st July 1981 goods covered by Schedule ' E ' (liable to both sales tax and general sales tax) purchased on Form 16 and held in stock on that date, were liable to tax when resold within the State. In the absence of identification of sales with purchases, the taxable sales is to be arrived at by adding gross profit to the purchase price. However, the dealer was eligible to set-off of sales tax paid on the purchases.

In Bombay, while assessing (August 1985) a reseller in dyes and chemicals, holding licence, for the period from 28th October 1981 to 15th November 1982, gross profit of 5 per cent was added to the opening stock of goods worth Rs. 16.85 lakhs purchased on the strength of Form 16 as he was unable to identify all the sales with corresponding purchases. The dealer had sold goods purchased worth Rs. 11.88 lakhs effected on Form 14 (without payment of tax) in the course of inter-State trade for Rs. 1.70 lakhs at a loss of about 86 per cent. In arriving at the taxable sales, the gross profit was, therefore, required to be computed by excluding the purchases of Rs. 11.88 lakhs effected on Form 14 and corresponding sales thereof valued at Rs. 1.70 lakhs. The gross profit as computed worked out to about 39 per cent as against 5 per cent adopted. This resulted in incorrect computation of the taxable turnover and consequent under-assessment of tax to the extent of Rs. 48,750.

On this being pointed out (May 1986) in audit, the department stated (October 1989) that the assessment was revised (September 1989) and additional demand raised for Rs. 97,828 (including penalty of Rs. 50,000).

Government to whom the matter was reported in September 1989, accepted the mistake and confirmed the demand (February 1990).

(*viii*) Under the Bombay Sales Tax Act, 1959, if a dealer, liable to pay tax, purchases goods from unregistered dealers, the resales of such goods are liable to tax at the rate prescribed in the Schedule to the Act.

In Bombay, the taxable sales turnover of a dealer who purchased goods for Rs. 6.20 lakhs from unregistered dealers during the period from 1st March 1984 to 24th October 1984 (assessed in December 1986) was determined at Rs. 4.14 lakhs. A further scrutiny of assessment records of the dealer revealed that no opening and/or closing stock of goods purchased from unregistered dealers was depicted and in the absence of an indication to this effect in the assessment records, the sales were shown at loss. The taxable sales thus determined were apparently incorrect and hence required re-examination.

On this being pointed out (February 1988) in audit, the department stated(February 1989) that the assessment was revised (July 1988) raising additional demand of Rs. 36,351 (including penalty of Rs. 9,000).

Government to whom the matter was reported in June 1989 accepted the mistake and stated (January 1990)that action to recover the demand under the provisions of Maharashtra Land Revenue Code was in progress.

(*ix*) In Bombay, in assessing (April 1987) a reseller of auto parts for the Calendar year 1984, sales of goods to the extent of Rs. 6.65 lakhs were allowed as resale eventhough the purchases of goods available for resale during the year were Rs. 3.77 lakhs only. Considering the gross profit of the dealer at 28 per cent during the year, the resale claim allowed in the assessment order was not correct and therefore required re-examination.

On this being pointed out (January 1989) in audit, the department stated (April 1989) that the dealer was reassessed raising additional demand of Rs. 44,480 (including penalty of Rs. 20,000). Further the department stated (February 1990) that the dealer had paid Rs. 15,000 and filed an appeal.

The matter was reported to Government in July 1989.

(*x*) In Amravati, a dealer whose purchases from registered dealers amounted to Rs. 4,92,412 in the year 1982-83, was allowed (June 1985) a resale claim to the extent of Rs. 9,51,923. The accounts of the dealer

disclosed an overall profit of 20 per cent olny whereas in respect of transactions relating to the resales as allowed by the assessing authority, the profits were over 93 per cent. This resulted in short levy of tax amounting to Rs. 32,394 due to deduction of an exaggerated amount towards resales from the turnover.

On the irregularity being pointed out (March 1987) in audit, the department revised the assessment (January 1989) raising an additional demand of Rs. 52,002 (including penalty).

The case was reported to Government in May 1989.

(*xi*) Under the Bombay Sales Tax Act, 1959, sale or purchase of books and periodicals including almanacs etc., are exempt from tax. However, publications which mainly publicise goods, services and articles for commercial purposes, are liable to tax at the rate of eight per cent.

In Bombay, sales worth Rs. 5.18 lakhs of weekly bulletins and monthly journals not covered under Schedule ' A ' of the Act effected by a printer during the period 1st July 1981 and 30th June 1982 (assessed in May 1985) were erroneously allowed as tax free. Further scrutiny of the assessment records and Trading and Profit and Loss account for the year ending 30th June 1982 revealed that gross turnover of sales was determined at Rs. 33.02 lakhs instead of Rs. 33.39 lakhs.

On this being pointed out (November 1987) in audit, the department revised (August 1988) the assessment raising additional demand of Rs. 44,146. Further the department stated (October 1989) that the dealer had made part payment of Rs. 11,146 and filed an appeal.

The matter was reported to Government in July 1989.

(*xii*) In Bombay,while assessing (January 1984) a manufacturer -cum-reseller of tin containers was allowed in the assessment for the period 1st April 1980 to 31st March 1981 a set-off of Rs. 12,030 on purchases of Rs. 2.41 lakhs on which tax of Rs. 19,248 was claimed to have been paid. A scrutiny of the assessment records of the selling dealer however revealed that he had not collected taxes separately on the sales effected by him. Either the set-off allowed to the dealer was erroneous or the taxable turnover of the vendor was erroneously determined for levy of tax.

On this being pointed out (January 1985) in audit, the department stated (October 1988) that the assessment of the selling dealer was revised

by levying tax on the sales of Rs. 4.66 lakhs which had remained to be disclosed in the return, raising additional demand of Rs. 43,565(including penalty of Rs. 9,000).

The matter was reported to Government in August 1989.

2.6. Application of incorrect rate of tax

Under the Bombay Sales Tax Act, 1959, the rate of tax leviable on any commodity is determined with reference to the entry in the Schedule to the Act applicable to that commodity. In respect of commodities which are not classified under any of the entries in the Schedules to the Act, tax is leviable at the rate indicated against the residuary entry.

Further, additional tax at the rate of 12 per cent (6 per cent upto 30th November 1982) of the tax payable is also payable by a dealer, whose turnover of sales or purchases exceeds 10 lakhs of rupees in any year.

Further, for failure to disclose in the return, the appropriate liability to pay for the proper and correct quantification of tax liability, penalty equal to a sum not exceeding the amount of tax (a sum not exceeding one-and-a-half times of tax upto 20th April 1987) found due and payable is also leviable.

In one case under-assessment of tax of Rs. 38,106 was recovered on being pointed out in audit.

(*a*) Sales of lifts, hoists, cranes and components, parts and accessories thereof are leviable to tax at the rate of 15 per cent.

In Bombay, while assessing (December 1985 and November 1986) a manufacturer of material handling equipment for the years 1982-83 and 1983-84, sales valued at Rs. 13.09 lakhs and Rs. 18.18 lakhs were subjected to tax at the rate of 8 per cent and 10 per cent respectively instead of at the correct rate of 15 per cent. This resulted in short levy of tax of Rs.1,60,796.

On this being pointed out (March 1987 and February 1988) in audit, the department revised (September 1988 and July 1988) the assessment orders and raised an additional demand of Rs. 2.79 lakhs (including penalty of Rs. 1,18,000).

The matter was reported to Government in May 1989 and July 1989.

(*b*) With effect from 1st July 1982, tax on sales of radios with more than 2 bands and components, parts and accessories thereof is leviable

at the rate of 15 per cent (12 per cent upto 30th June 1982). Under the Central Sales Tax Act, 1956, on inter-State sales of goods not supported by the prescribed declaration, tax is leviable at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods within the State whichever is higher.

At Bombay, sales of radio parts worth Rs. 34.25 lakhs by a manufacturer of radio parts and electronic goods during the two assessment periods falling between 1st July 1982 and 30th June 1984 (assessed in May 1986 and June 1986) were assessed to tax at the rate of 12 per cent instead of at 15 per cent, resulting in short levy of tax of Rs.1.15 lakhs. Similarly, sales of Rs. 22,074 effected during the period 1st July 1982 to 30th June 1983 in the course of inter-State trade or commerce and not supported by the prescribed declaration were subjected to tax at 10 per cent instead of 15 per cent resulting in under-assessment of Rs. 1,104.

On this being pointed out (March 1988) in audit, the department stated (November 1988 and December 1988)that the dealer was reassessed (September 1988 and October 1988) by raising demand of Rs. 1.74 lakhs (including penalty) under the local Act and Rs. 1,104 under the Central Sales Tax Act.

Government to whom the matter was reported in July 1989 stated (January 1990) that the dealer had paid Rs. 50,000 against the demand under the Bombay Sales Tax Act and Rs. 1,104 payable under the Central Sales Tax Act and had filed an appeal. Report on further development in appeal has not been received (May 1990).

(*c*) As per entry 44(A) (*i*) of Part -II of Schedule ' C ' to the Act, tax is leviable at the rate of ten per cent with effect from 1st June 1982 on sale of machinery, component parts and accessories thereof. Prior to that date, the goods were covered by residuary entry 102 of Part-II of Schedule ' C ' carrying tax liability of 8 per cent.

(*i*) In Bombay, in the assessment of two manufacturers of machinery for the period 1982-83, sales to the extent of Rs. 13.61 lakhs effected after 1st June 1982, were subjected to tax at eight per cent instead of ten per cent resulting in short levy of tax of Rs. 28,990.

On this being pointed out (September 1986 and January 1987) in audit, the department stated (October 1988 and June 1989) that the assessments of the dealer were revised (April 1988 and August 1989) raising additional

demand of Rs. 35,490 (including penalty of Rs. 6,500 for furnishing inaccurate particulars of transactions liable to tax).

Government to whom the matter was reported in September 1989 stated (March 1990) that one dealer had paid Rs. 19,875 against the demand of Rs. 24,875 and filed an appeal against levy of penalty of Rs. 5,000. Report in respect of the other dealer has not been received (May 1990).

(*ii*) As per entry 44A of Part -II of Schedule ' C ' to the Act, tractors and spare parts thereof were taxable at 10 per cent from 1st June 1982. By a Government notification dated 31st March 1983, the rate of tax on tractors was reduced to 4 per cent from 1st April 1983.

In Malkapur (Buldana district) an a authorised dealer of tractors and spare parts thereof sold tractors (upto 31st March 1983) and spare parts (upto 30th June 1983) for Rs. 24.06 lakhs on which sales tax at the rate of 8 per cent was uniformly levied under the residuary entry instead of at the rate as aforesaid. The mistake resulted in short levy of Rs.44,260.

On the mistake being pointed out (June 1988) in audit, the department accepted (April 1989) the objection and stated that corrective action was being initiated. Further report has not been received(May 1990).

The case was reported to Government in June 1989 and followed up by reminder (March 1990); their reply has not been received (May 1990).

(*iii*) At New Bombay, in the assessment of a reseller for the period 1st August 1981 to 31st July 1982 (assessed in January 1985), sales turnover of Rs. 6,24,716 were taxed at 8 per cent treating them as goods covered by the residual entry 102 of Part-II to Schedule ' C ' of the Act. It was, however, noticed (December 1985) in audit that goods sold by the dealer included machinery parts and cranes which are taxable at higher rate as per entries 44(A) (*i*) and 82 of Part-II of Schedule ' C ' to the Act. This resulted in short levy of tax of Rs. 12,467 (including additional tax of Rs. 706).

On this being pointed out (December 1985) in audit, the department stated (January 1989) that the assessment of the dealer was revised (October 1988) raising an additional demand of Rs. 69,402 (including penalty of Rs. 30,000).

Government to whom the matter was reported in June 1989 stated (January 1990) that the dealer had made part payment of Rs. 30,000 and filed an appeal.

(*d*) " Mono block " pump sets are covered by the entry 44(*b*) of Part-II of Schedule ' C ' to the Bombay Sales Tax Act, 1959 and are liable to tax at the rate of 10 per cent from 1st July 1981 (2 per cent upto 30 th June 1981).

In Beed, while assessing (July 1985) a dealer in electrical goods, sale of mono block pump sets amounting to Rs.2.24 lakhs during the period 1st July 1981 to 31st March 1983 were taxed at 4 per cent treating them as " agricultural machinery " instead of at 10 per cent leviable. This resulted in short assessment of tax of Rs. 13,418.

On this being pointed out (December 1987) in audit, the department reassessed (February 1989) the dealer raising additional demand of Rs. 34,518 (including penalty of Rs. 11,500).

The matter was reported to Government in July 1989.

(*e*) Articles made of gold and/or silver and not containing precious stones, pearls etc., of a value exceeding one tenth of the value of each article, are liable to sales tax of one per cent (2 per cent upto 31st March 1983).

In Bombay, while assessing a dealer in gold and silver for the period from 16th November 1982 to 4th November 1983, the entire taxable sales of Rs. 13.73 lakhs were taxed at the rate of one per cent. As the rate of tax was reduced from two per cent to one per cent only from 1st April 1983 the turnover of sales for the period falling between 16th November 1982 and 31st March 1983 was required to be ascertained and assessed to the differential tax of one per cent. Besides, as the sales turnover of the dealer had exceeded Rs. 10 lakhs during the period, additional tax at prescribed rates was also leviable.

On this being pointed out (November 1987) in audit, the department stated (June 1989) that during the pendency of revision proceedings, the enforcement branch after investigation determined (November 1988) that the gross turnover of sales of the dealer for the period was Rs. 481.86 lakhs, out of which the taxable turnover was Rs. 164.68 lakhs as against Rs. 13.73 lakhs determined by the assessing officer. Accordingly, the assessment was revised (March 1989) raising additional demand of Rs. 2.53 lakhs (including penalty of Rs. 25,500 for concealment of turnover liable to tax) which was paid in advance by the dealer in February 1989 before the revision order was passed.

On perusal of the revision order it was, however, noticed (August 1989) that additional tax was levied at 6 per cent on the tax payable on the sales effected upto 31st March 1983 and at 12 per cent thereafter. Additional tax is leviable at 12 per cent from 1st December 1982. On this being pointed out (August 1989) the department rectified (August 1989) the mistake and raised additional demand of Rs. 6,666.

The matter was reported to Government in September 1989.

(*f*) Under the Central Sales Tax Act, 1956, on inter-State sales of goods, tax is leviable at four per cent provided the sales are supported by valid declaration in Form 'C' obtained from the purchasing dealers. On inter-State sales of goods, other than declared goods, which are not supported by the declarations, tax is leviable at the rate of 10 per cent (8 per cent for declared goods) or at the rates applicable to the sale or purchase of such goods within the State whichever is higher. Under the provisions of the Bombay Sales Tax Act, 1959, a dealer purchasing goods on furnishing declaration in Form 14 (without payment of tax) is liable to pay purchase tax if the goods are not resold in the course of inter-State trade or commerce or export.

In one case under-assessment of tax of Rs. 28,301 was recovered on being pointed out in audit.

2.7. Non-levy/Short levy of tax

(*a*) Under the Bombay Sales Tax Act, 1959,the State Government may, by notification, exempt any class of sales or purchases from payment of the whole or any part of the tax payable under the provisions of the Act, subject to such conditions as may be imposed by the Government.

The Government of Maharashtra, by a notification issued on 30th June 1975, granted exemption from payment of sales tax in excess of four per cent on sales of goods by registered dealers to the Central or any State Government, subject to the production of a declaration in the prescribed form AF, declaring that the goods purchased were for official use by Government and not for the purpose of reasale or for use in the manufacture of goods for sale.

Further, additional tax at the rate of 12 per cent of the gross tax payable is also payable by a dealer whose turnover of sales or purchases exceeds ten lakhs of rupees in any year.

In Bombay, sale of goods to Government departments valued at Rs. 8.88 lakhs by a manufacturer of plastic goods during the period from 5th November 1983 to 24th October 1984 (assessed in April 1987) was required to be taxed at the concessional rate of 4 per cent . However, no tax was levied. This resulted in tax being levied short by Rs. 39,778.

On this being pointed out (December 1988) in audit, the department stated (May 1989) that the mistake was rectified (December 1988) by raising additional demand of Rs. 39,778 (including additional tax of Rs. 4,262).

The matter was reported to Government in July 1989.

(*b*) Under the Bombay Sales Tax Act, 1959, sales of goods to an authorised dealer are allowed to be deducted from the turnover of taxable sales, if the authorised dealer purchasing the goods certifies in the prescribed declaration (Form 14) that the goods are purchased for resale in the course of inter-State trade or commerce or in the course of export out of the territory of India or for packing of such goods.

Further, for failure to disclose in the return the appropriate liability, penalty equal to a sum not exceeding the amount of tax (a sum not exceeding one-and-a-half times of the amount of tax upto 20th April 1987) due and payable is also leviable.

In Bombay, in the assessment (October 1985) of a reseller in precious stones for the period from 28th October 1981 to 1st November 1982 the assessing Officer had disallowed the sales of Rs. 10.62 lakhs made to another authorised dealer as the dealer could not produce the prescribed declarations (Form 14). The assessing Officer of the purchasing dealer had also intimated (January 1985) that the dealer had not made any purchases from the dealer by issuing the prescribed declaration (Form 14). However, the Assistant Commissioner (Appeals) allowed (March 1986) the sales of Rs. 10.62 lakhs as deduction from the taxable turnover on the basis of declarations produced before him by the dealer and also set aside the penalty of Rs. 80,000 levied by the assessing officer. While deciding the appeal, the appellate authority had not considered the report of the assessing officer of the purchasing dealer that the dealer had not purchased any goods from the assessee. The order of the appellate authority, therefore,was not in order and resulted in short levy of tax amounting to Rs. 1.21 lakhs.

On this being pointed out (May 1987) in audit, the department stated (June 1989) that the order passed by the appellate authority was revised (January 1989) by raising additional demand of Rs. 1.21 lakhs. Report on action taken to restore the penalty of Rs. 80,000 levied in the assessment order has not been received (May 1990).

The matter was reported to Government in August 1989 and followed up by reminder (April 1990); their reply has not been received (May 1990).

(*c*) Under the Bombay Sales Tax Act, 1959 and the rules framed thereunder dealers are required to file returns periodically and pay taxes on the basis of such returns and in the manner prescribed. The Act further provides that if the returns furnished by a registered dealer are correct and complete, he could be assessed to tax on the basis of such returns. However, if a dealer does not pay tax due alongwith his returns by the prescribed dates, penalty is leviable at the prescribed rate after affording the dealer an opportunity of being heard.

In Bombay, a registered dealer was assessed to tax for the period 1st May 1983 to 30th April 1984 on the basis of the returns filed by him. A scrutiny of the assessment records of the dealer however, revealed that the dealer had paid the tax short by Rs. 10,000 as against payable as per returns but no action to realise the unpaid amount of tax of Rs. 10,000 and to levy penalty thereon was taken by the assessing authority.

On this being pointed out (January 1988) in audit, the department stated (February 1989) that the dealer was reassessed (November 1988) by raising an additional demand of Rs. 24,575 (including penalty of Rs. 12,775). The department further stated (October 1989) that the dealer had made part payment of Rs. 7,575 and filed an appeal.

The matter was reported to Government in June 1989.

(*d*) Under the provisions of the Central Sales Tax Act, 1956, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export if such last sale or purchase took place after and for the purpose of complying with the agreement or order for or in relation to such export. But the goods exported should be the same goods as those purchased in the preceding sale or purchase. In support of such claim, a dealer is required to furnish the authority a certificate signed by the exporter as evidence of export of such goods. It has been

judicially held (*) that raw hides and skins and dressed hides and skins i.e. leather are commercially different commodities even if they are grouped together under one entry for purposes of taxation.

In Nagpur, four dealers sold raw hides and skins to dealers in Tamil Nadu during the years 1984-85, 1985-86, 1985 and 1986 respectively and claimed exemption on the strength of certificates obtained from the dealers in Tamil Nadu as exporters but the goods sold by the dealers in Maharashtra were raw hides and skins, whereas the goods exported by the dealers in Tamil Nadu were dressed hides and skins i.e. leather processed in Tamil Nadu before they were exported. Thus central sales tax amounting to Rs. 16.19 lakhs was not levied on the four dealers on sales made during the years 1984-85, 1985-86, 1985 and 1986.

On the omission being pointed out (February 1989) in audit, the Commissioner of Sales Tax issued instructions (April 1987) conveying the Court judgement and decided that the legal positions explained above would be enforced prospectively for the period starting from 1st May 1987 but would not be enforced for assessments relating to the periods prior to 1st May 1987. The reply of the Commissioner is not tenable in view of the judgement of May 1964 of the Supreme Court is similar case. The sales tax law was also not amended by the Government of Maharashtra to permit any exemption from such levy of tax and hence the tax was leviable. Delay in implementation of the Supreme Court decision resulted in loss of revenue amounting to Rs. 16.19 lakhs for the above periods.

(*e*) Under the Bombay Sales Tax Act, 1959, tax is levied on the sale of goods, not exempted specifically under the Act, at the rates indicated against the relevant entry in the schedule whereunder the goods are classified. In regard to the goods not classifiable under any of the entries in the schedule to the Act, tax is levied at the rates indicated in the residuary entry.

In Akola, a dealer sold jute seeds for Rs. 7.00 lakhs during the period from 1st June 1977 to 31st May 1979. While assessing the tax on such sales in February 1981 the assessing officer did not levy any tax thereon

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(*) Shri Guruviah and sons Vs. State of

(1) Tamilnadu (1976) 38/STE/565(Supreme Court)

(2) H. Abdul Shakoor and Co. Vs. State of Madras (1964) 15 STC 719 (SC).

even though these sales of jute seeds were not exempt from levy of tax under the Act and were taxable under the residuary entry of the Schedule E to the Act. This mistake resulted in non-levy of tax of Rs. 56,023.

On the mistake being pointed out (November 1981) in audit, the assessing Officer stated that jute seed was nothing but Sann-hemp seed, and in the Schedule B of the Act, jute and Sann-hemp were described as a single commodity and further the dictionary meaning was one and the same for both types and since the sales of the Sann-hemp seed were exempt from levy of tax, the sales of jute seeds also were exempted from levy of tax.

The reply of the assessing Officer was not in conformity with the provisions of the Act as no specific exemption was allowed on the sales of jute seeds. In an exactly similar case, the Deputy Commissioner of Sales Tax (Appeal Mofussil), Nagpur decided in April 1989 that the jute seeds were different from Sann-hemp seeds and hence the sales of the jute seeds were not eligible for exemption from levy of tax.

The case was reported to Government in March 1983 and followed up by reminders (March 1990); their reply has not been received (May 1990).

2.8. Non-levy/short levy of additional tax

Under the provisions of Bombay Sales Tax Act, 1959, a dealer whose turnover of sales or of purchases exceeds ten lakhs of rupees in any year is liable to pay additional tax calculated at the rate of 12 per cent (6 per cent prior to 1st December 1982) of the sales tax and purchase tax payable by him for that year. According to the departmental instructions issued in March 1983, for the periods on or after 1st April 1983, the additional tax is to be calculated on the gross tax payable without deducting set-off therefrom. Further, in calculating the additional tax payable by the dealer, tax payable on sales of vanaspati, vegetable non-essential oils, etc., is not to be taken into consideration. Consequently, set-off admissible on the goods used in the manufacture of these goods is also to be excluded.

In two cases involving short levy of additional tax, an amount of Rs. 1.01 lakhs was recovered on being pointed out in audit. A few other cases are mentioned below.

(*i*) In Pune, in the assessments of an auctioneer, whose turnover exceeded 10 lakhs of rupees for the periods 1982-83 and 1983-84, additional tax was not levied on the tax assessed at Rs. 17.01 lakhs and Rs. 12.93 lakhs respectively. This resulted in short recovery of Rs. 1.29 lakhs during 1982-83 and Rs. 1.55 lakhs during 1983-84.

On this being pointed out (February 1986) in audit, the department stated (August 1989) that the assessments of the dealer were revised (November 1987) by raising additional demands aggregating to Rs. 2.84 lakhs.

The matter was reported to Government in September 1989.

(*ii*) In Bombay, while assessing a dealer (February 1987) in leather goods whose sales turnover exceeded Rs. 10 lakhs for the period 1st July 1984 to 30th June 1985, additional tax of Rs. 39,552 was not levied on assessed tax dues of Rs. 3.30 lakhs.

On this being pointed out (June 1989) in audit, the department stated (January 1990) that the additional demand of Rs. 58,908 had been raised.

Government to whom the matter was reported in September 1989 accepted the mistake and confirmed the demand.

(*iii*) In Bombay, while assessing (July 1987) a manufacturer of chemicals, edible oil, etc., for the period 1st July 1983 to 30th June 1984, additional tax liability was computed after taking into consideration the purchase tax of Rs. 18.13 lakhs after allowing set-off admissible instead of on gross purchase tax of Rs. 24.79 lakhs. This resulted in additional tax being levied short by Rs. 79,996.

On this being pointed out (January 1989) in audit, the department stated (May 1990) that the dealer was reassessed (January 1990) raising an additional demand of Rs. 79,996.

The matter was reported to Government in September 1989 and followed up by reminder (April 1990); their reply has not been received (May 1990).

(*iv*) In Bombay, while assessing (August 1987) a manufacturer of medicines for the Calendar year 1984, additional tax liability was computed taking into consideration the purchase tax of Rs. 4.40 lakhs after allowing set-off admissible instead of on gross purchase tax of Rs. 6.38 lakhs. This resulted in under-assessment of additional tax of Rs. 23,714.

On this being pointed out (December 1988) in audit, the department stated (January 1990) that additional demand of Rs. 23,714 had been raised.

Government to whom the matter was reported in September 1989 accepted the mistake and confirmed the demand.

(*v*) In Bombay, while assessing (April 1985 and November 1985) a manufacturer of vanaspati and non-essential oils, etc., for the Calendar years 1982 and 1983 respectively, additional tax was computed without excluding the set-off allowed on the goods used in the manufacture of vegetable non-essential oils and vanaspati, etc. This resulted in short levy of additional tax of Rs. 31,659 (Rs. 22,073 for the year 1982 and Rs. 9,586 for the year 1983).

On this being pointed out (October 1986) in audit, the department stated (June 1989) that action to revise the assessment will be initiated. Report on final action taken has not been received (May 1990).

The matter was reported to Government in September 1989 and followed up by reminder (April 1990); their reply has not been received (May 1990).

2.9. Non-levy/short levy of turnover tax

Under the Bombay Sales Tax Act, 1959, with effect from 13th July 1986, every dealer who is liable to pay tax and whose turnover of either all sales or all purchases exceeds twelve lakhs of rupees in any year is liable to pay a turnover tax at the rate of one-and-a-quarter per cent on the turnover of sales effected by him of goods specified in Schedule 'C' to the Act.

Further, additional tax at the rate of 12 per cent of the gross tax payable is also payable by a dealer whose turnover of sales or purchases exceeds ten lakhs of rupees in any year.

Further, for failure to disclose in the return the appropriate liability to pay for the proper and correct quantification of tax liability, penalty equal to a sum not exceeding the amount of tax found due and payable, is also leviable.

In three cases involving under-assessment due to incorrect levy of turnover tax, demands aggregating to Rs. 1,21,475 were raised and

recovered by the department on being pointed out in audit. A few other cases are mentioned below :

(*i*) In Bombay, in the assessment of a manufacturer of paper boards for the Calendar year 1986, turnover tax was erroneously levied at Rs.8,902 only as against the correct amount of Rs. 41,920 leviable. This resulted in short levy of turnover tax of Rs. 33,018.

On this being pointed out (July 1989) in audit, the department rectified the mistake (July 1989) and raised an additional demand of Rs. 33,018.

The matter was reported to Government in September 1989.

(*ii*) In Bombay, in the assessment for the period from 13th November 1985 to 2nd November 1986 of a dealer dealing in edible oil and vegetable ghee, turnover tax was not levied on the sales turnover of Rs. 19.49 lakhs resulting in an under-assessment of Rs. 24,381.

On this being pointed out (September 1988) in audit, the department accepted the mistake (February 1989). Report on action taken has not been received (May 1990).

The matter was reported to Government in September 1989 and followedup by reminder (April 1990); their reply has not been received (May 1990).

2.10. Incorrect allowance of sales as sales in the course of import

Under the provisions of the Central Sales Tax Act, 1956 a sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

For failure to disclose in the return, the appropriate liability to pay tax or claim inaccurate deduction, penalty equal to a sum not exceeding the amount of tax found due and payable (a sum not exceeding one and a half times of the amount of tax upto 20th April 1987) is leviable.

In two cases under-assessment of Rs. 64,013 owing to incorrect allowance of sales as sales in the course of import was raised and recovered on being pointed out in audit.

(*i*) In Bombay, in the assessment (March 1986) of a manufacturer in cloth and reseller in yarn for the period from 1st May 1982 to 30th April 1983 turnover of sales of Rs. 3.49 lakhs was allowed as sales in

the course of import. The consignment consisting of 253 packages covered by the bill of lading have been sold to five dealers by transfer of documents of title to the goods. As the appropriation of the goods to the individual buyers could not be completed without taking the delivery of the goods, the ownership of the goods was not transferred to the buyers before the goods had crossed the customs frontiers of India. The sales were, therefore, local sales liable to tax under the Bombay Sales Tax Act, 1959.

On this being pointed out (July 1986) in audit, the department revised (September 1988) the assessment order raising an additional demand of Rs. 28,306. Further, the department stated (October 1989) that penalty of Rs. 7,500 was also levied and that the dealer had made payment of Rs. 10,750 against the demands and filed an appeal before the Deputy Commissioner of Sales Tax (Appeals) against the disallowance of sales in the course of import and levy of penalty.

The matter was reported to Government in July 1989.

(*ii*) In Bombay, in assessing a manufacturer of electric cables etc. for the period from 1st October 1980 to 30th September 1981 sales worth Rs. 32.79 lakhs were allowed as sales in the course of import. As goods imported under one consignment were stated to have been sold to two different vendees, it was not clear as to how the goods could have been appropriated before the goods landed. The deduction allowed from the turnover, therefore, required reverification.

On this being pointed out (October 1984) in audit, the department stated (February 1989) that the assessment order was revised (February 1989) by disallowing the sales of Rs. 5.70 lakhs allowed as sales in the course of import raising additional demand of Rs. 57,594 (including penalty of Rs. 28,797).

The matter was reported to Government in August 1989.

(*iii*) In Bombay, in the assessment of a reseller in engineering goods, motor vehicle parts, yarn, paper and chemicals for the period from 23rd March 1980 to 22nd March 1981 (assessed in November 1983), sales worth Rs. 29.23 lakhs were allowed as sales in the course of import. However, details of proof of transfer of documents of title to the goods before the goods had crossed the customs frontiers were not kept on record. There was also no evidence on record to indicate that the goods were imported by the assessee himself. The sales allowed as sales in the course of import were, therefore, erroneous.

On this being pointed out (November 1984) in audit, the department accepted the audit point (March 1989) and the sales allowed as sales in the course of import were re-examined and it was found that the sales of Rs. 9.34 lakhs out of the sales of Rs. 29.23 lakhs allowed as sales in the course of import were not in order and the assessment was revised (November 1988) by raising additional demand of Rs. 1.24 lakhs including penalty of Rs. 24,586. Further, the department stated (December 1989) that the dealer had made part payment of Rs. 25,000 and had filed an appeal before the Deputy Commissioner of Sales Tax (Appeals) against the disallowance of sales as sales in the course of import and levy of penalty.

Government to whom the matter was reported in August 1989, confirmed the department's reply.

2.11. Incorrect allowance of taxable sales as sale of goods in transit from one State to another

Under the Central Sales Tax Act, 1956, when a sale in the course of inter-State trade or commerce is made by transfer of documents of title to such goods during their movement from one State to another, all subsequent sales to registered dealers made while the goods are in movement are exempt from tax, provided such goods are included in the registration certificate of the purchasing dealer and supported by E-I/ E-II and C Forms.

Further, additional tax at the rate of12 per cent of the gross amount of tax payable is also payable by the dealer if the turnover of sales or purchases exceeds 10 lakhs of rupees in any year.

Further, for failure to disclose in the return the appropriate liability to pay for the proper and correct quantification of tax liability, penalty equal to a sum not exceeding the amount of the tax found due and payable (not exceeding one-and-a half times of the amount of tax upto 20th April 1987) is aso leviable.

(*i*) In Bombay,in the assessment of a reseller in yarn and machinery for the period 1st July 1983 to 30th June 1984, sales of machinery worth Rs. 1.33 crores purchased from a dealer in Maharashtra and despatched to a dealer in Gujarat and sale of yarn worth Rs.1.61 crores, purchased from two dealers in Maharashtra and despatched to a dealer in Ahmedabad, were allowed as sales by transfer of documents of title to goods when they were in movement and exempted from levy of tax under the Central

Sales Tax Act, 1956. However, E-I and C Forms in support of the goods despatched, were not available on record. Hence the correctness of the exemption allowed could not be ensured in audit.

On this being poined out (April 1986) in audit, the department on re-examination stated (March 1989) that the sales of Rs. 2.59 crores were correctly allowed as exempted and sales worth Rs. 35.02 lakhs have been treated as sales in the course of inter-State trade or commerce leviable to tax under the Central Sales Tax Act, 1956. This resulted in an additional demand of Rs. 1.55 lakhs (including penalty of Rs. 20,000). Further, the department stated (October 1989) that the dealer had made part payment of Rs. 25,000 and filed an appeal.

The matter was reported to Government in June 1989.

(*ii*) In Bombay, in the case of a reseller of textile machinery, sales worth Rs. 6.76 lakhs effected during 1981-82 were not assessed (October 1984) to tax as they were allowed as inter-State sales by transfer of documents of title to goods when they were in movement. However it was noticed (June 1985) in audit that the transactions were not fully covered by the E-I certificate.

On this being pointed out (June 1985) in audit, the department on reverification found that transaction of sales worth Rs. 1,93,143 (purchase price Rs.1,24,800) was not supported by E-I certificate and hence treated as local sale liable to tax. The department revised (December 1988) the assessment by raising additional demand of Rs. 23,611 (including additional tax of Rs. 1,053 and penalty of Rs. 5,000). Further, the department stated (December 1989) that the dealer had made payment of Rs. 2,000 and filed an appeal.

Government to whom the matter was reported in June 1989, confirmed the department's reply (September 1989).

2.12. Incorrect grant of exemption

Under the Bombay Sales Tax Act, 1959 and a notification issued in July 1980 thereunder the sales, by a registered dealer to another dealer, being an industrial unit set up in the developing regions of the State of Maharashtra and duly certified as an eligible industrial unit by designated authorities and to whom a Certificate of Entitlement has been

granted by the Commissioner of Sales Tax are exempt from payment of tax leviable thereon provided such sales are supported by prescribed declarations issued by the purchasing dealer. However, in respect of purchases of raw material by the purchasing dealer, otherwise than against the declaration in Form'BC' refund of taxes, if any paid by him is allowed. Under the Bombay Sales Tax Rules, 1959 any process of doing any thing to the declared goods which do not take them out of the description of such declared goods, would not constitute " manufacture " for the purpose of levy of sales tax under the Act.

(*i*) In Chandrapur, a producer of coal and coke powder, who by the use of coal or coke as raw material purchased from registered dealers, during the period from November 1983 to October 1985 was granted a Certificate of Entitlement. He paid a tax of Rs. 34,673 thereon, which was refunded to him by the assessing authority by way of set-off. Further, the sales, of coal/coke powder, amounting to Rs. 4.05 lakhs made during the said period, against purchases of raw material outside the State of Maharashtra, were also exempted from levy of sales tax of Rs. 15,574.

The process of conversion of " coal/coke into coal or coke-powder ", did not take it out of the description of the raw material and hence it did not constitute " manufacture ". Hence issue of the Certificate of Entitlement, to the assessee as well as the grant of refund and exemption of sales tax of Rs. 50,247 was not in order.

On this being pointed out (November 1988) in audit, the department stated that the dealer was holding a Certificate of Entitlement and as such was granted set-off under the Rules. The department further stated that pulverisation of coal into dust was treated as a manufacturing process.

Government informed (October 1985) the Commissioner of Sales Tax that Government was considering an alternative scheme for providing incentives to those who are not " manufacturers" and that it was not fair and desirable to cancel the Certificate of Entitlement already issued.

The case was reported to Government (September 1988) and followed up by reminder (April 1990); their remarks have not been received (May 1990).

(*ii*) In Chandrapur, a producer of "coal-powder" who was granted Certificate of Entitlement from August 1983 under the package scheme, purchased raw material (i.e. " coal "), from registered dealers during the period January 1985 to December 1985 and paid a tax of Rs. 80,293 thereon which was subsequently refunded by the assessing authority. The dealer also purchased, on production of declaration in Form " BC ", coal for Rs. 77.11 lakhs during the subsequent period from January 1986 to May 1988 and was exempted from the payment of purchase tax amounting to Rs. 3.08 lakhs.

As the process of conversion of " coal " into " coal-powder " (both being included in the same entry of declared goods) does not constitute " manufacture ", the assessing authority was not correct in issuing Certificate of Entitlement to the assessee who was not a manufacturer. Refund of tax and exemption from payment of tax on the basis of incorrect Certificate of Entitlement thus resulted in under-assessment of Rs.3.88 lakhs.

On this being pointed out (October 1988) in audit, the department stated (February 1989) that the Certificate of Entitlement was issued under the Package Scheme 1979 to some non-manufacturers as there was no such condition of " manufacture " in that scheme. Although in the package scheme, 1983, the concessions were confined to " manufacturers " as defined in the Bombay Sales Tax Act, 1959, the sales tax exemption was stated to be extended to others as per directions of higher authorities.

The Finance Department informed (October 1985) the Commissioner of Sales Tax that Government was considering alternative scheme for providing incentives to those who are not "manufacturers". It was also stated that it was not fair and desirable to cancel the Certificate of Entitlement already issued and to suspend the use of BC Form. The contention of the department is not tenable in the absence of any provision extending the benefit of tax exemption to assessees other than manufacturers as also in view of the fact that the activity of the assessee did not amount to " manufacture ". In reply to audit enquiries the department stated (April 1990) that no Certificate of Entitlement was issued after 1st October 1985 and in regard to thc alternative scheme the Government stated (April 1990) that their reply would be communicated to Audit early.

The matter was reported to Government in October 1988 and followed up by reminders (April 1990); their reply has not been received (May 1990).

(*iii*) In Solapur, in the assessments of a manufacturer of cotton yarn for the periods falling between 5th November 1983 and 2nd November 1986, sales of cotton waste to the extent of Rs. 3.05 lakhs were treated as exempt from payment of tax as the dealer held Certificate of Entitlement. As sales of manufactured goods viz. cotton yarn only are covered by the Certificate of Entitlement, the sales of cotton waste are not eligible for exemption. This resulted in tax of Rs. 13,650 not being levied on the said sales.

On this being pointed out (August 1988) in audit, the department stated that the assessments were revised (March 1989) raising additional demand of Rs. 33,179 (including levy of sales tax of Rs. 3,131 on sales of miscellaneous items, disallowance of set-off of Rs. 9,391 and purchase tax of Rs. 5,390).

The matter was reported to Government in September 1989.

(*iv*) By a notification dated 5th July 1980 the Government, under sub-section 5 of Section 8 of the Central Sales Tax Act, 1956, exempted levy of Central Sales Tax on sales of manufactured goods, effected in the course of inter-State trade or commerce by a registered dealer holding a Certificate of Entitlement granted to him for manufacture in an eligible industrial unit set up in the developing region in the State.

A registered dealer in Yavatmal manufacturing staple yarn and blended yarn, and holding a Certificate of Entitlement, collected central sales tax to the tune of Rs. 63,884 on the sales of raw material amounting to Rs. 16.61 lakhs made in the course of inter-State trade or commerce against Form C during the period from 1st May 1983 to 30th September 1983 and credited the same to the Government as per the tax-returns filed by him. The amount of tax collected was erroneously refunded by the tax assessing authority on the ground that the dealer was holding a Certificate of Entitlement. As no manufacture was involved and the material was sold in the same condition in which it was purchased, the sales were taxable at the rate of 4 per cent towards central sales tax.

There was thus an irregular refund of sales tax of Rs. 63,884 in this case.

On the omission being pointed out (June 1988) in audit, the department stated that action for the revision of the case has been initiated.

The case was reported to Government in June 1989 and followed up by reminder (March 1990); their reply has not been received (May 1990).

2.13. Failure to assess turnover under the Central Sales Tax Act

Under the provisions of the Central Sales Tax Act, 1956 read with provisions of the Bombay Sales Tax Act, 1959, tax shall be paid by a registered dealer in the manner and at such intervals as may be prescribed therein. The assessing authority can also assess to tax a registered dealer in respect of any period on the basis of returns furnished by him, provided the assessing authority is satisfied that these are correct and complete.

Further, for failure to disclose in the return the appropriate liability to pay for the proper and correct quantification of tax liability, penalty equal to a sum not exceeding the amount of tax found due and payable (not exceeding one-and-a-half times the amount of tax upto 20th April 1987) is also leviable.

In Bombay, the returns filed by a dealer in Iron, Steel and Hardware for the period from 25th October 1984 to 12th November 1985 were accepted and the dealer was assessed (February 1987) on the basis of these returns. A further scrutiny of the assessment records however revealed that the dealer had disclosed inter-State sales at Rs. 88,054 in the returns, which were not taken into account by the assessing authority under the Central Sales Tax Act resulting in tax being levied short.

On this being pointed out (February 1988) in audit, the department subjected (May 1988) the turnover to tax raising additional demand of Rs. 22,013 (including penalty). Further, the department stated (November 1989) that the dealer had made part payment of Rs. 5,000 and filed an appeal.

The matter was reported to Government in July 1989.

2.14. Irregular grant of concession from tax and grant of excess set-off

Under the provisions of the Central Sales Tax Act, 1956 and the rules made thereunder, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export if such last sale or purchase took place after and for the purpose of complying with the agreement or order for or in relation to such export. No tax is leviable on such sale or purchase. In support of such a claim, a dealer is required to furnish, to the assessing authority, a certificate in the prescribed form (Form H) signed by the exporter and evidence of export

of such goods. Such a dealer is also entitled to set-off of taxes paid or deemed to have been paid on his purchases provided the goods are resold in the course of export.

For failure to disclose true sales or purchases or to show in the return the appropriate liability to pay tax or claim inaccurate deduction on account of set-off, penalty at prescribed rates is also leviable.

In Bombay, in the assessment of a reseller of imitation jewellery, for the period from 1st April 1984 to 31st March 1985, sales worth Rs. 1.42 lakhs were allowed as sales in the course of export on the strength of certificates obtained from the exporter by the dealer. However, the certificates furnished did not indicate the date of agreement or order number with date of the foreign buyer in compliance of which the purchases were made by the exporter. Further, there was no proof of the goods having been exported. The turnover of sales was, therefore, required to be taxed which was not levied. Set-off of Rs. 3,296 allowed on such sales was inadmissible.

On this being pointed out (March 1988) in audit, the department stated (April 1989) that the dealer was re-assessed (November 1988) by raising additional demand of Rs. 31,121 (consisting of dis-allowance of set-off of Rs. 3,296 under the Bombay Sales Tax Act, 1959, levy of tax of Rs. 14,243 and penalty of Rs. 13,582 for failure to disclose transactions liable to tax under the Central Sales Tax Act, 1956). The department further stated (December 1989) that the dealer had made part payment of Rs. 5,500 and filed an appeal.

Government to whom the matter was reported in September 1989, confirmed the department's reply (January 1990).

2.15. Non-levy/short levy of purchase tax and additional tax due to incorrect determination of taxable turnover

Under the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder, if a dealer liable to pay tax despatches goods to his own place of business or to his agent outside the State, the value of such goods is to be reduced from the turnover of sales to determine the net taxable turnover subject to the production of declarations in the prescribed form (Form F) issued by specified authority. Additional tax at the rate of 12 per cent (6 per cent upto 30th November 1982) of the tax payable is also payable by a dealer whose turnover either of

all sales or of all purchases exceeds ten lakhs of rupees in a year. From 1st July 1982, the Act provides for levy of purchase tax at the rate of 2 per cent in addition to the tax paid on certain specified goods, if the goods manufactured out of such specified goods are transferred to branches/agents outside the State of Maharashtra otherwise than as sale.

In Bombay, in the assessment of a manufacturer of alluminium extrusion and alluminium alloys for the period from 1st May 1982 to 30th April 1983, the despatches of the dealer to his place of business outside the State of Maharashtra were determined at Rs. 38.77 lakhs as against Rs. 32.44 lakhs shown by the dealer in the statement of sales kept on record. This resulted in the taxable sales being determined less by Rs. 6.33 lakhs. As the total sales exceeded 10 lakhs of rupees the additional tax was also payable which was incorrectly determined at Rs. 45,838 instead of at Rs. 48,959 due to application of incorrect rate of tax with effect from 1st December 1982.

Further, for the period from 1st May 1983 to 30th April 1984 purchase tax leviable at 2 per cent on purchases of certain specific goods used in manufacture of taxable goods and transferred to his branch outside the State of Maharashtra was not levied.

This resulted in non-levy of purchase tax amounting to Rs. 26,539 and short levy of additional tax of Rs. 3,185.

On this being pointed out (August 1987) in audit, the department stated (March 1989) that the dealer had produced additional declaration in respect of despatches amounting to Rs. 3.11 lakhs. Accordingly the dealer was re-assessed (February 1989) for both the periods raising additional demand of Rs. 26,152. Further, the department stated (February 1990) that the dealer had made part payment of Rs. 5,000 and filed an appeal.

Government to whom the matter was reported in August 1989, confirmed (February 1990) the department's reply.

2.16. Non-levy of General Sales Tax

Under the Bombay Sales Tax Act, 1959 and the rules made thereunder, prior to 1st July 1981, levy of general sales tax could be postponed if the purchasing dealer holding licence furnishes a certificate in Form 16 to

the effect that the goods purchased would be resold in the same form. Subsequent sales within Maharashtra State made by the licenced dealer would be subjected to general sales tax. Further, a licenced dealer who has purchased goods prior to 1st July 1981, other than those specified in Part-II of Schedule-B paying general sales tax shall be allowed a refund of general sales tax paid by him on the goods so purchased which have been resold by him otherwise than in the course of inter-State trade or commerce or of export out of the territory of India.

Further, for failure to disclose in the return the appropriate liability to pay for the proper and correct quantification of tax liability, penalty equal to a sum not exceeding the amount of tax found due and payable (not exceeding one-and-a-half times the amount of tax upto 20th April 1987) is also leviable.

In Bombay, in the assessment of a reseller in chemicals and caustic soda for the period from 20th October 1979 to 7th November 1980 and 8th November 1980 to 27th October 1981 (assessed in January 1983 and March 1983 respectively) a set-off of Rs. 26,750 was allowed to a licenced dealer on the amount of general sales tax paid by him on the basis of credit note dated 2nd December 1980 issued to the vendor. The set-off was to be granted after verifying from the assessing officer of the vendor whether the turnover of sales was subjected to general sales tax in the assessment of the vendor.

On this being pointed out (February 1984) in audit, the department stated (February 1989) that the assessment of the vendor for the Calendar year 1980 was revised (December 1988) by raising additional demand of Rs. 42,668 (including penalty of Rs. 100).

Further, the department stated (February 1990) that the dealer had filed an appeal against the demand.

The matter was reported to Government in August 1989.

2.17. Mistake in computation of tax due to allowance of wrong credit

Under the Bombay Sales Tax Act, 1959 and the Rules made thereunder, dealers are required to file returns periodically and pay tax on the basis of these returns. On finalisation of the assessment, demand for the balance of tax due is raised, after giving credit for the tax already paid.

Further, for failure to disclose in the return the appropriate liability to pay for the proper and correct quantification of tax liability, penalty equal to a sum not exceeding the amount of tax due and payable (not exceeding one-and-a-half times of the amount of tax payable upto 20th April 1987) is also leviable.

In one case, involving under-assessment due to allowance of excess credit of Rs. 30,000 and remission of penalty of Rs. 3,500 erroneously allowed, the department raised an additional demand of Rs. 42,100 including penalty of Rs. 12,100 at the instance of audit and the same was recovered from the dealer.

2.18. Non-levy or short levy of penalty

The Bombay Sales Tax Act, 1959 provides that if a dealer does not pay tax due alongwith his returns by the prescribed date, penalty should be levied at the prescribed rate after affording the dealer an opportunity of being heard.

Penalty is also leviable under the Act, if a dealer conceals the particulars of any transaction liable to tax or does not furnish any return by prescribed date. If the amount of tax paid by the dealer is found to be less than 80 per cent of the amount of tax assessed, reassessed or found due on revision of assessment, he is deemed to have concealed the turnover liable to tax or knowingly furnished incorrect particulars of turnover liable to tax and penalty not exceeding one-and-a-half times the amount of tax is leviable (a sum not exceeding the amount of tax leviable with effect from 21st April 1987).

As per the Central Sales Tax Act, 1956 penalty is leviable as per the corresponding provisions of the respective State Act.

(*a*) In the cases of 4 dealers in Bombay, New Bombay and Aurangabad, action to levy penalty for late payments or penalty for concealment of turnover was either not taken or penalty was levied short in the assessment orders between August 1983 and September 1986.

On this being pointed out (between August 1984 and November 1987) in audit, the department levied penalty of Rs. 1.72 lakhs.

(*b*) In the cases of 12 dealers in Bombay, Thane, Aurangabad and Nashik, action to levy penalty for late payments or penalty for concealment of turnover had either been initiated or deferred between September 1980 and January 1989 but no follow-up action was taken by the department.

On this being pointed out (between July 1982 and January 1989) in audit, the department levied penalty and raised demand for Rs. 9.26 lakhs.

The above omissions were reported to Government in September 1989.

2.19. Avoidable payment of interest

According to Bombay Sales Tax Act, 1959, where an amount required to be refunded by the Commissioner to any person by virtue of an order issued under the Act is not so refunded to him within 90 days of the date of the order, Government shall pay such person simple interest at nine per cent per annum on the said amount from the date immediately following the expiry of the period of 90 days to the date of refund.

In Nagpur, in the assessment (April 1982) of a dealer, an importer and reseller in general goods, baby foods, butter etc., a tax of Rs. 2,90,724 was levied by the assessing authority for the assessment year 1976-77 and 1977-78. The dealer who had paid, during the period from May 1976 to July 1977 and June 1977 to June 1978, sales tax amounting to Rs. 5.44 lakhs for these years before filing his tax-returns went in appeal against the decision of the assessing authority to the Assistant Commissioner (Appeals) who confirmed (January 1983) the assessment. The assessee after payment of a further sum of Rs. 1.25 lakhs (in August 1982 and July 1983) preferred (March 1983) a second appeal with the Maharashtra State Sales Tax Tribunal which decided (October 1983) the tax liability as only Rs. 1.25 lakhs for both the years. Thus an amount of Rs. 5.44 lakhs already paid by the dealer became refundable to him by the department within 90 days of the date of judgement by Tribunal. The department, however, actually refunded the amount to the dealer in November 1984 along with an interest at the rate of 9 per cent per annum amounting to Rs. 39,668 on the belated payment of refund which could have been avoided.

On this being pointed out (February 1989) in audit, the department stated that the interest granted was proper and legal in the eyes of law. The reply of the department is not tenable.

Had the department stood alert to the law and taken timely action for authorising refund within the stipulated period, payment of interest amounting to Rs. 39,668 could have been avoided.

The case was reported to Government in May 1989, their reply has not been received (May 1990).

2.20. Under-assessments

In 210 cases pointed out in audit during the period from 1st April 1988 to 31st March 1989 (where money value of each case was less than Rs. 20,000) under-assessment/losses of revenue amounting to Rs. 8.31 lakhs were accepted by the assessing authorities/department out of which an amount of Rs. 1.96 lakhs was also recovered during the period between July 1988 and January 1990.

2.21. Arrears of tax collection and blockage of revenue by stay orders by Court

2.21.1. *General.*—Sub-section (*2*) of Section 38 of Bombay Sales Tax Act, 1959, read with Rule 29 of Bombay Sales Tax Rules, 1959, lays down that a registered dealer furnishing returns as required under Section 32 *ibid*, is required to pay to Government, the amount of taxes due for the period covered by the return on or before the date prescribed for submission of the return. If the return is filed later than the prescribed date, penalty or interest payable on account of the late payment, should also form part of such payment. Similarly payment of dues arising from any assessment, re-assessment or revision order, is also required to be made within 30 days of receipt of notice of demand.

If any dealer having furnished returns discovers any omission or incorrect statement therein, he may furnish a revised return before the expiry of three months next following the exact date prescribed for filing the original return and if any further amount of tax etc., is payable as per the revised return, the same is required to be paid alongwith the revised return.

Penalty is leviable if the particulars furnished or liability shown in a return, is found to be incorrect or incomplete or the taxes paid with the return fall short of 80 per cent of the taxes assessed for any period.

If the dealer has made any irregular collection of taxes such amounts alongwith penalty imposed thereon are also required to be paid to Government as per Section 37 *ibid.*

If the amount due from the dealer on account of any of the events stated above, is not paid in time despite notices of demand issued by the taxation authorities, Section 38-B empowers the Commissioner to recover the same as arrears of land revenue, in accordance with the powers and procedure laid down in the Maharashtra Land Revenue Code, 1966.

Under Section 55 of the Act where the dealer disputes before any appellate authority, the levy of taxes or penalty or forfeiture of irregular collection, in any assessment, re-assessment or revision order passed by any taxation authority, such appeal is entertained ordinarily only on production of evidence of payment of disputed amount of tax. However, the appellate authority may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal, either without payment, on furnishing a security of equal amount, or on proof of payment of a smaller sum, with or without production of security for the balance amount, as it may direct.

The nature of securities that can be furnished is specified in Rule 59.

In reference applications filed in High Court against the orders of Tribunal, the payment of tax due if any, in accordance with such order cannot be stayed pending the disposal of the reference, as per sub-section (*6*) of Section 61.

2.21.2. *Arrears of tax demands.*—Position of arrears in collection of sales tax was as under during the fiscal year ended on 31st March 1989.

	Arrears for periods upto 31st March 1988	Arrears for 1988-89	Total arrears as on 31st March 1989
	(Rupees in crores)		
1. Bombay Sales Tax Act, 1959	205.47	101.99	307.46
2. Central Sales Tax Act, 1956	40.07	26.83	66.90
	245.54	128.82	374.36

(*i*) In 28 cases, involving arrears of taxes amounting to Rs. 1.77 crores, the present where abouts of the defaulters were not known to the department.

(*ii*) In another 48 cases wherein taxes aggregating to Rs. 3.78 crores were outstanding, the assessees either had no source of income to pay up the dues or had left behind no property from which the department could realise the dues. Proposals for write-off in some cases were under consideration.

(*iii*) In 78 cases, tax dues worth Rs. 9.79 crores were outstanding, as firms had either gone into liquidation or were declared insolvent etc. The department has lodged claims, with the court receiver, official assignee or official liquidator as the case may be, for realisation of the dues.

(*iv*) In another 20 cases involving arrears of tax worth Rs. 2.77 crores, the defaulters were either sick or units already closed.

(*v*) In 98 cases the department initiated action by issue of Revenue Recovery Certificates, for realisation of defaulted dues, aggregating to Rs. 8.68 crores. Out of these, in 29 cases (Rs. 2.22 crores), the certificates were issued to Revenue Authorities outside the State where the defaulters held some attachable property and in the remaining 69 cases (Rs. 6.46 crores), the recovery certificates were issued under the Maharashtra Land Revenue Code, 1966.

(*vi*) In 14 cases the department had instituted prosecution for recovery of outstanding dues aggregating to Rs. 1.44 crores.

(*vii*) The arrears shown outstanding included dues against eligible units, availing of deferral of liability under the package scheme of incentives to industries in backward areas of the State. Such deferred dues included in the arrears figure amounted to Rs. 20.42 crores in 28 cases. As the repayment or recovery of these tax arrears would become due after the moratorium of 12 years it is not appropriate to include these amounts in the arrears.

(*viii*) The arrears also include Rs. 3.82 crores, outstanding against 6 manufacturers of electronic goods. These dealers are eligible for being granted administrative relief equal to the above tax dues, in accordance with the department's decision in the wake of Supreme Court's judgement, setting aside the preferential rate of tax on electronic goods manufactured in the State; afforded under Government notification, by way of exemption from payment at the general rate.

(*ix*) The arrears also include taxes to be realised from the Forest department by book adjustment, to the tune of Rs. 1.24 crores in 8 cases.

(*x*) In 9 cases, the dealers had applied for remission of dues of Rs. 50.93 lakhs outstanding against them.

2.21.3. *Major portion of remaining arrears pertained to cases which were pending before the appellate authorities of the department, the Maharashtra Sales Tax Tribunal, the High Court and the Supreme Court.*—

(*i*) Oil and Natural Gas Commission, the single largest tax payer of the State, has been disputing the levy of tax by the State of Maharashtra, on the sale of crude oil and gas obtained out of Oil and Natural Gas Commission's off-shore drilling operation in Bombay High and has preferred appeals against all the assessments for the period from 1978-79 onwards. Most of these appeals are now pending before the Maharashtra Sales Tax Tribunal. The amount of assessed dues outstanding against this dealer aggregated to Rs. 54.18 crores for the assessment periods 1978-79 to 1985-86.

(*ii*) A Central Government undertaking manufacturing ships, barges rigs etc., disputed the levy of sales tax on its sales contending that either they are transactions of works contract or that they took place in the course of export, delivery having been given on the high-seas.

In the appeals against the assessment orders for the periods from 1979-80 to 1985-86, pending before the appellate authorities revenue to the tune of Rs. 19.90 crores has been blocked.

(*iii*) Another Central Public Sector Corporation, which is a canalising agent for the import and supply of cotton from foreign countries, disputed the levy of sales tax on its sales of imported cotton to the mills in the State, despite a determination order issued by the department under Section 52 of the Bombay Sales Tax Act, 1959, holding such sales to be local sales liable to sales tax and further confirmation of the determination by the Maharashtra Sales Tax Tribunal. The Corporation contended that it acted as an agent of the customer Mills and, therefore, was not liable to tax. Total dues outstanding against the dealer in respect of assessments for the periods from 1974-75 to 1979-80 ran into Rs. 15.36 crores.

(*iv*) Another dealer, an industrial house having operations all over India, has been purchasing automobile chassis from its sister concern which manufactured it, without payment of sales tax, by issuing declarations in the prescribed form (F-14) to the effect that the goods are meant for resale in the course of inter-State trade or commerce, or for export. Those goods were being sold in the form of motor vehicles after building body on the chassis purchased. As the goods purchased against declarations were not being sold in the same form, it was treated

as contraventio his contention of the department was affirmed (ashtra Sales Tax Tribunal but the dealer chall Court. Arrears pending recovery on this account crores.

(*v*) Scope of ealer ' was extended with effect from 16th August 19 1 purchases by Customs Department, shipping companies, Government Press etc. came within the purview of taxation.

(*a*) The Customs Department, Bombay, challenged in the High Court the levy of sales tax on the sales of the goods confiscated and unclaimed etc., prior to the above dates and is in arrears of tax amounting to Rs. 3.87 crores.

(*b*) India Security Press, was in arrears of tax amounting to Rs. 4.21 crores levied on its sales of printed material to Government department.

(*c*) A Central Government undertaking in the shipping transport industry challenged its liability as a dealer and was in arrears of tax amounting to Rs. 2.09 crores.

2.21.4. *Stay orders granted against enforcement of recovery.*—As on 31st March 1988, there were 320 taxation cases in the form of reference applications and writ-petitions, pending in the High Court and Supreme Court. Amount of revenue blocked in the stay orders granted in these cases was of Rs. 7.90 crores as shown below :

	No. of cases	Amount involved (in crores of rupees)		
		B.S.T.	C.S.T.	Total
High Court ..	270	6.16	0.36	6.52
Supreme Court	50	1.34	0.04	1.38
Total ..	320	7.50	0.40	7.90

Out of the 270 cases involving tax revenue worth Rs. 6.52 crores pending in High Court, security has been obtained only in two cases—in one case, in the form of bank guarantee for full amount of Rs. 1.97 lakhs and in the other, as cash deposit of Rs. 5,500 against Rs. 90,693 of taxes involved. Out of 50 cases pending in Supreme Court, involving taxes amounting to Rs. 1.38 crores, security in the form of bank guarantee was obtained only in one case involving Rs. 2.70 lakhs. In 217 other cases involving taxes worth Rs. 7.85 crores, no security has been obtained.

Out of the pending litigations, 88 cases in the High Court and 20 cases in the Supreme Court relate to 1981-82 and earlier years.

CHAPTER 3

STATE EXCISE

3.1. Results of Audit

Test check of records relating to State Excise, conducted in audit during the year 1988-89, revealed short levy of excise duty amounting to Rs. 19.16 lakhs in 172 cases, which broadly fall under the following categories :—

		Number of cases	Amount (in lakhs of rupees)
1	Non-levy or short levy of excise duty ..	12	2.54
2	Short recovery of licence fee and privilege fee ..	69	7.21
3	Short or non-recovery of supervision charges ..	33	4.36
4	Other irregularities	58	5.05
		172	19.16

Some of the important cases noticed during 1988-89 and in earlier and subsequent years are mentioned in the following paragraphs.

3.2. Short recovery of licence fee

(*a*) Under the provisions of the Bombay Foreign Liquor Rules, 1953, a fee is payable for grant of vendor's licence. The rate of fee payable is based on the population of the town or village in which the shop is located. The licence fee was revised upwards with effect from March 1988.

In Nagpur district in respect of 6 licensees, licence fee was not recovered at the revised rate resulting in short recovery of Rs. 45,000.

On this being pointed out (February 1989) in audit, the department stated (January 1990 and February 1990) that Rs. 42,500 had been recovered from 5 licensees. Report on action taken in respect of the sixth licensee has not been received.

The matter was reported to Government in September 1989 ; their reply has not been received (May 1990).

(*b*) Under the Bombay Rectified Spirit Rules,1951, read with the (Amendment) Rules, 1988 with effect from 16th March 1988, a licence fee of Rs. 25,000 per annum is leviable for grant of licence, where the quantity of rectified spirit to be possessed and used per annum for industrial, medicinal, scientific and other similar purposes exceeds 1,00,000 bulk litres.

At kolhapur in one case, an amount of Rs. 20,000 was recovered on being pointed out in audit.

(*c*) Under the provisions of Rule 3 (3) of the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966, a licence in Form I to construct and work a distillery for manufacture of spirit and its renewal, is granted on payment of a fee of Rs. 50,000 (prior to 10th September 1985). The Government raised with effect from 10th September 1985, the rate of licence fee to Rs. 1,25,000 where the annual capacity of the distillery was 1,35,00,001 to 1,80,00,000 bulk litres. The validity of the licence was 5 years. However, with effect from 16th March 1988, the period of validity of a licence has been reduced to one year and the fee for the said capacity revised to Rs. 30,000.

In Kolhapur district, licence of one distillery, the distillation capacity of which was 1,50,00,000 bulk litres during 1985-86 and 1986-87 and 1,80,00,000 bulk litres during 1987-88, was renewed for a period of 5 years from 1986 to 1991 on recovery of Rs. 75,000 instead of Rs. 1,25,000 recoverable, thus resulting in short recovery of Rs. 50,000.

On this being pointed out (November 1987) in audit, the department recovered (February 1988) Rs. 25,000. Report on further recovery has not been received (May 1990).

The matter was reported to Government in August 1989.

(*d*) Under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966, a licence to manufacture potable Liquor was granted for a period of 5 years on payment of a fee of Rs. 50,000.

By an amendment on 16th March 1988 the period of validity of the licence was made annual, retaining the same quantum of fee. Accordingly, all licences were deemed to have expired on 31st March 1988 and a fresh licence would be deemed to have been granted from 1st April 1988, provided the licensee paid within two months of the amendment, the difference between the licence fee payable and the amount at the credit of the licensee calculated at one fifth of the licence fee paid for every completed year of the unexpired portion of the period of the licence as on 31st March 1988.

In Sindhudurg district in one case the differential amount of Rs. 30,000 was recovered on being pointed out in audit.

(*e*) Under the Bombay Foreign Liquor Rules, 1953, licence to sell foreign liquor by retail in a restaurant situated in a town with a population of 3 lakhs is Rs. 15,000 (Rs.20,000 from 16th March 1988). Similarly licence to sell foreign liquor by retail to permit holders residing or boarding in a hotel having upto 50 rooms is granted on payment of a fee of Rs. 20,000. By an amendment (March 1988) the fee of Rs. 20,000 is made applicable to hotels having upto 25 rooms and Rs.40,000 is chargeable in respect of hotels having 26 to 100 rooms.

In Pune, Chandrapur and Jalna districts in five cases, licence fee aggregating to Rs. 60,000 was recovered on being pointed out in audit.

(*f*) Under the provisions of the Maharashtra Country Liquor Rules, 1973, a fee is payable for a licence to sell country liquor by retail. The fee payable is based on the population of the city, town or village in which the shop is located. The rates of licence fee for sale of country liquor were revised upwards in November 1981.

In Ahmednagar and Nashik in the case of 8 licensees, licence fee recovered short to the extent of Rs. 46,000 was demanded on being pointed out in audit, out of which amounts aggregating to Rs. 43,500 have been recovered (between March 1989 and November 1989).

3.3. Short recovery of privilege fee

Under the Bombay Prohibition (Privilege fees) Rules,1954, for the privilege of transferring his licence to another person, a licensee is required to pay a fee equal to the fee prescribed for grant of the licence. The privilege fee payable for admission of a partner into or withdrawal of a partner from the licensee's partnership business is fifty percent of

the fee payable for the grant of the licence. However, on change of a proprietory concern into a partnership firm or vice versa a privilege fee equal to full licence fee is payable as the status of the licensee is changed.

In Bombay, Pune, Satara ,Sangli, Ratnagiri and Ahmednagar in 43 cases short recovery of privilege fees resulted in demands aggregating to Rs. 2.37 lakhs being raised at the instance of audit, out of which amounts aggregating to Rs.2.32 lakhs were recovered in 42 cases.

3.4. Non-recovery of import fee and duty on import of Indian made foreign liquor

Under the provisions of the Maharashtra Foreign Liquor (Import and Export) Rules , 1963, with effect from 16th March 1988, an import fee at the rate of Rs. 3 per bulk litre is recoverable (Rs.2 upto 15th March 1988) for grant of an import pass for import of spirits, wines, malt liquor etc. Similarly, with effect from the same date, duty on Indian made foreign liquor is recoverable at the rate of Rs.57 per proof litre.

In Bombay, Kolhapur and Thane, short recovery of import fee and duty in the case of 8 licensees, resulted in demands aggregating to Rs.1.52 lakhs being raised and recovered on being pointed out in audit.

3.5. Non-recovery of toddy instalments and interest

Under the Maharashtra Toddy shop (Grant of licence by Auction or Tender) order, 1968, licence for running toddy shop in the State is issued to the highest bidder in public auction and every successful bidder or tenderer is required to pay on the spot or on the next working day, one-fourth of the amount of the bid and also to pay to the Collector a security deposit equal to the amount of the monthly instalment before the commencement of the year for which his bid or tender has been accepted. The amount of security deposit thus paid, is adjustable unless it is forfeited for breach of the terms and conditions of the licence towards the payment of the last monthly instalment. The balance amount is required to be paid in six equal monthly instalments. The first such instalment is to be paid not later than 5th of October of the year in which the bid or tender is accepted and subsequent instalments not later than 5th of every month following thereafter. If any monthly instalment is not paid on or before the last day of the month in which it is payable,the Collector may re-auction the licence at the cost of the defaulting bidder or tenderer. Interest at 18.5 per cent per annum is chargeable on the instalments paid late.

In Akola and Pune in 15 cases amounts aggregating to Rs. 1.01 lakhs were recovered on being pointed out in audit.

(*i*) In Beed, Jalna and Pune districts, 13 licensees had delayed the payment of instalments on the due dates falling between October 1987 and February 1988. The period of delay extended from 3 days to 161 days. However, the department did not take any action to levy and recover interest of Rs. 52,325 from the licensees.

On this being pointed out (between June 1988 and September 1988) in audit, the Government/department stated (October 1988, April 1989 and October 1989) that Rs. 35,684 had been recovered from 9 licensees. Report on action taken to levy and recover interest in respect of the remaining 4 licensees belonging to Pune has not been received (May 1990).

The matter was reported to Government in July 1989 and followed up by reminders (April 1990), their final reply has not been received (May 1990).

3.6. Short levy of duty due to incorrect declaration of strength

Excise duty on Indian made foreign liquor is calculated on alcoholic strength of liquor as certified by the Chemical Analyser to Government. Where the report of the Chemical analyser is not available, duty is provisionally recovered based on the alcoholic strength declared by the manufacturer. On receipt of the report from the Chemical Analyser the provisional assessment is finalised and additional demand raised, if necessary.

In the case of two licensees in Nagpur and Ratnagiri districts, in respect of 64 batches of Indian made foreign liquor manufactured during March 1986 and January 1988 the strength certified by the Chemical Analyser was higher than that declared by the manufacturer. However, no action was taken to demand and recover the differential excise duty amounting to Rs. 54,594.

On this being pointed out (between May and November 1988) in audit, the department issued demand notice (June 1988) for Rs. 21,468 in respect of one licensee. Action taken in respect of the other licensee has not been received (May 1990).

The matter was reported to Government in August 1989 and followed up by reminder (April 1990); their reply has not been received (May 1990).

3.7. Excess allowance of wastage of spirit in transit

Under the Bombay Rectified Spirit (Transport in Bond) Rules, 1951, duty is not levied on wastage of spirit occuring in transit, if it is upto half per cent per 160 kilometres of transit. Wastage in excess of the prescribed limit is required to be reported to the Commissioner of Prohibition and Excise and if not explained to his satisfaction duty is payable on the excess wastage.

In Pune, in respect of 52 consignments of rectified spirit, for wastage in excess of the prescribed limit duty of Rs. 54,061 was recovered on being pointed out in audit.

3.8. Short recovery of supervision charges

As per the provisions of the Bombay Prohibition Act, 1949, all transactions pertaining to the receipt, transport, storage of spirit and manufacture, bottling and issues of potable liquor shall be supervised by the prohibition and excise staff the cost of which is to be paid to the State Government by the licensee, quarterly, in advance, at the rates prescribed by the Government.

In one case an amount of Rs. 1.29 lakhs was recovered on being pointed out in audit.

3.9. Non-recovery of bonus

As per the provisions of the Bombay Prohibition Act, 1949 and Rules framed thereunder, the cost of staff of the Prohibition and Excise staff deployed to supervise the manufacture, storage and issues of spirit and potable liquor is recoverable from the respective licensees at the rates prescribed from time to time by the Government and the Commissioner of Prohibition and Excise.

The Government of Maharashtra, Finance Department (November 1986 and September 1987) sanctioned for the years 1986-87 and 1987-88 the payment of bonus to various categories of Government staff. The Commissioner of Prohibition and Excise (March 1988) revised the rates of supervision charges recoverable including the element of bonus for the years 1986-87 and 1987-88.

During the audit of 44 excise units in Bombay, Thane, Jalgaon, Solapur and Nagpur Districts, it was noticed that the demands for recovery of bonus for the years 1986-87 and 1987-88 amounting to Rs. 1.08 lakhs were neither raised nor recovered from the licensees.

On the omission being pointed out (between June 1988 and February 1989) in audit, the department recovered a sum of Rs.20,992 (between July 1988 and April 1989). Report on action taken to recover the balance amount has not been received (May 1990).

The matter was reported to Government in September 1989, and followed up by reminder (April 1990); their final reply has not been received (May 1990).

3.10. Under-assessments

In two cases pointed out by Audit during December 1988 and March 1989 (where money value of each case was less than Rs. 20,000) under-assessment amounting to Rs. 18,828 was accepted and recovered by the department between March 1989 and July 1989.

CHAPTER 4

LAND REVENUE

4.1. Results of Audit

Test check of land revenue records conducted in audit during the year 1988-89 in 237 offices out of 526 offices in the State disclosed non-levy and short levy of land revenue amounting to Rs. 1,427.68 lakhs as indicated below :—

		Amount (in lakhs of rupees)
1.	Non-levy/short levy of non-agricultural assessment/conversion tax/incorrect revision of non-agricultural assessment.	245.79
2.	Non-levy/short levy/incorrect levy of increase of land revenue ..	207.62
3.	Non-levy/short levy of education cess	1.01
4.	Non-levy/short levy/Non-recovery of occupancy price/rent ..	44.35
5.	Short levy of royalty/application fee/licence fee etc. ..	3.00
6.	Non-levy/short levy of occupancy price/interest/fine/land revenue/ non-agricultural assessments/cess/conversion tax etc. in the cases of encroachments on Government lands.	925.91
	Total ..	1,427.68

Some of the important cases noticed during 1988-89 and in earlier years are mentioned in the following paragraphs.

4.2. Encroachment of Government land

4.2.1. *Introduction.*—Under the Maharashtra Land Revenue Code, 1966, every occupant to whom Government land is granted on occupancy rights, is required to pay land revenue fixed under the provisions of the

Code in addition to occupancy price fixed under the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971. The Collectors are empowered to dispose of such lands in the manner prescribed by Government.

The Collectors have been empowered to abate or remove summarily any encroachment made on any land or foreshore vested in Government. The encroacher is liable to pay, for the whole period of the encroachment, the assessment for the entire survey number (if the land forms part of an assessed survey number) or if the land has not been assessed, such assessment as would be leviable for the said period, in the same village on similar land used for the same purpose. In addition to the assessment he is also liable to pay fine upto Rs. 1,000 in case the land is used for agricultural purpose and upto Rs. 2,000 in case the land is used for non-agricultural purpose. In order to prevent unauthorised occupation of Government land and to streamline timely detection of encroachments, Government issued instructions (December 1967, August 1968 and February 1969) to the departmental officers to take necessary steps for early detection and to make report of encroachments. Prompt action was required to be taken on the cases reported and deterrent action such as summary eviction, levy of heavy fine etc., under the Maharashtra Land Revenue Code, 1966 to make unauthorised occupation of Government land unprofitable.

Mention was made in paragraph 4.4 of the Audit Report (Revenue Receipts) for 1978–79 regarding the encroachments on Government land whereupon the Public Accounts Committee (1982–83) in their 14th report made the following recommendations and observations, "The Government time and again issued number of circulars (February 1987) but it is observed that there is a tendency on the part of revenue authorities in flouting the orders (December 1978, September 1982). The Committee is surprised to note that neither the encroachments are detected immediately nor any action to remove the encroachments is taken even after detection. The laxity encourages the encroachers in illegal occupation of Government lands depriving the Government of considerable amount by way of rent".

The Government when approached (January 1989) however replied that all these cases were being urgently pursued for finalisation, and under various executive orders issued from time to time suitable instructions were issued during the period from December 1978 to December

1983, and assured in January 1989 that the Tahsildars would be personally held responsible for the encroachment as per instructions issued in February 1987.

4.2.2. *Scope of Audit.*—A further review through test check of connected records in 75 out of 330 tahsils in 9 districts viz. Nagpur, Amravati, Aurangabad, Nashik, Solapur, Kolhapur, Thane, Pune and Akola, was conducted by audit during January 1989 to June 1989, with the specific objective of watching the implementation of the recommendation of the Public Accounts Committee on earlier audit findings.

4.2.3. *Organisational set-up.*—Under the provisions of the Maharashtra Land Revenue Code, 1966, the assessments and realisation of land revenue in respect of lands held by the encroachers are to be made by the tahsildars, Sub-Divisional Officers, Additional Collector etc., according to their respective delegations of powers. The other levies like occupancy price and fine are also leviable along with the levy of land revenue which includes lease-money, rent, cess etc. The appeal, if any, with reference to the assessments lies with the next higher authority in the heirarchy in the Revenue Department.

4.2.4. *Highlights.*—Consolidated information regarding encroachment on Government lands for agricultural and non-agricultural purposes was not available with Government. [Paragraph 4.2.5 (I)-(*a*) and (*b*)].

Abnormal delays ranging from one year to over twenty five years in reporting encroachments by the local officers to higher authorities were noticed. (Paragraph 4.2.6.)

The omission pointed out in Audit Report (1978–79) regarding encroachment on Government land admeasuring 55 hectares 1 R in Pune and Nagpur Municipal Corporation units had not been rectified by the department despite P. A. C. recommendations and non-agricultural assessment recoverable amounted to Rs. 21.00 lakhs. [Paragraph 4.2.7 (*i*) and (*ii*)].

Non-recovery of occupancy price and land revenue of Rs. 4.99 lakhs was noticed in audit. [Paragraph 4.2.8 (*a*) and (*b*)].

Non-regularisation of encroachment and non-recovery of occupancy price, non-agricultural assessment, and fine amounting to Rs. 69.25 lakhs even after 15 years were noticed. (Paragraph 4.2.9).

An amount of Rs. 26.35 lakhs towards non-agricultural assessments on 48.46 hectares under encroachment in Pune city and Pimpri-Chinchwad Corporations though leviable was not levied. In addition, occupancy price and fine were also leviable but the same have not been fixed. [Paragraph 4.2.7 (*iii*) and (*iv*)].

Occupancy price of Rs. 8.79 lakhs and incorrect assessment of market value involving a further amount of Rs. 4.34 lakhs was not recovered. [Paragraph 4.2.9 (*b*)].

4.2.5. (I) **Lack of data on encroachments of Government land and failure to regularise/remove the encroachments**

(*a*) *For agricultural purposes.*—The information indicating the position of encroachments for agricultural purposes in the State, as on 31st March 1978 and 1st August 1988 of Government lands was not available with Government (February 1989). The information received from six divisions is as under :—

Position of encroachment as on 31st March 1978		Encroachments after 31st March 1978 to 31st July 1988		Position as on 31st July 1988.	
Cases	Area Hectares—Ares	Cases	Area Hectares—Ares	Cases	Area Hectares—Ares
77,658	1,05,459.31	42,924	48,475.12	1,11,793	1,47,019.52

As per instructions contained in the orders issued by Government in December 1978, the existing encroachments for agricultural purposes as on 31st March 1978 were to be regularised in eligible cases by 31st May 1979 and encroachments in other ineligible cases as well as the fresh encroachments thereafter, were to be removed. Encroachments made after 31st March 1978 shall not in any case be regularised. Despite Government instructions the encroachments are increasing year after year and large number of encroachments as on 31st March 1978 still remain to be regularised (March 1990).

(b) *For non-agricultural purposes.*—No survey was conducted by Government in respect of encroachments for non-agricultural purposes (February 1989). The information in respect of the total area of Government land (in the State) encroached upon was not available with the

Government (March 1989). The information received from 6 Divisions is as under:—

Position of Encroachment as on 31st March 1978		Encroachments after 31st March 1978 to 31st July 1988		Position as on 31st July 1988	
No. of cases	Area	No. of cases	Area	No. of cases	Area
	Hect- Ares		Hect- Ares		Hect- Ares
12,744	648.22	83,627	2,074.20	94,960	2,607.56

(II) *Pending encroachment cases.*—(*a*) The position of number of cases of encroachments got evicted, regularised and still pending as on 31st July 1988 in respect of 75 tahsils out of 330 tahsils in the State is as under :—

	Encroachments for agricultural purposes			
	No. of tahsils for which information was available	Total cases	Area	
			Hectares	Ares
Evicted	72	5,224	3,224.59	
Regularised	72	2,332	1,943.61	
Pending	72	6,643	5,059.10	

Scrutiny of the connected records revealed that except for the issue of occasional notices calling upon the encroachers to make payment, generally no effective follow up action in each individual case was taken by the department.

(*b*) Encroachments for non-agricultural purposes:—

	No. of Tahsils	Total No. of cases as on 31st July 1988	Area in Hect- Ares	Amount recoverable towards OP, NAA & Fine Rs.	Amount recovered Rs.	Balance Rs.
Evicted ..	75	6,504	62.55	4,69,893	3,70,451	99,442
Regularised ..	75	128	7.43	34,184	32,133	2,051
Pending ..	75	53,630	616.10	77,56,637	..	77,56,637
						78,58,130

(c) *Pending cases of encroachments requiring regularisation in *Nazul area.*—In Akola district, 1,586 cases involving area of 33 hectares 93.18 ares on Nazul land were under encroachment for various periods ranging from 3 to 23 years. These cases were still to be regularised (March 1990). The occupancy price, non-agricultural assessment and fine recoverable worked out to Rs. 37.94 lakhs.

4.2.6. *Abnormal delay of local officers to report encroachments.*— As per the instructions of Government in December 1979, the primary responsibility of the local officers is to submit a report about encroachment to his immediate superior and start necessary enquiries about the same without any loss of time.

In the case of encroachments in Thane, Pune, Kolhapur, Solapur and Nashik district, it was noticed that there was abnormal delay ranging from 1 to 25 years and above in reporting encroachment of land as detailed below:—

Duration of delay	1 to 5 years	6 to 10 years	11 to 15 years	16 to 25 years	above 25 years	Total
No. of cases involved	13,126	19,892	1,434	2,382	178	37,012

4.2.7. *Failure to take action on P. A. C. recommendations.*—In the case of encroachment of Government lands, the encroachment is either regularised or got evicted. In cases of regularisation, occupancy price together with land revenue and fine as decided by the Collector, are leviable and in the case of eviction land revenue and fine are leviable.

(*i*) Mention was made in para 4.4.3 (II) (B) (iv) of the Audit Report (Revenue Receipts) for 1978-79 regarding the unauthorised distribution of the land under survey No. 12 of Yerwada area, located within the limits of the Corporation of Pune city. Further, scrutiny of the case by Audit (April 1989) showed that encroachment of the land admeasuring 12 hectares 47 ares made during 1975-76 for 150 huts and houses still continued (March 1990). Non-agricultural assessment to be levied till 1978-79 (period covered by the Audit Report 1978-79) amounting to Rs. 1.40 lakhs and to Rs. 6.28 lakhs for the subsequent period 1979-80

*" Nazul " land is unalienated Government land used or likely to be used for public purposes like roads, markets, recreation grounds etc., and the land has got site value as opposed to agricultural value.

to 1988-89 has not however been levied thereon. Further, occupancy price and fine though leviable have not been levied. The details of present market value of land and fine are not available with the department and so occupancy price could not be worked out. Fine, was however, calculated at the minimum rate of Rs. 5 per case.

The department stated (January 1989) that the facts would be brought to the notice of the Collector, Pune for necessary action.

(*ii*) Audit scrutiny (April 1989) of the relevant records relating to 16 hectares 89 ares in Nagpur Municipal Corporation already referred to in para 4.4.3 (II)(B)(iv) of the report for 1978-79 revealed that in all a total area of 42 hectares 54 ares was actually unauthorisedly distributed even prior to 1978-79 to about 900 persons and the encroachments on these Government lands still continued (March 1990). The total amount recoverable towards the non-agricultural assessment worked out to Rs. 13.32 lakhs for the period from 1979-80 to 1988-89. Occupancy price and fine are also recoverable in these cases. No action (March 1990) was, however, taken by the department either to recover the amount from encroachers or get the occupants evicted.

(*iii*) *Encroachment on Government land subsequently treated as "slum area".*—Government land admeasuring 14 hectares 63 ares in survey numbers 96, 103, 107, 108, 109 and 191/A of Yerwada in Pune City, which was under encroachment from the year 1975-76, was subsequently declared " slum area " in 1983.

Even though the encroachments took place from the year 1975-76 onwards, no report thereof was made to the Tahsildar till 1986. Further, under the Maharashtra Land Revenue Code, 1966, non-agricultural assessment on this area, which was encroached upon, was to be levied and recovered right from 1975-76 onwards since no exemption was available for these lands in this regard and hence the tax leviable was not levied and collected by the department. The non-agricultural assessment leviable on these lands and not recovered, amounted to Rs. 9.01 lakhs for the period from 1975-76 to 1988-89.

Besides, as per the Government orders (June 1985) the area which was declared as " slum area " in 1983, was to be transferred to the Maharashtra Housing and Area Development Authority for being developed and sold/leased to the co-operative societies formed of the slum dwellers, and occupancy price and/or lease-rent and fine at the prescribed rate

were to be levied and collected by the department in addition to service charges. Since the land was not handed over to the Authority (March 1990) it could not be developed and hence no occupancy price/lease rent with fine was levied and recovered in each case under the relevant provisions of Acts and Rules. The encroachments had, therefore, not been regularised (March 1990).

The department replied (January 1989) that since the amount involved was quite heavy, the matter would be reported to the Collector, Pune for further action thereon.

(*iv*) Government land admeasuring 33 hectares 83 ares situated within Pune and Pimpri-Chinchwad Municipal Corporation was encroached by 5,136 occupants from the year 1978-79. The area under encroachment was declared as " slum area " and was transferred to the Maharashtra Housing and Area Development Authority during the period from April 1988 to March 1989.

According to the Government orders (June 1985), the areas declared as " slum area " are to be transferred to the Maharashtra Housing and Area Development Authority for being developed and leased to the co-operative societies formed of slum-dwellers and lease-rent and service charges with fine thereon, are to be levied and recovered. Even though the land in this case was transferred to the Authority, the possession thereof was not handed over to the Authority till March 1990 with the result that the land was neither developed nor was it leased to the co-operative societies of slum dwellers. Asa result no lease rent/occupancy price was levied and collected by the department. All these cases of encroachment were thus not regularised (March 1990). Since the land was not developed, its present market value was not determined and the occupancy price could not be fixed by the department in these cases.

Further, under the Maharashtra Land Revenue Code, 1966 non-agricultural assessment is leviable on these encroached lands and no exemption in this regard was permissible. Thus land revenue (including Conversion tax) was required to be levied and recovered on the lands right from the year of encroachment in each case, regardless of whether or not the land was developed and leased. In the case of the area under consideration, the non-agricultural assessment including fine leviable amounted to Rs. 17.34 lakhs for the period from 1978-79 to 1988-89. The department did not take any action to levy land revenue (March 1990).

In all these cases, occupancy price could not be fixed by the department as the present market value of the lands was not determined as the lands were not developed. In addition fine at the prescribed minimum rate of Rs. 5 per case is taken into account while determining the total fine leviable.

4.2.8. (*a*) *Non-recovery of occupancy price and Land revenue.*—Under the provisions of Maharashtra Land Revenue Code, 1966 and the Maharashtra Land Revenue Rules, the Collector may grant the land encroached upon, to the encroacher subject to the encroacher paying such penal occupancy price not exceeding five times the value of the land, as the Collector may at his discretion fix, subject to the minimum of two and half times the ordinary occupancy price, if the encroacher does not belong to a backward class and equal to the ordinary occupancy price, if he belongs to the backward class.

Seven pieces of land admeasuring 1935.81 square metres situated in Pune, Akola, Solapur, Kolhapur and Nagpur were granted to the respective encroachers during the years 1986-87 to 1987-88 subject to payment of the occupancy price, within two months of the date of orders of Government. These amounts were not, however, recovered (March 1990). The total amount recoverable works out to Rs. 3.90 lakhs including the non-agricultural assessment and fine leviable thereon.

(*b*) *Short levy of occupancy price.*—In Karvir tahsil (Kolhapur district) Government land admeasuring 60.859 ares situated in C.R., S.No.729 F of Wadange Village was encroached upon from 1976-77 onwards by a Krida Mandal and was put to non-agricultural use. The encroachment was, however, reported by the talathi only in 1983. The Collector's proposal (March 1985) for regularisation of 750 square metres was approved by Government in January 1986. The Mandal paida total amount of Rs. 5,158 (Rs. 4,900 towards occupancy price, Rs. 234 towards non-agricultural assessment, fine Rs.24) as per the instructions of the Collector which was based on market rate Rs. 7 per square metre of the land. According to the Maharashtra Land Revenue Rules, the occupancy price has to be recovered at $2\frac{1}{2}$ times the prevailing market rate of the land, which was not done. Further, no details in support of the regularisation of only 750 square metres of encroached land instead of 6085.90 square metres as reported by the talathi, are available on the records of the Collectorate. The occupancy price and non-agricultural assessment leviable on the area of 6085.90 square metres from 1976-77 to 1988-89 works out to Rs.1.09 lakhs against which only Rs.5,158 has so far been recovered.

4.2.9(*a*) (*i*) *Encroachment of Government lands for industrial and residential purposes.*—In Aurangabad (city) two individuals had encroached upon the Government land admeasuring 720 square metres and 658.10 square metres in S.No.128 C.T.S. 20,666 respectively since 23rd August 1970 and the land was used for hotel purposes. Based on the market value of the land Rs. 750 per square metre fixed (September 1987) by the Assistant Director of Town Planning, Aurangabad, the occupancy price recoverable in both cases works out to Rs. 25.84 lakhs (2½ times the market value). Besides, non-agricultural assessment and fine amounting to Rs. 6,000 was also recoverable. The department stated (April 1989) that the matter was pending with Government.

(*ii*) 638 persons in Bhavsingpura in Aurangabad within Municipal Corporation limits had encroached 12 hectares 80 ares of Government land in Sr. No. 46 from 1965-66, for residential purposes. Occupancy price, non-agricultural assessment and fine amounting to Rs.9.52 lakhs were recoverable for the period from 1965-66 to 1988-89 from the persons concerned. The records of the Collector, Aurangabad indicated that the matter was under correspondence with Government from January 1986 for regularisation and the collectorate replied (April 1989) that the cases are pending with the Government.

(*iii*) In Karanja tahsil (Akola district) Government land admeasuring 1886.93 square metres (Plot No. 7. of village Ajampur) was encroached upon by sixty persons from 1981-82 and was under non-agricultural use since then. In March 1984 the encroachment was regularised by Government directing that each of the encroachers should pay the occupancy price at 2½times the current market price and non-agricultural assessment at the penal rate of 2½ times the ordinary rate from the date of orders to be issued by the Collector, Akola. Subsequently, in July 1987 these orders were modified to the extent that the occupancy price of the land equal to market price should be paid by 45 encroachers belonging to backward classes and at the rate of 2½ times the market price of the land be paid by the remaining 15 persons. In addition, the non-agricultural assessment at ordinary rate was also payable by the 45 encroachers belonging to backward classes and at 2½ times ordinary rate of non-agricultural assessment in the case of remaining 15 encroachers, besides fine at the rate of Rs.500 each. As the encroachers were not made aware of the regularisation, no payments were made by them (March 1990). Failure of the department to follow up the regularisation orders thus resulted in the Government revenue amounting to Rs. 91,441 (including

non-agricultural assessment) not being realised (March 1990) and keeping the cases without settlement.

(*iv*) In Pune city (Pune district) two pieces of land admeasuring 701.690 square metres in C.T.S. No. 1528 and 441 square metres in C.T.S. No. 1933, were encroached upon in August 1944 by an individual and put to residential use by him. Government, however regularised in (June 1984) the encroachment of 441 square metres in Survey No. 1933 and the encroacher paid the occupancy price (Rs. 60,638 and fine Rs. 500) thereof in June 1985. But encroachment on the other land in S. No. 1528 was not regularised and no specific reasons were given for not doing so. Considering the market rates in the area as made applicable to the C.T.S. No. 1933 the revenue derivable towards the occupancy price of the land, amounts to Rs. 97,696 (including the non-agricultural assessment Rs. 714 and fine Rs. 500).

(*v*) 31.62 hectares of land in Sy. No. 90,129, 238,239 and 88 in Pune City were granted in June 1952 to seven individuals on lease for the period ending 31st March 1953 and no extension was granted thereafter.

All these lands except 2 hectares 21 ares in Survery No. 129, were resumed by Government from 1st April 1953. The portion of 2 hectares 21 ares continued under encroachment from 1st April 1953 and the land was used for agricultural purpose till 1975-76 and thereafter for residential purposes. The encroachment is yet to be regularised. Occupancy price, non-agricultural assessment, fine and conversion tax leviable in this case works out to Rs. 31.94 lakhs.

4.2.9. (*b*) *Non-recovery of occupancy price.*—An area of 1,745.45 square metres of Government land bearing the Survey No. 75 situated within the limits of Aurangabad Municipal Corporation was encroached upon by an individual during 1953–54. Upon the service of notice by the Collector for the eviction of encroachments, the encroacher requested (November 1979) for the grant of the land to him. The Assistant Director, Town Planning and Valuation Department, Aurangabad approved the rates of Rs. 15 per square metre, Rs. 200 per square metre and Rs. 300 per square metre for the years 1950, 1980 and 1983 respectively and communicated these rates to the Collector, Aurangabad and the Commissioner, Aurangabad Division, Aurangabad in November 1983. The Collector however, submitted the proposal to Government (December, 1983) taking into account the rate of the land at Rs. 200 per square metre prevailing during the year 1980, instead of the market rate of

Rs. 300 per square metre of this land prevailing in 1983 as required under Rule 43 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971. While examining the Audit Report 1974-75 on leases, the Public Accounts Committee also emphasized the need to recover the amount of the lease rent on the basis of the correct valuation of the lands done by the Town Planning Department, and the Government had accordingly obtained the valuation of the lands, as at the time of transfer thereof. This point was also stressed by the High Court of Judicature at Bombay while deciding the writ petitions on leases in 1974. Hence the Collector ought to have considered the market rate of 1983 (Rs. 300 per square metre) while submitting the proposal to Government in December 1983. Incidentally, the Commissioner, Aurangabad Division, Aurangabad suggested to Government in May 1986, that the market rate of 1983 be considered in deciding this case. This aspect was also not considered by the Government. In December, 1986, Government, however, sanctioned the land to the encroacher on the basis of the proposal submitted by the Collector in December, 1983, and directed him to regularise the encroachment in favour of the encroacher. The total occupancy price recoverable on the basis of the rate recommended by the Collector worked out to Rs. 8.79 lakhs (including the non-agricultural assessment and fine) as against the cost of Rs. 13.13 lakhs (considering the rate of Rs. 300 per square metre) resulting in a loss of revenue of Rs. 4.34 lakhs. Though the demand was raised in February 1987 by the Collector, the amount was not realised (March 1990).

On this being pointed out (April 1989) in audit, the department replied (April 1989) that the encroacher represented for reduction of the amount payable by him and so the matter was referred to Government and was pending with them.

4.2.10. *Arithmetical mistake in calculation of occupancy price.*—In Thakurli village (Kalyan tahsil) land admeasuring 292.54 square metres in Survey No. 379 (AICTS 6342) was encroached upon by an individual from 1970–71 for industrial purpose. The case of encroachment was regularised by Government in April 1976 and the possession of land delivered on 1st November 1976 and Rs. 1,750 were realised in October 1986 towards occupancy price. Since the market value of the land was Rs. 50 per square yard the occupancy price works out to Rs. 17,500 instead of Rs. 1,750 actually recovered involving short recovery of Rs. 15,750 plus interest of Rs. 16,058 (total Rs. 31,808) at the rate of 8 per cent on the unpaid occupancy price from October 1976 to June 1989.

Further the occupancy price is required to be calculated at 2 1/2 times the market rate of the land. In the instant case the occupancy price was calculated and levied at single market rate. This also resulted in short levy of revenue of Rs. 42,000 with attendant short levy of non-agricultural assessment thereon.

4.2.11. *Failure to measure land at the time of handing over possession.*— A firm was granted 5 acres of land in Mouje ovale-Gaimukh in S. No. 286, 289, 296 and 298 on lease from 9th May 1978 to 8th May 1988 with lease rent of Rs. 3,323 per annum. The possession of the said land was given in 1978 without measuring the land. The party was already occupying 10 A-6 G from 9th May 1978. Thus there was an encroachment on Government land of 5 A 6 G which remained unnoticed till 1988. This has resulted in non–levy of lease rent amounting to Rs. 0.38 lakh for the lease period.

4.2.12. *Failure to detect encroachment.*—Government land admeasuring 13 H-32 R in SY No. 110 and 3 H-55 R in Sy No. 126 of Badnera village in Amravati district was encroached upon by the Municipal Corporation of Amravati for construction of octroi Naka and Public latrines from 1986. The non-agricultural assessment leviable on this account for the period 1986 to 1988–89 works out to Rs. 0.97 lakh. Occupancy price thereof was not yet decided as the occupancy rates are stated to have not been declared.

4.2.13. *Encroachments in Urban Area in Corporation limits.*—The city survey offices of Aurangabad, Kolhapur, Solapur, Thane, Nashik and Nagpur intimated 7,279 cases of encroachments involving an area of 39 hectares 94.05 ares with encroachment period ranging from 5 to 40 years. The total amount recoverable from the encroachers on account of occupancy price, non-agricultural assessment and fine amounted to Rs. 686 lakhs. In the absence of market rates of lands encroached upon in Thane, Nashik and Aurangabad the occupancy price of these lands could not be ascertained.

4.2.14. *Short levy of non-agricultural assessment and cess.*—Under the provisions of Maharashtra Land Revenue Code, 1966, if a person makes encroachment on any land which forms part of a land bearing a survey number he is required to pay non-agricultural assessment on entire land bearing that survey number irrespective of the area of the land encroached by him. Further, under the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 and Bombay Village Panchayats Act, 1958 cess at the prescribed rate is also leviable.

In 3 villages of Solapur district and 2 villages of Kolhapur district 5.77 hectares of land were encroached upon during the period from 1978–79 to 1984-85 out of 68.95 hectares of land coming in entire survey Nos. The non-agricultural assessment and Zilla Parishad and Panchayat Samiti Cess recoverable on these lands works out to Rs. 2.50 lakhs.

On this being pointed out (June 1989); the department confirmed the facts (June 1989).

4.2.15. *Incorrect regularisation of encroachments on agricultural lands.*— (*a*) According to the order issued by Government in December 1978, the encroachment to the extent of an area equal to 2 hectares of jirayat land shall only be regularised. Where the encroacher is holding some jirayat land either as owner or in any other capacity, the regularisation shall be limited to such area as would bring his total holdings equal to two hectares of jirayat land.

In Thane, Aurangabad, Pune, Solapur, Chandrapur and Nanded districts 1148 cases have been regularised wherein more than 2 hectares of jirayat land were granted to the encroachers. This involved grant of excess land of 40 hectares 18 ares. Details of cost thereof are not available with the department.

(*b*) As per Government order of December 1978 all subsistant encroachments on Government lands made for cultivation which existed on 31st March 1978, could be regularised, if the encroacher, not being a person belonging to backward class, and whose total annual income including the income of members of his family does not exceed Rs. 3,600.

In Thane district, in 75 cases involving Government land of 20 hectares 80 ares, the regularisation was done though the annual family income of the encroachers not being members of SC/ST, exceeded Rs. 3,600. Details of cost of the land are not available on the records of the department.

4.2.16. *Misuse of Government land*—In another case, one individual encroached on Government land admeasuring 104.30 sq. m. in C.T.S. 1038-E-ward, Kolhapur from the year 1963 and constructed permanent and temporary structures thereon, which were rented out by him to five tenants for commercial purposes and earned Rs. 99,810 by way of rent. The Government directed (October, 1987) the Collector to (*i*) take over the unauthorised constructions on the Government land (*ii*) recover the sum of Rs. 99,810 earned by him (*iii*) levy.

(*a*) occupancy price of the land at the penal rate of 2 1/2 times the present market rate thereof,

(*b*) non-agricultural assessment at normal rate till the date of issue of orders (April 1987) and at the penal rate of 2 1/2 times thereof, for the period thereafter,

(*c*) fine at Rs. 100 from each tenant and

(*iv*) then regularise the encroachment in favour of the tenants under Rule 43 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971.

These amounts were to be recovered within three months from 15th October 1987. In addition to these amounts, conversion tax is also leviable. Neither was the amount of Rs. 99,810 recovered nor was the matter regularised by the Collector (July 1989).

4.2.17. *Non-recovery of fine from the encroachers.*—In Amravati, out of a total fine of Rs. 1.57 lakhs, levied in 1838 cases of encroachments relating to the years 1965–66 to 1987–88 Rs. 74,072 were recovered in 485 cases during the period from 1982–83 to 1988–89 leaving a balance of Rs. 83,185 in 1353 cases.

On these cases being pointed out (March 1989) the department confirmed the facts.

The cases brought out in review were reported to the Government in July 1989 and followed up by reminder in March 1990; their reply has not been received (May 1990).

4.3. Failure to levy non-agricultural assessment

Under the Maharashtra Land Revenue Code, 1966, land revenue is assessed with reference to the purpose for which land is used, such as agricultural, residential, industrial or commercial. Under the Maharashtra Land Revenue Code (Amendment) Act, 1979 conversion tax equal to three times the non-agricultural assessment is leviable when permission for non-agricultural use of land or change of user is granted or unauthorised non-agricultural use of land is regularised. Besides, in the case of unauthorised use of land for non-agricultural purposes fine is also leviable to the extent decided by the Collector, not exceeding 40 times the non-agricultural assessment with reference to the altered use of the land. Under the Maharashtra Increase of Land Revenue and Special Assessment

Act, 1974 (as amended with effect from 1st August 1975) a tax called " increase of land revenue " is payable at 50 per cent of land revenue by persons holding lands 8 hectares and above and at 100 per cent by those holding land 12 hectares and above. The term " holding "includes agricultural as well as non-agricultural lands. Also under the Maharashtra Zilla Parishads and Panchayats Samitis Act, 1961 and Bombay Village Panchayat Act, 1958 a cess at the prescribed rates is also leviable on the holder of the lands.

In Walwa tahsil (Sangli district) in one case of non-levy of land revenue amounting to Rs. 1.58 lakhs, the entire amount was recovered on being pointed in audit. A few other other cases are mentioned below:—

(*i*) In Ahmedpur Village (Ahmedpur tahsil, Latur district), land admeasuring 2 hectares 51 ares held by the Co-operative Market Nirman Society Ltd., was not assessed to land revenue even though it was put to commercial use from August 1986. The omission resulted in non-levy of non-agricultural assessment amounting to Rs. 21,084 for the years 1986-87 to 1988-89.

On this being pointed out (June 1988) in audit, the department accepted (January 1989) the mistake and raised the demand.

The case was reported to Government in June 1989.

(*ii*) In Karvir tahsil (Kolhapur district) a land admeasuring 3,751.12 square metres and situated within the limits of municipal corporation was put to commercial use right from 1971-72 without permission. Non-agricultural assessment thereon was not levied by the revenue authorities. The omission resulted in non-realisation of land revenue of Rs. 50,048. (including conversion tax Rs. 9,611) for the period from 1971-72 to 1988-89.

On the omission being pointed out (September 1988) in audit, the department stated (April 1989) that the demand will be raised on receipt of orders of non-agricultural assessment from the assessing authority.

The case was reported to Government (October 1988) with a reminder in March 1990; their reply has not been received (May 1990),

(*iii*) In Karvir tahsil land admeasuring 71 ares situated within the limits of Kolhapur Municipal Corporation, was put unauthorisedly to commercial use from 1967 onwards, but the department did not assess the land revenue on the land being put to non-agricultural use which

resulted in non-levy of revenue amounting to Rs. 46,988 (including conversion tax Rs. 9,666 besides fine to be decided by revenue authorities) for the period from 1967-68 to 1988-89.

On the omission being pointed out (September 1988) in audit, the department stated (October 1989) that the demand for short assessment was raised. Final report of the recovery thereof has not been received (May 1990).

The case was reported to Government in June 1989; their reply has not been received (May 1990).

(*iv*) In Raver tahsil (Jalgaon district) land admeasuring 3 hectares situated outside the Municipal limits but within the revenue limits of the village Raver was put to commercial use from 1983-84 by the Maharashtra State Electricity Board. But the land was not assessed to land revenue which has resulted in non-realisation of revenue amounting to Rs. 4.1 lakhs (including increase of land revenue for Rs. 95,400 and local cess for Rs. 2.10 lakhs) for the period from 1983-84 to 1988-89.

On this being pointed out (November 1988) in audit, the department accepted the audit point. Report on raising the demand and recovery has not been received (May 1990).

The case was reported to Government (December 1988); followed up by a reminder in March 1990, their reply has not been received (May 1990).

(*v*) In Indapur tahsil (Pune district) land admeasuring 3 hectares 56 ares situated in urban village Kalamb was put to residential use (May 1981) by an industrial organisation. The non-agricultural assessment was, however, not levied resulting in non-levy of revenue amounting to Rs. 1.35 lakhs (including increase of land revenue of Rs. 32,681 and cess of Rs. 69,975).

On this being pointed out (July 1985) in audit, the department raised necessary demand and recovered an amount of Rs. 44,144. Report on recovery of the balance amount has not been received (May 1990).

The case was reported to Government (September 1985), followed up by a reminder in March 1990; their reply has not been received (May 1990).

(*vi*) In Kolhapur City, land admeasuring 2740.3 square metres and held by Kolhapur District Sahakari Dudh Sangh, Kolhapur was changed from residential use to commercial use in July 1974 unauthorisedly but the land revenue was not assessed as for commercial use. The mistake resulted in non-realisation of revenue amounting to Rs. 34,643 (including conversion tax) for the years 1973–74 to 1988–89.

On this being pointed out (September 1988) in audit, the department accepted (September 1988) the mistake. Report on raising of demand has not been received (May 1990).

The case was reported to Government in June, 1989; followed up by reminder in March, 1990; their reply has not been received (May 1990).

(*vii*) In Kolhapur City (Kolhapur district) the mode of use of the land admeasuring 1 hectare 41.064 ares was changed unauthorisedly from 'residential' to 'industrial' in October 1974, but the land was not assessed as for industrial use. The mistake resulted in non-realisation of revenue amounting to Rs. 93,116 (including conversion tax) for the years 1974–75 to 1988–89.

On this being pointed out (September 1988) in audit, the department accepted (September 1988) the mistake. Report on raising of demand has not been received (May 1990).

The case was reported to Government in June 1989; their reply has not been received (May 1990).

(*viii*) In Udgir town (Latur district), permission for residential use of two pieces of land admeasuring 2 hectares 76 ares was granted by revenue authorities in May 1986 subject to the condition *inter-alia* that the grantee shall pay non-agricultural assessment at 23.8 paise per square metre from the commencement of non-agricultural use. No demand was raised for the non-agricultural assessment payable though non-agricultural use commenced in May 1986. This resulted in non-realisation of non-agricultural assessment amounting to Rs. 41,980 (including conversion tax of Rs. 19,375) for the years 1985–86 to 1988–89.

On this being pointed out (June 1988) in audit, department accepted the omission and raised the demand (May 1989).

The case was reported to Government in June 1989.

(*ix*) In Jalgaon tahsil land admeasuring 718.56 square metres, situated within the limits of Jalgaon Municipal Council was unauthorisedly (1980) put to commercial use by an educational institution. The land was not assessed to land revenue which resulted in non-levy of revenue amounting to Rs. 21,730 (including conversion tax of Rs. 5,432) for the period from 1980–81 to 1988–89.

On this being pointed out (July 1988) in audit, the department stated (July 1989) that steps to raise the demand are being initiated.

(*x*) In Karvir tahsil (Kolhapur district) land admeasuring 19 hectares 38 ares within the limits of Kolhapur Municipal Corporation was unauthorisedly (1953) put to commercial use by a private commercial organisation. The land was not assessed to land revenue which resulted in non-levy of revenue amounting to Rs. 22.28 lakhs for the period from 1953–54 to 1988–89, including the conversion tax of Rs. 2.61 lakhs and increase of land revenue of Rs. 9.27 lakhs.

On the omission being pointed out (September 1988) in audit, the department stated (September 1988) that steps to raise the demand on assessment are being initiated.

The case was reported to Government (October 1988); their reply has not been received (May 1990).

(*xi*) In Kurla tahsil (Bombay suburban district) land admeasuring 3 hectares 66 ares was un-authorisedly put to industrial use from March 1955 and the non-agricultural assessment thereon was fixed in March 1970. Revised standard rates for non-agricultural assessment (effective after three months from the date of notification) were notified on 29th April 1971. These rates were again revised in July 1981 with retrospective effect from 1st August 1979. The non-agricultural assessment for 4039.40 square metres only was revised in July 1975 with effect from August 1971 on the basis of commercial rates instead of industrial rates. The department did revise the assessment for the entire area of land in February 1977 but failed to make necessary note of this revision in the relevant records as a result of which revised land revenue remained unrecovered. On the basis of revised standard rates effective from August 1979, department again revised (December 1981) assessment only for 4039.40 square metres again at commercial rates instead of at industrial rates. The assessment was, however, finally revised in June 1984 for the entire area (3 hectares 66 ares) at industrial rates but no demand was

raised. On further verification the department noticed (May 1988) that the actual area under industrial use was (3 hectares 83 ares) and not 3 hectares 66 ares. This resulted in short realisation of revenue to the tune of Rs. 1.84 lakhs for the period from 1971–72 to 1988–89 (including Rs. 2,896 for the period from 1955 to 1970–71).

On the mistakes being pointed out(December 1987)in audit, the department accepted (October 1988) the objections and recovered Rs. 1.24 lakhs during the period from August 1988 to February 1989.

Report on recovery of balance dues has not been received (May 1989).

The case was reported to the Government in January 1988.

(*xii*) In Bhor tahsil (Pune district), 14 hectares of land acquired by the Bhor Municipal Council (October 1978), was leased out (October 1980) to an industrial estate for 99 years. A portion of the land admeasuring 3 hectares 32 ares was however put to industrial use in October 1980 and 60 square metres in April 1987. The non-agricultural assessment thereon was not levied by the department and as such not recovered. The omission resulted in non-realisation of revenue Rs. 66,325 for the period from 1980–81 to 1988–89.

On this being pointed out (September 1987) in audit, the department recovered (October 1988) Rs. 25,000. Further report on recovery of balance amount has not been received (May 1990).

The case was reported to Government in October 1987; their reply has not been received (May 1990).

(*xiii*) In Khed tahsil (Pune district) land admeasuring 1 hectare and 9 ares situated in Raghujinagar urban village was put to residential use from 1st August 1984. The land was not assessed to land revenue. The omission resulted in short realisation of revenue amounting to Rs. 26,858 including cess (Rs. 18,465) for the period 1984–85 to 1988–89.

On this being pointed out (June 1985) in audit, the department recovered Rs. 22,962.

Report on recovery of balance amount has not been received (May 1990).

(*xiv*) In Hatkanangale tahsil (Kolhapur district) a piece of land admeasuring 3 hectares and 45 ares situated in Shiroli village put to industrial use from 1971–72 was not assessed to land revenue. This

omission resulted in non-realisation of revenue amounting to Rs. 1,24,890 including cess (Rs. 85,215) for the period from 1971–72 to 1988–89.

On this being pointed out (September 1986) in audit, the department accepted (April 1989) the omission and stated that the steps to raise the demand are being taken.

The case was reported to Government in October, 1986.

(*xv*) In Karvir tahsil (Kolhapur district) land admeasuring 1 hectare and 92.3 ares within the limits of municipal corporation, Kolhapur was put to commercial use (December, 1959) by a private commercial organisation. The land was not assessed to land revenue which resulted in non-levy of revenue amounting to Rs. 1.28 lakhs for the period from 1959–60 to 1988–89 (including the conversion tax Rs. 25,877).

On the omission being pointed out (September 1988) in audit, the department agreed to raise the demand on assessment.

The case was reported to Government (October 1988); their reply has not been received (May 1990).

(*xvi*) In Jalgaon tahsil land admeasuring 4 hectares and 81 ares situated in the Nashirbad village was put to industrial use in 1976–77 (3 hectares and 81 ares) and 1980–81 (one hectare) by a private dairy development organisation. The land was not assessed to land revenue resulting in non-levy of revenue amounting to Rs. 49,165 (including Rs. 25,753 towards cess and Rs. 11,706 towards increase of land revenue) for the period 1976–77 to 1988–89.

On the omission being pointed out (July 1988) in audit, the department accepted the Audit point and stated that the demand will be raised after assessment.

4.4. Non-levy of land revenue

Under Maharashtra Land Revenue Code, 1966 land revenue is assessed with reference to the purpose for which the land is put to use like agricultural, residential, industrial, commercial or any other purposes. In the case of lands used for non-agricultural purposes the standard rates of non-agricultural assessment per square metre of land in each block of lands in urban areas, covering all the lands within the limits of any municipal corporation or municipality, are fixed by the Collector, with the approval of the Government. Further, as per the Maharashtra Land

Revenue Code (Amendment) Act, 1979 effective from 31st March 1979, a conversion tax equal to three times the amount of non-agricultural assessment, is leviable on all lands situated in the areas of municipal corporations and municipal councils (' A ' and ' B ' class only) when permission for non-agricultural use or change of user of land is granted or unauthorised non-agricultural use is regularised by the revenue authorities on or after 31st March 1979. Under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974 (as amended from 1st August 1975) a tax called " increase of land revenue " is also payable at 50 percent of land revenue by persons holding 8 hectares and above (and at 100 per cent by persons holding 12 hectares and above). The term " holding " includes agricultural as well as non-agricultural lands.

In Warud (Amravati district) and Yavatmal and Kurla (Bombay suburban district) in three cases involving non-assessment of land revenue amounting to Rs. 7.92 lakhs, the entire amount was recovered on being pointed out in audit. A few other cases are mentioned below :—

(*i*) In Barshi tahsil (Solapur district) land admeasuring 2 hectares and 48 ares situated within the limits of Barshi municipality was put to commercial use with permission from February 1984. In the gazette notification of February 1980 notifying the standard rates with retrospective effect from 1st August 1979 the survey numbers in which this land is situated were omitted under the erroneous presumption that the land although outside city survey limits was non-urban. This resulted in the non-agricultural assessment thereof being fixed at the rate of (Rs. 0.02 paise per square metre per annum) applicable to non-urban areas.

On the mistake being pointed out (August 1987) the Collector replied that unless a notification is issued in the gazette the non-agricultural assessment cannot be levied. The Tahsildar has proposed (March 1988) to include this land in Zone III to which the standard rate of 33 paise per square metre per annum for commercial use is applicable. Computed at this rate, non-agricultural assessment leviable would be Rs. 66,073 (including conversion tax Rs. 23,708) for the years 1983–84 to1988–89.

Failure of the department to include this survey number in the gazette notification deprived the Government of Rs. 66,073.

The department, however, stated (June 1989) that the revised rates would be made applicable in this case after notification in gazette.

(*ii*) In Kalamnuri tahsil (Parbhani district) land admeasuring 1 hectare and 71 ares situated within the limits of the Kalamnuri Municipality was put to commercial use from 1980–81 by Maharashtra State Electricity Board. The non-agricultural assessment and the increase of land revenue was not levied thereon. This omission resulted in non-realisation of revenue of Rs. 86,798 (including Rs. 43,398 towards increase of land revenue for the period from 1980–81 to 1988–89).

On this being pointed out (March 1988) in audit, the department recovered (June 1988) an amount of Rs. 84,871 for the period upto 1987–88 and raised (August 1988 and January 1989) demand for balance amount for the year 1988–89.

(*iii*) In Karvir tahsil (Kolhapur district) land admeasuring 76.11 ares situated within the limits of Municipal Corporation, Kolhapur was put to commercial use from 1976–77 by the Maharashtra State Electricity Board. The land was however, not assessed to land revenue resulting in non-realisation of revenue amounting to Rs. 95,886 (including increase of land revenue for Rs. 47,943). Besides, conversion tax is also leviable at the time of regularisation for the period from 1976–77 to 1988–89.

On this being pointed out (September 1988) in audit, the department raised the demand (June 1989). Final report of recovery has not been received (May 1990).

The cases were reported to Government in September 1987, April, August and October 1988.

4.5. Non-revision of land revenue

Under the Maharashtra Land Revenue Code, 1966, an assessment or reassessment of non-agricultural land, remains in force for the guarantee period, if any, mentioned in the assessment order or the sanad. Thereafter, the land revenue is liable to be revised in accordance with the standard rates of non-agricultural assessment notified in gazette from time to time. The Maharashtra Land Revenue Code Amended Act, 1979 , provides that, with effect from 1st March 1979, assessment or reassessment done prior to 31st March 1979, shall be revised with effect from 1st August 1979, except that in cases where the periods during which assessments are to remain in force have been specified in the order or sanad, the assessment shall be revised only after expiry of these periods. Further, under the Maharashtra Increase of Land Revenue and Special Assessment Act,

1974, as amended with effect from 1st August 1975, a tax called " Increase of Land Revenue" became leviable on agricultural lands and non-agricultural lands in the State. The increase of land revenue is payable at 50 per cent of land revenue by persons holding land 8 hectares and above and at 100 per cent by persons holding land 12 hectares and above in the State. The term "holding" includes agricultural as well as non-agricultural lands. Under the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 and the Bombay Village Panchayat Act, 1958 a cess at a prescribed rate is leviable on land revenue recoverable in the areas covered by th Act.

(*i*) In Shrirampur tahsil (Ahmednagar district) a piece of land admeasuring 48 hectares 57 ares situated in Nipani Wadgaon Village was put to commercial use (August 1956) by a co-operative sugar factory. The non-agricultural assessment was guaranteed upto 31st July 1986. Nipani Wadgaon Village was classified (April 1981) as class I village with the standard rate of 2 paise per square metre. The non-agricultural assessment was, however, not revised on the basis of higher rate of assessment after the expiry of the guaranteed period. This omission resulted in short realisation of revenue amounting to Rs. 87,436 (including increase of land revenue Rs. 21,858 and cess Rs. 43,718) for the period from 1986-87 to 1988-89.

On this being pointed out (November 1988) in audit, the department raised (February 1989) necessary demands.

The case was reported to Government (December 1988); their reply has not been received (May 1990).

(*ii*) In Haveli tahsil (Pune district) land admeasuring 24 hectares and 32.88 ares under industrial use in Kothrud urban village, situated within the Corporation limits of Pune city was assessed to land revenue and was guaranted for the period from 1971-72 to 1985-86. The standard rates for non-agricultural assessment effective from 1st August 1979 were revised in June 1980. Hence the non-agricultural assessment on the land was due for revision with effect from 1st August 1986 on the basis of revised standard rates which was not done by the department. The omission resulted in short realisation of revenue amounting to Rs. 1.96 lakhs (including increase of land revenue of Rs. 0.98 lakh) for the period 1986-87 to 1988-89.

On this being pointed out (April 1988) in audit, department submitted (31st December 1988) the proposal (Sub-Divisional Officer, Pune) for revising the assessment.

The case was reported to Government in June 1989; followed up by reminder in March 1990; their reply has not been received (May 1990).

(*iii*) In Haveli tahsil (Pune district), a piece of land admeasuring 1 hectare and 85.23 ares was put to non-agricultural (residential) use from 1971. The land which was guaranteed upto 31st July 1986 was assessed to non-agricultural assessment. The rates of the non-agricultural assessment were revised in June 1980 with retrospective effect from 1st August 1979. On the expiry of the guarantee period the non-agricultural assessment was not revised at appropriate rate. Further, the increase of land revenue was also not levied on this land even though the total land holding of the assessee exceeded 12 hectares from 1st August 1975. The mistake resulted in short realisation of revenue amounting to Rs. 48,856 for the years 1975-76 to 1988-89 (including increase of land revenue and cess).

On this being pointed out (April 1988) in audit, the department raised the demand in September 1988.

The case was reported to Government in May 1988.

(*iv*) In Raver tahsil (Jalgaon district) land admeasuring 76.91 ares and situated within the limits of Raver Municipality was put to commercial use (August 1931) by the Municipal Council. Non-agricultural assessment thereon was fixed (January 1932) and was guaranteed upto 31st July1978. Standard rates for non-agricultural assessment were revised on 23rd November 1972 (effective from 23rd February 1973) and again in January 1981 (effective from 1st August 1979). But the non-agricultural assessment done in this case was not revised from 1st August 1978 and from 1st August 1979. The omission resulted in short realisation of revenue amounting to Rs. 29,204 for the period from 1978-79 to 1988-89.

On this being pointed out (November 1986) in audit, the department stated (July, 1989) that steps to raise the demand are being initiated. Further report has not been received (May 1990).

The case was reported to Government (December 1986).

(*v*) In Sangamner tahsil (Ahmednagar district) a piece of land admeasuring 51.51 ares of Sangamner urban village was put to industrial use

from 1st August 1969 and the land was assessed to land revenue without specifying any guarantee period. Although the standard rates of non-agricultural assessment for Sangamner tahsil were revised (January 1980) with retrospective effect from 1st August 1979, yet the assessment of the aforesaid land was not revised from August 1979. The omission resulted in revenue amounting to Rs. 35,233 being realised short during the period from 1979-80 to 1988-89.

On the omission being pointed out (November 1988) in audit, the department raised (June 1989) additional demand.

The case was reported to Government (December 1988).

(*vi*) In Chalisgaon tahsil (Jalgaon district) land admeasuring 4 hectares 79.03 ares situated within the municipal limits of Chalisgaon, was put to industrial use prior to 1970. Land Revenue assessed thereon was guaranteed upto 31st July 1969. The non-agricultural assessment was, however, not revised on expiry of guarantee period, though the standard rates were revised from 16th November 1972 and 22nd January 1981, effective from 16th February 1973 and 1st August 1979, respectively. The omission resulted in short realisation of revenue amounting to Rs. 1.21 lakhs for the period 1972-73 to 1988-89.

On this being pointed out (November 1987) in audit, the department accepted the audit point and agreed to raise the demand for the differential amount.

The matter was reported to Government in September 1985, December 1986 and December 1987; followed up by reminder in March 1990; their reply has not been received (May 1990).

(*vii*) In Kopargaon tahsil (Ahmednagar district) land admeasuring 44 hectares and 33.30 ares situated in Ranjangaon village was put to industrial use (1967) by a co-operative sugar factory. Non-agricultural assessment thereon done in August 1970 was guaranteed upto 31st July 1985. Although the standard rates for non-agricultural assessment were revised in April 1981 effective from 1st August 1979, yet the assessment was not revised after the expiry of the guarantee period from 1st August 1985 with reference to new standard rates resulting in short realisation of revenue amounting to Rs. 75,567 (including increase of land revenue amounting to Rs. 18,892 and cess Rs. 37,783) for the years 1985-86 to 1988-89.

On the omission being pointed out (August, 1987) in audit, the department recovered an amount of Rs. 73,251. Report on the balance amount has not been received (May 1990).

The case was reported to Government (September 1987).

(*viii*) In Haveli tahsil (Pune district), land admeasuring 24 hectares and 10.28 ares in Lonikalbhor urban village situated outside the corporation limits of Pune City was put to industrial use from 1972. Non-agricultural assessment thereon was fixed (December 1976) and was guaranteed upto 31st July 1986. The standard rates were revised (June 1980), with retrospective effect from 1st August 1979. On the expiry of the guarantee period the non-agricultural assessment thereof was not revised with effect from 1st August 1986. The omission resulted in short-realisation of land revenue of Rs. 7.18 lakhs (including increase of land revenue Rs. 1.71 lakhs and cess Rs. 3.76 lakhs) for the period from 1986-87 to 1988-89.

On this being pointed out (April 1988) in audit, the department accepted (April 1988) the mistake and raised additional demand.

The case was reported to Government in May 1989.

(*ix*) In Ahmedpur tahsil (Latur district), three pieces of land admeasuring 1 hectare and 62 ares, 80 ares and 1 hectare and14 ares situated within the municipal limits of Ahmedpur municipal council were put to commercial use by two Government undertakings from August 1971 and August 1980. Non-agricultural assessments thereon were also fixed and levied at the then prevailing rates without specifying guarantee period, and the standard rates of non-agricultural assessment were revised (September 1981) effective retrospectively from 1st August 1979. But, the non-agricultural assessments in these cases were not revised on the basis of the revised rates. The omissions resulted in short realisation of revenue amounting to Rs. 1.38 lakhs (including increase of land revenue of Rs. 68,920) for the years 1979-80 to 1988-89.

On this being pointed out (June 1986) in audit, the department raised (July 1988) the additional demand.

The case was reported to Government in June, 1989.

(*x*) Land admeasuring 65.41 ares situated within the municipal limits of Malegaon town in Malegaon tahsil was put to commercial use from 1947 and the non-agricultural assessment fixed therefor, was guaranteed

upto 31st July 1971. The standard rates for non-agricultural assessments were revised in January 1976 (effective after three months of such date of revision) and in August 1983, effective retrospectively from 1st August 1979. But the non-agricultural assessments, made earlier, were not revised on both the occasions. This omission resulted in short realisation of land revenue amounting to Rs. 44,929 for the period from 1976-77 to 1988-89.

On this being pointed out (January 1986) in audit, the department recovered Rs. 37,411 and final report on the recovery of balance amount has not been received (May 1990).

The case was reported to Government in June 1989.

4.6. Short levy due to application of incorrect rates

Under the Maharashtra Land Revenue Code, 1966, land revenue leviable on any land is assessed with reference to the purpose for which land is used, such as agricultural, residential, industrial or commercial. Further, under the Maharashtra Land Revenue Code (Amendment) Act, 1979 (effective from 31st March, 1979), a conversion tax, equal to three times the amount of non-agricultural assessment, is leviable on all lands situated in the areas of municipal corporations and municipal councils ('A' and 'B' class only), including the peripheral limits thereof, when permission for non-agricultural use or change of user of land is granted or unauthorised non-agricultural use is regularised by the revenue authorities (on or after 31st March 1979). In the case of unauthorised use of land for non-agricultural purposes, fine is also leviable to the extent decided by the Collector as per the orders issued by Government is December 1978. Further, under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 and Bombay Village Panchayats Act, 1958 cess at the prescribed rates in also leviable on the land revenue recoverable.

In Akola, in one case involving incorrect assessment of land revenue amounting to Rs. 36,174, the entire amount was recovered on being pointed out in audit. A few other cases are mentioned below :—

(*i*) In Nashik tahsil, land admeasuring 1 hectare and 30 ares situated within the limits of municipal Corporation, Nashik and used for commercial purpose was erroneously assessed to land revenue at the rate applicable to land used for residential purpose. The mistake resulted in short realisation of revenue amounting to Rs. 20,020 for the years 1985-86 to 1988-89 (including conversion tax).

On this being pointed out (March 1988) in audit, the department accepted (March 1988) the mistake and initiated action to recover the deficient amount. Further report has not been received (March 1990).

The case was reported to Government in March 1988; followed up by reminder in March 1990; their reply has not been received (May 1990).

(*ii*) In Pune, on a piece of land admeasuring 1 hectare and 42.652 ares permitted (August 1979) to be used for commercial purpose, non-agricultural assessment was assessed at incorrect rate applicable for residential use instead of the correct rate applicable for commercial use. This resulted in short realisation of revenue of Rs. 3.02 lakhs (including conversion tax of Rs. 69,671) for the period from 1979-80 to 1988-89.

On this being pointed out (August 1988) in audit, the department accepted (January 1989) the mistake and initiated action to revise the assessment. Further report has not been received (May 1990).

The case was reported to Government in May 1989; followed up by reminder in March 1990; their reply has not been received (May 1990).

(*iii*) In Nashik tahsil, four pieces of land admeasuring 14 hectares and 99 ares and situated within the municipal limits of Satpur were put to residential use, with permission, during 1979-80 but the lands were assessed (1979) to land revenue, on the basis of residential rates, applicable prior to 1978-79 instead of at the correct rates applicable to the period from 1979-80 onwards. The mistake resulted in short realisation of non-agricultural assessments amounting to Rs. 66,930 for the period from 1979-80 to 1988-89.

On the mistake being pointed out (September 1986) the department recovered an amount of Rs. 40,668 and stated that the steps to raise demand for the remaining amount are being initiated.

The case was reported to Government (October 1986); their reply has not been received (May 1990).

(*iv*) In Hatkanangale tahsil (Kolhapur district) land admeasuring 1 hectare and 12 ares and situated within the urban area of the municipal limits of Ichhalkaranji village was permitted (November 1988) to be used for residential purpose from November 1983. The non-agricultural assessment was incorrectly worked out and applied at Rs.3,270.10 paise instead of Rs.6,910.40 paise on the basis of the notified standard rate.

This mistake resulted in short levy of revenue of Rs.32,763 (including the conversion tax Rs.10,921) for the period from 1983-84 to 1988-89.

On this being pointed out (September 1988) in audit,the department accepted (April 1989) the mistake. Further report has not been received (May 1990).

The case was reported to Government in June 1989; their reply has not been received (May 1990).

(*v*) In Nashik tahsil, land admeasuring 3 hectares and 85 ares, situated within the Nashik Municipal Corporation, was put to non-agricultural (i.e. residential) use from 1983-84. Non-agricultural assessment thereof was fixed (September 1983) at the old rate of non-agricultural assessment even though the new standard rates were introduced (May 1983) with retrospective effect from 1st August 1979. The mistake resulted in short levy of land revenue amounting to Rs. 38,115 (including conversion tax Rs.12,705) for the years from 1983-84 to 1988-89.

On this being pointed out (September 1988) in audit, the department confirmed the audit point. Report on raising of additional demand has not been received (May 1990).

The case was reported to Government in June 1989, and followed up by reminder in March 1990; their reply has not been received (May 1990).

(*vi*) In Nashik tahsil, ten cases of lands admeasuring 5 hectares and 87.5456 ares situated within the limits of Nashik Municipal Corporation, and used for residential/commercial purposes, were not assessed to land revenue at correct standard rates of non-agricultural assessment as revised in May 1983 and effective from 1st August 1979. The mistake resulted in short realisation of revenue amounting to Rs.1.05 lakhs for the years 1983-84 to 1988-89 (including conversion tax Rs. 37,738).

On this being pointed out (September1988) in audit, the department accepted (February 1989) the audit point. Further report on recovery has not been received (May 1990).

The case was reported to Government in September 1988 and followed up by reminder in March 1990; their reply has not been received (May 1990).

(*vii*) In Yawal tahsil (Jalgaon district) five pieces of land admeasuring 2 hectares and 84 ares form village Faizpur situated out of the municipal limits thereof were put to residential use from 1979-80 and were assessed to land revenue at the rate prevailing prior to 1979-80 instead of at the rate effective from 1st August 1979. The cess leviable thereon was also not levied. The mistake resulted in short levy of land revenue amounting to Rs. 2.72 lakhs including the cess (Rs. 2.24 lakhs) for the period 1979-80 to 1988-89.

On the omission being pointed out (July 1987), the department stated that the steps to raise the demand on assessment are being initiated. Regarding the non-levy of cess, their reply has not been received (May 1990).

The case was reported to Government (August 1987).

(*viii*) In Ahmednagar tahsil, land admeasuring 1 hectare and 91.7325 ares situated at Nalegaon urban village outside the limits of Ahmednagar municipality but within the peripheral limits thereof was put to residential use (September 1982). The land was however, assessed at "incorrect" rates resulting in short realisation of revenue amounting to Rs. 1,01,059 (including cess for Rs. 58,951 and conversion tax for Rs. 12,632) for the period from 1982-83 to 1988-89.

On the mistake being pointed out (March 1989) in audit, the department stated (June 1989) that the steps to raise the demand for differential amounts are being initiated.

The case was reported to Government (April 1989).

(*ix*) In Nashik tahsil (Nashik district) a piece of land admeasuring 1 hectare and 69 ares situated within the limits of Municipal Corporation was put to commercial use from 1985-86. The standard rates for non-agricultural assessment effective from 1st August 1979 were notified in July 1983. The assessing officer however, fixed the non-agricultural assessment in respect of the land at Rs.200.10 paise per annum, as against the correct assessment at the revised rates which would have been Rs. 23,322. This resulted in short realisation of non-agricultural assessment during the years 1985-86 to 1988-89 together with the conversion tax amounting to Rs. 1.62 lakhs.

On the omission being pointed out (September 1988) in audit, the department stated (February1989) that the demand would be raised after approval by the assessing Officer.

The case was reported to Government in September 1988 and December 1988; their reply has not been received (May 1990).

(*x*) In Nashik tahsil a piece of land admeasuring 1 hectare and 84.4230 ares situated within the limits of Nashik Municipal Corporation, was put to commercial use from 1983-84 and the non-agricultural assessment thereon was levied (September 1983). Although the rates of non-agricultural assessment were revised (May 1983) with restrospective effect from 1st August, 1979, the non-agricultural assessment in this case was not done on the basis of revised standard rates. Application of incorrect rates of non-agricultural assessment resulted in short levy of revenue of Rs. 39,836 (including the conversion tax) for the period from 1983-84 to 1988-89.

On the mistake being pointed out (September 1988) in audit, the department stated (February 1989) that proposal for revision of the assessment is being sent to sub-Divisional Officer and on its approval demand would be raised.

The case was reported to Government (September 1988); their reply has not been received (May 1990.).

(*xi*) In Nashik tahsil, land admeasuring 1 hectare and 69 ares situated within the limits of Municipal Corporation, was put to commercial use from 1985-86 and was assessed (March 1985) to land revenue at Rs. 88.20 per annum. Although the standard rates of non-agricultural assessment were revised (May 1983) and were effected retrospectively from 1st August, 1979, the non-agricultural assessment was not done on the basis of revised standard rates. Failure to apply the correct rates of non-agricultural assessment resulted in short realisation of revenue amounting to Rs. 1.63 lakhs (including conversion tax of Rs. 0.70 lakh) for the period 1985-86 to 1988-89.

On this being pointed out (September 1988) in audit, department stated that necessary proposal is being sent to the assessing officer for his approval and demand would be raised thereafter.

The case was reported to Government (September 1988); their reply has not been received (May 1990).

(*xii*) In Nashik tahsil, a piece of land admeasuring 1 hectare and 24.85 ares situated within the limits of municipal corporation was put to commercial use from 1987-88. Non-agricultural assessment therefor was fixed in May 1988. By a notification issued in May 1983, the standard rates of non-agricultural assessment were revised retrospectively from 1st August 1979. The non-agricultural assessment on the land was, however, not based on the revised standard rates. This omission resulted in short levy of revenue to the extent of Rs. 44,000 (including conversion tax) for the years 1987-88 and 1988-89.

On the omission being pointed out (September 1988) in audit, the department stated (February 1989) that necessary proposal is being sent to sub-Divisional officer, Nashik and demand would be raised on approval of the proposal.

The case was reported to Government in September 1988 with a reminder in March 1990; their reply has not been received (May 1990).

(*xiii*) In Nashik tahsil, land admeasuring 1 hectare and 69 ares situated within the limits of Nashik municipal corporation was put to commercial use from 1985-86. Although the standard rates for non-agricultural assessment were revised (May 1983) with retrospective effect from 1st August, 1979, the non-agricultural assessment in this case was not fixed as per revised standard rates according to which the amount of such assessment would be Rs. 23,322 per annum and not Rs. 24.25 paise per year actually levied. Failure to apply the correct rate in levying the land revenue, resulted in short realisation of land revenue of Rs. 1.63 lakhs (including conversion tax) for the years from 1985-86 to 1988-89.

On this being pointed out (September 1988) in audit, the department stated (February 1989) that proposal for revision would be sent to the assessing authority and on its approval necessary demand would be raised.

The case was reported to Government in September 1988; followed up by reminder in March, 1990; their reply has not been received (May 1990).

(*xiv*) In Nanded tahsil, land admeasuring 13 hectares and 61.453 ares situated within the limits of Nanded Municipality was put to non-agricultural (i.e. industrial) use unauthorisedly from 1968 by a company. While regularising the unauthorised use of the land (November 1979) for the period 1968-69 to 1984-85 the assessing authority fixed the assessment at rates other than those prevailing in 1968 and without taking into consideration the revision brought about with effect from

November 1976 and 1st August, 1979. Besides, the increased land revenue was not levied as per rules. This resulted in short realisation of revenue of Rs. 2.80 lakhs (including conversion tax and increased land revenue) for the period from 1968-69 to 1984-85.

On this being pointed out (June 1986 and August 1988) in audit, the department raised additional demand of Rs. 1,91,722. Report of recovery has not been received.

The case was reported to Government in September, 1986.

(*xv*) In Nashik, tahsil land admeasuring 1 hectare and 69 ares situated within the limits of Nashik Municipal Corporation was put to commercial use from 1985-86. Though the revision of standard rates for non-agricultural assessment effective from 1st August 1979 was notified in May 1983 the assessing officer incorrectly determined the non-agricultural assessment in this case at old rate. This irregularity resulted in short levy of Rs. 1.62 lakhs including conversion tax.

On this being pointed out (September 1988) in audit, the department stated (February 1989) that demand would be raised after approval of revised assessment.

The case was reported to Government (September 1988), followed up by reminder in March 1990; their reply has not been received (May 1990).

(*xvi*) In Amalner tahsil (Jalgaon district) land admeasuring 1 hectare and 29.334 ares situated within the municipal limits of Amalner was put to commercial use from 1973-74. The non-agricultural assessment thereon was incorrectly levied at the residential rate instead of commercial rate, resulting in short levy of land revenue amounting to Rs. 1.03 lakhs for the period from 1973-74 to 1988-89.

On this being pointed out (January 1989) in audit, the department stated that the demand for the differential amount is being raised.

The case was reported to Government (February 1989).

(*xvii*) In Raver tahsil (Jalgaon district) in assessing land admeasuring 80.94 ares situated within the revenue limits of Raver village and used for industrial purposes by the Western Maharashtra Development Corporation, with effect from 1983-84 the cess was not levied. Non-agricultural assessment on the land was also erroneously fixed on the basis of

standard rates applicable for residential use instead of industrial use. The omission resulted in revenue amounting to Rs. 47,662 (including short levy of non-agricultural assessment for Rs. 6,314) not being realised for the period from 1983-84 to 1988-89.

On this being pointed out (November 1988) in audit, the department accepted the Audit point (July 1989) and stated that steps are being initiated to raise the demand.

The case was reported to Government (December 1988); their reply has not been received (May 1990).

(*xviii*) In Nashik taluka, land admeasuring 2,697 square metres, situated within the limits of Nashik Municipal Corporation was used for commercial purpose from 1985-86. Non agricultural assessment thereon was fixed at Rs. 154.55 per annum instead of at correct commercial rate of Rs. 3721.86 per annum based on the prevailing standard rate of non-agricultural assessment of Rs. 1.38 per square metre. The mistake resulted in short realisation of revenue amounting to Rs. 24,971 (including conversion tax) for the period 1985-86 to 1988-89.

On this being pointed out (September 1988) in audit, the department stated (February 1989) that necessary proposals for the rectification of the error will be submitted to the assessing authority. Further report has not been received (May 1990).

The case was reported to Government in September, 1988; their reply has not been received (May 1990).

4.7. Short levy due to incorrect revision

Under the Maharashtra Land Revenue Code, 1966, an assessment or re-assessment of non-agricultural land, when done, remains in force for the guaranteed period, if any, mentioned in the assessment orders or sanad. Thereafter, the land revenue is liable to be revised in accordance with the standard rates of non-agricultural assessment notified in the gazette from time to time. On revision, the revised assessment shall not exceed two times the amount of land revenue payable immediately before revision if the land is used for residential purposes and shall not exceed six times the amount if the land is used for any other non-agricultural purposes, As per the Maharashtra, Increase of Land Revenue and Special Assessment Act, 1974 (as amended on 1st August 1975) if the total holdings of a person in the State is 8 hectares and above, increase of land revenue

is payable at 50 per cent of the land revenue and if it is 12 hectares and above at 100 per cent of the land revenue.

In Junnar tahsil (Pune district), in one case involving incorrect revision of land revenue amounting to Rs. 26,434, the entire amount was recovered on being pointed out in audit. A few other cases are mentioned below :—

(*i*) In Bhamburda village of the urban area of Pune city, a piece of land admeasuring 2591.99 square metres was put to industrial use. Non-agricultural assessment was fixed thereon without any guarantee period. The rates of non-agricultural assessment were revised in April 1971 effective from July 1971 and again in June 1980 retrospectively effective from 1st August 1979, but on both the occasions the revised assessments were erroneously limited to twice the land revenue instead of six times payable immediately before the revision. The mistakes resulted in short levy of revenue during the period July 1971 to July 1989 amounting to Rs. 46,588.

On this being pointed out (August 1988) in audit, the department accepted the mistake (August 1988) and initiated (February 1989) action with the Collector, Pune to revise the land revenue. Further report has not been received (May 1990).

The case was reported to Government in (August 1988), followed up by reminder in March 1990; their reply has not been received (May 1990).

(*ii*) In Raver tahsil (Jalgaon district) land admeasuring 1 hectare and 62.56 ares situated within the limits of municipal council of Raver was put to commercial use (1912) by a commercial organisation. Non-agricultural assessment thereon was fixed and guaranteed from 1918 to 31st July 1979. Standard rates of non-agricultural assessments were revised in January 1981 (effective from 1st August 1979). On expiry of the guarantee period the revision of the non-agricultural assessment with effect from 1st August 1979, was limited to twice the amount of non-agricultural assessment before revison instead of six times thereof. The mistake resulted in short realisation of revenue amounting to Rs. 48,388 for the period from 1979-80 to 1988-89.

On this being pointed out (November 1986) in audit, the department stated (July 1989) that steps to raise the demand for the differential amount are being initiated.

The case was reported to Government (December 1986).

(*iii*) In Chalisgaon tahsil (Jalgaon district) a piece of land admeasuring 4 hectares and 59.733 ares and situated within the limits of Chalisgaon municipality was put to industrial use (August 1944). Non-agricultural assessment was guaranteed upto 31st July 1978. Standard rates of non-agricultural assessments were revised on 23rd November 1972 (effective from 23rd February 1973) and again in January 1981 (effective from 1st August 1979). After the expiry of the guarantee period on 31st July 1978 the non-agricultural assessment was revised with effect from 1st August 1978 but was limited to twice the old assessment before revision instead of six times leviable. The non-agricultural assessment was further required to be revised from 1st August 1979 which was not done. The omissions resulted in short realisation of revenue amounting to Rs. 1,73,148 for the period from 1978-79 to 1988-89.

On the omission being pointed out (November 1987) in audit, the department stated that the steps to raise the demand for differential amount are being taken.

The case was reported to Government (December 1987); their reply has not been received (May 1990).

(*iv*) In Kolhapur tahsil 12 pieces of land admeasuring 2 hectares and 79.2778 ares and 2 pieces of land admeasuring 11589.30 square metres situated within the limits of kolhapur municipal corporation were put to commercial and industrial use respectively prior to 1970. The lands were assessed to land revenue, with guarantee period upto 31st July 1985. The standard rates of non-agricultural assessment for Kolhapur municipal corporation area were revised on 4th September 1980 but effective from 1st August 1979. On revision, with effect from 1st August 1985, the non-agricultural assessment thereon was, however, restricted to twice the old assessment instead of six times thereof. This mistake resulted in short realisation of revenue amounting to Rs. 60,248 for the period from 1985-86 to 1988-89.

On the mistake being pointed out (September 1988) in audit, the department stated that the steps to raise the demand on assessment are being initiated.

The case was reported to Government (September 1988), followed up by reminder in March 1990; their reply has not been received (May 1990).

(*v*) In Pune city eight pieces of land admeasuring 1 hectare and 92.2264 ares were under commercial use during the period prior to 1971 in four cases, and between 1971 and 1977 in three cases and from 1980 in one case. The rates of non-agricultural assessment were revised in April 1971 and June 1980 to be effective from 29th July 1971 and 1st August 1979 respectively. While revising the non-agricultural assessment from July1971 and August 1979 in these cases the revised standard rates of July 1971 and August 1979 were not applied resulting in fixation of incorrect non-agricultural assessments in all these cases. Further, while revising the non-agricultural assessments with effect from 1st August 1979 the amount of revised assessment in each case was limited to twice the old assessment before revision and since old assessment was itself not correct, the revised assessment was also not correct and the revised assessment was erroneously limited, in these cases, to twice the old assessment instead of six times thereof. The mistakes resulted in short levy of non-agricultural assessment amounting to Rs. 6.56 lakhs (including increase of land revenue) for the period from 1970–71 to 1988-89.

On this being pointed out (September 1986) in audit, the department accepted the audit point and stated that the matter will be referred to the assessing authority for revision. Further report has not been received (May 1990).

The case was reported to Government (September 1986), followed up by reminder in March 1990 ; their reply has not been received (May 1990).

(*vi*) In Wadhawan village, situated within the limits of Greater Bombay Municipal Corporation, a piece of land admeasuring 2 hectares and 24.072 ares was put to industrial use from prior to 1971. Non-agricultural assessment was fixed thereon at Rs. 2,816.70 with effect from 1st August 1971 without any guarantee period. The standard rates for non-agricultural assessment were revised in July 1981 retrospectively effective from 1st August 1979 but while revising the non-agricultural assessment in the instant case it was erroneously limited to twice the land revenue instead of six times payable immediately before the revision. The mistake resulted in short levy of revenue amounting to Rs. 1.13 lakhs for the period from 1979-80 to 1988-89.

On this being pointed out (August 1988) in audit, the department submitted (February 1989) revised proposal to assessing authority. Further report has not been received (May 1990).

The case was reported to Government in August 1988, followed up by reminder in March 1990; their reply has not been received (May 1990).

(*vii*) In Raver tahsil (Jalgaon district), land admeasuring 93.28 ares and situated within the limits of Raver Municipality, was put to commercial use from 1920-21. The assessment of this land was guaranteed upto 31st July 1978. Accordingly the assessment was revised with effect from 1st August 1978 i. e. after the expiry of the guarantee period. The standard rates of non-agricultural assessments which were revised on 23rd November 1972 effective from 23rd February 1973 were again revised in January 1981 with retrospective effect from 1st August 1979. The assessment was as such again revised with effect from 1st August 1979. But on both the occasions the revised assessment was restricted erroneously to twice the land revenue instead of six times the land revenue assessed before revision. This mistake resulted in short levy of revenue to the extent of Rs. 44,128 for the period from 1978-79 to 1988-89.

On this being pointed out (November 1986) in audit, the department revised the assessment and initiated action for recovery of the differential amount.

The case was reported to Government (December 1986) followed up by reminder in March 1990; their reply has not been received (May 1990).

(*viii*) In Ichalkaranji town (Kolhapur district), land admeasuring 15 hectares and 59.947 ares used for industrial purpose by an Industrial Co-operative Estate with an annual assessment of Rs. 9,359.64 from August 1970 was re-assessed from 1st August 1985, on the expiry of previous guarantee period, at Rs. 48,405.30 per year instead of Rs. 56,157.80 per year, six times the old non-agricultural assessment. Further, the total holdings of the assessee in the State being more than 12 hectares, increases of land revenue was short levied by Rs. 7,753 per year. The mistakes resulted in land revenue being realised short by Rs. 62,020 for the years 1985-86 to 1988-89.

On this being pointed out (September 1988) in audit, the department accepted (April 1988) the omission. Further report has not been received (May 1990).

The matter was reported to Government in September 1988, followed up by a reminder in March 1990, their reply has not been received (May 1990).

(*ix*) In Pandharpur tahsil (Solapur district) land admeasuring 1 hectare and 21.41 ares, situated within the municipal limits of Pandharpur was put to commercial use prior to 1970 and the non-agricultural assessment thereon fixed (Rs.2,731.50 per annum) from 1st August 1970 was guaranteed upto 31st July 1985. The standard rates for non-agricultural assessment were revised in February 1980 with retrospective effect from 1st August 1979. The non-agricultural assessment on this land revised with effect from 1st August 1985 after the expiry of the guarantee period was restricted to twice the land revenue instead of to six times resulting in short levy of Rs. 43,704 for the years 1985-86 to 1988-89.

On the mistake being pointed out (March 1988) in audit, the department raised necessary demand. Further report has not been received (March 1990).

The case was reported to Government (April 1988), followed up by reminder in March 1990; their reply has not been received (May 1990).

(*x*) In Bibvewadi urban area in Pune city, the non-agricultural assessment on land admeasuring 4,868.1 square metres used for industrial purposes was revised on general revision of standard rates effective from 29th July 1971 but the reassessment was incorrectly limited to twice the land revenue assessed immediately before the revision, instead of to six times thereof. The mistake resulted in further incorrect revision when it was done with reference to standard rates revised from 1st August 1979. These mistakes resulted in short realisation of land revenue amounting to Rs.20,730 during the years 1971-72 to 1988-89.

On this being pointed out (September 1986) in audit, the department accepted (September 1986) the omission and submitted the proposal for revision to Collector, Pune. Further report has not been received (May 1990).

The case was reported to Government in September 1986, followed up by a reminder in March 1990; their reply has not been received (May 1990).

4.8. Non-levy of increase of land revenue

Under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974 (in force from 1st August 1974), a tax called "increase of land revenue" is leviable on agricultural lands. In order to raise additional resources needed for implementing the Employment Guarantee Scheme,

the Act was amended with effect from 1st August 1975 to provide for increase of land revenue being leviable on all holdings of 8 hectares and above including non-agricultural lands. After the amendment,the increase of land revenue is payable at 50 per cent of the land revenue by persons holding land of 8 hectares and above and at 100 per cent of land revenue by persons holding land of 12 hectares and above. "Holding" includes agricultural as well as non-agricultural lands as clarified by the Government in August 1982.

(*i*) In Pune city and Solapur (North) tahsil, in three cases in respect of land admeasuring 31 hectares and 96.90 ares put to commercial use between 1971 and November 1975 land revenue of Rs.1.44 lakhs for the period from 1975-76 to 1988-89 was levied and recovered (February 1990) on being pointed out in audit.

(*i*) In Walwa tahsil (Sangli district) land admeasuring 21 hectares and 48 ares held by a co-operative sugar factory was put to industrial use from April 1983. Although the total holdings of the assessee exceeded 12 hectares, increase of land revenue was not levied. This omission resulted in non-realisation of revenue of Rs. 27,924 for the period from 1983-84 to 1988-89.

On this being pointed out (April 1988) in audit, the department recovered (February 1989) Rs. 23,628. Report on recovery of balance amount has not been received (May 1990).

The case was reported to Government in May 1988.

(*ii*) In Gultekadi village of Pune city out of land admeasuring 22 hectares and 99.65 ares held by one private association within the limits of Pune municipal corporation, land admeasuring 11 hectares and 53.4491 ares was put to residential use prior to 1975 but the increase of land revenue leviable thereunder was not levied. The omission resulted in non-realisation of revenue amounting to Rs. 20,091 for the period from 1975-76 to 1988-89.

On this being pointed out (September 1988) in audit, the department raised demand (October 1988).

The cases were reported to Government in April, November and December 1988, followed up by reminder in March 1990; their reply has not been received (May 1990).

(*iii*) In Bhoom tahsil (Osmanabad district) land admeasuring 1 hectare and 62 ares situated in the urban village Washi was put to commercial use (August 1980) by Maharashtra State Electricity Board. Although the non-agricultural assessment and cess were levied from time to time, yet the increase of land revenue @ 100 per cent of land revenue was not levied thereon. This omission resulted in non-realisation of revenue of Rs.1.08 lakhs (including short levy of non-agricultural assessment and local cess) for the period from 1980-81 to 1988-89.

On this being pointed out (October 1988) in audit, the department recovered(April 1989) an amount of Rs. 94,867 for the period upto 1987-88 and raised demand for 1988-89.

The case was reported to Government (November 1988).

(*iv*) In Bombay, 34 pieces of land admeasuring 5 hectares and 31.1842 ares were put to commercial use prior to 1975 by the Life Insurance Corporation of India. Although the total holding of the assessee including other holdings in the State exceeded 12 hectares, increase of land revenue was not levied on the land holder. This omission resulted in non-realisation of revenue amounting to Rs. 32.52 lakhs for the period from 1975-76 to 1988-89.

On this being pointed out (May 1988) in audit, the department raised demands (December 1988) against the assessee.

The case was reported to Government in November 1988; their reply has not been received (May 1990).

4.9. Failure to reassess the land revenue on change in mode of use of land

Under the Maharashtra Land Revenue Code, 1966, land revenue is assessed with reference to the purpose for which the land is used such as agricultural, residential, commercial or any other purpose. On change in mode of use of land, the land revenue is required to be reassessed. In cases, where such lands are situated in the areas of municipal corporations and municipal councils (' A ' and ' B ' class only), conversion tax equal to three times the amount of non-agricultural assessment, is also leviable when permission for non-agricultural use or change in use of land from one non-agricultural purpose to any other non-agricultural purpose is granted or unauthorised non-agricultural use is regularised by the revenue authorities, on or after 31st March 1979.

On land admeasuring 8 hectares and 66 ares in Latur Taluka (held by Gram Panchayat, Murud) put to non-agricultural use from August 1980, non-agricultural assessment at the revised rates effective from 1st August 1979 amounting to Rs. 4.09 lakhs for the period from 1980-81 to 1988-89 was levied and recovered (February 1990) on being pointed out in audit.

(*i*) In Chalisgaon tahsil (Jalgaon district) land admeasuring 4834.80 square metres situated within the limits of Chalisgaon municipality and used for industrial purposes was unauthorisedly put to commercial use from 1st August 1979 and was not assessed to land revenue. The omission resulted in non-levy of revenue amounting to Rs.39,974 (including conversion tax) for the period from 1979-80 to 1988-89.

On the omission being pointed out (November 1987) in audit, the department stated (July 1989) that the steps to raise the demand are being initiated.

4.10. Non-realisation of lease rent and non-levy of increased land revenue

Under the Maharashtra Land Revenue Code, 1966, and Rules made thereunder, every Government lessee, to whom Government lands are leased out shall pay as land revenue lease money fixed under the terms of the lease. Under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974 as amended with effect from 1st August 1975, a tax called " Increase of Land Revenue " became leviable on agricultural and non-agricultural lands in the State. The increase of land revenue is payable at 50 per cent of land revenue by persons holding land 8 hectares and above in the State and 100 per cent by persons holding 12 hectares and above. " Holding " includes agricultural as well as non-agricultural lands as clarified by the Government in August 1982. Under the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 and the Bombay Village Panchayats Act, 1958, a cess at the prescribed rate is leviable on land revenue recoverable from every tenant or lessee in the areas covered by the Act.

In Amalner tahsil (Jalgaon district), in respect of Government land admeasuring 16 hectares situated outside municipal limits of the village Mangrul, and leased out to a Co-operative industrial organisation for industrial use for thirty years with effect from 20th February 1980, the lease rent as per lease was neither fixed by the Collector, nor recovered

and credited to Government account before handing over the possession of the land to the lessee. Increase of land revenue and cess were also not levied. The omissions resulted in non-realisation of land revenue amounting to Rs. 7.25 lakhs (including increased land revenue Rs. 1.73 lakhs and cess Rs. 3.80 lakhs) for the period 1979–80 to 1988–89.

On this being pointed out (April 1986) in audit, Collector fixed the lease rent in November 1988 and directed Tahsildar to raise demand. Report on non-levy of increase of land revenue and cess, has not been received (May 1990).

The case was reported to Government (May 1986), followed up by a reminder in March 1990; their reply has not been received (May 1990).

4.11. Short levy of land revenue and increase of land revenue

Under the Maharashtra Land Revenue Code, 1966, the assessment or reassessment on non-agricultural lands, when done is liable to be revised after guaranteed periods, if any, mentioned in the assessment orders or the sanad. The Maharashtra Land Revenue Code (Amendment) Act, 1979 provides with effect from 31st March 1979, that the non-agricultural assessments done after 31st March 1979 are liable to be revised from 1st August 1979 on the basis of the standard rates notified under the provisions of the Act. Government ordered in May 1981 *inter alia*, that in cases where the guarantee period has already expired, the guarantee period be extended first upto 31st July 1979 and again from 1st August 1979 and the non-agricultural assessments also be revised accordingly with reference to the standard rates applicable for each period upto 31st July 1979 be taken as the basis for subsequent revision from 1st August 1979. Further, under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974, as amended in 1975, a tax called " increase of land revenue " is also payable at 50 per cent of land revenue if the land held by the holder is 8 hectares and above and at 100 per cent of land revenue if the land held is 12 hectares and above.

(*i*) In Ulhasnagar (Thane district) land admeasuring 15 hectares and 23.6424 ares situated within the limits of Ulhasnagar municipality was put to industrial use (from 1954) by an industrial firm. Non-agricultural assessment thereon was fixed for the guarantee period thereof which expired in 1961. Standard rates of non-agricultural assessment were revised in February 1979 (effective from 1st May 1979) and again in July

1981 (effective from 1st August 1979) which necessitated revision of the assessment done earlier, with effect from 1st May 1979 and 1st August 1979. But the revision was not done. This resulted in short levy of land revenue amounting to Rs. 8,16,075 (including increase of land revenue of Rs. 4,11,525) for the period from 1st May 1979 to 1984-85.

On the omission being pointed out (January 1981 and April 1985) in audit, the department revised the assessment with effect from May 1979 and recovered the amount of Rs. 1.56 lakhs (including increase of land revenue Rs. 1.07 lakhs) for the period from 1975-76 to 1984-85 and the assessment was guaranteed for ten years thereafter. The second revision from August 1979 was not done in spite of audit pointing out (March 1987) the necessity therefor. The omission resulted in short realisation of revenue amounting to Rs. 12.19 lakhs (including increase of land revenue Rs. 6.88 lakhs) for the period from 1975-76 to 1988-89.

The case was reported to the Collector, Thane in March 1987, followed up by reminders in April 1987, July 1987 and January 1988 and to Commissioner, Konkan Division and the Government in April 1989. Their replies have not been received (May 1990).

(*ii*) In Ulhasnagar tahsil (Thane district) land admeasuring 15 hectares and 5.43 ares and situated within the limits of Ulhasnagar municipality was put to industrial use (August 1954) by an industrial firm. The non-agricultural assessment thereon was done. The guarantee period for this area expired in July 1961. Standard rates of non-agricultural assessment were revised in February 1979 (effective from May 1979) and again in July 1981 (effective from 1st August 1979) which necessitated revision of the assessments done earlier in this case with effect from May 1979 and August 1979. But the revision was not done. This resulted in short levy of land revenue of Rs. 8,25,947 including increase of land revenue of Rs. 4,16,503.

On the omission being pointed out (January 1983 and April 1985) in audit, the department revised the assessment with effect from May 1979 and recovered the amount of Rs. 63,364 for the period from 1975-76 to 1985-86 and the assessment was guaranteed for ten years thereafter. The second revision from 1st August 1979 was, not however, done inspite of audit pointing out the need thereof. The omission resulted in short realisation of revenue amounting to Rs. 12.95 lakhs (including increase of land revenue Rs. 6.79 lakhs) for the period from 1975-76 to 1988-89.

The case was reported to the Collector, Thane (March 1983) followed up by reminders (October 1983, December 1983 and March 1987) and the Commissioner, Konkan Division, New Bombay (August 1988, January 1989) and Government (April 1989). Their replies have not been received (May 1990).

(*iii*) In Ulhasnagar (Thane district) two pieces of land admeasuring 34 hectares and 19.68 ares and 11 hectares and 56.39 ares situated within the limits of Ulhasnagar municipality were put to industrial use (from 1954) and residential use (from August 1977) respectively by an industrial firm. The non-agricultural assessment thereon was guaranteed upto 1961. Although the standard rates of non-agricultural assessment were revised in February 1979 (effective from May 1979) and again in July 1981 (effective from 1st August 1979). The assessments in these cases were however, not revised on both the occasions. This resulted in short levy of revenue of Rs. 36.36 lakhs.

On the omission being pointed out (January 1983 and April 1985) in audit, the department revised the assessment with effect from May 1979 and recovered the amount of Rs. 5.02 lakhs (including the increase of land revenue Rs. 2.51 lakhs) for the period from 1975-76 to 1984-85. The assessment was guaranteed for ten years thereafter. The second revision from August 1979 was not, however, done in spite of audit pointing out the necessity therefor. The omission resulted in short realisation of revenue amounting to Rs. 31.34 lakhs for the period from 1975-76 to 1988-89.

The case was reported to the Collector, Thane in March 1987 followed up by reminders (April 1987, July 1987, January 1988) and the Commissioner, Konkan Division, New Bombay (August 1988, January 1989) and to Government (April 1989). No final replies have been received (May 1990).

(*iv*) In Chopada tahsil (Jalgaon district) out of the land admeasuring 1 hectare and 5.06 ares situated within the limits of Chopada municipality 2,484 square metres were put to commercial use and 1,852 square metres to industrial use from 1977-78 and 61.70 ares were put to residential use from 1980-81. The standard rates were revised and notified on 11th September 1975 and 22nd January 1981 effective from 11th December 1975 and 1st August 1979. Scrutiny of records however revealed that the lands were assessed to land revenue between January 1980 and May 1980 retrospectively from 1977-78 and 1980-81 respectively at Rs. 187.50

per annum, 129.70 per annum, 424.90 per annum respectively and were guaranteed upto 31st July 1985, instead of at the rates prevailing from December 1975 and limiting the guarantee period upto 31st July 1979, and revising them from 1st August 1979. The omission resulted in short levy of land revenue amounting to Rs. 29,691 for the period from 1977-78 to 1988-89.

On this being pointed out (August 1985) in audit, the department accepted the audit point and stated that the steps (July 1989) to raise demand will be taken after assessment.

4.12. Non-levy of conversion tax

Under the Maharashtra Land Revenue Code (Amendment) Act, 1979, effective from 31st March 1979, conversion tax, equal to three times the amount of non-agricultural assessment is leviable on all lands situated in the areas of municipal corporations and municipal councils ('A' and 'B' class only) including the peripheral limits thereof, when permission for non-agricultural use or change of user of land is granted or unauthorised non-agricultural use is regularised by the revenue authorities (on or after 31st March 1979).

On land admeasuring 2 hectares 44.80 ares in Latur Taluka permitted (September 1980) to be used for non-agricultural residential purposes, conversion tax of Rs. 25,704 was levied and recovered in February 1990 on being pointed out in audit.

(*i*) In Jalgaon tahsil, land admeasuring 3 hectares and 74.9268 ares from Meharun village situated within the peripheral limits of Jalgaon municipality (Class 'A') were permitted between July 1984 and April 1986, to be used for non-agricultural purposes, but conversion tax was not levied thereon, resulting in non-realisation of revenue amounting to Rs. 20,134.

On this being pointed out (July 1988) in audit, the department raised demands (January 1989).

The cases were reported to Government (August 1988 and June 1989).

4.13. Non-levy of land revenue and conversion tax due to failure in making entries in basic records.

Under the Maharashtra Land Revenue Code, 1966, land revenue is assessed with reference to the purpose for which the land is used such

as agricultural, residential, industrial, commercial or any other purpose. As per Maharashtra Land Revenue Code (Amendment) Act, 1979, where permission for non-agricultural use or change of user of land is granted or unauthorised non-agricultural use is regularised by revenue authorities on or after 31st March 1979, conversion tax equal to three times the amount of non-agricultural assessment is leviable on all lands situated within the areas of municipal corporations and municipal councils ('A' and 'B' class only). Further, Register of Non-agricultural lands in Taluka Form II and Register of non-Agricultural Revenue in village Form II are basic records and the entries made therein form the basis for assessing land revenue. Failure to make the entries in the forms could result in non-recovery of land revenue and consequent recurring loss. Under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974, as amended from 1st August 1975, the increase of land revenue is payable on all lands at 50 per cent of the land revenue by persons holding land in the State 8 hectares and above and 100 per cent by those holding 12 hectares and above.

(*i*) In Nanded tahsil, in the case of a land admeasuring 4,000 square metres situated within limits of Nanded municipal council, permission (January 1983) for the non-agricultural (i.e. commercial) use of the land was subject to the assessee paying non-agricultural assessment at the prescribed rate from the date of commencement of non-agricultural use. The tahsildar was also directed (January 1983) to make necessary entries in the relevant records and effect recovery of the non-agricultural assessment accordingly. These instructions were not followed in the tahsil office with the result that the land revenue amounting to Rs. 24,600 (including conversion tax) for the years 1984-85 to 1988-89 was not levied.

On this being pointed out (June 1988) in audit, the department recovered (December 1988) the amount.

(*ii*) In Udgir tahsil (Latur district) in the case of six pieces of land admeasuring 4 hectares and 99 ares situated in the urban area of Udgir Municipal Council, permission for non-agricultural (i.e. residential) use of the land was accorded by the revenue authorities during the period between February 1983 and April 1986. But while granting permission in these cases conversion tax was not levied as the orders conveying the permission were not noted in the relevant records i.e. Taluka Form II

and Village Form II. The omission resulted in the land revenue of Rs. 84,228 (including conversion tax Rs. 35,030) not being levied and realised for the period from 1982-83 to 1988-89.

On this being pointed out (June 1988) in audit, the department raised the demands (May 1989). Further report has not been received (May 1990).

(*iii*) In Pune tahsil, a piece of land admeasuring 8 hectares and 85.94 ares and situated in the limits of Pune Municipal Corporation was held by an industrial organisation and 4 hectares and 11.9579 ares thereof was put to commercial use from 1968 onwards. Increase of land revenue thereon, though leviable from 1st August 1975, was not levied for the period from 1975-76 to 1988-89. Further, the remaining area of 4 hectares and 73.9821 ares was put, with permission, to residential use from October 1987. The assessing authority, while according the permission for residential use of the land, directed that the assessee should pay non-agricultural assessment at 50.4 paise per square metre and that the Tahsildar should make necessary notes in the relevant records and effect recovery of the non-agricultural assessment from the date of commencement of non-agricultural use of the land. These orders were, however, not noted in the relevant records with the result that demand therefor was not raised. These omissions resulted in non-levy of revenue amounting to Rs. 92,229 in both these cases(Rs.23,889 towards non-agricultural assessment, Rs. 68,340 towards increase of land revenue).

On this being pointed out (September 1988 and February 1989) in audit, the department raised the demand therefor (October 1988 and February 1989).

The cases were reported to Government in July 1988, September 1988 and June 1989.

(*iv*) In Kolhapur city as per the records in the Land Records Department the mode of use of land admeasuring 2 hectares and 0.737 ares was unauthorisedly changed by Shetkari Sahakari Sangh Limited, from " residential " to " commercial" in September 1971. It was noticed that the records in the Revenue Department were not updated and hence the land was not assessed as for commercial use. The lack of co-ordination between Land Records Department and Land Revenue Department resulted in under-assessment amounting to Rs. 2.68 lakhs (including conversion tax) for the years 1971-72 to 1988-89.

On this being pointed out (September 1988) in audit, the department accepted (September 1988) the mistake. Further report has not been received (May 1990).

The case was reported to Government in September 1988, followed up by a reminder in March 1990; their reply has not been received (May 1990).

4.14. Non-levy of conversion tax and cess

Under the Maharashtra Land Revenue Code (Amendment) Act, 1979, effective from 31st March 1979, conversion tax, equal to three times the amount of non-agricultural assessment, is leviable on all lands situated in the areas of Municipal Corporations and Municipal Councils(' A ' and ' B ' class only), or of any peripheral area of any of them, when permission for non-agricultural use or change of user of land is granted or unauthorised non-agricultural use is regularised by the revenue authorities (on or after 31 st March 1979). Under the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961, and the Bombay Village Panchayats Act, 1958, a cess at prescribed rate is also leviable.

In Bhiwandi tahsil (Thane district), land admeasuring 1 hectare and 31.5232 ares situated in urban village Khoni and within the peripheral area of Bhiwandi Municipal Council, was put to commercial use from 30th October 1979. But the conversion tax and cess were not levied. The omission resulted in non-realisation of revenue of Rs. 54,236 for the period from 1979-80 to 1988-89.

On this being pointed out (October 1988) in audit, the department accepted (February 1989) the omissions. An amount of Rs.25,309 has been recovered in July 1989 and August 1989. Further report has not been received (May 1990).

The case was reported to Government in October 1988; their reply has not been received (May 1990).

4.15. Under-assessments

In 45 cases, pointed out by audit during the period from 1st April 1988 to 31st March 1989 (where money value of each case was less than Rs. 20,000) under-assessments / losses of revenue amounting to Rs.3.24 lakhs were accepted by the assessing authority/department, out of which an amount of Rs. 3.00 lakhs was recovered between May 1988 and March 1990.

CHAPTER 5

TAXES ON VEHICLES

5.1. Results of Audit

Test check of records relating to assessment and collection of motor vehicles tax, further tax and passengers tax, conducted in audit during the year 1988-89, revealed short levy of taxes amounting to Rs. 12.04 lakhs in 311 cases, which broadly fall under the following categories :—

	Number of cases	Amount (in lakhs of rupees)
1. Non-levy or short levy of motor vehicles tax, further tax and passengers tax.	253	9.55
2. Irregular grant of exemption from payment of tax ..	22	1.22
3. Other irregularities	36	1.27
	311	12.04

Some of the important cases noticed during 1988-89 and in earlier and subsequent years are mentioned in the following paragraphs:

5.2. Incorrect grant of exemption from payment of tax

(*a*) Under the provisions of the Bombay Motor Vehicles Tax Act, 1958, the State Government is empowered to exempt either totally or partially, any class of motor vehicles from payment of tax. As per the departmental instructions issued on 27th June 1969), motor vehicles plying exclusively within project areas were exempted from payment of tax subject to the registered owners filing a declaration with the motor vehicles department before the commencement of every taxation quarter supported by the

prescribed certificate in form 'B' from the Executive Engineer about the exclusive use of the vehicle in the project area. However, if the vehicles are required to move out on public roads for fuelling, repairs or used for carrying stone, bricks, sand, soil etc., and transportation charges (lead charges) are provided in the tender agreement and paid towards it, exemption from payment of tax is not admissible in such cases.

In Solapur, twenty two vehicles operating in an irrigation project, were exempted from payment of tax for the period between August 1985 and September 1989. The vehicles were used for transporting sand and casing material required for the project from quarries, situated within a range of eight to seventy five kilometres away from the project. The lead charges paid to the contractor were Rs. 13.81 lakhs and Rs. 1.72 lakhs for the transportation of sand and stone respectively. This resulted in unintended benefit to the contractor and irregular exemption amounting to Rs. 1.32 lakhs.

The matter was reported to the Motor Vehicles Department and to Government in September 1989 and followed up by reminder (April 1990); their replies have not been received (May 1990).

(*b*) Under the Bombay Motor Vehicles Tax Act, 1958, all motor vehicles belonging to the Government of India as well as Government of Maharashtra are exempt from payment of motor vehicles tax. The exemption is not available to vehicles belonging to autonomous bodies, public companies or corporations.

In Bombay, motor vehicles tax and interest in respect of 6 vehicles belonging to a corporation amounting to Rs. 21,453 was levied and recovered on being pointed out in audit.

5.3. Short recovery of passengers tax

Under the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958, passengers tax is levied at the rate of 3.5 per cent of the fare collected (inclusive of tax) by the operator from the passengers in respect of journeys performed within municipal limits and at 17.5 per cent of the fare collected (inclusive of tax) in respect of journeys which extend beyond municipal limits as well. Penalty is leviable for non-payment of tax in time and all unpaid taxes/penalty are recoverable as arrears of land revenue. The Act also provides that no contract carriage shall be used for the carriage of passengers on any road in the State in case of

any tax or penalty payable in respect thereof remaining unpaid for more than 15 days after the demand or notice has been served on the operator.

In Aurangabad and Bombay in respect of two operators, amounts aggregating to Rs. 65,884 was recovered on being pointed out in audit.

5.4. Short recovery of tax on private service vehicles

Under the Bombay Motor Vehicles Tax Act, 1958, motor vehicles tax on private service vehicles is levied with reference to their licensed capacity to carry passengers, provided they are not registered in the name of an individual, local authority, public trust, university or an educational institution in which case tax is levied and recovered, with reference to the unladen weight of the vehicle.

At Bombay, in respect of two private service vehicles, motor vehicles tax of Rs. 23,387 was recovered on being pointed out in audit.

5.5. Non-recovery of motor vehicles tax and further tax

Under the Bombay Motor Vehicles Tax Act, 1958, and the rules made thereunder, a registered owner of a motor vehicle not intending to use or keep for use such vehicle in the State and desirous of being exempted from levy of tax, is required to make before the commencement of such period, a declaration in the prescribed form specifying the period of non-use and the place where the vehicle would be kept during the period. The exemption from payment of tax is granted by the department after satisfying itself that the vehicle in respect of which declaration has been made was not used during the period specified in this declaration

In Kalyan, although intimation in respect of a vehicle declaring its non-use during the periods between 1st January 1986 and 31st December 1988 were received in advance yet the department did not verify its non-use for the year 1986. However, during the verification (July 1987 and March 1988) of non-use for the years 1987-88, the vehicle was not found at the declared place, but no action was taken to recover the tax amounting to Rs. 21,276 (motor vehicles tax Rs. 16,230; further tax Rs. 5,046) by the department.

On this omission being pointed out (November 1988) in audit, the department raised (November 1988) the demands.

The matter was reported to Government in September 1989.

5.6. Non-raising of demands for tax

Under the Bombay Motor Vehicles Tax Act, 1958 and the Rules made thereunder, road tax at prescribed rates is leviable on all vehicles used or kept for use in the State. In the case of goods vehicles " further tax " (goods tax) is also leviable in addition to the road tax. The departmental manual provides that demand notices should be issued in each case of default in payment of tax. Interest is payable in case the tax due is not paid within the prescribed time limit.

In Gondia (Bhandara District) it was noticed that in respect of eight vehicles, registered in April 1986, tax had not been paid by the owners nor had any demand been raised by the department until it was pointed out in audit in August 1988. Whereupon the amount of tax of Rs. 21,347 was recovered (September 1988).

(*i*) At Gondia (Bhandara District) road tax and further tax payable by the owners at the time of registration and thereafter from time to time in respect of four goods vehicles registered on 25th April 1986, and seven registered on 3rd May 1986 were not levied and collected by the department nor were any demands raised therefor, until pointed out in audit. The taxes leviable and not collected by the department during the period from the dates of registration of the vehicles to 31st October 1988, amounted to Rs. 1.07 lakhs. The owners of the vehicles were also liable to pay Rs. 1.55 lakhs towards interest at 2 per cent per month, for the period upto 31st March 1990 for the delay in payment of the taxes.

On this being pointed out (October 1988) in audit, the department stated (December 1988) that demand notices had since been issued for this purpose.

The case was reported to Government (May 1989).

5.7. Under-assessments

In six cases pointed out by audit during the period 1st April 1988 to 31st March 1989 (where money value of each case was less than Rs. 20,000) under-assessment/losses of revenue amounting to Rs. 53,392 were accepted by the assessing authority/department out of which an amount of Rs. 37,359 was also recovered between June 1988 and April 1989.

CHAPTER 6

STAMP DUTY AND REGISTRATION FEES

6.1. Results of Audit

Test check of instruments and other records relating to stamp duty and registration fee, conducted in audit in 173 offices during the year 1988-89, revealed under-assessment amounting to Rs. 29.20 lakhs in 873 cases which broadly fall under the following categories.

		Numberof cases	Amount (in lakhs of rupees)
1.	Non-levy of stamp duty and registration fee on instruments executed by co-operative societies.	319	5.03
2.	Incorrect grant of exemption from duty/fee ..	394	6.76
3.	Short levy due to misclassification of documents ..	69	13.00
4.	short levy due to under-valuation of property ..	2	0.03
5.	Other irregularities	89	4.38
		873	29.20

Some of the important cases noticed in 1988-89 and in earlier years are mentioned in the following paragraphs.

6.2. Irregular exemption of stamp duty and registration fees

(*a*) By a Notification issued on 24th March 1980 superseding all existing notifications on the subject in the whole of Maharashtra including Vidarbha region, remission from stamp duty was withdrawn with effect from 24th March 1980 in respect of conveyance deeds relating to the purchase of land and executed by or on behalf of co-operative housing societies formed of persons belonging to classes other than agriculturists or backward communities.

(*i*) In the Sub-Registry, Nagpur (Headquarters) in respect of four instruments of conveyances relating to purchase of land. executed in July 1984 by a co-operative housing society formed of persons belonging to classes other than agriculturists or backward communities, were erroneously exempted from levy of stamp duty. This resulted in stamp duty amounting to Rs. 63,225 not being realised.

On the mistake being pointed out (March 1988) in audit, the Inspector General of Registration directed the Sub-Registrar (March, 1989) to take action for the recovery of the amount not levied. Further report has not been received (May 1990).

The case was reported to Government in April 1988 followed up by reminder in March 1990; their reply has not been received (May 1990).

(*ii*) In the Sub-Registry, Nagpur (Headquarters) stamp duty in respect of fifteen instruments of conveyance relating to purchase of land executed during the period from April 1982 to July 1982 and February 1984 to July 1984 by fifteen housing societies formed of persons belonging to classes other than agriculturists or backward communities was erroneously remitted, resulting in non-realisation of revenue of Rs.1.39 lakhs.

On this being pointed out (March 1988) in audit, the Sub-Registrar accepted the audit point and the Inspector General of Registration stated (May 1989) that specific orders in cases of accepted objections were not needed for effecting recovery. Further report has not been received (May 1990).

The case was reported to Government (April, 1988); their reply has not been received (May 1990).

(*iii*) In the Sub-Registry, Nagpur (Headquarters) stamp duty leviable on 14 instruments (seven instruments executed in March, 1984 by a housing society relating to transfer of plots to its members and seven other intruments executed in February 1984 and May 1984 by the Nagpur Improvement Trust relating to transfer of plots of land in lease-hold rights to co-operative housing societies) was erroneously exempted resulting in non-realisation of revenue of Rs. 45,110.

On this being pointed out (March 1988) in audit, the Sub-Registrar accepted the mistake (March 1988) and the Inspector General stated (May 1989) that since the Sub-Registrar has already accepted the mistake his remarks thereon were not necessary.

The case was reported to Government in April 1988, followed up by a reminder in March 1990; their reply has not been received (May 1990).

(*b*) By two different notifications issued in March 1939 and in August 1961 respectively, Government remitted stamp duty and registration fees payable on all instruments executed by or on behalf of a co-operative society registered under the Bombay Co-operative Societies Act, 1925 or by a member thereof and relating to the business of such society.

In the Sub-Registry, Karad (Satara district) a deed executed(March 1979) by Mayur Sahakari Kukkuta Palan Society of Rethare (BK.) conveying their immovable property valued at Rs. 24.00 lakhs in favour of Krishna Sahakari Sakhar Karkhana was erroneously exempted from the levy of stamp duty and registration fee, even though the transaction did not relate to the business of the society. The incorrect remission resulted in non-realisation of revenue amounting to Rs. 1.55 lakhs (stamp duty Rs. 1.31 lakhs and registration fee Rs. 24,000).

On this being pointed out (October 1982) in audit, the Government accepted the mistake (September 1988) and directed the departmental authorities to recover the amount. Report on recovery has not been received (May 1990).

(*c*) As per Government notifications issued in March 1939 and August 1961, instruments for securing the loans and advances for amounts exceeding Rs. 5,000 executed by members of co-operative housing society formed of persons other than agriculturists or backward communities are not exempt from stamp duty and registration fee.

In the Sub-Registry, Nagpur (Headquarters) stamp duty, in respect of 68 instruments for loan amount exceeding Rs. 5,000 in each case executed during the period January 1984 to July1 984 by the members of housing societies other than agricultural and backward communities, was remitted resulting in non-levy of revenue of Rs. 45,060 (including Rs. 500 towards registration fee in one case).

On the mistake being pointed out (March 1988) in audit, the Sub-Registrar accepted the audit objection and Inspector General of Registration replied (June 1988) that his reply in the matter was not necessary as the mistake was accepted by the Sub-Registrar.

The matter was reported to Government in April 1988, followed up by reminder in March 1990; their reply has not been received (May 1990).

(*d*) As per notifications issued in March 1939 and August 1961, stamp duty and registration fee leviable on the conveyance deeds executed by members of the co-operative housing societies formed of persons other than agriculturists or backward communities, are not exempt from levy of stamp duty provided the value of consideration exceeds Rs. 5,000.

In Sub-Registry, Nagpur (Headquarters) the stamp duty leviable on 101 conveyance deeds executed during the period from February 1984 to June 1984 by the members of co-operative housing societies was wrongly exempted though the amount of consideration in each case exceeded Rs. 5,000, resulting in non-realisation of stamp duty of Rs. 73,495 (including registration fee short levied in three cases).

On the mistake being pointed out (March 1988) in audit, the Sub-Registrar accepted the audit point and the Inspector General of Registration stated (May 1989) that no separate acceptance thereof by him would be necessary. Further report has not been received (May 1990).

The case was reported to Government (April 1988) and followed up by a reminder in May 1990.

6.3. Short levy of stamp duty and registration fee

By a notification issued in November 1972, Government remitted stamp duty and registration fee payable on mortgage deeds securing loans advanced by specified financial agencies for the purpose of acquisition of fixed assets such as land, buildings and machinery for starting or expanding industrial undertakings or small scale industries in certain areas.

In the Sub-Registry, Nagpur (Headquarters) one mortgage deed was registered on 10th February 1984 to secure repayment of the loan of Rs. 30 lakhs advanced by a financial agency to an industrial institution. The loan included Rs. 9.50 lakhs for development of site land and buildings. It was, however, observed that the stamp duty and registration fee of only Rs. 25 and Rs. 20 respectively were levied instead of Rs. 19,000 and Rs. 5,000 respectively resulting in short levy of Rs. 23,955.

On this being pointed out (March 1988) in audit, the department accepted the mistake and the Sub-Registrar was directed to recover the amount short levied. Further report has not been received (May 1990).

The case was reported to Government in June 1989, followed up by a reminder in March 1990; their reply has not been received (May 1990).

6.4. Non-levy of stamp duty and registration fees

(*a*) By a notification dated 24th March 1980 Government granted remission of stamp duty and registration fee on a sliding scale, in respect of conveyance deeds relating to immovable properties consisting of buildings having carpet area upto certain specified limits (i.e. not exceeding 1000 square feet) and executed by co-operative housing societies, formed of persons belonging to classes other than agriculturists or backward communities.

In Sub-Registry, Nagpur (Headquarters) in respect of a conveyance deed executed in May 1984 by a co-operative society relating to sale of a residential building with carpet area 6396.60 square metres for a consideration of Rs. 13.50 lakhs, stamp duty of Rs. 1.39 lakhs wrongly remitted was levied and recovered in January 1990 on being pointed out in audit.

(*i*) In the Sub-Registry, Nagpur in respect of five instruments executed (in April 1984 and June 1984) by five co-operative housing societies relating to the purchase of land, stamp duty was wrongly remitted, resulting in non-realisation of stamp duty of Rs. 52,050.

On the mistake being pointed out (March 1988) in audit, the Sub-Registrar accepted (March 1988) the mistake. The Inspector General of Registration, however, stated (May 1989) that specific order in cases of accepted objections was not necessary for effecting recovery. Particulars of recovery have not been received (May 1990).

The case was reported to Government (April 1988); followed up by a reminder in May 1990.

(*ii*) In the Sub-Registry, Nagpur (Headquarters) in respect of two conveyances executed in March 1984 by a co-operative housing society relating to sale of buildings with carpet area of 3,300 square feet for a consideration of Rs. 1.65 lakhs and Rs. 80,000, stamp duty was wrongly remitted in full. The mistake resulted in non-levy of stamp duty of Rs. 20,925 in both the cases.

On this being pointed out (March 1988) in audit, the department accepted (March 1988) the omission and the Inspector General of Registration stated (May 1989) that the recovery of the amount of non-levy of stamp duty will be made. Further report has not been received (May 1990).

The case was reported to Government (April 1988) and followed up by a reminder in May 1990.

(*b*) Under Bombay Stamp Act, 1958, on mortgage deeds, stamp duty is leviable at the appropriate rates specified in Schedule I to the Act. Further, registration fee is also leviable at the rates mentioned in the Table of Fees appended to the Maharashtra Registration Manual Part I as amended from time to time.

In the Sub-Registry, Karjat (Raigad district), a mortgage deed was registered in June 1984 by a firm for securing repayment of a loan of Rs. 11.23 lakhs advanced by a financing agency to the firm. But no stamp duty and registration fees applicable to mortgage deed were levied. The omission resulted in non-realisation of revenue of Rs. 27,460.

On the omission being pointed out (May 1987) in audit, the Inspector General of Registration accepted (August 1988) the mistake and directed the Sub-Registrar to initiate the recovery proceedings.

The case was reported to Government in June 1989 and followed up by a reminder in March 1990; their reply as not been received (May 1990).

6.5. Irregular remission of stamp duty and registration fee

By a notification issued on 3rd November 1972, Government remitted stamp duty payable on mortgage deeds securing loans advanced by specified financial agencies for the purpose of acquisition of fixed assets such as land, buildings and machinery for starting or expanding industrial undertakings or small scale industries in certain areas.

In the General Stamp Office, Bombay, stamp duty was remitted in the case of one document adjudicated on 14th December 1979 representing the indenture of mortgage of securing a loan of Rs. 314.46 lakhs advanced in 1979 by a financial agency to an industrial organisation at Chandrapur, even though the loan was given to meet " working capital " and not for acquisition of fixed assets. The irregular grant of remission resulted in non-realisation of revenue amounting to Rs. 6.29 lakhs.

On this being pointed out (December 1982) in audit, the department accepted the mistake, and stated (April 1985) that the amount of stamp duty payable could not be recovered since the document was certified by the Collector of stamps, Bombay under the Bombay Stamp Act, 1958.

The case was reported to Government in March 1983 and followed up by a reminder in March 1990; their reply has not been received (May 1990).

6.6. Short levy due to misclassification of instruments

According to the Bombay Stamp Act, 1958, " conveyance " includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred to or vested in, any other person, inter vivos, and which is not otherwise specifically provided for by Schedule I to the Act. Stamp duty on a deed of conveyance is leviable on the amount of the consideration set forth in the instruments at the rates prescribed in the schedule to the Act.

In the Sub-Registry, Dahanu (Thane district), stamp duty of Rs. 28,675 short realised due to application of rates applicable to conveyance deed, was levied and recoverd in March 1990 on being pointed out in audit.

(*i*) The Sub-Registry, Haveli 2 (Pune district) three instruments, executed in the year 1985, which related to conveying of right, title and interest in properties for consideration of an aggregate amount of Rs.7.35 lakhs were chargeable at the rates as applicable to conveyance deeds, but were erroneously charged with stamp duty at lower rates applicable to agreements. The mistake resulted in short levy of stamp duty amounting to Rs. 66,283.

On this being pointed out (March 1988) in audit, the Inspector General of Registration, while accepting (June 1989) the mistake, directed the Sub-Registrar, Haveli-2 to initiate action for the recovery of the amount of deficit stamp duty. Report on the recovery has not been received.

The case was reported to Government (April 1989) and followed up by a reminder in March 1990; their reply has not been received (May 1990).

6.7. Short levy of stamp duty and registration fee

Under the Bombay Stamp Act, 1958, stamp duty on the deed of settlement made for a religious or charitable purpose is leviable, as per Schedule I of the Act for a sum equal to the amount settled or the market value of the property settled.

According to the Code Order No.423 of the Maharashtra Registration Manual in determining the amount settled (or market value), the amount of encumbrances existing on such property is to be deducted therefrom.

In the Sub-Registry, Bombay, a deed of settlement was registered on 12th July 1982 by two settlers settling their immovable property viz. land and godowns in favour of a charitable trust of which they were

the trustees. As per the settlement deed, the property was agreed, through an " agreement to sell " registered at the same Sub-Registry on 16th June 1982, to be purchased by the settlers for Rs. 8.50 lakhs from a "family trust" of which the settlers are also the trustees by paying Rs. 5,920 as earnest money and the balance amount was to be paid in the manner indicated in the settlement deed. Stamp duty and registration fee were levied on the amount actually paid (i.e. Rs. 5,920) and the balance amount (Rs.8.44 lakhs which was not paid by the settlers) was treated as a liability on the property and was deducted from the value of the property.

A recital of the settlement deed, however, indicated that the settlers had, in their private capacity entered into an agreement leasing the godowns to a Government commercial corporation for three years on a monthly rent of Rs.27,072 and received from the Corporation Rs. 1.62 lakhs which was paid (July 1982) to the " family trust ". The settlers had, further, directed the charitable trust to hold the godown premises as the trust property and ;

(*i*) to recover advance rent of Rs.1.62 lakhs from the Corporation and pay therefrom a sum of Rs.1.54 lakhs to the "family trust" and ;

(*ii*) to recover the rent of Rs.27,072 per month and pay therefrom Rs. 24,000 per month to the "family trust". In view of these payments and commitments, actually there existed no liability on the immovable property settled. The deduction of Rs.8.44 lakhs from the value of the property settled was, therefore, incorrect. This resulted in short levy of stamp duty and registration fee amounting to Rs. 25,340.

On this being pointed out (January 1987) in audit, the Inspector General of Registration accepted (August 1988) the mistake and directed the Sub-Registrar to recover the amount short levied.

The case was reported to Government in June 1989 and followed up by a reminder in March 1990; their reply has not been received (May 1990).

6.8. Under-assessments

In 28 cases pointed out by Audit during the period from 1st April 1988 to 31st March 1989 (where money value in each case was less than Rs.20,000) under-assessments/losses of revenue amounting to Rs.1,97,521 were accepted by the assessing authority/department, out of which an amount of Rs.13,115 was also recovered during the period from April 1988 to July 1989.

CHAPTER 7

OTHER TAX RECEIPTS

7.1. Results of Audit

Test check of the records of departmental offices, conducted in audit during 1988-89, revealed short realisation or losses of revenue amounting to Rs. 49.45 lakhs in 1941 cases as listed below :—

	Number of cases	Amount (In lakhs of rupees)
Maharashtra Education and Employment Guarantee Cess	287	31.95
Profession Tax	1004	2.70
Electricity Duty	15	0.95
Entertainments Duty	615	9.96
Repair Cess	20	3.89
	1941	49.45

Some of the important cases noticed in 1988-89 and in earlier years are mentioned in the following paragraphs :

SECTION A—THE MAHARASHTRA EDUCATION AND EMPLOYMENT GUARANTEE CESS

7.2. Incorrect grant of exemption from payment of education cess and employment guarantee cess

Under the provisions of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962, lands and buildings vesting in the State Government or belonging to a municipality or a zilla parishad and used exclusively for public purposes and not used or intended to be used for

purposes of profit, are exempt from payment of education cess and employment guarantee cess. Government clarified (August 1986) that education cess and employment guarantee cess is recoverable on the annual rent recovered from the stall owners in respect of public markets and buildings owned by municipal corporations/municipalities/cantonment boards. No exemption is admissible in respect of properties owned by public sector corporations and undertakings of the Central and State Governments.

(*i*) In eight municipal wards in Bombay, education cess and employment guarantee cess aggregating to Rs. 22.52 lakhs in respect of shops, godowns etc., in markets belonging to the Bombay Municpal Corporation which are rented out on monthly basis was not recovered for periods falling between October 1962 and March 1989.

On these being pointed out (between June 1988 and March 1989) in audit, the department accepted the mistake in respect of properties covered in one ward and stated (June 1989) that the computer cell had been informed to levy and recover the cess from 1st April 1976. In another ward demand of Rs. 1.28 lakhs for the period 1st April 1975 to 31st March 1989 was raised (February 1989) and adjusted (March 1989) by departmental adjustment. Report on action taken in respect of the remaining six wards has not been received (May 1990).

The matter was reported to Government in August 1989 and followed up by reminders (April 1990); their reply has not been received (May 1990).

(*ii*) In Bombay, the buildings occupied by a corporation were granted exemption from payment of cess on the plea that they are owned by the Central Government. The incorrect grant of exemption resulted in non-realisation of revenue amounting to Rs. 2.32 lakhs for the years from 1986-87 to 1988-89.

On this being pointed out (March 1989) in audit, the department accepted (July 1989) the mistake. Report on final action taken, however, has not been received (May 1990).

The matter was reported to Government in August 1989.

7.3. Short assessment of State education cess

As per provisions of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962, as amended in 1974 and 1975, State education cess is leviable on lands and buildings in a municipal area. Employment

guarantee cess is also leviable on lands and buildings used for non-residential purposes with effect from 1st April 1975. The Schedule to the Act prescribes separate rates of tax (education cess) on properties used or intended to be used for residential and non-residential purposes depending upon the annual letting value. The rates of education cess on properties used for non-residential purposes are double the rates prescribed for residential purposes.

In Bombay, it was noticed (July 1988) that although four properties were used for non-residential purposes, the annual letting value of these four properties was incorrectly classified into residential rateable value. This resulted in State education cess and employment guarantee cess being short assessed by Rs. 26,245 (State education cess Rs. 17,506, employment guarantee cess Rs. 8,739) for the period April 1975 to March 1988.

The matter was reported to the department in August 1988 and to the Government in September 1989 and followed up by a reminder (April 1990); their replies have not been received (May 1990).

SECTION B—ELECTRICITY DUTY

7.4. Short recovery of electricity duty

Under the provisions of the Bombay Electricity Duty Act, 1958, and the Rules made thereunder, the rates of electricity duty for consumption of energy in premises used by industrial undertakings were revised upwards with effect from 18th March 1988 on slab rates depending on the quantum of energy consumed.

(*i*) In 5 cases involving short recovery of electricity duty, an amount of Rs. 24, 846 was recovered on being pointed out in audit.

(*ii*) In Nashik, it was noticed (September 1988) that even after 18th March 1988, six sugar factories continued to pay electricity duty at the prescribed lower rates on the energy consumed during the periods falling between 18th March 1988 and 31st May 1988 instead of at enhanced rates. This resulted in short recovery of electricity duty amounting to Rs. 47,488 on the aggregate of 53.42 lakh units of energy consumed by these factories during the period.

On this being pointed out (September 1988) in audit, the department recovered an amount of Rs. 41,059 (between october 1988 and February 1989) from four sugar factories. Final report on action taken to recover the balance amount has not been received (May 1990).

Government to whom the matter was reported in August 1989 while confirming recovery of Rs. 41,059 stated (January 1990) that the Chief Engineer has been instructed to adjust the balance dues of Rs. 6,429 from the electricity duty refund due to the remaining two assessees.

7.5. Non-recovery of electricity duty and interest

Under the Bombay Electricity Duty Act, 1958 and the Rules made thereunder, every person who is registered as a licensed generator of electrical energy exclusively for his own use, shall pay the electricity duty at the prescribed rates in respect of a calendar month (for the energy consumed by him) within the first 10 days of the succeeding month. If the duty is not paid to Government by the due date, interest is chargeable on the amount of duty in default at the rate of 18 per cent per annum for the first three months of default and at the rate of 24 per cent per annum for any period thereafter, till the duty is paid.

In one case involving non-levy of electricity duty, an amount of Rs. 60,138 was recovered on being pointed out in audit.

SECTION C – ENTERTAINMENTS DUTY

7.6. Short levy of entertainments duty due to incorrect validity of permits

Under the Bombay Entertainments Duty Act, 1923, as amended with effect from 1st January 1987 in lieu of the entertainments duty payable on actual payments for admission, the proprietor of cinema theatres in non-municipal areas may opt for payment of entertainments duty every week on compounded rates on a percentage of the gross collection capacity. Any proprietor who opts for the weekly mode of payment and where permitted to do so shall not be permitted to withdraw his option during that calendar year. For the period not covered by the permit, the entertainments duty is payable on the actual payments for admission.

In Kolhapur, in the case of three theatres, entertainments duty of Rs. 32,009 for the periods not covered by the permits was recovered on being pointed out in audit.

7.7. Non-recovery of entertainments duty/surcharge and composition fee/ penal interest

The Bombay Entertainments Duty Act, 1923 as amended from time to time, the Rules made thereunder and the Government instructions issued in February 1988 provide for submission of weekly return of

(G. C. P.) H 4192—14 (1435-8-90)

tickets issued and payment of entertainments duty and surcharge within 10 days from the date of entertainment. For failure to pay or evasion of duty and surcharge, the organisers are liable to be prosecuted, but the offence may be compounded on payment of composition fee of Rs. 200 or double the amount of duty or surcharge whichever is greater in addition to the duty payable. Where a proprietor fails to pay duty and composition fee within the period prescribed, while compounding the offence, he shall be liable to pay in addition to the amount of duty and composition fee a penal interest at the rate of 18 per cent per annum for the first 30 days and 24 per cent per annum thereafter till the amount and interest are fully paid.

(*i*) In Bombay, Pune, Solapur, Sangli and Jalna in 7 cases, involving non-payment of entertainments duty, surcharge, composition fee and penal interest, amounts aggregating to Rs. 80,021 were recovered on being pointed out in audit.

(*ii*) In Bombay and Solapur districts proprietors of two theatres made delayed payment of entertainments duty during the period between April 1987 and March 1988 by 3 days and 444 days. The penal interest leviable under the Act but not levied amounted to Rs. 51,654.

On being pointed out (January 1989 and March 1989) in audit, the department stated (March 1989 and June 1989) that an amount of Rs. 33,059 had been recovered from the theatre owners. Report on action taken to recover the balance amount from one theatre owner has not been received (May 1990).

The matter was reported to Government in July 1989 and followed up by reminder (April 1990); their reply has not been received (May 1990).

(*iii*) In Nashik, Nanded and Thane districts 13 cinema theatres did not pay the entertainments duty and surcharge within the prescribed period on a number of occasions during 1986-87. The extent of delay ranged from 1 day to 406 days. The composition fee and penal interest recoverable from these 13 theatres amounted to Rs. 1.60 lakhs.

On the omission being pointed out (April 1987, May 1987 and December 1987) in audit, the department recovered Rs. 99,718 towards composition fee and interest between April 1987 and November 1989. Government stated (May 1988) that two theatre owners of Nanded had filed writ petition in the High Court at Aurangabad against levy of interest of Rs. 26,103 and obtained stay against recovery. Report

on action taken to recover the balance amount from the theatre owners in Nashik district has not been received (May 1990).

The matter was reported to Government in September 1989.

SECTION D – REPAIR CESS

7.8. Incorrect exemption from payment of repair cess

Under the provisions of the Maharashtra Housing and Area Development Act, 1976, buildings which are vested in or leased to co-operative housing societies are exempt from payment of repair cess. However, the exemption is not admissible if such buildings are deemed to be structurally repaired at any time by the Maharashtra Housing and Area Development Board.

In Bombay, two buildings belonging to a co-operative housing society were taken up for repairs by the Board which was completed on 31st March 1987. Although the intimation of completion of repairs was sent by the Board to the department on 7th April 1987, exemption continued to be allowed to the buildings. The incorrect exemption resulted in non-realisation of repair cess amounting to Rs.33,502 for the years 1987-88 and 1988-89. The mistake was pointed out to the department (March 1989).

The matter was reported to Government in September 1989 and followed up by reminder (April 1990); their reply has not been received (May 1990).

SECTION E – PURCHASE TAX ON SUGARCANE

7.9. Loss of revenue owing to incorrect allowance of deduction on account of weight of binding material

Under the provisions of the Maharashtra Purchase Tax on Sugarcane Act, 1962 and the Rules made thereunder, a rebate of 2 per cent of the gross weight is admissible on account of weight of the tops of the sugarcane plant consisting of pith devoid of any sugar content and leaves and other thrash usually present in sugarcane and tax is levied on the remaining weight of the sugarcane. The Act does not provide for any rebate on account of binding material with which sugarcane is tied in bundles.

However, the Finance Department of the Government of Maharashtra vide memorandum dated 3rd April 1965 had intimated that while assessing the factories under the Act, a rebate not exceeding 0.625 kilogram per quintal of sugarcane on account of binding material would be admissible where sugarcane is brought bound in bundles and weighed as such.

The Agriculture and Co-operation Department notified on 12th June 1985 that the Director of Sugar, Maharahstra State, Pune was authorised to allow rebate to sugar factories in regard to weight of binding material not exceeding one kilogram per quintal of sugarcane brought bound in bundles. The same department clarified (August 1986) that the State Government had not issued any order in regard to allowance of 0.625 kilogram/quintal in relation to binding material and hence no allowance was admissible for binding material prior to issue of Government notification of 12th June 1985. Further, it was categorically stated that no deduction under sub-clause (3) of Section 3 of the Maharashtra Purchase Tax on Sugarcane Act on account of binding material was permissible.

In Nashik and Jalgaon it was noticed (July 1988) in audit, that deduction at the rate of 1 per cent was allowed in the assessments for the periods 1983-84 and 1984-85 completed between April 1986 and December 1987. On enquiry, the department was not in a position to point out the basis for the allowance of the deduction. The matter was therefore taken up (January 1989) with the Commissioner of Purchase Tax, Government (Finance Department) in reply to a reference (February 1989) by the Commissioner of Purchase Tax, stated (June 1989) that its memorandum of 3rd April 1965 was cancelled. The quantum of rebate allowed to the sugar factories in the State since issue of the memorandum of April 1965 is not known. However, on the basis of information furnished (October 1989) by the department, 66 sugar factories had been allowed or claimed rebate to the extent of 4.97 lakh metric tonnes for assessment periods falling between 1982-83 and 1987-88. The revenue forgone by Government on account of the above rebate works out to Rs.82.50 lakhs.

The matter was reported to the Government in September 1989 and followed up by reminder (April 1990); their reply has not been received (May 1990).

CHAPTER 8

NON-TAX RECEIPTS

8.1. Results of Audit

Test check of records in departmental offices dealing with non-tax receipts conducted during the year 1988-89 disclosed short recovery, non-recovery or loss of revenue amounting to Rs. 205.57 lakhs in 618 offices as mentioned below:—

		Amount (In lakhs of rupees)
1.	Non-recovery of audit fees	117.86
2.	Non-recovery of bonus	52.72
3.	Non-recovery of royalty on tendu leaves	15.67
4.	Other irregularities	10.08
5.	Loss due to delay in application of enhanced compounding rates.	9.24
		205.57

Some of the important cases noticed in 1988-89 and in subsequent year are mentioned in the following paragraphs:—

8.2. Non-recovery of bonus

Under the provisions of the Maharashtra Contingent Expenditure Rules, 1965, payment is required to be made in all cases where a Government department renders service or makes supplies to a non-Government body such as commercial department or undertaking. Service is rendered by the police department by providing escort of armed police personnel to banks and other organisations for security purpose subject to recovery of escort charges.

The Commandant, State Reserve Police Force, Bombay and the Commissioners of Police, Thane and Nagpur deployed certain police personnel to 13 organisations for security duty during the years 1985-86 to 1987-88 but did not recover bonus aggregating to Rs. 14.13 lakhs

paid to their police personnel during these years from the organisations to which they were deployed for security duty.

On this being pointed out (February 1989 and March 1989) in audit, the Commissioner of Police, Nagpur, recovered Rs. 59,272 during April 1989 and May 1989. Report on recovery of the demands aggregating to Rs. 10.90 lakhs raised by the Commissioner of Police, Nagpur and the Commandant, State Reserve Police Force, Bombay and action taken by the Commissioner of Police, Thane to recover Rs. 2.64 lakhs has not been received (May 1990).

Government to whom the cases were reported in September 1989; confirmed the recovery and demand raised by the Commissioner of Police, Nagpur; their reply in respect of the remaining two offices for which they were reminded (April 1990) has not been received (May 1990).

8.3. Loss due to delay in application of enhanced compounding rates

Under the provisions of the Indian Motor Vehicles Act, 1939, whosoever contravenes any provisions of the Act or Rules made thereunder, if no other penalty is provided for the offence, is punishable with fine. By an enabling provision in the Act, the Government of Maharashtra directed (April 1983) the Police Department (traffic) and the Motor Vehicles Department to compound the offences at the specified rates, either before or after the institution of prosecution of the offenders. Accordingly, the compounding rates fixed for offences, where no penalty is provided under the Act, was Rs. 50 for the first offence. Under a notification issued on 7th March 1988, the Government of Maharashtra enhanced the compounding rates from Rs. 50 to Rs. 80 with effect from 7th March 1988.

A test check in audit (September 1988 and July 1989) in the traffic branches of the Commissioners of Police, Bombay and Thane revealed that non-application of enhanced compounding rates in 30,792 cases of offence detected between 11th March 1988 and 14th July 1988 resulted in loss of revenue to the tune of Rs. 9.24 lakhs.

The matter was reported to the department and to the Government in September 1989, Government while accepting the facts, stated (January 1990) that the delay in implementation was due to administrative reasons.

8.4. Loss of revenue due to incorrect application of terms of contract

State monopoly in the trade of tendu leaves was introduced in the State of Maharashtra by an Act in 1969. According to the procedure

prescribed under the Maharashtra Minor Forest Produce (Regulation of Trade in Tendu Leaves Rules, 1969) the tendu leaves collected at various units are sold at the rate per standard bag sanctioned, after calling for sealed tenders. The purchaser has to take delivery of the leaves at the places stipulated in the agreement after payment of collection charges and to keep the stock in godowns of the department or approved godowns by the competent authority till the full payment of royalty thereof is made. Under condition VI of the contract the stock of tendu leaves in possession of the purchaser at any collection centre/godown is liable to be checked by the departmental officer at any time. The purchaser is responsible for any stock of leaves detected and determined as " excess " collection during such checking. The quantity so determined as " excess " is treated as part of the stock collected on the date of such checking for the purpose of recovery of sale amount which is to be effected at tendered rate together with sales tax and forest development tax. However, under condition VII of the contract, the purchaser shall be bound to purchase all additional bags of leaves collected over and above the number of bags notified in the agreement and the sale amount thereof is recoverable at a concessionally reduced rate.

In the case of the Forest Divisions mentioned below, the department, at the time of their check at godowns/collection centres, of stock of tendu leaves with purchasers assessed the excess collection shown against each case, and recovered, the sale price thereof at the reduced rate treating the quantity as additional collections instead of at tendered rate which resulted in loss of revenue as shown there against.

Serial No.	Name of the Forests Division	Year of tendu season	No. of bags excess assessed	Amount short levied (Rupees in lakhs)
1	2	3	4	5
1	Central Forests Division, Chandrapur	1987	843.927	1.05
2	Central Forests Division, Chandrapur	1986	596.747	0.71
3	Gadchiroli Forest Division, Gadchiroli.	1986	529.000	0.37
4	Chandrapur Forest Division, Chandrapur.	1987 and 1988	1048.536	0.77
5	Akola Forest Division, Akola ..	1987	464.344	0.37
		Total ..	3482.554	3.27

The Government stated that the excess assessed stock of leaves as detected at the time of their check should be treated as part of the stock collected on the date of checking and the sale amount thereof should be recovered under the condition VII of the contract.

The reply given by the Government is not in conformity with the condition VI of the contract which clearly stated that the sale amount thereof in such cases should be recovered at the tendered rate.

8.5. Non-recovery of fees

Financial assistance in the form of loans and subsidy is provided by Government to agricultural produce market committees, sale purchase co-operative societies for acquisition of site of market-yard, for its development and for providing amenities thereon as also for construction of godowns. As per Government orders issued in December 1976 the valuation and completion certificates in respect of construction works undertaken by the committees/ societies are required to be issued by the respective Executive Engineer of the district or by Deputy Engineer at taluka level on payment of fees at the prescribed rates by the Committees. This was also confirmed (May 1984) by the Commissioner for Co-operation and Registrar of Co-operative Societies.

In Akola district, 12 godowns and 14 market yards were constructed by the committees and sahakari sale purchase societies involving a total out-lay of Rs. 63.83 lakhs of the Government assistance. Valuation and completion certificates were issued either by the Executive Engineer, Public Works Division, Akola, or the Deputy Engineer with the department during the period from January 1984 to April 1988. Valuation and completion certificates issued by the Public Works Department attract fees at one-and-a-half per cent of the cost of such works. Accordingly, a total amount of Rs. 95,751 was to be recovered from the committees and societies, but was not recovered.

On this being pointed out (March 1988) in audit, the department stated (May 1989) that the recovery would be effected after referring the matter to the Directorate of Marketing, Pune. Further report has not been received (May 1990).

The case was reported to Government in June 1989; their reply has not been received (May 1990).

8.6. Non-recovery of rent

According to Government resolution in Agriculture and Co-operation department dated 27th February 1984, only one employee of certain specified categories in the animal husbandry department is eligible for rent free quarter or eligible to draw house rent allowance in lieu of rent free quarter. The order is effective from 1st February 1984.

In Pune, 36 Class IV employees were in occupation of rent free quarters. As per the Government order only one employee was eligible for rent free quarter. Non-recovery of rent from the 35 employees for the period 1st February 1984 to 31st May 1989 amounted to Rs. 42,604.

On this being pointed out (March 1989) in audit, the department stated (November 1989) that recovery of house rent had commenced from August 1989. The arrears of rent for the period February 1984 to July1989 was proposed to be recovered in twenty monthly instalments.

Government to whom the matter was reported in September 1989; while accepting the mistake stated (December 1989) that the Director of Animal Husbandry had been asked to verify if similar recovery was due from employees in other farms and institutions.

8.7. Loss of revenue due to short recovery of licence fee

Under the provisions of the Bombay Police Act, 1951, the Commissioner of Police is empowered to grant licence for keeping a place of public entertainment viz. boarding and lodging houses, residential hotels and eating houses where any kind of liquor or intoxicating drink is supplied to the public for consumption in or near the place. The licence fee prescribed for such establishments operating upto midnight is rupees thirty-five per annum.

In Pune, as per the records of the Commissioner of Police, five hundred eating houses, where liquor is also being served to the customers, are functioning upto midnight. While granting the licence to these eating houses a licence fee of rupees ten as against rupees thirty-five per licence, has erroneously been recovered from these establishments treating them as eating houses only. This resulted in short recovery of licence fee of Rs. 37,500 for the years 1986-87 to 1988-89.

On the loss being pointed out (January 1989) in audit, the department accepted the mistake and started charging the correct rate of licence fee from the year 1989-90. Report on recovery of short levy has not been received (May 1990).

Government to whom the matter was reported in September 1989, accepted the mistake and stated (November 1989) that the arrears of fee would be recovered at the time of renewal of licence for the Calendar year 1990.

Bombay,
The
13 सितम्बर SEP 1990

(K. B. DAS BHOWMIK)
Principal Accountant General (Audit)-I,
Maharashtra.

Countersigned

New Delhi,
The
29 अक्तूबर OCT 1990

(C. G. SOMIAH)
Comptroller and Auditor General of India.

APPENDICES

APPENDIX

Analysis of Tax Collections

Reference : Paragraph 1.4

Serial No.	Name of Tax	Amount collected at pre-assessment stage			Amount collected after regular assessment		
		1986-87	1987-88	1988-89	1986-87	1987-88	1988-89
1	Bombay Sales Tax ..	1142.15	1375.25	1621.35	86.28	89.19	92.29
2	Central Sales Tax ..	346.35	371.03	435.41	27.16	29.76	33.16
3	Motor Spirit Tax ..	155.37	190.36	210.99	..	..	..
4	Sugarcane Purchase Tax	18.31	19.58	6.85	5.98	9.13	19.69
5	Agricultural Income Tax	0.11	0.52	Negligible	0.34	0.48	0.31
6	Profession Tax ..	75.33	80.33	79.62	8.86	12.98	23.30
7	Entry Tax ..	..	..	8.16	..	..	..
8	Luxury Tax ..	..	..	12.92	..	..	..
	Total ..	1737.62	2037.07	2375.30	128.62	141.54	168.75

(Figures are as furnished

-I

(FINANCE DEPARTMENT)

Page No. 7

(In crores of rupees)

Amount refunded			Net collection of tax		
1986-87	1987-88	1988-89	1986-87	1987-88	1988-89
42.24	35.87	31.87	1186.19	1428.57	1681.77
2.25	1.50	1.27	371.26	399.29	467.30
....	....	....	155.37	190.36	210.99
....	....	....	24.29	28.71	26.54
....	....	....	0.45	1.00	0.31
0.01	0.01	....	84.18	93.30	102.92
....	....	....	....	....	8.16
....	....	....	....	....	12.92
44.50	37.38	33.14	1821.74	2141.23	2510.91

by the department)

APPENDIX

YEAR-WISE DETAILS OF OUTSTANDING AUDIT

(As on 30th

Reference: Paragraph 1.10

Serial No.	Nature of receipt	Upto 1984-85			1985-86		
		I.Rs.	Objs.	Amount	I.Rs.	Objs.	Amount
1	Sales Tax ..	263	610	53.46	141	246	57.73
2	Land revenue ..	894	1862	2208.10	110	194	420.34
3	Agricultural income tax	20	29	2.73	4	4	0.48
4	Stamp duty and registration fees.	464	999	445.36	65	127	88.35
5	Forest receipts ..	170	275	..	31	116	..
6	Taxes on vehicles ..	48	78	283.16	19	41	1.39
7	Entertainments duty ..	214	285	0.37	55	97	1.28
8	State Excise ..	248	429	1.20	48	79	0.22
9	Electricity duty ..	24	34	2.93	5	10	0.19
10	Tax on professions etc.	175	512	13.39	71	227	0.84
11	State Education Cess ..	94	307	10.97	27	72	4.61
12	Repair Cess ..	34	85	45.97	8	13	3.20
13	Luxury tax ..	2	7	..	2	7	..
14	Tax on residential premises ..	2	4	..	2	2	..
15	Other non-tax receipts ..	179	503	72.59	6	10	0.83
	Total ..	2831	6019	3140.23	594	1245	579.46

I.Rs.—Inspection reports.

-II

OBJECTIONS UNDER VARIOUS RECEIPTS

June 1989)

page 13

(Amount in lakhs of rupees)

1986-87			1987-88			1988-89			Total		
I.Rs.	Objs.	Amount	I.Rs.	Objs.	Amount	I.Rs.	Objs.	Amount	I.Rs.	Objs.	Amount
147	281	64.41	227	570	30.83	235	719	134.17	1013	2426	340.60
113	241	267.24	122	340	664.51	161	422	508.04	1400	3059	4068.23
8	19	0.56	2	2	..	1	1	..	35	55	3.77
54	112	41.26	43	106	98.20	38	102	32.11	664	1446	705.28
38	103	..	26	81	..	52	178	..	317	753	..
21	50	2.34	13	38	3.03	28	86	8.15	129	293	298.07
70	112	3.35	79	123	1.09	44	68	8.02	462	685	14.11
59	110	0.87	74	141	0.67	76	145	5.47	505	904	8.43
9	15	0.56	11	19	0.39	14	29	1.15	63	107	5.22
46	123	0.28	45	114	1.66	48	109	1.25	385	1085	17.42
21	55	1.12	25	54	3.03	16	35	1.25	183	523	20.98
9	12	5.11	10	15	1.86	4	6	3.15	65	131	59.29
..	..	..	2	6	194.68	..	..	..	6	20	194.68
3	3	..	2	2	..	1	1	..	10	12	..
18	26	1.81	9	18	0.31	2	5	1.26	214	562	76.80
616	1262	388.91	690	1629	1000.26	720	1906	704.02	5451	12061	5812.88

Objs.—Objections.

ERRATA

to the

Report of the Comptroller and Auditor General of India on revenue receipts for the year ended 31st March 1989 (No. 5)—Government of Maharashtra

Page	Reference		*For*	*Read*
	Para	Line		
	Table of contents			
(i)	Prefatory Remarks		vii	v
(i)	Overview		ix	vii
iv	8.4		149	148
iv	8.7		152	151
	Overview		x	viii
	Do.		xi	ix
	Do.		xii	x
14		1st	of 1987	1987
14	1.10	7th from above	5669	5659
41	2.5 (*x*)	1st	olny	only
44	2.6 (*c*) (*ii*)	5th	an a authorised	an authorised
46	2.7 (*a*)	5th from below	reasale	resale
64	2.18	13th from below	21st April 1987	20th April 1987
75	3.5	14th from above	Reminders	Reminder
93	4.3	11th from above	few other other	few other
94	4.3 (*iv*)	5th from above	Rs. 4.1	Rs. 4.01
97	4.3 (*xi*)	9th from above	(May 1989)	(May 1990)
101	4.5	10th from above	th	the
103	4.6 (*vii*)	2nd from above	form	from
124	4.12	9th from above	2 hectares 44.80 Ares	2 hectares and 44.80 Ares

(G.C.P.) H 2030 (1400—11-90)

(P.T.O.)

Page	Reference		*For*	*Read*
	Para	Line		
131	5.6 (*i*)	8th from above	1.07	2.07
135	6.3	10th from above	of site land	of site of land
137	6.4 (*b*)	1st from above	Under Bombay	Under the Bombay
137	6.4 (*b*)	15th from above	as not	has not
138	6.6	9th from above	application of rates applicable to conveyance deed,	application of rates applicable to agreements instead of rates applicable to conveyance deed,
138	6.6	10th from above	recoverd	recovered