

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

**PERFORMANCE AUDIT OF ARREARS OF SALES
TAX
FOR THE YEAR ENDED 31 MARCH 2010**

GOVERNMENT OF MAHARASHTRA

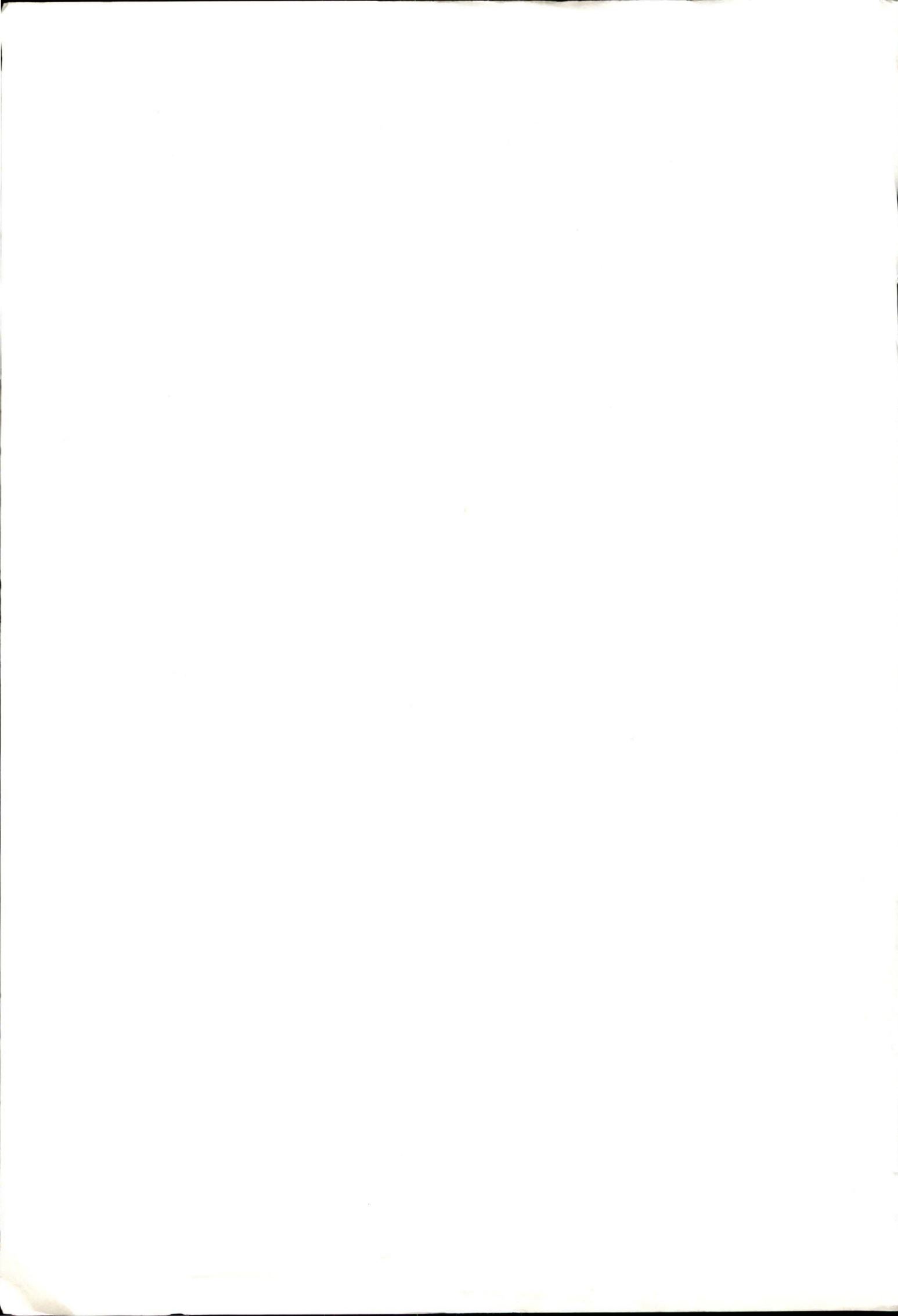


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PREFACE

1. This Report of the Comptroller and Auditor General of India containing the performance of the Sales Tax Department to recover the arrears of the revenue under the repealed Bombay Sales Tax Act has been prepared for submission to the Governor under Article 151(2) of the Constitution.
2. The audit of the receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.
3. The audit was conducted between November 2009 and December 2010 through a test check of records of the Sales Tax Department with special emphasis on the Revenue Recovery Certificates issued during the period 2000-01 to 2007-08.



EXECUTIVE SUMMARY

We reviewed the Performance of the Department relating to its recovery function in respect of Revenue Recovery Certificates (RRC), and cases pending before Debt Recovery Tribunal (DRT)/Official Liquidator (OL) and Board for Industrial and Financial Reconstruction (BIFR). We conducted this review with a view to impress upon the Department that with the introduction of VAT, which is a new tax regime, the arrears of the erstwhile Sales Tax Regime, needs to be recovered urgently.

The arrears of revenue had increased from ₹ 15,226.79 crore to ₹ 38,357.32 crore during the period 2005-2006 to 2009-2010. Out of this, the arrears locked up under the categories; RRC, DRT/OL and BIFR amounted to ₹ 1,921.90 crore. Of these, arrears of revenue of ₹ 517.41 crore in respect of 35 cases relating to RRC, DRT/OL, BIFR categories have been briefly discussed in this Report.

(Paragraph 2.1, 2.2)

Absence of a separate recovery machinery led to mounting arrears and abnormal delays in initiating action for recovery.

(Paragraph 3.1)

Large accumulation of arrears was a result of lack of follow up action for recovery, failure in attaching property, delay in auctioning the attached property, absence of coordination with their counterparts in other States, delay in pursuing the matter with the agencies like DRT, OL and BIFR and lack of monitoring at the higher levels.

(Paragraph 3.5)

The Department did not take follow up action in four cases which resulted in non-realisation of dues of ₹ 194.33 crore relating to RRCs issued within the State.

(Paragraph 3.6.1)

Issue of RRCs outside the State, though dealers' property was available within the State resulted in dues of ₹ 121.36 crore not being realised in six cases.

(Paragraph 3.6.2)

Delay in issue of RRCs and inadequate action in respect of cases pending for recovery from outside the State resulted in non-realisation of dues of ₹ 57.06 crore in five cases.

(Paragraph 3.7)

The Department did not pursue cases pending with the DRT which resulted in non-realisation of dues of ₹ 41.55 crore in seven cases.

(Paragraph 3.8)

Delayed action in lodging claims and non-pursuance of cases pending with the OL resulted in dues of ₹ 35.73 crore not being realised in seven cases.

(Paragraph 3.9)

Absence of follow up with the BIFR resulted in non-realisation of dues of ₹ 25.58 crore in two cases.

(Paragraph 3.10)

Inaction by the Department resulted in non-realisation of arrears of tax of ₹ 34.21 crore in one case in Nagpur.

(Paragraph 3.12)

CHAPTER-I

TAX ADMINISTRATION AND AUDIT OBJECTIVES

1.1 Introduction

Sales Tax has been the major source of revenue of the State and constituted 55 per cent (₹ 32,676.02 crore) of the total tax revenue (₹ 59,106.33 crore) raised by the State during 2009-2010. The Bombay Sales Tax (BST) Act, 1959 was in existence upto 31 March 2005. The erstwhile BST Act and the allied Acts as well as the rules framed thereunder governed the laws relating to the levy, assessment and collection of sales tax in the State. Every registered dealer liable to pay tax is required to file monthly/quarterly/annual return, as the case may be, along with proof of payment of tax due from him. The assessment was required to be initiated and completed within three years (extended to five years in respect of all assessments to be completed between 1 April 1999 and 31 March 2003). With effect from 1 April 2005, the Maharashtra Value Added Tax (MVAT) Act, 2002, was introduced in which the BST Act and some allied Acts such as “Works Contract Tax Act”, Lease Tax Act and Motor Spirit Taxation Act were merged.

Under the BST Act, tax assessed was required to be paid by the assessee in a manner and within the time specified in the notice of demand. Any dealer not satisfied with the demand could prefer an appeal with the Appellate Authority or in a Court of law. In case of failure on the part of the assessee to pay the amount within the date mentioned in the demand notice, the Department could recover the amount which remains unpaid as if it was arrears of land revenue.

As per Section 38(B) of the BST Act, for the purpose of effecting recovery of the amount of tax, penalty, interest and amount forfeited, which is due and recoverable from any dealer as arrears of land revenue, the Commissioner of Sales Tax (CST) shall have and exercise all the powers and perform all the duties under the Maharashtra Land Revenue Code (MLRC), 1966 which *inter alia* includes the process of arrest and imprisonment of the defaulters under section 183 and 184 of the said code. Thus the CST has been empowered under the Sales Tax Act to recover the arrears of Sales Tax and he does not have to depend on any other Department for this function.

In cases where the defaulters do not own any property in the State but have property in some other State then the concerned assessing authority is required to address the revenue authority of the other State for collecting the arrears as per the provisions of the Revenue Recovery (RR) Act, 1890. For this, the Revenue Recovery Certificates (RRC) are required to be forwarded to the Collectors of the districts of the States in which the defaulters possess properties.

1.2 Organisational set up

At the Government level, the Principal Secretary in the Finance Department is responsible for administration of the Sales tax laws in the State. At the Departmental level the overall control and supervision of the Sales Tax Department (ST Dept) is vested with the CST. Under the repealed BST Act

and allied Acts, the State was divided into sixteen divisions¹, each of which was under the charge of a Deputy Commissioner of Sales Tax (DCST) (Admn). However, after introduction of VAT, in order to complete the pending work under the BST Act and allied Acts, its administration was brought under the control of an Additional Commissioner of Sales Tax (Addl. CST). The Addl. CST is assisted by four² Joint Commissioners of Sales Tax (JCST) at divisional level in Mumbai and in the remaining 12 divisions (divided into three zones³ namely, Nagpur, Pune and Thane), he is assisted by the Joint Commissioners (Profession Tax). The JCSTs are assisted by the Senior Deputy Commissioners of Sales Tax (Sr. DCST), Deputy Commissioners of Sales Tax (DCST), Assistant Commissioners of Sales Tax (ACST) and Sales Tax Officers (STO).

For the purpose of recovery under VAT, a separate recovery branch headed by Joint Commissioner (JC) (Recovery) started functioning from February 2007, however, the concerned assessing authorities continued to be responsible for effecting recovery of dues under the BST Act.

1.3 Scope of Audit

With a view to ascertain the extent of arrears, adequacy and effectiveness of the system and procedure prevailing in the Department to recover the dues, a performance review in respect of revenue locked up under the categories of RRCs, DRT, OL, BIFR, etc., under the BST Act and allied Acts was conducted between November 2009 and December 2010 with reference to the records available in the office of the CST and subordinate offices under his control. The JCST-wise arrears of revenue were considered as the basis for selection of divisions for test check of records. Five divisions⁴ out of nine were selected by applying statistical sampling technique (Simple Random Sampling without Replacement), however, in order to have a proper geographical representation of the State three more divisions namely Aurangabad, Nagpur and Kolhapur were also selected for audit.

This Report deals only with the outstanding dues of Sales tax under the erstwhile BST Act.

1.4 Audit objectives

The review was conducted with a view to ascertain :

- the extent of accumulated arrears and reasons thereof;
- timely issue of RRCs;
- whether the rules and procedures prescribed in the Act and Rules for recovery were scrupulously followed ;

¹ Andheri, Aurangabad, Bandra, Borivali, Churchgate, Ghatkopar, Kolhapur, Mazgaon, Mandvi, Nagpur, Nariman Point, Nashik, Pune-I, Pune-II, Thane and Worli.

² Andheri, Borivali, Nariman Point and Worli.

³ Nagpur Zone: Amravati, Aurangabad, Nagpur and Nanded; Pune Zone: Dhule, Kolhapur, Nashik, Pune and Solapur; and Thane Zone : Raigad, Thane (City) and Thane (Rural).

⁴ Andheri, Nariman Point, Pune, Thane and Worli.

- the efficiency and effectiveness of the system to collect the arrears of tax; and
- whether adequate internal control and monitoring mechanism exists for prompt realisation of arrears of revenue.

1.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Sales Tax Department for providing necessary information and records for audit. An Entry Conference was held on 6 May 2010 in which the executive was informed about the selection of divisions as well as scope and methodology of audit. The JCST (Inspection) explained the various aspects and mechanism adopted by the Department for recovery of arrears of revenue including RRC cases. The draft Review Report was forwarded to the Government and the Department in April 2011 and the audit conclusions and recommendations were discussed in the exit conference held in July 2011. The CST, Dy. Secretary from Finance Department, Addl. CST and other senior officers from the Sales Tax Department attended the meeting. The replies given during the exit conference and at other times have been appropriately included in the relevant paragraphs.

CHAPTER-II TREND OF REVENUE AND ARREARS OF SALES TAX

2.1 Trend of revenue and extent of arrears

The following table presents the collection under Value Added Tax (VAT)/ Sales Tax, arrears of revenue under the BST Act and its recovery position during the period 2005-2006 to 2009-2010 :

(₹ in crore)

Year	Actual Receipts	Arrears of revenue	Additional demand during the year	Amount recovered	Percentage of arrears to actual receipts
2005-06	19,676.74	15,226.79	5,206.82	359.39	77.38
2006-07	24,130.72	30,824.22	23,035.56	393.11	127.74
2007-08	26,752.80	24,430.05	5,709.68	370.46	91.32
2008-09	30,680.53	33,971.82	15,971.77	359.51	110.73
2009-10	32,676.02	38,357.32	16,862.74	666.23	117.39

It could be seen from the above table that during the period 2005-2006 to 2009-2010, the receipts of the Department increased from ₹ 19,676.74 crore to ₹ 32,676.02 crore (66 per cent), and simultaneously the arrears during the same period also increased from ₹ 15,226.79 crore to ₹ 38,357.32 crore (152 per cent). During the period 2006-10, the Arrears of VAT and Sales tax exceed the actual collection by 28 to 17 per cent, except for the year 2007-08. This reflects an inefficient revenue collection.

2.2 Categories of arrears

According to the information furnished by the Department, the arrears were under the following stages of recovery at the end of March 2008, March 2009 and March 2010.

(₹ in crore)

Sr. No.	Stages of recovery of arrears	March 2008	March 2009	March 2010
1	DCST Appeal	2,574.63	529.66	981.23
2	JCST Appeal	6,900.92	6,503.18	7,158.56
3	Tribunal	2,836.12	3,502.14	2,597.67
4	Civil/Other Courts	157.01	448.73	6,663.21
5	High Court	581.21	445.59	688.54
6	Supreme Court	18.50	10.12	8.58
7	Claim lodged with OL/DRT	528.90	634.71	711.14
8	RRC within state	388.66	322.90	260.93
9	RRC outside state	466.16	506.65	533.97
10	BIFR	413.21	477.64	415.86
11	Arrears available for recovery	1,372.87	1,332.27	1,590.81
12	PSI, Sugarcane Purchase Tax	3,700.98	4,939.66	4,277.01
13	Dealer not traceable	826.00	4,709.01	1,852.33
14	Property not available	167.46	131.90	138.56
15	Other reasons	3,520.97	9,477.39	10,478.92
	Total	24,453.60	33,971.55	38,357.32

As can be seen from the above table, for the year 2009-10, the arrears locked up in the Departmental Appeals constituted ₹ 8,139.79 crore (21.22 per cent) and arrears wherein RRCs have been issued, dealers were not traceable, property was not available and arrears available for recovery constitute ₹ 3,842.63 crore (10.02 per cent of total arrears). Thus, it could be seen that 31.24 per cent of the total arrears were pending at departmental level.

In the exit conference the CST accepted that 31.24 per cent of arrears were pending at departmental level. In respect of appealed cases he stated that two amendments are proposed to the effect “not more than two adjournments to be allowed and 25 per cent part payment of the dues to be compulsorily paid excluding ex-parte assessments” to curb the tendency of assesseees to file appeals and to expedite the hearing of the cases filed.

2.3 Age-wise pendency of arrears

The age-wise details of arrears of revenue furnished by the Department as on 31st March 2010 were as under:

(₹ in crore)			
Periodicity of arrears	No. of cases	Amount	Percentage of arrears
Demand less than 1 year old	3,76,000	12,102.13	31.55
Demand between 1 to 2 years old	2,04,944	7,916.79	20.64
Demand between 2 to 5 years old	7,78,327	10,972.57	28.60
Demand between 5 to 10 years old	8,47,393	4,705.16	12.27
Demand over 10 years old	5,55,611	2,660.67	6.94
Total	27,62,275	38,357.32	100

As seen from the above table, ₹ 7,365.83 crore (19 per cent) in respect of 14,03,004 cases were pending for recovery for more than five years.

The Department may take prompt action in respect of cases which are more than five years old to prevent any risk of these arrears not being recovered due to lapse of time.

2.4 Recovery of arrears under the BST Act

Information⁵ regarding arrears at the beginning of the year, additions during the year, recoveries effected, other adjustments and arrears at the end of the year for the periods 2005-2006 to 2009-2010 are as under:

⁵ The figures of opening balance/closing balance in respect of arrears of sales tax for the period 2005-06 to 2009-10 which is now furnished by the Department is at variance with the figures furnished during the respective years for the Audit Reports 2005-06 to 2009-10.

(₹ in crore)

Year	Opening balance	Additions during the year/ percentage of (3) to (2)	Actual recovery/ percentage of (4) to (2)	Other adjustments ⁶ / percentage of (5) to (2)	Closing balance
(1)	(2)	(3)	(4)	(5)	(2+3)-(4+5)
2005-06	10,768.43	5,206.82/ 48.35	359.39/ 3.34	2,075.74/ 19.28	13,540.12
2006-07	13,540.12	23,035.56/ 170.13	393.11/ 2.90	7,500.62/ 55.40	28,681.95
2007-08	28,681.95	5,709.68/ 19.91	370.46/ 1.29	11,685.43/ 40.74	22,335.74
2008-09	22,335.74	15,971.77/ 71.51	359.51/ 1.61	6,033.01/ 27.01	31,914.99
2009-10	31,914.99	16,862.74/ 52.84	666.23/ 2.09	11,476.40/ 35.96	36,635.10 ⁷

From the above table it could be seen that during the period 2005-06 to 2009-10 the addition to arrears ranged between 20 and 170 *per cent*, adjustments due to write off, etc., was in the range of 19 to 55 *per cent* and recovery of arrears was in the range of one to three *per cent* with respect of the opening balance of arrears. The miniscule percentage of recoveries reflected poor management of recovery of arrears.

⁶ Appeal orders, write-off, cancellation of assessment orders, etc.

⁷ Does not include arrears of recovery from enforcement branch (₹ 1,021.66 crore) and Profession Tax (₹ 700.52 crore).

CHAPTER-III SYSTEM AND COMPLIANCE DEFICIENCIES

3.1 Absence of separate recovery machinery

The Assessing Authorities (AAs) were responsible for effecting recovery of arrears in respect of the BST Act. In respect of the four divisions in Mumbai, the JCs were responsible for monitoring the recoveries. In rest of Maharashtra, the Zonal JCs (Profession Tax) were responsible for monitoring the recoveries under the overall control of the Addl. CST.

Absence of separate recovery cell or recovery machinery in the Sales Tax Department for dealing with the huge mounting arrears, led to abnormal delays in initiating action for recovery.

In the exit conference the CST stated that a recovery cell was not created as the assessing officers would divest themselves of the responsibility of recovery of dues and simply transfer the cases to the Cell which would lead to further delays.

However, the fact remains that effecting recoveries through the AAs had proved ineffective.

Government may consider putting in place recovery machinery for focusing on recovery of arrears under the repealed Acts.

3.2 Ineffective monitoring at senior levels

In the review meetings conducted by the CST between August 2007 and March 2010, several instructions were issued to the subordinate officers in respect of recoveries pending under the BST Act. In the meetings held in August 2007, June 2008 and August 2008, the CST had given directions to transfer the pending RRC cases to the Recovery branch. Further, in a meeting held in November 2010 it was decided that, in respect of each division, out of top 100 cases "available for recovery" and top 100 cases "not available for recovery", 50 cases of both the categories were to be followed up at Commissionerate level and balance 50 cases of both the categories were to be followed up at the Addl. CST level.

Though the Government had stated in their reply that the target fixed for recovery of arrears is 100 *per cent*, the huge accumulation of arrears over the years was only indicative of the fact that monitoring of arrears was ineffective.

In respect of the transfer of pending RRC cases to the recovery branch, the Department stated (March 2011) that though decision was taken on the above lines, the same was not implemented due to administrative reasons and that the recovery is now being watched by the staff implementing the BST Act.

The reversal of decision is not understandable as the earlier arrangement to watch recoveries through the concerned AAs under the BST Act had already proved ineffective leading to gradual accumulation of arrears.

In respect of the top 100 cases analysis revealed that 80 cases were pending in Appeal and Tribunal. Action should have been taken by the Department to ensure that these cases were disposed off at the earliest.

3.3 Non-maintenance of Prescribed Register

The JCST (Admn.) of each division is required to maintain a register in form number-47 as prescribed in schedule number 12 of Manual of procedure of the Sales Tax Department in order to watch the progress of recovery cases in respect of RRCs issued outside the State. However, no such register was maintained in Thane and Worli divisions. Though, a register was maintained in the Nariman Point division, it was not updated after April 2009 and in Pune it was not maintained in the prescribed form.

Non-maintenance/non-updation of the registers indicated absence of effective follow ups in respect of RRC cases issued to other States.

3.4 Internal Audit

Internal audit is a vital component of the internal control mechanism and is intended to provide reasonable assurance of proper enforcement of laws, rules and Departmental instructions. Internal control also helps in creation of reliable financial and management information system for prompt and efficient services and for adequate safeguards against evasion of tax and other irregularities.

In Maharashtra, the Internal Audit Wing (IAW) is headed by a JCST stationed at Mumbai who is assisted by 10 DCSTs; six at Mumbai, one at Thane, two at Pune and one at Nagpur. As per para 8(J) of the Sales Tax Manual the IAW is required to audit all the recovery cases involving tax and penalty of more than ₹ 10 lakh and is also required to examine whether adequate efforts have been made to recover the dues, claims have been lodged with the proper authority, auctioning of the attached property has been initiated, action proposed has been taken against the defaulting dealers, etc. Further, internal audit of recovery cases involving amounts exceeding ₹ 10 lakh is to be carried out every year.

Scrutiny of the Inspection Reports (IRs) of five divisions⁸ of the IAW revealed that no observations were made in these reports regarding arrears of revenue.

The JCST (Inspection), Mumbai stated (September 2010) that the main function of IAW is to audit high revenue yielding cases and refund cases above ₹ 25 lakh under BST Act and VAT Act.

Despite instructions in the manual for auditing recovery cases, absence of any comments in the IRs of the IAW in respect of recovery cases revealed that internal control measures for recovery of arrears were inadequate.

In the exit conference the CST stated that the IAW has not focussed on recovery cases and instructed the JCST (Inspection) to look into the matter.

3.5 Categories of recovery

The position of number of cases and amount locked up in RRC cases within and outside the state and claims lodged with OL, DRT and BIFR at the end of March 2008, March 2009 and March 2010 are as given below:

⁸ Borivali, Kolhapur, Nariman Point, Pune and Worli.

(₹ in crore)

Year ending March	RRCs within the State		RRCs outside the State		BIFR		OL/ DRT	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2008	12,370	388.66	8,718	466.16	3,364	413.21	4803	528.90
2009	14,452	322.90	7,432	506.65	3,072	477.64	4841	634.71
2010	6,329	260.93	5,154	533.97	1,973	415.86	4648	711.14

Scrutiny of the recovery files revealed that arrears were mainly due to not keeping track of the returns filed by the dealer, absence of follow up action for recovery, non-raising of demands in time, failure in attaching the property, delay in auctioning the attached property, absence of coordination with the counterparts in other states, delay in pursuing the matter with the DRT, OL and BIFR and lack of monitoring at the supervisory levels.

The observations made in the Report cover the arrears of revenue of ₹ 517.41 crore in respect of 35 cases locked up under various categories such as; RRCs issued within and outside the State, DRT, OL, BIFR and others as discussed below.

3.6 Revenue Recovery Cases pending within the State

During test check of the recovery files of selected divisions, we noticed that RRCs were issued by the AAs for recovery of dues as arrears of land revenue. However, delay in issuing the RRCs and lack of follow up action by the Department in pursuing the cases resulted in huge amounts remaining unrecovered as detailed below:

3.6.1 Non-realisation of arrears of sales tax due to belated assessments and consequential delays in auctioning properties/proceeding against Companys' Directors

- During test check of the recovery files of a dealer of Pune division, in July 2010, we noticed that M/s. Hindustan Max G.B. Limited, manufacturer of Penicilin-G was in arrears of assessed tax of ₹ 182.89 crore for the periods 1997-1998 to 2002-2003. The reasons for accumulation of arrears was mainly on account of disallowance of claim of stock transfer due to absence of documents in support of the claim and disallowance of set-off claimed in the returns by the dealer, as their vendor had not paid the tax into the Government Treasury. In January 2004, the Company had informed the ST Dept. that the manufacturing activity had been suspended. The assessment orders from 1997-98 to 1999-00 were passed between November 2001 and March 2003 and the assessment orders for the subsequent periods 2000-01 to 2002-03 were passed between March 2006 and March 2009. The dealer had filed appeals for the periods 1997-98 to 1999-00 in March 2001, on the grounds of disallowance of set-off during the said periods which were rejected in November 2002 by the appellate authority. The dealer preferred second appeals before the Tribunal which was also rejected due to non-attendance. The proposal for issuing RRC was sent by the assessing authority to JCST in December 2008 but the JCST

issued the same only in July 2010. The reasons for delay in assessing three periods viz. 2000-01 to 2002-03, delay in issue of RRC and present status of the case was not available in the assessment records.

After we pointed out the case, the JCST (PT), Pune stated (June 2011) that the delay in issue of RRC was due to official lapses. In the reply received from the CST it was stated that for the periods 1997-98 to 1999-00, the dealer was contemplating to go in appeal and in respect of the periods 2000-01 to 2002-03, the dealer had preferred appeal in May 2011 which was rejected.

From the above facts it is clear that the dealer was only gaining time from March 2001 onwards to avoid any stringent recovery proceedings by the Department. The Department also had extended this process by delaying assessments of subsequent periods and issue of RRC.

- During test check of the recovery files of a dealer of Nariman Point division in August 2010, we noticed that M/s. Denholm Steel Limited, manufacturer of iron and steel, was in arrears of assessed tax of ₹ 9.03 crore, for the period 1995-96 to 1998-99. As the case was pending with the BIFR, the Department had lodged claim with BIFR in June and October 2004. A reference was also made by the Department in December 2004 to the Regional Officer, MIDC, Navi Mumbai to ascertain the ownership of the plot in possession of the dealer at Navi Mumbai. Though five to six years have passed, no further follow up action was taken by the Department.

After we pointed out the case, the Department ascertained (August 2010) the status of the case from the Director of Industries, Mumbai. The Director of Industries informed (September 2010) that the dealer's case was dismissed by BIFR in November 2000 and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) had also dismissed the dealer's appeal in February 2009 itself and that the Central Bank of India had taken possession of assets of the company prior to January 2008. In view of this, the STO, D-1017, Worli division stated (December 2010) that notice under the MLR Code has been issued (November 2010) to the dealer at his factory address.

In the exit conference, the Department stated that though the MIDC was informed that the property was not to be transferred to any other creditors, it failed to take note of the same resulting in the property being actually taken possession of by the Bank of Rajasthan which auctioned off the property for ₹ 8 crore, as per the orders issued by the DRT. It was further stated that the Department is contemplating appeal against the DRT order.

From the above facts it is clear that the Department had failed to closely monitor the case and their inaction had resulted in loss of its claim over the assets of the dealer and non-recovery of ₹ 9.03 crore. Their reply that they would file an appeal now after lapse of so many years is not convincing and is fraught with futile results due to lapse of time.

- During test check of the recovery files of a dealer of Pune division in July 2010, we noticed that M/s. Zubairy Auto Commercial Private Limited, importer-cum reseller of automobiles and spare parts, was in arrears of assessed tax of ₹ 1.53 crore, for the period 1990-1991 to 1996-1997. The assessment orders for the said periods were passed between July 2001 and April 2002 after delays ranging from five to ten years. The assessments for the

periods 1997-1998 to 2000-2001 were completed under summary assessment between August 2001 and July 2002 on the basis of the returns filed by the dealer. These assessments resulted in 'nil' demand. The dealer had closed his business in April 2001 and the registration certificate was also cancelled on 1 April 2001. Proposal for initiating prosecution proceedings against the Directors of the company was initiated in May 2002. No further action has been taken in the matter till July 2010. Further, as per the circular instructions issued by the CST, a dealer's return could not be accepted under summary assessment if the previous period had been assessed ex parte. In this case, though the assessment for the period 1996-97 was done ex parte the assessments for the subsequent periods, from 1997-98 to 2000-01, were completed under summary assessment which was irregular being violative of the Departmental instructions.

In the exit conference the Department stated that since the whereabouts of all the Directors were not known, a letter was issued to the concerned police station in March 2011 for tracing their whereabouts.

It is pertinent to mention here that in the present situation the Department ran the risk of not recovering the dues of ₹ 1.53 crore due to huge delay in assessments and also absence of follow up action against the Directors of the company.

- During test check of RRC cases of Kolhapur division, we noticed that one dealer, M/s. Milind Tyres and Rubber Company Private Limited, was in arrears of assessed tax of ₹ 88 lakh for the period 1990-1991 to September 2000. The activity of the dealer and the date of passing of assessment orders were not available in the recovery file. The dealer was holding Entitlement Certificate for the period October 1990 to September 1999 with a monetary ceiling of ₹ 52 lakh. Dealer's immovable properties were attached (September 2007) for the recovery of sales tax dues of ₹ 88 lakh. Though three years have elapsed, the Department had not made any effort to auction the property resulting in non-recovery of ₹ 88 lakh.

In the exit conference the Department stated that Tahsildar, Panhala Taluka, Kolhapur, had given a public notice for auction of property on 18 March 2011, however, the auction was stayed as a Co-operative bank had filed suit against the dealer in a Co-operative court in 2011.

Though the property was in the possession of the Department for almost four years, it had failed to auction off the property and realise the amount. Had timely action been taken the present deadlock could have been avoided.

3.6.2 RRCs issued wrongly to outside the State though the dealers or their property were available within the State

During test check of the records of Worli division between November 2009 and May 2010, we noticed that in five cases though the dealers or their property was available in the State, RRCs involving Government revenue of ₹ 121.36 crore were incorrectly issued outside the State as detailed below:

(₹ in crore)

Sl. no.	Name of dealer	Year of transaction	Date of passing Assessment Order	Dues	Remarks
1	M/s TCL Baron India Ltd. reseller in TVs, mobile phones and allied articles.	2000-2001 and 2001-2002	30-8-2003 and 20-2-2004	2.93 and 2.40	The RRC was issued to the ST Dept., New Delhi in October 2004 and to the Collector, Connaught Place, New Delhi in January 2006 without verifying the correctness of the whereabouts of the dealer. We saw from the Departmental records that the dealer had property in the State itself. Hence action to refer the RRC case to the Delhi authorities was not warranted. We further saw that the Department had not taken up any follow up action for the last five years.
2	M/s Baron International Ltd. reseller in consumer electronics and home appliances	1993-1994 to 2001-2002	Assessed between 31-03-1997 and 19-04-2005	85.56	Though the first assessment of the dealer was completed in March 1997, the Department initiated action under the MLR code for recovery of dues in October 2003 i.e. after a lapse of more than six years by issuing RRC to the ST Dept., New Delhi. The ST Dept., New Delhi informed the CST, Mumbai, in January 2005 that as the Directors of the company are residing in Mumbai, action may be initiated in Mumbai itself. Action to attach the bank accounts in February 2005 could not materialise as the accounts were already closed. No further follow up action had been taken till May 2010. Since the bank accounts and the Directors were in Mumbai, referring matter to Delhi was unwarranted which only delayed the action.
3	M/s Baron Electronics Pvt. Ltd. reseller in electrical and electronic goods such as TV sets, phone refrigerators etc.	1998-1999 to 2000-2001	Assessed between 26-09-2003 and 20-02-2004	23.74	The action for recovery of dues was initiated by issuing RRC to the Sub-Divisional Magistrate, Connaught Place, New Delhi in October 2004. No further follow up action had been taken till May 2010. Since the Directors of the company were having properties in Mumbai referring the matter to Delhi resulting in recovery not being effected was unwarranted which delayed the recovery.

Common comments in respect of the above three cases:

We found that Shri Kabir Jawahar Mulchandani was director on the board of all the three companies and three other family members Smt. Shakun Jawahar Mulchandani, Shri Jawahar Ruchiram Mulchandani and Shri Siddharth Jawahar Mulchandani were directors in either one of the three companies and were in possession of property in Mumbai itself. These facts were verifiable from the documents available with the Department, yet no notice was issued to the Directors for recovery of tax. Further, the default in payment of dues were for the periods commencing from 1993-94 itself. Thus the Department did not keep proper watch on the returns filed by the dealers to ascertain non-payment of tax, sent the notices to authorities outside the State when the properties/bank accounts were available in the jurisdiction of the Sales Tax Department in Mumbai itself. The seriousness of the Department about recovering the dues was, thus questionable. Further they failed to follow up the case due to which dues of ₹ 114.63 crore could not be recovered.

After we pointed out the case (November 2009), the AA lodged a police complaint against the Directors (December 2010) in the police cell at Mazgaon, Mumbai.

In the exit conference the CST agreed to look into the matter.

- M/s. Oracle Agencies Private Limited, a dealer in Worli division, who was a reseller in chemicals, was in arrears of assessed tax of ₹ 6.03 crore for the period 1 February 1999 to 31 March 1999. The value of sales during these two months was to the extent of ₹ 29.74 crore. The case was assessed in March 2002. The company had conducted business for two months and had closed its business activity in March 1999. As per the Articles of Association, Shri Sudhir N. Parikh and Shri Dharmesh H. Naik were the directors of the company and were residing in Mumbai. However, the RRC was sent to the Collector at Jamnagar in Gujarat in January 2008 for effecting the recovery from Shri Parag B. Dadia and Shri Jayesh J. Daftary that too after a delay of five years and nine months. Status of the persons in respect of whom RRCs were issued for recovery to the Collector at Jamnagar, Gujarat and reasons for issue of RRC in respect of persons not mentioned in the Articles of Association were not available on the records. Non-verification of facts available in the recovery file resulted in delayed action and non-recovery of dues of ₹ 6.03 crore.

In the exit conference the Department stated that the fact relating to delay in issue of RRC could not be corroborated with the records.

The reply, however, is silent as to why the Department had not issued RRC for recovery of dues from the Director who was residing in Mumbai.

- M/s. Sylvania Laxman Ltd., a dealer of Worli division was in arrears of assessed dues of ₹ 56 lakh for the period 1993-1994 to 1996-1997. The activity of the dealer and the date of assessments were not available on the records produced to audit. As the company was closed, a demand notice for recovery was pasted on the door of the Company. In July 2001, RRC was issued to the Deputy Commissioner of Sales Tax, New Delhi to recover the dues from the dealers property at New Delhi (3/10, Laxman House, Abbas Ali Road). However, scrutiny of the recovery file revealed that the dealer was having a property in Mumbai, as informed to the Department in January 1997 itself by the Secretary of Blossom Co-operative Housing Society Ltd., Marol, Mumbai. No action was taken to attach the property available in Mumbai and dues of ₹ 56 lakh stood unrecovered.

- The above dealer was also having a unit in Nagpur and was assessed for dues of ₹ 14 lakh, between August 1995 and February 1999, for the period 1992-1993 to 1995-1996. The arrears of recovery of ₹ 14 lakh was categorised by the Department as 'dealer not traceable', hence no further action was taken by the Department. However, as the dealer is having property in Mumbai recovery proceedings should have been initiated against him.

After we pointed out the case, the Department stated that a letter has been issued (January 2011) to the Chairman of the Blossom Co-operative Housing Society Ltd., seeking the present status of the ownership of any flat by M/s. Sylvania Laxman Ltd., in the society.

In the exit conference the Department stated that a letter was again issued in March 2011 to the Chairman of the concerned housing society.

The fact remains that though information for taking action was available in the Departmental records, action was not taken to sell the available properties.

Government may consider providing for declaration of assets of proprietors, partners and Directors at the time of registration and any subsequent additions thereto and any reference for attaching properties outside the State may be done only after exhausting all the remedies available in the jurisdiction of the Sales Tax Department of the State.

3.7 Non-pursuance of Revenue Recovery Cases issued to other States

During test check of the recovery files of selected divisions we noticed that RRCs were forwarded by the Department to the revenue authorities of the other States for recovery of dues as arrears of land revenue. However, delay in issuing the RRCs and inadequate action taken by the AAs to pursue the cases resulted in ₹ 57.06 crore remaining unrecovered in five cases as detailed below:

- A dealer of Nariman Point Division, M/s. Ballari Mercantile Private Limited, reseller in zinc containing products (generic name), was in arrears of assessed tax of ₹ 42.75 crore for the period from August 1998 to January 1999. During this period the turnover of sales of the dealer was ₹ 121.52 crore. The business was closed in January 1999 but the assessment order for the said period was passed after eight years, in March 2007. As per the assessment order, visit by the Enforcement Branch to the dealer's business premises revealed that the dealer was engaged in fictitious business (without effecting any actual transaction of goods). Thus, it was clear that the dealer had intended to defraud the Government with respect to payment of sales tax from the year 1998 itself but the Department had not kept any watch on the activities of the dealer. As the Directors⁹ of the company were residing at Hyderabad, the RRC for recovery of dues was issued to the Collector, Hyderabad in December 2007. A reminder was issued in August 2008.

After we pointed out the case (September 2009), the assessing officer stated (September 2010) that a visit was made to the residence of one of the partners as well as the Collector/Tahsildar's office at Hyderabad to discuss the matter regarding recovery.

In the exit conference the Department stated that the matter has been referred demi-officially to the Collector of Hyderabad in January 2011.

Thus inordinate delay in assessing the case and delay in initiating recovery proceedings and ineffective follow up action resulted in non-recovery of tax dues of ₹ 42.75 crore.

- During test check of the recovery files of a dealer of Thane zone in July 2010, we noticed that M/s. New India Industries Limited, engaged in the manufacture of photographic printing paper, was in arrears of assessed tax of

⁹ Shri Ramesh Kumar R. Doshi and Smt. Ushadevi R. Dashi.

₹ 10.51 crore for the period 1999-2000 to 2001-2002 (July 2001). The assessments for the above period were completed between January 2006 and March 2006, after delays ranging from three to five years. The dealer had closed his business in July 2001 and as no amount was available in his bank account and the Director¹⁰ of the company was residing in Gujarat, RRC was issued in July 2006 to the Collector, Baroda, in Gujarat State and a reminder was also issued in December 2008. Though 17 months have passed, no further action has been taken by the department for recovery of dues of ₹ 10.51 crore.

In the exit conference the Department stated that the dealer is neither traceable in Mumbai nor at Baroda.

Thus inaction on part of the Department to trace the dealer with the help of police was not taken at the appropriate time and resultantly the possibility of recovery now appears remote.

- In another case of Thane zone, a dealer, M/s. B.I.L. Industries Limited, engaged in the manufacture of iron and steel, was assessed (December 2003) for the period 1998-99 and 1999-2000. The total assessed dues was at ₹ 1.37 crore. As the dealer had closed his business and the Director of the Company had residential addresses at Kolkata and New Delhi, RRCs were issued to the Collectorates at Kolkata and New Delhi in September 2004. Reminders were also issued in May and October 2006. Though more than three years have passed, no further follow up action has been taken for recovery of ₹ 1.37 crore.

In the exit conference the Department stated that the dealer was not traceable at the Delhi address. Further, the reply from Collector, Kolkata is awaited for which a fresh reminder had been issued.

Thus belated action in assessing the dealer recovery and ineffective follow up action to track down the dealer/properties available have resulted in non-recovery of the arrears.

- During test check of the recovery files of a dealer of Worli division, we noticed that M/s. Enkay Texofood Industries Ltd. manufacturer of food products, tea, polyester yarn, edible oil, etc., was in arrears of assessed tax of ₹ 59 lakh, for the period 1997-1998 to 2000-2001. The assessment orders for the said periods were passed between March 2000 and March 2003. As the dealer had closed his business activity and had not paid the dues, the Department issued RRCs to the Collectorates at Nagpur, Pune, Vapi, Surat, Silvassa and Valsad in December 2003 and followed it up with reminders in March and May 2004. Though, more than six years have elapsed, no further action has been taken by the Department to effect recovery of dues of ₹ 59 lakh.

After we pointed out the case in May 2010, the assessing officer issued reminders to the concerned authorities in June 2010. However, no efforts were made to organise meetings with counterparts in other States to improve chances of recovery.

¹⁰ Shri Bharat Patel.

In the exit conference the Department stated that the dealer's case was in BIFR since 2006 and the Department had lodged its claim with BIFR in November 2010.

From the reply it is clear that the claim was lodged with the BIFR after delay of four years. The status of the case in the BIFR was required to be reviewed periodically.

Lack of concerted efforts and absence of co-ordination with counter parts in other States and failure to keep track of the cases by the Department have resulted in large arrears remaining pending for recovery.

- M/s Annapurna Cement Ltd, Nagpur, was assessed for dues of ₹ 1.84 crore between January 1992 and June 2003, for the periods between 1988-89 and 1997-98. As per the information received by the Department in September 1992, the Company was declared as a sick unit by the BIFR in February 1992.

The Department however, issued RRCs to the Collector, Hyderabad, Andhra Pradesh in March 1997 and July 2003 instead of lodging the claim with the BIFR. The Department was informed in December 2004 that the whereabouts of the dealer was not known and hence it was not possible to recover the dues under the provisions of the MLR code.

Meanwhile, in September 1997, BIFR issued orders for winding up of the company and the case was forwarded to the High Court for appointment of OL. The Department took six years (August 2003) to lodge the claim with the OL. Four reminders were issued between November 2003 and January 2005. Action taken by the Department for the last six and a half years was not available on record.

After we pointed out the case, DCST, B-251, Nagpur stated that the Department had immediately lodged the claim with the OL and current status of the claim shall be intimated as early as possible.

In the exit conference the Department stated that there was no delay as the Department has been in touch with the concerned authorities.

The reply is not acceptable as the word 'immediate' does not connote lodging of claim after six years and absence of follow up action since January 2005. Thus the Department has definitely delayed recovery action in the case. The lapse of time may have led to settlement of other outstanding claims with the OL and the possibility of nothing being left for the Department in respect of dues of ₹ 1.84 crore, cannot be ruled out

The Government may consider evolving a system for issuing RRCs in time and regularly co-ordinating with their counterparts in other States to whom RRCs have been issued.

3.8 Non-follow up action in the cases pending with the Debt Recovery Tribunal

DRT has been constituted under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The aim of the DRT was to receive the claim applications from banks and financial institutions against their defaulting borrowers. The dues of workmen against a company, the State

dues, and the dues of other non-secured creditors all get enmeshed before the DRT. If the dealer's property is under the possession of the DRT, the Department has to lodge its claim before the DRT. Further, as per section 38(C) of the BST Act, 1959, any amount of tax, penalty, interest or any other sum payable by a dealer shall be the first charge on the property of the dealer. Therefore, in case, the possession of the property of any defaulter is taken over by the DRT, the Department has to lodge its claim before the DRT.

The arrears of ₹ 41.55 crore in respect of seven cases which are pending before the DRT are discussed in detail below:

- During test check of the recovery files of a dealer of Aurangabad division in December 2010, we noticed that M/s. Jaina Cast Private Limited, was in arrears of assessed tax of ₹ 13.67 crore (the periods and dates of assessment were not available in the recovery file). The dealer was holding Eligibility Certificate under the deferral mode of Package Scheme of Incentives (PSI), 1988, for the period April 1997 to March 2006 with monetary ceiling of ₹ 73.18 lakh. The Department had issued show cause notice (June 1999) for recovery of sales tax dues as the dealer had availed excess sales tax benefit of ₹ 2.26 crore as per the returns filed by the dealer for the periods 1997-1998 and 1998-1999. The Maharashtra Sales Tax Tribunal (MSTT) granted stay on recovery of ₹ 2.26 crore in December 1999. The reasons for this stay and action taken by Department to get the stay vacated were not available

In October 2004 an officer from the Department visited the place of business of the dealer and found that the dealer had closed his business two to three years back and that Central Bank of India had already auctioned the movable properties of the dealer. Amount received by the bank was not available on record. The Department had issued RRC to the Collector, Faridabad in November 2004 for recovery of dues of ₹ 4.18 crore pertaining to the periods 1997-1998 and 1998-1999. Meanwhile, the MSTT dismissed (May 2007) the appeal filed on the grounds of non-appearance of the dealer despite sending three notices in July 2003, December 2004 and April 2007. This indicated that the dealer was only buying time for avoiding payment of dues. In March 2010, the Department requested the DRT to direct Central Bank of India to pay the Sales Tax dues of ₹ 13.67 crore.

Thus the Department merely issued show cause notices for record sake and did not keep track of the dealer's activity and the properties of the dealer. They failed to approach the MSTT to get the stay vacated, ascertain the charges of banks and financial institutions on the dealer's properties and were not prompt in lodging claim with the DRT. The Department was not alert enough due to which it lost claim on the properties of the dealer to the bank, leaving a remote possibility of recovering the dues.

- During test check of the recovery files of a dealer in Andheri division in August 2010, we noticed that M/s. Hindustan Transmission Products Limited, manufacturer of super enameled copper wire, was in arrears of assessed tax of ₹ 12.50 crore, for the period 1988-1989 to 1994-1995. The assessments for all the above periods were completed in April 2002, after delays ranging from seven to 11 years from the year of transaction. The fact that the dealer had closed his business came to light only after an inspector

visited the dealer's business premises in January 2003. The Department learnt that the dealer had closed his business and the property of the company was in the possession of the Court Receiver, High Court, Mumbai. For effecting the recovery of the sales tax dues, the Department informed the Court Receiver in January and February 2003. Later on in November 2005, the Department came to know that the recovery matter is pending with DRT, Mumbai for which the services of an Advocate of Mumbai High Court were engaged. However, the matter was referred to the Government Advocate in January 2006 and September 2007. Though three years have elapsed no further follow up action was taken by the Department for recovery of dues of ₹ 12.50 crore.

Thus the Department had not only delayed assessing the case for one reason or the other but also not kept track of the dealer's activities resulting in further delay in follow-up action. The case was also not effectively pursued with the DRT for recovery of Department's dues of ₹ 12.50 crore.

- During test check of the recovery file of the dealer, M/s. Nav Maharashtra Chakan Oil Mills of Pune division in July 2010, we noticed that sales tax dues aggregating ₹ 5.04 crore were pending for recovery as per the assessment orders passed in March 1999 and March 2000, for the periods 1990-1991 and 1991-1992 respectively. The dealer was a manufacturer and reseller of various types of edible oil. The company had closed its business without paying the sales tax dues of ₹ 5.04 crore. In January 2003, the Department lodged a claim with the DRT as the recovery proceedings were pending with it. As per the order passed by DRT, Pune in May 2004, an amount of ₹ 1.25 crore, being tax evaded by the dealer was apportioned to the Department out of sale proceeds from the assets of the dealer. However, the interest and penalty element of ₹ 3.65 crore was not apportioned on the ground that the BST Act provided the Department full powers to put the property in their possession for sale and that the grant of the entire amount to the Department would amount to giving a bonus to the applicant for their inaction to recover the amount. Scrutiny of records revealed that the Department was in possession of eight properties belonging to the dealer, which had been attached in the years 2000 and 2001 itself. The value of these properties was not available with the Department. No action had been taken by the Department to auction the properties for recovery of the balance amount till date. It is not known whether the properties remain in the physical possession of the Department.

It is pertinent to mention here that, though the dealer's case for recovery of dues was pending with the DRT from the year 2003 itself, the assessments for the subsequent periods, 1992-1993 to 2000-2001 were done ex-parte in August 2009 due to non-attendance of the dealer, raising additional demands of ₹ 102.69 crore after delays ranging from seven to 15 years. In all these cases notices were served to the dealer for appearing before the assessing authority with books of accounts only in July and August 2009. We referred the case to the Addl. CST, Mumbai in December 2010, enquiring the reasons for non-auctioning the properties which were attached by the Department.

The Commissioner's office stated (July 2011) that DCST (Appeal), Pune had set aside the demand of ₹ 102.69 crore raised for the assessment periods 1992-93 to 2000-01 and were required to be assessed afresh.

In the exit conference it was stated that the properties in the possession of the Department was slated to be auctioned in the month of August 2011.

It is clear that the dealer was delaying the recovery proceedings by non-attendance at the time of assessment and then proceeding in appeal. It is not known how the DC (Appeal) set aside all the demand assessed when the assessee dealer had failed to appear before the assessing authority and how well the Department pleaded its case before the Appellate authority. Unlike the Income Tax Department which closely monitors the functioning and orders of its Appellate machinery, this case clearly demonstrates that the Department does not monitor the orders of the appellate authority and have not issued any instructions to them to desist from setting aside orders where dealer has failed to appear before the assessing authority where he has been given the first opportunity to present his case. The Department's inaction in not auctioning the properties for almost 10 to 11 years also had caused further delay in recovery. Urgent action may be taken to assess the pending periods and auction off the properties and recover the dues.

- During test check of recovery file of a dealer in Aurangabad division in December 2010, we noticed that M/s. Ellora Steel Limited, engaged in the manufacture of ingots, rounds, circles, etc., was in arrears of sales tax of ₹ 3.99 crore, as per the assessment orders passed for the periods 1991-1992 to 1998-1999, between January 1995 and December 2004. As the dealer had not paid the dues, the Department initiated action under the MLR Code by attaching his movable and immovable properties in February 1997. No further action was taken for nine years till February 2006. In March 2006, the Department came to know from a newspaper advertisement issued by DRT, Aurangabad that the property of the dealer in its possession was to be auctioned. On knowing this, the Department casually wrote a letter to the Recovery Officer, DRT, Aurangabad in March 2006 intimating that sales tax dues are first charge on the property of the dealer. Further, scrutiny of correspondence file revealed that the entire property of the dealer was sold by the DRT, Aurangabad in a public auction held on 4 April 2006 to the highest bidder M/s J.N. Enterprises, New Delhi for ₹ 5.01 crore. However, no amount was paid to the ST Dept. In view of this the Department filed an appeal before DRT, Aurangabad which was dismissed in January 2007 on the following grounds:

- i. no proper application was filed by the ST Dept.; even court fee was not filed;
- ii. claim of the Department was not adjudicated at any stage; and
- iii. though the Department had attached the property in July 1997, further action of auctioning the property was not taken even after 10 years and they had come forward in a most casual way.

After we pointed out the case, JCST (Adm), Aurangabad division, Aurangabad stated (January 2011), that though the property of the dealer was attached, it was understood that the company was declared a sick unit by BIFR in July 1997, hence, recovery action was stayed. It was also stated that against the dismissal of the claim by DRT, an appeal was being preferred before the Debt Recovery Appellate Tribunal (DRAT), Mumbai on the directions of the Finance Department through the ST Dept.

During exit conference the Department stated that a fresh draft for appeal against the DRAT is under consideration for which a new counsel is required to be appointed.

Thus, due to inaction on the part of the Department to auction the properties already in its possession, a casual approach in lodging the claim with DRT and further delay of almost four years in preferring appeal against the dismissal of claim by the DRT resulted in non-recovery of ₹ 3.99 crore.

- During test check of the recovery files of a dealer of Thane division in August 2010, we noticed that M/s. Vishuddha Rasayani Private Limited, manufacturer of chemicals, was in arrears of assessed dues of ₹ 3.84 crore, for the periods 1991-1992 to 1996-1997 and 1998-1999 to 2001-2002. The assessment orders for these 10 periods were passed between June 1998 and November 2006. The dealer was covered under the deferral mode of Package Scheme of Incentives. As the dealer had closed his business during the operative period of the agreement, the entire amount had become recoverable, as per the conditions of the Eligibility Certificate. Since, no amount had been paid by the dealer, the Department lodged the claim with the DRT, Mumbai, in October 2007. No further follow up action was taken by the Department with the DRT, Mumbai. Scrutiny of the recovery files of the dealer revealed that immovable properties in the nature of residential flats, office at Thane and factory premises of the dealer were available for attachment, but only the flats and office were attached by the Department till date. Reasons for non-attachment of all the available properties was not on record.

After we pointed out the case in August 2010, the AA issued notice (October 2010) under MLR Code for recovery of the entire amount. As the AA learnt that the company is in liquidation, an inspector was deputed to gather the information about liquidator's name and address in order to file the claim of sales tax.

In the reply furnished by the Commissioner's office (July 2011) it was stated that the properties of the dealer were attached in January 2004 and October 2004 and notice for auction was issued in March 2005.

During the exit conference it was stated that the Department had approached the Government pleader in September 2010 for lodging claim with the DRT.

The reply is silent on non-attachment of all the available properties. Undue delay of over seven years in attaching and auctioning the property and lack of follow up action with the DRT had resulted in non-realisation of revenue of ₹ 3.84 crore.

- During test check of the recovery file of the dealer, M/s. Ram Laxman Hotels (Pvt.) Limited in Pune division in March 2010, we noticed that as per the assessment orders passed for the periods 1996-1997 to 2001-2002 and the returns filed by the dealer from July 2002 to November 2002, dues on account of sales tax and luxury tax aggregating¹¹ ₹ 86.95 lakh were pending for recovery. Since, the company had gone into liquidation, the Department had lodged a claim with the DRT, Pune. In March 2004, the DRT, Pune, informed the Department that an amount of ₹ 29.80 crore had been realised by it by way

¹¹ Sales tax : ₹ 68.03 lakh + luxury tax ₹ 18.92 lakh.

of auction of the attached property of the hotel. Out of this, ₹ 23 crore was distributed amongst some creditors leaving a balance of ₹ 6.80 crore. In response to this, the Department in September 2005 i.e. after a lapse of 17 months, lodged a claim¹² for ₹ 1.42 crore which also included interest for delayed payment upto September 2005. No further follow-up action was taken by the Department. Though six years have passed after receiving intimation from the DRT that the sales tax dues are available for recovery, absence of follow-up by the Department resulted in non-realisation of ₹ 1.42 crore.

In the exit conference the Department stated that sufficient funds were lying with the DRT for which claims would be lodged.

It is pertinent to note that more than seven years have elapsed after DRT had informed the Department of availability of funds for disbursement and further 16 months after audit had brought this to the notice of the Department. No efforts have been made to monitor the case effectively and recover the dues.

- During test check of the recovery files of a dealer of Pune division in March 2010, we noticed that M/s Paper and Pulp Conversion Ltd. was in arrears of assessed tax of ₹ 1.09 crore, for the period 1981-1982 to 1987-1988. The Company was closed in 1991 and the case for recovery of dues was pending with the DRT, Mumbai. The Department had submitted its claim with the DRT in December 2004 for recovery of dues of ₹ 1.09 crore. In February 2008, an advocate who was pleading the case with the DRT, Mumbai informed the Department that the property of the dealer in their possession had been sold by them for which a substantial amount was received. He asked the Department to depute an officer to look into the matter and pursue the claim with the DRT, Mumbai. Though more than two years have elapsed no action was taken by the Department in this regard.

After we pointed out the case, the DCST B-203, Pune division stated that action would be taken immediately in the matter. Further developments in the matter have not been reported (July 2011).

The fact remains that the Departmental machinery was not geared up for keeping track of the developments at the level of the DRT, resulting in non-recovery of dues of ₹ 1.09 crore from the assets which were sold by the DRT.

Government may consider devising a system for periodic liaison with the officials of the DRT with whom claims are lodged for recovery and these instances clearly point out to the necessity of having a separate Departmental recovery machinery for pursuing cases effectively and promptly with various authorities like the DRT, etc.

3.9 Inaction in lodging/pursuing claims with the Official Liquidator

The OLs are officers appointed by the Central Government under Section 448 of the Companies Act and are attached to the various High Courts. The primary function of the OL is to administer the assets of companies under liquidation, sale of the assets and realisation of all debts of companies in

¹² (Sales tax : ₹ 68.03 lakh and interest : ₹ 43.94 lakh) + (luxury tax ₹ 18.92 lakh and interest : ₹ 11.15 lakh).

liquidation for the purpose of distributing the same among the various creditors and other shareholders of the companies and to finally dissolve such companies after the affairs are completely concluded. When a company is put to winding up by an order of a High Court, the OL attached to the said High Court takes possession of the company's assets, books of accounts etc. and liquidates the company as per the orders of the High Court. As per section 530(i)(a) of the Companies Act, 1956, priority is given to all revenues, taxes, etc., due from the company to the Central, State or local authorities from the date of appointment of the Liquidator or from the date of order for winding up in case a liquidator is not appointed. As per the BST Act, 1959, only those demands will get priority within the meaning of section 530 of the Companies Act, 1956, in which demand notices have been served within 12 months immediately preceding the winding up.

Arrears of ₹ 35.73 crore in respect of seven cases which are pending before the Official Liquidator are discussed in detail below :

- During test check of the recovery files of a dealer of Nariman Point division in August 2010, we noticed that M/s. Swadeshi Mills Co. Ltd. was in arrears of assessed tax of ₹ 20.16 crore, for the period 1991-1992 to 2001-2002. The dealer had stopped his commercial activity in November 2000. Information independently collected by us from the OL in June 2010 revealed that out of the claim of ₹ 20.16 crore, only ₹ 1.29 crore was admitted by the OL. Further, out of ₹ 15.27 crore realised by the OL from the sale of movable assets, ₹ 11.19 crore was distributed among workers, ₹ 3.59 crore among secured creditors and ₹ 20.92 lakh was disbursed to the ST Dept. Reasons for short admission and short payment of claim (₹ 20.92 lakh against ₹ 1.29 crore admitted) by the OL was not available in the recovery file. This resulted in non-realisation of revenue of even the minimum amount of ₹ 3.38 (3.59-0.21) crore out of the total dues of ₹ 20.16 crore.

In the exit conference it was stated that the Department was vigorously pursuing the matter with the OL and the dues would be recovered from the balance assets i.e. land and building.

The reply is silent on short admission and disbursement of admitted claim by the OL, only indicating that matter was not taken up with the OL earnestly in time.

- During test check of the recovery file of the dealer, M/s. Orkay Industries Ltd. in Worli division in November 2009, we noticed that sales tax dues aggregating ₹ 5.12 crore were pending for recovery as per the assessment orders passed for the periods 1983-1984 and 1992-1993 to 2000-2001. The company had gone into liquidation and as per the orders passed by the Bombay High Court (BHC) in April 1998, the company was wound up and as per the subsequent order of BHC in December 1998, an OL was also appointed. Information available on record revealed that the ST Dept. sent demand notice totaling ₹ 4.10 crore, for the periods 1996-1997 to 2000-2001 to the Company through the OL between March 2000 and November 2003. Intimation to the OL relating to the remaining periods was not on record. The OL, however, informed the Department in August 2004 that in pursuance of the orders of BHC in September 2003, the plant and machineries in a factory at Sakinaka was sold for ₹ 92 lakh. Thus, it could be seen that though OL was

appointed in December 1998, the Department became aware of it only in March 2000, further, the assessments for the periods 1995-1996 and 1996-1997 which resulted in dues of ₹ 1.23 crore were not completed on priority basis, between April 1997 and March 1998, due to which intimation for recovery could not be sent in time to the OL. Further, though ₹ 92 lakh was available for recovery in September 2003, recovery could not be effected as no follow up action was taken by the Department for more than six years. This resulted in non-realisation of dues of ₹ 5.12 crore.

After we pointed out the case, the JCST (Inspection) stated that the claim was lodged with the OL in February 2010 and a reminder was issued in May 2011.

The fact remains that there were absence of concerted efforts at every stage of recovery resulting in non-realisation of dues and the Department's response only confirms this fact.

- During test check of the recovery files of another dealer of Andheri division in August 2010, we noticed that M/s. Neilcon Limited, manufacturer and reseller of leather goods, was in arrears of assessed tax of ₹ 4.81 crore, for the period 1994-1995 to 1998-1999. Out of this, the recoverable dues for the period 1995-1996 and 1996-1997 was ₹ 4.45 crore. As the dealer had closed his business and the claim for recovery was pending with the DRT, Mumbai, the Department lodged claim with the DRT for ₹ 35.49 lakh, for the periods 1994-1995, 1997-1998 and 1998-1999. In respect of the claim, the DRT, granted ₹ 34.05 lakh to the Sales Tax Department in March 2004. The claim of ₹ 4.45 crore for the periods 1995-1996 and 1996-1997 could not be lodged in time with the DRT, Mumbai as the assessments were completed only in September 2004 after a lapse of seven to eight years from the year of transaction. The claim of ₹ 4.45 crore was lodged with the OL only in December 2004. Even though six years had elapsed no follow up had been done by the Department. Inordinate delay in passing the assessment orders and lack of follow up action resulted in non-realisation of ₹ 4.45 crore.

After we pointed out the case (August 2010), the concerned AA visited the office of the OL and came to know that the case was disposed off and the sale proceeds were deposited in a bank.

- During test check of the recovery files of a dealer of Nariman Point division in August 2010, we noticed that M/s. I.A.E.C. India Limited was in arrears of assessed tax of ₹ 2.49 crore, for the period 1986-1987 to 1992-1993. The dealer had closed his business during 1993-1994, and had not paid the amount of sales tax dues of ₹ 2.49 crore. As the Company was in liquidation, the case came before the OL in November 2003 and as per the recovery file, the Department lodged claim with the OL in August 2004. Further, four reminders were issued between August 2004 and January 2007. However, information independently collected by us (June 2010) from the OL revealed that no claims were received by them from the ST Dept. This indicated that the Department had not pursued the matter with the OL for acceptance of the claim, leaving a possibility of the claims having been already settled in favour of other creditors by the OL. It also resulted in non-realisation of dues of ₹ 2.49 crore.

After we pointed out the case, the DCST (Inspection), Mumbai stated (January 2011) that the claim was lodged with the OL and communication is awaited from that end.

The reply is silent on non-receipt of the claim made by the Department to the OL as has been pointed out by audit.

- During test check of the recovery files of a dealer of Nariman Point division in August 2010, we noticed that M/s. Twin city was in arrears of assessed tax of ₹ 2.29 crore, for the period 1986-1987 to 1994-1995. As the dealer had closed his business and no amount was available for recovery, the case was forwarded to the OL in 2005. Information independently received by us from the OL revealed that, from the sale of assets of the company, the OL had realised ₹ 69.69 lakh, out of which ₹ 41.73 lakh was paid to the secured creditor; Bank of India, and an amount of ₹ 26.26 lakh was earmarked for payment to the ST Dept. Despite the order, the amount had neither been disbursed to the Department nor had the Department taken any action to realise the same till date (31 July 2011).

After we pointed out the case (August 2010), the Department referred to the OL in January 2011 enquiring about the disbursement of ₹ 26.26 lakh (January 2011). Further progress in the matter has not been received (July 2011).

The fact remains that the Department had not only failed to realise the earmarked amount of ₹ 26.26 lakh from the OL but also, no efforts were made to ascertain whether the balance amount of ₹ 2.03 crore could be recovered.

- During test check of the recovery file in Churchgate division in December 2009, it was noticed that, as per the assessment orders passed during various dates between May 1987 and March 1993, sales tax dues aggregating ₹ 25.73 lakh for the periods 1984-1985 to 1989-1990, were pending for recovery from M/s. Paper Coat and Print Private Ltd. as of December 2009. Detailed scrutiny of records revealed that the Industries Commissioner had declared the company as a sick unit in June 1984. After obtaining concurrence from the OL, the registration certificate issued to the dealer was cancelled by the Sales Tax Department and claim for recovery of the sales tax dues of ₹ 25.73 lakh was lodged with the OL in February 1994 only. However, the OL distributed ₹ 80.40 lakh received from the sale of assets of the Company amongst the two secured creditors namely SBI¹³ and MSFC¹⁴ as per the orders passed in August 1999 by the BHC. The court had specified in its order that SBI and MSFC were the only two secured creditors who had applied as respondents for claim. Thus the Department had failed to ensure through follow-ups that the claim is actually lodged with the OL for first charge on the property of the dealer. This resulted in non-recovery of dues of ₹ 25.73 lakh despite sale proceeds being available. Meanwhile, the ACST, B-113, Churchgate division had forwarded a proposal for write-off of ₹ 25.73 lakh to the DCST, Churchgate Division in July 2003, however, action to write off the amount is pending.

¹³ State Bank of India.

¹⁴ Maharashtra State Finance Corporation.

After we pointed out the case, the Department stated (July 2011) that, the OL had not brought the claim of the ST Dept. to the notice of the High Court due to which the claim of the Department was not considered while delivering the judgement.

However, the fact remains that the court had specified in its order that SBI and MSFC were the only two secured creditors who had applied as respondents for claim and the Department had not taken up the issue with the OL though 12 years have passed after the judgment was delivered.

- M/s. Bakemans Industries, Nagpur, engaged in the sale of biscuits was in arrears of sales tax dues of ₹ 96 lakh, for the period between 1996-97 and 2001-02 (upto December 2001). In April 1996, following the merger with M/s. Candico Ltd. the unit's base was shifted to Patiala in Punjab. The company was in liquidation since 2004. However, the Department issued RRC to the Collector, Patiala, Punjab in February 2010 for recovery of dues of ₹ 96 lakh. It was further seen that the Supreme Court (2008) in the case of M/s. Bakemans Industries Pvt. Ltd V/s New Cawnpore Flour Mills (Civil Appeal No. 3628 and 3629) had decided that an OL shall oversee the winding up proceedings of the company. The Department had not submitted its claim to the OL till date (July 2011).

In the exit conference the Department stated that the claim would be lodged with the OL.

Government may consider devising a system for periodic liaison with the OL with whom claims are lodged for recovery.

3.10 Non-recovery of arrears due to lack of follow up action in respect of cases pending with the BIFR

As per the Sick Industrial Companies (Special Provision) Act, 1985, where a reference for declaration as sick unit is filed and proceedings thereon are pending before BIFR, no suit for recovery or enforcement of any dues against the Company shall lie or be proceeded further, except with the consent of the Board. Where a Company has been declared 'sick' by the Board, the Department has to ensure inclusion of all the arrears in the 'statement of liabilities' of the Company furnished to the Board.

The arrears of ₹ 25.58 crore in respect of two cases which are pending before the BIFR are mentioned below:

- M/s Dunlop India Ltd., Nagpur, was assessed for dues of ₹ 2.36 crore, for the periods between 1988-89 and 1998-99, out of which, demands of ₹ 2.12 crore was raised between March 1999 and September 2003, for the period 1995-96 to 1998-99. The company had approached the BIFR in June 1998. The Department had wasted much time in issuing RRC to authorities outside the State between the period 2000 and 2004 and finally lodged claim of ₹ 2.36 crore with the BIFR in July 2004. In response to the Departmental letter dated 9 March 2004, the assessee stated on 25 March 2004, that only a claim of ₹ 18.09 lakh has been considered in the Draft Rehabilitation Scheme (DRS). No other correspondence was shown to audit by the Department.

In the exit conference the Department stated that instructions have been issued to press for considering total dues in DRS.

Therefore delay in taking action by the Department to lodge the claim with the BIFR has resulted in non-admitting of the balance arrears of revenue by the BIFR to the extent of ₹ 2.17 crore.

During test check of recovery files of selected divisions, we noticed that in respect of cases pending with the BIFR, there was no follow up action by the Department resulting in non-recovery of ₹ 23.41 crore as detailed in the following paragraphs:

- During test check of the recovery files of a dealer of Worli division in May 2010, we noticed that M/s Metal Box India Ltd., was in arrears of assessed dues of ₹ 23.41 crore, for the period 1985-1986 to 1996-1997. These assessment orders were passed between February 1989 and January 1999. We also noticed from the recovery file that the dealer's case was with the BIFR since 1988. Only one letter was available on record which was issued in November 2009 informing BIFR about the recoverable dues of ₹ 23.41 crore and also enquiring about the current status of the case. Though 10 years had elapsed since the last assessment order was passed, no further action had been taken by the Department to recover the dues.

After we pointed out, the JCST, Worli division only reiterated (January 2011) that a reminder was issued to the BIFR in November 2009.

Thus, though, dues of ₹ 23.41 crore were recoverable from the dealer, the matter was not pursued with the BIFR and the recovery of dues is now remote with passage of time.

Government may consider devising a system for periodic liaison with the officials of the BIFR with whom claims are lodged for recovery.

3.11 Incorrect reflection of arrears in respect of settled claim with BIFR

- During test check of recovery files of Worli Division in May 2010, we noticed that M/s. Raghuvanshi Mills was in arrears of assessed dues of ₹ 38 lakh, for the period 1989-90 to 1991-92. The dealer's case was shown as pending with BIFR since 1987. In this regard a letter was issued to BIFR in November 2009 (after 12 years), informing the BIFR about the recoverable dues and current status of the case. No further information was available in the file. The AA was asked about the current status of the case.

In reply to the preliminary audit query the JCST, Worli division only reiterated (January 2011) that a reminder had been issued to BIFR in November 2009. Subsequent visit to the unit by us in April 2011 revealed that the dealer's case was decided by BIFR in October 1993 itself and under a special relief and rehabilitation scheme the dues of ₹ 38 lakh was rescheduled to ₹ 14.50 lakh plus interest @ 13 per cent per annum, which was to be paid by the dealer in 20 quarterly installments. However, the amount of ₹ 38 lakh continued to be shown as outstanding in the departmental records. This resulted in incorrect reporting of arrears to the extent of ₹ 38 lakh.

In the exit conference the Department agreed with the facts stated above.

The Department needs to review and reconcile the position of arrears so that arrears are reported correctly.

3.12 Non-realisation of arrears of tax due to inaction by the Department

During test check of recovery files of M/s. Central India Polyesters in Nagpur division, engaged in the manufacture of polyester filament yarn, polyester texturised yarn, polyester chips etc., we noticed that sales tax dues aggregating ₹ 34.21 crore, for the periods 1993-94, 1994-95 and from 1998-99 to 2002-03 (assessed between 1997 to 2007) was pending recovery. The unit was granted eligibility certificate by the Joint Director of Industries (JDI), Nagpur, under the Package Scheme of Incentive for deferral of taxes from December 1989 to March 1992 and exemption of taxes from April 1992 to November 1998 with monetary ceiling of ₹ 147.40 crore.

As the eligibility period was over and the monetary ceiling was not fully exhausted, the dealer had applied for extension of ECs upto November 2002 to the Industries Department (ID). The ID issued an eligibility certificate for extension and required the Sales Tax Department to grant an entitlement certificate. The Sales Tax Department refused to issue the entitlement certificate as the cabinet sub-committee had rejected the proposal for grant of extension earlier. In this context the dealer filed appeal before the Tribunal. The Tribunal set aside the order of the Sales Tax Department and directed the CST to pass an order within two months from the date of its communication. No further information was available in the recovery file.

After we pointed out the case, the Commissioner's office stated (July 2011) that the JDI, Nagpur, had retrospectively cancelled the extension granted to the dealer in November 2008, hence it was not considered necessary to pass an order for grant of entitlement certificate.

The Department's reply is silent on the main issue of recovery of dues of ₹ 34.21 crore which was pending for almost four to 14 years from the date of passing the assessment orders.

3.13 Non-realisation of arrears of revenue due to failure to proceed against successor company

M/s. Coventry Springs and Engineering Co. Ltd., Nagpur, engaged in manufacture of steel coil springs and piston rod, was in arrears of sales tax dues of ₹ 3.96 crore, for the periods between 2000-01 and 2003-04. The said period was assessed in November 2008. After giving a public notice in "Lokmat Times" on 25 August 2007, the company was sold to M/s. Galvanotech Industries Private Limited, Kolkata on 24 October 2007 by Asset Reconstruction Co. (India) Ltd. (ARCIL) which was acting on behalf of SBI, a secured creditor of the assessee. As per the notings in the files of the recovery branch (August 2010) there was no moveable or immovable property available for taking action under MLR Code. In this regard we enquired as to why the provisions of section 19(4) of the BST Act, 1959 which reads "where a dealer, liable to pay tax under this Act, transfers or otherwise disposes off its business or effects any changes of ownership thereof, in consequence of which

he is succeeded in the business, the dealer and the person succeeding shall jointly and severally be liable to pay the tax due from the dealer under the Act” was not invoked.

In the exit conference the Department stated that possibility of recovery with the new owner would be explored.

Delayed assessment of the dealer by the Department and non-invoking of the provisions of section 19(4) of the BST Act, in time, had resulted in delay in recovery of dues of ₹ 3.96 crore.

3.14 Non-realisation of Government revenue due to belated action

During test check of the records of a unit of Worli Division in November 2009, it was noticed in respect of a dealer¹⁵, M/s. Mansingka Industries Pvt. Ltd. engaged in the manufacture of hydrogenated vegetable oils, soaps, oils and refined oils, that sales tax dues aggregating ₹ 2.36 crore were pending for recovery as per the assessment orders passed for the periods 1975-76 and 1982-83 to 1994-95. The company was declared a sick unit by BIFR and the factory was closed in February 1994. However, as per the notings made in the recovery file, in December 2003 the petition by the company for liquidation was dismissed and there was no stay for recovery of dues. Recovery proceedings under the MLR code for ₹ 2.36 crore was initiated through the AA¹⁶ at Jalgaon in April 2005 (as the dealer’s factory was situated there), who in turn referred the matter to the *Tahsildar*, Pachora, Jalgaon and followed it up with a reminder in March 2007. However, in September 2009 the AA informed the ACST, Recovery branch, Jalgaon that action has to be initiated from his end as recovery of dues was more than ₹ One lakh. Thus, it could be seen that though huge recovery for a long period (14 years) since 1982-83 was pending, recovery proceedings were initiated only after 22 years. No action was taken to ascertain the dealer’s activities during the intervening period. Further, as the Act had vested the powers for recovery with the Departmental authorities, referring the matter to the *Tahsildar* was not in order and in fact it further delayed the process of recovery by another 5 years. Finally, ₹ 2.36 crore remained unrecovered since 1994-95.

After we pointed out the case, JCST (Admn), Worli division stated (January 2011) that claim for recovery of dues has been lodged with BIFR, New Delhi in October 2010. However, the dealer had also applied to the Government of Maharashtra in June 2010 for one time settlement of the pending dues.

During exit conference the Department stated that the case was pending with the AAIFR and the next hearing was fixed on 4 July, 2011.

However, the current status of the case is yet to be ascertained by the Department and also the action taken by the Government on the one time settlement requested by the dealer.

¹⁵ Director of the company, Shri M.P. Mansingka, Office address: Maker Bhavan, 2nd floor, New Marine Lines, Mumbai: 400 020.

¹⁶ STO, D-1532, Jalgaon.

3.15 Inordinate delay in auctioning the property resulted in non-realisation of dues

- During test check of the recovery files of Worli division in May 2010, we noticed that M/s. Joychem Chemicals and Pharmaceuticals Ltd. was in arrears of sales tax dues aggregating ₹ 89 lakh, as per the assessment orders passed between October 1986 and February 1992, for the periods between 1979-80 and 1988-89. The RRC for recovery of dues was initiated in August 2003 after a lapse of 11 years from the last year of assessment. A residential flat belonging to one of the partners was also attached by the Department in November 2003 and was put to auction after more than two years in January 2006. However, the auction could not be held as the date of auction was declared as a holiday. Failure to take action resulted in non-recovery of dues of ₹ 89 lakh.

After we pointed out the case DCST (Admn), Worli division stated that the auction of the property was subsequently fixed on 7 February 2006 and the offset price was fixed at ₹ 18 lakh. Three parties attended but the amount offered by them was below the offset price. Hence auction could not be completed. As re-auction was to be held within one month the AA referred the matter to the JCST on 18 February 2006 for guidance who in turn referred the matter to the Addl. CST in March 2006. However, no guidance was received from the Addl. CST till July 2011.

In the exit conference the Department stated that the property would be put to auction within a month.

The facts of the case as well as the reply from the Department only reveal that recovery of arrears was not given priority and though the property was in their possession for almost eight years no amount could be realised.

3.16 Delay in auctioning of properties

During the test check of the records, we noticed that action was not being taken by the AAs for auctioning the properties of the defaulting dealers which were attached by the Department. In the absence of any specific provisions in the Act/Rules, it was necessary for the Department to issue circular instructions providing time lines for auctioning of the attached properties so that recovery of dues could be made in time. We found that the Commissioners directions to the AAs were completely missing in this regard.

CHAPTER-IV CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

Sales Tax is a major source of revenue for the State; and the Commissioner has been given all the powers of revenue authorities for recovery of the Sales Tax arrears and hence it is imperative that the Department should promptly and efficiently recover the demand created. We saw during the review on the Arrears of sales tax and the RRC cases in particular that there was large accumulation of arrears which had exceeded even the revenue collections thereby reflecting adversely on the Department's efforts for collection of the demand created. We saw that the Department did not adequately monitor the RRC cases, thereby defeating the very purpose for which the legislature had given adequate powers to the Department for recovery of the sales tax demand. No separate machinery was set up for pursuance of the RRC cases and the Departmental machinery was lackadaisical in its approach in absence of any targets being set for them for recovery in RRC cases. We saw RRCs were either not issued or delayed by several years by the AAs, RRCs were wrongly issued to other States when the dealers had attachable properties within the State. We saw that RRCs issued to other States were not pursued, properties of dealers were not attached or attached properties were not auctioned off in time to realise dues. We saw that legal action was not initiated against Directors of Companies for the Sales tax dues. Claims lodged with DRT, OL and BIFR were not pursued promptly and effectively when compared with the efforts of banks, financial institutions and the Income Tax Department. In absence of targets recovery was sluggish. These aspects reflect weakness in the system which necessitates the establishment of a strong and separate machinery for collection of arrears with effective monitoring at the Commissioner's level.

4.2 Summary of recommendations

The Government may consider:

- creating a mechanism for effective and regular pursuance of sales tax dues, prompt disposal of appealed cases and putting in place a separate recovery machinery for focusing on recovery of arrears under the repealed Acts, due to the introduction of the new VAT Regime;
- provide for declaration of assets of proprietors, partners and Directors at the time of registration and any subsequent additions thereto so that they could be attached in case of default;
- evolving a system for issuing RRCs in time, issuing RRCs outside the State selectively after exhausting all the remedies towards properties available in the State and regularly coordinating with their counterparts in other States to whom RRCs have been issued;
- devising a system for regular liaison with the OL, DRT and BIFR authorities so that claims lodged with them are not lost sight of;

- fixing responsibilities against officers who delayed assessments in default cases, delayed issue of RRCs and wrongly issued RRCs outside the State when properties of dealers were available within the State;
- reviewing and reconciling the position of dues so that arrears are reported correctly;
- examining the possibility of engaging outside agencies to locate the whereabouts of non-traceable assesseees and their assets as well as undisclosed assets. A proposal of this nature is under the consideration of Income Tax Department; and
- the Department may consider putting the names of the defaulting dealers in the public domain.

**Mumbai,
The 17 November 2011**



**(Mala Sinha)
Principal Accountant General (Audit)-I,
Maharashtra**

Countersigned

**New Delhi,
The 18 November 2011**



**(VINOD RAI)
Comptroller and Auditor General of India**

