

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

FOR THE YEAR ENDED 31 MARCH 2003

**(REVENUE RECEIPTS)
GOVERNMENT OF GUJARAT**

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PREFACE

This Report for the year ended 31 March 2003 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

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

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 2002-03 as well as those noticed in earlier years but could not be covered in previous years' Reports.

OVERVIEW

This Report contains 48 paragraphs including 3 reviews relating to non-levy/short levy of taxes, duties, interest and penalty involving Rs.677.60 crore. Some of the major findings are mentioned below:-

1. General

1.1 The total revenue receipts of the Government of Gujarat in 2002-03 were Rs. 17,875.34 crore as against Rs.15,986.06 crore during 2001-02. The revenue raised by the State from taxes during 2002-03 was Rs.9,520.66 crore and from non-tax receipts was Rs.3,995.58 crore. State's share of divisible Union taxes and grants-in-aid from Government of India were Rs.1,363.22 crore and Rs. 2,995.88 crore respectively. The main source of tax revenue during 2002-03 was Sales Tax (Rs.6,252.13 crore) and taxes and duties on Electricity (Rs.1,383.84 crore). The main receipts under non-tax revenue were from Interest (Rs.1,684.88 crore) and Non-ferrous Mining and Metallurgical Industries (Rs. 1,072.83 crore).

The aggregate of the amount received by the State Government on account of the State's share of Union Taxes and Grants-in-aid increased by 108 per cent from Rs. 2,090.94 crore in 2001-02 to Rs. 4,359.10 crore in 2002-03. The amounts received from the Government of India to the total revenue receipts of the State increased from 13 per cent in 2001-02 to 24 per cent in 2002-03. Tax receipts of the State decreased marginally (6 per cent) to Rs. 9,520.66 crore in 2002-03 compared to Rs. 10,134.18 crore in 2001-02.

(Para 1.1)

1.2 During the year 2002-03, 11,61,028 assessment cases were disposed of under various Acts, under the administrative control of Finance Department, which was 233 per cent of the new cases due for assessment.

(Para 1.8)

1.3 A test check of the records in the offices of Sales Tax, Land Revenue, Motor Vehicles Tax and other departmental offices conducted during 2002-03 revealed under assessment and loss of revenue of Rs. 731.01 crore in 1,200 cases. During the year, the concerned departments accepted under assessments etc. of Rs.2.14 crore in 536 cases and recovered Rs. 1.79 crore in 402 cases pointed out during 2002-03 and earlier years.

(Para 1.12)

2. Sales Tax

2.1 A review on Sales Tax - pendency of appeals at various levels and its impact on revenue collection revealed the following:

Tax arrears blocked in appeals with departmental Appellate Authorities increased from Rs.219.26 crore to Rs.995.61 crore between April 1997 and March 2002.

(Para 2.2.5)

Though cases granted stay on recovery were to be disposed of within two months, 121 cases involving tax dues of Rs.30.58 crore were decided with delays beyond two months and delay ranged between 2 months and 100 months.

(Para 2.2.12)

Fresh assessments in 54 cases of 19 dealers remanded by Appellate Authorities were not completed within the stipulated period of 3 years resulting in loss of revenue of Rs.10.74 crore due to becoming time barred.

(Para 2.2.14)

2.2 Under the Sales Tax Incentive Schemes, though the activity of refilling of liquified petroleum gas (LPG) is not considered a manufacturing process, exemption of tax of Rs.7.28 crore was allowed to 3 dealers engaged in refilling of LPG.

(Para 2.3.1)

2.3 Purchase tax of Rs.13.71 crore was not charged from 104 dealers even though they had not fulfilled the conditions prescribed under Gujarat Sales Tax Act.

(Para 2.4.1)

2.4 Mis-classification of goods resulted in non/short levy of tax of Rs.3.77 crore.

(Para 2.6)

2.5 There was non/short levy of turnover tax of Rs.1.19 crore in case of 25 dealers.

(Para 2.8)

3. Land Revenue

3.1 Non-eviction/non-regularisation of encroachment/breach of conditions of allotment resulted in loss of revenue of Rs.15.45 crore.

(Para 3.3.1 & 3.3.2)

3.2 There was non/short levy of conversion tax amounting to Rs.1.46 crore.

(Para 3.4)

4. Taxes on Vehicles

4.1 Composite tax of Rs.10.77 crore was not recovered from the operators of 587 omnibuses in 15 Regional Transport Offices.

(Para 4.2.1)

4.2 Incorrect issue of permit as taxi resulted in short levy of tax of Rs.3.52 crore

(Para 4.3)

4.3 Lumpsum tax of Rs.1.24 crore was not/short recovered from 1181 vehicles by 5 Regional Transport Offices.

(Para 4.4)

5. Stamp Duty and Registration Fees

5.1 Stamp Duty and Registration Fees of Rs.156.84 crore were short levied due to incorrect application of concessional rate.

(Para 5.2.1, 5.2.2 & 5.2.3)

5.2 Stamp duty and registration fees of Rs.49.04 crore were short levied due to misclassification of documents.

(Para 5.3)

5.3 Stamp duty and registration fees of Rs.4.24 crore were short levied on 79 documents comprising several distinct matters.

(Para 5.4)

6. Other Tax Receipts

Entertainments Tax

6.1 Incorrect grant of exemption to cinema owners resulted in non recovery of tax of Rs.1.01 crore

(Para 6.2)

6.2 Non recovery of entertainments tax due to delay in finalisation of offence cases amounted to Rs.1.47 crore.

(Para 6.6)

Luxury Tax

6.3 Luxury tax was short levied to the extent of Rs.1.41 crore due to non payment of tax on the tariff rates declared.

(Para 6.8)

7. Non-Tax Receipts

Water Rates.

7.1 A review on Levy and Collection of Water Rates revealed the following:

Fixed water rates of Rs.104.94 crore were not/short levied from 31 water users

(Para 7.2.7)

Interest and service charge of Rs.37.10 crore were either not levied or levied short from non-irrigation users who defaulted in payment of water rates.

(Para 7.2.8)

Water rates were levied short to the extent of Rs.41.77 crore due to incorrect billing.

(Para 7.2.11)

Mining Receipts

7.2 A review on collection of royalty and dead rent for mines and quarries revealed the following:

Application of incorrect rate resulted in short realisation of royalty on crude oil by Rs.5.37 crore including increased royalty.

(Para 7.3.7 & 7.3.8)

Incorrect adoption of price of natural gas supplied to various consumers for payment of royalty by ONGC resulted in short realisation of royalty by Rs.5.40 crore.

(Para 7.3.9)

Non enforcement of codal provisions and conditions of lease agreement resulted in non/short levy of royalty and interest of Rs.24.10 crore in 64 cases.

(Para 7.3.11)

CHAPTER I

GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Gujarat during the year 2002-03, the State's share of divisible Union Taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are given below:

(Rupees in crore)

		1998-99	1999-00	2000-01	2001-02	2002-03
I	Revenue raised by the State Government					
(a)	Tax Revenue	7,615.78	8,161.73	9,046.83	10,134.18	9,520.66
(b)	Non-tax revenue	2,766.49	2,990.37	3,349.14	3,760.94	3,995.58
	Total	10,382.27	11,152.10	12,395.97	13,895.12	13,516.24
II	Receipts from the Government of India					
(a)	State's share of divisible Union Taxes	1,641.60	1,665.04	1,573.75	600.68	1,363.22
(b)	Grants-in-aid	718.87	1,154.30	1,768.87	1,490.26	2,995.88
	Total	2,360.47	2,819.34	3,342.62	2,090.94	4,359.10
III	Total receipts of the State	12,742.74	13,971.44	15,738.59	15,986.06	17,875.34[#]
IV	Percentage of I to III	81	80	79	87	76

[#] For details, please see statement No.11 Detailed Accounts of Revenue by Minor Heads in the Finance Accounts of the Government of Gujarat 2002-03. Figures under the Heads "0020-Corporation tax, 0021-Taxes on Income Other than Corporation Tax, 0028-Other Taxes on Income and Expenditure, 0032-Taxes on Wealth, 0037-Customs, 0038-Union Excise Duties, 0044-Service Tax, 0045-Other Taxes and Duties on Commodities and Services", share of net proceeds assigned to States booked in the Finance Accounts under A-'Tax Revenue', have been excluded from revenue raised by the State and included in State's share of divisible union taxes in this statement.

The position of non-plan grants for the last five years is given below:

Year	Rupees in Crore
1998-99	210.58
1999-00	260.73
2000-01	824.03
2001-02	351.02
2002-03	2,123.49

Huge increase in non-plan grants during the years 2000-01 and 2002-03 was due to more grants-in-aid by Central Government towards calamity relief fund.

1.1.2 The details of tax revenue raised during the year 2002-03 along with the figures for the preceding four years are given below:

(Rupees in crore)

		1998-99	1999-00	2000-01	2001-02	2002-03	Percentage of increase (+) or decrease (-) in 2002-03 over 2001-02
1	(a) Sales Tax	4,045.97	4,177.66	4,891.08	4,841.69	5,095.00	(+)5
	(b) Central Sales Tax	749.87	956.81	1,051.66	1,015.71	1,157.13	(+)14
2	State Excise	27.25	32.02	40.37	47.31	47.11	-
3	Stamp Duty and Registration Fees	506.23	522.38	537.42	539.41	649.88	(+)20
4	Taxes and Duties on Electricity	1,447.17	1,401.63	1,521.00	1,656.52	1,383.84	(-)16
5	Taxes on Vehicles	460.21	601.71	627.28	676.63	808.11	(+)19
6	Taxes on Goods and Passengers	62.14	88.87	26.03	99.11	11.09	(-)89
7	Other Taxes on Income and Expenditure-Tax on Professions, Trades, Calling and Employment	75.33	83.05	104.80	93.31	95.64	(+)2

8	Other Taxes and Duties on Commodities and Services	169.63	180.96	165.66	1,077.54	177.67	(-)84
9	Land Revenue	71.98	116.64	81.53	86.95	95.19	(+)9
	Total	7,615.78	8,161.73	9,046.83	10,134.18	9,520.66	(-)6

The reasons attributed by the department for significant increase/decrease in receipts during 2002-03 over the receipts during 2001-02 are as under:

Central Sales Tax: The increase was mainly due to more receipts on inter-state sales.

Stamp duty and Registration Fees: The increase was mainly due to more receipts on sale of stamps and realisation of fees for registering documents.

Taxes and Duties on Electricity: The decrease was mainly due to abolition of tax on sale of electricity levied under the Gujarat Tax on Sale of Electricity Act, 1985 with effect from 1 April 2002.

Taxes on Vehicles: The increase was mainly due to more receipts under Motor Vehicles Tax Acts, Motor Vehicles Taxation Acts and other receipts.

Taxes on Goods and Passengers: The decrease was mainly due to non payment of tax by Gujarat State Road Transport Corporation (GSRTC), Ahmedabad Municipal Transport Service (AMTS) and other State Corporations under Bombay Motor Vehicles (Taxation of Passengers) Act, 1958.

1.1.3 The details of the major non-tax revenue raised during the year 2002-03 along with the figures for the preceding four years are given below:

(Rupees in crore)							
		1998-99	1999-00	2000-01	2001-02	2002-03	Percentage of increase (+) or decrease (-) in 2002-03 over 2001-02
1	Interest Receipts	1,592.69	1,764.54	1,929.82	1,594.30	1,684.88	(+)6
2	Dairy Development	0.52	0.51	0.47	0.35	0.20	(-)43
3	Other Non-Tax Receipts	165.83	198.38	334.15	453.52	358.16	(-)21
4	Forestry and Wild Life	16.03	22.07	18.48	28.34	32.49	(+)15

5	Non-ferrous Mining and Metallurgical Industries	470.23	530.78	616.65	734.58	1,072.83	(+)46
6	Miscellaneous General Services (including lottery receipts)	253.04	136.55	98.79	666.90	453.76	(-)32
7	Power	0.17	68.03	64.46	0.01	5.10	(+)50,900
8	Major and Medium Irrigation	132.09	110.68	136.58	132.09	267.23	(+)102
9	Medical and Public Health	38.65	41.33	49.14	47.26	39.02	(-)17
10	Co-operation	9.99	12.26	12.48	12.84	14.68	(+)14
11	Public Works	19.32	25.98	27.21	13.49	11.72	(-)13
12	Police	30.25	29.33	43.17	38.91	36.03	(-)7
13	Other Administrative Services	37.68	49.93	17.74	38.35	19.48	(-)49
	Total	2,766.49	2,990.37	3,349.14	3,760.94	3,995.58	(+)6

The reasons attributed by the Department for significant increase/decrease in receipts during 2002-03 over the receipts during 2001-02 are as under:

Dairy Development: The decrease was mainly due to less receipt of revolving Fund of World Food Programme 348 etc.

Non-ferrous Mining and Metallurgical Industries: The increase was mainly due to more receipts of mineral concession fees, rents and royalties.

Major and Medium Irrigation: The increase was mainly due to more receipts under Mahi Right Bank Canal and other receipts.

Power: The increase was mainly due to more collection of payment for services rendered.

Miscellaneous General Services: The decrease was mainly due to less receipts under "Other receipts".

1.2 Variations between Budget Estimates and Actuals

The variations between the Budget Estimates and Actuals of revenue receipts for the year 2002-03 in respect of the principal heads of tax and non-tax revenue are given below:

(Rupees in crore)

Head of Revenue		Budget Estimates	Actuals	Variations excess (+) or short fall(-)	Percentage of variation
	Tax Revenue				
1	Sales Tax	6,600.00	6,252.13	(-)347.87	(-)5
2	Taxes and Duties on Electricity	1,735.43	1,383.84	(-)351.59	(-)20
3	Stamp Duty and Registration Fees	550.00	649.88	(+)99.88	(+)18
4	Taxes on Vehicles	784.00	808.11	(+)24.11	(+)3
5	Taxes on Goods and Passengers	150.00	11.09	(-)138.91	(-)93
6	Land Revenue	130.00	95.19	(-)34.81	(-)27
7	State Excise	50.40	47.11	(-)3.29	(-)7
8	Other Taxes on Income and Expenditure	126.80	95.64	(-)31.16	(-)25
	Non tax Revenue				
9	Non-Ferrous Mining and Metallurgical Industries	1,117.26	1,072.83	(-)44.43	(-)4
10	Interest Receipts	1,750.00	1,684.88	(-)65.12	(-)4
11	Major & Medium Irrigation	285.60	267.23	(-)18.37	(-)6
12	Medical & Public Health	40.09	39.02	(-)1.07	(-)3
13	Forestry and Wild Life	24.79	32.49	(+)7.70	(+)31
14	Education, Sports, Arts & Culture	43.96	67.50	(+)23.54	(+)54
15	Police	65.86	36.03	(-)29.83	(-)45
16	Public Works	30.50	11.72	(-)18.78	(-)62
17	Miscellaneous General Services	610.00	453.76	(-)156.24	(-)26

The reasons attributed for the variation in receipts during 2002-03 against Budget Estimates are as under:

Taxes and Duties on Electricity: The decrease was mainly due to abolition of tax on sale of electricity levied under the Gujarat Tax on Sale of Electricity Act, 1985 with effect from 1 April 2002 and reduction in the rate of electricity duty applicable for commercial purpose and for unspecified category of consumers.

Stamp Duty and Registration Fees: The increase was due to more receipt on sale of non judicial stamps.

Taxes on Goods and Passengers: The decrease was mainly due to non payment of tax by Gujarat State Road Transport Corporation (GSRTC), Ahmedabad Municipal Transport Service (AMTS) and other State Corporations under Bombay Motor Vehicles (Taxation of Passengers) Act, 1958.

Land Revenue: The decrease was mainly due to less receipts from sale of Government Estates.

Other Taxes on Income and Expenditure: The decrease was mainly due to less receipt of taxes on professions, trades, calling and employment.

Forestry and Wild Life: The increase was due to more receipts on sale of timber and other forest produce.

Education, Sports, Arts and Culture: The increase was mainly due to more receipts under general education.

Police: The decrease was mainly due to less receipts under Police supplied to other Governments.

Public Works: The decrease was mainly due to less receipt under recovery of percentage charges.

Miscellaneous General Services: The decrease was mainly due to less receipts under other receipts.

1.3 Time Series Analysis of GSDP and Receipts

Year	GSDP (Rs. in crore)	Percent -age growth	Total Receipts (Rs. in crore)			Percent -age growth	Percentage Buoyancy in receipts	Receipts as percent -age of GSDP
			Tax receipts	Non-tax receipts	Total			
1998-99	1,05,305	15.48	7,615.78	2,766.49	10,382.27	17.82	1.151	9.86
1999-00	1,07,618	2.20	8,161.73	2,990.37	11,152.10	7.41	3.368	10.36
2000-01	1,10,449	2.63	9046.83	3,349.14	12,395.97	11.15	4.240	11.22

2001-02	1,24,905	13.09	9,246.57	3,760.94	13,007.51	4.93	0.377	10.41
2002-03	1,33,334 [#]	6.75	9,520.66	3,995.58	13,516.24	3.91	0.579	10.14

[#] Figures of GSDP for 2002-03 have been worked out based on average growth during 1997-98 to 2001-02.

The rate of growth of GSDP and total receipts (tax receipts plus non-tax receipts) fluctuated over the years. While the GSDP growth was between 15.48 *per cent* and 6.75 *per cent* during 1998-03, it remained quite low in 1999-00 (2.20 *per cent*) and 2000-01 (2.63 *per cent*) as against projected growth rate of 14 *per cent* by the Eleventh Finance Commission. However, receipts as percentage of GSDP showed a steady trend and remained between 9.86 *per cent* and 11.22 *per cent*. Despite growth of 13.09 *per cent* and 6.75 *per cent* in GSDP during 2001-02 and 2002-03, buoyancy of own tax receipts was very much low at 0.377 and 0.579 during these two years respectively as against buoyancy of 1.35 projected by the Eleventh Finance Commission.

1.4 Analysis of Collection

Break-up of total collection at pre-assessment stage and after regular assessment of Sales Tax, Motor Spirit Tax, Profession Tax, Entry Tax and Luxury Tax for the year 2002-03 and the corresponding figures for the preceding two years as furnished by the department is as follows:

(Rupees in crore)

Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Penalties for delay in payment of taxes and duties	Amount refunded	Net collection	Percentage of column 3 to 7
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Sales Tax	2000-01	4,357.34	492.83	-	34.93	4815.24	90
	2001-02	3,886.01	852.18	-	47.00	4691.19	83
	2002-03	4,043.43	1,182.93	-	63.65	5162.71	78
Motor Spirit Tax	2000-01	1,127.50	-	-	-	1,127.50	100
	2001-02	1,102.49	-	-	-	1,102.49	100
	2002-03	1,087.35	-	-	-	1,087.35	100
Profession Tax	2000-01	104.80	-	-	-	104.80	100
	2001-02	89.48	-	-	-	89.48	100
	2002-03	93.55	-	-	-	93.55	100
Entry Tax	2000-01	-	-	-	-	-	-
	2001-02	63.72	-	-	-	63.72	100
	2002-03	2.07	-	-	-	2.07	100
Luxury Tax	2000-01	13.81	-	-	-	13.81	100
	2001-02	14.66	-	-	-	14.66	100
	2002-03	29.92	-	-	-	29.92	100

The table above shows that percentage of collection of revenue at pre-assessment stage ranged between 78 and 90 *per cent* under sales tax during the year 2000-01 to 2002-03. There has been a continuous decrease over last 3 years in the percentage of collection at pre-assessment stage.

1.5 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2000-01, 2001-02 and 2002-03 along with the relevant all India average percentage of expenditure on collection to gross collection for 2001-02 was as follows:-

(Rupees in crore)					
Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India Average percentage for the year 2001-02
1 Sales Tax	2000-01	5,942.74	69.74	1.17	1.26
	2001-02	5,857.40	58.84	1.00	
	2002-03	6,252.13	64.14	1.03	
2 Taxes on Vehicles and Taxes on Goods and Passengers	2000-01	653.31	41.19	6.30	2.99
	2001-02	775.74	20.76	2.64	
	2002-03	819.20	25.30	3.09	
3 Stamp Duty and Registration Fees	2000-01	537.42	19.19	3.57	3.51
	2001-02	539.41	16.65	3.09	
	2002-03	649.88	18.36	2.83	
4 State Excise	2000-01	40.37	4.26	10.55	3.21
	2001-02	47.31	18.34	38.77	
	2002-03	47.11	21.40	45.42	

1.6 Collection of sales tax per assessee

(Rupees in crore)			
Year	No. of Assesseees	Sales Tax Revenue	Revenue/Assessee
1998-99	4,03,663	4,795.84	0.0119
1999-00	4,01,624	5,134.47	0.0127
2000-01	3,88,362	5,942.74	0.0153
2001-02	3,77,977	5,857.40	0.0155
2002-03	2,99,881	6,252.12	0.0208

The decline in the number of sales tax assessee was attributed to increase in turnover limit for new registration, deletion of Section 30, cancellation of dealer's registration certificate for non-payment of tax for three or more consecutive assessment periods and preparation for introduction of value added tax.

1.7 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2003 in respect of some principal heads of revenue amounted to Rs.6,574.61 crore of which Rs.6,084.50 crore was outstanding for more than 5 years as detailed in the following table:

(Rupees in crore)				
Sr. No.	Head of Revenue	Amount outstanding as on 31 March 2003	Amount outstanding for more than 5 years as on 31 March 2003	Remarks
1	Sales Tax	6,550.27	6,067.88	(i) Recovery stayed by Gujarat High Court, other judicial authorities and Government. (ii) Recovery has been held up due to dealers being insolvent.
2	Electricity Duty	13.92	13.92	The arrears of Rs.13.92 crore to be recovered from Baroda Municipal Corporation have not been finalised.
3	Entertainment Tax	10.39	2.67	No specific reasons were given by the department.
4	State Excise	0.03	0.03	Stay order has been granted by Honourable High Court.
	Total	6,574.61	6,084.50	

1.8 Arrears in assessments

The details of cases pending assessment at the beginning of the year 2002-03, cases becoming due for assessment during the year, cases disposed of during the year and number of cases pending finalisation at the end of the year 2002-03 as furnished by the Sales Tax Department in respect of Sales Tax, Profession Tax, Purchase Tax on sugarcane, Entry Tax, Lease Tax, Luxury Tax and Tax on Works Contracts are as follows:

Name of tax	Opening balance as on 1 April 2002	New cases due for assessment during 2002-03	Total assessments due during 2002-03	Cases disposed of during 2002-03	Balance at the end of the year 31 March 2003	Percentage of column 5 to 3
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales Tax	13,17,590	4,37,999	17,55,589	10,87,590	6,67,999	248.30
Motor Spirit Tax	1,657	877	2,534	117	2,417	13.34
Profession Tax	7,19,391	58,135	7,77,526	73,083	7,04,443	125.71
Purchase Tax on Sugarcane	59	11	70	24	46	218.18
Entry Tax	15	13	28	3	25	23.08
Lease Tax	5	3	8	4	4	133.33
Luxury Tax	21	24	45	5	40	20.83
Tax on works contracts	286	179	465	202	263	112.85
Total	20,39,024	4,97,241	25,36,265	11,61,028	13,75,237	233.49

The cases disposed of during the year 2002-03 ranged between 13 to 248 per cent of the new cases due for the assessment during the year 2002-03.

1.9 Evasion of tax

The detail of evasion of tax detected by the Sales Tax Department, cases finalised and the demands for additional tax raised as reported by the department is given below:

Sr. No	Name of tax/duty	Cases pending as on 31 March 2002	Cases detected during 2002-03	Total	No. of cases in which assessments/investigations completed and additional demand including penalty etc., raised		No. of cases pending finalisation as on 31 March 2003
					No. of cases	Amount of demand (Rupees in crore)	
1	Sales Tax	715	299	1,014	428	82.78	586

1.10 Write-off and waiver of revenue

During the year 2002-03, no demands relating to Sales Tax and State Excise were written off by the departments as irrecoverable.

1.11 Refunds

The number of refund cases pending at the beginning of the year 2002-03, claims received during the year, refunds allowed during the year and cases pending at the close of the year 2002-03, as reported by the departments are given below:

		(Rupees in crore)					
		Sales Tax		Taxes and Duties on Electricity		State Excise	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
1	Claims outstanding at the beginning of the year	744	3.58	6	0.03	1	0.09
2	Claims received during the year	5,334	82.92	6	13.78	-	-
3	Refunds made during the year	4,088	63.66	-	-	-	-
4	Balance outstanding at the end of the year	1,990	22.84	12	13.81	1	0.09

1.12 Results of audit

Test check of records of Sales Tax, Land Revenue, State Excise, Motor Vehicles Tax, Stamp Duty and Registration Fees, Electricity Duty, Other Tax Receipts, Forest Receipts and Other Non-tax Receipts conducted during the

year 2002-03 revealed under-assessment/short levy/loss of revenue amounting to Rs.731.01crore in 1,200 cases. During the course of the year, the departments accepted under-assessment of Rs.2.14 crore in 536 cases pointed out in 2002-03 and earlier years and recovered Rs.1.79 crore (402 cases). No replies have been received in respect of the remaining cases.

This Report contains 48 paragraphs including 3 reviews relating to non-levy/short levy of taxes, duties, interest and penalties etc., involving Rs.677.60 crore. The Departments/Government have accepted audit observations involving Rs.141.24 crore of which Rs.3.66 crore had been recovered upto August 2003. No reply has been received in other cases.

1.13 Failure of senior officials to enforce accountability and protect interest of Government

Principal Accountant General (Audit)-I, Gujarat, arranges to conduct periodical inspection of the Government Departments concerned with tax revenue of the State to test check the transactions and verify the maintenance of important accounting and other records as per prescribed rules and procedures. These inspections are followed up with Inspection Reports (IRs). When important irregularities etc., detected during inspection are not settled on the spot, these inspection reports are issued to the heads of offices inspected with a copy to the next higher authority. The heads of offices and respective next higher authorities are required to ensure compliance with the observations contained in the inspection reports and rectify the defects and omissions promptly and report their compliance to the Principal Accountant General. Serious irregularities through draft paragraphs are also brought to the notice of the Heads of the Departments by the office of the Principal Accountant General (Audit)-I. A half yearly report of the pending inspection reports and audit observations is sent to the Secretary of the department to facilitate monitoring of the audit observations in the pending IRs.

The number of Inspection Reports and audit observations relating to revenue receipts issued upto 31 December 2002 and pending settlement by the Departments as on 30 June 2003 along with corresponding figures for the preceding two years is given below:

Particulars	As at the end of		
	June 2001	June 2002	June 2003
Number of outstanding Inspection Reports	3,667	3,934	3,624
Number of outstanding audit observations	9,191	9,849	9,307
Amount of revenue involved (Rupees in crore)	1,182.57	1,721.18	1,969.23

Inspection Reports issued upto December 2002 pertaining to the offices of Sales Tax, Profession Tax, Forest, Land Revenue, Motor Vehicles Tax, Stamp Duty and Registration Fees, Entertainment Tax and Luxury Tax disclosed that 9,307 paragraphs relating to 3,624 Inspection Reports remained outstanding at the end of June 2003. Of these, 972 Inspection Reports containing 2,869 paragraphs had not been settled for more than 7 years. Even the initial replies which were required to be received from the Heads of offices within one month from the date of issue were not received in respect of 234 IRs issued during the year 2002-03. As a result, serious irregularities commented upon in these Inspection Reports had not been settled as of June 2003.

Department-wise break up of Inspections Reports and audit observations pending as on 30 June 2003 was as follows.

(Rupees in crore)

Sr. No	Department	Inspection Reports	Paras	Amount involved	Years to which observation relate	No. of IRs to which first replies have not been received
1	Sales Tax	1,052	3,983	358.03	1989-90 to 2002-03	49
2	Stamp Duty and Registration Fees	876	2,205	600.82	1988-89 to 2002-03	91
3	Land Revenue	669	1,018	94.75	1988-89 to 2002-03	51
4	Motor Vehicles Tax	221	781	202.77	1990-91 to 2002-03	1
5	Entertainments Tax	520	733	152.01	1989-90 to 2002-03	17
6	Geology and Mining	111	313	289.59	1995-96 to 2002-03	6
7	Forest	70	95	7.97	1993-94 to 2002-03	5
8	Luxury Tax	42	81	6.35	1995-96 to 2002-03	3
9	Electricity Duty	32	52	256.64	1989-90 to 2002-03	1
10	Profession Tax	27	40	0.23	1985-86 to 2002-03	10
11	Prohibition and Excise	4	6	0.07	1997-98 to 2002-03	-
	Total	3,624	9,307	1,969.23		234

1.14 Departmental Audit Committee Meetings

In order to expedite the settlement of outstanding audit observations contained in the Inspection Reports, Departmental Audit Committees are constituted in all the departments of Government. These committees are chaired by Secretaries of the concerned Administrative Departments and attended among others by the concerned officers of the State Government and officers of the Principal Accountant General (Audit)-I, Ahmedabad/ Accountant General (Audit)-II, Rajkot.

In order to expedite the clearance of the outstanding audit observations, it is necessary that the Audit Committees meet regularly and ensure that final action is taken on all audit observations outstanding for more than a year, leading to their settlement. The information regarding number of audit committee meetings held, Inspection Reports and paras settled during the year 2002-03 is as follows:

(Rupees in lakh)

Sr. No.	Name of the Department	No. of Audit Committee meetings held	No. of IRs/Paras settled		Money Value of paras settled
			IRs	Paras	
1	Sales Tax	3	4	125	29.10
2	Forest Receipts	1	13	32	80.96
3	Land Revenue	1	11	24	11.04
4	Stamp Duty and Registration Fees	1	4	34	2.83
5	Luxury Tax	1	4	12	6.27

No meetings were convened by the departments of Motor Vehicles Tax, Entertainments Tax, Geology and Mining. This indicates that the above departments have not taken initiative in using the machinery created for settling the outstanding audit observations.

1.15 Response of the Departments to Draft Audit Paragraphs

According to the Hand Book of Instructions for speedy settlement of Draft Paragraphs issued by the Finance Department on 12 March 1992, results of verification of facts contained in the draft paragraphs are required to be communicated to the Accountant General within six weeks from the date of their receipt. In exceptional cases where it is not possible to furnish final reply to the draft paragraph within the above time limit, an interim reply should be given to the Accountant General.

Sixty two draft paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2003 (Revenue Receipts) were forwarded to the Secretaries of the respective Departments between February and April 2003 through demi-official letters. The Secretaries of the respective Departments did not send replies to 55 draft paragraphs as indicated below. These paragraphs have been included in this Report without incorporating the response of the Secretaries of the Departments.

Name of the Department	No. of draft paragraphs to which replies from Secretaries not received.
Finance (Sales tax)	25
Revenue (Land Revenue & Stamp duty)	20
Home (Transport)	8
Information, Broadcasting & Tourism (Luxury Tax & Entertainments Tax)	2
Total	55

1.16 Follow up on Audit Reports-summarised position

As per instructions issued by the Finance Department on 12 March 1992, Administrative Departments are required to submit explanatory notes on paragraphs and reviews included in the Audit Reports within three months of presentation of the Audit Reports to the legislature, without waiting for any notice or call from the Public Accounts Committee, duly indicating the action taken or proposed to be taken.

It was, however, noticed that though the Audit Reports for the years 1999-00, 2000-01 and 2001-02 were presented to the State Legislature on 31 August 2001, 3 April 2002 and 28 March 2003 respectively, certain Departments as detailed below, had not submitted explanatory notes for the number of paragraphs shown as of August 2003.

Name of the department	1999-00	2000-01	2001-02	Total
Finance (Sales Tax)	15	16	16	47
Revenue Stamp Duty	7	8	7	22
Land Revenue	5	5	6	16
Home (Transport)	-	6	6	12
Information, Broadcasting and Tourism (Entertainments Tax & Luxury Tax)	4	4	6	14
Industries and Mines (Electricity Duty & Mining Receipts)	4	7	2	13
Total	35	46	43	124

CHAPTER – II

SALES TAX

2.1 Results of Audit

Test check of assessment records in various Sales Tax Offices conducted in audit during the year 2002-03 revealed under assessment of Rs.101.54 crore in 490 cases, which broadly falls under the following categories:

(Rupees in crore)			
Sr. No	Category	No. of cases	Amount
1	Incorrect rate of tax and mistake in computation	46	3.59
2	Incorrect grant of set-off	48	1.75
3	Incorrect concession/ exemption	28	10.12
4	Non/short levy of interest and Penalty	189	5.98
5	Other Irregularities	178	19.49
6	Review on "Pendency of appeals at various levels and its impact on revenue collection"	1	60.61
	Total	490	101.54

During the year 2002-03, the department accepted under assessment of Rs. 89.57 lakh in 232 cases and recovered Rs.70.71 lakh in 110 cases, of which 25 cases involving Rs. 9.51 lakh were pointed out during the year 2002-03 and rest in earlier years. A few illustrative cases and results of review on "Pendency of appeals at various levels and its impact on revenue collection" involving Rs.114.64 crore, are discussed in the following paragraphs.

2.2 Sales Tax pendency of appeals at various levels and its impact on revenue collection

Highlights

Tax arrears blocked in appeals with departmental Appellate Authorities increased from Rs.219.26 crore to Rs.995.61 crore between April 1997 and March 2002.

[Para 2.2.5]

None of the five Assistant Commissioners whose records were test checked was able to achieve the target fixed for disposal of appeal cases. *Percentage* of short fall varied between 8 and 85 during 1997-98 to 2001-02.

[Para 2.2.7]

Though cases granted stay on recovery were to be disposed off within two months, 121 cases involving tax dues of Rs.30.58 crore were decided with delays between 2 months and 100 months.

[Para 2.2.12]

Contrary to Commissioner's instructions to not remand cases to the Assessing Authorities, 221 cases were remanded by 5 Assistant Commissioners between February 2000 and March 2002.

[Para 2.2.13]

Fresh assessments in 54 assessments of 19 dealers remanded by Appellate Authorities were not completed within the stipulated period of 3 years resulting in loss of revenue of Rs.10.74 crore due to being time barred.

[Para 2.2.14]

Forty assessment orders pertaining to 14 dealers where tax assessed amounted to Rs.2.19 crore were set aside in appeals as the orders were barred by limitation which resulted in loss of revenue.

[Para 2.2.15]

Introduction

2.2.1 The Gujarat Sales Tax Act, 1969 (Act) and the Rules made thereunder govern the law relating to levy and collection of tax on purchase and sale of goods. Under Section 65 of the Act, an appeal against any original order

passed can be entertained by the following authorities if made within 60 days from the date of communication of the order of assessment appealed against:

- Assistant Commissioner of Sales Tax (Appeals) if the order is passed by the Sales Tax Officer;
- Deputy Commissioner of Sales Tax (Appeals) if the order is passed by the Assistant Commissioner of Sales Tax;

In the case of an order passed in appeal by the Assistant Commissioner or by Deputy Commissioner, a second appeal can be made to the Gujarat Sales Tax Tribunal.

The appellant is required to deposit the tax demanded in assessment or a lower sum as decided by the Appellate Authority. However, the Commissioner of Sales Tax directed (December 1995) that departmental Appellate Authorities should entertain appeal applications only if 20 *per cent* of the tax demanded in the assessment had been deposited.

The Act provides that where a case is remanded, fresh assessment shall be made within three years from the date of order of remand.

Organisational set up

2.2.2 The Sales Tax Department functions under the control and supervision of the Commissioner of Sales Tax (Commissioner) who is assisted by Additional Commissioners, Deputy Commissioners, Assistant Commissioners and Sales Tax Officers, eight Assistant Commissioners and eight Deputy Commissioners are entrusted with appellate functions. While Assistant Commissioners exclusively perform appellate functions, Deputy Commissioners perform administrative functions in addition to functioning as Appellate Authorities.

Audit Objectives

2.2.3 Detailed analysis of pendency of appeal cases at various levels and follow-up thereof after decision by these authorities for the period 1997-98 to 2001-02 was conducted in audit to -

- review the impact on revenue collection;
- ascertain compliance with prescribed norms and procedures;
- review the efficacy of internal controls.

Scope of audit

2.2.4 A test check of records was conducted in the office of the Commissioner of Sales Tax and 9 out of 16 departmental Appellate Authorities between July 2002 and November 2002. The findings are contained in the succeeding paragraphs:-

Increase in revenue blocked in appeals

2.2.5 Arrears of revenue under sales tax pending in appeals with the departmental Appellate Authorities at the end of the year from 1997-98 to 2001-02 are given in the table below :

(Rupees in crore)						
Year	Opening balance	Additions during the year	Total	Clearance during the year.	Closing balance	Percentage of Col. (5) to (4)
1	2	3	4	5	6	7
1997-98	219.26	192.97	412.23	226.73	185.50	55
1998-99	185.50	274.53	460.93	214.65	245.38	47
1999-00	245.38	256.63	502.01	137.99	364.02	27
2000-01	364.02	1597.04	1961.06	1570.70	390.36	80
2001-02	390.36	1195.03	1585.39	589.78	995.61	37

As on 31 April 1997, tax dues of Rs. 219.26 crore were blocked in appeal with the departmental Appellate Authorities which increased to Rs.995.61 crore as on 31 March 2002. A substantial increase was noticed during 2001-02. As similar information in respect of cases pending with the Tribunal and Courts called for from the department was not received, the over all percentage of revenue involved in appeals vis-a-vis total outstanding revenue could not be analysed.

Disposal of appeal cases

2.2.6 In the case of assessment orders passed by the Sales Tax Officer, the first appeal lies with the Assistant Commissioner (Appeal). The disposal of appeal cases by Assistant Commissioners (Appeal) ranged between 37 and 54 per cent of total pending appeals during the period from 1997-98 to 2001-02 as shown in the following table:

Disposal by Assistant Commissioners (Appeal)

(Rupees in crore)

Year	Outstanding as on 1 April No. of cases/ Amount	Additions during the year No. of cases/ Amount	Total No. of cases/ Amount	Clearance during the year No. of cases/ Amount	Closing balance as on 31 March No. of cases/ Amount	Percentage of Col. (5) to (4)
1	2	3	4	5	6	7
1997-98	<u>11122</u> 219.26	<u>3769</u> 192.97	<u>14891</u> 412.23	<u>8,060</u> 226.73	<u>6,831</u> 185.50	<u>54</u> 55
1998-99	<u>6,831</u> 185.50	<u>9,250</u> 268.78	<u>16,081</u> 454.28	<u>7,623</u> 212.42	<u>8,458</u> 241.86	<u>47</u> 47
1999-00	<u>8,458</u> 241.86	<u>5,460</u> 211.26	<u>13,918</u> 453.12	<u>5,940</u> 130.76	<u>7,978</u> 322.36	<u>43</u> 29
2000-01	<u>7,978</u> 322.36	<u>4,296</u> 502.22	<u>12,274</u> 824.58	<u>4,511</u> 525.78	<u>7,763</u> 298.80	<u>37</u> 64
2001-02	<u>7,763</u> 298.80	<u>4,729</u> 446.83	<u>12,492</u> 745.63	<u>4,592</u> 363.11	<u>7,900</u> 382.52	<u>37</u> 49

According to the norms fixed, each Assistant Commissioner (Appeal) has to dispose of 100 cases in a month. The norm was revised to 120 cases per month from May 2000. Thus as per the norms, 8 Assistant Commissioners should have disposed of 9,600 cases per year upto 1999-2000 and 11,520 cases per year from 2000-01 onward. As against this, the actual disposal ranged between 4,511 and 8,060 cases during 1997-98 to 2001-02 which was far below the norms resulting in accumulation of cases.

Achievement against norms

2.2.7 Test check of records of 5 Assistant Commissioners (Appeal) revealed that none had achieved the target in accordance with norms except Assistant Commissioner, Vadodara during 1997-98 and Assistant Commissioner –II, Ahmedabad in 1998-99 as shown in the following table :

Name of Authority	1997-98		1998-99		1999-00		2000-01		2001-02	
	Total cases #	Cases cleared	Total cases	Cases cleared	Total cases	Cases cleared	Total cases	Cases cleared	Total cases	Cases cleared
Target as per norms	1,200		1,200		1,200		1,420		1,440	
AC I, Ahmedabad	1,273	1,051	2,516	1,054	2,104	1,115	1,829	655	1,827	933
AC II, Ahmedabad	3,035	911	3,213	1,655	1,764	978	1,110	733	508	212
AC V, Vadodara	3,256	1,956	2,271	917	2,352	694	2,387	900	2,334	824
AC VI, Surat	3,684	962	2,537	590	2,196	623	1,882	545	2,094	509
AC VIII, Rajkot	2,398	825	3,037	1,029	2,051	803	1,979	523	2,254	587

Total cases include opening balance and cases received during the year.

No specific reasons were advanced for non-achievement of targets. As pendency of appeals would result not only in denial of timely legal remedy but also delay in timely realisation of revenue, remedial measures would be required to be taken.

Disposal by Deputy Commissioners (Appeal)

2.2.8 In the case of assessment orders passed by the Assistant Commissioner of Sales Tax, the appeal lies with Deputy Commissioner (Appeal). The disposal of appeal cases by Deputy Commissioners (Appeal) ranged between 23 and 60 *per cent* of the total pending appeals during 1998-99 to 2001-02 as shown in the following table :

(Rupees in crore)						
Year	Outstanding as on 1 April No. of cases/ Amount	Additions No. of cases/ Amount	Total No. of cases/ Amount	Clearance No. of cases/ Amount	Closing balance No. of cases/ Amount	Percentage of Col. (5) to (4)
1	2	3	4	5	6	7
1998-99	9 -	213 5.65	222 5.65	51 2.23	171 3.42	23 39
1999-00	171 3.42	487 45.36	658 48.78	256 7.23	402 41.55	39 15
2000-01	402 41.55	850 1094.82	1252 1136.37	455 1044.92	797 91.45	36 92
2001-02	797 91.45	879 748.20	1676 839.65	1008 226.67	668 612.98	60 27

Since Deputy Commissioners (Appeals) were also to perform administrative duties, no target was set for them for clearance of appeals. Against the average annual receipt of 607 cases during 1998-99 to 2001-02, the average disposal during the period was 443 cases resulting in accumulation of appeals.

2.2.9 Test check of records of four Deputy Commissioners (Appeals) revealed the disposal of appeal cases between 1998-99 to 2000-01 to be as under:

Name of Authority	No. of cases disposed of during							
	1998-99		1999-00		2000-01		2001-02	
	Total cases	Cases cleared	Total cases	Cases cleared	Total cases	Cases cleared	Total cases	Cases cleared
DC, Vadodara	30	8	133	20	298	77	412	152
DC-5, Surat	38	12	71	30	94	36	99	30
DC-6, Surat	52	11	105	63	178	65	239	131
DC, Rajkot	20	9	90	15	167	32	204	58

The number of cases cleared in a year varied from 8 to 152 pointing to a need to prescribe norms for clearance.

Tribunal

2.2.10 There were 5,302 cases pending disposal at the end of 31 March 2002 with the Gujarat Sales Tax Tribunal. The year wise breakup was as under:

Year of filing appeal	No. of cases
Upto 1997-98	2,670
1998-99	840
1999-00	481
2000-01	500
2001-02	811
Total	5,302

The oldest case pending disposal was filed in the year 1985-86. The amount involved in the cases pending before the Tribunal was not furnished by the department.

Position of appeal cases in Civil Courts, High Court/Supreme Court

2.2.11 There were 375 cases pending as on 31 March 2002, with various courts as under :

Period	No. of cases received including opening balance			No. of cases disposed of			No. of cases pending		
	Civil Court	High Court	Supreme Court	Civil Court	High Court	Supreme Court	Civil Court	High Court	Supreme Court
1997-98	280	148	13	-	-	-	280	148	13
1998-99	291	151	13	-	-	-	291	151	13
1999-00	296	160	14	31	41	8	265	119	6
2000-01	265	131	6	1	22	-	264	109	6
2001-02	268	133	6	22	10	-	246	123	6

Total amount involved in cases pending before the Courts was not furnished by the department.

Delay in finalisation of stay cases

2.2.12 The Appellate Authority under the Act, may direct the dealer to pay such amount of tax as it thinks fit before the disposal of appeal to safeguard government revenue. The Commissioner directed (June 1997) that cases where stay on recovery had been granted, appeal should be disposed of within two months.

Test check of records of 2* Assistant Commissioners and 3# Deputy Commissioners revealed that in 267 cases where stay on recovery was granted during January 1991 to January 2002, 121 cases involving tax dues of

* Rajkot and Surat.

Rajkot Surat and Vadodara.

Rs. 30.58 crore were decided with delays beyond the prescribed period ranging between 2 to 100 months as shown below:

(Rupees in crore)		
Period of delay	No. of cases	Amount
2 to 12 months	57	24.42
13 to 24 months	49	3.50
25 to 60 months	11	2.54
More than 60 months	4	0.12
Total	121	30.58

This delay, in contravention of the Commissioner's directions, had adversely affected the collection of revenue.

Irregular disposal of appeals by remand

2.2.13 According to instructions issued (February 2000) by the Commissioner, departmental Appellate Authorities were to decide the cases on merits and not remand cases to the Assessing Authorities.

In violation of the above instructions, 5[&] Assistant Commissioners and Deputy Commissioner, Vadodara remanded 221 cases to the Assessing Authorities during February 2000 to March 2002.

Loss of revenue due to time-barred assessments

2.2.14 According to procedures prescribed (July 1997) by the Commissioner, the assessing officers were to maintain a register indicating *inter-alia* the date of remand and the date of fresh assessment in respect of cases remanded by Appellate Authorities. Though such registers were maintained, inadequate monitoring of entries resulted in non-completion of fresh assessments within the time limit prescribed as detailed below:

- Test check of records of 8 assessing units revealed that 54 assessments of 19 dealers involving tax amounting to Rs.10.74 crore which were remanded by the Assistant Commissioner (Appeals) between August 1997 and September 1999, were not assessed afresh within three years resulting in these cases becoming time barred.
- In 60 assessments of 20 dealers involving tax effect of Rs. 16.42 crore where cases were remanded between August 1995 and July 1999, neither the records of fresh assessments were made available by the Assessing Authorities nor the Deputy Commissioner of Sales Tax confirm that fresh assessments had been made. As such the possibility of these cases becoming time barred could not be ruled out.

[&] 2 of Ahmedabad, 1 each of Rajkot, Surat and Vadodara.

2.2.15 Section 42 of the Act as it existed upto 31 March 1994, specified that no order of assessment for any year shall be made under Section 41(3) (scrutiny after calling the dealer) or Section 41(4) (best judgment assessment) at any time after the expiry of 2 years from the end of the year in which the last monthly, quarterly or annual return is filed as the case may be. This provision was re-introduced from 1 April 1998 prescribing time limit of three years. Similarly, time limit prescribed for re-assessment is five years where turnover has escaped assessment or is assessed at lower rate.

Test check of appeal orders passed by the Tribunal and the departmental Appellate Authorities during the period 1997-98 to 2001-02 showed that in 40 assessments of 14 dealers, pertaining to period from 1972-73 to 1993-94, the assessment orders were set aside in appeal, as the original order of assessment/reassessment was barred by limitation of time. Though the system provided for maintaining a pending assessment register to watch timely completion of assessments, inadequate monitoring and consequent delayed completion of assessments within the prescribed time resulted in the assessment orders being struck down in appeal resulting in loss of revenue of Rs. 2.19 crore.

Monitoring and Internal Control

2.2.16 The performance of the Appellate Authorities is monitored by the Commissioner through monthly returns, followed by monthly meetings. Administrative inspection of appellate offices is conducted by the Assistant Commissioner (Inspection) working under the direct control of the Commissioner. However, information on the system prescribed and followed for review of decision of departmental Appellate Authorities for possible appeal though called for from the Commissioner in October 2002 had not been received (August 2003).

Recommendations

2.2.17 Audit findings show that though norms were fixed for clearance of appeal cases by Assistant Commissioners, none achieved the norms resulting in accumulation of cases. There was wide variation in disposal of appeals by Deputy Commissioners. Delay in disposal and resultant accumulation of cases resulted in blocking of revenue which had increased manifold during the five years ending March 2002. In many cases, the departmental Appellate Authorities did not follow the instructions of the Commissioner for finalisation of appeals. Monitoring of cases pending assessments and that of cases remanded was not satisfactory.

However, the State Government may consider taking following steps to improve the effectiveness of the system:

- strengthen system to enforce compliance with the norms fixed;

- prescribe norms for disposal of appeals by Deputy Commissioners (Appeals);
- ensure compliance with procedures for timely disposal to avoid loss of revenue through cases becoming time barred;
- devise suitable control mechanism to ensure compliance with all rules and procedures.

The matter was brought to the notice of Department/Government in April 2003; reply was awaited (August 2003).

2.3 Incorrect grant of benefits under sales tax incentive schemes

2.3.1 As per scheme under entry 255 of Section 49(2) of the Gujarat Sales Tax Act, an eligible unit engaged in the activity of manufacture has to obtain an eligibility certificate for sales tax exemption from the Industries Department. Under the scheme there are certain industries which are not eligible for such incentives. The activity of refilling[#] of liquified petroleum gas (LPG) is not considered a manufacturing process.

During the test check of records of Assistant Commissioner, Amreli and Sales Tax Officers, Bhavnagar and Unjha, it was noticed in the assessment of 3 dealers for the periods 1996-97 to 2000-01 (finalised between September 2001 and March 2002) that the tax exemption was incorrectly allowed to the industries engaged in refilling of L.P.G. As these industries were not engaged in the activity of manufacturing, the eligibility certificates issued by the Department of Industries were irregular. This resulted in incorrect exemption of tax of Rs.7.28 crore including interest and penalty.

The above facts were brought to the notice of the Department (between July and December 2002) and of the Government in April 2003; reply was not received (August 2003).

2.3.2 According to sales tax incentive scheme, the eligible units are allowed to purchase raw materials, processing/packing materials and consumable stores on payment of tax at the rate of 0.25 *per cent* and the balance tax on purchases is calculated at the prescribed rates and adjusted against the ceiling limit of exemption. It has been judicially* held in Supreme Courts judgment, that liquified petroleum gas, natural gas and lignite used as fuel are not consumables.

- During test check of records of Assistant Commissioner, Rajkot and Vadodara and Sales Tax Officer, Bharuch, it was noticed in the assessment of 4 dealers for the periods between 1998-99 and 2000-01 (finalised between July 2001 and January 2002) that tax saved on purchases valued at Rs.10.02 crore of liquified petroleum gas, natural gas and lignite used

[#] State of Gujarat Vs Kosan Gas Company (1992) 87 STC 236.

* M/s. Coastal Chemicals Vs State of Andhra Pradesh (117-STC-12).

as fuel was incorrectly adjusted against the tax exemption limit treating them as consumables. This resulted in short levy of tax of Rs.1.95 crore including interest.

The above facts were brought to the notice of the Department between November and December 2002 and of the Government in March 2003; reply was not received (August 2003).

- During test check of records of Assistant Commissioner, Ahmedabad and Sales Tax Officers, Bhavnagar and Vadodara, it was noticed in the assessment of 5 dealers for the periods between 1994-95 and 1999-00 (finalised between September 2001 and December 2002) that tax adjusted against ceiling limit was calculated at incorrect rate on purchases of plastic granules, polyester chips, colour master (CM) batch granules and Middle Density Poly Ethylene (MDPE) granules valued at Rs.4.51 crores in 4 cases and on sale of oxygen gas valued at Rs.47 lakh in one case. This resulted in short levy of tax of Rs.36.36 lakh.

The above facts were brought to the notice of the Department between June and November 2002 and of the Government in March 2003. The Department accepted in May 2003 the audit observation involving an amount of Rs.0.94 lakh and recovered the amount in one case. The particulars of recovery, if any, and reply in remaining cases had not been received (August 2003).

2.3.3 The benefit of sales tax exemption/deferment is admissible in respect of such goods which are specified in the eligibility certificates issued by the Industries Department to the units. Benefit of tax exemption/deferment availed on sale of goods not specified in the eligibility certificate is required to be recovered along with interest and penalty.

During test check of records of Assistant Commissioner, Ahmedabad and Sales Tax Officer, Ahmedabad, it was noticed that while finalising the assessments (April and December 2001) in the case of two dealers between 1996-97 and 1999-00 the Assessing Authorities allowed sales tax exemption of Rs.46.18 lakh and adjusted against ceiling limit in respect of such goods which were not specified in the eligibility certificate issued by the Industries Department. The amount of tax so adjusted was required to be recovered along with interest and penalty which worked out to Rs.1.05 crore.

The above facts were brought to the notice of the Department in June 2002 and of the Government in March 2003; reply was not received (August 2003).

2.3.4 According to incentive schemes, the eligible unit has to remain in production continuously during the period of eligibility mentioned in the eligibility certificate and till the entire deferred tax is repaid in instalments. If the eligible unit discontinues commercial production at any time within the period of deferment/exemption for a period exceeding 12 months, entire amount of tax exempted/deferred is recoverable within a period of 60 days from the date of expiry of aforesaid period of 12 months. On failure to do so, the said amount shall be recovered from the eligible units as arrears of land revenue.

During test check of records of 4* Sales Tax Officers, it was noticed that 6 dealers were issued eligibility certificates for the period from May 1993 to May 2002 and availed tax deferment/exemption benefit of Rs.1.39 crore between March 1993 and December 1999. The dealers discontinued commercial production between March 1997 and January 2000. The entire amount of Rs.1.39 crore of tax deferment/exemption availed by the dealers was required to be recovered along with interest.

The above facts were brought to the notice of the Department between April and December 2002 and of the Government in March 2003. The Department accepted the audit observations involving an amount of Rs.51.56 lakh in 2 cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

2.3.5 According to sales tax incentive schemes, a specified manufacturer is allowed exemption from payment of tax or to defer the payment of tax in respect of goods manufactured by him subject to conditions laid down in the respective schemes. The tax so exempted/deferred is adjusted against the ceiling limit fixed by the competent authority.

During test check of records of 3[#] Assistant Commissioners and 8[§] Sales Tax Officers, it was noticed in the assessment of 12 dealers for the periods 1992-93 and 2002-03 (finalised between April 2000 and March 2002) that excess exemption of Rs.11.29 crore inclusive of interest and penalty was allowed as detailed below:

(Rupees in lakh)				
Sr. No.	Place	No. of cases	Inadmissible/Excess exemption allowed	Nature of irregularity
1	Surat	1	981.06	Sales of goods against Form 26 at concessional rate was allowed and adjusted against exemption limit during the period in which the dealer was unregistered.
2	Ahmedabad, Bharuch and Surat	4	91.46	Short levy of tax due to computation error, raising less demand and excess availment of deferment benefit in two cases.
3	Unjha	1	35.24	The tax exemption allowed and adjusted against exemption ceiling limit on branch transfer of goods was irregular. Hence, the amount adjusted was required to be recovered.

* Bhavnagar, Godhra, Junagadh and Surendranagar.

Ahmedabad, Rajkot and Surat.

§ 2 of Junagadh, 1 each of Ahmedabad, Bharuch, Surat, Unjha, Vapi and Vadodara.

4	Junagadh and Vapi	3	12.74	Short recovery of deferred tax due to incorrect fixation of instalment.
5	Junagadh and Rajkot	2	7.22	Units holding exemption certificate under the incentive scheme were not entitled to purchase or sale of goods without payment of tax on declarations. Further, purchases of raw materials, processing materials and consumable stores were only entitled to the benefit of the exemption. In one case tax saved on purchases of capital goods (i.e. machinery and diesel generating sets) and in another case, cotton sold on declarations were incorrectly adjusted against the exemption ceiling limit.
6	Vadodara	1	1.32	Turnover tax on resale of goods incorrectly adjusted against exemption limit.
	Total	12	1129.04	Say 11.29 crore

The above facts were brought to the notice of the Department between September 2001 and December 2002 and of the Government in March 2003. The department accepted the audit observations involving an amount of Rs.76.28 lakh in 7 cases and recovered Rs.3.58 lakh in 2 cases. The particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

2.4 Non levy of purchase tax

2.4.1 Under Section 15 of the GST Act, 1969, (Act) where a dealer purchases any goods specified in Schedule-II from an unregistered dealer, unless the goods so purchased are resold, a purchase tax is leviable at the prescribed rates. Ginning activity to obtain cotton and cotton seeds (bye product) is not a manufacturing activity as decided by Gujarat Sales Tax Tribunal. However Supreme Court[&] held that where a subsidiary product is continuously processed in the course of manufacture and sold regularly then an intention can be attributed to the manufacturer to manufacture and sale not merely the main item manufactured but also the subsidiary products.

[&] Commissioner of Sales Tax, Bombay Vs. Bharat Petroleum Corporation Ltd. 1995(77)ELT790(SC).

- During test check of records of 14^s Assistant Commissioners and 11[#] Sales Tax Officers, it was noticed in the assessment of 104 dealers for the periods between 1994-95 and 2000-01 (finalised between August 1998 and November 2002) that the dealers procured unginning cotton valued at Rs.959.90 crore from farmers (unregistered dealers) to obtain cotton and cotton seeds through ginning process. Cotton seeds were further used to obtain oil and oil cakes which was a manufacturing activity and thus, liable to purchase tax, which was not levied. This resulted in non levy of purchase tax of Rs.13.71 crore including interest and penalty.

On this being pointed out the department replied that since cotton obtained was resold and cotton seed was a bye product which was not purchased by the dealers, no purchase tax was leviable. The contention of the department is not acceptable as the dealers were regularly manufacturing oil and oil cakes from cotton seeds obtained from ginning process. The benefit applicable to a bye product would not be available in view of the Supreme Court Judgment. Hence purchase tax was leviable on the value of unginning cotton on proportionate basis.

- During test check of records of Assistant Commissioner, Palanpur and Sales Tax Officers, Surendranagar, it was noticed in the assessment of 2 dealers for the periods between 1996-97 and 2000-01 (finalised between April 1999 and October 2001) that purchase tax was not levied on purchased cotton from unregistered dealers which were burnt in fire in one case and on purchase of 'Kapas Sathi' used in the manufacture of bio coal briquettes in the other case. This resulted in short levy of tax of Rs.5.07 lakh including interest and penalty.

The above facts were brought to the notice of the Department (between January 2001 and July 2002) and of the Government (April 2003); reply was not received (August 2003).

2.4.2 Under Section 19 B of the Act, purchase tax at the rate of 4 *per cent* is to be charged if oil seeds purchased by a dealer are not resold. The purchase tax on oil seeds is reduced to one *per cent* for groundnut and 2 *per cent* for other oil seeds if used in manufacture of edible oil for sale within the state of Gujarat. Further, as per the decision of the Supreme Court[@] when an activity carried out on declared goods results in emergence of a new commercial commodity, tax becomes leviable at both the stages of purchase and sale even though the resultant product falls under the category of declared goods.

During test check of records of Assistant Commissioner, Rajkot and 4[#] Sales Tax Officers, it was noticed in the assessment of 7 dealers for the periods between 1994-95 and 1999-00 (finalised between March 1997 and March 2001) that purchase tax was not levied on oil seeds including groundnuts not

^s 3 of Rajkot, 2 each of Ahmedabad, Surendranagar, 1 each of Amreli, Bhavnagar, Himatnagar, Idar, Junagadh, Kadi, and Nadiad.

[#] 3 of Rajkot, 2 each of Ahmedabad, Surendranagar and 1 each of Amreli, Himatnagar, Mehsana and Palanpur.

[@] K.A. K. Anwar & Co. Vs. State of Tamilnadu (108 STC-258).

[#] Patan, Rajkot, Vadodara and Veraval.

resold in 3 cases; the process resulted in emergence of new commercial commodity in 3 cases and manufactured goods were consigned outside the state in one case. This resulted in non/short levy of tax of Rs.28.26 lakh including interest and penalty.

The above facts were brought to the notice of the Department between April 2000 and May 2002 and of the Government in April 2003. In 2 cases, the Department stated that as per Gujarat Sales Tax Rules, if the raw material and final product remain declared goods as a result of any process, it is considered as resale and no purchase tax is leviable. The reply of the department is not tenable in view of the Supreme Court's judgment where as a result of any process on declared goods if new commercial commodity of declared goods emerges, tax is leviable on purchase and sale. In one case, the Department accepted the audit observation involving an amount of Rs.0.76 lakh and recovered Rs.0.58 lakh. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

2.4.3 Under Section 15 (B) of the Act, where a dealer purchases taxable goods (other than declared goods) and uses them as raw materials in the manufacture of taxable goods, purchase tax at prescribed rate is leviable.

During test check of records of 5[@] Sales Tax Officers, it was noticed in the assessment of 10 dealers for the periods between 1994-95 and 1998-99 (finalised between April 2001 and March 2002) that though the dealers had transferred the manufactured goods either to their branches or consigned outside the State, purchase tax was levied at incorrect rate. This resulted in non/short levy of tax of Rs.11.87 lakh including interest and penalty.

The above facts were brought to the notice of the Department between June and November 2002 and of the Government in April 2003. The Department accepted between June and July 2003 the audit observations involving an amount of Rs.2.42 lakh in 2 cases and recovered Rs.0.65 lakh in one case. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

The matter was reported to Government in April 2003; reply had not been received (August 2003).

2.5 Turnover escaping assessment

Under the Act, "sale price" includes the amount of valuable consideration paid or payable to a dealer for any sale. Charges for freight or delivery or installation or any other services which are attributable to the stage upto completion of the sale would be component of the valuable consideration of the goods.

[@] 2 of Ahmedabad and 1 each of Bhavnagar, Billimora and Nadiad.

During the test check of records of Assistant Commissioner, Bharuch and 2 Sales Tax Officers, it was noticed in the assessment of 3 dealers for the periods between 1996-97 and 1999-00 (finalised between October 1998 and January 2002) that due to non-inclusion of valuable consideration forming part of the sale price collected by the dealers, the turnover of the dealers was determined less to the extent of 67.57 crore. This resulted in short levy of tax of Rs.2.91 crore including interest and penalty as per details given below:

(Rupees in crore)						
Sr. No	Name of office	No. of dealers	Period of assessment	Nature of irregularity	Turnover escaping assessment	Tax short levied
1	Bharuch	1	1998-99 1999-00	Turnover of imported steel pipes used in works contract was incorrectly allowed as deduction from sales turnover.	38.16	2.75
2	Ahmedabad	1	1997-98	Outside Gujarat State purchases resold after deducting profit resulted in non-assessment.	29.32	0.15
3	Surat	1	1996-97	Sales of used machinery and generator procured from outside the State were not considered for computation of turnover.	0.09	0.01
	Total	3			67.57	2.91

The above facts were brought to the notice of the Department between October 1999 and November 2002 and of the Government in March 2003. The Department accepted between July and December 2002 the audit observations and raised additional demand in one case. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

2.6 Non/short levy of tax due to mis-classification of goods

Under the Act, tax is leviable at the rates as indicated in the Schedules to the Act, depending upon the classification of goods. However, where goods are not covered under any of the Schedules, general rate of tax is applicable.

During test check of records of 7* Sales Tax Officers, it was noticed in the assessment of 8 dealers for the periods between 1991-92 and 2000-01 (finalised between April 1996 and October 2001) that the assessing officers levied tax at incorrect rates on sales of various goods valued at Rs.29.56 crore due to misclassification of goods. This resulted in non/short levy of tax of Rs.3.77 crore as detailed below:

* 2 of Ahmedabad, 1 each of Godhra, Surat, Surendranagar, Vadodara and Vapi.

(Rupees in lakh)

Sr. No	No. of Dealers (Location)	Name of commodity	Rate of tax leviable (Percentage)	Rate of tax levied (Percentage)	Tax short levied	Remarks
1	1 dealer (Ahmedabad)	Sugar Candy (Patasa)	12	Nil	255.31	The Department's reply was awaited.
2	1 dealer (Ahmedabad)	Instant print film	15	6	64.06	The Department did not accept the audit observation stating that the goods sold by the dealer was paper roll classifiable under entry 138(2) of Schedule IIA and not film roll. The reply of the department is not tenable as there is a separate entry for 'film' which is rightly classifiable under entry 138(i) of Schedule IIA attracting tax at the rate of 15 percent.
3	1 dealer (Surat)	Doors and Windows	14	7	21.74	The Department accepted the audit observation and raised the demand in July 2002. An amount of Rs.0.90 lakh was recovered.
4	3 dealers (Vadorara)	Low Tension Distribution Box	14.4 and 14	4.8 and 5	20.78	The Department accepted the audit observation and raised the demand in November 2002. The position of recovery was awaited.
5	1 dealer (Surendranagar)	Briquettes	12	Nil	8.97	The Department's reply was awaited.
6	1 dealer (Godhra)	PVC Cushioned Vinyl Flooring	12 and 14	8 and 10	6.20	The Department stated in May 2003 that PVC Vinyl Cushion flooring was an article of plastics and tax was levied at correct rate. The reply is not tenable in view of the fact that the process involved and the raw material of the product was glass-fliss tissues which was different.
Total	8				377.06	(Say 3.77 crore)

The above cases were brought to the notice of the Department between August 1997 and September 2002 and of the Government in March 2003. The

Department accepted in July and November 2002 the audit observations involving an amount of Rs.22.99 lakh in 2 cases (one of Vadodara and other of Surat) and recovered Rs.0.90 lakh in one case. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

2.7 Short levy of Central Sales Tax

2.7.1 According to Section 6(2) of the CST Act, 1956 where sale of any goods in the course of inter-state trade or commerce has either occasioned the movement of such goods from one state to another or has been effected by a transfer of documents of title to such goods during their movement from one state to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods shall be exempted from tax under the Act, provided the dealer effecting such sale produces a declaration in form E1 or E2 secured from the selling dealer and Form C or D from his purchaser.

During test check of records of Sales Tax Officer, Ankleshwar, it was noticed in the assessment of one dealer for the period 1994-95 finalised in July 2002 that sales turnover of machinery valued at Rs.92.04 lakh was allowed as deduction under the Act. However, scrutiny of the records revealed that the dealer purchased the machinery from a local dealer which was incorrectly treated as inter-state purchase. Accordingly, the transaction could not be classified under Section 6(2) of the CST Act, but should have been treated as an inter-state sale and tax was leviable at the rate of 4 *per cent* for sale being supported by form C. Incorrect deduction from turnover resulted in under assessment of Rs.8.54 lakh including interest and penalty.

2.7.2 The rate of tax on Outside Gujarat State sales of air conditioning plants, mechanical water coolers, refrigerators and their component parts and accessories without production of C forms is reduced to 8 *per cent* with effect from 1 August 1990. The aforesaid concession is not admissible to sale of air conditioners.

During test check of records of 2* Assistant Commissioners and Sales Tax Officer, Kalol, it was noticed in the assessment of 3 dealers for the period between 1995-96 and 1997-98 (finalised between June 2001 and March 2002) that reduced rate of tax at the rate of 8 *per cent* was incorrectly levied on sales of air conditioners valued at Rs.3.92 crore. This resulted in short levy of tax amounting to Rs.55.99 lakh including interest and penalty.

2.7.3 Under the Central Sales Tax Act, 1956, on inter-state sale of declared goods not supported by prescribed declaration (Form C), tax is leviable at twice the rate applicable to sale in respect of declared goods. In the case of other goods tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State whichever is higher. Dealers availing sales tax exemption benefit under entry 255 of notification issued under Section 49(2) of the GST Act, concessional rate of 4 *per cent* without production of C form

* Ahmedabad and Mehsana.

would be available only on production of form 29 or tax shall have to be computed at the higher rates as applicable. Further, according to the government notification of 16 June 2000, additional tax at the rate of 10 *per cent* is leviable on the tax levied in the course of inter-state sales.

During test check of records of Assistant Commissioners, Ahmedabad and Sales Tax Office, Vapi, it was noticed in the assessment of 4 dealers for the periods between 1994-95 and 2000-01 (finalised between January 2001 and March 2002) that in two cases on inter-state sales valued at Rs.10.44 lakh, tax was levied at concessional rate of 4 *per cent* though the sales were not supported by C form or form 29 and in two cases additional tax was not levied on inter-state sales. This resulted in short levy of tax of Rs.4.68 lakh including interest and penalty.

The above facts were brought to the notice of the Department between June and December 2002 and of the Government in February 2003. The Department accepted between May and October 2002 the audit observations involving an amount of Rs.0.99 lakh in two cases and recovered an amount of Rs.0.44 lakh in one case. Details of recovery and reply in remaining cases had not been received (August 2003).

2.8 Non /short levy of turnover tax

Under Section 10A of the Act, where the sales turnover of a dealer, first exceeds Rs.50 lakh, the dealer is liable to pay turnover tax at prescribed rate on the turnover of sales of goods other than declared goods after allowing permissible deduction under the Act. While working out the liability and applicability of rate of turnover tax, the taxable sales turnover in aggregate of all the branches of the dealer within the State is to be considered.

During test check of records of 7* Assistant Commissioners and 7** Sales Tax Officers, it was noticed in the assessment of 25 dealers for the periods between 1989-90 and 1996-97 (finalised between March 1997 and March 2002) that turnover tax was either not levied or levied at incorrect rates. This resulted in short/non levy of turnover tax of Rs.1.19 crore as given below:

(Rupees in lakh)					
Sr. No	No. of Dealers (location)	Period of assessment	Date of assessment	Nature of irregularity	Tax not/ Short levied.
1	11 dealers of Ahmedabad and Surat	1994-95 to 1996-97	Between March and December 2000	Purchase turnover of processed yarn and sale of life saving drugs not included for levy of turnover tax.	61.73

* 3 of Ahmedabad 2 each of Rajkot and Surat.

**2 each of Ahmedabad and Vadodara 1 each of Ankleshwar, Kadi, and Vapi.

2	10 dealers of Ahmedabad, Ankleshwar, Kadi, Rajkot, Surat, Vapi and Vadodara	1989-90 to 1996-97	Between April 2000 and March 2002	Sales made against declarations were not included for levy of turnover tax in two cases. Turnover tax was not levied in other cases.	54.05
3	4 dealers of Ahmedabad and Rajkot	1994-95 to 1996-97	Between March 1997 and March 2002	Turnover tax was incorrectly calculated.	2.86
	Total 25			Say 1.19 crore.	118.64

The above facts were brought to the notice of the Department between April 2002 and January 2003. The Department accepted audit observations involving an amount of Rs.6.72 lakh in 7 cases and recovered Rs.3.34 lakh in 4 cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

The matter was reported to the Government in February 2003; reply was awaited (August 2003).

2.9 Incorrect/excess grant of set-off

2.9.1 Under GST Rules, 1970, set-off would be admissible only if the assessee proves that he has paid the tax under the Act. Further, under Section 47 (4) of the Act, where a dealer to whom incentives by way of deferment of tax have been granted and where a loan liability equal to the amount of such tax payable by such dealer has been raised by the GIIC* and GSFC**, then such tax shall be deemed to have been paid.

During the test check of records of Assistant Commissioner and Sales Tax Officers, Ahmedabad, it was noticed that in the case of 2 dealers for the periods between 1996-97 and 1999-00 (finalised between August 1998 and February 2001) the set off was allowed on purchases of cotton from dealers holding deferment certificate without obtaining proof of raising loan from GIIC and GSFC. This resulted in incorrect grant of set-off of Rs.1.02 crore including interest and penalty.

The above facts were brought to the notice of the Department between March and May 2002 and of the Government in March 2003; reply had not been received (August 2003).

* Gujarat Industrial Investment Corporation Limited.

** Gujarat State Financial Corporation Limited.

2.9.2 Under GST Rules, 1970, a dealer who has paid tax on raw materials used in the manufacture of taxable goods is allowed set off, at the rate applicable to the respective goods from the tax on the sale of manufactured goods provided tax is paid on its sale. Set-off is not admissible for tax paid on the purchases of "prohibited goods". According to the conditions prescribed under the Rule, 4 *per cent* of the sale price of the manufactured goods consigned/ branch transferred outside the State is to be deducted from set-off arrived at. Further, as per Supreme Court's judgment⁵ light diesel oil (LDO) and liquified petroleum gas (LPG) used as fuel are not consumables.

During the test check of records of 3[#] Assistant Commissioners and 8[@] Sales Tax Officers, it was noticed in the assessments of 14 dealers for the periods between 1992-93 and 2001-02 (finalised between July 1993 and March 2002) that excess set-off of Rs.29.80 lakh including interest and penalty was allowed as detailed below:

(Rupees in lakh)				
Sr. No.	No. of dealers	Location	Excess set-off allowed	Nature of irregularity
1	7	Ahmedabad Gandhinagar & Vadodara	20.95	Set-off was allowed on LDO and LPG used as fuel though these were not consumables.
2	4	Ahmedabad	5.16	Set-off was allowed on the purchase of prohibited and tax free goods in two cases. Proportionate tax was not reduced in respect of raw material used in the manufacture of tax free goods in one case and set off was allowed at incorrect rate in other case.
3	1	Kalol	2.06	2 <i>per cent</i> of purchase price (as per condition of the rule) was not reduced from the amount of tax admissible as set-off.
4	1	Ahmedabad	1.16	4 <i>per cent</i> of the sale price of the goods transferred outside the state were incorrectly worked out.
5	1	Godhra	0.47	Set-off was allowed without reduction of turn over involving job work at prescribed rate.
Total	14		29.80	

The above facts were brought to the notice of the Department between December 1999 and December 2002 and of the Government in March 2003. The Department accepted in June and August 2002 the audit observations involving an amount of Rs.0.44 lakh in one assessment. Particulars of

⁵ In the case of Coastal Chemical Vs. State of Andhra Pradesh (117-STC-12).

[#] 2 of Ahmedabad and 1 of Gandhinagar.

[@] 4 of Ahmedabad, 2 of Vadodara and one each of Godhra and Kalol.

recovery, if any, and reply in the remaining cases had not been received (August 2003).

2.9.3 Under Rule 42E, set off of purchase tax levied on raw or processing material or consumable used in the manufacture of goods is admissible when the goods so manufactured are sold in the State. If the goods so manufactured are transferred to the branches/ consigned outside the state or sold by commission agents, set off to the extent of the goods not sold in the state is to be disallowed.

During test check of the records of 3* Assistant Commissioners and Sales Tax Officer, Vadodara, it was noticed that in the case of 5 dealers for the periods between 1987-88 and 1997-98 (finalised between June 2000 and March 2002) set off was allowed incorrectly as the dealers had either transferred the goods to their branches or consigned them outside the state or sold goods through commission agents. In one case, excess set off was carried forward to the next year due to calculation mistake. This resulted in excess grant of set off of Rs.79.73 lakh including interest.

The above facts were brought to the notice of the Department between April and November 2002 and of the Government in March 2003; reply had not been received (August 2003).

2.10 Application of incorrect rate of tax

Under the Act, sales tax is leviable at the rates as indicated in the schedules to the Act. The goods not covered under any of the schedules are taxed at the general rate.

During the test check of records of 3& Assistant Commissioners and 5@ Sales Tax Officers, it was noticed in the assessment of 8 dealers for the periods between 1993-94 and 2000-01 (finalised between January 1999 and March 2002) that purchase/sales turnover of Rs.33.53 crore of polyester chips and waste thereof, cement, bolts and nuts, washed cotton seed oil, tractor bearings, lime stone, gypsum and bauxite were taxed at incorrect rates. This resulted in short levy of tax of Rs.93.18 lakh including interest and penalty

The above facts were brought to the notice of the Department between October 1999 and December 2002. The Department accepted in January and June 2003 audit observations involving an amount of Rs.40.65 lakh in 2 cases. Details of recovery, if any, and reply in the remaining cases had not been received (August 2003).

The matter was reported to Government in March 2003; reply was awaited (August 2003).

* Jamnagar, Mehsana and Rajkot.

& Vadodara, Surat and Valsad.

@ Ahmedabad, Anand, Dahod, Mehsana and Palanpur.

2.11 Non/short levy of tax on Works Contract

Under the Act, a dealer engaged in works contract is permitted to pay in lieu of tax, a lump sum by way of composition at the rate fixed by Government from time to time on the total value of the contract. However, where a dealer does not opt to pay lump sum by way of composition of tax, he shall be assessed as a normal dealer. In case the process involved results in manufacture, the dealer would not be eligible for claiming deduction on account of resale of goods purchased from registered dealer.

During the test check of records of Assistant Commissioner and Sales Tax Officers, Ahmedabad, it was noticed in the assessment of 2 dealers for the periods between 1995-96 and 2001-02 (finalised between May 2000 and March 2002) that the material purchased from registered dealer and used in the works contract was deducted from turnover as resales. However, the activity carried out viz. fabrication, erection of steel structures, construction of cable tray etc. amounted to manufacture and resale allowed was irregular. In another case though the application made by the dealer to pay lump sum by way of composition of tax was not within the prescribed time, the dealer was incorrectly allowed composition of tax. This resulted in short levy of tax of Rs.40.58 lakh including interest and penalty.

The above facts were brought to the notice of the Department between April and August 2002 and of the Government in February 2003; replies had not been received (August 2003).

2.12 Non levy of additional tax

Under Section 4A of the Act, every dealer liable to pay tax on sale or purchase of goods under Section 3 or 3A of the Act, is liable to pay an additional tax at the rate of 10 *per cent* on such tax with effect from 1 April 2000.

During test check of records of Assistant Commissioners, Ahmedabad, and Mehsana and Sales Tax Officer, Vadodara, it was noticed in the assessment of 3 dealers for the period 2000-01 (finalised between June 2001 and March 2002) that additional tax was not levied. This resulted in non-levy of additional tax of Rs.10.04 lakh including interest and penalty.

The above facts were brought to the notice of the Department between June and November 2002. The Department accepted audit observation involving an amount of Rs.0.52 lakh and recovered the amount in one case. Details of recovery, if any, and reply in remaining cases had not been received (August 2003).

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

2.13 Non levy of tax

Under the Act, goods of incorporeal or intangible character like patents, trade marks, import licence etc. and sales by transfer of right to use the goods are chargeable to tax at the rates prescribed in the Schedule II & III respectively.

During the test check of records of 2 offices of Assistant Commissioner, Vadodara and Sales Tax Officer, Ankleshwar, it was noticed that no tax was levied in the assessment of 4 dealers for the periods between 1994-95 and 1999-00 (finalised between April 2001 and January 2002) on income of Rs.1.08 crore on sale of import licences DEPB licence. This resulted in non levy of tax of Rs.8.42 lakh including interest and penalty.

The above facts were brought to the notice of the Department between July and December 2002 and of the Government in March 2003; reply had not been received (August 2003).

2.14 Non levy of penalty

Under Section 45 (6) of the Act, where the amount of tax assessed or reassessed exceeds the amount of tax paid with the returns by a dealer by more than 25 *per cent*, there shall be levied on such dealer a penalty not exceeding one and one half times of the difference. Where additional tax liability arises due to seizure of books of accounts by enforcement branch or where evasion of tax is detected, penalty is to be levied at one and one half times the amount of tax.

During test check of records 8* Offices of Assistant Commissioner and 12** Sales Tax Officers, it was noticed in the assessment of 35 dealers for assessment periods between 1991-92 and 2000-01 (finalised between March 1999 and March 2002) that penalty was not levied at prescribed rates for difference of tax exceeding twenty five *per cent* in 26 cases and on the concealed turnover of tax detected during raids in 9 cases. This resulted in non levy of penalty of Rs.3.70 crore.

The above cases were brought to the notice of the Department between March and December 2002. The Department accepted the audit observations involving an amount of Rs.92.60 lakh in 4 cases. Reply in respect of remaining cases had not been received (August 2003).

The matter was reported in February 2003 to Government; reply had not been received (August 2003).

* 2 of Ahmedabad, and 1 each of Bhavnagar, Nadiad, Palanpur, Rajkot, Vadodara and Vapi.

** 4 of Ahmedabad, 2 of Junagadh, 1 each of Bharuch, Godhra, Palanpur, Surat, Vapi and Viramgam.

2.15 Non/short levy of interest

Under the Act, if a dealer does not pay the amount of tax within the prescribed period, simple interest at the rate of 24 *per cent* per annum is leviable on the amount of tax remaining unpaid for the period of default.

During test check of records of 7[&] Assistant Commissioners and 11[§] Sales Tax Officers, it was noticed in the assessment of 29 dealers for the periods between 1991-92 and 2000-01 (finalised between February 1999 and July 2002) that interest amounting to Rs.64.58 lakh was either not levied or levied short on the amount of unpaid tax.

The above facts were brought to the notice of the Department between March and December 2002. The Department accepted the audit observations involving an amount of Rs.17.78 lakh in 14 cases and recovered Rs.2.45 lakh in 4 cases. Reply in respect of remaining cases had not been received (August 2003).

The matter was reported to Government in February 2003; reply had not been received (August 2003).

2.16 Non-recovery of interest

To obviate adverse impact on revenue as a result of the judgment[@] of the Supreme Court of India that the existing provisions of the Central Sales Tax Act, 1956, do not provide for levy of interest on non payment or delayed payment of Central Sales Tax, the Government of India amended the provisions of the Act (2000) to enable levy of interest with retrospective effect. Consequently, the Commissioner issued (June 2000) instructions to all the assessing officers to re-open all appeal cases where interest had been refunded on the basis of the judgment of Supreme Court and raise demand for interest.

Test check of records of 2[§] Assistant Commissioners revealed that demands for interest of Rs.67.67 lakh, which was refunded in the light of the above judgment in 39 assessments, were either not raised by the assessing officers or demands were raised only after being pointed by audit.

The above cases were brought to the notice of the Department and to the Government in April 2003; reply had not been received (August 2003).

[&] 4 of Ahmedabad, 1 each of Bhavnagar, Nadiad and Rajkot.

[§] 3 of Ahmedabad, 2 each of Vadodara and Vapi, and 1 each of Bhavnagar, Junagadh, Nadiad and Valsad.

[@] M/s.India Carbon Ltd., Vs. State of Assam (106-STC-460).

[§] Surat and Vadodara.

2.17 Internal Audit System

Review on "Functioning of Internal Audit in Sales Tax Department" was included in Chapter-II of Audit Report (Revenue Receipts) of Government of Gujarat for the year ended 31 March 1999 covering the period upto March 1998.

With the introduction of single tier system of assessment from 1 April 1998, the Assistant Commissioners were entrusted with the assessment work also in addition to administrative work and work of internal audit. The posts of Assistant Commissioners (Admn) in the department were increased to 38. Three posts of Assistant Commissioners (Audit) were created with effect from 1 April 1998 and posted under the Deputy Commissioners of Ahmedabad, Vadodara and Surat considering large scale industrialisation in these areas. In respect of other divisions viz. Gandhinagar, Bhavnagar and Rajkot, the divisional Deputy Commissioners were to carryout internal audit of cases falling under their jurisdiction.

A target of 150 cases per month was fixed for each of the three Assistant Commissioners (Audit), for other Assistant Commissioners (Admn), no norms were fixed. With further restructuring of the department from 1 November 2002, internal audit was assigned to the Assistant Commissioners (Audit) under each of the seven Deputy Commissioners with a target of 150 cases per month.

Revised instructions for internal audit from 1 April 1998 were issued by the Commissioner as late as 27 December 1999 i.e. after a period of one year and nine months. Further, looking at the number of officers entrusted with internal audit and the norms fixed from time to time, it is evident that the department did not have any fixed norms on the quantum of cases to be subjected to scrutiny by internal audit as shown below:

Period	No. of officers	Target per officer per annum	Total cases to be audited	Remarks
Upto March 1998	13	3,000	39,000	--
April 1998 to October 2002	3	1,800	5,400	Does not include officers (Asstt. Commissioners (Admn) for whom no norms have been fixed.
November 2002 onwards	7	1,800	12,600	--

It is evident from the table that the function of internal audit was diluted from April 1998 onwards.

Details as to the number of officers entrusted with the work of internal audit, the targets fixed from time to time, number of cases subjected to scrutiny, number of cases where omissions were noticed in the assessment and additional demands raised in those cases for the period from 1999-00 to 2002-03 though called for from the department had not been received (August 2003).

The above matters were followed up with reminders to the Principal Secretary in May and July 2003 and Chief Secretary in July 2003. However, inspite of such efforts, no reply was received from the Government (August 2003).

CHAPTER – III

LAND REVENUE

3.1 Results of Audit

Test check of assessment records in the offices of the Collectors, District Development Officers, Taluka Development Officers, District Inspectors of Land Records and City Survey Superintendents conducted in audit during the year 2002-03, disclosed non/short recovery and loss of revenue amounting to Rs.34.22 crore in 94 cases. These cases broadly fall under the following categories:

(Rupees in crore)			
Sr. No.	Category	No. of cases	Amount
1	Non/short recovery of occupancy price	13	17.83
2	Non-raising of demand for non agricultural assessment	22	0.33
3	Non-recovery of conversion tax	08	0.20
4	Other irregularities	51	15.86
	Total	94	34.22

During the year 2002-03, the department accepted and recovered under assessment of Rs.18.16 lakh in 38 cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.18.88 crore are discussed in the following paragraphs.

3.2 Non/short recovery of occupancy price

Under the Bombay Land Revenue Code, 1879 (Code) and the Rules made thereunder, Government can dispose of available land to needy persons for any purpose on payment of occupancy price in advance on such terms and conditions as may be specified by the Government. The occupancy price in respect of non-agricultural land is to be determined by the Collector with reference to the value of land fixed by the Town Planner.

During test check of records of 3[@] Collectors, Taluka Development Officer, Balasinor and Mamlatdar Mahudha, it was noticed (between March and October 2002) that land measuring 2.12 lakh sq.mtrs. was allotted (between 2000 and 2002) by the respective Collectors to Bharat Sanchar Nigam Ltd (BSNL)/Telecom Department/Gujarat Industrial Development Corporation, subject to recovery of occupancy price before the allotment of land, which was either not recovered or recovered at incorrect rates. This resulted in non/short recovery of occupancy price of Rs.81.47 lakh as per details given below:

(Rupees in lakh)					
Sr. No.	Name of the Taluka	Year of allotment	Nature of irregularity	Area of land (sq.mtrs. in lakh)	Amount not/short recovered
1	Bhuj	2002	Occupancy price was not recovered for land allotted to GIDC.	2.00	44.00
2	Rajkot, Balasinor and Mahudha	2000	Occupancy price was not recovered for land allotted to Telecom Department.	0.04	29.50
3	Amreli	2000	Land was allotted to BSNL at concessional rate of Rs.25 per sq.mtr. though the Departments of Government of India only were eligible for such concession.	0.08	7.97
	Total			2.12	81.47

The above facts were brought to the notice of the Department between April and November 2002. The department replied in May 2002 that the matter had been referred to the Government for clarification in the first case. Reply in respect of remaining cases had not been received (August 2003).

The matter was reported to the Government in February 2003; reply had not been received (August 2003).

3.3 Loss of revenue due to non-eviction / non-regularisation of encroachments/breach of conditions of allotment

3.3.1 Under the Code and the Rules made thereunder, on detection of encroachment by the revenue authorities, the encroacher shall be evicted forthwith and assessed to non-agricultural assessment (NAA)/land revenue etc., at the prescribed rate with imposition of fine for the period of unauthorised occupancy. As per Government Resolution of January 1980, the Government land under unauthorised occupancy, if not required by Government, can be allotted to its occupants/occupancy regularised by the Collectors by recovering penal occupancy price at two and a half times of the market value on the date of regularisation.

[@] Amreli, Bhuj and Rajkot.

During test check of records of Collector, Gandhinagar and Taluka Development Officer, Kotda Sangani, it was noticed that 1.06 lakh sq. mtrs. of Government land was encroached between 1997-98 and 1999-00 by 60 to 76 individuals and was being used for residential and agricultural purposes. The encroachers were neither evicted nor was encroachment regularised. The penal occupancy price and non-agricultural assessment recoverable in the event of regularisation of these cases worked out to Rs.67.66 lakh for which no demands were raised.

The above facts were brought to the notice of the Department between June 2001 and October 2002 and of the Government in February 2003; reply had not been received (August 2003).

3.3.2 Under the Code and the Rules made thereunder, Government can dispose of available land to needy persons for specific purpose on payment of occupancy price/free of revenue on such terms and conditions as may be specified by the Government. In case of breach of conditions of allotment, the land with all fixtures and structures thereon shall be resumed by the State Government.

During test check of records of Collector, Palanpur and Mehsana, it was noticed that 9.79 lakh sq.mtrs. of land allotted to two organisations for specific purposes were either not utilised for the purpose for which the land was allotted or remained unutilised for 20 years. Failure on the part of the department to ensure the compliance of terms and conditions of allotment resulted in loss of revenue of Rs.14.77 crore as detailed below:

(Rupees in crore)					
Sr. No	Location	Year of allotment	Area of land (sq.mtrs. in lakh)	Loss of revenue	Nature of irregularity
1	Palanpur	1975	9.64	14.65	Government land was allotted to Shri Satyakalyan Samudayak Kheti Sahakari Mandali Ltd for cultivation by its members. However, it was unauthorisedly given by Mandali to persons other than its members for agricultural purposes. Breach of conditions of allotment resulted in wrongful occupancy.
2	Mehsana	1980	0.15	0.12	Government land allotted to Shri Two Hundred and Eighty Two Pergana Rohit Mandal for construction of hostel building within 24 months, remained unutilised for 20 years. Failure on the part of departmental officials to detect the breach of conditions of allotment resulted in loss of revenue in the form of occupancy price, NAA, premium, fine etc., for the land remaining unutilised for 20 years.
		Total	9.79	14.77	

The matter was brought to the notice of the Department between February and October 2002. The Department accepted the objection in February 2002 in respect of case at Sr.No.2 and decided to take back the possession of land. Reply in respect of remaining case has not been received (August 2003).

The matter was reported to the Government in February 2003; reply had not been received (August 2003).

3.4 Non/short levy of conversion tax

Under the Code, conversion tax is leviable on change in mode of use of the land from agricultural to non-agricultural purposes or from one non-agricultural purpose to another in respect of land situated in a city or town including its peripheral areas falling within one to five kilometers thereof. Different rates of conversion tax are prescribed for residential, industrial, commercial/other uses depending upon the population of the city/town. In case of Corporations, Boards etc., no permission is required and conversion tax is leviable in the year in which land is acquired. The conversion tax shall be paid in advance by a challan in the Government Treasury.

During test check of records of 5[@] District/Taluka Development Offices, it was noticed that in 15 cases, conversion tax for change in mode of use, though leviable, was either not levied or levied at incorrect rate on 20.99 lakh sq.mtrs. of land allowed for different purposes. Failure on the part of the departmental officials to follow the Codal provisions resulted in non/short levy of conversion tax amounting to Rs.1.46 crore as detailed below:

(Rupees in lakh)

Sr. No.	Name of the place	Area of land (sq.mtr. in lakh)	No.of cases	Amount not/short recovered	Nature of irregularity
1	TDO, Jamnagar	18.48	2	138.57	Though conversion tax was recoverable in advance, the same was not recovered for land acquired in September 1999 for GIDC for industrial purpose.
2	DDO, Mehsana and Ahmedabad	1.46	5	4.17	Conversion tax was not levied for change in mode of use from one non-agricultural purpose to another during 2001-02.
3	TDO, Rajkot	0.12	2	1.84	Due to extension of Rajkot Municipal Corporation limit in 1996, certain villages fell within the periphery of Rajkot city. Conversion tax, though leviable, was not levied.

[@] DDO Ahmedabad, Mehsana & Surendranagar, TDO Rajkot & Jamnagar.

4	DDO, Surendra- nagar	0.93	6	1.11	Conversion tax was recovered at incorrect rate in 4 cases and was not levied in 2 cases. -
	Total	20.99	15	145.69	

The above facts were brought to the notice of the Department between January and November 2002. The Department accepted audit observations involving an amount of Rs.3.42 lakh in 12 cases and recovered Rs.1.04 lakh in six cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

The matter was reported to the Government in February 2003; reply was awaited (August 2003).

3.5 Non/short recovery of premium

The Government decided in July 1983 to permit land holders holding land under new and restricted tenure under the Bombay Tenancy and Agricultural Land Act, 1948, (as applicable to Gujarat) to convert their land into old tenure and to sell/transfer the same subject to payment of premium computed on the difference between the estimated sale price of the land and the occupancy price recovered at the time of allotment of the land. This was further subject to payment of difference on actual sale price later. The premium recoverable is 70 per cent of the difference when the land held for more than 20 years is permitted to be sold for non-agricultural purposes.

During test check of records of Collector, Mehsana and Palanpur, Mamlatdar Sanand and Taluka Development Offices, Jambusar and Choryasi, it was noticed that land measuring 0.83 lakh sq.mtrs. in 7 cases held under new and restricted tenure was allowed to be sold/transferred, but premium at the prescribed rate was either not recovered or was recovered at incorrect rate. This resulted in non/short recovery of premium of Rs.79.17 lakh as detailed below:

(Rupees in lakh)					
Sr. No.	Name of the place	Area of land (sq.mtr. in lakh)	No. of cases	Amount not/short recovered	Nature of irregularity
1	Jambusar, Choryasi & Mehsana	0.55	04	61.64	Premium was not recovered on the differential amount of estimated sale price and actual sale price.
2	Sanand	0.08	01	11.67	As per Gujarat Revenue Tribunal orders (November 2000), the land was to be treated as "New and Restricted Tenure" for which the occupant of the land was required to obtain permission for sale/transfer of land from Collector

					by paying due premium for getting the case regularised. Deputy Collector though required to issue notice to the occupant to get the land changed from new tenure to old tenure did not do so. .
3	Palanpur	0.20	02	5.86	The land initially permitted to be used for residential purpose was subsequently permitted for commercial purpose. Premium recoverable on differential amount of sale price of land permitted to be used for commercial purpose was not recovered.
	Total	0.83	07	79.17	

The above facts were brought to the notice of the Department between October 2001 and August 2002. The Department accepted audit observations involving an amount of Rs.17.17 lakh in 2 cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

The matter was reported to the Government in February 2003; no reply was received (August 2003).

3.6 Non/short recovery of non-agricultural assessment

Under the Code and the Rules made thereunder, land revenue is payable at the prescribed rates on all lands unless specifically exempted from payment. For determining the rates of non-agricultural assessment (NAA), cities, towns and villages have been divided into five classes according to their population. Different rates depending on use of land are prescribed for each class of city/town/village. Peripheral areas falling within five kilometers of class "A" city and one kilometer of class "B" and "C" town/village are classified alongwith respective cities and towns. Certain industrial and adjoining areas which are notified by the Government are also classified as class "B" areas irrespective of the population of the concerned areas. All payments of land revenue shall be made to the officers of the village in which such revenue is due and noted in the prescribed forms/registers. The Code provides for issue of demand notices, distraint and sale of the defaulter's movable/immovable property etc. by Villages Officer for non payment of land revenue.

During test check of records of Mamlatdar, Pardi, Additional City Survey Superintendent, Sardarnagar and 5 Taluka Development Offices of 7^s districts, it was noticed that in 74 cases, on land measuring 40.68 lakh sq.mtrs. used for non-agricultural purposes during the period between 1970 and 2002 by semi-Government bodies, housing societies, companies and individuals, NAA was either not levied or was levied at incorrect rates. Failure to observe the Codal provisions and lack of proper monitoring resulted in non/short levy of non-agricultural assessment of Rs.28.46 lakh as detailed below:

^s Anand, Ahmedabad, Banaskantha, Jamnagar, Kheda, Mehsana and Valsad.

(Rupees in lakh)

Sr. No.	Name of the Taluka/ place	No. of cases	Period	Area of land (sq.mtr. in lakh)	Amount not/short levied	Nature of irregularity
1	Anand, Sardar-nagar (City Survey) & Kheda	8	Between 1970-71 and 2001-02	17.45	21.55	NAA was not levied/short levied on land used for various non-agricultural purposes.
2	Unjha & Pardi	26	Between 1989-90 and 2000-01	2.97	3.86	Though NAA was leviable at higher rates due to revision of rates, NAA was levied at pre-revised rates.
3	Jamnagar & Danta	40	Between 1989-90 and 2000-01	20.26	3.05	Though NAA was leviable at higher rates due to location of villages within the periphery of Jamnagar and Ambaji, NAA was levied at lower rates.
	Total	74		40.68	28.46	

The above facts were brought to the notice of the Department between February and October 2002. The Department accepted the audit observations involving an amount of Rs.4.92 lakh in 55 cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

The matter was reported to the Government in February 2003; reply was awaited (August 2003).

3.7 Non/short recovery of lease rent

Under the Code and the Rules made thereunder read with Government of Gujarat, Revenue Department Resolution of 31 August 1981 and 22 July 1993, Government can lease out unoccupied land for a specified period for manufacture of salt subject to payment of rent fixed by the Government from time to time. Lease rent was revised by Government in April 2000 and April 2001. Further, Government by issue of Resolution dated 9 July 1996, issued directions not to extend/renew the lease of salt ponds in Kutch on its expiry as little Rann of Kutch was declared as "wild ass sanctuary".

During test check of records of Taluka Development Offices, Dhrangadhra, Jambusar and Jamnagar, it was noticed that land measuring 88.41 lakh sq.mtrs. was leased out to 42 private parties for manufacture of salt. Though lease agreements of salt ponds in Kutch were terminated in July 1999 by the

Collector, lease rent of Rs.1.61 lakh was not recovered in 13 cases and rents at revised rates were not recovered in 29 cases, resulting in short levy of Rs.6.48 lakh.

The above facts were brought to the notice of the Department between October 2001 and May 2002 and of Government in February 2003; no reply was received (August 2003).

The above matters were followed up with reminders to the Principal Secretary in May/June 2003 and Chief Secretary in July 2003. However, inspite of such efforts, no reply was received from the Government (August 2003).

CHAPTER – IV

TAXES ON VEHICLES

4.1 Results of Audit

Test check of records in the offices of Commissioner of Transport, Regional Transport and Assistant Regional Transport Officers in the State, conducted in audit during the year 2002-03, disclosed under-assessments, etc. amounting to Rs.104.75 crore in 107 cases. These cases broadly fall under the following categories:

(Rupees in crore)			
Sr. No.	Category	No. of cases	Amount
1	Non/short levy of composite tax.	37	14.55
2	Non/short levy of motor vehicle tax	28	0.92
3	Other irregularities	42	89.28
	Total	107	104.75

During the year 2002-03, the department accepted and recovered under assessment of Rs.24.90 lakh in 125 cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.17.25 crore are discussed in the following paragraphs:

4.2 Non/short levy of Motor Vehicle Tax

Under the Bombay Motor Vehicles Tax Act, 1958, and Rules made thereunder, the tax is levied and collected in advance on all motor vehicles used or kept for use in the State. An additional tax commonly known as Composite Tax is leviable in lieu of passenger tax on all omnibuses/luxury buses exclusively used or kept for use as contract carriage in the State. The owner of a vehicle, who does not intend to use the vehicle or keeps it for use in the State but desires to avail of exemption from payment of tax, has to make a declaration within the period for which tax has been paid. Such a declaration is valid till the end of the financial year in which it is made. The declaration of non-use of vehicle is noted in the tax-index cards. The taxation authorities are required to review the tax index cards/registers to identify the defaulters and take prompt action to recover the dues.

4.2.1 During test check of records of 15[#] taxation authorities, it was noticed that operators of 587 omnibuses, who exclusively kept these vehicles for use as contract carriage had neither paid tax nor filed non-use declarations for various periods between 2000-01 and 2001-02. Failure on the part of the departmental officials to enforce the procedural requirements resulted in non levy of composite tax of Rs.10.77 crore.

The above facts were brought to the notice of the department between July 2001 and December 2002 and of the Government in February 2003. The department accepted in April 2003 the audit observations involving an amount of Rs.4.96 crore in 295 cases and recovered an amount of Rs.2.80 crore in 140 cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

4.2.2 During test check of records of 16[@] taxation authorities, it was noticed that in 593 cases, motor vehicles tax was not levied for the years 2000-01 and 2001-02 despite absence of any declaration regarding non-use of vehicles. Failure on the part of the departmental officials to adhere to the procedural requirements resulted in non levy of motor vehicles tax of Rs.62.17 lakh.

The above facts were brought to the notice of the department between February and December 2002 and of Government in February 2003. The department accepted the audit observations involving an amount of Rs.52.91 lakh in 431 cases and recovered an amount of Rs.19.44 lakh in 201 cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

4.3 Short levy of tax due to incorrect issue of permit as taxi

Under the Motor Vehicles Act, 1988, a “maxi-cab” constructed and adapted to carry more than 6 passengers, excluding the driver, for hire or reward, is defined as transport vehicle and the owners of these vehicles are liable to pay composite tax as applicable to “omnibuses”.

During test check of records of 10^{*} taxation authorities, it was noticed that 854 maxi cabs viz. Bajaj Tempo, Bajaj Matador, Autorikshaws, Vikram and Kushboo etc., having carrying capacity of more than six passengers, excluding the driver, had been incorrectly issued permit to run as motor cabs (taxies). The incorrect issue of permit to the above vehicles to run as taxies instead of as omnibuses resulted in short levy of tax of Rs.3.52 crore.

The above facts were brought to the notice of the Department between February and October 2002 and of Government in March 2003. The

[#] Ahmedabad, Bharuch, Bhavnagar, Bhuj, Gandhinagar, Junagadh, Mehsana, Nadiad, Navsari, Palanpur, Porbandar, Rajkot, Surat, Valsad and Vadodara.

[@] Ahmedabad, Bharuch, Bhavnagar, Bhuj, Gandhinagar, Junagadh, Mehsana, Navsari, Nadiad, Palanpur, Patan, Porbandar, Rajkot, Surat, Valsad and Vadodara.

^{*} Ahmedabad, Bardoli, Bhavnagar, Bharuch, Mehsana, Nadiad, Navsari, Patan, Surat, and Valsad.

Commissioner of Transport replied (March 2003) that after inspection of the vehicle, the State Transport Authority (STA) had granted its seating capacity as 6+1 in public interest. The reply is not tenable in view of the fact that based on audit comment, the STA in its meeting dated 6 November 2001 had decided to classify Bajaj Matador F-305 and 307 and Bajaj Tempo Trax, as per seating capacity shown in the sale invoice of non-transport vehicle. However, no decision had been taken to recover the differential amount of tax in respect of vehicles registered earlier.

4.4 Non/short levy of lump sum tax

Under the Act, the State Government prescribed rates of one time tax (lump sum tax), with effect from April 1987, leviable on all non-transport vehicles where unladen weight does not exceed 2,250 Kgs. Lump sum tax (LST) is leviable with reference to the cost of vehicle in respect of non-transport vehicle. From September 2001, LST is also leviable on transport vehicles used for carriage of goods or materials where registered laden weight does not exceed 3000 kgs. In respect of such vehicles registered prior to September 2001, LST was recoverable according to the age of the vehicle in 12 equal monthly instalments.

During test check of records of 5** taxation authorities, it was noticed that LST in respect of 89 non-transport vehicles was levied short due to incorrect application of rate or incorrect calculation of cost of the vehicles etc. Further, tax in respect of 1092 transport vehicles used for carriage of goods registered prior to September 2001 was not recovered. Failure to follow the provisions of the Act resulted in non/short levy of Lump sum tax of Rs.1.24 crore.

The above facts were brought to the notice of the Department between April and December 2002 and of Government in March 2003. The Department accepted audit observations in all the cases and recovered Rs.23.34 lakh in 265 cases. Particulars of recovery, if any, in the remaining cases had not been received (August 2003).

4.5 Incorrect grant of concession in composition amount

Under Section 200 of the Motor Vehicles Act, 1988, any offence committed, which is punishable under different Sections of the Act, can be compounded for such amount as the State Government may specify by notification in the official gazette. The Government vide notification of 1994 as amended from time to time has fixed the rate of composition amount for different types of offences punishable under different Sections of the Act.

During test check of records of Regional Transport Office, Nadiad and Surat, it was noticed in respect of 4552 cases of offences, finalised during 2000-01,

** Mehsana, Patan, Porbandar, Vadodara and Valsad.

that composition amount was levied at 50 and 75 *per cent* on the basis of instructions issued by the Commissioner of Transport in February 2000 and March 2001 though he was not empowered to reduce the amount of composition fees fixed by the Government. This resulted in short recovery of composition amount by Rs.68.26 lakh.

The above facts were brought to the notice of the Department between February and April 2002 and of the Government in March 2003. The Commissioner of Transport stated in April 2003 that under Section 86(5) the Regional Transport Officer is competent to levy compounding fee without any restriction. The reply is not tenable as the rates notified by the Government under Section 200 of the Act can only be amended by the Government. Further, Section 86(5) relates to permits only and not for general offence.

4.6 Incorrect grant of exemption

Under the Act, tax shall be levied and collected on all the motor vehicles used or kept for use in the State unless specifically exempted from payment. Tractor-cum-trailers belonging to agriculturists and used solely for agricultural purposes are exempted from payment of tax.

During test check of records of 5^s taxation authorities, it was noticed that in 85 cases, exemption from payment of tax was granted for various periods between 1999-00 and 2001-02 to tractor-cum-trailers without obtaining proof of owners being agriculturists or without requisite application for exemption in Form 'MT'. The incorrect grant of exemption in these cases resulted in non-levy of motor vehicles tax of Rs.16.40 lakh.

The above facts were brought to the notice of the department between June 2001 and October 2002 and of Government in February 2003. The Commissioner of Transport replied in April 2003 that the exemption was granted after obtaining the application in the prescribed form 'MT' and once the exemption was granted it was not necessary to obtain form MT every year. The reply is not tenable, since as per Rule 17(5) of the Rules, application has to be made within seven days of the period of the exemption, if any, last issued. Since the exemption is granted for a period "till the vehicle is used for agricultural purpose or transfer of ownership whichever is earlier", without obtaining 'MT' form every year, the owner's continued eligibility for exemption cannot be ensured.

4.7 Short recovery of tax due to incorrect approval of seating capacity

Under the Motor Vehicles Act, 1988, a "maxi-cab" constructed and adapted to carry more than six passengers, excluding the driver, for hire or reward, is

^s Bardoli, Nadiad, Surat, Valsad and Vadodara.

defined as transport vehicle and the owners of these vehicles are liable to pay composite tax as applicable to "omnibuses" based on the seating capacity. The seating capacity of 'TATA-SUMO' was nine plus driver as per the documents produced for registration. Based on the State Transport Authority's decision, the Commissioner of Transport issued orders in March 1996 to classify the above vehicle with the seating capacity of eight plus driver.

During test check of records of 6^s taxation authorities, it was noticed that 429 vehicles of the above category were allowed to be registered as "maxi-cabs" between 1997-98 and 2001-02 with seating capacity of eight plus driver. This resulted in short recovery of tax of Rs.18.04 lakh.

The above facts were brought to the notice of the Department between October 1999 and August 2002. The Department accepted the audit observation in February 2002 and stated that orders had been issued on the basis of decision of State Transport Authority to classify the vehicle with seating capacity as nine plus driver with effect from 6 November 2001. However, no decision was taken for recovery of difference of tax in respect of vehicles registered with incorrect seating capacity of 8 plus driver.

The matter was brought to the notice of Government in March 2003; reply had not been received (August 2003).

4.8 Delay in revalidation of drafts/dishonoured cheques

Under the Bombay Motor Vehicles Tax Rules, 1959, as amended from time to time, the payment of tax may be made by the vehicle owner into a government treasury or to the Taxation Authority in cash, by cheque or demand draft. Under reciprocal agreements, the State Government of Gujarat collects the composite fee in the form of demand drafts in respect of vehicles of other States plying in Gujarat State which is credited to government account by the Commissioner of Transport. If the validity of the demand drafts expires, these are returned to the authorities concerned of the home States/payers for revalidation. Under the Negotiable Instruments Act, 1881 (as amended in 1988) interest at the rate of 18 *per cent* per annum from the date of dishonour of the cheques to the date of payment has to be paid by the drawer. Action under Indian Penal Code (treating dishonour of cheque as cognizable offence) can also be taken, if notice is issued to the drawer within one month of the dishonour of cheque.

During test check of records of Commissioner of Transport, Ahmedabad and Regional Transport Offices, Ahmedabad and Rajkot, it was noticed that 101 demand drafts for Rs.3.24 lakh received on account of composite fees/tax from other States were not deposited promptly with the result validity of these drafts expired. Though these drafts were sent for revalidation between December 1998 and March 2001, the same were not received back. Another 27 cheques for Rs.4.27 lakh received from tax payers and deposited in the

^s Ahmedabad, Bhavnagar, Bharuch, Gandhinagar, Rajkot and Vadodara.

banks between April and September 1997 were dishonoured by the banks due to insufficient funds. Failure on the part of the departmental officials to monitor the revalidation of drafts/ to take action under Negotiable Instruments Act resulted in non-realisation of composite fee and tax amounting to Rs.7.51 lakh.

The above facts were brought to the notice of the Department between November 1999 and October 2002 and of Government in March 2003. The Commissioner of Transport replied in April 2003 that an amount of Rs.2.89 lakh was recovered in 71 cases and all efforts were being made to recover the remaining amount. Particulars of recovery, if any, in the remaining cases were awaited (August 2003).

The above matters were followed up with reminders to the Principal Secretary in May/June 2003 and Chief Secretary in July 2003. However, inspite of such efforts, no reply was received from the Government (August 2003).

CHAPTER – V

STAMP DUTY AND REGISTRATION FEES

5.1 Results of Audit

Test check of assessment records in the registration offices and offices of the Collectors of Stamp Duty (Valuation of Properties) in the state, conducted in audit during the year 2002-03 disclosed short realisation of stamp duty and registration fees amounting to Rs.121.04 crore in 253 cases which fall under the following categories:-

(Rupees in crore)			
Sr. No.	Category	No. of cases	Amount
1	Misclassification of documents	130	43.41
2	Under valuation of properties	12	0.48
3	Incorrect grant of exemption	14	1.21
4	Underassessment of stamp duty on instruments of mortgage deeds	33	51.92
5	Other irregularities	64	24.02
	Total	253	121.04

During the year 2002-03, the department accepted and recovered under-assessments of Rs.7.46 lakh in 41 cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.215.51 crore are discussed in the following paragraphs.

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

5.2.1 By a notification issued in April 1992 under the Bombay Stamp Act, 1958, (Act) as applicable to Gujarat, Government reduced the rate of stamp duty to one *per cent* for loans upto Rs.15 lakh and two *per cent* for loans exceeding Rs.15 lakh, on mortgage deeds executed by the industrial undertakings in favour of any financial institutions for borrowing loans when the possession of the property or part thereof in such deed is not given or not agreed to be given. From November 1994, the maximum stamp duty was restricted to Rs. 2 lakh per deed.

During test check records of 5[#] Sub-Registrar Offices, it was noticed in 8 documents registered between 2000 and 2001 that industrial undertakings obtained loans aggregating Rs.726.20 crore by executing mortgage deeds/debenture trust deeds in favour of banks. The mortgagors had handed over/ agreed to give possession of the mortgaged properties. Since the mortgagors handed over/agreed to give possession of the mortgaged properties, concessional rate of stamp duty levied was incorrect. This resulted in short levy of stamp duty of Rs.89.51 crore.

5.2.2 By another notification issued in July 2000, the above concession was also extended to mortgage deed executed by any industrial undertaking in favour of financial institution or financial institution acting as a trustee.

During test check of records of 6[&] Sub-Registrar Offices, it was noticed that in 33 documents registered during 2000-01, 33 industrial undertakings obtained loans aggregating Rs.1759.19 crore by executing bond/debenture trust cum mortgage deeds with financial institutions acting as trustees prior to 27 July 2000. Since the benefit of reduced rate of stamp duty was extended to documents executed by the financial institutions acting as trustees from 27 July 2000 only, the benefit of reduced rate of stamp duty was not admissible in respect of documents executed prior to this date. This resulted in short levy of stamp duty and registration fees of Rs.67.17 crore.

The above facts were brought to the notice of the Department between June 2001 and September 2002 and of Government in April 2003; reply had not been received (August 2003).

5.2.3 Under the Act, concessional rate of stamp duty at the rate of 6 *per cent* of consideration was leviable on deeds of conveyance executed for transfer of its premises by a registered Co-operative Housing Society, a Corporation formed and registered under the Bombay Non-Trading Corporation Act, 1959, a Board constituted under the Gujarat Housing Board Act, 1961/The Gujarat Rural Housing Board Act, 1972, in favour of its member or by such member in favour of another member. The Gujarat Co-operative Societies Act, 1961, provides that minimum eleven members are required to form a co-operative housing society. According to the bye-laws of Co-operative Housing Societies, only individual can be admitted as its member. In case of Gujarat Housing Board (GHB), if value of the property is upto Rs.75,000 stamp duty at the rate of one *per cent* is leviable.

During test check of records of 7[@] Sub-Registrar Offices, it was noticed that in the case of 82 documents of conveyance deeds registered during 1999 and 2000, stamp duty was incorrectly levied at concessional rate. This resulted in short levy of stamp duty of Rs.15.61 lakh as detailed below:

[#] Bharuch, Kadi, Mandvi, Narol, and Olpad.

[&] 2 each of Mehsana and Bharuch, 1 each of Ahmedabad and Surat.

[@] 4 of Rajkot, 2 of Ahmedabad and 1 of Navsari.

(Rupees in lakh)				
Sr.No.	Location	No. of documents	Short levy	Nature of irregularity
1	Ahmedabad and Gandevi	20	9.64	Though as per the by-laws of co-operative housing societies, only individual can be enrolled as a member of the society, concessional rate of duty was charged on the documents of conveyance deeds of properties sold to non-trading corporation etc. by co-operative housing societies.
2	Ahmedabad and Rajkot	53	5.23	Though concessional duty was leviable only on the documents of conveyance executed by members of co-op. housing societies with minimum 11 members for residential purpose, concessional rate of stamp duty was charged on the documents of conveyance for commercial use and in respect of co-op. housing societies having less than 11 members.
3	Ahmedabad	9	0.74	Benefit of concessional rate of stamp duty at the rate of 1 per cent allowed in respect of properties of GHB where value of each property was more than Rs.75,000.
	Total	82	15.61	

The above facts were brought to the notice of the Department between September 2000 and February 2002 and of Government in April 2003; reply had not been received (August 2003).

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

Under Section 3 of the Bombay Stamp Act, 1958, every instrument mentioned in Schedule-I shall be chargeable with duty at the rates as indicated in the Schedule. For the purpose of levy of stamp duty, an instrument is required to be classified on the basis of its recitals given in the document and not on the basis of its title.

During test check of records of 113[@] Sub-Registrar Offices, it was noticed that 1159 documents registered between 1999 and 2001 were classified on the basis of their titles and stamp duty was levied accordingly. Scrutiny of the

[@] 25 of Ahmedabad, 15 of Vadodara, 10 of Mehsana, 9 of Surat, 6 each of Kheda & Anand, 5 of Bharuch, 4 each of Bhavnagar, Patan, Banaskantha & Rajkot, 3 each of Junagadh, Surendranagar, Navsari, Sabarkantha & Bhuj, 2 each of Narmada & Porbandar, 1 each of Valsad & Gandhinagar.

recitals of these documents, however, revealed that these documents were misclassified. This resulted in short levy of stamp duty and registration fees of Rs.49.04 crore as detailed below:

(Rupees in crore)

Sr. No.	No. of offices	No. of documents	Short levy	Nature of irregularity
1	37	456	39.32	These documents were mis-classified as "agreement" though as per the recitals of the documents, possession of the property had been handed over/full rights to develop and market the properties, right and interest were transferred to the purchasers. These documents were, therefore, required to be classified as conveyance deeds.
2	30	312	5.71	These documents were misclassified as deposit of title deeds. However, recitals of these documents revealed that guarantors deposited the title deeds of their properties in the bank on behalf of the borrowers. These documents were, therefore, classifiable as bonds.
3	27	331	3.24	The documents were misclassified as deposit of title deeds though as per the recitals right/interest in the property was created in favour of the mortgagees by executing separate loan agreements, handing over demand promissory notes/giving Powers of attorney etc. These documents were, therefore, classifiable as mortgage deeds.
4	6	20	0.29	These documents were misclassified as 'correction deed' though as per recitals of the documents, changes were made in the name of purchasers, area of property, description of property etc. The documents, therefore were required to be classified as conveyance deeds.
5	2	4	0.26	Transfer of ownership by way of assignment (conveyance) was misclassified as deed of rectification.
6	7	25	0.11	In these documents, the share of co-owners was released to another co-owner without consideration hence, they were classifiable as conveyance instead of release deed.

7	4	11	0.11	Rights of property were reconveyed to original vendors through cancellation deed, instead of conveyance deed.
Total	113	1159	49.04	

The above facts were brought to the notice of the Department between June 2000 and December 2002 and of the Government in April 2003. The Department accepted audit observations involving an amount of Rs.5.40 lakh in 7 cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

5.4 Short levy of stamp duty and registration fees on instruments comprising several distinct matters

Under Section 5 of the Act, any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties for which such separate instrument would be chargeable under the Act.

During test check of records of 18 Sub-Registrar Offices of 8^s districts, it was noticed that 79 documents comprising or relating to several distinct matters of immovable properties valued at Rs.16.27 crore were charged to stamp duty and registration fees for only one matter/transaction. This resulted in short levy of stamp duty and registration fees of Rs.4.24 crore as detailed below:

(Rupees in lakh)

Sr. No.	Location	No. of documents	Value of property	Short levy	Nature of irregularity
1	Kalol, Vadodara, Padra, Dabhoi, Ahmedabad, Bharuch, and Surat	20	730.45	269.56	As per recitals, two distinct transactions of sale of property were involved, but duty was levied only on one transaction.
2	Ahmedabad, Bhavnagar, Kadi and Mangrol	21	318.93	66.50	As per recitals, instruments contained elements of conveyance / reconveyance and mortgage but duty was levied only either on conveyance or on mortgage.
3	Ahmedabad	1	243.28	37.71	Though instrument contained elements of sale

^s 5 of Ahmedabad, 4 of Vadodara, 3 of Surat, 2 of Mehsana and 1 each of Bhavnagar, Bharuch, Valsad and Jamnagar.

					and agreement to sell, duty was levied only on agreement.
4	Ahmedabad, Valsad and Surat	17	90.51	23.19	Though instruments contained elements of sale and gift, duty was levied only on sale.
5	Ahmedabad and Surat	8	94.80	10.35	Though instruments contained elements of conveyance and partition, duty was levied only on conveyance.
6	Ahmedabad	6	87.40	10.04	Though instruments contained elements of sale, gift and release, duty was levied only on one transaction of sale.
7	Ahmedabad, Vadodara and Valsad	5	54.60	6.75	Though instruments contained elements of sale and power of attorney with consideration, duty was levied only on sale.
8	Ahmedabad	1	7.18	0.30	Though instrument contained elements of partition and gift, duty was levied only on partition.
	Total	79	1627.15	424.40	(Say 4.24 crore)

The above facts were brought to the notice of the Department between March 2001 and November 2002 and of Government in April 2003; reply has not been received (August 2003).

5.5 Short levy of stamp duty due to non-adoption of market value

Under the Act, the rate of stamp duty leviable on a deed of transfer of lease by way of assignment is the same as applicable to a conveyance deed for the amount of consideration for the transfer or the market value of the property, whichever is greater.

During test check of records of Sub-Registrar Offices, Odhav, Naroda and Navgam (Surat), it was noticed in 10 documents of assignment of lease registered during 2000 and 2001 that while assigning the lease rights, market value of the immovable property transferred on lease was not taken into account for levying stamp duty. This resulted in short levy of stamp duty of Rs.3.28 crore.

The above facts were brought to the notice of the Department between February and June 2002 and of Government in April 2003; replies had not been received (August 2003).

5.6 Short levy of stamp duty and registration fees on document of further charge

An instrument imposing a further charge on mortgaged property is classifiable under Article 27 of Schedule-I of Bombay Stamp Act, 1958 and shall be chargeable with stamp duty at the rates as indicated in the Schedule.

During test check of records of Sub Registrar Offices, Kadi and Thasra, it was noticed that 2 documents registered during 1998-99 and 2001-02 styled as 'further charge', were executed by 2 industrial undertakings in favour of a bank and LIC of India, against various immovable properties already mortgaged to the above financial institutions for obtaining loan of Rs.27.87 crore. Stamp duty was charged at reduced rate applicable to equitable mortgage instead of charging duty at the rate applicable to deeds of further charge. Incorrect application of rate of duty resulted in short levy of stamp duty Rs.1.53 crore.

The above facts were brought to the notice of the department between August and November 2002 and of Government in April 2003; reply had not been received (August 2003).

5.7 Short levy of stamp duty due to undervaluation of properties

Under the Act, if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration is not as per the market value of the property, he may, either before or after registering the document, refer the same to the Collector for determining the true market value of the property. The market value of the property is to be determined in accordance with the Bombay Stamp (Determination of Market Value of the Property) Rules, 1984 and instructions issued by the Government from time to time.

During test check of records of Dy. Collector (Valuation) Ahmedabad, Junagadh, Rajkot and Sub-Registrar Narol, it was noticed that in 56 documents, the market value of the property was determined less than the actual market value. This resulted in short levy of stamp duty and registration fees of Rs.40.00 lakh as detailed below:

(Rupees in lakh)

Sr. No.	Location	No. of documents	Short levy	Nature of irregularity
1	Ahmedabad, Junagadh and Rajkot	53	24.19	Value of the properties recommended by the Sub Registrar and Town Planner in the valuation report was determined less by the Dy. Collector on the basis of representations of the executors.
2	Ahmedabad	1	9.40	Market value as per jantry was not adopted. This was against the principles of valuation (Determination of market value of the property) Rules, 1984.
3	Ahmedabad	2	6.41	Though the value of the property as per registered documents between September 1999 and October 1999 was only Rs.23,675 in each case, the owners obtained loan of Rs.19 lakh each by depositing the title deeds in August 2001. Since loan granted by the banks would have been based on the market value, the documents registered earlier were undervalued as the market value prevailing as per jantry at the time of registration of above documents was Rs.27.14 lakh each.
	Total	56	40.00	

The above facts were brought to the notice of the Department between May and November 2002 and of the Government in April 2003; reply had not been received (August 2003)

5.8 Non/short levy of additional duty

Under Section 3(B) of the Act, additional duty at the rate of fifty *per cent* of the basic duty is leviable on instruments of conveyance, exchange, gift, lease etc. of vacant land situated in urban areas (other than vacant land of less than 100 sq.mtrs. intended for residential purpose). For this purpose, land with building constructed upto lintel level is also treated as vacant land.

During test check of records of Dy. Collector (Valuation), Bhavnagar and 5 @ Sub-Registrar offices, it was noticed in case of 23 deeds of conveyance of vacant land situated in urban areas registered during 2000 and 2001 that additional duty at the prescribed rate was not levied. This resulted in short levy of stamp duty of Rs.17.99 lakh.

@ 3 of Ahmedabad, 1 each of Surendranagar and Rajkot.

The above facts were brought to the notice of the Department between November 2001 and November 2002 and of the Government in April 2003. No reply was received (August 2003).

The above matters were followed up with reminders to the Principal Secretary in June 2003 and Chief Secretary in July 2003. However, inspite of such efforts, no reply was received from the Government (August 2003).

CHAPTER – VI

OTHER TAX RECEIPTS

6.1 Results of Audit

Test check of records of various departmental offices relating to the following receipts conducted in audit during the year 2002-03 revealed under assessment etc. of Rs.66.32 crore in 156 cases as detailed below:

(Rupees in crore)			
Sr. No.	Category	No. of cases	Amount
1	Electricity duty	22	56.52
2	Entertainments tax	89	7.26
3	Luxury tax	28	2.54
4	Profession tax	17	0.002
	Total	156	66.32

During the year 2002-03, the department accepted and recovered under assessment amounting to Rs.55.88 lakh in 84 cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.5.66 crore are discussed in the following paragraphs.

ENTERTAINMENTS TAX

6.2 Incorrect grant of exemption

Under the new Tourism policy of 1995-2000, the Government exempted wholly the tax on entertainments which fulfil the criteria laid down under the scheme during the eligibility period or upto the period of expiry of the limits of incentives, whichever is earlier. The eligibility certificate issued by the Commissioner of Tourism is subject to the condition that the unit should obtain tax exemption certificate from the Commissioner of Entertainments Tax.

During test check of records of Collector (ET), Ahmedabad, it was noticed in October 2001 that the owner of a cinema had availed exemption between November 2000 and March 2001 from entertainment tax to the extent of Rs.1.01 crore without obtaining the tax exemption certificates from the Commissioner of Entertainments Tax, resulting in irregular grant of exemption from entertainments tax.

The above facts were brought to the notice of the Department in December 2001 and of the Government April 2003; reply had not been received (August 2003).

6.3 Non realisation of Entertainments Tax and Interest

Under the Gujarat Entertainments Tax (GET) Act, 1977 and the Rules made thereunder, entertainments tax shall be paid by the proprietor of a cinema house weekly within 14 days of the end of the week and by the proprietor of video parlour in advance every month by the 15th day of the month preceding the month to which the tax relates. If the payment of tax is delayed, simple interest at the rate of twenty-four *per cent* per annum is chargeable on the unpaid amount of tax for the period of delay.

During test check of records of 4[@] Collectors (ET) and 3[#] Mamlatdar offices, it was noticed that 18 cinema houses and 3 video parlours neither filed the returns nor paid the tax of Rs.71.45 lakh during the years 1999-00 and 2001-02. Failure to enforce the provisions of the Act and lack of proper monitoring resulted in non-realisation of tax of Rs.78.00 lakh including interest.

The above facts were brought to the notice of the Department between March and November 2002 and of the Government in March 2003. The Department accepted audit observations in 3 cases involving an amount of Rs.2.84 lakh and recovered an amount of Rs.0.37 lakh in one case. Government also, while accepting the audit observation replied in August 2003 that the Commissioner of Entertainments Tax had been instructed to recover the amount of tax from the defaulters. Further reply was awaited (August 2003).

6.4 Non recovery of entertainments tax from cable operators

Under the Act, tax is leviable for exhibition of programmes with the aid of antenna or cable television. Every proprietor has to pay tax in advance in quarterly instalments at the rate prescribed. For non-payment of tax within the prescribed time, interest at the rate of 24 *per cent* per annum is leviable.

[@] Ahmedabad, Bhuj, Navsari, and Vadodara.

[#] Mandvi, Modasa and Morbi.

During test check of records of 2[&]Collectors (ET) and 6[§] Mamlatdar offices, it was noticed that 146 cable operators did not pay entertainments tax between the periods 1999-00 and 2001-02. Failure to enforce the provisions of the Act and lack of proper monitoring resulted in non recovery of entertainment tax of Rs.17.44 lakh, including interest.

The above facts were brought to the notice of the Department between April and November 2002 and of the Government in March 2003. The Department accepted audit observations in 36 cases involving an amount of Rs.9.87 lakh. Government also, while accepting the audit observation replied in August 2003 that the Commissioner of Entertainments Tax had been instructed to keep note of actual number of connections and recover the dues.

6.5 Short levy of tax from "Touring Cinemas" paying compound tax

According to explanation below Section 6 of the GET Act, 1977, touring cinema means "an outfit comprising of cinematograph apparatus, plant and enclosures taken from place to place for giving cinematograph exhibition in local theatres and halls". These touring cinemas are allowed to pay the tax at concessional rate prescribed in the Act. To ensure the compliance with the provisions, the Act provides for production and inspection of accounts and documents by the proprietor and search of premises etc., by the departmental authorities. For contravention of the provisions, the prescribed officer shall recommend to the licensing authority to suspend the license granted to the proprietor.

During test check of records of Collector (ET), Mehsana and 11 [@]Mamlatdar offices, it was noticed that 21 touring cinema halls with permanent built-up facilities and being run in the same place for the periods ranging between more than 2 years and 20 years, were incorrectly issued licenses as touring cinemas and collected tax at concessional rates. Failure to enforce the provisions of the Act and lack of proper monitoring resulted in short levy of tax of Rs.12.92 lakh during 1999-00 and 2001-02.

The above facts were brought to the notice of the Department between November 2000 and December 2002 and of the Government in March 2003. The Department accepted the audit observations in 6 cases involving an amount of Rs.3.39 lakh. Particulars of recovery, if any, and reply in the remaining cases have not been received (August 2003).

[&] Bhuj and Vadodara.

[§] Anand(Rural), Gandevi, Himatnagar, Khambhat, Mandvi and Patan.

[@] Amreli, Bardoli, Chikhli, Jasdan, Lathi, Lalpur, Liliya, Mahuva, Porbandar, Sami and Umralla.

6.6 Non recovery of entertainments tax due to delay in finalisation of offence cases

As per section 9(1) of the GET Act, 1977, where for any reason any amount for admission to any entertainment or any complimentary ticket has escaped assessment to tax or the proprietor has failed to pay tax due, the prescribed officer shall assess to the best of his judgment the tax due on such payments. Commissioner (ET) issued instructions in July 1997 that demand notices should be issued to the defaulters within seven days from the date of registering the offences and offence cases decided promptly.

During test check of records of Collector (ET), Vadodara for the year 1999-00 to 2001-02, it was noticed that show cause notices were issued between August 2001 and February 2002 for payment of tax of Rs.1.42 crore after registering offences in 7 cases. However, final orders for effecting recovery were either not passed or issued even after lapse of periods ranging from 8 to 14 months. In 11 cases, though final orders were passed during December 1989 and December 1999, recovery of tax of Rs.4.91 lakh was not effected. Failure to enforce the provisions of the Act and follow the instructions of the Commissioner (ET) resulted in non-recovery of tax of Rs.1.47 crore.

The above facts were brought to the notice of the department between July 2000 and November 2002 and of the Government in April 2003. The Department accepted audit observations in 11 cases involving an amount of Rs.4.91 lakh and recovered an amount of Rs.0.63 lakh in 5 cases. Government also, while accepting the audit observation replied in August 2003 that instructions had been issued to the Commissioner of Entertainments Tax to take necessary action in the above cases.

6.7 Availing of unintended benefit by owners of the cinema

Under the GET Act, 1977, the Government may by notification in the Official Gazette, exempt either wholly or partly, any entertainment or class of entertainments from payment of tax subject to such conditions as may be specified therein. Government by issue of a Notification in June 1981 exempted from payment of tax the films in Gujarati language produced with the equipment of recognised studios located in Gujarat subject to fulfillment of certain conditions. As per condition of the eligibility certificate issued by the Commissioner of Entertainments Tax, the Cinema owner shall fix the rate of admission independently on the very day on which the Gujarati film is to be exhibited. The rate of admission shall be worked out after deducting entertainment tax from the rate of admission thus fixed and no addition/reduction shall be made in the rate of admission during exhibition of tax-free Gujarati films subsequently.

The intention of the Government to grant exemption to Gujarati films from payment of tax was to encourage the producers to produce films at a lower cost, which in turn, would benefit viewers. Hence, the benefit of tax-free films would reach viewers only when the rate of admission is kept lower than that of taxable films. Thus, by giving an option to the cinema owners to fix the rate of admission independently, the intention of the Government to make available low cost films to the viewers was defeated.

During test check of records of 4^s Mamlatdar offices, it was noticed that 7 cinema owners fixed the rates of admission of tax-free Gujarati films at rates higher than the regular non-exempted films. This resulted in availing of unintended benefit of Rs.15.71 lakh by the cinema owners.

The above facts were brought to the notice of the Department between May and November 2001 and of the Government in April 2003. Government replied in August 2003 that instructions had been issued to the Commissioner of Entertainments Tax to take necessary action.

LUXURY TAX

6.8 Non-payment of luxury tax under tariff rates declared in form II return/printed tariff

Under the Gujarat Taxes on Luxuries (Hotels and Lodging Houses) Act, 1977 and the Rules made thereunder, tax is leviable on the full tariff of a room as declared by the proprietors of hotels irrespective of whether the room was let out free or at concessional rates. Where any proprietor fails to furnish a true and correct return or to pay amount of tax due according to such return, he shall be liable to pay simple interest at the rate of 2 *per cent* per month. In addition, penalty not exceeding one and one half times the amount of tax is also leviable.

During the course of audit of 6^s Collectors/Dy. Collector (Luxury Tax), it was noticed that luxury tax including interest of Rs. 1.41 crore was either not paid or paid short by the hotel owners during the period 2000-01 and 2001-02 as per details given below. In addition, penalty at the maximum of Rs.1.71 crore was also leviable.

(Rupees in lakh)				
Sr. No.	Name of the place	No. of hotels	Tax short levied	Nature of irregularity
1	Ahmedabad.	9	81.44	The hotels had fixed two tariffs for the same luxury provided in double room, one when occupied by two persons and another when occupied by single person. Since the luxury provided in both the cases was the same, fixation of two tariffs for same luxury was irregular.

^s Borsad, Khambhat, Patan and Vijapur.

^s Ahmedabad, Bharuch, Mehsana, Palanpur Vadodara and Veraval.

2	Ahmedabad, Bharuch, Palanpur, Vadodara and Veraval	11	30.24	Proprietors of 11 hotels had paid luxury tax on the discounted amount in contravention of the provisions of the Act.
3	Ahmedabad	4	12.55	4 hotels at Ahmedabad fixed separate rate of tariff (day tariff) for part of the day less by 50 to 60 <i>per cent</i> of regular tariff contrary to the provisions of the Act.
4	Ahmedabad.	4	9.67	Hotel owners had collected and paid tax at half the rate for the last day's stay of the customer, which was contrary to the provisions of the Act.
5	Ahmedabad, Mehsana and Palanpur.	9	4.30	Proprietors of hotels had collected charges for extra bed but did not pay luxury tax on the charges so collected. Since extra bed is part of the luxury provided, charges collected should have been included for the purpose of levy of luxury tax.
6	Ahmedabad	1	3.03	A hotel owner at Ahmedabad did not pay any tax for the stay of persons on the plea that they were house guests. Invoices, however, revealed that charges for all other services like food, telephone, laundry etc. provided to them were recovered from these guests.
	Total	38	141.23	Say 1.41 crore

The above facts were brought to the notice of the Department between November 2001 and October 2002 and of the Government in March 2003. The Government replied in August 2003 that the Commissioner of Luxury Tax had been instructed to review the cases and recover the tax as per rules in five cases. In one case at Sr.No.2 the audit observation was not accepted on the ground that tax was recovered on the actual payment made by the customers. The reply is not tenable in view of the provisions of the Act.

6.9 Short levy due to non-inclusion of telephone charges in the taxable amount

Section 3(1) of the Act provides for levy and collection of tax from every person on the charges collected in respect of any luxury provided to him in a hotel. The charges for luxury provided in a hotel include telephone charges also. If the proprietor does not pay the tax within the prescribed period, he shall be liable to pay simple interest at the rate of 2 *per cent* for each month or part thereof alongwith penalty.

During test check of records of Collectors (LT), Ahmedabad, Jamnagar and Palanpur, it was noticed that 10 hotel owners had collected telephone charges but not included the same in the taxable amount. This resulted in short levy of tax amounting to Rs.42.28 lakh including interest.

The above facts were brought to the notice of the Department between September 2001 and October 2002 and of the Government in March 2003. The Government replied in August 2003 that the matter had been referred to the Law Department for their opinion and on receipt of the same necessary action would be taken. Further reply was awaited (August 2003).

6.10 Short levy of interest due to incorrect calculation

Under the Gujarat Taxes on Luxuries (Hotels and Lodging Houses) Act, 1977 and the Rules made thereunder, if a proprietor does not pay the amount of tax within the prescribed period, he shall be liable to pay simple interest at the rate of 2 *per cent* of the tax due for each month or part thereof with penalty for the period for which tax remains unpaid.

During test check of records of 3[@] Collectors (LT), it was noticed in respect of 18 hotels that interest was calculated at the rate of 24 *per cent* per annum, in number of days, for the period of default instead of calculating at the rate of 2 *per cent* for each month and part of the month as laid down in the Act. This resulted in short levy of interest of Rs.10.21 lakh.

The above facts were brought to the notice of the Department between November 2001 and October 2002 and of the Government in March 2003. The department accepted and recovered the amount of Rs.0.42 lakh in one case. The Government replied in August 2003 that the Commissioner of Luxury Tax had been instructed to take necessary action.

[@] Ahmedabad, Surat and Vadodara.

CHAPTER – VII

NON TAX RECEIPTS

7.1 Results of Audit

Test check of records in various departmental offices relating to the following receipts conducted in audit during the year 2002-03 revealed non/short recovery of receipts amounting to Rs.303.14 crore in 100 cases as detailed below:

(Rupees in crore)			
Sr. No.	Category	No. of cases	Amount
1	Geology and Mining	57	0.36
2	Forest Receipts	41	0.27
3	Review on “Levy and collection of water rates”.	1	236.33
4	Review on “Collection of royalty and dead rent for the mines and quarries”.	1	66.18
	Total	100	303.14

During the year 2002-03, the department accepted audit observations amounting to Rs.17.64 lakh in 16 cases and recovered Rs.1.18 lakh in 4 cases pertaining to earlier years. An illustrative case highlighting important audit observation and the results of reviews on (i) “Levy and collection of water rates” and (ii) “Collection of royalty and dead rent for the mines and quarries”, involving Rs.305.66 crore are discussed in the following paragraphs.

WATER RATES

7.2 Levy and collection of water rates

Highlights

Fixed water rates were of Rs.104.94 crore were either not levied on sanctioned reserved quantity of water or were levied short from 31 water users.

[Para 7.2.7]

Interest and service charge of Rs.37.10 crore were either not levied or were levied short from non-irrigation users who defaulted in payment of water rates.

[Para 7.2.8]

Penal water rates were not levied in respect of 20 non-irrigation users for their failure to install measuring devices and for non-execution of agreements. This resulted in short levy of Rs.8.48 crore.

[Para 7.2.10]

Water rates were assessed on the quantity of water actually available to the users instead of on the quantity of water released from the reservoir in 4 cases resulting in short levy of water rates of Rs.41.77 crore

[Para 7.2.11]

In two cases, non-levy of water rates on average basis as per the agreement, when measuring devices did not function, resulted in short levy of water rates by Rs. 6.06 crore.

[Para 7.2.12]

Charging water rates on net use beyond the authorised period resulted in short levy of Rs.5.38 crore.

[Para 7.2.13]

Water rates were levied short by Rs.68.55 lakh due to non-enhancement of water rates and computation error.

[Para 7.2.15]

Introduction

7.2.1 Out of a total geographical area of 196.00 lakh hectares (with 123.86 lakh hectares culturable area) 16.64 lakh hectares is under the command of irrigation in Gujarat. Water supply both for irrigation and non-irrigation purposes in the State is governed by the Bombay Irrigation Act, 1879 as applicable to Gujarat and by the Gujarat Canal Rules, 1962. The sources of irrigation/irrigation potential in the State are canal based which are obtained mainly from rivers Tapti, Mahi, Shetrunji and Panam. The rates chargeable from the water users for irrigation/non-irrigation purposes are called 'water rates'.

Water rates for non-irrigation purpose comprise fixed water rates and normal water rates. Fixed water rates are levied on sanctioned reserved quantity of water and normal water rates are levied on actual quantity of water drawn by users. Water users drawing water for non-irrigation purposes are required to execute an agreement with the Government before drawal of water. Non-execution of agreement would result in unauthorised use of water. The State Government had been revising water rates for irrigation as well as non irrigation purposes from time to time. Default in payment of water rates by users for non-irrigation purposes attracts levy of interest at the rate of 24 *per cent* per annum and service charge at the rate of one *per cent* per annum and for irrigation purpose interest at the rate of 12 *per cent* per annum.

Organisational set-up

7.2.2 For the purpose of administration of water supply for irrigation and non-irrigation purposes, the State is divided into four zones viz. North, South, Central and Saurashtra and Kutch under the control of Narmada, Water Resources and Water Supply Department headed by a Secretary to Government of Gujarat. The Chief Engineer-cum-Additional Secretary is the head of a zone. He is assisted by Superintending Engineers, Executive Engineers, Dy. Executive Engineers and Assistant Engineers etc. The demands for water rates for irrigation and non-irrigation purposes are raised and collected by Executive Engineers in charge of Irrigation Divisions under the Narmada Water Resources and Water Supply Department in respect of all projects. However, demands of water rates for irrigation purposes in respect of Mahi and Kakrapar Projects are raised by Executive Engineers and recovered by Recovery Mamlatdars.

Objectives of Audit

7.2.3 Levy of water rates governed by the Bombay Irrigation Act and Gujarat Canal Rules are regulated by various Government resolutions issued by the Narmada Water Resources and Water Supply Department. Detailed analysis of records in respect of 6 out of 18 major irrigation projects and 36

out of 115 medium irrigation projects, for the period 1997-98 to 2001-02 was conducted between April 2002 and March 2003 to see :

- Whether bills of water rates are raised in accordance with the conditions of supply as per agreements and rates are correctly charged;
- whether adequate action is initiated against defaulters to levy water rates with interest and service charge;
- whether adequate system for monitoring of levy and collection of water rates is in existence and its actual implementation.

Trend of revenue

7.2.4 The budget estimates, revenue realised under the head "Major and Medium Irrigation" during the last five years ending 2001-02 are as under:

(Rupees in crore)				
Year	Budget Estimates	Actual	Short fall / Excess	Percentage of short fall / Excess
1997-98	45.80	91.29	(+) 45.49	(+) 99
1998-99	200.00	132.10	(-) 67.90	(-) 34
1999-00	250.00	110.68	(-) 139.32	(-) 56
2000-01	267.50	136.58	(-) 130.92	(-) 49
2001-02	255.00	132.09	(-) 122.91	(-) 48

The targets of revenue realisation were not achieved during period from 1998-99 to 2001-02. The revenue increased in 1997-98 due to upward revision of water rates from April 1997. The rates were, however, revised downward in January 2001 with retrospective effect from 1 April 1997.

Shortfall in realisation of revenue was attributed by the department to scarcity of water prevailing during these years, non payments by the users due to recession in industries and impracticability in disconnection of water supply.

However, audit scrutiny did not reveal any proposal from Government either for waiver or postponement of such recoveries. Further, there was no provision for the Executives of Irrigation Department to take legal remedies against defaulters to recover the dues as arrears of land revenue.

Arrears of revenue

7.2.5 The position of arrears of revenue for supply of water for irrigation and non-irrigation purposes at the end of five years ended 2001-02 as furnished by the department, was as under:

(Rupees in crore)

Period (As on)	Irrigation Purpose Amount	Non-irrigation Purpose* Amount
31.03.1998	72.17	624.26
31.03.1999	N.A.	61.89
31.03.2000	82.00	84.84
31.03.2001	377.11	55.62
31.03.2002	361.47	318.33

* Figures, as furnished by the Department. These figures have not appeared in the respective years' Audit Reports.

Pendency of arrears with different concerned authorities though called for from the Government, was not received (August 2003).

The figures furnished by the Department as arrears of revenue for supply of water for irrigation purposes had never been reconciled by the State Government as the same do not tally with those furnished by the department for Audit Report of earlier years. The arrears of water rates included the arrears from 1972-73. Though provisions exist in the Bombay Irrigation Act, 1879 to recover the arrears under Land Revenue Code, effective efforts were not made for recovery through revenue authorities.

A few illustrative cases highlighting important irregularities noticed in review involving financial effect of Rs.236.33 crore are mentioned in the following paragraphs.

Avoidable financial burden on Government due to incorrect revision of water rates

7.2.6 The Government vide various resolutions, revised water rates in respect of water supplied for non-irrigation purposes from time to time as shown in the table below:

(Rupees)							
Government Resolution dated		Industries		GIDC		Domestic	
		Subsidy	Water Rates	Subsidy	Water Rates	Subsidy	Water Rates
03-12-1986	NWR*	0.45	0.55	0.50	0.50	0.85	0.15
	FWR#	--	0.10	--	0.10	--	0.10
22-05-1990	NWR	0.25	0.75	0.30	0.70	0.85	0.15
	FWR	--	0.10	--	0.10	--	0.10
01-05-1997	NWR	--	4.00	--	2.00	--	0.30
	FWR	--	2.50	--	1.25	--	0.20
30-01-2001 ^{\$}	NWR	--	2.50	--	2.50	--	0.30
	FWR	--	0.75/1.50	--	0.75	--	0.20

*NWR- Normal Water Rates leviable on actual water supplied.

FWR- Fixed Water Rates leviable on sanctioned reserved quantity.

\$ Applicable with effect from 1 April 1997.

The above table indicates water rates were revised by the Government from time to time. The loss of revenue due to downward revision was brought to the notice of the Government in June 2002. The Government replied in August 2002 that the rates for supply of water for non-irrigation purposes fixed in May 1990 at 85 paise per 1,000 litres were low and financial burden was increasing. These rates were low in comparison with the expenditure incurred on development of water resources, distribution of water and expenditure incurred for storing water. After preparing the detailed proposal of water pricing in consultations with Water Resources Expert, the charge for unit rate of water was worked out and accordingly these rates were enhanced to Rs.6.50 paise for 1,000 litres vide Government Resolution of 1 May 1997. However, these rates were again revised downward by Government as per Resolution of 30 January 2001 with retrospective effect from 1 April 1997 considering the representations of various industries against the hike of seven and a half times in water rates and considering poor recovery performance during 1997-98 to 1999-00. Government argued that the rates revised were as per the recommendations of the Vaidyanathan Committee, to the extent of one per cent of the capital expenditure and Maintenance and Repairs expenditure at the time of revision of water rates.

However, the main objective of revising water rates vide Government Resolution dated 1 May 1997 to relieve the Government of extra burden of expenditure could not be fulfilled. Thus, the Government continued to subsidise water supply for non-irrigation purposes.

Short levy of fixed water rates and interest in respect of non-irrigation purposes

7.2.7 Consequent on revision of water rates with effect from 1 April 1997, Government permitted the users to revise their reserved requirement of water for five years before 1 August 1997 to be effective from 1 April 1997. If no change was proposed, fixed water rates were to be charged on the existing reserved quantity every year irrespective of the quantity of water actually drawn.

During test check of records of 10[&] divisions, it was noticed that fixed water rates were either not levied or were levied short between 1997-98 to 2001-02 from 31 users. The amount of short levy worked out to Rs.104.94 crore including interest and service charge as shown below:

(Rupees in crore)

Sr. No.	No. of users	Amount	Nature of irregularity
1.	10 [@]	49.44	Fixed water rates were assessed on the users revised demand submitted by them after expiry of the time limit prescribed by the Government.
2.	1 [~]	21.56	Fixed water rates, though revised from April 1997, were levied at pre-revised rates. On this being pointed out, the Government replied (June 2003) that revised demand had been raised.
3	2 [!]	12.59	Fixed water rates were levied on the quantity of water drawn during the year instead of on sanctioned reserved quantity.
4	1 [#]	7.69	Fixed water rates were levied on the average quantity of four years demand instead of on sanctioned reserved quantity.

[&] KRBC, Surat, Surat Canal, Surat, Ambica, Navsari, Bhavnagar irrigation, Bhavnagar, Project Construction-3, Himatnagar, Irrigation Project, Modasa, URBC Investigation, Ankleshwar, Vadodara Irrigation, Vadodara, Nadiad Irrigation, Nadiad and Himatnagar Irrigation, Himatnagar.

[@] This includes, GNVFC, KRIBHCO Ltd., ONGC, GEB-UGBTPS, GACL.

[~] Kakrapar Atomic Power Project.

[!] Reliance Industries Ltd. and NTPC.

[#] Rama Newsprint and Papers Ltd.

5	13 [^]	7.29	Fixed water rates were not levied on the ground that the water was not drawn by the users.
6	1 ⁺	3.33	Short levy of water rates was due to levy of fixed water rates on pre-revised sanctioned quantity though the user had doubled its sanctioned reserved quantity.
7	1 [%]	2.94	Non levy of fixed water rates due to incorrect exemption.
8	2	0.10	Short levy of fixed water rates due to calculation mistake.
Total	31	104.94	

7.2.8 According to Government Resolutions, fixed water rates for non-irrigation purposes are to be charged on the existing reserved quantity of water and to be paid in the first week of April every year. Non / delayed payment of water rates attract levy of interest at the rate of 24 *per cent* per annum and service charge at the rate of one *per cent*.

Test check of records of 6* projects revealed that interest and service charge amounting to Rs.37.10 crore were either not levied or levied short for non payment/late payment of water rates from 26 users between 1997-98 and 2001-02 as shown below:

(Rupees in crore)

Sr. No.	Name of Project	No. of users	Amount of interest and service charge		Short levy	Remarks
			Leviable	Levied		
1	Mahi	3	61.08	28.91	32.17	The Government stated in June 2003 that field officers had been instructed to raise the bills.
2.	Kakrapar	15	24.52	20.89	3.63	The Government stated in June 2003 that in 12 cases the demand of Rs.1.91 crore was raised. In other cases, the final reply was awaited.

[^] This includes, Ahmedabad Municipal Corporation, Wood Paper Mills Ltd., Gujchem Distilleries India Ltd., Ghogha Juth WSS.
⁺ Bhavnagar Municipal Corporation.
[%] Baroda Rayon Corporation Ltd.
^{*} Ukai, Kakrapar, Shetrunji, Raval, Dhatarwadi and Mahi.

3.	Shetrunji, Raval and Dhatarwadi	3	1.55	0.73	0.82	The Department accepted in March 2003 the audit observation and raised the demand.
4	Ukai	5	1.82	1.34	0.48	The Department raised the demand in 2 cases. In other cases, the final reply is awaited.
	Total	26	88.97	51.87	37.10	

Non-levy of interest on irrigation dues

7.2.9 During test check of records of 5⁷ major projects and 5[<] medium projects in 11 irrigation divisions, it was noticed that interest at the prescribed rate had not been levied or demanded on outstanding irrigation dues for the period 1997-98 to 2001-02. This resulted in non-levy of interest of Rs.30.81 crore.

On this being pointed out in audit, 9 Divisional Officers accepted the audit observations and 2 Divisional Officers stated that interest was leviable after 30 November 2002 only as the Government had launched a scheme to waive interest as per Government Resolution of 5 July 2002. The reply is not tenable as Government Resolution of July 2002 provided for grant of relief from payment of interest subject to payment of water rates by a specified date and the department was not relieved from the responsibility of raising total demands including interest.

Non levy of penal water rates for non-irrigation purposes

7.2.10 The Government vide Resolutions of 22 May 1990 and 30 January 2001 provided that if water is drawn unauthorisedly or without permission, recovery of water rates is to be effected at 150 *per cent* of normal water rates. In case of failure to install scientific measuring device and not executing agreement, the drawal of water would be treated as unauthorised.

Test check of records of 8* divisions, revealed that 20 users had drawn water during the period from 1997-98 to 2001-02 either without executing agreements or without installing scientific measuring devices. The demand for normal water rate was raised instead of penal rate. This resulted in non-levy of penal water rate of Rs.8.48 crore.

⁷ Ukai, Kakrapar, Shatrunji, Panam and Mahi.

[<] Rajawal, Kharo, Heran, Karad and Jojawa-wadhwana.

* Project construction Division 3, Himatnagar, Irrigation Project Division, Modasa, Ambica Division, Navsari, Bhavnagar Irrigation Division, Bhavnagar, Bhavnagar Irrigation and Maintenance Division, Bhavnagar, Panam Project Division, Godhra, Nadiad Irrigation Division, Nadiad and Himatnagar Irrigation Division, Himatnagar.

On this being pointed out, the Government accepted audit observations in June 2003 and stated that field officers had raised the bills. Recovery particulars were awaited (August 2003).

Short levy due to incorrect billing

7.2.11 Government Resolution of January 2001, effective from 1 April 1997, provides that while preparing bills, the measurement of water shall be made for the quantity of water released / drawn from the reservoir or river and not for the quantity of water actually available to the user, institutions or industries.

During test check of records of Nadiad Irrigation Division, it was noticed that in cases of four users the bills for water rates were prepared for the period from 1997-98 to 2001-02 on the quantity of water actually available to them instead of quantity of water released from the reservoir. This resulted in short levy of water rates of Rs.41.77 crore.

On this being pointed out, the Department accepted the audit observations. However, it was stated that Government had decided in meeting held in March 2003 not to charge water rates for transit loss from Gujarat Water Supply and Sewerage Board and Gujarat Electricity Board. The reply of the department was not tenable as the procedure prescribed by the Government vide resolution of January 2001 was not amended. However, no such orders were also made available to audit.

7.2.12 According to the condition of the agreement executed between the water users and Government, in case measuring device ceases to function or goes out of order in any month, the water charges leviable in respect of that month is to be calculated on the basis of average quantity of water drawn in the preceding three months or the quantity of water drawn in the same month of the preceding year, whichever is higher provided that there has been no increase in capacity of the plant/plants. If capacity of plant/plants has increased, water drawn shall be correspondingly estimated on prorata basis.

During test check of records of 2* divisions, it was noticed that in the case of two users, the bills of water rates were not prepared as per provisions in the agreement when the measuring devices were not functioning for period ranging between 20 and 27 months during the years 1997-98 to 2001-02. This resulted in short levy of water rates of Rs.6.06 crore.

On this being pointed out, the Government accepted audit observation in one case and in respect of another case it was stated that meter had remained non-functional for 2-3 days mainly due to power cut. Hence, this being a short period, measurements were taken after approval of the Executive Engineer, who was empowered to take decision in such circumstances as per agreement.

* URBC Investigation Division, Ankleshwar and Bhavnagar Irrigation Division, Bhavnagar.

The reply of the Government was not tenable in view of the fact that scientific measuring device did not function for 20 different months during the period 1997-98 to 2001-02, and not for 2-3 days due to power cut, as noticed from the records produced to audit. Further, if the meter remained non-functional for 2-3 days only due to power cut then there should have been meter reading for the remaining days, which should have been considered for preparing bills. However, the bills were prepared on the total number of hours of water drawn during the concerned months and not as per the procedure prescribed in the agreement or on the basis of meter reading as required.

Incorrect grant of concession

7.2.13 Government vide resolution of 16 September 1992 granted relief/concession to the Central Pulp Mills Ltd., Songadh under the rehabilitation scheme sanctioned by BIFR^{**}. According to the Resolution, the Government was to charge royalty at the rate of Rs.425 per 1000 M³ of water based on net use, provided the water returned was treated as per the standards of Pollution Control Board for discharge into the system dedicated for natural ways. The relief in billing on net use was granted upto December 2000 only.

During test check of records of Ukai Left Bank Canal Investigation Division No.2, Valod, it was noticed that the bills for water rates were prepared on net use even during January 2001 to March 2002 though the Government had rejected in January 2002 the company's request to continue the concession in water rates after December 2000. This resulted in short levy of water rates of Rs.5.38 crore.

On this being pointed out in audit, the Government accepted in June 2003 the audit observation and stated that field officers had raised the bills. Recovery particulars were awaited (August 2003).

Non-recovery of water rates

7.2.14 Taking into consideration the scheme for rehabilitation of Central Pulp Mills by BIFR, the Government in Industries and Mines Department allowed in September 1992 deferment of outstanding water rates of Rs.96.46 lakh for 9 years repayable in three annual instalments.

Test check of records of Ukai Left Bank Canal Investigation Division No.2, Valod to whom the case had been transferred in May 1999 revealed that the first instalment of Rs.32.15 lakh due in 2001-02 had neither been paid by the unit nor had the demand raised against them.

On this being pointed out, Government stated in June 2003 that deferred amount was Rs.72.95 lakh. First instalment of Rs.24.32 lakh was paid on 12

^{**} Board for Industrial and Financial Reconstruction.

August 2002 and second instalment was paid on 2 June 2003. The reply is not tenable as the total amount of deferment outstanding was Rs.96.46 lakh in 1992 as intimated in May 1993 by the Executive Engineer, Surat Canal Division, Surat. As per the repayment schedule, the first instalment was due in 2001-02 and not in 2002-03.

Non-enhancement of water rates

7.2.15 Government vide Resolution dated 30 January 2001 revised normal water rates for drinking purposes to 30 paise per 1,000 litres effective from 1 April 1997. As per condition of the Resolution, the normal water rates are to be enhanced at the rate of ten *per cent* every year.

Test check of records of 6[&] divisions of 4 projects revealed that normal water rates were not enhanced in respect of 5 users for the periods from 1998-99 to 2001-02 and in case of 2 users water rates were calculated incorrectly due to calculation mistake during 1997-98. This resulted in short levy of water rates of Rs.68.55 lakh.

On this being pointed out in audit, the Government accepted audit observations in June 2003 and stated that bills had been raised.

Loss of interest due to delay in issue of bills

7.2.16 Government clarified (21 December 1988) that fixed water rates were payable in the first week of April every year and unpaid amount of normal water rates within three months from the date of bill. Failure to make payment of water rates attracts interest at the rate of 24 *per cent* and service charge at the rate of one *per cent*.

During test check of records of 4 divisions (2[#] projects), it was noticed that the bills for water rates in respect of 13 water users were prepared after the delay of 1 to 170 days after the due date during the period 1997-98 to 2001-02. Delay in issue of bills not only resulted in delay in collection of revenue but also in unintended benefit of interest to users. This resulted in loss of revenue to Government amounting to Rs.49.20 lakh.

On this being pointed out in audit, the Government while accepting the audit observations instructed the Superintending Engineers concerned to prepare the water rates bills positively at the end of each month and serve to the beneficiaries in the first week of next month so that loss of interest could be prevented.

[&] KRBC Division, Surat, ULBC Investigation Division 2, Valod, Project Construction Division 3, Himatnagar, Irrigation Project Division, Modasa, Ambica Division, Navsari and Panam Project Division, Godhra.

[#] Ukai and Kakrapar.

Short levy due to defective implementation of agreement

7.2.17 The institutions/ industrial units are required to take permission from Government to draw water for non-irrigation purposes from notified rivers, nalas, canals, reservoirs etc. Such permission is granted by the Government subject to conditions that the institution/unit should execute an agreement with the Department/ Government before drawal of water.

The Government in August 1997 sanctioned 3.143 Million Cubic Metre per year of water for supply, by the irrigation division to Mazam Regional Water Supply Scheme run by the Gujarat Water Supply and Sewerage Board for which an agreement was executed for a period of 30 years in December 2001. Though fixed water rates for sanctioned reserved quantity at the prescribed rates worked out to Rs.6.28 lakh per annum, the agreement provided for payment of fixed water rates of Rs.3.20 lakh per year only. This defective clause in the agreement contrary to the provisions of government resolution resulted in loss of revenue to government to the extent of Rs.3.08 lakh during 2001-02. The government would continue to incur loss of Rs. 3.08 lakh per year in subsequent years also.

On this being pointed out in audit, the Government stated that the field officer had been instructed to raise fresh bill as per the quantity of water sanctioned. However, the agreement was also required to be modified to levy fixed water rates of Rs.6.28 lakh instead of Rs.3.20 lakh to avoid recurring loss to Government.

Incorrect grant of concessional rate to defaulters

7.2.18 Considering the prevailing drought condition in 1998, the Government vide Resolution of June 1998, decided to charge water rates at pre-revised rates of 15 paise per 1,000 litres of water for the period from April 1998 to July 1998 for water supplied to local bodies and water supply schemes run by Gujarat Water Supply and Sewerage Board. In order to clear the arrears, the local bodies, were allowed to pay water rates at pre-revised rates beyond July 1998 provided the arrears as on 1 January 1998 were paid in eight six monthly instalments. First two instalments were to be paid on due dates.

Test check of records of Ambica Division, Navsari revealed that Valsad Nagarpalika had paid only two regular instalments. Even though the Nagarpalika had not made the payments of remaining instalments, the pre-revised rates were continued to be charged for the year 1998-99 to 2001-02. This resulted in short recovery of water rates of Rs.26.35 lakh.

On this being pointed out, the Government accepted the audit observation and stated in June 2003 that demand has been raised.

Lack of internal control

7.2.19 The division prepares and submits monthly return regarding supply of water in the prescribed proforma showing details of sanctioned reserved quantity of water, amount of water rates assessed and recovered from April to the month to which return pertains and amount outstanding at the end of the month of a particular year and sends it to the concerned Superintending Engineer who in turn sends it to the Government. The Government compiles the returns. However, no detailed scrutiny such as correctness of assessment, recovery etc. is made at any level. Further, due to non-availability of quantity of water actually drawn during the month and period to which recovery pertained, the correctness of assessment of water rates and interest and service charge could not be verified. Thus return in which the information furnished is not adequate and leads to the inadequate internal control.

The Department had not prescribed any proforma in which demands were to be raised and bills prepared.

The Department did not prescribe any proforma for keeping records for non-irrigation purposes, indicating details of sanctioned reserved quantity, actual quantity of water drawn, water rates assessed and details of payments.

Recommendations

7.2.20 Due to insufficient monitoring, water rates were not levied/raised on sanctioned reserve quantity, interest and service charge, penal rates were not applied against defaulters. Bills were not prepared in accordance with the rules where the measuring devices were not installed, defective quantity of water was assessed at the supply point instead of at the reservoir head.

Government may consider setting up of an internal audit wing to ensure periodical check of the correctness of the bills raised. Records and registers to be maintained by Irrigation Divisions should be prescribed clearly so that details of users, demands raised, recoveries made, dues pending, etc. are monitored effectively and efficiently.

The matter was brought to the notice of the Government in April 2003; replies received were incorporated in the relevant paras.

MINING RECEIPTS

7.3 Collection of royalty and dead rent for mines and quarries

Highlights

Application of incorrect rate resulted in short realisation of royalty on crude-oil by Rs.5.37 crore including increased royalty.

[Para 7.3.7 & 7.3.8]

Incorrect adoption of price of natural gas supplied to various consumers for payment of royalty by ONGC resulted in short realisation of royalty by Rs.5.40 crore.

[Para 7.3.9]

Non-enforcement of codal provisions and conditions of lease agreement in 64 cases resulted in non/short levy of royalty and interest of Rs.24.10 crore.

[Para 7.3.12]

Not raising demands for dead rent in cases of 883 lease holders resulted in blockage of revenue of Rs.4.10 crore.

[Para 7.3.13]

Non-payment of royalty in advance resulted in non-levy of interest of Rs.10.51 crore.

[Para 7.3.16]

Non-encashment in time of bank guarantee of Rs.11.84 crore given by Narmada Cement Co. Ltd., and grant of instalment facility and reduction of rate of interest not provided in the Act resulted in loss of interest of Rs.7.10 crore.

[Para 7.3.17]

Non-registration of lease deeds required to be registered compulsorily resulted in loss of revenue of Rs.6.78 crore.

[Para 7.3.18]

Introduction

7.3.1 The grant of mineral concessions and mining leases for the purpose of prospecting and mining of major minerals is governed by the Mines and Minerals (Development and Regulation) Act (MMDR Act), 1957 and the Mineral Concession Rules (MC Rules), 1960. The quarry leases for minor minerals are governed by the Gujarat Minor Mineral Rules (GMM Rules), 1966. Mining of mineral oil and gas is regulated by the Oil Field (Development and Regulation) Act (ODR Act), 1948 and the Petroleum and Natural Gas Rules (PNG Rules), 1959. In Gujarat, important minerals available are lignite, lime stone, bauxite, marble, bentonite, dolomite, black trap, fire clay, china clay, gypsum, manganese, chalk, mineral oil and natural gas. The Acts and Rules made thereunder, provide for levy of royalty* and dead rent** in the lease deed.

Organisational set up

7.3.2 The regulation and development of mines and minerals, grant of mineral concessions, assessment, levy and collection of royalty, dead rent and other mining dues etc. are administered by the Industries and Mines Department with the Principal Secretary as its head at the Government level and Commissioner of Geology and Mining as the head of the department, assisted by three Additional Directors, two Deputy Directors, two Assistant Directors and the staff at district offices. After formation of a separate Directorate of Petroleum in 1997, the regulation and development of oil and natural gas and grant of related concessions with the approval of Central Government, assessment, levy and collection are administered by Energy and Petro-chemicals Department with the Principal Secretary as its head at the Government level and the Director of Petroleum as the head of department assisted by two Geologists.

Audit objectives

7.3.3 Detailed analysis of records maintained in 11³ out of 19 district offices working under the Commissioner of Geology and Mining and in the Office of the Director of Petroleum, Gandhinagar for the period 1997-98 to 2001-02 was conducted in audit between April 2002 and November 2002 with an objective to:

* Royalty is a rent which varies with the quantum of mineral extracted from mines.

** Dead rent is a minimum sum guaranteed as royalty whether the mineral is extracted or not from the lease hold mines.

³ Junagadh, Vadodara, Valsad, Bharuch, Himatnagar, Palanpur, Porbandar, Amreli, Surat, Bhuj and Jamnagar.

- evaluate the efficacy of the system in ensuring timely payment of royalty, dead rent etc., and in ensuring compliance with the provisions of Acts and Rules governing the levy and assessment of dues;
- identify weakness in the system leading to
 - irregular issue of permits;
 - inadequate inspection of mines;
 - non-finalisation of assessments, non-levy/ recovery of dues.

Findings of the review, in addition to some points noticed in the course of local audit during earlier years are discussed in the succeeding paragraphs.

Trend of revenue

7.3.4 The budget estimates vis-a-vis mineral receipts collected between 1997-98 to 2001-02 in respect of Major and Minor Minerals were as under:

(Rupees in crore)

Year	Budget estimates	Actual receipts	Variation Excess (+) / Short fall (-)	Percentage of variation
1997-98	455.00	460.66	(+) 05.66	(+) 1
1998-99	679.10	470.23	(-) 208.87	(-) 31
1999-00	650.00	530.78	(-) 119.22	(-) 18
2000-01	670.00	616.65	(-) 53.35	(-) 8
2001-02	700.00	734.58	(+) 34.58	(+) 5

The receipts fell short by 31 and 18 *per cent* of budget estimates during 1998-99 and 1999-00 respectively. Reasons for the short fall though called for in December 2002 from departments concerned, had not been received (August 2003).

Arrears of revenue

7.3.5 As on 31 March 2002, arrears of revenue pending collection were as under:

(Rupees in crore)

Year	Major mineral	Minor mineral	Total
Upto 1997-98	5.33	6.61	11.94
1998-99	1.03	1.53	2.56
1999-00	3.57	2.74	6.31
2000-01	7.86	5.33	13.19
2001-02	16.39	7.14	23.53
Total	34.18	23.35	57.53

Out of Rs.57.53[#] crore, Rs.13.42 crore were covered under revenue recovery certificate, Rs.0.35 crore stayed by judicial authorities and recovery of Rs.1.50 crore was pending as the cases were under dispute. Out of balance of Rs.42.26 crore, demand notices were issued for recovery of Rs.35.39 crore and no action had been taken for remaining Rs.6.87 crore (December 2002).

In respect of oil and natural gas, position of arrears was not supplied by Department.

Energy and Petrochemicals Department

Short realisation of royalty on Oil and Natural Gas

7.3.6 Under the Petroleum and Natural Gas Rules (PNG Rules), 1959 royalty is payable on quantity of crude-oil and natural gas obtained from the well head of the area leased at the prescribed rate and within the time-limit fixed by the Central Government. The Rules further prescribe that royalty and other dues, if not paid within the time specified, are to be increased by 10 per cent for each month or part thereof during which the amount remained unpaid.

[#] Major defaulters: (1) M/s. Saurashtra Cement Ltd., (2) M/s. HMP Cement Co., (3) M/s. Gujarat Siddhi Cement, (4) M/s. Gujarat High Tech Industries and (5) M/s. Digvijay Cement Co.

Application of incorrect rate

7.3.7 Government of India had revised the rates of royalty on crude oil on adhoc basis from time to time. Between April 1994 and December 1999, the rates of royalty were revised nine times.

- During test check of records of Geologist, Vadodara, it was noticed that ONGC Ltd had paid in December 1999 royalty on crude oil at the rate of Rs.842 per MT instead of revised rate of Rs.850 per MT. Demand was not raised by the Geologist after scrutiny of return, resulting in short levy of royalty of Rs.1.21 crore including increased royalty.
- In another case, it was noticed that one private oil exploration company had paid royalty on crude oil at pre-revised rates between Rs.578 and Rs.800 per MT during the period November 1994 to March 2002 though the rate of royalty was revised to Rs.850 per MT, resulting in short levy of royalty of Rs.18.30 lakh including increased royalty.

On this being pointed out, the Geologist, Vadodara agreed to take action to recover the royalty from the oil companies.

7.3.8 Lessees are required to file monthly returns with the concerned Geologist who is responsible to scrutinize the correctness of the returns filed and payments of royalty made. Inadequate monitoring of the system prescribed in the rules resulted in non-raising of additional demands.

During test check of records of Director of Petroleum, Gandhinagar in case of two private oil companies, it was noticed that they were paying royalty at pre-revised rates during the period between November 1994 and March 2002. Though the demands were raised by the Directorate at the revised rates, realisation of royalty at the revised rates could not be made. This resulted in short realisation of royalty of Rs.1.12 crore. Moreover, increased royalty of Rs.2.86 crore was also recoverable for delay in payment.

On this being pointed out, the Director of Petroleum replied in May 2002 that in one case the lessee had adhered to payment of royalty at the rate of Rs.481 per MT as per production sharing contract entered into with the Government of India. The matter regarding revision of contract agreement was reported to have been taken up. Due to this, the State Government could not recover royalty at revised rates. No specific reasons were furnished for short realisation in respect of the other case.

The reply of the Director is not tenable because the matter should have been taken up with the Government of India long back to sort it out.

Incorrect adoption of price of gas

7.3.9 The Petroleum and Natural Gas Rules, 1959 stipulate that a lessee shall pay royalty on natural gas obtained from mining operations computed at the rate of ten *per cent* of the value at the wellhead. Value of the gas is fixed by the Government of India from time to time as per gas pricing system.

Though the method of determination of value at well head in respect of natural gas obtained from mining operation was called for by Audit in December 2002, the same had not been communicated by the Department (August 2003).

Test check of records relating to Oil and Natural Gas in the Energy and Petrochemicals Department of Government of Gujarat, revealed that ONGC had paid royalty on the quantity of gas at suppliers point at different rates to different consumers for the year 2000-01 and 2001-02 even though as per the Rule, the quantity and value obtained at well head was to be considered for computation of royalty. The department was unable to produce the aforesaid details. Considering the quantity adopted by the ONGC and the producers price approved by Government of India and communicated by the Gas Authority of India Ltd., the short levy of royalty worked out to Rs. 5.40 crore. The short realisation of royalty on this account for the earlier periods could not be ascertained due to non-availability of relevant records.

Incorrect allowance of deduction

7.3.10 The Petroleum and Natural Gas Rules, 1959 as amended from time to time provide that the lessee shall pay to the state government royalty computed on all crude oil at well head obtained in each month from mining operations.

During test check of records in Energy and Petrochemicals Department, it was noticed from the weekly dispatch reports attached with the returns that in respect of Cambay project of ONGC, one *per cent* deduction was allowed from gross quantity of crude oil for the periods between June 2000 and March 2002. The nature of the deduction was not specified in the returns. Incorrect allowance of deduction of 1889.020 MT crude oil resulted in loss of revenue to the extent of Rs.16.06 lakh.

Industries and Mines Department

Non/short levy of royalty and dead rent

7.3.11 Under the MMDR Act, 1957 read with GMM Rules, 1966, a lessee is liable to pay in respect of each mineral removed or consumed from the leased area, royalty or dead rent, whichever is higher. Failure to pay royalty and

dead rent within the date prescribed in the lease deed attracts interest at the rate of twenty four *per cent* per annum for the period of delay. Government can determine the lease for the breach of conditions of lease agreement and recover the amount of royalty and other dues in the same manner as arrears of land revenue.

During test check of records and registers in the offices of 8* Geologists, in 27 cases though lease holders removed/ consumed minerals between 1999-00 and 2001-02 from the leased area, they failed to pay the royalty within the time fixed by the state government. In 37 cases, the lessees had not paid any royalty on removal/ utilisation of minerals during the above period. However, demands for recovery, after scrutiny of returns and closing of demand and collection register, were not raised in 62 cases. In balance 2 cases, though the demands were raised, action for determination of lease for breach of conditions of lease deed was not initiated except for issue of show cause notice. Not raising demands and not-initiating action under Codal provisions resulted in non levy of royalty including interest of Rs.24.10 crore.

On this being pointed out, the Geologists concerned accepted the audit observations in 43 cases and agreed to recover the dues. Recovery particulars and reply in the remaining cases had not been received (August 2003).

7.3.12 Test check of records of offices of 13** Geologists, revealed that 883 mining/quarry lease holders, either did not extract any mineral during the year or royalty paid on removal/consumption of minerals extracted was less than dead rent payable. Hence, they were liable to pay dead rent or difference between dead rent payable and royalty actually paid respectively. Concerned Geologists had failed to review the Demand and Collection Register and raise the demands for dead rent. This resulted in non/short levy of dead rent of Rs.4.10 crore.

On this being pointed out, the Geologists concerned accepted the audit observations in 752 cases and recovered dead rent of Rs.0.22 lakh in 3 cases. Recovery particulars, if any, and reply in the remaining cases had not been received (August 2003).

7.3.13 In case of the Gujarat Mineral Development Corporation Ltd. (GMDC) holding mining lease of Base Metal Ores over an area measuring 1402-83-53 hectares in Palanpur District, it was observed that lessee had paid dead rent at pre-revised rate of Rs.150 per hectare instead of at Rs.300 per hectare from April 1997 and at the rate of Rs.350 per hectare from September 2000 onwards. Demands for differential dead rent, however, were not raised by the department after necessary scrutiny and closing of the Demand and Collection Register maintained by the Geologist. This resulted in short levy of dead rent of Rs.25.63 lakh including interest.

* Junagadh, Valsad, Himatnagar, Porbandar, Bhuj, Surat, Jamnagar and Palanpur.

** Junagadh, Vadodara, Valsad, Bharuch, Himatnagar, Palanpur, Porbandar, Amreli, Bhuj, Surat, Jamnagar, Ahmedabad and Bhavnagar.

The Geologist Palanpur accepted the audit observations and agreed to recover the amount.

7.3.14 Government fixed between April 1992 and June 1999 a lump sum rate of royalty for bricks manufacturers on the basis of quantity of bricks manufactured during the year.

During test check of the records of offices of 3* Geologists, it was observed that liability to pay lump sum royalty was fixed without ascertaining the actual number of bricks manufactured. However, demands had not been raised in 66 cases even on the basis of quantity of bricks estimated to be manufactured as mentioned by the manufacturer in the applications. This resulted in non/short levy of royalty of Rs.24.28 lakh.

On this being pointed out, the Geologists concerned accepted the audit observations and agreed to recover the amount.

7.3.15 Under the Act and Rules made thereunder, every lessee is liable to pay royalty in respect of each mineral removed or consumed from the leased area, at the rates and within the time specified in the Act. Where advalorem rate of royalty is prescribed in case of any mineral captively consumed by the lessee, rate of royalty is fixed by Commissioner of Geology and Mining. Though provisional rate of royalty on "Marl" was fixed at Re.1.00 per MT from April 1999, Rs.1.25 per MT from January 2000 and Rs.1.50 per MT from April 2000, the final rates for these periods had not yet been fixed.

During test check of records of the Office of the Geologist, Junagadh it was noticed in two cases that the payments on account of consumption of Marl made for periods between December 1997 and March 2002 with reference to final rates fixed upto March 1999 and provisional rates from April 1999, fell short by Rs. 24.18 lakh.

On this being pointed out, the Geologist, Junagadh accepted the audit observations and agreed to recover the amount.

Though checks were available in the form of Demand and Collection Registers, their quarterly review in the case of royalty and annual review in the case of dead rent and annual closing of registers, Geologists failed to make use of these available checks which resulted in non/short levy of royalty and dead rent.

Non/short-levy of interest

7.3.16 The Government vide circular dated 22 December 2000 instructed all the District Geologist Offices to collect royalty of minerals in advance. The Act provides that in case of default, interest at the rate of twenty four *per cent* is to be charged on the unpaid amount for the period of delay. Royalty

* Vadodara, Surat and Bharuch.

alongwith interest if not paid by the lessee can be recovered as arrears of land revenue.

During test check of records of the offices of 9 Geologists, it was noticed that interest of Rs.10.51 crore was not levied in 91 cases as detailed below:

(Rupees in crore)

Sr. No.	Name of the office	No.of cases	Amount of interest	Nature of irregularity
1	Bharuch, Bhuj, Junagadh and Surat.	4	1.84	Though royalty of Rs.33.29 crore was not paid in advance between January 2001 to March 2002, interest was not demanded.
2	Porbandar, Amreli and Junagadh.	5	7.53	Exemption from issue of triplicate passes was allowed subject to payment of royalty in advance. However, royalty of Rs.76.97 crore between April 1997 to March 2002 was paid with delay ranging between 2 days to 105 months but interest was not demanded.
3	Amreli, Bharuch, Vadodara and Jamnagar.	77	1.12	Interest recoverable on outstanding dues of Rs.1.78 crore upto the month preceding the date of issue of recovery certificate was not included in the certificate issued.
4	Palanpur.	5	0.02	Interest on delayed payment of royalty and dead rent was not demanded.
	Total	91	10.51	

On this being pointed out in audit, Geologists concerned accepted the audit observations in 52 cases and in the remaining cases reply had not been received from the Department (August 2003).

Loss of revenue due to reduction of rate of interest

7.3.17 Under the MMDR Act, 1957 and the Rules framed thereunder, Central Government can, by notification, enhance or reduce the rate of royalty recoverable in respect of any mineral with effect from such date as may be specified in the notification. Failure to pay royalty within prescribed time attracts simple interest at the rate of twenty four *per cent* per annum for the period of delay. No specific powers are vested with the State Government to reduce the rate of interest in the Act or Rules.

During test check of records of the office of the Geologist, Amreli, it was noticed that M/s Narmada Cement Company (a lessee) had filed in 1992 a

petition in the Gujarat High Court against the upward revision of royalty. The petition was admitted with direction to lessee to pay the royalty at the pre-revised rate and to furnish bank guarantee for the balance amount. Though the High Court of Gujarat had dismissed in October 1994 a petition in another case, (M/s. Digvijay Cement Vs. Union of India and others) and upheld the increase in the rate of royalty, an out of court settlement was accepted by State Government in August 2000. The Government allowed the lessee in January 2001 to pay the outstanding dues in instalments and reduce the rate of interest to twelve *per cent* per annum. Thus, inspite of the fact that the Court had upheld the revision of the rate of royalty and Government had security in the form of bank guarantee to recover the dues, acceptance of the out of court settlement resulted in delay in recovery of Rs.11.84 crore (in instalments) and in loss of interest of Rs.7.10 crore at the differential rate.

Loss of revenue due to non-registration of lease deed

7.3.18 Under the Registration Act, 1908, deeds conveying lease hold rights for periods beyond one year are required to be registered compulsorily. Under the provisions of the Bombay Stamp Act, 1958 as applicable to Gujarat, in case of lease of a mine in which royalty or share of produce is received as rent or part of a rent, stamp duty and registration fees are leviable based on average annual royalty.

During test check of records of offices of 8[#] Geologists, it was observed that in 28 cases, lease deeds for mining of various minerals were not got registered with the registering authorities though these leases were for more than one year. This resulted in loss of revenue of Rs.6.78 crore.

Acceptance of surrender of lease before recovery of Government dues

7.3.19 Under the Act and the Rules made thereunder, a lease holder can surrender whole or part of his quarry lease subject to payment of royalty, rent, fees, etc. upto the date of surrender of such leased area.

During test check of the records of offices of 3^{*} Geologists, it was observed that surrender of area of lease, either wholly or partly, were accepted in 26 cases between December 1997 and January 2002 without recovery of Rs.16.55 lakh on account of dead rent, royalty and interest.

[#] Vadodara, Valsad, Porbandar, Amreli, Bhuj, Jamnagar, Bharuch and Junagadh.

^{*} Vadodara, Amreli and Bhuj.

Non-recovery of Government dues after expiry of lease

7.3.20 Under the Act and the Rules, a quarry lease holder is liable to pay dead rent or royalty whichever is higher at the rates prescribed by Government. In case of default during the subsistence of lease, competent authority can enter the premises of leased area, take possession of the minerals or movable property and take suitable action to recover government dues.

Test check of records of the offices of 5[&] Geologists revealed that though the lease period had expired between 1997-98 and 2001-02 in 483 cases, no action was initiated by the competent authority to enter the premises of leased area and to take possession of mineral or movable property to recover the dues of Rs.1.78 crore (which became due during the period of lease) before the expiry of the lease period. Thus, inaction on the part of the Geologists to recover the dues before expiry of the lease indicated procedural lapse.

Irregular issue of permits

7.3.21 Under the Act, any State Government, after consultation with the Central Government can undertake prospecting or mining operations, in any area within the state, in respect of any mineral specified in the first schedule to the Act.

During test check of records of Geologists, Vadodara and Bhuj it was noticed that work permits for excavation of mineral and bauxite falling under Schedule I to the Act, were issued in four cases during the year 2001-02 without consultation with the Central Government. Out of these in one case the permit holder excavated 9961.3 MT of mineral during 2001-02; the details in other cases were not available.

7.3.22 Under the Gujarat Minor Mineral Rules, 1966, a competent authority can grant quarrying permits for extraction and removal of specified quantity of minor mineral, not exceeding 4000 MT under any one permit, on payment of royalty calculated at the prevailing rates.

Test check of records of Geologist, Amreli, revealed that permit to excavate the major mineral, other than that specified in Schedule-I was issued in 20 cases without the permission of State Government and the permit holder had exploited 45,404.0 MT of mineral between January 2000 and June 2001. The action on the part of Geologists to permit the exploitation of mineral without the approval of the State Government was irregular.

[&] Himatnagar, Porbandar, Amreli, Bhuj and Jamnagar.

Non-clearance of stock of mineral after closure of mines

7.3.23 Under the MMDR Act, 1957 and conditions of lease deed executed thereunder, where mineral is not removed within a calendar month after issue of notice on closure of mine, such mineral is deemed to be the property of the State Government and may be sold or disposed of in such manner as it may decide. The rate of fluorspar mineral was Rs.300 per MT during February 1998.

During test check of records of the Geologist, Vadodara, it was observed that GMDC holding mining lease of fluorspar did not clear 25,925.31 MT of mineral lying in forest area after closure of the mine in view of the Supreme Court's decision. The lessee was directed in November 1997 to lift the mineral after payment of royalty of Rs.11.67 lakh. Though the mineral was lying in forest area for more than four years after issue of notice for clearance, no action was initiated to lift and dispose of the mineral by the department, resulting in non-recovery of cost of mineral valued at Rs.77.78 lakh.

Inadequate inspection of mines and quarries

7.3.24 As per instructions issued in July 1986 by Government, each mine and quarry is required to be inspected once in a year by the District Geologist, with a view to get a sample of the mineral for analysis, to assess the excavation of minerals and to ascertain whether the same had been accounted for and the royalty paid correctly on the mineral removed from the mine.

- During test check of the records of offices of 11* Geologists, it was observed that out of total 31,391 mining leases / quarries required to be inspected for the period from 1997-98 to 2001-02, only 6559 mining leases/quarries were inspected. Inadequate inspection might lead to proliferation of illegal excavation and mining with resultant loss of revenue.
- Geologist, Vadodara had detected between February 1999 and March 2000, illegal excavation of dolomite by the lease holders in 36 cases and raised additional demand of Rs.9.37 crore.

On petition filed by lease holders regarding defective nature of show cause notice, the Honourable Gujarat High Court had disposed of the applications with directions in April 2002 to Geologist, Vadodara to issue fresh show cause notice to each lease holder separately indicating the period for which royalty

* Junagadh, Vadodara, Valsad, Bharuch, Himatnagar, Palanpur, Porbandar, Amreli, Bhuj, Surat and Jamnagar.

was sought to be recovered within a period of 2 months from 15 April 2002. But, no fresh show cause notice as per the directions of court was issued.

On this being pointed out, the Geologist, Vadodara replied in January 2003 that action to issue show cause notice was under progress. The inaction on the part of Geologist to issue notice even after a lapse of eight months has rendered the recovery of dues of Rs.9.37 crore doubtful.

Other topics of interest

Improper maintenance of records and registers

7.3.25 Under the Act and Rules made thereunder, monthly returns showing quantity of mineral excavated and removed/consumed during the month and balance quantity of mineral is to be submitted to the Geologists concerned by the lease holders within a prescribed period. On the basis of returns, a Demand and Collection Register in respect of each lease is to be maintained. Quantity of mineral excavated, removed / consumed and balance of mineral is to be entered from monthly returns in each case of lease in the Demand and Collection Register. Royalty payable by the lessee against such removal / consumption for each quarter is to be worked out at prevailing rate on such minerals. Demands for royalty/dead rent short paid during the year and interest on belated payments are raised after closing each account under the attestation of District Geologist.

Illustrative cases of improper maintenance of records and registers noticed during test check of records of the offices of 4 Geologists are as under:

- Test check of records of the Geologist, Porbandar revealed that monthly returns received from a lessee (M/s. H.M.P.Cement Ltd, Porbandar) were not posted in the Demand and Collection Register for the months of April 1997, February, March and April 1998. The scrutiny of returns revealed that lessee had also not paid royalty during these months. This resulted in demand of Rs.17.42 lakh not being raised.
- Test check of records of the Geologist, Jamnagar revealed that in case of M/S. Bombay Mineral Supply Co., dues of Rs.2.94 crore was outstanding as on 31 March 2001. The lessee had paid royalty amounting to Rs.77.94 lakh through 51 challans between September 1993 and June 2000 but these were not entered in the Demand and Collection Register by the Geologist during relevant period. Improper maintenance of records and registers resulted in delay in recovery of royalty including interest of Rs.2.94 crore besides rendering the correctness of the records doubtful.

- Test check of records of 3^s Geologists revealed that in 7 cases royalty/dead rent leviable and levied was computed incorrectly and hence demands for outstanding royalty/dead rent shown in the revenue recovery certificate issued to revenue authorities for recovery was short to the extent of Rs.80.05 lakh.
- Test check of records of Offices of 3^s Geologists revealed that annual closing of Demand and Collection Registers for the period 1997-98 to 2001-02 in respect of each lease holder's account was not completed. The entries relating to royalty outstanding as at the end of the year were neither attested nor the interest on belated payment during each year worked out and demanded.

On this being pointed out, the Geologists agreed to issue revised recovery certificate.

Non-finalisation of royalty assessments

7.3.26 Where the rates of royalty of minerals are fixed by Central or State Government on advalorem basis, assessments of royalty payable by the lease holders on removal/consumption of such minerals are to be carried out on receipt of monthly returns in respect of such minerals. No time limit for completion of such assessments has been laid down in the Act or Rules framed thereunder. As per Rule 64 D of the Mineral Concession Rules, 1960, the sale value of bauxite is to be worked out in accordance with London Metal Exchange (LME) rate.

During test check of records of the offices of 2* Geologists, it was noticed that in 20 cases of mining leases, assessment of royalty, recoverable demand from lease holders of mines of bauxite removed/consumed during the period from September 2000 to March 2002 involving royalty of Rs. 9.81 crore provisionally paid by lessees on estimation basis, were yet to be finalised due to non-availability of London Metal Exchange (LME) Rates and exchange rate of Dollar for the relevant period. In the absence of provisions prescribing any time limit for completion of assessment, additional amounts, if any, due from the lessees were not ascertained and demanded.

On this being pointed out in audit, one of the Geologists stated that LME rate and Foreign Exchange rate were not made available to him, hence rates adopted by the lease holders were taken into account for recovery of royalty. The other Geologists stated that LME rate and aluminium content would be collected from the lease holder and from press and assessment would be finalised. However, the reply is not tenable because requisite data in this regard should be obtained by the Geologists from the department at regular

^s Bharuch, Porbandar and Ahmedabad.

* Bhuj and Jamnagar.

intervals. Due to lack of any effective mechanism for supply of necessary data for assessment of royalty resulted in delay in finalisation of assessment and non-raising of additional dues, if any.

Non-reconciliation of receipts

7.3.27 The Bombay Treasury Rules, 1960 provide that when Government money in the custody of a Government Officer is paid into a treasury or a bank, the head of the office making such payments should reconcile the figures with the treasury officer's or bank's receipt with entry in cash book before attesting it and satisfy himself that the amount has actually been credited into the treasury or bank. He should as soon as possible after the close of the month, obtain from the treasury a consolidated receipt for all remittances made during the month and reconcile the same with the cash book.

During test check of the records of the offices of 4* Geologists it was noticed that no such reconciliation was carried out for the various periods between 1998-99 and 2001-02.

Internal Control

7.3.28 In order to ensure that royalty is paid on correct quantities, the departmental officers are empowered to carry out necessary inspections to verify the correctness of the returns submitted by various lessees/licensees.

In spite of formation of a separate Directorate of Petroleum in 1997, no inspection was conducted by the officers of the Directorate or by concerned Geologist to ensure the above requirements. Government had also not issued any instructions in regard to the Directorate indicating the authorities with whom such returns were to be filed and time schedule for receipt and scrutiny of returns.

Internal audit

7.3.29 An independent and effective internal audit under the direct control of the Head of the Department is essential for ensuring compliance with rules and procedures, prompt raising of demands, collection of receipts and proper accounting thereof, and overall functioning of the mineral administration in the State.

However no Internal audit arrangement is in place in the Department of Geology and Mining.

* Porbandar, Surat, Bhuj and Jamnagar.

Recommendations

7.3.30 Basic records as required under the Acts and Rules were not maintained properly and monitored affecting the collection of royalty and dead rent. Action as per provisions of Acts and Rules was not taken during the period of lease to recover dues accrued during such period. Assessments were not finalised promptly to ascertain and recover additional dues. Reconciliation of receipts was also not done as per the provisions of Rules. No procedures were in place in the Energy and Petrochemicals Department for acceptance and scrutiny of returns filed by oil companies. Government had not ascertained the procedure for fixation of value at wellhead of natural gas. However, to improve the position, Government may consider taking following steps to:

- review and strengthen existing system for ensuring correctness of royalty paid by lessees in respect of mineral oil and natural gas.
- ascertain and ensure compliance with procedure for fixation of value at well-head of natural gas for royalty.
- ensure compliance with the requirement of Act, Rules as regards maintenance of basic records, assessment and recovery of royalty etc., so as to fully protect revenue.

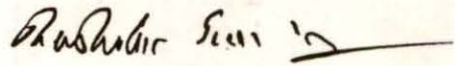
The above facts were brought to the notice of the Department and Government in April 2003 followed with reminder to Chief Secretary to the Government of Gujarat in July 2003; reply was awaited (August 2003).

7.4 Non levy of interest

According to Government Resolution of 11 September 1995 of the Industries and Mines Department, an industrial unit with project costing more than Rs.10 crore and eligible to avail Sales Tax Incentive under New Incentive Policy of 1995-2000 shall have to contribute 2 *per cent* of sales tax in case of exemption and 3 *per cent* of sales tax in case of deferment availed during the year for Gokul Gram Yojana before June of each financial year. In case of failure to contribute the amount on due date, interest at the rate of 2 *per cent* per month is leviable.

During test check of records of Assistant Commissioner, Jamnagar and Sales Tax Officer, Nadiad, it was noticed in the assessment of 3 dealers for the periods 1999-00 and 2000-01 that interest was not levied for late payment of contribution ranging from two to nineteen months. This resulted in non levy of interest of Rs.4.27 crore.

The above facts were brought to the notice of the department between May and July 2002 and of Government in April 2003. The Department accepted in April 2003 the audit observations involving an amount of Rs.0.71 lakh in one case. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).



Ahmedabad

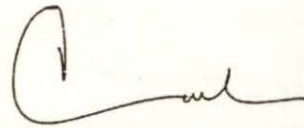
(Raghubir Singh)

The:

Principal Accountant General (Audit) Gujarat

16 FEB 2004

Countersigned



New Delhi

(Vijayendra N. Kaul)

The :

Comptroller and Auditor General of India

24 FEB 2004

18 FEB 2004

18 FEB 2004