

**Report of the
Comptroller and Auditor General of India
on Revenue Sector**

for the year ended March 2016

Government of Karnataka

Report No. 5 of the year 2016

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PREFACE

This Report for the year ended March 2016 has been prepared for submission to the Governor of Karnataka under Article 151 of the Constitution of India for being placed in the State Legislature.

The Report contains significant results of the performance audit and compliance audit of the Departments of Government of Karnataka under Revenue Sector, including Commercial Taxes Department, Department of Stamps and Registration, Revenue Department, Transport Department and Department of Mines and Geology.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2015-16 as well as those which came to notice in earlier years, but could not be reported in previous Audit Reports. The instances relating to the period subsequent to 2015-16 have also been included wherever found necessary.

Audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

OVERVIEW

This Report contains 17 paragraphs including two Performance Audits and one Compliance Audit relating to non/short levy of tax, interest, penalty, revenue foregone, etc. amounting to ₹ 1,017.45 crore. Some of the major findings are mentioned below:

I General

Total revenue receipts of the State Government for the year 2015-16 amounted to ₹ 1,18,817.31 crore against ₹ 1,04,142.15 crore for the previous year. 68 *per cent* of this was raised by the State through tax revenue (₹ 75,550.18 crore) and non-tax revenue (₹ 5,355.04 crore). The balance 32 *per cent* was received from the Government of India as State's share of divisible Union taxes (₹ 23,983.34 crore) and grants-in-aid (₹ 13,928.75 crore).

(Paragraph 1.1)

A total of 4,443 Inspection Reports issued up to December 2015 containing 9,305 observations involving money value of ₹ 2,162.61 crore were pending with the departments for settlement at the end of June 2016.

(Paragraph 1.5)

Test check of the records of 460 units of Value Added Tax, State Excise, Taxes on Motor Vehicles, Stamps and Registration Fee, Land Revenue and other Departmental offices conducted during the year 2015-16 showed under assessment/short levy/loss of revenue aggregating ₹ 1,220.57 crore in cases pointed out through 1,385 paragraphs.

(Paragraph 1.8)

II Taxes/VAT on Sales, Trade, etc.

Performance Audit on "Administration of Minor Taxes in Commercial Taxes Department"

Transport vehicles owners to the extent of 2.75 lakh persons liable to Professions Tax (PT) in the State were not enrolled with Commercial Taxes Department. PT of ₹ 137.11 crore was due from them between April 2011 to March 2016.

(Paragraph 2.4.9.1)

Non-enrolment of 6,943 Private and Public Limited Companies, 12,316 Partnership firms and 60,480 individuals engaged in various professions under Service sector resulted in non-realisation of PT of ₹ 99.67 crore from these persons (entities) between 2011-12 and 2015-16.

(Paragraph 2.4.9.2)

Enrolment of only 76 persons out of the estimated 1,600 taxable persons who worked in the 667 films produced during the period of 2011-16 indicates inadequacy in the enforcement of the KTPTCE Act, 1976, in this Sector.

(Paragraph 2.4.9.4)

Failure to capture PAN details of 1.13 lakh persons enrolled under the KTPTCE Act, 1976, rendered CTD not being able to ascertain the correct amount of PT due in cases where liability under PT was dependent on whether the person was an Income Tax payee or not.

(Paragraph 2.4.10)

Misclassification and consequent application of incorrect rate of tax by the assesseees and deficiencies in PELSoft to detect the errors relating to payment of PT resulted in non/short payment of PT ₹ 82.57 crore by 2.81 lakh proprietors, 47,940 partnership firms and 17,867 Companies during the years 2011-12 to 2015-16.

(Paragraphs 2.4.12 to 2.4.14)

Cross-verification by Audit with Service Tax Department revealed that 10,935 dealers who had practised professions under Service sector did not pay PT of ₹ 4.59 crore.

(Paragraph 2.4.17)

Compliance Audit

Tax of ₹ 5.51 crore declared in 947 returns filed by 413 assesseees was not paid.

(Paragraph 2.5)

Non-levy of penalty under Section 72(1) of the KVAT Act for delay in payment of tax by 300 assesseees amounted to ₹ 12.94 crore.

(Paragraph 2.6)

Additional tax of ₹ 4.08 crore determined by the Auditors in the audited statement of accounts was not paid by 34 dealers.

(Paragraph 2.7)

Non/short levy of interest under Section 36(2) of the KVAT Act for delay in payment of tax by 75 dealers amounted to ₹ 2.62 crore.

(Paragraph 2.8)

III Stamp Duty and Registration Fees

Performance Audit on "Adequacy of controls to prevent loss of Stamp Duty and Registration Fees"

Department of Stamps and Registration (DSR) had not analysed reduction of market value by District Registrars (DR) and had not specified any criteria for selection of DR orders for review by Inspector General of Registration and Commissioner for Stamps (IGRCS).

(Paragraph 3.4.10)

DSR had not instituted a mechanism for detection of suppression of facts by the parties which led to loss of Stamp Duty. Stamp Duty and Registration Fee of ₹ 24.34 crore were short levied due to suppression of facts and figures in the test checked cases.

(Paragraph 3.4.13)

DSR does not have a break-up of the revenue in terms of each article of levy and by whom paid in respect of the revenue from instruments not compulsorily registrable, deficiency of which affects enforcement activities to ensure due realisation of Stamp Duty on such instruments.

(Paragraph 3.4.14.1)

DSR had not collected Stamp Duty of ₹ 313.26 crore due on conveyance of Industrial Machinery and Certificate of Sale relating to auction of iron ore during the period 2011-16.

(Paragraphs 3.4.14.3 and 3.4.14.4)

DSR did not have details/confirmation of payment of Stamp Duty of ₹ 71.69 crore on Certificates of Shares and Bonds issued by Companies in Karnataka during 2011-16.

(Paragraphs 3.4.14.5 and 3.4.14.6)

Compliance Audit

Undervaluation of properties in respect of five sale deeds due to adoption of incorrect rates of market value guidelines resulted in short levy of Stamp Duty of ₹ 2.55 crore and Registration Fees of ₹ 0.45 crore.

(Paragraph 3.5)

IV Taxes on Motor Vehicles

“Working of Departmental Statutory Action in Motor Vehicles Department”

In 2,737 cases booked for non-production of documents, tax due of ₹ 1.20 crore from 35 Motor Vehicles was not identified and demanded. In 154 cases, Fitness Certificates, Clearance Certificates and No Objection Certificates were issued/renewed without disposing off the offence cases booked.

(Paragraphs 4.4.6.2 and 4.4.6.3)

In respect of 13 cases, documents like RC, MDL, Permit etc. were issued in duplicate by the Original Registering Authority (RTO) without the knowledge of these documents being impounded in original by another RTO.

(Paragraph 4.4.6.2)

In respect of 438 cases booked for overloading of vehicles, the excess goods were not off loaded and Compounding Fine of ₹ 68.19 lakh was also not collected.

(Paragraphs 4.4.7.1 and 4.4.7.2)

Lack of coordination between the field offices and Karnataka State Transport Authority resulted in issue of No Objection Certificates and non-surrender of documents in respect of 143 vehicles whose permits were under suspension.

(Paragraph 4.4.8)

Non disposal of 130 vehicles seized for non-payment of tax of ₹ 63.08 lakh through public auction resulted in non-recovery of tax due from those vehicles.

(Paragraph 4.4.9.1)

V Land Revenue

Irregular refund of bid amount collected by the Department while auctioning of Government land resulted in loss of revenue of ₹ 9.13 crore.

(Paragraph 5.4)

Adoption of guideline market value applicable for agricultural land while fixing of lease rent for lands leased for non-agricultural purposes resulted in short assessment of lease rent amounting to ₹ 29.72 crore.

(Paragraph 5.6)

VI Mines and Geology

Penalty for transportation of minor minerals without obtaining Mineral Dispatch Permits amounting to ₹ 244.58 crore was not demanded from the quarry lease holders.

(Paragraph 6.4)

Levy of royalty applicable at pre-revised rates by Monitoring Committee resulted in short levy of royalty of ₹ 18.78 crore on iron ore and manganese ore.

(Paragraph 6.5)

Chapter-I General

1.1 Trend of revenue receipts

The tax and non-tax revenue raised by the Government of Karnataka during the year 2015-16, the State's share of net proceeds of divisible Union taxes and duties assigned to the State and Grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned in **Table 1.1.1**.

Table 1.1.1
Trend of revenue receipts

(₹ in crore)						
Sl. No.	Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
1.	Revenue raised by the State Government					
	• Tax revenue	46,475.96	53,753.55	62,603.53	70,180.21	75,550.18
	• Non-tax revenue	4,086.86	3,966.11	4,031.90	4,688.24	5,355.04
	Total	50,562.82	57,719.66	66,635.43	74,868.45	80,905.22
2.	Receipts from the Government of India					
	• Share of net proceeds of divisible Union taxes and duties ¹	11,075.04	12,647.14	13,808.28	14,654.25	23,983.34
	• Grants-in-aid	8,168.41	7,809.42	9,098.82	14,619.45	13,928.75
	Total	19,243.45	20,456.56	22,907.10	29,273.70	37,912.09
3.	Total revenue receipts of the State Government (1 and 2)	69,806.27	78,176.22	89,542.53	1,04,142.15	1,18,817.31
4.	Percentage of 1 to 3	72	74	74	72	68

The above table indicates that during the year 2015-16, the revenue raised by the State Government (₹ 80,905.22 crore) was 68 *per cent* of the total revenue receipts. The balance 32 *per cent* of the receipts during 2015-16 was from the Government of India.

1.1.2 The details of the tax revenue raised during the period 2011-12 to 2015-16 are given in **Table 1.1.2**.

¹ Figures under the major heads of account 0020-Corporation Tax, 0021-Taxes on Income other than Corporation Tax, 0032-Taxes on Wealth, 0037-Customs, 0038-Union Excise Duties, 0044-Service Tax, 0028-Other Taxes on Income and Expenditure-Minor head-901 and 0045-Other taxes and Duties on Commodities and Services-Minor head-901 as Share of net proceeds assigned to States booked in the Finance Accounts of the Government of Karnataka for 2015-16, under 'A-Tax Revenue' have been excluded from the revenue raised by the State Government and included in the State's share of divisible Union taxes.

Table 1.1.2
Details of Tax Revenue raised

Sl. No.	Head of revenue	2011-12		2012-13		2013-14		2014-15		2015-16		Percentage of increase (+)/ decrease (-) in 2015-16 over 2014-15	
		BE	Actual	BE	Actual	BE	Actual	BE	Actual	BE	Actual		
1.	Taxes on sales, trade etc.	24,170.00	25,020.02	27,735.00	28,414.44	33,590.00	33,719.35	37,250.00	38,286.03	41,329.00	40,448.63	10.95	5.65
2.	State Excise	9,115.00	9,775.43	10,775.00	11,069.73	12,600.00	12,828.36	14,430.00	13,801.08	15,200.00	15,332.88	5.34	11.10
3.	Stamp Duty and Registration Fees	4,030.00	4,623.20	5,200.00	5,225.02	6,500.00	6,188.76	7,450.00	7,025.85	8,200.00	8,214.71	10.07	16.92
4.	Taxes on Vehicles	2,630.00	2,956.72	3,350.00	3,829.52	4,120.00	3,911.50	4,350.00	4,541.57	4,800.00	5,001.69	10.34	10.13
5.	Others	3,872.09	4,100.59	4,760.69	5,214.84	5,653.99	5,955.56	6,389.75	6,525.68	6,916.39	6,552.27	8.24	0.41
Total		43,817.09	46,475.96	51,820.69	53,753.55	62,463.99	62,603.53	69,869.75	70,180.21	76,445.69	75,550.18	9.41	7.65

BE = Budget Estimates

1.1.3 The details of the non-tax revenue raised during the period 2011-12 to 2015-16 are indicated in **Table 1.1.3**.

Table 1.1.3
Details of Non-tax revenue raised

Sl. No.	Head of revenue	2011-12		2012-13		2013-14		2014-15		2015-16		Percentage of increase (+)/ decrease (-) in 2015-16 over 2014-15	
		BE	Actual	BE	Actual	BE	Actual	BE	Actual	BE	Actual		
1.	Non-ferrous mining and metallurgical Industries	1,500.00	1,326.84	1,500.00	1,496.49	1,750.00	1,474.49	1,750.00	1,931.10	2,048.15	2,003.80	17.04	3.76
2.	Other Non-tax receipts	2,174.79	2,760.02	1,692.82	2,469.62	2,288.28	2,557.41	2,723.43	2,757.14	3,158.02	3,351.24	15.96	21.55
Total		3,674.79	4,086.86	3,192.82	3,966.11	4,038.28	4,031.90	4,473.43	4,688.24	5,206.17	5,355.04	16.38	14.22

1.2 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2016 on some principal heads of revenue amounted to ₹ 12,458.06 crore as detailed in the **Table-1.2**.

Table-1.2
Arrears of revenue

Sl. No.	Head of revenue	Total amount outstanding as on 31 March 2016	Replies of Department
1.	0030 (Stamp Duty)	82.91	NF
2.	0039 (State Excise)	827.81	Out of the total arrears, ₹ 78.18 crore was stayed by courts, ₹ 387.66 crore was covered by Revenue Recovery Certificates and recovery is in progress in the remaining ₹ 361.97 crore.

Sl. No.	Head of revenue	Total amount outstanding as on 31 March 2016	Replies of Department
3.	0040 (Taxes on sales, trade etc.)	10,791.81	Out of the total arrears, ₹ 1,151.68 crore was stayed by courts, ₹ 140.20 crore was before BIFR ² , ₹ 199.89 crore was under liquidation process, ₹ 90.42 crore was covered by Revenue Recovery Certificates, ₹ 9,016.18 crore was under Court and Departmental recovery, write off proposals were made for ₹ 58.74 crore and payments of ₹ 134.70 crore received were under verification.
4.	0853(Non-ferrous mining and metallurgical Industries)	755.53	NF
Total		12,458.06	

NF : Not Furnished

Details of arrears of revenue, if any, by Energy, Transport and Revenue Departments, though called for (May 2016) had not been received (December 2016).

1.3 Evasion of tax detected by the department

The details of cases of evasion of tax detected by the Transport, State Excise and Commercial Taxes Departments (CTD) are given in **Table 1.3**.

Table-1.3
Evasion of tax

Sl. No.	Head of revenue	Cases pending as on 31 March 2015	Cases detected during 2015-16	Total	(₹ in crore)		Number of cases pending for finalisation as on 31 March 2016
					Number of cases	Amount of demand	
1.	0039 (State Excise)	02	0	02	0	0	02
2.	0041 (Taxes on vehicles)	06	0	06	4	0.68	02
3.	0040 (Taxes on sales, trade etc.)	5,283	25,357	30,640	24,827	122.64	5,813

As seen from the above, though majority of cases detected have been settled in CTD, a significant number of cases are still outstanding at the end of the year. Early action may be taken by CTD to conclude these cases in the interest of revenue.

Details of frauds and evasions detected, if any, by Energy and Revenue Departments, though called for (May 2016) had not been received (December 2016). The Department of Mines and Geology and Department of Stamps and Registration have reported that no such cases have been detected.

² Board for Industrial and Financial Reconstruction.

1.4 Pendency of refund cases

The number of refund cases pending at the beginning of the year, claims received during the year, refunds allowed during the year and the cases pending at the close of the year 2015-16 as reported by the Commercial Taxes Department is given in **Table 1.4**.

Table-1.4
Details of pendency of refund cases

Sl. No.	Particulars	2015-16 (₹ in crore)	
		No. of cases	Amount
1.	Claims outstanding at the beginning of the year	264	135.03
2.	Claims received during the year	4,603	1,007.53
3.	Refunds made during the year	3,549	860.13
4.	Balance outstanding at the end of year	1,318	282.43

Details of pendency of refunds cases, if any, by Energy, Transport, Revenue and Mines and Geology Departments, though called for (May 2016), had not been received (December 2016). The State Excise and Stamps and Registration Departments reported that no refund cases were pending.

1.5 Response of the Government/Departments towards Audit

Accountant General (Economic and Revenue Sector Audit) (AG) conducts periodical inspection of the Government Departments to test check the transactions and verify the maintenance of the important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with the Inspection Reports (IRs) incorporating irregularities detected during the inspections and those not settled on the spot are issued to the heads of the offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of the offices/Government are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the AG within one month from the date of issue of IRs. Serious financial irregularities are reported to the heads of the Departments and the Government.

For 4,443 IRs (issued up to December 2015) 9,305 paragraphs involving ₹ 2,162.61 crore remained outstanding at the end of June 2016. The details along with the corresponding figures for the preceding two years have been given in the **Table 1.5**.

Table 1.5
Details of pending Inspection Reports

	June 2014	June 2015	June 2016
Number of IRs pending for settlement	4,114	4,022	4,443
Number of outstanding audit observations	8,753	9,573	9,305
Amount of revenue involved (₹ in crore)	1,851.83	2,061.05	2,162.61

1.5.1 The Department-wise details of the IRs and audit observations outstanding as on 30 June 2016 and the amounts involved are given in **Table 1.5.1**.

Table 1.5.1
Department-wise details of IRs

(₹ in crore)

Sl. No.	Name of the Department	Nature of receipts	Number of outstanding IRs	Numbers of outstanding audit observations	Money value involved
1.	Finance	Commercial Taxes	2,174	5,120	411.37
2.		State Excise	564	860	382.00
3.	Revenue	Land Revenue	399	889	280.39
4.		Stamp Duty and Registration Fees	748	1,363	356.21
5.	Transport	Taxes on Motor Vehicles	385	608	47.82
6.	Commerce and Industries	Mineral receipts	164	447	679.80
7.	Energy	Electricity tax	9	18	5.02
Total			4,443	9,305	2,162.61

Audit did not receive even the first replies, required to be received from the heads of offices within one month from the date of issue of the IRs, for 346 out of 460 IRs issued during 2015-16. This large pendency of the IRs due to non-receipt of the replies is indicative of the fact that the heads of offices and the Departments did not initiate action to rectify the defects, omissions and irregularities pointed out by the AG in the IRs.

The Government may consider having an effective system for prompt and appropriate response to audit observations to ensure timely realisation of revenue due to the Government exchequer.

1.5.2 Departmental Audit Committee (DAC) meetings

The Government issued (March 1968) instructions to constitute DAC in the Secretariat of all the Departments to expedite the clearance of audit observations contained in the IRs. These Committees are to be headed by the Secretaries of the Administrative Departments concerned and attended by the designated officers of the State Government and a nominee of the AG. These Committees are to meet periodically and, in any case, at least once in a quarter.

The Department-wise number of DAC meetings held and paragraphs settled during the year 2015-16 are as given in **Table 1.5.2**.

Table 1.5.2
Details of Departmental Audit Committee meetings

(₹ in lakh)

Department	No. of meetings held	No. of paragraphs settled	Money value
Commercial Taxes	04	205	784.01
Stamps and Registration	01	210	1,189.82
Land Revenue	04	128	1,536.61
State Excise	01	56	294.29

DAC Meetings were not convened by two Departments viz. Transport and Mines and Geology.

1.5.3 Non-production of records to audit for scrutiny

The programme of local audit of Tax Revenue/Non-tax Revenue offices is drawn up sufficiently in advance and intimations are issued, usually one month before the commencement of audit, to the Offices to enable them to keep the relevant records ready for audit scrutiny.

During the year 2015-16 as many as 679 assessment files, returns, refunds, registers and other relevant records were not made available to Audit. Break up of these cases is given in **Table 1.5.3**.

Table 1.5.3
Details of non-production of records

Name of the Office/Department	Number of records not produced to audit
Commercial Taxes Department	504
State Excise Department	01
Department of Land Revenue	151
Transport Department	14
Department of Mines and Geology	06
Department of Stamps and Registration	03
Total	679

1.5.4 Response of the Departments to the draft audit paragraphs

Draft Paragraphs/Performance Audit Reports proposed for inclusion in the Audit Report are forwarded by the Accountant General to Additional Chief Secretaries / Principal Secretaries / Secretaries of the Departments concerned through demi-official letters. According to the instructions issued (April 1952) by the Government, all Departments are required to furnish their replies on the Draft Paragraphs/Performance Audit Reports within six weeks of their receipt. The fact of non-receipt of replies from the Government is invariably indicated at the end of each such paragraph included in the Audit Report.

Seventeen draft paragraphs (including two Performance Audits and one Compliance Audit) proposed for inclusion in the Report of the Comptroller and Auditor General of India (Revenue Sector) for the year ended 31 March 2016 were forwarded to the Additional Chief Secretaries / Principal Secretaries / Secretaries to the Government and copies endorsed to the heads of Departments concerned between May and October 2016.

Replies for nine draft paragraphs have been received from the Heads of the Departments of Commercial Taxes, Stamps and Registration, Transport and Mines and Geology. In respect of Performance Audits, Exit Conferences were held with the Government (October 2016) and detailed replies are received from the Departments concerned. Replies to the remaining six draft paragraphs relating to Revenue, Transport and Mines and Geology Departments have not been received (December 2016).

1.5.5 Follow up on the Audit Reports-summarised position

According to the Rules of Procedure (Internal Working) of the Committee of Public Accounts (PAC), the Departments of Government are to furnish detailed explanations (departmental notes) on the audit paragraphs to the Karnataka Legislative Assembly Secretariat within four months of an Audit Report being laid on the Table of the Legislature. The Rules further require that before such submission, the departmental notes are to be vetted by the Accountant General.

180 paragraphs (including Performance Audits) were included in the Reports of the Comptroller and Auditor General of India on the Revenue Sector of the Government of Karnataka for the years ended 31 March 2011, 2012, 2013, 2014 and 2015 and one stand-alone report relating to the Department of Mines and Geology was placed before the State Legislature Assembly between March 2012 and March 2016.

As of September 2016, out of 180 paragraphs, departmental notes for 48 paragraphs have been received within the due date. However, departmental notes from the departments concerned on 75 paragraphs were received belatedly, with average delay being nine months. Further, the departmental notes on the remaining 57 paragraphs from seven Departments (Commercial Taxes, Land Revenue, Stamps and Registration, State Excise, Transport, Chief Electrical Inspectorate and Mines and Geology) have not been received (December 2016).

This indicates that more proactive action is required from the Executive to pursue the important issues highlighted in the Audit Reports, which would also aid in collection of unrealised revenue.

1.6 Analysis of the mechanism for dealing with the issues raised by Audit

To analyse the system of compliance to the issues highlighted in the Inspection Reports/Audit Reports by the Departments/Government, the action taken on the paragraphs and performance audits included in the Audit Reports of the last 10 years for one Department is evaluated and included in this Audit Report.

The succeeding paragraphs 1.6.1 and 1.6.2 discuss the performance of the Transport Department³ in respect of the cases detected in the course of local audit during the last ten years and also the cases included in the Audit Reports for the years 2005-06 to 2014-15.

³ under revenue head 0041.

1.6.1 Position of Inspection Reports

The summarised position of the Inspection Reports (IRs) issued during the last 10 years, paragraphs included in these reports and their status as on 31 March 2016 are tabulated below in **Table 1.6.1**.

Table 1.6.1
Position of Inspection Reports

(₹ in crore)

Sl. No.	Year	Opening Balance			Addition during the Year			Clearance during the year			Closing Balance		
		IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value
1.	2006-07	294	301	44.66	49	154	4.71	55	77	3.70	288	378	45.66
2.	2007-08	288	378	45.66	46	172	10.58	36	98	4.89	298	452	51.36
3.	2008-09	298	452	51.36	55	219	32.09	45	126	13.27	308	545	70.18
4.	2009-10	308	545	70.18	52	189	14.49	39	102	5.32	321	632	79.35
5.	2010-11	321	632	79.35	57	215	74.29	24	49	30.33	354	798	123.31
6.	2011-12	354	798	123.31	30	128	2.01	22	63	1.50	362	863	123.82
7.	2012-13	362	863	123.82	71	240	8.91	27	143	78.83	406	960	53.90
8.	2013-14	406	960	53.90	48	250	20.54	24	97	7.19	430	1,113	67.26
9.	2014-15	430	1,113	67.26	43	81	4.26	16	98	25.29	457	1,096	46.22
10.	2015-16	457	1,096	46.22	35	88	3.11	9	46	1.48	483	1,138	47.85

During the year 2015-2016, no DAC meetings were held by the Transport Department for settlement of IRs / paragraphs.

During regular inspection of offices, the pending IRs/paragraphs are reviewed on spot after obtaining compliance. Settlements of IRs/paragraphs are also made on receipt of compliance from the Department.

1.6.2 Recovery in accepted cases

The position of paragraphs included in the Audit Reports of the last 10 years, those accepted by the Department and the amount recovered are mentioned in **Table 1.6.2**.

Table 1.6.2
Recovery in accepted cases

(₹ in crore)

Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted	Money value of accepted paragraphs	Amount recovered during the year 2015-16	Cumulative position of recovery of accepted cases as of 31-03-2016
2005-06	01	0.05	01	0.32	-	0.32
2006-07	03	2.00	03	1.92	-	0
2007-08	04	1.40	04	1.39	-	0.17
2008-09	04	1.35	04	1.35	0.09	0.83
2009-10	02	0.19	02	0.17	-	0.16
2010-11	03	0.64	02	0.30	-	0.23
2011-12	03	1.20	03	0.81	-	0.43
2012-13	03	3.38	03	3.04	-	2.86
2013-14	02	1.63	02	1.63	0.08	0.55
2014-15	04	303.51	04	292.56	-	0

As seen from the table above, the percentage of recovery by the Department in accepted cases for the years 2005-06 to 2013-14 is 50.78 *per cent*. However, during the year 2015-16, the Department has not reported any recovery in respect of the accepted cases except for the years 2008-09 and 2013-14. The Department may take immediate action to pursue recovery of the dues involved in accepted cases.

1.7 Audit planning

The Auditable Units under various Departments are categorised into high, medium and low risk units according to their revenue position, past trends of the audit observations and other parameters. The annual audit plan is prepared on the basis of risk analysis which inter-alia includes critical issues in Government revenues and budget speech, white paper on state finances, Reports of the Finance Commission (State and Central), recommendations of the Taxation Reforms Committee, statistical analysis of the revenue earnings during the past five years, factors of the tax administration, audit coverage and its impact during past five years etc.

During the year 2015-16, there were 1,227 auditable units, of which 459 units were planned and 460 units had been audited, which is 37.41 *per cent* of the total auditable units. The details are shown in the **Table 1.7.1**.

Table 1.7.1
Details of units audited

Department	Auditable Units during the year 2015-16	Number of units	
		Units planned for audit during 2015-16	Units audited during 2015-16
Commercial Taxes	416	152	152
Stamp Duty and Registration Fees	283	102	103
Motor Vehicles Taxes	81	45	45
Land Revenue	253	92	92
State Excise	129	40	40
Mineral Receipts	34	18	18
Chief Electrical Inspectorate	31	10	10
Total	1,227	459	460

Besides the audit of units mentioned above, two Performance Audits were also taken up during the year on the 'Administration of Minor Taxes in Commercial Taxes Department' by Commercial Taxes Department and 'Adequacy of controls to prevent loss of Stamp Duty and Registration Fees' by Stamps and Registration Department along with an Audit on the 'Working of Departmental Statutory Action in Motor Vehicles Department'.

1.8 Results of audit

Position of local audit conducted during the year

Test check of the records of 460 units of Sales Tax/Value Added Tax, State Excise, Taxes on Motor Vehicles, Stamps and Registration Fee, Land Revenue and other Departmental offices conducted during the year 2015-16 showed under assessment / short levy / loss of revenue aggregating ₹ 1,220.57 crore in cases pointed out through 1,385 paragraphs. During the course of the year, the

Departments concerned accepted under assessment and other deficiencies of ₹ 48.04 crore raised through 276 paragraphs during 2015-16 and the Departments also recovered ₹ 19.76 crore in cases pointed out through eight paragraphs. The Departments collected ₹ 38.78 crore pointed out in 840 paragraphs during 2015-16, pertaining to the audit findings of previous years.

1.9 Coverage of this Report

This Report contains 17 paragraphs selected from the audit observations made during the local audit referred to above and during earlier years, (which could not be included in earlier reports) including the two Performance Audits and one Compliance Audit involving financial effect of ₹ 1,017.45 crore.

The Departments/Government have accepted audit observations involving ₹ 33.72 crore out of which ₹ 21.07 crore had been recovered. The replies in the remaining cases had not been received (December 2016). These are discussed in succeeding Chapters II to VI.

Chapter-II

Taxes/VAT on sales, Trade etc.

2.1 Tax Administration

Sales Tax/Value Added Tax (VAT) laws and Rules framed thereunder are administered at the Government level by the Additional Chief Secretary, Finance Department. The Commissioner of Commercial Taxes (CCT) is the head of the Commercial Taxes Department (CTD) who is assisted by 14 Additional Commissioners. There are 13 Divisional VAT Offices (DVO), 13 Appeal offices, 13 Enforcement/Vigilance offices and one Minor Acts Division in the State managed by 42 Joint Commissioners (JCCTs). There are 123 Deputy Commissioners (DCCT), 321 Assistant Commissioners (ACCT) and 526 Commercial Tax Officers (CTO) in the State. At the field level, VAT is being administered through 118 Local VAT Offices (LVOs) headed by ACCTs, VAT Sub Offices (VSOs), Professions Tax Offices (PTOs) and Entertainments Tax Offices (ETOs) headed by CTOs. The DCCTs, ACCTs and CTOs head 266 Audit Offices of the Department where assessments/re-assessments are finalised by the Department.

2.2 Internal audit

The Department has an Internal Audit Cell under the charge of the JCCT (Internal Audit and Inspection). This cell is required to conduct test check of cases of assessment as per the approved action plan and in accordance with the criteria decided by the Steering Committee to ensure adherence to the provisions of the Act and Rules as well as Departmental instructions issued from time to time.

As per the information furnished by the Department, the Internal Audit Cell is functioning from the year 2011-12. During the year 2015-16, 17 offices were covered by Internal Audit Cell and the total number of offices to be audited was not furnished. 307 objections involving ₹ 35.44 crore were raised during 2015-16. As at the end of 31 March 2016 there were 1,141 objections pending, involving ₹ 168.80 crore.

2.3 Results of Audit

In 2015-16, test check of records in 152 offices of CTD relating to VAT, Entry Tax, Professions Tax and Agricultural Income Tax revealed under assessment of tax and other irregularities amounting to ₹ 320.15 crore raised through 763 paragraphs. The observations broadly fall under the following categories as given in **Table 2.1**.

Table 2.1
Results of Audit

Sl No	Category	No. of paragraphs	(₹ in crore)
			Amount
	Value Added Tax		
1.	Non/short payment of tax	82	8.93
2.	Non/short levy of penalty	269	27.05
3.	Non/short levy of interest	149	6.62
4.	Non/short levy of output tax	73	7.50

Sl No	Category	No. of paragraphs	Amount
	Value Added Tax		
5.	Incorrect / excess carry forward of credit	51	2.43
6.	Incorrect / excess allowance of input tax credit	35	1.89
7.	Unacknowledged returns	23	6.40
8.	Incorrect allowance of Tax Deducted at Source	5	4.42
9.	Other irregularities	43	3.51
	Total	730	68.75
	Tax on Entry of Goods		
10.	Non/short levy of tax under entry tax	21	0.94
11.	Other irregularities	2	0.02
	Total	23	0.96
	Tax on Professions		
12.	Performance Audit on 'Administration of Minor Taxes in Commercial Taxes Department'	1	250.36
13.	Non/short payment of tax	1	0.01
	Total	2	250.37
	Agricultural Income Tax		
14.	Non/short levy of interest	8	0.07
	Grand Total	763	320.15

During the course of the year, the Department accepted under assessments and other deficiencies of ₹ 3.33 crore in 42 paragraphs which were pointed out in audit during 2015-16 and recovered ₹ 0.04 crore in cases pointed out through six paragraphs. An amount of ₹ 24.83 crore was also recovered in cases pointed out in 499 paragraphs, pertaining to earlier years.

A Performance Audit on 'Administration of Minor Taxes in Commercial Taxes Department' involving ₹ 250.36 crore and a few illustrative cases involving ₹ 31.23 crore are discussed in the following paragraphs.

2.4 Performance Audit on “Administration of Minor Taxes in Commercial Taxes Department”

Highlights

Transport vehicles owners to the extent of 2.75 lakh persons liable to Professions Tax (PT) in the State were not enrolled with Commercial Taxes Department. PT of ₹ 137.11 crore was due from them between April 2011 to March 2016.

(Paragraph 2.4.9.1)

Non-enrolment of 6,943 Private and Public Limited Companies, 12,316 Partnership firms and 60,480 individuals engaged in various professions under Service sector resulted in non-realisation of PT of ₹ 99.67 crore from these persons (entities) between 2011-12 and 2015-16.

(Paragraph 2.4.9.2)

Enrolment of only 76 persons out of the estimated 1,600 taxable persons who worked in the 667 films produced during the period of 2011-16 indicates inadequacy in the enforcement of the KTPTCE Act, 1976, in this Sector.

(Paragraph 2.4.9.4)

Failure to capture PAN details of 1.13 lakh persons enrolled under the KTPTCE Act, 1976, rendered CTD not being able to ascertain the correct amount of PT due in cases where liability under PT was dependent on whether the person was an Income Tax payee or not.

(Paragraph 2.4.10)

Misclassification and consequent application of incorrect rate of tax by the assessee and deficiencies in PELSoft to detect the errors relating to payment of PT resulted in non/short payment of PT ₹ 82.57 crore by 2.81 lakh proprietors, 47,940 partnership firms and 17,867 Companies during the years 2011-12 to 2015-16.

(Paragraphs 2.4.12 to 2.4.14)

Cross-verification by Audit with Service Tax Department revealed that 10,935 dealers who had practised professions under Service sector did not pay PT of ₹ 4.59 crore.

(Paragraph 2.4.17)

2.4.1 Introduction

Minor taxes administered by the Commercial Taxes Department (CTD) comprise of Professions Tax (PT), Entertainments Tax (ET) and Luxuries Tax (LT). The Karnataka Tax on Professions, Trades, Callings and Employment (KTPTCE) Act, 1976, the Karnataka Entertainments Tax (KET) Act, 1958, and the Karnataka Tax on Luxuries (KTL) Act, 1979, and the Rules made thereunder govern the levy and collection of said taxes in Karnataka.

The PT is payable by every person who exercises any profession or calling or is engaged in any trade or holds any appointment, public or private, or is employed in any manner in the State at the rate specified in the schedule to the Act subject to a maximum of ₹ 2,500 per annum¹.

The ET is a levy on cinematograph shows including video shows, horse races, cable television, any amusement recreation or any entertainment performance or pageant or a game or sport, whether held indoor or outdoor, to which persons are admitted on payment. The rate of tax on payment for admission is prescribed from time to time.

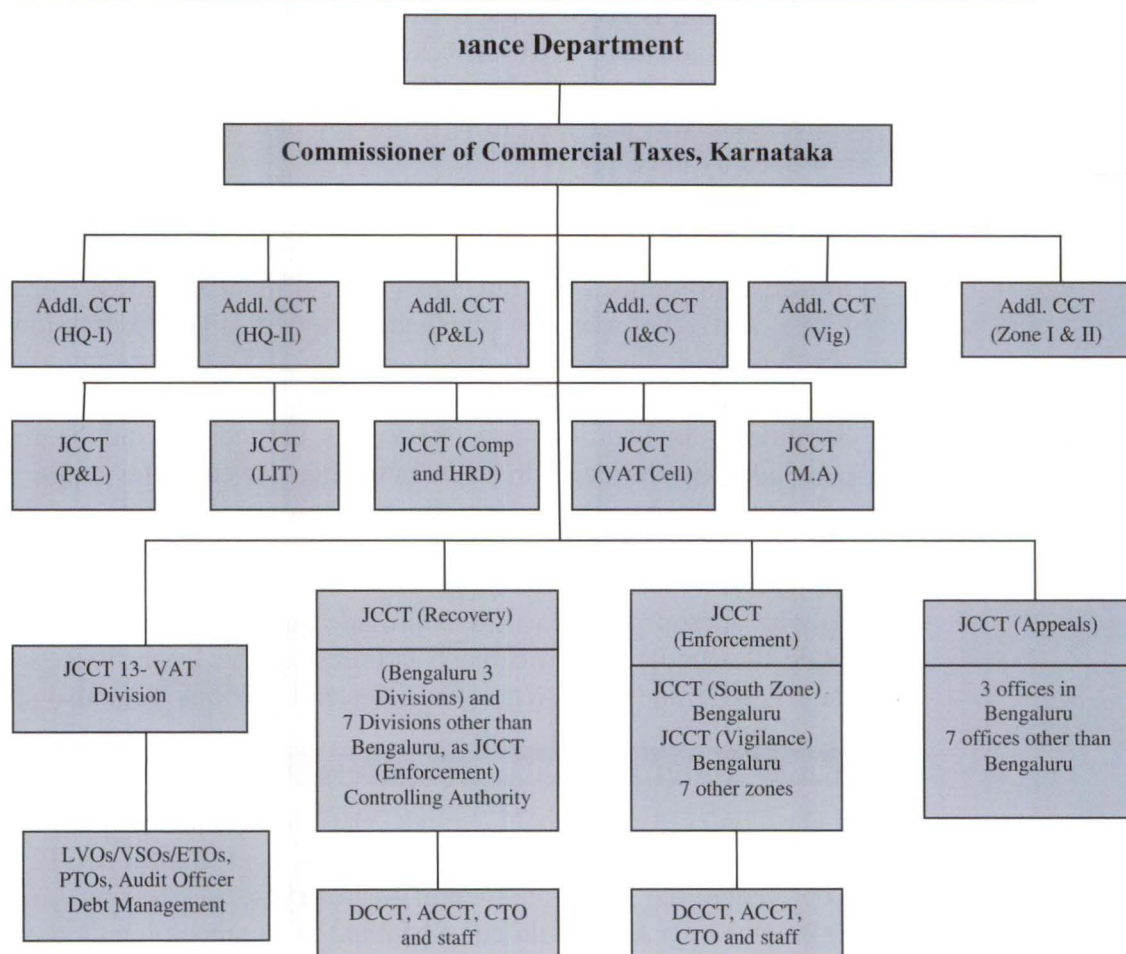
Luxuries under the KTL Act means services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life. Luxuries provided in a hotel, health club, marriage hall, club or in a hospital are levied with LT at the specified rates.

Online filing of returns and online payment of tax due on returns under the Professions Tax, Entertainments Tax and Luxury Tax are provided through the application software called PELSoft.

PELSOFT generates list of defaulters who have either not filed the return due or delayed its filing, or failed to make payment of tax or delayed the same.

¹ Clause (2) of Article 276 of the Constitution of India.

2.4.2 Organisational set up



2.4.3 Audit Objectives

The objectives of the Performance Audit (PA) were to ensure whether:

- The systems and procedures in place are adequate to ensure registration/enrolment of all the persons liable to Professions, Entertainment and Luxury Taxes and that filing of returns and payment of taxes by the persons registered/enrolled are effectively monitored?
- There has been follow-up/compliance with recommendations in the last two Performance Audits on this topic in the printed reports for the year 2006-07 and 2007-08?

2.4.4 Scope of Audit

Registration/enrolment, filing of returns, payment of taxes, re-assessments concluded and enforcement activities conducted between 1 April 2011 and 31 March 2016 under the PT, KET and KTL Acts were test-checked. The effectiveness of computerisation of tax administration in this regard was also reviewed. In Bengaluru, one exclusive Division is established for Minor Acts and two offices of this Division were taken up for pilot study. In addition,

four² out of 11 Divisions³ were selected in such a way that adequate representation is given to all the regions in the State geographically. Records maintained in 20⁴ field offices selected at random were test checked. Besides, database of both PELSoft and Electronic Filing System (*eFS*)⁵ for the entire State was analysed using front-end and back-end accesses to database provided by the CTD.

2.4.5 Methodology of audit

Information collected from other Departments/Agencies on Companies, Firms and other persons engaged in any business/profession was cross-verified with the records maintained in CTD to ascertain whether those persons were enrolled/registered with CTD and discharging their tax liabilities. In addition, test check was carried out on the re-assessments concluded by the department in the offices selected for audit. Database of *eFS* was cross-verified with the database of PELSoft to check whether defaults or underpayments of taxes due, if any, from dealers registered under Karnataka Value Added Tax (KVAT) Act, 2003, are detected and followed up with appropriate measures as provided under the respective Acts or Rules made thereunder. Enforcement activities of the Department with regard to the PT, KET and KTL Acts in the selected Divisions were also reviewed.

2.4.6 Acknowledgements

Entry Conference was held (March 2016) with Additional Chief Secretary to Government of Karnataka, Finance Department and the CCT. In the Entry Conference, the Additional Chief Secretary suggested that Luxury Tax and Entertainments Tax would get subsumed in the upcoming Goods and Services Tax (GST) Act due to which only such issues that would be relevant even after implementation of GST may be looked into in respect of LT and ET. Mid-term meeting was also held with Additional Chief Secretary, Finance Department and CCT in May 2016 to discuss the observations noticed in Audit till then. Audit acknowledges the inputs/suggestions offered by the Additional Chief Secretary, CCT and the co-operation extended by the CTD in furnishing records and providing access to the database. The Audit findings and recommendations were discussed with the Additional Chief Secretary to Government of Karnataka, Finance Department and the CCT in the Exit Conference held in October 2016.

2.4.7 Trend of revenue from Minor Taxes

2.4.7.1 The revenue realised by Government of Karnataka under the PT, ET and LT during the last five years from 2011-12 to 2015-16 are detailed in **Table 2.2**.

² Davangere, Dharwad, Kalaburgi and Mysore Divisions.

³ Out of 13 VAT Divisions shown in Organisational Chart two Divisions do not deal with Minor Taxes. Hence four Divisions were selected out of remaining 11 Divisions.

⁴ LVO-205, VSO-193, LVO-300, VSO-191, LVO-540, LVO-525, VSO-521, LVO-375, LVO-373, LVO-340, PTO-48, LVO-495, LVO-481, LVO-515, LVO-465, LT-4, PTO-1, 7 & 8 and ETO-4.

⁵ *eFS* - The software established for the administration of VAT under CTD.

Table:2.2
Trend of revenue from Minor Taxes

(₹ in crore)				
Year	Professions Tax	Entertainments Tax	Luxury Tax	Total from Minor Taxes
2011-12	600.20	480.15	139.99	1,220.34
2012-13	692.89	136.03	264.77	1,093.69
2013-14	792.98	146.22	299.06	1,238.26
2014-15	868.63	197.61	345.68	1,411.92
2015-16*	840.51	237.01	386.88	1,464.40

* Revenue figures from Finance Accounts for the year 2015-16.

As may be seen from the above table the annual revenue realised by Government increased by ₹ 244.06 crore during last five years (₹ 1,464.40 crore in 2015-16 minus ₹ 1,220.34 crore in 2011-12). The average increase in revenue was ₹ 48.81 crore per annum.

2.4.7.2 Cost of collection

The collection charges in respect of PT and ET only are shown distinctively in the Finance Accounts. The collection charges for LT were not shown separately but are included in the collection charges under the Head of Account 2040 – Taxes on sales, trade, etc. The details of cost of collection of PT and ET for last five years period are detailed in **Table 2.3**.

Table: 2.3
Cost of collection

(₹ in crore)						
Year	Professions Tax			Entertainments Tax		
	Revenue realised	Collection charges	Cost of collection (percentage)	Revenue realised	Collection charges	Cost of collection (percentage)
2011-12	600.20	4.13	0.69	480.15	0.86	0.18
2012-13	692.89	4.71	0.68	136.03	0.96	0.71
2013-14	792.98	4.84	0.61	146.22	1.01	0.69
2014-15	868.63	5.18	0.60	197.61	1.08	0.55
2015-16*	840.51	5.37	0.64	237.01	1.13	0.48

* Revenue figures from Finance Accounts for the year 2015-16.

It may be seen from the above that the cost of collection of PT ranged between sixty paise and sixty nine paise per one hundred Rupees and that of ET ranged between eighteen paise and seventy one paise per one hundred Rupees during last five years period.

Audit Findings

2.4.8 Enrolment of potential tax payers currently outside the tax net

It is important for every tax administration to identify all the potential tax payers to meet the revenue targets and to reduce the tax burden on the existing tax payers. Understanding the revenue potential and taking measures to bridge the gap can be valuable in augmenting revenues, designing tax reforms, simplifying tax structures, reducing compliance costs and improving the efficiency of tax administration.

Audit made an attempt to analyse the revenue potential under PT in Karnataka by selecting at random certain professions, separately under organised sector and unorganised sector. The details of the persons engaged in such professions were collected from the authorities/sources concerned and their enrolment cross-verified under PT administration. The results of such analyses are as follows:

2.4.9 Organised Sector

Identification of potential tax payers in organised sectors and gathering information on them through well-organised sources is strategically a low cost, low risk, effective and highly rewarding approach in tax base expansion.

Section 15 of the KTPTCE Act, 1976, provides that the State Government may, at its discretion, appoint any Government Department, or a Municipal Corporation, Municipality or Taluk Board (called 'Collection Agents') as its agent responsible for collection of tax under this Act from such persons or class of persons as may be prescribed.

Audit analysis of the tax potential under professions like owners of transport vehicles, companies registered under Companies Act, partners involved in partnership firms and individuals who are Service Tax assessee revealed that CTD has not adequately tapped such information sources to improve the tax collection. The instances are described below:

2.4.9.1 PT on owners of transport vehicles

Entry No.20 of the Schedule to the KTPTCE Act, 1976, prescribes tax on owners of transport vehicles (other than autorickshaws) at ₹ 1,000 per annum for owners of one vehicle and ₹ 2,500 per annum for vehicles for owners of more than one vehicle.

From the database of the CTD, it was noticed that only 4,294 persons were enrolled as owners of transport vehicles of which only 320 persons owned more than one transport vehicle and collection of PT from this sector was ₹ 6.55 lakh only during last five years.

Audit analysis of the information obtained in respect of this profession from Transport Department revealed that there were 2,42,186 persons⁶ owning single transport vehicle and 32,590 owning two to 160 transport vehicles in the State which were not enrolled with CTD for PT. Tax due from these persons worked out to ₹ 137.11 crore between April 2011 to March 2016.

CTD did not make any efforts to obtain information of the owners of transport vehicles which was easily accessible, as the source of such data was another State Government Department.

⁶ The number of transport vehicle owners considered by audit was on a conservative basis and was from the total population of over 17 lakh transport vehicles registered in the State. Transport vehicles which are paying quarterly tax to the Transport Department were only considered. Certain classes of transport vehicles on which Life Time Tax (LTT) is collected by Transport Department are not considered. Similarly, other States vehicles operating in the State for more than 120 days a year either through All India Permit or through Inter-State permits issued or vehicles covered by reciprocal agreements entered into by the State Transport Authority are also liable for PT. If these vehicles are considered, PT revenue of ₹ 50 crore per annum could be expected under this entry.

Besides, PT is also due from the owners of transport vehicles registered in other States but entering the State of Karnataka on the basis of permits obtained for more than 120 days in a year.

Ensuring enrolment of all the persons who are owners of transport vehicles and collection of PT at applicable rate can fetch revenue not less than ₹ 32 crore⁷ per annum and expected to grow at nine *per cent* per annum.

After these cases were pointed out in May 2016, the CTD replied in October 2016 that efforts were made to obtain information from Transport Department. Also physical surveys were conducted. So far 161 persons had been enrolled and tax and interest of ₹ 5.54 lakh collected while 33,941 cases are being pursued by issuing notices. The Audit Observations had been forwarded to all the Divisional VAT Offices (DVO) for necessary action at their end.

In the exit conference, the CTD expressed difficulties faced by them in locating the persons at the addresses at which the transport vehicles were registered with Transport Department. In this regard, Audit suggested to the Government/CTD that the Transport Department be made the collection agents for PT as the owners of transport vehicles would be frequently visiting that Department for various services such as permits, fitness certificate renewal, payment of quarterly tax, etc. The Additional Chief Secretary and the CCT agreed that entrusting the PT collection to Transport Department could be a workable solution and assured to look into the modalities.

Recommendation 1: Government may designate the Transport Department as the Collection Agent for PT due from owners of transport vehicles operating in the State.

2.4.9.2 Persons/entities engaged in various professions in Service Sector

All persons/entities offering services for consideration and whose annual turnover exceeds ₹ 10 lakh, were liable for registration with Service Tax Department and to pay Service Tax. As these persons/entities were engaged in provision of services which are classified as professions like event management, cinematograph film processing, transport contract, clearing agencies, property development, providing internet services, operating e-commerce business, stock broking through Stock Exchange Boards, educational institutions, film distribution, nursing homes, banking and financial institutions, etc. they were liable for registration/enrolment under PT at the rate of ₹ 2,500 per annum.

Audit obtained details of registrations from Service Tax Department and cross-verified the same with CTD to check the registration of such service providers under PT. This revealed that 6,943 Private and Public Limited Companies and 12,316 Partnership firms were not registered/enrolled with CTD. This had deprived Government of revenue of ₹ 24.07 crore during 2011-12 to 2015-16. Besides, there were 60,480 individuals engaged in the

⁷ Of the revenue due of ₹ 137.11 crore mentioned in the paragraph, the amount due during the year 2015-16 was about ₹ 32 crore. The growth in transport vehicles in the State is approximately nine *per cent* per annum.

professions mentioned above, where there was PT potential of ₹ 75.60 crore which remained unexplored by the CTD during the same period.

Potential non-realisation of revenue from these entities between April 2011 and March 2016 worked out to ₹ 99.67 crore. Ensuring enrolment of these entities would fetch additional revenue of ₹ 19.93 crore per annum.

After these cases were pointed out in August 2016, the CTD stated in October 2016 that the cases noticed by Audit have been forwarded to all the DVOs concerned for necessary action at their end.

Recommendation 2: Department may establish a system of collection and updation of information available with other Government Departments to capture the details such as the name of assessee, address, age in case of individuals, the turnover or income from the profession, etc. that affect the chargeability to PT. Also, the licensing authorities in respect of certain professions such as 'Financiers', 'Stock Brokers', 'Clearing Agencies', etc. be made collection agents for PT to ensure tax collection from all the potential tax payers under their control.

2.4.9.3 Unorganised sector

Audit acknowledges the difficulty in identification of potential tax payers in the professions under unorganised sector compared to those under the organised sector. However, no visible plans/efforts were found to be undertaken by the Department in devising any strategy to deal with this sector.

In order to assess the tax potential under this sector and to show the existence of the tax gap, audit analysed the following professions with the results stated against each profession.

2.4.9.4 Persons engaged in different professions in Film/Television industry

(a) Under entry No.12 of the Schedule to the KTPTCE, Act, 1976, self-employed persons in the motion picture industries viz. Directors, Actors, Actresses (excluding junior artists), playback singers, recordists and Editors are liable to PT of ₹ 2,500 per annum if they are Income Tax payers otherwise PT of ₹ 1,500 per annum is payable. Cameramen and Still Photographers covered under the same entry are liable to PT at ₹ 900 per annum.

Audit noticed that only 76 persons were enrolled with the Department under this category. Considering the volume of motion pictures produced in recent times and the number of regional channels telecasting several daily serials and shows, the number of registered persons under this category appeared low.

Considering 667⁸ films that were produced during the last five years period, Audit estimated that at least 1,600⁹ taxable persons existed under three categories of activities (Actors/Actresses, Directors and Music Directors). Accordingly, the tax potential of this entry could be between ₹ 1.2 crore to ₹ 2 crore¹⁰.

This indicates that the enforcement of the levy of PT on this Sector also had not received due attention of the Department which could have been tackled through interaction with the associations of persons relating to that industry such as Film Chamber of Commerce, Actors Association, etc.

After the issue was pointed out to the CTD in April 2016, the CTD in their reply furnished in October 2016 stated that they had sought information from various sources and conducted physical survey through which 419 persons liable to PT have been identified. After this, notices were issued by the Department to various television channels to furnish the details of persons working under different serials telecast by them.

(b) Under entry 12 of the Schedule, specific persons employed in motion picture industries, like Actors/Actresses, Playback Singers, Recordists and Editors are liable to pay PT at ₹ 2,500 per annum, if they are Income Tax payers and at ₹ 1,500 per annum in case they are not Income Tax payers. Prescription of only ₹ 900 per annum as PT for Cameramen and Still Photographers under the same entry irrespective of their Income Tax liability is sans logic and appears arbitrary.

2.4.9.5 Cable TV Operators

Under entry 39 of the KTPTCE Act, 1976, PT at specified rates has to be paid by persons providing entertainment using Dish Antennae and Cable TV.

Entertainments Tax at ₹ 15/- per connection per month is payable by the cable operators under Section 4-C of the KET Act. The cable operators were also eligible to opt for composition¹¹ of tax under Section 4-D of the KET Act. Further, no ET shall be payable by the cable operators who are receiving signals from Multi-System Operators (MSOs) who have paid tax under Section 4-G of the Act. The cable operators obtain licence from local Head Post Offices (HPOs) to transmit signals through cables.

Details regarding the number of cable operators licensed by jurisdictional HPOs and number of cable operators functioning under local MSOs in six places were collected and cross verification with CTD revealed that 641 out

⁸ The number of films produced each year during 2011-12 to 2015-16 was 134, 106, 151, 116 and 160 respectively.

⁹ The list of Kannada feature films released in last five years was prepared. The Actors/Actresses who played major roles and the name of the Director and Music Director were noted against each of the film. This list was analysed to extract list of persons who featured in at least one movie in a year.

¹⁰ Tax at the rate of ₹ 1,500 per annum as applicable in case of persons who are not Income Tax payers, for 1,600 persons for 5 years worked out to ₹ 1.2 crore. If the persons were Income tax payers then tax at ₹ 2,500 per annum for five years works out to ₹ 2.00 crore.

¹¹ Under this provision the cable operators would be required to pay fixed amount each month irrespective of the number of connections held by them.

of 698 cable operators were not enrolled / registered with CTD. The details are given in the **Table 2.4**.

Table :2.4
Cable TV Operators

Sl. No.	Place (City Municipal Corporation (CMC) or Taluk Municipal Corporation (TMC))	No. of Cable Operators (as per HPO or MSO)	No. of Cable Operators registered with CTD
1.	Ballari (CMC)	178	1
2.	Honnavar (TMC)	30	0
3.	Kumta (TMC)	11	2
4.	Yadgir (CMC)	148	2
5.	Bidar (CMC)	78	9
6.	Kalaburgi (CMC)	253	43
	Total	698	57

The above table shows that only 8.17 *per cent* of the cable operators were registered with CTD in six test-checked places. Thus, there is ample scope to expand the tax base in this sector through systematic collection and updation of details from the connected sources. CTD needs to ensure that all the cable operators are registered so that ET and PT due to Government could be collected either from them or through the MSOs.

In the exit conference, CTD stated that action has been initiated to enroll all the cable operators.

Recommendation 3: *Department may collect information from all possible sources like Recognised Associations, Nodal Agencies, etc. to bring in more persons liable to tax under the tax ambit in respect of un organised sectors.*

2.4.10 Enrolment/demand of tax from persons who are paying Income Tax

Under the residual entry 73 of the Schedule to the KTPTCE Act, 1976, persons other than those mentioned in any of the preceding entries who are engaged in any profession, trade, calling or employment and who are paying tax under the Income Tax Act, 1961, are prescribed to pay PT at the rate of ₹ 2,500 per annum. Besides, for the persons paying tax under the entries 9 and 12, higher amount of PT at the rate of ₹ 2,500 per annum has been prescribed for Income Tax payers while those who are not Income Tax payers are liable to pay lower amount of PT at the rate of ₹ 1,500 or ₹ 1,000 per annum, as the case may be.

Though the payment of Income Tax was one of the criteria under the entries aforesaid, no action plan was available with the Department to ascertain liability under Income Tax in order to identify, demand and collect tax from such persons liable to tax. Liability under the Income Tax Act varies from year to year and hence, CTD is required to collect the details of payment of Income Tax in order to assess the correctness of tax paid or to check the liability to tax for a person. As an initial step towards this goal, the Department needs to ensure capturing of PAN of all the existing registered assesseees.

Audit noticed that in respect of 1.13 lakh out of 2.52 lakh enrolled persons, the Department had not ascertained PAN. In the database of PELSoft, the field meant to record PAN was either left blank or filled with invalid data, i.e. data which is not in the valid PAN format. In the absence of PAN, the Department was not able to ascertain the liability of Income Tax with the Income tax Department and hence could not ascertain the correctness of tax paid under PT or to raise demands wherever PT was due and recover the same.

After these cases were pointed out in August 2016, the CTD in their reply furnished in October 2016 stated that information from Income Tax Department was obtained and 85,776 persons liable to PT were identified. Of these 29,970 persons were enrolled and PT together with interest amounting to ₹ 6.71 crore was collected from them.

Recommendation 4: CTD may capture details of PAN in respect of all the existing tax payers and establish cross-verification with Income Tax Department to ascertain the actual liability under the KTPTCE Act.

2.4.11 Administration of the existing tax base enrolled with the Department

Maintenance of relevant information of the tax payers is essential to detect and bring into the tax net any person/s who are evading or not paying tax and to ensure that persons enrolled are properly classified and are paying tax as applicable under the relevant entry or their claim for exemption from tax.

Audit analysis of the database of PELSoft and *eFS* revealed that CTD is not ascertaining and maintaining verifiable information about its tax payers under the KTPTCE Act. Certain deficiencies noticed in gathering information about the tax payers are as mentioned below:

- Though tax is collected from employees through the employer, actual details of the tax payer (employee) are not available;
- In respect of partnership firms, the details of each partner are not obtained and updated from time to time;
- In respect of Companies, details of branches are not being updated from time to time;
- Unique Identity of persons (PAN/Aadhaar Card) enrolled with CTD were not gathered and maintained.

In the absence of unique identity of each tax payer, whenever CTD identifies any person, it will not be able to ascertain whether that person is already a tax payer or not. Therefore, lack of information about its existing tax base poses major challenges to the CTD in its endeavour to widen the tax base either by reaching out to professionals by issue of notices or by co-ordination with agencies or associations or organisations with which such professionals are engaged.

Detailed observations in respect of the deficiencies mentioned in the PT above are as follows:

2.4.12 Inadequate monitoring of PT dues from persons/entities registered/enrolled with CTD

Audit analysed the data of the assesseees registered under KVAT Act, 2003, with the CTD to check the utilisation of its own data by the Department to ascertain the level of compliance of the assesseees under the control of the Department itself. Findings in this respect are detailed in the following paragraphs:

2.4.12.1 Non/short realisation of PT from persons registered as dealers/contractors under the KVAT Act

Under Entries 10 and 13 of the KTPTCE Act, 1976, individuals registered as contractors or dealers under the KVAT Act or Karnataka Sales Tax (KST) Act are liable to pay PT at the rate of ₹ 1,000, ₹ 1,500 or ₹ 2,500 per annum depending on the turnover achieved by them during that financial year.

The annual turnover of dealers was available in the *eFS* database. PT was to be paid online by each dealer through PELSoft. During the period from April 2011 to March 2016 there were 4,65,117 proprietorship firms who were liable to file 14,15,155 annual PT returns for one to five years period and were liable to pay PT due on the returns. Audit analyses revealed the following deficiencies under this sector:

- There were 2,10,847 dealers (45.33 per cent) who defaulted in filing one to five annual returns and consequently defaulted in the payment of PT due. The annual turnovers achieved by these dealers were in the range of ₹ 0.02 crore to ₹ 523.44 crore. The PT due from the defaulting dealers worked out to ₹ 48.78 crore. Of these, 19,699 dealers who had defaulted in payment of PT of ₹ 2.85 crore have got their TIN de-registered subsequently.
- PT of ₹ 10.69 crore was paid by 69,654 dealers in 89,473 annual PT returns for the years 2011-12 to 2015-16. However, based on the turnover achieved by these dealers, the total tax due for the said period works out to ₹ 18.26 crore. Consequent short realisation of revenue was ₹ 7.57 crore.

Since there was no linkage between PELSoft and *eFS*, PELSoft could not pull data about defaulting and short-paying VAT dealers from *eFS*, even though both databases were under the control of CTD. Suitable controls in PELSoft to access the annual turnover from *eFS* database and to watch for PT due for the particular slab could have ensured proper revenue realisation to Government.

In the exit conference the CTD stated that the LVOs concerned have been instructed to take necessary action to demand PT from the dealers under their jurisdiction.

Recommendation 5: *CTD may establish link between PELSoft and eFS so as to automate the levy and demand of PT after ascertaining the turnover declared under eFS and suitable modifications may be made in PELSoft to detect and alert both dealer and the assessing authority in case of default in payment of PT.*

2.4.12.2 Collection of PT not due from proprietors registered under VAT

Under the proviso (1) below Section 3 of the KTPTCE Act, 1976, no tax shall be payable by persons who have attained sixty (sixty-five up to 31 March 2015) years of age.

However, it was noticed that PT of ₹ 3.30 crore had been paid by 10,115 proprietors registered under VAT between April 2011 and March 2016 who were not liable to pay PT due to their age, under the above mentioned provision of the Act. Such collection made was not due and hence refundable to the persons concerned.

Though the information on age of individual dealers was available in the database of *eFS*, PELSoft was not designed to access the same to ensure that no payments are received from the persons exempted under the KTPTCE Act, 1976.

After these cases were pointed out in August 2016, CTD in their reply furnished in October 2016 stated that a Committee to revamp the KTPTCE Act has been constituted and the issue has been referred to the committee for examination in the light of the Audit observations.

Recommendation 6: Necessary controls may be established in PELSoft to prevent online tax payment from persons who are exempt on the basis of their age computed from date of birth entered in the registration table¹² of the eFS.

2.4.13 Non/short demand of PT from Companies registered under KVAT

Under entry No.25 of the Schedule to the KTPTCE Act, 1976, Companies registered under the Companies Act, 1956 and engaged in any profession, trade or calling was liable to PT of ₹ 2,500/- per annum.

Also, as per Explanation VI below the Schedule to the Act, 'every branch of any self-employed assessee enumerated in any item of the Schedule shall be deemed to be a separate assessee for the purpose of levy of PT specified in the Schedule'. Hence, under the Act, the Companies and its branches are deemed as separate assessees and tax has to be collected from each of the functioning branches.

2.4.13.1 There were 29,981 Companies (both Public Limited and Private Limited Companies) registered under VAT as on 31 March 2016. Audit analysis of these Companies revealed that between April 2011 to March 2016, there were 13,963 Companies which had defaulted in annual payments of PT for one to five years and 3,904 Companies had short paid the PT dues in their 7,247 annual returns. The total non-realisation of PT was ₹ 8.92 crore. This was due to non-payment of PT on their branches or incorrect self assessment of PT by the Companies concerned at the rates applicable to proprietorship firms instead of at the rates prescribed for them

¹² Dealers are required to apply for registration under Karnataka VAT Act, 2003, in Form VAT-1 furnishing all the particulars sought therein. The information such as name of the applicant, address, date of birth, nature of business, etc. are filled in that form by the applicants. These details are entered in the registration table of the *eFS*.

under entry 25. This also showed that PELSoft was not designed to detect such errors and prompt both assesseees and the LVOs concerned for necessary corrective actions.

2.4.13.2 In respect of 693 Companies enrolled under KTPTCE Act, 1976, and having at least one additional place of business it was noticed that PT due from them in their 1,039 returns for the years 2011-12 to 2015-16 was paid short by ₹ 93.18 lakh. This was due to omissions, incorrect self-assessments without considering the PT due on their branches or payment of tax at incorrect rates.

It was further noticed that the information on number of branches held by the enrolled Companies in the State were not being updated by CTD in their registration records. As a result, the CTD could only watch, if at all, for PT due on the number of branches held by the Companies at the time of their initial enrolment. Audit found that as against five branches declared by four Companies (details given in *Annexure 'A'*) at the time of their enrolment, there were 78 branches working in the State. Failure to put in place a system for updating information on new branches opened from time to time by the Companies enrolled/registered with CTD had resulted in foregoing of PT revenue due from branches every year.

Recommendation 7: PELSoft may be suitably modified to automate demand of PT based on the type of assessee and to incorporate vital information such as number of branches held by the assessee (already stored in the registration table of eFS) for the purpose of assessment and demand of tax.

2.4.14 Non/short demand of PT from Partnership firms registered under KVAT

Partnership firms fall under different professions and hence are governed by the entries 10 (Contractors executing works contract), 13 (Dealers registered or liable to be registered under VAT) and 26 (Partners of firms) of the Schedule to the KTPTCE Act, 1976, read with Explanations IV and V below the Schedule¹³.

On the basis of these multiple entries along with the explanations, it becomes evident that whenever the turnover of a partnership firm is less than ₹ 25 lakh, it has to pay tax under entry 26 for each partner and under 10 or 13, as the case might be, if it exceeds ₹ 25 lakh.

There were 75,783 partnership firms registered under KVAT as on 31 March 2016. Audit analysis of the data with respect to these partnership firms revealed the following:

¹³ Under the entries 10 and 13, tax has been fixed based on the ATO of the dealers as below:

• Less than ₹ 2 lakh	-	Nil
• ₹ 2 - ₹ 10 lakh	-	₹ 1,000
• ₹ 10 - ₹ 25 lakh	-	₹ 1,500 and
• Greater than ₹ 5 lakh	-	₹ 2,500

Under the entry 26, each partner of firm engaged in any profession is liable to pay ₹ 1,000/- per annum.

Further Explanation IV read with V states that partners of the firms shall be taxed if the turnover is less than ₹ 25 lakh and firms shall be taxed if the turnover exceeds ₹ 25 lakh.

- There were 5,052 partnership firms with Annual Turnover (ATO) below ₹ 25 lakh, who in their 8,016 annual PT returns filed before 118 LVOs/VSOs for the years 2011-12 to 2015-16 had self assessed and paid PT under entry 10 or 13 instead of the actual tax due under entry 26 of the schedule. The total amount of tax due was ₹ 2.06 crore at the rate of ₹ 1,000 for each partner of a firm per annum. But the actual amount of tax liability reported through the self-assessed returns by those firms and paid was only ₹ 1.19 crore which resulted in short payment of tax of ₹ 0.87 crore.
- There were 13,601 partnership firms whose ATO exceeded ₹ 25 lakh, who were engaged in trade through 2 to 40 branches in the State. Total tax liability of these firms, including tax due on their branches as per Explanation VI¹⁴ below the Schedule to KTPTCE Act, 1976, works out at ₹ 10.75 crore. However, it was found that the dealers concerned, in their 9,413 annual returns before the 118 LVOs/VSOs for the years between 2011-12 and 2015-16, paid PT of ₹ 6.43 crore only which resulted in short realisation of PT revenue amounting to ₹ 4.32 crore.
- There were 29,287 partnership firms (20,817 instances where ATO more than ₹ 25 lakh and 21,261 instances where ATO less than ₹ 25 lakh) under 118 LVOs/VSOs, who had neither filed any returns nor paid PT during the period from 1 April 2011 to 31 March 2016. The tax liability in these cases was calculated by Audit on the basis of number of partners where ATO was less than ₹ 25 lakh and at ₹ 2,500 where the ATO exceeded ₹ 25 lakh. Accordingly, tax due from these defaulting firms worked out to be ₹ 11.18 crore for the period mentioned.

These instances clearly showed that PELSoft was not able to ensure correctness of classification of the type of dealers and the PT due from them.

After these cases were pointed out in May/June 2016, CTD in their reply furnished in October 2016 stated that the audit observations have been forwarded to the JCCTs of the Divisions concerned for compliance.

2.4.15 Excess collection of tax from partnership firms

As per the provisions of the KTPTCE Act, 1976, no tax shall be demanded from partners but tax at the rate of ₹ 2,500 per annum has to be collected from the firms whose total turnover in a year was more than ₹ 25 lakh. It was, however, noticed that in respect of 8,403 firms, PT at ₹ 1,000 per partner for each branch of the firm was collected in 16,529 occasions where the ATO was greater than ₹ 25 lakh for the firms. This had resulted in excess collection of tax of ₹ 2.46 crore which is refundable to the firms concerned.

¹⁴ Explanation VI under the Schedule states that every branch of any self-employed assessee enumerated in any item of the Schedule shall be deemed to be a separate assessee for the purpose of levy of PT specified in the Schedule.

2.4.16 Need for rationalisation of levy of PT in case of Partnership Firms

As explained in paragraph 2.4.14, the levy of PT on Partnership Firms is very complex with many parameters prescribed and needs simplification. Explanation IV read with V below the Schedule to the KTPTCE Act, 1976, states that for partnership firms whose ATO exceeds ₹ 25 lakh or who have employed more than 10 employees, etc. tax shall be levied only on the firm but not on individual partners (entry 26). Audit infers that the explanations aforesaid work against the interest of revenue in cases of partnership firms having many partners and with significant turnovers. Comparing the same with entry 10 or 13 of the Schedule where individuals registered under VAT are liable to pay PT of ₹ 2,500 if their total turnover exceeds ₹ 25 lakh brings out the lack of equality in treatment of assesseees under the Act.

Audit analyses of 36,842 partnership firms registered under VAT during the period from 2011-12 to 2015-16 showed that if the ATO of the firms are apportioned to each partner of the firm and the liability of each partner is determined as if each partner is an independent professional, tax on each partner could have been levied between ₹ 1,000 to ₹ 2,500 per annum. Total number of persons (individuals) involved in these cases ranged between 52,367 and 63,314 and Government could have earned revenue ranging from ₹ 2.19 crore to ₹ 12.79 crore totalling to ₹ 49.62 crore for the years from 2011-12 to 2015-16 against which only ₹ 23.73 crore was realised. The potential revenue that could have been earned by Government over last five years was ₹ 26.76 crore. If suitable amendment in this direction is considered by Government/Department, it could fetch additional revenue of ₹ 5.22 crore per annum for future years.

In the exit conference, CTD stated that a Committee has been constituted to revamp the KTPTCE Act and all the issues raised by Audit would be referred to that Committee.

2.4.17 Incorrect exemption to Dealers who reported Nil turnover in a year

In addition to the above mentioned cases, it was seen that 1,61,698 dealers registered under KVAT Act had not paid PT for one or more years during the period from 2011-12 to 2015-16. During the years of non-payment of PT, the respective dealers had filed 'Nil' ATO under VAT/KST/Central Sales Tax and hence did not pay PT.

Audit analysed the CTD database in respect of these dealers and collected valid PAN in respect of 1,41,284 dealers. PAN number, being a unique identity, was utilised to cross-verify these dealers with the data of assesseees under Service Tax Department to check the reporting of turnover by any of these dealers under Service Tax. This revealed that 10,935 of these dealers were performing business under service sectors and filing returns and paying taxes with the Service Tax Department. Hence, these dealers were liable to

pay PT and the PT due from these dealers at ₹ 2,500 per annum worked out to ₹ 4.59 crore¹⁵ during 2011-12 to 2015-16.

In respect of remaining 20,414 dealers, PAN was not captured by the CTD and hence the same could not be cross-verified. Possibility of some of those dealers also being liable for PT could not be ruled out.

Ensuring recovery of PT due from dealers registered under VAT/KST may prevent non-realisation of revenue to the tune of ₹ 17.23 crore per annum.

In the exit conference, the CTD stated that the LVOs concerned have been instructed to take necessary action to demand PT from the dealers under their jurisdiction.

2.4.18 LT and PT revenue due from owners of lodging houses

Under entry 18 of the Schedule to the KTPTCE Act, 1976, owners of lodging houses with less than 20 rooms were liable to pay PT at ₹ 1,500 per annum and those with 20 rooms or more were liable to pay PT at ₹ 2,500/- per annum. Under the KTL Act, owners of lodging houses charging room rent of ₹ 750¹⁶ or more per day were liable to get registered and pay LT under the Act with the jurisdictional LVO or Luxury Tax Circle.

It was noticed that PELSoft had no field to capture vital details such as number of rooms in a lodging house and the tariff per day required to assess PT and LT dues. During 2011-12 to 2015-16, PT was not paid by owners of 1,071 out of 3,072 lodging houses registered with CTD.

In 27 Districts¹⁷, 973 bills issued to their customers between April 2011 and March 2016 by 609 lodging houses¹⁸ were collected at random and analysed by audit. The analysis revealed 242 lodging houses in 24 Districts¹⁹ were not registered with the CTD. Of these, 119 lodging houses charged room rent at the rate which attracted levy of LT. Though these lodging houses had been running for three to five years without registration and were collecting taxable charges from the public, they were not detected and brought to the tax net by the CTD. Twelve other lodging houses registered with CTD were found to have defaulted in filing returns or suppressed the tax liability in their returns.

¹⁵ Though the number of persons were 10,935, the instances of defaults were 18,374 (i.e. same dealer for more than one year in many cases) and hence the liability of ₹ 4.59 crore.

¹⁶ ₹ 500 or more up to 31 March 2014.

¹⁷ Bagalkote, Belagavi, Bengaluru, Bidar, Chamarajanagar, Chikkamagaluru, Dakshina Kannada, Davangere, Dharwad, Gadag, Hassan, Haveri, Kalaburgi, Kodagu, Kolar, Koppal, Madikeri, Mandya, Mysuru, Raichur, Ramanagara, Shivamogga, Tumakuru, Udupi, Uttar Kannada, Vijayapura and Yadgir.

¹⁸ The lodging house bills obtained by officers/officials while on official tour inside the State were collected for last three years. The bills were then summarised hotel wise and month wise. The hotel bills having their LT registration number were cross-verified with the returns filed for the respective month to ensure that they have disclosed the turnover involved and tax collected as per the bills. In respect of hotel bills without LT registration number, 'dealer search' option in PELSoft was used to check the registration status of those hotels and non-registrations were detected and where registration numbers were found, cross-verification with returns were carried out as mentioned above.

¹⁹ Bagalkote, Belagavi, Bidar, Chamarajanagar, Chikkamagaluru, Dakshina Kannada, Davangere, Dharwad, Gadag, Hassan, Haveri, Kalaburgi, Kolar, Koppal, Madikeri, Mandya, Mangaluru, Mysuru, Raichur, Ramanagara, Shivamogga, Uttar Kannada, Vijayapura and Yadgir.

In the absence of detailed accounts of the lodges, number of days of occupancy of the rooms, total charges collected by them, taxable charges, etc. Audit estimated the occupancy rate at 60 *per cent* of the days in a year (i.e. 240 days out of 365 days). Accordingly, the LT due to the Government from 62 non-registered lodging houses (out of 119 lodges, where tax was found collected in the bills issued) worked out to ₹ 2.45 crore. Besides, these lodging houses were liable to pay PT annually.

It may be seen from the above that a small sample of 973 bills of 609 lodging houses for five years period from April 2011 to March 2016 brought out 254 non-compliant cases which is 39.90 *per cent* of the lodging houses in the sample. This is quite alarming and the actual loss of revenue sustained by Government could be huge.

In the exit conference CTD agreed that the lodging houses that are charging LT from customers without registration have to be brought to the tax net and such exercises are also being carried out by them.

2.4.19 Compliance with recommendations made in the Previous Performance Audits

In the previous Performance Audits conducted on Minor Taxes (Audit Reports of 2006-07 and 2007-08), recommendations were made to Government / Department to put in place specific controls that could help the Department to expand its tax base, detect and follow-up on non-realisation of revenue due to dishonour of cheques or other instruments remitted to banks and to detect the cases of omission or commission leading to loss of revenue in a timely and effective manner so that corrective action could be taken up. The action taken by the Department in respect of these recommendations were verified during the course of this Performance Audit and results of that verification are mentioned below:

2.4.19.1 Establishing a system of obtaining information from various Licensing/registering authorities

In the Performance Audits mentioned above, Audit recommended to establish a system for obtaining periodical information from various authorities²⁰ permitting/licensing 'persons' to engage in business/profession which made them liable to tax under PT/KET/LT Acts and to follow-up on such information to bring all those persons under the tax net.

Departmental Notes furnished to the Public Accounts Committee by the Department in reply to audit recommendation stated that the data furnished by audit in respect of the non-registered persons engaged in various professions obtained from various authorities permitting / licensing several professions/businesses could not yield the revenue at the expected level. This was due to the fact that these persons were not traceable due to change of address, change of profession, not performing the profession for 120 days or more, etc.

²⁰ Karnataka Bar Council, Chief Electrical Inspector, Medical Council of India (Karnataka Chapter), Registrar of Co-Operative Societies etc.

Audit acknowledges the difficulties stated by the CTD. However, the licenses or permits issued by the licensing authorities would be for the period specified under the respective Act or Rules. Thereafter, the licenses would become due for renewal and the persons who intend to pursue the profession would apply for periodical renewal of licenses. Hence, making the licensing authorities collection agents for PT would ensure proper tax collection. The benefits that could accrue from organised sectors / licensing authorities have already been explained in paragraph 2.4.9.

In addition, in four²¹ districts, the lists of pawn brokers, chit funds, financiers licensed by the offices of the Registrar of Co-operative Societies were obtained and cross-verified with the LVOs/VSOs. They revealed that 2,504 persons had not enrolled/registered with CTD. Total amount of PT due from these persons during 2011-12 to 2015-16 amounted to ₹ 2.02 crore. The licenses issued were valid for five years only.

In the exit conference, the CTD agreed that making Registrar of Co-operative Societies as collection agent for PT from pawn brokers, chit fund and financiers would be a reasonable control to ensure collection of PT due from this sector.

2.4.19.2 Non-reconciliation of cheques/cash deposited into banks

It was recommended in our previous Performance Audit to fix a time limit for sending challans from banks to assessing authorities concerned to enable them to carryout timely reconciliation.

It was noticed that the Department has developed a module in PELSoft for reconciliation of cheques/cash deposited in banks with the monthly information obtained from banks/Treasury concerned, containing the realisation particulars of instruments deposited in the previous month in softcopy and uploaded to PELSoft. After matching the cheques/cash as per the CTD records with the details brought from banks, PELSoft generates 'Report on Reconciliation of Instruments sent to Bank with Bank statement' for each office.

During the course of audit, the Performance Audit team generated this Report once on 31 March 2016 and subsequently on 4 August 2016 in respect of 20 field offices²². The reconciliation report as on 31 March 2016 for these 20 offices showed 64,789 instruments involving revenue of ₹ 50.61 crore were pending for realisation particulars. This was communicated to all the 20 offices concerned in April 2016.

However, even after four months (as of 4 August 2016), 61,537 instruments involving ₹ 47.80 crore were pending for realisation in the same offices. This shows that though the Department has developed a computerised system of reconciliation and was able to generate report on instruments pending for reconciliation, it had failed to ensure timely reconciliation of all the instruments sent to banks for realisation. In the absence of timely

²¹ Bidar, Kalaburgi, Haveri and Uttara Kannada.

²² LVOs/VSOs-205, 193, 300, 191, 540, 525, 521, 375, 373, 340, 370, 495, 481, 515 and 465 ETO-4, PTOs-1, 7 & 8 and LT-4 offices.

reconciliation, the risk of dishonoured instruments, if any, escaping the attention of the Department cannot be ruled out.

In the exit conference, CTD stated that the necessary information for reconciliation had been collected from banks but due to some technical problems, the same was not being able to be uploaded to PELSoft.

2.4.19.3 Setting up of an Internal Audit Wing (IAW) in the Department

CTD was recommended for setting up of an IAW to ensure timely detection and correction of errors in assessments, levy and collection of taxes.

Audit acknowledges that the Department has established an IAW with effect from June 2011 as recommended by Audit. The IAW is catering to the needs of all the Acts/Rules administered by the Department. The focus is mainly on major taxes such as Value Added Tax, Karnataka Sales Tax and Central Sales Tax revenues.

2.4.20 Conclusion

As mentioned in paragraph 2.4.7, the annual revenue growth of PT, ET and LT was ₹ 48.81 crore over the period from 2011-12 to 2015-16. If the Government/Department considers preventive controls to plug the leakage of revenue from dealers registered under VAT and persons enrolled under PT and the rationalisation measures to bring equity among the tax payers as explained in the previous paragraphs, Government may get annual additional revenue of not less than ₹ 75.51 crore.

Department lacked strategies to capture potential tax payers who are presently outside the tax net. The Department had failed to tap even well-organised and well-regulated sources like owners of transport vehicles, service tax assesseees, etc. where large scale non-compliance was noticed in Audit. Though identification of potential tax payers is difficult under the unorganised sector, no strategy was developed to optimise the revenue due from this sector. Monitoring of existing assesseees was deficient which resulted in non-filing of returns and non/short payment of taxes. The Department did not capture basic details like PAN which poses challenges in ascertaining the correctness of tax liability and in efforts to widen the tax base.

The application software (PELSOFT) being used for the administration of the Minor Taxes was inadequate as it was unable to detect non/short payments based on the turnovers reported in VAT and to check the status of the dealer, whether individual, firm, Company, etc.

At the same time, CTD failed to provide fair treatment to all tax payers and collected revenue from persons who were exempted from tax under the KTPTCE Act, 1976.

In the exit conference with the Additional Chief Secretary (Finance) to the Government, it was replied that action would be taken to make other State Government Departments/licensing Authorities collection Agents of PT, wherever possible. Further, CTD in their reply stated that a Committee to revamp the Professions Tax Act has been constituted and the issues raised in Audit have been referred to the Committee for examination.

2.5 Non-discharge of tax liability declared in the returns

Under Section 35(1) of the KVAT Act 2003, every registered dealer shall furnish a return in the prescribed form and shall pay the tax due on such return within 20 days (or 15 days in the case of dealers assessed under composition of tax) after the end of the tax period.

Test check of returns between January 2015 and June 2016 in 38 LVOs in eight²³ Districts revealed that for 947 returns pertaining to tax periods between April 2010 and March 2015 filed by 413 assesseees, the respective tax liabilities amounting to ₹ 5.51 crore were not discharged. Penalty and interest as applicable worked out to ₹ 0.55 crore and ₹ 2.78 crore respectively. Total amount due worked out to ₹ 8.84 crore.

Even though the 'e-VARAD' system for online filing of returns clearly indicates a status of 'not acknowledged' against all returns where the tax liability is not discharged in full, the officers concerned failed to follow up on these cases and ensure timely recovery. The persistence of the irregularity despite the same being pointed out in the previous reports also indicates that the Department is yet to take proactive measures to address the issue at the systems level. It is recommended, therefore, that a system of escalation of a pendency report for resolution at higher levels be built into the computerised system and controlling officers be made responsible to review and ensure clearance of outstanding liabilities in a timely manner.

When Audit brought these cases to the notice of the Commissioner of Commercial Taxes and to Government between January and August 2016, Government replied that ₹ 19.19 lakh had already been collected from nine dealers. In respect of two dealers, Government replied that the observation may be dropped as tax was paid to the Department. The reply is not acceptable as the payment details furnished by the Department for having paid the tax was not traceable in eFS. Reply in respect of the remaining dealers is still awaited (December 2016).

2.6 Non-levy of penalty under Section 72(1) of the KVAT Act

According to Section 35 (1) of the KVAT Act, 2003, every registered dealer shall furnish a return and shall pay tax due on such return within twenty days after the end of the preceding month or any other tax period as may be prescribed.

Further, as per Section 72(1) of KVAT Act, a dealer who fails to furnish a return or who fails to pay the tax due on any return furnished as required under the Act shall be liable to pay together with any tax or interest due, a penalty equal to:

- five *per cent* of the amount of tax due or ₹ 50 whichever is higher, if the default is not for more than 10 days, and
- ten *per cent* of the tax due, if the default is for more than 10 days.

²³ Bengaluru, Bagalkote, Ballari, Dakshina Kannada, Dharwad, Mysuru, Ramanagara and Tumakuru.

Further, as per Section 72(6) of KVAT Act, 2003, the power to levy above penalty shall be vested with the prescribed authority to which returns are required to be furnished or the prescribed authority making an assessment or re-assessment.

During test check of records of 67 (56 LVOs, four VSOs and seven Audit Offices) in twenty-one²⁴ districts between December 2014 and February 2016, Audit noticed that

(a) There was belated payment of tax (i.e. beyond 20 days after the expiry of the applicable tax period) of ₹ 185.94 crore in the returns for the years 2011-12 to 2013-14 by 290 assesseees. Though all these cases attracted penalty under Section 72(1) of the Act, it was neither paid by the assesseees nor were any efforts made by the officers concerned to impose the same. This had resulted in non-levy of penalty of ₹ 12.55 crore.

(b) On similar grounds, 10 assesseees had filed returns for the years 2008-09, 2010-11, 2011-12 and 2013-14 and paid tax of ₹ 6.03 crore belatedly. It was noticed that though re-assessments orders for the aforesaid periods were passed by the assessing officers during the years 2012-13 to 2014-15, penalty for belated payment of tax was not levied. This had resulted in non-levy of penalty of ₹ 0.38 crore.

It is pertinent to note here that basic checks on the returns filed by the dealers are not undertaken by the department and hence the belated payments go unnoticed, escaping levy of penalty.

Despite the Hon'ble Supreme Court of India upholding the imposition of penalty under this section in December 2014, the department has not yet incorporated this provision into the computerised system. It is recommended, therefore, that the same may be effected expeditiously to ensure that dealers file returns and pay taxes in time and any delay in realising Government revenue is duly compensated through the levy of this penalty following extant procedures.

When Audit brought these cases to the notice of the Commissioner of Commercial Taxes and to Government between January and July 2016, Government replied that ₹ 1.86 crore had already been collected from 87 dealers, notices were issued by the Department in respect of 31 dealers for recovery of penalty and orders levying penalty was issued in respect of eight dealers.

In another case, Government replied that the observation may be dropped based on the assesseees' reply that sales were made to Indian Railways and payment were received belatedly. Due to this, the dealer did not pay tax within the due date prescribed. It was also stated that according to the judgement²⁵ passed by the Hon'ble High Court of Delhi, no penalty was

²⁴ Ballari, Belagavi, Bengaluru, Bidar, Chikkaballapura, Chikkamagaluru, Dakshina Kannada, Davanagere, Dharwad, Kalaburgi, Kodagu, Kolar, Koppal, Mandya, Mysuru, Ramanagara, Shivamogga, Tumakuru, Udipi, Uttara Kannada and Vijayapura.

²⁵ Judgement of Hon'ble High Court of Delhi in the case (121STC600) of M/s.Calcom Electronics Limited vs Sales Tax Officer.

leviable when there is genuine reasons for delay in submission of return and payment of tax.

Reply is not acceptable since Section 7 of the KVAT Act, 2003, states that sale is deemed to have taken place at the time of issue of invoice and hence has to be included in the taxable sales of goods during the period of issue of the tax invoice. Therefore, a registered dealer shall declare such turnover in monthly returns for which tax invoices was issued.

Reply in respect of the remaining dealers is still awaited (December 2016).

2.7 Non/short payment of differential tax liability declared in audited statement of accounts

According to Section 31(4) of the KVAT Act 2003, every dealer whose total turnover in a year exceeds a prescribed amount²⁶ shall have the accounts audited by a Chartered Accountant or a Cost Accountant or a Tax Practitioner (Auditor) and shall submit to the prescribed authority a copy of the audited statement of accounts in Form VAT-240 and other documents as prescribed in the Act.

Form VAT-240 provides for the auditor to file a comparative statement of dealer's liability to tax and his entitlements for input tax/refund as declared in the tax returns, and the corresponding correct amount determined in audit. In case of a difference between them, the auditor is to advise the dealer either to pay the differential tax together with the penalty and interest, if any, or to claim refund due to him, as the case may be.

During test check of records in 24 LVOs and two VSOs in ten²⁷ districts between January 2015 and February 2016, Audit noticed that 34 dealers in their audited accounts in Form VAT 240 had declared additional tax liability of ₹ 4.08 crore compared to the tax liability declared in the monthly returns for the years 2011-12 to 2013-14. As per the Act, this additional liability declared was to be paid by the dealers along with penalty (at 10 *per cent*) and interest (at 1.5 *per cent* per month). The dealers concerned, however, neither paid the dues on their own while filing the audited accounts, nor were the dues demanded by the LVOs / VSOs concerned. This had resulted in non/short payment of tax of ₹ 4.08 crore. Further, penalty and interest leviable under Sections 72(2) and 36 of KVAT Act, 2003, amounted to ₹ 0.40 crore and ₹ 1.06 crore respectively. The Department has not put into place a practice to examine whether the tax declared by the dealer in Form VAT 240 was in excess of the amount paid in the monthly returns. Hence, inaction on the part of the Department to raise timely demands resulted in amounts declared payable by the dealers themselves to be shown as pending realisation to the Government.

²⁶ ₹ 40 lakh till 31 March 2010, ₹ 60 lakh from 1 April 2010 to 31 March 2011 and ₹ 100 lakh thereafter.

²⁷ Bagalkote, Ballari, Belagavi, Bengaluru, Chikkamagaluru, Kalaburgi, Kodagu, Ramanagara, Udipi and Vijayapura.

It is pertinent to note here that Audit had repeatedly recommended²⁸ the establishment of an online ledger account for dealers that would compile liabilities of dealers from all the various sources of demand (Returns, Audited Statement of Accounts, Re-assessment orders etc.). The same observation was also reported in the previous report²⁹ which indicates that a practice of non-clearance of liabilities declared in VAT 240 is fairly prevalent among dealers. It is recommended, therefore, that the Department take pro-active steps to address this issue, specifically, by introducing a control by which such liabilities along with penalty due are adjusted against the Input Tax Credit claims made by the dealers in their subsequent VAT Returns.

When Audit brought these cases to the notice of the Commissioner of Commercial Taxes and to Government between January and August 2016, Government replied that ₹ 0.66 crore had already been collected from nine dealers, order levying tax was issued in one case and notices were issued by the Department in respect of four cases. Reply in respect of the remaining dealers is still awaited (December 2016).

2.8 Non/short levy of interest

Under Section 36(2) of the KVAT Act, 2003, every dealer who fails to pay any amount of tax or additional tax declared in the returns or furnishes a revised return more than three months after the tax becomes payable, shall be liable to pay simple interest. The rate of interest was 1.25 *per cent* per month up to 31 March 2011 and 1.5 *per cent* per month with effect from 01 April 2011 under Section 37(1) of the above Act, leviable from the date on which any amount payable under this Act was due.

During test check of VAT-100³⁰ returns, annual audited accounts filed in VAT-240³¹ and re-assessment orders in 43 Offices (31 LVOs and 12 Audit Offices) in thirteen³² districts between January 2015 and January 2016, Audit noticed that there was a delay in payment of tax amounting to ₹ 62.25 crore for the tax period from 2006-07 to 2013-14 by 75 dealers. The tax due was either against original returns or against additional tax liabilities arising from re-assessments / revised returns / annual audited accounts filed in VAT-240. Though the belated payment of tax in all these cases attracted payment of interest under Section 36(2) of the Act, it was either not levied or levied short. The total non/short levy of interest for the tax periods between April 2006 to March 2014 worked out to ₹ 2.62 crore. Though there is a provision in monthly returns, i.e. VAT-100, for payment of interest for delay in payment

²⁸ Recommendation No.5 under Paragraph No.2.12.11 of Report No.3 for the year ended 31 March 2010 and Recommendation No.1 under Paragraph No.2.8.18 of Report No.1 of 2014.

²⁹ Paragraph No.2.4 of Report No.3 of 2015.

³⁰ VAT-100 is a form used for filing monthly returns in which sales and purchases made by the dealers for a particular month are depicted.

³¹ VAT-240 is a form used for filing Annual Audited Statement prepared by Chartered Accountant or a Sales Tax Practitioner. VAT-240 is a comparative statement of dealer's liability to tax and his entitlements for input tax/refund as declared in the monthly returns (VAT-100), and the corresponding correct amount determined on audit.

³² Bagalkote, Ballari, Bengaluru, Dakshina Kannada, Davanagere, Dharwad, Kalaburgi, Kolar, Madikeri, Mysuru, Shivamogga, Vijayapura and Uttara Kannada.

of tax, the department failed to monitor compliance to this provision which resulted in the non/short levy of interest.

It is noteworthy to mention here that Audit had recommended the establishment of facility for automatic computation of interest on belated payment of taxes in the published report of Performance Audit³³ on “Online System in the Commercial Taxes Department”. Further, similar paragraphs were continuously published in the various Audit Reports on Revenue Sector which indicates the prevalence of non-compliance with payment of interest among the dealers. Hence, it is recommended that automation of levy of interest on belated payment may be established on a priority basis not only to plug the revenue loss but also to encourage the dealers on making timely payments.

When these cases were brought to the notice of the Commissioner of Commercial Taxes and to Government during February and August 2016, Government replied that an amount of ₹ 28.57 lakh was collected in respect of 19 dealers, orders have been passed for levy of interest in respect of nine dealers and notices have been issued in respect of four dealers. Reply in respect of remaining dealers is awaited (December 2016).

2.9 Excess adjustment of credit amount

According to Section 10 of the KVAT Act, 2003, the tax payable by a dealer under the Act on sale is called ‘Output Tax’ while the tax paid by the dealer on purchases is called ‘Input Tax’. A dealer is liable to pay the net tax³⁴ after setting off input tax paid against output tax payable.

The said provision of the KVAT Act, 2003, also stipulates that “where the input tax deductible by a dealer exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest, as may be prescribed”. As per Rule 127 of the Karnataka Value Added Tax Rules, 2005, any dealer, whose input tax deductible exceeds the output tax payable by him as specified under sub-section (5) of Section 10 on the basis of the return submitted for any month or quarter during a year or where any dealer, in whose case the input tax deductible exceeds the output tax payable by him on the basis of any final return submitted under sub-section (4) of Section 27, such dealer may, adjust such amount towards the tax payable by him under this Act or the Central Sales Tax Act, 1956.

Test check of VAT-100 returns, annual audited accounts filed in VAT-240 and re-assessment orders in 14 Offices (10 LVOs, two VSOs and two Audit Offices) in six³⁵ districts were conducted between January 2015 and December 2015. Audit cross verified the credit amounts brought forward and adjusted against the output tax liability by the dealers in their returns with respect to returns / revised returns filed by them for previous tax periods, advices given by auditors in Form VAT-240 and re-assessments concluded by the prescribed authorities. The cross verification revealed that 22 dealers for the tax periods from 2010-11 to 2013-14 were eligible for input tax credit

³³ Recommendation No.11 under Paragraph No. 2.8.18 of Report No.1 of 2014.

³⁴ Net Tax = Output Tax – Input Tax.

³⁵ Bengaluru, Bagalkote, Davanagere, Dharwad, Madikeri and Tumakuru.

amounting to ₹ 3.15 crore, however, these dealers had adjusted input tax credit of ₹ 4.45 crore, resulting in excess adjustment of credit amount of ₹ 1.30 crore. Audit noticed that the excess adjustment was primarily due to the mismatch of credits claimed by dealers in different returns/orders like monthly returns, revised returns, VAT 240, reassessment orders, etc. There is no mechanism in the Department for cross verification of details filed by dealers in different returns and reassessment orders to ensure correctness of input tax credit claimed by the dealers.

It is noteworthy to mention that Audit had repeatedly recommended³⁶ the establishment of an online ledger account for dealers that would compile liabilities of dealers from all the various sources of demand (Returns, Audited Statement of Accounts, Re-assessment orders, etc.) which would have reconciled the credits claimed differently in various sources. Similar observation was included in the previous report³⁷ which also indicates that practice of excess adjustment of credit is fairly prevalent among dealers. It is recommended, therefore, that modifications may be made to electronic filing system to enable the system for cross verification of details filed by the dealers in monthly returns, revised returns, audited statement, re-assessment orders, etc. to prevent loss of revenue.

When these cases were brought to the notice of the Commissioner of Commercial Taxes and to the Government during July and August 2016, Government replied that an amount of ₹ 2.04 lakh was recovered from two dealers and notice was issued in respect of one dealer. Reply in respect of remaining dealers is awaited (December 2016).

³⁶ Recommendation No.5 under Paragraph No.2.12.11 of Report No.3 for the year ended 31 March 2010 and Recommendation No.1 under Paragraph No.2.8.18 of Report No.1 of 2014.

³⁷ Paragraph No.2.7 of Report No.3 of 2015.

Chapter-III

Stamp Duty and Registration Fee

3.1 Tax administration

Receipts from Stamp Duty and Registration Fee are regulated by the Indian Stamp Act (IS Act), 1899, the Karnataka Stamp Act (KS Act), 1957, the Registration Act, 1908 and the Rules made thereunder. In Karnataka, the levy and collection of Stamp Duty and Registration Fee is administered at the Government level by the Principal Secretary, Revenue Department. The Department of Stamps and Registration (DSR) under the administrative control of the Revenue Department regulates the levy and collection of Stamp Duty and Registration Fee.

3.2 Internal audit

The Department stated that though an Internal Audit Cell was constituted in December 2012, it was still not functional (December 2016) due to lack of manpower.

3.3 Results of Audit

In 2015-16, test check of records of 97 units of the DSR revealed non/short levy of Stamp Duty, Registration Fee and other irregularities amounting to ₹ 442.73 crore raised through 261 paragraphs, which fall under the following categories as given in **Table 3.1**.

Table 3.1
Results of Audit

Sl No	Category	(₹ in crore)	
		No. of paragraphs	Amount
1	Performance Audit on 'Adequacy of controls to prevent loss of Stamp Duty and Registration Fee'	1	418.74
2	Short levy of Stamp Duty and Registration Fees due to incorrect application of market value	168	14.13
3	Short levy of Stamp Duty and Registration Fees due to misclassification of documents	19	1.27
4	Short levy of Stamp Duty and Registration Fees due to suppression of facts	24	2.09
5	Other irregularities	49	6.50
	TOTAL	261	442.73

During the course of the year, the Department accepted short/non levy of ₹ 6.00 crore in cases pointed out through 86 paragraphs. An amount of ₹ 2.15 crore was also recovered in cases pointed out through 149 paragraphs pertaining to earlier years.

A Performance Audit on 'Adequacy of controls to prevent loss of Stamp Duty and Registration Fee' involving ₹ 418.74 crore and a few illustrative cases involving ₹ 5.97 crore are discussed in the following paragraphs.

3.4 Performance Audit on “Adequacy of controls to prevent loss of Stamp Duty and Registration Fee”

Highlights

Department of Stamps and Registration had not analysed reduction of market value by District Registrars (DR) and had not specified any criteria for selection of DR orders for review by Inspector General of Registration and Commissioner for Stamps (IGRCS).

(Paragraph 3.4.10)

DSR had not instituted a mechanism for detection of suppression of facts by the parties which led to loss of Stamp Duty. Stamp Duty and Registration Fee of ₹ 24.34 crore was short levied due to suppression of facts and figures in the test checked cases.

(Paragraph 3.4.13)

DSR does not have a break-up of the revenue in terms of each article of levy and by whom paid in respect of the revenue from instruments not compulsorily registrable, deficiency of which affects enforcement activities to ensure due realisation of Stamp Duty on such instruments.

(Paragraph 3.4.14.1)

DSR had not collected Stamp Duty of ₹ 313.26 crore due on conveyance of Industrial Machinery and Certificate of Sale relating to auction of iron ore during the period 2011-16.

(Paragraphs 3.4.14.3 and 3.4.14.4)

DSR did not have details/confirmation of payment of Stamp Duty of ₹ 71.69 crore on Certificates of Shares and Bonds issued by Companies in Karnataka during 2011-16.

(Paragraphs 3.4.14.5 and 3.4.14.6)

3.4.1 Introduction

Stamp Duty is a tax levied (previously in the form of stamps and now by way of money) on the instruments recording transactions. Receipts from Stamp Duty and Registration Fee are regulated under the Indian Stamp Act, 1899, the Registration Act, 1908, the Karnataka Stamp (KS) Act, 1957, and the Rules made thereunder.

3.4.2 Organisational Setup

(a) The DSR is headed by the Inspector General of Registration and Commissioner of Stamps (IGRCS) and is assisted by four Deputy Inspectors General of Registration. At the functional level, there are 34 District Registrar (DRs) Offices and 248 Sub-Registrar Offices (SROs) in the State. The SRO is the primary unit where the instruments are presented for registration. The DR is the district-in-charge and the authority for determination of market value of properties. KAVERI (Karnataka Valuation and e-Registration) is the software used by the DSR for registration of documents.

The Government of Karnataka, during 2009 introduced payment of Stamp Duty by way of e-stamp certificates by formulating the Karnataka Stamp (Payment of Duty by means of e-stamping) Rules, 2009. Stock Holding Corporation of India (SHCIL) is the Central Record Keeping Agency and issues e-stamp certificates through its 'Authorised Collection Centre' or 'Authorised Stamping Centre'. E-stamp certificates are obtained by public through the authorised centres and amounts collected by SHCIL are remitted into Government Head of Account after deducting commission for issue of e-stamp certificates.

(b) **Staff Position:** IGRCS, in reply to the Audit Enquiry on staff position in DSR, stated that the men-in-position in the Department is not favourable. Status of vacancy of staff was stated to be about 32 *per cent* (536 out of 1,669 Posts) of the Sanctioned Strength with major shortages in the cadre of SROs (76 out of 172 Sanctioned Posts) and first/second Division Assistants (178 out of 744 Sanctioned Posts). Shortage of staff under Enforcement Wing and absence of Internal Audit Wing were also brought out in the reply.

3.4.3 Brief sketch of the controls established by DSR to prevent leakage of revenue

As per Section 17 of the KS Act, 1957, all instruments chargeable with duty and executed by any person in the State of Karnataka shall be stamped before or at the time of execution. At present, there are 55 entries in the Schedule to the KS Act on which Stamp Duty is leviable.

Instruments may be classified into two types, viz. those that are to be compulsorily registered as per the Registration Act, 1908, and the rest which are not compulsorily registrable in the normal course of their execution. Documents which purport to transfer or create a right, interest or title over property such as conveyance, exchange deed, settlement deed, release deed, etc. are compulsorily to be registered and hence are presented to the SRO for registration. Documents which are agreements for sale, agreements for works contract, labour or services, agreements for advertisements, licences issued by

an authority, policy of insurance, share certificate, transfer of shares, etc. attract Stamp Duty but are not compulsorily required to be registered. Hence, these documents are executed and presented to the relevant offices/parties but do not come to the DSR.

The different controls built into the system by DSR to ensure the correctness of the levy of Stamp Duty are as mentioned below:

- For not compulsorily registrable instruments, Section 33 of the KS Act empower officers in charge of public offices to impound an instrument not duly stamped and refer it to the DR for levy of proper duty. Section 67B empowers authorised officers to inspect any business premises and seize instruments which are not duly stamped, if any, and to levy proper duty on the instrument.
- For instruments such as conveyance deed, power of attorney, exchange deed, gift deeds, etc. which attract Stamp Duty at *ad valorem* rates on the market value¹ of the property, the guidance market value of properties in different areas of the State of Karnataka are estimated through the constitution of Central Valuation Committee (CVC) under Section 45 B of the KS Act. The SROs assess the market value of the property based on the consideration received and the guidance market value finalised by the CVC for each district, taluk, village, area, etc. The higher of the two is fixed as market value for the purpose of levy of Stamp Duty and Registration Fees.
- In case of disputes, while registering an instrument, with respect to the market value of the property in the document, SRO will refer the instrument to DR under Section 45A(1) of the KS Act, 1957, for determination of actual market value of the property.
- Under Section 45A(3) of the KS Act, DR may within two years from the date of registration, *suo moto* summon any instrument to examine the correctness of the market value of the property and Stamp Duty paid thereon.
- Under Section 53A of the KS Act, IGRCS is also provided with *suo moto* powers to review the orders of DR within a period of five years from the date of order of DR.

3.4.4 Audit Objectives

The aim of the Performance Audit was to assess the efficacy of the system and controls in the Department to detect and prevent loss of Stamp Duty. In this regard, the Objectives were:

- Whether the provisions of the KS Act, 1957, and allied Rules were adequate to ensure realisation of proper Stamp Duty on registered instruments?
- Whether control mechanism at the functional level was effective to ensure disclosure of all facts affecting chargeability of Stamp Duty and

¹ Market value of the property is the price, in the opinion of the DR, which the property would fetch in the open market on the date of execution of the instrument or consideration stated in the document, whichever is higher.

detect loss of Stamp Duty due to suppression of facts in the registered instruments?

- Whether adequate provisions and mechanism existed to collect Stamp Duty due on instruments not compulsorily registrable?

3.4.5 Audit Criteria

- The Indian Stamp Act, 1899
- The Karnataka Stamp Act, 1957
- The Karnataka Stamp Rules, 1958
- The Karnataka Stamp (Prevention of undervaluation of instruments) Rules, 1977
- Karnataka Stamp (Payment of Duty by means of e-stamping) Rules, 2009 and
- Notifications and circulars issued by the IGRCS.

3.4.6 Scope of Audit and methodology

The Performance Audit covered the period 2011-16. The new Articles for levy of Stamp Duty introduced during the period 2011-16 were reviewed besides other selected Articles of levy. In order to assess the controls with respect to registered documents, eleven² out of 34 DRs in the State were selected and documents registered across the SROs in the selected DRs were test checked on random sampling basis. In respect of not compulsorily registrable documents, information was obtained from various agencies to verify proper realisation of Stamp Duty.

3.4.7 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Revenue Department and IGRCS in providing necessary information and records for audit. An Entry Conference was held with IGRCS in April 2016 wherein the scope of audit, methodology and audit objectives including sampling were explained to the Department. The draft review report was forwarded to the Government and the Department in September 2016 and was discussed in the Exit Conference held in October 2016 with the Principal Secretary to Government, Revenue Department and the IGRCS. The views of the Government and replies of the DSR received during the Exit Conference have been included in the respective paragraphs.

Audit Findings

3.4.8 Analysis of Revenue

The Budget Estimates (BEs), actuals of revenue, variation in receipts over BE, percentage of variation and percentage of growth over previous years in respect of Stamp Duty and Registration Fee for the years 2011-12 to 2015-16 were as given in **Table 3.2**.

² Since Bengaluru district accounted for 73 per cent of the revenue earned by DSR, all the six DRs in Bengaluru and five out of the balance 28 DRs were selected on random sampling basis.

Table :3.2
Analysis of Revenue

(₹ in crore)

Year	Budget Estimates	Actuals	Percentage of variation of actual over BE	Revenue realised from registered instruments	Percentage of revenue realised through registered instruments to actuals (col 5 to col 3)
1	2	3	4	5	6
2011-12	4,030.00	4,623.20	(+) 14.72	4,567.79	98.80
2012-13	5,200.00	5,225.02	(+) 0.48	4,796.58	91.80
2013-14	6,500.00	6,188.76	(-) 4.78	5,698.22	92.07
2014-15	7,450.00	7,025.85	(-) 5.69	6,399.94	91.09
2015-16	8,025.00	8,214.71	(+) 2.36	7,391.87	89.98

Col 5: Figures furnished by DSR

It can be seen from the table above that the revenue has steadily increased over the years and the DSR has been able to exceed the revenue targets set in the BEs except during the years 2013-14 and 2014-15. The revenue collected comprises Stamp Duty from both registrable and not compulsorily registrable documents. As per the figures furnished by the DSR, more than 90 *per cent* of the revenue realised was on account of instruments presented to the DSR for registration. In respect of revenue from not compulsorily registrable documents, the DSR did not have complete break-up of revenue under each Article of levy.

The DSR did not make available the budget proposal files/information regarding targets envisaged in the BEs separately for registrable and not compulsorily registrable documents. Hence, audit could not assess the efficacy of revenue collection separately for registrable and not compulsorily registrable documents. During the period from 2011-12 to 2015-16, the DSR had introduced new levies of Stamp Duty on not compulsorily registrable instruments relating to works, labour and service contract agreements, agreements for advertisement and broadcasting for promotion of business, chit agreements executed in the State, Limited Liability Partnerships, etc. which should have positively impacted the growth of revenue during the period. However, in the absence of specific information on revenue collected under each of the new levies introduced and the instruments which are not compulsorily registrable in general, the DSR was not in a position to review the impact of the these levies on the revenue realisation.

3.4.9 Levy of Stamp Duty on the market value of the property

Instruments which purport to create, assign or transfer right or title in immovable property (like conveyance, exchange deed, settlement, release, or gift deed) attract *ad valorem* rate of Stamp Duty on the market value of the property which is the subject matter of the instrument. The CVC, constituted under the KS (Constitution of CVC) Rules, 2003, is responsible for publication of estimated guidance values of properties in different areas of the State. Rule 9 of the Rules *ibid* provides for rectification of any anomaly in the estimation of market value. The guidance market value or consideration, whichever is higher, is the basis for the SRO to levy Stamp Duty. DSR has to ensure reasonable realisation of Stamp Duty by defining market value of the property

through published guidance values or consideration stated in the instrument, whichever is higher. Fixation of guidance market value was a significant step towards ensuring Stamp Duty on a reasonable value of the property to the State Exchequer.

Analysis of sale deeds executed during 2011-16 revealed that only about 32 *per cent* of the instruments presented had consideration higher than the guidance market value. In the remaining 68 *per cent* of the instruments, which had consideration less than the guidance market value, the DSR ensured levy of Stamp Duty on guidance market value of the property.

Audit test checked the published guidance values and found some discrepancies which were referred to the DSR for rectification. The omissions found included prescription of market value for certain apartments lower than the general rate specified for apartments in the same area/road, non-revision of guidance market values for specific apartments during revision in November 2014 for the properties in the jurisdiction of DR Shivajinagar and inclusion of two market values for the same road which was known by two names in the jurisdiction of DR Basavanagudi.

DSR replied in the Exit Conference (October, 2016) that rates of some apartments were fixed lower than the general rates owing to factors such as quality of construction, surroundings, absence of facilities, etc. However, DSR agreed that, as pointed out in audit, the process should involve recording of specified reasons which would be ensured in future. In respect of different rates for same road, it was stated that action would be initiated to collect the deficit duty of about ₹ 20 lakh in the test checked cases.

3.4.9.1 Absence of clarity in definitions for levy of Stamp Duty

As per the Karnataka Stamp (Constitution of CVC) Rules, 2003, the estimated guidance market values for lands and sites should be indicated separately. The estimated guidance values were expressed in units of acres for land and square feet for sites. However, it was noticed that 'land' and 'site' were not specifically defined in the Rules and hence properties to be measured on acre or square feet basis could not be distinguished. Lands converted for non-agricultural purposes were continued to be treated as lands.

As per Rule 2(a) of the KS (Constitution of CVC) Rules, 2003, the values for lands converted for non-agricultural use near or in the vicinity of a town or city may be estimated per square feet. However, the intent of this Rule was not incorporated in the published guidance values of all districts except Mangaluru and Udupi. In Mangaluru and Udupi districts, the prescribed guidance value per unit of converted land (cent³) is on par with the rate of sites on square feet basis. The converted land measuring up to 25 cents is measured at the specified rate *per cent* and thereafter at prescribed percentages of the specified rate.

³ Unit of measurement of land; 100 cents equal one acre; 1 cent equals about 435 square feet.

access was only through neighbouring lands. Such aspects should normally be adopted as pointers for systematically deriving the average guidance market value of agricultural land by the CVC. The Audit analysis indicated that the percentage of reduction in land prices in respect of land locked properties by DRs varied from 7 to 86 per cent. The significant variation implied that such aspects were not factored into CVC guidance market value which indicates scope for improvement.

(b) Lack of facilities like water, power, drainage, bus, etc.

The properties involved are agricultural land and land converted for non-agricultural purposes and the reasons for reduction were lack of facilities like water, power, drainage, bus, etc. The percentage reduction ranged from 5 to 88 as given in Table 3.4.

Table: 3.4
Reduction in Market value due to Lack of facilities

(₹ in crore)			
Sl.No.	Type of land	No. of cases	Reduction in market value
1	Agricultural land	167	31.45
2	Converted land	08	17.78

Audit acknowledges the fact that the reasons mentioned above merit reduction in price. However, the CVC, in the guidance market value, prescribes different rates for dry, wet and plantation lands with lowest rate for dry land and highest for plantation land. Since, the difference of rates has already been factored into the CVC guidance values, further reduction on the basis of non-availability of water leaves scope for review.

(c) Property not situated on National Highway (NH)/Ring Road

Audit noticed that though CVC guidance values specified survey numbers abutting NH/Ring road, the spot inspection reports of the DR in 29 cases, point it out to be otherwise stating that the properties in question were about 800 meters to two kilometres from the NH or were situated on the service road or that *phodi* (partition due to part sale) transaction of the property in question rendered it away from the NH. The percentage reduction ranged from 21 to 72.

Such inconsistencies can be rectified through co-ordination with the Survey, Settlement and Land Records Directorate and National Highways Authority of India for determination of exact survey numbers abutting the NH. Institution of a standard for treatment of bifurcations in survey number after *phodi* in the CVC guidance values also would reduce the chances of error in this respect.

Audit also noticed that these reports of the survey number not being on NH/Ring Road were not being conveyed to the CVC to consider during subsequent revisions of the guidance market values. Hence, the survey numbers continued to be shown as on NH/Ring road even in subsequent revisions of CVC guidance values.

The Government (December 2016) replied that the DRs have been asked to report all cases where market value is reduced on the ground that the property is not situated on NH/Ring Road along with 11E⁷ sketches with a recommendation to exempt from application of rates specified for NH/Ring Road. The Department stated that the Commissioner, Survey, Settlement and Land Records would be requested to furnish the village wise maps of properties on NH/Ring Road.

(d) Other cases

There were 224 cases which were disposed of at lower rate quoting various other reasons such as properties without proper approach roads, uneven land, existence of pits and boulders within the properties and distance from town. The cases involved agricultural, converted land and sites. The percentage reduction ranged from 3 to 86 as given in **Table 3.5**.

Table: 3.5
Reduction in Market value due to other cases

Sl.No.	Type of land	No. of cases	(₹ in crore)
			Reduction in market value
1	Agricultural land	144	37.89
2	Converted land	33	40.36
3	Site	47	59.21

Though reasons were specified for reducing the prices, it is pertinent to mention that the extent of Kharab⁸, as prescribed in the Record of Rights, Tenancy and Crop Inspection (RTCs), was much lesser than that used for calculation by DR. Hence, audit is of the opinion that instead of classifying the whole land as uneven, the extent of Kharab land out of the total extent should be specifically stated in the order of DR so that fixation of market value is more realistic.

The Government (December 2016) replied that instructions had been issued to forward all orders of DRs for use during revision of guidance market values.

Recommendation 2: Government may prescribe a scale of reduction in guidance market value specific to the reasons, wherever possible, to make the proceedings under Review more uniform.

Recommendation 3: DR orders should be referred to the CVC so that the grounds on which such market value reduction is ordered by DRs can be factored into subsequent revisions of guidance market values.

3.4.10.2 Omissions noticed in respect of DR orders

Orders passed by the DR under Section 45(A)(1) of the KS Act, 1957, have to take into account the representations of the purchaser vis-à-vis the factual position on spot inspection and other determinants affecting the value of the property and arrive at a reasoned order determining the market value of the property on which Stamp Duty and Registration Fee are levied as against the guidance market value. On a test-check of orders passed by DRs under

⁷ 11E sketch is the sketch mandated to be produced at the time of registration of agricultural lands. The sketch is issued by the Department of Survey, Settlement and Land Records and exactly marks the portion of the land being sold with clear boundaries.

⁸ Kharab land is the extent of land unfit for agriculture.

Section 45(A)(1) of the KS Act, Audit noticed certain apparent omissions in the orders which affected the market value determination. The nature of the omissions was as under:

- Omission to determine market value for car parking slots;
- Omission to reckon the consideration passed on to the vendor in the sale agreement;
- Not considering the rate per square foot for the property agreed to between the parties in a sale agreement executed between them;
- Inadequate documentation of evidence for the reasons on which reduction in market value is ordered; and
- Determination of market value in contravention of CVC special guidelines and clarification circular issued by IGRCS in that regard;

A few illustrative cases with Stamp Duty and Registration Fee in this respect are detailed in *Annexure 'B'*.

Keeping in view the omissions noticed in the orders of the DRs, Audit concludes that such orders required a system of periodical review in the interest of revenue. Absence of such a mechanism prevents the detection and consequent rectification of the omissions and errors in the DR orders and hence proves detrimental to the realisation of revenue.

In the backdrop of issues discussed in paragraphs 3.4.10.1 and 3.4.10.2, Audit examined the review powers of the IGRCS as detailed in the following paragraphs.

3.4.11 *Suo moto* review of market value orders by the IGRCS

According to Section 53-A of the KS Act, 1957, IGRCS may *suo moto*, within a period of five years from the date of order passed under the Act by the DR, call for and examine the records relating to such order or proceedings taken under the Act.

Audit noticed that other than the IGRCS, no other authority in the DSR is empowered to verify the correctness of orders passed by DRs in the interest of revenue and pass orders independently. It was noticed that the DSR had not prescribed any criteria/parameters which would help detect orders of DRs prejudicial to the interest of revenue; as a result IGRCS would not be able to make an effective selection of the orders for his review under Section 53A.

Audit examined the exercise of these provisions as means to monitor the orders of the DRs and to prevent revenue leakage in cases of omission and errors.

The details of *suo moto* review taken and inspection conducted by IGRCS are as given in **Table.3.6**.

Table :3.6
Details of *suo moto* review by DRs and IGRCS

Year	Number of orders passed by the DRs	No of orders reviewed under Section 53A
2011-2012	5,817	09
2012-2013	2,969	01
2013-2014	1,969	06
2014-2015	2,659	06
2015-2016	2,316	04

Hence, it is evident that review powers are rarely exercised by IGRCS. Audit noticed that in respect of the orders of the DR which were set aside by review under Section 53A, the cases had been remanded back to the same DR for passing revisionary orders taking into account directions issued by the IGRCS. However, the DSR did not make available details of compliance on these orders and revenue mobilisation on account of such review. Audit concludes that monitoring in this respect is not effective in the Department.

To ensure an effective review mechanism in the interest of revenue, there is a need for introduction of a mechanism of review of orders passed by DRs on the basis of identified criteria such as where market value determined is less than a prescribed percentage of the guidance value. Availability of such criteria will enable IGRCS to identify and pick cases which may be potentially prejudicial to revenue.

DSR replied in the Exit Conference (October 2016) that the DRs had been directed to maintain details of orders passed by them in specified format and the Management Information System (MIS) will be modified which would enable to pick cases fit for review.

Recommendation 4: The mechanism for selective review under Section 53-A may be strengthened by introducing defined criteria to the extent possible and a mechanism to review the orders of DRs may be instituted, on the basis of which the IGRCS could select cases for further check in the interest of revenue.

3.4.12 *Suo moto* review by DRs

As per Section 45 (A)(3) of the KS Act, the DR may, *suo moto*, within two years from the date of registration of any instrument not already referred to him under Section 45(A)(1) of the KS Act, call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property and the duty payable thereon.

Details of cases disposed of under Section 45(A)(3) of the KS Act, and revenue realised there from for the State is as given in **Table 3.7**.

Table: 3.7
Details of *suo moto* cases disposed by DRs

Year	No. of cases disposed under <i>suo moto</i> review	(₹ in crore)
		Revenue realised thereon
2011-12	2,817	2.93
2012-13	828	7.25
2013-14	399	0.59
2014-15	644	1.87
2015-16	531	4.07

On a review of the mechanism of *suo moto* review by the DRs, Audit noticed the following deficiencies:

- DSR did not have any mechanism for data analysis relating to recurrent transactions in respect of a property and intelligence information which would help identify potential cases of undervaluation.

- DRs did not record specific reasons for selecting any case for *suo moto* review. Cases for selection of *suo moto* review were selected on a random basis without any analysis of the documents registered which resulted in poor value addition towards the revenue generated as shown in **Table 3.7**.
- Neither targets nor time line for disposal of cases had been prescribed for the DRs in respect of such *suo moto* review.

3.4.12.1 Use of Data Analysis to select cases for *suo moto* review

- Audit noticed that parties enter into sale agreements for a consideration higher than the guidance market value and subsequently either cancel the sale agreement or otherwise enter into a sale deed wherein consideration received is equal to the published guidance market value and Stamp Duty is paid thereon.

Audit adopted a parameter “difference of consideration in the sale agreement and sale deed executed by the same parties for the same property”, as selection criteria for *suo moto* review in the SROs.

During test check of records in 33⁹ SROs, Audit noticed that in respect of 135 sale deeds, the consideration agreed to in the sale agreements was higher. As against consideration of ₹ 246.35 crore agreed to in

the sale agreements, the sale deeds were registered for a consideration/market value of ₹ 151.17 crore. The difference in consideration between sale agreement and sale deed amounted to ₹ 95.18 crore. The potential revenue in these cases amounted to ₹ 6.30 crore. Data analysis on such criteria would have helped select potential cases for *suo moto* review of DRs.

- Audit suggests that in respect of a project, analysis of the consideration in different instruments relating to different units of the project could be a pointer to select cases fit for review. For example, Audit noticed in one project in the jurisdiction of DR, Ramanagaram, the guidance market value prescribed for the project ranged between ₹ 1,200 to ₹ 1,650 per square feet. Out of 192 instruments registered in that project, 143 documents were registered for the guidance market value and the consideration in the balance 49 instruments ranged from ₹ 1,700 to ₹ 4,500 per square feet. Such analysis would help DR to select the cases registered for exactly the guidance market value and detect undervaluation, if any.

⁹ Anekal, Attiibele, Banaswadi, Basavakalyan, Basavanagudi, Begur, Bidarhalli, Bomanahalli, Byatarayanapura, Chamarajpet, HAL, Halasuru, Hebbal, Hoovinahadagalli, Indranagar, Jayanagar, J.P. Nagar, Jigani, Kacharakanahalli, K. R. Puram, Mahadevpura, Mysuru (East), Mysuru (North), Mysuru (South), Mysuru (West), Nanjangud, Peenya, Periyapatna, Sarjapura, Shivajinagar, Somwarpete, Srinivasapura and Vijaynagar.

3.4.12.2 Detection of under-valuation cases

During test check of records in 42¹⁰ SROs, it was noticed that in 95 cases, the SROs had registered the instruments for a consideration/estimated market value of ₹ 504.40 crore as against the correct estimated guidance value of ₹ 718.68 crore. Audit noticed that non-adoption of special instructions attached to the guidance market value, omission to fix consideration as market value whenever it was higher than the guidance market value, etc. were the reasons for undervaluation of properties which resulted in incorrect estimation of guidance value by the SROs. This had resulted in short levy of Stamp Duty and Registration Fee of ₹ 8.75 crore.

Recommendation 5: The *suo moto* review of instruments by DRs may be strengthened with increased use of data analysis for selecting cases to identify potential revenue leakage.

3.4.13 Controls to detect suppression of facts resulting in short levy of Stamp Duty and Registration Fee

Section 28 of the KS Act, 1957, stipulates the consideration and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. Section 61 of the KS Act stipulates that any person with intent to defraud the Government executes any instrument in which all the facts and circumstances required under Section 28 are not fully and truly set forth in the instrument will be punishable with a fine which may extend to five times of the deficient duty.

The DSR had mandated submission of an affidavit at the time of registration by the parties to an instrument which among compliance to other Land laws also stated compliance to Section 28 of the KS Act. However, there was no mechanism to ascertain whether the actual consideration between the parties are depicted in the instruments so as to ensure that the Stamp Duty and Registration Fee are levied on amount of consideration in cases where the consideration is more than the guidance value.

Cross-verification undertaken by Audit of different transactions on the same property revealed suppression of facts and figures which resulted in loss of stamp duty as detailed in succeeding paragraphs.

¹⁰ Banaswadi, Basavakalyan, Begur, Belgavi, Bommanahalli, Byatarayanapura, Bhadravathi, Chickmagalur, Chintamani, Dasanapura, Devanahalli, Gandhinagar, Ganganagar, Halasur, Hebbal, Humnabad, Jala, Jayanagar, J.P. Nagar, Karatagi, Kengeri, K.R. Puram, Laggare, Madanayakanahalli, Malleshwaram, Mysuru (East), Mysuru (South), Nagarabhavi, Nanjanagud, Pavagada, Peenya, Rajajinagar, Rajarajeswarinagar, Sarjapura, Shivajinagar, Srirampuram, Shanthinagar, Shikaripura, Tavarekere, Tumkur, Vijaynagar and Yeshwanthpura.

3.4.13.1 Suppression of consideration in sale deeds as compared to information furnished to banks for sanction of loans

Stamp Duty is levied *ad valorem* on the market value of the property viz. on the published guidance market value or consideration stated in the document, whichever is higher.

Audit test checked loan sanction records in two banks¹¹ which revealed that the consideration as per the sale agreements furnished to the banks for sanction of loan was higher than the consideration set forth in the subsequent sale deeds executed. The banks had released the loan amount directly to the vendor along with the margin money of the purchaser which clearly indicated that consideration received was suppressed in the sale deed. In respect of 36 sale deeds registered in 14¹² SROs, the consideration stated in the instrument was ₹ 19.67 crore. However, as per the loan records of the banks, loan was sanctioned on the consideration of ₹ 31.96 crore agreed to in the unregistered sale agreements along with corresponding construction agreements. Suppression of consideration of ₹ 12.38 crore in these cases had resulted in loss of revenue of ₹ 82.35 lakh.

3.4.13.2 Suppression of consideration received in sale agreement at the time of execution of sale deed

Audit noticed that one of the methods adopted by the executants is that certain amount of consideration is paid along with the sale agreements for the property and the fact of payment was evident from recitals of the sale agreement. However, in the subsequent sale deeds executed, the parties suppressed the receipts of the consideration already paid vide sale agreements. The DSR does not have a mechanism to detect such suppression.

There were 141 instruments of sale deed registered in 16¹³ SROs. Stamp Duty and Registration Fee were levied on the consideration/market value of ₹ 301.91 crore. Cross-verification of sale agreements executed in respect of the same property between the same parties revealed that consideration agreed to in the sale agreements amounted to ₹ 331.39 crore and the vendors had received consideration of ₹ 193.14 crore as per the recitals of the sale agreements. However, receipt of this consideration in the sale agreements had not been accounted for in the consideration stated to be received in the sale deeds. This suppression had resulted in loss of Stamp Duty and Registration Fee of ₹ 10.88 crore.

¹¹ Syndicate Bank and Vijaya Bank.

¹² Banaswadi, Bommanahalli, Byatarayanapura, Doddaballapura, Gandhinagar, Ganganagar, Hebbal, Indiranagar, Jayanagar, J.P. Nagar, Mahadevpura, Nagarbhavi, Peenya and Yeshwanthpura.

¹³ Ballari, Basavakalyan, Begur, BTM Layout, Davanagere, Devanahalli, Doddaballapura, Gandhinagar, Hebbal, Jala, Jayanagar, J.P.Nagar, Mysuru (North), Mysuru (South), Peenya and Rajarajeswarinagar.

3.4.13.3 Suppression of agreed market value in Power of Attorney and execution of Power of Attorney in sale agreement.

(a) As per Article 41 of the Schedule to the KS Act, Stamp Duty on a power of attorney is on the market value of the property which is the subject matter of power of attorney. It was noticed that the parties to a power of attorney (GPA) did not specify the market value of the property as agreed to by them in the instrument. Hence, Stamp Duty and Registration Fee were levied on the guidance market value of the property.

Test check of records by Audit revealed that 143 GPAs were registered in 27¹⁴ SROs during 2011-16. Stamp Duty and Registration Fee were levied on the guidance market value of ₹ 95.92 crore as GPAs to sell property. Cross-verification with other transactions (like mortgage deeds, sale agreements, sale deeds, etc.) on the properties revealed that the executants of the GPAs had also entered into sale agreement with the same party for the same property. The consideration agreed to in the sale agreements amounted to ₹ 252.84 crore and was higher than the guidance market value which was not mentioned in the GPAs executed. Suppression of the agreed value of the property in the GPA resulted in loss of Stamp Duty and Registration Fee of ₹ 9.38 crore on the differential market value.

(b) As per Article 5 (e)(i) of the Schedule to the KS Act, Stamp Duty is leviable on a sale agreement wherein possession of the property is given at the rate applicable to a conveyance. Further, as per explanation below this Article, when reference of a GPA granted separately to the purchaser by the seller in respect of a property, which is the subject matter of such agreement, is made in the agreement, the possession of the property is deemed to be given.

It was noticed in eight¹⁵ SROs, that 13 sale agreements involving sale consideration of ₹ 22.31 crore were registered. The instruments had been stamped as agreements without possession. It was noticed that in these cases, the parties had suppressed the fact of having executed a GPA¹⁶ in favour of the purchaser though the GPA had also been registered with the DSR. Suppression of fact of having executed a GPA in the sale agreement had resulted in classifying the instruments as agreements without possession of property and consequent short levy of Stamp Duty and Registration Fee of ₹ 1.15 crore¹⁷.

¹⁴ Anekal, Attibele, Banashankari, Banaswadi, Basavangudi, Bidarahalli, Bommanahalli, BTM Layout, Byatarayanapura, Chamarajapete, Devanahalli, Doddaballapur, Halsuru, Ganganagar, HAL, Hebbal, Indiranagar, Jala, Jayanagar, Mahadevpura, Mysuru (North), Mysuru (East), Nanjangud, Peenya, Rajarajeswarinagar, Sarjapura and Somwarpet.

¹⁵ Attibele, Belluru, Basavanagudi, H.D. Kote, Kalaburgi, Kengeri, Rajarajeswarinagar and Sringeri.

¹⁶ Stamp Duty on these GPAs had been levied at ₹ 200/- as GPAs for carrying out specific functions on behalf of the owner. However, scrutiny of the recitals revealed that the GPAs either empowered the GPA holders to receive sale consideration or included a general clause empowering them to do anything with respect to the scheduled property.

¹⁷ Stamp Duty and Registration Fee are calculated at five *per cent* and one *per cent* respectively on the guidance value of the property.

The Government (December 2016) stated that changes will be made to KAVERI to generate MIS reports to detect the incidences of other transactions in the same property. DSR also intimated that action would be initiated in respect of the test checked cases.

Recommendation 6: MIS Reports can be generated through KAVERI to flag the occurrences of different instruments between the same parties in respect of the same property. This would enable selection of such cases for *suo moto* review by the DRs for detecting and preventing any possible evasion of Stamp Duty.

3.4.13.4 Suppression of details of property

The DSR had mandated production of RTC or municipal authority tax paid receipt at the time of registration of sale deed.

The KAVERI system was integrated with 'Bhoomi', the agricultural land records software and hence, details of property were verified online for agricultural property. However, in respect of sites and building thereon, the system was not integrated with BBMP khata information system or the *e-swathu*¹⁸ of the local municipal bodies.

Audit noticed that mandating production of last tax paid receipt of the municipal authority was a good control which deterred suppression of facts about extent of site, extent of construction on the site and usage of property for residential or non-residential purposes.

Audit noticed that in seven¹⁹ SROs in respect of nine instruments registered, the details of the property were suppressed resulting in undervaluation of property and short levy of Stamp Duty and Registration Fee of ₹ 2.11 crore. The suppression involved suppression about location of property, extent of building, usage of building, etc. which were detected by cross-verifying with the tax paid receipt or sale agreement executed earlier with regard to the property.

Penalty under Section 61 of the KS Act, 1957, is applicable in all the cases mentioned in the paragraphs from 3.4.13.1 to 3.4.13.4, subject to proving of wilful suppression.

3.4.14 Stamp Duty on instruments not compulsorily registrable

In respect of the various instruments which are liable to Stamp Duty but not presented to the DSR in the normal course of its execution, levy and collection of Stamp Duty requires ensuring compliance, establishment of channels of information through co-ordination with other departments/agencies concerned and enforcement activities.

Sections 33 and 67B of the KS Act enable the DSR to monitor realisation of Stamp Duty on instrument, which are not compulsorily registrable.

As per Section 33 of the KS Act, "every person having by law or consent of parties authority to receive evidence, and every person-in-charge of a public

¹⁸ Software used by Panchayat for tax receipts.

¹⁹ Bommanahalli, Dasanapura, Malleshwaram, Mysuru (South), Nagarabhavi, Ramanagara and Vijayanagar.

office, except an officer of police, before whom any instrument chargeable in his opinion with duty, is produced or comes in the performance of his function, shall, if it appears to him that such instrument is not duly stamped, impound the same". Such impounded instruments shall be sent to the DRs for levy of proper duty.

Section 67-B of the KS Act empowers the officer²⁰ of the DSR, authorised in this regard to enter and search any premises²¹ where he has reason to believe that any register, book, record, paper, application, information in electronic storage and retrieval device or medium, instrument or proceedings are kept and to inspect them, if he has reason to believe that any of the instruments specified in the Schedule has not been charged at all or incorrectly charged with duty leviable. If upon such inspection, the officer is of the opinion that any instrument chargeable with duty is not duly stamped, he shall require the person liable to pay the proper duty or the deficit duty in respect of the instrument.

Further, the Performance Audit on "Levy and collection of Stamp Duty and Registration Fee", in the Audit Report for the year ended March 2009 (Recommendation No.1 under Paragraph No. 5.2.16) had recommended for establishment of a system in the DSR for coordination with various departments/agencies to monitor realisation of proper Stamp Duty and Registration Fee on instruments not compulsorily registrable which are presented before other public offices.

3.4.14.1 Absence of details for revenue from instruments not compulsorily registrable

As per the figures furnished by DSR, the revenue from instruments not compulsorily registrable had increased from ₹ 403.74 crore in 2011-12 to ₹ 856.91 crore in 2015-16. Audit analysis of the figures furnished by the DSR revealed that the revenue from instruments not compulsorily registrable was computed arithmetically as the difference between total revenue as per treasury figures and revenue from registered documents in KAVERI. DSR does not have a break-up of the revenue in terms of each article of levy and by whom paid in respect of the revenue from instruments not compulsorily registrable. The revenue of ₹ 856.91 crore in 2015-16 comprised of ₹ 214.18 crore from instruments identifiable by Article of levy, revenue from franking machines and endorsement for payment of Stamp Duty by DR under Section 10A of the KS Act. The Department did not have details for the balance ₹ 642.73 crore. This balance amount of ₹ 642.73 crore also included revenue remitted by SHCIL for e-stamp certificates. Non-identification of the Articles under which revenue is generated and the details of payments made by the payer affects enforcement activities to ensure due realisation of stamp duty on all instruments not compulsorily registrable.

In this regard, a reference is drawn to the good practice followed by the State of Maharashtra, that is, to generate online challan for payment of Stamp Duty

²⁰ DR or officer not below the rank of Sub-Registrar authorised by the DR or IGRCS.

²¹ Provided that no residential accommodation (not being a place of business-cum-residence) shall be so entered into and searched except on the authority of a search warrant issued by a Magistrate having jurisdiction over the area.

on not compulsorily registrable instruments through the Departmental website which will capture all the relevant information.

Recommendation 7: The DSR may initiate generation of online challan, therein capturing all necessary information, such as Article of Levy, by whom paid, etc. through its website. This can be later integrated in the Khajane II software of the Treasury.

3.4.14.2 Revenue from selected instruments which are not compulsorily registrable

Audit verified the efficacy of the mechanism for collection of Stamp Duty on instruments not compulsorily registrable and the implementation of its Recommendations in the previous Performance Audit²². The non-realisation of Stamp Duty on certain not compulsorily registrable instruments along with deficiency in mechanism for collection of Stamp Duty is given in following paragraphs.

3.4.14.3 Conveyance of Industrial Machinery

As per Article 20(5) of the Schedule to the KS Act, Stamp Duty is leviable on conveyance of industrial machinery. The rate of duty was five *per cent* (two *per cent* if the machinery is treated as movable property with effect from 1 April 2015) of consideration or market value of the property, whichever is higher.

As per the information collected by Audit from the Central Excise Commissionerates, Bengaluru and Mysuru, there were 864 units manufacturing industrial machinery. As per the turnover reported to the Central Excise authorities, the total turnover of industrial machinery for the period from 2011-12 to 2015-16 was ₹ 2,485.11 crore²³. Stamp Duty has to be levied on the sale of industrial machinery out of this turnover reported to Central Excise authorities. To assess the Stamp Duty due, Audit collected information on sale of machinery from Commercial Taxes Department. As per the *e-sugam*²⁴ data of the Commercial Taxes Department, the consideration involved in the invoices for sale of machinery was ₹ 3,407.03 crore for the period 2011-16. The Stamp Duty due on this conveyance of industrial machinery²⁵ was ₹ 68.96 crore²⁶.

The non-realisation of Stamp Duty on conveyance of industrial machinery was also pointed out in Audit Report for the year ended 31 March 2009; however,

²² Paragraph 5.2 of Audit Report (Revenue Receipts) for the year ended 31 March 2009.

²³ Turnover mentioned is turnover reported to Central Excise Department for Excise Duty and may include non-sale turnover such as stock transfer. Hence, department has to ascertain the actual sales turnover.

²⁴ *e-Sugam* – Online request and download of delivery note in Form VAT 505 for goods movement of invoice value greater than ₹ 25,000.

²⁵ The *e-sugam* uploaded by the dealers does not have exact classification of the industrial machinery and the DSR needs to obtain/verify the same.

²⁶ Stamp Duty at five *per cent* for the years 2011-12 to 2014-15. The rate of Stamp Duty for the year 2015-16 was five *per cent* and two *per cent* for immovable and moveable machinery respectively. Stamp Duty was calculated at two *per cent* on the total turnover as bifurcation of turnover relating to immovable and movable machinery was not available for the year 2015-16.

the DSR had not initiated action in this respect. The continued inaction of the DSR resulted in forgoing revenue of at least ₹ 68.96 crore.

The Government (December 2016) stated that action will be initiated to collect Stamp Duty on conveyance of industrial machinery.

3.4.14.4 Certificate of Sale

As per Article 15 of the Schedule to the KS Act, Stamp Duty at Conveyance rate on the purchase money was leviable on the Certificate of Sale granted to the purchaser of any property sold by public auction by a Court or Tribunal or officer of Government or by any other authority under any enactment.

Audit noticed that the Monitoring Committee set up under the directions of the Hon'ble Supreme Court was entrusted with the disposal of illegally mined iron ore seized by the Government, through public auction. Monitoring Committee after completion of auction, issued acceptance cum tax invoice, which inter-alia, stipulated the payments due and confirmed the sale in favour of the successful bidder.

These instruments, construed as Certificates of Sale, attracted stamp duty. The purchase money realised on auction of seized iron ore of 'C' category mining leases was forfeited to Government. The revenue so realised during 2011-16 amounted to ₹ 4,886.08 crore. Stamp Duty due on this amounted to ₹ 244.30 crore.

DSR did not identify the auction of seized ore by Monitoring Committee as a potential source of revenue and did not initiate action to verify the process of auction and identify instruments, if any, liable to Stamp Duty. Non-identifying acceptance cum tax invoice letters issued as certificate of sale resulted in foregoing of aforesaid revenue of ₹ 244.30 crore.

The Monitoring Committee opined that the Acceptance-cum-Sale invoices issued by them did not attract Stamp Duty. However, DSR in the Exit Conference (October 2016) accepted that the auction by Monitoring Committee had not been identified as a potential source and replied that concerned DRs would be suitably instructed to process the original copy of the Acceptance-cum-Tax invoice and book the cases under relevant provisions of the KS Act.

3.4.14.5 Certificates of Shares

As per Article 16 of the Schedule to the KS Act, for any certificate or other document evidencing the right or title of the holder thereof, or any other person, either in any share, scrip or stock in or of any incorporated company or body corporate, Stamp Duty at the rate of one rupee for every one thousand rupees or part thereof of the value of the share was leviable.

The absence of any mechanism to periodically obtain details of issue of shares by companies registered in Karnataka from the Securities and Exchange Board (SEBI) and Registrar of Companies (RoC) had been pointed out in a previous Performance Audit.²⁷

²⁷ Paragraph No. 5.2.9.2 of Audit Report (Revenue Receipts) for the year ended 31 March 2009.

a) As per information obtained from National Stock Exchange (NSE), 50 companies/banks with registered offices in Karnataka had issued shares for ₹ 21,546.89 crore during the period 2011-16. Stamp Duty realisable on this was ₹ 21.55 crore. It was noticed that the amount of Stamp Duty collected by DSR on shares during the period was ₹ 6.98 crore. Therefore, due to lack of proper co-ordination and information gathering mechanism, the DSR had not followed up on the Stamp Duty due in all cases. The loss of Stamp Duty amounted to ₹ 14.57 crore.

b) As per Article 62 of the Schedule to the Indian Stamp Act, 1899, Stamp Duty at 0.25 *per cent* of the value of the share was payable on transfer of share. As per the Companies Act 1957, companies filed the transfer share certificate with the RoC, who used to monitor due stamping of the transfer deed (Form SH 4). However, as per the amended Companies Act, 2013, the companies are not required to file the Form SH 4 with the RoC. The transfer deed, after being duly stamped, is retained with the company records. The transfer of shares is reported in the annual returns e-filed to the RoC.

It was noticed that the DRs were collecting Stamp Duty on the transfer of share certificates (Form SH 4) furnished to their offices for payment of duty. Consequent to amended Companies Act, 2013, the SH-4 form is now filed in the records of the company and transfer of shares reported in the Annual Return to the Ministry of Corporate Affairs. The SH-4 forms are not being submitted to the DRs for endorsing payment of Stamp Duty. Hence, the DSR needs to have a mechanism in place to verify the actual transfer of shares vis-a-vis SH-4 forms stamped at DR offices to ensure realisation of Stamp Duty due on all transfers of shares. To assess the potential Stamp Duty involved, Audit had requested for information on transfer of shares as reported in the annual returns from the RoC. Response is still awaited (December 2016).

In the Exit Conference (October 2016), the Government accepted the Audit observation and stated that the Department had initiated correspondence with the Ministry of Corporate Affairs for a login access for collection of real time information.

3.4.14.6 Stamp Duty on Debentures

As per Article 27 of the Schedule to the Indian Stamp Act, 1899, Stamp Duty on debentures was 0.05 *per cent* on the face value of the debentures for every year of the debenture period, subject to a maximum of 0.25 *per cent* of the value of debentures or rupees twenty-five lakh, whichever is lower.

As per the information obtained from the NSE, 18 companies/banks²⁸ had raised capital of ₹ 68,022 crore by issue of bonds in the nature of debentures which were listed on the NSE. Stamp Duty payable on this amounted to ₹ 61.87 crore. As per information available with the DSR, four companies/

²⁸ Atria Convergence Technologies Private Limited, Bengaluru Metro Rail Corporation Limited, BMM Cements Limited, Can Fin Homes Limited, Canara Bank, Embassy Property Development Private Limited, GMR Infrastructure Limited, ING Vysya Bank Limited, Karnataka Bank Limited, Karnataka Neeravari Nigama Limited, Karnataka State Financial Corporation Limited, Krishna Bhagya Jala Nigama Limited, Mysore Paper Mills Limited, Prestige Estates Projects Limited, Pune Dynasty Projects Private Limited, Syndicate Bank, Toyota Financial Services India Limited and Vijaya Bank.

banks had paid the Stamp Duty of ₹ 4.75 crore on the bonds of ₹ 14,413 crore raised. The Department did not have information about remittance of Stamp Duty payment directly into the Treasury, if any, by other companies/banks. Audit could not verify the realisation of Stamp Duty in the remaining cases due to absence of Article-wise/payer-wise details²⁹ of revenue realised. The DSR, also, could not confirm realisation or otherwise of Stamp Duty of ₹ 57.12 crore in these cases which resulted in non-accountal of revenue due (December 2016).

As regards Stamp Duty on Certificates of Shares, Transfer of Shares and Debentures, the Government (December 2016) replied that action will be initiated to obtain the required information from the SEBI website and to recover the Stamp Duty from the companies concerned. Further, efforts have also been initiated to get access to MCA21³⁰ Portal for getting relevant information.

3.4.14.7 Agreement relating to advertisement for promotion of business

As per Article 5(i-b) of the Schedule to the KS Act, introduced with effect from 1 April 2012, agreements relating to advertisement or telecasting or broadcasting of programs for promotion and development of business attracts Stamp Duty at one rupee for every one thousand rupees or part thereof on the amount or consideration in the agreement.

There are many regional Kannada TV channels and FM radio channels which earn revenue from sale of advertisement slots and sponsorship of programs. Even though the levy was introduced from 1 April 2012, the DSR had not levied and collected Stamp Duty due on agreements executed, if any, by these channels. The advertisements aired in Television, Radio and print media can be booked through e-platforms with online payment facilities. The e-platforms have a checkbox for accepting the Terms and Conditions for the account of the user. In such cases, e-instruments are being created without consideration being part of the agreement. The DSR has not formulated a mechanism to identify such e-instruments and realize stamp duty due thereon.

The Government (December 2016) replied that the DRs would be instructed to visit TV/Radio channels, Advertisement Agencies, Consultants, Newspaper offices, Other Publications, etc. to obtain copies of agreements and recover the Stamp Duty due.

3.4.14.8 Stamp Duty on agreements relating to building works, labour or services

As per Article 5(i-d) of the Schedule to the KS Act, introduced with effect from 1 April 2012, Stamp Duty is leviable on agreements relating to building works or labour or services (works contracts). The rate of duty leviable was ₹ 100/- if the consideration does not exceed rupees ten lakh and in case consideration exceeds rupees ten lakh, the duty leviable is ₹ 100/- for every Rupees ten lakh subject to a maximum of ₹ 5.00 lakh.

²⁹ As discussed in Paragraph No. 3.4.14.1.

³⁰ MCA21 is the portal of Ministry of Corporate Affairs digitising all information and returns relating to Companies.

Audit test checked works contract agreements executed during the period from 2012-13 to 2015-16 by work executing agencies of the Government of Karnataka like Karnataka Industrial Areas Development Board, National Highways Authority of India, Krishna Bhagya Jala Nigam Limited, Karnataka Neeravari Nigam Limited, Karnataka Power Corporation Limited, BBMP, etc. Audit test checked 345 works contract agreements with turnover aggregating ₹ 5,682.64 crore entered into by these organisations. It was noticed that Stamp Duty on 207 agreements had been short realised. These 207 works contract agreements aggregating consideration of ₹ 4,440.96 crore were entered into by these works executing agencies on which Stamp Duty of ₹ 50.26 lakh³¹ was to be realised. Against this, the agreements were executed on e-stamp certificates obtained for ₹ 47,650 resulting in short-realisation of Stamp Duty of ₹ 49.78 lakh. In the balance cases, the turnover involved was less than ₹ 10 lakh and hence the stamp duty of ₹ 100 on which they were executed was correct. Audit noticed that the agencies were executing works contract agreements on e-stamp papers ranging from ₹ 100 to ₹ 1,000 without computing the correct Stamp Duty.

DSR had neither initiated correspondence with these agencies nor inspected the instruments executed by these agencies to ensure realisation of proper Stamp Duty on works contract agreements.

The Government (December 2016) replied that the Karnataka Stamp (Second Amendment) Bill, 2015, includes amendments to make the authorities concerned responsible for collecting Stamp Duty and pay the same to Government. The amendments have been sent to the Government of India for the assent of Hon'ble President.

3.4.14.9 Reasons noticed by Audit for non/short realisation of Stamp Duty

As detailed above in paragraphs 3.4.14.3 to 3.4.14.8, Audit found that though there were several not compulsorily registrable instruments which attracted Stamp Duty, DSR was not geared up to ensure collection of revenue from such documents. Audit attributes these following reasons:

(a) Lack of awareness programmes

DSR had not undertaken any educative initiatives like media advertisements, awareness workshops for deed writers, business forums, etc. to actively publicise the liability of Stamp Duty on various types of instruments. The Departmental website too does not prominently display the Stamp Duty liability in respect of not compulsorily registrable instruments. During the course of collecting information in the audit, works executing agencies such as Karnataka Housing Board, Krishna Bhagya Jala Nigama Limited, Karnataka Neeravari Nigama Limited, BBMP, etc. reported not being aware of the due Stamp Duty for works contract agreements. Neither had the agencies received any communication regarding the same from the DSR.

³¹ At the rate of rupees one hundred for amount or consideration of rupees ten lakh in the agreement.

In this regard, reference is drawn to a good practice followed by the Commercial Taxes Department in Karnataka viz. conducting of various workshops, TV programmes etc. regarding Taxes on Sale, Trade etc.

DSR assured that the suggestion of Audit will be examined and necessary action would be taken.

Recommendation 8: The liability of Stamp Duty and payment mode in respect of such instruments (which are not compulsorily registrable) may be prominently publicised on the departmental website and in all such public offices where such instruments are executed/presented.

(b) Failure to notify 'Public Offices' and absence of a reporting mechanism in Public Offices

As per Section 33 of the KS Act, Government may determine which offices shall be deemed to be public offices and who shall be deemed to be persons-in-charge of public offices.

It was noticed that the DSR had not notified such 'public offices'. The KS Act does not provide for reporting of all Stamp Duty liable instruments executed/submitted in 'public offices'. Consequently, the DSR had not instituted a reporting mechanism regarding instruments received in public offices or produced before them and the Stamp Duty realisation on such instruments. This had resulted in the absence of information with the DSR for ensuring compliance.

The DSR replied that the Karnataka Stamp (Second Amendment) Bill, 2015, includes amendments to make the authorities concerned responsible for collecting Stamp Duty and pay to Government. The amendment had been sent to the Government of India for the assent of Hon'ble President. However, in the Exit Conference (October 2016), DSR agreed to consider notifying public offices even if the assent of Hon'ble President was not immediately forthcoming.

Recommendation 9: DSR may notify public offices for the awareness and benefit of all concerned. Government may consider amending provisions of the KS Act to provide for reporting by the public offices to DSR.

(c) Inadequacy of co-ordination with other Agencies/Department and inspection of offices

Audit had in a previous Performance Audit ³² pointed out certain major sources of revenue not tapped by the Department viz. on Acknowledgements, conveyance of industrial machinery, Certificates of Shares, Bonds, Clearance Lists, etc. In that connection, Audit had recommended;

1. For installing a system in the Department for co-ordination with various departments/agencies to monitor realisation of proper Stamp Duty on instruments presented before them, and
2. Framing rules prescribing the procedures for conducting inspections to prevent any leakage of revenue due to evasion of Stamp Duty on instruments not required to be presented for registration.

³² Paragraph No. 5.9 of Audit Report for the year ended 31 March 2009.

It was noticed that DSR had appointed two Consultants for follow-up and revenue realisation on instruments which are not compulsorily registrable. Besides, the DRs were also collecting revenue from not compulsorily registrable instruments through inspections under Section 67B of offices/premises where possibility of such documents was doubted. The revenue realised by these efforts steadily rose from ₹ 3.09 crore in 2011-12 to ₹ 51.36 crore in 2015-16.

Audit noticed that while the Consultants and DRs continued their inspections and reporting of revenue realised separately to the IGRCS, the Enforcement Wing had not maintained a database of potential tax sources for periodical follow-up. Further, during the audit period, the Consultants and DRs had concentrated on realisation of Stamp Duty on Policy of Insurance, pawn/pledge documents, Clearance Lists, Certificates of Shares, Transfer of Shares, Licences, Certificates of Sale, etc. The DSR is yet to streamline co-ordination with different agencies to ensure optimum revenue realisation on other Articles of levy such as Acknowledgements, industrial machinery, etc.

Further, audit noticed that DSR had entered into agreement with M/s BOI Shareholding Ltd in June 2016, an undertaking wholly owned by Bank of India, which is collecting revenue due on commodities and securities trading for Governments of Maharashtra, Gujarat, Andhra, Telangana and West Bengal at present. This initiative will ensure realisation of due Stamp Duty on Clearance Lists.

The Government (December 2016) replied that necessary action will be taken to create consolidated database of all potential sources.

Recommendation 10: For instruments not compulsorily registrable, the DSR may create a database of potential tax sources identified during inspections for follow-up on future revenue realisation from these sources.

(d) Non-computation of Stamp Duty due at the time of purchase of e-stamps for non-registrable documents

After introduction of payment of Stamp Duty by way of e-stamp certificates in 2009, SHCIL has been entrusted with the issue of e-stamp certificates through its 'Authorised Collection Centre' or 'Authorised Stamping Centre'. Stamp Duty was payable by obtaining e-stamp certificates to execute the document.

Audit noticed that the e-stamping application prescribed under the KS (Payment of Duty by means of e-stamping) Rules required the purchaser to fill the required Stamp Duty amount, type of payment, bank name, etc. but the prescribed form does not prescribe fields for details of Article of Levy for which stamp is being obtained and the consideration involved in the instrument. In practice, the form being used by the Authorised Centers of SHCIL has fields for type of document and consideration involved. The Authorised Centres are also mandatorily capturing the details of Article of Levy in respect of the document; however the filling up of the information on consideration involved in the instrument is optional. Since the software used by the SHCIL currently does not calculate the proper Stamp Duty due, e-Stamp certificates are issued for the amount sought by the purchaser without ensuring the proper Stamp Duty due for the instrument for which it would be used. If the Department can ensure mandatory calculation of Stamp Duty due

at the time of purchase of e-stamp certificates by collecting information on classification of instrument and consideration, it can ensure realisation of due Stamp Duty.

The DSR replied that feasibility of the suggestion of Audit would be considered after discussion with SHCIL.

Recommendation 11: A mechanism may be instituted to compute the appropriate Stamp Duty due by capturing relevant details required for such computation, like classification of the instrument, consideration involved in the instrument, etc. at the time of purchase of e-stamp certificates.

3.4.15 Conclusion

There are many Articles of levy of Stamp Duty on which the DSR has been not been successful in realising optimum Stamp Duty revenue. The DSR has not implemented procedures and channels for information gathering and collection of Stamp Duty due on all such instruments which were not presented to it. In respect of instruments on which Stamp Duty was leviable on the market value of the property, the published guidance market value served as a benchmark for collection of optimum revenue. However, the review by DRs to detect cases of undervaluation was not effective as the selection of cases was not based on any data analysis/criteria to choose potential cases and had not resulted in significant additional revenue. There was no mechanism in the DSR to identify cases of evasion of Stamp Duty and verify transactions between parties for suppression of facts and figures in the instrument affecting chargeability of Stamp Duty. DSR did not have a mechanism to ascertain the correctness of the consideration between the parties. Orders of DR determining market value of a property under Section 45(A)(1) of the KS Act, were not being referred to the CVC for taking into account the specific issues raised by DR and revising CVC guidance value. Though Section 53(A) of the KS Act, provided for *suo moto* review of the orders passed by DRs, no criteria had been set for mandatory scrutiny of the DR orders in the interest of revenue.

Monetary impact in terms of non/short realisation of Stamp Duty pointed out in the Report works out to ₹ 418.74 crore. This is indicative as Audit scrutiny was based on the sample selected and the actual impact of additional revenue generation would be much higher.

3.5 Short levy of Stamp Duty and Registration Fee due to undervaluation

According to Section 3 of the KS Act 1957, Stamp Duty is levied on instruments chargeable with duty as prescribed under various Articles in the schedule of the Act *ibid*. Under Article 20 of the Schedule to the KS Act, for instruments of conveyance, Stamp Duty is charged as a percentage of the consideration or of the market value of the property, whichever is higher. Market value guidelines are prescribed for properties situated in the State by the CVC under Section 45-B of the Act. This forms the basis for estimation of market value by the registering officer while registering documents chargeable with Stamp Duty.

During test check of records of five³³ SROs between April and July 2015, Audit noticed five cases of undervaluation of properties resulting in short levy of Stamp Duty and Registration Fee amounting to ₹ 2.55 crore and ₹ 0.45 crore respectively as shown in *Annexure 'C'*. The reasons for undervaluation were; adoption of incorrect rates of market value guidelines or due to non-adherence to the special instructions attached to the guidance market value, which should have been verified and rectified by the SROs before registration of documents.

When Audit brought these cases to the notice of the IGRCS and Government during February and May 2016, it was replied (August 2016) that an amount of ₹ 5.68 lakh was recovered in one case, orders have been passed by the DRs in two cases and in remaining cases the IGRCS has directed the DRs concerned to initiate action for recovery of dues under Section 45 (A) (3) of the Act.

3.6 Non-levy of Stamp Duty and Penalty

According to Section 3 of the KS Act 1957, Stamp Duty is levied on instruments chargeable with duty as prescribed under various Articles in the schedule of the Act *ibid*.

Under Section 34 of the KS Act, 1957, 'No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped'. Further, it is also provided that such instruments shall be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of ten times the amount of the proper stamp duty or deficient portion, when ten times the deficit exceeds five rupees.

Under Article 5(e)(i) of the Schedule to the KS Act, in respect of an agreement relating to sale of immovable property wherein possession of the property is delivered or is agreed to be delivered without executing the conveyance, stamp duty at the rate applicable to conveyance on the market value of the property is leviable.

³³ Bommanahalli, Hubballi (South), J.P. Nagar, Malleshwaram and Shivajinagar.

During test check of records in the office of the SRO, Devanahalli in August 2015, Audit noticed that a Joint Development Agreement³⁴ (JDA) was registered on 18 December 2013 between five land owners and three confirming parties in favour of M/s. Nitesh Estates Limited. Two Assignment Agreements, executed on 3 September 2012, were produced as evidence at the time of registration of the JDA, in which one of the land owners, M/s. Alpha Devanahalli Properties Pvt. Ltd (ADPPL) had acquired rights over a land³⁵, which was part of the scheduled property of the JDA. The land acquired through Assignment Agreements originally belonged to Smt. Shivamma and Smt. Basamma. They had entered into the Assignment Agreements with M/s ADPPL and had received consideration amounting to ₹ 5.39 crore from M/s ADPPL through the Agreements.

Audit noticed that though the Assignment Agreements conveyed only agreemental rights, recital of JDA states that the title of the lands mentioned was passed to M/s.ADDPL vide the Assignment Agreements. Since no conveyance deed was executed after the Assignment Agreements and the possession of property was stated in the JDA to be transferred to M/s.ADDPL, these agreements should be treated as Sale Agreements of immovable property which were chargeable under Article 5 (e)(i) of the Schedule to the KS Act, 1957. Consequently, the stamp duty leviable at the rate of conveyance (i.e. five³⁶ per cent on ₹ 5.39 crore) works out to ₹ 26.95 lakh against which only ₹ 400/- was paid. This resulted in non-levy of stamp duty of ₹ 26.95 lakh. Further, as per the provisions of the KS Act, 1957, these agreements were not to be admitted by the SR for execution of JDA till such time the deficit stamp duty was paid by the Agreement holder together with penalty of ₹ 269.5 lakh, at 10 times of the deficit stamp duty.

Incorrect admission of agreements and allowing execution of JDA by the SRO has resulted in non levy of Stamp Duty and penalty of ₹ 2.96 crore.

SRO at the time of registration of JDA failed to verify these Assignment Agreements and collect proper stamp duty and penalty before admitting registration of JDA. This resulted in loss of stamp duty on these Assignment Agreements.

Audit brought this to the notice of the IGRCS and Government during March and April 2016, it was replied (September 2016) that notice was issued to M/s. ADPPL for payment of Stamp Duty of ₹ 26.95 lakh.

³⁴ Joint Development Agreement No. 07358/2013-14.

³⁵ Sy.Nos.51, 54/2, 56/6 and 52/1 of Guttahalli Village, Kasaba Hobli, Devanahalli Taluk, Bengaluru Rural District.

³⁶ As per section 3-B of the KS Act, 1957, additional duty on Stamp Duty is applicable only on certain instruments like conveyance, exchange, settlement, gift or lease in perpetuity of immovable property. Since, Agreements are not chargeable with additional duty as per the section, additional duty is not included in the calculation.

CHAPTER-IV Motor Vehicle Taxes

4.1 Tax administration

The provisions of the Karnataka Motor Vehicles Taxation (KMVT) Act, 1957, and rules made thereunder govern the levy and collection of taxes on motor vehicles. The levy of taxes on motor vehicles is administered by the Transport Department headed by the Commissioner for Transport and Road Safety who is assisted by Joint Commissioners of Transport. There are 59 Deputy Commissioner for Transport and Senior Regional Transport Offices / Regional Transport Offices (RTOs)/Assistant Regional Transport Offices (ARTOs) and 15 check posts in the State.

4.2 Internal audit

The Internal Audit Wing (IAW) is functioning in the Transport Department since 1960.

As per the information furnished by the Department, out of 84 offices due for audit during 2015-16, none of the offices were audited by IAW. The shortfall in coverage of offices was attributed to the shortage of staff in the Wing. Year wise details of the number of objections raised, settled and pending along with tax effect, as furnished by the Department are given in **Table 4.1**.

Table 4.1
Year wise details of observations raised by IAW

Year	Observations raised		Observations settled		Observations pending	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
2011-12	107	53.42	27	6.50	80	46.92
2012-13	79	116.82	16	17.63	63	99.19
2013-14	174	513.60	36	163.12	138	350.48
2014-15	-	-	-	-	-	-
2015-16	-	-	-	-	-	-
Total	360	683.84	79	187.25	281	496.59

(₹ in lakh)

As seen from above, it is clear that the activities of IAW in the Department have reduced to a greater extent after 2013-14 and virtually to nil in the previous two year period. This indicates that the department is not according due importance to internal audit.

It is recommended that due importance may be accorded to strengthen IAW as internal audit is an important mechanism to ensure the compliance of the department with the applicable laws, regulations and approved procedures.

4.3 Results of Audit

In 2015-16, test check of records in 41 offices of Transport Department, disclosed under assessment of tax and other irregularities amounting to ₹ 5.18 crore brought out through 77 paragraphs. The observations broadly fall under the following categories as given in **Table 4.2**.

Table 4.2
Results of Audit

(₹ in crore)			
Sl No	Category	No. of paragraphs	Amount
1.	'Working of Department Statutory Action in Motor Vehicles Department'	1	2.57
2.	Non /short levy of Life Time Tax	19	0.50
3.	Non demand of quarterly tax	25	0.66
4.	Other irregularities	32	1.45
	TOTAL	77	5.18

During the course of the year, the Department accepted under assessments and other deficiencies involving ₹ 2.08 crore in cases pointed out through 74 paragraphs. An amount of ₹ 1.44 crore was also recovered in cases pointed out through 47 paragraphs pertaining to earlier years.

Audit on 'Working of Departmental Statutory Action in Motor Vehicles Department' involving ₹ 2.57 crore is discussed in the following paragraphs.

4.4 "Working of Departmental Statutory Action in Motor Vehicles Department"

Highlights

In 2,737 cases booked for non-production of documents, tax due of ₹ 1.20 crore from 35 Motor Vehicles was not identified and demanded. In 154 cases, fitness certificates, Clearance Certificates and No Objection Certificates were issued / renewed without disposing off the offence cases booked.

(Paragraphs 4.4.6.2 and 4.4.6.3)

In respect of 13 vehicles, documents like RC, MDL, Permit etc. were issued in duplicate by the Original Registering Authority (RTO) without the knowledge of these documents being impounded in original by another RTO.

(Paragraph 4.4.6.2)

In respect of 438 cases booked for overloading of vehicles, the excess goods were not off loaded and Compounding Fine of ₹ 68.19 lakh was also not collected.

(Paragraphs 4.4.7.1 and 4.4.7.2)

Lack of coordination between the field offices and Karnataka State Transport Authority resulted in issue of No Objection Certificates and non-surrender of documents in respect of 143 vehicles whose permits were under suspension.

(Paragraph 4.4.8)

Non disposal of 130 vehicles seized for non-payment of tax of ₹ 63.08 lakh through public auction resulted in non-recovery of tax due from those vehicles.

(Paragraph 4.4.9.1)

4.4.1 Introduction

Taxation and regulation of Motor Vehicles (MV) is accomplished through the provisions of a number of enactments. Violations of rules under any of these enactments, for example non-payment of MV tax, plying on public road without valid permit or valid Fitness Certificate (FC), driving without a licence, overloading, not possessing the Certificate of Registration (RC), plying on road without registration / Insurance Certificate (IC) / Pollution Under Control Certificate (PUC) or Emission Test Certificate (ETC) etc. when detected by the Transport Department Authorities are booked under Departmental Statutory Action (DSA).

Offences booked under DSA may be compounded by the Officers authorised at the time of booking. In cases where the Registered Owners (ROs) / drivers refuse to pay Compounding Fine (CF), and if the case is not settled within the stipulated time of 15 days, then the department has to file a case before the Court of law for prosecution.

Whenever tax due has not been paid in respect of any MV within the period specified (either quarterly, half-yearly, yearly or Life Time Tax), the authorised officer of the Department not below the rank of IMV may seize and detain the MV for recovery of tax.

4.4.2 Audit Objectives

This audit attempted to find out whether:

- cases registered under Departmental Statutory Action (DSA) are disposed off in compliance with the existing regulatory framework? and
- the enforcement function of the Department is suitably integrated to the VAHAN Software, for effective follow-up action?

4.4.3 Audit Criteria

The sources of audit criteria are as follows:

- The Motor Vehicles Act, 1988
- The Central Motor Vehicles Rules, 1989
- The Karnataka Motor Vehicles Rules, 1989
- The Karnataka Motor Vehicles Taxation Act, 1957
- The Karnataka Motor Vehicles Taxation Rules, 1957
- Circulars issued by Commissioner for Transport and Road Safety in this regard

4.4.4 Scope of Audit

The period of Audit was for five years from 2011-12 to 2015-16. Adequacy of systems and controls in disposing of DSA cases and sale of MVs seized and detained to recover the Government dues through public auction were analysed in this Audit. 12¹ out of 59 Deputy Commissioner for Transport and

¹ DCT and Sr. RTOs, Bengaluru (South), DCT and Sr. RTO, Bengaluru (Central), DCT and Sr. RTO, Electronic City, Bengaluru, DCT and Sr. RTO, Mangaluru, DCT and Sr. RTO, Kalaburgi, DCT and Sr. RTO, Dharwad, DCT and Sr. RTO, Shivamogga, RTO, Hassan, RTO, Nelamangala, RTO, Kolar, RTO, Mandya, Additional Commissioner for Transport and Secretary, Karnataka State Transport Authority, Bengaluru.

Sr.Regional Transport Officers (DCT and Sr. RTO) / RTOs and three² of 15 check posts were selected for test check of records on the basis of geographical representation³. The total number of cases pending under DSA throughout the State as on 31 March 2016 was 1,02,014. Out of this, 39,399 DSA cases were pending in the selected offices, of which 3,750 cases were selected for Audit based on random sampling. In respect of cases relating to MVs seized and detained for recovery of tax dues, 100 *per cent* check was conducted. The total number of MVs seized was 400 in the selected offices.

4.4.5 Methodology

Records pertaining to pendency and disposal of DSA cases and sale and pendency of disposal of MVs seized and detained were test checked to ascertain timely action taken to collect Government dues and CF along with timely intimation of pending cases to the Original Registering Authority (ORA) / Permit Issuing Authority concerned. Cross-verifications were done from State Register⁴, National Register⁵ (i.e. VAHAN) and with the ORA to ascertain regular payment of tax and renewal/issue of certificates like FC, Clearance Certificate (CC)/No Objection Certificate (NOC) without disposal of pending DSA cases.

4.4.6 Booking and status of cases under DSA in the Department

Offences committed are booked under relevant provisions of the Act and Rules. As stated earlier, such cases could be settled either by compounding or through prosecution. The CF is levied by the enforcement authority not below the rank of Inspector of Motor Vehicles (IMV) on the spot by issuing Check Report cum Receipt (CRR)⁶ or Check Report (CR)⁷. Though Government of Karnataka started computerisation of the Transport Department from the period 2000-01, data in respect of DSA cases has not been computerised yet. The cases booked during check of the vehicles by the IMV are forwarded to the office where they are entered manually in a DSA register and further follow up of these cases is watched. Whenever a case is settled, it is rounded off in the register.

As mentioned under methodology, audit selected a sample of cases booked under DSA for the period from 2011-12 to 2015-16 in the Offices and Check

² ARTO, Attibele Check Post, Bengaluru, ARTO, Humnabad Check Post, Bidar and ARTO, Zalki Check Post, Vijayapura.

³ Two offices each in North-Western and North-Eastern region of the State and one office each in Eastern, Western and Central region of the State. Further, in Southern Region, eight offices were selected since Bengaluru Urban and Rural Divisions come in this region and also due to more pendency of DSA in these Divisions.

⁴ The information like registration details, tax payment, class of vehicle, address etc. which are captured at the RTO level may entirely go to the State Register, so as to avoid any dependency of introducing new services on the level of information available at the state level.

⁵ Data from the different State Registers situated at State Data Centers flow to the National Register maintained by Ministry of Road Transport and Highways, Government of India. The National Register acts as a central repository of all crucial data/ information. This also enables the users to avail the service on "Anywhere Service" basis.

⁶ CRR is issued where the offences are compounded on the spot.

⁷ CR is a show cause notice which is issued in cases where the offences are not compounded on the spot but at a later date.

Posts selected for analysis. Audit noticed that the selected sample of DSA cases falls under the following categories as given in **Table 4.3**.

Table 4.3
Status of cases pending under DSA

Nature of Offence	Number of cases
Non-production of documents	2,737
Overloading of goods by MVs	438
MVs seized for non-payment of tax	400
Violation of permit conditions	163
MVs mis-used/altered	12
TOTAL	3,750

Audit noticed that the follow-up efforts made by the Department to dispose off these cases were not found documented. It is pertinent to note that the Department did not offer these cases for compounding even when the MVs concerned approached the RTOs for different transactions like issue / renewal of NOC, CC, FC, etc. Details of analysis of these cases by Audit are detailed in the paragraphs below:

4.4.6.1 Failure to verify complete details during inspections and inadequate follow up of the pending cases

Section 207 of the MV Act empowers the Authorised Officers, if he has reason to believe that a MV has been or is being used in contravention of the provisions of Act or in contravention of any condition of such permit, to seize and detain the vehicle in the prescribed manner.

Section 213 of the MV Act empowers the department to make such examination and inquiry as it thinks fit in order to ascertain whether the provisions of the Act and the Rules made thereunder are being observed. It also empowers the department to examine any person and require the production of any register or other document maintained in pursuance of the Act, and take on the spot or otherwise statements of any person which it may consider necessary for carrying out for the purposes of the Act.

Further, according to Rule 139 of the CMV Rules, 1989 read with Section 130 of the MV Act, 1988, the driver or conductor of a MV shall produce RC, IC, FC, permit, the Motor Driving License (MDL) and any other relevant documents on demand by any police officer in uniform or any other officer authorised by the State Government in this behalf, and if any or all of the documents are not in his possession, he shall produce duly attested extract or extracts of the documents within 15 days from the date of demand.

4.4.6.2. From the sample selected, Audit noticed that 2,737 cases were booked for non-production of documents, where the driver failed to produce RC, FC, IC, Tax Card (TC), ETC, Permit, MDL etc. for verification. These MVs were released and audit noticed that these documents were not produced subsequently within 15 days as prescribed under the Rules. However, no action was found to be initiated by the department in this regard to follow up the cases and collect the CF applicable from such offenders.

In addition, Audit noticed that whenever a MV is checked / inspected, the person authorised to inspect is not in a position to examine the complete details regarding the MV like tax payment details, violation of permit conditions, alteration of the vehicle after registration, incidence of previous offences etc. Due to non-computerisation of the DSA cases, details of the offences were inaccessible to the IMV at the time of inspection. National Register and State Registers were also not accessible to the IMVs to detect non compliances towards payment of tax, class of vehicle, issue of NOC etc.

Audit analysed the cases booked for non-production, by cross-verifying the details of such MVs among different RTOs, National Register, etc. and found that 63 MVs out of the cases booked for non-production of documents, had other more serious offences including non-payment of taxes, violation of permit conditions, alteration of vehicle after registration, etc. pending against them. These offences went un-noticed by the IMV at the time of inspection due to lack of information as explained above. In certain cases, documents seized by the Inspecting Officer were issued in duplicate from another Office (jurisdictional office). Details in respect of the 63 vehicles mentioned above are illustrated below:

- In 13 cases, audit found that documents like RC, MDL, Permit etc. were issued in duplicate by the ORA/OLA without the knowledge of these documents being impounded in original by another RTO.
- In six⁸ DCT and Sr.RTOs / RTOs/ Check Posts, tax amounting to ₹ 87.40 lakh for the period from August 2010 to November 2016 was found due from 23 MVs. This fact was not noticed by the IMVs while inspecting the vehicle and consequently the MV was booked only for non-production of documents.
- There were 11 MVs (two cases relates to MVs registered in other state) classified as 'Campers Van'⁹ which were equipped with seats and berths more than the prescribed. Though this fact was recorded by the IMVs in the CRs, vehicle was not seized as provided under Section 207 of the MV Act. It is pertinent to note that the cases booked against these vehicles were for non-production of documents.
- MV Tax amounting to ₹ 32.38 lakh was not collected in another 12 cases in which the MV were found to be altered after registration. Though, the fact of alteration of vehicles was recorded in the CR, aforesaid additional tax liability as per Section 8-B¹⁰ of the KMVT Act, was not collected. Further, it should be noted that offence booked against such MVs were for non-production of documents.

⁸ Bengaluru (Central), Electronic City, Hassan, Humnabad Check Post, Kalaburgi and Mandya.

⁹ According to Notifications issued by the Department read with Rule 2(l) of the CMV Rules, 1989, "Campers Van" means a special category vehicle constructed to include living accommodation having cooking and storage facility, which should not include more than eight seats convertible into sleeper in addition to the driver's seat.

¹⁰ According to section 8-B of the KMVT Act, 1957, if a Vehicle is found altered after registration which attracts higher rate of tax, such MV shall be made to pay twice the difference of tax between the tax already paid and the liability at higher rate.

- Two MVs were issued NOC from the State of Karnataka (during July 2006 and September 2008) for migration to another State. These MVs were found plying in the State of Karnataka against which cases of non-production of documents were registered during July 2011 and May 2014. On cross verification with National Register, Audit noticed that these MVs were not registered in the States to which NOC was issued nor were the NOCs cancelled at the Issuing Authority. Hence, the chances of these MVs plying in State itself, even after obtaining NOC, without payment of tax cannot be ruled out. Potential tax effect along with penalty works out to ₹ 25.98 lakh.
- Two MVs were issued NOC from other States for migration to the State of Karnataka. However, these MVs did not get registered in Karnataka and were plying in the State without payment of taxes. Tax to the tune of ₹ 3.02 lakh for the period from March 2007 was due from these MVs.

4.4.6.3 Audit noticed that though the MVs against which cases were pending had approached the department to obtain different documents like NOC, CC, FC, cancellation / renewal of permit, etc. the department failed to ascertain the pendency of offences and consequently no action was initiated to settle the offences. Certain illustrations to emphasise the point are detailed below:

- There were 110 CRs pending against 39 MVs in five¹¹ DCT and Sr.RTOs / RTOs with total CF due amounting to ₹ 6.14 lakh. This indicates multiple offences against a single vehicle which went unnoticed resulting in the non-booking of increased penalty for second and subsequent offence.
- In 154 cases, fitness was renewed and CC was issued without disposing off the previously booked DSAs on these MVs which resulted in non-collection of CF of ₹ 1.17 lakh. 126 of such cases booked by the ORA were not settled at the time of renewal of fitness and issue of CC/NOC
- Permits were also found cancelled/renewed subsequently without settling the offence in respect of two MVs.

In this connection, a comparison can be made with the Inspectors of Police Department (Traffic) who have been supplied with hand-held devices loaded with up-to-date information of the offences booked by them. This improves the efficiency of settling pending offences and collection of fines in the Traffic Police Department. A similar model may work for the Transport Department as well, as the device will quickly inform the IMVs details regarding the MVs inspected and pending offences against the MVs.

These cases were brought to the notice of the Department/Government during October 2016. Reply is still awaited (December 2016).

¹¹ Bengaluru (South), Dharwad, Mangaluru, Kolar and Nelamangala.

4.4.7 Goods in excess of the permissible limit were allowed to be transported without offloading and without levying CF

According to Section 113 read with Section 114 of the MV Act and circular instructions¹² of Commissioner for Transport and Road Safety, MV carrying goods in excess of the permissible quantity, shall be made to offload the excess goods carried by it before allowing the vehicle to move further.

As per Section 194 read with Section 200 of the MV Act, the offence shall be compounded by levying the fine specified under the Act. Further, Audit pointed out that MVs with extra load above the permitted limit are a potential threat to the quality of roads, to the environment due to higher levels of emission and to road safety as these MVs are prone to accidents due to overturning / toppling.

Audit noticed that the MVs carrying load in excess of the permitted quantity, though booked under DSA, were allowed to proceed without offloading the excess load carried by them. Details in this respect are as below:

4.4.7.1 There were 384 cases of overloading, noticed by the Department, in respect of MVs registered in the State which were not made to offload the excess load carried before allowing to proceed further. It was noticed that the officers concerned had not taken action to offer these cases to be compounded which resulted in non-collection of CF to the tune of ₹ 62.13 lakh.

4.4.7.2 Further, against 11¹³ DCT and Sr.RTOs / RTOs / Check posts, 54 cases were booked in respect of MVs pertaining to other State/s wherein excess goods were not offloaded. Here also no action was taken to compound the cases which resulted in non-levy of CF amounting to ₹ 6.06 lakh. Audit points out that non-collection of CF on the spot is necessary in such cases as the follow up of MVs registered in other States is comparatively difficult and the chances of such fines becoming non- realisable are high.

Further, Audit noticed that in respect of 29 MVs out of the 438 vehicles mentioned in the paragraphs from 4.4.7.1 to 4.4.7.2, NOCs for transfer outside the state were issued, without settling the cases pending against them, due to delay or non-intimation of cases booked to the ORA or to the permit issuing authority.

Audit noticed that in none of the cases in the sample selected for audit, the department has taken action to offload the goods in excess. Hence compliance to the provision regarding overloading was non-existent in the Department.

These cases were brought to the notice of the Department/Government during October 2016. Reply is still awaited (December 2016).

¹² Circular instructions issued by the Commissioner for Transport and Road Safety on 20 September 2013.

¹³ Attibele Checkpost, Bengaluru (Central), Bengaluru (South), Electronic City, Dharwad, Hassan, Humnabad Checkpost, Kalaburgi, Kolar, Nelamangala and Zalki Checkpost.

4.4.8 Non-coordination of the RTOs with Karnataka State Transport Authority (KSTA)

The offence cases booked in the DCT and Sr. RTOs/ RTOs/ ARTOs/ Check Posts for violation of permit conditions like route violations, plying with passengers more than permitted, carrying goods other than goods of passengers, contract carriages operating as stage carriages etc. in the entire State are to be forwarded to KSTA¹⁴, Bengaluru to initiate action under Section 86 of the MV Act. According to this Section, Permit Issuing Authorities can take action against the violation of permit conditions and have the powers of cancellation/ suspension of permits. On receipt of cases booked for permit violations, KSTA has to pass an order for suspension/cancellation of permits, after giving suitable opportunity to the offender. Such orders shall be intimated to the jurisdictional RTOs with a copy endorsed to office where the case was booked.

Audit noticed that 163 cases were booked for violation of permit conditions in the sample selected. Analysis of such cases revealed the following:

- 128 cases were booked between April 2008 and May 2015 and forwarded to KSTA. KSTA suspended the permits of these MVs during July 2013 and June 2016 for a period ranging from 10 days to 270 days. However, this was not pursued by KSTA to confirm whether the order of suspension was implemented by surrendering of the documents in original and keeping of MVs under non-use during the period of suspension. On cross verification with National Register, Audit found that these vehicles were paying taxes regularly during the period of suspension / cancellation and hence concluded that the documents were not surrendered by ROs and MVs were plying even during suspension/cancellation.
- In three¹⁵ DCT and Sr.RTO/RTO/Check Posts, 17 cases were booked relating to carrying of commercial goods i.e. not belonging to passengers by the All India Tourist Omni Buses (AITOBs) / contract carriages. However, such goods were not offloaded or seized and buses were released without compounding the offences. Audit also noticed that these cases were not intimated to KSTA for initiating action under Section 86 of the MV Act.
- In 15 cases, NOCs were issued by ORA without obtaining confirmation of settlement of offences from the KSTA.

The above lapses indicate lack of coordination between various field offices and KSTA.

These cases were brought to the notice of the Department/Government during October 2016. Reply is still awaited (December 2016).

¹⁴ KSTA is the permit Issuing Authority in respect AITOBs, Contract Carriages, Stage Carriages (interstate). The permits issued are valid for a period of five years.

¹⁵ Bengaluru (South), Nelamangala and Zalki Check Post.

4.4.9 Disposal of MVs seized and detained

Sub-section (2) of Section 11-A of the KMVT Act, 1957, stipulates that, if the tax due in respect of the vehicle seized and detained is not paid within thirty days from the date of such seizure and detention, the officer empowered by the State Government may, after giving a notice in writing to the Registered Owner (RO) and the person who had the possession or control of the vehicle immediately before such seizure and detention, and considering their objections, if any, recover the tax due by sale of such vehicle in the manner prescribed in Rule 27-B¹⁶ of KMVT Rules.

During the audit period in the selected offices, 400 MVs were seized and detained for non-payment of tax dues. Audit checked the compliance with the provisions and timely disposal of the MVs seized to verify the effectiveness in recovering the tax dues and found the following:

4.4.9.1 Out of 400 MVs seized, 130 MVs were seized for non-payment of tax amounting to ₹ 63.08 lakh for the period from July 2006 to May 2016 in 12¹⁷ DCT and Sr. RTOs / RTOs/ Check Post. However, these MVs were not put up for public auction for recovery of the tax due. Audit points out that delay in initiating action for conduct of auction in respect of these MVs have already ranged from 3 to 97 months. The reasons for inaction in all these cases where revenue is due to the Government Exchequer were not found recorded in the documents produced.

4.4.9.2 In five¹⁸ DCT and Sr. RTOs/RTOs, 35 MVs were seized and detained for non-payment of taxes. On a cross check in VAHAN Software, Audit found that these MVs were released and were subsequently paying taxes regularly and getting FC renewed from time to time. But, Audit could not trace the orders of release of these MVs from the records produced.

4.4.9.3 According to Rule 27-B (8) of the KMVT Rules, 1957, where the proceeds of the sale through auction is less than the tax due and the expenses incidental to the sale of the vehicle, the empowered officer shall forward the certificate for recovery of the deficit amount of the tax due as arrears of land revenue to the Deputy Commissioner of the District in which the RO of the vehicle resides.

Audit noticed that auction was carried out for the disposal of 15 seized MVs, after a considerable delay of 04 to 151 months, from which a tax of ₹ 11.26 lakh was due to the Government. The amount recovered against these vehicles through auction was as given in **Table 4.4**

¹⁶ Rule 27-B prescribes the manner of conduct of auction which includes issue of proclamation (both in Kannada and English) which specifies the date, place and time of auction along with description of the MV. The same has to be advertised in local newspapers. Rule further prescribes the money to be deposited at the time auction etc.

¹⁷ Bengaluru (Central), Bengaluru (South), Electronic City, Dharwad, Hassan, Humnabad Check Post, Kalaburgi, Kolar, Mandya, Nelamangala, Mangaluru and Shivamogga.

¹⁸ Electronic City, Kalaburgi, Kolar, Nelamangala and Mandya.

Table:4.4
Disposal of Motor Vehicles in auction

(₹ in lakh)			
Delay	Number of MVs	Amount of Tax Due	Amount recovered
04 months to 12 months	04	3.56	1.97
13 months to 60 months	06	6.36	3.49
61 months to 120 months	03	0.64	0.33
More than 121 months	02	0.70	0.34
Total	15	11.26	6.13

Audit noticed that though the revenue collected from the auction proceeds was less than the tax due, Department has not initiated action to forward certificate for recovery of the deficit amount of tax to the Deputy Commissioner (Revenue).

4.4.9.4 Cases of non-registration were booked against three MVs which were seized and detained by the Department. Two of these MVs were found missing from the place of custody as per the Department records. On inspection, Audit found that the third MV was also missing from the office premises, where it was kept in custody. Further, it was also noticed that no action was found to be initiated by the Department to trace out these vehicles as per the records produced.

4.4.9.5 In respect of remaining 217¹⁹ MVs, 14 MVs were auctioned off recovering amount commensurate with the tax amount due from those MVs. Further, in respect of 125 MVs, Audit noticed from the records that there was no tax due from these MVs. However, these MVs were not released by the Department as no claims were made by the ROs for release of these MVs. Intimations issued to the ROs by the Department in this respect were also returned due to incorrect or incomplete address. Department may have to take proactive action to dispose off these MVs after completing the required procedures.

All these cases indicate unsystematic dealing of the offence cases, lack of proper periodical follow up and timely action in disposing of the MVs detained in the custody of the Office.

After these cases were brought to notice of the Officers concerned (June to September 2016), it was replied that the matter would be examined.

These cases were brought to the notice of the Department/Government during October 2016. Reply is still awaited (December 2016).

4.4.10 Non-production of records

4.4.10.1 In DCT and Sr.RTO, Dharwad, 78 files relating to MVs sold in public auction during the period from 2011-12 to 2015-16 were not produced after multiple requests.

4.4.10.2 In DCT and Sr.RTO, Mangaluru, five files relating to MVs seized and detained which are pending for sale through public auction for recovery of tax due from May 2000 to December 2015 were not produced.

¹⁹ 78 files of MVs disposed off in auction were not produced to audit which is detailed in a subsequent paragraph.

4.4.11 Conclusion

As noticed from the sample selected, Audit concludes that ineffective follow up led to DSA cases remaining unsettled in the Offices visited. Absence of a centralised database and controls in the department resulted in the MVs, even with cases pending against them, getting renewal of FC, issue / renewal of permits / payment of tax / issue of CC / NOC done without settling of the cases pending against them. Timely action was not taken to intimate the Original Registering Authorities regarding the instances of impounding of original documents by another RTO which led to issue of duplicate RC/ MDL on false affidavits. Non-offloading of excess loads carried by the MVs may affect the condition of the roads and worsen the already polluted environment. Further, non-disposal or delay in disposal of seized MVs has led to significant number of MVs lying un-disposed and also resulted in loss of revenue to the Government.

4.4.12 Recommendations

It is recommended that:

1. *Centralised database may be developed for offence cases to ensure accessibility of such information throughout the State and make the settlement of these cases an essential criterion for services like renewal of fitness/ issue of CC/ NOC/ Permits or its renewal/ issue of duplicate records, etc.*
2. *Hand held devices, like the ones with Police Department (Traffic) in the State, may be supplied to the enforcement authorities, to verify all the pertinent details of MVs and incidences of previous offences against them.*

Chapter-V Land Revenue

5.1 Tax administration

The receipts from Land Revenue are regulated under Karnataka Land Revenue (KLR) Act, 1964, and the rules made thereunder and administered at the Government level by the Principal Secretary, Revenue Department. The Principal Secretary is assisted by four Regional Commissioners, 30 Deputy Commissioners (DCs), 44 Assistant Commissioners and 179 Tahsildars.

5.2 Internal Audit

The objective of an Internal Audit Wing (IAW) is to have a deterrent and reforming effect by pointing out mistakes and ensuring remedies without loss of time.

IAW has not been constituted under the Department, which leaves it vulnerable to the risk of control failure.

Audit recommends setting up of IAW in the Department to examine and evaluate the level of compliance with the rules and procedures so as to provide a reasonable assurance on the adequacy of the internal controls.

5.3 Results of Audit

In 2015-16, test check of the records of 69 units of Land Revenue revealed non/short realisation of cost of land, conversion fine, compounding fee and other irregularities amounting to ₹ 171.15 crore raised through 154 paragraphs, which fall under the following categories as given in **Table 5.1**.

Table 5.1
Results of Audit

Sl No	Category	(₹ in crore)	
		No. of paragraphs	Amount
1	Short / non levy of cost of land	44	131.40
2	Short / non levy of lease rent	32	7.60
3	Short / non levy of conversion fine and compounding fee	49	1.81
4	Other irregularities	29	30.34
	TOTAL	154	171.15

During the course of the year, the Department had accepted under assessments worth ₹ 3.44 crore in cases pointed out through 42 paragraphs. An amount of ₹ 1.20 crore was also recovered in cases pointed out through 54 paragraphs pertaining to earlier years. A few illustrative cases involving ₹ 43.86 crore are discussed in the following paragraphs.

5.4 Irregular refund of bid amount

According to Section 174 of the KLR Act, 1964, in all cases of sale of immovable property, the party declared to be the purchaser shall be required to deposit immediately 25 *per cent* of the amount of his bid, and the balance within fifteen days from the date of the sale. Further, under Section 175(2) of the KLR Act, in cases of default of payment of the balance of the bid amount within the period prescribed in Section 174, the deposit, after defraying

therefrom expenses of the sale, shall be forfeited to the State Government and the property shall be resold.

During test check of records in the office of the Tahsildar, Bengaluru North Additional, Bengaluru, it was noticed that land to an extent of 32 acres and 14 guntas in Sy.No.21 of Hosahalli Village, Jala Hobli, Bengaluru North (Additional) Taluk was put up for public auction as per auction notification¹ on 22 February 2007. After due procedure, M/s.MVR Securities Private Limited, won the bid for a price of ₹ 36.50 crore and the sale was confirmed on 28 March 2007. M/s.MVR Securities paid ₹ 9.13 crore which was one fourth of the total bid amount as per conditions of the auction sale and were liable to pay the remaining bid amount within 15 days from winning the bid. This amount was, however, not paid by the successful bidder within the due date.

The Deputy Commissioner (DC), Bengaluru passed orders² on 23 May 2011 for forfeiture of the deposit, stating that M/s.MVR Securities Private Limited had not paid the remaining amount even on repeated requests, citing inability to continue with the transaction due to issues of conversion of land use, even though the auction was conducted on 'as is where is basis'.

Meanwhile, M/s.MVR Securities Private Limited approached the department for cancellation of the bid and requested for refund of the amount already deposited. Overlooking the relevant provisions of KLR Act, 1964, DC vide order dated 27 July 2011 had recommended that the issue of refund may be considered by the Government which in turn was recommended to be issued by Government vide letter dated 22 December 2011.

The Department, based on the recommendation of the Government, acceded to the request of M/s.MVR Securities Private Limited and refunded the deposit through notification³ on 31 December 2011.

Thus, refund of the deposit was in contravention to the KLR Act, 1964, and conditions of the auction, and resulted in incorrect refund of ₹ 9.13 crore.

This case was brought to the notice of the Department and Government during February and March 2016 respectively. Reply is still awaited (December 2016).

5.5 Short collection of the cost of land granted due to adoption of incorrect guidance value

According to Rule 23 of the Karnataka Land Grant Rules, 1969, the agricultural lands which were leased temporarily to any person for purposes of cultivation before the commencement of Rules *ibid*, such lands may be granted to the lessee by the DC on payment of price fixed by him in accordance with rules under which the lands were granted. In respect of the lands which have been leased out after the commencement of the Rules *ibid*, such land may be granted to the lessee on payment of the price fixed by the DC.

¹ Notification No.LND(Govt. Land)Auction/CR/32/06-07 dated 22.02.2007.

² DC Order No.LND/Govt. Land/Auction/CR/42/06-07 dated 23.05.2011.

³ Notification No.LND/Govt. Land/Auction/42/06-07 dated 31.12.2011.

During the review of land grant records in two⁴ Tahsildar offices in Chikkamagaluru District between November and December 2015, Audit noticed that in three cases, plantations lands⁵ which were temporarily leased for coffee cultivation during the year 1960 (before the commencement of the Karnataka Land Grant Rules, 1969) were granted to the existing lease holders or legal heirs of the lease holders by collecting the CVC guidance value of the land. The value collected was the guidance value for dry land whereas the actual classification of the lands granted was plantation land and value prescribed for plantation land under CVC was higher than the value for dry land. This incorrect adoption of guidance value resulted in short collection of cost of land of ₹ 89.75 lakh as given in **Table 5.2**.

Table 5.2
Short collection of cost of land

(₹ in lakh)						
Sl. No.	Taluk/Hobli/ Village/Survey No./Land Grant order No.	Extent of land (Acres)	Guidance value/acre adopted	Actual guidance value/acre for plantation lands	Difference in guidance value/acre	Resultant short collection of cost of land
1.	NR Pura / Kasaba/ Badagabylu / 120,121 and 122/ No.M4: LCR: CR:2: 2014-15 dated 31.10.2014	25.00	1.40	4.00	2.60	65.00
2.	Mudigere / Kasaba/ Kolagodu / 19/No.M3: LCR: 05/2014-15 dated 05.12.2014	5.00	1.30	4.90	3.60	18.00
3.	Mudigere / Banakal / Kundoor/205/No.M3:L CR:1/2011-12 dated 01.08.2011	5.00	0.70	2.05	1.35	6.75
Total						89.75

It is recommended to adopt guidance value appropriate to land usage while granting of Government lands to avoid revenue shortages.

After these cases were pointed out to the Tahsildars concerned (November and December 2015), it was replied that the cases would be referred to the DC, Chikkamagaluru.

These cases were brought to the notice of the Department and Government during April and June 2016 respectively. Reply is still awaited (December 2016).

5.6 Short assessment and non-demand of lease rent and interest

Rule 19 of the Karnataka Land Grant Rules, 1969, states that subject to availability of land, the DC may give land on lease to Educational institutions, Co-operative Farming Societies, Grama Panchayaths, Taluk Panchayaths, etc. The Rule also stipulates that in respect of lands leased for non-agricultural

⁴ Mudigere and N.R. Pura.

⁵ As per the definition under KLR Act, 1964, "Plantation Land" means land in which a plantation crop that is, cardamom, coffee, pepper, rubber or tea, can be grown.

purposes, the DC shall fix the rent payable for lease of land taking into account the locality, the purpose for which the land is utilised, etc. Clause 6 of the lease deed for temporary occupation of land for non-agricultural purposes states that interest at 12 *per cent* per annum is payable for non-payment or delayed payment of lease rent.

Article 33(a) of the Karnataka Financial Code, 1958, states that every Government servant who is responsible for the collection of any moneys due to Government should see that demands are made at once as payments become due, that effective steps are taken to ensure the prompt realisation of all amounts due.

During test check of records in four⁶ Offices of the Tahsildar between January 2014 and March 2016, Audit noticed that the DC, Bengaluru Urban, had issued orders, during the period from October 2004 to January 2014, granting lease of 18.20 acre of Government land to six⁷ different Trusts / Societies for 30 years for educational purposes. In four cases, the annual lease rent payable was one *per cent* on the prevailing guidance market value fixed by the CVC, which has to be enhanced whenever the guidance market value is revised. However, in the remaining two cases, the annual lease rent was fixed at 10 *per cent* of the prevailing guidance market value with a condition of further up gradation of 10 *per cent* of the lease rent fixed every two years.

Audit noticed that while fixing lease rent, the Department had adopted guidance market value applicable to agricultural land whereas, in the cases mentioned aforesaid, the land was being leased out for a non-agricultural purpose⁸. Hence, while fixing lease rent, the rates applicable for non-agricultural purposes (usage of land) should have been adopted. Such incorrect fixation has resulted in short assessment of lease rent and consequent loss of revenue of ₹ 2.06 crore till the time of audit inspection. If not rectified on a priority basis, the incorrect fixation would cause an additional loss of ₹ 27.66 crore over the lease period of 30 years in the six leases referred here, thus causing a total of loss of revenue of ₹ 29.72 crore to the Government Exchequer.

Further, it is pertinent to note that even the lease rent fixed by the DC on the basis of rates applicable for agricultural land was not pursued and collected by the authorities concerned. Audit noticed that against a lease rent payable of ₹ 3.19 crore (calculated according to rate applicable for agricultural land and revised as per the conditions attached to the lease) in the six cases as per the order of DC for the period from 2004-05 to 2015-16, only ₹ 83.35 lakh was paid resulting in short payment of ₹ 2.36 crore. Hence, the Department failed to demand and collect the balance amount of ₹ 3.04 crore due as lease rent along with interest from the lessees.

⁶ Anekal, Bengaluru East, Bengaluru North and Bengaluru South.

⁷ Karnataka Chitrakala Parishath, M/s Surya Education Trust, M/s Bangalore Institute of Higher Education and Research Trust, Sri Kanchi Kamakoti Medical Trust, Sri. Chimney Hills Education Society and Sri. Kanteerava Pragathi Vidya Samsthe.

⁸ As per the special instructions of guidance market value, the lands used for commercial purposes, the rates of agricultural has to be enhanced by 60 *per cent* for the year 2007-08, 50 *per cent* for the years 2011-12 to 2013-14 and 60 *per cent* for the year 2014-15.

As per the provision of Karnataka Financial Code, 1958, the Controlling Officer of every department of Government should closely watch the progress of the realisation of the revenues under his control and check the recoveries made against the demands. Since the lease records are maintained by the Tahsildars, the responsibility for collection of lease rent vests with the Tahsildars. However, it was noticed that no efforts were made by the Tahsildars concerned to collect lease rents falling due periodically.

Further, the Department has to exercise utmost prudence while disposing valuable assets like land under its ownership. The rules and regulations prescribed in the disposal of such assets have to be strictly adhered to and followed up judiciously in the interest of safeguarding such assets and optimising the revenue realised from those assets.

On these being pointed out, Tahsildars, Bengaluru North and Bengaluru South stated that notices were issued on 13 January 2015 and 28 September 2015 to Karnataka Chitrakala Parishath and Kanteerava Pragathi Vidya Samsasthe respectively for non-payment of lease rent. Further, for short assessment of lease rent, it was stated that the matter would be referred to the DC for further action.

These cases were brought to the notice of the Department and to Government during July and August 2016 respectively. Reply is awaited (December 2016).

5.7 Short collection of cost of lands granted at concessional rates

The Karnataka Land Grant Rules, 1969 provides for grant of lands for various purposes under Rules 20, 21 and 22. The Rules also provide for concessions in rates on the market value of the land. Besides, Rule 27 *ibid* vests the State Government with powers to relax any of the provisions of these Rules by recording the reason for the same.

During test check of records relating to grant of land in the offices of the DC, Chikkamagaluru and Tahsildars – Bengaluru North (Additional) and Karwar during August and November 2015, Audit noticed that lands were granted to three institutions⁹ at concessional rates during the years 2011-12 to 2014-15 based on the decision of the State Government. On a scrutiny of these files, it was noticed that the State Government had ordered the grant of lands at 50 per cent of the prevailing guidance market value issued by the CVC.

In respect of one case, there was considerable delay between the order of the Government (12 January 2011) and the final grant order (7 January 2013) by the DC during which the guidance market value was revised. However, the resultant upward revision was not considered while calculating the cost to be collected which resulted in short collection of ₹ 57.50 lakh.

In respect of the other two cases, previous rates of guidance market value were adopted instead of prevailing rates at the time of issue of final grant order by DC. The resultant short collection in these two cases amounted to ₹ 49.78 lakh.

⁹ Y.A.N. Charitable Trust, M/s. North Western Karnataka Road Transport Corporation and Kuvempu University.

Hence, the failure of the Department in ascertaining the market value of the land prevailing at the time of issue of final grant order by DC led to a total loss of revenue ₹ 107.28 lakh in the three cases mentioned above. Reasons, if any, for application of rates than what was applicable were not found on record in any of these cases.

In light of the above cases, it is recommended that the accurate prevailing guidance market value issued by CVC has to be ascertained from the respective Sub-Registrar offices before the issue of final order by DC.

On this being brought to notice, the DC, Chikkamagaluru District and Tahsildars – Bengaluru North (Additional) and Karwar replied that the matter would be examined.

These cases were brought to the notice of the Department and Government between March and June 2016. Reply is still awaited (December 2016).

Chapter-VI Mineral Receipts

6.1 Tax administration

The responsibility for the management of mineral resources is shared between the Central and State Governments¹. The Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 enacted by the Central Government, lays down the legal framework for regulation of mines and development of minerals². The Mineral Concession (MC) Rules, 1960, the Mineral Conservation and Development (MCD) Rules, 1988, and the Granite Conservation and Development Rules, 1999, have been framed for conservation and systematic development of minerals and for regulating grant of permits, licences and leases.

Legislations for exploitation of minor minerals have been delegated to the States. Accordingly, Karnataka Minor Mineral Concession (KMMC) Rules, 1994 were framed by the State Government.

6.2 Internal audit

The Internal Audit Wing (IAW) is functional in the Department of Mines and Geology (DMG) since 1985. It is headed by an Accounts Officer on deputation from the State Accounts Department under the overall control of the Director.

As per the information furnished by the Department, out of 31 offices due for audit during 2015-16, none of the offices were audited by IAW. The shortfall in coverage of offices was attributed to the shortage of staff in the Wing. Year wise details of the number of objections raised, settled and pending along with tax effect, as furnished by the Department are given in **Table 6.1**.

Table 6.1
Year wise details of observations raised by IAW

Year	Observations raised		Observations settled		Observations pending	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
Upto 2011-12	1,640	335.69	1,403	295.67	237	40.03
2012-13	02	1.48	-	-	02	1.48
2013-14	0	-	-	-	-	-
2014-15	02	-	-	-	02	-
2015-16	0	-	-	-	-	-
Total	1,644	337.17	1,403	295.67	241	41.50

(₹ in crore)

As seen from above, it is clear that the activities of IAW in the department have reduced to a greater extent after 2011-12 and virtually to nil in the previous two year period. This indicates that the department is not according due importance to internal audit.

¹ Entry 54 of the Union list (list I) and entry 23 and 50 of the State list (list II) of the Seventh Schedule of the Constitution of India.

² Other than petroleum and natural gas and atomic minerals.

It is recommended that due importance may be accorded to strengthen IAW as internal audit is an important mechanism to ensure the compliance of the department with the applicable laws, regulations and approved procedures.

6.3 Results of Audit

In 2015-16, test check of the records of 17 units of DMG, showed non-levy of penalty for removing minerals without Mineral Despatch Permit, non/short recovery of royalty, short levy of interest / dead rent and other irregularities involving ₹ 271.95 crore pointed out through 53 paragraphs, which fall under the following categories as given in Table 6.2.

Table 6.2
Results of Audit

Sl. No	Category	Number of paragraphs	(₹ in crore)
			Amount
01.	Non/short levy of penalty for transportation of minerals without obtaining Mineral Despatch Permits	14	244.54
02.	Non/short levy of royalty	12	22.62
03.	Short levy of interest / dead rent	12	0.26
04.	Other irregularities	15	4.53
	Total	53	271.95

During the course of year, the Department accepted under assessments and other deficiencies of ₹ 32.14 crore in respect of audit findings in 13 paragraphs which were pointed out in audit during 2015-16 and recovered ₹ 19.72 crore in cases pointed out through two paragraphs. An amount of ₹ 0.35 crore was realised in cases pointed out through nine paragraphs pertaining to earlier years.

A few illustrative cases involving ₹ 264.72 crore are mentioned in the following paragraphs.

6.4 Non-levy of penalty for transportation of minor minerals without obtaining Mineral Dispatch Permits

Rule 42(1) of the KMMC Rules, 1994, requires that no person shall transport, or cause to be transported, any minor mineral, except under or in accordance with a Computerised Mineral Dispatch Permit (MDP) generated in electronic form (*e-permit* or *m-permit*). Additionally, as per Part-V, Clause-4 of the quarrying lease deed, the lease holder will be liable for penalty at five times of royalty for transporting minor mineral without obtaining MDP.

In order to provide ease of operations for minor mineral quarry leaseholders who are not able to have IT infrastructure at the lease area, SMS based trip sheet facility was introduced in Integrated Lease Management System with effect from January 2012. However, the facility of *m-permit* was discontinued due to certain technical reasons with effect from February 2015 and has not been re-established thereafter.

During test check of records in the seven³ Deputy Director (DD) offices and seven⁴ Senior Geologist (SG) offices of DMG between January and March 2016, Audit found that 1,34,61,612.5 metric tonnes (MTs) of building stone, 15,425 MTs of murram, 17,353 MTs of fullers earth, 232.357 cubic meters (cum) of grey granite, 218.61 cum of pink granite and 4,40,449 square meters (sqm) of Shahabad stone were transported without obtaining MDPs during the years 2011-12 to 2014-15. Penalty at five times of royalty on such transportation as required under provisions of lease agreement was not levied. The resultant non-levy of penalty works out to ₹ 244.58 crore.

On similar lapses being pointed out in previous years, the Department has consistently maintained that the provisions of Rule 42 (1) of KMMC Rules are not applicable to non-specified minor minerals and that the scientific method of pit measurement of quarry leases exercised by the Department during its yearly assessment is an adequate control to detect the quantum of production and royalty thereof. The rationale stated by the Department to claim non-applicability is that Rule 31 of the Chapter IV of the Rules—Grant of Quarry Leases for Non-specified Minor Minerals—lists out provisions under other chapters of the KMMC Rules, 1994, that are also applicable to non-specified minor minerals, but does not specifically mention Rule 42.

When Audit brought these cases to the notice of the Department and Government during March and May 2016, the Department (July 2016) stated that the matter has been referred to the Law Department seeking clarification on the applicability of Rule 42 (1) of KMMC Rules, 1994, for transportation of non-specified minor minerals. Reply from Government and opinion of Law Department are awaited (December 2016).

6.5 Short levy of royalty due to application of pre-revised rates

Section 9 (2) of the MMDR Act, 1957, enables the levy of royalty from a lease holder in respect of any mineral removed or consumed from the leased area at the rate specified for the time being as in the Second Schedule of the Act. With effect from 1 September 2014, rates of royalty leviable on iron ore and manganese ore were revised from 10 per cent and 4.2 per cent to 15 per cent and 5 per cent respectively of sale price, *ad valorem*⁵.

On verification of the accounts of the Monitoring Committee (MC)⁶ during November and December 2015, Audit noticed that royalty on minerals sold in *e-auctions* was collected at the pre-revised rates till 31 August 2014 and at the revised rates thereafter. Since the basis for application of rates of royalty as

³ Belagavi, Bengaluru Rural, Chitradurga, Dakshina Kannada, Hosapete, Kalaburgi and Tumakuru.

⁴ Ballari, Bengaluru (Urban), Haveri, Kolar, Koppal, Mandya and Shivamogga.

⁵ Government of India, Ministry of Mines Notification No. G.S.R. 63(E) dated 1 September 2014.

⁶ The Monitoring Committee was formed under orders of the Hon'ble Supreme Court dated 2 September 2011 and 23 September 2011 for dealing with the various issues related to the sale through *e-auction* of the existing stock of iron ore, its transportation and account of the sale proceeds of iron ore. Sale of Iron and Manganese ore extracted from mines belonging to Ballari, Chitradurga and Tumakuru Districts of Karnataka is through *e-auction* conducted by the Committee. In the process, royalty and other levies due to Government are being collected by the Committee from the successful bidders and paid to the Departments concerned.

per the above provision is the date of 'removal' of the mineral, the revised rates are applicable even for minerals sold prior to 1 September 2014, if the actual removal, evidenced by the issue of trip sheets⁷, is after that date.

Audit noticed that in respect of *e-auctions* of iron ore conducted during 2013-14 and 2014-15, royalty on 16,64,248.01 metric tons of iron ore valued at ₹ 374.62 crore was levied at the rate of 10 *per cent* as against the revised rate of 15 *per cent*, though the mineral was removed after 1 September 2014. The resultant short levy of royalty works out to ₹ 18.73 crore.

Similarly, in respect of *e-auctions* of manganese ore for the year 2014-15, it was noticed that royalty on 9,424 metric tons of manganese ore worth ₹ 6.06 crore was levied at the rate of 4.2 *per cent* as against the revised rate of 5 *per cent* though mineral was removed after 1 September 2014. Resultant short levy of royalty works out to ₹ 4.85 lakh.

The Department of Mines and Geology should have advised MC to collect difference of royalty on the minerals transported after 1 September 2014.

In this regard, it is also recommended that suitable modifications be made in the 'Integrated Lease Management' application system of the Department by which any additional incidence of royalty owing to change of rates is levied and collected at the time of issue of trip sheets.

When Audit brought these cases to the notice of the Director of Mines and Geology and Government during March and April 2016, Department replied that an amount of ₹ 17.99 crore was recovered by the MC after getting the matter clarified with the Director of Mines and Geology. Further reply is awaited (December 2016).

6.6 Short deduction of royalty due to incorrect adoption of rates of royalty

According to Rule 36 of the KMMC Rules, 1994, the holder of a quarrying lease or licence, shall pay royalty on the minor mineral removed or consumed by the lease / licence holder or his agent, manager, employee or contractor at the rates specified in Schedule-II under the Rules. The rates under Schedule II were revised with effect from 5 March 2014 which works out to ₹ 30/-, ₹ 103/- and ₹ 108/- per cubic meter (cum) for murram, ordinary sand and building stone respectively. Revised rates were communicated to the field offices by the Director of Mines and Geology vide Circular (13 March 2014).

As per the circular instruction (December 2007) of Commerce and Industries Department, Government of Karnataka, the work executing departments / agencies on the work executed by them, should deduct royalty from the bills of the contractors, if they fail to produce proof of payment of royalty.

During the test check of records of the office of the SG, Ballari during February 2016, Audit noticed that monthly statements of royalty deduction were being submitted by two work executing agencies⁸. These agencies had

⁷ Trip sheets are issued at the time of actual transportation of mineral. Each trip sheet is valid for a solitary trip of a vehicle.

⁸ M/s.North East Karnataka Road Transport Corporation Limited, Ballari and M/s.Karnataka Power Corporation Limited, Ballari.

recovered royalty on murram, ordinary sand and building stone from the bills of the contractors who had executed various works for the period from March 2014 to March 2015. Audit scrutiny of these statements revealed that the royalty (measured in cum) was deducted at rates lesser than prescribed in the Circular of 13 March 2014. The royalty deductible amounted to ₹ 1.95 crore, of which, only ₹ 0.59 lakh was deducted from the payments made to contractors, resulting in short collection of royalty amounting to ₹ 1.36 crore.

The Department had not detected the short collection of royalty even though the statements of royalty deducted by the work executing agencies were available with the Department. Consequently, action has not been taken to bring this deficiency to the notice of those agencies for initiating recovery of balance amount of royalty. This shows the absence of verification of the correctness of royalty deducted by the work executing departments / agencies.

It is recommended that the statements submitted by the work executing agencies have to be verified in the offices concerned to ensure the correctness of royalty deducted by such agencies.

On this being pointed out by Audit during February 2016, the SG, Ballari stated that the cases would be examined (February 2016).

Audit brought these cases to the notice of the Director of Mines and Geology and Government during June and July 2016. Reply is awaited (December 2016).



(Bijit Kumar Mukherjee)
Accountant General
(Economic and Revenue Sector Audit)
Karnataka

Bengaluru
The

06 FEB 2017

Countersigned



(Shashi Kant Sharma)
Comptroller and Auditor General of India

New Delhi
The

07 FEB 2017

Annexure 'A'
(See paragraph 2.4.13.2)

Sl. No.	Name of the Company/ Enrollment Number	No of branches as per PELSoft (excluding main office)	Actual Number of branches	Differential Number of branches for which PT demand not raised	Source of information
1.	FedBank Financial Services Limited/ 154585225	1	28	27	Official website of the company: http://www.fedfina.com
2.	Simply Grameen Business Solutions Private Limited/ 109458884	1	2	1	Official website of the company: http://www.simplygrammeen.com/contact.html
3.	Homeocare International Private Limited/ 195575307	0	9	9	Official website of the company: http://www.homeocare.in/homeocare-branches-in-karnataka.html
4.	Nirantara FinAccess Private Limited/ 157660235	3	34	31	Official website of the company: http://www.finaccess.nirantara.co.in/
Total		5	73	68	

Annexure 'B'
(See Paragraph 3.4.10.2)

(₹ in crore)

DR	Number of orders	Guideline market value/ consideration in instrument	Market value determined in order	Reduction of money value/ omission of consideration	Revenue involved
Rajajinagar, Bengaluru (Rural) and Jayanagar	13	23.51	21.05	8.55	0.63
In two orders (DRs, Rajajinagar and Bengaluru (Rural), the consideration of ₹ 6.76 crore received by the vendors vide sale agreements were not considered in the order determining the market value of the property. In another instance (DR Jayanagar), in 11 cases of conveyance of industrial land to the same purchaser, the market value was determined at ₹ 500 per square feet for industrial land even though the consideration agreed to by parties in the agreement for the property was ₹ 975 per square feet.					
Mysore	1	4.38	2.19	2.19	0.14
The document conveyed site measuring 1,32,829.51 square feet of land for a consideration of ₹ 60 lakh. DR determined the market value for 50 per cent of the sital area at the guideline value of ₹ 330/- per square feet after allowing deduction of 50 per cent sital area for civic amenities. Audit scrutiny revealed the site was formed out of a composite land of 10 acres after obtaining necessary plan approval and release order from Mysore Urban Development Authority(MUDA). Since, the site was a transfer after all necessary clearances from MUDA, allowance of 50 per cent for civic amenities again was not in order and resulted in short levy of Stamp Duty and registration fee.					
Rajajinagar	9	5.59	4.49	1.1	0.08
The reason attributed in the order was that there was difference of opinion between the parties in fixing the rates and hence purchasers had to complete 8 items of works such as flooring, glazed wall tiles in bathroom, kitchen, service connections like water supply and electrification etc. However, it was noticed that recitals of the sale deeds stated that "the purchaser hereby confirm categorically that the apartment delivered is completed in all respects and aspects to his/her satisfaction and the apartment adheres to the specifications promised/mentioned by the vendors and the purchasers herein absolves the vendors from any claims, damages occasioned due to any latent defects, short comings or deficiencies in the property sold". However, while passing the orders, neither photographic evidence nor statement of the Developer regarding handing over possession with incomplete work was placed on record.					
Jayanagar	2	20.10	13.37	6.73	0.43
As per Article 20(1) of KS Act 1957, the market value in respect of unit of apartment was to be determined as fully constructed flat/apartment/unit irrespective of the stage of construction deeming it as fully constructed. However, in these two cases of transfer of part of commercial complex, the DR determined the market value by reducing the value for the incomplete buildings and also market value by stating that in one case the building had been constructed by the Developer in terms of an earlier Joint Development Agreement entered into between the parties.					
Ramanagaram	1	--	54.73	5.72	0.11
While determining market value of the instrument relating to Company Petition in the Hon'ble High Court relating to Scheme of Arrangement of Companies, the DR though had in the spot inspection report stated that the immovable property contained car parking slots had not determined the value for the car parking. As per plan submitted along with the instrument, an extent of 28659.26 square feet was shown as car parking. At an average of 125 square feet per car parking, the value of 229 car parking slots worked out to ₹ 5.72 crore. This had resulted in short levy of Stamp Duty.					
Ramanagaram	37	4.20	1.32	2.98	0.19
As per CVC guidelines, land up to five guntas was to be valued at the rate applicable for sites in the area and land between five and ten guntas was to be valued at half the rate applicable to sites. IGRCS through a circular issued in November 2014 clarified that if an instrument transferred bits of land in different survey numbers to a single purchaser, then the land was to be valued at agricultural rate only even if it was below 10 guntas. It was noticed that the DR had in contravention of CVC guideline and IGRCS circular valued land at agricultural rate even in cases where there was transfer of only one piece of land below 10 guntas.					

Annexure 'C'
(See Paragraph 3.5)

Sl. No.	Name of SRO / Description of Document / Document Number / Date of registration	Description of Property conveyed	Rate per Square feet / Acre / Super Built up Area as per / CVC guidelines	Actual market value or consideration on which SD and RF to be levied	Market Value / consideration as stated in the document	(₹ in lakh)		
						Stamp Duty and Registration Fee		
						Leviable	Levied	Short levy
1	Malleshwaram / Gift Deed / 891/2014-15 / 24.06.2014	Converted Land measuring 8 Acres 14 Guntas out of Sy.No.66, situated at Chagalatti Village, Jala Hobli, Bengaluru North Taluk. Land is converted for non-agricultural residential purposes	₹ 150 lakh per Acre	1,252.50	626.25	83.29	41.65	41.65
2	Shivajinagar / Sale Deed / 2,400/2014-15 / 31.10.2014	Property known as "Alyssia" constructed in Municipal No.23, Old No.28, Richmond Road, Richmond Town, measuring to extent of 18,137 Square Feet along with commercial complex comprising of Basement, Ground Floor, Mezzanine, First Floor, Second Floor, Third Floor and Terrace measuring 52,465 Square Feet	₹ 10,864/- per square feet	5,625.73	3,600.00	371.30	237.60	133.70
3	Hubli (South) / Sale Deed / 2,084/2013-14 / 17.07.2013	Property situated at Third Floor of Urban Oasis Mall (CTS No.4784-B) measuring 36,300 Square Feet super built up area and 12,800 square feet of undivided share of land.	₹ 2,400/- per square feet	871.20	785.08	57.50	51.82	5.68
4	Bommanahalli / Sale Deed / 7,743/2014-15	BDA Property bearing Sy.No.44/5A and 44/6, measuring 1,825.39 Sq.Meters, situated at Bommanahalli Village, Begur Hobli, Bengaluru South Taluk, presently property bearing Municipal No.94/44/5A/44/6 coming under the jurisdiction of BBMP	₹ 70,000/- per square meter	1,277.77	404.10	84.33	28.88	55.45
5	J.P. Nagar / Sale Deed / 4,564/2014-15	Converted Land measuring 1 Acre or 43,560 Square Feet out of total extent of land measuring 2 Acres 20 Guntas (converted for Commercial purpose - 2 Acre 04 Guntas and Industrial purpose - 16 guntas) situated at Sy.No.92/2, Alahalli Village, Uttarahalli Hobli, Bengaluru South Taluk.	₹ 2,800 per square feet	1,219.68	255.00	80.50	16.96	63.54
TOTAL				10,246.88	5,670.43	676.92	376.91	300.02

