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LEGISLATURE ON **9 JUL 2018**

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

for the year ended 31 March 2017

Government of Tamil Nadu

Report No.2 of 2018

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PREFACE

This Report of the Comptroller and Auditor General of India for the year ended 31 March 2017 has been prepared for submission to the Governor of the State of Tamil Nadu under Article 151 of the Constitution of India.

The Report contains significant findings of audit of Receipts and Expenditure of major Revenue earning Departments under Revenue Sector conducted under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

The instances mentioned in this Report are those, which came to notice in the course of test audit during the period 2016-17 as well as those which came to notice in earlier years, but could not be reported in the previous Audit Reports; instances relating to the period subsequent to 2016-17 have also been included, wherever necessary.

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

OVERVIEW

The report contains 20 paragraphs, including one Performance Audit, relating to non / short levy of taxes, interest, penalty, etc. involving ₹ 4,769.56 crore. Some of the major findings are mentioned below:

I General

The total revenue receipts of the State during 2016-17 were ₹ 1,40,231.13 crore, comprising tax revenue of ₹ 85,941.40 crore and non-tax revenue of ₹ 9,913.76 crore. ₹ 24,537.77 crore was received from the Government of India as State's share of divisible Union taxes and ₹ 19,838.20 crore as grants-in-aid. The revenue raised by the State Government in 2016-17 was 68 *per cent* of the total revenue receipts as compared to 69 *per cent* in 2015-16. Sales tax (₹ 63,233.58 crore) formed a major portion (74 *per cent*) of the tax revenue of the State. Interest receipts, dividends and profits (₹ 4,503.90 crore) accounted for 45 *per cent* of the non-tax revenue.

(Paragraph 1.1)

Test check of records relating to commercial taxes, state excise, motor vehicles tax, stamp duty and registration fee, electricity tax, mines and minerals and land revenue during the year 2016-17 revealed under-assessments, short levy, loss of revenue and other observations amounting to ₹ 6,470.97 crore in 4,560 cases.

(Paragraph 1.9)

II Value Added Tax / Central Sales Tax

Audit of Assessment, levy and collection of VAT and CST on Petroleum Products revealed the following:

- Absence of provision to levy tax at second point of sale in respect of petrol and diesel resulted in dealers' commission not being subjected to levy of tax. Inclusion of such a provision would have given an additional revenue of ₹ 645.35 crore.

(Paragraph 2.4.4)

- The assessing authorities did not ensure adherence to the conditions governing grant of exemption and applicability of reduced rate of tax. Exemption / reduced rate of tax allowed on sale of petroleum products in the absence of prescribed certificates / documentary evidences resulted in non / short levy of tax of ₹ 1,247.57 crore.

(Paragraphs 2.4.7, 2.4.8.1, 2.4.9.1 & 2.4.11)

- The system of e-transit pass had not been effectively utilised by the Department to monitor the interstate movement of petroleum products.

(Paragraph 2.4.12.2)

Audit of the Functioning of Business Intelligence Unit revealed the following:

- Business Intelligence Unit (BIU) did not engage itself in timely and continuous collection of data. Further, the procured data was also not properly analysed and conveyed in a manner in which it was easily usable by the assessing authorities. This resulted in poor utilisation of data by the assessing authorities in unearthing evasion of tax.

(Paragraphs 2.5.2 & 2.5.3)

- There was no proper monitoring mechanism to ensure timely and effective utilisation of BIU data by the enforcement and territorial wings of the Department.

(Paragraph 2.5.7.1)

- Data independently sourced by us from other departments / agencies and our examination of the extent of utilisation of BIU data in the assessment circles revealed suppression / under assessment of turnover involving levy of tax and penalty of ₹ 2,456.98 crore.

(Paragraphs 2.5.3.1 to 2.5.3.12)

Audit of Collection of Arrears of Tax in Commercial Taxes Department revealed the following:

- There existed no system in the Department to monitor disposal of cases pending with various appellate / judicial fora. Thus, the failure to undertake proper pursuance of cases pending in appeal resulted in blocking of arrears of ₹ 1,119.29 crore.

(Paragraph 2.6.3)

- The process of recovery of arrears under the Revenue Recovery Act suffered from deficiencies of non-initiation of revenue recovery proceedings, non / delay in initiation of action for attachment of property and failure to conduct auction after attachment of property. This resulted in arrears of ₹ 720.59 crore remaining uncollected.

(Paragraph 2.6.5)

Other Audit Observations

Incorrect claim of input tax credit of ₹ 2.05 crore was noticed in seven cases.

(Paragraph 2.7.4)

Non / short reversal of input tax credit of ₹ 2.69 crore was noticed in nine cases involving sale of exempted goods and stock transfer of goods to other States.

(Paragraph 2.7.5)

III Stamp Duty and Registration Fee

Performance Audit on Assessment and Levy of Stamp duty and Registration fee revealed the following:

The failure of the Department to evolve a system to monitor payment of stamp duty by brokerages resulted in short collection of stamp duty of ₹ 359.69 crore.

(Paragraph 3.4.8)

Omission to collect stamp duty in respect of bonds issued through depositories resulted in non-collection of stamp duty of ₹ 450.52 crore.

(Paragraph 3.4.9)

There was non-adherence to the guidelines of Central Valuation Committee in subsequent fixation of market guideline value.

(Paragraph 3.4.13)

Incorrect allowance of exemption in respect of issue of debentures resulted in non-levy of stamp duty of ₹ 24.34 crore.

(Paragraph 3.4.16)

In 19 registering offices, short collection of registration fee of ₹ 12.18 crore was noticed in respect of 51 instruments.

(Paragraph 3.4.17)

In 41 registering offices, misclassification of instruments by the registering authorities resulted in short collection of stamp duty and registration fee of ₹ 8.50 crore.

(Paragraph 3.4.18)

Incorrect remission of transfer duty surcharge of ₹ 21.34 crore was noticed in 23,804 instruments processed under the Samadhan Scheme.

(Paragraph 3.4.20.1)

IV Taxes on Vehicles

- Misclassification of Private Service Vehicles as Educational Institution Vehicles resulted in short realisation of tax of ₹ 20.41 lakh.

(Paragraph 4.3.1)

- Non-collection of life time tax from owners of old tourist motor cab amounted to ₹ 11.18 lakh.

(Paragraph 4.3.3)

- Misclassification of Contract Carriages as Private Service Vehicles resulted in loss of revenue of ₹ 22.43 lakh.

(Paragraph 4.3.5)

V Other Tax and Non-Tax Receipts

State Excise

The failure to collect annual privilege fee at enhanced rate in respect of licensees situated within Chennai City limits resulted in short realisation of revenue of ₹ 52 lakh.

(Paragraph 5.2)

The failure to collect brand renewal fee and label approval fee from three licensees resulted in non-realisation of revenue of ₹ 23.45 lakh.

(Paragraph 5.3)

Mines and Minerals

Audit of Collection of arrears in the Department of Geology and Mining revealed the following:

- Failure to refer long pending cases of arrears for recovery under the Revenue Recovery Act resulted in non-collection of arrears of ₹ 29.11 crore.

(Paragraph 5.5.2)

- Non-initiation of action in cases referred under the Revenue Recovery Act resulted in non-collection of arrears of ₹ 5.39 crore.

(Paragraph 5.5.3)

- Non-initiation of action for recovery following disposal of appeals resulted in accumulation of arrears of ₹ 24.23 crore.

(Paragraph 5.5.4)

CHAPTER I
GENERAL

CHAPTER I GENERAL

1.1 Trend of revenue receipts

1.1.1 Tax and non-tax revenue raised by the Government of Tamil Nadu during the year 2016-17, the State's share of net proceeds of divisible Union taxes and duties assigned to States 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.

Table 1.1
Trend of revenue receipts

(₹ in crore)						
Sl. No.	Particulars	2012-13	2013-14	2014-15	2015-16	2016-17
1.	Revenue raised by the State Government					
	• Tax revenue	71,254.27	73,718.11	78,656.54	80,476.08	85,941.40
	• Non-tax revenue	6,554.26	9,343.27	8,350.60	8,918.31	9,913.76
	Total	77,808.53	83,061.38	87,007.14	89,394.39	95,855.16
2.	Receipts from the Government of India					
	• State's share of divisible Union taxes	14,519.69	15,852.76	16,824.03	20,353.86	24,537.77 ¹
	• Grants-in-aid	6,499.48	9,122.28	18,589.27	19,259.62	19,838.20
	Total	21,019.17	24,975.04	35,413.30	39,613.48	44,375.97
3.	Total revenue receipts of the State Government (1 + 2)	98,827.70	1,08,036.42	1,22,420.44	1,29,007.87	1,40,231.13
4.	Percentage of 1 to 3	79	77	71	69	68

Source: Finance Accounts of Government of Tamil Nadu

During the year 2016-17, the revenue raised by the State Government (₹ 95,855.16 crore) was 68 per cent of the total revenue receipts as against 69 per cent in the preceding year. The remaining 32 per cent of the receipts during 2016-17 was from the Government of India.

¹ For details please see Statement No. 14 – Detailed statements of revenue by minor heads of the Finance Accounts of the Government of Tamil Nadu for the year 2016-17. Figures under the head '0021 – Taxes on income other than Corporation Tax – Share of net proceeds assigned to States' booked in the Finance Accounts under 'A – Tax revenue' have been excluded from the revenue raised by the State and included in 'State's share of divisible Union taxes' in this statement.

1.1.2 The following table presents the details of tax revenue raised during the period from 2012-13 to 2016-17.

Table 1.2
Details of Tax revenue raised

(₹ in crore)

Sl. No.	Head of revenue	2012-13		2013-14		2014-15		2015-16		2016-17		Percentage of increase (+) or decrease (-) in 2016-17 over 2015-16
		Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	
1.	Taxes on Sales, Trade, etc.	44,007.69	44,041.13	52,826.74	53,532.17	65,202.06	57,190.80	68,874.57	57,522.03	64,835.04	63,233.58	(+) 9.92
2.	State Excise	11,473.97	12,125.68	14,469.87	5,034.91	6,483.04	5,731.18	7,296.67	5,836.02	6,636.08	6,248.16	(+) 7.06
3.	Stamp Duty and Registration Fee	8,466.94	7,645.40	9,874.22	8,251.25	10,470.18	8,362.33	10,385.29	8,721.45	9,858.17	7,236.65	(-) 17.02
4.	Taxes on Vehicles	4,141.11	3,928.43	4,881.15	3,683.58	5,147.14	3,828.95	4,882.54	4,233.39	4,793.91	4,854.29	(+) 14.67
5.	Land Revenue	80.02	131.31	112.38	272.83	171.57	170.54	203.41	257.53	315.27	153.40	(-) 40.44
6.	Taxes on immovable property other than agricultural land (urban land tax)	10.52	16.75	18.09	11.52	18.09	10.06	18.09	7.91	18.09	10.20	(+) 28.95
7.	Others ²	3,280.29	3,365.57	3,882.94	2,931.85	4,343.27	3,362.68	3,968.54	3,897.75	4,235.30	4,205.12	(+) 7.89
	Total	71,460.54	71,254.27	86,065.39	73,718.11	91,835.35	78,656.54	95,629.11	80,476.08	90,691.86	85,941.40	

Source: Finance Accounts of Government of Tamil Nadu

The following are the reasons for variations in receipts.

Stamp Duty and Registration Fee: The decrease was mainly due to decrease in receipts on adhesive revenue stamps, receipts from unstamped, insufficiently stamped documents and fees for registering documents.

Taxes on Vehicles: The increase was mainly due to increase of fees for registration of Licences, badges, permits and fitness certificates.

² 'Others' represent tax receipts pertaining to heads other than those mentioned above.

1.1.3 The following table presents the details of non-tax revenue raised during the period from 2012-13 to 2016-17.

Table 1.3
Details of Non-tax revenue raised

(₹ in crore)

Sl. No.	Head of revenue	2012-13		2013-14		2014-15		2015-16		2016-17		Percentage of increase (+) or decrease (-) in 2016-17 over 2015-16
		Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	
1.	Interest receipts, dividends and profits	1,786.87	2,053.88	1,548.98	3,422.77	2,240.28	2,588.83	2,750.67	3,093.50	2,874.85	4,503.90	(+) 45.59
2.	Crop Husbandry	127.25	125.85	120.04	213.77	93.16	150.00	145.06	44.93	128.46	56.94	(+) 26.73
3.	Forestry and Wildlife	158.57	93.94	98.65	193.87	44.86	141.30	143.02	85.52	158.59	34.22	(-) 59.99
4.	Non-Ferrous Mining and Metallurgical industries	850.96	927.19	1,078.64	933.28	1,094.08	976.59	1,191.80	981.12	1,180.99	983.90	(+) 0.28
5.	Education, Sports, Art and culture	911.34	751.88	1,565.12	1,693.29	1,606.33	1,932.01	1,985.40	1,355.04	2,404.56	1,195.23	(-) 11.79
6.	Other receipts ³	2,197.62	2,601.52	2,353.66	2,886.29	3,005.27	2,561.87	2,855.55	3,358.20	2,976.50	3,133.57	(-) 6.69
	Total	6,032.61	6,554.26	6,765.09	9,343.27	8,083.98	8,350.60	9,071.50	8,918.31	9,723.95	9,913.76	

Source: Finance Accounts of Government of Tamil Nadu

The following are the reasons for variations in receipts.

Interests receipts, dividends and profits: The overall increase in revenue was mainly due to huge increase of interest on Ways and Means Advances to Statutory Corporations, Boards and Government Companies.

Crop Husbandry: The overall increase in revenue was due to huge increase in receipts under Integrated Coconut Development

Forestry and Wildlife: The overall decrease in revenue was mainly due to decrease under receipts from Farm Forestry, Rent on Buildings and from Mines and Minerals.

Education, Sports, Art and Culture: The overall decrease in revenue was mainly due to decrease under Reimbursement of expenditure under the Rashtriya Madhayamik Shiksha Abhiyan (RMSA).

³ 'Other receipts' represent non-tax receipts pertaining to heads other than those mentioned above.

1.2 Analysis of arrears of revenue

The arrears of revenue, as on 31 March 2017, on some principal heads of revenue amounted to ₹ 31,048.57 crore, of which ₹ 13,303.19 crore was outstanding for more than five years, as detailed in Table 1.4.

Table 1.4
Arrears of revenue

(₹ in crore)

Sl.No.	Head of revenue	Total amount outstanding as on 31 March 2017	Amount outstanding for more than five years as on 31 March 2017	Replies of Department
1.	Taxes on Sales, Trade, etc.	27,320.65	10,009.41	Recovery of ₹ 5,597.81 crore was being done through issue of Recovery Certificates through auction of property. Recovery of ₹ 7,928.11 crore was stayed by High Court and other judicial authorities. Government stayed the collection of ₹ 18.08 crore. Recovery of ₹ 2,436.99 crore was held up due to rectification/review application. Collection of ₹ 563.24 crore was held up due to persons becoming insolvent. Amount of ₹ 585.88 crore was likely to be written off. Remaining arrears of ₹ 10,190.54 crore were at various stages of recovery.
2.	Stamp Duty and Registration Fee	365.48	299.46	Recovery of ₹ 365.42 crore was covered by Recovery Certificates and collection of ₹ 6 lakh was stayed by High Court and other judicial authorities.
3.	State Excise	34.68	34.68	Recovery of ₹ 14.94 crore was covered by Recovery Certificates. Recovery of ₹ 62.97 lakh was stayed by High Court and other judicial authorities. Recovery of ₹ 4.14 crore was covered by rectification/review application and persons becoming insolvent. Amount of ₹ 90.88 lakh was likely to be written off. Arrears of ₹ 13.77 crore were at various stages of collection. ₹ 29 lakh was since collected.
4.	Taxes on vehicles	2.06	00.00	Demands of ₹ 1.67 crore were covered by Recovery Certificates. An amount of ₹ 21.83 lakh was stayed by High Court and other judicial authorities. Remaining arrears of ₹ 17.01 lakh were at various stages of collection.
5.	Non-Ferrous Mining and Metallurgical industries	2,770.25	2,461.66	Demands of ₹ 131.73 crore were covered by Recovery Certificates. Recovery of ₹ 1,597.35 crore was stayed by High Court and other judicial authorities. Recovery of ₹ 10.41 crore was stayed by Government. Recovery of ₹ 5.66 crore was held up due to rectification/review application. Remaining arrears of ₹ 1025.09 crore were at various stages of recovery.
6.	Electricity Taxes	555.45	497.98	Demands of ₹ 67.12 crore were covered by Recovery Certificates. Recovery of ₹ 459.67 crore was stayed by High Court and other judicial authorities. Remaining arrears of ₹ 28.66 crore was being collected in instalments.
	Total	31,048.57	13,303.19	

Source: Replies of concerned Departments

The table indicates that recovery of some of the arrears has been stayed by judicial authorities. The table further indicates that the amount of uncollected revenue as on 31 March 2017 was about one-third of the total revenue raised by the Government during the year 2016-17.

1.3 Arrears in assessments

As per the provisions of the Tamil Nadu Value Added Tax (TNVAT) Act, the returns filed by the dealers for the year shall be deemed to have been assessed as on 31 October of the succeeding year. The TNVAT Act provides for selection of cases which were deemed to have been assessed for detailed scrutiny. The Department stated that scrutiny of 30,350 out of 1,06,810 cases was yet to be completed as on 31 March 2017, the details of which are mentioned in **Annexure 1**. The details of pendency furnished by the Department indicate that 7,755 cases relate to the assessment years 2006-07 and 2007-08, the selection of which was made between August 2008 and September 2010.

1.4 Evasion of tax detected by the Department

The details of cases of evasion of tax detected by the Commercial Taxes and Home (Transport) Departments, cases finalised and the demands for additional tax raised as reported by the Department are given in Table 1.5.

Table 1.5
Evasion of Tax

Sl. No.	Head of revenue	Cases pending as on 31 March 2016	Cases detected during 2016-17	Total	Number of cases in which assessment/ investigation completed and additional demand with penalty etc. raised		Number of cases pending for finalisation as on 31 March 2017
					Number of cases	Amount of demand (₹ in crore)	
1.	Sales Tax / VAT	7,639	10,304	17,943	8,898	2,444.56	9,045
2.	Taxes on Vehicles	75	259	334	259	0.30	75

The number of cases pending at the end of the year had increased when compared to that at the beginning of the year in respect of Sales Tax / VAT.

1.5 Pendency of Refund Cases

The number of refund cases pending at the beginning of the year 2016-17, claims received during the year, refunds allowed during the year and cases pending at the close of the year 2016-17 as reported by the Departments are given in Table 1.6.

Table 1.6
Details of pendency of refund cases

(₹ in crore)

Sl.No.	Particulars	Sales tax / VAT		Taxes on vehicles	
		No. of cases	Amount	No. of cases	Amount
1.	Claims outstanding at the beginning of the year	24,886	1,241.26	152	0.14
2.	Claims received during the year	16,372	97.59	320	0.71
3.	Refunds made during the year	15,449	741.55	441	0.77
4.	Balance outstanding at the end of the year	25,809	597.30	31	0.09

The TNVAT Act provides for payment of interest, at the rate of half *per cent* per month, if the excess amount is not refunded to the dealer within 90 days from the date of the order of assessment or revision of assessment. Due to slow pace of disposal of refund cases, Government may incur liability for payment of interest.

1.6 Response of the Departments/Government towards audit

The Accountant General (Economic and Revenue Sector Audit), Tamil Nadu (AG) conducts periodical inspection of the Government Departments to test check the transactions and verify the maintenance of important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with Inspection Reports (IRs) incorporating irregularities detected during the inspection and not settled on the spot, which 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 comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial replies to the AG within one month from the date of issue of the IRs. Serious financial irregularities are referred to the heads of the Departments and the Government.

IRs issued upto 31 December 2016 disclosed that 29,696 paragraphs involving money value of ₹ 5,792.97 crore relating to 5,692 IRs, remained outstanding at the end of June 2017 as mentioned below along with the corresponding figures for the preceding two years in Table 1.7.

Table 1.7
Details of pending IRs

	June 2015	June 2016	June 2017
Number of IRs pending settlement	7,070	6,830	5,692
Number of outstanding audit observations	24,978	28,599	29,696
Amount of revenue involved (₹ in crore)	4,699.50	4,624.91	5,792.97

Source: As per data maintained in office of the AG(E&RSA), Tamil Nadu, Chennai

1.6.1 The Department-wise details of the IRs and audit observations outstanding as on 30 June 2017 and the amounts involved are mentioned in Table 1.8.

Table 1.8
Department-wise details of IRs

(₹ in crore)					
Sl. No.	Name of the Department	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved
1.	Commercial Taxes and Registration	Taxes on Sales, Trade, etc.	1,300	17,278	3,000.66
		Stamp duty and registration fee	1,781	5,697	1,823.86
		Entry tax	173	306	5.94
		Entertainment tax	78	80	4.16
		Luxury tax	128	157	4.60
		Betting tax	11	22	0.09
		Expenditure audit	13	46	0.03
2.	Revenue	Land revenue	1,099	3,626	316.63
		Urban land tax	130	282	20.54
3.	Home (Transport)	Taxes on vehicles	413	1,119	51.64
4.	Home (Prohibition and Excise)	State excise	223	374	30.06
5.	Industries	Mines and minerals	235	494	210.99
6.	Energy	Electricity tax	108	215	323.77
Total			5,692	29,696	5,792.97

Source: As per data maintained in office of the AG(E&RSA), Tamil Nadu, Chennai

The large pendency of the IRs, due to non-receipt of the replies is indicative of failure by heads of offices and departments to initiate action to rectify defects, omissions and irregularities pointed out by the AG through the IRs.

1.6.2 Non-production of records to audit for scrutiny

The programme of local audit of commercial tax offices is prepared sufficiently in advance and intimated to the Department / offices one month before the commencement of local audit to enable them to keep relevant records ready for audit scrutiny.

During 2016-17, 1,29,572 sales tax assessment records were called for in 162 offices, out of which 17,811 records in 106 offices were not made available for audit. Of these, 114 assessment records pertained to six special circles where assessments of major dealers are dealt with.

The delay in production of records for audit would render the audit scrutiny ineffective, as rectification of under-assessment, if any, might become time barred, by the time these files are produced to audit.

The matter regarding non-production of records in each office and arrears in assessment is brought to the notice of the Department through the local audit reports of the respective offices.

The non-production of assessment records is a serious lapse on the part of the executive authorities thereby defeating the very purpose of audit as it also hinders the discharge of duties of the Comptroller and Auditor General of India as enshrined in the Constitution.

1.6.3 Response of the Departments to draft Audit Paragraphs

The draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India are forwarded by AG to the Principal Secretaries of the concerned Departments, drawing their attention to audit findings and requesting them to send their response within six weeks. The status of receipt / non-receipt of replies from the Departments is indicated at the end of each such paragraph included in the Audit Report.

Thirty nine draft paragraphs (including one Performance Audit) proposed for inclusion in the Report of the Comptroller and Auditor General of India for the year ended March 2017 were forwarded to the Principal Secretaries of the respective Departments between June and October 2017. However, replies to 27 paragraphs were not received (January 2018). These paragraphs have been included in the Report without the response of the Principal Secretary of the Departments concerned. However, replies of Assessing Authorities have been included in the paragraphs.

1.6.4 Follow-up of Audit Reports

With a view to ensure accountability of the executive in respect of the issues dealt with in the Audit Reports, the Public Accounts Committee (PAC) laid down in 1997 that after the presentation of the Report of the Comptroller and Auditor General of India in the Legislative Assembly, the Departments shall initiate action on the audit paragraphs and the action taken explanatory notes thereon should be submitted by the Government within two months of tabling the Report, for consideration of the Committee. In spite of these instructions, the explanatory notes on audit paragraphs of the Reports were being delayed inordinately. We observed that 231 paragraphs included in the Reports of the Comptroller and Auditor General of India on the Revenue Receipts of the Government of Tamil Nadu upto the year ended March 2016 were pending discussion by PAC. Out of the above, the Departments have not furnished explanatory notes in respect of 194 paragraphs. Review of the outstanding action taken notes (ATNs) as of 31 March 2017 on paragraphs included in the Report of the Comptroller and Auditor General of India, Revenue Receipts, Government of Tamil Nadu indicated that the Departments had not submitted ATNs for 1,622 recommendations pertaining to audit paragraphs discussed by PAC. Out of the pending 1,622 recommendations, even the first ATN had not been received in respect of 1,057 recommendations, the earliest of which related to the Audit Report for the year 1986-87.

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

To analyse the system of addressing the issues highlighted in the IRs / 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 the Audit Report. For the current Audit Report, the Home (Transport) Department was taken up for analysis.

1.7.1 Position of Inspection Reports

The summarised position of the IRs issued to Home (Transport) Department relating to Motor Vehicles Tax during the last 10 years, paragraphs included in these reports and their status as on 31 March 2017 are tabulated in Table 1.9.

Table 1.9
Position of Inspection Reports

(₹ in crore)

Year	Opening Balance			Additions			Total			Clearance			Closing Balance		
	IRs	Paras	Money Value	IRs	Paras	Money Value	IRs	Paras	Money Value	IRs	Paras	Money Value	IRs	Paras	Money Value
2007-08	367	901	73.28	48	131	7.37	415	1,032	80.65	5	8	2.33	410	1,024	78.32
2008-09	410	1,024	78.32	46	126	7.38	456	1,150	85.70	7	9	2.85	449	1,141	82.85
2009-10	449	1,141	82.85	32	94	7.79	481	1,235	90.64	10	14	3.01	471	1,221	87.63
2010-11	471	1,221	87.63	32	107	8.05	503	1,328	95.68	56	350	4.75	447	978	90.93
2011-12	447	978	90.93	30	126	4.05	477	1,104	94.98	60	141	0.75	417	963	94.23
2012-13	417	963	94.23	49	139	0.57	466	1,102	94.80	9	73	0.53	457	1,029	94.27
2013-14	457	1,029	94.27	42	249	6.17	499	1,278	100.44	2	111	0.66	497	1,167	99.78
2014-15	497	1,167	99.78	41	232	2.58	538	1,399	102.36	5	158	0.95	533	1,241	101.41
2015-16	533	1,241	101.41	46	369	13.18	579	1,610	114.59	163	484	54.81	416	1,126	59.78
2016-17	416	1,126	59.78	45	214	8.01	461	1,340	67.79	53	306	18.31	408	1,034	49.48

The above table indicates that there was considerable progress in settlement of outstanding inspection reports and paragraphs during the years 2014-15 to 2016-17. However, the pendency of paragraphs has increased over the ten year period and as against 901 paragraphs, which were pending at the beginning of 2007-08, the number at the end of 2016-17 had increased to 1,034 paragraphs. The Department may take steps for early clearance of the paragraphs.

1.8 Audit planning

The unit offices under various Departments are categorised into high, medium and low risk units according to their revenue position, past trends of audit observations, nature / volume of transactions, etc. The annual audit plan is prepared on the basis of risk analysis which, *inter alia*, includes statistical analysis of the revenue earnings during the past five years, features of the tax administration, audit coverage and its impact during the past five years, etc.

During the year 2016-17, the audit universe comprised 1,558 auditable units, of which 430 units (27.59 per cent) were planned, and all the planned units were audited. The details are shown in **Annexure 2**.

1.9 Results of audit

Position of local audit conducted during the year

The records of commercial taxes, state excise, motor vehicles tax, stamp duty and registration fee, electricity tax, mines and minerals and land revenue were test checked during 2016-17 and under-assessment, short levy, loss of revenue and other observations amounting to ₹ 6,470.97 crore were noticed in 4,560 cases, out of which, the Departments accepted 220 cases involving ₹ 2.53 crore. During the year 2016-17, the Departments also accepted under-assessment and other deficiencies in 663 cases involving ₹ 31.08 crore, which were pointed out in earlier years. The departments recovered ₹ 17.20 crore during 2016-17.

1.10 Scope of this Report

This Report contains 20 paragraphs including one Performance Audit relating to non/short levy of taxes, stamp duty, registration fee, interest, penalty and other audit observations involving financial effect of ₹ 4,769.56 crore. The Departments / Government accepted audit observations involving ₹ 7.59 crore; of which ₹ 2.35 crore was recovered. These are discussed in succeeding Chapters II to V.

CHAPTER II

VALUE ADDED TAX / CENTRAL SALES TAX

CHAPTER II

VALUE ADDED TAX / CENTRAL SALES TAX

2.1 Tax administration

The administration of the Department is vested with the Commissioner of Commercial Taxes (CCT). The State has been divided into 40 zones, comprising 334 Assessment Circles including four Large Taxpayers⁴ units (LTUs) at Chennai and one Divisional Large Taxpayers unit at Coimbatore. Assessment, levy and collection of tax are done by the Assessing Authorities (AAs) in charge of the Assessment Circles. Monitoring and control at the Government level is done by the Principal Secretary, Commercial Taxes and Registration Department.

2.2 Internal audit

The Internal Audit wing comprises of one Assistant Commissioner (AC), one Commercial Tax Officer (CTO) and two supporting staff in each zone. The assessments finalised and the refunds made in the preceding year were to be taken up for audit in the succeeding year.

The details of offices programmed for conduct of internal audit and the offices in respect of which internal audit was done during the years 2014-15 to 2016-17 were not furnished by the Department. The year-wise break up of outstanding inspection reports was also not furnished by the Department, though the Department stated that 23,038 paragraphs involving ₹ 662 crore were pending for settlement as of 31 March 2017.

Our check of records in seven⁵ out of 40 zonal offices revealed that despite CCT's emphasis (April 2014) on strengthening of internal audit, the sanctioned posts of AC and CTO were lying vacant for significant periods during 2014-15 to 2016-17. Our verification of files relating to audit programs revealed that during the period from 2014-15 to 2016-17, an average of 26.67 units of the total auditable units were programmed and an average of 18.67 units were covered. Thus, there was shortfall of coverage of even programmed units.

When this was pointed out, the Department replied that short fall in conduct of audit was due to vacancies and diversion of personnel to other assignments.

This indicated that least importance was being given to internal audit, though internal audit is an important component of internal control system and gives an opportunity to the Department to identify its weaknesses and undertake corrective measures.

⁴ Large taxpayers – Dealers whose taxable turnover for a year exceeds ₹ 200 crore.

⁵ Zone V, Chennai, Zone VII, Chennai, Zone VIII, Chennai, Zone IX, Chennai, Madurai (East), Tiruppur and Virudhunagar

Despite CCT's instructions in 2014 that internal audit reports in respect of an Assessment Circle is to be communicated through online only to the concerned Assessment Circle within 15 days from the date of completion of audit, we observed that online communication of internal audit reports to the concerned Assessment Circle was not undertaken in any of the seven zones. We also observed that in four⁶ zones, out of the total 30 reports issued, 14 reports (47 *per cent*) were issued to the Assessment Circles belatedly; the period of delay ranging from three to 78 days after the time prescribed for issue of report.

Failure to expedite finalisation and communication of inspection reports resulted in delay in pursuance of paras. In the remaining zones, no records were maintained for watching issue of internal audit reports to the concerned Assessment Circles after completion of audit.

We found the absence of monitoring system in the zonal offices to ensure timely action being taken by the Assessment Circles in respect of the observations contained in the internal audit reports. No records were maintained to watch the issue and disposal of internal audit reports. We observed in four⁷ zones that replies to 25 out of a total of 30 reports (83 *per cent*) issued during the period of coverage were received beyond the stipulated period of 90 days; the period of delay ranging from 13 days to 907 days.

Thus, non-maintenance of records and lack of proper monitoring system to ensure timely action being taken in respect of issues contained in the internal audit reports has led to huge pendency of internal audit reports and audit observations.

We also noticed that the programme for internal audit is designed and approved by the DC (Territorial), who is also the administrative head for the AAs within the Zone. The same reporting officer for both internal audit as well as AA does not favour independence of internal audit. We, therefore, recommended that internal audit be placed under the independent authority within the department, who is not in charge of any assessment.

The Department accepted the audit observation / recommendation and stated that this would be taken care of at the time of functional re-organisation / cadre re-structuring.

⁶ Zone V, Chennai, Madurai (East), Tiruppur and Virudhunagar

⁷ Zone V, Chennai, Madurai (East), Tiruppur and Virudhunagar

2.3 Results of audit

Test check of records of departmental offices conducted during the period from April 2016 to March 2017 revealed under-assessment of tax and other irregularities amounting to ₹ 4,230.21 crore in 3,366 cases, which broadly fall under the following categories.

Table: 2.1

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1	Audit of Assessment, levy and collection of VAT and CST on Petroleum Products	1	1,376.63
2	Audit of the Functioning of Business Intelligence Unit	1	2,457.77
3	Audit of Collection of arrears of tax in Commercial Taxes Department	1	0.66
4	Incorrect exemption of tax	54	59.92
5	Incorrect rate of tax	152	10.38
6	Incorrect computation of taxable turnover	325	25.50
7	Non/short levy of tax	372	17.99
8	Non-levy of penalty/interest	171	18.05
9	Incorrect allowance of input tax credit	1,555	257.88
10	Others	567	5.41
11	Expenditure audit	167	0.02
	Total	3,366	4,230.21

The Department accepted under-assessment and other deficiencies amounting to ₹ 2.28 crore involved in 196 cases pointed out during the year 2016-17. The Department further accepted under-assessment and other deficiencies amounting to ₹ 20.11 crore in 396 cases, which were pointed out in earlier years. An amount of ₹ 5.98 crore in 442 cases had been collected.

Audit of Assessment, levy and collection of VAT and CST on Petroleum Products, Audit of the Functioning of Business Intelligence Unit, Audit of Collection of arrears of tax in Commercial Taxes Department and few illustrative cases involving ₹ 3,841.68 crore are discussed in the following paragraphs.

2.4 Audit of 'Assessment, levy and collection of VAT and CST on Petroleum Products'

2.4.1 Introduction

The levy of Value Added Tax on Petroleum products contribute significantly to the State's revenue from tax on sale of goods. The four⁸ public sector oil companies are the highest contributors to revenue from petroleum products. The revenue from tax on sale of petroleum products constitutes nearly 20 per cent of the State's sales tax revenue.

The petroleum products are classified under the First and Second Schedule to the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). The major petroleum products, namely, Aviation Turbine Fuel (ATF), Petrol, High Speed Diesel (HSD) Oil, Kerosene and Light Diesel Oil (LDO) are mentioned in the Second Schedule involving levy of tax at the point of first sale in the State. Other petroleum products such as Crude Oil, Liquefied Petroleum Gas (LPG), Lubricating oil and Kerosene sold through Public Distribution System (PDS) are mentioned in the First schedule and involve levy of tax at every point of sale in the State.

Audit was conducted to ascertain (i) the sufficiency of the existing system / statutory provisions for assessment, levy and collection of tax on sale of petroleum products; (ii) adherence to the provisions governing assessment; and (iii) the functioning of the e-transit pass system. Audit was conducted from April to August 2017 covering the assessments finalised during the period 2014-15 to 2016-17.

The audit observations were discussed with the Additional Chief Secretary to Government, Commercial Taxes and Registration Department in the Exit Conference held on 9 January 2018. The views expressed at the meeting have been considered and duly incorporated in relevant paragraphs of the Report.

Audit Findings

The audit findings from the examination of records are given in the succeeding paragraphs. In the beginning, audit findings on common issues relating to petroleum products are given, followed by the specific issues relating to each petroleum product.

Common issues

2.4.2 Exemption on the sale turnover among oil companies allowed without verification

As per Explanation II in the Second Schedule to the TNVAT Act, sale of petroleum products by one oil company to another oil company shall not be deemed to be the first sale in the State and is exempted. The oil companies are required to file a return in Form 'J' meant for goods mentioned in the Second

⁸ Chennai Petroleum Corporation Limited (CPCL), Bharat Petroleum Corporation Limited (BPCL), Hindustan Petroleum Corporation Limited (HPCL) and Indian Oil Corporation Limited (IOC)

Schedule. The said return does not contain provision to furnish the details of name, TIN of the purchaser, quantity sold, invoice number and date relating to the sale of petroleum products amongst the oil companies. In the absence of these details, the correctness of the claim of exemption as sale by one oil company to another oil company is not susceptible to verification.

During check of records in four⁹ Assessment Circles, we noticed from the Form 'J' returns that four oil companies had declared a turnover of ₹ 88,966.28 crore as sale of petroleum products amongst themselves during the years 2013-14 to 2015-16 and claimed exemption from levy of tax. We, however, noticed that the AAs of these Assessment Circles did not obtain the quantitative details of product-wise / dealer-wise sale pertaining to the above turnover, and verify with records of other oil companies to ensure the correctness of the claim of exemption.

After we pointed this out (June 2017), the AAs issued notices (July / August 2017) to the oil companies calling for the details of product-wise / dealer-wise sales of petroleum products. Further report was awaited (January 2018).

2.4.3 Levy of purchase tax

As per Section 12 of the TNVAT Act purchase tax is leviable, where a dealer purchases taxable goods without payment of tax within the State and sends the goods so purchased to a place outside the State, on stock transfer.

As per Explanation II in the Second Schedule, sale made amongst oil companies are exempted from levy of tax. Hence, levy of purchase tax is attracted if the goods so purchased without payment of tax are sent to other States on stock transfer.

2.4.3.1 Scrutiny of Form WW¹⁰ filed by an oil company assessed in LTU-II Assessment Circle indicated stock transfer of Motor Spirit (MS) and HSD to other State. The oil company had not paid purchase tax stating that locally purchased goods were not received at Ennore Terminal (at Chennai), from which stock transfer to other States was made during the years 2013-14 to 2015-16.

We, however, noticed from scrutiny of records that the oil company had received 6,42,499.8 kilo litres (KLs) of petroleum products without payment of tax from CPCL during the years 2013-14 to 2015-16. Since Ennore Terminal was commissioned only during the middle of 2013-14 and the other Terminal at Tondiarpet was shifted to Ennore, the claim of the oil company for non-payment of purchase tax in respect of stock transfer of petroleum products during the years 2013-14 to 2015-16 was not acceptable.

After we pointed this out (September 2017), the AA issued notice (September 2017) to the dealer calling for details of purchases and stock transfer of

⁹ LTU-I, LTU-II, LTU-III and LTU-IV

¹⁰ Form WW is the statement of audited accounts filed by dealers whose turnover for a year is in excess of ₹ one crore.

petroleum products from the terminal at Ennore. Further report was awaited (January 2018).

2.4.3.2 An oil company assessed in LTU-I Assessment Circle had not paid purchase tax on the ground that separate accounting records were maintained to establish track of source of product that is sold or stock transferred to other State.

We observed that since the products purchased from various sources are stored in a common tank, the contention of the dealer that stock transfers were made only out of the products sourced from refinery, interstate purchase and imports is not acceptable. Merely maintaining the source of purchase of the product that is being sold or stock transferred in the accounting records does not give separate identity to the product that is stored in common tank, especially when oil is the product in question. Hence, purchase tax was leviable.

After we sought (June 2017) the quantitative details of purchases made by the dealer from other oil companies within the State and the accounting thereof, the AA issued notice (July 2017) to the dealer. Further report was awaited (January 2018).

2.4.4 Absence of provision to levy tax at second point of sale

Under the TNVAT Act, petrol and diesel are taxable at the first point of sale in the State. These products are kept outside the ambit of levy of tax at every point of sale in respect of value addition that takes place at each stage. The oil manufacturing companies determine the retail price of petrol and diesel to be adopted by the retail outlets. The petrol and diesel is sold by oil manufacturing companies to dealers on cost plus profit basis. The dealers now own petrol and diesel. State VAT and dealers' commission are then added to the cost of petrol which determines the final retail price of petrol. The dealers' commission is not considered while determining the element of value added tax, though the sale price of petrol and diesel is inclusive of dealers' commission. This results in dealers' commission not being subjected to levy of tax since levy of tax on petrol and diesel is restricted to first point of sale inside the State.

We noticed that the commission paid to the dealers during the period from 2013-14 to 2015-16 was in the range of ₹ 1.09 to ₹ 2.04 per litre. The oil companies had effected sale of 1,96,31,712 KLs of petrol and diesel during the period 2013-14 to 2015-16. The commission realised by the dealers calculated at the minimum rate for the years works out to ₹ 2,695.68 crore. Thus, the non-inclusion of dealers' commission for determination of turnover subjected to levy of tax and the restriction of levy to first point of sale resulted in non-realisation of revenue on the dealers' commission, which is part of final sale price of petrol and diesel.

We observed that the Value Added Tax Acts of the State of Haryana and UT of Delhi does not restrict the levy of tax on petrol and diesel to the first point of sale. Hence, the retail outlets pay tax on their sale price, which is inclusive of dealers' commission. Similar provisions in the State of Tamil Nadu could have resulted in realisation of additional revenue of ₹ 645.35 crore by way of

tax on dealers' commission in respect of sales made at retail outlets during the period 2013-14 to 2015-16.

We, therefore, suggest for amendment of the TNVAT Act to provide for multi point levy of tax on sale of petrol and diesel in order to augment the revenue of the State.

During Exit Conference, the Additional Chief Secretary to Government stated that the suggestion of audit would be taken up for further consideration.

2.4.5 Non-inclusion of private sector oil companies in Explanation III to the Second Schedule

Tax on the petroleum products falling under Second schedule of the TNVAT Act is levied at the first point of sale in the State. As per Explanation II to the Second Schedule, a sale by one oil company to another oil company as specified in Explanation III, shall not be deemed to be the first sale in this State. Explanation III specifies six public sector oil companies with a provision that it shall include any other oil company notified in this behalf by the Government in the Tamil Nadu Government Gazette. The State Government, however, have not notified private sector oil companies. Thus, subsequent sale amongst public and private sector oil companies does not attract levy of tax since the earlier transaction of sale was subjected to levy of tax, as mentioned below.

- Sale of petrol and diesel by a private sector oil company for ₹ 151.45 crore was exempted from levy of tax as the preceding sale by two oil companies for ₹ 143.49 crore was subjected to levy of tax. Levy of tax in respect of sale effected by private oil company would have fetched additional revenue of ₹ 1.90 crore.
- Sale of petrol and diesel by two oil companies for ₹ 98.91 crore was exempted from levy of tax as the preceding sale by private sector oil company for ₹ 90.86 crore was subjected to levy of tax. Levy of tax in respect of sale effected by public sector oil companies would have fetched additional revenue of ₹ 2.05 crore.

We noticed that in Andhra Pradesh Value Added Tax Act, the private sector oil companies are also included along with public sector oil companies so that the sale amongst them is not considered as first sale.

We, therefore, suggest for amendment of the TNVAT Act to provide for inclusion of private sector oil companies under Explanation III, so as to augment the revenue of the State.

The Department stated during Exit Conference that proposal in this regard was pending with the Finance Department.

Specific issues relating to each petroleum products

2.4.6 Crude oil

Crude oil, being declared goods, is taxable at the rate of five *per cent* at every point of sale in the State as per entry 41 of Part B of First Schedule to the TNVAT Act.

2.4.6.1 Non-reversal of input tax credit (ITC)

As per Section 19(9) of the TNVAT Act, no ITC shall be available to a registered dealer for tax paid at the time of purchase of goods, if such inputs are damaged in transit or destroyed at some intermediary stage of manufacture. As per Section 19(12) of the TNVAT Act, where a dealer has availed credit on inputs and when the finished goods becomes exempt, credit availed on inputs used therein, shall be reversed.

- During test check of records in LTU-III Assessment Circle, we noticed that reversal of ITC of ₹ 7.68 crore effected by the AA while finalising (December 2015) the assessment of the oil company for the year 2010-11 towards loss of inputs in manufacturing process was remanded back (February 2017) to the AA for fresh assessment by the Joint Commissioner (CT) Appeals. However, the AA did not take further action (September 2017). We noticed from the Annual Report for the years 2013-14 to 2015-16 that similar loss of inputs was incurred in manufacturing process involving reversal of ITC of ₹ 10.98 crore.

- During check of records in LTU-III Assessment Circle, we noticed (August 2017) that an oil company, which availed ITC on purchase of crude oil, had not reversed proportionate ITC relating to exempted sale of petroleum products specified in the Second Schedule to the TNVAT Act, *viz.*, sale to another company. The non-reversal of ITC for the period from October 2012 to March 2013 worked out to ₹ 11.31 crore.

We pointed this out to the Department in July / August 2017. Reply was awaited (January 2018).

2.4.7 Aviation Turbine Fuel (ATF)

As per entry 5(i) of Second Schedule to the TNVAT Act, sale of ATF is leviable to tax at the rate of 29 *per cent* at the point of first sale in the State. Inter-State sale of ATF not covered by 'C' Form declaration is also taxable at the rate of 29 *per cent* as per Section 8(2) of the Central Sales Tax Act, 1956 (CST Act).

2.4.7.1 Incorrect grant of exemption from levy of tax

The Notification issued by Government of India, Ministry of Civil Aviation in November 2002 provides for exemption from levy of all taxes and duties in India whether levied by the Central Government or the State Government, as the case may be, in respect of fuel and lubricants filled into receptacles forming part of any aircraft registered in any other Countries (other than India), which is a party to the convention or which had entered into the said agreement with India and operating a scheduled or non-scheduled international air service to or from India.

As per Section 5(5) of the CST Act, purchase of ATF by designated Indian carrier for the purpose of its international flight was granted exemption. Similarly, by issue of Notification in September 2008, exemption was granted by Government of Tamil Nadu in respect of tax payable on sale of ATF by the oil companies in Tamil Nadu to (i) aircraft of any country other than India, which was a party to the convention on International Civil Aviation or which had entered into Air Services Agreements with India and (ii) Indian carriers, specified by Government of India as “designated Indian carriers”, for the purpose of their international flights. The exemption is subject to the condition that the oil companies obtain and furnish a certificate in the form prescribed.

- In LTU-I and LTU-II Assessment Circles, we noticed that exemption availed by two oil companies on a turnover of ₹ 2,067.35 crore as representing sale of ATF to international airlines during the years 2013-14 to 2015-16 was not supported by necessary certificates prescribed in this regard. The non-levy of tax in the absence of certificates worked out to ₹ 599.53 crore.

After we pointed this out, the AAs issued notices to the oil companies calling for the production of certificates in support of the claim of exemption.

- During check of records in LTU-III Assessment Circle, we noticed that the AA, while finalising (March 2017) the assessment of an oil company under the CST Act for the year 2015-16 exempted the turnover of ₹ 200.77 crore representing sale of ATF to another oil company at Bangalore. The incorrect grant of exemption resulted in short levy of tax of ₹ 58.22 crore (calculated at the rate of 29 per cent on the turnover of ₹ 200.77 crore).

- During check of records in LTU-IV Assessment Circle, we noticed that exemption claimed by an oil company on sale of ATF to international airlines for ₹ 23.32 crore during the year 2013-14 was not supported by certificates issued by the respective international airlines which effected purchase of ATF but by an agent who certified the genuineness of the actual purchaser (international airlines) and the supplier company. This was in contravention to the provisions of the Government order governing grant of exemption. The incorrect grant of exemption based on invalid certificates resulted in non-levy of tax of ₹ 6.76 crore.

- During check of records in LTU-IV Assessment Circle, we noticed that exemption was claimed by an oil company during the years 2014-15 and 2015-16 on a turnover of ₹ 18.10 crore as sale of ATF to international carrier, Air Arabia. Since the status of designated airline was not accorded to Air Arabia by the Government of India, Ministry of Civil Aviation in respect of its operations to Ras al-Khaima, the claim of exemption on sale of ATF to Air Arabia in respect of its operations to Ras al-Khaima was required to be disallowed. Similarly, the exemption claimed by the oil company on sale of ATF to World Fuel Services and Aviation Services Management for ₹ 78.70 lakh during the years 2012-13, 2014-15 and 2015-16 was required to be disallowed in the absence of Notification granting exemption on such sales. The levy of tax at the rate of 29 per cent on the turnover of ₹ 78.70 lakh worked out to ₹ 22.82 lakh.

After we pointed out the above, the AAs issued notices to the oil companies proposing disallowance of the claim of exemption. Further report was awaited (January 2018).

During Exit Conference, the Government stated that proposal prescribing time limit for furnishing of certificates / documents and denial of exemption / reduction in rate of tax in case of non-compliance would be considered.

2.4.7.2 Application of incorrect rate of tax

As per entry 5(i) of the Second Schedule to the TNVAT Act, on sale of ATF including Jet fuel, tax is leviable at the rate of 29 *per cent* at the point of first sale in the State. With effect from 19 June 2012, ATF sold to an aircraft with a maximum take-off mass of less than forty thousand kilograms operated by scheduled airlines is taxable at the rate of five *per cent* at the point of first sale in the State.

During check of records in three¹¹ Assessment Circles, we noticed that the AAs had accepted the payment of tax at reduced rate of five *per cent* by three oil companies on sale of ATF including Jet Fuel to Turbo-prop aircraft during the years 2012-13 to 2015-16, though documentary evidences regarding compliance of the conditions governing such reduced rate were not furnished by the oil companies. The incorrect allowance of reduced rate of tax on the turnover of ₹ 880.64 crore resulted in short levy of tax of ₹ 211.35 crore.

After we pointed the above to the Department, the AAs issued notices to the oil companies proposing levy of tax at differential rate. Further report was awaited (January 2018).

2.4.8 Liquefied Petroleum Gas (LPG) and Lubricant oil

The petroleum products, *viz.*, Lubricants, Auto LPG and Commercial LPG Cylinders, not being specified elsewhere in any of the Schedules to the Act attract levy of tax at the rate of 14.5 *per cent* under entry 69 of Part C of the First Schedule to the TNVAT Act. These goods, when sold as industrial inputs for use in manufacture inside the State attract levy of tax at the concessional rate of five *per cent*. The grant of concessional rate is subject to the production of certificate by the purchasing dealer.

2.4.8.1 During check of records in LTU-I and LTU-IV Assessment Circles, we noticed that two oil companies had effected sale of petroleum products as industrial inputs and paid tax at the rate of five *per cent* instead of at the rate of 14.5 *per cent* on the turnover of ₹ 4,143.26 crore during the years 2013-14 to 2015-16. However, the dealers did not furnish industrial input certificates in support of the concessional rate of tax. Hence, the adoption of concessional rate of tax was not in order. The amount of tax leviable at the differential rate of 9.5 *per cent* worked out to ₹ 393.61 crore.

We verified the database of Commercial Taxes Department (CTD) and followed up with further scrutiny of records in the Assessment Circles. Such scrutiny revealed that 73 dealers of 52 Assessment Circles to whom the sales were effected at concessional rate, had not filed returns under the TNVAT

¹¹ LTU-I, LTU-II and LTU-IV

Act. Of these 73 dealers, the RCs of 46 dealers were cancelled prior to the purchase of goods.

We pointed this out to the Department in September 2017. Reply was awaited (January 2018).

During Exit Conference, the Government stated that proposal prescribing time limit for furnishing of certificates / documents and denial of exemption / reduction in rate of tax in case of non-compliance would be considered.

2.4.8.2 Our analysis of the database of CTD, followed up with further verification in Assessment Circles revealed that 129 dealers of 90 Assessment Circles had effected purchase of commercial LPG cylinders, lubricant oil and auto LPG for ₹ 23.82 crore during the years 2013-14 to 2015-16 subsequent to the cancellation of RC. The tax and penalty leviable on the turnover of ₹ 23.82 crore worked out to ₹ 5.18 crore.

After we pointed this out (September 2017), the AAs of 40 Assessment Circles issued notices (between September and December 2017) to 60 dealers proposing levy of tax and penalty of ₹ 3.39 crore. Further report regarding action taken after issue of notice and reply in respect of the remaining cases was awaited (January 2018).

2.4.8.3 Exemption was granted (June 2011) in respect of tax payable on the sale of LPG for domestic use in the State, by an oil company as defined in Explanation III to the Second Schedule of the Act to another oil company listed in the above-mentioned Explanation or to a distributor in Tamil Nadu.

Our scrutiny of monthly returns for the years 2013-14 to 2015-16 filed by an oil company of LTU-III Assessment Circle revealed that the oil company had effected sale of LPG to the purchasing oil company and claimed exemption from levy of tax as 'LPG for domestic use'. We noticed that the dealer had, *inter-alia*, effected sale of LPG domestic bulk and LPG domestic bulk (Non-subsidised) to the purchasing oil company and claimed exemption for ₹ 922.05 crore under the category 'LPG for domestic use'.

The Bulk LPG were transported by the oil company through LPG road tankers (LPG Bullet vehicles) and supplied to various bottling plants of the purchasing oil company. Hence, we suggested that the end or ultimate use of Bulk LPG had to be ensured before allowing the exemption claimed by the assessee. In other words, it had to be ensured that the Bulk LPG sold had been converted only as LPG for domestic use and filled in 14.2 kg cylinders in the bottling plants of the purchasing oil company before allowing exemption from levy of tax. Hence, the quantum of sale made by the oil company under headings 'LPG domestic bulk and LPG domestic bulk (Non-subsidised)' requires further cross verification with the relevant production records of the purchasing oil company to ensure that the commodity had been ultimately sold only for domestic purpose.

After we pointed this out in August 2017, the AA issued notice (August / September 2017) to the dealer calling for production of documentary evidences in support of the claim of exemption on sale of bulk LPG. Further report was awaited (January 2018).

2.4.9 Superior Kerosene Oil (SKO)

As per entry 9 of Second Schedule to the TNVAT Act, Kerosene other than those sold through Public Distribution System (PDS) is assessable to tax at the rate of 25 *per cent* at the point of first sale within the State, while kerosene sold through PDS was assessable to levy of tax at the rate of five *per cent* under entry 72 of Part B of the First Schedule to the TNVAT Act.

By a Notification issued in March 2007, the rate of tax on sale of SKO was reduced from 25 *per cent* to four *per cent* (five *per cent* from 12 July 2011) subject to the condition that the sale is to the manufacturer for use in manufacture and the purchaser is not eligible for ITC under TNVAT Act.

2.4.9.1 During check of records in LTU-I and LTU-IV Assessment Circles, we noticed that two oil companies had paid tax at the concessional rate of five *per cent* on sale of SKO effected during the years 2013-14 to 2015-16. However, documentary evidences in support of the concessional rate of tax were not furnished. In the absence of documentary evidences, levy of tax at the differential rate of 20 *per cent* on the sales turnover of ₹ 175.23 crore worked out to ₹ 35.05 crore.

After we pointed this out (June 2017), the AAs issued notice (July 2017) to the dealers. Further report was awaited (January 2018).

During Exit Conference, the Government stated that proposal prescribing time limit for furnishing of certificates / documents and denial of exemption / reduction in rate of tax in case of non-compliance would be considered.

2.4.9.2 The Notification (March 2007) granting concessional rate of tax on sale of SKO provided that the purchasers shall not be eligible for claim of ITC.

We checked the details furnished by two oil companies regarding sale of SKO and compared the same with the database of CTD. Such verification revealed that 12 dealers of 10¹² Assessment Circles, who purchased industrial kerosene for ₹ 25.65 crore during the period 2012-13 to 2015-16 had claimed ITC of ₹ 1.28 crore in contravention to the conditions of the Notification. This also warranted levy of penalty of ₹ 64.03 lakh.

After we pointed this out in September 2017, the AAs issued (between September and November 2017) notices to the dealers proposing reversal of ITC and levy of penalty. Further report was awaited (January 2018).

2.4.9.3 As per Section 19(20) of the TNVAT Act introduced in August 2010 with retrospective effect from 1 January 2007, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of ITC over and above the output tax of those goods shall be reversed. The oil companies, which had sold SKO at subsidised price to various distributors / sub-distributors of kerosene had effected reversal of ITC in respect of such sales only from 18 July 2012 as the writ petition filed by them in respect of the earlier period was pending in the Madras High Court.

¹² Alandur, Cholavaram, Dindigul (Rural), Esplanade, Hosur (North), Koyambedu, Lalgudi, Sembium, Sriperumbudur and Vepery

- During check of records in LTU-IV Assessment Circle, we noticed that an oil company had purchased 8,27,996 KLS of PDS Kerosene between August 2012 and March 2016 and made reversal of ITC of ₹ 108.50 crore under Section 19(20) of the Act. We noticed that the purchase price adopted for computation of reversal of ITC was lesser than the actual purchase price. This resulted in short reversal of ITC of ₹ 1.79 crore relating to the period from August 2012 to March 2016.

- During check of records in LTU-II Assessment Circle, we noticed that an oil company had made reversal of ITC of ₹ 21.06 crore involving purchase turnover of ₹ 643.30 crore relating to the years 2013-14 to 2015-16. This corresponds to 1,69,024.7 KLS of PDS Kerosene. Though reversal of ITC of ₹ 21.60 crore was required to be made in respect of this quantity, the dealer had reversed ITC of ₹ 21.06 crore. This resulted in short reversal of ITC of ₹ 53.39 lakh.

We pointed this out to the Department in September 2017. Reply was awaited (January 2018).

- Our scrutiny of the records of the Department of Civil Supplies and Consumer Protection revealed that the Oil Manufacturing Companies (OMCs) had requested (January 2011) the Government to give relief, due to extra burden in view of the introduction of Section 19(20) in the TNVAT Act. The increase in sale price of kerosene, which was linked to Section 19 (20) of the Act, was being paid by Civil Supplies and Consumer Protection Department, Chennai in the form of subsidy to OMCs, through the Tamil Nadu Civil Supplies Corporation.

We noticed that the three oil companies had received subsidy of ₹ 55.07 crore during the years 2013-14 to 2015-16. However, the reversal of ITC effected by the oil companies as per Section 19(20) of the TNVAT Act was only ₹ 37.41 crore. The reversal of ITC was applicable only in respect of sales made out of locally purchased goods. The oil companies had effected purchase of PDS Kerosene from interstate also. We, however, noticed that subsidy for entire quantity of supply of PDS Kerosene was made to the oil companies, instead of restricting it to the sales effected out of locally purchased goods.

We, therefore, suggested that before releasing subsidy to oil companies, the details of the amount of ITC reversed by the oil companies on account of Section 19(20) be obtained so as to ensure release of correct amount of subsidy.

- We analysed the details of sale of SKO made by three oil companies with the database of CTD and followed up with further verification in Assessment Circles. Such verification revealed that 31 dealers of 28¹³

¹³ Alandur, Amaindakurai, Brough Road, Choolai, Chromepet. Cuddalore (Taluk), Devakottai, Dindigul-IV, Gudiyatham, Kanchipuram, Lalgudi, Leigh Bazaar, Nannilam, Pollachi (East), Ponneri, Ramanathapuram, Sengottai, Singarathope, Sirgali, T.Nagar, Tallakulam, Tambaram, Thanjavur-I, Thiruvannamalai-II, Tindivanam, Tirukoilur, Vandavasi and Villivakkam

Assessment Circles whose RCs were cancelled, had effected purchase of PDS Kerosene for ₹ 63.52 crore subsequent to the dates of cancellation of RCs. The AAs could not verify the intended use of PDS Kerosene.

We pointed this out to the Department in September 2017. Reply was awaited (January 2018).

2.4.10 Light Diesel Oil

As per entry 8 of Second Schedule to the TNVAT Act, Light Diesel Oil (LDO) attracts levy of tax at the rate of 25 *per cent* at the point of first sale in the State. By issue of Notification in July 2011, Government reduced the rate of tax to five *per cent* on the sale of any goods except petrol, diesel and cement to the State and Central Government Departments including Indian Railways and Departments of other State Governments in Tamil Nadu subject to the condition that the dealer obtains and furnishes a certificate in the prescribed form. Similar reduction was granted on sale of any goods except petrol, diesel and cement to the Tamil Nadu Electricity Board, Tamil Nadu Generation and Distribution Corporation Limited, Tamil Nadu Transmission Corporation Limited, Neyveli Lignite Corporation Limited, Local Authorities and Co-operative Societies, subject to the condition that the dealer obtains and furnishes a certificate in the form specified.

During check of records in LTU-I and LTU-IV Assessment Circles, we noticed that two oil companies had paid tax at the rate of five *per cent* on the sales turnover of LDO of ₹ 24.94 crore relating to the years 2013-14 to 2015-16. Since the Notification specifically excluded diesel, the concessional rate of tax was not applicable in respect of sales of LDO. Levy of tax at the differential rate of 20 *per cent* worked out to ₹ 4.99 crore.

After we pointed this out (May and June 2017), the AA of LTU-I Assessment Circle issued notice (June 2017) to the dealer proposing disallowance of concessional rate of tax. The AA of LTU-IV assessment circle stated (May 2017) that notices were already issued in this regard and the issue would be considered while passing orders. The reply was not acceptable as though the dealer had filed their reply in January 2017 itself in respect of the Notice relating to the year 2014-15, and the AA had since initiated no action.

2.4.11 High Speed Diesel Oil and Furnace Oil

As per entry 7 of Second Schedule to the TNVAT Act, sale of High Speed Diesel Oil (HSD) is taxable at the rate of 21.43 *per cent* at the point of first sale in the State. As per entry 67A of First Schedule to the TNVAT Act, furnace oil is leviable to tax at the rate of five *per cent* at every point of sale inside the State. By issue of Notification (December 2004), Government reduced the tax payable by oil companies on sale of HSD, LDO and Furnace oil to foreign bound vessels, for use in such vessels for voyage to any place outside the country to four *per cent* subject to the condition that the oil companies obtain and furnish a declaration from the purchaser in the form appended to the Notification.

During check of records in LTU-IV Assessment Circle, we noticed that an oil company had effected sale of HSD and Furnace oil to international bunkers and paid tax at the reduced rate of four *per cent* during the years 2012-13 to 2015-16. Our scrutiny of the declaration forms filed in support of such sales revealed the following deficiencies.

- In 69 declaration forms relating to sale of HSD for ₹ 30.89 crore during the years 2012-13 and 2013-14, the destination was either not mentioned or the destination mentioned was a place within the Indian Territory. The adoption of reduced rate of tax in respect of sale to such vessels was not in order. This resulted in short levy of tax of ₹ 5.38 crore. Similarly, in 31 declaration forms relating to sale of Furnace oil for ₹ 16.48 crore during the years 2012-13 and 2013-14, the destination was either not mentioned or the destination mentioned was a place within the Indian Territory. The adoption of reduced rate of tax in respect of sale to such vessels was not in order. This resulted in short levy of tax of ₹ 16.48 lakh.
- Sale of HSD and Furnace oil effected during the years 2014-15 and 2015-16 were not covered by declaration forms. Hence, the payment of tax at the concessional rate of four *per cent* on the sales turnover of ₹ 43.45 crore and ₹ 45.60 crore respectively was not in order. Levy of tax at the differential rate of 17.43 *per cent* and one *per cent* respectively worked out to ₹ 8.03 crore.

After we pointed out (May and June 2017) the above aspects, the AA issued notices (July 2017) to the dealer proposing levy of tax at the scheduled rate. Further report was awaited (January 2018).

During Exit Conference, the Government stated that proposal prescribing time limit for furnishing of certificates / documents and denial of exemption / reduction in rate of tax in case of non-compliance would be considered.

2.4.12 Other audit findings

2.4.12.1 Non-levy of interest for belated payment of tax

As per Section 42(1) of the TNVAT Act, the tax assessed or that has become payable under this Act from a dealer shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than thirty days from the date of service of the notice.

As per Section 42(3) of the TNVAT Act, on any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at one and a quarter *per cent* per month up to 28 May 2013 and at two *per cent* per month thereafter of such amount for the entire period of default. As per Section 9(2-B) of the CST Act, the provisions relating to levy of interest for belated payment of tax under the TNVAT Act, also apply in respect of the tax payable under the CST Act.

- During check of records in LTU-I and LTU-IV Assessment Circles, we noticed that two oil companies had not paid tax of ₹ 8.37 crore and ₹ 1.79 crore respectively in respect of sales effected by them to Tamil Nadu Fisheries Development Corporation Limited and Tamil Nadu State Apex Fisheries Cooperative Federation Ltd during the years 2010-11 and 2011-12, though the sales were not covered by any exemption notification.

The Government sanctioned (September 2016) ₹ 10.17 crore towards the amount of value added tax payable to the oil companies in respect of the sales effected in 2010-11 and 2011-12. While one oil company had remitted (December 2016) ₹ 8.37 crore, the other oil company was yet to remit tax of ₹ 1.79 crore. The amount of interest leviable for belated payment of tax in one case worked out to ₹ 9.32 crore, while the amount of interest accrued in the other case (as of August 2017) worked out to ₹ 2.19 crore.

After we pointed this out (July 2017), the AAs issued notices to the dealers proposing levy of interest for belated payment of tax. Further report was awaited (January 2018).

- On a scrutiny of the assessment orders passed under the CST Act and e-payment collection report, we noticed that demand of ₹ 3.18 crore relating to the years 2009-10, 2012-13 and 2013-14 was paid belatedly by a dealer; the period of delay ranging from seven months to 46 months. Interest of ₹ 1.74 crore relating to such belated payment of tax was, however, not levied and collected.

After we pointed this out (September 2017), the AA issued notices to the dealer proposing levy of interest for belated payment of tax. Further report was awaited (January 2018).

2.4.12.2 Functioning of e-transit pass system

The Sixth Schedule of the TNVAT Act consists of commodities, the transportation of which either into or outside the State shall be accompanied by transit pass. The Government amended (November 2011) the Sixth Schedule and brought petrol and diesel under the ambit of transit pass system to monitor interstate movement of petroleum products and to curb mid-dropping of the same.

The Department introduced (February 2014) e-transit pass system for sixth schedule goods and developed MIS module for use of territorial divisions / Assessment Circles to monitor the surrender of e-transit passes generated by the dealers before undertaking the interstate movement of the goods.

During the present audit, we sought to ascertain the adequacy and effectiveness of the e-transit pass system pertaining to monitor the movement of petroleum products from the State to the Union Territory of Puducherry.

As per the data provided for the period from 2014-15 to 2016-17, we noticed that 12,940 e-transit passes relating to interstate sale of petroleum products were not surrendered by three oil companies. Our test check in four border check posts revealed that out of 149 transit passes indicated as not having been surrendered, 128 were actually surrendered at the check posts and the

discrepancy was due to failure by the check post officers to enter the details of surrender of transit passes in the system. We observed that AAs of the oil companies were periodically issuing notices for non-surrender of transit passes without cross verifying the details with the concerned check post officers. The AA of LTU-IV Assessment Circle had confirmed the notices issued for the years 2014-15 and 2015-16 and levied additional demand of ₹ 53.08 crore and the Madras High Court had stayed recovery of the same on an appeal preferred by the dealer.

Thus, the introduction of e-transit pass system had not been effectively utilised by the Department to monitor the interstate movement of petroleum products. After the introduction of Goods and Services Tax with effect from 1 July 2017, the functioning of the check posts had been suspended and surrender of transit passes by carriers of petroleum products were not being monitored at the check posts. As difference in tax rates of petroleum products between this State and the Union Territory of Puducherry still persists, the Department may institute a mechanism to ensure the supply of petroleum products at the intended place of delivery outside the State and thereby safeguard against any diversionary trade practices that may be contemplated by the dealers in the light of the suspension of activities of the check posts.

The Additional Chief Secretary to Government, while accepting the audit's suggestion for evolving an alternate mechanism in the wake of abolishment of check posts, suggested the Department to consider preparation of e-way bill with Radio Frequency Identification tagging without human intervention.

2.4.13 Conclusion

Our audit exercise indicated deficiencies in existing system/statutory provisions regarding the assessment, levy and collection of tax in respect of petroleum products. The adherence to the conditions governing grant of exemption and applicability of reduced rate of tax was not ensured by the AAs. The system of e-transit pass introduced for monitoring the interstate movement of petroleum products was ineffective.

We referred the matter to the Government in September 2017. Reply was awaited (January 2018).

2.5 Audit of the Functioning of Business Intelligence Unit

2.5.1 Introduction

The Tamil Nadu Commercial Taxes Department established (December 2012) a 'Business Intelligence Unit' (BIU) in the office of the Commissioner of Commercial Taxes to improve revenue collection, check evasion of tax and to carry out analysis of various data gathered internally and externally, on commodities, dealers, exports and imports, etc. The functions of BIU include gathering business intelligence from external and internal sources, identifying the risk to revenue by analysing the gathered data, recommending cases for Audit / Surprise Inspection based on risk analysis, delivering the data in a utility form for investigation by Enforcement / Territorial Wing and monitoring the result of realisation of revenue from such detection. In order to monitor the overall business activities, gather information related to tax evasion and to improve the tax compliance at divisional level, Divisional Business Intelligence Units (DBIU) were constituted (March 2014) in each Enforcement Division under the control of the Joint Commissioner (Enforcement). The DBIU is responsible for sector-wise and territory-wise study and survey of the commercial activities in the division, gathering business intelligence from Government and non-Government agencies and exchange of intelligence and information with other DBIUs, BIU and Inter State Investigation Cell (ISIC)¹⁴.

We undertook the audit exercise to ascertain the effectiveness of the functioning of BIU in improving revenue and checking evasion of tax by examining (i) the process of collection, analysis and dissemination of information; (ii) the extent of utilisation of information in assessment process and (iii) the follow up mechanism evolved to monitor such utilisation.

We covered three year period from 2013-14 to 2015-16 and the activities of BIU until 31 March 2017. We compiled the details gathered by BIU, which was spread across numerous excel sheets into a single data base. The turnover reported in the monthly returns by dealers falling under eight¹⁵ categories was compared with the details gathered by BIU. Such comparison revealed that the turnover reported by 4,675 dealers of 320 Assessment Circles was lesser than the details gathered by BIU to the extent of ₹ 29,762 crore. Of these, 2,143 dealers of 160 Assessment Circles, involving discrepancy of ₹ 20,014 crore were taken up for detailed analysis by examining the extent of utilisation of BIU data by the AAs to reconcile the discrepancy in turnover and to detect suppression and tax evasion, if any. Apart from the above, we also independently collected data from a few sources like Spices Board, Rubber Board, Agricultural Marketing Committee, *etc.* and cross-verified the same with the database of CTD. The utilisation of BIU data by the Enforcement

¹⁴ Inter State Investigation Cell, headed by a JC is established to control evasion of tax on interstate transactions. This Cell focuses on movement of evasion prone commodities in and out of the State.

¹⁵ K-Dealer, Annual Dealer, Corporation of Chennai, e-Commerce, Service Tax, Possible Bill Traders, Import and Spices board.

Wings and monitoring system for ensuring utilisation of BIU data was also examined.

Audit findings

2.5.2 Collection and dissemination of data

The first objective of BIU is to identify various sources from which data could be collected and establish a mechanism for collection of data on a regular basis. We, however, observed that BIU did not obtain data from external agencies on a regular basis. The collection of data was intermittent and in parts. Thus, BIU did not adopt a systematic approach for collection of data. There was no mechanism to identify data sources systematically and to ensure that the data was procured from these sources on a regular and continuous basis and stored systematically (both raw data and processed data). Many efforts of collection were a onetime exercise, the details of which are mentioned in **Annexure 3**. We recommend implementing a mechanism for continuous and complete procurement of data from identified sources and for storage of both procured and processed data in a data warehouse.

The data procured from various internal and external agencies is cross-verified by BIU with the database of CTD based on the common field of PAN, to identify the TIN of dealers. The cases without TIN are forwarded to Enforcement divisions for further follow-up. The data of dealers with large turnover is analysed by BIU and based on such analysis, Investigation Files (IF) are prepared and forwarded to the Enforcement Wing for conduct of surprise inspection at the business premises of the dealers. The remaining cases with TIN are forwarded to the Territorial wing for further action. This data is also hosted in the intranet of the Department for utilisation by the AAs of the Assessment Circles. The data is uploaded in excel format in Microsoft Excel files under various tags, such as import of goods, e-commerce operators, service tax abatement in respect of materials, data from Corporation of Chennai, *etc.*

We observed that the complete data relating to a dealer was not available in a single place, but was spread across various tags and assessment years. As such, the AAs were not able to make use of data uploaded by BIU in assessment process.

After we pointed this out (August 2017), BIU stated that since all the AAs are familiar with MS excel application, the data was easily usable in the Assessment Circles. The AAs of 71 out of 160 Assessment Circles, however, felt that BIU data was not easily usable. Though the AAs of 24 Assessment Circles felt that the BIU data was easily usable, the actual utilisation of data was poor, as mentioned in the succeeding paragraphs. Data involving turnover of ₹ 2,000 crore uploaded by BIU in intranet in respect of 150 dealers (including 27 dealers whose registration certificates were cancelled) was not utilised by the AAs.

Hence, we suggest that the data be made available as a single database for each assessment year of a dealer in a consolidated form as part of the dealer details in Registration module. This would enable the AA to view all the transactions effected by a dealer / TIN and to initiate further action. The

Department accepted the audit recommendation and stated (August 2017) that the concept of consolidated database will be considered for implementation in future.

In the Exit Conference, the Additional Chief Secretary to Government, Commercial Taxes and Registration Department, while accepting the audit observation, directed BIU to look into the issue and take necessary action.

2.5.3 Utilisation of data by the Assessing Authorities

Data obtained by BIU

We sought to ascertain the extent of utilisation of BIU data by the AAs in assessment process to detect suppression and evasion of tax. For this purpose, we examined the action taken by the AAs of 160 Assessment Circles in respect of 2,143 dealers based on the details uploaded by BIU in intranet of CTD. We noticed that the AAs had initiated action only in respect of 275 dealers, which correspond to just 13 *per cent* of the total number of dealers. In respect of 1,392 dealers, notices were issued by the AAs based on our audit observation, while in respect of the remaining 476 dealers, reply was awaited from the AAs concerned. These details are mentioned in Table below.

Table 2.2: Utilisation of BIU data uploaded in Format ‘B’ by jurisdictional AAs

Tag	Test checked by Audit		Action already initiated by AAs		Action initiated by AA based on audit observation		Reply awaited	
	No. of dealers	DTO	No. of dealers	DTO	No. of dealers	DTO	No. of dealers	DTO
K-Dealer	209	NQ	51	NQ	133	NQ	25	NQ
Annual Dealer	370	46.41	8	3.59	111	31.83	251	10.98
Chennai Corporation	220	321.16	2	50.59	177	222.54	41	48.03
e-Commerce	108	76.27	9	8.64	94	66.55	5	1.08
Service Tax	125	1,376.96	9	11.21	100	1,173.57	16	192.17
Possible bill traders	151	NQ	26	NQ	58	NQ	67	NQ
Import	929	17,062.26	170	2,766.17	688	10,683.50	71	3,612.59
Spices Board	31	1,131.32	0	0	31	1,131.32	0	0
Total	2,143	20,014.38	275	2,840.20	1,392	13,309.31	476	3,864.85

*DTO – Differential Turnover; NQ – Not Quantified.

This indicates that BIU data was not effectively utilised by the AAs in unearthing evasion of tax. The poor utilisation of data by AAs is also indicative of absence of the existence of proper monitoring mechanism.

We examined the extent of utilisation of BIU data by the AAs in respect of the following categories of dealers. The findings are given below.

2.5.3.1 Importers

We observed that details of import of goods relating to February 2016 and the period from April to June 2016 was uploaded in intranet of CTD only in July 2017. Prior to February 2016, BIU obtained details regarding import of specific category of goods¹⁶ for various periods from the Customs department and uploaded the same in the intranet of CTD for use of AAs. BIU did not obtain data of imports for the period subsequent to June 2016. Though details of filing of returns was available in database of CTD, BIU did not take steps to cross verify the details of imports by the dealers with the turnover reported by them in the monthly returns. This would have enabled BIU to identify dealers, who had suppressed import of goods and thereby the AAs concerned could have been addressed to initiate action instead of uploading the entire data in intranet.

We cross verified the data uploaded in intranet by BIU with the monthly returns filed by the dealers with CTD to ascertain the proper accounting of imports by the dealers. Such cross verification revealed that 929 dealers, who imported goods valued at ₹ 31,119.92 crore, had reported turnover of ₹ 14,057.65 crore in the monthly returns filed by them with CTD. Our scrutiny regarding utilisation of BIU data in the Assessment Circles revealed in respect of 170 dealers alone, the AAs had initiated action and in respect of the remaining dealers, the suppression remained undetected. After we pointed this out, the AAs issued notices to 688 dealers proposing levy of tax of ₹ 642.94 crore and penalty of ₹ 964.41 crore, where the discrepancy between the value of imports and the turnover reported by the dealers in the monthly returns was ₹ 10,683.50 crore. Reply in respect of 71 dealers involving tax and penalty of ₹ 271.22 crore was awaited (January 2018).

We further noticed that 462 out of the above mentioned dealers, who imported goods valued at ₹ 4,538.03 crore, either did not file monthly returns or filed 'Nil' returns with the CTD. The RCs of 167 dealers who had imported goods valued at ₹ 2,828.20 crore was cancelled.

2.5.3.2 K- Dealers

As per Section 3(4)(a) of the TNVAT Act, every dealer, who effects second and subsequent sale of goods purchased within the State, whose total turnover, for a year, is less than rupees fifty lakh, may, at his option, instead of paying tax under sub-section (2), pay a tax at 0.5 *per cent*, for each year, on his total turnover. BIU identified 2,269 dealers who had purchased goods for more than ₹ 50 lakh during the years 2008-09 to 2014-15 and uploaded the details in intranet of CTD for use by the AAs in assessment process.

We examined the utilisation of data in respect of 209 out of 2,269 dealers and found that apart from 51 dealers, the AAs did not initiate action in the remaining cases. After we pointed this out, the AAs of 64 Assessment Circles

¹⁶ Gold, Sugar, Iron and Steel, Tiles, Scrap, Timber, Electric and electronic goods, Liquor, Mobile, Computer and laptop, Vehicles and Edible oil

issued notices to 133 dealers and collected ₹ 10.65 lakh from two dealers. Further report regarding action taken by AAs after issue of notice and reply in respect of the remaining 25 dealers was awaited (January 2018).

2.5.3.3 Annual return filing dealer

As per Rule 7(7) of TNVAT Rules, every registered dealer, who is not liable to pay tax under the TNVAT Act, shall file return for each year in Form I-1 on or before 20th day of May of the succeeding year showing the actual turnover in respect of all goods dealt with by him. The turnover shall not exceed ₹ 10 lakh. Dealers with annual turnover in excess of ₹ 10 lakh shall file monthly return in Form I and pay tax.

On the basis of details of purchase taken from Annexure I of other dealers, BIU identified 1,916 dealers, who had made business of more than ₹ 10 lakh. This data was uploaded in intranet of the CTD. We examined the utilisation of BIU data in respect of 370 selected dealers and found that the AAs had initiated action only in respect of eight dealers. In the remaining cases, the AAs did not initiate action by utilising the BIU data available in intranet. After we pointed this out, the AAs issued notices to 111 dealers proposing levy of tax of ₹ 4.62 crore and penalty of ₹ 6.94 crore. Further report regarding action taken after issue of notice and reply in respect of the remaining 251 dealers, involving tax and penalty of ₹ 4.15 crore was awaited (January 2018).

2.5.3.4 Corporation of Chennai

The details of contract awarded by the Corporation of Chennai during the years 2011-12 to 2015-16, the contractor-wise project details for the period 2013-14 and 2014-15 was hosted by BIU in intranet during July 2016. The cases without TIN were forwarded to the Enforcement Wing.

We examined the action taken by the AAs in respect of 220 out of 717 dealers and found that the AAs had initiated action only in respect of two dealers. In respect of the remaining dealers, the AAs did not initiate action by utilising the BIU data available in intranet. After we pointed this out, the AAs issued notices to 177 dealers proposing levy of tax and penalty of ₹ 26.74 crore. Report regarding further action taken after issue of notice and reply in respect of 41 dealers involving tax and penalty of ₹ 5.84 crore was awaited (January 2018).

2.5.3.5 e-Commerce dealers

The data relating to 6,078 e-commerce dealers involving a turnover of ₹ 1,252.84 crore, pertaining to the years 2013-14 to 2015-16 was hosted in the intranet of CTD by BIU. We analysed 108 cases, where the difference between the turnover reported in the monthly returns and the turnover hosted by BIU was more than ₹ 10 lakh and examined the utilisation of BIU data by the AAs. We observed that apart from nine dealers, the AAs did not utilise BIU data and initiate action. After we pointed this out, the AAs issued notices to 94 dealers proposing levy of tax and penalty of ₹ 24.12 crore. Report regarding further action taken after issue of notice and reply in respect of the remaining five dealers involving tax and penalty of ₹ 40 lakh was awaited (January 2018).

We further noticed that the RCs of 378 dealers (out of 6,078 dealers) were cancelled by the registering authorities. Of this, 212 dealers did online trading for ₹ 16.89 crore after cancellation of RC. In the remaining cases, where online trading was done for ₹ 10.05 crore, the RCs were cancelled later. Thus, this demonstrates the significance of timeliness of procurement, analysis and uploading of data by BIU for use by AAs.

2.5.3.6 Service Tax

BIU collected (September 2014) the details of Service Tax Registration for the year 2013-14 and uploaded the same in intranet of CTD for use by the AAs. The data related to 2,938 service providers of “work contract services”, who claimed abatement of ₹ 4,752.20 crore on account of transfer of materials.

We analysed 125 cases where the abatement claimed was more than ₹ 10 lakh, and examined whether the abatement was reported by the dealers and whether AAs had taken action in cases where the turnover was not reported by the dealers. We found that only in respect of nine dealers, the AAs had initiated action. The AAs issued notices proposing levy of tax of ₹ 58.37 crore and penalty of ₹ 87.56 crore to 100 dealers after being pointed out by Audit. Report regarding further action taken after issue of notice and reply in respect of the remaining 16 dealers involving tax of ₹ 9.58 crore and penalty of ₹ 14.37 crore was awaited (January 2018).

2.5.3.7 Bill Traders

BIU prepared a list of 173 suspected Bill Traders based on information received from external and internal agencies and forwarded the same to the Assessment Circles. The CCT instructed (July 2014) the AAs to finalise the assessments of the dealers after verification of the transactions. We test checked 151 cases and observed that the AAs had taken action only in respect of 26 dealers. After we pointed this out, the AAs issued notices to 58 dealers. Further report regarding action taken after issue of notice and reply in respect of the remaining 67 dealers was awaited (January 2018).

2.5.3.8 Star Hotels

BIU prepared a list of star hotels based on the details taken from the website of Tourism Department and forwarded the same to the Assessment Circles to ensure levy of tax on sale of food and drinks at higher rate applicable to star hotels. We collected the list of Star hotels from the Department of Tourism and found that out of 49 dealers, the AAs had not taken action in respect of three dealers involving levy of differential tax of ₹ 76.78 lakh.

We pointed this out to the Department in April / May 2017. Reply was awaited (January 2018).

2.5.3.9 Spices Board

Spices Board is an autonomous body responsible for the export promotion of 52 scheduled spices and development of Cardamom. Its main functions include research, development and regulation of domestic marketing of small and large Cardamom. Spices Board introduced e-Auction of Cardamom in Bodinayakanur, Theni District in Tamil Nadu in August 2007. In the e-

Auction system, licensed dealers are provided with user id and password. The dealers have to log into the system to participate in an Auction.

BIU collected data of Cardamom dealers of Tamil Nadu from Spices Board, Cochin and forwarded the same to JC (Enforcement), Madurai for transmission to the territorial wing for use in assessment process.

We collected data (up to September 2015) from BIU and after ascertaining the TIN of dealers, we cross verified the purchase details of Cardamom dealers obtained from Spices Board with the turnover reported in the monthly return filed by them with the CTD. Such cross verification revealed suppression of turnover by 31 out of 130 dealers, who purchased Cardamom at the auction centre during the years 2007-08 to 2013-14. The non-utilisation of BIU data by the AA resulted in non-levy of tax and penalty of ₹ 56.18 crore and ₹ 84.28 crore respectively.

We also noticed that four dealers whose RC was cancelled, participated in the auction and procured cardamom. The CT Department did not send the cancellation details of the dealers to the Spices Board, Cochin or Auction Centre at Bodinayakanur.

We obtained the details of auction sales from the Spices Board, and observed that a registered dealer of Bodinayakanur Assessment Circle was one of the licensed auctioneers from Tamil Nadu during the period from February 2015 to December 2016. We cross verified the auction sales effected by the auctioneer for 19 days with the turnover reported in the monthly returns filed with CTD. Such cross verification revealed that the auctioneer had suppressed turnover of ₹ 56.80 crore. After we pointed this out (April 2017), the AA, Bodinayakanur Assessment Circle revised the assessment and raised additional demand of tax and penalty of ₹ 2.51 crore. The AA, however, failed to obtain the complete details from Spices Board and restricted the levy of tax and penalty to the turnover pertaining to 19 days auction sales.

As per the statement of auction sales available with BIU for the years 2007-08 to 2014-15 (upto September 2014), the total sales conducted by the auctioneer was ₹ 463.74 crore. The above data of auction sales was also available with JC Enforcement, Madurai. These details were not passed on to the AA of Bodinayakanur Assessment Circle to enable cross verification with the turnover reported by the dealer in the monthly returns to detect the suppression of turnover, if any.

The above observations illustrate the inadequate coordination between Spices Board and CTD and also between different wings of CTD resulting in leakage of revenue due to the Government.

The Additional Chief Secretary to Government, Commercial Taxes and Registration Department accepted (January 2018) the audit observation regarding poor utilisation of data and instructed BIU to pursue the matter. The JC, BIU stated that a consolidated report in this regard would be furnished to audit.

Data collected by Audit

Apart from the above, we also gathered details from the following sources and analysed the same with the turnover reported by the dealers in the returns filed by them with CTD. The result of such verification revealed the following.

2.5.3.10 Import

We collected (June 2017) details of import from DG Systems, Customs Department, New Delhi in respect of the commodities¹⁷ relating to the years 2014-15 and 2015-16. We cross verified with the database of CTD to ascertain the TIN of the importers and conducted further scrutiny in respect of dealers whose RC was cancelled and where the difference between the value of imports and the turnover reported by the dealers was more than ₹ one crore. Such a scrutiny revealed that 104 dealers whose RC was cancelled had imported goods valued at ₹ 1,000.44 crore. The turnover reported by the dealers in the monthly returns filed by them was, however, ₹ 104.30 crore. Thus, turnover of ₹ 896.14 crore was suppressed by the dealers.

After we pointed this out (August 2017), the AAs issued notices in respect of 19 dealers involving tax of ₹ 8.02 crore and penalty of ₹ 12.04 crore respectively. Further report regarding action taken after issue of notice and reply in respect of the remaining dealers involving tax and penalty of ₹ 159.88 crore was awaited (January 2018).

2.5.3.11 Rubber Board, Kottayam

Rule 43B of the Rubber Rules, 1955 prescribes that transportation of rubber from one State to another shall be accompanied by a valid declaration in the prescribed Form (Form N2) issued by the Rubber Board. A copy of the N2 Form (in quadruplicate) shall be forwarded by the consignor to the Rubber Board at Kottayam.

The details of N2 forms issued to the dealers were collected by JC (Enforcement), Tirunelveli, from the Rubber board, Kottayam. The details relating to 34 dealers were forwarded (October 2015) to the AA of Thuckalay Assessment Circle. BIU also collected the data from Rubber Board, Kottayam, regarding N2 forms submitted by dealers after completion of their transaction. We, however, noticed that this information was not utilised in the assessment of the dealers.

We collected (March 2017) the details of filled in N2 forms (data relating to dealers registered in Tamil Nadu) from Rubber Board. The total value in the N2 forms for the period from 2012-13 to 2016-17 was ₹ 52 crore. We cross verified the same with the details in the CST return of the dealers and observed suppression of turnover of ₹ 38.28 crore by 17 dealers of Kuzhithurai and Thuckalay Assessment Circles involving tax of ₹ 1.94 crore and penalty of ₹ 2.91 crore. After we pointed this out, the AAs agreed to issue notices to the dealers. We also noticed that out of 17 dealers, the registration certificates of four dealers were already cancelled.

¹⁷ Precious metals, iron and steel, electrical goods and parts

2.5.3.12 Agricultural Marketing Committee

The functions of BIU, *inter alia*, involve gathering business information from external sources like the Marketing Committees. At the Marketing Committee, fees / cess is collected at prescribed percentage from the traders on the value of sale / purchase.

We obtained (March 2017) from the Kanyakumari Agricultural Marketing Committee, details of the transaction of sale / purchase of cashew relating to the years 2013-14 to 2015-16 and cross verified the same with the returns filed by the dealers with CTD. Such cross verification revealed that three dealers of Thuckalay Assessment Circle, who purchased cashew without payment of tax from the unregistered cashew growers at the Marketing Committee, had sent the same valued at ₹ 21.40 crore to other States otherwise than by way of sale. Though the stock transfer of cashew purchased from unregistered dealers to other States involves payment of purchase tax under Section 12 of the TNVAT Act, purchase tax was neither paid by the dealers nor was the same levied by the AA. The amount of tax and penalty leviable worked out to ₹ 2.68 crore.

We brought this to the notice of the Department in May 2017. Reply was awaited (January 2018).

2.5.3.13 Tamil Nadu Civil Supplies Corporation

The Government of Tamil Nadu decided (June 2011) to implement the scheme of free distribution of a package to women beneficiaries consisting of electric table fan, induction stove, domestic electric food mixer and tabletop wet grinder through the Tamil Nadu Civil Supplies Corporation (TNCSC).

TNCSC purchased the goods from the dealers on payment of appropriate tax and distributed it to the eligible beneficiaries, free of cost. The free distribution was done in five phases from the year 2011-12 to 2015-16 and the total tax revenue involved in this was around ₹ 500 crore.

BIU collected details of purchase from TNCSC and uploaded the same in intranet after ascertaining the TIN of dealers. We observed that TNCSC had also forwarded copies of purchase order to BIU. However, BIU neither took any action to follow these huge transactions with CCT nor issued instructions to the AAs of Assessment Circles.

We obtained the details (February 2017) from TNCSC and compared the same with the monthly returns of the dealers, who supplied goods to TNCSC. Such comparison revealed incorrect claim of ITC of ₹ 4.40 crore by 16 dealers of 11¹⁸ Assessment Circles and the same was utilised by the dealers against the output tax liability.

As per the purchase order of TNCSC, the balance five *per cent* of payments relating to supply of goods would be made upon only on submission of the tax payment certificate, as certified by the AAs of the concerned Assessment Circles. The AAs had issued tax payment certificate without ascertaining the correct amount of ITC.

¹⁸ Avarampalayam, Avinashi, Dr. Nanjappa Road, Esplanade, Harbour, Kodungaiyur, Mylapore, Peelamedu (N), Thudiyalur, Trichy Road and Washermanpet

We cross verified the details of sales declared by the dealers in the monthly returns with the data obtained from TNCSC. Such cross verification revealed that seven dealers of six¹⁹ Assessment Circles, who supplied goods valued at ₹ 477.01 crore to TNCSC had reported turnover of ₹ 200.78 crore in the monthly returns filed by them with CTD.

During Exit Conference, the Additional Chief Secretary to Government, Commercial Taxes Department accepted the audit observation and instructed BIU to obtain data from all agencies like Spices Board, Rubber Board, etc.

2.5.4 Investigation files initiated by BIU

An investigation file on suspected tax evasion is prepared on the basis of complaints, and various other sources of information obtained from internal and external sources. The revenue impact as per various findings is summarized in the investigation file. The additional aspects with respect to various provisions of the Act which have to be scrutinised by the investigation team is also detailed in the investigation file. The Investigation Files (IF) are prepared and forwarded to the Joint Commissioners of Enforcement Wing for conduct of surprise inspection (SI) at the business premises of the dealers.

As per the information provided by BIU, 499 investigation files were prepared as on June 2017; of which, 197 investigation files were based on the petitions and complaints. This shows that 40 *per cent* of investigation files were initiated based on sources other than the data collected by BIU. The disadvantage with regard to such files is the lack of additional information with the Department other than the details already furnished by the dealers in their returns. The details of status of investigation files as provided by BIU are detailed in the Table below.

Table 2.3: Status of IFs initiated by BIU (as per data available in BIU)

Year	Number of IFs proposed by BIU	Number of IFs processed	Demand raised (₹ in crore)	Number of IFs pending due to		
				Non-conduct of SI	Non-finalisation of SI proposal	Non-implementation of proposal
2013-14	11	8	48.68	1	0	2
2014-15	220	93	172.58	5	10	112
2015-16	91	9	26.92	34	9	39
2016-17	107	1	0	100	0	6
2017-18	70	0	0	70	0	0
Total	499	111	248.18	210	19	159

Source: As per data available in BIU

The above Table indicates pendency of 78 *per cent* of the IFs due to various reasons. While 42 *per cent* of the IFs were pending due to non-conduct of Surprise Inspection, four *per cent* were pending due to non-finalisation of Surprise Inspection Proposal by the Enforcement wing and 32 *per cent* were

¹⁹ Harbour, Kodungaiyur, Madhavaram, Mylapore, T. Nagar and Washermanpet

pending due to non-implementation of the proposals by the Assessment Circles. However, BIU did not conduct review meetings to monitor the progress of action taken on IFs forwarded to the Enforcement Wings.

Out of 499 investigation files prepared by BIU, 305 investigation files were forwarded to the two Enforcement Divisions of Chennai, out of which, in respect of 116 cases, surprise inspection was yet to be undertaken (September 2017). We scrutinised 101 cases, where surprise inspection was undertaken by the Enforcement Divisions of Chennai and observed that in 51 cases, surprise inspection was conducted within 15 days from the receipt of investigation file. In the remaining 50 cases, surprise inspection was conducted beyond the period of 15 days since the receipt of investigation files; the period of delay being one month and more in 39 cases. We further observed delay in communication of surprise inspection proposals to the territorial wing for implementation by the AAs. Out of 101 proposals, 89 proposals were communicated beyond the prescribed period of 20 days since the conduct of surprise inspection.

The Additional Chief Secretary to Government, Commercial Taxes Department, accepted the audit observation and instructed BIU to monitor IF files in work flow on a task basis.

During scrutiny, we observed deficiencies in two proposals evolved by the Enforcement Wing.

- A surprise inspection proposal was evolved based on investigation file created by BIU, in respect of a dealer assessed in Kilpauk Assessment Circle. The import data procured by BIU indicated import of goods for ₹ 44.23 crore and ₹ 30.87 crore during 2012-13 and 2013-14 respectively. The audited accounts in Form WW, however, mentioned import of goods valued at ₹ 13.65 crore and ₹ 4.53 crore during 2012-13 and 2013-14 respectively. Thus, there was short reporting of imports amounting to ₹ 56.92 crore. The surprise inspection proposal formulated by the Enforcement Wing, however, mentioned the suppression of import purchases as ₹ 50.23 crore; thereby resulting in short levy of tax and penalty of ₹ 73.42 lakh.
- Similarly, in another case relating to MMDA Colony Assessment Circle, we noticed that failure to adopt BIU data procured from the Corporation of Chennai for the year 2013-14 and 2014-15 resulted in short levy of tax and penalty of ₹ 5.41 lakh.

We pointed this out in August 2017. Reply was awaited (January 2018).

2.5.4.1 Other Investigation Files

Apart from the above IFs, we observed that BIU also initiated investigation files based on instructions issued by CCT from time to time. The scrutiny of records relating to these files revealed the following deficiencies.

- The CCT instructed (June 2015) BIU to prepare 20 investigation files in respect of non-surrendering of transit passes during the period 2014-15. We observed that though the extraction of data could have been done by the Assistant Programmer posted in BIU, the JC, BIU requested (July 2015) the JC, Computer Systems to provide details for further analysis. These details were not received as of June 2017. After we pointed this out (June 2017), the

BIU stated that relevant data was being extracted by the Deputy Programmer in BIU.

- The set-top boxes provided for DTH connection by the service providers to the customers is liable to tax under Section 4 of TNVAT Act. Based on CCT's instructions (March 2015), the details of tax levied and collected on the leasing of set top boxes were called for from eight dealers through BIU. However, we observed that report was received only in respect of one case. After we pointed this out, it was stated that the concerned Joint Commissioners were reminded (August 2017) in this matter and the progress would be followed by BIU. Thus, proper follow up action was not taken by BIU, with the result; the details were not obtained even after a lapse of two years since the details were sought for.
- Chennai Trade Centre falling under the jurisdiction of Nandambakkam Assessment Circle organises exhibitions on various commodities every weekend, where sales are effected. Based on a complaint regarding evasion of tax by two unregistered dealers who were event organisers, the CCT directed (June 2015) BIU to collect schedule of all exhibitions through the AA of Nandambakkam Assessment Circle and create a control system to check evasion of tax. Apart from addressing Joint Commissioner, Chennai (East) in June 2015, no further action was taken by BIU to obtain the necessary information.

We, however, ascertained (September 2017) from the events details that the organisers had collected rent of ₹ 22.60 crore during 2013-14 to 2015-16, which revealed significant amount of participation and potential activity of sale of related goods. However, BIU did not take effective steps to collect the requisite information and guard against evasion of tax.

2.5.4.2 Investigation files initiated by DBIUs

Apart from BIU, the DBIUs also *suo motu* initiate investigation files. During the audit of DBIU, under the control of JC, Enforcement I & II, Chennai, we test checked ten surprise inspection files prepared by the DBIU and found that the investigation files were based on the data collected from intranet of CTD and not on information collected by DBIU from any external source. This defeated the objective of regional specialisation with which DBIU was established.

In order to curb large scale evasion of tax taking place in interstate transaction, CCT instructed (June 2014) six JCs (Enforcement) to obtain details of interstate transactions relating to the years 2012-13 and 2013-14, which were recorded in the border check posts. However, the information was awaited from the Enforcement Wings.

After we pointed this out, it was stated by JC, BIU that reminders were issued in August 2017. The laxity of DBIU is evident from the failure to obtain requisite information even after a lapse of three years since issue of instructions by CCT.

2.5.5 Follow-up action taken by Enforcement Wings in respect of cases without TIN

The BIU forwards the data relating to cases, without TIN numbers, to the Enforcement Wing for further investigation. The following paragraphs enumerate the audit findings relating to such cases.

- The data received from Corporation of Chennai was processed and data relating to 312 cases without TIN was forwarded by BIU to the Enforcement Divisions for further investigation. These cases related to the years 2011-12 to 2015-16 and the total value of work involved was ₹ 165.13 crore. However, BIU did not have any details regarding the follow-up action taken by the enforcement divisions.
- The data received from Tamil Nadu Slum Clearance Board was processed by BIU and data pertaining to dealers without TIN was forwarded to the enforcement divisions for further investigation. The data related to transactions pertaining to the years 2013-14 to 2015-16. However, BIU did not have any details regarding the follow-up action taken by the enforcement divisions.
- The import data received from the Directorate of Revenue Intelligence (DRI) Chennai for the period from 1 April 2014 to 12 November 2014 did not contain information regarding TIN of importers in respect of 206 cases. The information relating to 201 cases (where the import value was more than ₹ 10 lakh) was forwarded to enforcement divisions for further action. However, BIU did not have any details regarding the follow-up action taken by the enforcement divisions.

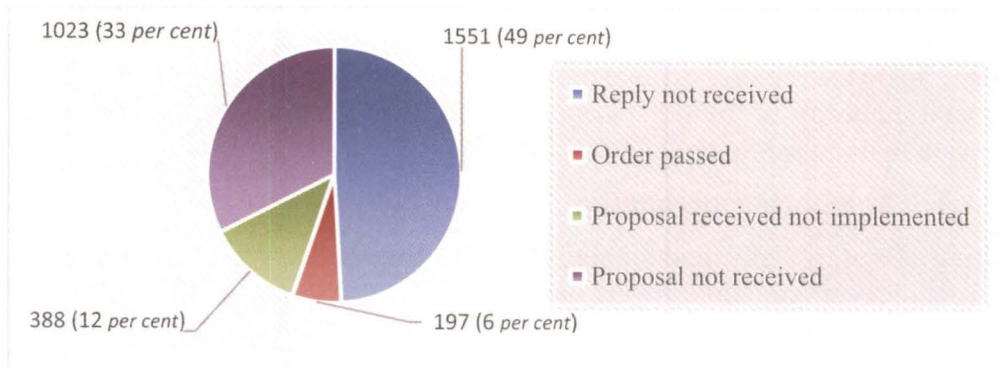
Thus, we observed absence of monitoring mechanism to follow up the cases referred to the enforcement divisions for further investigation. BIU did not even have the basic information of action taken by the enforcement divisions in respect of cases forwarded by it.

2.5.6 Role of BIU in VAT Audit

In order to fetch additional revenue, BIU was vested with the responsibility of selection of cases for VAT Audit to be conducted by the Enforcement Wings. The following criteria were adopted by BIU for selection of cases for conduct of VAT Audit.

- Large dealers (Dealers whose taxable turnover in the previous year was in excess of ₹ 200 crore) who were required to file returns on the 12th day of every month.
- Dealers whose total turnover is greater than ₹ 50 crore with ITC mismatch of more than ₹ 10 lakh and dealers whose claim of ITC from cancelled dealers exceeds ₹ 5 lakh.
- Dealers whose total turnover is greater than ₹ 10 crore and whose total sales is less than 75 per cent of purchases and claim of ITC from cancelled dealers exceeds ₹ 5 lakh.

The total number of cases selected for VAT Audit by BIU for the years 2013-14 and 2014-15 was 6,181. Out of this, we selected 3,159 cases pertaining to 166 Assessment Circles for analysing the status of implementation. The status of implementation of VAT Audit notes in respect of these 3,159 cases is depicted in the pie chart given below.



As seen from the pie chart, VAT audit notes was implemented only in respect of six per cent of the cases, which were selected for conduct of VAT audit by BIU. The Department did not furnish reply in respect of 49 per cent cases, which were selected for VAT audit. Thus, the Department was still unable to provide complete statistical information despite computerisation of the functioning of the Department, even after the implementation of Total Solution Project (TSP).

Apart from the above, we noticed that the following cases were selected by CCT for VAT audit based on specific inputs. We noticed that these cases were pending due to absence of proper follow-up mechanism as detailed below.

- Based on CCT's instructions, BIU issued (September 2014) notice to an airlines company to get registered under the TNVAT Act as the supply of food and drinks to the flight passengers exceeded the prescribed threshold limit for registration. Another notice was issued instructing the airlines to furnish the details of supply of food and drinks in respect of flights that originated from the State relating to the years 2006-07 to 2014-15. However, these details were not furnished till December 2017. Similar details in respect of other private airlines were also awaited. This issue was kept pending for more than two years, indicating absence of follow up action.
- Thirty two dealers including five organisations were selected (September 2015) for VAT Audit by the CCT and the list of dealers was also forwarded to the Enforcement Wings concerned. However, report from the Enforcement Wings regarding conduct of VAT Audit was still awaited by BIU.

Thus, BIU was not aware of the status of implementation of VAT audit proposals indicating inadequacy of the monitoring and follow-up mechanism.

2.5.7 Internal control mechanism

Internal control is an important management tool and comprises of all the methods and procedures adopted by the Department to assist in achieving the objective of BIU to prevent and detect suppression of turnover and tax evasion by data analysis using Information Technology. Further, a well-defined monitoring mechanism and Management Information System (MIS) would enable to make timely, adequate and accurate information available to the relevant authority in the organisation for effective monitoring and for use in decision making process.

2.5.7.1 Monitoring mechanism

During scrutiny of functioning of BIU, we observed that circulars, instructions, or guidelines were not issued by CCT to fix time limit for collection of data, dissemination of information and furnishing of follow-up reports on any activity of BIU. No registers were maintained to monitor the progress of action taken by the enforcement wings and the Assessment Circles in respect of cases referred by BIU. The Assessment Circles also do not submit any progress report regarding utilisation of BIU data to unearth additional revenue. Further, we observed that no review meeting was conducted by CCT after October 2015 to monitor the functioning of BIU. The officials / officers posted in BIU had not been imparted specific training that would enable them to process the data received from internal and external agencies efficiently and effectively.

The absence of monitoring mechanism resulted in ineffective utilisation of the data by enforcement and jurisdictional assessment circles, inadequate implementation of IF files, delayed conduct of VAT audit and Surprise Inspections, delay in communication of VAT Audit notes and Surprise Inspection Proposals as described in the previous sections of the report. There was no follow-up of any activity initiated by BIU and most leads initiated by BIU were not utilised promptly and effectively to unearth tax evasion.

Further, there was no hierarchical organisational structure among the DBIUs and BIU. The BIU was unaware of any activities performed by DBIU such as IFs initiated by DBIUs, additional data procurement, etc. Further, the JC (Enforcement) plays multiple roles, *i.e.* being the head of a DBIU and head of the enforcement wing, which conducts the surprise inspections and VAT Audits in cases proposed by BIU. BIU did not follow-up the cases referred to the Enforcement Wings nor does the Enforcement Wings submit any return to BIU.

2.5.7.2 Total Solution Project

The delay in utilisation of data hosted by BIU, by the jurisdictional AAs was pointed out in the Report of the Comptroller and Auditor General of India on Revenue Sector for the year ended 31 March 2015 Government of Tamil Nadu. Government stated (December 2015) that the workflow mechanism of TSP would ensure that delay does not occur in future. During the Exit Conference, the Department stated that time limit had been fixed to complete the pending cases before December 2015 to ensure revenue generation before March 2016. We, however, observed (August 2017) that TSP rolled out in

June 2016, did not include modules for BIU, and thus did not cater to the needs of AA to take prompt action (August 2017).

2.5.7.3 Business Intelligence Solution

A proposal for Selection of System Integrator for Implementation of Total Solution for e-Governance (TSP) was proposed (March 2012) to enhance MIS and reporting capabilities and business intelligence for system-aided decision-making. The main objective of deploying a Business Intelligence solution is to provide the Department with enhanced capabilities to process and analyse large volume of data in a smarter, intelligent and faster manner to support it in its goal of maximising revenue and controlling tax evasion.

The key components of the scope of work of the System Integrator includes the following.

- Development / procurement, customisation, implementation and maintenance of Business Intelligence, Analytics and Reporting Solution.
- Procurement, commissioning and maintenance of any enabling hardware, storage, system software, manpower *etc.*, for the BI solution.
- Creation of data warehouse / data store including any interfaces / scripts for exchange of data with internal and external sources.
- Extraction, transformation and loading of data from source systems (internal sources of the Department) to Data warehouse.
- Data cleansing (if required) to ensure data quality before or after migration.

When audit enquired the status of implementation, it was replied (August 2017) by JC, BIU that implementation of Business Intelligence solution would be considered in future.

2.5.8 Conclusion

BIU did not engage itself in timely and continuous collection of data. Further, the manner in which the raw data was converted into information and disseminated was inadequate and ineffective. The information was not disseminated in a planned and timely manner and was not readily available for utilisation by the AAs in assessment process. This led to poor utilization by AAs of the data procured and uploaded by BIU in intranet of CTD. Investigation Files initiated by the BIUs was not followed up properly. BIU's role is significant in unearthing tax evasion, especially in the era of voluntary compliance taxation. However, the absence of monitoring mechanism had led to the different wings of the Department work in *silos*, thus resulting in ineffective utilization of data in unearthing tax evasion, which was the primary objective of BIU.

2.6 Audit of “Collection of Arrears of Tax in Commercial Taxes Department”

2.6.1 Introduction

The arrears of revenue of the State predominantly comprises of the arrears pertaining to sales tax / value added tax. The arrears of principal heads of revenue of the State at the end of March 2017 was ₹ 31,048.57 crore; of which arrears of sales tax / value added tax of Commercial Taxes Department was ₹ 27,320.65 crore (88 *per cent*). The powers for collection of tax including arrears are contained in TNVAT Act. The TNVAT Act provides that the tax admitted by a dealer as per return shall become due without any notice of demand to the dealer on the last date of the period for filing return. In other cases, the TNVAT Act provides that the tax assessed or has become payable under the Act shall be payable within 30 days from the date of service of notice. In case of failure on the part of the dealer to pay the amount demanded within the prescribed date, Department may recover the amount through any of the following methods:

- as arrears of land revenue under the Revenue Recovery Act (RR Act) / Central Revenue Recovery Act (CRR Act);
- by application to the magistrate for recovery as a fine; and,
- by a demand on any person owing money to the assessee by issue of notice.

As on 31 March 2017, the amount of tax, which was pending collection in all the 334 Assessment Circles of the State was ₹ 27,320.65 crore. Of these, 34²⁰ Assessment Circles involving arrears of ₹ 10,953.51 crore (40 *per cent* of total arrears) were selected for test check by random sampling method to assess the effectiveness of the system for collection of arrears of revenue. The audit was conducted from June to August 2017, the findings of which are given below.

Audit Findings

2.6.2 Deficiencies noticed in maintenance of demand register

The register for watching demands and collection, *viz.*, Vat Register – 003 (known as the ‘L’ register under the earlier TNGST regime) is the basic register that is maintained in the Assessment Circles. Any demand raised against a dealer has to be entered therein with details of nature of demand, date of issue of notice, date of service of notice, due date of payment and date of actual collection. Our scrutiny of the ‘L’ register and connected records

²⁰ Anna Salai, Ambattur, Aruppukottai, Bodinayakanur, Chepauk, Chitrakara Street, Chokikulam, DLTU Coimbatore, Kamarajar Salai, Kilpauk, LTU-I, LTU-II, LTU-III, LTU-IV, Melur, Munichalai Road, Nethaji Road, Pattaravakkam, Poonamallee, P N Palayam, Sattur, South Avani Moola Street, Sriperumbudur, Tallakulam, Tamil Sangam Salai, Thudiyalur, T. Nagar, Tiruvallikeni, Tuticorin-III, Vengalokadai Street, Virudhunagar-I, Virudhunagar-II, Virudhunagar-III and West Tower Street

such as assessment orders, revision orders and demand notices in the Assessment Circles indicated the following deficiencies.

2.6.2.1 Omission to enter demands in 'L' register

During check of records and connected 'L' register in Kilpauk Assessment Circle, we noticed that demand of ₹ 3.09 crore raised in respect of a dealer in December 2012 relating to the assessment year 2011-12 was omitted to be entered in the 'L' register. Further, demand of ₹ 7.68 crore raised in June 2014 was omitted to be entered in 'L' register. Similarly, in another case, demand of tax and penalty of ₹ 82.56 lakh relating to the years 2007-08 to 2011-12 were not entered in the 'L' register of the year 2014-15, though the demands were raised on completion of assessments in July 2014. The demands were only entered in the 'L' register for the year 2015-16.

After we pointed this out, demand of ₹ 3.09 crore was entered in the 'L' registers of VAT and CST for the year 2017-18. Regarding the omission to enter the demand of ₹ 7.68 crore, the AA stated that it was only a notice for payment of tax. The reply is not acceptable as the notice was regarding non-payment of tax admitted by the dealer in the monthly returns of April, May and November 2012. As per Section 21 of the TNVAT Act, the tax payable as per return filed by the dealer becomes due for payment without issue of any notice to the dealer on the last date prescribed for filing of return. The AA stated (August 2017) that collection of demand of ₹ 82.56 lakh would be enforced based on the outcome of the appeal preferred by the dealer.

2.6.2.2 Incorrect entry of demands in 'L' register

During check of records and 'L' register in Thudiyalur Assessment Circle, we noticed that penalty of ₹ 6.88 crore raised (January 2015) against a dealer in respect of assessment year was entered in the 'L' register as ₹ 68.76 lakh. Similarly, demand of tax of ₹ 7.89 crore and penalty of ₹ 5.42 crore raised (January 2015) against the dealer in respect of assessment year 2011-12 were entered as ₹ 89.36 lakh and ₹ 54.69 lakh respectively in the 'L' register.

In Bodinayakanur Assessment Circle, tax of ₹ 1.50 crore relating to the assessment year 1993-94 of a dealer was entered in the 'L' register as ₹ 15.00 lakh; while penalty of ₹ 2.27 crore was entered in the 'L' register as ₹ 22.62 crore.

Similarly, in Tiruvallikeni Assessment Circle, tax of ₹ 3.42 lakh pertaining to the assessment year 2005-06 of a dealer was entered in the 'L' register as ₹ 34.12 lakh in September 2011.

After we pointed this out, the AA, Thudiyalur Assessment Circle, while attributing the incorrect entries in 'L' register to clerical error, stated (July 2017) that demand notices for correct amounts were issued to the dealer. The AA, Tiruvallikeni Assessment Circle attributed the same to typographical error and stated (August 2017) that corrections had since been made in the 'L' register for the year 2017-18.

2.6.2.3 Non-elimination of demands

Elimination of tax or penalty demand is an important work in preparation of Demand, Collection and Balance (DCB) Statement. The demands that are collected or that are set aside by appellate forums or that are ordered to be waived or written off are required to be deleted from the VAT Register 003, so that the register depicts the correct amounts of demands that are required to be collected. Our scrutiny of the demand register and records pertaining to the demands entered therein revealed that in the following cases, certain demands which were realised or set aside or waived / written off were still shown as pending, thereby overstating the arrear position.

- In five²¹ Assessment Circles, though demands of ₹ 213.89 crore were set aside by judicial forums, the same were not eliminated.
- Based on Supreme Court's decision rendered in July 2006 that sale of lottery tickets does not involve sale of goods, the Commissioner had issued instructions in May 2015 that arrears accrued in lottery ticket cases should be eliminated. However, lottery ticket arrears of ₹ 165.56 crore were not eliminated in four²² Assessment Circles.
- Demand of tax of ₹ 2.18 crore pertaining to braided cords were not eliminated in three²³ Assessment Circles, though Government waived the same by Orders issued in February 2009.
- Demand of ₹ 0.37 crore though collected in March 2016 was still shown as pending in Divisional Large Taxpayers' Unit (DLTU), Coimbatore.
- Demand of ₹ 190.61 crore, though transferred to other Assessment Circle in August 2016, instead of being eliminated on such transfer, was still shown as pending in LTU-IV Assessment Circle.

2.6.3 Pursuance of cases pending in appeals

Wherever appeals are filed by the assesseees against the assessments before the appellate / judicial fora, it is imperative that the AAs initiate prompt action to vacate stay, if any, granted by the appellate fora or to file the counter affidavits and take necessary steps for expeditious disposal of the cases so as to ensure realisation of revenue. Where the appeals are dismissed restoring the original orders, revenue recovery action should be initiated immediately for realisation of arrears.

Our scrutiny of records revealed deficiencies on non-follow up, non-compliance or delay in compliance or non-pursuance of the appellate / High Court / other judicial orders. This had resulted in long drawn or protracted legal proceedings resulting in delay in collection of arrears.

²¹ LTU-I, LTU-II, LTU-III, LTU-IV and Sriperumbudur

²² Nethaji Circle, Madurai, South Avani Moola Street, Tallakulam and Tiruvallikeni

²³ Kamarajar Salai, South Avani Moola Street and Tamil Sangam Road

- Scrutiny of records in five²⁴ Assessment Circles revealed that in five cases, writ appeal / special leave petition / counter affidavit had not been filed by the Department thereby resulting in blocking of arrears of ₹ 63.23 crore.
- The absence of system to monitor disposal of cases pending with various appellate / judicial fora resulted in failure to undertake timely follow up action to ensure early realisation of revenue of ₹ 768.71 crore in four²⁵ Assessment Circles.
- Eight disputed cases pertaining to seven²⁶ Assessment Circles and involving revenue of ₹ 98.78 crore were covered by writ petitions filed (between 2006 and 2015) by the dealers. The Department had not taken any action to file the counter affidavits or vacation petitions to expedite disposal of the cases or for vacation of stays granted against collection of tax.
- In seven²⁷ Assessment Circles, though the Madras High Court had remanded back (between June 2012 and October 2016) the cases involving revenue of ₹ 176.42 crore, reassessment was yet to be made by the AAs even after the lapse of one to five years, which indicated laxity on the part of the Department.
- In four²⁸ Assessment Circles, the Department did not take action for recovery of arrears of ₹ 12.15 crore after the assessment was upheld by the appellate authority. Out of the above, in respect of a case relating to an assessee in the State of Kerala; the AA did not initiate measures to recover ₹ 1.58 crore.

After we pointed this out, the Department replied that the individual cases were referred to the Assessment Circles concerned and details of action taken thereon would be intimated.

2.6.4 Inordinate delay in implementation of VAT Audit / Surprise Inspection proposal

The CCT instructed (June 2010) that VAT Audit notes / Surprise inspection proposals should be forwarded by the Enforcement Wing within one month from the date of completion of audit and the same should be implemented by the AAs within three months from the date of receipt of the reports. As per revised instructions issued in July 2013, notice incorporating the proposals of VAT Audit / Surprise inspection was to be issued by the AA within 30 days from the date of receipt of proposals in case of LTU assesseees and within 15 days in case of other assesseees. Orders were required to be passed within two months from the date of service of notice in case of LTU assesseees and in

²⁴ LTU-II, LTU-III, Tiruvallikeni, Sattur and Sriperumbudur

²⁵ Anna Salai, Bodinayakanur, DLTU, Coimbatore and Kilpauk

²⁶ Anna Salai, DLTU, Coimbatore, LTU-IV, Pattaravakkam, Sriperumbudur, Thudiyalur and T.Nagar

²⁷ DLTU, Coimbatore, Kilpauk, LTU-I, LTU-III, Thudiyalur, Tiruvallikeni and T.Nagar

²⁸ DLTU, Coimbatore, LTU-I, P N Palayam and Tuticorin-III

respect of proposals involving revenue of more than ₹ 5 crore. In other cases, orders were required to be passed within one month of date of service of notice.

Our check of records revealed that in five²⁹ Assessment Circles, there were delays in implementation of VAT Audit / Surprise inspection reports, much beyond the three month period prescribed for implementation of the same. This, in turn, delayed initiation of action for recovery of ₹ 70.28 crore.

We pointed this out to the Department. Reply was awaited (January 2018).

2.6.5 Recovery of arrears under the Revenue Recovery Act

As per Section 42 (2) of the TNVAT Act, any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or a person shall have priority over all other claims against the property of the said dealer and the same may be recovered as land revenue.

When a dealer defaults in payment of tax, the AA himself can take action under the Revenue Recovery Act for enforcing collection. When a defaulter does not own any property in a district and enquiries show that he has properties in other districts, requisitions should be sent to the Assessment Circle of the other district for enforcing collection. Whenever coercive action for collection is taken, various stages of process should be enforced quickly and the results watched closely, lest any delay should render recovery impossible.

➤ We noticed in eight³⁰ Assessment Circles that in 23 cases involving arrears of ₹ 105.06 crore, details of property owned by the defaulters were not ascertained even after long periods of time since the amounts fell into arrears due to lack of sustained action on the part of the Department. Thus, the process of undertaking coercive action for enforcing collection through distraint / attachment of moveable and immoveable properties of the defaulting dealers could not be commenced despite lapse of long periods of time.

➤ We noticed in three³¹ Assessment Circles that though the properties of the defaulting dealers were attached (between August 2005 and January 2013) for non-payment of arrears of ₹ 87.66 crore, auction of the properties was not conducted. The non / delay in initiation of action for auctioning the property after attachment under the RR Act had resulted in non-realisation of arrears of tax.

➤ The Notice of assessment and demand issued to the dealer in the prescribed form mentions that the amount of tax demanded as per the notice shall be paid within the prescribed period of date of service of notice, failing

²⁹ Kilpauk, LTU-I, LTU-II, Sriperumbudur and Tiruvallikeni

³⁰ Chokkikulam, Bodinayakanur, LTU-III, LTU-IV, Munichalai Road, Sattur, Tuticorin-III and Virudhunagar-II

³¹ Bodinayakanur, Melur and Nethaji Road

which the amount will be recovered as if it were an arrear of land revenue or fine imposed by a Magistrate.

We, however, noticed in 26 cases that though there was default in payment of arrears of ₹ 527.87 crore by the dealers, no action was initiated for recovery of the same, resulting in arrears remaining uncollected.

➤ When a defaulter does not own any property in a district and enquiries show that he has properties in other districts, requisitions should be sent to the Assessment Circle of the other district for enforcing collection. On receipt of such a requisition, action will be taken to collect the arrears as if the arrears had accrued in that district.

In three³² Assessment Circles, for collection of arrears of demand of ₹ 13.61 crore raised against three dealers, requisitions were sent to other districts wherein the properties of the dealers were situated. But the arrears remained uncollected due to lack of co-ordination among the officers in the department and improper / no response from the officers in the other districts.

➤ In LTU-I and Bodinayakanur Assessment Circles, the arrear action files relating to 22 cases involving arrears of ₹ 84.60 crore were not produced to audit for verification. Therefore, the measures taken by the Department for collection of arrears could not be ascertained.

After we pointed this out, the AA, Bodinayakanur Assessment Circle attributed the reasons for deficiency in recovery of arrears under the RR Act to vacancy in the post of sales tax collection inspector. The AA further stated that since the post was filled in August 2017, necessary action would be taken to collect the arrears. The AAs of other Assessment Circles stated that action would be initiated for recovery of arrears. However, reasons which hindered the AAs in taking action for recovery of arrears were not furnished.

2.6.6 Failure to initiate follow up action on waiver petition

Section 31 of the TNVAT Act provides the Government the power to waive the whole or any part of tax or penalty or interest or fee payable in respect of any period by any dealer under the Act. As per the powers derived from the above Section, waiver orders are to be issued in eligible cases.

During check of records in Melur Assessment Circle, Madurai, we observed that though proposal for waiver of demand of ₹ 18.36 crore relating to a Co-operative Spinning Mills was submitted by the AA to Deputy Commissioner (CT) Madurai (East) in September 2011, no decision was taken to accept and forward the proposals to Government or to reject it. The amount continued to remain in arrears.

After we pointed this out (July 2017), the AA stated that necessary follow up action would be taken. Further report was awaited (January 2018).

³² Ambattur, Kilpauk and Nethaji Circle, Madurai

2.6.7 Incorrect elimination of demand

Elimination of tax or penalty demand is an important work in preparation of DCB Statement. The assistant responsible for preparation of DCB Statement should not eliminate any demand on his own but obtain orders from the AA before such deletion. Entries to this effect should be made in the relevant registers and note order should be filed in the DCB Statement.

However, we noticed in P.N. Palayam Assessment Circle, Coimbatore that demand of ₹ 7.41 crore in respect of seven dealers which was raised in September 2015 was written off without any proper proceedings.

When the incorrect elimination of demand was pointed out in June 2017, the AA replied that statement of audited accounts in Form WW were filed by the dealer and the demands raised in best judgment assessment were eliminated. The reply was not acceptable since the assessments, which were made on best judgment basis were not amenable to revisionary proceedings as envisaged in Section 84 of the TNVAT Act. Further, revision proceedings were not passed even in a single case and the demands were just eliminated from the 'L' register.

Similarly, in Tiruvallikeni Assessment Circle, scrutiny of the statistics for the month of March 2017 revealed that demand of ₹ 35.24 crore in 779 cases were eliminated, for which there was no corresponding files or entries in the 'L' register. The above elimination of the demands was carried out without any proper proceedings or approval of the higher authorities.

We pointed this out in August 2017. Reply was awaited (January 2018).

2.6.8 Non-levy of interest

As per Section 42(3) of the TNVAT Act, on any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at one and a quarter *per cent* per month upto 28 May 2013 and at two *per cent* per month thereafter of such amount for the entire period of default.

During check of records in DLTU and Tiruvallikeni Assessment Circles, we noticed that arrear of ₹ 48.18 lakh relating to the years 1994-95 and 2005-06 was recovered from two assessees during September 2014 and March 2016 with delay ranging from 50 to 170 months. However, interest of ₹ 66.55 lakh was not levied and recovered by the AAs.

We pointed this out to the Department and their reply was awaited (January 2018).

2.6.9 Internal control mechanism

An internal control mechanism safeguards against errors and irregularities in operational and financial matters. It examines and evaluates the extent of compliance of the departmental rules and procedures. The failure to prepare DCB Statements, the non-usage of TSP for generation of MIS report on arrear position and the failure to forward detailed list of arrear cases along with the monthly statistics is evidence of the existence of weak internal control system.

2.6.9.1 Preparation of DCB Statement

The TNVAT Manual (Part II Chapter XV) of the CT Department prescribes a system of preparation and onward transmission of DCB Statement through which the demands raised in respect of tax, interest, penalty, registration and other miscellaneous receipts and balance could be watched. However, we noticed that in 13³³ Assessment Circles, the above system of furnishing of DCB statements had been discontinued at different quarters and no DCB statement had been sent to the higher authorities from the Assessment Circles. This had resulted in non-monitoring of collection and balance of the taxes and arrears respectively by the supervisory authorities.

2.6.9.2 Preparation of DCB Statement in Total Solution Project

The TSP software was introduced (with effect from June 2016) with a view to reduce paper work and documentation and introduce system aided administration and collection of tax. However, we observed that in spite of a lapse of more than a year since the implementation of TSP, the legacy data relating to arrears of tax had not been uploaded in the TSP. Hence, TSP could neither be used for generation of accurate MIS reports on the arrear position nor could be used for effective monitoring and follow up of collection of arrears.

2.6.9.3 Preparation of consolidated arrear position

The Assessment Circles prepare monthly statistics in respect of the arrear and collection position and the same is forwarded to the territorial DC, who in turn consolidates the circle statistics and forwards it to the jurisdictional JC, who in turn consolidates the DCs statistics and forward it to the Commissioner's office. We noticed that the detailed list of cases of the arrear position as per the statistics are not prepared and submitted by the Assessment Circles. We observed that the amount of arrears as per the monthly statistics did not agree with the actual arrear position in the Assessment Circles.

2.6.9.4 Follow up mechanism of collection of arrears

We observed that during the monthly review meetings, no specific follow up in respect of the pending arrears had been discussed and no minutes were maintained in the Assessment Circles consistently.

In the Exit Conference, the Additional Chief Secretary to Government instructed the Department to upload the legacy data of arrears in the TSP

³³ Ambattur, Anna Salai, Chepauk, Kilpauk, LTU-I, LTU-II, LTU-III, LTU-IV, Pattaravakkam, Poonamallee, Sriperumbudur, Tiruvallikeni and T.Nagar

module and make use of MIS reports for effective monitoring and follow up of collection of arrears.

2.6.10 Conclusion

The collection of the arrear demands is one of the significant and important work of the Commercial Taxes Department. Any lapse or deficiency or inaction on the part of the Department on the above process will have a serious impact on the revenue of the Government and their ability to balance the budget. A sample study of the arrear position revealed that there was no effective control, follow up and pursuance of arrears. There were instances of non-initiation of recovery proceedings, delay or non-follow up of revenue recovery proceedings, non-follow up of legal cases, non-compliance to judicial forums' orders etc. There was no effective internal control mechanism to watch the above deficiencies by the higher authorities, which had resulted in the huge accumulation of arrears.

2.7 Other Audit Observations

Value Added Tax

2.7.1 Application of incorrect rate of tax

As per Section 3(2) of TNVAT Act, in the case of goods specified in part B or Part C of the First Schedule, the tax shall be payable by a dealer on every sale made by him within the State at the rate specified therein. As per entry 13A of Part C of First Schedule to the TNVAT Act, introduced with effect from 12 July 2011, Compact Discs (CDs) / DVDs were taxable at the rate of 14.5 *per cent*.

During test check (December 2015 and February 2017) of records in Nungambakkam Assessment Circle, we noticed from the monthly returns and the statement of audited accounts in Form-WW that a dealer had paid tax at the rate of five *per cent* on the turnover of ₹ 2.27 crore pertaining to sale of CDs / DVDs instead of the correct rate of 14.5 *per cent* during the assessment years 2012-13 to 2014-15. The AA also failed to ensure the payment of tax at correct rates by scrutiny of monthly returns filed by the dealer. This resulted in short realisation of tax of ₹ 21.62 lakh.

After we pointed this out (January 2016 and March 2017), the AA, Nungambakkam Assessment Circle revised (June 2017) the assessment of the dealer for the year 2014-15 and raised additional demand of ₹ 7.18 lakh. Collection particulars of the additional demand and reply in respect of the remaining years was awaited (January 2018).

The matter was referred to the Government in August 2017. Reply was awaited (January 2018).

2.7.2 Incorrect allowance of compounded rate of tax

Section 3(2) of the TNVAT Act provides that in the case of goods specified in Part B or Part C of the First Schedule, the tax shall be payable by a dealer on every sale made by him within the State at the rate specified therein.

Section 3(4)(a) of the TNVAT Act read with Notification dated 1 January 2007 provides that notwithstanding anything contained in Section 3(2), a dealer who effects second and subsequent sales of goods purchased within the State and whose turnover relating to taxable goods for a year is less than ₹ 50 lakh, may at his option pay tax at the rate of 0.5 *per cent*.

As per Section 3(4)(b) of the TNVAT Act, as it stood upto 31 March 2012, if the taxable turnover of a dealer in a year reaches ₹ 50 lakh at any time during the year, he is liable to pay tax under Section 3(2) of the Act on all his sales turnover. The Section further provides that such dealer whose turnover has reached ₹ 50 lakh during the previous year shall not be entitled to exercise such option for subsequent years.

During scrutiny (April 2016) of records in Vaniyambadi Assessment Circle, we noticed that a dealer in hardware had paid tax of ₹ 0.27 lakh and ₹ 0.25 lakh at the compounded rate of 0.5 *per cent* during the years 2011-12 and 2012-13 on the sales turnover of ₹ 54 lakh and ₹ 50.02 lakh respectively. As the taxable turnover of the dealer during the two years was in excess of ₹ 50 lakh, payment of tax at compounded rate was not in order. The AA, however, failed to ensure payment of tax at correct rate.

After we pointed this out (April 2016), the AA revised the assessment (October 2016) and after deducting ₹ 0.52 lakh, raised additional demand of ₹ 14.58 lakh. Collection particulars of the additional demand was awaited (January 2018).

The matter was referred to the Government in February 2017. Reply was awaited (January 2018).

2.7.3 Non-levy of purchase tax

As per Section 12 of the TNVAT Act, every dealer who in the course of his business purchases from a registered dealer or from any other person any goods (the sale or purchase of which is liable to tax under the Act) in circumstances in which no tax is payable by that registered dealer on the sale price of such goods under this Act and dispatches them to a place outside the State, except as a direct result of sale or purchase in the course of inter-state trade or commerce shall pay tax on the turnover relating to the purchase aforesaid at the rate specified in the Schedules to the Act.

As per entry 18 of the Fourth Schedule to the TNVAT Act, turmeric sold by any dealer whose total turnover does not exceed ₹ 300 crore in a year is exempt from levy of tax. As per entry 52 of Part B of the First Schedule to the TNVAT Act, turmeric other than those specified in the Fourth Schedule is taxable at the rate of five *per cent*.

During scrutiny of records in Leigh Bazaar Assessment Circle (January 2016), we noticed that a dealer whose total turnover during the years 2013-14 and 2014-15 was less than ₹ 300 crore had purchased turmeric from agriculturists and other dealers without payment of tax. The dealer had sent turmeric to places outside the State otherwise than by way of sale during the said years. As turmeric had not suffered tax earlier in the State, purchase tax was leviable for the stock transfer. However, purchase tax of ₹ 13.42 lakh and ₹ 9.09 lakh relating to the assessment years 2013-14 and 2014-15 respectively was not paid by the dealer, and the AA also failed to levy the same.

After we pointed this out (January 2017) the AA stated (March 2017) that since the total turnover of the dealer did not exceed ₹ 300 crore in a year, levy of purchase tax was not attracted.

The reply is not acceptable as the exemption upto ₹ 300 crore was applicable only for sale of turmeric. In the instant case, the dealer had purchased turmeric without payment of tax under the circumstance that the turnover of the selling dealers was less than ₹ 300 crore. The turmeric so purchased was sent outside the State otherwise than by way of sale. Hence, the conditions governing levy of purchase tax was satisfied.

The matter was referred to the Government in March 2017. Reply was awaited (January 2018).

2.7.4 Incorrect claim of input tax credit

As per Section 19 (1) of the TNVAT Act, there shall be input tax credit (ITC) of the amount of tax paid or payable under this Act, by the registered dealer, to the seller on his purchase of taxable goods specified in the First Schedule.

As per Section 27(2) of the TNVAT Act, where for any reason, ITC has been availed wrongly, the AA shall reverse the ITC availed and determine the tax due. Section 27(4) of the Act, *ibid*, provides for levy of penalty, in the case of first detection, at the rate of 50 *per cent* of the ITC wrongly claimed.

Our test check of records revealed the following irregularities in claim of ITC by the dealers.

2.7.4.1 Under Section 2(24) of the TNVAT Act, 'input tax' means the tax paid or payable under the Act by a registered dealer to another registered dealer on purchase of goods in the course of his business.

During test check of records (between April and September 2016) in three³⁴ Assessment Circles, we cross verified the details contained in the monthly returns of the purchasing dealers with the details contained in the monthly returns filed by the selling dealers. We noticed that the claim of ITC of five dealers during the year 2014-15, *inter alia*, included claim of ₹ 96.19 lakh in respect of purchase of goods valued at ₹ 19.24 crore effected from three dealers whose registration certificates were cancelled prior to the transaction of sale / purchase. Thus, at the time of purchase made by the dealers, the selling dealers were not registered under the Act and the claim of ITC by the purchasing dealers was not in order. The incorrect claim of ITC preferred by the dealers in the monthly returns was, however, allowed by the AA.

After we pointed this out (between May and September 2016), the AAs revised (between June 2016 and March 2017) the assessments and raised additional demand of ₹ 96.19 lakh. The appeal filed by a dealer after paying ₹ 16.44 lakh, being 50 *per cent* of the disputed tax was pending before JC (CT) Appeal, Chennai. Outcome of appeal and collection particulars of the balance amount was awaited (January 2018).

The matter was referred to the Government in August 2017. Reply was awaited (January 2018).

2.7.4.2 As per Section 19(11) of the TNVAT Act, in case any registered dealer fails to claim ITC in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before 90 days from the date of purchase, whichever is later.

During test check of records (November / December 2016) in Mylapore and Salem (Town) (North) Assessment Circles, we noticed that two dealers had, in

³⁴ Gudiyatham, LTU-II and Vaniyambadi

the monthly returns of April, July and August 2014, claimed ITC of ₹ 1.08 crore in respect of purchase of goods effected between April and December 2013. As the claim of ITC was not preferred within the prescribed time, the same had to be disallowed and the amount recovered from the dealers. The AAs, however, failed to invoke the provisions of Section 19 (11) of the Act and allowed the time barred claim of ITC. The incorrect claim of ITC of ₹ 1.08 crore was required to be reversed along with levy of penalty of ₹ 54.08 lakh.

The matter was brought to the notice of the Department in November / December 2016 and referred to the Government in July / August 2017. Reply was awaited (January 2018).

The IT application of the Department has a facility for the Assessing Authorities (AAs) to generate MIS reports on the claims of ITC. It was however, observed that AAs were not effectively utilising these reports to detect deficiencies in the returns submitted by the dealers despite instructions having been issued by the Commissioner of Commercial Taxes whereby AAs were required to undertake the annual verification of consolidated and e-filed monthly returns. As a result, AAs were not able to link the cases of ITC claims of cancelled dealers as well as the time barred cases.

It is recommended that the IT software should be strengthened to ensure avoidance of such occurrences in future. The department should also ensure expeditious modifications and updation of the IT software as per the requirements.

2.7.5 Non / short reversal of input tax credit

2.7.5.1 As per Section 19(1) of the TNVAT Act, there shall be ITC of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule. As per Section 19 (5) (a) of the Act no ITC shall be allowed in respect of goods exempted under Section 15. As per Section 19(12) of the Act, where a dealer has availed credit on inputs and when finished goods become exempt, credit availed on inputs used therein should be reversed. As per Section 15 of the Act, sale of goods specified in the Fourth Schedule and goods exempted by notification by the Government by any dealer shall be exempted from tax. By issue of Notification in August 2012, Government granted exemption on the sale of furnace oil to HT consumers for use in Gensets for the period from 1 February 2012 to 30 September 2012.

During scrutiny (September 2016) of records in LTU-IV Assessment Circle, we noticed that tax paid by a dealer through monthly returns on sale of furnace oil during the period from February 2012 to September 2012 was refunded by orders issued in January 2016. The AA, however, failed to reverse proportionate ITC corresponding to such exempted sales.

After we pointed (September 2016) this out, the AA revised (October 2016) the assessment and collected additional demand of ₹ 1.02 crore, partly by cash (December 2016 and January 2017) and partly by way of adjustment from the refund available to the dealer in respect of the assessment year 2011-12.

The matter was referred to the Government in June 2017. Reply was awaited (January 2018).

2.7.5.2 As per Section 19(5)(a) of the TNVAT Act, ITC is not available in respect of sale of goods exempt from levy of tax. Sale of goods to Special Economic Zone (SEZ) located in other States is exempt as per Section 8(6) of the CST Act.

During scrutiny (between August and October 2016) of records in three³⁵ Assessment Circles, we noticed that three dealers had claimed ITC of ₹ 148.99 crore on purchase of inputs during the years 2013-14 and 2014-15. The total sales turnover of ₹ 8,676.83 crore of the dealers for the years 2013-14 and 2014-15, *inter alia*, included sale of goods valued at ₹ 73.23 crore to SEZs located in other States. As such sale was exempt from levy of tax, proportionate ITC of ₹ 97.08 lakh corresponding to such sales was required to be reversed. The dealers failed to reverse proportionate ITC in respect of sale to SEZs located in other States and the AAs also failed to enforce the same.

After we pointed this out (between August and October 2016), the AAs of LTU-I and LTU-IV Assessment Circles revised the assessment and raised additional demand of ₹ 24.94 lakh. Report regarding collection and reply in respect of the remaining cases was awaited (January 2018).

The matter was referred to the Government between May and August 2017. Government accepted the audit observation in a case pertaining to LTU-IV Assessment Circle and stated that the amount of ₹ 9.70 lakh was collected. Reply of the Government in the other cases was awaited (January 2018).

2.7.5.3 As per Section 19 (5) (a) of the TNVAT Act, no ITC shall be allowed in respect of goods exempted under Section 15. As per Section 19(12) of the Act, where a dealer has availed credit on inputs and when finished goods become exempt, credit availed on inputs used therein should be reversed.

During scrutiny (May 2016) of records in Amaidakarai Assessment Circle, we noticed that a dealer had claimed ITC of ₹ 35.10 lakh on purchase of inputs during the year 2014-15. The total sales turnover of ₹ 15.37 crore of the dealer for the year 2014-15 *inter alia* included sale of goods valued at ₹ 7.82 crore which were exempt from levy of tax. Therefore, proportionate ITC of ₹ 17.86 lakh corresponding to such exempted sales was required to be reversed. The dealer failed to reverse proportionate ITC in respect of exempted sale and the AA also failed to enforce the same.

After we pointed this out in June 2016, the AA revised the assessment in November 2016 and raised additional demand of ₹ 17.86 lakh; the collection particulars of which was awaited (January 2018).

The matter was referred to the Government in August 2017. Reply was awaited (January 2018).

³⁵

LTU-I, LTU-IV and Tiruverumbur

2.7.5.4 As per Section 19(4) of the TNVAT Act, ITC shall be allowed on the tax paid or payable on the purchase of goods in excess of *five per cent* relating to such purchases, if the goods purchased are transferred or used in the manufacture of other goods and transferred to other States otherwise than by way of sale. The Section provides that if a dealer has already availed ITC, there shall be reversal of credit against such transfer.

During scrutiny (November 2016 and February 2017) of records in three³⁶Assessment Circles, we noticed that four dealers who claimed ITC of ₹ 8.12 crore on purchase of goods during the year 2014-15, had transferred goods valued at ₹ 66.12 crore to other States, otherwise than by way of sale. The transfer of goods to other States, otherwise than by way of sale, warranted reversal of proportionate ITC of ₹ 91.31 lakh. We, however, observed that as against ₹ 61.42 lakh, reversal of ₹ 39.93 lakh alone was made in one case, while in the other cases, reversal was not made by the dealers. Thus, there was non / short reversal of ITC of ₹ 51.38 lakh. The AAs also failed to notice the non / short reversal of ITC pertaining to stock transfer of goods to other States otherwise than by way of sale.

After we pointed this out (between November 2016 and February 2017), the AAs revised the assessments (January and July 2017) and raised additional demand of ₹ 51.38 lakh; the collection particulars of which was awaited (January 2018).

The matter was referred to the Government between March and August 2017. Reply was awaited (January 2018).

2.7.6 Non / short levy of interest

As per Section 21 of the TNVAT Act, every dealer registered under the Act, shall file return, in the prescribed form showing the total and taxable turnover within the prescribed period, in the prescribed manner along with the prescribed documents and proof of payment of tax. The tax under this Section shall become due without notice of demand to the dealer on the last date of the period of filing return.

As per Section 42(1) of the TNVAT Act, the tax assessed or has become payable under this Act from a dealer shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than thirty days from the date of service of the notice. As per Section 42(3) of the TNVAT Act, on any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at one and a quarter *per cent* per month upto 28 May 2013 and at two *per cent* per month thereafter of such amount for the entire period of default.

As per Rule 7(8) of the Tamil Nadu Value Added Tax Rules, 2007, the dealers making electronic payment of tax and whose taxable turnover in the previous

³⁶ Alwarpet, Nandambakkam and Nungambakkam

year is ₹ 200 crore and above, shall file the returns on or before 14th of the succeeding month along with proof of payment of tax.

During scrutiny (July 2015 / September 2016) of records in four³⁷ Assessment Circles, Chennai, we noticed that six dealers had, during certain months of the assessment years 2013-14 and 2014-15, paid tax of ₹ 629.94 crore belatedly; the period of delay ranging from one day to 1,917 days. The belated payment of tax attracts levy of interest of ₹ 5.11 crore. The AAs, however, levied interest of ₹ 4.44 crore for belated payment of tax. This resulted in short levy of interest of ₹ 66.74 lakh.

After we pointed this out (between July 2015 and October 2016), the AAs did not accept the audit observation and stated (July 2015 / March 2017) that where the due date of payment of tax falls on a holiday, the period of delay had been calculated by reckoning the next working day as due date and interest has been correctly levied as per the provisions of the Tamil Nadu General Clauses Act.

Government to whom the matter was referred (July 2016) also stated (February 2017) in respect of two cases pertaining to LTU-II and LTU-III Assessment Circles that where the due date of payment of tax falls on a holiday, the period of delay had been calculated by reckoning the next working day as due date and interest had been correctly levied as per the provisions of the Tamil Nadu General Clauses Act.

The reply was not acceptable as the Tamil Nadu General Clauses Act does not provide for shifting of due date to the next working day. Section 11 of Tamil Nadu General Clauses Act only provides that where any act was directed to be done in any office within a period of time, if the office is closed on the last day of the prescribed period, then the act is considered to be done in the due time, if it is done on the next day afterwards on which the office is open. Hence, in cases where due date for payment of tax falls on a holiday, if tax is not paid on the next working day following the holiday, period of default has to be reckoned from the due date, though the same happens to be a holiday.

Reply of the Department and the Government in respect of the remaining cases was awaited (January 2018).

Central Sales Tax

2.7.7 Incorrect computation of taxable turnover

Article 286(1)(b) of the Constitution of India, envisages that no law of a State shall impose (or) authorise the imposition of a tax on the sale (or) purchase of goods where such sale takes place in the course of import of goods into the territory of India.

As per Section 5(2) of the CST Act, a sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the Territory of India if sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the Customs frontiers of India.

³⁷ LTU-III, LTU-IV, Mahal and Pudukkottai-I

As per Section 8(2) of the CST Act, interstate sale of goods not covered by valid declaration forms are assessable to tax at the rate applicable to sale of such goods inside the State. Stainless steel scraps were taxable at the rate of four *per cent* inside the State.

During scrutiny (October 2016) of records in Gummidipoondi Assessment Circle, we noticed that the AA, while finalising the assessment of a dealer for the year 2010-11 under the CST Act, had allowed exemption on a turnover of ₹ 2.37 crore as sales having been effected by transfer of documents of title to the goods before the goods had crossed the Customs frontier of India. We, however, noticed that documentary evidences in proof of such sale having taken place by transfer of documents of title to goods were not available in the assessment file. We, therefore, suggested that the sales turnover be assessed at the rate of four *per cent* as sales not covered by valid declaration forms involving tax of ₹ 9.50 lakh.

After we pointed this out (October 2016), the AA revised the assessment and raised additional demand of ₹ 9.50 lakh; the collection particulars of which was awaited (January 2018).

The matter was referred to the Government in July 2017. Reply was awaited (January 2018).

CHAPTER III

STAMP DUTY AND REGISTRATION FEE

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STAMP DUTY AND REGISTRATION FEE

3.1 Tax administration

The Registration Department administers the Indian Stamp Act, 1899 and the Registration Act, 1908 and the Rules made thereunder. The administration of the Department is vested with the Inspector General of Registration (IGR). There are 50 registration districts comprising 576 registration offices in the State. The levy and collection of stamp duty and registration fees are done by the registering authorities. The monitoring and control at the Government level is done by the Secretary, Commercial Taxes and Registration Department.

3.2 Internal audit

Internal audit is a vital component of internal controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well. The Department has a system of internal audit to ensure *cent per cent* audit of all the documents registered. There are 45 audit units, each headed by a Audit District Registrar (ADR) and assisted by an Assistant, Junior Assistant and a Typist. The periodicity of audit of all offices is on monthly basis. The Registration Manual (Part II) provides guidance for establishment and working of internal audit in the department. The Department has also prepared and published a Hand Book of Internal Audit (HBIA) for instant and simplified guidance.

From the data furnished by the Department, we found that as against 4,659 audits due for the period from 2014-15 to 2016-17, 2,933 audits were completed and balance of 1,726 audits (36 *per cent*) was in arrears as on 31 March 2017. Out of the pending audits, 747 (more than 40 *per cent*) relate to the period 2014-15. Within the five zones³⁸ which were covered for detailed study, we noticed that out of 2,350 monthly audits, 156 (seven *per cent*) remained uncovered.

The manual provides for audit of all units in a year and all documents of an auditee. As no sampling of documents for audit is required, the department has guided that programme of audit may be designed based on number of documents registered in the auditee.

The data sourced from the Policy Statement of the Department reveals that while the number of documents registered had depleted by almost 30 *per cent* over the ten-year period, revenue through registration of documents increased by 75 *per cent*. Thus, the planning for audit should take into consideration

³⁸

Chennai (South), Madurai (South), Trichy, Coimbatore and Tirunelveli

both the number of documents as well as revenue of the auditee unit, so as to be a scientific approach towards identifying the auditee units as well as allocation of manpower.

The IGR issued instructions in October 2011³⁹ that the ADR shall issue audit slips within 10 days from the date of completion of audit to the concerned Sub-Registrar (SR) and the SR shall furnish reply within 10 days from the date of audit slips. The instructions stipulated that final report incorporating replies and rejoinders should be issued within 30 days from the date of completion of audit. By a further circular issued in July 2015, the IGR instructed that slips shall be issued within the end of the month of audit. We, however, noticed in the five zones that 622 (82 *per cent*) out of 756 reports were issued belatedly; the period of delay ranging from six to 557 days. The Department attributed the reason for delayed issue of report to heavy workload as a result of 11 to 15 months' audit being taken up simultaneously.

Delay in issue of audit reports causes delay in pursuance of paras, thereby leading to delayed corrective measures being undertaken by the department.

The details furnished by the Department indicated that 22,598 paragraphs involving ₹ 96.31 crore were outstanding as on 31 March 2017. The number of outstanding paragraphs in the five zones was 4,669.

Part 7(2) of the manual prescribes a column for details of outstanding paras of previous reports and action taken by the auditee. We noticed that in all the reports, the column was left blank. The outstanding paras of earlier reports were therefore not being brought to the notice of the auditee during the current audit. The lack of methodical pursuance of old cases has resulted in piling up of outstanding paras.

We also observed that the independence of internal audit is compromised as the zonal District Inspector General of Registration to whom the District Registrar (Audit) reports, is also the administrative head of the zone. We therefore suggest that internal audit should be placed under an independent authority within the department who is not in charge of any division.

³⁹

As per Inspector General of Registration circular no.21 dated 27.10.2011

3.3 Results of audit

Test check of records of departmental offices conducted during the period from April 2016 to March 2017 revealed non/short levy of stamp duty and registration fee and other irregularities amounting to ₹ 972.32 crore in 670 cases, which broadly fall under the following categories:

Table 3.1

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1	Performance Audit on Assessment and levy of stamp duty and registration fee	1	924.67
2	Undervaluation of instruments	79	4.82
3	Misclassification of instruments	232	9.72
4	Incorrect grant of exemption	9	10.46
5	Excess/Incorrect allocation of Transfer Duty Surcharge	46	7.72
6	Others	303	14.93
	Total	670	972.32

During the course of the year 2016-17, the department accepted and recovered underassessment and other deficiencies amounting to ₹ 7.34 crore in 105 cases, out of which, ₹ 6 lakh involved in 4 cases was pointed out during the year and the rest in earlier years.

A Performance Audit on “Assessment and levy of stamp duty and registration fee” involving ₹ 924.67 crore is discussed below:

3.4 Performance Audit on Assessment and Levy of Stamp duty and Registration Fee

Highlights

The failure of the Department to evolve a system to monitor payment of stamp duty by brokerages resulted in short collection of stamp duty of ₹ 359.69 crore.

(Paragraph 3.4.8)

Omission to collect stamp duty in respect of bonds issued through depositories resulted in non-collection of stamp duty of ₹ 450.52 crore.

(Paragraph 3.4.9)

There was non-adherence to the guidelines of Central Valuation Committee in subsequent fixation of market guideline value.

(Paragraph 3.4.13)

Incorrect allowance of exemption in respect of issue of debentures resulted in non-levy of stamp duty of ₹ 24.34 crore.

(Paragraph 3.4.16)

In 19 registering offices, short collection of registration fee of ₹ 12.18 crore was noticed in respect of 51 instruments.

(Paragraph 3.4.17)

In 40 registering offices, misclassification of instruments by the registering authorities resulted in short collection stamp duty and registration fee of ₹ 8.50 crore.

(Paragraph 3.4.18)

Incorrect remission of transfer duty surcharge of ₹ 21.34 crore was noticed in 23,804 instruments processed under the Samadhan Scheme.

(Paragraph 3.4.20.1)

3.4.1 Introduction

The Registration Department is one of the major revenue earning Department of the State. The contribution of stamp duty and registration fee to the total tax revenue of the State during the last five-year period ranged between 10.63 and 11.19 *per cent*. The Registration Department is responsible for registration of immovable properties, marriages, firms, societies, chits, etc. Indian Stamp Act 1899 (IS Act), as amended by the Government of Tamil Nadu, from time to time provides for levy of stamp duty on various instruments. The rates of stamp duty, which are prescribed in Schedule I to IS Act, are adopted by the Government of Tamil Nadu with suitable amendments. Besides, registration fee is levied in accordance with the Registration Act, 1908.

3.4.2 Organisational set up

The Inspector General of Registration (IGR) is the administrative head of the Registration Department. At the Head Office, the IGR is assisted by four⁴⁰ Additional Inspectors General of Registration, one Deputy Inspector General of Registration, two Assistant Inspectors General of Registration and seven District Registrars (DR). For effective administration, the State is divided into nine Registration Zones, each zone comprising of four to nine registration districts. There are 50 Registration Districts and 576 Registering Offices in the State. The Registering Offices are headed by the DRs or Sub Registrars (SRs). The monitoring and control at Government level is done by the Secretary to Government, Commercial Taxes and Registration Department.

3.4.3 Audit objectives

The Performance Audit was conducted to ascertain whether-

- the Department had adequate system in place to ensure levy and collection of stamp duty and registration fee in accordance with the prescribed provisions of Acts and Rules;
- assessment and levy of stamp duty and registration including valuation and classification was appropriate;
- exemptions / concessions were allowed as per the Rules / provisions of the Act; and
- measures planned by the Department to improve citizen service delivery were implemented.

3.4.4 Scope and methodology

The Performance Audit was conducted between March 2017 and September 2017 covering the transactions relating to the period from 2011-12 to 2015-16. Fifty six⁴¹ out of 576 Registering Offices in the State, which contribute 42 per cent revenue were selected by stratified sampling. In addition to the above,

⁴⁰ Stamps and Registration, Guidelines, Intelligence and Chits),

⁴¹ Joint I SR, Chennai Central, Joint I SR, Chennai South, Joint I SR, Coimbatore, Joint I SR, Kumbakonam, Joint I SR, Madurai North, Joint I SR, Salem, Joint I SR, Thanjavur, Joint I SR, Tiruppur, Joint I SR, Trichy, Joint II SR, Chengalpet, Joint II SR, Chennai Central, Joint II SR, Coimbatore, Joint II SR, Cuddalore, Joint II SR, Krishnagiri, Joint II SR, Thiruvannamalai, Joint II SR, Tiruppur, Joint II SR, Virudhunagar, SR, Acharapakkam, SR, Adayar, SR, Alandur, SR, Ambattur, SR, Annanagar, SR, Ganapathy, SR, Gandhipuram, SR, Guduvancherry, SR, Hosur, SR, Jolarpet, SR, Kelamangalam, SR, Kundrathur, SR, Madukkur, SR, Manavalanagar, SR, Mylapore, SR, Neelangarai, SR, Padappai, SR, Pallavaram, SR, Pammal, SR, Periamet, SR, Periyanaickanpalayam, SR, Ponneri, SR, Puliyangudi, SR, Purasawakkam, SR, Redhills, SR, Royapuram, SR, Selaiyur, SR, Singanallur, SR, Sriperumbudur, SR, Sunkuvarchatram, SR, T.Nagar, SR, Tambaram, SR, Thiruvallur, SR, Thiruvottiyur, SR, Thondamuthur, SR, Tirupporur, SR, Uthukuli, SR, Velacherry, and SR, Woraiyur

nine⁴²DIGR offices and Sub-registries having jurisdictional area of State Industries Promotion Corporation of Tamil Nadu (SIPCOT) Industrial parks were also selected for Performance Audit. The files and records available in the office of IGR were also scrutinised. An entry conference was held with the Department in April 2017 during which the objectives, scope and methodology of audit were explained. The draft Performance Audit Report was forwarded to the Government in November 2017 and was discussed in the Exit Conference held in January 2018. The views expressed by the Government and Department during the Exit Conference have been taken into account and incorporated in the report.

3.4.5 Audit criteria

The criteria for audit was derived from the following:

- Indian Stamp Act, 1899
- Indian Stamp Rules, 1925
- The Registration Act, 1908
- The Tamil Nadu (Prevention of Undervaluation of Instruments) Rules, 1968
- The Tamil Nadu Stamp (Constitution of Valuation Committee for estimation, publication and revision of market value guidelines for Properties) Rules, 2010
- Various Notifications / orders / circulars issued by the Government / Department.

3.4.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation extended by the Zonal and field offices of the department in the conduct of the performance audit.

3.4.7 Trend of Revenue

The following table details the trend of revenue relating to Registration Department during 2011-12 to 2015-16.

⁴² Chennai, Coimbatore, Cuddalore, Madurai, Salem, Thanjavur, Tirunelveli, Trichy and Vellore

Table 3.2 - Trend of Revenue

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+) / shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-a-vis total tax receipts	No. of documents registered
2011-12	5,856.07	6,580.78	(+) 724.71	(+) 12.38	59,517.66	11.06	35,18,435
2012-13	8,466.94	7,645.40	(-) 821.54	(-) 9.70	71,254.27	10.73	26,90,351
2013-14	9,874.22	8,251.25	(-) 1,622.97	(-) 16.44	73,718.11	11.19	26,53,291
2014-15	10,470.18	8,362.33	(-) 2,107.85	(-) 20.13	78,656.54	10.63	25,73,931
2015-16	10,385.29	8,721.45	(-) 1,663.84	(-) 16.02	80,476.08	10.84	25,28,561

Source: Finance Accounts and Policy Notes of the Department

The above Table indicates that though there is a steady increase in revenue during the five-year period, the actual receipts was less than the budget estimates during the period from 2012-13 to 2015-16; the percentage of variation being as high as 20 per cent in the year 2014-15. The reasons attributed by the Department for shortfall in collection was gradual decrease in the number of documents registered during the said years.

Audit Findings

3.4.8 Lack of mechanism to ensure collection of stamp duty on contract notes

As per Article 5 (c) of Schedule I to IS Act, as applicable to the State of Tamil Nadu, agreement or memorandum of agreement entered into for sale or purchase of securities with stock brokers of recognised stock exchange are chargeable to stamp duty at the rate of fifteen paise for every ₹ 2,500 (0.006 per cent) or part thereof on the value of security at the time of purchase or sale, as the case may be.

The Government, with a view to ensuring full realisation of revenue due to the State in respect of these securities related transactions, appointed (April 2012) Bank of India Shareholding Limited. (BOISL), as agent for collecting stamp duty on securities related transactions from brokers. The duty payers are also permitted to pay the amount directly into the Government Treasury and remit the challan to the department.

We noticed that the details pertaining to the turnover of the brokerages in Tamil Nadu, based on which the duty was remitted was not being maintained by the department. The Department did not devise a system to monitor the collection of stamp duty and therefore, could not ensure proper realisation of duty due to the Government.

We obtained the details of volume of securities related transactions entered into by brokerages in respect of clients situated in the State from the National

Stock Exchange (NSE), Bombay Stock Exchange (BSE) and the Multi Commodity Exchange (MCX). The turnover reported to the exchange during the period from 2011-12 to 2015-16 was ₹ 81.95 lakh crore involving payment of stamp duty of ₹ 491.72 crore. The details furnished by the Department, however, revealed that stamp duty of ₹ 132.03 crore was realised during the period from 2011-12 to 2015-16. This resulted in short collection of stamp duty of ₹ 359.69 crore.

During Exit Conference, Government stated that Association of National Exchange Members of India (ANMI) had filed writ petition against collection of stamp duty under Article 5 and the High Court of Madras had issued interim injunction in 2013, restraining the Regional Training Institute of the Registration Department from calculating stamp duty under Article 5 in respect of the members of the petitioner association, until next hearing.

The reply was not acceptable as the stay granted by Madras High Court was only in respect of members of ANMI, and brokerages who are not members of ANMI have to pay stamp duty under Article 5 (c) of the IS Act. The net amount of stamp duty payable by brokerages who are not members of ANMI, after deducting the amount paid by them worked out to ₹ 286.85 crore, which the department was not restrained from collecting. The Department did not institute measures to regularly obtain the turnover of brokerages from the stock exchanges to ensure proper realisation of revenue due to Government. We further observed that though the issue involved high revenue implication, no action was taken by the department to vacate the interim stay and therefore further hearing of the case did not take place since 2013.

3.4.9 Omission to collect stamp duty in respect of bonds issued through depositories

According to Section 8-A of the IS Act, notwithstanding anything contained in this Act or any other law for the time being in force, an issuer, by the issue of securities to one or more depositories, shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped under Article 15 of the IS Act.

Details obtained by us from the National Securities Depository Limited (NSDL) revealed that bonds valuing ₹ 18,771.84 crore were issued in the State of Tamil Nadu during the period from 2011-12 to 2015-16. However, no stamp duty was levied in respect of such bonds. Applying the rate of ₹ 12 for every ₹ 500 or part thereof in excess of ₹ 1,000 prescribed under Article 15, the amount of non-levy works out to ₹ 450.52 crore.

Mention was also made in Para 3.2.10 of the Report of the Comptroller and Auditor General of India (Revenue Receipts), Government of Tamil Nadu for the year ended March 2006 on non-levy of stamp duty on the issue of bonds through depositories. The Public Accounts Committee, in its Report dated 17 June 2014 (154th Report / XIV Assembly) recommended that proper mechanism could be evolved for due payment of consolidated stamp duty in respect of such issue of bonds.

At the Exit Conference, the Additional Chief Secretary to Government instructed the Department to devise a system to plug the huge leakage of revenue.

Thus, the continued failure of the Department to evolve a suitable mechanism for proper realisation of stamp duty in respect of issue of bonds through depositories, despite the recommendations of PAC in this regard resulted in leakage of revenue due to Government.

3.4.10 Absence of system to reconcile e-payments

The Registration Department introduced e-payment system of remitting stamp duty and registration fee through banks with effect from January 2015. The facility was essentially meant to eradicate difficulties and complications in payment through demand drafts and cash. The system is designed such that the registering authority can ensure that the payment was credited to the accredited bank from the remitter's account before registering instruments. The system is beneficial both to the department and consumers; while the department is relieved of the risks of handling cash and the burden of remitting cash and drafts, the public are also benefitted by reduction of charges that the bank levy on issue of demand drafts. As of September 2017, ₹ 206.21 crore had been collected through e-payment mode.

While verifying the records maintained in the sub-registries, we noticed that no reconciliation was done in respect of e-payments. We ascertained from the office of the IGR that reconciliation of e-payments was not being undertaken. Without reconciliation of remittances credited into the accredited bank account and the Government account, it could not be ensured that all payments received on behalf of the department had actually been reflected in the treasury accounts. Identification of non-realisation and belated realisation of amounts is a necessary follow-up procedure that could be taken up with the banks for claim of interest as per bilateral agreements.

When we pointed out (October 2017) the lack of system to monitor realisation of e-payments into Government Account even after a lapse two years, Government agreed to look into the matter and offer its reply.

3.4.11 Belated realisation of amounts into Government Account

Reconciliation is a procedure by which a department ensures that all monies collected in the form of tax or duty and deposited by it in the bank as cash or demand drafts were realised into the Government account. The manual of the department insists on daily reconciliation of remittances with the accounts maintained in the Government treasury.

As per Article 9 of Tamil Nadu Financial Code Volume I, departmental controlling officer should obtain regular accounts and returns from his subordinates for the amounts realized by them and paid into the treasury. The controlling officer should reconcile any differences as early as possible.

During check of remittances in 25 Registering Offices, we found that the demand drafts deposited in banks were realised belatedly; the period of delay

ranging from five days to 92 days in respect of 1,064 demand drafts. However, the delay in realisation of demand drafts was not noticed either by the SR or by the controlling officer indicating that proper reconciliation of the department figures with that of the Treasury was not undertaken.

During Exit Conference, Government stated that it was planning to introduce *cent per cent* e-payment in near future. The Department, however, agreed with suggestion for establishing a module in the web based registration application for ensuring reconciliation of departmental figures with that of the treasury.

3.4.12 Incorrect system followed in respect of documents returned based on Court orders

As per Section 47 A (1) of IS Act, if the registering authority has reason to believe that the market value of the property has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. District Revenue Officers (Stamps) and Special Duty Collectors (Stamps) have been nominated as Collector for the purpose of Section 47A.

During check of documents, we noticed in five⁴³ out of 56 offices that 13 documents which were referred to DRO (Stamps) under Section 47-A(1) for determination of true market value were returned to the parties based on the directions of the Honourable High Court of Madras with the condition that payment of deficit stamp duty would be made on the issue of order determining the true market value by the DRO (Stamps). The IGR issued instructions that a copy of the original document shall be forwarded back to the Collector for determination of valuation. Scrutiny of the reconciliation statement regarding documents pending for valuation with DRO (Stamps), however, revealed that these 13 documents were not included therein, though the final determination of market value was yet to be made. There was risk of the market value of the properties involved in these documents remaining undetermined and consequent non-realisation of the amount of deficit stamp duty.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

3.4.13 Determination of market value

Section 47-AA of the IS Act introduced with effect from June 2010 empowers the State Government to constitute a Valuation Committee under the Chairmanship of the Inspector General of Registration for estimation, publication and revision of market value guidelines of properties in the State and for constitution of sub-committees in each district by the Valuation

⁴³ Joint I SR, Chennai Central, Joint II SR, Chennai Central, SR, Tirupurur, SR, Gandhipuram and SR, Annanagar

Committee. The Valuation Committee is the authority for formulation of policy, methodology and administration of market value guidelines in the State.

3.4.13.1 Non-adherence of the guidelines of Central Valuation Committee in subsequent fixation of market guideline value

The guideline values for various survey numbers and streets were fixed by the Valuation Committee based on certain prescribed parameters and these values were declared as market values of the properties with effect from April 2012. The IGR issued instructions in September 2011 that higher market guideline value should be adopted for higher category classification and descending values should be adopted for lower category classification. That is, the value assigned to Residential Class II (RC II) shall be lower than that of Residential Class I (RC I), the value fixed for Commercial Class (CC) III shall be lesser than that of CC II and so on. The assignment of class to areas was based on various factors such as proximity to important facilities, infrastructure, etc. The Registering Officers were empowered to fix these guideline values subsequently in cases where the existing rates did not reflect actual market value of the survey number or street and required revision.

- Our scrutiny of Guidelines register in 16⁴⁴ Registering Offices revealed that subsequent fixation of market value guidelines for properties did not conform to the instructions issued by the IGR in September 2011. The value assigned to CC IV was higher than that of CC I and value assigned to RCII was higher than that of RC I. While fixing market value guidelines for lower category classification, suitable upgradation of market value guidelines for higher category classification was not done. Thus, properties situated in higher category areas were subjected to levy of stamp duty at lower values when compared to the newly fixed market value guidelines of lower category areas. Even the adoption of newly assigned value of lower category of properties in respect of 675 instruments of conveyance registered between April 2012 and March 2016, would have fetched additional stamp duty and registration fee of ₹ 6.34 crore.

Similarly, we also noticed that higher category had been assigned to areas while new fixations were undertaken, but the values were fixed at the rates corresponding to lower categories in nine cases. The adoption of lower values resulted in short levy of stamp duty and registration fee of ₹ 11.86 lakh.

- The Central Valuation Committee clarified in 2011 that any consideration, being 100 *per cent* more than the existing market value guideline and quoted as consideration in less than five instruments, should alone be ignored as fancy market value and not reckoned by the RO for revision or fixation of market value guidelines.

On a scrutiny of the guideline register in SR, Tiruporur, we noticed that while assessing the market value guidelines of an area, which was converted from an

⁴⁴ Joint II SR, Chennai Central, Joint II SR, Cuddalore, SR, Hosur, SR, Acharapakkam, SR, Alandur, SR, Anna Nagar, SR, Selaiyur, SR, Gandhipuram, SR, Guduvancheri, SR, Jolarpet, SR, Kelamangalam, SR, Neelangarai, SR, Puliangudi, SR, Purasawakkam, SR, Tambaram and SR, Thiruvottiyur

agricultural area into an integrated township, and part of which conveyed through 14 instruments on the same day, the RO fixed the rate of ₹ 3,000 per sqft adopting the highest rate then prevailing in the village in which the property was situated. All these 14 instruments quoted different values for undivided shares (UDS) within the same township, viz., from ₹ 3,567 to ₹ 7,437 per sqft. Ignoring four values that were 100 per cent more than the existing highest market value guideline of ₹ 3,000 sqft, the lowest rate expressed as consideration in the next five instruments of descending values was ₹ 5,434 per sqft. Instead of adopting this rate, the RO adopted the market value guideline of ₹ 3,000, which was even lesser than the least consideration expressed in any of the 14 instruments. Justifying the fixation, the RO had stated that the value of ₹ 3000 per sqft was fixed since the highest value of ₹ 7,437 was adopted in only one instrument and therefore it was a fancy value as per CVC clarification. There was, however, no justification offered for non-adoption of values expressed in at least five instruments. The flawed fixation procedure adopted by the RO helped the executants of subsequent instruments to adopt ₹ 3,000 per sqft as cost of UDS, that resulted in lower realisation of stamp duty and registration fee of ₹ 13.76 crore in respect of 1,252 instruments.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

3.4.14 Assessment of documents without inquiry

Section 27 of the IS Act mandates that persons executing an instrument shall disclose all facts that influence valuation of the instrument for the purpose of stamp duty. We noticed in the following cases that neither the executants disclosed the information which are vital for assessment nor the RO called for the same before assessing the instrument.

3.4.14.1 Incorrect adoption of rate of stamp duty in respect of instruments of Deposit of title deeds

As per Article 6(1)(a) of the IS Act, instrument of Deposit of title deeds (DOTD) for securing the repayment of money advanced shall attract maximum stamp duty of ₹ 25,000 and maximum registration fee of ₹ 5,000 where the loan or debt is repayable on demand or beyond three months from the date of the instrument. Where the loan or debt is repayable within three months from the date of such instrument, the rate of stamp duty is ₹ 2.50 for every ₹ 1,000 or part thereof of the value of the loan or debt. Thus, the tenure of repayment of loan or debt determines the rate of stamp duty chargeable on such instrument.

During check of documents, we found that in all the ROs, the instrument of DOTD did not contain a clause specifying the period of repayment of loan or whether the loan was repayable on demand. However, the ROs, instead of ascertaining the tenure of repayment of loan, levied stamp duty of maximum of ₹ 25,000 in respect of these instruments.

We further found that in 30 cases in 16⁴⁵ Registering Offices, the loans were cleared within three months and corresponding receipt deeds were executed. The failure of the ROs to insist upon period of repayment being mentioned in the instruments of DOTD and adoption of concessional rate without ascertaining the period of repayment of loan resulted in short realisation of stamp duty and registration fee of ₹ 2.98 crore.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

3.4.14.2 Non-verification of compliance to the provisions of Income Tax Act

The Finance Act 2013-14 introduced Section 194-1A for deduction of tax at source (TDS) on the values of transactions of immovable property, other than an agricultural land. According to this Section, tax of one *per cent* is required to be deducted where the value of transfer of any immovable property is ₹ 50 lakh or more. The tax so deducted is required to be paid by the purchaser of the immovable property quoting his PAN within 7 days (from 1 June 2016, the time was increased to 30 days) from the end of the month in which the consideration amount was paid.

During check of records in 55 Registering Offices, we noticed that the details of deduction of tax was not available in 918 instruments of conveyance involving transfer of immovable properties valued at ₹ 50 lakh or more and the entire consideration passed on to the vendors. The compliance to the statutory provisions of the Income Tax Act was not verified by the ROs while registering these instruments. The payment of TDS by the purchaser over and above the consideration mentioned in the instruments would also be subject to levy of stamp duty as part of total consideration involved in the transfer of immovable properties.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

3.4.14.3 Incorrect valuation of deeds of construction agreement

According to Section 5(i) of the IS Act, construction agreements for multi-storey units shall be chargeable with stamp duty and registration fee of one *per cent* each on the value of construction.

During test check of documents in SR, Tiruppur, we noticed that in respect of three instruments involving agreements on joint development of owners' property and construction of multi-storey building registered in April 2014, the total cost of construction was not disclosed but only the advance amount

⁴⁵ DR, Chennai Central, DR, Chennai South, DR, Coimbatore, DR, Madurai North, DR, Trichy, Joint II SR, Chennai Central, Joint II SR, Cuddalore, Joint II SR, Virudunagar, SR, Adyar, SR, Anna Nagar, SR, Ganapathy, SR, Hosur, SR, Kumbakonam, SR, Puliangudi, SR, Royapuram and SR, Singanallur

was mentioned. The RO, instead of classifying the instruments as construction agreements, treated the same as miscellaneous joint development agreements and levied registration fee alone on the advance amount. The misclassification resulted in short collection of stamp duty and registration fee of ₹ 89.22 lakh.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

Compliance Deficiencies

3.4.15 Short collection of stamp duty and registration fee due to undervaluation of property

As per Article 23 of Schedule I to the IS Act, conveyance of immovable property attracts levy of stamp duty at the rate of seven *per cent* including surcharge on the market value of property. Section 47AA of the IS Act provides that the guideline values fixed by the empowered committee shall be the minimum market value of the property. In addition, under the Registration Act, 1908, registration fee is leviable at the rate of one *per cent* on the market value of the property. Section 47-A(1) of the IS Act provides that, if the RO has reason to believe that the market value of the property conveyed has not been truly set forth in the instrument, he may after registering such instrument, refer the same to the Collector⁴⁶ for determination of market value of property and the proper duty payable thereon.

3.4.15.1 Failure to adopt guideline rates

Test check of records in twenty two⁴⁷ Registering Offices revealed that though the value of properties set forth in 66 instruments of conveyance was less than the value as per the 'Guidelines Register', the ROs, after registering the instruments, failed to refer the same to the Special Deputy Collector (Stamps)/ District Revenue Officer (Stamps) for determination of correct market value. Thus, there was undervaluation of property and consequential short levy of stamp duty and registration fee of ₹ 4.43 crore.

After we pointed this out, the Joint I SR, Madurai reported collection of ₹ 50,000 in May 2016. The SR, Sunguvarchatiram stated that five instruments were referred to DRO (Stamps) under Section 47A(1) of the IS Act. Reply in respect of the remaining cases was awaited (January 2018).

⁴⁶ The District Revenue Officer (Stamps) and Special Deputy Collector (Stamps) are 'Collector' for the purpose of Section 47-A of the IS Act.

⁴⁷ DR, Chennai North, Joint I SR, Madurai North, Joint I SR, Thanjavur, Joint II SR, Tiruvannamalai, SR, Arasaradi, SR, Avadi, SR, Guduvanchery, SR, Gummidipoondi, SR, Hosur, SR, Kundrathur, SR, Manavalanagar, SR, Pallavaram, SR, Pammal, SR, Periyannayakanpalayam, SR, Ponneri, SR, Redhills, SR, Royapuram, SR, Sattur, SR, Sunguvarchatiram, SR, Surampatti, SR, Tiruporur and SR, Tiruvallore.

3.4.15.2 Failure to disclose correct particulars in the instruments

As per Section 27 of the IS Act, the consideration, market value and all other facts and circumstances affecting chargeability of any instrument with duty or the amount of duty with which it is chargeable shall be fully and truly set forth in the instrument.

During check of documents in eight⁴⁸ Registering Offices, while verifying the recitals of the documents and their parent deeds, we noticed that there was misclassification of nature / location of land, suppression of floors in buildings conveyed and splitting up of property, which the ROs failed to notice. This resulted in short collection of stamp duty and registration fee of ₹ 3.36 crore.

After we pointed this out, the Joint II SR, Tirunelveli stated that lands conveyed in the original document was agricultural land, which could have been swiftly converted into house sites the same day as the layout was unapproved and gift deeds were also not executed and registered. The reply was not acceptable as more than sixteen acres of land could not have been converted into house sites and conveyed within three to four hours. The SR, Adyar replied (May 2017) that the vendor cannot be compelled to pay stamp duty and registration fee in respect of floors which were not conveyed. The reply was not acceptable as the entire undivided share of land had been conveyed by the vendor. The instrument of conveyance had indicated built-up area of building as 2.30 lakh sqft, whereas the built-up area determined by the Assistant Executive Engineer, after inspection of premises was 3.16 lakh sqft. Reply in respect of the other cases was awaited (January 2018).

3.4.15.3 Undervaluation of buildings

The IGR issued instructions in March 2001 that where the value of building quoted in an instrument is ₹ 25 lakh or more, the same should be referred to Assistant Executive Engineer (AEE) of the Registration Department for determination of value of the building. The valuation fixed by the valuation officer is binding on the registering authority for the purpose of levy of stamp duty.

During test check (August 2017) of documents in Joint I SR, Coimbatore and SR, Woraiyur, we noticed that the ROs failed to consider the value of building determined by AEE for levy of stamp duty and registration fee. This resulted in short collection of ₹ 5.80 lakh in two cases.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

⁴⁸ Joint I SR, Thanjavur, Joint I SR, Tiruppur, Joint II SR, Chengalpet, Joint II SR, Tiruvannamalai, Joint II SR, Tirunelveli, SR, Adyar, SR Purasawakkam and SR, Tiruporur

3.4.16 Non-collection of stamp duty

As per Article 27 of Schedule I to the IS Act, stamp duty at the rate of 0.05 *per cent* per year of the face value of debenture, subject to the maximum of 0.25 *per cent* or ₹ 25 lakh, whichever is lower, has to be collected for the debentures issued. Stamp duty is exempted in case a debenture is issued by an incorporated company or other body corporate in terms of a registered mortgage deed duly stamped in respect of the full amount of debentures to be issued thereunder, where by the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture holders.

During test check of documents in 18⁴⁹ Registering Offices, we noticed from 133 deeds of debenture trust registered between March 2012 and March 2016 that companies mortgaged immovable properties in favour of trustee companies to secure re-payment of ₹ 35,191 crore mobilised by issue of secured Non-Convertible Debentures. These deeds were classified under Article 40(b) of the IS Act as mortgage without possession and stamp duty and registration fee of ₹ 39.50 lakh was collected. It was mentioned in the schedules to the deeds that the debentures were exempted from payment of stamp duty under proviso to Article 27.

As no part of the properties mortgaged had been “made over” to the Trustees for the benefit of the debenture holders, the mortgagors had not met the condition stipulated to claim exemption from levy of stamp duty. However, no stamp duty was collected under Article 27 for issue of debentures. The omission to collect the stamp duty under Article 27 at the rate of 0.05 *per cent* per year subject to a maximum of ₹ 25 lakh for each document, on the total face value of the debentures of ₹ 40,357 crore resulted in non-collection of stamp duty of ₹ 24.34 crore.

After we pointed this out, the Government replied (February 2015 and April 2016) that as per the Transfer of Property Act, 1882, creation of charge to secure repayment of money does not require transfer of physical possession of properties to the Trustees. The Government further stated that as per judicial decision⁵⁰, the principal instrument, which attracted stamp duty was the deed of trust and mortgage and the debentures to be issued at a later date were exempted under Article 27 of the IS Act.

The reply was not acceptable for the following reasons:

Article 27 of the IS Act exempts the debentures issued by an incorporated company only in cases, where the company makes over, in whole or in part, their property to trustees for the benefit of the debenture holders. The phrase

⁴⁹ DR, Chennai(Central), DR, Chennai(South), DR, Coimbatore, Joint II SR, Saidapet, SR, Adyar, SR, Alandur, SR, Ambattur, SR, Avadi, SR, Guduvanchery, SR, Neelangarai, SR Pallavaram, SR, Periamet, SR, Purasawakkam, SR, Radhapuram SR, Sriperumpudur, SR, Thallakulam, SR, Tiruvottiyur and SR, Tuticorin Melur

⁵⁰ The Chief Controlling Revenue Authority vs. The Madras Refineries Limited – AIR 1974 Mad (362) (1974)

‘makes over’ means⁵¹ to transfer the title or possession of property. In these cases, the possession of properties was not handed over to the Debenture Trustees. The issue of making over of whole or part of the property was not the subject matter of issue in the judicial decision referred to in the reply of the Government. We further observed that in a case pertaining to SR, Ambattur, ₹ 21 lakh was collected in February 2015.

During Exit Conference, the Government stated that opinion of the Advocate General would be obtained and the case would be examined to ascertain whether there is any loss of revenue to Government.

3.4.17 Short collection of registration fee

As per clause (l) of Article 1 of the Table of Fees under Section 78 of the Registration Act, 1908, the registration fee on agreement to sell or resell shall be leviable on the intended sale consideration, where possession is handed over or is agreed to be handed over. As per proviso to clause (o), in the case of cancellation of deed of agreement to sell which involves handing over of the possession of property, registration fee is leviable on the consideration expressed in the original deed of agreement to sell.

As per clause (p) of Table of Fees, in the case of Transfer of lease or Surrender of lease, registration fee shall be levied on the amount of consideration including the value of improvement, if any, set forth in such documents, and when no consideration or value of improvement is expressed, the fee chargeable on the original lease shall be realised.

During check of records in 19⁵² Registering Offices, we noticed short collection of registration fee of ₹ 12.18 crore in respect of 51 instruments registered between April 2011 and March 2016. This was due to failure to consider the entire amount of advance for levy of registration fee, incorrect treatment of agreements involving handing over possession of properties as not involving transfer of properties and failure to levy registration fee on the amount refunded by SIPCOT on surrender of leases.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

⁵¹ As per Collins English Dictionary

⁵² DR, Chennai Central, DR, Chennai South, DR, Tiruppur, SR, Ambattur, SR, Gangaikondan, SR, Gummidipoondi, SR, Kandrathur, SR, Manavalanagar, SR, Manamadurai, SR, Nilakottai, SR, Padappai, SR, Perundurai, SR, Pochampalli, SR, Purasawakkam, SR, Sriperumbudur, SR, Sunguvarchathiram, SR, Tirupporur, SR, Tiruvallore and SR, Uthangarai

3.4.18 Misclassification of documents

Section 3 of the IS Act provides that instruments shall be chargeable with duty of the amount indicated in Schedule I as the proper duty thereof. The various types of instruments and the amount of stamp duty applicable in respect of such instruments are listed in Schedule I to the IS Act. The ROs, while registering an instrument should ensure proper collection of stamp duty at the rate applicable to such instrument.

During check of records in 40⁵³ Registering Offices, we noticed that in instruments registered between April 2011 and March 2016, proper stamp duty was not collected by the ROs due to misclassification of instruments. Similar irregularities of misclassification relating to partition, release, power of attorney and lease deeds have been included in Audit Reports of the past eight years. The Department has not taken any corrective action in this regard. This resulted in short collection of stamp duty and registration fee of ₹ 8.50 crore; the details of which are mentioned in **Annexure 4**.

3.4.19 Non / short collection of stamp duty in respect of lease deed

According to Article 35 (b) of the IS Act, lease of immovable property for a period between 30 years and 99 years attracts a stamp duty of four rupees for every ₹ 100 or part thereof of the amount of rent, fine, premium, or advance, if any, payable.

➤ During check of records in SR, Sunguvarchatiram and SR, Tiruporur, we noticed that, in the instruments involving leasing of properties by SIPCOT, capital cost was collected by SIPCOT towards providing infrastructure for supply of water. Fifty *per cent* of the charges were collected upfront in the lease deeds and the remaining fifty *per cent* was agreed to be collected along with charges for actual quantity of water supplied on annuity basis. This amount was not included in the consideration for lease for the purpose of calculation of stamp duty. This resulted in short collection of an amount of ₹ 29.31 lakh.

➤ We noticed in SR, Tiruporur during August 2017, that a lease deed executed between SIPCOT and a lessee was registered as modified lease deed incorporating the change of name and address of the lessee. The term of lease agreed to in the deed was different from the original deed. The RO, instead of levying stamp duty at four *per cent* on the lease amount of ₹ 73.81 crore,

⁵³ DR, Chengalpat, DR, Chennai North, DR, Chennai South, DR, Tiruppur, DR, Trichy, Joint II SR, Arakkonam, Joint II SR Chengalpat, Joint II SR, Coimbatore, SR, Ambattur, SR, Annanagar, SR, Ayothiapattinam, SR, Bhavani, SR, Ganapathy, SR, Gandhipuram, SR, Gummidipoondi, SR, Hosur, SR, Kinathukadavu, SR, Kodambakkam, SR, Kundrathur, SR, Madhavaram, SR, Madhukarai, SR, Manavalanagar, SR, Mettupalayam, SR, Mylapore, SR, Neelangarai, SR, Othakadai, SR, Palladam, SR, Pammal, SR, Paramakkudi, SR, Periamet, SR, Perundurai, SR, Pollachi, SR, Purasawakkam, SR, Sriperumbudur, SR, Sunguvarchathiram, SR, T Nagar, SR, Tiruparankundram, SR, Tiruvottiyur, SR, Virugambakkam and SR, Wallaja Nagar

treated the instrument as supplementary deed and collected stamp duty of ₹ 100. This resulted in non-collection of stamp duty of ₹ 2.95 crore.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

3.4.20 Transfer Duty Surcharge

As per Section 175 of the Tamil Nadu Panchayat Act, 1994 and Section 94 of the Tamil Nadu Urban Local Bodies Act, 1998, a duty, in the form of a surcharge on the duty imposed by the Indian Stamp Act shall be levied and collected on the instruments of sale, exchange, gift, mortgage with possession and lease in perpetuity at such rate as may be fixed by the Government, not exceeding five *per cent* on the market value of the property set forth in the instrument. The rate of surcharge has been fixed at two *per cent* with effect from 21 November 2003. The surcharge so collected is subsequently allocated to the concerned Director of Municipal Administration / Town Panchayats.

3.4.20.1 Incorrect remission of transfer duty surcharge

- The Government of Tamil Nadu granted⁵⁴ (October 2011) remission of one-third of difference of duty chargeable on the value of properties as proposed by the RO and the duty already paid in respect of instruments pending for determination of market value under Sections 47A(1), 47A(3), 47A(5), 47A(10) and 19B(4) of the IS Act (Samadhan Scheme). The scheme was in operation for three months from the date of issue of Notification. During scrutiny of records in nine⁵⁵ offices of DIGR, we noticed that in respect of 23,804 instruments which were accepted and processed under the Samadhan Scheme, the remission of one-third of duty was also extended to transfer duty surcharge (TDS). As the levy of stamp duty and surcharge are governed by different Acts, the remission of surcharge of ₹ 21.34 crore was not in order.

- By a Notification issued in December 2003, remission of 50 *per cent* of stamp duty was granted in respect of instruments involving gift of properties to Societies and Charitable Trusts, which are approved for exemption/concession of tax under Section 80G of the Income Tax Act. By an Order issued in January 2009, Government allowed remission of 50 *per cent* of stamp duty and registration fee payable on the instruments executed by Tamil Nadu Small Industries Development Corporation (SIDCO).

During check of documents in four⁵⁶ Registering Offices, we noticed that in respect of six instruments involving gift of properties to Trusts, remission of

⁵⁴ G.O. Ms. No.132, Commercial Taxes and Registration (J1) Department dated 31 October 2011

⁵⁵ Chennai, Coimbatore, Cuddalore, Madurai, Salem, Thanjavur, Trichy, Tirunelveli and Vellore

⁵⁶ Joint I SR, Coimbatore, SR, Madhukarai, SR, Tiruporur and SR, Velachery

50 *per cent* of stamp duty was erroneously extended to surcharge also. Similarly, while registering (between April 2013 and February 2015) 29 instruments of conveyance involving allotment of land by SIDCO, the ROs had collected 50 *per cent* of stamp duty and registration fee. Since the notification provides only for remission of stamp duty, the extension of the same to TDS was not in order. This resulted in short collection of transfer duty surcharge of ₹ 9.78 lakh.

After we pointed this out, the Department stated (June 2016) that since surcharge had to be collected only on the part on which stamp duty was levied, the remission allowed was in order.

The reply was not acceptable as the levy of stamp duty and surcharge were governed by different Statutes. Though surcharge in the form of duty was leviable, it was levied on the market value of property and not on the stamp duty levied under the Indian Stamp Act. The remission allowed in respect of TDS, in the absence of separate notification was, therefore, not in order.

3.4.20.2 Incorrect / Excess allocation of transfer duty surcharge

We observed from the periodical quarterly returns of TDS and registers in eight⁵⁷ Registering Offices that ₹ 10.76 crore was allocated to local bodies towards TDS as against ₹ 4.39 crore due for allocation. This resulted in excess allocation of ₹ 6.37 crore.

After we pointed this out, SR, Cheyyur and SR, Purasawakkam replied that excess allocation of ₹ 68.53 lakh was adjusted in the allocation made for the subsequent quarters. Reply in respect of remaining cases was awaited (January 2018).

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

3.4.21 Incorrect allowance of exemption

As per Government Order issued in December 2003, fifty *per cent* stamp duty concession is applicable only in cases where the Donee Society or Trust is approved under section 80 G of Income Tax Act 1961. As per Government Order issued in September 1986, instruments of gifts or settlement in favour of Hindu/Muslim institutions coming under Hindu Religious and Charitable Endowment Act and Wakfs, attract stamp duty and registration fee of ₹ 100.

During verification of records in Joint-I SR, Coimbatore, we found that while in one case, an institution run by a trust was granted 50 *per cent* exemption of stamp duty, in the other case, the rate of stamp duty after granting 50 *per cent* exemption was incorrectly calculated as 3.5 *per cent* instead of four *per cent*.

Similarly, during scrutiny of documents in SR, Periamet and SR, Ponneri, we noticed that exemption was granted to two institutions even while there was no

⁵⁷ DR, Chennai North, SR, Ambattur, SR, Cheyyur, SR, Gummidipoondi, SR, Kundrathur, SR, Purasawakkam, SR, Sattur and SR, Srivilliputtur

declaration on the part of the donees that the institutions were governed by the Wakf board. This resulted in short collection of stamp duty of ₹ 76.19 lakh.

- By a Notification issued in November 1997, instruments involving gift or settlement of land for public purpose in favour of Government or any local authority were granted exemption from levy of stamp duty.

During check of records in SR, Ambattur and SR, Purasawakkam, we noticed in respect of instruments involving gift of property to Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), the ROs levied nominal stamp duty of ₹ 100. As TANGEDCO is neither a Government Department nor a Local Authority, the exemption allowed was not in order. The incorrect grant of exemption resulted in non-levy of stamp duty and registration fee of ₹ 56.60 lakh.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

Citizen Services

3.4.22 Collection of fees for failed service

The Government of Tamil Nadu announced, through policy Note during 2013-14, that the process of registration of documents would be recorded through IP camera to bring in transparency in the transactions conducted in sub-registries. The Government also issued orders to provide the recorded proceedings through compact discs (CD) to the people connected with the transactions on payment of ₹ 50 per document.

We found in all the offices that no stock register was maintained for procurement and supply of CDs. In thirty four Registering Offices, we noticed that the registering authorities collected ₹ 50 for 6.77 lakh documents registered but issued CDs only for 2.69 lakh documents. The failure to issue CDs after collection of requisite fee resulted in excess collection of ₹ 2.04 crore.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

Others

3.4.23 Registration of documents on a holiday just before revision of rates

Rule 4 of the Registration Rules provides that a document presented for registration, or a sealed cover purporting to contain, a will presented for deposit under section 42 or a power of attorney, presented for attestation under section 33 shall not be accepted on an authorised holiday, except in a special emergency. When a Sub-Registrar accepts a document or attests a power of

attorney on such a day he shall immediately make a report to the Registrar explaining the circumstances.

During verification of records in nine offices of DIGR, we noticed that in 40 Sub-Registries, 746 instruments were registered on 31 March 2012, being a Saturday. In SR, Thingalur, 151 instruments were registered on 31 March 2012, whereas the total number of documents registered in the office during the entire year was 4,285. The reasons for registering the instruments on a holiday were not furnished to audit. Incidentally, revised guideline rates, with manifold rise when compared to the previous rates, came into effect from 1 April 2012 in the whole of the State. The registration of these 746 instruments of conveyance on the next working day would have fetched additional amount of ₹ 5.12 crore based on the revised guideline values notified by the Government.

The absence of reason for having undertaken registration on a holiday, when the Rules provides for the same only in the contingency of the existence of special emergency raises a strong doubt that the same was adopted only to avoid payment of higher amount of stamp duty.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

3.4.24 E-authentication of guideline register

The Valuation Committee decided (November 2013) to introduce e-authentication of guideline value registers, whereby each and every page of the guideline value register will be digitally signed by DIGR and also each and every page of the digitally signed guideline register would be barcoded to ensure that the same cannot be tampered by SRs. Such an exercise would also ensure that guideline values present in the register are the same as the guideline value present on department website.

We, however, noticed that the above procedure was not adhered to, and the guideline value registers were neither digitally signed by the DIGR nor they were barcoded. This was not pointed out before hosting of values in website. In SR, Annanagar, we noticed that in respect of two cases, there was discrepancy in values and classification of properties between the guideline register maintained in the Office and that uploaded in the website. Since the objective of hosting the details in website is to make known to the public the classification of the properties and value thereof for payment of stamp duty, strict adherence to the prescribed procedures should be enforced to avoid such discrepancies.

During Exit Conference, Government agreed to look into the matter and stated that suitable action would be taken. Further report was awaited (January 2018).

3.4.25 Non-implementation of Web-based software

Presently, the documents are being scanned and preserved as separate modules in the sub-registries. The documents cannot be viewed through internet and therefore documents registered in one sub-registry cannot be accessed by the DIGR, IGR or other sub-registries. Therefore, a copy of the scanned documents is being sent to the IGR. As the CDs can be easily lost or damaged, the disaster management mechanism is not in place. With a view to overcome these deficiencies, the Government sanctioned ₹ 117.34 crore for the development of comprehensive web based software in 2012. Once the project is implemented, documents and encumbrance certificates can be viewed through web which will be of great advantage to public. However, the implementation of the project is being delayed. The reasons for the delay could not be ascertained since the records and details of the project were not furnished.

During Exit Conference, Government stated that online registration in all the Sub-registries would be commenced by the end of January 2018.

3.4.26 Conclusion

There is an urgent need for augmentation of revenue by effectively implementing the existing provisions and also prescribing rates of duty where there is absence of rates. The instructions issued by the Valuation Committee was not followed in fixation of market value guidelines of properties. Effective system for monitoring of payments being credited into Government account is yet to be devised. There have been widespread errors in implementing grant of exemptions and remissions, classification of instruments, and necessary inquiries have not been made by ROs before registration of documents. Certain irregularities such as excess allocation of surcharge continue to persist despite being pointed out continuously.

3.4.27 Recommendations

The Government / Department may initiate measures for

- establishing a mechanism with other external agencies like Depositories, Exchanges, SIPCOT, Income Tax Department, *etc* to ensure proper collection of stamp duty and thereby augmenting the revenue of the State.
- ensuring strict compliance to the guidelines governing determination of market value guidelines and revision of such guidelines, wherever necessary, to reflect the current market value of properties.
- ensuring strict adherence by the ROs to the conditions governing grant of exemption / remission of stamp duty and registration fee.

- ensuring strict compliance with the provisions of the Acts and judicial decisions in proper classification of instruments and realisation of stamp duty and registration fee.
- ensuring proper reconciliation of the department figures with that of the Treasury figures to ensure early realisation of revenue.

CHAPTER IV
TAXES ON VEHICLES

CHAPTER IV TAXES ON VEHICLES

4.1 Tax administration

The receipts from the Transport Department are regulated under the provisions of the Motor Vehicles Act, 1988, the Central Motor Vehicles Rules, 1989, the Tamil Nadu Motor Vehicles Rules, 1989 and the Tamil Nadu Motor Vehicles Taxation Act and Rules, 1974. The Department is under the administrative control of the Transport Commissioner of the State.

4.2 Results of Audit

Test check of records of departmental offices conducted during the period from April 2016 to March 2017 revealed under assessment of tax, fees and other observations amounting to ₹ 7.30 crore in 140 cases, which broadly fall under the following categories:

Table 4.1

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1	Non/short collection of tax	98	6.82
2	Non/short collection of penalty	10	0.30
3	Others	32	0.18
	Total	140	7.30

During the course of the year 2016-17, the department accepted under assessments and other deficiencies in 67 cases and recovered ₹ 97.66 lakh, out of which, ₹ 19.21 lakh involved in 18 cases was pointed out during the year and the rest in earlier years.

Few illustrative cases involving ₹ 80.22 lakh are discussed in the following paragraphs.

4.3 Audit Observations

4.3.1 Short realisation of tax due to misclassification of Private Service Vehicles as Educational Institution Vehicles

As per Section 2 (11) of the Motor Vehicles Act, 1988 (MV Act), “educational institution bus” means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities. As per item 8(a) of First Schedule to Tamil Nadu Motor Vehicles Taxation Act, 1974 (TNMVT Act), the rate of tax in respect of vehicles owned by schools is ₹ 50 per person per quarter and in respect of vehicles owned by colleges and other educational institutions, the rate of tax is ₹ 100 per person per quarter.

The Honourable Madras High Court held in January 2008 that the educational institution must own the vehicle and vehicles held in the name of Trust cannot be treated as ‘educational institution vehicles’.

On a scrutiny of permit registers, we observed that in five⁵⁸ Regional Transport Offices (RTOs) 30 vehicles owned by Trusts/Societies were classified as educational institution vehicles (EIVs) and permits were accordingly issued. The vehicles were classifiable as “Private Service Vehicles” and attract tax of ₹ 500 per seat per quarter. The incorrect issue of permits and collection of tax at the rates applicable to EIVs resulted in short realisation of revenue of ₹ 20.41 lakh pertaining to the year 2015-16.

The matter was referred to the Government in July / August 2017. Government accepted (December 2017) the audit observation pertaining to Chennai (West) and stated that ₹ 5.74 lakh was collected in respect of nine vehicles. The Government further stated that field officers concerned were instructed to collect the difference of tax in respect of remaining vehicles. Reply in respect of the remaining cases was awaited (January 2018).

4.3.2 Non-collection of tax in respect of Construction Equipment Vehicles

As per Section 3 of the TNMVT Act, tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the Schedules to the Act. Clause 6C of the First Schedule to the TNMVT Act specifies levy of tax for Construction Equipment Vehicles at ₹ 10,000 per annum.

On a scrutiny of records (between April 2016 and February 2017) in 26⁵⁹ RTOs followed by further verification of payment of tax in “e-services” of the

⁵⁸ Chennai (West), Chennai (North West), Chengalpet, Marthandam, Redhills and Tenkasi

⁵⁹ Chennai (North-East), Chennai (North-West), Chennai (South-West), Chennai (South), Chennai (West), Coimbatore (Central), Coimbatore (North), Coimbatore (South), Cuddalore, Dharmapuri, Dindigul, Gobichettipalayam, Kanchipuram, Madurai (North), Madurai (South), Marthandam, Meenambakkam, Redhills, Salem (West), Sankari, Sholinganallur, Srirangam, Tenkasi, Theni, Villupuram and Virudhunagar

Department, we noticed that tax was not collected in respect of 1,033 construction equipment vehicles pertaining to the year 2015-16.

The classification of construction equipment vehicles as non-transport vehicles involving payment of tax annually anywhere in the State results in lack of departmental control to ensure due payment of tax by the owners of these vehicles.

Eight⁶⁰ RTOs replied (November 2016 and January 2017) that tax of ₹ 10.40 lakh was collected in respect of 104 vehicles and action was initiated in the remaining cases by issue of notices and communication of the list of vehicles to the Enforcement officials, Unit Offices and Check Posts, besides blacklisting the vehicles in the server to prevent further transaction of the vehicles.

Government stated (January 2018) that it was decided to collect life time tax in respect of construction equipment vehicles, as these categories of vehicles are classified as non-transport vehicle to avoid non-collection of tax in future.

4.3.3 Non-collection of life time tax from owners of old tourist motor cab

As per Section 3 of the TNMVT Act read with Class 5-A of the First Schedule, tax of ₹ 6,500 for five years was payable in respect of tourist motor cab. By an amendment made in April 2012, Seventh Schedule was introduced providing for levy of life time tax in respect of tourist motor cab. The rate of tax in respect of old tourist motor cabs was fixed at 8.5 *per cent* of the cost of vehicle, if the cost of vehicle did not exceed ₹ 10 lakh and at 14.5 *per cent* of the cost of vehicle, if the cost of the vehicle exceeded ₹ 10 lakh. The registered owners of such vehicles were required to pay life time tax at the specified rates at the time of renewal of permit or during the currency of the existing permit.

Our scrutiny (January 2017) of the Permit Register in the office of the RTO, Chennai (Central) along with VAHAN data revealed that owners of 18 old tourist motor cabs which were due for renewal during the year 2015-16 had not renewed the same. Since these vehicles were covered by valid permits as of April 2012, the owners of these vehicles were liable to pay life time tax in respect of these vehicles, notwithstanding the non-renewal of the permits thereafter. The Department, however, failed to issue demand notices for recovery of life time tax from the owners of the vehicles. The amount of life time tax due in respect of these eighteen vehicles calculated on the basis of details of cost of vehicles available in the records was ₹ 11.18 lakh.

The matter was referred to the Government in August 2017. Government accepted (December 2017) the audit observation and stated that demand notices were issued to the owner of the vehicles and efforts are being taken to collect life time tax. Further report regarding collection particulars was awaited (January 2018).

⁶⁰ Chennai (West), Coimbatore (Central), Coimbatore (North), Coimbatore (South), Cuddalore, Theni, Villupuram and Virudunagar

4.3.4 Non-realisation of taxes from the owners of maxi cabs and goods vehicles

As per Section 3 of the TNMVT Act, tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the Schedules to the Act. As per Section 8 of the TNMVT Act, the tax due under this Act shall be paid within such period, not being less than seven days or more than 45 days from the commencement of the quarter, half-year as may be prescribed. Section 15 of the TNMVT Act provides for payment of penalty, if the tax due in respect of any motor vehicle was not paid within the prescribed period. Rule 3 of the TNMVT Rules provides that so long as a transport vehicle is covered by permit issued by any transport authority, the vehicle shall be deemed to be kept for use in the State. Rule 8 of the TNMVT Rules provides for collection of penalty equal to the amount of quarterly tax where the delay in payment of tax is beyond 45 days after the expiry of the prescribed period. As per Section 15-A of the TNMVT Act, the licensing officer may, at any time, within a period of five years, from the expiry of the period to which the tax relates, issue notice to the owner of the motor vehicle and after making such inquiry as he may consider necessary, direct such owner or other person to pay the whole or any portion of such tax, which has not been paid.

Generation of reports from *VAHAN* database regarding non-payment of taxes followed with further verification (April 2016) in “e-Services” of the Department revealed that in the office of the RTO, Chennai (North-East), the owners of 62 goods vehicles and two maxi cabs did not pay quarterly tax amounting to ₹ 7.90 lakh relating to the year 2015-16. However, no action was initiated by the RTO for recovery of tax from the defaulting vehicle owners. This resulted in non-realisation of tax of ₹ 7.90 lakh. Besides, penalty of ₹ 7.90 lakh for delay in payment of tax was also leviable.

The matter was referred to the Government in August 2017. Government stated (January 2018), that tax was due for only one quarter as the permit was cancelled in the same quarter due to non-payment of tax. The Government further stated that efforts were made for collection of tax, besides blocking the vehicles in the computer to avoid further transaction of the vehicles.

The reply of the Government was not acceptable as verification of the e-Services website of the Transport Department did not indicate cancellation of permits for these vehicles. In respect of seven goods vehicles, quarterly tax for the year 2015-16 was collected based on the audit observation.

4.3.5 Loss of revenue due to Misclassification of “Contract Carriages” as “Private Service Vehicles”

As per Section 2(33) of the MV Act, ‘Private Service Vehicle’ (PSV) means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward. As per Section 2 (30) of the Act *ibid*, ‘owner’

in relation to a motor vehicle, which is the subject of an agreement of lease means the person in possession of the vehicle under that agreement.

Government of Tamil Nadu (GoTN), while clarifying (September 2002) on the issue of PSV permits to vehicles owned by the companies on lease, stipulated that the company should enter into an agreement with the registered owner and take over their vehicle on lease for the company's use. GoTN issued instructions in 2004 that there should be a lease deed evidencing transfer of vehicle and the lessee (in the capacity of "owner" of the vehicle in pursuance of the agreement) shall also have the liability to pay all taxes, fees, penalties, fines, damages, insurance claims and other necessities and requirements arising out of the Motor Vehicles Act and its related rules.

During test check of records in the office of the Regional Transport Officer, Chennai (South), we noticed that permits were issued to five motor vehicles classifying them as PSVs based on the lease agreement entered into between the Company and the original owner of the vehicles. Accordingly, tax of ₹ 500 per seat per quarter applicable to PSV as per class 8 (b) of the First Schedule to the TNMVT Act was collected in respect of these vehicles on the basis of the permits issued.

Scrutiny of the agreement, however, revealed that the identity of the specific vehicle, which was proposed to be given on lease was not mentioned. The liability of payment of tax vested with the original owner of the vehicle, which was in contravention of the instructions of the Government. There was no evidence for the lessee having taken possession of the vehicle. The deed, therefore, did not conform to the stipulations of GoTN for issue of PSV permits to leasehold vehicles and also, the essentials of a lease deed, which should clearly contain specific details of property leased out and the consideration (not being null) for lease, were also not met. The deed also negotiated and agreed on cost of operation, the cost being paid by the lessee to the lessor, who would operate the fleet. This not only confirmed that the vehicles continued to be in possession of the lessor but also that the vehicles were operated as contract carriages, for hire or reward. Thus, issue of PSV permits to these vehicles was not in order. These vehicles should have been treated as contract carriages and tax of ₹ 3,000 per seat per quarter should have been collected as per Part II of Schedule VII of the TNMVT Act.

The incorrect classification resulted in a loss of revenue of ₹ 22.43 lakh for the period 2015-16, since the department had collected only ₹ 500 per seat per quarter applicable for PSV instead of ₹ 3,000 per seat per quarter due for contract carriages.

The Government, to whom the matter was referred (August 2017) stated (November 2017) that the vehicles could not be treated as contract carriages as the agreement was between the companies and the original owners and not like contract carriages, where the agreement was between the end user and the permit holder. The Government further stated that since the vehicles were used only for the purpose for which the permit was issued, these could not be classified as contract carriages. The Government, however, stated that revised lease agreement format is now being insisted comprising the vehicle number given under lease and stipulation for payment of all taxes, fees, insurance claim, etc. by the lessee in the capacity of the owner of the vehicle.

The reply was not acceptable as the agreements entered into between the owners and the companies did not involve transfer of ownership of the vehicles to the companies. The conditions mentioned in the agreements were clearly contractual. The end use of the vehicle shall not justify the incorrect classification of the vehicles by the department.

CHAPTER V

OTHER TAX AND NON-TAX RECEIPTS

CHAPTER V

OTHER TAX AND NON-TAX RECEIPTS

5.1 Results of audit

In 2016-17, test check of departmental offices revealed non / short levy of licence fee / privilege fee, electricity tax, inspection fees, dead rent, seigniorage fee and other observations amounting to ₹ 1,121.80 crore in 137 cases, which fall under the following categories.

Table 5.1

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
State Excise			
1	Non/short collection of licence fee / privilege fee	8	1.45
2	Others	44	227.97
Total		52	229.42
Electricity Tax			
1	Non-levy / collection of electricity tax, duty and additional tax	8	3.25
2	Non-levy / collection of inspection fees, testing fees, fine and penalty	2	3.37
3	Non-renewal / collection of licence fees under Lift Act, 1997	4	3.82
4	Others	10	698.37
Total		24	708.81
Mines and Minerals			
1	Non / short levy of dead rent, seigniorage fees, royalty	10	65.59
2	Non-collection of brick mineral annual fee	3	0.37
3	Non-collection of interest / penalty	5	39.02
4	Others	43	78.59
Total		61	183.57
Grand Total		137	1,121.80

During the course of the year 2016-17, the departments accepted under assessments and other deficiencies in 59 cases and recovered ₹1.02 crore, out of which, ₹ 0.29 lakh involved in one case was pointed out during the year and the rest in earlier years.

Audit on Collection of Arrears in the Department of Geology and Mining and few illustrative cases involving ₹ 2.40 crore are discussed in the following paragraphs.

STATE EXCISE

5.2 Short collection of annual privilege fee

As per clause II in sub-rule (b) of Rule 17 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, FL2 licence for possession of liquor by a non-proprietary club for supply to members, shall be issued by the Commissioner of Prohibition and Excise Department, on payment of annual privilege fee, licence fee and application fee. The licence is valid from the date of grant or the beginning of the financial year for which the license is granted, whichever is later, till the end of the financial year. With effect from 1 April 2012, the annual privilege fee for FL2 licence is ₹ 10 lakh for licensees situated in Chennai City and ₹ 6 lakh for licensees in other areas.

During test check (March 2017) of records in the office of the Commissioner of Prohibition and Excise, Chennai, we noticed that during issue / renewal of thirteen FL2 licences for the years 2014-15 to 2016-17, annual privilege fee of ₹ 6 lakh was collected, though the licensees were situated in areas which were already brought within Chennai City limits as per the orders of Government issued in July 2011⁶¹. This resulted in short realisation of revenue of ₹ 52 lakh.

After we pointed this out (April 2017), the Department replied (May 2017) that the issue of collection of privilege fee either on the basis of Revenue Districts or taking into account the Corporation limits was taken up with the Government and the clarification in this regard was awaited.

The matter was referred to the Government (May 2017). Reply was awaited (January 2018).

5.3 Non-payment of brand renewal fee and label approval fee

As per Rules 13 and 16 of the Tamil Nadu Wine (Manufacture) Rules, 2006, renewal fee of ₹ 2 lakh and ₹ 5,000 are payable for brand renewal and label approval respectively. By an Order⁶² issued in November 1998, the Government decided to levy registration fee of ₹ 2 lakh and renewal fee of ₹ 2 lakh for each brand of other forms of liquor, *i.e.* beer and Indian made foreign spirits, also. The Commissioner of Prohibition and Excise had decided in a meeting held on 2 March 2017 that brand renewal and label approval fee had to be paid by the licensees till the date of obtaining Government orders for deletion of brands.

⁶¹ G.O (Ms) No 97 Municipal Administration and Water Supply (Election) Department dated 19-7-2011

⁶² G.O.Ms.No.248, Prohibition and Excise (III) Department dated 25.11.1998

During the verification of licence records (between October 2014 and October 2016) in three⁶³ Excise Supervisory Officers (ESO), we noticed that three licensees neither renewed the licenses for 11 brands nor did they submit proposals for deletion of the brands previous held by them. The brand renewal fee of ₹ 22 lakh and label fee of ₹ 1.45 lakh for 29 pack sizes for the years 2013-14, 2014-15 and 2016-17 was, however, not collected from the licensees. After we pointed this out (between October 2014 and October 2016), the ESO, SNJ Distilleries Private Limited reported (June 2017) collection of brand renewal fee and label approval fee of ₹ 10.75 lakh for the year 2016-17. The ESO, Mohan Breweries and Distilleries Limited (IMFL Unit) stated in March 2016 that the licensee had been instructed to remit the amount of brand renewal and label fee. Further report regarding collection and reply in respect of the remaining case was awaited (January 2018).

The matter was referred to the Government in May 2017. Reply was awaited (January 2018).

ELECTRICITY TAX

5.4 Incorrect grant of refund

As per Rule 12 of the Tamil Nadu Tax on Consumption or Sale of Electricity Rules 2003, no consumer shall be entitled to the refund of tax paid to the Government in excess of tax leviable under the Act, unless an application for the refund of tax has been made to the Director within twelve months from the date of payment of such excess tax. The Director, on receipt of the application for the refund of tax, may, if satisfied, pass an order for the refund of tax paid during the period of one year prior to the date of receipt of the application.

During scrutiny of records in the Office of the Chief Electrical Inspector to Government (CEIG), we noticed that a Company, which was sanctioned a Structured Package of Assistance by the Industries Department (October 2008) *inter alia* involving exemption from payment of electricity tax for a period of five years from the date of commercial production of the expansion unit, had applied to the CEIG (who is also the “Director” for the purpose of this Act) for refund of electricity tax of ₹ 2.63 crore paid by it during January 2012 to May 2014. Accordingly, instructions were issued by the CEIG for adjustment of electricity tax of ₹ 2.63 crore from the tax payable by the Company for future periods.

⁶³ ESO, M/s.Mohan Breweries and Distilleries Ltd. (IMFL Unit), Chennai, ESO, M/s.Mohan Breweries and Distilleries Ltd. (Breweries Unit), Chennai & M/s.SNJ Distilleries (P) Ltd., Maduranthakam

The commercial production was commenced in April 2009, and the Company, instead of availing exemption, had paid electricity tax in respect of electricity captively consumed by it at the expansion unit from January 2012 to May 2014, before seeking refund (June 2014) of electricity tax. In as much as the Rules provide for refund of tax only if the application is filed within one year of payment of tax and also the Director is empowered to grant refund only for the period of one year prior to the date of receipt of application, the Company was eligible for refund of ₹ 98.31 lakh alone which was paid during the period from June 2013 to May 2014. Thus, the refund of the entire amount of ₹ 2.63 crore, including the electricity tax of ₹ 1.64 crore paid by the Company during the period from January 2012 to May 2013, was not in order. This resulted in excess refund of electricity tax of ₹ 1.64 crore.

After we pointed this out (April 2016), the CEIG replied (June 2016) that necessary action would be taken on receipt of information regarding the tax paid by the Company during the period of exemption. Further report was awaited (January 2018).

The matter was referred to the Government in August 2017. Reply was awaited (January 2018).

MINES AND MINERALS

5.5 Audit on Collection of Arrears in the Department of Geology and Mining

5.5.1 Introduction

The extraction of major and minor minerals are governed by Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act), Mineral Concession Act, 1960 (MC Act) and the Tamil Nadu Minor Mineral Concession Rules, 1959 (TNMMC Rules). The Department of Geology and Mining is the administrative authority for implementing the provisions of the Act and Rules and checking of violations. The Commissioner of Geology and Mining (CGM) is the head of the Department. The CGM is assisted by the District Collectors (DCs), Deputy Directors (DD) and Assistant Directors (AD) at district level.

Audit was conducted in July 2017 and arrears as at the end of March 2017 was examined to ascertain (i) the reasons for pendency; (ii) whether the provisions of the Acts and Rules were followed scrupulously in pursuing the cases of arrears; and (iii) the efficiency and effectiveness of the monitoring system.

Out of 31 District level offices, four⁶⁴ offices were selected for test check based on random sampling covering 28 per cent of the total arrears.

The arrears of revenue as on 31 March 2017 along with the figures for the preceding three years are given in Table 5.2 below:

Table 5.2 – Position of arrears

(₹ in crore)						
Year	Opening balance	Addition	Total	Amount deleted	Amount collected during the year	Closing Balance
2013-14	2,461.66	128.08	2,589.75	0	3.23	2,586.52
2014-15	2,586.52	101.97	2,688.49	0	2.40	2,686.09
2015-16	2,686.09	64.12	2,750.21	65.13*	1.97	2,683.11
2016-17	2,683.11	218.68	2,901.79	107.03	28.49	2,766.27

*deleted based on Supreme Court's decision in respect of local cess and local cess surcharge

Source: Figures furnished by the Department

The category wise pendency of arrears of revenue of the Department as on 31 March 2017 is as follows:

Table 5.3– Category wise pendency of arrears

(₹ in crore)		
Category	Amount	Percentage
Pending in appeal	1,783.76	64.48
Covered under RR Act	139.00	5.03
Rectification/review	5.66	0.20
Other factors/stages	837.85	30.29
Total	2,766.27	100

(Source: Figures furnished by the Department)

As on 31 March 2017, ₹ 2,323.04 crore was outstanding for more than five years.

Audit Findings

The report includes observations in the sampled districts with illustrations and an analysis of system of monitoring collection of arrears.

5.5.2 Non pursuance of cases to finality and non-reference under Revenue Recovery Act

According to Rule 36B (1) of the TNMMC Rules, interest at the rate of 24 per cent per annum on any rent, royalty, fee or other sum due to the State Government under the Act, after the amount is unpaid for more than sixty days from the date from which it became payable. Rule 36B(2) *ibid* lays down that

⁶⁴ Dindigul, Krishnagiri, Tirunelveli and Tiruvallur

the arrears of any amount payable under the Act or these Rules may be recovered under the provisions of the Tamil Nadu Revenue Recovery Act, 1864 (RR Act). While scrutinising the DCB register along with relevant files, we came across cases, wherein no action was taken to refer long pending cases for recovery under the RR Act. A few illustrative cases are mentioned below:

- The District Revenue Officer (DRO), Kodaikanal issued orders (2003) for recovery of ₹ 6.02 lakh on account of illegal mining activity carried on by a person. The matter was referred to Tahsildar, Kodaikanal in May 2005, but no action was taken for effecting recovery under the RR Act. The amount remained uncollected (January 2018).
- The District Collector, Krishnagiri, in one case, imposed (February 2002) penalty of ₹ 33.86 lakh for illicit removal of granite blocks. Despite issue of reminders by the Department to Tahsildar, no action was taken (July 2017) for effecting recovery under the RR Act.
- The Revenue Divisional Officer (RDO), Hosur imposed (January and March 2015) penalty of ₹ 28.71 crore for illicit quarrying of rough stone by eight persons. No action was taken by the Department to recover the amount under the RR Act.

After we pointed this out (July 2017), the Department stated that one case involving arrears of ₹ 25.87 crore was covered by appeal. However, details of appeal were not furnished to audit. In respect of the remaining cases, the Department stated that action would be taken for collection of arrears.

5.5.3 Non-initiation of action in cases referred under the RR Act

According to Section 5 of the RR Act, whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's movable and 'immovable property, or by execution against the person or the defaulter. Cases are referred by department for recovery under the RR Act after exhausting all ways for recovery or if the defaulter is absconding or not traceable.

While verifying the registers and records relating to cases referred under the RR Act, we found that no action was initiated by the Officer responsible to proceed against the defaulters. A few illustrative cases involving substantial money value are detailed below:

The District Collector, Krishnagiri imposed (2002) penalty of ₹ 5.39 crore in two cases for illegal quarrying of granite. The cases were referred for collection under the RR Act during the years 2007 and 2010. However, no action was taken by the Tahsildar to recover the amounts under the RR Act. The amounts, therefore, remained unrecovered even after the lapse of 15 years.

5.5.4 Non-initiation of action following disposal of appeals

While perusing the files relating to arrear of revenue, we found that the department did not take follow-up action after disposal of appeals. This resulted in accumulation of arrears. A few cases are illustrated below:

➤ The Sub-Collector, Hosur, in one case, imposed (October 2014) penalty of ₹ 4.35 crore. The appeal filed (December 2014) against the levy of penalty was dismissed by the District Collector in July 2016. However, no action was taken for recovery of the amount of penalty.

After we pointed this out, the Department replied that appeal was filed by the defaulter. However, no evidence was available regarding filing of second appeal by the defaulter.

➤ The District Collector, Dharmapuri imposed (January 2004) penalty of ₹ 19.44 crore for illicit quarrying by a lessee. When the lessee appealed against the above penalty, the CGM remitted the case back to the District Collector. A further appeal filed by the lessee against the decision of the CGM to remit the case back to the District Collector was dismissed by the Government in November 2005. However, the District Collector issued notice only in August 2012, *i.e.* seven years after the dismissal of appeal by the Government. As of March 2017, the demand was still in arrear and no action was taken to refer the case under the RR Act. Thus, even after the lapse of 12 years since dismissal of the case, the demand remained uncollected.

After we pointed this out (July 2017), the Department replied that action would be taken to collect the arrears. However, reasons for delay in initiation of action for recovery of arrears was not furnished.

➤ The Tahsildar, Kodaikanal, under the directions of District Revenue Officer, issued orders levying penalty of ₹ 18.01 lakh to four contractors of Highways department for illegal removal of hard rock in 2011. While one contractor paid an amount of ₹ 50,000 as against ₹ 1.36 lakh due, others did not remit their dues. The Collector initiated action under the RR Act in 2012, which was challenged in Madurai Bench of Madras High Court. The Court granted interim stay of recovery proceedings (2013) subject to payment of deposit of ₹ 1 lakh. Though the amount was not deposited by the appellants, action was not taken for recovery of arrears. The amount of ₹ 43.59 lakh including interest calculated upto 31 March 2017 remained uncollected.

After we pointed this out (July 2017), the Department replied (October 2017) that reminders were issued to the Tahsildar for collection of arrears under the RR Act. However, reason for delay in initiation of action consequent to the vacation of stay in 2013 was not furnished.

5.5.5 Absence of further information in the records

The Department shall maintain the files of individual defaulters of amounts due to the Government and update them so as to watch the progress of the case and to furnish the Government the latest position on the pursuance. During verification, we found that in the following cases, files were not updated and the latest position was not available even when the amounts were shown as pending in DCB register as arrears:

- The Sub-Collector, Hosur imposed (October 2014) penalty of ₹15.90 crore on four persons for illicit quarrying of rough stone. Though the Department stated that the persons had gone on appeal to the District Collector, evidence of preference of appeal was not available in the records. The outcome of appeal and further action taken was also not known.
- The fixation of a lease amount of ₹4.13 crore in the year 2000 for the period from 1995-2000 by Tahsildar, Ponneri, was challenged in High Court in 2004. The case was remanded back to the Collector in 2008, who sought opinion on fixation from the Secretary, Industries Department in January 2009. No trail was available in the records in respect of further action taken. The arrear was pending for 17 years now without further action.

We pointed this out in July 2017. Reply was awaited (January 2018).

5.5.6 Internal Control Mechanism

Proper maintenance of records and internal control mechanism are essential to watch progress of collection of arrears. In the statement of details of arrears of revenue as on 31 March 2017, a sum of ₹1,540.88 crore was shown as arrears towards local cess (LC) and local cess surcharge (LCS) and interest thereon for the period from 1982-83 to 1990-91. On the basis of Supreme Court's decision, the department ceased to levy, LC and LCS from 1991-92, although the existing demand was carried forward with interest as arrears. In 2001, the Supreme Court struck down the demand and further appeal was not contemplated. However, only ₹65.13 crore was deleted and the balance demand of ₹1,534.77 crore (including interest) continued to be shown as arrears. Failure to maintain records in a proper way and watch the progress of cases systematically resulted in non-deletion of arrear amount from the records for a long time, resulting in over statement of arrears due to Government.

After we pointed this out (October 2017), the Department replied that the case was pending with PAC and no directions were issued by the Government for further appeal. The reply is not tenable as though PAC recommended to take legal action in this regard, further action was not taken and the amount also was not deleted.

5.5.7 Conclusion

From the above, we conclude that there was a lack of systematic follow-up action to collect arrears due to Government as just above one *per cent* of arrears only had been collected in the last four years. Pursuance of cases had also been tardy as almost 85 *per cent* of arrears was pending for more than

five years. There was no proper maintenance of related files and records to watch the trail of action taken in the pending cases.

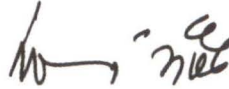
The matter was referred to Government in August 2017. Reply was awaited (January 2018).



Chennai
Dated 07 May 2018

(R. THIRUPATHI VENKATASAMY)
Accountant General
(Economic and Revenue Sector Audit)
Tamil Nadu

Countersigned



New Delhi
Dated 09 May 2018

(RAJIV MEHRISHI)
Comptroller and Auditor General of India



ANNEXURES

Annexure 1
(Referred to in Paragraph 1.3)

Statement showing the details of selection and pendency of scrutiny assessments

Assessment Year	Date of selection	Number of cases	Cases finalised upto 2015-16	Cases finalised during 2016-17	Closing Balance
2006-07 and 2007-08	April 2008 and September 2010	61,681	70,794	5,486	30,350
2008-09 to 2011-12	April 2014	45,129			

Yearwise break up of details of assessments pending finalisation as on 31 March 2017

Year	Closing Balance
2006-07	4,201
2007-08	3,554
2008-09	5,378
2009-10	6,512
2010-11	4,965
2011-12	5,740
Total	30,350

Annexure 2
(Referred to in Paragraph 1.8)

Statement showing the details of audits planned and conducted during the year

Sl. No.	Name of the Department	Nature of receipts	Auditable units	Units planned	Units audited
1	Commercial Taxes and Registration	Sales Tax and other receipts	456	171	171
		Stamp duty and Registration fee	587	117	125
2	Revenue	Urban Land Tax	15	0	0
		Land Revenue	267	58	58
3	Home (Transport)	Taxes on vehicles	81	41	39
4	Home	Motor Vehicle Maintenance Organisation	21	3	3
5	Home (Prohibition and Excise)	State Excise	75	17	16
6	Industries	Mines and minerals	31	14	13
7	Energy	Electricity duty	24	8	8
8	Treasury and Accounts	Asst. Supdt. of Stamps	1	1	1
Total			1,558	430	434

Annexure 3

(Referred to in Paragraph 2.5.2)
Statement showing collection of data by BIU

Sl No	Name of the agency	Period	Nature of data	Date of receipt	Frequency of receipt of data
1	Customs	April 2014 to June 2015	Import data of Gold and sugar	07.07.2015	One time
		April 2013 to June 2015	Import data of tiles	07.07.2015	
		2013-14	Import data of scrap, timber, electrical / electronic goods	24.11.2014	
		2013-14	Import data of liquor	31.07.2014	
		January 2014 to June 2015	Import data of Mobiles	07.07.2015	
		April 2014 to November 2014	Import data of computer and laptops	14.11.2014	
		2007-08 to 2014-15	Import data of iron and steel	14.11.2014	
January 2007 to September 2014	Import data of vehicles	23.06.2014 and 4.11.2014			
2	TN Slum Clearance Board	2013-14	Works Contract details	Various dates	
3	Corporation of Chennai	From 2011-12			
4	Chennai Metropolitan Development Authority	2006 to 2015			
5	TANGEDCO	2013-14			
6	Tamil Nadu Medical Services Corporation	2013-14 to 2014-15			
6		2013-14	Medical equipment	28.08.2014	
		2007-08 to 2014-15	Drugs and Medicine	21.05.2015	
			Civil Construction	14.10.2014	
7	Chief Commissioner of Central Excise, Chennai	2013-14	Service Tax data	23.09.2014	
8	Electronics Corporation of Tamil Nadu Limited	2006-07 to 2011-12	Procurement of Laptops	05.12.2014	
9	TNCSC	2011-12 to 2013-14	Procurement of goods for free distribution.	01.06.2015	
10	Controller General of Patents and Designs of Trademark, Mumbai	12.07.2014 to 24.03.2015	Trade mark registration	15.04.2015	
11	Customs	2013-14	Tuticorin Import data	27.05.2015	Monthly
		2014-15 to July 2017	Import data of edible oil	Monthly data	
12	Myntra	2013-14	e-Commerce data of various commodities	02.09.2014	
13	Flipkart	From November 2014 onwards		Various dates	
14	Amazon	From August 2014			
15	Snap deal	2013-14			

Annexure 4
(Referred to in Paragraph 3.4.18)

Statement showing the short levy of stamp duty and registration fee due to misclassification of instruments

(₹ in lakh)

Sl. No.	Name of the Registering Office	Nature of irregularity	Amount short levied
1	Joint I Chennai South	As per Article 40 (a) of schedule I to IS Act, mortgage with possession attracts stamp duty of four <i>per cent</i> on the amount secured by such deed. As per Explanation under Article 40, a mortgagor who executes a power of attorney (POA) with the mortgagee in respect of the said property is deemed to give possession thereof. In addition, registration fee is collectable at the rate of one <i>per cent</i> on the secured amount, subject to a maximum of ₹ two lakh. Though scrutiny of recitals of an instrument registered in April 2014 indicated that the mortgagor had executed POA, authorising the Lender to lease, sell, transfer or dispose and also receive rents, consideration and all monies in respect of the mortgaged property, the RO erroneously treated the same as simple mortgage and collected stamp duty and registration fee of ₹ 50,000, instead of ₹ 74 lakh on the amount of ₹ 18 crore secured by the mortgage deed.	73.50
We pointed this out to the Department in August 2017. Reply was awaited (January 2018).			
2	Eight ⁶⁵ offices	As per Article 48(e) of Schedule I to the IS Act, POA given for consideration and authorising the attorney to sell any immovable property attracts stamp duty of four <i>per cent</i> on the consideration. Eight instruments of POA were registered by vendors between April 2011 and March 2015 appointing agents to deal with the property, including the power to sell. It was mentioned therein that no consideration was received. Scrutiny of sale agreements entered into between the same persons in respect of the same properties and registered either simultaneously or before registering POA revealed that vendors had received advances. The ROs, however, classified the same as General Power of Attorneys instead of as POA given for consideration.	256.94
After we pointed this out, three ⁶⁶ ROs did not accept the audit observation for reasons of (i) Absence of specific mention of consideration in POA; (ii) Conjoint reading of instruments not being provided for under the IS Act; and (iii) Agreement being made with the Company, a separate entity from the persons to whom power was given. The reply was not acceptable as Courts have held ⁶⁷ that (i) more than one document executed during the same period of time should be read together to ascertain true nature of the transaction;			

⁶⁵ Joint II SR, Coimbatore, SR, Annanagar, SR, Ganapathy, SR, Gandhipuram, SR, Neelankarai, SR, Periamet, SR, Purasawakkam and SR, Virugambakkam

⁶⁶ SR, Annanagar, SR, Gandhipuram and SR, Virugambakkam

⁶⁷ Honourable Supreme Court of India, in the case between Mushir Mohammed Khan Versus Sajeda Bano (2000)

Honourable High Court of Madras in the case of Board of Revenue, Madras versus Annamalai and Company Private Limited (1967)

Sri Subhash Chandra vs. Chief Controlling Revenue Authority (Allahabad High Court) (2007)

Sl. No.	Name of the Registering Office	Nature of irregularity	Amount short levied
<p>(ii) it would be perfectly legitimate to treat the consideration for the grant of power as traceable to the loan advanced earlier; and (iii) advance paid by the relative of the Agent to the Principal could be treated as the consideration for the power.</p> <p>The matter was referred to the Government (October 2017). Reply was awaited (January 2018).</p>			
3	20 ⁶⁸ offices	<p>As per Article 55 C of Schedule I to the IS Act, any instrument whereby a co-owner of a property releases his claim over property in favour of another co-owner who is not a family owner shall attract stamp duty at eight <i>per cent</i> of the market value of the property which is the subject matter of release. In addition, registration of one <i>per cent</i> on the market value of property is leviable. The term 'family' for the purpose of this Article has been defined in Article 58 of Schedule I.</p> <p>Properties released to non-family members were treated as family releases by the RO who collected stamp duty and registration fee of ₹ 18.64 lakh as against due amount of ₹ 231.27 lakh. Further, in SR, T Nagar, the RO incorrectly classified a non-family release deed as a compromise deed and collected a stamp duty and registration fee of ₹ 2 lakh instead of ₹ 18 lakh.</p>	228.63
<p>After we pointed this out (between November 2014 and April 2017), the ROs replied that there existed co-parcenary right among the parties and the concession for stamp duty and registration fee was also available for the co-parceners. The ROs cited the clarification of IGR issued in January 2014 that Article 55 A of IS Act contemplates release in respect of co-parcenary properties, properties jointly inherited, properties devolved by succession, and since in these cases there existed co-parcenary right over the property, the documents were classifiable as family release.</p> <p>The reply was not acceptable because the transfer of share in property had not taken place among the family members as per the provisions of the IS act, though there existed co-parcenary rights. Moreover, clarification issued by IGR cannot be a substitute for the statutory provisions contained in the relevant Act</p>			
4	15 ⁶⁹ offices	<p>As per Article 23 of Schedule I to the IS Act, instrument of conveyance of immovable property attracts stamp duty at the rate of eight <i>per cent</i> (upto 31 March 2012) and at seven <i>per cent</i> thereafter on the market value of the property. Registration fee is leviable at the rate of one <i>per cent</i> on the market value of the property. As per Article 17 of Schedule I to the IS Act, for instrument of cancellation, if attested and not otherwise provided for, stamp duty of ₹ 50 is to be levied on the same.</p> <p>Conveyance of properties effected through 64 sale deeds were cancelled through 'deeds of cancellation' citing various reasons such as consideration was not received,</p>	165.45

⁶⁸ DR, Chengalpet, DR, Tiruppur, Joint-IISR, Chengalpet, Joint-I SR, Tiruchirappalli, SR, Ambattur, SR, Anna Nagar, SR, Ayodyapattinam, SR, Gandhipuram, SR, Gummidipoondi, SR, Kodambakkam, SR, Manavala Nagar, SR, Mylapore, SR, Othakadai, SR, Palladam, SR, Pammal, SR, Pollachi, SR, Sriperumbudur, SR, Thiruvottiyur, SR, Virugambakkam and SR, Walajah Nagar

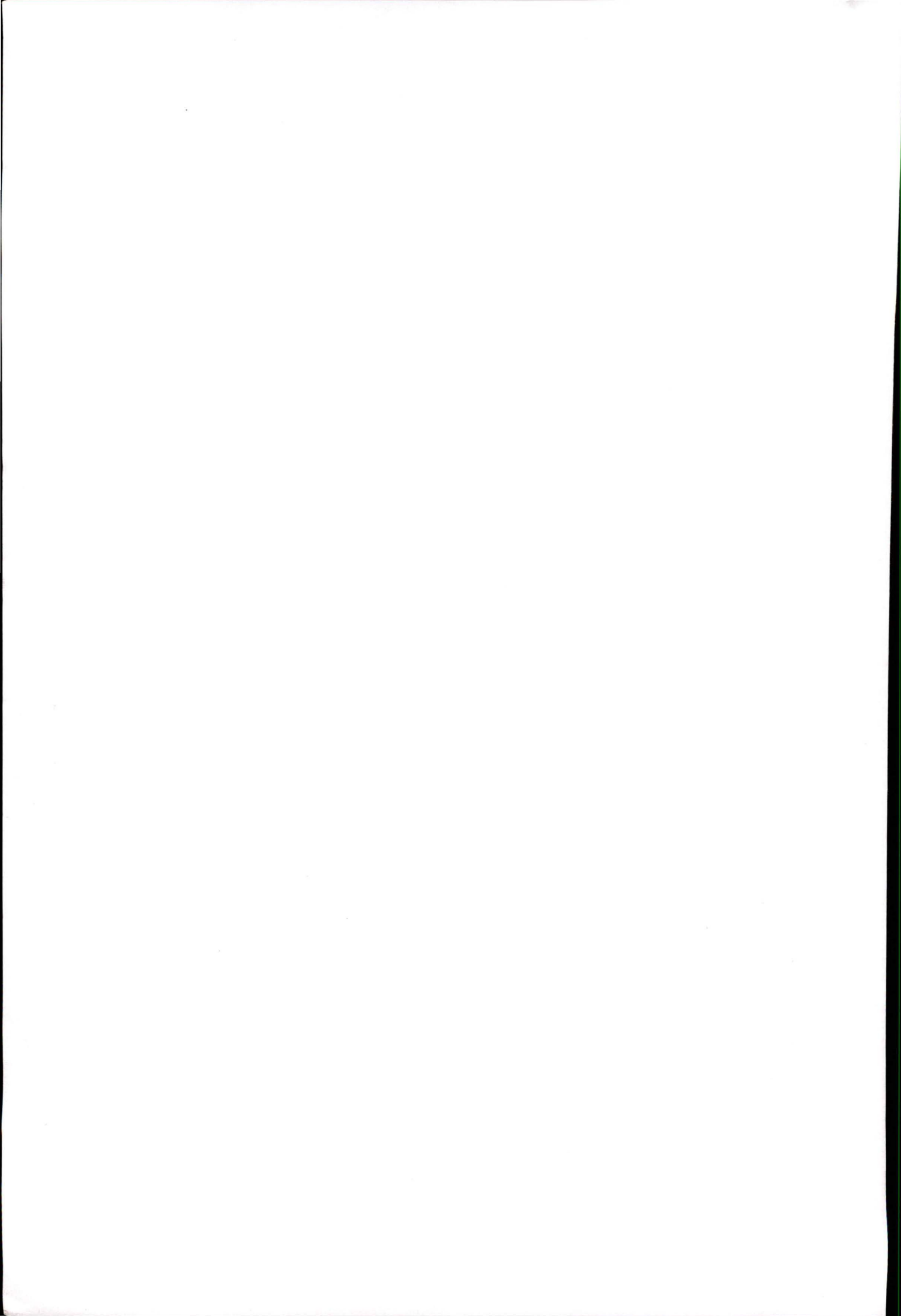
⁶⁹ DR, Chennai (South), Joint-II SR, Arakkonam, Joint II SR, Chengalpet, SR, Ambattur, SR, Kinathukidavu, SR, Kundrathur, SR, Madhukkarai, SR, Mylapore, SR, Palladam, SR, Pammal, SR, Paramakudi, SR, Virugambakkam, SR, Thirupparankunedram, SR, Thirukalukundram and SR, Thiruvottiyur

Sl. No.	Name of the Registering Office	Nature of irregularity	Amount short levied
		possession was not handed over, conditions of sale deed not followed, etc. and stamp duty and registration fee of ₹ 0.13 lakh was collected by the ROs. Since the vendors had re-acquired right and interest over the properties from the original purchasers and the properties vested again in the vendors through cancellation deeds, these deeds were to be treated as re-conveyance deeds. Accordingly, stamp duty and registration fee of ₹ 165.58 lakh was required to be levied on the market value of the property of ₹ 20.70 crore.	
<p>After we pointed this out, the Department replied that the documents did not indicate re-conveyance of properties by the purchasers to the vendors and the IGR had clarified in December 2011 that unless it was specifically recited in the instrument that the property was re-conveyed, it cannot be treated as re-conveyance. The Department further stated that as per Article 17 of Schedule I to the IS Act, instrument by which any instrument previously executed was cancelled was only a cancellation and the deed of cancellation cannot be treated as re-conveyance.</p> <p>The reply was not tenable as after registering the cancellation deeds, necessary entries were made in the original sale deeds recording its cancellation and the same was also featured in the Encumbrance Certificate. The cancellation of a sale deed can be effected only when there was a condition in the original deed for cancellation and in the absence of such condition in any of the original sale deeds, the subsequent instruments retransferring the properties to the original vendors were to be classified as conveyance deeds falling under Article 23 of the IS Act.</p> <p>The matter was referred to the Government (March / April 2017). Reply was awaited (January 2018).</p>			
5	Nine ⁷⁰ offices	<p>As per Article 45 (b) of Schedule I to the IS Act, instrument of partition among persons other than family members is chargeable to stamp duty at the rate of four <i>per cent</i> on the amount of the value of the separated share or shares of the property. 'Family' as defined under the IS Act includes father, mother, husband, wife, son, daughter, grandchild, brother, sister and also includes adoptive father and mother, adopted son and daughter in the case of any one whose personal law permits adoption.</p> <p>Through 17 instruments of partition executed and registered between June 2013 and March 2016, immovable properties valued ₹ 13.58 crore were transferred to persons, who were not included in the definition of "family" as per the IS Act. The shares allotted to persons not defined within the term "family" were to be classified as non-family partition and stamp duty and registration fee of ₹ 82.44 lakh was required to be collected. The ROs, however, collected ₹ 18.19 lakh. Thus, failure of the ROs to classify the partition as partition between non-family members resulted in short collection of stamp duty and registration fee.</p>	64.25
<p>After we pointed this out, the SR, Madhavaram replied (August 2016) that the parties to the partition became co-owners by operation of law and not by the act of the parties. The question of non-family member will arise only if the right in the property is acquired otherwise than by intestate succession or testamentary succession. The DR, Chennai (North) replied (August 2015) that in similar case, the Chief Controlling Revenue Authority (CCRA) in his order dated</p>			

⁷⁰ DR, Chengalpet, DR, Chennai (North), SR, Bhavani, SR, Madhavaram, SR, Mettupalayam, SR, Palladam, SR, Walajah Nagar, SR, Perundurai and SR, Thiruvottiyur

Sl. No.	Name of the Registering Office	Nature of irregularity	Amount short levied
		<p>14 June 2010 has treated the partition as partition between family members. The SR, Thiruvottiyur (April 2017) replied that as per the CCRA proceedings, a document executed by legal heirs of two brothers was chargeable under Article 45(a) as the legal heirs will also be treated as family members for the purpose of levy of stamp duty.</p> <p>The reply was not acceptable as the partition involved allocation of share of properties to non-family members. The Madurai Bench of Madras High Court, in the case of Muthubalu Vs. Inspector General of Registration, held in February 2014 that the definition of family mentioned in Schedule I of Indian Stamp Act was exhaustive and not illustrative. The partition of property involving son-in-law / daughter-in-law was therefore required to be classified as partition among non-family members.</p> <p>The matter was referred to the Government (February and August 2017). Reply was awaited. (January 2018).</p>	
6	Four ⁷¹ offices	<p>As per Article 63 of Schedule-I to the IS Act, in the case of an instrument of transfer of lease where the lease was transferred by way of assignment, stamp duty is leviable at the rate of five <i>per cent</i> of the market value equal to the amount of consideration for the transfer. As per the Table of Fees prepared under Section 78 of the Registration Act, 1908, Registration Fee at the rate of one <i>per cent</i> is leviable on the consideration for the transfer of lease.</p> <p>Through 30 instruments, lease of properties were transferred by SIPCOT to new lessees at the request of the original lessees. The period of lease was determined by deducting from the period of original allotment, the period for which the lands were held by the original allottees. The instruments of modified lease, which resulted in transfer of leases from the original allottees to the new lessees were required to be classified under Article 63 of the IS Act. Accordingly, stamp duty at the rate of five <i>per cent</i> and registration fee at the rate of one <i>per cent</i> was required to be collected on the value of ₹ 41.19 crore. The ROs, however, treated the instruments as lease of lands by SIPCOT and collected stamp duty at the rates of four <i>per cent</i> and registration fee at the maximum amount of ₹ 20,000 per instrument. Thus, as against ₹ 2.33 crore, the ROs collected ₹ 1.73 crore.</p> <p>We pointed this out between April and September 2017. Reply was awaited (January 2018).</p>	60.79

⁷¹ SR, Hosur, SR, Sunguvarchatiram, SR, Sriperumbudur and SR, Walajah Nagar



GLOSSARY

GLOSSARY

AA	Assessing Authority
AC	Assistant Commissioner
AD	Assistant Director
ADR	Audit District Registrar
AEE	Assistant Executive Engineer
AIG	Assistant Inspector General of Registration
AG	Accountant General
ATF	Aviation Turbine Fuel
ANMI	Association of National Exchange Members of India
ATN	Action Taken Notes
BIU	Business Intelligence Unit
BOISL	Bank of India Shareholding Limited
BPCL	Bharat Petroleum Corporation Limited
BSE	Bombay Stock Exchange
CC	Commercial Class
CCT	Commissioner of Commercial Taxes
CDs	Compact Discs
CEIG	Chief Electrical Inspectorate to Government
CGM	Commissioner of Geology and Mining
CPCL	Chennai Petroleum Corporation Limited
CRR Act	Central Revenue Recovery Act
CST	Central Sales Tax
CTD	Commercial Taxes Department
CTO	Commercial Tax Officer
CVC	Central Valuation Committee
DBIU	Divisional Business Intelligence Unit
DC	District Collector
DCB	Demand, Collection and Balance
DIGR	Deputy Inspector General of Registration
DD	Deputy Director
DOTD	Deposit of Title Deed
DR	District Registrar
DRI	Directorate of Revenue Intelligence
DRO	District Revenue Officer
DVDs	Digital Video Discs
ESO	Excise Supervisory Officer
EIV	Educational Institution Vehicles
GoTN	Government of Tamil Nadu
HBIA	Hand Book of Internal Audit

HPCL	Hindustan Petroleum Corporation Limited
HSD	High Speed Diesel Oil
IF	Investigation File
IOC	Indian Oil Corporation
IS Act	Indian Stamp Act
ITC	Input Tax Credit
IR	Inspection Report
IGR	Inspector General of Registration
ISIC	Inter State Investigation Cell
JC	Joint Commissioner
KL	Kilo litre
LC	Local cess
LCS	Local cess surcharge
LDO	Light Diesel Oil
LTU	Large Taxpayers Unit
LPG	Liquefied Petroleum Gas
MCX	Multi Commodity Exchange
MMDR Act	Mines and Minerals (Development and Regulation) Act
MV Act	Motor Vehicles Act
NSE	National Stock Exchange
NSDL	National Securities Depository Limited
OMCs	Oil Manufacturing Companies
PAN	Permanent Account Number
PSV	Private Service Vehicle
PAC	Public Accounts Committee
PDS	Public Distribution System
RDO	Revenue Divisional Officer
RTO	Regional Transport Office
RO	Registering Officer
RC	Registration Certificate
RR Act	Revenue Recovery Act
SIDCO	Tamil Nadu Small Industries Development Corporation
SIPCOT	State Industries Promotion Corporation of Tamil Nadu Limited
SKO	Superior Kerosene Oil
SR	Sub Registrar
sqft	Square feet
TANGEDCO	Tamil Nadu Generation and Distribution Corporation Limited
TNCSC	Tamil Nadu Civil Supplies Corporation
TNGST	Tamil Nadu General Sales Tax
TNMMC Rules	Tamil Nadu Minor Mineral Concession Rules
TNMVT Act	Tamil Nadu Motor Vehicles Taxation Act,

TNVAT	Tamil Nadu Value Added Tax
TDS	Tax Deduction at Source
TIN	Tax Identification Number
TSP	Total Solution Project
UDS	Undivided share
VAT	Value Added Tax

