

CHAPTER-II

VALUE ADDED TAX/SALES TAX

2.1 Tax administration

The tax administration of the Commercial Tax Department of the State is governed by the Gujarat Value Added Tax (GVAT) Act, 2003 and the Central Sales Tax (CST) Act, 1956. The GVAT Act was made effective in the State from 1 April 2006 and on its implementation, the Gujarat Sales Tax Act, 1969, the Bombay Sales of Motor Spirit Taxation Act, 1958 and the Purchase Tax on Sugarcane Act, 1989 were repealed. However assessments, appeals, recovery etc., pertaining to the period prior to the implementation of GVAT continued to be governed under the provisions of these repealed Acts. The Commercial Tax Department (Department) is headed by the Commissioner of Commercial Tax (Commissioner), who is assisted by a Special Commissioner and an Additional Commissioner. The Department is geographically organised into seven administrative divisions, each headed by an Additional/Joint Commissioner (Addl./J.C). A division has 'circles', each headed by a Deputy Commissioner (DC); there are 23 circles in the State. A circle has assessment units each headed by Assistant Commissioner/Commercial Tax Officer (AC/CTO); there are 104 units in the State. In addition, there are 11 permanent, two seasonal/temporary check posts headed by AC/CTO. Besides, there are staff positions in the Department's head office for administration, audit, legal, appeal, enforcement, e-governance, internal inspection etc., headed by Addl./J.C or DC.

2.2 Analysis of budget preparation

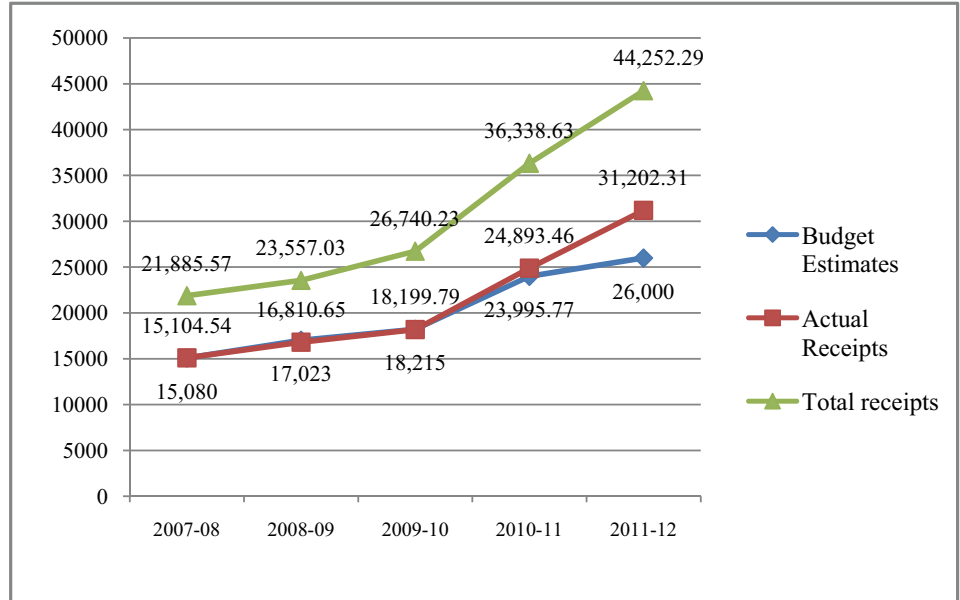
The Budget Estimates are furnished by the Commissioner in the prescribed format to the Finance Department. While preparing the budget estimates, the Commercial Tax Department considered normal growth of the State economy, rise in price of goods (particularly petroleum products) and increase in demand and production of consumer goods. Actual receipts was 20 *per cent* more than the budget estimates for the year 2011-12; reason for the variation between actual receipts and budget estimates was not furnished to audit.

2.3 Trend of revenue

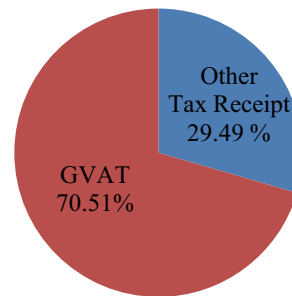
Actual receipts from Sales Tax/VAT during the last five years 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual Sales Tax/VAT receipts vis-a- vis total tax receipts
2007-08	15,080.00	15,104.54	(₹)24.54	(₹)0.16	21,885.57	69.02
2008-09	17,023.00	16,810.65	(-) 212.35	(-) 1.25	23,557.03	71.36
2009-10	18,215.00	18,199.79	(-) 15.21	(-) 0.08	26,740.23	68.06
2010-11	23,995.77	24,893.46	(₹)897.69	(₹)3.74	36,338.63	68.50
2011-12	26,000.00	31,202.31	(₹)5,202.31	(₹)20.00	44,252.29	70.51



Contribution of VAT



The contribution of GVAT in total tax receipts increased from 68.50 per cent in 2010-11 to 70.51 per cent in 2011-12, the collection increased by 25.34 per cent over previous year.

The above pie chart indicates the dominance of contribution of GVAT over the other tax receipts in Gujarat.

2.4 Analysis of arrears of revenue

(₹ in crore)

Year	Opening balance of arrears	Demand raised	Amount collected during the year	Closing balance of arrears
2007-08	8,352.53	2,326.70	2,739.73	7,939.50
2008-09	7,939.50	2,019.07	1,104.67	8,853.90
2009-10	8,853.90	6,428.33	4,084.70	11,197.53
2010-11	11,197.53	5,238.54	1,929.99	14,506.08
2011-12	14,506.08	3,059.10	998.73	16,566.45

The arrears of revenue as on 31 March 2012 amounted to ₹ 16,566.45 crore, of which ₹ 4,888.56 crore were outstanding for more than five years. Further, the total outstanding amount of ₹ 16,566.45 crore *inter alia* included ₹ 6,948.79 crore, the recovery of which has been stayed by the High Court of Gujarat and other judicial authorities, ₹ 6,878.28 crore is proposed to be written off as the chance for its recovery is remote, recovery of ₹ 463.27 crore is held up due to non-finalisation of rectification and review applications of the dealers and for the arrears of ₹ 382.32 crore recovery certificates are issued.

2.5 Assessee profile

The number of registered dealers was 4,17,016 at the end of March 2012. Out of them, 3,304 dealers paid tax more than ₹ 40 lakh and the rest 4,13,712 dealers paid less than ₹ 40 lakh during the year. The dealers were required to file 40,26,636 monthly/quarterly returns. Out of which 3,19,061 returns were not filed during the year. In all the cases, the Department initiated necessary action against the defaulted dealers.

2.6 Cost of VAT per assessee

Number of live dealers during the year 2011-12 and during the preceding three years with expenditure incurred on collection of revenue and cost of tax per assessee are given below:

(₹ in lakh)

Year	No. of dealers	Expenditure on collection of revenue	Cost of GVAT per assessee
2008-09	3,73,426	9,951.00	0.03
2009-10	3,77,093	12,907.00	0.03
2010-11	3,99,455	14,937.00	0.04
2011-12	4,17,016	16,249.00	0.04

Thus, the cost of tax per assessee during the four years ranged between ₹ 0.03 lakh and ₹ 0.04 lakh.

2.7 Arrears in assessment

The number of assessments pending at the beginning of the year 2011-12, assessments due during the year, assessments done during the year and pending at the end of the year along with the figures for the preceding four years as furnished by the Commercial Tax Department³ are given below:

(No. of cases)						
Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Assessments done during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2007-08	7,28,402	3,84,961	11,13,363	4,00,588	7,12,775	64
2008-09	3,46,922 ⁴	1,08,174	4,55,096	1,27,315	3,27,781	72
2009-10	3,27,781	1,22,180	4,49,961	1,80,159	2,69,802	60
2010-11	2,69,802	90,666	3,60,468	1,75,050	1,85,418	51
2011-12	1,85,418	69,109	2,54,527	79,044	1,75,483	69

Thus, the percentage of closing balance at the end of each year during 2007-08 to 2011-12 to total cases which became due for assessment ranged between 51 and 72 per cent.

The Commissioner of Commercial Tax, for the purpose of selection of cases for audit assessments, grouped all the live dealers in various categories on the basis of GVAT paid with returns by the dealers during the year, ITC claimed in the returns, claim of refund in the returns, nature of business like works contracts, dealers who opted to pay lump sum tax, dealers having high turnover, return/challan defaulters, dealers whose TINs were cancelled during the year, enforcement cases/search/seizure cases, incentive certificate holders, dealers holding certificates issued by Kadi and Village Industries Commissioner, dealers who had high claim of ITC on opening stock (only for 2006-07), exporters claiming provisional refunds, and randomly selected self assessments. Tasks (assessments) of the selected dealers were generated in the name of selected assessing officers.

Status of assessment under GVAT Act, as reported by the Department is mentioned in the following table:

³ In respect of sales tax/GVAT, profession tax, purchase tax on sugarcane, lease tax and tax on works contracts.

⁴ Differs from the closing balance of ₹ 7,12,775 reported by the Department for 2007-08.

(No. of cases)

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Assessments done during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2009-10	54,948	99,289	1,54,237	38,707	1,15,530	74.90
2010-11	1,15,530	60,365	1,75,895	79,978	95,917	54.53
2011-12	95,917	6,1067	1,56,984	43,985	1,12,999	71.98

Section 34 of GVAT Act authorises the Commissioner to audit the self assessment made under Section 33. The above figures represent only the cases selected by the Department for audit assessment under Section 34 of GVAT Act. The remaining cases are considered self-assessed. The details regarding extent of scrutiny of these self-assessed cases were not made available to audit.

The Government needs to take steps for speedy disposal of audit assessment. The outstanding assessment cases under erstwhile Sales Tax Act may be finalised on priority basis to avoid revenue loss due to time bar.

2.8 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the periods from 2008-09 to 2011-12 along with the relevant All India average percentage of expenditure on collection to gross collection for the preceding years is shown below:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection of the preceding years
GVAT/sales tax	2008-09	16,810.65	99.51	0.59	0.83
	2009-10	18,199.79	129.07	0.71	0.88
	2010-11	24,893.45	149.37	0.60	0.96
	2011-12	31,201.97	162.49	0.52	0.75

The cost of collection in respect of GVAT/sales tax was lower than the respective previous year all India average.

2.9 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of sales tax/GVAT, cess on motor spirit, profession tax and entry tax for the year 2011-12 and the corresponding figures for the preceding two years as furnished by the Department is mentioned:

(₹ in crore)

Heads of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount refunded	Net collection	Percentage of column 4 to 3
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales tax/ GVAT	2009-10	18,529.72	278.11	1,384.13	17,423.70	1.50
	2010-11	23,751.68	1,253.81	1,879.67	23,125.82	5.28
	2011-12	29,472.05	998.73	1,954.49	28,516.29	3.39
Cess on Motor Spirit	2009-10	496.40	0.05	-	496.45	0.01
	2010-11	642.14	-	-	642.14	00
	2011-12	746.37	3.32	-	749.69	0.44

Note: The figures as furnished by the Department are at variance with the Finance Accounts figures and need reconciliation.

Thus, the percentage of collection of revenue after assessment (additional demand) with reference to pre-assessment stage ranged between 0 and 5.28 per cent under sales tax/GVAT/cess on motor spirit during the years 2009-10 to 2011-12.

2.10 Impact of Audit Reports-Revenue impact

During the last five years, the audit reports have pointed out cases of non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc, with revenue implication of ₹ 5,287.48 crore in 78 paragraphs. Of these, the Department/Government had accepted audit observations in 68 paragraphs involving ₹ 143.28 crore and had recovered ₹ 10.50 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2006-07	12	27.86	11	10.98	4	1.51
2007-08	12	134.90	10	21.81	8	1.55
2008-09	17	5,013.96	12	24.62	8	2.85
2009-10	15	34.38	13	26.83	7	0.75
2010-11	22	76.38	22	59.04	10	3.84
Total	78	5,287.48	68	143.28	37	10.50

The above table indicates that the recovery, even in accepted cases, was very low (7 per cent of the accepted money value). The Government may advise the Department for taking suitable steps for speedy recovery.

2.11 Working of internal audit wing

Internal Audit Wing of Commercial Tax Department, headed by Joint Commissioner (C) Audit, conducts audit of all offices dealing with the assessment and collection of Sales Tax/Value Added Tax. C (Audit) is assisted by seven Dy. Commissioner (Audit), one each in every Division. The Dy. Commissioner (Audit) has a monthly target of 125 assessment cases. The concerned Dy. Commissioner (Audit) submits monthly statement to C (Audit) giving particulars such as offices audited, number of dealers covered and objection raised. The C (Audit) offers his comments on such statements. During the year 2011-12, seven Dy. Commissioners (Audit) audited 8,444 cases as against yearly target of 10,500 cases. Out of 8,444 cases audited, revision orders involving an amount of ₹ 5.44 crore were passed in 116 cases.

The internal audit wing needs to put in more concerted efforts to achieve the target fixed so that better tax compliance is ensured.

2.12 Results of audit

We test checked the records of 95 units relating to Commercial Tax Offices during 2011-12 and noticed underassessment of tax and other irregularities involving ₹ 270.95 crore in 932 cases which falls under the following categories:

Sl. No.	Categories	No. of cases	Amount (₹ in crore)
1.	Levy and collection of VAT on Works Contract	1	19.07
2.	Incorrect rate of tax and mistake of computation.	68	7.58
3.	Incorrect grant of set off	11	1.67
4.	Incorrect concession/exemption	19	2.70
5.	Non/short levy of interest & penalty	239	67.69
6.	Other irregularities	57	58.81
7.	Irregular/excess grant of Input Tax Credit	270	31.80
8.	Non/short levy of tax	265	79.16
9.	Non/short levy of purchase tax	2	2.47
	Total	932	270.95

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 23.49 crore in 154 cases, of which 15 cases involving revenue implication of ₹ 6.44 lakh were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 72.33 lakh was realised in 56 cases during the year 2011-12.

A few illustrative audit observations involving ₹ 151.90 crore are mentioned in the succeeding paragraphs.

2.13 Audit observations

Our scrutiny of the records of the various Commercial Tax offices revealed several cases of non-compliance with the provisions of the Gujarat Sales Tax Act, 1969, the Gujarat Sales Tax Rules, 1970, the Central Sales Tax Act, 1956, Gujarat Value Added Tax Act, 2003, Gujarat Value Added Tax Rules, 2006 etc., and Government notifications and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out by us. Such omissions on the part of the Departmental officers are pointed out by us each year; however the irregularities not only do persist, but also remain undetected till our audit is conducted. There is need for the Government to improve the internal control system and internal audit.

2.14 Levy and collection of VAT on Works Contracts

As per Section 2(23) of Gujarat Value Added Tax Act, 2003 (GVAT) Act, 2003, Sales means a sale of goods made within the State for cash or deferred payment or other valuable consideration and *inter alia* includes transfer of property in goods (whether as goods or in some other form) involved in execution of works contract. Further, explanation to the Section 2 (23) GVAT Act states that Works contract is a contract for execution of works and includes such works contract as the State Government may, by notification in the Official Gazette, specify. The State Government vide notification dated 31 March 2006, listed the name of the works contract, the list includes 14 items viz construction/repairing of building/road/bridge, installation, fabrication, assembling, commissioning or repairing of any plant or machinery, overhauling, repairing of motor vehicle/vessels, blending, finishing, processing, fabrication of any goods, laying of pipes, painting/polishing etc.

Section 3 of GVAT Act is charging section and accordingly the Works contractor whose total purchase or sale exceeds rupees five lakh and taxable turnover exceeds rupees ten thousand is liable to register himself under GVAT Act. Further, under Section 14 A of the Act, the Commissioner may, in such circumstances and subject to such conditions as may be prescribed, permit every dealer who transfers property in goods (whether as goods or in some other form) involved in execution of a works contract, to pay at his option in lieu of the amount of tax leviable from him under this Act in respect of any period, a lump sum tax by way of composition at such rate as may be fixed by the State Government by notification in the official gazette having regard to the incidence of tax on the nature of the goods involved in the execution of the total value of the works contract. Under Section 29 every dealer should file correct and complete returns of the goods in respect of his business and the transactions thereof in the form prescribed and also pay the tax in the manner provided in Section 30 of the Act.

Rule 18 AA of the GVAT Rule, 2006, prescribes deductions of charges towards labour, services etc., in calculation of value of goods at the time of transfer of property in goods involved in the execution of works contracts. The value so arrived shall be the taxable turnover under works contract.

Audit findings relating to deficiencies noticed in the assessments of contractors are discussed in the succeeding paragraphs.

2.14.1 Short levy of tax due to irregular availment of labour deduction and sub-contract

Section 14A of the GVAT Act read with Rule 28 (8) (c) provides for payment of lump sum tax by way of composition by a civil works contractor at the rate of 0.6 *per cent* of the total value of the works contract after deducting amounts paid to the sub-contractors.

As per section 32 of GVAT returns furnished by the dealers shall be subject to the scrutiny to ensure that the tax has been paid correctly.

During test check of annual returns, VAT Audit Reports, assessment orders and connected assessment records between December 2010 and June 2012 of 15⁵ offices, we noticed that 40 registered dealers for the assessment period from 2006-07 to 2008-09 had availed incorrect deductions aggregating to ₹ 225.70 crore on account of labour charges, service charges and the payments made to sub-contractors. Of these, in nine dealers the omission escaped the notice of the assessing authorities (AA) while

finalising audit assessments between 2009-10 and 2010-11 and in the remaining 31 dealers, the assessing authorities incorrectly accepted the returns filed by the dealers. This resulted in short levy of tax of ₹ 1.66 crore. Besides, interest of ₹ 88.09 lakh and penalty were also leviable.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.2 Short levy of tax due to application of incorrect rate under Section 14 A

Section 14A of the Act read with Notifications dated 17 August 2006 and 11 October 2006, works like Building construction, works of roads, cross drainage structure and bridges, digging and laying pipeline, dams, check dams, weirs, protection wall, canal and head works attract tax at the rate of 0.6 *per cent* of the total value of the works contract. Other works contract attracts 2 *per cent* of the total contract value.

During the test check of records of seven⁶ offices between July 2010 and June 2012, we noticed that for the assessment years from 2006-07 to 2008-09 12 dealers had executed the works not listed in the notifications like fabrication & erection, civil - mechanical works, interior design, body building *etc.* However, the dealers had paid the tax at the concessional rate of 0.6 *per cent*, instead of two *per cent* of the total value of works contract. Of

⁵ ACCT: 5, 9, 10, 17, 18 and 21 Ahmedabad, Ankleshwar, Anand, Bharuch, Gandhinagar, Mehsana, Nadiad, 11 Surat, 40 Vadodara and DCCT: 2, Ahmedabad.

⁶ ACCT: 5, 21 Ahmedabad, Gandhidham, Gandhinagar, Junagadh, Patan and 1, Surat.

these, in case of six dealers the omission escaped the notice of the AA while finalising audit assessments between March 2009 and January 2012 and in the remaining cases incorrectly accepted the self assessments filed by the dealers. This resulted in under assessment of tax of ₹ 69.76 lakh. Besides, interest of ₹ 30.66 lakh and penalty were also leviable.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.3 Short levy of VAT due to excess deduction towards labour/ services etc.

Under clause 30(c) of Section 2 of Gujarat Value Added Tax Act, 2003, deduction for labour/service and other charges is available to the extent of expenditure incurred, on the condition that true and correct records are maintained and furnished at the time of assessment to the satisfaction of the assessing authority.

2.14.3.1 During test check of records of Seven⁷ offices between July 2011 and March 2012 in eight cases related to the assessment period 2006-07, we noticed that as per the profit & loss account/ construction account allowable deductions for labour/service charges were ₹ 13.59 crore from the total turnover of ₹ 42.59 crore. However, the AA allowed (between July 2010 to May 2012) deduction of ₹ 22.42 crore for labour/service charges. This resulted in short levy of tax of ₹ 57.55 lakh. Besides interest of ₹ 41.13 lakh and penalty were also leviable.

Rule 18A of Gujarat Value Added Tax Rules, 2006 provides for deduction for sub contract made with a registered dealer. In absence of true and correct records a lump sum deduction shall be admissible at the rate of 30 per cent in case of civil works contract, and 10 to 20 per cent for other works for levy of VAT.

2.14.3.2 During test check of records of nine⁸ offices between July 2010 and May 2012 in 10 cases related to the assessment period 2006-07, we noticed that the AA allowed (from September 2009 to January 2011) deductions for labour, service charges of ₹ 40.71 crore from the turnover of ₹ 117.45 crore even though there was nothing in the assessment order that true and correct records were maintained and furnished by the dealer for labour/service charges. The AA had mentioned in the assessment orders that deductions claimed were in excess of the permissible limits but incorrectly allowed the deductions claimed by the dealers instead of limiting it. This resulted in the short levy of tax of ₹ 1.35 crore. Besides, interest of ₹ 96.72 lakh and penalty were also leviable.

⁷ ACCT: 3, 9, 14 and 20 Ahmedabad, 41 and 42 Vadodara, 1 Surat.

⁸ ACCT 10, 14, 23 Ahmedabad, 40 and 41, Vadodara, 1 Amnagar, 1 Nadiad, Mehsana and 103, Bhuj.

2.14.3.3 During test check of records of three⁹ offices between March 2012 and June 2012, we noticed that in five cases of self assessment related to the assessment period 2007-08, dealers claimed deductions for labour/service charges of ₹ 12.27 crore instead of ₹ 5.40 crore from total turnover of ₹ 26.72 crore even though no accounts of labour and services charges were furnished along with returns. This resulted in short payment of tax of ₹ 46.23 lakh. Besides interest of ₹ 24.48 lakh and penalty was also leviable.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.4 Short levy of CST - Inter-State transaction treated as local works contract

As per Section 3 of Central Sales Tax Act, 1956, a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce, if the sale or purchase (a) occasions the movement of goods from one State to another; or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. Building¹⁰ bus body on chassis by using own material is 'sale' and not works contract.

During test check of records between May 2012 and June 2012 of two¹¹ offices, we noticed that two registered dealers, during assessment period 2007-08, executed the work of body building on contract basis on the chassis provided by the contractee from Rajasthan, Uttarakhand, Maharashtra and Goa. In these cases, the dealers used the required material and constructed the body building on the chassis. Since the material used ultimately resulted in

movement of goods from one state to another, the transaction was an inter-state sale and not a case of works contract within the State. However, the transaction was treated as works contract and the dealers paid lump sum tax at the rate of two *per cent* instead of the tax applicable on the material used in the work of body building at the rate of 12.5 *per cent*.

This resulted in the short levy of CST of ₹ 95.29 lakh including interest of ₹ 32.99 lakh.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

⁹ ACCT: 5 Ahmedabad, 74 Vapi, Bharuch.

¹⁰ Dutt Motor Body Builders V. State of Gujarat (1999) 116 STC 216 (Guj HC DB).

¹¹ ACCT: 21 Ahmedabad and 24 Gandhinagar

2.14.5 Non/short deduction of TDS

Section 59-B of the GVAT Act read with Notification dated 1.4.2008 *inter alia* provides for deduction of TDS at the rate as may be prescribed by the Government at the time of payment of the whole or part of the specified sale price. In respect of a specified works contract where TDS has not been deducted, the amount shall be payable by the contractor or sub contractor directly and penalty not exceeding twenty five *per cent* of the amount to be deducted, is leviable.

During test check of records between April 2011 and March 2012 of six¹² offices, we noticed that eight dealers for the assessment period from 2006-07 to 2008-09 had not deducted TDS in seven cases and deducted short in one case from the payments of specified sale price of ₹ 55.71 crore made to sub-contractors as required under rules. This resulted in non/short deduction of TDS aggregating to ₹ 1.03 crore.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.6 Irregular availment of TDS

Section 59B of the GVAT Act *inter alia* provides for furnishing TDS certificate in Form-703 by the person deducting the tax specifying the amount of tax deducted to the contractor or sub contractor at the time of payment of the specified sale price. Further, deduction of TDS made shall be treated as a payment of tax or lump-sum tax on behalf of contractor or sub-contractor and on production of certificate, credit shall be allowed.

During test check of records between February 2012 and March 2012 of three¹³ offices, we noticed that in case of four dealers for the assessment period from 2006-07 and 2007-08, the credit of TDS was granted irregularly. Of these, in one case credit was allowed without obtaining the TDS certificates as required by the GVAT Act. Further, two dealers availed credit of TDS certificates which pertained to other dealers. In one case TDS certificates were furnished for ₹ 7.17 lakh while

credit was granted for ₹ 7.67 lakh (i.e. excess credit of ₹ 0.50 lakh). This resulted in irregular availment of TDS credit of ₹ 32.24 lakh.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

¹² ACCT: 5, 8 & Ahmedabad, Bhuj, 42 Vadodara
DCCT: 2 Ahmedabad.

¹³ ACCT: 9 Ahmedabad, 40 and 41 Vadodara

2.14.7 Availment of composition scheme despite breach of condition

Rule 28(8)(g) of Gujarat Value Added Tax Rules, 2006 under Section 14-A *inter alia* provides if the dealer to whom the permission to pay lump sum tax at the 0.6 per cent is granted contravenes the provisions of the Act or the rules made in this behalf, such permission shall be liable to be cancelled forthwith from the date of event concerning such contravention. Consequently, such dealer shall be liable to pay tax under section 7 from the date of such contravention.

During test check of records of three¹⁴ offices between February 2012 and June 2012 we noticed that three dealers, for the assessment year from 2006-07 to 2007-08, had opted for lump sum payment of tax. The permission granted for payment of lump sum tax (Form-215A) *inter alia* stipulated that the dealer should furnish the details of works contract in the form 216 within the time limit prescribed and should pay the amount of composition within the time prescribed. We noticed that the

dealers had not complied with these conditions by non-filing of returns and by not paying the lump sum tax within time prescribed. In one case the dealer was allowed composition of tax prior to the date of his filing of application for composition. Hence, the permission granted for payment of lump sum tax was liable for cancellation due to non-compliance of the conditions by the dealers. The Department had not cancelled the permission and the dealers had availed the benefit of payment of lump sum tax. This resulted in short levy of tax of ₹ 2.59 crore including interest of ₹ 85.40 lakh.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.8 Short levy of VAT due to incorrect deduction of turnover

Section 2(23) (b) read with Section 7 of GVAT Act provide that transfer of property in goods involved in the execution of the works contract is taxable. Further, notification dated 11 August 2006, issued u/s 5(2) of the Act exempts whole of tax on sales of goods, if such goods are purchased from the registered dealer and used in the execution of works contract relating to processing of cotton textile fabrics including bleaching, dyeing and printing thereof.

During test check of records between March 2011 and June 2012 of 12¹⁵ offices, we noticed that 20 registered dealers in the assessment year from 2006-07 to 2008-09 had either i) incorrectly shown less turnover of sales than what was shown in their books of accounts or ii) had irregularly deducted the

¹⁴ ACCT: 5 Ahmedabad, Gandhidham and 41 Vadodara.

¹⁵ ACCT: 5, 6, 8, 16, 21 & 22 Ahmedabad, Mehsana, 40 and 41 Vadodara, 74 Vapi, 68 Surat

DCCT: Corporate-2, Ahmedabad

turnover as exempted item or iii) deducted the job work income from the total turnover which was not admissible. The incorrect exhibition of turnover or irregular deductions led to escapement of taxable turnover aggregating to ₹ 85.62 crore. This has resulted in short levy of tax amounting to ₹ 4.72 crore including interest of ₹ 1.74 crore.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.9 Non/short levy of VAT due to irregular deduction

Section 2(30) read with Section 7 of GVAT Act and Rule 18AA of GVAT Rules *inter alia*, provide for levy of tax on the taxable turnover of sales which remains after deducting there from, in case of sales in relation to works contract, the charges towards labour, service and other like charges at the rate set out against each of them in the Schedule II or Schedule III.

During test check of assessment records between March 2012 and May 2012 of three¹⁶ offices, we noticed that a registered dealer during 2007-08 had deducted the value of imported materials as High Sea Sale (HSS) from gross taxable receipt of a project work which he was executing under a contract on Turn ~~ky~~ basis. The dealer had imported material for use in the

project and also paid custom duty. Further, the dealer had received total amount of the project including the value of imported goods from the contractee. Thus, the deduction on account of HSS was irregular as the title to the goods was not transferred before the goods had crossed the customs frontier. Further, in two cases, the dealers had understated their receipts by incorrectly showing the amount of sales either by not reckoning the opening stock or by erroneously arriving at the amount of turnover. This has resulted in short levy of tax amounting to ₹ 70.13 lakh including interest of ₹ 24.28 lakh.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.10 Non-levy of tax due to non-assessment of Unregistered Dealer (URD)

Section 34(8) of Gujarat Value Added Tax Act, 2003 states that if the Commissioner is satisfied that any dealer who has been liable to pay tax, has failed to get himself registered, the Commissioner shall proceed to assess the dealer in respect of unregistered period.

During test check of records between January 2012 and February 2012 of two¹⁷ offices, we noticed that three unregistered dealers got themselves registered in the midyear of the assessment year 2006-07. However, the

¹⁶ ACCT: 24 Gandhinagar, 42 Vadodara and DCCT: Bharuch.

¹⁷ ACCT: 8 Ahmedabad, 41 Vadodara

assessing authorities assessed the turnover of the dealers only for the period after their date of registration and had not assessed the tax on the turnover amounting to ₹ 5.94 crore made by them in the capacity of URD dealers prior to their registration. This resulted in non-levy of VAT of ₹ 26.94 lakh including interest of ₹ 1.32 lakh.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.11 Irregular allowance of ITC

Section 14(A) (2) and 14(3) of Gujarat Value Added Tax Act, 2003 prohibit for claiming any tax credit by lump sum certificate holder. Further, Rule 28(8) (vi-a) (3) of Gujarat Value Added Tax Rules, 2006 states that if such dealer has already claimed the tax credit of the goods held in stock on the date of effect of permission to make lump sum tax and such goods are going to be used in the works contract for which permission to pay lump sum is sought for, he shall reverse such input tax credit claimed.

During test check of records of six¹⁸ offices between March 2011 and June 2012, we noticed that seven registered dealers for assessment period 2006-07 and 2007-08 had not reversed or short reversed the ITC claimed on the goods which was in stock at the time of granting permission to pay lump sum tax.

(₹ in lakh)

Sl. No.	No. of dealers	Nature of objection	Amount of ITC reversible	Short levy of tax including interest and penalty
1	05	The dealer did not reverse Input Tax Credit on purchase of goods proportionately at the time of granting permission to pay lump sum tax. The amount of goods on which ITC was reversible was ₹ 34.74 crore.	149.36	462.67
2	02	Input Tax Credit was allowable ₹ 32.74 lakh but the assessing officers allowed tax credit of ₹ 48.08 lakh.	15.34	24.07
	07	Total	164.70	486.74

Thus, the non-reversal or short reversal of ITC by the dealers resulted in short levy of tax of ₹ 4.87 crore including interest of ₹ 1.11 crore and penalty of ₹ 2.10 crore.

¹⁸ ACCT: 9 & 0 Ahmedabad, Amkambalia, Gandhidham, Mehsana
DCCT: Bharuch.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.15 Incorrect/excess grant of ITC on purchases

As per Section 11 of Gujarat Value Added Tax Act, 2003, a registered dealer who has purchased taxable goods shall be entitled to claim tax credit equal to the amount of tax paid. The tax credit shall be allowed on his purchase of taxable goods in the State which are intended for the purpose of sale or resale; sale in the course of inter State trade or commerce; branch transfer or consignment to other States; sales in the course of export out of territory of India; sales to SEZ, use as raw material in the manufacture of taxable goods and use as capital goods meant for use in manufacture of taxable goods.

2.15.1 During test check of the audit assessments/self assessment cases of 35¹⁹ offices between July 2010 and March 2012, we noticed in 68 assessments of 68 dealers finalised between January 2009 and November 2011 for the period between 2006-07 and 2007-08, the AA had allowed excess/ incorrect Input Tax Credit (ITC) of ₹ 8.19 crore on purchases made by the dealers. This resulted in incorrect/excess grant of ITC of ₹ 23.89 crore including

interest of ₹ 3.46 crore and penalty of ₹ 12.24 crore. A few cases are illustrated below.

Sl. No.	Name of the office	Assessment year Date of assessment	Nature of observation	Excess grant of ITC (₹ in lakh)
1	DCCT-7, Gandhinagar	2006-07 31.12.2010	ITC allowed on "fixed Assets/Capital goods" which are not plant & machinery and are not directly involved in the process of manufacturing.	7.53
Remarks: Department while accepting the audit observations stated that revision order under Section 75 was passed on 07.05.12 and ITC of ₹ 7.53 lakh was disallowed.				
2	DCCT-4, Ahmedabad	2006-07 28.03.2011	ITC allowed on consumable stores for manufacturing tax free goods.	11.00
Remarks: Department while accepting the audit observations stated that detailed report would be submitted after issue of revision order.				
3	DCCT-4, Ahmedabad	2007-08 01.12.2010	ITC allowed on purchases from the Ab-initio cancelled dealer	16.81
Remarks: Department while accepting the audit observations passed reassessment order under Section 35 of GVAT Act, and raised demand of ₹ 16.81 lakh.				

¹⁹ ACCT: 1, 3, 5, 8, 11, 14, 16, 18, 20, 21 Ahmedabad, 1, Anand, Ankleshwar, 2, Bhavnagar, Gandhidham, Ghandhinagar, 1, Amnagar, Morbi, 1, 2, Nadiad, 4 Rajkot, 1, 3, 4, 11, 12, Surat, and 5,7 Vadodara.
DCCT: 3, 4 Ahmedabad, Corporate Cell 3, Ahmedabad, Gandhidham, Gandhinagar, Nadiad, 17 Surat and Valsad

4	ACCT-14 Ahmedabad	2006-07 18.05.2011	ITC claimed by the assessee as per return was ₹ 42.56 lakh but the AA in AR allowed ₹ 43.71 lakh resulting in excess grant of ITC of ₹ 1.15 lakh.	1.15
Remarks: Department while accepting the audit observations stated that detail report will be submitted after receipt of report from concerned Joint Commissioner.				
5	DCCT-25, Gandhidham	2006-07 30.03.2011	Claim of ITC against revised return admitted, though revised return was filed after due date.	8.51
Remarks: Department while accepting the audit observations stated that detailed report would be submitted after issue of revision order.				

The above facts were brought to the notice of the Department between January and May 2012. The Department accepted the audit observations in 26 cases involving an amount of ₹ 6.11 crore and recovered ₹ 3.91 lakh in two cases. The particulars of the recovery in accepted cases and the replies of remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in 26 cases; the reply in the remaining cases had not been received (September 2012).

Under Section 11 of GVAT Act, 2003, a registered dealer who has purchased taxable goods shall be entitled to claim tax credit equal to the amount of tax paid. Under sub-Section 3(b) (iii) of Section 11 of the Act, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* of taxable turnover of the purchases of fuels used for the manufacture of goods. Further, the Gujarat Sales Tax Tribunal in its judgment in the case of M/s Mahavir Inductomelt P. Ltd. (Ship breaker) v/s the State of Gujarat held that dismantling of an unserviceable discarded ship is not a manufacturing process.

2.15.2 During test check of the records of four²⁰ offices, we noticed between June 2011 and January 2012 in 56 assessments of 48 dealers for the period between 2006-07 and 2007-08 finalised between May 2010 and April 2011 that the AOs had allowed excess ITC on fuel.

In case of nine assessments related to nine dealers, the AOs either did not deduct four *per cent* ITC on purchase of fuel or deducted it short, while in case of 47 assessments of 39 dealers,

the AOs allowed them ITC on purchase of fuel (LPG) though the dealers were ship breakers and had used the fuel in the ship breaking activity. As the

²⁰ ACCT: 15 Ahmedabad and 4 Rajkot
DCCT: Bhavnagar

process of dismantling of ships is not a manufacturing activity as per the tribunal judgment cited above, no ITC was admissible on the fuel used in the dismantling of ships.

This has resulted in irregular/excess grant of ITC of ₹ 1.49 crore including interest of ₹ 55.84 lakh and penalty of ₹ 10.46 lakh.

The above facts were brought to the notice of the Department between April 2011 and May 2012. The Department in cases of 47 assessments of 39 dealers involving short levy of ₹ 1.20 crore stated that matter was pending before the Tribunal and the outcome of the cases would be informed accordingly and in six cases, the Department accepted the audit observations involving an amount of ₹ 17.32 lakh. The particulars of the recovery in accepted cases and the replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in six cases; the reply on the remaining cases had not been received (September 2012).

Under sub-Section 3(b) of Section 11 of the Act, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* of taxable turnover of the purchases

(i) of taxable goods consigned or dispatched for branch transfer or to his agent outside the state, or

(ii) of taxable goods which are used as raw material in the manufacture, or in the packing of goods which are dispatched outside the state in the course of branch transfer or consignment or to his agent outside the state.

2.15.3 During test check of the records of 12²¹ offices, we noticed between June 2010 and March 2012 in the assessments of 13 dealers for the period 2006-07 that the AOs while finalising the assessments between July 2009 and March 2011 either did not reduce the ITC proportionately or reduced less ITC, though the dealers had availed ITC on purchased goods and had effected branch transfer of such goods or manufactured goods to other States. This resulted in excess grant of

ITC of ₹ 95.73 lakh including interest of ₹ 23.18 lakh and penalty of ₹ 31.76 lakh.

The above facts were brought to the notice of the Department between February 2011 and May 2012. The Department accepted the audit observations in nine cases involving an amount of ₹ 60.02 lakh and recovered ₹ 4.34 lakh in three cases. The particulars of the recovery in accepted cases and replies of remaining cases had not been received (September 2012).

²¹ ACCT: 1 and 19 Ahmedabad, Ankleshwar, Godhra, Kol, 4 Rajkot, 3 Surat and 7 Vadodara.

DCCT: 6 Ahmedabad, 13 Nadiad, 22 Rajkot & 1 Vadodara.

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in nine cases; the replies on the remaining cases had not been received (September 2012).

Section 11(5) (g) of GVAT Act, 2003 stipulates that Input Tax Credit shall not be allowed on purchases of goods specified in the Schedule-I or the goods exempt from whole of tax by notification issued under Sub Section (2) of Section 5 of the Act, *ibid*. The Government of Gujarat, vide notification No.GHN-96 dated 02.09.2006 issued under Section 5(2) of the Act, notified that sales of Kerosene through Public Distribution System (PDS) was exempted from the payment of tax.

2.15.4 During test check of records of two²² offices, we noticed between May and August 2011 in the assessment of eight dealers for the period 2006-07 finalised between May 2009 and March 2011 that the AOs had allowed ITC of ₹ 1.92 lakh on Kerosene purchased by Public Distribution System dealers after 2 September 2006, though it was declared tax free with effect from the date of notification. Since the amount of tax collected was in contravention of the Rule, it

should have been forfeited under Section 31(3) of the Act, *ibid*. Thus, grant of ITC by the assessing authority was irregular. This has resulted in irregular grant of ITC of ₹ 8.24 lakh including interest of ₹ 2.56 lakh and penalty of ₹ 3.76 lakh.

The above facts were brought to the notice of the Department between April and May 2012. The Department accepted the audit observations in three cases involving an amount of ₹ 3.72 lakh. The particulars of the recovery in accepted cases and the replies of remaining cases have not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in three cases; the replies on the remaining cases had not been received (September 2012).

²² ACCT: Amreli and Godhra

2.16 Incorrect grant of ITC due to incorrect credit on opening stock

Under Section 12 of the GVAT Act, 2003, read with rule 16 of the GVAT Rules 2006, all the dealers who are deemed to have been registered under Section 23, shall furnish in Form 108 to the authority a prescribed statement of such taxable goods under this Act held in stock on 31 March 2006, which were purchased during the period 2005-06 for which the dealer intends to claim tax credit. Further, under sub Section (7) of Section 12 of the Act *ibid*, a penalty equal to twice the amount of excess tax credit claimed than what he is entitled to is also leviable.

During test check of records of 15²³ offices, we noticed between August 2010 and March 2012 in the assessment of 28 dealers for the period 2006-07 finalised between March 2009 and March 2011 that the AOs had allowed excess ITC on opening stock as detailed below:

(₹ in lakh)

Sl. No.	No. of dealers	ITC allowed	ITC allowable	Excess ITC allowed	Short levy of tax including interest and penalty	Nature of Objection
1.	11	58.98	8.31	50.67	182.59	AO allowed ITC of ₹ 58.98 lakh on the opening stock, though as per VAT Audit Report and Balance sheet the dealers were entitled to ITC of ₹ 8.31 lakh.
2.	6	15.72	1.47	14.25	48.55	AOs allowed benefit of ITC on opening stock beyond September 2006 though it was not permissible under Rule 16 (6).
3.	4	3.62	0	3.62	3.62	AOs allowed ITC on opening stock without submission of the claim in the prescribed Form 108 which is irregular as per Section-12.
4.	2	7.73	2.33	5.40	19.81	As per the provision under Section 12 (2) of the Act, the ITC claim could not be enhanced but the AOs allowed the dealers to enhance their claim of ITC on opening stock through revised Form 108.
5.	2	28.35	25.81	2.54	8.81	Adoption of incorrect mode of calculation resulted in excess claim/allowance of ITC on opening stock.
6.	1	2.36	0.98	1.38	3.99	AO allowed ITC on opening stock at higher rate of tax than was admissible as per Rule.
7.	1	3.65	2.15	1.50	5.19	AO allowed ITC of ₹ 21.50 lakh on opening stock of inter-State purchase, though it was not allowable as per the Act.
8.	1	1.62	0	1.62	2.20	AO did not reduce ITC of ₹ 1.62 lakh proportionately on opening stock though the final product was Tax free goods.
Total	28	122.03	41.05	80.98	274.76	

²³ ACCT: 8, 13, 16, 21 and 22 Ahmedabad, Amreli, Ankleshwar, Bharuch, Godhra, 2 Nadiad, 5 Rajkot, 3 Surat, DCCT: 4 Ahmedabad, 22 Rajkot, 17 Surat.

This resulted in excess allowance of ITC of ₹ 2.75 crore including interest of ₹ 50.78 lakh and penalty of ₹ 1.43 crore.

The above facts were brought to the notice of the Department between January and May 2012. The Department accepted the audit observations in 14 cases involving an amount of ₹ 20.80 lakh. The particulars of the recovery of the accepted cases and replies of remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in 14 cases; the replies of the remaining cases had not been received (September 2012).

2.17 Excess ITC/Tax paid carried forward

As per column No.22 of PART-V of Annual Return in Form 205 and Assessment order in Form-304, amount of excess tax paid and/or excess ITC which remains after adjustment against tax payable, is carried forward to the subsequent year. As a prevalent procedure, the amount carried forward in the Annual Return/ monthly return of April of subsequent year is accepted as correct and allowed in the assessment order also. In case carried forward tax/ITC is less in assessment than claimed in Annual Return/monthly return of April of subsequent period, the deficit amount along with interest is treated as demand. The procedure is reasonably followed, because assessments are done in selected cases and for selected periods only and the dealers avail the carried forward amount in subsequent period before assessments are finalised. Further, as per Section 32 returns or revised returns furnished by the dealer in accordance with section 29 shall be subject to scrutiny by the commissioner.

During test check of monthly/quarterly, and annual returns in six²⁴ offices we noticed between March 2011 and March 2012 in the assessments of 23 dealers for the period 2006-07 and 2007-08 finalised between August 2009 and March 2011 that the assessing authority allowed ₹ 109.20 lakh as against the admissible carry forwarded ITC of ₹ 74.86 lakh. This has resulted in excess carry

forward of ITC of ₹ 34.34 lakh to the subsequent years.

The Department does not have any system in place to rectify the effect of reduction of ITC in subsequent years. The AOs had also not scrutinised the returns of the subsequent periods to ensure the effect of reduction of ITC. This resulted in excess carry forward of ITC of ₹ 56.26 lakh including interest of ₹ 21.87 lakh.

²⁴ ACCT : 5 and 21 Ahmedabad, Ankleshwar, Gandhidham
DCCT: 4 Ahmedabad, 11 Vadodara

The above facts were brought to the notice of the Department between April and May 2012. The Department accepted the audit observations in 19 cases involving an amount of ₹ 49.79 lakh and recovered in four cases of ₹ 6.47 lakh. The particulars of the recovery of the accepted cases and replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in 19 cases; the reply on the remaining cases had not been received (September 2012).

2.18 Application of incorrect rate of tax (VAT)

As per Section-7 of GVAT Act, 2003 there shall be levied a tax on the turnover of sales of goods specified in Schedule-II and Schedule-III at the rates set out against each of them. Further as per entry 87 of schedule-II specifies that all goods other than those specified in Schedule-II or III, tax at the rate of twelve and half per cent is leviable.

During test check of the records of 12²⁵ offices, we noticed between August 2010 and March 2012 in assessments of 20 dealers for the assessment period 2006-07 finalised between July 2009 and December 2011 that the AOs incorrectly assessed tax at lower rates. This resulted in short levy of tax of ₹ 341.16 lakh including interest of ₹ 77.15 lakh and penalty of ₹ 147.62 lakh as detailed below.

(₹ in lakh)

Sl. No.	No. of dealers	Commodity	Rate of tax		Short levy of tax including interest and penalty
			Leviable	Levied	
1	3	Pipe fittings	12.5	4	23.58
2	4	Valves	12.5	4	51.47
3	1	Fire safety instruments	12.5	4	5.07
4	1	Sawing machine parts	12.5	4	0.72
5	1	Oil engine parts	12.5	4	1.38
6	1	Trade rubber	12.5	4	5.48
7	1	Chemical fertilisers	4	0	1.37
8	1	Prilled Ammonium Nitrate	12.5	4	12.98
9	1	Cycle tyre & tubes	12.5	4	1.56
10	1	Electric goods	12.5	4	3.19
11	1	Plastic containers capacity more than 20 litres	12.5	4	91.22
12	1	Electronic capacitors	12.5	4	7.04
13	1	Crain, lifts etc.	12.5	4	91.42
14	1	Electronic goods	12.5	4	44.06
15	1	Tractor parts	12.5	4	0.62
	20			Total	341.16

²⁵ ACCT: 2, 6, 9, 11, 14, 19, 21, 22 and 23, Ahmedabad, Gondal, 12 Surat
DCCT: 11 Vadodara.

The above facts were brought to the notice of the Department between March and May 2012. In one case the Department did not accept the audit observation stating that Prilled Ammonium Nitrate was chemical and was levied to tax accordingly. The reply is not tenable as Prilled Ammonium Nitrate is not chemical rather it is an explosive which is used for the purpose of blasting of stones in quarries. The Department accepted the audit observations in six cases involving an amount of ₹ 45.33 lakh. The particulars of the recovery of the accepted cases and the replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in seven cases; the replies of the remaining cases had not been received (September 2012).

2.19 Avoidable payment of interest on refund

As per Rule 15(7) of the GVAT, Rules, 2006, in case of sales made in the course of export outside the territory of India and the amount of carried forward tax credit admissible under items (iv) and (v) of clause (a) of sub-section(3) of Section 11 of Gujarat Value Added Tax, Act, 2003 remains unadjusted, such amount of tax credit shall be refunded within the period of three months next following the end of the month in which such purchases were made. Further, as per Section-32 returns or revised returns furnished by the dealer in accordance with section 29 shall be subject to scrutiny by the commissioner.

During test check of records of seven²⁶ offices, we noticed between March 2011 and February 2012 in the assessment of 14 dealers for the period 2006-07 finalised between June 2009 and March 2011 that the AOs allowed payment of interest on refund. Payment of interest of ₹ 3.86 crore on refunds of ₹ 11.92 crore could have been avoided, if provisional assessment of tax had been done

timely as per provisions stated above. This resulted in avoidable payment of interest of ₹ 3.86 crore.

This was brought to the notice of the Department between January and May 2012. We had not received replies (September 2012).

We reported the matter to the Government (June 2012), we had not received their replies (September 2012).

²⁶ ACCT : 5 and 11 Ahmedabad, 6 Vadodara, and 1 Vapi
DCCT: Corporate cell-2 and petro-1 Ahmedabad, Valsad

2.20 Short levy of VAT due to incorrect determination of turnover

As per Section 7 of Gujarat Value Added Tax Act, 2003 there shall be levied tax on the turnover of sales of goods at the rates specified in the Schedule II or III. Further, as per the instructions and guidelines issued by the Department from time to time, while finalising assessment proceedings assessing officers are expected to take into account the facts and figures contained in annual accounts and other papers etc, submitted by the dealer apart from the facts and figures mentioned in the periodical returns furnished by the dealer.

During test check of records of 15²⁷ offices, we noticed between January 2011 and March 2012, in 19 assessments of 18 dealers for the period from 2006-07 to 2007-08 finalised between July 2009 and March 2011, that the Assessing Officers did not include the amount of valuable consideration forming

part of sale turnover, such as, sales of DEPB²⁸, warranty claim income, sales of plant and machinery. This resulted in short realisation of VAT of ₹ 2.84 crore including interest of ₹ 80.56 lakh and penalty of ₹ 87.98 lakh.

The above facts were brought to the notice of the Department between January and May 2012. The Department accepted the audit observations in eight cases involving an amount of ₹ 33.38 lakh and recovered ₹ 6.74 lakh in two cases. In one case, regarding the non-inclusion of turnover made by the dealer prior to his registration, the Department stated that such a type of turnover was effected by the unregistered dealer could be assessed within a period of eight years. In this case, the period would be available upto March 2015. Hence, the same would be assessed under intimation to audit. The particular of recoveries of accepted cases and replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in eleven cases; the replies on the remaining cases had not been received (September 2012).

²⁷ ACCT: 5, 6, 10, 14, 20 and 22 Ahmedabad, 51 Anand, 1 Bhavnagar, 2 Nadiad, 5 Rajkot, 5 Vadodara and 2 Vapi

²⁸ DCCT: 2 Ahmedabad, 19 Bhavnagar, 22 Rajkot
Duty Entitlement Pass Book

2.21 Short levy of VAT due to misclassification

The GVAT Act, 2003 provides for levy of tax at the rates as prescribed in the schedules to the Act, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the schedule, general rate of tax given in residuary entry is applicable.

During test check of records of four²⁹ offices, we noticed between June 2011 and March 2012 that the AOs while finalising assessments between March 2010 and March 2011 allowed five dealers in their assessments to pay tax at lower rates due to incorrect classification of goods, such as chewing gum was classified as sweet and sweet meat, distilled water was treated as medicine, bio booster was treated as pesticides. These commodities fall under residuary entry and attract VAT at 12.5 *per cent*. This resulted in short levy of VAT of ₹ 2.42 crore including interest of ₹ 54.22 lakh and penalty of ₹ 1.11 crore.

The above facts were brought to the notice of the Department between April and May 2012. The Department accepted the audit observations in four cases involving an amount of ₹ 2.42 crore. The particulars of the recovery of accepted cases and the replies of remaining one case had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in four cases; the replies on the remaining one case had not been received (September 2012).

2.22 Non/short levy of interest (VAT)

Under Section 42(6) of the GVAT Act, 2003 where the amount of tax assessed or reassessed for any period exceeds the amount of tax already paid by a dealer for that period, the dealer shall pay simple interest at the rate of eighteen *per cent* per annum on the amount of tax remaining unpaid for the period of default. By virtue of Section 9 (2) of the CST Act, the above provisions apply to the assessments under the CST Act as well.

During test check of records of 13³⁰ offices, we noticed between June 2010 and February 2012 in the assessments of 17 dealers for the period 2006-07 finalised between July 2009 and April 2011 that AOs either did not levy interest or levied short on the amount of unpaid tax. This resulted in non/short levy of interest of ₹ 40.37 lakh.

²⁹ ACCT: 5,9 and 20 Ahmedabad,
DCCT: Range-18, Valsad

³⁰ ACCT: 6, 8 and 11 Ahmedabad, Ankleshwar Gandhidham, Porbandar, 5 Rajkot and Vyara
DCCT: Corporate 3 Ahmedabad, 13 Nadiad, 11 Vadodara, Enforcement and 15 Surat

We pointed this out to the Department between January 2011 and May 2012. The Department accepted the audit observations of nine cases of ₹ 26.90 lakh and recovered ₹ 1.48 lakh in three cases, particulars of recovery of accepted cases and replies on remaining cases were awaited (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in twelve cases; the replies on the remaining cases had not been received (September 2012).

2.23 Non/short levy of penalty (VAT)

Section 34 (12) of the GVAT Act, 2003 provides that where tax assessed or reassessed exceeds the amount of tax already paid with returns by the dealer by twenty five *per cent* of the amount of tax so paid, the dealer shall be required to pay penalty not exceeding one and half times the difference between the tax paid with returns and the amount so assessed or reassessed and Section 34 (7) provides that if the dealer has availed tax credit for which he is not eligible he shall be required to pay penalty not exceeding one and half times the tax assessed on account of the said reason.

Further Section 12 (7) of the GVAT Act, 2003 provides that if the Commissioner is satisfied that a dealer has claimed excess tax credit than what he is entitled to under section 11 or under this section, the Commissioner may, after giving the dealer an opportunity of being heard direct him to pay a penalty equal to twice the amount of tax credit so claimed.

During test check of the records of 14³¹ offices, we noticed between January 2011 and March 2012 in the assessment of 26 dealers for the period from 2006-07 to 2008-09 that the difference between tax assessed and tax paid with returns exceeded by 25 *per cent* of the amount of tax paid, however, the AOs while finalising the assessments between August 2007 and April 2011 did not levy penalty or short levied the penalty in terms of aforesaid provisions. This resulted in non/short levy of penalty of ₹ 11.07 crore.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in seven cases involving an amount of ₹ 33.67 lakh and recovered ₹ 3.78 lakh in one case. The particulars of the recovery of accepted cases and the replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in eight cases; the replies on the remaining cases had not been received (September 2012).

³¹ ACCT: 2, 6 Ahmedabad, Gandhidham, Ankambhaliya, Kol, Palanpur, 4 Rajkot and 1 Vapi
DCCT: Enforcement-2 and Petro-2 Ahmedabad, 22 Rajkot, 16 and 17 Surat.
CCT: Flying Squad Ahmedabad.

2.24 Non-levy of VAT on hiring charges

As per section 2(23)(d) of the Gujarat Value Added Tax Act, 2003 sales include transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration. Further, as per the instructions and guidelines issued by the Department from time to time, while finalising assessment proceedings, assessing officers are expected to take into account the facts and figures contained in annual accounts submitted by the dealer apart from the figures mentioned in the periodical returns furnished by the dealer.

During test check of records of two³² offices, we noticed between November 2011 and March 2012 in the assessments of three dealers for the period 2006-07 finalised between March 2010 and March 2011 that AOs did not include sales considerations received as hiring charges in lieu of transfer of rights to use such as, lease of tankers, machinery and

equipments etc. in the sales turnover for levying tax, even though it was evident from VAT Audit report/profit and loss account that the dealers had effected such transactions during the year. This resulted in non-levy of VAT on specified goods of ₹ 51.30 lakh including interest of ₹ 21.40 lakh.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in one case involving an amount of ₹ 42.70 lakh. The particulars of the recovery of accepted case and the replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

2.25 Short and belated payment of tax due to failure in return scrutiny

Section 33 of the GVAT Act, 2003, stipulates that where a dealer has furnished all the returns/ revised returns and annual return and paid the tax due according to such returns and the Commissioner is satisfied that returns are correct and complete and a notice for audit assessment has not been served on such dealer, such dealer shall be deemed to have been assessed for that year. Further, returns or revised returns furnished by the dealer are required to be scrutinised under Section 32 (1) of the Act.

During test check of the records of ACCT-8, Surat, we noticed in August 2011 in the case of one dealer for the period 2007-08 treated as deemed to have been assessed, that the dealer had paid ₹ 90.76 lakh as per the copies of challans available in the self assessed file against the tax payable of ₹ 1.17 crore leaving an

³² ACCT: 20 Ahmedabad, Gandhidham

unpaid balance of ₹ 26.51 lakh.

We further noticed delay in payment of tax that ranged between 34 days and 495 days and attracted interest of ₹ 9.74 lakh. Failure to scrutinise returns and non-inclusion of such a big tax payer in the list of audit assessment resulted in short and belated payment of tax of ₹ 36.25 lakh including interest of ₹ 9.74 lakh.

After being pointed out by us the concerned division informed that reassessment order has been passed in view of audit observation and a demand of ₹ 16.91 lakh was raised at the instance of audit.

This was brought to the notice of the Department (May 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

2.26 Irregular payment of Lump Sum Tax

Eatables are taxable at the rate of 12.5 per cent under the GVAT Act, 2003. However, section 14D of the Act read with Rule 28C of GVAT Rules stipulates that the Commissioner may permit payment of lump sum tax by way of composition at the rate of four per cent on sales of eatable made by hotels, restaurants etc; provided that they do not have in stock any eatable stock purchased from outside the state for the purpose of composition of tax. As per explanation provided below section 14D of the Act, eatable include alcoholic and non-alcoholic beverages.

2.26.1 During test check of the records of ACCT-1, Ahmedabad office, we noticed between March and July 2011 that a dealer engaged in the business of sales of eatables, opted for and was allowed by the assessing officer to pay lump sum tax by way of composition on his turnover during 2006-07. Scrutiny of records, however, revealed that the dealer

had made inter-state purchase of liquor valued of ₹ 31.40 lakh which was in violation of the rule. The dealer was thus, required to be assessed to pay tax at 12.5 per cent on his taxable turnover of ₹ 82.50 lakh. However, the Assessing authority did not detect the mistake while finalising the assessment in January 2011 and levied tax at the rate of four per cent. This resulted in short realisation of tax of ₹ 11.82 lakh including interest of ₹ 4.82 lakh.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observation involving an amount of ₹ 10.82 lakh. The particulars of the recovery had not been received (September 2012).

The matter was reported to the Government (June 2012), the replies had not been received (September 2012).

Bakery items are taxable at the rate prescribed under section 7 of the GVAT Act. However, the Government vide notification No.24 dated 31 March 2006 permitted the dealers engaged in the manufacturer of Bakery items, to opt for payment of lump sum tax at the rate of two *per cent* of the sales turnover by way of composition.

Section 33(3) (b) of the Act stipulates that in the case of deemed assessment, the Commissioner should ensure at the time of submission of a return by a dealer that the returns furnished by the dealer are correct

2.26.2 During the test check of five self assessments of five dealers of ACCT-1, Surat for the period 2006-07, we noticed that the dealers engaged in the manufacture of bakery items had opted for and were allowed by the assessing authority for composition of tax for the period 2006-07. The dealers were liable to pay tax of ₹ 2.48 lakh on sales turnover of ₹ 123.98 lakh. However, they paid tax of

one lakh after incorrectly deducting the sale of un-branded biscuits valued at ₹ 74.39 lakh from the sales turnover. The omission was not detected by the assessing authority at the time of submission of a return by a dealer resulting in short realisation of ₹ 4.70 lakh including interest of ₹ 2.23 lakh and penalty of ₹ 0.99 lakh.

This was brought to the notice of the Department (March 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

2.27 Incorrect deduction from sales turnover under GVAT Act

As per Section 2(30) of the GVAT Act, 2003 taxable turnover means the turnover of all sales or purchases of a dealer during the prescribed period in any year which remains after deducting there from:

- a) The turnover of sales not subject to tax under the Act;
- b) The turnover of goods declared exempt under sub section (1) of section 5 or under a notification under sub section (2) of section 5.

During test check of the records of three³³ offices, we noticed between April and December 2011 in the assessments of three dealers for the period 2006-07 finalised between December 2009 and March 2011 that the AOs allowed deductions on sales of Mobile phones and Maiz oil cake treating

the goods as tax free though the goods were not exempted from levy of tax. This resulted in incorrect deduction of turnover involving tax of ₹ 7.58 lakh including interest of ₹ 2.93 lakh.

³³ ACCT: 19 Ahmedabad, Morbi
DCCT: 1 Ahmedabad.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in one case involving an amount of ₹ 6.29 lakh. The particulars of the recovery in accepted case and the replies of remaining cases had not been received (September 2012).

The matter was reported (June 2012) to the Government and the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

2.28 Short levy of tax due to application of incorrect rate of tax (CST)

The Gujarat Sales Tax Act (GST), 1969 provides to levy tax at the rates as provided in the schedules to the Act, however, where the goods are not covered under any specific entry of schedule, rate of tax given for residuary entry is applicable. Further, under Section 8(1) of Central Sales Tax Act (CST), 1956, every dealer who in the course of inter-State trade or commerce sells to a registered dealer goods of the description referred to in sub-section 3 shall be liable to pay tax at the rate of four *per cent*. Explanation below section 8 of CST Act says that sale of any goods shall not be deemed to be exempt from tax generally payable under the sales tax law of the concerned State, if the sale of such goods is exempt only in specified circumstances or conditions.

During test check of records of nine³⁴ offices, we noticed between August 2010 and January 2012 in the seven CST assessments of seven dealers for the period from 2003-04 to 2006-07 finalised between March 2007 and February 2011 that the Assessing Officers incorrectly assessed tax on sales turnover of ₹ 14.29 crore of the commodities as mentioned below:-

³⁴ ACCT: 15 Ahmedabad, Ankleshwar and 6 Vadodara, 2 Vapi.
DCCT: Corp-1, Corp.Cell-3, Petro-2 Ahmedabad, 14 Bharuch and 12 Vadodara

Sl. No.	No. of dealers	Commodity	Applicable rate of tax (%)	Rate applied	Turnover of sales (₹ in lakh)	Short levy of tax including interest and penalty (₹ in lakh)	Nature of audit observation
1.	1	LPG	15	14	645.42	24.78	Tax was leviable @5 per cent but was incorrectly levied at 14 per cent.
2.	4	S.S.Patta Patti	4	2	283.07	10.00	Tax at the rate of 2 per cent was applicable w.e.f. 02-08-2006 as per notification under Section 8 (5). In these four cases, sales was effected before 02-08-2006, hence tax leviable was at 4 per cent (pre-revised rate).
3	1	Cycle tube	4	1	233.07	12.45	The dealer paid Concessional rate of tax @ one per cent applicable to Tricycle, Rickshaw, Pedal Rickshaw instead of 4 per cent applicable to sale of parts of auto rickshaw.
4	1	Skimmed Milk Powder	4	2	267.57	16.12	The dealer had paid tax on sales of Skimmed Milk Powder at @ per cent on sales made prior to 02.08.06 instead of 4 per cent.
	7	Total			1429.13	63.35	

This resulted in short levy of tax of ₹ 63.35 lakh including interest of ₹ 15.87 lakh and penalty of ₹ 22.87 lakh.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in five cases involving an amount of ₹ 20.60 lakh. The particulars of the recovery in accepted cases and the replies of remaining cases had not been received (September 2012).

After we reported the matter in September 2012; the Government confirmed the reply of the Department in five cases; the replies in the remaining cases had not been received (September 2012).

2.29 Irregular grant of deduction against Form "I" for sales to SEZ unit

As per Section 8(6) of CST Act, 1956 read with rule 12 (11) of CST (Registration & Turnover) Rules, 1957 exemption of tax on sales of goods made in the course of inter State trade or commerce to SEZ units or developers is available to dealers who furnish Form I duly filled in and signed by such units or developers.

During test check of records of ACCT-1, Surat, we noticed in March 2011 in the assessment of one dealer for the period 2006-07 finalised in July 2010, that the AO allowed deduction of ₹ 5.26 crore against Form I for the transactions relating to the

assessment period 2009-10. Detailed scrutiny of the assessment records revealed that the dealer had made intra state sale of fabrication material valued at ₹ 5.26 crore to M/s Reliance Petroleum Ltd, Jamnagar (in SEZ) in June 2009 against Form I. However, the dealer claimed the deduction against the Form I in the assessment year 2006-07 which was also incorrectly allowed by the AO. This omission on part of assessing officer resulted in irregular grant of exemption of ₹ 92.19 lakh including interest of ₹ 33.77 lakh.

This was brought to the notice of the Department (April 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

2.30 Incorrect allowance of deduction as inter-state sales

Section 6(2) of the CST Act, 1956 provides that where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of document of title of such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer shall be exempt from tax.

During test check of the records of three³⁵ offices between March 2010 and February 2012, we noticed in the assessments of three dealers for the period between 2005-06 and 2006-07, finalised between June 2008 and September 2010 that the AOs incorrectly granted exemption on the

ineligible inter-state sales. In case of three dealers first sale was effected between two dealers situated within the State of Gujarat while in case of one dealer, the title of the goods passed to the buyer before movement of goods commenced. All the four cases were not eligible to get exemption in the light of the provision stated above. This resulted in non-levy of tax of ₹ 1.13 crore including interest ₹ 46.78 lakh.

³⁵ ACCT: 8, 10 Ahmedabad and 1 Vapi.

The above facts were brought to the notice of the Department in April 2012. The Department accepted the audit observation in one case involving an amount of ₹ 5.46 lakh. The particulars of the recovery in accepted case and the replies of remaining cases had not been received (September 2012).

The matter was reported (June 2012) to the Government and the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

2.31 Irregular grant of deduction of High Seas Sales

Section 5(2) of the CST Act provides that a sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the 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.

During test check of the records of two³⁶ offices, we noticed between December 2009 and November 2010 in the assessment of two dealers for period from 2005-06 to 2006-07 finalised in November 2008 and May 2009 that the AOs allowed irregular deduction of high sea sales of ₹ 5.67 crore

having a tax implication of ₹ 1.16 crore including interest of ₹ 26.07 lakh and penalty of ₹ 33.02 lakh as detailed below.

(i) In case of one dealer the prescribed documents *viz.* copy of agreement between the importer and purchaser, bill of entry endorsed in favour of the purchaser, sales bill, proof of payment of customs duty etc. were not found on record in support of the deduction.

When we pointed this out, the concerned Joint Commissioner informed that reassessment orders was passed and a demand of ₹ 1.14 crore was raised.

(ii) In the case of another dealer, date of purchase of stamp paper was after the date of agreement. We also noticed that the date of bill of entry was earlier than the date of agreement; the events being not in sequence leads to a suspicion that the transaction is fictitious.

This was brought to the notice of the Department between April and May 2012 and reported to the Government (June 2012); their reply has not been received (September 2012).

³⁶ ACCT: 14 Ahmedabad, 12 Surat.

2.32 Incorrect allowance of export deduction

Under Section 5 (3) of CST Act read with Rule 12 (10) of CST (Registration and turnover) Rules, last sale of goods preceding the sale occasioning the export of the goods out of territory of India shall also be in the course of such export (deemed export), if such last sale took place after, and was for the purpose of complying with, arrangement or order for or in relation to such export of the same goods. Further, the dealer has to furnish, a certificate in form H'duly filled in all details with evidence of export of such goods.

During test check of the records of six³⁷ offices, we noticed between September 2009 and March 2012 in 10 assessments of six dealers for the period from 1999-2000 to 2006-07 finalised between March 2007 and April 2011 that the AOs

allowed incorrect claim of export of goods. In case of five assessments of three dealers, they allowed the deductions without production of proof of export such as H'forms and Bill of lading. In case of two dealers, the exported goods (copper pipes, wires etc.) were not the same. These were (sanitary and bathroom fittings) as claimed by the penultimate exporter still the claims of the dealers were admitted. In the remaining three assessments of one dealer, the name of final exporter as per bill of lading was different from the form H'produced. Allowance of irregular export sales resulted in short levy of tax of ₹ one crore including interest of ₹ 33.52 lakh and penalty of ₹ 14.40 lakh.

The above facts were brought to the notice of the Department between April and May 2012. The Department accepted the audit observations in one case involving an amount of ₹ 16.09 lakh. The particulars of the recovery in accepted case and the replies of remaining cases had not been received (September 2012).

After we reported the matter in June 2012; the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

³⁷ ACCT: 11, 15, 22 Ahmedabad, Gandhidham and 1 Junagadh
DCCT: 18 Valsad

2.33 Non/short levy of CST due to non-production of forms or acceptance of duplicate forms

Section 8 of the Central Sales Tax (CST) Act, 1956 provides for levy of tax at the rate of four *per cent* on inter-state sale of goods made against declaration in Form C'. Where the sale is not supported by declaration in Form C', tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher. In respect of declared goods where the sale is not supported by Form C', tax is leviable at twice the rate applicable. As per the decision of Honorable Supreme Court in the case of M/s. India Agency Vs. Addl. Commissioner of Sales Tax, Bangalore (139-STC-329) it is mandatory to submit original copy of declaration of Form C' to avail benefit of concession.

2.33.1 During test check of the records of nine offices³⁸, we noticed between June 2010 and January 2012 in 12 assessments of 10 dealers for the period from 2002-03 to 2006-07 finalised between March 2007 and March 2011 that AOs levied CST incorrectly on the sales valued of ₹ 13.06 crore though these were not supported by the declaration in Form C', so levying concessional rates of tax instead of appropriate rates of tax without obtaining the declaration in Form-C is

irregular. This resulted in short levy of tax of ₹ 1.67 crore including interest of ₹ 35.24 lakh and penalty of ₹ 58.93 lakh.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in three cases involving an amount of ₹ 35.30 lakh and recovered in one case of ₹ 1.70 lakh. The particulars of the recovery in accepted cases and the replies of remaining cases had not been received (September 2012).

After we reported the matter in June 2012; the Government confirmed the reply of the Department in three cases; the replies on the remaining cases had not been received (September 2012).

2.33.2 During test check of the records of two offices³⁹, we noticed between October 2009 and September 2010 in two assessments of two dealers for the period 2004-05 finalised between June 2007 and June 2008 that sales of various goods were not supported with the original copy of declaration Form C'. However, AOs incorrectly levied concessional rates of tax instead of appropriate rates. This resulted in short levy of tax of ₹ 12.22 lakh including interest of ₹ 2.13 lakh and penalty of ₹ 3.30 lakh.

³⁸ ACCT: 5 and 16 Ahmedabad, Bhuj, Gandhidham, Vijapur, Modasa, 7 and 12 Surat, DCCT: Enforcement Rajkot

³⁹ ACCT: 3 Amnagar, 1 Managadh

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observation in one case involving an amount of ₹ 24.20 lakh. The particulars of the recovery in accepted case and the replies of remaining one case had not been received (September 2012).

After we reported the matter in June 2012; the Government confirmed the reply of the Department in one case; the replies on the remaining case had not been received (September 2012)

2.34 Irregular set-off under Rule 44 adjusted against CST

Rule 44 of the GST Rules provides that the dealer who had paid tax on purchase of goods is eligible for set off from the tax payable on inter State sale of such goods. The rule further provides that no set off shall be granted where the vendor, who has sold the goods to the claimant, has not credited in Government treasury, the amount of tax on his sales for which set off is claimed. Further, excess set-off which remains after adjustment against GST demand is available for adjustment against CST demand.

During test check of the records of two⁴⁰ offices, we noticed between September and December 2010 in six assessments of three dealers for the period from 2004-05 to 2005-06 finalised between May 2008 and March 2009 that the dealers were irregularly granted set-off under Rule 44 which was adjusted against CST demand and the same was allowed by

the assessing authority.

(i) In case of four assessments of two dealers, though the AOs finalised assessments to the best of their judgments, i.e. without obtaining the required records from the dealer as the dealers did not respond to the notices issued for assessments, still they were granted set-off under the rule without verification of the facts from the records.

(ii) In case of two assessments of one dealer, the AOs allowed set-off under this rule, though the dealer has used these goods in the manufacturing instead of reselling the purchased goods. So the allowance of set-off on resale of goods is irregular. This resulted in underassessment of CST of ₹ 43.78 lakh including interest of ₹ 9.80 lakh and penalty of ₹ 15.02 lakh.

The above facts were brought to the notice of the Department in May 2012. The Department accepted the audit observations in four assessments of two dealers involving an amount of ₹ 45.38 lakh. The particulars of the recovery in accepted cases and the replies on remaining cases had not been received (September 2012).

⁴⁰ ACCT: 7 and 9 Ahmedabad.

After we reported the matter in June 2012; the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

2.35 Incorrect exemption/deferment under incentive scheme to new industries

The composite incentive scheme issued under sales tax regime allowed the eligible units to avail of tax exemption as well as tax deferment incentives simultaneously. Rule 18A (3) of the GVAT Rules provides that the eligible units availing of composite benefit under the earlier law could opt for either tax exemption or tax deferment incentive. Rule 18 D (5) stipulates that the eligible unit shall make payment of tax deferred in accordance with the provisions of the respective Government Resolutions (resolution). The resolution for composite incentive specified that the tax exemption under the scheme shall be guided by the notifications issued under the repealed Acts and that of tax deferment shall be guided by the respective resolution. The deferment incentive of 1995-2000 industrial incentive scheme was guided by the resolution issued (September 1995) by the Industries and Mines Department (I&M). Under the provisions of the resolution, I&M issued eligibility certificates to the dealers based on which, the commercial tax Department issued sanction certificate. The resolution on deferment incentive stipulates that the eligible units shall pay the deferred tax in six equal annual installments to the Government account, on completion of deferment period or amount of incentive, whichever is earlier. Accordingly, for the composite incentive holders who had exercised option for continuation of tax exemption under the GVAT Act, the scheme of deferment was completed on 31 March 2006. Therefore, as per the conditions laid down in the resolution GR for deferment incentive, they were required to start payment of deferred tax from April 2006, in six annual equal installments.

2.35.1 During test check of the records of two offices⁴¹ we noticed between October 2011 and February 2012 in case of five eligible industrial units under composite incentive scheme under erstwhile GST Act had availed deferment incentive of ₹ 48.57 crore upto 31 March 2006 and opted for exemption under the GVAT Act. As per the stipulations of deferment incentive, the Department should have recovered ₹ 48.57 crore on annual basis from these units. The AOs did not initiate any action to recover the installments due. Interest was also recoverable at the rate of 18 per cent per annum for the delay in payment of installments. This

resulted in non-recovery of ₹ 65.36 crore including interest of ₹ 16.79 crore.

⁴¹ DCCT: Corporate-2, Ahmedabad, 25 Gandhidham.

This was brought to the notice of the Department between April and May 2012 and reported to the Government (June 2012); their reply has not been received (September 2012).

Under the sales tax incentive scheme, the eligible units are required to remain in production continuously during the eligibility period mentioned in the eligibility certificate. In case of contravention of any of the conditions laid down for the eligible units, the exemption granted shall cease to operate and the entire availed amount would be recovered within 60 days. Further, an eligible unit is not entitled to deduction for sale against any certificate under Section 12 or 13 as the product is tax free under the scheme.

2.35.2 During test check of the records of three⁴² offices, we noticed between November 2007 and January 2012, in the assessments of three dealers for the period from 1998-99 to 2004-05 and finalised between January 2005 and April 2008 that

incorrect exemption of tax under sales tax incentive scheme was allowed.

(i) In case of one dealer, we observed that the dealer closed his business during the currency of eligibility period 11 February 1993 to 10 February 2002 without any permission of competent authority, yet the AO did not recover the availed amount of exemption.

(ii) In case of another dealer, the AO allowed in contravention of the conditions of sales of molasses' against Form 19 issued under clause B of Section 13 of GST Act, 1969.

(iii) In case of other one dealer, the AO applied lower rate of tax than it was applicable.

Total under assessment of tax in the above three cases worked out to ₹ 59.88 lakh. On this being pointed out the concerned Joint Commissioner, reassessed the case and raised a demand of ₹ 23.14 lakh.

The above facts were brought to the notice of the Department in March and May 2012. The Department accepted the audit observations in two cases in three assessments involving an amount of ₹ 38.56 lakh and recovered of ₹ 3.90 lakh in one case. The particulars of the recovery in accepted cases and the replies on remaining case had not been received (September 2012).

After we reported the matter in June 2012; the Government confirmed the reply of the Department in two cases; the replies on the remaining case had not been received (September 2012).

⁴² ACCT: Kol and Morbi
DCCT: Valsad

2.36 Non-levy of purchase tax

Section 15-B of the GST Act, 1969 provides that where a dealer purchases directly or through commission agent any taxable goods other than declared goods and uses them as raw material, processing material or as consumable stores in the manufacture of taxable goods, purchase tax at prescribed rate is leviable on such goods. Purchase tax so levied is admissible as set off under the Rule 42E of the GST Rules, 1970 provided the goods manufactured are sold by the dealer within the State.

During test check of records of two⁴³ offices we noticed between August 2010 and April 2011 in the assessment of two dealers for the period 2004-05 & 2005-06 finalised between December 2008 and August 2009 that the Assessing Officers either disallowed less set-off under Rule 42E or did not levy purchase tax under Section 15B of the Act as detailed below:

(₹ in crore)

Sl. No.	Name of Office	No. of dealers	Short levy of tax including interest and penalty	Nature of Observation
1	DCCT Corporate Cell-1, Ahmedabad	1	1.26	The AO made a arithmetical mistake in calculation of ratio of interstate branch transfer which resulted in disallowing proportionate set-off of ₹ 1.26 crore under Rule 42E.
2	ACCT, Godhra	1	1.12	The AO did not levy purchase tax under section 15B proportionately though the dealer branch transferred the manufactured goods. On being pointed out in audit the jurisdictional Joint Commissioner of Commercial Tax intimated that the case was reassessed and demand was raised at the instant of audit.
Total			2.38	

This resulted in short levy of tax of ₹ 2.38 crore including interest of ₹ 61.13 lakh and penalty of ₹ 64.02 lakh.

The above facts were brought to the notice of the Department in May 2012. The Department accepted the audit observations in both the two cases involving an amount of ₹ 2.38 crore. The particulars of the recovery had not been received (September 2012).

After the matter was reported in June 2012; the Government confirmed the reply of the Department in two cases.

⁴³ ACCT: Godhra,
DCCT: Corporate Cell-1, Ahmedabad

2.37 Misclassification of goods under Gujarat Sales Tax Act

The GST Act provides for levy of tax at the rates as prescribed in the schedules to the Act, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the schedule, general rate of tax given in residuary entry is applicable.

During test check of records of three offices⁴⁴, we noticed between January 2011 and April 2012 that the AOs allowed three dealers to pay tax at lower rates due to incorrect classification of goods valued ₹ 12.22 crore during the period from 2004-05 to 2005-06 while finalising assessments

between August 2008 and November 2009. In these cases the AO had not levied tax at appropriate rate on transformer for CFL, chewing gum and engine oils due to misclassification of goods. The difference between the rate of tax leviable and levied was ranging from 3 to 11. This resulted in short realisation of tax of ₹ 1.24 crore including interest of ₹ 30.54 lakh and penalty of ₹ 33.94 lakh as given in the table below.

(₹ in lakh)

Sl. No.	Name of the goods	Turnover of sales	Rate of tax leviable	Rate of tax levied	Short levy of tax including interest and Penalty
1	Transformers for CFL	36.89	15	8	2.58
2	Chewing gum	973.81	12	6	105.32
3	Engine oils	66.80	15	4	15.73
	Total	1,077.50			123.63

The above facts were brought to the notice of the Department in March and May 2012. The Department accepted the audit observations in one case involving an amount of ₹ 6.68 lakh. The particulars of the recovery of accepted case and the replies on remaining cases had not been received (September 2012).

After the matter was reported in June 2012; the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

⁴⁴ ACCT: Morbi & Vadodara
DCCT: 5 Ahmedabad.

2.38 Short levy of sales tax due to incorrect deduction on turnover under Gujarat Sales Tax Act

As per Section 7 and 8 of Sales Tax Act, 1969 there shall be levied tax on the turnover of sales of goods at the rates specified in the Schedule II part A and Schedule-II part B respectively. Further, as per the instructions and guidelines issued by the Department from time to time, while finalising assessment proceedings assessing officers are expected to take into account the facts and figures contained in annual accounts and other papers etc, submitted by the dealer apart from the facts and figures mentioned in the periodical returns furnished by the dealer.

During test check of the records of five⁴⁵ offices, we noticed between April 2009 and April 2011 in the assessments of five dealers for the period from 1995-96 to 2005-06 finalised between December 2005 and December 2008, that the AOs did not include the amount of valuable considerations forming part of sales turnover such as, sales of plant and machinery, sales of DEPB⁴⁶ and DFRC⁴⁷, specified sales of DG set

etc, though these information were available in Profit & Loss account, other income of tax audit report etc. Escapement of turnover of ₹ 14.05 crore thus resulted in short levy of tax of ₹ 77.69 lakh including interest of ₹ 18.40 lakh and penalty of ₹ 21.09 lakh.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in three cases involving an amount of ₹ 44.78 lakh. The particulars of the recovery of accepted cases and the replies on remaining cases had not been received (September 2012).

After the matter was reported (June 2012); the Government confirmed the reply of the Department in three cases; the replies on the remaining cases had not been received (September 2012).

2.39 Incorrect allowance of deduction as RD resale

As per Section 7 of the GST Act, 1969, on resale of goods purchased by a dealer from a registered dealer (RD), there shall not be levied sales tax.

During test check of records of two⁴⁸ offices we noticed between February and September 2011 in the assessments of two dealers

for the period between 2004-05 and 2005-06 finalised between August 2009 and March 2010 that the AOs had incorrectly allowed deductions of RD resale from the total sales turnover as detailed below.

⁴⁵ ACCT:Godhra, Morbi, 1 Rajkot, 12 Surat and 6 Vadodara.

⁴⁶ Duty Entitlement Pass Book

⁴⁷ Duty Free Replenishment Certificate

⁴⁸ ACCT : 8 Ahmedabad and 5 Vadodara

In case of one dealer, the AO finalised the assessment to the best of his judgement, as the dealer did not respond to the notice issued to him for a regular assessment. As the AO finalised the assessment order without obtaining the records, the correctness of claim for RD resales and allowance of the deduction could not be ascertained.

In case of another dealer, the AO allowed excess deduction of RD resale as the value of RD resale allowed by the AO exceeded the value of RD purchase plus value of opening stock of RD purchase and gross profit as per Trading, Profit and Loss Account. This resulted in total short levy of tax of ₹ 34.61 lakh including interest of ₹ 12.13 lakh.

This was brought to the notice of the Department (May 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

2.40 Non-entry of Demand in the Recovery Register

As per the existing system, after finalisation of assessment of raid cases in Enforcement Division, a copy of demand notice is sent to the concerned units having jurisdiction over the respective dealers. On receipt of demand advice, amount of demand is to be entered in the Recovery Register in the said jurisdictional unit for watching recovery in the respective cases.

During test check of the records of DCCT (Enforcement) Bhavnagar, we noticed in November 2010 in the case of two dealers for the period from 2002-03 to 2003-04 finalised between January and December 2004 incorrect entry and omission of entry in the recovery

register resulting in non monitoring of recovery of ₹ 28.63 lakh, though it was required to enter in the demand register of the concerned unit. This indicates the existence of weak monitoring system for the recovery of dues.

This was brought to the notice of the Department (May 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

2.41 Irregular grant of set-off

Rule 44 of the GST Rules provides that the dealer who had paid tax on purchase of goods is eligible for set off from the tax payable on inter-state sale of such goods. The rule further provides that no set off shall be granted where the vendor, who has sold the goods to the claimant, has not credited in Government treasury, the amount of tax on his sales for which set off is claimed.

2.41.1 During test check of the records of two offices⁴⁹ between January 2009 and December 2010, we noticed in the assessments of two dealers for the period between 2004-05 and 2005-06, finalised between May 2008 and March 2009 that the AOs

⁴⁹ ACCT: 9 Ahmedabad and 7 Vadodara.

allowed irregular set-off. In case of one dealer the AO allowed set-off on purchase of items which were not resold and in case of another dealer the AO allowed set-off under this rule, though he used the purchased goods in the manufacturing of other goods, instead of reselling the purchased goods. This resulted in irregular grant of set-off of ₹ 22.59 lakh including interest of ₹ 7.39 lakh.

The above facts were brought to the notice of the Department between April and May 2012. The Department accepted the audit observations in one case involving an amount of ₹ 12.62 lakh. The particulars of the recovery of accepted cases and the replies of remaining cases had not been received (September 2012).

After the matter was reported (June 2012) the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

Condition no. 2 below Rule 42 G of GST Rules, 1970 specifies that the purchased goods on which set-off is being claimed should be used by the assessee in the state of Gujarat in the manufacture of goods described in entry 5 of schedule II-A.

2.41.2 During test check of the records of two⁵⁰ offices, we noticed between March and May 2011 in the assessments of two dealers for the assessment period 2005-06, finalised in

March 2010, that the dealers manufactured (fully/partly) goods which fall under an entry other than entry 5 of Schedule IIA i.e. iron and steel. Hence, the condition was not fulfilled and attracted disallowance of set-off proportionately/fully. The AOs allowed set-off, though manufactured goods did not fall under the entry 5 of schedule II A of the Act. This resulted in irregular allowance of set-off of ₹ 18.17 lakh including interest of ₹ 6.37 lakh.

This was brought to the notice of the Department (April 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

Rule 42 of GST Rules, 1970 provides that a dealer who has paid tax on the purchase of goods (other than prohibited goods) to be used as raw material or processing material or consumable stores in the manufacture of taxable goods, is allowed set-off at the rate applicable to the respective goods from the tax payable on the sale of manufactured goods subject to fulfillment of general conditions prescribed in Rule 47 of the Rules.

2.41.3 During test check of the records of two⁵¹ offices, we noticed between December 2009 and March 2011 in the assessment of three dealers for the assessment period from 2004-05 to 2005-06, finalised between May 2008 and March 2009 that the AOs allowed excess set-off on purchase of goods as detailed below:

⁵⁰ ACCT: 2 Bhavnagar and 5 Rajkot
⁵¹ ACCT: 20 Ahmedabad, 1 Rajkot.

(₹ in lakh)

Sl. No.	Name of the office	No. of dealers	Short levy of tax including interest and penalty	Nature of observation
1	ACCT-20, Ahmedabad	1	3.81	Set-off was allowed on purchases of old buses though dismantling of condemned buses does not amount to manufacture.
2	ACCT-1, Rajkot	1	2.37	Set-off allowed on purchase of prohibited goods ⁵² i.e. chemical.
		2	6.18	

This resulted in irregular grant of set-off of tax of ₹ 6.18 lakh including interest of ₹ 1.93 lakh and penalty of ₹ 0.66 lakh.

The above facts were brought to the notice of the Department between September 2010 and May 2012. The Department accepted (June 2011) the audit observations in one case involving an amount of ₹ 2.36 lakh. The particulars of recovery of accepted case and the replies on remaining case had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department one case; the reply in the remaining one case had not been received (September 2012).

2.42 Non/short levy of Entry Tax

Under Section 3(1) read with Section 2(k) of the Gujarat Tax on Entry of Specified Goods into Local Area Act, 2001 (Amended by Gujarat Act No. 5 of 2006 dt. 1/4/06) there shall be levied and collected on the entry of specified goods into a local area a tax on the purchase value thereof at such rates as may be fixed by the State Government by notification not exceeding the maximum rates specified in column 3 of the schedule. The rate of tax on vehicles and cement attract entry tax at the rate of 12.5 per cent under Schedule-II of GVAT Act, 2003

During test check of records of two⁵³ offices we noticed between August 2011 and March 2012 in the assessments of two dealers for the period 2006-07 finalised in March and April 2011 that though the dealers had made Inter State purchases of vehicles, cement, the AOs in one case did not levy entry tax at the rate of 12.5 per cent on vehicles and in another case the assessing authority levied entry tax on cement at

⁵² Prohibited goods: Section 2 (21) of the GST Act, 1969 specifies certain goods to be prohibited. These goods are called prohibited goods because they could not be purchased by registered dealer, free of tax against a certificate in Form 19 or that set off of tax paid on their purchases is not admissible under Rule 42, even though they may be required by him for use in manufacture of taxable goods.

⁵³ ACCT: Godhra
DCCT: 22 Rajkot

lower rate instead of appropriate rate i.e. eight *per cent*. This resulted in short levy of tax of ₹ 20.06 lakh including interest of ₹ 5.76 lakh and penalty of ₹ 6.27 lakh.

After this being pointed out, the concerned Joint Commissioner in one case involving ₹ 11.69 lakh passed reassessment order and raised the demand.

This was brought to the notice of the Department between April and May 2012 and reported to the Government (June 2012); their reply has not been received (September 2012).

2.43 Non-levy of purchase tax u/s 19B (GST)

Under Section 19B of GST Act, 1969, the turnover of purchases of oilseeds including groundnut purchased by a dealer is liable for payment of purchase tax under the Act. During 1 April 1993 to 8 November 1994, purchase tax was leviable at two *per cent*.

During test check of records of ACCT, Gondal, we noticed in August 2010 in the assessment of one dealer for the period 1993-94 finalised in October 2008 that the AO did not levy purchase tax on purchase of castor oilseeds

for ₹ 1.48 crore. This resulted in under assessment of ₹ 6.84 lakh including interest of ₹ 2.12 lakh and penalty of ₹ 1.77 lakh.

The above facts were brought to the notice of the Department in May 2012. The Department accepted (June 2011) the audit observation in this case involving an amount of ₹ 6.84 lakh. The particulars of recovery in accepted case had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in this case.

2.44 Short levy of tax on hiring charges under Gujarat Sales Tax Act

Section 3A of the GST Act provides that any dealer, whose turnover of Specified Sale exceeds ₹ 50,000 in a year, is liable to pay tax. Section 2 (30C) provides that Specified Sale means the transfer of right to use any goods for any purpose for cash, deferred payment or other valuable consideration. Rate of tax on specified sale of goods in respect of plant and machinery, as per entry 8 of Schedule III to the Act is four *per cent*.

During test check of the records of ACCT, Godhra, we noticed in August 2011 in the assessment of one dealer for the period 2004-05 finalised in September 2008 that the AO allowed levy of sales tax on machinery hire charges at two *per cent* instead of at four *per cent*. This resulted in short levy of tax on specified sales of

₹ 5.89 lakh including interest of ₹ 1.30 lakh and penalty of ₹ 2.17 lakh.

This was brought to the notice of the Department between April and May 2012 and reported to the Government (June 2012); their reply has not been received (September 2012).

2.45 Short levy of Interest under GST and CST Act

Section 47(4A) of the GST Act, 1969 provides that if a dealer does not pay the amount of tax within the prescribed period and if the amount of tax assessed or reassessed exceeds the amount of tax already paid by more than ten *per cent*, simple interest at the rate of 24 *per cent* per annum for the period upto 31 August 2001 and at the rate of 18 *per cent* per annum thereafter is leviable on the amount of tax remaining unpaid for the period of default. By virtue of Section 9(2) of CST Act, the above provisions apply to assessments under the CST Act as well.

During test check of records of five⁵⁴ offices, we noticed between February 2010 and March 2011 in 20 assessments of 14 dealers for the period from 2002-03 to 2005-06 finalised between December 2007 and July 2009 that AOs either did not levy interest or levied it short on the amount of unpaid tax. This resulted in non/short levy of interest of ₹ 1.80 crore.

The above facts were brought to the notice of the Department in April 2012. The Department accepted the audit observation in 14 cases involving an amount of ₹ 1.22 crore. The particulars of recovery in accepted cases and the replies of the remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in 14 cases; the reply in the remaining cases had not been received (September 2012).

⁵⁴ ACCT: 8 Ahmedabad, Deesa, Gandhidham, 5 Rajkot
DCCT: Enfor cement -5 Surat

2.46 Non/short levy of penalty under GST and CST Act

Section 45(6) of the GST Act, 1969 provides that where the amount of tax assessed or reassessed exceeds the amount of tax paid with the returns by a dealer by more than 25 *per cent*, penalty not exceeding one and a half times of difference shall be levied. Further, the Commissioner vide public circular dated 3 June 1992 has laid down slab rates for levy of penalty. By virtue of section 9(2) of the CST Act, the above provisions apply to assessments under the CST Act as well.

During test check of the records of 10⁵⁵ offices, we noticed between November 2009 and January 2012 in 18 assessments of 12 dealers for the assessment period from 2001-02 to 2005-06 that the difference between tax assessed and tax paid with returns exceeded 25 *per cent* of the amount of tax paid. However, the AOs while finalising the assessments between October 2007 and December 2009 did not

levy penalty or penalty was levied short as per provisions and Commissioner's circular of June 1992. This resulted in non/short levy penalty of ₹ 1.47 crore.

The above facts were brought to the notice of the Department between January and May 2012. The Department accepted the audit observations in six cases involving an amount of ₹ 1.06 crore. The particulars of the recovery in accepted cases and the replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department six cases; the replies on the remaining cases had not been received (September 2012).

⁵⁵ ACCT: 1 and Flying Squad, Ahmedabad, Ankleshwar, 6 Vadodara and Godhra
DCCT: Corporate-1 and Enforcement (Div-2) Ahmedabad and Enforcement Rajkot.