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CHAPTER – I

LAND REVENUE AND MINOR MINERALS

1.1.1 Introduction:

Under Entries 18 and 45 of List II, of the Seventh Schedule to the Constitution read with Article 246, the State Legislature has exclusive powers to legislate on the following matters:

Entry 18 – Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land, land improvement and agricultural loans, colonisation.

Entry 45 – Land Revenue, including the assessment and collection of Revenue, the maintenance of land records, survey for revenue purposes and records of right and alienation of revenues.

The Estates Acquisition Act, 1953 passed on 13th February, 1954 by the West Bengal Legislature by virtue of its powers under Entry 18 provides for acquisition by the Government of estates and rights of the intermediaries therein and of certain rights of raiyats and under-raiyats and of the rights of certain other persons in the lands comprised in the estates. Under the provisions of this Act all estates, and rights of intermediaries therein, as also the rights of tenants known as 'raiyats' and 'under-raiyats' vested in the State on the 15th April, 1955 (in the case of intermediaries) and on the 14th April 1956 (in the case of raiyats and under-raiyats). With the abolition of intermediaries interests, the intermediaries are now holding their khas lands upto the ceiling prescribed from time to time as tenants directly under the State generally on payment of the rent prevailing in the locality. The raiyats and under-raiyats who hold lands under the intermediaries before the date of vesting of the Estate are also holding their khas lands, upto the prescribed ceiling as tenants directly under the State on payment of the same rent as they paid or were liable to pay to their landlords immediately before the date of vesting.

The Second Act, the West Bengal Land Reforms Act, 1955 was passed by the State Legislature on 30th March, 1956 by virtue of its power under both Entries mentioned above. It makes some reforms in the law relating to the land tenures consequent on the vesting of all estates and rights in the State. This Act came into force from 31st March, 1956 but some of the sections were brought into force only from subsequent dates. The important provisions in this Act are mentioned in para 3 *et seq.*

The West Bengal Land Reforms Act, 1955 extends to whole of West Bengal except areas included in Kolkata as defined in Schedule 1 to the Calcutta Municipal Act, 1951 subsequently replaced by Kolkata Municipal Corporation Act, 1980 and made effective from 4 January 1984. The Act XXIII of

1850 (The Calcutta Land Revenue Act, 1985) is applicable in respect of Kolkata. Under Section 1 of the Act of 1850, all assessable land, not the property of the Government of which the rate of assessment is not known or which have not hereto before been assessed, shall be assessed at the rate of three annas (19 paise) for each cottah. As per Section 2 of the Act, only the lakheraj tenures of lands in Kolkata of which uninterrupted possession has been held, exempt from assessment for sixty years, shall be valid, no other lakheraj tenures of land in Kolkata shall be deemed valid unless the same area or shall be held under an unexpired grant from the British Government. The Act contemplates exemption on no other lands in Kolkata

1.1.2 Definitions:

(i) 'Land' means land of every description and includes tank, tank-fishery, fishery, home stead, or land used for the purpose of live-stock breading, poultry farming, dairy or land comprised in tea garden, mill, factory, work-shop, orchard, hat, bazar, ferries, tolls or land having any other sairati interests and any other land together with all interests, and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth.

[Section 2 (7) of the W.B.L.R. Act, 1955]

(ii) 'Agricultural land' means land ordinarily used for purposes of agriculture or horticulture and includes such land, notwithstanding that it may be lying fallow for the time being.

[Section 2 (b) of the W.B.E.A. Act, 1953]

(iii) 'Non-agricultural land' means land other than agricultural land or other than land comprised in a forest.

[Section 2 (j) of the W.B.E.A. Act, 1953]

(iv) 'Homestead' means a dwelling house together with any courtyard, compound, garden, outhouse place of worship, family graveyard, library, office, guesthouse, tanks, wells, privies, latrines, drains and boundary walls annexed to or appertaining to such dwelling house.

[Section 2 (g) of the W.B.E.A. Act, 1953]

(v) 'Rent' means whatever is lawfully payable or deliverable in money or kind or both, by a tenant to his landlord, on account of the use or occupation of the land held by the tenant and includes also money recoverable under any enactment for the time being in force as if it was rent.

[Section 2 (o) of the W.B.E.A. Act, 1953]

(vi) 'Revenue' means whatever is lawfully payable or deliverable in money or kind or both by a raiyats under the provisions of the WBLR Act, 1955 in respect of the land held by him.

[Section 2 (11) of the W.B.L.R. Act, 1955]

(vii) 'Raiyats' means a person or an institution holding land for any purposes what so ever.

[Section 2 (10) of the W.B.L.R. Act, 1955]

(viii) 'Khas land' or 'Khasmahal land' a term used for Government Estates in West Bengal has been described as '.....and Estate which is managed by the Collector in direct communication with the raiyats'.

Apart from wastelands,Government comes in possession of Khasmahal estates by the following process:-

(1) When estates or parts of estates were sold for arrears of revenue and Government bought them either because no bidders appeared or because satisfactory terms were not offered .

(2)'Thanadari lands' or lands formerly allotted to Zamindars for keeping up'Thanas'where the Zamindars were exonerated from this duty, the lands were resumed by Government

(3) Islands and chars formed in river or seashore

(4) Lands escheated in default of legal heirs or claimants

(5) Lands forfeited for any offence against the State

(6) Lands which were acquired by consequent, for example the Dwars of Jalpaiguri and Darjeeling districts

The terms 'Khasmahal' is not used for Land belonging to departments of Government other than the Land and Land Reforms Department though they are also the property of Government but not termed as "Khasmahal Land".

1.1.3 Organizational set-up:

The Land and Land Reforms Department, Government of West Bengal (previously Board of Revenue, West Bengal) exercises overall supervision in the matter of realisation of revenue and settlement of land for a term of years as provided in the West Bengal Land and Land Reforms Manual, 1991. So long, there were Additional District Magistrate (LR), SLROs, JLROs in each district. By a notification issued by the Government in the Land and Land Reforms Department under No.727 L, dated 21 July 1988 a new integrated set-up in land reforms of each district has been created from March 1989. Accordingly, under the Land and Land Reforms Department there is one District Land and Land Reforms Officer for each district, one Sub-divisional Land and Land Reforms Officer for each sub-division and one Block Land and Land Reforms Officer for each block, who will carry out the duties related to land reforms of the district. Under each Block Land and Land Reforms Officer, there will be three Revenue Officers (one for settlement matters, one for quasi-judicial matters and the other for land reforms matters) and one Revenue Inspector and one Bhumisahayak for each Gram Panchayet. Bhumisahayaks will perform the same duties as were performed by the erstwhile Tahsildars under the direct supervision of the Revenue Inspector and also maintain relevant records

and registers prescribed in the West Bengal Land and Land Reforms Manual, 1991. The Revenue Officer and Revenue Inspector (erstwhile JLRO and CI) will discharge their duties in respect of land reforms as may be allotted by Government under the new integrated set up scheme. Now, all the Bhumisahayaks are whole-time Government servants.

1.1.4 Source of receipt of Land Revenue including Minor Minerals Receipts:

(A) Land revenue accrues to the State under the following accounts:

(i) Land Revenue i.e. rent and cesses from tenants or raiyats of land vested with or owned by Government as well as private individuals.

(ii) Income from sairati interests like big water areas (5 acres and above), interests falling within municipal areas and hats/bazaars not handed over to the Regulated Market Committees.

(iii) Royalty and Cesses on coal and other minerals raised in the State in accordance with a licence or lease granted under Mines and Minerals (Development and Regulation) Act, 1957, as amended from time to time and also the provisions of Minerals Concession (MC) Rules, 1960 and different Cess Acts.

(iv) Royalty and Cesses for extraction of minor minerals, viz., brick earth, sand, boulder, morrum, stone, gravels, etc., levied under the West Bengal Minor Minerals (WBMM) Rules, 1973 subsequently substituted by WBMM Rules, 2002 and different Cess Acts.

The West Bengal Land Reforms Act, 1955, as amended from time to time read with the West Bengal Land and Land Reforms Manual, 1991 contains the provisions regarding liability for payment of revenue by the tenants/raiyats in the manner set forth therein.

The revenue, i.e., rent payable is recorded in the Record-of-Rights (ROR). Where the land was rent-free, rent of such land was to be fixed with effect from 1 November 1965 at the rate of rent prevalent in the vicinity. Section 23 of the West Bengal Land Reforms Act, 1955 read with Rule 15 of the West Bengal Land Reforms Rules, 1965 prescribed the manner in which revenue is to be determined.

Prior to 1379 BS (1972-73), rent was payable at single rate as per ROR and with effect from 1st Baisak 1379 BS (1972-73), raiyats holding land in excess of 3 acres were required to pay rent at double the rate in respect of lands situated in non-irrigated areas and at treble the rate in respect of land situated in

irrigated areas. A surcharge at ten per cent of annual rent is chargeable in respect of raiyats holding lands of more than 10 acres in one mouza.

Where the land held by a raiyat and his family in non-irrigated area does not exceed 24.28 hectares (6 acres), the raiyat and his family shall be exempted from paying revenue w.e.f. 1st day of Baisakh, 1385 BS.

In case of irrigated area the land holding limit is 1.619 hectares (4 acres) for the purpose of exemption from paying revenue.

However, there are certain exceptions where such exemptions are not allowable.

[Section 24 (a) of the W.B.L.R. Act, 1955]

But other raiyats are required to pay revenue i.e. rent and cesses at normal rates. But all the raiyats including exempted raiyats are liable to pay all the cesses, viz., road cess, public works cess, education cess, rural employment cess and surcharge. In case of exempted raiyats arrears of cesses payable by them for the period from 1385 BS to 1407 BS had been waived by the Government vide L & LR Department (LR Branch) order No.3052 LR/IA-04/03 GE (M) dated 10 November 2003.

(B) Cess on Land Revenue:

The rates of revenue payable by the Raiyats for different categories of land for different purposes with effect from 1st day of Poush 1412 BS (corresponding to 17 December 2005) as per section 9 of the W.B.L.R (Amendment) Act, 2005 (substitution of section 23 of the W.B.L.R Act, 1955) are enumerated in the Appendix to the Chapter.

However, the following lands are exempted from the payment of revenue as per section 10 of the W.B.L.R (Amendment) Act, 2005 (section 23A of the W.B.L.R Act, 1955):-

(a) Land owned by the Central Government, The State Government and Local Bodies

(b) Land used as public roads, burial grounds, places of worships, burning ghat or for such other public purposes as may be prescribed and

(c) Land held by the Government sponsored educational institutions.

(Ref. Notification No. 2331-L dated 11.November.2005 and order No. 521-LR/3M-12/06 OS (M) dated 20 February, 2006)

There are four kinds of cesses leviable on annual rent. These are road cess and public works cess under the Cess Act, 1880, education cess under the West Bengal Primary Education Act, 1973, effective from 1 April 1981 and rural employment cess and surcharge under the West Bengal Rural Employment and Production Act, 1976, effective from 1 April 1976.

The rates of cesses leviable on per rupee of land rent are as under:

	Upto 31-3-1981	From 1-4-1981
Road Cess	6 paise	6 paise
Public Works Cess	25 paise	25 paise
Education Cess	6 paise	10 paise

Rural employment cess and surcharge is leviable at 45 paise (30 paise + 15 paise) per rupee of rent for lands in non-irrigated areas and at 60 paise (30 paise + 30 paise) for land falling in irrigated areas from 1 April 1976.

(C) Income from Sairati interests:

(a) Prior to 1386 BS (1979-80), all sairati interests were to be leased out by the Land and Land Reforms Department and the income derived therefrom was to be credited to Government account under head "0029 – Land Revenue". By an order issued by the erstwhile Board of Revenue under No.2634-(15) GE (M) dated 7 March 1979 all vested tanks, ferries and fisheries were transferred to the respective Panchayat Institutions with effect from 1386 BS (1979-80) for which no revenue was realisable by the Land and Land Reforms Department. But in case of big water areas (5 acres and above) and interests falling in the municipal areas settlement is to be made by the Land and Land Reforms Department as before (vide Board's Order No.5777, dated 21 May 1979). Some Regulated Market Committees have been formed in all the districts where some selected 'hats' and 'bazaars' were handed over to them on lease basis with effect from 1387 BS (1980-81). The lease rent in these cases is to be fixed on the basis of average of preceding three years annual rent. In case of leasing and management of ferries, fisheries and sairati interests other than those transferred to Panchayat Institutions procedures prescribed in Chapter – XVII of the Manual of 1991 should strictly be followed.

In case of leasing and management of hats and bazaars procedures prescribed in Chapter –XVI of the Manual should be followed.

(D) Lease of Government lands:

Government lands, both agricultural and non-agricultural, are leased out as per rules prescribed in WBL&LR Manual, 1991. In respect of agricultural lands, rules in Chapter-XIII and in respect of non-agricultural lands, rules in Chapter-XV of the Manual should be followed.

Procedure for transfer of Government land to institutions, inter-departmental transfer of land, lease of Government land held by other departments are prescribed in Chapter-XXVII of the said Manual.

Transfer of land between the State and Central Governments is governed by the principles laid down in the Land Transfer Rules, as embodied in the Land Acquisition Manual.

In case of transfer of land by the State Government to the Central Government Departments/Undertakings/Corporations market value of the land proposed to be transferred together with the capitalised value (80 per cent of the market value of the land) will have to be realised.

Any instalment of revenue or part thereof if not paid by the date fixed for the payment of such instalment, shall be deemed to be an arrear. If such arrear remains unpaid at the close of the agricultural year to which it relates, a notice of demand shall be served on the raiyats asking him to make payment of the arrear within the date specified in the notice with interest at the rate of 6.25 per cent per annum from the date or dates on which the revenue became due. If after receipt of the notice of demand, a raiyat does not pay the arrears of revenue with such interest within the specified date, such arrear of revenue shall be realised as a public demand under the Bengal Public Demands Recovery Act, 1913 as amended from time to time.

[Rule 20 of WBLR Rules, 1965]

(E) Minor Minerals:

The extraction, removal or despatch of minor minerals as defined under Section 3(e) of the Mines and Minerals (Development and Regulation) Act, 1957 as amended in 1972, read with Government of India, Department of Mines and Fuel, Notification No.III-159(18)/541A-II, dated 10 June 1958 is governed by the West Bengal Minor Minerals Rules, 2002 (Formerly West Bengal Minor Minerals Rules, 1973). Under Rule 27, the district authority or any other officer authorised in this behalf by the State Government is the competent authority to issue quarry permits for extraction and removal of minor minerals on advance payment of royalty at the prescribed rates. Conditions for the grant of such permits are embodied in the Rules of 2002. For extraction of Minor Minerals the quarry permit holders are required to pay royalty, different kinds of cesses and dead rent .:

(i) Royalty: The rates of royalty on different kinds of minor minerals effective from 8 November 2002 are given below (vide Notification No.422 CI/MINES RULE/002/02/MI dated 8 November 2002):

Clay (Brick earth) and Ordinary earth	Rs.34 per 100 Cft.
Sand (both dry and wet)	Rs.63 per 100 Cft.
Laterite/Morrum	Rs.43 per 100 Cft.
Boulder	Rs.63 per 100 Cft.
Granite (Black)	Rs.1,840 per 100

	Cft.
Granite (Grey)	Rs.1,133 per 100 Cft.
Stone/Sand Stone	Rs.63 per 100 Cft.

(ii) Cess: In all cases of extraction and removal of minor minerals, different kinds of cesses, viz., road cess, public works cess, primary education cess and rural employment cess are also realisable as under:

Road cess and Public Works cess under the Cess Act, 1880 at 50 paise each per tonne of despatch

Primary Education cess under the WB Primary Education Act, 1973 at Re.1 and Rural Employment cess under the WB Rural Employment and Production Act, 1976 at 50 paise per tonne of despatch are leviable from 1 June 1987 vide West Bengal Taxation Law (Amendment) Act, 1987 notified under No.991-L, dated 30 May 1987.

Item	Volume	Tonnage	PW Cess (Rs.0.50 per MT)	Road Cess (Rs.0.50 per MT)	P Education Cess (Rs.1 per MT)	RE Cess (Rs.0.50 per MT)	Total Cesses (in Rs.)
Sand (Dry)	100 Cft	5 MT	3.00	3.00	5.00	3.00	14.00
Sand (Wet)	100 Cft	5.5 MT	3.00	3.00	6.00	3.00	15.00
Morrum/Laterite	100 Cft	5.5 MT	3.00	3.00	6.00	3.00	15.00
Boulder	100 Cft	5.5 MT	3.00	3.00	6.00	3.00	15.00
Granite (Black)	100 Cft	5.1 MT	3.00	3.00	6.00	3.00	15.00
Granite (Grey)	100 Cft	5.1 MT	3.00	3.00	6.00	3.00	15.00
Stone/Sand Stone	100 Cft	8.5 MT	5.00	5.00	9.00	5.00	24.00
Clay (Brick earth/ordinary earth)	100 Cft	6 MT	3.00	3.00	6.00	3.00	15.00

Conversion rates of 100 cft of each kind of minor minerals into tonnage and different kinds of cesses leviable thereon are as under:

(iii) Dead Rent:

Rates of Dead Rent in respect of leased out area of mining leases in respect of minor minerals are as under

First year	Rs.2000.00 per hectare
Second year	Rs.3000.00 per hectare
Third year and onwards	Rs.5000.00 per hectare per annum

(Ref. Schedule II to the W.B. Minor Minerals Rules, 2002 and Rule 20(1)(b) of the said rules).

1.1.5 Provisions for interest and recovery of arrears:

In case of non/short payment of land revenue and cesses including miscellaneous demands on or before the 31st Chaitra of the agricultural year in which the amounts fall due interest is to be charged at the rate of 6.25 per cent per annum on the arrears of such revenue.

Arrears of land revenue may be realised from the defaulters by initiation of certificate proceedings as per procedure laid down in the Bengal Public Demands Recovery Act, 1913. On recourse to certificate procedure, interest from the date of making the certificate to the date of realisation should be realised keeping in mind the following rules laid down in instruction 28(2) of the Certificate Manual, 1953.

(a) Interest shall be calculated quarterly;

(b) No interest shall be charged on any amount below Rs.13;

(c) No interest shall be charged in any case where the period between making the certificate and the date of realisation is below four months. But where the period is four months or more, interest shall be charged for the whole period.

(Rule 303 and 304 of the WB L & LR Manual, 1991)

1.1.6 Procedure for Audit:

Records maintained – Following are the relevant records/registers in district, sub-division and block office and by the Bhumisahayaks which should be subjected to audit –

(a) District Office:

(i) Miscellaneous Demand Register (Register VI)

(ii) Register of long term leases (Register X)

(iii) Register of licenses issued under the Minor Minerals Rules, 2002

(iv) Register of Khasmahal properties (Register 32 and 33)

(v) Stock Account of Receipt Books

(vi) Remission and Abatement Register (Register XI)

(vii) Stock account of Rent Receipt Books and DCR Books (Register 94)

(b) Sub Divisional Land & Land Reforms Office.

Various records & registers relating to Land Revenue and Minor Minerals.

(c) BL&LR Office:

(i) Register IV – Cash Book

(ii) Register VI – Miscellaneous Demand Register

(iii) Register VII – Miscellaneous Collection Register

(iv) Register VIII – Register of Unoccupied lands (vested lands)

(v) Register IX – Mutation Register

(vi) Register X – Register of Leases for a term of years

(vii) Register XII – Proposal for Settlement

(viii) Register XIV – Miscellaneous Petition Register

(ix) Register 94 – Stock account of Rent Receipt Books and DCR Books

(x) Register 10 – Register of Certificate Cases

(xi) Register 58 – Daily Register of Court Fee realised

(xii) Register 63 – Collection Register

(xiii) Register 32 – Register of Khasmahal Properties

(xiv) Attested copies of Records of Rights

(d) By 'Bhumisahayaks':

(i) Rent Roll or Jamabandi Register (Register-I)

(ii) Tenants' Ledger (Register-II)

(iii) Daily Collection Register (Register-III)

(iv) Cash Book (Register-IV)

(v) Treasury Pass Book of Challan (Register-V)

(vi) Miscellaneous Demand Register (Register-VI)

(vii) Miscellaneous Collection Register (Register-VII)

(viii) Rent Receipt Books (Rule 50 and Form 1007) and DCR Books

1.1.7 Audit Checks:

Audit is conducted district-wise. Office of the District Land and Land Reforms Officer (DL & LRO) is first taken up and a detailed tour programme is prepared for inspection of the different SDL & LROs, BL & LROs. Audit of 'Bhumisahayaks' accounts selected for the purpose is conducted in the BL & LR Office. The audit is concluded in the Office of the DL & LRO.

The following checks are to be exercised at different levels:

1.1.7(A) District Office:

(i) Miscellaneous Demand Register and the Register of long term lease are to be verified to see that in respect of the leases granted/sanctioned by the competent authority, the demands have been properly raised, realised and the leases given according to the relevant provisions of the WBL&LR Manual, 1991.

(ii) The Register of Mining Lease maintained under Rule 25 of the West Bengal Minor Minerals Rules, 2002 to be scrutinised to see that all leases have been covered by licences and lease agreements have been executed in prescribed form. Where the realisation of royalty is effected by the district office, demands are properly raised and realised. In other cases Block-wise list of leases may be obtained for verification at that end.

(iii) Stock Account of Money Receipt Books – The account should be checked very carefully with reference to the receiving challans of the Press and Forms Department. A statement of issues is to be prepared for cross checking with receipts of these books recorded in the stock accounts of the recipient sub-divisional or block land reforms offices.

(iv) Remission and Abatement Register – It may be seen that the sanctions for remission or abatement of revenue have been issued by competent authorities for reasons recorded in writing and have been duly noted in the Register.

The files relating to lease, settlement and other revenue matters should be obtained and carefully reviewed by the inspecting party and the supervising officer to verify whether the various steps and decisions taken in such cases were in accordance with the law and the instructions of Government and whether the interests of the State have been safeguarded. It may also be seen whether the orders of exemptions with reference to flood, draught, etc. to holders upto certain quantum of land have been properly implemented with reference to area actually mentioned in the Government Notification.

1.1.7(B) Sub Divisional Land and Land Reforms Office:

Audit check is also to be conducted of records and registers relating to realisation of land revenue and minor minerals receipts maintained in the office.

1.1.7(C) BL & LR Office:

(i) Entries in the Cash Book are to be checked with relevant bills, vouchers, receipts, challans, etc.

(ii) Register of Miscellaneous Demands may be scrutinised to see that the demands have been duly carried over from year to year, all the interests have been leased out after observing the prescribed formalities and the demands have been raised and realised. The collections noted in the Register of

Miscellaneous Collection (Register – VII) are to be checked with relevant receipts/challans and also with reference to Cash Book.

In case of non-leasing out of any interest for a particular period/year for some reasons or other approval of the competent authority has been obtained and recorded therein.

(iii) Register of vested lands (Register-VIII) is meant for recording particulars of vested lands. It should be seen that the lands available for settlement are settled without unnecessary delay and steps have been taken for fixation of rent of the erstwhile rent-free lands. It should also be seen that this register depicts a true and clear picture by making comparison between the entries in this register and the mouza-wise statement of vested lands received from the settlement section from time to time. A reconciliation between the two sets of figures should be insisted upon where the same had not been done.

It is also to be seen that survey of vested lands is conducted from time to time and in case of any unauthorised occupation appropriate action has been taken either for eviction or for settlement as per provisions of the Acts and Rules.

(iv) Mutation Register (Register-IX) – This register records the particulars of all applications for mutation of names on account of inheritance and notices of transfer, gift, etc. (vide Rules 34, 107, 116, 117, 209 and 225 of Estates Manual). The entries in this register should be checked with the register for notices of transfer. The delay in finalising the mutation cases may also be investigated as such delays may have an adverse effect on the collection of revenue. It should also be seen that dues for mutation cases and conversion cases have been realised at prescribed rates.

(v) The Register of Long Term Leases Licences (Register-X) is meant for noting of leases licences for a term of years. Its object is to ensure, that when a lease for a term is about to expire, timely action has been taken for re-settlement. It can be seen from this register whether prompt action had been taken to extend or terminate leases and whether there are cases in which the leases had expired but no action had been taken to review them for resettlement.

(vi) Proposal for settlement (Register-XII) – All proposals for settlement whether for vested lands, fisheries or foreshore lands are entered in this register. Few entries are to be checked with relevant settlement cases.

(vii) Miscellaneous Petition Register (Register-XIV) – All types of miscellaneous petitions are entered in this register before sending the same for local enquiry and report. It may be seen that the cases involving revenue are not lost sight of.

(viii) Stock Account of Receipt Books – Receipt side of the account should be checked with reference to Invoices/Challans and issues as shown in the Stock Register. The issue side should be checked carefully to see that the books issued to the Bhumisahayaks have been received back after use. It should be seen that there is sufficient control over the receipt books, particularly those issued to Bhumisahyaks. It should also be ensured that all unused forms, if any, in used books have been cancelled to prevent their unauthorised use.

(ix) Register of Certificate cases (Register-10). It should be checked with requisitions, challans, etc. It may be seen that there is no unnecessary delay in the disposal of the certificate cases. Some of the certificate cases in which the dues have been recovered are to be verified to see that the interest due had also been realised, proper court fee stamps have been suffixed towards cost of the certificate case and the stamps have duly been defaced. It may also be seen that the court fees are always entered in the Register of Court Fees realised (Register-58).

(x) Collection Register (Register-63) should be checked with fortnightly returns furnished by Bhumisahayaks, challans, etc.

(xi) Register of Khasmahal properties – Same checks as mentioned in the case of vested lands may be carried out.

(xii) In addition to the above the following points should be checked thoroughly:

(a) Conversion of agricultural land for non-agricultural use, delay in settlement of agricultural/non-agricultural land and consequent loss of revenue.

(b) Distributions, settlement and assessment of broughtinland, char land, surplus land and Bhoodan land.

(c) Unauthorised encroachment of Government land-delay in eviction or settlement and consequent loss of revenue.

Besides, the above, a general review should be made in respect of cases relating to lease, settlement and other revenue matters so as to bring out any cases of breach of law or rules or other irregularities resulting in non-realisation/short realisation and loss of Government revenue.

1.1.7(D) Bhumisahayak accounts:

The basic assessment records are maintained by the Bhumisahayaks. The main object of audit should be to see that all holdings are correctly recorded in the prescribed registers and the revenue thereon is correctly assessed, realised and accounted for. Following detailed scrutiny may be conducted in respect of the records maintained by the Bhumisahayaks:

(i) Register I – Rent Roll or Jamabandi Register – This register is to be maintained in accordance with the instructions in Rule 25 of the Estates Manual. In this register, the names of the tenants, their status, their rents/cesses and the area and the class of the lands are noted. It will contain no entries of miscellaneous demands. No alteration or addition will be made in Register I except on receipt of a written order and every alteration must be attested by a gazetted officer. Mutations are governed by rules 115 et. seq. and it should be verified whether these rules have been observed in carrying out the alteration of this account. Practically, this register is a copy of Khatians or Records of Rights published by the Settlement Section and may be treated as one of the basic assessment records. The entries in this register may be compared with the Records of Rights (Khatians) to see that the assessments have been correctly recorded.

(ii) Register II – Talabbaki or Tenants' ledger is maintained under Rule 26 of the Estates Manual – mouza-wise and separate pages are allotted to each tenancy. The detailed instructions for writing up this register are contained in Rule 27. The area, annual demand and collection of rent and cesses, the tenants' names and residences are noted in this register. Orders regarding remission of rents are also recorded here. From this register, the position regarding the demand, collection and arrear dues in respect of a particular tenant or of a mouza may be ascertained. It should be seen that this register is posted and reconciled upto date. The rent receipts as per receipt books may be traced into this register at random.

(iii) Register III – Daily collection Register – Rule 28 lays down the instruction for the maintenance of this register. In this register collections of rents, cesses and interest from the tenants under the charge of the Bhumisahayak day by day in chronological order are noted. All the receipts issued by the Bhumisahayak selected for audit are traced into this register. The totalling and balancing of the register are also to be checked. When interest is leviable, it should be seen whether the interest has been duly levied. When remission of interest owing to flood/draught, etc., is allowed, it should be seen whether orders of remission have been properly implemented with reference to areas actually mentioned in the Government Notification.

(iv) Register IV & Register V – Total of the daily collection as per Register III are noted in the receipt side of the cash book and the remittances made to Treasury are noted in the payment side. The receipt side should be checked with the Register III and the payment side with relevant challans or Treasury Pass Book (Register V) where maintained. The challans for the selected months should be verified with the original treasury records and in case of any discrepancy the same is to be pointed out.

(v) Register VI & VII – Same checks as are mentioned in item (ii) of BL&LR Office may be carried out.

1.1.8 Checking of Returns:

The periodical returns submitted to the higher authorities including L & LR Department by lower formations may be test-checked to determine their correctness (C&AG's Circular No.1320-Rev. A/8-83, dated 5-3-1973). The following returns may be specially seen for the purpose.

Return Nos.:- I. Revenue Statement

II. Progress Statement of collection

III. List of defaulters

Return of certificate cases.

Return of vested lands.

1.1.9 Checking of Bhumisahayaks' Accounts:

The BL & LROs and Revenue Inspectors are entrusted with regular checking of the Bhumisahayaks' accounts under orders of the competent authority. Salient features of such checking are enumerated below:

(i) The Accounts of Bhumisahayaks should not remain unchecked for more than a month

(ii) The Revenue Inspector should check the Accounts of Bhumisahayaks posted in his office at least twice a month

(iii) The BL & LRO himself or any Revenue Officer authorised by him and the Revenue Inspector shall be responsible for checking the accounts of Bhumisahayaks in his area and every month a report is to be sent to the higher authority to that effect.

(iv) The Revenue Inspector and the BL&LRO, should take notes from Register 94 before inspecting each Revenue Inspectors' (RI) office.

(v)The RI office should be selected for checking in such a manner that no accounts of Bhumisahayaks remains unchecked for more than a month. Suitable programme should be made for overlapping of checking by BL& LROs and Revenue Inspectors.

(vi) Bhumisahayaks should present themselves with their collection papers in the BL& LRO Office once in three months when the assistant who maintains Register '94 will scrutinise all the receipt

books used or unused made over to the Bhumisahayaks. He should see that no used receipt book remains with the Bhumisahayak, no page in any rent receipt book is removed and each cancelled receipt has its duplicate attached to it and that its duplicate has also been cancelled. After satisfying himself on the above points he should record a certificate duly signed and dated to that effect on the cover of the book

(vii) The BL& LRO or the Revenue Officer or the Revenue Inspector will check the rent receipts with Registers of Daily Collection and Cash Book maintained by the Bhumisahayaks so as to ensure that the amount collected have been accounted for and that Bhumisahayaks did not keep at any time any amount exceeding Rs.2,000.

(viii) To prevent defalcation by tampering duplicate copies of rent receipts, the BL& LRO and the Revenue Officers will collect some original rent receipts at random from raiyats, check them with corresponding counterfoils and thereafter return the receipt to the raiyats. If the original and counterfoil disagree, all papers are to be withdrawn from the Bhumisahayak and a report is to be sent to the DL&LRO for further orders

(ix) In the hill areas of Darjeeling when Mandals come to deposit collection money, the existing practice of checking the accounts by the office assistants before the challans are passed should continue.

Whenever any defalcation or loss of money including land revenue is unearthed, the following procedure should be taken:-

i) The case of defalcation immediately after its discovery, should be reported to the Accountant General, West Bengal excepting petty cases involving amount not exceeding Rs.200

ii) Simultaneously the DL & LRO should send a report of defalcation through the DLR & S, West Bengal to the L & LR Department and the Finance Department. The Collector and the Divisional Commissioner should be kept informed in writing. The DL & LRO should transfer the concerned suspected officer/staff from the office where defalcation has occurred

iii) A First Information Report should be lodged with the police at the earliest possible moment

iv) Departmental proceedings should be started immediately against the officer/staff suspected for causing defalcation

(DLR & S, WB No.400/3151-68/C/2004 dated 19.7.2004 and Chapter-XIX of the WBLLR Manual 1991)

1.1.10 Rules of procedure for local inspection:

Sufficiently in advance of taking up the audit of an office, the Section Officer/Assistant Audit Officer should requisition the required documents from the sections:

The Assistant Audit Officer/Section Officer and the Senior Audit Officer/Audit Officer should first call on the head of the office whose records are being subjected to audit and discuss generally about the special points, if any, that may arise during the audit, the condition of the records, arrangements necessary to ensure smooth flow of records to audit, etc. The head of the office may also be requested to inform the audit party of any particular point or which he desires the audit to look into with special attention.

All information and clarification as well as replies to objections by audit should be obtained from the Officer-in-Charge of the office inspected by issue of audit query statement. The audit query statement should be prepared in duplicate by carbon process and the top copy should be issued to the local office.

The audit queries should be drafted carefully and with precision so that the nature of the query or objection is clearly brought out and not vaguely hinted it. The direction given in para 6 of the C & AG's Manual of Standing Order (Audit) regarding the use of language and tone of the report should also be borne in mind.

The audit queries should be serially numbered and made over to the head of the office and acknowledgement taken in a memorandum book kept for the purpose.

Government of West Bengal have instructed that the head of the office, should return the audit queries on the same or next day, if possible, with a written answer against each points raised. (Finance Department Memo No.1405-F dated 7.4.1933 as amended by Memo No.40-18P dated 25.7.1933). Formal reminders should be issued in case of delays on the part of the head of the office in returning the objection statement. The supervising officer should impress upon the head of the office the necessity of returning the statement on the same or next day as directed in the Government order. If the replies on the audit queries are incomplete or inadequate, the pages concerned should again be made over to the local office with a request for immediate return with further remarks to clarify the points.

It has been observed that audit queries are prepared without details or the records/registers checked and flimsy conclusions are drawn in the para of the inspection reports. It should be seen that all materials included in any objection indicating the years of occurrence, money value as per records/notes or the other authenticated documents are correctly mentioned in the query and calculations made therein should also be re-checked before issue of the query and drafting the paras of the IR. It should be seen whether the replies to the points mentioned in the query are properly given

by the local officer/head of office where necessary and verified that there remain no points unanswered particularly in the case of the paras having potentiality for marking as FIR. It should also be ensured that paras proposed to be marked as FIR, contain detailed comments of the district office and copies of key documents are attached.

Particular care should be taken to prepare a separate file for audit queries involved in proposed FIR paras only and submitted to the HQ along with the IR file and other audit query files. Appendices, where necessary, should be prepared in sixtuplicate, each page being legibly written giving grand total of each column where money figures and areas of land are involved. All pages of the appendices should be signed by the AAO/SO. A "Review Note" showing all the details of all the outstanding paras of the previous inspection reports reviewed with comments of the supervising Audit Officer should be prepared thoroughly and submitted with the inspection report.

1.1.11 Preparation of Inspection Report:

As soon as the audit query statements issued are received back with replies from the head of the local office inspected, they should be examined and verified (if necessary) with the relevant records. Those cases in which the replies are found not satisfactory or in which the audit objections stands even after the replies, should be incorporated in the Inspection Report.

The Inspection Report should be divided into three parts viz., **Part – I:** containing unsettled objections of previous inspection reports, **Part – II, Section - A:** containing major irregularities and objections. These should cover cases of under and over assessments of substantial money values and other important aspects of taxation administration for which action at higher levels may be required, **Part-II – Section B:** Irregularities which, though not major, are required to be brought to the notice of the higher authorities and **Part – III:** Test Audit Note containing minor irregularities and omissions which should be complied with by the Taxation Officers at their own levels. Part – III could be issued on the spot and in duplicate of which one copy should be received back with replies and kept in the IR, which should be verified during the next audit.

[C.&A.G.'s.letter No.1320-Rev. A/8-73 dated 5.3.1973and Para 6.1.20 of C&AG's Manual of Standing Orders (Audit)]

Time allotted in audit programme for each office includes time required for drafting the Inspection Report. The work of the local office, should, therefore, be so spread out as to complete the drafting of the Inspection Report before the inspecting staff leaves the local office on completion of audit. Before leaving the office on completion of audit the Section Officer/Assistant Audit Officer/Senior Audit Officer/ Audit Officer (in case of supervised inspection) should discuss the draft Inspection Report with the head of the local office inspected and obtain his signature thereon in token of his having perused the report and verified the corrections of the facts contained therein.

The draft Inspection Report duly attached with title sheet and forwarding memo in the prescribed format must reach the Receipt Audit Wing (HQ) within five days of the completion of audit.
[C & AG's Circular No.799-TA/83-83 dated 16.7.1983]

Separate Inspection Reports are to be prepared for Land Revenue Receipts and Minor Minerals Receipts.

When the audit of expenditure is undertaken alongwith audit of receipt, a separate report should be drawn up for expenditure audit, for onward transmission to OA (Inspection Civil) wing of the office of the Principal Accountant General (Audit), West Bengal for issue and pursuance.

[C & AG's letter No.161-Rec. A-IV/145-72 III, dated 30.6.1973 read with No.4149-Tech. Adm/639-68 dated 19.10.1969]

The results of investigation of the points included in Audit Note Book and the paras of the previous Inspection Reports marked for verification with the records of the Local Office by the next audit will be noted in the Audit Note Book.

1.1.12 Miscellaneous Instructions:

(a) In respect of audit of land revenue receipts, information as to records seen and records not produced to audit should be incorporated in the report itself.

[C & AG's letter No.222-Rec. A-IV/72-73 dated 13.8.1973]

(b) Separate paragraph should be included in the Inspection Report about the extent of arrears in the collection of revenue and about the position of internal control system in the department/local office.

1.1.13.Results of Audit:

Important points that may come out during the course of audit of Land revenue Receipts:-

=Advance possession of Government land without realisation of rent and salami

=Non-settlement of Government land under unauthorised occupation

=Non/incorrect renewal of long term leases

=Incorrect determination of rent and salami

=Non-assessment of market value and capitalised value of land transferred to the Central Government Departments/Undertakings/Corporations

=Irregular reduction of lease rent and salami in settlement of non-agricultural land

=Non-observation of time schedule for disposal of settlement cases

=Non-realisation of cesses from exempted raiyats

=Loss of revenue due to non-leasing of sairati interests

=Non-realisation of lease rent in respect of sairati interests

=Irregular transfer of big water areas to Pachayat Bodies

=Non-realisation of damage fee from unauthorised occupiers of Government land

=Non/short levy of interest for delay in payment of lease rent/cesses

=Non-assessment and non-realisation of salami from tea garden owners and etc.

ANNEXURE

Rates of revenue payable by the Raiyats in respect of different categories of Land used for different purposes with effect from 1st day of Poush 1412 BS (corresponding to 17 December 2005).

Sl. No.	Category of plot of land	Rate of revenue
(1)	(2)	(3)
1.	Where any plot of land is situated in the areas not falling within the local limits of any Municipal Corporation of Municipality, other than the areas of the Kolkata Metropolitan Development Authority-	
	(a) In case such plot of land is used for the purpose of agriculture;	Rs. 20.00 per acre
	(b) In case such plot of land is used for the purpose of activities allied to agriculture,	Rs. 30.00 per acre
	Explanation – The expression "activities allied to agriculture" shall mean fisheries, poultries, piggeries, gotteries, floriculture, horticulture, sericulture, dairies, livestock breeding and include other land based biomass production activities;	
	(c) In case such plot of land is comprised in tea garden and land used for cultivation of tea;	Rs. 30.00 per acre
	(d) In case such plot of land is used as homesteads and non- agriculture purposes other than commercial and industrial activities as mentioned in clause (1) and clause (n);	Rs. 40.00 per acre
	(e) In case such plot of land is held by any Government undertaking;	Rs. 50.00 per acre
	(f) In case such plot of land is used by a company or a body corporate, other than Government Company as defined in section 617 of the Companies Act, 1956 for the purpose of activities allied to agriculture as defined in Explanation to clause (b)	Rs. 150.00 per acre
	(g) in case of such plot of land is used for brackish water fisheries by individual fish farmers or by any co-operative society;	Rs. 200.00 per acre
	(h) in case such plot of land is used for brackish water fisheries by a company or any body corporate other than a Government Company as defined in section 617 of the Companies Act, 1956;	Rs. 400.00 per acre
	(i) in case such plot of land is used for any commercial and industrial activities as mentioned in clause (n) without having any *pucca* structure;	Rs. 500.00 per acre
	(j) in case such plot of land is used under multi- storied building by any co—operative society;	Rs. 600.00 per acre
	(k) in case such plot of land is used for housing complex developed by any private company or any public company, 0ther than a Government Company as defined	Rs. 800.00 per acre

	in section 617 of the Companies Act, 1956;	
	(l) in case such plot of land is used for any commercial and industrial activities, not specified in clause (n), in any *pucca* structure;	Rs. 1000.00 per acre
	(m) in case such plot of land is used for agro processing, food processing, agro- industries, agricultural commodities storage warehouses and godowns, food parks in *pucca* structure;	Rs. 1200.00 per acre
	(n) in case such plot of land is used for any commercial and industrial activities. Explanation – The expression " commercial and industrial activities" shall mean cold storages, rice mills, general trading warehouses, godowns, automobiles garages, repairing shops, business establishments in market place or supermarket, multiplexes, cinema, theatre or video halls, and hotels, restaurants, and hospitals, pathological laboratories, nursing homes, and include other offices and establishments of any company or body corporate other than a Government company as defined in section 617 of the Companies Act, 1956;	Rs. 1500.00 per acre
	(o) in case such plot of land is comprised in and used for mills, factories or workshops other than those commercial and industrial activities specified in clause (l) and clause (n);	Rs. 2000.00 per acre
2.	Where any plot of land is situated in the areas falling within the local limits of any Municipal Corporation or Municipality, other than the areas of the Kolkata Metropolitan Development Authority -	
	(a) in case such plot of land is used for the purpose of agriculture and activities allied to agriculture;	Rs. 20.00 per acre
	(b) in case such plot of land is used for homesteads and is situated within the local limits of --	
	(i) any Municipal Corporation,	Rs. 35.00 per decimal
	(ii) any Municipality of Category A,	Rs. 25.00 per decimal
	(iii) any Municipality of Category B,	Rs. 20.00 per decimal
	(iv) any Municipality of Category C,	Rs. 15.00 per decimal
	(v) any Municipality of Category D,	Rs. 10.00 per decimal
	(vi) any Municipality of Category E,	Rs. 5.00 per decimal
	(c) in case such plot of land is comprised in and used for mills, factories, workshops or any other commercial and industrial activities and such plot of land is situated within the local limits of -	
	(i) any Municipal Corporation,	Rs. 175.00 per decimal
	(ii) any Municipality of Category A,	Rs. 150.00 per decimal
	(iii) any Municipality of Category B,	Rs. 100.00 per decimal
	(iv) any Municipality of Category C,	Rs. 75.00 per decimal
	(v) any Municipality of Category D,	Rs. 50.00 per decimal
	(vi) any Municipality of Category E,	Rs. 25.00 per decimal
Explanation – The expression "commercial and industrial activities" shall mean cold storages, warehouses, godowns, automobiles garages, repairing shops, business establishments in		

market place or supermarket, multi – plexes, cinema, theatre or video halls, hotels, restaurants, and hospitals, pathological laboratories, nursing homes, and include other offices and establishments of any company or body corporate other than a Government company as defined in section 617 of the Companies Act;		
	(d) in case such plot of land is used for non- agricultural purposes other than commercial and industrial activities mentioned in clause (c)	Rs. 50.00 per acre
	Explanation I – For the purpose of determination of revenue in respect of any plot of loan, municipalities are classified into the following categories on the basis of population as ascertained at the last preceding census of which the relevant figure have been published -	
	Category A – municipal areas having population more than 2,15,000	
	Category B – municipal areas having population above 1,70,000 but not exceeding 2,15,000	
	Category C – municipal areas having population above 85,000 but not exceeding 1,70,000	
	Category D – municipal areas having population above 35,000 but not exceeding 85,000	
	Category E – municipal areas having population but not exceeding 35,000	
	Provided that Darjeeling Municipality is classified as Category A Municipality irrespective of the population	
	Explanation II- For the purpose of determination of revnue in respect of any plot of land comprised in and used for mills, factories, workshops or other commercial and industrial activities, revenue for the portion of the plot of land which is not directly used for shops, offices, storages and godowns, parking spaces in *pucca*, structures, of such mills, factories, workshops shall be assessed at the rate specified in clause (d) of serial No. 2;	

CHAPTER-II

MINES AND MINERALS.

1.2.1. Introductory:

Under Section 5(1)(a)(i) of the West Bengal Estates Acquisition Act, 1953, rights in sub-soil, including rights in mines and minerals in the estates, shall vest in the State free from all encumbrances and under Section 29 thereof all leases of mines and minerals granted by an intermediary and subsisting immediately before the date of vesting (15th April, 1955) are, with effect from such date, deemed to have been granted by the State Government on the same terms and conditions as of the subsisting lease. Therefore, the lessees holding mines directly under the properties or tenure holder will hold the same directly under the State Government and pay royalty and other dues to the State Government, irrespective of the fact whether such lessees have given out any sub-lease or not.

(Board of Revenue Memo No. 2690(4)-E.A., dated 25.2.1956 to the Addl. Collector(EA), Birbhum).

The lease amounts previously payable by the lessees of mines to ex-intermediaries now being collected by the State Government in the Land and Land Reforms Department.

Entry 54 of List 1 (Union List) of the Seventh Schedule of the Constitution empowers Legislature to regulate mines and minerals to the extent declared to be expedient in public interest and to the extent there is no such declaration, this power vests with the State Legislature under Entry 23 of List II (State List). The Mines and Minerals (Development and Regulation) Act, 1957 (Act 67 of 1957) was passed by Parliament on 28th December, 1957 regulating mining operations of all minerals. Under Section 4 of this Act, no person can undertake any reconnaissance, prospecting or mining operations in any area except under a reconnaissance permit or a prospecting licence or a mining lease granted under the Act by the State Government. Section 9 of the Act requires the holder of a mining lease, whether granted before or after the commencement of the Act, to pay royalty in respect of mineral removed by him from the leased area, at the rates specified in the Second Schedule to the Act. The rates in the schedule will thus prevail over the rates mentioned in the lease agreements entered into by the ex-intermediaries. There is also provision of payment of dead rent by the mining leaseholder for all the areas included in the instrument of lease under Section 9A of the Act.

The Second Schedule contains a list of 51 items and the rates of royalty in these cases are ad-valorem in some cases and are on quantitative basis in others. In the case of royalty leviable on ad-valorem basis, it is to be calculated on F.O.R., price subject to a minimum of 50 paise per ton in the case of coal and on sale price at the pits mouth in the other cases. Though there is no definition of these expression in the Act, both the terms 'F.O.R. price' and sale price will include the excise duty, cesses and sales tax where they are leviable and the former will include also the element of freight included

in the price (See definition of sale price under the Sales Tax Act the scope of 'F.O.R. price' discussed in Thungabhadra Industries Vs. C.T.O. II STC 827).

The receipts on account of royalty regulated under the Central Act also accrues to the State of Entry 50 of list II of the Seventh Schedule of the Constitution. Besides royalty, surface rent/dead rent, as the case may be is also realisable from the mining leaseholders. Different kinds of cesses (PW, Road, Primary Education, and Rural Employment Cess) under the Cess Act, 1880, the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment & Production Act, 1976 are also, leviable at the prescribed rates for extraction and despatch of both major and minor minerals from the quarry-site. The mining lease holders are also liable to pay Water Rate at the rate specified in the West Bengal Irrigation (Imposition of Water Rate) Act, 1974 for use of water from streams during mining operation.

In exercise of the powers conferred by Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957 the Central Government has made rules known as the Mineral Concession Rules, 1960 which regulates the procedures for grant of reconnaissance permits, prospecting licences and mining leases for undertaking any reconnaissance, prospecting or mining operation in any area and renewal of prospecting licences and mining leases.

In case of granting of mining leases, a lease deed in Form K or in a form as near thereto as circumstances of each case may require is required to be executed within six months of the order or within such period as the State Government may allow in this behalf. A model Form of Mining Lease (Form K) is given in the Mineral Concession Rules, 1960.*(Rule 31 of the Mineral Concession Rules, 1960)*

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1.2.2. Organisational set up and procedure for assessment and recovery:

The Director of Mines and Minerals under the control of the Commerce and Industries Department (Mines Branch) is the administrative head of the Mining Estates Branch of the State. He is assisted by the Chief Mining Officer (CMO) at Asansol and 4 Zonal Mining Officers at Siliguri, Suri in Birbhum, Chinsurah in Hooghly and Purulia. The grant of mining leases and licences etc. of minerals bearing areas and assessment of royalty, dead rent etc. for both major and minor minerals (excepting cases of quarry permits for minor minerals which are granted by the minor minerals section under the District Collector/District Land and Land Reforms Officer (DL&LRO) on advance realisation of royalty) are dealt with by the Mining Officers with the approval of the Director.

On completion of assessment, the Chief Mining Officer and the Zonal Mining Officers send the assessment orders to the Cess Deputy Collector, Asansol or the Collector of the district/ DL&LRO

concerned as the case may be for realisation of assessed revenue. However, the Primary Education cess under the West Bengal Primary Education Act 1973 and rural employment cess under the West Bengal Rural Employment and Production Act, 1976 leviable on coal are assessed (ad valorem from October 1983) and collected by the Commissioner, Commercial Taxes, West Bengal under the Finance Department with effect from October 1982. The surface rent and cesses on major minerals, the royalty and cesses on minor minerals are assessed and collected by the DL&LRO or Cess Deputy Collector, as the case may be.

The concerned authorities, liable to effect recoveries from the assesees, are required to credit the amount of royalty etc. under the appropriate head of account. They should furnish to the CMO monthly statements in each month, showing amount of royalty etc. paid by each lessee in respect of each separate lease/mine during the preceding month. These statements should show the figures for coal, non-coal and minor minerals separately.

(Board of Revenue Memo No.15116/45/23/69 M&M dated 29.7.1969)

1.2.3 Recovery of certain sums as arrears of land revenue: Any rent, royalty, tax, fee or other sum due to the Government under the Mines Act and the rules made thereunder or under the terms and conditions of any permit, license or lease may be recovered as an arrear of land revenue. *(Sec.25(1) of the M&M(D&R)Act,1957)*

1.2.4. Penalty provisions:

Provisions for penalty are laid down in Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957 which, inter-alia, contains the following: -

Whoever contravances the provisions of sub-section(1) or sub-section (1A)of Sec. 4 of the M&M (D&R) Act, 1957 shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to twenty five thousand rupees or with both (sub-section 1)

Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the minerals so raised, or, where such minerals has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(SubSection-5)

1.2.5 Rates Applicable

(A) Royalty:

In terms of item of the Second Schedule to the Mines and Minerals (Development & Regulation) Act, 1957, the rate of royalty of the Act, that the rate is applicable even in respect of lease granted on coal is fixed at 5 per cent of the F.O.R. price in terms of section 9(1) before the commencement of Act for any mineral removed after such commencement, notwithstanding anything contained in the lease agreement. In West Bengal, as the rights previously under intermediaries were vested with Government from 15.4.1955 under the Estates Acquisition Act, 1953, the royalties accrued to the State only from the date. By S.O. No. 3094, dated 29th December 1961, issued by the Government of India, Department of Mines and Fuel (Ministry of Steel, Mines and Fuel), under Section 9(1) it was directed that even in respect of mining leases of coal granted before 25th October, 1949, the lessee shall pay royalty on coal at the rate specified in any agreement between the lessee and the lessor or at 2.5 per cent of F.O.R. price, whichever was higher, instead of the rate in the Second Schedule. By S.O. No. 81, dated 1st January, 1966, effective from that date, the Government of India directed that the rate in the Second Schedule (viz. 5 per cent on F.O.R. price) will be applicable even in respect of mining lease in respect of coal granted before 25th October, 1949. The rates of royalty in coal were thus as under from time to time and this is known as the "Three-tier formula:-

15.4.1955 to 28.12.1961	At the rates mentioned in the lease of the ex-intermediaries (Section 29 of the Estates Acquisition Act).
29.12.1961 to 31.12.1965	At the above mentioned rates or at 2 1/2 per cent whichever is higher (S.O. No. 3094, dated 29.12.1961)
10.1.1966 onwards	At 5 per cent (S.O. No 81 dated 1.1.1966).

The State Government decided that pursuant to the decision of the Supreme Court (A.I.R. 1967 S.C. 887) Government was legally entitled to claim royalty in respect of coal leases (even in respect of those granted prior to 15.10.1949) at the statutory rate of 5 per cent of F.O.R. price with effect from 15.4.1955 and that the notification of the Government of India in this matter had no effect.

(C&I Department Circular Nos. 750(30) Mines dated 19.2.1969 and 5158(30) Mines 3R-27/69 dated 21.11.1969)

From 1st March, 1971 onwards the royalty on coal has been prescribed at specific rates on the quantity of coal despatched as per Second Schedule of the Mines and Minerals (Development and Regulation) Act, 1957. Notification No. CI-17/70 dated 19.2.1971 issued by Government of India, Ministry of Petroleum and Chemicals and Mines and Metals. (Department of Mines & Metals) has prescribed the specific rates. The existing rates of royalty on coal and other minerals generally found in this State are given below.

1. Coal Group

(i) Group-I Coals: (Grade – A)	
(a) Coking Coal Steel Grade-I Steel Grade-II Washery Grade-I	Seven rupees only per tonne.
(ii) Group-II Coals: (Grade – B)	
(a) Coking coal washery Grade-II Coking coal washery Grade-III (b) Semi-coking coal Grade-I Semi-coking coal Grade-II (c) Non-coking coal Grade-A Non-coking coal Grade-B	Six rupees and fifty paise only per tonne.
(iii) Group-III coals	
Coking coal washery Grade-IV Non-coking coal Grade-C	Five rupees and fifty paise only per tonne
(iv) Group-IV coals: (Grade – C)	
Non-coking coal Grade-D Non-coking coal Grade-E	Four rupees and thirty paise only per tonne.
(v) Group-V coals: (Grade – D)	
Non-coking coal Grade-F Non-coking coal Grade-G	Two rupees and fifty paise only per tonne

Explanation: For the purpose of this item, the specification of each grade of the coal shall be as prescribed under clause 3 of the Colliery Control Order, 2000.

2. Dolomite	Eight rupees per tonne
3. Fireclay (including plastic, pipe, lithomargic and natural pozzolanic clay)	Five rupees per tonne
4. Limestone (a) LD Grade (less than one and half per cent Silica content) (b) Others.	Ten rupees per tonne
5. Pyrophyllite	Ten rupees per tonne
6. Chinaclay/Kaolin (including Ballclay, white shale and white clay.) (a) Crude	Eight rupees per tonne

(b) Processed(including washed)	Thirty-five rupees per tonne.
7. Felsper	Six rupees per tonne
8. Sand for stowing	Forty paise per tonne.
9. Quartz, Silica sand, Moulding sand and Quartzite.	Five rupees per tonne.
10. Ochre	Six rupees per tonne

Ref: - Notification of the Government. Of India in the Ministry of Steel and Mines (Dept. of Mines) No. GSR 458(E) dated 5.5.1987 (For SL No. 2 to10)

(B) Dead Rent:

(1) The rates of dead rent applicable to the leases other than those obtained for supply of raw material to the industry owned by the concerned lessee:

(RATES OF DEAD RENT IN RUPEES PER HECTARE PER ANNUM)

Category of the Mining Lease	**1st year of the lease**	**2nd to 5th year of the lease**	**6th to 10th year of the lease**	**11th year of the lease and onwards**
1	**2**	**3**	**4**	**5**
1. Lease area upto 50 hectares	Nil	30	60	90
2. Lease area above 50 hectares but not exceeding 100 hectares	Nil	40	80	120
3. Lease area above 100 hectares	Nil	60	100	150

In the case of lease obtained for the supply of raw material for the industry owned by the concerned lessee, the rates of dead rent would be applicable as given in respect of item No.1 above irrespective of the lease area.

(Section 9A of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 27(1)(c) of the Mineral Concession Rules, 1960)

(C) Surface Rent:

Rate of Surface Rent in respect of leased out area is as under:

Rs 111.17 per hectare i.e. Rs.45 per acre per annum.

(Rule 27(1)(d) of the Mineral Concession Rules, 1969)

(D) Cesses:

(i) Rates of different kinds of cesses leviable on major minerals extracted and despatched from the quarry site are as under:

Name of mineral	P.W.Cess	Road Cess	Primary Education Cess	Rural Employment Cess
Coal	50 paise per metric tonne (MT) of annual despatch.	50 paise per metric tonne (MT) of annual despatch.	5 per cent of the annual value• of the coal-bearing land	20 per cent of the annual value of coal bearing land.
In respect of minerals other than coal including stowing sand	As above	As above	Re. 1 per MT of annual despatch	50 paise per MT of annual despatch.

(ii) Rates of different kinds of cesses on Dead Rent and Surface Rent for area of land occupied/leased out for mining operation.

(Per rupee of annual rent)

PW cess under the Cess Act, 1880	25 paise
Road Cess under the Cess Act, 1880	6 paise
Primary Education Cess under the W.B. Primary Education Act, 1973	10 paise
Rural Employment Cess and Surcharge under the West Bengal Rural Employment and Production Act, 1976	45 paise (30+15)
Total	**86 paise per rupee of rent.**

(E)) Water Rate:

According the terms of Model form 'K' the lease holder of a mining lease is required to pay water rate at the rate of Rs.54 per acre per annum of the leased out area under the West Bengal Irrigation (Imposition of Water Rate) Act, 1974.

(Rule 27(1)(d) of the Mineral Concession Rules 1960).

1.2.6 Rates of interest leviable for non/short payment of mining dues:

(A) For non/short payment of royalty, rent, fee or other sums payable under the Mining Act and the rules made thereunder:

• Annual value of coal-bearing land in relation to a financial year means one-half of the value of coal produced from such coal bearing land during the two years immediately proceeding that financial year excluding taxes, duties and other charges. Where there is no production of coal for more than two consecutive years, such land shall be liable for levy of cess in respect of any year immediately succeeding the said two consecutive years.

24 (twenty four) per cent per annum from the sixtieth day of the expiry of the date fixed by the Government for payment of such dues until payment is made

(Rule 64A of the Mineral Concession Rules, 1960)

(B) For non /short payment of PW & Road cesses leviable under the Cess Act, 1880

6.25 per cent per annum on the unpaid/short paid amount of cess dues.

(C) For non/short payment of Primary Education cess leviable under the W.B. Primary Education Act, 1973 and rural employment cess leviable under the West Bengal Rural Employment & Production Act, 1976

2 (Two) per cent for each month of default in payment of cess dues.

(Section 78A of the West Bengal Primary Education Act, 1973 and Section 4A of the West Bengal Rural Employment and Production Act, 1976)

1.2.7 Procedure for Audit:

The audit of assessments and recovery of royalty and other Government. dues has to be done in two stages, the assessments have to be subjected to scrutiny at the offices of the Chief Mining Officer and other Mining Officers the collection of royalty etc. on the basis of the assessments, at the offices of the Cess Deputy Collector, Asansol and the concerned District Land & Land Reforms Officers, as the case may be.

The basis for the assessments of the royalty is the monthly returns submitted by the mining lease holder to the CMO and other Mining Officers in which the figures of despatches of coal and other minerals will be given, along with F.O.R. prices where the royalty is to be calculated thereon. These returns are checked by the CMO and other Mining Officers as the case may be in accordance with the instructions contained in the State Government's orders and the assessments are made. If no such returns had been filed, the assessment are based on information about the production of the mines, obtained from other sources, such as periodical statements furnished by the mines to the Director of Mines and Minerals and other authorities. The assessments have to be generally scrutinized in audit with reference to the supporting materials and correctness to be verified in accordance with the law and orders of Government. It should also be seen whether the demands on the basis of the assessments had been raised promptly and that adequate records have been kept to watch realisation of the demands. The monthly statements received from the DL&LROs should be reviewed to see that they have been subjected to adequate checks by the departments and posted in the Royalty Register. Dues shown outstanding for a long time and the adequacy of the action taken to realise them should be reviewed and commented upon. It should be seen that all the demands communicated to the DL&LRO had been

acknowledged by that authority and cases in which such acknowledgements are not forthcoming should be listed for verification by audit in the office of that authority.

In the office of the Cess Deputy Collector, Asansol and the DL&LROs concerned, the cases of demands raised, particularly those pending for a long time should be scrutinized to verify whether demands have been raised promptly and pursued diligently. In the case of old demands, the action taken to effect recoveries by coercive methods prescribed by law would be reviewed. In case of old demands communicated by the CMO and other mining officers but not acknowledged by the Cess Deputy Collector, Asansol and the DL&LROs the latter should be requested to trace them and take action in consultation with the former. The recoveries shown to have been effected in the statements sent to the CMO and other mining officers should be checked with the demands raised and discrepancies, if any, should be got reconciled. The credits in the Treasury accounts for the recoveries should also be traced to the usual extent.

1.2.8. Chief Mining Officer:

The Chief Mining Officer and Mining Officers, Government of West Bengal, Mining Estate Branch, Directorate of Mines and Minerals, West Bengal shall make assessment in respect of royalty, dead rent, other charges (excluding surface rent) in respect of Mines and Minerals payable to the State Government excepting in the cases of short term leases for minor minerals. In a case where a person other than a lessee is in actual control of operation in a mine assessment should be made against the lessee or such other person being made a party to any court action for realisation of the same without prejudice to the State Government's right to take such other actions under the law as may be considered necessary for violation of the Central Acts and Rules in force from time to time.

Information regarding surface rent, if provided in the terms of the lease should be sent to the DL&LRO concerned for assessment and realisation of the same.

The Accounting year for assessment shall be the financial year and accounts shall be maintained accordingly.

The Chief Mining Officer and Mining Officers of the Mining Estate Branch may direct the lessees/prospecting licensees to furnish such returns and documents as may be necessary to find out the quantum of minerals raised and despatched and also to furnish such other documents and returns which shall be necessary for verification of right title in respect of the property and assessment of dues on account of mines and minerals.

The Chief Mining Officer and Mining Officers may verify and check up the corrections of such returns and documents with reference to information available from dependable sources and also by actual verification and inspection. In the cases where the lessees do not submit any return document or

statement in spite of all efforts summary assessment should be made on the basis of other available dependable materials without prejudice to legal action that might be taken for such default. The Chief Mining Officer and Mining Officers may, however, make re-assessment in such cases, if such lessees ultimately furnish necessary information and return before certificates are filed against them on the basis of summary assessment. The reasons for re-assessment should be recorded in each case. Where on examination, scrutiny and inspection of return and documents and the stock of minerals, any material discrepancy involving the assessment of the royalty is detected, the lessee/licensee shall be given an opportunity to explain such discrepancy. On receipt of such explanation or on the event of no such explanation being furnished within a reasonable time, Chief Mining Officer and Mining Officers will take final decision in the matter and make assessment accordingly in consultation with the Director of Mines and Minerals and the Government in Commerce and Industries Department, if considered necessary. After assessment is complete, the same should be forwarded to the realising authorities. In case where re-assessment is made, the Chief Mining Officer, should also send such report to the realizing authority recording reasons for such re-assessment.

If any Mining Lessee/Prospecting Licensee fails to submit any documents and return as may be required by the Chief Mining Officer for the purpose of assessment of rent and royalty or verification of title in property, Chief Mining Officer and Mining Officers shall issue notice upon such lessee for production of such returns and documents exercising the powers conferred upon them under Section 24 of the Mines and Minerals (D&R) Act, 1957 and also under the authority conferred upon them by the State Government under Rule 27 of the M.C. Rules, 1960 failing which appropriate action as provided in the said Act and Rules or any other law in force shall be taken against such defaulting lessees. In cases of repeated failures on the part of Lessee/Licensee to furnish such returns and documents, the Chief Mining Officer, shall bring the matter to the notice of the Government through the Director of Mines and Minerals for examining if the lease may be determined for the above breaches without prejudice to State Government's right to take any other action against such Lessee/Licensee as provided under the Rules and Acts.

Where the sale price of minerals is a controlled fixed price such price should be taken for the purpose of assessment of royalty provided anything to the contrary is not provided in any Act and Rules. In other cases where royalty is chargeable on the sale price on ad valorem basis and where there is no controlled fixed price for such mineral till royalty is fixed on tonnage basis, the sale price of any particular consignment of such mineral should be determined depending on Bill Registers and other books of accounts of the company and such other reliable information as may be considered desirable by the Assessing Officer.

In case of non-coal minerals where royalty is fixed on ad valorem basis on the pit's mouth value of the mineral, the pit's mouth value shall be arrived at after deducting necessary charges on account of transport, loading, unloading benefaction cost, etc. from the F.O.R. price of the mineral as may be determined by the Assessing Officers.

Regarding the size and quality grade of coal, which has a bearing on the price of coal the Chief Mining Officer and Mining Officers, until further order, shall generally proceed by the figures and information furnished by the Lessee/Licensee unless if appears to be not acceptable. The Assessing Officer may, however, make enquiry about the grade and size and also use their discretion.

The Chief Mining Officer and Mining Officers shall use discretion in allowing expenditure for use of coal for boiler consumption or for consumption of labour etc., without waiting for Government decision. In case of any doubt the Director of Mines and Minerals may be consulted.

Where a leased area carrying a dead rent has been subleased without any specific provisions for dead rent, the dead rent on such sub-leased area shall be calculated pro-rata on the basis of the dead rent provided in the lease. Similarly, the dead rent on the lease area left after the sub-lease shall be reduced on pro-rata basis.

In respect of a lease where royalty on coal is payable on the basis of percentage of F.O.R. price for assessment of additional charges, if provided in such lease, it shall be examined, if such additional charge may be deemed to have merged with the royalty according to the construction of lease terms. If so, these charges should be left out from assessment. Otherwise they should be included. In case of doubt a reference may be made to the Government through the Director of Mines and Minerals. In case of free fuel coal to be supplied to the Government as per terms of the lease, the price of coal as provided in the lease should be charged. If no price is mentioned in the lease it should be charged at the market rate prevailing at the time of its being due. If the lease provides for free supply of coal and the lessee is reluctant to pay the price in lieu of such free coal, the matter shall be referred to the State Government through Director of Mines and Minerals for decision. No charge for fuel coal shall be made for the period during which there was no raising in the mine.

Full particulars of the lease deeds in respect of which royalty of minerals is payable together with the due dates of payments of royalty shall be kept ready in the Mining Estate Branch, Asansol for purpose of issue of notices, reminders regarding submission of returns and particulars necessary for assessment of royalty in case of defaulting lessees.

Immediately on receipt of the monthly return of 'Raising, despatches and stock of coal and royalty due' the arithmetical accuracy thereof should be checked and if the figures are found correct posting from that return to the royalty register should be completed.

Thereafter the Chief Mining Officer and or any Mining Officer should verify the raising, despatch and stock figures as stated in the said return with a view to see as far as practicable that:

(i) High-grade coal has not been shown as inferior grade of coal;

(ii) Raising and despatch figures have not been suppressed.

Such verification may be done by actual visit to mine, examination of mine plans, survey of mines, examination of raising and despatch register, workers attendance register or in any other manner considered necessary.

At the time of assessing royalty the duty of the Assessing Officer would be to check, as far as practicable, whether the total figures of the F.O.R. price of coal despatched as per monthly returns, agrees with the figures of sales shown in the audited statement of accounts as well as in the books of account. In case of disagreement, the figures in the audited statement of account shall ordinarily be accepted. He should further scrutinise the books of account of lessees/licensees to see that no sales or production have been suppressed.

In cases of collieries in respect of which audited statement of accounts are not produced, the verification of the figures as per monthly returns and scrutiny of the sales and production as mentioned above should be done thoroughly with reference to the books of account.

In respect of limited companies and other concerns who have more than one colliery or some of the collieries are situated outside West Bengal or which have different terms of leases the Assessing Officer in such cases may accept figures certified by their auditors. The lessees may also be asked to furnish the detailed calculation of royalty shown in the Profit and Loss Account.

Assessment in cases of under-reporting should be made on the basis of the Report of the Committee which was set up under this Department Order No. 29--Mines, dated the 29th January, 1968 for formulating a detailed procedure for assessment of royalty.

1.2.9. Results of Audit:

Important points that may come out during the course of audit of Receipts of Mines & Minerals:-

(A) Minor Minerals:

- ⇨ Short realisation of royalty due to application of incorrect rate;
- ⇨ Non/short realisation of price of minor minerals extracted unauthorisedly;
- ⇨ Non/short realisation of cesses on minor minerals;
- ⇨ Non/short assessment and realisation of surface rent and cesses;

- ⇨ Non/short raising of demand;
- ⇨ Non/short levy of interest for delayed payment of mining dues.

(B) Major Minerals:

- ⇨ Non-levy/short levy of revenue due to unauthorised extraction of mines;
- ⇨ Short levy of royalty due to application of incorrect conversion factor;
- ⇨ Incorrect gradation of coal;
- ⇨ Non-realisation of royalty due to non-raising of demand;
- ⇨ Short realisation of royalty due to incorrect classification of minerals;
- ⇨ Loss of royalty due to non-extraction of minimum quantity of minerals;
- ⇨ Loss of royalty due to unlawful mining of minerals not specified in the lease;
- ⇨ Blocking up of royalty;
- ⇨ Loss of royalty due to overstocking of minerals;
- ⇨ Loss of royalty due to use of stowing sand as ordinary sand;
- ⇨ Non-payment of cesses on excess consumption of coal in colliery;
- ⇨ Evasion of primary education and rural employment cesses;
- ⇨ Underassessment of primary education and rural employment cesses due to mistake in calculation;
- ⇨ Underassessment of cesses due to discrepancy in returns;
- ⇨ Non-levy of cesses on dead rent;
- ⇨ Non-realisation of cesses on surface rent;
- ⇨ Non-assessment and non-realisation of dead rent;
- ⇨ Non-assessment and non-realisation of water rate;
- ⇨ Non-levy/short levy of interest;
- ⇨ Non-inclusion of interest in certificate demand;
- ⇨ Non-levy/short levy of stamp duty and registration fees for execution and registration of lease deeds of mines;
- ⇨ Non-levy/short levy due to non- determination of mining lease.

CHAPTER - III

Internal Control :

Internal Audit System in Land and Land Reforms Department

1.3.1. Introduction:

Internal Audit System is designed for examination of the effectiveness of internal control prevailing in the management and recommend improvement. Internal Control is an integral process that is effected by an entity's management and is designed to provide reasonable assurance in order that the following general objectives are being achieved:

- fulfilling accountability obligations
- complying with applicable Laws and Regulations
- executing orderly, ethical, economical, efficient and effective operations
- safeguarding resources against loss

Land and Land Reforms Department have not set up any Internal Audit Wing so far. In absence of Internal Audit System, it is not ensured whether the above objectives are being achieved within the L & LR Department.

1.3.2. Role of Management in absence of Internal Audit:

As Internal Audit Wing is non-existent in L & LR Department; the management is responsible for all activities of the organisation including the internal control system. Their responsibilities vary depending on their function in the Department and the Departments' characteristics. For smooth as well as methodical functioning of the office/management, some records viz. Cash Book, Demand Register, Register of long term leases, Register of khasmahal properties, Stock Account of Receipts Books, Rent Receipts Books, Encroachment file along with updated entries etc. are required to be submitted for examination from time to time. They should also watch the application and maintenance of different forms introduced for enforcing internal control mechanism within the L & LR Department.

1.3.3 Role of Internal Audit in enforcement of Internal Control: As there is no Internal Audit System prevailing in the L & LR Department, the Department is not in a position to obtain any feed back regarding effectiveness of internal control prevailing in the subordinate offices. Accordingly, for enforcement of internal control in the Department for its smooth functioning, Department itself has the overall responsibility for the design, implementation and proper functioning of the internal control system. Department should establish an internal audit wing as part of the internal control system and use it in monitoring the effectiveness of internal control. Monitoring internal control *inter alia*, includes policies and procedures which ensure that the findings of audits

and other reviews are adequately and promptly resolved. Managers are to (i) promptly evaluate findings from audits and other reviews including those showing deficiencies and recommendations reported by auditors, (ii) determine proper actions in response to findings and recommendations from audits and reviews, (iii) complete, within established time frames all corrective actions that correct or otherwise resolve the matters brought to their attention. Efficient Internal Audit helps the management to put in place the Internal Control.

Internal auditors can be a valuable educational and advisory resources on internal control. In addition to its role of monitoring the organisations' internal control, an adequate internal audit can contribute to the efficiency of the external audit efforts by providing direct assistance to the external auditor. A strong internal audit unit can reduce the audit work of the Supreme Audit Institution (SAI) and avoid needless duplication of the work.

1.3.4 Role of Supreme Audit Institutions (SAI):

In absence of Internal Audit Wing in the L & LR Department; SAI have a greater responsibility to discharge. They should encourage and support the establishment of effective internal control in the Department by highlighting lacunae in the Land Reforms Act/Rules/Manual, system failure or system deficiency and recommending remedial measure in course of audit/review in the auditee units.

Thus SAI may play a strategic role in the development of the Internal Control Systems directly/indirectly depending on their legal mandate and management structure of the organisation.

CHAPTER – IV

Role of Audit against possible Fraud and Corruption in Land and Land Reforms Department

1.4.1 Introduction:

Fraud is deliberate misrepresentation of facts and/or significant information by one or more individual among the management, staff or third parties while corruption involves behaviour on the part of officials in the office in which they improperly and unlawfully enrich themselves by misusing the position in which they are placed.

The role of audit in addressing fraud and corruption has come under critical scrutiny in the wake of increasing cases of fraud and corruption in both Government offices and other sectors. Auditors as such need be more vigilant to and alert for situations, like control weakness, inadequacies in record keeping, cross and unusual transactions or results, which could be indicative of fraud, improper or unlawful expenditure, unauthorised operations, waste, inefficiency or lack of probity. Supreme Audit Institution (SAI) should endeavour to create an environment that is unfavourable to fraud and corruption for which they need be given adequate mandates that enable them to effectively contribute to fight against fraud and corruption.

1.4.2 Extent of Fraud/Corruption:

Fraud and corruption are mostly interlinked. So, while fraud and corruption should be perceived independently for their numerous implications, the auditor is required to be well aware of the complex co-relation between the two. Attention should be drawn to possibility of separate treatment, wherever the situation so warrants.

1.4.3 Fraud and corruption may involve:

- ✓ intentional misrepresentation of financial information;
- ✓ manipulation, falsification and alteration of records;
- ✓ misappropriation of money/assets;
- ✓ willful suppression or omission of the effects of transactions from records;
- ✓ recording of transaction without substance;
- ✓ wrongful application of accounting policies;
- ✓ misuse of office for private gain;
- ✓ offer to solicit an offer of inducement or reward as benefit for performance of an official act;

- ✓ attempt to camouflage;
- ✓ wilful misinterpretation of the provisions of Acts and Rules.

1.4.4. Audit Checks to prevent fraud and corruption:

While conducting audit on the accounts of Land Revenue Receipts, Audit should get reasonable assurance that risk of fraud and corruption is minimised. For that audit should closely examine:

- ✓ whether records are being maintained properly; if any, basic record is not maintained or discontinued, impact thereof on annual collection with reference to that of prior to discontinuation should be carefully investigated and commented upon;
- ✓ whether assessment of dues have been properly made taking into account correct rates prevailing during the accounting period. If there are recurring instances of underassessment, reason thereof needs be carefully investigated;
- ✓ whether the register of demand are properly maintained and all the entries are done properly;
- ✓ whether the Land Revenue/Cesses and other dues have been properly realised and duly credited to Government account;
- ✓ audit should make a thorough checking of totals of cash book and to verify challan register to ensure the amounts received and duly credited to Government account;
- ✓ stock account of Receipts Books to be checked with special care in order to prevent fraud by issue of fake receipts;
- ✓ audit should carefully check remittance to the Bank as per Receipt register, Bank/Treasury Challan books and the list of credits verified from the TF Section of Accountant General (A&E), West Bengal office, where the tax amounts are directly remitted into treasuries, the challan should be verified with the treasury records;
- ✓ exemption/remission cases are to be checked with reference to the provisions of Acts, Rules and Orders;
- ✓ rent and cesses are levied properly and exemptions are allowed by the competent authority as per provisions of Land Reforms Acts and Rules;
- ✓ audit should make a comparative study of revenue of the year taken up for audit with that of the previous year. If any alarming shortfall/excess comes into notice the reasons thereof need be investigated and commented upon;
- ✓ whether the provisions of LR Acts, Rules and Orders issued from time to time have been properly interpreted. It is to be seen if there is any misinterpretation for personal gain;

- ✓ whether there is any manipulations/falsifications/alterations of records;
- ✓ whether periodical verifications of the basic records exhibiting collection of revenue are regularly made by the competent authorities.

Audit should, above all, extend his responsibility to provide assurance to make the management aware of the weakness in the internal control system. It may submit proposals and recommendations to the auditee offices where controls are found to be inadequate/absent. Thus audit can be of significant influence in reducing fraud and corruption.

PART - II

THIKA TENANCY

CHAPTER -I

2.1.1 Introduction:

The West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 was published in Official Gazette (Vide Notification No.2118-L dated 22.11.2002). The object of the Act is to provide for the acquisition of interests of landlords in respect of lands comprised in thika tenancies in Kolkata, Howrah and other Municipalities of West Bengal for development and equitable utilization of such lands with a view of subservient the common good. The present Act replaces the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981.

The Act came into force with effect from 1st March, 2003.It extends to Kolkata as defined in Clause (9) of Section 2 of the Kolkata Municipal Corporation Act, 1980, excluding the whole or any area

included within limits of Kolkata which immediately before the 4th day of January, 1984 being the date of coming into force of the Kolkata Municipal Corporation Act, 1980, was comprised in any municipality and to Howrah as defined in Clause (15) of Section 2 of the Howrah Municipal Corporation Act, 1980, excluding the whole or any area included within the limits of Howrah which immediately before the 10th day of January,1983 being the date of coming into force of the Howrah Municipal Corporation Act,1980, was not comprised in the municipality of Howrah.

2.1.2 Organizational Set-up:

Under the administrative control of Land and Land Reforms Department, Government of West Bengal, two separate offices headed by the Controllers of Thika Tenancy have been set up for the areas of Kolkata and Howrah Municipal Corporations. The Controller is responsible for assessment and collection of revenue from the thika tenants.

Under the Controller of Thika Tenancy, Kolkata, four regional offices have been set up at Cossipore, Narkeldanga, Tangra and Belvedere. There is, however, no regional office under the Controller of Thika Tenancy, Howrah.

2.1.3 Definitions:

1. "Bharatia" means any person by whom, on whose account, rent is payable for any structure or part thereof owned by a thika tenant, but excludes any person paying rent to a Bharatia and any resident of a structure forfeited by the State Government under sub-section (2) of section 6, irrespective of the status, the said person may have enjoyed earlier.

2. "Controller" means an officer or officers appointed under Section 10 and includes an Additional and a Deputy Controller.

3. "Holding" means a parcel or parcels of land occupied by any person as a thika tenant under one set of conditions along with any tank included in such land.

4. "Landlord" means any corporation charitable or religious, institutions or person, who, for time being, is entitled to receive or, but for a special contract, would be entitled to receive, the rent for any land comprised in the tenancy of a thika tenant or in a khatal, tank or hut owned by him, and includes any corporation, institution or person having superior interest in such thika tenancy.

5. "Pucca structure" means any structure constructed mainly of brick, stone or concrete or any combination of these materials, or any other material of a durable nature.

6. "Khatal" means a place where cattle are kept or maintained for the purpose of trade or business including business in milk derived from such cattle.

7. "Lease" means a lease of immovable property by which a transfer of a right to enjoy such property made for a certain time expressed or implied or in perpetuity in consideration of a price paid or promised, or of money etc. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium and the money, share, service or other thing to be so rendered is called the rent.

2.1.4.Thika tenant and incidence of thika tenancies:

Thika tenant as defined in section 2(14) of the Act means any person who occupies, whether under a written lease or otherwise, land under another person, and is or, but for a special contract would be liable to pay rent, at a monthly or at any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for residential, manufacturing or business purpose and includes the successors-in-interest of such persons.

Section 4 of the Act provides that lands comprised in, and appurtenant to, tenancies of thika tenants including open areas, roads and land held in monthly or other periodical tenancies, whether under a written lease or otherwise, for being used or occupied as khatal and interest of landlords therein shall be deemed to have vested in the State, free from all encumbrances.

Sub-section (1) of section 5 of the Act provides that every thika tenant, occupying any land under a landlord shall occupy such land directly under the State as, if the State had been the landlord in respect of that land. Such thika tenant or tenants shall furnish to the Controller a return showing the particulars of his total land within the time as prescribed. The Controller may, on a written application from such thika tenant or tenants extend the date for furnishing the return by a period not exceeding sixty days.

Sub-section (1) of section 6 of the Act envisages that the thika tenants holding lands directly under the State shall be entitled to let out in whole or in Part structures existing or, or constructed after, the date of commencement of this Act on such lands but not any vacant land or any part thereof.

Sub-section (2) of Section 6 states that any transfer or agreement for transfer, whether oral or in writing, or any activity in contravention of the provisions of sub-section (4), or sub-section (5) of Section 5 or proviso to sub-section (1) of this section, shall be declared invalid under an order of the Controller and the structure or part of structure, as the case may be, shall be forfeited to the State in accordance with the procedure as may be prescribed.

Further sub-section (4) of Section 6 states that whenever it appears to the State Government that the land comprised in any thika tenancy is needed, or is, likely to be needed, for any public purpose, it may, after giving the thika tenant and the Bharatias, if any, an opportunity of being heard, resume the land comprised in such thika tenancy with or without structures, if any, and take possession of the land. Provided that immediately after such resumption, the State Government shall pay to the thika

tenant or the Bharatia, if any, an amount not exceeding ten times of the compensation determined under sub-section (6) of section 7 of the Act in addition to the compensation determined under sub-section (6) of section 7.

The term 'public purpose' shall include planned development of any area or holding and implementation of any scheme for improvement thereof.

2.1.5. Assessment and Collection of Revenue:

It has been provided under sub-section (2) of section 5 of the Act that every thika tenant shall be liable to pay to the State Government in the prescribed manner such revenue as may be determined.

Until the amount of revenue is determined, the thika tenant shall pay annual revenue being not less than what he was paying to the landlord before coming into force of the Act. The annual revenue paid for any period shall be adjusted against the amount of revenue when determined.

The amount of revenue, when determined shall be payable in such instalment or instalments and on such date or dates as the Controller may direct.

The Land and Land Reforms Department (Land Reforms Branch) however issued instruction that pending assessment of revenue under sub-section (2) of section 5 read with section 24 of the Act the thika tenant shall continue to pay revenue to the State Government at rates and periodicities at which they had been paying rent to the landlord before 18th January, 1982.

It has been provided therein that such periodical revenue shall be paid by challan only. The challan should be presented before the Controller for endorsing the same after proper scrutiny and verification of records and subsequent passing the challans for deposit of actual amount of revenue into the Kolkata Treasury or the State Bank of India, Howrah, as the case may be. The challan for subsequent payment of revenue may be passed only after the receipted challan for the last deposit is produced before the Controller.

(Ref.: - Government. of West Bengal, Land and Land Reforms Department (Land Reforms Branch), letter No. 2099(2)-R-Ref. 12A-2/82 dated 12.11.1982.)

2.1.6. Interest on Arrear Revenue:

Under sub-rule (d) of rule 3 of the Rules made under the Act, the arrear of revenue shall bear interest at the rate of the 6.25 per cent per annum from the date on which such revenue or instalment thereof falls due till the date of its payment.

Such arrears of revenue or part of revenue and interest accrued thereon shall be recoverable as public demand as per sub-rule (e) of rule 3 of the Rules made under the Act.

2.1.7. Offence and Penalties:

Sub-rules (c) and (d) of rule 3 of the Rules made under the Act provide for collection of penalty and levy of interest for delay in payment thereof but there is no provision in the Act and the Rules made thereunder, for levy of penalty for any other offences, if any.

2.1.8. Procedure of Audit:

Audit is conducted at the Office of the Controller of Thika Tenancy including the Zonal offices, if any, under their control. The primary duty of audit is to see that:

(a) Revenue payable by the thika tenant has been assessed correctly;

(b) Revenue payable by the thika tenant has been collected promptly;

(c) Adequate rules and regulations have been framed for proper assessment and collection of revenue;

(d) There exists regular accounting of demands and collection;

(e) That proper safeguards exist to ensure that there is no willful omission to levy and collect tax;

(f) That claims of tax are pursued with due diligence and are not abandoned or reduced except with adequate justification and proper authority.

In addition to the above, the following checks are to be exercised in audit with reference to the records and registers maintained in the offices

(A) Land Records:

This is the basic record for vesting of lands under the Act. The Controller or his Zonal Officer/s should maintain complete land records (record of right) of all the mouzas under his control.

This record should be checked in audit in order to assess the quantum of lands to be vested to the State and the number of thika tenants who are liable to pay revenue to the State.

(B) Return Register:

There should be a Register of Returns to be maintained by the Controller of thika tenancy or by the zonal officers under his control in respect of the thika tenants who submitted their returns. This register should be kept street-wise indicating the names of the thika tenants and other land particulars.

It should be checked in audit in order to see that:

a) All the thika tenants as recorded in the land records, have submitted their returns,

b) The returns were submitted within the prescribed time limit. The form and the manner of filling of the returns should be checked to see whether they conform to the rules governing them.

c) Prompt actions have been taken against the defaulting thika tenants,

d) All returns have been scrutinized promptly and revenue is being realised from all the thika tenants.

(Instructions issued by the Director of Land Records and Survey, West Bengal under letter No. 793/1219-20/C/81, dated 8-4-1983.)

(C) Tenants' Ledger:

A. Tenants' Ledger, keeping all records about tenancy, deposit of rent, etc., so that payment position may be ascertained at a glance, should be maintained. In audit, it should be seen that:-

e) names of all the thika tenants as per return register have been incorporated therein together with the particulars of rent paid by them,

f) the revenue has been realised in full and in time,

g) interest has been charged for delay in payment of revenue,

h) prompt action has been taken for realisation of arrear revenue by certificate proceedings,

i) entries in the tenant's ledger should be test-checked with the challan register in order to see that postings of credits are genuine and properly done,

j) Collection of revenue by challans has been promptly posted in this register.

(D) Challan Register:

A challan register should be maintained for noting down the particulars of challans passed by the Controller. On receipt of challans (receipted) from the treasury, a note about receipt of revenue should be kept in this register.

This register should be checked in audit to see:

a) whether revenue or instalments thereof as per challans passed by the Controller, has been deposited into the treasury/bank,

b) whether additional interest, where the revenue was deposited long after the date of passing the challan has been levied,

c) whether proper action has been taken against the tenants who default in payment of revenue even after the challan are passed by the Controller,

d) the amount of revenue deposited during a month agrees with that of the treasury.

(Government. of West Bengal Land Reforms Branch letter no. 2099(2)-L.Ref / 2A-2 / 82 dated12.11.1982)

2.1.9. Internal Control and Role of Audit against possible Fraud and Corruption

Internal Control – Internal Audit System and Role of Audit against possible Fraud and Corruption in Land and Land Reforms Department have already been discussed in Para – 1.3 of Chapter – III and Para – 1.4 of Chapter – IV of Part – I of this volume respectively which may please be referred to while conducting audit of this item.

PART-III

TAXES on VEHICLES

CHAPTER-I

3.1.1. Legislative background

Taxes on mechanically propelled vehicles is a subject included in item 35 of List-III (concurrent list) of the Seventh Schedule to the Constitution of India. Both Parliament and the State Legislatures have jurisdiction to make laws on the subject in terms of Article 246(2) of the Constitution. While the law made by the Parliament is mainly regulatory in nature and that by the State Legislatures are both regulatory and taxing. In addition, the state Legislatures have the power under entry 57 of List-II (State List) to levy "Taxes on vehicles, whether mechanically propelled or not suitable for use on roads, including tram cars" subject to the provisions of entry 35 of List-III.

3.1.2. Central Legislation

The Motor Vehicles Act, 1988 (Central Act No.59 of 1988) as amended from time to time lays down the law relating to motor vehicles, regulates the licensing of drivers of motor vehicles, conductors of stage carriages, registration of motor vehicles, control of transport vehicles including those in State Transport Undertakings, control of traffic and other incidental and ancillary matters such as insurance of motor vehicles against third party risks, offences and penalties for contravention of the provisions of the Act etc.

3.1.3. Acts/Rules governing Motor vehicles Tax

i. Motor Vehicles (MV) Act. 1988
ii. Central Motor Vehicles (CMV) Rules, 1989
iii. West Bengal Motor Vehicles Tax (WBMVT) Act. 1979
iv. West Bengal Motor Vehicles (WBMV) Rules, 1989
v. West Bengal Additional Tax and One-Time Tax on Motor Vehicles (WBAT&OTTMV) Act, 1989

3.1.4. Salient features alongwith Government policy

The basic principles relating to issue of driving licence, grant/renewal of registration certificates and control of vehicles, grant/renewal of permits and provisions of penalties for offences are governed under the MV Act, 1988. The Act has empowered both the Central and the State Governments to make rules prescribing detailed procedures for implementation of the provisions of the Act. The CMV Rules 1989 and the WBMV Rules 1989 have prescribed various kinds of fees relating to registration , certificate of fitness, assignment of new registration mark, grant / renewal of registration fee, application fees for permit both temporary and permanent, special permit fee etc.

The WBMVT Act, 1979 and the WBAT&OTTMV Act, 1989 prescribe levy of tax, additional tax and one time tax on different types of vehicles at rates prescribed under the rule. Both the above acts provide for imposition of penalty at specified rates depending on the delay in payment of tax from the due date of payment.

The Regional Transport Officer (RTO) at the district level and Additional Regional Transport Officers (ARTO) at the Sub-divisional level perform the duties of registering authorities and taxing officers. The Director, Public Vehicles Department (PVD) is the taxing and registering as well as permit issuing authority within the jurisdiction of Kolkata.

The RTOs act as permit issuing authority for the districts.

3.1.5. Scope of Audit

The revenue realized from motor vehicles may generally fall under the following categories:

i. Fees realized under the provisions of the MV Act, 1988, CMV Rules, 1989 and WBMV Rules, 1989;

ii. Taxes/Additional Tax and One Time Tax on motor vehicles realised under the provisions of the WBMVT Act, 1979 and WB AT&OTTMV Act, 1989;

iii. Fines, penalties and composition money realised under various provisions of the aforesaid Acts and Rules.

The responsibility of audit is to see the correctness of levy and realization of taxes, fees, fines and penalties with respect to the extant rules and orders.

CHAPTER - II

3.2.1. Procedure of Registration

Procedure relating to registration of motor vehicles are contained in Sections 39 to 47 of the MV Act, 1988 and Rules 52 to 75 of the WBMV Rules, 1989. According to these provisions all motor vehicles have to be registered with the appropriate Registering Authority in the state in which the owner has his residence or place of business and the vehicles have to display in the prescribed manner the registration number that is given/ assigned to each vehicle.

3.2.2. Method of Application for Registration

The applications for issue, renewal of certificate of registration and assignment of new registration mark under Section 41(1), 41(8) and 47(1) MV Act, 1988 have to be submitted in prescribed Form by the applicant to the registering authority under Rules 54(1) of the CMV Rules, 1989 alongwith a fee prescribed in Rule 81(Sl.No . 4) of the said Rules.

A motor vehicle registered in a state is not required to be registered elsewhere in India and the certificate of Registration issued or in force will be effective throughout the country vide Section 46 of the M.V. Act, 1988. But under Section 47(1) of the Act a fresh registration mark has to be applied for and given when a vehicle registered in the state and is kept in another state for more than a year. In terms of Section 43 of MV Act, 1988 read with Rule 60 of the WBMV Rules, 1989 a temporary certificate of registration valid only for a period not exceeding one month, can be issued on receipt of requisite fee. The registration of motor vehicles belonging to a diplomatic officer or consular officer is governed by the provisions under Section 42 of the MV Act, 1988.

3.2.3. Registration of Transport Vehicles

Section 58 of the MV Act, 1988 read with Rule 62 of the WBMV Rules, 1989 provides certain special provisions for the registration of transport vehicles.

The registering authority when registering a transport vehicle other than a Motor Cab shall make entry in the record of registration and in the certificate of registration of the vehicle the following particulars :-

i. the un-laden weight of the vehicle;
ii. the gross vehicle weight (GVW) of the vehicle and the registered axle weight pertaining to the several axles thereof;
iii. the number, nature and size of the tyres attached to each wheel;
iv. if the vehicle is used or adopted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided.

Under Section 58 of the MV Act, 1988 the Central Government have specified the maximum gross vehicle weight and maximum safe axle weight of transport vehicles. [vide Schedule below O.O. No. So-728(E) dated 18.10.1996].

3.2.4. Registration of Tractor-Trailers and Trailers

In exercise of the power conferred by Section 58(3) of the MV Act, 1988 the Central Government accorded approval to the registration of certain types of vehicles viz. Tractor-Trailers and Trailers of different description as detailed in the notifications issued from time to time [viz. S.O. 777(E) dated 08.11.1996, S.O. 366(E) dated 10.11.1998 and S.O. 396(E) dated 28.5.1999].

3.2.5. Registration of vehicles used by the Defence Department

In exercise of the powers conferred by Section 60(1) of the MV Act, 1988 the Central Government specifies the following officers who may register the motor vehicles used for Government purposes relating to the Defence of the country and unconnected with any commercial enterprise.

i. The officers commanding of units of the Army and above the rank of Major;

ii. The officers commanding of units of the Air Force and above the rank of squadron Leader;

iii. The officers commanding of units of the Navy and above the rank of Lieutenant Commander.

The above officers may grant certificate of fitness in respect of the aforesaid vehicles.

(Notification No. S.O. 424(E) dated 09.6.1989).

3.2.6 Procedure for fixation of laden weight of transport vehicle

(A) The maximum safe laden weight as notified by the Central Government in terms of Section 58(1) of MV Act, 1988, will be the registered laden weight (RLW) to be entered in the registration certificate;

(B) The registered laden weight (RLW) of all rigid transport vehicles with two axles (front axle two tyres and rear axle four tyres) registered between 1968 and March 1983 should be fixed at 150% of manufacturers' ratings or 16,200 Kgs. whichever is less;

(Transport Department. Letter No. 4681 WT dated 5/11.5.1984)

(C) In case of any transport vehicle registered in other state and brought into West Bengal for re-registration, the registering authority may revise the entry in the registration certificate in accordance with the notification issued under Sub-Section(1) of Section 58 of MV Act, 1988. If maker's document is not available, the registering authority may revise the entry in accordance with RLW assigned to the vehicles of the same make, model and wheel base in the state of West Bengal and the revised RLW will have to be communicated to the original registering authority(Home Transport Department Notification No. 1898 WT dated 22.12.1972);

(D) Military disposal vehicles/converted vehicles/assembled vehicles or such other types of vehicles where the manufacturer's ratings are generally not available, should be co-related with conventional vehicles and RLW assigned correspondingly as stated in the Schedule to the Notification dated 29.9.1982.

(Transport Department letter No. 8990-WT/3M-157/32 dated 14/17.11.1983)

3.2.7. Certificate of Fitness of transport vehicle

Under Section 56 of the Act read with Rule 57 of the WBMV Rules, 1989, all transport vehicles other than the vehicles which are properties of the Central Government under Section 60 of the Act, shall not be deemed to be registered unless they carry a "Certificate of Fitness" in Form-38 except the vehicles for which application for renewal of 'Certificate of Fitness' (CF) have already been made under Rule 57 but the same have not been disposed of by the concerned transport authority before the date of expiry of CF. In such cases the CF shall be deemed to remain valid till disposal of the application vide Rule 66 of WBMV Rules, 1989.

A certificate of Fitness remains valid throughout India for the period as below:

i) New transport vehicle	Two years.
ii) Renewal of CF in respect of vehicles mentioned in (i) above	One year
iii) Vehicles covered by tourist permits	Three years.
iv) Fresh registration of imported vehicles	Same period as in the case of vehicles manufactured in India with regard to the date of manufacture.

However, the issuing authority may for reasons to be recorded in writing, cancel a CF at any time during its validity period.

The rates of fee for grant or renewal of a CF are specified in the Table below Rule 81 of the Central Motor Vehicles Rules, 1989 and as revised from time to time. An application for renewal of CF shall be made not less than one month before the expiry of the Certificate. If the owner fails to make application on or before the date aforesaid but before the expiry of the CF he shall be liable to pay 150 *percent* of the fee prescribed under the rule. If the application for Certificate of fitness is made beyond the date of expiry of the certificate the owner is liable to pay 150 per cent of the full fee together with the amount as shown in Schedule E 14 vide Rule 57(6) of the WBMV Rules, 1989. This is in addition to any fine payable under Section 192 of the Act.

3.2.8. Transfer of ownership of motor vehicles

Transfer of ownership of motor vehicles are governed by Section 50 of the MV Act, 1988 read with Rule 69 of the WBMV Rules, 1989.

As per Rule 81 of the CMV Rules, 1989 the fee for transfer of ownership is half of the registration fee as prescribed. In case of failure to submit the application for recording the transfer of ownership within the prescribed period the owner of the vehicle shall pay the amount as specified in Schedule A in addition to normal fees vide Rule 65 of WBMV Rules, 1989.

Note: The registering authority, however, enjoys power to condone the delay and to accept a token amount of Re.1 in very genuine cases.

3.2.9. Endorsement of hire-purchase lease and hypothecation of agreement

An application for entry of the agreement, in the Certificate of Registration duly signed by both the registered owner and the financer/lessee, shall be made in proper form to the registering authority alongwith the Certificate of Registration and the requisite fee as specified in Rule 81 (Rule 60 of CMV Rule, 1989). The owner of the vehicle and the financer/lessee shall make application in the proper from alongwith the Certificate of Registration and the appropriate fee as specified in Rule 81, to the registering authority for termination of the agreement (Rule 61 of CMV Rule, 1989).

3.2.10. Alteration of Motor Vehicle

Alteration means a change in the structure of a vehicle, which results in a change in its basic feature viz. modification of engine, facilitation of operation by different types of fuel or sources of energy etc. However, no owner of a motor vehicle may alter the vehicle in such a way necessitating changes in the particulars of the Certificate of Registration, without prior consent of the registering authority. If alteration made without consent it shall be reported to the registering authority within fourteen days of the alteration together with Certificate of Registration and prescribed fee.

3.2.11. Exemption from payment of registration fees

(A) Rule 61 of the W.B.M.V. Rules, 1989 allows exemptions from payment of registration fees in respect of the following Motor vehicles owned by the Anjuman Mufidul Islam, the Hindu Satkar Samity, the Jewish Burial Board or by any other similar organization(s) and used exclusively for the removal of dead bodies;

i. Motor vehicles owned by any organisation and certified by the State Government as used solely for charitable purposes;

ii. Motor vehicles in the name of (a) Consulate General, (b) High Commission, (C) Trade Commission and (d) Embassy.

(B) Under Rule 33 of the CMV Rules, 1989 the motor vehicles in the possession of dealers shall be exempted from the necessity of registration, but the dealers are required to obtain trade certificate from concerned registering authority on payment of fee as specified in Rule 81 of CMV Rule 1989

3.2.12. Trade Certificate

Rules 34 to 46 of the CMV Rules, 1989 deal with trade certificate. An application for the grant of or renewal of trade certificate shall be made in Form-16 together with appropriate fee as specified in Rule 81. Separate application shall be made for each category of vehicles. A trade certificate granted or renewed under Rule 35 shall be in force for a period of 12 months from the date of issue or renewal thereof and shall be effective throughout India. No holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent.

3.2.13. Showroom Inspection Fee

For the purpose of registration under Section 41 and temporary registration under Section 43 of M.V. Act., 1988 of both transport and non-transport vehicle fitted with complete and ready body the vehicle shall be inspected in the showroom of the dealer. A fee as prescribed in Schedule-A (as revised from time to time) shall be realized from the dealer/sub-dealer vide Rule 60A of WBMV Rules, 1989.

3.2.14. Cancellation of Registration

Under Sections 54 and 55 of the MV Act., 1988 the registering authority may cancel the certificate of registration under the following circumstances:

i. When registration has been under suspension for an uninterrupted period of not less than six months;

ii. If any motor vehicle has been destroyed or rendered permanently incapable of use on the road;

iii. In the case of permanent removal of vehicle out of India.

3.2.15. Appeals against the order of the Registering Authority

Any owner of motor vehicles being aggrieved by an order of the registering authority under Sections 41, 42, 43, 45, 47, 48, 49, 50, 52, 53, 55 and or 56 may appeal to the competent authority prescribed under Rule 54 of CMV Rules, 1989 within thirty days of the receipt of the order together with appropriate fee as specified in Rule 81 read with Section 57 of the MV Act., 1988 and Rules 70 & 71 of the CMV Rules, 1989.

3.2.16. Grant of Permit

No owner of a motor vehicle shall use or permit to use a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a regional or state transport authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used under Section 66(II).

The procedure for applying, granting, renewal, transfer, cancellation, suspension and validation for use outside the region in which permit granted, duration and general conditions attaching to all permits are governed by the provisions under Sections 69 to 88 of the MV Act, 1988

3.2.16 (A) Types of permit

i. Stage carriage permit;
ii. Contract carriage permit;
iii. Goods carriage permit;
iv. Private service vehicle permit;
v. National Permit(goods carriage);
vi. Tourist vehicle permit (Tourist Bus, Taxi, Motor car).

A permit other than a temporary permit or a special permit shall be effective for five years from the date of its issue or renewal.

3.2.16 (B) Security Deposit for permit

Security deposit for grant of all kinds of permits shall be as prescribed in Schedule E4.

Note: i) No security deposit is required in respect of vehicles belonging to State Transport undertaking or to the State Government vide notification no 14602-WT/TE-72/91 dated 19.12.1991.
ii) Security deposit is refundable if the permit prayed for, is not granted

(Rule 124 of WBMV Rules, 1989)

3.2.16 (C) Application fees for permits

The fee for application for grant or renewal of permit shall be as specified in Schedule A as per Notification no 2668-WT/3M-151/96 dated 04.5.1998.

3.2.16 (D) Permit fees

The fees in respect of grant or renewal of permits shall be as specified in Scheduled-A as per Notification No. 2668-WT/WT/3M-151/96 dated 04.5.1998.

3.2.16 (E) Permit fees period

The fee in respect of all classes of permits are payable for the whole period at the time of grant or renewal of permit. But in the case of a permit in respect of a service of stage carriage issued to any state transport undertaking the fee is payable annually vide Rule 130 of WBMV, Rules, 1989.

3.2.16 (F) Exemption from payment of permit fee

The State Government may exempt any vehicle from payment of permit fee and fee for its renewal and countersignature belonging to:

i. the Consulate General;
ii. the Trade Commissioner;
iii. the High Commissioner;

iv. the Embassy, if there is reciprocal arrangement;

v. the Charitable Institution used solely for the purpose of charity.

(Rule 134 of WBMV Rules, 1989)

3.2.16 (G) Countersignature of permit

Under Section 88 of the MV Act, 1988 a permit granted by the RTA of any one region shall not be valid in any other region unless the permit has been countersigned by the RTA of that region and permit granted in any State shall not be valid in any other State unless countersigned by the STA of that state or by the concerned RTA.

The fees for application and countersignature of permits shall be as specified in Schedule-A and as revised from time to time.

3.2.16 (H) Temporary authorization in lieu of permit

If the holder of the permit is required to part with the permit or any part thereof (part A or B) he shall be allowed by the authority a temporary authorization enabling him to ply the vehicle on road.

3.2.17. Tourist Vehicle Permit

An application for the grant of a tourist permit shall be made to the state transport authority. The tourist permit shall be deemed to be invalid from the date on which the motor vehicle covered by the permit completes 9 years in the case of motor cab and 8 years for others from the date of initial registration.

(Rule 82 of CMVR, 1989)

An authorisation fee is to be paid annually in bank draft of Rs.500 per annum or as revised from time to time. If the permit holder undertake to pay it direct to the concerned STA at the time of entry in his jurisdiction, the authorisation shall expressly state the fact thereon.

(Rule 83 of CMVR, 1989)

3.2.18. National Permit

An application for grant of a national permit (all India permit) shall be made to the STA or the authority designated by the State Government. A national permit shall be deemed to be invalid from the date on which the multi axle goods carriage completes 15 years, non-multi axle goods carriage completes 12 years and the multi axle trailer completes 25 years from the date of initial registration.

Application for authorization for national permit shall be accompanied by a fee in bank draft as prescribed. The period of validity of an authorization shall not exceed one year at a time vide Rules 86 to 88 of CMV Rules 1989.

The permit fee for grant of national permit and tourist vehicle permit shall be as specified in Schedule E4.

3.2.19. Composite fee

The composite fees shall be realized from the holders of tourist vehicle permits and national permits in lieu of all taxes. The composite fee in respect of goods carriage which has for the purpose of plying in the state of West Bengal, national permit granted by any other state, shall be the same as the composite fee fixed by such state in respect of goods carriage which has for the purpose of plying in such state, national permit granted by the state of West Bengal.

The composite fees in respect of motor cabs, and omnibus, which have for the purpose of plying in the state West Bengal, national permits granted by the states, other than the state of West Bengal or Union Territories, shall be as follows:

i. Motor Cabs upto 6 seats – Rs. 300 per quarter;

ii. Motor Cabs of 7 to 13 seats – Rs. 3000 per quarter;

iii. Omnibus of 14 to 35 seats – Rs. 12,000 per quarter.

Note: The composite fees shall be collected by the States/Union Territories which issues permits on behalf of West Bengal in bank drafts and sent to the latter and the vice versa.

3.2.20. Special fees on heavy goods vehicle

Special fees on heavy goods vehicles e.g. articulated trailor, truck-trailor combination, rigged frame goods vehicle having gross vehicle weight above 22,542 Kg is governed by the provisions under Rule 121 of the WBMV Rules, 1989 read with GOs circulated from time to time. The owners of such vehicles are required to pay a fee called special fee per annum at the prescribed rates :-

Annexure - I

Sl. No.	GVW in Kg.	Amount of fee
1.	Upto 22,542	No fee
2.	Upto 26,400	3,000
3.	Upto 30,000	4,000
4.	Upto 34,000	5,000
5.	Upto 38,000	6,000
6.	Upto 42,000	7,000
7.	Upto 46,000	8,000
8.	Upto 50,000	9,000
9.	Upto 52,000	10,000
10.	Upto 60,000	11,000
11	Upto 70,000	12,000
12	70001 and above	13, 000

(GO Nos 20013-WT/3M-121/85 dt. 28.12.1990, 2160-WT/3M-121/85 dt. 22.02.1991, 4716-WT/3M-121/85 dt.06.4.1991 and circular No. 7952--WT/3M-157/82 dt.05.6.1991)

3.2.21. Permit

3.2.21 (A) Transfer of Permit

Section 82 of MV Act, 1988 and Rule 159 of the WBMV Rules, 1989 deal with transfer of permit from one person to another as well as to the legal successor of the deceased permit holder. In no case transfer can be effected without the permission of the transport authority who granted the permit.

After death of the permit holder the legal heir is to intimate the fact of death, stating his intention to use the permit to the transport authority who granted it. Application for transfer shall be made within three months of the death, which may be condoned by the authority in genuine cases. Fee for transfer of permit shall be as specified in Schedule A.

3.2.21. (B) Cancellation and Suspension of permit

The Transport Authority who granted a permit may cancel or suspend the permit for such period as he thinks fit for the reasons stated in Section 8 of MV Act read with Rule 147 of WBMV Rules 1989.

3.2.21.(C) Issue of duplicate permit

In the case of loss or destruction of part A or part B of any permit, each part may be issued in duplicate on payment of fee as specified in Schedule A vide Rule 160 of WBMV Rules 1989.

3.2.21.(D) Renewal of permit and counter-signature of permit

Rules 148 and 149 of WBMV Rules 1989 deal with renewal of permit and renewal of counter-signature of permit respectively. The renewal shall be subject to payment of fees in the scale as prescribed in Schedule-A.

If application for renewal is made after expiry of due date a fee in the scale as prescribed in Schedule E-3 shall be paid for condonation of delay vide Rule 151 of WBMV Rules 1989.

3.2.22. Appeal

When any order is made by the State Transport Authority or the Regional Transport Authority in connection with Chapter-V of the MV Act and the permit holder is aggrieved by such order, he may prefer appeal under Section 89(1) to the State Transport Appellate Tribunal against such order.

3.2.23. Special provisions for state transport undertakings

Under Section 99 of the MV Act, 1988 the State Government may formulate proposal of a scheme for public interest that road transport services in general or in relation to any area or route should be run or operated by the state transport undertaking, which should get approval in the prescribed manner before giving into effect.

In order to give effect to the approved scheme in respect of a notified area/route the concerned Transport Authority may refuse to entertain any application for grant/renewal of permit (both stage

carriage and goods carriage, as the case may be) from private operator or cancel or modify the terms of existing permits vide Section 103(1) & (2) of the Act.

Under Sec.103(3) it is declared that no appeal shall be made against any action taken or order issued, by the STA or any RTA under Section 103(1) & (2).

3.2.24. Driving Licence

3.2.24.(A) Procedure relating to grant of driving licence

Under Section 3 of the MV Act, 1988 no person shall drive a motor vehicle in any public place unless he holds an effective driving licence and no person shall drive motor vehicle as a paid employee or drive a transport vehicle unless his driving licence specifically entitles him to do so.

3.2.24.(B) Types of driving licence

i) Learners licence;
ii) Non-professional licence;
iii) Professional licence.

The conditions governing the issue of driving licence are contained in Chapter-II (Section 3 to 121 of the MV Act) and Rules 3 to 23 of the CMV Rules 1989.

Under Section 14 a learner's licence is valid for six months but renewable on payment of requisite fee. Second renewal is at the discretion of the licensing authority.

In the case of a licence to drive a transport vehicle it is valid for three years but in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature it is valid for one year and renewable subject to condition of completion of one day refresher course.

In the case of any other licence it is valid for twenty years if the person obtaining licence has not attained the age of fifty years on the date of application or renewal or till the date on which he attains fifty years, whichever is earlier, but after fifty years licence is renewable for five years, vide Sec. 14(M) of the Act. However, the driving licence continues to be valid for a period of thirty days after the date of its expiry.

3.2.24.(C) Issue of duplicate licence, transport vehicle driver's badge and duplicate thereof

Under Rule 9 of the WBMV Rules 1989 the licensing authority is empowered to issue duplicate licence in case of loss/destruction/defacement/being torn on receiving fee as specified in Schedule-A. The rate of fee for issue of driver's badge and duplicate thereof shall be as specified in Schedule-A (Rule 19(3) of WBMV Rules 1989).

3.2.24.(D) Temporary authorisation in lieu of a licence

When a licence is submitted to the authority for renewal/seized by the police officer/any court takes temporary possession of the licence, the licensing authority/the police officer/the court shall issue a temporary authorization in favour of the holder to drive.

3.2.24.(E) Revocation of licence

The licensing authority and the court may disqualify driving licence on the conditions and circumstances as laid down in Sections 16, 19 and 20 of the MV Act, 1988. However, the aggrieved person may appeal to the prescribed appellate authority against the order.

3.2.24.(F) Driving licence to drive motor vehicles belonging to the Defence Department

Under Section 18 of the Act read with Rule 20 of CMV Rules, 1989 the authorities to issue driving licence are as follows:-

(i) all the officers commanding of units of Army of and above the rank of Major;

(ii) all the officers commanding of units of Navy of and above the rank of Lieutenant Commander;

(iii) all the officers commanding of unit of Air Force of and above the rank of Squadron Leader.

3.2.24.(G) Rates of fees

The rates of fees in connection with driving licence have been specified in the table below Rule 32 of the CMV Rules, 1989 and as revised from time to time. However, under Rule 16 of the WBMV Rules, 1989 the State Government may exempt from payment of fees in respect of personnel belonging to the:

i. Consulate General,

ii. High Commission,

iii. Trade Commission,

iv. Embassy of any country.

3.2.24.(H) Issue of conductor's licence in respect of Stage carriage

Section 29 to 37 of MV Act, 1988 and Rules 29 to 51 of WBMV Rules, 1989 deal with the matters relating to conductors' licence. The fee for issue of a conductor's licence and for each renewal thereof shall be one-half of that of a driving licence in terms of Section 30 of MV Act, 1988 read with Rule 32 of CMV Rules 1989. For rates of fee for duplicate conductor's licence, conductor's badge and duplicate thereof Schedule-A under WBMV Rules, 1989 and upto-date notification in the matter should be consulted.

3.2.24.(I) Driving school and establishments

No person shall establish or maintain any driving school or establishment for imparting instructions in driving motor vehicles without a licence granted by the licensing authority on receipt of appropriate fee as specified in Rule 32 of CMV Rules1989.

3.2.24.(J) Offences, Penalties and procedure

Section 177 to 186, 189 to 192A, 194 and 196 deal with various kinds of offences punishable under the MV Act.

3.2.24.(K) Compounding of offences

Any offence punishable under Sections 177, 178, 179, 180, 181, 182, 183(1) & (2), 183, 184, 186, 189, 190(2), 191, 192, 194, and 196 may be compounded by such officers as the State Government specify by notification. The offence may be compounded before or after the institution of the prosecution. If the offender is in custody, after the offence has been compounded he shall be discharged, and proceeding will be closed vide Section 200 of the MV Act, 1988

Procedure of compounding of offences has been discussed in rule 349 of the WBMV Rules 1989.

CHAPTER - III
West Bengal Motor Vehicles Tax Act, 1979

3.3.1. Introduction :-

Before enactment of the West Bengal Motor Vehicles Tax (WBMVT) Act, 1979 (came into force with effect from 01.6.1979 by notification No. 6318-WT, dated 23.5.1979) the realization of tax on Motor Vehicles in West Bengal had been guided under the provisions of the Bengal Motor Vehicles Tax Act, 1932 and the Rules made thereunder viz. the Bengal Motor Vehicles Tax Rules, 1957. Although the old Tax Act, 1932 has been replaced by the Tax Act, 1979 the said Rules have not been replaced by framing new Motor Vehicles Tax Rules under the West Bengal Motor Vehicles Tax Act, 1979 the Tax Rules, 1957 are still in force (Govt. of W.B Transport Department letter No. 5085-WT/3M-189/2004 dated 17.11.2004)

By passage of time the Government of WB amended some Sections/Sub-Sections/clauses of the Act and also revised the rates of Tax specified in the Schedule thereto by notification in the official Gazette from time to time.

3.3.2. Imposition of tax:-

a. Under the WBMV Tax Act, 1979 every owner of a registered motor vehicle or every person who owns or keeps in his possession or control any motor vehicle shall pay tax on such motor vehicles at the rate prescribed in the Schedule -Sec 3(1)

b. In case of a chassis which may be constructed or adopted for use in future as a transport vehicle, tax shall be imposed from the date of weighment or the date of presentation of the complete vehicle for registration, whichever is earlier. But tax shall be imposed automatically after expiry for a period of three months whether the body on the chassis is completed or not (GO No. 2306-WT dated 28.2.1992)

c. The dealer who keeps in his possession or control any motor vehicles shall also pay tax on such motor vehicles at rates prescribed in the Schedule although the motor vehicles are not driven in any public place on the basis of trade certificate- Sec 3(2)

NB. A manufacturer of motor vehicles do not come within the purview of the definition of dealer. If any manufacturer is engaged in selling his vehicles outright and trade certificates are granted in respect of the vehicles to be sold, such manufacturer has to pay dealer's tax.

d. In case of a motor vehicle which is brought to WB from outside the state on temporary registration is liable to pay such tax but such a vehicle on permanent registration is exempted from payment of such tax.

e. If any air-conditioning machine is fitted in a motor vehicle the owner of the vehicle shall pay a special tax at the rate specified in part 1 of the Schedule.

However the following mechanically propelled vehicles can not be called motor vehicles and taxes can not be imposed

i. A vehicle running on fixed rails in a factory or enclosed premises;

ii. A vehicle fitted with less than four wheels and having engine capacity of not exceeding 25 CC;

iii. A vehicle of a special type adopted for use only in a factory or enclosed premises but is not road worthy at all;

iv. The special equipments adopted for use within the enclosed Airport/Mine Areas.

(GO Nos RT-11044/4/92-MVL dated 03.11.1992 and 1104/4/92-MVL dated 18.10.1993)

Note: Dumpers and Rockers run on rubber tyres, are vehicles used for transportation of goods and thus liable to pay a compensatory tax for availability of roads for them to run upon.

3.3.3. Realisation and calculation of Tax

Realisation of tax depends on actual use as well as classification of the motor vehicles. There are various models of vehicles which should be classified according to their uses or modes of plying and brought under the categories of vehicles as defined under the MV Act and Rules framed thereunder as well as the Tax Acts.

Under the Tax Schedule of both the WBMV Tax Act, 1979 and the WB Additional Tax and One Time Tax on Motor Vehicles Act, 1989 different rates of tax have been prescribed on the basis of seating capacity or unladen weight/gross vehicle weight of the vehicle. Therefore, before assessment and realization of tax, the following information should be ascertained:

a. Actual use of the vehicle

b Type of the vehicle - Transport or non transport

i. In case of transport vehicle whether it is a contract carriage / stage carriage / Private service vehicle or bus of a company or goods carriage;

If stage carriage, whether an express bus or deluxe bus or tourist bus or limited service bus or ordinary bus;

ii. If non-transport vehicle, whether falls under motor car (not more than six seats excluding driver) or an Omnibus (more than six seats excluding driver) and registered in the name of individual owner and declaration given by him regarding use for private purpose.

Note: In the certificate of registration type of vehicle, fixation of actual seating accommodation, unladen weight, Gross vehicle weight shall be recorded properly

3.3.4. Calculation / Assessment of Tax

3.3.4.(A). In the case of non transport vehicle

MV Tax /Addl. Tax to be assessed from the date of registration if registered within seven days from the date of delivery from the dealer, excluding the period of journey.

(GO No 2306-WT dated 28.2.1992)

3.3.4.(B) In the case of transport vehicle

Tax / Addl Tax to be assessed from the date of weighment or the date of presentation of the completed vehicle for registration, whichever is earlier.

(GO No. 2306-WT dated 28.2.1992)

3.3.4.(C). In the case of seized unregistered vehicle

If the date of purchase or possession is not ascertained, tax shall be assessed from the year indicating the make/model of the vehicle.

(GO No.166-WT dated 05.1.1995)

3.3.4.(D). In the case of vehicle purchased from army disposal/public auction

To be calculated/assessed from the date of original registration of the vehicle purchased by the present owner, if the date can't be ascertained from the date of purchase through army disposal or public auction (to be treated as a date of first registration)

(GO No.13260(25)-WT dated 24.10.1989)

3.3.5. Mode of payment of Tax

(A) Tax is payable annually in advance by the person liable to pay the tax within such period as may be determined by the Taxing Officer. In case of transport vehicle tax shall be paid quarterly in advance and a rebate of five per cent shall be allowed if the tax is paid for the whole year in advance.

Section 4(1)

(B) Section 4(1A) of the Tax Act provides the grace period of fifteen days for payment of tax for the subsequent period. In the case of natural calamity delay in payment of the tax may be condoned by the State Government;

Note: If the last day of grace period is a holiday tax may be accepted on the very next working day (GO No.12150-WT dated 01.10.1991)

(C) In the case of a vehicle temporarily registered under Sec.43 of the MV Act 1988 one-twelfth of the annual tax shall be paid;

(D) In the case of a motor vehicle registered outside West Bengal and is used/kept for use in WB temporarily, Tax shall be payable for every week or part thereof for the period the vehicle so used or kept for use at the rate of 1/52nd part of annual tax per week;

(E) In the case of a transport vehicle registered in any place outside state but plying in WB without valid permit and payment of tax payable in WB, such vehicle shall pay arrear tax for 17 weeks prior to the date of interception at the rate specified in Part-II under sub-heading "B vehicles for carrying passengers plying for hire or reward" in the Schedule together with a fine of an equivalent amount;

(F) If a transport vehicle registered outside the state but temporarily kept in West Bengal is found plying in the State without paying tax in WB, such vehicle shall pay tax for a period of one year preceding the date of interception at the rate specified in part-I under sub-heading "A vehicles for carrying passengers not plying for hire or reward" in the Schedule together with a fine of an equivalent amount in addition to tax for a further period on one year;

(G) In the case of failure by the owner of a vehicle registered outside the state to produce convincing documents regarding arrival of the vehicle to WB at the time of paying tax/change of address/assignment of new registration mark, he shall pay tax for more than one year together with a fine of an equivalent amount (Section-4);

(H) If a motor vehicle is altered in such a manner than higher rate of tax is payable in respect of the altered vehicle the owner is liable to pay an additional tax of a sum equal to the difference between the tax paid and the amount payable after alteration (Section 6);

Note: Such additional tax has no relation to additional tax payable under WB Additional Tax and one-time Tax on Motor Vehicles Act, 1989.

(I) The exemption of tax can be allowed only in respect of a vehicle for the period during which the vehicle is not fit or opt out for use on the public place in the event of mechanical failure due to accident or otherwise subject to all the documents in respect of that vehicle have been surrendered to the Taxing Officer.

3.3.6. Exemption from payment of Tax and additional Tax

The State Government, in the public interest, may, by notification in the official Gazette, exempt either totally or partially any motor vehicle or class of motor vehicles from the payment of tax .

(Section-21)

The following offices/organisations/individuals are entitled to full exemption of MV Tax and Addl. Tax on motor vehicles (Ref. : Notification Nos. 7964 WT dated 07.7.1989 and 7110-WT dated 03.8.1994).

a. Offices of Govt. of West Bengal,

b. Central Armed Forces/Central Security Force/Railway protection Forces,

c. Persons as the members of the Territorial Army,

d. Local Authority, Municipal Body, Notified Area Authority and Corporation which are exclusively used for conservancy or Water Supply purposes,

e. Kharagpur Station Committee for conservancy and fire extinguishing purposes,

f. Ramkrishna Mission/Sarada Pith/Belur Math and Mission,

g. Little Sisters of the poor and St. Joseph's Home for the Aged,

h. Consulates and Consular Officers charge de affairs of countries which grant reciprocal facilities in such matters,

i. Following officers or staff of the office of the High Commissioner for the United Kingdom in India:
    i. Deputy High Commissioners,
    ii. Counsellors,
    iii. First Secretaries,
    iv. Second Secretaries.

j. Deputy High Commissioner of Pakistan and Bangladesh at Calcutta and the following diplomatic members of his staff:
    v. Counsellors,
    vi. Secretaries,
    vii. Attaches,
    viii. Advisors,

k. Charitable institutions in opinion of State Govt. using vehicle solely for charitable purposes,

l. Trade Commissioners/Assistant Trade Commissioners/Trade Agents of other countries,

m. United Nations and its agencies and organizations,

n. Technical Co-operation Mission/International Development Mission of the United States of America and the personnel of the said mission not being Indian Nationals,

o. Owner of the vehicle used only for carrying dead bodies for cremation or burial (Exemption granted annually),

p. Physically handicapped persons,

q. St. John's Ambulance,

r. Ambulance/Mobile dispensaries:
    i. Hospitals of State Government or Hospitals run under the direct control of the State Government.
    ii. Municipalities, Local Bodies, Municipal Corporation and Indian Red Cross Society,
    iii. Charitable Institutions, Private Hospitals, Nursing Homes, Trusts, Societies, Services of which are rendered free of cost(vide Notification No. 18848-WT dated 26.11.1990)

s. Tractors/Trailers used exclusively for agricultural purposes or within tea gardens and not on public road,

t. Vehicles owned by CSTC/SBSTC/WBSTC/CTC are exempted from payment of tax at the first registration by the dealers,

u. MV Tax for stage carriage belonging to all STCs of West Bengal(Ref. : Notification No. 8927 dated 25.8.1999)

v. Non-transport vehicles belonging to i) the West Bengal Pollution Control Board, ii) Central Bureau of Investigation and iii) Border Security Force registered in West Bengal,

w. If the vehicle is not used and the certificate of registration and other papers in respect of that vehicle is surrendered to the Taxing Officer for non-use of the vehicle,

x. Battery-operated vehicles/CNG vehicles/solar powered vehicles for a period of five years from 19.9.1994(Ref. : Notification No. 8577-WT dated 19.9.1994).

3.3.7. Liability to pay tax

If the tax payable in respect of a vehicle remains unpaid after transfer of its ownership, such tax shall be borne by the transferee or who is in possession of that vehicle. In such case tax cannot be claimed from the former owner of that vehicle.

Note: This Section of the Act shall not affect the liability to pay the arrear tax by the transferor.

3.3.8. Imposition of penalty for non/delayed-payment of tax

Section 11 of the MBMV Tax Act, 1979 empowers the Taxing Officer to impose penalty at rates between 25 per cent and 100 percent of tax due depending on the period of delay in payment. If the tax is not paid within the specified period under Section 4(1) or Clause (a) or (b) of Sub-section (1A) of Section 4, the person is liable to pay penalty as below:

3.3.8(A) In the case of transport vehicles :

i) Within 30 days after expiry of grace period of 15 days - one fourth of the tax due.

ii) After 30 days but within 60 days after expiry of grace period of 15 days – Half of the tax due.

iii) After expiry of 60 days on expiry of grace period of 15 days – equal to the amount of tax

3.3.8(B) In the case of other vehicles :

Same as the case of transport vehicles above.

Under Section 11A of the Act the State Government may by notification in the official gazette specify the rate of penalty for non-payment of tax in the following cases:

The national permit holder authorized to operate his vehicle in West Bengal,

In the case of goods carriage the public carrier's permit holder permitted to operate his carriage in West Bengal

3.3.8(C) Validity of permit in the case of non-payment of tax :

Section 12 of WBMV Tax Act, 1979 provides that if the tax due in respect of a transport vehicle is not paid within the prescribed period, the permit shall be invalid from the date of expiry of the prescribed period till the tax is actually realized.

3.3.8(D) Refund/Remission of Tax :

Section 13 of the Act deals with the procedure of claiming refund or remission of tax. The claimant is to apply to the Taxing Officer together with supporting documents within prescribed time limit.

Note: Any arrear tax, penalty or fine shall be recovered in the same manner as an arrear of land revenue vide Section 14.

3.3.8(E) Search and seizure of Motor Vehicles :

Section 16 of the WBMV Tax Act, 1979 empowers State Government Officer, as may be prescribed, and Police Officer not below the rank of sub-Inspector, to check any motor vehicle in the prescribed manner for the purpose of verifying that the tax payable under the Act, had been paid. The officers may also seize and detain any vehicle for which tax is due. The vehicle so seized may be released if due tax together with prescribed penalty is paid to or documents in support of payment of tax are produced to the Taxing Officer, having Jurisdiction, by the owner within 30 days of detention of the vehicle. On expiry of 30 days the vehicle may be sold in auction unless the owner pays double the amount of the total tax due including penalty under Section-11 within a further period of 15 days.

Note: For detailed procedure of issue of notice to the owner, publication of notice specifying aggregate amount plus 20 percent administration cost in two newspapers for non-compliance of notice, auction of the vehicle, recovery of the dues etc. Sec. 16 of WBMV Act, 1979 may consulted.

Section 16A of the Act empowers the Taxing Officer, if the owner is not available, to sell the commodities which the seized vehicle contains, so that the commodities do not get perished/deteriorated or lost due to long detention and also to dispose of the same by public auction.

No court shall release a vehicle seized under this Act unless the owner furnishes a bank guarantee equivalent to one and a half times of total dues vide Sec.16B.

CHAPTER - IV

West Bengal Additional Tax & One Time Tax on Motor Vehicles Act, 1989

3.4.1. Background:

Under the provisions of Section 3 of the West Bengal Motor Vehicles Tax Act, 1979 the state Government can increase rates of the tax specified in the Schedule thereto by notification in the official Gazette from time to time. The State Legislature enacted a composite Act called WB Addl. Tax and One-Time Tax on Motor Vehicles Act, 1989, for imposing additional tax on certain kinds of Motor Vehicles and one-time tax on motor cycles, scooters etc. in order to make the tax on such vehicles compensatory and regulatory to a significant extent. By passage of time the Government of West Bengal amended some Sections/sub-Sections/Clauses of the Act and also revised the rates of taxes by notification in the official Gazette from time to time.

3.4.2. Vehicles liable to pay Additional Tax :

(A) Every owner of a registered motor vehicle or every person who owns or keeps in his possession or control as described in Schedule-I, shall pay the additional tax at the rate specified therein against such vehicle;

(B) In the case of a motor vehicle registered outside West Bengal but is plying in West Bengal, additional tax shall be realized at prescribed (one fifty-second part of annual rate per week) for the period during which such vehicle is plying or staying;

(C) A motor vehicle registered as an omnibus or public service vehicle in respect of which no permit has been granted shall pay additional tax;

(D) Non-transport vehicles and private services vehicles registered outside West Bengal and entering into West Bengal occasionally or for a temporary period are liable to pay additional tax at the prescribed rates in addition to MV Tax. Vehicle plying without payment of taxes may be seized and penalized in accordance with law;

(E) Any motor vehicle which is exempted from payment of tax under the WBMVT Act, 1979 is also exempted from payment of additional tax;

(Section 3)

(F) The owner of a motor vehicle registered out-side West Bengal and plying in West Bengal, either under inter-state Reciprocal Transport Agreement or not is liable to pay additional tax at prescribed rate*;* *(Section 4)*

(G) If a motor vehicle is registered in West Bengal but pays MV tax in any other state on change of address without having changed the registration number, the additional tax is leviable on such vehicle *[Section 5(1)]*

(H) Temporary registration under Section 43 of the MV Act in respect of a vehicle is made for a period of one month only. Accordingly, a vehicle temporarily registered is subject to pay only

one-twelfth of the additional tax payable for the year. *[Section 5(2)]*

(I) In the case of payment of additional tax in advance for the year, a rebate of five percent shall be allowed. But in the case of transport vehicles, payment of additional tax shall be made quarterly; *[Section 5(3)]*

(J) In the case of inter-state permits while granting the permit in respect of a vehicle by the other state for arrear falling within West Bengal, the permit issuing authority shall realize additional tax as leviable under Section 4 and remit the same to the State Transport Authority, West Bengal by a Bank Draft and also endorse the fact of realization of such additional tax. *[Section 5(4)]*

Note: (i) Additional tax shall be leviable for the entire period for which counter-signature is to be made on the inter-state permit (Section 6)

ii) The additional tax shall be computed on an annual basis and shall be payable before the validity of the counter-signature commences.

(K) If a motor vehicle which is not liable to pay additional tax, is converted to a motor vehicle of any category referred to in Schedule 1 the converted motor vehicle shall be liable to pay additional tax at the prescribed rate from the date on which such conversion takes place. *[Section 8(1)]*

(L) Similarly whenever a motor vehicle of any description referred to in Schedule-I is converted to any other category of vehicle exempted from payment of additional tax, such portion of additional tax calculated on the basis of the period for which the vehicle remains in Schedule 1 shall be refundable on claim within 15 days of such conversion; *[Section 8(2)]*

(M) A three-wheeler vehicle used to carry more than six passengers for reward or hire would fall within the definition of "Maxi Cab" is not entitled for exemption from Additional Tax (Swapan Kr. Podder vs state of West Bengal & others, 1988(1) CHN 406).

Note: "Vikram Autorickshaw" having a seating capacity of 8 including driver is liable to pay additional Tax.

3.4.3. Liability to pay additional tax and validity of permit :

The provisions of liability to pay additional tax in the case of transfer of ownership of motor vehicles and validity of permit due to non-payment of additional tax in respect of transport vehicles are the same as stated under (6 & 7) WBMV Tax Act, 1979.

3.4.4. One-time tax :

"One-time tax" means the tax imposed under the Act on motor cycle or motor cycle combination as specified in Schedule 11 for a period of 15 years from the date of its registration before the commencement of the West Bengal Additional Tax and One-Time Tax on Motor Vehicles (second Amendment) Act, 2003(effective from 15.9.2003 vide Notification No. 4062-WT dated 19.9.2003); and on motor car and Omnibus as specified in Schedule-IV for a period of five years from the date of its registration.

"Life-time tax" means the tax imposed on motor cycle or motor cycle combination under the Act and leviable for the entire life-time of such motor cycle or motor cycle combination.

The owner of a motor cycle/motor cycle combination of less than 15 years old, who applies for first registration/assignment of new registration mark or change of address on removal from other state, is liable to pay, from the date of commencement of this Act, one-time tax as specified in Schedule-II in lieu of any tax payable under WBMV Tax Act, 1979(Section 9(2). In the similar cases on or after the date of coming into force of the WB Additional Tax and One-Time Tax on Motor Vehicles(Amendment) Act, 1992 the owner shall pay one-time tax as specified in Schedule-III..

[Section 9(A)]

As per amendment of section 9A of the West Bengal Additional Tax and One Time Tax on Motor Vehicles Act 1989, in 2003 and 2004 the owner of any motor cycle being less than fifteen years old when applying for first registration, or assignment of fresh registration mark or change of address on removal of motor cycle from other State, shall pay life time tax with effect from 15th September, 2003. In terms of amendment made in 2004 for the first proviso of Section 9A in 2004 , the owner of the motor cycle registered after the 25th day of November, 1991, shall be liable to pay the difference of the rate of life time tax payable as specified in Schedule III and one time tax already paid, and if the difference is not paid by 16th March, 2005, as specified by the State Government in their Circular No. 6730 –WT/3M-115/2003P dated 29.12.2004, a penalty at the rate specified in Section 10 of the Act shall be charged.

The owner of the motor cycle is entitled to claim refund of the amount paid as one-time tax as specified in part-II of Schedule-II if the said motor cycle is removed from West Bengal on change of address or on cancellation of registration. The owner is entitled for 1/360th of life-time tax or 1/180th or 160th of one-time tax, as the case may be, for each calendar month.

[Section 9(6)]

The owner of the motor cycle/motor cycle combination registered under Section 9A, is entitled to claim refund of the amount paid as one-time as specified in part-II of Schedule-II, if the said cycle is removed from West Bengal on change of address or on cancellation of registration. The owner is

entitled for 1/360th of life-time tax or 1/180th or 1/60th of one-time tax, as the case may be, for each calendar month.

3.4.5. One-time tax on motor cars and Omnibuses :

The West Bengal Additional Tax and One-Time Tax on Motor Vehicles (Amendment) Act, 1999 introduced the provisions of payment for a period of five years of one-time tax inclusive of tax under the WBMV Tax Act, 1979 and additional tax, by the owners of non-transport vehicles registered in the names of individuals. The provisions are stated below:

(A) In lieu of annual tax one-time tax for five years shall be leviable on motor cars and omnibus(non-transport vehicles) at the rates specified in part-I of Schedule-IV. *[Section 9B(1)]*

(B) The owner of a motor car/omnibus of less than ten years old, applying for first registration/assignment of fresh registration mark/change of address from another state, shall pay one-time tax at the rates specified in part-I of Schedule-IV. *[Section 9B(2)]*

(C) The owner of a motor car/omnibus of less than ten years old which is already registered in West Bengal, shall pay one-time tax for five years at the rates specified in part-I of Schedule-IV on expiry of the period for which the annual tax has been paid. *[Section 9B(3)]*

Note: a) The provisions of Section 9B are effective from 22.7.1999.
b) The owner referred to at (iii) above enjoys discretion to pay annual tax under WBMV Tax Act, 1979.
c) The owners of motor vehicles of more than ten years old referred to at (ii) & (iii) shall pay annual tax under WBMV Tax Act, 1979

(D) The owners of motor vehicles paying one-time tax under(ii) & (iii) above are entitled to claim refund of tax on removal of the vehicles to any other state at the rate specified in part-II of Schedule-IV. The owner is entitled for 1/360th of life-time tax or 1/180th or 1/60th of one-time tax, as the case may be, for each calendar month. *[Section 9B(5B)]*

(E) In the case of the vehicle being air-conditioned, the owner of the vehicle shall pay special tax in addition to one-time tax. *[Section 95(8)]*

3.4.6. Mode of payment of Tax and penalty :

There shall be grace period of 15 days for payment of the additional tax/one-time tax/life-time tax on which it becomes payable.

Penalty shall be imposed for delayed payment of additional tax or life-time tax beyond grace period of 15 days as under :-

i) for delay from sixteenth day to forty fifth day	25% of the tax payable.
ii) for delay from forty sixth day to seventy fifth day	50% of the tax payable.

iii) for delay for more than 75 days.	The amount equal to the amount of tax payable.

For delay for payment of one-time tax the penalty shall be imposed as under

i) for delay from 16th to 45th day	1/20th part of the one-time tax payable.
ii) for delay from 46th day to 75th day	1/10th part of the one-time tax payable.
iii) for delay more than 75 day	1/5th part of the one-time tax payable.
iv) for delay beyond one year but upto two years.	2/5th part of the one-time tax payable.
v) for delay beyond two years but upto three years.	3/5th part of the one-time tax payable.
vi) for delay beyond three years but upto four years.	4/5th part of the one-time tax payable.
vii) for delay for more than four years.	The amount equal to the amount of one-time tax payable.

3.4.7. Seizure of Motor Vehicles :

Section 11 & 12 of WB Additional tax and One-Time Tax on Motor Vehicles Act, 1989 deal with seizure of motor vehicles for non-payment of taxes. Section 13 of the Act deals with disposal of both perishable and non-perishable commodities found in the seized motor vehicles.

3.4.8. Penalty :

In contravention of any provision of the Act, or orders made thereunder, fine, may be imposed upto Rs.300/- for first offence and it may be upto Rs.500/- for second and subsequent offence. However, the state Government may exempt it wholly or partly.

(Section 23 & 23A)

CHAPTER - V

3.5.1. Fraud and Corruption :

Fraud is deliberate misrepresentation of facts and/or significant information by one or more individual among the management, staff or third parties while corruption involves behavior on the part of officials in the office in which they improperly and unlawfully enrich themselves by misusing the position in which they are placed.

3.5.2. Role of Audit :

Fraud and corruption are mostly interlinked. So, while fraud and corruption should be perceived independently for their numerous implications, the auditor is required to be well aware of the complex correlation between the two. Attention would be drawn to possibilities of separate treatment, wherever the situation so warrants.

The role of audit in arresting fraud and corruption has come under critical scrutiny in the wake of increasing cases of fraud and corruption in both Government Offices and other Sectors. Auditors as such need be more vigilant to and alert for situations, control weaknesses, inadequacies in record keeping, errors and unusual transaction or results, which could be indicative of fraud, improper or unlawful expenditure, unauthorized operations, waste, inefficiency or lack of probity. SAI should endeavour to create an environment that is unfavourable to fraud and corruption for which they need be given adequate mandates that enable them to effectively contribute to the fight against fraud and corruption.

3.5.3. Nature of Fraud and corruption:

-intentional misrepresentation of financial information;

-manipulation, falsification and alteration of records;

-misappropriation of money/assets;

-suppression or omission of the effects of transactions from records;

-recording of transactions without substance;

-misapplication of accounting policies;

-misuse of office for private gains;

-offer to solicit an offer of inducement or reward as benefit for performance of an official act;

-attempt to camouflage;

-Willful misinterpretation of the provisions of Acts and Rules.

3.5.4. Audit checks:

While conducting audit of receipts of MV Tax the responsibility of audit is to carefully verify:

i. Whether records are being maintained properly. If any basic record is not maintained or discontinued, impact thereof on annual collection with reference to that of prior to discontinuation, should be carefully investigated.

ii. Whether assessment of dues have been properly made taking into account the correct rates prevailed at the time of assessment. If there are recurring instances of underassessment, reason thereof needs be carefully investigated.

iii. Whether taxes and other receipts have been properly realized and duly credited to Govt. account in time.

iv. Audit should make a thorough checking of totals of cashbook and to verify challan Register to see the amounts received are duly credited to Govt. account.

v. Stock account of Token-cum-Receipt books to be cheeked with special care in order to prevent fraud by issue of fake receipts.

vi. Audit should carefully check each remittance to the Bank as per Receipt Register. Bank Treasury challan Books and the list of credits should be verified from the TF Section, if needed. Where the tax amounts are directly remitted into the Treasuries, the challan should be verified with the Treasury records.

vii. Exemption/Remission cases to be checked with reference to the provisions of Acts, Rules and orders.

viii. Refund cases to be checked with reference to all relating records.

ix. Fines and penalties have been imposed properly and exemptions have been allowed by the competent authority as per provisions of Acts and Rules.

x. Audit should make a comparative study of collection of revenue of the year taken up for audit with that of the previous year. If any alarming shortfall comes to notice the reasons thereof need be investigated.

xi. Whether the provisions of Acts, Rules and orders have been properly interpreted. It is to be seen if there is any misinterpretation for personal gains.

xii. Whether there is any manipulation/falsification/alteration of records.

xiii. Audit should, above all, extend its responsibility to provide assurance to make the management aware of the weakness in the internal control system. It may submit proposals and recommendations to the auditee unit, where controls are found to be inadequate. Thus audit can be a significant instrument in reducing fraud and corruption.

CHAPTER- VI
INTERNAL CONTROL

3.6.1. Introduction :

Internal control is an integral and continuing process that is effected by an entity's management and personnel and is designed to provide reasonable assurance that the following general objectives are being achieved:

- Fulfilling accountability obligations;
- Complying with applicable laws and regulations;
- Executing orderly, ethical, economical, efficient and effective operations;
- Safeguarding resources against loss.

Internal control is a dynamic integral process that is continuously adopting to the changes of the organization. Management and personnel at all levels have to be involved in this process to provide reasonable assurance of the achievement of the objectives. The internal control system is, therefore, interlinked with an organisation's activities and is most effective when it is built into the entity's infrastructure. It is an integral part of the essence of the organization. It is integrated within the basic management process of planning, executing and monitoring. Therefore, internal control is a tool used by the management and directly related to the organisation's objectives. As such management is an important element of internal control. However, all personnel in the organization play important roles in the matter.

3.6.2. Internal control and information Technology :

Information systems imply specific types of control activities. As information technology has advanced, organizations have become increasingly dependent on computerized information systems to carry out their operations, to process, maintain, and report essential information. As a result, the reliability and security of computerised data and of the systems that process, maintain and report these data are a major concern to the management and auditors of the organizations.

The use of automated system to process information introduces several risks that need be considered by the organization. The risk stem from, among other things, uniform processing of transactions, information system automatically initiating transactions, increased potential for undetected errors, existence, completeness and volume of audit trails, the nature of the hardware and software used, and recording of unusual transactions. Effective information Technology controls, therefore, can provide management with reasonable assurance that information processed by its system meets desired control objectives, such as ensuring the completeness, timeliness, and validity of data and preserving its integrity.

3.6.3. Internal control and Internal Audit :

Internal auditors examine the effectiveness of internal control and recommend improvements although they are not primarily responsible, for establishing or maintaining it. But effective Internal Audit System in an Organisation has a significant role to play in the matter.

3.6.4. Internal Control and Staff members :

The staff members' contribution to Internal Control System of an Organisation is very significant. Internal Control is an explicit or implicit part of everyone's duty. All staff members play a role in

effecting control and should be responsible for reporting problems of operations, non-compliance with the code of conduct, or violations of policy.

3.6.5. Internal Control and Management :

Management Staff are directly responsible for all activities of an organization including the internal control system. So effectiveness of Internal Control largely depends on the efficiency of the Management.

3.6.6. Role of Audit in improving Internal Control system in the unit offices of MV Department :

Internal Audit is a part of Internal Control System. As Internal Audit has not been established in the MV Department, SAI Audit should see with special care the following aspects of Internal Control System of the auditee office and make necessary comments/recommendations, where necessary, in order to make the system an effective one :

-whether accountability obligations in respect of financial matters and fair performance have been properly fulfilled;

-whether provisions of laws, rules and orders have been correctly interpreted and properly complied with;

-whether operation of the organization is orderly, ethical, economical, efficient and effective;

-whether there is effective safeguard against loss of Government. Revenue;

-whether effective monitoring system exists in the auditee organisation;

-whether the auditee organisation follows any human resource development policy for better performance;

-whether an effective checking and supervision exists in the office in order to prevent fraud and corruption;

-whether an effective Information system with trained personnel exists in the office in order to meet desired control objectives of the management.

CHATER – VII

3.7.1. Registers / Records maintained by the Motor Vehicles Department

3.7.1(A). Registration Section

-Register of Registration of vehicles (a separate Register of Registration is maintained for each type and series of vehicle);

-Register of Registration of foreign vehicles, i.e. vehicles registered in other states but plying permanently in the state;

-Exemption Register;

-Cash Book and Subsidiary Cash Book for each Counter Cashier;

-Counterfoils of Receipt Books;

-Stock Register of statutory Forms;

-Personal file of each vehicle registered in the region.

3.7.1.(B). Permit Section

-Permit Register (separate register for each category of vehicle);

-Temporary Permit Register;

-Permit Countersignature Register;

-Permit Cancellation Register;

-Duplicate Permit Register;

-Register of temporary permit issued by the other RTA in respect of vehicles coming from other states;

-Permit Exemption Register;

-Case Register;

-Stock Register of Forms;

-Information Book;

-Counterfoils of Receipt Book;

-Subsidiary Cash Book for each counter cashier and Central Cash Book;

-Bank Challan Book;

-Bank Pass Book;

-List of daily collections verified by the Office of the Accountant General, West Bengal.

3.7.1.(C). Licence Section

i) Register of Learner's licence;

ii) Register of regular professional licences;

iii) Register of regular non-professional licences;

iv) Register of regular licences for Bus conductors;

v) Register of application for Driving test;

vi) International Travelling Pass Register;

vii) International Driving licence Register;

viii) Counterfoil of Receipt Books;

ix) Subsidiary Cash Book-Central Cash Book.

3.7.1.(D). Tax Section

i) Motor Vehicle Tax (Demand) Register (Form J);

ii) Register of Receipts (Form G);

iii) Register of Receipt of Bank Drafts;

iv) Register of cheques dishonoured;

v) Surrender Register (Form K);

vi) Register of Refund (Form H);

vii) Register of exemption of tax;

viii) Stock Register of Receipt-cum-Tokens;

ix) Counterfoil of Receipt-cum-Tokens (Form D);

x) Declaration Forms (in A, B);

xi) Stock Register of Forms;

xii) Accountant General's verified statement of daily collections;

xiii) Bank challans;

xiv) Receipt Books (Form C).

3.7.1.(E). Case Section

i) Information Register;

ii) Case Register;

iii) Inspection Reports of the Inspection.

3.7.2. Audit checks to be exercised

3.7.2.(A). The primary duty of audit is to see that

-All assessments have been done correctly in accordance with the Acts and Rules;

-Demands have been raised in time and collected promptly;

-All the receipts have been credited into Government Account without delay; and

-Rules and Regulations framed for the assessments and collection of revenue are adequate and are being observed.

No formal demand against the vehicle owners for the tax due is raised. To ensure that due tax are paid by the owner regularly, spot checking of vehicles on the road are being done by the inspecting staff of the Department. A review of registers maintained by the Department including test check of individual cases will disclose whether various kinds of fees and tax realisable under the two Acts have been correctly realised.

3.7.2.(B). Register of Registration of Vehicles

This is a permanent record of all motor vehicles registered by the Registering Authority.

Audit will see that:

a) the registration fee has been realised according to the rate prescribed in Rule 81 of CMV Rules, 1989. Rule 60(6) prescribe realisation of temporary registration fee at the rate mentioned in Schedule A of the rule of the WBMV Rules, 1989.

b) the fees for CF and its renewal in respect of transport vehicles and stage carriages have been realised in terms of Rule 57 of the WBMV Rules, 1989 and Rule 81 of CMV Rules, 1989;

c) the transfers of ownership of vehicle have been properly recorded in the Register and prescribed fees have been realised;

d) the alteration of vehicles, change of address, transfer of vehicle from one region to other has been noted under proper attestation ;

e) the registered laden weight in respect of transport vehicles, seating capacity in respect of stage carriages, unladen weight in respect of other vehicles have been correctly fixed with reference to the Rules in this regard;

f) the hire purchase agreement and its termination have been noted in the register wherever necessary and prescribed fees as per Rule 81 of the CMV Rules, 1989 have been realized;

g) suspension and cancellation of registration of vehicles have been noted;

h) the cases of exemption from payment of registration fees etc., are to be examined to see, whether the conditions laid down in Rules 61 of the WBMV Rules, 1989 were fulfilled.

3.7.2.(C). West Bengal Motor Vehicles Tax (Demand) Register (Form J)

In term of Rule 26 of the **West Bengal Motor Vehicles Tax (WBMVT)** Rules, 1957 tax demand and collection Register maintained showing the details of vehicles like Registration No., unladen

weight, registered laden weight, seating capacity, etc. is to be verified to examine the correctness of assessment of tax on vehicles and its realistion.

Audit will see that:

a) The money columns and period of tax payable have been properly filled in under proper attestation;

b) The changes in RLW seating capacity in respect of transport vehicles and stage carriages have been properly noted quoting the authority for such revision;

c) The removal of vehicles from the jurisdiction of one taxing officer to another have been properly noted as required under Rule 26(4) of the WBMVT Rules, 1957. The audit will cross verify the records of other taxing offices to ensure that tax has been collected there regularly;

d) The off-road period in respect of any vehicle under Section 4(3) of the WBMVT Act, 1979 has been properly noted and attested by the taxing officer ;

e) The review of the Register, as required under Rule 24(5) of WBMV Tax Rules, 1957 has been conducted by the taxing officer to detect and take necessary action against the defaulters, as required under Rule 17 of the WBMVT Rules, 1957;

f) Tax exemptions were allowed as per Sec. 21 of the WBMVT Act,1979 read with Rule 14 of WBMVT Rules and Note below Rule 24(1);

g) It should be checked to ensure that log report and the copy of tax token prepared by the individual operator handling computer are properly prepared and that tax and penalty, if any, have been realised at proper rate from the registered owners of the vehicles and accounted for in the Cash Books.

3.7.2.(D). Permit Register

Permit Register in respect of permanent/temporary permits is maintained showing the validity period of permits and names of the parties etc.

Audit will see that

-the fees in respect of permits of various types of vehicles have been realised in terms of Rule 65 of the WBMVT Rules 1957 and the periodicity as well as area of permit has been properly noted;

-the renewal of permit has been made within the period prescribed in Sec. 81 of the MVT Act 1988;

-transfer of permit has been made with due regard to the provisions contained in Sec.82 of the MVT Act., 1988 read with Rule 159 of the WBMV Rules, 1989;

-fee for countersignature on permits in respect of vehicle of other State/Region has been realised as per Section 88 of the MVT Act, 1988 read with Rule 129 of WBMV Rules, 1989;

-Cancellation and suspension of permit under Sec 86 of MVT Act, 1988 read with Rule 147 of WBMV Rules, 1989 has been noted.

3.7.2.(E). Licence Register

Licence issued to professional and non-professional driver of vehicles as well as for conductors in stage carriages are noted seriatim in this Register. Audit will see that renewal of licence has been made on payment of prescribed fee after expiry of the validity period. Cancellation or suspension of any licence has been noted under proper attestation. The above procedure will apply *mutatis mutandis* while auditing learner's Licence Register.

3.7.2.(F). Surrender Register (Form K)

In terms of Rule 28 of WBMVT Rules, 1957 this register is maintained to record the particulars of documents viz. Registration Certificate, Part-A and B of Permit, Tax Token etc. surrendered by the owner of vehicle for getting remission of tax for non-use of vehicles.

Audit will see that:

- Necessary investigation of non-use of vehicle has been conducted within reasonable time for verifying the non-use of vehicle before granting remission of tax as provided in Sec. 4(3) of the WBMVT Act, 1979;
- The duration and withdrawal of surrender has been noted in the Surrender Register and Tax Demand and Collection Register under attestation by the Taxing Officer;
- The cases of surrenders have been reviewed by the Taxing Officer from time to time to see that necessary investigation is being conducted by them regularly and the result thereof is also reported to him;
- At the time of return of tax papers to the owner of the vehicle or his agent after expiry of tax exemption period necessary acknowledgement of the return has been obtained.

3.7.2.(G). Refund Register (Form H)

The Register is maintained to record the Refund for which a Certificate of Refund was issued.

Audit will see that:

- Refund application has been made within the prescribed period as required under Rule 24(7) of the WBMVT Rules, 1957;

- The calculation of the amount of refund has been correctly made;

-.Necessary conditions as laid down in sec. 4 of the WBMV Tax Act read with WBMVT Rules 1957 were fulfilled before granting refund;

- Necessary notes of refund payment along with refund certificate have been recorded against the vehicle in question in the Demand and Collection Register to guard against double payment;

- The refund payment order has been encashed within its validity period;

- The total of refund booked in the accounts by the Accountant General has been periodically reconciled with the departmental figures so that irregularities in the payments of the refund orders are located promptly.

3.7.2.(H). Stock Account of Token-cum-Receipt Books

The Register is maintained to record the receipts, issues and balance of Token-cum-Receipts.

Audit will see that

- The number of Token-cum-Receipt Books received agrees with the indent made by the department and these are kept under lock and key;

- The number of Token-cum-Receipt contained in each token book is recorded on the cover page with dated initial of a responsible officer and all such Receipts cum Tokens are machine numbered;

- The issue of these books to the cashiers and return of used books are duly acknowledged;

- If any token is found defective, both original and duplicate copies are cancelled under proper attestation and kept in the Receipts cum Token Book;

- At the end of every quarter, the balance of Receipt cum Token Books lying in stock is verified by physical counting to guard against misuse of any token. A certificate to this effect is recorded in the Stock Account.

3.7.2.(I). Tax Tokens

A test check of the Tax Token Register should be conducted for a selected period (at least for 2 months) to see that moneys were credited into the Government account in respect of all the tax tokens issued. Each tax token should either be supported by Treasury Challan or cash receipt as the case may be and the amount in question should have been entered in the Register of Receipt (G Register). In order to guard against the issue of tax tokens against fraudulent treasury challan/cash receipt, audit will cross verify the departmental receipt figures with the Treasury records/Cash book entries for selected periods.

The arrangement of reconciliation of departmental receipt figures with those of treasury figures by the departmental authority should be reviewed in audit. Any arrear of reconciliation shall be reported by audit.

3.7.2.(J). Declaration Form

Audit will cross check the declaration forms for selected months (say 2 months) with the Registration Register to see that the tax has been correctly assessed with reference to the specification shown in the declaration form as well as Registration Register. Audit will also check the declaration forms with the receipt counterfoils and the latter with the Receipt Register.

3.7.2.(K). Bank Pass Book, Challan Book

Audit will check daily remittance to the Bank as per Receipt Register, Bank Challan Books, Bank Pass Book and the list of credits verified from the TF Section. In cases where the tax amounts are directly remitted into the Treasuries, the challans for the selected period should be verified with the Treasury records.

3.7.2.(L). Bank Draft Register (PVD Kolkata)

This Register shows the position of receipts, disposals and encashment of bank drafts received from the Regional Transport Authorities of other States in respect of their vehicles coming into this State.

Audit will see that

- the bank drafts were sent promptly for credit to Government account;
- Necessary steps have been taken by the department to reconcile the advice slips of bank drafts with those entered in the inter-State movement of vehicle register in order to ensure that all the vehicles registered outside the State and plying in West Bengal were properly taxed;
- Necessary verification of Challan Register should be made to see that the amounts received as bank drafts were duly credited to Government Account;
- The documentation is complete in respect of Registration No. of Vehicles alongwith names of Registering authorities, names and address of the vehicles owners for making any future reference regarding under assessment of tax and or revalidation of bank drafts, etc.

3.7.2.(M). Register of dishonored cheque

This Register is maintained to record the cases of cheques which were returned as dishonored. In terms of Rule 3 of the WBMVT Rules, 1957, payment of tax by cheque drawn in favour of Taxing Officer, Kolkata by designation is accepted. A temporary tax token valid for 30 days is issued pending encashment of cheque.

Audit will see that necessary cancellation orders of temporary tax tokens were issued as soon as the intimations of dishonoring of the cheque were received and that the party concerned had been asked to deposit the tax due forthwith. The fact of cancellation of cheque has been noted in the Tax Demand and Collection Register under proper attestation.

3.7.2.(N). Inter State Vehicle Movement Register

The vehicles registered in other states coming into West Bengal on the basis of temporary permits issued by other state or permit countersigned by the respective regional authorities, are recorded in this Register on the basis of intimation received from the vehicle owners as per Rule 23 of the WBMVT Rules, 1957.

Audit will see that

- registration number of vehicle, address of the registering authority, name and temporary address of the vehicle owners, duration of stay in West Bengal have been noted;
- road tax payable in term of Sec. 4(2) of the WBMVT Act, 1979 has been realised in advance as per the rates of tax applicable in West Bengal;
- necessary action of seizure or detention of vehicle as required under Sec. 16 of the WBMVT Act, 1979 has been taken in case of overstayal of vehicle;
- the fact of realisation of tax has been verified with reference to entries in the Bank Draft Register.

3.7.2.(O). Case Register (Form 1)

The Register is maintained to show the numbers of cases of defaulting parties reported to the Magistrate for initiating recovery proceedings as required under Rule 17 of the WBMVT Rules, 1957.

Audit will see that

i. the particulars like vehicle number, name of the owner , type of vehicle, etc. have been noted in the Register and corresponding note has also been kept in the Demand and Collection Register under attestation of the Taxing Officer;

ii. in case of amounts of tax paid in the Court, the Magistrate's intimations to the Taxing Officer as required under Rule 17(3) of WBMVT Rules, 1957 have been received;

iii. the Taxing Officer had reviewed the Register from time to time and taken up cases of inordinate delays in realisation of tax with the appropriate authorities.

3.7.2.(P). Exemption Register

This Register contains the Registration Nos. and name of the owners of the vehicle and the purposes for which exemptions from payment of tax were granted.

Audit will see that exemptions from payment of tax were allowed with due regard to the provisions contained in Sec. 21 of the WBMVT Act, 1979 and that necessary report regarding the conditions for exemption from payment of tax has been received from the owner of such vehicles at the end of April of every year as required under Rule 14 of the WBMVT Rules, 1957.

3.7.3. Checking of files regarding new licenses, registration cases, permits

Audit will scrutinise the individual files to the extent prescribed.

Audit will review the files in general to see whether procedure regarding registration of vehicles, issue of permit and licenses as laid down in the Acts/Rules have been properly followed.

PART - IV
Taxes and Duties on Electricity
Chapter – I
Preliminary

4.1.1. Introduction:

According to entry 53 of list II of the Seventh Schedule to the Constitution, levy of taxes on the consumption and sale of electricity is within the competence of the State Government while under entry 38 read with entry 47 of list III, electricity and levy of fees in respect thereof fall within the concurrent jurisdiction of the Central and State Governments. Thus while the State may levy taxes on the consumption and sale of electricity, the Central Law, viz. the Indian Electricity Act, 1910 and other enactments regulate levy of fees for inspection and other purposes of those enactments.

The basic act, which is primarily a regulatory measure, is the Indian Electricity Act, 1910 laying down the law relating to the supply and use of electrical energy in India. It regulates the procedure for grant of licenses to electrical undertakings prescribing obligations in respect of marks and delivering supplies and regulates the relation between the licensees and the consumers. The Electricity (Supply Act, 1948) supplements the Indian Electricity Act, 1910 providing for the nationalisation of the production and supply of electricity by authorising the setting up of Electricity Boards and generally for taking measure conducive to electrical development.

The Indian Electricity Rules, 1956 have been made by the Central Electricity Board by virtue of the powers vested with it under section 37 of the Act and these rules provide for various matters covered by the Act and *inter alia* prescribe in rule 7 fees for certain services mentioned in Annexure II and also empower the State Government to levy fees for testing and inspections. The fees so prescribed by West Bengal Government are set out in Annexure I and II to this Chapter.

The West Bengal Lifts and Escalators Act, 1955 is also a regulatory measure, passed by the State Legislature to license and regulate the working of lifts and escalators. Rules framed under this Act also provides for levy of certain fees, vide Annexure III of this Chapter.

By virtue of power vested in the State under entry 53 of list II of the Seventh Schedule, Bengal Electricity Duty Act, 1935 was passed in the State Legislature with the object of levying a duty on electrical energy consumed in the State. The Act, which is purely a taxing enactment, came into operation w.e.f. 1 July 1935 and provides *inter alia*, the obligation of the licensees and the other persons generating and consuming electrical energy with regard to payment of duty, manner of payment, mode of recovery and the powers of the Inspecting Officers appointed under this Act. The Bengal Electricity Duty Rules, 1935 framed under Section 11 of the Act made detailed provisions for the assessment and collection of duty.

The West Bengal Duty on Inter-State River Valley Authority (ISRVA) Electricity Act, 1973 (Act VII of 1973) was passed by the State Legislature to provide for the levy of duty on consumption in West Bengal of energy generated, distributed, sold or consumed by an ISRVA such as Damodar Valley Corporation. This Act published in the Calcutta Gazette (Extra ordinary) on 19 March 1973 was given retrospective effect from 1 February 1958 to validate levies already made.

Detailed rules have been framed under this Act also on the liNe of the rules under the 1935 Act. These rules, known as West Bengal Duty on ISRVA Electricity Rules, 1973, came into force on 1st February 1958.

Important provisions of the above acts/rules made thereunder are mentioned in paragraph 40.

4.1.2. Definitions:

Under the BED Act:

(1) "consumer" means any person, other than a distributing licensee, who is supplied with energy by a licensee (or by the State Government);

(2) "energy" means electrical energy;

(2a) "energy charge" means the amount charged (whether as energy charge or some other charge) by a licensee for the supply of energy to a consumer before deduction of rebate, if any, allowed by the licensee for payment on or before such date as may be specified by the licensee;

(2b) "gross charge" means the aggregate amount of energy charge and fuel surcharge, if any, made by the licensee for the supply of energy;

(3) "licensee" means any person licensed under Part II of the Indian Electricity Act, 1910 to supply energy and includes any person who has obtained the sanction of the (State Government) under Section 28 of that Act (and also includes the West Bengal Electricity Board to be constituted under Section 5 of the Electricity (Supply) Act, 1948;

(3a) "net charge" means the amount of gross charge that remains after deduction therefrom of any rebate referred to in clause (2a) or refund of fuel surcharge, if any;

(4) "prescribed" means prescribed by rules made under this Act.

4.1.3. What is Electricity Duty?

The electricity duty is also a consumption tax because it is levied by the State Government on the consumption of electricity for domestic as well as industrial purposes. Generally, the taxable event with respect to duty of excise is 'manufacture' or 'production'. Here the taxable event is not the production or generation of electrical energy but its consumption. If a producer generating energy could store it up, he would not be required to pay any duty under the Act. Thus, electricity duty being a consumption tax can also be levied on the electrical energy consumed by the producer himself. The Supreme Court also held that a producer consuming energy generated by himself is also a consumer (AIR 1963, SC 44).

4.1.4. Organisational set up

The Chief Electrical Inspector, West Bengal headed the Inspectorate and functioned under both the Power Department and Finance (Taxation) Department upto December 1996 to administer various provisions of the Acts and Rules with the help of one Administrative Officer and several Inspecting Officers posted both at headquarters as well as two Zonal offices at Asansol and Jalpaiguri.

From January 1997 the work of inspection and estimation of electricity duty payable by licensees/non-licensees under the BED Act, 1935 is entrusted to the Director of Electricity Duty appointed by the Finance (Taxation) Department who is assisted by Additional, Deputy and Assistant Directors, Electricity Duty Officers, Inspecting Officers and one Administrative Officer. In the case of consumers receiving energy from DVC and governed by the ISR Act, 1973, the Chief Electrical Inspector, West Bengal continues to be responsible for inspection and estimation of electricity duty. The Collectors of districts on receipt of the estimates are responsible for collection of electricity duty and recovery of arrears under both the Acts.

CHAPTER – II

BENGAL ELECTRICITY DUTY ACT, 1935.

4.2.1. Charge of Duty:

Subject to the provisions of sub-section (3) of section 3 of the Bengal Electricity Duty Act, 1935 there shall be charged, levied and paid to the State Government a duty (hereinafter referred to as 'electricity duty'), on the net charge for energy consumed, or the units of energy consumed, as the case may be, at the rates specified in the first Schedule as amended from time to time.

Provided that during a period of one year with effect from -

(a) the 1st day of June 1979, no electricity duty shall be payable by a person (other than a licensee) who generates energy from a diesel generating plant, or

(b) the 1st day of April 1985, no electricity duty shall be payable by a person (other than a licensee) who generates energy from a coal based generating plant

(c) the 1st day of February 1990, no electricity duty on the units of energy consumed shall be payable by a person (other than a licensee) who generates energy from a waste-gas-based generating plant,

registered under Section 7B for his own consumption for any industrial or manufacturing process (including cold storages and cinema houses) and for such other purposes as the State Government may, by notification in the official gazette, specify in this behalf.

Explanation:

For the purpose of this provision 'own consumption' shall not include any consumption for domestic purposes.

Provided further that the State Government may, by notification in the official gazette, extend the period referred to in the first proviso from time to time but such extension shall not exceed a period of one year at a time. Provided also that where any electricity duty is charged, levied or paid at the rates

specified in any of the clauses of any article of part C of the first Schedule, such duty may be charged, levied or paid, monthly for a period of three consecutive months on the basis of average monthly consumption during the three months immediately preceding the period as aforesaid, in such manner, in such areas, for such class of consumers and subject to such conditions as may be prescribed.

Explanation:
The expression 'month' shall mean a period of not less than 25 days and not more than 35 days and shall be computed in the manner prescribed.

(a) The special rate of duty referred to [sub-clause (ii) of clause (b) of article (2)] of part B of the first Schedule shall not be admissible unless –

i) the cost of energy consumed for purposes of electrolysis or heating in electric furnaces is 20 per cent or more of the total cost of manufacture by electrolysis or heating in electric furnaces, and

ii) separate books of account are maintained showing separately the details of the cost of energy consumed for purposes of electrolysis or heating in electric furnaces and the total cost of manufacture by electrolysis or heating in electric furnaces

(b) An industrial undertaking claiming the benefits of the special rate of duty referred to [sub-clause (ii) of clause (b) of article (2)] of part B of the first Schedule shall make an application in writing to an officer specially appointed in this behalf by the State Government by notification in the official gazette and thereupon such officer shall, after giving the applicant an opportunity of being heard and after making such enquiry (if any) as he may think fit, make an order –

(i) if he is satisfied that the requirements of this Act and the Rules made thereunder have been complied with allowing the application, or

(ii) if he is not so satisfied, rejecting the application, and such order shall, subject to the provisions or clause (c) be final

(c) The State Government, may, on application or of its own motion, revise any order made under clause (b).

4.2.2. Payment of electricity duty and submission of return:
Subject to the provisions of Section 5 in the case of energy supplied by a licensee the licensee shall collect and pay to the State Government at the prescribed time and in the prescribed manner, the electricity duty payable under Section 3 on the energy supplied by him to consumers. The duty so payable shall be a first charge on the amount recoverable by the licensee for the energy supplied by him and shall be a debt due by him to the State Government.

Provided that the licensee shall not be liable to pay the duty in respect of any energy supplied by him for which he has been unable to recover his dues.

(1) In the case of energy supplied by the State Government, the consumer shall pay to the State Government at the prescribed time and in the prescribed manner the electricity duty payable under Section 3 on the energy supplied by the State Government to the consumer.

(2) Where any person fails or neglects to pay at the prescribed time and in the prescribed manner, the amount of electricity duty due from him, the licensee or the State Government, as the case may be, may, without prejudice to the right of the State Government to recover the amount under Section 8, and after giving not less than seven clear days notice in writing to such person, cut off supply of energy to such person, and may, for that purpose, exercise the power conferred on a licensee by sub-section(1) of Section 24 of the Indian Electricity Act, 1910, for recovery of any charge or sum due in respect of energy supplied by him.

(3) The licensee shall be entitled, for his cost of collection of the duty, to a rebate of such percentage as may be determined by the State Government on the amount of the duty collected and paid by him under sub-section(1).

(4) In the case of energy other than energy supplied by a licensee or the State Government the person who generated or supplied such energy shall pay to the State Government at the prescribed time and in the prescribed manner the electricity duty payable under Section 3 on units of such energy.

Under section 4(b) of the West Bengal Duty on Inter-State River Valley Authority Electricity Act, persons generating and consuming energy, persons receiving energy directly from an Inter-State River Valley Authority and the Inter-State River Valley Authority which supplies energy to its employees, etc. are also liable to pay electricity duty in the prescribed manner.

Manner of payment:

Rules 2 and 4 of the Bengal Electricity Duty Rules, 1935 and Rules 3 and 5 of the West Bengal Duty on Inter-State River Valley Authority Electricity Rules 1973 prescribe the time of payment of duty, submission of returns thereof according to the following table:

By whom payable	Due date of payment	Due date of submission of returns	Prescribed form of return
Licensee	Within 60 days after expiry of the month for which duty is levied.	Within 70 days following the month to which the return relates	Form 'A' and 'B' Rule - 4
Any person generating and consuming energy other than licensee	Within 30 days after expiry of the month for which duty is levied	Within 45 days following the month to which the return relates	Form 'D' Rule – 11
Consumer in case the energy is supplied by State Government	Within 15 days from the date of receipt of bill	--	--
Persons receiving energy	Within 60 days after	Within 70 days after the	Form 'D_1' and 'D_2'

from ISRVA liable to pay duty u/s 4(b)	expiry of the month	month to which the return relates	Rule – 5(2)
Inter-State River Valley Authority liable to pay duty u/s 4(c)	--	--	Form 'E_1' and 'E_2' Rule – 5(3)

All the returns are required to be submitted in triplicate, the first copy to the Collector, the second copy to the Chief Electrical Inspector and the third copy to the Inspecting Officer-in-Charge of the Zonal Offices.

There is no provision in the relevant Acts for charging any interest for belated submission of returns. A fine can, however, be imposed u/s 9 of the Bengal Electricity Duty Act, 1935 for non-submission or late submission of returns.

Note: In relaxation of the normal rules, West Bengal State Electricity Board has been allowed to deposit the amount of electricity duty collected from the Centralised Bulk consumers as shown in Annexure – VI in the Calcutta Collectorate. The Board is required to submit a copy of the monthly return together with the copy of the treasury challan showing the date and amount of deposit to the Collector of the district to which the collection of electricity duty relates.

[Finance (Taxation) Department, Memo No.3575-FT dated 17 October 1973 addressed to the Secretary, WBSEB]

4.2.3. Interest payable by licensee:

Subject to the provision of sub-Section (1) of Section 5(A) where a licensee fails to make payment to the State Government by the prescribed date electricity duty collected by him under Section 5, he shall pay a simple interest at the rate of two percentum upto 31 March 2003 from April 1995 and thereafter at the rate of one percentum for each English calendar month of default from the first day of such month immediately following the prescribed date upto the month preceding the month of full payment of such duty, or upto the month prior to the month of assessment of electricity duty under Section 3A and the rules made thereunder, whichever is earlier upon so much amount of the duty payable by him as remains unpaid at the end of each such month of default.

(2) Subject to the provision of sub-section (2) of Section 5A where a licensee fails to make payment of any electricity duty due from him after assessment under Section 3A by the date specified in the notice he shall pay a simple interest at the rate of two percentum upto 31 March 2003 from April 1995and thereafter at the rate of one percentum for each English calendar month of default from the first day of such month immediately following the date specified in the notice upto the month preceding the month of full payment of the duty or upto the month immediately preceding the month of commencement of proceedings for recovery under Section 8, whichever is earlier, upon so much of the amount of electricity duty from him according to such notice as remains unpaid at the end of each such month of default.

(3) A licensee liable to pay interest under sub-section (1) or sub-section (2) of Section 5A as the case may be, shall pay to the State Government such interest in such manner and by such date as may be prescribed.

(4) Interest under sub-section (1) shall be payable in respect of payment of duties by the licensee, the prescribed date of which under Section 5 is the date subsequent to, and interest under sub-section (2) shall be payable in respect of assessment for which a notice of demand under Section 3A is issued after, the date of coming into force of Section 3 of the West Bengal Finance Act, 1995.

(5) Where the authority prescribed by the State Government under Section 3A to make assessment has reason to believe that licensee has failed to pay interest payable by, or due from, him under sub-section (1) or (2), by the prescribed date or that the amount of interest paid by him is not correct, such authority shall determine the amount of interest in such manner as may be prescribed; the amount of interest so determined shall be collected from the licensee in such manner as may be prescribed.

4.2.4. Interest payable by the Government:

The State Government shall, in the prescribed manner, pay a simple interest at the rate of two percentum* upto 31 March 2003 from April 1995and thereafter at the rate of one percentum for each English calendar month of delay in making refund to a licensee the amount of electricity duty paid in excess which arises from an order under Section 7C passed on appeal by the prescribed authority on or after the coming into force of Section 3 of the West Bengal Finance Act, 1995, from the first day of the English calendar month next following the expiry of three months from the date of such order upto the month preceding the month in which refund is made, upon the amount of duty refundable to him according to such order.

4.2.5. Exemption:

Section 3(3) of the BED Act read with the second schedule provides for exemption of duty in respect of the following consumptions:

Energy consumed by –

(a) Any Government except to the extent specified in the second schedule;

(b) By or in respect of any –

i) local authority

ii) railway administration as defined in the Indian Railways Act, 1890

iii) institution or class of persons specified in the second schedule

(c) in any -

i) place of public worship, public burial or burning ground or other place for the disposal of the dead

* interest payable at the rate of one percentum w.e.f. 1 April 2003 vide notification No.842-FR dated 31 March 2003

ii) premises declared by the State Government to be used exclusively for purposes of public charity

iii) vessel whether sea-going or in land

Besides, under Section 4(1) of the BED Act, newly formed undertakings are exempt from payment of duty till the expiry of 3 years from the date on which energy was first supplied.

Note:(1) In terms of Article 287 of the Constitution, no electricity duty can be levied by a State on energy consumed by as sold to Central Government or to Railways. This constitutional prohibition will not apply to the energy consumed by occupants of Central Government or Railway buildings as consumption by an occupant is not consumption by Government. Similarly duty may be charged from those people who ran their shops/restaurants at railway platforms and use electricity.

The use of electricity by these persons is meant for profit purposes and not for consumption by Indian Railway. Where, however, an occupant gets electricity free of charge as a part of his emoluments under the terms of his employment or contract, the duty is leviable on the occupant but if the electricity is supplied free of charge by the Central Government or Railway for administrative reasons (such as when energy is brought by them and then distributed free), the duty is not leviable as the sale of energy had been to the Government or the Railway and not to the occupants.

[Finance (Taxation) Department No.2194(16) FT, dated 4 December 1953]

Note:(2) Collector/Deputy Commissioner is the authority to decide whether any hospital or dispensary is maintained for private gains or not. The licensee should, therefore, obtain necessary certificate from the Collector/Deputy Commissioner in order to grant exemption in this regard and the exemption is to be allowed only on receipt of a clear certificate to that effect.

[vide GWB Finance (Taxation) Department letter No.2434 FT dated 13 June 1973 addressed to the CAO, WBSEB]

Note:(3) Essential quantum of energy required to be consumed in the process of generation, transformation or distribution of electricity is not dutiable whether in the case of licensee or private generators or suppliers.

4.2.6. Assessment:

BED Act

There is no provision for regular assessment of electricity duty payable by the licensee/consumer. However, if a licensee/consumer fails to submit a return under Section 6 or submit an incorrect or incomplete return the authority as prescribed in sub-Rule (1) of Rule 9C of the BED Rule, 1935 shall proceed to assess under Section 3A of the BED Act, 1935 to the best of his judgement the amount of

electricity duty payable by such licensee/consumer. The detailed procedure has been prescribed in the sub-Rule (2) or Rule 9C of the Rule ibid.

ISRVA Act

There is no provision for regular assessment of duty under the ISRVA Act. But sub-rule f (ii) under Rule 11 of the ISRVA Act lays down that :

(i) where non-payment or incorrect payment of duty has been made, the Collector of the District may serve a notice to the person liable to pay duty for furnishing data necessary for assessment and proceed to assess the duty payable by that person.

Provided that if the data are not furnished within one month after service of the notice or if there is reason to believe that the data furnished are not correct or incomplete, the Collector may, after giving reasonable opportunity to represent the case, assess to the best of his judgement the amount of duty payable by such person.

(ii) No assessment under Section 3A shall be made :-

(a) after the expiry of four years from the end of the year comprising the period or periods in respect of which the assessment is made, or

(b) after the 31 December 2000, whichever is later.

Explanation: for the purpose of this Section, 'year' means the year commencing on the first day of April and ending on the last day of March.

4.2.7. Procedure for collection of revenue

The fees leviable under the first two enactments mentioned above are collected by the Chief Electrical Inspector and remitted into the Revenue Bank of India. For this purpose, demands are raised by issue of bills for the services rendered, etc, and there bills are entered in bill registers maintained in his office. When fees are realised the amounts thereof are noted against the respective entries in the bill registers.

The duty under the two Electricity Duty Acts are required to be collected from the consumers by the licensees who bill for and collect the duty along with the charges for the electrical energy supplied to them. The duty so realised has to be remitted by the licensees into the nearest Government Treasury and challans in support of the payments are required to be attached to the returns submitted by them. The licensees are required to remit the duty only to the extent it has been collected by them though they have an option to remit amounts not collected also. The licensees are allowed a rebate at rates notified by the State Government under Section 5(3) towards cost of collection of the duty. It is to be noted that unlike sales tax, the electricity duty which is a debt due by the supplies to the Government

is collected by the licensees as against of the Government and they are statutory liable to pay as duty to Government only the amounts collected by them.

The accounts of licensees can be inspected by the Chief Electrical Inspector and if any under assessment is noticed during such inspection, the licensee will be called upon to pay the amounts specified.

The responsibility for the collection of Electricity Duty devolves on the Chief Electrical Inspector and collectors of Districts. The Chief Electrical Inspector is the authority to whom the returns have to be submitted by all licensees and other person generating electricity in Calcutta and 24-Parganas District, while in the other Districts the returns are to be submitted to the Collector with copies to the Chief Electrical Inspector. The Collector in these Districts thus look after the collection of duty in the Districts and keep a watch over the receipts of the returns, etc. However, the Chief Electrical Inspector, as the inspecting authority is responsible to inform the Collector of any under assessments of duty noticed by him and on receipt of such intimation the Collector will have to be arrange for the collection of those amounts also from the licensees.

4.2.8. Licence/other fees payable under the Electricity Acts:

The Indian Electricity Act, 1910 and the Indian Electricity Rule, 1956 made thereunder, provide for the grant of licences by the State Government to the suppliers of energy (for which rules 11 of the Indian Electricity Rule, 1956 prescribes a fee not exceeding Rs.1500) and for the appointment of Inspectors who are responsible for the implementation of the general safety precautions by the Act and for the supervision over the generation, transmission, distribution and consumption of electrical energy. The Inspectorate also undertakes testing of the installations of the licensees as well as those of the consumers, for which the following periodicity has been prescribed by the State Government under Rule 46 of the Indian Electricity Rules, 1956:

i) High and Extra High Voltage installations(above 33,000 volts) :-Annually

ii) Medium Voltage installations (651 volts to 33,000 volts) :- Triennially

The rate of fees will be the same as those fixed for services of Electrical Inspectors (vide Annexure – 1).

[Government of West Bengal, Commerce and Industries Department No.4110-Power /IE-7/65 dated 29 June 1965]

iii) Inspections of low voltage installations (250 volts to 650 volts) are entrusted to the suppliers concerned and is to be carried out once in 5 years. The rate of fees that could be charged for this inspection has been fixed at Rs.3.75 per installation.

For all the services rendered by the Inspectors of Electricity, Rule 7(2) of the Indian Electricity Rules, 1956, empowers the State Government to levy such fees for testing and inspection and generally for the services of inspectors as it may specify and the Government may also remit (that is, waive) any fee or part thereof.

The rates of the fees prescribed by West Bengal Government under this rule are indicated in Annexure – I. The regulation made under Rule 45 also prescribe certain fees for issue of permits, certificates etc. to electrical workman and supervisors, the rates of fees prescribed for these are mentioned in Annexure – I.

The West Bengal Lift Rules, 1959 and the West Bengal Escalator Rules, 1962 also prescribe certain fees for licences, etc. and these are indicated in Annexure – II.

The testing laboratory under the Chief Electrical Inspector undertakes testing of various electrical instruments, metal etc. for which rates of fees prescribed by Government are indicated in Annexure – IV.

An important point to be noticed is that the fees prescribed under the Indian Electricity Act, 1910 and the rules or regulations made thereunder are towards cost of services rendered by Government or concessions granted by it; they do not amount to 'tax' or 'duty' which are levied for general purposes of the States. Hence it is open to audit to suggest periodically to Government a modification of the rates of fee prescribed for the services or concessions if, in the opinion of audit they do not adequately cover the cost thereof.

4.2.9. Offences and Penalties

Section 9 of the Bengal Electricity Duty Act, 1935 imposes on conviction before a Magistrate a fine not exceeding Rs.1000 if any person fails to keep books of accounts as required under Section 6 as to submit due prescribed return in time or intentionally obstructs an Inspector in exercise of his power under the Act.

Similarly penalty has also been imposed under Rule 12 of Bengal Electricity Duty Rules, 1935 for any breach of the said Rules.

There is, however, no provision for 'Appeal' under the relevant Acts and Rules.

In case of any dispute between the consumer and the licensee, Rule 10 requires the licensee to refer the matter to the Collector or such other Officer as the State Government may appoint, who will decide the matter after such enquiry as he thinks fit.

4.2.10. Recoveries and Write-off:

Arrear duty are recoverable as a public demand (Section 8 of the BED Act). The State Government may Write-off any duty which is found irrecoverable wholly or in part, even after careful and diligent thought to recover the same (Rule 8A of BED Rules).

4.2.11. Special rate of duty in certain cases:

Clause (2) of part 'b' of first schedule prescribed, concessional rate of duty in cases the energy is consumed for the purpose of –

(A) A cottage or small scale industry not being a factory under the Factories Act, 1948.

Note: Every application for availing of the benefit under this clause has to be submitted to the Inspecting Officer if the industry is situated in Calcutta and to the Collector of the district in other cases, and only after the certificate of admissibility under the law has been given by that authority, the concession may be allowed.

[Finance Department's Circular No.430-FT dated 21 February 1958]

(B) Electrolysis or heating in electric furnaces by any industry undertaking.

Note: The concessional rate in this case is not admissible unless the following conditions laid down u/s 3(2)(a) of the Bengal Electricity Duty Act, 1935 and explanation a(i) in Section III of part 'B' of first schedule of the Inter-State River Valley Authority Electricity Act, 1973 are satisfied.

(i) Cost of energy consumed for the purpose of electrolysis, etc. is 20% or more of the total cost of manufacture by electrolysis etc.

(ii) Separate books of account are maintained showing separately the details of cost of energy consumed for purpose of electrolysis, etc. and the total cost of manufacture by electrolysis etc.

Notes: .Cost of energy does not include element of electricity duty

[vide GWB Finance (Taxation) Department No.305-FT dated 27 January 1965]

2. The Chief Electrical Inspector has been notified by Government as the authority to whom applications have to be made for the concession being extended (Finance Department's notification No.609 and 610 dated 22 February 1974).

3. Total cost of manufacture would mean the cost of producing the manufactured product which would exclude cost of input raw material and output product. In calculating the cost of manufacturing, the following component should also be included –

a) cost of electrical energy in heating

b) cost of electrodes if used in the process

c) cost of materials added in the furnace (if used) during the process

d) cost of labour and supervision and other contingent expenditure connected with the process and other overhead costs.

[vide GWB Finance (Taxation) Department's Memo No.1947 dated 31 July 1974 addressed to the Chief Electrical Inspector, West Bengal]

4.2.12 . Refunds and Rebates:

Electricity Duty, once paid ,is not refundable or recoverable from subsequent dues, unless sanctioned in writing by the Government or other Competent Authority.

[Rule 3(9)]

Rebates:-

In terms of section 5(3) of the Bengal Electricity Duty Act, 1935 (and section 6(2) of the 1973 Act) a rebate at such rates as may be notified by Government is admissible to the licensee towards cost of collection. The following are the rates of rebate notified by the State Government.

Calcutta Electric Supply Company	A flat rate of 1% on the amount of electricity duty collected
Other licensees	10 % on the first Rs.100 2.5 % on the next Rs.400 2 % on the sums above Rs.500

Subject to maximum of Rs.1,000 per month.

[Finance Department No.1109(15) FT dated 8 March 1972]

The West Bengal Electricity Board is also eligible to a rebate at a flat rate of one per cent (without being limited to Rs.1,000 pm) provided the duty is paid by it to the credit of Government within 30 days following the date on which the relevant return falls due. This rate came into force from 1 April 1974 in respect of duty collected and deposited from that date.

[Finance Department No.1007-FT dated 21 March 1974]

The licensee should deposit the entire amount of the duty collected by them and separately draw the amount of rebate to which they are eligible, by bills presented to the Collector or other authority concerned. The payments of rebate will be accounted for under expenditure head and not as a reduction of revenue.

[Finance Department No.4070(15)-FT dated 11 July 1974]

The Collector of the district is required to maintain the following registers to watch proper realisation of electricity duty in respect of his district:

(i) Challan Register (Proforma I)

(ii) Monthly Return Register (Proforma II)

(iii) Demand Register (Proforma III)

CHAPTER III

Role to be played in absence of Internal Audit System:

4.3.1. Introduction:

Internal Audit System is designed for examination of the effectiveness of internal control prevailing in the management and recommend improvement. Internal Control is an integral process that is effected by an entity's management and is designed to provide reasonable assurance in order that the following general objectives are being achieved:

- fulfilling accountability obligations
- complying with applicable Laws and Regulations
- executing orderly, ethical, economical, efficient and effective operations
- safeguarding resources against loss

The Power Department and Finance (Taxation) Department {Now Finance (Revenue) Department} have not set up any Internal Audit Wing so far in respect of taxes and duties on Electricity. In absence of Internal Audit System, it is not ensured whether the above objectives are being achieved within the said Departments.

4.3.2. Role of Management in absence of Internal Audit:

As Internal Audit Wing is non-existent the Director of Electricity Duty is responsible for all activities of the Department including the internal control system. For smooth as well as methodical functioning of the office/Department, records viz. Offence Register, Bill Register, Defaulters Register, Registration Register, Lift Licence Register, Form 'W' Register, Department's Assessment and Advice Register, Collection Register of tax/duty, generating set Register, Register of Licensees and non-licensees, Challan Register, Rebate Payment Register, Return Register etc. along with updated entries, are required to be maintained properly in the office and be inspected periodically by the Director of Electricity Duty or by any other Officer empowered by him. Similarly, in course of work, the Directorate of Electricity Duty should watch the observance of different provisions of the Bengal Electricity Duty Act, 1935, the Bengal Electricity Duty Rules, 1935, the Electricity Duty Manual and Standing orders issued from time to time for exercising effective internal control within the different units controlling the assessment and realisation of electricity duty. He should also watch the application and maintenance of different forms introduced for enforcing internal control mechanism within the Electricity Duty Department.

4.3.3 Role of Supreme Audit Institutions (SAI)

In absence of Internal Audit Wing in the Electricity Duty Department; SAI have a greater responsibility to discharge. They should encourage and support the establishment for having effective internal control in the Departments by highlighting lacunae in the Electricity Duty Act/Manual, system failure or system deficiency and recommend remedial measure in course of audit/review in the auditee units.

Thus SAI may play a strategic role in the development of the Internal Control Systems directly/indirectly depending on their legal mandate and management structure indirectly of the organisation.

CHAPTER IV

Procedure for Audit

4.4.1 Procedure for Audit:

The Primary duty of audit is to see that –

(a) Inspection fees and other fees leviable under the Electricity Rules have been correctly levied and realised. Fees for inspection are to be realised in advance.

(b) Electricity Duty payable by the licensees and other persons have been credited to Government according to the provisions of the laws in force

(c) Assessment of duty where necessary has been made, demands raised and collected promptly.

(d) Adequate rules and regulations have been framed for proper levy and collection of demands that internal procedure sufficiently safeguards any willful omission to levy or collect the 'fees' and 'duty'

(e) Inspections required to be done under the law have been carried out and that the correctness of the duty by the assesses had been checked and reported in these inspections.

Audit is conducted both at the Head Office of the Directorate at Kolkata and the Zonal offices at Asansol and Jalpaiguri. Besides, the district wise audit of receipt of electricity duty is taken up annually along with other receipts of the Collector.

4.4.2 Checks to be exercised in audit:

Besides, general review of the above records maintained in the local office, the following audit checks may be exercised.

A. Inspection fees and other fees:

i) Entries in the Inspection Fee Bill Register should be test checked with the office copies of the bills to see that the rates charged in the bill are according to the prescribed rates. Few bills should be compared with the previous bills to see that there is not omission to included in installation, etc. last inspected in the current bill without assigning any reasons.

ii) The amount of fees realised as shown in the Bill Register should be entered in the Cash Book and the remittances into the treasury should be test checked to verify that the moneys have been credited to Government.

iii) The Bill Register should be compared with the Defaulters Register to see that amount of bills not paid within the stipulated date are entered in the latter register and action warranted under the rules is taken for realisation of the dues.

iv) Where fees are charged according to the connected load of each installation, it should be seen that the connected load of more than one such installation is not summed up to charge a single rate on the total connected load of the installations. For example, if in any generating station there are three transformers having direct connected load459, separate charge should be made for each transformer.

v) It should be seen that the periodicity of inspection as fixed by Government is being maintained and that no installation due for inspection has been left uninspected and that the fees for such inspection are realised in advance.

vi) Regarding other fees for different examination, licences, permits, etc. it should be seen that the prescribed fees in each case is entered in the Cash Book. Few cases of licence, permits, etc. should be checked to see that the renewals are being made in time and that penalty for delayed renewals is realised.

B. Electricity Duty:

Return Register: This register is maintained for watching the receipt of monthly returns from the licensees and other persons liable to pay electricity duty. It should be seen that the returns are duly entered in this register and that action is taken under the rules against the defaulters.

Returns:

The returns should be scrutinised carefully to see that:-

a) the returns are complete in all respect and that they are submitted in time.

b) energy consumed for different purposes has been corrected, allocated and that the appropriate rate of duty is charged for each class of consumption and 'highest of the applicable rates are charged where different kinds of consumption of energy chargeable at different rates are not recorded in separate meters.

c) the exemption from duty have been correctly allowed and that the conditions imposed for granting concessional rate of duty have been fulfilled.

d) the figures shown in the returns particularly the units charged at the lower rate of duty were subject to check of the Inspecting Officer is required under Rule 6 of the Bengal Electricity Rules.

e) the payment of duty is made within the date specified under the rules and challan numbers and dates in token of payment are invariably quoted in the returns.

Note: The amounts shown, have been remitted into the treasury by their challans should be test checked with the treasury records to verify that the moneys have been credited to Government.

f) the rebate admissible to the licensee as cost of collection of duty is in accordance with the rates fixed by Government and that they are not deducted from the remittances but claimed separately.

C. Besides the above, the following general points should also be seen: - –

a) whether meters have been installed for generation and consumption of energy in the auxiliaries? In cases where meter for generating the energy has not been installed, the percentage of energy shown as consumed in the process of generation may be compared with that fixed by Government or any other authority or obtaining in other comparable identical units.

b) whether electricity duty has been paid in respect of energy by Autonomous Bodies, Co-operative Societies and similar other non-Government bodies and Institutions.

c) whether electricity duty has been realised as and when due from persons consuming energy from their own source of generation.

d) whether electricity duty has been recovered in respect of energy consumed by (a) Government employees, (b) employees of the Electricity Board or other licensees and (c) those to whom energy is supplied free or at concessional rates.

e) whether the refund allowed were sanctioned by the competent authority and the amount refunded was actually deposited by the person concerned. This should be seen with reference to original treasury challans.

D. Assessment and Arrear Advice Register:

This register is maintained for recording assessment in *lieu* of meters under Rule 11. The cases where under-payment of duty is detected by the Inspecting Officer are also recorded in this register. In both the cases, advice of assessment is sent to the licensee/consumer and the Collector for realisation of the dues. This register should be checked with the report of the Inspecting Officer and their assessment to see that –

a) sufficient data were made available for proper assessment of duty and there is sufficient evidence on record to justify the allocation of the energy consumed to the lower slabs of duty

b) the assessment advice not only indicate the arrear duty to be realised but also the rates at which current duty is chargeable

c) the amount advised for realisation has been realised and credited to Government account

E. Collection Register:

In this register are entered the figures of collection of electricity duty, furnished by the Collectors through their monthly report. It should be seen that the amount deposited in a month has been shown separately in respect of each licensee and private generators. This will facilitate a comparison between the figures shown by the Collector and that shown in the returns for duty, submitted by the licensee etc.

F Form 'W' Register:

As per Sl. No.(9) of the Second Schedule energy consumed in one-roomed or two-roomed shops or tenements in one building upto 25 units in any one month is exempt from duty. Consumers intending to claim such exemption are required to make application in Form 'W' which are entered in this register. These applications should be test-checked in audit to see that the exemptions have been rightly granted after proper enquiry by the inspecting staff of the Directorate.

G. Generating set Register:

This register is intended for recording the cases where permission is granted to generate electrical energy by installation of 'Diesel Generating Sets'. Person installing generating plants having a capacity over 2.5 kilowatts are required to pay electricity duty on the energy generated and consumed by them. It should, therefore, be seen in audit that –

a) all the cases of installation, permitted by the Electrical Inspectors have been recorded in the register and the Collectors concerned have been informed on the fact

b) meters have been installed in all the generating sets for recording the energy consumed

c) steps are taken to read the meters and check the accounts of energy consumed by the private generators periodically by the inspecting staff of the Directorate

d) the regular returns of duty paid in the prescribed form are being submitted

e) the set has been registered with the Chief Electrical Inspector, West Bengal

f) the exemption allowed does not go beyond the date of registration with the aforesaid authority

g) the consumption of energy relates to industrial and manufacturing process (including Cold Storage and Cinema Hall) only

h) the person generating such energy is not a licensee

i) the period of extension has been made by Government by notification in the official gazette

Register of licensees and non-licensees and the Returns maintained in the office of the Collectors may be checked in the same manner as laid down in respect of 'Return Register' and returns respectively maintained at the head office.

H. Challan Register:

It should be seen that all the challans submitted in token of payment of electricity duty are entered in this register. Credits in respect of selected month recorded in this registers should be checked with the payment, shown in the returns and verified from the record of the treasury.

I. Rebate Payment Register:

Entries in this register should be checked with the office copies of the rebate bills. It should be seen that rebate has been calculated according to the prescribed rates and that the conditions imposed for grant of rebate have been fulfilled.

4.4.3. Periodicity of Audit:

Generally audit of electricity duty at the Directorate Office shall be annual and at the Collectorate Office shall be biennial/triennial.

4.4.4. Records maintained at head office:

(A) In connection with inspection and other fees:

(i) Inspection fee bill register

(ii) Defaulters register for non-payment of inspection fees

(iii) Workman Permit examination application register

(iv) Supervisors competency certificate examination register

(v) National certificate examination register

(vi) Electrical contractors examination register

(vii) Meter testing fees register

(viii) Register for certificate of registration for maintenance of firms (lift)

(ix) Lift licence register

(B) In connection with electricity duty:

(i) Returns in the prescribed forms

(ii) Return register for licensees, private generators, and persons receiving energy from Inter-State River Valley Authority

(iii) Assessment and arrear advice register

(iv) Form 'W' register

(v) Collection register and monthly returns from the Collector

(vi) Generating set register.

At Zonal Offices:

Same records as mentioned in serial (B)(i) and (ii) above

At Collectors Office:

Register of licensees and non-licensees

Challan Register

Rebate Payment Register

Returns

Miscellaneous:

(i) Audit at the head office of the Directorate should be followed by audit at the two Zonal offices and one single 'Inspection Report' shall be issued. Separate report will be drawn up in respect of each Collectorate

(ii) The particulars of records not made available to audit should be mentioned in the body of the Inspection Report and the records seen in audit should be indicated in a separate list or in the audit note book to be kept for each unit of audit

[C&AG's Circular No.7 of 1974 (RA)]

(iii) A separate paragraph should be included in Inspection Report about the extent of arrear in collection of revenue.

ANNEXURE – I

Department of Power (West Bengal)

Notification

Rules for the levy of fees for the services of Electric Inspectors No.953-Power/IV dated 29 September 1988 – In exercise of the power conferred by sub-rule (2) of Rule 7 of the Indian Electricity Rules, 1956.

The Schedule

SCALE-A

(1) For an inspection, examination or test of any electrical installation or apparatus to which energy is, or is about to be, supplied at medium or high or extra high voltage except in cases to which scales B to N specifically apply.

	Fees For	
Connected load of installation etc. (KW or KVA)	**Initial inspection (Rs.)**	**Inspections other than initial**
Upto and including 10 Kilowatts	30	One half of the fees charged for initial inspections
Exceeding 10 kilowatts but not exceeding 20 kilowatts	40	
Exceeding 20 kilowatts but not exceeding 50 kilowatts	80	
Exceeding 50 kilowatts but not exceeding 100 kilowatts	120	
Exceeding 100 kilowatts but not exceeding 500 kilowatts	Rs. 120 plus Rs.24 for every 20 KWs or part thereof in excess of 100 KWs	
Exceeding 500 kilowatts but not exceeding 1000 kilowatts	Rs. 600 plus Rs.16 for every 20 KWs or part thereof in excess of 500 KWs	
Exceeding 1000 kilowatts but not exceeding 2000 kilowatts	Rs. 1000 plus Rs.8 for every 20 KWs or part thereof in excess of 1000 KWs	
Exceeding 2000 kilowatts	1,450	

(2) The fees shall be paid by the owner to whom energy is, or is about to be supplied.

SCALE-B

(1)(i) For an inspection, examination or test of any generating station or other place in which energy is, or is about to be, generated at a voltage of 100 volts or more.

	Fees For	
K.W. or K.V.A. of plant installed	**Initial inspection**	**Inspections other than**

	(Rs.)	initial
Upto and including 25 Kilowatts	100	One half of the fees charged for initial inspections
Exceeding 25 kilowatts but not exceeding 50 kilowatts	150	
Exceeding 50 kilowatts but not exceeding 100 kilowatts	200	
Exceeding 100 kilowatts but not exceeding 200 kilowatts	400	
Exceeding 250 kilowatts but not exceeding 500 kilowatts	500	
Exceeding 500 kilowatts but not exceeding 750 kilowatts	600	
Exceeding 750 kilowatts but not exceeding 1000 kilowatts	700	
Exceeding 1000 kilowatts	800	

(ii) For an inspection, examination or test of any transformer or receiving station or sub-station or other place in which energy is, or is about to be, distributed at a voltage of 100 volts or more.

	Fees For	
K.W. or K.V.A. of plant	**Initial inspection (Rs.)**	**Inspections other than initial**
Upto and including 100 Kilowatts	100	One half of the fees charged for initial inspections
Exceeding 100 kilowatts but not exceeding 250 kilowatts	200	
Exceeding 250 kilowatts but not exceeding 500 kilowatts	300	
Exceeding 500 kilowatts but not exceeding 750 kilowatts	400	
Exceeding 750 kilowatts but not exceeding 1000 kilowatts	500	
Exceeding 1000 kilowatts	600	

(2) In the case of a generating station or other than place in which energy is, or is about to be, generated the fee shall be paid by the licensees or the person generating or about to generate energy. In the case of a transformer or receiving station or sub-station the fee shall be paid by the person owing the same.

SCALE-C

For an inspection, examination or test of any electrical installation, appliance or apparatus, in any place of public entertainment.

	Fees For	
Connected load of installation etc. (KW or KVA)	**Initial inspection (Rs.)**	**Inspections other than initial**
(i) For an inspection, examination or test of any electrical installation, appliance or apparatus, other than a generating plant, transformer, neon sign, air-cooler or air-conditioning plant for which separate fees will be	200	

charged under appropriate scales in a Cinema, Theatre or other place of public entertainment other than a travelling cinema or temporary place of public entertainment referred to in clause(ii)		One half of the fees charged for initial inspections
(ii) For an inspection, examination or test of any electric installation, appliance or apparatus other than a generating plant, transformer, neon sign, air-cooler or air-conditioning plant for which separate fees will be charged under appropriate scales in a travelling cinema or other temporary place of public entertainment.	100	

(2) The fee shall be paid by the owner:

SCALE-D

(1) For an inspection, examination or test of any electrical installation, appliance or apparatus, in any factory, within the meaning of the Indian Factories Act, 1948, other than a generating station or a receiving station or a sub-station for which a separate fee will be charged under Scale-B.

(i) For lighting or for purposes other than power:

	Fees For	
Connected load of installation etc.	**Initial inspection (Rs.)**	**Inspections other than initial**
Upto and including 1 Kilowatt	20	One half of the fees charged for initial inspections
For every additional kilowatt or part of a kilowatt exceeding 1 kilowatt	Rs.20 subject to a maximum of Rs.200	
(ii) For Power purposes:-		
Upto and including 10 Kilowatts	30	
Exceeding 10 kilowatts but not exceeding 20 kilowatts	40	
Exceeding 20 kilowatts but not exceeding 50 kilowatts	80	
Exceeding 50 kilowatts but not exceeding 100 kilowatts	120	
Exceeding 100 kilowatts but not exceeding 500 kilowatts	Rs.120 plus Rs.24 for every 20 KWs or part thereof in excess of 100 kilowatt	
Exceeding 500 kilowatts but not exceeding 1000 kilowatts	Rs.600 plus Rs.16 for every 20 KWs or part thereof in excess of 500 kilowatt	
Exceeding 1000 kilowatts but not exceeding 2000 kilowatts	Rs.1000 plus Rs.8 for every 20 KWs or part thereof in excess of 1000 kilowatt	
Exceeding 2000 kilowatts	1450	

SCALE-E

(1) For an inspection or examination of any electric traction system, trolly wires overhead equipment or test of bonding and leakage currents – Rs.`100 plus per diem of 8 hours.

(2) The fee shall be paid by the owner of the electric traction system.

SCALE-F

(1) For an inspection or examination or test of -

(a) a high or extra high voltage service connection – Rs.100

(b) a medium voltage service connection – Rs.50

(c) a low voltage service connection – Rs.20.

(2) The fee shall be paid by the supplier or other persons supplying energy.

SCALE-G

(1) For an examination of overhead lines of different suppliers or owners approaching or crossing each other, or of any overhead lines approaching or crossing telephone, telegraph or tramway trolly wires currents – each approach or crossing -Rs.20.

(2) The fee shall be paid by the person whose line was last erected.

SCALE-H

(1) For an inspection, examination or test of -

(a) a high or extra high voltage overhead line or cable - a minimum charge of Rs.100 for a distance up to five kilometers and Rs.10 per kilometer or part thereof beyond five kilometers and

(b) a medium or low voltage overhead line or cable – a minimum charge of Rs.20 for a distance up to one kilometer and Rs.5 per kilometer or part thereof beyond one kilometer

(c) for an inspection, examination or test of a high or extra high voltage switchgear or circuit breaker not covered under scales B(I)(i), B(I)(ii) or F(I)(a) – Rs.100

(2) The fee shall be paid by the supplier or owner thereof as the case may be

SCALE – I

(1) For the inspection and or issue of a certificate under sub-rule (3) of rule 82 of the Indian Electricity Rules, 1956 – Rs.50

(2) The fee shall be paid by the person who proposes either to erect a new building, structure, flood bank, road or to make any temporary addition or alteration in or upon any building, structure, flood bank or road.

SCALE - J

(1) For testing and giving a decision on the accuracy of meters and other apparatus under section 26(6) and 26(7) of the Act –

(a) For testing in the laboratory a meter or other apparatus of any description:

(i) up to and including a capacity of 50 Ampere -

For low voltage circuits	Rs.20
For medium voltage circuits	Rs.30
For high or extra high voltage circuits	Rs.50

(ii) of a capacity exceeding 50 Amperes but not exceeding 200 Amperes

For low voltage circuits	Rs.30
For medium voltage circuits	Rs.40
For high or extra high voltage circuits	Rs.60

(iii) of a capacity exceeding 200 Amperes but not exceeding 500 Amperes

For low voltage circuits	Rs.40
For medium voltage circuits	Rs.50
For high or extra high voltage circuits	Rs.80

(iv) of a capacity exceeding 500 Amperes

For low voltage circuits	Rs.50
For medium voltage circuits	Rs.70
For high or extra high voltage circuits	Rs.100

(b) In the case of a meter or other apparatus disputed under Section 26 of the Act, where the test is required by the Electrical Inspector to be carried out on a consumer's premises, the fees set out in sub-clause (a) above shall be increased by Rs.10, Rs.15 and Rs.30 per meter for low, medium or high or extra high voltage circuits, respectively.

For sub-clause (a) and (b) the Electrical Inspector shall decide under rule 8 of the Indian Electricity Rules, 1956 by whom such fee shall be payable.

Note: In deciding the capacity of meters and other apparatus for the purpose of clause (1) of scale J, the capacities shall be reckoned as those of the shunts or the primary rides of the current transformers, where ever these are used with the meter or other apparatus.

(2) the fees shall be paid by the suppliers or the owners as may be decided by the Electrical Inspector.

SCALE – K

(1) For an inspection, examination or test under Rules 98 to 101 of the Indian Electricity Rules, 1956 of any main, distributing mains, or service line for the existence of leakage therein which may result in electrolysis or other injury to any water, gas or other pipe or to any appliance connected therewith – Rs.50 for the first hour or part thereof and thereafter Rs.30 per hour or part thereof.

(2) If any leakage is discovered in any such main, distributing main, or service line in excess of the limits prescribed in Rules 98 to 101, the fee shall be paid by the supplier or owner of the main, distributing main, or service line, as may be decided by the Electrical Inspector.

If no leakage is discovered in excess of the limits prescribed by Rules 98 to 101, the fee shall be paid by the party applying for the test.

SCALE - L

(1) Where the Electrical Inspector is called upon to settle any dispute arising under:

	Per decision
(a) Section 21(4) of the Act	Rs. 40
(b) Section 26(4) of the Act	Rs. 20
(c) Clause VI(3) of the schedule to the Act	Rs. 60
(d) Sub-rule 2(b) of rule 82	Rs. 60
(e) Rule 52(1)	
(i) For high or extra high voltage	Rs. 100
(ii) For medium or low voltage installation	Rs. 30

(2) The fee shall be paid by the party against whom the decision is given.

SCALE - M

(1)

(a) For examination of electrical layouts or for approving layouts submitted to Electrical Inspector before any new installation work is taken up	Rs.50
(b) for testing the resistance of an earth electrode including earth conductors	Rs.50
(c) for testing an installation for localizing of leakage to earth in low or medium voltage installation	Rs.30 the first hour or part thereof and thereafter Rs.10 per hour or part thereof

(2) The fee shall be paid by the party making an application.

SCALE - N

(1) For an inspection and examination for giving a decision in connection with a dispute between the supplier and owner of an installation with regard to any breach of provisions of the Act or

the Rules and rates, not provided in any other scale ----------Rs.40

(2) The fee shall be paid by the party against whom the decision is given.

ANNEXURE – II

Regulations under Rule 45 of Indian Electricity Rule 1956 issued under Government Notification No.3560/UP/I/R/4156 dated 25 October 1956

Regulation No.-17	Grant of permit to Electric workman; permit shall be renewed every 5 years. The fee for renewal shall be Rs.5
Regulation No.-22	Supervisions Certificate of competency shall be renewed every 5 years. The fee for renewal shall be Rs.10 may be renewed upto one year with a penalty not exceeding Rs.5 on the discretion of Secretary
Regulation No.-34	(i) Fees for supervisor's competency certificate Rs.50 only for any two parts at a time and Rs.20 for each additional part thereof (ii) Fees for working permit Rs.20 per class (iii) Fees for contactors license – initial fee Rs.500 Annual Renewal fee Rs.100 may be renewed upto one month with a penalty of Rs.10

The Indian Electricity Certificate of Supervisors Regulation, Notification No.2588 MP dated 29 July 1959.

Regulation No.-9	Fee for Rs.35 per application, Renewal fee Rs.9 every three years, may be renewed upto one year with a penalty of Rs.5 at the discretion of Licensing Board.

ANNEXURE – III

(A) Extracts from West Bengal Lift Rules, 1958 (Rule 17)

(a) Application for license for working of lift	Rs.100 per lift (1)
(b) Annual License Fee	
(1) For lift excepting those in premises and for purposes mentioned in items (2) and (3) below:	Rs.40 per lift(2)
(2) For lifts in hospitals or dispensaries declared by Government as not maintained for private gain	Rs.10 per lift
(3) For lifts in building dedicated for public charity and used exclusively for that purpose for which a declaration has been made by Government	Rs.10 per lift
(c) Annual inspection fee	Rs.35 per lift(3)
(d) For inspection made at the request of the owner of the premises to whom a license has been granted or his agent or at the request of any occupier thereof who ordinarily uses the lift	Rs.10 per lift for each inspection
(e) Penalty for late renewal	Rs.20

(1) to (3) substituted by the Amended Rule 1975

(B) Extracts of the West Bengal Escalators Rules, 1962, Rule 14(1)

1)	Application fee for license for working as an escalator	Rs.50
2)	Annual license fee	Rs.40
3)	Annual inspection fee	Rs.10

4)	Penalty for late renewal	Rs.5

ANNEXURE – IV

Schedule of charges for testing of ammeters, voltmeters, wattmeters, watthourmeters, insulation testers etc. in the testing laboratory of the Directorate of Electricity, approved by Government under letter No.1407/4M-14/52 dated 9 June 1953 of the Commerce and Industries Department, West Bengal.

The testing charge indicated below cover only the testing work in determining the accuracy of the instruments.

(A) Charges for testing Ammeters:

(i) For single range ammeters –

(a)	upto a maximum range of 200 amperes	Rs.10
(b)	upto a range exceeding 200 amperes, but not exceeding 500 amperes	Rs.15
(c)	upto a range exceeding 500 amperes	Rs.20
(ii)	For multirange upto a range of 200 amperes	
(a)	for one range only	Rs.10
(b)	for every other additional range	Rs.5
(iii)	For multirange ammeters upto a range of 500 amperes	
(a)	for every range exceeding 200 amperes, but not exceeding 500 amperes	Rs.15
(b)	for every other additional range	Rs.5
(iv)	For multirange ammeters of any range exceeding 500 amperes	
(a)	for every range exceeding 500 amperes	Rs.20
(b)	for every range exceeding 200 amperes, but not exceeding 500 amperes	Rs.20
(c)	for every range below 200 amperes	Rs.5

Note: In deciding the capacity of ammeters which worked with current transformer or shunts the rating of the primary side of the current transformers and of the shunts will be taken into consideration for determining the testing charges.

(B) Charges for testing voltmeters

(i)	For single range voltmeters	
(a)	Upto a maximum range of 500 volts	Rs.10
(b)	Upto a range exceeding 500 volts but not exceeding 750 volts	Rs.15
(ii)	For multirange voltmeters upto a range of 500 volts	
(a)	For one range only	Rs.10
(b)	For every additional range	Rs. 5
(iii)	For multirange voltmeters upto a range 750 volts	
(a)	For every range exceeding 500 volts but not exceeding 750 volts	Rs.15
(b)	For every other additional range	Rs. 5
(iv)	For multirange voltmeters, any range exceeding 750 volts	

(a)	For every range exceeding 750 volts	Rs.20
(b)	For every range exceeding 500 volts but not exceeding 750 volts	Rs.10
(c)	For every range below 500 volts	Rs. 5

Note: *In deciding the capacity of voltmeters which are worked with potential transformers the rating of the primary side of the potential transformers will be taken into consideration for determining the testing charges.*

(C) Charges for testing wattmeters:

(i) For single range wattmeters of voltage range upto and including 750 volts –

a)	for current range upto and including 200 amperes	Rs.10
b)	for current range exceeding 200 amperes but not exceeding 500 amperes	Rs.15
c)	for current range exceeding 500 amperes	Rs.20

(ii)	For single range wattmeters of voltage range exceeding 750 volts	
a)	for current range upto and including 300 amperes	Rs.15
b)	for current range exceeding 200 amperes, but not exceeding 500 amperes	Rs.20
c)	for current range exceeding 500 amperes	Rs.30

Note: *(i) For multirange wattmeters the charges for each range will be the same as for single range wattmeter of similar range*

(ii) In deciding the capacity of wattmeters which are worked with current and potential transformers the rating of the primary side of such instruments, transformers will be taken into consideration for determining the testing charges.

(D) Charges for testing watthour meters:

(i) For watthour meters of current upto and including 50 amperes

a)	for voltage range upto and including 250 volts	Rs.10
b)	for voltage range exceeding 250 volts but not exceeding 650 volts	Rs.15
c)	for voltage range exceeding 650 volts	Rs.20

(ii) For watthour meters of current range exceeding 50 amperes, but not exceeding 200 amperes

a)	for voltage range upto and including 250 volts	Rs.15
b)	for voltage range exceeding 250 volts but not exceeding 650	Rs.20
c)	for voltage range exceeding 650 volts	Rs.25

(iii) For watthour meters of current range exceeding 200 amperes, but not exceeding 500 amperes -

a)	for voltage range upto and including 250 volts	Rs.25
b)	for voltage range exceeding 250 volts but not exceeding 650 volts	Rs.25
c)	for voltage range exceeding 650 volts	Rs.30

(iv) For watthour meters of current range exceeding 500 amperes -

a)	for voltage range upto and including 250 volts	Rs.25
b)	for voltage range exceeding 250 volts but not exceeding 650 volts	Rs.30
c)	for voltage range exceeding 650 volts	Rs.35

Notes: (i) For multirange watthour meters the charge for each range will be the same as per single range meter of similar range

(ii) In deciding the capacity of watthour meters which are worked with current and potential transformers and shunts, the primary side of the current transformers and potential transformers and of the shunts, will be taken into consideration for determining the testing charges.

(E) Charges for testing frequency meters, power factor meters, galvanometer, milli ammeters, macro ammeters

i)	for single range instruments	Rs.10
ii)	for multirange instruments	
a)	for one range only	Rs.10
b)	for every other additional range	Rs.5

(F) Charges for testing of Insulation Tester and Earth Tester:

i)	For single range tester	Rs.5
ii)	For multirange testers	
a)	for one range only	Rs.5
b)	for every other additional range	Rs.3

(G) Charges for testing Electrostatic Instruments – same as for voltmeter as per item (B)

For determination of testing charges for electrostatic instruments the working voltage of the range of the instruments to be tested will be taken into consideration.

For testing of insulating oil for determining its di-electric strength – Rs.10 per sample

For testing of instruments, etc, not covered by the above – In accordance with the charges estimated by the Electrical Inspector-in-Charge of the Laboratory.

ANNEXURE – V

Rates of Electricity Duty

The First Schedule

(A) For energy other than energy supplied by a licensee or the State Government

In the case of energy, other than energy supplied by licensee or the State Government, generated by a person liable to pay electricity duty under sub-section (4) of Section 5.

(B) For industrial Purposes: 5 paise upto 22 November 2004 and 40 paise w.e.f. 23 November 2004

(1) Low and Medium Voltage Energy:

Where low or medium voltage energy supplied by a licensee is consumed by a consumer in any premises in connection with industrial or manufacturing process including cold storage, and consumption of energy during the month to which the calculation of duty relates:

(a) Upto 22 November 2004

Does not exceed five hundred units	2.5 percentum of net charge for energy consumed
Exceeds five hundred units but does not exceed one thousand units	5 percentum of net charge for energy consumed
Exceeds one thousand units	7.5 percentum of net charge for energy consumed

(b) With effect from 23 November 2004

Does not exceed five hundred units	Nil
Exceeds five hundred units but does not exceed two thousand units	2.5 percentum of net charge for energy consumed
Exceeds two thousand units but does not exceed three thousand five hundred units	7.5 percentum of net charge for energy consumed
Exceeds three thousand five hundred units	12.5 percentum of net charge for energy consumed

((i) to (iv) modified vide BED (Amendment) Act, 2004)

(2) High Voltage Energy:

(a)	Except in cases falling under clause (b), where high	7.5 percentum upto 22 November 2004 and w.e.f 23

voltage energy supplied by a licensee is consumed by a consumer in any premises in connection with industrial or manufacturing process including cold storage	November 2004 15 percentum of net charge for energy consumed
(b) where energy is consumed for the purposes of (i) a cottage industry or a small scale industry, by any undertaking not being a factory as defined in the Factories Act, 1948 or, (ii) electrolysis or heating in electric furnace, by any industrial undertaking and separate meters or sub-meters are installed for indicating the quantity of energy so consumed	5 percentum of net charge for energy consumed

Explanation: Notwithstanding anything contained in Part A or Part C, where energy is consumed in any premises for lights and fans and for any other purposes in connection with industrial or manufacturing process, including cold storage, electrolysis or heating in electric furnaces, carried on therein, and the quantity of energy consumed for lights and fans is not separately indicated by meters or sub-meters, such quantity of energy consumed for lights and fans or for and other purposes shall be deemed to have been consumed for industrial purposes and the duty shall be payable in accordance with the rate in article (1) or (2), as the case may be of this part.

Provided that in respect of energy consumed in residences situated in such premises, the duty shall be payable in accordance with the rate in article (1) or (2), as the case may be, or part (c) of this schedule.

(C) Where a common rate is charged by a licensee for supply of energy for lights, fans and all other purposes except the purposes referred to in Part B.

(1) Low and Medium Voltage Energy:

In the case where a common rate is charged for supply of low or medium voltage energy for lights, fans and all other purposes, except the purposes in connection with industrial or manufacturing process referred to in article (1) of Part B, in any premises, and –

(a) Where such common rate is charged for low or medium voltage energy supplied by a licensee for commercial purposes to a consumer whose consumption of such energy during the month to which the calculation of duty relates -

(i) Upto 22 November 2004

(i)	does not exceed 25 units	Nil
(ii)	exceeds 25 units but does not exceed 60 units	2.5 percentum of net charge for energy consumed
(iii)	exceeds 60 units but does not exceed one hundred units	5 percentum of net charge for energy consumed
(iv)	exceeds 100 units but does not exceed one hundred and 50 units	7.5 percentum of net charge for energy consumed
(v)	exceed 150 units but does not exceed 500 units	10 percentum of net charge for energy consumed
(vi)	exceeds 500 units	12.5 percentum of net charge for energy

	consumed

(ii) With effect from 23 November 2004

(i)	does not exceed 150 units	Nil
(ii)	exceeds 150 units but does not exceed 500 units	10 percentum of net charge for energy consumed
(iii)	exceeds 500 units but does not exceed 1000 units	12.5 percentum of net charge for energy consumed
(iv)	exceeds 1000 units	15 percentum of net charge for energy consumed

(b) where such common rate is charged for low or medium voltage energy supplied by licensee for any purposes other than the commercial purposes referred to in clause (a), to a consumer whose consumption of such energy during the month to which calculation of duty relates -

(i) Upto 22 November 2004

(i)	does not exceed 25 units	Nil
(ii)	exceeds 25 units but does not exceed 60 units	2.5 percentum of net charge for energy consumed
(iii)	exceeds 60 units but does not exceed 100 units	5 percentum of net charge for energy consumed
(iv)	exceeds 100 units	7.5 percentum of net charge for energy consumed

(ii) With effect from 23 November 2004

(i)	does not exceed 300 units	Nil
(ii)	exceeds 300 units	10 percentum of net charge for energy consumed

(2) High Voltage Energy:

In the cases, where a common rate is charged for high voltage energy supplied by a licensee to a consumer for purposes, other than the purposes in connection with industrial or manufacturing process referred to in article (2) of Part B, in any premises, and –

(a) Where such common rate is charged for high voltage energy for commercial purposes to a consumer	12.5 percentum upto 22 November 2004 and thereafter 17.5 percentum of net charge for energy consumed
(b) Where such common rate is charged for high voltage energy for purposes, other than the commercial purposes referred consumed to in clause (a), to a consumer	10 percentum upto November 2004 and thereafter 15 percentum of net charge for energy consumed

(3) In respect of all premises where the supply of energy by a licensee is unmetered for -

	Paise per month
Every lamp of less than 30 watts	20
Every lamp of 30 watts or more but less than 40 watts	29
Every lamp of 40 watts or more but less than 60 watts	37
Every lamp of 60 watts or more but not exceeding 100 watts	50
For every additional 15 watts or fraction thereof in excess of 100 watts in any lamp	10

Explanation 1: For the purposes of this part, where the electricity duty charged, levied or paid in accordance with the provisions contained in the third proviso to sub-section(1) of Section 3, the expression "consumption of energy' shall mean the consumption of energy as arrived at on the basis of average monthly consumption in accordance with the said proviso.

Explanation 2: For the purposes of this Schedule:

(i) The expression "low or medium voltage energy" means any energy supplied, the voltage of which does not exceed 650 volts under normal conditions, subject to the percentage variation allowed under Indian Electricity Rules, 1956.

(ii) The expression "high voltage energy" means any energy supplied, the voltage of which exceed 650 volts under normal conditions, subject to the percentage variation allowed in the Indian Electricity Rules, 1956.

The Second Schedule

(See proviso of Section 3)

Exemption:

(1) Any Government, save in respect of premises used for residential purposes

(2) A railway administration, save in respect of premises used for residential purposes

(3) A local authority, save in respect of premises used for residential purposes.

Items (4), (5) and (6) were omitted by Section 7(2) of the Bengal Electricity Duty Amendment Act, 1957 (West Bengal Act XXI of 1957)

(7) A hospital or dispensary which is not maintained for private gain

(8) Any consumer using not more than 25 units in any one month

(9) Any consumer, being a landlord, or other person who supplies energy to one-roomed shops or tenants in any one building, in respect of the energy supplied to any such shop or tenement in which not more than 25 units of energy have been used in any one month

(10) Any consumer in a rural area using not more than 60 units in any three consecutive months

(11) Any person being a licensee or private generator, in respect of electrical energy consumed in the process of generation, transformation or distribution of electricity or for consumption in the case of a licensee, at his administrative office.

Explanation (a_2): Exemption (8) applies to a consumer who has more than one meter to record his consumption for different purposes if his total consumption in respect to all these meters does not exceed 25 units.

Explanation 1 was omitted by Section 7(2) of the Bengal Electricity Duty (Amendment Act) 1957 (West Bengal Act XXI of 1957).

Any consumer in respect of energy consumed for irrigation for agricultural process.

[Section 5 of the BED (Amendment) Act, 1979 (WB Act XVIII of 1979)]

A newly set up industrial unit, same in respect of premises used for residential purposes, for a period of five years from the date of first commercial production.

[Section 2(1) of WB Finance Act, 1993 (WB Act V of 1993)]

Explanation: A sick industrial unit or a closed industrial unit, after being rehabilitated or revised, shall be deemed to be a newly set up industrial unit.

[West Bengal Finance Act, 1999 (WB Act III of 1999), w.e.f. 1 April 1993]

An expanded portion of an existing industrial unit, established in a premises by way of expansion, save in respect of premises used for the residential purposes, for a period of five years from the date of first commercial production in the expanded portion of such unit.

[Section 3(2)(a) of the WB Finance Act, 1995 (WB Act III of 1995)]

Explanation (2): For the purposes of exemption (8) in the premises referred to in Article 2 of the first schedule, every 10 watts shall be deemed to consume one and a half units in a month

Explanation (3): For the purposes of exemption (9), in where more than 25 units of energy have been used in any one month in any shop or tenement for which there is no meter or sub-meter shall be determined by dividing the total number of units supplied during that month to such shops or tenements in the building by the number of such shops or tenements therein.

Explanation (4): For the purposes of exemption (10), the expression 'rural area' means an area other than an area to which the cantonments Act, 1924 or the Coochbehar Town Committee Act, 1903 or the Bengal Municipal Act, 1932, or the Chandernagore Municipal Act, 1955, or the Howrah Municipal Corporation Act, 1980, applies or an area declared as a notified area under Section 93A of the Bengal Municipal Act, 1932.

[Section 2(b)(ii) of the Bengal Electricity Duty (Amendment) Act, 1974 (West Bengal Act XXIX of 1974 followed by Section 4(6) of the WB Taxation Laws (Amendment) Act, 1993 (WB Act IV of 1993)]

Explanation (5): For the purposes of exemption (13), the expression 'a newly set up industrial unit' means an industrial unit which is established and commissioned by its owner for the manufacture of goods in West Bengal for the first time on or after the first day of April 1993, under any scheme approved by the State Government.

[Section 2(2) of the West Bengal Finance Act, 1993 (WB Act V of 1993)]

Explanation (6): For the purposes of exemption (14) –

(i) the expression 'existing industrial unit' shall mean an industrial unit which exists in West Bengal immediately before it starts commercial production for the first time in its expanded portion on or after commencement of Section 3 of West Bengal Finance Act, 1995;

(ii) the expression 'expanded portion' shall mean such potion of an existing industrial unit which is set up for commercial production after creation of additional capacity either in the existing premises or in any other premises in West Bengal.

[Section 3(2)(b) of the WB Finance Act, 1995 (WB Act III of 1995)

PART - V
STAMP DUTY AND REGISTRATION FEES
CHAPTER – I
REGISTRATION:

5.1.1 Introduction:

The item "Registration of Deeds and Documents" appears as Entry No.6 in List III of the Seventh Schedule of the Constitution and in accordance with Art.246(2), the Parliament and the Legislature of the State have concurrent powers to make laws on the subject. The Indian Registration Act, 1908, a law passed by the Central Legislature and modified by both the Central and State Legislature from time to time, regulates the registration of deeds and documents throughout India. The West Bengal Legislature has made several amendments to the Act in its application to this State, the more notable among amendments being the insertion of Section 2(11), 55A, 78(2), 80A and 82A in the Central Act.

The Indian Registration Act of 1908 (Act XVI of 1908) came into force on 1st January, 1909. This Act collected and consolidated several laws governing the subject and incorporated them in one Act. The main object of the law governing registration is not the raising of any substantial revenue like other taxation statutes but "to give security to the titles and rights of persons purchasing real property or receiving such property in gifts or advancing money on the mortgage of it or taking it on lease of other limited assignment; to prevent individuals being defrauded by giving or receiving in gift or lending money on mortgage or taking on lease any such property that may have been so previously disposed of or pledged; to afford persons the means of obviating as far as may be practicable, litigation respecting the authenticity of their wills or any written authority they may grant to their wives to adopt sons after their death; and that individuals may be able to provide against any injury to their right or property, by the loss or destruction of deeds relating to transactions of the nature of those above specified."

Section 78, 79 and 80 of the Act empowers the State Government to levy and regulate the recovery of fees for registration of documents, etc. Section 51 prescribes the books which should be kept in all the

Registration Offices and in addition to these registers, the following books are also maintained under rule 7 and the Financial Rules:-

(a) Cash Book -(Form No.24)

(b) Subsidiary Fees Registers for :-

(i) Registration Fees- (Form No.11)
(ii) Search, inspection and copying fees- (Form No.18)
(iii) Visit and Commission Fees- (Form No.9).

(c) Challan Book- (Form No.23)

(d) Registers of Receipt Books.

(e) Receipt Books (Form Nos.8 and 10).

(f) Register of Fines (Form No.28).

When documents are presented for registration, the Registering Authority examines them to see whether they have been presented within the time allowed under Section 23 et seq., they have been properly stamped as required by the Stamp Act and that they are otherwise in order. The fee realisable for the documents in terms of Section 80 is then realised, entered in the several registers and receipt is granted to the payee.

Under Section 69 and 80G, powers are delegated to the Inspector General of Registration to make rules for implementation of the law. The West Bengal Registration Rules, 1962 have been framed under these powers and approved by Government in their Notification No.541-Registration, dated 18.06.63.

The latest rates of fees leviable under the Act is prescribed by Notification No.480-F.T. dated the 15th February 2002 and deemed to have been come into force with effect from 31st January 1994.

The registration fees payable for the registration of the documents shall be calculated.

(a) where clause (16B) of Section 2 of the Indian Stamp Act 1899 and the West Bengal Stamp (Prevention of undervaluation of Instruments) Rules, 1994 are applicable on the basis of market value of the right title and interest so created by such documents and at such rate as may be shown in the Table A below :

Table A

	Rupees
When the market value does not exceed Rs.250.	2.00
When the market value exceeds Rs.250 but does not exceed Rs.500.	7.00
When the market value exceeds Rs.500 but does not exceed Rs.1000.	8.00
For every additional Rs.1000 or part thereof of the market value exceeding Rs.1000 up to Rs.5000.	9.00

For every additional Rs.1000 or part thereof of the market value above Rs.5000.	11.00

(b) Where the said section of the said Act and the said rules are not applicable and the value of the right, title and interest so created is expressed in the document, on the basis of value stated in such document and at such rate as may be shown in the Table B below:

Table B

	Rupees
When the value does not exceed Rs.250.	2.00
When the value exceeds Rs.250 but does not exceed Rs.500	7.00
When the value exceeds Rs.500 but does not exceed Rs.1000	8.00
For every additional Rs.1000 or part thereof exceeding Rs.1000 up to Rs.5000.	9.00
For every additional Rs.1000 or part thereof above Rs.5000.	11.00

5.1.2. Scope of Audit:

Principles laid down in Chapter 3 of Section II of M.S.O. (Audit.) and the introductory Chapter in Revenue Audit Manual Vol. I – Section I are to be followed as the basic guidelines. The effectiveness of audit depends largely on the documents and records available for audit in the offices of the assessing and collecting authorities. The attention of audit should particularly be devoted to see whether there is proper documentation in regard to levy, assessment and collection without which effective audit is not possible.

The audit of registration fees mainly consists in seeing whether the fees realisable for the various services rendered by the Registration Department have been determined correctly and have been realised properly and credited to Government account promptly. The assessment and levy of Stamp Duty on the Instruments registered in the registering offices are also to be checked along with the audit of registration fees. It should be seen that the registering authority has discharged effectively his duty of verifying that the instruments have been properly stamped as required under the Stamp Act and other relevant legislation for the valuation indicated therein.

In the audit of the records kept by the Registration Offices the following points should be seen :-

(a) Fees for the services rendered have been correctly levied in accordance with the table of fees laid down in the Act/Rules.

(b) Proper receipts are granted for the fees realised.

(c) Check the main and subsidiary Cash Books to see that all money received are accounted for in the Subsidiary Cash Book and carried over to the main Cash Book and deposited in the treasury the next day and the remittances into the treasury are supported by the treasury receipted challans.

(d) Monthly reconciliation is done between the departmental figures with those of the treasuries.

(e) Fines leviable under the Act and the rules thereunder are actually levied and collected.

(f) Remission of fines and refunds have been authorised by competent authority.

(g) Proper account is kept in the receipt-books.

(h) Copies of a few documents should be seen whether they have been adequately and properly stamped as per the provisions of the Stamp Act and other relevant regulations and whether market value of the property set forth in the documents has been correctly determined with reference to market value monitoring register and other records.

(i) Scrutiny of Inspector's Report.

(j) Whether the Registering Authority has watched compliance with the provisions of Sec.230A of the Income Tax Act, 1961 under which documents required to be registered under the provisions of certain clauses of Sec.17 of the Indian Registration Act, 1908, shall not be registered unless the prescribed certificates of the Income Tax Officers is produced by the executors of the instrument.

(k) Audit may also attempt to correlate the volume shown in the instrument registered in the registering office with that shown in the returns filed by the party for Income Tax, Wealth Tax, Gift Tax, Estate Duty, and bring to the notice of Government cases of undervaluation, if any, for such action as they consider necessary.

(CAG's Circular No.3 of 1973 received with letter No.1320-Rev.A/8/73, dated 05.03.1973).

5.1.3. Audit Procedure:

The following records maintained by registration office are to be checked in local inspection:

(a) Cash Book.

(b) Fee Book.

(c) Receipt Book.

(d) Miscellaneous Receipt Book.

(e) Register of application for search and copy.

(f) Register Books No. I to IV.

(g) Stock Register of Receipt Books.

(h) Register of Visits and Commissions.

(i) Challan Book.

(j) Register of Refunds.

(k) Register of Power of Attorney.

(l) Register of documents pending admission to Registration.

(m) Register of documents impounded.

(n) Defect Register.

(o) Market value monitoring register.

(p) Register of Bank Drafts.

The several books recording the fees recovered, fines levied should be verified to see that they have been maintained in accordance with the law and the departmental instructions in force.

Under Rule 43, the Registering Authority is required to endorse a Certificate of Admissibility (in Form No.I of Appendix II) on each document indicating the amount of fees leviable under section 78 read with the Table of fees prescribed by Government and the fines, if any, payable under Section 25(I) and 34(I) read with Rule 39(I). Simultaneously, entries of the fees and fines are required to be made in the Fee Book (Form No.11) or in the Register of Fines (Form No.28), as the case may be Rule 45(2) also requires the issue of receipts in Form No.8 to the persons who have tendered the documents in proof of receipt of the fees and fines (if any). Similarly, Rules 22A(7), 25(4), 29(3), 34 and 109(3) require issue of receipts in Form 10 or 19 or 20, as the case may be, for the various types of fees mentioned therein, as also for fees short levied originally but recovered subsequently under Article N of the Table of Fees. The Fee Book and the register of Fines should be checked in detail with the duplicate copies of these receipts and also with the entries made in the Certificate of Admissibility as copied out (under Rule 4) in the Registers prescribed under Section 51(1). A similar procedure is to be followed in the case of other receipts that may be received by the department. The daily totals of the fees and fines realised should be checked and traced into the Cash Book.

Rule 118(2) requires that the total of fees collected (except the fees collected on account of T.A. in connection with visits and commissions, which are directly paid over to the persons entitled thereto under sub-rule (5) of Rule 118) should be remitted daily to the Treasury/Sub-Treasury accompanied by challans in Form No.23. The remittances should be checked with reference to the copies of the receipted challans maintained in the registration offices and counter-checked with records of Treasury/Sub-Treasury to the extent prescribed. Where a system of remitting the collections of revenue by means of money orders to the district offices is in force in any office, in accordance with Rule 118(3), the remittances should be checked with reference to the post office receipts of the money orders as well as with the postal acknowledgements received from the Registrar. When the audit of the Registrar's office is taken up, the receipts received by money orders should be particularly verified

with reference to the remittances made by the sub-offices to ensure that all money orders received have been accounted for and remitted into the Treasury. It is also to be seen that Bank Drafts received on account of deficit stamp duty have not been unnecessarily retained and promptly sent to District Registrar/Treasury for ultimate credit into Government account.

Rule 76(1) requires that the originals of the receipts should be returned at the time the registered deeds, etc. are taken delivery of by the executants and that these originals should be pasted on to their respective counterfoils. A comparison should be made between the original receipts and the duplicates and in case any discrepancy is found, a complete check should be made of all the receipts issued during the period under audit to locate all such cases.

The entries in the Cash Book should then be checked in the usual manner and delays in the remittances of the receipts to the sub-treasury or treasury and appropriations of the receipts for expenditure should be noted.

The procedure for keeping an account of the blank and used Receipts Books should be checked to ensure that all Receipts Books received for use or used have been kept in proper custody, their receipts and issues have been made properly and that the closing balance of blank receipt books tallies with the stock on hand. It should also be seen whether physical verification of the stock on hand has been conducted periodically by the appropriate authorities and steps taken to settle/reconcile any discrepancies found on physical verification.

After the receipt and accounting of the fees and fines have been checked in the manner indicated above, a detailed check should be made of the correctness of the fees realised and fines levied, with reference to the rules and the law governing them. It should be ensured that the fees have been realised in accordance with the rates fixed under the law and if any exemptions or concessions or refunds had been allowed in this regard, they were in accordance with the law or orders of Government. Similarly, in the case of fines, the actual amount levied should be verified with reference to the rates prescribed in Rule 39 to 42 (and where fines leviable had not been levied or levied at reduced rates, it should not only be seen that reasons are recorded therefor but that the reasons are also valid in law).

5.1.4. Marriage Registration:

Section 8 of the Hindu Marriage Act, 1955, empowers the State Government to make rules for recording particulars of Hindu Marriage if the parties so desire in a register known as 'Hindu Marriage Register'. By virtue of this power the State Government has framed rules known as 'Hindu Marriage Registration Rules, 1958', published in West Bengal Government Notification No.306-Regn, dated 19.09.1958.

Under Rule 3, any registering officer appointed under the Indian Registration Act, 1908, or any other person, may be appointed as Registrar of Hindu Marriage Rule 4 prescribes the filing of applications in the form mentioned in Schedule 'A', to be entered by the Registrar in the Hindu Marriage Register in the form 'C'. Rule 8 requires the applications to be prescribed and kept bound in volumes.

Fees for the registration are prescribed in Rule 9 which lays down the following rates:-

Sl. No.	Particulars	Fees (Rupees.)
(i)	For receiving an application of marriage for registration for registering a Hindu marriage (to be paid by the parties to the marriage)	100.00
(ii)	For recording an objection (to be paid by the objectioner)	40.00
(iii)	For every enquiry into an objection (to be paid by the objectioner)	100.00
(iv)	For registering a marriage (to be paid by the parties to the marriage)	260.00
(v)	For a certified copy of a) application in Schedule A b) entry in Hindu marriage Register in Schedule C	 60.00 60.00
(vi)	For registering a marriage in Schedule C at any time outside the office hours (to be paid in addition to Fees in Serial No.iv)	100.00
(vii)	For registering a marriage in Schedule C outside his office at any place within the jurisdiction of the Registrar (to be paid by the parities to the marriage in addition to Fees in Serial No.iv)	400.00
(viii)	For making a search (to be paid by the applicant) :- a) For First year b) For subsequent years	 30.00 20.00 p.a s.t.max.of.200.00
(ix)	For inspection of original entry in the Hindu Marriage Register on application in the Form 3 specified in schedule A (to be paid by the applicant)	20.00
(x)	For correction of any error in Schedule c (to be paid by the applicant)	50.00

Note: The rate of fees mentioned in the table above may be reduced by fifty per cent for applicants below poverty line on production of income certificate issued by the concerned Panchayat Pradhan of a Gram Panchayat or Councillor of Municipality or Member of the Legislative Assembly or Member of Parliament of the area in which the applicant resides.

[Authority: Government of West Bengal Judicial Deptt's Notification No.215 JL dt.28.05.2002]

On receipt of the fees, the registering authority issues a receipt in Form 10 and enters the amount in the Fee Book in Form II at the end of each day, in lump. The total realisation on each day is carried to

the Cash Book and subsequently remitted to the treasury. The fees realised are credited to the head XXI-Misc. Departments' through separate challans.

Audit should trace all the applications filed by the parties into the register in Form 'C'. The fees realised should be checked with reference to the entries in the register in Form 'C' and traced into the Cash Book through the Fee Book and the receipts.

Audit of this class of receipts should be taken up alongwith the audit of Registration Offices. In case any other person has been appointed as Registrar of Marriages in terms of Rule 3, the relevant records maintained by that official should be obtained and audited in the same manner, the requisition for the records of such officials being obtained through the Registrar of the area concerned.

5.1.5. Special Marriage Registration:

Section 50 of the Special Marriage Act, 1954 (143 of 1954) empowers the State Government to make rules for recording particulars of Special Marriage. By virtue of this power the State Government has framed rules known as West Bengal Special Marriage Rules, 1969, published in West Bengal Government Notification No.142-Regn dated 31 January 1969. Subsequently amended from time to time.

Different kinds of Fees for registration of Special Marriage are prescribed in Rule 14 of the said Rules as under:

Sl. No.	**Particulars**	**Fees *(Rupees)***
(i)	For receiving a notice of marriage under Section 5 and for publication of such notice under Section 6 (to be paid by the parties to the marriage)	100.00
(ii)	For receiving an application of marriage for registration under Section 15 (to be paid by the parties to the marriage)	100.00
(iii)	For recording an objection (to be paid by the objectioner)	40.00
(iv)	For solemnizing or registering a marriage (to be paid by the parties to the marriage)	260.00
(v)	For a certified copy of entry a)in the Marriage Notice Book other than an entry relating to an objection b)in the Marriage Certificate Book (to be paid by the applicant)	 60.00 60.00
(vi)	For a certified copy of a notice under Section 5 or a Declaration under Section 11 on an application for registration of marriage under Section 15 (Form IV)	60.00
(vii)	For solemnizing a marriage or registering a marriage at any time outside the office hours as mentioned under rule 3 (to be paid by the parties to the marriage in addition to Fees in Sl. No.iv)	100.00
(viii)	For solemnizing or registering of marriage outside his office at any	400.00

	place within the jurisdiction of the Marriage office (to be paid by the parties to the marriage in addition to fees in serial no.iv.)	
(ix)	For making a search to be paid by the applicant- a) For first year b)For subsequent years	 30.00 20.00 p.a. s.t. max. of 200
(x)	For every enquiry into an objection (to be paid by the objectioner).	100.00
(xi)	For inspection of original entry in the Marriage Certificate Book or Notice of Marriage under section 5 or Declaration under section 11 or application for registration of marriage under section 15 (to be paid by the applicant.)	20.00
(xii)	For correction of any error under section 49 (to be paid by the applicant).	50.00

Note:- The rate of fees mentioned in the table above may be reduced by fifty percent for applicants below poverty line on production of income certificate issued by the concerned Panchayat Pradhan of a Gram Panchayat or Councillor of Municipality or Member of the Legislative Assembly or Member of Parliament of the area in which the applicant resides.

[Ref:- Government of West Bengal, Judicial Department Notification No. 216 JL dated 28.5.2002]

CHAPTER – II
STAMP DUTY

5.2.1. Introduction :

Under Entry No.44 of List III of Seventh Schedule read with Article 246 (2) of the Constitution , both the Parliament and the State Legislatures have power to legislate on "Stamp Duty other than duties and fees collected by means of judicial stamps, but not including rates of stamps duty". The Central and the State Legislatures have thus concurrent jurisdiction on the law relating to stamp duties subject to the restrictions mentioned in the entry. Under Entry No.91 of List I of the Seventh Schedule read with Article 268(1), the Central Legislature has exclusive jurisdiction to legislate on the levy of stamp duties in respect of Bills of Exchange, Cheques, Promissory Notes, Bills of Lading, Letter of Credit, Policies of Insurance, Transfer of Shares, Debentures, Proxies and Receipts and the State Legislature has no power in these matters though the proceeds of the taxation may be assigned to the matters in terms of Article 268 (2). Entry No.63 of List II of the Seventh Schedule prescribes that the State Legislature has exclusive jurisdiction to legislate of 'rates of stamp duty in respect of documents other than those specified in List I' and consequently that legislature can levy and regulate the taxation in that field.

The Indian Stamp Act, 1899 is a Central Legislation which was in force before the Constitution came into effect but continues to remain in force by virtue of Article 372(1). Under the Constitution, therefore, both the Central and the State Legislatures have jurisdiction to amend or modify the Indian Stamp Act subject to the limitations contained in Entry No.91 of List I and Entry No.63 of List II. In respect of fees collected as court fees by means of judicial stamps, the State Legislature has exclusive jurisdiction under Entry No.3 of List II. The Court Fees Act, 1870, though a Central Act, continues to remain in force and to regulate the levy of Court Fees, subject to amendments made by the State Government from time to time. The Stamp Act and Court Fees Act have, therefore, to be read with all the amendments that may be made by the State Legislature in so far as the law is applicable to West Bengal.

The Indian Stamp Act is a fiscal measure imposing duty on various instruments specified in the Schedule I thereto at the rates specified therein. Such duties are paid by the executors of instruments by either using impressed stamp paper, or by affixing adhesive stamps, of proper denomination on them. By an amendment made to Section 3 by Bengal Act III of 1922, Schedule I of the Central Act is replaced by Schedule IA of the State Act and the rates prescribed in the latter schedule alone will apply in West Bengal. Stamp Duty is leviable only on the documents mentioned in Schedule IA and the duty is not leviable on others such as wills, not mentioned therein. Exemptions from duty are also

mentioned in the schedule and Section 9 provides for remissions and reductions of duty. The State Government have made rules by virtue of powers vested in them under Sections 74 and 75 of the Act. These rules lay down the detailed procedure for determination and collection of Stamp duty.

The Court Fees Act is also a fiscal measure to secure revenues to the State, partly to reimburse the cost of administration of justice. Section 25 thereof requires all fees to be paid by means of stamps, the stamps being either impressed or adhesive or partly one and the other. In addition to this Act, some other Acts like West Bengal Value Added Tax Act, 2003, West Bengal Premises Tenancy Act 1956 (Rules 13 to 24), etc. also prescribe certain fees being paid in the shape of court fee stamps. The documents exempt from court fees are listed in section 19 of the Court Fee but any document not mentioned in the First and the Second Schedules is also exempt.

5.2.2. Method of Levy of Stamp Duty:

Under clause-26 of section-2 of the Indian Stamp Act, 1899 as amended from time to time "Stamp" means any mark, seal or endorsement by any agency or person duly authorised by the State Government and includes an adhesive or impressed Stamp, for the purposes of duty chargeable under this Act.

The two types of stamps which are in vogue, are judicial stamps and non-judicial stamps. The judicial stamps are governed by the Court Fees Act, 1870 and are to be used for documents mentioned therein, generally comprising those field before judicial, quasi-judicial authorities. The non-judicial stamps, governed by the Indian Stamp Act, 1899 are used for payment of duty on all the instruments mentioned in the schedule to that Act, which are executed either with or without registration under the Registration Act. A judicial stamp can not be used in place of non-judicial stamp and *vice-versa*. Thus a deed for transfer of property, stamped with a judicial stamp, will be deemed to be unstamped and similarly a petition filed before a court, stamped with a non-judicial stamp, will not be admissible under Court Fees Act.

Non-judicial stamps are mainly of two kinds, impressed stamps and adhesive stamps. The impressed stamps are available in the form of plain sheets with stamp embossed or printed on the top of the sheet, while the adhesive stamps are available loose so that they can be affixed on any document. Section 10 and 11 of the Stamp Act and Rule 3 *et.seq*. of the Indian Stamp Rules, 1925, indicate the different methods of payment of stamp duty for different types of documents. In addition, Rule 8 allows use of coloured impressions marked on skeleton forms of the instruments, subject to the conditions in Rules 9 to 11.

5.2.3. General Principles governing levy of Stamp Duty:

The basic principle of the Indian Stamp Act is that it levies the duty on the instruments and not on the transactions covered by the instruments. That is, the levy of stamp duty is on the instruments recording the transactions and not on the transactions themselves. Thus, if there is a sale deed or a partition deed put down in writing, the duty is attracted but if the sale or the partition takes place without any written deed, the duty is not attracted.

The second principle is that the stamp duty on an instrument depends on the real nature or substance of the transactions recorded in the instruments and not on any title or description or nomenclature given by the parties who execute the instruments. The description of any deed given by the parties is thus not decisive in classifying the documents but it is only the actual character of the transactions and the true nature of the rights created by the instruments that are decisive in such matters. It is however, open to the parties to select and adopt a particular form of transaction so as to attract less stamp duty (Board of Revenue *vs*. Narasimhan 1961 Madras 926).

The third principle is that the sufficiency of the stamp duty leviable on a document must be determined by looking at the documents and what is stated therein and not on any other evidence (Raman Chetty *vs*. Md. Ghouse 16 Calcutta 432). The valuation for the purpose of stamp duty is also to be based on the value on date the instrument is executed and not with reference to any subsequent or antecedent changes in prices or valuation (Bhairab C. Chowdhury *vs.* Alok Jain) (3 Cal. 265, Board of Revenue *vs.* V.Ayyar 1950 Madras 738) Section 27 of the Stamp Act requires the executants to set forth all facts affecting the levy of duty, fully and truly in the instruments. The charging entries in the schedule to the Stamp Act (such as items 23, 55 etc.) levy duty on the valuation as "set forth in the instruments" and not on any other valuation which may be made by any other authority or person. That is, if in a document, the value of the property is shown of a particular figure and the stamp duty is leviable *ad valorem*, the assessment of duty has to be based on that figure and the registering authority has no jurisdiction to alter the valuation for the purpose of levying the duty. (Inre M.M. Ali 1922 Allahabad 82 and also Bd. Of Revenue vs. V.Ayyar 1950 Madras 738). If the registering authority has reason to believe that the valuation has been understated to evade stamp duty, he may either refer the case to the Collector under Section 40 for adjudication or initiate case for prosecution under Section 64A of the Stamp Act read with Section 87 of the Registration Act as it is an offence under the former section to omit to set forth fully and truly the value of the property. (Miran Bux *vs*. Emperor 1945 Lahore 69 and Board of Revenue *vs.* Ayyar 1950 Madras 738).

If a document can be classified under two or more of the descriptions in Schedule IA and they attract different rates of duty, it can be charged, in terms of Section 6, only with the highest of the duties and not any other or all of them. If a document is chargeable with duty under any one of the entries in the

schedule, the appropriate duty has to be levied even if the document takes the character of a document exempted from duty.

The rates of stamp duty in respect of instruments where such duty is leviable ad valorem in West Bengal as per Schedule –IA to the Stamp Act of 1899 are enumerated in the Annexure.

5.2.4. Scope of Statutory Audit:

The audit of stamp accounts maintained by the treasuries and sub-treasuries is in fact in the nature of audit of Stamp Stock Account and this is being done both in the Central audit and local inspections. Every month the Treasury Officer furnishes to the Accountant General, the 'Plus and Minus Memorandum of Stamps' which show the opening balance, receipt during the month, sales during the month and the closing balance. The Plus and Minus Memorandum is scrutinised in Central audit with reference to the previous month's memo, to check the opening balance invoices sent by the Indian Security Press, Nasik to check the fresh receipts and the receipt schedule under the head "Stamps" to check the sales or issued from stock.

Areas where checks from revenue audit angle can be exercised are thus:-

(a) Instruments registered in the Registration Offices.

(b) Documents liable to stamp duty filed with departments of Government like Department of Patents and Trade Marks, Department of Company Law Administration, Board of Revenue etc.

(c) Plaints, suits etc. liable to stamp duty under the Court Fees Act filed before the courts.

The audit of stamp duty on instruments referred to in item (a) above is conducted by the Receipt Audit Party conducting audit of registration fees and those mentioned against items (b) and (c) above are to be conducted by the expenditure audit parties visiting those offices.

[Circular No.3 of 1973 contained in C & AG's letter No.1320-Rev A/8-73 dt.05.03.1973.]

5.2.5. Audit Procedure:

Under Rule 4 of the West Bengal Registration Rules, 1962, the value of stamp affixed on each document registered is to be noted in red ink on the left hand side margin of the Register Books. As the original documents will not be available for this purpose, audit has to be carried out with reference to these red ink entries, in the registers to see whether the stamp duty paid was in accordance with the law. Under Rule 21(b) *ibid*, the registering authority has to satisfy himself that the document presented to him for registration is duly stamped or is exempt from or does not require stamp duty.

In respect of a single instrument affixed with stamp exceeding Rs.100 in value, it has to be seen further that the stamps have been bought direct from Treasury and not through Stamp Vendors (Rule 6A (i) of Section II of Stamp Manual). After so satisfy himself, he has to record a certificate of admissibility, under Rule 43, in Form No.I (Appendix II) showing that the document was duly

stamped etc. This certificate is also copied out in the register, in terms of Rule 4. It should be ensured in audit that this certificate has been so recorded, proof of which will be the copy of it in the Registers. Unless the original documents are available in the Registration Offices at the time of audit, they should not be summoned to be produced for audit.

The deeds copied out in the selected month should be scrutinized to find out their correct nature or classification and to verify whether the stamp duty levied was in accordance with the law. Audit should also be on the look out for cases where the deeds have been deliberately given a wrong description so as to evade proper stamp duty or where the properties have been *prima facie* under-valued for the same purpose. It must however, be borne in mind that while the Registering authority has the responsibility to classify the document correctly with reference to the nature of the transaction irrespective of the description given to it by the parties, and where he has reason to believe while registering any instrument of certain kinds on which stamp duty is payable advalorem, that the market value of the property has not been truly set forth in the instrument he shall have to take action for assessment of market value of the property and proper stamp duty payable thereon keeping the registration of such instrument in abeyance till realisation of deficit stamp duty (Section 47A of the Stamp Act). Cases of under-assessment of stamp duty must be brought out more with a view to point out the defects in the system or failure to exercise check prescribed by the law than to effect any recovery of the amounts short recovered. Consequently petty under-assessment, not revealing any defect in the system or in scrutiny by the registering authority, should rarely be pointed out in audit.

In addition to the checks mentioned above for the selected month, a general scrutiny of all the deeds registered during the period of audit should be conducted so as to verify that there have been no prima facie defects in the levy and recording of stamp duty on the instruments registered. The following categories of documents registered should be particularly scrutinised to see whether the classification of the document has been done in accordance with law and that there had been no improper description so as to evade stamp duty.

Settlement Deeds:

The word "settlement" is defined in Section 2(24) of the Stamp Act and such deeds attract the same duty as conveyance. It should be ensured that deeds classified under this category are strictly covered by the terms of the definition in Section 2(24), as otherwise they will fall under the category of 'Gifts'.

Settlement and Trust:

The distinction between the two lies in the construction of the deed in question.

Where the main purpose of distributions is absent, it is trust, even if an instrument making a settlement, includes an agreement by the beneficiary to act in a particular way in consideration of such settlement the instrument is settlements.

Settlement and Will:

"Will shall include a condition and every writing making voluntary posthumous disposition of property". In order to be the settlement, the primary condition is that it must be non-testamentary instrument. In order to make an instrument settlement, it must operate immediately upon its execution.

Settlement is never postponed to operate on any future date like Will. Under the Will, the property which is left at the time of the testatories death passes to the legal and on this principle the will would speak from the death of the testator and not from the time it was executed.

Settlement and Gift:

A settlement is a disposition of property generally conclude in the form of trust for a consideration of marriage, religion, charity or provision for family dependents or others. Thus for settlement it is essential that the object of the gift should be to make same provisions for donee whereas gift is one which is made voluntarily and without considerations.

Partitions:

An instrument of partition means any instrument whereby co-owners of any property divide or, agree to divide such property in severality. The essence of partition is that there should be co-ownership and it should be put an end to with the result that such property is divided in severality. A deed acknowledging the fact of past partition is not an instrument of partition.

It is always open to a partner to bring into partnership property belonging to him. If it is registered under the Registration Act, it would not be chargeable as conveyance on sale with regard to such property brought into the firm, as it would contain no work of disposition character which expressly or by implication amount to transfer of property as between the owner and the other parties.

Partition and Settlement:

A deed of partition necessarily presupposes that more than one person has a joint share in the property and that joint share has been divided between the parties by a deed called the instrument of partition. Where the father is also a Karta of the joint Hindu family applying his authority to divide the joint family property, the document bringing out the division is an instrument of partition, though all the co-owners got the share is not relevant. In order to make the deed settlement, the property comprised in the deed must belong to the settler alone least it should be instrument of partition.

Wills:

"Wills" are not charged with any stamp duty but cancellation of wills are dutiable under Article 17 of schedule IA. A settlement dutiable under Article 58, should be distinguished from, and should not be classified as a will, as the former takes effect during the lifetime of the executor while the latter takes effect after his death.

Release Deeds:

The expression 'release' is explained by the entry 55 of schedule IA as renouncing a claim upon another person or against specified property. The rate of duty for release deeds is very nominal and much less than on deeds of gift, partition or conveyance. Normally when one co-owner of a property relinquishes his right over it to another co-owner, it is a release of the property. The beneficiary in a release may or may not be mentioned in the deed. Thus a release can only be by and also in favour of a person who already had a right over the property in question and the consequence of the release is that the beneficiary's right is increased at the expenses of that of the executants (C.C.R.A. *vs*. Lakshman Chettiar, 1970 Madras 348).

If these conditions are not satisfied, that is, the beneficiary or the executant had no pre-existing right over the property, the transaction will be gift (if there was no consideration) or conveyance (if otherwise). A release deed is also different from partition as the former is executed by one person and binds him alone, while the latter is an agreement between two, or among more than two persons to divide property by identifiable shares, even if in the process one or more of them are left with no shares (12 Madras 198).

Essentials of release deed:

(1) It does not pass right to another but gives up right or claim with the person executing the deed.

(2) It must be in writing.

(3) It should expressly state the giving up of specific right or claim.

(4) Right or claim so given up must be pre-existing and certain.

(5) Both parties must first recognize the pre-existence of such right or claim and then give it up expressly.

(6) It must not tantamount to partition, gift or transfer by conveyance.

Release and Conveyance:

Co-owners relinquishing their share in the joint family in lieu of specified sum of money is not a release deed but a conveyance on sale.

A transfer by trustee in favour of the beneficiary is not release but a trust, there is no claim to renounce.

The essential difference between conveyance and release lies in the fact that in the latter, there is no transfer of an interest or right to another, who had no pre-existing right in it to any extent.

A sale deed of a property contains a clause for repurchase from the vendee by the vendor. Subsequently, an instrument giving up the right of repurchase to the vendor is a release of right and not a conveyance nor a deed of cancellation.

Release and Partition:

Where sets of a Hindu Joint Family coparcenary property are split up in to severality, the process involving distraction of coparcenership and conversion of it into several interest for allotment to each sharer is a process of partition. The fact that one of the sharers agreed to receive certain ascertained sum in lieu of his share and for this purpose authorised other sharers to sell certain items of immovable property will not convert the process of partition into that of release.

A partition deed by which the co-owners divide the property in severality does not become a release. Partition is an incident of division. It is a bilateral act whereas release is unilateral act. Partition binds all those who have joint interest in the property sought to be portioned but a release deed binds the executant alone.

Gift Deeds:

Gift which attract levy under Gift Tax Act, 1958 should be examined and a list of such cases exceeding Rs.20,000 in value should be prepared for being verified with the assessments made under that Act.

Lease and Licence or Mortgage:

Leases, for terms upto five years attract less stamp duty than mortgage deeds, while those in excess of the period, are to be charged at the rates applicable to conveyance as in the case of mortgage deeds, the basis for valuation being as mentioned in items 35 and 40 of Schedule IA. Licence is not leviable for stamp duty. A lease is defined in Section 2(16) of the Stamp Act and Section 105 of the Transfer of Property Act; it is a grant of Property for a time by the owner or one who has an interest in it, the consideration being the payment of rent. A licence gives a right to use the property in the manner or for the purposes stipulated, while the owner retains possession and control over the property (Associated Hotels *vs.* Kapoor, 1959 S.C.1262), while in the case of lease, an interest in the property is vested with the lessee and he can normally use it in any manner, subject to the terms of the lease. If there is a debt with the property being mentioned as a security, it is a mortgage and if the income from that property is to be utilized or applied towards interest on or principal of, the amount of debt, it is an usufractuary mortgage.

Essentials of lease:

The following are the essential of a lease:-

(1) There must be an immovable property.

(2) The premises must be transferred to another person called the tenant or lessee. Where possession is not delivered to the lessee, he is not a tenant at all. Thus, delivery of possession is an essential element.

(3) The right must be that of the enjoyment of premises which includes the right to possess the property.

(4) The tenant must hold an interest in the property.

(5) The transfer can be made for a certain time express or implied or in perpetuity.

(6) Such transfer of right must be for consideration *i.e.* rent which may be in form of money or money's value.

(7) There must be the competent parties, *i.e*. lessor on the one hand and the lessee on the other hand.

There cannot be a lease unless all these essentials are present. An instrument of lease is to be executed by both lessor and lessee because it is a bilateral agreement.

As licence is not liable to stamp duty, the distinction between the two may be carefully studied.

Difference between lease and licence:

	Lease		**Licence**
1.	There must be a transfer of right of possession.	1.	No right of possession but only a permission to enter upon.
2.	The right creates an interest in an immovable property.	2.	It is merely a personal privilege which does not amount to an interest in the property.
3.	A lessee can further sublet or assign his interest with the prior permission of the lessor.	3.	A licensee cannot further transfer it in any case.
4.	It may be written or oral and may require registration.	4.	It can be granted with or without writing and no registration is required unless it is coupled with interest.
5.	A notice to quit is necessary.	5.	Notice to revoke may be required.
6.	Subject to contract to contrary, 15 days' notice expiring with the end of the month is required before a suit for eviction.	6.	No such condition need to be fulfilled. The licenser can revoke Licence at any time he wishes except as under section 60 of the Indian Easement Act.
7.	A lessee can sue any person independently of the lessor.	7.	A licensee cannot sue at all, only the licenser can sue.
8.	A lessee has right of his own which are protected under the law.	8.	A licensee does not hold any right; hence there is nothing to be protected by law.
9.	A lease is a heritable right.	9.	No such heritable right.

10.	On denial of the title of the lessor or renounces the status of himself as the tenant, the Landlord can forfeit the tenancy rights of the lessee.	10.	No such forfeiture.
11.	The tenant has exclusive right of possession.	11.	No such exclusive right.

Test for determining Lease or Licence:

(1) Where the right or possession is not granted except a permission to use, not involving the transfer of property, it is only a licence.

(2) Where no exclusive right to possession of the property is given, it is a licence; and where an exclusive right passes to the transferee it becomes a lease.

(3) Where right to exclusive possession is given but there is sufficient reason to hold that it is only a personal right and so interest in property is created, it will be a licence to ascertain this, the substant and not the form of document is to be looked into. If the document creates an interest in the factory it is a lease; but if it only permits another to make use of the property of which the legal possession continues with the grantor, then it is merely a licence.

5.2.6. Audit of refunds and allowances:

Section 45 of the Stamp Act empowers the Chief Controlling Revenue Authority (Inspector General of Registration) to refund penalties levied or excess stamp duty paid subject to the condition mentioned in the section. Allowances for spoiled or misused stamps are governed by Chapter VI of the Stamp Act (Sections 49 to 55) and Rules 19 and 20 of the Indian Stamp Rules. Such cases coming to the notice of audit should be scrutinised carefully to ensure that the refunds and allowances have been allowed in accordance with the law and the procedure laid down therein had been followed. In particular it should be seen that :-

(1) the time limits for making the claims had not been exceeded, unless the delays are condoned by competent authorities.

(2) the deduction of 10 paise for each rupee or part thereof had been made in the case of each payments (*vide* sections 53(C) and 54).

Note: *– The deduction of 10 paise is to be calculated on the total value of the stamps and not on each stamp separately (Page 48 of Bengal Stamp Manual Vol. I).*

(3) the spoiled or misused stamps are surrendered and kept on record after being duly cancelled or endorsed before the allowance is granted, and

(4) the spoiled and misused stamps are sent for destruction in case the claimant does not take the allowance within a year (Rule 20).

5.2.7. Audit of undervaluation of property:

In exercise of the power conferred by Clause (16B) of Section 2, Section 27, Section 47A and Section 75 of the Indian Stamp Act, 1899. The West Bengal Stamp (Prevention of undervaluation of instruments) Rules, 1994 came in to force w.e.f.31.01.1994 vide Finance Department Notification No.248-FT dated 30.01.1994 which was subsequently replaced by the West Bengal Stamp (Prevention of undervaluation of Instruments) Rules, 2001 w.e.f.15.03.2001 vide Notification No.821-FT dated 01.03.2001.

As per the said Rules market value of the property should be determined on the basis of highest price for which sale of any property of similar nature and area and in the same locality or in a comparable locality has been negotiated and settled during the last five years or on the basis of any court decision/information or report received from any court, Central or State Government Authority, Local Authority or Local Body. In the case of any undervaluation of a property the Registering Authority is required to determine the actual market value and serve a notice to the person by whom the stamp duty is payable for payment of the deficit amount of stamp duty within a period of thirty days and in the event of failure to pay the same within the stipulated period the case is required to be referred to the concerned Collector/Deputy Inspector General of Registration within fifteen days for determination of market value of the property and proper stamp duty payable thereon. The Collector/DIGR is required to issue notice to the party within 30 days for hearing of the case and after determining the market value of the property and stamp duty payable thereon a notice is to issue to the party for payment of deficit stamp duty ordinarily not before 15 days from the date of issue. In case of non-payment of the amount by the specified date the party is liable to pay interest at the rate of 2 per cent for each month of default. Any person aggrieved by an order passed by the Collector/DIGR may prefer an appeal within a period of 60 days from the date of receipt of the notice.

Suo motu review of any case for determination of market value of the property may also be done by the Collector within 5 years from the date of registration of any instrument. Suo-motu revision of any order passed by the Collector or Appellate Authority may be done by Chief Controlling Revenue Authority. Any order passed by the Chief Controlling Revenue Authority shall be final and shall not be called in question in Civil Court or before any other authority.

While scrutinising the documents on which stamp duty is payable advalorem it should be seen in audit that the market value of the property has been truly set forth therein with reference to records mentioned in the relevant rules and proper Stamp duty has been paid by the executant. In case of under valuation of property it is to be seen that appropriate action has been taken as per provision of the Act and Rules for determination of actual market value of the property and proper stamp duty payable thereon. It is also to be seen that deficit stamp duty has been realised before final registration

of the instrument and in case of delay in payment of deficit stamp duty due interest has been charged and realised. Penalty is also leviable in respect of certain classes of instruments not duly stamped inadmissible in evidence etc. when such instruments be admitted in evidence on payment of chargeable stamp duty/deficit stamp duty (section 35 of the stamp Act).

All duties, penalties and other sums due may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due or by any other process for the time being in force, for the recovery of arrears of Land revenue. Cases of short levy of stamp duty and registration fees due to under valuation of property and non-levy/short levy of interest due to delay in payment of deficit stamp duty are required to be brought to the notice of the local office and also to be highlighted in the Inspection Report in case of explanation offered by the local office is not satisfactory and acceptable to audit.

5.2.8. Important points which are generally noticed during audit of Stamp Duty and Registration Fees

(1) Lack of action by Registering Officers resulted in non-realisation of stamp duty and registration fees.

(2) Delay in disposal of cases referred to the Collector for determination of market value resulted in non-realisation of deficit stamp duty and registration fees.

(3) Non-registration of flats resulted in non-realisation of stamp duty and registration fees.

(4) Loss of revenue due to misclassification of instruments.

(5) Loss of revenue due to undervaluation of property.

(6) Loss of revenue due to irregular remission of stamp duty and registration fees.

(7) Non-realisation of differential stamp duty in respect of deeds registered in other States

(8) Non- levy/short levy of additional stamp duty in Kolkata Municipal Corporation and Howrah Municipal Corporation..

CHAPTER - III

Role to be played in absence of Internal Audit System:

5.3.1. Introduction:

Internal Audit System is designed for examination of the effectiveness of internal control prevailing in the management and recommend improvement. Internal control is an integral process that is effected by an entity's management and is designed to provide reasonable assurance that the following general objectives are being achieved:

= Fulfilling accountability obligations;

= Complying with applicable laws and regulations;

= Executing orderly, ethical, economical, efficient and effective operations.

= Safeguarding resources against loss.

Directorate of Registration and Stamp Revenue have not set up any Internal Audit Wing so far. In absence of Internal Audit System, it is not ensured whether the above objectives are being achieved within the above mentioned directorate.

5.3.2. Role of Management in absence of internal audit:

As Internal Audit Wing is non-existent in Registration and Stamp Revenue Directorate Managers are responsible for all activities of the organisation including the internal control system. Their responsibilities vary depending on their function in the organisation and the organisation's characteristics. For smooth as well as methodical functioning of the office/management some records viz. Cash Book, Receipt Books, Stock Register of Receipt books, Register of refund, Defect Register, Register of visits and Commissions, Register of documents impounded Market Value Monitoring Register etc. are required to be maintained properly in the office. Similarly, in course of work the department should watch the observance of different provisions of the Indian Registration Act 1908, the Indian Stamp Act 1899, the West Bengal Stamp Rules 2002, Governments' Notifications issued from time to time for exercising effective internal control within the registering unit. They should also watch the application and maintenance of different forms introduced for enforcing internal control mechanism within the management.

5.3.3. Role of Internal Audit in enforcement of Internal Control:

As there is no Internal Audit system prevailing in the Directorate of Registration and Stamp Revenue, Registering Authority in not in a position to obtain any feed back regarding effectiveness of internal control prevailing in the Directorate. Accordingly, for enforcement of internal control in the organisation for its smooth functioning, management itself has the overall responsibility for the design, implementation and proper functioning of the internal control system. Management should consider for establishment of an internal audit wing in the Directorate of Registration and Stamp revenue as a

part of internal control system and use it to help monitoring the effectiveness of internal control. Monitoring internal control, inter-alia, includes:-

- Prompt evaluation of findings from audits and other reviews, including those showing deficiencies and recommendations reported by auditors.
- Determine proper actions in response to findings and recommendations from audits and reviews.
- Complete within established time frame, all actions that correct or otherwise resolve the matters brought to their attentions.

Internal auditors can be a valuable educational and advisory resource on internal control. In addition to its role of monitoring the organisations' internal controls, an adequate internal audit staff can contribute to the efficiency of the external auditor. A strong internal audit unit can reduce the audit work of the Supreme Audit Institution (SAI) and avoid needless duplication of the work.

5.3.4. Role of Supreme Audit Institution:

In absence of Internal Audit Wing in the Directorate of Registration and Stamp Revenue; Supreme Audit Institution have a greater responsibility to discharge. They should encourage and support the establishment of effective internal control in the Government by highlighting lacunae in the Registration Act/Stamp Act, system failure or system deficiency and recommending remedial measures in course of audit/review in the auditee units. Thus Supreme Audit Institution may play a strategic role in the development of the internal control system directly/indirectly depending on their legal mandate and management structure of the organisation.

5.3.5. Role of Audit against possible fraud and corruption:

Fraud is deliberate misrepresentation of facts and/or significant information by one or more individual among the management, staff or third parties while corruption involves behaviour on the part of officials in the office in which they improperly and unlawfully enrich themselves by misusing the position in which they are placed.

The role of audit in addressing fraud and corruption has come under critical scrutiny in the wake of increasing cases of fraud and corruption in both Government offices and other sectors. Auditors as such need be more vigilant to and alert for situations, control weakness, inadequacies in record keeping, errors and unusual transactions of results, which could be indicative of fraud, improper or unlawful expenditure, unauthorised operations, waste, inefficiency or lack of probity. SAI should endeavour to create an environment that is unfavourable to fraud and corruption for which they need

be given adequate mandate that enable them to effectively contribute to the fight against fraud and corruption.

Fraud and corruption are mostly interlinked. So, while fraud and corruption should be prescribed independently for their numerous implications, the auditor is required to be well aware of the complex correlation between the two. Attention should be drawn to possibility of separate treatment, wherever the situation so warrants.

Fraud and corruption may involve :-

(i) Intentional mis-representation of financial information;

(ii) Manipulation, falsification and alteration of records;

(iii) Misappropriation of money/assets;

(iv) Suppression or omission of the effects of transactions from records;

(v) Recording of transaction without substance;

(vi) Misapplication of accounting policies;

(vii) Misuse of office for private gain;

(viii) Attempt to solicit an offer of inducement or reward as benefit for performance of an official act;

(ix) Attempt to camouflage.

(x) Wilful misinterpretation of the provisions of Acts and Rules.

5.3.6. Audit checks to prevent fraud and corruption:

While conducting audit of receipts of the Department the responsibility of audit is to carefully verify:-

(i) Whether records are being maintained properly; if any basic record is not maintained or discontinued, impact thereof on annual collection with reference to that of prior to discontinuation, should be carefully investigated and commented upon.

(ii) Whether assessment of dues have been properly made taking into account correct rates prevailing during the accounting period. If there are recurring instances of underassessment, reasons thereof need be carefully investigated.

(iii) Whether the stamp duty and registration fees have been properly realised and duly credited to Government account.

(iv) Audit should make a thorough checking of totals of Cash Book and to verify Challan Register to ensure the amounts received and duly credited to Government account.

(v) Stock account of Token-cum-Receipts Books to be checked with special care in order to prevent fraud by issue of fake receipts.

(vi) Audit should carefully check remittances to the Bank as per Receipt Register, Bank/Treasury Challan books and the list of credits verified from the T.F. Section of AG (A&E) WB's Office and where the tax amounts are directly remitted into treasury the challan should be verified with the treasury records.

(vii) Exemption/Remission cases are to be checked with reference to the provisions of the Acts/Rules and orders

(viii) Refund cases are to be checked with reference to all relating records.

(ix) Fines and penalties are imposed properly and exemptions are allowed by the competent authority as per provisions of the Acts and Rules.

(x) Audit should make a comparative study of revenue of the year taken up for audit with that of the previous year. If any alarming short fall comes into notice the reasons thereof need be investigated and commented upon.

(xi) Whether the provisions of Stamp Duty and Registration Acts, Rules and Orders issued from time to time have been properly interpreted. It is to be seen if there is any misinterpretation for personal gain.

(xii) Whether there is any manipulation/falsification/alteration of records.

(xiii) Whether periodical verifications of the basic records exhibiting collection of revenue are regularly made by the competent Authority.

Audit should, above all, extend responsibility to provide assurance to make the management aware of the weakness in the internal control system. It may submit proposals and recommendations to the auditee offices where control for fraud appears to be inadequate/ absent. Thus, audit can be a significant influence in reducing fraud and corruption.

ANNEXURE

(A) Important Government Orders On REGISTRATION AND STAMP DUTY

(1) Stamp duty and registration fees payable on instruments executed by farmers/agriculturists for obtaining loans from the State Government for the purpose of sinking filter points, shallow tube wells, pump sets, etc. are exempt.

(Judicial Department, Notification No.962, Regn. 5-7-71 and 1582, dt.12-10-72; 5116-F.T., dt.13-7-72 and 98-F.T., dt.5-1-73.).

(2) Any fee payable in respect of any documents executed in favour of a Co-operative Society by an Office, or a member or on behalf of a member thereof and relating to the business of such society, has been remitted by the State Government in respect of all Co-operative Societies in West Bengal.

(Judicial Department, Notification No.555 Regn., dated 19th April, 1968).

(3) Government of West Bengal remitted with effect from 1-8-87 in respect of all Co-operative Societies in West Bengal, the Stamp duty (other than stamp duties falling within entry 91 or entry 96 of List I of the Seventh Schedule to the Constitution of India), in respect of any instrument executing by or on behalf of, or in favour of, a Co-operative Society or by an officer or on behalf of a member thereof and relating to the business of such Co-operative Societies, in cases where but for such remission such Co-operative Society or Officer or Member thereof would have been liable to pay the stamp duty chargeable under any law for the time being in force in respect of such instrument. Provided that the stamp duty payable by a member of a Co-operative Housing Society in whose favour an apartment in a multi-storied building is allotted or to whom such apartment is transferred shall not be remitted if the value of such apartment exceeds three lakh and fifty thousand rupees.

(Authority : Department of Co-operation's Notification No.3161-Coop/H/207/807, dt.31.07.1987 and Circular No.1 for 2002 of Inspector General of Registration and Commissioner of Stamp Revenue, West Bengal communicated under No.1(38)/1M-310/01 dated 14.01.2002).

Some benefit by way of remission of stamp duty and registration fees upto valuation of Rs.3.50 lakh is allowable to the members of a Co-operative Housing Society for the purpose of execution of deed of conveyance of the property by the Co-operative Housing Society in favour of its members who purchased their plots of land and built their flats/houses themselves through the said Co-operative Society and not by any promoter. (G.O.No.248-FT dt.25.01.2002).

The said benefit is also available to the members of the Co-operative Housing Societies who have mortgaged their flats on taking loan from Apex Co-operative Society. In such cases the benefit contemplated in the G.O. dated 25.01.2002maybe given to a member of the Co-operative Housing Society who has mortgaged his flat within three months from the date of last repayment of loan

instalment on production of documentary evidence to the Registering Authority concerned (G.O.No.2697-FT dt.05-09-2002).

Exemption claim of a member of Co-operative Housing Society from payment of Stamp Duty and Registration fees upto a valuation of Rs.3.5 lakh per House/flat constructed by the said society is required to be verified with reference to the permission certificate issued by the concerned leasing authority.

No exemption from payment of Stamp Duty and registration fees is to be allowed to a nominal member of the Co-operative Housing Society and also for second and subsequent transfer of House/Flats by a CHS.

(G.O.No.1(38)/IM-310/01 dt.14.01.2002 - Circular No.1 for 2002).

(4) Statement in the prescribed Form No.37-G is to be furnished to the Registering Officer under Sec. 269P(1) of the Income Tax Act, 1961 along with the instrument of transfer of property. The statement is checked with the instruments and then forwarded in Form No.37-H to the Income Tax competent Authority (Assistant Commissioner) by each registering authority.

(5) Government of West Bengal, Judicial Department Order No.1702 Regn. dated 26.11.1966 lays down that sub-registry offices should be inspected at least once in 6 months by any one of the following officers namely I.G.R./I.R.O.s/D.R.s/D.S.R.s.

(6) Government remitted the fees payable under the Registration Act, 1908, for the registration of deed of 'GIFT' to be executed by any donor/ donors of land in favour of the State Government for installation of minor Irrigation Schemes.

(Judicial Department's Order No.3991, Regn. dt.11.12.85).

(7) Government remitted in the whole of West Bengal, the duty with which any instrument of gift when executed by any donor/donors of land in favour of the State Government for construction of sub-centres and Primary health centres under Indian Population Project-IV are chargeable under the Indian Stamp Act, 1899.

(Finance Taxation Deptt.'s Notification No.2180 F.T. III-25.6.86).

(8)(a) As per clause (A) of Sub-Sec(1) of Sec 9 of Indian Stamp Act 1899 and sub-section 2 of Sec 78 of the registration Act 1908, exemption of stamp duty and Registration fees is allowed from the gift/transfer of land for the purpose of Sishu Siksha Kendra.

(G.O.No.2143 FT dated 11.07.2002 issued by Finance (Taxation Department). Government of West Bengal).

(b) Stamp duty and registration fee chargeable under the respective Acts on the deed of gift by which a piece of land or a piece of land with building or structure thereon is donated by a person to the Government of West Bengal, or a Panchyati Raj Institution or Municipality/Municipal Corporation or

a District Primary School Council within the state of West Bengal for implementation of projects for public cause are exempted.

This may also be applicable in case of execution of gift deed of land in favour of Government of West Bengal for the purpose of construction of hostel building for SC/ST students.

(G.O.No.3260 FT dated 25.11.1999 and 3937-BCW 55-18/97 dated 24.12.1999).

(9) Government of West Bengal, Legislative Department Notification No.1408L, dated 8th August, 1984 lays down that :-

(1) Where the State Government on receipt of any report from the registering office or otherwise has reason to believe that any immovable property has been transferred by a person to another person for an apparent consideration which is less than the fair market value of the property and that has not been truly stated in the instrument of transfer, the State Government may acquire the property after initiating proceedings in accordance with the provisions of the Land Acquisition Act, 1894.

(2) Every Registering Officer shall report to the State Government in the judicial department any case of transfer as aforesaid as soon ass it comes to his notice.

(B) Rates of Stamp Duty in respect of instruments where such duty is leviable ad-valorem in West Bengal as per Schedule I A to the Stamp Act, 1899 (Effective from 5.8.2003).

No. of the Schedule	Description of the instruments	Proper stamp duty
23	Conveyance as defined by Section 2(10) of the Act	(a) eight percentum of the market value[1] when the property in the areas to which the Kolkata Improvement Act, 1911 or the Howrah Improvement Act, 1956 extends (b) eight percentum of the market value when the property is situated in the areas of any Municipal Corporation or Municipality or a notified area other than those included in clause (a) (c) six percentum of the market value when the property is situated in the areas other than those included in clause(a) or clause(b)
5(d)	Agreement or Memorandum of an Agreement if relating to sale or lease-cum-sale of immovable property	The same duty as a conveyance (No.23) for market value
31	Exchange of property instrument of	The same duty as a conveyance (No.23) on the market value of the property of the greatest value
33	Gift – Instrument of, not being a Settlement (No	One-half of one percentum of the market value of the

[1] 'Market Value' means, in relation to any property which is the subject matter of an instrument, the price which such property would have fetched or would fetch if sold in open market on the date of execution of such instrument as determined in such manner and by such authority as may be prescribed by rules made under this Act or the consideration stated in the instrument, whichever is higher (clause 16B of Section 2 of the Stamp Act)

	58) or Will or Transfer (No .62) _ (i) When made to a member of a family[2];.	property which is the subject matter of the Gift
	(ii) When made to any other person	The same duty as a conveyance (No.23) on the market value of the property which is the subject matter of the Gift
45	Partition – Instrument of as defined by Section 2(15)	One-half of one percentum of the market value of the separated share or shares of the property
48	Power-of-Attorney as defined in Section 2(21), not being a Proxy (No.52)	
	(f) When given for consideration and authorising the attorney to sell any immovable property	The same duty as a conveyance (No.23) for the market value of the property
	(g) When given to a promoter or developer by whatever name called, for construction on, development, sale of, or transfer (in any manner whatsoever) of, any immovable property	As above
	(h) When irrevocable authority is given to the attorney to sell immovable property	As above
58	Settlement – A – Instrument of (including a deed of dower) Deed of dower executed on the occasion of a marriage between Muhammadans	The same duty as a conveyance (No.23) on the market value of the property for the settlement thereof for the purpose referred to in sub clause (b) of clause (24) of Section 2
	B – Revocation of	The same duty as a conveyance (No.23) on the market value of the immovable property for settlement, thereof for the purpose referred to in sub clause (b) of clause (24) of Section 2

63	Transfer of lease by way of assignment and not by way of under lease	The same duty as a conveyance (No.23) for the market value of the property
40	Mortgage deed, not being an Agreement relating to deposit of title-deeds, pawn or pledge (No.6), Bottomry Bond (No.16), Mortgage of Crop (No.41), Respondentia Bond (No.56) or Security Bond (No.57) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given	The same duty as a conveyance (No.23) for a consideration equal to amount secured by such deed
32	Further charge – Instrument of that is to say, any instrument imposing a further charge on mortgaged property – (a) When such original mortgage is one of the descriptions referred to in clause (a) of Article No.40 (that is with possession)	The same duty as a conveyance (No.23) for a consideration equal to the amount of further charge secured by such instrument
	(b) When such mortgage is one of the descriptions referred to in clause (b) of Article No.40 (that is without possession) (i) If at the time of execution of the instrument of further charge, possession of the property is given or agreed to be given under such instrument	The same duty as a conveyance (No.23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge
	(ii) If possession is not given	The same duty as a Bond (No.15) for the amount of the further charge secured by such instrument

[2] For the purpose of this Article member of a family shall mean parent, spouse, son, daughter (unmarried, widowed or divorcee), son's wife, grandson, granddaughter, brother or sister (unmarried, widowed or divorcee)

54	Reconveyance of mortgaged property (a) If the consideration for which the property was mortgaged does not exceed Rs.1,000 (b) In any other case	The same duty as a conveyance (No.23) for the amount of such consideration as set forth in the Reconveyance Rs.100
35	Lease including an under lease or sub lease and any agreement to let or sub let (a) Where by such lease the rent is fixed and no premium is paid or delivered -	
	(i) Where the lease purports to be for a term of less than one year	The same duty as a Bottomry Bond (No.16) for the whole amount payable or deliverable under such lease
	(ii) Where the lease purports to be for a term of not less than one year but not more than five years	The same duty as a Bottomry Bond (No.16) for the amount or value of the average annual rent reserved
	(iii) Where the lease purports to be for a term exceeding five years but not exceeding ten years	The same duty as a Conveyance (No.23) for a consideration equal to the amount or value of the average annual rent reserved
	(iv) Where the lease purports to be for a term exceeding ten years but not exceeding twenty years	The same duty as a Conveyance (No.23) for consideration equal to twice the amount or value of the average annual rent reserved
	(v) Where the lease purports to be for a term exceeding twenty years but not exceeding thirty years	The same duty as a Conveyance (No.23) for a consideration equal to three times the amount or value of the average annual rent reserved
	(vi) Where the lease purports to be for a term exceeding thirty years but not exceeding one hundred years	The same duty as a Conveyance (No.23) for a consideration equal to four times the amount or value of the average annual rent reserved
	(vii) Where the lease purports for a term exceeding one hundred years or in purpetuity	The same duty as a Conveyance (No.23) for a consideration equal in the case of a lease granted solely for agricultural purposes to one tenth and in any other case to one sixth of the whole amount of rents which would be paid or additioned in respect of the first fifty years of the lease
	(viii) Where the lease does not purport to be for any definite term	The same duty as a Conveyance (No.23) for a consideration equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long
	(b) Where the lease is granted for a fine or premium, or for money advanced and where no rent is reserved	The same duty as a Conveyance (No.23) for a consideration equal to the amount or value of such fine or premium or advance set forth in the lease
	(c) Where the lease is granted for a fine or premium, or for money advanced in addition to rent reserved	The same duty as a Conveyance (No.23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered

PART -VI

TAXES ON AGRICULTURAL INCOME

CHAPTER - I

6.1.1. Introduction:

The audit of receipts of Agricultural Income Tax in West Bengal was first taken up in August, 1974 after promulgation of an Ordnance on 4th January, 1974 by the Government of West Bengal (Published in the Extraordinary issue of the Calcutta Gazette, dated 7th January, 1974 by amending Sec. 56(3) of the Bengal Agricultural Income Tax Act, 1944 so as to permit disclosure of the information contained in the assessment records for purposes of audit of receipts and refunds of the tax.

6.1.2. Legislative background:

Taxes on income other than agricultural income is within the exclusive legislative competence of Parliament in terms of Entry No. 82 of List I of Seventh Schedule to the Constitution while taxes on agricultural income are within the legislative competence of the State in terms of Entry No. 46 of List II. The Bengal Agricultural Income Tax Act, 1944 was passed on 30th December, 1944 but was deemed to have come into force on 1st April, 1944.

6.1.3 Acts & Rules Administered:

The Directorate of Agricultural Income Tax, West Bengal administers the following Acts and Rules relating to Agricultural Income Tax:

Name of the Act.	Name of the Rules made under the Act.
1. The Bengal Agricultural Income Tax Act, 1944	The Bengal Agricultural Income Tax Rules, 1944
2. The West Bengal Primary Education, 1973	The West Bengal Primary Education (Levy of Cess on Tea Estates) Rules, 1984
3. The West Bengal Rural Employment and Production Act, 1976	The West Bengal Rural Employment and Production Rules, 1976

6.1.4. Organisational Set-up:

The Commissioner of Agricultural Income Tax, West Bengal is appointed under Section 21(1) of the Bengal Agricultural Income Tax Act, 1944 and vested with the powers conferred under the Act and Rules made thereof. The Directorate can be broadly divided into two branches, viz. Agricultural Income Tax (A.I. Tax) and Multi-Storied Building Tax (M. B. Tax) Branch. The Commissioner, Agricultural Income Tax is also the ex-officio Commissioner of the Multi-Storied Building Tax and

Urban Land Tax. However, below the level of Commissioner, the administrative set-up of the two branches is separate.

6.1.5. Offices under the Directorate relating to Agricultural Income Tax:

(i) Agricultural Income Tax Office:

Sl. No.	Office	Acts administered	Jurisdiction	Headquarters
1.	Kolkata Range I	B.A.I.T.Act,1944 W.B.P.E.Act.1973 W.B.R.E.P.Act,1976	Companies, firms and other Association of Persons having Registered Office at Kolkata and in the district of North and South 24 Parganas and all assesses of Howrah and Hooghly.	New Secretariat Buildings (12th floor),Kolkata 700001
2.	Kolkata Range II	B.A.I.T. Act,1944 W.B.P.E.Act,1973 W.B.R.E.P. Act, 1976	Individual Assesses of North and South 24 Parganas Districts and Kolkata	-do-
3.	Nadia Range	B.A.I.T.Act,1944 W.B.P.E.Act,1973 W.B.R.E.P.Act,1976	Nadia District.	Krishnanagar
4.	Jalpaiguri Range	B.A.I.T.Act,1944 W.B.P.E.Act,1972 W.B.R.E.P.Act,1976	The district of Jalpaiguri excluding the areas of Alipurduar, Kumargram and Kalchini Police Stations of Alipurduar sub-division and the sub-division of Mekhligunj of Cooch Behar District.	Jalpaiguri
5.	Darjeeling Range	B.A.I.T.Act,1944 W.B.P.E.Act, 1973 W.B.R.E.P.Act.1976	The district of Darjeeling	Siliguri
6.	Cooch Behar Range	B.A.I.T.Act,1944 W.B.P.E.Act,1973 W.B.R.E.P.Act.1976	Alipurduar,Kumargram and Kalchini Police stations of Alipurduar sub-division of Jalpaiguri district, district of Cooch Behar excluding Mekhligunj sub-division	Cooch Behar
7.	Malda Range	B.A.I.T.Act,1944 W.B.P.E.Act, 1973 W.B.R.E.P.Act.1976	Malda District.	Malda
8.	Uttar Dinajpur Range	-do-	Uttar Dinajpur District	Raiganj
9.	Dakshin Dinajpur Range	-do-	Dakshin Dinajpur District	Balurghat
10.	Birbhum Range	B.A.I.T.Act,1944	Birbhum District	Suri
11.	Burdwan Range	B.A.I.T.Act, 1944	Burdwan District.	Burdwan
12.	Bankura Range	B.A.I.T.Act,1944	Bankura District	Bankura
13.	Purulia Range	-do-	Purulia District	Purulia
14.	Medinipur Range	-do-	Purba and Paschim Medinipur Districts.	Medinipur

15.	Murshidabad-Range	-do-	Murshidabad District	Berhampore

(ii) Other Offices of the Directorate relating to Agricultural Income Tax:

Sl. No.	Offices	Acts administered	Jurisdiction	Headquarters
1.	Office of the Assistant Commissioner, A.I.Tax, Jalpaiguri	B.A.I.T.Act,1944 W.B.P.E.Act, 1973 W.B.R.E.P.Act.1976	Districts of Darjeeling, Cooch Behar, Jalpaiguri, Uttar Dinajpur, Dakshin Dinajpur, Malda	Jalpaiguri
2.	Office of the Deputy Commissioner, A.I.Tax Malda Circle	All Acts administered by the A.I.Tax Offices within the Circle.	-do-	Malda
3.	Office of the Dy. Commissioner, A.I.Tax Burdwan Circle	-do-	Districts of Burdwan, Birbhum, Bankura, Purulia, Purba and Paschim Medinipur	Burdwan.

The Commissioner of Agricultural Income Tax, appointed under Sec. 21(1) of the Bengal Agricultural Income Tax Act, 1944 and vested with the powers conferred under the Act and the rules made thereunder is the head of the Directorate of Agricultural Income Tax. The Assistant Commissioner of Agricultural Income Tax functions as the Appellate authority of the Directorate. There is also an Appellate Tribunal constituted under Section 22 of the Act. The Tribunal consists of one Judicial member, one Lawyer member and one Accountant member. The Agricultural Income Tax Officers are the assessing officers.

6.1.6. Brief notes on the Acts administered:

(i) Bengal Agricultural Income Tax Act, 1944. The Act was introduced to tax the income generated from the agricultural sector. Presently, only agricultural income received from the land used in cultivation of tea is taxed; there is no tax on other sources of agricultural income. The total income that an assessee derives from cultivation, manufacture and sale of tea is treated as mixed income and forty per cent of such income is treated as "business income" and taxed under the Income Tax Act, 1961. The balance amount is treated as agricultural income and assessed under the Bengal Agricultural Income Tax Act, 1944. However, the entire income derived from the sale of green tea leaves is treated as agricultural income.

Agricultural income tax on income received by assesses other than a Company, Firm or other Association of Persons from agricultural crops other than tea was abolished from the financial year 1993-94. The liability to pay agricultural income tax by Companies, Firms or other Associations of Persons for agricultural income received from land producing crops other than tea was abolished in the

financial year 1994-95. Presently, only the asseesses deriving income from tea have to pay agricultural income tax.

(ii) The West Bengal Primary Education Act. 1973.-This Directorate is responsible for administration and collection of Education Cess payable under the Act by tea estates only. The collection of the cess goes to a fund called the Primary School Council Fund.

The cess is calculated at a prescribed rate on the quantum of green tea leaves produced by the tea estate. Presently four paise per kilogram of green tea leaves is charged as Primary Education Cess.

(iii) The West Bengal Rural Employment and Production Act, 1976. The Directorate is responsible for administration and collection of Rural Employment Cess payable under the Act by tea estates only. The Collection of cess goes to a fund called West Bengal Rural Employment and Production Fund. The cess is calculated at a prescribed rate on the quantum of green tea leaves produced by the tea estates. Presently eight paise per kilogram of green tea leaves is charged a Rural Employment Cess.

6.1.7. Important amendments made in the Acts administered by the Directorate relating to Agricultural Income Tax:

THE BENGAL AGRICULTURAL INCOME TAX ACT, 1944
THE WEST BENGAL PRIMARY EDUCATION ACT, 1973
THE WEST BENGAL RURAL EMPLOYMENT & PRODUCTION ACT, 1976

Item-I

In the West Bengal Act XVI of 2001 (No. 1488-L, dated 31.07.2001), the rate of Agricultural Income Tax payable on the whole of the total Agricultural Income of every Company, Firm or Other Association of persons was fixed at 45 paise per rupee with effect from 01.04.2001. However, the same has further been reduced to 30 paise per rupee with effect from 01.04.2003 vide West Bengal Act III of 2003 (No. 572-L dated 31.03.2003).

Item-II

In the West Bengal Act VI of 2004 (1304-L, dated 20-8-2004), the Government has been empowered with effect from 01.11.2004 to issue notification to exempt any tea estate from payment of the cess for any period both under the West Bengal Primary Education Act, 1973 and west Bengal Rural Employment and Production Act, 1976.

Item-III

In April 2005 the Government have granted a scheme of exemption from payment of cess for three years of 2004-05, 2005-06 and 2006-07 vide various Government Notifications with the condition that the defaulting owners of Tea Estates pay off their arrear dues of cess accruing up to 31.3.2004 in 24 equal monthly installments starting from April 2005. Considerable relief has also been granted on the interest payment too.

CHAPTER -II

6.2.1. Definitions:

The term Agricultural Income has been defined in Article 366(1) of the Constitution as "Agricultural Income defined for the purpose of enactments relating to Indian Income Tax Act". The State legislation has accordingly defined agricultural income in the same terms as the Indian Income Tax Act. While theoretically there should be no complications as regards definition, this matter has been the subject of prolific litigation over many years and audit should be generally familiar with the scope of "agricultural income" as laid down in judicial pronouncements and case laws particularly those relating to the definition of "agricultural income" or "agricultural operations".

(1) Sec. 2(1) of the Act defines agricultural income as follows:

(a) any rent or revenue derived from land which is used for agricultural purposes; and is either assessed to land revenue in a State or subject to local rates assessed and collected by officers of Government as such:

(b) any income derived from such land by:

(i) Agriculture or;

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily implied by a cultivator or receiver or rent-in-kind to render the produce raised or received by him fit to be taken to market or;

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in term (ii),

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver or rent-in-kind of any land with respect to which, or the produce of which, any operation mentioned in items (ii) and (iii) of sub-clause (b) is carried on. Provided that the building is on or in the immediate vicinity of the land and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as

dwelling house, or a store house or other out-building and provided that the building is not situated, in or adjacent to urban area.

Agricultural income is derived from land mainly in two forms i.e., by big landholders in the form of rent for use of the land by others for cultivation and by the tillers or cultivators of the soil directly by sale or consumption for manufacture and business of their produce.

Agriculture may comprise the basic operations i.e. field cultivation and subsequent operations such as weeding preservation of crop, marketing, etc. The nature of the produce raised has no relevance to the character of an agricultural operation which may extend to cultivation of all commodities of food value, artistic and decorative value, trade and commercial value, housing value, fuel value and medical and health value.

(2) Assessee means a person by whom Agricultural Income Tax is payable.

(3) Total agricultural income means the total amount of all agricultural income of any previous year derived from land situated in West Bengal with any local cess and education cess payable for such agricultural land.

(4) Total World Income means the sum of;

(a) Total World Income defined in Income Tax Act, 1961;

(b) Total Agricultural Income defined in this Act; and

(c) Agricultural Income derived from land in any State of India other than West Bengal,

(5) Previous Year means:

(a) the financial year ended on the 31st March prior to the tax year;

(b) at the option of the assessee, the year ended on the date prior to the 31st March, to which his accounts have been made up; or

(c) any year determined by the Commissioner of Agricultural Income Tax for any class or classes (i.e. for those who keep their account, according to the Bengali year. Commissioner has determined that the "Previous Year" means Bengali year terminating within next month after the end of the financial year referred to in clause (a) above.

6.2.2. Charges of Agricultural Income Tax and Computation of Taxable Income:

Section 3 of the Act states that Agricultural Income Tax shall be charged for each financial year in accordance with and subject to the provisions of the Act, at the rate or rates specified in the Schedule in respect of total agricultural income of the previous year of every individual, Hindu Undivided Family, company, firm or other association of persons subject to such provisions as laid down in the Act. Provided that if the total income of the previous year of any individual or Hindu undivided family consists of agricultural income as well as other income, agricultural income tax shall be

chargeable on the agricultural income at the highest rate which would have been chargeable if the total worked income were the agricultural income.

Provided further that in such cases increase in the quantum of tax in view of the application of the highest rate shall not exceed fifty per centum of the amount by the total world income exceeds the agricultural income.

As per provision in the Act and the Rules total agricultural income is to be computed separately for different sources like "Agricultural Income from rent or revenue", "agricultural income from agriculture", etc. Agricultural income from rent or revenue should comprise rent, local cess and education cess received in cash or kind salamis (premia) or fees for settlement transfer, etc. of waste land and holdings used for agricultural purposes and also other income like Phalkar, Banker, Pasturage fees accrued/pending in the previous year subject to the following allowances to be deducted to arrive at the net income on this account:-

(1) Any sums paid in the previous year on account of land revenue or rent, any local rate or cess including education cess in respect of such land;

(2) Amount of interest paid in respect of mortgage or other capital charge upon the land, or on borrowed capital for requisition, reclamation or improvement of land subject to the limits fixed under Section 80 of the Bengal Money Lenders Act, 1940; Interest paid on loans taken under Agricultural Loans Act, 1884, or Land Improvement Loans Act, 1888;

(3) Expenditure for maintenance of any irrigation or protective work or other capital asset;

(4) Depreciation in respect of such work or asset constructed or acquired after the commencement of the Act for the benefit of the land or for deriving agricultural income therefrom;

(5) Premium paid in order to effect insurance against loss of damage to land or crops;

(6) Collection charges including cost of maintenance of Kutcheries or other capital assets and expenses of litigation subject to a maximum of 15 and 20 per centum revenue accrued in the previous year as per proviso to clause (7);

(7) Additional allowance in respect of collection charges under clause (8);

(8) In the case of rent in kind, cost incurred in performing any process of rendering the produce fit to be taken to market, for transporting the same to market for maintaining in good repair any agricultural implements or machinery and in providing for the upkeep of cattle used for such purposes;

(9) Any expenditure (not being in the nature of capital expenditure or personal expenditure) laid out wholly and exclusively for the purpose of deriving agricultural income from such land.

The category of income pertains to land holders and tenure holders-large or small-who without themselves cultivating, collect rents from their tenants who cultivates.

Rent means whatever is lawfully payable in money or in kind or in both to land holder by a raiyat for the use and occupation of land for the purpose of agriculture. It includes water supply charges, all local taxes, cesses, pasturage fees and fishery rents.

The word "revenue" is limited to land revenue only and does not comprise all revenues.

The word "rent" means only and does not include interest on arrears of rent therefore, an assessee is only entitled to deduct in respect of collection charges of the total amount of rent which accrued in the previous year and in arriving at the total all interest must be excluded.

Income from land subject only to local rate or cess imposed by Municipalities will not be agricultural income. These local rates have relevance only to the determination of agricultural income from buildings. Where agricultural land is let out for purposes other than agriculture, such as for the use of potteries, or as brickfields or as stone quarries or for erecting shops, the income derived therefrom may be indirectly referable to land but would not be agricultural income.

Depreciation means allowance made for decrease in value of property through wear and tear.

The allowance is admissible at prescribed rates for different kinds of assets as furnished in Rule 3(1). These assessees shall furnish particulars in Form 1 for obtaining the allowance.

With the abolition of Zamindari and introduction of other Land Reforms instances of the first category of agricultural income have become rare. Agricultural income now-a-days, means income from agriculture.

Income derived from land by agriculture would be the market value of produce. Income from cultivation, or other agricultural operation in respect of lands, includes profit earned by a cultivator by the sale of his raw produce even if he keeps a shop for the retail vend of such produce. Income derived by utilizing the raw produce of his own lands for the purpose of manufacture of goods by a manufacturer who carries on partly agricultural and partly business operations such as those done in a sugar factory in rice or oil mills or by a tea estate and the income derived by a land owner who gross on his own land for which he pays land revenue, or local rate or rent, forest or other trees or tea seeds or coffee and derived income therefrom are instances of agricultural income. All such income as well as those derived from dairy and poultry farming, bathans fruits and flower gardening lac and cotton growing which are also agricultural income, need be included in the computation of this category. In

case of utilisation of raw produce other than tea the market value of such raw produce may be shown separately from the market value of general produce sole. As in the previous case this category of income is subject to the allowances as below:

(i) Costs incurred in the previous year in cultivating land or for raising livestock thereon;

(ii) Expenses for rendering the produce fit to be taken to market;

(iii) Cost of transportation of produce or livestock to market;

(iv) Expenses for maintenance of agricultural machinery and upkeep of cattle, etc. for cultivation, transport to market, etc.

Provided that in the case of an individual or Hindu undivided family cultivating land without the aid of servants, hired labourers or both, the allowance for the above four clauses shall instead of such cost, equal to fifty per cent of the market value of produce raised from such land.

Besides the above the following further charges as in the case of the previous category are allowed as deductions to arrive at such income:

(i) Land revenue or rent and also local rate or cess including Education Cess;

(ii) Amount of interest as in the case of the first category paid on mortgage, capital charges on land, borrowed capital and also on loans under Agricultural or Land Improvement Loans Acts;

(iii) Expenses on maintenance of Irrigation and Protective Works and on depreciation charges thereof;

(iv) Sums paid as premia for insurance against loss or damage to land or crops;

(v) Allowance admissible for loss between written down value and actual sale price of obsolete assets;

(vi) Any other expenditure (not being in the nature of capital or personal expenditure) laid out wholly and exclusively for the purpose of deriving agricultural income.

In the case of mixed income other than income from cultivation, manufacture and sale of tea a profit and loss statement, as regard to the entire income is desirable.

If there is any profit not included therein, sums carried to reserves or other funds, e.g. Reserve for bad debts, drawings for proprietors and partners in the shape of salami, commission or interest, cost of addition, alteration or depreciation of assets, expenditure not connected with the business and not allowable under Indian Income Tax Acts as also any rental value of property owned and occupied,

these may be added thereto. Deductions may also be made for allowable exemptions like, on Securities, which are tax free, profit, etc. on which tax has already been paid. etc.

In respect of the accounting year concerned in the case assessee's income derived from tea business (cultivation, manufacture and sale) has been determined by the Indian Income Tax Officer, the portion computed therein as agricultural income and excluded from Income Tax will be treated as taxable amount of agricultural income and tax as per rates will be payable on the whole of such agricultural income. For this purpose a certified copy of the detailed assessment order of the Indian Income Tax Officer under Income Tax Act, 1961 should be filed along with the return.

Market value means the price that a willing purchaser would pay to a willing seller having due regard to its existing conditions. Even where no selling is done and the stock is either held or consumed, the value shall have to be estimated at average market rate for the year. Remuneration received by a person from managing agricultural property would not be agricultural income.

The following income should also be included in the return under appropriate heads:

(a) Agricultural portion of the dividends on shares owned in companies including those having a mixed income;

(b) So much of the total agricultural income of the wife of asseessee as arises directly or indirectly from assets transferred directly or indirectly to her by the assessee, otherwise than for adequate consideration, or in connection with any agreement to live apart;

(c) So much of the total agricultural income of the assessee's minor child as arises directly or indirectly from assets transferred directly or indirectly to him, or her by the assessee otherwise than for adequate consideration, unless she is a married daughter;

(d) So much of the total agricultural income of any person or association of persons as arised from assets transferred by the assessee to the person or association of persons other wise than for adequate consideration, for the benefit of assessee's wife or minor child or both (vide Sec. 12 of the Act).

Where in any year it is computed that the sum on which Agricultural Income Tax is payable by the assessee is a negative quantity (i.e. loss) under either head of agricultural income specified in Sec. 5 (i.e. (i.) agricultural income from rent or revenue and (ii) agricultural income from agriculture) the asseessee shall be deemed to have sustained to a loss under that head to the extent of such negative quantity (loss) and such amount of loss shall be set off against the income computed under the other head of agricultural income on which Agricultural Income Tax is payable in the same year as per Section 26 of the Act. If however such loss cannot be wholely set off against the available income in

the particular year, the amount of loss not so set off shall be carried forward in the same manner to the next following year and so on, but no amount of such loss shall be carried forward for more than six successive year (Section 26).

6.2.3. Exemptions, Rebate and Reliefs:

Agricultural Income derived from agricultural land except the income received from the land used in cultivation of tea is exempt from tax at present.

Income of Central Government, State Government and local authority is exempted from tax.

Total agricultural income for this purpose does not include:

(i) Any agricultural income derived from land situated outside West Bengal as also (ii) any agricultural income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purpose or in case of Muslim trusts commonly known as Walk-al-al-aulads, the income applied thereto.

"Charitable purpose" includes relief of the poor, education, medical relief and advancement of any other object of general utility.

A private gift to one's own self or kith and kin may be meritorious and pious but is not a charity in the legal sense and the courts in India have never regarded such gift as for religious and charitable purposes even under the Mohamedan Law: Faxlul Rabbi Vs. State of West Bengal- AIR 1966 sc. 1722.

Agricultural Income Tax shall not be payable on (I) any dividend received as a shareholder out of agricultural income of a company or firm, etc. who has paid or will pay tax in respect of the said income; (ii) any sum received as share of agricultural income of any Hindu Undivided Family whose tax has been paid and (iii) any sum paid to effect insurance or deferred annuity on the life of wife, husband or minor child or on the life of any member, his wife or minor child in the case of a Hindu undivided family. The aggregate of exemptions under insurance shall not exceed one sixth of the total agricultural income.

In computing the amount of any allowance or relief from assessment no part shall be included which constitutes a ground for relief under the provisions of the Indian Income Tax Act.

6.2.4. Liability for payment of taxes in special cases:

Any person, receiving agricultural income as guardian, trustee or agent of any person being a minor, lunatic idiot or person residing outside West Bengal interested in such income or as a receiver or

administrator appointed by Court is liable to pay tax in like manner as recoverable from a person in direct receipt of such income.

Similarly tax on agricultural income derived from land received by Court of Wards, Administrator General, Official Trustee including trustees under Wakf deeds or a common Manager is leviable on such Court of Wards, Administrator General, Official Trustee, Common Manager, etc. as would be leviable from any person on whose behalf such agricultural income is received.

When agricultural income received on behalf of any person by trustees, agents, etc. is part only of the total agricultural income of that person, tax shall be assessed on the total agricultural income of the person and will be recoverable rateably from the trustees, etc., according to the portion of the total agricultural income of such person received by such trustees, etc. as the case may be.

Where any agricultural income or part thereof is not specifically received on behalf of any one person, or where the individual shares are indeterminate, tax shall be levied and recoverable at the rate applicable to the total amount of such income.

Nothing contained in Section 13 and 14 shall prevent direct assessment and recovery of tax from the person on whose behalf the income is received.

Tax paid by companies, firms and associations will be deemed to be paid on behalf of individual shareholder, partner or member on such part of agricultural income of share holders, etc. as represents the portion of agricultural income of such company and others which is received by their shareholders, partner or member.

Unless otherwise provided a person deriving agricultural income jointly for himself and for others shall be assessed on the total agricultural income derived from such land at the rate which would be applicable, if such income had been derived solely for his own benefit. He may make proportionate deduction of tax before payment of individual share of the income to the beneficiaries.

Liability of tax and assessment in the case of discontinued firms or associations shall be jointly and severally borne by every person who was a partner or member at the time of such discontinuance or dissolution.

Assessment for the year in which the firm or association was discontinued may be made in that year on the basis of the agricultural income received during the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any made for agricultural income of the previous year.

When the constitution of a firm has been changed assessment shall be made on the firm as constituted at the time.

Where there is a case of succession both the person succeeded and the person succeeding shall be taxed in respect of their actual share. Where the person succeeded cannot be found and the tax cannot be recovered from him, assessment shall be made on and tax recovered from the person succeeding who in turn will be entitled to recover the same from the person succeeded.

Any person working as agent of non-resident persons collecting agricultural income for him or others may be treated as such by the Agricultural Income Tax Officer (A.I.T.O.) He should, however, be given an opportunity of being heard by the Agricultural Income Tax Officer (A.I.T.O.) as to his liability.

In case of death of an assessee his executor/legal representative shall help in the assessment and be liable to pay tax.

6.2.5. Returns, Assessments, Rectification and Revision:

As laid down in Sec. 24 the A.I.T.O. shall, on or before such date in each year as may be prescribed, give notice by publication in such news papers and in such other manner as may be prescribed, requiring every person whose total agricultural income during the previous year exceeded the maximum amount which is not chargeable to Agricultural Income Tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be required by the notice) his total agricultural income during that year. Notice may also be served on individuals liable to agricultural income tax for furnishing Returns in prescribed form within such period not being less than thirty days. The time for filling of return may, however, be extended by the A.I.T.O.

If any person has not furnished a return within the time allowed or having furnished, discovers omissions or wrong statements therein he may furnish a return or revised return any time, before assessment is made.

After receipt of a return if the A.I.T.O is satisfied without requiring the presence of the assessee or the production by him of any evidence that the return submitted u/s 24 is correct and complete, he shall assess the total agricultural income of the assessee u/s 25(I) of the Act. If, however, he is not satisfied as to the correctness of the return he will issue notice directing the assessee to produce such evidence or documents, etc. as specified in the notice. After examining various materials as gathered the A.I.T.O will assess the total agricultural income of the assessee u/s 25(3).

When the asseessee does not submit his return in response to a notice u/s 24(2) of the Act and has not made a return of revised return u/s 24(3) within the time allowed by the A.I.T.O., the A.I.T.O. has been given the power to make an exparte assessment estimating the income of the assessee to the best of his judgement u/s 25(5).

At the time of assessment u/s 25 any member of a Hindu Undivided Family may claim that hitherto, undivided family has been partitioned, the A.I.T.O. should then enquired and if he is satisfied, shall record an order to than effect. Thereafter A.I.T.O., shall make an assessment of the total Agricultural Income received by on behalf of the joint family as such, as if no partition had taken place, and each member shall be liable for proportionate share of the tax so levied in addition to tax for which he may be separately liable. When no order has been passed the family should be deemed as undivided for the purpose of assessment.

All assessment should be completed within the time limit mentioned below:

(i) for assessment completed u/s 25 or reassessment u/s 38(I) (except Tea Co. cases), within four years from the end of the year in which the agricultural income was first assessable;

(ii) for assessments completed with reference to Sec. 8, clause (c) of sub-Sec. (I) of Sec. 32 (I) in respect of tea companies, within six years from the end of the year in which the agricultural income was first assessable;

(iii) for assessment completed under Section 25 or of assessment or re-assessment under sub-section (I) of Section 38 in case of assessees whose agricultural income is derived from tea grown in West Bengal and sold by the grower himself or lies agent after manufacture within six years from the end of the year in which such income was first assessable.

Explanation:

In computing the period of limitations for the purpose of assessment of tea, the period during which an assessment proceeding under this Act or under Indian Income Tax Act, 1961 is stayed by injunction under the order of the court shall be excluded.

If it is found in any particular case that agricultural income has escaped of assessment in the course of original assessment proceedings, the A.I.T.O. has powers to reopen the assessment for that year and tax that income. The escapement would arise in the following cases: -

(i) Where the assessee has been under-assessed or has been assessed at too low a rate;

(ii) Where the assessee has been granted excess relief under the Act;

(iii) Where the assessee has concealed the particulars of his agricultural income; or

(iv) Has deliberately furnished inaccurate particulars under Sec. 38(I).

Where an assessee satisfies the A.I.T.O. within one month from the service of the demand notice that he was prevented by sufficient cause from making a return or that he did not receive the notice u/s 24(4) or 25(2), or that he had not a reasonable opportunity to comply or was prevented by sufficient

cause from complying with the terms of notices referred to above, the A.I.T.O. shall cancel the assessment and proceed to make a fresh assessment u/s 25(Sec. 31).

Where a mistake has crept in the order of the A.I.T.O. he can rectify it within four years from the date of order in which the mistake occurred. The mistake, however, should be one apparent from record. This rectification is not confined only to arithmetical mistake. It can also be made where by virtue of a judgement of a court or of retrospective amendment to the law or where a legal position taken at the earlier stage is found to be wrong. This power to rectify mistake is also given to the Assistant Commissioner, the Commissioner and the Appellate Tribunal. Each of these authorities can correct mistake in the order passed. All these authorities can correct mistake either on their own motion or on application by the assessee. Before, however, effecting any rectification as stated above the asseessee should be given a notice in this regard and be allowed a reasonable opportunity of being heard.

An assessee if dissatisfied with the assessment or refund order, is given a right to appeal within 30 days of the receipt of the order (which may however be extended by AC) the Assistant Commissioner has powers to confirm, cancel, reduce and enhance it. He can also set aside the assessment and ask the A.I.T.O. to make fresh assessment. Likewise in the case of penalty order, he can confirm, cancel, reduce and enhance the penalty. His orders are judicial orders and are appealable to the Appellate Tribunal, which is the second court of appeal to decide on facts. It should be noted that whereas appeal to the Assistant Commissioner can only be made by an assessee and not by the department, the appeal to the Appellate Tribunal can be made against the order of the Assistant Commissioner by either party. It is the Commissioner who is the authority to decide whether to file an appeal to the Appellate Tribunal against the order of Assistant Commissioner or not. The Appellate Tribunal can pass such orders, as it thinks fit on the appeal filed before it. On the disposal of the appeal by the Appellate Tribunal, if either party feels that a question of law arises for decision from that order, there is a provision enabling the party to request the Tribunal to refer the question of law of the High Court. There is provision for appeal to the Supreme Court. The judgement passed by the High Court on the question of law will be given effect to by the Tribunal. If either party is still dissatisfied with the decision of the High Court, the decision of the Supreme Court is final and binding on all Courts (Sec. 35, 36, 63 and 64).

Besides, the right to appeal, a tax-payer is also given the right to approach the Commissioner of Agricultural Income Tax to revise an order passed by any authority subordinate to the Commissioner within one year from the date of the order and the Commissioner may, after enquiry if he thinks for, pass such orders thereon, not being an order prejudicial to the assessee as he thinks fit. The Commissioner may, of his own motion also call for the record of any proceedings under the Act in

which an order has been passed by the authority subordinate to him and may pass such order after any inquiry he thinks proper subject to the provisions of the Act.

Sec. 39 states that the Commissioner may at any time within four years from the date of any order passed by him in revision case u/s 37, the Appellate Tribunal or the Assistant Commissioner may at any time within four days from the date of any order passed by it or him on appeal and the A.I.T.O. may, at any time within four years from the date of any assessment order or refund order passed by him, on his own motion rectify any mistake apparent from the record of the revision, appeal, assessment or refund as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee subject to certain provisions as laid down in the Act.

6.2.6. Collection of Tax:

Any amount specified as payable in a notice of demand u/s 33 or an order under Section 35, 36 or 37 shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not mentioned, then on or before the first day of the second month following the date of the service of the notice or order and any assessee failing so to pay shall be deemed to be in default (vide Sec. 44). When an assessee is in default in making of the payment of tax, the A.I.T.O. may in his discretion direct that, in addition to the amount of the arrears including interest, a sum not exceeding half that amount shall be recovered from the assessee by way of penalty (Sec. 45). If, however, the tax is not paid the A.I.T.O. may forward to the Collector a certificate under his signature specifying the amount of arrears due from the assessee, and on receipt of such certificate the Collector shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue.

Besides the issue of such certificate to the collector of a district under sub-section (3) of Section 45 the Agricultural Income Tax Officer may recover tax by any or more of the modes provided under Section 45A(I) to (9) of the Act.

There is no provision for deduction of tax at source from certain payments as obtained in the Income Tax files. Collection of Agricultural Income Tax normally, therefore, starts with the issue of Demand Notice which is to be issued by the A.I.T.O. in prescribed form for the amount of Agricultural Income Tax or penalty due in consequence of orders passed under the Act. From 1975 onwards the Act has been amended to provide for payment of Advance Tax. Advance Tax means the Agricultural Income Tax payable in advance in accordance with the provision of the Act. An assessee shall pay as Advance Tax a sum equal to the tax calculated on his total agricultural income of the latest previous year assessed in such member installments not exceeding four and on such dates as may be prescribed. When in his estimate the Advance Tax payable would be more or less than the amount computed the assessee shall, before the payment of the last instalment of Advance Tax send to the A.I.T.O. a revised

estimate and adjust his installments accordingly. Where no previous assessments have been made, the assessee shall send to the A.I.T.O before the date on which last instalment of Advance Tax is due in his case his estimate of current total agricultural income and the Advance Tax payable.

Default in payment of Advance Tax will be treated in the same way as tax and penalty payable under regular demand notices. Advance Tax paid will be adjusted with the tax payable on regular assessment.

After a regular assessment has been made under Section 25 any amount paid as Advance Tax in pursuance of Section 26A or of this section shall be deemed to have been paid towards the regular assessment and where the amount of Advance Tax paid as aforesaid exceeds the amount payable under the regular assessment the excess shall be refunded to the assessee.

6.2.7. Interest:

(i) The State Government shall pay a simple interest at the rate of two per centum Calendar month on the amount by which the aggregate sum of installment of Advance Tax paid during any financial year in which they are payable under Section 26 or 26B exceeds the amount of the tax determined on regular assessment under Section 25 from the first day of the month next after the expiry of three months from the date of such regular assessment upto the month preceding the month in which the refund of the excess amount is mode.

Where in any financial year an assessee has paid an Advance Tax under Section 26A or Section 26B and the Advance Tax so paid is less than eighty per centum of the tax determined on regular assessment under Section 25 simple interest at the rate of two per centum for each English Calendar month from the first day of January in the financial year in which the Advance Tax was payable up to the month prior to the month of such regular assessment shall be payable by the assessee upon the amount by which the advance tax paid falls short of the tax determined on regular assessment and where no payment of Advance Tax has been made in accordance with the provisions of Sec. 26A or 26B interest at the rate of two per centum for each English Calendar month from the first day of January in the financial year in which the Advance Tax was payable up to the month prior to the month of such regular assessment shall by payable by the assessee.

Whereupon an order under Sections 31, 35, 36, 37,39,63 or 64 the amount on which interest was payable under Section 26E or under Section 26D had been reduced the interest shall be reduced proportionately and the excess interest paid if any shall be refunded.

A.I.T.O may reduce or waive the interest payable in any circumstances as may be prescribed under certain circumstances.

In calculating the interest payable under Section 26E (4) of this Act, the amount of Advance Tax or tax determined on regular assessment under Section 25 in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees, where such amount contains a part

of one hundred rupees, if such part is fifty rupees or more it shall be increased to hundred rupees and if such part is less than fifty rupees, it shall be ignored.

The provisions for interest as made in Section 26C, 26D and Section 26E, shall not be applicable in case of an assessee, whose Agricultural Income Tax does not exceeds two thousand rupees.

When a return has been furnished under Sec. 24 the assessee shall pay the tax so payable within thirty days of furnishing the return.

Notice of discontinuance of a business should be sent to the A.I.T.O. within thirty days thereof. For failure to give the notice A.I.T.O. may direct that a sum shall be recovered from the assessee by way of penalty not exceeding the amount of agricultural Income Tax subsequently assessed on him for agricultural income received up to the date of discontinuance.

6.2.8. Refunds, write-off, offences and penalties:

A claim for refund of tax arised to a person when he finds that the amount of tax paid by him or on his behalf is greater than the amount with which he is properly chargeable under the Act. This may arise in any one of the following cases: -

(i) where, on appeal or revision, any higher Appellate Authority or the Commissioner reduces the income determined by the A.I.T.O.;

(ii) where the tax originally determined gets reduced on account of rectification of a mistake;

(iii) where a relief for double income tax payable is due (Sec. 49);

(i) refunds due to a share holder of a company a partner of a firm or a member of an association of persons due to the fact that the tax deemed to have been paid by companies, firms and association of persons on their behalf;

(ii) where taxes realised in advance by the A.I.T.O. from Tea Companies in terms of executive instruction are greater than the tax determined on actual assessment.

(iii) Where under any of the provisions of the Act a refund is found to be due to any person the prescribed authority may, in lieu of payment of the refund set off the amount to be refunded or any part of that amount against the agricultural income tax, if any, remaining payable by the person to whom the refund is due. No claim for refund is admissible unless it is made within four years from the last day of the financial years commencing next after the expiry of the previous year in which the agricultural income was received.

(iv) In some cases it happens that the demand due from an asessee becomes irrecoverable for such reasons as the assessee having become insolvent or having died leaving behind no assets or having left India for good, or remaining untraceable. In such cases it is useless to keep the demand in books and the directorate should initiate proposals and such demand is ultimately written off by the Government. A register of demands thus written off is maintained in the Government's Office.

Offences liable to conviction and fine by a Magistrate are mainly failure without reasonable cause: -

(i) to furnish returns in due time;

(ii) to produce or cause to be produced by the appointed date, books of accounts or documents called for;

(iii) to grant inspection or allow copies to be taken;

(iv) false statement in a verification is also punishable with imprisonment and fine.

Each day of continuance of offence after conviction is also punishable with fine. Proceedings for an offence should, however, be made at the instance of the Commissioner, who is empowered to compound any such offence at any time during or after the institution of proceedings.

Penalties may be imposed for failure-

(v) to pay tax or any part thereof within thirty days of furnishing return and also in the case of a continuing failure;

(vi) to furnish the return as per notice or within the time allowed subsequently;

(vii) to comply with notice production of documents, evidence or attendance. Penalty may also be imposed when the assessee is in default in making payment of agricultural income tax, when he has concealed the particulars of agricultural income and also when in the course of regular assessment proceedings the Agricultural Income Tax Officer is satisfied that the assessee has shown an income which is untrue;

(viii) Under the provisions of the Act, where in any financial year an assessee had not paid advance tax or paid which is less than 80 per cent of the tax determined on regular assessment a simple interest @ 2 per cent per month commencing from 1st January of the financial year up to the month prior to the month of assessment upon the amount by which the advance tax paid falls short of tax determined is to be levied.

(Section 26 of the Act.)

(ix) If the amount specified in any notice of demand issued under Section 33 is not paid within the time mentioned therein, the assesee shall be liable to pay simple interest at the rate of two per centum for each English Calendar month, following the month in which the demand is payable upto the month prior to the month in which such demand is paid.

CHAPTER-III

6.3.1. Different kinds of cesses leviable on dispatches of tea:

Levy of Rural Employment Cess was first introduced on despatches of tea from April 1981 and levy of Primary Education Cess was first introduced from 14th April 1984.

Rates of Cess on despatches of tea are as under in respect of Rural Employment and Production Act, 1976:

1.	Green Tea	Thirty paise/kg.
2.	Green Tea Leaves	Four paise /Kg.
3.	Denatured Tea Waste (unfit for human consumption).	Thirty paise/Kg.
4.	Tea except in SL. 1, 2, 3	Seventy-five paise / kg. (of tea of packet 2 Kgs.)

Under The West Bengal Primary Education Act, 1973 effective from 14.4.84:

1.	Green Tea	Ten paise/kg.
2.	Green Tea Leaves	Eight paise/kg.
3.	Denatured Tea Waste (unfit for human consumption).	Nil
4.	Tea except those mentioned in sl. 1,2,3	Rupee one./kg

6.3.2. Provisions for imposition of penalty for non-filing of returns:

(A) Rural Employment Cess:

Penalty equal to the amount not exceeding Rs.5 lakh or 10 per cent of the amount of cess payable whichever is less, may be imposed for non filing of yearly return within 30 days from the end of the year showing payment of Rural Employment Cess.

(Section 4 of the W.B. Rural Employment and Production Act, 1976 and Rule 26 of the West Bengal Rural Employment and Production Rules, 1976).

(B) Primary Education Cess:

Penalty not exceeding the amount of cess payable as per assessment may be imposed for non-filing of quarterly returns within 30 days from the expiry of such quarter showing payment of Primary Education Cess

(Section 78 of the W .B. Primary Education Act, 1973 Act, 1973 and Rule 9 of the W.B. Primary Education (Levy of Cess on Tea Estate). Rules, 1984)

6.3.3. Provision for levy of interest for non/short payment of cess:

For non/short payment of R.E. and P.E. Cess by the prescribed date according to returns filed interest is leviable @ 2 per centum per month for the period of default.

(Section 4 of the Act. ibid.)

No penalty for non-payment of cess by the prescribed date can be imposed when interest is charged.

6.3.4. Exemptions:

Prior to 1.4.83 exemption up to 15% of despatches of tea or one lakh Kgs. whichever is greater was allowed and w.e.f. 1.4.93 exemptions were allowed for one lakh kilogram of tea or four lakd fifty thousand kgs. of green tea leaves.

This is made applicable in respect of both Rural Employment Cess Act, 1976 and Primary Education Cess Act, 1973.

CHAPTER – IV

6.4.1. Records and Registers:

Two forms of cover have been prescribed for keeping records connected with assessment of Agricultural Income Tax viz. Form 56-Miscellaneous Record and Form 57-Assessment Record. The cover for the assessment record should contain only (a) the assessment forms (Forms 43), the assessment order (Form 42) explaining the assessment and a copy of the appellate order (Form 54) including that of the Appellate Tribunal, orders of High Court on reference case which should be secured by tax and (b) unsecured the last two returns of income which have been received and the Depreciation Record (Form 58) when prepared. All other papers should be placed in the Misc. Record (Form 56).

The following registers are maintained by each Range Office:

(i) General Index Register -this is a permanent record giving the names and addresses of all the assessees under the Range Assessing Officers;

(ii) Demand and Collection Register;

(iii) Classified Register of Demand;

(iv) Register of Application u/s 31;

(v) Register of Certificate proceedings;

(vi) Advance Realisation;

(vii) Register of loss set-off;

(viii) Refund vouchers;

(ix) Cash Book;

(x) Assessment case.

Besides these records and registers monthly collection statements along with other statistical returns are prepared by each Range Officer showing (I) Tax, (ii) Penalty, (iii) Miscellaneous, (iv) other particulars as per order of the C.A.I.T., W.B. No. 1159(9)-C dated 20.4.1960.

6.4.2. Audit Checks:

A test check of the entries made in the Registers maintained in the Range Offices should be made to see that there are no irregularities in assessment, collection and adjustment of tax due to improper maintenance or non-maintenance of the Register. A test check of the collection statements and other statistical returns and the basis of their compilation may also be conducted.

In relation to Agricultural Income Tax assessment and refunds, Audit has to satisfy itself by such test-checks as it may consider necessary that the internal procedure adequately provides for and secures:-

(i) the collection and utilisation of data necessary for computation of the demands or refunds under the law;

(ii) the prompt raising of demands on tax payers in the manner required by law;

(iii) regular accounting of demands, collections and refunds;

(iv) The correct accounting and allocation of collection and their credit to Government account;

(v) That proper safeguards exist to ensure that there is no wilful omission to levy or collect taxes or to issue refunds;

(vi) That claims on tax payers are pursued with due diligence and are not abandoned or reduced except with adequate justification and proper authority;

(vii) That double refunds, fraudulent or forged refund orders or other losses of revenue through fraud, default or mistakes are promptly brought to light and investigated;

(viii) It should also be seen that there is a proper system of survey periodically to ensure that all the persons liable to tax on agricultural income, are brought on record of the assessing authority;

(ix) Adequacy of the system and its proper observance should be checked by reference to relevant documents.

Co-ordination of audit with Income Tax Audit and Land Revenue Audit:

Since the assessee of Agricultural Income Tax may also be liable to Income Tax and Land Revenue, some co-ordination is necessary among the inspection parties auditing Land Revenue. Income Tax and Agricultural Income Tax in the matter of correlation of the income returned by assessees for different purposes. Such correlation should be made in cases of large assessments by Revenue Audit Head Quarters or Receipt Audit Wing of O.A.D. Headquarters as the case may be.

In the case of tea companies close correlation between the two sets of assessment orders is of utmost importance. In the income tax assessment some income may not be assessed to tax being agricultural in nature. But that very income may not be treated as agricultural income by the A.I.T.O. In all such borderline cases, cross verification is essential.

Other areas where correlation is very effective are:

(a) acceptance of partition of a Hindu Undivided Family;

(b) assessment of discontinued business/firms;

(c) clubbing of income;

(d) disclosure of income under Section 271(4) of the I.T. Act, 1961. The data collected by survey, search and seizures by one side may be profitably utilised by the other by making suitable references to the heads of departments for investigation. In all doubtful and delicate cases, the matter may be taken up demi-officially with the concerned Commissioner, etc. instead of issuing formal audit queries.

Such correlations should be made in case of large assessments, by Receipt Audit Headquarters (Central) and Receipt Audit Headquarters (State Receipts).

While scrutinising the assessments, re-assessments and rectifications the following audit checks may be exercised:

(i) to verify agricultural income as returned by the assessee has been correctly considered in the assessment and no income although returned has escaped assessment;

(ii) in cases where the assessee has sold the agricultural produce to any Government recognised agency (e.g. F.C.I.) whether proper cash memos/vouchers have been produced;

(iii) where the assessee has not filed any return and the assessment is made exparte the assessing officer generally adopts the average yield and price of a particular commodity in a particular locality. The average yield and price are generally compiled by the Inspectors of the Directorate thana-wise for each district for various agricultural crops by actual survey work and on obtaining information from B.D.Os and Agricultural Marketing Officer and get them approved by the Commissioner. In most of the cases of non-company assessees (individual, HUF, etc.) assessment are made exparte for non-

receipt of return or for non-production of required evidence or documents. And the A.I.T.O. generally takes the agricultural holding from the assessment of the immediate preceding year for the purpose of assessment and adopts the average yield and price of the previous year relevant to assessment of average yield and price may be procured from the Department and it should be seen that no wide variation of the price are made by the A.I.T.O. amongst the same locality except for specified reasons.

(iv) The arithmetical accuracy of the computation should be checked up;

(v) In tea co. cases it should be particularly seen that the A.I.T.O. has taken the agricultural income as determined and left over by the Income Tax Officer under the Indian Income Tax Act;

(vi) Whether a certified copy of the I.T. assessment order has been filed by the assessee or obtained by the A.I.T.O.;

(vii) Whether any agricultural income viz. sale of green tea, bamboo, etc. omitted by the I.T.O. of the Indian Tax Act has been taken by A.I.T.O. in the assessment;

(viii)Whether deductions specially allowable from business income under the Indian I.T. Act is not wrongly allowed by the A.I.T.O. in Agricultural Income Tax Assessment;

(ix) Where the tea business income assessed is reduced in appeal, revision, etc., it is to be seen whether income pertaining to agricultural operation has been correctly computed by the A.I.T.O. at the time of rectification u/s 39 pursuant to Indian I.T. rectification order given appeal effect;

(x) Arithmetical accuracy of the Indian I.T. assessment order itself may also be seen to verify whether profit shown in the P & L A/c has been correctly taken up by the I.T. assessment under the Indian Income Tax Act. Various additions and deductions made in the said order may also be checked up to detect any arithmetical errors;

(xi) Allowance of deductions as enumerated in Sections 6 and 7 in respect of cultivation should be checked to ascertain that they are correctly allowed;

(xii) Where the allowance of any deduction is dependent on production of proof or evidence it should be seen that no such deduction is allowed without proper evidence or proof;

(xiii) It should be seen whether deductions for cost of cultivation equal to 50% of total agricultural income as laid down in the proviso to Sec. 7 is not allowed to other assessees except individual HUF assessees;

(xiv) Whether depreciation has been allowed correctly as per Rule 3(I) of the B.A.I.T. Rules'44;

(xv) While examining assessments on which appeal effect has been given by A.I.T.O., it should be seen that the true meaning and impact of appellate order has been followed in the rectified assessment order by the A.I.T.O;

(xvi) Where the assessee claims deduction for life insurance premia paid by him it should be seen that it is correctly allowed u/s 10(C) and to see whether double relief is not allowed and prevented u/s 11 of the Act.;

(xvii) To check up where necessary, the Inspector's report available in the assessment records and to see that the agricultural holding of any assessee as reported by the Inspector has not been taken less by the AITO without any recorded reason;

(xviii) In case of best judgement assessments it should be seen that no wide variation of the agricultural holding assessed in any year is made in comparison with preceding years. Executive instructions issued in this regard may be consulted. Individual cases of wrong judgements involving exercises of discretion should not be questioned in audit. If, however, there are a number of cases of misapplication of discretion resulting in under /over assessment audit should consider them for forming a basis for judgement thereon for comment;

(xix) To see whether agricultural income of any year has been omitted from assessment and barred by limitation;

(xx) Where the assessee is entitled to have his previous loss set off from the assessed income of any particular year it should be seen that the correct amount as carried over from the previous year has been set off and that no set off is allowed after the period prescribed in Sec.26;

(xxi) The rates of tax applied and correctness thereof should be checked up;

(xxii) Whether demand notice has been promptly issued and actually served on the assessee.

In case of refund the following checks are to be exercised:

(a) It should be seen whether refund application has been made by assessee within the time prescribed in Sec. 52;

(b) Whether refund has been correctly worked out;

(c) Whether at the time of payment of refund any tax is outstanding from the assessee. If so, whether the refund has been adjusted towards such sum;

(d) Whether the details mentioned in the refund order and the advice note agree;

(e) Whether the advice note received from the Bank or treasury in duly preserved;

(f) Whether acknowledgement slips for receipts of refund order are kept in custody or pasted on the back or counterfoils of refund vouchers;

(g) Whether these acknowledgement slips bear the seal of the Post Office and the signature of the person in receipt of the refund orders;

(h) Where a duplicate refund voucher is issued due to expiration of its validity it is to be seen that the original voucher has been obtained back by the Assessing Officer, cancelled and attached to its counterfoil and reference to the new voucher issued is recorded on it.

In some cases it happens that the demand due by an assesee becomes irrecoverable for such reasons as the assessee having become insolvent or having died leaving behind no assets or having left India for good or remaining untraceable. In such cases it is useless to keep the demand in books and in such cases the authorities of the A.I.T., Directorate initiate proposal for writing off the demand which is ultimately written off by Government after proper inquiry as the Government deem fit. A register of demands thus written off is maintained in the Commissioner's office.

It is to be seen that the irrecoverable demand is not due to lapse or negligence on the part of the department in initiating, pursuing and collecting the tax or it is not due to lacuna in the provisions of the Act.

CHAPTER -V

Internal Control Mechanism - Internal Audit System in the Directorate of Agricultural Income Tax:

6.5.1. Introduction:

Internal Audit System is designed for examination of the effectiveness of internal control prevailing in the management and recommend improvement. Internal Control is an integral process that is effected by an entity's management and is designed to provide reasonable assurance in order that the following general objectives are being achieved:

- fulfilling accountability obligations;
- complying with applicable Laws and Regulations;
- executing orderly, ethical, economical, efficient and effective operations;
- safeguarding resources against loss.

The Agricultural Income Tax Directorate has not set up any Internal Audit Wing so far. In absence of Internal Audit System, it is not ensured whether the above objectives are being achieved within the Directorate.

6.5.2. Role of Management in absence of Internal Audit:

As Internal Audit Wing is non-existent in the Directorate of Agricultural Income Tax. The A.I.T. Directorate is responsible for all activities of the organisation including the internal control system.

Their responsibilities vary depending on their function in the Directorate. For smooth as well as methodical functioning of the office/management, some records viz. Cash Book, Demand and Collection Register, Register of Classified demand, Register of Certificate Proceedings, Register of losses set off etc. are required to be maintained properly in the office. They should also watch the application and maintenance of different forms introduced for enforcing internal control mechanism within the Directorate.

6.5.3. Role of Internal Audit in enforcement of Internal Control:

As there is no Internal Audit System prevailing in the Directorate, the Directorate is not in a position to obtain any feed back regarding effectiveness of internal control prevailing in the subordinate offices. Accordingly, for enforcement of internal control in the Directorate for its smooth functioning, Directorate itself has the overall responsibility for the design, implementation and proper functioning of the internal control system. The Directorate should establish an internal audit wing as part of the internal control system and use it in monitoring the effectiveness of internal control. Monitoring internal control *inter alia*, includes policies and procedures which ensure that the findings of audits and other reviews are adequately and promptly resolved. Managers are to (i) promptly evaluate findings from audits and other reviews including those showing deficiencies and recommendations reported by auditors, (ii) determine proper actions in response to findings and recommendations from audits and reviews, (iii) complete, within established time frames all actions that correct or otherwise resolve the matters brought to their attention.

Internal auditors can be a valuable educational and advisory resources on internal control. In addition to its role of monitoring the organisation' internal control, an adequate internal audit can contribute to the efficiency of the external audit efforts by providing direct assistance to the external auditor. A strong internal audit unit can reduce the audit work of the Supreme Audit Institution (SAI) and avoid needless duplication of the work.

6.5.4. Role of Supreme Audit Institutions (SAI):

In absence of Internal Audit Wing in the Directorate; SAI have a greater responsibility to discharge. They should encourage and support the establishment of effective internal control in the Directorate by highlighting lacunae in the Acts and Rules, system failure or system deficiency and recommending remedial measure in course of audit/review in the auditee units.

Thus SAI may play a strategic role in the development of the Internal Control Systems directly/indirectly depending on their legal mandate and management structure of the organisation.

CHAPTER - VI

Role of Audit against possible Fraud and Corruption in Agricultural Income Tax Directorate:

6.6.1. Introduction:

Fraud is deliberate misrepresentation of facts and/or significant information by one or more individual among the management, staff or third parties while corruption involves behavior on the part of officials in the office in which they improperly and unlawfully enrich themselves by misusing the position in which they are placed.

The role of audit in addressing fraud and corruption has come under critical scrutiny in the wake of increasing cases of fraud and corruption in both Government offices and other sectors. Auditors as such need be more vigilant to and alert for situations, control weakness, inadequacies in record keeping, cross and unusual transactions or results, which could be indicative of fraud, improper or unlawful expenditure, unauthorized operations, waste, inefficiency or lack of probity. Supreme Audit Institution (SAI) should endeavor to create an environment that is unfavorable to fraud and corruption for which they need be given adequate mandates that enable them to effectively contribute to the fight against fraud and corruption.

6.6.2. Extent of Fraud/Corruption:

Fraud and corruption are mostly interlinked. So, while fraud and corruption should be perceived independently for their numerous implications, the auditor is required to be well aware of the complex co-relation between the two. Attention should be drawn to possibility of separate treatment, wherever the situation so warrants.

6.6.3. Fraud and corruption may involve:

- ✓ intentional misrepresentation of financial information;
- ✓ manipulation, falsification and alteration of records;
- ✓ misappropriation of money/assets;
- ✓ willful suppression or omission of the effects of transactions from records;
- ✓ recording of transaction without substance;
- ✓ misapplication of accounting policies;
- ✓ misuse of office for private gain;

- ✓ offer to solicit an offer of inducement or reward as benefit for performance of an official act;
- ✓ attempt to camouflage;
- ✓ willful misinterpretation of the previsions of Acts and Rules.

6.6.4. Audit Checks to prevent fraud and corruption:

While conducting audit on the accounts of Agricultural Income Tax Audit is entrusted with the following verifications:

- ✓ whether records are being maintained properly; if any, basic record is not maintained or discontinued, impact thereof on annual collection with reference to that of prior to discontinuation should be carefully investigated and commented upon;
- ✓ whether assessment of dues have been properly made taking into account correct rates prevailing during the accounting period. If there are recurring instances of underassessment, reason thereof needs be carefully investigated;
- ✓ whether the Tax and cesses and other dues have been properly realised and duly credited to Government account;
- ✓ audit should make a thorough checking of totals of cash book and to verify challan register to ensure the amounts received and duly credited to Government accounts;
- ✓ audit should carefully check remittance to the Bank as per Receipt register, Bank/Treasury Challan books and the list of credits verified from the TF Section of Accountant General (A&E), West Bengal office, where the tax amounts are directly remitted into treasuries, the challan should be verified with the treasury records;
- ✓ exemption/remission cases are to be checked with reference to the provisions of Acts, Rules and Orders;
- ✓ tax and cesses are levied properly and exemptions are allowed by the competent authority as per provisions of the Acts and Rules;
- ✓ audit should make a comparative study of revenue of the year taken up for audit with that of the previous year. If any alarming shortfall comes into notice the reasons thereof need be investigated and commented upon;
- ✓ whether the provisions of the Acts, Rules and Orders issued from time to time have been properly interpreted. It is to be seen if there is any misinterpretation for personal gain;
- ✓ whether there is any manipulations/falsifications/alterations of records;

- ✓ whether periodical verifications of the basic records exhibiting collection of revenue are regularly made by the competent authorities.

Audit should, above all, extend the responsibility to provide assurance to make the management aware of the weakness in the internal control system. It may submit proposals and recommendations to the auditee offices where controls are found to be inadequate/absent. Thus audit can be a significant influence in reducing fraud and corruption.