PREFACE

This Report for the year ended 31 March 2011 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

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

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 2010-11 as well as those noticed in earlier years but which could not be included in the previous years' reports.

OVERVIEW

This Report contains 50 paragraphs including four Performance Audits relating to non/short levy of tax, penalty, interest etc. involving ₹ 462.98 crore. Some of the major findings are mentioned below:

I General

The total revenue receipts of the Government of Gujarat in 2010-11 were ₹ 52,363.64 crore as against ₹ 41,672.36 crore during 2009-10. The revenue raised by the State from tax receipts during 2010-11 was ₹ 36,338.63 crore and from non-tax receipts was ₹ 4,915.02 crore. State's share of divisible Union taxes and grant-in-aid from the Government of India were ₹ 6,679.44 crore and ₹ 4,430.55 crore, respectively. Thus, the revenue raised by the State Government was 79 *per cent* of the total revenue receipts. The main source of tax revenue during 2010-11 was Sales Tax/VAT (₹ 24,893.46 crore) and stamp duty and registration fees (₹ 3,666.24 crore). The main receipt under non-tax revenue was from non-ferrous mining and metallurgical industries (₹ 2,019.31 crore).

(Paragraph 1.1)

II Sales Tax/VAT

Performance Audit on "Cross Verification of Declaration Forms in Inter-State Trade or Commerce" revealed the following:

- Though Declaration forms under the CST Act were being issued online since July 2008 to the dealers, the physical position of the unutilised Declaration forms was not known, since this was not called back by the Department.

(Paragraph 2.13.6)

- The TINXSYS website was not utilised for verification of forms till June 2011 and despite Departmental instructions, for its usage thereafter, we found instances where the Assessing officers were not utilising it effectively.

(Paragraph 2.13.7)

- Internal control measures for cross verification of Inter State Trade Transactions in the form of Special Cell was absent.

(Paragraph 2.13.8)

- Correctness of purchase transactions, involving revenue implication of ₹ 12.93 crore could not be ensured in absence of a system to check the utilisation of forms issued.

(Paragraph 2.13.9)

- Evasion of tax to the tune of ₹ 2.44 crore was noticed due to fraudulent utilisation of 'C' Forms/under-disclosure of Inter-State sales due to absence of cross verification system.

(Paragraph 2.13.10)

- Non/short levy of Central Sales Tax of ₹ 1.19 crore was noticed due to allowance of Branch Transfer on fake 'F' forms/over-declaration of branch transfer by the selling dealer in absence of system of cross verification of transactions.

(Paragraph 2.13.11)

- There was Non/short levy of tax of ₹ two crore on inter-state purchase effected on fake 'C' form/under-disclosed Inter-State purchase.

(Paragraph 2.13.15)

- We detected Mis-utilisation of 'F' forms which resulted in non/short levy of tax of ₹ 8.45 crore in absence of cross verification system.

(Paragraph 2.13.18)

Compliance Audit

Irregular deduction of labour charges from VAT sales turnover resulted in under assessment of ₹ 66.79 lakh in case of seven dealers.

(Paragraph 2.15)

In 13 offices, the assessing officers allowed excess set-off, either on purchase of prohibited goods or without ascertaining the fulfillment of prescribed conditions. This resulted in excess grant of set off of ₹ 61.40 lakh including interest and penalty.

(Paragraph 2.20.1)

In five offices, the assessing officers did not initiate any action to recover tax of ₹ 2.33 crore including interest of ₹ 1.19 crore from 16 dealers under the deferment incentive schemes in violation of rules and provisions of the schemes.

(Paragraph 2.22.2)

In 22 offices, the assessing officers while finalising the assessments either did not levy penalty or levied it short though difference between the tax assessed and tax paid exceeded the prescribed limit. This resulted in non/short levy of penalty of ₹ 3.91 crore.

(Paragraph 2.24)

In five offices, the assessing officers applied incorrect rate of tax in the CST assessments which resulted in under assessment of ₹ 90.70 lakh including interest and penalty.

(Paragraph 2.32)

Concession of ₹ 2.98 crore was allowed to 49 dealers without obtaining declaration/certificates as required under Central Sales Tax Act, 1956.

(Paragraph 2.35)

III Land Revenue

Government land admeasuring 14.75 lakh square metres was allotted to Suzlon and other companies for windmill project. Though conversion tax for change in mode of use of land was required to be levied, the Departmental officials failed to levy it. This resulted in non levy of conversion tax amounting to ₹ 0.88 crore.

(**Paragraph 3.5**)

In one case, occupancy price fixed by Government (June 2005) was not increased after lapse of one year at the time of allotment of land (March 2007). Deficiency in the system to keep proper watch by the Department to levy and collect occupancy price at correct rates resulted in non/short recovery of occupancy price of ₹ 16.48 lakh.

(**Paragraph 3.6**)

We found that in one case, the applicant committed breach of condition by commencing non agricultural use on a new tenure land. In another case, premium price was levied short due to incorrect calculation of area. There was total short levy of premium price of ₹ 14.04 lakh.

(**Paragraph 3.7.2**)

IV Taxes on Vehicles

A Performance Audit on "**Computerisation in Motor Vehicle Department**" revealed the following:

- VAHAN application for registration of vehicles was implemented in all 26 RTOs of the State since March 2008. State Consolidated Register was in place. However, tax module relating to registration of the specially designed vehicles falling under non-transport category and transport vehicles were not designed in the system.

(Paragraph 4.9.7.1)

- Out of four modules (Registration, Taxes, Fitness and Enforcement) meant for vehicles, the Fitness Module and Enforcement Modules were not implemented in any of the RTOs/ARTOs. Further, the module relating to tax has been implemented only for the non-transport vehicles and not implemented for transport vehicles.

(Paragraph 4.9.7.2)

- Out of 34 fields prescribed for registration of motor vehicles in 'Form 20' under Central Motor Vehicles Rules, 1989, five fields were not mapped in the system.

(Paragraph 4.9.8.1)

- The system lacked necessary controls/checks to avoid wrong input in many crucial fields. We found that in 4,684 of registered vehicles, the chassis numbers or engine numbers entered in Inspection Memos table did not match with the chassis numbers or engine numbers entered in registration records.

(Paragraph 4.9.9.1)

- We found that out of 1.45 lakh vehicles entered in the system, PAN was left blank in 1.13 lakh entries and in 694 cases, the PAN entered was shown as 000000, NO, etc. i.e. an invalid number of alphabet.

(Paragraph 4.9.10.1)

- We noticed that in 1766 cases, there were duplicate insurance cover notes, in 48 cases the insurance cover note details were blank and in 132 cases, the insurance cover notes were invalid. (e.g. 00000000, 0, NEW, etc).

(Paragraph 4.9.10.2)

- We found that penalty column lacked necessary validity controls. A minus amount could be entered in the penalty column and accordingly, a receipt of negative amount could also be generated. The system was therefore, vulnerable to generate receipt in minus amount.

(Paragraph 4.9.10.3)

- SARATHI Application for driving licences was partially implemented as the module meant for issue of driving school licence, conductor licence and enforcement modules had not been implemented so far.

(Paragraph 4.9.11.1)

Compliance Audit

In case of two fleet owners (Gujarat State Road Transport Corporation and Ahmedabad Municipal Transport Service) passenger tax of ₹ 363.77 crore was not levied. Besides, interest and penalty was also leviable.

(Paragraph 4.10)

Operators of 2,633 omnibuses, who kept their vehicles for use exclusively as contract carriage and 2,272 vehicles used for transport of goods, had neither paid tax nor filed non-use declarations for various periods between 2007-08 and 2009-10. The Departmental officials failed to issue demand notices and initiate recovery action prescribed in the Act. This resulted in non-realisation of motor vehicles tax of ₹ 21.47 crore including interest of ₹ 2.14 crore and penalty of ₹ 2.68 crore.

(Paragraph 4.11)

In case of two fleet owners (Gujarat State Road Transport Corporation and Ahmedabad Municipal Transport Service), motor vehicle tax, interest and penalty of ₹ 10.94 crore was not levied.

(Paragraph 4.13)

Lump sum tax of ₹ 15.61 lakh including interest and penalty was short levied on 20 imported vehicles.

(Paragraph 4.15)

V Stamp Duty and Registration Fees

A Performance Audit on **"Levy and Collection of Stamp Duty and Registration Fees"** revealed the following:

- No time limit has been prescribed by the Department for finalisation of valuation cases referred to Dy. Collectors (Stamp Duty Valuation Office) under Section 32A of Bombay Stamp Act, 1958. This resulted in pendency of 53,093 cases presented for registration during the period from 1-4-2000 to 31-3-2010 and blocking of revenue of ₹ 49.35 crore.

(Paragraph 5.6.7)

- Non-levy of stamp duty on the delivery orders of the imported goods at Inland Container Depot and Air Cargo valued at ₹ 1,05,870.65 crore during the period from 2006-07 to 2009-10 deprived the State Government revenue of ₹ 105.87 crore towards stamp duty**.**

(Paragraph 5.6.11)

- Non-inspection of records of public offices and not prescribing any periodical returns to obtain data regarding instruments chargeable with duty from the public offices resulted in incorrect classification of lease agreements as concession agreements which resulted in short levy of stamp duty of ₹ 42.21 crore and registration fees of ₹ 8.61 crore.

(Paragraph 5.6.12.1 and 5.6.12.2)

- No mechanism was devised by the Department to ascertain whether Companies incorporated in the State have paid stamp duty on issue and allotment of shares or not. The stamp duty of ₹ 73.43 crore was involved in issue and allotment of shares by 16,230 companies during the period 2006-07 to 2009-10. In one case, non-inclusion of premium in the value of shares resulted in short levy of stamp duty of ₹ 6.09 crore.

(Paragraph 5.6.13)

- Incorrect application of rate of stamp duty on contract notes issued by two companies/brokers in connection with purchase and sale of shares and incorrect allowance of benefit of reduced rate of duty to four companies/ brokers resulted in short levy of stamp duty aggregating to ₹ 7.46 crore.

(Paragraph 5.6.14.1 and 5.6.14.2)

- Due to non-co-ordination with Income Tax Department, the Registration Department failed to levy stamp duty on additional consideration disclosed by the assessees during the course of search, raid etc., by the Income Tax Authorities resulted in short levy of stamp duty of ₹ 45.08 lakh.

(Paragraph 5.6.16)

- Incorrect calculation of consolidated stamp duty on debentures resulted in short levy of stamp duty of ₹ 1.25 crore.

(Paragraph 5.6.18)

- Incorrect classification of bonds as promissory notes resulted in short levy of stamp duty of ₹ 1.06 crore.

(Paragraph 5.6.19)

- Misclassification of 28 instruments in three Sub Registrar offices and Additional Superintendent of Stamps office resulted in short levy of stamp duty of ₹ 7.15 crore.

(Paragraph 5.6.28)

- Undervaluation of immovable properties in 368 cases in 37 Sub Registrar offices, DC, Anand, Additional Superintendent of Stamps, Gandhinagar and DDO, Anand resulted in short levy of stamp duty and registration fees of ₹ 7.09 crore.

(Paragraph 5.6.30)

VI Other tax receipts

A Performance Audit on "**Working of Electricity Duty Department**" revealed the following:

- The Department was saddled with huge arrears of electricity duty which stood at ₹ 743.60 crore. No arrears had been recovered in the past three years.

(Paragraph 6.3.7)

- Non-finalisation of the case of M/s. Essar Power Ltd., a licensee, by the Government despite directions from the Court in March 2007 to decide the case within two months resulted in blocking up of revenue of ₹ 97.46 crore, including interest of ₹ 60.08 crore.

(Paragraph 6.3.7.1)

- *M/s. Arunodaya Mills Ltd.*, Morbi did not pay duty for the period from June 2004 to September 2006 as contemplated in the rule. The Department had not referred the case to the Collector in time for recovery

of its dues as arrears of land revenue. The Department also did not register their claim before auction of its property by IDBI Bank through public notice for recovery of their dues. This resulted in blocking up of revenue of ₹ 1.40 crore.

(Paragraph 6.3.7.2)

- The Department had not maintained a complete data base of the captive power plants/DG set units, in absence of which important details of energy generated, duty paid/exempted were not available.

(Paragraph 6.3.8.1)

- Department did not take effective action against those lift operators whose licence had expired during the period 2005-06 to 2009-10; 55 to 73 *per cent* were operating with expired licences. The Department had not carried out inspection of lift installations, the shortfall being as high as 88 *per cent* during the period 2005-06 to 2009-10, thereby jeopardising public safety.

(Paragraph 6.3.8.2, 6.3.8.3)

- The Department had made the energy audit compulsory for eligible industrial and commercial consumers. Our test check revealed that authorised energy auditors audited the units ranging between five to twenty two *per cent* during the period from 2005-06 to 2009-10 and gave their recommendations. There was no mechanism to ensure whether recommendations of energy auditors were complied with, defeating the objective of energy audit.

(Paragraph 6.3.8.4)

- There was no separate internal audit wing for ensuring correct levy and prompt realisation of electricity duty. The office of the Chief Electrical Inspector fell short of the required target of inspections fixed by the office itself.

(Paragraph 6.3.8.5)

- The Department failed to levy and recover interest of ₹ 20.06 crore and penalty of ₹ 44 lakh from GSFC units. In case of GACL, the Company did not pay interest of ₹ 11.22 crore but the Department did not initiate action for its recovery.

(Paragraph 6.3.9.5)

Compliance Audit

Absence of provision for levy of entertainment tax on T-20 cricket tournament organised by IPL resulted in foregoing entertainments tax of ₹ 1.38 crore.

(Paragraph 6.4)

In 650 cases, cable operators did not pay/ paid belatedly entertainments tax resulting in non/short realisation of entertainment tax of ₹ 88.98 lakh, including interest.

(Paragraph 6.5)

VII Non-tax receipts

Royalty was non/short levied in 116 cases on minerals removed from leased area resulting in non/short levy of royalty and interest of ₹ 1.30 crore. In another case, the Department failed to initiate action to recover royalty of ₹ 9.14 crore as per interim order of the High Court.

(Paragraph 7.5)

In 506 cases, the Department did not raise demand for dead rent from lease holders resulting in non levy of dead rent of ₹ 2.54 crore.

(Paragraph 7.6.1)

For 39 quarry mining leases sanctioned between October 2005 and September 2009 by the District Geologist, Bhavnagar, lease deeds were not executed and three was notional loss of ₹ 20.81 lakh to the Government on account of non-recovery of dead rent.

(Paragraph 7.8)

District Development Officers detected 84 cases of illegal mining and manufacturing of bricks in the area under their jurisdiction. Lack of system for co-ordination between the Revenue Authorities and concerned District Geologists resulted in non-levy of royalty of ₹ 19.72 lakh, including penalty of ₹ 4.80 lakh.

(Paragraph 7.9)

CHAPTER-I
GENERAL

1.1 Trend of revenue receipts

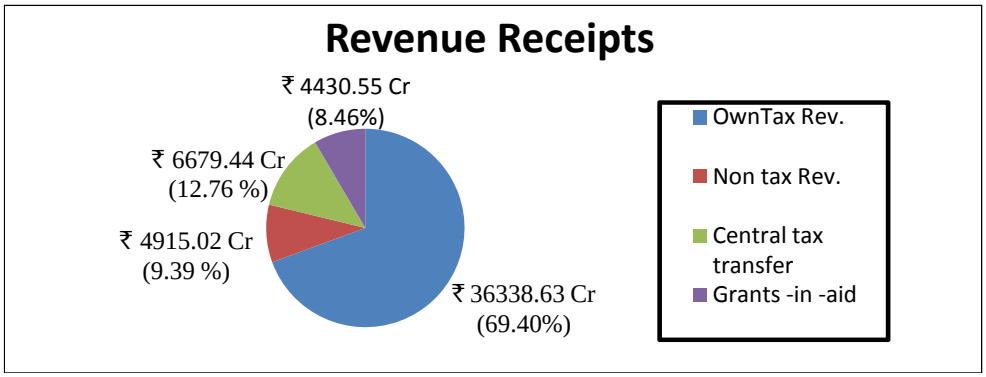
1.1.1 The tax and non-tax revenue raised by the Government of Gujarat during the year 2010-11, the State's share of net proceeds of divisible Union Taxes and duties assigned to the State and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned below:

(₹ in crore)

Sl. no.	Particular	2006-07	2007-08	2008-09	2009-10	2010-11
1.	**Revenue raised by the State Government**					
	• Tax revenue	18,464.63	21,885.57	23,557.03	26,740.23	36,338.63
	• Non-tax revenue	4,948.78	4,609.31	5,099.32	5,451.71	4,915.02
	Total	**23,413.41**	**26,494.88**	**28,656.35**	**32,191.94**	**41,253.65**
2.	**Receipts from the Government of India**					
	• Share of net proceeds of divisible Union taxes and duties	4,425.95	5,426.09	5,725.86	5,890.92	6,679.44
	• Grants-in-aid	3,162.86	3,768.88	4,293.50	3,589.50	4,430.55
	Total	**7,588.81**	**9,194.97**	**10,019.36**	**9,480.42**	**11,109.99**
3.	**Total revenue receipts of the State Government (1 and 2)**	**31,002.22**	**35,689.85**	**38,675.71**	**41,672.36**	**52,363.64**[1]
4.	**Percentage of 1 to 3**	**76**	**74**	**74**	**77**	**79**

The above table indicates that during the year 2010-11, the revenue raised by the State Government (₹ 41,254 crore) was 79 *per cent* of the total revenue receipts against 77 *per cent* in the preceding year. The balance 21 *per cent* of the receipts during 2010-11 was from the Government of India.

[1] For details, please see statement No. 11, Detailed Accounts of revenue by minor heads in the Finance Accounts of the Government of Gujarat for the year 2010-11. Figures under the Heads "0020 - Corporation tax, 0021 - Taxes on Income other than corporation tax, 0028 - Other taxes on income and expenditure, 0032 - Taxes on wealth, 0037 - Customs, 0038 - Union excise duties, 0044 - Service tax, 0045 - Other taxes and duties on commodities and services", - share of net proceeds assigned to states booked in the Finance Accounts under A - 'Tax Revenue', have been excluded from revenue raised by the State and included in State's share of divisible union taxes in this statement.



1.1.2 The following table presents the details of tax revenue raised during the period from 2006-07 to 2010-11.

(₹ in crore)

Sl. no.	Heads of revenue	2006-07	2007-08	2008-09	2009-10	2010-11	Percentage of increase (+) or decrease (-) in 2010-11 over 2009-10
1.	Sales tax/VAT	10,886.21	13,199.04	15,143.86	15,651.20	2,0226.78	(+) 29.23
	Central sales tax	1,931.25	1,905.50	1,666.79	2,548.59	4,666.68	(+) 83.11
2.	Taxes and duties on electricity	2,087.77	2,046.52	2,369.91	2,643.65	3,262.64	(+) 23.41
3.	Stamp duty and registration fees	1,425.03	2,018.43	1,728.50	2,556.72	3,666.24	(+) 43.40
4.	Land revenue	498.71	683.09	543.50	1,161.20	1,788.78	(+) 54.05
5.	Taxes on vehicles	1,191.15	1,310.09	1,381.66	1,542.64	2,003.68	(+) 29.89
6.	Taxes on goods and passengers	5.96	151.62	169.35	6.91	6.38	(-) 7.67
7.	State excise	41.94	47.20	48.71	65.94	62.97	(-) 4.50
8.	Other taxes on income and expenditure	131.07	149.67	185.84	196.87	228.22	(+) 15.92
9.	Other taxes	265.54	374.41	318.91	366.51	426.26	(+) 16.30
	Total	**18,464.63**	**21,885.57**	**23,557.03**	**26,740.23**	**36,338.63**	**(+) 35.89**

The reasons for variations wherever substantial, though called for in June 2011, were not reported (October 2011) by the concerned Departments.

1.1.3 The following table presents the details of non-tax revenue raised during the period from 2006-07 to 2010-11:

(₹ in crore)

Sl. no.	Heads of revenue	2006-07	2007-08	2008-09	2009-10	2010-11	Percentage of increase (+) or decrease (-) in 2010-11 over 2009-10
1.	Non-ferrous mining and metallurgical industries	2,173.76	2,082.14	1,559.82	2,138.98	2,019.31	(-)5.59
2.	Interest receipts	283.07	329.88	567.81	419.44	403.88	(-) 3.70
3.	Major and medium irrigation	330.61	452.82	455.77	504.61	618.14	(+) 22.50
4.	Miscellaneous general services	968.96	588.53	643.29	847.14	62.29	(-) 92.65
5.	Other administrative services	36.57	47.93	189.44	110.80	41.11	(-) 62.90
6.	Police	90.66	86.24	77.44	101.45	149.08	(+) 46.95
7.	Medical and public health	66.68	66.25	126.50	62.40	118.11	(+) 89.28
8.	Public works	30.64	27.19	31.69	51.06	36.71	(-) 28.10
9.	Forestry and wild life	36.91	35.08	40.51	39.76	45.22	(+) 13.73
10.	Other non-tax receipts	930.92	893.25	1,407.05	1176.07	1421.17	(+) 20.84
Total		**4,948.78**	**4,609.31**	**5,099.32**	**5,451.71**	**4,915.02**	**(-) 9.84**

The concerned Departments did not inform (October 2011) the reasons for variations, despite being requested (May 2011).

1.2 Response of the Departments/Government towards audit

In the following paragraphs from 1.2.1 to 1.2.6, response of the Departments/ Government towards various aspects related to audit process has been discussed.

1.2.1 Failure of senior officials to enforce accountability and protect the interest of the State Government

Principal Accountant General (Commercial and Receipt Audit) Gujarat, Ahmedabad (PAG), conducts periodical inspection of the Government Departments to test check the transactions and verify the maintenance of the

important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with inspection reports (IRs) incorporating irregularities detected during the inspection and not settled on the spot, which are issued to the heads of the offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of offices/ Government are required to comply promptly the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the PAG within one month from the date of receipt of the IRs. Serious financial irregularities are reported to the heads of the Departments and the Government.

Inspection reports issued upto December 2010 disclosed that 14,100 paragraphs involving ₹ 8,718.32 crore relating to 4,535 IRs remained outstanding at the end of June 2011 as mentioned below alongwith the corresponding figures for the preceding two years.

Particulars	As at the end of		
	June 2009	June 2010	June 2011
Number of outstanding inspection reports	4,035	4,374	4,535
Number of outstanding audit observations	11,426	12,998	14,100
Amount of revenue involved (₹ in crore)	4,987.77	7,290.79	8,718.32

The Department-wise details of the IRs and audit observations outstanding as on 30 June 2011 and the amounts involved are mentioned below:

Sl. no.	Name of the Department	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved (₹ in crore)
1	Finance	Taxes/VAT on sales, trade etc.	1,484	5,901	2,989.01
		Professional Tax	16	27	0.05
2	Home	State excise	12	16	0.28
3	Revenue	Land revenue	431	989	405.03
4	Ports and Transport	Taxes on motor vehicles	391	1,559	1,076.42
5	Revenue	Stamp duty and registration fees	1,075	3,141	1,377.49
		Valuation of property	190	403	51.99
6	Industries and Mines	Geology and Mining	252	728	446.11
		Director of Petroleum	4	30	2,022.51
7	Energy and Petrochemicals	Electricity duty	57	89	148.14

8	Forest and environment	Forestry and wild life	61	101	9.51
9	Information and Broadcasting	Entertainments tax, luxury tax, etc.	562	1,116	191.78
Total			**4,535**	**14,100**	**8,718.32**

Even the first replies required to be received from the heads of office within one month from the date of receipt of the IRs were not received for 214 IRs issued up to December 2010. This large pendency of the IRs due to non-receipt of the replies is indicative of the fact that the heads of offices and heads of the Departments failed to initiate action to rectify the defects, omissions and irregularities pointed out by the PAG in the IRs.

We recommend that the Government may take suitable steps to implement an effective procedure for prompt and appropriate response to audit observations as well as take action against officials /officers who failed to send replies to the IRs/paragraphs as per the prescribed time schedules and also failed to take action to recover outstanding demand in a time bound manner.

1.2.2 Departmental audit committee meetings

The Government set up audit committees (during various periods) to monitor and expedite the progress of the settlement of IRs and paragraphs in the IRs. The details of the audit committee meetings held during the year 2010-11 and the paragraphs settled are mentioned below:

(₹ in crore)

Sl. no.	Name of the Department/Head of revenue	No. of meetings held	No. of IRs/paragraphs settled		Amount
			IRs	Paragraphs	
1.	Finance (Sales tax/VAT)	2	1	67	4.67
2.	Ports and Transport (Motor vehicles tax)	1	3	176	94.00
3.	Land Revenue	1	12	39	3.58
4	Geology and Mining	1	18	226	36.49
5	Valuation of Property	1	29	119	4.21
6	Forest and Environment	1	42	92	0.36

It could be seen from the above paragraph that though the amount of the outstanding observations had increased from ₹ 7290.79 crore to ₹ 8718.32 crore i.e. increase of 19.58 *per cent*, only seven meetings were held during the year.

Considering the large pendency of IRs and audit paragraphs, the Departments need to hold more audit committee meetings to clear the outstanding paragraphs.

1.2.3 Non-production of records to Audit for scrutiny

The programme of local audit of all the Departments is drawn up sufficiently in advance and intimations are issued, usually one month before the commencement of audit, to the Department to enable them to keep the relevant records ready for audit scrutiny.

During 2010-11, 10,113 tax assessment records relating to 85 Commercial tax offices were not made available to audit, which included 5,903 cases which were not produced during previous years. The tax effect was not available with the assessing authority. 3,722 documents relating to Stamp Duty and Registration Fees in one office were not made available to us. Details of the cases are mentioned below:

Sl. No.	Name of Office	No. of units	Year in which it was to be audited	Number of assessment cases/documents not produced
1.	Commercial Tax Offices	85	2006-07 to 2010-11	10,113
2.	Sub-Registrar Office III (Navagam), Surat	01	2007 to 2009	3722
3.	Collector (ET), Mehsana	01	2007-08 to 2009-10	Entertainment Tax records i.e. Form-III and Form 17 relating to one cinema.

1.2.4 Response of the Departments to the draft audit paragraphs

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

Fifty seven draft paragraphs (clubbed into 50 paragraphs) proposed for inclusion in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2011 (Revenue Receipts) Government of Gujarat were forwarded to the Secretaries of the respective Departments between May and November 2011 through demi-official letters. The Secretaries of the respective Departments replied to 41 draft paragraphs. Out of 41 paragraphs 15 draft paragraphs were replied partially. The paragraphs of the reviews have been included in this report after incorporating the response of the Secretaries of the concerned Departments, wherever received.

1.2.5 Follow up on Audit Reports - summarised position

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

The AR for the years 2008-09 was presented to the State Legislature on 30 March 2010. Explanatory notes in respect of paragraphs included in AR 2008-09 were not yet furnished by the Departments as mentioned below (October 2011).

Name of the Department	2008-09 (Paragraphs)	2008-09 (Sub paragraphs-Reviews)	Total
Finance (Sales tax/VAT)	08	11	19
Revenue			
(Stamp duty)	12	--	12
(Land revenue)	5	--	5
Ports and Transport (Motor vehicles tax)	2	12	14
Information and Broadcasting			
(Entertainments tax)	4	--	4
(Luxury tax)	1	--	1
Industries and Mines (Mining receipts)	--	11	11
Energy and Petrochemicals			
(Mining receipts)	--	11	11
(Electricity Duty)	2	--	2
Total	**34**	**45**	**79**

1.2.6 Compliance with the earlier Audit Reports

During the years between 2005-06 and 2009-10, the Departments/Government accepted audit observations involving ₹ 647.94 crore of which an amount of ₹ 46.87 crore had been recovered till 31 March 2011 as mentioned below:

(₹ in crore)

Year of Audit Report	Total money value	Accepted money value	Recovery made*
2005-06	441.53	427.76	16.55
2006-07	94.53	23.84	5.67
2007-08	304.96	86.28	10.60
2008-09	5,743.47	46.98	4.48
2009-10	352.04	63.08	9.57
Total	**6936.53**	**647.94**	**46.87**

* Amount recovered as shown above includes recovery effected by Commercial Tax, MVT, SD & RF, Entertainment Tax, Luxury Tax and GMR Departments. Despite repeated reminders and pursuance at all levels, recovery effected by Land Revenue, and Electricity Duty has not been received (October 2011).

The recovery in respect of the accepted cases was meagre (seven *per cent* of the accepted money value).

We recommend the Government to advise the concerned Departments to take necessary steps for speedy recovery at least in those cases/ paragraphs which have been accepted by the concerned Departments in the interest of revenue.

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

In order to analyse the system of addressing the issues highlighted in the Inspection Reports/Audit Reports by the Departments/Government, the action taken on the paragraphs and reviews included in the Audit Reports of the last five years in respect of Geology and Mining Department is evaluated and included in this Audit Report.

The succeeding paragraphs 1.3.1 to 1.3.2.2 discuss the performance of the Geology and Mining Department to deal with the cases detected in the course of local audit conducted during the last five years and also the cases included in the Audit Reports for the years 2006-07 to 2010-11.

1.3.1 Position of Inspection Reports

The summarised position of inspection reports issued during the last five years, paragraphs included in these reports and their status as on 31 March 2011 are tabulated below.

(₹ in crore)

Year	Opening balance			Addition during the year			Clearance during the year			Closing balance during the year		
	IRs[2]	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value
2006-07	173	485	310.26	21	77	3.40	1	12	0.54	193	550	313.12
2007-08	193	550	313.12	19	84	46.91	3	3	0.01	209	631	360.02
2008-09	209	631	360.02	18	103	28.69	0	1	0.08	227	733	388.63
2009-10	227	733	388.63	30	153	81.26	1	6	0.17	256	880	469.72
2010-11	256	880	469.72	17	101	14.91	18	229	36.53	255	752	448.10

There was continuous increase in the number (except in 2010-11) and money value of the objections as at the end of the year from 2006-07 to 2010-11. This indicates failure of the Department to take timely action on the audit objections. During five years period from 2006-07 to 2010-11, Geology and Mining Department conducted one ACM and settled 226 paragraphs and 18 IRs involving money value of ₹ 36.49 crore. The efforts made to settle the paragraphs in 2010-11 need to be continued in future.

1.3.2 Assurances given by the Department/Government on the issues highlighted in the Audit Reports

1.3.2.1 Recovery of accepted cases

The position of paragraphs included in the Audit Reports of the last five years, those accepted by the Department and the amount recovered are mentioned in the following table:

Year of AR	Number of paragraphs included	Money value of the paragraphs (₹ in crore)	Money value of accepted paragraphs (₹ in crore)	Amount recovered during the year 2010-11 (₹ in crore)	Cumulative position of recovery of accepted cases (₹ in crore)
2005-06	2	13.14	13.14	3.20	11.42
2006-07	1	3.34	2.18	1.77	2.73
2007-08	1	1.41	1.29	0.45	0.80
2008-09	1	627.63	524.81	0.00	0.00
2009-10	7	19.15	18.45	1.67	7.02
Total	**12**	**664.67**	**559.87**	**7.09**	**21.97**

Out of observations of ₹ 559.87 crore accepted, the Department recovered an amount of ₹ 21.97 crore during the period of five years which was very low (3.92 *per cent* of accepted amount of observations).

[2] Includes only those observations which were not included in Audit Reports.

We recommend the Department to consider taking effective steps to recover the amount of accepted money value utilising the powers conferred by Act/Rules of Geology and Mining for recovery of tax and speed up the recovery.

1.3.2.2 Action taken on the recommendations accepted by the Department/Government

The draft performance reviews conducted by the PAG are forwarded to the concerned Departments/Government for their information with a request to furnish their replies. These reviews are also discussed in an exit conference and the Department/Government's views are included while finalising the reviews for the Audit Reports.

The following paragraphs discuss the issues highlighted in the reviews on the Geology and Mining Department featured in Audit Reports of the last five years including the recommendations and action taken by the Department on the recommendations accepted by it as well as by the Government.

Year of AR	Name of the review	Number of recommen-dations	Details of the recommendations accepted	Status
2008-09	Levy and collection of royalty dead rent and surface rent from mines and quarries	Seven	--	The rates of yearly surface rent were revised at non-agricultural assessment rates vide notification dated 27.8.2010 by Industries and Mines Department (Para 7.2.9)

The Department/Government had accepted the recommendations of the review which appeared in the report of the Comptroller and Auditor General of India for the year 2008-09 and accordingly the rates of yearly surface rent were revised @ non-agricultural assessment rates vide Government of Gujarat (Industries and Mines) notification dated 27 August 2010.

1.4 Audit planning

The unit offices under various Departments are categorised into high, medium and low risk units according to their revenue position, past trends of audit observations and other parameters. The annual audit plan is prepared on the basis of risk analysis which *inter-alia* include critical issues in government revenues and tax administration i.e. budget speech, white paper on state finances, reports of the Finance Commission (State and Central), recommendations of the taxation reforms committee, statistical analysis of the revenue earnings during the past five years, features of the tax administration, audit coverage and its impact during past five years etc.

During the year 2010-11, the audit universe comprised of 962 auditable units, of which 305 units were planned and audited during the year, which is 31.7 *per cent* of the total auditable units.

Besides the compliance audit mentioned above, three performance reviews and one Information Technology review were also taken up to examine the efficacy of the tax administration of these receipts.

1.5 Results of audit

1.5.1 Position of local audit conducted during the year

Test check of the records of 305 units of commercial tax, land revenue, state excise, motor vehicles tax, stamp duty and registration fees, electricity duty, other tax receipts, forest receipts and other non-tax receipts conducted during the year 2010-11 revealed under assessment/short levy/loss of revenue amounting to ₹ 1453.75 crore in 1804 cases. During the course of the year, the concerned Departments accepted under assessments and other irregularities of ₹ 610.38 crore in 408 cases of which 41 cases involving ₹ 237.03 crore were pointed out in audit during the year 2010-11 and the rest in the earlier years. Department collected ₹ 17.77 crore in 318 cases in 2010-11.

1.5.2 This Report

This report contains 50 paragraphs including four performance audits on (i) "Performance Audit on declaration forms in inter-State trade or commerce", (ii) "Collection of Stamp Duty and Registration Fees" (iii) "Working of Electricity Duty Department" and (iv) "Computerisation in Motor Vehicles Department**"** relating to short/non levy of tax, duty and interest, penalty etc., involving financial effect of ₹ 462.98 crore. The Departments/Government have accepted audit observations involving ₹ 88.96 crore out of which ₹ 13.07 crore has been recovered. The replies in the remaining cases have not been received (October 2011). These are discussed in succeeding Chapters II to VII.

CHAPTER II

EXECUTIVE SUMMARY

Significant increase in tax collection	In 2010-11, the collection of Value Added Tax increased by 36.78 *per cent* over the previous year which was attributed by the Department to better tax compliance by the Department, increase in the price of the petrol and diesel, growth rate of development, compensation received from Central Government for loss due to reduction of rate of tax and Central Sales Tax and repayment of deferred Sales Tax.
Short fall in Internal Audit	During the year 2010-11, seven Dy. Commissioner (Audit) audited 1,492 cases against yearly target of 12,600 cases. The internal audit wing needs to put in more concerted efforts to achieve the target fixed so that better tax compliance is ensured.
Meagre recovery by the Department of observations pointed out by us in earlier years	During the period 2005-06 to 2009-10, we had pointed out non/short levy, non/short realisation, under assessment/loss of revenue, incorrect exemption concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc. with revenue implication of ₹ 5522.99 crore in 70 paragraphs. Of these, the Department/Government had accepted audit observations in 59 paragraphs involving ₹ 109.95 crore and had recovered ₹ 8.36 crore. This indicates that recovery of accepted cases was very low (7.6 *per cent* of the accepted money value)
Results of audit conducted by us in 2010-11	In 2010-11, we test checked the records of various Commercial Tax Offices and noticed under assessment and other irregularities of ₹ 441.86 crore in 752 cases. The Department accepted objections of ₹ 15.22 crore in 114 cases, of which 10 cases involving ₹ 3.09 lakh were pointed out and accepted in 2010-11 and the rest in earlier periods. During 2010-11, the Department recovered ₹ 1.25 crore in 59 cases.
What we have highlighted in this Chapter	Performance Audit on **"Cross verification of Declaration forms in Inter-State trade or commerce"** revealed the following: • Though Declaration forms under the CST Act were being issued online since July 2008 to the dealers, the position of the unutilised Declaration forms was not known, since this was not called back by the Department. • The TINXSYS website was not utilised for verification of forms till June 2011 and despite Departmental instructions, for its usage thereafter, we found instances where the Assessing officers were not utilising it effectively. • Internal control measures, for cross verification of Inter State Trade Transactions, in form of special cell was absent.

- Correctness of purchase transactions, involving revenue implication of ₹ 12.93 crore could not be ensured in absence of a system to check the utilisation of forms issued.
- Evasion of tax to the tune of ₹ 2.44 crore was noticed due to fraudulent utilisation of 'C' Forms/under-disclosure of Inter-State sales due to absence of cross verification system.
- Non/short levy of Central Sales Tax of ₹ 1.19 crore was noticed due to allowance of Branch Transfer on fake 'F' forms/over-declaration of branch transfer by the selling dealer in absence of system of cross verification of transactions.
- There was non/short levy of tax of ₹ two crore on inter-state purchase effected on fake 'C' form/under-disclosed Inter-State purchase.
- We detected misutilisation of 'F' forms which resulted in non/short levy of tax of ₹ 8.45 crore in absence of cross verification system.

Other observations were as follows:

- Irregular deduction of labour charges from VAT sales turnover resulted in under assessment of ₹ 66.79 lakh in case of seven dealers.
- In 13 offices, the assessing officers allowed excess set-off, either on purchase of prohibited goods or without ascertaining the fulfillment of prescribed conditions. This resulted in excess grant of set off of ₹ 61.40 lakh including interest and penalty.
- In five offices, the assessing officers did not initiate any action to recover tax of ₹ 2.33 crore including interest of ₹ 1.19 crore from 16 dealers under the deferment incentive schemes in violation of rules and provisions of the schemes.
- In 22 offices, the assessing officers while finalising the assessments though leviable did not levy penalty or levied short. This resulted in non/short levy of penalty of ₹ 3.91 crore.
- In five offices, the assessing officers applied incorrect rate of tax in the CST assessments which resulted in under assessment of ₹ 90.70 lakh including interest and penalty.
- Concession of ₹ 2.98 crore was allowed to 49 dealers without obtaining declaration/certificates as required under Central Sales Tax Act, 1956.

Recommendations

Government may consider taking the following steps:

- the functioning of the system of *online* issuance of declaration forms may be reviewed periodically to ascertain and maintain its efficacy. Ensure compliance of instructions issued in respect of utilisation of 'TINXSYS' website by the assessing officers.

- issuing instructions for obtaining periodical details of utilisation of declaration forms by prescribing returns to ensure the correct accounting of purchase transactions.

- prescribing a mechanism to cross-check a fixed percentage of declaration forms furnished by the selling dealers from the Commercial Tax Department of the State issuing such forms to the purchasing dealers.

- Government/Department may consider installing a system for exchange of information with other states on a regular basis to avoid the sales escaping assessment. Undertake enforcement measures to ensure that the inter-State transactions are properly accounted for by the selling/ purchasing dealers.
- Assessing officer (AO) should ensure that all the required declaration forms in support of inter-state trade/export are provided by the dealers as per the provisions of Act/Rules.
- While allowing set-off/ITC, the assessing officer should apply the provisions of Act/Rules strictly.
- While finalising taxable turnover, the assessing officer should also take into account the figures available in other records of the assessee, and
- While finalisation of the assessment, the assessing officer should levy the prescribed interest and penalty, wherever applicable.

CHAPTER II
SALES TAX/VALUE ADDED TAX

2.1 Tax administration

The tax administration of the Commercial Tax Department of the State is governed by the Gujarat Value Added Tax (GVAT) Act, 2003 and the Central Sales Tax (CST) Act, 1956. The GVAT Act was made effective in the State from 1st April 2006 and on its implementation, the Gujarat Sales Tax Act, 1969, the Bombay Sales of Motor Spirit Taxation Act, 1958 and the Purchase Tax on Sugarcane Act, 1989 were repealed. However assessments, appeals, recovery etc., pertaining to the period prior to the implementation of GVAT continued to be governed under the provisions of these repealed Acts. The Commercial Tax Department (Department) is headed by the Commissioner of Commercial Tax (Commissioner), who is assisted by a Special Commissioner and an Additional Commissioner. The Department is geographically organised into seven administrative divisions, each headed by an Additional/Joint Commissioner (Addl./JC). A division has 'circles', each headed by a Deputy Commissioner (DC); there are 25 circles in the State. A circle has assessment units each headed by Assistant Commissioner/Commercial Tax Officer (AC/CTO); there are 104 units in the State. In addition, there are 11 permanent, two seasonal/temporary check posts headed by AC/CTO. Besides, there are staff positions in the Department's head office for administration, audit, legal, appeal, enforcement, e-governance, internal inspection *etc*., headed by Addl./JC or DC.

2.2 Analysis of budget preparation

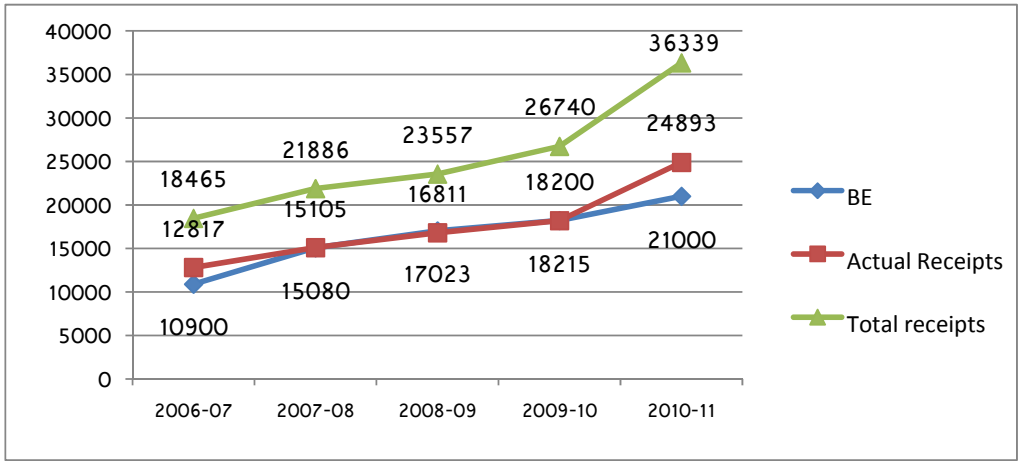
The Budget Estimates are furnished by the Commissioner in the prescribed format to the Finance Department. While preparing the budget estimates, the Commercial Tax Department considers normal growth of the State economy, rise in price of goods (particularly petroleum products) and increase in demand and production of consumer goods. There is no variation between Budget Estimates and Revised Estimates. Actual receipts is 18.54 *per cent* more than the Budget Estimates for the year 2010-11; reasons for the variation as stated by the Department were better tax compliance by the Department, increase in the price of petrol and diesel, increased growth rate of development, compensation received from central government for loss due to reduction of rate of tax under central sales tax, and repayment of deferred sales tax.

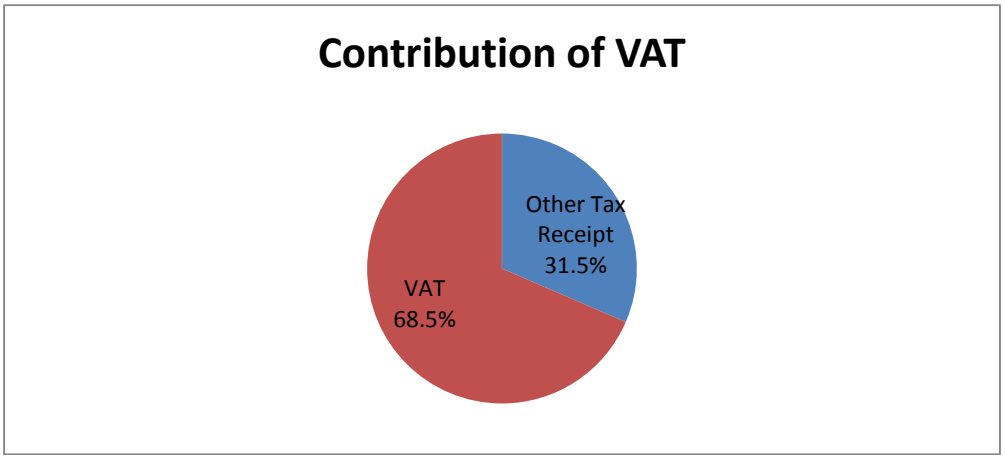
2.3 Trend of receipts

Actual receipts from Sales Tax/VAT during the last five years 2006-07 to 2010-11 alongwith the total tax receipts during the same period is exhibited in the following table and graph:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual Sales Tax/VAT receipts vis-a-vis total tax receipts
2006-07	10,900.00	12,817.46	(+) 1,917.46	(+) 17.59	18,464.63	69.42
2007-08	15,080.00	15,104.54	(+) 24.54	(+) 0.16	21,885.57	69.02
2008-09	17,023.00	16,810.65	(-) 212.35	(-) 1.25	23,557.03	71.36
2009-10	18,215.00	18,199.79	(-) 15.21	(-) 0.08	26,740.23	68.06
2010-11	21,000.00	24,893.46	(+) 3893.46	(+) 18.54	36,338.63	68.50





The contribution of VAT in total tax receipts increased from 68.06 *per cent* in 2009-10 to 68.50 *per cent* in 2010-11.

The above pie chart indicates the dominance of contribution of Value Added Tax (VAT) over the other tax receipts in Gujarat.

2.4 Analysis of arrears of revenue

(₹ in crore)

Year	Opening balance of arrears	Demand raised	Amount collected during the year	Closing balance of arrears
2006-07	8,080.31	1,812.94	1,540.72	8,352.53
2007-08	8,352.53	2,326.70	2,739.73	7,939.50
2008-09	7,939.50	2,019.07	1,104.67	8,853.90
2009-10	8,853.90	6,428.33	4,084.70	11,197.53
2010-11	11,197.53	5,238.54	1,929.99	14,506.08

The arrears of revenue as on 31 March 2011 amounted to ₹ 14,506.08 crore, of which ₹ 4,047.82 crore were outstanding for more than five years. Of the total outstanding amount, recovery certificates for ₹ 1,161.42 crore were issued. Recovery of ₹ 5,155.47 crore has been stayed by the High Court of Gujarat and other judicial authorities. Recoveries of ₹ 548.03 crore and ₹ 217.06 crore are held up due to insolvency of dealers and non-finalisation of rectification and review applications of the dealers respectively. ₹ 212.31 crore is unlikely to be recovered and hence proposed to be written off and ₹ 2,382.35 crore is under various stages of recovery.

We recommend the Government to make determined efforts to recover the huge Sales Tax/VAT arrears.

2.5 Assessee profile

The number of dealers required to file returns was 3,90,929 at the end of March 2011. Out of them, 6,929 dealers paid tax more than ₹ 20 lakh and the rest 3,84,000 dealers paid less than ₹ 20 lakh during the year. 3,90,929 dealers were required to file returns during the year but 49,401 dealers defaulted in filing of returns and in all cases necessary action was taken.

2.6 Cost of VAT per assessee

Number of live dealers during the year 2010-11 and during the preceding three years with expenditure incurred on collection of revenue and cost of tax per assessee are given below:

(₹ in lakh)

Year	No. of dealers	Expenditure on collection of revenue	Cost of VAT per assessee
2007-08	3,66,676	9843.00	0.03
2008-09	3,73,426	9951.00	0.03
2009-10	3,77,093	12907.00	0.03
2010-11	3,99,455	14937.00	0.04

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

2.7 Arrears in assessment

The number of assessments pending at the beginning of the year 2010-11, assessments due during the year, assessments done during the year and pending at the end of the year alongwith the figures for the preceding four years as furnished by the Commercial Tax Department[3] are given below:

(No. of cases)

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Assessments done during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2006-07	6,82,709	4,24,113	11,06,822	3,78,420	7,28,402	66
2007-08	7,28,402	3,84,961	11,13,363	4,00,588	7,12,775	64
2008-09	3,46,922[4]	1,08,174	4,55,096	1,27,315	3,27,781	72
2009-10	3,27,781	1,22,180	4,49,961	1,80,159	2,69,802	60
2010-11	2,69,802	90,666	3,60,468	1,75,050	1,85,418	51

Thus, the percentage of closing balance at the end of each year during 2006-07 to 2010-11 to total cases which became due for assessment ranged between 51 and 72 *per cent*. The decrease in cases due for assessment was due to the introduction of the Gujarat Value Added Tax Act, 2003 with effect from 1 April 2006 in place of the Gujarat Sales Tax Act, 1969.

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

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

[3] In respect of sales tax/VAT, professional tax, purchase tax on sugarcane, lease tax, luxury tax and tax on works contracts.

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

(No. of cases)

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Assessments done during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2008-09	0	69135	69135	14187	54948	79.48
2009-10	54948	99289	154237	38707	115530	74.90
2010-11	115530	60365	175895	79978	95917	54.53

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

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

2.8 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the periods from 2007-08 to 2010-11 alongwith the relevant All India average percentage of expenditure on collection to gross collection for the preceding years is shown below:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection of the preceding years
VAT/sales tax	2007-08	15,104.54	98.43	0.65	0.82
	2008-09	16,810.65	99.51	0.59	0.83
	2009-10	18,199.79	129.07	0.71	0.88
	2010-11	24,893.45	149.37	0.60	0.96

The cost of collection in respect of VAT/ sales tax was lower than the all India average.

2.9 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of sales tax/VAT, cess on motor spirit, professional tax and entry tax for the year 2010-11 and the corresponding figures for the preceding two years as furnished by the Department is mentioned below:

(₹ in crore)

Heads of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount refunded	Net collection	Percent-age of column 4 to 3
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales tax/VAT	2008-09	15,793.59	186.40	1,338.19	14,641.80	1.18
	2009-10	18,529.72	278.11	1,384.13	17,423.70	1.50
	2010-11	23,751.68	1,253.81	1,879.67	23,125.82	5.28
Cess on Motor Spirit	2008-09	523.68	2.67	-	526.35	0.51
	2009-10	496.40	0.05	-	496.45	0.01
	2010-11	642.14	-	-	642.14	00

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

Thus, the percentage of collection of revenue after assessment (additional demand) with reference to pre-assessment stage ranged between 0 and 5.28 *per cent* under sales tax/VAT/cess on motor spirit during the years 2008-09 to 2010-11.

2.10 Impact of Audit Reports-Revenue impact

During the last five years, we, through our audit reports, had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 5,522.99 crore in 70 paragraphs. Of these, the Department/Government had accepted audit observations in 59 paragraphs involving ₹ 109.95 crore and had recovered ₹ 8.36 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2005-06	14	311.89	13	25.71	7	1.70
2006-07	12	27.86	11	10.98	4	1.51
2007-08	12	134.90	10	21.81	8	1.55
2008-09	17	5,013.96	12	24.62	8	2.85
2009-10	15	34.38	13	26.83	7	0.75
Total	**70**	**5,522.99**	**59**	**109.95**	**34**	**8.36**

The above table indicates that recovery even in accepted cases was very low (7.6 *per cent* of the accepted money value).

The Government may take suitable steps for speedy recovery.

2.11 Working of internal audit wing

Internal Audit Wing of Commercial Tax Department, headed by Joint Commissioner (JC Audit), conducts audit of all offices dealing with the assessment and collection of Sales Tax/Value Added Tax. JC (Audit) is assisted by Dy. Commissioners (Audit). There are seven Dy. Commissioners (Audit), one each in every Division and has a monthly target of 150 cases. The concerned Dy. Commissioner (Audit) submits monthly statement to JC (Audit) giving particulars such as offices audited, number of dealers covered and objection raised. The JC (Audit) offers his comments on such statements. During the year 2010-11, seven Dy. Commissioners (Audit) audited 1,492 cases as against yearly target of 12,600 cases. Out of 1,492 cases audited, revision orders involving an amount of ₹ 71.12 lakh were passed in 18 cases.

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

2.12 Results of audit

We test checked the records of 96 units relating to Commercial Tax Offices during 2010-11 and noticed underassessment of tax and other irregularities involving ₹ 441.86 crore in 752 cases which fall under the following categories:

Sl. No.	Categories	No. of cases	Amount (₹ in crore)
1	**A Performance Audit on cross verification of declaration forms in inter-State trade or commerce**	1	27.01
2	Incorrect rate of tax and mistake in computation	17	3.68
3	Irregular grant of set-off	19	1.33
4	Irregular concessions/exemptions	8	10.96
5	Non/short levy of tax, interest and penalty	239	294.90
6	Other irregularities	29	5.21
7	VAT Audit	439	98.77
	Total	**752**	**441.86**

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 15.22 crore in 114 cases, of which 10 cases involving revenue implication of ₹ 3.09 lakh were pointed out in audit during the year 2010-11 and the rest in earlier years. An amount of ₹ 1.25 crore was realised in 59 cases during the year 2010-11.

A Performance Audit on "C**ross verification of declaration forms in inter-State trade or Commerce**" involving ₹ 27.01 crore and few illustrative audit observations involving ₹ 49.37 crore are mentioned in the succeeding paragraphs.

2.13 A Performance Audit on "Cross Verification of Declaration Forms in Inter-State Trade or Commerce"

Highlights

- Though Declaration forms under the CST Act were being issued online since July 2008 to the dealers, the position of the unutilised Declaration forms was not known, since these were not called back by the Department.

(Paragraph 2.13.6)

- The TINXSYS website was not utilised for verification of forms till June 2011 and despite Departmental instructions, for its usage thereafter, we found instances where the Assessing officers were not utilising it effectively.

(Paragraph 2.13.7)

- Internal control measures, for cross verification of Inter State Trade Transactions, in the form of special cell was absent.

(Paragraph 2.13.8)

- Correctness of purchase transactions, involving revenue implication of ₹ 12.93 crore could not be ensured in absence of a system to check the utilisation of forms issued.

(Paragraph 2.13.9)

- Evasion of tax to the tune of ₹ 2.44 crore was noticed due to fraudulent utilisation of 'C' Forms/under-disclosure of Inter-State sales due to absence of cross verification system.

(Paragraph 2.13.10)

- Non/short levy of Central Sales Tax of ₹ 1.19 crore was noticed due to allowance of Branch Transfer on fake 'F' forms/over-declaration of branch transfer by the selling dealer in absence of system of cross verification of transactions.

(Paragraph 2.13.11)

- There was non/short levy of tax of ₹ two crore on inter-state purchase effected on fake 'C' form/under-disclosed Inter-State purchase.

(Paragraph 2.13.15)

- We detected misutilisation of 'F' forms which resulted in non/short levy of tax of ₹ 8.45 crore in absence of cross verification system.

(Paragraph 2.13.18)

2.13.1 Introduction

Under the Central Sales Tax Act, 1956, registered dealers are eligible for certain concessions and exemptions of tax on inter State transactions on submission of prescribed declarations in Forms 'C' and 'F'. The State Governments grant these concessions/exemptions to the dealers for furtherance of trade and commerce, on production of these forms.

The inter-State trade forms are being issued in Gujarat *online* from 1st July 2008 to the dealers directly through a cell created for the purpose under the divisional head i.e. Joint Commissioner. The information is being uploaded on the TINXSYS from the Department server to TINXSYS server from 1st July 2008. In respect of forms issued from October 2005 to June 2008, the information was uploaded manually.

So far as 'printing & custody' and 'issue & accounting' of declaration forms before the introduction of system of issuance of *online* forms are concerned, no lacunae was noticed in the internal control exercised by the Department for the purpose.

2.13.2 Organisational set up

The Commercial Tax Department of Gujarat functions under the control and supervision of Additional Chief Secretary, Finance Department, Government of Gujarat. The Commissioner of Commercial Tax is the head of the Department and is assisted by Special Commissioner of Commercial Tax (SCT) and Additional Commissioner of Commercial Tax (ACT) (Administration and Enforcement). The State is divided into seven divisions, each headed by a Joint Commissioner (JC) of Commercial Tax. Divisions are subdivided into circles (Ranges), each headed by a Deputy Commissioner (DC) of Commercial Tax. The circles are further divided into units which are supervised by the Assistant Commissioner (AC) of Commercial Tax. The ACs are assisted by Commercial Tax Officers (CTOs) and Commercial Tax Inspectors (CTIs). Validity and correctness of various exemptions and concessions claimed by the dealers are checked by the concerned DCCT/ACCT or CTO during finalisation of assessments.

2.13.3 Audit Objectives

The review was aimed to check and ascertain whether:

- there exists a foolproof system for custody and issue of the declaration forms,
- exemptions/concessions of tax granted by the assessing authorities were supported by the original declaration forms,
- there exists a system for ascertaining genuineness of the forms for preventing evasion of tax,

- there is a system of uploading the particulars in the TINXSYS website and the data available there is utilised for verifying the correctness of the forms,
- appropriate steps are taken on receipt and detection of fake, invalid and defective (without proper or insufficient details) forms and
- there exists an effective and adequate internal control mechanism.

2.13.4 Scope and methodology of audit

During the review, audit verified records of all the commercial tax units audited between November 2010 and January 2011, covering all assessments finalised during the period from 2007-08 to 2009-10, where exemptions/ concessions were granted under the CST Act. In the first phase of review, data comprising of 25,133 'C' forms and 3,625 'F' forms were collected from 23 offices of the Commercial Tax Department during local audit. The genuineness of the forms and transactions against which exemptions/concessions were granted were cross verified by our Accountant General offices across the country. In the second phase of the review, this office received a database comprising of 4,517 'C' forms and 988 'F' forms pertaining to the State of Gujarat. To verify the genuineness of the forms, 80 units of the Commercial Tax Department of the State were visited between April and June 2011.

2.13.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Commissioner of Commercial Tax in providing the necessary information and records for audit. An entry conference was held in November 2010 in which the scope and methodology of the review was explained to the Department. The Special Commissioner of Commercial Tax, Additional Commissioner of Commercial Tax and Joint Commissioners of all the divisions attended the meeting. The exit conference has not been held. Audit findings of the review were reported to the Department in August 2011. Replies have been received from certain field units (November 2011).

Audit findings

System deficiencies

2.13.6 Computerisation-*On-line* issuance of forms

The Inter-State trade forms are being issued in Gujarat *online* from 1st July 2008 to the dealers directly through a cell created for the purpose under the divisional head i.e. Joint Commissioner. The information is being uploaded on the TINXSYS from the department server to TINXSYS server from 1st July 2008. In respect of forms issued from October 2005 to 1st July 2008, the information was being uploaded manually.

The Department had not issued any guidelines/instructions to call back the unutilised declaration forms remaining with the dealers after introduction of *online* system of issuance of declaration forms. Hence, in the absence of instructions regarding calling back of such unutilised forms, the possibility of misuse thereof cannot be ruled out.

2.13.7 TINXSYS

Tax Information Exchange System (TINXSYS) is a centralised exchange of all interstate dealers spread across the various States and Union Territories of India. TINXSYS helps the Commercial Tax Departments of various States and Union Territories to effectively monitor the interstate trade.

TINXSYS can be used by Commercial Tax Department officials for verification of central Statutory Forms issued by other State Commercial Tax Departments and submitted to them by the dealers in support of claim for concessions.

TINXSYS website started functioning in 2006. However, the Department issued instructions to the assessing officers to visit 'TINXSYS' or the official website of the Commercial Tax Department of the concerned State to verify the genuineness of the forms submitted by the dealers of Gujarat to avail concession/exemption from levy of CST in June 2011 only. Such instructions were issued only after happening of instances where the forms submitted by the dealers were found to be doubtful or the registration number of the opposite dealers were cancelled *ab-initio*. Hence, delay in issuance of instructions to utilise the facility of 'TINXSYS' website resulted in substantial loss of revenue to Government exchequer.

Moreover, in spite of specific instructions, it was found in 10 units out of 13 units visited by us that the assessing officers were not utilising the facility of the 'TINXSYS' website. Hence, it can be concluded that the percentage of the officers using 'TINXSYS' was not satisfactory.

Department should put into place a mechanism by prescribing returns to monitor that all declaration forms are uploaded in the website and also ensure that this website is utilised for application and issue of 'C' forms.

2.13.8 Internal control

It is the responsibility of the Commercial Tax Department to ensure proper accounting of declaration forms and to take adequate safeguards against misutilisation of declaration forms on which tax relief is allowed involving large amount of revenue to the State exchequer. For the above purpose, the Department is expected to setup special cell as an enforcement measure to cross-verify the genuineness of declaration forms and the opposite dealer involved in the transaction with the dealer of Gujarat.

Moreover, the selling/purchasing dealers did not account for the inter-State sale/purchase properly, resulting in suppression of turnover. As such, the department failed to ascertain and ensure the correctness of transactions recorded and genuineness of the forms used in the inter-State trade and to

ensure proper accounting of the inter-State transactions in terms of monetary value. We further noticed that neither such special cell was created by the Department nor assessing officers were instructed to carry-out verification of certain percentage of forms either manually or through 'TINXSYS'. This reflects lack of internal control exercised by the Department.

2.13.9 Absence of a system for obtaining the details regarding issue and accounting of declaration forms by the dealers

To exercise better control regarding correct accounting of transactions of purchase by the dealers who had obtained various declaration forms from the Department, it is necessary to devise a system and issue instructions to assessing officers for periodical verification of the position of utilisation of such forms by the relevant dealers.

On receipt of such utilisation details, correctness thereof can be cross checked for proper accounting thereof. However, no system was put in place by the Department in the form of return for obtaining the details regarding utilisation of declaration forms.

During scrutiny of records, audit noticed in the case of 206 purchasing dealers registered in the State of Gujarat that they had obtained 438 declaration forms (C form: 328; F form: 110) from the Department. However, in absence of any system in place for obtaining the details regarding utilisation periodically, the correctness of purchase transactions valued ₹ 323.33 crore, involving revenue implication of ₹ 12.93 crore at the rate of four *per cent* of the value of goods involved could not be ensured.

Department may consider issuing instructions for obtaining periodical details of utilisation of declaration forms by prescribing returns to ensure the correct accounting of purchase transactions.

Compliance deficiencies

2.13.10 Evasion of tax due to fraudulent utilisation of "C" Forms under disclosure of inter State sales

Section 8(1) of the Central Sales Tax Act, 1956 read with Rule 12(1) of the CST Rules, 1957 prescribe that every dealer, who in the course of inter-state trade or commerce, sells goods to a registered dealer, shall be liable to pay tax under this Act, which shall be four *per cent* of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is lower provided the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration in original Form 'C', obtained from the prescribed authority, duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars. In case the dealer fails to furnish the said declaration, he shall be liable to tax (a) in the case of declared goods, at twice the rate applicable to the sale or purchase of such goods inside the respective State, and (b) in case of goods other than declared goods, at the rate of ten *per cent* or at the rate applicable to the sale or purchase of such goods inside the respective State,

whichever is higher. Moreover, as per Section 9 read with Section 34 of the GVAT Act, 2003 and Section 45 of the erstwhile GST Act, 1969; penalty not exceeding 150 *per cent* of the tax evaded may also be imposed.

Deficiencies noticed due to absence of effective system to cross check inter State transactions to have moral check on the registered dealers are mentioned in paragraph 2.13.10.1 to 2.13.10.3.

2.13.10.1 Incorrect grant of concessional rate of tax on forms not issued to purchasing dealers by the Department in which they were registered

During audit scrutiny, the data regarding inter-state sales in respect of 81 dealers registered with CTD, Gujarat, and assessed between April 2007 and March 2010, who had effected sale transactions valued at ₹ 18.22 crore against 134 'C' forms, was collected and the same was verified with the records pertaining to 'C' forms issued to the purchasing dealers registered with CTD of the eight[5] States. The exercise of cross checking revealed that the said forms were not issued to the purchasing dealers by the concerned circles of respective States in which they were registered. Grant of concessional rate of tax on the basis of declaration forms not issued/obtained from the jurisdictional commercial tax authorities of respective State involving tax of ₹ 1.09 crore needed investigation. The regularities remained unnoticed due to absence of a system to cross check inter State transactions.

After we pointed this out, the Department accepted to initiate reassessment proceedings in case of two dealers involving eight 'C' forms with tax effect of ₹ 3.21 lakh. While in case of two dealers involving three 'C' forms with tax effect of ₹ 1.65 lakh Department expressed its inability to reassess/ revise the assessments due to time bar provisions. Further, in case of five dealers involving six 'C' forms Department stated that the facts would be confirmed from the Commercial Tax Department of the concerned State and call the dealer for further necessary action.

The Department in case of one dealer involving five 'C' forms with tax effect of ₹ 0.42 lakh did not accept the audit observation and stated that the transactions were in conformity with sales record of the dealer. Reply of the Department is not tenable since the forms produced by the seller were not issued to the purchasing dealer by the Commercial Tax Department of the concerned State.

2.13.10.2 Incorrect grant of concessional rate of tax on forms issued to dealers other than those who made purchases

Similar exercise in respect of 29 selling dealers registered with CTD, Gujarat, and assessed between February 2007 and March 2010, revealed that they had effected sales worth ₹ 13.44 crore against 45 'C' forms which were found

[5] Andhra Pradesh, Bihar, Chhattisgarh, Haryana, Madhya Pradesh, Maharashtra, Tamil Nadu and Uttar Pradesh

issued by the CTD of respective states to the dealers other than purchasing dealers or the purchasing dealer had issued the form to the selling dealer other than the dealer claiming concessional rate of tax/mentioned in respective 'C' forms. With the result, forms were misused by the purchasing dealers. Acceptance of such 'C' Forms, having a tax effect of ₹ 80.61 lakh needs investigation. The irregularities remained unnoticed due to absence of a system to cross check inter State sales.

After we pointed out, the Department agreed in case of four dealers involving five 'C' forms to confirm the facts from the Commercial Tax Department of the concerned State and call the dealer for further necessary action.

The Department in case of three dealers involving three 'C' forms with tax effect of ₹ 10.49 lakh while not accepting the audit observation stated that the transactions were in conformity with sales record of the dealer. Reply of the Department is not tenable since the audit observations are based on cross verification of the records of the Commercial Tax Department having jurisdiction over the purchaser of the concerned State. Hence, the Department may take-up the matter with the concerned Commercial Tax Department for confirmation of the facts.

2.13.10.3 Disclosure of less inter State sales by selling dealers than those by purchasing dealers

Audit scrutiny in respect of records pertaining to 25 selling dealers registered with CTD, Gujarat and assessed between April 2007 and March 2010, revealed that they had shown value of goods sold as ₹ 4.35 crore against 44 'C' forms. However, the actual value of such transactions as shown by the purchasing dealers was ₹ 9.76 crore. Hence, the selling dealers had under- disclosed the inter-State sales by ₹ 5.41 crore, with the result there was sales escaping assessment. The differential tax to be recovered for short disclosure of sales worked out to ₹ 54.08 lakh.

After we pointed out, the Department agreed in case of two dealers involving four 'C' forms to confirm the facts from the Commercial Tax Department of the concerned State and call the dealer for further necessary action.

The Department in case of one dealer involving two 'C' forms with tax effect of ₹ 0.50 lakh while not accepting the audit observation stated that the transactions were in conformity with sales record of the dealer. Reply of the Department is not tenable since the audit observations are based on cross verification of the records of the Commercial Tax Department having jurisdiction over the purchaser of the concerned State. Hence, the Department may take-up the matter with the concerned Commercial Tax Department for confirmation of the facts.

Government/Department may consider putting in place an effective system of cross check of interstate transactions to avoid loss of revenue.

2.13.11 Grant of incorrect exemption on incorrect Branch Transfer

Under Section 6A(1) of the Central Sales Tax Act, 1956 read with Rule 12(5) of the CST (Turnover and Registration) Rules, 1957, inter alia, where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal and not by reason of sale, he may furnish to the assessing authority, a declaration in original Form 'F' obtained from the prescribed authority, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars, along with the evidence of dispatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale. In case the dealer fails to furnish the said declaration obtained from the prescribed authority, he shall be liable to pay tax at the rate of ten *per cent* or at the rate applicable to the sale or purchase of such goods inside the respective State, whichever is higher. Moreover, as per Section 9 read with Section 34 of the GVAT Act, 2003 and Section 45 of the erstwhile GST Act, 1969, penalty not exceeding 150 *per cent* of the tax evaded may also be imposed.

Lack of effective system to cross check interstate transactions in the cases of branch transfer claims by the registered dealers caused total non/short levy of central sales tax of ₹ 1.19 crore as mentioned in para 2.13.12, 2.13.13 and 2.13.14.

2.13.12 Grant of incorrect exemption on "F" forms not issued by the Department of the States in which they were registered

The data regarding branch transfer, effected by the eight dealers registered with Commercial Tax Department, Gujarat and assessed between March 2008 and January 2010; against 58 'F' forms involving value of goods worth ₹ 5.69 crore was collected and verified with the records pertaining to F forms issued to the agent or principal registered with six[6] Commercial Tax Department of the respective States. Result of the cross check revealed that such forms were not issued to the dealers by the concerned circles of respective States in which they were registered. Since the forms furnished by those dealers were not obtained from the jurisdictional commercial tax authorities of the respective State in which they were registered and the same were fake, the grant of exemption of tax on production of such forms was irregular and tax was required to be levied at the prescribed rates. Thus, grant of exemption from levy of tax on fake 'F' forms resulted in non levy of CST to the tune of ₹ 56.94 lakh.

After we pointed out, the Department in case of one dealer involving one 'F' form with tax effect of ₹ 0.17 lakh expressed its inability to reassess/ revise the

[6] Bihar, Chhattisgarh, Madhya Pradesh, Maharashtra, Uttar Pradesh, Daman & Diu.

assessment due to time bar provisions. While in case of three dealers involving 36 'F' forms the Department agreed to confirm the facts from the Commercial Tax Department of the concerned State and call the dealers for further necessary action.

2.13.13 Incorrect grant of exemption from tax on forms issued to dealers other than those who made branch transfers

During scrutiny of records in case of two dealers of Gujarat assessed in January/February 2010 we found that the dealers had affected branch transfer of goods valued at ₹ 37.76 lakh against seven 'F' forms. Our scrutiny revealed that these forms were issued by the commercial Tax Departments of West Bengal and Madhya Pradesh in favour of the dealer other than those whose name was mentioned in the 'F' forms as produced by the dealer of Gujarat for claiming exemption from levy of CST. The exemption from levy of CST on the strength of such forms was incorrect and escaped from the notice of the Department due to absence of a system of cross verification. The tax was required to be levied at the rate of ten *per cent* or the rate applicable for sale of goods within the State of Gujarat, whichever is higher. Non-levy of tax at the applicable rate worked out to ₹ 3.78 lakh.

After we pointed out, the Department agreed in case of one dealer involving four 'F' forms to confirm the facts from the Commercial Tax Department of the concerned State and call the dealer for further necessary action.

2.13.14 Disclosure of more branch transfers by consigner than those shown by consignees

In case of nine dealers (consigners) of Gujarat assessed between July 2007 and February 2010 who had claimed branch transfer of goods valued at ₹ 9.38 crore against 28 'F' forms to the Consignees i.e. agent or the principal, we found that consignees had shown inter-State branch transfer worth ₹ 3.54 crore only in their accounts on the basis of these forms. As such, the consigners may have over-stated the value of such branch transfer by ₹ 5.84 crore. The excess claim towards branch transfer got un noticed in absence of a system of cross verification of the transactions and resulted in non-levy of CST to the tune of ₹ 58.39 lakh.

After we pointed out, the Department agreed in case of one dealer involving seven 'F' forms to call the dealer for further necessary action.

The Department in case of one dealer involving six 'F' forms with tax effect of ₹ 5.57 lakh did not accept the audit observation and stated that the transactions were in conformity with sales records of the dealer. Reply of the Department is not tenable since the audit observations are based on cross verification of the records of the Commercial Tax Department having jurisdiction over the purchaser of the concerned State. Hence, the Department may take-up the matter with the concerned Commercial Tax Department for confirmation of the facts.

Government/Department may consider putting in place an effective system of cross check of interstate transactions to avoid loss of revenue.

2.13.15 Non/short levy of tax on inter-State purchases effected on C forms/under disclosed inter-State purchases

As per the provisions contained in the Gujarat Value Added Tax Act, 2003 and erstwhile Gujarat Sales Tax Act, 1969, turnover of purchases means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of any purchase of goods made by him during a given period after deducting the amount of purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period. Further, as per Section 30(2) of the Act ibid, taxable turnover means the turnover of all sales or purchases of a dealer during the prescribed period in any year, which remains after deducting there from the turnover of sales not subject to tax under the Act ibid. As per Section 7 of the Act ibid there shall be levied a tax on the turnover of sales of goods specified in Schedule II or Schedule III at the rate set out against each of them in the said Schedules. Moreover, as per Section 9 read with Section 34 of the GVAT Act, 2003 and Section 45 of the erstwhile GST Act, 1969, penalty not exceeding 150 *per cent* of the tax evaded may also be imposed.

Lack of effective system of cross check of interstate transactions of purchases by the registered dealers caused total non/short levy of tax of ₹ two crore as mentioned in para 2.13.16 and 2.13.17.

2.13.16 Non-issue of 'C' forms to the purchasing dealers by the Commercial Tax Department of the State of Gujarat

Data collected regarding inter-state purchases against 'C' Forms, affected by the dealers registered with Commercial Tax Department of Gujarat, were verified with the inter-State sales records of the selling dealers registered with Commercial Tax Department of the respective States. Result of cross check revealed that sellers in different States had shown sales of goods valued at ₹ 7.74 crore against 30 'C' forms claimed to be issued by 13 purchasing dealers of Gujarat.

However, we found that these 'C' forms were not issued to those purchasing dealers by the Commercial Tax Department of the State of Gujarat. Hence, the 'C' forms found with the selling dealers of the respective State needed investigation to ensure their correctness. These 'C' forms were said to be issued between August 2004 and January 2009. The resultant effect may be suppression of inter-State purchases and consequential suppression of sales turnover to that extent resulting in non-levy of tax to the tune of ₹ 30.95 lakh.

2.13.17 Suppression of inter-State purchases

Our cross verification of the records revealed that 52 purchasing dealers of Gujarat purchased goods from dealers valued at ₹ 55.45 crore on the basis of 67 'C' forms issued to them by the Department. However, these dealers had shown inter-State purchases of ₹ 13.10 crore only in their books of accounts. Thus, the dealers had shown inter-State purchases lesser by ₹ 42.35 crore. This was verified from the Utilisation Certificates, Issue Register of the department and counter foil of 'C' forms available with the purchasing dealers. As such, the purchasing dealer had suppressed the turnover to that extent. The mistake remained unnoticed by the Department as it had not conducted any cross verification of any of the forms. The suppression of sales by the dealer resulted in short levy of tax to the tune of ₹ 1.69 crore.

After we pointed out, the department agreed in case of seven dealers involving 13 'F' forms to call the dealers for further necessary action. Reply in other cases has not been received.

Government/Department may consider installing a system of information with other states on a regular basis to avoid the sales escaping assessment.

2.13.18 Mis-utilisation of declaration 'F' forms

As per contents of Form F prescribed under Rule 12(5) of the CST (Registration and Turnover) Rules, 1957 the transferee has to certify that the goods transferred to him as detailed in the form have been duly accounted for the quantity or weight and value thereof. Further, as per sub-Section 30 of Section 2 of the Gujarat Value Added Tax Act, 2003, taxable turnover means the turnover of all sales or purchases of a dealer during the prescribed period in any year, which remains after deducting there from the turnover of sales not subject to tax under the Act ibid. As per Section 7 of the Act ibid there shall be levied a tax on the turnover of sales of goods specified in Schedule II or Schedule III at the rate set out against each of them in the said Schedules. Moreover, as per Section 9 read with Section 34 of the GVAT Act, 2003 and Section 45 of the erstwhile GST Act, 1969, penalty not exceeding 150 *per cent* of the tax evaded may also be imposed.

Lack of effective system of cross check of interstate transactions of purchases by the registered dealers caused total non/short levy of tax of ₹ 8.45 crore. We further noticed that no enforcement measures to ensure that the inter-State transactions are properly accounted for by the selling/purchasing dealers were under taken by the Department as mentioned in the paragraph no. 2.13.19 and 2.13.20.

2.13.19 Suppression of value of goods received on branch transfer on utilisation of fake forms

During the course of cross check of data regarding goods received on the basis of branch transfer against 'F' form by the dealers registered with Commercial Tax Department, Gujarat were verified with the branch transfer records of the

agent or principal registered with Commercial tax Department of Andhra Pradesh and Maharashtra.

In the case of four dealers of Gujarat assessed between March 2009 and March 2010, we noticed that 21 'F' Forms stated to have been issued by dealers for goods valued at ₹ 207.58 crore were not issued to them by the Commercial Tax Department of the State of Gujarat i.e. the 'F' forms furnished by the dealers to his agent or principal to receive goods through branch transfer were fake. Since, the said 'F' forms were not issued by the Department; the possibility that the dealers did not disclose and certify the accounting of goods cannot be ruled out. This suppression of value of goods, if proved, will involve tax effect to the tune of ₹ 8.30 crore.

On this being pointed out, the Department while accepting the audit observation replied in case of one dealer involving 17 'F' forms with tax effect of ₹ 8.29 crore that notice had been issued to the head office of the dealer for re-assessments.

2.13.20 Under disclosure of inter-State purchases effected through branch transfer

We found during the cross verification of 'F' Forms that seven dealers of Gujarat received goods through inter-State branch transfer, against 12 'F' forms involving value of ₹ 8.49 crore, from the agent or the principal of such dealer from Haryana, Delhi, J&K and Tamil Nadu. However, these dealers had shown inter-State branch transfer worth ₹ 12.34 crore. Thus, the dealers of Gujarat who received goods on such branch transfer had shown purchases lesser by ₹ 3.85 crore. Thus, under-disclosure of the receipt of goods on branch transfer basis resulted in short levy of tax to the tune of ₹ 15.42 lakh.

After we pointed out, the department agreed in case of three dealers involving seven 'C' forms to call the dealers for further necessary action.

Government/Department may consider installing system of exchange of information with other states on a regular basis to avoid the sales escaping assessment. Undertake enforcement measures to ensure that the inter-State transactions are properly accounted for by the selling/purchasing dealers.

2.13.21 Conclusion

The review on the inter-State transactions revealed a number of system and compliance deficiencies. Department had not put into place any mechanism to monitor that all declaration forms issued by the Department are uploaded in the website and also ensure that this website is utilised for application and issue of 'C' forms. Even the instructions for uploading the forms were issued after a lapse of five years. No special cell was created by the Department for verification of the forms uploaded in the website nor assessing officers were instructed to carry-out verification of certain percentage of forms either manually or through 'TINXSYS'. This reflects lack of internal control exercised by the Department. Periodical details of utilisation of declaration

forms to ensure the correct accounting of purchase transactions were not obtained. Moreover, the selling/purchasing dealers did not account for the inter-State sale/purchase properly, resulting in suppression of turnover. As such, the Department failed to ascertain and ensure the correctness of transactions recorded and genuineness of the forms used in the inter-State trade and to ensure proper accounting of the inter-State transactions in terms of monetary value. We also noticed that no enforcement measures to ensure that the inter-State transactions are properly accounted for by the selling/ purchasing dealers were under taken by the Department. No mechanism to cross-check a fixed percentage of declaration forms furnished by the selling dealers from the Commercial Tax Department of the State issuing such forms to the purchasing dealers was existing in the Department. There was no system for exchange of information with other states on a regular basis to avoid the sales escaping assessment. No enforcement measures were under taken to ensure that the inter-State transactions are properly accounted for by the selling/purchasing dealers.

2.13.22 Recommendations

Government may consider taking the following steps:

- the functioning of the system of *online* issuance of declaration forms may be reviewed periodically to ascertain and maintain its efficacy. Ensure compliance of instructions issued in respect of utilisation of 'TINXSYS' website by the assessing officers.

- issuing instructions for obtaining periodical details of utilisation of declaration forms by prescribing returns to ensure the correct accounting of purchase transactions.

- prescribing a mechanism to cross-check a fixed percentage of declaration forms furnished by the selling dealers from the Commercial Tax Department of the State issuing such forms to the purchasing dealers.

- Government/Department may consider installing a system for exchange of information with other states on a regular basis to avoid the sales escaping assessment. Undertake enforcement measures to ensure that the inter-State transactions are properly accounted for by the selling/ purchasing dealers.

2.14 Audit observations

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

Few illustrative cases involving revenue implication of ₹ 49.37 crore are mentioned in the following paragraphs.

2.15 Incorrect allowance of deduction from sales turnover (VAT)

Section 2(30) of Gujarat Value Added Tax Act, 2003 and Rule 18 AA of Gujarat Value Added Tax Rules, 2006 provide for deductions for charges towards labour, services etc., from turnover of sales in cases of transfer of property in goods involved in the execution of works contract. A registered dealer who claims such deductions shall maintain correct records of the charges and furnish evidence of the same at the time of assessment. Where the amount of such charges is not ascertainable or the records maintained is not clear, a lump sum deduction shall be admissible at the rates prescribed under the Rule ibid. Further, a works contractor who has been granted permission for payment of lump sum tax is required to pay tax on total value of works contract.

During test check of the records of two [7] offices, we noticed in December 2010 in the assessment of seven dealers for the period 2006-07 finalised between September 2009 and July 2010 that the AOs allowed irregular deductions of labour charges in case of two dealers from sales turnover without proper maintenance of records of labour and in case of other five dealers, who were granted permission for payment of lump sum tax, we noticed from assessment order that the AOs allowed deduction for labour charges though not admissible to lump-sum permission holders. This resulted in under assessment of ₹ 66.79 lakh including interest of ₹ 21.18 lakh and penalty of ₹ 12.47 lakh.

After we pointed out the cases in March 2011, the Department accepted between September and October 2011 audit observations involving an amount

[7] ACCT: 5, 6 Ahmedabad

of ₹ 66.79 lakh in case of all the dealers. Particulars of recovery have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in five cases; the reply in the remaining cases has not been received (October 2011).

2.16 Excess grant of ITC under Section 11 & 12

Under Section 11 of Gujarat VAT Act, 2003, a registered dealer who purchased taxable goods shall be entitled to claim tax credit equal to the amount of tax paid.

Under subsection 3(b) (ii) of Section 11 of GVAT Act, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* of taxable turnover of the purchase within the state of taxable goods which are used as raw material in the manufacture or in the packing of goods which are dispatched outside the state in the course of branch transfer or consignment or to his agent outside the state.

Under section 12 *ibid*, all dealers who are deemed to have been registered under Section 23, shall furnish in such form to such authority as may be prescribed a statement of such taxable goods under this Act held in stock on 31st March, 2006 which are purchased during the period commencing on 1st April, 2005 and ending 31st March, 2006.

During test check of records of four[8] offices, we noticed between May and October 2010 in the assessment of four dealers for the period 2006-07 finalised between June 2009 and June 2010 that the Assessing Officers had allowed excess Input Tax Credit (ITC) of ₹ 4.49 lakh. This resulted in short levy of tax of ₹ 6.43 lakh including interest of ₹ 1.45 lakh and penalty of ₹ 0.50 lakh as detailed in the table below:

Sl. No.	Name of office	Money Value (₹ in lakh)	No. of dealers	Nature of objection
1	ACCT-7, Vadodara	2.53	1	The A.O. did not reduce ITC for purchase of fuel.
2	ACCT-4, Ahmedabad	0.75	1	The dealer allowed ITC for opening stock at higher rate than admissible.
3	ACCT-8, Surat	1.22	1	The A.O. did not reduce ITC for shortage of LPG.
4	ACCT, Ankleshwar	1.93	1	The A.O. did not reduce ITC on opening stock though the manufactured goods were branch transferred.
Total		**6.43**	**4**	

[8] ACCT: 4 Ahmedabad, Ankleshwar, 8 Surat, 7 Vadodara.

After we pointed out the cases between December 2010 and March 2011, the Department accepted the audit observation of ₹ 6.43 lakh in all the cases. Particulars of recovery have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (October 2011).

2.17 Non/short levy of penalty (VAT)

Section 34(12) of Gujarat VAT Act, 2003 states that where tax assessed or reassessed exceeds the amount of tax already paid with returns by the dealer by twenty five *per cent* of the amount of tax so paid, the dealer shall be required to pay penalty not exceeding one and half times the difference between the tax paid with returns and the amount so assessed or reassessed.

Further Section 12 (7) (b) of the Act ibid states that if Commissioner is satisfied that a dealer has claimed excess credit than he is entitled, the Commissioner may after giving the dealer an opportunity of being heard direct him to pay a penalty equal to twice the amount of tax credit claimed.

During test check of the records of four[9] offices, we noticed between June and September 2010 in the assessment of five dealers for the period 2006-07 that the difference between tax assessed and tax paid with returns exceeded by 25 *per cent* of the amount of tax paid in case of four dealers and in case of one dealer excess credit was claimed. However, the AOs while finalising the assessments between August 2009 and March 2010 did not levy penalty or levied short in terms of aforesaid provisions. This resulted in non-levy of penalty of ₹ 20.27 lakh as shown in the table below:

(₹ in lakh)

Sl. No.	Name of the office	Tax short paid	Penalty leviable at the rate of 150 *per cent*	Penalty levied	Short levy of penalty
1	DCCT, Nadiad	2.54	3.81	0	3.81
2	DCCT, Nadiad	1.72	2.58	0	2.58
3	ACCT-2, Anand	1.46	2.19	0	2.19
4	ACCT-10, Ahmedabad	3.13	6.27	0	6.27
5	DCCT- 3 Ahmedabad	2.71	5.42	0	5.42
	Total	**11.56**	**20.27**	**0**	**20.27**

[9] ACCT :- 10 Ahmedabad, 2 Anand
DCCT:-, 3 Ahmedabad, Nadiad

After we pointed out between January and March 2011, the Department accepted the audit observations in all the cases involving an amount of ₹ 17.93 lakh. Particulars of recovery have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (October 2011).

2.18 Non/short levy of Turnover tax

Section 10A of the GST Act provides for levy of turnover tax at prescribed rate on the turnover of sales of goods other than declared goods after allowing permissible deduction under the Act, where the turnover of sales of a dealer liable to pay tax, first exceeds ₹ 50 lakh. From April 1993, sales made against various declarations and sales exempted from tax under Section 49 were excluded from the permissible deductions making such sales also liable to turnover tax. Turnover tax was exempted on edible oil under entry 37 of section 49 (2) of the Act during 09.11.1994 to 31.03.1997.

During test check of the records of two[10] offices, we noticed between October 2009 and August 2010 in the assessment of four dealers for the period from 1993-94 to 1996-97 finalised between July and October 2008, that in one case the AO did not levy turnover tax on sales against declarations (Form 24). In case of four assessments of three dealers AOs also did not levy turnover tax on sales of edible oil prior to 09.11.1994. This resulted in short realisation of turnover tax of ₹ 37.10 lakh including interest of ₹ 11.29 lakh and penalty of ₹ 10.14 lakh.

We reported the facts to the Department between May 2010 and March 2011. The Department accepted audit observations in all cases between June and October 2011 involving an amount of ₹ 31.96 lakh. The particulars of recovery have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in all case.

2.19 Short levy of tax due to application of incorrect rate (GST)

The GST Act provides to levy tax at the rates as provided in the schedules to the Act, however, where the goods are not covered under any specific entry of the schedule, rate of tax given in residuary entry is applicable.

During test check of records of four[11] offices, we noticed between September 2009 and March 2010 in the assessment of four dealers for the period

[10] ACCT : 23 Ahmedabad and Gondal

[11] ACCT : 15, 21, Enforcement (Flying Squad) Ahmedabad,
DCCT : 4 Ahmedabad

from 2004-05 to 2005-06 finalised between May 2007 and September 2009 that the Assessing Officers incorrectly assessed tax on sales turnover of ₹ 6.82 crore of the commodities as mentioned below:

Sl No	No. of Dealers	Commodity	Applicable rate of tax (%)	Rate applied (%)	Remarks
1	1	Tractor battery	8	4	As per Public Circular dated 24.09.1996, the commodity falls under entry 128 (3) of schedule IIA and attracts tax @ 8 %.
2	1	Aluminum foil (printed)	6	4	The commodity falls under entry 150 of schedule II A and attracts tax @ 6%.
3	1	Fire proof door	12	8	The commodity falls under entry 195 of schedule II A and attracts tax @ 12%.
4	1	Chemical and dyes	6	4	The AO applied rate of tax @ 4% throughout the assessment year though the applicable rate of tax in the first quarter of the year was 6% instead of 4%.

Total short levy of tax was of ₹ 27.38 lakh including interest of ₹ 2.76 lakh and penalty of ₹ 2.48 lakh.

After we pointed out between July and September 2010, the Department accepted (between August 2010 and October 2011) all the above audit observations. Particulars of recovery have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (October 2011).

2.20 Incorrect grant of set-off under rule 42

Rule 42 of GST Rules, 1970 provides that a dealer who has paid tax on the purchase of goods (other than prohibited goods[12]) to be used as raw or processing material or consumable stores in the manufacture of taxable goods, is allowed set-off at the rate applicable to the respective goods from the tax payable on the sale of manufactured goods subject to fulfillment of general conditions prescribed in Rule 47 of the Rules.

2.20.1 During test check of the records of 13[13] offices, we noticed between November 2008 and January 2010 in the assessment of 16 dealers for the assessment period from 2002-03 to 2005-06, finalised between September 2007 and March 2009 that the AOs allowed excess set-off as mentioned below:

Sl. No.	No. of Dealers	Rule	Violation of rule	Short Levy (₹ in lakh)
1	4	Condition No. 2 of Rule 42 provides for set off on purchase of taxable goods other than prohibited goods.	The AOs allowed set-off on purchase of prohibited goods.	37.96
2	6	Condition No. 4 (iii) of Rule 42 provides for deduction of four *per cent* of sales price of the goods transferred to branch outside the State from the set-off calculated.	The AOs did not deduct four *per cent* of sales price of goods transferred to other States for sales.	12.92
3	4	--	The AOs allowed excess set off due to computation error.	8.94
4	2	Condition No. 4 (i) of Rule 42 provides for deduction of two *per cent* of the purchase price of the goods considered for grant of set off from the set off calculated.	The AOs did not deduct prescribed two *per cent* from set-off.	1.58
Total	**16**			**61.40**

This resulted in excess grant of set-off of tax of ₹ 61.40 lakh including interest of ₹ 11.86 lakh and penalty of ₹ 1.24 lakh.

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

13 ACCT: 3, 6, 8,11,15, 20, 21 and 23 Ahmedabad, 2 Nadiad
DCCT: 1, 2, 4 Ahmedabad, 10 Vadodara

The above facts were brought to the notice of the Department between March 2009 and September 2010. The Department accepted the audit observations in case of 15 dealers involving an amount of ₹ 28.82 lakh and recovered ₹ 8.21 lakh in case of five dealers. The Department did not accept the audit observation in case of two assessments of one dealer stating that the dealer had not purchased un-machined casting, a prohibited good, based on which the audit observation was raised. Reply of the Department is not acceptable for the reason that audit has got copies of purchase invoices of the goods stating that the goods purchased were unmachined casting. Particulars of recovery in remaining cases have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in seven cases; the reply in the remaining cases has not been received (October 2011).

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

2.20.2 During test check of the records of three[14] offices, we noticed between July and November 2009 in the assessment of four dealers for the assessment period from 2003-04 to 2004-05, finalised between March 2008 and March 2009 that the dealers manufactured (fully/partly) goods which fell under an entry other than entry 5 of Schedule IIA. Hence, the condition was not fulfilled and attracted disallowance of set-off proportionately/fully. The AOs allowed set-off, though manufactured goods did not fall under the entry 5 of schedule II A of the Act. This resulted in excess grant of set-off of tax of ₹ 7.73 lakh including interest of ₹ 0.33 lakh.

The above facts were brought to the notice of the Department between December 2009 and July 2010. The Department accepted the audit observations in all the above cases involving tax of ₹ 7.69 lakh and recovered ₹ 6,260 in one case. The particulars of recovery in the remaining cases have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (October 2011).

[14] ACCT: 1 Ahmedabad and 3 Rajkot
DCCT: 23 Rajkot

2.21 Excess grant of set-off under rule 42-E

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

During test check of records of four[15] offices, we noticed between October 2009 and March 2010 in the assessment of four dealers for periods from 2004-05 to 2005-06 finalised between June 2008 and February 2009, that the AOs disallowed less set-off in three cases and incorrectly allowed the set-off in one case inspite of the fact that the dealer transferred the manufactured goods to his branches. This resulted in underassessment of ₹ 24.96 lakh including interest of ₹ 0.44 lakh as detailed in the table below:

Sl. No.	Name of office	Money Value (₹ in lakh)	No. of dealers	Nature of observation
1	DCCT Corporate Cell-2, Ahmedabad	20.41	1	AO. disallowed less set off under Rule 42E for branch transfer.
2	DCCT-6, Ahmedabad	0.74	1	AO. disallowed less set off under Rule 42E for branch transfer.
3	ACCT-1, Vadodara	1.27	1	AO. did not levy Purchase Tax under Section 15B proportionately, though the dealer branch transferred the manufactured goods.
4	DCCT-21, Junagadh	2.54	1	AO. disallowed less set off under Rule 42E for branch transfer.
Total		**24.96**	**4**	

The above facts were brought to the notice of the Department between February and September 2010. Department accepted the audit observations involving ₹ 24.51 lakh in case of all dealers and also recovered ₹ 21.15 lakh in two cases. Particulars of recovery in remaining cases have not been received (October 2011).

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

[15] DCCT: Corp. cell 2 and 6 Ahmedabad, 21 Junagadh
ACCT: 1 Vadodara

2.22 Incorrect grant of benefits under sales tax incentive scheme

The Government of Gujarat issued a notification vide entry 140 under Section 49 (2) of the GST Act, 1969 for granting benefit of exemption to the eligible units under the incentive scheme for economic development of Kutch District. The Government of Gujarat also, vide Finance Department resolution of June 2002, decided to allow deferment of sales tax, general sales tax and additional tax within the ceiling limit of the eligibility certificate. The levy and collection of central sales tax in Gujarat is governed by the Central Sales Tax Act, 1956 (CST Act).

2.22.1 During test check of the records of ACCT Gandhidham in February 2010, we noticed from the assessments of 16 dealers for the assessment year 2004-05 and 2005-06 that the AOs incorrectly allowed adjustment of central sales tax of ₹ 25.15 crore against exemption ceiling limit available. Government was required to issue notification under Section 8(5) of CST Act for grant of exemption to eligible units for CST exemption. However, there was no notification under the CST Act under which this exemption could be availed. Revenue involved in the above cases was ₹ 25.15 crore.

This was brought to the notice of the Department (September 2010); the Department accepted (October 2011) the audit observation and stated that the action to modify the original resolution had been initiated.

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

Under the sales tax deferment incentive schemes, the units which opt for deferment incentives are allowed to collect and retain the tax and pay it after a specified period into the Government account. The deferred amount of tax is recoverable in six equal annual installments beginning from the financial year subsequent to the year in which the unit exhausts the limit of incentive granted to it under the scheme or after the expiry of relevant period during which deferment is available, whichever is earlier. In the event of default in payment of tax deferred, interest is leviable at the rate of 24 *per cent* up to 31.8.2001 and 18 *per cent* thereafter.

2.22.2 During test check of the records of five offices[16], we noticed between September 2008 and September 2010 that in case of 16 dealers involving 21 assessments that they committed violation of rules and provisions which resulted in short realisation of installments of ₹ 2.33 crore including interest of ₹ 1.19 crore as shown in the table below:

[16] ACCT: Gandhinagar, 1 Junagadh, 5 Rajkot, 7 Vadodara, Vijapur

(₹ in lakh)

Sl. No.	No. of cases	Applicable rules & provisions	Breach of rules and provisions	Short levy of tax	Short levy of interest
1	1	As per Public Circular dated 22.3.96, deferment certificate holder cannot pay tax in cash during the currency of deferment period.	Dealer has paid tax in cash instead of adjustment against available deferment limit	11.30	4.39
2	1	If the dealer availing benefit of deferment scheme make branch transfer, an aggregate amount of tax at the rate of four *per cent* or the rate applicable whichever is lower is required to be deducted from the deferment limit.	Dealer has made branch transfer but the tax at the rate of four *per cent* was not deducted from the deferment limit.	12.92	-
3	5	Dealer shall repay availed amount of deferment incentive in six equal annual instalments, beginning from the next financial year in which the incentive period or sanctioned amount exhausted, whichever is earlier. In case of late payment interest is leviable under section 47(4A)(b) of the Sales Tax Act, 1969.	Dealers have not made payment of instalments due. This resulted in short levy of tax and interest thereon	90.50	27.67
4	14	In case of late payment, interest is leviable under section 47(4A)(b) of the Sales Tax Act, 1969.	Dealers have made late payment of instalments resulting into short levy of interest.	-	86.72
Total	**21**			**114.72**	**118.78**

The above facts were brought to the notice of the Department between February 2008 and March 2011. The Department accepted audit observations during December 2009 and October 2011 in 19 assessments of 15 dealers (in case of one dealer out of two assessments it accepted in one assessment) involving ₹ 1.57 crore and recovered ₹ 90.84 lakh from five dealers. The Department did not accept audit observations in two cases stating (i) in one case that dealer had correctly made payment within 60 days, (ii) in the second case the dealer was holding two deferment certificates in which some period was common. Department further stated that the payment was made in time on maturity period of each certificate. Reply is not tenable because of the following reasons: (i) in the first case for the reason that the relaxation of 60 days vide Circular dated 19.5.2010 was available to the beneficiaries only from 1.4.2010, and (ii) in the second case for the reason that the limit of deferment amount in respect of the first certificate was exhausted in the year 1998-99 and therefore repayment should have started from 1.4.1999. The report on recovery in accepted cases has not been received (October 2011).

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

Under the sales tax incentive scheme, the eligible units are required to remain in production continuously during the eligibility period mentioned in the eligibility certificate. In case of contravention of any of the conditions laid down for the eligible units, the exemption granted shall cease to operate and the entire availed amount would be recovered within 60 days. Further, an eligible unit is not entitled to deduction for sale against any certificate under Section 12 or 13 as the product is tax free under the scheme. Further, additional tax leviable under Gujarat Sales Tax Act at the rate of ten *per cent* of the sales tax and purchase tax was not adjustable upto 2 March 2001, hence it was payable in cash.

2.22.3 During test check of the records of four offices[17] we noticed between May 2008 and January 2011, in the assessment of four dealers for the period from 2000-01 to 2007-08 and finalised between June 2004 and April 2008 that incorrect exemption of tax under sales tax incentive scheme was allowed as mentioned below:

(₹ in lakh)

Sl. No.	No. of cases	Short levy	Nature of observation
1	1	7.19	Rate of tax for craft paper was 4 *per cent* and for duplex paper board 8 per cent. The dealer was assessed by accepting returns filed by him, as the books of accounts were lost in flood. Ratio of turnover for application of rate of tax at the rate of 4 and 8 *per cent* was not adopted based on previous assessments.
2	1	2.74	Additional tax of 10 *per cent* was not paid in cash but adjusted against the exemption limit. Adjustment was not disallowed till 03.03.2001.
3	1	41.04	In contravention of the condition of exemption benefit, the dealer closed his business after availing benefit of ₹ 41.04 lakh without condonation by competent authority.
4	1	1.91	In contraventions of the conditions of the exemption benefit, the dealer made sales against forms under Section 12, 13 and 49 (2) of the Act.
Total	**4**	**52.88**	

This resulted in under assessment of tax of ₹ 52.88 lakh including interest of ₹ 0.98 lakh and penalty of ₹ 0.76 lakh.

After the above facts were brought to the notice of the Department between July 2008 and March 2011, the Department accepted (March 2010 and March 2011) the audit observations involving an amount of ₹ 51.18 lakh in case of all

[17] ACCT:Gandhidham, Kalol
DCCT: 8 Mehsana, 17 Surat

above dealers and recovered ₹ 7.40 lakh in case of two dealers. Particulars of recovery in remaining cases have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in three cases; the reply in the remaining case has not been received (October 2011).

2.23 Irregular benefit to an assessee in earthquake affected area

Section 41(2) of the GST Act, 1969 provides that assessment of the registered dealer shall be finalised without inviting the dealer to produce the records, if the return filed by the dealer is correct and complete. Commissioner of Sales Tax vide circular dated 13 March 2002 instructed to accept the returns of the registered dealers, situated in the area affected by earthquake of January 2001 under Section 41(2) of the Act. The circular provides that returns shall be submitted within the prescribed time along with payment of tax and pending for assessment for the period upto 31 March 2001. Also, the concessions were available to the dealer subject to production of the certificate from the jurisdictional Collector stating that the dealer's business was affected in the earthquake.

During test check of records of DCCT, Gandhidham in May 2008, we noticed in case of one dealer that the dealer approached the GST Tribunal against assessment order passed under Section 41(5) of the GST Act. The tribunal disposed of the case with instructions to assess the case on merit and remanded the case to the AO. The AO passed the assessment order in March 2007 under Section 41(2) of the Act, on the basis of returns filed by the dealer for the period from April 2000 to August 2000. The A.O. allowed the benefit of concessions in respect of earthquake affected area to the dealer without production of record by the dealer for scrutiny assessment. The AO thus, accepted the claim of deduction by the dealer in respect of high sea sales of ₹ 47.99 crore and claim of deductions against declarations in Form 19[18] of ₹ 3.04 crore without production and verification of relevant records. Audit, however, noticed that the dealer had neither filed relevant returns in time nor produced the requisite certificate of the Collector. It was also observed from the assessment order that the dealer had produced certificate of Nagarpalika as evidence to the effect that his house was destroyed in the earthquake and therefore eligible for the benefit of the circular. As the dealer did not fulfill the conditions of the circular referred to above about certificate from the Collector of the District, he was not eligible to avail the benefit of the circular dated 13 March 2002 issued by the Commissioner. Tax involved in the transactions worked out to ₹ 4.86 crore including interest of ₹ 1.26 crore and penalty of ₹ 1.36 crore.

[18] **Form 19** is issued by a purchaser to the seller for purchasing taxable goods without payment of tax for use in the manufacture of taxable goods.

In case of Form-19 and High Sea Sales, the Department at least could have obtained copy of the required details from purchasing dealers, which was not done and all these sales were allowed without verification.

The above facts were brought to the notice of the Department in June 2008. The Department in June 2011 while accepting the objection raised a demand of ₹ 5.34 crore. Recovery proceedings were in progress.

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

2.24 Non/short levy of penalty

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

During test check of the records of 22[19] offices, we noticed between March 2009 and September 2010 in the assessment of 31 dealers for the assessment period from 2002-03 to 2005-06 that the difference between tax assessed and tax paid with returns exceeded 25 *per cent* of the amount of tax paid. However, the AOs while finalising the assessments between March 2007 and June 2010 did not levy penalty or levied short as per provisions and Commissioner's circular of June 1992. This resulted in non/short levy of penalty of ₹ 3.91 crore.

After this was pointed out between July 2009 and March 2011, the Department accepted audit observations between September 2010 and October 2011 involving an amount of ₹ 3.89 crore in case of 30 dealers and recovered ₹ 1.01 lakh in case of two dealers. In case of one dealer the Department did not accept the audit observation stating that unpaid tax was less than 50 *per cent* of the total tax payable, therefore penalty levied at the rate of 20 *per cent* was correct. Reply is not tenable as the percentage of unpaid tax was to be calculated on the tax paid and not on total tax payable. Particulars of recovery in remaining cases have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in 15 cases; the reply in the remaining cases has not been received (October 2011).

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[19] ACCT : 1, 8, 10, 11, 20, 21 Ahmedabad, Enforcement Ahmedabad, Ankleshwar, 2 Bhavnagar, Gandhidham, 24 Gandhinagr, Navsari, 3 Rajkot, 6 Surat, 2,5,7 Vadodara, 1 Vapi,Vijapur

DCCT: 1,2,4 Ahmedabad

The Commissioner may instruct all the assessing officers for applying provisions of penalty as per the circular of the Department while finalising assessments.

2.25 Avoidable payment of interest on refunds

Under Section 54 of Gujarat Sales Tax Act, 1969, where refund of any amount becomes due to the dealer by virtue of an order of assessment under Section 41, he shall, subject to the provisions of the section, be entitled to receive in addition to the said amount, simple interest at the rate of nine *per cent* per annum on the said amount from the date immediately following the date of closure of the accounting year to which the said amount relates to the date of order of assessment.

During test check of the records of two[20] offices, it was noticed between April and December 2010 in the assessment of two dealers for the period 2004-05 finalised between June 2008 and March 2009 the Department could have avoided the payment of interest on refund of ₹ 2.50 crore as detailed below:

Sl. No.	No. of dealers	Rule	Violation	Interest paid
1	1	Rule 52A of the GST Rules, 1970 stipulates that where a dealer has furnished a quarterly return according to which, tax payable as per the said return is less than the tax actually paid by him for the said quarter and if the dealer desires that the payment so made in excess of the tax payable as per the said return shall be adjusted towards the tax payable as per return of the subsequent quarter, the dealer may make such adjustment in the return of the subsequent quarter in the same year.	Excess payment of tax of ₹ 7.70 crore in the first quarter of 2004-05 was not allowed to be adjusted in the subsequent months, despite dealer's request.	₹ 2.30 crore
2	1	Section 54 (1) of the GST Act, 1969 provides that no interest shall be payable on the amount of refund where an amount required to be refunded is refunded within 35 days of the order.	The Assessing Officer took 234 days after the date of order to pay the refund for which the Department paid additional interest of ₹ 19.93 lakh.	₹ 19.93 lakh

This resulted in excess/avoidable payment of interest of ₹ 2.50 crore on refund.

The cases were pointed out to the Department in March 2011. The Department accepted the audit observation in one case involving ₹ 19.93 lakh. In another case involving ₹ 2.30 crore, while not accepting the audit observation, stated

[20] ACCT: 6 Ahmedabad
DCCT: Petro-2 Ahmedabad

that the dealer was called for to furnish certain information/documents in respect of first quarter to ascertain the correctness of returns. Since the dealer could not furnish the same, excess payment claimed in the returns was not allowed to be adjusted in the subsequent returns. Reply of the Department is not tenable in the light of the facts that though the dealer did not produce the documents, yet interest was paid to the dealer up to the date of assessment.

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

2.26 Non/short levy of interest

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

During test check of records of 13[21] offices, we noticed between August 2009 and December 2010 in the assessment of 20 dealers for the period from 1997-98 to 2005-06 finalised between July 2007 and September 2009 that AOs either did not levy interest or levied it short on the amount of unpaid tax. This resulted in non/short levy of interest of ₹ 32.81 lakh.

The above facts were brought to the notice of the Department between January 2010 and March 2011. The Department accepted audit observations between February 2010 and October 2011 involving ₹ 17.97 lakh in case of all dealers and recovered ₹ 2.36 lakh in case of six dealers. Particulars of recovery in the remaining cases have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in 12 cases; the reply in the remaining cases has not been received (October 2011).

[21] DCCT: 1, 2, 5 Ahmedabad, Enforcement-Gandhinagar
ACCT: 1, 8, 15 Ahmedabad, 24 Gandhinagar, 5 Rajkot, 6 Surat, 2, 5, 7 Vadodara

2.27 Incorrect allowance of deduction from sales turnover

Section 41(3) of GST Act, 1969 provides that the assessing authority after considering all the evidences which may be produced in support of declaration made by the dealers shall assess the amount of tax due from them.

During test check of the records of two [22] offices, we noticed between January and February 2010 in the assessment of two dealers for the period 2005-06 finalised between February 2007 and August 2008 that the AOs allowed deduction of ₹ 52.91 crore without any evidence in support of declaration made by the dealers, for allowing deduction from levy of tax as mentioned below:

Sl. No.	Sales turnover allowed to be deducted without evidence (₹ in crore)	Commodity	Rate of tax	Tax involved (₹ in lakh)
1	51.74	Coke	4%	206.95
2	1.17	Automobile	8%	8.66

This resulted in underassessment of ₹ 2.23 crore including interest of ₹ 3.64 lakh and penalty of ₹ 3.46 lakh.

The above facts were brought to the notice of the Department between August and September 2010. The Department accepted the audit observations between March and October 2011 involving an amount of ₹ 2.24 crore in case of both the dealers and adjusted ₹ 2.07 crore against the incentive limit of the dealer in one case. The particulars of recovery in remaining one case has not been received (October 2011).

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

2.28 Non/short levy of tax on Works Contract

Section 55 A of the GST Act, 1969 provides that a dealer engaged in works contract may opt to pay in lieu of tax, a lump sum amount by way of composition, at the rate fixed by Government from time to time on the total value of the contract. Further, as per judicial decisions, the property of materials such as chemicals and dyes used in the process of dyeing and printing are passed on to the fabrics of the customers and such passing of property of material is a deemed sale and tax is leviable on such materials.

During test check of records of five offices[23], we noticed between May 2009 and February 2010 in the assessment of six dealers for the period from 2004-05 to 2005-06 that the AOs in two cases did not levy

[22] ACCT: Gandhidham, 2 Vadodara

[23] ACCT: 6 & 21 Ahmedabad, 4 & 5 Vadodara
DCCT: 1 Ahmedabad

composition tax at correct rates. In another case, a composition permission holder was allowed deduction from turnover as resale and in another case a dealer was allowed to collect tax though not eligible as per the Act. In case of two dealers, the AOs did not levy tax on works contacts of dyeing and printing though the tax was leviable in view of the judicial decisions. This resulted in total under assessment of tax of ₹ 50.47 lakh including interest of ₹ 8.80 lakh and penalty of ₹ 14.84 lakh.

The above facts were brought to the notice of the Department between September 2009 and October 2010; the Department accepted the audit observations in four cases involving ₹ 25.40 lakh and recovered ₹ 0.56 lakh in one case. In case of two dealers the Department did not accept the audit observations stating that exemption from levy of tax was correctly allowed in view of Commissioner's Circular dated 22.9.1986. Reply is not tenable in view of the judicial pronouncements[24]. The particulars of recovery in the remaining cases have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in two cases; the reply in the remaining cases has not been received (October 2011).

2.29 Incorrect allowance of deduction against forms

The GST Act provides that the sales made on certain declarations are allowed without payment of tax subject to fulfillment of the prescribed conditions. Sales of prohibited goods against declaration in Form 19 are not permissible.

During test check of the records of five[25] offices, we noticed between July 2008 and March 2010 in the assessment of five dealers for the period from 2003-04 to 2005-06 finalised between July 2006 and November 2008 that the AOs allowed either sales of prohibited goods against Form 19 or sale without production of forms. This resulted in underassessment of ₹ 12.96 lakh including interest of ₹ 3.04 lakh and penalty of ₹ 2.55 lakh.

The above facts were brought to the notice of the Department between November 2008 and March 2011. The Department accepted the audit observations in all cases involving an amount of ₹ 12.70 lakh and recovered ₹ 0.46 lakh in two cases. The particulars of recovery in remaining cases have not been received (October 2011).

[24] M/s Mathushree Textiles Ind. Ltd. (132 STC 539)
M/s Teaktex Processing Complex Ltd. (136 STC 435)
M/s Bijoy Processing Ind. (92 STC 503)

[25] ACCT: 1 and 21 Ahmedabad, 24 Gandhinagar, Vyara
DCCT: Nadiad

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (October 2011).

2.30 Incorrect classification of goods

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

During test check of records of four offices[26], we noticed between March 2007 and May 2010 that the AOs allowed four dealers to pay tax at lower rates due to incorrect classification of goods during the period from 2000-01 to 2005-06 while finalising assessments between July 2004 and July 2008. This resulted in short realisation of tax of ₹ 10.97 lakh including interest of ₹ 2.56 lakh and penalty of ₹ 2.13 lakh.

The above facts were brought to the notice of Department between June 2009 and January 2011. The Department accepted the audit observation in all cases. Particulars of recovery have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in two cases; the reply in the remaining cases has not been received (October 2011).

2.31 Unauthorised utilisation of Form 17-B

Form 17 B is issued under Section 13(A)(ii)(a) of the Gujarat Sales Tax Act, 1969 by a licensed dealer for purchasing goods specified in Schedule II B to the Act without payment of tax for resale by him within the state of Gujarat otherwise than in the course of inter State trade or commerce or export out of the territory of India.

During test check of the records of ACCT-15, Ahmedabad, we noticed in case of M/s. Shiv Enterprise from the registration certificate file that his registration certificate was cancelled with effect from 1 April 2005 on request as the dealer had discontinued his business. Scrutiny of forms issue register revealed that a book of form 17B containing 25 forms bearing serial number 11246926 to 11246950 was issued on 10.11.2004 to the dealer by the commercial tax unit. However, at the time of cancellation of the registration of the dealer, account of utilised statutory forms was not taken. The statutory forms remained unutilised were also not taken back.

[26] ACCT: 4, 10 Ahmedabad, 5 Vadodara, 2 Vapi

Further, during cross-check of the forms, we noticed from the assessment file of one M/s. Vallabh Trading Co. for the period 2005-06 falling under jurisdiction of the ACCT-Patan that the dealer had sold cotton valued ₹ 19.46 crore to M/s. Shiv Enterprise of ACCT-15, Ahmedabad against five forms 17B bearing serial numbers 11246944, 11246946, 11246947, 11246949 & 11246950. It was further noticed that the assessing officer had disallowed his sales against these forms and raised demand on these transactions. It was evident from the result of the cross-check of the forms that M/s. Shiv Enterprise unauthorisedly utilised forms 17 B even after cancellation of his registration. The above cross-check of forms was done for five forms only and utilisation of remaining 20 forms could not be verified by audit.

On the facts being brought to the notice of the Department in September 2010, Department accepted in October 2011 that details of utilisation of forms issued to the dealer was not traceable. Loss of revenue could not be ascertained in absence of details of utilisation.

The Department should invariably obtain details of forms issued to a dealer at the time of cancellation of his registration number.

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

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

During test check of records of five[27] offices, we noticed between December 2009 and August 2010 in the assessment of eight dealers for the period from 2003-04 to 2005-06 finalised between July 2007 and February 2009 that the Assessing Officers incorrectly assessed tax on sales turnover of ₹ 37.26 crore of the commodities as mentioned below:

[27] ACCT : 6, 20, 21 Ahmedabad, Godhra, 2 Vadodara

Sl. No.	No. of dealer	Commodity	Applicable rate of tax (%)	Rate applied	Turnover of sales	Short levy	Remarks
1.	6	Insecticides and pesticide	4	2	₹ 34.72 crore	₹ 67.91 lakh	Insecticides and pesticides fall under entry 136 of schedule II A to the GST Act attract tax at the rate of six *per cent.* The State Government vide its notification dated 1.9.2001 specified tax at the rate of two *per cent* on sales of insecticides and pesticides for use in the agriculture; else the applicable rate was four *per cent.* As such, the general rate of tax applicable to the sale of insecticides and pesticides was four *per cent* Hence, as per proviso of the CST Act, inter State sale supported with C forms attracts tax at the rate of four *per cent.*
2.	1	Detergent & toilet soap	1.2 & 4 respectively	4 & 1.25	₹ 1.44 crore	₹ 80.92 lakh and ₹ 1.44 crore	As rate of tax and turnover was higher of toilet soap than that of detergent, incorrect application of rate of tax resulted in short levy of CST.
3.	1	Fire proof door	12	10	₹ 28.47 lakh	₹ 46,216	The commodity falls under entry 195 of schedule II A and attracts tax @ 12%, on inter State sales without form C was to be levied @ 12%.

Total short levy of tax was ₹ 90.70 lakh including interest of ₹ 19.73 lakh and penalty of ₹ 0.51 lakh.

After this was pointed out between July 2010 and March 2011, the Department accepted (between October 2010 and October 2011) audit observations involving an amount of ₹ 64.85 lakh in case of seven dealers. In case of one dealer the Department did not accept the audit observations stating that the dealer had permission for manufacture and sale of pesticides for agricultural purposes only. Reply of the Department is not tenable in absence of notification under Section 8(5) of the CST Act. The concessional rate of tax is leviable only on local sales and not on inter State sales. The particulars of recovery have not been received (October 2011).

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

2.33 Non-levy of CST

As per Section 7 of the Gujarat Value Added Tax Act, 2003 tax is leviable at the rates prescribed in the schedules to the Act depending upon the classification of the goods. Under Section 8 of the CST Act, 1956 as amended from 11th May 2002 effective from 1.6.2002 on Inter State Sales (other than declared goods) not supported by declaration in Form-C, tax is leviable at the rate of 10 *per cent* or at the rate applicable to sales of such goods inside the state whichever is higher.

During test check of records of the office of ACCT-8, Surat, we noticed in October 2010 in the assessment of a dealer for the year 2006-07 finalised in June 2009 that the AO allowed sales of "narrow fabrics" as tax free. The notification dated 29.4.2006 specified narrow fabric, elastic fabric and rubber thread as industrial inputs and tax was leviable at four *per cent.* Further, the words "narrow fabrics" and "elastic fabrics" were deleted from the list vide notification dated 29 May 2006. Thus the product "narrow fabrics" was taxable at four *per cent* during the period between 29.4.2006 and 29.5.2006 if sold in the State and at 10 *per cent* if sold during the course of inter-State sales without Form-C. Narrow fabrics valued ₹ 31.43 lakh was required to be assessed to tax at 10 *per cent* (without Form C). Failure to do so resulted in non-levy of tax of ₹ 8.26 lakh including interest ₹ 1.12 lakh and penalty of ₹ 4.29 lakh.

We pointed out to the Department in March 2011. Department accepted the audit observation (October 2011).

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

2.34 Non-levy of tax on High Sea Sale

Section 5(2) of the CST Act provides that a sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the custom frontiers of India. Further, Section 41(3) of GST Act provides that the assessing authority after considering all the evidences which may be produced in support of declaration made by the dealer shall assess the amount of tax due from the dealer.

During test check of the records of ACCT-Gandhidham, we noticed in December 2008 in the assessment of one dealer for the year 2005-06 finalised in March 2008 that the AO allowed deduction of high sea sales[28] of ₹ 1.70 crore but did not keep the prescribed documents *viz*. copy of

[28] Sales of goods before crossing the custom frontiers of India, by endorsing the import documents in favour of the purchaser by importer.

agreement between the importer and purchaser, bill of entry endorsed in favour of the purchaser, sales bill, proof of payment of customs duty etc. on record in support of the deduction. Before allowing the deduction of high sea sales, the AO should have kept the prescribed documents on record as evidence in support of the deduction allowed. In the absence of relevant documents, correctness of deduction allowed from turnover could not be verified. The tax involved in these transactions worked out to ₹ 32.39 lakh including interest of ₹ 5.11 lakh and penalty of ₹ 10.23 lakh.

The above facts were brought to the notice of the Department in June 2009. The Department accepted the audit observations (March 2011) and raised demand of ₹ 38.04 lakh and recovered ₹ 4.85 lakh (October 2011). The particulars of recovery of remaining amount is awaited (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department.

2.35 Non/short levy of CST due to non production of forms or acceptance of incorrect/incomplete forms

Section 8 of the Central Sales Tax (CST) Act, 1956 provides for levy of tax at the rate of four *per cent on* inter-state sale of goods made against declaration in Form 'C'. Where the sale is not supported by declaration in Form 'C', tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher. In respect of declared goods where the sale is not supported by Form 'C', tax is leviable at twice the rate applicable.

2.35.1 During test check of the records of eight offices[29], it was noticed between January 2010 and November 2010 in the assessment of 26 dealers for the period from 1999-2000 to 2005-06 finalised between March 2006 and September 2009 that AOs incorrectly levied concessional rates of tax instead of appropriate rate of tax as detailed below:

Sl. No.	No. of dealers	Total Short levy (₹ in lakh)	Nature of objection
1	22	124.65	Concessional rate of tax was levied without production of form 'C'.
2	4	0.84	A.O. allowed concessional rate of tax on unscrupulously enhanced value of forms.
Total	**26**	**125.49**	

This resulted in short levy of tax of ₹ 1.25 crore including interest of ₹ 27.97 lakh and penalty of ₹ 34.12 lakh.

[29] ACCT: 2, 10 Ahmedabad, 5 Rajkot, 1 Surat, 5 Vadodara
DCCT: 1, Petro 1 Ahmedabad, 12 Vadodara

After these cases were pointed out between August 2010 and March 2011, the Department accepted the audit observations involving ₹ 71.17 lakh in case of 18 dealers and recovered ₹ 2.43 lakh in case of three dealers. In case of 13 assessments of eight dealers involving audit observations of ₹ 54.32 lakh the Department stated that the assessments were done keeping in view Commissioner's circular dated 28.02.2006 under simple assessment scheme wherein submission of forms were not required. Reply of the Department is not acceptable for the reason that after amendment of section 8 of CST Act, 1956 from 1 June 2002, the State Government cannot allow concessional rate/ exemption on inter State sale of goods not supported by declaration in Form C. Particulars of recovery in the remaining cases have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in 14 cases; the reply in the remaining cases has not been received (October 2011).

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

2.35.2 During test check of the records of six offices[30], we noticed between August 2009 and July 2010 in the assessment of 10 dealers for the period from 2004-05 to 2005-06 finalised between March 2008 and January 2009 that sales of various goods were not supported by the original copy of Form 'C'. However, AOs incorrectly levied concessional rates of tax instead of at appropriate rates. This resulted in short levy of tax of ₹ 71.71 lakh including interest of ₹ 15.01 lakh and penalty of ₹ 17.52 lakh.

After the cases were pointed out between February 2010 and March 2011, the Department accepted the audit observations involving ₹ 71.53 lakh in case of all dealers and recovered ₹ 1.68 lakh in case of two dealers. The particulars of recovery in remaining cases have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in six cases; the reply in the remaining cases has not been received (October 2011).

[30] ACCT: 1 Ahmedabad, 1, 2 and 5 Rajkot.
DCCT: 23 Rajkot and 11 Vadodara

The CST Act and Rules made thereunder provide that where any dealer transfers goods from one state to another not by reason of sale, he shall furnish a declaration in form 'F', duly filled and signed by the principal officer of the other place of business, along with the evidence of dispatch of such goods. If the dealer fails to furnish such declaration, the movement of such goods shall be deemed to have been occasioned as a result of sale. By virtue of Section 9 (2A) of CST Act, provisions of interest and penalty as per general sales tax law applicable in the State becomes applicable.

2.35.3 During test check of the records of two[31] offices, we noticed between January and February 2010 in the assessment of two dealers for the period 2005-06 finalised between May 2007 and June 2008 that in one case the AO allowed claim of transfer of goods to other place of business without any declaration or evidence for dispatch of such transfer. In another case, the AO allowed unauthorised corrections and enhancement in the value of the 'F' forms. This resulted in incorrect deduction of turnover involving tax of ₹ 39.88 lakh including interest of ₹ 0.62 lakh and penalty of ₹ 0.94 lakh as detailed in the table below:

Sl. No.	No. of Dealer	Short Levy (₹ in lakh)	Nature of observation
1	1	36.75	Values of 'F' forms were enhanced by applying white ink.
2	1	3.13	Deduction allowed without production of form 'F'.
Total	**2**	**39.88**	

The above facts were brought to the notice of Department between August and September 2010. The Department accepted the audit observations in both the cases. The particular of recovery have not been received (October 2011).

We reported the matter to the Government (June 2011); their reply has not been received (October 2011).

[31] DCCT: 2 Ahmedabad ,11 Vadodara

Rule 12(10) of the Central Sales Tax (Registration and Turnover) Rules, 1957, provides that the dealer has to furnish to the prescribed authority, a certificate in form H, duly filled in with all details *viz*. agreement number and date relating to such export, particulars of goods along with evidence of export of such goods in support of his claim for export. By virtue of Section 9 (2A) of CST Act, provisions of interest and penalty as per general Sales Tax law applicable in the state becomes applicable.

2.35.4 During test check of the records of five [32] offices, we noticed between October 2009 and March 2010 in the assessment of 11 dealers for the period from 2004-05 to 2005-06 finalised between July 2007 and March 2009 that the AOs allowed export sales valued at ₹ 3.20 crore either without production of form H/bill of lading or against incomplete certificates in form 'H'. This resulted in underassessment of ₹ 60.46 lakh including interest of ₹ 12.33 lakh and penalty of ₹ 16.38 lakh.

The above facts were brought to the notice of the Department between December 2009 and December 2010. The Department accepted the audit observations involving an amount of ₹ 60.46 lakh in case of all the dealers. The particulars of recovery have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in two cases; the reply in the remaining cases has not been received (October 2011).

Observations related to Dadra and Nagar Haveli

2.36 Evasion of tax on fraudulent utilisation of Forms

The turnover of purchases means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of any purchase of goods made by him during a given period after deducting the amount of purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period. Further, taxable turnover means the turnover of all sales or purchases of a dealer during the prescribed period in any year, which remains after deducting therefrom the turnover of sales not subject to tax. There shall be levied a tax on the turnover of sales of goods at the prescribed rates. Moreover, penalty at prescribed rates may be levied on tax so evaded.

Lack of effective system of cross check of interstate transactions of purchases by the registered dealers caused total non-levy of tax of ₹ 41 lakh.

[32] ACCT: 21 Ahmedabad, 3 Jamnagar, Kalol, 5 Rajkot
DCCT: 23 Rajkot

2.36.1 Evasion of tax due to utilisation of fake forms

During exercise of cross check, data regarding inter-state purchases effected by the dealers registered with Commercial Tax Department, Dadra and Nagar Haveli, against 'C' forms was collected and same were verified with the inter-State sales records of the selling dealers registered with Commercial Tax Department of the respective States. We noticed in case of M/s Super Flooring, that 'C' form bearing number DNH/C/0230304 involving value of ₹ 0.69 crore was cancelled by the dealer as per his declaration to the Department. However, the said form was utilised by the selling dealer of Gujarat for claiming concessional rate of CST. This shows that the declaration filed by the dealer was not correct and the dealer had actually issued the said form to the selling dealer for receiving inter-State purchases. This had resulted in suppression of inter-State purchases and consequential suppression of sales turnover to that extent. Tax was required to be levied at the prescribed rates on the sales turnover so suppressed. Thus, suppression of sales turnover by the dealer resulted in non levy of tax to the tune of ₹ 3 lakh.

2.36.2 Evasion of tax due to fraudulent use of forms

In case of 13 purchasing dealers of Dadra and Nagar Haveli, 20 'C' forms involving sale value of ₹ 5.59 crore, it was noticed that the purchasing dealer had issued the 'C' form to a selling dealer other than the selling dealer claiming concessional rate of CST. Hence, the dealers were not liable to disclose their inter-State purchases effected against the said forms used illegally and the purchases against illegal 'C' form escaped from accounting/assessment. This resulted in suppression of inter-State purchases and consequential suppression of sales turnover to that extent. Tax was required to be levied at the specified rates on the sales turnover so suppressed. Thus, suppression of sales turnover by the dealers resulted in non-levy of tax to the tune of ₹ 22 lakh.

2.36.3 Evasion of tax due to under disclosure of inter-State purchases

In case of 21 dealers of Dadra and Nagar Haveli effecting purchases against 32 'C' forms involving value of ₹ 5.45 crore, the purchasing dealers had shown inter-State purchases of ₹ 1.39 crore only. Hence, the dealers had shown inter-State purchases lesser by ₹ 4.06 crore than that disclosed by the selling dealer of the respective State. As such, the purchasing dealer had under-disclosed the value of inter-State purchases; consequently, sales turnover of the dealer was also suppressed. Hence, the dealer was required to pay tax at the prescribed rates for sales turnover so suppressed. Thus, suppression of sales by the dealer resulted in short levy of tax to the tune of ₹ 16.25 lakh.

Government/Department may consider installing a system of exchange of information with other states on a regular basis to avoid the sales escaping assessment.

CHAPTER III

EXECUTIVE SUMMARY

Substantial increase in tax collection	In 2010-11, the collections of land revenue increased by 54.05 *per cent* over the previous year.
Results of audits conducted by us in 2010-11	Test check of records in the offices of Collectors, District Development Officers and Mamlatdars (LR) in the State during the year 2010-11 revealed under assessment of tax and other irregularities involving ₹ 54.51 crore in 203 cases. During the course of the year, the Department accepted and recovered underassessed revenue of ₹ 2.13 crore in 46 cases of which 8 cases involving ₹ 11.23 lakh were pointed out during the year 2010-11 and the rest in earlier years.
What we have highlighted in this Chapter	Test check of records relating to assessment and collection of premium price, conversion tax etc. in the offices of Collectors, District Development Officers and Mamlatdar (LR) revealed the following: • In 46 cases of allotment of Government land for windmill project, conversion tax amounting to ₹ 0.88 crore for change in use of land was not levied. • Deficiency in the system to keep proper watch by the Department to levy and collect occupancy price at prescribed rates resulted in non/short recovery of occupancy price of ₹ 16.48 lakh. • A new tenure land was transferred by the owner without converting it into old tenure. The registering authorities did not initiate action to send copy of the document to the concerned Collector for recovery of premium price of ₹ 9.10 lakh. • In one case, the applicant committed breach of condition by commencing non agricultural use on a new tenure land. In one case, premium price was levied incorrectly due to incorrect calculation of area. There was total short levy of premium price of ₹ 14.04 lakh. • Deficit premium price of ₹ 7.62 lakh was not recovered in one case.
Recommendations	Based on the audit observations pointed out in the succeeding paragraphs, we suggest the following recommendations for improvement • In cases of allotment of Government land, occupancy price and conversion tax should be levied at prescribed rates. • In cases of breach of conditions of grant of Government land or breach of condition in cases of new tenure land, premium should be levied at correct rates.

CHAPTER-III
LAND REVENUE

3.1 Tax administration

The administration of Land Revenue Department vests with the Principal Secretary (Revenue). For the purpose of administration, the State is divided into 26 districts. Each district is further divided into *talukas* and villages.

The District Collectors are overall in charge and responsible for the administration of their respective districts. The *Mamlatdars* and Executive Magistrates are in charge of the administration of their respective *talukas* and exercise supervision and control on *talatis* who are entrusted with the work of collection of land revenue and other receipts including recovery of dues treated as arrears of land revenue. In addition, the Revenue Department has delegated powers to the *Panchayat* Officers (DDOs and TDOs) for recovery of dues treated as arrears of land revenue to facilitate the revenue administration.

3.2 Analysis of budget preparation

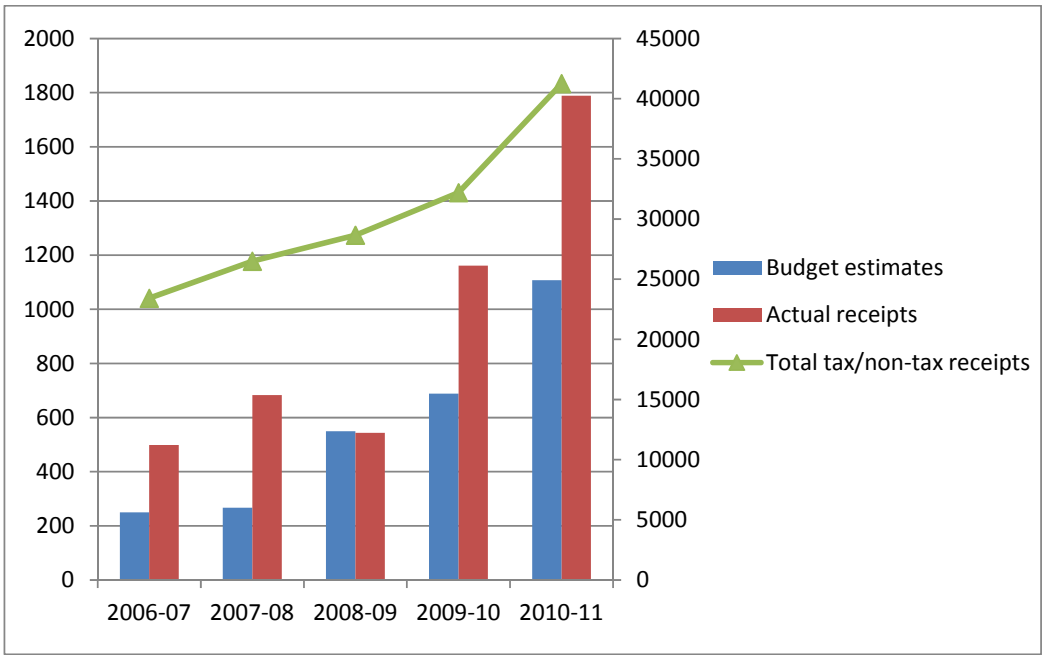
The Budget Estimates are furnished by the Revenue Department in the prescribed format to the Finance Department. While preparing the budget estimates, the Department is required to consider the income of previous year and the expected receipts during the financial year. The targets set by the Department are reported to the Finance Department which is responsible for preparation of the Budget estimates for the entire state.

3.3 Trend of receipts

Actual receipts from Land Revenue during the last five years 2006-07 to 2010-11 alongwith the total tax/non-tax receipts during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax/ non-tax receipts of the State	Percentage of actual receipts *vis-a-vis* total tax/non-tax receipts
2006-07	250.00	498.71	(+) 248.71	(+) 99.48	23,413.41	2.13
2007-08	267.50	683.09	(+) 415.59	(+) 155.36	26,494.88	2.58
2008-09	550.00	543.50	(-)6.50	(-) 1.18	28,656.35	1.90
2009-10	688.50	1,161.20	(+) 472.70	(+) 68.66	32,191.94	3.61
2010-11	1,107.50	1,788.78	(+) 681.28	(+) 61.52	41,253.65	4.34



It could be seen from the above that there was substantial increase in actual receipts as compared to budget estimates for the period except in 2008-09. The variation between the actual receipts and the budget estimates ranged between 61.52 *per cent* and 155.36 *per cent*. This indicates that the budget estimates were not prepared on realistic basis.

As budget estimates are an important part of the financial planning, **we recommend the Government to issue suitable directions to the Department for framing the budget estimates on realistic and scientific basis and ensure that the estimates are as close to the actual receipts as possible.**

3.4 Results of audit

Test check of records in the offices of Collectors, District Development Officers and Mamlatdar (LR) in the State during the year 2010-11 revealed under assessment of tax and other irregularities involving ₹ 54.51 crore in 203 cases, which fall under the following categories:

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1.	Non/short recovery of occupancy price/premium price	39	33.03
2.	Non/short recovery of NAA, non/short levy of NAA at revised rate, non-raising NAA demand	21	0.71
3.	Non/short recovery of conversion tax	49	7.73
4.	Other irregularities	75	12.50
5.	Non-levy of measurement fee	19	0.54
	Total	**203**	**54.51**

During the course of the year, the Department accepted and recovered underassessment and other irregularities of ₹ 2.13 crore in 46 cases of which 8 cases involving ₹ 11.23 lakh were pointed out in audit during the year 2010-11 and the rest in earlier years.

A few illustrative cases involving ₹ 1.51 crore are mentioned in the following paragraphs.

3.5 Non-levy of conversion tax

Section 67 of Bombay Land Revenue Code, 1879 provides for the levy of conversion tax on change in the mode of use of land from agricultural to non agricultural purpose or from one non agricultural purpose to another in respect of land situated in a city, town or village. Different rates of conversion tax are prescribed for residential/charitable and industrial/other purposes, depending upon the population of the city/town/notified area/ village. Conversion tax shall be paid in advance by challan in the Government treasury. Revenue Department in its resolution of December 2006 had stated that in cases of allotment of Government land for non- agricultural purpose, conversion tax is required to be levied as per standing instructions of the Department.

During test check of records of Collector, Jamnagar and District Development Officer, Porbandar between April and October 2010, it was noticed that in 46 cases relating to the period 2008-09 to 2009-10, 14.75 lakh square metres of government land was allotted to Suzlon and other companies for windmill project. Though conversion tax for change in mode of use of land was required to be levied, the departmental officials failed to levy it. This resulted in non-levy of conversion tax amounting to ₹ 0.88 crore.

After this was pointed out to the Department in December 2010 and April 2011, the Department in one case has recovered ₹ 7.20 lakh. Particulars of recovery and reply in remaining cases have not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

3.6 Non/short levy of occupancy price

Government of Gujarat instructed in May 2006, that in case of allotment of Government land, market rate fixed by the District Land Price Committee (DLPC) shall be increased by adding 12 *per cent* at flat rate instead of calculating the increase of 12 *per cent* on monthly basis where orders of the allotment are issued after one year from the date of market rate fixed by the DLPC. The DLPC shall fix market value of the land afresh if the order of allotment is issued after completion of two years.

During test check of records of Sub-Registrar, Bhuj in April 2010, it was noticed in one case that occupancy price[33] fixed by Government (June 2005) was not increased after lapse of one year at the time of allotment of land (March 2007). Deficiency in the system to keep proper watch by the Department to levy and collect occupancy price at correct rates resulted in non/short recovery of occupancy price of ₹ 16.48 lakh.

This was pointed out to the Department in October 2010, their reply has not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[33] Government can dispose off available land to needy persons for cultivation and for any other purpose on payment of occupancy price, subject to such terms and conditions as may be specified by them.

3.7 Non-levy of premium price

The Government of Gujarat decided in July 1983 to allow conversion of land from new and restricted tenure to old tenure for sale/transfer for agricultural purpose or non-agricultural purposes subject to payment of premium price at prescribed rates fixed by the Government from time to time. The premium recoverable is 80/50 *per cent* of the differential value when land is sold for non-agricultural or agricultural purpose respectively. Any breach of condition(s) specified in the order of conversion of land under new and restricted tenure to old tenure attracts differential premium price at prescribed rates. Again, as per the Government Resolution dated 16 March 1982, premium price at prescribed rates was required to be levied on estimated market value adopted for levy of premium price or actual sale consideration, as per sale deed registered on the first occasion whichever is higher. This proviso was cancelled with effect from 4 July 2008. Thus in the cases where the sale consideration was higher and documents of such land were registered between the period 16 March 1982 and 3 July 2008, premium was leviable on higher value.

3.7.1 Test check of sale deeds (December 2010) registered with Sub-Registrar, Valsad for the year 2009 revealed that new tenure[34] land was transferred by the owner without converting it into old tenure[35] land. As the land was of new tenure, it cannot be transferred without prior approval of the Collector and payment of premium. The fact of non-conversion of land into old tenure was evident from the recital of the document. However, the registering authorities did not initiate action to send copy of the document to the concerned Collector for recovery of the premium price of ₹ 9.10 lakh.

This was pointed out to the Department in May 2011, their reply has not been received (October 2011).

3.7.2 During test check of records of two Collector offices[36] between April and September 2010, it was noticed that out of two cases, in one case, the applicant committed breach of condition as was evident from the orders of the Collector, by commencing non-agricultural activity on the new tenure land valued at ₹ 67.47 lakh without prior approval of Collector. However, the departmental officials failed to initiate any action to recover the differential premium price at the rate of 20 *per cent* of market value for breach of condition. In other case, premium price was recovered less due to incorrect calculation of area. Premium price was levied incorrectly on 39,154 sq m

[34] New and restricted tenure means the tenure of occupancy which is non- transferable and impartible without the prior approval of Collector.

[35] Old tenure means land deemed to have been purchased by a tenant on Tiller's Day, 1 April 1957, free from all encumbrances.

[36] Anand and Bhuj

instead of actual area of 39,514 sq m. This resulted in non/short recovery of premium of ₹ 14.04 lakh.

This was pointed out to the Department in December 2010 and March 2011, their reply has not been received (October 2011).

3.7.3 During test check (April 2010) of documents registered with Sub-Registrar, Bhuj in the year 2008, it was noticed from recital of one sale deed that initially, the Collector had fixed the estimated market value of a land at ₹ 40.47 lakh for payment of premium price for the purpose of conversion of land from new to old tenure. Subsequently, the same land was sold at a sale consideration of ₹ 50 lakh which was higher than the estimated market value adopted for the purpose of levy of premium price. The premium price was required to be levied on the differential amount between the estimated market value and actual sale consideration, but it was not levied. The registering authorities also did not initiate action to send copy of the document to the concerned Collector for recovery of the deficit premium price of ₹ 7.62 lakh.

This was pointed out to the Department in September 2010, their reply has not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

3.8 Non/short levy of measurement fees

Settlement Commissioner and Director of Land Records, Gandhinagar vide orders dated 4 May, 2000 revised the rates of measurement fee from 1 February 2003. Accordingly, measurement fee is leviable at the rate of ₹ 1200 for each development plan upto four plots and ₹ 300 for each additional plot.

During test check of records of three Collector offices[37] for the year 2008-09 and 2009-10, it was noticed in 76 cases during September to November 2010 that the revenue authorities granted permission to use land for various non-agricultural purposes as per approved plan. However, departmental officials did not recover measurement fee at prescribed rates. This resulted in non/short levy of measurement fee of ₹ 16.47 lakh.

This was pointed out to the Department in February and March 2011, their reply has not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[37] Gandhinagar, Jamnagar and Palanpur.

CHAPTER IV

EXECUTIVE SUMMARY

Substantial increase in tax collection	In 2010-11, the collection of taxes from motor vehicles increased by 29.89 *per cent* over the previous year which was attributed by the Department to increase in registration of vehicles and upward trend of prices of vehicles.
Internal audit not conducted	During the year 2010-11, the Department planned to audit units pending for internal audit upto 2006-07. However, Department did not furnish the details of units audited during the year 2010-11. Pendency of units to be audited was very high and as such, the very purpose of internal audit was defeated. This result had its impact in terms of the weak internal controls in the Department leading to substantial leakage of revenue. It also led to the omissions on the part of the Regional Transport Officers remaining undetected till we conducted our audit.
Very low recovery by the Department of observations pointed out by us in earlier years	During the period 2005-06 to 2009-10, we had pointed out non/short levy, non/short realisation of tax, fee etc., with revenue implication of Rs. 337.63 crore in 20 paragraphs. Of these, the Department/Government accepted audit observations in 19 paragraphs involving ₹ 82.07 crore but recovered only ₹ 14.18 crore in 16 paragraphs. The recovery position as compared to accepted objections was very low (17.28 *per cent* of the accepted money value)
Results of audit conducted by us in 2010-11	In 2010-11, we test checked the records of offices of Commissioner of Transport, Regional Transport and Assistant Regional Transport Offices in the State and noticed under assessment of tax and other irregularities involving ₹ 262.30 crore in 153 cases. During the course of the year, the Department accepted underassessment and other irregularities of ₹ 490.12 crore in 37 cases, of which 13 cases involving ₹ 236.26 crore were pointed out in audit during the year 2010-11 and the rest in earlier years. An amount of ₹ 1.53 crore was realised in 32 cases during the year 2010-11.
What we have highlighted in this Chapter	A Performance Audit on **"Computerisation of Motor Vehicles Department"** revealed the following: • VAHAN application for registration of vehicles was implemented in all 26 RTOs of the State since March 2008. State consolidated Register was in place. However, tax module relating to registration of the specially designed vehicles falling under non-transport category and transport vehicles were not designed in the system. • Out of four modules (Registration, Taxes, and Fitness & Enforcement) meant for vehicles, the Fitness Module and Enforcement Modules were not implemented in any of the RTOs/ARTOs. Further, the module relating to tax has been implemented only for the non-transport vehicles. This module was not implemented for transport vehicles. • Out of 34 fields prescribed for registration of motor vehicles in 'Form 20' under Central Motor Vehicles Rules, 1989, five fields were not mapped in the system.

- The system lacked necessary controls/checks to avoid wrong input in many crucial fields. We found that in 4684 of registered vehicles, the chassis numbers or engine numbers entered in Inspection Memos table did not match with the chassis numbers or engine numbers entered in registration records.

- We found that fuel of 145 cars was changed from Petrol to CNG/LPG, but neither the fee collected nor the changes made in vehicles were incorporated in the system.

- We found that out of 1.45 lakh vehicles entered in the system, PAN was left blank in 1.13 lakh entries and in 694 cases, the PAN entered was shown as 000000, NO, etc. i.e. an invalid number of alphabet.

- We noticed that in 1766 cases, there were duplicate insurance cover notes, in 48 cases the insurance cover note details were blank and in 132 cases, the insurance cover notes were invalid. (e.g. 00000000, 0, NEW, etc).

- We found penalty column lacked necessary validity controls. A minus amount could be entered in the penalty column and accordingly, a receipt of negative amount could also be generated. The system was therefore, vulnerable to generate receipt in minus amount.

- SARATHI Application for driving licences was partially implemented as the module meant for issue of driving school licence, conductor licence and enforcement modules have not been implemented so far.

- Driving licences were issued with incomplete details due to inadequate space in *Sarathi* system as the card had space for only four categories of driving licences.

Test check of records relating to assessment and collection of motor vehicles tax in the Commissioner of Transport, Regional Transport and Assistant Regional Transport Offices revealed the following:

- Operators of 2633 omnibuses, who kept their vehicles for use exclusively as contract carriage and 2272 vehicles used for transport of goods, had neither paid tax nor filed non-use declarations for various periods between 2007-08 and 2009-10. The Departmental officials failed to issue demand notices and initiate recovery action prescribed in the Act. This resulted in non-realisation of motor vehicles tax of ₹ 21.47 crore including interest of ₹ 2.14 crore and penalty of ₹ 2.68 crore.

- In case of two fleet owners (Gujarat State Road Transport Corporation and Ahmedabad Municipal Transport Service), passenger tax of ₹ 363.77 crore was not levied. Besides, interest and penalty was also leviable.

- In case of two fleet owners (Gujarat State Road Transport Corporation and Ahmedabad Municipal Transport Service), motor vehicle tax, interest and penalty of ₹ 10.94 crore was not levied.

	• In 20 cases of imported vehicles, lump sum tax of ₹ 15.61 lakh including interest and penalty was short levied.
Recommendations	The Government may consider implementing the following recommendations to rectify the deficiencies and improve the *Vahan* and *Sarathi* systems. • May take immediate measures to implement all the remaining modules in *Vahan* and *Sarathi* system so as to make the State Register/National Register complete in all respect. • May take immediate steps to appoint new members in place of retired members to plan and implement the (*Vahan* and *Sarathi*) system within a fixed time frame. • May take corrective measures to remove the deficiencies in the system (*Vahan* and *Sarathi*). • May take corrective measures to update the website of the Department on regular basis. • May take necessary steps to recover the electricity and other dues from the contractor.

CHAPTER-IV
TAXES ON VEHICLES

4.1 Tax administration

The State Commissioner of Transport (CoT) heads the Gujarat Motor Vehicles Department (GMVD) under the administrative control of the Additional Chief Secretary to the Government of Gujarat in the Ports and Transport Department. He is assisted by a Joint Commissioner and 82 officials at GMVD head office. There are 26 Regional Transport Offices (RTO). There are 10 permanent check posts[38] and three internal check-posts[39] working under 10 RTOs.

4.2 Analysis of budget preparation

The budget estimates are prepared on the basis of guidelines issued by Finance Department. The elements considered for the preparation of budget estimates were (i) actual receipts of last eight months of previous year and (ii) actual receipts of first four months of the current year.

4.3 Trend of receipts

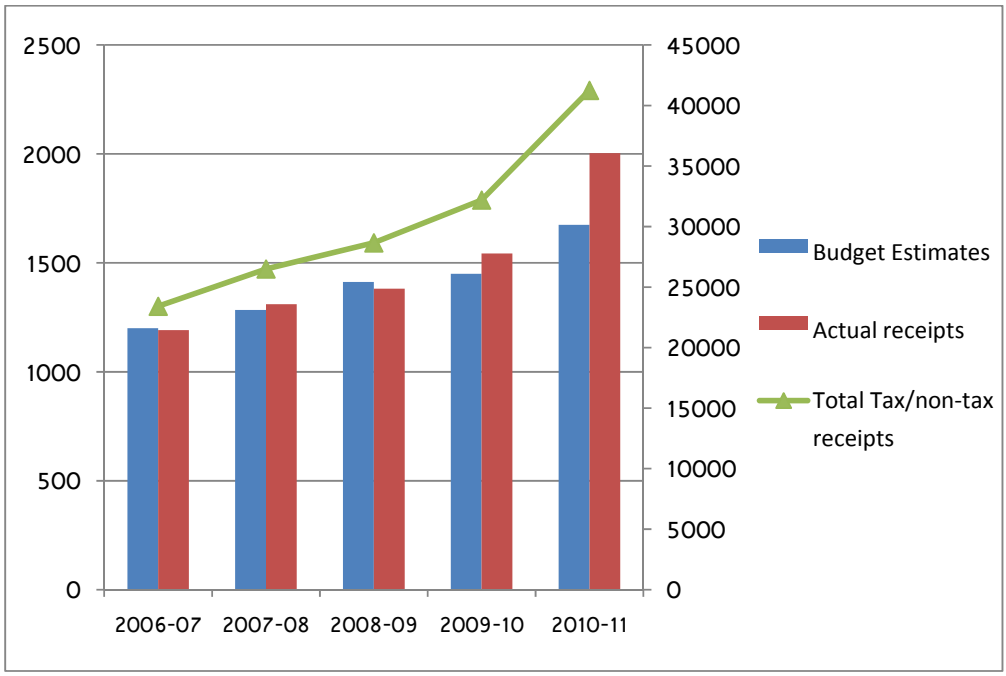
Actual receipts from Motor Vehicle Tax during the last five years from 2006-07 to 2010-11 along with the total tax/non-tax receipts during the same period are exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax/ non-tax receipts of the State	Percentage of actual receipts *vis-a vis* total tax/non-tax receipts
2006-07	1,200.00	1,191.15	(-) 8.85	(-) 0.74	23,413.41	5.09
2007-08	1,284.00	1,310.09	(+) 26.09	(+) 2.03	26,494.88	4.94
2008-09	1,412.40	1,381.66	(-) 30.74	(-) 2.18	28,656.35	4.82
2009-10	1,450.00	1,542.64	(+) 92.64	(+) 6.39	32,191.94	4.79
2010-11	1,675.00	2,003.68	(+) 328.68	(+) 19.62	41,253.65	4.86

[38] Ambaji, Amirgarh, Bhilad, Dahod, Deesa, Shamlaji, Songarh, Tharad, Waghai and Zalod.

[39] Budhel (Bhavnagar), Khavdi (Jamnagar) and Samkhiyali (Bhuj).



The Department attributed the reasons for variation between budget estimates and actual receipts during 2010-11 to the increase in registration of vehicles and upward trend of prices of the vehicles. Though there was increase in actual receipts for the period 2006-07 to 2010-11, the actual receipts *vis-a-vis* total tax/non-tax receipts declined from 5.09 *per cent* to 4.86 *per cent.*

4.4 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2011 amounted to ₹ 123.23 crore of which ₹ 49.36 crore were outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2006-07 to 2010-11.

(₹ in crore)

Year	Opening balance of arrears	Amount collected during the year	Closing balance of arrears
2006-07	58.11	22.15	89.54
2007-08	89.54	59.73	75.73
2008-09	75.73	24.66	80.07
2009-10	80.07	26.36	96.06
2010-11	96.06	88.55	123.23

The above table indicates that arrears of revenue increased from ₹ 58.11 crore to ₹ 123.23 crore during the period of five years. **The Department needs to take strict action against the defaulters for reduction of arrears.**

4.5 Cost of collection

The gross collection in respect of receipts of taxes on vehicles and taxes on goods and passengers, expenditure incurred on its collection and the percentage of such expenditure to gross collection during the years 2008-09 to 2010-11 alongwith the relevant all India average percentage of expenditure on collection to gross collection for the preceding years are mentioned in the following table:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection for the preceding year
Taxes on vehicles and taxes on goods and passengers	2008-09	1,551.01	43.43	2.80	2.58
	2009-10	1,549.54	54.79	3.54	2.93
	2010-11	2,010.06	76.17	3.79	3.07

Thus the cost of collection during all the three years remained above the all India average percentage.

4.6 Impact of Audit Reports - Revenue impact

During the last five years, audit through its audit reports had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 337.63 crore in 20 paragraphs. Of these, the Department/ Government had accepted audit observations in 19 paragraphs involving ₹ 82.07 crore and had since recovered ₹ 14.18 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2005-06	5	17.80	5	10.98	5	2.58
2006-07	2	9.10	2	8.95	2	1.33
2007-08	1	83.08	1	36.56	1	7.37
2008-09	4	6.29	4	6.29	4	1.39
2009-10	8	221.36	7	19.29	4	1.51
Total	**20**	**337.63**	**19**	**82.07**	**16**	**14.18**

The above table indicates that recovery in accepted cases was very low (17.28 *per cent* of the accepted money value).

The Government may take suitable measures for speedy recovery.

4.7 Working of internal audit wing

The department has internal audit wing with a sanctioned strength of three parties consisting of one senior auditor and one sub-auditor in each party. During the year 2010-11, the department planned to audit units pending for internal audit upto 2006-07. However, department did not furnish the details of units audited during the year 2010-11. Pendency of units to be audited was very high and as such, the very purpose of internal audit was defeated.

4.8 Results of audit

We test checked the records of offices of Commissioner of Transport, Regional Transport and Assistant Regional Transport Offices in the State during the year 2010-11 and noticed under assessment of tax and other irregularities involving ₹ 262.30 crore in 153 cases, which fall under the following categories:

(₹ in crore)

Sr. No.	Category	No. of cases	Amount
1.	**Computerisation in Motor Vehicles Department (A Performance Audit)**	1	0.00
2.	Non/short levy of motor vehicle tax	70	16.08
3.	Other irregularities	76	5.45
4.	Passenger tax/MVT	6	240.77
	Total	**153**	**262.30**

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 490.12 crore in 37 cases, of which 13 cases involving ₹ 236.26 crore were pointed out in audit during the year 2010-11 and the rest in earlier years. An amount of ₹ 1.53 crore was realised in 32 cases during the year 2010-11.

A Performance Audit on "**Computerisation in Motor Vehicles Department**" and few illustrative audit observations involving ₹ 49.77 crore are mentioned in the succeeding paragraphs.

4.9 A Performance Audit on "Computerisation in Motor Vehicle Department"

Highlights

VAHAN application for registration of vehicles was implemented in all 26 RTOs of the State since March 2008. State consolidated Register was in place. However, tax module relating to registration of the specially designed vehicles falling under non-transport category and transport vehicles were not designed in the system.

(Paragraph 4.9.7.1)

Out of four modules (Registration, Taxes, Fitness and Enforcement) meant for vehicles, the Fitness Module and Enforcement Modules were not implemented in any of the RTOs/ARTOs. Further, the module relating to tax has been implemented only for the non-transport vehicles. This module was not implemented for transport vehicles.

(Paragraph 4.9.7.2)

Out of 34 fields prescribed for registration of motor vehicles in 'Form 20' under Central Motor Vehicles Rules, 1989, five fields were not mapped in the system.

(Paragraph 4.9.8.1)

The system lacked necessary controls/checks to avoid wrong input in many crucial fields. We found that in 4684 of registered vehicles, the chassis numbers or engine numbers entered in Inspection Memos table did not match with the chassis numbers or engine numbers entered in registration records.

(Paragraph 4.9.9.1)

We found that fuel of 145 cars was changed from Petrol to CNG/LPG, but neither the fee collected nor the changes made in vehicles were incorporated in the system.

(Paragraph 4.9.9.3)

We found that out of 1.45 lakh vehicles entered in the system, PAN was left blank in 1.13 lakh entries and in 694 cases, the PAN entered was shown as 000000, NO, etc. i.e. an invalid number of alphabet.

(Paragraph 4.9.10.1)

We noticed that in 1766 cases, there were duplicate insurance cover notes, in 48 cases the insurance cover note details were blank and in 132 cases, the insurance cover notes were invalid. (e.g. 00000000, 0, NEW, etc).

(Paragraph 4.9.10.2)

We found penalty column lacked necessary validity controls. A minus amount could be entered in the penalty column and accordingly, a receipt of negative amount could also be generated. The system was therefore, vulnerable to generate receipt in minus amount.

(Paragraph 4.9.10.3)

SARATHI Application for driving licences was partially implemented as the module meant for issue of driving school licence, conductor licence and enforcement modules have not been implemented so far.

(Paragraph 4.9.11.1)

Driving licences were issued with incomplete details due to inadequate space in *Sarathi* system as the card had space for only four categories of driving licences.

(Paragraph 4.9.13.2)

4.9.1 Introduction

The Gujarat Motor Vehicles Department (GMVD) is governed by the Motor Vehicles (MV) Act, 1988, the Central Motor Vehicles Rules, 1989, the Bombay Motor Vehicles Tax Act, 1958 (BMVT Act), the Bombay Motor Vehicles Tax Rules, 1959 (BMVT Rules) and the Gujarat Motor Vehicles Rules, 1989. The Department is primarily responsible for compliance of the provisions of the Acts and the Rules framed there under which inter alia includes the collection of taxes and fees, issuance of driving licences, certificate of fitness to transport vehicles, registration of motor vehicles and granting regular and temporary permits to the vehicles.

The Government of India, in order to have a national registry of registered vehicles and driving licence s issued and for providing valuable data for the centre and security agencies, asked all the State Governments in the year 2001 to implement the '*Vahan*' and '*Sarathi*' software systems developed by the National Informatics Centre (NIC). In this connection, 50 servers, 253 Desktop, 125 printers and other accessories were provided during February 2010 by NIC to the Department for implementation of *Vahan* system. All these 50 servers were installed at the 26 RTOs/ARTOs.

The *Sarathi* and *Vahan* software were supplied to the Department by NIC in November 2006 and March 2008 respectively after customising it in accordance with the requirement of the Department. In the *Vahan* system, necessary modifications relating to tax structure for Motor Vehicles prevalent in Gujarat were made as per the specific request by the Department from time to time. The *Sarathi* system for driving licence was implemented in November, 2006. The GMVD started the *Vahan* Software for vehicles registration on pilot basis only in March, 2008.

The Department has registered 1.30 crore vehicles till March 2011, out of which 14.25 lakhs vehicles were entered into *Vahan* system. The work of digitization of old records is under process. The Department issued 8.51 lakh driving licences through Sarathi system till March 2011. The old legacy data of 77.73 lakh licences issued under old computerised system were also ported to *Sarathi* system so that the same can be used in *Sarathi* as and when required.

4.9.2 Organisational set-up

The State Commissioner of Transport heads the GMVD. The Commissioner of Transport is under the administrative control of the Additional Chief Secretary, Ports and Transport Department, Government of Gujarat. The Commissioner is assisted by a Joint Director and a total staff of 109 gazetted and 1020 non-gazetted officials. There are 26 Regional Transport Offices/Assistant Regional Transport Offices and two Inspector offices for as many districts in Gujarat except Dang.

4.9.3 Audit Objectives

The review was conducted with a view to assess whether:

- There was full fledged Committee for implementation of the plan relating to system (VAHAN & SARATHI) and the Committee formed by the State had held regular meetings or not.
- Local applications for vehicle registration and private licences developed and implemented by the States, to the extent they differ from the structure of *Vahan* and *Sarathi*;
- Computerised systems implemented were complete (module wise) and correctness and completeness of the data captured by the RTO offices;
- Connectivity systems established between RTOs in the State for the creation of State Registers of vehicles and licences and National Registers and central servers were put in place towards achievement of above stated objectives;
- The computerised National Permit system was implemented as planned for and project objectives were achieved;
- Reliable general and security controls were in place to ensure data security and audit trail besides back up of data for loss of data due to crash systems and to have an overall assurance of the functioning of the computerised systems for the stated objectives;
- Internal control mechanism was in place at the Ministry and State level to monitor the implementation of the projects.

4.9.4 Audit Scope and Methodology

We analysed the records/data in the office of the Commissioner of Transport, Gandhinagar and field offices for the period from April, 2009 to March, 2011. Data analysis was done by using 'IDEA' software on data obtained from Commissioner of Transport, Gandhinagar and application controls were also analysed. In case of registration of vehicles through *Vahan* system, we analysed entire data of 5.55 lakh vehicles of Regional Transport Office, Ahmedabad, Nadiad, Rajkot and Assistant Regional Transport Office, Anand which were entered during the period April, 2009 to March, 2011.

4.9.5 Acknowledgement

Indian Audit & Accounts Department acknowledges the co-operation of the Commissioner of Transport office in providing necessary information and records for audit. An entry conference was held on 24th August 2011 in which scope and methodology of audit was explained to the Department/ Government. The Commissioner of Transport, Officer on Special Duty and Administrator attended the meeting. Audit findings of the review were reported to the Government in October 2011. The report was discussed with the Department in the exit conference held in November 2011. The replies furnished by the Department have been considered and appropriately incorporated in the review.

Audit findings

4.9.6 Absence of a proper planning for implementing the system of computerisation

The main objective of *Vahan* and *Sarathi* was to have a uniform format and standardised software for issue of registration certificates by the transport departments of all the States and to have a national registry of registered motor vehicles and driving licence s. It was planned to implement the system fully in all the States during the Tenth Plan (2002-2007). The final date was extended up to 31 March 2008.

A formal Committee was formed by the State (2004) for implementation of *Vahan* & *Sarathi* consisting of members of Commissioner's Office and NIC. However, it was noticed that no regular meetings were held and new members were not appointed in place of members who retired from the Committee. We found that there was no full fledged Committee to plan and implement the system (*Vahan* & *Sarathi*) and as such modules were partially implemented.

After this was pointed out the CoT agreed (November 2011) in the exit conference to reconstitute the committee.

4.9.7 Deficiencies noticed in planning and implementation of VAHAN

In data processing systems, adequate input processing and output controls need to be designed to ensure data integrity and eligibility. Analysis of data of 5.55 lakh vehicles entered in *Vahan* system in Regional Transport Office, Ahmedabad, Nadiad, Rajkot and Assistant Regional Transport Office, Anand from April, 2009 to March, 2011 revealed a number of deficiencies mentioned in the following paragraphs:

4.9.7.1 Incomplete State Register/National register of vehicles due to non-registration of specially designed vehicles

The *Vahan* software was designed to capture all the transactions[40] relating to vehicles. The main objective of the system was to have a uniform format and standardised software for issue of registration certificates by the transport departments of all the States and to have a national registry of registered motor vehicles. The work of registration of vehicles under *Vahan* system is done by the departmental officials.

The Gujarat Motor Vehicles Department introduced '*Vahan*' system in March, 2008 for registration of non-transport vehicles only in Ahmedabad on pilot basis. The same was later implemented in all 26 RTOs across Gujarat. However, tax module relating to registration of the specially designed vehicles[41] falling under non-transport category and transport vehicles (about 14 *per cent* of total vehicle population) were not designed in the system. Thus, database was not complete to that extent. The State Register/National register of vehicles were not complete due to partial implementation of *Vahan* system.

The CoT stated (November 2011) that module for registration of specially designed vehicles has now been finalised and it would be implemented soon. Regarding audit observation that module relating to tax has not been implemented for transport vehicles, COT stated that delay has occurred due to non-finalisation of module relating to tax structure. Once tax module is finalised, they would implement the module within few months.

4.9.7.2 Non-implementation of the fitness and enforcement modules

Out of four modules (Registration, Taxes, Fitness & Enforcement) meant for vehicles, the Fitness Module and Enforcement Modules were not implemented in any of the RTOs/ARTOs. Further, the module relating to tax has been implemented only for the non-transport vehicles. This module was not implemented for transport vehicles.

4.9.8 Mapping of Business rules

4.9.8.1 Non-mapping of business rules

Out of 34 fields prescribed for registration of motor vehicles in 'Form 20' under Central Motor Vehicles Rules, 1989, five fields were not mapped in the system which are as under:-

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[40] Registration of New Vehicle/Other State Vehicle/Temporarily Registered Vehicle/ Consulate Vehicle, Addition/Removal/Continuation of Hypothecation in Registration Certificate, Change of Address/Transfer of Owner in Registration Certificate, Vehicle Alteration, Issue of NOC, Renewal of Registration for Private Vehicle, etc.

[41] Mobile canteen, cranes, library van, work shop, clinic, tree trimming vehicles, vehicles fitted with compressor, generators, drilling rigs, road water sprinklers, haulage vehicles, X-Ray van, cash van, tower wagons, fork lifts and comper van.

Sl. No.	Column No. of Form 20	Name of the fields
1	2	Age of the person to be registered as registered owner
2	5	Duration of stay at the present address
3	7	Place of birth
4	8	If place of birth is outside India, when migrated to India
5	9	Declaration of citizenship by status

Since the data are meant to be utilised at the State and Central level in future for cross verification at various ends, its non-mapping renders the data incomplete to that extent.

The CoT stated (November 2011) that information in these five fields are not vital and therefore not mapped in the system.

4.9.8.2 Non-mapping of provision for calculation of differential amount of tax

The rate of road tax for individual owner is 6 *per cent* of sale amount and in case of Company/Firms; it is 12 *per cent* of sale amount of the vehicle. Thus, whenever there is change in ownership from individual to Company/Firm, the differential tax is required to be calculated and recovered from the new owner of the vehicle.

We found that the VAHAN system did not have a provision to calculate and record the receipt of differential tax at the time of change in the name of the owner in the system. The calculation and receipt of the differential tax is being done manually.

4.9.8.3 Deficiency in the system of collection for differential tax collected manually

In case of temporary breakdown of the system or for any other reasons hand written receipts are issued in token of tax received. These receipts were later required to be entered in the system to update the records and rule out misappropriation of receipts due to loose controls etc. Further, any alteration made in the vehicles was also required to be incorporated in the VAHAN system.

Data analysis of non-transport vehicles (cars) registered at RTO, Ahmedabad during the period from 1-4-2009 to 31-3-2011, revealed that 22 vehicles were transferred in the name of company/firms from individuals and the tax was collected manually. On cross verification from receipt books, it was found that though the name of owner was changed in the VAHAN software, the differential tax collected manually was not incorporated in the VAHAN system.

The CoT accepted the deficiency and stated (November 2011) that in the new version of the module, provision of collection of differential tax/changes made in vehicles has been incorporated.

4.9.9 Data accuracy

4.9.9.1 Inaccuracies noticed in data of chassis number and engine number of vehicles

As per Section 44 of Motor Vehicles Act, 1988, every registering authority shall before proceeding to register a motor vehicle or renew the certificate of registration in respect of a motor vehicle, other than a transport vehicle, require the person applying for registration of the vehicle, to produce the vehicle before the registering authority in order to satisfy that the particulars contained in the application are true. For registration of any vehicle, the vehicle owner submits the application for the registration containing the details of the vehicle to the respective registration authority. On receipt of the application, the same is entered in the *Vahan* system and sent for inspection. The name of the inspector who has inspected the particular vehicle, chassis number, engine number and other details are entered into the VAHAN system for registration.

Our cross verification of data available in the *Ownership table* and *Pvt-.MVI check Table*[42] of non-transport vehicles (cars) with the registration records revealed that in case of 4684 registered vehicles, the chassis numbers or engine numbers entered in *Ownership table* did not match with the chassis numbers or engine numbers entered in *Pvt-.MVI check Table*. We noticed that the data inaccuracies were due to incorrect practice of entering data of only last few digits of crucial fields like chassis number and engine number fields etc; in the *Pvt-.MVI check Table.*

Thus, the system lacked necessary controls/checks on chassis number and engine number fields to avoid wrong input in these crucial fields, while entering in the *Pvt-.MVI check Table*. From the above, it is evident that there is a need for developing a system to ensure capturing of the correct details of vehicle inspected.

The CoT agreed (November 2011) with the audit observation and stated that it is cumbersome for the inspectors to enter long figures in all the cases. He further stated that these cases would be scrutinised in detail.

Due to data entry errors in 1108 cases, the registration date of vehicles was entered into the system prior to the purchase date which shows that there were no checks/supervisions over the data entry operators.

[42] Table in which verification report of inspection done by inspector is entered.

4.9.9.2 Inaccuracy in data entry resulting in faulty search logic in National Register of Vehicles

The National Register was designed to enable the owner of the vehicle to view the details of his vehicle online and verify its correctness. All the data entered/updated in VAHAN system across India get uploaded in the National Register. For this purpose, the search utility has been provided on the link "Vehicle Search" on the website "vahan.nic.in". Any owner of the vehicle can get details of his vehicle by entering the registration number of vehicle and last five digits of chassis number.

However, during data analysis it was noticed that though chassis number was a mandatory field for data entry, no proper validation control existed to ensure completeness of the chassis number. As a result, in 16 cases, chassis number entered was even less than five characters. Further, these vehicles could not be traced on the National Register despite the fact that the data was available on the server mainly because of faulty logic in search programme. Thus, the owners of these vehicles were not able to access the information available on the National Register.

The CoT agreed (November 2011) with the audit observation and stated that clarification in this regard would be sought from NIC.

4.9.9.3 Inaccuracies due to non-updation of the system

Change of a vehicle from one fuel type to another fuel type can be done subject to the payment of fees of ₹ 150 per vehicle. A module for this purpose exists in VAHAN. The system is required to be updated at the time of approval of change of type of fuel to reveal correct information to stake holders.

Test check of records of 1100 non-transport vehicles (cars) registered at RTO, Ahmedabad revealed that fuel of 145 cars was changed from Petrol to CNG/LPG. The same was required to be updated in VAHAN system at the time of approval of change of type of fuel. However, neither the fee collected nor the changes made in vehicles were incorporated in the system. Due to non-updation of the system with respect to changes made in the system as mentioned above, the database of VAHAN did not reveal correct information about these vehicles to the stake holder's viz. public, insurance agencies, banks and financial institutions and enforcement agencies. It was also found that tax module for transport vehicles had not been implemented by the Department.

4.9.10 Validity of data

4.9.10.1 Inaccuracies due to incomplete validation controls relating to PAN

Every purchaser of vehicle (excluding two wheelers) has to submit Form 20 prescribed for registration of his vehicle under Rule 47 of the Central Motor Vehicles Rules, 1989 and also mention his Permanent Account Number (PAN) in the Form at the time of registration of the vehicle.

The permanent account number (PAN) issued by Income Tax Department is required to be quoted in cases of purchase of motor car and provision had been made in the registration module of the VAHAN Software to capture the PAN details. Scrutiny of the VAHAN software revealed that the department had not made it compulsory for input validation in the business rules, due to this, we found that out of 1.45 lakh vehicles (except two wheelers) entered in the system, PAN was left blank in 1.13 lakh entries and in 694 cases, the PAN entered was shown as 000000, NO, etc. i.e. an invalid number of alphabet.

However, the Commissioner of Transport and other officers in exit conference intimated that PAN was not mandatory under the Gujarat Motor Vehicles laws though it was mandatory under the Income Tax Act, 1961. However, the fact remains that the PAN numbers have been entered incorrectly in 694 cases. The incorrect entries need rectification, besides, PAN number is an important field that can link the Department with Income Tax Department and therefore it should be made compulsory.

4.9.10.2 Duplicate insurance cover notes

The insurance of the vehicle is essential at the time of registration in terms of Rule 47 of the Central Motor Vehicles Rules, 1989. Due to lack of validation checks while capturing of insurance cover notes, in 1766 cases, it was observed that there were duplicate insurance cover notes. In 48 cases, the insurance cover note details were blank and in 132 cases, the insurance cover notes were invalid indicating figures like 00000000, 0, NEW, etc. Besides entry of insurance cover-note number was not made mandatory in the system.

The CoT agreed (November 2011) with the audit observation and stated that this anomaly has been rectified.

4.9.10.3 Absence of validity controls to check entry of vulnerable numbers

During test check of input application controls and validation checks in the VAHAN system, it was observed from the fee collection data entry form of registered vehicles, that penalty column lacked necessary validity controls. A minus amount could be entered in the penalty column and accordingly, a receipt of negative amount could also be generated. The system was therefore,

vulnerable to generate receipt in minus amount. Due to this, possibility of loss of revenue cannot be ruled out.

The CoT agreed (November 2011) with the audit observation and stated that corrections had been carried out.

4.9.11 Deficiencies noticed in implementation of *Sarathi* system

4.9.11.1 Partial implementation of *Sarathi* module

The *Sarathi* system was implemented in November 2006 with a view to capture all the transactions relating to issue/renewal/duplicate leaner's licence, issue/renewal/duplicate driving licence, issue/renewal/duplicate conductor licence, change of address/additional endorsement in driving licence/conductor licence, etc. However, the module meant for issue of driving school licence, conductor licence and enforcement modules have not been implemented so far. Thus, the *Sarathi* system was not fully implemented.

The CoT stated (November 2011) that in respect of driving school licence and conductor licence, quantum of data is miniscule because very few licences are issued each month. However, they would implement these modules at the earliest. He further stated that implementation of module of enforcement is a comprehensive exercise. However, this would be implemented.

4.9.11.2 Non-maintenance of State/National Register of Driving Licences

The VAHAN and SARATHI database server is a decentralized system. All the servers at the RTOs/ARTOs installed were connected to the State Data Centre through VPN connection. The data pertaining to VAHAN of all the RTOs/ ARTOs are copied to the State Consolidated Register on a daily basis. Further, the data from State Consolidated Register are uploaded to the State Register and then to the National Register.

However, due to insufficient bandwidth between the RTOs/ARTOs and the NIC State Data Centre at Gandhinagar, the data pertaining to Driving Licences issued through *Sarathi* could not be transferred to State Register for Driving Licence and in turn to the National Register for Driving Licences. Due to this, the State Register/National Register for Driving Licences issued in Gujarat could not be created till date.

The CoT accepted (November 2011) the audit observation and stated that connectivity of RTOs is being updated to prepare the State Register.

4.9.11.3 Non-utilisation of hand-held terminals

We found 192 hand held terminals (HHT) valued ₹ 61.43 lakh were purchased (March 2000) for the purpose of reading the data stored in the Smart Card driving licence and Registration Certificate. However, it was noticed that the

HHTs were still lying unutilised as the enforcement module in *Sarathi* system has not been implemented so far. Further, the HHT also cannot be utilised for *Vahan* system because the Registration Certificates issued through *Vahan* are not based on smart card.

The CoT agreed (November 2011) with the audit observations and stated that HHTs were utilised partially. As the registration certificates issued through *Vahan* were not based on smart card, HHTs were not fully utilised.

4.9.12 Non-updation of Commissioner of Transports' website on National Permit Scheme

The new National Permit scheme was introduced by Government of India, Ministry of Road Transport and Highways on 7th May 2010. The Ports and Transport Department also implemented the scheme from the same date. Under the new scheme, an applicant seeking new National Permit/Renewal of existing National Permit has to deposit ₹ 1,000 as authorization fees to concerned RTO/ARTO along with application. The RTO/ARTO after verification of the content of the application advises the applicant to make payment of ₹ 15,000, either by cash or through internet banking towards consolidated fee. The RTO/ARTO after verification of status of payment, issue electronically printed national permit having hologram of the issuing State/UT. Under this scheme, there is no need to issue State wise authorisation. A vehicle having National Permit would be entitled to move in other States without payment of any tax.

As per the guidelines issued by Government of India for the implementation of the new scheme, wide publicity was required to be given so as to educate the transporters about the scheme. However, even after one and half years of introduction of new National Permit Scheme, the website of the Department still displayed the old scheme about National Permit. Hence, the website which is the main medium for publicity gave incorrect information about the National Permit scheme.

During the exit conference CoT stated (November 2011) that it would be updated.

4.9.13 Safety and security

4.9.13.1 Mobile units for issuance of licence at remote places

The RTOs/ARTOs organise camps on regular basis so as to enable people residing in remote localities to obtain LDL/DL etc. In this context, clause 4 of Chapter-III of the agreement provides that mobile units for issuance of licence s at remote places would be provided by the contractor as per tender documents. There was no clarification in the agreement as to for how many days during the year the mobile units will be provided by the contractor. The documents provide that 30 mobile units were required by 23 RTOs/ARTOs at different places for issuance of licence s. But we found from the records that

mobile units were not provided by the contractor and as such people residing in remote localities were deprived of the benefit.

The CoT agreed (November 2011) with the audit observations and stated that the contract would be reviewed.

4.9.13.2 Insufficient space in Smart Card based driving licence

The *Sarathi* system was introduced to issue smart card based driving licence. The driving licence is issued in the prescribed format under Rule 7 of Central Motor Vehicles Rules, 1989. Close scrutiny of format of driving licence issued under *Sarathi* system revealed that space provided for printing the "Class of Vehicle" (COV), which the Licence holder is permitted to drive was limited to only four COV. Data analysis of the driving licence issued at RTOs (Ahmedabad, Rajkot and Nadiad) and ARTOs (Anand and Navsari) between April, 2009 and March, 2011 revealed that 476 driving licences were issued with more than four COV. Thus, these driving licences in Smart Card form were issued with incomplete details. Though there was provision in the system to issue print out of the Driving Licence in plain paper format showing all the COV, it was not despatched along with the Smart Card and was issued only on personal demand by the Licence holder. Hence, it could not be ensured that all these Licence holder were provided full details of the Licence.

The CoT agreed (November 2011) with the audit observation and stated that it is not feasible to have more number of COV in the given space. He further stated that attempts are being made to reduce the number of categories of licences and telescopic linkage of higher category licence with lower category licence.

4.9.13.3 Computer generated tokens

As per the agreement, the contractor was required to issue computer generated tokens bearing DL applicant name, date, time and token number to the applicant who has submitted duly approved documents. However, in none of the RTOs/ARTOs, computer generated tokens were issued. Due to non issuance of computer generated tokens, it could not be ensured in audit whether licences were issued on the basis of *"first come first serve"* basis. The computer generated tokens were essential to ensure transparency in the system.

The CoT agreed (November 2011) with the audit observations.

4.9.13.4 Serial Numbers of cards

Note below Form 7 issued under Rule 16 (2) of the Central Motor Vehicles Rules, 1989 about issue of Smart Card driving licences stipulates that as a security measure, card serial number will be printed by card manufacturer on the back side upper left corner of the card. However, it was noticed that the smart cards supplied by the contractor did not bear any serial number as prescribed and therefore possibility of misuse of the cards cannot be ruled out.

The CoT agreed (November 2011) with the audit observation and stated that numbering of smart cards has been introduced from November 2011.

4.9.13.5 Input and processing controls in *Sarathi* system

In Gujarat, the work of issue of Learner's Licence and Driving Licence through *Sarathi* system was assigned to M/s. Bharat Electronics Ltd., M/s. Algorithm Solutions Pvt. Ltd. and M/s. GEMALTO Pvt. Ltd. (henceforth referred as the contractor) and an agreement to this effect was executed on 24th July 2009. The contractor was responsible for providing infrastructure and operational requirements like equipments viz. Desktop machines, Smart card hardware/software, printers, etc. required for providing SDL preparations, developing sites at all RTOs for the purpose as stipulated in Chapter-III of the contract.

For learner's licence every applicant, after payment of fee and submission of requisite documents, was required to take a computer based examination (STALL-Screen Test Aid for Learner Licence) in the Regional Transport Office for evaluation of the knowledge of traffic rules. The system poses up to 15 multiple choice questions. If the applicant answers at least 11 questions correctly, he is marked as passed by the system.

Analysis of data of Learner's Licence and driving Licence entered in '*Sarathi*' system at RTOs (Ahmedabad, Rajkot and Nadiad) and ARTOs (Anand and Navsari) between April, 2009 and March, 2011 revealed lack of proper input and processing controls in the software resulting in generation of incorrect data as mentioned below:-

- In 5272 cases, one and half minutes or less time was taken by candidates to answer 11 questions and all candidates were declared passed. This aspect may be examined to ascertain the stage at which lapse has occurred.

- For answering each question in Learner's Driving Licence exam, a maximum time of 48 seconds was allowed and the test had to be completed in 12 minutes. Due to incorrect mapping of business rules pertaining to STALL exam, in 26 cases, it was observed that the applicants were given more than 12 minutes to pass the examination.

- Rule 8 of the Central Motor Vehicles Rules, 1989, prescribes minimum educational qualification of 8th Standard for driving licence of transport vehicles. It was noticed that in 14 cases, the applicants having educational qualification below 8th Standard were issued licence for transport vehicles. Further, in 1663 cases, driving license for transport vehicles were issued to applicants without specifying educational qualification. Hence, system did not have validation checks on minimum educational qualification in case of licence for transport vehicles.

- Due to incorrect mapping of business rules pertaining to STALL exam, in 212 cases, the number of questions answered were more than the number of questions posed by the system and all candidates were declared as passed.

- The candidates are declared passed after answering 11 questions correctly. However, due to incorrect mapping of business rules pertaining to STALL exam, in 12 cases, candidates answered more than 11 answers correctly but the test continued even after 11 correct answers. Chances of data manipulation in such cases cannot be ruled out because after eleventh correct answer, the learner's driving licence test closes automatically.

The CoT agreed (November 2011) with the audit observations and stated that these individual cases would be scrutinised in detail by the Department.

Deficiencies noticed in outsourcing agreement

4.9.14 Payment of electricity charges

As per article 7 of chapter III of the agreement with the contractor, the Commissioner of Transport was required to provide power connection to the contractor. The responsibility to install sub-meter and make payment for power charges was on the contractor.

Review of records maintained at the Office of the commissioner of Transport revealed that in none of the offices (RTOs/ARTOs), separate meters were installed. Due to this, Government bore the entire expenditure of electricity charges. The Department did not initiate any action in the last two years i.e. from 24th July, 2009 to till date install separate meter for the purpose of recovery of power charges.

CoT agreed (November 2011) to recover electricity charges from contractor. He further stated that separate meters have been installed for this purpose.

4.9.15 Conclusion

Though the GMVD has implemented VAHAN & SARATHI software in all the 26 RTOs/ARTOs, the implementation is partial. The fitness and enforcement module in VAHAN and SARATHI application for driving licences was partially implemented as the module meant for issue of driving school licence, conductor licence and enforcement modules have not been implemented so far. There are certain control deficiencies in the modules implemented. Out of 34 fields prescribed for registration of motor vehicles in 'Form 20' under Central Motor Vehicles Rules, 1989, five fields were not mapped in the system, fuel of 145 cars was changed from Petrol to CNG/LPG, but neither the fee collected nor the changes made in vehicles were incorporated in the system. We found that out of 1.45 lakh vehicles entered in the system, PAN was left blank in 1.13 lakh entries and in 694 cases, the PAN entered was shown as 000000, NO, etc. i.e. an invalid number of alphabet Thus, the system lacked necessary controls/checks to avoid wrong input in these crucial fields. We found that in 4684 registered vehicles, the chassis numbers or engine numbers entered in Inspection Memos table did not match with the chassis numbers or engine numbers entered in registration records. We found penalty column lacked necessary validity controls. A minus amount could be entered in the penalty column and accordingly, a receipt of negative

amount could also be generated. The system was therefore, vulnerable to generate receipt in minus amount.

4.9.16 Recommendations

The Government may consider implementing the following recommendations to rectify the deficiencies and improve the system.

- May take immediate measures to implement all the remaining modules in *Vahan* and *Sarathi* system so as to make the State Register/National Register complete in all respect.

- May take immediate steps to appoint new members in place of retired members to plan and implement the (*Vahan* and *Sarathi*) system within a fixed time frame.

- May take corrective measures to remove the deficiencies in the system (*Vahan* and *Sarathi*).

- May take corrective measures to update the website of the Department on regular basis.

- May take necessary steps to recover the electricity and other dues from the contractor.

CoT agreed (November 2011) to implement the recommendations made by audit.

4.10 Non-Recovery of passenger tax, interest and penalty from fleet owners

Section 3 of the BMV (Taxation of Passengers) Act, 1958 and rules made thereunder provide for levy of tax on all passengers carried by a stage carriage at prescribed rate from the fleet owners. The Act also provides for levy of interest and penalty at prescribed rate on delayed payments.

During test check of records of Commissioner of Transport, Gandhinagar in January and June 2010, for the period 2008-09 and 2009-10, we noticed in case of two fleet owners (GSRTC[43] and AMTS[44]) that these fleet owners had collected passenger tax of ₹ 363.77 crore but did not pay it within the prescribed time. Taxation authority did not take any further action for recovery of dues except issue of demand notice in case of AMTS (March 2010). Besides, interest of ₹ 20.34 crore and penalty of ₹ 90.94 crore was also leviable for which demand was not raised. Further, AMTS delayed payment of passenger tax for CNG buses (private operators), ranging between eight to 26 days on which interest of ₹ 0.52 lakh and penalty of ₹ 25.95 lakh was leviable. Taxation authority did not raise demand of interest and penalty for the late payment. This resulted in non-realisation of passenger tax of ₹ 363.77 crore. Besides, interest and penalty was also leviable.

After this was pointed out to the Department in October and December 2010, the Department accepted the audit observations. Particulars of recovery have not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[43] Gujarat State Road Transport Corporation.

[44] Ahmedabad Municipal Transport Service.

4.11 Non/short realisation of motor vehicle tax on transport vehicles

The BMVT Act prescribes that contract carriage and goods carriage vehicles shall pay assessed tax on monthly and half yearly basis respectively except for the period where the vehicles are not in use. In case of delay in payment, interest at the rate of two *per cent* per month and if the delay exceeds one month, a penalty at the rate of two *per cent* per month subject to a maximum of 25 *per cent* of tax is also chargeable. The Act authorises the department to recover unpaid tax dues as arrears of land revenue. The Act also empowers the taxation authority to detain and keep in custody the vehicles of the owners who defaulted in payment of Government dues.

During test check of Demand and Collection Registers of 21 taxation authorities[45] between September 2009 and November 2010, we noticed that operators of 2633 omnibuses, who kept their vehicles for use exclusively as contract carriage and 2272 vehicles used for transport of goods, had neither paid tax nor filed non-use declarations for various periods between 2007-08 and 2009-10. The Departmental officials failed to issue demand notices and initiate recovery action prescribed in the Act. This resulted in non-realisation of motor vehicles tax of ₹ 21.47 crore including interest of ₹ 2.14 crore and penalty of ₹ 2.68 crore.

After this was pointed out to the Department in July, September, November and December 2010 and January and March 2011, the Department accepted audit observations in 949 cases amounting to ₹ 4.35 crore. In 324 cases, the Department recovered an amount of ₹ 1.30 crore. In other cases, particulars of recovery and reply have not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[45] Ahmedabad, Amreli, Anand, Bardoli, Bhavnagar, Bhuj, Bharuch, Dahod, Gandhinagar, Godhra, Himatnagar, Junagadh, Mehsana, Nadiad, Navsari, Palanpur, Patan, Rajkot, Surat, Vadodara and Valsad.

4.12 Non-Ascertaining of mailing address

Submission of proof of address is a pre-requisite to register a motor vehicle. This helps the department to initiate follow up action on annual tax and fee payments. The Act requires RTOs to issue Revenue Recovery Certificate (RRC) against defaulters after one month of non-payment of MVT. Audit scrutiny revealed that in several cases RRCs were issued after the prescribed time limit and often with incorrect mailing address. Before issue of certificate of registration, RTO has to verify evidence of address from one of the documents specified in CMV Rules, 1989. However, RTOs failed to verify and maintain updated records of address.

During test check of the records of nine taxation authorities[46] between October 2009 and June 2010 for the period 2007-08 to 2009-10, we noticed that in 1736 cases, the demand notices issued to vehicle owners for recovery of outstanding dues were returned back due to incorrect address of vehicle owners. Failure on the part of the departmental officials in non-ascertaining the correct address of the vehicle owner resulted in postponement of recovery of tax to the tune of ₹ 15.98 crore.

After this was pointed out to the Department in July, September, October and December 2010, the Department accepted audit observations in 77 cases amounting to ₹ 9.88 crore. In three cases, an amount of ₹ 8.95 lakh has been recovered. In other cases, particulars of recovery and reply have not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[46] Ahmedabad, Amreli, Dahod, Mehsana, Nadiad, Patan, Rajkot , Surat and Vadodara

4.13 Non-payment of motor vehicle tax, interest and penalty by fleet owners

Section 12 of the BMVT Act and rules made thereunder provide that any tax due and not paid shall be recoverable in the same manner as arrears of land revenue. The Act also provides for levy of interest and penalty at prescribed rate on delayed payments of the tax. The Rules also provide to make declarations by the fleet owners in prescribed form HT and IT (preliminary and final) for assessment and collection of tax.

During test check of records of Commissioner of Transport, Gandhinagar for the period 2008-09 and 2009-10, we noticed in case of two fleet owners (GSRTC[47] and AMTS[48]) that these fleet owners had not paid motor vehicle tax of ₹ 7.65 crore. Taxation authority failed to initiate any other action for recovery of the dues except issue of demand notice. This resulted in non-levy of tax of ₹ 7.65 crore, interest of ₹ 1.38 crore and penalty of ₹ 1.91 crore. The total non-levy of tax is ₹ 10.94 crore including interest and penalty.

After this was pointed out to the Department in October and December 2010, the Department accepted the audit observations. Further report of recovery has not been received. (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[47] Gujarat State Road Transport Corporation.

[48] Ahmedabad Municipal Transport Service

4.14 Non-renewal of national permit

As per Home Department notification dated 27.03.1997, the motor vehicle operator having national permit for a period of five years has to pay authorisation fee of ₹ 500 for each year during the validity period of the permit along with composite tax of ₹ 5,000 per annum for each of the states selected for such permit, except in case of cancellation of such permit for subsequent year.

During the test check of National Permit Registers of eight taxation authorities[49] between October 2009 and May 2010 for the period 2008-09 to 2009-10, we noticed that in respect of 634 transport vehicles, authorisation fees were not recovered for the period ranging from one to four years (i.e. 2004-05 to 2009-10). The taxation authorities also did not issue any notices to them. There was no structured mechanism to record and follow up the same. This resulted in non-realisation of authorisation fees of ₹ 4.03 lakh due to the State Government. Besides this, composite tax of ₹ 1.11 crore relating to other states was also recoverable in the form of demand draft.

After this was pointed out to the Department in July, September, November and December 2010, the Department accepted audit observations in 84 cases amounting to ₹ 40.62 lakh (₹ 1.30 lakh authorisation fees and ₹ 39.32 lakh composite tax). In 16 cases, the Department has recovered an amount of ₹ 20,000 as authorisation fee and ₹ 3.24 lakh as composite tax. In other cases, particulars of recovery and reply have not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

4.15 Short levy of lump sum tax on imported vehicles

As per the Notification of April 2007 issued under the BMVT Act, 1958, six *per cent* of sales value is payable as tax on registration of indigenous four wheeled vehicles by individuals, local authorities, universities, educational and social institutions and for others the rate is double. In case of imported cars, tax is payable at twice the above rates. Further instructions were issued to treat certain vehicles (vide circular dated 27 July 2004) as imported vehicles and tax them accordingly.

During the test check of registration records of the four taxation authorities[50], between October 2009 and July 2010, for the period 2007-08 to 2009-10, we noticed in 20 cases of imported vehicles that in 19 cases tax was not levied at applicable rates. In one case, tax was recovered only on customs duty paid and cost of vehicle was not included in total cost of vehicle for the purpose of levy of tax. This resulted in

[49] Ahmedabad, Bharuch, Bhuj, Dahod, Gandhinagar, Nadiad, Rajkot and Surat.
[50] Ahmedabad,Rajkot, Rajpipla(Narmada), and Vadodara

short levy of MVT of ₹ 15.61 lakh including interest of ₹ 2.11 lakh and penalty of ₹ 1.89 lakh.

After this was pointed out to the Department in September and December 2010, the Department accepted audit observations of ₹ 3.03 lakh in nine cases. In six cases, the department recovered an amount of ₹ 2.24 lakh. In other cases, particulars of recovery and reply have not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

4.16 Evasion of entry tax

The Gujarat Government (Sales Tax Department) decided (September 2001) to levy entry tax at the rate of 12 *per cent* on motor vehicles brought from other States in Gujarat within 15 months from the date of its registration. The Departmental instructions (October 2003) provided that RTOs should verify payment of entry tax by demanding prescribed documents from the vehicle owners.

During test check of the FT-forms and other records of two taxation authorities[51] between January and February 2010, we noticed that seven registered vehicles brought from other states in 2008-09, the departmental officials did not keep on record any proof of payment of entry tax as prescribed in circular before re-registration. This resulted in evasion of entry tax of ₹ 6.80 lakh.

After this was pointed out to the Department in September and October 2010, the Department accepted audit observations in five cases amounting to ₹ 5.30 lakh. Particulars of recovery and reply in remaining two cases have not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[51] Nadiad and Surat.

CHAPTER V

EXECUTIVE SUMMARY

Substantial increase in tax collection	In 2010-11, the collections of stamp duty and registration fees increased by 43.40 *per cent* over the previous year which was attributed by the Department to inflation and steep rise in value of properties.
Internal audit not conducted	As per the information furnished by the Department, 758 Sub-Registrar offices were to be inspected for the period 2006 to 2010. Inspectors of Registration covered 260 inspections resulting in shortfall of 498 inspections. Pendency of units to be audited was very high and as such, the very purpose of internal audit was defeated.
Very low recovery by the Department of observations pointed out by us in earlier years	During the last five years, audit through its audit reports had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc., with revenue implication of ₹ 295.02 crore in 47 paragraphs. Of these, the Department/Government accepted audit observations in 13 paragraphs involving ₹ 11.55 crore and had recovered ₹ 1.37 crore. Recovery in accepted cases was very low (11.86 *per cent* of the accepted money value).
Results of audits conducted by us in 2010-11	Test check of records of offices of the Collectors of Stamp Duty (Valuation of Property) and Sub-Registrar Offices in the State during the year 2010-11 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 627.56 crore in 480 cases. During the year 2010-11, the Department accepted underassessment and other irregularities of ₹ 17.78 crore in 20 cases. An amount of ₹ 30.87 lakh was realised in 16 cases during the year 2010-11.
What we have highlighted in this Chapter	A Performance Audit on "**Levy and Collection of Stamp Duty and Registration Fees"** revealed the following: • No time limit was prescribed by the Department for finalisation of valuation cases referred to Dy. Collectors (Stamp Duty Valuation Office) under Section 32A of Bombay Stamp Act, 1958. This resulted in pendency of 53,093 cases presented for registration during the period from 1-4-2000 to 31-3-2010 and blocking of revenue of ₹ 49.35 crore. • Non levy of stamp duty on the delivery orders of the imported goods at Inland Container Depot and Air Cargo valued at ₹ 1, 05,870.65 crore during the period from 2006-07 to 2009-10 deprived the State Government revenue of ₹ 105.87 crore. • Non inspection of records of public offices and not prescribing any periodical returns to obtain data regarding instruments chargeable with duty from the public offices resulted in incorrect classification of lease agreement as concession agreement which subsequently resulted in short levy of stamp duty of ₹ 42.21 crore and registration fees of ₹ 8.61 crore. • No mechanism has been devised by the Department to ascertain whether Companies incorporated in the State had paid stamp duty on issue and allotment of shares or not. The stamp duty of ₹ 73.43 crore was involved in issue and allotment of shares by 16230 companies during the period 2006-07 to 2009-10. In one case, non inclusion of premium in the value of shares resulted in short levy of stamp duty of ₹ 6.09 crore.

	• Incorrect application of rate of stamp duty on contract notes issued by two companies/brokers in connection with purchase and sale of shares and incorrect allowance of benefit of reduced rate of duty to four companies/brokers resulted in short levy of stamp duty aggregating ₹ 7.46 crore. • Non co-ordination with Income Tax Department to levy stamp duty on additional consideration disclosed by the assessee during the course of search/raid etc. conducted by the Income Tax Authorities resulted in short levy of stamp duty of ₹ 45.08 lakh. • Incorrect calculation of consolidated stamp duty on debentures resulted in short levy of stamp duty of ₹ 1.25 crore. • Non levy of stamp duty on transaction in Government securities. • Non-levy of stamp duty on instruments comprising several distinct matter in 66 Sub Registrar offices deprived Government revenue of ₹ 11.35 crore. • Misclassification of 28 instruments in three Sub Registrar offices and Additional Superintendent of Stamps office resulted in short levy of stamp duty of ₹ 7.15 crore. • Undervaluation of immovable properties in 368 cases in 37 Sub Registrar offices resulted in short levy of stamp duty and registration fees of ₹ 7.09 crore.
Recommendations	The Government may consider implementing the following recommendations to rectify the deficiencies and improve the system: • Introducing a system of co-ordination with various authorities/departments so as to ensure levy of proper stamp duty on instruments falling under Schedule I of BS Act. • Insert Explanation under Article 24 of Schedule I of the Bombay Stamp Act in line with Maharashtra for charging stamp duty on delivery orders of goods imported through ICDs and Air Cargo. • The Government may consider publicising the importance of levy of proper stamp duty on instruments to the mass public for creating awareness, which would decrease non compliance and would further increase revenue. • The Government may consider amending the BS Act and GS Rules in order to levy interest on delayed payment of stamp duty in all cases. • Government may take necessary steps to improve the internal control mechanism in the Department. • The Government may consider setting up a system of co-ordination with ROC to collect data regarding incorporated companies raising fund and allotting and issuing shares so as to levy and collect proper stamp duty. • The Government may consider setting up a system of co-ordination with stock exchanges to collect segment-wise turnover data of brokers issuing notes or memorandum to the principals in the State so as to plug leakage of revenue. • The Government may devise a system for co-ordination with Income Tax Department to collect periodical data of cases of suppression of sale consideration wherein deficit stamp duty and registration fee is involved.

CHAPTER-V
STAMP DUTY AND REGISTRATION FEES

5.1 Tax administration

The overall control on the levy and collection of stamp duty and registration fees rests with the Revenue Department. The Inspector General of Registration (IGR) and Superintendent of Stamps, Gandhinagar is the head of the Department. The IGR is assisted by the Sub-Registrar (at the district and *taluka* level) whereas the Superintendent of Stamps is assisted by the Deputy Collector (Stamp Duty Valuation Office) [DC] at the district level.

5.2 Analysis of budget preparation

The budget estimates are furnished by the IGR and Superintendent of Stamps, Gandhinagar in the prescribed format to the Finance Department. While preparing the budget estimates, the Department considers normal growth of the State economy, revenue of the previous year, inflation/recession factor and number of documents likely to be registered.

5.3 Cost of collection

The gross collection in respect of receipt of stamp duty and registration fees, expenditure incurred on its collection and the percentage of such expenditure to gross collection during the years 2008-09 to 2010-11 along with the relevant all India average percentage of expenditure on collection to gross collection of the preceding years are mentioned below:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection for the preceding year
Stamp duty and registration fees	2008-09	1,728.50	42.16	2.44	2.09
	2009-10	2,556.72	53.38	2.09	2.77
	2010-11	3,666.24	62.73	1.71	2.47

The cost of collection in respect of stamp duty and registration fees was lower than all India average except in the year 2008-09. The increase in aggregate expenditure on collection of revenue during the year 2009-10 and 2010-11 over previous years was mainly due to implementation of recommendations of Sixth Pay Commission and increase in expenditure on sale of stamps.

5.4 Impact of Audit Reports

5.4.1 Impact of Audit Reports - Revenue impact

During the last five years (excluding the current year's report), audit through its audit reports had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc., with revenue implication of ₹ 295.02 crore in 47 cases. Of these, the Department/Government accepted audit observations in 13 cases involving ₹ 11.55 crore and had recovered ₹ 1.37 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2005-06	6	52.04	1	0.01	1	0.43
2006-07	6	8.66	1	1.83	--	0.05
2007-08	15	148.91	7	9.63	3	0.83
2008-09	12	78.77	2	0.03	2	0.02
2009-10	8	6.64	2	0.05	1	0.04
Total	**47**	**295.02**	**13**	**11.55**	**7**	**1.37**

The above table has been prepared after taking into consideration of replies of the Department in which they accepted the audit observations. No replies were received in respect of remaining paragraphs. The above table indicates that recovery in accepted cases also was very low (11.86 *per cent* of the accepted money value). The administrative Department had not furnished detailed explanations to any of the above paragraphs though they were required to furnish within three months of presentation of the ARs to the Legislature (except 2009-10) as per the instructions issued by the Finance Department on 12 March 1992.

We recommend that the Government may consider issuing suitable instructions to the Department for taking effective/speedy steps in recovering the amounts, especially in those cases, which have been accepted by the Department.

5.4.2. Impact of Audit Reports – Amendments in the Act/Rules/ notifications/orders issued by Government at the instance of audit

We had pointed out following issues to the Department several times through Audit Reports:

- Short levy of Stamp Duty and Registration Fees on deemed transactions of conveyance between mortgagor and bank/ financial institutions – (section 5 of BS Act, 1958);

- Short levy of Stamp Duty and Registration Fees on extended period of lease deeds by misuse of slabs decided under the Act-Article 30 (a) of BS Act, 1958;

- Classification of equitable mortgage deed/deposit of title deeds containing recitals of mortgage as instrument of legal mortgage deed-Article 6(i) of BS Act, 1958.

The Department in April 2011 accepted these audit observations and issued a circular to all Sub-Registrars to levy Stamp Duty and Registration Fees as pointed out by the audit.

5.5 Results of audit

Test check of records of offices of the Collectors of Stamp Duty (Valuation of Property) and Sub-Registrar Offices in the State during the year 2010-11 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 627.56 crore in 480 cases, which fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	**Levy and Collection of Stamp Duty and Registration Fees (A Performance Audit)**	1	281.73
2	Misclassification of documents	99	245.71
3	Undervaluation of property	68	7.28
4	Incorrect grant of exemption	5	0.02
5	Underassessment of stamp duty on instruments of mortgage deeds	24	2.69
6	Other irregularities	99	13.40
7	Short levy of Stamp Duty and Registration Fees	184	76.73
	Total	**480**	**627.56**

The Department did not furnish even first reply in 360 cases out of the above cases. In remaining cases, during the course of the year, the Department accepted underassessment and other irregularities of ₹ 17.78 crore in 20 cases. An amount of ₹ 30.87 lakh was realised in 16 cases during the year 2010-11.

A Performance Audit on "**Levy and Collection of Stamp Duty and Registration Fees"** involving ₹ 281.73 crore is mentioned in the succeeding paragraphs.

5.6 Levy and Collection of Stamp Duty and Registration Fees

Highlights

No time limit has been prescribed by the Department for finalisation of valuation cases referred to Dy. Collectors (Stamp Duty Valuation Office) under Section 32A of Bombay Stamp Act, 1958. This resulted in pendency of 53093 cases presented for registration during the period from 1-4-2000 to 31-3-2010 and blocking of revenue of ₹ 49.35 crore.

(Paragraph 5.6.7)

Non-levy of stamp duty on the delivery orders of the imported goods at Inland Container Depot and Air Cargo valued at ₹ 1,05,870.65 crore during the period from 2006-07 to 2009-10 deprived the State Government revenue of ₹ 105.87 crore towards stamp duty**.**

(Paragraph 5.6.11)

Non-inspection of records of public offices and not prescribing any periodical returns to obtain data regarding instruments chargeable with duty from the public offices resulted in incorrect classification of lease agreement as concession agreement which subsequently resulted in short levy of stamp duty of ₹ 42.21 crore and registration fees of ₹ 8.61 crore.

(Paragraph 5.6.12.1 and 5.6.12.2)

No mechanism was devised by the Department to ascertain whether Companies incorporated in the State had paid stamp duty on issue and allotment of shares. The stamp duty of ₹ 73.43 crore was involved in issue and allotment of shares by 16230 companies during the period 2006-07 to 2009-10. In one case, non-inclusion of premium in the value of shares resulted in short levy of stamp duty of ₹ 6.09 crore.

(Paragraph 5.6.13)

Incorrect application of rate of stamp duty on contract notes issued by two companies/brokers in connection with purchase and sale of shares and incorrect allowance of benefit of reduced rate of duty to four companies/ brokers resulted in short levy of stamp duty aggregating to ₹ 7.46 crore.

(Paragraph 5.6.14.1 and 5.6.14.2)

Non-co-ordination with Income Tax Department to levy stamp duty on additional consideration disclosed by the assesses during the course of search, raid etc., by the Income Tax Authorities resulted in short levy of stamp duty of ₹ 45.08 lakh.

(Paragraph 5.6.16)

Incorrect calculation of consolidated stamp duty on debentures resulted in short levy of stamp duty of ₹ 1.25 crore.

(Paragraph 5.6.18)

Incorrect classification of bonds as promissory notes resulted in short levy of stamp duty of ₹ 1.06 crore.

(Paragraph 5.6.19)

Misclassification of 28 instruments in three Sub Registrar offices and Additional Superintendent of Stamps office resulted in short levy of stamp duty of ₹ 7.15 crore.

(Paragraph 5.6.28)

Undervaluation of immovable properties in 368 cases in 37 Sub Registrar offices, DC, Anand, Additional Superintendent of Stamps, Gandhinagar and DDO, Anand resulted in short levy of stamp duty and registration fees of ₹ 7.09 crore.

(Paragraph 5.6.30)

5.6.1 Introduction

Receipts from stamp duty in the State are regulated under the Indian Stamp Act, 1899 (IS Act) and the Bombay Stamp Act, 1958 (BS Act) as adapted by the State of Gujarat and Rules made thereunder. The registration of documents and related matters are regulated under the provisions of the Registration Act, 1908.

Indian Stamp Act prescribes the rate of stamp duty in respect of bills of exchange, cheques, promissory notes, bill of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts specified in Entry no. 91 of List I in the Seventh Schedule to the Constitution (Union list). While the State Government is empowered under Entry 63 of List II of Seventh Schedule of the Constitution to prescribe rate of stamp duty for documents/instruments other than those specified in Entry 91 of Union list and the same are covered by the BS Act.

According to Section 3 and 3-A of the BS Act, documents falling under Schedule I of the Act are chargeable with duty and additional duty. Further, all documents which are compulsorily registrable[52] in terms of Section 17 of the Registration Act shall be stamped before or at the time of execution or immediately thereafter on the next working day following the day of execution in the State. Section 33 of the BS Act empowers every person in charge of a public office to impound any instrument, produced before him in performance of his functions, if it appears that such instrument is not duly stamped. Vide Circular No.IGR/VHT/134-04/9130-9155 dated 09-05-2007, the Superintendent of Stamps and Inspector General of Registration with reference to the Rule 45 of the Gujarat Registration Rules, 1970, had

[52] Conveyance, lease above one year, agreement to sale, power of attorney with possession and mortgage deeds.

instructed the registering officers not to accept any instrument presented for registration if stamp duty thereon is not paid according to the market value of the property and direct the party to present the said instrument to the DC for determination of market value of the property in question and proper amount of stamp duty payable thereon.

During the period covered under review, the rate of stamp duty along with additional duty on conveyance was reduced by the Government from 8.4 *per cent* to 5.95 *per cent* with effect from 1st April 2006. The rate was further reduced to 4.9 *per cent* with effect from 1st April 2007. Similarly, the rates of registration fee were also revised to one rupee for every rupees one hundred or part thereof on the amount or value of the consideration or of the property with effect from 1st April 2007. The *Jantri*[53] rates applicable since April 1999 were also revised by the Government from 9th February 2007 and 1st April 2007. The Government introduced the new *Jantri* rates again with effect from 1st April 2008.

5.6.2 Organisational set up

The overall control of the levy and collection of stamp duty and registration fees rests with the Revenue Department of Government of Gujarat which is headed by Principal Secretary, Revenue Office of the Inspector General of Registration (IGR), Office of the Superintendent of Stamps (SS) and the Office of the Chief Controlling Revenue Authority are three independent offices headed by a single officer. The IGR is assisted by one Deputy IGR and three Assistant IGRs in the Headquarters and 151 Sub Registrars (SRs) at the district and *taluka* level. The SS and the Additional SS is assisted by 28 Deputy Collectors, Stamp Duty Valuation Offices (DC) at the district level.

5.6.3 Audit objectives

The performance audit was conducted with a view to examine whether:

- the Department has set up effective mechanism to collect stamp duty and registration fees;
- the prescribed rules and procedures of Act are being implemented by the Department;
- there is any lacunae in the Acts/Rules having revenue implications;
- adequate internal control systems commensurate to the size of the Department and nature of work exists.

[53] Statement issued by the Government showing the rates for the purpose of determination of value of immovable properties and levy of stamp duty.

5.6.3.1 Audit criteria

Audit criteria considered were Indian Stamp Act, 1899, Bombay Stamp Act, 1958, Gujarat Stamp Rules, 1978, Bombay Stamp (Determination of Market Value of Property) Rules, 1984, Registration Act, 1908; notifications/circulars/orders issued under the said Acts/Rules and judicial pronouncements.

5.6.4 Scope and methodology of audit

The review was conducted by test check of records maintained in the office of the Additional Superintendent of Stamps, IGR, 77 SRs and 4 DCs. The review was conducted between May 2010 and March 2011. The documents registered in SR offices were selected for scrutiny by way of risk analysis and revenue implications. Information in respect of instruments of which registration was not compulsory was obtained from various agencies to cross verify the proper realisation of stamp duty. The review was conducted for the period from 2005-06 to 2009-10 by test check of records maintained in the office of the Additional Superintendent of Stamps, IGR, 77 SRs and four DC offices.

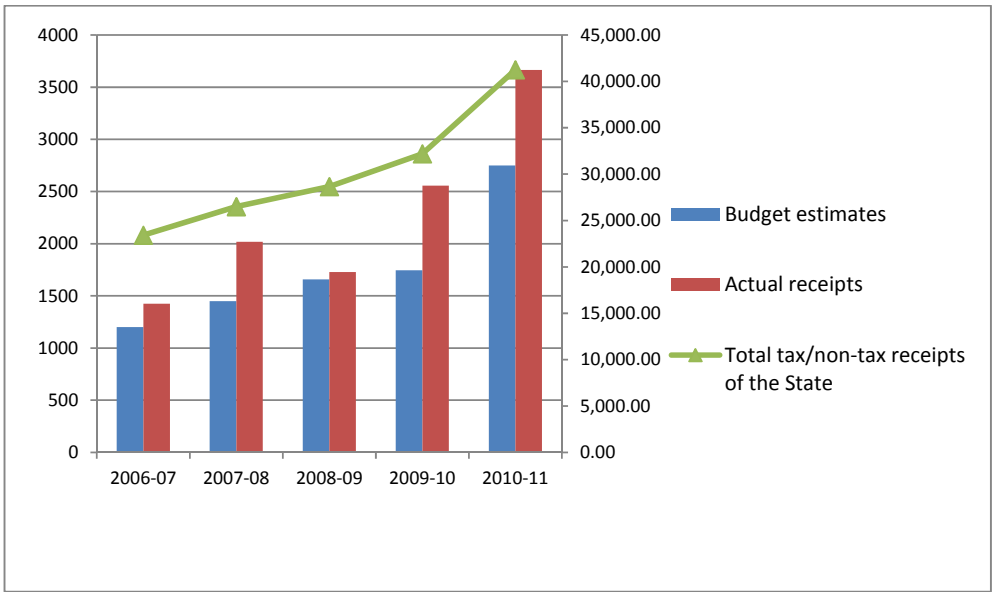
5.6.5 Acknowledgement

Indian Audit & Accounts Department acknowledges the co-operation of the SS and IGR and the subordinate offices in providing information and records for audit. The entry conference with the Department was held in July 2010 in which the scope and methodology of audit was discussed. The review report was sent to the Government in June 2011 for their response. The report was discussed with the Department in the exit conference held in August 2011. The replies furnished by the Department have been considered and appropriately incorporated in the review.

5.6.6 Financial Performance

The budget estimates and actual realisation of stamp duty and registration fees during the last five years 2006-07 to 2010-11 were as under:-

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax/ non-tax receipts of the State	Percentage of actual receipts *vis-a vis* total tax/non-tax receipts
2006-07	1200.00	1425.03	(+) 225.03	(+) 18.75	23,413.41	6.09
2007-08	1450.00	2018.44	(+) 568.44	(+) 39.20	26,494.88	7.62
2008-09	1658.00	1728.50	(+) 70.50	(+) 4.25	28,656.35	6.03
2009-10	1745.75	2556.72	(+) 890.97	(+) 46.45	32,191.94	7.94
2010-11	2750.00	3666.24	(+) 916.24	(+) 33.32	41,253.65	8.89



Stamp Duty collections constituted 6.03 to 8.89 *per cent* during 2006-07 to 2010-11 of the total receipts of the State.

From the above, it is seen that there was huge variation between the budget estimates and the actual revenue collection during 2006-07, 2007-08, 2009-10 and 2010-11. Thus, it is evident that the Department need to follow more realistic budgeting exercise.

After this was pointed out, the Department replied that the variation between the budget estimates and actual receipts is attributed to inflation and speedy rise in value of properties.

5.6.7 Blocking up of revenue

5.6.7.1 Delay in finalization of valuation cases

As per the information furnished by the office of Additional SS, 53093 documents were presented for registration during the period from 1st April 2000 to 31st March 2010. The said documents were referred for valuation purpose by SRs to DCs under Section 32A[54] of BS Act. These documents were pending for finalisation as on March 2010. No time limit has been prescribed by the Department for finalisation of valuation cases by DCs. Thus delay in finalisation of cases resulted in blocking up of revenue in the form of stamp duty to the extent of ₹ 49.35 crore based on the valuation made by the SRs.

We recommend that Government may consider inserting a provision in the Act/Rules to make the decision of the collector time bound.

[54] Section 32A of BS Act provides for determination of market value of property by the Dy. Collectors in the instruments referred to him by Sub Registrars.

5.6.7.2 Recovery of arrears of revenue

The SS office had prescribed a Management Information System (MIS) under which information was to be sent monthly by each DC to the Addl. SS for consolidation. However, we noticed that many DCs did not send monthly information regularly. This resulted in consolidation of incorrect and non-reliable data. This was evident from the information communicated by the SS to the Revenue Department in respect of documents referred to DC by SRs under Section 32A of the BS Act. Due to this, the closing balance of following years did not tally with the opening balance of the next year as mentioned in the table below:

Year	Opening balance of documents pending for finalisation	Number of documents received during the year	Number of documents finalised	Number of documents pending for finalisation
2005-06	67710	64256	46441	143561
2006-07	85525	20960	33424	13495
2007-08	73061	19777	35361	114604
2008-09	57477	30543	32280	107220
2009-10	55740	24200	43624	103783

Thus, the system of keeping information about arrears of revenue was not followed by the Department properly. Due to this, correct data about arrears of revenue were not available with the Department.

After this was pointed out, the Department replied (August 2011) that exercise is on to put the data in order.

5.6.8 Non-creation of charge on immovable properties

Out of 28 DC offices, in 19 DC offices, action was required to be initiated in 1,52,834 cases for recovery of arrears of Stamp Duty of ₹ 228.04 crore by creating charge on immovable properties in land revenue records. The Department did not furnish similar information for remaining 9 DC offices. Thus, the total amount of revenue pending collection in the State in respect of cases finalised under Section 32A of BS Act was not available with the Department as on March 2010. Age wise information of demand raised/not raised and reasons for delay in initiating action for recovery of dues as arrears of land revenue were also not intimated to audit.

The Hon'ble High Court of Gujarat in the case of *Prahladji Valaji Thakor vs State of Gujarat* set aside all orders of DCs issued on or before 15th May 2007, wherein there were no speaking orders about fixation of stamp duty and penalty. The court directed the Department to undertake requisite proceedings afresh in terms of the provisions of BS Act and assess the duty accordingly. Due to failure on the part of the Department to follow the system and

procedure stipulated in the Act for determination of market value of properties there was duplication of work and delay in collection of revenue.

The Department stated (August 2011) that monthly meetings with DCs would be convened to review the progress in this regard.

5.6.9 Disposal of appeal cases

Under Section 53 of the Bombay Stamp Act, 1958, any person aggrieved by an order of the DC can prefer an appeal before Chief Controlling Revenue Authority (CCRA) within a period of sixty/ninety days from the date of order of the DC. However, the BS Act does not specify any time limit for disposal of appeal cases.

As per the information made available by the office of the CCRA, 618 cases were pending for disposal as on 31st March 2010. The detail of deficit stamp duty involved in the pending cases was not provided to audit. Year wise analysis of the pending cases is given in the table below:

Year of appeal	Number of cases pending
1990 to 2005	368
2006	9
2007	15
2008	45
2009	71
2010	110
Total	**618**

Out of the 618 appeal cases, delay in disposal of 27, 110 and 231 cases was pertaining to more than 15, 10 and 5 years, respectively. In the absence of time limit for disposal of cases, the collection of revenue was adversely affected and further it also added hardship to appellants. There was no mechanism to monitor timely disposal of cases pending since long.

After this was pointed out, the SS replied (July 2011) that out of total 618 cases, the office had disposed 470 cases upto July 2011 and the remaining cases would also be disposed of on priority basis.

Audit findings

System deficiencies

5.6.10 Absence of a system of inspection of instruments in co-ordination with various organisations to ensure realisation of proper duty

As per Section 68 of the BS Act, 1958, the Collector may authorise any officer to enter any premises and inspect instruments specified in Schedule I of the Act which have not been charged at all or incorrectly charged with duty leviable under the Act. The Act also provides to seize and to impound such instruments under Section 33. Dy. Collector (SDVO)[55] has been empowered to exercise these powers.

We noticed that there was no co-ordination between Stamps and Registration Department and other Departments/ organisations/local bodies, etc., before whom documents chargeable with stamp duty were presented. The Department did not prescribe any periodical returns to obtain data regarding instruments chargeable with duty and details of duty realised thereon when presented before the officers-in-charge of public offices. The public offices/officers have not been defined in the Act. No rules prescribing the procedure for conducting the inspection were framed and therefore, the Department could not monitor the realisation of proper stamp duty. We obtained data from various sources including Government Organisations/Departments/Undertakings and local bodies which revealed non/short realisation of stamp duty of ₹ 245.50 crore and registration fee of ₹ 8.61 crore during 2005-06 to 2009-10 as mentioned in the succeeding paragraphs 5.6.11 to 5.6.17.

[55] Dy. Collector (SDVO) has been appointed in this behalf vide Government notification No.GHM-98/57/M/STP/1493/877/H. 1. dated 8th September 1998.

5.6.11 Non-levy of stamp duty on Delivery Orders at ICDs/Air Cargo

As per Article 24 of Schedule I of BS Act, stamp duty at the rate of 0.1 *per cent* is leviable with effect from 1st April 2006 on delivery order of any goods lying in any dock or port, in any warehouse in which goods are stored, or deposited on rent or hire, or upon any wharf, in case value of such goods exceed one hundred rupees. According to Section 2 (12) of the Customs Act, 1962, "custom port" means any port appointed under clause (a) of Section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot.

During the test check of records of the office of DCs and Addl. SS, Gandhinagar for the period 2006-07 to 2009-10, it was noticed that the Department have been collecting stamp duty on the delivery orders/bill of entries filed by the importers who have imported goods through various sea ports in the State. However, we noticed that no stamp duty was levied and collected on the delivery orders of goods imported through 'dry ports' such as Inland Container Depots (ICDs) located in various parts of the State and Air Cargo at Ahmedabad. As per the information collected from four ICDs[56] in the State and Air Cargo, Ahmedabad, we noticed that in 91,895 cases, the Departmental officials did not levy stamp duty on the delivery orders of the imported goods valued ₹ 1,05,870.65 crore during the period from 2006-07 to 2009-10. This deprived the State Government revenue on account of stamp duty of ₹ 105.87 crore.

After this was pointed out, the Department stated (September 2011) that no stamp duty was levied and collected as there is no enabling provision in the Act to charge stamp duty on delivery orders issued by shipping agents or airlines of ICD and Air Cargo.

Government may consider to insert Explanation under Article 24 of Schedule I of the Bombay Stamp Act in line with Maharashtra for charging stamp duty on delivery orders of goods imported through ICDs and Air Cargo.

[56] ICD Valvada-Vapi, ICD Sachin- Surat, ICD Sabarmati-Ahmedabad and ICD Ankleshwar

5.6.12 Short levy of stamp duty on lease agreements

As per Section 2 (n) (iii) of the BS Act, 'lease' means a lease of immovable property and includes any instrument by which tolls of any description are let. Accordingly, instrument of toll contracts are chargeable to stamp duty as an instrument of lease deed under Article 30 of Schedule I of the BS Act at the prescribed rates. Section 17 of the Registration Act stipulates that agreement of lease of immovable property for any term exceeding one year is compulsorily registrable. Stamp duty on lease deed is chargeable at the prescribed rates for a consideration equal to the amount or value of fine, premium or money advanced in addition to the amount of the average annual rent reserved on the basis of the period of lease.

5.6.12.1 As per the information made available by Gujarat State Road Development Corporation Ltd. (a Government Company), we noticed that six lease agreement styled as concession agreements were executed by the Company with private parties during the period 2005-06 to 2009-10 for the purpose of construction of toll ways under *Build, Operate and Transfer* contracts (BOT). The agreements were executed for a term ranging from 13 years to 22 years. We noticed from the recitals of the agreement that in consideration of the grant of project land on lease, the private parties agreed to pay lease fee, concession fees, premium[57] in the form of additional concession fees and the development fees to the Company. The said agreements give the private parties sole and exclusive right to demand, collect and appropriate toll fees from the users of the toll way on and from the Commercial Operation Date till the Transfer Date.

According to the recital of the agreements, documents are classifiable as lease agreement and chargeable to stamp duty under Article 30 (c) of Schedule I of the BS Act, 1958. However, these agreements were executed on a non-judicial stamp paper of ₹ 100 each and were not registered as instruments of lease. This deprived the State Government revenue on account of stamp duty of ₹ 31.06 crore and registration fees of ₹ 6.34 crore aggregating ₹ 37.40 crore.

After this was pointed out, the Department stated (September 2011) that the GSRDC has furnished details of concession/lease agreements which are under scrutiny.

5.6.12.2 In terms of Section 19 of the BS Act, if any instrument relating to property located in the State is executed outside the State and subsequently received in the State, the differential duty would be leviable, if any, at the rates prevailing on the date of execution in the State. However, duty already paid in other state would be reduced from the amount payable under the Act.

[57] Stamp duty was calculated on premium, concession fee and lease fee treating it as rent as it was recurring in nature and development fee was treated as premium as it was one time payment.

We noticed that National Highway Authority of India, Gandhinagar (NHAI), executed an agreement with Larsen and Toubro Company Ltd. (L & T), at New Delhi on 17th March 2010. Though the agreement was executed out of the State and subsequently received in the State, the same was chargeable with the differential duty in Gujarat as per Section 19 of the Act *ibid*. The agreement was executed for a term of 24 years and lessor (NHAI) in consideration of the concession fee and premium in the form of additional concession fees had granted the right of way of the project highway to L & T as a licensee. The agreement granted sole and exclusive right to L & T to demand, collect and appropriate toll fees from the users on and from the Commercial Operation Date till the currency of the agreement.

In view of the recitals of the agreement, the document was required to be classified as lease agreement and stamp duty applicable under Article 30 (c) of Schedule I of the BS Act, 1958 should have been charged. However, the agreement was executed on a non-judicial stamp paper of ₹ 100 and was not registered as an instrument of lease. This deprived the State Government revenue on account of stamp duty of ₹ 11.15 crore and registration fees of ₹ 2.27 crore aggregating ₹ 13.42 crore.

After this was pointed out, the Department replied (September 2011) that the agreement had been called from NHAI for scrutiny and necessary action. The Department further stated that format of monthly returns have been prescribed to various public authorities for giving details of such type of agreements executed by them. Further reply is awaited (November 2011).

5.6.13 Non/short levy of stamp duty on allotment and issue of shares

As per Article 31 & 18 of Schedule I of BS Act, 1958, stamp duty is leviable at the rate of 0.1 *per cent* from 1st April 2006 on the value of shares allotted or share certificates issued to the general public, promoters, institutional buyers etc., by any company or a proposed company incorporated in the State of Gujarat. Section 9(b) of the Bombay Stamp Act, 1958, empowers the State Government to provide for the composition or consolidation of duties in the case of issues of bonds or marketable securities other than debentures by any incorporated company or other body corporate.

We noticed that the Department had not evolved any mechanism to ascertain the stamp duty liability of the Companies which venture into primary markets through Initial Public Offer (IPO) or otherwise and raise capital by means of allotment and issue of shares. Further, there was no co-ordination with the Registrar of Companies, Gujarat (ROC) to monitor and levy stamp duty on issue of shares by the Companies incorporated in the State.

5.6.13.1 As per the information collected from the ROC and internet websites, it was noticed that 11 Companies registered in the State of Gujarat had raised capital by way of Initial Public Offer during 2006-07 to 2009-10. Out of the 11 Companies, three had voluntarily paid consolidated stamp duty at the office of the Additional SS, Gandhinagar and one at Mumbai. Remaining seven Companies either did not pay the requisite stamp duty on issue and allotment of shares or paid less stamp duty applicable in other States. The Department did not evolve a mechanism to ascertain the stamp duty liability of Companies which raised capital by way of IPO. This resulted in non/short levy of stamp duty of ₹ 3.88 crore.

After this was pointed out, the Department replied (September 2011) that two Companies have paid stamp duty at Hyderabad and notices have been issued to the remaining five Companies. The reply is not tenable as the stamp duty paid by two Companies at Hyderabad was at a lower rate and hence differential stamp duty should be recovered from them.

5.6.13.2 We noticed that during the period from 2006-07 to 2009-10, 11,924 Companies were incorporated in the State with total paid-up capital aggregating ₹ 5,843.61 crore, of which only seven Companies[58] had paid the consolidated stamp duty[59]. The information regarding the payment of stamp duty of ₹ 5.60 crore by the remaining 11,917 Companies was not on record. Similarly, as per the information received from ROC, 4306 Companies were incorporated with a paid-up capital of ₹ 63,951.92 crore before 1st April 2006 but have issued shares during the period from 2006-07 to 2009-10. Accordingly, they were liable to pay stamp duty of ₹ 63.95 crore. The Department did not have any mechanism to ascertain whether these companies had paid the stamp duty on issue and allotment of shares or not. The stamp duty involved in both these cases amounts to ₹ 69.55 crore.

After this was pointed out, the Department replied (September 2011) that at the time of incorporation of companies, the Companies paid stamp duty on the shares allotted for nominal capital by way of physically affixing the stamps or by franking. The Department further replied that MCA system implemented in ROC from 30th October 2009 collected stamp duty on different type of instruments furnished by companies at the time of incorporation. The reply is not tenable as the stamp duty is required to be levied on the shares issued and allotted with relation to the paid-up capital and not on the nominal capital.

The Government may consider setting up a system of co-ordination with ROC to collect data regarding registered companies raising fund and allotting and issuing shares so as to levy and collect proper stamp duty.

[58] (1) Bhavnagar Energy Company Ltd., (2) Meghmani Finechem Ltd., (3) RJD Integrated Textile Park Ltd., (4) Safal Realty Pvt. Ltd., (5) Kunj Infrastructure Pvt. Ltd., (6) GSPC (JDPA) Ltd., (7) Baroda Textile Effects Pvt. Ltd.

[59] Seven companies raised capital of ₹ 247.56 crore on which stamp duty of ₹ 24.76 lakh was paid.

5.6.13.3 Under Article 17 of Bombay Stamp Act applicable in Maharashtra, the rate of stamp duty chargeable on share certificates or other documents is the same as in the case of Gujarat State. However, an explanation has been inserted under the Maharashtra Act so as to include the amount of premium in the value of shares, scrips or stock. There is no such explanation under Article 18 pertaining to Certificate or other documents of Schedule I of the BS Act applicable in Gujarat. We noticed that the Department charged stamp duty on the aggregate amount of face value and premium in all the cases except in one case mentioned below. Absence of the explanation in the BS Act had created a lacuna in the Act and resulted in short levy of stamp duty.

Test check of records in the office of the Additional SS revealed that Axis Bank Ltd., Ahmedabad (Bank) had allotted 7,14,28,570 nos. of preferential equity shares under Qualified Institutional Placements (QIP), Global Depository Receipts (GDR) and to the promoters of the Bank during 2009-10. The bank paid consolidated stamp duty of ₹ 7.14 lakh on the face value of the shares though the allotment was made at the rate of ₹ 906.70 per share (₹ 10 face value *plus* ₹ 896.70 premium), thereby raising a capital of ₹ 6164.22 crore. Accordingly, the bank was liable to pay stamp duty of ₹ 6.16 crore instead of ₹ 7.14 lakh. The Departmental officers did not ascertain the correct stamp duty liability of the Bank. Omission to include premium price in the value of shares for the purpose of calculation of duty resulted in short levy of stamp duty of ₹ 6.09 crore.

After this was pointed out, the Department replied (September 2011) that notices have been issued (January, March and July 2011) to the bank for recovery of deficit stamp duty.

The Department may consider inserting the explanation in the Act in line with Maharashtra to the effect that stamp duty may be charged on the aggregate value i.e., face value *plus* premium of shares.

5.6.14 Lack of system/mechanism to collect data of contract notes issued by brokers

As per Article 5(c), Article 39(f) and Article 48A (b) and (c) of Schedule I of Bombay Stamp Act, 1958, stamp duty is chargeable on each note of memorandum sent by a Broker or Agent to his principal intimating the purchase or sale of any share, scrip, stock bond, debenture stock or other marketable security of a like nature exceeding in value ₹ 20 except Government securities.

We observed that the Department neither has the machinery nor has effective co-ordination with Stock Exchanges to collect data relating to the volume of trading carried out and contract notes issued by each members/brokers/agents (firms) based in the State of Gujarat regularly to levy and collect proper stamp duty from them. Accordingly, the Department did not have the data regarding total stamp duty chargeable, levied and outstanding on above type of

instruments executed in the State. The Department had collected stamp duty only from those firms who voluntarily paid duty. There was no mechanism in place in the Department to check the correctness of the segment wise turnover figures furnished by the firms in their return by way of verification of annual accounts of the respective firms or by way of cross check with the data collected from stock exchanges for the purpose of levy of stamp duty. Audit observed that the Department did not develop any system to collect such revenue. We further noticed from the records of most of the firms for the period upto 2009 that the challans or the detailed monthly statements of segment wise turnover in support of the payment of stamp duty were not available on record. In the absence of challans and detailed statements of turnover, we could not work out the amount of short levy of stamp duty.

Mention was also earlier made in paragraph 5.3 of the Report of the Comptroller and Auditor General of India (Revenue Receipt), Government of Gujarat for the year ended 31 March 2009 on the above subject and revenue implications thereof. It was also recommended that the Government might consider to take appropriate measures to prevent leakage of such revenue.

After this was pointed out, the Department replied (September 2011) that meeting was held with stock exchanges for collection of trade wise information of clients based in Gujarat. Further, the Department also replied that SEBI and ROC have been asked to issue necessary instructions and warning to the companies not paying stamp duty on the trades carried out by them on behalf of their clients based in Gujarat.

Few illustrative cases wherein non/short levy of stamp duty was noticed by audit during test check of records are mentioned below:

5.6.14.1 Test check of records relating to Article 5(c) and 39(f) of Schedule I of BS Act, 1958 in the office of the Addl. SS for the period from 2005-2010 revealed that the Departmental officials did not collect stamp duty at the correct rate on the notes or memorandum sent by brokers or agents intimating the purchase or sale of shares, scrips etc., on behalf of the principal.

Two Companies[60] had applied incorrect rate of stamp duty on the notes or memorandum issued by them to the principals in respect of purchase or sale of any share, scrip etc., i.e., 0.007 *per cent* instead of 0.01 *per cent* in the case of delivery trade and 0.001 *per cent* instead of 0.002 *per cent* in the case of non delivery and future & option trades. The Departmental officers did not ascertain the correct payment of duty. This resulted in short levy of stamp duty of ₹ 23.49 lakh.

After this was pointed out, the Department replied (September 2011) that in the case of Karvy Stock Broking Ltd., deficit stamp duty of ₹ 17.01 lakh has been recovered (May 2011) and in the case of Dani Share and Stock Pvt. Ltd., notice has been served for intimating details of turnover for further necessary action by the Department.

[60] Karvy Stock Broking Ltd. in r/o 5/2008 to 2/2010 & Dani Share and Stock Pvt. Ltd., in r/o 4/2004 to 4/2008 and 3/2009 to 10/2009.

5.6.14.2 The State Government reduced the rate of stamp duty in respect of non delivery as well as future and option trading of shares, scrips etc., from 0.01 *per cent* to 0.001 *per cent* for the period from 01.04.2004 to 29.08.2006 with a condition that the person liable to pay duty has to make full payment of outstanding deficit duty up to 31.05.2007.

We noticed in three cases that the Companies[61] had not paid the stamp duty for the year 2003-04 and in one case[62] the deficit duty was not paid within the prescribed time and as such they were not eligible for the benefit of reduced rate of stamp duty. Grant of benefit of reduced rate of duty to these four Companies resulted in short levy of stamp duty of ₹ 7.23 crore.

After this was pointed out, the Department replied (September 2011) in respect of Fortune Fiscal Ltd., and KIFS Securities Pvt. Ltd., that notices were issued for recovery of deficit stamp duty. The Department replied (January 2012) that in respect of other two cases, they have remitted the stamp duty at Maharashtra State for the period 2003-04 and hence were eligible to claim the benefit of reduced rate of stamp duty. The reply of the Department is not tenable. The stamp duty paid by the two firms pertaining to the period 2003-04 at Maharashtra State in the case of non delivery trade was at a lower rate i.e. 0.002 *per cent*, while the duty was required to be paid at the rate of 0.007 *per cent* in Gujarat. Hence, differential duty was required to be levied from them for the period 2003-04, which also disallows them from being availing the benefit of reduced rate benefit for the period 01-04-2004 to 29-08-2006.

The Government may consider setting up a system of co-ordination with stock exchanges to collect segment-wise turnover data of brokers issuing notes or memorandum to the principals in the State so as to plug leakage of revenue.

5.6.15 Non/short levy of stamp duty on brokers note on commodity trading

Under Article 5(d) to (g), Article 39(a) to (d) and Article 48A (d) of Schedule I of the BS Act, 1958, stamp duty @ 0.001% is chargeable w.e.f 7th June 2006 on agreement, note or memorandum sent by a broker or agent to his principal intimating the purchase or sale of various commodities.

Three Commodity Exchanges[63] were in operation in the State during the period from 2005-06 to 2009-10. As per the information furnished by the Department in respect of the trading done by the registered members of the three exchanges during the period from April 2007 to August 2009, it was noticed that total turnover was

[61] Fortune Fiscal Ltd., Inventure Growth & Securities Ltd. and Marwadi Shares and Finance Ltd.

[62] KIFS Securities Pvt Ltd.

[63] National Commodities and Derivatives Exchange, Multi Commodity Exchange and National Multi Commodity Exchange.

₹ 15,41,647.40 crore on which they were liable to pay stamp duty of ₹ 15.42 crore. However, the total stamp duty collected by the Department for the above period was only ₹ 5.55 crore. This resulted in short realisation of revenue of ₹ 9.87 crore. The records further revealed that notices for recovery of stamp duty were not issued to the members/brokers who either had not paid the stamp duty during the period or paid lesser amount of stamp duty. The Department could not produce the details of trading done by the members/brokers of the three commodity exchanges during the period from April 2005 to March 2007 and from September 2009 to March 2010. This shows absence of system for collection of the vital data from commodity exchanges for the purpose of levy of duty.

After this was pointed out, the Department replied (September 2011) that notices have been issued (November 2010, January and March 2011) to the brokers for payment of stamp duty on the segment wise turnover figures. Further, the Department also replied that information have been called from the exchanges for brokerwise turnover for the period from 2007 to 2011. Further reply is awaited (November 2011).

5.6.16 Leakage of stamp duty due to non co-ordination with Income Tax Department

Based on Income Tax Department's instructions, the Inspector General of Registration instructed in 2005[64] to all Sub Registrars to provide details of registered documents of conveyances after interval of every six months wherein the value of sale consideration is more than ₹ 30 lakh. No mechanism is set up by IGR to obtain required information from the IT Department.

As per the existing instructions of IGR, the Sub Registrars in the State were required to send information to the Income Tax Department about conveyance deeds of ₹ 30 lakh and above. However, there was no system to collect information regarding the search, seizures or raid conducted by Income Tax Department in cases wherein undisclosed income on account of sale or purchase of immovable properties was involved and attracted higher stamp duty and registration fees.

During the course of audit of two Income Tax Offices[65] for the assessment year 2008-09, we noticed that during search/raid conducted by Income Tax authorities, assessees made disclosure of receipt of the additional consideration by them in cash for sale of land besides the consideration stated in the registered sale deeds. This additional amount of sale consideration received by the executants attracted stamp duty and registration fees as per the BS Act and the Registration Act. Since the assessees had undervalued their properties and shown less consideration in the registered documents, possibility of more such cases with the Income Tax Department cannot be

[64] IGR- 132/2005/8638-8669 dated 30th August 2005.

[65] Assistant Commissioner of Income Tax, Circle I, Ahmedabad and Dy. Commissioner of Income Tax, Central Circle 2(1).

ruled out. The Department had failed to set up any arrangement to collect information about cases of search and seizure from the Income Tax Department. This resulted in leakage of revenue of ₹ 45.08 lakh.

After this was pointed out, the Department replied (August 2011) that they would co-ordinate with Income Tax Department to collect the information regarding the search, seizures or raid conducted by Income Tax Department in cases wherein undisclosed income on sale or purchase of immovable properties is involved and attracted higher duty and registration fees as well. The Department further stated that after collection of the required information, necessary action will be taken to recover the deficit stamp duty and registration fees.

The Government may devise a system for co-ordination with Income Tax Department to collect periodical data of cases of suppression of sale consideration wherein deficit stamp duty and registration fee is involved.

5.6.17 Non/short levy of stamp duty on leave and license agreements

Article 30A of Schedule I of BS Act provides for levy of stamp duty on leave and license agreements relating to immovable property other than residential property at the rate of fifty paise for every hundred rupees or part thereof on the whole amount payable or deliverable plus the total amount of fine or premium or money advanced or to be advanced irrespective of the period for which such leave and license agreement is executed.

As per the information collected by us from two local bodies[66], we noticed that during the period 2006-07 to 2009-10, they had executed four agreements relating to erection of advertisement boards on electric poles falling under their jurisdiction. The said instruments were required to be classified as leave and license agreements and stamp duty was chargeable at prescribed rate thereon. However, the executants had either not paid any stamp duty or executed the agreement on non-judicial stamp papers of ₹ 100, which resulted in non/short levy of stamp duty of ₹ 11.55 lakh.

After this was pointed out, the Department while accepting the audit observation stated (September 2011) that the records would be called for and proper stamp duty would be levied on the instruments. Besides, they have also stated that necessary instructions have been issued (September 2011) to the concerned authorities to send quarterly return to the SS office stating the nature of the agreement and stamp duty levied thereon.

[66] Ahmedabad Municipal Corporation and Vadodara Municipal Corporation.

5.6.18 Short levy of consolidated stamp duty on debentures

Article 27 of Indian Stamp Act, 1899 provides for levy of stamp duty on debentures. Ministry of Finance, Revenue Department, Government of India vide Order no. SO2189 (E) dated 12-09-2008 had revised the rate of stamp duty chargeable on debentures at 0.05 *per cent* per year of the face value of the debenture, subject to a maximum of 0.25 *per cent* or rupees twenty five lakh, whichever is lower.

Test check of records in the office of the Addl. SS revealed that permission was given by the Department to Axis Bank Ltd., (Bank) during 2008-09 for payment of consolidated stamp duty on the issue of 15,000 debentures. The face value of each debenture was ₹ 10,00,000 and the total value of debentures allotted was ₹ 1,500 crore. We noticed that the Department had levied and collected consolidated stamp duty of ₹ 2.50 crore instead of ₹ 3.75 crore. This resulted in short levy of consolidated stamp duty of ₹ 1.25 crore.

After this was pointed out, the Department while accepting (August 2011) the audit observations stated that demand notices were issued (January and July 2011) to Axis Bank Ltd., for recovery of deficit stamp duty on debentures issued.

5.6.19 Short levy of stamp duty due to misclassification of instruments – Debentures treated as promissory notes

As per Section 2(22) of the Indian Stamp Act, Promissory note means a promissory note as defined by the Negotiable Instruments Act, 1888. According to Section 2(12) of Companies Act, 1956, "debenture" includes bonds. In instrument of Bond, an executant specifies period or date of repayment. It also provides for the payment of a specified principal and interest on the specified date.

Test check of files and cheque register in the office of the Addl. SS revealed that State Bank of Saurashtra, Bhavnagar had issued (09th March 2006) 'bonds in the nature of promissory notes' valued ₹ 200 crore during 2005-06 and ₹ 225 crore during 2006-07. The Bank paid ₹ 2.13 crore towards consolidated stamp duty considering the instruments as promissory notes. The classification of the instrument as promissory note or bond/debenture has to be made in accordance with the terms and conditions mentioned therein. The copy of the instrument was not available on record and hence, audit could not ascertain the correct classification of the instrument. However, the SS office classified the instruments as debenture and accordingly notice was issued (January 2007 and July 2008) to the bank for the deficit duty chargeable thereon. Stamp duty chargeable on the instruments

as debentures worked out to ₹ 3.19 crore. However, the bank paid stamp duty of ₹ 2.13 crore only. The deficit duty of ₹ 1.06 crore has not been collected till date.

After this was pointed out, the Department stated (September 2011) that they have sought copies of bonds from the bank to decide the classification of instruments. Further reply is awaited (November 2011).

5.6.20 Violation of provisions of the Act under Amnesty Schemes - 2006 and Amnesty Scheme - 2007

Section 9 (a) of the BS Act empowers the State Government to reduce or remit the stamp duty chargeable under an instrument. While, Section 46 of the BS Act read with Rule 30A of Gujarat Stamp Rules, 1978 prescribes recovery of simple interest at the rate of 15 *per cent* per annum from persons, who do not pay the deficit duty, penalty or other sums payable under the Act within ninety days from the date of receipt of the order.

The Government of Gujarat in exercise of the powers conferred by clause (a) of Section 9 read with Section 46 of the BS Act, under the Amnesty Schemes 2006 and 2007 remitted/reduced stamp duty along with the interest payable on the instruments where the order under Section 32A or 32B of the BS Act had been passed by DC. We noticed that the provisions of the Act do not empower the State Government to remit or reduce the interest payable on any instrument but only empowers the Government to remit or reduce the stamp duty chargeable on any given instrument. However, in violation of the provisions of the Act, the State Government issued orders to reduce the entire amount of interest payable on instruments under the two Amnesty Schemes introduced in the year 2006 and 2007.

After this was pointed out, the Department replied (August 2011) that the interest is chargeable on the amount of stamp duty and when Government remits the stamp duty, then question of recovering interest does not arise. The reply is not tenable because there is no specific provision in the Act which enables Government to remit or reduce interest.

The Government may consider inserting enabling provisions under Section 46 of BS Act in line with Section 119(2)(a) of Income Tax Act, 1961 wherein, powers have been delegated to Central Board of Direct Taxes (CBDT) to issue circulars for waiver of interest in peculiar circumstances of cases.

5.6.21 Short recovery of service charges

As per Section 46(2) of Bombay Stamp Act, 1958, all duties, penalties, interest and other sums required to be paid under the Act may be recovered by the Collector by distress sale of the movable or immovable property of the person from whom the same are due or as an arrears of land revenue. Under Rule 117-C of the Gujarat Land Revenue Rules, 1972, as amended by Notification No.GMM 83-M-96-LRR-2171-109334-L dated 13th May 1983, cases wherein recovery proceedings have to be adopted/under recovery of dues treated as arrears of land revenue, as a result of default in payment by the defaulters, five *per cent* of the dues recoverable as arrears of land revenue under any law for the time being in force shall be recovered as service charges from the defaulters.

5.6.21.1 During test check of records in three DC offices[67] for the period 2006-07, we noticed that in 1,965 cases, no service charge was levied on amount of ₹ 1.76 crore recovered as arrears of land revenue. This resulted in non-levy of service charges of ₹ 8.82 lakh.

5.6.21.2 Test check of records in the office of two DCs[68] revealed that the service charges were levied only on the portion of deficit stamp duty and penalty excluding the interest element. As per the provision in the BS Act, the interest element was also required to be recovered as arrears of land revenue. Non-inclusion of interest element of ₹ 1.44 crore for the purpose of levy of service charges between April 2009 and March 2010 resulted in short recovery of service charges of ₹ 6.79 lakh. The information regarding service charges recoverable on interest element by remaining 24 DC offices was not furnished to audit.

After this was pointed out, the Department stated (August 2011) that recovery in 150 cases amounting to ₹ 26,821 have been effected by one DC. In all other cases, information has been called from DCs for further necessary action.

[67] Dy. Collector (SDVO), Bharuch, Patan and Rajkot-I.

[68] Dy. Collector (SDVO)-I, Vadodara & Dy. Collector (SDVO)-I, Ahmedabad.

5.6.22 Non-levy of stamp duty on transactions in Government securities

Stamp duty is chargeable on purchase and sale of Government securities covered under Article 5 (b), 18 A (1), 39 (g) and 48 A (a) of Schedule I of the BS Act. The rate of stamp duty applicable to instruments falling under 5(b) is rupee one for every ten thousand rupees or part there of the value of the security, while one hundred rupees is payable in the case of documents falling under 39(g) and 48(a) of Schedule I. As per Article 18A(1), stamp duty chargeable is the sum of duties payable under Article 5 (b) or 39 (g), as the case may be relating to the transaction for the purchase and sale of Government securities submitted to the clearing house of a stock exchange.

The Department did not evolve any mechanism or system to ascertain and levy the total amount of stamp duty chargeable on purchase and sale of Government securities. Under Section 3 of BS Act, first issue of Government securities is exempted from payment of duty. However, the Department did not have the data relating to the transactions carried out by banks/brokers/agents of the State through Stock exchanges relating to Government securities and stamp duty leviable thereon. In the absence of data, we could not assess the amount of non/short levy of stamp duty on purchase and sale of Government securities.

After this was pointed out, the Department replied (August 2011) that information has been called for from BSE and NSE for levy of stamp duty on transactions of Government securities.

5.6.23 Non-levy of interest on delayed payment of stamp duty

Section 46 of the BS Act read with Rule 30A of Gujarat Stamp Rules, 1978 provide for recovery of simple interest at the rate of fifteen *per cent* per annum from persons, who do not pay the deficit duty, penalty or other sums payable under the Act within ninety days from the date of receipt of the order. Under the provisions of the Act (Section 32), only DCs are empowered to issue orders. Thus cases wherein orders/notices issued by Additional SS for payment of deficit duty are not covered by Section 32 and interest is not levied on delayed payment of duty.

Test check of records in the office of the Addl. SS revealed that many instruments falling under various articles of Schedule I of the BS Act were produced before the Addl. SS for assessment and payment of proper stamp duty. In such cases, either the party itself paid the duty directly, or the Addl. SS issued notice to party for payment of deficit stamp duty. Since these notices did not fall under the provisions of Section 32, the Departmental officials could not levy interest under Rule 30A of Gujarat Stamp Rules for delay in payment of duty. Due to this lacuna in the Act and Rules, the Government lost substantial amount of interest on delayed payment of stamp duty. In five[69] cases, due to the lacuna in the Act and Rules, we noticed that potential loss of revenue on account of interest was of ₹ 1.51 crore.

After this was pointed out, the Department stated (August 2011) that since the final orders have not yet been passed in the five cases pointed out in Audit, question of levy of interest does not arise. The reply is not tenable because there are no enabling provisions in the Act/Rules to levy interest at the time of issue of final orders in the above five cases.

The Department may consider either to get the rules amended or the orders of Addl. SS may be issued through concerned DCs, in order to invoke the provisions of Section 32 of the Act.

5.6.24 Department's achievement

The Department implemented a new computer system "Registration of Documents System" designed by NIC initially in 25 SR Offices and later extended to all the other SR offices from April 2007. The Department has been regularly updating the system with various valuable functions to improve the efficiency of the registration activities and to safeguard public interest. During the year 2010-11, the Department had implemented E-governance through "Garvi" system in cases of conveyance of agricultural land wherein the validation of registered document is done simultaneously in the Village Forms under Bombay Land Revenue Code, 1879.

[69] (1) R.K.Global Shares & Securities Ltd. on brokers note issued - ₹ 1,27,849,
(2) & (3) Axis Bank on issue of equity shares and debentures - ₹ 70,16,026 and
(4) & (5) State Bank of Saurashtra on issue of bonds/debentures – ₹ 79,06,250.

5.6.25 Internal audit

Rule 77 of the Gujarat Registration Rules, 1970 provides for inspection of registering offices by designated Registrars and Inspectors. Every Registrar should inspect the offices of the Sub-Registrars (SRs) in the district at least once in every two years. Rule 78 prescribes that every Inspector of Registration (IR) should inspect the office of the SR once in a year. Further, the Revenue Department vide their circular no.TAPAS-102001-3357(1)-N.1 dated 22nd November 2001, have prescribed the number of surprise visits to be undertaken by the IGR, Dy. IGR, Asst. IGR and IR in the SR offices.

As per the information furnished by the Department, IRs were required to carry out 758 inspections of records of the SR offices during the period 2006 to 2010. IRs carried out only 260 inspections and thus there was shortfall of 498 inspections as mentioned in the table below:

Year	No. of offices to be inspected	No. of offices covered in inspection	Shortfall	% of shortfall
2006	148	61	87	58.78
2007	149	51	98	65.77
2008	150	53	97	64.67
2009	150	43	107	71.33
2010	161	52	109	67.70
Total	**758**	**260**	**498**	**65.70**

During the period from January 2005 to December 2009, 34,09,484 documents were registered by the SRs, out of which the IRs carried out internal audit of only 14,70,822 documents. This resulted in shortfall of audit of 19,38,662 documents i.e., 56.86 *per cent*. We further observed that no audit was conducted in 39 SR offices during the period 2005-09. The IRs checked 14,70,822 documents out of which objection was raised in 3480 documents. The Department complied objections in 2152 documents. Final compliance in 1328 documents has not been furnished so far.

Regarding the surprise visits by the IGR, Dy. IGR, Asst. IGR and IR based on Revenue Department's circular of 22nd November 2001, we noticed that there was shortfall of inspections by IGR ranging from 42 to 81 *per cent*, Dy.IGR from 42 to 92 *per cent*, Assistant IGR from 11 to 100 *per cent* and Inspector of Registration from 75 to 100 *per cent*.

After this was pointed out, the IGR stated (March 2011) that shortfall in inspection was due to shortage of manpower and increase in workload on existing staff. However, records did not indicate any action initiated by the Department to improve staff strength or outsource the work.

5.6.26 Working of E-Stamping in Gujarat

5.6.26.1 Introduction

E-stamping is a secured electronic way of paying for non-judicial stamps to the Government. Gujarat State was the first to introduce e-stamping in the country. Stock Holding Corporation of India (SHCIL), being the Central Record Keeping Agency, is responsible for overall application and maintenance of e-stamping in the State. SHCIL and the three Authorised Collection Centres (ACC) appointed by them having 49 branches at various places within the State issue e-stamp certificates to the clients. ACC acts as an intermediary between SHCIL and stamp duty payer. The e-stamp certificate is designed with advanced security features which includes Unique Identification Number (UIN), Optical watermark, 2D Barcode and Microprint. Other important features of the e-stamping include:

a. The client can verify the authenticity of the e-stamp certificate online with the help of UIN printed on the e-stamp certificate.

b. SRs can lock the e-stamp certificate online once it is used in a registrable document so that the certificate cannot be reused or cancelled for refund.

E-stamping, a web based application system was introduced with a view:

(1) to prevent paper and process related fraudulent practices;

(2) to provide secure and reliable collection mechanism;

(3) to store information in electronic form; and

(4) to build a central data repository to facilitate easy verification and generation of MIS reports.

The revenue collected by the Department on account of sale of e-stamps in Gujarat during 01.04.2007 to 31.03.2010 is given in the table below:

(₹ in crore)

Period	Number of e-stamp certificates issued	Stamp duty collected through E-stamping	Total Stamp duty collection	% of e-stamping *vis-à-vis* total stamp duty collection
2007-08	57,069	48.57	2018.44	2.41
2008-09	66,380	66.91	1728.50	3.87
2009-10	2,24,216	249.00	2556.72	9.74

From the above, it can be seen that the revenue collected through e-stamping during 2009-10 increased by 272 *per cent* as compared to 2008-09. The increase in revenue is attributed to the public acceptability of the system.

5.6.26.2 Audit observations

During the audit of system of e-stamping, the following deficiencies were noticed:

5.6.26.2.1. Deficiency in security features

The salient features of e-stamping system is that the certificate can be printed only once and cannot be photocopied for reuse as the optical watermark in the back ground changes from 'Original' to 'COPY'. However, audit noticed that with the help of high resolution scanner and printer, the e-stamp certificate can be duplicated for multiple uses. The online system of e-stamping provides for locking of certificates by SRs once the e-stamp certificate along with the instrument is presented before him for registration. This facility is provided with an intention to avoid multiple use of the same e-stamp certificate in another document. Further, locking of certificates is required to be checked at the time of processing refund application in order to ensure that it has not been used earlier.

Audit noticed that the procedure of locking e-stamp certificate is not followed by most of the SRs. Moreover, the ReD system[70] used in the SR offices for registration of documents provides a field for entering Unique Identification Number (UIN). However, as the UIN field is not made mandatory, most of the SR offices have not entered UIN in the ReD system. Due to non-locking and non-entering of UIN in the ReD system, the possibility of fraud by using e-stamp more than once cannot be ruled out.

After this was pointed out, the Department replied (August 2011) that all SRs have been instructed to lock the E-Stamping Certificate to avoid multiple use of it. Further, Department also stated that a meeting was conducted with SHCIL to provide user IDs and passwords to all the SRs by the end of August 2011.

5.6.26.2.2. Non-reconciliation of remittances

The stamp duty collected by the ACC branches and counters on each day is being consolidated by the SHCIL and paid by a single cheque on the next day to the Stamp Office at Ahmedabad. The Stamp Office deposits the same into the Government account.

However, we noticed that the Stamp Office has not evolved any mechanism to cross verify the veracity of the amount of stamp duty collected and actually paid by the ACC branches and counters around the State. Further, no reconciliation of remittances made into the treasury was carried out by the Department till date (November 2011).

[70] Software designed by NIC for Registration of documents in the electronic form.

Compliance Deficiencies

5.6.27 Short levy of stamp duty and registration fees on instrument comprising several distinct matters

Under Section 5 of the BS Act, any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of duties for which such separate instrument would be chargeable under the Act. As per various judgements of courts, at the time of registration of document, regard should be given to the substance of the document and not to the description at the head of the document. We noticed many cases in which the documents contained more than one transaction. The SR failed to take cognizance of the recitals of the document and levy the stamp duty on the transaction which was not registered earlier. Such cases have been explained in detail in para 5.6.27.1 to 5.6.27.3.

5.6.27.1 Non-levy of stamp duty on release of property by co-owner

As per Explanation I under Section 2(g) of the BS Act, an instrument other than an instrument of partition, whereby a co-owner of any property, transfers his interest to another co-owner of the property, shall be deemed to be an instrument by which property is transferred *inter-vivos* and is chargeable to duty as conveyance.

During test check of documents of eleven SR Offices[71] and DC, Bhuj, we noticed from recitals of 45 documents that there was mention of release of property by one co-owner in favour of another co-owner and sale of property to the purchaser. However, the SRs did not take cognizance of the recitals of the documents and verify the nature of transaction through the document. Stamp duty involved in these cases was ₹ 1.80 crore.

After this was pointed out to the Department between July 2010 and May 2011, the Department stated that the DCs have been instructed to take immediate action for recovery of dues.

[71] Ahmedabad-I, II, III, IV, Himatnagar, Surat-I, II, III, IV & Vadodara II, IV

5.6.27.2 Non-levy of separate stamp duty on loans taken from different banks

As per circular issued by SS in 2007, documents falling under the category of distinct matters under Section 5 of the BS Act would also include different transactions from different institutions/ individuals/companies and if mortgage, conveyance etc., are executed in a single document then as per section 5 are chargeable to duty considering it as separate document.

During test check of documents registered with four SR offices[72], it was noticed that loan of ₹ 635.62 crore was taken from different banks by loanees. The Registering authorities levied stamp duty only on the total amount of loan taken from different Banks instead of and levying separate stamp duty on loan taken from each bank treating this transaction under section 5. This resulted in short levy of stamp duty of ₹ 43 lakh in eight cases.

After this was pointed out to the Department in May 2011, the Department stated (August 2011) that they would refer to guidelines issued by RBI in cases where many banks form a consortium to fund a single loanee.

5.6.28 Short levy of stamp duty and registration fees due to misclassification of deeds

Under Section 3 of the BS Act, every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. As per various judgements of courts, at the time of registration of document, regard should be had to the substance of the document and not to the description at the head of the document.

During test check of documents in the office of the Addl. SS and three SR offices, we noticed that 28 documents registered in 2009 were classified on the basis of their titles and the stamp duty and registration fees were levied accordingly. Scrutiny of the recitals of these documents revealed that the documents were misclassified. This resulted in short levy of stamp duty and registration fees of ₹ 7.15 crore as mentioned in the following table:

[72] Ahmedabad-V, Bharuch, Morbi & Valsad.

(₹ in crore)

Sl. No.	Location	No. of Documents	Consideration	Short Levy	Nature of objection
1	Gandhinagar-Additional Superintendent of Stamps	17	977.20	6.84	Recitals of the documents indicated that the Company agreed to create an additional security in favour of the Security Trustee and agent by way of mortgage and charge on its immovable properties and hence documents were classifiable as "Mortgage with additional security" instead of an agreement.
2	Ahmedabad-III, IV, Gandhinagar	11	6.81	0.31	Recitals of documents indicated that release of rights over properties was by one co-owner in favour of another co-owner. Stamp duty was chargeable as conveyance but stamp duty was levied at the rate applicable to partition deed.

After this was pointed out to the Department in May 2011, the Department accepted the audit observations and stated (August 2011) that out of total 28 cases, in 11 cases demand notices are being issued/had been issued. The Department had instructed all the DCs to take immediate action for recovery of dues in the remaining cases.

5.6.29 Stamp duty foregone due to non-execution of conveyance deeds between owners and developer of properties

Stamp duty chargeable on 'Development agreement' is covered under Article 5(ga) and 45(g) of Schedule I of Bombay Stamp Act, 1958. As per Article 5(ga) agreement given to a promoter or developer, by whatever name called for construction or development of or sale or transfer (in any manner whatsoever) of any immovable property stamp duty at the rate of 1 *per cent* is chargeable. This Article was inserted in the Act from 1st September, 2001.

In case of development agreement, the owner of the land hands over the land to the developer and the developed property along with the right in land is sold to the buyer. Since the ownership of land is not transferred by the owner to the developer, the developer does not get the right to transfer the land to the buyer. It is necessary that after the development of property is completed, a proper conveyance deed is executed between the owner/s and the developer of property.

During test check of records of five SR offices[73], we noticed in eight documents registered between 2007 and 2009 that consideration was already paid/agreed to be paid by the developer to the land owner before the development of the property. The land owner also empowered the developer to sell the constructed/developed properties, along with the right in land and to receive its consideration. Since the power to sell the land cannot be transferred without the execution of conveyance deed for land; the parties in these development agreements should have executed separate conveyance deeds conveying the land to the developer. In one of these documents, it was clearly mentioned in the recitals of the agreement that a separate agreement would be entered into by the parties to convey the land. Despite this, the Sub Registrar did not insist on the execution of conveyance deed for land. The Sub Registrars also could not confirm whether separate conveyance deeds were executed by the parties for land or not, in absence of any system developed for watching registration of conveyance deeds.

Non-insistence of separate conveyance deed by the owners of land in favour of developers in such kind of transactions resulted in transfer of land without payment of proper stamp duty. The stamp duty foregone was to the tune of ₹ 2.26 crore in such cases.

After this was pointed out to the Department between August 2009 and May 2011, the Department accepted the audit observations and stated (August 2011) that demand notices are being issued/had been issued and instructions have been issued to all the DCs to take immediate action for recovery of dues.

Department may consider issuing instructions to SRs to insist for separate conveyance deeds in all cases where the development agreement contains recitals regarding transfer of right to sell the land to developer and of land value has been paid/agreed to be paid by the developer.

[73] Ahmedabad-III, IV, V, Gandhinagar & Vadodara I

5.6.30 Short levy of stamp duty due to undervaluation of properties

Section 32 A the Bombay Stamp Act, 1958 provides that if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall, before registering the document, refer the same to the DC for determination of the market value of the property. The market value of the property is to be determined in accordance with the Bombay Stamp (Determination of Market Value of the Property) Rules, 1984. IGR in his circular dated 26th November 2007, instructed to all SRs to include area of common plot, internal road etc in total area of land for arriving at the market value of property for the purpose of levy of stamp duty. As per the guidelines issued for implementation of revised *Jantri* rates effective from 1st April 2008, where agricultural land is purchased for non-agricultural purposes with the permission of competent authority and total area of such land is more than 10,000 sq m, duty at concessional rate i.e. 20 *per cent* less than the effective rate of the duty is chargeable, if order of competent authority is presented at the time of registration. Further, as per guidelines issued in the new *Jantri* developed land includes land which can be used for non-agriculture purpose, land wherein development can take place or which is capable of being developed e.g. land converted into non agriculture, land included in development scheme (*vikas yojana*)/Town Planning scheme, land purchased under Section 63 A and 63 AA of the Bombay Tenancy Act, 1948 and land included in SEZ and IT parks. However, when shop is included in Mall, Arcade or Multiplexes no rebate in floor or frontage should be given.

During test check of documents of 37 SR offices, DC, Anand, Addl.SS, Gandhinagar and DDO, Anand between 2004 and 2009, we noticed that the market value of the properties was determined incorrectly in 368 documents, which resulted in short levy of stamp duty and registration fee of ₹ 7.09 crore as mentioned in the following table:

(₹ in lakh)

Sl. No.	Location	No. of documents	Short levy	Nature of irregularity
1.	Ahmedabad-VI, Anjar, Dehgam, Kalol(Pms), Savli, Surat-II, III, IV, Vadadora-IV	9	64.88	Government has prescribed *jantri* for determination of market value of the land and properties respectively. Instead of adopting the *jantri* rates, lesser value of the properties as shown in the document was accepted.
2.	Ahmedabad-V, Anjar, Gandhinagar-Additional Superintendent of Stamps, Jamnagar-1, Navsari, Rajkot –IV, Surat-I, II, Vadodara-I, III.	17	194.77	While calculating the market value, the registering authorities adopted incorrect rates. In four cases, land was included in TP. In two cases the land in question was non agricultural and in one case, agricultural land was given to non agriculturist. However, Revenue Authorities (RAs) valued the land at the rate applicable to agricultural land. In one case, the land could be used for commercial cum industrial use hence rate of developed land was to be applied. However, RA applied rate of industrial use. In one case, value of construction was not taken into consideration. In one case, incorrect rebate was given to shop in Mall. In three cases, rate of agreement to sell was taken into consideration instead of rate prevailing at the time of conveyance. In one case, rate of revenue survey number was taken into consideration though the land was included in TP and rate of TP was available in the *jantri*. In three cases, rate of another TP scheme was adopted though the particular survey No. fell in another TP where the rates were higher.
3.	Ahmedabad-V, Anjar, Bardoli, Jamjodhpur, Jamnagar-I, Jhagadia, Mangrol, Mehsana, Morbi, Olpad, Padra, Sanand, Vadodara-IV, Valsad	41	181.28	While calculating market value of land, Sub Registrars considered rate of agricultural land instead of developed land, although the land was purchased by non agriculturists.

4.	Anjar, Mandvi	277	156.52	Reduction of 20 *per cent* in rate was given in respect of land purchased for non agricultural use where the area of land was more than 10,000 sq. mtrs. although copy of permission by competent authority was not presented with the document.
5.	Ahmedabad-V, Anand-DDO, Borsad, Kadi, Sanand, Vadodara-II.	14	58.68	While calculating the market value, the Sub Registrars adopted the rate of agricultural land instead of developed land, although permission had already been given under the Bombay Tenancy Act.
6.	Ahmedabad-I, Vadodara-III	3	9.26	While calculating the market value the Sub Registrars excluded the area of common plot and road.
7	Anand-DC(SDVO), Anjar, Ahmedabad-III, VII, Bhuj-., Gandhidham	7	43.97	Government of Gujarat revised the *jantri* rates from February and April 2007 and new *jantri* rates came into effect from 1st April 2008. While calculating the market value, the Sub Registrar applied the market value of the land at pre revised/old *jantri* rate.

After this was pointed out to the Department between July 2010 and May 2011, the Department accepted the audit observations and stated (August 2011) that out of total 368 cases, in three cases of DC, Anand, the Department accepted undervaluation amounting to ₹ 65,464. In 364 cases, demand notices are being issued/had been issued. No reply has been received in remaining one case.

5.6.31 Non-realisation of stamp duty due to non-registration of documents

Section 33 of the Bombay Stamp Act (as applicable to Gujarat) empowers every person in charge of a public office to impound any instrument, produced before him in performance of his functions, if it appears that such instrument is not duly stamped.

During test check of the documents of 20[74] SR offices and DC, Gandhinagar, it was noticed that recitals of the documents registered between 2006 and 2009 indicated need for execution of another document. The executants of those documents did not register their documents with the registering authorities. Of these, in 76 cases, development agreements were not registered, and in 10 cases the agreements to sale with possession were not registered. The Sub-Registrars did not detect

[74] Ahmedabad-I, II, IV, VI, Dehgam, Deesa, Gandhinagar, Nadiad, Palanpur, Pardi, Patan, Rajkot-I, Sanand, Surat-I, II, III, Vadodara-I, II, IV, Visnagar

the cases where execution of another document was necessary and failed to initiate action to get the earlier document for scrutiny for the purpose of levy of proper stamp duty. Stamp duty involved in these cases was ₹ 3.26 crore.

After this was pointed out to the Department between July 2010 and May 2011, the Department accepted the audit observations and stated (August 2011) that out of total 86 cases, in 84 cases, demand notices are being issued/ had been issued. No reply has been received in the remaining two cases.

5.6.32 Short levy of Registration fees

The Government revised rate of registration fees from 10th August, 1988. As per revised fee table, registration fees on partnership deed, partition etc. is leviable on ad valorem scale at the rate of 1 *per cent* on the amount or value of property. As per Section 23 of the Indian Registration Act, documents have to be presented within four months from the date of execution. The Gujarat Registration Rules, 1970 provides for levy of fine of 2.5 times the proper amount of registration fees for every month.

During test check of the documents of eight[75] SR offices, between 2008 and 2009, we noticed in 15 documents that registration fees was not levied correctly. Registration fees was short levied due to (i) non consideration of market value, (ii) unpaid wages and salary payable transferred to the purchaser were not considered, (iii) cash brought in by partner was not considered etc. and (iv) in one case document was presented for registration after lapse of six months from the date of execution. This resulted in short levy of registration fees of ₹ 1.24 crore.

After this was pointed out to the Department between 2008 and 2009, the Department accepted the audit observation and stated (August 2011) that out of total 15 cases, in 2 cases, the Department had recovered an amount of ₹ 4.59 lakh. In one case, certificate had been issued under Section 80-C-1 of Registration Act. In remaining 12 cases, demand notices are being issued/have been issued.

[75] Ahmedabad-II, V, VII, Gandhinagar, Rajkot-I, Surat-I, III, IV.

5.6.33 Non/short levy of stamp duty and registration fees on dissolution of partnership

As per Article 44(3) (a) of the BS Act where any immovable property is taken as share on dissolution of partnership by a partner other than a partner who brought that property as a share or contribution to partnership, stamp duty is chargeable at the rate applicable on a conveyance.

During test check of records of five[76] SR offices, we noticed between 2008 and 2009 that in nine documents, although at the time of dissolution of partnership the partners distributed among themselves immovable property purchased by their respective firms, the Departmental officials did not levy stamp duty at the rate applicable to conveyance. This resulted in non/short levy of stamp duty and registration fees of ₹ 67.34 lakh.

After this was pointed out to the Department between January and May 2011, the Department stated (August 2011) that out of total 9 cases, in 3 cases, demand notices are being issued/have been issued. The Department instructed all the Dy. Collectors to take immediate action for recovery of dues in the remaining cases.

5.6.34 Short levy of stamp duty and registration fees due to incorrect computation of consideration

As per Section 2(g) of the BS Act (as applicable to the State of Gujarat), conveyance on sale includes every instrument by which movable/ immovable property is transferred *inter vivos*. Thus, when movable property is sold or transferred, the total value of such property is to be taken for the purpose of levy of the stamp duty and registration fees.

During test check of the records of four[77] SR offices between 2005 and 2009, we noticed in four cases that properties (movable and immovable) of defaulters were sold through auction by financial institutions to recover their outstanding dues. Recitals of document revealed that consideration of movable properties (i.e. plant, machinery etc.,) valued at ₹ 12.17 crore was not included in total sale consideration of properties for the purpose of levy of stamp duty and registration fees. This resulted in short levy of stamp duty and registration fees of ₹ 50.23 lakh.

After this was pointed out to the Department between September 2009 and May 2011, the Department accepted the audit observation and stated (August 2011) that in all cases, demand notices are being issued/have been issued. The Department instructed all the DCs to take immediate action for recovery of dues in these cases.

[76] Jamnagar-1, Kamraj, Surat-I, II, III.
[77] Dholka, Kalol(PMS), Morbi, Vadodara-III.

5.6.35 Short levy of stamp duty and registration fees on lease deeds due to incorrect computation

The Bombay Stamp Act (as applicable to the State of Gujarat) provides for levy of stamp duty on lease at the rate applicable to conveyance deed. For calculation of consideration for the purpose of levy of stamp duty on lease deeds, average annual rent reserved depending on the period of lease is to be considered. Further premium paid or money advanced is also to be added in the consideration.

During test check of the documents of three[78] SR offices between 2008 and 2009, we noticed in two documents that escalation in maintenance and property tax were not taken into consideration for the purpose of levy of duty. In one case, lease was for a period of 20 years with escalation in rent at the rate of 15 *per cent* after every 3 years and hence stamp duty and registration fee was chargeable on twice the amount of annual average rent reserved, and in another case the lease was for a period of 50 years with escalation in rent at the rate of 15 *per cent* after every 3 years and hence stamp duty and registration fees was chargeable on thrice the amount of annual average rent reserved. However, in both the cases there was a mistake in working out the annual average rent reserved. This resulted in short levy of stamp duty and registration fees of ₹ 16.46 lakh.

After this was pointed out to the Department between September 2010 and March 2011, the Department accepted the audit observation and stated (August 2011) that in all cases, demand notices are being issued/ have been issued. The Department also instructed all the DCs to take immediate action for recovery of dues in these cases.

5.6.36 Instrument not duly stamped

Section 17 of the Bombay Stamp Act (as applicable to the State of Gujarat), prescribes that all instruments chargeable with duty and executed by any person in the state shall be stamped before or at the time of execution or immediately thereafter on the next working day following the date of execution.

During test check of documents of two[79] SR offices in 2009, we noticed in seven documents that the stamps were used after the execution of the documents. This resulted in short levy of stamp duty of ₹ 14.39 lakh due to use of invalid stamps.

After this was pointed out to the Department in May 2011, the Department accepted the audit observations and stated (August 2011) that in all cases demand notices have been issued. The Department had instructed DCs to take immediate action for recovery of dues in these cases.

[78] Rajkot-III, Vadodara-I, IV
[79] Ahmedabad-IV, Gandhinagar

5.6.37 Conclusion

The review revealed a number of system and compliance deficiencies. Management information system prevailing in the Department is very weak. There was no system to maintain proper database to monitor timely realisation of arrears of duty. There was leakage of revenue due to absence of system of co-ordination with various government organisations executing instruments liable for payment of stamp duty. Internal control system of the Department was weak due to shortage of manpower. There is a lacuna in the BS Act and Gujarat Stamp Rules 1978 which results in non-levy of interest on delayed payment of stamp duty.

5.6.38 Summary of recommendations

The Government may consider implementing the following recommendations to rectify the deficiencies and improve the system:

- The Government may consider introducing a system of co-ordination with various authorities/Departments so as to ensure levy of proper stamp duty on instruments falling under Schedule I of BS Act.
- Government may consider to insert Explanation under Article 24 of Schedule I of the Bombay Stamp Act in line with Maharashtra for charging stamp duty on delivery orders of goods imported through ICDs and Air Cargo.
- The Government may consider publicising the importance of levy of stamp duty on instruments to the mass public for creating awareness, which would decrease non compliance and would further increase revenue.
- The Government may consider amending the BS Act and GS Rules in order to levy interest on delayed payment of stamp duty.
- The Government may consider setting up a system of co-ordination with ROC to collect data regarding registered companies raising fund and allotting shares so as to levy and collect proper stamp duty.
- The Government may consider setting up a system of co-ordination with stock exchanges to collect segment-wise turnover data of brokers issuing notes or memorandum to the principals in the State so as to plug leakage of revenue.
- The Government may devise a system for co-ordination with Income Tax Department to collect periodical data of cases of suppression of sale consideration wherein deficit stamp duty and registration fee is involved.
- Inserting enabling provisions under Section 46 of BS Act in line with Section 119(2)(a) of Income Tax Act, 1961 wherein, powers have been delegated to Central Board of Direct Taxes (CBDT) to issue circulars for waiver of interest in peculiar circumstances of cases.

CHAPTER VI

EXECUTIVE SUMMARY

Results of audits conducted by us in 2010-11

We test checked the records of offices of various departmental offices relating to Entertainments tax, Luxury tax and Electricity duty in the State during the year 2010-11 and noticed short realisation of tax and other irregularities involving ₹ 36.60 crore in 111 cases. During the course of the year, the Department accepted underassessment and other irregularities of ₹ 68.72 crore in 65 cases, of which seven cases involving ₹ 21.79 lakh were pointed out during the year 2010-11 and the rest in earlier years. An amount of ₹ 2.23 crore was recovered in 49 cases during the year 2010-11.

What we have highlighted in this Chapter

A Performance Audit on "**Working of Electricity Duty Department**" revealed the following:

- The Department was saddled with huge arrears of electricity duty which stood at ₹ 743.60 crore. No arrears had been recovered in past 3 years.
- *M/s. Arunodaya Mills Ltd.*, Morbi did not pay duty for the period from June 2004 to September 2006 as contemplated in the rule. The Department had not referred the case to the Collector in time for recovery of its dues as arrears of land revenue. The Department also did not register their claim before auction of its property by IDBI Bank through public notice in time for recovery of their dues, resulting in non-recovery of revenue of ₹ 1.40 crore.
- Details of only consumers paying electricity duty more than ₹ 50,000/- were monitored by maintaining their data-base. The Department had not maintained a complete data base of the captive power plants/DG set units, in absence of which important details of energy generated, duty paid/exempted were not available.
- Department did not take effective action against those lift operators whose licence had expired during the period 2005-06 to 2009-10; 55 to 73 *per cent* were operating with expired licences. The Department had not carried out inspection of lift installations, the shortfall being as high as 80 *per cent* during the period 2005-06 to 2009-10, thereby jeopardising public safety.
- The Department had made the energy audit compulsory for eligible industrial and commercial consumers. Test check revealed that authorised energy auditors audited the units ranging between five to twenty two *per cent* during the period from 2005-06 to 2009-10 and gave their recommendations. However, we saw that there was no mechanism to ensure whether recommendations of energy auditors were complied with, defeating the objective of energy audit.
- M/s. Essar Power Ltd., a licensee used to supply electricity to erstwhile Gujarat Electricity Board, stopped payment of tax on sale of electricity from November 1999 onwards. The licensee filed a petition in Gujarat High Court against the action initiated by the Department to recover their dues. The Court directed the Government in March 2007 to decide the case within two months from the date of order. The Government had yet not decided the case. This resulted in blocking up of revenue of ₹ 97.46 crore, including interest of ₹ 60.08 crore.

	In T-20 cricket tournament organised by IPL, the Government has foregone entertainment tax of ₹ 1.38 crore. In 650 cases of cable operators, there was non/short realisation of entertainment tax of ₹ 88.98 lakh including interest. Proprietors of fourteen cinema houses availed irregular exemption of entertainment tax of ₹ 36.35 lakh.
Recommendations	Regarding levy and collection of Electricity Duty, Government may consider the following: • maintain database of all CPPs/DG sets to ensure that duty by such units is paid correctly and in time • make suitable amendment in the Act/Rules to the effect that there exist a strong deterrence to operation of lifts without valid license. • set up a system to watch the compliance of recommendations of energy auditors by the auditee units. • to take effective steps to recover arrears of revenue because the same are increasing from year to year. • fix the amount on which penalty should be levied in case of non-payment of interest within a prescribed period; and • create a separate internal audit wing with adequate manpower. Regarding levy and collection of Entertainment Tax, Government may consider : • levy of entertainment tax on the sale of tickets for IPL matches. Moreover, legislature's sanction is required to be obtained to cover such commercial activities under the net of entertainment tax.

CHAPTER-VI
OTHER TAX RECEIPTS

6.1 Impact of Audit Reports

6.1.1 Impact of Audit Reports - Revenue impact

During the last five years, in our Audit Reports we had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of tax, incorrect computation etc, with revenue implication of ₹ 77.63 crore in 20 paragraphs. Of these, the Department/ Government had accepted audit observations in 13 paragraphs involving ₹ 1.72 crore and had since recovered ₹ 0.99 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2005-06	6	51.73	4	0.71	4	0.42
2006-07	1	0.11	1	0.11	1	0.05
2007-08	4	0.87	3	0.15	3	0.05
2008-09	7	24.58	3	0.44	3	0.22
2009-10	2	0.34	2	0.31	2	0.25
Total	**20**	**77.63**	**13**	**1.72**	**13**	**0.99**

The above table indicates that recovery in accepted cases was moderate (57.56 *per cent* of the accepted money value).

The Government may take suitable measures for speedy recovery.

6.1.2 Impact of Audit Reports – Amendments in the Act/Rules/ notifications/orders issued by Government at the instance of audit

It was earlier noticed in audit that the Entertainment tax Department had not prescribed any format for maintaining accounts of service charge. There was no mechanism for periodic verification of accounts of service charge submitted by cinema owners. Accepting the audit observation, the Department has issued a Circular in July 2011 in which detailed guidelines have been issued for maintenance and submission of accounts of service charge.

6.2 Results of audit

We test checked the records of offices of various Departmental officers relating to Entertainments tax, Luxury tax and Electricity duty in the State during the year 2010-11 and noticed short realisation of tax and other irregularities involving ₹ 36.60 crore in 111 cases, which fall under the following categories:

Sr. No.	Category	No. of cases	Amount (₹ in crore)
1	**Working of Electricity Duty Department (A Performance Audit)**	1	14.31
2	Non/short recovery of Entertainment Tax and interest from cinema houses/cable operators/ video parlours	18	6.23
3	Non/short recovery of interest on belated payment of ET in cinema houses/cable operators	1	0.01
4	Irregular grant of exemption	3	0.42
5	Non/short recovery of security deposit	1	0.02
6	Non/recovery of ET on service charge	17	6.79
7	Non-recovery of ET on rental charges	1	0.01
8	Non-short recovery of inspection fee	11	0.61
9	Non/short levy of Luxury Tax	8	0.13
10	Retention of tax collected by hotel owners	4	0.16
11	Other irregularities	46	7.91
	Total	**111**	**36.60**

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 68.72 crore in 65 cases, of which seven cases involving ₹ 21.79 lakh were pointed out in audit during the year 2010-11 and the rest in earlier years. An amount of ₹ 2.23 crore was recovered in 49 cases during the year 2010-11.

A Performance Audit on "**Working of Electricity Duty Department**" involving money value of ₹ 14.31 crore and a few illustrative cases involving ₹ 3.18 crore are contained in the following paragraphs.

6.3 Performance Audit on "Working of Electricity Duty Department"

Highlights

A Performance Audit on **"Working of Electricity Duty Department"** revealed the following:

- The Department was saddled with huge arrears of electricity duty which stood at ₹ 743.60 crore. No arrears had been recovered in the past three years.

(Paragraph 6.3.7)

- Non-finalisation of the case of M/s. Essar Power Ltd., a licensee, by the Government despite directions from the Court in March 2007 to decide the case within two months resulted in blocking up of revenue of ₹ 97.46 crore, including interest of ₹ 60.08 crore.

(Paragraph 6.3.7.1)

- *M/s. Arunodaya Mills Ltd.*, Morbi did not pay duty for the period from June 2004 to September 2006 as contemplated in the rule. The Department had not referred the case to the Collector in time for recovery of its dues as arrears of land revenue. The Department also did not register their claim before auction of its property by IDBI Bank through public notice for recovery of their dues. This resulted in blocking up of revenue of ₹ 1.40 crore.

(Paragraph 6.3.7.2)

- The Department had not maintained a complete data base of the captive power plants/DG set units, in absence of which important details of energy generated, duty paid/exempted were not available.

(Paragraph 6.3.8.1)

- The Department did not take effective action against those lift operators whose licence had expired during the period 2005-06 to 2009-10; 55 to 73 *per cent* were operating with expired licences. The Department had not carried out inspection of lift installations, the shortfall being as high as 88 *per cent* during the period 2005-06 to 2009-10, thereby jeopardising public safety.

(Paragraph 6.3.8.2, 6.3.8.3)

- The Department had made the energy audit compulsory for eligible industrial and commercial consumers. Our test check revealed that authorised energy auditors audited the units ranging between five to twenty two *per cent* during the period from 2005-06 to 2009-10 and gave their recommendations. There was no mechanism to ensure whether recommendations of energy auditors were complied with, defeating the objective of energy audit.

(Paragraph 6.3.8.4)

- There was no separate internal audit wing for ensuring correct levy and prompt realisation of electricity duty. The office of the Chief Electrical Inspector fell short of the required target of inspections fixed by the office itself.

(Paragraph 6.3.8.5)

- The Department failed to levy and recover interest of ₹ 20.06 crore and penalty of ₹ 44 lakh from GSFC units. In case of GACL, the Company did not pay interest of ₹ 11.22 crore but the Department did not initiate action for its recovery.

(Paragraph 6.3.9.5)

6.3.1 Introduction

The levy and collection of Electricity Duty by State Government on consumption of electrical energy by consumers is governed by the Bombay Electricity Duty Act, (BED Act) 1958 as applicable to and modified in Gujarat, and the Rules made thereunder. Under the BED Act, 1958 every licensee shall collect duty from consumers on the units of energy sold for consumption through electric power supply bills and pay it to State Government by the prescribed dates. Further, every person who consumes energy generated by him is also liable to pay duty. Fees for testing and inspection of installations connected to supply system are also levied and collected under the Indian Electricity Act, 1910 (IE Act) and the Indian Electricity Rules, 1956 (IE Rules). In Gujarat, major portion of electricity duty is levied, collected and paid to the State Government by three licensees viz. the *Gujarat Urja Vikas Nigam Ltd.* (GUVNL), the Torrent Power Ltd. (Ahmedabad) and Torrent Power Ltd. (Surat). Office of the Chief Electrical Inspector (CEI) and office of the Collector of Electricity Duty (Collector) are two independent offices headed by a single officer. The Collector (ED) is entrusted with the work relating to grant of exemption from payment of electricity duty to new industrial units and self generating units. He also issues certificates to consumers regarding chargeability of duty at reduced rate, deferment and refund of duty and also monitors collection and payment of duty by licensees and self generating units. Under the Act, he is the authority for adjudication of disputes. The CEI is entrusted with the work of checking of extra high voltage installations and overall supervision of work of assistant electrical inspectors and electrical inspectors.

6.3.2 Scope of audit

We test checked the of records of Collector (ED), Gandhinagar, Chief Electrical Inspector Gandhinagar, ten[80] out of eighteen Assistant Electrical Inspectors, 38[81] out of 90 High Tension (HT) divisions of Gujarat *Urja Vikas Nigam Limited* and each HT billing centre of Torrent Power at Ahmedabad and Surat. We selected the units on the basis of revenue collection by the licensees. Audit was conducted for the period from 2005-06 to 2009-10 between December 2010 and April 2011.

6.3.3 Audit objectives

Review of the records was conducted with a view to:

- assess the effectiveness of levy and collection of electricity duty and fee,
- assess the procedure of refund/adjustment of duty;

[80] Bharuch, Gandhinagar, Godhra, Jamnagar, Junagadh, Mehsana, Nadiad, Rajkot, Valsad, Vadodara

[81] Anand (2), Ankleshwar (2), Bavla, Bhuj , Bharuch (2), Bopal, Gandhinagar, Himmatnagar, Jamnagar (3), Kalol, Kadi,Mehemdabad, Morbi, Nadiad (2), Navsari (2), Rajpipla, Rajkot (3), Surat (4), Sabarmati, Talod, Valsad, Vapi (2), Vadodara (3)

- assess whether an adequate internal control mechanism exists to ensure proper realisation of duty, interest, penalty and fee,
- assess effectiveness of procedure of monitoring of exemption of electricity duty;
- ascertain whether statutory inspections of electrical installations were being carried out and fees for inspections were being collected in time.

6.3.3 .1 Audit criteria

Audit criteria considered were The Electricity Act, 2003, Indian Electricity Rules, 1956, Bombay Electricity Duty Act, 1958, Bombay Electricity Duty (Gujarat) Rules, 1986, The Gujarat Lift and Escalator Act, 2000; notifications/circulars/orders issued under the said Acts/Rules and judicial pronouncements.

6.3.4 Organisational set-up

The overall control on levy and collection of duty and fees rests with the Principal Secretary, Energy and Petrochemicals Department. Chief Electrical Inspector (CEI) and Collector, Electricity Duty Gandhinagar (CED) is the head of the Department working under the Pr. Secretary. Collector (ED) is assisted by assessment officer and administrative officer at headquarters level and eleven duty inspectors at field level. Duty Inspectors are responsible for ensuring correctness of levy and collection of duty at billing centres of licensees. These duty inspectors have also been assigned the work of checking of readings in meters of self generating units of electricity and collection of duty thereof.

Chief Electrical Inspector is assisted by four Dy. Chief Electrical Inspectors, 13 Electrical Inspectors and 34 Assistant Electrical Inspectors at district level for conducting inspection of electrical installations.

6.3.5 Acknowledgement

We acknowledge the co-operation of Collector of Electricity Duty, Chief Electrical Inspector, Energy and Petrochemical Department and Executive Engineers of operation and maintenance divisions of GUVNL in providing the necessary information and records for audit. An entry conference was held in February 2011 which was attended by Pr. Secretary, Energy and Petrochemical Department, Collector (ED) and Chief Electrical Inspector wherein the audit objectives and scope of audit were discussed. The exit conference was held in August 2011 which was attended by Pr. Secretary, Energy and Petrochemical Department, Collector (ED) and Chief Electrical Inspector. In the exit conference, observations made during the review were discussed. Department accepted the audit observations and assured of taking corrective measures.

6.3.6 Trend of revenue and financial performance

The budget estimates and actual realisation of taxes and duties on electricity during the last five years period ended 31st March 2010 were as under:-

(₹ in crore)

Year	Budget Estimate	Actual Realisation	Variation (excess + or shortfall -)	Percentage variation
2005-06	1800.00	1899.68	(+) 99.68	5.53
2006-07	1990.00	2062.33	(+) 72.33	3.63
2007-08	2080.00	2030.65	(-) 49.35	(-) 2.37
2008-09	2306.33	2344.21	(+) 37.88	1.64
2009-10	2587.00	2621.29	(+) 34.29	1.32

From the above, it is evident that there was marginal difference between budget estimate and actual realisation of electricity duty.

The electricity duty receipts as a share of the total State receipts is given below:

Electricity Duty Receipts in perspective

(₹ in crore)

Year	Total State Receipt (TSR)	Tax Revenue of the State (TR)	Total Electri- city Duty Receipts	Total Electricity Duty as percentage of TSR	Total ED as percentage of TR
2005-06	25066.87	15698.11	1899.68	7.57	12.10
2006-07	31002.22	18464.63	2062.33	6.65	11.17
2007-08	35689.85	21885.57	2030.65	5.68	9.28
2008-09	38675.71	23557.03	2344.21	6.06	9.95
2009-10	41672.36	26740.23	2621.29	6.29	9.80

Electricity Duty on an average constitutes 10.5 *per cent* of the total receipts.

6.3.7 Position of arrears

The position of arrears of revenue at the end of five years ended 31st March 2010 as furnished by the Department was as under:

(₹ in crore)

Year	Opening Balance as on 1st April	Addition during the year	Recovery affected during the year	Outstanding as on 31st March
2005-06	421.86	99.39	43.58	477.67
2006-07	477.67	88.95	48.81	517.81
2007-08	517.81	133.62	NIL	651.43
2008-09	651.43	23.98	NIL	675.41
2009-10	675.41	68.19	NIL	743.60

The table above indicated that there was significant increase in arrears of revenue during the five years period.

Out of arrears of revenue of ₹ 743.60 crore,

- recovery of ₹ 683.26 crore was under litigation and the matter was pending with the High Court of Gujarat,
- recovery of ₹ 44.49 crore was pending with BIFR,
- recovery of ₹ 13.92 crore was pending in with Government since 1984-85 due to non-fixation of value of assets of Vadodara Municipal Corporation.
- recovery of ₹ 1.93 crore was pending certificate action under land revenue code.

The Department could not realise any amount of arrears during last three years i.e. from 2007-08 to 2009-10, though there was significant addition of arrears during this period. This indicated weak monitoring mechanism and inadequate action to realise arrears.

After we pointed out, the Department stated (August 2011) that out of the total arrears of ₹ 743.60 crore, ₹ 727.75 crore were under dispute. The matter was pending with Gujarat High Court. However, in case of Essar Steel Ltd., ₹ 539.24 crore was outstanding towards electricity duty along with interest and penalty. The High Court in its oral order had stated that Essar Steel Ltd. would pay ₹ 50 crore in two instalments by 30th April 2010. Thereafter, it would pay ₹ 15 crore every month. As per High Court's directives, it has paid ₹ 275 crore during April 2010 to July 2011. ₹ 13.92 crore was due from Vadodara Municipal Corporation (VMC) and was under dispute between VMC and GEB. The Principal Secretary stated (August 2011) that now the VMC had agreed to pay the principal amount of outstanding dues. However, proof of payment was not made available to audit.

6.3.7.1 Blocking of Government revenue due to inordinate delay in decision

As per the erstwhile Gujarat Tax on Sale of Electricity Act, 1958 (repealed with effect from 1st April 2002), tax on sale of electricity was leviable up to March 2002. This tax was administered by CED. The term sale as defined in the Act means sale of electricity made by the licensee within the State to the consumer for cash or deferred payment or other valuable consideration. The definition of licensee was amended in May 1999 and generating companies were also included in the definition.

During test check of records of Collector ED, Gandhinagar, we noticed that M/s. Essar Power Ltd., started their plant in the year 1995 and supplied electricity to erstwhile Gujarat Electricity Board (GEB) and M/s. Essar Steel Ltd, its sister concern. Essar Steel Ltd also had its own generating plant and

GEB connection. M/s. Essar Power Ltd did not pay sales tax up to 11 May 1999. It started (May 1999) payment of sales tax after generating units were covered under the definition of licensee. The unit, however, stopped payment of sales tax from November 1999 onwards. The Department initiated action for recovery of dues as arrears of land revenue. Against the action of the Department, the unit filed a case in Gujarat High Court (SCA No. 2838/2003). The court ordered Government in May 2003 to take fresh decision on the representation of Petitioner Company after giving reasonable opportunity of hearing to the petitioner. The Department in January 2006 reviewed the case and reiterated that the company was liable to pay tax on sale of electricity. Aggrieved by the decision of the Government, the company again approached High Court in January 2006. The court in its oral orders of March 2007 cancelled the Government orders of January 2006 and again directed the Government to take fresh decision within two months from the date of order keeping in view the case of M/s. Gujarat Industries Power Ltd. (GIPL).

However, the Government has not decided the matter even after lapse of four years of High Court orders. The GIPL has already paid sales tax up to the date of abolition of Act. Inordinate delay on the part of the Government to decide the issue resulted in blocking of Government revenue of ₹ 97.46 crore (₹ 37.38 crore sales tax + ₹ 60.08 crore interest). One meeting was called in September 2010, but no decision was taken.

After we pointed out, the Department stated (August 2011) that as per orders of the High Court, they called the party for hearing and process of written submission is under progress.

6.3.7.2 Deay in claiming Government dues

Under Section 8(1) of the BED Act, 1958, any sum due on account of electricity duty, if not paid at the time and in the manner prescribed shall be deemed to be in arrears, and thereupon such interest which the State Government may by general or special orders fix shall be payable on such sum; and the sum together with any interest thereon, shall be recoverable either through a civil court or as an arrears of land revenue. Under Rule 9(3) (a) of BED Gujarat Rules, 1986, persons generating electricity are required to pay duty within ten days after expiry of the month to which duty relates. They are also required to submit quarterly returns in form 'D' to the Collector as well as to Inspector of electricity duty on or before the 10th day of next month following the quarter to which the return relates. There was no system in place in the Department to refer to public notices in respect of defaulter properties and create a charge on immovable properties in revenue records.

During test check of records of Collector ED, Gandhinagar, it was noticed that M/s. Arunodaya Mills Ltd., Morbi did not pay duty for the period from June 2004 to September 2006 as contemplated in the rule. The Department referred

(April 2007) the case to Collector, Rajkot for recovery of its dues as arrears of land revenue under Section 8 of BED Act, 1958. There was also charge of IDBI Bank Ltd. on the property of the above mill. In order to realise their dues, the bank issued public notice on 24 January 2007 in *Gujarat Samachar* and in *Economic Times* on 25 January 2007 for auction of the properties on "as is where is basis". However the Department did not take cognizance of the public notice. Had the Department registered their claim at the time or before auction of the property, the Government dues would have been realised by now. Department was not vigilant enough to recover their dues. It did not pursue the case with due diligence. As a result, the question of whether the liability to make payment of electricity duty and interest rests with the purchaser (M/s. Shanti Export Pvt. Ltd.) or the original owner (M/s. Arunodaya Mills Ltd.) remained uncertain. The buyer had also mentioned this fact when Government demanded its dues from the buyer. The buyer had argued that in terms of sale deed, the property bought by them was free from all encumbrances. The buyer was bargaining with Government to waive the interest. Had the Department initiated action in time, the Government revenue of ₹ 1.40 crore (Electricity duty ₹ 1.14 crore + interest ₹ 0.26 crore) would have been realised by now.

After we pointed out, the Department agreed (August 2011) with the audit observations. Further they agreed that there is no system in the Department to refer to press clipping etc.

The reply of the Department is not acceptable because the staff working in office as well as in field (E.D. Inspector) ought to remain vigilant and take cognizance of those public notices, wherein substantial government revenue is involved.

6.3.8 System Deficiencies

6.3.8.1 Partial maintenance of database of captive power plant/DG set units with CED

Under Rule 9 of the Bombay Electricity Duty (Gujarat) Rules 1986, every person other than licensee who intends to generate or intends to continue generation of energy for his own use and every person other than licensee who generates energy and supplies the same to any other person free of charge shall make an application in form "C" for registration to CED. Every person, to whom the registration number is assigned under the sub rule 1 of the rule ibid, shall pay the ED payable in respect of the calendar month within ten days after the expiry of the said month in the Government treasury. He is also required to forward proof of payment to CED and the concerned inspector indicating therein the registration number assigned to him. Further, he is also required to submit quarterly return in form "D" to the CED and the concerned inspector on or before the 10th day of next month following the quarter to which the return relates. The technical approval of CPP/DG set is granted by CEI.

Cross-examination of records of both offices viz. CEI and CED revealed that during the period 2005-06 to 2009-10, although the office of CEI accorded approval to layout plans of 1129 CPPs/DG sets, the office of CED, had information of only 187 units of CPPs/DG sets operators. For the remaining units, office of CED did not have any database. Further, the number of approved CPPs/DG sets upto 31st March 2005 was not available with the office of CEI. The records of the consumers having DG set/CPP was also not maintained at field level offices.

In absence of database:

(a) the Department did not have details of energy generated by these units and duty paid directly in treasury by such units,

(b) the Department was not aware of date of expiry of exemption from payment of duty and the date from which the units would start payment of duty, and

(c) the Department could not enforce penal action against units which did not pay electricity duty.

After we pointed out, the Department stated (August 2011) that the units for which database has been maintained, constitute substantial share of ED receipts. The process of upgradation of software for maintaining database is in progress. However, nature of software and what specific need it caters to, was not made available to audit.

Reply of the Department is not acceptable because we noticed that as per the records of CED the electricity duty received from self generation unit was

₹ 384.40 crore for the year 2009-10, whereas the total electricity duty received from operators whose database had been maintained by the Department was ₹ 282.08 crore only. This shows that the correctness of revenue of more than ₹ 100.32 crore was not scrutinised in the year 2009-10. Similarly revenue of ₹ 139.44 crore was not scrutinised for the year 2008-09. Apart from this, there was no system in place to ensure whether all units which were liable to pay electricity duty had paid duty or not. Also, whether the details of all self generating units were available with CEI office which accords technical sanction, non-maintenance of complete database in order to monitor proper payment of electricity duty was not justified.

6.3.8.2 Non-renewal of licence of lifts

Under Rule 8 of Gujarat Lifts and Escalators Rules, 2001, every licence for operating a lift or an escalator shall be renewable every three years. The owner has to make an application in prescribed form together with licence and challan for the prescribed fee. An application to this effect should be made by the owner to the Chief Electrical inspector before 30 days of expiry of license. If the holder of licence fails to renew the licence in the said manner and before the date of expiry, the license shall become void and fresh licence has to be obtained. The Department did not set up any mechanism to watch the operation of lifts without valid licence. Further as per Chief Electrical Inspector Office Order No. 395 inspection of 40 lifts was planned per month in Ahmedabad, Vadodara, Surat and Rajkot. In other cities, all lifts at periodical interval were required to be inspected.

During the test check of the records of Chief Electrical Inspector, Gandhinagar, it was noticed that there were more than nineteen thousand lifts in the State. Every year, one third licensees should apply for renewal of licences. However, we noticed from the records during the period covered by audit that substantial number of licences had expired but they failed to renew the same. The percentage of such lift operators increased from 55 *per cent* to 73 *per cent* as per details given in the table below:

Year	No. of lift with licence expired	No. of application received for renewal	No. of lift operating without licence	Percentage of lifts operating without licence
2005-06	2977	1352	1625	55
2006-07	3505	1202	2303	66
2007-08	4323	1268	3055	71
2008-09	5137	1551	3586	70
2009-10	5878	1586	4292	73

The responsibility to renew the licence rests with the lift owner and only 6959 operators applied for renewal of licence during the period 2005-06 to 2009-10.

Further, Department did not evolve any mechanism to impress upon the lift operators to get their licence renewed. Department also did not take any effective action against operators who operated their lift without valid licence. Further, the inspection report also did not have any column about renewal of lift inspected. This showed that renewal of licence of lift was not monitored at any level.

After we pointed out, the Department stated (August 2011) that number of lifts had increased manifold during last five years and many lifts were operating without valid licence. Though the provisions provide for closing down of lifts without licence, such steps were not taken for the benefit of public at large. The Department agreed with the audit observations.

6.3.8.3 Non-inspection of installations jeopardised public safety

As per Rule 46 of the IE Rules, where an installation is connected to supply system of supplier, every such installation shall be periodically inspected and tested at an interval not exceeding five years either by an inspector or by the supplier. Fees at prescribed rates depending upon the connection load at the supply system are to be recovered. There is no monetary penal provision or levy of interest on late/non-payment of inspection fees.

During test check of records of Chief Electrical Inspector, it was noticed that out of 61.03 lakh electrical installations required to be inspected, only 7.58 lakh installations were inspected by the Department during the period from 2005-06 to 2009-10, leaving 53.45 lakh installations uninspected as detailed in the table below:

Year	Inspection Due	Inspection Done	Inspection not done	Percentage of non inspection
2005-06	1167296	152758	1014538	87
2006-07	1169627	141151	1028476	88
2007-08	1237829	144404	1093425	88
2008-09	1237849	145696	1092153	88
2009-10	1290728	174625	1116103	86
Total	**6103329**	**758634**	**5344695**	**88**

Further the Department did not have any annual inspection programme but all high tension installation were required to be inspected annually. Thus failure to inspect installations jeopardised public safety to a great extent.

After we pointed out, the Department agreed (August 2011) with the audit observation and stated that Government has been requested to explore possibility of outsourcing the work of inspection of installations.

6.3.8.4 Non-achievement of objective of energy audit

Energy and Petrochemicals Department in its order dated 5th October 1999 [Gujarat Use of Electrical Energy (Regulation) Order, 1999] made energy audit compulsory for eligible consumers (i.e. industrial consumers having contract demand of 200 KVA or more and commercial consumers having demand of 75 KVA and above). The first audit shall be conducted within one year from the commencement of these orders/date of a person's becoming a consumer. Thereafter, it shall be conducted after every three years.

Commissioner of Electricity, Gujarat State had authorised certain persons with specific qualifications and prescribed equipments who would be eligible to conduct energy audit. The energy audit report in its findings provides existing Energy Profile of the unit with percentage share of the major equipments/ processes, utilities etc. This also provides measures to be taken to improve energy efficiency and reduce losses in all the areas. The report is required to be submitted to Collector of Electricity Duty, Gujarat State who shall give directions to the consumers for elimination of inefficient use of electricity. These directions should be carried out by the consumers within six months from date of receipt of such directions. The order dated 5th October 1999 is silent about steps to be taken by the Department in case energy audit is not conducted by eligible consumers or recommendations of energy auditors not followed. The table below gives details of energy audits conducted during 2005-06 to 2009-10:

Year	No. of consumers falling under energy audit (industrial + commercial)	No. of consumers whose energy audit was done (industrial +commercial)	Percentage of unit audited	No. of units of energy saved as per administrative report (in million)
2005-06	7263	406	6	165.2
2006-07	7523	352	5	154
2007-08	7812	366	5	34.70
2008-09	8120	466	6	124.67
2009-10	8430	1829	22	277.25

The above table indicates that during first four years i.e. 2005-06 to 2008-09, only five to six *per cent* of the eligible units were covered under energy audit. This increased to 22 *per cent* in the year 2009-10. This showed that the coverage under energy audit by Department was very dismal. Further the number of energy auditors appointed by Department was only *twenty* as on 31st March 2010. Department may consider appointment of more auditors to increase the coverage under energy audit.

Scrutiny of the records of the office of Chief Electrical Inspector, Gandhinagar revealed that no follow up action was taken on the energy auditor's report

submitted to the office. There was no mechanism to ensure whether the recommendations of energy auditors were followed by auditee units or not. Hence, there was no actual saving of energy due to energy audits. Despite this, the Department reports showed the units of energy saved in its administrative reports based on the recommendations of the auditor's reports. For the period 2005-06 to 2009-10, Department had shown that 755.82 million units of energy were saved, which was not correct.

After this was pointed out, the Department confirmed that the figure shown in administrative reports as units of energy saved were not actually saved but was potential saving of energy, provided the auditee unit follows the recommendations of the energy auditor.

After we pointed out, the Department stated (August 2011) that though energy audit is mandatory, it is not compulsory to implement the recommendations. More than 6000 units were audited, but results have not been consolidated to arrive at the amount of energy conserved as a result of energy audit

6.3.8.5 Internal audit

An independent and effective internal audit under the direct control of the head of the Department is essential for ensuring compliance of the provisions of the Act/Rules and the Government instructions regarding assessment of duties/fees, raising of demands, collection and accounting of duties/ fees and for overall functioning of the system.

During test check of the records, we observed that no mechanism of internal audit existed for the office of the CED. In case of office of the CEI some mechanism of internal audit existed which looked after both administrative as well as aspect relating to inspection fee. However, there was neither a formal head nor dedicated staff for this purpose. Further, it also fell short of the required target fixed by the office itself as shown in the table below:

Year	Total no. of offices	No. of offices required to be inspected	No. of Offices actually inspected	Shortfall in inspection
2005-06	47	5	5	NIL
2006-07	47	5	1	4
2007-08	47	6	1	5
2008-09	47	7	3	4
2009-10	47	5	4	1

This shows that internal audit was not being viewed as an effective tool of internal control by the Department. Considering the fact that electricity duty is the second largest contributor to State exchequer, an independent and effective internal audit for ensuring correct levy and prompt realisation of electricity duty was required.

After we pointed out, the Department agreed (August 2011) with the audit observations. They stated that due to shortage of staff, there is no dedicated staff for internal audit. However, the possibility of increasing manpower for this purpose shall be explored.

6.3.8.6 Exemption to new industrial undertakings

According to Section 3 (2) (vii) of BED Act, 1958, a new industrial undertaking is entitled for exemption from payment of electricity duty for a period of five years from the date of production. The purpose of exemption is to boost industrial growth in the State. In the procedure prescribed, it has been stated that CED may make such enquiries as he deems necessary before grant of exemption. This makes it almost necessary for the Department to perform some sort of physical site verification.

During the course of the review, we noticed that the Department allowed exemption to 5740 new industrial undertakings during the period 2005-06 to 2009-10. Our test check of 506 cases revealed that office of Collector of Electricity Duty called for all documents i.e. first sale bill, process of manufacture, nature of goods manufactured, audit report, copy of registration obtained from Commissioner of Industries in respect of small scale industries, list of machineries installed, certificate of civil engineer regarding capital investment, etc. before allowing exemption to eligible units. Out of 506 cases checked, we observed that in 56 cases applications were rejected for want of proper documentary evidence. From the above, it was evident that though the Department was taking adequate safeguard by calling for relevant documents before allowing exemption to new industrial undertaking but there was no system for site verification. No site verification report was found on record.

After we pointed out, the Department agreed (August 2011) with the audit observation, and stated that due to shortage of electrical inspectors, they were unable to undertake site verification of the undertakings. However, they agreed to look into the matter.

6.3.9 Compliance deficiencies

6.3.9.1 Non-levy of duty due to incorrect grant of exemption

Under Section 3 (2) (ia) electricity consumed on connections of notified area for other than public purpose is not eligible for exemption from payment of duty.

During test check of records of Ankleshwar Industrial division of GUVNL, we noticed that no duty was charged on four H. T. connections released in the name of "Notified Area Officer, GIDC, Ankleshwar". The exemption was granted by the division office of GUVNL on the basis of Collector ED's letter of November 2008 wherein it was mentioned that duty was not to be charged on electricity consumed by notified area Ankleshwar for supply of water to public. Since the water from these connections was also supplied to industries and not exclusively to public, exemption from payment of duty was not admissible. This resulted in incorrect exemption of electricity duty of ₹ 69.75 lakh.

6.3.9.2 Non-levy of electricity duty on consumption of electricity for residential purpose

According to Section 13(a) of BED Act, 1958, no duty is leviable on electricity consumed by the Government of India or sold to the Government of India for their consumption. Rule 10 of the Bombay Electricity Duty (Gujarat) Rules 1986 further provides that where meter for indicating consumption of electrical energy for different purpose is not provided, the levy of duty should reckoned as if electricity is consumed for single purpose for which higher rate of duty is leviable and duty shall be charged for entire electricity consumed for combined purpose.

During test check of records, we noticed that in three divisions[82] of GUVNL, Central Reserve Police Force (CRPF), Air Force, Army and Border Security Force (BSF) were provided H. T. connections at Gandhinagar, Jamnagar and Bhuj. Apart from the electricity consumed for operational, maintenance and construction work, the energy was also consumed in residential quarters of the officials of para-military and armed forces etc. The energy consumed in the residential quarters was not assessed to duty on the ground that the electricity was consumed by G.O.I. No separate meter was installed in the quarters of the officials as such the actual loss could not be quantified by us.

[82] Bhuj, Gandhinagar and Jamnagar

After we pointed out, the Department accepted (August 2011) the audit observations in cases of exemption granted to GIDC, Ankleshwar and CRPF/Army/BSF. They have also initiated action for recovery.

6.3.9.3 Short levy of duty due to application of incorrect rate

As per Section 3(1)(a) of the BED Act, duty shall be levied and paid to the State Government on consumption of electricity at the rates specified in schedule I of the Act. The rate of duty varies with reference to use of electricity i.e. residential, educational, industrial, commercial and others etc.

During test check of records of five divisions of GUVNL[83] , it was noticed in six cases that electricity duty was not levied with reference to use of electricity. This resulted in short levy of duty to the extent of ₹ 66.46 lakh**.**

After we pointed out, the Department agreed (August 2011) with the audit observations. In one case, principal amount of ED of ₹ 4.74 lakh has been recovered. In other cases, action for recovery has been initiated.

6.3.9.4 Short levy of duty and interest

As per Section 8(1) of BED Act, 1958 if any sum due on account of electricity duty is not paid at the time and in the manner prescribed it shall be deemed to be in arrear and the sum together with interest at the rate of 24 *per cent* up to 31st March 2002 and at the rate of 18 *per cent* thereafter shall be recoverable either through civil court or as arrears of land revenue.

6.3.9.4.1 With a view to mitigate financial hardship of M/s. Mafatlal Industries Ltd, Industries and Mines Department vide resolution dated 15th March 2003 granted deferment of electricity duty and tax on sale of electricity. The scheme provided that:

(a) The unit was allowed deferment of electricity duty and tax on sale of electricity for a period of five years from 23.5.2000 to 22.5.2005.

(b) The unit was not required to pay any interest during the above deferment period.

(c) The deferred amount of electricity duty and tax on sale of electricity shall be paid in next five years in sixty equal instalments along with simple interest at the rate of 12 *per cent* from June 2005 onwards.

During test check of records of Navsari Division of GUVNL, it was noticed that the unit neither paid interest nor principal up to eleven months after moratorium period. The unit started payment of interest from May 2006 onwards. The entire deferred amount of ₹ 9.73 crore is outstanding till date. The unit did not make payment at the time and in the manner prescribed and

[83] Ahmedbad, Gandhinagar, Kadi, Vadodara (2).

therefore interest at the normal rate i.e. 18 *per cent* was leviable instead of concessional rate of 12 *per cent*. Further, Department had neither approached civil court nor land revenue authorities to recover the deferred amount along with interest. This has resulted in non-recovery of ₹ 12.95 crore (₹ 9.73 crore principal and interest of ₹ 2.82 crore).

6.3.9.4.2 Similarly, Industry and Mines Department vide their resolution of 23rd October 2003 granted deferment of payment of electricity duty to two subsidiary companies of M/s. Arvind Mills Ltd. for a period of five years or up to the monetary limit of ₹ 54.60 crore, whichever is earlier. The deferment was granted with a view to enable companies to overcome the loss. The scheme provided that:

(a) no interest was leviable during the period of deferment,

(b) interest at the rate of 12 *per cent* was leviable during the period of repayment, and

(c) repayment of amount deferred should be made in five equal annual instalments along with interest.

During test check of records of the Collector ED, it was noticed that both companies availed deferment of ₹ 51.52 crore. Companies commenced repayment of principal amount in time but did not pay interest as stipulated in the scheme. As against interest of ₹ 11.48 crore (at the rate of 12 *per cent*) payable under the scheme, companies paid only ₹ 1.05 crore. Thus ₹ 10.43 crore was paid less towards interest during the period of repayment.

After this was pointed out to the Department in September 2010, the Department stated (August 2011) that in the case of *M/s Mafatlal Industries Ltd.,* action for recovery has been initiated. It is paying the amount in instalments due to poor financial condition. In case of *M/s Arvind Mills Ltd*. and *M/s Arvind Products Ltd.,* the matter is *sub judice.*

Reply of the Department is not acceptable in view of the fact that the Department has not raised demand for interest at higher rate i.e. 18 *per cent* per annum instead of 12 *per cent per* annum.

6.3.9.5 Non-levy of penalty and non-initiation of action for recovery

According to Section 8(3) of BED Act, 1958, if any sum due on account of electricity duty is paid by the consumer but the interest thereon is not paid by such consumer within six months from the date of such payment, such consumer shall also be liable to pay penalty (not exceeding 12 *per cent* per annum) on such sum as the State Government may by general or special order fix. The entire sum together with interest and penalty shall be recovered either through the civil court or as arrears of land revenue. The Government did not fix the sum on which penalty was leviable.

During test check of records of the Collector ED, Gandhinagar, we noticed that Gujarat Industries Power Company Ltd, Vadodara (the licensee) was co-generating electricity for its own use and for other participating companies. The participating companies were (1) M/s. Gujarat State Fertilizer Company Ltd. (Main) (GSFC) (2) GSFC-Kharach (3) GSFC-Polymer (4) GSFC, Sikka and (5) M/s. Gujarat Alkalies and Chemicals, Vadodara (GACL). These companies paid duty under schedule-II instead of schedule-I and were therefore asked to pay differential duty of ₹ 48.81 crore along with interest of ₹ 31.27 crore for the period from June 2000 to June 2006. The companies paid duty between September 2006 and March 2008 but did not pay interest accrued on duty amount. In case of GSFC units, the company did not pay interest of ₹ 20.06 crore. The Department levied penalty on GSFC units amounting to ₹ 2.00 crore till July 2008 instead of ₹ 2.44 crore. This resulted in non-levy of penalty of ₹ 44 lakh.

In case of GACL, the company did not pay interest of ₹ 11.22 crore. The Department did not take any action for recovery.

After we pointed out, the Department agreed (August 2011) with the audit observations and initiated action for recovery of dues.

6.3.10 Achievements of the Department

Energy Audit

India is an energy deficient country and is not in a position to meet the energy demand of the entire country. Any step towards saving energy is a welcome step. The Energy and Petrochemicals Department, in Government of Gujarat has made energy audit compulsory for industrial and commercial undertakings in order to save energy. Although the Department has a long way to go in order to make the idea of energy audit an effective tool in saving energy and achieve the desired objective, it is nevertheless a right step in the right direction. However, the very objective of energy audit to save energy could not be achieved so far due to lack of follow up action on the reports of the energy auditor.

6.3.11 Summary of recommendations

Government may consider taking action on the following recommendation:

- maintain database of all CPPs/DG sets to ensure that duty by such units is paid correctly and in time,
- make suitable amendment in the Act/Rules to the effect that there exist a strong deterrence to operation of lifts without valid license,
- set up a system to watch the compliance of recommendations of energy auditors by the auditee unit,
- take effective steps to recover arrears of revenue because the same are increasing from year to year,
- fix the amount on which penalty should be levied in case of non-payment of interest within a prescribed period, and
- create a separate internal audit wing with adequate manpower.

ENTERTAINMENT TAX

6.4 Non-levy of entertainment tax on cricket matches organised by IPL

As per Section 3 of the Gujarat Entertainments Tax Act, 1977, tax is leviable on every payment for admission to an entertainment. However, under Section 3A, exemption from payment of tax has been granted in respect of any payment for admission to entertainments specified in the Schedule III of the Act which includes inter alia all kinds of sports excluding the sports or rides provided in the water park and holiday

During test check of records of the Collector (ET), Ahmedabad for the year 2009-10, it was seen from the available records that the Indian Premier League (IPL) had organised a T-20 cricket tournament in the year 2010. Four matches of the above tournament were allotted to Ahmedabad city. These matches were played at Sardar Patel Stadium, Motera, Ahmedabad during March and April 2010. Gujarat Cricket Association (GCA) through its franchise Rajasthan Royals sold the entry tickets for above matches.

The IPL matches are purely commercial in nature and the franchise owners of the cricket teams comprising business tycoons and film stars spent crores of rupees to buy the teams and players from all cricket playing nations of the world richest cricket tournament. The IPL was conceptualised as an entertainment spectacle and also pitched as the ultimate destination of TV entertainment. It was thus obvious, that main objective of IPL was to provide entertainment and hence merited levy of ED on sale of tickets. We would like to draw the attention of the Government to the fact that at least two States in the recent past have brought proceeds of IPL under the ambit of entertainment tax. The State of Maharashtra in 2010 and Tamilnadu in 2011 have brought IPL matches under entertainment tax.

Looking to the tax levy scenario of the above mentioned two states, the Government of Gujarat may also consider for levy of entertainments tax on tickets of IPL matches, which is more commercial in nature than sports. Based on the seating capacity and rates of entry tickets of four matches held at Sardar Patel Stadium, Motera, Ahmedabad and keeping in view the fact that all the four matches were attended by spectators beyond full capacity of the stadium, the amount of entertainments tax forgone during 2010-11 works out to ₹ 1.38 crore (Rate of ET: 20 per cent x Gross amount of tickets sold: ₹ 6.93 crore[84]).

After we pointed this out in November 2011, the Commissioner of Entertainments Tax, Gujarat State, Gandhinagar did not accept the audit observation. He stated that under Section 3(A) of the Act, all types of sports

[84] Based on the estimation of income of IPL organiser furnished by Commissioner of Entertainment Tax, Gujarat State, Gandhinagar. It has been assumed that the amount of ticket includes tax.

excluding the sports or rides provided in the water park and holiday resorts are exempted from payment of entertainments tax.

The Government may consider levy of entertainments tax on the sale of tickets for IPL matches by suitable amendment to the Act.

6.5 Non/short levy of entertainment tax and interest from cable operators

Section 6-B of Gujarat Entertainments Tax Act, 1977, provides that tax is leviable for exhibition of programmes with the aid of antenna or cable television. The Gujarat Entertainments Tax (Exhibition by means of cable television and antenna) Rules, 1993 provides that each operator has to register with the Department and file quarterly return in advance accompanied by copies of challan for payment of tax. The Department is required to assess the return before commencement of the succeeding quarter and raise the demands for non/short payment of tax. For non- payment of tax within the prescribed time, the Act provides for levy of interest at the rate of 18 *per cent* per annum from April 2007 onwards and at the rate of 24 *per cent* prior to April 2007

During test check of records of six Collector offices[85] and six Mamlatdar offices[86] between July 2009 and November 2010 for the period 2003-04 to 2009-10, we noticed that out of 650 cable operators, 645 cable operators did not pay tax. Other five operators had paid tax belatedly. Thus, failure on the part of the departmental officials to keep proper watch over timely assessment and collection of entertainments tax resulted in non-realisation of entertainments tax of ₹ 88.98 lakh including interest of ₹ 12.34 lakh.

After this was pointed out to the Department in August, September and October 2010, and February and March 2011, the Department accepted (August 2011) the audit observations of ₹ 88.98 lakh in 650 cases. Out of total amount of ₹ 88.98 lakh, ₹ 25.57 lakh has been recovered and ₹ 63.41 lakh is outstanding (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[85] Ahmedabad, Bhuj, Gandhinagar, Navsari, Rajkot and Vadodara.

[86] Bharuch, Bhuj, Gandhidham, Gondal, Karjan and Surat.

6.6 Incorrect exemption of entertainment tax

Government vide notification dated 9 February 2004, granted exemption from payment of entertainments tax to the extent of ₹ three and ₹ four per ticket to the proprietors of air conditioned/air cooled cinema and non-air conditioned/non-air cooled cinema house respectively subject to condition that the tax has been paid in time and in the manner prescribed in the Rule. The Department further clarified in circular dated 20 February 2004 that the proprietor of cinema house not paying tax within prescribed time limit was not eligible for exemption of tax on the amount of service charge. This benefit of exemption was also not extended to the multiplex cinemas as they are 100 *per cent* tax free and hence they were not entitled to collect any service charge.

During test check of records of four Collector offices[87] and six Mamlatdar offices[88] between October 2009 and June 2010 for the period 2002-03 to 2009-10, we noticed that out of total 14 cases, in nine cases, proprietors of cinema houses had availed benefit of exemption of tax on the amount collected popularly known as service charge, though they had not paid tax within prescribed time limit and the delay ranged from one day to seven months. In five cases, multiplex cinemas, though not eligible for availing the exemption of tax on the amount collected as service charge, irregularly availed this exemption (tax leviable was to be deducted from the exemption limit available to the multiplexes). This resulted in irregular availment of exemption of entertainments tax of ₹ 36.35 lakh.

This was brought to the notice of the Department in August, September and October 2010.The Department accepted (August 2011) audit observations of ₹ 11.83 lakh in eight cases. Particulars of recovery have not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[87] Gandhinagar, Mehsana, Rajkot and Vadodara

[88] Anand (City and Rural), Kadi, Mehsana, Vijapur and Visnagar

6.7 Non/short levy of entertainment tax and interest from cinema owners/video parlours

Gujarat Entertainments Tax Act, 1977, and Rules made thereunder provide that entertainment tax shall be paid by the proprietor of a cinema house weekly within 14 days of the end of the week and by the proprietor of video parlour in advance every month by 15th day of the month preceeding the month to which the tax relates. For non- payment of tax within the prescribed time, Section 10(2) of the Act provides for levy of interest at the rate of 24 *per cent* per annum upto March 2007 and at the rate of 18 *per cent* thereafter.

During test check of records of three Collector offices[89] and Mamlatdar office, Dhoraji between March 2010 and October 2010 for the period 2007-08 to 2009-10, we noticed that out of seven cinema owners/ video parlours, in three cases, tax was not levied. In one case, tax was levied at incorrect rates. In one case, tax was paid belatedly. In other two cases, tax was not recovered from closed theatres. This resulted in non-realisation of entertainments tax of ₹ 20.65 lakh including interest of ₹ 1.27 lakh.

After this was pointed out to the Department in September and October 2010 and February 2011, the Department accepted (August 2011) audit observations of ₹ 20.65 lakh in seven cases. In five cases, the Department recovered an amount of ₹ 15.10 lakh. In other cases, particulars of recovery have not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[89] Ahmedabad, Surat and Vadodara.

LUXURY TAX

6.8 Non/short levy of luxury tax, interest and penalty

Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 provides for levy of tax on luxury provided in a hotel in respect of a room under the occupation of a person at the specified rates on the basis of 50 *per cent* occupancy as per the average declared tariff. If the proprietor fails to pay the tax in time, interest at the rate of two *per cent* per month or part thereof for the period of delay is recoverable.

During test check of records of six Collector offices[90] and four Assistant Collector/Deputy Collector offices[91] between September 2009 and June 2010 for the period 2003-04 to 2009-10, we noticed that out of 20 hotel/resort owners, in eighteen cases, luxury tax was not levied or short levied. In one case, luxury tax collected by resort owner was retained by him. In one case, tax was paid belatedly. Thus, failure on the part of the departmental officials to keep proper watch over timely assessment and collection of luxury tax resulted in non/short levy of luxury tax of ₹ 32.85 lakh including interest/penalty of ₹ 6.52 lakh.

After this was pointed out to the Department in September, October and November 2010 and March 2011, the Department accepted (August 2011) the audit observations. Out of total amount of ₹ 32.85 lakh, an amount of ₹ 22.18 lakh has been recovered. In remaining cases, details of recovery have not been received (October 2011).

The matter was reported to the Government in June 2011, their reply has not been received (October 2011).

[90] Ahmedabad, Bhuj, Navsari, Palanpur, Surat and Vadodara.

[91] Dahod, Porbandar, Rajula and Veraval.

CHAPTER VII
EXECUTIVE SUMMARY

Marginal decrease in non-tax receipts collection	In 2010-11, the collections of mining receipts decreased by 5.59 *per cent* over the previous year.
Very low recovery by the Department of observations pointed out by us in earlier years	During the period 2005-06 to 2009-10, we had pointed out non/short levy, non/short realisation of royalty, dead rent etc., with revenue implication of ₹ 664.67 crore in 12 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 559.87 crore but recovered only ₹ 7.09 crore. The recovery position as compared to acceptance of objections was very low (3.92 *per cent* of the accepted money value).
Results of audit conducted by us in 2010-11	Test check of records of offices of the District Geologists and Director of Petroleum in the State during the year 2010-11 revealed short realisation of tax and other irregularities involving ₹ 30.93 crore in 105 cases. During the course of the year, the Department accepted underassessment and other irregularities of ₹ 16.41 crore in 126 cases, of which three cases involving ₹ 40.86 lakh were pointed out in audit during the year 2010-11 and the rest in earlier years. An amount of ₹ 10.32 crore was realised in 116 cases during the year 2010-11.
What we have highlighted in this Chapter	Test check of records relating to assessment and collection of royalty, dead rent etc in the Offices of District Geologists and Director of Petroleum in the State revealed the following: • System deficiencies of not renewing expired/cancelled leases and non- finalising of quarry leases were noticed by us. The leases were not finalised for years together, even though, a period of three months have been prescribed for finalisation of the leases Besides, several instances of non-recovery of lease rent and dead rent were noticed by us. • We saw that 116 lessees had removed minerals (i.e. Black trap, Quartzite, Building Stone etc) from the leased area. But royalty was not levied in four cases and short levied in 112 cases on minerals removed from leased area. There was non/short levy of royalty and interest of ₹ 1.30 crore. In another case, the Department failed to initiate action to recover royalty of ₹ 9.14 crore as per interim order of the High Court. • In 506 cases, the lease holders did not excavate and remove the mineral. They were liable to pay dead rent of ₹ 2.54 crore which was not demanded by the Department resulting in short realisation of revenue.

	• District Development Officers detected 84 cases of illegal mining and manufacturing of bricks in the area under their jurisdiction. However, these cases were not transmitted to concerned District Geologists for further necessary action. There was no system in place for communication of such illegal mining activities to the mineral administration in the State. Lack of system of co-ordination between the Revenue Authorities and concerned District Geologists resulted in non-levy of royalty of ₹ 19.72 lakh including penalty of ₹ 4.80 lakh.
Recommendations	• The Department may take effective steps to re-grant leases. • The Department may take effective steps to recover outstanding dues of royalty, dead rent and surface rent etc.

CHAPTER VII
NON-TAX RECEIPTS

7.1 Results of audit

Test check of records of offices of the District Geologists and Director of Petroleum in the State during the year 2010-11 revealed short realisation of tax and other irregularities involving ₹ 30.93 crore in 105 cases, which fall under the following categories:

(₹ in crore)

Sr. No.	Category	No. of cases	Amount
1.	Non/short levy of dead rent/surface rent	25	2.01
2.	Non/short levy of royalty	22	11.05
3.	Other irregularities	50	1.80
4.	Non-levy of interest on belated payment of royalty/dead rent	1	0.04
5	Non/short levy of surface rent	7	16.03
	Total	**105**	**30.93**

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 16.41 crore in 126 cases, of which three cases involving ₹ 40.86 lakh were pointed out in audit during the year 2010-11 and the rest in earlier years. An amount of ₹ 10.32 crore was realised in 116 cases during the year 2010-11.

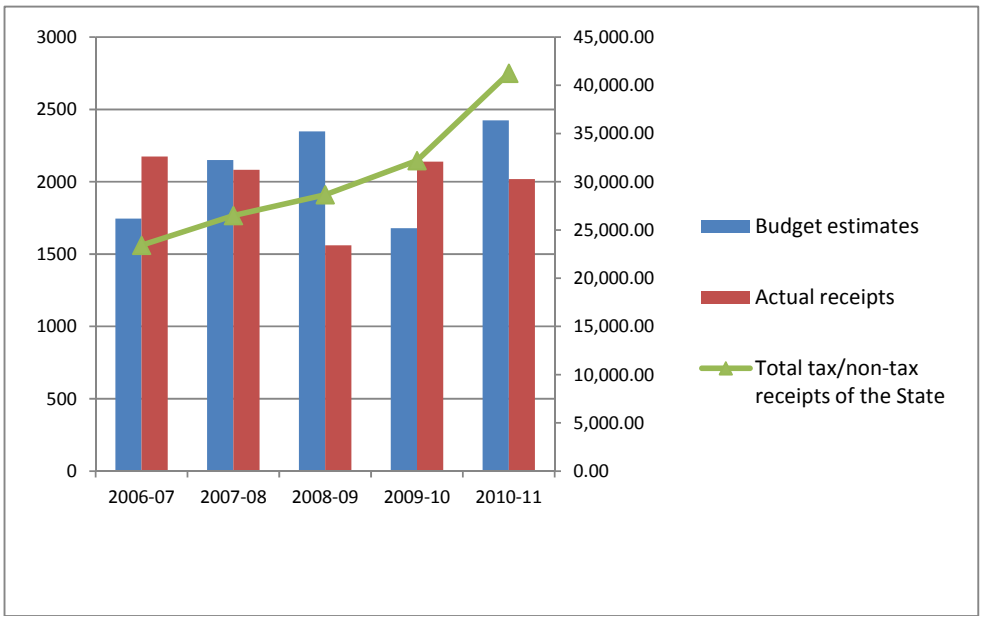
A few illustrative audit observations involving ₹ 36.01 crore are mentioned in the succeeding paragraphs.

7.2 Trend of receipts

Actual receipts from Geology and Mining during the last five years 2006-07 to 2010-11 along with the total tax/non-tax receipts during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax/ non-tax receipts of the State	Percentage of actual receipts *vis-a vis* total tax/non-tax receipts
2006-07	1745.00	2173.76	(+) 428.76	24.57	23413.41	9.28
2007-08	2150.00	2082.14	(-) 67.86	3.16	26494.88	7.86
2008-09	2347.80	1559.82	(-) 787.98	33.56	28656.35	5.44
2009-10	1679.00	2138.97	(+) 459.97	27.40	32191.94	6.64
2010-11	2425.18	2019.31	(-) 405.87	16.74	41253.65	4.89



There has been significant variation between the budget estimates and actual receipt in all years except 2007-08.The actual receipts have declined during the period 2010-11 due to variation in crude oil receipts on account of payment of royalty at discounted rates to Oil and Natural Gas Corporation as per instructions of the Ministry of Petroleum and Natural Gas.

We recommend to the Government to prepare the budget estimates receipts more realistically.

7.3 Impact of audit

7.3.1 Impact of audit - Revenue impact

The position of paragraphs included in the Audit Reports of the last five years, those accepted by the Department and the amount recovered is mentioned in the following table:

Year of AR	Number of paragraphs included	Money value of the paragraphs (₹ in crore)	Money value of accepted paragraphs (₹ in crore)	Amount recovered during the year 2010-11 (₹ in crore)	Cumulative position of recovery of accepted cases (₹ in crore)
2005-06	2	13.14	13.14	3.20	11.42
2006-07	1	3.34	2.18	1.77	2.73
2007-08	1	1.41	1.29	0.45	0.80
2008-09	1	627.63	524.81	-	0.00
2009-10	7	19.15	18.45	1.67	7.02
Total	**12**	**664.67**	**559.87**	**7.09**	**21.97**

Out of accepted audit observations of ₹ 559.87 crore, the Department recovered ₹ 21.97 crore during the period of five years which was very low (3.92 *per cent* of accepted money value).

We recommend the Department to consider taking effective steps to speed up the recovery in accepted cases.

7.3.2 Impact of Audit Reports – Amendments in the Act/Rules/ notifications/orders issued by Government at the instance of audit

It was noticed in audit that the Department was recovering surface rent at the pre-revised rates of non-agricultural assessment. The Department has issued a notification in August 2010 and revised rates of surface rent.

INDUSTRIES AND MINES

7.4 Non-compliance to provisions of the Act/Rules/instructions

Under Rule 59 of the Mineral Concession Rules, 1960, no area which was previously held or which is being held under a mining lease shall be available for grant unless availability of the area is notified in the Official Gazette. Rule 18 (1)(c) of Gujarat Minor Mineral Rules 1960, provides that available area for grant of lease should be notified in the official gazette at least thirty days in advance specifying the date from which such area shall be available for grant of lease. With a view to avoid delay in re-granting the lease where the lease has expired, cancelled or surrendered, Government of Gujarat vide circular no. MIS/102006/ GOI/32/CHH dated 24.05.2006 and dated 20.10.2008 issued instructions to all the District Geologists/Commissioner of Geology and Mining to send proposal for re-grant at the earliest on priority basis and to see that such areas are re-granted within 60 days. The Commissioner of Geology and Mining was instructed to monitor such cases to ensure that re-granting of the lease is not delayed due to delay in sending of the proposal by the Geologist or his office.

During test check of Demand and Collection Registers of three District Geologist[92] in April 2009 and August 2009 for the period 2005-06 to 2008-09, we noticed that in 64 cases, lease of ordinary sand had expired or surrendered or cancelled/terminated. These leases remained idle for the period ranging between one to 11 years. It was observed that though the Department had identified the areas which could be given on lease again, no efforts were made by the Department to send a proposal for issue of Gazette notification to the Collector for the purpose. Due to failure on the part of the departmental officials to re-grant leases, Government had forgone revenue in form of dead rent to the tune of ₹ 1.11 crore.

After this was pointed out to the Department between September and December 2010, the Department in its reply (July 2011) stated that before issuing notification, period of 90 days is required to be observed. The Government has instructed District Geologists to take utmost care and remain more vigilant before re-allotment of land. This causes the delay in issue of notification for re-allotment of land. The reply of the Department is not convincing in view of the fact that the delay was unjustifiable and the Departmental officials were not vigilant in re-allotment of expired leases.

The matter was reported to the Government in May 2011, their reply has not been received (October 2011).

[92] Ahmedabad, Anand, Gandhinagar.

7.5 Non/short levy of royalty and interest

The Mines and Minerals (Development and Regulations) Act, 1957, (herein after referred to as Act) the Mineral Concession Rules, 1960 and the Gujarat Minor Mineral Rules, 1966 provide that a lessee is liable to pay royalty in respect of any mineral removed or consumed from the leased area at the prescribed rates in respect of each lease for major/minor mineral. Default in payment attracts simple interest at the rate prescribed. Rule 64 D of Mineral Concession Rules, 1960, provides that royalty for minerals such as Pozzolanic Clay, fire clay, gypsum etc, will be computed on the basis of monthly mineral value as shown in "Monthly Statistics of Mineral Production", published by Indian Bureau of Mines, Nagpur. Section 9(3) of the Act empowers the Central Government to enhance/ reduce the royalty rates in respect of any mineral by notification in the official gazette. Accordingly, the Central Government revised the rates of royalty on coal and lignite with effect from 1st August 2007. The revised rate of royalty for lignite is ₹ 45 plus 2 *per cent* of basic pithead price of ROM (Run of mine) lignite. Section 4 of the Act stipulates that no person shall undertake any mining operation in any area except in accordance with the terms and conditions of the mining lease granted under the Act.

During test check of records of 10 District Geologists for the period 2004-05 to 2009-10, we noticed between March 2009 and January 2011 that in 119 cases, there was non/short levy of royalty and interest of ₹ 11.55 crore as mentioned in the table below:

(₹ in crore)

Sr No	Location	No. of cases	Short levy	Nature of objection
1	Bhuj, Godhra, Himatnagar, Palanpur, Porbandar, Rajkot, Rajpipla, Tapi Dn (Surat), Vadodara	116	1.30	According to Industries and Mines Department Circular dated 2 December 2000, lessee has to pay royalty in advance. Government has also introduced a system of issue of triplicate passbook in case of advance payment of royalty. A perusal of Demand and Collection Register revealed that 116 lessees had removed minerals (i.e. Black trap, Quartzite, Building Stone etc) from the leased area. Royalty was not levied in four cases and short levied in 112 cases on minerals removed from leased area.
2.	Bhuj, Tapi Dn(Surat)	2	1.11	The Department did not initiate action to recover interest on non-payment/ delayed payment of dues.

3	Amreli	1	9.14	The Department failed to initiate any action to recover royalty on Marl at the rate of ₹ 12 per MT as per interim order of Gujarat High Court.

The Departmental officers failed to initiate action to recover the royalty and interest in these cases. This resulted in non/short levy of royalty and interest of ₹ 11.55 crore.

After this was pointed out to the Department between September 2010 and March 2011, the Department in its reply (July 2011) accepted audit observations amounting to ₹ 10.44 crore in 118 cases and recovered ₹ 5.84 crore in 104 cases. In remaining cases, reply has not been received (October 2011).

The matter was reported to the Government in May 2011, their reply has not been received (October 2011).

7.6 Non/short levy of dead rent

Under Section 9 of the Act, a lessee is liable to pay in respect of each mineral removed or consumed from the leased area, royalty or dead rent whichever is higher. If lease holders do not extract any mineral during the year or royalty paid on removal/ consumption of minerals extracted is less than dead rent payable, they are liable to pay dead rent or difference between dead rent payable and royalty actually paid . Further, rule 22 of Gujarat Minor Minerals Rules, 1966 provides that the lease shall be liable to be cancelled if the lessee ceases to work the quarry for a continuous period of six months without some reasonable cause or prior permission of the competent authority. Government of Gujarat revised rates of dead rent in respect of minor mineral with effect from 15th January 2010. Default in payment of royalty attracts simple interest at the prescribed rates (i.e. 24 *per cent* per annum upto 7 October 2007 and 18 *per cent* per annum thereafter).

During test check of Demand and Collection Register of office of 18 District Geologists[93] for the period 2005-06 to 2009-10, we noticed between March 2009 and January 2011 that out of total 543 cases:

7.6.1 In 506 cases, the lease holders did not excavate and remove the minerals. In these cases, the Department was required to cancel the leases, but in none of these cases, the leases were cancelled. The lessees continued to hold their rights. They were liable to pay dead rent of ₹ 2.54 crore. However, no demand for the same was raised by the Department. This resulted in non-levy of dead rent of ₹ 2.54 crore.

[93] Ahmedabad, Amreli, Anand, Bharuch, Bhuj, Dahod, Gandhinagar, Godhra, Himatnagar, Jamnagar, Junagadh, Navsari, Palanpur, Porbandar, Rajkot, Rajpipla (Narmada), Tapi Dn. (Surat), Vadodara.

7.6.2 In 37 cases, the lessees paid royalty of ₹ 2.96 lakh on the minerals excavated. The dead rent of the area leased out worked out to ₹ 24.40 lakh. The royalty paid was less than the dead rent payable for the leased area. However, the Departmental officials did not recover differential amount between dead rent and royalty. This resulted in short levy of dead rent of ₹ 21.44 lakh.

The total non/short levy of dead rent was ₹ 2.75 crore in 543 cases.

After this was pointed out to the Department between September 2010 and March 2011, the Department in its reply (July 2011) accepted audit observations amounting to ₹ 2.44 crore in 486 cases and recovered ₹ 1.12 crore in 279 cases. In remaining cases, reply has not been received (October 2011).

The matter was reported to the Government in May 2011, their reply has not been received (October 2011).

7.7 Non/short levy of surface rent

Rule 22 of Gujarat Minor Mineral Rules, 1966 provides that the general conditions of lease may include a condition among others that "the lessee shall also pay to Government for the surface area leased to him surface rent at the rate prescribed by the Government from time to time. The rate of surface rent shall not exceed rate of non agricultural assessment prescribed by the Government." As per revised rates effective from 1st August, 2003, rates of NAA are ₹ 1, ₹ 0.50 and ₹ 0.15 per sq m per annum for Class A, Class B and Class C of cities/ villages respectively. Default in payment of surface rent attracts simple interest at prescribed rates (i.e. 24 *per cent* per annum upto 7.10.2007 and 18 *per cent* per annum thereafter).

During test check of the records of six District Geologists[94] for the period 2008-09 to 2009-10, we noticed between October 2009 and August 2010 that in 224 cases of leases of major and minor minerals, the Departmental officials did not levy surface rent on area admeasuring 329 lakh sq m. This resulted in non-levy of surface rent of ₹ 29.59 lakh.

After this was pointed out to the Department between September 2010 and March 2011. The Department in its reply (July 2011) accepted audit observations amounting to ₹ 29.59 lakh in 224 cases and recovered ₹ 29.55 lakh in 223 cases. In remaining case, reply has not been received (October 2011).

The matter was reported to the Government in May 2011, their reply has not been received (October 2011).

[94] Bhavnagar, Dahod, Godhra, Himatnagar, Jamnagar, Porbandar

7.8 Loss of revenue due to non-finalisation of lease deeds

Sub-rule (4) of Rule 11 of Gujarat Minor Mineral Rules, 1966 provides that where a quarry lease is granted under sub-rule (1) the requisite lease deed shall be executed in triplicate within three months from the date of the order sanctioning the lease and if no such deed is executed within the said period the order granting the lease shall be deemed to have been revoked. Rule 13 of the Rules provides that possession of the area will be handed over to the lessee after the lease deed is executed.

During test check of the lease register and files of lease granted by District Geologist, Bhavnagar for the year 2009-10, we noticed in May 2010 that in 39 quarry mining leases sanctioned between October 2005 and September 2009, final lease deeds were not executed. Consequently, all those applicants could not get possession of their respective lease. Non-finalisation of lease deeds resulted in notional loss of revenue in the form of dead rent amounting to ₹ 20.81 lakh.

After this was pointed out to the Department in December 2010, the Department in its reply (July 2011) stated that out of total 39 cases, lease deeds have been executed in 12 cases and in remaining 27 cases, leases have been cancelled. Further details were not furnished by the Department (October 2011).

The matter was reported to the Government in May 2011, their reply has not been received (October 2011).

7.9 Non-levy of royalty on illegal mining and manufacturing of bricks due to lack of co-ordination

Rule 3 of Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005 puts restrictions on possession, storage, sale, trade, mining, and removal etc of minerals except in accordance with the provisions of the Act. Rule 5 provides that no person shall quarry, mine, excavate or win any mineral in any land without the permission granted under the Act. Rule 13 provides for penalties for contravention of these Rules. Government has also constituted task force at State/district level. Industries and Mines Department vide notification dated 16.06.1999 fixed royalty at lump sum rates for brick manufacturing. There is provision of penalty of ₹ 10,000 for illegal manufacturing of bricks.

Cross check of the records of five District Geologists[95] with records of respective District Development Officers (DDO) for the period 2005-06 to 2008-09, between March 2009 and April 2010 revealed that DDOs had detected 84 cases of illegal mining and manufacturing of bricks in the area under their jurisdiction. However, these cases were not transmitted to concerned District Geologists for further necessary action. There was no system in place for communication of such illegal mining activities to the mineral administration in the State. Lack of system of co-ordination between the Revenue Authorities and concerned District Geologists resulted in non-levy of royalty of ₹ 19.72 lakh including penalty of ₹ 4.80 lakh.

After this was pointed out to the Department between September and December 2010, the Department in its reply (July 2011) accepted audit observations amounting to ₹ 19.72 lakh in 84 cases and recovered ₹ 2.90 lakh in 22 cases. In remaining cases, reply has not been received (October 2011).

The matter was reported to the Government in May 2011, their reply has not been received (October 2011).

[95] Ahmedabad, Anand, Bhavnagar, Godhra, Navsari.

7.10 Loss of revenue due to lack of co-ordination between Geologist and revenue authorities

Government of Gujarat *vide* G.R.No. NSJ/1081/1023/2 dated 13 July 1983 decided to permit land holders, holding the land under new and restricted tenure under the Bombay Tenancy and Agricultural Land Act, 1948 (as applicable to Gujarat) to convert their land into old tenure and to sell/transfer the same, subject to payment of premium at prescribed rates computed on the difference between the estimated price of the land and the occupancy price recovered at the time of allotment of the land.

Section 66 of the Bombay Land Revenue Code, 1879 provides that land cannot be used for non-agricultural (NA) purpose or for any purpose other than the purpose for which such land is assessed and held (under Section 65 and 65-A of the Code ibid), unless the permission is obtained from the Collector. For breach of the provisions, penalty at the rate as prescribed by the Government in Revenue Department vide Resolution No.BHKP/1080/59560-K dated 27-8-80 is leviable. Section 67 A of the BLR Code, 1879 provides for levy of conversion tax on change in the mode of use of the land from agricultural to non-agricultural purpose in respect of land situated in a city, town or village. Different rates have been prescribed for residential/charitable and industrial/other purpose depending upon the population of the city/town/ village. Moreover, the Government of Gujarat *vide* G.R. No. LRC 102002/1640/6 dated 22 April 2003 revised the rates of conversion tax to ₹ two *per* sq.mt. for temporary non-agricultural use of land falling in city/town/village with population below one lakh.

During test check of records of three District Geologists[96], we noticed that in six cases, the District Geologist did not inform the concerned revenue authorities to initiate action to recover the non-agricultural assessments (NAA) for non-agricultural use of land, alongwith premium, conversion tax and penalty. Out of six cases, in four cases, the Geologists did not ensure payment of conversion tax before commencement of non-agricultural use. In one case, though the owner was liable to pay premium, conversion tax and penalty, the District Geologist did not inform about non-agricultural use of land to the concerned revenue authority. In one case, District Geologist did not inform concerned revenue authority the detection of unauthorised non-agricultural use of land for excavation of black-trap/ hard murhum where the owner was liable to pay non-agricultural assessment and penalty for non-agricultural use without permission of the Collector.

[96] Dahod, Godhra, Rajpipla

Thus, due to lack of co-ordination between the District Geologists and concerned District revenue authorities, there was a loss of revenue to the tune of ₹ 11.52 lakh in the form of Premium/Conversion Tax, Non-agricultural Assessment and penalty.

After this was pointed out to the Department between September and December 2010, the Department in its reply (July 2011) accepted audit observations amounting to ₹ 0.66 lakh in four cases and recovered ₹ 0.19 lakh in one case. In remaining cases, reply has not been received (October 2011).

The matter was reported to the Government in May 2011, their reply has not been received (October 2011).

7.11 Non-realisation of revenue due to non-adherence of conditions of lease sanction order

The Mines and Minerals (Development and Regulation) Act, 1957 and Rules made thereunder empower the State Government to sanction the lease of major minerals with prior approval of the Central Government. As per Section 65 of the Bombay Land Revenue code, 1879, if owner of agricultural land wishes to use land or part thereof for any non agricultural purpose, he shall first obtain the permission of the Collector under Section 66 of the code, ibid. If an agricultural land is put to use for any non agricultural purpose without the permission of the Collector being obtained first, the owner of such land shall be liable to pay penalty at such rate as may be deemed fit by the Collector subject to instructions issued by the Government. Government had prescribed the rate of penalty for use of agricultural land for non-agricultural purpose without making an application and before obtaining the permission of the Collector.

Test check of the records of District Geologist, Bhavnagar for the year 2007-08 in April 2009 revealed that Government of Gujarat granted lease of land admeasuring 3672 hectares of various survey numbers of Taluka Bhavnagar and Ghogha to Gujarat Mineral Development Corporation Limited (lessee) for mining of lignite for a period of 20 years. The area of 3672 hectares consisted of 2941.6784 hectares and 730.3216 hectares of Private land and Government land respectively.

As per condition of the sanction order, the lessee was required to obtain NA permission from the competent authority under the provisions of the Bombay Land Revenue Code. Our scrutiny of records revealed that the lessee did not obtain NA permission for the land and started mining activity from December 2008 and extracted 39516.350 MT, 96257.480 MT, and 130143.900 MT of lignite during the months of December 2008, January and February 2009 respectively. Thus, non-compliance of the condition of the sanction order of

the lease resulted in non-realisation of revenue in the form of conversion tax of ₹ 17.65 crore.

After this was pointed out to the Department in September 2010, the Department in its reply (July 2011) did not accept the audit observations. It stated that as per Revenue Department's GR dated 25.03.1981, when land is acquired under Section 11 of Land Acquisition Act, 1894, the purpose of land gets changes automatically. GMDC had already paid conversion charges amounting to ₹ 3.88 crore before acquiring the land. Reply of the Department is not tenable because it was clearly mentioned in the sanction order that the lessee was required to obtain NA permission from the competent authority under the provisions of the Bombay Land Revenue Code.

The matter was reported to the Government in May 2011, their reply has not been received (October 2011).

ENERGY AND PETROCHEMICALS DEPARTMENT

7.12 Non-levy of interest for belated payment of royalty on oil and natural gas

As per Rule 14 of the PNG Rules 1959, a lessee shall pay royalty in respect of any mineral oil mined, quarried, excavated or collected by him from the leased area at the rates specified in schedule of the Act from time to time. The royalty shall be paid on monthly basis as may be provided for in the lease and shall be paid by the last day of the month succeeding the month in respect of which it is payable.

As per Rule 23(1) of PNG Rules 1959, all license fees, lease fees, royalties and other payments under these rules, shall, if not paid to the Central or State Govt. as the case may be within the time specified for such payment, be increased by a penal rate of 200 basis points over the prime lending rate of SBI for the period of delay.

During test check of records of the Director of Petroleum, Gandhinagar for the year 2009-10 in November 2010, we noticed in eight cases that lease holders did not pay royalty within the prescribed time limit and in one case the royalty paid was accepted by the Department without checking correctness/ methodology. Interest was leviable for the same delay in payment of royalty but was not levied. This resulted in non-levy of interest of ₹ 2.12 crore.

After this was pointed out to the Department in March 2011, the Department in its reply (July 2011) accepted audit observations amounting to ₹ 1.08 crore in eight cases. In case of ONGC, the Department stated that ONGC pays royalty on crude oil at discounted price instead of market driven price in terms of instructions of Ministry of Petroleum and Natural Gas. ONGC first pays royalty for the current month based on previous quarter's discounted price and

at the end of the quarter, updation is done as per Ministry's instructions. Further reply is awaited (October 2011).

The matter was reported to the Government in May 2011, their reply has not been received (October 2011).

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