

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

The Report has been laid on the table of the State Legislature Assembly on 10-07-2014

for the year ended 31 March 2013

Government of West Bengal
Report No. 1 of the year 2014

TABLE OF CONTENTS

	Reference to	
	Paragraph	Page
PREFACE		v
OVERVIEW		vii
CHAPTER I		
GENERAL		
Trend of revenue receipts	1.1	1
Response of the departments/Government towards audit	1.2	5
Analysis of the mechanism for dealing with the issues raised by audit	1.3	9
Audit planning	1.4	11
Results of audit	1.5	12
CHAPTER II		
SALES TAX/VALUE ADDED TAX		
Tax administration	2.1	17
Trend of revenue	2.2	17
Cost of collection of VAT per assessee	2.3	18
Arrears in assessment	2.4	19
Working of internal audit wing	2.5	19
Cost of collection	2.6	20
Analysis of collection	2.7	20
Revenue impact of audit reports	2.8	20
Results of audit	2.9	22
“Efficiency of the Administration of Value Added Tax in West Bengal”	2.10	23
Audit observations	2.11	49
Short determination of Turnover of Sales	2.12	49
Non/short levy of interest	2.13	50
Non-levy of penalty on evaded tax	2.14	51
Non/short levy of purchase tax	2.15	52
Short levy of tax on contractual transfer price	2.16	53
Application of incorrect rate of tax	2.17	54
Irregular allowance of input tax credit	2.18	54
Irregular allowance of stock transfer	2.19	55
Irregular allowance of compounded rate of tax	2.20	56
Short levy of tax due to mistake in computation	2.21	57

	Reference to	
	Paragraph	Page
CHAPTER III		
LAND REVENUE		
Tax administration	3.1	61
Trend of revenue	3.2	61
Cost of collection	3.3	62
Revenue impact of Audit Reports	3.4	63
Working of internal audit wing	3.5	63
Results of audit	3.6	64
Audit observations	3.7	65
Non/short realisation of rent, cess and surcharge on land used for commercial purpose	3.8	65
Non-realisation of revenue due to non-settlement of long term lease	3.9	66
Non-realisation of lease rent and interest	3.10	66
CHAPTER IV		
MOTOR VEHICLES TAX		
Tax administration	4.1	71
Trend of revenue	4.2	71
Cost of collection	4.3	72
Revenue impact of audit reports	4.4	73
Working of internal audit wing	4.5	73
Results of audit	4.6	73
Audit observations	4.7	75
Non-realisation of taxes due to non-maintenance of Tax Demand Register(TDR)	4.8	75
Non/partial mapping of business rules in the VAHAN software	4.9	77
Non-realisation of special fee	4.10	84
Non/short realisation of permit fee	4.11	85
CHAPTER V		
STAMP DUTY AND REGISTRATION FEES		
Tax administration	5.1	91
Trend of revenue	5.2	91
Cost of collection	5.3	92
Revenue impact of Audit Reports	5.4	93
Results of audit	5.5	93
“Evasion of Stamp Duty and Registration Fees”	5.6	95

	Reference to	
	Paragraph	Page
CHAPTER VI		
OTHER TAX RECEIPTS		
Tax administration	6.1	117
Results of audit	6.2	117
Audit observations	6.3	119
Non-realisation of wastage fee on handling wastage	6.4	119
Non-realisation of Profession Tax due to non-enrolment	6.5	119
Non-raising of demand of Profession Tax	6.6	120
CHAPTER VII		
MINES AND MINERALS		
Tax administration	7.1	125
Revenue impact of audit reports	7.2	125
Working of internal audit wing	7.3	126
Results of audit	7.4	126
Audit observations	7.5	127
Non/short realisation of price of brick earth extracted unauthorisedly	7.6	127
Non/short realisation of royalty and cess on brick earth	7.7	127
Non-realisation of royalty, penalty and fine due to lack of co-ordination between the assessing and the realisation authority	7.8	128

PREFACE

This Report of the Comptroller and Auditor General of India has been prepared for submission to the Governor under Article 151 of the Constitution for being laid before the State Legislature.

The report, covering the one year period 2012-13, contains significant results of the compliance and performance audit of the Departments of the Government of West Bengal under the Economic and Revenue Services, including Finance Department, Excise Department, Land and Land Reforms Department and Transport Department.

The cases mentioned in this Report are among those which came to notice in course of test audit (2012-13) of accounts for the period 2012-13 as well as those which had come to notice in earlier years but could not be reported in previous Audit Reports; matters relating to the period subsequent to 2012-13 have also been included wherever necessary.

Audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India, based on the Auditing Standards of the International Organisation of Supreme Audit Institutions.

Chapter I of this Report covers trend of revenue receipts, response of the departments/Government towards audit, analysis of the mechanism for dealing with the issues raised by audit, audit planning and results of audit.

OVERVIEW

OVERVIEW

I. General

This Report contains 25 paragraphs including two Performance Audits relating to under-assessment/ non-realisation/ loss of revenue etc. involving ₹ 954.70 crore. Some of the major findings are mentioned in the following paragraphs:

The total receipts of the Government for the year 2012-13 increased to ₹ 68,295.75 crore from ₹ 58,755.04 crore in the previous year. 51 *per cent* of the total revenue collected in 2012-13 was raised by the Government through tax revenue (₹ 32,808.49 crore) and non-tax revenue (₹ 1,918.15 crore). The balance 49 *per cent* was received from the Government of India as the State's share of net proceeds of divisible Union taxes (₹ 21,226.27 crore) and Grants-in-aid (₹ 12,342.84 crore).

(Paragraph 1.1.1)

As on 30 June 2013, 757 inspection reports issued upto December 2012 containing 3,595 audit observations involving ₹ 1,313.57 crore were outstanding for want of response or final action by the concerned departments.

(Paragraph 1.2.1)

Test check of records of sales tax/value added tax, land revenue, transport, state excise, stamp duty and registration fees, profession tax, electricity duty, amusement tax, other tax and non-tax receipts conducted during the year 2012-13 indicated under-assessment/ short levy/ loss of revenue amounting to ₹ 571.86 crore in 1,533 audit observations. During the course of the year, the departments accepted under-assessment of ₹ 119.96 crore in 864 audit observations and recovered ₹ 2.80 crore at the instance of audit.

(Paragraph 1.5.1)

II. Sales Tax/Value Added Tax

A Performance Audit on 'Efficiency of the Administration of Value Added Tax in West Bengal' revealed the following:

- Absence of a system of cross verification of information of other departments as well as within the department resulted in evasion of tax of ₹ 115.97 crore by 190 dealers.

(Paragraphs 2.10.8.3, 2.10.8.4, 2.10.8.5 and 2.10.9.1)

- Lack of a system of monitoring compliance of the findings of the preventive wings resulted in non-assessment and non-realisation of ₹ 3.14 crore.

(Paragraph 2.10.11)

- Non-initiation of recovery proceedings resulted in evasion of tax of ₹ 642.62 crore in 1,620 cases by 1,570 dealers.

(Paragraphs 2.10.19.1, 2.10.19.2, 2.10.19.3 and 2.10.19.4)

- Absence of monitoring of certificate cases by the department and inaction of the Tax Recovery Officers resulted in non-realisation of ₹ 43.08 crore in 697 cases.

(Paragraphs 2.10.20.1, 2.10.20.2 and 2.10.20.3)

- Inefficiency of administration in monitoring transit declarations resulted in evasion of tax of ₹ 91.73 crore by transporters in 3,689 cases.

(Paragraph 2.10.22)

- Non-disposal of appeal cases within the specified time limit resulted in allowance of claims of disputed amount of ₹ 63.16 crore to the appellants in 139 appeal cases without any hearing.

(Paragraph 2.10.23)

- Deficiencies in the internal control mechanism like non-maintenance of database of preventive wing's findings, non-existence of working manual of Internal Audit Wing and poor maintenance of records were noticed.

(Paragraph 2.10.24)

Due to short determination of turnover of sales there was short levy of tax of ₹ 6.62 crore in 22 cases.

(Paragraph 2.12)

Penalty of ₹ 6.25 crore was not levied on evaded tax of ₹ 3.32 crore by the Assessing Authorities in seven cases.

(Paragraph 2.14)

The AAs determined short CTP which resulted in short levy of tax of ₹ 9.41 crore in 26 cases.

(Paragraph 2.16)

Application of incorrect rate of tax resulted in short levy of tax of ₹ 3.01 crore in 21 cases.

(Paragraph 2.17)

Computation mistakes/omissions on the part of AAs resulted in short levy of tax of ₹ 68.71 lakh in nine cases.

(Paragraph 2.21)

III. Land Revenue

Non-initiation of any action to realise the dues from defaulting *raiyyats* and application of rates lower than the prescribed rates resulted in non/short realisation of rent, cess and surcharge of ₹ 5.26 crore in 2,623 cases.

(Paragraph 3.8)

Failure of the Department to realise annual lease rent from seven lessees resulted in non-realisation of rent and interest of ₹ 15.88 lakh.

(Paragraph 3.10)

IV. Motor Vehicles Tax

Non-maintenance of Tax Demand Registers led to non-realisation of tax, additional tax, special tax and penalty of ₹ 199.57 crore from the owners of 2,54,185 vehicles.

(Paragraph 4.8)

Penalty of ₹ 1.16 crore was not realised from owners of vehicles for delayed payment of taxes in 4,334 cases.

(Paragraph 4.9.1)

Realisation of fee for Certificate of Fitness at incorrect rates resulted in short realisation of ₹ 98.45 lakh in cases of 72,698 vehicles.

(Paragraph 4.9.2)

Showroom inspection fee of ₹ 50.35 lakh was not realised in 40,766 cases.

(Paragraph 4.9.6)

Tax and penalty of ₹ 42.18 lakh in respect of 9,254 newly registered vehicles were not realised from the dealers.

(Paragraph 4.9.7)

Assessment of additional tax in 6,498 cases of goods vehicles of other states at rates below the prescribed rate resulted in short realisation of additional tax by ₹ 46.17 lakh.

(Paragraph 4.9.8)

Owners of 2,240 vehicles did not pay special fee of ₹ 80.72 lakh.

(Paragraph 4.10)

V. Stamp Duty and Registration Fees

A Performance Audit on ‘**Evasion of Stamp Duty and Registration Fees**’ revealed the following:

- Absence of a system of sharing of information between the Public Offices and the Registration Offices relating to execution/submission of documents in the Public Offices led to avoidance/ evasion of tax of ₹ 60.21 crore.

(Paragraphs 5.6.5.1 to 5.6.5.4)

- Absence of provision in the Acts/Rules to prevent splitting of properties led to avoidance of additional stamp duty of ₹ 4.73 crore.

(Paragraph 5.6.6)

- Incorrect mapping of the business rules in the CORD software resulted in short-levy of stamp duty of ₹ 23.77 crore.

(Paragraph 5.6.7.1)

- Undervaluation of properties by furnishing incorrect property details led to evasion of stamp duty and registration fees of ₹ 23.73 crore.

(Paragraphs 5.6.8.1 to 5.6.8.3)

- Misclassification of instruments by registering authorities resulted in short-levy of stamp duty by ₹ 1.05 crore.

(Paragraphs 5.6.9.1 and 5.6.9.2)

CHAPTER I : GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by Government of West Bengal during the year 2012-13, the State's share of net proceeds of divisible Union taxes and duties assigned to the States and grants-in-aid received from Government of India during the year and the corresponding figures for the preceding four years are mentioned below:

Table 1.1 – Trend of revenue receipts

(₹ in crore)						
Sl. No.	Receipts	2008-09	2009-10	2010-11	2011-12	2012-13
1.	Revenue raised by the State Government					
	• Tax revenue	14,419.15	16,899.98	21,128.74	24,938.16	32,808.49
	• Non-tax revenue	4,966.39	2,438.11	2,380.49	1,340.25	1,918.15
	Total	19,385.54	19,338.09	23,509.23	26,278.41	34,726.64
2.	Receipts from Government of India					
	• State's share of net proceeds of divisible Union taxes	11,321.78	11,648.16	15,954.95	18,587.81	21,226.27
	• Grants-in-aid	6,197.07	5,935.40	7,800.02	13,888.82	12,342.84
	Total	17,518.85	17,583.56	23,754.97	32,476.63	33,569.11
3.	Total receipts of the State Government (1 and 2)	36,904.39	36,921.65	47,264.20	58,755.04	68,295.75¹
4.	Percentage of 1 to 3	53	52	50	45	51

The above table indicates that during the year 2012-13, the revenue raised by the State Government (₹ 34,726.64 crore) was 51 *per cent* of the total revenue receipts against 45 *per cent* in the preceding year. The balance 49 *per cent* of receipts during 2012-13 was received from Government of India as State's share of net proceeds of divisible Union taxes and Grants-in-aid.

¹ For details, please see Statement No. 11 – Detailed statement of revenue by minor heads in the Finance Accounts of Government of West Bengal for the year 2012-13. Figures under the heads 0020-Corporation tax, 0021 - Taxes on income other than Corporation tax, 0032 - Taxes on wealth, 0037 – Customs duty, 0038 - Union Excise duties and 0044 - Service tax mentioned in the Statement under caption “A - Tax revenue” have been excluded from the revenue raised by the State and included in the State's share of divisible Union taxes.

1.1.2 The following table presents the details of tax revenue raised during the period 2008-09 to 2012-13:

Table 1.2 - Details of Tax revenue

(₹ in crore)

Sl. No.	Head of revenue	2008-09	2009-10	2010-11	2011-12	2012-13	Percentage of increase (+)/ decrease (-) in 2012-13 over 2011-12
1.	Tax on Sales, trade etc.	8,955.09	10,509.64	13,275.77	15,888.41	18,554.76	(+)16.78
2.	Stamp duty and registration fees	1,509.49	1,814.22	2,265.21	2,731.68	4,357.23	(+)59.51
3.	State excise	1,082.94	1,443.81	1,783.34	2,117.04	2,621.43	(+)23.83
4.	Land revenue	983.78	928.92	1,253.66	1,872.23	2,023.72	(+)8.09
5.	Taxes on vehicles	608.01	774.34	936.01	1,007.23	1,221.55	(+)21.28
6.	Other taxes and duties on Commodities and Services	367.15	393.11	441.18	477.39	448.72	(-)6.01
7.	Other taxes on Income and Expenditure- Taxes on Profession, Trades, Callings and Employment	321.60	362.40	388.54	426.68	448.01	(+)5.00
8.	Taxes and duties on electricity	587.52	664.57	769.09	408.19	1,837.15	(+)350.07
9.	Other taxes	3.57	8.97	15.94	9.31	1,295.92 ²	(+)13,819.66
Total		14,419.15	16,899.98	21,128.74	24,938.16	32,808.49	(+)31.56

Increase in tax revenue receipts in 2012-13 over the preceding year from Sales Tax and VAT (16.78 *per cent*) was attributed by the department mainly to increase on surcharge on sales tax, motor spirit sales, collection under VAT and West Bengal Sales Tax Act. Increase in Stamp Duty and Registration Fees (59.51 *per cent*) was due to sale of judicial stamps, stamp duties on unstamped document, collection of registration fees, standard user charges, sale of other non-judicial stamps, duty on impressing of documents. Increase in State Excise (23.83 *per cent*) was due to State Excise on country spirits, license fees for commercial spirits, fines and confiscations, receipts on malt

² The figure includes Tax on entry of goods into local areas of ₹ 1,282.54 crore collected subsequent to introduction of the West Bengal Tax on Entry of Goods into Local Areas Act, 2012.

liquor, spirits used for medical preparations and receipts of duty on foreign liquor. The increase of Land Revenue (8.09 *per cent*) was due to receipts on Land Revenue tax, rates and cesses on land, miscellaneous receipts other than Government estates, collection of royalties from mines and minerals, surcharge on Land Revenue under rural employment, interest on arrears of Land Revenue, education cess on coal mines and recoveries on account of Land Acquisition Establishment. The increase in Taxes on vehicles (21.28 *per cent*) was due to receipts on One Time Tax on motor vehicle, issue of laminated driving license, receipts under the Motor Vehicles Act, 1988 and the West Bengal Motor Vehicles Tax Act, 1979. Increase in Other taxes on income and expenditure (five *per cent*) and Taxes and duties on electricity (350.07 *per cent*) were due to receipts on Profession, Trade, Callings & Employment and receipts for adjustment for energy charges of CTC to Calcutta Electricity Supply Corporation (CESC), waiving of Government electricity duty as per incentive scheme, receipts towards adjustment of subsidy for rural electrification by West Bengal State Electricity Board (WBSEB), receipts in cash payable by WBSEB, CESC, other receipts on taxes and duties on electricity respectively.

The decrease in Other taxes and duties on commodities and services (6.01 *per cent*) was attributed by the department mainly to decrease in receipts of Entertainment Tax on VCR/VCP Set, Betting tax, collection from Railway Passenger fare, Luxury tax, collection of cess on sale of motor spirit and high speed diesel etc.

1.1.3 The following table presents the details of Non-Tax revenue raised during 2008-09 to 2012-13:

Table 1.3 - Details of Non-Tax revenue

							(₹ in crore)
Sl. No.	Head of revenue	2008-09	2009-10	2010-11	2011-12	2012-13	Percentage of increase (+) / decrease (-) in 2012-13 over 2011-12
1.	Interest receipts	3,999.90	362.83	716.84	291.54	934.10	(+)220.40
2.	Police	66.88	68.67	103.62	152.79	133.76	(-)12.46
3.	Forestry and wildlife	45.33	64.17	75.49	92.47	113.61	(+)22.86
4.	Medical and public health	66.36	47.34	67.03	82.13	84.34	(+)2.69
5.	Dairy development	29.84	27.43	26.84	28.37	30.11	(+)6.13
6.	Roads and Bridges	18.58	25.90	22.52	23.34	47.55	(+)103.73
7.	Education, sports, art and culture	44.62	73.04	65.21	20.54	38.33	(+)86.61
8.	Housing	9.07	14.52	11.52	11.94	11.44	(-)4.19
9.	Food storage and warehousing	340.17	1,292.97	877.31	1.55	1.39	(-)10.32
10.	Others	345.64	461.24	414.11	635.58	523.52	(-)17.63
Total		4,966.39	2,438.11	2,380.49	1,340.25	1,918.15	(+) 43.12

The increase in non-tax revenue receipts in 2012-13 over the preceding year from Interest receipts (220.40 *per cent*), Forestry and wildlife (22.86 *per cent*) and Roads and bridges (103.73 *per cent*) was attributed by the departments mainly to (i) interest on loans to studios and laboratories, West Bengal State Electricity Distribution Co. Ltd., West Bengal Electronic Industries Development Corporation, LIG housing scheme, premium on loan on West Bengal Government stock, interest on capital outlay for Multipurpose River Project Scheme and investment of cash balances; (ii) sale of timber from different circles of the department; and (iii) other receipts on Roads and Bridges and agency charges on national highways received from Government of India.

The decrease in non-tax revenues in 2012-13 over the preceding year under Police (12.46 *per cent*) was attributed by the department mainly to deployment of police to other Government and private persons and decrease in recoveries of establishment charges from Calcutta Port Trust (CPT), receipts of cost of anti-hijacking measures, receipts under Arms Act and miscellaneous receipts.

1.2 Response of the departments/Government towards audit

Audit observations raised during local inspection are replied to by the concerned authorities after issue of inspection report(s). On non-receipt of satisfactory reply/non-settlement of the observations in the departmental Audit Committee meeting(s), the potential observations are converted into draft paragraph(s) and forwarded to the departments/Government for reply/comments within six weeks. In case, the reply furnished by the Government is not satisfactory, the draft paragraphs are finally included in the Audit Report. The Secretary to the Government of the concerned department, after laying of the Audit Report in the legislature, forwards explanatory notes on the relevant paragraphs to the Committee on Public Accounts (PAC) for vetting by the Accountant General (AG). After discussion, the PAC makes recommendations for compliance within six months by the Government for final settlement of the paragraphs.

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

The Accountant General (E&RSA) conducts periodic inspection of the Government departments to test check the transactions and verify the maintenance of important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with the inspection reports (IRs) incorporating irregularities detected during the inspection and not settled on the spot, which are issued to the heads of the offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of the offices/Government are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial replies to the AG within four weeks from the date of issue of the IRs. Serious financial irregularities are reported to the heads of the departments and the Government.

Inspection Reports issued upto December 2012 disclosed that 3,595 paragraphs involving ₹ 1,313.57 crore relating to 757 IRs remained outstanding at the end of June 2013 as mentioned below alongwith the corresponding figures for the preceding two years:

Table 1.4 - Summary of outstanding IRs

	June 2011	June 2012	June 2013
Number of outstanding IRs	1,007	673	757
Number of outstanding audit observations	3,039	2,780	3,595
Amount involved (₹ in crore)	4,280.62	832.52	1,313.57

The department-wise details of the IRs and audit observations outstanding as on 30 June 2013 and the amounts involved are mentioned below:

Table 1.5 - Department wise details of outstanding IRs

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	Sales Taxes/ VAT	165	1,153	453.71
		Electricity duty	33	59	71.26
		Amusement Tax	16	34	1.89
		Profession Tax	60	159	6.52
		Stamp duty and registration fees	191	527	69.84
		Non-judicial Stamp duty	10	23	8.46
		State Lotteries	01	01	0.07
2.	Excise	State excise	30	164	119.47
3.	Land and Land Reforms	Land Revenue	83	647	213.50
		Receipts from mines and minerals	89	380	136.67
4.	Transport	Taxes on motor vehicles	79	448	232.18
Total			757	3,595	1,313.57

Even the first replies required to be received from the heads of offices within four weeks from the date of issue of the IRs were not received for 245 IRs issued upto December 2012. This large pendency of the IRs due to non-receipt of the replies is indicative of the fact that the heads of offices and the heads of the departments *inter alia* failed to initiate action to rectify the defects, omissions and irregularities pointed out by the AG in the IRs.

It is recommended that the Government may put in place an effective mechanism to ensure prompt and appropriate response to audit observations as well as institute a system for taking action against officials/officers who fail to send replies to the IRs/paragraphs as per the prescribed time schedules or fail to take action to recover loss/outstanding demand in a time bound manner.

1.2.2 Departmental Audit Committee meetings

The Government sets up Audit Committees 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 2012-13 and the paragraphs settled are mentioned in the following table:

Table 1.6 - Details of Departmental Audit Committee meetings

Departments	Number of meetings held	Number of paragraphs		Money Value of paragraphs settled (₹ in lakh)
		Discussed	Settled	
Land and Land Reforms	4	25	23	1,284.82
State Excise	1	41	25	354.96
Total	5	66	48	1,639.78

Thus, out of four Departmental³ Audit Committees, two committees held five meetings during 2012-13 and settled 48 paragraphs involving money value of ₹ 1,639.78 lakh. The other departments/directorates did not hold any Audit Committee meeting during 2012-13 despite being requested.

The Government may consider holding Audit Committee meetings regularly of each department at least twice a year.

1.2.3 Response of the departments to the draft audit paragraphs

Audit issued 32 draft paragraphs (DPs) and two Performance Audits (PAs) to four departments proposed for inclusion in the Audit Report 2012-13. After regular persuasion through reminders with departments, replies in respect of two PAs were received within the stipulated period of six weeks. In respect of 32 DPs, replies were received after the stipulated period. After consideration of the replies, the report now contains 23 paragraphs.

³ Excise Department, Finance Department (comprising Directorate of Commercial Taxes, Directorate of Registration and Stamp Revenue, Directorate of Electricity Duty and Directorate of State Lotteries), Land and Land Reforms Department and Transport Department.

The details of DPs and PAs issued and reply received are mentioned below:

Table 1.7 - Response of the departments to the DPs

Name of the Department	Head of Revenue	No. of DPs issued	Reply received within due date	Reply received after due date
Finance	Sales Tax/VAT	10+01(PA)	01(PA)	10
	Stamp Duty and Registration Fees	01(PA)	01(PA)	Nil
	Profession Tax	02	Nil	02
Excise	State Excise	02	Nil	02
Land and Land Reforms	Land Revenue including Mines and Minerals	06	Nil	06
Transport	Taxes on Motor Vehicles	12	Nil	12
Total		32+02(PA)	02(PA)	32

The Government should ensure that the concerned departments furnish replies to the DPs within the stipulated period of six weeks.

1.2.4 Follow up on Audit Reports – summarised position

As per Rules of Procedure of the Committee on Public Accounts of the West Bengal Legislative Assembly (Internal Working) framed in 1997, the concerned department shall send Action taken notes (ATN) on the recommendations contained in the Report of the PAC within six months from the date of its presentation to the House. However, the departments failed to submit ATNs within the stipulated period in respect of 33 paragraphs included in the Audit Reports upto the year ended March 2007 of which 19 belonged to the period prior to 2001-02.

The position of outstanding ATNs due from the departments (as on March 2013) in respect of Audit Reports of last 10 years is mentioned in the following table:

Table 1.8 - Position of outstanding ATNs

Year of Audit Report	No. of paragraphs /PA	No. of paragraphs /PA discussed	PAC Report	Date of presentation in the Assembly	No. of ATNs due
2001-02	53+02(PA)	03	37 th Report of 2010-11	25 March 2011	1
2001-02			20 th Report of 2008-09	17 March 2009	2
2003-04	34+02(PA)	01+01(PA)	2 nd Report of 2006-07	28 November 2006	8
2006-07	53+03(PA)	05+02(PA)	23 rd Report of 2008-09	24 March 2009	2
2006-07			35 th Report of 2010-11	25 March 2011	1

The Government should put in place a monitoring mechanism to watch and ensure timely action on the recommendations made by PAC in their report, with a view to safeguard the interests of revenue of the State.

1.2.5 Compliance with the earlier Audit Reports

The Committee on Public Accounts discusses the Audit Reports (Revenue Sector) and presents its own reports and recommendations for compliances by the Government. Normally 20 *per cent* of the total numbers of paragraphs of the Audit Report are selected every year for discussion. The remaining paragraphs are settled on the basis of replies of the Government.

As of 31 March 2013, the Government had not furnished explanatory notes in respect of selected six paragraphs and eight sub-paragraphs and unselected 1,080 paragraphs and 525 sub-paragraphs of Audit Reports from 1981-82 to 2010-11. The lack of response from the Government would adversely affect the revenue realisation.

1.2.5.1 Recovery of the accepted cases of the earlier Audit Reports

During the years 2007-08 to 2011-12, the Departments/Government accepted audit observations involving ₹ 1,244.52 crore of which an amount of ₹ 19.61 crore was recovered till March 2013 as mentioned in the following table:

Table 1.9 - Recovery of the accepted cases of the earlier Audit Reports

(₹ in crore)			
Year of Audit Report	Total money value of the Audit Report	Total money value of the accepted cases	Amount recovered
2007-08	616.07	193.74	0.49
2008-09	784.58	495.00	14.83
2009-10	236.97	88.24	0.94
2010-11	558.70	181.42	1.87
2011-12	530.97	286.12	1.48
Total	2,727.29	1,244.52	19.61

Thus, recovery in respect of the accepted cases was very low (1.58 *per cent*) as compared to the accepted money value.

The Government may take action to install a mechanism to pursue and monitor prompt recovery in the accepted cases.

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

Excise Department

The succeeding paragraphs 1.3.1 to 1.3.2 discuss the action taken by the **Excise Department** to deal with the cases detected in course of local audit conducted during the last 10 years (*Table No. 1.10*) and also the cases included in the Audit Reports for the years 2002-03 to 2011-12 (*Table No. 1.11*).

1.3.1 Position of Inspection Reports

The summarised position of inspection reports issued during the last 10 years, paragraphs included in these reports and their status as on 31 March 2013 are tabulated as follows:

Table 1.10 - Position of Inspection Reports

(₹ in crore)

Year	Opening Balance			Addition during the year			Clearance during the year			Closing balance		
	IRs	Paras	Money value	IRs	Paras	Money value	IRs	Paras	Money value	IRs	Paras	Money value
2003-04	135	323	460.68	12	61	5.46	23	91	54.37	124	293	411.77
2004-05	124	293	411.77	17	87	60.88	01	34	12.99	140	346	459.66
2005-06	140	346	459.66	06	65	49.18	02	45	6.07	144	366	502.77
2006-07	144	366	502.77	07	72	41.27	10	93	26.30	141	345	517.74
2007-08	141	345	517.74	10	122	22.57	03	75	98.57	148	392	441.74
2008-09	148	392	441.74	06	52	27.67	01	36	3.72	153	408	465.69
2009-10	153	408	465.69	10	82	59.06	132	370	463.44	31	120	61.31
2010-11	31	120	61.31	06	80	42.36	14	78	9.58	23	122	94.09
2011-12	23	122	94.10	07	80	63.12	01	42	66.13	29	160	91.09
2012-13	29	160	91.09	10	92	46.87	06	72	17.36	33	180	120.60

The department settled lesser number of paragraphs as compared to additions during the last 10 years except in the years 2003-04, 2006-07 and 2009-10.

It would be seen from the above table that the pace of clearance was slow except in 2009-10. Since with the passage of time chances of recovery of receipts become remote, the department may settle the audit observations promptly.

The department held one Audit Committee meeting during the year 2012-13 and settled 25 paragraphs involving money value of ₹ 354.96 lakh.

1.3.2 Recovery of the accepted cases

The position of paragraphs included in the Audit Reports of the last 10 years, those accepted by the department and the amount recovered are mentioned below:

Table 1.11 - Recovery of the accepted cases

(₹ in crore)

Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted	Money value of accepted paragraphs	Position of recovery of cases as on 31.03.2013
2002-03	04	84.50	02	16.11	0.10
2003-04	03	8.32	03	0.30	0.06
2004-05	04	11.57	03	11.18	0.13
2005-06	04	0.35	04	0.30	0.14
2006-07	14	37.69	07	27.02	0.59
2007-08	04	11.13	02	0.27	0.24
2008-09	06	20.66	03	0.73	0.43
2009-10	04	2.49	03	0.86	0.02
2010-11	01	293.85	01	85.06	0.08
2011-12	01	0.06	00	00	0.00
Total	45	470.62	28	141.83	1.79

The department accepted 28 paragraphs involving ₹ 141.83 crore during the last 10 years but realised ₹ 1.79 crore (1.26 *per cent*) till 31 March 2013 which is meagre. This indicates that the recovery mechanism of the department needs improvement.

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 tax administration, audit coverage and its impact during last five years etc.

During the year 2012-13, the audit universe consisted of 224 auditable units out of 535 units. Against 171 units planned for audit, 175 units were audited. The details are shown in the **Annexure-I** of the report.

Besides Compliance Audit mentioned above, two Performance Audits on “Efficiency of the Administration of Value Added Tax in West Bengal” and “Evasion of Stamp Duty and Registration Fees” were also taken up to examine the efficacy of tax administration of these receipts.

1.5 Results of Audit

1.5.1 Position of local audit conducted during the year

Test check of records of 175 units of commercial tax, state excise, land and land reforms, transport, stamp duty and registration fees and other departmental offices conducted during the year 2012-13 revealed underassessments/short levy/loss of revenue aggregating to ₹ 571.86 crore in 1,533 cases. During the year, the departments concerned accepted underassessments and other deficiencies in 864 cases involving ₹ 119.96 crore of which 747 cases involving ₹ 110.71 crore were pointed out during 2012-13 and the rest in the earlier years. The departments collected ₹ 2.80 crore in 87 cases during 2012-13.

1.5.2 This Report

This report contains 23 paragraphs involving financial effect of ₹ 268.45 crore and two Performance Audits on “Efficiency of the Administration of Value Added Tax in West Bengal” and “Evasion of Stamp Duty and Registration Fees” pointing out financial implications of ₹ 532.15 crore and ₹ 154.10 crore respectively. The departments/Government has accepted audit observations involving ₹ 668.00 crore of which ₹ 1.67 crore has been recovered. Position of realisation in the remaining accepted cases has not been received (November 2013). These are discussed in succeeding chapters II to VII.

CHAPTER-II

Sales Tax/Value Added Tax

EXECUTIVE SUMMARY	
Increase in tax collection	In 2012-13 tax collection in respect of VAT including sales tax and central sales tax increased by 16.78 <i>per cent</i> over the previous year which was attributed by the Department mainly to increase on surcharge on sales tax, motor spirit sales, collection under VAT and West Bengal Sales Tax Act.
Low audit coverage by internal audit wing	Internal audit wing of the Directorate of Commercial Taxes does not have any Audit Manual. The wing planned three charge offices but audited only two charge offices out of 92 offices (67 charge offices, one Corporate Division and 24 Ranges) during 2012-13 which was only 2.17 <i>per cent</i> of the total auditable units.
Very low recovery by the Department against observations pointed out by audit	During the period 2008-09 to 2012-13 audit had pointed out non/short levy, non/short realisation, underassessment /loss of revenue, etc. with revenue implication of ₹ 881.66 crore in 79 paragraphs. Of these, the Department accepted 70 paragraphs involving ₹ 534.50 crore but recovered only a meagre amount of ₹ 0.17 crore.
Results of audit conducted in 2012-13	<p>In 2012-13, test check of the records of 41 units relating to VAT receipts indicated underassessment of tax and other irregularities involving ₹ 304.41 crore in 647 cases.</p> <p>The Department accepted underassessment and other deficiencies of ₹ 44.52 crore in 313 cases, of which 288 cases involving ₹ 42.94 crore were pointed out in audit during the year 2012-13 and the rest in the earlier years. An amount of ₹ 21.90 lakh was realised in 30 cases during the year 2012-13.</p>
What has been highlighted in this Chapter	<p>In this Chapter a Performance Audit on “Efficiency of the Administration of Value Added Tax in West Bengal” with financial effect of ₹ 532.15 crore has been presented.</p> <p>The following points have been highlighted in the Performance Audit:</p> <ul style="list-style-type: none"> • Absence of a system of cross verification of information of the other departments as well as within the department resulted in evasion of tax of ₹ 115.97 crore by 190 dealers.

	<ul style="list-style-type: none"> • Non-existence of a system of monitoring compliance of the findings of the preventive wings resulted in non-assessment and non-realisation of ₹ 3.14 crore. • Non-initiation of recovery proceedings resulted in evasion of tax of ₹ 642.62 crore in 1,620 cases of 1,570 dealers. • Absence of monitoring of the certificate cases by the department and inaction of the Tax Recovery Officers resulted in non-realisation of ₹ 43.08 crore in 697 cases. • Inefficiency of the administration in monitoring transit declarations resulted in evasion of tax of ₹ 91.73 crore by the transporters in 3,689 cases carrying goods on strength of transit declarations. • Non-disposal of appeal cases within the specified time limit resulted in allowance of claims of disputed amount of ₹ 63.16 crore to the appellants in 139 appeal cases without any hearing. • Deficiencies in the internal control mechanism like non-maintenance of database of preventive wing's findings, non-existence of working manual of Internal Audit Wing and poor maintenance of records were noticed. <p>Besides these, some illustrative cases of ₹ 51.41 crore noticed during the test check of records in compliance audit have also been included.</p> <p>Similar omissions on the part of the Assessing Authorities (AAs) were pointed out repeatedly in the Audit Reports for the past several years. However these irregularities persisted and remained undetected by the audited entity till these were redetected in audit. Omissions were apparent from the records which were made available to audit, however the AAs were unable to detect them.</p>
Conclusion	<p>Performance Audit on "Efficiency of the Administration of Value Added Tax in West Bengal " revealed a number of deficiencies regarding absence/inadequacy of system/departmental instructions, non-compliance of the prevalent provisions and in the internal control mechanism in the functioning of the DCT. Absence of any system of cross verification of information that can be obtained from other departments as well as information available in different wings of the department itself, non-monitoring of compliance of the findings of preventive wings, non-initiation of penalty as well as</p>

recovery proceedings and non disposal of seized goods adversely affected the realisation of revenue. Failure of the DCT to monitor the business activities of the dealers with cancelled registration and functioning of TROs and delayed disposal of the appeal cases within the specified time limit affected revenue realisation. Absence of a database of persistent tax evading dealers, non-existence of a working manual, non-maintenance of Scrutiny Register, absence of a structured Internal Audit Wing and poor record keeping were found to be weaknesses of the internal control mechanism of the DCT.

The Government may consider :

- establishing a system by issuing departmental instructions to coordinate with other departments/ within the department on information available with them, so as to bring eligible unregistered dealers into the tax net and to prevent tax evasion by registered dealers;
- instituting an effective surveillance system so as to curb business of dealers with cancelled registrations;
- timely initiation of recovery proceedings, raising demand in modified appeal cases and disposal of the seized materials to avoid delays in realisation of revenue;
- maintaining a database of the dealers identified as persistent tax evaders by the preventive wings of the department; and
- maintenance of Scrutiny register and providing a working manual for streamlining the functioning of the IAW.

CHAPTER II : SALES TAX/VALUE ADDED TAX

2.1 Tax administration

Sales Tax and Value Added Tax (VAT) comprise receipts under the West Bengal Sales Tax (WBST) Act, 1994 (effective from May 1995), the Central Sales Tax (CST) Act, 1956 (effective from January 1957) and the Value Added Tax Act, 2003 (effective from April 2005). The WBST Act, 1994 is operative on sales of commodities like foreign liquor, country liquor, diesel, petrol and motor spirit, whereas, on remaining commodities the WBVAT Act, 2003 is applicable. Various provisions under the Act/Rules are administered by the Finance (Revenue) Department headed by the Principal Secretary/Secretary to the Government of West Bengal who is assisted by the Commissioner of Commercial Taxes (CCT), Special Commissioners, Additional Commissioners, Senior Joint Commissioners, Joint Commissioners, Deputy Commissioners and Commercial Tax Officers.

2.2 Trend of revenue

Actual receipts from VAT¹ during the years from 2008-09 to 2012-13 along with the total tax receipts during the same period is exhibited in the following table and chart:

Table 2.1 - Trend of revenue

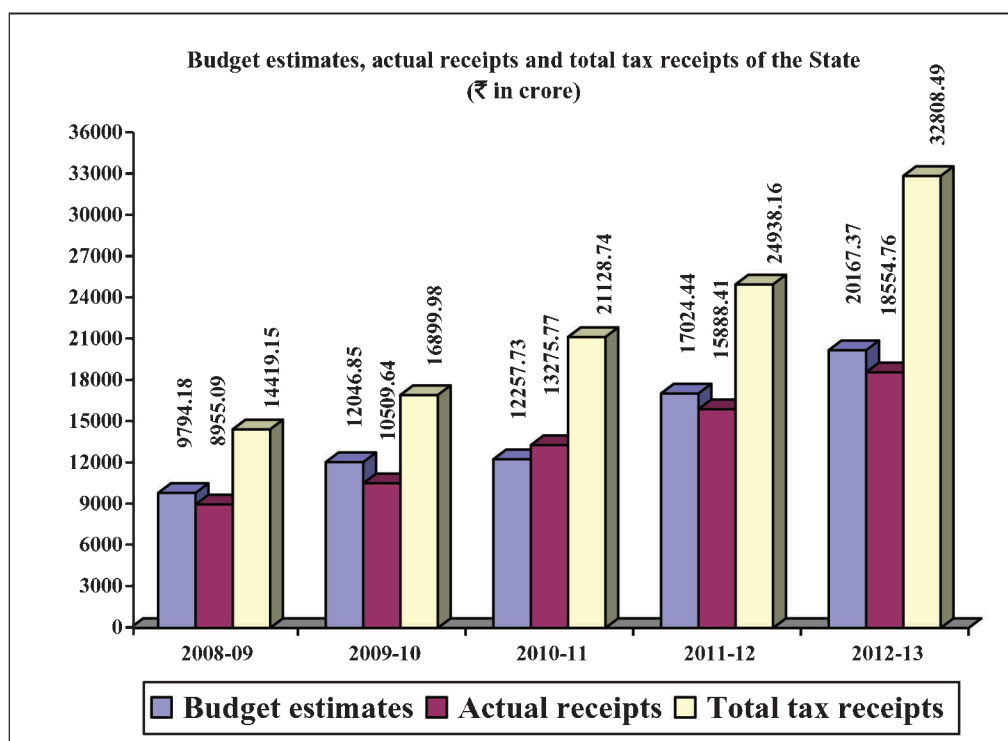
(₹ in crore)

Year	Budget estimates	Actual receipts	Variation Excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT receipts vis-à-vis total tax receipts
2008-09	9,794.18	8,955.09	(-)839.09	(-)8.57	14,419.15	62.11
2009-10	12,046.85	10,509.64	(-)1,537.21	(-)12.76	16,899.98	62.19
2010-11	12,257.73	13,275.77	(+)1,018.04	(+)8.31	21,128.74	62.83
2011-12	17,024.44	15,888.41	(-)1,136.03	(-)6.67	24,938.16	63.71
2012-13	20,167.37	18,554.76	(-)1,612.61	(-)8.00	32,808.49	56.55

Source : Finance Accounts and Budget Publications of the Government of West Bengal.

¹ Includes sales tax, central sales tax and VAT.

Chart 2.1: Budget estimates, Actual receipts and Total tax receipts



Total tax receipts of the State have shown an increasing trend for the last five years as is with the receipts of taxes on sales, trade etc. The percentage of revenue contribution to total tax receipts by receipts of taxes on sales, trade etc. has been almost stable within a range of 62 *per cent* to 64 *per cent* between 2008-09 and 2011-12. But in 2012-13 it has come down to 56.55 *per cent*. In 2012-13, tax collection in respect of sales, trade etc increased by 16.78 *per cent* over the previous year which was attributed by the Department mainly to increase on surcharge on sales tax, motor spirit sales, collection under VAT and West Bengal Sales Tax Act.

2.3 Cost of collection of VAT per assessee

Cost of collection of VAT per assessee for the last three years is shown in the following table:

Table 2.2 - Cost of collection of VAT per assessee

Year	Cost of collection (₹ in crore)	No. of dealers at the end of the year	Cost of VAT per assessee (₹ in thousand)
2010-11	165.18	3,10,832	5.31
2011-12	174.52	2,27,351	7.68
2012-13	190.91	2,44,434	7.81

Source: Finance Accounts and figures furnished by the Department.

Cost of collection of VAT per assessee suddenly increased to ₹ 7.68 thousand per assessee in 2011-12 from ₹ 5.31 thousand per assessee in 2010-11. In 2012-13, it has further increased by 0.13 thousand per assessee over 2011-12.

Thus, there is ample scope for better tax administration by lowering the cost of collection and bringing more dealers in the tax net.

2.4 Arrears in assessment

The position of arrears in assessment during the year 2012-13 was not furnished by the Department (though reminders were issued). The position of arrears in assessment during 2010-11 to 2011-12 is shown in the following table:

Table 2.3 – Number of assessment cases in arrear

Sl. No.	Particulars	2010-11	2011-12	2012-13
1.	Opening Balance	89,086	1,05,804	Not furnished by the Department
2.	Cases initiated during the year	61,514	77,383	
3.	Cases disposed of during the year	44,796	55,325	
4.	Cases pending at the end of the year	1,05,804	1,27,862	

Since the department did not furnish the figures of arrears in assessment for 2012-13, Audit could not analyse the disposal of assessments by the assessing authorities.

2.5 Working of internal audit wing

Internal audit wing of the Directorate of Commercial taxes started functioning from May 1991 as a permanent in-house mechanism for scrutinising and detecting irregularities in assessments of Sales Tax and VAT cases as well as checking of different records/registers to ascertain whether the internal control system as envisaged in the Act and Rules made thereunder is functioning properly. The wing is headed by the Commissioner of Commercial taxes, West Bengal who is assisted by one Additional Commissioner of Commercial Taxes (Addl. CCT), two Sr. Joint Commissioners, one Joint Commissioner/C.T.O, an Upper Divisional Clerk, a Lower Divisional Clerk and a Peon. The wing does not have any internal audit manual. The wing planned to audit three charge offices but audited only two out of total 92 auditable units (i.e. 67 charge offices, one Corporate Division and 24 Ranges) during the year 2012-13. Thus, coverage of internal audit wing during 2012-13 was only 2.17 *per cent* of the total auditable units which needs to be widened.

2.6 Cost of collection

Gross collection from sales tax and VAT, expenditure incurred on its collection and the percentage of such expenditure to gross collection for the years 2010-11 to 2012-13 are given in the following table:

Table 2.4 – Cost of collection

(₹ in crore)

Year	Gross Collection	Gross Expenditure	Percentage of expenditure to gross collection	All India average percentage of expenditure on collection for the preceding year
2010-11	13,275.77	165.18	1.24	0.96
2011-12	15,888.41	174.52	1.10	0.75
2012-13	18,554.76	190.91	1.03	0.83

Source: Finance Accounts.

Though the percentage expenditure on collection of VAT has steadily come down from 1.24 *per cent* in 2010-11 to 1.03 *per cent* in 2012-13, it was always higher than the all India average.

2.7 Analysis of collection

Table 2.5 – Analysis of collection

(₹ in crore)

Year	Amount collected at pre-assessment stage	Amount collected after regular assessment	Penalties for delay in payment of taxes and duties	Amount refunded	Net collection	Percentage of column 2 to 6
1	2	3	4	5	6	7
2010-11	13,292.42	95.09	47.82	48.82	13,386.51	99.30
2011-12	Not furnished by the Department.				15,904.44	--
2012-13	Not furnished by the Department.				18,554.76	--

Source: Figures furnished by the Department and Finance Accounts.

Since the department did not furnish (though called for) the figures of VAT collection at the pre-assessment stage and after regular assessment for 2012-13, Audit could not ascertain the voluntary tax compliance by the dealers.

2.8 Revenue impact of audit reports

During the last five years (including the current year's report), audit 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, mistake in computation etc, in 79 paragraphs with revenue implication of ₹ 881.66 crore. Of these, the Department/Government had accepted audit observations of 70 paragraphs involving ₹ 534.50 crore against which recovery of only ₹ 0.17 crore has been intimated.

The details are shown in the following table:

Table 2.6 – Revenue impact of audit reports

(₹ in crore)

Year of audit report	Paragraphs included		Paragraphs accepted		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2008-09	20	44.91	15 ²	10.39	-	-
2009-10	15	136.85	13 ³	92.87	-	-
2010-11	18	48.23	17 ⁴	17.97	2	0.04
2011-12	15	68.11	14	67.65	2	0.05
2012-13	11	583.56	11 ⁵	345.62	2	0.08
Total	79	881.66	70	534.50	6	0.17

The above table shows that the department did not report any recovery against the accepted cases during 2008-09 to 2009-10 and reported marginal recovery during 2010-11 to 2012-13.

It is recommended that the Government may revamp the recovery mechanism to ensure that the amount involved in the accepted cases is promptly recovered.

² 14 paragraphs partly accepted.

³ All paragraphs partly accepted.

⁴ Three paragraphs fully and 14 paragraphs partly accepted.

⁵ One paragraph partly accepted.

2.9 Results of audit

In 2012-13, Audit test checked the records of 41 units relating to VAT receipts and found underassessment of tax and other irregularities involving ₹ 304.41 crore in 647 cases under the following categories:

Table 2.7 – Results of audit

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Incorrect determination of Contractual Transfer Price (CTP)/turnover of Sales (TOS)	76	28.97
2.	Irregular allowance of transfer of goods/Input Tax Credit (ITC)/remission	111	11.53
3.	Irregular allowance of compounded/concessional rate of tax	39	10.60
4.	Application of incorrect rate of tax/Mistake in computation	73	18.17
5.	Non/short levy of additional sales tax/purchase tax/penalty/interest	237	90.03
6.	Others	111	145.11
Total		647	304.41

During the course of the year, the department accepted underassessment and other deficiencies of ₹ 44.52 crore in 313 cases, of which 288 cases involving ₹ 42.94 crore were pointed out in audit during the year 2012-13 and the rest in the earlier years. An amount of ₹ 21.90 lakh was realised in 30 cases during the year 2012-13.

Audit findings of the Performance Audit on ‘**Efficiency of the Administration of Value Added Tax in West Bengal**’ with financial effect of ₹ 532.15 crore and a few illustrative cases involving ₹ 51.41 crore are mentioned in the succeeding paragraphs.

2.10 Performance Audit on “Efficiency of the Administration of Value Added Tax in West Bengal”

2.10.1 Introduction

The concept of ‘Value Added Taxation’, in keeping with the global trend of reforms in indirect taxes was introduced in West Bengal in 2003 and the West Bengal Value Added Tax (WB VAT) Act was implemented w.e.f. 01.04.2005. Under the provisions of the Act, the cascading effect of taxation at each stage of transaction of commodity till it reaches the final consumer was attempted to be minimised by setting off of the amount of input tax (tax paid on purchases) at each stage against the output tax (tax payable on the sale). Various commodities are classified into four⁶ main categories under the VAT Act for the purpose of application of different rates of VAT on their transaction. However, under the VAT regime of West Bengal’s indirect taxation, some of the commodities like liquor, diesel, motor spirit, petrol, etc. are not covered under VAT but instead administered under the West Bengal Sales Tax Act, 1994. Inter-state transactions of goods are administered under the Central Sales Tax Act, 1956.

Value Added Tax⁷ is the major tax-revenue of the State. During last five years, it contributed 62.44 *per cent* of the total tax revenue and 54.54 *per cent* of total revenue raised by the State.

Performance Audit on “Efficiency of the administration of Value Added Tax in West Bengal” for the period 2007-08 to 2011-12 was taken up from March to July 2013.

Highlights

- Absence of a system of cross verification of information of other departments as well as within the department resulted in evasion of tax of ₹ 115.97 crore by 190 dealers.

(Paragraphs 2.10.8.3, 2.10.8.4, 2.10.8.5 and 2.10.9.1)

- Lack of a system of monitoring compliance of the findings of the preventive wings resulted in non-assessment and non-realisation of ₹ 3.14 crore.

(Paragraph 2.10.11)

- Non-initiation of recovery proceedings resulted in evasion of tax of ₹ 642.62 crore in 1,620 cases by 1,570 dealers.

(Paragraphs 2.10.19.1, 2.10.19.2, 2.10.19.3 and 2.10.19.4)

- Absence of monitoring of certificate cases by the department and inaction of the Tax Recovery Officers resulted in non-realisation of ₹ 43.08 crore in 697 cases.

(Paragraphs 2.10.20.1, 2.10.20.2 and 2.10.20.3)

⁶ Zero rated commodities - as mentioned in Schedule A and AA, one *per cent* rate of tax- as mentioned in Schedule B, four *per cent* rate of tax – as mentioned in Schedule C (Part I, II and III) and 13.5 *per cent* rate of tax- as mentioned in Schedule CA.

⁷ Including Sales Tax.

- Inefficiency of administration in monitoring transit declarations resulted in evasion of tax of ₹ 91.73 crore by transporters in 3,689 cases.

(Paragraph 2.10.22)

- Non-disposal of appeal cases within the specified time limit resulted in allowance of claims of disputed amount of ₹ 63.16 crore to the appellants in 139 appeal cases without any hearing.

(Paragraph 2.10.23)

- Deficiencies in the internal control mechanism like non-maintenance of database of preventive wing's findings, non-existence of working manual of Internal Audit Wing and poor maintenance of records were noticed.

(Paragraph 2.10.24)

2.10.2 Organisational set up

The WBVAT Act, 2003 and the Rules made thereunder are administered by the Directorate of Commercial Taxes (DCT), which is under the administrative control of the Principal Secretary, Finance (Revenue) Department. The overall control and superintendence of the Directorate is vested with the Commissioner of Commercial Taxes (CCT) who is assisted by two Special Commissioners, 45 Additional Commissioners (Addl. CCTs), 1,105 Senior Joint Commissioners (Sr. JCCTs), Joint Commissioners (JCCTs), Deputy Commissioners (DCCTs), Commercial Tax Officers (CTOs) and 1,220 Assistant Commercial Tax Officers (ACTOs).

The Bureau of Investigation (BOI) and the Central Section (CS) are two main Preventive Wings under the Directorate. The BOI is headed by an Additional CCT who is assisted by one Sr. JCCT, two JCCTs, five DCCTs, eight CTOs and 23 ACTOs. The CS is also headed by an Addl. CCT who is assisted by 15 Sr. JCCTs, 10 JCCTs, 29 DCCTs, 62 CTOs and 123 ACTOs. The Central Section has its three branches at Beliaghata (Kolkata), Asansol and Siliguri.

2.10.3 Trend of Revenue

Actual receipts from VAT during 2007-08 to 2011-12 along with the total tax receipts during the period are as detailed below:

Table 2.8 – Trend of Revenue

(₹ in crore)						
Year	Budget Estimates	Actual receipts	Variation Excess(+)/ Shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT receipts vis-à-vis total tax receipts
2007-08	8,505.71	8,060.46	(-)445.25	(-)5.23	13,126.33	61.41
2008-09	9,794.18	8,955.09	(-)839.09	(-)8.57	14,419.15	62.11
2009-10	12,046.85	10,509.64	(-)1,537.21	(-)12.76	16,899.98	62.19
2010-11	12,257.73	13,275.77	(+)1,018.04	(+)8.31	21,128.74	62.83
2011-12	17,024.44	15,888.41	(-)1,136.03	(-)6.67	24,938.16	63.71

The percentage of revenue contribution from VAT to the total tax receipts has been varying between 61.41 and 63.71 *per cent*.

2.10.4 Analysis of cost of collection

Gross collection from VAT, expenditure incurred on its collection and the percentage of such expenditure to gross collection for the period from 2007-08 to 2011-12 have been analysed and the same has been compared with the percentage of expenditure to gross collection of a few other states as well as all-India average percentage of expenditure on collection for the same period. The position is given below:

Table 2.9 – Analysis of cost of collection

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	Percentage of expenditure to gross collection of other states					(₹ in crore)
				Tamil Nadu	Andhra Pradesh	Gujarat	Maha-rashtra	Punjab	All India average percentage of expenditure on collection
2007-08	8,060.46	92.42	1.15	0.77	0.92	0.65	0.58	0.86	0.82
2008-09	8,955.09	100.34	1.12	0.91	0.87	0.59	0.71	0.75	0.83
2009-10	10,509.64	150.01	1.43	0.91	0.91	0.71	0.87	0.79	0.88
2010-11	13,275.77	165.18	1.24	0.77	0.90	0.60	0.70	1.07	0.96
2011-12	15,888.41	174.52	1.10	0.62	0.81	0.52	0.68	0.89	0.75

Though expenditure on collection of VAT has come down from 1.43 *per cent* of gross revenue in 2009-10 to 1.10 *per cent* in 2011-12, it has always been higher than the percentage of other major States and the all India average. Thus, there is need to improve efficiency in collection of VAT in the State.

2.10.5 Audit objectives

Performance Audit was undertaken with a view to ascertain whether:

- provisions of the Act/Rules were effectively enforced and adequate departmental instructions were issued to ensure that all the prospective dealers are detected and brought under the tax net;
- tax, interest and penalty were properly assessed and collected in time and whether there exists an effective collection mechanism; and
- there exists an effective internal control mechanism including internal audit.

2.10.6 Scope, methodology and criteria of audit

Out of 68 charge offices, 23 were selected for Performance Audit by application of risk analysis and simple random sampling method. In addition, records of BOI, Central Sections, concerned Circle offices, Ranges, Checkposts and the Tax Recovery Officers/Certificate Officers were also checked. Data obtained from other Departments/Directorates/Divisions were

also cross-verified with data available with the Directorate/charge offices to detect evasion by the dealers. Similar audit findings of transaction audit also stand included in the report.

Provisions of West Bengal Value Added Tax Act, 2003 and West Bengal Value Added Tax Rules, 2005 were used as source of audit criteria for the Performance Audit. The Performance Audit covered the period from 2007-08 to 2011-12.

2.10.7 Acknowledgement

Audit acknowledges the co-operation of DCT in providing necessary records and information for the Performance Audit. Before taking it up, an Entry Conference was held on 21 March 2013 with the Commissioner of Commercial Taxes and Senior Officers of the DCT, in which the audit objectives, scope, criteria and methodology of Performance Audit were discussed. Findings of the Performance Audit were forwarded to the Directorate and Department in August 2013. The Exit Conference was held on 29 August 2013. Views of the Directorate have suitably been incorporated in the relevant paragraphs.

Audit findings

System deficiencies

Comprehensive Act, Rules/Procedure framed thereunder and its effective implementation ensure sound tax administration. Audit observed a number of system deficiencies *inter alia* related to absence and inadequacy of provisions. Due to them administration of VAT in the State could not realise its potential for collection. These are discussed in the following paragraphs:

2.10.8 Absence of a system to co-ordinate information with other departments

Sections 10, 14 and 23 of WBVAT Act, 2003 prescribe that a dealer shall get himself registered when his/her turnover exceeds the taxable turnover prescribed under the Act. The threshold limit of taxable turnover for a dealer to be registered is ₹ five lakh. The Act provides for penalty for failure to apply for registration. Sections 16 and 18 prescribe that the taxable turnover of sales and contractual transfer price (CTP⁸) of a dealer is to be taxed at prescribed rates after permissible deductions. Section 96 of the Act prescribes a penalty of sum not exceeding twice the amount of tax evaded to be imposed for concealment of sale/contractual transfer price.

During the Performance Audit, Audit observed that the Directorate had no effective system for cross verification of information of the other departments to detect unregistered dealers and to check evasion by the registered dealers/work contractors.

Information of other departments viz. Land and Land Reforms Department, Election Commission, Directorate of Registration and Stamp Revenue and Railways which contained records of potential tax payers, could have been

⁸ CTP- Cost of a project in case of works contractors.

made use of for the purpose of checking VAT registration. If utilised, it would have made substantial difference in bringing additional work contractors/dealers within the tax net. In some other cases, though dealers were registered with the DCT, they had not disclosed the turnover/CTP. In absence of such information the DCT was not in a position to levy VAT on them. Both these types of evasion could have been arrested if the department had cared to undertake such cross verification of related information available with other Government Departments.

Evasion due to non-detection of the unregistered dealers as well as evasion by the registered dealers is discussed in the following paragraphs:

2.10.8.1 Evasion by the unregistered brick field owners

Records are maintained by District Land and Land Reforms Officers (DL&LROs) in respect of extraction of brick earth by the brick field owners. Audit cross verified the information obtained from six⁹ DL&LROs, with Dealers' registration database of the DCT and found that 853 unregistered dealers (brick field owners) under jurisdiction of eight¹⁰ charge offices extracted 44.95 crore cft of brick earth between 2007-08 and 2011-12 which was sufficient to produce bricks valued at ₹ 2,004.20 crore¹¹. Though the sale quantities of these individual brick field owners exceeded the threshold limit of taxable turnover for the purpose of registration, the dealers were not brought under tax net. Thus, unregistered dealers engaged in the manufacture and sale of bricks escaped imposition of VAT.

On this being pointed out, three¹² charge offices in 269 cases involving ₹ 23.83 crore accepted the audit observations and stated that the brick field owners were not registered and action was being taken against them. In the remaining cases, the charge offices did not furnish any reply/specific reply.

Earlier, in response to a comment made under para 2.2.7 of the Audit Report (Revenue Receipts), Government of West Bengal for the year ended 31 March 2006, regarding evasion of tax due to non-registration by the brick field owners, the Department had replied that there was a need to set up a mechanism for exchange of information between the DCT and DL&LROs & other offices. However, audit noticed that no such mechanism has so far been set up (November 2013).

2.10.8.2 Evasion by the unregistered sand quarry permit/lease holders

Audit cross verified the information obtained from two¹³ DL&LROs, in connection with extraction of sand by the quarry permit/lease holders with

⁹ Burdwan, Hooghly, Howrah, Jalpaiguri, Midnapore (East) and Nadia. Total 19 DL&LROs in the state.

¹⁰ Asansol, Burdwan, Cooch Behar, Durgapur, Krishnanagar, Serampore, Shibpur and Tamluk.

¹¹ Calculated on the basis of the submission of Bengal Brickfield Owners' Association (about bricks that can be produced by using 100 cft of brick earth) in the Hon. Supreme Court (in Civil Appeal no.1532 of 1993) and the rates prescribed in the Schedule of rates of WB PWD.

¹² Asansol, Krishnanagar and Tamluk.

¹³ Burdwan and Midnapore (East).

Dealers' registration database of DCT and found that 106 unregistered dealers (quarry permit/lease holders) extracted 526.88 lakh cft of sand valued at ₹ 34.22 crore (calculated as per schedule of rates of WB PWD) between 2007-08 and 2011-12. Though the sand extracted was sold and the sale quantities of these individual dealers exceeded the threshold limit of taxable turnover for registration, they were not brought under tax net. The dealers engaged in extraction and sale of sand, had avoided payment of VAT by not getting themselves registered.

On this being pointed out, two¹⁴ charge offices accepted the audit observation in 24 cases involving ₹ 33.30 lakh and stated that the sand quarry/lease permit holders were not registered and action was being taken against them. In the remaining cases the charge offices did not furnish any reply/specific reply.

2.10.8.3 Evasion by work contractors in preparation of Electoral Photo Identity Cards (EPICs)

Cross verification of information obtained from the State Election Commission regarding the contracts for preparation of EPICs with the registration data/assessment records/returns of the contractors revealed the following:

- The State Election Commission had awarded the work of preparation of EPICs to IT firms. Audit found that four such unregistered IT firms received payment of ₹ 1.10 crore from the Election Commission between 2009-10 and 2012-13. Though the CTP of the individual work contractors exceeded the threshold limit of taxable turnover for registration, they were not brought under the tax net. Thus, these unregistered work contractors had avoided VAT to the tune of ₹ 4.39 lakh.

On this being pointed out, JCCT, Bankura accepted (September 2013) the audit observation in one case of ₹ 0.8 lakh. In remaining cases, the Sr. JCCT, Central Section did not furnish reply.

- Cross verification of information from the State Election Commission, in connection with preparation of EPICs further revealed that four other work contractors who were registered with the DCT, under jurisdiction of three¹⁵ charge offices, received payment of ₹ 9.66 crore from the Election Commission between 2007-08 and 2011-12. But the CTP was not disclosed by these dealers in their returns and the Assessing Authorities (AAs) also failed to detect concealment of these CTP in the absence of any system of cross verification. This resulted in evasion of VAT amounting to ₹ 38.64 lakh. Penalty not exceeding twice of the tax evaded under Section 96 of the Act was also leviable, but was not levied for reasons not on record.

On this being pointed out, JCCT, Salt Lake charge admitted audit observation in two cases of ₹ 35.99 lakh and stated (December 2012) that suo-motu revision proposal had been sent. In the remaining cases, no specific reply was furnished.

¹⁴ Asansol and Tamluk.

¹⁵ Salt Lake, Shibpur and Ultadanga.

2.10.8.4 Evasion by work contractors in computerisation of registration of documents

The Directorate of Registration and Stamp Revenue had awarded the work of computerisation of the process of registration of documents and delivery thereof to the executants in registering offices to IT work contractors. In response to an audit query, the Directorate communicated that two work contractors had received payment of ₹ 32.03 crore and ₹ 14.54 crore respectively from the Directorate during the period from 2007-08 to 2011-12.

On cross verification of this information with the dealers' assessment case records, it was observed that one party did not disclose the CTP in its VAT returns for the respective periods where as the other disclosed only ₹ 1.62 crore as CTP in the returns as against actual receipts of ₹ 14.54 crore. The AAs also failed to detect such concealment of CTP in absence of any system of cross verification. This resulted in evasion of VAT amounting to ₹ 3.34 crore. Penalty not exceeding twice of the tax evaded under Section 96 of the Act was also leviable, but was not levied for reasons not on record.

On this being pointed out, JCCT, Corporate Division admitted the audit observation in respect of the first party and stated (May 2013) that action was being initiated. In the other case, JCCT, Ballygunge charge did not furnish any reply.

2.10.8.5 Evasion by Railway contractors

The South Eastern Railway awards civil work contracts to be executed in the State to various works contractors. In response to audit's request, the Sr. Divisional Engineer, Garden Reach, South Eastern Railway communicated that payments were made to 24 works contractors during the period 2007-08 to 2011-12. Results of cross-verification of this information in respect of eight dealers¹⁶ with DCT registration database and dealers' returns revealed that:

- An unregistered work contractor received payment of ₹ 1.17 crore from the South Eastern Railway between 2009-10 and 2011-12. Though, the CTP of the work contractor exceeded the threshold limit of taxable turnover for registration, he was not brought under the tax net. Thus, the unregistered work contractor avoided VAT of ₹ 4.03 lakh.
- Two dealers under Shibpur charge received payments of ₹ 32.81 lakh from the South Eastern Railway during the period of assessment from 2009-10 to 2011-12, but they did not disclose CTP in their returns. The AAs also failed to detect such concealment of CTP. This resulted in evasion of VAT amounting to ₹ 1.87 lakh. Penalty under Section 96 of the WBVAT Act was also leviable.

On these being pointed out, the CCT accepted the audit observations and stated in the Exit Conference (August 2013) that railways had been requested to set up an institutional mechanism for sharing electronic data. Cross verification with the departments not having electronic database, however, may not be practical. In respect of cases of tax evasion, the charge officers were instructed by the CCT to initiate action.

¹⁶ Assessment records/returns in respect of eight dealers were made available to audit.

2.10.9 Absence of a system to co-ordinate information within the department

Audit also observed that the Directorate had no effective system for cross verification of information within the department to detect unregistered dealers and to check evasion of VAT by registered dealers/work contractors. The endorsed way bills data and Tax Deducted at Source (TDS) data available electronically¹⁷ with the DCT were not utilised by AAs to restrict tax evasion by registered dealers and to bring the unregistered work contractors into the tax net as discussed in the following paragraphs:

2.10.9.1 Evasion by suppression of purchases through way bills

According to provisions of the WBVAT Act, 2003, purchase of the dealers includes purchases within the State and inter-state purchase through waybills¹⁸.

According to Section 96 of the WBVAT Act, 2003, where a dealer has concealed any purchase with an intent to reduce the amount of net tax payable by him, the AA may impose penalty of a sum not exceeding twice the amount of tax which would have been avoided by him if the concealed purchases were not detected.

Audit cross verified the information/returns furnished by dealers regarding their purchases from outside the state through way bills with the database of the endorsed way bills of the DCT in respect of 200 cases of 177 dealers assessed/deemed to be assessed by the AAs of 20 charge offices¹⁹ between January 2010 and September 2012. Audit found that dealers disclosed purchases from outside the State of ₹ 9,264.43 crore in their returns submitted to the AAs whereas their actual purchases from outside the State were ₹ 11,086.42 crore as evident from the database of the endorsed way bills of the Directorate. AAs failed to detect this suppression of purchases of the dealers and the cases were assessed/deemed to have been assessed by them. Suppression of purchase from outside the State resulted in concealment of sales of ₹ 1,822.00 crore and consequent evasion of tax by the dealers amounting to ₹ 112.14 crore. Penalty under Section 96 of the WBVAT Act was also leviable.

On being pointed out, five²⁰ charge offices accepted the audit observations in 38 cases involving ₹ 5.14 crore and initiated action accordingly. JCCT, Chinabazar, stated that in nine cases involving ₹ 80.71 lakh deemed assessment cases were to be completed without calling for books of accounts. Therefore, there was no question of checking the dealers' books of accounts and documents by which the database records could have been cross verified. The reply is not tenable as the database containing all relevant information

¹⁷ TDS data available at TDS Cell and endorsed way bills data at the Directorate of Commercial Taxes itself.

¹⁸ Waybill is a document issued by the Assessing Authority in Form-50 for transportation of goods.

¹⁹ Asansol, Bally, Ballygunge, Behala, Beliaghata, Bhowanipore, Burdwan, Chandni Chowk, Chinabazar, Colootola, Corporate Division, Durgapur, Fairlie Place, Midnapore, Park Street, Salkia, Serampore, Siliguri, Strand Road and Taltola.

²⁰ Asansol, Bally, Behala, Salkia and Strand Road.

was already available with the DCT and no additional information was required by the AAs to conduct the necessary verification. In the remaining cases, the charge offices did not furnish any reply/specific reply.

2.10.9.2 Evasion by unregistered work contractors

Sections 40 and 46 of the WBVAT Act prescribe that a person/entity responsible for paying any sum to any dealer for execution of a works contract within West Bengal shall deduct tax (TDS) at the prescribed rate on his contractual transfer price. The amount of tax so deducted shall be remitted to the Government accounts within 10 days and the deductor shall submit a scroll in Form 19 within 45 days after expiry of the month of such deduction.

Audit analysed and cross verified the data of Tax Deducted at Source (TDS) available in TDS cell with Dealers' registration database of DCT and observed through reverse calculation²¹ that gross CTP of the works contract in respect of 1,305 unregistered dealers (Works Contractors) exceeded the threshold limit of taxable turnover for registration but they did not get themselves registered under VAT Act. This resulted in evasion of tax of ₹ 8.75 crore. The TDS data was available with the Directorate, but they did not use this data to bring works contractors under tax net.

The CCT in the Exit Conference (August 2013) stated that it was difficult to bring all small dealers under the tax net. However, specific inputs would be definitely enquired into.

2.10.10 Absence of a mechanism to watch and prevent the business of cancelled registration dealers

Section 29 of the WBVAT Act, 2003 prescribes the conditions under which the certificate of registration of a dealer shall be cancelled. However, the department has not devised any mechanism to monitor such cancelled registration of dealers so that they do not run their business while evading tax. Misuse of cancelled registration certificates was noticed in following cases:

2.10.10.1 Non-detection of business activities of the cancelled registration dealers

Audit cross verified information obtained from the DL&LROs, TDS Cell of the Directorate, Public Works (Roads) Directorate and VAT returns of the dealers with the database of the cancelled dealers of the DCT and found that 103 dealers continued to operate their business even after the date of cancellation of their VAT registrations. In the absence of a mechanism in the Directorate to watch and prevent the business of such dealers whose registrations were cancelled, the Directorate could not detect and initiate necessary proceedings against them for possible tax evasion when identified.

CCT did not furnish any specific reply in the Exit Conference (August 2013).

²¹ CTP was calculated on the basis of TDS amount. TDS at the rate of two *per cent* in case of registered works contractor and four *per cent* in case of unregistered works contractor. After arriving at the CTP, tax at the rates prescribed in Rule 30(2) (Sl.no.21 of the table) of VAT Rules, 2005 in respect of dealers who exceeded the threshold limit of turnover, has been calculated by Audit.

2.10.10.2 Evasion of tax by misuse of cancelled Registration Certificates

Section 40 of the Act prescribes deduction of TDS at the rate of two and four *per cent* in case of registered and unregistered dealers respectively.

Audit cross verified the information obtained from the TDS Cell of the Directorate, South Eastern Railway and Public Works (Roads) Directorate with database of the cancelled dealers of the DCT and found that 59 dealers in 106 cases executed works contracts of ₹ 4.65 crore and used registration numbers for deduction of TDS at the rate of two *per cent* in place of four *per cent*, though their registration certificate numbers were cancelled on the dates prior to the dates of transaction (payment). Thus, the dealers misused registration certificate numbers and evaded tax of ₹ 22.89 lakh.

CCT did not furnish any specific reply in the Exit Conference (August 2013).

2.10.11 Absence of a system to monitor compliance to the findings of BOI and CS

Bureau of Investigation (BOI) and Central Section (CS) are the preventive units of the DCT. Reports containing findings of investigation conducted by BOI and CS are sent to the concerned AAs for assessment and realisation of the evaded tax. For cases where assessments have been finalised, Section 85 of the WBVAT Act provides that, assessments may be opened for *suo motu* revision and inclusion of the evaded tax.

Audit cross verified findings of BOI and CS with the assessment case records of the dealers in seven²² charge offices and found that in 16 cases of 12 dealers, the Directorate detected concealment of sale/purchase/CTP of ₹ 33.13 crore and under-charging of tax on ₹ 3.25 crore by a dealer at the rate of four *per cent* in place of 12.5 *per cent*. The investigation reports were forwarded to the AAs for necessary follow-up action and realisation of the under-assessed dues. But the AAs did not comply with the findings of the Preventive Wings at the time of assessment which resulted in non-assessment and non-realisation of government revenue of ₹ 3.14 crore. Penalty was also imposable in these cases under Section 96 of the Act.

On analysing the reasons for this, Audit observed that there was no mechanism for monitoring such compliance. The charge officers did not maintain any register for receipt of the BOI and CS reports and their subsequent distribution to the group officers for compliance. The Directorate also did not prescribe any item regarding 'compliance of BOI/CS findings' in the format of progressive reports of the Charge/Circle office. Under these circumstances, the findings, as noted above, of the BOI/CS escaped compliance leading to non-realisation of revenue.

On being pointed out, three²³ charge offices accepted (June 2013) the audit observations in eight cases involving ₹ 1.38 crore. In the remaining cases, the charge offices did not furnish any reply/specific reply.

²² Asansol, Ballygunge, Behala, Corporate Division, Durgapur, Lalbazar and Park Street.

²³ Asansol, Behala and Lalbazar.

The CCT stated in the Exit Conference (August 2013) that as per circular issued under the WBST Act in August 1997, the charge offices should monitor the compliance of the findings of the BOI and CS and send a report on action taken within six months. The circular had been reiterated through e-mail by the CCT.

Compliance Deficiencies

Deficiencies in assessment and collection of VAT, interest and penalties

Proper tax assessment and a sound collection mechanism are the essential elements of efficient and effective tax management. Audit noticed deficiencies in implementation of provisions of WBVAT Act for assessment and collection of VAT, interest and penalties as detailed in the succeeding paragraphs.

2.10.12 Non-initiation of assessment

Section 46(1) of the WBVAT Act prescribes that where no return has been furnished by a registered dealer for any return period of a year, the Commissioner shall, after giving a notice to such dealer, proceed for assessment in prescribed manner. Section 49(1) provides that no assessment under Section 46 shall be made after the 30th June next following the expiry of two years from the end of the year in respect of which the assessment has to be made.

Scrutiny of assessment case records of three²⁴ Charge offices revealed that in 28 cases of 26 dealers for the period of assessment between 2005-06 and 2009-10, the dealers did not submit all four quarterly VAT returns for the above periods. Their cases were liable for assessment under provision of Section 46 of the WBVAT, Act and notice in the prescribed form (Form-25) was to be issued to the dealers. But the AAs did not initiate any proceeding for assessment of these defaulting dealers. There was no recorded reason for non-initiation of assessments in the case records. By the date of audit, all the cases had already become time barred. Consequently, evasion and loss of government revenue cannot be ruled out due to non-assessment of such cases.

On being pointed out, the JCCT, Asansol Charge accepted the audit observations in 12 cases (August 2013). Other charge offices did not furnish any reply. On this being pointed out, the CCT instructed the charge offices to analyse the causes of such non-initiation of assessment.

2.10.13 Evasion due to excess claim of Input Tax Credit

In the VAT regime, false/fake/excess claim of ITC and their subsequent non-detection by AAs at the time of assessment/deemed assessment is the main area of evasion, especially in the cases of deemed assessments where the assessing officers can only go by the returns/documents available with them.

Section 22(4) of WBVAT Act, 2003 prescribes that the input tax credit shall be allowed to the extent of the amount of tax paid/payable by the purchasing

²⁴ Asansol, Burdwan and Siliguri.

dealer on his purchase of taxable goods within the state from a registered dealer for direct use in the business, other than such taxable goods as specified in the negative list. Under Section 16(3), a dealer under composite scheme shall not be entitled to issue tax invoice and as such purchases from such dealers is not eligible for ITC.

Under Section 22(13), where a registered dealer has enjoyed ITC on such purchases for which he is not entitled, he has to reverse the amount of ITC to that extent.

Under Section 33(3) of the Act, where a dealer required to adjust any amount of reverse credit by way of deducting ITC fails to do so, he shall pay a simple interest at the rate of 12 *per cent* per annum.

Audit scrutinised records of cases assessed/deemed to be assessed for the periods of assessment from 2006-07 to 2009-10, and observed in 21²⁵ charge offices that in 132 cases of 126 dealers, the dealers claimed ITC of ₹ 3.10 crore though purchases were made from dealers whose RCs were either cancelled²⁶ or they were composite dealers²⁷ not entitled to any ITC, or the items concerned appeared in the negative list. AAs failed to notice such irregularities and the cases were assessed/ deemed to be assessed by them. This resulted in evasion by the dealers amounting to ₹ 3.91 crore including interest.

On being pointed out, 14²⁸ charge offices accepted the audit observations in 63 cases involving ₹ 1.99 crore, out of which ₹ 3.99 lakh had been realised in six cases. In the remaining cases, the charge offices did not furnish any reply/specific reply.

2.10.14 Evasion by the dealers under composite scheme

Sections 16 & 18 of the WBVAT Act and Rules 38 & 39 prescribe that a registered dealer intending to pay tax at compounded rate is required to exercise option in Form-16 within 90 days from the commencement of the year before the prescribed authority for a maximum period of one year at a time. The dealers who opt for compounded rate of tax have to submit their returns in Form-15.

Audit scrutinised the case records assessed/deemed to be assessed for the period of assessment from 2005-06 to 2009-10 and observed in eight²⁹ charge offices that in 72 cases, 58 dealers (resellers) submitted their returns in Form-15 but they did not exercise their option in Form-16, as ascertained from the records of the circle office also. Thus, the dealers did not fulfil the conditions

²⁵ Asansol, Ballygunge, Beliaghata, Bhowanipore, Burdwan, Chandni Chowk, Colootola, Corporate Division, Durgapur, Fairlie Place, Kadamtala, Lalbazaar, Midnapore, Park Street, Postabazar, Salkia, Salt Lake, Serampore, Siliguri, Strand Road and Taltola.

²⁶ Dealers whose registration had been cancelled were to be treated as “Unregistered Dealers” and purchase made from them was not entitled for Input Tax Credits.

²⁷ Registered dealers (resellers) eligible to pay tax at compounded rate (0.25 *per cent*). Such dealers cannot issue tax invoice.

²⁸ Asansol, Belighata, Burdwan, Colootola, Corporate Division, Durgapur, Kadamtala, Lalbazar, Park Street, Postabazar, Salkia, Serampore, Siliguri and Taltola.

²⁹ Asansol, Ballygunge, Beliaghata, Bhowanipore, Burdwan, Midnapore, Park Street and Siliguri.

for availing the benefits of composite scheme in order to avail the benefit of paying tax at the compounded rate, but the AAs allowed these dealers to pay tax at the compounded rate without checking their eligibility under the composite scheme. This resulted in evasion of revenue of ₹ 82.90 lakh.

On being pointed out, four³⁰ charge offices accepted the audit observations in 28 cases involving ₹ 39.47 lakh. In the remaining cases, the charge offices did not furnish any reply/specific reply.

The CCT stated in the Exit Conference (August 2013) that the charge offices were instructed to furnish replies.

2.10.15 Short determination of Gross Turnover

Section 16 of the WBVAT Act, 2003 levies tax on the turnover of sales which is defined as the aggregate of the sale prices or parts of sale prices receivable by a dealer in respect of sales of goods.

Audit found in three cases of two dealers in two³¹ charge offices that during the period of assessment from 2005-06 to 2007-08, the dealers did not include hiring charges and miscellaneous receipts of ₹ 1.10 crore in their gross turnover of sales in their returns. This resulted in short determination of gross turnover of ₹ 1.10 crore and consequent short levy of tax of ₹ 13.71 lakh.

On being pointed out, the JCCT, Asansol admitted the audit observation in two cases of ₹ 11.59 lakh. In the remaining case the charge office did not furnish any reply.

The CCT accepted the audit observations in the Exit Conference (August 2013) and stated that the charge offices were instructed to furnish replies.

2.10.16 Application of incorrect rate of tax

Section 16(2) of WBVAT Act, 2003 prescribes that the rate of tax on the goods/commodities sold depends upon classification of goods in the schedule appended to the Act.

Scrutiny of assessment case records of three³² charge offices for the periods of assessment from 2006-07 to 2009-10, revealed that in three cases, dealers applied incorrect rates of tax for determination of their tax liability. Hiring charges, pollution control equipments and miscellaneous goods not specified elsewhere should have been charged at the rate of 12.5 *per cent* but the dealers calculated their tax liability at the rate of four *per cent* on a total sale value of ₹ 174.72 crore, and paid tax of ₹ 6.99 crore in place of ₹ 21.84 crore. At the time of assessment/deemed assessment, the AAs also failed to detect underassessment of this tax liability by the dealers. This resulted in short levy of tax due to application of incorrect rate of tax amounting to ₹ 14.85 crore.

³⁰ Asansol, Beliaghata, Bhowanipore and Park Street.

³¹ Asansol and Ballygunge.

³² Asansol, Behala and Siliguri.

On being pointed out, two³³ charge offices admitted the audit observation in two cases of ₹ 14.83 crore. In the remaining case, the charge office did not furnish any reply.

The CCT accepted the audit observations in the Exit Conference (August 2013) and stated that the charge offices were instructed to furnish replies.

2.10.17 Evasion by poppy seeds importers

On evasion of VAT on sales of “Poppy Seeds” imported from outside India, the Sr. JCCT/ Central Section communicated (November 2010) to seven charge offices that during 2005-06 to 2008-09, 11 poppy seeds importers had disposed imported poppy seeds at a price as low as 20 *per cent* to 25 *per cent* of the prevailing market price and that the sales transactions were not only undervalued but the pattern of disposal was also designed so that incidence of taxation stopped at the first point and the subsequent sales were made non-traceable. Audit observed non-compliance as well as non-imposition of penalty in these cases as narrated below:

2.10.17.1 Audit cross verified the findings of the Central Section, Kolkata regarding evasion of tax by the importers of poppy seeds with the assessment case records of four dealers in four³⁴ charge offices and observed that the Preventive Wings of the Directorate detected concealment of sale of poppy seeds of ₹ 253.49 crore during the years 2007-08 and 2008-09. But the AAs did not comply with the findings of the Preventive Wings at the time of assessment, which resulted in non-assessment and non-realisation of government revenue of ₹ 10.14 crore.

On being pointed out, the charge offices admitted the audit observation in all cases and stated that action was initiated/being initiated.

2.10.17.2 Audit cross verified the findings of the Central Section regarding cases of search and seizure and tax evaded by the dealers with the assessment case records of six³⁵ charge offices and observed that in 12 cases of seven dealers, the CS detected concealment of sale of poppy seeds of ₹ 326.34 crore and consequent evasion by the dealers of ₹ 13.05 crore for assessment periods between 2006-07 and 2008-09. The findings were duly communicated to charge officers for taking necessary follow up action. At the time of assessment, a separate proceeding for imposition of penalty under Section 96 of the Act was not initiated by them. The AAs also did not quote any reason for non-initiation of separate proceedings for imposition of penalty in the assessment orders.

On being pointed out, all six charge offices accepted the observation in 11 cases and stated that penalty under Section 96 were initiated/ being initiated separately. In the remaining case, the charge officer did not furnish any specific reply.

The CCT accepted the audit observations in the Exit Conference (August 2013) and stated that the charge offices were instructed to initiate action. In

³³ Asansol and Behala.

³⁴ Armenian Street, Beadon Street, Park Street and Postabazar.

³⁵ Armenian Street, Beadon Street, Colootola, Jorasanko, Park Street and Postabazar.

respect of non-imposition of penalty, he stated that a circular had been issued in May 2013.

2.10.18 Non-initiation of penalty proceedings in established cases of tax evasion.

Section 96 of the WBVAT Act, 2003 prescribes that where a dealer has concealed any sale/purchase/CTP or any particular thereof or furnished incorrect statement of his turnover of sales /purchase/CTP or claimed excess amount of input tax credit with intent to reduce the amount of net tax payable by him, a separate proceeding to impose penalty may be started. After providing such dealers a reasonable opportunity of being heard, the AA may, by an order in writing, impose penalty of a sum not exceeding twice the amount of tax which would have been avoided by him if concealed sales/purchase/CTP or excess claim of ITC were not detected.

Audit cross verified the findings of the Bureau of Investigation (BOI³⁶) and Central Section (CS³⁷) regarding cases of search and seizure and tax evaded by the dealers with the assessment case records of nine³⁸ charge offices. On the basis of such cross verification, audit observed that in 39 cases in respect of 30 dealers, the BOI/ CS had detected concealment of sale/purchase/CTP and excess claim of input tax credit (ITC) amounting to ₹ 756.74 crore and consequent evasion by the dealers of ₹ 50.47 crore for assessment periods between 2005-06 and 2010-11. The findings were duly communicated to the charge officers to take follow up action. At the time of assessment, though AAs had agreed with the detection of the BOI/CS and took appropriate action by levying tax etc., a separate proceeding for imposition of penalty under Section 96 of the Act was also required to be initiated by them which were not done for reasons not found on record.

Non-imposition of penalty, in such established cases of evasion detected by the Preventive Wings, defeated the purpose, relevance and spirit of the provisions of penalty under Section 96 of the Act.

On being pointed out, seven³⁹ charge offices admitted the audit observations between March and June 2013 in 20 cases of ₹ 40.23 crore and assured that proper action would be taken. In the remaining cases, they did not furnish any reply/specific reply.

The CCT accepted the audit observations and stated in the Exit Conference (August 2013) that a circular had been issued to impose minimum penalty of 25 *per cent* of the tax in evasion cases.

³⁶ The main function of the BOI is to search a dealer's place of business, seize records/ documents/ physical stock of goods and to lodge complaints to the police in evasion cases.

³⁷ The main function of the CS is to conduct way side checking, search and seizure of vehicles/goods.

³⁸ Asansol, Ballygunge, Bhowanipore, Colootola, Corporate Division, Durgapur, Lalbazar, Park Street and Serampore.

³⁹ Asansol, Bhowanipore, Colootola, Durgapur, Lalbazar, Park Street and Serampore.

2.10.19 Non-initiation of recovery proceedings

According to provisions of the WBVAT Act, 2003 and Rules made thereunder, the due amount of tax, penalty, late fee and interest assessed by the AA shall be paid by the dealer on or before the date specified in the notice of demand. In case of default in payment within the specified dates, such amount shall be recovered by initiating special mode of recovery (issue of Garnishee notice⁴⁰) under Section 60 or referring the cases to the Tax Recovery Officers (TRO) under Section 55.

Audit scrutinised the demand register (Register 58), certificate case register (Register IX) and related case records in 21⁴¹ charge offices and observed that arrear dues were getting accumulated over years. Even in cases of confirmed or modified appellate decisions, the charge offices did not initiate immediate recovery proceedings. In many cases, the dealers were running their business but the assessed dues remained uncollected from them for want of recovery proceedings as discussed in the subsequent paragraphs:

2.10.19.1 Non recovery from the dealers whose Registration Certificates were cancelled due to default in payment of tax

Audit noticed in 17⁴² charge offices that in 463 cases of 434 dealers assessed between March 2007 and June 2012, the dealers defaulted in payment of assessed tax, penalty, late fee and interest within the dates specified in the demand notices, and neither did they appeal against the assessment orders issued by the AAs. Cross-verification of Registration Certificates (R.Cs) of these dealers with the database of the cancelled dealers of the Directorate revealed that the R.Cs of the dealers were cancelled between June 2005 and February 2013 and they had closed their business.

Authorities neither initiated any special mode of recovery proceeding under Section 60 (issuing Garnishee notice) nor referred the cases to the Tax Recovery Officer (TRO)/Certificate Officer (CO) even after lapse of period ranging between five to 97 months from the dates of cancellation of their R.Cs. As the R.Cs of the dealers were cancelled, the possibilities of recovery of the assessed dues became remote and there was evasion of tax by ₹ 94.02 crore.

On being pointed out, six⁴³ charge offices accepted the audit observations in 115 cases involving ₹ 19.55 crore and stated (between December 2012 and August 2013) that recovery proceedings were initiated/being initiated. In the remaining cases, the charge offices did not furnish any reply/specific reply.

⁴⁰ Notice served to a third party by the VAT authorities to surrender money in settlement of a debt/claim in respect of a dealer.

⁴¹ Asansol, Ballygunge, Behala, Beliaghata, Bhowanipore, Burdwan, Chandni Chowk, Chinabazar, Colootola, Durgapur, Fairlie Place, Krishnanagar, Lalbazar, Midnapore, Park Street, Salkia, Salt Lake, Serampore, Siliguri, Strand Road and Taltola.

⁴² Asansol, Ballygunge, Beliaghata, Bhowanipore, Burdwan, Chandni Chowk, Chinabazar, Durgapur, Fairlie Place, Lalbazar, Midnapore, Park Street, Salkia, Serampore, Siliguri, Strand Road and Taltola.

⁴³ Asansol, Beliaghata, Bhowanipore, Lalbazar, Strand Road and Taltola.

2.10.19.2 Evasion by the defaulting dealers

Audit noticed in 21⁴⁴ charge offices that 1,075 dealers in 1,096 cases were assessed and demand notices were issued between June 2008 and November 2012. The dealers had defaulted in payment of assessed tax, penalty, late fee and interest within the dates specified in the demand notices and also did not prefer any appeal against the assessment orders issued by the AAs.

Authorities did not initiate recovery proceedings under Section 60 or 55 of the Act even after expiry of periods ranging between seven to 59 months after the dates specified for payment in the demand notices. Though the dealers were running their businesses, neither were the special mode of recovery initiated by the charge officers nor were the cases sent to the TRO for recovery of the assessed dues. Thus, the dealers evaded assessed dues in the absence of initiation of any recovery proceedings. This resulted in evasion of revenue of ₹ 533.21 crore.

Ten charge offices⁴⁵ accepted the audit observations in 152 cases involving ₹ 113.66 crore, out of which ₹ 3.60 lakh was realised in one case and in rest of the admitted cases, they stated that recovery proceedings were initiated/being initiated. In the remaining cases, the charge offices did not furnish any reply/specific reply.

2.10.19.3 Non-recovery in appeal cases where assessments were confirmed

Section 84 of WBVAT Act, 2003 prescribes that if any dealer is aggrieved of any assessment by AAs, he may prefer an appeal before the Appellate Authority. The Appellate Authority while disposing of any appeal case, may confirm, modify or annul the assessment and direct the AAs to make a fresh assessment.

Audit cross verified the judgments on appeal cases of nine⁴⁶ Appellate Authorities with the assessment records of 15⁴⁷ charge offices and found that in 45 cases of 45 dealers involving disputed amount of ₹ 13.76 crore, the dealers filed appeal petition before the Appellate Authorities between 2008-09 and 2011-12. The Appellate Authorities confirmed the assessments between April 2009 and May 2012 and directed the dealers to pay the assessed tax dues immediately.

Further scrutiny revealed that though the dealers continued their business without paying their dues, the AAs neither initiated the recovery proceedings under Section 60 nor sent the cases to the TRO for recovery even after a lapse of periods ranging from 14 to 51 months from the date of confirmation of

⁴⁴ Asansol, Ballygunge, Behala, Beliaghata, Bhowanipore, Burdwan, Chandni Chowk, Chinabazar, Colootola, Durgapur, Fairlie Place, Krishnanagar, Lalbazar, Midnapore, Park Street, Salkia, Salt Lake, Serampore, Siliguri, Strand Road and Taltola.

⁴⁵ Asansol, Beliaghata, Bhowanipore, Chandni Chowk, Colootola, Krishnanagar, Lalbazar, Park Street, Strand Road and Taltola.

⁴⁶ Bally, Berhampore, Burrabazar, Chowringhee, Dharmatala, Durgapur, Kolkata (South) Circle, Midnapore and Siliguri Circle.

⁴⁷ Ballygunge, Bhowanipore, Burdwan, Chandni Chowk, Chinabazar, Durgapur, Fairlie Place, Krishnanagar, Midnapore, Park Street, Salkia, Serampore, Siliguri, Strand Road and Taltola.

appeal cases. As a result, the defaulting dealers continued to evade revenue of ₹ 13.76 crore.

On being pointed out, six⁴⁸ charge offices accepted the audit observations in 13 cases involving ₹ 4.54 crore and stated that recovery proceedings were initiated/being initiated. In the remaining cases, the charge offices did not furnish any reply/specific reply.

2.10.19.4 Non-recovery in appeal cases where assessments were modified and revised demands were raised

Audit cross verified the judgments on appeal cases of six⁴⁹ Appellate Authorities with the assessment records of eight⁵⁰ charge offices and found that 16 dealers in 16 cases filed appeal petitions before the Appellate Authorities between 2008-09 and 2010-11. The Appellate Authorities modified the assessments between May 2010 and August 2012 and modified demands had been issued to the dealers directing them to pay the dues.

Further scrutiny revealed that though the dealers continued to run their business without payment of their dues, the AAs neither initiated the recovery proceeding under Section 60 nor sent the cases to the Tax Recovery Officer for recovery even after a lapse of period from 11 to 38 months from the specified dates of payment in modified demand notices. As a result, the dealers continued to evade revenue of ₹ 1.63 crore in modified appeal cases while still running their businesses.

Charge offices did not furnish any reply/specific reply. CCT accepted the observations in the Exit Conference (August 2013) and stated that recovery proceedings would be initiated immediately after the expiry of the specified date of payment.

2.10.19.5 Non-raising of demands in appeal cases where assessments were modified

Cross verification of judgments on appeal cases of the five⁵¹ Appellate Authorities with assessment case records of six⁵² charge offices revealed that in seven cases of seven dealers, the dealers had appealed before the Appellate Authorities during 2009-10 and 2010-11. The Appellate Authorities had modified the assessments between June 2010 and January 2012 and instructed the AAs to raise demands as per modified orders. However, no demand has been raised by the AAs even after expiry of a period between 18 to 37 months. This resulted in non-realisation of revenue of ₹ 1.68 crore.

On being pointed out, the JCCT, Park Street raised a modified demand of ₹ 1.05 lakh in one case. In the remaining cases, the charge offices did not furnish any reply.

⁴⁸ Bhowanipore, Burdwan, Krishnanagar, Serampore, Strand Road and Taltola.

⁴⁹ Bally, Berhampore, Burrabazar, Chowringhee, Durgapur and Kolkata (South) Circle.

⁵⁰ Ballygunge, Bhowanipore, Chinabazar, Durgapur, Fairlie Place, Krishnanagar, Salkia and Strand Road.

⁵¹ Circles: Chowringhee, Dharamtalla, Durgapur, Kolkata South and Siliguri.

⁵² Ballygunge, Burdwan, Chandni Chowk, Fairlie Place, Park Street and Siliguri.

The CCT accepted the observation in the Exit Conference (August 2013) and stated that a circular specifying the time limit for raising demand in modified appeal cases was being issued. Report on action taken was yet to be received (November 2013).

2.10.20 Absence of monitoring in respect of transmission of certificates for recovery of dues

Section 55 of the WBVAT Act prescribes that where any amount of tax, late fee, interest or penalty is recoverable, the Commissioner may send a certificate to the Tax Recovery Officer specifying the amount of dues. Thereafter, the CO/TRO serves a demand notice upon the defaulting dealer specifying date of payment therein. If the dealer defaults in payment within the prescribed date, the CO/TRO is empowered to recover the dues by attaching/selling the moveable/immovable property of the dealer.

2.10.20.1 Cross verification of registers maintained in 16⁵³ charge offices with those maintained in seven⁵⁴ offices of the TROs revealed that in 2,225 cases involving ₹ 256.28 crore, certificates were forwarded by the charge officers to the TROs for recovery of the assessed dues between April 2007 and March 2012. Out of these, in 151 cases involving ₹ 8.64 crore, these certificates were found not to have been received by the TRO offices as there were no corresponding entries in their registers.

On being pointed out, six⁵⁵ TROs admitted non-receipt of 106 certificate cases involving ₹ 3.61 crore. In the remaining cases, the TROs did not furnish any specific reply.

2.10.20.2 Audit scrutiny of records maintained in the offices of four⁵⁶ Tax Recovery Officers further revealed that in 90 cases of certificate requisition received from eight⁵⁷ charge offices between June 2007 and November 2011, no action for recovery of the assessed dues was taken by the TROs since last one and half years. In the absence of any action taken to realise the assessed dues by the TROs, an amount of ₹ 9.62 crore remained unrealised.

On being pointed out, two⁵⁸ TROs accepted the audit observation between July and August 2013 in 30 cases involving ₹ 57.31 lakh and stated that immediate action would be taken. In the remaining cases, the TROs did not furnish any specific reply.

2.10.20.3 Audit scrutinised certificate case records maintained in six⁵⁹ TROs and observed that in 456 cases of certificate requisitions involving recoverable amount of ₹ 24.82 crore, received during 2007-08 and 2011-12, the TROs initiated the recovery proceedings against the dealers. As the dealers were

⁵³ Asansol, Ballygunge, Bhowanipore, Burdwan, Chandni Chowk, Darjeeling, Durgapur, Fairlie Place, Krishnanagar, Midnapore, Park Street, Salkia, Salt Lake, Serampore, Siliguri and Taltola.

⁵⁴ TROs: 24 Parganas, Berhampore, Durgapur, Howrah, Midnapore, Serampore and Siliguri.

⁵⁵ TROs: 24 Parganas, Berhampore, Durgapur, Midnapore, Serampore and Siliguri.

⁵⁶ TROs: 24 Parganas, Berhampore, Serampore, and Siliguri.

⁵⁷ Beliaghata, Bhowanipore, Fairlie Place, Krishnanagar, Lalbazar, Serampore, Siliguri and Taltola.

⁵⁸ TROs: Berhampore and Siliguri.

⁵⁹ TROs: 24 Parganas, Berhampore, Durgapur, Midnapore, Serampore and Siliguri.

untraceable at their declared places of business the notices were returned undelivered.

Out of these 456 cases, in 100 cases involving ₹ 3.95 crore, additional information was sought for by two⁶⁰ TROs from four⁶¹ charge offices, but they did not respond to the request of the TROs till the date of audit. In the absence of additional information about the dealers, no further action for recovery of the assessed dues could be taken by TROs. Hence, owing to non-coordination between the charge officers and TROs, an amount of ₹ 24.82 crore involved in these certificate cases could not be realised.

Non-existence/non-traceability of the dealers had been accepted by six⁶² TROs in 384 cases involving amount of ₹ 11.87 crore. In the remaining cases, the TROs did not furnish any specific reply.

The CCT accepted the audit observations in the Exit Conference (August 2013) and stated that a mechanism was to be developed for periodical reconciliation between the charge offices and the TROs and instructed the TROs to initiate action immediately.

2.10.21 Non-disposal of seized goods

According to provisions of Rule 129 of the WB VAT Rules, where the goods are seized for transportation of goods without way bills or transit declarations (under Section 76) and the penalty imposed has not been paid by the date specified in the notice issued, the authority which has seized such goods shall sell the goods in open auction for cash on delivery fixing a date.

Audit scrutinised the 'Seizure Register' maintained in six⁶³ offices and found that in 73 cases of 73 dealers/ transporters, goods valuing ₹ 2.56 crore were seized by the VAT authorities between April 2007 and September 2012 as these goods had been transported without way bills or transit declarations. In these cases, penalty of ₹ 89.44 lakh was imposed by the Authorities and demands were raised accordingly. Out of this amount of penalty imposed, only ₹ 18.33 lakh could be realised and an amount of ₹ 71.12 lakh remained unrealised. These cases were not involved in any appeal, revision or litigation as no mention to this effect had been found in the Seizure Register.

VAT Authorities did not take action for disposal of the seized goods even after expiry of 10 to 75 months from the dates of seizure of the goods, hence, revenue towards the disposal value of these goods against the penalty amounting to ₹ 71.12 lakh remained unrealised. The condition of those goods had been deteriorating with passage of time and the possibility of realisation of the penalty has become remote. This was admitted by Sr. JCCT, Alipurduar Range, who also admitted the observation in seven cases of ₹ 9.21 lakh and stated (August 2013) that quality of the goods were deteriorating in the absence of disposal. Sr. JCCT, Central Section, Kolkata stated (May 2013) in 34 cases involving ₹ 28.67 lakh that goods were kept in the custody of the

⁶⁰ TROs: Durgapur and Siliguri.

⁶¹ Asansol, Burdwan, Durgapur and Siliguri.

⁶² 24 Parganas, Berhampore, Durgapur, Medinipur, Serampore and Siliguri.

⁶³ Alipurduar Range, Asansol Central Section, Kharagpur Range, Kolkata Central Section, Phansidewa More Check post and Siliguri Range.

Directorate and such goods would be placed in auction. In the remaining cases, the officers-in-charge did not furnish any specific reply.

CCT stated in the Exit Conference (August 2013) that a circular specifying the time limit for disposal of seized goods was being issued. Report on action taken was yet to be received (November 2013).

2.10.22 Deficient monitoring of transit declarations

Section 80(1C) of the WB VAT Act, 2003 prescribes that the transporters, carriers or transporting agents shall not transport any goods in a goods vehicle bound for any place outside West Bengal unless he has in his possession a valid Declaration (Transit Declaration) as specified in Rule 121(1)(a). In the Declaration, particulars like description, quantity and value of goods, the entry and exit points, etc. are required to be declared. Section 80(14) specifies that if the goods vehicle transporting the goods does not move outside West Bengal, it shall be presumed that the goods so transported have been sold in the State by the transporters, carriers or the transporting agents and he shall be deemed to be a dealer under the Act.

Audit scrutinised the system of generation and monitoring of Transit Declarations (T.Ds) under the Directorate during the period under Performance Audit and found that till 14 November 2010, there was a system of manual generation of T.Ds and thereafter a system of electronic T.Ds was introduced by the Directorate. Audit observed lack of monitoring and control of the Directorate in both the manual and electronic system of T.Ds which resulted in loss of substantial amount of Government revenue as discussed in the following sub-paragraphs:

2.10.22.1 Data regarding entry of consignments in the State through T.Ds. and exit thereof from four⁶⁴ different check posts (as declared in the T.Ds.) was obtained from the Information System Division (ISD) of the DCT for the period from 01.04.2007 to 14.11.2010. Analysis of this data revealed that out of the 5,39,810 consignments entered into the State, exit details in respect of 1,23,819 consignments were not on record, as detailed in the following table.

	Number of consignments	Value (₹ in crore)
Consignments entered	5,39,810	47,183.70
Consignments exited	4,15,991	37,908.04
Exit details not available	1,23,819	9,275.66

Out of above 1,23,819 exit details which were not available in the online data, 20,078 cases valued at ₹ 4,369.44 crore (having values above ₹ two lakh and above) were selected for cross verification with the manual Exit Registers maintained at these four check posts to ascertain their status of exit. Out of the selected sample, 13,479 cases valued at ₹ 3,173.81 crore could be cross verified in audit and the remaining 6,599 cases valued at ₹ 874.63 crore could not be cross verified due to non-production of Exit Registers to audit by the two⁶⁵ check post authorities. Results of cross-verification are as follows:

⁶⁴ Barobisha, Baxirhat, Haldia and Phansidewa.

⁶⁵ Barobisha and Haldia.

	Number of consignments	Value (₹ in crore)
Consignments selected for cross-verification	20,078	4,369.44
Exit Registers not made available	6,599	1,195.63
Consignments cross-verified	13,479	3,173.81
Consignments exited	6,142	1,478.24
Consignments not exited	7,337	1,695.57

Thus, in 7,337 cases transporters carrying goods valued at ₹ 1,695.57 crore entered West Bengal by furnishing T.Ds at the entry check posts, but did not report for exit at any of exit check posts till the date of audit. Therefore, under provisions of Sub-Section 14 of Section 80 of the WB VAT Act, the goods so transported, should be deemed to have been sold in West Bengal by the transporters, carriers or transporting agents. In the absence of any system of monitoring and control, tax evasion by the dealers (transporters, carriers or transporting agents) cannot be ruled out.

On being pointed out, three⁶⁶ check posts accepted the audit observation in 3,689 cases involving ₹ 91.73 crore and stated (March and July 2013) that the cases were being forwarded to the entry check posts for initiating action. In the remaining cases, the check post authority stated (June 2013) that action would be taken immediately.

2.10.22.2 Under Section 80(5A) of the Act, the transporters are required to submit the utilisation statement of e-TDs within two days from the date of exit of the goods from the State. Further, Section 80(14) provides that in case of non-submission of utilisation by the transporters within the prescribed time, the goods shall be presumed to be sold within the State and the transporter shall be deemed to be a dealer under this Act.

Audit analysed the e-TDs data of the Directorate for the period from April 2011 to March 2012 and found that out of 11,88,385 e-TDs of ₹ 1,27,829.18 crore generated during that period, utilisation in case of 1,52,429 e-TDs of ₹ 18,420.77 crore was not submitted by the transporters. Audit further observed that no report was generated by the IMPACT software application used for the purpose to monitor such cases of non-submission of utilisation statement of e-TDs for taking appropriate action against the defaulters. A tax liability of ₹ 736.83⁶⁷ crore was involved in the aforesaid cases.

On being pointed out, the Addl. CCT, Information System Division (ISD) did not furnish any reply.

The CCT stated in the Exit Conference (August 2013) that there were some practical difficulties in exercising checks at the exit check posts. In case of e-TDs, the CCT stated that decision would be taken after discussion with the officers of ISD and National Informatics Centre (NIC).

⁶⁶ Baxirhat, Haldia and Phansidewa.

⁶⁷ four per cent of ₹ 18,420.77 crore.

2.10.23 Non-disposal of appeal cases within specified time limit

Section 84 of the WB VAT Act, 2003 prescribes that an appeal case is to be disposed of within the period specified. If any appeal could not be disposed of within the specified period, the same shall be deemed to have been disposed of in accordance with law and all the claims of the appellant shall be deemed to have been allowed in full.

Audit scrutinised the Appeal Receiving and Disposal Register maintained in two⁶⁸ Circle offices, and found that out of 19,860 appeal cases received during the period from 2007-08 to 2011-12, 144 cases were barred by limitation of time and were disposed in favour of the dealers without any hearing by the Appellate Authorities. This resulted in disposal of disputed amount of ₹ 63.16 crore in favour of the dealers in 139 cases. In five appeal cases the disputed amounts were not furnished to audit though sought for.

CCT accepted the audit observation in the Exit Conference (August 2013) and instructed the concerned Circle offices to examine the cases and initiate necessary action. However, the time limit had already expired in these cases.

2.10.24 Internal Control Mechanism

Internal Control is an integral component of an organisation's management processes established in order to provide reasonable assurance that the organisation's operations are carried out effectively, economically and efficiently. Evaluation of Internal control mechanism in the administration of VAT revealed deficiencies in the administrative, operational and monitoring controls. Internal audit arrangements were also deficient and unable to provide complete assurance against irregularities. Deficiencies in the internal control mechanism are discussed in the following sub-paragraphs:

- Audit observed that the Preventive Wing of the Directorate i.e. Bureau of Investigation detected evasion valuing ₹ 183.27⁶⁹ crore in 445⁷⁰ search and seizure cases during the period from 2007-08 to 2011-12. Further, the Central Sections also detected concealment/suppression of sales /purchases of ₹ 987.22⁷¹ crore in 602⁷² search and seizure cases during the period from 2008-09 to 2011-12. A database of dealers who are persistent evaders of tax and the modus-operandi of tax evasions could be helpful for the AAs to judge and make appropriate decisions while assessing such dealers or the dealers with whom such tax evading dealers have business transactions. However, a database of such dealers has not been prescribed by the Act and Rules. Neither has the Directorate initiated any measure in this regard by issuing administrative circulars and notifications, etc.
- Audit observed that the WB VAT Act and West Bengal Value Added Rules were enacted in 2003 and 2005 respectively. Unlike in other states,

⁶⁸ 24 Parganas Circle and Kolkata South Circle.

⁶⁹ 2007-08-14.81 crore, 2008-09-18.57 crore, 2009-10-9.70 crore, 2010-11-38.09 crore and 2011-12-102.10 crore.

⁷⁰ 2007-08-82 cases, 2008-09-41 cases, 2009-10-86 cases, 2010-11-89 cases and 2011-12-147 cases.

⁷¹ 2008-09-348.83 crore, 2009-10-446.87 crore, 2010-11-96.74 crore and 2011-12-94.78 crore.

⁷² 2008-09-129 cases, 2009-10-189 cases, 2010-11-155 cases and 2011-12-129 cases.

such as Andhra Pradesh which has formulated its Value Added Tax (APVAT) Manual, the DCT, West Bengal, has not done so even after expiry of ten years from the enactment of WB VAT Act, 2003. Manual on the working of the Directorate where segregation of duties, power, role and responsibility of various wings/sections/officers of the Directorate, the working procedure of the anti evasion wings like Bureau of Investigation, Central Section, duties and responsibilities of their officers, internal controls prevailed in these wings, etc. would go a long way in systematising work.

- No Scrutiny Register has been prescribed by the WB VAT Act and Rules made thereunder. The CCT, however, issued instructions for maintenance of a Scrutiny Register for each group under the charge in the format prescribed. Audit observed in 21⁷³ charge offices between October 2012 and July 2013 that out of 176⁷⁴ groups under the charge offices, Scrutiny Registers were not produced to audit by 150⁷⁵ groups. In 26⁷⁶ groups where Scrutiny Registers were found maintained, it was observed that not all the returns were being scrutinised. The Scrutiny Registers were also not inspected by the charge officers every month as required. Thus, instructions of the CCT were not followed by the charge offices. In the absence of a properly maintained Scrutiny Register, it was difficult to ensure that all the returns were being scrutinised by the AAs. Consequent tax evasion by the dealers whose returns were left unscrutinised cannot be ruled out.

In response to a comment made under Para 2.2.8.2 of the Audit Report (Revenue Receipts), Government of West Bengal for the year ended 31 March 2009 regarding non-maintenance of Scrutiny Register, the Department had earlier admitted the audit observation, but has not initiated any action so far (November 2013).

- Audit observed that the Internal Audit Wing (IAW) of the Directorate headed by a Special Commissioner and presently having two Sr. JCCTs and one JCCT had started functioning since May 1991 but no manual on the working of the IAW has been prepared yet, and neither is there any structured plan for conducting internal audit of various Wings, Circles, Charges, Ranges, Checkposts, etc. during last five years. Performance and functioning of the Preventive Wings have never been evaluated and audited by the IAW. During 2009-10 to 2011-12, only nine⁷⁷ charge

⁷³ Asansol, Ballygunge, Behala, Beliaghata, Bhowanipore, Burdwan, Chandni Chowk, Chinabazaar, Colootola, Darjeeling, Durgapur, Fairlie Place, Krishnanagar, Lalbazar, Midnapore, Park Street, Salkia, Saltlake, Serampore, Siliguri and Taltola.

⁷⁴ Asansol-10, Ballygunge-14, Behala-13, Beliaghata-7, Bhowanipore-11, Burdwan-7, Chandni Chowk-6, Chinabazaar-3, Colootola-8, Darjeeling-3, Durgapur-6, Fairlie Place-6, Krishnanagar-7, Lalbazaar-6, Midnapore-10, Park Street-10, Salkia-8, Salt Lake-12, Serampore-10, Siliguri-12 and Taltola-7.

⁷⁵ Asansol-10, Ballygunge-14, Behala-13, Beliaghata-3, Bhowanipore-11, Burdwan-7, Chandni Chowk-6, Chinabazaar-3, Colootola-8, Fairlie Place-6, Krishnanagar-7, Lalbazaar-3, Midnapore-8, Park Street-10, Salt Lake-12, Serampore-10, Siliguri-12 and Taltola-7.

⁷⁶ Beliaghata-4, Darjeeling-3, Durgapur-6, Lalbazaar-3, Midnapore-2 and Salkia-8.

⁷⁷ Barrackpore, Belgachia and Howrah in 2009-10; Postabazar, Salt Lake and Ultadanga in 2010-11 and Barasat, Beadon Street and Shyambazar in 2011-12.

offices were audited by the IAW. Number of charges audited by the IAW during 2007-08 and 2008-09 were not intimated to audit though sought for. The IAW could not provide specific information regarding the cases detected by them during last five years, recommendations made by them and follow up action taken by the Directorate thereupon.

- Audit observed lack of proper system and procedures in 17⁷⁸ charge offices in respect of record-keeping and maintenance. The Directorate did not issue any guidelines for periodic weeding, indexing and destruction of old assessment case records to the charge offices, neither did charge offices evolve any system of weeding and indexing of the assessment case records. Neither were the assessment case records maintained according to types of assessments like scrutiny assessment, deemed assessment, assessed by VAT audit etc, nor were those maintained dealer-wise. Assessment case records of different periods of the same dealer were not kept together. In the absence thereof, it is difficult for the dealing assistants to make the case records available for different periods of the same dealer to the AAs/ Audit. During Performance Audit, audit team requisitioned last five years' case records related to 4,545⁷⁹ dealers from the charge offices; but due to poor record keeping, case records in respect of 1,509 dealers could not be made available to audit.

On this being pointed out, the CCT in the Exit Conference (August 2013) agreed to the issue and assured that it would maintain the database of the dealers who persistently evade tax, formulate Manuals, strengthen the functions of the IAW and to implement Data Management System (DMS). Report on action taken was yet to be received (November 2013).

2.10.25 Conclusion

Audit noticed deficiencies regarding absence/inadequacy of system/departmental instructions, non-compliance of the prevalent provisions and in the internal control mechanism in the functioning of the DCT. Absence of system of cross verification of information that can be obtained from other departments as well as information available in different wings of the department itself, non-monitoring of compliance of the findings of preventive wings, non-initiation of penalty as well as recovery proceedings and non disposal of seized goods adversely affected realisation of revenue. Failure of the DCT to monitor the business activities of the dealers with cancelled registration and functioning of TROs and failure to dispose the appeal cases within the specified time limit affected revenue realisation. Absence of a database of persistent tax evading dealers, non-existence of a working manual, non-maintenance of Scrutiny Register, absence of a structured Internal Audit Wing and poor record keeping were found to be weaknesses of the internal control mechanism of the DCT.

⁷⁸ Asansol, Ballygunge, Behala, Beliaghata, Bhowanipore, Burdwan, Chandni Chowk, Darjeeling, Durgapur, Fairlie Place, Lalbazar, Midnapore, Park Street, Salt Lake, Serampore, Siliguri, and Taltola.

⁷⁹ Asansol-349, Ballygunge-541, Behala-355, Beliaghata-296, Bhowanipore-371, Burdwan-250, Colootola-219, Darjeeling-33, Durgapur-247, Fairlie Place-164, Lalbazar-223, Midnapore-298, Park Street-591, Siliguri-411 and Taltola-197.

2.10.26 Summary of recommendations

The Government may consider taking the following steps to enhance the efficiency and effectiveness of the Directorate in respect of implementation of VAT in the State:

- establishing a system by issuing departmental instructions to coordinate with other departments/ within the department on information available with them, so as to bring eligible unregistered dealers into the tax net and to prevent tax evasion by registered dealers;
- instituting an effective surveillance system so as to curb business of dealers with cancelled registrations;
- timely initiation of recovery proceedings, raising demand in modified appeal cases and disposal of the seized materials to avoid delays in realisation of revenue;
- maintaining a database of the dealers identified as persistent tax evaders by the preventive wings of the department; and
- maintenance of Scrutiny register and providing a working manual for streamlining the functioning of the IAW.

Sales Tax/Value Added Tax

2.11 Audit observations

Scrutiny of assessment records of sales tax/value added tax (VAT) indicated several cases of non/improper-observance of the provisions of the Act/Rules and inefficient/ineffective monitoring resulting in non/short levy/realisation of taxes and penalties as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out in audit. Similar omissions on the part of the Assessing Authorities have been pointed out by Audit earlier, but the irregularities have persisted suggesting systemic deficiencies. There is a need to improve the internal control system including internal audit so that such errors can be corrected timely and avoided in future.

2.12 Short determination of Turnover of Sales

Sections 2(40) and 17 of the West Bengal Sales Tax (WBST) Act, 1994 and Sections 2(55) and 16 of the West Bengal Value Added Tax (WBVAT) Act, 2003 prescribe that turnover of sales (TOS) in relation to any period means the aggregate of the sale prices or parts of sale prices receivable by a dealer, or if a dealer so elects, actually received by the dealer during such period. A dealer is liable to pay tax at prescribed rates on the amount of such turnover after allowing permissible deductions.

1. During test check of records, carried out in the Corporate Division, Kolkata, Audit found that in two cases assessed in June 2007 under the WBST Act for assessment period 2004-05, the Assessing Authorities (AAs) had incorrectly determined turnover of sales (TOS) at ₹ 23.88 crore instead of ₹ 26.31 crore. In one case, AA determined the TOS less than the TOS disclosed by the dealer in his returns and in the other case, did not include all taxable items in the TOS. This resulted in short determination of TOS by ₹ 2.43 crore and consequent short levy of tax of ₹ 25.33 lakh.

Department admitted (April 2011) the audit observation in one case involving ₹ 13.79 lakh and stated that the dealer had gone to appeal (on some other grounds) and a cross-revision would be filed with the appellate authority. Their report on further action taken is awaited. In the other case, department did not furnish any reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

2. Audit found in 13⁸⁰ charge offices that in 20 cases assessed between June 2008 and December 2011 under the WBVAT Act for the assessment periods between 2005-06 and 2008-09, AAs incorrectly determined TOS at ₹ 610.54 crore instead of ₹ 736.99 crore. This resulted in short determination of TOS by ₹ 126.45 crore and consequent short levy of tax of ₹ 6.37 crore as detailed in the following table:

⁸⁰ Alipore, Asansol, Ballygunge, Bankura, Barasat, Beadon Street, Chandney Chawk, Corporate Division, Howrah, Park Street, Postabazar, Salt Lake and Shibpur.

Table 2.10 – Short determination of turnover of sales

(₹ in lakh)

Sl. No.	Nature of irregularity	No. of cases	TOS to be determined	TOS determined by AAs	Short determination of TOS	Short levy of tax
1.	Determination of TOS less than the TOS disclosed by dealers in their returns	12	18,816.80	13,451.44	5,365.36	249.30
2.	Exemption allowed on sales not supported by the requisite declaration forms	1	1,826.26	956.49	869.78	86.98
3.	Determination of sales less than disclosed by the dealer in books of accounts	1	309.15	246.15	63.00	2.52
4.	Double deduction of export sales from TOS	1	4,648.77	4,132.82	515.95	64.49
5.	Non-inclusion of all the taxable items in TOS	3	39,217.36	38,441.03	776.33	31.05
6.	Selling price per unit was valued abnormally lower than the value of closing stock per unit	2	8,880.51	3,825.80	5,054.71	202.19
Total		20	73,698.85	61,053.73	12,645.13	636.53

After audit pointed out the cases, department admitted (between August 2011 and March 2013) the audit observations in 19 cases involving ₹ 6.32 crore; but did not furnish any report on levy and realisation of tax. In the remaining one case involving ₹ 5.01 lakh, the department did not furnish any reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

2.13 Non/short levy of interest

Sections 31 and 32 of the WBST Act and Sections 33 and 34 of the WB VAT Act prescribe that if a dealer, who

- furnishes a return of any period but fails to make full payment of tax payable for such period by prescribed date; or
- fails to deduct inadmissible input tax credit (ITC) from the amount of ITC for a period by prescribed date; or
- fails to make payment of the tax demanded after assessment by the date specified in the demand notice; shall be liable to pay interest at the rate of one *per cent* per month.

1. Audit found in Corporate Division, Kolkata that in nine cases assessed between June 2007 and February 2011, under the WBST Act for the assessment period 2004-05, the AAs short levied interest of ₹ 19.47 lakh in four cases and did not levy interest of ₹ 6.18 lakh in five cases though the dealers failed to pay tax within prescribed dates. This resulted in non/short levy of interest of ₹ 25.65 lakh.

After audit pointed out the cases, the department admitted audit observations in eight cases involving ₹ 24.89 lakh and realised ₹ 0.84 lakh in one case but did not furnish report on realisation in the other cases. In the remaining one case involving ₹ 0.76 lakh, the department did not furnish any reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

2. Audit found in 18⁸¹ charge offices that in 87 cases assessed between September 2008 and June 2012 under the WB VAT Act for assessment periods between 2005-06 and 2009-10, AAs short levied interest of ₹ 1.62 crore in 17 cases and did not levy interest of ₹ 19.90 crore in 70 cases though the dealers did not pay tax by prescribed/specified dates or did not deduct the inadmissible ITC. This resulted in non/short levy of interest of ₹ 21.52 crore.

After audit had pointed out the cases, the department admitted (between August 2011 and April 2013) audit observations in 50 cases involving ₹ 5.57 crore but did not furnish any report on realisation.

In other five cases involving ₹ 12.14 crore, the department stated (between November 2011 and August 2012) that interest was not leviable as the tax was not admitted by the dealers or the ITC was rejected during assessment. The reply is not tenable since in two cases the dealers had availed ITC on fuel, lubricant oil etc which fall under the Negative List appended to section 22 of the WB VAT Act on which dealers are not eligible for ITC. In other three cases, the AAs disallowed the ITC due to non-maintenance of true and up-to-date accounts by the dealers availing ITC as required under section 63 of the WB VAT Act. In the remaining 32 cases involving ₹ 3.81 crore, the department did not furnish any reply/specific reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

2.14 Non-levy of penalty on evaded tax

Section 76(1) of the WBST Act and Section 96(1) of the WB VAT Act prescribe penalty if a dealer has concealed any turnover or furnished incorrect particulars thereof or claimed excess amount of Input Tax Credit (ITC)/Rebate, but has not reversed the same to the extent of his disentitlement. Under the WBST Act, the AA in addition to tax, may impose penalty which shall not be less than one and a half times and not more than thrice the amount of tax that would have been avoided by him. Under the WB VAT Act, the quantum of penalty should not exceed twice the amount of tax which would have been avoided if such concealment was not detected.

1. Audit found in Corporate Division, Kolkata that in two cases assessed in June 2007 under the WBST Act for the assessment period 2004-05, the AAs detected one case of submission of false 'F' forms in support of consignment sales of ₹ 7.27 crore and another case of suppression of intra-state sales of ₹ 63.34 lakh by the dealers. Though the dealers intended to evade tax of ₹ 75.65 lakh, the AAs did not levy penalty under section 76(1) of the WBST Act to the extent of ₹ 1.13 crore.

⁸¹ Asansol, Ballygunge, Bankura, Bhowanipore, Corporate Division, Durgapur, Esplanade, Jorabagan, Kadamtala, Lyons Range, Monoharkatra, NS Road, Park Street, Postabazar, Salt Lake, Shibpur, Shyambazar and Siliguri.

After audit pointed out the cases, the department admitted (February 2012) the audit observation in one case involving ₹ 4.36 lakh, but did not furnish report on levy/realisation of penalty. In another case involving ₹ 1.09 crore, the department did not furnish any reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

2. Audit found in two⁸² charge offices that in five cases assessed between January 2009 and June 2011 under the WBVAT Act for assessment periods between 2005-06 and 2008-09, the AAs noticed evasion of tax of ₹ 2.56 crore by dealers by means of claims of ITC not supported by purchase details, understatement of gross sales by suppression/concealment of purchases/imports and filing of nil returns despite running business. However, AAs did not levy any penalty under section 96(1) of the WBVAT Act amounting to ₹ 5.12 crore.

After audit pointed out the cases, the department admitted (between June 2012 and April 2013) the audit observations and stated that proceedings for levy of penalty of ₹ 2.99 crore had been initiated in four cases, but did not furnish any report on levy/realisation (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

2.15 Non/short levy of purchase tax

Section 12 of the WBVAT Act provides for payment of purchase tax at prescribed rates on unregistered purchases of goods by a dealer which are not directly related to his business or fall in the Negative List of the Act.

Audit found in Corporate Division, Kolkata that in two cases assessed between November 2008 and January 2010 for the assessment period 2005-06, the AAs under-assessed the unregistered purchases and short levied the purchase tax amounting to ₹ 44.44 lakh. In one case, the AA assessed the purchase tax as ₹ 54.13 lakh on the purchases of ₹ 4.50 crore from the unregistered dealers and deducted the ITC of ₹ 22.62 lakh from this amount. Erroneously, an identical amount was again deducted as ITC from the total tax liability of the dealer (including VAT and purchase tax payable). In the other case, purchase tax of ₹ 21.82 lakh was not levied on unregistered purchases of ₹ 5.46 crore. This had resulted in short/non levy of purchase tax of ₹ 44.44 lakh.

The department is yet to furnish any reply/specific reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

⁸² Burdwan and Corporate Division.

2.16 Short levy of tax on contractual transfer price

Sections 14 and 18 of the WBVAT Act prescribe that any transfer of property in goods involved in the execution of works contract shall be deemed to be a sale by the person making such transfer and tax at prescribed rates shall be levied on his contractual transfer price (CTP) after allowing deductions towards labour charges, service charges and payments to sub-contractors etc. Further, where the taxable CTP for application of proper rate of tax is not ascertainable from the books of accounts maintained by the dealer or where a dealer does not maintain books of accounts worthy of credence, tax on CTP should be assessed according to the table given under Rule 30(2) of the WBVAT Rules, 2005.

Audit found in 10⁸³ charge offices that in 26 cases assessed between August 2008 and February 2012 for the assessment periods between 2005-06 and 2008-09, the AAs determined short CTP which resulted in short levy of tax of ₹ 9.41 crore as detailed in the following table:

Table 2.11 – Short levy of tax on Contractual Transfer Price

(₹ in lakh)

Sl.No	Nature of irregularity	No. of cases	Taxable CTP assessable	Taxable CTP assessed	Under assessment of taxable CTP	Short levy of tax
1.	Short levy of tax due to non-application of prescribed rates under Rule 30(2) of the WBVAT Rules	6	988.37	447.89	540.48	54.94
2.	Incorrect deductions of payments to sub-contractors, salary, security deposit, installation charges, labour charges and TDS etc	9	35,363.54	33,355.95	2,007.59	266.85
3.	CTP assessed short than disclosed by the dealers in their returns/books of accounts/statements etc	10	16,748.44	6,496.90	10,251.54	608.01
4.	Tax not levied on contractual receipts of pre-registration period	1	156.36	60.26	96.10	11.50
Total		26	53,256.71	40,361	12,895.71	941.30

After audit pointed out the cases, the department admitted (between February 2012 and June 2013) the audit observations in 23 cases involving ₹ 5.85 crore; but did not furnish any report on levy and realisation of tax. In the remaining three cases involving ₹ 3.56 crore, the department did not furnish any reply/specific reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

⁸³ Ballygunge, Barasat, Behala, Corporate Division, Jorabagan, Malda, Salt Lake, Sealdah, Shyambazar and Tamluk.

2.17 Application of incorrect rate of tax

Section 16(2) of the WBVAT Act prescribes the rate of tax on the goods sold/purchased depending upon classification of the goods. Section 8(2) of the Central Sales Tax (CST) Act, 1956 provides that in case of inter-state sales of goods made to unregistered dealers, tax is leviable at the rate applicable to the sale/ purchase of such goods inside the State.

Audit found in 12 charge offices⁸⁴ that in 21 cases assessed between September 2008 and June 2011 for the assessment periods from 2005-06 to 2008-09, the AAs in 19 cases levied tax on sales/purchases of ₹ 33.80 crore at the rate of four *per cent*/10 *per cent* instead of 12.5 *per cent* under the WBVAT Act. In the remaining two cases under the CST Act, the AAs levied tax at the rate of four *per cent* /10 *per cent* instead of 12.5 *per cent* on inter-state sales of ₹ 5.14 crore to unregistered dealers. Thus, application of incorrect rate of tax resulted in short levy of tax of ₹ 3.01 crore.

The department admitted (between September 2011 and January 2013) the audit observations in 16 cases involving ₹ 1.94 crore; but did not furnish report on levy and realisation of tax. In the remaining five cases involving ₹ 1.07 crore, the department did not furnish any specific reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

2.18 Irregular allowance of input tax credit

Section 22 of the WBVAT Act prescribes that a registered dealer can avail the benefit of Input Tax Credit (ITC) to the extent of tax paid or payable by him in respect of purchases of taxable goods from registered dealers of West Bengal. Any amount of ITC which remains excess at the end of a year shall be carried over to the next year. However, no ITC shall be allowed for purchase made from a registered dealer enjoying payment of tax at compounded rate. In addition, ITC availed is required to be reversed at the prescribed rate in case of stock transfer outside the state. Further, if sale price of any good is less than the purchase price of such good, ITC is restricted to the amount of output tax payable on sale of such good. Also, ITC is permissible on transitional stock held by a registered dealer subject to certain conditions and restrictions.

Audit found in 16⁸⁵ charge offices that in 39 cases assessed between July 2008 and June 2012 for the assessment periods between 2005-06 and 2009-10, the AAs allowed ITC of ₹ 9.35 crore instead of ₹ 7.55 crore. This resulted in irregular allowance of ITC of ₹ 1.80 crore as detailed in the following table:

⁸⁴ Barasat, Behala, Corporate Division, Chandney Chowk, Durgapur, Howrah, Lyons Range, Monoharkatra, Maniktala, Saltlake, Sealdah and Shyambazar.

⁸⁵ Bally, Ballygunge, Barasat, Beadon Street, Behala, College street, Corporate Division, Durgapur, Malda, Maniktala, Manoharkatra, Park Street, Postabazar, Salkia, Shibpur and Tamluk.

Table 2.12 – Irregular allowance of Input Tax Credit

(₹ in lakh)					
Sl. No.	Nature of irregularity	No. of cases	ITC allowed	ITC allowable	Irregular allowance of ITC
1.	ITC allowed on purchases made from dealers whose registrations were cancelled	9	162.24	149.79	12.45
2.	ITC allowed on purchases made from dealers who filed 'nil' returns and sales-purchases mismatch between purchaser and seller	4	6.81	00.00	6.81
3.	ITC allowed on purchases made from unregistered/non-existent dealers/dealers enjoying composition scheme	3	6.04	00.00	6.04
4.	ITC allowed on tax free items/consumable items/capital goods not capitalised	3	459.48	443.26	16.22
5.	ITC brought forward from previous year in excess of available ITC and allowed in assessment	3	14.61	3.45	11.16
6.	ITC allowed on non-submission of statement of transitional stock ⁸⁶ or without verification of purchase documents etc	9	100.95	31.55	69.40
7.	Other cases of excess allowance of ITC	8	184.77	126.67	58.10
Total		39	934.90	754.72	180.18

It is evident from the table above that the AAs allowed ITC to the dealers without thorough scrutiny of the accounts and without cross checking the status/accounts of the selling dealers.

The department admitted (between August 2011 and May 2013) the audit observations in 27 cases involving ₹ 1.11 crore; but did not furnish any report on levy and realisation of tax. In the remaining 12 cases involving ₹ 0.69 crore, the department did not furnish any reply/specific reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

2.19 Irregular allowance of stock transfer

Section 6A of the CST Act prescribes that a dealer seeking exemption for transfer of goods to his agents/branches has to furnish declaration in form 'F'. Transfer of goods effected during a calendar month is to be covered by a single 'F' form. Otherwise, such transfer of goods is liable to be treated as inter-state sale and taxed accordingly. Production of 'F' form in support of transfer of goods has been made mandatory from June 2002.

Audit found in three⁸⁷ charge offices that in three cases assessed between November 2008 and June 2010 for assessment periods 2005-06 and 2007-08, the AAs allowed exemption of tax on transfer of goods to the branches/agents outside the State for ₹ 227.19 crore. Of these, allowance of stock transfer of ₹ 38.89 crore was irregular as either the single 'F' form covered transactions

⁸⁶ Stock of goods held by a registered dealer as on 01.04.2005.

⁸⁷ Chandni Chowk, Corporate Division and Esplanade.

beyond one month or the transactions were not covered by 'F' forms. Consequently, there was underassessment of tax of ₹ 41.62 lakh as detailed in the following table:

Table 2.13 – Irregular allowance of stock transfer

(₹ in lakh)						
Sl. No.	Nature of irregularity	No. of cases	Stock transfer allowed	Stock transfer allowable	Excess allowance	Short levy of tax
1.	Single 'F' form covered transactions beyond one month	2	18,896.11	18,830.20	65.91	3.39
2.	Transactions not covered by 'F' forms	1	3,823.13	0	3,823.13	38.23
Total		3	22,719.24	18,830.20	3,889.04	41.62

The department admitted (October 2011 and May 2012) the audit observations in two cases involving ₹ 39.48 lakh but did not furnish report on levy and realisation of tax. In the remaining one case involving ₹ 2.14 lakh, the department did not furnish any reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

2.20 Irregular allowance of compounded rate of tax

Rules 38(4) and 39(4) of the WB VAT Rules, 2005 prescribe that a registered dealer who intends to avail the benefit of paying tax at compounded rate in lieu of normal rate shall have to exercise such option in Form 16 before the appropriate authority within 90 days from the date of commencement of the assessment year. Rule 38(9) prescribes that a registered dealer availing compounded rate of tax, whose turnover exceeds ₹ 50 lakh at any time during a year, shall continue to pay tax at the compounded rate upto the end of that month in which turnover of sales so exceeds ₹ 50 lakh, but he shall not be eligible for payment of tax at the compounded rate for the remaining part of the quarter.

Audit found in nine⁸⁸ charge offices that in four cases for assessment periods between 2005-06 and 2007-08 and in 30 deemed assessment cases for assessment periods between 2006-07 and 2008-09, the AAs levied tax of ₹ 0.08 crore at compounded rate⁸⁹ instead of ₹ 1.07 crore at normal rate on turnover of sales of ₹ 10.98 crore though the dealers were not eligible for such benefit due to non/delayed submission of Form 16 and the turnover exceeding the prescribed limit. This resulted in short levy of tax of ₹ 0.99 crore.

The department admitted (August 2011 and August 2012) the audit observations in 19 cases involving ₹ 0.59 crore; but did not furnish any report on realisation of tax. In the remaining 15 cases involving ₹ 0.40 crore, the department did not furnish any specific reply (November 2013).

⁸⁸ Asansol, Ballygunge, Howrah, Kadamtala, Malda, Postabazar, Salkia, Shibpur and Shyambazar.

⁸⁹ 0.25 per cent in case of registered dealers and two per cent in case of registered dealers making sales by way of transfer of right to use goods.

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

2.21 Short levy of tax due to mistake in computation

Under the WBVAT Act, tax is to be computed at the rates applicable from time to time along with interest and penalty, if any, on the goods sold.

Audit found in four⁹⁰ charge offices that in nine cases assessed between June 2009 and December 2011 for assessment periods between 2006-07 and 2008-09, the AAs assessed tax of ₹ 2.48 crore instead of ₹ 3.25 crore due to levy of tax on turnovers of sales/purchases less than the turnovers of sales/purchases actually determined by them; omission of taxable receipts (as assessed by them) while determining the turnover of sales; and calculation of tax at the rates lower than the rates actually determined by them, etc. Such arithmetical mistakes/omissions resulted in short levy of tax of ₹ 68.71 lakh.

The department admitted (between November 2011 and March 2013) the audit observations in seven cases involving ₹ 27.37 lakh; but did not furnish any report on realisation of tax. In the remaining two cases involving ₹ 41.34 lakh, the department did not furnish any reply/specific reply (November 2013).

The Government accepted (September 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

⁹⁰ Ballygunge, Bhawanipore, Chandni Chowk and Salt Lake.

CHAPTER-III

Land Revenue

EXECUTIVE SUMMARY	
Tax administration	In 2012-13, collection in respect of land revenue increased by 8.09 <i>per cent</i> over the previous year which was attributed by the Department to higher receipts on Land Revenue tax, rates and cesses on land, miscellaneous receipts other than government estates, collection of royalties from mines and minerals, surcharge on Land Revenue under rural employment, interest on arrears of Land Revenue, education cess on coal mines and recoveries on account of Land Acquisition Establishment.
Low recovery by the department against observations pointed out by audit	During the period from 2008-09 to 2012-13, audit had pointed out non/short levy, non/short realisation, underassessment/loss of revenue etc. with revenue implication of ₹ 135.97 crore in 18 paragraphs. Of these, the department/Government had accepted audit observations in 17 paragraphs involving ₹ 127.68 crore and had since recovered ₹ 15.17 crore which is only 11.88 <i>per cent</i> .
Audit coverage by internal audit wing	The Internal Audit Wing (IAW) planned to audit 18 District Land and Land Reforms Officers (DL&LROs), 10 Land Acquisition (LA) Collectors, one First Land Acquisition (FLA) Collector, one Rent Controller and two Controllers of Thika Tenancy during the year 2012-13, whereas audit was conducted in respect of 17 DL&LROs, four LA Collectors, one Rent Controller and two Controllers of Thika Tenancy during the period which was 75 <i>per cent</i> of the units planned for audit.
Results of audit conducted in 2012-13	In 2012-13, test check of the records of nine units relating to receipts from Land Revenue indicated non-realisation/blocking of revenue and other irregularities involving ₹ 49.04 crore in 171 cases. During the year, the department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 50.28 crore in 154 cases, of which 151 cases involving ₹ 47.38 crore were pointed out during the year 2012-13 and the rest in the earlier years. An amount of ₹ 67.70 lakh was realised in three cases at the instance of audit.

<p>What has been highlighted in this Chapter</p>	<p>In this Chapter are presented illustrative cases of ₹ 6.39 crore selected from observations noticed during test check of records of the office of the DL&LROs and Block Land and Land Reforms Officers (BL&LROs) where Audit found that the provisions of the West Bengal Land Reforms Act, 1955 and West Bengal Land and Land Reforms Manual, 1991 were not complied with.</p> <p>Similar omissions on the part of DL&LROs and BL&LROs were pointed out by audit in earlier years also, but not only do the irregularities persist, these remain undetected by them till they were detected once again by audit.</p>
<p>Conclusion</p>	<p>The Department needs to initiate immediate action to rectify its procedures regarding non-realisation/ blocking of revenue and other irregularities etc. pointed out by audit, especially in those cases where it has accepted Audit's contention and to effect the necessary recoveries.</p>

CHAPTER III: LAND REVENUE

3.1 Tax administration

Land Revenue consists of receipts from land rent, rates and cess, management of Ex-Zamindari Estates, survey and settlement operations etc. Assessment and collection of land revenue are governed by the West Bengal Land Reforms Act, 1955, West Bengal Land Reforms Rules, 1965, West Bengal Land Acquisition Manual, 1991, West Bengal Land and Land Reforms Manual, 1991 and Land Transfer Rules contained in the Bengal Land Acquisition Act, 1917. Land Revenue is administered by the Land and Land Reforms (L&LR) Department headed by the Land and Land Reforms Commissioner (LRC) and Additional Chief Secretary, assisted by the Director of Land Records and Surveys (DLR&S) and Joint LRC, Additional District Magistrate (ADM) and District Land and Land Reforms officers (DL&LROs), Sub-divisional Land and Land Reforms officers (SDL&LROs), Block Land and Land Reforms officers (BL&LROs) and Revenue Inspectors.

3.2 Trend of revenue

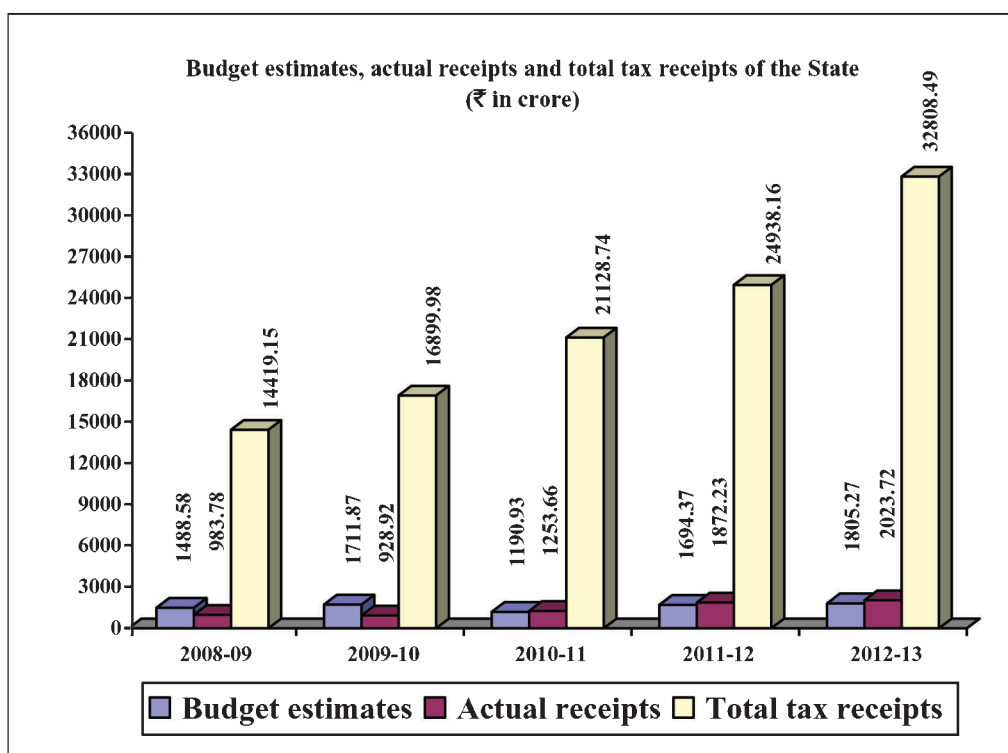
Actual receipts from land revenue during the years 2008-09 to 2012-13 along with the total tax receipts of the year during the same period is exhibited in the following table and chart:

Table 3.1 - Trend of revenue

(₹ in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	1,488.58	983.78	(-) 504.80	(-) 33.91	14,419.15	6.82
2009-10	1,711.87	928.92	(-) 782.95	(-) 45.74	16,899.98	5.50
2010-11	1,190.93	1,253.66	(+) 62.73	(+) 5.27	21,128.74	5.93
2011-12	1,694.37	1,872.23	(+) 177.86	(+) 10.50	24,938.16	7.51
2012-13	1,805.27	2,023.72	(+) 218.45	(+) 12.10	32,808.49	6.17

Source : Finance Accounts and Budget Publications of the Government of West Bengal.

Chart 3.1 – Trend of revenue



In 2012-13, collection in respect of land revenue increased by 8.09 *per cent* over the previous year which was attributed by the Department to higher receipts on Land Revenue tax, rates and cesses on land, miscellaneous receipts other than Government estates, collection of royalties from mines and minerals, surcharge on Land Revenue under rural employment, interest on arrears of Land Revenue, education cess on coal mines and recoveries on account of Land Acquisition Establishment. However, the percentage of variation in budget estimates and actual receipts ranged between (-) 45.74 and (+) 12.10 *per cent* during the last five years, except in 2010-11 where the variation was (+) 5.27 *per cent*. This shows that the budget estimates failed to project the prospective collection properly.

3.3 Cost of collection

The gross collection of land revenue and the expenditure incurred on collection during the years 2010-11 to 2012-13 are given in the following table:

Table 3.2 – Cost of collection

(₹ in crore)

Head of revenue	Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection
Land Revenue	2010-11	1,253.66	576.57	45.99
	2011-12	1,872.23	565.64	30.21
	2012-13	2,023.72	579.72	28.65

Source: Finance Accounts.

The percentage of expenditure on collection of land revenue decreased gradually from 2010-11 to 2012-13 which shows improved tax administration by the department.

3.4 Revenue impact of audit reports

During the last five years (including the current year's report), Audit pointed out non/short levy, non/short realisation, underassessment/loss of revenue etc with revenue implication of ₹ 135.97 crore in 18 paragraphs. Of these, the department/Government had accepted audit observations in 17 paragraphs involving ₹ 127.68 crore and had since recovered ₹ 15.17 crore. The details are shown in the following table:

Table 3.3 – Revenue impact of audit reports

(₹ in crore)

Year of audit report	Paragraphs included		Paragraphs accepted by the department		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2008-09	5	37.34	5 ¹	37.03	4	14.22
2009-10	4	1.73	4 ²	1.10	3	0.18
2010-11	5	1.27	4 ³	1.25	4	0.21
2011-12	1	89.24	1 ⁴	82.47	1	0.43
2012-13	3	6.39	3 ⁵	5.83	1	0.13
Total	18	135.97	17	127.68	13	15.17

Thus, against the accepted cases of ₹ 127.68 crore, the department/Government has recovered ₹ 15.17 crore which is only 11.88 *per cent*.

It is recommended that the Government may revamp the recovery mechanism to ensure that the amount involved in accepted cases is promptly recovered.

3.5 Working of internal audit wing

The internal audit wing of an organisation is a vital component of its internal control mechanism and is generally defined as the control of all controls to enable the organisation to assure itself that the prescribed system is functioning reasonably well.

The internal audit wing of the L&LR Department was re-introduced in the year 2007-08 with the objective of fulfilling accountability, obligations, complying with applicable rules and regulations, executing orderly and effective operations and safeguarding resources against loss. The wing is headed by the Audit Officer cum Ex-officio Joint Secretary who is assisted by Internal Audit Officers and Assistant Auditors. No Internal Audit Officer was posted in the IAW against sanctioned strength of 16 whereas the existing

¹ Four paragraphs partly accepted.

² Partly accepted.

³ One paragraph partly accepted.

⁴ Partly accepted.

⁵ One paragraph partly accepted.

strength of Assistant Auditors was 11 against the sanctioned strength of 14. Though a manual of the wing has been drafted, it has not yet been published. The wing planned to audit 18 DL&LROs, 10 Land Acquisition (LA) Collectors, one First Land Acquisition (FLA) Collector, one Rent Controller and two Controllers of Thika Tenancy during the year 2012-13, whereas audit was conducted in respect of 17 DL&LROs, four LA Collectors, one Rent Controller and two Controllers of Thika Tenancy during the period which was 75 per cent of the units planned for audit.

3.6 Results of audit

In the year 2012-13 Audit test checked the records of nine units relating to receipts from Land Revenue and found non-realisation/blocking of revenue and other irregularities involving ₹ 49.04 crore in 171 cases which fall under the following categories:

Table 3.4 – Results of audit

Sl. no.	Categories	(₹ in crore)	
		No. of cases	Amount
1.	Non-levy and non-realisation of rent and <i>salami</i>	57	29.24
2.	Non-realisation of rent, cess and surcharge	22	12.92
3.	Non-realisation of rent at commercial rate	40	6.63
4.	Blockage/loss of revenue due to non-leasing of <i>sairati interest</i>	09	0.15
5.	Non-realisation of land revenue/cess from big raiyats	04	0.07
6.	Other cases	39	0.03
Total		171	49.04

During the year, the department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 50.28 crore in 154 cases, of which 151 cases involving ₹ 47.38 crore were pointed out during the year 2012-13 and the rest in earlier years. An amount of ₹ 67.70 lakh was realised in three cases at the instance of audit.

A few illustrative cases involving ₹ 6.39 crore are mentioned in the following paragraphs.

3.7 Audit observations

Scrutiny of records in the offices of the District Land and Land Reforms Offices (DL&LROs) and the Block Land and Land Reforms Offices (BL&LROs) indicated non/short realisation of rent, cess and surcharge on land used for commercial purpose, non-realisation of Government revenue due to non-settlement of long term lease and non-realisation of lease rent and interest as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test checks carried out in audit. There is a need for the Government to improve the internal control system including internal audit so that recurrence of such irregularities is avoided.

3.8 Non/short realisation of rent, cess and surcharge on land used for commercial purpose

Section 23 of the West Bengal Land Reforms (WBLR) Act, 1955 provides that *raiya*s⁶ using land for commercial purposes are liable to pay land rent at the prescribed rate. A surcharge and different kinds of cess are also realisable on the land rent payable by the *raiya*s. The *bhumi sahayaks* posted in the revenue inspectors' offices under the BL&LROs are responsible for collection of land rent.

During test check of records in eight⁷ DL&LROs, audit found that in 2,623 cases⁸ 1,021 *raiya*s used 2,957.41 acres of land for commercial purposes for various periods between 2008-09 and 2010-11. Out of these, in 2,606 cases 1,017 *raiya*s did not pay rent, cess⁹ and surcharge of ₹ 4.80 crore but the DL&LROs did not initiate any action to realise the dues from them. In remaining 17 cases involving four *raiya*s, only ₹ 17.98 lakh was realised against dues of ₹ 64.09 lakh owing to application of rates lower than the prescribed rates. This resulted in non/short realisation of rent, cess and surcharge of ₹ 5.26 crore.

Five¹⁰ DL&LROs admitted (between May and December 2011) the audit observations in 1,005 cases involving ₹ 2.76 crore; but did not furnish any report on realisation. In the remaining 1,618 cases involving ₹ 2.50 crore, six¹¹ DL&LROs did not furnish any specific reply (November 2013).

Government accepted (September 2013) the audit observation and stated that ₹ 13.26 lakh has been realised in 804 cases, but did not furnish any report on realisation of the balance amount (November 2013).

⁶ *Raiyat* means a person or an institution holding land for any purpose.

⁷ Birbhum, Burdwan (East), Malda, Nadia, North 24 Parganas, Paschim Medinipur, Purba Medinipur and South 24 Parganas.

⁸ One instance of non-payment of rent in any year constitutes one case.

⁹ Road cess 6 paise, Public Works cess 25 paise, Primary Education cess 10 paise, Rural Employment cess 30 paise and surcharge 15 paise on each rupee of land rent payable.

¹⁰ Birbhum, Burdwan (East), Nadia, North 24 Parganas and South 24 Parganas.

¹¹ Burdwan (East), Malda, Nadia, Paschim Medinipur, Purba Medinipur and South 24 Parganas.

3.9 Non-realisation of revenue due to non-settlement of long term lease

Rule 238 of the West Bengal Land and Land Reforms (WBL&LR) Manual, 1991 provides that Government land, remaining in possession of a person(s) without any lease, may be offered to such person(s) on long term settlement for non-agricultural purpose on realisation of rent and *salami* at the prescribed rates. Further, Rule 225 of the Manual prescribes that the procedure of long term settlement is to be completed by the Department within five months from the date of its initiation.

In five cases under three¹² DL&LROs, 38.53 acres of land were under unauthorised occupation of two private companies, one private educational institute, one political committee and one lawyers' association. The occupants had applied between March 2006 and March 2010 for long term settlement of the land for the purposes they were using the same. However, the Department did not finalise any long term settlement till date; in two of these cases, even the proposals for long term lease settlement were not forwarded by the concerned DL&LROs to the approving authority (L&LR Department), while in two other cases, proposals were pending with the L&LR Department. In the remaining case, though sanction to long term lease was accorded by the L&LR Department, no lease deed was executed by the concerned DL&LRO. Thus, failure of the Department to settle the land through lease with the unauthorised occupants within the prescribed time-limit resulted in non-realisation of revenue of ₹ 97.23 lakh (Rent: ₹ 10.50 lakh and *Salami*: ₹ 86.73 lakh).

The Department did not furnish any specific reply in any of the cases pointed out by audit (November 2013).

The Government accepted (September 2013) the audit observation except one case involving ₹ 55.79 lakh where a proposal for cancellation of sanction (accorded by the L&LR Department for lease agreement) was sent by the DL&LRO, Paschim Medinipur as the occupant did not show interest in executing the lease agreement. Although the Government did not accept the case, the fact remains that the land was not settled and the Government stands to lose revenue for the period of unauthorised occupation. Also, they did not furnish any report on the action taken for ejectment of the unauthorised occupant for refusal of offer of long term lease as required under Rule 238 of the WBL&LR Manual, 1991 (November 2013).

3.10 Non-realisation of lease rent and interest

Rule 235 of WBL&LR Manual, 1991 provides that the rent shall be payable yearly according to the Bengali year and shall fall due on the last day of the Bengali year in respect of which it is paid. Rule 303 prescribes interest at the rate of 6.25 *per cent* per annum on delayed payment of revenue.

Four¹³ DL&LROs, did not realise annual lease rent of ₹ 15.25 lakh between 2009-10 and 2010-11 from seven lessees in possession of 79.29 acres of land.

¹² Birbhum, North 24 Parganas and Paschim Medinipur.

¹³ Nadia, North 24 Parganas, Paschim Medinipur and Purba Medinipur.

This resulted in non-realisation of rent and interest of ₹ 15.88 lakh (lease rent ₹ 15.25 lakh and interest ₹ 0.63 lakh). In the BL&LRO, Shantipur under the DL&LRO, Nadia, the lease register did not show essential details like dates of commencement, expiry, renewal of lease and amount of annual rent; only the names of lessees were recorded. This would render the monitoring of realisation of rent ineffective.

All concerned DL&LROs admitted the audit observations, but did not report on realisation of any revenue (November 2013).

The Government accepted (September 2013) the audit observation but had not furnished the position of realisation (November 2013).

CHAPTER-IV

Motor Vehicles Tax

EXECUTIVE SUMMARY	
Increase in tax collection	Tax collection in respect of Motor Vehicles Taxes for the year 2012-13 increased by 21.28 <i>per cent</i> over the previous year which was attributed by the Department to receipts on One Time Tax on motor vehicle, issue of laminated driving license, receipts under the Motor Vehicles Act, 1988 and the West Bengal Motor Vehicles Tax Act, 1979.
Non-existence of Internal Audit mechanism	Transport Department has no Internal Audit Wing. Deficiencies such as those observed in paragraphs 4.8 to 4.11 occurred unchecked in the absence of internal controls.
Very low recovery by the Department against observations pointed by audit	During 2008-09 to 2012-13, audit had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, etc. with revenue implication of ₹ 308.77 crore in 61 paragraphs. Of these, the department/Government accepted 27 paragraphs involving ₹ 221.53 crore of which only a meagre amount of ₹ 0.84 crore has been recovered by the Department.
Results of audit conducted in 2012-13	<p>In 2012-13, test check of the records of 14 units relating to Motor Vehicle Tax receipts indicated non-realisation/blocking of revenue and other irregularities involving ₹ 151.52 crore in 217 cases.</p> <p>The Department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 2.86 crore in 59 cases, of which 15 cases involving ₹ 0.62 crore were pointed out in audit during 2012-13 and the rest in earlier years. An amount of ₹ 6.41 lakh was realised in eight cases at the instance of audit.</p>
What has been highlighted in this Chapter	In this Chapter cases of non-realisation of tax, additional tax, special tax and penalty, short realisation of fitness fee, non/short realisation of permit fee, non-realisation of audio fee, non-realisation of dealer's tax etc in the offices of the State Transport Authority, West Bengal, Director, Public Vehicles Department, Kolkata, Regional Transport Officers and Additional Regional Transport Officers amounting to ₹ 205.42 crore have been presented.

	<p>Similar omissions on the part of the Assessing Authorities (AAs) were pointed out in the Report No. 5 of the Comptroller and Auditor General of India for the year ended 31 March 2010 on “Collection of motor vehicle taxes, fees and fines”, despite which the irregularities persisted. These remained undetected till these were again pointed out by audit. Such irregularities/ omissions were apparent from the records made available to audit but were not detected by the AAs.</p>
Conclusion	<p>Transport Department may take appropriate steps to prepare an e-Tax Demand Register, ensure comprehensive mapping of business rules in the VAHAN software and initiate immediate action to recover the revenue pointed out by audit, more so in cases where audit contention has been accepted.</p>

CHAPTER IV: MOTOR VEHICLES TAX

4.1 Tax administration

Taxes on vehicles consist of receipts under the Central Motor Vehicles Act and the State Motor Vehicles Taxation Act etc. Assessment and collection of Motor Vehicles tax is governed by the Central Motor Vehicles Act, 1988; Central Motor Vehicles Rules, 1989; the West Bengal Motor Vehicles Tax Act, 1979; West Bengal Motor Vehicles Rules, 1989 and West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989. Motor Vehicles Tax is administered by the Transport Department headed by the Principal Secretary who is assisted by the Financial Advisor and five Joint Secretaries at the headquarters. The Transport Department is responsible for collection of motor vehicle taxes, fees and fines through the State Transport Authority (STA), Public Vehicle Department (PVD), Kolkata and 40 registering authorities (RAs) comprising of 18 Regional Transport Officers at the district level and seven Additional Regional Transport officers at the Sub-Divisional level.

4.2 Trend of revenue

Actual receipts from Taxes on Vehicles during the years 2008-09 to 2012-13 along with the budget estimates and the total tax receipts of the State during the same period is exhibited in the following table and chart:

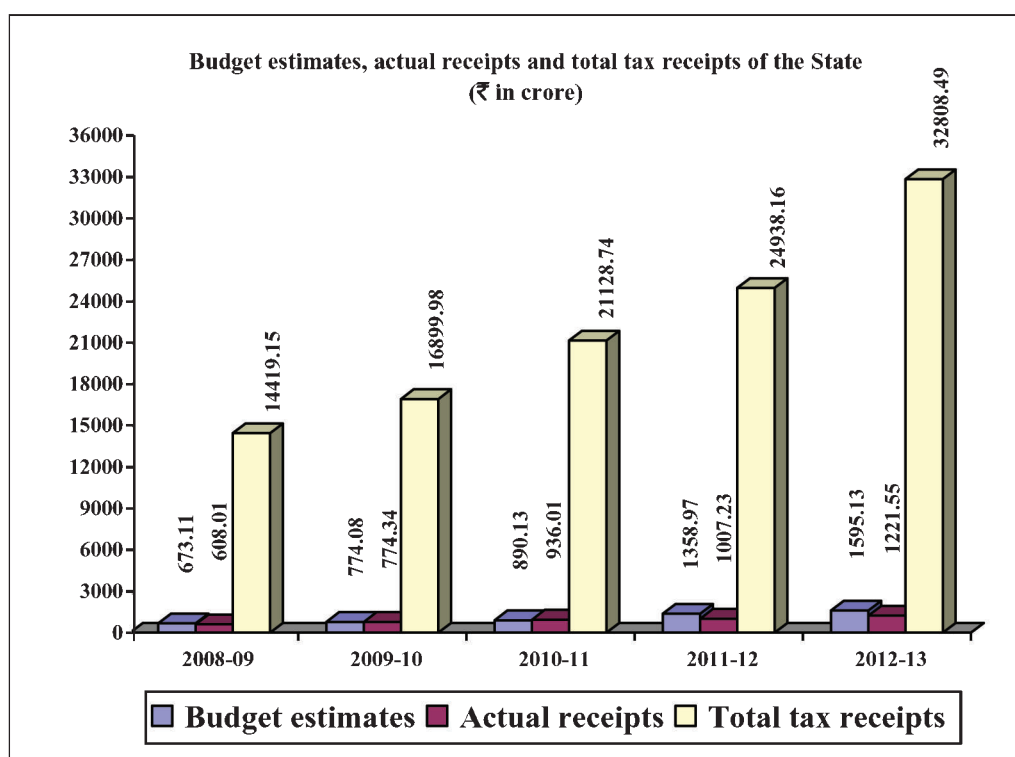
Table 4.1 – Trend of revenue

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	673.11	608.01	(-)65.10	(-)9.67	14,419.15	4.22
2009-10	774.08	774.34	(+)00.26	(+)0.03	16,899.98	4.58
2010-11	890.13	936.01	(+)45.88	(+) 5.15	21,128.74	4.43
2011-12	1,358.97	1,007.23	(-)351.74	(-)25.88	24,938.16	4.04
2012-13	1,595.13	1,221.55	(-)373.58	(-)23.42	32,808.49	3.72

Source : Finance Accounts and Budget Publications of the Government of West Bengal.

Chart 4.1 – Budget estimates, Actual receipts and Total tax receipts



Revenue collection in respect of Motor Vehicles Taxes for the year 2012-13 increased by 21.28 *per cent* over the previous year which was attributed by the Department to receipts on One Time Tax on motor vehicle, issue of laminated driving license, receipts under the Motor Vehicles Act, 1988 and the West Bengal Motor Vehicles Tax Act, 1979. It was also observed that there was a variation of (-) 23.42 *per cent* in budget estimates and actual receipts indicative of unrealistic estimation.

4.3 Cost of collection

The gross collection of Motor Vehicles Tax and the expenditure incurred on collection during the years 2010-11 to 2012-13 are given in the following table:

Table 4.2 – Cost of collection

(₹ in crore)					
Head of revenue	Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average of expenditure on collection for the preceding year
Motor Vehicles Tax	2010-11	936.01	19.64	2.10	3.07
	2011-12	1,007.23	20.16	2.00	3.71
	2012-13	1,221.55	21.10	1.73	2.96

Source: Finance Accounts.

The table shows a decreasing trend of expenditure over the years indicating improvement in tax administration.

4.4 Revenue impact of audit reports

During the last five years (including the current year's report), Audit pointed out non/short levy, non/short realisation, underassessment/loss of revenue etc., with revenue implication of ₹ 308.77 crore in 61 paragraphs. Of these, the Department/Government has accepted audit observations in 27 paragraphs involving ₹ 221.53 crore and has since recovered ₹ 0.84 crore. Details are shown in the following table:

Table 4.3 – Revenue impact of audit reports

(₹ in crore)

Year of audit report	Paragraph included		Paragraphs accepted by the departments		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2008-09	05	10.69	05	1.17	Nil	Nil
2009-10	42	14.41	09	4.76	Nil	Nil
2010-11	04	73.97	04	9.05	02	0.07
2011-12	06	4.28	05	2.15	03	0.02
2012-13	04	205.42	04 ¹	204.40	02	0.75
Total	61	308.77	27	221.53	07	0.84

Thus, against the accepted cases of ₹ 221.53 crore, the Department/Government has recovered ₹ 0.84 crore which is only 0.38 per cent.

4.5 Working of internal audit wing

Internal audit wing of an organisation is a vital component of its internal control mechanism to enable the organisation to assure itself that the prescribed system is functioning reasonably well.

Audit observed that the Transport Department has no internal audit wing. Deficiencies such as detected in paragraphs 4.8 to 4.11 occurred unchecked in the absence of internal control.

4.6 Results of audit

In 2012-13, Audit test checked the records of 14 units relating to Motor Vehicles Tax and found cases of non-realisation/blocking of revenue and other irregularities involving ₹ 151.52 crore in 217 cases which fall under the following categories:

¹ One paragraph partly accepted.

Table 4.4 – Results of audit

(₹ in crore)

Sl. no.	Categories	No. of cases	Amount
1.	Non-realisation of tax, additional tax and penalty	94	125.02
2.	Non-realisation of special tax	13	20.77
3.	Non-realisation of audio fee	11	1.83
4.	Non-realisation of special fee	11	0.56
5.	Short realisation of fitness inspection fee	13	1.02
6.	Non-realisation of penalty for delayed payment of taxes	10	0.48
7.	Non-realisation of showroom inspection fee	05	0.37
8.	Short realisation of additional tax from goods vehicles of other states	06	0.18
9.	Non/short realisation of permit fee due to non-renewal of permits	18	0.76
10.	Non/short realisation of dealer's tax	11	0.24
11.	Non-realisation of video fee	07	0.04
12.	Others	18	0.25
Total		217	151.52

During the year, the Department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 2.86 crore in 59 cases, of which 15 cases involving ₹ 0.62 crore were pointed out in audit during the year 2012-13 and the rest in earlier years. An amount of ₹ 6.41 lakh was realised in eight cases at the instance of audit.

A few illustrative cases involving ₹ 205.42 crore are mentioned in the following paragraphs.

4.7 Audit observations

Scrutiny of the records in the offices of the State Transport Authority (STA), West Bengal, Public Vehicles Department (PVD), Kolkata, Regional Transport Officers (RTOs) and Additional Regional Transport Officers (ARTOs) revealed non- realisation and short realisation in number of cases of taxes and fees as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test checks carried out in audit. Similar omissions were pointed out by audit repeatedly in the past but these lapses continue to persist indicating systemic weaknesses. There is a need to improve the internal control system so that recurrence of such cases can be avoided.

4.8 Non-realisation of taxes due to non-maintenance of Tax Demand Register (TDR)

Section 3 of the West Bengal Motor Vehicles Tax (WBMVT) Act, 1979 and Sections 3, 4, 9B and 10 of the West Bengal Additional Tax and One-time Tax on Motor Vehicles (WBAT & OTMV) Act, 1989 prescribe the rates of tax, additional tax and special tax on motor vehicles. Further, Sections 11 and 10 of the Acts respectively, provide for imposition of penalty in case of non-payment of taxes. In addition, Rule 26 of the West Bengal Motor Vehicles Tax (WBMVT) Rules, 1957 prescribes that the tax officer shall maintain a Tax Demand Register in Form 'J' showing registration number, name and address of the owner, tax due etc. and shall review the register in order to see whether the tax is regularly paid and shall take prompt action against the person concerned who has not paid the tax.

During analysis of data of 14 Registering Authorities (RAs), audit found that the VAHAN² software had no provision for maintenance of TDR for monitoring the payment of taxes due, and neither the RAs maintain prescribed TDRs in manual form. There was neither any provision in the software to automatically generate a report containing the information required in the TDR, even though the information was scattered through different tables created in the software. By analysing the information available in the tables relating to payment of different kinds, audit was able to calculate the penalty leviable and observed that non-maintenance of the TDRs in the changed scenario of IT environment deprived the department from monitoring and taking necessary action. Non-maintenance of TDRs led to non-realisation of taxes and penalty of ₹ 199.57 crore as per details provided in table 4.5.

Audit observed that 1,95,200 owners of vehicles did not pay tax, additional tax and penalty of ₹ 165.37 crore, though their vehicles were plying on roads which was evident from records of payment of fitness fee. Audit also found that special tax and penalty of ₹ 34.20 crore in respect of 58,985 air conditioned vehicles were not collected from the owners.

² VAHAN- software used by the Transport Department for registration of vehicles and collection of taxes and fees thereof.

Table 4.5 - Non-realisation of tax, additional tax, special tax and penalty

(₹ in crore)

Sl. No.	Name of the RA	Non-realisation of tax, additional tax and penalty			Non-realisation of special tax and penalty	
		Total no. of registered vehicles	Total no. of defaulter vehicles	Amount of non-realisation	Total no. of defaulter vehicles	Amount of non-realisation
1.	Alipur	3,14,043	17,356	15.23	2,221	1.69
2.	Alipurduar	14,244	597	0.70	24	0.02
3.	Asansol	1,46,629	4,933	7.27	104	0.06
4.	Bankura	40,015	710	0.34	34	0.01
5.	Barasat	1,46,787	3,292	2.16	1,757	0.59
6.	Barrackpore	1,41,789	3,796	3.01	444	0.16
7.	Burdwan	1,31,794	6,726	8.13	36	0.03
8.	Contai	11,322	233	0.11	11	0.02
9.	Durgapur	91,713	2,074	4.80	57	0.03
10.	Howrah	2,95,275	6,575	7.51	550	0.53
11.	Nadia	68,241	2,068	1.73	17	0.01
12.	Public Vehicles Department (PVD), Kolkata	7,07,651	1,42,637	111.60	53,263	30.60
13.	Siliguri	1,21,325	2,957	1.46	447	0.44
14.	Tamluk	63,030	1,246	1.32	20	0.01
Sub-Total		22,93,858	1,95,200	165.37	58,985	34.20
Total		165.37			34.20	
Grand total		199.57				

After audit pointed out the cases, 11 RAs³ admitted (between January 2012 and May 2013) the audit observations in 1,73,702 cases of tax, additional tax and penalty involving ₹ 143.61 crore and realised ₹ 0.70 crore in 510 cases. While accepting the observation in respect of 56,690 cases of special tax involving ₹ 32.47 crore, RAs stated that ₹ 3.77 lakh had been realised in 28 cases and demand notices 'had been'/'would be' issued in 56,662 cases. Their report on further action taken and realisation made is awaited. In the remaining cases, three RAs⁴ did not furnish any specific reply (November 2013).

³ Alipurduar; Asansol; Bankura; Barasat; Barrackpore; Burdwan; Contai; Howrah; PVD, Kolkata; Siliguri and Tamluk.

⁴ Alipur, Durgapur and Nadia.

Government accepted (October 2013) the audit observation and stated that demand notices were issued in most of the cases and recovery was under process, but did not furnish any report on realisation (November 2013).

4.9 Non/partial mapping of business rules in the VAHAN software

Collection of motor vehicles taxes, fees and fines is guided by provisions laid down in the WBMVT Rules, 1957, the WBMVT Act, 1979, the WBAT & OTMV Act, 1989, the Motor Vehicles (MV) Act, 1988 and the Central Motor Vehicles (CMV) Rules, 1989. For effective implementation of these provisions, it was essential that all the provisions were mapped properly in the software VAHAN to prevent any non/short realisation of revenue.

During analysis of data of 14 RAs, audit found that various provisions of the business rules were either not mapped or were mapped partially or were not made mandatory (wherever applicable) in VAHAN software for realisation of revenue due at the time of transaction. This resulted in non/short realisation of revenue of ₹ 4.75 crore as detailed in the subsequent sub-paragraphs.

4.9.1 Non-realisation of penalty

Section 11 of the WBMVT Act and Section 10 of the WBAT & OTMV Act provide for levy of penalty at rates ranging between five *per cent* and 100 *per cent* (depending upon the kind of vehicle and period of delay) of taxes due in case of failure in payment of the taxes within stipulated time.

During analysis of data of nine RAs, audit found that in 4,334 cases penalty was not realised from owners of the vehicles for delayed payment of taxes. This was due to non-mapping of the provision pertaining to the realisation of penalty in case of delayed payment of taxes in the VAHAN software. This resulted in non-realisation of penalty of ₹ 1.16 crore as detailed in the following table:

Table 4.6 - Non-realisation of penalty

(₹ in lakh)

Sl. No.	Name of the RA	No. of vehicles	Non-realisation of penalty
1.	Alipur	629	24.09
2.	Alipurduar	200	10.45
3.	Barasat	597	3.07
4.	Barrackpore	127	1.53
5.	Durgapur	661	14.08
6.	Howrah	1,601	41.25
7.	Nadia	139	3.94
8.	PVD, Kolkata	142	2.70
9.	Siliguri	238	14.62
Total		4,334	115.73

Five RAs⁵ admitted (between February 2012 and January 2013) the audit observations in 2,667 cases involving ₹ 0.59 crore and one RA while accepting the observation stated that NIC⁶ had been requested for rectification of the software. Their report on further development and realisation of penalty is awaited. In the remaining 1,667 cases involving ₹ 0.57 crore, four RAs⁷ did not furnish any reply/specific reply (November 2013).

Government accepted (October 2013) the audit observation and stated that demand notices were issued in most of the cases, but did not furnish any report on realisation (November 2013).

4.9.2 Short realisation of fitness fee

Rules 62 and 81 of the CMV Rules, 1989 prescribe that the owner of a transport vehicle shall make application and produce the vehicle for inspection for conducting test of fitness annually for the renewal of certificate of fitness (CF) after completion of two years of registration and pay fees at the prescribed rates. Further, Rule 57(6) of the WBMVT Rules, 1989 provides that if the owner fails to produce the vehicle within stipulated time, he shall be liable to pay 150 *per cent* of prescribed fee for conducting test of fitness.

During analysis of data of 14 RAs, audit found that in case of 72,698 vehicles, the owners produced the vehicles belatedly for inspection for renewal of CF and the RAs realised the fee for CF at normal rates instead of 150 *per cent* of the fitness fee. This was due to non-mapping of provision in the VAHAN software regarding realisation of fee for CF at the rate of 150 *per cent* in case of delayed production of vehicles. This resulted in short realisation of fitness

⁵ Alipurduar; Barasat; Barrackpore; Howrah and PVD, Kolkata.

⁶ National Informatics Centre.

⁷ Alipur, Durgapur, Nadia and Siliguri.

fee of ₹ 98.45 lakh as detailed in the following table:

Table 4.7 -Short realisation of fitness fee

(₹ in lakh)

Sl. No.	Name of the RA	No. of Vehicles produced belatedly for inspection of fitness	Fee realisable (inclusive of application fee @ ₹ 100 per vehicle)	Fee realised (inclusive of application fee @ ₹ 100 per vehicle)	Short-realisation
1.	Alipur	9,440	43.79	32.34	11.45
2.	Alipurduar	1,761	7.70	5.72	1.98
3.	Asansol	7,058	41.49	30.01	11.48
4.	Bankura	1,501	7.20	5.30	1.90
5.	Barasat	3,751	19.57	14.30	5.27
6.	Barrackpore	5,460	32.49	23.48	9.01
7.	Burdwan	6,079	34.45	24.99	9.46
8.	Contai	589	2.91	2.14	0.77
9.	Durgapur	3,695	22.50	16.23	6.27
10.	Howrah	6,018	31.65	23.11	8.54
11.	Nadia	4,101	20.81	15.24	5.57
12.	PVD, Kolkata	15,221	60.73	45.56	15.17
13.	Siliguri	4,206	20.35	14.97	5.38
14.	Tamluk	3,818	22.41	16.21	6.20
Total		72,698	368.05	269.60	98.45

Ten RAs⁸ admitted (between February 2012 and January 2013) the audit observations in 43,347 cases involving ₹ 65.49 lakh, but did not furnish any report on realisation. In the remaining 29,351 cases involving ₹ 32.96 lakh, four RAs⁹ did not furnish any reply/specific reply (November 2013).

Government accepted (October 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

4.9.3 Short realisation of fancy registration mark fee

Rule 61(4) of the WBMVT Rules, 1989 read with notifications issued from time to time provides for allotment of fancy registration number to motor vehicles and the rates of fee thereof. The Government has reserved numbers from 0001 to 0020 and all four digit numbers of same digit (e.g.1111, 2222 etc.) (total 29 numbers) in a series. The fancy fee for these 29 numbers in a series has been kept higher than other fancy numbers.

⁸ Alipurduar, Asansol, Bankura, Barasat, Barrackpore, Burdwan, Durgapur, Howrah, Siliguri and Tamluk.

⁹ Alipur; Contai; Nadia and PVD, Kolkata.

By a notification issued in November 2007, the Government has fixed rate of fancy registration fee at ₹ 2.00 lakh for all four digit numbers of same digit.

During analysis of data of the RAs, Contai, Nadia and Tamluk, audit found that reserved fancy registration numbers (all four digit numbers of same digit) were allotted to five vehicles during the period 2008-09 to 2010-11. However, due to non-mapping of the prescribed rate of fancy registration fee in the software/system, only ₹ 0.69 lakh was realised due to application of incorrect rate against the realisable fee of ₹ 10.00 lakh. This resulted in short realisation of fee for fancy registration mark of ₹ 9.31 lakh.

RA, Contai admitted (February 2013) the audit observation in one case involving ₹ 1.99 lakh and stated that action was being taken for realisation of the fee short levied. In the remaining four cases involving ₹ 7.32 lakh, the RAs, Nadia and Tamluk did not furnish any specific reply (November 2013).

Government accepted (October 2013) the audit observation, but did not furnish any report on further action taken (November 2013).

4.9.4 Non-realisation of renewal fee

Section 41 (3) of the MV Act, 1988 prescribes that a certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid for a period of 15 years from the date of issue of first such certificate and shall be renewable thereafter. Further, Rule 81 of the CMV Rules, 1989 prescribes fee for issue/renewal of certificates of registration. The fee for registration for two wheelers and light motor vehicles has been prescribed as ₹ 60 and ₹ 200 per vehicle respectively.

During analysis of data of four RAs¹⁰, audit found that 2,668 vehicles, other than transport vehicles, were plying without renewal of their certificate of registration which had expired between April 2008 and March 2011. Audit also noticed that the VAHAN software was not customised for prompting automatic requirement of renewal after expiry of the specified period at the time of payment of taxes. This resulted in non-realisation of renewal fee of ₹ 5.28 lakh.

RA, Asansol admitted (February 2012) the audit observation in 330 cases involving ₹ 0.64 lakh. In the remaining 2,338 cases involving ₹ 4.64 lakh, three RAs¹¹ did not furnish any reply/specific reply (November 2013).

Government stated (October 2013) that detailed reply would be furnished shortly; their detailed reply is awaited (November 2013).

4.9.5 Non-realisation of audio fee

Schedule F to Rule 218(7) of the WBMVT Rules, 1989 provides for realisation of annual audio fees at prescribed rates for installation of radio set, gramophone, tape recorder, cassette recorder or any kind of apparatus producing sound effect or voice in the motor vehicle.

¹⁰ Alipur; Asansol; PVD, Kolkata and Tamluk.

¹¹ Alipur; PVD, Kolkata and Tamluk.

During analysis of data of 12 RAs, audit found that against audio sets installed in 1,38,071 vehicles, owners of 29,006 vehicles did not pay the audio fee of ₹ 1.08 crore for different periods between 2008-09 and 2010-11. Since the VAHAN software was not customised to make the field “audio fee” mandatory for realisation of the due audio fee at the time of payment of road tax, there was non-realisation of audio fee of ₹ 1.08 crore as detailed in the following table:

Table 4.8 - Non-realisation of audio fee**(₹ in lakh)**

Sl. No.	Name of the RA	Total no. of audio fitted vehicles	No. of defaulter vehicles	Amount of non-realisation
1.	Alipur	15,193	1,252	5.76
2.	Alipurduar	686	169	0.60
3.	Asansol	2,944	1,310	5.29
4.	Barasat	9,395	2,294	6.90
5.	Barrackpore	14,791	6,026	18.09
6.	Burdwan	2,509	922	4.37
7.	Durgapur	3,621	286	1.95
8.	Howrah	10,776	5,350	28.78
9.	Nadia	2,309	438	2.42
10.	PVD, Kolkata	66,490	8,298	24.89
11.	Siliguri	6,943	1,660	4.98
12.	Tamluk	2,414	1,001	3.86
Total		1,38,071	29,006	107.89

Six RAs¹² admitted (between February and November 2012) the audit observation in 15,047 cases involving ₹ 60.69 lakh but did not furnish any report on realisation. In the remaining 13,959 cases involving ₹ 47.20 lakh, the RAs did not furnish any specific reply (November 2013).

Government accepted (October 2013) the audit observation and stated that demand notices were issued in most of the cases and recovery had also been made in some cases, but did not furnish any report on realisation (November 2013).

4.9.6 Non-realisation of showroom inspection fee

Under Rule 60A of the WBMVT Rules, 1989, a vehicle shall be inspected at the time of first registration in the showroom/premises of the dealer or sub-dealer and a fee (ranging between ₹ 50 and ₹ 400) as prescribed in Schedule A of the Rules shall be realised from the dealer or sub-dealer.

¹² Alipurduar, Barasat, Barrackpore, Burdwan, Durgapur and Howrah.

During analysis of data of four RAs¹³, audit found that 1,87,764 new vehicles were registered during the period from 2008-09 to 2010-11, however, showroom inspection fee of ₹ 50.35 lakh was not realised in 40,766 cases. It was also noticed that the VAHAN software was not customised to make the field “showroom inspection fee” mandatory for realisation of such fee at the time of first registration. This resulted in non-realisation of showroom inspection fee of ₹ 50.35 lakh as detailed in the following table:

Table 4.9 - Non-realisation of showroom inspection fee

(₹ in lakh)

Sl. No.	Name of the RA	No. of new vehicles registered	No. of cases of non-realisation	Amount of non-realisation
1.	Alipur	66,802	8,157	11.25
2.	Asansol	50,201	270	0.62
3.	PVD, Kolkata	45,407	32,076	37.96
4.	Tamluk	25,354	263	0.52
Total		1,87,764	40,766	50.35

The RAs did not furnish any specific reply (November 2013).

Government stated (October 2013) that detailed reply would be furnished shortly which is awaited (November 2013).

4.9.7 Non-realisation of dealer's tax

Section 3(2) of the WBMVT Act, 1979 prescribes that every dealer or manufacturer who keeps in his possession or control any motor vehicle shall pay dealer's tax on such motor vehicle at the time of its first registration at the prescribed rates. Further, Section 11(b) (iii) of the Act provides that in case of delay in payment of tax exceeding 60 days after the expiry of grace period of 15 days, penalty equal to the amount of tax payable is also realisable from a defaulter dealer.

During analysis of data of 11 RAs, audit found that dealer's tax and penalty of ₹ 42.18 lakh in respect of 9,254 newly registered vehicles were not realised from the dealers during the period from April 2008 to March 2011. It was noticed that the VAHAN software was not customised to make the field “Dealer's tax” mandatory for realisation of the dealer's tax at the time of first registration. This resulted in non-realisation of dealer's tax and penalty of ₹ 42.18 lakh as detailed in the following table:

¹³ Alipur; Asansol; PVD, Kolkata and Tamluk.

Table 4.10 -Non-realisation of dealer's tax

(₹ in lakh)

Sl. No.	Name of the RA	Total no. of vehicles registered during audit period	No. of vehicles against which dealer's tax was not realised	Amount of non-realisation
1.	Alipur	66,802	7,166	22.12
2.	Asansol	50,201	162	2.70
3.	Bankura	25,811	478	6.67
4.	Barasat	33,616	22	0.42
5.	Barrackpore	19,728	47	0.46
6.	Burdwan	40,038	68	1.27
7.	Durgapur	55,077	156	0.56
8.	Howrah	49,294	761	2.76
9.	Nadia	34,055	74	0.49
10.	PVD, Kolkata	45,407	226	2.73
11.	Tamluk	25,354	94	2.00
Total		4,45,383	9,254	42.18

RA, Howrah admitted (March 2013) the audit observation in 761 cases involving ₹ 2.76 lakh and stated that ₹ 0.56 lakh had been realised in 174 cases; but did not furnish any report on realisation in respect of the remaining cases. The RAs, Bankura, Barasat, Barrackpore and Burdwan admitted (between February 2012 and January 2013) the audit observations in 615 cases involving ₹ 8.82 lakh; but did not furnish report on realisation. In the remaining cases the Department did not furnish any specific reply (November 2013).

Government accepted (October 2013) the audit observation and stated that an amount of ₹ 1.06 lakh was realised in RTO, Howrah, but did not furnish any report on realisation of the balance amount (November 2013).

4.9.8 Short levy of additional tax

The Schedule-I appended to Section 3 of the WBAT & OTMV Act, 1989 prescribes levy of additional tax on the goods vehicles registered in the other states at the rate of 80 *per cent* of the annual tax payable under the WBMVT Act, 1979.

During analysis of data of two RAs¹⁴, audit found that for 6,498 cases of goods vehicles of the other states additional tax of ₹ 56.12 lakh was assessed and realised between April 2007 and March 2011. On further analysis Audit found that the additional tax was assessed by VAHAN at the rates below the prescribed rate of 80 *per cent* of tax payable under the WBMVT Act, 1979. This resulted in levy and realisation of additional tax of ₹ 56.12 lakh instead of leviable amount of ₹ 102.29 lakh. Thus, improper mapping of the Section 3 of the WBAT & OTMV Act, 1989 in VAHAN resulted in short levy and

¹⁴ Asansol and Durgapur.

subsequent short realisation of additional tax of ₹ 46.17 lakh as detailed in the following table:

Table 4.11 – Short levy of additional tax

(₹ in lakh)

Sl. No.	Name of the RA	No. of vehicles	Amount of additional tax leviable	Amount of additional tax levied	Short levy of additional tax
1.	Asansol	5,839	91.70	50.51	41.19
2.	Durgapur	659	10.59	5.61	4.98
Total		6,498	102.29	56.12	46.17

After audit pointed out the cases, the RA, Asansol stated (February 2012) that the matter would be taken up with the NIC; but has not yet furnished any report regarding further action taken and realisation of tax despite issue of reminders (upto May 2013). No specific reply has been received from the other RA (November 2013).

Government stated (October 2013) that detailed reply would be furnished shortly; their detailed reply is awaited (November 2013).

4.10 Non-realisation of special fee

Rule 121 of the WBMVT Rules, 1989 prohibits plying of heavy goods vehicles having gross vehicle weight (GVW) above 22,542 kg within the State. However, the Government relaxed this restriction and permitted plying of such vehicles in the State on payment of a special fee at varying rates depending on the GVW by orders issued from time to time.

During analysis of data of 11 RAs, audit found that 34,439 vehicles having GVW above 22,542 kg plied in the state of West Bengal during the period from 2008-09 to 2010-11. Further analysis revealed that owners of 2,240 vehicles did not pay special fee of ₹ 80.72 lakh. However, the concerned RAs did not take any action to realise the special fee from the defaulting vehicle owners. This resulted in non-realisation of special fee of ₹ 80.72 lakh as detailed in the following table:

Table 4.12 - Non-realisation of special fee

(₹ in lakh)

Sl. No.	Name of the RA	Total number of goods vehicles having GVW greater than 22,542 kg	No. of defaulting vehicles	Non-realisation of special fee
1.	Alipur	961	54	1.72
2.	Asansol	4,870	414	16.99
3.	Barasat	3,654	187	4.32
4.	Barrackpore	7,828	560	15.74
5.	Burdwan	6,003	391	16.37
6.	Durgapur	2,645	249	13.54
7.	Howrah	3,115	163	5.07
8.	Nadia	381	20	0.80
9.	PVD, Kolkata	1,028	60	1.44
10.	Siliguri	1,322	51	1.32
11.	Tamluk	2,632	91	3.41
Total		34,439	2,240	80.72

Five RAs¹⁵ admitted (between February and November 2012) the audit observations in 1,352 cases involving ₹ 42.82 lakh but did not furnish any report on further action taken or realisation of fee. In the remaining 888 cases involving ₹ 37.90 lakh, the RAs did not furnish any reply/specific reply (November 2013).

Government accepted (October 2013) the audit observation and stated that demand notices were issued in most of the cases, but did not furnish any report on realisation (November 2013).

4.11 Non/short realisation of permit fee

Section 66 of the MV Act, 1988 provides that the owner of a transport vehicle can use his vehicle in a public place only after obtaining a permit from the prescribed authority. Further, Rules 126 and 127 of the WBMVT Rules, 1989 prescribe that fees for application and grant/renewal of permit in respect of different kinds of vehicles are realisable as per rates specified in Schedule-‘A’ of the Rules.

From the scrutiny of permit registers of seven RAs¹⁶, audit found that 436 public transport vehicles were plying with expired permits. Audit also noticed that owners of those vehicles were paying fitness fee and road taxes which is indicative of those vehicles being on road and not lying idle. However, the RAs did not realise permit fees from them while collecting other taxes. This resulted in non-realisation of permit fee of ₹ 22.31 lakh.

It was also observed in three RAs¹⁷ that permit fee of ₹ 21.09 lakh was realised in lieu of ₹ 28.07 lakh in case of 306 public transport vehicles during

¹⁵ Barasat, Barrackpore, Burdwan, Howrah and Siliguri.

¹⁶ Alipur; Bankura; Barasat; Burdwan; Howrah; PVD, Kolkata and Tamluk.

¹⁷ Barasat; STA, WB and Tamluk.

2008-09 to 2011-12 due to application of pre-revised rate¹⁸ of permit fee. This resulted in short realisation of permit fee of ₹ 6.98 lakh.

Thus, there was an overall non/short realisation of permit fee in case of 742 public transport vehicles of ₹ 29.29 lakh as detailed in the following table:

Table 4.13 – Non/short realisation of permit fee

(₹ in lakh)

Sl No. (1)	Name of the RA (2)	Permit fee non-realised (no. of vehicles) (3)	Permit fee short realised			Total (3+6)
			Permit fee realisable (4)	Permit fee realised (5)	Short realisation of Permit fee(no. of vehicles) (6)	
1.	Alipur	1.87(28)	-	-	-	1.87(28)
2.	Bankura	3.56(62)	-	-	-	3.56(62)
3.	Barasat	1.85(41)	0.72	0.58	0.14(9)	1.99(50)
4.	Burdwan	6.65(133)	-	-	-	6.65(133)
5.	Howrah	2.10(41)	-	-	-	2.10(41)
6.	PVD, Kolkata	3.24(58)	-	-	-	3.24(58)
7.	State Transport Authority (STA), WB	-	5.52	3.20	2.32(45)	2.32(45)
8.	Tamluk	3.04(73)	21.83	17.31	4.52(252)	7.56(325)
Total		22.31(436)	28.07	21.09	6.98(306)	29.29(742)

Five RAs¹⁹ admitted (between January 2012 and November 2012) the audit observations in 611 cases involving ₹ 21.86 lakh and stated that demand notices would be issued to the defaulting vehicle owners. Their report on further action taken is awaited. In the remaining 131 cases involving ₹ 7.43 lakh, three RAs²⁰ did not furnish any specific reply (November 2013).

Government accepted (October 2013) the audit observation and stated that recovery had been made in some cases, but did not furnish any report on realisation (November 2013).

¹⁸ Rates of the permit fees and security deposits were revised in October 2005 vide Notification No. 4026-WT/6M-13/2005 dated 5 October 2005.

¹⁹ Bankura, Barasat, Burdwan, Howrah and Tamluk.

²⁰ Alipur; PVD, Kolkata and STA, WB.

CHAPTER-V

Stamp Duty and Registration Fees

EXECUTIVE SUMMARY	
Increase in tax collection	In 2012-13, the collection from Stamp Revenue increased by 59.51 <i>per cent</i> over the previous year which was attributed by the Department to sale of judicial stamps, stamp duties on unstamped document, collection of registration fees, standard user charges, sale of other non-judicial stamps, duty on impressing of documents.
Very low recovery by the Department against observations pointed out by Audit	During 2008-09 to 2012-13, audit pointed out non/short levy, non/short realisation, under assessment/loss of revenue etc., with revenue implication of ₹ 216.80 crore in nine paragraphs. Of these, the department/ Government had accepted audit observations in eight paragraphs involving ₹ 167.57 crore and had since recovered ₹ 2.11 crore which is only 1.26 <i>per cent</i> .
Audit coverage by Internal audit wing	The internal Audit Branch set up in November 1998 under the Finance Department conducts internal audit in various departments. Audit found that the Directorate of Registration and Stamp Revenue did not have an Internal Audit Wing. Further, the Department of Internal Audit of the State Government had not conducted audit of the Directorate during 2007-08 to 2011-12.
Results of audit conducted in 2012-13	<p>In 2012-13 test check of the records of 61 units relating to stamp duty and registration fees indicated non-realisation/blocking of revenue and other irregularities involving ₹ 10.74 crore in 255 cases.</p> <p>During the year, the department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 8.23 crore in 177 cases, of which 168 cases involving ₹ 6.77 crore were pointed out during the year 2012-13 and the rest in earlier years. An amount of ₹ 60.56 lakh was realised in three cases at the instance of audit.</p>
What has been highlighted in this Chapter	<p>In this Chapter a Performance Audit on “Evasion of Stamp Duty and Registration Fees” with financial effect of ₹ 154.10 crore has been presented.</p> <p>The following points have been highlighted in the Performance Audit:</p> <ul style="list-style-type: none"> • Absence of a system of sharing of information between the Public Offices and

	<p>the Registration Offices relating to execution/submission of documents in the Public Offices led to avoidance/ evasion of tax of ₹ 60.21 crore.</p> <ul style="list-style-type: none"> • Absence of provision in the Acts/Rules to prevent splitting of properties led to avoidance of additional stamp duty of ₹ 4.73 crore. • Incorrect mapping of the business rules in CORD software resulted in short-levy of stamp duty of ₹ 23.77 crore. • Under valuation of properties by furnishing of incorrect property details led to evasion of stamp duty and registration fees of ₹ 23.73 crore. • Misclassification of instruments by registering authorities resulted in short-levy of stamp duty of ₹ 1.05 crore.
Conclusion	<p>Performance Audit has brought out number of system as well as compliance deficiencies which resulted in evasion of stamp duty and registration fees. Audit found that due to absence of system of sharing of information between Public Offices and Registration Offices relating to execution/submission of documents in the Public Offices, the department could not detect the cases of unduly stamped instruments executed/submitted in those Public Offices. Due to lacunae in the Acts/Rules, there has been avoidance of additional stamp duty by splitting of instruments. Incorrect mapping of business rules in CORD software resulted in short-levy of stamp duty. Due to improper scrutiny of the deeds, stamp duty and registration fees were evaded by property owners through undervaluation of properties by furnishing incorrect property details. Deeds were misclassified by RAs resulting in short-levy of stamp duty and registration fees. Further, potential revenue could not be mobilised by the department due to non-implementation of the Finance Act, 2011.</p> <p>The department may :</p> <ul style="list-style-type: none"> • devise an effective system of coordination with the POs to ensure realisation of proper stamp duty and registration fees.

- **incorporate all business rules properly in the CORD software for correct levy of stamp duty.**
- **direct the RAs to check deeds scrupulously with respect to market value assessment slips generated through the CORD software to detect the mismatch of particulars of properties to avoid evasion of stamp duty.**
- **establish an effective internal audit wing of its own to ensure that various provisions of the Acts and Rules are properly administered for effective tax administration.**

CHAPTER V: STAMP DUTY AND REGISTRATION FEES

5.1 Tax administration

Levy and collection of stamp duty and registration fees are regulated under the Indian Stamp (IS) Act, 1899 and the Indian Registration (IR) Act, 1908 and the Rules framed thereunder as applicable in West Bengal. Instruments to be registered under the Acts are chargeable to stamp duty and registration fees at the rates prescribed by the State Government from time to time.

5.2 Trend of revenue

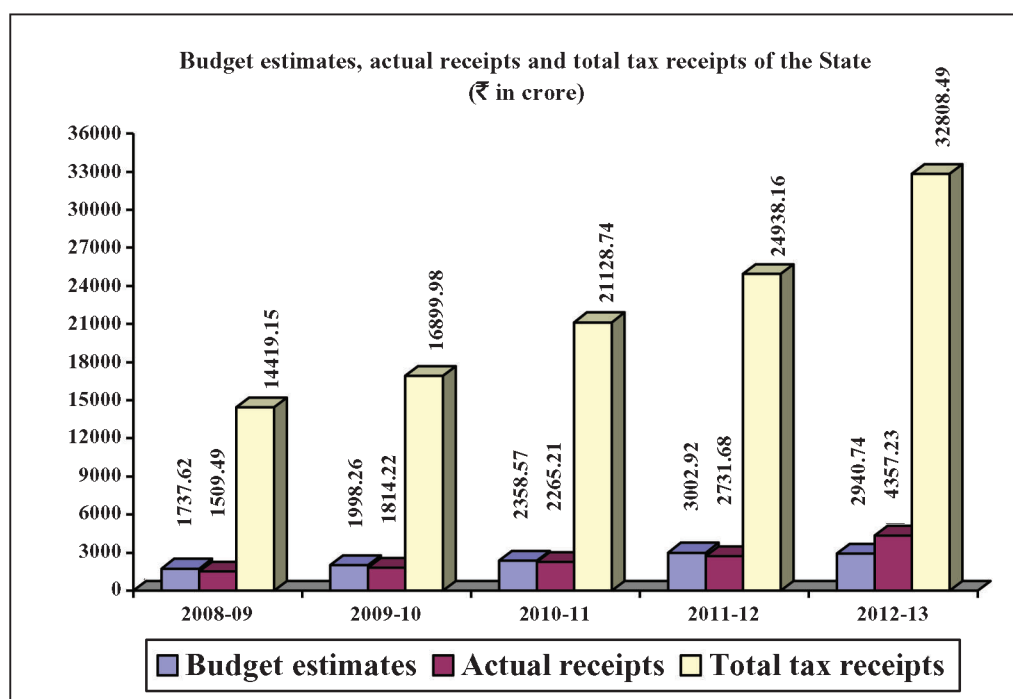
Actual receipts from stamp duty and registration fees during the years 2008-09 to 2012-13 along with the budget estimates and the total tax receipts of the State during the same period is exhibited in the following table and chart:

Table 5.1 - Trend of revenue

(₹ in crore)						
Year	Budget estimates	Actual receipts	Variation excess(+)/shortfall(-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	1,737.62	1,509.49	(-)228.13	(-)13.13	14,419.15	10.47
2009-10	1,998.26	1,814.22	(-)184.04	(-)9.21	16,899.98	10.74
2010-11	2,358.57	2,265.21	(-)93.36	(-)3.96	21,128.74	10.72
2011-12	3,002.92	2,731.68	(-)271.24	(-)9.03	24,938.16	10.95
2012-13	2,940.74	4,357.23	(+)1,416.49	(+)48.17	32,808.49	13.28

Source: Finance Accounts and Budget Publications of the Government of West Bengal.

Chart 5.1 – Budget estimates, Actual receipts and Total tax receipts



In 2012-13, collection from stamp duty and registration fees increased by 59.51 *per cent* over the previous year which was attributed by the Department to sale of judicial stamps, stamp duties on unstamped document, collection of registration fees, standard user charges, sale of other non-judicial stamps, duty on impressing of documents. However, the percentage of variation in budget estimates and actual receipts was (+) 48.17 *per cent* in 2012-13. This shows that the budget estimates failed to project the prospective collection properly.

5.3 Cost of collection

The gross collection of stamp duty and registration fees and the expenditure incurred on collection during the years 2010-11 to 2012-13 are given in the following table:

Table 5.2 – Cost of collection

(₹ in crore)					
Head of revenue	Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average of expenditure on collection for the preceding year
Stamp duty and registration fees	2010-11	2,265.21	94.31	4.16	2.47
	2011-12	2,731.68	96.62	3.54	1.60
	2012-13	4,357.23	101.39	2.33	1.89

Source: Finance Accounts.

The percentage expenditure on collection of stamp revenue has steadily come down from 4.16 *per cent* in 2010-11 to 2.33 *per cent* in 2012-13 but is still higher than the All India average.

5.4 Revenue impact of audit reports

During the last five years (including current year's report), Audit pointed out non/short levy, non/short realisation, underassessment/loss of revenue etc., with revenue implication of ₹ 216.80 crore in nine paragraphs. Of these, the department/Government had accepted audit observations in eight paragraphs involving ₹ 167.57 crore and had since recovered ₹ 2.11 crore.

The details are shown in the following table:

Table 5.3 – Revenue impact of audit reports

(₹ in crore)

Year of audit report	Paragraph included		Paragraph accepted by the departments		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2008-09	3	52.30	2*	50.54	NIL	NIL
2009-10	1	1.84	1*	1.54	1	0.20
2010-11	1	5.23	1	5.23	1	0.99
2011-12	3	3.33	3	3.33	2	0.92
2012-13	1	154.10	1*	106.93	NIL	NIL
Total	9	216.80	8	167.57	4	2.11

* partly accepted.

Thus, against the accepted cases of ₹ 167.57 crore, the department/Government has recovered ₹ 2.11 crore during 2009-10 to 2011-12 which is only 1.26 *per cent*.

It is recommended that the Government may revamp the recovery mechanism to ensure that the amount involved in accepted cases is promptly recovered.

5.5 Results of audit

In 2012-13 Audit test checked records of 61 units relating to stamp duty and registration fees and found non-realisation/blocking of revenue and other irregularities involving ₹ 10.74 crore in 255 cases which fall under the following categories:

Table 5.4 – Results of audit

(₹ in crore)

Sl. no	Categories	No of cases	Amount
1.	Non-realisation of stamp duty and registration fees/under-valuation of property	37	3.26
2.	Non-referring the cases to the collector/DIGR	23	2.15
3.	Splitting of property during registration	35	0.90
4.	Non-issue of demand notice	18	1.38
5.	Others	142	3.05
Total		255	10.74

During the year, the department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 8.23 crore in 177 cases, of which 168 cases involving ₹ 6.77 crore were pointed out during the year 2012-13 and the rest in earlier years. An amount of ₹ 60.56 lakh was realised in three cases at the instance of audit.

Audit findings of Performance Audit on 'Evasion of Stamp Duty and Registration Fees' with financial effect of ₹ 154.10 crore are mentioned in the subsequent paragraphs.

5.6 Performance Audit on “Evasion of Stamp Duty and Registration Fees”

5.6.1 Introduction

Stamp duty and registration fees are major sources of revenue of the Government of West Bengal and contribute around 10 *per cent* to the State’s total own revenues. The Directorate of Registration and Stamp Revenue under the Finance (Revenue) Department is entrusted with the task of assessment, levy and collection of stamp duty and registration fees. Levy and collection of stamp duty and registration fees are governed by the Indian Stamp (IS) Act, 1899, the Registration Act, 1908 and the Rules framed thereunder as applicable in West Bengal. In 1999, the department introduced the system of **Computerisation of Registration of Document (CORD)** with technical support of the National Informatics Centre (NIC) for bringing transparency in the assessment of market value and for speedy disposal of the registration process. The CORD software was implemented in all Registration Offices in West Bengal by 2011¹.

Highlights

Absence of a system of sharing of information between the Public Offices and the Registration Offices relating to execution/submission of documents in the Public Offices led to avoidance/evasion of tax of ₹ 60.21 crore.

(Paragraphs 5.6.5.1 to 5.6.5.4)

Absence of provision in the Acts/Rules to prevent splitting of properties led to avoidance of additional stamp duty of ₹ 4.73 crore.

(Paragraph 5.6.6)

Incorrect mapping of the business rules in the CORD software resulted in short-levy of stamp duty of ₹ 23.77 crore.

(Paragraph 5.6.7.1)

Undervaluation of properties by furnishing incorrect property details led to evasion of stamp duty and registration fees of ₹ 23.73 crore.

(Paragraphs 5.6.8.1 to 5.6.8.3)

Misclassification of instruments by the registering authorities resulted in short-levy of stamp duty of ₹ 1.05 crore.

(Paragraphs 5.6.9.1 and 5.6.9.2)

5.6.2 Organisational setup

Stamp duty and registration fees are administered by the Finance (Revenue) Department headed by the Principal Secretary. The overall control and superintendence over assessment, levy and collection of stamp duty and registration fees vest with the Inspector General of Registration (IGR), West

¹ CORD software in the units selected for the Performance Audit (except for three units) was implemented by 2008.

Bengal, who is assisted by 12 Deputy Inspectors General of Registration (DIGR) in charge of Range Offices, three Additional Registrars of Assurances (ARA), 26 District Sub-Registrars (DSR) and 211 Additional District Sub-Registrars (ADSR).

5.6.3 Audit objectives, criteria, scope and methodology

Performance Audit on “**Evasion of Stamp Duty and Registration Fees**” for the period from 2007-08 to 2011-12 was conducted with the objective to ascertain whether:

- Department had devised an effective system of coordination with various Public Offices² (POs) to ensure that the documents required to be registered are presented for registration and the requisite stamp duty and registration fees are levied correctly;
- business rules had been duly mapped in the CORD software;
- provisions of the relevant Acts/Rules and departmental instructions are enforced properly by the Registering Authorities to safeguard revenue of the State; and
- internal control mechanism was effective and sufficient to safeguard collection of stamp duty and registration fees.

Performance Audit was conducted between April and July 2013 in 21³ Registration Offices (RO) selected through Stratified Random Sampling Method from 60 major ROs located in urban developing areas out of the total 240 ROs in the State for the period from 2007-08 to 2011-12. The units selected for the Performance Audit cover more than 56.5 *per cent* of the total revenue of the State from these duties and fees during the last three years (2009-10 to 2011-12). The CORD data of all the selected ROs were analysed using Interactive Data Extraction and Analysis (IDEA) software. Besides, manual records of the ROs, three⁴ out of 12 Range Offices of DIGRs and records of some major Public Offices were also test checked. Audit observations noticed during the course of transaction audit had also been suitably incorporated in this report.

Provisions of the Indian Stamp Act, 1899, Registration Act, 1908, Rules framed under the said Acts and the business rules of the CORD software were used as criteria for the audit.

5.6.4 Acknowledgement

Entry Conference to discuss the objectives, scope and methodology of the Performance Audit was held in March 2013 with the IGR. Observations and recommendations of audit were discussed with the IGR in the Exit Conference held in September 2013. Audit acknowledges the co-operation of the

² Public Office is an office held by a Public Officer as defined in Section 2(17) of Code of Civil Procedure, 1908.

³ ADSRs Alipore, Asansol, Bagdogra, Baharampur, Barasat, Barrackpore, Baruipur, Behala, Bidhannagar, Bolpur, Burdwan, Cossipore, Durgapur, Howrah, Kharagpur, Singur, ARA-I & II Kolkata, DSRs Alipore-III, Hooghly-I and Howrah.

⁴ DIGRs Range-I, Range-II and Range-IV.

department in providing necessary information and records. Replies of the Directorate furnished during the Exit Conference have been suitably incorporated in the report.

Audit findings

Absence/inadequacy of the provisions in the Acts/ Rules leading to evasion or avoidance of tax

Audit observed a number of deficiencies relating to inadequacy of provisions in respect of coordination between the Directorate of Registration and the Public Offices, deficiencies in the CORD software resulting in short-levy of stamp duty and splitting of properties leading to avoidance of stamp duties. These are discussed as follows:

5.6.5 Absence of a system to ensure realisation of proper stamp duty and registration fee through co-ordination with public offices

Section 3 of the Indian Stamp (IS) Act, 1899 provides that subject to the provisions of Act and the exemptions contained in Schedule I, all the instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore. Further, Section 17 of the Act provides that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution. Documents prescribed under Section 17 of the Registration Act, 1908 are 'compulsorily registrable'.

Section 33(1) of the IS Act, 1899 provides that every person in charge of a public office (PO) before whom any instrument chargeable with duty is produced shall impound the same if such instrument is not duly stamped. Under Section 38(2) of the Act, the impounded documents are required to be sent to the Collector. Further, Section 73 of the Act provides that every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings etc.

The Income Tax Act mandates certain specified persons⁵ to furnish an annual information return relating to specified high value transactions for monitoring the payment of tax. But there is no such provision in the IS Act making the POs accountable for furnishing returns on the details of documents executed /presented before them so that it can be checked whether those were duly stamped and registered. Audit noticed that the provisions of the IS Act relating to impounding of such documents and forwarding these to the Collector were not complied with by many POs and these remained undetected in the absence of any return prescribed. One way to check this was through the inspection of the POs by the Collectors, but Audit noticed that here also the department had not fixed any norm or target for such inspections

⁵ Section 285BA(1) of the Income Tax Act, 1961 read with Rule 114E of the Income Tax Rules, 1962.

and that the inspections of POs were not conducted. Thus, due to the absence of adequate provisions and procedural lapses, substantial amount of stamp duty and registration fees remained un-assessed and uncollected as discussed below:

Non-registration of documents

Audit scrutinised various instruments executed/presented in different POs and found that many of these instruments were not duly stamped/registered, but the POs did not impound these instruments. As a result, they remained insufficiently stamped/unregistered.

5.6.5.1 Non-registration of lease agreements

As per Section 2(16) of the IS Act, 1899 “lease” means a lease of immovable property and includes a *patta*; a *kabuliyat* or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property; any instrument by which tolls of any description are let; any writing on an application for a lease intended to signify that the application is granted; any agreement to lease and mining lease. Further, Section 17(d) of the Registration Act, 1908 provides that leases of immovable property from year to year or for any term exceeding one year or reserving a yearly rent is compulsorily registrable. As per Section 29(c) of the IS Act, the lessee is responsible for payment of Stamp Duty on execution of lease agreement.

Audit scrutiny of relevant records in different Public Offices⁶ revealed that different nature of lease agreements were required to be executed/presented in those offices. It was seen that such lease agreements were either not executed or executed with insufficient stamp duties and were not registered even though those were ‘compulsorily registrable’ under the Registration Act, 1908 leading to non-realisation of duties amounting to ₹ 30.03 crore in cases as discussed below:

- Audit found from the records of the Chief Mining Officer, Asansol under the C&I Department that in two cases, mining leases for a term of 20 years were granted by the department in favour of two companies between September 2008 and June 2012 for extraction of coal-bed methane (CBM) in Raniganj (South) block under the district of Burdwan. Both the companies continued exploration of CBM without executing the lease deeds even after a lapse of period ranging between 10 and 56 months and consequently no stamp duty and registration fees was paid by the lessees.
- Scrutiny of records of KMC and KMDA revealed that in three cases, they granted lease of land, commercial building and market complex between November 2007 and October 2010 for a period ranging between 60 and 99 years in favour of three companies. Audit found that the lease agreements were executed but were not got registered. There were payments of

⁶ Of various units of the Commerce and Industries (C&I) Department, Kolkata Municipal Corporation (KMC), Kolkata Metropolitan Development Authority (KMDA), West Bengal Industrial Infrastructure Development Corporation (WBIIDC), Directorate of Commercial Taxes, Urban Local Bodies (ULBs) and Bharat Sanchar Nigam Limited (BSNL) etc.

nominal amount of stamp duty (₹ 10 to ₹ 100) but no registration fee was paid in these cases by the lessees.

- From records of WBIIDC audit found that in 37 cases, it granted lease of land measuring 181.01 acre for a period ranging between 72 and 99 years to the entrepreneurs between 2007-08 and 2011-12. The lessees executed lease agreements on non-judicial stamp paper of ₹ 100 each and did not get them registered though compulsorily registrable. Resultantly, the lessees did not pay the due amount of stamp duty and registration fee.
- Audit found that in 87 cases of lease of ferries granted by seven⁷ Municipalities, one⁸ Municipal Corporation and one⁹ Zilla Parishad (ZP), between 2007-08 and 2011-12, lease agreements were either not executed or executed on insufficient value of stamp papers. Out of these 87 cases, in 29 cases, where lease term ranged from 12 to 60 months, lease agreements were not registered though compulsorily registrable. Resultantly, amount of stamp duty and registration fee due was not paid in these cases by the lessees.
- Audit found that in two cases lease of toll plazas along the ‘Kalyani-Dum Dum Express Way’ were granted by the KMDA in September 2006 and December 2012 for a term of two years in each case. Audit found that the lease agreements were executed on non-judicial stamp paper of ₹ 100 and were not registered. Consequently, amount of stamp duty and registration fee due was not paid in these cases.
- Audit found that in 78 cases of seven¹⁰ divisional offices under the Calcutta Telephones, BSNL did not register the lease agreements entered into with private parties for using lands/buildings for the installation/operation of mobile towers although the lease agreements were compulsorily registrable as the period of leases ranged between seven and 15 years in each case. Audit found that the lease agreements were executed on stamp papers ranging from ₹ 10 to ₹ 100. Resultantly, amount of stamp duty and registration fee due was not paid in these cases by BSNL.
- Audit found in 39 cases that 11¹¹ charge offices under the Directorate of Commercial Taxes allowed dealers to obtain VAT registration on the basis of unregistered lease agreements executed on nominal value of stamp papers with the owners of their respective business premises. These agreements were compulsorily registrable, but amount of stamp duty and registration fee due was not paid in these cases by the dealers.

Due to non-compliance of the provisions contained in Section 33(1) of the IS Act, 1899 by these Public Offices, non-execution/non-registration of lease agreements, 248 cases remained undetected and stamp duty and registration

⁷ Baidyabati, Bhadreswar, Champdany, Garulia, Hooghly-Chinsurah, Naihati and Serampore Municipalities.

⁸ Chandannagar Municipal Corporation.

⁹ Hooghly Zilla Parishad.

¹⁰ Barrackpore, Bidhannagar, Central, City, Serampore, Shyambazar and Howrah Division.

¹¹ Asansol, Ballygunge, Beliaghata, Bhawanipore, Bowbazar, College Street, Ezra Street, Park Street, Salt Lake, Siliguri and Ultadanga.

fees of ₹ 30.03 crore was evaded by the lessees as shown in the following table:

Table 5.5 – Non-registration of lease agreements

(₹ in lakh)

Name of the source department/office	No. of cases	Nature of lease	Term of lease (Year)	Assessable value ¹²		Evasion of stamp duty and registration fees
				Average annual rent/royalty	Premium	
Commerce and Industries Department	2	Mining lease	20	117.82	--	2,414.00
Kolkata Municipal Corporation	1	Lease of market complex	60	18.42	--	5.97
Kolkata Metropolitan Development Authority	2	Lease of land and commercial complex	99	--	4,101.94	325.79
West Bengal Industrial Infrastructure Development Corporation	37	Lease of land	Between 72 and 99	--	1,583.19	112.37
Urban Local Bodies	87	Lease of ferries	From 6 months to 5 years	605.66	461.66	60.72
Kolkata Metropolitan Development Authority	2	Lease of Toll Plazas	2	526.58	--	26.85
Bharat Sanchar Nigam Limited	78	Lease of mobile towers	Between 7 and 15	53.33	--	8.43
Directorate of Commercial Taxes	39	Lease of business premises	Between 1.5 and 99	647.30	107.20	49.03
Total	248			1,969.11	6,253.99	3,003.16

Directorate accepted (September 2013) the audit observation and stated that communication would be initiated with concerned departments for taking necessary action at their end.

5.6.5.2 Non-registration of sale of properties of liquidated companies

As per Article 18 of Schedule IA to the IS Act, Certificate of sale, granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue Officer is chargeable with same duty as a Conveyance for a consideration equal to the amount of purchase-money. Under Section 17(2)(xii) of the Registration Act, 1908, such certificates of sale are compulsorily registrable.

¹² Assessable value is the consideration value against which the lease is granted. A lease may be granted against rent or premium or both.

Audit noted from the records of the Official Liquidator (OL), Kolkata that immovable properties of five liquidated companies were disposed in public auction by the OL between 2007-08 and 2011-12 at a consideration of ₹ 28.55 crore. However, the purchasers neither paid the stamp duty nor registered the certificates of sales even after a lapse of period ranging between 22 and 60 months. Consequently, stamp duty and registration fees amounting to ₹ 2.31 crore remained unrealised as detailed in **Annexure-II**. Non-detection of these transactions was attributable to the absence of a mechanism for sharing the information by the OL (a public office) with the Registration Authorities regarding the sales.

After audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that communication would be initiated with the concerned liquidators.

5.6.5.3 Non-registration of sale agreement

Article 5(d) of Schedule-IA of the IS Act provides that agreement relating to the sale of immovable property is chargeable to same duty as applicable to a conveyance deed. Further, an agreement to sale is compulsorily registrable under Section 17(1A) of the Registration Act, 1908.

Absence of a provision making it mandatory on the part of public offices to share information relating to lease or sale with the registration authorities, even when the instruments relating to such transactions were not impounded, led to loss of substantial revenue due to non-payment of the correct amount of stamp duties and registration fees by the transacting parties. From the records of the Kolkata Municipal Corporation (KMC) audit found that in one case, an agreement for sale was executed among a group of different developers and KMC (as a confirming party) for sale of land measuring 204 cottah¹³ at a consideration of ₹ 51.00 crore in May 2010. Audit, however, found that the said agreement was executed on non-judicial stamp paper of ₹ 20 only and the same was not registered either. Absence of provisions in the relevant Acts/Rules for detection of such transactions where public offices were involved resulted in evasion of stamp duty of ₹ 3.57 crore.

After audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that communication would be initiated with the concerned department for taking necessary action at their end.

5.6.5.4 Non-payment of stamp duty on Power of Attorneys for development of properties

Article 48(g) to the Schedule-IA of the IS Act provides that agreements or memorandum of agreements, giving authority or power to a promoter or a developer for construction, development, sale or transfer of any immovable property shall be chargeable with the same stamp duty as in an actual sale transaction.

Audit noted from the records of the West Bengal Housing Board (WBHB) that in 41 cases the WBHB entered into development agreements with different companies between April 2007 and March 2012 for construction of different

¹³ Cottah is a unit for measuring the area of land and is equivalent to 720 sq.ft.

housing projects. After the execution of the development agreements, power of attorneys (POA) were executed by the WBHB authorising the companies/developers to construct the projects on the land belonging to the WBHB with the power to sell the constructed portion of the projects. Audit, however, found that the development agreements and POAs were notarised on non-judicial stamp paper with denomination of ₹ 50 and ₹ 100 only. This resulted in evasion of stamp duty of ₹ 24.30 crore. The transactions remained undetected, despite the involvement of a Public Office as a party because of absence of relevant provisions in the related Acts/Rules in respect of sharing of information.

After Audit pointed this out, the Directorate stated (September 2013) that the Government (Finance Department) would look into the issue so that registration of documents involving Government agencies/ undertakings/ statutory bodies/constitutional bodies takes place in all the cases where the registration is compulsory.

5.6.6 Absence of provision in the Act to prevent splitting of properties to avoid additional stamp duty

The IS Act, 1899 (as applicable in West Bengal) as amended by the West Bengal Finance Act, 2007 provides for levy of additional stamp duty at the rate of one *per cent* if the market value of the property exceeds ₹ 25 lakh.

From the analysis of CORD data and scrutiny of deeds of conveyance in 35 ROs, Audit found that in 879 cases, the purchasers of properties subdivided one piece and parcel of land/flat involving market value in excess of ₹ 25 lakh into several smaller plots/flats to keep the market value of each of such divided plots or flats below ₹ 25 lakh. In each case, the transacting parties were the same and the deeds of conveyance against the properties were also executed on the same day, indicating that the intention of the purchasers was to purchase the whole piece of land/flat, and that the properties were subdivided in order to avoid the additional stamp duty by splitting of original properties into several. Audit found that in place of 879 instruments (deeds of conveyance) that should have been executed, 2,514 deeds were actually executed, each attracting a lower rate of duty and resulting in avoidance of additional stamp duty of ₹ 4.73 crore. There is no provision in the Act or Rule to prevent splitting of instruments for avoiding additional stamp duty, neither is there any provision to realise composite stamp duty on the whole property for avoidance of stamp duty by the purchasers. Due to the absence of any such provision in the Acts/Rules, additional stamp duty can easily be avoided by splitting of instruments.

After Audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that due to absence of provision relating to splitting of properties, no legal action could be initiated by the RAs. However, a circular in this regard had already been issued in October 2012.

5.6.7 Deficiency in the CORD system

CORD software was implemented to eliminate the shortcomings of the conventional registration system and to improve citizen services by making them faster, user friendly and transparent. Audit observed a number of deficiencies in the CORD system as discussed below:

5.6.7.1 Short-levy of stamp duty by the CORD system

Under Article 23 of Schedule-IA to the IS Act the rate of stamp duty on deed of conveyance is as under:

Property situated in	Market Value of the Property	Rate of stamp duty
(a) areas to which Kolkata Improvement Act, 1911 or Howrah Improvement Act, 1956 extends	>25,00,000	7 per cent
	≤25,00,000	6 per cent
(b) areas under any Municipal Corporation/ Municipality/ Notified Area other than those included in (a) above	>25,00,000	7 per cent
	≤ 25,00,000	6 per cent
(c) areas other than those included in (a) or (b)	>25,00,000	6 per cent
	≤ 25,00,000	5 per cent

(1) Howrah Improvement Act, 1956 (HIA) extends to all areas within the jurisdiction of the district of Howrah. Thus, stamp duty under Article 23(a) of the Act is leviable in case of sale of any property situated in the district of Howrah. From the analysis of computerised data of CORD in three¹⁴ ROs, Audit found that in 22,624 cases, sale deeds of immovable properties situated in the district of Howrah involving market value of ₹ 1,502.13 crore were executed and registered between April 2007 and March 2012. In all these cases the properties were treated as falling under category (c) under article 23 of Schedule-IA to the IS Act, for being situated in ‘Panchayat areas (Local body code - 6)’ and the CORD software accordingly assessed the stamp duty under Article 23(c) at the rate of five *per cent* or six *per cent* as the case may be. The software did not take into cognisance the fact that categories (b) and (c) under article 23 above did not apply to Howrah district which was covered by the category (a) under the above article attracting duties at the rate of seven *per cent* or six *per cent*. Due to incorrect mapping of business rules in the CORD software, the system assessed stamp duty at one *per cent* lower rate in each case. This resulted in short-levy of stamp duty of ₹ 15.01 crore as shown in **Annexure-III**.

After Audit pointed this out, the Directorate stated (September 2013) that Howrah Improvement Act, 1956 may extend to the entire district of Howrah for the purpose of implementation of various development schemes, but that could not cease the jurisdiction of the Panchayats so far as their territories

¹⁴ ADSR, Howrah, ARA-I and DSR, Howrah.

were concerned within the district. The reply is not tenable because the whole Howrah district is covered under Howrah Improvement Act, 1956 and therefore jurisdiction of Panchayat is not relevant in this case.

(2) Under the West Bengal Town and Country (Planning & Development) Act, 1979, Government of West Bengal, notified the following areas under the district of Birbhum, Burdwan, North 24 Parganas and South 24 Parganas as Planning Area¹⁵.

Name of district	Name of Police Stations	Areas included in the Planning Area
Birbhum	Bolpur	Areas under Sian Muluk, Raipur-Surpur, Ruppur and Kankalitala Gram Panchayats
Burdwan	Burdwan	Areas under the Burdwan-I and Burdwan-II Panchayat Samiti
North 24 Parganas	Rajarhat	Areas under JL Nos. 6, 12, 13, 21, 22, 23, 24, 25, 26, 27, 32, 33, 34, 35, 36 and 55
South 24 Parganas	Kolkata Leather Complex	Areas under JL Nos. 25, 26, 28, 29, 30, 31, 32, 33, 35, 44 and 45

The said areas were declared to be notified areas from the dates of effect of the respective notifications.

Analysis of CORD data of six¹⁶ ROs by audit revealed that in 16,143 cases, immovable properties involving market value of ₹ 875.76 crore under the said areas were transferred by the owners of the properties by executing deeds of conveyance between April 2007 and March 2012. In all the cases, the properties were treated as falling under category (c) of Article 23 of Schedule-IA to the IS Act, for being situated in 'Panchayat areas (Local body code 6)' and the CORD software accordingly assessed stamp duty under Article 23(c) at the rate of five *per cent* or six *per cent* as the case may be. Since, the said areas fall under the notified area covered by Article 23(b), stamp duty at higher rates was leviable in all these cases. Non-mapping of the notified areas in the CORD software resulted in short-levy of stamp duty of ₹ 8.76 crore as shown in **Annexure-IV**.

After audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that the CORD system would be updated in this regard.

5.6.7.2 Non-mapping of minimum Car Parking Space in CORD software

As per Rule 65 of the West Bengal Municipal (Building) Rules, 1996 read with memo no. 695/25 dated 23.04.2004 of District Registrar, the minimum car parking space or garage shall be 2.5 metres x 5 metres = 12.5 square metres (135 sq ft).

¹⁵ Planning Area means any area declared to be a planning area under the West Bengal Town and Country (Planning & Development) Act, 1979 and includes Kolkata Metropolitan Area.

¹⁶ ADSRs Bidhannagar, Bolpur, Burdwan, ARA-I, ARA-II and DSR-III, Alipore.

Analysis of CORD data pertaining to 18¹⁷ ROs revealed that in 16,233 cases car parking space were registered between 2007 and 2012 not complying with the prescribed norm of minimum parking/ garage space of 135 sq ft. There was no validation control in the CORD software to that effect so that any parking/garage space below this limit is not accepted for the purpose of registration. This resulted in short realisation of stamp duty and registration fees of ₹ 6.86 crore in 16,233 cases.

After audit pointed this out, the Directorate stated (September 2013) that the ROs were not empowered to take the garage area other than those specified in the documents. The reply is not tenable because minimum car parking space has been prescribed in West Bengal Municipal (Building) Rules, 1996 and was accepted by the District Registrar. That should have been mapped in the CORD system.

Deficiencies in the implementation of Acts/Rules/Departmental orders

Efficient compliance to the provisions of the Acts/Rules is essential for any effective administration of revenue. Any deviation from the provisions may result in undervaluation of market value of properties, misclassification of instruments and consequent short realisation of stamp duty and registration fees. Deficiencies in implementation of the provisions of Acts/Rules noticed in audit are discussed in the succeeding paragraphs:

5.6.8 Undervaluation of properties due to mis-declarations

Prior to registration of any instrument, the registrants are required to furnish the required particulars of the properties in the prescribed format before the Registering Authorities (RA) for generation of market value of the property through the CORD software. Suppression or omission of this information will result in incorrect determination of market value and will adversely affect the revenue.

5.6.8.1 Undervaluation of flats/apartments by furnishing incorrect particulars

As per Rule 3B(17) of the West Bengal Stamp (Prevention of Undervaluation of Instruments) [WBS (PUI)] Rules, 2001 read with the business process of CORD software, the market value per sq ft of the flat or any structure appreciates according to the amenities in the following manner:

Nature of amenities	Rate of appreciation of market value per sq ft
Roof garden/ gymnasium/ swimming pool/ club facility	₹ 400
Lift facility	₹ 100

¹⁷ ADSRs Asansol, Bagdogra, Baharampur, Barasat, Barrackpore, Baruipur, Behala, Bidhannagar, Bolpur, Burdwan, Cossipore, Durgapur, Howrah, Kharagpur, ARA-I & II Kolkata, DSRs Alipore-III and Hooghly-I.

(1) From analysis of CORD data of 13¹⁸ ROs in 2,294 cases, Audit found that purchasers of flats /apartments having super built up area of 28.35 lakh sq. ft. declared that none of the amenities like gymnasium/roof garden /club/swimming pool etc. were available in those flats/apartments. The sale deeds were registered with RAs by executing these between 2007-08 and 2011-12. Audit, however, found that other owners of flats of the same housing complexes registered their properties with the same RAs declaring availability of the said amenities in those housing complexes. From the recitals of the deeds, Audit found that the amenities were offered in common for all the flat owners in those housing complexes. Thus the purchasers of the flats/apartments in these complexes did not furnish correct particulars of the amenities available in the complex at the time of generation of market value by the CORD software leading to suppression of market value of the properties and evasion of duty, and concerned RAs also did not scrutinise or cross-check the particulars mentioned in these deeds with information supplied by other registrants. This resulted in undervaluation of properties by ₹ 113.37 crore and consequent evasion of stamp duty and registration fees of ₹ 8.61 crore.

(2) Similarly, from the analysis of CORD data of 18¹⁹ ROs, Audit found that in 2,142 cases, the purchasers of flats/apartments had declared non-availability of lifts and registered the sale deeds between 2007-08 and 2011-12. However, from sale deeds executed in respect of other flats/apartments in the same complexes, Audit, found that these were registered with the facility of lifts. Incorrect particulars were furnished by the aforementioned 2,142 flats/apartments for generating lesser market values through the CORD software, which was not scrutinized or detected / cross-checked at the time of registration by the RAs with information supplied by other registrants. This resulted in undervaluation of properties by ₹ 17.52 crore and consequent evasion of stamp duty and registration fees of ₹ 1.27 crore.

After Audit pointed this out, the Directorate accepted (September 2013) the audit observation that there was no inbuilt mechanism in the system to detect such cases by linking them with the previously registered documents and contended that the registering authorities were required to verify the contents of the documents with the particulars shown in the query form by the registrants. The contention is not tenable as Rule 3(1) of the WB Stamp (Prevention of Undervaluation of Instruments) Rules provides that the value be determined by comparing the value of similar properties in the same locality.

5.6.8.2 Undervaluation of properties by furnishing incorrect particulars of road width

As per Rule 3B(10) of the West Bengal Stamp (Prevention of Undervaluation of Instruments) [WBS (PUI)] Rules, 2001 read with the business process of

¹⁸ ADSRs Alipore, Bagdogra, Barasat, Behala, Bidhannagar, Burdwan, Durgapur, Howrah, Kharagpur, ARA-I & II Kolkata, DSRs Alipore-III and Howrah.

¹⁹ ADSRs Alipore, Asansol, Bagdogra, Baharampur, Barasat, Barrackpore, Baruipur, Behala, Bidhannagar, Burdwan, Cossipore, Durgapur, Howrah, ARA-I & II Kolkata, DSRs Alipore-III, Hooghly-I and Howrah.

CORD software, if the land or flat or any structure is not located on the road by which it is addressed but on the lane/by-lane emanating from the said road, and if the width of the said approach road is less than eight feet, the market value of the property per sq ft of it shall be depreciated by 15 *per cent* and 20 *per cent* for Kolkata and Howrah/other municipality areas respectively.

Audit found from the analysis of CORD data of 18²⁰ ROs that in 11,197 cases the purchasers of flats and lands executed sale deeds between April 2007 and March 2012 and registered their properties with the concerned RAs declaring that the properties were not located on the roads by which they were addressed, but on the approach roads emanating from those. Audit, however, found that in these 11,197 cases the approach road width had been shown as 'zero', which was incorrect. Thus, by furnishing incorrect particulars of the road width, the registrants availed undue advantage of depreciating the market value. The CORD system also accepted the inadmissible values in that field in the absence of proper validation checks and allowed depreciation in the market value. This resulted in undervaluation of properties of ₹ 165.47 crore and consequent evasion of stamp duty and registration fees of ₹ 12.29 crore.

Directorate accepted (September 2013) the audit observation and stated that necessary action would be taken in this regard for realisation of revenue.

5.6.8.3 Undervaluation of properties by furnishing incorrect particulars of age of flats

As per Rule 3C(6) of the WBS (PUI) Rules, 2001 read with the business process of CORD software, the market value of old flat shall be depreciated considering the age of the flat at the following rates.

Age of flat (in year)	Rate of depreciation
0-5	Nil
6-20	0.5 % per annum
21-40	0.75 % per annum
More than 40	1% per annum subject to maximum of 40%

Audit analysed the CORD data of three²¹ ROs and found that in 133 cases the purchasers of flats /apartments registered their properties with the concerned RAs declaring the age of the flat between 10 and 30 years. From the recitals of deeds, however, Audit found that age as per the building plans sanctioned by the local authorities were less than their declared ages. Thus, the purchasers furnished incorrect particulars of the age of the flats in order to reduce the market value of the properties and due to improper scrutiny of deeds by the RAs the registrants were allowed excess depreciation. This resulted in suppression of market value by ₹ 19.31 crore and consequent evasion of stamp duty and registration fees of ₹ 1.56 crore.

²⁰ ADSRs Alipore, Asansol, Bagdogra, Baharampur, Barrackpore, Baruipur, Behala, Bidhannagar, Bolpur, Burdwan, Durgapur, Howrah, Kharagpur, ARA-I & II Kolkata, DSRs Alipore-III, Hooghly-I and Howrah.

²¹ ADSRs Asansol, Baruipur and ARA-II.

Directorate accepted (September 2013) the audit observation and stated that necessary action would be taken in this regard for realisation of revenue.

5.6.9 Misclassification of instruments

Rate of stamp duty depends on the nature of documents registered. Misclassification of documents into an incorrect category results in under charge of stamp duty and registration fees.

5.6.9.1 Misclassification of gift deed

Article 33(i) of Schedule-IA of the IS Act provides that any instrument of gift in favour of family members is chargeable with stamp duty at the rate of 0.5 *per cent* of the market value of the property. However, Article 33(ii) of the Act provides that if the gift of any property is made to any other person, stamp duty is chargeable as in the case of sale.

From the records of four²² ROs, Audit found that in five cases the instruments were misclassified as gift deeds in favour of family members²³. In four cases, gifts of properties were made in favour of persons other than family members and in one case deed of conveyance was classified as gift deed while in reality it was a deed of conveyance. Due to misclassification of instruments by the RAs, there was short-levy and under realisation of stamp duty by ₹ 41.61 lakh as shown in **Annexure -V**.

Directorate accepted (September 2013) the audit observation and stated that necessary action would be taken in this regard.

5.6.9.2 Misclassification of deed of assignment as lease deed

Under Article 35 of Schedule-IA of the IS Act, the stamp duty on lease deed is charged on the premium²⁴ and/ or the average annual lease rent of the property whereas under Article 63, stamp duty on the transfer of lease by way of assignment is chargeable on the market value of the property as in case of sale.

Audit found from the records of ARA-I & II, Kolkata that in eight cases instruments of transfer of lease of properties by way of assignment involving market value of ₹ 9.02 crore were executed between August 2010 and February 2011. RAs misclassified the instruments as lease deeds and charged stamp duty and registration fees of ₹ 9.84 lakh instead of ₹ 72.77 lakh. This resulted in short-levy of stamp duty of ₹ 62.93 lakh.

After audit pointed this out, the Directorate stated (September 2013) that the cases would be verified in detail.

5.6.10 Arrears of revenue

Arrears of revenue relate to the pre-CORD registration period when valuation of properties was done by the RAs and monitored through a market-value monitoring register updated from time to time by the Department. If any

²² ADSR Cossipore, ARA-I, ARA- III and DSR-III Alipore.

²³ Family member means parent, spouse, son, daughter, son's wife, grand son or grand daughter, brother or sister. (*Explanation below Article 33 of Schedule-IA of IS Act*)

²⁴ Premium- A one time lump sum amount paid by the lessee to the lessor at the time of execution of lease agreement.

instrument did not reflect the correct market value as per the register, or if the market value of a property was not determined, the RAs had the option of registering the properties provisionally pending determination of actual market value, by accepting whatever duties were paid. On determination of correct market value, a fresh demand notice was required to be issued to the registrant. After introduction of the CORD system, the situation changed as the system automatically generates the market value depending on information supplied by the registrant. Arrears of revenue, thus, relate to the period before introduction of CORD, in phased manner from 2004.

Audit found that in a number of cases, demand notices were either not issued at all after valuation was done or not followed up properly. Besides, in the absence of any time limit in the Act/Rules for disposal of pending cases, substantial revenue remains unrealised as discussed below:

5.6.10.1 Non-realisation of deficit stamp duty and registration fees due to non-issue of demand notices

Section 47A of the IS Act, 1908 read with Rule 3(8) of the [WBS (PUI)] Rules, 2001 provides that where the registering authority (RA) has reason to believe that the market value of the property has not been truly set forth in any instrument presented for registration, he shall ascertain the market value of the property and issue notice to the concerned party directing him to pay the deficit stamp duty and registration fees within the time specified in the said notice.

Audit found from records of 11²⁵ ROs between October 2011 and July 2013, 1,579 instruments presented for registration between September 1994 and January 2012 were kept pending for final registration by the RAs due to under valuation of the properties. Audit found that though the market values of these properties were determined by the RAs subsequently in all these cases, no demand notices were issued to the concerned parties for payment of deficit stamp duty and registration fees. This resulted in non-realisation of revenue of ₹ 5.85 crore. Out of the test checked cases 80.49 *per cent* cases of arrears were pending for more than seven years. Age wise analysis of the pending cases is shown in the following table:

Table 5.6 – Age-wise analysis of the pending cases

Pendency period	No. of Cases	Percentage
More than 10 years	194	12.29%
7-9 years	1,077	68.20%
4-6 years	236	14.95%
0-3 years	72	4.56%
Total	1,579	100%

After audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that instructions in this regard have been issued to the respective ROs for necessary compliance.

²⁵ ADSRs Alipore, Barasat, Burdwan, Cossipore, Ghateswar, Hariharpara, Ketugram, Mekhliganj, Patashpur and DSRs Murshidabad-I and II.

5.6.10.2 Non-realisation of deficit stamp duty and registration fees due to non-reference of pending cases to the Collector

Section 47A of the IS Act, 1908 read with Rule 3(8) and 4(1) of the [WBS(PUI)] Rules, 2001 provides that on receipt of the notice from RA, if the deficit stamp duty and registration fees are not paid by the concerned party within the time, the RA shall refer the case to the Collector for determination of the market value of the properties. Under Section 48 of the Act, all dues are recoverable by any process, for the time being in force, for the recovery of arrears of land revenue.

Audit found from the records of 11²⁶ ROs that 2,269 instruments of sale, gift etc. were kept pending for final registration by the RAs as market value of the properties were not truly set forth in those instruments. Subsequently, market value of the properties were determined by RAs in all these cases and demand notices were also issued to the concerned parties for payment of deficit stamp duty and registration fees of ₹ 7.52 crore. Since, the registrants did not pay the deficit stamp duty and registration fees within the time specified in demand notices, RAs were required to refer the cases to the Collectors for determination of market value of the properties and stamp duty payable thereon. Audit, however, found that the RAs neither referred the cases to the Collectors (DIGRs)²⁷ for adjudication nor took any action under Section 48 of the IS Act for recovery of the arrear revenue even after lapse of periods ranging from six to 193 months from the date of issue of the demand notices. The delay in referring the cases to the DIGRs was due to non-stipulation of a time frame in the Acts/Rules for forwarding such cases.

After Audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that instructions in this regard had been issued to the respective ROs toward compliance of the same.

5.6.10.3 Non-realisation of deficit stamp duty and registration fees due to delay in adjudication

Under Rules 5(1), 5(4) and 5(5) of the [WBS (PUI)] Rules, 2001 the Collector on receipt of reference from the RA under Section 47 of the IS Act, shall issue a notice for hearing in Form-VIII to the concerned party, within 30 days from the date of receipt of such reference and after hearing the person shall determine the market value of the property and proper stamp duty payable thereon.

Audit found from the records of three²⁸ Range Offices that 16,134 instruments were referred to the Collectors by 67 registering authorities for determination of market value of the properties between August 2000 and March 2012. In 7,095 out of 16,134 cases, market values of the properties were not determined by the Collectors even after a lapse of period ranging between 14 and 153

²⁶ ADSRs Barasat, Bhangore, Burdwan, Cossipore, Dinhata, Durgapur, Goas, Lalbagh, Sagardighi and DSRs, Bankura and Murshidabad-II.

²⁷ DIGRs act as the Collector under the IS Act, 1908.

²⁸ DIGRs Range-I, Range-II and Range-IV.

months and even the notices (in Form-VIII) for hearing had not been issued to the parties in 5,555 out of 7,095 cases.

Audit test checked 1,504 instruments where the hearing notices were not issued and found that stamp duty and registration fees were paid by the registrants on the set forth value of ₹ 68.66 crore instead of the market value of ₹ 314.17 crore subsequently assessed by the RAs. Delay in adjudication of these cases resulted in non-realisation of stamp duty and registration fees of ₹ 20.01 crore.

After Audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that instructions in this regard had been issued to the respective ROs toward compliance of the same.

Government may consider taking up a special drive for disposal of the pending cases pertaining to the pre-CORD registration period and initiate certificate proceedings²⁹ to recover the arrears of revenue.

5.6.11 Internal control mechanism

Internal Control is an integral component of an organisation's management processes established in order to provide reasonable assurance that the organisation's operation are carried out effectively, economically and efficiently. Evaluation of internal control mechanism in the administration of stamp duty and registration fees revealed deficiencies in the administrative, operational and monitoring controls. Deficiencies in the internal control mechanism of the department are discussed in the succeeding paragraphs:

5.6.11.1 Non-existence of Manual

Audit observed that the Directorate did not prepare any Office Procedure Manual for the working of the Directorate where segregation of duties, power, role and responsibility of various registering authorities and Collectors are documented.

After audit pointed this out, the Directorate stated (September 2013) that the procedure specified in relevant Acts and Rules were followed in this regard. However, no reply had been furnished regarding the absence of the manual.

5.6.11.2 Absence of target for inspection of Public Offices

Under Section 73 of the IS Act, 1899 the Collectors are authorised to inspect the Public Offices to detect any fraud or omission of duty in respect of documents executed/presented in those offices.

Audit found that the department did not prescribe any norm/target for the inspection of the Public Offices by the Collectors. In the absence of such monitoring, the department could not ensure that the documents executed in the Public Offices are duly stamped and the documents compulsorily registrable are presented in the Registration Offices.

²⁹ Certificate proceeding is a process of referring the case to the Certificate Officer for recovery of arrears of revenue.

The Directorate did not furnish specific reply to the audit observation (September 2013).

5.6.11.3 Absence of target for inspection of Registration Offices

Under Rule 5A of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001, the Collectors are required to inspect the Registration Offices (RO) and to check the documents registered through the CORD software by random selection to assure that market value of the properties had been generated correctly from the CORD software. If the market value of any property has not been generated correctly due to non-furnishing of correct particulars of the property, the Collector shall determine the market value and the stamp duty payable thereon.

Audit found that the department did not fix the periodicity of inspection of ROs by the Collectors. The methodology of selection of the documents was also not prescribed. In the absence of prescribed norms, the efficiency and effectiveness of the inspections conducted by the Collectors could not be ascertained in audit.

After Audit pointed this out, the Directorate stated (September 2013) that collectors were asked to inspect five ROs and requested to submit report thereon after the end of each quarter. The fact, however, remains that no periodicity of inspection was prescribed. Regarding the methodology of selection of deeds, the Directorate did not furnish any reply.

5.6.11.4 Lack of reports/returns and improper maintenance of records

Reports/returns are important tools of an effective internal control mechanism. Proper maintenance of the prescribed records/registers are essential for preparation of correct and complete reports/returns.

Audit observed that the department did not prescribe any report/return on arrears of revenue to be submitted by the registering authorities. In absence of such returns, the department was not aware of the position of arrears of revenue and their progressive realisation. Under Rule 3(8) of the West Bengal Stamp (Prevention of Undervaluation of Instrument) Rules, 2001, the registering authorities shall, on determination of market value of the properties in respect of deeds registered provisionally, record the particulars thereof in Form-VA. The cases referred to the Collector under Section 47A of the IS Act by the registering authorities, for adjudication, is required to be maintained in Form-VI. Audit observed that the registers prescribed for pending documents and for the documents referred to the Collector were either not maintained or maintained improperly, leaving some vital columns blank.

After audit pointed this out, the registering authorities accepted that the registers were not maintained properly. The Directorate stated (September 2013) that report on arrears of revenue was obtained from time to time. Reply is not tenable as in the absence of the prescribed register which is basis for preparation of correct and complete reports, the authenticity of the report on arrears of revenue, as stated to be obtained, could not be ensured.

5.6.12 Non-existence of Internal Audit Wing

The internal Audit Branch set up in November 1998 under the Finance Department conducts internal audit in various departments. Audit found that the Directorate of Registration and Stamp Revenue did not have any Internal Audit Wing of its own. Further, the Department of Internal Audit of the State Government had not conducted audit of the Directorate during 2007-08 to 2011-12.

Other points of interest

5.6.13 Under mobilisation of revenue due to non-implementation of the Finance Act, 2011

As per Section 2(2)(c) of the Finance Act, 2011 published under Gazette Notification No. 1070L dated 30.08.2011, the rate of stamp duty on deed of gift in favour of family members was enhanced from 0.5 *per cent* to two *per cent*. The department was required to issue notification giving effect to the change brought out in the Finance Act, 2011 in order to levy stamp duty at the enhanced rate.

Audit found that the department has not issued any notification to levy stamp duty at the enhanced rate even after a lapse of 18 months. Audit analysed the CORD data of all the 21 ROs and found that in 42,838 cases, gift deeds in favour of the family members were executed between October 2011 and March 2013. The market values of the gifted properties were assessed at ₹ 4,674.92 crore on which stamp duty of ₹ 23.91 crore at the existing rate was paid by the donees. Had the enhancement of duty been done by the department and enhanced rates applied, additional stamp duty of ₹ 69.62 crore could have been realised.

After Audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that the matter was pending with the Government.

5.6.14 Irregular allowance of remission

As per Section 9(1)(a) of the IS Act, read with G.O. No. 865-F.T. dated 21.05.2008, Government of West Bengal, Finance Department (Revenue Branch) had remitted stamp duty and registration fees in full on the execution of lease deed in favour of the West Bengal Industrial Development Corporation Limited (WBIDCL), a Government of West Bengal undertaking. However, the said remission was not available for any subsequent transfer of the same land by the WBIDCL to the sub-lessees or transferees.

Audit noticed from the records of the WBIDCL in July 2013 that in one case WBIDCL allotted 315.41 acres of land in Sahachawk Industrial Park in Paschim Midnapore to one private firm on lease for a term of 99 years for setting up industries against premium of ₹ 5.30 crore and annual lease rent of ₹ 1.58 lakh. The lease deed was executed between the WBIDCL and the company in September 2009 and was presented before the Additional Registrar of Assurance-III, Kolkata for registration. Audit found that though stamp duty and registration fees of ₹ 37.95 lakh was chargeable on the lease deed, RA remitted stamp duty and registration fees in full in contravention of

the Government order of May 2008. This resulted in irregular allowance of remission of ₹ 37.95 lakh.

After audit pointed this out, the Directorate stated (September 2013) that the case would be verified.

5.6.15 Conclusion

Performance Audit has brought out a number of system as well as compliance deficiencies which resulted in evasion of stamp duty and registration fees. Audit found that due to absence of a system of sharing of information between the Public Offices and the Registration Offices relating to execution/submission of documents in the Public Offices, the department could not detect cases of unduly stamped instruments executed/submitted in those Public Offices. Due to lacunae in the Acts/Rules, there has been avoidance of additional stamp duty by splitting of instruments. Incorrect mapping of the business rules in the CORD software resulted in short-levy of stamp duty. Due to improper scrutiny of the deeds, stamp duty and registration fees were evaded by the property owners through undervaluation of properties by furnishing incorrect property details. Deeds were misclassified by the RAs resulting in short-levy of stamp duty and registration fees. Further, potential revenue could not be mobilised by the department due to non-implementation of the Finance Act, 2011.

5.6.16 Summary of recommendations

To improve the effectiveness of the state machinery for better management of the receipts from stamp duty and registration fees, the Government may:

- consider framing provisions for compulsory sharing of information by the Public Officers with the Registering Authorities relating to instruments executed in their offices in relation to the construction, development, sale, lease or transfer of any immovable property;
- implement the system of regular inspection of the Public Offices to ensure collection of proper stamp duty and registration fees;
- consider devising a system to check splitting of property with an intent of avoidance of payment of additional stamp duty;
- incorporate all business rules properly in the CORD software for correct levy of stamp duty;
- direct the RAs to check the deeds scrupulously with respect to the market value assessment slips generated through the CORD software to detect the mismatch of particulars of properties to avoid evasion of stamp duty;
- consider stipulating a timeframe for disposal of pending cases and recovery of due taxes; and
- establish an effective internal audit wing of its own to ensure that various provisions of the Acts and Rules are properly administered for effective tax administration.

CHAPTER-VI

Other Tax Receipts

EXECUTIVE SUMMARY	
Tax administration	This Chapter contains cases on receipts from the State Excise and the Profession Tax. The assessment and collection of Excise duty and Profession Tax are governed by separate sets of Acts and Rules. These taxes are administered by the Excise Department and the Finance (Revenue) Department respectively, headed by the Principal Secretary (Finance) who is assisted by the concerned Directorates.
Results of audit conducted in 2012-13	<p>In 2012-13, test check of the records of 34 units relating to Excise Duty and other Fees, Profession Tax, Amusement tax and Electricity Duty indicated underassessment of tax and other irregularities involving ₹ 44.37 crore in 152 cases.</p> <p>The departments accepted underassessment and the other deficiencies of ₹ 5.89 crore in 74 cases, of which 47 cases involving ₹ 5.40 crore were pointed out in audit during the year 2012-13 and the rest in the earlier years. An amount of ₹ 87.80 lakh was realised in 28 cases during the year.</p>
What has been highlighted in this Chapter	In this Chapter illustrative cases of ₹ 2.49 crore selected from the observations noticed during the test check of records of the office of the Collector of Excise, Kolkata (South) and Superintendent of Excise, South 24 Parganas and the unit offices of Profession Tax have been highlighted.
Conclusion	Improper monitoring and inaction on the part of concerned authorities resulted in excess allowance of handling wastage in Excise Department, non-detection of unregistered professionals and non-recovery of profession tax in Finance Department.

CHAPTER VI : OTHER TAX RECEIPTS

6.1 Tax administration

Assessment and collection of Excise duty and other Fees, Profession Tax, Amusement Tax and Electricity Duty are governed by separate sets of Acts and Rules. These taxes are administered by the Excise Department and the Finance (Revenue) Department headed by the Principal Secretary (Finance) who is assisted by the concerned Directorates.

6.2 Results of audit

In the year 2012-13, Audit test checked the records of 34 units relating to Excise Duty and other Fees, Profession Tax, Amusement Tax and Electricity Duty and found underassessment of tax and other irregularities amounting to ₹ 44.37 crore in 152 cases falling under the following categories:

Table 6.1 – Results of audit

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
A. STATE EXCISE			
1	Non/short realisation of excise duty to short yield of alcohol/beer etc.	01	32.30
2	Non/short levy of excise duty/wastage fee on chargeable wastage of Rectified Spirit/India Made Foreign Liquor	07	2.29
3	Non/short realisation of privilege fee/additional fee/licence fee/renewal fee/initial grant fee/pass fee etc.	29	2.33
4	Non/short realisation of establishment cost/fee	03	0.22
5	Loss/blockage of revenue	01	0.08
6	Other cases	27	0.76
Total		68	37.98
B. PROFESSION TAX			
1	Non-realisation of demand of Profession tax against enrolled certificate holders	05	0.10
2	Non-realisation of profession tax due to non-enrolment	24	0.44
3	Non-realisation of profession tax due to non-assessment	04	0.06
4	Other cases	07	0.85
Total		40	1.45
C. AMUSEMENT TAX			
1	Non/short realisation of Entertainment/ Luxury/ Amusement tax etc.	19	1.15
2	Non imposition of penalty	03	0.37
3	Other cases	05	0.05
Total		27	1.57
D. ELECTRICITY DUTY			
1	Short raising of demand	01	1.07
2	Non/short assessment and non/short realisation of Electricity duty	09	2.11
3	Non-levy/realisation of interest on delayed payment of Electricity duty	03	0.18
4	Other cases	04	0.01
Total		17	3.37
Grand Total		152	44.37

During the year, the departments accepted underassessment and other deficiencies of ₹ 5.89 crore in 74 cases, of which 47 cases involving ₹ 5.40 crore were pointed out in the year 2012-13 and the rest in the earlier years. An amount of ₹ 87.80 lakh was realised in 28 cases during the year.

A few illustrative cases involving ₹ 2.49 crore are mentioned in the following paragraphs.

6.3 Audit observations

Scrutiny of records in the offices of the Collector of Excise, Superintendent of Excise, Deputy Commissioners of Profession Tax (DCPTs) and Profession Tax Officers (PTOs) indicated non-realisation of wastage fee on handling wastage, non-realisation of profession tax due to non-enrolment and non-raising of demand of profession tax as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out in audit. Such omissions were pointed out in audit repeatedly but not only did these persist, but also remained undetected till next audit. There is need to improve the internal control system in these departments so that recurrence of such lapses is avoided.

STATE EXCISE

6.4 Non-realisation of wastage fee on handling wastage

Rule 38(2) of the Consolidated Rules framed under Section 86 of the Bengal Excise (BE) Act, 1909 provides that if the wastage in handling of spirit exceeds 0.25 per cent of the total quantity of spirit handled in a year, the licensee shall be required to pay a wastage fee at the rate of ₹ 186 per LPL¹ on such excess wastage within a week on demand by the Collector.

During scrutiny of records relating to stock taking of a country spirit bottling plant and a distillery under the Collector of Excise, Kolkata (South) and the Superintendent of Excise, South 24 Parganas, it was found that the licensees handled 4.55 crore LPL of spirit between 2010-11 and 2011-12. The permissible handling wastage in respect of these quantities of spirit was 1.14 lakh LPL, against which the licensees had availed wastage of 2.19 lakh LPL, leading to non-realisation of wastage fee of ₹ 1.96 crore. Though excess wastage had come to notice of the excise authorities during annual stock taking in April 2011 and April 2012, they did not initiate any action as per the provisions of the BE Act and Rules to raise demand and realise the wastage fee.

The Department admitted (September 2012 and May 2013) the audit observations in both the cases and stated that demand notices were being issued but had not reported any realisation (November 2013).

The Government accepted (September 2013) the audit observation and stated that in one case ₹ 6.46 lakh was realised and in the other case demand was raised. Their report on further realisation is awaited (November 2013).

PROFESSION TAX

6.5 Non-realisation of Profession Tax due to non-enrolment

Sections 3(2) and 5(2) of the West Bengal State Tax on Professions, Trades, Callings and Employments (WBSTPTCE) Act, 1979 provide that every

¹ London Proof Litre (LPL). London Proof means the strength or proof as ascertained by means of Sykes Hydrometer and denotes that spirit which at the temperature of 51 degree Fahrenheit weighs exactly 12/13th part of an equal measure of distilled water.

person coming under the purview of the Act shall obtain a certificate of enrolment from the prescribed authority and pay tax at the prescribed rates.

Scrutiny of records from 14 licence issuing offices² and eight unit offices³ of profession tax revealed that 914⁴ professionals had not enrolled themselves with the prescribed authority and continued their professions without payment of any profession tax between 2008-09 and 2011-12. The Profession Tax Officers (PTOs) also failed to bring these persons under the tax net and recover tax from them at the prescribed rates, leading to evasion of profession tax of ₹ 33.06 lakh.

Seven PTOs⁵ admitted the audit observations in 905 cases involving ₹ 32.61 lakh and stated that ₹ 3.19 lakh has been realised. Their report on further realisation is awaited. In the remaining nine cases involving ₹ 0.45 lakh, one PTO⁶ did not furnish any specific reply (November 2013).

The Government accepted (September 2013) the audit observation but did not furnish any report on further action taken (November 2013).

6.6 Non-raising of demand of Profession Tax

Section 8 of the WBSTPTCE Act, 1979 provides that any person who stands enrolled before the commencement of the year is liable to pay profession tax at the prescribed rates (ranging from ₹ 216 *per annum* to ₹ 2,500 *per annum*) before 31st July of that year. Further, Rule 15 (2) of the WBSTPTCE Rules, 1979 provides that in case of non-payment, the PTO shall serve a notice of demand directing the defaulter to pay the dues within 15 days from the date of receipt of notice. Section 10 provides for levy of penalty upto 50 *per cent* of the unpaid tax.

In four⁷ unit offices between November 2011 and September 2012, it was seen that 333 enrolled persons⁸ did not pay profession tax for various periods between 2009-10 and 2011-12. However, the PTOs did not serve the demand notice to the defaulters resulting in non-realisation of profession tax of ₹ 20.17 lakh and penalty as leviable.

² Agricultural Income Tax Officer, Purulia; Assistant Registrar of Co-operative Societies, Jalpaiguri; Chief Medical Officer of Health (CMOH), Barasat; CMOH, Birbhum; CMOH, Nadia; CMOH, Purba Medinipur; CMOH, Purulia; CMOH, South 24 Parganas; Municipality, Barasat; Municipality, Chinsurah; Municipality, Hooghly ; Municipality, Jalpaiguri; Municipality, Serampur and Regional Transport Officer, Purba Medinipur.

³ DCPT,WBCU-V, Barasat; DCPT,WBNU-II, Jalpaiguri; DCPT,WBSU-II, Serampur; DCPT,WB Unit-V, Purulia; PTO, WBCU-II, Krishnanagar; PTO,WBCU-VII, Baruipur; PTO,WBSU-IV, Tamluk and PTO,WBWU-VI, Suri, Birbhum.

⁴ Banquet/Marriage hall-15, Beauty parlours-27, Cable operators-152, Computer training centres-17, Courier service-5, Cyber cafes-20, District level co-operative societies-211, Motor training institute-8, Nursing Homes, Diagnostic centres, Pathological laboratories, etc.-432, Private schools-6, Residential hotels-20 and Security agency-1.

⁵ DCPT,WBCU-V, Barasat; DCPT,WBNU-II, Jalpaiguri; DCPT,WBSU-II, Serampur; DCPT,WB Unit-V, Purulia; PTO, WBCU-II, Krishnanagar; PTO,WBCU-VII, Baruipur and PTO,WBSU-IV, Tamluk.

⁶ PTO,WBWU-VI, Suri, Birbhum.

⁷ DCPT/WBWU-V, Purulia; JCPT/Special Range; PTO/WBCU-VII, Baruipur and PTO/WBWU-IV, Bankura.

⁸ Companies-149, Money lenders-46, Owners of nursing homes and pathological laboratories-28, Rice mill owners-45, and Miscellaneous professionals-65.

On pointing out these cases, the PTOs admitted (between November 2012 and July 2013) the audit observations and stated that an amount of ₹ 7.58 lakh was realised. The report on further realisation is awaited (November 2013).

The Government accepted (September 2013) the audit observation but did not furnish any report on further action taken (November 2013).

CHAPTER-VII

Mines and Minerals

EXECUTIVE SUMMARY	
Tax administration	Assessment and collection of mining receipts are governed by the Mines and Minerals (Development and Regulation) [MMDR] Act, 1957, the West Bengal Minor Minerals (WBMM) Rules, 2002, the Public Demands Recovery (PDR) Act, 1913, the Cess Act, 1880, the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976.
Very low recovery by the Department against observations pointed out by audit	During 2008-09 to 2012-13, audit pointed out non/short levy, non/short realisation, underassessment/loss of revenue etc with revenue implication of ₹ 376.95 crore in 20 paragraphs. Of these, the department/Government had accepted audit observations in 16 paragraphs involving ₹ 141.27 crore and had since recovered ₹ 1.38 crore which was only 0.98 <i>per cent</i> .
Results of audit conducted in 2012-13	<p>In 2012-13, test check of records of 12 units relating to mining receipts indicated underassessment of tax and other irregularities involving ₹ 11.70 crore in 85 cases.</p> <p>The department accepted underassessment and other deficiencies in 87 cases of ₹ 8.18 crore, of which 78 cases involving ₹ 7.60 crore were pointed out during the year 2012-13 and the rest in the earlier years. An amount of ₹ 35.86 lakh was realised in nine cases at the instance of audit during the year.</p>
What has been highlighted in this Chapter	<p>In this Chapter cases of non/short realisation of price of brick earth extracted unauthorisedly, non/short realisation of royalty and cess on brick earth and non-realisation of royalty, penalty and fine due to lack of co-ordination between the assessing authority and the realisation authority noticed during the test check of records of the District Land and Land Reforms Offices, Block Land and Land Reforms Offices and the Mining Office, Purulia amounting to ₹ 2.72 crore have been presented.</p> <p>Other similar omissions on the part of the assessing authorities were pointed out by audit repeatedly, but the irregularities persisted and these remained undetected by them till these were detected once</p>

	again in audit. The irregularities/omissions were apparent from records made available to audit by the department; however they were unable to detect these mistakes.
Conclusion	The Government may revamp the recovery mechanism to ensure that the amount involved in accepted cases is promptly recovered.

CHAPTER VII: MINES AND MINERALS

7.1 Tax administration

The mining receipts comprise mainly the application fees for lease/permits for reconnaissance, prospecting and reserve licences, royalty for extraction of major and minor minerals, dead rent, surface rent, fines and penalties for offences and interest for delayed payment of dues etc. Primary Education cess, Rural Employment cess, Public Works cess and Road cess are also realised from the holders of quarry permits and mining leases.

Assessment and collection of mining receipts are governed by the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957, the West Bengal Minor Minerals (WBMM) Rules, 2002, the Public Demands Recovery (PDR) Act, 1913, the Cess Act, 1880, the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976.

Four departments viz. Commerce and Industries (C&I) Department, Finance Department, Land and Land Reforms (L&LR) Department and the General Administration Department are associated with the assessment, levy and collection of mining receipts. All departments are headed either by an Additional Chief Secretary or Principal Secretary/Secretary level officer and assisted by Director and district level officers.

7.2 Revenue impact of audit reports

During the last five years (including the current year's report), Audit pointed out through its reports non/short levy, non/short realisation, underassessment/loss of revenue etc., with revenue implication of ₹ 376.95 crore in 20 paragraphs. Of these, the department/Government had accepted audit observations in 16 paragraphs involving ₹ 141.27 crore and had since recovered ₹ 1.38 crore. The details are shown in the following table:

Table 7.1 – Revenue impact of audit reports

(₹ in crore)

Year of audit report	Paragraphs included		Paragraphs accepted by the department		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2008-09	05	1.59	04*	1.43	03	0.10
2009-10	03	4.30	02*	4.22	02	0.26
2010-11	04	2.98	04	2.98	04	0.42
2011-12	05	365.36	03*	129.92	02	0.07
2012-13	03	2.72	03	2.72	03	0.53
Total	20	376.95	16	141.27	14	1.38

* partly accepted.

The amount recovered was only 0.98 *per cent* in the accepted paragraphs which was very low.

The Government may revamp the recovery mechanism to ensure that the amount involved in accepted cases is promptly recovered.

7.3 Working of internal audit wing

There was no separate Internal Audit Wing (IAW) for the units related to mining receipts. As the mining activities are regulated by Land and Land Reforms (L&LR) Department, the IAW of the L&LR Department is liable to conduct audit of the units involved in regulation of mining activities. The internal audit wing of the L&LR Department was re-introduced in the year 2007-08 with the objective of fulfilling accountability, obligations, complying with applicable rules and regulations, executing orderly and effective operations and safeguarding resources against loss. Performance of the IAW of L&LR has already been discussed in Para 3.5 of this report.

7.4 Results of audit

In 2012-13, Audit test checked the records of 12 units relating to mining receipts and found underassessment of tax and other irregularities involving ₹ 11.70 crore in 85 cases which fall under the following categories:

Table 7.2 – Results of audit

(₹ in crore)			
Sl. no.	Categories	No. of cases	Amount
1.	Non/short assessment/realisation of price of minor/major minerals extracted unauthorisedly	20	3.66
2.	Non/short assessment/levy/realisation of royalty and cess	37	1.78
3.	Penalty for underperformance	7	3.99
4.	Non/short raising of demand	12	1.35
5.	Other cases	9	0.92
Total		85	11.70

During the year, the department accepted underassessment and other deficiencies in 87 cases of ₹ 8.18 crore, of which 78 cases involving ₹ 7.60 crore were pointed out during the year 2012-13 and the rest in earlier years. An amount of ₹ 35.86 lakh was realised in nine cases during the year.

A few illustrative cases involving ₹ 2.72 crore are mentioned in the following paragraphs.

7.5 Audit observations

Scrutiny of records in the offices of the District Land and Land Reforms Offices and the Block Land and Land Reforms Offices indicated non/short realisation of price of brick earth extracted unauthorisedly, non/short realisation of royalty and cess on brick earth and non-realisation of royalty, penalty and fine due to lack of co-ordination between the assessing and the realisation authority as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test checks carried out in audit. There is a need for the Government to improve the internal control system including internal audit so that recurrence of such irregularities is avoided.

7.6 Non/short realisation of price of brick earth extracted unauthorisedly

Section 4(1) of the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 prescribes that no person shall undertake any mining operation in any area except under the authority of a permit/licence of a mining lease granted under the Act. In addition, under Section 21(5) of the Act in the event of unauthorised extraction of minerals the Department is empowered to recover either the minerals raised unlawfully or where such minerals have already been disposed of, the price thereof. By an order issued in September 1984, the Board of Revenue, West Bengal fixed the price of brick earth as ₹ 30 per 100 cubic feet (cu ft) for the year 1981 with an increase of ₹ 1.50 per 100 cu ft each year.

In seven¹ District Land and Land Reforms Offices (DL&LROs), audit found that in 271 cases, the brick field owners had extracted 3.68 crore cu ft of brick earth between 2008-09 and 2010-11 without any permit/licence as required. In 65 cases, the price of brick earth (₹ 0.72 crore) was not realised, while in the remaining 206 cases, there was short realisation of ₹ 0.96 crore due to application of rates lower than the prescribed rate. Thus there was total non/short realisation of price of brick earth of ₹ 1.68 crore.

After it was pointed out, DL&LROs in 101 cases involving ₹ 67.89 lakh admitted the audit observations without reporting any action towards realisation. In the remaining 170 cases involving ₹ 99.93 lakh, DL&LROs did not furnish any specific reply (November 2013).

The Government accepted (September 2013) the audit observation and stated that ₹ 48.42 lakh was realised in 142 cases but did not submit any report on realisation of the balance amount (November 2013).

7.7 Non /short realisation of royalty and cess on brick earth

Rule 27(1) of the West Bengal Minor Minerals (WBMM) Rules, 2002 provides that the district authority or any other officer authorised in this behalf by the State Government may grant quarry permit to any person to extract any minor mineral on pre-payment of royalty at prescribed rates. Further, under

¹ Birbhum, Burdwan (East), Nadia, North 24 Parganas, Paschim Medinipur, Purba Medinipur and South 24 Parganas.

the provisions of the Cess Act, 1880 (as amended in 1984), the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976, the holders of quarry permits are liable to pay different types of cesses at prescribed rates on extraction of minor minerals.

In three² DL&LROs, the brick field owners continued to extract brick earth between 2008-09 and 2010-11 without any advance payment of royalty and cess as required; neither was any prior permit taken by them as required for extraction of brick earth. Further, in 26 instances, it was seen that although the brick field owners had extracted 38.45 lakh cu ft of brick earth, neither did the owners pay the royalty and cess amounting to ₹ 12.89 lakh, nor was any action initiated by the DL&LROs to realise these dues. In other four cases, the brick field owners extracted 6.75 lakh cu ft of brick earth and paid royalty and cess of ₹ 0.87 lakh against ₹ 2.20 lakh, but the DL&LROs did not initiate any action to realise the differential amount. Thus, there was non/short realisation of royalty and cess totalling to ₹ 14.22 lakh in these 30 cases.

The DL&LROs admitted the audit observations but failed to report any further realisation (November 2013).

The Government accepted (September 2013) the audit observation and stated that ₹ 2.78 lakh was realised in six cases but did not submit any report on realisation of the balance amount (November 2013).

7.8 Non-realisation of royalty, penalty and fine due to lack of co-ordination between the assessing and the realisation authority

Assessment and collection of mining receipts are governed by the MMDR Act, 1957 and the WBMM Rules, 2002. The Commerce and Industries Department's order no.1871-Mines dated 11.04.1969 prescribes procedures for assessment of royalty etc. payable to the State Government on account of Mines and Minerals. As per the order, the Mining Officer shall make assessment in respect of royalty, dead rent and other charges (except cases of short term leases for minor minerals) and forward the assessment report to the DL&LRO for realisation.

During scrutiny of lease deed agreements alongwith case records of the mining leases in the Mining Office (MO) at Purulia, it was found that the West Bengal Mineral Development and Trading Corporation (WBMDTC) Ltd. had extracted 2,545.22 cubic metre (cu m) of Black Stone against the minimum prescribed quantity of 2,05,000 cu. m as per the lease deed during the period from 31.01.2005 to 30.06.2008. The MO, Purulia assessed that there were dues (WBMDTC) of ₹ 90.08 lakh on account of royalty, penalty for short extraction and fine for delayed submission of monthly returns. The assessment report was sent to the DL&LRO, Purulia in March 2009 for raising the demand; however DL&LRO, Purulia stated that it was not received till the date of audit (March 2011). This led to consequent non-realisation of revenue of ₹ 90.08 lakh. It was also noticed that there was no system of co-ordination between assessing (the MO) and realisation authority (the DL&LRO) to

² North 24 Parganas, Paschim Medinipur and South 24 Parganas.

monitor receipt of assessment reports, raising of demands and other follow-up action taken on the basis of such reports.

The MO, Purulia (March 2011) and the DL&LRO, Purulia (May 2013) admitted the audit observation. Their report on realisation is awaited (November 2013).

The Government accepted (September 2013) the audit observation and stated that ₹ 2.01 lakh was realised and for realisation of the remaining amount, efforts were being undertaken. Their report on further action taken is awaited (November 2013).

Kolkata

(MAUSUMI RAY BHATTACHARYYA)
Accountant General
(Economic and Revenue Sector Audit),
West Bengal

Countersigned

New Delhi

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

APPENDICES

Annexure-I**(Ref: Para-1.4)****Units planned and audited in 2012-13**

Category/Nature of Audit	Total number of units	Audit planned	No. of units audited
Value Added Tax			
Sales Tax/VAT units consisting of Corporate Division; DCT; Charge offices; Cess on Petrol, diesel etc. and Check Posts	85	43	41
Other Receipts			
State Excise (Receipt cum expenditure)	27	10	10
Stamp Duty and Registration Fees including Non-Judicial Stamp(Receipt cum expenditure)	268	55	64
Motor Vehicles Tax	27	14	14
Amusement Tax	22	09	08
Profession Tax	30	13	11
Agricultural Income Tax	4	1	0
Land Revenue	21	09	09
Minor Minerals and Mining Receipts	28	12	12
Electricity Duty	21	5	5
Departmental Receipts	2	0	1
Total	535	171	175

Annexure – II

(Ref: Para- 5.6.5.2)

(₹ in lakh)

Sl No	Name of the liquidated company	Schedule of the property purchased	Date of auction	Amount of auction bid money paid	SD payable	RF payable	Total SD&RF Payable
			Date of confirmation				
1	M/s Kanoria Wisconsin Centrifugal Ltd.	5.248 acre of lease hold land at C-4, Industrial Growth Centre, Goyespore, Kalyani, Nadia	07.05.2007	195.00	13.65	2.15	15.80
			07.05.2007				
2	M/s Jenson & Nicholson Financial Services Ltd.	Flat No-05 (Southern Portion), 2nd floor, 4B, Orient Row, P.S. Beniapukur, Kolkata	22.06.2007	21.00	1.26	0.23	1.49
			22.06.2007				
3	M/s Kero Rajendra Monolithics Ltd.	Barzora Thana, Bankura, West Bengal	21.09.2010	79.00	5.53	0.87	6.40
			01.10.2010				
4	M/s The Memorial Finance & Investment India Ltd.	4,835 sft Flat at 35, A.P.C Road, Kolkata	28.09.2010	132.00	9.24	1.45	10.69
			01.10.2010				
5	M/s Rehabilitation Industrial Corporation Ltd.	25, Mirza Galib Street, Kolkata – 700016	21.06.2011	2,428.50	170.00	26.71	196.71
			08.07.2011				
Total				2,855.50	199.68	31.41	231.09

Annexure – III

(Ref: Para- 5.6.7.1)

(₹ in crore)

Name of the registration office	Nature of the property	No of cases	Market value of the properties	Short levy of stamp duty
ADSR, Howrah	Land	7,339	319.47	3.19
	Flat	710	37.34	0.37
ARA-I, Kolkata	Land	1,176	208.59	2.09
	Flat	70	7.42	0.07
DSR, Howrah	Land	12,345	854.18	8.54
	Flat	984	75.13	0.75
Total		22,624	1,502.13	15.01

Annexure – IV**(Ref: Para- 5.6.7.1)****(₹ in lakh)**

Name of office	Police Station by which the Notified Area is administered	Nature of properties	No of cases	Market value of properties	Short levy of SD
ADSR, Bidhannagar	Rajarhat	Land	3,977	31,629.00	316.29
		Flat	397	3,277.00	32.77
ADSR, Bolpur	Bolpur	Land	636	805.55	8.05
ADSR, Burdwan	Burdwan	Land	9,472	26,651.56	266.51
		Flat	15	146.22	1.46
ARA-I, Kolkata	Kolkata Leather Complex	Land	205	1,409.22	14.09
ARA-II, Kolkata	Rajarhat	Land	924	16,399.00	163.99
		Flat	201	3,763.00	37.63
DSR-III, Alipore	Kolkata Leather Complex	Land	300	3,203.49	32.03
		Flat	16	291.76	2.92
Total			16,143	87,575.80	875.74

Annexure – V**(Ref: Para- 5.6.9.1)****(₹ in lakh)**

Name of the office	Year	Nature of irregularity	Market value of the property	Stamp duty leviable	Stamp duty levied	Short-levy of stamp duty
ADSR, Cossipore	2012	Deed of conveyance was misclassified as gift deed in favour of family members.	16.24	0.97	0.08	0.89
ARA-II	2012	Relationship between the donor and donee was not established. Further, the gift was made in pursuance of an arbitration award and thus was not voluntary in nature.	583.71	40.86	2.92	37.94
	2012	Gift was made in favour of sister-in-law, nephew and nieces of the doner not covered in the definition of family.	30.77	2.15	0.15	2.00
ARA-III	2010	Family relationship was not established.	5.71	0.34	0.03	0.31
DSR-III, Alipore	2011	Family relationship was not established.	8.50	0.51	0.04	0.47
Total			644.93	44.83	3.22	41.61