REPORT OF THE
COMPTROLLER AND AUDITOR GENERAL
OF INDIA

FOR THE YEAR ENDED
31 MARCH 2014

(REVENUE SECTOR)
GOVERNMENT OF MAHARASHTRA

REPORT NO 1 OF THE YEAR 2015

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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 of India for being laid before the State Legislature.

This Report contains significant results of the performance audit and compliance audit of the departments of the Government of Maharashtra under economic services (Revenue Sector). The results of audit of Sales Tax Department, Relief and Rehabilitation Department, Urban Development Department, Transport Department, State Excise Department and Finance Department have been included in the report.

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 2013-14 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 2013-14 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.

OVERVIEW

This Report contains 28 paragraphs, including three Performance Audits relating to non/short levy of taxes, duties, interest and penalty, etc., involving ₹ 255 crore. Some of the major findings are mentioned below:

I General

The total revenue receipts of the State during the year 2013-14 were ₹ 1,49,749.64 crore, of which the revenue raised by the State Government was ₹ 1,19,877.77 crore and receipts from Government of India was ₹ 29,871.87 crore. The revenue raised by the State Government constituted 80 *per cent* of the total net receipts of the State. The receipts from Government of India included ₹ 16,630.43 crore on account of the State's share of divisible Union taxes which registered an increase of 9.47 *per cent* over the previous year and ₹ 13,241.44 crore received as grants-in-aid.

(Paragraph 1.1.1)

At the end of June 2014, 11,241 audit observations involving ₹ 4,274.03 crore relating to 4,977 inspection reports issued up to 31 December 2013 were pending for settlement.

(Paragraph 1.5)

II Taxes on Sales, Trade, etc.

Audit of the "Refund and Refund Audit Branch" of the Sales Tax Department revealed the following:

- Delay in finalisation of 100 refund cases resulted in grant of interest of ₹ 8.18 crore which could have been avoided, had the cases been finalised within the stipulated time period.
- Irregularities, mistakes, excess set off/deferment of tax, inadmissible deductions and application of incorrect rates were noticed in the 19 Refund and Refund Audit units. This resulted in short levy of tax/incorrect grant of refunds aggregating to ₹ 4.38 crore.

(Paragraphs 2.4.3 to 2.4.7)

- Demands aggregating to ₹ 17.74 crore were raised after a lapse of four to nine months. No time limit was fixed by the Department for raising the demand. Besides, non-follow of the provisions of the Act resulted in non recovery of revenue amounting to ₹ 33.28 crore.

(Paragraph 2.4.8)

- The correctness of the interstate and export transactions having a tax effect of ₹ 8.72 crore could not be verified as the transactions were not supported by documentary evidence, correct and complete forms, etc.

(Paragraph 2.4.10)

Cross verification of the assessment records with the list of *hawala* dealers prepared by the Department revealed that a dealer had made purchases from three *hawala* dealers, though no set off was admissible, it was granted

incorrectly resulting in underassessment of tax including interest and penalty of ₹ 38.12 lakh.

(Paragraph 2.5.1)

In two cases, it was found that the tax was paid at the rate of four *per cent* instead of 12.5 *per cent*. Though, the assessing authority levied tax of ₹ 87.04 lakh at the rate of 12.5 *per cent*, but it omitted to levy penalty of ₹ 87.04 lakh resulting in short realisation of revenue to that extent.

(Paragraph 2.5.5)

III State Excise

Audit of the "Scheme for granting subsidy to grain based distilleries" revealed the following:

- The Finance and Planning Departments were not in favour of the subsidy scheme however, the Home Department went ahead with the scheme stating that its implementation would benefit farmers and improve production of grains. There was nothing on record to suggest that the subsidy scheme benefited grain producing farmers.

(Paragraphs 3.4.3 and 3.4.6)

- Though seven distilleries had submitted their letter of intent (LOI) and detailed plan for setting up of distilleries much before the notifications of the scheme and the profitability statements of three units indicated that these units would run in profit, despite this, subsidy to the extent 90.48 *per cent* of total subsidy was granted to them.

(Paragraph 3.4.4)

IV Stamp duty and Registration fees

A performance audit on "**Levy and Collection of Stamp Duty in adjudication cases"** revealed as under :

- Scrutiny of the information collected from the Inspector General of Registration, Pune revealed that 1.24 lakh cases involving revenue of ₹ 726.80 crore were outstanding as on 31 March 2014 at various stages.

(Paragraph 4.3.7)

- Payments made on account of components like rent, construction cost, brokerage charges etc. paid by the developer were incorrectly treated as obligation and stamped at 0.2 *per cent* instead of 5 *per cent* by treating it as a part of consideration for development agreement. This resulted in short levy of stamp duty and penalty of ₹ 13.04 crore in 36 instruments.

(Paragraphs 4.3.8.1 and 4.3.8.2)

- Consideration amount of ₹ 421.75 crore based on sharing of revenue between the developer and the owner, though mentioned in the instrument, was not considered for levy of stamp duty instead it was levied on the market value of the land of ₹ 66.86 crore. This resulted in short levy of stamp duty and penalty of ₹ 21.69 crore.

(Paragraph 4.3.8.3)

- Premium aggregating to ₹ 15.35 crore paid by a developer for additional FSI and water charges was not considered for levy of stamp duty. This resulted in short levy of stamp duty of ₹ 76.74 lakh in Collector of Stamps, Kurla.

(Paragraph 4.3.8.4)

- Construction cost of the area occupied by the tenants was omitted from determination of the market value in 83 cases. This resulted in short levy of stamp duty and penalty of ₹ 16.54 crore.

(Paragraphs 4.3.9.1 and 4.3.9.4)

- The adjudicating authorities treated "A- category cessed buildings" as non cessed buildings and applied incorrect FSI ratio of 1.33 instead 3 / 2.5. This resulted in short levy of stamp duty including penalty of ₹ 4.37 crore in six adjudicated cases.

(Paragraph 4.3.10)

- Transfer of Development Rights of 1.15 lakh sqft involving ₹ 11.25 crore was not taken into account for determination of the market value of the property. This resulted in short levy of stamp duty of ₹ 56.24 lakh and penalty of ₹ 11.25 lakh.

(Paragraph 4.3.11)

- Stamp duty of ₹ 23.89 lakh payable on a supplementary agreement executed in continuation of a joint development agreement (JDA) that had altered the contents of the JDA substantially was not levied. This resulted in short realisation of revenue to that extent.

(Paragraph 4.3.12)

- An amount of ₹ 200 crore received by the owner company was incorrectly treated as an unsecured loan/obligation, etc. instead of consideration for development agreement. The total consideration worked out to ₹ 235.67 crore. The Department levied stamp duty of ₹ 5.46 crore on the consideration amounting to ₹ 97.62 crore. This resulted in undervaluation of ₹ 138.05 crore involving stamp duty of ₹ 6.32 crore.

(Paragraph 4.3.13.1)

- Development agreement and lease agreements were misclassified as BOT agreements in three cases and stamp duty was levied at lesser rates. This misclassification of the instruments resulted in short levy of stamp duty of ₹ 4.81 crore in three cases.

(Paragraph 4.3.13.2)

- Instructions contained in ASR were not followed uniformly. In some cases FSI mentioned in the instruments was taken into consideration while in some cases it was not taken into consideration for determination of the market value of the properties. This resulted in undervaluation of the properties involving stamp duty ₹ 2.30 crore in eleven cases where FSI mentioned in the documents was not taken into consideration.

(Paragraph 4.3.14)

- There was shortfall in conducting audit by internal audit wing of IGR. No specific targets were set for auditing Collector of Stamps office by the IGR. Further, the Additional Controller of Stamps, Mumbai was not conducting audit of any of the Collector of Stamps under its control despite the huge revenue contributed by them.

(Paragraph 4.3.16)

We noticed that the Department had not determined the market values of property brought for registration in accordance with the rates prescribed in the ASR. This resulted in undervaluation of property in five cases involving stamp duty of ₹ 1.53 crore.

(Paragraph 4.4.1)

An area of 2,806.69 square meters was exempted from the levy of stamp duty though there was nothing on record to indicate that it was occupied by tenant. This incorrect exemption resulted in short levy of stamp duty of ₹ 76.98 lakh.

(Paragraph 4.4.2)

In one case, the Collector of Stamps, levied stamp duty and penalty of ₹ 26.24 lakh on the consideration of ₹ 4.77 crore mentioned in a document instead of the market value of ₹ 63.77 crore involving stamp duty of ₹ 3.18 crore resulting in short levy of stamp duty of ₹ 2.95 crore.

(Paragraph 4.4.8)

VI Other Tax Receipts and Non-tax Receipts

Maharashtra Tax on Buildings (with larger Residential Premises)

Performance Audit on **"Assessment, Collection and Accounting of Maharashtra Tax on Buildings (with larger Residential Premises)"** revealed the following:

- Audit noticed absence of a mechanism to ascertain effective utilisation of living space and the extent to which the objective of the Maharashtra Tax on Buildings (with larger Residential Premises) Act, 1979 (MTOB Act) was fulfilled.

(Paragraph 6.3.6.1)

- Notifications for levy and collection of MTOB were not issued in respect of 15 municipal corporations formed after 1989; of these, five corporations were levying and collecting the tax, while the remaining ten corporations were not collecting tax.

(Paragraph 6.3.6.2)

- Notification for fixation of rate of MTOB on capitalised value of properties was not issued. Non-realisation of revenue amounting to a minimum of ₹ 74.85 crore was due to inaction on the part of the Urban Development Department (UDD) to permit Municipal Corporation of Greater Mumbai (MCGM) to issue bills at provisional rates.

(Paragraph 6.3.6.3)

- The municipal corporations did not maintain a uniform database of properties, due to which the possibility of some properties remaining un-assessed could not be ruled out.

(Paragraph 6.3.6.4)

- We noticed that four municipal corporations had not remitted taxes amounting to ₹ 4.26 crore into Government Account. The information regarding non-remittance of revenue by the corporations was not available with the UDD.

(Paragraph 6.3.6.5)

- In four corporations 1,711 properties had escaped assessment resulting in non-realisation of revenue of ₹ 1.99 crore.

(Paragraphs 6.3.7.1 and 6.3.7.2)

Entertainments Duty

Entertainments Duty (ED) amounting to ₹ 1.83 crore was not recovered from 336 cable operators and 18 permit rooms/beer bars with live orchestra.

(Paragraphs 6.4.1 and 6.4.2)

Education cess and Employment Guarantee cess

EC and EGC aggregating ₹ 59.10 crore was collected by the three municipal corporations but it was not remitted into the Government treasury.

(Paragraph 6.6.3)

VII Finance Department, Government of Maharashtra, Directorate of Account & Treasuries

Performance Audit on **"IT audit of Government Receipts Accounting System (GRAS)"** revealed the following:

- Prescribed procedure for recording e-Receipts in the cash book was not followed in three offices under the Inspector General of Registration (IGR) and four offices of the State Excise Department.

(Paragraph 7.9.2)

- Reconciliation of e-Receipts was not carried out with the Principal Accountant General (Accounts and Entitlements). Further, reports with classification details required for reconciliation were not available for the user Departments.

(Paragraph 7.9.3)

- Technical documentation on the database was inadequate as the Data Dictionary descriptions of the fields were absent and the Entity Relation Diagram (ERD) was not available.

(Paragraph 7.9.4)

- Though the Government had made it mandatory to quote the users' IT PAN in e-challans for receipts exceeding ₹ 10,000, the instructions were

not followed in 1,45,272 cases. Further, validation checks in this regard were absent.

(Paragraph 7.10.1)

- Data of e-Receipts accounted by Pay and Accounts Office was uploaded to the GRAS website only for the period 2012-13, that too partially.

(Paragraph 7.10.2)

- There was absence of proper procedure for rectification of misclassification of heads of accounts. Further, misclassification of heads of accounts for the year 2013-14 involving an amount of ₹ 32.53 crore was noticed in two offices.

(Paragraph 7.10.4)

- Though the e-Receipts are required to be defaced after service to the user has been provided, same was not done so in respect of e-Receipts amounting to ₹ 14,503.95 crore for the period 2010-11 to 2013-14 in all the departments test checked.

(Paragraph 7.10.5)

- The user access controls to GRAS were weak as user IDs were allotted in the code name of the user office and shared by multiple individual users.

(Paragraph 7.11.3)

- The audit trail in the system was inadequate as transactions in the system lacked a unique identifier or transaction code.

(Paragraph 7.11.6)

CHAPTER I

GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by Government of Maharashtra during the year 2013-14, the State's share of divisible Union taxes and duties assigned to the State and Grants-in-aid received from Government of India (GoI) during the year and the corresponding figures for the preceding four years are mentioned in **Table 1.1.1**.

Table 1.1.1

(₹ in crore)

Sr. No.	Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
1.	Revenue raised by the State Government					
	Tax revenue[1]	59,106.33	75,027.09	87,608.46	1,03,448.58	1,08,597.96
	Non-tax revenue[2]	8,263.97 (8,352.61)	8,213.10 (8,225.04)	8,150.10 (8,167.70)	9,977.74 (9,984.40)	11,279.81 (11,351.97)
	Total	**67,370.30 (67,458.94)**	**83,240.19 (83,252.13)**	**95,758.56 (95,776.16)**	**1,13,426.32 (1,13,432.98)**	**1,19,877.77 (1,19,949.93)**
2.	Receipts from the Government of India					
	Share of net proceeds of divisible Union Taxes and duties	8,248.12	11,419.79	13,343.34	15,191.92	16,630.43
	Grants-in-aid	11,203.23	11,195.89	12,166.64	14,322.33	13,241.44
	Total	**19,451.35**	**22,615.68**	**25,509.98**	**29,514.25**	**29,871.87**
3.	**Total revenue receipts of the State Government (1and 2)**	**86,821.65 (86,910.29)**	**1,05,855.87 (1,05,867.81)**	**1,21,268.54 (1, 21,286.14)**	**1,42,940.57 (1,42,947.23)**	**1,49,749.64 (1,49,821.80)**
4.	**Percentage of 1 to 3**	**78**	**79**	**79**	**79**	**80**

The above table indicates that during the year 2013-14, the revenue raised by the State Government (₹ 1,19,877.77 crore) was 80 *per cent* of the total revenue receipts against 79 *per cent* in the preceding year. The balance 20 *per cent* of the receipts during 2013-14 was from the Government of India.

[1] For details – refer statement no. 11 – Detailed accounts of revenue by minor heads in the Finance Accounts of the Government of Maharashtra for the year 2013-14. Figures under the head 0020- Corporation Tax, 0021- Taxes on income other than corporation tax, 0022- Taxes on agricultural income, 0032-Taxes on wealth, 0037-Customs, 0038-Union Excise Duties, 0044 Service Tax – share of net proceeds assigned to State booked in the Finance Accounts under A- Tax revenue have been excluded from the revenue raised by the State and included in the State's Share of divisible Union Taxes in this statement

[2] Figures in brackets indicate gross receipts, the details of which are available in Statement No. 11 - Detailed accounts of revenue by minor heads in the Finance Accounts of the Government of Maharashtra for the year 2013-14.The figures above those in brackets are lower because of netting of expenditure on prize winning tickets from Lottery receipts.

1.1.2 The details of the tax revenue raised during the period 2009-10 to 2013-14 are given in **Table 1.1.2.**

Table 1.1.2

(₹ in crore)

Sr. No.	Head of revenue		2009-10	2010-11	2011-12	2012-13	2013-14	Percentage of increase (+)/ decrease (-) in 2013-14 over 2012-13
1.	Taxes on sales, trade etc.	BE[3]	25,806.00	32,915.05	42,074.24	48,773.70	57,973.50	
		Actual	30,170.70	38,934.47	46,796.91	55,855.27	57,760.74	(+) 3.41
	Central Sales Tax	BE	1,200.00	3,071.13	3,925.76	4,587.98	4,449.00	
		Actual	2,505.32	3,548.25	3,799.45	4,224.45	4,769.30	(+) 12.90
2.	State Excise	BE	4,800.00	5,800.00	8,500.00	9,450.00	10,535.00	
		Actual	5,056.63	5,961.85	8,605.47	9,297.11	10,101.12	(+) 8.65
3.	Stamp Duty and Registration fees	BE	9,600.00	10,478.86	15,677.14	15,730.00	17,403.08	
		Actual	10,773.65	13,515.99	14,407.49	17,548.25	18,675.98	(+) 6.43
4.	Taxes and Duties on Electricity	BE	3,000.00	3,800.00	4,400.00	4,809.93	5,830.00	
		Actual	3,289.32	4,730.26	4,831.09	5,895.68	6,083.90	(+) 3.19
5.	Taxes on Vehicles	BE	2,600.00	2,860.00	4,000.00	4,200.00	4,750.00	
		Actual	2,682.30	3,532.90	4,137.42	5,027.42	5,095.92	(+) 1.36
6.	Taxes on Goods and Passengers	BE	665.29	738.57	812.43	893.67	998.00	
		Actual	976.60	599.88	574.25	690.74	1,240.68	(+) 79.62
7.	Other taxes on Income and Expenditure- Taxes on Professions, Trades, Callings and Employments	BE	1,599.80	1,608.14	1,700.00	1,870.00	1,944.00	
		Actual	1,612.35	1,686.20	1,829.94	1,961.10	2,165.48	(+) 10.42
8.	Other Taxes and Duties on Commodities and Services	BE	944.19	918.81	1,099.36	1,378.67	1,642.38	
		Actual	1,325.39	1,422.31	1,662.63	1,874.34	1,614.82	(-) 13.84
9.	Land Revenue	BE	770.00	1,647.74	1,497.13	1,600.86	1,760.39	
		Actual	714.04	1,094.98	963.81	1,074.02	1,088.85	(+) 1.38
10	Others[4]	BE	2,064.51	2,558.67	3,116.74	3,992.15	5,012.47	
		Actual	0.03	0.00	0.00	0.20	1.17	(+) 754.29
Total		**BE**	**53,049.79**	**66,396.97**	**88,632.74**	**97,286.96**	**1,12,297.82**	
		Actual	**59,106.33**	**75,027.09**	**87,608.46**	**1,03,448.58**	**1,08,597.96**	**(+) 4.98**

Source: Finance Accounts

It would be seen from the above that -

- actual receipts in each year was more than the BE of the respective years except during 2011-12 and 2013-14.

[3] BE – Budget Estimates
[4] Includes Union Excise Duties and Service Tax.

- there has been a constant increase in the revenue during the last five years. However, the increase was the greatest (26.94 *per cent*) in 2010-11 over 2009-10 and the least (4.98 *per cent*) in 2013-14 over 2012-13.
- There has been a sharp increase of 79.62 *per cent* in receipts under the head "Taxes on Goods and Passengers" the reasons for which though called for have not been received. However as per Finance Accounts, the increase was mainly on account of increase in the collection of tax under the head "Tax on entry of goods into Local Area" (80 *per cent*).

1.1.3 The details of the non-tax revenue raised during the period 2009-10 to 2013-14 are indicated in **Table 1.1.3**

Table 1.1.3

(₹ in crore)

Sr. No.	Head of revenue		2009-10	2010-11	2011-12	2012-13	2013-14	Percentage of increase (+)/ decrease(-) in 2013-14 over 2012-13
1	Interest Receipts	BE	1,113.72	971.95	1,156.31	1,325.79	1,338.80	
		Actual	1,342.00	1,421.70	1,358.94	2,464.41	3,933.81	(+) 59.62
2	Non-ferrous mining and Metallurgical Industries	BE	1,372.00	2,150.81	2,280.50	2,405.71	2,632.82	
		Actual	1,466.73	1,841.19	2,045.47	2,037.76	2,141.17	(+) 5.07
3	Miscellaneous General Services[5]	BE	7,318.59	1,710.65	317.43	396.14	393.19	
		Actual	979.89	622.28	556.29	311.52	155.69	(-) 50.02
4	Power	BE	773.00	763.05	763.26	780.10	780.00	
		Actual	456.61	485.42	725.01	451.41	617.50	(+) 36.79
5	Major and Medium Irrigation	BE	787.24	952.87	1,041.15	909.21	1,117.97	
		Actual	812.58	729.54	583.05	531.89	496.91	(-) 6.58
6	Other Administra-tive Services	BE	127.93	139.44	146.41	547.45	608.92	
		Actual	154.03	626.94	171.19	242.52	250.48	(+) 3.28
7	Others[6]	BE	2,401.64	3,527.02	4,023.72	4,494.79	5,121.96	
		Actual	3,052.13	2,483.03	2,710.15	3,938.23	3,684.25	(-) 6.45
Total		**BE**	**13,894.12**	**10,215.79**	**9,730.83**	**10,886.17**	**11,993.66**	
		Actual	**8,263.97**	**8,213.10**	**8,150.10**	**9,977.74**	**11,279.81**	**(+) 13.05**

Source: Finance Accounts

It would be seen from the above table that

- the actual receipts from 2009-10 to 2013-14 have always been less than the budget estimates of the respective years.

[5] Includes net lottery receipts after adjustment of prize money paid.

[6] Dairy Development, Forestry and Wild life, Medical and Public Health, Co-operation, Public Works, Police and other non-tax receipts

- The increase in non-tax revenue has almost remained constant during the 2009-10 to 2011-12, however, percentage of increase over the preceding year during 2012-13; was 22.42 *per cent*, as compared to 13.05 *per cent* in 2013-14.

1.2 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2014 under the head "0040-Taxes on sales, trade, etc." amounted to ₹ 87,110.74 crore of which ₹ 21,169.88 crore was outstanding for more than five years, as detailed in **Table 1.2.**

Table 1.2

(₹ in crore)

Head of revenue	Total amount outstanding as on 31 March 2014	Amount outstanding for more than five years as on 31 March 2014	Replies of Department
0040-Taxes on Sales, Trade, etc.	87,110.74	21,169.88	Out of ₹ 87,110.74 crore, stay orders were granted by the appellate authority for ₹ 32,153.75 crore, recovery proceedings for ₹ 39,235.05 crore were not initiated as the time limit was not over and the remaining amount of ₹ 15,721.94 crore was in different stages of recovery.

The other departments like, State Excise, Registration, Transport etc. did not intimate arrears pending collection despite being requested (June 2014). As such, total arrears of revenue of the entire state could not be ascertained.

1.3 Arrears in assessments

The details of cases pending at the beginning of the year, cases becoming due for assessment, cases disposed of during the year and number of cases pending for finalisation at the end of the year as furnished by the Sales Tax Department in respect of sales tax, motor spirit tax, luxury tax and tax on works contracts are shown in the following **Table 1.3.**

Table 1.3

Head of revenue	Opening balance	New cases due for assessment during 2013-14	Cases due for assessment	Cases disposed of during 2013-14	Balance at the end of the year	Percentage of disposal (col. 5 to 4)
1	2	3	4	5	6	7
Sales Tax	11,429	88,534	99,963	68,107	31,856	68
Motor Spirit Tax	749	22	771	17	754	2
Purchase Tax on sugarcane	229	60	289	92	197	32
Entry Tax	25	0	25	0	25	0
Lease Tax	980	28	1,008	144	864	14
Luxury tax	1,207	230	1,437	369	1,068	26
Tax on works contracts	17,985	971	18,956	3,921	15,035	21
Total	**32,604**	**89,845**	**1,22,449**	**72,650**	**49,799**	**59**

Source: Figures furnished by the Department.

Thus, it would be seen from the above that

- 49,799 cases remained unassessed as on 31 March 2014. Of these, 31,856 cases pertained to Bombay Sales Tax Act (BST Act). Thus, 64 *per cent* of the BST cases continued to be un-assessed despite the fact that the BST Act has been repealed since eight years.
- The percentage of disposal under other heads of revenue was also poor. It ranged from nil to 32 *per cent*.

The Government may instruct the Department for early finalisation of all these cases in a time bound manner as with the passage of time the chances of recovery of dues involved in the cases would become bleak.

1.4 Evasion of tax detected by the Department

The details of cases of evasion of tax detected by the Sales Tax Department, cases finalised and demands for additional tax raised as reported by the Department are given in **Table 1.4.**

Table 1.4

(₹ in crore)

Head of revenue	Number of cases					
	pending as on 31 March 2013	detected during 2013-14	Total	investigation completed	additional demand with penalty etc. raised	pending for finalisation as on 31 March 2014
Taxes on Sales, Trade, etc.	4,818	18,748	23,566	17,696	10,436.94	5,870

As seen from the above table that investigation in 17,696 cases (75 *per cent* of total cases) was completed and additional demand with penalty etc. of ₹ 10,436.94 crore was raised.

1.5 Response of the Government/Departments towards audit

The Principal Accountant General (Audit)-I, Mumbai (PAG) and the Accountant General (Audit)-II, Nagpur (AG) conduct periodical inspections of the Government departments to test check transaction of the tax and non-tax receipts and verify the maintenance of important accounting 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 reply to the PAG/AG within one month from the date of issue of the IRs. Serious financial irregularities are also reported to the heads of the Department and the Government by the offices of the PAG/AG. Half yearly reports are sent to the

Secretaries of the concerned departments in respect of the pending IRs to facilitate the monitoring of audit observations.

IRs issued up to December 2013 disclosed that 11,241 audit observations involving ₹ 4,274.03 crore relating to 4,977 IRs remained outstanding at the end of June 2014 along with the corresponding figures for the preceding two years are mentioned in **Table 1.5.**

Table 1.5

Particulars	June 2012	June 2013	June 2014
Number of IRs pending for settlement	4,921	4,760	4,977
Number of outstanding audit observations	10,860	10,510	11,241
Amount of revenue involved (₹ in crore)	2,667.74	2,827.78	4,274.03

1.5.1 The department-wise details of the IRs issued up to 31 December 2013 and audit observations outstanding as on 30 June 2014 and the amounts involved are mentioned in **Table 1.5.1.**

Table 1.5.1

(₹ in crore)

Sr. No.	Name of the Department	Nature of receipts	Number of out-standing IRs	Number of out-standing audit obser-vations	Money value involved
1	Home	State Excise	216	362	368.15
2		Taxes on vehicles	305	1213	103.75
3	Revenue and Forest	Land Revenue	1,014	2,050	1,213.23
4		Entertainments Duty	428	775	20.05
5		Education Cess and Employment Guarantee Cess	136	224	444.67
6		Stamps and registration fees	1,084	2,449	498.57
7	Finance	Taxes on Sales, trade etc.	1,266	3,384	178.30
8		Taxes on profession etc.	142	189	2.58
9	Industry, Energy and Labour	Electricity duty	104	195	1,377.52
10	Urban Development	Residential Premises Tax	85	116	4.48
11		Repair Cess	17	22	3.99
12	Home, Irrigation, Public Works, Revenue and Forest Department	Other non-tax receipts	180	262	58.74
Total			**4,977**	**11,241**	**4,274.03**

The first replies in respect of each IR though required to be received from the concerned head(s) of office(s) within one month from the date of issue of the IRs, was not received for 542 IRs issued up to 31 December 2013. The pendency of the IRs due to non-receipt of the replies is indicative of the fact that the Head(s) of Office(s) and the departments did not initiate action to rectify the defects, omissions and irregularities pointed out by the PAG/AG in the IRs.

The Government may consider issuing instructions to the concerned Head(s) of the office(s) for furnishing first replies to the IRs issued by the PAG/AG within the stipulated period of one month and take appropriate steps for settlement of the audit observations raised in these IRs.

1.5.2 Departmental Audit Committee Meetings

The Government had set up Audit Committees during various periods to monitor and expedite the progress of the settlement of IRs and paragraphs in the IRs. The details of the Audit Committee Meetings (ACM) held during the year 2013-14 and the paragraphs settled are mentioned in **Table 1.5.2.**

Table 1.5.2

(₹ in crore)

Sr. No.	Department	Number of meetings held	Number of paras discussed	Number of paras settled	Amount
1	Finance Department (Taxes on Sales, Trade, etc.)	5	894	521	36.23
2	Revenue and Forest Department (Land Revenue)	1	113	31	3.64
3	Relief and Rehabilitation (Stamps and Registration Fees)	1	449	129	11.56
Total		**7**	**1,456**	**681**	**51.43**

The progress of settlement of paragraphs pertaining to the Revenue and Forest Department and Relief and Rehabilitation Department was on lower side in comparison to the pendency of the IRs and paragraphs.

1.5.3 Response of the Departments to draft audit paragraphs

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

Forty two draft paragraphs (clubbed into 28 paragraphs) including three Performance Audits were sent to the Principal Secretaries/Secretaries of the respective departments between March 2014 and September 2014. The Principal Secretaries/ Secretaries of the departments did not send replies to 37 draft paragraphs despite issuing reminders (November 2014) and the same have been included in this Report without the response of the departments.

1.5.4 Follow-up on Audit Reports - summarised position

Position of explanatory notes :- According to the instructions issued by the Finance Department, all the Departments were required to furnish explanatory memoranda, vetted by Audit, to the Maharashtra Legislative Secretariat, in respect of paragraphs included in the Audit Reports, within three months of their being laid on the table of the House.

The Reports of the Comptroller and Auditor General of India on the Revenue Sector of the Government of Maharashtra for the years ended 31 March 2009, 2010, 2011, 2012 and 2013 and two standalone Reports containing 187 paragraphs were placed before the State Legislature Assembly between April 2010 and June 2014. Of these, the explanatory notes in respect of 115 paragraphs from seven[7] departments have not been received at all while those in respect of the remaining 72 paragraphs were received with delays ranging from four to 40 months.

Position of Action Taken Notes (ATNs):- With a view to ensure accountability of the executive in respect of all the issues dealt with in the Audit Reports, the PAC lays down in each case, the period within which action taken notes (ATNs) on its recommendations should be sent.

The PAC discussed 278 selected paragraphs pertaining to the Audit Reports for the years from 1986-87 to 2010-11. It made 145 recommendations in their 18 Reports[8]. However, in respect of 101 recommendations, ATNs, though due, have not been received from the concerned Departments as given in **Table 1.5.4**.

Table 1.5.4

Sr. No.	Name of the Department	Year of Audit Report						
		1986-87 to 2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	Total
1	Home	13	--	1	3	--	4	21
2	Revenue and Forests	17	--	1	2	6	6	32
3	Urban Development	--	--	1	--	--	--	1
4	Finance	11	7	4	2	2	4	30
5	Medical Education and Drugs	--	2	--	--	--	--	2
6	Industries, Energy and Labour	2	--	1	1	--	1	5
7	Relief and Rehabilitation	4	3	--	1	--	--	8
8	Co-operation and Textiles	--	1	--	--	1	--	2
Total		**47**	**13**	**8**	**9**	**9**	**15**	**101**

[7] Home, Revenue and Forests, Urban Development, Finance, Water Resources, Industry, Energy and Labour, Relief and Rehabilitation.

[8] 27th Report of 1994-95, 9th and 12th Reports of 1995-96, 12th, 13th, 14th, 18th and 21st Reports of 1996-97, 21st Report of 1997-98, 5th Report of 2000-01, 12th Report of 2002-03, 5th Report of 2006-07, 6th Report of 2007-08, 5th, 6th and 7th Report of 2010-11, 15th and 16th Reports of 2012-13.

1.6 Analysis of the mechanism for dealing with the issues raised by Audit in the Finance Department

To analyse the system of addressing the issues highlighted in the Inspection Reports/Audit Reports by the departments/Government, the action taken on the paragraphs and Performance Audits included in the Audit Reports of the last 10 years in respect of one Department is evaluated and included in each Audit Report.

The succeeding paragraphs 1.6.1 to 1.6.3 discuss the performance of the Sales Tax Department under revenue head- "0040, Tax on Sales, trade, etc. " in respect of cases detected in the course of local audit during the years 2004-05 to 2013-14 as well as those included in the Audit Reports during the last 10 years, i.e. 2003-04 to 2012-13.

1.6.1 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 2014 are shown in **Table 1.6.1**

Table 1.6.1

(₹ in crore)

Year	Opening balance			Additions during the year			Clearance during the year			Closing balance during the year		
	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value
2004-05	2,778	7,423	216.29	580	2,577	11.29	688	3,095	47.93	2,670	6,905	179.65
2005-06	2,670	6,905	179.65	574	2,479	27.45	665	2,257	21.88	2,579	7,127	185.22
2006-07	2,579	7,127	185.22	608	1,989	14.77	1,018	3,911	34.00	2,169	5,205	165.99
2007-08	2,169	5,205	165.99	621	2,431	72.59	679	2,372	18.47	2,111	5,264	220.11
2008-09	2,111	5,264	220.11	335	1,204	477.38	507	2,077	82.83	1,939	4,391	614.66
2009-10	1,939	4,391	614.66	376	1,482	43.19	608	2,020	461.18	1,707	3,853	196.67
2010-11	1,707	3,853	196.63	361	1,552	49.34	406	1,675	19.25	1,662	3,730	226.72
2011-12	1,662	3,730	226.72	398	1,300	29.07	268	1,118	10.65	1,792	3,912	245.14
2012-13	1,792	3,912	245.14	228	952	8.62	239	982	32.97	1,781	3,882	220.79
2013-14	1,781	3,882	220.79	246	1,313	23.33	451	1,601	49.10	1,576	3,594	195.02

The Government had set up Audit Committees (during various periods) to monitor and expedite the progress of IRs and paragraphs in the IRs. The outstanding paras are also pursued through periodic references to the concerned offices and also through field parties which visit these offices for audit in the subsequent years. Regular meetings apart from Audit Committee Meetings are also held with heads of the offices for discussion of those issues wherein the departmental views do not concur with the audit observations.

The Department may continue its efforts in making use of its machinery created for settlement of the outstanding audit observations so that the outstanding IRs, paragraphs and the amounts are considerably reduced.

The number of IRs, paragraphs and the amount pending settlement during the last 10 years has slightly shown a decreasing trend, still an amount of ₹ 195.02 crore is pending settlement in 3,594 paragraphs contained in 1,576 IRs.

1.6.2 Position of recovery of accepted cases in Audit Reports

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 in **Table 1.6.2.**

Table 1.6.2

(₹ in crore)

Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted	Money value of accepted paragraphs	Amount recovered during the year 2013-14	Amount recovered up to 31.03.2014
2003-04	16	266.92	12	7.39	0.00	5.54
2004-05	14	175.42	11	19.09	0.00	5.19
2005-06	14	19.60	13	11.31	0.00	2.74
2006-07	10	8.97	9	8.69	0.02	1.05
2007-08	12	41.74	6	9.33	0.00	0.72
2008-09	15	1,814.22	9	22.69	0.01	0.04
2009-10	8	0.65	7	0.65	0.02	0.03
2010-11	12	14.24	10	2.85	0.00	0.16
2011-12	7	14.23	3	6.49	0.07	0.07
2012-13	15	247.23	9	3.05	0.09	0.09
Total	**123**	**2,603.22**	**89**	**91.54**	**0.21**	**15.63**

The above table indicates that the recovery was only 17.07 *per cent* of the total accepted cases during the last ten years. The Government may instruct the concerned Department to make more efforts for recovery of the amounts at least those cases which have been accepted by the Department. These may considered to be recovered as arrears of land revenue.

1.6.3 Action taken on the recommendations accepted by the Departments/Government

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

During the last five years, audit had made 33 recommendations regarding the improvements to be made in the maintenance of records, VAT Software, recovering the arrears of revenue, conducting surveys, providing details of selling dealers in the returns along with treasury challans, strengthening the cross verification and pursuance of interstate transactions, conducting of surveys for registration of dealers, etc.

Of these, the Department has accepted 15 recommendations and has taken remedial measures in improving the VAT software and in the maintenance of records. However, in respect of 18 remaining recommendations, the response of the Department has not been received.

1.7 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* includes critical issues in Government revenues and tax administration i.e. budget speech, reports of the Finance Commission (State and Central), recommendations of the taxation reforms committee; statistical analysis of the revenue earnings during the past five years, features of the tax administration, audit coverage and its impact during past five years, etc.

Out of 1,809 auditable units, 1,059 units were planned for audit during 2013-14. All these units were audited during the year. In addition to this, three performance audits were conducted during the year to ascertain the efficiency and efficacy of the tax administration in realisation of the revenues.

1.8 Results of audit

Position of local audit conducted during the year

Test check of the records of 1,059 units of Sales Tax/Value Added Tax, State Excise, Motor Vehicles, Goods and Passengers, Forest Receipts and other departments conducted during the year 2013-14 revealed under assessment / short levy/loss of revenue aggregating to ₹ 841.96 crore in 13,686 cases. During the course of the year, the concerned departments accepted under assessment and other deficiencies of ₹ 34.03 crore involved in 2,320 cases which were pointed out in audit during 2013-14 and earlier years. The departments collected ₹ 27.01 crore in 2,307 cases during 2013-14, pertaining to the audit findings of 2013-14 and of previous years.

Coverage of this Report

This Report contains 28 paragraphs (selected from the audit detections made during the local audit referred to above and during earlier years, which could not be included in earlier reports) including three Performance audits, involving financial effect of ₹ 255 crore.

The departments/Government accepted audit observations involving ₹ 67.64 crore out of which ₹ 66.83 lakh had been recovered. The replies in the remaining cases have not been received (December 2014). These are discussed in succeeding Chapters II to VII.

CHAPTER II

TAXES ON SALES, TRADE, ETC.

2.1 Tax administration

Levy and collection of Value Added Tax receipts is governed by the Maharashtra Value Added Tax Act, 2002 (MVAT Act), Maharashtra Value Added Tax Rules, 2005 (MVAT Rules), notifications and instructions issued by the Government from time to time. The Sales Tax Department under the overall control of the Principal Secretary to the Government, Finance Department, is headed by the Commissioner of Sales Tax. He is assisted by the Zonal Additional Commissioners of Sales Tax, Joint Commissioners of Sales Tax in respect of functional branches and Deputy Commissioners of Sales Tax and other officers at divisional level.

The MVAT Act, came into force with effect from 1 April 2005. Prior to the introduction of the MVAT Act, the assessment, levy and collection of Sales Tax was governed by the Bombay Sales Tax Act, 1959 (BST Act) which was repealed with effect from 1 April 2005. However, the assessments pertaining to BST Act era that have not been finalised so far, continue to be governed by the erstwhile BST Act.

2.2 Internal Audit

The Department has an Internal Audit wing (IAW) headed by the Joint Commissioner of Sales Tax (Internal Audit). The criteria fixed by the IAW for audit of refund cases is as under.

- All cases where refund amount assessed by the assessing authorities (AA) is ₹ 10 lakh or more.
- All refund cases where the dealers deal in chemicals, iron and steel, etc.

The refund orders in the above cases are passed by the AA only after these cases are checked by the IAW.

In respect of all other assessments finalised by the AA, audit is conducted on selective basis by the IAW.

Information regarding position of cases selected for audit and actually audited is given in **Table 2.2.**

Table 2.2

Year	No. of cases selected for audit	No. of cases audited	Audit observations raised	Audit observations settled till 31.03.2014	Pending observations as on 31.03.2014
2009-10	3,560	3,742	830	587	243
2010-11	4,000	4,208	1,356	995	361
2011-12	3,240	3,065	1,188	1,031	157
2012-13	6,280	6,703	2,539	1,942	597
2013-14	16,695	18,628	5,905	4,720	1,185
Total	**33,775**	**36,346**	**11,818**	**9,275**	**2,543**

Thus the facts indicate that:-

- During the last five years, the IAW had conducted the audit of more number of cases than it had selected in that particular year except 2011-12.
- During the last five years, the number of audit observations raised by IAW has increased from year to year, their corresponding settlement has also shown an increasing trend. The Department has settled 78.48 *per cent* of the observations raised by IAW.

2.3 Results of audit

In 2013-14, test check of records of 284 units relating to VAT/Sales Tax assessments showed underassessment of tax and other irregularities involving ₹ 30.78 crore in 300 cases, which fall under the following categories as shown in **Table 2.3.**

Table 2.3

(₹ in crore)

Sr. No.	Category	No. of cases	Amount
1	Audit of "Refund and Refund Audit Branch"	1	13.95
2	Non/short levy of tax	156	9.29
3	Incorrect grant/excess set-off	64	2.88
4	Non/short levy of interest/penalty	16	1.82
5	Other irregularities	63	2.84
Total		**300**	**30.78**

The Department accepted underassessment and other deficiencies of ₹ 97.84 lakh in 80 cases which were pointed out during 2013-14 and earlier years, and recovered amount of ₹ 60.59 lakh in 77 cases.

A few audit observations noticed during test check of the Refund and Refund Audit Branch and other units of the Sales Tax Department revealed underassessment of tax of ₹ 15.55 crore, which are mentioned in the succeeding paragraphs.

2.4 Audit of "Refund and Refund Audit Branch" of the Sales Tax Department

2.4.1 Introduction

Refund and Refund Audit Branch (RRA Branch) was formed in the Sales Tax Department with effect from March 2006 for timely finalisation of refund claims and to ensure the validity and accuracy of refund claims. The Refund and Refund Audit branches are headed by Joint Commissioners of Sales Tax (JCs) at divisional level assisted by Deputy Commissioners who are further assisted by the Assistant Commissioners and Sales Tax Officers.

The process of claiming refund starts from filing an application in Form 501 by a registered dealer. From October 2009, every registered dealer claiming refund is required to file refund application (Form 501) online making use of MAHAVIKAS. The refund applications so submitted are allotted to different assessing authorities (AA) of the RRA Branch making use of an application in the software in the system i.e. MAHAVIKAS itself.

The AAs of RRA Branch are required to finalise the assessments under the MVAT Act and allow the refunds along with interest, wherever due. The rates of interest are notified by the Government from time to time.

2.4.2 Scope and methodology of audit

There are 48 refund and refund audit units in 13 Divisions of the Sales tax Department. As per information furnished by the Department, refunds aggregating to ₹ 3,477.40 crore in 15,588 cases were granted during the year 2012-13 and 57,207 cases were pending in the state as on 31 March 2013.

We conducted audit of all refund cases finalised in the 19 units in five divisions between July 2013 and March 2014. Refunds aggregating to ₹ 2,946.40 crore in 9,048 cases had been finalised in these units during 2012-13. These are detailed in **Table 2.4.2.**

Table 2.4.2

(₹ in crore)

Division	Opening balance as on 01.04.2012	Addition during the year 2012-13	Disposal during the year 2012-13	Balance as on 31.03.2013	No. of cases in which refund granted during 2012-13	Amount of Refund granted during 2012-13
Aurangabad	590	78	192	476	186	966.33
Mumbai	10,788	15,688	6,442	20,034	3,720	968.63
Nashik	1,475	8,930	7,224	3,181	2,196	72.96
Pune	2,490	9,550	11,322	718	1,326	864.68
Thane	5,169	2,834	1,626	6,377	1,620	73.80
Total	**20,512**	**37,080**	**26,806**	**30,786**	**9,048**	**2,946.40**

Thus, it would be seen that the audit coverage was 84.73[1] *per cent* in terms of amount of refunds and 58.04[2] *per cent* in terms of number of cases. The above table reveals that 30,786 cases were pending for disposal in the selected divisions as on 31 March 2013.

Audit findings

2.4.3 Discrepancies in processing and grant of refunds

A registered dealer claiming refund is required to file an application in Form 501 under Rules 17A(2) and 60(1) of the MVAT Rules. The Commissioner, on receipt of the application and after calling for bank guarantees may grant refund under Section 51 of the MVAT Act within eighteen months[3] (as amended from 1 May 2011) subject to the following conditions:

In respect of the periods ending on or before 31 March 2010	On or before 30 September 2011
In respect of the periods beginning with 1 April 2010 and ending on 31 March 2011	On or before 30 June 2012

The cases of provisional refunds are required to be finalised under Section 23 of the MVAT Act and if any refund is found due to the dealers, it is granted along with interest at the rate of 0.5 *per cent* per month under Section 52 of the MVAT Act. However, no interest is admissible where the refund has been granted under Section 51 of the Act.

2.4.3.1 During test check of records in Mumbai, Pune and Thane Divisions, we noticed in 100 cases that the refund applications pertaining to different periods from 2005-06 to 2009-10 had been received by the Department on or before 31 March 2011. Although in all these cases refund was required to be made before 30 September 2011 and 30 June 2012, the claims were allowed (2012-13) belatedly with delays ranging from one month to six months under Section 23 of the MVAT Act. This resulted in grant of interest of ₹ 8.18 crore in refunds amounting to ₹ 68.25 crore under Section 52 of the MVAT Act. Had, the claims been passed timely under Section 51 of the MVAT Act, the payment of interest amounting to ₹ 8.18 crore could have been avoided.

Thus, it would be seen from the above that despite a lapse of eight years from the implementation of VAT in Maharashtra, the Department has not developed a system for timely processing of the refund cases.

2.4.3.2 We noticed during test check of records in Thane and Mumbai Divisions that four dealers were granted refund aggregating ₹ 6.21 crore under Section 51 of the MVAT Act. After the assessment of the cases, the dealers in Thane were entitled for additional refund of ₹ 2.27 crore, whereas the Mumbai dealers were not found entitled to any refund. However, the assessing authorities allowed interest on the entire amount of refund in contravention of the provisions of Section 52 of the Act. This resulted in irregular grant of interest on refunds aggregating ₹ 51 lakh as shown in **Table 2.4.3.2.**

[1] (₹ 2,946.40 ÷ ₹ 3,477.46) × 100 = 84.73 %.
[2] (9,048 ÷ 15,588) × 100 = 58.04 %.
[3] Prior to 1 May 2011, the refund was required to be granted within a period of six months from the date of receipt of the application.

Table 2.4.3.2

(₹ in crore)

Division/ No. of dealers	Period	Refund prior to assessment u/s 51	Refund after assessment	Total refund	Interest granted on total refund	Interest due on refund after assessment	Irregular interest Col 6 – Col 7
1	2	3	4	5	6	7	8
Thane/1	2010-11	3.05	1.78	4.83	0.46	0.19	0.27
Thane/1	2010-11	2.62	0.49	3.11	0.24	0.05	0.19
Mumbai/1	2005-06	0.19	0.00	0.19	0.02	0.00	0.02
	2006-07	0.23	0.00	0.23	0.02	0.00	0.02
Mumbai/1	2005-06	0.12	0.00	0.12	0.01	0.00	0.01
Total		**6.21**	**2.27**	**8.48**	**0.75**	**0.24**	**0.51**

The Department accepted (November 2013) the observation and stated that corrective action for the recovery of the interest has been initiated. Further progress in the matter has not been received (December 2014).

2.4.3.3 During test check (August 2013) of records in Thane Division, we noticed that a dealer holding Entitlement Certificate under Package Scheme of Incentives (PSI), 1993, was exempted from payment of tax up to the ceiling limit of ₹ 2.45 crore for the period from 11 October 2002 to 10 October 2014. The ceiling limit of ₹ 2.45 crore was exhausted in full during 2005-06. Thereafter, the dealer collected tax aggregating ₹ 1.16 crore during the subsequent periods 2006-07 to 2008-09 and deposited the same into the Government treasury. However, while finalising these assessments in October and December 2012 respectively, the assessing authority incorrectly refunded entire amount of tax of ₹ 1.16 crore resulting in irregular grant of refund of ₹ 1.16 crore.

The Department accepted (November 2013) the observation and stated that corrective action for recovery had been initiated. Further progress in the matter has not been received (December 2014).

2.4.3.4 As per Section 42(3) of the MVAT Act, a dealer who pays lump sum tax by way of composition shall pay five *per cent* of the total contract value in the case of construction contracts and eight *per cent* of such value in any other case with effect from 20 June 2006. Prior to 20 June 2006, a works contractor in case of all type of contractors (construction and other than construction) was liable to pay lump sum tax by way of composition equal to eight *per cent* of the total contract value.

As per Section 29(10) (b) of the MVAT Act, any sum collected by a person or dealer in contravention of Section 60 shall be forfeited to the State Government. As per Section 60(2) of the MVAT Act 'no registered dealer shall collect any amount by way of tax or in lieu of tax in excess of the amount of tax payable by him on any sale of goods under the provisions of this Act'.

We noticed that for the period 2006-07 a civil works contractor who had opted for the payment of tax under the composition scheme collected tax of ₹ 13.55 lakh at pre-revised rate of eight *per cent* on sales turnover of ₹ 1.68 crore

instead of ₹ 8.40 lakh at the rate of five *per cent*. The contractor paid ₹ 8.40 lakh into the treasury. However, the assessing officer, while assessing the case, refunded the amount of the tax collected in excess instead of forfeiting the same. This resulted in incorrect grant of refund of ₹ 5.15 lakh.

2.4.3.5 Section 45 of the MVAT Act provides that if the principal contractor shows to the satisfaction of the Commissioner of Sales Tax that the tax has been paid by the sub-contractor then the principal contractor shall not be liable to pay tax on that transaction. Rule 50 of the MVAT Rules provides for a certificate in form 407 regarding turnover of sales and VAT paid by the sub-contractor.

We noticed during test check (February 2014) of records in Pune Division, that a principal contractor engaged in civil construction works was allowed deduction in respect of sub-contract value of ₹ 16.60 crore against Form 407 issued by the sub-contractor for the period 2009-10. The cross verification with the records of the sub-contractor revealed that the sub-contractor had executed the works valued at ₹ 16.60 crore, which included VAT of ₹ 79.07 lakh. As such, the principal contractor was entitled to a deduction of ₹ 15.81 crore only. This incorrect deduction of ₹ 79.07 lakh resulted in short levy of tax of ₹ 3.95 lakh.

2.4.4 Allowance of excess set-off

2.4.4.1 As per Rule 53(4) of the MVAT Rules in respect of construction contractor who had opted for the composition scheme, the set-off shall be allowed after reduction of four *per cent* of purchase price in respect of other than capital goods with effect from 20 June 2006.

We noticed during test check (February 2014) of records in Pune Division, that VAT was paid under composition scheme on sales turnover of ₹ 11.04 crore during the period 2008-09 by a sub-contractor. The corresponding purchase price worked out by the contractor was ₹ 6.65 crore. However, the same was incorrectly determined by the assessing authority as ₹ 3.11 crore only. This short determination of corresponding purchase price, resulted in reduction of the set-off by ₹ 12.44 lakh[4] instead of ₹ 26.61 lakh[5]. Thus, incorrect setoff resulted in excess refund of ₹ 14.16 lakh[6]. The dealer was also liable to pay interest of ₹ 1.70 lakh under the MVAT Act.

2.4.4.2 As per Rule 53(3) of the MVAT Rules, if any dealer despatches any taxable goods outside the State, to any place within India not by reason of sale, to his own place of business or of his agent (branch transfer), then set-off to the extent of an amount equal to four *per cent* during 2006-07 and three *per cent* during 2007-08 of the purchase price of the corresponding taxable goods shall be deducted from the amount of setoff due to the dealer.

We noticed (July 2013 and March 2014) during test check of assessment records in Aurangabad and Mumbai Divisions that set-off was allowed in full to two dealers who had transferred goods to branches outside the State during 2006-07 and 2007-08, without reducing the same in accordance with the

[4] Four *per cent* of ₹ 3.11 crore.
[5] Four *per cent* of ₹ 6.65 crore
[6] ₹ 26.61 lakh - ₹ 12.44 lakh

provisions of Rule 53(3). This resulted in grant of excess refund of ₹ 8.64 lakh as detailed in **Table 2.4.4.2.**

Table 2.4.4.2

Division	Period	Branch Transfer (₹ in crore)	Purchase value of goods transferred to Branch (₹ in crore)	Rate of reduction notified under CST Act *(per cent)*	Amount of reduction-excess set-off (₹ in lakh)
Aurangabad	2006-07	1.65	1.55	4	6.20
	2007-08	0.76	0.69	3	2.08
Mumbai	2006-07	0.12	0.09	4	0.36
Total					**8.64**

2.4.5 Inadmissible deduction under works contract

As per Section 42(3) of the MVAT Act, no deduction on any account, except amounts payable towards sub-contract involving goods to a registered sub-contractor, shall be allowed to a contractor who opts for composition scheme.

During test check (September 2013 to March 2014) of assessment records in Mumbai, Nashik and Pune Divisions, for the period 2006-07 to 2008-09, we noticed that inadmissible deductions aggregating ₹ 94.91 lakh on account of tax element included in sale price and service tax etc., though inadmissible, were allowed in respect of six dealers who had opted for composition scheme for payment of tax. This resulted in excess grant of refund of ₹ 6.49 lakh.

2.4.6 Excess deferment of tax

As per Section 92(1) of the MVAT Act, no eligible unit to whom the Eligibility Certificate (EC) has been granted shall be eligible to draw the benefit in any year after the appointed date of deferment, in respect of production in excess of the annual production capacity of the unit as prescribed by the State Government in the eligibility certificate issued to the beneficiary.

During test check (December 2013) of RRA records in Nashik Division, we noticed in a case finalised in March 2013, that a dealer was holding EC issued by the State Industrial and Investment Corporation of Maharashtra Limited (SICOM Ltd.) for manufacturing of alcohol, rectified spirit, etc. for the period from 11 January 2002 to 10 January 2007 with ceiling limit of 46.27 crore litre. The dealer was entitled to deferment of tax up to a ceiling of 150 lakh litre for the period 2005-06. However, while finalising the assessment, the assessing authority allowed the benefit of deferment for 193.93 lakh litres. The excess deferment of tax on 43.93 lakh litres resulted in excess grant of refund of ₹ 2.12 crore.

Further, we noticed that as the assessments for periods commencing from 2006-07 onwards were pending, this aspect of ceiling limit may be kept in view at the time of their completion of these assessments.

2.4.7 Application of incorrect rate of tax

2.4.7.1 As per the provisions of the MVAT Act, all goods which are not covered by Schedule A, B, C and D to the MVAT Act shall be covered by entry 1 of Schedule E of the Act and shall be taxable at the rate of 12.5 *per cent*. The commodity 'micronutrients fertilizer' was introduced in Schedule Entry C-34 with effect from 1 May 2005 and was taxable at the rate of four *per cent*. Prior to this, it was not covered in any of the schedules and was taxable at the rate of 12.5 *per cent*.

During test check of records in Pune division, we noticed in case of a manufacturer of micronutrients fertilizer that sales of micronutrients fertilizer amounting to ₹ 84.58 crore relating to the month of April 2005 was taxed at the rate of four *per cent*. As the commodity was not covered elsewhere in the schedule during April 2005, the tax was required to be levied at the rate of 12.5 *per cent.* The levy of tax at lesser rate resulted in short levy of tax at ₹ 7.19 lakh.

2.4.7.2 Rule 58 of the MVAT Act stipulates that in case of works contract, the tax is payable on the value of goods involved in execution of works contract at the rates applicable to such goods under the Act.

The Commissioner of Sales Tax in respect of works contract relating to supply and laying of cement concrete paver blocks (CC Paver blocks), clarified that the rate of tax is to be levied on the material used in the property that has been transferred. The rates shall be same as specified in the schedule.

Sale of cement is taxable at the rate of 12.5 *per cent* under Schedule E as the same is not covered in any of the other Schedules. CC paver blocks are taxable at the rate of four *per cent*.

During test check of records in Mumbai division, we noticed that a dealer engaged in manufacturing, supplying and laying of CC paver blocks, had utilised cement valued at ₹ 82.29 lakh in the manufacture of CC paver blocks during 2007-08 and 2008-09. The corresponding sale of cement utilised in the paver blocks after adding the profit percentage amounted to ₹ 1.40 crore. The contractor was liable to pay tax ₹ 17.50 lakh. However, the dealer paid tax of ₹ 5.60 lakh at the rate of four per cent treating the paver blocks as a separate commodity. The excess grant of refund in this case worked out to ₹ 11.94 lakh.

The above cases were pointed out to the Department and reported to the Government in July 2014. The Department stated that the cases pointed out would be rechecked and action will be taken on verification of the facts. However, report on the action taken has not been received (December 2014).

2.4.8 Recovery of dues

2.4.8.1 Absence of time limit for issue of demand notice

As per Section 32 of the MVAT Act, the amount of tax due as per any order passed under the provision of the Act is to be paid with interest and penalty (if any) within 30 days from the date of service of the notice issued. However, no time limit has been prescribed in the MVAT Act for issue of the demand

notices to the dealers by the assessing authorities after completion of an assessment.

During test check (September 2013 to January 2014) of RRA records in Aurangabad and Mumbai Divisions, we noticed that, 46 assessments of 40 dealers were assessed between June 2012 and March 2013. A demand of ₹ 17.74 crore was required to be raised. However, the demands were raised after a lapse of four months to nine months after passing the assessment order. The delay in raising the demand resulted in blockage of Government revenue.

A prescribed time limit for issue of demand notice would have prompted the authorities to issue the demand notices timely and the amounts in question could have been recovered without any loss of time. In view of this, the Government may consider fixing a time limit for issue of demand notices in the interest of revenue.

2.4.8.2 Non-recovery of dues

MVAT Act provides that if the demands raised under Section 32 are not paid within 30 days from the date of issue of demand notice, the dues shall be recovered as arrears of land revenue.

It was noticed (September 2013 to January 2014) in Mumbai Division that in 46 periods in respect of 45 dealers, *ex-parte* assessment orders under Section 23(2) were passed for different periods (2005-06 to 2008-09) and the notices for demand aggregating ₹ 33.28 crore were issued to them between August 2012 and July 2013. The dealers, however, did not deposit the tax dues and no action was taken to recover the same as arrears of land revenue.

The Department stated (September 2013 to January 2014) that corrective action would be taken after verification. Further reply has not been received (December 2014).

2.4.9 Non-levy of penalty

As per Section 29(4) of the MVAT Act, if a dealer is held producing knowingly false bills, cash memorandums, vouchers etc., the Commissioner may impose on him, in addition to any tax payable by him, a penalty equal to the amount of tax found due as a result of the commission or omission.

We noticed in Mumbai, Nashik, Pune and Thane Divisions, that in 115 cases, the set-off claimed by dealers on purchases involving tax effect of ₹ 1.28 crore shown in their returns for periods from 2005-06 to 2009-10 was disallowed by the assessing authorities as these purchases were found *hawala* transactions made by the selling dealers'[7] These selling dealers were declared hawala dealers and input tax credit (ITC)[8] aggregating ₹ 1.28 crore claimed by the purchasing dealers in respect of such purchases was disallowed by the Department. However, penalty under Section 29(4) equal to the amount of set-off claimed on *hawala* purchases was not levied. This resulted in non-levy of penalty aggregating ₹ 1.28 crore.

[7] Dealers issuing false bills for a commission to other tax paying dealers, to enable the latter to fraudulently claim input tax credits. There is no movement of goods against these bills.

[8] The input tax credit in relation to any period means setting off the amount of input tax i.e. tax paid on purchases by a registered dealer against the amount of his output tax i.e., tax payable on the sales made by him.

The Department stated that the matter would be verified. Further progress in the matter has not been received (December 2014).

2.4.10 Discrepancies noticed in the cases finalised under CST Act

2.4.10.1 Incorrect exemption due to production of incorrect and incomplete forms

As per Section 5 (3) and (4) of the Central Sales Tax Act, 1956 (CST Act) and Rules made there under, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India is deemed to be in course of export and is exempt from tax, provided, the last sale or purchase took place after, and was for the purpose of complying with the agreement or order for or in relation to such export. Also, the selling dealer is required to produce a certificate in Form H duly filled in and signed by the exporter along with the evidence of export of goods.

During test check of records in Mumbai, Pune and Thane Divisions, we noticed that, three dealers engaged in manufacture of machinery for pharmaceutical and plastic industries were allowed sales aggregating ₹ 88.70 lakh as exempt from tax on Form H during 2008-09 and 2010-11. However, our scrutiny revealed that purchase orders placed by the exporters in these cases were prior to the import orders received from the foreign buyer. This indicated that the purchases made by the exporters were not preceded by an agreement with foreign buyer. As such exemption of ₹ 11.09 lakh availed of by the dealer was in contravention of provisions of Section 5(3) and 5(4) of the CST Act. This resulted in excess grant of refund.

2.4.10.2 Incomplete I form(s)

Sales valued at ₹ 33.67 crore involving tax effect of ₹ 2.53 crore in 15 cases made in Special Economic Zones (SEZ) were exempted from payment of tax by the assessing authorities in Aurangabad, Mumbai, Pune and Thane, though Form I necessary for allowing such exemptions under Section 8 of the CST Act, were incomplete. These did not contain the important details like name, number and quantity of the goods and the name of the selling dealers from which the goods were purchased. As such, the correctness of sales allowed on incomplete Form I could not be verified. The possible loss of revenue of ₹ 2.53 crore in these cases cannot be ruled out.

The Department stated that the matter would be verified. Further progress in the matter has not been received (December 2014).

2.4.10.3 Absence of documentary evidence

Audit scrutiny in Mumbai Division revealed that export documents such as Bank Realisation Certificates, copies of agreement with foreign buyer, shipping bills, etc., required under Section 5(1) of the CST Act, were not available on record. As such, the correctness of the exemption of tax of ₹ 5.65 crore in support of export sales valued at ₹ 197.65 crore made by five dealers during 2005-06 to 2008-09 could not be ascertained.

2.4.10.4 Incomplete H form(s)

Form H in support of export sales valued at ₹ 6.25 crore relating to different periods from 2005-06 to 2010-2011 (11 periods[9]) pertaining to 11 dealers of Aurangabad, Mumbai, Nashik, Pune and Thane Divisions, were found incomplete. It did not contain necessary details like agreement orders from foreign buyer, purchase orders from the local buyer etc. As such, the basis of this exemption of tax (₹ 42.52 lakh) could not be verified in audit.

The above cases were pointed out to the Department and reported to the Government in July 2014. The Department stated that the cases pointed out would be rechecked and action will be taken on verification of the facts. However, report on the action taken has not been received (December 2014).

2.4.11 Non-registration of the dealers despite availability of the data in the Department

As per Section 3 of the MVAT Act, every dealer having an annual turnover of ₹ 5 lakh and above is liable to pay tax. He is also required to obtain a valid certificate of registration as provided in the MVAT Act.

As per Section 66 (2) of the MVAT Act, for the purpose of the survey, the Commissioner may, by general or special notice, require any dealer or class of dealers to furnish the names, addresses and such other particulars as he may find necessary, relating to the persons and dealers who have purchased any goods from or sold any goods to such dealer or class of dealers during any given period.

During test check of records of the RRA Branches in Mumbai, Nashik, Pune and Thane Divisions, we noticed that, in 208 cases, the dealers had shown purchases aggregating ₹ 119.43 crore from unregistered dealers in their returns/purchase statement/Form 704 relating to different periods from 2005-06 to 2010-11. Though the purchases made from each dealer exceeded ₹ five lakh, no efforts were made by the survey branch to get the names and address and other particulars of these unregistered dealers. The concerned RRA Branch had also not taken the matter with the survey branch for further investigation for their registration. As a result, the possibility of evasion of tax by these unregistered dealers could not be ruled out.

After this was pointed out, the Department stated that corrective action would be taken after the verification of the facts. However, the fact remains that the Department has not put in place a system for exchange of information regarding the turnover of dealers between the RRA branch and survey branch so that these unregistered dealers could be brought under the tax net.

The draft paragraph was forwarded to the Department/Government in July 2014. Their reply has not been received (December 2014).

[9] Period(s) : A local term means assessment.

2.4.12 Conclusion and Recommendations

Thus the above facts reveal that delays in finalisation of the refund cases resulted in an avoidable expenditure of ₹ 8.18 crore paid on account of interest by the Department in 100 cases, the assessments were not finalised correctly and with adequate care that could have prevented payment of incorrect, irregular and excess refunds amounting to ₹ 4.38 crore, the documents required to be furnished in interstate and export transaction having a tax effect of ₹ 8.72 crore needed for claiming exemption from payment tax were either not found on record or were found incomplete. Relevant provisions in recovery of the demands were not followed with the result ₹ 33.28 crore remained unrecovered. In addition demands aggregating to ₹ 17.74 crore were raised after a lapse of four to nine months resulting in delay in collection of the amount to that extent.

In view of the above, it is recommended that the Sales Tax Department:

- may issue instructions to the Refund and Refund Audit Branch for timely finalisation of the refund cases, thereby to avoid payment of interest on delayed refunds;
- may put in place suitable mechanism to raise demands within a reasonable timeframe and ensure expeditious recovery of demands raised; and
- ensure that the assessment of refund cases is made correctly and all necessary documents are obtained and put on record.

2.5 Other audit observations

Our scrutiny of the assessment records finalised under Bombay Sales Tax Act, 1959 (BST Act), Maharashtra Value Added Tax, 2002 (MVAT Act), Central Sales Tax Act, 1956 (CST Act) in the Sales Tax Department revealed cases of non-observance of provisions of Acts/Rules, non/short levy of tax, irregular grant of exemptions and other cases as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till we conduct audit. There is need for the Government to improve the internal control system including strengthening of internal audit.

Discrepancies noticed in cases finalised under Maharashtra Value Added Tax Act, 2002 (MVAT Act)

2.5.1 Incorrect allowance of set-off on purchases from *hawala* dealers

Deputy Commissioner of Sales Tax, LTU-E-626, Mazgaon Division, Mumbai

Trade Circular No. 8T of June 2012, issued by the Commissioner of Sales Tax stipulated that ITC claim shall not be allowed on purchases made by any dealer from *hawala* dealers even though such *hawala* dealer has paid the taxes partially or fully, as these are not genuine transactions. Investigation Branch of Sales Tax Department has prepared a list of *hawala* dealers.

Cross verification (August 2013) of the assessment records with the list of *hawala* dealers prepared by the Department revealed that a dealer dealing in import and resale of ferrous and non-ferrous metal for the period 2008-09 had claimed setoff of ₹ 14.73 lakh on purchases made from three dealers. These three dealers were declared as *hawala* by the Department and as such, the setoff claimed by the dealer was required to be disallowed in terms of the Circular of June 2012. Thus, incorrect allowance of set-off resulted in underassessment of tax including interest and penalty of ₹ 38.12 lakh.

After this was pointed out (September, 2013), the Department accepted the observation and communicated (October 2013) the same to Joint Commissioner of Sales Tax (Appeal) I for corrective action as the dealer had preferred an appeal against the assessment order. Further progress in the matter has not been received.

We reported the matter to the Government in May 2014. Their reply has not been received (December 2014).

2.5.2 Non-levy of penalty on *hawala* transactions

Deputy Commissioner of Sales Tax, E-818 Business Audit, Mazgaon, Mumbai

As per Section 29(4) of the MVAT Act, where any person or dealer has knowingly issued or produced any document including a false bill, cash memorandum, voucher, declaration or certificate/by reason of which any

transaction of sale or purchase effected by him or any other person or dealer is not liable to be taxed or is liable to be taxed at a reduced rate or incorrect set-off is liable to be claimed on such transaction, the commissioner may, impose on him in addition to any tax payable by him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

During scrutiny (April 2013) of records relating to business audit of a reseller of pipes and pipe fittings for the years 2005-06, 2006-07, 2008-09 and 2009-10, we noticed that the assessing officer had disallowed set-off amounting to ₹ 10.21 lakh on account of purchases made from *hawala* dealers. However, penalty equal to the amount of set-off disallowed i.e. ₹ 10.21 lakh was not levied by the assessing authority.

After we pointed out the case in May 2013, the Department stated that as per Trade Circular 22T of 2009, if a dealer files revised return along with interest at the rate of 25 *per cent* under Section 30(4), which was done in this case, then penalty under Section 29(3) is not leviable.

The reply of the Department is not in line with the provisions of the Act as in this case penalty is leviable under Section 29(4) and not 29(3) of the Act. The Trade Circular of 2009 applies to Section 29(3) which has further been explained in the notes under Section 29 of the Act. This stipulates that if a person produces false documents including a false bill, penalty under section 29(4) is leviable. Besides, there was nothing on record to indicate that the assessing authority had discussed the provisions regarding the levy of penalty in the assessment order.

We reported the matter to the Government in May 2014. Their reply has not been received (December 2014).

2.5.3 Non-levy of VAT on Service Tax

Deputy Commissioner of Sales Tax, E-002, LTU, Nasik and Deputy Commissioner of Sales Tax, E-833, Business Audit, Mazgaon, Mumbai

As per Section 2(25) of the MVAT Act, "sale price" means the amount of value consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged. The Commissioner of Sales Tax held (DDQ of January 2012) that service tax payable or paid on a transaction forms the part of sale price liable to tax under MVAT Act 2002.

During test check (September 2012 and October 2012) of the assessments and other related records finalised between July 2011 to March 2012 of two dealers for three periods between 2007-08 and 2008-09, we noticed that service tax aggregating ₹ 1.09 crore collected by the dealers was not included in the taxable turnover of sales. This resulted in under assessment of ₹ 12.88 lakh including interest.

After we pointed out the cases in October 2012 and November 2012, the Department stated (January 2013) in case of one dealer that since the dealer had preferred appeal against the payment of tax, the audit observation had

been communicated to the appellate authority. Reply in the other case has not been received.

We reported the matter to the Government in July, 2014. Their reply has not been received (December 2014).

2.5.4 Non-levy of penalty on misclassification/concealment of transactions

Deputy Commissioner of Sales Tax, Business Audit – IV Branch, E-822, Mazgon, Mumbai

As per Section 29(3) of the MVAT Act, if a dealer has knowingly misclassified or has concealed the particulars of any transaction liable to tax, the Commissioner may impose upon him, in addition to any tax due from him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission. VAT on power inverters is leviable at the rate of 12.5 *per cent* as per schedule entry E-1.

2.5.4.1 During test check of the assessment records (September 2011) of a wholesaler and distributor of power inverters for the period 2005-06 (finalised in March 2011), we noticed that the dealer had collected and paid tax at the rate of four *per cent* instead of 12.5 *per cent* on sale of power inverters valued at ₹ 1.93 crore treating it as an IT product under Schedule entry C-56. The AA had, however, levied tax at the rate of 12.5 *per cent* and raised differential additional tax of ₹ 16.40 lakh but omitted to levy penalty of ₹ 16.40 lakh on additional dues raised by it, resulting in short realisation of revenue to that extent.

After we pointed out the case in October 2011, the Department accepted the audit observation and levied a penalty of ₹ 16.40 lakh for the year 2005-06 in August 2013. A report on the recovery has not been received.

We reported the matter to the Government in March 2014. Their reply has not been received (November 2014).

2.5.4.2 During test check of the assessment records (September 2011) of a wholesaler and distributor of power inverters for the period 2007-08 (finalised in March 2011), we noticed that the assessing officer had levied tax at the rate of 12.5 *per cent* on the sale of power inverters (Schedule entry E–1) of ₹ 7.99 crore on which the dealer had collected and paid tax at four *per cent* treating the commodity as UPS[10], an IT product (Scheduled entry C-56) and raised additional tax of ₹ 67.89 lakh. Further, the AA had also levied tax at the rate of 12.5 *per cent* on the turnover of ₹ 22 lakh which was not shown in the returns filed by the dealer for 2007-08 but was determined at the time of business audit conducted under Section 22 of the MVAT Act. The AA had levied additional tax of ₹ 70.64 lakh (₹ 67.89 lakh + ₹ 2.75 lakh) for the year 2007-08. However, the AA had not levied penalty of ₹ 70.64 lakh equal to the additional dues. There was nothing on record to indicate that the assessing authority had discussed the provisions regarding the non-levy of penalty in the assessment order.

[10] Uninterrupted Power Supply.

After we pointed out the case in October 2011, the Department accepted the audit observation and levied a penalty of ₹ 70.64 lakh for the year 2007-08 in August 2013. A report on the recovery has not been received.

We reported the matter to the Government in March 2014; their reply has not been received (December 2014).

Discrepancies noticed in cases finalised under the Bombay Sales Tax Act, 1959 (BST Act)

2.5.5 Short levy of interest

2.5.5.1 Sr. Deputy Commissioner of Sales Tax, M – 13, Nariman Point Division, Mumbai

As per Section 36(3)(b)(b) of the BST Act, if a dealer who has filed all the returns other than the annual return in respect of the said period of the assessment within one month from the end of the said period and the tax remaining unpaid is more than 10 *per cent* of total tax payable on the date prescribed for filing of the last return in respect of a period of assessment, then the dealer is liable to pay simple interest at the rate of 1.25 *per cent* of such tax for each month subject to a maximum period of 18 months.

During test check (February 2011) of the assessment records of a dealer dealing in import and export of diamonds, we noticed that the dealer was assessed to a tax of ₹ 1.90 crore for the period 2004-05 (finalised in March 2010), out of which he had paid ₹ 1.20 crore along with the returns. The balance of ₹ 70.27 lakh (which was more than 10 *per cent* of the total tax payable) remained unpaid at the time of assessment and interest of ₹ 15.81 lakh was leviable thereon for a period of 18 months. However, the assessing officer levied interest of ₹ 8.99 lakh resulting in short levy of interest of ₹ 6.82 lakh.

After we pointed out the case in April 2011, the Department accepted the observation and raised additional demand of ₹ 6.82 lakh (March 2013). A report on the recovery has not been received.

We reported the matter to the Government in March 2014; their reply has not been received (December 2014).

2.5.5.2 Sales Tax Officer, A-03, Nariman Point Division, Mumbai

As per Section 36(3) (b) of the BST Act, if a dealer has not filed the returns in time and any tax remained unpaid on the date prescribed for filing of the last return in respect of a period of assessment, then the dealer is liable to pay simple interest at the rate of 1.25 *per cent* of such tax for each month or part thereof from the date immediately following the date on which the period for which the dealer has been assessed expires till the date of order of assessment.

During the scrutiny (May 2008) of assessment records of a reseller, importer, exporter and general merchant in petroleum products, oil, oil seeds etc. for the period 2002-03 (finalised in November 2007) and who was assessed for dues of ₹ 42.53 lakh, we noticed that the AA had levied interest of ₹ 28.71 lakh instead of ₹ 34.02 lakh due to arithmetical mistakes in assessment order. This resulted in short levy of interest by ₹ 5.31 lakh.

After we pointed out the case in June 2008, the Department accepted the audit observation and passed an order in August 2013 raising additional demand of ₹ 5.85 lakh on account of interest u/s 36(3)(b). A report on the recovery has not been received.

We reported the matter to the Government in May 2014. Their reply has not been received (December 2014).

2.5.6 Delay in action in recovery of arrears of revenue

2.5.6.1 Sales Tax officer, D 1530, Jalgaon Division

As per the BST Act, the tax assessed was required to be paid by the assessee in a manner and within the time specified in the notice of demand. In case of failure on the part of the assessee to pay the amount within the date mentioned in the demand notice, Section 38(B) of the BST Act empowers the Commissioner of Sales Tax to exercise all the powers and perform all the duties under the Maharashtra Land Revenue Code, 1966 (MLR Code), to recover the amount(s) which remains unpaid as arrears of land revenue. If the defaulters own property outside the State, the concerned assessing authority is required to issue, under the provisions of the Revenue Recovery Act 1890, a "Revenue Recovery Certificate (RRC)" to the Collectors of the Districts of the States in which the defaulters possess properties, to recover the arrears of tax.

During test check of the recovery files in Jalgaon Division in November 2012, we noticed that a company, manufacturing chemicals and allied products was in arrears of assessed sales tax dues of ₹ 33.29 lakh for the periods 1990-91 and 1991-92. The assessment orders for the said periods were passed *ex-parte* in March 1994 and March 1999 as the dealer did not produce his records for assessment to Assessing Authority (AA) who in turn assessed the case on the basis of information available on the records. However, from the recovery files it was noticed that the Department had started recovery proceedings only in November 2012 i.e. after 18 and 13 years from the date of passing the respective assessment orders. It has come to notice that the dealer has closed down and left the place of business almost 12 years ago. The Department issued a letter to Maharashtra Industrial Development Corporation (MIDC), Jalgaon for recovery of dues and also to the Police Inspector to trace out the dealer (November 2012). But, no response was received in this regard by the Department.

The above facts indicate that belated action in assessing the dealer and ineffective follow up action resulted in non-recovery of arrears of ₹ 33.29 lakh. However, there was nothing on record to indicate that any action has been taken against the persons responsible for lapse.

We reported the matter to the Government in March 2014. Their reply has not been received (December 2014).

2.5.6.2 Assistant Commissioner of Sales Tax, C- 817, Jalgaon Division, Dhule

During test check of the recovery files in Jalgaon Division in November 2012, we noticed that a company manufacturing chemicals and holding Entitlement Certificate under exemption mode for the period from 1 February 1997 to 31 December 2003 with monetary ceiling of ₹ 15.74 lakh was assessed in March

2009 for periods from 1997-98 to 2001-02 under the BST Act and raised demand for dues amounting to ₹ 30.53 lakh. Scrutiny of the records revealed that the dealer had already closed his business from 2002-03 and the Department was also aware of the fact since June 2003. However no action in this case was taken from June 2003 to April 2009, i.e. during a period of almost six years, The Department in April 2009 requested Maharashtra State Electricity Distribution Company Limited (MSEDCL) and the MIDC Police Station for help to trace out the dealer. However, no response in the matter was found to have been received from these quarters. Further, the Department in December 2010 informed MIDC to prohibit sale, donation or transfer of the property of the dealer. The FIR was lodged by the Department only in June 2013 to trace the dealer.

Thus, belated action in assessing the dealer and lack of timely action by the Department to trace the dealer resulted in non-recovery of Government revenue of ₹ 30.53 lakh. There was nothing on record to indicate that any action has been taken against the persons responsible for lapse.

We reported the matter to the Government in May 2014. Their reply has not been received (December 2014).

CHAPTER III

STATE EXCISE

3.1 Tax administration

Levy and collection of state excise and other related receipts are regulated by the Bombay Prohibition Act, 1949 (BP Act), Bombay Prohibition (Privilege Fees) Rules, 1954 and Maharashtra Potable Liquor (Periodicity and Fees for Grant, Renewal or Continuance of Licence) Rules, 1996. These Acts and Rules are implemented by the Commissioner of State Excise (CSE) under the overall control of the Principal Secretary to the Government in Home Department, assisted by Joint Commissioners and Deputy Commissioners. At the district level he is assisted by the Superintendents of State Excise (SSE) working under the Regional Deputy Commissioners. The state excise receipts mainly comprise of excise duty leviable on spirits, fees on licenses and privilege fees.

3.2 Internal audit

The Joint Director (Accounts) in the office of the Commissioner of State Excise, Maharashtra State, Mumbai, is in charge of the internal audit wing of the State.

Information regarding position of cases planned to be taken up for audit and actually audited is given in **Table 3.2**

Table 3.2

Year	No. of units			Audit observations during the year		
	Planned	Audited	Un-audited	Raised	Settled	Pending 31.03.2014
2009-10	821	473	348	1,286	509	777
2010-11	875	442	433	1,131	403	728
2011-12	1,052	515	537	1,598	1,294	304
2012-13	1,094	538	556	1,001	658	343
2013-14	1,116	400	716	945	153	792
Total				**5,961**	**3,017**	**2,944**

The above table indicates that the number of unaudited units have been increasing from year to year. Besides, 49.39 *per cent* of the audit observations have remained unsettled during the last five years.

3.3 Results of audit

In 2013-14, test check of records of 114 units relating to excise duty, license fee receipts, etc. showed non/short realisation of excise duty/license fee/ interest/penalty and other irregularities involving ₹ 22.54 crore in 360 cases as shown in **Table 3.3.**

Table 3.3

(₹ in crore)

Sr. No.	Category	No. of cases	Amount
1	Audit of "Subsidy granted to grain based distilleries"	1	0.45
2	Non/short levy/recovery of Excise duty/ Application fees/License fee/Privilege fee	150	20.46
3	Miscellaneous/Non recovery of compounding fees/non-recovery due to reduction in manufacturing cost	27	0.22
4	Non and Short recovery of Supervision Charges/ Interest/ Bonus	118	1.17
5	Non-recovery of toddy installment	64	0.24
Total		**360**	**22.54**

During the course of the year, the Department accepted and recovered underassessment and other deficiencies of ₹ 1.60 crore in 141 cases; of these 56 cases involving ₹ 93.27 lakh were pointed out during 2013-14 and the rest during earlier years.

A few audit observations on grant of subsidy to grain based distilleries are mentioned in the succeeding paragraphs.

3.4 Audit of "Subsidy granted to grain based distilleries"

3.4.1 Introduction

The Government of Maharashtra (GoM), on the basis of a Cabinet decision, issued a Resolution on 8 June 2007 promulgating a scheme called "Food Grain based distillery and integrated unit financial Aid-2007". The salient features of the scheme were as under:

- All the new grain based distilleries or integrated units (distilleries and potable liquor units) which were set-up and became operational by 31 December 2009 were eligible for getting financial assistance.
- This financial assistance was to be given only for the spirit manufactured from the grains produced in the state.
- To compensate for the capital investment made by the grain based spirit manufacturing units, reimbursement was to be given at the rate of ₹ 10 per litre of the spirit sold to units manufacturing either liquor, drugs or cosmetics to the extent of excise duty paid on such manufacture.
- The maximum limit of reimbursement of capital investment made by the unit would be
    - 150 *per cent* or ₹ 37.50 crore, whichever was less, for "D"[1] category backward area in the Vidarbha and Marathwada region
    - 200 *per cent* or ₹ 50 crore, whichever was less, for "D+"[1] category backward area in the Vidarbha and Marathwada region
    - 100 *per cent* or ₹ 25 crore, whichever was less, for the "D" and "D+" areas of other regions
- The above concession would in no case exceed the date on which the entire capital investment made by the unit was recovered by way of subsidy admissible to it, or 31 December 2013, whichever is earlier.
- The unit would start production within two years from the date on which letter of intent is sanctioned and considering the progress of the scheme, the State Government may extend the due date to the eligible units from time to time as per the requirement subject to the condition that there would not be any change in the final due date up to which concession is given.
- The aforesaid financial assistance of ₹ 10 per litre would be granted only if grain based spirit was used in the state of Maharashtra in manufacturing potable liquor and cosmetics (M & T P) and also proper records are maintained which are certified by the Excise Department.
- This scheme would increase production of grains like *jowar*.

[1] Classification of regions in Maharashtra by the Industries Department for the implementation of Package Scheme of Incentives. "D" region denotes the lesser developed areas and "D+" denotes the least developed areas of the state of Maharashtra.

3.4.2 Background of the scheme

Ministry of Petroleum and Natural gas, the Government of India (GoI) in a notification issued in September 2002 directed the Government of Maharashtra (GoM) that five *per cent* ethanol-blended petrol shall be sold in the State from 1 January 2003. The Ministry of Science and Technology, Government of India assigned (April 2003) M/s. MITCON Consultancy Services Ltd., Pune, the work of assessing whether cereal grains such as maize and *jowar* could be used as raw material to produce alcohol in Maharashtra and whether the cost effective and sustainable technology for the same was available in India. The MITCON report *inter alia* recommended enactment of a law to make it imperative to use only grain based alcohol for potable liquor and molasses based alcohol for fuel blending and for industrial use. It further recommended to notify the concerned Act and Rules so that cereal grains for sale at Agricultural Produce Marketing Committees (APMCs) could be purchased directly by the manufactures of grain based spirit.

The Government, in its Resolution of June 2007, decided to grant subsidy to grain based distilleries on the basis of the study report of MITCON, according to which the manufacture of grain based spirit would be costlier than molasses based spirit by ₹ 6 to ₹ 7 per bulk litre. It further justified the grant of subsidy by stating that the incentive in the form of subsidy would encourage investment in the industry and the grain unfit for human consumption would be utilised in the production of grain based spirit as the farmers were unable to get proper price for such grain.

3.4.3 Views of the other departments on the scheme

The contents of the scheme proposed by the Home Department were circulated to the Finance, Planning and Industries departments for their views. It was seen that the Finance Department and Planning Department were not in favour of the scheme and the Industries Department did not give any comment. The comments of the Finance and Planning departments are as under.

Views of the Finance Department:

- The contention that the subsidy would increase the production of *jowar* was not realistic.
- The State had specific policies relating to production and sale of alcohol and grant of incentives in this area which did not find place in the State's planning process. Further, as the state's budget was balanced, it did not leave any scope for grant of subsidy to distilleries.
- The Government was not responsible for bridging the gap of demand and supply in the alcohol industry and in case there is such a gap, then the private entrepreneurs would step forward to start such industries on their own with an eye on the profits involved.
- The Study Report submitted by MITCON to the Government had not been prepared as per standards and therefore, the correctness of the assumptions made could not be ascertained.

Views of the Planning Department:

- There was decrease in cultivable area, production and productivity of *jowar* during the period 1996-97 to 2003-04;
- Moreover, Maharashtra was also not self-sufficient in production of food grains necessitating large scale purchases from Food Corporation of India as well as other states.
- In view of the above, it was not possible to give concurrence to the proposed scheme.

Views of the Minister of Finance and Planning :-The Minister of Finance and Planning Department had made the following observations on the scheme as per the notings in the relevant files.

- Till date the Government has avoided grant of subsidy on production of alcohol. Further, spirit manufactured from grain based distillery is used only for liquor production; it would result in increased consumption of liquor and also attract public criticism.
- The basis on which subsidy of ₹ 10 per litre was proposed was not clear. However, as the difference in cost of production of spirit from molasses based distillery to that from grain based distillery was ₹ 5 to ₹ 6 only, the amount of subsidy was to be restricted to ₹ 6 only.
- Since molasses based alcohol would be diverted for ethanol, setting up of grain based distilleries would get impetus and hence grant of such type of subsidy was not correct.

Thus, though Finance and Planning departments were not in favour of the subsidy scheme, the Home Department went ahead with the scheme, it reiterated its stand that the subsidy would encourage investment in the industry and the grains unfit for human consumption would be utilised in the manufacture of alcohol, which would ultimately benefit the farmers and put up the proposal to the Cabinet which was approved by the cabinet.

3.4.4 Lack of justification for grant of subsidy

As per Rules 3 to 14 of Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966, any person desiring to set-up a distillery for the manufacture of spirit shall make an application along with Letter of Intent (LOI)[2], to the Government through the CSE along with necessary documents. The CSE shall conduct necessary verification of the details furnished in the application form and forward the same to the Government with its recommendations. The Government may grant the permission and instruct the applicant to proceed with construction of distillery within a fixed period of two years. The Government grants the applicant a license in Form I on payment of prescribed fee. The license is granted only for one year and is renewed every year in advance before 31 March.

[2] It is a document outlining an agreement between the licencee and the Government.

We noticed that 32 licenses were issued under the scheme, however no records registers or files indicating the basis for grant of licenses relating to the receipt and processing of applications/LOIs were produced to audit. As such the methodology adopted in selection of the cases to ensure whether transparency was maintained could not be ascertained by audit.

Out of these 32 licenses, we found that in seven cases the distilleries had applied for licenses for production of grain based spirit prior to the date of notification of the scheme. These distilleries had submitted their LOIs and detailed plan for setting up of distilleries much before the notification of the scheme indicating therein in the accounts statements that they were self-sustainable. None of these units had indicated that they need any sort of help from the Government for setting up the industry. The profitability statements available in the records of the three units indicated that each would run in profit ranging from ₹ 2.47 crore to ₹ 4.18 crore (after payment of tax). The details of subsidy given to these seven distilleries is indicated in **Table 3.4.4**.

Table 3.4.4

(₹ in crore)

Sr. No.	Name of distillery	Amount of subsidy received	Date of LOI	Date of acceptance of LOI	Date of issue of licence	Annual profit range after tax
1	M/s. Alco Plus Producers Pvt. Ltd., Latur	40.60	07.01.2004	26.03.2004	05.04.2008	3.62
2	M/s Grainotch Industries Pvt. Ltd., Aurangabad	32.64	18.11.2006	17.02.2007	13.05.2009	NA[3]
3	M/s. Viraj Alcohol, Sangli	25.00	15.03.2005	26.07.2005	09.08.2007	4.18
4	M/s. Anand Distillery, Amravati	14.47	06.10.1993	--	21.05.2008	NA
5	M/s. Yashraj Ethanol Processing Pvt. Ltd., Satara	6.54	08.04.2004	25.08.2005	10.08.2009	2.47
6	M/s. Venkateshwara Bio Refinery, Sangli	0.86	15.06.2006	21.11.2006	30.12.2009	NA
7	M/s. Shivshakti Sahakari Glucose Karkhana, Sangli	0.06	18.07.2005	06.01.2006	31.08.2009	NA
Total		**120.17**				

Thus, the above facts indicate that there was no justification for granting subsidy to these seven distilleries. These distilleries had received subsidy of ₹ 120.17 crore which was 90.48 *per cent* of the total subsidy of ₹ 132.82 crore given to 11 distilleries (**Appendix-I**) during the period 2009-10 to 31 December 2013.

[3] Not available

3.4.5 Irregular grant of subsidy

As per the scheme, the subsidy was admissible to grain based distilleries in respect of only those quantity of grain based spirits which are exclusively used in the production of liquor and medicinal and toiletry preparations on which state excise duty of Maharashtra was levied. In case of (export or Outside Maharashtra State sale) on which state excise duty is not leviable, subsidy is not admissible.

During scrutiny of subsidy claim files at the office of the CSE we noticed that one distillery at Sangli had sold 4,00,000 bulk litres (BL) and 55,000 BL of Spirit to M/s. ABC at Ahmednagar and M/s. XYZ at Pune respectively during the period April 2008 to November 2009. M/s. ABC had exported the final product in respect of purchase of 2,80,000 BL of spirit and utilisation certificate in respect of balance spirit of 1,20,000 BL was not available in the files produced to audit. Further, as per utilisation certificate furnished by M/s. XYZ, 20,000 BL of spirit was used for industrial purpose on which no excise duty was levied and utilisation certificate was not available in respect of remaining 35,000 BL of spirit.

Hence, as per the provisions of the scheme, the above quantity of 4,55,000 BL of spirit did not qualify for grant of subsidy. It was, however, seen that the distillery was granted subsidy for the above sales also resulting in incorrect grant of subsidy of ₹ 45.50 lakh (4,55,000 x ₹ 10) to the distillery at Sangli.

3.4.6 No increase in production of *jowar*

As per the scheme one of the inherent objectives was to increase production and productivity of *jowar* in the State. However, as per information obtained from the Director of Agriculture, Maharashtra, there was no overall increase in the area, production and productivity of *jowar* in the state after the scheme was launched as shown in **Table 3.4.6**.

Table 3.4.6

Year	Area in hundreds of hectares	Production in hundreds of tons	Productivity Kg/ hectare
2008-09	41,691	35,400.80	849.12
2009-10	41,763	35,653.94	853.72
2010-11	40,592	34,519.63	850.40
2011-12	32,290	26,269.00	813.53
2012-13	32,899	21,737.00	660.72
2013-14	28,624	22,681.00	792.00

Though subsidy was allowed to the distillers, there was nothing on record to suggest that the subsidy scheme benefited the grain producing farmers or had led to an increase in the production of grains such as *jowar*.

3.4.7 Grant of subsidy to demerit commodity

Alcoholic beverages are considered 'demerit commodity'[4] and are subject to very high rates of taxes in Maharashtra. The excise duty on Indian Made Foreign Liquor (IMFL) and country liquor is levied at the rate of 300 *per cent* and 250 *per cent* respectively of the manufacturing cost. In addition to excise duty, Value Added Tax (VAT) at the rate of 25 *per cent* of the sale price is also levied. These measures are designed to make the alcoholic beverages expensive so as to discourage its consumption.

The Finance Department was also not in favour of the scheme. It had opined that giving of incentives in this area under this scheme did not find a place in the State's planning process and would attract public criticism.

Thus, the scheme led to utilisation of the tax payers' money towards promotion of a demerit commodity.

3.4.8 Diversion of molasses based ethanol to petroleum companies

The Department had not fixed any norm/target for diversion of ethanol to petroleum companies. No diversion of ethanol to petroleum companies was made during the year 2008-09 and 2009-10 while the diversion to petroleum companies saw a steady fall from 2010-11 to 2012-13 (971.49 lakh bulk litres (BL), 533.56 lakh BL and 280.13 lakh BL respectively). Diversion made during the year 2013-14 and 2014-15 was not available with the Department. Thus, the objective of the scheme was not achieved.

3.4.9 Absence of penal action and non-monitoring of the scheme

The eligibility certificate under the Package scheme of Incentives floated by the Industries Department stipulates operative period of agreement during which if the unit closes down or continues to remain below normal production during the year, entire amount of incentives availed of together with interest thereon shall be immediately recoverable and if not paid on demand, the Government shall be entitled to recover the same dues as arrears of land revenue.

However, no provision, by way of obligation(s), or pecuniary action to ensure a minimum operative period during which the unit would remain in operation and maintain a minimum production levels after availing the subsidy, was made in the scheme. As such, the Department had no control on the distilleries to watch their functioning after grant of subsidy.

No system was found to have been put in place by way of returns or otherwise to watch the progress made in achieving the objectives at the apex level. There was nothing on record to indicate that the progress made in achieving the objectives was evaluated from time to time for ensuring its continuance during the period of operation.

[4] "Demerit commodity" means a commodity whose consumption is considered unhealthy, degrading or otherwise socially undesirable due to perceived negative effects on the consumers themselves (Source: the Wikipedia, the free encyclopedia)

The subsidy granted to a distillery (Alkoplus Producers Pvt. Ltd.) was ₹ 40.60 crore i.e., 31 *per cent* which was the highest amount of subsidy received by any distillery, Anand Distilleries received subsidy of ₹ 14.47 crore up to February 2013. Both the units stopped manufacturing spirit since March 2013 and February 2013 respectively stating shortage of water and grain respectively.

Thus, these distilleries remained in operation from May 2008 to March 2013, till the operation of the scheme. The scheme was closed in March 2013.

3.4.10 Conclusion

The Government did not formulate specific goals and time frame to achieve the objectives of the scheme and adequate efforts to monitor the scheme were not made. The Government opted to grant cash subsidy to manufacturers of rectified spirit made from grains. The scheme envisaged increase in area and production of *jowar*. However, the same decreased after implementation of the scheme. There was nothing on record to indicate that effective steps were taken to ensure that farmers were benefited by way of better price for their produce. No mechanism was put in place to ensure that prescribed amount of ethanol was diverted for fuel blending as envisaged under the scheme. Further, no system existed to monitor the activities of the distilleries after availing the subsidy.

Thus, the envisaged objectives of the scheme remained to be achieved even after grant of subsidy aggregating ₹ 132.82 crore. Besides, tax payers' money was utilised for extending subsidy to producers of alcoholic beverages (demerit commodity). There is nothing to suggest that subsidy scheme benefited the grain producing farmers.

CHAPTER IV

STAMP DUTY AND REGISTRATION FEE

4.1 Tax administration and organisational setup

The levy and collection of stamp duty and registration fee in Maharashtra is governed by Maharashtra Stamp Act[1], 1958 (MS Act), Indian Stamp Act 1899 (IS Act), Indian Registration Act, 1908 (IR Act) and the rules framed thereunder.

The Inspector General of Registration (IGR) is the head of the Stamp Duty and Registration Department who works under the overall control of the Principal Secretary, Relief and Rehabilitation (RR) at the Government level. He is assisted by Additional Controller of Stamps (ACOS), Mumbai, ten[2] Deputy Inspectors General of Registration (DIGs), nine[3] Assistant IGRs, six Collector of Stamps (COS) and Superintendent of Stamp (SOS) at Mumbai and Mumbai suburban district (MSD), 32 Joint District Registrars and Collector of Stamps (JDRs and COS) at district levels.

A separate cell (called valuation cell) headed by the Joint Director of Town Planning and valuation consisting of seven divisions of the State has been formed for preparation of Annual statement of Rates (ASR). These rates are used by the registering authorities for determination of the true market value of the properties. Mumbai Division is headed by the Deputy Director of Town Planning and valuation (DDTP) and other six[4] divisions are headed by Assistant Director of Town Planning (ADTP). The members of the valuation cell belong to Urban Development Department; however, the cell works under the administrative control of IGR, Pune.

4.2 Results of audit

In 2013-14, test check of the records of 206 units of the Stamp Duty and Registration Fees Department showed non/short levy of stamp duty and registration fees etc. and other irregularities amounting to ₹ 162.93 crore in 652 cases, which fall under the categories given in **Table 4.2**.

[1] This title was substituted for the title "The Bombay Stamp Act, 1958" by Mah. 24 of 2012 (w.e.f. 1-5-1960)
[2] Including one Dy. IGR, Headquarter at Pune and one Dy. IGR (Computerisation)
[3] Including one Assistant IGR in Stamp Office, Mumbai
[4] Amravati, Aurangabad, Nagpur, Nashik, Pune and Konkan (Thane)

Table 4.2

(₹ in crore)

Sr. No.	Categories	No. of cases	Amount
1.	Performance audit on "Levy and collection of Stamp duty in Adjudication Cases"	1	72.61
2.	Short levy due to under valuation of property	451	81.33
3.	Short levy due to misclassification of documents	19	6.18
4.	Incorrect grant of exemption of stamp duty and registration fees	81	1.91
5.	Non-levy of stamp duty and registration fees	71	0.71
6.	Other Irregularities	29	0.19
Total		**652**	**162.93**

The Department accepted short levy and other deficiencies and recovered in 191 cases involving ₹ 6.13 crore, of which 36 cases involving ₹ 0.80 crore were pointed out during 2013-14 and rest during earlier years.

A performance audit on "**Levy and Collection of Stamp Duty in adjudication cases"** and a few illustrative cases involving ₹ 79.27 crore are discussed in the succeeding paragraphs.

4.3 Performance audit on "Levy and collection of Stamp duty in Adjudication Cases"

Highlights

- Scrutiny of the information collected from the Inspector General of Registration, Pune revealed that 1.24 lakh cases involving revenue of ₹ 726.80 crore were outstanding as on 31 March 2014 at various stages.

(Paragraph 4.3.7)

- Payments made on account of components like rent, construction cost, brokerage charges etc. paid by the developer were incorrectly treated as obligation and stamped at 0.2 *per cent* instead of 5 *per cent* by treating it as a part of consideration for development agreement. This resulted in short levy of stamp duty and penalty of ₹ 13.04 crore in 36 instruments.

(Paragraphs 4.3.8.1 and 4.3.8.2)

- Consideration amount of ₹ 421.75 crore based on sharing of revenue between the developer and the owner, though mentioned in the instrument, was not considered for levy of stamp duty instead it was levied on the market value of the land of ₹ 66.86 crore. This resulted in short levy of stamp duty and penalty of ₹ 21.69 crore.

(Paragraph 4.3.8.3)

- Premium aggregating to ₹ 15.35 crore paid by a developer for additional FSI and water charges was not considered for levy of stamp duty. This resulted in short levy of stamp duty of ₹ 76.74 lakh in Collector of Stamps, Kurla.

(Paragraph 4.3.8.4)

- Construction cost of the area occupied by the tenants was omitted from determination of the market value in 83 cases. This resulted in short levy of stamp duty and penalty of ₹ 16.54 crore.

(Paragraphs 4.3.9.1 and 4.3.9.4)

- The adjudicating authorities treated "A- category cessed buildings" as non cessed buildings and applied incorrect FSI ratio of 1.33 instead 3 / 2.5. This resulted in short levy of stamp duty including penalty of ₹ 4.37 crore in six adjudicated cases.

(Paragraph 4.3.10)

- Transfer of Development Rights of 1.15 lakh sqft involving ₹ 11.25 crore was not taken into account for determination of the market value of the property. This resulted in short levy of stamp duty of ₹ 56.24 lakh and penalty of ₹ 11.25 lakh.

(Paragraph 4.3.11)

- Stamp duty of ₹ 23.89 lakh payable on a supplementary agreement executed in continuation of a joint development agreement (JDA) that had altered the contents of the JDA substantially was not levied. This resulted in short realisation of revenue to that extent.

(Paragraph 4.3.12)

- An amount of ₹ 200 crore received by the owner company was incorrectly treated as an unsecured loan/obligation, etc. instead of consideration for development agreement. The total consideration worked out to ₹ 235.67 crore. The Department levied stamp duty of ₹ 5.46 crore on the consideration amounting to ₹ 97.62 crore. This resulted in undervaluation of ₹ 138.05 crore involving stamp duty of ₹ 6.32 crore.

(Paragraph 4.3.13.1)

- Development agreement and lease agreements were misclassified as BOT agreements in three cases and stamp duty was levied at lesser rates. This misclassification of the instruments resulted in short levy of stamp duty of ₹ 4.81 crore in three cases.

(Paragraph 4.3.13.2)

- Instructions contained in ASR were not followed uniformly. In some cases FSI mentioned in the instruments was taken into consideration while in some cases it was not taken into consideration for determination of the market value of the properties. This resulted in undervaluation of the properties involving stamp duty ₹ 2.30 crore in eleven cases where FSI mentioned in the documents was not taken into consideration.

(Paragraph 4.3.14)

- There was shortfall in conducting audit by internal audit wing of IGR. No specific targets were set for auditing Collector of Stamps office by the IGR. Further, the Additional Controller of Stamps, Mumbai was not conducting audit of any of the Collector of Stamps under its control despite the huge revenue contributed by them.

(Paragraph 4.3.16)

4.3.1 Introduction

Stamp duty and Registration Fee is the second largest tax revenue of the State. The levy and collection of stamp duty is governed by the MS Act, 1958 and Indian Stamp Act 1899 as applicable to the State. The rates of stamp duty leviable on the instruments executed under the Act are mentioned in the Schedule I of the MS Act.

The instruments intended for registration are presented before the concerned Sub Registrar. Under Section 32A of the MS Act, if any Sub Registrar receiving such instruments has reasons to believe that the market value of immovable property has not been truly set forth in the instrument, he shall refer the same to the Collector of Stamps (COS) for determination of true market value of such property. Every registering authority is empowered under Section 33 to impound the document if he/she finds that the document has not been sufficiently or has been incorrectly stamped and forward the same to COS for determination of correct market value.

Section 39 empowers the COS to determine the duty, if any, with which the impounded instrument is chargeable. Section 53 empowers the Chief Controlling Revenue Authority (CCRA) to reassess the duty leviable assessed by COS in any case brought to his/her notice by any person. The market value of the property is determined as per the provisions of the Bombay Stamp (Determination of True market value of property) Rules 1995 and ASR. Further, Section 9 of MS Act empowers the Government of Maharashtra in reducing or remitting of stamp duty leviable on certain instruments. As per Section 31 of the MS Act, when an instrument whether executed or not is brought to the Collector by the parties to have his opinion as to the duty with which it is chargeable, and pay a fee of ₹ 100, the Collector shall determine, in his judgment, the duty with which it is chargeable. If stamp duty is paid within sixty days from the date of service of the notice of demand in respect of the instrument adjudicated then the COS, under section 32 certifies by endorsement on such instrument that full duty has been paid. The COS shall mention the relevant Article of the schedule and the amount with which it was chargeable.

This process of determination of the stamp duty is called “Adjudication as to Stamps” and is detailed in Chapter III of the MS Act.

4.3.2 Revenue collected from adjudicated cases

The revenue collection of the State through levy of stamp duty on adjudication cases during the period from 2009-14 are indicated in **Table 4.3.2**.

Table 4.3.2

(₹ in crore)

Year	No. of cases adjudicated u/s 31, 32 and 33	Stamp Duty recovered in adjudicated instruments	Percentage increase/decrease	
			cases compared to previous year	Stamp duty compared to previous year
2009-2010	9,594	121.09		
2010-2011	85,218	1,560.32	788.24	1,188.56
2011-2012	58,953	1,247.55	(-) 30.82	(-) 20.05
2012-2013	33,376	945.71	(-) 43.39	(-) 24.19
2013-2014	27,213	672.20	(-) 18.47	(-) 28.92
Total	**2,14,354**	**4,546.87**		

Source: Information furnished by IGR office

It can be seen from the above that number of cases adjudicated and the stamp duty collected thereon increased in the year 2010-11 by 788.24 *per cent* and 1,188.56 *per cent* respectively compared to 2009-10. However, from the year 2011-12, there was gradual decline in number of cases adjudicated as well as the stamp duty.

The department in the exit conference (September 2014) stated that prior to 2012 many types of agreements were to be compulsorily adjudicated before registration which resulted in delay in realization of SD and caused inconvenience to public. From 2012 onwards these restrictions were withdrawn resulting in direct registration of these instruments. This resulted in reduction in number of adjudication cases. The Principal Secretary however stated that the figures will be re-verified and confirmation would be sent to audit.

4.3.3 Scope and methodology of audit

The performance audit was conducted between January 2014 and July 2014 in respect of adjudicated cases finalised by the Department between January 2009 and December 2013. The records of COS of Mumbai Division[5], three COS in Konkan division[6], two COS in Pune Division[7] and two COS from Nagpur division[8]were selected for this performance audit.

As per the information (calendar year wise) furnished by the Department, at the end of December 2013, total 1,87,141 cases involving ₹ 3,874.67 crore were adjudicated during the period from 2009 to 2013.

We conducted the performance audit in five divisions in which 1,04,220 adjudicating cases involving ₹ 3,633.27 crore were finalised during the period from 2009 to 2013. Statement showing the number of adjudication cases and

[5] COS Mumbai, Enforcement-1, Enforcement-II, Superintendent of Stamps (SOS), Mumbai, COS Andheri, COS Borivali, COS Kurla
[6] Thane City, Thane Rural and Raigad
[7] Pune City and Pune Rural
[8] Nagpur City and Nagpur Rural

the amount involved in the five divisions selected for PA is shown in **Table 4.3.3.**

Table 4.3.3

(₹ in crore)

Division	Total Units	No. of Cases	Revenue involved	Total Units selected	Cases in selected units	Revenue in selected units
Mumbai	7	65,492	2,809.46	7	65,492	2,809.46
Konkan	5	23,861	685.82	3	20,964	673.86
Pune	6	19,888	113.35	2	11,859	91.09
Nagpur	6	7,862	67.67	2	5,905	58.86
Total	**24**	**1,17,103**	**3,676.30**	**14**	**1,04,220**	**3,633.27**

Thus the audit coverage was 56 *per cent* in respect of number of cases and 94 *per cent* in respect of amounts realised.

Reasons for taking up the performance audit: During transaction audit we had noticed that there was no uniformity in adjudicating the similar nature of instruments by same/different adjudication authorities i.e. by COS. Instances of misclassification of documents while adjudication was also noticed. These were reported through audit inspection reports periodically. Keeping the number of the instruments and the amount into consideration, it was decided to take up a Performance Audit (PA) on this topic.

4.3.4 Audit objectives

Audit was conducted with a view to ascertain that:

- Adequate rules and procedures were prescribed by the Government and these were applied uniformly in adjudicating the cases.
- Classification of instruments and determination of market value was in accordance with the provisions of the Acts and Rules made there under.
- Internal controls were efficient and effective for timely disposal of the adjudication cases.

4.3.5 Audit Criteria

The audit criteria for the Performance Audit are derived from the provisions of the following Central and State Laws:

Central Laws:

- The Indian Stamp Act 1899
- The Indian Registration Act 1908

State Laws:

- The Maharashtra Stamp Act 1958
- The Bombay Stamp (Determination of True Market Value of Property) Rules, 1995

- The Development Control Regulation for Greater Mumbai 1991 (DCR)
- The Transfer of Property Act, 1882
- The Maharashtra Rent Control Act, 1999
- Maharashtra Slum Areas (Improvement, clearance and redevelopment) Act, 1971
- Maharashtra Housing Area Development Authority Act, 1976 (MHADA Act)
- Annual Statement of Rates (ASR) for respective years
- Notification/Resolution/Circular issued by the GoM and IGR and Controller of Stamps, Pune from time to time.

4.3.6 Acknowledgement

The scope, methodology and objective of the audit were discussed with the IGR prior to commencement of performance audit. The draft performance Report was forwarded to the Government in August 2014. An exit conference was held in September 2014 with the Department and the Government. The Government side was represented by the Principal Secretary (RR). The responses of the Government in the exit conference and at other point of time have been incorporated in the relevant paragraphs of the Report.

We acknowledge the co-operation of the Stamp and Registration Department in providing the necessary information and records to audit.

Audit Observations

During the performance audit we found a number of system and compliance deficiencies. A few are mentioned in the succeeding paragraphs.

4.3.7 Delay in disposal of cases resulting in blocking of revenue

Scrutiny of the information collected from the IGR revealed that 1,24,325 cases involving revenue of ₹ 726.80 crore were outstanding as on 31 March 2014 at various stages as mentioned in **Tables 4.3.7.1** to **4.3.7.4.**

4.3.7.1 Adjudication cases forwarded by SR to COS

Section 32A of the MS Act stipulates that if any, registering authority receiving instruments for registration has reasons to believe that the true market value of property has not been truly set forth in the instrument, he/she shall refer such instrument to COS for determination of true market value of such property.

As per the information furnished by the Department, 1.14 lakh adjudication cases involving stamp duty of ₹ 129.76 crore forwarded by SR to COS were outstanding as on 31 March 2014 as mentioned in **Table 4.3.7.1**

Table 4.3.7.1

(₹ in crore)

Year	Opening balance		Received		Disposal		Closing balance		Percentage	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	(8) to (2) + Col (4)	(9) to (3) + Col (5)
1	2	3	4	5	6	7	8	9	10	11
2009-10	51,056	34.13	42	0.07	3,531	0.09	47,567	34.11	93.09	99.74
2010-11	1,51,801	205.16	314	0.31	22,304	50.26	1,29,811	155.21	85.34	75.54
2011-12	1,24,401	155.07	2,071	1.23	8,656	12.98	1,17,816	143.32	93.16	91.70
2012-13	1,17,816	143.22	688	2.39	2,416	9.14	1,16,088	136.47	97.96	93.72
2013-14	1,45,015	202.38	1,001	3.59	31,757	76.21	1,14,259	129.76	78.25	63.00

Source: figures obtained from IGR office

The pendency in disposal of cases ranged between 78.25 *per cent* and 97.96 *per cent* and percentage of amount involved in these pending cases ranged between 63 and 99.74 *per cent*.

4.3.7.2 Cases impounded by the Department

Section 33 deals with impounding of insufficiently stamped instruments both unregistered as well as registered. The COS is empowered to determine the duty, if any, with which the impounded instrument is chargeable.

As per the information furnished by the Department, 7,125 impounded cases involving stamp duty of ₹ 77.24 crore brought for adjudication were shown outstanding as on 31 March 2014 as mentioned in **Table 4.3.7.2**

Table 4.3.7.2

(₹ in crore)

Year	Opening balance		Received		Disposal		Closing balance		Percentage	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	(8) to (2) + Col (4)	(9) to (3) + Col (5)
1	2	3	4	5	6	7	8	9	10	11
2009-10	14,759	74.87	1,429	9.97	2,558	10.77	13,630	74.07	84.20	87.31
2010-11	13,615	73.66	21,475	483.26	23,664	490.21	11,426	66.71	32.56	11.98
2011-12	10,993	57.12	23,961	296.58	24,316	307.58	10,638	46.12	30.43	13.04
2012-13	9,528	46.02	14,094	121.53	15,296	144.49	8,326	23.06	35.25	13.76
2013-14	7,170	49.41	11,235	112.33	11,280	84.50	7,125	77.24	38.71	47.76

Source: figures obtained from IGR office

The pendency in disposal of cases ranged between 30.43 *per cent* and 84.20 *per cent* and percentage of amount involved in these cases ranged between 11.98 *per cent* and 87.31 *per cent*.

4.3.7.3 Cases brought for Adjudication before COS

Section 31 of the MS Act stipulates that when an executed or unexecuted instrument is brought to the Collector of Stamps (COS) by one of the parties to the instrument, on payment of fee of one hundred rupees, to have the opinion as to the duty with which it is chargeable, the COS shall determine the duty with which the instrument is chargeable and issue demand notice.

As per the information furnished by the Department, 1,990 adjudication cases involving stamp duty of ₹ 390.32 crore were pending (March 2014) for Adjudication before COS. The details of the cases received and disposed of is mentioned in table **4.3.7.3**

Table 4.3.7.3

(₹ in crore)

Year	Opening balance		Received		Disposal		Closing balance		Percentage	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	(8) to (2) + Col (4)	(9) to (3) + Col (5)
1	2	3	4	5	6	7	8	9	10	11
2009-10	3,500	99.78	3,734	99.02	3,505	110.23	3,729	88.56	51.55	44.55
2010-11	3,798	90.85	38,641	977.71	39,250	1,019.85	3,189	48.71	7.51	4.56
2011-12	2,555	46.04	25,567	1,007.07	25,981	926.99	2,141	126.12	7.61	11.98
2012-13	2,136	128.53	15,796	858.80	15,664	792.08	2,268	195.25	12.65	19.78
2013-14	2,189	191.99	13,920	782.41	14,119	584.08	1,990	390.32	12.35	40.06

Source: figures obtained from IGR office

The closing balance of the above table indicates that though the number of cases pending adjudication has been decreasing from year to year, the amount involve in the cases has been increasing. During 2013-14, there has been 100 *per cent* increase in amount of the pending cases. This indicates that cases with high money value are pending adjudication. The Department needs to ensure that high money valued cases are adjudicated at the earliest in the interest of the revenue.

4.3.7.4 Adjudication cases pending with IGR

Section 53A of the MS Act empowers the Chief Controlling Revenue Authority (CCRA) to reassess the duty leviable assessed by COS. When through mistake or otherwise any instrument is charged with less duty than leviable by the COS, the CCRA shall examine such instrument and order recovery of deficit stamp duty from the concerned parties.

As per the information furnished by the Department, 951 adjudication cases involving stamp duty of ₹ 129.49 crore were shown outstanding as on 31 March 2014 as pending adjudication with IGR as shown in **Table 4.3.7.4.**

Table 4.3.7.4

(₹ in crore)

Year	Opening balance		Received		Disposals		Closing balance	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases[9]	Amount
2009	331	100.13	51	17.99	21	3.32	361	114.80
2010	361	114.80	42	7.41	12	2.74	391	119.47
2011	397	119.47	27	81.57	22	76.25	402	124.79
2012	401	124.79	15	57.85	8	57.23	408	125.41
2013	408	125.41	551	23.61	8	19.53	951	129.49
Total			**686**	**188.43**	**71**	**159.07**		

Out of 686 cases received by the IGR during the period 2009-13, only 71 cases (only 10 *per cent*) were disposed even though both the number of pending cases and the amount involved under section 53A showed an increasing trend.

Thus, it would be seen from the above that a large number of adjudication cases have not been finalised by various authorities in the Registration Department. Since, considerable Government revenue is involved in these cases it is recommended that a time frame needs to be set and monitored at the apex level to ensure timely disposal of these cases.

In the exit conference, the Principal Secretary stated that the figures would be checked and confirmed after verification. As regards disposal of cases, as well as age-wise analysis, the Principal Secretary stated that comments will be offered after verification of the facts.

The fact however remains that the figures have been furnished by the Department and the correctness of the figures should have been ensured during their compilation. Furnishing of incorrect figures indicates deficiency in the maintenance of records which needs remedial action by the Department.

The Department may maintain a proper and correct database of adjudication cases for effective monitoring of cases and draw up a time bound framework for their finalisation so that the Government revenue is not unnecessary blocked.

4.3.8 Discrepancies noticed in determination of consideration value

As per Article 5 (g-a) of Schedule-1 of MS Act, 1958, instruments giving authority or power to a promoter or a developer (by whatever name called) for construction or development of, or, sale or transfer (in any manner whatsoever) of any immovable property, stamp duty as is leviable under Clause (a), (b), (c) or (d) (as the case may be) of Article 25 shall be charged on the consideration[10] or market value[11] of the property, whichever is higher.

[9] The opening balances were not tallying with the closing balances.

[10] Consideration is the value of the property mentioned by the executor in the instrument. It can be different from the market value defined below.

We noticed lack of a uniform policy in determination of consideration mentioned in the instruments, resulting in short levy of stamp duty while executing development agreements during the course of audit. These are mentioned in the following paragraphs.

4.3.8.1 Lack of uniform policy in determination of consideration value mentioned in the agreements

Redevelopment agreements of existing buildings of Co-operative Housing Societies or otherwise which fall under the description of Article 5 (g-a) of Schedule-1 of MS Act, 1958 are executed between developer and Society for the redevelopment of the property.

We observed (May 2014) that while adjudicating the instruments of Redevelopment Agreements, the COS offices of Mumbai, Andheri, Kurla and Borivali were treating payments made on account of items like rent for temporary accommodation, hardship/corpus funds, brokerage charges, shifting charges by the developer to the society and its members for the development rights of the property as part of the consideration value. Further, the consideration value also included the construction cost of the built up area, society's office, watchman's office etc. including parking space given by the developer. However, we found that COS Enforcement-I and Enforcement-II, Mumbai while adjudicating 35 Redevelopment Agreements did not consider the items as part of consideration value.

A few illustrative cases are shown in **Table 4.3.8.1.**

Table 4.3.8.1

(₹ in lakh)

Case No. / date	Items not considered by the Enforcement office as consideration		Case No. / date	Items considered by the Enforcement office as consideration	
1	2		3	4	
Different treatment given to different instruments by the same COS in levy of stamp duty					
COS,Enf-II, Mumbai: SDE/NEW/ 163 /12 Dt. 07/03/12 In this case COS Enf-II treated these items as obligation and stamped @ 0.2 *per cent*	Corpus Fund	66.60	**COS, Enf-II, Mumbai** SDE/NEW/401/12 dtd 21/05/12 In this case COS Enf-II treated these items as part of consideration and stamped @ 5 *per cent*	Corpus Fund	55.20
	Rent	129.60		Rent	53.13
	Shifting	5.40		Shifting	1.44
	Brokerage	5.40		Brokerage	2.53
	Total	**207.00**		**Total**	**112.30**
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 12.19 lakh.					

[11] Market value means the price which such property would have fetched if sold in open market on the date of execution of such instrument and is determined in accordance with the rules framed under Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 (DMVR).

1	2		3	4	
COS,Enf-II, Mumbai: SDE/NEW/ 41 /12 Dt. 18/01/12 In this case COS Enf-II treated these items as obligation and stamped @ 0.2 *per cent*	Corpus Fund	140.00	**COS, Enf-II, Mumbai** SDE/NEW/402/12 dtd 25/05/12 In this case COS Enf-II treated these items as part of consideration and stamped @ 5 *per cent*	Corpus Fund	100.00
	Rent	90.00		Rent	84.76
	Brokerage	5.00		Shifting	4.32
	Stamp duty and Registration charges	3.00		Brokerage	3.36
				CC of area given to members	182.29
				CC of parking	12.84
	Total	**238.00**		**Total**	**387.57**
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 10.72 lakh.					
COS, Enf-I, Mumbai: ENF-I/EVN/J/82/12 Dt. 15/06/12 In this case COS Enf-I treated these items as obligation and stamped @ 0.2 *per cent.*	Rent	209.88	**COS, Enf-I, Mumbai** ENF -1/ EVN J/1 /10 Dt. 22/06/10 In this case COS Enf-I treated these items as part of consideration and stamped @ 5 *per cent*	Corpus Fund	38.75
	Brokerage	7.2		Rent	68.82
	Shifting	4.00		Shifting	1.60
				CC of area given to members	100.02
	Total	**221.08**		**Total**	**209.19**
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 28.47 lakh.					
COS, Enf-I, Mumbai: ENF-1/EVN/J/61/12 Dt. 10/04/12 In this case COS Enf-I treated these items as obligation and stamped @ 0.2 *per cent*	Rent	72.00	**COS, Enf-I, Mumbai** ENF-1/EVN/J/51/10 Dt. 30/01/10 In this case COS Enf-I treated these items as part of consideration and stamped @ 5 *per cent*	CC of area given to members	86.54
	Brokerage	2.40		Corpus fund	92.80
	Shifting	1.20		Rent	46.08
				Shifting and Brokerage	2.56
	Total	**75.60**		**Total**	**227.98**
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 7.98 lakh.					
Different treatment given to same nature of instrument in two offices COS, Enforcement II, Mumbai and COS Mumbai					
COS, Enf-II, Mumbai In SDE/NEW/325/ 12 dated 23/04/12, COS Enf-II treated these items as obligation and stamped @ 0.2 *per cent*	Hardship compensation	816.48	**COS Mumbai** In ADJ/M/4587/10 dated 03/11/10, COS treated these items as part of consideration and stamped @ 5 *per cent*	Hardship compensation	952.00
	Rent for Alternate accommodation	1,250.64		Rent for Alternate accommodation	509.60
	Total	**2,067.12**		**Total**	**1,461.60**
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 2.93 crore.					

1	2		3	4	
COS, Enf- II, Mumbai In SDE/NEW/450 /12 dated 4/05/2012, COS-II treated these items as obligation and stamped @ 0.2 *per cent*	Corpus fund	60.00	**COS Mumbai** In ADJ/M/5736/10 dated 28/12/10, COS treated these items as part of consideration and stamped @ 5 *per cent*	Corpus fund	100.00
	Rent	492.47		Rent	160.27
	Brokerage	41.04		Brokerage	nil
	Transport	9.14		Transport	nil
	Total	**602.65**		**Total**	**260.27**
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 30.65 lakh.					
Different treatment given to same nature of instrument in two offices COS, Enf-I, Mumbai and COS Andheri					
COS, Enf-I, Mumbai In ENF-1/EVN/J/79 /12 dated 06/06/12, COS Enf-I treated these items as obligation and stamped @ 0.2 *per cent*	Rent	345.60	**COS Andheri** In ADJ/A/188/12 dated 13/03/12, COS treated these items as part of consideration and stamped @ 5 *per cent*	Rent	201.60
	Brokerage	14.40		Brokerage	16.00
	Shifting	14.40		Shifting	1.60
	Total	**374.40**		**Total**	**219.20**
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in foregoing of Government revenue of ₹ 57.97 lakh.					
Different treatment given to same nature of instrument in two offices COS, Enforcement I, Mumbai and COS Mumbai					
COS, Enf-I, Mumbai In ENF-1/EVN/J/ 68/12 dated 18/05/12, COS Enf-I treated these items as obligation and stamped @0.2 *per cent*	Rent	236.83	**COS Mumbai** In ADJ/M/3987/11 dated 16/11/11, COS treated these items as part of consideration and stamped @ 5 *per cent*	Rent	812.16
	Brokerage	9.87		Brokerage	nil
	Transport	5.85		Transport	13.50
	Total	**252.55**		**Total**	**825.66**
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 37.99 lakh.					

Such types of variations i.e. non-inclusion of components of payments for consideration for development agreement under article 5 (g-a) was noticed in 35 cases. The short realisation of revenue involved in these 35 adjudicated cases in the shape of stamp duty and penalty amounted to ₹ 11.39 crore.

The Principal Secretary in the exit conference accepted (September 2014) the fact and stated that instructions would be issued to all offices in this regard and further stated that action would be taken to recover the deficit stamp duty along with penalty. A report on recovery has not been received (December 2014).

4.3.8.2 Short levy of stamp duty on Re-development Agreement

Audit observed that in respect of Re-Development Agreement deed executed between a Society and the Developer for redevelopment of 7,099.21 square meter of land together with the building standing thereon situated at Parel Sewree Division of Mumbai was adjudicated by COS Enforcement-I, Mumbai in January 2012. While adjudicating, the COS had not taken into account the

construction cost of the built up area and parking area valued at ₹ 18.88 crore to be given to the society members as consideration.

Further, rent of ₹ 16.81 crore paid by the developer on behalf of the society was treated as obligation and stamp duty was levied at the rate of 0.2 *per cent* under article 5(h)(A)(iv). These two items were a part of consideration, and stamp duty at the rate of five *per cent* under Article 25 of schedule-I to MS Act though leviable was not levied. This resulted in short levy of stamp duty of ₹ 1.65 crore.

After we pointed out (December 2013) the short levy, the Principal Secretary accepted (September 2014) the audit observation in the exit conference and stated that action for recovery of deficit stamp duty along with penalty will be initiated.

Report on realisation of deficit stamp duty and penalty has not been received (December 2014).

4.3.8.3 Non-consideration of revenue sharing aspect mentioned in the recitals of the document resulted in short levy of SD and penalty

We noticed (April 2014) in the office of the COS, Nagpur city, that in one evasion case pertaining to Development Agreement deed, document was executed on 30 September 2011 between the Land Owner (Goldbricks Infrastructure Pvt. Ltd) and the Developer (Godrej Properties Ltd) for development of 11,98,509 square feet (sqft) of FSI[12] and saleable area admeasuring 19,84,500 sqft termed as Residential Zone-II to be developed on a plot admeasuring 36,744 square meter (sqm) along with constructed area of 1,440.19 sqm. The COS, Nagpur (City) determined the market value of land along with constructed area at ₹ 66.86[13] crore and levied stamp duty of ₹ 3.34 crore and penalty of ₹ 26.74 lakh levied for four months at the rate of two *per cent* per month.

We noticed from the recitals of the document that Godrej was to develop the said project with Goldbricks on a Revenue Sharing basis and in consideration thereof Godrej would share the Gross Sales Revenue in the manner enumerated in **Table 4.3.8.3 (1)**.

[12] FSI {Floor space Index} ratio of total floor area of a building to the size of the land on which the building is situated.

[13] Zone /Division No: 1.2/259 Page 22; Rate ASR 2011: ₹ 18,000 per sqm.
Market Valuation of the land: (36744 x 18,000) = ₹ 66,13,92,000
Construction Area 1440.19 sqm @ ₹ 5,000 per sqm = ₹ 72,00,950
Total Market Value = ₹ 66,85,92,950 i.e. ₹ 66.86 crore

Table 4.3.8.3 (1)

Sale Price of flats (per sqft)	Revenue Sharing ratio for the first 10 lakh sqft of saleable area		Revenue Sharing ratio for the balance saleable area	
	Goldbricks entitlement	Godrej's entitlement	Goldbricks entitlement	Godrej's entitlement
Up to ₹ 5,250 per sqft	38 *per cent* of the Gross Sales Revenue (GSR)	62 *per cent* of the GSR	43 *per cent* of the GSR	57 *per cent* of the GSR
From ₹ 5,251 per sqft to ₹ 5,999 per sqft	60 *per cent* of the incremental GSR	40 *per cent* of the incremental GSR	60 *per cent* of the incremental GSR	40*per cent* of the incremental GSR
Above ₹ 6,000 per sqft	70 *per cent* of the incremental GSR	30 *per cent* of the incremental GSR	70 *per cent* of the incremental GSR	30 *per cent* of the incremental GSR

The Department had not taken into account the above facts of revenue sharing mentioned in the document while calculating the market value. The adjudicating authority had levied stamp duty of ₹ 3.34 crore on the market value of land amounting ₹ 66.86 crore instead of on consideration ₹ 421.75 crore based on recitals mentioned in the deed. This resulted in short levy of stamp duty of ₹ 17.74 crore and penalty of ₹ 3.95 crore as shown in **Table 4.3.8.3 (2)**.

Table 4.3.8.3 (2)

Calculation of consideration	(₹ in crore)
For the first 10 lakh square feet of saleable area minimum rate considered ₹ 5,250 per sqft, 38 *per cent* of (10,00,000*5250)	199.50
For the remaining 9,84,500 square feet of saleable area minimum rate considered ₹ 5,250 per sqft, 43 *per cent* of (9,84,500*5,250)	222.25
Total consideration	421.75
Since consideration is higher than the market value of entire land amounting ₹ 66.86 crore as determined by the COS; stamp duty is leviable on consideration say on	421.75
Stamp duty leviable Article 25 (b) @ 5 *per cent*	21.08
Stamp duty levied	3.34
Short levy of stamp duty	17.74
Since the document was executed on 30.09.2011 hence penalty for 10 months i.e. up to July 2012 @ 2 *per cent* per month is leviable	4.22
Penalty levied	0.27
Short levy of penalty	3.95
Total short levy of stamp duty and penalty	21.69

The Principal Secretary in the exit conference (September 2014) accepted the audit observation. Report on realisation of deficit stamp duty and penalty has not been received (December 2014).

4.3.8.4 Short levy of stamp duty due to non-inclusion of premium relating to additional FSI and water charges

In COS, Kurla, Mumbai, a development agreement was executed in March 2013 between "The Association of Societies" and the "Developer" for

development of a plot admeasuring 15,903.46 sqm situated at village Chembur. The COS levied stamp duty of ₹ 5.93 crore on the consideration amount of ₹ 118.61 crore. The recital of the deed indicated that the developer shall pay on behalf of the Association of Societies premium for additional FSI and water charges of ₹ 15.35 crore. This part of payment was not included in the consideration while adjudicating the document by COS. This resulted in short levy of stamp duty of ₹ 76.74 lakh.

The Principal Secretary accepted (September 2014) the audit observation in the exit conference and stated that action will be taken to recover the deficit stamp duty. Report on realisation of deficit stamp duty has not been received (December 2014).

It is recommended that the Government may issue instructions to the Department for adopting uniform policy for determination of consideration amount in respect of development/redevelopment agreements to ensure uniformity.

4.3.9 Determination of market value of old buildings

The market value is required to be worked out as per instructions and at the rates mentioned in ASR. As per instruction No. 1 of ASR for valuation of the old property with tenant, market value should be calculated based on the area of property that can be built on that plot as per prevailing admissible FSI as mentioned in the Development Control Regulation (DCR) for Greater Mumbai 1991.

JDTP Pune, in a letter dated 14 January 2011 addressed to the ACOS, Mumbai had stated that in respect of cessed[14] (old) properties, cost of constructed area provided to the tenants free of cost can be considered for deduction from the market value (MV) of the available FSI. This suggestion resulted in different treatment of similar nature of instruments by COS in Mumbai and MSD, as in some cases, the construction cost (CC) of tenant occupied area was deducted from the market value of the available FSI. In some cases the CC of tenant occupied area was not deducted from the market value of the available FSI and in some cases, the CC of tenant occupied area was added to the consideration amount to compare it with the market value of the available FSI as mentioned in the succeeding paragraphs:

4.3.9.1 Construction cost of the tenant occupied area excluded from determination of the market value in case of old buildings

Audit observed (February and May 2014) in 81 adjudicated cases in COS, Mumbai, Enforcement I and II, Mumbai, finalised between January 2010 and December 2013 that the market value of 'A' category cessed buildings[15] were calculated by deducting the CC of the area to be given to the tenants from the

[14] Mumbai Building Repairs and Reconstruction Board formed under MHADA Act 1976 surveys the old buildings of Mumbai Island city and levies a cess for repairs and reconstruction of the building as per its category based on its age, such properties are called cessed buildings.

[15] Buildings constructed prior to 1940

market value of FSI available[16] for the Purchaser/Assignee/Developer. Thus, deduction of the CC of the area given to the tenants treating it as obligation in 81 adjudicated cases has resulted in short levy of stamp duty of ₹ 16.39 crore including penalty of ₹ 12.93 lakh.

A few illustrative cases out of 81 cases pointed out by audit where the COS deducted the CC of area to be given to the tenants, also made arithmetical mistakes and applied incorrect rates in working out the market value are highlighted in **Table 4.3.9.1.**

Table 4.3.9.1

ADJ case No and date	Nature of irregularity
Adj/M/ 841/13 dt. 06/05/13	In this instrument of Conveyance of property situated at Bhuleshwar admeasuring 5,047.70 sqm having permissible FSI of 20,828.33 sqm, FSI available to the developer was 7,390.70 after deducting 13,437.63 sqm, the area given to the tenants. The MV of the area available to the developer worked out to ₹ 3,589.03 lakh[17]. The COS Mumbai deducted ₹ 2,351.59 lakh on account of CC of area 13,437.63 sqm admeasuring at the rate of ₹ 17,500 per sqm given to tenants. The COS Mumbai levied SD of ₹ 58.67 lakh on MV of ₹ 1,173.49[18] lakh against SD leviable on MV of ₹ 3,589.03 lakh, which resulted in short levy of SD of ₹ 120.78 lakh.
Adj/M/4449/11 dt. 20/12/2011	In this instrument of Indenture pertaining to property situated at Dadar Naigaon admeasuring 3,271 sqm having permissible FSI of 11,196.35 sqm, FSI available to the developer was 3,732.12 sqm after deducting 7,464.23 sqm, the area given to the tenants. The MV of the area available to the developer worked out to ₹ 1,894.09 lakh[19]. The COS Mumbai deducted ₹ 1,194.28 lakh on account of CC of area admeasuring 7,464.23 sqm at the rate of ₹ 16,000 per sqm given to tenants from ₹ 1,894.09 lakh and compared this with consideration of ₹ 725.00 lakh paid by the purchaser to the vendor and levied SD of ₹ 36.25 lakh treating consideration higher against SD leviable on MV of ₹ 1,894.09 lakh which resulted in short levy of SD of ₹ 58.45 lakh.
ADJ/M/ 758/12 dt. 23/04/2012	In this instrument of Conveyance pertaining to property situated at Mazgaon admeasuring 1,605 sqm having permissible FSI of 9,968.25 sqm, FSI available to the developer was 3,322.75 sqm after deducting 6,645.50 sqm, the area given to the tenants. The MV of the area available to the developer worked out to ₹ 1,286.60 lakh[20]. The COS Mumbai deducted ₹ 1,045.86 lakh on account of CC of area admeasuring 5,976.35 sqm at the rate of ₹ 17,500 per sqm given to tenant from ₹ 1,286.60 lakh and compared this with consideration of ₹ 250.00 lakh paid by the purchaser to the vendor and levied SD of ₹ 12.50 lakh treating consideration higher against SD leviable on MV of ₹ 1,286.60 lakh which resulted in short levy of SD of ₹ 51.83 lakh.

[16] As per Regulation 33(7) of the DCR for Greater Mumbai 1991 and Appendix III thereto, in case of redevelopment of 'A' category cessed buildings undertaken by the landlord or Cooperative Housing societies of landlord or occupiers, the total FSI shall be three of the gross plot area or the FSI required for rehabilitation of existing occupiers plus 50 *per cent* incentive FSI, whichever is higher. In these cases self-contained flats of minimum 300 sq ft and maximum 753 sq ft carpet area are to be given to the old residential tenants/occupants. The shopkeepers are to be given an area equivalent to their old area.

[17] (7,390.70 sqm x ₹ 47,600) + ₹ 71.06 lakh (112 times of rent of ₹ 63,443/- per month)

[18] The COS considered the MV of ₹ 1,173.49 lakh instead of ₹ 1,237.44 due to arithmetical error for calculating SD.

[19] (3,732.12 sqm x ₹ 48,600/-) + ₹ 80.28 lakh (112 times of rent of ₹ 71,681/- per month)

[20] (3,322.75 sqm x ₹ 34,900 per sqm)+ ₹ 34.58 lakh (112 times of rent of ₹ 30,873 per month) + ₹ 92.39 lakh (valuation of property in possession of owner)

Adj/M/4180/11 dt. 25/11/2011	In this instrument of Development agreement pertaining to property situated at Girgaon admeasuring 3,343.57 sqm having permissible FSI of 8,358.93 sqm, FSI available to the developer was 2,762.74 sqm after deducting 5,224.44 sqm and 371.75 sqm, the area given to the tenants and the owner respectively. The MV of the area available to the developer worked out to ₹ 1,939.44 lakh[21]. The COS Mumbai deducted ₹ 642.38 lakh on account of CC of area admeasuring 4,014.87[22] sqm at the rate of ₹ 16,000 per sqm given to tenant and ₹ 260.97 lakh on account of CC of area admeasuring 371.75 sqm given to the owner. The COS levied stamp duty of ₹ 64.85 lakh on MV of ₹ 1297.06 lakh[23] instead of on ₹ 1,939.44 lakh which resulted in short levy of SD of ₹ 32.12 lakh.

4.3.9.2 Construction cost of the tenant occupied area not deducted from market value of property

While in the above cases, the true market value was determined by deducting the construction cost of area to be given to the tenant, it was observed that COS Mumbai, Enforcement I and II, Mumbai themselves in other similar cases of conveyance and development agreements for adjudication determined the market value without deducting the construction cost of the area to be given to the tenants. A few illustrative cases where the CC of the area to be given to the tenants was not deducted by COS are given in **Table 4.3.9.2.**

Table 4.3.9.2

Sr. No.	Name of the COS	ADJ CASE NO and date	Location of Property	FSI	Gross area of plot	Area to be given to the tenants
1	Mumbai	547/2011 dtd. 09/02/2011	Parel Sewree	2.5	1,168.07	1,355.01
2	Mumbai	277/2011 dtd. 05/02/2011	Lower Parel	3	2,321.93	4,951.49
3	Mumbai	3651/11 dtd. 30/04/2011	Byculla	1.5	716.56	697.02
4	Mumbai	2865/11 dtd. 06/09/11	Bhuleshwar	4	7,711.61	16,026.02
5	Enforcement-2	SDE/NEW/ 28/ 2012 dtd. 09/01/12	Matunga	3	542.56	210.22

4.3.9.3 Construction cost of the tenant occupied area added to market value of property

In five cases of similar nature, COS Kurla added the CC of the area to be given to the tenants to the consideration to arrive at the MV of the property while adjudicating as mentioned in **Table 4.3.9.3.**

[21] 2,762.74 sqm x ₹ 70,200

[22] Area to be given to the tenants was 5,224.44 sqm, however the COS deducted CC for 4,014.87 sqm only.

[23] 8,358.92 sqm – 5,224.44 sqm = 3,134.48 sqm x ₹ 70,200 = ₹ 2,200.41 lakh ₹ 2,200.41 lakh - ₹ 642.38 lakh - ₹ 260.97 lakh = ₹ 1,297.06 lakh

Table 4.3.9.3

Sr. No.	ADJ CASE NO and date	Location of Property	Gross area of plot	Total area to be given to the tenants	Amount of CC given to the tenant included in consideration
1	ADJ/497/13/K dtd 27/05/13	Borla	1,251.42	1,070.63	188.43
2	ADJ/364/13/K dtd. 23/4/13	Kurla 1	508.7	540	95.04
3	ADJ/1258/13/K dtd. 4/12/13	Ghatkopar	1,812.7	1,154.78	203.24
4	ADJ/182/12/K dtd. 19/04/12	Kurla 1	508	360	57.60
5	ADJ/1172/11/K dtd. 02/05/2011	Kurla 1	508	360	54.00

4.3.9.4 Different treatments in valuation of properties in Mumbai Sub urban District

Similarly, in COS Enforcement-II, Mumbai, we noticed (May 2014) during test check of the evasion cases that out of nine cases of adjudication of instrument of development agreement/conveyance pertaining to the properties situated in MSD, in seven cases the market value of the properties were calculated by the COS without deduction of the construction cost of the area to be given to the tenants from the market value of balance FSI available to the Purchaser/Developer. However, in remaining two cases, the market value of the properties were calculated by deducting the construction cost of the area to be given to the tenants from the market value of balance FSI available to the Purchaser/Developer. This resulted in short levy of stamp duty and penalty of ₹ 15.27 lakh as mentioned in **Table 4.3.9.4.**

Table 4.3.9.4

ADJ case no	Nature of irregularity
SDE/NEW/ 352/12	In this instrument of Development Agreement pertaining to property admeasuring 1,101.64 sqm situated at Andheri, the COS Enforcement II, Mumbai deducted ₹ 1.55 crore on account of CC of area admeasuring 965.91 sqm at the rate of ₹ 16,000 per sqm given to tenant. However, non-levy of stamp duty on the construction cost resulted in short realisation of Government revenue of ₹ 8.78 lakh including penalty of ₹ 0.34 lakh
SDE/NEW/ 387/12	In this instrument of Development Agreement pertaining to property admeasuring 1,338.60 sqm situated at Walnai, the COS Enforcement II, Mumbai deducted ₹ 149.92 lakh on account of CC of area admeasuring 937.02 sqm at the rate of ₹ 16,000 per sqm given to Owner[24]. However non-levy of stamp duty on the construction cost resulted in short realisation of Government revenue ₹ 6.49 lakh including penalty of ₹ 0.13 lakh.

Thus, there was no uniform system in calculating the true market value in cases involving development of tenanted property which resulted in short levy of stamp duty.

The Principal Secretary in the exit conference (September 2014) accepted the fact that there was a need to bring uniformity in the system and stated that comprehensive circular/guidelines will be issued in this regard.

[24] In this case, though no tenant was involved COS deducted CC of area given to the Owner.

The Principal Secretary further stated that the COS offices of Mumbai, Enforcement I and II were following the instructions of JDTP, Pune issued vide above mentioned letter dated 14 January 2011. However, the reply of the Department was silent on the correctness of the instructions issued by the JDTP. The correctness of the instructions need to be investigated legally and applied uniformly.

It is recommended that the Department may legally investigate the correctness of the suggestion issued by JDTP Pune, in his letter dated 14 January 2011 and apply it uniformly. However in the interest of revenue, it may not deduct the cost of construction of area given to the tenants from the market value of the properties till such a clarification is received.

4.3.9.5 Lack of uniformity in the application of instructions in the ASR resulted in short levy of stamp duty in a conveyance deed

As per instruction 4 of ASR, while valuing old property, if the value arrived at after allowing depreciation is less than the value of developed land then valuation should be done as per land plus construction cost method i.e. (Land rate + depreciated construction cost rate) x 1.20 x area of unit.

In a conveyance deed adjudicated by COS, Mumbai, we noticed that the vendors sold to the purchaser land admeasuring 7,116.47 sqm along with all FSI including FSI for the set back land of 2,450 sqm and TDR[25] available on the land along with six industrial unit admeasuring 837.53 sqm. The market value was determined at ₹ 17.60 crore on which stamp duty of ₹ 88 lakh was levied. We noticed from the calculation sheet that while determining the market value of old industrial units, though the value (of ₹ 71,600 per sqm) arrived after allowing depreciation was less than the value (of ₹ 80,700 per sqm) of developed land, the land plus construction cost method was not applied. Further, the Department deducted the cost of construction of area to be handed over to tenants from the market value and also reduced the market value by 20 *per cent* on account of rent, compensation, etc. to be given to the tenants.

Stamp duty of ₹ 1.81 crore was leviable on market value of ₹ 36.18 crore. Non-adoption of correct method of calculation and irregular deduction resulted in short levy of stamp duty of ₹ 92.91 lakh as detailed in the **Appendix II**.

After we pointed out (January 2014), the Principal Secretary in exit conference stated (September 2014) that the Deputy Director of Town Planning (DDTP) valued the property by applying established principles of the market valuation.

The reply of the Department is however contrary to the instruction which prescribed land plus construction cost method in the ASR (Instruction 4) in valuation of the properties. This indicates that the Department is not following its own instructions.

[25] Transfer of Development Rights- In certain circumstances, the development potential of a plot of land may be separated from the land itself and may be made available to the owner of the land in the form of Transferable Development Rights (TDR) which can be loaded on development of a receiving plot.

4.3.9.6 Short levy of SD and penalty due to incorrect working of the market value of a development agreement

In COS Enforcement-II, Mumbai, we noticed (May 2014) in one case of a development agreement for 6,165 sqm situated in a larger plot in MSD, the COS deducted the construction cost of the area to be given to the MCGM on behalf of the owner amounting to ₹ 97.98 lakh from the market value of ₹ 17.14 crore. The COS worked out[26] the true market value as ₹ 13.96[27] crore and levied stamp duty of ₹ 69.79 lakh. The deduction of cost of construction from the market value resulted in short levy of stamp duty of ₹ 16.85 lakh including penalty of ₹ 0.95 lakh as mentioned in **Table 4.3.9.6.**

Table 4.3.9.6

	(₹ in lakh)
Adj No.	SDE/NEW/02/13
FSI in sqm given for development by the owner	6,165
Market Valuation of the saleable FSI available to the Developer @ ₹ 27,800 per sqm (6,165 x ₹ 27,800)	1,713.87
Consideration in cash	1,390.00
Cost of construction of 612.43 sqm Built up area to be handed over	97.99
Total Consideration	1,487.99
Since market value of FSI being developed is higher stamp duty is leviable on market value	1,713.87
Stamp duty leviable Article 25 (b) @ 5 *per cent*	85.69
Stamp duty levied	69.79
Short levy of stamp duty	15.90
Penalty for 3 months @ 2 *per cent* = 6 *per cent*	0.95
Total short levy of stamp duty and penalty	16.85

This was pointed out to the Department; their reply has not been received (December 2014).

It is recommended that in order to have uniformity in determination of the market value for levy of stamp duty suitable guidelines/instructions regarding the classification of the ingredients to be taken into consideration for working out the consideration/market value of instruments may be specified and applied uniformly. Further the Government may ensure that the instructions issued by the department in ASR are uniformly followed.

4.3.10 Incorrect treatment of 'A' category cessed buildings as non-cessed and incorrect calculation of market value

During scrutiny (February and May 2014) of adjudicated cases in COS Mumbai and COS Enforcement I and II, Mumbai we noticed that in the

[26] The COS considered the yield percentage (yP) at the rate of 0.86384 for determination of the market value. Yield percentage is the amount one earns on an interest-bearing investment in a year expressed as a percentage.

[27] MV = ₹ 17,13,87,000 (–) ₹ 97,98,880 = ₹ 16,15,88,120
₹ 16,15,88,120 x 0.86384 = ₹ 13,95,86,281

following two cases, though the properties were 'A' category cessed buildings, this fact was not taken into account by the COS while determining the true market value. This resulted in incorrect working of FSI and short determination of the market value as mentioned in the succeeding paragraphs;

4.3.10.1 As per DCR 1991, the FSI for A category cessed building was 3/2.5 or rehabilitation area plus 50 *per cent* incentive of this rehabilitation area whichever is higher, FSI for non-cessed property was 1.33.

Cross verification from Cess Building database of Mumbai Building Repairs and Reconstruction Board revealed that the property was 'A' category cess building but was incorrectly treated as non-cessed. The total FSI of properties[28] in each case as per the DCR 1991, worked out to 3,371.70[29] sq m instead of 1,883.73 sq m considered by the COS ENF1 Mumbai. This resulted in less depiction of FSI by 2,975.82 sqm[30] involving market value of ₹ 22.94 crore as detailed below :

- In one case, market value of the property was ₹ 9.83 crore involving stamp duty of ₹ 98.39 lakh against which stamp duty of ₹ 1.60 lakh was levied.
- In another case, the market value of the property was ₹ 13.11 crore involving stamp duty of ₹ 65.49 lakh against which stamp duty of ₹ 0.37 lakh was levied.

This resulted in short realisation of stamp duty of ₹ 1.62 crore. Besides, penalty of ₹ 1.98 crore was also leviable.

4.3.10.2 Further, in another four cases, we noticed that though the COS considered the properties as 'A' category cessed buildings, however, the incentive FSI available to the purchaser under regulation No. 33(7)[31] of DCR 1991 was incorrectly left out. The FSI as per the instructions worked out to 4,655.9 sqm valued at ₹ 19.48 crore. Besides, the recitals also indicated the receipt of rent of ₹ 56.43 lakh by the developer. Thus, the total market value of incentive FSI available to the purchaser was to ₹ 20.04 crore involving stamp duty of ₹ 100.22 lakh. The Department had incorrectly worked out the area as 486.97 sqm as available to the developer and levied stamp duty ₹ 25.60 lakh. This resulted in non-realisation of stamp duty of ₹ 74.62 lakh and penalty thereon amounting to ₹ 2.61 lakh.

Thus, incorrect treatment in A category cessed building resulted in short levy of stamp duty of ₹ 2.36 crore and penalty of ₹ 2.01 crore.

The Principal Secretary accepted (September 2014) the audit observation in the exit conference and stated that action will be taken to recover the deficit stamp duty and penalty. However, a report on realisation of deficit stamp duty and penalty has not been received (December 2014).

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[28] ENF-1/EVN 354/09, ENF-1/EVN 352/09

[29] Area of the plot=1,348.68 x 2.5=3371.70

[30] Area of the plot=3,371.70-1,883.73=1,487.91 x 2 = 2,975.82.

[31] In case of redevelopment of 'A' category cessed building undertaken by landlord and/or Co-operative Housing Societies of landlord and/or occupiers, the total FSI shall be 2.5 of the gross plot area or the FSI required for rehabilitation of existing occupiers plus 50 *per cent* incentive FSI, whichever is more.

4.3.11 Short levy of stamp duty – TDR not loaded

As per instruction 3 of the guidelines of the ASR 2011, 40 *per cent* of the land rate is to be taken into account in respect of plots eligible for loading of TDR.

Cross verification (May 2014) of two instruments of Assignment of Development Rights executed (December 2007 and December 2010) by the different parties for same property i.e. piece and parcel of land admeasuring 5,342.50 sqm of Akurli village within MSD revealed that the potential of loading of TDR of 1.15 lakh sqft along with FSI of 2 lakh sqft was passed on to the assignee. But this TDR of 1.15 lakh sqft involving ₹ 11.25 crore was not taken into account for the levy of stamp duty in the second instrument by the COS while adjudicating which resulted in short levy of stamp duty of ₹ 56.24 lakh and penalty of ₹ 11.25 lakh.

After we pointed out, the Principal Secretary in the exit conference accepted (September 2014) the audit observation and stated that action will be taken to recover the deficit stamp duty and penalty.

Report on realisation of deficit stamp duty and penalty has not been received (December 2014).

4.3.12 Non-levy of stamp duty on supplementary agreements

As per section 14A of MS Act, 1958, where due to material alterations made in an instrument by a party, with or without the consent of other parties, the character of the instrument is materially or substantially altered, then such instrument requires a fresh stamp paper according to its altered character.

In COS, Mumbai, an agreement styled as "Supplementary Agreement deed" in continuation of a registered joint development agreement was executed between the Developer cum owner and the Joint Developer for redevelopment of three plots admeasuring 2,578.46 sqm together with old cessed buildings standing on the land situated at Lower Parel, Mumbai.

We noticed that that under this supplementary agreement, the recitals (character) of the original agreement was substantially altered. Under the original agreement, it was agreed that the said property will be developed jointly and after deducting the expenses made for the said project, the profit will be shared equally between both the parties. However, under the supplementary agreement, the parties hereto have mutually agreed that instead of sharing net profit after deducting expenses incurred for the execution of the project, it is agreed and decided between both the parties that the Joint developer alone will arrange funds from the Banks/financial Institutions and entire expense for execution and completion of the project will be borne and incurred by the Joint developer alone and from the date of execution of this Supplementary agreement, the developer cum owner will not invest any amount in execution of the project. It was also decided and agreed by between both the parties that the flats of the project shall be shared by and between the developer cum owner and the joint developer in the ratio of 27:73 respectively based on the aggregate area of all the flats in the proposed building.

As the character of the original joint development agreement was substantially altered in the supplementary agreement, fresh stamp paper according to its

altered character was required. However, while adjudicating and calculating the leviable stamp duty, this aspect was not considered by the COS resulting in short levy of stamp duty of ₹ 23.89 lakh as mentioned in **Table 4.3.12.**

Table 4.3.12

	(₹ in lakh)
Market value (MV) of 23 *per cent* additional area given to the Joint developer under the Supplementary agreement	532.86
Consideration being paid by the Joint developer to the developer owner under the Supplementary agreement:	409.25
Since is MV higher stamp duty is leviable on MV	532.86
Stamp duty leviable Article 25 (b) @ 5 *per cent*	26.64
Stamp duty levied	2.75
Short levy of stamp duty	23.89

The Principal Secretary in the exit conference accepted (September 2014) the audit observation and stated that action will be taken to recover the deficit stamp duty. Report on realisation of deficit stamp duty has not been received (December 2014).

4.3.13 Incorrect determination of consideration and classification of instruments

4.3.13.1 A Joint Venture Agreement deed executed (November 2012) between Pilot Constructions Pvt. Ltd (The party of the first part called as Company in the document), and Sheth Buildwell Pvt. Ltd (The party of the second part called as SBPL in the document) for assignment of 60 *per cent* of Development and sale of free sale component of 6,00,000 sqft i.e. 55,741.36 sqm of Built up area on land admeasuring 14,121 sqm and 13,388.90 sqm and forming a portion of Cadastral survey No.6 (part), situated at Sion Koliwada, Mumbai to SBPL was adjudicated by COS, Mumbai vide case No. ADJ/M/3861/11.

We noticed that the Department had incorrectly treated the consideration of ₹ 200 crore given by SBPL to Company as unsecured loan /obligation etc. though it was clear from the recital of the document that it was consideration for the value of the property. The recitals revealed that-

"the share of the company in the realisation shall be 40 *per cent* of the realisations of the joint venture plus ₹ 200 crore called as the fixed share. The share of SBPL in the realisations shall be 60 *per cent* of the realisations minus ₹ 200 crore".

From the above recital it is clear that ₹ 200 crore was a part of consideration value of property. But the same was treated as unsecured loan and obligation. The total consideration worked out to ₹ 235.67 crore on which stamp duty leviable was ₹ 11.78 crore. The consideration mentioned by the executants in the deed and accepted by the COS was ₹ 97.62 crore levied stamp duty (including obligation) of ₹ 5.46 crore. This resulted in short levy of stamp duty of ₹ 6.32 crore.

The Principal Secretary accepted (September 2014) the audit observation in the exit conference and stated that action will be taken to recover the deficit stamp duty. Report on realisation of deficit stamp duty has not been received (December 2014).

4.3.13.2 As per article 5 (g-a) of MS Act, 1958, stamp duty on development agreement is leviable at the rate of five *per cent* on the market value as on conveyance under Article 25. Further, as per Article 36 (iv) of schedule-I of MS Act, 1958, in an instrument of Lease, where such lease purports to be for a period exceeding 29 years, the same duty is to be levied as leviable on conveyance under clause (a), (b), (c) or (d) as the case may be of article 25. As per article 5(h)(A)(vi), agreement relating to project under Built, Operate and Transfer (BOT) system with or without toll or free collection rights, stamp duty shall be levied at the rate of 0.1 *per cent* of agreed amount in cases where the amount agreed does not exceed rupees 10 lakh and in other cases stamp duty shall be 0.2 *per cent* of agreed amount. As per section 6 of MS Act, 1958, where an instrument comes under two or more descriptions in schedule-I and the duties chargeable are different, the instrument shall be charged with the highest of such duties.

Audit scrutiny of adjudicated cases in JDR/COS Pune city and Thane city revealed that in three instruments, the COSs classified the instruments under article 5 (h) (A) (vi) instead of classifying under article 5(g-a). This resulted in short levy of stamp duty of ₹ 4.81 crore as shown in **Table 4.3.13.2.**

Table 4.3.13.2

(₹ in crore)

Sr. No.	Name of COS/ Adj case No.	Stamp duty leviable	Stamp Duty levied	Short levy of Stamp Duty
1	2	3	4	5
1	COS Pune City/336/2010	1.82	0.10	1.72
2	COS Pune City/161/2011	2.74	0.21	2.53

Nature of irregularity: Two agreements were executed between Pune Municipal Corporation (PMC) and M/s Patil Constructions (Developers) for re-development of five/six plots admeasuring 96,324.6 sqm situated in Pune. The COS treated the instrument as BOT agreement and levied stamp duty of ₹ 0.31 crore at the rate of 0.2 *per cent* as per article 5(h) (A) (vi). This should have been treated as instrument of lease or development agreement as the recitals revealed that the developer shall get lease hold right of 41,446.59 sqm of built up area for 99 years in lieu of re-developing the existing dilapidated quarter by constructing new tenements for PMC employees.

The value of PMC component falling under article 5(g-a) and developers component falling under Article 36 worked out to ₹ 91.27 crore and ₹ 47.85 crore respectively. Since instrument comes under two or more descriptions in schedule-I and stamp duty is leviable on higher value, stamp duty of ₹ 4.56 crore should have been levied at the rate of five *per cent* on ₹ 91.27 crore. Thus, misclassification of instrument resulted in short levy of stamp duty.

Remarks: The Principal Secretary accepted (September 2014) the audit observation and stated that action will be taken to recover the deficit stamp duty.

1	2	3	4	5
3	COS Thane city	0.58	0.02	0.56
Nature of irregularity: An agreement was executed between Ganeshanand Developers (JV) and S. P. Motels (second party) for sub-lease of property accrued to the first party by way of lease from Thane Municipal Corporation. The period of sub lease, as per working notes of COS was for a period of 20 years. In consideration of grant of sub-lease, the second party agreed to pay-off and clear all the outstanding loans, liabilities, debts etc of JV (first party) amounting to ₹ 23.25 crore. Stamp duty of ₹ 58.11 lakh should have been levied at the rate of five *per cent* on 50 *per cent* of ₹ 23.25 crore as per article 36 (iii). However, the COS treated the instrument as BOT agreement and levied stamp duty of ₹ 2.38 lakh at the rate of 0.2 *per cent* on total rent to be received in 20 years of sub lease amounting ₹ 23.78 crore as per article 5(h) (A) (vi). Thus, misclassification of instrument resulted in short levy of stamp duty.				
Remarks: The Principal Secretary accepted (September 2014) the audit observation and stated that action will be taken to recover the deficit stamp duty.				

A report on realisation of deficit stamp duty in both cases has not been received (December 2014).

4.3.13.3 As per Article 36 (iii) of the MS Act, 1958, where the lease purports to be for a period exceeding ten years but not exceeding twenty nine years with a renewal clause contingent or otherwise then stamp duty is levied as is leviable on a conveyance under article 25 on 50 *per cent* of the market value of the property. Article 5(h)(A)(iv)(b) includes instruments not covered under any other article and are liable for stamp duty at the rate of 0.2 *per cent*.

We observed in respect of two instruments titled "Revenue Sharing Agreement" adjudicated by COS Mumbai that the lessor had leased the premises for 15 years to the lessee. In both the instruments, it was mentioned that the lessor shall give and allow the lessee to carry on their business in the premises for a minimum period of nine years as an initial period followed by renewal period of six years. The lessee agreed to pay to the lessor lease rent one *per cent* of the net turnover per month or ₹ six lakh per month in respect of first instrument and one *per cent* of the net turnover per month or ₹ five lakh per month in respect of second instrument. The recitals further revealed that the said revenue shall be increased by 15 *per cent* every three years from the date of execution of this agreement. The above recital clearly indicates that these instruments come under the description of lease deed for a period of 15 years. However, the COS while adjudicating the documents incorrectly classified and levied stamp duty under article 5(h)(A)(iv)(b) which includes instruments not covered under any other article. This resulted in short levy of stamp duty of ₹ 18.98 lakh.

The Principal Secretary accepted (September 2014) the audit observation in the exit conference and stated that action will be taken to recover the deficit stamp duty. A report on realisation of deficit stamp duty has not been received (December 2014).

4.3.14 Non-uniformity in follow of instructions in ASR and instructions issued by IGR

Floor Space Index (FSI) also called floor area ratio is the ratio of total floor area of building on a certain location to the size of the land of that location. Total covered area on all floors of all buildings on a certain plot = FSI X area of the plot. As per instruction 3 of ASR 2013, wherever the admissible FSI is mentioned in the document, the loading of TDR i.e. increase in land rate of ASR by 40 *per cent* is not to be done.

4.3.14.1 Short levy of stamp duty in Kurla

During the test checked of 23 instruments of development/re-development agreements adjudicated by COS Kurla, in 18 cases the COS considered FSI mentioned in instruments was correctly taken for working out the market value of the properties. In the remaining five instruments, stamp duty was incorrectly levied on the consideration mentioned in the instrument instead of the market value based on FSI mentioned in the document. This resulted in short levy of stamp duty of ₹ 51.57 lakh as shown in **Table 4.3.14.1.**

Table 4.3.14.1

Adj. Case No.	Nature of irregularity
73/K/13	Total FSI available on plot including TDR as per the document was 3,082.32 sqm. After excluding area of 1,522.36 sqm given to society members the balance FSI available to the developer was 1,559.96 sqm valued at ₹ 5.33[32] crore involving stamp duty of ₹ 26.67 lakh. The COS levied stamp duty of ₹ 13.79 lakh on the consideration of ₹ 2.76 crore mentioned in the document of instead of the market value which was higher. This resulted in short levy of stamp duty of ₹ 12.88 lakh.
725/13/K	Total FSI available on plot including TDR as per the document was 1,511.19 sqm. After excluding area given to society members of 816.35 sqm the balance FSI available to the developer was 694.84 sqm valued at ₹ 4.02 crore involving stamp duty of ₹ 20.08 lakh. The COS levied stamp duty of ₹ 10.81 lakh on consideration of ₹ 2.16 crore instead of market value which was higher. This was short levy of stamp duty of ₹ 9.27 lakh.
404/12/K	Total FSI available on plot including TDR as per the document was 10,156.7061 sqm. After excluding area of 5,947.02 sqm given to society members the balance FSI available to the developer was 4,209.69 sqm valued at ₹ 22.10[33] crore. The COS levied stamp duty of ₹ 1.01 crore on consideration of ₹ 20.27 crore mentioned in the document. Since the market value of ₹ 22.10 crore was greater, stamp duty of ₹ 1.10 crore was required to be levied on the market value of ₹ 22.10 crore. This resulted in short levy of stamp duty of ₹ 9.11 lakh.
927/12/K	Total FSI as per the document was 1,973.16 sqm. However, the COS has considered 1,023.12 sqm by multiplying the plot area admeasuring 730.8 sqm situated at village Chembur by 1.4. After deducting the area of 939.03 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 1.79 crore. This was compared with the consideration amount worked out at ₹ 5.07 crore and COS levied stamp duty of ₹ 25.37 lakh on ₹ 5.07 crore. However, if the 2.7 FSI mentioned in the document would have been considered, the balance FSI would have been 1,034.13 sqm valuing ₹ 6.41 crore on which stamp duty of ₹ 32.06 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 6.69 lakh.

[32] ASR rate ₹ 34,200 x 1,559.96 sqm = ₹ 5.33 crore
[33] ASR rate ₹ 52,500 x 4,209.69 sqm = ₹ 22.10 crore

1631/10/K	Total FSI as per the document was 2,214.62 sqm. However, the COS has considered 1,550.23 sqm by multiplying the plot area admeasuring 1,107.31 sqm situated at village Chembur by 1.4. After deducting the area of 200.74 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 5.53 crore. This was compared with the consideration amount worked out at ₹ 22.08 lakh and COS levied stamp duty of ₹ 27.66 lakh on ₹ 5.53 crore. However, if the 2 FSI mentioned in the document would have been considered, the balance FSI would have been 2,013.88 sqm valuing ₹ 8.26 crore on which stamp duty of ₹ 41.28 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 13.62 lakh.

4.3.14.2 Short levy of stamp duty in Andheri

Similarly, we observed that in nine test checked instruments of development/ re-development agreements adjudicated by COS Andheri, even though the admissible FSI was clearly mentioned in all the documents, the COS considered the FSI mentioned in the documents in three instruments only. In remaining six instruments, the COS had incorrectly taken into account 1.4 FSI while calculating the market value resulting in short levy of stamp duty of ₹ 1.79 crore as shown in **Table 4.3.14.2**

Table 4.3.14.2

Adj. Case No.	Nature of irregularity
1778/13/ Andheri	Total FSI as per the document was 3,061.26 sqm involving ₹ 25.70 crore involving stamp duty of ₹ 1.29 crore. However, in the recitals the executants had considered FSI of 1,587.32 sqm by multiplying the plot area admeasuring 1,133.80 sqm situated at Bandra by 1.4 instead of at 2.7. The consideration amount mentioned in the document was ₹ 10.20 crore and COS levied stamp duty of ₹ 50.98 lakh on ₹ 10.20 crore. Thus, there was short levy of stamp duty of ₹ 77.52 lakh.
738/13/ Andheri	Total FSI as per the document was 914.22 sqm. However, the COS has considered 474.04 sqm by multiplying the plot area admeasuring 338.60 sqm situated at village Bandra by 1.4 instead of 2.7. After deducting the area of 214.13 given to the owner, the market value of remaining FSI of 700.09 sqm given to the developer worked out to ₹ 9.32 crore involving stamp duty of ₹ 46 lakh. The COS levied stamp duty of ₹ 20.99 lakh on ₹ 4.20 crore. This resulted in short levy of stamp duty of ₹ 25.60 lakh. The basis on which market value was worked out was not found on record.
A/905/12	Total FSI as per the document was 3,941.649 sqm. However, the COS has considered 2,588.65 sqm by multiplying the plot area admeasuring 1,459.87 sqm situated at village Bandra by 1.4 *plus* fungible FSI of 544.83 sqm. After deducting the area of 2,179.40 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 7.54 crore. This was compared with the consideration amount worked out at ₹ 14.57 crore and COS levied stamp duty of ₹ 72.84 lakh on ₹ 14.57 crore. However, if the FSI of 2.7 mentioned in the document would have been considered, the balance FSI would have been 1,562.399 sqm valuing ₹ 19.64 crore on which stamp duty of ₹ 98.20 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 25.36 lakh.
A/803/12	Total FSI as per the document was 5,418.09 sqm. However, the COS has considered 3,608.78 sqm by multiplying the plot area admeasuring 2,006.7 sqm situated at village Bandra by 1.4 *plus* fungible FSI of 799.40 sqm. After deducting the area of 3,434.24 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 5.40 crore. This was compared with the consideration amount worked out at ₹ 22.35 crore and COS levied stamp duty of ₹ 111.77 lakh on ₹ 22.35 crore. However, if the FSI of 2.7 mentioned in the document would have been considered, the balance FSI would have been 1,993.85 sqm valuing ₹ 25.22 crore on which stamp duty of ₹ 126.11 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 14.34 lakh.

A/122/11	Total FSI as per the document was 4,124.2 sqm. However, the COS has considered 2,886.94 sqm by multiplying the plot area admeasuring 2,062.10 sqm situated at village Oshiwara by 1.4. After deducting the area of 623.57 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 14.49 crore. This was compared with the consideration amount worked out at ₹ 13.34 crore and COS levied stamp duty of ₹ 72.43 lakh on ₹ 14.49 crore. However, if the FSI of 2 mentioned in the document would have been considered, the balance FSI would have been 3,233.38 sqm valuing ₹ 20.69 crore on which stamp duty of ₹ 103.47 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 31.04 lakh.
A/579/11	Total FSI as per the document was 1,238 sqm. However, the COS has considered 866.60 sqm by multiplying the plot area admeasuring 619 sqm situated at village Vile Parle West by 1.4. After deducting the area of 753.9 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 72.80 lakh. This was compared with the consideration amount worked out at ₹ 2.07 crore and COS levied stamp duty of ₹ 10.33 lakh on ₹ 2.07 crore. However, if the FSI of 2 mentioned in the document would have been considered, the balance FSI would have been 484.10 sqm valuing ₹ 3.13 crore on which stamp duty of ₹ 15.64 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 5.31 lakh.

In COS Borivali, audit observed that in all the cases of similar nature, the COS while adjudicating the instrument had considered the FSI mentioned in the document.

The Principal Secretary in the exit conference (September 2014) stated that for the potential of loading TDR on the land, the land rate was increased by 40 *per cent* and aspect of Fungible FSI was also taken into account. Hence, the valuation done was correct.

Thus, the above facts revealed a uniform system/procedure has not been framed by the Government for working of the consideration/market value of the properties. Some of the COS are following ASR instructions like COS Borivali who has worked out the consideration by taking the FSI mentioned in the document in full, while in some COS like Kurla and Andheri not maintained any uniformity as in some cases, they have adopted FSI other than that mentioned in the instrument or loaded TDR. There was nothing on record to indicate why different methods had been adopted for determination of the market value

It is recommended that the Government may advise the department for framing a uniform policy for determination of FSI, loading of TDR in respect of development/redevelopment agreements as to have a uniform tax base and ensuring that it is uniformly applied and regulated in accordance with instructions contained in the Annual Statement of Rates for levy of stamp duty.

4.3.15 Absence of mechanism to ensure adherence to terms and conditions for remission of stamp duty

Government of Maharashtra under Notification of June 2007 granted full remission on some instruments[34] on the condition that any unit failing to start

[34] Instruments relating to Hypothecation, Pawn, Pledge, Deposit of title deeds, Conveyance, further charge on mortgaged property, Lease and Mortgage deed in the Schedule-I to the BS Act executed by any person for starting a new industrial unit or extension, expansion or diversification of any existing industrial unit in Group C, D and D + areas and in such areas classified as 'No Industry Districts' under the package scheme of Incentives, 2007.

the activities for which remission was granted or breach of any of the conditions of package scheme of Incentives, 2007 shall be liable to pay the stamp duty and penalty, as if there was no remission from the beginning.

During scrutiny (March 2014) of adjudicated documents in the office of the COS Nagpur Rural, we found that the remission of stamp duty amounting to ₹ 3.18 crore in respect of 35 lease and sale deeds was granted under Notification *ibid* between the years 2009 and 2012. However, there was neither any mechanism in place nor any mechanism was stipulated in the notification or the Package Incentive Scheme, 2007 for ensuring that the beneficiary units have started their activities and the conditions of the package scheme of Incentives, 2007 were not breached.

After this was pointed out, the Department stated that information in respect of 35 cases was called from District Industries Centre, Nagpur (DIC). Of these there were violations of terms and conditions subject to which exemption was granted in four cases involving stamp duty of ₹ 54.90 lakh. However, action taken in these cases was not intimated to audit.

The fact remains that there was absence of mechanism for ensuring that the beneficiary units have started their activities within the stipulated period.

4.3.16 Internal Control Mechanism

An effective internal audit wing always acts as a deterrent to the occurrence of any major irregularity. IGR issued guidelines for internal audit through a circular in June 2001. According to these guidelines, the internal audit wing of IGR consisting of two wings (Desk-10 and Desk-11) was given monthly target to conduct audit of three offices and every DIG of the division has to conduct audit of two offices each in every month. However no specific target of auditing COS office by IGR was set. The details of audit conducted by the internal audit wings of IGR are shown in **Table 4.3.16.**

Table 4.3.16

Year	Target total	Offices Audited			
		Dy. IGR	COS + SOS	Joint SR/ SR	Total
2009	72	Nil	Nil	Nil	Nil
2010	72	Nil	Nil	7	7
2011	72	Nil	1	28	29
2012	72	1	11	32	44
2013	72	Nil	4	32	36
Total	**360**	**1**	**16**	**99**	**116**

Source: Information collected from IGR

It was evident from the above table that the internal audit wings of IGR office did not conduct audit of any of the 39 COS/SOS during the year 2009 and 2010. In the year 2011, 2012 and 2013 audit was carried out in one, 11 and four COS/SOS offices only. Out of 16 COS offices audited by internal audit wing of IGR, the details of number of observations and the amount of short levy of stamp duty pointed out in respect of 15 COS offices was as shown in **Table 4.3.16.1.**

Table 4.3.16.1

(₹ in lakh)

Year	Name of COS	Period Covered	No. of cases pointed out	Amount of short levy of stamp duty pointed out
2011-12	Kurla	January 2011 to March 2011	14	69.28
	Sindhudurg	April 2010 to March 2011	5	10.83
	Nagpur City	April 2010 to March 2011	15	172.43
2012-13	Mumbai	April 2010 to March 2011	13	352.07
	Andheri	April 2010 to March 2011	7	2,565.58
	Borivali	April 2011 to December 2011	11	1,138.66
	Enforcement-1	April 2010 to March 2011	24	1,554.24
	Thane Rural	April 2010 to September 2010	7	138.10
	Pune City	January 2011 to December 2011	7	249.54
	Pune Rural	April 2010 to March 2011	24	170.40
	Satara	April 2010 to March 2011	6	5.00
	Sangli	April 2010 to March 2011	2	21.14
	Nasik	April 2010 to March 2011	4	241.46
	Nagpur Rural	April 2010 to March 2011	5	2.40
2013-14	Enforcement-2	April 2010 to March 2011	15	465.47
Total			**159**	**7,156.60**

It can be seen from the above that in 15 COS offices audited during 2011-13, internal audit wing of IGR pointed out 159 cases of short levy of stamp duty amounting to ₹ 71.57 crore, hence if specific target of auditing COS office by internal audit wing of IGR was set and had more COS office were audited, there would have been chances of detection of more cases of short levy of stamp duty.

After we pointed out (June 2014), the IGR assured that every year minimum 10 to 12 COS offices will be audited by internal audit wings of his office.

It was also noticed that in divisions other than Mumbai, there is two tier audit of COS i.e. one by IGR and one by DIG. However, it was noticed that the ACOS, Mumbai is not conducting audit of any of the COSs under his control, even though huge revenue is being collected by COSs of Mumbai Division.

After we pointed out (July 2014), the IGR accepted the point and issued a circular in August 2014 wherein ACOS, Mumbai was directed to conduct audit of the COSs under his control. It is recommended that the Department may strengthen the internal controls including the internal audit wing of the Department to ensure that the cases are promptly reported to the concerned authorities and rectificatory action is taken to avoid loss of revenue.

4.3.17 Conclusion

The documents marked for adjudication normally involve huge money value. However, during the last five years there has been increasing pendency of documents resulting in blocking of revenue. Discrepancies were noticed in the data of adjudication cases furnished by IGR office which indicated lack of monitoring at various levels. There are no clear instructions for determining the true market value of property given to the developer for development and in respect of the consideration given by the developer to the society and society members which resulted in lack of uniformity in adjudication of similar documents. Further, due to absence of adequate guidelines, there was lack of uniformity in determining of market value of 'A' category cessed properties and tenanted properties in Mumbai and MSD. Instances of misclassification, misinterpretation of instrument were noticed due to non-consideration of all facts and circumstances which resulted in short levy of stamp duty. We noticed that there were instances of non-cognizance of instructions in ASR and instructions of IGR by the adjudicating authorities. There was shortfall in conducting audit by internal audit wing of IGR, no specific target for auditing COS office by IGR was set and ACOS, Mumbai was not conducting audit of any of the COS under his control who contribute huge revenue.

4.3.18 Summary of recommendations

The Government/Department may consider:

- **maintaining a proper and correct database of adjudication cases for effective monitoring and drawing up a time bound framework for their finalisation so that the Government revenue is not unnecessary blocked;**
- **framing a uniform policy for determination of FSI, loading of TDR in respect of development/redevelopment agreements so as to have a uniform tax base and ensuring that it is uniformly applied and regulated in accordance with instructions contained in the Annual Statement of Rates for levy of stamp duty.**
- **strengthening the internal controls including the internal audit wing of the Department to ensure that the cases are promptly reported to the authorities and rectificatory action is taken to avoid any loss of revenue.**

4.4 Other audit observations

During scrutiny of records of the various registration offices, we noticed several cases of non-compliance of the provisions of the MS Act, 1958 and Government notifications and instructions and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on our test check of records. The Government/Department need to improve internal control mechanisms so that such cases can be avoided, detected and corrected.

4.4.1 Short levy of stamp duty due to undervaluation of property

As per Article-25 (a) (b) (c) (d) of schedule–I of MS Act 1958, stamp duty on conveyance deeds shall be leviable on the true market value of property or the consideration mentioned in the instrument, whichever is higher. True market value is determined by considering the rates prescribed in the ASR.

4.4.1.1 During test check of documents / instruments we noticed that the market value of the properties were determined incorrectly by the Department.

Scrutiny of documents/instruments in the office of Joint Sub Registrar XII, Haveli, Pune revealed (November 2012) that the property was situated in village Warje, the survey numbers were 100 and 101. The area of land was 42,000 sqm and 31,463 sqm respectively. The rates as per ASR were ₹ 10,400 per sqm and ₹ 700 per sqm respectively and the correct market value worked out to ₹ 28.63 crore as against ₹ 4.83 crore mentioned in the document. This resulted in short levy of stamp duty of ₹ 1.19 crore. The basis on which the consideration of ₹ 4.83 crore mentioned in the document was not produced to audit.

After we pointed out (November 2012), the Joint District Registrar and Collector of Stamps, Pune accepted the audit observation (May 2013) and directed the Joint Sub-Registrar to recover the entire amount pointed out by audit. Progress made in the recovery of the demand raised has not been received (December 2014).

4.4.1.2 In SR Khamgaon, two deeds were executed in November 2010 and in December 2011. The market value of the property determined by the Department was ₹ 75.85 lakh. The basis on which it was calculated was not made available to audit. However, as per ASR 2010 and 2011 the correct market value of the property worked to ₹ 3.82 crore. Thus, there was a short levy of stamp duty of ₹ 13.27 lakh.

After we pointed out (March 2013), Joint District Registrar and Collector of Stamps, Buldhana, accepted the observation (September 2013 and June 2013 respectively). Further progress of recovery has not been received (December 2014).

4.4.1.3 Section 23 of Indian Registration Act 1908 stipulates that no document other than 'Will' shall be accepted for registration unless presented within four months from the date of execution.

Audit noticed that two documents titled as 'Agreement to Sale' were executed in SR Rajgurunagar at Khed, Pune, in January 1992 but were registered in December 2011. Since the prescribed period of four months had expired, these

were liable to be rejected for registration and fresh document based on ASR of 2011 were required to be executed. However the Department in contravention to the provisions of the Act incorrectly accepted the old deed of 1992 for registration. As per ASR of 2011, the market value of the properties aggregated ₹ 5.68 crore on which a stamp duty of ₹ 22.74 lakh and registration fees of ₹ 0.60 lakh was leviable. However the Department levied stamp duty of ₹ 1.88 lakh and registration fees of ₹ 0.54 lakh. This irregularity resulted in short realisation of stamp duty and registration fees of ₹ 20.92 lakh.

After we pointed out (October 2013) the case, the Joint District Registrar, Class-I, and Collector of Stamp, Pune, (Rural) has accepted the observation. (March 2014). Further progress of recovery has not been received (December 2014).

4.4.2 Irregular exemption from payment of stamp duty

As per Article-25(b)(vi) of Schedule –I of MS Act 1958, stamp duty at the rate of five *per cent* is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument whichever is higher. These rates are prescribed in the ASR. Further, as per instruction 2.3 (a) of ASR, if the property is occupied by the tenants, then concessions can be allowed only on furnishing any two proofs of tenancy as stated ibid are attached with the registering document and the same shall be the part of the document.

During test check of instruments registered in the Office of the Sub Registrar, Andheri II, Mumbai (May 2013), we noticed that a conveyance deed was executed on 23 December 2011 for sale of 2,098.90 sqm of land situated within limits of Municipal Corporation of Mumbai Sub Urban District. The said document was executed but was not registered. The Collector of Stamps (Enforcement-2), Mumbai, based on a complaint (January 2012) impounded the document (March 2012) and worked out the market value of the property as ₹ 75.66 lakh. However, stamp duty of ₹ 5.00 lakh was levied on the sale consideration of ₹ 1.00 crore mentioned in the document.

We further found that FSI of 2,938.46[35] sqm was available on the land, which valued at ₹ 16.40 crore on which stamp duty of ₹ 81.98 lakh was leviable. But Department exempted an area of 2,806.69 sqm from the levy of stamp duty on the ground that it was occupied by tenant. However, there was neither any document in support of the tenancy attached with the document nor was the fact of tenancy mentioned in the document. Thus, exemption without proof of tenancy and incorporating in document was irregular.

The facts were brought to the notice of Collector of Stamps (May 2013) who accepted (December 2013) the audit observation and directed SR, Andheri-II, to recover the deficit stamp duty of ₹ 76.98 lakh. Further report on progress made in recovery has not been received (December 2014).

[35] Area 2,098.9 sqm x 1.4 (FSI) = 2,938.46 sqm
2,938.46 x (ASR rate) ₹ 55,800 = ₹ 16,39,66,068 say ₹ 16.40 crore

4.4.3 Levy of stamp duty on market value instead of consideration

As per Section 2 (na) of MS Act 1958 "market value" for the purpose of levy of stamp duty in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher.

During test check of documents / instruments registered in the SR, Haveli VII, Pune, in February 2010, we noticed that an agreement to sale was executed between owner and a purchaser on 14 November 2008 for development and sale of a land admeasuring 15,700 sqm situated in Haveli Taluka. The Department had levied stamp duty of ₹ 11.28 lakh on the market value of ₹ 2.82 crore. However, the details of working out the market value were not available on record. The property was assessed by the Assistant Town Planner (ATP) and he had worked out the consideration amount as ₹ 14.90 crore. Since the consideration mentioned in the document was more than the market value, the stamp duty of ₹ 59.60 lakh was leviable. This aspect was not considered by the Department resulting in short levy of stamp duty of ₹ 48.32 lakh.

After we pointed out (February 2010), Joint District Registrar and Collector of Stamps, Pune has accepted (January 2013) the audit observation relating to short levy of stamp duty. Further report on progress made in recovery has not been received (December 2014).

4.4.4 Short levy of stamp duty due to non-application of IGR's instructions

As per Article 25 (b) (vi) of schedule–I of MS Act 1958, stamp duty at the rate of five *per cent* and one *per cent* cess thereon is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument, whichever is higher. True market value is determined by considering the rates prescribed in the ASR and under Instructions 17(B) for valuation of bulk land on percentage basis. The IGR issued a circular in March 2011 (effective from 1st April 2011) which stipulated uniform policy for determination of market value of bulk land. The market value was required to be calculated in accordance with the slabs mentioned in the circular.

During test check of documents / instruments registered in the SR-IV, Thane (Bhayandar), we noticed that a Sale Deed was executed (April 2011) between the vendor and purchaser for sale of an area admeasuring 14,210 sqm from village Ghodbunder, within Mira Bhayandar Municipal Corporation limits, for a consideration of ₹ 4.10 crore. The basis on which market value was fixed was not found on record. However, the true market value of the property by application of IGR's circular (slab-wise) worked out to ₹ 14.25 crore involving stamp duty of ₹ 85.48 lakh. Thus, there was a short levy of stamp duty of ₹ 29.46 lakh.

After we pointed out (March 2013), Joint District Registrar and Collector of Stamps, Thane, accepted the observation (August 2013) and instructed Sub-registrar-IV, Thane to recover the deficit stamp duty. However the

progress made in recovering the amount has not been received (December 2014).

4.4.5 Short levy of stamp duty due to non-following of instructions contained in annual statement of rates

As per Article 5 (g-a) of Schedule-I to MS Act, 1958, an agreement relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of any immovable property in such case the same duty as is leviable on conveyance under clause (b) (c) or (d) as the case may be of Article 25, on the market value of property is leviable at the rates applicable to the area in which the property is situated. These rates are prescribed in the ASR. However, in cases where the independent rates are not given in the ASR for any zone then the market value is to be determined as per instruction 6 of the ASR.

During test check of documents / instruments registered in the SR, Haveli XX, Pune in October 2013, we noticed that an agreement was executed between owner and developer on 21 June 2012 for development and sale of a land admeasuring 24,400 sqm situated within limits of Pimpri-Chinchwad Municipal Corporation. The share of consideration to be received from sale of tenements was to be distributed in the proportion of 41 *per cent* (Owner) and 59 *per cent* (Developer). The Department had worked out the market value of property at ₹ 2.75 crore, while the consideration mentioned in the instrument was ₹ 4.52 crore. The Department levied stamp duty of ₹ 22.62 lakh on consideration being higher. The working of market value and consideration was not available with the Department.

However, we noticed that the flat rate for the zone was not fixed by the IGR, Pune and the market value was required to be worked out in accordance with instruction 6 of ASR 2012, which stipulated that if the flat rate are not given then market value of the flat = (Land rate + Construction rate) X 1.15 X Area of land. The market value of the property works out to ₹ 14.60 crore[36] on which stamp duty at ₹ 72.99 lakh was leviable. Thus, there was a short levy of stamp duty of ₹ 50.37 lakh.

After we pointed out (October 2013), Joint District Registrar and Collector of Stamps, Pune has accepted (January 2014) and Sub Registrar, Haveli XX, Pune recovered (April 2014) the deficit stamp duty of ₹ 50.37 lakh. Though the entire amount in the instant case has been recovered, the Department should review similar cases and initiate action to recover the deficit stamp duty.

4.4.6 Short levy of stamp duty due to arithmetical mistakes

As per Article 5 (g-a) of Schedule I of MS Act, 1958, an agreement if relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of any immovable property, in such case the same duty as is

[36] Rate of flat = (₹ 1690 + ₹ 11,000) x 1.15 x 10,004 sqm = ₹ 14,59,93,374 i.e. ₹ 14,59,93,500

leviable on conveyance under clause (b) (c) or (d) as the case may be of Article 25, on the market value of property is leviable.

During test check of documents / instruments registered in SR, Haveli VII, Pune in February 2010, we noticed that three Development Agreements were executed between owners and developers on 9 May 2008 for development of a land admeasuring 5,500 sqm situated at Mohammad Wadi of Haveli Taluka, within limits of Pune Municipal Corporation. The Department had worked out the market value of property at ₹ 2.70 crore and consideration at ₹ 5.24 crore and levied stamp duty of ₹ 5.26 lakh on consideration being higher. The detailed working of market value was not available on record.

We noticed that the Department had committed arithmetical mistakes (in adding different values of the consideration) in the deed executed. The total consideration received by the three vendors was ₹ 12.74 crore[37] but the assessing authorities totalled these transactions as ₹ 5.24 crore. This resulted in short determination of market value by ₹ 7.50 crore involving the stamp duty of ₹ 7.50 lakh.

After we pointed out (February 2010), Joint District Registrar and Collector of Stamps, Pune has accepted (January 2013) the observation. However the progress made in recovering the amount has not been received (December 2014).

4.4.7 Short levy of stamp duty due to incorrect grant of bulk land benefit

As per Article 5 (g-a) of Schedule I to MS Act, 1958, an agreement if relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of any immovable property, in such case the same duty as is leviable on conveyance under clause (b) (c) or (d) as the case may be of Article 25, on the market value of property (or the consideration stated in the instrument, whichever is higher) is leviable at the rates applicable to the area in which the property is situated. These rates are prescribed in the ASR. Further, as per Article-25(b)(vi)(b)(ii) of schedule–I of MS Act, stamp duty at the rate of five *per cent* is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument whichever is higher.

During test check of documents/instruments registered in Joint Sub Registrar, Class-I, Thane (Rural) in October 2013, we noticed that a Development Agreement was executed between owner, developer and sub-developer on 10 June 2011 for development and sale of a land admeasuring 8,200 sqm (FSI 10,906.67 sqm) situated within Vasai Taluka, Thane for a consideration of ₹ 2.38 crore. The Department while adjudicating document, had worked out the market value of property at ₹ 2.36 crore by giving bulk land benefit[38] of ₹ 1.08 crore and levied stamp duty of ₹ 11.92 lakh on consideration being higher. We noticed that the developer had already carried out the construction of buildings up to plinth level.

[37] ₹ 5.42 crore + ₹ 4.89 crore + ₹ 2.43 crore = ₹ 12.74 crore

[38] The value of the land is less when sold in bulk than that sold in plots.

Thereafter, for further construction an agreement was executed with the sub-developer for utilising the total FSI of 10,906.67 sqm. However, the benefit of bulk land though not admissible to the sub-developer was allowed incorrectly. The correct market value of the property worked out to ₹ 3.44 crore on which stamp duty of ₹ 17.18 lakh was leviable. Thus, incorrect determination of market value of property resulted in short levy of stamp duty of ₹ 5.26 lakh.

After we pointed out (October 2013), Joint Sub Registrar, Class-I, Thane (Rural) accepted the observation (March 2014). Further progress of recovery has not been received (December 2014).

4.4.8 Short levy of stamp duty by Collector of Stamps

As per Section 2 (na) of the MS Act, "market value" in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument, or the consideration stated in the instrument whichever is higher. Further, as per Article-25 (b) (vi) of schedule – I of MS Act, stamp duty at the rate of five *per cent* is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument whichever is higher. These rates are prescribed in the Annual Statement of Rates.

During test check of documents/instruments registered in Collector of Stamp, Mumbai, in May 2011, we noticed that a deed of conveyance was executed between owner and a purchaser on 12 April 2008 for a land admeasuring 10,312.10 sqm. The purchaser approached for adjudication of the document for determination of the market value for the purpose of stamp duty payable on deed. The COS, Mumbai determined the market value of the property as ₹ 63.77 crore. However, while passing the order, the COS, Mumbai incorrectly levied stamp duty of ₹ 23.85 lakh along with penalty of ₹ 2.39 lakh on the consideration of ₹ 4.77 crore mentioned in the document instead of the market value of ₹ 63.77 crore involving stamp duty of ₹ 3.18 crore. This has resulted in short levy of stamp duty of ₹ 2.95 crore.

After we pointed out (May 2011), the Chief Controlling Revenue Authority (CCRA), Pune accepted (February 2014) the audit observation and passed an order for recovery of ₹ 2.95 crore besides penalty of ₹ 27.12 lakh.

Further report on recovery has not been received (December 2014).

The above observations of audit were reported to Government (between May 2014 to June 2014); the reply has not been received (December 2014).

CHAPTER V

TAXES ON VEHICLES, GOODS AND PASSENGERS

5.1 Tax administration

Levy and collection of taxes and other receipts under the Motor Vehicles sector are regulated by the Central Motor Vehicles Act, 1988, the Bombay Motor Vehicle Tax Act, 1958, the Bombay Motor Vehicles Transportation of Passengers Act, 1958, and the Rules made there under. These Acts and Rules are implemented by the Transport Commissioner under the overall control of the Principal Secretary (Transport) to the Government in Home Department, assisted by an Additional Commissioner, a Joint Commissioner, Deputy Commissioners and Regional and Deputy Transport Officers. The motor vehicles receipts mainly comprise of taxes on motor vehicles and taxes on goods and passengers.

5.2 Internal Audit

Each Regional Transport Office is having an internal audit wing headed by an Accounts Officer. The criteria for taking up audit has been laid down in order dated 1 September 1971, which prescribes checking of assessment of tax in case of newly registered vehicles, checking of cash book, dead stock etc.

Information regarding position of units planned to be taken up for audit and actually audited is given in **Table 5.2.**

Table 5.2

Year	No. of units planned	No. of units audited	Audit observations raised	Audit observations settled till 31.03.2014	Pending observations as on 31.03.2014
2009-10	17	17	684	354	30
2010-11	19	19	454	362	92
2011-12	18	18	332	258	74
2012-13	29	29	1,171	806	365
2013-14	32	32	693	193	500

Source : Figures furnished by the Department

It can be seen from the above table that the Internal Audit wing of the Department is functioning efficiently. However, more efforts are needed to reduce the pendency of observations.

5.3 Results of audit

In 2013-14, test check of the records of 48 units relating to Bombay Motor Vehicles Tax Act, etc. showed under assessment of tax and other irregularities involving ₹ 45.42 crore in 2,387 cases, which fall under the following categories shown in **Table 5.3.**

Table 5.3

(₹ in crore)

Sr. No.	Category	Number of cases	Amount
1	Non/short levy of tax due to application of incorrect rates	1,556	43.90
2	Short levy of tax due to incorrect exemption/classification	175	0.48
3	Excess refund and miscellaneous	656	1.04
Total		**2,387**	**45.42**

During the year 2013-14, the concerned Department accepted underassessment, short levy of motor vehicle tax of ₹ 1.40 crore in 364 cases and recovered the entire amount, of these, two cases involving ₹ 0.69 crore related to 2013-14 and the rest to earlier years.

An audit observation involving ₹ 10 lakh noticed during audit is discussed in the following paragraph.

5.4 Short recovery of Motor Vehicle Tax (MVT)

RTOs: Aurangabad, Kolhapur Mumbai; Dy. RTOs: Malegaon, Pen, Pimpri – Chinchwad

The State Government has, vide notification dated 27 April 2011, revised the rates of annual tax from 1 May 2011 on non-AC, AC and imported tourist taxies to ₹ 1,000, ₹ 2,000 and ₹ 3,000 respectively for every passenger the vehicle is permitted to carry.

During test check of Cash Balance Recovery Registers and relevant records in six offices between October 2012 and April 2013, we noticed that MVT in respect of 214 tourist taxies for various periods between July 2010 and November 2013 was not paid at revised rates by the owners of the vehicles. This resulted in short recovery of ₹ 10.00 lakh.

After this being pointed out between November 2012 and May 2013, the Department accepted the observation and communicated recovery of ₹ 0.77 lakh in 15 cases between December 2012 and July 2013. Report on the recovery in the balance amount has not been received.

We reported the matter to the Government in May 2014; their reply has not been received (December 2014).

CHAPTER VI

OTHER TAX AND NON-TAX RECEIPTS

6.1 Tax administration

This chapter consists of receipts from Entertainments Duty, Electricity Duty, State Education Cess (EC), Employment Guarantee Cess (EGC), Tax on Buildings (with larger Residential Premises) (MTOB), Land Revenue etc. The administration is governed by Acts and Rules framed separately for each Department.

6.2 Results of audit

In 2013-14, test check of the records of 407 units relating to the Entertainment Duty, Taxes and Duties on Electricity, Education Cess/Employment Guarantee Cess, Profession Tax, Repair Cess, Land Revenue etc. showed non/short credit of lapsed deposits into Government revenue account and other irregularities amounting to ₹ 580.28 crore in 9,986 cases, which fall under the following categories as indicated in the **Table 6.2.**

Table No. 6.2

(₹ in crore)

Sr. No.	Category	No. of cases	Amount
1	Performance Audit on "Assessment, collection and accounting of Maharashtra Tax On Buildings (with larger Residential Premises)"	1	93.95
2	Entertainment Duty	1,475	13.14
3	Taxes and Duties on Electricity	656	12.86
4	Land Revenue	297	170.69
5	Repair Cess	3,144	183.10
6	Education Cess/Employment Guarantee Cess	126	92.68
7	Maharashtra Tax on Buildings (with Larger Residential Premises)	1,831	4.07
8	Profession Tax	2,446	3.14
9	Non-Tax Receipt	10	6.65
Total		**9,986**	**580.28**

During the year 2013-14 as well as during earlier years, the concerned Department accepted underassessment, short levy, etc. and recovered ₹ 17.29 crore in 1,534 cases of which 143 cases involving ₹ 4.65 crore related to 2013-14 and the rest to earlier years.

A Performance Audit on "**Assessment, collection and accounting of Maharashtra Tax on Buildings (with larger Residential Premises)**" with total financial effect of ₹ 93.95 crore and a few audit observations involving ₹ 65.67 crore are included in the succeeding paragraphs.

SECTION A

Maharashtra Tax on Buildings (with larger Residential Premises)

6.3 Performance Audit on "Assessment, Collection and Accounting of Maharashtra Tax on Buildings (with larger Residential Premises)"

Highlights

- Audit noticed absence of a mechanism to ascertain effective utilisation of living space and the extent to which the objective of the Maharashtra Tax on Buildings (with larger Residential Premises) Act, 1979 (MTOB Act) was fulfilled.

(Paragraph 6.3.6.1)

- Notifications for levy and collection of MTOB were not issued in respect of 15 municipal corporations formed after 1989; of these, five corporations were levying and collecting the tax, while the remaining ten corporations were not collecting tax.

(Paragraph 6.3.6.2)

- Notification for fixation of rate of MTOB on capitalised value of properties was not issued. Non-realisation of revenue amounting to a minimum of ₹ 74.85 crore was due to inaction on the part of the Urban Development Department (UDD) to permit Municipal Corporation of Greater Mumbai (MCGM) to issue bills at provisional rates.

(Paragraph 6.3.6.3)

- The municipal corporations did not maintain a uniform database of properties, due to which the possibility of some properties remaining un-assessed could not be ruled out.

(Paragraph 6.3.6.4)

- We noticed that four municipal corporations had not remitted taxes amounting to ₹ 4.26 crore into Government Account. The information regarding non-remittance of revenue by the corporations was not available with the UDD.

(Paragraph 6.3.6.5)

- In four corporations 1,711 properties had escaped assessment resulting in non-realisation of revenue of ₹ 1.99 crore.

(Paragraphs 6.3.7.1 and 6.3.7.2)

6.3.1 Introduction

Assessment, collection and accounting of tax on buildings with larger residential premises are governed by the Maharashtra Tax on Buildings (with Larger Residential Premises) Act, 1979 (MTOB Act) and Rules made thereunder. This tax is levied on residential premises in corporation areas, the floorage of which exceeds 125 square meters in Greater Mumbai and 150 square meters in other corporation areas. Besides augmentation of the revenue receipts, the objective for levy of the tax was to keep a check on extravagant use of available living space, availability of more residential accommodation in thickly populated cities. The administration of MTOB Act falls under the Urban Development Department (UDD) of the State Government. The Municipal Corporations (MCs) have been empowered to implement the Act on behalf of the State Government. The tax collected by the MCs is remitted into the treasury as per the provisions of the Act.

The collection of tax under MTOB Act is made in the manner in which the property tax is collected in that area under the relevant municipal law. The Assessor and Collectors in the respective MCs are entrusted with the assessment, collection of MTOB and remittance thereof to the Government account.

As per Section 3.3 of the MTOB Act, the tax is levied and collected on the basis of the rateable value/capital value and the area of the property, which is similar to assessment of property tax by the respective MCs. Rateable value means the annual letting value (as given in the ready reckoner) of the property less 10 percent for repairs. Capital Value is based on the value of the property as mentioned in the Stamp Duty Ready Reckoner (SDRR) prepared under Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, and if the property does not feature in the SDRR, then on the basis of market value of the property as fixed by the Commissioner. There are 26 Municipal Corporations in the State. The State Government has classified the Municipal Corporations in category A[1] (1 MC), B[2] (2 MCs), C[3](4 MCs) and D[4](19 MCs) based on the criteria like population, per capita income and per capita area.

6.3.2 Audit scope and methodology

Performance Audit of MTOB was conducted between October 2013 and June 2014. A test check of the records of 10 MCs covering the period from 2009-10 to 2013-14 was carried out. For the purpose of this Performance Audit, all corporations falling in categories A, B and C were selected. As the revenue receipts for the tax is low for 'D' category corporations, three[5] 'D' type corporations were selected. The selection is given in **Table 6.3.2.**

[1] 'A'-Municipal Corporation of Greater Mumbai.

[2] 'B'-Nagpur and Pune.

[3] 'C'-Nashik, Navi Mumbai, Pimpri-Chinchwad and Thane.

[4] 'D'-Ahmednagar, Akola, Amravati, Aurangabad, Bhiwandi-Nizampur, Chandrapur, Dhule, Jalgaon, Kalyan-Dombivali, Kolhapur, Latur, Malegaon, Mira-Bhayandar, Nanded-Waghala, Parbhani, Sangli-Miraj-Kupwad, Solapur, Ulhasnagar and Vasai-Virar.

[5] Amravati, Aurangabad and Kalyan-Dombivali Municipal Corporation.

Table 6.3.2

Category of corporations	Total corporations	Corporations selected for Performance Audit
'A'	1	1
'B'	2	2
'C'	4	4
'D'	19	3
Total	**26**	**10**

An entry conference was held in June 2014 with the Principal Secretary, UDD and the officers of the MCs in which the objective, scope and methodology of the Performance Audit were discussed. The exit conference was held on 17 November 2014.

6.3.3 Audit objectives

The Performance Audit was taken up with a view to ascertain whether:

- the system of levy and collection of taxes was efficient and effective;
- the exemptions/ refunds granted were in conformity with the Government policy;
- the provisions of the Act and Rules relating to assessment, levy and collection of tax were adequate and enforced effectively to safeguard revenue collection; and
- an effective monitoring and internal control mechanism was in place.

6.3.4 Audit criteria

The levy and collection of tax on buildings with larger residential premises were examined with reference to:

- the Maharashtra Tax on Buildings (with larger residential premises) Rules, 1979;
- the Resolution/Notifications issued by of the Government from time to time.

6.3.5 Trend of revenue

6.3.5.1 Preparation of budget estimates

As per the Maharashtra Budget Manual, Budget Estimates (BEs) should be prepared to achieve as close an approximation to the actuals as possible based on the tax collections and other receipts under the MTOB Act, any recognizable regularity in the figures of the past years, amount outstanding at the end of the current year and amount likely to be collected in the next financial year.

It was noticed that the budget estimates for MTOB were not being prepared by the UDD, though it was administering the tax.

In the exit conference the Pr. Secretary, UDD stated that the budget estimates were prepared by the Finance Department.

6.3.5.2 Targets and achievement

The Budget Estimates and actual revenue realised as provided by the Office of the Principal Accountant General (Accounts & Entitlements), Maharashtra during the years 2009-10 to 2013-14 in respect of MTOB were as given in **Table 6.3.5.2:**

Table 6.3.5.2

(₹ in lakh)

Year	Budget Estimates	Actual collection	Variations (+) excess / (-) shortfall	Percentage of variation
2009-10	178.50	564.80	(+)386.30	(+)216.41
2010-11	00.00	61.51	(+)61.51	NA
2011-12	61.34	155.63	(+)94.29	(+)153.71
2012-13	61.34	98.17	(+)36.83	(+)60.04
2013-14	107.06	179.01	(+)71.95	(+)67.20

The above table reveals that variation between the Budget Estimates and the actual collection ranged from 60.04 *per cent* to 216.41 *per cent* indicating therein that the Budget Estimates were not framed on realistic basis. There was a need to have a relook at the entire budgetary process so as to ensure that the Budget Estimates conform to requirements prescribed in the Budget Manual.

The steep drop in revenue during 2010-11 was due to less collection of MTOB by MCGM during 2010-11, it had contributed only ₹ 4.78 crore towards revenue collection and thereafter no tax was realised by the MCGM.

Audit findings

6.3.6 System Deficiencies

6.3.6.1 Absence of mechanism to check the extravagant use of available living space

One of the objectives of the MTOB Act was to check extravagant use of the available living space in thickly populated cities so that more residential accommodation could become available in these areas.

We found that the basic data like number of larger flats / premises, area of taxable properties, etc. was not available with the UDD. It had not put in place any system for obtaining this information from the MCs. As such, it was not possible to ascertain the extent to which this objective was achieved.

In the exit conference the Pr. Secretary, UDD accepted the fact of non-maintenance of data and stated that a new software package has been installed in the MCs in January 2014 in which basic data like number of larger flats/premises, area of taxable properties, etc. will be captured.

It is recommended that Department may put in place a mechanism to compile / consolidate all data on properties on which MTOB is leviable.

6.3.6.2 Non-issue of notifications

Section (1)(3)(b) of the MTOB Act provides that the State Government may bring the MTOB Act into force in such area/areas of the municipal corporations of other city/cities and with effect from such date or dates as the State Government may, by notification in the Official Gazette.

The MTOB Act extends to the whole of the state of Maharashtra. We found that eleven corporations were formed till 1989 and notifications were issued in respect of all these 11 corporations[6] from time to time. Thereafter, 15[7] more corporations were formed latest being Vasai- Virar City MC in 2009, but in none of these MCs, notification for implementation of MTOB Act was issued (July 2014). Of these 15 corporations, we found that five[8] corporations were collecting the tax while the remaining were not collecting the tax.

In the exit conference, the Pr. Secretary, UDD stated that it was not mandatory to issue notifications, and further stated that matter regarding non-collection of tax and issue of notification would be examined.

To safeguard the Government revenue it is recommended that Government may follow the provisions of MTOB and issue notifications for collection of tax in respect of all MCs.

6.3.6.3 Non-issue of notification for fixation of rates of MTOB

The Urban Development Department vide Government Resolution dated 27 April 2010, amended the MTOB Act by inserting sub-section (4) in Section 3. As per the amended Act, MTOB shall be levied on the capital value of the buildings in those MCs where property tax was levied on the capital value under the provisions of the relevant municipal laws. The MTOB was required to be levied on all buildings or parts thereof at a rate not exceeding 0.05 *percent* of the capital value. The rate of tax was required to be specified by the State Government by issue of a separate notification. However, no such notification has been issued till date.

In the Municipal Corporation of Greater Mumbai (MCGM), the system of levy and collection of property tax and MTOB were shifted from Rateable Value to Capital Value since April 2010. Thereafter, though MCGM started collection of property tax on the basis of Capital Value from April 2010 onwards the collection of MTOB was discontinued. MCGM sent a proposal to the UDD in June 2011 for issue of provisional bills at the pre-revised rate. In May 2013, MCGM proposed a rate of 0.03 *per ce*nt of the CV for levy of MTOB and also asked for permission for issue of provisional bills pending the approval of the

[6] Amravati, Aurangabad, Kalyan-Dombivali, Kolhapur, MCGM, Nagpur, Nashik, Pimpri-Chinchwad, Pune, Solapur and Thane.

[7] Ahmednagar, Akola, Bhiwandi-Nizampur, Chandrapur, Dhule, Jalgaon, Latur, Malegaon, Mira-Bhayandar, Nanded-Waghala, Navi Mumbai, Parbhani, Sangli-Miraj-Kupwad, Ulhasnagar and Vasai-Virar.

[8] Ahmednagar, Chandrapur, Dhule, Malegaon and Navi Mumbai.

proposed rate. However, no action was taken by UDD in this regard. As per the data collected from MCGM, MTOB recoverable at the proposed rate of 0.03 *per cent* of the capital value of properties liable to be taxed under MTOB Act aggregated to ₹ 74.85 crore.

In the exit conference the Pr. Secretary, UDD did not give any specific reply for non levy of MTOB. Besides, action taken on the proposal sent by MCGM which could have earned a revenue of ₹ 74.85 crore was also not intimated. The Pr. Secretary stated that the matter would be examined in detail.

It is recommended that the UDD may issue a notification specifying the exact percentage of CV for levy of MTOB in the interest of the revenue of the State.

6.3.6.4 Improper maintenance of computerised database

All the MCs were computerised for levy and collection of MTOB. Scrutiny of computerised database in 10 corporations revealed the following deficiencies:

In Thane and Pune MCs, there was no provision in the database for entering area of the residential property. Thus, the correctness of tax which is based on the area could not be ascertained.

In Amravati, Aurangabad and Nagpur MCs, though there was provision for entering the area of the property in the database, but the database was found incomplete to the extent mentioned in **Table 6.3.6.4.**

Table 6.3.6.4

Municipal Corporations	Total Records	Records with area	Records without area	Percentage of records without area
Amravati	1,40,151	1,20,112	20,039	14
Aurangabad	1,68,576	0	1,68,576	100
Nagpur	1,43,912	5,386	1,38,526	96

In Navi Mumbai MC, individual flat wise area available in the buildings was not recorded in the database. In absence of complete database, the possibility of properties remaining un-assessed/less assessed to MTOB could not be ruled out. This indicates that corporations did not follow a uniform procedure in computerisation the records of properties.

In the exit conference the Pr. Secretary, stated that a new software package has been installed in the MCs in January 2014 in which basic data like number of larger flats/premises, area of taxable properties, etc., will be captured. However, the Department did not specify the flow of information relating to buildings from MCs to UDD.

It is recommended that UDD may make efforts for a complete database and instruct the MCs to update their database so that all taxable properties are assessed to tax.

6.3.6.5 Non-remittance of MTOB into Government Account

Under the provisions of Section 14(1) of MTOB Act, the amount of tax and penalty recovered by any MC shall be paid to the State Government within a period of 30 days from the date of such recovery.

As per Section 15(1) of the Act if any municipal corporation makes a default in the collection or payment to the State Government of any sum due in respect of the tax under this Act, the State Government may, after holding such inquiry as it thinks fit, fix a period for the collection or payment of such sum.

The information relating to non-remittances was not available with the UDD. The Government was not aware of the amounts due to them. Information collected from 10 corporations revealed that four corporations had not remitted taxes amounting to ₹ 4.26 crore into Government Account as shown below in **Table 6.3.6.5.**

Table 6.3.6.5

(₹ in lakh)

Sr. No.	Name of corporation	Period	Amount
1.	Navi Mumbai	April 2012 to March 2014	54.72
2.	Aurangabad	April 2009 to March 2014	37.51
3.	Nagpur	April 2009 to March 2014	16.50
4.	Pune	April 2013 to March 2014	317.04
Total			**425.77**

We also noticed that these amounts were lying with the corporations for periods ranging from one month to 36 months.

6.3.6.6 Non-submission of returns

Under the provision of Section 14(3) of the MTOB Act, the Municipal Commissioner is required to furnish, within three months from the date of expiry of every year, a return showing the aggregate amount of tax assessed in respect of that year, and the aggregate amount of such assessed tax and penalty, if any, collected in that year, to the State Government.

Scrutiny of records in selected MCs revealed that none of the corporations had submitted the prescribed returns, to the UDD during 2009-10 to 2013-14. The receipt of the same was also not monitored by the UDD.

After this being pointed out, the MCs stated that they would henceforth submit the required returns.

In the exit conference, the Pr. Secretary, UDD accepted that a proper system to monitor the receipt returns from MCs would be put in place.

6.3.6.7 Internal audit

Scrutiny of records relating to internal audit of the selected MCs revealed that in Aurangabad and Nagpur Municipal Corporations, internal audit was not carried out during the period covered by audit. As such the adequacy of

prescribed controls for detection/prevention of evasion of taxes was not evaluated by these corporations.

Further, the UDD also did not carry out any inspection/audit about the correctness of levy and collection of MTOB by the MCs that could have promptly brought the irregularities/non-collection and non-remittance to the notice of the Department.

6.3.6.8 Non-reconciliation of revenue receipts

As per the provisions of Rule 98(2)(v) of the Maharashtra Treasury Rules, 1968, as soon as possible after the end of every month, every head of the office who is collecting money on behalf of the Government is required to prepare a statement of the amount credited by him into the Government Treasury and get the same verified by the Treasury Office and obtain a certificate stating that the amount has been verified and found correct.

Scrutiny of records in five[9] MCs revealed that the remittances of MTOB during the period from 2009-10 to 2013-14 were not reconciled with the records of concerned treasuries. In the absence of timely reconciliations, the possibility of non-detection of irregularities or being detected late cannot be ruled out.

In the exit conference, the Pr. Secretary, UDD stated that the issues regarding reconciliation of the remittances will be taken care of at the earliest.

6.3.7 Non/short levy of MTOB

Section 3 of MTOB Act, 1979 provides that tax shall be levied and collected on all buildings or parts thereof situated in corporation areas, containing any residential premises:

- if situated in MCGM, the floorage of such premises is more than 125 square meter and the rateable value (RV) thereof is more than ₹ 1,500 and
- if situated in any other corporation area, where the floorage is more than 150 square meter and the RV thereof is more than ₹ 1,500.

The rate of tax in respect of such residential premises is 10 *per cent*.

6.3.7.1 Non-levy of MTOB in three MCs (Nagpur, Pune and Thane)

Scrutiny of the Assessment books[10], Inspection Books[11] and other records relating to the Assessment and Collection of 10 corporations revealed that in three MCs, 229 properties escaped assessment resulting in non-realisation of ₹ 36.74 lakh as given in **Table 6.3.7.1**:

[9] Amravati, Aurangabad, Nagpur, Nashik and Pune.

[10] Assessment Book contains Area, Rateable Value, Type of construction, Year of Construction, Location

[11] Inspection Book contains Area, Rateable Value, Type of construction, Location, Inspectors remarks regarding inspection.

Table 6.3.7.1

(₹ in lakh)			
Sr. No.	**Name of corporation**	**No. of properties**	**Amount of MTOB (2009-14)**
1.	Nagpur	68	1.32
2.	Pune	153	31.03
3.	Thane	8	4.39
Total		**229**	**36.74**

The above fact indicates that there is a need for the UDD to monitor the assessments made by the MCs so as to ensure the correct levy and collection of MTOB.

6.3.7.2 Non-levy of MTOB in MCGM

In MCGM, it was seen that 1,482 properties escaped assessment resulting in non-realisation of tax of ₹ 162.28 lakh for the year 2009-10 as given in **Table 6.3.7.2**.

Table 6.3.7.2

(₹ in lakh)			
Sr. No	**Ward**	**No. of properties**	**Non-levy of MTOB (2009-10)**
1.	D-Ward	214	28.13
2.	F-North	110	12.84
3.	H-West	236	38.94
4.	L-Ward	424	30.43
5.	N-Ward	97	7.56
6.	P-South	126	9.76
7.	R-Central	59	4.62
8.	S-Ward	195	28.54
9.	T-Ward	21	1.46
Total		**1,482**	**162.28**

Out of these, 50 property owners were continuous defaulters since the implementation of the Act in 1979.

MCGM stated that as soon as the new system for levy of MTOB on the basis of CV is implemented, these properties would be taxed and arrears would be recovered.

It is recommended that UDD specify the rate of percentage of CV for levy of MTOB so that MCGM may start assessing and levying tax on properties which have escaped assessment.

6.3.7.3 Short levy of MTOB in MCGM

During 2009-10, MCGM was collecting MTOB on RV basis. Scrutiny of computerised data furnished to audit by Assessment & Collection Department of MCGM and assessment books maintained in the Ward Offices revealed that

though MCGM had revised the RV, the revised rate were not applied in 73 cases during 2009-10 resulting in short levy of ₹ 7.96 lakh as detailed in **Table 6.3.7.3**:-

Table 6.3.7.3

(₹ in lakh)

Sr. No.	Wards of MCGM	No. of flats	Old Rateable Value as per the records	Old MTOB (10% of Rateable Value)	Revised Rateable Value	Revised MTOB (10% of Rateable Value)	Short levy of MTOB (2009-10)
1.	F-North	30	33.03	3.30	36.95	3.70	0.40
2.	H-West	43	9.07	0.91	84.62	8.46	7.56
Total		**73**	**42.10**	**4.21**	**121.57**	**12.16**	**7.96**

MCGM stated (March 2014) that supplementary bills would be issued after implementation of amended software package based on CV System of property tax.

6.3.7.4 Incorrect application of rates

As per Bombay Provincial Municipal Corporation Act, rateable value means annual letting value after deduction of 10 *per cent* for repairs. MTOB is levied at the rate of 10 *per cent* of the rateable value (RV).

Scrutiny of database of MTOB payers in Pune Municipal Corporation (PMC) revealed that while determining the RV of properties, deduction for repairs etc. from the annual rent was allowed at 15 *per cent* as against 10 *per cent.* This resulted in non-realisation of revenue to the extent of ₹ 11.25 lakh as detailed in **Table 6.3.7.4**:

Table 6.3.7.4

(₹ in lakh)

Year	RV fixed @ 85 percent of annual rent (100-15)	RV to be fixed @ 90 percent of annual rent (100-10)	Short fixation of RV	Rate of MTOB (in *percent*)	Short levy of MTOB
2009-10	215.50	228.18	12.68	10	1.27
2010-11	412.17	436.41	24.25	10	2.42
2011-12	436.78	462.48	25.69	10	2.57
2012-13	518.49	548.99	30.50	10	3.05
2013-14	329.15	348.51	19.36	10	1.94
Total					**11.25**

After this being pointed out, the PMC stated (May 2014) that 15 *per cent* deduction was allowed as per resolution passed by the General Body of the PMC in its meeting held on 3 April 1970. The reply of the corporation is not correct as MTOB is levied by the State legislature and the rate of tax cannot be decreased.

In the exit conference, the Pr. Secretary, UDD stated that the matter would be examined and corrective measures will be taken.

It is recommended that UDD may advise the corporations to collect the revenue in accordance with the Acts and rules passed by the State legislature.

6.3.7.5 Collection of revenue by the MCs

Under the provisions of Section 14(3) of the MTOB Act, the Municipal Commissioner is required to furnish, within three months from the date of expiry of every year, a return showing the aggregate amount of tax assessed by the assessing authority in respect of that year, and the aggregate amount of such assessed tax and penalty, if any, collected by the collecting authority in that year, to the State Government.

UDD had not put in place any mechanism to monitor the receipt of the MCs. Thus, the total revenue due and collected was not available with the Department. We collected the information from the MCs audited.

Information obtained from 10 MCs relating to demand raised and amount collected in respect of MTOB revealed that there were arrears of ₹ 12.66 crore as on 31 March 2014 as shown in **Table 6.3.7.5**:

Table 6.3.7.5

		(₹ in crore)
Sr. No.	**Name of MC**	**Arrears**
1.	Amravati	0.070
2.	Aurangabad	0.050
3.	Nagpur	0.180
4.	Pimpri Chinchwad	1.980
5.	Pune	0.240
6.	Kalyan Dombivali	0.100
7.	Navi Mumbai	0.170
8.	Greater Mumbai	9.790
9.	Nashik	0.080
10.	Thane	0.001
Total		**12.660**

Age-wise arrears was not available with the MCs.

After this was pointed out, the concerned MCs stated that demand notices are being issued to reduce the arrears and penalty is imposed wherever necessary.

It is recommended that UDD may put in place a mechanism to monitor the demands raised, tax collected and remitted into the treasuries and take steps to minimise arrears. Also, a mechanism may be adopted to ensure that returns are submitted on time.

6.3.8 Conclusion

The Performance Audit revealed the following deficiencies:

Budget Estimates revealed a huge variation with actuals ranging from 60.04 *per cent* to 216.41 *per cent*. UDD neither had any basic data like number of larger flats/premises, area of taxable properties nor had put in place any system for obtaining the same from the MCs. UDD had not issued notifications for levy of MTOB in respect of 15 MCs. Since April 2010, UDD has not issued notifications for fixing the rate of percentage of CV. PMC applied incorrect rates while calculating rateable value. MCs did not follow a uniform procedure in computerisation of properties. Five corporations had not remitted taxes into Government Account. None of the corporations had submitted the prescribed returns, to the UDD during 2009-14, there were arrears in 10 MCs as on 31 March 2014. Internal audit was not carried out in Nagpur and Aurangabad during the period covered by audit. In five MCs, the remittances of MTOB during the period from 2009-10 to 2013-14 were not reconciled with the records of concerned treasuries.

6.3.9 Recommendations

The Government/Department may consider:

- **putting in place a mechanism to compile /consolidate all data on properties on which MTOB is leviable;**
- **ensure issuing notification specifying the percentage of capital value for levy of MTOB in MCGM; and**
- **putting in place suitable mechanism to ensure that MCs collect the tax at prescribed rates and timely remit the same to the Government Accounts along with prescribed returns.**

The Pr. Secretary, UDD accepted the recommendations in the exit conference.

SECTION B

ENTERTAINMENTS DUTY

6.4.1 Non/short recovery of entertainment duty from cable operators

Under the Bombay Entertainments Duty Act, 1923 (BED Act), every Collector is required to maintain a recovery register in which the amount of ED due, received, and deposited by each cable operator is recorded.

During test check of Recovery Register of 22 offices (four [12] Deputy Collectors, seven[13] Resident Deputy Collectors and 11[14] Taluka Magistrates) between February 2012 and January 2014, we noticed that entertainment duty amounting to ₹ 1.43 crore was not paid by 336 cable operators during various periods between November 2008 and March 2013. No action was taken for realisation of the revenue from these cable operators. Further, interest at the prescribed rates and penalty were also leviable.

After we pointed out the cases, the Department accepted the observation and communicated recovery of ₹ 9.15 lakh from 40 cable operators between October 2012 and November 2013. Report on recovery of the balance amount along with interest and penalty has not been received.

The matter was brought to the notice of the Government in May and June 2014. Their reply has not been received (December 2014).

6.4.2 Non-recovery of entertainment duty from permit room/beer bar with live orchestra

Under the provisions of section 3(11) of BED Act, read with order dated 17 September 2010 issued by the Revenue and Forest Department, Entertainment Duty is recoverable at the rate of ₹ 50,000 per month from permit room/beer bar with live orchestra located in Municipal Corporation areas with effect from 20 January 2010. Such duty is recoverable in advance by the 10th day of the month to which it relates and is watched through the live orchestra recovery register. As per Section 9B of the BED Act, interest at the rate prescribed from time to time is also leviable.

During test check of live orchestra recovery register of five offices (one[15] DC and four[16] TMs) between May 2013 and January 2014, we noticed that Entertainment Duty amounting to ₹ 40 lakh was not paid/recovered from 18 permit rooms/beer bars with live orchestra during various periods between April 2012 and March 2013. This resulted in non-realisation of entertainment duty to that extent. Further, interest at the prescribed rate was also leviable.

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[12] Mumbai (Zones III, V, VII and IX).

[13] Mumbai (Zones I and XI), Pune (Zones B, C, E, G and M).

[14] Andheri (Zones I, III and IV), Borivali (Zone V, VI and VII), Kurla at Mulund (Zones XI and XII), Kalyan, Thane and Ulhasnagar.

[15] Mumbai (Zone XI).

[16] Andheri (Zones I and IV), Kurla at Mulund (Zone XI), Thane.

After we pointed out the cases, the Department accepted the observation and communicated recovery of ₹ 5 lakh from four defaulters between May 2013 and October 2013. Report on the recovery of the balance amount along with interest and penalty has not been received.

We reported the matter to the Government in May 2014; their reply has not been received (December 2014).

6.4.3 Non-recovery of entertainment duty in case of dishonored cheques

Deputy Collectors, Mumbai (Zones V, VII and XI), Taluka Magistrates Andheri (Zones I, III and IV) and Kurla at Mulund (Zone IX, XI and XII))

As per the provisions of BED Act, Entertainment Duty can either be paid in cash or through cheque. Further, if the cheque through which Entertainment Duty is paid is dishonoured for any reason whatsoever, the Department has to immediately recover the amount in cash along with interest from the defaulters and also initiate action under the provisions of Section 138 of Negotiable Instruments Act (Amended), 1988 (NI Act).

During test check of the records of nine offices between January 2012 and December 2013, we noticed from the cheque/ dishonoured cheque register that in 72 cases, cheques issued by cable operators for payment of Entertainment Duty aggregating ₹ 25.57 lakh were dishonoured during various periods between July 2008 and March 2013. These amounts should have been recovered in cash along with interest. The concerned officers neither took any action to recover the amount from the defaulters nor initiated proceedings as contemplated under the Negotiable Instrument Act. This resulted in non-realisation of Entertainment Duty aggregating ₹ 25.57 lakh and interest thereon.

After we pointed out the cases between February 2012 and February 2014, the Department accepted the observation and communicated recovery of ₹ 1.54 lakh in eight cases. Report on recovery of the balance amount has not been received.

We reported the matter to the Government in May and June 2014; their reply has not been received (December 2014).

6.4.4 Non-forfeiture of security deposits

DC (ED), Mumbai and Mumbai Suburban District, Bandra (East)

As per the provisions under Rule 14 of the Bombay Entertainment Duty Rules, 1958, every organiser shall pay security deposit to the prescribed officer as that officer may decide. If an organiser fails to submit returns under Rule 16 or 21 within 10 days of the date of the performance of the entertainment or such extended period not exceeding one month, the prescribed officer may, after giving the organizer a week's notice, forfeit the security deposit.

During test check of the Personal Ledger Account and cash book of two offices in August 2013 and January 2014, we noticed that security deposits aggregating ₹ 3.74 crore collected from 218 organizers for the events

organized between April 2012 and March 2013 were lying in PLA, outside the Consolidated Fund of the State. The organizers neither submitted the returns within the prescribed period, nor had sought any extension for the same. The organisers also did not apply for the refunds for security Deposit. As such these were required to be forfeited which was not done.

After we pointed out the cases in September 2013 and February 2014, the Department confirmed the facts and stated that the action for forfeiture of the security deposits is under progress and same would be credited into the Government Account soon. Further progress in the matter has not been received.

The matter was brought to the notice of the Government in June 2014; their reply has not been received (December 2014).

SECTION C

LAND REVENUE

6.5 Short levy of Non-Agricultural Assessment, Zilla Parishad/Village Panchayat Cess and Increased Land Revenue

The Government of Maharashtra vide GR dated 23 October 2007, revised the rates of Non-Agriculture Assessment (NAA) of land in rural areas of Maharashtra especially for occupants of Class-II land from 1 August 2008 as one paisa to five paisa per square meter (sqm). Further, under the Maharashtra Increase of Land Revenue and Special Assessment Act, 1974 with effect from 1 August 1975, "Increase of land revenue" (ILR) is also payable at 100 *per cent* in cases where land holding is more than 12 hectare. Similarly, under the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 and Bombay village Panchayat Act, 1958, cess at the rate of eight times of NAA is also leviable in the areas covered by the Act.

Scrutiny of records in Tahsildar Tasgaon, District Sangli, revealed (March 2013) that an area of 3,74,200 sqm in Class-II land in Village Turchi, Tahsil Tasgaon was under the use for non-agriculture purpose. The department levied NAA at the pre-revised rate at one paisa per sqm for the year 2008-09 to 2012-13 amounting to ₹ 1.87 lakh[17] instead of revised rate at five paisa per sqm for the year 2008-09 to 2012-13 amounting to ₹ 9.36 lakh[18]. This has resulted in short levy of NAA amounting to ₹ 7.48 lakh.

After we pointed out (March 2013), Tahsildar, Tasgaon has accepted (March 2013) the observation and stated that the demand notice would be issued to party to recover the deficit amount of NAA. Report on recovery has not been received (December 2014).

[17] NAA ₹ 3,742 + ILR ₹ 3,742 + ZP/VP cess ₹ 29,936 = ₹ 37,420 per year. NAA along with ILR and Cess for five years = 5 x ₹ 37,420 = ₹ 1,87,100

[18] NAA ₹ 18,710 + ILR ₹ 18,710 + ZP/VP cess ₹ 1,49,680 = ₹ 1,87,100 per year. NAA along with ILR and Cess for five years = 5 x ₹ 1,87,100 = ₹ 9,35,500

The matter was reported to Government (May 2014); their reply has not been received (December 2014).

SECTION D

EDUCATION CESS AND EMPLOYMENT GUARANTEE CESS

6.6.1 Non-recovery of education cess and employment guarantee cess

Assessor and Collectors, Mumbai (D and M/E Wards); Assistant Assessor and Collectors (AAC), Mumbai (R/N and G/N Wards) and Ulhasnagar Municipal Corporation (UMC)

As per the provision under sections 4 and 6 (b) of the Maharashtra Education Cess and Employment Guarantee Cess Act, 1962, (MECEGC Act) there shall be levied and collected education and employment guarantee cess along with property tax at the rates prescribed by the Government and credited to Government Account.

Further, as per the provision under section 10 (1) of MECEGC Act, if any person, on being served with a notice of demand for the collection of tax in pursuance of the provisions of section 9, fails to pay within the period mentioned in the notice, any amount due from him on account of tax, the municipality, or as the case may be, the Collector on being satisfied that such person has willfully failed to pay the tax may, subject to the general or special orders of the State Government, recover from him as penalty a sum not exceeding one tenth of the amount of the tax so unpaid, in addition to the amount of tax payable by him.

During test check of the records of five offices between March 2011 and June 2013, we noticed from Bill cum Collection Register, Tabulated Ward Reports and computer system that EC and EGC aggregating to ₹ 51.49 lakh was not recovered from 104 property holders during various periods between 2007-08 and 2012-13 resulting in non-realisation of Government Revenue to that extent.

After we pointed out the cases between March 2011 and July 2013, one office[19] accepted the observation and stated that demand notices would be issued and recovery effected. The other four offices stated that the cases would be verified. Further action in the matter has not been received.

We brought the matter to the notice of the Government in April 2014; their reply has not been received (December 2014).

[19] Assistant Assessor and Collector, G/N Ward, MCGM, Mumbai.

6.6.2 Non-recovery of education cess and employment guarantee cess in case of dishonoured cheques

Assessor and Collector (AC), Pune Municipal Corporation; Assistant Assessor and Collectors (AAC), Brihanmumbai Municipal Corporation (K Ward, H/W Ward and D Ward) and Ulhasnagar Municipal Corporation

As per provisions under Rule 100(b) of the Maharashtra Treasury Rules 1968, in the event of the cheque being dishonoured by the collecting bank for any reasons, whatsoever, the Department has to recover the dues in cash, the amount involved immediately along with interest from the defaulters and also initiate action under the provisions of section 138 of Negotiable Instruments Act (Amended), 1988 (NI Act).

During test check of the records of five offices between June 2013 and October 2013, we noticed from the cheque/dishonored cheque register that in 72 cases, cheques received amounting to ₹ 16.24 lakh were dishonored by concerned banks during various periods between 2009-10 and 2012-13. These amounts were to be recovered in cash along with interest. The concerned Department neither took any action to recover the amount from the defaulters nor initiated proceedings as contemplated under the NI Act. This resulted in non-realisation of revenue amounting to ₹ 16.24 lakh and interest thereon.

After we pointed out the cases between July 2013 and October 2013, the concerned corporations stated that action would be taken for recovery of dishonored cheques.

We brought the matter to the notice of the Government in May 2014; their reply has not been received (December 2014).

6.6.3 Non-remittance of education cess and employment guarantee cess

Municipal Corporations of Kolhapur, Nagpur and Pune

As per provision under sections 4 and 6 (b) of the Maharashtra Education Cess and Employment Guarantee Cess Act, 1962, read with rule 4 of Education (Cess) Tax on Lands and Buildings (Collection and Refund) Rules, 1962, cess and penalty collected by the Municipal Corporation (MC) during any calendar week are required to be credited into the Government account before the expiry of the following week. If any MC defaults in payment of any sum under the Act, Government may, after holding such enquiry as it thinks fit, fix a period for the payment of such sum. The Act also empowers the Government to direct the banks/treasury in which the earnings of the MC are deposited, to pay such sum from the bank account to the Government. There is no provision in the Act to levy interest or penalty on delay in remittance of Government revenue by the MC.

During scrutiny of the Tax Collection Registers of three MCs between May 2013 and July 2013, we noticed that the MCs did not remit revenue amounting to ₹ 59.10 crore relating to EC and EGC which was collected during the years from 2011-12 to 2012-13. The Government also did not initiate any action either to fix a period for the payment of the dues or direct the bank to pay the amounts due from the accounts of the MCs.

After this, being pointed out in June and in August 2013, the Assistant Assessor and Collector, Kolhapur and Pune MCs stated that the collected amount would be remitted to the Government Account.

We brought the matter to the notice of the Government in May 2014; their reply has not been received (December 2014).

CHAPTER-VII

Finance Department, Government of Maharashtra
Directorate of Account & Treasuries

A Performance Audit on "**IT Audit of Government Receipt Accounting System**" was conducted and results of audit are mentioned in the following paragraphs.

Highlights

A Performance Audit on "**Information Technology audit of Government Receipts Accounting System** (GRAS)" revealed the following:

- Prescribed procedure for recording e-Receipts in the cash book was not followed in three offices under the Inspector General of Registration (IGR) and four offices of the State Excise Department.

(Paragraph 7.9.2)

- Reconciliation of e-Receipts was not carried out with the Principal Accountant General (Accounts and Entitlements). Further, reports with classification details required for reconciliation were not available for the user Departments.

(Paragraph 7.9.3)

- Technical documentation on the database was inadequate as the Data Dictionary descriptions of the fields were absent and the Entity Relation Diagram (ERD) was not available.

(Paragraph 7.9.4)

- Though the Government had made it mandatory to quote the users' IT PAN in e-challans for receipts exceeding ₹ 10,000, the instructions were not followed in 1,45,272 cases. Further, validation checks in this regard were absent.

(Paragraph 7.10.1)

- Data of e-Receipts accounted by Pay and Accounts Office were uploaded to the GRAS website only for the period 2012-13, that too partially.

(Paragraph 7.10.2)

- There was absence of proper procedure for rectification of misclassification of heads of accounts. Further, misclassification of heads of accounts for the year 2013-14 involving an amount of ₹ 32.53 crore was noticed in two offices.

(Paragraph 7.10.4)

- Though the e-Receipts are required to be defaced after service to the user has been provided, same was not done so in respect of e-Receipts amounting to ₹ 14,503.95 crore for the period 2011-12 to 2013-14 in all the departments test checked.

(Paragraph 7.10.5)

- The user access controls to GRAS were weak as user IDs were allotted in the code name of the user office and shared by multiple individual users.

(Paragraph 7.11.3)

- The audit trail in the system was inadequate as transactions in the system lacked a unique identifier or transaction code.

(Paragraph 7.11.6)

7.1 Introduction

Government of Maharashtra (GoM) had decided (May 2008) to create a new treasury called **'Virtual Treasury'**. Accordingly Finance Department (FD) initiated (February 2009) to develop and implement an online Government Receipt Accounting System (GRAS) which enables tax payers/other revenue payers to make payments through e-Challan on its website using participating banks' internet banking facility. The GRAS system was introduced in June 2010 with a vision to transform the state receipt transactions from manual to electronic mode by building a safe, secure, sound, efficient and accessible system. e-Payment is a mode of payment in addition to the conventional methods of payment offered by GoM. GRAS is operated and maintained by the Virtual Treasury.

Virtual Treasury System is a module under the Treasury Computerization Project which is a Mission Mode Project (MMP) under the National e-Governance Plan (NeGP). The objectives of the Treasury Computerization Project are to make budgeting processes more efficient, improve cash flow management, promote real time reconciliation of accounts, strengthen Management Information Systems (MIS), improve accuracy and timeliness in accounts preparation, bring about transparency and efficiency in public delivery systems, better financial management along with improved quality of governance in states.

Yearwise collection of revenue through GRAS is indicated in **Table 7.1.**

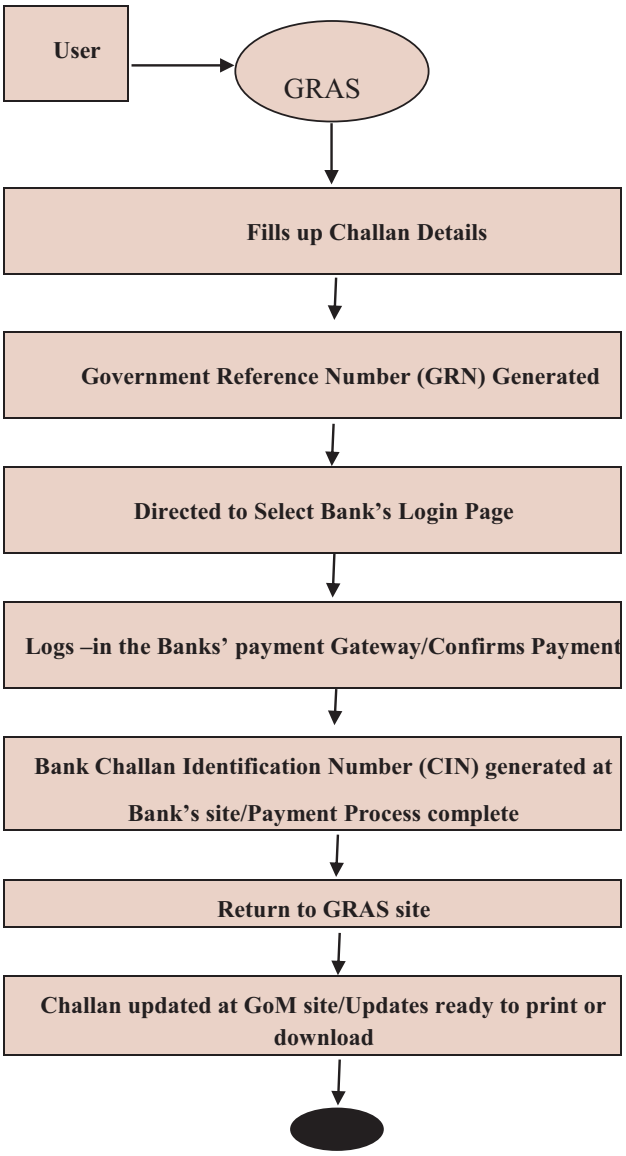
Table 7.1

		(₹ in crore)
Year	**No. of Challans**	**Amount**
2010-11	30,547	457
2011-12	1,23,352	10,365
2012-13	3,83,147	22,612
2013-14	17,65,143	27,044

Source: Information furnished by the Department

GRAS is a web based application and the transactions take place through a web-portal **https://gras.mahakosh.gov.in.**

7.2 The process



The fund collected in the Virtual Treasury Account is remitted to Government's account with the Reserve Bank of India (RBI) electronically or as per the guidelines of RBI. The application software was designed and developed by National Informatics Center (NIC), Pune and the system is hosted at Data Centre of Tata Communications Limited (TCL). A Disaster Recovery site is also available.

7.3 User departments

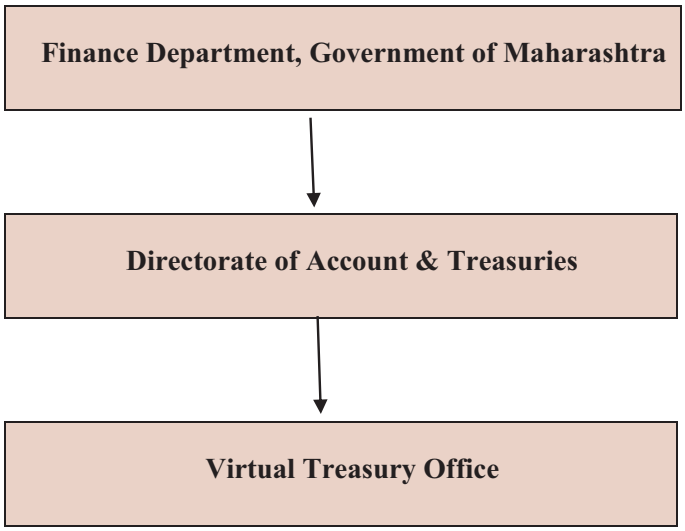
Major user departments of GRAS are:

(i) Offices under Inspector General of Registration (IGR) for payment of Stamp Duty & Registration Fee

(ii) Offices under Excise Department for payment of Excise Duty and other Taxes of the Department

(iii) Regional Transport Officers (RTOs) under Transport Commissioner for Vehicle registration payments by dealers

7.4 Organisational setup



The Virtual Treasury Officer (VTO) administers the overall functioning of the GRAS application.

7.5 Audit objectives

The audit objectives are to evaluate whether:

- the planning and implementation of the system were appropriate to meet the objectives of the computerisation of government receipts;
- the input, processing and output controls were adequate to ensure integrity of the system and that they complied with the rules and procedures;
- reliable controls were in place to ensure data security and necessary audit trails have been incorporated in the system;
- the integration of data in GRAS with systems of Treasury/user departments and its reconciliation is done as per the laid down procedure; and
- the system meets the requirement of internal audit.

7.6 Audit scope and methodology

Audit analysed the data and records relating to GRAS with the help of Computer Assisted Audit Techniques (CAAT). Data analysis covered the period from 2010-11 to 2013-14.

Audit sample included the Virtual Treasury Office, Pay & Accounts Office (PAO), Mumbai and nine offices of major user departments. Selection of nine offices was done by random sampling, i.e., three[1] offices under the Inspector General of Registration (IGR), four[2]offices under Excise Department and two[3] Regional Transport Offices (RTOs) under Transport Commissioner.

The Entry Conference was held with the Secretary, Finance Department (FD) (Accounts and Treasuries), on 16th May 2014. Audit findings and recommendations were discussed in the exit conference held on 5th November 2014. The Secretary, FD (Accounts and Treasuries) and other officers from the Directorate of Accounts and Treasuries (DAT) attended the meeting. Replies given during the exit conference and at other points of time have been appropriately included in the relevant paragraphs.

7.7 Audit criteria

The planning and implementation of the GRAS, data management and monitoring were examined with reference to:

- Maharashtra state e-Governance Policy 2011;
- Maharashtra Treasury Rules 1968;
- Maharashtra Treasury Manual;
- Government Resolutions (GR);
- Guidelines issued by Directorate of Accounts & Treasuries (DAT); and
- Generally accepted good IT practices.

7.8 Acknowledgement

We acknowledge the co-operation of FD, VTO and nine user offices in providing the necessary information and records to audit.

Audit observations

7.9 General controls

We examined the general controls relating to system development, strategy and policies, documentation, project monitoring associated with the IT system. Weaknesses noticed in audit are discussed as follows.

[1] General Stamp Office (GSO)-Mumbai, Deputy Inspector General of Registration (Dy. IGR) Pune, Joint District Registrar (JDR)- Thane Urban
[2] Superintendent of Excise Kolhapur, Nashik, Amravati and Aurangabad
[3] Regional Transport Office (RTO)- Pune and Mumbai(West) at Andheri

Planning and management

7.9.1 Inadequate project management

Government of India (GoI) has approved the scheme for the implementation of the Mission Mode Project (MMP) "Computerization of State Treasuries" in July 2010. For implementation of Treasury Computerization including GRAS the GoM has received an amount of ₹ 990 lakh during the period 2011-12 to 2012-13.

As per the Guidelines of MMP of GoI dated July 2010, Directorate of Accounts and Treasuries (DAT) has prepared the Detail Project Report (DPR) including Institutional Mechanism for Project Management in September 2010.

As per Para 13 of the DPR for the purpose of governance and program management the following institutional setup was proposed:

An apex body consisting of high level functionaries to provide management support, formulate the strategy and be the driving force behind escalation, resolution and decision making.

- The departmental core team for overall implementation of the project will act as an interface between the apex body and the users.
- External users group consists of stakeholders such as RBI & Agency Banks, Accountant General (Accounts), Accountant General (Audit) to provide inputs on requirements.
- Internal users group consists of end users whose day to day work will get impacted by implementation of this project and to provide inputs on requirements and User Acceptance Testing support.

Audit observed that the external and internal user groups were not formed for providing inputs for requirements and user acceptance tests. Thus the FD did not have the necessary project management structure in place which carried the risk of user needs not being fully met.

On this being pointed out (August 2014), the Joint Director (Computer& State Record Keeping Agency), DAT stated that a High Power Committee (HPC) and Project Implementation Committee were formed by GoM for approval of MMP funds and fund for all systems was sanctioned by HPC in January 2012.

The Department is silent on the setting up of an institutional arrangement such as apex body, departmental core team, external user groups and internal user groups. In absence of adequate user involvement, the system carries deficiencies that are described in the subsequent paragraphs of the report.

In the exit conference, the Secretary, FD accepted the audit observations.

Policies and procedures

7.9.2 Procedure relating to maintenance of cash book for e-Receipts not followed

Rule 108A of the MTR, incorporated in October 2011, provides for payments in the Treasury through the electronic mode and accounts of such electronic

payments shall be maintained by the Virtual Treasury. As per GoM Circular (December 2011) on procedure for accounting and reconciliation of e-Receipt of GRAS, the concerned office should download the e-Receipt from GRAS and an entry to be taken in the cash book and a monthly statement of account to be sent to the controlling officer. Scrutiny of records of the nine units revealed that the cash books for e-Receipts were not maintained in the four and three concerned offices of IGR and Excise respectively. In two RTO offices, it was observed that the data on GRAS are downloaded regularly into the system of the RTO and related services were provided to the payee through their system. Accounting related comments in respect of these two RTOs are discussed in para 7.10.3.

It was further observed that features were not designed in GRAS to generate the required reports for the concerned offices such as daily cash account with complete classification details for each unit/department to reconcile the e-Receipts.

Thus the departments continued with the manual process of accounting and had not followed the procedures prescribed for the changed business process of the Virtual Treasury.

On this being pointed out the concerned offices accepted the audit observation and stated that no cash book is maintained for e-Receipts. Further, GSO Mumbai stated that due to GRAS they were not aware of requirement of maintaining separate cash book for e-Receipts. Further VTO stated that this may be due to not knowing the concept of the GRAS and training would be provided to the user department.

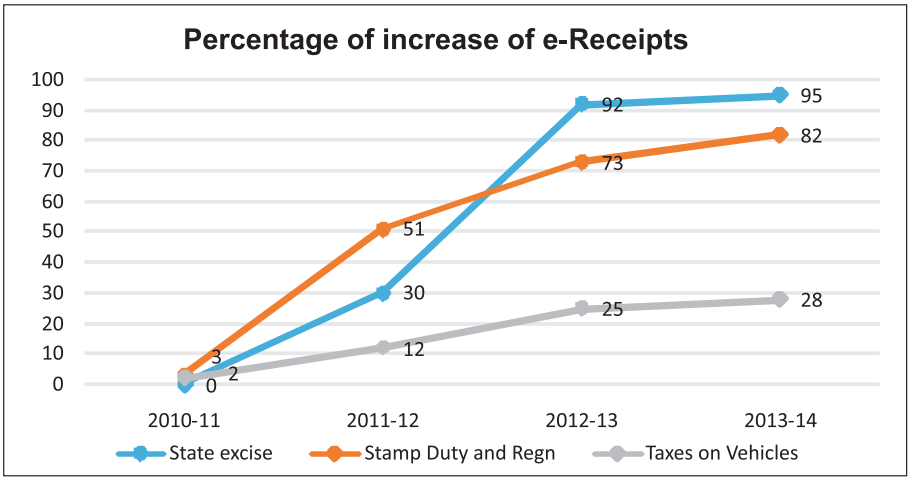
The fact remains that the implementation of prescribed procedure relating to GRAS in the user department was not monitored by the VTO/FD. The deficiencies in maintaining the cash book for e-Receipts could result in lack of control over the monitoring of e-Receipts and related services provided to the payee.

In the exit conference, the Secretary, FD accepted the audit observations and stated that necessary action would be taken.

7.9.3 Non-reconciliation of e-Receipts

As per the Maharashtra Budget Manual, Rule 157, Appendix 3, Para 3, the controlling officer should do the reconciliation with Principal Accountant General (Accounts & Entitlement) [PAG (A&E)]. Further, as per the GoM Circular (December 2011), the procedure for reconciliation was required to be followed for e-Receipts also.

There is a substantial increase in payments through e-Receipts from 2010-11 to 2013-14. The percentage of increase in e-Receipts of State Excise, Stamp Duty and Registration, and Taxes on Vehicles are given below:



Scrutiny of the records of the nine units taken up for audit revealed that though there was substantial increase in payments through e-Receipts, reconciliation with the figures of monthly accounts of PAG (A & E) was done only for the receipt other than e-Receipts. It was further observed that the reports with classification details required for reconciliation were not available for the user departments.

On this being pointed out the concerned offices accepted the audit observation and stated that e-Receipts were not reconciled with the figures of accounts of PAG (A & E). VTO stated that required MIS reports will be made available to the user department.

The non-reconciliation of e-Receipts despite substantial amount of receipts through e-Receipts since 2010-11 leads to the risk of failure to identify, investigate and resolve recurring problems of the newly introduced system which would result in their continued reoccurrence in future periods.

In the exit conference, the Secretary, FD accepted the audit observations and stated that all the departments would be instructed to reconcile the e-Receipts.

7.9.4 Documentation

Documentation of an IT system such as System Requirement Specifications (SRS), System Design Document (SDD) and Entity Relation Diagram (ERD), Data Dictionary (DD) etc. are necessary for regular operation and future maintenance.

The documentation relating to SRS and Data Dictionary were furnished to audit and we observed that-

- The Data Dictionary description of the field to understand the Data fields were not depicted.
- The System Design Document (SDD) and the Entity Relation Diagram (ERD) which describes a process flow and shows a relation with the various data stored in different tables were not available.
- Documentation for Change Management process was not available.

Inadequate technical documentation would not only result in high reliance and dependency on outsourced personnel but also pose a major risk for the future

maintenance of the application system, system up gradation by other agencies and usage of data.

In the exit conference, the Secretary, FD accepted the lacunae in the documentation of the system and the Joint Director (Reforms) stated that in future, documentation would be maintained in specific format.

The fact remains that the documentation on the system was inadequate and this needs to be set right.

7.10 Application controls

Application controls pertain to specific computer applications. They consist of input, output and processing controls and help to ensure rule mapping, proper authorization, completeness, accuracy and validity of transaction.

Input controls

Input controls ensure that the data entered is complete and accurate. The accuracy of data input in a system could be controlled by imposing computerised validity checks. Weaknesses in the input controls noticed in audit are discussed below.

7.10.1 Mandatory PAN data not captured

Rule 112 of the MTR prescribes that any person paying money into the treasury or the bank on government account should present in form MTR 6. In October 2008 GoM revised the form of challan for receipt (MTR Form 6) which is suitable for manual as well as e-payments and it was made mandatory to quote the PAN number of the user for e-Challan over an amount of ₹ 10,000. In GRAS the relevant data such as name of the department, type of payment, office name, location, name of the payee, PAN number, account head details etc. are to be entered in the e-Challan.

Analysis of GRAS data revealed that a large number of e-Challan did not capture the PAN number for e-Payments above ₹ 10,000 as shown in **Table 7.10.1.**

Table 7.10.1

(₹ in crore)

Year	No of Challans	Amount
2011-12	484	1.09
2012-13	3,251	6.74
2013-14	1,45,272	1,026.19

The Department needs to address these control weakness in the system to ensure the completeness and accuracy of data.

The VTO stated that due to citizen demand and user department's request the PAN field has been made non-mandatory and a proposal to change the mandatory requirement of PAN would be sent to the Government.

The reply is not acceptable in view of the fact that as per the existing procedure approved by the Government, PAN is mandatory to be captured.

The objective of the Government for having such information could not be achieved.

In the exit conference, the Secretary, FD accepted that the PAN number had to be captured and the Joint Director (Reforms) mentioned that the necessary validation would be incorporated in the system.

Processing controls

Process controls inbuilt in the system must ensure that process was complete and accurate and processed data was updated in the relevant files. Data analysis revealed the following weaknesses.

7.10.2 PAO accounted data not uploaded

VTO was under the control of Pay and Accounts Office (PAO), Mumbai till May 2014 due to delay in allotment of separate treasury code for the Virtual Treasury. The daily transactions in GRAS were downloaded in the PAO system and accordingly monthly accounts were prepared. As per the GoM Circular dated July 2013, all the GRAS Challans accounted in the PAO accounts were required to be uploaded in the GRAS system manually to enable the user departments to verify the e-Receipts.

Analysis of data in respect of PAO accounted e-Receipts uploaded in GRAS revealed that such e-Receipts accounted in the PAO system were uploaded partially to the GRAS website for the period 2012-13 as detailed in **Table 7.10.2**

Table 7.10.2

(₹ in crore)

Year	Total e-Receipts		PAO accounted e-Receipts uploaded in GRAS		Difference	
	No. of e-Receipts	Amount	No. of e-Receipts	Amount	No. of e-Receipts	Amount
2012-13	3,83,147	22,612.06	3,18,882	19,418.44	64,265	3,193.62

This indicated that PAO accounted e-Receipts would not be available to the user departments. This partial uploading /non-uploading of accounted GRAS challans defeated the objective of enabling the user departments to verify the e-Receipts accounted by Government.

On this being pointed out (May 2014) the VTO stated that PAO accounted data is uploaded partially due to incompatibility between the format of data in the PAO system and GRAS.

In the exit conference, the Joint Director (Reforms) stated that the necessary instructions have been issued to PAO to upload the remaining data into GRAS.

7.10.3 Accounting of e-Receipts in cash book

As per the GoM Circular (December 2011), the concerned office should download the e-Receipt from GRAS and an entry is to be made in the receipts side of the cash book on the same day and deposited to virtual treasury in the expenditure side.

Vahan system[4] is in use in individual RTO offices for registration of vehicles and e-Receipts in GRAS is downloaded by the concerned RTO offices regularly. In the Vahan system, when services were provided the e-Receipts were categorized as Used Challan and where services were not provided such e-Receipts are categorized as Unused Challan. Scrutiny of the procedure followed at RTO, Mumbai (West) and RTO, Pune revealed that the e-Receipts were recorded in the cash book only on the date of providing services to the customer which is later than the actual date of receipt of money through the online system. From the instances discussed below it can be seen that there was delay in accounting of e-Receipts due to improper integration of two separate systems i.e. GRAS and VAHAN.

i) Non-accounting of e-Receipts in the cash book.

Analysis of data for various periods between October 2010 and March 2014 of GRAS revealed that e-Receipts amounting to ₹ 134.6 lakh and ₹ 2.18 lakh were not accounted in the cash book of RTO, Mumbai (W) and Pune respectively and shown as unused Challan. This is contrary to the Finance Department circular of December 2011.

ii) Accounting of e-Receipts in different financial year

Scrutiny of the GRAS database and data relating to cash book of RTO, Andheri on e-Receipts revealed that e-Receipts of the financial year is not accounted in the same financial year and instead it is accounted in the subsequent financial year as detailed in **Table 7.10.3 (ii).**

Table 7.10.3 (ii)

(in ₹)

Financial Year of GRAS Receipt	No. of e-Receipts	Amount	Financial Year of Cash Book of RTO Andheri
2010-2011	50	5,76,098	2011-2012
2011-2012	144	58,14,373	2012-2013
2012-2013	85	26,78,263	2013-2014

iii) Non-availability of e-Receipts in the department system

Records furnished by RTO, Mumbai (West) revealed that four e-Receipts for the period between May 2011 and June 2012 amounting to ₹ 11.12 lakh were not available in the cash book as well as the Used and Unused list of Vahan system. This is contrary to the Finance Department circular of December 2011.

[4] Vahan System is an application software implemented in RTOs for computerization of vehicle registration and related receipts.

In reply, RTO Mumbai (West) stated that GRAS Receipts are downloaded in the Vahan system where the dealers register the vehicle within seven days of making payments and delayed cases of registration for more than seven days are not downloaded and hence not reflected in the used or un-used list.

Thus it is evident that the prescribed procedure is not followed in maintaining the cash book and in the reconciliation the figures of the department will not match with the figures of accounts of GoM.

In the exit conference, the Secretary, FD agreed with the audit observations and stated that the matter would be taken up with the concerned departments.

7.10.4 Misclassification of e-Receipts

Accounts classification codes are to be mapped with the concerned department so that such information would be available for the Users at the time of making payment in GRAS system.

i) Classification code not available in Master Data

Account classification code for all the payment relating to an office should be available in GRAS. Scrutiny of master table relating to the mapping of classification code for account head revealed that the code of pension contribution was not mapped with the Excise Department and thus was not available for the payment of pension contribution. Analysis of data relating to Superintendent of State Excise, Kolhapur revealed that pension contributions in 132 cases of e-Receipts amounting ₹ 43.03 lakh were wrongly classified under Excise receipt.

ii) Classification code not properly mapped with the units

Separate account classification codes are prescribed for General Stamp Office (GSO) and Inspector General of Registration (IGR) for monitoring revenue collection. Audit observed that account classification codes relating to GSO and IGR were not mapped with the respective units in the GRAS system. Due to this, classification codes other than the classification of the concerned units were listed in the drop down box which resulted in selection of incorrect classification codes at the time of filling of the e-Challans.

This led to misclassification and under-statement of ₹ 9.70 crore during 2012-13 and ₹ 25.25 crore during 2013-14 pertaining to various heads of account relating to GSO and over-statement of the amount in various heads relating to IGR. Similarly under-statement of ₹ 4.78 crore during 2012-13 and ₹ 7.28 crore during 2013-14 pertaining to various heads of account relating to IGR and over-statement of the amount in various heads relating to GSO.

iii) Misclassification

Scrutiny of data of Superintendent of State Excise, Kolhapur relating to import fees in 19 cases amounting to ₹ 275.92 lakh for 2011-14 and license fees in two cases amounting to ₹ 48.21 lakh for 2012-13 were misclassified as Excise Duty on IMFL

The department needs to address the control weakness in the system to plug the possibilities of the misclassification by the external user who are not familiar with the account classification.

GSO, Mumbai stated that the misclassification is required to be rectified although the VTO informed that there is no facility available in GRAS to rectify the misclassification.

In the exit conference, the Secretary, FD agreed with the audit observations and stated that the necessary module for rectification of misclassification would be made in the system.

Inadequate process of reconciliation of e-Receipts led to problems of misclassification in the system. A system driven reconciliation may be developed to minimise such misclassifications.

7.10.5 Defacement of e-Receipts in GRAS on providing services to the payee

Defacement is the process of marking the e-Receipt in GRAS as "Defaced" for which the department has provided the service on verification of e-Receipt. On defacement a watermark "Deface" appear on the e-Receipt. Specimen of a defaced challan is given below:

CHALLAN
MTR Form Number-6

GRN	MH000241063201213E	BARCODE		Date	Form ID
Department	Commissioner [illegible]				
Type of Payment	Other Receipts	AMOUNT	2530.00	DATE	21/05/2014
Office Name	Supt State Excise Amravati			TAX ID (If Any)	
Location	AMRAVATI			PAN No. (If Appliacable)	AADCA6029K
Year	2012-2013 One Time			Full Name	ANAND DISTILLERIES PVT LTD
Account Head Details		Amount In Rs.		Flat/Block No.	147 KEKATPUR
0039010101	Amount of Tax	2530.00		Premises/Building	
				Road/Street	KEKATPUR

DEFACED FOR RS:2530.00
Sr.No. 1 Deface Number 0000420843201415
In words: Two Thousand Five Hundred Thirty Rupees Only
USER EXC050
Payer Details

As per the Finance Department's circular dated December 2011, it is binding on the concerned Department to deface the e-Receipts in GRAS on providing services to the Payee. It is the responsibility of the head of the department to deface the e-Receipts.

Non-defacement of challan may lead to the risk of availing of services on un-authentic e-Receipts, weak monitoring of services against e-Receipts and loss of Government revenue.

Scrutiny of GRAS database revealed that the departments had not defaced the e-Receipts aggregating ₹ 14,503.95 crore as indicated in **Table 7.10.5.**

Table 7.10.5

(₹ in crore)

Department	Year	Total e-Receipts	Amount	No. of e-Receipts not defaced	Amount	Percentage of e-Receipts not defaced
IGR	2010-11	896	392.51	876	381.08	97
	2011-12	11,547	7,291.79	4,505	2,816.16	39
	2012-13	89,831	12,764.94	75,076	4,126.78	32
	2013-14	12,83,296	15,245.80	5,20,147	2,295.97	15
EXCISE	2010-11	7,808	0.26	7,805	0.26	100
	2011-12	15,338	2,555.07	3,504	420.12	16
	2012-13	74,341	8,566.59	11,091	723.59	8
	2013-14	1,02,615	9,553.82	32,865	730.33	8
RTO	2010-11	21,826	64.31	17,131	46.54	72
	2011-12	92,811	508.36	81,684	460.73	91
	2012-13	2,01,927	1,235.09	1,89,890	1,169.24	95
	2013-14	2,17,821	1,441.35	2,06,687	1,333.15	92
Total					**14,503.95**	

This indicates that the departments have not followed the prescribed procedures for defacement of e-Receipts and verification of e-Receipts on providing service which may lead to misuse of e-Receipts. On providing service the department has to verify the e-Receipts and deface it ensuring the authenticity of the e-Receipts submitted by the payee.

In the exit conference, the Secretary accepted the audit observation and stated that necessary procedures would be strictly followed.

7.10.6 Forged e-Receipts were noticed for payment of stamp duty on delivery orders

GoM levies stamp duty on delivery orders on imported goods lying in any port or in any warehouse. Custom House Agents (CHA) can pay stamp duty on delivery orders by way of e-payments through GRAS. Container Freight Service (CFS) agencies verifies the e-Receipts and releases the goods. Facility for verification and defacement of e-Receipts was given to the CFS only in January 2014.

Test check of records in respect of e-Receipts relating to stamp duty on delivery orders at one of the agency of CFS at Uran, revealed that in two cases prior to January 2014, e-Receipts were found prima facie to be forged as GRN numbers of the two e-Receipts were not available in the GRAS database. These e-Receipts were used as proof of payment of stamp duty on Delivery Orders of imported goods as shown in **Table 7.10.6.**

Table 7.10.6

(in ₹)

Sr. No.	GRN No.	Date	Delivery Orders Details	Amount
1	MH000400815201314E	07-08-2013	DO NO. –RCMBD20139640 dt 08.08.2013 IGM NO. – 2065873 ITEM NO. – 773	4230
2	MH000440696201213E	14-03-2013	DO NO. – FDL130338675 dt 16.03.2013 IGM NO. – 2055710 ITEM NO. – 3	1180

On this being pointed out (July 2014), the VTO stated that such e-Receipts were not available in the GRAS system. The Deputy Inspector General of Registration, Thane stated that the matter would be verified and action would be taken accordingly. Further it was stated that necessary instructions were issued in January 2014 to all CFSs to verify and deface the e-Receipts at the time of providing services on delivery orders.

In the exit conference, the Secretary mentioned that the incident is taken seriously by the government.

7.10.7 Refund process not followed

The GoM, Finance Department Circular dated 16 December 2011 prescribed procedure for the treasury for refund of e-Receipts. Accordingly, for the approval of refund application processed by the Department, the Treasury Officer should access GRAS with the login id and password allotted to ensure the correctness of the original challan and then make the necessary note of refund at their level and release payment.

Test check of records at the Office of the Joint District Registrar, Thane Urban relating to the e-Refund of e-Receipts and data in GRAS for the month of March 2013 revealed that the prescribed procedures were not followed by the Treasury Office, Thane as refund payments were made without making necessary entry by the Treasury Office in GRAS in all 29 cases test checked involving a total refund of ₹ 41.72 lakh. Thus not following the procedure regarding note of refund made the risk of not knowing whether the refund has been paid by the treasury or not.

In the exit conference, the Joint Director (Reforms) stated that necessary action is being taken.

7.11 Information system security

7.11.1 IT security policy

An effective IT security policy is important for protection of the information assets created and maintained by an organisation.

By way of enunciating an IT security policy, the organisation demonstrates its ability to reasonably protect all business critical information and related information processing assets from loss, damage or abuse; and also creates enhanced trust and confidence between organisations, trading partners and external agencies as well as within the organisation.

It was observed that GoM did not have an approved IT Security policy and FD did not issue any security guidelines for GRAS.

In the exit conference, the Secretary, FD accepted the audit observation and mentioned that an IT Security Policy would be put in place.

7.11.2 Outsourced Data Hosting Services

GRAS is hosted in a Data Centre of Tata Telecommunication Limited (TCL) at Mumbai along with other systems of FD. As per the agreement with TCL the following conditions were stipulated relating to the security of the system.

- TCL shall sign a Non-Disclosure Agreement.
- TCL shall adhere to the Information Security Policy developed by the GoM.

The Non-Disclosure Agreement was not available for audit scrutiny. As there was no Information Security Policy developed by the GoM, the condition mentioned in the Agreement could not be enforced.

In the exit conference, the Secretary, FD agreed to do the needful.

7.11.3 Generic users

Data in GRAS is accessed by different user categories such as various user Departments, VTO and citizens. In the computerized system, access to data was required to be restricted to authorized individual users only. It was, however, noticed that User IDs were allotted in the code name of the user office instead of the individual users and user IDs were shared by different individual users. Thus individual users responsible for the transactions are not recorded in the system. Some of the access IDs are detailed in **Table 7.11.3.**

Table 7.11.3

Name of the Office	User ID	Name of the User
Dy. Inspector General of Registration, Thane	IGR001	IGR001
Joint District Registrar, Thane (Urban)	IGR108	IGR108
General Stamp Office, Mumbai	IGR537	IGR537
R T O, Mumbai (West)	RTO002	RTO002
R T O, Pune	RTO012	RTO012
Superintendent State Excise, Kolhapur	EXC024	EXC024
Superintendent State Excise, Aurangabad	EXC030	EXC030
Superintendent State Excise, Nasik	EXC039	EXC039
Superintendent State Excise, Amravati	EXC050	EXC050

Further it was noticed that out of 369 users relating to IGR, EXCISE and RTOs, 300 users had not even changed their password since the initial password was issued to them and 43 users have not changed their password for more than 100 days.

This indicates poor control over access to the system and there was risk of misuse. Further, users were not aware of the information security risks.

Access management to the GRAS application needs to be improved and strengthened and a password policy should be framed to enhance data security.

In the exit conference, the Secretary stated that a password policy would be formulated and implemented.

7.11.4 Business continuity and disaster recovery plan

An organisation should have a business continuity and disaster recovery plan with associated controls to ensure that the organization can accomplish its mission and not lose the capability to process, retrieve and protect information maintained in case of eventualities due to interruption or disaster leading to temporary or permanent loss of computer facilities and data.

GRAS servers are hosted in the data centre of TCL. It was informed that mock drill practice was conducted every three months for disaster recovery testing. Audit observed that the VTO did not have any documented business continuity and disaster recovery plan for the GRAS.

The Finance Department may establish a framework of business continuity plan for GRAS due to its rapid increase in volume of transactions.

On this being pointed out (July 2014), VTO stated that back up of the Data is taken regularly.

The Department is silent on the business continuity and disaster recovery plan for GRAS.

7.11.5 Uploading of scrolls by participating Banks in GRAS

The Directorate of Accounts & Treasuries (DAT), Maharashtra State, Mumbai in February 2009 prescribed that the participating banks in GRAS shall remit to RBI all receipts at the end of the day by any payment mechanism/mode acceptable to the RBI. Participating bank should at the same time send an electronic scroll in the format defined by the Government from time to time and a hard copy of the same to the VTO.

Audit observed that out of 16 participating banks, only two (Industrial Development Bank of India and Indian Overseas Bank) were uploading scrolls that were digitally signed and none of the participating banks were submitting hard copy of the electronic scroll to the VTO.

The non-submission of digitally signed scrolls indicates that the data transmitted by banks is vulnerable to risks of unauthorized interception, alteration, duplication and transmission of data.

The absence of digital signature and the non-availability of signed hard copy by a responsible official of the participating banks indicate the deficiency in the maintenance of accounting records.

In the exit conference, the Secretary assured that steps would be taken to make the system more secure.

7.11.6 Audit trails

Audit trails help track the history of transactions, changes/modifications in data, log of system failures, erroneous transactions, etc. In a system, a unique identifier or transaction code would direct the transaction to the proper application programme for processing. Then if one audit entry is deleted a gap in the numbering sequence will appear so that changes can be detected.

Scrutiny of the database in this regard revealed the following lacunae:

- Entries/transactions in the tables in the database did not have a unique identifier or transaction code
- The auditing log is not enabled in the DB2 database

These discrepancies indicated inadequate audit trails and controls over modification and deletion of data in the system.

Use of sequential numbering for transaction identifier will enhance the audit trails features.

On this being pointed out (July 2014), the VTO accepted that audit log is not configured for recording backend modifications at the database.

7.12 Internal audit

Internal audit system both in the manual as well as computerized environment helps provide assurance that necessary controls are in place. As per Rule 74 and 75 Maharashtra Treasury Rules 1968, the workings of the Treasuries/Sub-treasuries/Pay and Accounts Office has to be annually reviewed through inspections covering the cash book, cash balances, book balances and registers.

On scrutiny of the System Requirement Specifications (SRS) and application software we observed that the requirements of audit/internal audit were not included and an audit module was not prepared.

This indicates that though audit is an intrinsic part of assurance on the functioning of the treasury system, the necessary requirements for facilitation of audit in view of the virtual treasury and GRAS were not elicited and incorporated in the system.

In the exit conference, the Secretary, FD agreed to do the needful.

7.13 Management Information System

The application System should provide for various Management Information System (MIS) reports which could act as a tool for various user groups such as user department, audit and treasury to monitor the receipts, account classification, verification of e-Receipts and reconciliation.

We observed that critical MIS reports such as scheme code wise receipts for any period, user wise list of e-Receipts, list of undefaced e-Receipts, list of refund approved by treasury were not available. Due to non-availability in this regard the users could not monitor the misclassified receipts, defacement of e-Receipts and reconciliation.

The Department may identify MIS reports needed for various user groups for necessary monitoring.

In the exit conference, the Secretary, FD agreed to include the required MIS reports in the system.

7.14 Conclusion

The GRAS system under treasury computerization project under National e-Governance plan was implemented since 2010 with a view to promote real time reconciliation of accounts, strengthen Management Information Systems (MIS), improve accuracy and timeliness in accounts preparation, bring about transparency and efficiency in public delivery systems, better financial management along with improved quality of governance in states. However, it was observed that even after four years of implementation, the laid down rules and prescribed procedure for implementation of GRAS were not followed by the user departments for maintenance of cash book and reconciliation of e-Receipts which indicate the absence of ownership and lack of internal controls. Deficient mapping of business rules and validation checks resulted in cases of misclassification. These are not rectified due to lack of reconciliation. Some standard MIS reports required by specific user groups are not available in the system. Defacement of e-Receipts which is binding on the department on providing the services to payee was not done in many cases and cases of forged e-Receipts were also noticed.

7.15 Recommendations

GoM may consider

- **Reviewing the implementation of GRAS by the user departments;**
- **Monitoring the defacement of e-Receipts on providing services to the Payee by the user department;**
- **Ensuring adequate logical access control so that the safety and security of data is not compromised;**
- **Creation of adequate audit trails to track the changes made in the data; and**

- **Analyse the requirements of MIS reports and requirements of Audit and design appropriate MIS module and get better value as assurance from the functioning of the system.**

In the exit conference, the Secretary, FD accepted all the recommendations.

(MALA SINHA)
Principal Accountant General (Audit)-I,
Maharashtra

Mumbai
The

Countersigned

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

New Delhi
The

Appendix I
Statement showing availment of subsidy
(Reference: Paragraph 3.4.4)

(₹ in crore)

Sr. No.	Name of distillery	Amount of subsidy received
1	M/s. Alco Plus Producers Pvt. Ltd., Latur	40.60
2	M/s Grainotch Industries Pvt. Ltd., Aurangabad	32.64
3	M/s. Viraj Alcohol, Sangli	25.00
4	M/s. Anand Distillery, Amravati	14.47
5	M/s. Saswad Mali Sugar Factory Ltd., Solapur	10.96
6	M/s. Yashraj Ethanol Processing Pvt. Ltd., Satara	6.54
7	M/s. Dhawal Pratap Singh Mohite Patil Agro Industries, Solapur	0.88
8	M/s. Venkateshwara Bio Refinery, Sangli	0.86
9	M/s. Vittal Distilleries Ltd., Osmanabad	0.66
10	M/s. Octega Green Power & Sugar, Kolhapur	0.15
11	M/s. Shivshakti Sahakari Glucose Karkhana, Sangli	0.06
		132.82

Appendix II

Statement showing comparison of calculation of market value as per audit and COS

(Reference para 4.3.9.5)

Valuation as per COS and adopted by Audit			**(Amount in ₹)**
Plot area			7,116.47
Less: Road area			(-) 2,450.18
Less: Amenities 5% of 4,666.29			(-) 233.31
Total FSI Admissible			**4,432.98**
FSI for Road at 40% of total FSI admissible (4,432.98 x 0.40)			1,773.19
Area on which TDR will be available 2,450.18 – 1,773.19			676.99
Total FSI available (4,432.98 + 1,773.19 = 6,206.17 x 1.33)			8,254.21
Total TDR area (233.31 + 676.99 = 910.30) x 1.33			1,210.70
Valuation of TDR area = 1,210.70 x ₹ 80,700 x 0.80 **(A)**			7,81,62,792
Area to be given to tenant = 5,069 x 1.20			6,082.80
Balance area after giving to tenant = 8,254.21 – 6,082.80			2,171.41
Valuation of above area = 2,171.41 x ₹ 80,700 **(B)**			17,52,32,787
Valuation as per COS		**Valuation as per audit**	
Valuation of six industrial units having carpet area of 837.53 sqm		Valuation of six industrial units having carpet area of 837.53 sqm	
837.53 x 1.2 x ₹ 1,79,000 (Industrial rate) x 40%	7,19,60,577	Industrial rate as per ASR is ₹ 1,79,000 and after allowing depreciation rate is ₹ 71,600. This rate is less than rate of ₹ 80,700 prescribed for land in ASR. Hence for valuation as per instruction 7 of ASR is (land rate + rate of construction after depreciation) x 1.20 x area of unit = (80,700 + 7,680 (40% of construction rate)) **x** 1.20 **x** (837.53 x 1.2) sqm **[C]**	10,65,90,098
837.53 x 1.2 x ₹ 80,700 (Land rate)	8,11,06,405		
Value considered by dept [C]	**8,11,06,405**	**Total MV (A + B + C)**	**35,99,85,677**
Market Value (A + B + C)	**33,45,01,984**	Market value of tenanted property (112 times of annual rent of ₹ 16,252 (D)	18,20,224
Less: cost of construction of area to be given to tenant (6,082.80 x ₹ 19,200)	11,67,89,760	**Total Market Value (A+B+C+D)**	**36,18,05,901 ₹ 36.18 crore**
Market value of property	**21,77,12,224**		
Above value reduced to 80 per cent as developer has to incur expenses on account of rent, shifting charges etc.	**17,41,69,779**	**Stamp duty payable**	**₹ 181.00 lakh**
Add: 112 times of annual rent of ₹ 16,252	18,20,224	**Stamp duty paid**	**₹ 88.09 lakh**
Total market value	**17,59,91,000**	**Short levy of stamp duty**	**₹ 92.91 lakh**