



**Report of the  
Comptroller and Auditor General of India  
on  
Revenue Sector  
for the year ended 31 March 2017**



**Government of Maharashtra**  
Report No. 3 of the year 2018



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## TABLE OF CONTENTS

PARAGRAPH HEADINGS	PARA	PAGE
Preface		v
Overview		vii-xi
<b>CHAPTER I</b>		
<b>GENERAL</b>		
Trend of revenue receipts	1.1	1
Analysis of arrears of revenue	1.2	4
Evasion of tax detected by the Department	1.3	4
Response of the Government/Departments towards audit	1.4	5
Analysis of the mechanism for dealing with the issues raised by Audit in the Finance Department	1.5	13
Audit Planning	1.6	15
Results of audit	1.7	15
<b>CHAPTER II</b>		
<b>TAXES ON SALES, TRADE, ETC.</b>		
Tax administration	2.1	17
Internal Audit	2.2	17
Results of audit	2.3	20
Audit of “Maharashtra Settlement of Arrears in Disputes Act, 2016”	2.4	22
Other audit observations	2.5	32
Disposal of Refund applications and grant of Refunds	2.5.1	32
Incorrect allowance of taxable sales as exempted sales	2.5.2.1	34
Short levy of tax due to irregular allowance of inter-state sales at concessional rate	2.5.2.2	35
Short levy of tax on works contract	2.5.2.4	37
Non/short levy of interest for delayed payment of taxes under Section 30(2) of the Maharashtra Value Added Tax Act, 2002	2.5.3	38
Short levy of interest under Section 30(3) of the Maharashtra Value Added Tax Act, 2002	2.5.4	39
Non-levy of penalty for furnishing incorrect claims in Audit Report	2.5.5	40

<b>PARAGRAPH HEADINGS</b>	<b>PARA</b>	<b>PAGE</b>
Non-levy of penalty under Section 61(2) for late filing of Audit Report	2.5.6	40
Excess allowance of tax credit	2.5.7	41
<b>CHAPTER III</b>		
<b>STAMP DUTY AND REGISTRATION FEE</b>		
Tax administration	3.1	43
Internal Audit	3.2	43
Results of audit	3.3	44
Audit observations	3.4	45
Short levy of stamp duty due to -- 'Revenue Sharing' aspect	3.4.1	45
Short levy of stamp duty due to incorrect calculation of market value of property	3.4.2	46
Short levy of stamp duty on Assignment Deed	3.4.3	47
Short levy of stamp duty due to non-consideration of renewal period of Lease	3.4.4	48
Short levy of stamp duty of ₹ 1.22 crore due to undervaluation of property	3.4.5	49
Short levy of stamp duty due to misclassification of document	3.4.6	51
Short levy of stamp duty due to undervaluation of market value of Lease Deeds	3.4.7	52
<b>CHAPTER IV</b>		
<b>LAND REVENUE</b>		
Tax administration	4.1	54
Results of audit	4.2	54
Performance Audit on "Encroachment on Government land allotted for non-agricultural purposes"	4.3	56
Audit of "Management of Nazul lands in Vidarbha Region"	4.4	76
Other audit observations	4.5	86
Short levy of occupancy price	4.5.1	86
Short recovery of unearned income	4.5.2	87

<b>CHAPTER V</b>		
<b>TAXES ON VEHICLES</b>		
Tax administration	5.1	88
Internal Audit	5.2	88
Results of audit	5.3	89
Non-recovery of Motor Vehicle Tax from transport vehicles (buses)	5.4	90
Non-recovery of Motor Vehicle Tax in respect of transport vehicles (goods)	5.5	90
Non-recovery of Motor Vehicle Tax in respect of non-transport series of vehicles (Excavators/Cranes)	5.6	91
<b>CHAPTER VI</b>		
<b>OTHER TAX AND NON-TAX RECEIPTS</b>		
Tax administration	6.1	92
Results of audit	6.2	92
Non-recovery of additional licence fees	6.3	93
Short recovery of privilege fees	6.4	93
Short recovery of licence renewal fees	6.5	95
Non recovery of Entertainments Duty from cable operators	6.6	95
Non recovery of Entertainments Duty from permit rooms/beer bars with live orchestra	6.7	97
Non-levy of Entertainments Duty on convenience charges collected in respect of online booking of movie tickets	6.8	97
Non-recovery of Entertainments Duty in case of dishonoured cheques	6.9	98
Non/short levy of penal interest on delayed payment of Entertainments Duty	6.10	99
Short realisation of fines due to delay in implementation of revised rates for traffic violations	6.11	100



## **PREFACE**

This Report of the Comptroller and Auditor General of India for the year ended 31 March 2017 has been prepared for submission to the Governor of Maharashtra under Article 151 of the Constitution of India.

This Report contains significant findings of audit of Receipt and Expenditure of major Revenue earning Departments under Revenue Sector conducted under the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971 and Regulations on Audit and Accounts, 2007 issued thereunder by the Comptroller and Auditor General of India.

The instances mentioned in this Report are those, which came to notice in the course of test audit during the period 2016-17 as well as those which came to notice in earlier years, but could not be reported in the previous Audit Reports; instances relating to the period subsequent to 2016-17 have also been included, wherever necessary.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.



## OVERVIEW

This Report contains 33 paragraphs (including one Performance Audit) relating to non/short levy of taxes, duties, interest and penalty, etc., involving ₹ 117.24 crore. Some of the major findings are mentioned below:

### I General

The total revenue receipts of the State during the year 2016-17 were ₹ 2,04,569.64 crore, of which the revenue raised by the State Government was ₹ 1,49,202.16 crore and receipts from Government of India was ₹ 55,367.48 crore. The revenue raised by the State Government constituted 73 *per cent* of the total net receipts of the State. The receipts from Government of India included ₹ 33,714.90 crore on account of the State's share of divisible Union taxes which registered an increase of 20 *per cent* over the previous year and ₹ 21,652.58 crore received as grants-in-aid.

(Paragraph 1.1.1)

### II Taxes on Sales, Trade, etc.

Audit of “Maharashtra Settlement of Arrears in Disputes Act, 2016” revealed the following:

- The arrears of revenue locked up in appeals with the Sales Tax Department (STD), Maharashtra Sales Tax Tribunal (MSTT) and Courts as on 31 March 2016 aggregated to ₹ 60,135.26 crore in 1,02,743 appeal cases. The Government promulgated an Act called the “Maharashtra Settlement of Arrears in Dispute Act, 2016” (the Settlement Act) on 26 April 2016 to unlock these arrears.

(Paragraph 2.4)

- The expected settlement of arrears and the recovery therefrom was not properly assessed at the time of framing policy of the Settlement Act.

(Paragraph 2.4.1.2)

- The coverage of the scheme in the mainstream print and electronic media was not adequate. The Scheme of Settlement Act 2016 could achieve only two to 16 *per cent* reduction in number of appeal cases pending with various appellate authorities

(Paragraph 2.4.1.2 and 2.4.5)

- Out of 40,262 orders passed under the Settlement Act in the State, 15,309 orders (38 *per cent*) pertained to cases where the appeals had been filed by the dealers after the enactment of the Settlement Act which actually did not constitute arrears in dispute as on date of notification of the scheme. The net revenue recovered in these cases was ₹ 550.64 crore, after a waiver of ₹ 305.81 crore.

(Paragraph 2.4.2)

- Though 31 *per cent* of the revenue locked up in appeals related to four major oil companies, these companies were not persuaded to avail the

benefits of the Settlement Act as these were considered as highly unlikely to come forward for the same. As a result, huge arrears of revenue mostly relating to the repealed Bombay Sales Tax Act, 1959, remained locked up in appeals.

**(Paragraph 2.4.3)**

Sales in alcoholic and non-alcoholic beverages and general merchandise items valued at ₹ 3.91 crore made to various flights of different airlines were incorrectly treated the goods as tax free goods. This resulted in short levy of tax of ₹ 48.89 lakh.

**(Paragraph 2.5.2.1)**

Sales of cars valued at ₹ 6.72 crore was allowed in the course of inter-state trade on production of C forms from dealers who were not resellers. The concessional rate of tax applied was incorrect. This resulted in short levy of tax of ₹ 69.16 lakh.

**(Paragraph 2.5.2.2)**

Interest aggregating to ₹ 1.60 crore for delayed payment of value added tax was either not levied or was levied short in 28 cases.

**(Paragraph 2.5.3 and 2.5.4)**

### **III Stamp Duty and Registration Fee**

As per the recitals of the documents, consideration of the property in terms of revenue sharing worked out to ₹ 202.19 crore involving stamp duty of ₹ 8.74 crore against which ₹ 3.73 crore was levied resulting in short levy of stamp duty of ₹ five crore.

**(Paragraph 3.4.1.1)**

The market value of the property, as per ASR was worked out to ₹ 52.95 crore on which stamp duty of ₹ 3.18 crore was required to be levied; against this ₹ 2.38 lakh was levied on ₹ 39.60 lakh. This resulted in short levy of stamp duty by ₹ 3.15 crore.

**(Paragraph 3.4.2)**

Irregular grant of bulk land benefit in valuation of a property, resulted in short levy of stamp duty of ₹ 1.58 crore.

**(Paragraph 3.4.3)**

Non considering the renewal clause as part of lease deed for calculation of market value resulted in short levy of stamp duty of ₹ 1.52 crore.

**(Paragraph 3.4.4)**

## IV Land Revenue

Performance Audit on “**Encroachment on Government land for non-agricultural purposes**” revealed the following:

The Government did not maintain any database of the Government land in the State and also data of the encroachment on government land was not available at District and Tahsil level. The data prepared under the *Maharajaswa Abhiyan* was not reliable. There were discrepancies in data recorded at various levels. Encroachment registers were not properly maintained. No action was taken for eviction of encroachment. No periodical survey was conducted by Circle Officers for identification of encroachment.

- Cross verification by Audit of encroachment registers in 416 test checked villages with property cards and other records in the Tehsil indicated that encroachments had taken place in 77 villages which were not included in the registers.

**(Paragraph 4.3.1.1)**

- Niphad Tahsil of Nasik District consisted of 135 villages. The Tahsildar reported 582 cases of encroachments in the Tahsil. The village level Encroachment Registers showed 1,270 cases of encroachments on Government land in 55 villages selected for test check. The encroachments could be more if encroachment cases in all the 135 villages were considered.

**(Paragraph 4.3.1.3)**

Government land measuring 67,490.20 sqm of Lendi Talab (pond), a water body in Mauza Nagpur Khas was encroached with the construction of 1,200 to 1,500 houses.

In Thane city, a lake existed 30 to 35 years ago and now a slum comprising 300 to 350 houses had grown up and remaining open land was used for parking vehicles.

**(Paragraph 4.3.2.2)**

Encroachment on Government land in respect of brick kilns in three Tahsils was 1,74,421.71 sqm.

**(Paragraph 4.3.2.3)**

No action for eviction of encroachment was taken even after noticing it. In Thane District, Government land was transferred to Municipal Corporations (MC) for protection against encroachment. However, it did not serve the purpose as cases of encroachment by MC itself were noticed on the transferred land. The encroachment on grazing land was not removed as Revenue Department passed on the responsibility to concerned Local bodies.

- Audit noticed that Government land reserved (September 2010) in District Plan for public purpose like playground, parks, cremation ground, roads etc., in the custody of Municipal Corporations (MC) in Thane District, was encroached.

**(Paragraph 4.3.2.5)**

- Unauthorised transfer of leased land by manipulating document and encroachment was noticed in village Waladgaon of Aurangabad Tahsil. The land was allotted on lease for touring talkies purpose and the lessee sold the leased land.

**(Paragraph 4.3.2.6)**

The monitoring by the Department was weak on account of (i) absence of periodical reports for keeping a check over encroachment, (ii) lack of efforts to obtain data/information on Government land and (iii) laxity of the Department in taking penal action against encroachers.

- Scrutiny of records revealed that a road included in Development Plan of Nagpur city was encroached for residential purposes. There was no co-ordination between the Government and NMC to ensure the eviction of the encroachments made.

**(Paragraph 4.3.2.7)**

- Information furnished by Tahsildars of test-checked Tahsils revealed that in 102 villages of nine Tahsils 507.87 ha of grazing land was encroached and had not been evicted and handed over to Gram Panchayat despite Supreme Court orders.

**(Paragraph 4.3.2.8)**

- The records of allotment of Government land were test checked at District Collector/Tahsil offices. The cases of breach of terms and conditions of allotment was noticed in 13 cases involving area of 1,39,651 sqm.

The flats constructed on the Government land allotted to a society of 218 members of tribal community for residential purposes were unauthorisedly transferred to persons other than the 218 members.

**(Paragraph 4.3.3)**

Audit of “**Management of Nazul Lands in Vidarbha Region**” revealed the following:

- Non execution and registration of Nazul leases at the time of renewal resulted in loss of stamp duty and registration fee of ₹ 16.81 crore in 80 cases.

**(Paragraph 4.4.1.3)**

- There was no mechanism to keep track on sales/transfers of Nazul Lands, in absence of which the department could not recover the unearned income of ₹ 9.87 crore in 15 test checked cases.

**(Paragraph 4.4.1.4)**

- In two Districts viz., Nagpur and Gondia the lease rents were levied between June 2007 and December 2011 at pre-revised rates instead of rates prescribed in the resolution of June 2007. This resulted in under assessment of annual lease rent of ₹ 2.44 crore with cumulative effect of ₹ 24.40 crore for 10 years in 81 test-checked cases.

**(Paragraph 4.4.2)**

- In Nagpur District, 19 lessees were using the land for commercial purposes though these were allotted for residential purposes. The department has not recovered unearned income of ₹ 22.67 crore for breach of condition of lease.

**(Paragraph 4.4.3)**

Application of incorrect rate for valuation of land to calculate occupancy price resulted in short levy of ₹ 1.42 crore.

**(Paragraph 4.5.1)**

## **V Taxes on Vehicles**

Tax amounting to ₹ 1.04 crore was not recovered from vehicles of various classes.

**(Paragraphs 5.4 to 5.6)**

## **VI Other Tax and Non-Tax Receipts**

Additional licence fees for service of liquor in rooms aggregating ₹ 51.34 lakh was not recovered from three star-category hotels.

**(Paragraph 6.3)**

Entertainments Duty payable by cable operators aggregating ₹ 1.21 crore was not recovered in case of 247 cable operators.

**(Paragraph 6.6)**

Fines at revised rates for traffic violations aggregating ₹ 3.63 crore in 1,34,010 cases was not realized as the notification revising the rates was implemented with delays ranging from four to 25 weeks in five offices.

**(Paragraph 6.11)**



## 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 2016-17, 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	2012-13	2013-14	2014-15	2015-16	2016-17
1	Revenue raised by the State Government					
	Tax revenue <sup>1</sup>	1,03,448.58	1,08,597.96	1,15,063.32	1,26,608.10	1,36,616.32
	Non-tax revenue <sup>2</sup>	9,977.74	11,279.81	12,447.26	13,307.53	12,585.84
	<b>Total</b>	<b>1,13,426.32</b>	<b>1,19,877.77</b>	<b>1,27,510.58</b>	<b>1,39,915.63</b>	<b>1,49,202.16</b>
2	Receipts from the Government of India					
	Share of net proceeds of divisible Union Taxes and duties	15,191.92	16,630.43	17,630.03	28,105.95	33,714.90
	Grants-in-aid	14,322.33	13,241.44	20,140.64	16,898.61	21,652.58
	<b>Total</b>	<b>29,514.25</b>	<b>29,871.87</b>	<b>37,770.67</b>	<b>45,004.56</b>	<b>55,367.48</b>
3	<b>Total revenue receipts of the State Government (1 and 2)</b>	<b>1,42,940.57</b>	<b>1,49,749.64</b>	<b>1,65,281.25</b>	<b>1,84,920.19</b>	<b>2,04,569.64</b>
4	<b>Percentage of 1 to 3</b>	<b>79</b>	<b>80</b>	<b>77</b>	<b>76</b>	<b>73</b>

*Source: Finance Accounts*

The above table indicates that during the year 2016-17, the revenue raised by the State Government (₹ 1,49,202.16 crore) was 73 per cent of the total revenue receipts against 76 per cent in the preceding year. The balance 27 per cent of the receipts during 2016-17 was from the Government of India.

**1.1.2** The details of the tax revenue raised during the period 2012-13 to 2016-17 are given in **Table 1.1.2**.

<sup>1</sup> For details – refer statement no. 14 – Detailed accounts of revenue by minor heads in the Finance Accounts of the Government of Maharashtra for the year 2016-17. 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.

<sup>2</sup> Net figures after adjustment of expenditure on account of prize winning tickets under the Head "Lottery Receipts".

**Table 1.1.2**

								(₹ in crore)
Sr. No.	Head of revenue		2012-13	2013-14	2014-15	2015-16	2016-17	Percentage of increase (+)/ decrease (-) in 2016-17 over 2015-16
1	Taxes on sales, trade etc. (Including Central Sales Tax)	BE <sup>3</sup>	53,361.68	62,422.50	69,089.60	74,616.77	81,437.69	
		RE <sup>4</sup>	59,408.63	63,922.50	69,089.60	74,616.77	81,437.69	
		Actual	60,079.72	62,530.04	67,466.29	69,660.82	81,174.17	(+)16.52
2	State Excise	BE	9,450.00	10,535.00	11,500.00	13,500.00	15,343.86	
		RE	9,550.00	10,535.00	11,500.00	13,699.90	13,600.00	
		Actual	9,297.11	10,101.12	11,397.08	12,469.56	12,287.91	(-) 1.46
3	Stamp Duty and Registration fees	BE	15,730.00	17,403.08	19,426.00	21,000.00	23,547.66	
		RE	16,490.33	18,850.00	19,420.73	21,500.00	20,000.00	
		Actual	17,548.25	18,675.98	19,959.29	21,766.99	21,011.83	(-) 3.47
4	Taxes and Duties on Electricity	BE	4,809.93	5,830.00	6,501.00	7,150.00	7,912.58	
		RE	5,359.01	6,107.76	6,873.60	7,650.00	7,912.58	
		Actual	5,895.68	6,083.90	4,350.45	8,506.37	6,669.56	(-) 21.59
5	Taxes on Vehicles	BE	4,200.00	4,750.00	5,250.00	5,693.67	6,750.00	
		RE	4,510.00	4,900.00	5,244.17	5,693.67	6,750.00	
		Actual	5,027.42	5,095.92	5,404.97	6,017.19	6,741.21	(+) 12.03
6	Taxes on Goods and Passengers	BE	893.67	998.00	1,097.80	1,150.00	1,276.00	
		RE	930.72	1,225.00	1,097.80	1,150.00	1,276.00	
		Actual	690.74	1,240.68	586.56	1,582.13	1,876.71	(+) 18.62
7	Land Revenue	BE	1,600.86	1,760.39	1,867.29	3,200.15	3,200.15	
		RE	1,070.80	1,227.77	1,873.29	1,900.19	1,500.55	
		Actual	1,074.02	1,088.85	1,272.38	1,748.31	1,799.39	(+) 2.92
8	Others <sup>5</sup>	BE	3,248.67	3,586.38	3,908.74	4,324.13	4,753.59	
		RE	3,263.43	3,606.39	3,908.74	4,324.13	4,753.59	
		Actual	3,835.64	3,781.47	4,626.30	4,856.73	5,055.54	(+) 4.09
<b>Total</b>	<b>BE</b>	<b>93,294.81</b>	<b>1,07,285.35</b>	<b>1,18,640.43</b>	<b>1,30,634.72</b>	<b>1,44,221.53</b>		
	<b>RE</b>	<b>1,00,582.92</b>	<b>1,10,374.42</b>	<b>1,19,007.93</b>	<b>1,30,534.66</b>	<b>1,37,230.41</b>		
	<b>Actual</b>	<b>1,03,448.58</b>	<b>1,08,597.96</b>	<b>1,15,063.32</b>	<b>1,26,608.10</b>	<b>1,36,616.32</b>	<b>(+) 7.90</b>	

Source: Finance Accounts

It would be seen from the above that -

- There has been a continuous increase in the revenue during the last five years.

<sup>3</sup> BE – Budget Estimates.

<sup>4</sup> RE – Revised Estimates.

<sup>5</sup> Includes receipts under the heads “Other taxes on Income and Expenditure- Taxes on Professions, Trades, Callings and Employments” and “Other Taxes and Duties on Commodities and Services” and receipts misclassified under Union Excise Duties and Service Tax.

- There has been a sharp decrease of 21.59 *per cent* in receipts under the head “Taxes and Duties on electricity” during 2016-17 over 2015-16 which was attributable to less collection of taxes under the sub-head “Taxes on consumption and sale of Electricity” (21.81 *per cent*) under the Bombay Electricity Duty Act, 1958 and decreased collection on account of Maharashtra Tax on Sale of Electricity (Amendment) Act, 2004.
- The increase of 18.62 *per cent* in receipts under the head “Taxes on Goods and Passengers” was due to more receipts from tax on passengers and tax on entry of goods into local area.

**1.1.3** The details of the non-tax revenue raised during the period 2012-13 to 2016-17 are indicated in **Table 1.1.3**.

**Table 1.1.3**

								(₹ in crore)
Sr. No.	Head of revenue		2012-13	2013-14	2014-15	2015-16	2016-17	Percentage of increase (+)/ decrease(-) in 2016-17 over 2015-16
1	Interest Receipts	BE	1,325.79	1,338.80	2,973.70	2,973.70	1,122.37	
		RE	1,929.53	3,142.60	2,973.70	2,973.70	2,981.31	
		Actual	2,464.41	3,933.81	3,351.46	3,079.45	3,259.07	(+) 5.83
2	Non-ferrous mining and Metallurgical Industries	BE	2,405.71	2,632.82	2,767.00	3,000.00	3,400.00	
		RE	2,113.17	2,517.00	2,767.00	3,095.72	3,250.00	
		Actual	2,037.76	2,141.17	2,335.85	3,064.05	3,104.79	(+) 1.33
3	Miscellaneous General Services <sup>6</sup>	BE	396.14	393.19	413.97	2,434.42	2,430.15	
		RE	324.81	328.37	413.97	634.42	1,428.37	
		Actual	311.52	155.69	316.25	361.90	129.49	(-) 64.22
4	Power	BE	780.10	780.00	850.00	828.00	910.80	
		RE	688.80	1,209.00	850.00	828.00	1,729.24	
		Actual	451.41	617.50	523.77	619.98	760.04	(+) 22.59
5	Major and Medium Irrigation	BE	909.21	1,117.97	798.53	938.90	1,132.79	
		RE	909.21	740.46	798.53	938.90	260.24	
		Actual	531.89	496.91	657.93	624.68	309.06	(-) 50.53
6	Others <sup>7</sup>	BE	5,069.23	5,730.88	5,705.82	10,489.85	11,001.13	
		RE	5,103.55	4,820.13	5,716.50	6,228.04	6,970.82	
		Actual	4,180.75	3,934.73	5,262.00	5,557.47	5,023.39	(-) 9.61
<b>Total</b>		<b>BE</b>	<b>10,886.17</b>	<b>11,993.66</b>	<b>13,509.02</b>	<b>20,664.87</b>	<b>19,997.24</b>	
		<b>RE</b>	<b>11,069.07</b>	<b>12,757.56</b>	<b>13,519.70</b>	<b>14,698.78</b>	<b>16,619.98</b>	
		<b>Actual</b>	<b>9,977.74</b>	<b>11,279.81</b>	<b>12,447.26</b>	<b>13,307.53</b>	<b>12,585.84</b>	<b>(-) 5.42</b>

Source: Finance Accounts

<sup>6</sup> Includes net lottery receipts after adjustment of prize money paid.

<sup>7</sup> Includes receipts under the heads Other Administrative Services, Dairy Development, Forestry and Wild life, Medical and Public Health, Co-operation, Public Works, Police and other non-tax receipts.

It would be seen from the above table that -

- There has been a continuous increase in the revenue during the period from 2012-13 to 2015-16, however, it dropped during 2016-17.
- The actual receipts for the period have always been less than the budget estimates of the respective years.
- The sharp decrease of 64.22 *per cent* in receipts under the head “Miscellaneous General Services” was due to decreased receipts on Unclaimed Deposits, Guarantee Fees and Miscellaneous other receipts.
- The sharp decrease of 50.53 *per cent* in receipts under the heads “Major Irrigation” and “Medium Irrigation” was mainly due to reduced receipts on sale of water for domestic, irrigation and other purposes and Local Cess on water charges.
- The increase of 22.59 *per cent* in receipts under the head “Power” was mainly due to more receipts from the Maharashtra State Electricity Distribution Company Ltd.

## **1.2 Analysis of arrears of revenue**

The arrears of revenue as on 31 March 2017 under major heads of revenue amounted to ₹ 1,03,532.50 crore of which ₹ 20,726.92 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 2017	Amount outstanding for more than five years as on 31 March 2017
Taxes on Sales, Trade, etc.	1,02,699.59	19,984.32
Taxes and Duties on Electricity	588.43	585.30
State Excise Duty	4.22	3.83
Stamps and Registration Fees	134.91	134.91
Taxes on vehicles	105.35	18.56
<b>Total</b>	<b>1,03,532.50</b>	<b>20,726.92</b>

Source: Information furnished by the Departments

The Departments may take appropriate steps to reduce the pendency of arrears, especially those more than five years before the possibility of recovery thereof becomes remote.

## **1.3 Evasion of tax detected by the Department**

The details of cases of evasion of tax detected under major heads of revenue, cases finalised and demands for additional tax raised as reported by the concerned Departments are given in **Table 1.3**.

Table 1.3

(₹ in crore)						
Head of revenue	Number of cases					
	Pending as on 31 March 2016	Detected during 2016-17	Total	Investigation completed	Pending for finalisation as on 31 March 2017	Additional demand with penalty etc. raised
Taxes on Sales, Trade, etc.	3,442	3,552	6,994	4,801	2,193	5,226.34
State Excise	4	---	4	4	---	2.51
Stamps & Registration fees	6,156	8,606	14,762	7,844	6,918	70.37
Taxes on vehicles	138	105	243	176	67	31.96
<b>Total</b>	<b>9,740</b>	<b>12,263</b>	<b>22,003</b>	<b>12,825</b>	<b>9,178</b>	<b>5,331.18</b>

Source: Information furnished by the Departments

As seen from the above table that the Departments completed investigation in 12,825 cases (58 per cent of total cases) and raised additional demand with penalty etc. of ₹ 5,331.18 crore.

#### 1.4 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. The offices of the PAG/AG report serious financial irregularities to the heads of the Department and the Government. 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.

Scrutiny of IRs issued up to December 2016 disclosed that 10,888 audit observations involving ₹ 3,164.96 crore relating to 4,423 IRs remained outstanding at the end of June 2017. Details of the same along with the corresponding figures for the preceding two years are mentioned in **Table 1.4**.

**Table 1.4**

Particulars	June 2015	June 2016	June 2017
Number of IRs pending for settlement	5,430	5,385	4,423
Number of outstanding audit observations	12,611	12,650	10,888
Amount of revenue involved (₹ in crore)	4,767.06	3,967.76	3,164.96

**1.4.1** The department-wise details of the IRs issued up to 31 December 2016 and audit observations outstanding as on 30 June 2017 and the amounts involved are mentioned in **Table 1.4.1**.

**Table 1.4.1**

(₹ in crore)					
Sr. No.	Name of the Department	Nature of receipts	Number of out-standing IRs	Number of outstanding audit observations	Money value involved
1	Home	State Excise	80	148	3.93
2		Taxes on vehicles	334	1,030	564.07
3		Police Receipts (Non-Tax)	10	11	2.37
4	Revenue and Forest	Land Revenue	325	522	1,445.91
5		Entertainments Duty	361	663	23.80
6		Stamps and registration fees	1,227	2,867	697.84
7		Forest Receipts (Non-Tax)	87	116	23.21
8	Finance	Taxes on Sales, Trade etc.	1,473	4,845	265.57
9		Taxes on Profession, etc.	107	141	2.53
10	Industries, Energy and Labour	Taxes and duties on Electricity	61	107	4.58
11	Urban Development	Education Cess and Employment Guarantee Cess	146	224	118.95
12		Maharashtra Tax on Buildings (with larger Residential Premises)	97	133	3.65
13	Housing	Repair Cess	24	34	8.55
14	Water Resources	User Charges (Non-Tax)	32	36	0.00
15	Public Works	Non-Tax Receipts	9	11	0.00
<b>Total</b>			<b>4,423</b>	<b>10,888</b>	<b>3,164.96</b>

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 308 IRs issued up to 31 December 2016. 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.

#### 1.4.2 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 (ACMs) held during the year 2016-17 and the paragraphs settled are mentioned in **Table 1.4.2**.

**Table 1.4.2**

(₹ in crore)						
Sr. No.	Department	Nature of receipts	Number of meetings held	Number of paras discussed	Number of paras settled	Amount
1	Home	State Excise	2	134	67	9.26
2	Revenue and Forests	Land Revenue	4	1,489	1,226	1,471.98
3		Stamps and Registration Fees	1	477	296	40.40
4	Finance	Taxes on Sales, Trade, etc.	3	372	205	1.39
<b>Total</b>			<b>10</b>	<b>2,472</b>	<b>1,794</b>	<b>1,523.03</b>

The progress of settlement of paragraphs pertaining to “Taxes on Sales, Trade, etc.” and “Stamps and Registration Fees” was on lower side in comparison to the pendency of the IRs and paragraphs.

#### 1.4.3 Arrears in assessments

The Value Added Tax (VAT) system relies on self-assessment and envisages Departmental audit of returns filed by the dealer, with the necessity of assessment arising only in case of the audit findings being disputed by the dealers. As per Section 20 of Maharashtra Value Added Tax Act, 2002, (MVAT Act) every registered dealer having a turnover of ₹ ten lakh per annum (₹ five lakh per annum till 26<sup>th</sup> June 2014) has to file correct, complete and self-consistent returns. Dealers having annual tax liability exceeding ₹ 10 lakh or claiming refunds exceeding ₹ one crore are required to file monthly returns, dealers having tax liability between ₹ one lakh and ₹ 10 lakh or claiming refunds between ₹ 10 lakh and ₹ one crore are required to file quarterly returns and all other dealers are required to file six-monthly returns. These returns are scrutinized by Maharashtra Vikrikar Automation System (MAHAVIKAS), which is the IT system of the Department and follow up action is taken by the Returns Branch. The registered dealer who fails to file the return within the prescribed period has to pay a late fee before filing the return. The non-filers are either unilaterally assessed or prosecuted. The dealers who pay tax less than the tax payable declared in their return are treated as short-filers. The cases of short filers are closed after recovery of tax

dues. Every dealer, subject to certain conditions, is required to file an Audit Report in Form 704 relating to verification and certification, computation of tax liability etc. within ten months from the end of the year to which it relates under Section 61 of the MVAT Act.

The system of audit or assessment under MVAT Act is of cases selected on the basis of risk analysis. When the findings of the Departmental audit under Section 22 of the Act are accepted by the dealer and he files revised returns and pays up the dues, if any, arising out of such audit, the case is treated as closed. The necessity of assessment under Section 23 of the Act arises in case of the audit findings being disputed by the dealers. The dealers' returns will be deemed assessed if no assessment is conducted within time limit prescribed in the Act, which is four years from the end of the year for which the returns were filed.

Prior to 1 January 2016, cases were audited /assessed by the Large Taxpayers unit (LTU) Branch, Business Audit Branch and the Refund and Refund Audit Branch. Further, with effect from March 2012, a new concept called Issue Based Audit (IBA) was introduced, with a view to recover the taxes which were obvious and did not require much verification. From 2013-14, refund cases up to ₹ five lakh were also brought under the scope of IBA.

The Sales Tax Department (STD) was restructured with effect from 1 January 2016 and the existing functional setup was changed into a single desk multifunctional set up (single window system). The functions of the LTU Branch, being a single window system, was continued. However, other functions such as Registration, Business Audit, Refund and Refund Audit, Recovery etc. of non LTU dealers in a particular area designated by PIN codes were transferred to Nodal offices who were appointed to preside over that area.

The number of returns<sup>8</sup> filed by the dealers during the period from 2014-15 to 2016-17, and the Departments' action on thereon is shown in **Table 1.4.3 (A)**.

**Table 1.4.3 (A)**

Year	No. of returns filed by dealers	No. of returns short filed	No. of dealers selected for Issue Based Audit	No. of dealers selected for Computerized Desk Audit
2014-15	11,00,794	49,603	35,831	<i>Not furnished</i>
2015-16	11,47,437	71,611	<i>Not furnished</i>	<i>Not furnished</i>
2016-17	38,16,321	<i>Not furnished</i>	1,92,453 <sup>9</sup>	1,16,447 <sup>10</sup>

**Source: Information furnished by the Department**

The Department is assessing the returns filed by dealers in the time barring year, i.e. four years since filing of returns. In 2016-17, they have selected dealers for Issue Based/Computerized desk audit based on returns filed during

<sup>8</sup> Includes returns filed under Central Sales Tax Act, 1956 as follows: 2014-15 – 3,45,361; 2015-16 – 3,72,460; 2016-17 – Not furnished.

<sup>9</sup> For returns filed during 2012-13, 2013-14 and 2014-15.

<sup>10</sup> For returns filed during 2013-14.

FY 2013-14. The actual number of assessments done against them was awaited.

The pendency of cases under the Large Taxpayers Units branches of the Sales Tax Department is shown in the following table.

**Table 1.4.3(B) - Large Taxpayers Unit (LTU)**

Period	Cases selected	Cases closed	Cases pending	Percentage of column 4 to 2
1	2	3	4	5
2014-15 <sup>11</sup>	17,129	6,077	11,052	65
2015-16 <sup>11</sup>	18,283	4,995	13,288	73
2016-17	13,739	6,027	7,712	56

**Source: Information furnished by the Department**

As seen from the above table the percentage of pending cases decreased from 65 per cent in 2014-15 to 56 per cent in 2016-17.

**Non-furnishing of data :-** Audit had sought from the Sales Tax Department, the entire data of LTU dealers in electronic form pertaining to returns filed, payments made, refunds granted, Audit Report in Form 704 and assessment orders passed for the years 2012-13 to 2016-17 to enable comprehensive selection of cases for audit scrutiny. However, the Department did not provide the same to audit. Audit was hampered to this extent.

The information regarding the pendency of cases in the Business Audit branch and the Refund and Refund Audit Branch during 2014-15 and 2015-16 are given in the following tables.

**Table 1.4.3(C) - Business Audit**

Period	Cases selected	Cases closed	Cases pending	Percentage of column 4 to 2
1	2	3	4	5
2014-15	50,104	39,885	10,219	20
2015-16	77,537	19,839	57,698	74

**Source: Information furnished by the Department**

<sup>11</sup> Information for the years 2014-15 and 2015-16 is at variance with the figures given in the Audit Report for the year ended 31 March 2016, on account of “cases closed by way of scrutiny/other way” considered as closed cases. The same has been corrected now.

**Table 1.4.3(D) - Refund and Refund Audit**

(₹ in crore)					
Period	Cases selected	Cases closed	Cases pending	Amount	Percentage of column 4 to 2
1	2	3	4	5	6
2014-15 <sup>12</sup>	80,045	46,960	33,085	4,201.61	41
2015-16 <sup>12</sup>	72,294	48,887	23,407	2,969.25	32

Source: Information furnished by the Department

The information regarding pendency of cases in the Nodal Offices during 2016-17 is given in the following table.

**Table 1.4.3(E) – Nodal Offices**

(₹ in crore)					
Period	Cases selected	Cases closed	Cases pending	Amount	Percentage of column 4 to 2
1	2	3	4	5	6
2016-17	50,800	30,017	20,783	2,718.16	41

Source: Information furnished by the Department

It can be seen from the above table that the number of cases selected for Business audit and Refund Audit during 2015-16 was 1,49,831, out of which 81,105 cases, i.e. 54 percent, were outstanding. As against 1,49,831 cases in 2015-16, only 50,800 cases were selected for audit by nodal offices during 2016-17, out of which 20,783 cases, i.e. 41 per cent were outstanding.

As the Maharashtra Value Added Tax has been replaced with the Goods and Services Tax from 1 July 2017, the Department needs to draw up an Action Plan to complete the business audit cases and expedite the pending refund cases as well as set benchmarks and time frames for sanctioning of refunds, so that the assessment of these cases are not further delayed.

**Cases under the erstwhile Bombay Sales Tax Act, 1959 and allied Acts.**

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 1.4.3 (F)**.

<sup>12</sup> Information for the years 2014-15 and 2015-16 is at variance with the figures given in the Audit Report for the year ended 31 March 2016, on account of pre-audited cases considered as closed cases. The same has been corrected now.

**Table 1.4.3(F) – Cases under the erstwhile BST Act and allied Acts**

Name of Act	Opening balance	New cases due for assessment during 2016-17	Cases due for assessment	Cases disposed of during 2016-17	Balance at the end of the year	Percentage of disposal (col. 5 to 4)
1	2	3	4	5	6	7
Bombay Sales Tax	72,420	1,97,415	2,69,835	1,85,582	84,253	69
Motor Spirit Tax	173	0	173	142	31	82
Purchase Tax on sugarcane	174	41	215	54	161	25
Entry Tax	27	390	417	417	0	100
Lease Tax	243	11	254	29	225	11
Luxury tax	1,421	1,912	3,333	2,434	899	73
Tax on works contracts	4,487	57	4,544	943	3,601	21
<b>Total</b>	<b>78,945</b>	<b>1,99,826</b>	<b>2,78,771</b>	<b>1,89,601</b>	<b>89,170</b>	<b>68</b>

Source: Information furnished by the Department.

Thus, it would be seen from the above that 89,170 cases under the BST Act and Allied Acts remained unassessed as on 31 March 2017 though the Acts stand repealed since 11 years.

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.

#### **1.4.4 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 PAG/ 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 concerned departments/Government is indicated at the end of each paragraph included in the Audit Report.

Fifty two draft paragraphs (clubbed into 33 paragraphs) including one Performance Audits were sent to the Principal Secretaries/Secretaries of the respective departments between May 2017 and September 2017. The Principal Secretaries/ Secretaries of the departments did not send replies to all these draft paragraphs and the same have been included in this Report without the response of the departments.

#### **1.4.5 Follow-up on Audit Reports - summarised position**

**Position of explanatory notes :-** According to the instructions issued by the Finance Department, all the Departments are required to furnish explanatory memoranda, duly 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. However, explanatory memoranda in respect of 93 audit paragraphs included in Audit Reports from 2006-07 onwards have not been received till date as shown below in Table 1.4.5(A).

**Table 1.4.5(A)**

Department	Audit Report					Total
	Upto 2011-12	2012-13	2013-14	2014-15	2015-16	
Revenue and Forest	28	5	5	16	15	69
Urban Development	2	---	1	1	---	4
Finance	---	---	---	5	5	10
Home	2	1	1	1	3	8
Industry, Energy and Labour	---	1	---	---	---	1
Co-operation	---	---	---	---	1	1
<b>Total</b>	<b>32</b>	<b>7</b>	<b>7</b>	<b>23</b>	<b>24</b>	<b>93</b>

**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 Public Accounts Committee lays down in each case, the period within which ATNs on its recommendations should be sent. However, ATNs for 155 recommendations included in eight Reports of the Public Accounts Committee on Audit Reports 2005-06 onwards have not been received from the concerned Departments as given in Table 1.4.5 (B).

**Table 1.4.5(B)**

Sr. No.	Public Accounts Committee Report No.	ARs discussed	No. of recommendations for which ATNs are awaited
1	7 <sup>th</sup> Report of 2010-11	2005-06	35
2	15 <sup>th</sup> Report of 2012-13	2006-07	23
3	16 <sup>th</sup> Report of 2012-13	2007-08	35
4	2 <sup>nd</sup> Report of 2015-16	2008-09	2
5	9 <sup>th</sup> Report of 2015-16	2010-11	8
6	15 <sup>th</sup> Report of 2015-16	2013-14	18
7	16 <sup>th</sup> Report of 2015-16	2010-11	15
8	26 <sup>th</sup> Report of 2015-16	Standalone Report on "Government Land given on lease SA GLL"	19
<b>Total</b>			<b>155</b>

The Department-wise and Audit Report-wise breakup of the 155 awaited ATNs are given in Table 1.4.5 (C).

Table 1.4.5 (C)

Name of the Department	Year of Audit Report					Total
	Up to 2007-08	2008-09	2010-11	2013-14	SA GLL	
Revenue and Forests	27	1	23	---	18	71
Finance	15	---	---	18	---	33
Home	17	1	---	---	---	18
Water Resources	6	---	---	---	---	6
Industries, Energy and Labour	7	---	---	---	---	7
Public Works	11	---	---	---	---	11
Co-operation, Marketing and Textiles	3	---	---	---	---	3
Urban Development	---	---	---	---	1	1
Housing	5	---	---	---	---	5
<b>Total</b>	<b>93</b>	<b>2</b>	<b>23</b>	<b>18</b>	<b>19</b>	<b>155</b>

### **1.5 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 1.5.1 to 1.5.2 discuss the performance of the Finance Department under revenue head - "Taxes on Sales, Trade, etc." in respect of cases detected in the course of local audit during the years from 2007-08 to 2016-17 as well as those included in the Audit Reports during the last 10 years, i.e. 2006-07 to 2015-16.

#### **1.5.1 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 2017 are shown in **Table 1.5.1**.

**Table 1.5.1**

(₹ 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
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	461.22	1,707	3,853	196.63
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
2014-15	1,576	3,594	195.02	197	1,108	54.00	108	701	11.84	1,665	4,001	237.18
2015-16	1,665	4,001	237.18	209	1,182	31.55	112	873	25.28	1,762	4,310	243.45
2016-17	1,762	4,310	243.45	199	1,145	51.03	103	731	7.91	1,858	4,724	286.57

The Government had set up Audit Committees (during various periods) to monitor and expedite the progress of clearance 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 shown an increasing trend, with an amount of ₹ 286.57 crore is pending settlement in 4,724 paragraphs contained in 1,858 IRs.

### **1.5.2 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 1.5.2**.

Table 1.5.2

(₹ 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 up to 31/03/2017
2006-07	10	8.97	9	8.69	1.05
2007-08	12	41.74	6	9.33	0.72
2008-09	13	1,814.22	9	22.69	0.04
2009-10	7	0.65	7	0.65	0.03
2010-11	12	14.17	11	2.71	0.17
2011-12	7	14.22	5	7.89	1.92
2012-13	15	247.22	9	3.24	0.41
2013-14	7	15.55	5	2.89	0.53
2014-15	5	1.23	1	0.42	0.29
2015-16	5	0.87	2	0.60	0.00
<b>Total</b>	<b>93</b>	<b>2,158.84</b>	<b>64</b>	<b>59.11</b>	<b>5.09</b>

The above table indicates that the recovery was only nine *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 in those cases which have been accepted by the Department. These may be considered to be recovered as arrears of land revenue.

## 1.6 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 2,049 auditable units, 726 units were planned for audit during 2016-17 and against which 727 units were audited during the year. In addition to this, one Performance Audit was conducted during the year to ascertain the efficiency and efficacy of the tax administration in realisation of the revenues.

## 1.7 Results of audit

### Position of local audit conducted during the year

Test check of the records of 727 units of Sales Tax/Value Added Tax, State Excise, Taxes on Motor Vehicles, Goods and Passengers, Forest Receipts and other departments conducted during the year 2016-17 revealed under

assessment / short levy/loss of revenue aggregating to ₹ 876.77 crore in 2,686 observations. During the course of the year, the concerned Departments accepted under assessment and other deficiencies of ₹ 272.24 crore involved in 1,533 observations which were pointed out in audit during 2016-17 and earlier years. The departments collected ₹ 271.84 crore in 1,542 cases during 2016-17, pertaining to audit findings of 2016-17 and of previous years.

### **Coverage of this Report**

This Report contains 33 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 one Performance Audit, involving financial effect of ₹ 117.24 crore.

The departments/Government accepted audit observations involving ₹ 24.85 crore out of which ₹ 2.02 crore had been recovered. The replies in the remaining cases have not been received (February 2018). These are discussed in succeeding Chapters II to VI.

## CHAPTER II

### TAXES ON SALES, TRADE, ETC.

#### 2.1 Tax administration

Levy and collection of Value Added Tax (VAT) 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 functions under the administrative control of the Additional Chief Secretary, Finance Department (ACS FD) at the Government level. The Commissioner of Sales Tax, Maharashtra State (CST) heads the Sales Tax Department and is assisted by a Special Commissioner of Sales Tax/ Additional Commissioners/Joint Commissioners (JCs)/Deputy Commissioners (DCs)/Assistant Commissioners (ACs) and Sales Tax Officers (STOs) at various levels.

The Government, promulgated an Act called the “Maharashtra Settlement of Arrears in Dispute Act, 2016” (the Settlement Act) on 26 April 2016 for settlement of these arrears. Under the Act, the Nodal officers viz. the DCs, ACs and STOs were entrusted with the job of processing the applications filed for the settlement of arrears in dispute under the supervision of the Additional Commissioners and Nodal Joint Commissioners. The Zonal Additional Commissioners were overall in-charge of the implementation of the Settlement Act throughout their respective Zones.

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 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).

Information regarding position of cases selected for internal audit and actually audited as furnished by the Department is mentioned in **Table 2.2**.

**Table 2.2**

Year	No. of cases selected for audit by IAW	No. of cases audited by IAW	Audit observations raised By IAW	Audit observations settled till date	Audit observations pending as on 31 March of the year
2012-13	6,280	9,682	2,789	2,322	467
2013-14	16,695	18,628	5,808	4,949	859
2014-15	13,140	17,209	5,028	3,807	1,221
2015-16	15,660	17,086	4,312	2,796	1,516
2016-17	15,055	18,197	4,185	1,447	2,738
<b>Total</b>	<b>66,830</b>	<b>80,802</b>	<b>22,122</b>	<b>15,321</b>	<b>6,801</b>

Source: Information furnished by the Department

During the last five years, the number of cases actually audited have exceeded the number of cases planned to be audited. The Department has settled 69 per cent of the observations raised by IAW.

Scrutiny of the records of internal audit wing of the LTU wing revealed shortfall in cases audited by IAW and pendency of audit objections raised by the wing. These are discussed in the following paragraphs.

**2.2.1** The Large Taxpayer Unit (LTU) of the Department was formed in January 2007 to provide single window service to dealers with net tax liability of ₹ one crore and above or who had claimed refunds of more than ₹ five crore during the year.

The Internal Audit Manual (IAM) stipulated that cases where tax liability or grant of refund in a year is more than ₹ one crore, such cases are required to be audited (pre-refund /post-refund) by Deputy Commissioner-Internal Audit. Since each LTU case has more than one crore tax liability each LTU case was required to be audited by the Internal Audit Wing (IAW). However, audit found that only 17 to 27 per cent of the LTU cases were audited by the IAW as shown in the **Table 2.2.1**.

**Table 2.2.1**

Year <sup>1</sup>	No of cases assessed by LTU wing	Internal audits completed cases	Percentage of Col 3 to Col 2	Observations raised		Percentage of Col 5 to Col 3
				Cases	Amount (₹ in crore)	
1	2	3	4	5	6	7
2013-14	6,297	1,044	17	130	360.12	12.45
2014-15	6,077	1,217	20	174	165.29	14.30
2015-16	4,995	1,365	27	152	234.92	11.14
<b>Total</b>	<b>17,369</b>	<b>3,626</b>		<b>456</b>	<b>760.33</b>	

Source: KKPI reports furnished by the Department

<sup>1</sup> LTU wise information.

The Department stated (July 2017), that the shortfall in auditing was due to the increase in the number of LTU cases without corresponding increase in the Internal Audit Officers. It was further stated that instructions had been issued to ensure auditing of all LTU cases by Internal Audit Officers.

**2.2.2 Internal audit of lower number of cases in LTU Units**

The cases finalised in wings other than LTU like Business Audit (BA) and Refund Audit Wing (RA) are having tax liability of less than ₹ 1 crore. It was seen that the IAW conducted audit of more number of cases finalized by RA Wing and BA Wing than that finalized by LTU wings. The comparative data is given in the following **Table 2.2.2**.

**Table 2.2.2**

Year	Section	Internal audits completed	Revenue involved in audit para		Percentage of cases having audit objection
		Cases	Cases	Amount (₹ in crore)	
2013-14	LTU	1,044	130	360.12	12.45
	RA	9,902	773	62.25	7.81
	BA	4,370	223	2.11	5.10
2014-15	LTU	1,217	174	165.29	14.30
	RA	9,106	904	71.81	9.93
	BA	4,260	127	3.07	2.98
2015-16	LTU	1,365	152	234.92	11.14
	RA	8,162	619	93.55	7.58
	BA	4,517	176	11.31	3.90

**Source: KKPI reports furnished by the Department**

The Department stated that refund cases were given priority considering the time limit and sensitivity of the subject for all stake holders. However, the fact remains that the instructions contained in the Internal Audit Manual have not been followed.

**2.2.3 Performance of IAW in disposal of the audit observations raised in LTU cases**

The performance of IAW with respect to audit observations raised and settled in respect of the selected divisions is as given in the **Table 2.2.3**:

**Table 2.2.3**

Audit Year	No. of cases of LTU branch selected for Audit	No. of cases audited by IAW	Audit observations raised by IAW	Audit observations settled till date	Audit observations pending as on 31 March 2017	Percentage of Col 6 to Col 4
1	2	3	4	5	6	7
2013-14	681	681	180	161	19	11
2014-15	1,145	1,145	360	327	33	10
2015-16	1,392	1,392	405	309	96	24
<b>Total</b>	<b>3,218</b>	<b>3,218</b>	<b>945</b>	<b>797</b>	<b>148</b>	<b>16</b>

Source: Information furnished by the Department

The Department had settled 84 *per cent* of the audit observations raised during the last three years. The amount involved in the remaining 16 *per cent* (148 observations) was ₹ 187.42 crore. Since the amount involved is huge, the Department may make efforts to settle all the observations so that recovery could be made timely.

The JC explained the reasons for pendencies in internal audit as being due to delay in furnishing proper compliance by the concerned authorities and due to the cases lying with appellate authorities.

The Department needs to tackle the issues by taking suitable measures for ensuring sufficient manpower for internal audit and ensuring the compliance of the norms set by the Department itself.

### 2.3 Results of audit

In 2016-17, test check of records of 200 units relating to Taxes on Sales, Trade, etc. showed underassessment of tax and other irregularities involving ₹ 57.72 crore in 1,142 observations, which fall under the following categories as shown in **Table 2.3**.

**Table 2.3**

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	Audit of "Maharashtra Settlement of Arrears in Disputes Act, 2016"	1	0.13
2	Non/short levy of tax	139	10.69
3	Incorrect grant/excess set-off of tax	82	1.87
4	Non/short levy of interest/penalty	198	6.79
5	Non-forfeiture of excess collection of tax	18	0.11
6	Other irregularities like non submission of declaration forms, computation errors etc.	704	38.13
<b>Total</b>		<b>1,142</b>	<b>57.72</b>

During 2016-17, the Department accepted underassessment and other deficiencies of ₹ 1.46 crore in 89 observations which were pointed out during 2016-17 and earlier years. The Department also recovered an amount of ₹ 1.07 crore in 2016-17 in respect of 98 observations accepted during 2016-17 and earlier years.

The Department in one case recovered an amount of ₹ 5.21 lakh after issue of the draft paragraph.

A few illustrative cases involving ₹ 6.03 crore including a paragraph on “Maharashtra Settlement of Arrears in Disputes Act, 2016” are discussed in the succeeding paragraphs.

## **2.4 Audit of “Maharashtra Settlement of Arrears in Disputes Act, 2016”**

### **Introduction**

The arrears of revenue locked up in appeals with the Sales Tax Department (STD), Maharashtra Sales Tax Tribunal (MSTT) and Courts as on 31 March 2016 aggregated to ₹ 60,135.26 crore in 1,02,743 appeal cases. The Government, promulgated an Act called the “Maharashtra Settlement of Arrears in Dispute Act, 2016” (the Settlement Act) on 26 April 2016 to unlock these arrears. As per the Settlement Act, arrears in dispute included tax, interest payable and penalty imposed under the provisions of the relevant Act, in respect of any statutory order that pertained to period ending on or before 31 March 2012. The benefit of the Settlement Act was available to the dealers who had filed appeals and stay in full or in part had been granted by the appellate authority under the provisions of the relevant Act, or by the Tribunal or Court not later than 30 September 2016, provided the appeals were withdrawn by the appellants. The applicants who desired to settle the arrears in dispute were required to submit their application to the designated authority of the STD and pay the entire dues of tax in dispute and interest dues of 25 *per cent*. The balance 75 *per cent* interest dues and the entire penalty dues out of the disputed arrears were eligible for waiver.

The Government amended the provisions of the Act from time to time. It extended the last date for submission of applications up to 30 November 2016 and dispensed with the condition of the cases being under stay retrospectively from 26 April 2016. In other words, the applicant was entitled to avail the benefits irrespective of the fact whether the arrears in dispute were pending in appeal were stayed or not.

Earlier to this, settlement of arrears was made under the Bombay Sales Tax Act, 1959 in the form of an Amnesty Scheme in June 2004. Thus, an effort to settle the arrears was made after a gap of 12 years.

Audit of the Settlement of Arrears Scheme was taken up to ascertain the extent to which the scheme had been successful in reduction of arrears of tax pending in appeal with the Departmental authorities; the correctness of the orders passed under the Scheme and whether there were any lacunae/deficiencies in the Settlement Act. The audit was conducted from April to July 2017.

### **Audit scope and methodology**

There are 13 divisions in the Sales Tax Department in the Maharashtra State out of which four divisions namely Mumbai, Pune Thane-City and Thane-Rural (33 *per cent* of total divisions) were selected for the audit. The divisions were selected on the basis of maximum numbers of Settlement Orders passed. The details of the sample size is mentioned in the following table.

Division	Number of Nodal Divisions where Settlement orders passed	Number of Nodal Divisions selected	Number of Settlement Orders passed in the selected Divisions/ Nodal Divisions	Number of units selected/ Total number of units in selected Divisions	Number of Settlement Orders passed in the selected units	Percentage of Settlement Orders covered
Mumbai	18	5	6,255	9/41	1,996	32
Pune	8	2	877	3/9	321	37
Thane-City	1	1	3,006	4/14	1,351	45
Thane-Rural	1	1	1,790	2/14	608	34
<b>Total</b>		<b>9</b>	<b>11,928</b>	<b>18/78</b>	<b>4,276</b>	<b>36</b>

An entry conference was held with the officials of the Department on 19 May 2017, wherein the scope and methodology of the audit was discussed. Thereafter, the draft Report containing the deficiencies noticed during the period of audit was forwarded to the Department/Government in July 2017. The Exit Conference was held on 31 October 2017. The replies received during the exit conference and at other points of time have been appropriately incorporated in the relevant paragraphs of the Report.

## Audit Findings

### 2.4.1 Planning and Outcome of the Settlement Act

#### 2.4.1.1 Financial implication of the Act

As per records pertaining to the planning for the introduction of the Settlement Act, it was seen that the total arrears as on 5 January 2016 were ₹ 86,450 crore (₹ 36,147 crore under BST Act + ₹ 50,303 crore for VAT Act). The Department expected to settle dues approximately amounting to ₹ 11,793.50 crore.

The recovery of tax arrears (other than interest/penalty) was expected at ₹ 982.52 crore<sup>2</sup>. The information regarding applications received under the Settlement Act during the period from April 2016 to November 2016, the disposals thereof and the arrears recovered and waived as on 14 September 2017 is shown in **Table 2.4.1.1** as under:

**Table 2.4.1.1**

Applications received under the scheme	Applications disposed off			Arrears recovered (₹ in crore)		Arrears waived (₹ in crore)	
	Applications approved	Applications rejected	Pending	Tax	Interest	Interest	Penalty
41,559	40,262	838	459	1,539.57	420.41	1,199.59	841.74
<b>Total</b>				<b>1,959.98</b>		<b>2,041.33</b>	

Source: Information furnished by the Department

<sup>2</sup> The Department applied parameters of earlier Amnesty Schemes and worked out the probable recoverable amount as ₹ 982.52 crore (in the form of tax after excluding interest and penalty and probability of 20 percent of the dealers that could opt for Amnesty Scheme).

It can be seen that the arrears involved in the applications which were approved under the Act worked out to ₹ 4,001.31 crore as against of ₹ 11,793.50 crore expected to be settled. The amount of revenue waived was more than the revenue received under the Act. The recovery of tax was ₹ 1,539.57 crore against ₹ 982.52 crore.

#### **2.4.1.2 Reduction of arrear cases**

A comparison of pending appeal cases with various appellate authorities at the commencement of the Settlement Act and after its expiry revealed that the reduction in the number of appeal cases was not significant as shown in **Table 2.4.1.2** as follows:

**Table 2.4.1.2**

<b>Appellate Authority</b>	<b>No. of cases as on 1 April 2016</b>	<b>Addition during the year</b>	<b>Disposal during the year</b>	<b>No. of cases as on 31 March 2017</b>	<b>Reduction in percentage</b>
DC Appeal	77,938	36,749	52,349	65,345	16
JC Appeal	18,948			15,941	16
MSTT	4,462	3,059	3,451	4,070	9
H.C. Mumbai	1,395	269	298	1,366	2
<b>Total</b>	<b>1,02,743</b>	<b>40,077</b>	<b>56,098</b>	<b>86,722</b>	<b>16</b>

**Source: Information furnished by the Department**

It can be seen from the above table that the reduction in the number of cases in appeal ranged from two to 16 *per cent* only.

In the Exit Conference, the Department stated that there was a 25 *per cent* reduction in appeal cases, and not 16 *per cent*. The Department did not furnish any documentary evidence in support of their claim. However, as per the information furnished by the Department itself indicate reduction in appeal cases ranged between two and 16 *per cent*.

The above facts indicated that neither the expected settlement amount of arrears, nor the recoveries therefrom were properly assessed at the time of framing policy of the Settlement Act.

#### **2.4.2 Lacuna/deficiencies in the Act**

As per the provisions of Section 2(2) of the Settlement Act, “arrears in dispute” includes tax, interest and penalty in respect of any statutory order pertaining to any period ending on or before the 31 March 2012, against which appeal is filed and is subsequently withdrawn. The Act did not mention the date on which the assessments should have been made for the purpose of the Settlement Act.

The Settlement Act provided the cut-off date for filing the appeals as 30 November 2016. Thus, this gave an opportunity to the dealers who had not yet filed appeals as on the date of promulgation of the Act, to enter into a dispute with the Department for payment of arrears, to file appeals and then avail the benefits of the Settlement Act, in terms of waiver of 75 *per cent*

interest and full penalty as applicable. A few cases are discussed in the following paragraphs.

**Cases assessed prior to the promulgation of the Settlement Act**

Audit noticed that 859 assessed cases involving ₹ 48.41 crore were not in appeal before the promulgation of the Act. The dealers simultaneously filed and withdrew the appeals to avail the benefits of the Settlement Act. Thus, the probability that the arrears were disputed only for sake of availing the benefit under the Scheme could not be ruled out. A few cases are mentioned in **Table 2.4.2(a)** below:

**Table 2.4.2(a)**

(₹ in lakh)					
Name of Dealer and period	Date of Assessment	Date of filing of appeal	Date of Settlement Order	Arrears recovered	Arrears waived
Drive India Enterprises Solutions Ltd. 2011-12	27/01/2016	15/06/2016	14/01/2017	16.10	6.15
Apex Metal India 2010-11	10/11/2015	30/05/2016	03/01/2017	20.55	24.01
A.S.Timber 2011-12	31/01/2015	18/08/2016	21/01/2017	15.07	18.01
C & G Extrusion Machine 2009-10	28/12/2015	02/05/2016	15/12/2016	5.82	3.16
M R Dying 2011-12	20/03/2016	25/07/2016	17/01/2017	11.91	7.89
Sahyadri Motors Pvt. Ltd. 2010-11	23/03/2015 Additional Demand order: 26/10/2016	05/11/2016	11/11/2016	0.00	24.51
Kanade Anand Udyog Pvt. Ltd. 2010-11	21/08/2014 Additional Demand order: 02/08/2016	18/10/2016	10/01/2017	0.00	9.58

**Source: Information furnished by the Department**

**Cases assessed after the promulgation of the scheme**

This lacuna also resulted in settlement of the arrears that were assessed after the promulgation of the Act on 26 April 2016. Audit noticed that 358 cases involving arrears of ₹ 30.74 crore were assessed after the promulgation of the Act, wherein the dealers simultaneously filed and withdrew the appeals to avail the benefits of the Settlement Act. A few cases are mentioned in **Table 2.4.2(b)** below:

**Table 2.4.2(b)**

(₹ in lakh)					
Name of Dealer and period	Date of Assessment	Date of filing of appeal	Date of Settlement Order	Arrears recovered	Arrears waived
Shivaum Steel (P) Ltd. 2008-09	11/11/2016	11/11/2016	30/01/2017	37.16	54.76
Greaves Cotton Ltd. 2011-12	07/11/2016	15/11/2016	30/03/2017	84.93	35.32
Rocket Foods Ltd. 2011-12	09/06/2016	16/06/2016	02/09/2016	21.64	22.74
Chetak Trading Co. 2008-09	09/11/2016	11/11/2016	19/12/2016	0.00	6.76
Meghdooth Enterprises 2009-10	23/08/2016	14/09/2016	17/11/2016	21.18	31.15

**Source: Information furnished by the Department**

As per information furnished by the Department, out of 40,262 orders passed under the Settlement Act in the State, 15,309 orders (38 *per cent*) pertained to cases where the appeals had been filed by the assessee dealers after the enactment of the Settlement Act. The net revenue recovered in these cases was ₹ 550.64 crore, after a waiver of ₹ 305.81 crore. In the sample checked by audit, the Department recovered arrears of ₹ 31.19 crore in 1,217 cases and the waiver of interest/penalties was ₹ 47.96 crore.

In the Exit Conference, the Department stated that the Act itself provided for orders for periods in appeal on or before 31 March 2012, hence even appeals filed after the date 26 March 2016 were considered under the Settlement Act, if they pertained to period ending on or before 31 March 2012. In respect of settlement orders which were assessed after the enactment of the Act, Department stated that this has resulted in speeding up the recovery of taxes.

The fact remains that many dealers reaped unintended benefits of current arrears due to deficiencies/lacunae in the Settlement Act, whereas the huge pendency of old appeals/disputes largely remained to be tackled.

### **2.4.3 Non-recovery of arrears from Oil Companies**

The Settlement Act was passed with the objective of reducing the arrears pending before various Appellate forums by way of settlement of arrears in dispute under various Acts administered by the MSTD.

The arrears of tax amounting to ₹ 60,135.26 crore were pending in Departmental Appeals, Maharashtra Sales Tax Tribunal (MSTT), High Court and Supreme Court as on 31 March 2016. Out of these, 31 *per cent* of the arrears (₹ 18,673.47 crore in 131 cases) were pending from four Oil Companies<sup>3</sup>. While framing the policy for the Settlement Act, the

<sup>3</sup> M/s Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd., Bharat Petroleum Corporation Ltd. and Reliance Industries Limited.

Department had mentioned that these Oil Companies were “highly unlikely to come forward for Amnesty”.

The stage-wise pendency of arrears is shown in **Table 2.4.3(a)** as under.

**Table 2.4.3(a)**

(₹ in crore)				
Sr. No.	Stages of recovery of Arrears	Arrears in respect of Oil Companies	Financial Year	Period of appeal
1	Departmental Appeal	11,144.80	1986-87 to 2012-13	2002-03 to 2016-17
2	MSTT	7,280.24	1985-86 to 2004-05	1997-98 to 2016-17
3	High Court/ Supreme Court	248.43	1999-00 to 2004-05	2012-13 to 2013-14
<b>Total</b>		<b>18,673.47</b>		

**Source: Information furnished by the Department**

Further scrutiny revealed that arrears of ₹ 13,222.77 crore pertained to the assessment periods under the Bombay Sales Tax Act/Motor Spirit Taxation Act, the oldest being the assessment year 1985-86.

Though these Acts ceased to exist after 1 April 2005, the pending cases indicate that the Department had neither expedited the clearance of these appeals nor did they persuade the Oil Companies to come forward to avail the benefits of the Settlement Act. However, one company i.e. HPCL took the benefit of the scheme by partially withdrawing nine appeal cases involving arrears of ₹ 30.89 crore, and paid up arrears of ₹ 17.32 crore (November 2016).

Information furnished by the Department in respect of 28 appeal cases of Oil Companies revealed that these cases were pending with the first appellate authority, the oldest being from 1998-99, as shown in **Table 2.4.3(b)**.

**Table 2.4.3(b)**

(₹ in crore)				
Period of appeal	Number of cases	Number of hearings held	Arrears involved	Remarks
1998-99	2	45	0.07	In one case arrears is nil
2003-04	2	13 to 23	0.75	In one case : 23 hearings
2006-07	2	4 to 12	527.48	In one case dues is nil
2007-08	2	7	2.11	
2008-09	3	3 to 10	695.86	
2009-10	5	7 to 38	693.48	In 2 cases : 38 hearings and in 2 cases : 22 hearings
2010-11	7	2 to 16	4,111.36	In two cases no hearings have been held
2014-15	5	1	161.71	
<b>Total</b>	<b>28</b>		<b>6,192.82</b>	

**Source: Information furnished by the Department**

Thus, it would be seen from the above that seven cases, though the hearings have been held for more than 22 times, the cases have not been decided till date. Similarly, in two cases no hearings were held. This indicated that the Appellate Authorities had not decided the cases and neither planned for disposing off the cases in time. The Companies have, therefore, preferred to keep the cases pending under litigation and not come forward for availing the benefits.

In the Exit Conference, the Department stated that all the four Oil Companies were regularly persuaded for opting under the Settlement Act, however, it was very difficult to settle the issue across the table. This issue has been raised in the meetings with Hon'ble Ministers and Oil Companies, and the Department is examining ways to settle these cases.

It would be in the interest of revenue if the Department could consider issuing appropriate instructions to the Departmental appellate authorities to promptly dispose these appeal cases pending with the Department.

#### **2.4.4 Irregular waiver of interest**

As per Trade Circular dated 3 May 2016 issued under the Settlement Act, interest payable under Section 30(2) of the Maharashtra Value Added Tax Act, 2002 for the period starting on or after 1 May 2010 and ending on 31 March 2012 is treated as undisputed arrear and is not subject to waiver under the Settlement Act, and hence is required to be recovered in full.

Scrutiny of the records of five<sup>4</sup> selected offices revealed that interest payable by the dealer pertained to the undisputed periods and did not fall within the ambit of the Settlement Scheme. However, the dealers applied for the waiver of interest in respect of undisputed periods and also were allowed by the assessing authority. This resulted in incorrect waiver of ₹ 12.83 lakh in respect of five dealers.

After this being pointed out in audit, the Department accepted the observations and raised additional demand of ₹ 11.52 lakh in four cases, out of which recovery of ₹ 7.17 lakh was also intimated in three cases. Further action taken by the Department in one case is awaited. The above irregular waiver has been pointed by audit only in sample cases test checked and the actual interest waived may be more. The Department may make an effort to recheck all the cases to trace out the incorrect waiver of interest.

In the Exit Conference, the Department accepted the observation and stated that corrective action would be taken in the matter.

#### **2.4.5 Absence of wide publicity**

In order to give wide publicity to the scheme, the Department issued various trade circulars and courtesy letters to all dealers having dues, and held seminars with the dealers as well as Chartered Accountants/Sales Tax Practitioners by the Department throughout the State. They also used TV, Radio, Hoarding Boards and Pamphlets for publicity of the scheme, and held 261 programmes throughout the State.

Perusal of the details revealed that the coverage of the scheme in the mainstream print and electronic media was not adequate. It was noticed that no publicity was given through print and electronic media in Pune, Kolhapur Nagpur, Raigad and Jalgaon, which were important charges/centres for the Department. It was noticed that in Pune and Nagpur no seminar was held.

In the Exit Conference, the Department stated that the Scheme had been given enough publicity and more than 500 programmes were held. The reply of the Department was not in consonance with the information furnished which indicated that only 261 seminars were conducted.

The absence of wide publicity to the Scheme in the mainstream print and electronic media may be one of the reasons for poor response to the scheme. The facts indicate that the Department had failed to settle the old arrears through this Act.

#### **2.4.6 Absence of Internal Control and Monitoring Mechanism**

Section 11 of the Settlement Act provides that after an order is passed by the designated authority, the Commissioner may, on his own motion, at any time, within twelve months from date of service of order, call for the record of such order and after notice of error in such order, in so far as it is prejudicial to the

<sup>4</sup> Dy. Commissioner of Sales Tax, Large Taxpayers Unit: E-622 Mumbai, E-609 Pune; Dy. Commissioner of Sales Tax, Business Audit E-005 Kalyan, E-004 Thane; Dy. Commissioner of Sales Tax, Refund and Refund Audit, E-005 Thane.

interest of revenue, may serve on the dealer a notice and pass an order to the best of his judgment, where necessary.

Section 12 of the Settlement Act provides that the Commissioner may, from time to time, issue instructions and directions as he may deem fit to the designated authorities for carrying out the purposes of the Act.

We called for information regarding review of Settlement Orders by the Commissioner and the instructions and directions issued to designated authorities for carrying out the purposes of the Act. The same has not been received.

It was also noticed that plan for implementation of the Scheme to achieve the target prepared by the Sales Tax Department did not yield the desired result of unlocking the old arrears. No efforts were seen to be taken by the Department to analyse the effectiveness of the scheme. Further, it was noticed that 232 applications out of 1,217 applications where appeals were filed after the enactment of the Settlement Act, i.e. during the period from April 2016 to November 2016, details of appeal, details of payments, etc., were not on record. There was also nothing on record to indicate that a report on the achievement of the Scheme had been submitted by the Department to the Government of Maharashtra.

In the Exit Conference, the Department stated that approximately 11,000 cases had been verified till June 2017.

#### **2.4.7 Conclusion and Recommendations**

It was seen that the total arrears of VAT and BST as on 5 January 2016 were ₹ 86,450 crore and dues expected to be settled under the Act was ₹ 11,793.50 crore. However, the applications received under the Settlement Act were for ₹ 4,001.31 crore only, against which the recovery made was ₹ 1,959.98 crore. Thus, the scheme had not succeeded in making a significant dent on the huge arrears of tax, which remained unrecovered.

Though the Settlement Act was announced with the intention of unlocking the huge arrears of ₹ 60,135.26 crore pending before various appellate forums as on 31 March 2016, the Scheme could achieve only 16 *per cent* reduction in number of appeal cases pending with Departmental authorities, i.e. from 96,886 cases as on 31 March 2016 to 81,286 cases pending as on 31 March 2017. Similarly in respect of Sales Tax Tribunal cases, the reduction was nine *per cent* in number of appeal cases i.e. from 4,462 to 4,070, whereas 15,309 applications for appeals were filed and withdrawn after the promulgation of the Act, involving arrears of ₹ 856.45 crore taking unintended benefits of the Scheme due to lacunae in the provisions.

Though 31 *per cent* of the revenue locked up in appeals related to four major Oil Companies, these companies/dealers were not persuaded to avail the benefits of the Settlement Act. As a result, huge arrears of revenue mostly relating to the repealed Bombay Sales Tax Act, 1959, remained locked up before the appellate authorities, without any resolution in sight.

The Department's dissemination of the Scheme in the mainstream print and electronic media was not adequate.

The Commissioner did not review a percentage of the Settlement Orders passed under the Act and neither was any Report on the achievements of the Scheme was submitted to the Government of Maharashtra.

- **The Government may consider directing the Department to carry out a review of the Settlement orders, to identify the leakages of revenue, if any. The effective date for implementation of the scheme be defined carefully in future.**

## **2.5 Other audit observations**

Our scrutiny of the assessment records finalised under the Maharashtra Value Added Tax, 2002 (MVAT Act) and the Central Sales Tax Act, 1956 (CST Act) in the Sales Tax Department revealed cases of non-observance of provisions of Acts/Rules, short levy of tax, irregular grant of set-off, etc., 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.

### **2.5.1 Disposal of Refund applications and grant of Refunds**

Mention was made in the Comptroller and Auditor General's Audit Report on Revenue Receipts for the year ended 31 March 2014 that refunds granted under Section 52 of the MVAT Act by the Department had resulted in avoidable payment of interest of ₹ 8.18 crore. While discussing the Report, the Public Accounts Committee (PAC) in its 15<sup>th</sup> Report of 2015-16 (placed in the State Legislature on 13 December 2016) had recommended for streamlining the machinery of the Department for timely grant of refunds so that no interest would be payable. Besides the information required from the dealers in grant of refund should be obtained promptly in advance. However, audit found that the Department had continued granting interest on account of delays in grant of the refunds as discussed in the following paragraphs.

#### **2.5.1.1 Disposal of Refund applications**

The status of disposal of Refund applications as per the KKPI<sup>5</sup> reports in the four divisions<sup>6</sup> test checked was as follows in **Table 2.5.1.1**.

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<sup>5</sup> KKPI - Key Key Performance Indicators - monthly return submitted by each unit to the Joint Commissioner.

<sup>6</sup> Mumbai, Pune, Nashik and Raigad.

Table 2.5.1.1

(₹ in crore)							
Year		Total Refund applications <sup>7</sup>	Audit Completed Cases under Section 22	Assessment Completed Cases under Section 23	Pre-Audit Refund Granted <sup>8</sup> Cases	Refund Applications pending at the end of the year	Pendency percentage (Col 7 to Col 3)
1	2	3	4	5	6	7	8
2014-15	Cases	1,527	35	388	62	1,042	68
	Amount	7,305.44	60.41	590.55	1,135.09	5,519.74	76
2015-16	Cases	1,398	21	151	39	1,187	85
	Amount	6,959.50	37.73	413.16	1,153.96	5,354.66	77
2016-17	Cases	963	15	93	198	657	68
	Amount	4,970.98	33.58	360.24	2,100.10	2,477.07	50

Source: KKPI reports furnished by the Department

It would be seen that the percentage of pendency of applications at the end of each year ranged between 68 and 85 *per cent*. Thus, it was evident that the LTU wings have been unable to grant refunds due to dealers within the prescribed period of eighteen months, indicating therein that the Department needed to strengthen its machinery for prompt disposal of the refund applications so as to avoid the payment of interest.

The Department stated (October 2017) that the major reasons for the refund applications not getting processed were the dealer's unmatched input tax credit report generated from the dealers' electronic submissions, differential tax liability due to pending declarations, etc. The Department needs to strengthen its IT system so that the input tax credits of the dealers are matched, and refund applications are processed timely.

### 2.5.1.2 Grant of interest on Refunds

Under Section 51 of the MVAT Act, the Commissioner, on receipt of the refund application (Form 501) may grant refund of VAT claimed by the dealer as per the return filed by the dealer, within 18 months from the date of filing of the application. As per Section 52 of the MVAT Act, where refund of any tax becomes due to a dealer, simple interest at the rate of 0.5 *per cent* per month shall be payable to him. However, as per proviso to Section 52, interest shall not be granted towards any refund granted under Section 51.

Test-check of records in four divisions<sup>9</sup> revealed that in case of 20 dealers there were delays in processing the refund applications resulting in grant of interest of ₹ 28.66 crore under section 52 of the Act, which could have been avoided. A few instances of such grant of interest is mentioned below.

1. M/s Maharashtra State Power Generation Co. Ltd. had applied for refund amounting to ₹ 116.13 crore in January 2014 for the period

<sup>7</sup> Figure has been arrived at after considering the closing balance of the year, the addition of new applications, and after adjusting applications withdrawn, rejected, etc.

<sup>8</sup> The amounts indicated pertain to the refund claimed.

<sup>9</sup> Mumbai, Pune, Nashik and Raigad.

2012-13. However, the dealer was assessed in March 2017 i.e. after 37 months from the filing of refund application and granted a refund of ₹ 122.26 crore which included interest amounting to ₹ 13.10 crore on the refund due.

2. M/s General Motors claimed a refund of ₹ 39.89 crore for the period 2012-13 in June 2014. The STD assessed the dealer in March 2017 i.e. after 32 months of filing of refund application by the dealer. The assessment resulted in total refund of ₹ 44.44 crore including interest on refund amounting to ₹ 4.76 crore.
3. M/s Sun Pharmaceuticals Industries Ltd.'s refund application for an amount of ₹ 11.07 crore for 2012-13 filed in September 2014 was assessed by the STD in March 2017 i.e. after 30 months from filing of the refund application. The assessment resulted in grant of refund of ₹ 11.99 crore including an interest on refund component of ₹ 1.29 crore.

It was observed that in the above three cases, the STD had assessed the dealers in the last month of the limitation year. There was nothing on record to indicate as to why the refund applications were not processed timely under Section 51 which could have saved the payment of interest.

## **2.5.2 Non/short realisation of tax due to omissions in assessments by the assessing authorities**

### **2.5.2.1 Incorrect allowance of taxable sales as exempted sales**

#### **Tax was not levied on sale of beverages, etc. of ₹ 3.91 crore made by one dealer to various airlines during 2010-11**

As per the Section 2(24) of MVAT Act, "Sale means a sale of goods made within the state for cash or deferred payment or other valuable consideration". Further, as per explanation (vi) thereunder, sales include "the supply by way of or as part of any service or in any other manner what so ever, of goods being food or any other article for human consumption or any drink, where such supply or service is made or given for cash, deferred payment or other valuable consideration". Sales of goods to airlines in India constitute local sales and are taxable under MVAT Act.

Scrutiny (June 2016) of assessment and related records of a dealer dealing in alcoholic and non-alcoholic beverages and general merchandise items etc., revealed that sales valued at ₹ 3.91 crore during 2010-11 were made to various flights of different airlines. The assessing officer<sup>10</sup> while finalising the assessment in January 2015, incorrectly treated the goods as tax free goods and omitted to levy the tax. This resulted in short levy of tax of ₹ 48.89 lakh. Further, interest under the provisions of the MVAT Act was also leviable.

Audit also found that similar sales of the same dealer during the subsequent period i.e. 2011-12 had been assessed (January 2016) to tax @ 12.5 per cent by another assessing authority.

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<sup>10</sup> Dy. Commissioner of Sales Tax, E-605, LTU, Pune.

After this being brought out to the notice by Audit, the Department stated that the case had been referred (November 2016) for re-examination under the MVAT Act. Further progress in the matter is awaited.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

### **2.5.2.2 Short levy of tax due to irregular allowance of inter-state sales at concessional rate**

#### **Sales of cars amounting to ₹ 6.72 crore was allowed in the course of inter-state trade on production of C forms from dealers who were not likely to use the cars in accordance with the declarations given on C forms**

Under the provisions of Section 8(1) of the Central Sales Tax Act, 1956, (CST Act) every dealer, who sells goods in the course of inter-state trade or commerce to a registered dealer outside the State, is liable to pay tax at the rate of two *per cent* (with effect from 1 June 2008) on such turnover. Section 8(3) of the Act further states that such goods or class of goods should be specified in the certificate of the registration of the purchasing dealer, and should be used by him either for resale or in the manufacture or processing of goods for sale or in the telecommunication network or in mining or in the generation or distribution of electricity or any other form of power or for packing of goods or classes of goods specified in the registration certificate of the purchasing dealer. As per Section 8(4) of the Act, the selling dealer should furnish a declaration in Form C, duly filled and signed by the purchasing dealer, for claiming the concessional rates of tax.

During the test-check (April 2016) of the assessment order and other relevant records it was noticed that a dealer<sup>11</sup>, had claimed concessional rate of tax on inter-State sales of 20 Audi cars valued at ₹ 7.72 crore made to 19 dealers of Chhattisgarh, Uttarakhand, Daman and Diu during the year 2011-12 on the production of declarations in Form C. The assessing authority levied (May 2015) concessional rate of tax of two *per cent* on the sales.

Audit scrutiny revealed that out of these, sales amounting to ₹ 6.72 crore were made to 17 dealers. Of these, 14 dealers had purchased the cars on borrowed capital and the cars were hypothecated to various financial institutions as per on tax invoice found on record. This indicated that these cars were not purchased for resale. The fact that the dealers were not resellers of cars was confirmed by Commercial Taxes Department of Chhattisgarh in respect of five dealers. As such, the sales of these cars on Form C being irregular, was liable to be disallowed for concessional rate of tax. The sales were to be taxed at 12.5 *percent*. Application of incorrect rate of tax resulted in short levy of tax of ₹ 69.16 lakh.

The Department stated (August 2017) that the verification of C forms has been taken up with TINXSYS. Further progress in the matter has not been received.

<sup>11</sup> dealing in resale of motor cars, spare parts and accessories, in the office of the Dy. Commissioner of Sales Tax, E-705, Refund and Refund Audit, Mazgaon.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

- Further test check of records of four divisions<sup>12</sup> revealed that the assessing authorities had incorrectly finalised the assessments of the dealers resulting in short realisation of tax, as discussed in the following paragraphs.

**2.5.2.3** Audit noticed that in seven cases, the assessing authorities incorrectly worked out the tax resulting in short levy of tax of ₹ 79.42 lakh. This was pointed out to the Department between April 2017 and June 2017.

The Department accepted the audit observations in three cases involving ₹ 35.12 lakh, and recovered ₹ 1.76 lakh against ₹ 1.04 lakh pointed out by audit in another case. The excess of ₹ 0.72 lakh was on account of interest. In the remaining three cases the Department stated that the matter was under verification. A few instances are discussed in the following **Table 2.5.2.3**.

**Table 2.5.2.3**

(₹ in lakh)				
Sr. No.	Name of office Assessment Period Date of assessment	Relevant provisions	Audit observation in brief	Short levy of tax and interest
1	2	3	4	5
1	DCST E 630, <u>LTU, Mazgaon</u> <u>2011-12</u> 29/03/2016	Section 8(6) of the CST Act, provides that sales to units in Special Economic Zones (SEZ) are exempted from levy of CST, provided that such goods are used in the SEZ units for manufacture, production, processing, etc. as specified in the certificate of registration held by the purchasing dealer. The purchasing dealer is required to submit a declaration in Form I for this purpose indicating the details of the purchase.	Sales valued at ₹ 1.79 crore to a SEZ were exempted by the assessing authority on the production of certificates in Form I. Scrutiny of these sales (Form I) revealed that these sales pertained to aluminum composite panels valued at ₹ 1.15 crore made to an IT development firm in Tamil Nadu. As per the dealer profile available on the website of the Tamil Nadu Tax Department (tnvat.ctd.gov.in) the purchasing dealer was registered for IT products notified by the Government and not aluminum composite panels. The goods purchased by the dealer were therefore not in any way related to its business. As such, the dealer was not entitled for the exemption on Form I, which was incorrectly allowed by the assessing authority.	23.29
The Department stated that the dealer was in appeal and the matter had been communicated to the appellate authority. It would be in the interest of revenue if the Department takes immediate action for disallowance of exemption on sales made on Form I, rather than routinely forwarding the matter to the appellate authority, when the issue is not related to the appeal filed by the dealer.				

<sup>12</sup> Mumbai, Pune, Nashik and Raigad.

1	2	3	4	5
2	DCST E 633, <u>LTU, Mazgaon</u> 2009-10 13/04/2015	As per the provisions contained in Section 8(1) of the CST Act, every dealer who sells goods in the course of interstate trade or commerce to a registered dealer shall be liable to pay tax @ 2 <i>per cent</i> on his turnover of such sales provided that the sales are supported by the declaration in Form 'C'. Sales not supported by the declaration in Form 'C' are taxable at the rate applicable to sale or purchase of such goods inside the state.  Welding helmets, spectacles, eye wash/safety shower and goggles etc. are covered by Schedule E of the MVAT Act and are taxable @ 12.5 <i>per cent</i> .	A dealer dealing in Welding helmets, spectacles, eye wash/safety shower and goggles etc. had not produced C forms in support of inter-state trade sales valued at ₹ 1.91 crore. However, at the time of assessment the assessing authority levied tax @ four per cent instead of 12.5 <i>per cent</i> on these sales, resulting in short levy of tax. This resulted in short realisation of tax amounting to ₹ 28.56 lakh.	28.56
The Department stated (October 2017) that the issue was under verification.				

#### 2.5.2.4 Short levy of tax on works contract

The notification dated 30 November 2006 issued under Section 42 of the MVAT Act, specifies the contracts that would be eligible for composition tax. The rate of composition tax on construction contracts was five *per cent* while for other contracts it was eight *per cent*. The Government in November 2006, notified the works contract that could be classified as construction contracts. The notified list did not include contract activities dealing with works like erection, installation, construction of electricity transmission lines.

Scrutiny of assessment records in one unit revealed that a dealer<sup>13</sup>, engaged in works contract activities of erection, installation, construction of electricity transmission lines, had undertaken works contract during 2012-13. The business of the dealer did not fall under the construction contract. However, the assessing authority incorrectly treated the works as construction contracts and levied tax at the rate of five *per cent* instead of eight *per cent* on works contracts receipts of ₹ 15.49 crore. This resulted in short levy of tax of ₹ 46.48 lakh.

The Department stated (October 2017), that the issue was under verification.

<sup>13</sup> Assessed by DCST LTU, E 648, Mazgaon on 18/03/2017 for the period 2012-13.

**2.5.3 Non/short levy of interest for delayed payment of taxes under Section 30(2) of the Maharashtra Value Added Tax Act, 2002**

**Interest aggregating to ₹ 71.54 lakh for delayed payment of taxes as per returns was either not levied or was levied short in 12 cases**

Under the provisions of Section 30(2) of Maharashtra Value Added Tax Act 2002, a registered dealer who fails to pay the tax according to the return within the time specified by or under the Act, shall be liable to pay by way of simple interest, in addition to the amount of such tax, a sum calculated at the prescribed rate on the amount of such tax, for each month or part thereof, after the last day by which he should have paid such tax.

Scrutiny of records in nine offices<sup>14</sup> revealed that 12 dealers assessed between July 2014 and March 2016 for the periods from 2007-08 to 2011-12 had delayed payment of taxes ranging from one month to 63 months. Since the dealers had not paid the taxes with their returns, they were liable to pay interest for the period of default. However, the concerned assessing officers either did not levy the interest or levied it short resulting in non/short levy of interest aggregating to ₹ 71.54 lakh. A few illustrative cases are as follows.

**Table 2.5.3**

(₹ in lakh )							
Sr. No.	Name of the Dealer Assessing Officer	Assessment Period Date of assessment	Amount of tax paid with delay	Delay in months	Interest leviable	Interest levied	Difference
1	M/s Benchmark Mutual Fund DC E-606 LTU Mazgaon	<u>2010-11</u> 11/11/2015 <u>2011-12</u> 27/02/15	1,930.00	27 to 38	69.50	59.84	9.66
2	M/s Poonam Skyline Construction DC E-809 BA Mazgaon	<u>2009-10</u> 29/03/2016	1,875.00	30 months	7.10	Nil	7.10
3	M/s Gokuldham Real Estate Development Co. DC E-815 BA Mazgaon	<u>2009-10</u> 31/03/2015	255.10	30 to 31 months	92.33	70.58	21.75

The matter was brought to the notice of the Department and the Government in May 2017 and July 2017. The Department accepted the audit observation in six cases involving ₹ 33.94 lakh and recovered an amount of ₹ 6.41 lakh, the reply in the remaining six cases have not been received.

<sup>14</sup> DCST LTU E-606 and 635, Mazgaon; E-303 Kolhapur: DCST BA E-809, 813, 815 and 825 Mazgaon; E-801 and 808, Pune.

### 2.5.4 Short levy of interest under Section 30(3) of the Maharashtra Value Added Tax Act, 2002

#### Interest on dues payable as a consequence of assessment order was short levied by ₹ 88 lakh in 16 cases

Under the provisions of Section 30(3) of Maharashtra Value Added Tax Act 2002, if any tax remains unpaid up to one month after the end of the period of assessment, then the dealer is liable to pay simple interest at the rates, as specified from time to time, on such tax for each month or part thereof from the date immediately following the last date of the period for which the dealer has been assessed till the date of the order of assessment.

Scrutiny of records in three divisions<sup>15</sup> relating to assessment under MVAT Act in respect of 16 dealers assessed between June 2013 and March 2017 for the periods from 2005-06 to 2012-13 revealed that the dealers had not paid the taxes within the stipulated time. The dealers were liable to pay interest of ₹ 30.29 crore against which interest of only ₹ 29.41 crore was levied while finalising the assessments. This resulted in short levy of interest amounting to ₹ 88 lakh. A few illustrative cases are as follows:

**Table 2.5.4**

(₹ in lakh)						
Sr. No.	Name of dealer Assessing Officer	Assessment Period Date of assessment	Dues after assessment	Interest levied	Interest leviable	Difference
1	M/s Bayer Material Science Pvt. Ltd. DCST E-602, LTU, Mazgaon	<u>2007-08</u> 26/03/2015	142.32	132.11	135.33	3.22
2	M/s. JSW Steel Ltd DCST E-638, LTU Mazgaon	<u>2006-07</u> 31/03/2016	263.59	336.08	339.37	3.29
3	M/s Pawan Steel DCST E-801, BA(I), Mazgaon.	<u>2005-06</u> 14/03/2015	136.82	181.27	184.71	3.43

The matter was brought to the notice of the Department and to the Government in May 2017 and July 2017. The Department accepted the audit observation in seven cases involving ₹ 19 lakh and recovered an amount of ₹ 9.57 lakh. The progress made in the recovery and reply in the remaining cases have not been received.

<sup>15</sup> Mumbai, Pune and Palghar.

### **2.5.5 Non-levy of penalty for furnishing incorrect claims in Audit Report**

**High sea sales were disallowed at the time of assessment of the dealer by the Assessing Authority. However, penalty amounting to ₹ 70.61 lakh was not levied under Section 29(3) of the MVAT Act**

As per Section 29 (3) of the MVAT Act, while or after passing any order under this Act, in respect of any person or dealer, the Commissioner, on noticing that a dealer has knowingly misclassified or concealed any transaction liable to tax may, after giving dealer a reasonable opportunity of being heard, 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.

Audit scrutiny of assessment records revealed that one dealer had claimed high sea sales in his Form 704 for the year 2008-09, which was disallowed at the time of assessment as the dealer was unable to produce the declarations and he was taxed at appropriate rate. The total tax effect in this case amounted to ₹ 70.61 lakh as shown in following table.

**Table 2.5.5**

(₹ in lakh)					
Sr. No.	Period of transaction and assessing authority	Date of assessment	Details of transaction	Amount	Tax involved
1	2008-09 DCST E-636, LTU, Mazgaon	April 2015	High sea sales	564.89	70.61 (@ 12.5%)

The reasons for non-levy of penalty despite disallowing the sales as high sea sales were not found on record. Penalty amounting to ₹ 70.61 lakh could have been levied under Section 29(3) of the MVAT Act. The Department stated (October 2017) that the case would be examined for levy of penalty.

### **2.5.6 Non-levy of penalty under Section 61(2) for late filing of Audit Report**

**Penalty aggregating to ₹ 1.07 crore for delayed filing of Audit Report in Form 704 was not levied in 11 cases**

As per provisions of Section 61(1) of the Maharashtra Value Added Tax Act, 2002 read with Rules 65 and 66 of the Maharashtra Value Added Tax Rules, 2005, every dealer having a turnover over ₹ 60 lakh, shall get his accounts in respect of such year audited by a Chartered Accountant within the prescribed period from the end of the year and submit the report of audit (in Form 704) within ten months (nine months and fifteen days vide notification dated 21 November 2012) of the year to which the report relates. Under Section 61(2) of the said Act, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, impose on him, in addition to any tax payable, a sum by way of penalty equal to one tenth percent, of the total sales, for failure to file the audit report. The Commissioner had extended the time limits for

filing the reports of audit for the years 2007-08, 2008-09 and 2009-10 vide circulars issued from time to time.

Scrutiny of records in 14<sup>16</sup> offices between March 2015 and May 2017, revealed that 14 dealers had submitted/uploaded the reports of audit in Form 704 after the due date/extended date prescribed by the Commissioner from time to time. However, the assessing officers had not issued show cause notice for levy of penalty as prescribed under the Act. Thus, penalty leviable in these cases amounting to ₹ 1.07 crore could not be levied. A few illustrations are as follows:

Table 2.5.6

(₹ in lakh)						
Sr. No.	Name of dealer Assessing Officer	Assessment Period Date of assessment	Due/ extended date of filing F-704	Actual date of filing F-704	GTO of sales	Penalty leviable under Section 61(2)
1	M/s Vishal Retail Pvt. Ltd. DCST E-608, LTU Pune	2008-09 26/12/2014	30/04/2010	01/06/2010	18,449.75	18.45
2	M/s PBA Infrastructure Pvt. Ltd. DCST E-620, LTU Mazgaon	2009-10 28/09/2015	15/02/2011	15/04/2011	27,185.13	27.19
3	M/s Bafna Motors Ratnagiri Pvt. Ltd. DCST E-003, LTU Kolhapur	2010-11 13/11/2014	31/01/2012	02/03/2012	10,219.07	10.22

The matter was brought to the notice of the Department and to the Government in May 2017 and July 2017. The Department accepted the audit observation in four cases involving ₹ 46.79 lakh and in one case raised a demand ₹ 7 lakh instead of ₹ 27.19 lakh. Scrutiny of three cases revealed that Audit Reports for the periods 2011-12, 2014-15 and 2015-16 were not filed within the stipulated date.

### 2.5.7 Excess allowance of tax credit

#### Tax was credited in excess by ₹ 16.57 lakh resulting in less raising of demand to that extent on account of interest

Audit scrutiny of assessment records revealed that a dealer had paid tax of ₹ 5.75 crore along with returns as per Form 704. In addition to this, the dealer was required to pay ₹ 16.57 lakh on account of interest on delayed payment of taxes along with returns. This amount of ₹ 16.57 lakh was not paid by the dealer but the assessing authority incorrectly treated this amount as having been deposited by the dealer, and allowed a credit of ₹ 5.92 crore. The

<sup>16</sup> DCST LTU - E-620, E-626, E-633 Mazgaon; E-608, E-615, 623 Pune; E-003 Kolhapur: DCST RRA - E-707, E-709 Mazgaon; E-010 Raigad: DCST BA- E-808, E-813, E-825 Mazgaon: DCST (Inv) E-006 Mazgaon.

omission resulted in excess credit of ₹ 16.57 lakh and less raising of demand to that extent on account of interest.

The Department accepted the observation and stated that rectification order along with demand notice for ₹ 16.57 lakh was served to the dealer in May 2017. The Department further communicated recovery of ₹ 7.63 lakh paid by the dealer in May 2017. Further progress made in recovery of the amount is awaited.

## CHAPTER III

### STAMP DUTY AND REGISTRATION FEE

#### 3.1 Tax Administration

Receipts from stamp duty and registration fee are regulated under the Indian Stamp Act 1899 (IS Act), Indian Registration Act, 1908 (IR Act) and the rules framed there-under as applicable in Maharashtra and are administered at the Government level by the Principal Secretary, Revenue Department. The Inspector General of Registration (IGR) is the head of the Stamp duty & Registration Department who is empowered with the task of superintendence and administration of registration work. He is assisted by Additional Controller of Stamps, Mumbai (ACoS), 8 Deputy Inspector Generals (DIGs), 6 Collectors of Stamp (CoS) at Mumbai and Mumbai Sub-urban District, 34 Joint District Registrars and 504 Sub-Registrars at District and Taluka levels.

#### 3.2 Internal audit

The details of audit conducted by the internal audit wings of IGR are as detailed in **Table 3.2**.

**Table 3.2**

Year	No. of units			Audit observations		
	Planned	Audited	Unaudited	Raised	Settled up to 31/03/2017	Pending as on 31/03/2017
2012-13	72	43	29	405	112	293
2013-14	72	38	34	207	53	154
2014-15	72	14	58	55	12	43
2015-16	72	11	61	115	15	100
2016-17	72	57	15	415	30	385
<b>Total</b>	<b>360</b>	<b>163</b>	<b>197</b>	<b>1,197</b>	<b>222</b>	<b>975</b>

Source: Information furnished by the Department

Thus, the facts indicate that:

- During the year 2012-13 to 2016-17, audit was carried out only in 163 offices whereas it was planned for 360 units. Thus, only 45 *per cent* of the units were covered against the units planned for internal audit.
- Only 19 *per cent* of the audit observations raised by the internal audit wing were settled.

### **3.3 Results of audit**

In 2016-17, test check of the records of 221 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 ₹ 114.86 crore in 568 observations, which fall under the categories given in **Table 3.3**.

**Table 3.3**

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	Short levy due to under valuation of property	444	102.76
2	Short levy due to misclassification of documents	17	1.31
3	Incorrect grant of exemption of stamp duty and registration fees	27	7.14
4	Non-levy of stamp duty and registration fee	48	2.28
5	Other Irregularities	32	1.37
<b>Total</b>		<b>568</b>	<b>114.86</b>

In response to the observations made in the local audit through Inspection Reports during the year 2016-17 as well as during earlier years, the Department accepted short levy and other deficiencies and recovered in 312 observations involving ₹ 9.43 crore, of which 29 observations involving ₹ 1.78 crore was pointed out during 2016-17 and rest during earlier years.

A few illustrative cases involving ₹ 16.20 crore are discussed in the succeeding paragraphs.

### 3.4 Audit observations

During scrutiny of records of the various registration offices, we noticed several cases of non-compliance of the provisions of the Maharashtra Stamp Act (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.

#### 3.4.1 Short levy of stamp duty due to -- 'Revenue Sharing' aspect

##### 'Revenue Sharing' aspect between Owners and Purchasers for calculating the market value, resulting in short levy of stamp duty of ₹ 7.50 crore

As per para 684 of Maharashtra Registration Manual (MRM), Part-II, where the developer offers to allot residential/non-residential components to the owner in lieu of the development right, the value of the residential/non-residential components should be calculated according to the prevailing rates prescribed in the statistics on the day of execution of the agreement and the duty and fees should be levied on the greater of the two values viz. the value of the consideration component or the market value of the property. On such instruments, stamp duty is leviable under provision contained in Article 5 (g-a) (i) of MS Act.

Further, as per Article 5 (g-a) (i) of MS Act, if immovable property is given to a Developer for development, construction, sale or transfer then stamp duty is leviable on conveyance<sup>1</sup> under Article 25 (b) of the said Act.

**3.4.1.1** Scrutiny of instruments in Offices of nine<sup>2</sup> Sub Registrars, revealed (July 2014 and April 2016) that in 22 cases, the development agreements were executed (2012-14) between 'owners' and 'developers' for development of land. As per recital of the agreements, the owners and developers had agreed to develop the properties on the basis of revenue sharing<sup>3</sup> on percentage<sup>4</sup> basis. The Department levied stamp duty of ₹ 3.73 crore on market value/consideration of ₹ 68.22 crore. The basis on which consideration/market value was worked out by the Department was not found on record.

As per the recitals of the documents, consideration of the property in terms of revenue sharing worked out to ₹ 202.19 crore involving stamp duty of ₹ 8.74 crore. Thus, there was short levy of stamp duty of ₹ five crore.

After being pointed out (July 2014 and June 2016), the IGR, Pune accepted (October 2015 and January 2017) the audit observations. The Department

<sup>1</sup> Conveyance means a conveyance on sale by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, *inter vivos*, and which is not otherwise specifically provided for by Schedule-I.

<sup>2</sup> Sub Registrar-II, Khed, Pune, Joint Sub Registrar, Haveli-XV, Pune, Joint Sub Registrar, Haveli-XXIII, Pune, Joint Sub Registrar, Haveli-XIX, Pune, Sub Registrar, Haveli-XXIV, Pune, Joint Sub Registrar, Haveli-XXI, Pune, Joint Sub Registrar-IV, Kurla, Mumbai, Joint Sub Registrar, Haveli-I, Pune and Sub Registrar, Haveli-IX, Pune.

<sup>3</sup> Revenue realized from selling of constructed units in open market.

<sup>4</sup> Ranged between 21:79 and 48:52.

raised demand of ₹ 5.28 crore<sup>5</sup>. Details of recovery, if any made, were not received from the Department (February 2018).

All the above observations were brought to the notice of Government (June 2017 and August 2017). Reply thereto was awaited (February 2018).

**3.4.1.2** As per instruction 33 of Annual Statement of Rate (ASR) for the year 2015 where the developer offers to share revenue from sale of residential/non-residential units to the owner in lieu of the development right, the value of the residential/non-residential components should be calculated according to the prevailing rates prescribed in the ASR and the consideration for the purpose of levy of stamp duty would be 85 *per cent* of Owner's share. This ratio was effective from 1 January 2015 onwards. Thus, upto 2015 the consideration for the purpose of levy of stamp duty would be 100 *per cent* of Owner's share and from 2015 onwards it was 85 *per cent* of Owner's share.

Scrutiny of instruments in Offices of three<sup>6</sup> Sub Registrars, revealed (May and September 2016) that in three cases, the development agreements were executed (2015) between 'owners' and 'developers' for development of land. As per recital of the agreement the owners and developers had agreed to develop the properties on the basis of revenue sharing on certain percentage<sup>7</sup>. The Department levied stamp duty of ₹ 1.82 crore on market value/consideration of ₹ 39.30 crore. The basis on which consideration/market value was worked out by the Department was not found on record.

As per the recitals of the documents, consideration of the property in terms of revenue sharing worked out to ₹ 95.80 crore (85 *per cent*) involving stamp duty of ₹ 4.32 crore. Thus, there was short levy of stamp duty of ₹ 2.50 crore.

After being pointed out (September and October 2016), the IGR, Pune accepted (December 2016 and January 2017) the audit observations. The Department raised demand of ₹ 2.50 crore. The matter relating to short levy of stamp duty has been taken up with the Department.

All the above observations were brought to the notice of Government (June 2017 and August 2017). Reply thereto was awaited (February 2018).

### **3.4.2 Short levy of stamp duty due to incorrect calculation of market value of the property**

**Department calculated the market value considering the property as tenanted property, without ensuring documentary evidence for the same, resulting in short levy of stamp duty of ₹ 3.15 crore**

As per Article 25 (a), (b), or (c) of Schedule-1 of MS Act, 1958, stamp duty is leviable on a conveyance deed on the market value of the property or the consideration, whichever is higher. Further, instruction number one of Annual Schedule of Rates (ASR) and a note made thereunder prescribed method for calculation of market value of the property. Its stipulated that where such

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<sup>5</sup> While calculating the consideration applied ASR of 2015 instead of ASR of the respective years.

<sup>6</sup> Joint Sub Registrar, Haveli-IX, Pune, Joint Sub Registrar, Haveli-XIX, Pune and Joint Sub Registrar, Haveli-XIV, Pune.

<sup>7</sup> Ranged between 40:60 and 60:40.

property is tenanted (provided that documentary evidence *i.e.* certificates given by the Municipal Corporation/Municipal Council/Gram Panchayat, Electricity Bill, Telephone bill for tenancy) should be attached with the deed.

A conveyance deed was executed (July 2011) in the Office of Joint Sub Registrar-III, Jalgaon between the vendor and the purchaser for sale of land admeasuring 51,997.795 sqm along with constructed godown of area admeasuring 35,626.34 sqm on it. The land was bearing CTS No. 2682 situated at Jalgaon within the Jalgaon Municipal Corporation limits. The document was adjudicated by the Collector of Stamps, Jalgaon, who assessed the market value of property at ₹ 39.60 lakh by applying instruction number one<sup>8</sup> of ASR (on the basis of cash receipt of monthly rent of ₹ 37,000) and levied the stamp duty at the rate of six *per cent* amounting to ₹ 2.38 lakh.

Scrutiny revealed (April 2013) that the benefit of the tenanted property was granted to the executants on the basis of monthly receipts of the tenancy instead of required documents such as certificates given by the Municipal Corporation Electric Bill, Telephone bill etc as prescribed in instruction number one of ASR. Hence, calculation of market value as per instruction number one of ASR was not admissible. As such, the market value of the property, as per ASR was worked out to ₹ 52.95 crore on which stamp duty of ₹ 3.18 crore at the rate of six *per cent* was required to be levied. This resulted in short levy of stamp duty by ₹ 3.15 crore<sup>9</sup>.

After being pointed out by audit (April and May 2015), the Chief Controlling Revenue Authority (CCRA), MS, Pune verified the facts and accepted (June 2016) the observation and ordered the recovery of stamp duty of ₹ 3.15 crore.

This was brought to the notice of Government (May 2017 and August 2017). Reply thereto was awaited (February 2018).

### 3.4.3 Short levy of stamp duty on Assignment Deed

#### Short levy of stamp duty of ₹ 1.58 crore due to irregular grant of bulk land benefit in valuation of a property

As per instruction number 16 (b) contained in ASR, the market value of the bulk land should be worked out in accordance with the slab rates mentioned in it. This facility is not available to the plots or layouts which are approved by the Competent Authority<sup>10</sup>. Further, as per provision contained in Article 60 of MS Act, 1958, in case of transfer of lease by way of assignment<sup>11</sup>, the stamp duty is levied as is leviable on a conveyance under Article 25 on market value of the property. Further, as per note three under instructions No. 16 (b), issued

<sup>8</sup> If area occupied by the tenant is more than the area which is constructed as per admissibility, then the market value of the property should be calculated = 16 X 7 X monthly rent received from tenant.

<sup>9</sup> Stamp duty leviable ₹ 3.18 crore - Stamp duty levied ₹ 2.38 lakh.

<sup>10</sup> In the instance case Competent Authority was Maharashtra Industrial Development Corporation.

<sup>11</sup> A transfer of rights in real property or Personal Property to another that gives the recipient the transferee the rights that the owner or holder of the property the transferor had prior to the transfer.

by the IGR, Pune the bulk land benefit <sup>12</sup> should not be given to the plot in layout approved by Competent Authority.

An assignment deed was executed (October 2014) in the Office of the Joint Sub Registrar, Haveli-III, Pune between assignor and assignee for transfer of lease by way of assignment of part of land admeasuring 36,421.30 sqm from the plot BG-80 situated at Bhosari block in Pimpri Industrial Area under Maharashtra Industrial Development Corporation (MIDC). The Department worked out the market value of the property at ₹ 90.20 crore by giving bulk land benefit of ₹ 49.58 crore and levied stamp duty at the rate of six <sup>13</sup> per cent of ₹ 5.41 crore.

Audit observed (January 2016) that the plot was a part of another property for which layout was approved by MIDC. Thus, bulk land benefit was not admissible to this property. Also, stamp duty of five per cent was applicable on the above transaction as Local Body Tax Cess is not leviable on assignment deed. As per ASR 2014, the market value of the property worked out to ₹ 139.78 crore, on which stamp duty at the rate of five per cent of ₹ 6.99 crore was leviable. Thus, irregular grant of bulk land benefit in calculation of market value of the property resulted in short levy of stamp duty of ₹ 1.58 crore<sup>14</sup>.

After this was pointed out (January 2016 and February 2016), the Joint District Registrar and Collector of Stamps, Pune (City) accepted (October 2016) the observation and calculated the market value to ₹ 152.64 crore<sup>15</sup> and worked out short levy of stamp duty of ₹ 3.75 crore. However, the rate of stamp duty was incorrectly applied as six per cent instead of five per cent. This mistake was communicated to the Department in April 2017. The progress made in recovering the amount is still awaited (February 2018).

This was brought to the notice of Government (April 2017 and August 2017). Reply thereto was awaited (February 2018).

#### **3.4.4 Short levy of stamp duty due to non-consideration of renewal period of Lease**

**Department did not consider the renewal clause as part of 'lease deed' for calculation of market value, resulting in short levy of stamp duty of ₹ 1.52 crore**

**3.4.4.1** As per Article 36 (iii) of the MS Act, 1958, in case of lease where period of lease exceeds ten years with a renewal clause, stamp duty is leviable on 50 per cent of market value of the property. Further, as per Explanation-II, the renewal period, if specifically mentioned, shall be treated as part of the present lease.

Scrutiny of registered documents in Office of the Joint Sub Registrar, Haveli-III, Pune revealed that a lease deed was executed between lessor and lessee for

<sup>12</sup> The value of the land is less when sold in bulk than that sold in plots.

<sup>13</sup> Stamp duty five percent and Local Body Tax (LBT) Cess one percent.

<sup>14</sup> Stamp duty leviable ₹ 6.99 crore – stamp duty levied ₹ 5.41 crore.

<sup>15</sup> Cost of land ₹139.78 crore + ₹ 12.85 crore cost of constructed area on the land (this was not considered by audit in calculation of market value).

the property having built-up area of 1,92,767.70 sqft. The said lease was initially for a period of 10 years with an option of renewal for an additional period of five years. The Department worked out the market value of the property at ₹ 105.49 crore and levied stamp duty of ₹ 1.32 crore on 25 per cent of market value treating the lease period as 10 years. Since renewal period of five years was in perpetuity, it should have been treated as part of the lease and accordingly stamp duty of ₹ 2.67 crore was to be levied on 50 per cent of the market value (₹ 106.79 crore). Thus, non-consideration of renewal period resulted in short levy of stamp duty of ₹ 1.35 crore.

After this was pointed out (January 2015 and February 2015), the Joint District Registrar and Collector of Stamps, Pune (City) accepted (October 2015) the short levy. Progress in recovery has not been received (February 2018).

**3.4.4.2** As per Article 36 (iv) of the MS Act, 1958, in case of lease for a period exceeding twenty-nine years, with a renewal clause contingent or otherwise, stamp duty is leviable on 90 per cent of the market value of the property.

Two lease deeds were executed by a lessor (March 2012), in the Office of Joint Sub Registrar-VII, Thane at Bhayandar for a period of 30 years with two lessees. The leases were executed for ground floor and first floor bearing survey no. 237 and 241 situated at village Navghar within Mira-Bhayandar Municipal Corporation, Taluka and District Thane. The Department levied stamp duty of ₹ 21.61 lakh on ₹ 4.32 crore, (i.e. 50 per cent of the value of the property ₹ 8.64 crore) instead of stamp duty of ₹ 38.89 lakh on ₹ 7.77 crore (i.e. 90 per cent of the value of the property). This resulted in short levy of stamp duty of ₹ 17.28 lakh<sup>16</sup>.

After this was pointed out (April 2013 and May 2013), the Joint District Registrar and Collector of Stamps, Thane (City) accepted (August 2015) the observation and stated that the action for recovery of short levy of stamp duty of ₹ 17.28 lakh had been initiated under Section 32 (A) of MS Act.

This was brought to the notice of Government (April 2017 and August 2017). Reply thereto was awaited (February 2018).

### **3.4.5 Short levy of stamp duty of ₹ 1.22 crore due to undervaluation of property**

**Department did not work out the market value of the property as per ASR which resulted in undervaluation of property and short levy of stamp duty of ₹ 1.22 crore**

As per Article 25 of MS Act, 1958, stamp duty is leviable on true market value of property, which is the subject matter of Conveyance. As per the section 2 (na) of 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.

<sup>16</sup> Stamp duty leviable ₹ 38.89 lakh – Stamp duty levied ₹ 21.61 lakh.

True market value is determined by considering the rates prescribed in the ASR. In the ASR issued by the Inspector General of Registration (IGR), Pune, rates for deriving the market value of the property are prescribed as per the use of property for residential or commercial purpose.

**3.4.5.1** A deed of transfer was executed (February 2013) in the Office of Joint Sub Registrar, Haveli-XXIII, Pune. The transaction was for sale of office space No. 5 and 6 on first floor admeasuring 3,740.08 sqm along with 500 sqm car parking in building No. A in village Lohgaon on Pune-Nagar road within Pune Municipal Corporation limit. The Department worked out the market value of the property at ₹ 9.50 crore and levied the stamp duty at the rate of five *per cent* amounting to ₹ 47.50 lakh. The details of working of market value by department were not available.

Scrutiny of recital of document revealed (March 2015) that the property was meant for commercial use, hence as per ASR-2013, the rate of ₹ 65,800 per sqm was applicable on the property for deriving the market value. Accordingly, the market value of the property was worked out to ₹ 20.51 crore on which stamp duty of ₹ 1.23 crore was required to be levied. This resulted in short levy the stamp duty by ₹ 75.56 lakh.

After being pointed out by audit (March 2015 and April 2015), the Joint District Registrar & Collector of Stamps, Pune (City) (November 2015) accepted the observation and ordered to initiate action for short levy of stamp duty of ₹ 75.56 lakh.

This was brought to the notice of Government (May 2017 and August 2017). Reply thereto was awaited (February 2018).

**3.4.5.2** A conveyance deed was executed (January 2014) in the Office of Joint Sub Registrar, Haveli-XXII, Pune, between owner and purchaser for sale of land admeasuring 5,100 sqm bearing survey number 5/3, situated at mouza Vadgaonsheri, taluka Haveli, within the limits of Pune Municipal Corporation, Pune. The Department determined the market value of the land at ₹ 4.26 crore and levied stamp duty of ₹ 25.62 lakh. However, the basis on which market value was calculated was not found on record.

Scrutiny of related documents revealed (June 2015) that the above land was classified under residential zone of Pune Municipal Corporation and as per ASR-2014, rate of ₹ 18,040 per sqm was applicable on it. The market value of the land worked out to ₹ 8.35 crore on which stamp duty of ₹ 50.12 lakh<sup>17</sup> was leviable. This resulted in short levy of stamp duty of ₹ 24.50 lakh<sup>18</sup>.

After being pointed out (June 2015 and July 2015), the Joint District Registrar and Collector of Stamps, Pune (City) accepted (October 2015) the observation and ordered recovery of stamp duty of ₹ 24.50 lakh under section 32A of MS Act.

This was brought to the notice of Government (May 2017 and August 2017). Reply thereto was awaited (February 2018).

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<sup>17</sup> Six *per cent* of market value (₹ 8.35 crore).

<sup>18</sup> ₹ 50.12 lakh - ₹ 25.62 lakh.

**3.4.5.3** A conveyance deed was executed (October 2012) in the Office of the Joint Sub Registrar, Thane-IV between the ‘vendor’ and the ‘purchaser’ for land admeasuring 3,110 sqm at survey No. 125 village Navghar within the limits of Mira-Bhayandar Municipal Corporation for the consideration of ₹ 5 lakh. As per ASR-2012, the said land in survey No. 125 was classified under zone 11/40 for which rate of open land was ₹ 18,900 per sqm. Accordingly, the market value of the property was ₹ 5.17 crore<sup>19</sup> which was higher than the consideration, hence the stamp duty at the rate of six *per cent* of ₹ 31.04 lakh was leviable on it.

Audit observed (March 2014) that Department worked out market value of the land at ₹ 1.48 crore considering rate of open land ₹ 5,400 per sqm pertaining to zone 11/42 and levied the stamp duty of ₹ 8.87 lakh at the rate of six *per cent* on market value of the property. Thus, application of incorrect rate resulted in short levy of stamp duty of ₹ 22.17 lakh<sup>20</sup>.

After being pointed out by audit (March 2014), the Joint District Registrar and Collector of Stamps, Thane (City) revalued the property and accepted (February 2017) the observation for short levy of stamp duty of ₹ 22.17 lakh.

This was brought to the notice of Government (April 2017 and August 2017). Reply thereto was awaited (February 2018).

### **3.4.6 Short levy of stamp duty due to misclassification of document**

#### **Department misclassified the development agreement as Works Contract, resulting in short levy of stamp duty of ₹ 92.48 lakh**

As per Section 6 of MS Act, where an instrument comes within two or more of the description in Schedule-I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties. Further, as per article 5 (g-a) of MS Act, stamp duty on 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, is leviable at the same rate as leviable on conveyance under clause (b) or (c) of Article 25 of MS Act, on the market value of the property.

A deed of Memorandum of Understanding (MoU) was executed (May 2015) in the Office of Joint Sub Registrar-V, Vasai, Palghar, between Owner and Contractor (Developer). The Department had worked out the market value of the property of ₹ 35 crore and levied the stamp duty of ₹ 3.49 lakh<sup>21</sup> on the market value treating the agreement document as ‘Works Contract Document’.

Scrutiny of records revealed (April 2016) that the developer was to develop owner’s land admeasuring 2,00,000 sqft (18,587 sqm) by constructing a building on it. As per clause 11 of the MoU, the developer would get

<sup>19</sup> Market value as per instruction 16 (B) of ASR-2012  
500 sqm X ₹ 18,900 X 100% = ₹ 94,50,000  
1,500 sqm X ₹ 18,900 X 90% = ₹ 2,55,15,000  
1,110 sqm X ₹ 18,900 X 80% = ₹ 1,67,83,200  
Total = ₹ 5,17,48,200.

<sup>20</sup> Stamp duty leviable ₹ 31.04 lakh – Stamp duty levied ₹ 8.87 lakh.

<sup>21</sup> at the rate of 0.1 *per cent*, under Article 63 (b) of MS Act.

58,853 sqft (5,469.61 sqm) constructed flats (at the rate of ₹ 2,750 per sqft) in the form of 50 per cent consideration and 50 per cent consideration would be in the form of cash payment of ₹ 16.11 crore. Further, it was also mutually decided that if owners fails to pay the remaining 50 per cent amount by cash/cheque, then that consideration will also be adjusted in the form of flats and shops of the constructed building. As per the clauses of MoU, audit found that it was a 'development agreement' and not a 'Works Contract' which shall be stamped under Article 5 (g-a) (i)<sup>22</sup> of MS Act.

As per ASR-2015 the consideration of owner, worked out to ₹ 19.19 crore involving stamp duty of ₹ 95.97 lakh. Thus, misclassification of document resulted in short levy of stamp duty of ₹ 92.48 lakh.

After being pointed out by audit (May 2016 and June 2016), the Joint District Registrar & Collector of Stamps, Thane (Rural) accepted (January 2017) the observation and initiated action for recovery.

Progress on recovery was awaited (February 2018).

### **3.4.7 Short levy of stamp duty due to undervaluation of market value of Lease Deeds**

**Department did not apply the rates prescribed in the ASR while calculating of market value of lease deeds, resulting in short levy of stamp duty of ₹ 29.74 lakh**

As per Article 36 (ii) of the MS Act, 1958, in case of lease where period of lease exceeds five years but not exceeding ten years with a renewal clause contingent or otherwise, stamp duty is leviable on 25 per cent of market value of the property.

Two lease deeds were executed (September 2013) in the Office of the Joint Sub Registrar, Haveli-III, Pune between lessors and lessees for the properties having built-up area of 42,251.14 sqm<sup>23</sup>. The said leases were initially for a period of three years with an option of renewal for an additional period of two terms of three years each. The department worked out the market value of the property at ₹ 223.48 crore<sup>24</sup> and levied stamp duty of ₹ 2.79 crore<sup>25</sup> on 25 per cent of market value at the rate of five per cent.

Scrutiny of related documents revealed (January 2015) that the above properties were classified under zone 30/456.1 and as per ASR-2013, the rate for shop/commercial unit at ground floor of ₹ 91,100 per sqm and for unit situated at upper floor of ₹ 66,200 per sqm were applicable on it. Considering the rate applicable as per ASR, the market value of the properties were worked out to ₹ 247.28 crore<sup>26</sup> and stamp duty on 25 per cent of market value of ₹ 61.82 crore amounting to ₹ 3.09 crore was to be levied. Thus, undervaluation of the lease properties resulted in short levy of stamp duty of ₹ 29.74 lakh<sup>27</sup>.

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<sup>22</sup> at the rate of five per cent.

<sup>23</sup> 37,753.84 sqm + 4,497.3 sqm.

<sup>24</sup> ₹ 2,07,53,14,375 + ₹ 15,95,04,812.

<sup>25</sup> ₹ 2,59,42,000 + ₹ 19,94,000.

<sup>26</sup> ₹ 2,16,49,80,612 + ₹ 30,78,46,604.

<sup>27</sup> Stamp duty leviable ₹ 3,09,10,340 - Stamp duty levied ₹ 2,79,36,000.

After being pointed out by audit (January 2015 and February 2015), the Joint District Registrar and Collector of Stamps, Pune (City) accepted (December 2015) the short levy of stamp duty.

This was brought to the notice of Government (May 2017 and August 2017). Reply thereto was awaited (February 2018).

## CHAPTER IV

### LAND REVENUE

#### 4.1 Tax Administration

The administration of Land Revenue Department vests with the Principal Secretary, Revenue Department. For the purpose of administration, the State has been divided into six divisions and each division is headed by the Divisional Commissioner who is assisted by District Collectors. There are 36 District Collectors, 121 revenue sub divisions, 358 Tahsils headed by the Tahsildars. The Revenue Inspector and Village Officers (Talathi) are responsible at the grass root level for collecting the land revenue and dues recoverable as arrears of land revenue.

#### 4.2 Results of audit

In 2016-17, test check of the records of 86 units of the Land Revenue, showed Non levy/short levy of Occupancy Price, Lease Rent, Unearned income, non levy of Non-Agriculture Assessment etc. and other irregularities amounting to ₹ 187.92 crore in 251 observations, which fall under the categories given below in **Table 4.2**.

**Table 4.2**

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	Performance Audit of “Encroachment on Government land for non-agricultural purposes”	1	0.00
2	Audit of “Management of Nazul Lands in Vidarbha Region”	1	85.90
3	Non levy/short levy of measurement fees, sanad fees, license fee etc.	5	17.17
4	Non levy/short levy of fine, non-auction/short recovery of surface rent on account of sand ghats, royalty etc.	45	14.21
5	Non levy/short levy/incorrect levy of Non-Agriculture Assessment (NAA), ZP/VP cess and conversion tax.	48	5.99
6	Non levy/short levy of occupancy price, lease rent, unearned income etc.	63	44.83
7	Other irregularities	88	19.82
<b>Total</b>		<b>251</b>	<b>187.92</b>

In response to our observations made in the local audit reports during the year 2016-17 as well as during earlier years, the Department accepted and recovered under assessments/other deficiencies involving ₹ 192.52 crore in

443 observations, out of which five observations involving ₹ 30.12 lakh were pointed out during 2016-17 and the rest during earlier years.

A few illustrative cases involving ₹ 87.69 crore including a performance audit on “Encroachment on Government land for non-agricultural purposes” are discussed in the succeeding paragraphs.

### **4.3 Performance Audit on “Encroachment on Government land for non-agricultural purposes”**

Performance Audit on “Encroachment on Government land for non-agricultural purposes” revealed the following:

The Government did not maintain any database of the Government land in the State and also data of the encroachment on government land was not available at District and Tahsil level. The data prepared under the *Maharajaswa Abhiyan* was not reliable. There were discrepancies in data recorded at various levels. Encroachment register were not properly maintained. No action was taken for eviction of encroachment. No periodical survey was conducted by Circle Officers for identification of encroachment.

- Cross verification by Audit of encroachment registers in 416 test checked villages with property cards and other records in the Tehsil indicated that encroachments had taken place in 77 villages which were not included in the registers.

**(Paragraph 4.3.1.1)**

- Niphad Tahsil of Nasik District consisted of 135 villages. The Tahsildar reported 582 cases of encroachments in the Tahsil. The village level Encroachment Registers showed 1,270 cases of encroachments on Government land in 55 villages selected for test check. The encroachments could be more if encroachment cases in all the 135 villages were considered.

**(Paragraph 4.3.1.3)**

Government land measuring 67,490.20 sqm of Lendi Talab (pond), a water body in *Mouza Nagpur Khas* was encroached with the construction of 1,200 to 1,500 houses.

In Thane city, a lake existed 30 to 35 years ago and now a slum comprising 300 to 350 houses had grown up and remaining open land was used for parking vehicles.

**(Paragraph 4.3.2.2)**

Encroachment on Government land in respect of brick kilns in three Tahsils was 1,74,421.71 sqm.

**(Paragraph 4.3.2.3)**

No action for eviction of encroachment was taken even after noticing it. In Thane District, Government land was transferred to Municipal Corporations (MC) for protection against encroachment. However, it did not serve the purpose as cases of encroachment by MC itself were noticed on the transferred land. The encroachment on grazing land was not removed as Revenue Department passed on the responsibility to concerned Local bodies.

- Audit noticed that Government land reserved (September 2010) in District Plan for public purpose like playground, parks, cremation ground, roads etc., in the custody of Municipal Corporations (MC) in Thane District was encroached.

**(Paragraph 4.3.2.5)**

- Unauthorised transfer of leased land by manipulating document and encroachment was noticed in village Waladgaon of Aurangabad Tahsil. The land was allotted on lease for touring talkies purpose and the lessee sold the leased land.

**(Paragraph 4.3.2.6)**

The monitoring by the Department was weak on account of (i) absence of periodical reports for keeping a check over encroachment, (ii) lack of efforts to obtain data/information on Government land and (iii) laxity of the Department in taking penal action against encroachers.

- Scrutiny of records revealed that a road included in Development Plan of Nagpur city was encroached for residential purposes. There was no co-ordination between the Government and NMC to ensure the eviction of the encroachments made.

**(Paragraph 4.3.2.7)**

- Information furnished by Tahsildars of test-checked Tahsils revealed that in 102 villages of nine Tahsils 507.87 ha of grazing land was encroached and had not been evicted and handed over to Gram Panchayat despite Supreme Court orders..

**(Paragraph 4.3.2.8)**

- The records of allotment of Government land were test checked at District Collector/Tahsil offices. The cases of breach of terms and conditions of allotment was noticed in 13 cases involving area of 1,39,651 sqm.

The flats constructed on the Government land allotted to a society of 218 members of tribal community for residential purposes were unauthorisedly transferred to persons other than the 218 members

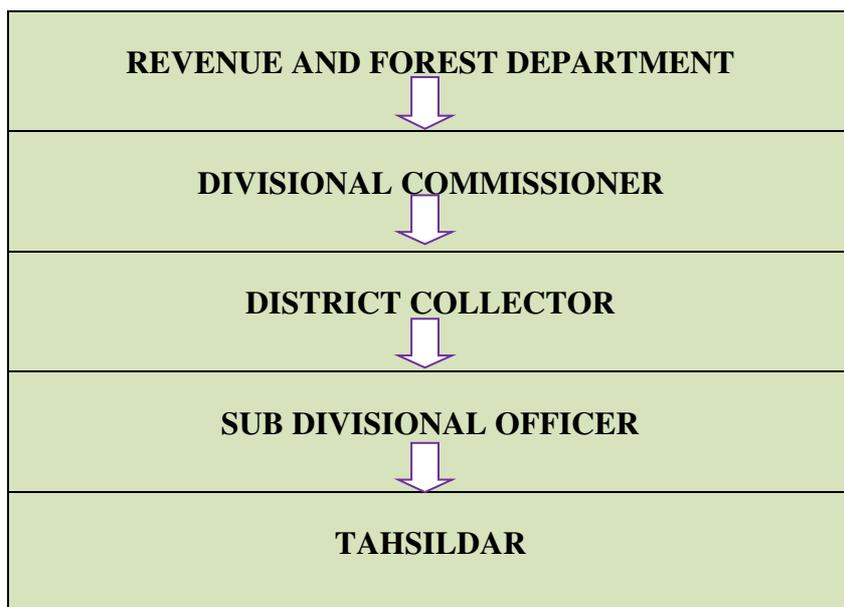
**(Paragraph 4.3.3)**

## Introduction

The management of Government land is governed by the provisions of Maharashtra Land Revenue (MLR) Code 1966 and Disposal of Government Land Rules, 1971 made thereunder. As per Section 53 of MLR the Government land held by any occupant by way of encroachment or trespass is called unauthorised occupation and any person occupying any land after expiry of the period of lease or tenancy or termination of the lease or tenancy or breach of any conditions annexed to the tenure respectively is also a unauthorized occupant. Sections 50, 51, 52 of the MLR Code deal with the removal, regularization, fixation of value of land and eviction from the encroached land respectively. The state Government had from time to time issued Government resolutions/instructions for regularisation of the encroached land. This regularisation is subject to the terms and conditions mentioned in each resolution.

The Government of Maharashtra, Revenue and Forest Department had initiated (August 2015 and continued thereafter) a drive, *Maharajaswa Abhiyan* for smooth functioning of revenue Department which *inter alia* included identification and eviction of encroachments on Government land.

## Organisational setup



## Audit Objectives

The audit was conducted with the view to ascertain that

- (i) a proper mechanism existed in the Department for identification, eviction and regularization of encroached land;
- (ii) the land revenue records of the encroachment cases were maintained properly;
- (iii) and adequate and effective monitoring controls existed in the state for safeguarding the Government land.

### **Audit Criteria**

The audit criteria for performance audit were derived from the provisions of the following Acts and Rules/notifications issued there under:

- (i) Maharashtra Land Revenue Code, 1966,
- (ii) Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971,
- (iii) Maharashtra Land Revenue Circle Officers and Circle Inspectors (Duties and Functions) Rules, 1970.
- (iv) Government resolution and circulars issued from time to time.

### **Scope and methodology of Audit**

The Performance Audit was conducted between January 2017 and June 2017 covering the period from 2011-12 to 2015-16.

The State is divided into six revenue divisions. Of these, audit test checked the records of six Districts<sup>1</sup> (one from each division having highest population), two Tahsils from each selected District and records related with the regularization of encroachments at Mantralaya. 7/12 extracts/Property cards<sup>2</sup> of Government lands were also checked on random basis at Tahsil level. The encroachment cases pertaining to periods prior to March 2011 were also scrutinized during the audit. Leads of probable areas of encroachment of land were also gathered from Google Earth application. The findings appearing in this report on the basis of this application were got confirmed by the Department.

An Entry Conference was held in February 2017 with the Principal Secretary, Revenue and Forest Department (RFD) in which the objectives, scope and methodology of audit were explained. The audit findings were reported to the Government in July 2017. An Exit Conference was held in September 2017 with the Principal Secretary, RFD in which the audit findings were discussed in detail. The replies received during the exit conference and at other points of time have been appropriately incorporated in the relevant paragraphs.

<sup>1</sup> Amravati (Amravati & Morshi), Aurangabad (Aurangabad & Paithan), Nagpur (Nagpur & Hingna), Nasik (Nasik & Niphad), Pune (Pune & Haveli) and Thane (Thane & Kalyan).

<sup>2</sup> The 7/12 extract is an extract from the land register maintained by the revenue Department of the Government of Maharashtra, a state in India. The extract gives information of the survey number of the land, the name of the owner of the land and its cultivator, the area of the land, the type of cultivation - whether irrigated or rain fed, the crops planted in the last cultivating season. A property card provides information about the ownership of a property and history of holdings of a land located in urban area.

## **Audit findings**

Audit noticed a number of system and compliance deficiencies during the performance audit in regulations and identification of cases of encroachments at various levels. These are briefly discussed as follows:

### **4.3.1 Maintenance of records and identification of encroachments**

#### **4.3.1.1 Maintenance and submission of Encroachment register**

The Land Revenue Rule book provides for maintenance of a register at village level in form number 1-E (Encroachment Register). Information regarding survey number of land, name of the encroachers, area of encroachment and date on which encroachment was noticed, period from which land was encroached and assessment to be recovered from the year is required to be entered in the Encroachment Register. This was required to be maintained by Talathi<sup>3</sup>. The register was required to be submitted to Tahsildar, who was responsible for taking action under the Maharashtra Land Revenue Code (MLR Code) against encroachers.

Audit scrutinised the Encroachment Registers of 416 villages out of 1,457 villages in twelve test-checked Tahsils. Out of these, in 204 villages the registers were maintained but were incomplete. The essential information like area/description of land encroached, date of encroachment, purpose of encroachment, etc. were not recorded in the registers. In the registers of the 203 villages the Department had reported nil encroachment. In the remaining 9 villages entries made in encroachment register were correctly filled. In 337 villages the encroachment registers had not been submitted by Talathi to Tahsildar. This indicated that the Department failed to maintain the records properly and keep a vigil on encroachment cases. In absence of records the total number of encroachments could not be ascertained.

Cross verification of these registers with the records at Tahsil level like 7/12 abstract/property cards, complaint cases etc. and leads from Google Earth application revealed encroachments in 77 villages which were not recorded in the registers though the encroachments had taken place in the villages. These are discussed in the respective paragraphs.

**Manipulation of encroachment registers:** The Sub Divisional Officer (SDO) had received complaints against the deliberate entries of encroachment made in encroachment registers of three villages<sup>4</sup> of Thane Tahsil. On investigation it was found that the period and the name of Talathi who inserted entries were not on record. Therefore, the entries were cancelled by SDO and the registers were kept in the custody of Tahsil office and were not maintained in those villages.

Further, in four villages<sup>5</sup> of Thane Tahsil, serial numbers of the encroachment registers were changed by inserting entries in between the existing numbers. These cases were pointed out by audit; action taken has not been intimated.

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<sup>3</sup> Revenue officer at Village level under Tahsildar.

<sup>4</sup> Agasan, Dativali and Sabe.

<sup>5</sup> Balkum, Kalwa, Maziwade and Uttan.

Since, the date of encroachment is an important factor while regularising encroachment, its manipulation in the records is fraught with the risk of granting benefits to the unintended persons. The above facts indicate that there was need not only for ensuring the proper maintenance of records but also for its regular submission to the higher authorities so that its correctness was ensured and monitoring done properly.

In exit conference (September 2017), Principal Secretary stated that the practice of recording encroachments in encroachment register (1-E) was apparently discontinued apprehending it would create record for claiming rights on Government lands and would serve as direct evidence of physical possession in any legal proceeding. The reply was not in consonance with the provisions of the MLR Code. It is recommended that the records may be maintained in a proper manner so that the process of removal, eviction or regularisation is timely taken by the Department.

#### **4.3.1.2 Inspection by Circle Officers**

Rule 17 of the Maharashtra Land Revenue Circle Officers and Circle Inspectors (Duties and Functions) Rules, 1970 read with Revenue and Forest Department's circular of February 1969 provided that the Circle Officer should certify every year that he had inspected all Government lands and that there were no encroachments thereon and in case of encroachment, he had to report it to his superior officer (Tahsildar).

The records produced to audit indicated that inspection for identification of encroached land were not made by any Circle Officers in the test checked Tahsils. The Principal Secretary accepted (September 2017) audit contention and stated that it was expected to conduct inspection of Government lands in the *Maharajaswa Abhiyan* (Abhiyan). However, inspection certificate was not insisted upon. Now a certificate for the inspection conducted would also be obtained from respective Circle officers.

The fact however remained that the Department had not followed the existing system and as a result, it had to rely on the Abhiyan. The system prescribed in MLR Code needs to be followed irrespective of any other efforts made by the Government.

#### **4.3.1.3 Accuracy of the encroachment data available in District, Tahsil and Village levels**

One of the major components of *Maharajaswa Abhiyan* (Abhiyan) was identification and eviction of encroachments on Government land. A monthly return indicating the cases of encroachments were required to be reported to the District Collectors by Tahsildars. The reports were consolidated at District level and submitted to the Government under the Abhiyan.

Audit cross checked the monthly returns submitted by the six District Collectors to the RFD with the Encroachment Registers (1-E) maintained by 416 villages. The discrepancies noticed between the two are discussed below.

(i) Niphad Tahsil of Nasik District consisted of 135 villages. The Tahsildar reported 582 cases of encroachments in the Tahsil. The village level Encroachment Registers showed 1,270 cases of encroachments on

Government land in 55 villages selected for test check. The encroachments could be more if encroachment cases in all the 135 villages considered.

(ii) In Hingna Tahsil (134 villages) of Nagpur District, monthly returns of December 2015 and January 2016 were at variance. The monthly return of December 2015 showed the opening balance as on 31 July 2015 as nil while the monthly return of January 2016 showed the opening balance as on 31 July 2015 as 16. All these 16 cases were shown as evicted. The figures were at variance again with the Encroachment Register maintained with the Tahsil which indicated that 1,701 encroachment cases in Encroachment Registers of three<sup>6</sup> villages only out of 134 villages in the Tahsil. The encroachments could be more if encroachment cases in all the villages of Tahsil were considered.

(iii) Records revealed that Tahsildar, Nasik had reported 86 encroachment cases in monthly return of February 2016. However, District Collector, Nasik while consolidating the monthly return for the month depicted only 29 encroachment cases against Nasik Tahsil.

The mismatch between the two sets of information needed to be reviewed and rectified. It may be ensured that correct information is submitted to the Government through these monthly returns.

The Principal Secretary accepted the facts and stated (September 2017) that the data in Abhiyan was only a numerical representation of encroachment cases while details of individual encroachment cases were recorded in 1-E register. He further stated that necessary instructions would be issued to ensure that number of encroachment cases was compiled correctly at Tahsil, District and Government levels.

#### **4.3.1.4 Absence of central database for Government Land and encroachment thereof**

The RFD circular of February 1982 stipulated that it would be the responsibility of the concerned District Collectors that no new encroachments came up on any open land. The new encroachments were to be immediately removed in accordance with the provisions of the law.

Audit observed that the Government had not maintained any data base either electronically or manually at Tahsil, District or Government level for Government land. The information was compiled Tahsil wise manually by District Collector, Nasik. The format adopted did not contain the full details/information of the encroached land as critical information like date from which land had been encroached, number of encroachers etc. was not found entered.

Compilation of data under Abhiyan was also found defective as the discrepancies between the figures at various levels were noticed and discussed in Paragraph 4.3.1.3.

The Principal Secretary accepted the facts and stated (September 2017) that steps had been taken under Abhiyan for preparation of a comprehensive database of Government lands.

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<sup>6</sup> Vagdara, Vanadongari and Savangi villages in Hingna Tahsil of Nagpur District.

Thus, the Department had not made any serious effort for having an accurate and updated data for the entire state so that removal of the encroachments could be planned in a systematic, transparent and time bound manner.

### 4.3.2 Action against encroachment

Section 53 (1) of the MLR Code, 1966 provided that if in the opinion of the Collector any person is unauthorisedly occupying or wrongfully in possession of any land vesting in the State Government, it shall be lawful for the Collector to evict such person. In absence of a reliable encroachment data at District and Tahsil levels, audit could not ascertain the total quantum of encroachments in the State. Similarly, performance of RFD in taking effective action against encroachments could not be ascertained.

As per Section 50 (2) and (4) of MLR Code if encroached land was used for non-agricultural purposes, fine not exceeding ₹ 2,000 was leviable and in addition penalty at the discretion of Collector, not exceeding ₹ 50 per day during any portion of which the encroachment continued after the date fixed for the notice to take effect.

As discussed in Paragraph 4.3.1.1 regarding discontinuation of recordings of encroachment cases in the Encroachment Registers and absence of central database for Government land and encroachment thereon (Paragraph 4.3.1.4) audit could not ascertain the extent of encroachment. Audit randomly checked the records like 7/12 abstract, files of complaint cases etc. at district and Tahsil level and cross verified with records with City Survey Office. Audit found encroachments were made for commercial and other activities and these are discussed in the following paragraphs.

#### 4.3.2.1 Encroachment of Government land for commercial purposes

➤ Records of District Superintendent of Land Records, Nagpur (DSLRL) revealed that mutation of land admeasuring 1,552.04 sqm occupied by the Orange City Hospital (OCH) since January 2000 was cancelled by an order of DSLR in December 2005. The ownership of the land was transferred to the Government in the records. However, the land in question was not got evicted. A City Survey Office investigation in 2014 revealed that the land belonged to Government. On this, OCH filed (April 2014) an appeal case before the appellate authority DSLR which was dismissed in April 2017. There was nothing on record to indicate that stay orders for eviction of the land were granted by any investigating appellate authority between February 2014 and April 2017. The Department also did not make any effort to get the land vacated which continued to remain in the illegal occupation of the OCH for the last 17 years. The value of the land as per Annual Statement of Rates amounts to ₹ 9 crore. For illegal occupation of the land, non-agricultural cess and fine of ₹ 3.58<sup>7</sup> lakh would have been recovered had the notices been issued to OCH.

In exit conference (September 2017), Principal Secretary stated that the District Collector, Nagpur would verify the factual status of the land.

<sup>7</sup> Fine: ₹ 2,000 + (365 days x ₹ 50 x 17 years) = ₹ 3,12,250 and NA cess : 1,552.04 sq.m x 1.74 x 17 years = ₹ 45,900 Total = ₹ 3,58,150 (₹ 3,12,250 + ₹ 45,900) say ₹ 3.58 lakh.

- As per the property cards, land bearing city survey numbers 1051, 1053, 1054, 1056 and 1057 in Paithan belonged to the Government. Shops having area of 8,000 sqm were constructed (2015) on this land by Nagar Parishad, Paithan. The Revenue Department did not take any action till the receipt (October 2015) of a complaint addressed to the District Collector, Aurangabad who instituted an enquiry. The result of enquiry was not produced to audit. In March 2017, a proposal for regularisation of illegal encroachment was forwarded by District Collector, Aurangabad to Secretary, Urban Development Department, response on which was yet awaited.

Thus, RFD was not keeping a keen vigil on the Government land and remained unaware of the facts till buildings were constructed by the Nagar Parishad Paithan. In exit conference (September 2017), Principal Secretary stated that the District Collector's proposal to regularize the encroachment would be examined in terms of applicable laws.

#### **4.3.2.2 Encroachment on water bodies<sup>8</sup>**

- As per survey done (April 2013) by City Survey Officer-I, (CSO) Nagpur, Government land admeasuring 67,490.20 sqm of Lendi Talab (pond), a water body in Mouza Nagpur Khas was encroached with the construction of 1,200 to 1,500 houses. A list of 368 encroachers was furnished by the CSO to audit. Analysis of the information of 368 cases furnished by CSO revealed that the 36 number of encroachments were made during the period from 2005 to 2017. The exact area of the pond was not available with the Department (January 2017). The Assistant Commissioner and Ward officer, Nagpur Municipal Corporation (NMC) had advised the Tahsildar, Nagpur (July 2015) for taking action in and around encroachment of Lendi Talab as the land belonged to State Government and also offered encroachment removal squad of NMC. No action for eviction of encroachment has so far been taken. The need for urgent action to protect the water body is evident from the Google Earth pictures of 2005 and 2017 (**Annexure-I**) which clearly indicate large encroachment during the last twelve years. The Department had not kept any record of the encroachments. Hence, loss on account of non-levy of fine and non-agriculture cess could not be worked out by audit.

In exit conference (September 2017), Principal Secretary noted the fact and stated that necessary direction would be issued to District Collector, Nagpur to effectively co-ordinate with NMC for removal of encroachment.

- As per the certified (DSLR Thane) map of village Panchpakhari in Thane city, a water body (lake) existed adjacent to survey number 106a and 107. The concerned Tahsildar informed audit (June 2017) that a lake existed 30 to 35 years ago and now a slum comprising 300 to 350 houses had grown up and remaining open land was used for parking vehicles. The encroachment register was not made available to audit to confirm the extent of encroachment. This indicated inaction on the part of authorities in taking timely action to evict the encroachment.

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<sup>8</sup> A body of water forming a physiographical feature, for example a sea or a reservoir.

In exit conference (September 2017), Principal Secretary noted the fact and stated that necessary directions would be issued to District Collector, Thane to effectively co-ordinate with Thane Municipal Corporation for removal of encroachment.

#### 4.3.2.3 Encroachment for mining and allied activities

- It was noticed that no data of encroachment on Government land in respect of brick kilns existed in the test checked units. However on being asked by audit it was collected and furnished by two Tahsils<sup>9</sup> to audit. Audit took input/lead from Google Earth application and found possibilities of encroachment on account of brick kilns in Paithan and near the river Kadwa, Niphad (**Annexure-II**). This was brought to the notice of Department who accepted the facts of the encroachment in all the four Tahsils. The total area encroached in three Tahsils, as furnished by the concerned Tahils, was 1,74,421.71 sqm. The area of encroachment in Niphad Tahsil was not furnished.

In exit conference (September 2017), Principal Secretary noted the fact and stated that necessary direction would be issued to respective Collectors for removal of encroachments. The Government may arrange drive for identification and removal of encroachments.

- It was seen that Tahsildar, Aurangabad had intimated the Maharashtra State Electricity Distribution Company Limited (MSEDCL) for disconnecting electric supply of 22 stone crushers located on Government Land in five villages<sup>10</sup> operating without payment of the royalty for the year 2016-17. No effort was made to ascertain validity of permission to operate these stone crushers.

Audit noticed that the Tahsildar, Aurangabad had not granted any permission to these crushers for use of the Government land; they had occupied the Government land without any authority. The encroachers were also liable to pay fine and non-agricultural cess.

In exit conference (September 2017), Principal Secretary noted the facts and stated that necessary directions would be issued to Collector, Aurangabad for removal of encroachments.

#### 4.3.2.4 Encroachment by Educational Institutions

- (i) Records (Scrutiny of 7/12 abstract) revealed that land admeasuring 8.98 ha, bearing *khasra* number 87/1-2-3 of the village Jaitala, Nagpur belonged to Government. The District Collector, Nagpur intimated (August 2017) that out of 8.98 ha, 4.60 ha was in possession of Roman Catholic Diocese Education Institute. Nothing on record was found to indicate valid permission for the said use of land. Tahsildar, Nagpur stated (January 2017) that no land had been allotted from the said *khasra* number. This indicated that the institute had encroached on 4.60 ha of the land.

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<sup>9</sup> Amravati and Aurangabad.

<sup>10</sup> Aadgaon Bu, Ladsawangi, Naigaon, Sawangi and Tuljapur.

In exit conference (September 2017), Principal Secretary noted the facts and stated that necessary directions would be issued to District Collector, Nagpur for removal of encroachment.

(ii) Records revealed that in Kannad village of Aurangabad District land admeasuring 6.07 ha and 2.02 ha was allotted (July 1976) by District Collector, Aurangabad on occupancy and lease right basis to Shri Chattrapati Shikshan Prasarak Mandal, Kannad (Mandal) for constructing college, hostel building and play ground respectively. Taluka Inspector of Land Records, Kannad conducted (July 2016) measurement and found that the Mandal had occupied excess land of 2.55 ha in addition to the land allotted to it. Out of this, 2.33 ha was resumed by the Tahsildar but 0.22 ha of land on which the college building was constructed could not be resumed. Neither notice for eviction was issued nor any attempt made to regularise the same.

Further, the lease of the land for play ground allotted to the Mandal expired in 1991. The lease was not renewed till date and Mandal continued to hold the land for its use which was unauthorized and needed eviction.

In exit conference (September 2017), Principal Secretary stated that since the building was constructed on the encroached land and its removal would hamper the education of students, the proposal to regularize the encroachment would be explored in terms of applicable laws. In case of expiry of the lease of play ground, proposal for renewal, if any, would be examined. Reply of the Principal Secretary is not tenable because no action on unauthorised occupation of the land allotted for play ground had been taken even after lapse of 26 years of expiry of the lease

#### **4.3.2.5 Encroachment of the Government land transferred to Municipal Corporation**

In September 2010, RFD decided to keep Government land reserved in District Plan for public purpose like playground, parks, cremation ground, roads etc., in the custody of Municipal Corporations (MC) in Thane District, with the aim to keep it free from encroachment.

Accordingly, the District Collector, Thane transferred (2010 to 2015) 401.60 ha of land in various villages to three MCs<sup>11</sup>. In December 2015, Tahsildar, Thane surveyed a sample of these lands and reported that the lands had been partly encroached and were used by MCs for purposes other than reserved one. Thus, the use of land by MCs was unlawful.

Audit noticed few instances of encroachments on the land transferred to MCs which are mentioned in the following paragraph.

- In Kalwa village in Thane Tahsil, land admeasuring 15.91 ha transferred to Thane Municipal Corporation (TMC), was reserved for recreation ground. The Talathi, Thane Tahsil informed (June 2017) that 7.56 ha land was used for hospital and Maharashtra State Electricity Board's office. Similarly, in village Kolshet, land admeasuring 2.18 ha transferred to TMC had been encroached by slum; in village Davle 0.75 ha land was transferred (2010) to TMC

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<sup>11</sup> Thane MC, Mira Bhayander MC and Kalyan Dombivali MC.

after evicting residential encroachment on 185.80 sqm land, but the encroacher had re-occupied it (October 2012).

In exit conference (September 2017), Principal Secretary stated that Government could assign the responsibility of protection/maintenance of Government land to local authorities. However, the purpose of use cannot be changed without the permission of revenue authorities and it would be joint responsibility of local and revenue authorities to safeguard the Government land. He further stated that instruction would be issued to conduct the survey of these lands under the *Maharajaswa Abhiyan*.

The fact remained that the Government was not in a position to protect its land and was keeping it in the custody of MCs for protecting it from encroachments though there were well defined rules in the MLR Code for protection of the Government land. Besides it had not developed any system to ensure that the land was in safe custody. As a result, the land was encroached upon.

#### **4.3.2.6 Unauthorised transfer of leased land by manipulating document and encroachment thereof**

Scrutiny of records (7/12 abstract and records of mutation) maintained by Tahsildar, Aurangabad revealed that as per mutation entry no. 603 (02/06/1993) land admeasuring 2,000 sqm bearing Gut No. 175 in village Waladgaon of Aurangabad Tahsil was allotted on lease for touring talkies purpose. The mutation entry was made on the basis of allotment order shown as issued on May 1993. Copy of allotment order was not on records with the District Collector, Aurangabad to ascertain the lease period.

In the correspondence file, two letters were available, one issued (March 1988) by the District Collector, Aurangabad for allotment of land on lease for 99 years and the other (February 1995) mentioning no necessity of taking permission of revenue authorities for mortgaging land.

District Collector, Aurangabad received a copy of lease order (lease period of 99 years) from Bank of Maharashtra, which was not found to have been issued by his office. He referred (December 2000) the letter to State Examiner of Documents, Aurangabad (SED) along with sample signature of concerned official for checking its authenticity. SED certified (2001) that signature of the official on first letter did not match with the sample signatures provided by the Department. The result of investigation in case of second letter was not on record. Tahsildar, Aurangabad ordered (May 2008) the Circle Officer for enquiry in the case as the lessee transferred the land to various persons on the basis of the letter showing lease period of land for 99 years. The Circle Officer intimated (June 2008) Tahsildar, Aurangabad that lessee had sold land to various persons.

The District Collector, Aurangabad intimated (August 2015) to Divisional Commissioner, Aurangabad that an enquiry was conducted in the case and ordered (August 2015) Tahsildar, Aurangabad to restore land in the name of Government. No action for restoration of land was taken (October 2017) nor case was registered with the police against the lessee for submitting manipulated document. In exit conference, Principal Secretary stated that necessary instructions would be issued to the District Collector, Aurangabad for action and filing first information report in the matter.

#### **4.3.2.7 Encroachment on the road included in Development Plan**

Scrutiny of the records (development plan of Nagpur city) at Nagpur Municipal Corporation (NMC) and image of the area on Google Earth application (**Annexure-III**) revealed that a road included in Development Plan of Nagpur city was encroached for residential purposes. After this was pointed out by audit, Tahsildar, Nagpur confirmed the facts and stated that encroachment on road was dealt by NMC. The NMC replied (August 2017) that the road situated on the land belonged to Government hence issue regarding road was not in its purview. This indicated that there was no co-ordination between the Government and NMC. Thus Government land was fraught with the risk of more encroachments in absence of timely action by Government.

In exit conference (September 2017), Principal Secretary stated that both revenue and local authorities were responsible for protection of Government land. There should be co-ordination between these for removal of encroachment if any.

#### **4.3.2.8 Encroachment on grazing land**

To protect grazing land from encroachments, Supreme Court in its judgment had issued (January 2011) orders that the land under administrative control of Gram Panchayat (GP)/Nagar Panchayat (NP) should be kept free from encroachment by all the State Governments and be handed over to the GP for public usage. The Supreme Court further instructed that the State Government should ensure strict and prompt compliance with the court order and submit compliance reports to the court from time to time. The RFD in July 2011 instructed GPs/NPs for conducting a special programme for eviction of encroachments and protecting the land from further encroachments by taking help of concerned Tahsildar, Public Works Department and Police Department.

Information furnished by Tahsildars of test-checked Tahsils revealed that in 102 villages of nine Tahsils 507.87 ha of grazing land was encroached and had not been evicted and handed over to GP. There was nothing on record to indicate that compliance was submitted to Supreme Court.

As per information obtained from nine Tahsils the area of grazing land and encroachment thereon is mentioned in **Table No 4.3.2.8**.

**Table No 4.3.2.8 : Grazing land and encroachment thereon**

Sl. No.	Name of the Tahsil	Number of villages	Area of the grazing land encroached (in Hectare)
1	Nashik	9	12.82
2	Niphad	28	79.54
3	Aurangabad	1	0.92
4	Paithan	5	26.11
5	Haveli	7	4.45
6	Pune City	2	12.56
7	Hingna	0	0
8	Thane	21	132.42
9	Kalyan	29	239.05
<b>Total</b>		<b>102</b>	<b>507.87</b>

Source: Information furnished by respective Tahsildar

Two Tahsils<sup>12</sup> had not prepared information of grazing land and encroachment thereupon and information in respect of Tahsil Nagpur was awaited.

A few other cases of encroachment of grazing land are mentioned as follows:

(i) In village Dehu in Pimpri Chinchwad Tahsil, grazing land admeasuring 10 ha was allotted (1993) on lease of 30 years on annual lease rent of one rupee to the Mahatma Gandhi Smarak Nidhi, Kothrud for plantation purposes. Later, it was intimated by the Circle Officer (November 2010) that the land was not being utilised by the lessee and it has been encroached by 288 slum dwellers. The land was resumed in September 2014 and 33 huts were removed. However, as of October 2016, the number of encroached huts went up to 406. No action for eviction of encroachment was taken except notices issued to the encroachers.

(ii) In village Kharabwadi in Tahsil Khed instead of evicting encroachment, the proposal for regularization of encroachment for residential purposes on grazing land admeasuring 344.64 sqm was sent (November 2013) to RFD by the Divisional Commissioner, Pune. Further progress in this case was not intimated. The proposal sent was in principle against the orders of the Supreme Court.

In exit conference (September 2017), Principal Secretary noted the fact and stated that both revenue and local authorities were responsible for protection of grazing land and agreed to issue instructions to the District Collectors and GPs for coordinating with each other for evicting encroachment on grazing land.

### **4.3.3 Unauthorised retention of Government land after allotment**

RFD clarified in its GR dated 22 January 2002 that it was the responsibility of the District Collectors to verify whether the allottee/lessee of Government land had adhered to the conditions of the allotment/lease. In case of breach of terms

<sup>12</sup> Amravati and Morshi.

and conditions action against the allottee/lessee was required to be taken as per Section 53 of MLR Code. This included eviction of encroachment on land unauthorisedly occupied by persons.

In five Districts i.e. Aurangabad, Amravati, Nagpur, Pune and Thane details of expired leases were not furnished. Therefore audit could not ascertain the actual status of the leases and action taken against the lessee under Section 53 of the MLR code.

Audit scrutinized cases of breach of conditions of land allotment produced by the Department at District/Tahsil level. The cases of breach of terms and conditions of allotment were noticed in 13 cases wherein action in terms of Section 53 was not taken. Four of these cases are discussed in the following paragraphs and the remaining nine cases are briefly discussed in table no. 4.3.3.2(ii).

#### **4.3.3.1 Irregular transfer of land**

i) RFD vide GR dated 09 May 1980 had sanctioned 74,400 sqm of land having survey number 35 and 36 situated in *mouza* Warje, Tahsil Haveli, Pune for society of nomadic tribes. Out of this, RFD allotted (2008) 17,650 sqm land of survey number 35 to Ramnagar Co-Operative Housing Society (RCHS) for residential purpose to 218 members of nomadic tribe on following terms and conditions:

- (a) the eligibility of the members was to be verified in terms of Social Welfare, Cultural Affairs and Sports and Special Assistant Department GR dated 01 April 1998. District Collector after verification was required to issue formal orders of grant of land to the society members.
- (b) the land shall not be transferred or mortgaged without prior approval from the Government
- (c) the land allotted shall be used for the sanctioned purpose only. It shall not be used for other purpose without approval from the Government.

The Special District Social Welfare Officer, Pune (SDSWO) forwarded (29 August 2008) a list of 218 members of the RCHS to the District Collector, Pune wherein it was verified that the 218 members belonged to nomadic tribe. District Collector was required to declare the eligibility of members for land grant. However, there was nothing on records to indicate that any action was taken on the list forwarded by SDSWO. Audit further observed that Chairman, RCHS had executed (November 2009) a development agreement with Sidharth properties. District Collector, Pune informed audit that flats were transferred to persons other than the 218 members as verified by SDSWO. As such Chairman, RCHS breached the conditions of allotment of land and nothing on records was found to indicate that District Collector monitored the adherence to terms and conditions of allotment of land even when constructions was under progress or at the time of transfer of flats.

Thus, the objective of granting land for residence of 218 nomadic tribe beneficiaries remained unachieved and Government land worth ₹ 24.66 crore was illegally exploited by the Chairman, RCHS against whom no action for violation of allotment conditions was taken.

In exit conference (September 2017), Principal Secretary agreed to issue directions to District Collector, Pune for taking stern action against the responsible persons and for ensuring protection of the right of 218 members.

ii) Land admeasuring 40,000 sqm in village Khedshivapur, Tahsil Haveli was allotted (1984) to Dnyan Probodhini Sanstha (Sanstha) for the purpose of construction of technical and industrial training institute for its students and for playground. Sanstha sold (2008) 4,250 sqm of this land to M/s. Red Shop Manufacture Limited who again sold it to Meto Tak Paper Company without any permission of the competent authority and some part of building of institute was rented to third person. No action to resume the land was taken despite repeated violations/breaches of terms and condition of allotment of land.

In exit conference (September 2017), Principal Secretary stated that details would be obtained from Collector, Pune and appropriate action taken.

#### 4.3.3.2 Irregular use of land

i) In Yerwada village of Pune District, land admeasuring 1.60 ha was allotted (September 1992) to Pune Municipal Corporation (PMC) on lease for 15 years (till 2007) for play ground. There was nothing on records to show that the lessee applied for renewal of lease. Out of 1.60 ha, PMC sub-leased (April 2000) 0.80 ha land to C-DAC without permission of revenue authorities. C-DAC did not use the land and RFD directed (November 2011) District Collector, Pune to restore land to the Government and recover lease amount of ₹ 72.06 lakh paid by the C-DAC to PMC. However, land was still in possession of PMC and an amount of ₹ 72.06 lakh was not recovered.

Further, as per *Panchnama* report (inspection conducted by Talathi Yerwada, Pune in October 2016), a statue was erected by encroaching on the land. The District Collector, Pune in his report (November 2016) to Divisional Commissioner, Pune stated that a building having swimming pool, gymnasium and watchman room existed on the remaining part of land admeasuring 0.80 ha. The ownership of the building was not available on the records. As such the land admeasuring 1.60 ha including the land of 0.80 ha leased to C-DAC was not restored and no action for eviction of encroachments on the land admeasuring 0.80 ha was taken.

In exit conference (September 2017), Principal Secretary agreed to issue directions to District Collector, Pune for taking action for erecting of statue on the land which was restored and also agreed to address the issue of construction of swimming pool and gymnasium by the PMC on the balance land.

ii) RFD had regularised (July 1974) the encroachment and unauthorised construction by the Wagheshwar V.K.S.S Sanstha (Society) in Village Wagholi, of Tahsil Haveli on the land admeasuring 217 sqm subject to the condition that the society shall use the land for Godown and office building only. The Society constructed a three storied building comprising 20 shops and 10 lodging units on 900 sqm of land by encroaching on 683 sqm (900-217) Government land. Thus, apart from unauthorised construction and breach of condition, additional encroachment was made by the society. No

action has been taken by Tahsildar for eviction of encroachment on 900 sqm of land valued at ₹ 90 lakh.

District Collector, Pune informed that notice was served on the concerned society in February 2017 in response to which, the society filed appeal no. RCS 629/2017 in civil court. The status of the case would be verified and accordingly action to restore the land would be taken. In exit conference (September 2017), Principal Secretary agreed to issue instructions to the District Collector, Pune for early settlement of case.

Audit also observed nine cases of breach of terms and conditions of allotment of land in five<sup>13</sup> out of 12 test-checked Tahsils. In these cases 65,101 sqm of land was occupied unauthorisedly, which should be treated as encroachment. Action of either resuming of land to Government or regularisation by levy of charges and penalty was to be taken. The details are given in **Table 4.3.3.2 (ii)**

**Table 4.3.3.2 (ii): Cases showing breach of condition for allotment of land**

Sr. No.	Name of the lessee/occupant	Description of the Land	Area of the land (sqm) and purpose of allotment	Nature of breach
1	2	3	4	5
1	Shetkari Sahkari Sangh, Nasik	CTS No. 1238, 1257 to 1262 Village & Tahsil - Niphad, Nasik	286.20 sqm As per Dy. Superintendent of Land records, Niphad letter dated 20/01/2017 the land was allotted for godown.	Land was used for constructing shops and renting them out.
2	Kanda Nirjalikaran Karkhana Pimalgaon (B)	Survey No. 517/A/1/4 Village - Pimpalgaon Basvant, Tahsil - Niphad, Nasik	40,000.00 sqm As per SDO, Niphad letter dated 04/02/2017 the land was allotted for drying onion.	Land was sold to the Agriculture Produce Market Committee
3	Shri. Pardeshi Somnath Sitaram	CTS No. 1050 Paithan, Aurangabad	1,045.50 sqm The property card of survey number 1050, Paithan showed land for touring talkies.	Land was used for construction of Marriage hall.
4	Pune Club	Survey No. 6 and 6B Tahsil Pune City, Pune	2,988.88 sqm As per Tahsildar Pune City letter dated 09/06/2015 land was allotted for recreational activities.	Land (1,217 sqm) was used for commercial purpose.
5	Rashtriya Apang Vikas Sanstha, Pune	Survey No.63/2B1/1 Village Pravati Tahsil Pune City	880.40 sqm As per the District Collector, Pune letter dated 13/06/2016 the land was allotted for welfare of physically handicapped person.	Not used by the Sanstha itself, the land was used by the Alliance Club, Pune

<sup>13</sup> Haveli, Niphad, Nasik, Pune City and Paithan.

1	2	3	4	5
6	Progressive Education Society, Pune	Survey No.85/1B & 86/1/1 Village Aundh Tahsil Pune City	10,000.00 sqm As per District Collector letter dated 16/05/2016 the land was allotted for educational purpose.	Land (242.02 sqm) was sub-leased (01/07/1991 to 30/06/2011) to Bank and stationery shop
7	Rajgadh Dyanpith Bhor, Pune	Dhanakwadi, Haveli, Pune	4,900.00 sqm As per mutation register the land was allotted for educational purpose.	Construction of a three storey building which included hotel, beauty parlour and shops on ground floor.
8	Shiv Smarak Samiti, Pune	Gat No.40 Village Dhankawadi, Tahsil Haveli	3,300.00 sqm As per District Collector, Pune letter dated 16/09/1989 the land was allotted for cultural hall and hostel for students.	In addition to the said purpose, land was also used for 20 shops, marriage hall, one College and office.
9	Ramchandra Jiwaji More	CTS. No. 947, Survey No.377/1 Village - Bhagoor, Tahsil - Nasik	1,700.00 sqm As per Additional Collector letter dated 04/02/1960 the land was allotted for stocking firewood, charcoal.	Operating Bar and Restaurant since last 20 to 25 years without any permission of revenue authorities.

In exit conference (September 2017), Principal Secretary agreed to issue directions to concerned District Collectors for taking appropriate action in these cases and also stated that a policy would be framed to address the issue. The reply of the Principal Secretary may be viewed in the light of the fact that the District Collectors took no action to evict the unauthorised occupants of Government land despite statutory and administrative directives.

#### 4.3.4 Monitoring of encroachment of Government land

RFD vide circular of May 1999, instructed that squad should be formed at District level for identification and prevention of encroachment. It was also instructed that District Collector, Sub-Divisional Officer and Tahsildar should review the encroachment status in monthly meetings.

- As per information furnished, out of six selected Districts, no squad for identification or prevention of encroachment was formed in four Districts<sup>14</sup>. In Pune District squad was formed but the report on action taken was not made available to audit nor was it found on record. The District Collector, Nagpur did not furnish information.

Further, monthly meetings to review the status of encroachment were not being conducted in two Districts viz. Amravati and Nasik. In remaining Districts, it was observed that monthly review meetings

<sup>14</sup> Amravati, Aurangabad, Nasik and Thane.

were taking place. District Collector, Nagpur did not furnish any report.

- It was also instructed (February 1987) by RFD that a six monthly report should be submitted through District Collectors, containing details of total Government land in Tahsil, number of encroachment on the land, area of land encroached upon and land remaining vacant. No such report was prepared in any of the six Districts and twelve Tahsils test-checked.
- RFD vide resolution of September 2010 and October 2013 directed that details of the land in possession of local bodies and punishment for its misuse should be displayed at the local Revenue Offices/Local Bodies. In the all the test-checked Tahsils, notice board showing details of Government land in Tahsil and mentioning punishment for its misuse was not displayed.
- RFD's circular of May 1999 states that a police complaint should be made against the encroacher of the Government land. In all the test-checked Tahsils, no police complaints were lodged against the encroachers and audit also did not notice instances in which police complaints were lodged.

Thus, the monitoring by the Department was weak on account of (i) absence of periodical reports for keeping a check over encroachment, (ii) lack of efforts to obtain data/information on Government land and (iii) laxity of the Department in taking penal action against encroachers.

In exit conference (September 2017), Principal Secretary accepted the observations regarding internal control and stated that issue of formation of squad, quarterly returns was addressed in the *Maharajaswa Abhiyan* with effect from August 2015. He also agreed to issue instructions regarding unavailability of returns at District Collectors and Tahsil level, display of notice boards and lodging of police complaint against the encroachers.

The facts remained that squads were not formed (June 2017) in five test-checked Districts and the returns submitted under Abhiyan were also not reliable and incomplete.

#### **4.3.5 Conclusion and Recommendations**

The Government did not maintain the databank of the total open Government land in the State and also data on encroachment on government land was not available at District and Tahsil level. The data prepared under the *Maharajaswa Abhiyan* was not reliable. There were discrepancies in maintenance of encroachment register. No action was taken for eviction of encroachment. No periodical survey was conducted by Circle Officers for identification of encroachment.

- **Information of a Government land in given place and identification of encroachment are two important aspects that need to be addressed for effective action to deal with encroachment. Accordingly a database should be prepared for the open Government land and encroachment thereof, detailing name of the encroachers, period of encroachment, area of encroachment and action taken.**

No action for eviction of encroachment was taken even after noticing it. In Thane District, Government land was transferred to Municipal Corporations (MC) for protection against encroachment. However, it did not serve the purpose as cases of encroachment by MC itself were noticed on the transferred land. The encroachment on grazing land was not removed as Revenue Department passed on the responsibility to concerned Local bodies.

- **A system should be devised for taking action against encroachment. Government may issue directives that in case of land transferred to local bodies, the responsibility to monitor encroachment and its removal should remain with Revenue Authorities.**

In cases of breach of condition of allotment of land on lease/occupancy right basis, no action for restoration of land was taken; renewal of lease was not done in case of allotment of land on leases. The system of monitoring the encroachment was weak. Periodical reports were not submitted.

- **The Collector should verify the land allotted on lease and on expiry of lease period it should be either renewed or the lessee evicted. In case of occupancy right, Revenue Authorities should ensure that land is being used for the purpose for which it was allotted. The dedicated squad at District should be formed to monitor the Government land.**

In exit conference (September 2017), Principal Secretary accepted the recommendations regarding formation of database, strengthening the mechanism prescribed for identification and reporting of encroachment and devising system for timely action against encroachment. In case of recommendations for issuing directives for land transfer to local bodies, Principal Secretary suggested that the holder/assignee of the land should be primarily responsible for protection of Government land and in case of its failure, RFD would ensure protection of land. In case of mechanism for corrective action against unauthorized retention of Government land for specific purposes, he suggested that there should be a specific policy regarding renewal of leases or otherwise.

#### **4.4 Audit of “Management of Nazul Lands in Vidarbha Region”**

##### **Introduction**

Prior to independence, erstwhile Government of Central Province (CP) & Berar and prior to formation of Maharashtra State (Maharashtra State was formed in May 1960) the Government of Madhya Pradesh in Vidarbha<sup>15</sup> Region of Maharashtra, allotted Nazul lands on lease subject to certain terms and conditions to public for residential, commercial, educational and charitable purposes. Nazul land means any type of Government land used for non-agricultural purpose such as building, market, playground or any other public purpose or the Nazul land which has potential for such use in future including such lands granted on long or short term lease.

The renewal of lease was being done by fixing lease rent at three times the old rent mentioned in the expired lease as per Government Resolution (GR) dated January 1983, till June 2007.

The Government of Maharashtra framed a policy for renewal of leases, regularisation of breach committed in lease conditions and other matters by issue of GR dated June 2007 which *inter-alia* prescribed fixation of lease rent based on the market value of property on renewal of leases. Thereafter the lease rent was revised from time to time.

In March 2015, Government of Maharashtra vide Maharashtra Land Revenue Code (Amendment) Act, 2012 inserted a provision, new Section 37A, in Maharashtra Land Revenue Code, 1966 (MLRC) making a provision to levy unearned income on sale/transfer of Government land. The sale/transfer of Government land could only be made after prior approval of Government. Prior to this the levy of lease rent and unearned income on sale/transfer of Government land was done by issue of GRs.

##### **Scope of audit**

Audit was conducted during January to May 2017 covering leases renewed from June 2007 to 31 March 2017. Audit selected five districts (Akola, Amravati, Gondia, Nagpur and Wardha) having highest number of Nazul leases out of 11 districts, with a view to examine efficiency of the Department in renewal of the leases and recovery of government revenue. The Revenue and Forest Department (Department) renewed 4,039<sup>16</sup> cases in these five districts up to 31 March 2017. Out of these, audit test checked 1,528<sup>17</sup> cases.

The observations were communicated to the Department and to the Government in July 2017. The replies of District Collectorates wherever received have been incorporated in the relevant paragraphs. Replies from the Government have not been received.

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<sup>15</sup> Covering 11 districts in two divisions: Nagpur Division – Bhandara, Chandrapur, Gadchiroli, Gondia, Nagpur, Wardha and Amravati Division - Akola, Amravati, Buldhana, Washim and Yavatmal.

<sup>16</sup> Akola: 11 cases, Amravati: 1,932 cases, Gondia: 950 cases, Nagpur: 216 cases and Wardha: 950 cases.

<sup>17</sup> Akola: 7 cases, Amravati: 280 cases, Gondia: 340 cases, Nagpur: 216 cases and Wardha: 685 cases.

#### 4.4.1 Trend of renewal of leases of Nazul Land

As per terms and condition of lease, if the lessee fails to pay the rent or breaches the terms and conditions of the lease agreement, then the Government can resume the land granted under lease. The statistics of progress of renewal of Nazul Leases furnished by the Revenue and Forest Department (Department) as on 31 March 2017 is given below in **Table 4.4.1**:

**Table 4.4.1**

Division	No. of Districts		No. of Nazul leases		No. of leases whose term of lease has expired		No. of leases renewed		No. of leases yet to be renewed	
	Total	Selected	Total	Selected districts	Total	Selected districts	Total	Selected districts	Total	Selected districts
Nagpur	6	3	25,059	20,580	12,989	9,262	2,219	2,096	10,770	7,166
Amravati	5	2	12,492	8,265	9,288	7,173	3,861	1,943	5,427	5,230
<b>Total</b>	<b>11</b>	<b>5</b>	<b>37,551</b>	<b>28,845</b>	<b>22,277</b>	<b>16,435</b>	<b>6,080</b>	<b>4,039</b>	<b>16,197</b>	<b>12,396</b>

**Source:** Statistics furnished by Divisional Commissioner, Nagpur and Amravati

It would be seen from the above that 16,197 cases of Nazul leases have not been renewed as of 31 March 2017. In five test checked Districts out of total 28,845 Nazul leases, 12,396 leases were yet to be renewed as on 31 March 2017. District Collectorate, Wardha, stated that notices were issued to the lessees for renewal of the lease, but, they did not turn up for the renewal. However, there was nothing on record to indicate that any action had been taken by the Department for resumption of the Government land. The reason for non-renewal of leases was not received or found on records in the remaining four districts.

##### 4.4.1.1 Development of software for management of Nazul land

The Divisional Commissioner, Nagpur had floated a tender for development of software for management of Nazul land in Nagpur Division in 2012. After tendering process, the work was allotted (2012) to M/s Karvy Data Management Ltd, Hyderabad for ₹ 15 lakh. No record indicating the progress made in this regard by the Department was made available to audit. As such audit could not ascertain the status of work executed. However, audit found that records were being maintained manually in all the Collectorate offices.

##### 4.4.1.2 Maintenance of proper records of Nazul Leases

The Collector was responsible for renewal of the leases, collection of lease rent and other matters relating thereto. For this purpose a register called "Demand Register" was prescribed under the provisions of Revenue Book Circular (RBC). The RBC was issued under Central Province and Berar Land Revenue Code. The Code was repealed with effect from August 1967 and the Nazul lands were governed under MLRC, 1966. However, the Government had not made any provision for maintenance of such demand register in the MLRC, 1966.

Scrutiny of records in five Collectorates revealed that demand registers was being maintained only in two Collectorates viz. Gondia and Wardha while the remaining three Collectorates viz. Akola, Amravati and Nagpur had not maintained demand registers of Nazul leases. A comparison of the demand

registers of these two Collectorates indicated that these were in different formats. While the Collectorate, Gondia had included all the necessary columns like amount of lease rent, date of renewal, etc., these were not included by the Collectorate, Wardha. The Collectorate Nagpur stated that it was preparing the demand register on the basis of the information obtained from City Survey Office. The remaining Collectorates did not furnish any reply.

In the absence of registers the Department did not have any watch over the timely collection of lease rent and the compliance with terms and conditions of lease by lessees. Annual leases rent of many years are collected in arrears only at the time of renewal of lease in most of the cases.

It is recommended that a provision be made for maintenance of the demand register for Nazul lands under the MLRC, 1966.

#### **4.4.1.3 Execution, registration and absence of standard format of lease deeds**

Registration of lease deed is compulsory under section 17 of Indian Registration Act, 1908 and as per article 36 of Maharashtra Stamp Act, 1958 stamp duty on lease of 30 years was leviable at the prescribed<sup>18</sup> rate on 90 *per cent* of the market value of property. Further, the Revenue Book Circular (RBC) provided for execution of lease deed in Form F and the subsequent renewal in Form H. However, RBC issued under Central Province and Berar Revenue Code was repealed with the introduction of the MLR code, 1966. No such forms were specified in MLR code, 1966.

#### **Execution of lease deeds:-**

- Audit noticed that the Department had not adopted a uniform system for grant, execution and registration of renewal of lease. In Amravati Division, audit of the test checked districts (Akola and Amravati) revealed that at the time of renewal of leases, lease deeds were not being executed and the leases were renewed on the “Office Orders” issued by the district authorities. In Nagpur Division, audit of test checked districts (Nagpur, Gondia and Wardha) revealed that lease deeds were executed and registered only in Nagpur Districts; in remaining two districts the lease deeds were executed but not registered. The lease deeds were required to be registered under the provisions of Section 17 of the Registration Act. Non-execution of lease deed is fraught with the risk of delayed payment of the lease rent and non-monitoring of the terms and conditions of lease. Besides, non-execution / registration of leases at the time of renewal resulted in non-realisation of stamp duty and registration fee of ₹ 16.81<sup>19</sup> crore in 80 illustrative cases test checked in three districts (Amravati, Gondia and Wardha).

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<sup>18</sup> Five *per cent* in Municipal area (A and B class) and four *per cent* in Municipal Councils.

<sup>19</sup> Stamp duty at the rate of four percent and registration fee at the rate of one percent leviable on ₹ 387.61 crore (90 percent of land cost of ₹ 387.61 crore in terms article 36 Maharashtra Stamp Act, 1958) worked to ₹ 16.81 crore.

**Format of lease deeds:-**

- Further, out of five districts test checked, in three districts (Nagpur, Gondia and Wardha) the leases continued to be renewed in Form H with modification by District authorities from time to time. There was no uniformity in the format of the renewed lease deed. The essential terms and conditions like provision of levy for unearned income, interest on delayed payment of lease rent etc. were not specified in the lease agreement. In the remaining two districts (Amravati and Akola), no lease deeds were executed. It would be in the interest of revenue, if uniform format is prescribed for renewal of leases of Nazul land. After being pointed out the Collectorate Wardha stated that there was no provision in GR of 2015 for levy of stamp duty. The reply is not relevant as levy of stamp duty is governed under the Maharashtra Stamp Act, 1958 and its registration is governed under the Indian Registration Act, 1908.

**4.4.1.4 Non-existence of mechanism to detect transfer of lease of Nazul land and incorrect description of property cards**

The transfer and change of use of Nazul Land without permission could be regularised by payment of unearned income @ 40 and 50 *per cent* of market value of land used for residential and commercial purpose respectively as per the Government resolution of December 2015. The title of the land shall remain with the Government irrespective of sale or transfer and the occupants could hold the land on lease basis.

Audit noticed that in Nagpur, the title of Nazul Land in property cards was shown in the name of the Government while in the remaining four Districts (Wardha, Gondia, Amravati and Akola), the title of Nazul Land in property cards was shown in the name of the lessees and not the Government.

Audit obtained information regarding the sale of lands from the Registration Department through E-search facility of i-SARITA (Software used by the Registration Department) in two Districts (Amravati and Akola where separate Zone was prescribed for Nazul land in Annual Statement of Rates.) and identified 79 cases of sale/transfer and sub-leasing of Nazul land during 2016-17. Of these, cross verification in respect of 15 instruments of sale and lease deeds furnished by the Registration Department with the records in Collectorates revealed that unearned income was not recovered as detailed below:

- In five cases sale of Nazul land was made at ₹ 4.06 crore but these cases were not regularized and unearned income of ₹ 1.61 crore was not recovered.
- In the remaining 10 cases change in use of land as well as transfer of land valued at ₹ 8.26 crore was made. However, unearned income of each of ₹ 4.13 crore for change in use and transfer of land totaling to ₹ 8.26 crore was not recovered.

Thus there was non-realisation of ₹ 9.87 crore on account of unearned income. The records in respect of the remaining 64 cases need to be rechecked to ascertain the status of payment of the unearned income.

The Department may co-ordinate with Stamps and Registration Department and obtain statistics of transactions in respect of Nazul lands periodically for effective monitoring and collection of unearned income. The Nazul lands were being sold by the lessees/occupants by executing “sale deeds” thereby conveying all the rights on the land to the subsequent purchasers as if they were the exclusive owners/title holders of the land. Since, the occupants of Nazul Land had only the right to enjoy the benefit of land during the currency of lease, they could not transfer the land by way of sale deed as they were not the owners of the land. Government may put in place a mechanism so that the sale of Government Nazul land is prevented.

**4.4.2 Renewal of Nazul lease - Incorrect assessment of lease rent**

Government of Maharashtra, Government Resolution dated 11 January 1983 revised the lease rent in respect of Nazul land as where the terms and conditions of the leases specifically provide for the manner and extent up to which the rates are to be revised, the revised rent should be worked out in accordance with the conditions laid down in the respective lease deeds. In all other cases, the revised lease rent should be worked out at three times of the previous lease rent. Once the lease rent is fixed, it shall be remain in force for the entire lease period. There after the lease rents were revised from time to time as mentioned in the following **Table 4.4.2**.

**Table 4.4.2**

<b>GR of June 2007</b>	<b>GR of December 2011</b>	<b>GR of December 2015</b>
The R&FD vide resolution of June 2007 revised the lease rent based on current market value of the land. As per resolution, the revised lease rent was fixed equal to prime lending rate <sup>20</sup> (declared by the Bank) Where lease had expired prior to June 2007, the lease rent shall be increased annually by four percent of the old rate and recovered as arrears. The rate fixed shall be revised after every ten years.	As per resolution, the revised lease rent was fixed equal to 0.10 to 0.50 <i>per cent</i> of the existing market value of land, area and use of the land. Where lease had expired prior to December 2011, the lease rent shall be levied at the <b>old rate</b> and recovered as arrears. The rate fixed shall be revised after every ten years.	As per resolution, the revised lease rent was fixed equal to 0.02 to 0.10 <i>per cent</i> of the existing market value of land, area and use of the land. Where lease had expired prior to December 2015, the lease rent shall be levied at the <b>old rate</b> and recovered as arrears. The rate fixed shall be revised after every five years.

The term **old rate** has not been defined in the GRs. The Department continued to levy the lease rent in accordance with the GR of 1983 up to 2011 despite the fact that a number of leases had expired and were renewed between 2007 and 2011. This had resulted in loss of revenue as detailed in the following paragraph.

<sup>20</sup> Prime lending rates on 10, 20 and 25 *per cent* of the existing market value of land viz. residential, commercial or educational/charitable purpose respectively.  
Year 2008- 12.75 *per cent*, 2009 – 12.25 *per cent*, 2010 – 11.75 *per cent* and 2011 – 12.50 *per cent*.

- In two Districts viz., Nagpur and Gondia, test check of the files revealed that 81 leases were renewed between June 2007 and December 2011. The lease rent of these cases was fixed at pre revised rates in accordance with the resolution of 1983 instead of rates prescribed in the resolution of June 2007. The annual least rent paid by the lessees was ₹ 0.94 lakh instead of ₹ 2.45 crore. This resulted in under assessment of annual lease rent of ₹ 2.44 crore with cumulative effect of ₹ 24.40 crore for ensuing 10 years.
- In another two districts viz. Wardha and Amravati, 35 Nazul land leases were renewed in 2016. The leases had expired between 1978 and 2015. The Department renewed the leases and levied rent of ₹ 0.17 crore for the period from 1978 up to December 2015 in accordance with the rates mentioned in the GR of 1983 and not ₹ 4.50 crore in accordance with the GRs of 2007 and 2011. This resulted in short levy of lease rent of ₹ 4.33 crore.
- As per GR June 2007 and December 2011 the lease rent shall be revised after every 10 years while as per GR of December 2015 the lease rent shall be revised after every 5 years. Once the lease rent was fixed it remained constant till the date of next revision. The lease rent had been reduced in 2011 and 2015 as compared to the year 2007. The minimum rate of lease rent was reduced from 0.10 *per cent* in 2011 to 0.01 *per cent* in 2015, i.e. fall of 90 *per cent* of the previous rates. Despite the revision in rates of the lease rent in 2015, the lease rent fixed under the GRs of 2007 and 2011 remained unchanged. Thus there was no uniformity in revision of the lease rent fixed under different GRs.

The Collectorate Nagpur stated that the Nazul plot holders were aggrieved by the revised lease rent which was 100 to 300 times of the old rents in many areas. Accordingly, the then Revenue and Forest Minister had instructed (27 November 2007) to stay the GR dated June 2007. The instructions and relevant documents were not produced to audit. The facts however, indicates that no serious efforts was made by the Department to fix the rates and period of lease rent. The parameters on which the lease rent was fixed were not also made available to audit. Besides in absence of the definition of the Old rates, the Department continued to treat the old rates mentioned in the GR of 1983. Thus, the rates of lease rent as per GR dated June 2007 and December 2011 could not be made effective. Thus there is a need to remove the anomalies and ensure uniformity in fixation of lease rent and its revision.

#### **4.4.3 Levy and collection of unearned income**

Government vide resolution of December 2011, August 2014 and December 2015 prescribed the rates of unearned income leviable for change in use, transfer or breach of conditions of lease agreement in case of Government land (Nazul) given on lease. Transfer of land or change in use of land without permission from Government, it is treated as breach of conditions and accordingly rate of unearned income is leviable. Further, all these resolutions stipulated that lessees were liable to pay unearned income on the market value of land as on the date of breach of condition of lease (for change in use or sale

of land), provided that the prescribed documentary evidence for change of use from the said date was produced. If the prescribed documentary evidence is not produced, unearned income is leviable on the current market value of land. The rates of unearned income applicable as per the resolutions are given below in **Table 4.4.3(A)**.

**Table 4.4.3(A)**

(In percentage of market value)						
Resolution	Unearned income for breach committed prior to issue of GR		Unearned income leviable if permission obtained from Government		Unearned income for breach committed after issue of GR	
	Residential	Commercial	Residential	Commercial	Residential	Commercial
December 2011	25	25	Not prescribed	12.5	Not prescribed	50
August 2014	25	25	Not prescribed	12.5	Not prescribed	50
December 2015	10	25	5	12.5	40	50

The cases of non/short levy of unearned income in test-checked districts are detailed below in **Table 4.4.3(B)**.

**Table 4.4.3(B)**

Name of Districts	Audit observation	Amount involved in crore
1	2	3
Nagpur	Audit selected 100 cases of Nazul leases renewed (April 2005 to July 2016) by the Collector, Nagpur for residential purpose and cross checked their land use with the property tax records of the Nagpur Municipal Corporation (NMC) to ascertain the correctness of land use and found that in 19 cases, the lessees used land measuring 14,718.81 sqm for commercial purpose i.e. for shops. The land was allotted for residential purposes.  Thus, there was unauthorised change in use of land. The value of the land was ₹ 90.68 crore, the unearned income payable to the Government at the rate of 25 per cent of market value amounting to ₹ 22.67 crore was recoverable.	22.67
After this was pointed out the Collectorate Nagpur agreed to conduct physical verification of these lands and if the lands were found to be used for commercial purpose, unearned income as per GR dated Dec. 2015 would be recovered.		
Amravati and Wardha	As per the GRs of 2015, unearned income shall be levied separately for sale /transfer and for change of use of land without permission.  It was observed that in 20 cases the lessees had sold the land as well as changed the use of land between 1963 and 2012. The regularization of sale of the land was applied for in 2015 and order for commercial use and sale was given in 2016. The Department was liable to recover unearned income of ₹ 4.50 crore for sale of land and change in use of land. However, the Department recovered only ₹ 2.25 crore only for one breach i.e. sale and did not levy unearned income for change in use. This resulted in non-levy of unearned income of ₹ 2.25 crore.	2.25
The Collectorate Wardha had stated that as per local bodies, the lands fall under the residential as well as commercial zone. Hence, the unearned income was not leviable for change of use. Reply is not tenable as leases were given for residential purpose. The commercial use of land in contravention of condition of lease is a breach which needs to be regularized on payment of unearned income. Classification of land by local bodies is immaterial. The Collectorate Amravati had not furnished any reply.		

1	2	3
Amravati and Nagpur	<p>Six owners of six shops located at six different commercial places had approached (January 2015 to October 2016) the Collectorate for regularisation of their shops. Scrutiny of the documents<sup>21</sup> submitted by these applicants revealed that the erstwhile lessees from whom the shops were purchased had changed the use of the pieces of land from residential purpose to commercial complexes by constructing shops on the six pieces of land admeasuring 23275.13 sqm valued at ₹ 63.90 crore.</p> <p>The Department regularized only these six shops and did not take any action to levy and collect unearned income from remaining shops existing in those commercial places. The unearned income leviable was ₹ 15.80 crore.</p>	15.80
The Collectorate Nagpur stated that unearned income from remaining occupants would be recovered after spot verification of the lands. The Collectorate, Amravati had not furnished reply.		
Gondia	<p>Scrutiny of Renewal files revealed that a lessee had sold land admeasuring 1,326.70 sqm without permission in 1992. The breach was regularized (February 2017) by levying unearned income at residential rate of 10 <i>per cent</i> of market value of land. However, the reports of spot verification made by Department in 2011 and statement of lessee on record indicated that the lessee was using 1,000 sqm out of total area of 1,326.70 sqm for commercial purpose. As such, for this portion, unearned income at the rate of 25 <i>per cent</i> of the market value of ₹ 1.08 crore was leviable. However, the Department did not levy unearned income for unauthorised commercial use of land, which worked out to ₹ 27 lakh.</p>	0.27
The Collectorate Gondia stated that the lessee had used the land for commercial purpose as beedi factory in the past, now the building on the land was vacant and no commercial activity was being undertaken. Fact remains that the land was used for commercial purpose hence unearned income was recoverable for change in use of the land.		
Amravati	<p>Scrutiny of Renewal files revealed that three Nazul plots total admeasuring 10,928.10 sqm were regularised in March 2016 for commercial purpose. However, while working out the unearned income, the area of three plots was considered as 2,323 sqm instead of 10,928.10 sqm. Besides, while working out the market value of the property, Department applied the land rates of the year 1964 instead of Annual Statement of Rates 2015-16. The omissions on the part of the Department resulted in short levy of unearned income by ₹ 10.39 crore.</p>	10.39
Collector, Amravati stated that matter would be taken up with higher authorities and thereafter reply would be furnished.		
Wardha	<p>Scrutiny of Renewal files revealed that lease of Nazul land measuring 2,787.00 sqm (FSI 1.42 i.e 3,900.85 sq. mtr) valued at ₹ 96 lakh was renewed (February 2015) for the period from 1978 to 2008 for residential purpose. As per a report of the Municipal Council, Hinganghat, the purchaser of land (M/s. Mrugnayani Infrastructure) changed the land use to commercial in 2013 without obtaining permission from Department. This was regularised by levying unearned income of ₹ 12.19 lakh (approximately at the rate of 12.5 <i>per cent</i>). However, the market value of the land based on the FSI index amount to ₹ 2.12 crore. The unearned income payable worked out to ₹ 1.06 crore at the rate of 50 <i>per cent</i> of the market value. This resulted in short levy of ₹ 94 lakh.</p>	0.94

<sup>21</sup> Copy of sale deed or deed of declaration.

1	2	3
Wardha	Permission to sell the shops admeasuring 3,900.85 sqm located in survey no. 28 was granted by the Department in May 2013. The Department levied unearned income of ₹ 25 lakh on the market value of ₹ 2.03 crore. However, audit noticed that Department had worked out incorrect market value as per land rate of Nazul Sheet No. 27 instead of Sheet No. 28. The market value of the property aggregated to ₹ 3.04 crore on which unearned income of ₹ 38 lakh was leviable. Incorrect application of rates resulted in short levy of unearned income by ₹ 13 lakh.	0.13
<b>Total</b>		<b>52.45</b>

#### **4.4.4 Internal Control Mechanism**

The Collectors have delegated the powers related to management of Nazul Land to Sub-Divisional Officers in their respective Districts. For effective administration of Nazul land and to have effective check, it is imperative that Sub-Divisional Officers in a prescribed interval send progress reports of lease renewals to the Collector. The Collectors in turn should submit prescribed periodical report to Divisional Commissioners to achieve an assurance on timely renewal of lease, collection of rent, correctness of levy of unearned income etc.

It was observed that the SDOs submitted progress reports only when called for by the Collectors/Divisional Commissioners. There was no mechanism for periodic reporting and monitoring in the Department for effective management of Nazul Land.

#### **4.4.5 Conclusion and Recommendations**

Collectorates did not maintain database of Nazul leases and demand registers to ascertain timely collection of lease rent and expired leases. The property cards of Nazul Lands in four Districts did not bear the name of Government as title holder (*Muldharak*) which resulted in unchecked sale and transfer of Nazul land. Standard format for renewal of Nazul lease under MLRC was not prescribed due to which sale deeds for Nazul land were being executed irregularly. In cases of non-payment of lease rent, the action for resumption of land from lessee was not taken. Lease agreements were not registered which led to loss to Government by way of non levy of stamp duty.

- **The Government may consider issuing instructions for keeping up-to-date records of Nazul land and correcting the details contained in property cards. The Government may consider framing Rules under MLRC, 1966 prescribing the basic forms in which the Nazul Records should be maintained to achieve uniformity in record keeping across 11 Districts of Vidarbha for effective management of Nazul Lands.**

Cases of incorrect assessment, short/non levy and incorrect application of rates for levy of lease rent as well as that of unearned income were noticed. In some cases regularisation of change in use of land was made incorrectly.

- **Government may issue instructions to ensure correct assessment and levy of lease rent and unearned income, their timely collection and**

**action in case of breach of conditions by obtaining data from Local Bodies. The Department should co-ordinate with Department of Stamps and Registration and obtain statistics of transactions in respect of Nazul lands periodically for effective monitoring and collection of unearned income.**

#### **4.5 Other audit observations**

During scrutiny of records of the various land records and land revenue offices, we noticed several cases of non-compliance of the provisions of the Maharashtra Land Revenue Code, 1966 (MLR code), Government notifications/instructions as mentioned in the succeeding paragraphs of this chapter. These are illustrative cases and are based on the test check carried out by Audit. As, such cases are pointed out by Audit repeatedly; there is need on the part of the Government to improve the internal control system so that recurrence of such cases can be avoided.

##### **4.5.1 Short levy of occupancy price**

###### **Application of incorrect rate for valuation of land to calculate occupancy price<sup>22</sup> resulted in short levy of ₹ 1.42 crore**

GoM, R & FD sanctioned (March 2012) allotment with advance possession of Government land to Maharashtra State Electricity Distribution Company Limited (MSEDCL), Aurangabad. The land admeasuring 52.00 Hectare (*i.e.* 5,20,000 sqm) bearing gut number 264 situated at *mouza* Ektuni, Tahsil Paithan, District Aurangabad was sanctioned for erecting of Electricity Sub-Station. The occupancy price of ₹ 2.90 crore was levied on the market value determined by the Joint District Registrar, Aurangabad (City). The details of market value worked out were not available.

Scrutiny of records in Office of the Collector, Aurangabad revealed (November 2013) that the rate of the said land was ₹ 275 per sqm. Based on the slab rates<sup>23</sup> the market value of the property comes to ₹ 8.64 crore<sup>24</sup>. As per instruction 30 of the Annual Statement of Rates (ASR) 2012, 50 per cent of the cost of the land was required to be paid to the Government as occupancy price which worked out to ₹ 4.32 crore. This resulted in short levy of occupancy price of ₹ 1.42 crore<sup>25</sup>.

This was pointed out by the audit between November 2013 and December 2013), the reply of the Collector, Aurangabad is awaited (February 2018).

This was brought to the notice of Government (April 2017 and August 2017). Reply thereto was awaited (February 2018).

<sup>22</sup> As per rule 2 (k-i) of Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971, occupancy price means the price payable as consideration for the grant of the right to occupy and use land. It is the market value of the land determined as per the rates prescribed in ASR.

<sup>23</sup> Government of Maharashtra, Revenue & Forest Department vide resolution (2008) prescribed the specific slabs for valuation of Government land allotted to the various institutions.

<sup>24</sup> 2,000 X ₹ 275 X 100% = ₹ 5,50,000  
2,000 X ₹ 275 X 90% = ₹ 4,95,000  
2,000 X ₹ 275 X 80 % = ₹ 4,40,000  
4,000 X ₹ 275 X 70% = ₹ 7,70,000  
5,10,000 X ₹ 275 X 60 % = ₹ 8,41,50,000  
Total = ₹ 8,64,05,000.

<sup>25</sup> ₹ 4.32 crore - ₹ 2.90 crore.

#### 4.5.2 Short recovery of unearned income

**Department did not calculate the market value as per the rate prescribed in Annual Schedule of Rates for levy of unearned income, which resulted in short recovery of ₹ 36.53 lakh**

As per Government resolution (July 2002 and May 2006) of Revenue and Forest Department, if Class-II land<sup>26</sup> is converted into Class-I land<sup>27</sup> for non-agricultural purposes, then the unearned income<sup>28</sup> amount equivalent to 50 per cent of market value<sup>29</sup> of the land determined as per the rates prescribed in ASR, should be recovered from the applicant.

Additional Collector, Dhule passed an order (September 2012) granting the permission for conversion of Class-II land into Class-I land. The area of the land was 3.06 Hectare (i.e. 30,600 sqm) bearing gut number 203/3, 203/4 situated at *mouza* Jaitane, Tahsil Sakri, District Dhule. The market value of the land was assessed at ₹ 9.18 lakh and unearned income amounting to ₹ 4.59 lakh<sup>30</sup> was recovered (September 2012). However, details of calculation of market value were not found on record.

Scrutiny of records in the Office of the District Collector, Dhule revealed (March 2015) that the market value of the land was ₹ 400 per sqm as per ASR-2012. The market value worked out to ₹ 82.24 lakh. Accordingly, unearned income, amounting to ₹ 41.12 lakh<sup>31</sup> was required to be recovered. Thus, incorrect assessment of market value of the land resulted in short recovery of unearned income by ₹ 36.53 lakh (₹ 41.12 lakh - ₹ 4.59 lakh).

Additional District Collector stated (March 2015) that the matter will be scrutinized and reply will be submitted.

This was brought to the notice of Government (May 2017 and August 2017). Reply thereto was awaited (February 2018).

<sup>26</sup> Class-II land means the land which occupant hold unalienated land in perpetuity subject to restrictions on the right to transfer.

<sup>27</sup> Class-I land means land without any restriction on the right to transfer.

<sup>28</sup> Unearned income means an amount equal to difference between current market value or the price realised by way of sale, whichever is higher.

<sup>29</sup> Market value as per Section 2 (na) of Maharashtra Stamp Act, 1958, 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.

<sup>30</sup> 50 per cent of ₹ 9.18 lakh.

<sup>31</sup> 50 per cent of ₹ 82.24 lakh.

## CHAPTER V

### TAXES ON VEHICLES

#### 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 Maharashtra Motor Vehicle Tax Act, 1958, the Maharashtra 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 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 31/03/2017	Pending observations as on 31/03/2017
2012-13	29	29	1,171	847	324
2013-14	32	32	693	224	469
2014-15	119	136	642	208	434
2015-16	129	151	516	242	274
2016-17	135	126	373	69	304
<b>Total</b>	<b>444</b>	<b>474</b>	<b>3,395</b>	<b>1,590</b>	<b>1,805</b>

**Source: Information furnished by the Department**

During the last five years, the number of units actually audited have exceeded the number of units planned to be audited. The Department has settled 47 per cent of the observations raised by the internal audit wing.

### 5.3 Results of audit

In 2016-17, test check of the records of 52 units relating to Maharashtra Motor Vehicles Tax Act, etc. revealed under assessment of tax and other irregularities involving ₹ 461.01 crore in 313 observations, which fall under the following categories shown in **Table 5.3**.

**Table 5.3**

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	Non/short levy of tax	194	11.93
2	Miscellaneous	119	449.08
<b>Total</b>		<b>313</b>	<b>461.01</b>

In response to our audit observations pointed out during the year 2016-17 as well as earlier years, the concerned Department accepted underassessment, short levy, etc. and recovered ₹ 18.61 crore in 291 observations.

A few illustrative cases involving ₹ 1.04 crore are discussed in the succeeding paragraphs.

**5.4 Non-recovery of Motor Vehicle Tax from transport vehicles (buses)**

**Tax amounting to ₹ 52.32 lakh was not recovered from owners of 97 transport vehicles i.e. buses**

According to the provisions of Section 3(1) of the Maharashtra Motor Vehicle Tax Act, 1958, tax is leviable on transport series vehicles (buses), used or kept for use in the State of Maharashtra, at prescribed rates in accordance with the seating capacity of the vehicle. The tax is payable in advance for annual, quarterly and less than quarterly periods as specified in Section 4 of the Act. The Regional Transport Offices (RTOs) maintain the details of recoveries made from the vehicle owners, issue of demand notices, etc. in the Cash Balance Review Register (CBRR). In case the tax is not paid in time, interest at the rate of two percent per month on the unpaid is recoverable from the vehicle owners under Section 8A of the Act. Further, as per provisions of Section 12 of the Act, arrears of tax and interest are recoverable as arrears of land revenue.

During test check of seven<sup>1</sup> offices between March 2015 and February 2017, we noticed from the CBRR that tax in respect of transport series vehicles (bus) amounting to ₹ 52.32 lakh was not recovered from owners of 97 vehicles for periods ranging from three months to 45 months between July 2012 and May 2016. It was seen that the CBRR had not been reviewed periodically and the demand notices had not been issued by the RTOs.

On this being brought to notice of the Department, they accepted the observations and intimated recovery of ₹ 7.08 lakh in respect of 14 cases between April 2015 and February 2017 and report on recovery in the remaining cases has not been received.

We reported the matter to the Government in July 2017; their reply has not been received (February 2018).

**5.5 Non recovery of Motor Vehicle Tax in respect of transport vehicles (goods)**

**Tax amounting to ₹ 26.72 lakh was not recovered from owners of 123 transport vehicles i.e. goods vehicles**

According to the provisions of Section 3(1) of the Maharashtra Motor Vehicle Tax Act, 1958, tax is leviable on transport series vehicles (goods), used or kept for use in the State of Maharashtra, at prescribed rates in accordance with the registered laden weight of the vehicle. The tax is payable in advance for annual, quarterly and less than quarterly periods as specified in Section 4 of the Act. The Regional Transport Offices (RTOs) maintain the details of recoveries made from the vehicle owners, issue of demand notices, etc. in the Cash Balance Review Register (CBRR). In case the tax is not paid in time, interest at the rate of two percent per month on the unpaid is recoverable from the vehicle owners under Section 8A of the Act. Further, as per provisions of

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<sup>1</sup> Regional Transport Officer – Mumbai (E), Mumbai (W) and Nashik; Dy. Regional Transport Officer – Ambajogai, Kalyan, Panvel and Vashi.

Section 12 of the Act, arrears of tax and interest are recoverable as arrears of land revenue.

During test check of five<sup>2</sup> offices between March 2015 and February 2017, we noticed from the CBRR that tax in respect of transport series vehicles (goods) amounting to ₹ 26.72 lakh was not recovered from owners of 123 vehicles for periods ranging from three months to 51 months between March 2011 and May 2016. It was seen that the CBRR had not been reviewed periodically and the demand notices had not been issued by the RTOs.

On this being brought to notice of the Department, they accepted the observations and intimated recovery of ₹ 7.03 lakh only in 26 cases during February 2016 and July 2017, and report on recovery in the remaining cases was not received.

We reported the matter to the Government in June 2017; their reply has not been received (February 2018).

### **5.6 Non recovery of Motor Vehicle Tax in respect of non-transport series of vehicles (Excavators/Cranes)**

#### **Tax amounting to ₹ 25.25 lakh was not recovered from owners of 94 equipment fitted vehicles**

According to the provisions of Section 3(1) of the Maharashtra Motor Vehicle Tax Act, 1958, tax is leviable on equipment fitted vehicles such as cranes and excavators, used or kept for use in the State of Maharashtra, at prescribed rates in accordance with the registered unladen weight of the vehicle. The tax is payable in advance for annual, quarterly and less than quarterly periods as specified in Section 4 of the Act. The Regional Transport Offices (RTOs) maintain the details of recoveries made from the vehicle owners, issue of demand notices, etc. in the Cash Balance Review Register (CBRR). In case the tax is not paid in time, interest at the rate of two percent per month on the unpaid amount is recoverable from the vehicle owners under Section 8A of the Act. Further, as per provisions of Section 12 of the Act, arrears of tax and interest are recoverable as arrears of land revenue.

During test check of four<sup>3</sup> offices between March 2015 and February 2017, we noticed from the CBRR that tax amounting to ₹ 25.25 lakh was not recovered from owners of 94 equipment fitted vehicles such as excavators, earthmovers, cranes, etc., for periods ranging from nine months to 72 months between July 2010 and December 2017. It was seen that the CBRR had not been reviewed periodically and the demand notices had not been issued by the RTOs.

On this being brought to notice of the Department, they accepted the observations and intimated recovery of ₹ 6.20 lakh in 23 cases in February and August 2017, and report on recovery in the remaining cases was not received.

We reported the matter to the Government in June 2017; their reply has not been received (February 2018).

<sup>2</sup> Regional Transport Officer – Nashik; Dy. Regional Transport Officer – Ambajogai, Kalyan, Panvel and Vashi.

<sup>3</sup> Regional Transport Officer – Andheri, Jalna and Nashik; Dy. Regional Transport Officer – Panvel.

## CHAPTER VI

### OTHER TAX AND NON-TAX RECEIPTS

#### 6.1 Tax administration

This chapter consists of receipts from State Excise, Entertainments Duty, State Education Cess (EC), Employment Guarantee Cess (EGC), etc. The administration is governed by Acts and Rules framed separately for each Department.

#### 6.2 Results of audit

In 2016-17, test check of the records of 139 units relating to the State Excise, Entertainments Duty, Taxes and Duties on Electricity, Education Cess/Employment Guarantee Cess, Profession Tax, Repair Cess, etc., showed short levy of licence fees, entertainments duty and other irregularities amounting to ₹ 55.26 crore in 412 observations, which fall under the following categories as indicated in **Table 6.2**.

**Table 6.2**

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	State Excise	122	2.84
2	Entertainments Duty	141	3.84
3	Taxes and Duties on Electricity	29	8.67
4	Repair Cess	10	0.02
5	Education Cess and Employment Guarantee Cess	46	29.08
6	Maharashtra Tax on Buildings (with Larger Residential Premises)	3	0.01
7	Profession Tax	57	0.35
8	Non-Tax Receipts	4	10.45
<b>Total</b>		<b>412</b>	<b>55.26</b>

In response to our audit observations pointed out during the year 2016-17 as well as earlier years, the concerned Department accepted underassessment, short levy, etc. and recovered ₹ 50.21 crore in 398 observations of which 40 observations involving ₹ 82.58 lakh related to 2016-17 and the rest to earlier years.

A few illustrative cases involving ₹ 6.21 crore are discussed in the succeeding paragraphs.

**State Excise**

**6.3 Non-recovery of additional licence fees**

**Additional licence fees for service of liquor in rooms aggregating ₹ 51.34 lakh was not recovered from three star-category hotels**

As per notifications issued from time to time by the Commissioner of State Excise, Maharashtra State under Rule 4(a) of the Maharashtra Potable Liquor (Periodicity and Fees for Grant, Renewal or Continuance of Licence) Rules, 1996, star hotels providing room-service of liquor are liable to pay in advance, in addition to licence fee, additional fees for one licence for service of liquor in rooms. In case these fees are not paid by the due date or within the prescribed period, the same can be recovered, under Section 114 of the Maharashtra Prohibition Act, 1949, along with simple interest at the rate of two *per cent* per month, from the date it has become due, as arrears of land revenue.

Scrutiny of licence renewal registers in two<sup>1</sup> offices between November 2015 and November 2016, we noticed that additional licence fee aggregating ₹ 51.34 lakh was not recovered from two hotels (one four star and one five star category) in Raigad District for the periods from 2013-14 to 2016-17, and from one four star category hotel in Thane District for 2014-15 and 2015-16. The non/short recovery aggregating ₹ 51.34 lakh was due to the fact that the Department had not made any enquiries before the issue of the regular licences for liquor, about the “star” category of the hotel, for application of the Rules regarding licence fees for service of liquor in rooms.

On this being brought to notice (November 2016) the Department accepted the observation and intimated (March 2017 and August 2017) recovery of ₹ 9.50 lakh in respect of two hotels in Raigad District and ₹ 20.85 lakh (including interest of ₹ 6.89 lakh) in respect of the hotel in Thane. Report on the recovery of the balance amount is awaited.

The Government may direct the Department to obtain undertakings regarding star category held by the hotels at the time of their grant/renewal of licences to ensure the timely recovery of additional licence fees.

We brought the matter to the notice of the Department in June 2017; their reply has not been received (February 2018).

**6.4 Short recovery of privilege fees**

**Privilege fees for transfer of liquor shop licence from one name to another, which is based on the population of the area where the shop is situated, was recovered short by ₹ 22.92 lakh in one case, as the Department had considered population figures of Census 2001 instead of 2011**

As per the provisions of Rule 5(b) of the Bombay Prohibition (Privileges Fees) Rules, 1954, the fees payable by any licensee for the privilege of having the transfer of licence in Form CL-III under the Maharashtra Country Liquor

<sup>1</sup> Superintendent of State Excise- Raigad and Thane.

Rules, 1973 or in Form FL-II or FL-III under the Bombay Foreign Liquor Rules, 1953, from one name to another, in the areas of Municipal Corporation of Greater Mumbai, Navi Mumbai, Thane, Bhiwandi, Mira-Bhayandar, Vasai-Virar, Kalyan-Dombivli and Pune shall be eight times of the fee chargeable for grant or renewal or continuance of such licence, whichever is higher. In case of other licences, the privilege fee is recoverable at the same rates as the fee chargeable for grant or renewal or continuance of licence, whichever is higher, in accordance with Rule 5(c) of the Bombay Prohibition (Privileges Fees) Rules, 1954. Further, the fees for grant or renewal or continuance of such licences is based on the population of the area in which these licences are operating.

During the test check (June 2016) of records relating to licences granted under Maharashtra Prohibition Act and Rules made thereunder in the office of the Superintendent of State Excise, Thane, we noticed that two licences, viz. FL-II and CLFLTOD-III of a shop located in the area of Navi Mumbai Municipal Corporation (population 11,20,547 – Census 2011), were transferred from one name to another in March 2015. However, while calculating the privilege fee, the licence fees were not recovered at the correct rates in accordance with the population of the area in which the licences were operating. Though the Report of Census 2011 was released in 31 May 2013, the Department had adopted the census figures of 2001 for calculation of privilege fee. This resulted in short recovery of privilege fee of ₹ 22.92 lakh as shown in **Table 6.4:**

**Table 6.4**

(Amount in ₹)						
Sr. No.	Licence Location Population	Date of transfer	Fees for renewal or grant of licence	Privilege fee to be recovered	Privilege fees recovered	Short recovery
1	FL II/ 238 and CLFLTOD-III/219 Navi Mumbai 11,20,547	30/03/2015	6,93,000 (FL) + 1,69,200 (Toddy)	55,44,000 + 1,69,200	33,00,000 + 1,20,900	22,44,000 + 48,300
<b>Total</b>						<b>22,92,300</b>

On this being brought to notice in June 2016, the Department accepted the observation and intimated recovery of the entire amount in September 2017.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

### 6.5 Short recovery of licence renewal fees

**Licence fees for renewal of liquor shop licences, which is based on the population of the area where the shop is situated, were recovered short by ₹ 14.67 lakh in five cases as the Department had considered population figures of Census 2001 instead of Census 2011**

In exercise of the powers conferred by Clause (a) of Rule 4 of the Maharashtra Potable Liquor (Periodicity and fees for grant, renewal or continuance of licence) Rules, 1996 and the provisions under Maharashtra Prohibition Act, 1949 read with Maharashtra Country Liquor Rules, 1973 for grant, renewal or continuance of licences in respect of manufacture of spirits/potable liquor/beer/wine/country liquor and retail sale thereof, etc. the Commissioner notifies the rates for each financial year for licences mentioned in Column No. 2 of the Schedule of the notification. The licence fees for retail sale of country liquor is based on the population of the area in which the retail shop is located.

During the scrutiny of records in two<sup>2</sup> offices during July 2016 and November 2016, we noticed that renewal fees in respect of five licences, which were renewed for various periods beginning from 2014-15 onwards, were not recovered at the correct rates in accordance with the population of the area where the shops were situated. Though the Report of Census 2011 was released in May 2013, the Department continued to adopt the census figures of 2001 for calculation of licence fees. The short recovery in this regard worked out to ₹ 14.67 lakh.

After this was brought to the notice of the Department between September 2016 and November 2016, the Department accepted the observation and reported recovery of the entire amount between November 2016 and January 2018.

We brought the matter to the notice of the Government in June 2017; their reply has not been received (February 2018).

### Entertainments Duty

### 6.6 Non recovery of Entertainments Duty from cable operators

**Entertainments Duty payable by cable operators aggregating ₹ 1.21 crore was not recovered in case of 247 cable operators**

Under Section 3(4) of the Maharashtra Entertainments Duty Act, 1923 (MED Act), Entertainments Duty is payable by the cable operators at the following rates:

<sup>2</sup> Superintendent of State Excise: Ahmednagar and Nagpur.

Sr. No.	Area	Amount of entertainment duty to be paid per TV set per month (with effect from 01/06/2006)
1	Within the limits of all Municipal Corporations and all cantonments	₹ 45
2	Within the limits of all 'A' and 'B' class <sup>3</sup> Municipal Councils	₹ 30
3	Within the limits of any other areas not covered by entries 1 and 2	₹ 15

Under Rule 14 of the Collection of Entertainments Duty on Cable Television (including Entertainments Duty leviable on DTH Broadcasting Services) by way of Public Auction Rules 2003, the Collector is required to assess the cable operators and recover the Entertainments Duty. These cable operators are required to file monthly returns in Form 'E' along with the payment of Entertainments Duty with the Collector. As per Section 4B(4) of the MED Act, if the return is not filed within the prescribed time, the State Government may, after giving the cable operator a reasonable time, assess to the best of its judgment, the Entertainments Duty due from the cable operators and also direct them to pay the Entertainments Duty and penalty. Besides fine, penal interest was also payable at the prescribed rates. Failure of compliance to the provisions of Section 4B is punishable under Section 5A by imprisonment for a term extending up to six months or fine not more than ₹ 5,000 or both. As per Section 9B of the MED Act, interest at the rate of 18 *per cent* per annum for the first 30 days and 24 *per cent* per annum thereafter is also to be levied in case of default in payment.

Test check of records of 11<sup>4</sup> offices between December 2015 and September 2016 revealed that 245 cable operators who were operational neither filed the returns nor paid the Entertainments Duty amounting to ₹ 1.21 crore for various periods between April 2012 and March 2016. The demands were also not raised by the concerned Collectors resulting in non-realisation of Entertainments Duty to that extent. Penalty and interest at the prescribed rates was also leviable.

After we pointed out these cases, the Department accepted the observations and communicated (between June 2017 and December 2017) recovery of ₹ 67.79 lakh from 161 cable operators between January 2016 and December 2017. Report on action taken on recovery of remaining amount has not been received.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

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<sup>3</sup> Category A – Municipal Councils with population between one lakh and three lakh. Category B – Municipal Councils with population between 40,000 and one lakh.

<sup>4</sup> Resident Deputy Collectors- Latur, Mumbai (Zone XI), Nanded and Thane; Dy. Collectors- Mumbai (Zone III, Fort) and Nashik; Taluka Magistrates- Andheri (Zone I, Zone III, Zone IV), Borivali (Zone V) and Kalyan.

**6.7 Non recovery of Entertainments Duty from permit rooms/beer bars with live orchestra**

**Entertainments Duty payable by proprietors of permit rooms/beer bars with live orchestra aggregating ₹ 11 lakh was not recovered in 10 cases**

As per Section 3 (11A) of the Maharashtra Entertainments Duty Act, 1923, there shall be levied and paid in advance by the tenth of every calendar month by the proprietor of every permit room or beer bar with live orchestra, the Entertainments Duty in respect of entertainment in such permit room or beer bar with live orchestra, to the State Government, at the rates of ₹ 50,000 per month in case of areas within the limit of Municipal Corporations.

Scrutiny of Recovery Register and relevant records in three<sup>5</sup> offices falling within the limits of Municipal Corporation of Greater Mumbai, between July 2016 and September 2016 revealed that Entertainments Duty amounting to ₹ 11 lakh was not paid by the proprietors of 10 permit room/beer bars with live orchestra during various periods between May 2015 and March 2016. The demands were also not raised by the respective prescribed officers against these permit rooms/beer bars resulting in non-recovery of Entertainments Duty of ₹ 11 lakh.

On this being brought to notice between July 2016 and September 2016, one office communicated (April 2017) recovery of ₹ 7 lakh in respect of eight permit rooms/beer bars. Recovery in respect of the balance cases was awaited.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

**6.8 Non levy of Entertainments Duty on convenience charges collected in respect of online booking of movie tickets**

**Entertainments Duty aggregating ₹ 13.21 lakh was not levied on convenience/service charges charged for online booking of tickets for admission to seven cinema theatres in Mumbai Suburban District**

Section 2(b)(ii) of the Maharashtra Entertainments Duty Act, 1923 (MED Act) defines “payment for admission” as “any payment for seats or other accommodation in a place of entertainment”.

As per Seventh Proviso under the aforesaid Section (added on 29 December 2014), any payment not exceeding ten rupees per ticket charged by the proprietor of any place of entertainment, for providing facility for online ticket booking shall not be included in the payment for admission i.e. any amount of such convenience charges in excess of ₹ 10 shall be included in the payment for admission and consequently Entertainments Duty shall be leviable. The proviso also required the proprietor to submit the data of online tickets sold per month and internet handling fee or convenience charges thereof to the Collector before seventh day of every succeeding month.

<sup>5</sup> Resident Dy. Collector Mumbai (Zone II and Zone XI) Fort and Taluka Magistrate Zone IV, Andheri.

Under the provisions of Section 4(2)(b) of the MED Act, the owners of place of entertainments are required to file returns in Form B disclosing the payments for admission and the duty payable thereon. However, the Form B has not been modified to include amounts of convenience charges collected in excess at ₹ 10 per ticket.

Under the provisions of Section 3(1)(c) of the MED Act, rates of Entertainments Duty on movie theatres is 45 per cent within the limits of Brihan Mumbai Municipal Corporation.

Our test check (April 2017) of returns in Form B and the returns pertaining to online ticket bookings in four<sup>6</sup> offices in Mumbai Suburban District (within the limits of Brihan Mumbai Municipal Corporation) revealed that “convenience charges” collected by seven cinema theatres in excess of ₹ 10 amounting to ₹ 42.55 lakh during the various periods between December 2014 and March 2017, were not assessed and subjected to levy of Entertainments Duty by the Department. This resulted in non-recovery of Entertainments Duty amounting to ₹ 13.21 lakh.

On this being brought to notice (April 2017) of the Department, the Department accepted the observations and stated that demand notices would be issued and recovery would be effected. Report on the recovery is awaited.

It is recommended that the Department may verify the records of other theatres with online booking facility in the Mumbai Suburban District as well as other districts to ascertain the recovery of Entertainments Duty on convenience charges.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

### **6.9 Non-recovery of Entertainments Duty in case of dishonored cheques**

**Entertainments Duty aggregating ₹ 13.25 lakh in 21 cases was not recovered in cash as the cheques by which they were initially paid were not honoured by the banks**

As per the provisions of Maharashtra Entertainments Duty Act, 1923, Entertainments 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 four<sup>7</sup> offices of the Department between April 2016 and July 2016, we noticed from the cheque/ dishonoured cheque register that in 21 cases, cheques issued by cable operators for payment of Entertainments Duty aggregating ₹ 13.25 lakh between January 2015 and March 2016 had been dishonoured by the concerned banks. Of these in one

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<sup>6</sup> Taluka Magistrate: Borivali, Kurla at Mulund (Zones VIII, X and XII).

<sup>7</sup> Entertainments Duty Officer- Zone D, Pune (Collector, Pune): Taluka Magistrates – Andheri (Zones I, III and IV) (Collector Mumbai Suburban Division).

case, it was stated that the cheque was dishonoured due to paucity of funds in the account of the cable operator. In the other cases, reasons were not furnished. The concerned officers neither took any action to recover the dues from the defaulters nor initiated proceedings as contemplated under the Negotiable Instrument Act. This resulted in non-realisation of Entertainments Duty aggregating ₹ 13.25 lakh and interest thereon.

After we pointed out the cases between May 2016 and August 2016, the Department accepted the observation and communicated (November 2016 and November 2017) recovery of ₹ 8.87 lakh in 12 cases. Report on recovery in the balance cases has not been received.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

### **6.10 Non/short levy of penal interest on delayed payment of Entertainments Duty**

#### **Penal interest aggregating ₹ 10.91 lakh was not levied in delayed payment of Entertainments Duty in 59 cases**

Under Section 3 of the Maharashtra Entertainments Duty Act, 1923 (MED Act), Entertainments Duty is payable on a monthly basis by cable operators, DTH service providers and proprietors of permit rooms and beer bars with live orchestra.

Under the provisions of Section 9(B) of the Maharashtra Entertainments Duty Act, 1923, if any proprietor fails to pay the amount of duty due under Section 3 within the prescribed period, he shall be liable to pay to the State Government, in addition to the amount of duty so payable, penal interest at the rate of 18 *per cent* per annum for the first 30 days and at the rate of 24 *per cent* per annum thereafter on such amount from the date such amount became or becomes payable till the amount and interest is fully paid.

Scrutiny of recovery register pertaining to Entertainments Duty in six<sup>8</sup> offices revealed that 59 assesseees of Entertainments Duty including cable operators, proprietors of permit rooms and beer bars, etc. had delayed payments of Entertainments Duty dues for various periods between January 2013 and March 2016. The delays ranged from 30 days to 1,072 days but the Department did not levy/short levied penal interest for the delayed remittances of the dues for which the penal interest recoverable in these cases worked out to ₹ 10.91 lakh.

On this being brought to notice, the Department stated that action would be taken to recover the interest. Further progress in the matter is awaited.

We brought the matter to the notice of the Government in July 2017; their reply has not been received (February 2018).

<sup>8</sup> Deputy Collector, Fort (Zone II and Zone XI); Taluka Magistrates - Borivali (Zone VI), Kalyan and Kurla at Mulund (Zone IX and XI).

**Police Receipts**

**6.11 Short realisation of fines due to delay in implementation of revised rates for traffic violations**

**Fines at revised rates for traffic violations aggregating ₹ 3.63 crore in 1,34,010 cases was not realized as the notification revising the rates was implemented with delays ranging from four to 25 weeks in five offices**

Under the Motor Vehicles Act, 1988 (MV Act), the Traffic Police are required to recover fines from traffic offenders for offences under the Act. The quantum of fines to be recovered are regulated by notifications issued by the Home Department of the State Government from time to time.

The Home Department had vide a Gazette notification issued on 4 August 2016 revised the rates of fines for offences committed under various Sections of the MV Act, and circulated the same to all offices.

Scrutiny of records of the offices of the Dy. Commissioner of Police (HQ), Aurangabad City and the Superintendents of Police, Dhule, Nashik, Raigad and Ratnagiri during December 2016 to September 2017 revealed that the notification was implemented with delays ranging from four to 25 weeks<sup>9</sup>, resulting in short realization of revenue amounting to ₹ 3.63 crore on account of various traffic offences penalised by the Department during various periods between August 2016<sup>10</sup> to January 2017 as shown in **Table 6.11**:

**Table 6.11**

Sr. No.	Name of the office	Delay in weeks	No. of Cases	Penalty leviable (₹)	Penalty levied (₹)	Short recovery (₹)
1	Commissioner of Police, Aurangabad City	25	1,14,718	4,40,62,100	1,19,99,800	3,20,62,300
2	Superintendent of Police, Dhule	25	12,869	54,24,900	25,32,600	28,92,300
3	Superintendent of Police, Nashik	16	4,984	16,63,300	5,53,800	11,09,500
4	Superintendent of Police, Raigad	8	641	2,00,900	64,100	1,36,800
5	Superintendent of Police, Ratnagiri	4	798	1,84,800	88,600	96,200
<b>Total</b>			<b>1,34,010</b>	<b>5,15,36,000</b>	<b>1,52,38,900</b>	<b>3,62,97,100</b>

<sup>9</sup> Calculated from 4 August 2016.

<sup>10</sup> Information for the period from 04 August 2016 to 31 August 2016 is not readily available in respect of Superintendents of Police – Dhule, Nashik and Raigad, hence non-recovery calculated from 01 September 2016. In case of SP Ratnagiri, information available from 19 August 2016 only.

After this was pointed out, the offices stated that the delay in receipt of the aforesaid notification caused consequent delays in its implementation.

Failure of the Department to implement the notification from the date of issue indicates weak internal checks and control systems within the Department.

We brought the matter to the notice of the Government in August and September 2017; their reply has not been received (February 2018).



(SANGITA CHOURE)

**Principal Accountant General (Audit)-I,  
Maharashtra**

**Mumbai  
The 07 May 2018**

**Countersigned**



(RAJIV MEHRISHI)

**Comptroller and Auditor General of India**

**New Delhi  
The 09 May 2018**



## Annexure I

(Reference: Paragraph number 4.3.2.2)



**Image No. 1: Google Earth Image of May 2005 of Lendi Talab, Nagpur**



**Image No. 2: Google Earth Image of July 2017 of Lendi Talab, Nagpur**

**Annexure II**

*(Reference: Paragraph number 4.3.2.3)*



**Image No. 1: Google Earth images (February 2016) of Niphad Tahsil indicating encroachment for brick work**



**Image No. 2: Google Earth images (March 2016) of Paithan Tahsil indicating encroachment for brick work**

**Annexure III**

(Reference: Paragraph number 4.3.2.7)



**Image No. 1: Showing Road under development plan encroached Source: Google Earth**

DP plan road



**Image No. 2: Development Plan of Nagpur City**



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