CHAPTER - III

3 Transaction Audit Observations

Important audit findings noticed as a result of test check of transactions made by the State Government companies/Statutory corporations are included in this Chapter.

Government companies

Tamil Nadu Industrial Development Corporation Limited

3.1 Loss due to adoption of incorrect minimum upset price

While alienating Government land to a joint venture promoter for developing SEZ, the Company deviated from the Government policy and adopted the guideline value applicable for residential area instead of for an industrial area resulting in minimum loss of revenue of Rs.148.88 crore to the Government

The Company, engaged in promotion and development of industries, decided (October 2006) to develop a Special Economic Zone (SEZ) for Information Technology (IT)/Information Technology Enabled Services (ITES) in a Joint Venture (JV) format in 26.64 acres out of 49.19 acres of land allotted by the Government in Thiruvanmiyur and Kottivakkam villages in Chennai and Kancheepuram Districts respectively. The Company also decided (October 2006) to select the JV partner on the basis of the highest offer of non-refundable upfront lease rent for a lease period of 99 years for the area to be allotted. The upset price for the lease rent was to be the higher of the market value as ascertained from the Revenue department and the guideline value of the Registration Department.

The Company determined the market value of land as Rs.3,520 per Sq.ft. by adding annual escalation of 12 *per cent* (as per the Government methodology) on the guideline value of Rs.3,000 per Sq.ft. applicable for residential area in Canal Bank Road, Taramani obtained from Registration Department of the State Government. The Company quoted this market rate as the upset price and invited (August 2007) 'Request for Proposals' (RFP) from the eight short listed bidders. The Company selected (September 2007) DLF Limited as JV partner, which quoted the highest rate of Rs.5,757 per sq.ft. as upfront lease rent. The Company received the Government approval (January 2008) and issued Letter of Award to DLF Limited in February 2008. DLF Limited remitted Rs.725.33 crore of lease rent into Government Account in April and May 2008.

Audit observed (March 2009) that the Company erred in fixation of lease rent and adopted wrong parameters in view of the following:

- The entire area of 49.19 acres of land allotted by the Government was poromboke♣ land. According to the guidelines issued (May 1975) by the State Government, the Company should have fixed market value of the Government land allotted for industrial purposes at double the market rate of residential area indicated by the Registration Department. Accordingly, the upset price of this land should have been fixed at Rs.7,040 per Sq.ft. (being the double of guideline value of Rs.3,520 per Sq.ft. applicable for residential area). However, the Company leased out this land by collecting the land value at the rate of Rs.5,757 per Sq.ft., instead of Rs.7,040 per Sq.ft which resulted in minimum loss of Rs.148.88• crore to the Government exchequer and resultant undue benefit to the JV promoter.
- Fixation of lower upset price for the above land was also evident from the fact that the balance portion of land measuring 25.27 acres♦ had been allotted (February 2008) to another joint venture partner *viz*., Tata Reality and Infrastructure Limited (Tata), Mumbai for developing another Special Economic Zone at their quoted rate of Rs.12,050 per Sq.ft.

The Government replied (December 2009) that the plots were sold after following the tender processes to both Tata and DLF projects. The reply is not convincing in view of the fact that both the plots belonged to the Government and were allotted for industrial purposes. However, in respect of DLF plot, the upset price was fixed based on the guideline value for residential plots, whereas for Tata plots, the same was fixed based on the guideline value for industrial area.

Audit suggests that the Company needs to fix the correct land prices for sales and avoid passing undue favour.

3.2 Undue benefit to a joint venture company

While alienating Government land to a joint venture promoter, the Company deviated from the Government policy and adopted lower rate of escalation for fixing the land cost. Thereby, it extended an undue benefit of Rs.9.75 crore to the promoter

The Government of Tamil Nadu accorded its approval (November 2001) for alienating 40.19 acres of poromboke land to the Company for establishing TIDEL Park-II project at Chennai as a Joint Venture (JV) project with the following conditions:

♣ Land used or reserved for public or Government purpose.

• 26.64 acres X 43,560 sq.ft per acre X differential price of Rs.1,283 per sq.ft (Rs.7,040 – Rs.5,757 per sq.ft) = Rs.148.88 crore.

♦ The balance portion includes 22.55 acres (49.19 acres – 26.64 acres) and a further allotment of 2.72 acres in 2006-07.

- The Company should alienate the land to the JV partners only after collecting the market value of the land on the date of transfer and
- Alienation should be in phases after successful utilisation of the land allotted in the earlier phases.

The Company, thereafter, entered (July 2002) into a Memorandum of Understanding (MOU) with Ascendas (India) Private Limited, Chennai (Ascendas) for jointly promoting the project in 15 acres of land. Based on the Company's request (December 2002) to transfer land in favour of Ascendas, the Government transferred five acres of land in the first phase and fixed (April 2003) the price at Rs.19.46 crore. The cost of the above land was collected by the Company in April 2004 and the land was transferred to Ascendas in May 2004. The Company, meanwhile entered (June 2003) into an associate sector JV agreement with Ascendas. Based on the request of Ascendas, the Company handed over (August 2005 and April 2007) the balance 10 acres of land in two phases by fixing[*] the land cost as Rs.21.97 crore and Rs.25.65 crore for each parcel of five acres respectively. These costs were remitted by Ascendas during April/July 2006 and November 2006/June 2007 respectively.

Audit observed (March 2009) that the procedure for fixation of land cost by the Company was erroneous and caused loss of Rs.9.75 crore to the Government. The Company did not follow the Government Orders of 10 September 2001 {GO (MS) No.329 of Revenue Department} to increase the base value of land by 12 *per cent per annum* in the second and third installments of transfer of land. Failure to adopt the Government order on escalation, for reasons not put on record, resulted in undue benefit of Rs.7.41 crore to Ascendas. The cost of land in the first phase was fixed by the Government in April 2003 and the actual payment was received by the Company in April 2004, *i.e.*, after a delay of one year. Accordingly, the Company should have applied the date of receipt of money as the date of valuation of land and should have increased the cost by another 12 *per cent per annum,* being the rate of escalation adopted by the Government for valuation of land. Failure to do so resulted in loss of revenue of Rs.2.34 crore.

The Company replied (May 2009) that adoption of escalation rate of 10 *per cent per annum* on the price fixed by the Government in April 2003 was based on decision of the Board of Directors in December 2002 and as per clause 2.4 (c) of the Associate sector agreement with Ascendas. It further stated that there was no mention regarding the cost escalation for the first phase of five acres and hence it did not collect any escalation for the transfer of the said land.

The reply is not convincing because the said land was a Government property and by deviating from the Government policy, the Company extended an undue benefit of Rs.9.75 crore to the JV Company.

[*] The land cost fixed by the Government in April 2003 was cumulatively escalated by 10 *per cent per annum* to arrive at the cost in August 2005/April 2007.

Audit suggests that Company should enter into contracts which are compliant with extant directions of the Departments of the State Government to protect its interests and those of the Government, especially where it is acting as a custodian of Public Property.

The matter was reported to the Government in May 2009; its reply was awaited (December 2009).

Electronics Corporation of Tamil Nadu Limited

3.3 Unproductive investment in business data centre

The Company spent Rs.8.56 crore to setup a business data centre without a business plan and approval of the State Government, rendering the investment idle and unproductive. The Company is contract bound to incur a wasteful maintenance expenditure of Rs.3.47 crore upto the year 2012

The Company decided (March/August 2007) to set up its own business data centre at an estimated cost of Rs.11.85 crore, which comprised of Rs.1.97 crore for civil works at the Company's Information Technology centre at Chennai, Rs.4.08 crore for construction of a new building and other physical infrastructure at Madurai for setting up a Disaster Recovery Centre (DRC) and Rs.5.80 crore for procurement of two main frame servers-one each for the company's data centre at Chennai and the proposed DRC, Madurai.

The Board while approving the above proposal, directed (August 2007) that as funds from the indenting departments were available, the mainframe server for the data centre at Chennai could be procured straight away and the second mainframe server for DRC at Madurai could be procured after mobilising funds from indenting departments. However, Audit observed (May 2009) that the Company commenced the project (October 2007) and procured two mainframe servers at a cost of Rs.6.08 crore from IBM India Private Limited (IBM) before mobilising funds from the user departments. There was factually no demand from any departments, hence funds could not be mobilised. The Company also purchased other related infrastructure like generators, air-conditioners *etc.,* at a cost of Rs.1.64 crore. The Company also negotiated (November 2007) an agreement with IBM for providing post warranty annual maintenance at a total cost of Rs.3.47 crore for a period of four years and incurred Rs.0.84 crore on purchase of Linux operating system solution licence for five years. The Company could not finalise a suitable location for DRC at Madurai and installed both the main frame servers at Chennai to make the project operational (April 2008).

The Company, to avoid assessment of propriety of procurement of these main frame servers, transferred the existing data on Family Card Projects pertaining to Civil Supplies Department of Government of Tamil Nadu hitherto maintained in the rack servers at the Corporate Office data centre to the main frame servers without any revenue realisation/assurance from the Department. The Company was unable to obtain business from any Department and could not utilise the servers for storing any data as they were procured without any assessment of demand or assurance of business.

Audit noticed (July 2009) that:

- the Company incurred the above capital expenditure without prior approval of the Project Investment Committee (PIC) of the State Government even though as per Government Orders (December 1996), PIC's clearance is mandatory for every investment in excess of Rs.2 crore by a State PSU. The Company, though after incurring expenditure, attempted (May 2008) to obtain ratification of PIC but has not been granted so far (December 2009).
- As per the generally accepted IT security practices, a DRC has to be located in a place other than the place of the main Data Centre. But the mainframe server originally proposed for installation at Madurai had also been installed at Chennai in the same premises as the land required for DRC was not available at Madurai. Thus, the Company had also compromised the basic laid down principles of data security.

Audit concludes that the hasty decision of the Company to establish its own Data Centre without a business plan/assessment of business obtainable and the consequent hardware procurement resulted in unproductive investment of Rs.8.56 crore and a committed expenditure of Rs.3.47 crore towards annual maintenance of the Data Centre upto March 2012 without any business.

Audit recommends that the Company should embark on viable projects after a feasibility study, proper assessment and adequate and reliable data to protect its financial interests.

The matter was reported to the Company/Government in August 2009; their reply was awaited (December 2009).

3.4 Unproductive expenditure on engagement of Software professionals

The Company ventured into software development without determining its scope and did not monitor the project during execution, which led to unproductive expenditure of Rs.2.56 crore

The Company, as a part of its business activity, decided (May 2007) to develop software application in the areas of family card project (Civil Supplies Department), dealer's registration (Commercial Tax Department), anywhere property registration (Registration Department) *etc*., unilaterally without any demand from the State Government's user Departments.

Audit noticed (July 2009) that the Company, even before finalisation of user requirement study (URS) and system requirement study (SRS), entered

(November 2007) into a contract through open tender with Anadocs IT Solutions Private Limited, Chennai (Anadocs) for supply of seven software professionals at a man monthly rate ranging from Rs.40,000 to Rs.1,40,000 for a period of one year, subsequently raised to 13. It extended the contract period for further four months up to March 2009 citing non-completion of the software development work. The project did not take off. The Company discontinued (March 2009) the services of Anadocs without imposing any cost and liability by which time it had paid Rs.1.79 crore.

The Company re-awarded the assignment and committed (February 2009) to incur Rs.0.77 crore for the next two years for take over and completion of work by engaging three other companies through limited tender.

Audit observed that:

- the Company ventured into software development without any consultation on requirement and commitment from the User Departments. The Company prematurely engaged professionals for software development without finalisation of URS and SRS. The Company had engaged (January 2007 to September 2009) 15 management consultants and incurred Rs.26.55 lakh for finalisation of SRS but they were diverted for other works, defeating the purpose of their engagement. The Company, in absence of SRS and URS, neither defined the scope of work of Anadocs nor specified the delivery requirements, making the task of software development directionless.
- as per the Tamil Nadu Transparency in Tenders Act, 1998, the evaluation of tender is to be done only by a Tender Committee. However, the contract in favour of Anadocs was evaluated/finalised by the then Managing Director without approval of any tender committee.
- the contract with Anadocs did not specify any milestone for completion and the reporting requirements to the Management. There was no record to indicate that the Company had monitored/evaluated the progress of the work throughout the contract period.
- subsequent engagement of the three IT companies without finalisation of SRS, reporting mechanism and defined deliverables indicate that the Company had not learnt from its earlier mistake and the expenditure of Rs.0.77 crore upto 2011 shall also be unproductive.

Thus, venturing into software development without any demand and determining its scope coupled with unsound management practices led to an unproductive expenditure of Rs.1.79 crore, which was written off by the Company in October 2009.

The matter was reported to the Company/Government in August 2009; their replies were awaited (December 2009).

Poompuhar Shipping Corporation Limited

3.5 Unwarranted extension of charter period of a vessel

The Company incurred an avoidable expenditure of Rs.1.20 crore due to unwarranted extension of engagement of an uneconomical vessel

The Company is engaged in ocean transport of coal required by Tamil Nadu Electricity Board (TNEB). To overcome the shortage of vessels for transporting coal during the planned dry docking of the Company's own vessel MV Tamil Periyar (between December 2007 and March 2008), the Company invited (October 2007) tender for chartering of two vessels for three months plus or minus 10 days at the charterer's option, commencing from 1 December 2007.

The tender evaluation committee examined (October 2007) the offer of M/s.Good Earth Maritime Limited, Chennai to hire vessel, MV Goodlight at a charge of Rs.30.86 lakh per day. The committee noted that though the weighted average cost of transporting coal of Rs.1,143.63 per tonne by the said vessel was higher than the prevailing rate of Rs.854.95 per tonne and also that vessel was 28 years old against its norm of engaging only upto 15 years old vessels, the Company accepted the offer in view of non-availability of alternate vessels during the period from December 2007 to March 2008. The Company operated MV Goodlight from 1 January 2008 to 30 March 2008. On 10 March 2008, TNEB requested the Company not to redeliver the vessel to the owners by the end of March 2008 and to exercise the option of extension of charter period by 10 days for undertaking one more voyage in the Vizag - Ennore sector. The Company accepted the request (March 2008) of TNEB and operated the vessel for an extended period of 1 April 2008 to 16 April 2008.

Audit observed (February 2009) that there were nine vessels in operation for handling the coal from Paradeep, Haldia and Vizag ports with an aggregate capacity of 4.49 lakh MT (excluding MV Goodlight) as on 1 April 2008. This was enhanced to 4.94 lakh MT with the return of Company's own vessel MV Tamil Periyar (capacity: 45,000 MT) after dry docking on 2 April 2008. Considering the fact that the Company was having the coal stock of 4.46 lakh MT in the above three ports as on 1 April 2008, the Company could have discharged the coal stock without extending the charter of MV Goodlight and there was no time limit to be adhered to for lifting the stock. Thus, by utilising the vessel MV Goodlight for an extended charter period and not supplying its principal (TNEB), correct data to take an informed decision, the Company incurred avoidable expenditure of Rs.1.20[•] crore which was ultimately passed on and added to TNEB's loss.

The Government replied (May 2009) that the Company had exercised the plus 10 days charterer's option based on the request of TNEB due to critical stock

• The differential cost of Rs.289 per tonne incurred on transport of 41,568 tonnes of coal in the Haldia-Paradip-Ennore sector during the extended period.

position of coal in their thermal stations and MV Goodlight moved a quantity of 41,568 MT of coal in Vizag – Ennore sector during the extended period.

The reply is not convincing as the Company could have avoided extension to MV Goodlight and still discharged the coal stock from the loading ports with the available vessels.

Audit concludes that extension of chartered period of MV Goodlight at that point of time was not a sound business decision and suggests that the Company should take decisions on sound commercial principles to safeguard its financial interests and those of its principal.

Arasu Rubber Corporation Limited

3.6 Non-adjustment of gratuity amount

Non-adjustment of the gratuity amount receivable from Government against the lease rent payable to the Government led to avoidable payment of interest of Rs.73.87 lakh

The Company was formed in October 1984 with the objective of efficient implementation of the various developmental and commercial activities relating to rubber plantations in Kanyakumari district, which were carried out till then by the Forest Department. The rubber plantation workers, who were on the rolls of the Forest Department at the end of September 1984, became workers of the Company on the date of its formation. These workers were eligible to receive gratuity (at the rate of 15 days' wages for every completed year/part of the year of service) from the Forest Department for the services rendered by them upto September 1984.

The Company had been making gratuity payments in full to those workers on their retirement/resignation/death from its own funds even though it was liable to make only proportional payments for the services rendered to the Company from the date of its formation. Therefore, the Company resolved (April/September 1990) to claim reimbursement of the amount paid for the services rendered in the Forest Department and accordingly wrote (January 1992, May 1993 and May 1994) to the Government claiming the gratuity amount of Rs.16.20 lakh upto June 1991.

In the meanwhile, a lease agreement valid for 60 years was executed (March 1997) between the Company and the Government with retrospective effect from 1 October 1984. Clause 6 of the lease agreement provided for deducting the outstanding liabilities payable by the Forest Department to the Company prior to the lease period from the lease amount payable to the Government. Government further stated (December 1997) that belated remittance of lease amount would attract interest at 12 *per cent per annum*. In view of this, it was imperative on the part of the Company to adjust all the outstanding dues payable by the Forest Department from the lease amount payable to

Government so as to avoid interest in case of belated settlement of the lease amount.

After being pointed out in Audit (February 2003), the Company requested (May 2003) the Government to adjust Rs.85.82 lakh paid as gratuity by the Company to the erstwhile workers of the Forest Department for the period from 1 January 1984 to 31 March 2002 against the lease rent *etc*., payable by the Company. The Government replied (June 2005) that reimbursement of gratuity from the Forest Department was to be finalised in consultation with the Principal Chief Conservator of Forest, Chennai.

Audit observed that the Company did not work out the lease amount payable after adjusting the gratuity by invoking the provisions contained in Clause 6 of the lease agreement. Instead, it has been paying interest at 12 *per cent per annum* on the lease amount that remained outstanding since 1991-92.

The total amount of gratuity paid on behalf of the Forest Department during the period from 1988-89 to 2006-07 and not reimbursed so far was Rs.148.50 lakh and the interest borne by the Company due to non-adjustment of the gratuity amount from 1997-98 to 2006-07 was Rs.73.87 lakh.

The Government replied (August 2009) that the reconciliation of the amount paid by the Company has been completed by the Principal Chief Conservator of Forest and the orders for adjusting the lease rent payable would be issued shortly.

3.7 Non-availing the benefits of inter crop cultivation

The Company did not carry out inter crop cultivation, and hence, could not control the expenditure of Rs.30.72 lakh besides foregoing possible revenue

The Company has been engaged in rubber plantation in an area of 4,786 hectares in Kanyakumari district (since October 1984) transferred to it by the Government. The rubber trees have to be maintained for a period of 30 to 35 years and felled thereafter for carrying out fresh plantation.

The Rubber Board recommended (2002) to cultivate inter crops in the newly replanted areas during first three years of replantation with any of the species *viz.*, banana, pine apple, ginger, turmeric, medicinal plants, cardamom, *etc.*, to extract benefits of weed control, prevention of high casualty of young rubber plants and resultant accrual of income. The Company, accordingly approached (February 2003) the Forest Department for obtaining permissions to cultivate inter crops. The Forest Department permitted the activity (November 2003).

The Company selected (January 2004) banana as inter crop in Keeriparai division and outsourced (February 2004) inter cropping in the said area and earned revenue of Rs.6.22 lakh *per annum.*

Audit observed that though the Company had derived specific advantages from inter cropping, it decided (June 2006) not to go for inter cropping in another area of 55.4 hectares in Coupe No.4 of Keeriparai division on the ground that the area under replantation was a flat area without much weeds. Audit noticed that as inter cropping was not done in this area, the Company could not control expenditure and incurred Rs.30.72 lakh towards maintenance and weed control during two-and-half years upto September 2008 besides heavy casualty rates of rubber plants which ranged between 16 to 37 *per cent* against the norm of 10 *per cent* leading to a loss of Rs.3.04 lakh.

Audit observed (January 2009) that the Company's decision not to carry out inter cropping in Coupe No.4 despite being aware of its definite advantages was not in the best financial interests of the Company. Though the Company had noted that the area was flat and without much weeds it had actually incurred Rs.10.60 lakh towards de-weeding, indicating that there was need for carrying out inter cropping. It stands in stark comparison to the fact that the Company did not incur any expenditure on weed control, maintenance, *etc*., in the first instance of inter cropping. Thus, had the Company resorted to inter cropping at this plot also, it could have not only reduced its expenditure of Rs.30.72 lakh on maintenance, de-weeding, *etc*., but also earn possible income through sale of the crop.

The Government replied (August 2009) that inter cropping permitted in the initial years of plantation of rubber had adversely affected the crops and hence the same was not continued further. The reply is not convincing because the inter crop cultivation was recommended by the Rubber Board for improving the health of the rubber plants which was adopted by the Company in their master plan upto 2015-16.

Audit recommends that the Company should follow the advice of the research bodies and follow their recommendations.

Tamil Nadu Small Industries Corporation Limited

3.8 Avoidable extra expenditure on Central Excise Duty and Value Added Tax

Inclusion of transportation cost in the value of goods resulted in avoidable payment of Central Excise Duty and Value Added Tax (VAT) amounting to Rs.34.35 lakh

The Company obtained (July 2007) an order from the Director of School Education, Chennai for supply of steel/wooden furniture for a value of Rs.69.09 crore inclusive of excise duty and other taxes.

Section 4(1) (b) of Central Excise Act, 1944 (Act), provides that the assessable value of goods manufactured for the purpose of computation of Central Excise Duty shall be based on the manufacturing cost of goods excluding the cost of transportation from the factory/warehouse to the place of delivery. Exclusion of cost of transportation is allowed by the Central Excise Authorities only if the assessee has shown the same separately in invoices.

Audit noticed (July 2008) that the Company erred and did not show the transportation cost separately in the invoices raised in respect of the supplies made to the Directorate during the period from October 2007 to January 2008 and consequently had to pay an excess excise duty of Rs.33.03 lakh on the transportation charges of Rs.2.07 crore. In addition, the Company also paid VAT of Rs.1.32 lakh on the above excess excise duty. Thus, had the Company shown distinctly the transport charges in the invoices, it could have avoided payment of Excise duty on transport charges.

On being pointed out by Audit, the Company made (February 2009) an attempt to obtain refund of excise duty. The Excise Department, however, rejected (June 2009) the Company's claim for refund of the excess excise duty as the transportation cost was not shown separately in the invoices and the Company could not produce proof for actual transportation cost.

This failure of the Company to depict the transport cost separately in the invoices and produce proof for actual transportation cost incurred resulted in avoidable payment of Central Excise Duty and VAT of Rs.34.35 lakh.

The matter was reported to the Company/Government in August 2009; their replies were awaited (December 2009).

Tamil Nadu Small Industries Development Corporation Limited

3.9 Avoidable payment of interest on income tax

Absence of a system to estimate advance income tax payable led to short remittance of advance income tax, resulting in avoidable payment of interest of Rs.30.63 lakh

Section 208 of the Income Tax Act, 1961 (Act), stipulates advance payment of tax, where the tax payable *per annum* by an assessee is Rs.5,000 or more. This advance tax calculated in accordance with Section 209 of the Act is payable in four quarterly instalments between June and March of every financial year. If the assessee fails to pay 90 *per cent* of the assessed tax before the end of the financial year, the assessee is liable to pay interest at the rate of one *per cent* for every month or part of the month under Section 234 B of the Act and is also liable to pay similar interest for shortfalls in the quarterly payment of advance tax under Section 234 C of the Act.

Audit observed that during the financial years 2006-07 and 2007-08, the Company paid advance tax of Rs.36.00 lakh and Rs.121.19 lakh against the actual tax liability of Rs.223.97 lakh and Rs.361.96 lakh respectively. Consequent on shortfall in payment of advance tax during the said two years, the Company had to pay interest of Rs.25.88 lakh under Section 234 B of the Act and Rs.23.55 lakh under Section 234 C of the Act.

Audit observed that the Company estimated the advance tax based on the revised estimate of tax of the previous year instead of estimating it on the basis of actual profit earned during the previous year. The Company did not have a system of periodical review of actual profit earned with that of the budgeted profit of the respective financial years, which would have enabled the Company to pay the advance income tax correctly and could have avoided payment of interest of Rs.49.43 lakh for the years 2006-07 and 2007-08.

Thus due to absence of system of review of actual profit, the Company could not estimate the advance income tax liability resulting in avoidable payment of interest of Rs.30.63 lakh after allowing for interest earned (Rs.18.80 lakh) on delayed payments. The Company needs to put in place immediately a proper system of estimation of tax liability on actual/estimated profit.

The Government replied (May 2009) that a system would be evolved by the Company to review the status of income and tax payable by it on quarterly basis.

Tamil Nadu Minerals Limited

3.10 Avoidable payment of penal interest on sales tax

The Company delayed remittance of sales tax resulting in avoidable payment of penal interest of Rs.38.22 lakh and net loss of Rs.29.10 lakh

The Company is engaged in supply of granite blocks to buyers and dealers both for domestic and export sales. Rule 12 (10) of the Central Sales Tax (Registration and Turnover) Rules 1957, lays down that a dealer, who claims the sale as an export sale has to furnish a certificate in Form-H along with the evidence for such sales to claim exemption from levy of sales tax.

During 2002-03 and 2003-04, the Company issued invoices for sale of granite blocks to certain buyers without collecting sales tax based on their request to treat the sales as export sales but not supported by Form-H. Subsequently, four buyers expressed their inability to export the granite blocks and requested (November 2003 to October 2004) the Company to treat the sales as local sales. The Company, then adjusted (November 2003 to October 2004) Rs.1.03 crore towards sales tax for the domestic sales from the running accounts maintained by the buyers with it. However, the Company remitted the tax to the Sales Tax Department in May 2005.

For the delayed remittance of tax amount of Rs.1.03 crore for the year 2002-03, the tax authorities levied (June 2005) penal interest of Rs.51.44 lakh by reckoning the period of delay as 25 months from 1 April 2003 to 30 April 2005. The Company remitted the same to the sales tax authorities in March 2006. The sales tax authorities also demanded (June 2005) penal interest of Rs.8.70 lakh for the year 2003-04, which was paid by the Company in September 2005.

Though the Company raised (October 2006) fresh debit notes for Rs 60.14 lakh of penal interest on the buyers, they accepted Rs.21.92 lakh as their part of the liability applicable to the period from 1 April 2003 to the dates of adjustment of tax made by the Company. The Company was forced to bear the balance penal interest burden of Rs.38.22 lakh.

Audit observed that the Company's failure to insist on submission of the Form-H at the time of issuing the invoices to the buyers and relying on the dealers' verbal assurances to produce the same later without any method of ensuring the same led to this avoidable liability. The Company, even after realisation of the sales tax by way of adjustments from the advance payments of the buyers, further delayed remittance of the sales tax. There was no reason on record for doing so though it was holding Rs.30.95 crore and Rs.40.46 crore in Fixed Deposits (FD) as on March 2003 and 2004 respectively, showing that Company was not short of resources. At the then prevailing rate for investments in FD, the Company could have earned only Rs.9.12 lakh on the amount of sales tax that was remitted belatedly. Even after considering the interest amount, the net loss suffered due to payment of penal interest worked out to Rs.29.10 lakh.

Audit recommends that the Company needs to put in place a proper system of internal controls to oversee receipt of statutory forms as proof for export sales from the buyers within the respective financial year and remit the sales tax collected without delay to avoid penal liabilities.

The matter was reported to the Company/Government in April 2009; their reply was awaited (December 2009).

Tamil Nadu Agro Industries Development Corporation Limited

3.11 Inadequate arrangement for safeguarding movable/immovable assets

The Company which has become non functional from March 2003 did not safeguard its movable/immovable assets. There were delays in conveyance of land in its favour and did not realise Rs.40 lakh from a Company under liquidation due to non-traceability of original share certificates

The State Government ordered (November 2001) closure of the Company in view of its continued losses and it eventually became non-functional from March 2003. As at closure of financial year 2002-03, the Company had total assets valued at Rs.26.25 crore comprising of immovable assets of Rs.20.50 crore and movable assets of Rs.5.75 crore. To have better control over the assets, the Company should maintain complete and updated records of assets besides making security arrangements and periodical physical verification. In the case of land, the Company should ensure that allotted land is got conveyed and protected. In respect of assets like receivables/investments, the Company should ensure timely recovery and encashment. Scrutiny of records by Audit disclosed deficiencies in maintenance and upkeep of movable and immovable assets as detailed below:

Delays in conveyance of land

The Company had 44.17 acres of land in nine locations in the State (Market value: Rs.59.57 crore as on March/April 2002). Out of this, 23.99 acres of land at Pochampalli in Dharmapuri District was for its sunflower oil factory. Without getting the land alienated and registered, the Company constructed (1977) factory building (value: Rs.1.22 crore) on this land. The District Collector, Krishnagiri had issued notice (June 2005) to take over this land and building.

The Company replied (August 2009) that it had requested the District Collector, Krishnagiri not to terminate the advance possession of land by it. The Government decision was awaited.

Similarly, the Company took over (1974) 4.12 acres of land at Ambattur, Chennai from Tamil Nadu Small Industries Development Corporation Limited (SIDCO). The Company registered (November 2000) the sale deed by paying stamp duty and registration charges of Rs.0.17 lakh on the value of Rs.1.24 lakh prevalent in 1970. However, the registration authorities refused to release the sale deed and demanded additional stamp duty and registration charges of Rs.99.41 lakh based on the guideline value of the land (Rs.7.11 crore) as of November 2000. Due to its delay in registering the land, the Company had become liable to pay Rs.99.41 lakh to get legal ownership of the land.

The company replied (August 2009) that the final decision of the registration authorities for its representation for exemption from payment of enhanced stamp duty was awaited.

Non-maintenance of asset records

The Company did not maintain updated ledgers for all the current assets and sundry debtors worth Rs.90.76 lakh. It could not realise from February 2008 to till date (November 2009), the return of Rs.40 lakh from its investments in the shares of Dutch Rama Agro Foods Limited (under liquidation) as the original share certificates could not be located.

The Company replied (August 2009) that it had moved the court for realising the amount from the Official Liquidator of the firm without insisting on production of original share certificates and the case was still pending disposal.

Non-conducting of periodical physical verification

The Company had plant and machinery valued at Rs.1.44 crore as on March 2002 in its unit at Pochampalli. The Company admitted that it had not conducted periodical physical verification of these assets (August 2009) due to non-availability of staff.

Thus, inadequate arrangement for safeguarding its assets exposed the Company to losses on account of delay in conveyance of land, encroachment and non maintenance of asset records.

Recommendations

Audit recommends that the Company should:

- **maintain complete and updated records of all movable/immovable assets**
- **conduct physical verification of assets at regular intervals and**
- **take early steps for conveyance of land in its name.**

Pending formalities for its closure should be completed by the Government.

The matter was reported to the Government in August 2009; its reply was awaited (December 2009).

Statutory Corporations

Tamil Nadu Electricity Board

3.12 Avoidable loss of generation

The Board suffered generation loss of 386 MU valued at Rs.74.45 crore during 2005-09 due to non replacement of defective turbine shaft

A major crack in the turbine shaft of 60 MW capacity Hydro Power House-I at Kodayar resulted in suspension of generation of power (June 2004). After carrying out temporary rectification work, the turbine was put into operation in August 2004. Subsequently, the Board decided (November 2004) to replace the defective turbine shaft at a cost of Rs.75.50 lakh to avoid breakdowns and outages and also decided (January 2005) to operate the existing defective turbine (in the interim) at a reduced load of upto 40 MW.

Based on the Board's enquiry (December 2004), the original equipment manufacturer (OEM) representative offered (December 2004) to supply new turbine shaft with accessories within eight months at a total price of Rs.64.32 lakh. The offer was valid for acceptance for 90 days *i.e.*, up to March 2005 and was extended to May 2005 on request (April 2005) of the Board. However, the Board issued purchase orders (PO) only in July 2005. Later, further amendments were issued to the PO conditions as requested by the supplier and a final PO was issued only in January 2006. But the supplier withdrew (February 2006) the offer citing the reason of price increase. The supplier revised the offer in August 2007 at a price of Rs.1.11 crore with a delivery schedule of 18 months. The Board did not consider the fresh offer and cancelled (December 2007) its original PO issued in July 2005 stating that the supplier did not show interest in supplying the shaft. The Board again floated a fresh tender, which was opened in June/August 2008 and the PO issued in July 2009 with scheduled date of supply upto January 2010. Consequently, the Kodayar Power House-I continued to be operated at reduced capacity ranging from 24 MW to 36 MW during the period from 2005-06 to 2008-09.

Thus, the inordinate delay of the Board in taking decisions on amendment requested by the supplier led to cancellation of first PO. Inability to finalise the second offer for one year led to continued sub optimal power generation by the power house. Audit observed that the actual generation during the period from 2005-06 to 2008-09 was between 154 MU and 225 MU which aggregated to 772 MU as against the possible generation of 1,158 MU[♣]. The

♣ Possible generation for the full load of 60 MW was worked out based on the actual Plant Load Factor achieved by the power house during respective years.

opportunity loss of generation revenue during this period worked out to 386 MU and considering the cost of generation at this power house and average generation/purchase cost from other sources of the Board, the loss suffered was of the order of Rs.74.45 crore.

The Board replied (September 2009) that the existing machine had a lot of failures and break downs due to its age and various technical problems and purchase order for new turbine shaft was issued in July 2009. The point, however, remains that the Board delayed its decision to replace the defective turbine shaft.

Audit recommends that the Board must procure critical spares with minimal loss of time to maintain its generation and revenue potential.

The matter was reported to the Government in August 2009; its reply was awaited (December 2009).

3.13 Loss due to choice of incorrect option for payment

The Board is incurring an avoidable interest of Rs.31.54 crore as it chose an incorrect option for payment

The Board purchases power from Neyveli Lignite Corporation Limited (NLC) based on agreements entered into between February 1999 and September 2001. The terms of agreements, *inter alia*, provide for making payment of bills through Letter of Credit (LC). As per Central Electricity Regulatory Commission (CERC) Regulations (2001), a rebate of 2.5 *per cent* could be availed by the beneficiary Boards, when payments are made through LC, which was reduced to 2 *per cent* with effect from April 2004. If payment is made through other modes within a period of one month, a rebate of one *per cent* is allowable.

Audit, during scrutiny, noticed that the Board had been making payments to NLC within three days of presentation of bills, without establishing LC but unilaterally availed rebate of 2.5/2 *per cent* up to December 2007. On being objected to by CERC (October 2005/September 2006) based on NLC's petition, Board discussed (December 2005) various options of making payments for power purchased, *viz*., (i) payment on the day of presentation of bill through LC, (ii) payment within three days by cheque with back-up LC[•] and (iii) payment on 30th day through bank. It decided to opt for method number (ii).

Board obtained (March 2006) the concurrence of NLC for this option but started implementing it only from January 2008 onwards, for reasons not on record.

• Under this arrangement, LC established by the Board would be utilized by NLC only in case of default in payment.

Audit observed that the Board analysed (December 2005) the cost-benefit of payment within three days with LC back-up *vis-a-vis* payment on 30th day by factoring in only the expenditure on opening LC and interest for 28 days in the first option but ignored the potential interest saving on borrowings on account of postponement of payment up to the 30th day under the latter option. The savings in interest foregone by the Board by not choosing the latter option, as worked out in Audit for the period from January 2006 to August 2009, was Rs.31.54 crore.

The Board replied (June 2009) that the opportunity benefit foregone by the Board could be considered only if it was capable of making payment to NLC from its own resources on the 30th day. The reply is not convincing because, by Board's own admission, its decision was based on actual cash inflow and outflow. Audit observed that the Board had not factored in the deemed savings on interest on overdraft postponed for 27 days.

Audit recommends that the Board should revisit its decision and re-exercise its option of payment, which is beneficial to it.

The matter was reported to the Board/Government in August 2009; their replies were awaited (December 2009).

3.14 Over payment to a captive power producer

The Board made an over payment of Rs.17.15 crore to a captive power producer as it adopted higher purchase rate applicable for firm power even though it purchased "infirm power" from them

The captive power producer (CPP) generates electricity from its own power plant and sells the surplus power to the Tamil Nadu Electricity Board (Board). The captive power policy pronounced (April 1998) by the Government of Tamil Nadu stipulated that a CPP had to furnish an annual commitment for sale of power to the Board as "firm power" and were paid at the specified rate. In case the CPP supplied additional power beyond annual commitment, the same was to be classified as "infirm power" for which the Board had to pay @ 75 *per cent* of rate applicable for "firm power".

The Board entered (October 2001) into a Power Purchase Agreement (PPA) (valid for five years upto October 2006) with Tamil Nadu Newsprint and Papers Limited (TNPL) for purchasing surplus power from their 24.62 MW captive power plant at Pugalur without any firm annual commitment. The captive power policy stipulated that the purchase price of unconfirmed power was Rs.1.95 per unit with effect from 1 April 2001 with cumulative escalation of five *per cent* every year. Against this, the purchase price of power was fixed in the agreement at Rs.2.25 per unit with effect from 1 April 2001 with cumulative increase of five *per cent* every year. After expiry of this agreement on 17 October 2006, the Board entered into a fresh PPA valid for three years on 23 June 2008. There was no formal agreement between the Board and TNPL for the intervening period (17.10.06 to 22.06.08) even though TNPL continued to supply its surplus power to the Board at Rs.2.73

per unit. In April 2008, the Board decided to fix the purchase price at Rs.3.01 per unit retrospectively from 17 October 2006 to 31 March 2008 and to fix the rates as per the guidelines of Tamil Nadu Electricity Regulatory Commission thereafter.

Audit observed (January 2009) that since there was no commitment regarding annual quantity of power to be sold by TNPL to the Board, the entire purchase should have been treated as "infirm power purchase" as per the captive power policy and TNPL was thus eligible for a price of Rs.1.95 to Rs.2.25 per unit (being 75 *per cent* of the price payable for "firm power purchase") during the period from 27 November 2001[♦] to 31 March 2009. Therefore, for purchase of 576.80 million units of "infirm power", the Board paid Rs.148.75 crore even though TNPL was eligible to get a price of Rs.131.60 crore only and has resulted in over payment of Rs.17.15 crore.

The Board replied (May 2009) that the rate of Rs.2.25 per unit with 5 *per cent* annual escalation was fixed in 2001-02 to encourage the bagasse waste based power generation. It further stated that since TNPL indicated that the surplus energy available, if any, would be supplied to the Board, the issue of firm and infirm power did not arise. The reply is not convincing because once the captive power policy became operative since April 1998, the Board had no liberty to fix its own rate for purchase of power from any CPP. Moreover, the captive power policy did not envisage any special concession for CPP using bagasse waste as a fuel for power generation.

Audit concludes that Board's failure to correctly regulate the purchase price as per the captive power policy resulted in over payment of Rs.17.15 crore to TNPL.

Audit suggests that the Board follow the purchase rates of power stipulated in captive power policy for regulation of payment to any CPP.

The matter was reported to the Government in June 2009; its reply was awaited (December 2009).

3.15 Non-recovery of differential cost from suppliers

Failure of the Board to invoke the risk purchase clause in the contract and recover the differential price from the defaulting suppliers resulted in loss of Rs.3.76 crore

The Board, based on its tender (November 2003), placed Purchase Orders (PO) in April 2004 on 15 Small Scale Industrial (SSI) units for procuring 1,565 Distribution Transformers (DTs) of 100 KV/22 KV/433 Volt capacity at an all inclusive firm price of Rs.74,990 per DT. Subsequently, based on the willingness (July 2004) of four of the above 15 SSI units, the Board placed (September 2004) repeat orders for supply of 1,100 DTs at the same price to be supplied in three equal quarterly installments up to June 2005. Both the

♦ The date on which TNPL had started exporting power to the Board's grid.

POs contained terms and conditions providing for collecting the differential cost from the defaulting suppliers in the event of subsequent procurement at a higher cost on account of short supply of ordered quantity of DTs by them.

As against the total ordered quantity of 2,665 DTs in both the POs, the Board received 1,951 DTs up to October 2005 (1,536 DTs against the PO issued in April 2004 and 415 DTs against the PO issued in September 2004). Thus, there was cumulative short supply of 714 DTs in both the POs. To overcome the shortage and augment the stock position of DTs, the Board placed POs for purchase of 2,700 DTs of the same capacity on 20 SSI units in September 2005 at an all inclusive price of Rs.1,27,707 per DT and on another new firm for supply of 300 DTs at an all inclusive price of Rs.1,15,248. The ordered quantity of this PO was received between September 2005 and January 2009.

Audit noticed (October 2007) that the Board did not invoke its rights of holding the supplier responsible to supply the entire ordered quantity and in the event of their default, to make good the loss sustained by the Board consequent to the placing of fresh orders elsewhere at higher cost, for reasons not on record. It was further noticed that out of 714 DTs short supplied by four units, three SSI units (Hindustan Heavy Electricals, Coimbatore (245 DTs), Industrial Heaters and Transformers, Coimbatore (101 DTs) and Electro Mech Industries, Coimbatore (339 DTs) under the same management accounted for 685 DTs. Without recovering the differential cost of Rs.3.76 crore from all the four defaulting suppliers, the Board placed a fresh PO in September 2005 on 21 units, which strangely included the above three defaulting SSI units also.

Thus, failure of the Board to invoke risk purchase clause and recover the differential price from the defaulting suppliers resulted in self inflicted loss of Rs.3.76 crore[♦].

The matter was reported to the Board/Government in August 2009; their replies were awaited (December 2009).

3.16 Failure to recover works contract tax

Failure to deduct works contract tax at source from the windmill developers led to an avoidable liability of Rs.2.49 crore towards works contract tax and penal interest of Rs.1.20 crore.

The Board has been creating infrastructural facilities such as dedicated wind farm substations, erection of transformer in the sub stations, laying of extra high tension lines, *etc.*, at the request of the wind energy developers for evacuation of the wind energy generated by the developers. The Board authorised the wind energy developers to execute the evacuation facilities initially at their cost and adjust it later from the Infrastructure Development Charges payable by the developers to the Board. On successful completion,

♦ The difference in price of Rs.52,717 per DT for 714 DTs.

commissioning and handing over of the works by the developers, the Board capitalises these works.

Audit noted that role of the wind energy developers engaged in creation of infrastructure for evacuation of power was similar to any dealer involved in execution of the works contract. The Board, which reimbursed the expenses initially incurred by the contractor towards the cost of works (after adjustment of the infrastructure development charges) was liable to deduct tax at *two per cent* of the cost of civil works and *four per cent* of all other works under section 7 F(1) of the Tamil Nadu General Sales Tax Act, 1959 (Act). The Act also required that the person deducting the tax at source should deposit the sum deducted to the tax authority and any failure in this regard would attract penal interest. Both the tax and penal interest would become due on the date of accrual, without any notice of demand for payment.

The Board awarded 103 wind energy development works between July 2003 and June 2007, of which, 54 works were completed between January 2004 and May 2007. Out of this, the Board reimbursed the actual cost of Rs.62.18 crore in respect of 28 works. But while doing so, the Board which was responsible for deduction and remittance of Works Contract Tax (WCT) as per the provision of the Act, did not deduct the tax amounting to Rs.2.49 crore (reckoned at *four per cent* of the cost of works). This has also attracted a liability of penalty of Rs.1.20 crore at *two per cent* per month for the period of default in payment of works contract tax calculated upto March 2009. The non deduction of WCT was a control failure of the Board and it exposed its financial interests.

The Board stated (March 2009) that it would recover the work contract tax from the reimbursable amount to be settled with the wind mill developers and for all future contracts a clause had been included that the appropriate works contract tax would be levied on the reimbursement amount.

The point stays that failure of the Board in not deducting the WCT resulted in avoidable liability of Rs.3.69 crore towards tax and penal interest thereon. Audit recommends that the Board put in place a system to ensure that all statutory taxes/dues and Acts are followed while drafting the contracts.

The matter was reported to the Government in April 2009; its reply was awaited (December 2009).

3.17 Loss of revenue due to delay in extending additional load

Inordinate delay by the Board in effecting new service connections and supplying additional load resulted in loss of revenue of Rs.2.59 crore in respect of three service connections.

Section 43(1) of the Electricity Act, 2003, read with Regulation 4 of Tamil Nadu Electricity Distribution Standards of Performance Regulation, 2004 issued (September 2004) by the Tamil Nadu Electricity Regulatory Commission (TNERC) stipulate that the Board shall provide High Tension (HT) and Extra High Tension (EHT) service connections to a consumer within

150 days of receipt of application wherever such service connection involves extension and improvement to the Board's side facilities. In case of extension of additional load without involving any extension or improvement work, the same was to be effected within 30 days. To adhere to the time schedule given by TNERC, the Board had also issued (May 2005) a flow chart stipulating a time schedule of activities involved in the service connection.

Audit noticed (May 2009) that (i) Sanmar Ferrotech Limited, Gummidipoondi applied (9 January 2008) for a new 110 KV EHT service with a maximum demand of 10,000 KVA for their proposed foundry unit. However, the application was registered on 8 May 2008 and the load was sanctioned on 18 August 2008. The supply was effected on 24 October 2008, thereby taking an overall time of 290 days from the date of receipt of application. Thus, there was a delay of 140 days over and above the time fixed by TNERC. Further, there was delay in preparing feasibility report (up to May 2008), firming up the cost (upto August 2008) and revision of the cost estimate three times between April and August 2008. The successive delays were as a result of the field offices and the Head Office of the Board having different opinions regarding recovery of the cost of bay extension works (Rs.18.65 lakh) from the consumer even though the said expenditure was finally borne by the Board. Thus, the Board finalised load flow studies (April 2008) which was the basis for sanctioning the work and the cost estimates and took 219 days as against the time schedule of 15 days prescribed in its flow chart of activities. As the consumer could be billed for the load of 10,000 KVA only from 24 October 2008, the inordinate delay of 140 days in sanctioning and extending the load resulted in loss of revenue of Rs.1.21[∝] crore to the Board.

(ii) M/s.Tulsyan NEC Limited, Gummidipoondi, having a sanctioned load of 7,500 KVA applied for an additional load of 5,000 KVA on 13 August 2008. The application from the High Tension (HT) consumer was, however, registered by the Board only on 25 March 2009 and the additional load was sanctioned on 31 March 2009. Thus, there was a delay of 198 days in giving additional load by the Board beyond the prescribed period of 30 days. This was despite the fact that the transformer of 33 KV industrial feeder and the cable supplying power to the above consumer within the same sub-station was already having adequate capacity to cater to the proposed load and there was no requirement for carrying out any improvement work for effecting the additional load. The delay was mainly due to the fact that:

- The Board commenced the process of obtaining sanction for additional load only on 25 February 2009 and accorded sanction on 31 March 2009.
- During the intervening period, the Board sought (4 March 2009) clarification within its two offices as to whether the additional load of 5,000 KVA could be fed at 33 KV voltage level even though the Board was aware (September 2006) that the load beyond 5,000 KVA without any upper limit could be fed into the feeder at 33 KV level itself and

∝ Calculated for the period from 9 June 2008 to 23 October 2008 at the rate of Rs.300 per KVA for additional load of 9,000 KVA.

the same was also permitted by TNERC {*vide* its Distribution Code No.26 (d)}.

The delay in extending additional load from September 2008 to March 2009 had resulted in a revenue loss of Rs.55.89 lakh♦, being the monthly minimum charges receivable from the consumer.

(iii) Sri Kannabiran Mills Limited, Coimbatore, (consumer), applied to the Board on 6 June 2006 for a new high tension service connection of 2,200 KVA. While seeking the Board's sanction for additional load, the Superintending Engineer, Coimbatore stated that the desired service connection would be possible only on transferring of 9,000 KVA load from the 11 KV Singanallur feeder to the 110/11 KV Kallimadai Sub-station (SS) by erecting a 16 MVA power transformer at Kallimadai SS, which had already been sanctioned by the Board in April 2004.

The Board accorded sanction (August 2006) for new HT service connection and the consumer paid (September 2006) the required development charges and other charges of Rs.10.16 lakh. The power transformer required for Kallimadai SS was received on 5 July 2007 and was commissioned on 2 August 2007. After completion of the Board side extension works and transfer of the above mentioned load, the supply to the consumer was effected on 22 November 2007. Thus, the Board took 533 days from 6 June 2006 to 22 November 2007 against the time limit of 120 days prescribed by the Tamil Nadu Electricity Regulatory Commission. The delay was due to (i) Board's delay in initiating action to erect the second 16 MVA power transformer till June 2006 though the administrative approval for the same was accorded in April 2004, (ii) delay of four months in supply of the transformer by the contractor and (iii) delay of four months in effecting the new service connection from the date of commissioning of the 16 MVA power transformer at the Kallimadai SS was due to non-synchronisation of related line works along with erection of transformers.

Due to the above mentioned avoidable delays, the Board took 413 days in excess of the prescribed time limit of 120 days for effecting the service connection to the consumer. This resulted in loss of scope to earn revenue of Rs.81.77∇ lakh to the Board.

For the above cases, the Board in its reply (February, June and July 2009) to the statement of facts stated that the allotment of power transformers to the SS was based on the priority such as failure replacement and prevailing load conditions in particular SS. The service connection to Sanmar Ferrotech Limited was effected within 170 days from the date of registration of the application and hence there was only a marginal delay of 20 days. In case of Tulsyan NEC Limited, the application was registered after the consumer produced environmental clearance certificate. The replies were not

♦ Calculated for the period from 11 September 2008 to 31 March 2009 at the rate of Rs.300 per KVA for additional load of 4,500 KVA.

∇ Calculated for the period from 6 October 2006 to 22 November 2007 at the rate of Rs.300 per KVA for additional load of 2,200 KVA.

convincing because the necessity to erect second power transformer in Kallimadai SS arose as early as in August 2005 itself, when its peak load (12.56 MVA) was more than 70 *per cent* of its capacity. The delays in providing/enhancing sanctioned load were attributable to Board's laxity as mentioned in the paragraph. Belated action for procurement of transformers and registration of applications in both the cases indicated that there was no foolproof monitoring system to ensure service connections were provided within stipulated time.

Thus, lack of seriousness and failure to synchronise the activities such as procurement of the transformer, line extension and other improvement works resulted in loss of scope to earn additional revenue to the Board.

Audit suggests to that the Board may institute a monitoring mechanism to oversee that service connection are provided within the time limit.

The matter was reported to the Government in April 2009; its reply was awaited (December 2009).

3.18 Loss of interest

The Board did not regulate the last date for payment of current consumption charges in respect of low tension service connections as per the Tamil Nadu Electricity Supply Code, which resulted in delayed remittances of bills by the consumers and loss of interest of Rs.69.74 lakh to the Board.

The Board has categorised its service connections as High Tension (HT) and Low Tension (LT) connections. As per Section 56 of the Indian Electricity Act, 2003, the Board is required to give a clear 15 days' notice for disconnecting supply in case of default of payment of Current Consumption (CC) charges by the consumers. The Tamil Nadu Electricity Supply Code notified by the Tamil Nadu Electricity Regulatory Commission (TNERC) with effect from 1 September 2004 stipulated that the due date for payment of CC charges for LT service connections shall be not less than five days from the date of entry in the consumer card exclusive of 15 days' notice period prior to disconnection on account of non-payment. Thus, as per the policy of TNEB, the Board was to allow a maximum time limit of 20 days to the consumers to make payment without disconnection of their service connection.

The Board adopted a system of bi-monthly assessment and collection of electricity charges for LT service connections. The Board also instructed (May/June 2006) that whenever the LT meter readings were taken after 26th day of the assessment month, the due date of payment would be beyond 15th day of the succeeding month after completion of 20 days from the date of meter reading.

Audit noticed (April 2009) that the above billing and collection system of the Board had resulted in a situation, wherein a majority of LT consumers, whose meter readings were taken between 16th and 25th of the assessment month were allowed payment time of 21 to 30 days due to adoption of 15th day of the collection month as the uniform last date irrespective of the date of entry in the consumer card. Similarly, in case of those consumers, whose service connections were assessed between 26th and 30th of the month were also allowed extra time up to five days due to adoption of 20th of collection month as the uniform last date for receiving the payment. Thus, in both the cases the Board had been allowing excess time beyond 20 days, which was a controllable factor as computerization of entire LT billing in the State commenced only in 2006-07. A test check of assessments and collection of CC charges of LT consumers in respect of two out of nine regions *viz*., Chennai North and Chennai South for the year 2008-09 revealed that the CC charges amounting to Rs.633.87 crore were collected with delays ranging from one to 15 days, which resulted in loss of interest of Rs.69.74 lakh[°] to the Board.

The Board, in reply (May 2009) to the statement of facts, stated that due to operational difficulty it continued to adopt 15th day of collection month as the last date of payment and the system of 30 days' assessment/collection would be taken on trial basis which would be implemented all over the State after analyzing the trial performance.

Audit concludes that the Board's inability to restrict the last date for payment in line with the provisions of TNERC's Supply Code resulted in loss of interest of Rs.69.74 lakh in respect of these two regions of the Board. The fact remains that the Board still continues the same billing and collection system (December 2009).

The matter was reported to the Board/Government in June 2009; their replies were awaited (December 2009).

Tamil Nadu Warehousing Corporation

3.19 Non-remittance of service tax

The Corporation failed to collect and pay service tax of Rs.1.07 crore as per the requirement of the Finance Act and, therefore, has also become liable to pay interest/penalty amounting to Rs.29.69 lakh.

The Government of India (GOI), by an amendment to the Finance Act, 1994, brought the renting of immovable property for furtherance of business and commerce within the ambit of taxable services from 1 June 2007. The Corporation, by virtue of being in the business of building/hiring of godowns in this State became liable to levy and remit service tax and education cess to the GOI at the rate of 12.36 *per cent* on the warehousing charges collected by it from its clients. The Corporation overlooked applicability of service tax to it till August 2008. The Corporation got itself registered only in September 2008 as a service provider and started collecting service tax from its clients. Audit noticed that for the period from 1 June 2007 to 30 September 2008, the Corporation was liable to pay service tax of Rs.1.15 crore on the rent collected

° At a cash credit interest rate of 10 *per cent per annum*.

but it actually collected and remitted Rs.7.83 lakh only. Since the Corporation had never levied service tax for the services for this period, it saddled itself with a liability of Rs.1.07 crore• and also became liable to pay a sum of Rs.10.43• lakh as interest and Rs.19.26• lakh as penalty due to non-remittance of service tax up to June 2009.

The Government replied (November 2009) that Corporation was continuously pursuing recovery of the service tax.

Audit concludes that due to delayed application of the provision of Act, the Corporation failed to levy service tax from the clients which resulted in avoidable liability of statutory dues of Rs.1.07 crore to the Government with an additional avoidable liability of penalty/interest of Rs.29.69 lakh.

• Interest under Section 75 calculated at 13 *per cent* from 1 October 2008 to 30 June 2009. Penalty under Section 76 calculated at 2 *per cent* per month from 1 October 2008 to 30 June 2009.

General

3.20 Follow-up action on Audit Reports

Explanatory notes outstanding

3.20.1 The Comptroller and Auditor General of India's Audit Reports represent the culmination of the process of scrutiny starting with initial inspection of accounts and records maintained in the various offices of Public Sector Undertakings (PSUs) and Departments of the Government. It is, therefore, necessary that they elicit appropriate and timely response from the Executive. Finance Department, Government of Tamil Nadu had issued instructions (January 1991) to all Administrative Departments to submit explanatory notes indicating corrective/remedial action taken or proposed to be taken on the paragraphs and reviews included in the Audit Reports within six weeks of their presentation to the Legislature, without waiting for any notice or call from the Committee on Public Undertakings (COPU).

The Audit Reports for the years 1998-99, 1999-2000, 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08 were presented to the State Legislature in April 1999, May 2000, September 2001, May 2002, May 2003, July 2004, September 2005, August 2006, May 2007, May 2008 and July 2009 respectively. Nine out of 18 departments, which were commented upon, had not submitted explanatory notes on 72, out of 273 paragraphs/reviews, as of 30 November 2009, as indicated below:

Year of Audit Report (Commercial)	Total number of paragraphs/review in the Audit Report	Number of paragraphs/reviews for which explanatory notes were not received♥
1998-99	29	1
1999-2000	28	1
2000-01	25	1
2001-02	32	6
2002-03	29	2
2003-04	24	5
2004-05	25	9
2005-06	30	11
2006-07	27	12
2007-08	24	24
TOTAL	**273**	**72**

♥ Paras/ reviews for which no explanatory notes were received but discussed by COPU are excluded.

Department-wise analysis is given in the **Annexure-14.** The Industries department (34) is responsible for non-submission of large number of explanatory notes.

Compliance with the Reports of Committee on Public Undertakings (COPU)

3.20.2 The action taken notes to the paragraphs included in the Report of the Committee on Public Undertakings (COPU) are to be furnished by the concerned departments within six weeks from the date of presentations of these reports to the State Legislature. Replies to 30 paragraphs pertaining to 23 Reports of COPU presented to the State Legislature between January 2001 and June 2009 had not been received as of December 2009 as indicated below:

Year of COPU Report	Total number of Reports involved	Number of paragraphs in respect of which replies were not received
2000-01	1	1
2001-02	8	9
2002-03	3	3
2003-04	4	6
2004-05	2	3
2006-07	2	5
2008-09	3	3
TOTAL	**23**	**30**

Response to inspection reports, draft paragraphs and reviews

3.21 Audit observations noticed during audit and not settled on the spot are communicated to the heads of the Public Sector Undertakings (PSUs) and departments of the State Government through inspection reports. The heads of PSUs are required to furnish replies to the inspection reports through the respective heads of departments within a period of six weeks. Inspection reports issued up to March 2009 pertaining to 60 PSUs disclosed that 2,800 paragraphs relating to 684 inspection reports remained outstanding at the end of September 2009; of these, 82 inspection reports containing 217 paragraphs had not been replied to for more than two years. Department-wise break-up of inspection reports and audit observations outstanding as on 30 September 2009 are given in **Annexure-15.**

Similarly, draft paragraphs and reviews on the working of PSUs are forwarded to the Principal Secretary/Secretary of the administrative department concerned demi-officially seeking confirmation of facts and figures and their comments thereon within a period of six weeks. It was, however, observed that 15 draft paragraphs and two reviews forwarded to the various departments during the period from April to December 2009, as detailed in **Annexure-16**, had not been replied so far (December 2009).

It is recommended that the Government should ensure that (a) procedure exists for action against the officials who fail to send replies to inspection reports/draft paragraphs/reviews/ATNs on the recommendations of COPU as per the prescribed time schedule, (b) action to recover loss/outstanding advances/overpayments is taken within prescribed time and (c) the system of responding to audit observations is revamped.

Chennai **(S. RAJANI)**
The **Accountant General**
(Commercial and Receipt Audit),
Tamil Nadu

Countersigned

New Delhi **(VINOD RAI)**
The **Comptroller and Auditor General of India**