PREFACE

This report for the year ended 31 March 2009 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

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

The cases mentioned in this report are among those which came to notice in the course of test audit of records during the year 2008-09 as well as those noticed in earlier years, but could not be included in the previous years' reports.

OVERVIEW

The report contains 27 paragraphs including four reviews relating to non/short levy of taxes, interest, penalty, etc. involving Rs. 337.40 crore. Some of the major findings are mentioned below:

I General

The revenue raised by the State during 2008-09 was Rs. 55,042.51 crore, comprising Rs. 33,684.37 crore as tax revenue and Rs. 5,712.33 crore as non-tax revenue. Rs. 8,510.80 crore was received from the Government of India as State's share of divisible Union taxes and Rs. 7,135.01 crore as grants-in-aid. The revenue raised by the State Government in 2008-09 was 72 *per cent* of the total revenue receipts as compared to 69 *per cent* in 2007-08. Sales tax (Rs. 20,674.70 crore) formed a major portion (61 *per cent*) of the tax revenue of the State. Interest receipts, dividends and profits (Rs. 1,501.09 crore) accounted for 26 *per cent* of the non-tax revenue.

(Paragraph 1.1)

At the end of 2008-09, arrears in respect of taxes administered by the departments of Commercial Taxes, Revenue, Home, etc., amounted to Rs. 10,204.58 crore; of which sales tax alone accounted for Rs. 9,871.35 crore.

(Paragraph 1.4)

As at the end of June 2009, 7,213 inspection reports containing 24,693 audit observations involving Rs. 3,417.03 crore were outstanding in various departments.

(Paragraph 1.9)

Test check of the records relating to sales tax, state excise, land revenue, urban land tax, taxes on vehicles and other departmental offices conducted during the year 2008-09 revealed underassessments, short levy, loss of revenue and other observations amounting to Rs. 1,459.26 crore in 2,752 cases.

(Paragraph 1.14)

II Sales Tax

Review on **"Transition from Sales Tax to Value Added Tax"** revealed as under:

- Failure to formulate a time bound action plan for attaining finality in respect of matters relating to the erstwhile TNGST Act resulted in huge pendency of assessments, non-collection of arrears and non-implementation of taxation proposals.

(Paragraph 2.2.7.1, 2.2.7.2 & 2.2.7.3)

- Absence of provisions empowering registering authorities to exercise vital checks before granting registration or for conducting survey and lack of co-ordination with the other Government departments to elicit information about dealers resulted in non-detection of dealers liable for registration.

(Paragraph 2.2.8.1)

- Failure to prescribe a time frame under the TNVAT Act for finalisation of assessments has led to pendency and consequent delay in selection of cases for scrutiny.

(Paragraph 2.2.10)

- Refund of Rs. 57.29 crore was allowed in 1,567 cases without ensuring the remittance of tax into the Government account.

(Paragraph 2.2.12.3)

- The benefit of reduction in rate of tax on the implementation of TNVAT was not passed on to the general public by way of reduction in prices.

(Paragraph 2.2.13.4)

Review on **"Computerisation of Value Added Tax Information System in Commercial Taxes Department"** revealed as under:

- Lack of URS, system design and its documentation while switching over to the new environment of VAT computerisation exposed the lack of preparation at the time of customisation.

(Paragraph 2.3.6.1)

- Absence of proper connectivity between the client and server resulted in non generation of notices at circle level and consequent delay in realisation of revenue.

(Paragraph 2.3.7.3)

- Absence of input and validation controls in vital fields like TIN, rate of taxes resulted in lack of the data integrity and reliability.

(Paragraph 2.3.8)

Incorrect grant of exemption without verification of the genuineness of the transaction of consignment sale resulted in non-levy of tax of Rs. 3 crore, including penalty of Rs. 1.80 crore.

(Paragraph 2.5)

Erroneous treatment of sale as works contract resulted in short levy of tax of Rs. 2.33 crore.

(Paragraph 2.8)

In two assessment circles, incorrect assessment of goods sold under the brand names by two dealers resulted in short levy of tax of Rs. 1.13 crore.

(Paragraph 2.9)

III Stamp Duty and Registration Fees

In 52 registering offices, misclassification of instruments was noticed in 651 cases which resulted in short levy of stamp duty and registration fees of Rs. 6.85 crore.

(Paragraph 3.3)

In five registration offices there was short levy of stamp duty and registration fees of Rs. 1.86 crore due to under valuation of property.

(Paragraph 3.4)

In three sub registries, excess allocation of transfer duty surcharge to local bodies resulted in incorrect allocation of Rs. 66.60 lakh.

(Paragraph 3.5)

IV Other Tax Receipts

Review on **"Assessment and levy of entertainments tax"** revealed as under:

- Revenue of Rs. 141.74 crore was not realised by the department on account of non registration of cable television operators during the years 2003-04 to 2007-08.

(Paragraph 4.2.7.1)

- There was excess assignment of funds to local bodies to the tune of Rs. 61.33 lakh.

(Paragraph 4.2.13)

V Non-Tax Receipts

Mines and Minerals

Review on **"Receipts under mines and minerals"** revealed as under:

- Absence of a system for cross verification of Central Excise Range office records with the records of the Assistant Director, Geology and Mining, Nagapattinam revealed incorrect depiction of mineral oil produced by a company resulting in less payment of royalty of Rs. 2.17 crore.

(Paragraph 5.2.8)

- There was absence of time limit provision for renewal of lease deeds. The leases of four lessees in six cases were not renewed even after a considerable time of six to 12 years. This resulted in non-realisation of stamp duty of Rs. 1.20 crore.

(Paragraph 5.2.9)

- Absence of a proper system in place to take up the revision of seigniorage rates at the interval of every three years resulted in foregoing of revenue of Rs. 42.43 crore for the period from April 2006 to March 2008.

(Paragraph 5.2.10)

- Absence of a proper system in place to take up the revision of royalty rates at the interval of every three years resulted in foregoing of revenue of Rs. 105.29 crore in respect of lignite.

(Paragraph 5.2.16)

CHAPTER I

GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Tamil Nadu and the state's share of divisible Union taxes and grants-in-aid received from the Government of India during the year 2008-09 and the corresponding figures for the preceding four years are as mentioned in the following table:

(Rupees in crore)

Sl. no.	Particulars	2004-05	2005-06	2006-07	2007-08	2008-09
I	**Revenue raised by the State Government**					
	• Tax revenue	19,357.04	23,326.03	27,771.15	29,619.10	33,684.37
	• Non-tax revenue	2,208.35	2,600.75	3,422.57	3,304.37	5,712.33
	Total	**21,565.39**	**25,926.78**	**31,193.72**	**32,923.47**	**39,396.70**
II	**Receipts from the Government of India**					
	• State's share of divisible Union taxes	4,236.39	5,012.74	6,393.86	8,065.27	8,510.80[1]
	• Grants-in-aid	2,649.75	3,020.47	3,325.65	6,531.77	7,135.01
	Total	**6,886.14**	**8,033.21**	**9,719.51**	**14,597.04**	**15,645.81**
III	**Total receipts of the State (I + II)**	28,451.53	33,959.99	40,913.23	47,520.51	55,042.51
IV	**Percentage of I to III**	**76**	**76**	**76**	**69**	**72**

The above table indicates that during the year 2008-09, the revenue raised by the State Government was 72 *per cent* of the total revenue receipts (Rs. 55,042.51 crore) as compared to 69 *per cent* of the total revenue receipts (Rs. 47,520.51 crore) in 2007-08. The balance 28 *per cent* of the receipts during 2008-09 was from the Government of India.

[1] For details please see Statement No. 11 – Detailed accounts of revenue by minor heads of the Finance Accounts of the Government of Tamil Nadu for the year 2008-09. Figures under the head '0021 – Taxes on income other than corporation tax – Share of net proceeds assigned to states' booked in the Finance Accounts under 'A – Tax revenue' have been excluded from the revenue raised by the state and included in 'State's share of divisible Union taxes' in this statement.

1.1.2 The following table presents the details of tax revenue raised during the period from 2004-05 to 2008-09:

(Rupees in crore)

Sl. no.	Heads of revenue	2004-05	2005-06	2006-07	2007-08	2008-09	Percentage of increase (+) or decrease (-) in 2008-09 over 2007-08
1.	Sales tax	12,996.18	15,554.69	17,727.16	18,156.36	20,674.70	(+) 13.87
2.	State excise	2,549.00	3,176.65	3,986.42	4,764.06	5,755.52	(+) 20.81
3.	Stamp duty and registration fees	1,604.36	2,084.86	2,997.46	3,804.74	3,793.68	(-) 0.29
4.	Taxes on vehicles	1,014.75	1,124.93	1,260.88	1,483.21	1,709.57	(+) 15.26
5.	Land revenue	71.95	179.48	120.68	78.03	207.73	(+) 166.22
6.	Taxes on immovable property other than agricultural land (urban land tax)	11.81	11.86	14.45	15.75	11.79	(-) 25.14
7.	Others	1,108.99	1,193.56	1,664.10	1,316.95	1,531.38	(+) 16.28
Total		**19,357.04**	**23,326.03**	**27,771.15**	**29,619.10**	**33,684.37**	(+) **13.73**

The reasons for increase/decrease in 2008-09 over 2007-08 as furnished by the concerned departments (January 2010) are mentioned below:

State excise: The increase of revenue was due to increase in the production of Indian Made Foreign Spirits and Beer which in turn has resulted in increase of the excise duty and vend fee.

Taxes on vehicles: The increase of revenue was due to increase in the vehicular population and increase in the rate of life time tax.

Land revenue: The increase of revenue was mainly due to increase in the rate of local cess and local cess surcharge.

Taxes on immovable property other than agricultural land (Urban land tax): The decrease in revenue was due to non-completion of the assessment and non-collection of revenue as a result of diversion of the manpower to other relief works.

The other departments did not furnish (January 2010) the reasons for variations despite being requested (October 2009).

1.1.3 The following table presents the details of major non-tax revenue raised during the period from 2004-05 to 2008-09:

(Rupees in crore)

Sl. no.	Heads of revenue	2004-05	2005-06	2006-07	2007-08	2008-09	Percentage of increase (+) or decrease (-) in 2008-09 over 2007-08
1.	Interest receipts, dividends and profits	590.05	819.91	1,134.00	1,282.20	1,501.09	(+) 17.07
2.	Crop husbandry	57.27	66.43	74.45	82.41	73.53	(-) 10.78
3.	Forestry and wild life	155.07	138.59	82.31	46.42	82.65	(+) 78.09
4.	Non-ferrous mining and metall-urgical industries	409.58	465.68	566.64	581.76	527.36	(-) 9.35
5.	Education, sports, art and culture	143.43	209.98	215.83	301.40	302.74	(+) 0.44
6.	Other receipts	852.95	900.16	1,349.34	1,010.18	3,224.96	(+) 219.25
Total		**2,208.35**	**2,600.75**	**3,422.57**	**3,304.37**	**5,712.33**	**(+) 72.87**

The reason for increase/decrease in 2008-09 over 2007-08 as furnished by the concerned departments (January 2010) is mentioned below:

Interest receipts, dividends and profits: The increase was due to increase in the interest receipts from public sector undertakings, departmental commercial undertakings and co-operative societies.

Other receipts: The increase was due to very large increase of Rs. 2,000 crore in the receipts of Industries department on account of collection of upfront land lease rent.

The other departments did not furnish (January 2010) the reasons for variations despite being requested (October 2009).

1.2 Variations between the budget estimates and actuals

The variations between the budget estimates and the actuals of revenue receipts for the year 2008-09 in respect of the principal heads of tax and non-tax revenue are mentioned below:

(Rupees in crore)

Sl. no.	Heads of revenue	Budget estimates	Actuals	Variations excess (+) or short fall (-)	Percent-age of variation
1.	Sales tax	19,417.74	20,674.70	(+) 1,256.96	(+) 6.47
2.	State excise	5,329.60	5,755.52	(+) 425.92	(+) 7.99
3.	Stamp duty and registration fees	4,888.90	3,793.68	(-) 1,095.22	(-) 22.40
4.	Taxes on vehicles	1,707.60	1,709.57	(+) 1.97	(+) 0.12
5.	Land revenue	146.18	207.73	(+) 61.55	(+) 42.11
6.	Taxes on immovable property other than agricultural land (urban land tax)	17.94	11.79	(-) 6.15	(-) 34.28
7.	Taxes and duties on electricity	250.09	355.69	(+) 105.60	(+) 42.22
8.	Interest receipts, dividends & profits	1,109.73	1,501.09	(+) 391.36	(+) 35.00
9.	Non-ferrous mining and metallurgical industries	593.40	527.36	(-) 66.04	(-) 11.13
10.	Crop husbandry	94.78	73.53	(-) 21.25	(-) 22.42
11.	Roads and bridges	33.60	45.57	(+) 11.97	(+) 35.63
12.	Major and medium irrigation	22.61	25.47	(+) 2.86	(+) 12.65

The reasons for variations in the actuals over the budget estimates as furnished by the concerned departments (January 2010) are mentioned below:

Stamp duty and registration fees: The decrease was due to recession/slow down in real estate sector and consequently registration of documents with high value relating to transfer of properties declined.

Land revenue: The increase was due to increase in the rate of local cess and local cess surcharge.

Taxes on immovable property other than agricultural land (urban land tax): The decrease was due to non-collection of tax by the department and non-completion of the assessments.

Taxes and duties on electricity: The increase was due to collection of arrears consequent to the order of the High Court of Madras.

Interest receipts, dividends and profits: The increase in revenue was due to increase in interest receipts from public sector undertakings, departmental commercial undertakings and co-operative societies.

Non-ferrous mining and metallurgical industries: The decrease was due to refunds made during the period.

Crop husbandry: The decrease was due to remittance of state horticulture farm receipts from the Government account to Tamil Nadu Horticulture Development Agency (TANHODA) account from February 2008 as per the Government Order.

The other departments did not furnish (January 2010) the reasons for variations despite being requested (October 2009).

1.3 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and percentage of such expenditure to gross collection during the years 2006-07, 2007-08 and 2008-09 alongwith the relevant all India average percentage of expenditure on collection to gross collection for 2007-08 are follows:

(Rupees in crore)

Sl. no.	Heads of revenue	Year	Collection	Expen-diture on collection of revenue	Percentage of expen-diture on collection	All India average percent-age for the year 2007-08
1.	Sales tax	2006-07	17,727.16	120.96	0.68	
		2007-08	18,156.36	139.24	0.77	0.83
		2008-09	20,674.70	187.27	0.91	
2.	Taxes on vehicles	2006-07	1,260.88	30.43	2.41	
		2007-08	1,483.21	40.44	2.73	2.09
		2008-09	1,709.57	47.56	2.78	
3.	State excise	2006-07	3,986.42	33.11	0.83	
		2007-08	4,764.06	38.64	0.81	3.27
		2008-09	5,755.52	45.10	0.78	
4.	Stamp duty and registration fees	2006-07	2,997.46	106.89	3.57	
		2007-08	3,804.74	133.84	3.52	2.58
		2008-09	3,793.68	133.20	3.51	

The percentage of expenditure on collection in respect of taxes on vehicles and stamp duty and registration fees in the state was higher than the all India average for the year 2007-08. The Government needs to take appropriate measures to bring down the cost of collection.

1.4 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2009 in respect of some principal heads of revenue amounted to Rs. 10,204.58 crore, of which Rs. 3,644.95 crore had been outstanding for more than five years as mentioned below:

(Rupees in crore)

Sl. no.	Heads of revenue	Amount outstanding as on 31 March 2009	Amount outstanding for more than five years as on 31 March 2009	Remarks
1.	Sales tax	9,871.35	3,443.53	Out of Rs. 9,871.35 crore, demands of Rs. 1,797.77 crore were covered under the Revenue Recovery Act. Demands of Rs. 1,516.83 crore were stayed by the Government/High Court and other judicial/appellate authorities and Rs. 318.47 crore was held up due to rectification/review application. Rs. 55.11 crore could not be recovered on account of assessees becoming insolvent. Rs. 422.07 crore is likely to be written off/waived. Rs. 2,650.50 crore was covered under the deferral scheme and Rs. 2,330.99 crore was under various stages of recovery. Rs. 779.61 crore has since been collected.
2.	Stamp duty and registration fees	147.88	108.59	Out of Rs. 147.88 crore, demands of Rs. 144.40 crore were covered under the Revenue Recovery Act. Demands of Rs. 3.48 crore were stayed by the High court and other judicial authorities.
3.	Urban land tax	113.85	36.57	Out of Rs. 113.85 crore, demands of Rs. 16.70 crore were stayed by the Government/High Court and other judicial authorities. Recovery of Rs. 3.87 crore was stayed by the Principal Commissioner of Land Reforms. Rs. 81.29 crore was under various stages of collection. Rs. 11.99 crore has since been collected.
4.	State excise	38.83	38.83	Out of Rs. 38.83 crore, demands of Rs. 17.41 crore were covered under the Revenue Recovery Act; demands of Rs. 2.68 crore were stayed by the High Court and other judicial authorities; Rs. 4.36 crore was held up due to rectification/review application. Rs. 7.73 lakh was held up on account of persons becoming insolvent. Rs. 50.60 lakh was likely to be written off. Rs. 13.79 crore was under various stages of collection.
5.	Land revenue	29.06	15.36	Out of Rs. 29.06 crore, demands of Rs. 3.66 crore were covered under the Revenue Recovery Act. Demands of Rs. 3.93 crore were stayed by the High Court and other judicial authorities and Rs. 3.41 crore was stayed by the Government. Rs. 2.49 lakh was likely to be written off. Rs. 16.08 crore was under various stages of collection. Rs. 1.96 crore has since been collected.

6.	Taxes on vehicles	3.61	2.07	Out of Rs. 3.61 crore, demands of Rs. 2.07 crore were covered under the Revenue Recovery Act. Demands of Rs. 30.67 lakh were stayed by the High Court and other judicial authorities. Rs.27.96 lakh is stayed by Government. Rs. 0.26 lakh is likely to be written off. Rs. 64.26 lakh was under various stages of collection. Rs. 31.33 lakh has since been collected.
Total		**10,204.58**	**3,644.95**	

The other departments did not furnish (January 2010) the position of arrears of revenue despite being requested (October 2009).

1.5 Arrears in assessment

The number of cases pending for assessment at the beginning of the year 2008-09, due for assessment during the year, disposed during the year and pending at the end of the year 2008-09 alongwith the figures for the preceding four years as furnished by the Commercial Taxes Department in respect of sales tax and Revenue Department in respect of urban land tax are mentioned below:

Heads of revenue	Opening balance	Cases which became due for assess-ment	Total	Cases disposed during the year	Cases pending at the end of the year	Percent-age of disposal (Col.5 to 4)
1	2	3	4	5	6	7
Sales tax/Value added tax (VAT)						
2004-05	53,533	1,71,052	2,24,585	1,70,293	54,292	76
2005-06	54,292	1,77,496	2,31,788	1,62,872	68,916	70
2006-07	68,916	1,82,457	2,51,373	1,51,825	99,548	60
2007-08	99,548	1,78,414	2,77,962	76,814	2,01,148	28
VAT	---	1,44,759	1,44,759	22,108	1,22,651	15
2008-09	2,01,148	---	2,01,148	55,381	1,45,767	28
VAT	1,22,651	1,85,270	3,07,921	95,047	2,12,874	31
Urban land tax						
2004-05	5,093	2,227	7,320	1,383	5,937	19
2005-06	5,937	3,812	9,749	2,101	7,648	22
2006-07	7,648	2,076	9,724	2,974	6,750	31
2007-08	6,750	1,583	8,333	2,253	6,080	27
2008-09	6,080	1,457	7,537	1,384	6,153	18

The reasons attributed by the concerned departments in January 2010 for less number of assessments finalised are mentioned below:

Sales tax: The time consumed for creating awareness among the traders, imparting training to the officers on the VAT Act and the preparatory processes for introduction of the VAT Act hampered the pace of finalisation of assessments. Besides, shortage of staff also affected the process of finalisation of assessments.

Urban land tax: Shortage of staff as a result of diversion to other relief works hampered the finalisation of assessments.

Immediate action needs to be taken to finalise the remaining cases in sales tax as VAT has been introduced in the state from 2006-07. The number of pending cases in urban land tax is large too. The department should initiate steps to complete the assessments within a definite time frame.

1.6 Evasion of tax

The details of cases of evasion of sales tax detected, finalised and demands for additional tax raised as reported by the Commercial Taxes Department are mentioned below:

Head of revenue	Cases pending as on 31 March 2008	Cases detected during 2008-09	Total cases	Cases in which assessments/ investigations completed and additional demand including penalty etc., raised		Cases pending for finalisation as on 31 March 2009
				No.	Amount (Rupees in crore)	
Sales tax						
Enforcement wing	68	64	132	82	Not furnished	50
Administrative wing	4,080	346	4,426	568	57.46	3,858

It is necessary to finalise these cases at the earliest to minimise the risk of loss of revenue.

1.7 Write off and waiver of revenue

During the year 2008-09, Rs. 28,053 (in 56 cases) relating to sales tax was written off by the Commercial Taxes Department as irrecoverable. In addition to the above, sales tax amounting to Rs. 32.34 lakh was waived off by the department during the year.

1.8 Refunds

The number of refund cases pending at the beginning of the year 2008-09, claims received during the year, refunds allowed during the year and cases pending at the close of the year as reported by the Commercial Taxes department are mentioned below:

(Rupees in crore)

Sl. no.	Particulars	Sales tax	
		No. of cases	Amount
1.	Claims outstanding at the beginning of the year	87,062	212.85
2.	Claims received during the year	7,473	156.04
3.	Refunds made during the year	12,773	187.18
4.	Balance outstanding at the end of the year	81,762	181.71

Tamil Nadu General Sales Tax Act (TNGST Act) provides for payment of interest calculated at the rate of one *per cent* or part thereof, if the excess amount is not refunded to the dealer within 90 days from the date of order of assessment or revision of assessment or within 90 days from the date of receipt of order passed in appeal, revision or review. The pending refund cases need attention to avoid mandatory payment of interest.

The other departments did not furnish the details of refund cases despite being requested (October 2009).

1.9 Failure to enforce accountability and protect interest of the Government

The Accountant General, Commercial & Receipt Audit, Tamilnadu (AG) arranges to conduct periodical inspection of the Government departments to test check the transactions and verify the maintenance of important accounting and other records as per the prescribed rules and procedures. These inspections are followed up with inspection reports (IRs). Audit observations on incorrect assessments, short levy of taxes, duties and fees, etc., as also defects in the maintenance of initial records noticed during audit and not settled on the spot are communicated to the heads of offices and other departmental authorities through the IRs. Serious financial irregularities are reported to the heads of the departments concerned and the Government. The heads of offices are required to furnish replies to the IRs through their respective heads of departments within a period of two months to the AG.

1.9.1 The number of IRs and audit observations relating to revenue receipts issued upto 31 December 2008, which were pending for settlement by the departments as on 30 June 2009, alongwith the corresponding figures for the preceding two years are mentioned below:

	Position as on 30 June		
	2007	2008	2009
Number of inspection reports pending for settlement	6,638	7,271	7,213
Number of outstanding audit observations	23,047	23,624	24,693
Amount of revenue involved (Rs. in crore)	2,772.37	2,951.86	3,417.03

The increase in the outstanding audit observations is indicative of non-compliance with the Government's instruction to furnish replies to the initial audit observations and report on further action taken thereon within the stipulated time. Though state level audit committees and departmental audit committees were constituted in March 1993 with the objective of expeditious

settlement of the outstanding observations, the number of observations were still on the increase.

1.9.2 The revenue headwise breakup of the IRs and audit observations outstanding as on 30 June 2009 are mentioned below:

Sl. no.	Revenue heads	Number of outstanding		Amount (Rupees in crore)	Earliest year to which the inspection report relates
		Inspection reports	Audit obser-vations		
1.	Sales tax	3,342	16,658	1,127.52	1987-88
2.	Stamp duty and registration fees	1,170	2,311	261.31	1985-86
3.	Land revenue	859	2,012	1,296.87	1988-89
4.	Taxes on vehicles	481	1,013	92.77	1988-89
5.	State excise	288	519	112.76	1987-88
6.	Taxes on agricultural income	73	202	81.03	1988-89
7.	Mines and minerals	301	594	344.32	1990-91
8.	Urban land tax	280	740	43.01	1983-84
9.	Electricity duty	65	116	40.67	1992-93
10.	Entertainment tax	65	69	6.46	1992-93
11.	Luxury tax	121	137	4.31	1994-95
12.	Betting tax	12	25	0.09	1991-92
13.	Entry tax	156	297	5.91	2003-04
Total		**7,213**	**24,693**	**3,417.03**	

1.10 Departmental audit committee meeting

In order to expedite the settlement of the outstanding audit observations contained in the IRs, departmental audit committees are constituted by the Government. These committees are chaired by the Secretaries of the concerned administrative department and attended by the concerned officers of the State Government and officers of the AG (C&RA).

In order to expedite clearance of the outstanding audit observations, it is necessary that the audit committees meet regularly and ensure that final action is taken in respect of all the audit observations outstanding for more than a year, leading to their settlement. During the course of the year 2008-09, 11 meetings were held in respect of the paragraphs pertaining to sales tax, stamp duty and registration fees, transport and prohibition and excise and mines and minerals. 253 paragraphs involving revenue of Rs. 5.68 crore were settled during these meetings.

1.11 Response of the departments/Government to draft audit paragraphs

The Government (Finance Department) issued directions (April 1952) to all the departments to send their responses to the draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India within six weeks from the date of receipt of the draft paragraphs. The draft paragraphs are forwarded by the AG to the Secretaries of the concerned departments through demi-official letters, drawing their attention to the audit findings with a request to send their response within six weeks. The fact of non-receipt of replies from the departments is invariably indicated at the end of each such paragraph included in the Audit Report.

54 draft paragraphs (including 4 reviews) clubbed into 27 paragraphs proposed to be included in the Report of the Comptroller and Auditor General of India for the year ended March 2009 were forwarded to the Secretaries of the respective departments during March-September 2009 through demi-official letters. The Secretaries of the departments did not send replies to 41 draft paragraphs (including 3 reviews). Response of the departments wherever received, has been appropriately included in this report.

1.12 Follow-up on Audit Reports

With a view to ensuring accountability of the executive in respect of the issues dealt with in the Audit Reports, the Public Accounts Committee (PAC) had directed that the department concerned should furnish remedial/corrective Action Taken Notes (ATN) on the recommendations of the PAC relating to the paragraphs contained in the Audit Reports within the prescribed time frame.

A review of the outstanding ATNs as on 31 March 2009 on paragraphs included in the Report of the Comptroller and Auditor General of India, Revenue Receipts, Government of Tamil Nadu and discussed by the PAC revealed that the departments had not submitted the ATNs in respect of 1,021 recommendations pertaining to 301 audit paragraphs.

Further, the PAC has also laid down that necessary explanatory notes for those issues mentioned in the Audit Reports should be furnished to the Committee within the maximum period of two months from the date of placing of the Report before the Legislature. Though the Audit Reports for the years from 2000-01 to 2007-08 were placed before the Legislative Assembly between May 2002 and July 2009, the departments are yet to submit explanatory notes for 87 paragraphs (including 9 reviews) included in these reports.

1.13 Compliance with the earlier Audit Reports

During the period from 2003-04 to 2007-08, the department/Government accepted audit observations involving Rs. 173.45 crore, of which Rs. 78.28 crore had been recovered till 31 October 2009 as mentioned below:

(Rupees in crore)

Year of Audit Report	Total money value	Accepted money value	Recovery made
2003-04	815.05	26.87	0.79
2004-05	576.20	7.16	3.20
2005-06	228.71	5.18	2.27
2006-07	151.38	87.75	64.64
2007-08	408.47	46.49	7.38
Total	**2,179.81**	**173.45**	**78.28**

The Government may institute a mechanism to monitor the position of recoveries pointed out in the Audit Reports and take necessary steps for speedy recovery.

1.14 Results of audit

Test check of the records of sales tax/VAT, land revenue, state excise, motor vehicles tax, stamp duty and registration fees, electricity duty, other taxes and non-tax receipts conducted during 2008-09 indicated underassessment, short levy, loss of revenue and other observations amounting to Rs. 1,459.26 crore in 2,752 cases. During the year, the departments accepted underassessment of Rs. 17.96 crore in 1,136 cases pointed out in 2008-09 and earlier years and recovered/adjusted Rs. 8.42 crore.

This Report contains 27 paragraphs including four reviews relating to non/short levy of taxes, duties, interest and penalties and other audit observations involving revenue of Rs. 337.40 crore. The departments/ Government accepted audit observations involving revenue of Rs. 113.67 crore, of which Rs. 0.98 crore had been recovered/adjusted by the departments upto November 2009. Final reply has not been received in respect of the remaining cases (January 2010). These are discussed in the succeeding chapters II to V.

CHAPTER II

SALES TAX

2.1 Results of audit

Test check of the records of the departmental offices conducted during the period April 2008 to March 2009 indicated underassessments, non-levy of penalty and other observations of Rs. 229.93 crore in 1,140 cases**,** which broadly fall under the following categories:

(Rupees in crore)

Sl. no.	Category	No. of cases	Amount
1.	**Transition from Sales Tax to Value Added Tax (A review)**	1	62.06
2.	**Computerisation of Value Added Tax Information System in Commercial Taxes Department (A review)**	1	0.00
3.	Incorrect exemption from levy of tax	173	96.47
4.	Application of incorrect rate of tax	257	33.14
5.	Non-levy of penalty/interest	378	15.36
6.	Non/short levy of tax	81	11.49
7.	Incorrect computation of taxable turnover	81	3.36
8.	Others	168	8.05
Total		**1,140**	**229.93**

During the year 2008-09, the department accepted underassessments and other deficiencies of Rs. 5.35 crore in 780 cases, of which Rs. 1.82 crore involved in 349 cases were pointed out during the year and the rest in earlier years. Of these, the department recovered Rs. 2.93 crore during the year.

After the issue of a draft paragraph, the department recovered Rs. 11.44 lakh in two cases.

Two reviews on **"Transition from Sales tax to value added tax"** and **"Computerisation of value added tax information system in commercial taxes department"** involving Rs. 62.06 crore and few illustrative audit observations involving Rs. 10.35 crore relating to other cases are discussed in the succeeding paragraphs.

2.2 Transition from Sales Tax to Value Added Tax

Highlights

- Failure to formulate a time bound action plan for attaining finality in respect of matters relating to the erstwhile TNGST Act resulted in huge pendency of assessments, non-collection of arrears and non-implementation of taxation proposals.

(Paragraph 2.2.7.1, 2.2.7.2 & 2.2.7.3)

- Absence of provisions empowering registering authorities to exercise vital checks before granting registration or for conducting survey and lack of co-ordination with the other Government departments to elicit information about dealers resulted in non-detection of dealers liable for registration.

(Paragraph 2.2.8.1)

- Failure to prescribe a time frame under the TNVAT Act for finalisation of assessments has led to pendency and consequent delay in selection of cases for scrutiny.

(Paragraph 2.2.10)

- Failure to re-fix turnover limits for claiming exemptions/compounding rate of tax while introducing the Act in the midst of the year resulted in foregoing revenue of Rs. 13.76 crore during 2006-07.

(Paragraph 2.2.11)

- Incorrect allowance of input tax credit (ITC) amounting to Rs. 4.77 crore on closing stock was noticed in 39 circles.

(Paragraph 2.2.12.1)

- ITC of Rs. 602.77 crore in 51,120 cases was allowed without verification of original tax invoices in support of the claim.

(Paragraph 2.2.12.2)

- Refund of Rs. 57.29 crore was allowed in 1,567 cases without ensuring the remittance of tax into Government account.

(Paragraph 2.2.12.3)

- Failure to spell out the intention of the Government clearly in the notification resulted in foregoing revenue of Rs. 13.58 crore.

(Paragraph 2.2.13.2)

- The benefit of reduction in rate of tax on the implementation of TNVAT was not passed on to the general public by way of reduction in prices.

(Paragraph 2.2.13.4)

2.2.1 Introduction

The Government of India decided to implement State Level Value Added Tax in all States on the basis of decision taken on 23 January 2002 in the empowered committee of the States' Finance Ministers. The empowered committee submitted its White Paper in January 2005 and anticipated that the introduction of VAT will result in the following benefits:

- elimination of cascading tax burden, by providing a set off for input tax as well as tax paid on previous purchases;
- rationalisation of the over all tax burden by abolition of other incidental taxes such as surcharge and additional sales tax;
- built in self assessment by dealers; and
- simple and transparent tax structure.

The Government of Tamil Nadu repealed the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) and enacted the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) effective from 1 January 2007. Some of the differences between the TNVAT Act and the repealed Act are as under:

(i) VAT is a multi-point taxation system, while the repealed Act had a single/double point taxation system.

(ii) The VAT system relies on the dealers to pay the tax voluntarily by furnishing the returns prescribed in the TNVAT Act; of these not more than 20 *per cent* of the completed self assessments is taken up for scrutiny whereas under the repealed Act, cent *per cent* assessments were required to be assessed/scruitinised by the department.

(iii) The VAT system simplifies the tax structure and reduces the control of the executive over the dealers whereas in the repealed Act, the incidence of various elements like surcharge and additional sales tax had made the tax structure cumbersome.

(iv) Under the TNVAT Act, the goods are taxable under the first schedule at three rates, viz., one *per cent*, four *per cent* and 12.5 *per cent*. The goods that are not taxable under the TNVAT Act are mentioned in the second schedule. The TNVAT Act provides an option for payment of tax at compounded rate in respect of hotels, restaurants and sweet stalls at the prescribed rate, where the turnover does not exceed Rs. 50 lakh during the year. The commodities which are exempted from levy of tax are listed in the fourth schedule. The sales made to international organisations are treated as zero rated sales and are listed in the fifth schedule of the TNVAT Act.

A review on the "Transition from Sales Tax to Value Added Tax" was conducted by audit. It indicated a number of system and compliance deficiencies which are discussed in the subsequent paragraphs.

2.2.2 Organisational set up

The Commissioner of Commercial Taxes (CCT) is the head of the department of Commercial Taxes (CT) and is assisted by Additional Commissioners (ADC), Joint Commissioners (JC) and Territorial Deputy Commissioners (DC) who exercise administrative control. The Deputy Commissioners of Fast

Track Assessment Circles (FTAC), Assistant Commissioners (AC)/ Commercial Tax Officers (CTO) and Assistant Commercial Tax Officers (ACTO) are the assessing authorities responsible for the levy and collection of sales tax and arrears thereof in the respective assessment circle. In addition, there is an enforcement wing, which has been formed for the purpose of conducting surprise inspection and unearthing suppression of turnover to prevent leakage of revenue. The monitoring and control at the Government level is done by the Secretary, Commercial Taxes and Registration Department.

2.2.3 Audit objectives

The review was conducted with a view to ascertain that the

- planning for implementation and transition from the TNGST Act to TNVAT Act was effected timely and efficiently;
- organisational structure was adequate and effective;
- provisions of the TNVAT Act and the Rules made thereunder were adequate and enforced properly to safeguard the revenue of the State;
- reduction in prices envisaged by the empowered committee on the introduction of VAT had materialised and
- internal control mechanism existed in the department and was adequate and effective to prevent leakage of revenue.

2.2.4 Scope and methodology of audit

The State has been divided into ten territorial divisions consisting of 323 assessment circles for the administration of the TNVAT Act. The review of the records of the Commercial taxes (CT) department was conducted in all the ten territorial divisions between April 2009 and August 2009. The data relating to the period from January 2007 to March 2009 were obtained from the Government Secretariat, the administrative sections of the CT department and 145 assessment circles falling in the ten divisions for an analysis. Besides, findings during the local audits conducted from April 2008 to March 2009 were also utilised. The selection of the assessment circles was based on the high revenue generation and the geographical location.

2.2.5 Acknowledgment

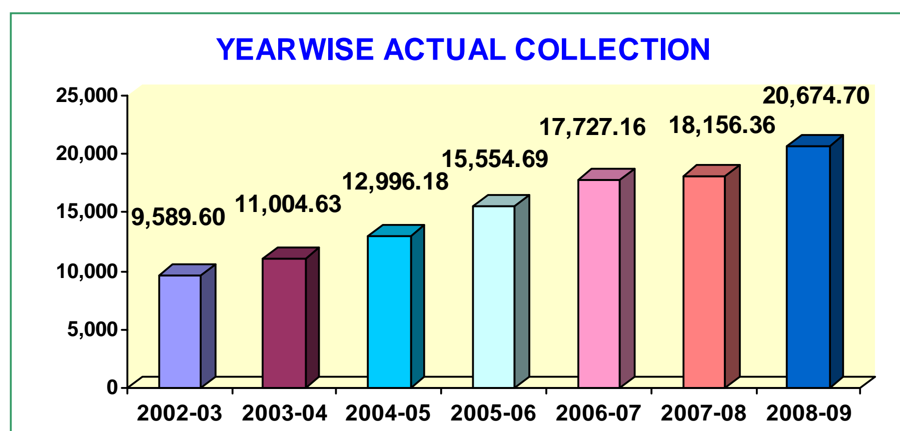
The Indian Audit and Accounts department acknowledges the cooperation of the CT department in providing the necessary information and records for audit. An entry conference was held in April 2009 in the Office of the CCT, Chennai in which audit objectives and methodology of audit were explained. The draft review was forwarded to the department and the Government in September 2009. The exit conference was held with the Commissioner of Commercial Taxes on 12 November 2009 in which the results of audit and recommendations were discussed. The replies of the department given during exit conference and at other times have been appropriately reflected in the review report.

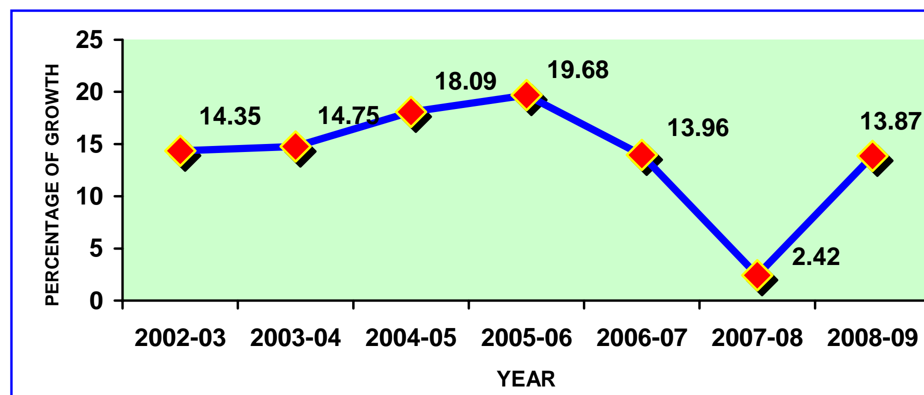
Audit findings

2.2.6 Pre-VAT and post-VAT tax collection

The comparative position of pre-VAT sales tax collection (2002-03 to 2005-06), composite sales tax and VAT collection (2006-07) and post-VAT tax collection (2007-08) including annual growth rate is mentioned below:

Pre-VAT			Post -VAT		
Year	Actual collection (Rs. in crore)	Percentage of growth	Year	Actual collection (Rs. in crore)	Percentage of growth
2002-03	9,589.60	14.35	2006-07[2]	17,727.16	13.96
2003-04	11,004.63	14.75	2007-08	18,156.36	2.42
2004-05	12,996.18	18.09	2008-09	20,674.70	13.87
2005-06	15,554.69	19.68			





Thus, though the collections increased in absolute terms, the growth rate in the post VAT period registered a decrease, the rate being as low as 2.42 *per cent* in 2007-08. The reasons attributed by the department for the low growth rate in 2007-08 were the lowering of revenue neutral rate which was more than 16.5 *per cent* under the pre-VAT regime to less than 12.5 *per cent* under the VAT, the increase in the threshold limit for the levy of tax under the VAT and the concept of ITC set off on the out put tax. The department further stated

[2] Composite period of pre-VAT and post-VAT.

that manufacturing States stand to lose more as the concept of the ITC and its set off will reduce the VAT revenue.

2.2.7 Preparedness and transitional process

The department formed a VAT cell as early as August 2001 to attend to the VAT related issues such as drafting the TNVAT Act, organising training, interaction with the other states, etc. The draft TNVAT Bill 2003 received the assent of the President of India in March 2003 and it was published in the Extraordinary Gazette on 13 March 2003.

The Government had published the Draft VAT Act in the Gazette in October 2006 and uploaded it on the official website for the benefit of the public, besides establishing 39 Help Desks. The traders were imparted training by senior officers of the department.

The TNVAT Act, however, was introduced in the State with effect from 1 January 2007. The reason for the delay in implementation was attributed to the requirement of arriving at a broad consensus among all sections of the society to the major tax reform.

Though the TNVAT Act was introduced after a period of nearly five years since the formation of VAT Cell, the department failed to formulate a time bound action plan for attaining finality in respect of matters relating to the erstwhile Act by overlooking the following issues.

2.2.7.1 Time limit for finalisation of assessments pending under TNGST Act

Section 12C of the TNGST Act, 1959 and Section 87A of the TNVAT Act empower the assessing officers to make deemed assessment, without calling for the accounts of the dealers, in respect of assessments pending upto 31 December 2006. Despite these enabling provisions, a large number of assessments under the erstwhile Act are kept pending as detailed in the table below:

Year	Opening balance	Cases which became due for assessment	Total	Cases disposed	Cases pending	Percentage of disposal
2005-06	54,292	1,77,496	2,31,788	1,62,872	68,916	70
2006-07	68,916	1,82,457	2,51,373	1,51,825	99,548	60
2007-08	99,548	1,78,414	2,77,962	76,814	2,01,148	28
2008-09	201,148	-	2,01,148	55,381	1,45,767	28

The percentage of finalisation of assessments pertaining to the TNGST Act has fallen sharply after the implementation of VAT. Although the poor pace of finalisation of assessments is likely to affect the collection of taxes adversely, **yet no action plan for fixation of targets in terms of number of cases for each assessing authority and the time period within which the pending cases should be disposed has been devised by the department.**

The Government may formulate an effective action plan to facilitate the finalisation of assessments and closely monitor its implementation.

2.2.7.2 Arrears of revenue

A scrutiny of the joint commissioner's performance review report indicated that Rs. 6,738.60 crore involved in 1,27,077 cases pertaining to the period upto 2005-06 was pending collection as on 31 March 2009. The year wise break up is indicated in the following table:

Period	Upto 2002-03	2003-04	2004-05	2005-06
No. of cases	83,821	11,136	14,871	17,249
Amount (Rs. in crore)	3,443.53	992.88	1,242.25	1,059.94

The huge amount of the arrears indicates that concerted and effective efforts are not being made towards recovery of arrears.

The Government may consider fixing targets for collection of old arrears for each assessing authority in a time bound manner and closely monitor the performance of the assessing authorities.

2.2.7.3 Non-implementation of taxation proposals

The Enforcement Wing, after inspection of the premises of the assessees, forwards its findings in the form of proposals, known as 'D3' proposals (taxation proposals) to the assessing authorities for implementation. **No time limit has been prescribed for the implementation of taxation proposals.**

Audit noticed that 3,839 taxation proposals involving Rs. 3,219.33 crore and pertaining to the period up to 2006-07 were pending as on 31 March 2009 as mentioned below:

Period	Upto 2003-04	2004-05	2005-06	2006-07	Total
No. of cases	2,323	536	486	494	3,839
Amount (Rs. in crore)	3,071.68	99.71	33.11	14.83	3,219.33

The Government may consider formulating a time bound action plan for finalisation of the pending taxation proposals and monitoring should be made effective to ensure that no proposal escapes implementation beyond the prescribed time.

2.2.7.4 Analysis of the staff requirement and reorganisation of the department

The overall position of sanctioned strength and vacancies in the cadres from Group A to Group D as furnished by the CCT is given below:

As on	Category of post	Sanctioned strength	Person in position	Vacancy	Percentage of vacancy
1 April 2007	DCs and above	143	114	29	20
	CTOs and ACs	2,453	1,712	741	30
	Record keeper to ACTOs	5,562	3,736	1,826	33
	Others	2,266	1,189	1,077	48
Total		**10,424**	**6,751**	**3,673**	**35**

1 April 2008	DCs and above	143	102	41	29
	CTOs and ACs	2,453	1,666	787	32
	Record keeper to ACTOs	5,562	3,672	1,890	34
	Others	2,266	1,182	1,084	48
Total		**10,424**	**6,622**	**3,802**	**36**
1 April 2009	DCs and above	143	86	57	40
	CTOs and ACs	2,453	1,459	994	41
	Record keeper to ACTOs	5,562	3,529	2,033	36
	Others	2,266	1,126	1,140	50
Total		**10,424**	**6,200**	**4,224**	**41**

The above table indicates an increasing trend in vacancies. The department may carry out a detailed analysis of staff requirement considering the requirement under VAT and also the effect of computerisation.

System deficiencies

2.2.8 Registration of dealers

2.2.8.1 Absence of provision for conducting survey

According to the TNVAT Rules, every application for registration shall be accompanied by two recent passport size photographs alongwith the proof of payment of registration fee. The registering authority shall, on satisfying itself that the application is in order, assign TIN and issue a certificate of registration. **Unlike the TNGST Act, the registering authority is not required to call for the physical appearance of the person signing the application for registration or making or causing to make such enquiry** as it may consider necessary **before the grant of the registration certificate (RC). The TNVAT Act also does not provide for conducting of survey or cross verification with other departments for the purpose of identifying fresh cases of assessments.**

- Audit noticed that on the orders of the CCT, the department had conducted a survey of the premises of the dealers in October 2008 and November 2008 and found that in 234 cases, the dealers were not available in their places of business. This has resulted due to the absence of a statutory provision for making necessary enquiry by the assessing authorities before the grant of RCs and on account of the ease with which RC could be obtained under the TNVAT Act.

- As per the Section 38(3) (g) of the TNVAT Act, every dealer who, in the course of his business, obtains or brings goods from outside the State or effects export of goods out of the territory of India/State shall get himself registered under the Act, irrespective of the quantum of his turnover in such goods.

Audit obtained the list of the exporters registered with the Chemical & Allied Products Exports Promotion Council, Plastic Exports Promotion Council and a few listed in the India Yellow Pages, and cross verified these with the data base of the registered dealers in the department's web site. Such verification

indicated that 59 exporters had not obtained registration under the TNVAT Act. This indicates that the departmental authorities had failed to undertake the requisite exercise to detect unregistered dealers. The lack of co-ordination and cross verification with the records of the other Government departments/ organisations to elicit information about the dealers, resulted in non detection of the unregistered dealers liable for registration.

The Government may consider incorporating a specific provision in the Act to enable the registering authority to exercise certain basic and vital checks before granting registration to ensure authenticity of the application for registration. Similarly, suitable measures may be instituted for undertaking mandatory cross verification with the records of other departments for detecting unregistered dealers.

2.2.9 Returns

Section 21 of the TNVAT Act deals with filing of returns. Rule 7 of the TNVAT Rules prescribes different returns for different classes of dealers and the due dates within which the returns are to be filed.

2.2.9.1 Deficiencies in the format of the prescribed forms for submitting returns

The Act enables the dealers to make self assessment and accounts are not required to be produced by the dealers except in cases selected for scrutiny. It is, therefore, necessary that the returns which form the basis for determination of tax payable by the dealers should have adequate columns/fields for eliciting the requisite information and to ensure the correctness of the claim of ITC and output tax payable by the dealers. The following deficiencies in the formats of the return were noticed by the audit.

- The return in 'Form-I' prescribed for dealers other than those who opt to pay tax at the compounded rates does not have a column to exhibit the exemption/reduction in rates of tax granted to commodities by issue of notifications. Hence, there may be a mismatch between the commodity code and the rate of tax adopted in the return.
- The TNVAT Act provides for claim of ITC within 90 days from the date of purchase or before the end of the financial year, whichever is later. The monthly return, however, does not have a column for accommodating a claim if it is not made immediately in the month of purchase.
- Under the TNVAT Act, dealers who effect second and subsequent sale of goods purchased within the State and whose total turnover for a year was less than Rs. 50 lakh could opt for payment of tax at the compounded rate. The return in 'Form-K' meant for such dealers does not have a provision to exhibit the seller's TIN, in the absence of which the correctness of the claim as local purchases cannot be ensured. A column for exhibition of cumulative monthly turnover in the return would be useful to easily identify the dealer's claim for payment of tax at the compounded rate.

The Government may consider modifying the prescribed format, in order to make them more compatible with the provisions of the Act/Rules.

2.2.9.2 Absence of deterrent measure for submission of incorrect returns

The TNVAT Act places faith on voluntary payment of tax by the dealers by permitting them to make self assessments. The Act, however, does not provide for levy of penalty for submission of incorrect/incomplete returns. This results in a dealer committing an offence being placed on par with an honest tax payer and is hence discriminatory.

The Government may consider prescribing a provision in the Act for levy of penalty for submission of incorrect/incomplete returns which would act as an effective deterrent against any attempt of tax evasion by the dealers.

2.2.10 Absence of time limit for finalisation of assessments

According to the Section 22(2) of the TNVAT Act, the assessing authority shall accept the returns submitted by a dealer for the year if they are accompanied by the proof of payment of tax and other prescribed documents and pass orders on the basis of such returns. **The Act, however, does not prescribe any time limit for passing of assessment orders.**

Audit noticed large pendency of assessments under the TNVAT Act as mentioned in the following table.

Year	Opening balance	Cases due for assessment	Total	Cases disposed	Cases pending	Percentage of disposal
2007-08	-	1,44,759	1,44,759	22,108	1,22,651	15
2008-09	1,22,651	1,85,270	3,07,921	95,047	2,12,874	31

The low rate of disposal in the two years has increased the pendency of the assessments. The CCT had issued instructions in November 2007 and August 2008 directing the assessing authorities to pass assessment orders immediately on acceptance of the returns. A monthly return was also being submitted by the assessing authorities to the CCT through their controlling officers. The huge pendency of assessment cases despite these measures indicates that the monitoring system requires strengthening.

2.2.10.1 The TNVAT Act provides for selection of not more than 20 *per cent* of the assessment cases where orders are passed on the basis of the returns, for detailed scrutiny. **The Act, however, does not prescribe a time limit within which the scrutiny of the returns has to be made**.

Audit noticed in 13 assessment circles that only 249 assessments had been checked out of 772 selected for scrutiny. Scrutiny in the balance 523 cases had not been done because of non-production of accounts by the dealers.

The Government may consider prescribing a statutory time limit for passing of the assessment orders, production of the accounts by the dealers selected for detailed scrutiny and completion of the scrutiny under the TNVAT Act.

2.2.11 Absence of provision for proportionate fixation of turnover

The sale of certain commodities like vegetable oil upto a turnover of Rs. 500 crore for a year was exempt under the TNGST Act. The exemption was continued under the TNVAT Act. Section 3(4) of the TNVAT Act affords an option of paying compounded rate of tax of 0.5 *per cent* to dealers whose turnover for a year is less than Rs. 50 lakh. The TNVAT Act, however, did not provide for proportionate restriction of turnover limit for claim of exemption/compounding payment of tax to Rs. 125 crore/Rs. 12.5 lakh respectively for the year 2006-07 as it was introduced with effect from 1 January 2007. The absence of such a provision had resulted in foregoing of revenue of Rs. 13.76 crore as detailed below:

- Two dealers of vegetable oil in Washermanpet-II and Virudhunagar-I assessment circles were granted exemption from payment of tax, though the turnover of the dealers under the TNVAT Act for the year 2006-07 was Rs. 126.96 crore and Rs. 181.75 crore respectively. This resulted in foregoing of revenue of Rs. 12.35 crore.

- Audit noticed that in 23 assessment circles[3], 75 dealers whose turnover under the TNVAT Act for the year 2006-07 was in excess of Rs. 12.5 lakh had exercised the option to pay tax at the compounded rate of 0.5 *per cent* instead of at the scheduled rates. This resulted in foregoing of revenue of Rs. 1.41 crore.

The details of exemption granted in respect of similar commodities though called for in August 2009, were not furnished (January 2010).

Compliance deficiencies

2.2.12 Input tax credit

2.2.12.1 Incorrect allowance of claim of the ITC on closing stock

The TNVAT Act provides for allowance of the ITC to a registered dealer for the sales tax paid under the TNGST Act on the goods (excluding capital goods) purchased between 1 January 2006 and 31 December 2006 and held in stock on the date of commencement of the Act, subject to certain prescribed conditions. The dealer claiming the ITC on closing stock shall submit a stock inventory statement in duplicate in Form V alongwith photostat copies of related purchase invoices within 59 days from the commencement of the VAT Act.

- Test check of the records in 11 assessment circles[4] conducted between April 2008 and March 2009 indicated that the assessing authorities, while allowing ITC in 17 cases, failed to ensure that the conditions like submitting a stock inventory statement in duplicate in Form V, photocopies of the invoices

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[3] Avinashi Road, Dindigul I, Erode (Rural), Mailamchandai-II, Palayamkottai, Park Road, Nethaji Road, Salem (Bazaar), Sathy Road, Sivakasi-I & II, Srirangam, Tambaram-I Thiruverumbur, Tirunelveli (Junction), Tuticorin I , II & III, Udumalpet (North), Vellore (Rural) and Virudhunagar-I, II & III.

[4] Adyar-I, FTAC-I (Coimbatore), FTAC-III & IV (Chennai), Hosur (North) & (South), Saidapet, Shevapet, Tiruchengode, Tiruvanmiyur and Tiruvottriyur.

stipulated in the Act for claim of the ITC etc. were followed by the dealers. This resulted in excess allowance of ITC of Rs. 3.70 crore.

After this was pointed out, the assessing authority reversed the excess credit and collected Rs. 1.57 lakh in one case. The reply in respect of the remaining cases has not been received (January 2010).

- Section 88(6)(a) of the TNVAT Act provides that every registered dealer shall be entitled to claim the ITC for the sales tax paid under the TNGST Act on the goods held in stock excluding capital goods.

Test check of the records in 28 assessment circles[5] indicated that the ITC allowed on closing stock included the amount of surcharge paid under the TNGST Act. This resulted in incorrect allowance of the ITC of Rs. 1.07 crore.

- The TNVAT Rules require the assessing authority to scrutinise the stock inventory in the Form V filed by the dealers and pass orders within seven months from the date of commencement of the Act.

Test check of the records in 13 assessment circles indicated (August 2009) that the assessing authorities did not pass orders in 439 cases involving the ITC of Rs. 10.31 crore required to be passed within seven months from 1 January 2007. Thus, the correctness of the claim of the ITC could not be verified.

2.2.12.2 Incorrect allowance of ITC in the absence of original tax invoices

According to the Section 19(1) of the TNVAT Act, the registered dealer who claims the ITC shall establish that the tax due on the purchases has been paid by him in the manner prescribed. Section 22(2) of the TNVAT Act provides that the returns shall be accompanied by proof of payment of the tax and the prescribed documents. Rule 10(2) of the TNVAT Rules stipulates that every registered dealer who claims the ITC shall produce the original tax invoice in support of the claim.

Information received from 102 assessment circles indicated that the ITC of Rs. 602.77 crore had been allowed in respect of 51,120 cases during 2006-07 though the claims were not supported by original tax invoices.

After this was pointed out, the assessing authorities contended (between October 2008 and March 2009) that calling for invoices was not warranted in a self assessment regime and the correctness of the claim would be verified at the time of scrutiny of assessment with reference to accounts.

The reply is not in consonance with the TNVAT Rules, which provide for compulsory filing of original tax invoices in support of the claim of the ITC.

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[5] Brough Road, Chokkikulam, FTAC-II & IV(Chennai), Ganapathy (Coimbatore), Hosur (North), Kamarajar Salai, Karur (East) & (North), Madurai (Rural)(South), Mettur, Nethaji Road, Ramanathapuram, Salem (Bazaar), Salem (North), Salem (Rural), Shevapet (North), Sivakasi-II, Tirunelveli (Bazaar), Tuticorin-I & II, Tirunelveli (Junction), Tirupparankundram, Virudhunagar-I, II & III, West Tower Street circle and West Veli Street Circle.

2.2.12.3 Issue of refunds in violation of procedure

According to Section 18 of the TNVAT Act, export sales and sales in the course of export are classified as zero rate sales. Section 18(2) provides that the dealer, who makes zero rate sales, shall be entitled to refund of input tax paid or payable by him on purchase of those goods which are exported as such or consumed in the manufacture of other goods that are exported. Rule 11 (2) of the TNVAT Rules stipulates that the assessing authority after verification of the correctness of the claim of refund preferred by the dealer, shall issue the refund within ninety days of receipt of application from the claimant.

Test check in 30 assessment circles[6] indicated that the refund amounting to Rs. 57.29 crore had been made in 1,567 cases, without ensuring that the tax in respect of the purchases relating to zero rate sales had been remitted to the Government account.

After this was pointed out, the assessing authorities stated that the CCT had clarified in August 2007 that the refunds could be made after ensuring the existence of the sellers and the verification of the tax payment by them is not necessary. The clarification was not in consonance with the rule which stipulates that the refund should be issued after proper verification.

2.2.13 Other points of interest

2.2.13.1 Absence of definition for the term "accrual of claim" in respect of zero rate sales

According to section 18 (3) of the TNVAT Act, claim for refund of ITC in respect of zero rate sales shall be made within one hundred and eighty days from the date of accrual of the ITC. The term "accrual of claim" has neither been defined in the Act nor in the Rules. The CCT had clarified in August 2007 that "accrual of claim" was from the date of filing of the returns. The CCT had again clarified in September 2007 that it was from the date of zero rate sales. The two clarifications are contradictory.

After this was pointed out, the CCT stated (November 2009) that "accrual of claim" was from the date of export and an amendment in this regard was being proposed by the department.

2.2.13.2 Revenue foregone due to issue of incorrect notification

According to entry 8 of Part B of the First Schedule to the TNVAT Act, as it existed on 1 January 2007, bakery products including biscuits with or without brand name were taxable at the rate of four *per cent*.

Audit noticed that the department had proposed an amendment for levy of tax at 12.5 *per cent* in respect of branded bakery products by deletion of the words "with or" appearing in entry 8 of Part B. The proposal was approved by the Government but while carrying out the proposed amendment, a separate

[6] Adyar I, Alwarpet, Amaindakarai, Ayyanavaram, Egmore I & II, Evening Bazaar, Esplanade I & II, Guindy, Harbour II, Loansquare I, Mannady (East) & (West), Luz, Manali, Nandanam, Nungambakkam, Peddunaickenpet (North), Purasawalkam, Royapettah I & II, Tambaram II, T.Nagar, (North), (South) & (East), Tondiarpet, Tiruvanmiyur, Vallalarnagar and Valluvarkottam.

notification was issued in March 2007 reducing the rate of tax on unbranded biscuits. Accordingly, biscuits sold with brand name continued to be taxed at four *per cent*. Later, the Government amended entry 8 of Part B of the first schedule in June 2007 by deletion of the words "with or" appearing therein. This notification was given retrospective effect from 1 January 2007. Based on the opinion of the CCT that the retrospective amendment would result in hardship to the dealers in branded biscuits, as they would have collected tax at lower rate, the Government issued a notification in July 2007 reducing the rate of tax on sale of branded biscuits to four *per cent* for the period from 1 January 2007 to 7 June 2007.

The issue of an erroneous notification in March 2007 had resulted in foregoing of revenue of Rs. 13.58 crore in respect of four dealers in four assessment circles[7] on the sales turnover of branded biscuits of Rs. 159.75 crore for the period from 1 April 2007 to 7 June 2007.

2.2.13.3 Deficiencies in uploading of data in the TINXSYS

The Empowered Committee of State Finance Ministers authored a website named TINXSYS (Tax Information Exchange System) as a repository of interstate transactions. This is mainly aimed at helping the commercial tax department to monitor interstate trade effectively.

The details regarding the number of 'C' and 'F' forms issued to the dealers and the information regarding utilisation of the forms as obtained from the TINXSYS indicate that as against the issue of 44,61,925 forms, details of utilisation of 1,82,617 forms were uploaded on the website. This was because details of utilisation of forms from the dealers had not been obtained before issuing the forms.

Audit scrutiny in eight assessment circles indicated that the forms were again issued to 156 dealers without obtaining the details of usage of 10,270 forms issued to them earlier.

The delay/omission to upload the details of utilisation of forms would tend to defeat the very purpose of the creation of the website, viz., effective monitoring of inter state trade. In the absence of verification of used forms, the possibility of misuse and consequent evasion of tax cannot be ruled out.

The department may consider issuing instructions for submission of utilisation certificates by the indenting dealers before the issue of fresh declaration forms.

2.2.13.4 Absence of mechanism to evaluate the prices

The Empowered Committee envisaged fall in prices of the commodities on the introduction of the VAT.

Audit undertook a study of the maximum retail sale price (MRP) rates of commodities governed by Section 4A of the Central Excise Act. Test check indicated that 13 manufacturers of commodities falling under the categories of cosmetics, aerated drinks, pharmaceutical products, paints, bakery products and food preparations had not reduced the MRP rates. The benefit of

[7] Fast Track Assessment Circle-IV (Chennai), Hosur (North), Tindivanam and Tiruvottriyur.

reduction of taxes not passed on to the general public by the manufacturers of these goods during the period from January 2007 to March 2007 worked out to Rs. 40.28 crore.

The department had no mechanism to check if the benefit of reduction in tax rates had been passed on to the general public.

The Government needs to monitor these prices so that the benefit of reduction in tax rates is passed on to the general public.

2.2.13.5 VAT compensation

The Government of India had agreed to compensate the State Governments for the loss of revenue consequent to the implementation of the VAT. The Government of Tamil Nadu preferred a claim of Rs. 2,962.35 crore for the calendar year 2007.

Audit scrutiny of the compensation claim indicated that while the amount of deferred sales tax and entry tax realised during the years 1999-2000 to 2003-04 were included for the purpose of arriving at the projections for the year 2007, these receipts were not included in the computation of the actual revenue realised during the calendar year 2007. The Government of India restricted the claim amount to Rs. 1,515.45 crore for 2007 based on the observation of audit. The Government of Tamil Nadu, however, continued with the same practice in working out a claim of Rs. 2,062.39 crore for the calendar year 2008. The Government of India has restricted the claim to Rs. 1,498.96 crore.

The Government needs to compute the compensation claim correctly.

2.2.14 Enforcement wing

Under the TNVAT Act, the departmental officers authorised by the Government are empowered to conduct inspection of the business premises of the dealers to unearth evasion of the tax.

The data gathered in the review indicate that the enforcement wing had remained almost dormant after introduction of the Act, as observed from the decline in their activities as detailed below:

Year wise details of shop inspection/test purchases of the Enforcement Wing					
Functions	**2005-06**	**2006-07**	**Percentage with reference to pre-VAT period (2005-06)**	**2007-08**	**Percentage with reference to pre-VAT period (2005-06)**
Shops inspected	9,313	1,572	16.87	7	0.01
Test purchase made	2,829	Nil	Nil	Nil	Nil

The reasons for ineffectiveness of the wing though called for in August 2008 have not been received (January 2010).

2.2.15 Internal audit

Internal audit, which provides reasonable assurance of proper enforcement of the laws, rules and departmental instructions, is a vital component of internal control. It is generally defined as the control of all controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well.

Audit observed that internal audit of the assessments, receipts and refunds was not being conducted by the department. The department stated in September 2009 that under the VAT regime, no internal audit was conducted due to vacancies in the internal audit wing. The department added that internal audit was being conducted only in the assessment circles where the assessing officers were due to retire.

The Government may strengthen the internal audit mechanism. The scope, extent and modality of monitoring of internal audit need to be defined and implemented.

2.2.16 Conclusion

The review revealed that the department had failed to formulate a time bound action plan for attaining finality in respect of the matters relating to the erstwhile Act. It had not put in place a system for recovery of the arrears of revenue and for implementation of taxation proposals. The department did not foresee the implications of certain terms/definitions in the Act while introducing the Act in the midst of a year. The transitional issues were not addressed adequately and this led to a number of system and compliance deficiencies. The VAT Act did not provide for conducting of surveys or cross verification with other departments for identification of fresh cases of assessments. The returns under the Act were found deficient in accommodating the claim of ITC, if not made in the month of the purchase. The VAT Act did not provide for a deterrent measure to prevent submission of incorrect returns and time limit for finalisation of assessments. Refunds were made without ascertaining their correctness. Issue of an erroneous notification resulted in foregoing of revenue. The review also indicated that the department did not gear up adequately to meet the requirements/challenges to ensure smooth transition. Audit also noticed that the compensation claimed by the Government of Tamil Nadu was incorrect. The internal controls of the department need to be strengthened to enable the authority at the apex level to keep a close watch on the implementation of the Act.

2.2.17 Summary of recommendations

Government may consider:

- formulating an effective action plan to facilitate and monitor the finalisation of assessments at the earliest;
- fixation of targets for collection of arrears of tax due and monitoring of the performance of the assessing authorities;

- formulation of a time bound action plan for finalisation of the pending taxation proposals to ensure that no proposal escapes implementation beyond the prescribed time;
- bringing a specific provision in the Act to enable the registering authority to exercise certain basic and vital checks, before granting registration to ensure the authenticity of the application for registration. Similarly, suitable measures may be instituted for undertaking cross verification with the records of other departments for detecting unregistered dealers;
- modification of the formats of the prescribed returns in order to make them compatible with the provisions of the Act/Rules;
- prescribing a statutory time limit for passing of assessment orders, production of accounts by dealers selected for detailed scrutiny and for completion of scrutiny under the TNVAT Act; and
- prescribing penalty for submission of incorrect/incomplete returns to act as an effective deterrent against any attempt of tax evasion by the dealers.

2.3 Computerisation of Value Added Tax (VAT) Information System in Commercial Taxes Department

Highlights

- Lack of URS, system design and its documentation while switching over to the new environment of VAT computerisation exposed the lack of preparation at the time of customisation.

(Paragraph 2.3.6.1)

- Absence of proper connectivity between the client and server resulted in non generation of notices at circle level and consequent delay in realisation of revenue.

(Paragraph 2.3.7.3)

- Absence of input and validation controls in vital fields like TIN, rate of taxes resulted in lack of the data integrity and reliability.

(Paragraph 2.3.8)

2.3.1 Introduction

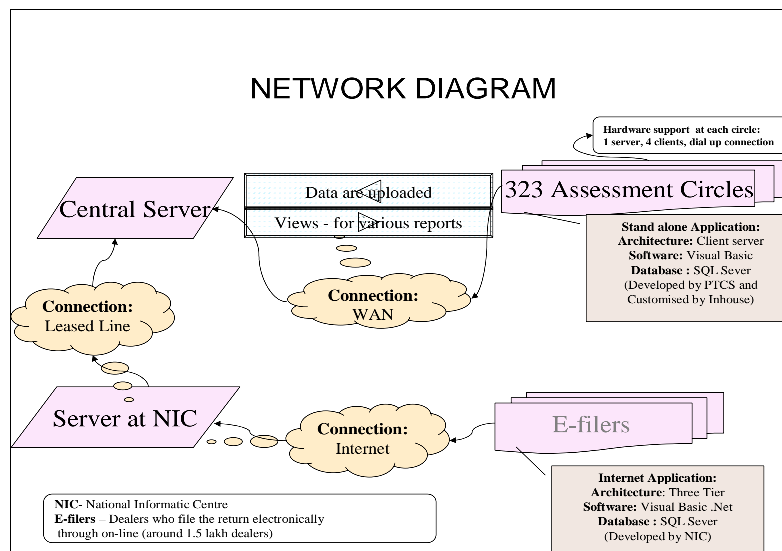
The Commercial Taxes department, as part of its e-governance initiatives, planned to achieve a smooth transition to the VAT system by introducing e-services like e-registration, e-filing of returns, e-request for supply of forms and e-assessment by upgrading the existing hardware, software and network. It also planned to achieve upgradation of the facilities to capture return information quickly, avoiding manual data entry and safeguard against false claim of input tax credit and refund claim of the exporters.

With a view to implement the above objective, the Government of Tamil Nadu engaged M/s. Pallavan Transport Consultancy Services as its consultant in 2003. The department undertook the implementation of computerisation in various stages at a cost of Rs. 37.41 crore.

- The stand alone applications[8], which were customised in-house and installed in all the 323 assessment circles, comprise registration module and return processing module under the VAT Act.
- The internet applications[9] comprise a website developed by the National Informatic Centre (NIC) and offer the following services, viz., online application for registration, e-filing of monthly returns, e-request of the saleable forms, online facility to know the details of a dealer, rate and schedule of a commodity, status of the refunds and the availability of the saleable forms.
- The intranet applications[10] are used for generation of live reports on revenue collection, MIS reports like return filed status, return audit, scrutiny of the data already entered in the offices, online cross

[8] using Oracle as back end and Visual basic as front end.
[9] using Oracle as back end and VB.NET as front end.
[10] using Oracle as back end and VB.NET as front end.

verification of ITC[11] availed by the dealers, generation of notice for wrong claim and uploading of annexure to Form I and statutory forms.



At present, the filing of monthly returns by the assessees is being done both manually and also through e-filing. The data captured in the stand alone database is exported to the central server through Wide Area Network (WAN)[12]. Capturing of the details of purchase and sales annexed to the monthly returns for the period pertaining to the previous two years has been outsourced. As regards e-filing, the return is entered online and the details regarding purchase and sales are uploaded as 'Excel file attachment' to the NIC server[13], a copy of which is transmitted to the central server[14]. At present, 1.5 lakh dealers out of 5 lakh registered dealers (30 %) utilise the online facility to file their monthly returns.

A review of the computerisation of the Value Added Tax Information System in the Commercial Taxes Department was conducted by Audit. It indicated a number of system and compliance deficiencies which have been discussed in the subsequent paragraphs.

2.3.2 Organisational structure

The Secretary, Commercial Taxes and Registration department (CT department) is the head of the department at the Government level. The Commissioner of Commercial Taxes (CCT) is the head of the Commercial Taxes department and is assisted by the Additional Commissioners, Joint Commissioners and Deputy Commissioners who exercise administrative

[11] Input tax credit – Section 19(1) of TNVAT Act provides for input tax credit of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First schedule. The registered dealer, who claims input tax credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed.

[12] WAN- A wide area network (WAN) is a computer network that connects a broad area.

[13] located in the NIC premises.

[14] located in department's premises.

control. The Central Computer centre of the CT department is headed by the Joint Commissioner (Computer Systems) and functions with three programmers, four deputy programmers and eight assistant programmers.

2.3.3 Audit objective

The information technology audit of computerisation of VAT was undertaken with a view to ascertain that

- there exists proper documentation for system design, user requirement specification and system requirement specification;
- proper acceptance testing such as programme testing, system testing, user testing and quality assurance testing was done;
- the system meets the requirements of the TNVAT Act and is synchronised with the critical business rules of the department;
- proper input, validation and process controls exist in the system to ensure the authenticity, completeness and accuracy of the data;
- the database provides sufficient, complete, reliable and authorised information for management action; and
- there exists adequate security controls and disaster recovery plan.

2.3.4 Scope and methodology of audit

Test check of the records of five assessment circles[15] was conducted to study the system in place. Further, the data available for the period from January 2007 to October 2008 in the central server of the department was obtained and examined using structured query language (SQL) to check their adequacy and reliability. The mapping of business rules and the controls available in the application software were ascertained through an examination of the data entry screens.

2.3.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the CT department in providing necessary information and records for audit. An entry conference was held in April 2009 in which audit objectives and methodology were explained. The exit conference was held in August 2009 with the Commissioner and officers of the CT department and officials of NIC in which results of audit and recommendations were discussed. The draft review was forwarded to the department and the Government in August 2009 and replies received from the department during the exit conference and at other times have been appropriately reflected in the review report.

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[15] Fast Track Assesement Circle (FTAC) I, Chennai, FTAC II, Chennai, Sowcarpet I, Sowcarpet II and Manali.

Audit findings

System deficiencies

2.3.6 General controls

General controls relate to the environment within which the development and implementation of IT systems are carried out. The objectives of the controls are to ensure effective development, implementation and maintenance of the IT systems. An assessment of these controls indicated the following deficiencies.

Planning

2.3.6.1 As a preparatory step towards introduction of the TNVAT Act, the Government sanctioned an amount of Rs. 1 crore for consultancy and development work and the same was entrusted to M/s. Pallavan Transport Consultancy Services (PTCS) in January 2003. As the vendor expressed difficulty to continue with the project (January 2005), the department paid an amount of Rs. 0.57 crore for the completed modules[16]. Further, under the e-governance plan (August 2004), the Government sanctioned Rs. 15.80 crore, out of which Rs. 13.09 crore was spent for extending e-services[17] through NIC.

The TNGST modules developed by the PTCS were further customised by in-house developers for VAT. This was implemented in all the 323 assessment circles for capturing information of manual filers. In the absence of the documentation[18], audit could not find out whether the issues brought out in the succeeding paragraphs were due to user requirements not being identified initially or due to deficiency in the stages of development of the software. Later, the department paid Rs. 0.45 crore (March 2007) to M/s. Electronics Corporation of Tamilnadu Ltd. (ELCOT) for the development of the integrated web based software[19].

Audit scrutiny indicated that the department was already using a web based application developed by the NIC to enable online e-filing of the monthly returns by the dealers. The department could have customised this existing web based application developed by the NIC after rectifying the deficiencies noticed and utilised it by creating more users and providing appropriate access rights. Instead, the department opted for developing a new application through M/s. ELCOT which was a duplication of the work. Further, no URS was prepared or timeframe set while entrusting the work to the ELCOT. It was also noticed that the vendor had not prepared SRS or SDD and was yet to deliver the software (August 2009).

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[16] For TNGST, Check post movement and appellate wing.

[17] Like e-registration, e-filing of returns, e-payment, e-assessment, e-request for supply of forms.

[18] User requirement specification (URS), System requirement specification (SRS) or System design document (SDD).

[19] Covering the functions such as On-line dealer registration, e-return filing and capturing of data contained in the manual return filed by the assessee at the circle office, tax collection and refund, saleable form, self assessment order.

2.3.6.2 Based on the project report submitted by PTCS, the department had an initial plan of adopting ICR[20] and VPN[21] technology and sanctioned Rs. 1.24 crore during 2006 for capturing the data of monthly returns. However, the department did not procure the required hardware. Instead, it diverted (March 2009) Rs. 1.20 crore for procurement of other hardware and enhancing the infrastructure of NIC server after three years.

The essence of the VAT is the concept of the ITC. The details of purchase and sales furnished with the returns have to be cross checked with the other returns of same/other circles to verify the correctness of the claims.

Due to non-adoption of the initial plan, the data pertaining to the period from January 2007 to June 2008 (approx 15 crore records) were pending to be captured in the system and the ITC amounting to Rs. 9,586 crore in respect of returns filed is yet to be verified. Failure of the department to execute its initial plan had resulted in delay in capturing the data, besides expenditure of Rs. 5.25 crore on outsourcing of the manual data entry of voluminous pending records. The work was yet to be completed.

2.3.6.3 In the absence of documentation, the various stages of system development, back up, physical and logical security could not be analysed.

The department while accepting the non-existence of necessary documentation, stated (October 2009) that this would be carried out in the web based software being developed by the ELCOT.

2.3.7 Application controls

2.3.7.1 Acceptance testing

The process of acceptance testing is to identify, as far as possible, the errors and deficiencies which can exist in the software supporting the system, the user interface, the procedure manuals, the job design and the organisational structure design, if any, prior to its final release for putting into use. Acceptance testing is carried out to identify these errors or deficiencies before these errors cause a widespread adverse impact.

Audit scrutiny indicated that acceptance tests like the programme and the system user quality assurance were not carried out by the department.

The department replied (August 2009) that quality assurance testing was not carried out in the existing software and it would be carried out in the Web based software being developed by the ELCOT.

2.3.7.2 System design

The return processing module captures the tax payable details (tax due from the dealers) from the monthly return furnished by the dealers. The collection module captures the details of tax collected from the dealer. Tax collected may be on account of tax paid under TNVAT, CST, interest for belated payment of tax, if any, penalty, if any, cost of forms, etc. The collection module does not

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[20] Intelligent character recognition (ICR) is process that translates handwritten text into machine readable characters. ICR technology permits data capture software to automatically read information from all types of documents.

[21] Virtual private network.

have separate head wise provision for capturing the details of collection of various components like entry tax, TDS, VAT, CST, advance tax at check post, interest, etc. The tax collection could not, therefore, be correlated with the tax due.

Data analysis indicated that in 11,078 returns the details of tax paid in the monthly returns was at variance with the details of the tax collected.

After this was pointed out, the department attributed (August 2009) the variance to the non-availability of separate provisions for entry tax, TDS, advance tax at check post, payment of interest, etc.

The Government may consider providing for a separate provision in the system for capturing the details of various taxes/various elements to ensure the correctness of tax collection.

2.3.7.3 Mapping of business procedures

The responsibility of the cross verification of information furnished by the dealers rests with the assessing officers at the circle level. However, it was noticed that the facility of the cross verification was not provided at the circle level. Instead, after cross verification, notices were generated at the central level where the central server was located. The officials at the central levels are not responsible for issuing the notice and they communicate it to the circles through email. Thus, though the responsibility had been vested with the concerned assessment officials of the circles they are solely depended upon the information provided to them by those at the central level.

Audit scrutiny indicated (August 2009) that in June 2009, 9,909 notices were generated at the central level and sent to the concerned circles. Out of these, only 1,987 notices were issued to the dealers by the assessment circles. Non-mapping of this business procedure in the IT environment by generation/issue of notices at the circle level resulted in deficient assurance on the correctness of the claim/tax paid.

- Online monthly return required to be filed by the dealer contains information like tax paid during the period for purchases, tax payable through sales and these are supported by the details of purchase and sales. However, the tax credit and the tax payable were not generated through the system from the details of the purchase and sales. Instead, users were required to manually enter the details once again in the return format. This indicated that the process of capturing information for the main return from the details given against the purchases and sales was not mapped in the system.

Audit observed that in 64,061 returns, the ITC claimed in the return was in excess of the eligible amount of VAT paid as exhibited in the details of purchase/sales.

The department replied (August 2009) that efforts had been made to ensure the correctness of information through generation of notices after cross verifying the details and corrective action taken in many cases and in the absence of the provision for correcting the errors, the corrections could not be incorporated in the system.

- Further, the system also allowed the users to manually enter the amount of VAT instead of it being derived automatically from purchase/sales turnover and commodity codes furnished by the dealer using the tax rates available in the system. As a result, the arithmetical accuracy for the amount of VAT paid i.e., the amount of purchase multiplied by the tax rate was not ensured by the system in respect of 99,838 instances in 94,376 returns.

The Government may consider providing a system which automatically captures the return information from the details of purchases and sales entered manually and ensure mapping of business procedures and restricting repeated manual entry to improve integrity of data.

Compliance deficiencies

2.3.8 Input control/validation checks

Input controls ensure that the data received for processing is genuine, complete, properly authorised and entered accurately without duplication. It was observed that both in manual data entry and e-filing of returns, the software captures data as such and no controls were programmed to check and validate the data. The discrepancies in input/validation checks noticed are mentioned below:

2.3.8.1 Input control

- **Tax payers Identification Number (TIN)**

Audit scrutiny of the purchase details furnished by the dealers alongwith the 'I' return[22] indicated that in 8,30,142 purchases mentioned in 1,11,825 returns, the seller's VAT number contained invalid TIN, alphabets and undefined state codes which were not between 01 and 35. Similarly, the sales details furnished by the dealers alongwith the monthly returns were found to contain invalid TIN, alphabets and undefined state codes in 44,48,986 instances in 2,82,800 returns.

The department replied (August 2009) that the cases of invalid TIN, lesser digits, alphabets and undefined state codes had been identified by the department and notices had been generated and sent to the circles.

The genuineness of the TIN registration, the details of the dealers, inter state purchase, eligibility of ITC could be verified only with proper entry of TIN. The system did not validate the data entered, as was evident by the mistakes noticed in the returns. The lack of supervisory input controls has resulted in accepting returns with large number of errors and also made verification of the above facts difficult.

- **Commodity codes and tax rates**

The system contained the data relating to various commodity codes, their description and the rates of tax. In the absence of input controls, the system allowed capture of incorrect commodity codes and failed to validate both commodity codes and tax rates with reference to details available in the system.

[22] 'I' return - Value added tax Monthly Return furnished by the assessee to the department.

- It was noticed during data analysis that the system accepted data entry of 398 invalid commodity codes in 31,440 instances.

After this was pointed out, the department accepted (August 2009) that the software did not have the provision for validating the commodity codes.

- It was also noticed that in 360 instances in 144 returns, tax in excess of the applicable rate of one *per cent*; in 1,51,570 instances in 7,714 returns, tax in excess of the applicable rate of four *per cent* and in 5,598 instances in 1,018 returns, tax in excess of the applicable rate of 12.5 *per cent* were allowed to be entered in the returns. It was also noticed that instead of the applicable tax rates i.e. (one *per cent*/four *per cent*/12.5 *per cent*), various incorrect rates such as 8,301, 2.82, etc. were also allowed to be entered in respect of the commodity codes 2001 to 2150 and 301 to 369.

After this was pointed out, the department stated (August 2009) that these errors were due to wrong entry of commodity code and also stated that the errors were communicated to the circles for rectification.

The Government may consider incorporating proper input control to avoid incorrect data entry.

2.3.8.2 Validation checks

- **Carry forward of the ITC**

The closing balance of the ITC of the previous month has to be automatically considered as the opening balance of ITC in the succeeding month. Audit noticed a difference of Rs. 960.48 crore between the opening balance and closing balance of the ITC in 1,28,147 returns including 11,924 returns of e-filers.

After this was pointed out, the department accepted (August 2009) the absence of validation in this regard.

The Government may consider modifying the software to ensure that the closing balance of the ITC of the previous month is the opening balance of the succeeding month.

- **Reverse credit**

The details regarding the claim relating to reversal of the ITC[23] during the month should also be annexed separately alongwith the monthly return. Data analysis indicated that in 44 returns, the ITC reversal amount shown in the annexure varied with the reverse credit amount shown in the monthly return. In respect of 23 returns, the reverse credit amount as per the return was less than the reversal amount as per the annexure, resulting in excess credit of Rs. 1.74 lakh. This indicated deficient validation checks in this regard.

The department replied (August 2009) that the cases would be reviewed.

[23] Reverse credit – Where a purchasing dealer has returned the goods to the seller for any reason, the input tax credit claimed already on the purchase by the dealer shall be liable to reversal of tax credit on such goods returned, in the manner as may be prescribed.

- **ITC on closing stock**

ITC available on the closing stock held by the dealers on 31 December 2006 under the TNGST Act[24], was allowed to be availed within the next six months and the closing stock as on 31 December 2006 was captured in the system.

Audit scrutiny indicated that the software did not have provision to restrict the availing of the ITC on closing stock against the eligible closing stock while permitting the dealer to avail of such credit in the next six months. Data analysis showed that in 1,648 returns, the ITC availed of by the dealers in the monthly returns was more than the eligible amount of the ITC on closing stock resulting in excess claim of the ITC of Rs. 47.20 crore. Failure to validate the ITC credit availed of after the implementation of TNVAT Act against the ITC as per closing stock declared initially resulted in availing of excess ITC.

The department replied (August 2009) that this was due to data entry error initially while feeding the data and those cases had been referred to the assessment circle concerned. The differential amount had been collected in other cases. The fact remains that the data entry errors are yet to be corrected in the system.

- **Exempted goods**

The TNVAT Act stipulates that no input tax credit shall be allowed in respect of sale of goods specified in the Fourth Schedule which are exempt under Section 15. The system did not have the provision to validate/disallow the ITC claimed for the purchase of exempted goods.

Data analysis indicated that in respect of 1,032 returns, claim of ITC for Rs. 9.80 crore had been preferred by the dealers in respect of the exempted goods.

After this was pointed out, the department stated (August 2009) that the claim may be due to error in entry of commodity codes. The fact remains that the system should have been so designed that any ITC claim in respect of the exempted goods should have been derived from the details available rather than allowing for data entry.

- **Capital goods**

The TNVAT Act provides for allowance of the ITC credit on capital goods and the capital goods were identified with a specific commodity code, viz., 2025. The system allowed entry of commodity codes other than 2025, viz., 301, 2067, 2041 etc to indicate the capital goods.

Data analysis indicated that in 4,136 returns, the software allowed ITC credit for goods with codes other than 2025 indicating the absence of validation check in the program.

After this was pointed out, the department replied (August 2009) that in respect of goods under commodity code 301, notices were issued to disallow the claim of the ITC. The reply is not tenable as though all these three

[24] Tamil Nadu General Sales Tax Act – The Act which was in existence prior to implementation of TNVAT Act (1.1.2007).

commodities are eligible for the ITC, the same could not be classified as capital goods.

The Government may consider incorporating proper input/validation control to avoid incorrect data entry.

2.3.9 Other points of interest

2.3.9.1 Saleable Forms

Saleable forms viz., Form C is issued for interstate purchases, Form F is issued during stock transfer between branches. These are issued to the dealers during inter state purchases for availing of concessional rate of tax.

Audit observed the following discrepancies:

- The database has the details about the cost of different types of the saleable forms. The cost of a form is to be extracted by the system automatically from the database to populate the relevant field. However, it was noticed that the system allowed manual intervention to input the cost of the saleable forms and that too at the rates even lower than the prescribed rate. This resulted in short collection of revenue of Rs. 2.08 lakh in 67,466 forms.
- Though the saleable forms were issued to 63,737 dealers, the usage details were available only for 5,597 dealers. As the information of usage of the saleable forms is incomplete, proper usage of these forms could not be verified through the system.
- Audit noticed the existence of 158 different types of dummy values in the book series number of the saleable forms. Further 11,761 forms valuing Rs. 2.27 lakh were also sold using these dummy book series number.

After this was pointed out, the department replied (August 2009) that the dummy series entered were data entry errors and since the issues were made using dummy series numbers, the usage detail of such forms could not be verified through system.

The Government may consider capturing complete information regarding usage of saleable forms in the system to verify their genuineness. Necessary input control may be put in place to avoid entry of dummy series number.

2.3.10 Conclusion

Audit observed that user requirement specifications were not identified nor was there any documentation of the system development. Thus, it could not be identified whether the control deficiencies pointed out in audit were due to deficient identification of user requirement or inadequacies in system development. Absence of any testing of the system indicated a deficient system implementation strategy by the department. Deficient mapping of business procedure, deficient input control and validation checks have made data incomplete, inaccurate and unreliable. In the absence of provision to

make corrections of errors made during e-filing of returns, the accuracy and utility of the data available in the system could not be verified.

2.3.11 Summary of recommendations

The Government may consider:

- providing a separate provision in the system for capturing the details of various taxes/various elements to ensure the correctness of tax collection;
- providing a system which automatically captures the return information from the details of purchases and sales entered manually and ensure mapping of business procedures and restricting repeated manual entry to improve integrity of the data;
- incorporating proper input control to avoid incorrect data entry;
- redesigning the software to adopt the closing balance of the ITC of the previous month as the opening balance of the succeeding month and putting in place suitable controls at higher level for effecting corrections; and
- incorporating proper input/validation control to avoid incorrect data entry.

2.4 Other audit observations

Scrutiny of the records in the offices of the Commercial taxes department indicated several cases of non-observance of the provisions of the Acts/Rules resulting in application of incorrect rates of tax, incorrect grant of exemption/concessional rate of tax, non/short levy of interest/penalty and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and based on test check carried out in audit. Although such omissions are pointed out every year, the irregularities do persist; and remain undetected till the next audit is conducted. There is need for improving the internal control mechanism so that such omissions can be detected and rectified at the very beginning.

2.5 Incorrect grant of exemption from levy of tax

Under Section 8(2)(b) of the Central Sales Tax Act, 1956 (CST Act), interstate sale of goods other than declared goods, not covered by valid declarations in Form 'C' is assessable to tax at the rate of 10 *per cent* or at the rate applicable to the sale of such goods inside the State, whichever is higher.

Section 6A of the CST Act provides for exemption where the movement of any goods from one state to another was occasioned by reason of transfer of such goods to the other state and not by reason of sale. The burden of proving that the movement of those goods was so occasioned shall be on the dealer. For this purpose, the dealer shall produce declaration in the Form 'F' duly filled and signed by the principal officer of the other place of business or his agent or principal as the case may be. In case of disallowance of exemption, in addition to tax, the assessing authority shall also levy penalty depending on the percentage of difference between the tax assessed and paid as per returns.

Test check of the records in Bodinayakanur assessment circle indicated that the assessing authority while finalising the assessments of four dealers for the years 2003-04 and 2004-05 in April 2006, had allowed exemption on the transfer of cardamom and pepper valued at Rs. 12.02 crore to a dealer of Delhi against declaration in the Form 'F'. Cross verification of the records of Bodinayakanur assessment circle with those of the Commercial Tax Department, Delhi indicated (April 2005) that the agent at Delhi was a bogus dealer. His registration number was incorrect and the declaration Form `F` submitted by him with the claim had not been issued by the commercial tax office at Delhi. Hence, the exemption allowed on a turnover of Rs. 12.02 crore to the dealer was not in order and resulted in non-levy of tax of Rs. 3 crore, including penalty of Rs. 1.80 crore.

After this was pointed out in August 2008, the assessing authority replied that the revision of assessment would be considered after verification. Further action taken has not been reported (January 2010).

The matter was reported to the department and to the Government in April 2009; their reply has not been received (January 2010).

2.6 Application of incorrect rates of tax

2.6.1 Under the provisions of the TNGST Act, tax is leviable on the sale or purchase of goods at the rates and at the points mentioned in the relevant schedules to the Act.

Test check of the records in two assessment circles indicated that the assessing authorities, while finalising the assessments of two dealers for the years 2003-04 to 2005-06 between May 2006 and June 2007 applied incorrect rates of tax on the turnover of Rs. 1.61 crore. This resulted in short levy of tax of Rs. 15.21 lakh (inclusive of surcharge) as mentioned below:

(Rupees in lakh)

<table>
<tr><th rowspan="2">Sl. no.</th><th rowspan="2">Assessment circle (No. of dealers)</th><th rowspan="2">Year of transaction (Month/ Year of assessment)</th><th rowspan="2">Commodity/ Transactions</th><th rowspan="2">Tax-able turn-over</th><th colspan="2">Rate of tax (per cent)</th><th rowspan="2">Amount short levied</th></tr>
<tr><th>Appli-cable</th><th>App-lied</th></tr>
<tr><td>1</td><td>Ramnagar
(1)</td><td>2003-04
2004-05
(May 2006)</td><td>Fruit jam sold with a brand name</td><td>64.27</td><td>16</td><td>4</td><td>8.10</td></tr>
<tr><td colspan="8">After this was pointed out in January 2008, the assessing officer stated (January 2008) that the higher rate of tax was not applicable in this case as in the preparation of fruit jam, additives like chemicals and essence were added. Besides, the brand name “senthu” under which the commodity was sold was not registered under the Trade and Merchandise Marks Act.
The reply is not in consonance with the provisions of the Act, which envisages that fruit jam with or without additives and sold under brand name is taxable at 16 per cent. Further, as per the entry relating to food and food preparations, the brand name is not required to be registered for the purpose of levy of tax.</td></tr>
<tr><td>2</td><td>Ice House
(1)</td><td>2005-06
(May/June 2007)</td><td>Sale of printed cartons</td><td>96.70</td><td>10</td><td>3</td><td>7.11</td></tr>
<tr><td colspan="8">After this was pointed out in April 2008, the assessing officer replied (April 2008) that the cartons sold by the assessee were only printed material, as without the printed matter, the cartons could not be used by the purchasers.
The reply is not in consonance with entry 5(1) of Part C of the First Schedule, according to which cartons are taxable at the rate of 10 per cent. The CCT had also clarified in February 2003 that printing information of the products contained in the cartons was only incidental and the cartons could serve the purpose even without printing. Hence they were taxable at 10 per cent under entry 5(i) of Part C of the first schedule to the TNGST Act.</td></tr>
<tr><td colspan="4">Total</td><td>160.97</td><td></td><td></td><td>15.21</td></tr>
</table>

The matter was reported to the department and the Government between July 2008 and February 2009; their replies have not been received (January 2010).

2.6.2 Under Section 8(2)(b) of the CST Act, inter-state sale of goods other than declared goods, not covered by valid declarations in Form ‘C’ is assessable to tax at the rate of 10 *per cent* or at the rate applicable to the sale of such goods inside the State, whichever is higher. The elements of surcharge and additional sales tax, wherever applicable, are also to be taken into consideration to arrive at the local rate of tax.

Test check of the records in Villupuram-I and Thiruverumbur assessment circles indicated that the assessing authorities, while finalising the assessments of two dealers for the years 1999-2000 and 2003-04 during April 2005 and December 2006 respectively, applied incorrect rates of tax on the inter state sale of goods valued at Rs. 2.96 crore. This resulted in short levy of tax of Rs. 8.68 lakh.

After the cases were pointed out in August 2007 and January 2009, the assessing authority, Thiruverumbur assessment circle revised the assessment in March 2008 and raised an additional demand of Rs. 3.06 lakh; of which Rs. 1.25 lakh has been collected. Report on recovery of the balance amount and reply in respect of the remaining case have not been received (January 2010).

The matter was reported to the Government between January 2009 and April 2009; their reply has not been received (January 2010).

2.7 Incorrect grant of concessional rate of tax

2.7.1 Section 3(5) of the TNGST Act provides that notwithstanding anything contained in Section 3(2), the tax payable by a dealer in respect of sale of any of the goods mentioned in the Eighth Schedule shall be at the rate of three *per cent* of the turnover relating to such sale. Imported machinery is not eligible for the concessional rate of tax and is chargeable to tax at the rate of 20 *per cent* under Section 3-C of the TNGST Act. The concessional rate is also not eligible for sale of goods like air handling units, weighing machines and electrically operated cranes (EOT cranes) which are not mentioned in the Eighth schedule and which are taxable at the rate of 20 *per cent* and 12 *per cent*.

2.7.1.1 Test check of the records in three assessment circles[25] indicated that the assessing authorities while finalising the assessments of three dealers for the years 2004-05 to 2006-07 between April 2006 and March 2008, had erroneously assessed the sale of imported machinery valued at Rs. 1.22 crore at the concessional rate of three *per cent* instead of the applicable rate of 20 *per cent*. This resulted in short levy of tax of Rs. 21.72 lakh.

The Government, to whom the matter was reported between November 2008 and April 2009, replied (August 2009) that the concessional rate of tax allowed was in order as "machineries of all kinds" are mentioned in the Eighth Schedule to the Act and the CCT had clarified in May 2006 that imported machinery could be sold against Form XVII under Section 3(5) of the TNGST Act. The Government further stated that the Section 3(5) was introduced prior to the introduction of the Section 3(2-C) and hence no mention of the Section 3(2-C) was made in the Section 3(5) of the TNGST Act. The reply is not in consonance with the provisions of the Act. The entry at serial number 9 of schedule XI of the TNGST Act provides for levy of tax at the rate of 20 *per cent* in respect of items falling under Part D and Part E of schedule I of the Act. The machinery of all kinds fall under entry number 20 of the Part D of the schedule I. As such tax is leviable at the rate of 20 *per cent* .This entry

[25] Purasawalkam, T.Nagar (East) and Villivakkam.

has not been deleted or amended till date and should have been applied in the interest of the revenue.

2.7.1.2 Test check of the records in four assessment circles[26] indicated that the assessing authorities, while finalising the assessments of four dealers for the years 2004-05 and 2005-06 between January 2007 and December 2007, had erroneously allowed the concessional rate of tax of three *per cent* on the sale of goods not mentioned in the Eighth Schedule, viz., air handling units, weighing machines and EOT cranes. The erroneous allowance of the concessional rate of tax on the turnover of Rs. 4.40 crore, instead of levying tax at the rates of 20 *per cent* and 12 *per cent* resulted in short recovery of tax of Rs. 46.56 lakh (inclusive of surcharge).

After the cases were pointed out between September 2007 and November 2008, the assessing authority, Guindy assessment circle replied that the concessional rate allowed was in order as the sales were covered by Form XVII declarations. The reply is not in consonance with the provisions of the Act as the air handling unit is not specified in the Eighth Schedule and sale thereof is not eligible for the concessional rate of tax. The assessing authorities, T. Nagar (North) and Ganapathy assessment circles replied that the concessional rate allowed was in order as the CCT had clarified in October 2000 and June 2002 that cranes were classifiable as machinery. The reply is not tenable as the CCT, in the latest clarification issued in September 2006, viz., prior to the finalisation of the assessments, had clarified that EOT cranes did not find a place in the Eighth Schedule and, therefore, could not be sold at concessional rate against Form XVII declaration. Reply in respect of the remaining case has not been received (January 2010).

The matter was reported to the Government in March/April 2009; their reply has not been received (January 2010).

2.7.2 Section 3(3) of the TNGST Act provides for concessional rate of tax of three *per cent* on sale of goods by a dealer to another dealer for use by the latter in the manufacture inside the State and for sale by him of any goods other than the goods falling under Part A of the third schedule to the Act. The concessional rate is subject to the filing of Form XVII declaration obtained from the purchaser. Thus, the concessional rate on sale of goods is not applicable where the goods manufactured fall under Part A of the third schedule.

Test check of the records in Fast Track Assessment Circle-IV, Chennai indicated that the assessing authority, while finalising the assessment of a dealer for the year 1999-2000 in July 2003, had allowed concessional rate of tax on sale of lubricants valued at Rs. 66.08 lakh, though the product to be manufactured as mentioned in the Form XVII declaration was sugar, a commodity falling under Part A of the third schedule to the TNGST Act. The incorrect grant of concessional rate of tax resulted in short levy of tax of Rs. 8.59 lakh.

[26] Ganapathy (Coimbatore), Guindy, Korattur and T.Nagar (North).

After this was pointed out in December 2006, the assessing authority replied in May 2008 that since the Form XVII declaration had been filed, there was no further obligation on the part of the seller and the purchasing dealer alone was liable for levy of the differential rate of tax and penalty. The reply is not in consonance with the provisions of the Act, which specifically precludes the sale of goods at concessional rate, where the manufactured goods fall under Part A of the third schedule.

The matter was reported to the Government in April 2009; their reply has not been received (January 2010).

2.8 Erroneous treatment of sale as works contract

Under entry 22 of Part D of the First Schedule to the TNGST Act, 1959, in respect of bodies built on chassis of motor vehicles belonging to others, tax is leviable at the rate of 12 *per cent* on the turnover relating to bodies.

Test check of the records in Alandur assessment circle indicated that a dealer had purchased the requisite material and undertaken the work of building bodies on the chassis supplied by the customers. The assessing authority, while finalising the assessments of the dealer for the years 2002-03 to 2006-07 between June 2004 and June 2007, instead of levying tax at the rate of 12 *per cent* on the turnover of Rs. 19.99 crore relating to the bodies built on the chassis, had erroneously treated the transaction as works contract not involving transfer of property in goods. The erroneous treatment of sale as works contract resulted in short levy of tax of Rs. 2.33 crore (inclusive of surcharge).

After this was pointed out in December 2008, the assessing authority replied that the dealer had received labour charges from the customers for body building and there was no outright sale of body built on the chassis. The reply is not tenable as audit scrutiny indicated that the dealer had purchased the requisite raw material and used these in the work of building bodies on the chassis belonging to the customers. The transaction was, therefore, one of sale attracting levy of tax at 12 *per cent*.

The matter was reported to the Government in March 2009; their reply has not been received (January 2010).

2.9 Short levy of tax on goods sold by trade mark holders

According to Section 3-J of the TNGST Act, whenever a dealer holding the trade mark or patent thereof sells goods at any point of sale other than the first point of sale, he shall be deemed to be the first seller in the State and shall be liable to pay tax accordingly. For determining the tax due to be paid by him, the tax levied and collected at the immediate preceding point of sale on the same goods shall be deducted from the tax payable by him at the point of sale.

Section 3-H of the TNGST Act provides for the levy of resale tax of one *per cent* on the turnover of resale of goods specified in the First Schedule and the Eleventh Schedule at a point other than the point of levy specified therein.

In Nandanam and Ganapathy assessment circles, while finalising the assessments for the years 2003-04 to 2005-06 (upto 25 September 2005) between April 2006 and March 2008 of two dealers who held trade mark[27]/brand name[28] in respect of goods sold by them, the assessing officers erroneously levied resale tax under Section 3-H at one *per cent* on the second sales turnover of goods sold under a brand name, instead of levying tax at the schedule rates applicable to the sale of goods as provided under Section 3-J of the TNGST Act. This resulted in short levy of tax of Rs. 1.13 crore.

After the cases were pointed out in December 2007/July 2008, the assessing authority, Ganapathy assessment circle replied that the certificate of registration of trade mark was issued to the dealer on 26 September 2005 and hence the assessment made at one *per cent* prior to such date was in order. The reply is not in consonance with the provisions of Section 23 of the Trade Marks Act, 1999 which specifies that the trade mark shall be registered as of the date of making of the application and that date shall be deemed to be the date of registration. In the instant case, the Certificate of registration of trade marks specified that it was issued as of 3 June 1999 and hence tax was to be levied at 12 *per cent* for the period from 2003-04 to 2005-06. The reply in respect of the remaining case has not been received (January 2010).

The matter was reported to the Government in November 2008; their reply has not been received (January 2010).

2.10 Non-levy of differential rate of tax

Section 3(3) of the TNGST Act, 1959 provides for purchase of goods at concessional rate of three *per cent* for use in the manufacture of any goods for sale, subject to the furnishing of declaration in the Form XVII by the purchaser. The Act further provides that the purchasing dealer shall be liable to pay the difference of tax payable on the turnover relating to sale of such goods, if he fails to make use of the goods so purchased for the purpose specified in the declaration. Under the TNGST Act, chemicals are taxable at the rate of 12 *per cent* at the point of first sale in the State.

The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai has held[29] in October 2005 that the process of conversion of wet blue leather (semi finished leather) into finished leather does not involve manufacture and has upheld the levy of differential rate of tax in respect of chemicals purchased at concessional rate and used in such conversion.

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[27] Motor vehicle parts sold under the trade mark “Roots Auto”.

[28] Washing soap and detergent sold under the brand name “Henkel”.

[29] State of Tamil Nadu Vs. Tvl. A. Ahmed & Co. – STA No.298/04 TNTST (AB), Chennai.

Test check of the records in Vepery and Thyagaraya Nagar (North) assessment circles indicated that two dealers had purchased chemicals at the concessional rate by furnishing the Form XVII declarations for Rs. 1.30 crore and utilised the chemicals for processing of wet blue/semi finished leather into finished leather. The assessing officers, while finalising the assessment for the years 2004-05 and 2005-06 in July 2006 and February 2007 respectively, failed to levy the differential rate of tax, though no manufacturing activity was undertaken by the assessees. The omission resulted in non-levy of tax of Rs. 12.26 lakh (inclusive of surcharge).

After this was pointed out in September 2007 and November 2007, the assessing officers stated that the conversion of semi finished leather (wet blue) into finished leather involved manufacture. The reply is not in consonance with the decision of the Appellate Tribunal mentioned above according to which the process does not involve manufacture.

The matter was reported to the Government in April 2009; their reply has not been received (January 2010).

2.11 Non-levy of additional sales tax

As per the provisions of the Tamil Nadu Additional Sales Tax Act, 1970, every dealer whose taxable turnover for a year exceeds Rs. 10 crore is liable to pay additional sales tax at the prescribed rate on the turnover. As per the explanation under Section 2(1)(aa) of the Act, the taxable turnover shall not include the turnover of resale, taxable under section 3-H of the Tamil Nadu General Sales Tax Act (TNGST Act).

Under Section 3(2-A) of the TNGST Act, in the case of cement mentioned in the fifth schedule, the tax is payable by a dealer at the first and every other point of sale in the State. Thus, the turnover relating to sale of cement at a point other than the first point of sale is also a taxable turnover and is, therefore, subject to levy of the additional sales tax.

In Tambaram I assessment circle, while finalising the assessment of a dealer for the year 2004-05 in June 2006, the turnover of sale of cement amounting to Rs. 7.25 crore assessed to tax at the second point of sale was omitted to be considered as taxable turnover. The turnover of cement assessed to tax at first sale point was Rs. 2.97 crore. Thus, the total turnover liable for levy of additional sales tax of one *per cent* was Rs. 10.22 crore. The assessing officer did not levy the additional sales tax of Rs. 10.22 lakh.

After the case was pointed out in October 2008, the assessing officer issued notice for revision of the assessment. Further report has not been received (January 2010).

The mater was reported to the Government in January 2009; their reply has not been received (January 2010).

2.12 Non/short levy of tax

Under Section 3(2-C) of the TNGST Act read with entry 18 of the Eleventh Schedule, white kerosene (superior kerosene oil) is assessable to tax at the rate of 25 *per cent* at the point of first sale in the State. Under Section 3-I of the TNGST Act, surcharge is leviable at the rate of five *per cent* on the tax levied under Section 3(2-C) of the Act.

Test check of the records in Omalur assessment circle indicated that the assessment of a dealer for the year 2003-04 finalised in June 2007 comprised a turnover of Rs. 3.22 crore representing local sale of superior kerosene oil camouflaged as inter-state sale by the assessee. The assessee was liable to pay a tax of Rs. 80.62 lakh on the said turnover. The department, however, levied a tax of Rs. 69.62 lakh. Further, the assessing authority omitted to levy surcharge on the first sales turnover of superior kerosene oil valued at Rs. 7.75 crore, including the turnover of Rs. 3.22 crore mentioned above. This resulted in non/short levy of tax of Rs. 20.68 lakh.

This was pointed out to the department in November 2008 and the Government in February 2009; their reply has not been received (January 2010).

2.13 Non-levy of interest for belated payment of tax

According to Section 24(3) of the TNGST Act, a dealer shall pay in addition to the tax amount due, interest as prescribed from time to time for the entire period of default on any amount remaining unpaid after the due date. The provisions relating to levy of interest for belated payment of tax under the TNGST Act also apply in respect of the tax payable under the Central Sales Tax Act.

In ten assessment circles[30], tax of Rs. 7.55 crore relating to the assessment years 1996-97 and 1999-2000 to 2005-06 was paid belatedly by 12 dealers between June 2002 and March 2008. The delays ranged from one day to 55 months and 17 days. As against the interest of Rs. 1.24 crore leviable for such belated payment of tax in all these cases, the assessing authorities had levied interest of Rs. 14.06 lakh in two cases. This resulted in non/short levy of interest of Rs. 1.10 crore.

After the cases were pointed out between January 2008 and August 2008, the assessing authorities levied interest of Rs. 64.83 lakh in seven cases; of which Rs. 17.77 lakh had been collected. Further report regarding collection of the balance amount and reply in respect of the remaining cases have not been received (January 2010).

The matter was reported to the Government between July 2008 and April 2009. The Government accepted the audit observation in six cases. Reply of the Government in the remaining cases has not been received (January 2010).

[30] Ariyalur, Cuddalore (Taluk), Hosur (North), Porur, Sriperumbudur, Tiruvanmiyur, T.Nagar (East), Trichy (Road), Vadapalani-I and Villupuram-I.

2.14 Non-levy of penalty

2.14.1 Section 12(3)(b) of the TNGST Act provides for levy of penalty at prescribed percentage of the short fall in payment of tax, where the tax paid by a dealer as per his returns falls short of the tax assessed by the assessing authority.

Test check of the records in Ramnagar and Trichy Road assessment circles indicated that two dealers had paid tax of Rs. 3.55 lakh alongwith the returns for the years 2003-04 and 2004-05. The tax assessed as per the final assessment was Rs. 9.02 lakh. The shortfall in payment of tax attracted levy of penalty of Rs. 8.35 lakh calculated at the rate of 125 *per cent* of the balance tax due. Similarly, in Ambattur assessment circle, test check of records in audit indicated that the assessee had paid tax of Rs. 18.65 lakh as per returns, whereas the tax assessed for the years 2002-03 and 2003-04 was Rs. 31.97 lakh. The shortfall in payment of tax attracted levy of penalty of Rs. 13.32 lakh calculated at the rate of 100 *per cent* of the balance tax due. The assessing authority, however, omitted to levy penalty of Rs. 21.67 lakh.

After the cases were pointed out between January 2008 and March 2009, the assessing authority, Ambattur assessment circle replied in March 2008 that since the books of accounts were not produced by the assessee, the correctness or otherwise of the returns filed could not be ascertained and hence penalty was not attracted. The reply is not in consonance with the provisions of the Act which envisages levy of penalty in case of shortfall in payment of tax. Reply in respect of the remaining cases has not been received (January 2010).

The matter was reported to the Government between November 2008 and February 2009; their reply has not been received (January 2010).

2.14.2 According to Section 12(3)(c) of the TNGST Act, in case of submission of the monthly returns by a dealer after ten days after the expiry of the prescribed period, the assessing authority shall levy penalty calculated at the rate of two *per cent* of the tax payable for every month or part thereof during which the default in the submission of the return continued. According to Rule 18(2) of the TNGST Rules, the return for each month in respect of a dealer whose taxable turnover in the preceding year was Rs. 200 crore and above shall be submitted so as to reach the assessing authority on or before the 12th of the succeeding month.

Test check of the records in the Fast Track Assessment Circle-IV, Chennai indicated that a dealer had filed returns in respect of certain months after 10 days after the expiry of the prescribed period. The assessing authority, while finalising the assessments of the dealer for the years 2002-03 to 2004-05 between June 2007 and August 2007, however, failed to levy penalty of Rs. 1.13 crore for the belated submission of the returns.

After this was pointed out in December 2008, the assessing authority replied that interest had already been levied and collected. The reply is not in consonance with the provisions of the Act as the levy of penalty under the Section 12(3)(c) of the Act mentioned above is independent of the interest levied under Section 24(3) of the TNGST Act for belated payment of tax.

The matter was reported to the Government in April 2009; their reply has not been received (January 2010).

CHAPTER III

STAMP DUTY AND REGISTRATION FEES

3.1 Results of audit

Test check of the records of the departmental offices conducted during the year 2008-09 indicated undervaluation, misclassification and other observations amounting to Rs. 88.84 crore in 1,073 cases which could be classified under the following categories:

(Rupees in crore)

Sl. no.	Category	No. of cases	Amount
1.	Misclassification	374	34.62
2.	Undervaluation	259	25.04
3.	Others	440	29.18
Total		**1,073**	**88.84**

During the year 2008-09, the department accepted underassessments etc., amounting to Rs. 8.02 crore in 201 cases, of which Rs. 5.16 crore involved in 69 cases were pointed out during 2008-09 and the rest in earlier years. The department collected Rs. 0.90 crore pertaining to 56 cases.

After the issue of one draft paragraph, the department collected Rs. 33.45 lakh.

A few illustrative audit observations involving Rs. 10.73 crore are mentioned in the succeeding paragraphs.

3.2 Audit observations

Scrutiny of the records in the offices of Registration department relating to revenue received from stamp duty and registration fees indicated several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy of stamp duty/registration fees and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and based on test checks carried out in audit. Although such omissions are pointed out every year, the irregularities do persist and remain undetected till the next audit is conducted. There is need for the Government to consider directing the department to improve the internal control system including strengthening internal audit so that such omissions can be avoided, detected and corrected.

3.3 Misclassification of instruments

3.3.1 As per the provisions of the Article 58 of the Schedule 1 to the Indian Stamp Act, 1899, any instrument of settlement executed in favour of a member or members of a family is leviable to stamp duty at the rate of one *per cent* of the market value of the property subject to a maximum of Rs. 10,000. In any other case, stamp duty is leviable at the rate of eight *per cent* of the market value of the property. As per the explanation under Article 58, family means father, mother, husband, wife, son, daughter, grant child and also includes adoptive father and mother, adopted son and daughter.

3.3.1.1 Test check of the records in seven District Registries[31] and 44 Sub-Registries[32] between July 2008 and January 2009 indicated that through 645 settlement deeds registered during the year 2007-08, properties were settled by the executants in favour of their brothers/sisters. In each case stamp duty and registration fees were collected at the rate of one *per cent* subject to a maximum of Rs. 10,000 and Rs. 2,000 respectively. As brothers/sisters do not come under the purview of Article 58, the settlements made should be classified as among non family members and stamp duty of Rs. 5.86 crore and registration fees of Rs. 0.73 crore should have been collected as against Rs. 0.63 crore collected. This had resulted in short collection of stamp duty and registration fees of Rs. 5.96 crore.

The matter was reported to the department (between August 2008 and February 2009) and to the Government (between January 2009 and April 2009). The Government stated (April 2009) that for the purpose of settlement there cannot be any pre-existing right over the property in the form of either co-parcener or co-owner. As such settlement deeds executed in favour of brother or sister are to be regarded as instruments in favour of a family member as defined in Article 58. The reply is not in consonance with the

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[31] Coimbatore, Dindigul, Gobichettipalayam, Kanchipuram, Krishnagiri, Madurai (S) and Tiruchirappali.

[32] Acharapakkam, Alangudi, Ambattur, Annur, Annanagar, Arakkonam, Arasaradi, Attur, Avadi, JT II Chengalpattu, Chokkikulam, JT II Coimbatore, Coonoor, Dharapuram, Ganapathy, Gandhipuram, Guduvancherry, JT II & III Kanchipuram, Kanniyur, Jt IV Madurai, JT II Manavalanagar, Nagalnaickenpatti,, Nallur, P.N.Palayam, Peelamedu,, Perambalur, Periamet, Pollachi, Ponneri, Poonamallee, K.Sathanur, Satyamangalam, Sembium, Srirangam, Suramangalam, Tallakulam, Thamaraipatti, Jt II Thousand Lights, Thiruvellore, Thiruverambur, JT III Trichy, Tirupattur, Tiruparankundram and JT II Tiruppur.

provisions of the Article 58 in which brothers and sisters have not been mentioned in the definition of family.

3.3.1.2 Test check of the records in Joint III Sub-Registry, Tiruchirappali in September 2008 indicated that through a settlement deed registered in February 2008, property valued at Rs. 30.68 lakh was settled by an executant who was adopted by an adoptive mother in May 1997, in favour of his natural father who is not a family member. This had resulted in short levy of stamp duty and registration fees of Rs. 2.64 lakh.

After this was reported in May 2009, the Government accepted (July 2009) the audit observation and stated that instructions have been issued to initiate action to realise the amount.

3.3.2 As per the Indian Stamp Act, 1899, conveyance includes a conveyance on sale and every instrument by which property is transferred and which is not otherwise specifically provided for by the Schedule I. As per the Article 17, on an instrument of cancellation, if attested and not otherwise provided for, stamp duty is to be levied at Rs. 50. There cannot be a thing as cancellation of a conveyance under which right of property has already been passed. A property can be retransferred only by a reconveyance.

Test check of the records in Sub-Registry, Coonoor and Gandhipuram in August 2008 indicated that two pieces of agricultural land were conveyed in December 2002 and March 2005 and the possession of the land was handed over to the purchasers on receipt of the consideration of Rs. 42.72 lakh. These transactions were, however, cancelled through cancellation deeds executed and registered in June 2004 and September 2007 respectively. The value of the properties as per guideline rates at the time of cancellation was Rs. 6.31 crore. Since the right of the property had been passed to the purchasers, the cancellation deeds should have been classified as reconveyance deeds instead of cancellation deeds and stamp duty and registration fees of Rs. 56.73 lakh was chargeable instead of Rs. 50 per instrument. This misclassification had resulted in short collection of stamp duty and registration fees of Rs. 56.73 lakh.

After this was reported (September/October 2008 and May 2009) to the Government, it stated (June 2009) that for reconveyance, there must be transfer of property in favour of the vendor. Since the document in question is a deed pole, it cannot be construed by any stretch of imagination as reconveyance. The reply is untenable since the right of the property was retransferred to the original vendors.

3.3.3 According to the clause 1 (b) of the "Table of Fees" under section 78 of the Indian Registration Act, 1908, the registration fees leviable on an agreement to sell or resell shall be on the advance or earnest money. The rate of registration fees leviable on sale agreement was one *per cent* on the advance money received.

Test check of the records in the office of the Sub-Registrar, Ponneri in January 2009 indicated that two instruments were registered as mortgage deeds in February 2008 on payment of registration fees of Rs. 10,000 titled as "creation of charge by deposit of title". The recitals of the deeds indicated that a sum of Rs. 15.53 crore was received as advance for the purpose of conveyance of the land measuring 15.53 acres pursuant to a 'Memorandum of Understanding' entered into between the mortgagors and the intended purchaser in February 2008. This advance was to be adjusted against the sale consideration. In the event of failure to convey the land, the advances were to be repaid alongwith an interest at 12 *per cent* per annum. The documents should have been treated as 'sale agreements' and the registration fee of Rs. 15.53 lakh was required to be collected. The misclassification of the documents as mortgage deeds instead of the sale agreements resulted in short collection of registration fee of Rs. 15.53 lakh.

After this was reported to the Government (May 2009), it stated (June 2009) that previous transactions entered into in different deeds were recorded and such transactions were not liable for stamp duty. The reply is untenable since the facts of the case as available in the documents clearly indicate that the instrument is a sale agreement and should have been taken into account in the interest of revenue.

3.3.4 As per the Article 23 of the Schedule 1 to the Indian Stamp Act 1899, in the case of conveyance of an immovable property, stamp duty is leviable at the specified rate on the market value of the property. As per Article 18, a certificate of sale (in respect of each property put up as a separate lot and sold) is granted to the purchaser of any property sold by public auction by a civil or revenue court or collector or other revenue officer.

Test check of the records in the office of the Sub-Registrar, Neelangarai in February 2008 indicated that an instrument of certificate of sale issued by the Debts Recovery Tribunal, Chennai in June 2006, in favour of a company for the purchase of land measuring 58.66 cents with the superstructure thereon was treated as rectification. It was, however, noticed in audit that as the properties were not sold through public auction but were purchased by mutual consent of the executants, the instrument was required to be classified as conveyance deed. Thus, there was misclassification of instrument. The value of the land was Rs. 1.53 crore and consequent short collection of stamp duty and registration fees was of Rs. 13.80 lakh. The value of the building and machinery conveyed has to be ascertained by the department for levy of stamp duty and registration fees.

After this was pointed out (March 2008), the District Registrar stated (June 2008) that the registering officer had been advised to take action for redetermination of the market value of the property and for recovery of the difference in the amount of stamp duty.

The matter was reported to the Government in December 2008; their reply has not been received (January 2010).

3.4 Short levy due to undervaluation of property

As per the provisions of the Article 23 of the Schedule 1 to the Indian Stamp Act 1899, in the case of conveyance of immovable property, stamp duty including the surcharge is leviable at the rate of 8 *per cent* on the market value of the property. According to the Section 27, the consideration, the market value and all other facts and circumstances affecting the chargeability of the instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly setforth therein. As per the Rule 3 (4) of the Tamil Nadu Stamp (Prevention of undervaluation of instruments) Rules, 1968, the registering officer may also consider the value of the property as per the guide lines register for the purpose of verifying the market value.

The Central Valuation Committee for guideline value had decided in September 2007 that if any document with a value higher than the guideline value was registered for a particular survey number/Street/Nagar before 01 August 2007, the same should be taken into account for registering the document on or after 01 August 2007.

Test check of the records in five registering offices between September 2007 and December 2008 indicated that in 10 documents there was undervaluation of properties to the extent of Rs. 20.90 crore resulting in short levy of the stamp duty and registration fees of Rs. 1.86 crore as detailed below:

(Rupees in lakh)

<table>
<tr><th>Sl. no.</th><th>Name of the Registry (No. of documents)</th><th>Nature of irregularity</th><th>Property under valued by</th><th>Deficit stamp duty and regis-tration fees</th></tr>
<tr><td>1.</td><td>Tiruporur (3)</td><td>Two sale deeds and one exchange deed of land measuring 2.5 acres, 4 acres and 5.77 acres were executed by a company in May 2006. The value of the land as per the guidelines amounted to Rs. 27.36 crore. However, the deeds were executed for Rs. 10.69 crore resulting in undervaluation of Rs. 16.67 crore.</td><td>1,667.00</td><td>150.00</td></tr>
<tr><td colspan="5">After this was pointed out (October 2007); the District Registrar, Chengalpattu accepted the audit observation (May 2008) and recommended the collection of deficit amount. Report on collection has not been received (January 2010).</td></tr>
<tr><td>2.</td><td>Neelangarai (1)</td><td>A piece of land was conveyed for a consideration of Rs. 1.09 crore and a sale deed was executed and registered in September 2006. The cost of the building of Rs. 2 crore was, however, not included in the deed. Thus, the suppression had resulted in undervaluation of property.</td><td>200.00</td><td>17.97</td></tr>
<tr><td>3.</td><td>Villivakkam, Ambattur (4)</td><td>In four instruments of conveyance registered (August and December 2007), in four villages, the value of the land measuring 23,611 square feet was arrived by adopting incorrect rates of Rs. 2,050, Rs. 375, Rs. 2,255 and Rs. 500 per square feet instead of adopting the correct rates of Rs. 6,185, Rs. 521, Rs. 3,046 and Rs. 1,104 per square feet respectively fixed by Central Valuation Committee. This had resulted in under valuation of the properties</td><td>136.49</td><td>11.66</td></tr>
<tr><td colspan="5">After this was pointed out in May 2009, the Government accepted (June 2009) the audit observation in two cases pertaining to Villivakkam and stated that action under Section 47A(3) had been initiated to collect the deficit amount of Rs. 7.50 lakh. It was further stated that in respect of one case, the deficit amount of Rs. 1.22 lakh had been collected. The Sub-Registrar, Ambattur replied that the deficit amount would be collected. Further report has not been received (January 2010).</td></tr>
</table>

4.	Gummidi-poondi, (2)	Arithmetical mistakes were noticed in conversion of the area of building from square feet into square meters in two instruments of conveyance of buildings with different extents of land executed and registered in August 2006 and February 2007. Consequently the buildings were undervalued by Rs. 86.18 lakh.	86.18	6.17
After this was pointed out in May 2009, the Government accepted (June 2009) the audit observation and stated that the case had been referred under Section 47A(3). Further report has not been received (January 2010).				
		Total	**2,089.67**	**185.80**

3.5 Excess allocation of transfer duty surcharge to local bodies

According to the Section 94 of the Tamil Nadu Urban Local Bodies Act, 1998 and the Section 175 of the Tamil Nadu Panchayat Act, 1994, a duty on transfer of immovable property shall be levied in the form of a surcharge (transfer duty surcharge) alongwith the duty imposed under the Indian Stamp Act, 1899 on the instruments of sale, exchange, gift, mortgage with possession, lease in perpetuity, etc. It shall be levied and collected at the rate of two *per cent* on the market value of the property transferred and subsequently allocated to the concerned local bodies.

Test check of the records in the office of the three Sub-Registrars[33], between April and September 2008 indicated that the transfer duty surcharge (TDS) of Rs. 66.60 lakh was allowed in excess to the local bodies due to clerical error.

After this was pointed out in May 2009, the Government accepted (July 2009) the audit observation in the case of Sivagiri and stated that action would be taken to adjust the excess allocation. Reply in respect of the other two cases have not been received (January 2010).

3.6 Non-levy of stamp duty due to incorrect grant of exemption

The Government of Tamil Nadu issued orders in May 2004 under the Section 9 of IS Act exempting all industrial units and their expansions located in the Special Economic Zones (SEZ), from payment of the stamp duty and registration fees in respect of land transactions.

Test check of the records in the office of the Sub-Registrar, Tambaram in January 2008 indicated that a building with a floor area of 1.80 lakh square feet valued at Rs. 7.17 crore and constructed on the land in the Madras Export Processing Zone in Kadaperi village was conveyed in October 2006 by Ambattur Clothing Limited in favour of Celebrity Fashions Limited. The registering authority allowed exemption from payment of stamp duty of Rs. 57.35 lakh on the ground that it was situated in the SEZ. However, as per the Government order, the exemption was admissible in respect of land transaction only and not for sale of a building. The incorrect exemption resulted in non-levy of stamp duty of Rs. 57.35 lakh.

After this was pointed out, the Registering authority replied in January 2008 that the document was registered as per the Government orders in SEZ Act, 2005 (Central Act 28 of 2005) which exempted levy of the stamp duty and registration fees from 10 February 2006. He added that the SEZ Act notified

[33] Sivagiri, Sriperumbudur and Tiruvellore.

by the Tamil Nadu Government exempted the levy of stamp duty and registration fees. The reply is not in line with the Government order of May 2004, in which exemption was granted in respect of land only and not on building constructed on the land.

The matter was reported to the Government in March 2009; their reply has not been received (January 2010).

3.7 Non-realisation of stamp duty due to incorrect exemption

According to the notification dated 29 June 1966 issued under the Co-operative Societies Act, remission of the stamp duty chargeable under the Indian Stamp Act is admissible in respect of instruments executed by a member of a registered co-operative society provided that the executant is a member of such society continuously for a period of not less than two years.

Test check of the records in Joint II Sub-Registry, Chengalpattu in July 2008 indicated that eight sale deeds were registered (between February and March 2008) whereby lands measuring 5.01 lakh square feet were conveyed in favour of a co-operative housing society by persons who were not members of the society, for a consideration of Rs. 4.96 crore. The registering authority exempted these instruments from stamp duty on the ground that the persons conveyed the land through power of attorney who were members of the society. As the notification covers only those transactions executed by the members of the society, the exemption allowed to non-members is not correct and as such stamp duty of Rs. 39.70 lakh is leviable.

After this was pointed out in December 2008, the Government accepted (March 2009) the audit observation and stated that the District Registrar had been instructed to initiate action for recovery of the amount.

3.8 Non-raising of demand for realisation of deficit stamp duty

Under the sub Section 2 of Section 47 A of the Indian Stamp Act, 1899, the collector shall, after giving the parties a reasonable opportunity of being heard and holding an enquiry, determine the market value of the property which is the subject matter of conveyance. As per Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, the collector shall pass an order within three months from the date of determining the market value of the properties and duty payable on the instrument and communicate the order so passed to the parties.

Test check of the records in the office of the Special Deputy Collector (Stamps), Vellore in July 2008 indicated that though the market value of a property was determined as Rs. 2.83 crore in June 2006 after inspection of the site by the Special Deputy Collector, no order was passed in this regard. Consequently no demand was raised even after a lapse of two years. This resulted in delay in realisation of the deficit stamp duty to the extent of Rs. 22.26 lakh.

After this was pointed out in January 2009, the Government accepted (October 2009) the audit observation and stated that final orders had been issued in August 2008 for collection of the amount. Report on recovery has not been received (January 2010).

3.9 Incorrect computation of lease amount

As per the provisions of the Article 35 (a) of Schedule I to the Indian Stamp Act, 1899, the stamp duty leviable on an instrument of lease for a period of less than 30 years is at the rate of one *per cent* on the total rent reserved and the advance, fine, premium, etc. received, if any. As per the explanation under Article 35, when a lessee undertakes to pay recurring charges, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.

Test check of the records in the office of the Joint II Sub-Registry, Thousand Lights, Chennai in October 2008 indicated that a lease deed was executed in November 2007 for a value of Rs. 140.99 crore. The lease was for a period of 11 years and stamp duty of Rs. 1.41 crore was levied. However, while working out the value an amount of Rs. 3.50 per square feet per month towards the amortised cost of the diesel generator set for the carpet area of 2.09 lakh square feet was omitted to be included. This works out to Rs. 9.67 crore for the entire period of lease and resulted in consequent short collection of stamp duty of Rs. 9.67 lakh.

After this was pointed out (December 2008), the Sub-Registrar stated that the DG set is a moveable property and rent on moveable properties would not be taken into account as per Section 2(6) of the Stamp Act. The contention of the department is, however, not correct as the DG sets are embedded and are, therefore, immovable properties. The cost should be treated as a component of lease rent.

The matter was reported to the Government in April 2009; their reply has not been received (January 2010).

3.10 Short collection of registration fees

According to proviso under the Clause L of item 1 of the "Table of Fees" prescribed under Section 78 of the Registration Act, 1908, the registration fee is leviable on the intended sale consideration in the case of an agreement to sell, where possession is handed over or is to be handed over.

Test check of the records in the office of the Sub-Registrar, Alandur in April 2008 indicated that a company was in possession of a leased property since May 2005. In January 2008, the company entered into an agreement with the lessor for purchase of land valued at Rs. 7 crore and an advance of Rs. 10 lakh was paid. As the possession of the property was with the intended purchaser at the time of execution of the instrument of sale agreement, registration fees of Rs. 7 lakh was required to be collected at one *per cent* of the intended sale consideration. However, an amount of only Rs. 10,000, being one *per cent* of the amount advanced was collected. This resulted in short collection of registration fees of Rs. 6.90 lakh.

After this was reported to the department (May 2008) and the Government (January 2009), the Government accepted the audit observation (February 2009) and stated that instructions had been issued for collection of the deficit registration fees. A report on collection of the amount has not been received (January 2010).

CHAPTER IV

OTHER TAX RECEIPTS

4.1 Results of audit

Test check of the records of the departmental offices during the period from April 2008 to March 2009 indicated non/short collection of tax, fees, penalty, licence fees, etc., and other audit observations amounting to Rs. 1,029.36 crore in 491 cases as mentioned below:

(Rupees in crore)

Sl. no.	Categories	No. of cases	Amount
A	**Entertainments Tax**		
1.	**Assessment and levy of entertainments tax (A review)**	1	142.92
2.	Incorrect grant of exemption	2	0.12
Sub total		**3**	**143.04**
B	**Land Revenue**		
1.	Short recovery of value and rent in respect of land assigned	81	192.04
2.	Non-levy of building licence fees	67	0.99
3.	Others	214	685.91
Sub total		**362**	**878.94**
C	**Taxes on Vehicles**		
1.	Non/short collection of penalty	14	3.24
2.	Non/short collection of tax	67	1.92
3.	Non/short collection of fees	19	0.29
4.	Others	26	1.93
Sub total		**126**	**7.38**
Total		**491**	**1,029.36**

During the year 2008-09, the concerned departments accepted and collected underassessments, non/short collection of tax, fees, penalty etc., amounting to Rs. 4.32 crore in 124 cases, which were pointed out in earlier years.

After the issue of two draft paragraphs, the Revenue Department recovered Rs. 24.24 lakh during the year 2008-09.

A review on **"Assessment and levy of entertainments tax"** involving Rs. 142.92 crore and few illustrative audit observations involving Rs. 0.58 crore are discussed in the succeeding paragraphs.

A - ENTERTAINMENTS TAX

4.2 Assessment and levy of entertainments tax

Highlights

- Revenue of Rs. 141.74 crore was not realised by the department on account of non-registration of cable television operators during the years 2003-04 to 2007-08.

(Paragraph 4.2.7.1)

- Failure of the department to register and bring to tax net the amusements providers resulted in non-levy of tax of Rs. 14.15 lakh.

(Paragraph 4.2.7.3)

- Absence of system to enable cross verification of records resulted in short levy of tax of Rs. 24.90 lakh.

(Paragraph 4.2.8)

- There was excess assignment of funds to local bodies to the tune of Rs. 61.33 lakh.

(Paragraph 4.2.13)

4.2.1 Introduction

The assessment, levy and collection of entertainments tax in Tamil Nadu is governed by the Tamil Nadu Entertainments Tax Act, 1939 (TNET Act) and the rules made thereunder, as amended from time to time. Under the TNET Act, tax is leviable on each payment for admission to any cinematograph exhibition in theatres, exhibition of cinematograph film on television screens, television exhibition through cable net work, payment for admission to amusement in amusement arcade or amusement park or theme park and on each payment to the recreation parlour. The tax on television exhibition through cable net work was under the control of local bodies upto June 2003; thereafter it was taken over by the State Government.

A review of the system of assessment and levy of entertainments tax was conducted by audit. The system and compliance deficiencies observed during the course of the review are discussed in the subsequent paragraphs.

4.2.2 Organisational set up

The overall control of the department vests with the Secretary to Government, Commercial Taxes and Registration department. The Commissioner of Commercial Taxes (CCT) is the Head of the department. The CCT is assisted by 40 Deputy Commissioners and 317 Commercial Tax Officers (designated as Entertainments Tax Officers) in the discharge of duties relating to assessment, levy and collection of entertainments tax.

4.2.3 Audit objectives

The review was conducted with a view to ascertain the

- efficiency and effectiveness of the existing system regarding the registration of dealers and the assessment and levy of tax;
- correctness of the exemption granted under the Act; and
- adequacy and effectiveness of the internal control system.

4.2.4 Scope of audit

The review was conducted from June 2008 to April 2009 and the records relating to the period 2003-04 to 2007-08 were test checked in 108 out of 317 assessment circles. It was ensured that the sample selected was representative geographically, covered the top revenue earning units and the areas with concentration of amusement and entertainment providers. The assignment of revenue/compensation to the local bodies was checked in 22 out of 40 territorial Deputy Commissioner's offices. Besides, the files maintained in the Secretariat and in the Office of the CCT were also scrutinised.

4.2.5 Acknowledgment

The Indian Audit and Accounts Department acknowledges the cooperation of the CT department in providing necessary information and records for audit. An entry conference was held on 21 May 2008 with the Joint Commissioner of Commercial Taxes in which the scope and methodology of audit was explained. The review report was forwarded to the Government in June 2009 and was discussed in the exit conference held in November 2009. The exit conference was attended by the Commissioner of Commercial Taxes. Response of the department to the audit observations furnished during the exit conference and at other points of time has been appropriately incorporated in the respective paragraphs.

Audit findings

4.2.6 Trend of revenue

As per the budget manual, whenever the budget is prepared, the aim is to achieve as close an approximation to the actuals as possible. The details regarding the budget estimates (BE) prepared for entertainments tax and the basis for framing the same were not furnished (January 2010) despite being requested for (September 2009). Hence, the method of the preparation of BE and achievement of the targets could not be analysed in audit. Analysis of the total tax revenue raised by the State and the revenue realised under the TNET Act for the last five years is given below.

Year	Tax revenue (Rupees in crore)	Entertainments tax receipts (Rupees in crore)	Percentage of entertainments tax receipts to tax revenue	Percentage of increase/decrease (-) of entertainments tax over previous year
2003-04	15,944.97	106.97	0.67	(-) 31
2004-05	19,357.04	61.06	0.32	(-) 43
2005-06	23,326.03	12.58	0.05	(-) 79
2006-07	27,771.15	40.37	0.12	221
2007-08	29,619.10	9.09	0.03	(-) 77
Total	**1,16,018.29**	**230.07**	**0.20**	

Thus, the entertainments tax revenue, which was Rs. 106.97 crore in 2003-04, had sharply fallen to Rs. 9.09 crore in 2007-08 registering a decline of 92 *per cent* during the five year period. The share of entertainments tax receipts in the total tax revenue has fallen from 0.67 *per cent* in 2003-04 to 0.03 *per cent* in 2007-08. The reasons for the decrease in entertainments tax revenue, though called for from the department, have not been received (January 2010).

System deficiencies

4.2.7 Inadequate provision in the Act to detect unregistered entertainment provider

Section 12-A of the TNET Act empowers the officer authorised by the State Government to inspect the places of entertainment, if he has reasonable ground to suspect that any contravention of the provision of this Act or the rules made thereunder has been committed. **The Act, however, does not provide for conducting street survey or the like to bring into tax net the unregistered entertainment providers**, which has resulted in non realisation of revenue as detailed below:

4.2.7.1 Registration of cable television operators

The Government took over the functions of levy and collection of tax on the cable television network from the local bodies with effect from 1 June 2003. The Government anticipated a revenue of Rs. 150 crore over the period of five years from 2003-04 to 2007-08. The revenue earned by the department was, however, only Rs. 24.38 crore for the same period.

Under the Cable Television Network (Regulation) Act, 1995 and the rules made thereunder, the cable television operators are required to register themselves with the Department of Posts and obtain a certificate for conducting their business. Rule 21-B of the TNET Rules stipulates that the proprietor of every place from where television exhibition is provided shall, within 30 days from the date of commencement of such television exhibition, submit to the entertainments tax officer, an application for registration.

Audit noticed that no street survey or cross verification was done by the department to ensure registration of all cable television operators. The information regarding the number of cable television operators in Tamil Nadu during the years 2003-04 to 2007-08 as obtained by audit from the Department of Posts and the number registered with the CT department during the said period are mentioned in the following table:

(Rupees in crore)

Year	Number of cable television operators registered with		Number of cable television operators omitted to be brought to tax net	Revenue not collected
	Department of Posts	CT department		
2003-04	14,591	3,203	11,388	27.97
2004-05	14,457	3,405	11,052	27.15
2005-06	14,518	3,398	11,120	27.32
2006-07	14,476	3,210	11,126	27.68
2007-08	15,821	2,948	12,873	31.62
	Total			**141.74**

The table indicates that 12,873 operators had not got themselves registered with the CT department and consequently had not paid the requisite tax. **The department made no effort to obtain the list of cable television operators from the Department of Posts and bring all of them under the tax net. The failure of the CT department resulted in non-realisation of revenue of Rs. 141.74 crore.**

The Government, to whom the matter was reported, stated in November 2009 that most of the cable operators registered with the Department of Posts had obtained sub leases from major cable operators and were not individual service providers. It added that even if any demand is raised in future, it would not serve any purpose as tax on cable television exhibition had been exempted with effect from 1 April 2008 and the arrears outstanding as on 31 March 2008 had also been waived.

The public interest served by foregoing revenue by exempting the cable television operators from tax and waiving the arrears payable were not on record. Cable television operations are taxed in all the major States like Andhra Pradesh, Gujarat, Kerala, Madhya Pradesh, Maharashtra and Orissa. The present action of the Government, besides conferring financial benefit to the cable television operators, is also fraught with the risk that such operators will not even register themselves with the Government and, consequently, it would not be able to exercise any oversight on their operations including the content provided. Further, the reply that the sub-lessees are not liable to pay tax is not tenable as they provide individual connections to the place of the customers and TNET Act and the rules stipulate that the proprietor of every place from where television exhibition is provided shall get himself registered and pay tax. In fact, the annual revenue of Rs. 30 crore anticipated by the Government had been worked out on the basis of 13,043 cable television operators who were in existence as on 31 May 2003.

4.2.7.2 Levy of tax in respect of games provided in clubs

Section 4-G of the TNET Act provides for levy of tax in respect of games provided in recreation parlours. The term "recreation parlour" has been defined to mean any place where games such as bowling, billiards, snooker, etc. are provided for which persons are required to make payment for admission or participation.

It was ascertained through media and internet websites that a number of clubs provide the facilities of games like billiards, snooker, etc to the members as well as the guests of the clubs. The information gathered from the web sites was cross verified with the details of accounts of seven clubs obtained from the Registrar of Companies and Registrar of Societies. Scrutiny of records in the CT department indicates that these **clubs are not registered with the department and hence levy of tax in respect of the games provided in the clubs is not being made**. The department had also not taken steps to levy and collect tax from these clubs after getting them registered under the TNET Act.

The Government may take steps for registration of the clubs so as to bring them under the ambit of the TNET Act and facilitate the levy of entertainments tax on games provided in clubs.

4.2.7.3 Levy of tax on amusements provided in trade fairs

The Tamil Nadu Tourism Development Corporation (TTDC) has been providing amusement through private operators at the Trade Fairs conducted by them and also at the Ooty Boat House. The TTDC has earned an income of Rs. 97.71 lakh through award of monopoly rights to private operators for conducting amusement operations at India Tourist and Industrial Fair for the financial years 2004-05 to 2007-08. Similarly, the earnings through amusement operations organised through private operator at Boat House were Rs. 43.84 lakh for the years 2004-05 to 2007-08. Audit noticed that these private operators had not obtained registration in their respective assessment circles and consequently, tax was not paid on the amounts collected by them for admission to the amusement. **The department had also not taken steps to levy and collect tax from these operators in respect of the amusements provided by them after getting them registered under the TNET Act. The failure of the department had resulted in non levy of tax of Rs. 14.15 lakh.**

After this was pointed out, the Government stated in November 2009 that there were no provisions in the existent Act to levy tax on the amusements provided in trade fairs and exhibition grounds which were on small scale. The reply is untenable as the TNET Act provides that all amusement providers should register themselves and pay tax.

4.2.8 Absence of system to enable cross verification of records

Under Section 4 of the TNET Act, entertainments tax is leviable at the rate of fifteen *per cent* of the gross payment for admission inclusive of the amount of the tax for new films in respect of the theatres situated within the limits of the areas of the municipal corporations. **The Act does not specifically provide for cross verification of departmental records with the records of other departments** to ensure the correctness of the theatre collections furnished by

the proprietors of cinema theatres to the CT department for the purpose of payment of entertainments tax.

Audit cross checked the gross collections reported by theatre proprietors for payment of entertainments tax to the CT department with the details of theatre collections reported by the proprietors in their income tax returns. The verification indicated that the proprietors of six theatres in Ayanavaram and Triplicane I assessment circles had reported theatre collection of Rs. 22.24 crore in the income tax return during the years 2004-05 to 2006-07. However, the collection reported by the proprietors in the weekly returns to the entertainments tax officers during the said period was Rs. 20.58 crore. This resulted in underreporting of gross collection of Rs. 1.66 crore involving a tax of Rs. 24.90 lakh.

The Government may consider providing a suitable monitoring system to identify the unauthorised cable television operators, amusement/ entertainment providers through survey and coordination with Department of Posts and other agencies to bring them under the tax net.

The Government stated in November 2009 that in order to eliminate the lack of provisions in the Act, necessary proposals shall be considered for introduction of provisions for conduct of street survey, etc. to bring the unregistered entities into the net of taxation.

4.2.9 Scheme of grant of exemption to tamil films that carry titles in tamil

Section 4 of the TNET Act provides for levy and collection of entertainments tax on each payment for admission to any cinematographic film in the theatres at the prescribed rates.

With a view to encourage the usage of tamil in film titles and as a measure of offering incentives to the tamil film industry, new films that carry tamil titles were granted total exemption from levy of tax by the Government in July 2006. With effect from November 2006, the exemption was extended to old films also. The exemption could be availed of after obtaining a certificate from the CCT that the title of the film was in tamil. A committee consisting of three members was constituted in August 2007 to review the applications for grant of exemption. Based on the recommendations of the committee, the CCT was empowered to grant sanction for exemption from levy of entertainments tax. **Audit noticed that on the basis of the application filed by the producers, the proprietors of theatres continue to avail of the benefit of exemption.**

4.2.9.1 Test check of the records in 45 assessment circles[34] indicated that producers whose films were screened by the proprietors of 109 theatres

[34] Alandur, Arisipalayam, Ayyanavaram, Avinashi Road, Bodinayakanur, Big Bazaar , Chapauk, Chidambaram-I, Chengalpet, Chintadripet, Dindigul-II & V, Gandhipuram, Kodaikanal, Koyambedu, Kilpauk, Loansquare-I, Mettupalayam, MTP Road, N.H. Road, Ooty (South) & (North), Palayamkottai, Perur, Pollachi (West), Porur, Ramnagar, Rasipuram, R.S. Puram (East), Saidapet, Salem (Rural), Salem (Town)(North), Saligramam, Singanallur, Tambaram-I, Tenkasi, Theni I & II, Tirunelveli (Bazaar) & (Town), Tiruvanmiyur, Triplicane-I, Vaniyambadi & West Veli Street Circle, Madurai.

applied for grant of exemption. The proprietors were allowed to avail of exemption from payment of entertainments tax, in respect of films which were rejected by the CCT as not eligible for the grant of exemption. **The decision to accept or reject the application for grant of exemption filed by the producers was not taken before the release of the films for public screening.** The erroneous allowance of exemption on the gross collection of Rs. 71 lakh resulted in non levy of tax of Rs. 10.20 lakh upto March 2008.

4.2.9.2 Test check of the records in 13 assessment circles[35] indicated that in 21 theatres, 31 films that were not in tamil were exhibited. Though these films were not exempted, the proprietors were erroneously allowed to avail of exemption from payment of entertainments tax amounting to Rs. 2.22 lakh.

After the cases of incorrect grant of exemption were pointed out, the entertainments tax officers, in 11 cases, collected the amount of Rs. 2.48 lakh in June/July 2009. Reply in respect of the other cases has not been received (January 2010).

The Government stated in November 2009 that the assessing authorities have been instructed to issue notices to the proprietors concerned and effect collection of demands after verification. Further report is awaited (January 2010).

The Government may consider instituting a system to ensure that the decision to grant exemption to the films is taken prior to the date of the screening of the films in theatres.

4.2.10 Scope for inclusion of certain types of entertainment under TNET Act

Under the TNET Act, "entertainment" has been defined to mean a horse race or cinematograph exhibition or an amusement or a recreation parlour where a game such as bowling, billiards, snooker or the like is provided to which persons are admitted on payment. The levy of tax is being made on the above entertainments. The other entertainments such as IPL cricket matches, game shows, musical performances, fashion shows, etc. have gained considerable popularity among the public and have enough scope of bringing considerable revenue to the Government exchequer.

4.2.10.1 The IPL matches are of a purely commercial nature and the franchisee owners of the teams comprise business tycoons and film stars who spend crores of rupees to buy the teams and players from all cricket playing nations for the world's richest cricket tournament. The IPL has been conceived as an entertainment spectacle and also pitched as an ultimate destination of TV entertainment. The main objective of IPL is to provide entertainment and hence merits levy of entertainments tax on sale of tickets. It is also pertinent to mention that states like Delhi and Maharashtra have decided to treat IPL as a commercial venture and have accordingly decided to impose entertainments tax on the sale of tickets.

[35] Avinashi Road, Big Bazaar, Chengalpet, Chidambaram-I & II, Dindigul-II, Gandhipuram, Kodaikanal, Porur, Rasipuram, Tambaram, Theni-I & West Veli Street Circle, Madurai.

4.2.10.2 The concept of home based entertainment has undergone a sea change and there is an increasing shift towards Direct to Home (DTH) services and there are a number of players offering such services. DTH is an upmarket premium product, catering mostly to the affluent sections of the society. DTH services are also being subjected to levy of entertainments tax in other States. The Government may, therefore, consider bringing the DTH services under the ambit of the TNET Act.

The Government may, therefore, consider enlarging the scope of the definition "entertainment" and bring these activities also under the ambit of the TNET Act.

4.2.11 Internal control mechanism

Section 7A of the TNET Act prescribes that if the entertainment tax officer is satisfied that the return submitted by the proprietor is correct and complete, it shall assess the proprietor on the basis thereof. However, scrutiny in audit revealed that in 91 out of 108 assessment circles, the assessment of the weekly returns furnished by the theatre proprietors was not done. Similarly, the assessments of monthly returns furnished by the proprietors of amusement parks were not done in 10 out of 21 cases checked. **This is indicative of the control weakness in the system.**

Audit scrutiny also indicated that inspection of recreation parlours/clubs have not been undertaken by the department. The sharp decline in the number of cable television operators was not taken note of by the department and rectificatory measures were also not initiated. Further, internal audit has not been undertaken by the department due to vacancies in the internal audit wing. The above indicate the absence of proper internal control system.

The Government may consider strengthening the internal control mechanism.

Compliance deficiencies

4.2.12 Application of incorrect rate of tax

Section 4-G of the TNET Act was introduced with effect from November 2001 to provide for levy of tax at 20 *per cent* on each payment to the recreation parlour, where a game such as bowling, billiards, snooker or the like by whatever name called is provided, for which persons are required to make payment for admission or participation.

Test check of the records in Chengalpet assessment circle indicated that a dealer who had two registrations, one for an amusement arcade and the other for a recreation parlour had paid tax at 10 *per cent* even in respect of the collections pertaining to recreation parlour. The assessing authority, while finalising the assessments of the dealer for the years 2002-03 to 2004-05 between February 2004 and March 2006, had also assessed the entire turnover to tax at 10 *per cent*. The adoption of incorrect rate of tax on the turnover of Rs. 55.73 lakh pertaining to recreation parlour resulted in short levy of tax of Rs. 5.57 lakh.

After this was pointed out, the Government stated in November 2009 that the assessing officer has been instructed to issue notice and take action after due verification. Further report has not been received (January 2010).

4.2.13 Excess assignment of funds to local bodies

The Government had issued orders to compensate the local bodies on account of exemption from entertainment tax granted to tamil films that carry titles in tamil. The amount of compensation was fixed at 90 *per cent* of the tax that was lost on account of the grant of exemption.

Audit scrutiny of the records in the offices of the Deputy Commissioners indicated that a sum of Rs. 59 lakh was assigned in excess of the eligible limit of 90 *per cent* to the local bodies as mentioned in the following table.

(Rupees in lakh)

Sl. no.	Name of the office	Year	Amount of tax exempted	90 *per cent* of the amount mentioned in column 4	Amount assigned	Amount assigned in excess
1	2	3	4	5	6	7
1	Coimbatore Zone III	2006-07	42.26	38.03	84.19	46.16
2	Coimbatore Zone I	2006-07	101.54	91.39	94.54	3.15
3	Tiruppur	2006-07	100.66	90.59	94.70	4.11
4	Pollachi	2006-07	44.98	40.48	43.49	3.01
5	Villupuram	2007-08	12.72	11.45	14.00	2.55
	Total		**302.16**	**271.94**	**330.92**	**58.98**

Further, audit scrutiny of the records in the office of the Deputy Commissioner, Madurai (West) indicated that while calculating the amount due to local bodies during 2007-08, the tax amount was erroneously adopted as Rs. 7.33 lakh as against the correct amount of Rs. 4.72 lakh. This resulted in excess assignment of Rs. 2.35 lakh. After this was pointed out in December 2008, the Deputy Commissioner (CT) Madurai (West) stated in June 2009 that necessary adjustment was made in the assignment made in the succeeding quarter.

The Government stated in November 2009 that the assessing authorities have been instructed to verify the issue and report the facts. Further reply has not been received (January 2010).

4.2.14 Conclusion

Audit review revealed a number of deficiencies in the system of levy and collection of entertainments tax receipts leading to leakages of revenue. The deficiencies in the system led to non-detection of providing of entertainments/amusements by operators without registration. The review also revealed that the failure of the department to ensure the registration of all the proprietors providing television exhibition through cable net work resulted in non collection of revenue from these operators. The department has not specified any system for cross verification of returns filed by the proprietors of cinematographic exhibitions with the theatre collections reported by them in the income tax returns. The review also revealed that proper system had not been constituted to ensure that the decision to grant exemption or otherwise to

tamil films that carry titles in tamil is taken prior to the date of the screening of the films. The non finalisation of assessments had resulted in incorrect availing of exemption by the proprietors of theatres. There is considerable scope for generation of revenue by bringing other entertainments like IPL, DTH services, etc. under the ambit of the TNET Act.

4.2.15 Summary of recommendations

The Government may consider the following:

- providing a suitable monitoring system to identify the unauthorised cable television operators, amusement/entertainment providers through survey and coordination with other agencies to bring them under the tax net;
- registration of clubs so as to bring them under the ambit of the TNET Act and facilitate the levy of entertainments tax on games provided in clubs;
- instituting a system to ensure that the decision to grant exemption or otherwise to the films is taken prior to the date of the screening of the films in theatres;
- strengthening the internal control system to ensure that assessment is made on receipt of returns; and
- enlarging the scope of the definition "entertainment" for the levy of tax under the TNET Act.

4.3 Other audit observations

Scrutiny of the records in the offices of Revenue and Transport departments relating to revenue received from tax, fees, penalty, etc., indicated several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy of lease rent, cost of land, short levy of tax and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out in audit. Although such omissions are pointed out every year, the irregularities do persist; and remain undetected till the next audit is conducted. There is need for the Government to consider directing the department to improve the internal control system including strengthening internal audit so that such omissions can be avoided, detected and corrected.

B - LAND REVENUE

4.4 Short realisation of lease rent

As per the Revenue Standing Order 24-A, Government lands can be leased to private bodies, companies, association of local bodies for use by them for commercial purposes. As per the Government order issued in June 1998, the lease rent shall be fixed at the rate of 14 *per cent* per annum on the market value of the land used for commercial purposes.

Test check of the records in the office of the Tahsildar, Karaikudi in January 2009 indicated that the Government land admeasuring 43.25 acres (18.84 lakh square feet) was leased to a company in June 2008 for a period of five years. The market value of the land adjacent to this land was Rs. 11 per square feet. However, instead of adopting the rate of Rs. 11 per square feet, the department incorrectly classified the land as agricultural land and worked out the cost of land at Rs. 1.34 per square feet. Adoption of lesser rate resulted in undervaluation of property by Rs. 1.82 crore and consequent short levy of lease rent of Rs. 25.48 lakh per annum. The short levy for the period from June 2008 to March 2009 amounted to Rs. 21.23 lakh.

The matter was reported to the department in March 2009 and the Government in April 2009; their replies have not been received (January 2010).

4.5 Non-leasing of Government land

Test check of the records in the office of the Tahsildar, Chengalpattu in August 2008 indicated that the Government lands measuring 149 cents were encroached upon by a limited company since April 1999. The encroacher used the encroached land as a parking area and also constructed a permanent structure for security rooms, canteen, etc. Neither the encroacher applied for grant of land on lease basis nor did the Government get him evicted till March 2003. In May 2003 the encroacher applied for grant of long term lease. The Tahsildar sent the proposal for grant of lease thrice to the district collector. The first proposal sent in February 2004 in which the proposed lease rent of Rs. 10.15 lakh per annum for 20 years was found incomplete and was returned to the Tahsildar. The second proposal was sent in January 2007 followed by the third proposal in January 2009 in which lease rent was proposed as Rs. 33.53 lakh per annum. The proposal has not yet been sent to Government for sanction of lease though a period of ten years has already elapsed.

The matter was reported to the department in October 2008 and the Government in March 2009; their replies have not been received (January 2010).

The Government may consider taking appropriate steps for fixation of a time limit for sending the proposals by the collectors and also for disposal of the same at the level of the Government.

4.6 Delay in alienation of Government land

As per the Revenue Standing Order 15, Government lands can be given on assignment to private persons on collection of the prevailing market value of such lands on the date of assignment.

Test check of the records in the office of the Tahsildar (Land Revenue), Tiruvallur in July 2008 indicated that Government lands measuring 1,872 cents in Remanjeri Village were under the possession of a Trust. The Trust requested for alienation of the said land as early as in August 2000 but the same has not been alienated till date. This has resulted in blockage of revenue of Rs. 25.27 lakh[36] being the cost of the land. The land was under possession and enjoyment of the Trust without remitting any cost to the Government for eight years due to delay in alienation of the land.

After this was pointed out in July 2008, the Tahsildar, Tiruvallur replied that the necessary alienation proposal was under preparation.

The matter was reported to the Government in January 2009; their reply has not been received (January 2010).

[36] As per guideline rate of Rs.1,350 per cent prevailing in 2008

C - TAXES ON VEHICLES

4.7 Short levy of tax on temporary permits issued to other state omni buses

As per Schedule 6 of the Tamil Nadu Motor Vehicles Taxation Act, 1974, a temporary licence for a period not exceeding seven days or thirty days or ninety days at a time may be issued in respect of any class of motor vehicles specified in the First Schedule on payment of the tax. The amount of tax payable is 1/3rd in the case of temporary licence issued for a period between seven and thirty days and full quarterly tax in the case of temporary licence issued for a period exceeding thirty days.

Test check of the records of three Regional Transport Offices[37] (August 2008) indicated that 98 other state omni buses were allowed to run in the State by issue of temporary permits. The permits were initially for a period of 30 days on payment of tax at the rate of one third of quarterly tax. The vehicles were granted extension for a further period of 30 days on application. Since the combined period of temporary permits exceeds 30 days, they were liable to pay full quarterly tax. However the department levied again only one third of the quarterly tax on extension. This resulted in short levy of tax of Rs. 36.62 lakh.

The cases were pointed out to the department between August and October 2008 and the Government in December 2008/January 2009. The Government accepted (March 2009) the audit observation in the case of Dharmapuri and stated that the Transport Commissioner had been instructed to collect the entire difference of the tax pointed out in audit. The report on recovery details and reply in the remaining cases have not been received (January 2010).

[37] Dharmapuri, Karur and Mettupalayam.

CHAPTER V

NON-TAX RECEIPTS

5.1 Results of audit

Test check of the records of the departmental offices during the period from April 2008 to March 2009 indicated non-levy, short levy of royalty, seigniorage fee[38], dead rent and other observations amounting to Rs. 111.13 crore in 48 cases as mentioned below.

(Rupees in crore)

Sl. no.	Category	No. of cases	Amount
A. Geology and Mining Department			
1.	**Receipts from mines and minerals (A review)**	1	109.85
2.	Non/short levy of royalty, dead rent and seigniorage fee	12	0.05
3.	Others	34	1.01
B. Public Works Department			
1.	Non/short recovery of licence fees	1	0.22
Total		**48**	**111.13**

During the year 2008-09, the department accepted underassessments and collected Rs. 26.89 lakh in 31 cases, of which Rs. 1.13 lakh pertaining to four cases were pointed out during 2008-09 and the rest in earlier years.

A review on **"Receipts from mines and minerals"** involving Rs. 109.85 crore and an illustrative audit observation involving Rs. 0.22 crore is discussed in the succeeding paragraphs:

[38] Seigniorage fee represents the payments made for material or the mineral won from the land in respect of minor mineral.

A – MINES AND MINERALS

5.2 Receipts from Mines and Minerals

Highlights

- Absence of a system for cross verification of Central Excise Range office records with the records of the Assistant Director Geology and Mining, Nagapattinam revealed incorrect depiction of mineral oil produced by a company resulting in less payment of royalty of Rs. 2.17 crore.

  (Paragraph 5.2.8)

- No time limit has been prescribed for renewal of lease deeds. The leases of four lessees in six cases were not renewed even after a considerable time of six to 12 years. This resulted in non-realisation of stamp duty of Rs. 1.20 crore.

  (Paragraph 5.2.9)

- Absence of a proper system in place to take up the revision of seigniorage rates at the interval of every three years resulted in foregoing of revenue of Rs. 42.43 crore for the period from April 2006 to March 2008.

  (Paragraph 5.2.10)

- Inaction in obtaining vacation of interim stay resulted in non-realisation of revenue of Rs. 10.76 crore.

  (Paragraph 5.2.13)

- Incorrect fixation of rate of royalty of a mineral viz. "Marl" resulted in loss of revenue of Rs. 6.85 crore.

  (Paragraph 5.2.14)

- Absence of a proper system in place to take up the revision of royalty rates at the interval of every three years resulted in foregoing of revenue of Rs. 105.29 crore in respect of lignite.

  (Paragraph 5.2.16)

5.2.1 Introduction

The principal major minerals found in Tamil Nadu are lignite, limestone, magnesite, quartz, feldspar and bauxite. Minor minerals like black and grey granite, river sand and rough stones are available in the state. Oil and natural gas is also being extracted in the coastal belt of the State.

Extraction of the major minerals is governed by the Mines and Minerals (Development and Regulation) Act, 1957 (Act) and the Mineral Concession Rules, 1960 (MC Rules) made thereunder. Under the Act, the Government is empowered to make rules to regulate the grant of mining lease in respect of minor minerals. Accordingly, the Tamil Nadu Minor Mineral Concession

Rules, 1959 (TNMMC Rules) were framed. Prospecting or mining operations can be undertaken only with a licence or mining lease granted under the TNMMC Rules. The holder of the mining lease shall pay royalty/segniorage fee at the rates prescribed as the case may be, in respect of minerals removed by him from the leased area. Wherever royalty/seigniorage fee in a year is less than dead rent, the dead rent is payable in lieu of royalty/seigniorage fee.

Receipts from the mines and minerals consist of the application fee, licence fee, royalty and dead rent, etc. The stamp duty and registration fees are also leviable on mining lease deeds under the Indian Stamp Act, 1899, and the Indian Registration Act, 1908.

A review on Receipts under Mines and Minerals was conducted by audit. It indicated a number of system and compliance deficiencies which have been discussed in the succeeding paragraphs.

5.2.2 Organisational set up

The overall control of the department vests with the Principal Secretary to the Government, Industries Department. The Commissioner of Geology and Mining (CGM) is the head of the Department. He is assisted by the district collectors (DCs) who are assisted by Deputy Directors (DD) and Assistant Directors (AD) in performing their duties. There are 27 DCs, a gem collection centre at Karur and a geo-technical cell at Coonoor. Each office is headed by a DD/AD. They are assisted by the Tahsildars/Deputy Tahisldars in performance of their statutory functions.

The Commissioner of Geology and Mining has been vested with the powers for the grant of mineral concessions in respect of major minerals occurring in *ryotwari* (patta) lands. In respect of Government lands, the State Government is vested with the powers for the grant of quarry lease of minerals. The District Collectors are empowered to grant leases for minor minerals other than granite irrespective of the classification of lands.

5.2.3 Scope and methodology of audit

Test check of the records was conducted for the period 2004-05 to 2007-08 in the office of the Secretary to the Government (Industries), Commissioner of Geology and Mining and 12[39] out of 27 District Offices between August 2008 and March 2009. The selection of the districts was made on the basis of the maximum revenue earned by each district and its geographical location in the state. The findings of audit are discussed in the succeeding paragraphs.

5.2.4 Acknowledgment

The Indian Audit and Accounts Department acknowledges the co-operation rendered by the Geology and Mining Department in providing the necessary information and records for audit. An entry conference was held in August 2008 with the Commissioner of Geology and Mining in which the audit objectives, scope and methodology were explained. The draft review was forwarded to the Government in September 2009. An exit conference was held

[39] Coimbatore, Cuddalore, Krishnagiri, Madurai, Nagapattinam, Nagercoil, Perambalur, Ramanathapuram, Salem, Thanjavur, Vellore and Villupuram.

in October 2009 in which audit findings and recommendations were discussed with the representatives of the department and the Government. The department was headed by the Commissioner of Geology and Mining while the Government side was headed by the Principal Secretary, Industries. The replies of the department/Government given during the exit conference and at other times have been appropriately reflected in the respective paragraphs.

5.2.5 Audit objectives

The audit objectives were to ascertain:

- the efficiency and efficacy of the system and procedures for awarding leases of the major and minor minerals;
- the adequacy and effectiveness of the internal controls to monitor renewal of leases to stop illicit mining from the quarries; and
- whether the royalty of the major minerals and seigniorage fee of the minor minerals were periodically revised.

5.2.6 Trend of revenue

A comparative position of the budget estimates and the actual revenue for the period from 2004-05 to 2007-08 is mentioned below:

(Rupees in crore)

Year	Budget estimates	Actuals	Percentage of variations
2004-05	525.39	409.58	(-) 22
2005-06	427.49	465.68	(+) 9
2006-07	527.91	566.64	(+) 7
2007-08	667.30	581.76	(-) 13

The foregoing table indicated variations ranging from (-) 22 *per cent* to (-) 13 *per cent* between the budget estimates and actual revenue during 2004-05 and 2007-08 respectively.

After this was pointed out, the department intimated (October 2009) that it was preparing the budget estimates only in respect of the minerals directly under their control and the budget estimates in respect of the minerals extracted from "forest areas" and sand quarries controlled by the forest and the public works departments respectively were not being included in it.

Since all the minerals are administered under the Act and credited to the head "0853–Mines", the department should prepare the budget estimates of the minerals for the entire state in a scientific manner and after obtaining the essential details from the forest and public works departments so that the actual receipts are very close to the budget estimates.

5.2.7 Position of arrears

As per the information furnished by the department, arrears amounting to Rs. 1,623.36 crore were pending collection as on 31 March 2008. The year-wise position, arrears pending under RR Act and in courts are mentioned in the following table:

(Rupees in crore)

Year	Arrears of revenue	Arrears covered under RR Act	Arrears covered in court cases	Arrears pending under various stages of recovery
2004-05	254.93	13.14	91.84	149.75
2005-06	261.63	39.51	92.26	129.86
2006-07	1,651.06	55.06	1,199.59	396.41
2007-08	1,623.36	38.05	1,229.69	354.62

It can be seen that there was a sharp increase in arrears in the year 2006-07. The increase was mainly in the category of court cases. Audit scrutiny of the departmental records indicated that the increase was due to inclusion of arrears pertaining to local cess and local cess surcharge which were pending finalisation in the courts.

Audit findings

System deficiencies

5.2.8 Short payment of royalty due to absence of cross verification

According to Rule 14 of the Petroleum and Natural Gas (P & NG) Rules 1959, a lessee shall pay royalty in respect of any mineral oil mined, quarried, excavated or collected by him from the leased area at the rate specified in the schedule of the Act from time to time. Similarly, in accordance with the Government of India, Ministry of Finance, Central Board of Excise and Customs Circular No.769/02/2004-CX dated 09 January 2004, National Calamity Contingent Duty (NCCD) was payable on the production of crude petroleum oil and supplied from oil field to the refineries.

A cross verification of Central Excise Range Office records with the records of the Assistant Director, Geology and Mining, Nagapattinam, indicated less payment of royalty of Rs. 2.17 crore by a company due to incorrect depiction of production of mineral oil as mentioned in the following table:

Year	Production as per Central Excise Department records	Production as per Geology and Mining Department records	Difference in quantity	Minimum rate of royalty per MT paid during the year	Amount of royalty involved (Rupees in crore)
	(in metric tones)				
2005-06	3,84,745.000	3,78,790.538	5,954.462	2,553.938	1.52
2006-07	3,52,603.860	3,50,454.817	2,149.043	3,038.815	0.65
Total	**7,37,348.860**	**7,29,245.355**	**8,103.505**		**2.17**

Thus, production of 8,103.505 MT was shown less in the records of mining department. **There was no mechanism for cross checking of the data with other departments to prevent any loss on account of royalty.**

After this was pointed out the department raised a demand of Rs. 2.17 crore against the company. However, a report on recovery has not been received (January 2010).

The Government may consider putting in place a system of cross verification of the data available in the mining department with that available with the other state or central Government departments/public sector companies in the interest of revenue.

5.2.9 Absence of time limit for renewal of lease deed

As per Rule 24A of Mineral Concession Rules 1960, application for renewal of mining lease should be made at least twelve months before the expiry of the current lease. If the lease is not renewed, the current lease is deemed to have been extended till the Government renews the lease. Once the lease is renewed, the assessee is bound to register the lease and pay stamp duty on the value of anticipated royalty worked out on the basis of quantity of minerals expected to be quarried over the lease period. **The Act/Rule does not provide for any time limit for finalisation of cases relating to renewal of lease.**

Test check of the records in three districts offices[40] indicated that lease (major minerals) in six cases pertaining to four lessees expired between the period August 1996 and June 2002. Though applications for renewal of lease in all the six cases were received in time and the proposals for renewal were sent to the Department/Government, the same were not approved even after a considerable period of time ranging from 6 to 12 years. All the lessees were allowed to continue their operations under the deemed extension provision. Thus, no lease deed was registered resulting in non-realisation of stamp duty amounting to Rs. 1.20 crore.

The Government may consider taking up the issue with the Central Government for including a provision in the Act/Rules fixing a time limit within which lease deed should be renewed.

5.2.10 Non-revision of seigniorage fee for minor minerals

As per proviso to Section 15(3) of the Mines and Minerals (Development and Regulation) Act 1957, the Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years. The rates of seigniorage fee for all minor minerals were last revised in October 2002 and for granite, in April 2003. Thereafter, the rates have not been revised till date though a proposal for increasing the seigniorage fee of all minor minerals by 30 *per cent* of the existing rates was forwarded by the department to the Government in March 2006. The proposal was returned by the Government three times i.e., in June 2006, September 2006 and December 2007 asking for a few earlier Government orders issued by them. The proposals were forwarded again in January 2008 in which the department sought to increase the seigniorage fee by 50 *per cent* of the existing rates. However, the Government has not revised the rates till date. The revised rates would have fetched revenue of Rs. 42.43 crore for the period from April 2006 to March 2008 in respect of rough stone and granite excavated.

[40] Coimbatore, Perambalur and Salem.

The Government may consider putting in place a system for periodical revision of rates of royalty/seigniorage fee so that the revision of rates is made well in time before the completion of the three year period.

5.2.11 Absence of monitoring of exploitation of mineral

Test check of the records indicated that 7,177 leases were granted by the department during the period 2004-05 to 2008-09. The break up of the leases as monitored by the department is mentioned below:

Sl. no	Name of the Mineral	No. of leases in patta land	No. of leases in Government land	Total no. of leases
1.	Oil and natural gas	14	1	15
2.	Limestone	349	151	500
3.	Lignite	1	nil	1
4.	Other major minerals	389	149	538
5.	Minor minerals	4,220	1,903	6,123
Total		**4,973**	**2,204**	**7,177**

The total number of minor mineral lease holders was 6,123. The minerals were being removed on transport permit issued by the deputy/assistant directors. These were noted in a register called 'Permit Register' in which each lessee was awarded a separate folio. However, no periodical report or return was prescribed at higher level for identification of the mines that had remained idle due to non-extraction of mineral or were not in operation for any other reasons. In the absence of this, audit could not ascertain the number of actual leases that had remained idle or were not in operation.

There were no systematic and planned visits to the quarries by the department to ensure proper exploitation of the mineral by the lessees. A sample of 444 leases awarded during 2006-07 and 2007-08 in eight districts[41] were taken up for detailed audit scrutiny which indicated the following:

- Out of 444 leases, in respect of 142 cases, lessees did not pay any seigniorage fee. There was nothing on record to indicate that any mineral was extracted during the above period.
- In 217 cases, seigniorage fee at the rate of one *per cent* to 50 *per cent* of anticipated seigniorage fee was paid as mineral to that extent was alone extracted.
- In 85 cases, seigniorage fee at the rate of 51 *per cent* to 100 *per cent* of anticipated seigniorage fee was paid.

The above analysis indicated that the mineral was either not exploited at all or exploited partially. There was no mechanism to monitor the progress of extraction of the mineral either by way of returns or by way of supervisory checks and to bring the leases that did not bring any revenue to the state to the notice of the higher authorities.

[41] Coimbatore, Krishnagiri, Madurai, Nagercoil, Perambalur, Salem, Vellore and Villupuram.

The Government may take appropriate measure for preparation and submission of periodical reports/returns by the field offices and for monitoring at higher levels.

5.2.12 Internal Audit

5.2.12.1 Internal audit is a vital component of internal controls and is generally defined as the control of all controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well.

Audit noticed that there was no separate internal audit wing in the department. The internal audit was conducted by the department of Internal Audit and Statutory Board under the control of Finance Department. The extent of internal audit coverage as furnished by the department is mentioned in the following table:

Year	No. of offices due for audit	No. of offices where audit completed	Arrears of audit	Arrears in percentage
Upto 1998-99	26	19	8	31
1999-00	28	16	12	43
2000-01	29	4	25	86
2001-02	29	1	28	97
2002-03	27	5	22	81
2003-04	27	1	26	96
2004-05	29	4	25	86
2005-06	29	9	20	69
2006-07	29	10	19	66
2007-08	29	2	27	93

Thus, internal audit of very few of the offices due for such audit is actually being conducted.

5.2.12.2 The yearwise breakup of outstanding inspection reports, audit objections and the money value involved in respect of internal audit as on 31 March 2008 are mentioned in the following table**:**

Year	No. of inspection reports	No. of audit objections	Amount involved (Rupees in crore)
Upto 1998-99	38	614	70.75
1999-00	50	776	83.75
2000-01	54	809	91.93
2001-02	55	838	94.98
2002-03	60	929	254.57
2003-04	61	952	258.02
2004-05	61	952	258.02
2005-06	62	976	258.44
2006-07	63	983	263.08
2007-08	64	991	263.25

The above table indicates that the number of inspection reports, outstanding objections and money value of objections were on the increase.

The above facts indicate laxity in conducting internal audit and in the cases where such audit was conducted, its observations not being taken seriously by the management leading to mounting of the number of observations pending settlement.

After this was pointed out, the Commissioner stated (October 2009) that the department had already taken up the matter with the Government for establishment of a separate internal audit wing.

The Government may take appropriate measures to ensure effective conducting of internal audit and taking timely action on its observations.

Compliance deficiencies

5.2.13 Inaction in obtaining vacation of stay

As per Rule 8A (a) (c) of Tamil Nadu Minor Mineral Rules, 1959, all the lessees, besides onetime payment of the lease amount, shall also pay the seigniorage fee or dead rent, whichever is more. The department granted quarrying leases in 1998 to M/s. Gem Granite Ltd. in five districts[42] to quarry black granite for a period of 20 years under Rule 8A of the Tamil Nadu Minor Mineral Concession Rules, 1959.

Two lessees filed two separate writ appeals before the High Court of Chennai. The first lessee filed the appeal in July 2000 and obtained stay order on payment of seigniorage fee. The second lessee filed the appeal in August 2000 which was decided in December 2006 in favour of revenue. Based on this decision, the lessee paid the seigniorage fee for the stay period as well as for the subsequent periods. The first lessee started paying the seigniorage fee for the subsequent period (i.e., from April 2007) but did not pay the fee for the period between September 1998 and March 2007. Even though the matter had been decided in its favour in the case of the second lessee, the department had not initiated any action citing this judgment to get the interim stay vacated in the case of the first lessee. This resulted in non-realisation of revenue of Rs. 10.76 crore.

After this was pointed out, the department stated (October 2009) that the Government pleader had requested (April 2009) the deputy registrar of the High Court, Chennai to bring the appeal for early hearing and disposal.

5.2.14 Fixation of royalty in respect of "Marl"

Three mining lessees of limestone in Perambalur district found a new mineral 'Marl[43]' during extraction of limestone and were granted permission by the department for its extraction and utilisation. The department fixed the rate of royalty at ten *per cent* of the value, classifying it as an unspecified item in the Second Schedule of the Act. Test check of the records indicated that

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[42] Krishnagiri, Madurai, Salem Vellore and Villupuram.

[43] As per the glossary of Geology, `Marl' is a grey earthly substance containing 35-65 *per cent* clay and 65-35 *per cent* carbonate.

permission for inclusion of marl in the mining lease was granted on account of the following reasons:

- The mineral "marl" is said to be used upto 25 *per cent* in the cement manufacture.
- The production cost of marl is very low.
- The chemical composition is more or less equal to limestone.

The above facts indicated that the utility of 'Marl' was to some extent the same as that of limestone, in production of cement and, thus, should have been charged at the same rate of royalty as that of limestone. Thus, fixation of royalty at ten *per cent* by the Government has caused a loss to the tune of Rs. 6.85[44] crore during the period from 2005-06 to 2007-08 in which 17.24 lakh MT of 'Marl' were utilised in the production of cement.

After this was brought to the notice of the department, it was stated (November 2009) that action to fix the correct rate of royalty would be taken in accordance with the provisions of the Act and the difference in royalty, if any, would be recovered from the lessees concerned as arrears of land revenue.

5.2.15 Short levy of licence fee for mining petroleum

Rule 10 of Petroleum Exploration Licence (PEL) Rules, provides that a licence can be granted initially for four years which may be extended for a further period of one year each till the expiry of exploration period provided under agreement. In April 2003, the Central Government relaxed this limit extending it till the expiry of the exploration period. The rate of the licence fee ranged from Rs. 50 per square kilometer for the first year to Rs. 700 per square kilometer for the fourth year. Thereafter, it is Rs. 1,000 per square kilometer for each subsequent year of renewal.

Test check of the records in six District Offices[45] indicated that a company renewed twelve petroleum exploration licences beyond the fifth year on 48 occasions. However, renewal fees from 2004-05 to 2007-08 were levied at lesser rates instead of at Rs. 1,000 per square kilometer per annum. This resulted in short levy of annual licence fee of Rs. 1.19 crore.

After this was pointed, the department accepted (June 2009) the audit observation. A report on recovery has not been received (January 2010).

5.2.16 Non-revision of rate of royalty of major mineral

As per provisio to Section 9(3) of the Mines and Minerals (Development and Regulation) Act 1957, the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years. The Eleventh Finance Commission (2000) recommended that the rates of royalty on minerals be revised and the decision about the revision of the rates of royalty be taken well before the date on which the revision falls due so that it can be notified immediately after the completion of every three year period as provided under the law. The Commission further opined that in case

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[44] 17,23,766.250 MT X Rs. 39.72 (Rs. 45 – Rs. 5.28) = Rs. 6,84,67,995.

[45] Nagapattinam, Tiruvarur, Perambalur, Cuddalore, Ramanathapuram and Thanjavur.

the process of revision was not completed by the date the new revision is due, the states should be entitled to compensation.

Lignite is one of the main revenue earning major minerals of the state. The royalty rate was fixed by Government of India in 2001. Thereafter, it was revised in the year 2007 after a gap of six years. The State Government did not take action to get the rate of royalty revised immediately after three years, i.e., from April 2004 to July 2007 and also no proposal was sent by the State Government to the Central Government for claiming compensation for the delayed revision of royalty on lignite which worked out to Rs. 105.29 crore.

After this was pointed out, the department stated in July 2009 that they would take up the matter with the Central Government.

5.2.17 Conclusion

Audit review revealed that no system had been prescribed for cross verification of data available with the mining department with other State/Central Government department/undertakings. No revision of royalty rates at periodical intervals was proposed by the State Government. This resulted in foregoing considerable amount of revenue. The department remained unaware of the areas of malfunctioning of the systems as internal audit remained largely non-functional.

There were no system prescriptions for the inspection of quarries, either in the matter of course or as special/surprise checks where low/no seigniorage fee collections were made. There were also inordinate delays in renewal of leases which resulted in non realisation of stamp duty.

5.2.18 Summary of recommendations

The Government may consider:

- putting in place a system of cross verification of the data available in the mining department with other State or Central Government departments/public sector companies in the interest of revenue;
- taking up the issue with the Central Government for including a provision in the Act/Rules, fixing a time limit within which lease deed should be renewed;
- putting in place a system for revision of rates of royalty/seigniorage fee so that the revision of rates is made well in time before the completion of the three year period;
- taking appropriate measures for preparation and submission of periodical reports/returns by the field offices and for monitoring at higher levels; and
- taking appropriate measures to ensure effective conducting of internal audit and taking timely action on its observations.

B – PUBLIC WORKS DEPARTMENT

5.3 Non/short recovery of licence fees

The Tamil Nadu Public Buildings (Licensing) Act, 1965 provides for the inspection and licensing of the public buildings. Public building means any building used as school, college, university, hostel, library, hospital, club, lodging/boarding house, marriage hall, community hall, etc. According to the Section 3 of the Act, all public buildings shall be used only under a valid licence obtained from the competent authority on payment of the prescribed fees. The Tahsildar is the competent authority to issue licences based on application by the owners of the buildings. The licence granted is valid for a period of three years. The rate of fee varies from Rs. 10 to Rs. 5,000 depending on the nature and value of the buildings.

Test check of the records in 14 taluk offices[46] during the period between December 2006 and March 2009 indicated that the owners of 477 public buildings did not apply for the licences and hence these were not granted. Further, in Thirukovilur taluk in respect of 46 private and aided schools, a licence fee of Rs. 44,000 was recoverable against which Rs. 4,600 was recovered. These deficiencies resulted in non/short recovery of licence fees of Rs. 21.62 lakh.

After this was pointed out between January 2007 and March 2009, the District Collector, Kancheepuram replied (December 2008) that Rs. 1.85 lakh had been collected between July 2007 and June 2008. A report on recovery from the remaining taluks has not been received (January 2010).

[46] Ambattur, Andipatti, Chenalpattu, Cheyyur, Denkanikottai, Maduranthagam, Hosur, Srirangam, Thirukazhikundram, Thirukovilur, Thiruvallur, Thiruvarur, Thiruvaiyaru and Tirunelveli.

The matter was reported to the Government between November 2008 and March 2009; their reply has not been received (January 2010).

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