Report of the
Comptroller and Auditor General of India

on

Revenue Receipts

for the year ended 31 March 2012

GOVERNMENT OF GUJARAT

(Report No. 2 of the year 2013)

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PREFACE

This Report for the year ended 31 March 2012 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/value added tax, land revenue, taxes on vehicles, stamp duty and registration fees and other tax 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 2011-12 as well as those noticed in earlier years but which could not be included in the previous years' reports.

OVERVIEW

This Report contains 73 paragraphs including one Performance Audit relating to non/short levy of tax, penalty, interest etc. involving ₹ 348.22 crore. Some of the major findings are mentioned below:

I. General

The total revenue receipts of the Government of Gujarat in 2011-12 were ₹ 62,958.99 crore as against ₹ 52,363.64 crore during 2010-11. The revenue raised by the State from tax receipts during 2011-12 was ₹ 44,252.29 crore and from non-tax receipts was ₹ 5,276.52 crore. State's share of divisible Union taxes and grant-in-aid from the Government of India were ₹ 7,780.31 crore and ₹ 5,649.87 crore, respectively. Thus, the revenue raised by the State Government was 79 *per cent* of the total revenue receipts. The main source of tax revenue during 2011-12 was Sales Tax/Value Added Tax (₹ 31,202.31 crore) and stamp duty and registration fees (₹ 4,670.27 crore). The main receipt under non-tax revenue was from non-ferrous mining and metallurgical industries (₹ 1,819.64 crore).

(Paragraph 1.1)

II. Sales Tax/Value Added Tax (VAT)

Irregular allowance of deductions towards labour charges from taxable turnover in 15 offices from 40 dealers resulted in short realisation of revenue of ₹ 1.66 crore.

(Paragraph 2.14.1)

In seven offices, the assessing authorities applied incorrect rate of tax in 12 assessments under Section 14-A resulting in short levy of tax of ₹ 100.42 lakh including interest.

(Paragraph 2.14.2)

In 19 offices, the dealer claimed excess/inadmissible deductions of labour, service charges in 23 assessments resulting in short levy/payment of tax of ₹ 4.01 crore including interest.

(Paragraph 2.14.3)

Incorrect exhibition of turnover and irregular deduction led to escapement of taxable turnover in 20 assessments in 12 offices, subsequently resulting in short levy of VAT of ₹ 4.72 crore including interest.

(Paragraph 2.14.8)

We noticed incorrect/excess grant of ITC of ₹ 26.42 crore in 145 assessments in 53 offices.

(Paragraph 2.15)

In 15 offices, incorrect credit of ITC on opening stock in 28 assessments resulted in incorrect grant of ITC of ₹ 2.75 crore.

(Paragraph 2.16)

In 12 offices, the assessing authority applied incorrect rate of tax in 20 assessments resulting in short levy of VAT of ₹ 3.41 crore including interest and penalty.

(Paragraph 2.18)

In 15 offices, the assessing officers did not include the amount of valuable consideration forming part of sales turnover in 19 assessments. This resulted in short realisation of VAT of ₹ 2.84 crore including interest and penalty.

(Paragraph 2.20)

In four offices, misclassification of goods resulted in short levy of tax of ₹ 2.42 crore in five assessments including interest and penalty.

(Paragraph 2.21)

In two offices, the assessing officers did not include sale consideration received as hiring charges in three assessments. This resulted in short levy of tax of ₹ 51.30 lakh including interest and penalty.

(Paragraph 2.24)

In nine offices, the assessing officers applied incorrect rate of CST resulting in short levy of tax of ₹ 63.35 lakh including interest and penalty.

(Paragraph 2.28)

III. Land Revenue

A performance audit report on **Management of Government Land** revealed the following:

- The Department did not have consolidated data of alienated and un-alienated land, the status of the alienation proposals received from the Collectors, approved, rejected and pending cases.

  (Paragraph 3.5.8)

- Undervaluation of Government land due to incorrect computation of market value of land and non-recovery of additional market value for allotment of grazing land resulted in short recovery of occupancy price of ₹ 36.49 crore in 29 cases.

  (Paragraph 3.5.9.1)

- Larsen & Toubro Limited was allotted Government land for manufacture of Super Critical Steam Generators and Forging Shop for Nuclear Power Plant. The price of the land was fixed by DLVC instead of SLVC rates. This resulted in forgoing of revenue of ₹ 128.71 crore.

  (Paragraph 3.5.9.4)

- Allotment of land at concessional price to two ineligible trusts resulted in undue benefit to the trusts and subsequent short recovery of occupancy price of ₹ 25.05 crore.

  (Paragraph 3.5.9.5)

- The delay in regularisation of encroached Government land coupled with levy of ad-hoc penalty at lesser rates in the case of Essar Steel Company Ltd. resulted in short recovery of ₹ 238.50 crore.

(Paragraph 3.5.9.7)

- Delay in finalisation of value of Government land resulted in blocking up of revenue to the tune ₹ 23.60 crore.

(Paragraph 3.5.10.1)

- Government land was not utilised for the purpose for which it was allotted and conditions of allotment was breached in five cases. The Departmental officials either failed to detect the cases or did not take corrective actions to vacate the land.

(Paragraph 3.5.11.8)

- Government Resolutions/Orders/instructions were not adhered to by the Collector which resulted in non/short levy of conversion tax and stamp duty aggregating ₹ 102.95 crore.

(Paragraph 3.5.11.9)

Compliance Audit

During test check of records of five Collector offices, two Dy. Collector offices and District Development office, Amreli for the period 2008-09 to 2010-11, we noticed that there was non/short levy of premium price of ₹ 8.70 crore in 10 cases.

(Paragraph 3.6)

During test check of records of three District Development offices for the period 2008-09 and 2009-10, we noticed that in seven cases, there was non/short levy of conversion tax amounting to ₹ 28.09 lakh.

(Paragraph 3.7)

IV. Taxes on Vehicles

Operators of 1,697 omnibuses, who kept their vehicles for use exclusively as contract carriage and 1,436 vehicles used for transport of goods, had neither paid tax nor filed non-use declarations for various periods between 2008-09 and 2010-11. The Departmental officials failed to issue demand notices and initiate recovery action prescribed in the Act. This resulted in non-realisation of motor vehicles tax of ₹ 16.34 crore including interest of ₹ 1.30 crore and penalty of ₹ 1.71 crore.

(Paragraph 4.7)

V. Stamp Duty and Registration Fees, Entertainment Tax, Luxury Tax and Electricity Duty

A. Stamp Duty and Registration Fees

In the office of the Additional Superintendent of Stamps, Gandhinagar, Collector, Vadodara, DC (SDVO), Valsad and 42 Sub-Registrar offices, incorrect determination of market value of properties in 258 cases resulted in short levy of stamp duty and registration fees of ₹ 11 crore.

(Paragraph 5.7)

In the office of the Additional Superintendent of Stamps, Gandhinagar and 30 Sub-Registrar offices, in case of 284 documents, the documents were classified on the basis of their titles, which resulted in misclassification of documents and resultant short levy of stamp duty of ₹ 1.74 crore.

(Paragraph 5.9)

B. Entertainments Tax, Luxury Tax and Electricity Duty

In two Collector offices and Deputy Collector office, Anjar, luxury tax of ₹ 32.27 lakh including interest of ₹ 19.25 lakh was not levied/short levied from 14 hotel owners.

(Paragraph 5.19)

VI. Non-tax receipts

Non/short levy of royalty and interest of ₹ 97.54 lakh was noticed in 46 cases in five Geologists during the period 2008-09 to 2010-11.

(Paragraph 6.5)

Short levy of dead rent and interest of ₹ 1.28 crore was noticed in 187 cases in seven Geologist offices.

(Paragraph 6.6)

In six district Geologist offices, surface rent was levied at incorrect rates resulting in short levy of ₹ 1.80 crore.

(Paragraph 6.7.2)

Levy of licence fees at lesser rates resulted in short levy of license fee of ₹ 15.24 lakh.

(Paragraph 6.16)

CHAPTER-I
GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Gujarat during the year 2011-12, the State's share of net proceeds of divisible Union Taxes and duties assigned to the State and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned below:

(₹ in crore)

Sl. no.	Particulars	2007-08	2008-09	2009-10	2010-11	2011-12
1.	**Revenue raised by the State Government**					
	• Tax revenue	21,885.57	23,557.03	26,740.23	36,338.63	44,252.29
	• Non-tax revenue	4,609.31	5,099.32	5,451.71	4,915.02	5,276.52
	Total	**26,494.88**	**28,656.35**	**32,191.94**	**41,253.65**	**49,528.81**
2.	**Receipts from the Government of India**					
	• Share of net proceeds of divisible Union taxes and duties	5,426.09	5,725.86	5,890.92	6,679.44	7,780.31
	• Grants-in-aid	3,768.88	4,293.50	3,589.50	4,430.55	5,649.87
	Total	**9,194.97**	**10,019.36**	**9,480.42**	**11,109.99**	**13,430.18**
3.	**Total revenue receipts of the State Government (1 and 2)**	**35,689.85**	**38,675.71**	**41,672.36**	**52,363.64**	**62,958.99**[1]
4.	**Percentage of 1 to 3**	**74**	**74**	**77**	**79**	**79**

The above table indicates that during the year 2011-12, the revenue raised by the State Government (₹ 49,528.81 crore) was 79 *per cent* of the total revenue receipts which was same as in the preceding year. The balance 21 *per cent* of the receipts during 2011-12 was from the Government of India.

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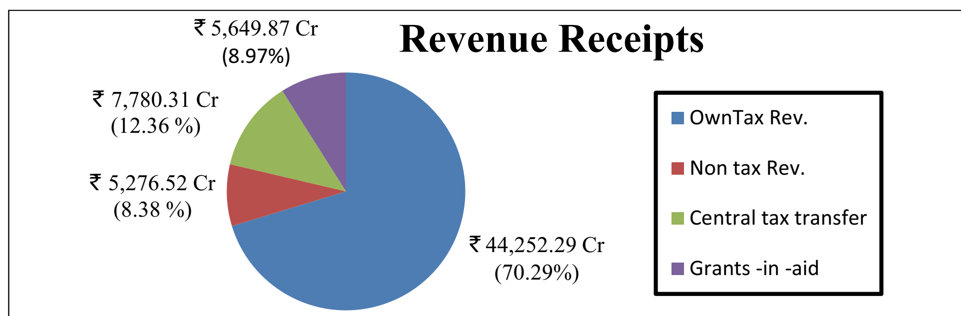
[1] For details, please see statement No. 11, Detailed Accounts of revenue by minor heads in the Finance Accounts of the Government of Gujarat for the year 2011-12. Figures under the Heads "0020 - Corporation tax, 0021 - Taxes on Income other than corporation tax, 0028 - Other taxes on income and expenditure, 0032 - Taxes on wealth, 0037 - Customs, 0038 - Union excise duties, 0044 - Service tax, 0045 - Other taxes and duties on commodities and services", - share of net proceeds assigned to states booked in the Finance Accounts under A - 'Tax Revenue', have been excluded from 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 2007-08 to 2011-12.

(₹ in crore)

Sl. no.	Heads of revenue	2007-08	2008-09	2009-10	2010-11	2011-12	Percentage of increase (+) or decrease (-) in 2011-12 over 2010-11
1.	Sales tax/VAT	13,199.04	15,143.86	15,651.20	20,226.78	27,259.38	(+) 34.77
	Central sales tax	1,905.50	1,666.79	2,548.59	4,666.68	3,942.93	(-) 15.51
2.	Taxes and duties on electricity	2,046.52	2,369.91	2,643.65	3,262.64	3,654.56	(+) 12.01
3.	Stamp duty and registration fees	2,018.43	1,728.50	2,556.72	3,666.24	4,670.27	(+) 27.39
4.	Land revenue	683.09	543.50	1,161.20	1,788.78	1,477.18	(-) 17.42
5.	Taxes on vehicles	1,310.09	1,381.66	1,542.64	2,003.68	2,251.03	(+) 12.34
6.	Taxes on goods and passengers	151.62	169.35	6.91	6.38	208.34	(+) 3,165.52
7.	State excise	47.20	48.71	65.94	62.97	72.11	(+) 14.51
8.	Other taxes on income and expenditure	149.67	185.84	196.87	228.22	222.18	(-) 2.65
9.	Other taxes	374.41	318.91	366.51	426.26	494.31	(+) 15.96
	Total	**21,885.57**	**23,557.03**	**26,740.23**	**36,338.63**	**44,252.29**	**(+) 21.77**

The reason for substantial increase in taxes on goods and passenger tax during 2011-12 over the previous year 2010-11 was due to increase in collection of passenger tax.

The increase in collection of goods and passenger tax during 2011-12 over previous year was the highest (3,165.52 *per cent*). It was stated to be due to the increased collection of passenger tax.

The reasons for substantial variations related to other receipts, though called for in May 2012, were not reported (September 2012) by the concerned Departments.

1.1.3 The following table presents the details of non-tax revenue raised during the period from 2007-08 to 2011-12:

(₹ in crore)

Sl. no.	Heads of revenue	2007-08	2008-09	2009-10	2010-11	2011-12	Percentage of increase (+) or decrease (-) in 2011-12 over 2010-11
1.	Non-ferrous mining and metallurgical industries	2,082.14	1,559.82	2,138.98	2,019.31	1,819.64	(-) 9.89
2.	Interest receipts	329.88	567.81	419.44	403.88	631.89	(+) 56.45
3.	Major and medium irrigation	452.82	455.77	504.61	618.14	684.15	(+) 10.68
4.	Miscellaneous general services	588.53	643.29	847.14	62.29	69.65	(+) 11.82
5.	Other administrative services	47.93	189.44	110.80	41.11	70.27	(+) 70.93
6.	Police	86.24	77.44	101.45	149.08	138.97	(-) 6.78
7.	Medical and public health	66.25	126.50	62.40	118.11	90.76	(-) 23.16
8.	Public works	27.19	31.69	51.06	36.71	38.07	(+) 3.70
9.	Forestry and wild life	35.08	40.51	39.76	45.22	39.93	(-) 11.70
10.	Other non-tax receipts	893.25	1,407.05	1,176.07	1,421.17	1,693.19	(+) 19.14
Total		**4,609.31**	**5,099.32**	**5,451.71**	**4,915.02**	**5,276.52**	**(+) 7.36**

The concerned Departments did not inform (September 2012) the reasons for variations, despite being requested (May 2012).

1.2 Response of the Departments/Government towards audit

In the following paragraphs from 1.2.1 to 1.2.6, response of the Departments/ Government towards various aspects related to audit process has been discussed.

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

Principal Accountant General (Economic and Revenue Sector Audit) Gujarat, Ahmedabad (PAG), conducts periodical inspection of the Government Departments to test check the transactions and verify the maintenance of the important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with Inspection Reports (IRs) incorporating irregularities detected during the inspection and not settled on the spot, which are issued to the heads of the offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of offices/ Government are required to comply promptly on the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the PAG within one month from the date of receipt of the IRs. Serious financial irregularities are reported to the heads of the Departments and the Government.

Inspection Reports issued upto December 2011 disclosed that 14,423 paragraphs involving ₹ 8,814.69 crore relating to 4,519 IRs remained outstanding at the end of June 2012 as mentioned below along with the corresponding figures for the preceding two years.

Particulars	June 2010	June 2011	June 2012
Number of outstanding inspection reports	4,374	4,535	4,519
Number of outstanding audit observations	12,998	14,100	14,423
Amount of revenue involved (₹ in crore)	7,290.79	8,718.32	8,814.69

The Department-wise details of the IRs and audit observations outstanding as on 30 June 2012 and the amounts involved are mentioned below:

Sl. no.	Name of the Department	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved (₹ in crore)
1	Finance	Taxes/VAT on sales, trade etc.	1,531	6,114	3,078.07
		Professional Tax	16	27	0.05
2	Home	State excise	13	17	0.23
3	Revenue	Land revenue	374	849	369.31
4	Ports and Transport	Taxes on motor vehicles	410	1,654	1,091.74
5	Revenue	Stamp duty and registration fees	1,144	3,539	1,416.39
		Valuation of property	196	428	53.53

6	Industries and Mines	Geology and Mining	265	788	449.64
		Director of Petroleum	4	30	2,022.51
7	Energy and Petrochemicals	Electricity duty	54	85	148.10
8	Forest and environment	Forestry and wild life	-	-	-
9	Information and Broadcasting	Entertainments tax, luxury tax, etc.	512	892	185.12
Total			**4,519**	**14,423**	**8,814.69**

Even the first replies required to be received from the heads of office within one month from the date of receipt of the IRs were not received (June 2012) for 92 IRs issued up to December 2011. This large pendency of the IRs due to non-receipt of the replies is indicative of the fact that the heads of offices and heads of the Departments failed to initiate action to rectify the defects, omissions and irregularities pointed out by the PAG in the IRs.

We recommend that the Government may take suitable steps to implement an effective procedure for prompt and appropriate response to audit observations as well as take action against officials/officers who failed to send replies to the IRs/paragraphs as per the prescribed time schedules and also failed to take action to recover outstanding demand in a time bound manner.

1.2.2 Departmental audit committee meetings

The Government set up Audit Committees to monitor and expedite the progress of the settlement of IRs and paragraphs in the IRs. The details of the Audit Committee meetings held during the year 2011-12 and the paragraphs settled are mentioned below:

(₹ in crore)

Sl. no.	Name of the Department/Head of Revenue	No. of meetings held	No. of IRs/paragraphs settled		Amount settled
			IRs	Paragraphs	
1.	Finance (Sales tax/VAT)	02	-	61	12.05
2.	Ports and Transport (Motor vehicles tax)	-	-	-	-
3.	Land Revenue	04	65	165	29.45
4	Geology and Mining	-	-	-	-
5	Stamp duty	01	-	-	-
6	Forest and Environment	-	-	-	-
7.	Information & Broad casting (Entertainment tax, Luxury tax)	02	28	95	2.61

It could be seen from the above paragraph that though the money value involved in the amount of the outstanding observations had increased from ₹ 8,718.32 crore to ₹ 8,814.69 crore i.e. increase of 1.11 *per cent*, only nine meetings were held during the year.

Considering the large pendency of IRs and audit paragraphs, the Departments need to hold more Audit Committee meetings to clear the outstanding paragraphs.

1.2.3 Response of the Departments to the draft audit paragraphs

According to the hand book of instructions for speedy settlement of draft paragraphs issued by the Finance Department on 12 March 1992, results of verification of facts contained in the draft paragraphs are required to be communicated to the Principal Accountant General (PAG) within six weeks from the date of their receipt. In exceptional cases where it is not possible to furnish the final reply to the draft paragraph within the above time limit, an interim reply should be given to the PAG.

Eighty one draft paragraphs (clubbed into 72 paragraphs) and one Performance Audit proposed for inclusion in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2012 (Revenue Receipts) Government of Gujarat were forwarded to the Secretaries of the respective Departments between May and October 2012 through demi-official letters. The Secretaries of the respective Departments replied to 64 draft paragraphs. Out of 64 paragraphs 30 draft paragraphs were replied partially. The paragraphs of the Performance Audit have been included in this report after incorporating the response of the Secretaries of the concerned Departments, wherever received.

1.2.4 Follow up on Audit Reports - summarised position

As per instructions issued by the Finance Department on 12 March 1992, administrative Departments are required to submit explanatory notes on paragraphs and reviews included in the Audit Reports (AR) within three months of presentation of the ARs to the Legislature, without waiting for any notice or call from the Public Accounts Committee, duly indicating the action taken or proposed to be taken.

The AR for the years 2009-10 and 2010-11 were placed to the State Legislature on 30 March 2012. Explanatory notes in respect of paragraphs included in ARs 2009-10 and 2010-11 were not yet furnished by the Departments as mentioned below (September 2012).

Name of the Department	2009-10 (Paragraphs)	2009-10 (Sub paragraphs-Reviews)	2010-11 (Paragraphs)	2010-11 (Sub paragraphs-Reviews)	Total
Finance					
(Sales tax/VAT)	1	--	6	18	25
Revenue					
(Stamp duty)	8	--	-	29	37
(Land revenue)	1	16	4	--	21
Ports and Transport					
(Motor vehicles tax)	8	--	7	9	24
Information and Broadcasting					
(Entertainments tax)	1	--	4	--	5
(Luxury tax)	--	--	1	--	1
Industries and Mines					
(Mining receipts)	7	--	8	--	15
Energy and Petrochemicals					
(Non-tax receipts	--	--	1	--	1
(Interest receipts)	--	7	--	--	7
(Electricity Duty)	1	--	--	13	14
Total	**27**	**23**	**31**	**69**	**150**

Thus, out of 41 paragraphs (excluding two Performance Audits) and 46 paragraphs (excluding four Performance Audits) included in the Audit Reports 2009-10 and 2010-11, explanatory notes were received only in 29 paragraphs and no explanatory note was received for the remaining 58 paragraphs.

1.2.5 Compliance with the earlier Audit Reports

During the years between 2006-07 and 2010-11, the Departments/Government accepted audit observations involving ₹ 309.14 crore of which an amount of ₹ 43.39 crore had been recovered till 31 March 2012 as mentioned below:

(₹ in crore)

Year of Audit Report	Total money value	Accepted money value	Recovery made*
2006-07	94.53	23.84	5.67
2007-08	304.96	86.28	10.60
2008-09	5,743.47	46.98	4.48
2009-10	352.04	63.08	9.57
2010-11	462.98	88.96	13.07
Total	**6,957.98**	**309.14**	**43.39**

* Amount recovered as shown above includes recovery effected by Finance, Port and Transport, Revenue, Information and Broadcasting, Industries and Mines, and Energy and Petrochemicals Departments. Despite repeated reminders and pursuance at all levels, recovery of Electricity Duty effected by Energy and Petrochemicals Department had not been received (September 2012).

The recovery in respect of the accepted cases was meagre (14 *per cent* of the accepted money value).

We recommend the Government to advise the concerned Departments to take necessary steps for speedy recovery at least in those cases/ paragraphs which have been accepted by the concerned Departments in the interest of revenue.

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

In order to analyse the system of addressing the issues highlighted in the Inspection Reports/Audit Reports by the Departments/Government, the action taken on the paragraphs and reviews included in the Audit Reports of the last five years in respect of Ports and Transport Department is evaluated and included in this Audit Report.

The succeeding paragraphs 1.3.1 to 1.3.2.2 discuss the performance of the Ports and Transport Department to deal with the cases detected in the course of local audit conducted during the last five years and also the cases included in the Audit Reports for the years 2007-08 to 2011-12.

1.3.1 Position of Inspection Reports

The summarised position of inspection reports issued during the last five years, paragraphs included in these reports and their status as on 31 March 2012 are tabulated below.

(₹ in crore)

Year	Opening balance			Addition during the year			Clearance during the year			Closing balance at the end of the year		
	IRs	Para-graphs[2]	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value
2007-08	303	1088	486.61	28	288	51.53	0	3	0.043	331	1373	538.10
2008-09	331	1373	538.10	19	135	256.52	2	6	0.01	348	1502	794.61
2009-10	348	1502	794.61	26	174	263.34	0	74	146.20	374	1602	911.75
2010-11	374	1602	911.75	22	152	262.30	3	176	94.01	393	1578	1,080.04
2011-12	393	1578	1,080.04	21	137	15.98	0	45	3.55	414	1670	1,092.47

There was continuous increase in the number (except in 2010-11) and money value of the objections as at the end of the year from 2007-08 to 2011-12. This indicates failure of the Department to take timely action on the audit objections. During five years period from 2007-08 to 2011-12, Ports and Transport Department conducted two Audit Committee Meetings in which 248 paragraphs and three IRs involving money value of ₹ 240.20 crore were settled.

[2] Those observations which were not included in Audit Reports.

1.3.2 Assurances given by the Department/Government on the issues highlighted in the Audit Reports

1.3.2.1 Recovery of accepted cases

The position of paragraphs included in the Audit Reports of the last five years, those accepted by the Department and the amount recovered are mentioned in the following table:

Year of AR	Number of paragraphs included	Money value of the paragraphs (₹ in crore)	Money value of accepted paragraphs (₹ in crore)	Amount recovered during the year 2011-12 (₹ in crore)	Cumulative position of recovery of accepted cases (₹ in crore)
2006-07	2	9.10	8.95	0.0	1.33
2007-08	1	83.08	36.56	0.0	7.37
2008-09	4	6.29	6.29	0.0	1.39
2009-10	8	221.36	19.29	0.0	1.51
2010-11	7	49.77	25.66	0.0	1.05
Total	**22**	**369.60**	**96.75**	**0.0**	**12.65**

Out of observations of ₹ 96.75 crore accepted, the Department recovered an amount of ₹ 12.65 crore during the period of five years which was very low (13.07 *per cent* of the accepted amount of observations).

We recommend the Department to consider taking effective steps to recover at least the amount of the accepted paragraphs in accordance with the provision of Motor Vehicles Act/Rules of Ports and Transport Department.

1.3.2.2 Action taken on the recommendations

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

We conducted three Performance Audits during the last five years as mentioned below:

We had proposed 15 recommendations for improving the efficiency, efficacy and internal controls of the Department. Response to the recommendations has not been received.

Year of AR	Name of the review	Number of recommendations
2007-08	Administration of Motor Vehicles Tax in Gujarat	7
2008-09	Computerisation of issue of Driving Licence and Registration of Vehicle (An Information Technology Audit)	3
2010-11	Performance Audit on Computerisation in Motor Vehicle Department	5

1.4 Audit planning

The unit offices under various Departments are categorised into high, medium and low risk units according to their revenue position, past trends of audit observations and other parameters. The annual audit plan is prepared on the basis of risk analysis which *inter-alia* include critical issues in government revenues and tax administration i.e. budget speech, white paper on state finances, reports of the Finance Commission (State and Central), recommendations of the taxation reforms committee, statistical analysis of the revenue earnings during the past five years, features of the tax administration, audit coverage and its impact during past five years etc.

During the year 2011-12, the audit universe comprised 965 auditable units, of which 273 units were planned and 271 units audited during the year, which is 28.08 *per cent* of the total auditable units. The remaining two units belong to Commercial Tax Department. No assessment was done during this period, therefore no audit was taken up.

Besides the compliance audit mentioned above, one performance audit was also taken up to examine the efficacy of the tax administration of these receipts.

1.5 Results of audit

1.5.1 Position of local audit conducted during the year

Test check of the records of 271 units of commercial tax, land revenue, state excise, motor vehicles tax, stamp duty and registration fees, electricity duty, other tax receipts and other non-tax receipts conducted during the year 2011-12 revealed under assessment/short levy/loss of revenue amounting to ₹ 596.11 crore in 1,744 cases. During the course of the year, the concerned Departments accepted under assessments and other irregularities of ₹ 52.20 crore in 397 cases of which 36 cases involving ₹ 5.83 crore were pointed out in audit during the year 2011-12 and the rest in the earlier years. Department collected ₹ 6.71 crore in 249 cases in 2011-12.

1.5.2 This Report

This report contains 73 paragraphs, including one performance audit on “Management of Government Lands” relating to short/non-levy of occupancy/premium price/NNA/conversion tax, non/short levy of VAT, royalty, dead rent, stamp duty and other irregularities involving financial effect of ₹ 348.22 crore. The Departments/Government have accepted audit observations involving ₹ 40.81 crore out of which ₹ 3.77 crore has been recovered. The replies in the remaining cases had not been received (September 2012). These are discussed in succeeding Chapters II to VI.

CHAPTER-II
EXECUTIVE SUMMARY

Trend of receipts	The contribution of GVAT in total tax receipts was 70.51 *per cent* in 2011-12, the collection increased by 25.34 *per cent* over the previous year.
Revenue Impact of Audit Reports	During the last five years, through the Audit Reports we have pointed out cases of non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc, with revenue implication of ₹ 5,287.48 crore in 78 paragraphs. Of these, the Department/Government had accepted audit observations in 68 paragraphs involving ₹ 143.28 crore and had recovered ₹ 10.50 crore.
Results of Audit	We test checked the records of 95 units relating to Commercial Tax Offices during 2011-12 and noticed underassessment of tax and other irregularities involving ₹ 270.95 crore in 932 cases. During the course of the year, the Department accepted underassessment and other irregularities of ₹ 23.49 crore in 154 cases, of which 15 cases involving revenue implication of ₹ 6.44 lakh were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 72.33 lakh was realised in 56 cases during the year 2011-12.
What we have highlighted in this Chapter	• Irregular allowance of deductions towards labour charges from taxable turnover in 15 offices from 40 dealers resulted in short realisation of revenue of ₹ 1.66 crore. • In seven offices, the assessing authorities applied incorrect rate of tax in 12 assessments under Section14-A resulting in short levy of tax of ₹ 100.42 lakh including interest. • In 19 offices, the dealer claimed excess/inadmissible deductions of labour, service charges in 23 assessments resulting in short levy/payment of tax of ₹ 4.01 crore including interest.

- Incorrect exhibition of turnover and irregular deduction led to escapement of taxable turnover in 20 assessments in 12 offices, subsequently resulting in short levy of VAT of ₹ 4.72 crore including interest.

- We noticed incorrect/excess grant of ITC of ₹ 26.42 crore in 145 assessments in 53 offices.

- In 15 offices, incorrect credit of ITC on opening stock in 28 assessments resulted in incorrect grant of ITC of ₹ 2.75 crore.

- In 12 offices, the assessing authority applied incorrect rate of tax in 20 assessments resulting in short levy of VAT of ₹ 3.41 crore including interest and penalty.

- In 15 offices, the assessing officers did not include the amount of valuable consideration forming part of sale turnover in 19 assessments. This resulted in short realisation of VAT of ₹ 2.84 crore including interest and penalty.

- In four offices, misclassification of goods resulted in short levy of tax of ₹ 2.42 crore in five assessments including interest and penalty.

- In two offices, the assessing officers did not include sale consideration received as hiring charges in three assessments. This resulted in short levy of tax of ₹ 51.30 lakh including interest and penalty.

- In nine offices, the assessing officers applied incorrect rate of CST resulting in short levy of tax of ₹ 63.35 lakh including interest and penalty.

CHAPTER-II
VALUE ADDED TAX/SALES TAX

2.1 Tax administration

The tax administration of the Commercial Tax Department of the State is governed by the Gujarat Value Added Tax (GVAT) Act, 2003 and the Central Sales Tax (CST) Act, 1956. The GVAT Act was made effective in the State from 1 April 2006 and on its implementation, the Gujarat Sales Tax Act, 1969, the Bombay Sales of Motor Spirit Taxation Act, 1958 and the Purchase Tax on Sugarcane Act, 1989 were repealed. However assessments, appeals, recovery etc., pertaining to the period prior to the implementation of GVAT continued to be governed under the provisions of these repealed Acts. The Commercial Tax Department (Department) is headed by the Commissioner of Commercial Tax (Commissioner), who is assisted by a Special Commissioner and an Additional Commissioner. The Department is geographically organised into seven administrative divisions, each headed by an Additional/Joint Commissioner (Addl./JC). A division has 'circles', each headed by a Deputy Commissioner (DC); there are 23 circles in the State. A circle has assessment units each headed by Assistant Commissioner/Commercial Tax Officer (AC/CTO); there are 104 units in the State. In addition, there are 11 permanent, two seasonal/temporary check posts headed by AC/CTO. Besides, there are staff positions in the Department's head office for administration, audit, legal, appeal, enforcement, e-governance, internal inspection *etc*., headed by Addl./JC or DC.

2.2 Analysis of budget preparation

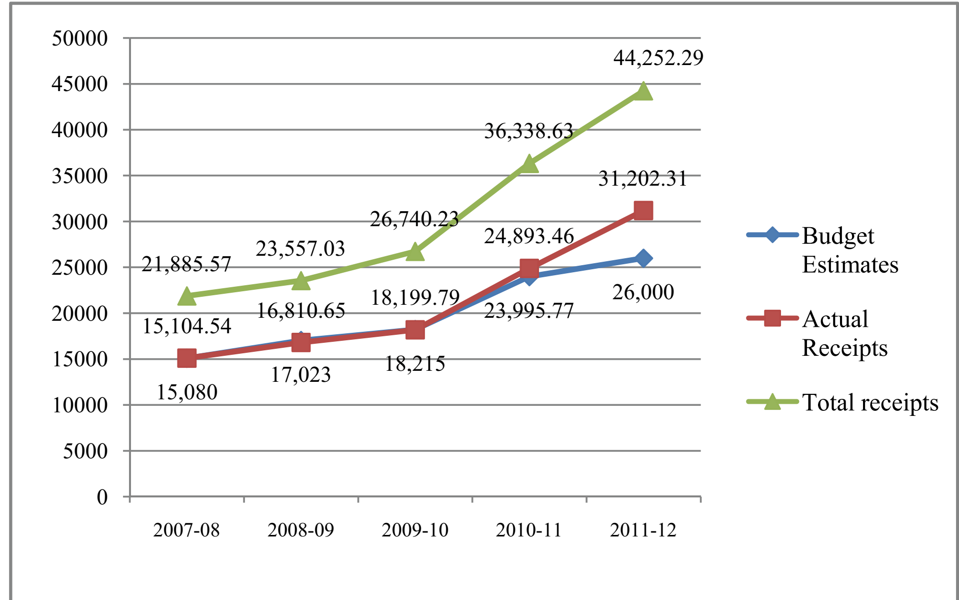
The Budget Estimates are furnished by the Commissioner in the prescribed format to the Finance Department. While preparing the budget estimates, the Commercial Tax Department considered normal growth of the State economy, rise in price of goods (particularly petroleum products) and increase in demand and production of consumer goods. Actual receipts was 20 *per cent* more than the budget estimates for the year 2011-12; reason for the variation between actual receipts and budget estimates was not furnished to audit.

2.3 Trend of revenue

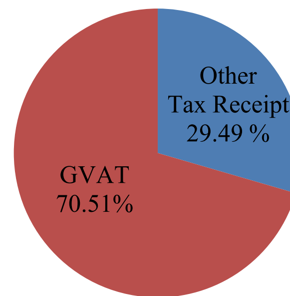
Actual receipts from Sales Tax/VAT during the last five years 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual Sales Tax/VAT receipts vis-a- vis total tax receipts
2007-08	15,080.00	15,104.54	(+)24.54	(+)0.16	21,885.57	69.02
2008-09	17,023.00	16,810.65	(-) 212.35	(-) 1.25	23,557.03	71.36
2009-10	18,215.00	18,199.79	(-) 15.21	(-) 0.08	26,740.23	68.06
2010-11	23,995.77	24,893.46	(+)897.69	(+)3.74	36,338.63	68.50
2011-12	26,000.00	31,202.31	(+)5,202.31	(+)20.00	44,252.29	70.51



Contribution of VAT



The contribution of GVAT in total tax receipts increased from 68.50 *per cent* in 2010-11 to 70.51 *per cent* in 2011-12, the collection increased by 25.34 *per cent* over previous year.

The above pie chart indicates the dominance of contribution of GVAT over the other tax receipts in Gujarat.

2.4 Analysis of arrears of revenue

(₹ in crore)

Year	Opening balance of arrears	Demand raised	Amount collected during the year	Closing balance of arrears
2007-08	8,352.53	2,326.70	2,739.73	7,939.50
2008-09	7,939.50	2,019.07	1,104.67	8,853.90
2009-10	8,853.90	6,428.33	4,084.70	11,197.53
2010-11	11,197.53	5,238.54	1,929.99	14,506.08
2011-12	14,506.08	3,059.10	998.73	16,566.45

The arrears of revenue as on 31 March 2012 amounted to ₹ 16,566.45 crore, of which ₹ 4,888.56 crore were outstanding for more than five years. Further, the total outstanding amount of ₹ 16,566.45 crore *inter alia* included ₹ 6,948.79 crore, the recovery of which has been stayed by the High Court of Gujarat and other judicial authorities, ₹ 6,878.28 crore is proposed to be written off as the chance for its recovery is remote, recovery of ₹ 463.27 crore is held up due to non-finalisation of rectification and review applications of the dealers and for the arrears of ₹ 382.32 crore recovery certificates are issued.

2.5 Assessee profile

The number of registered dealers was 4,17,016 at the end of March 2012. Out of them, 3,304 dealers paid tax more than ₹ 40 lakh and the rest 4,13,712 dealers paid less than ₹ 40 lakh during the year. The dealers were required to file 40,26,636 monthly/quarterly returns. Out of which 3,19,061 returns were not filed during the year. In all the cases, the Department initiated necessary action against the defaulted dealers.

2.6 Cost of VAT per assessee

Number of live dealers during the year 2011-12 and during the preceding three years with expenditure incurred on collection of revenue and cost of tax per assessee are given below:

(₹ in lakh)

Year	No. of dealers	Expenditure on collection of revenue	Cost of GVAT per assessee
2008-09	3,73,426	9,951.00	0.03
2009-10	3,77,093	12,907.00	0.03
2010-11	3,99,455	14,937.00	0.04
2011-12	4,17,016	16,249.00	0.04

Thus, the cost of tax per assessee during the four years ranged between ₹ 0.03 lakh and ₹ 0.04 lakh.

2.7 Arrears in assessment

The number of assessments pending at the beginning of the year 2011-12, assessments due during the year, assessments done during the year and pending at the end of the year along with the figures for the preceding four years as furnished by the Commercial Tax Department[3] are given below:

(No. of cases)

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Assessments done during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2007-08	7,28,402	3,84,961	11,13,363	4,00,588	7,12,775	64
2008-09	3,46,922[4]	1,08,174	4,55,096	1,27,315	3,27,781	72
2009-10	3,27,781	1,22,180	4,49,961	1,80,159	2,69,802	60
2010-11	2,69,802	90,666	3,60,468	1,75,050	1,85,418	51
2011-12	1,85,418	69,109	2,54,527	79,044	1,75,483	69

Thus, the percentage of closing balance at the end of each year during 2007-08 to 2011-12 to total cases which became due for assessment ranged between 51 and 72 *per cent*.

The Commissioner of Commercial Tax, for the purpose of selection of cases for audit assessments, grouped all the live dealers in various categories on the basis of GVAT paid with returns by the dealers during the year, ITC claimed in the returns, claim of refund in the returns, nature of business like works contracts, dealers who opted to pay lump sum tax, dealers having high turnover, return/challan defaulters, dealers whose TINs were cancelled during the year, enforcement cases/search/seizure cases, incentive certificate holders, dealers holding certificates issued by Kadi and Village Industries Commissioner, dealers who had high claim of ITC on opening stock (only for 2006-07), exporters claiming provisional refunds, and randomly selected self assessments. Tasks (assessments) of the selected dealers were generated in the name of selected assessing officers.

Status of assessment under GVAT Act, as reported by the Department is mentioned in the following table:

---

3 In respect of sales tax/GVAT, profession tax, purchase tax on sugarcane, lease tax and tax on works contracts.

4 Differs from the closing balance of ₹ 7,12,775 reported by the Department for 2007-08.

(No. of cases)

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Assessments done during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2009-10	54,948	99,289	1,54,237	38,707	1,15,530	74.90
2010-11	1,15,530	60,365	1,75,895	79,978	95,917	54.53
2011-12	95,917	6,1067	1,56,984	43,985	1,12,999	71.98

Section 34 of GVAT Act authorises the Commissioner to audit the self assessment made under Section 33. The above figures represent only the cases selected by the Department for audit assessment under Section 34 of GVAT Act. The remaining cases are considered self-assessed. The details regarding extent of scrutiny of these self-assessed cases were not made available to audit.

The Government needs to take steps for speedy disposal of audit assessment. The outstanding assessment cases under erstwhile Sales Tax Act may be finalised on priority basis to avoid revenue loss due to time bar.

2.8 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the periods from 2008-09 to 2011-12 along with the relevant All India average percentage of expenditure on collection to gross collection for the preceding years is shown below:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection of the preceding years
GVAT/sales tax	2008-09	16,810.65	99.51	0.59	0.83
	2009-10	18,199.79	129.07	0.71	0.88
	2010-11	24,893.45	149.37	0.60	0.96
	2011-12	31,201.97	162.49	0.52	0.75

The cost of collection in respect of GVAT/sales tax was lower than the respective previous year all India average.

2.9 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of sales tax/GVAT, cess on motor spirit, profession tax and entry tax for the year 2011-12 and the corresponding figures for the preceding two years as furnished by the Department is mentioned:

(₹ in crore)

Heads of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount refunded	Net collection	Percent-age of column 4 to 3
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales tax/ GVAT	2009-10	18,529.72	278.11	1,384.13	17,423.70	1.50
	2010-11	23,751.68	1,253.81	1,879.67	23,125.82	5.28
	2011-12	29,472.05	998.73	1,954.49	28,516.29	3.39
Cess on Motor Spirit	2009-10	496.40	0.05	-	496.45	0.01
	2010-11	642.14	-	-	642.14	00
	2011-12	746.37	3.32	-	749.69	0.44

Note: The figures as furnished by the Department are at variance with the Finance Accounts figures and need reconciliation.

Thus, the percentage of collection of revenue after assessment (additional demand) with reference to pre-assessment stage ranged between 0 and 5.28 *per cent* under sales tax/GVAT/cess on motor spirit during the years 2009-10 to 2011-12.

2.10 Impact of Audit Reports-Revenue impact

During the last five years, the audit reports have pointed out cases of non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc, with revenue implication of ₹ 5,287.48 crore in 78 paragraphs. Of these, the Department/Government had accepted audit observations in 68 paragraphs involving ₹ 143.28 crore and had recovered ₹ 10.50 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2006-07	12	27.86	11	10.98	4	1.51
2007-08	12	134.90	10	21.81	8	1.55
2008-09	17	5,013.96	12	24.62	8	2.85
2009-10	15	34.38	13	26.83	7	0.75
2010-11	22	76.38	22	59.04	10	3.84
Total	**78**	**5,287.48**	**68**	**143.28**	**37**	**10.50**

The above table indicates that the recovery, even in accepted cases, was very low (7 *per cent* of the accepted money value). The Government may advise the Department for taking suitable steps for speedy recovery.

2.11 Working of internal audit wing

Internal Audit Wing of Commercial Tax Department, headed by Joint Commissioner (JC) Audit, conducts aud it of all offices dealing with the assessment and collection of Sales Tax/Value Added Tax. JC (Audit) is assisted by seven Dy. Commissioner (Audit), one each in every Division. The Dy. Commissioner (Audit) has a monthly target of 125 assessment cases. The concerned Dy. Commissioner (Audit) submits monthly statement to JC (Audit) giving particulars such as offices audited, number of dealers covered and objection raised. The JC (Audit) offers his comments on such statements. During the year 2011-12, seven Dy. Commissioners (Audit) audited 8,444 cases as against yearly target of 10,500 cases. Out of 8,444 cases audited, revision orders involving an amount of ₹ 5.44 crore were passed in 116 cases.

The internal audit wing needs to put in more concerted efforts to achieve the target fixed so that better tax compliance is ensured.

2.12 Results of audit

We test checked the records of 95 units relating to Commercial Tax Offices during 2011-12 and noticed underassessment of tax and other irregularities involving ₹ 270.95 crore in 932 cases which falls under the following categories:

Sl. No.	Categories	No. of cases	Amount (₹ in crore)
1.	Levy and collection of VAT on Works Contract	1	19.07
2.	Incorrect rate of tax and mistake of computation.	68	7.58
3.	Incorrect grant of set off	11	1.67
4.	Incorrect concession/exemption	19	2.70
5.	Non/short levy of interest & penalty	239	67.69
6.	Other irregularities	57	58.81
7.	Irregular/excess grant of Input Tax Credit	270	31.80
8.	Non/short levy of tax	265	79.16
9.	Non/short levy of purchase tax	2	2.47
	Total	**932**	**270.95**

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 23.49 crore in 154 cases, of which 15 cases involving revenue implication of ₹ 6.44 lakh were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 72.33 lakh was realised in 56 cases during the year 2011-12.

A few illustrative audit observations involving ₹ 151.90 crore are mentioned in the succeeding paragraphs.

2.13 Audit observations

Our scrutiny of the records of the various Commercial Tax offices revealed several cases of non-compliance with the provisions of the Gujarat Sales Tax Act, 1969, the Gujarat Sales Tax Rules, 1970, the Central Sales Tax Act, 1956, Gujarat Value Added Tax Act, 2003, Gujarat Value Added Tax Rules, 2006 etc., and Government notifications and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out by us. Such omissions on the part of the Departmental officers are pointed out by us each year; however the irregularities not only do persist, but also remain undetected till our audit is conducted. There is need for the Government to improve the internal control system and internal audit.

2.14 Levy and collection of VAT on Works Contracts

As per Section 2(23) of Gujarat Value Added Tax Act, 2003 (GVAT) Act, 2003, Sales'means a sale of goods made within the State for cash or deferred payment or other valuable consideration and *inter alia* includes transfer of property in goods (whether as goods or in some other form) involved in execution of works contract. Further, explanation to the Section 2 (23) GVAT Act states that Works contract' is a contract for execution of works and includes such works contract as the State Government may, by notification in the Official Gazette, specify. The State Government *vide* notification dated 31 March 2006, listed the name of the works contract, the list includes 14 items viz, construction/repairing of buildi ng/road/bridge, installation, fabrication, assembling, commissioning or repairing of any plant or machinery, overhauling, repairing of motor vehicle/vessels, blending, finishing, processing, fabrication of any goods, laying of pipes, painting/polishing etc.

Section 3 of GVAT Act is charging section and accordingly the Works contractor whose total purchase or sale exceeds rupees five lakh and taxable turnover exceeds rupees ten thousand is liable to register himself under GVAT Act. Further, under Section 14 A of the Act, the Commissioner may, in such circumstances and subject to such conditions as may be prescribed, permit every dealer who transfers property in goods (whether as goods or in some other form) involved in execution of a works contract, to pay at his option in lieu of the amount of tax leviable from him under this Act in respect of any period, a lump sum tax by way of composition at such rate as may be fixed by the State Government by notification in the official gazette having regard to the incidence of tax on the nature of the goods involved in the execution of the total value of the works contract. Under Section 29 every dealer should file correct and complete returns of the goods in respect of his business and the transactions thereof in the form prescribed and also pay the tax in the manner provided in Section 30 of the Act.

Rule 18 AA of the GVAT Rule, 2006, prescribes deductions of charges towards labour, services etc., in calculation of value of goods at the time of transfer of property in goods involved in the execution of works contracts. The value so arrived shall be the taxable turnover under works contract.

Audit findings relating to deficiencies noticed in the assessments of contractors are discussed in the succeeding paragraphs.

2.14.1 Short levy of tax due to irregular availment of labour deduction and sub-contract

Section 14A of the GVAT Act read with Rule 28 (8) (c) provides for payment of lump sum tax by way of composition by a civil works contractor at the rate of 0.6 *per cent* of the total value of the works contract after deducting amounts paid to the sub-contractors.
As per section 32 of GVAT returns furnished by the dealers shall be subject to the scrutiny to ensure that the tax has been paid correctly.

During test check of annual returns, VAT Audit Reports, assessment orders and connected assessment records between December 2010 and June 2012 of 15 [5] offices, we noticed that 40 registered dealers for the assessment period from 2006-07 to 2008-09 had availed incorrect deductions aggregating to ₹ 225.70 crore on account of labour charges, service charges and the payments made to sub-contractors. Of these, in nine dealers the omission escaped the notice of the assessing authorities (AA) while finalising audit assessments between 2009-10 and 2010-11 and in the remaining 31 dealers, the assessing authorities incorrectly accepted the returns filed by the dealers. This resulted in short levy of tax of ₹ 1.66 crore. Besides, interest of ₹ 88.09 lakh and penalty were also leviable.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.2 Short levy of tax due to application of incorrect rate under Section 14 A

Section 14A of the Act read with Notifications dated 17 August 2006 and 11 October 2006, works like Building construction, works of roads, cross drainage structure and bridges, digging and laying pipeline, dams, check dams, weirs, protection wall, canal and head works attract tax at the rate of 0.6 *per cent* of the total value of the works contract. Other works contract attracts 2 *per cent* of the total contract value.

During the test check of records of seven[6] offices between July 2010 and June 2012, we noticed that for the assessment years from 2006-07 to 2008-09 12 dealers had executed the works not listed in the notifications like fabrication & erection, civil - mechanical works, interior design, body building *etc.* However, the dealers had paid the tax at the concessional rate of 0.6 *per cent,* instead of two *per cent* of the total value of works contract. Of

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[5] ACCT: 5, 9, 10, 17, 18 and 21 Ahmedabad, Ankleshwar, Anand, Bharuch, Gandhinagar, Mehsana, Nadiad, 11 Surat, 40 Vadodara and DCCT: 2, Ahmedabad.

[6] ACCT: 5, 21 Ahmedabad, Gandhidham, Gandhinagar, Junagadh, Patan and 1, Surat.

these, in case of six dealers the omission escaped the notice of the AA while finalising audit assessments between March 2009 and January 2012 and in the remaining cases incorrectly accepted the self assessments filed by the dealers. This resulted in under assessment of tax of ₹ 69.76 lakh. Besides, interest of ₹ 30.66 lakh and penalty were also leviable.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.3 Short levy of VAT due to excess deduction towards labour/ services etc.

Under clause 30(c) of Section 2 of Gujarat Value Added Tax Act, 2003, deduction for labour/service and other charges is available to the extent of expenditure incurred, on the condition that true and correct records are maintained and furnished at the time of assessment to the satisfaction of the assessing authority.

2.14.3.1 During test check of records of Seven[7] offices between July 2011 and March 2012 in eight cases related to the assessment period 2006-07, we noticed that as per the profit &loss account/ construction account allowable deductions for labour/service charges were ₹ 13.59 crore from the total turnover of ₹ 42.59 crore. However, the AA allowed (between July 2010 to May 2012) deduction of ₹ 22.42 crore for labour/service charges. This resulted in short levy of tax of ₹ 57.55 lakh. Besides interest of ₹ 41.13 lakh and penalty were also leviable.

Rule 18A of Gujarat Value Added Tax Rules, 2006 provides for deduction for sub contract made with a registered dealer. In absence of true and correct records a lump sum deduction shall be admissible at the rate of 30 *per cent* in case of civil works contract, and 10 to 20 *per cent* for other works for levy of VAT.

2.14.3.2 During test check of records of nine[8] offices between July 2010 and May 2012 in 10 cases related to the assessment period 2006-07, we noticed that the AA allowed (from September 2009 to January 2011) deductions for labour, service charges of ₹ 40.71crore from the turnover of ₹ 117.45 crore even though there was nothing in the assessment order that true and correct records were maintained and furnished by the dealer for labour/service charges. The AA had mentioned in the assessment orders that deductions claimed were in excess of the permissible limits but incorrectly allowed the deductions claimed by the dealers instead of limiting it. This resulted in the short levy of tax of ₹ 1.35 crore. Besides, interest of ₹ 96.72 lakh and penalty were also leviable.

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7 ACCT: 3, 9, 14 and 20 Ahmedabad, 41 and 42 Vadodara, 1 Surat.

8 ACCT 10, 14, 23 Ahmedabad, 40 and 41, Vadodara, 1 Jamnagar, 1 Nadiad, Mehsana and 103, Bhuj.

2.14.3.3 During test check of records of three[9] offices between March 2012 and June 2012, we noticed that in five cases of self assessment related to the assessment period 2007-08, dealers claimed deductions for labour/service charges of ₹ 12.27 crore instead of ₹ 5.40 crore from total turnover of ₹ 26.72 crore even though no accounts of labour and services charges were furnished along with returns. This resulted in short payment of tax of ₹ 46.23 lakh. Besides interest of ₹ 24.48 lakh and penalty was also leviable.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.4 Short levy of CST - Inter-State transaction treated as local works contract

As per Section 3 of Central Sales Tax Act, 1956, a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce, if the sale or purchase (a) occasions the movement of goods from one State to another; or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. Building[10] bus body on chassis by using own material is 'sale' and not works contract.

During test check of records between May 2012 and June 2012 of two[11] offices, we noticed that two registered dealers, during assessment period 2007-08, executed the work of body building on contract basis on the chassis provided by the contractee from Rajasthan, Uttarakhand, Maharashtra and Goa. In these cases, the dealers used the required material and constructed the body building on the chassis. Since the material used ultimately resulted in movement of goods from one state to another, the transaction was an inter-state sale and not a case of works contract within the State. However, the transaction was treated as works contract and the dealers paid lump sum tax at the rate of two *per cent* instead of the tax applicable on the material used in the work of body building at the rate of 12.5 *per cent*.

This resulted in the short levy of CST of ₹ 95.29 lakh including interest of ₹ 32.99 lakh.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

[9] ACCT: 5 Ahmedabad, 74 Vapi, Bharuch.

[10] Dutt Motor Body Builders V. State of Gujarat (1999) 116 STC 216 (Guj HC DB).

[11] ACCT: 21 Ahmedabad and 24 Gandhinagar

2.14.5 Non/short deduction of TDS

Section 59-B of the GVAT Act read with Notification dated 1.4.2008 *inter alia* provides for deduction of TDS at the rate as may be prescribed by the Government at the time of payment of the whole or part of the specified sale price. In respect of a specified works contract where TDS has not been deducted, the amount shall be payable by the contractor or sub contractor directly and penalty not exceeding twenty five *per cent* of the amount to be deducted, is leviable.

During test check of records between April 2011 and March 2012 of six[12] offices, we noticed that eight dealers for the assessment period from 2006-07 to 2008-09 had not deducted TDS in seven cases and deducted short in one case from the payments of specified sale price of ₹ 55.71 crore made to sub-contractors as required under rules. This resulted in non/short deduction of TDS aggregating to ₹ 1.03 crore.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.6 Irregular availment of TDS

Section 59B of the GVAT Act *inter alia* provides for furnishing TDS certificate in Form-703 by the person deducting the tax specifying the amount of tax deducted to the contractor or sub contractor at the time of payment of the specified sale price. Further, deduction of TDS made shall be treated as a payment of tax or lump-sum tax on behalf of contractor or sub-contractor and on production of certificate, credit shall be allowed.

During test check of records between February 2012 and March 2012 of three[13] offices, we noticed that in case of four dealers for the assessment period from 2006-07 and 2007-08, the credit of TDS was granted irregularly. Of these, in one case credit was allowed without obtaining the TDS certificates as required by the GVAT Act. Further, two dealers availed credit of TDS certificates which pertained to other dealers. In one case TDS certificates were furnished for ₹ 7.17 lakh while credit was granted for ₹ 7.67 lakh (i.e. excess credit of ₹ 0.50 lakh). This resulted in irregular availment of TDS credit of ₹ 32.24 lakh.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

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[12] ACCT: 5, 8 & 9, Ahmedabad, Bhuj, 42 Vadodara
DCCT: 2 Ahmedabad.

[13] ACCT: 9 Ahmedabad, 40 and 41 Vadodara

2.14.7 Availment of composition scheme despite breach of condition

Rule 28(8)(g) of Gujarat Value Added Tax Rules, 2006 under Section 14-A *inter alia* provides if the dealer to whom the permission to pay lump sum tax at the 0.6 *per cent* is granted contravenes the provisions of the Act or the rules made in this behalf, such permission shall be liable to be cancelled forthwith from the date of event concerning such contravention. Consequently, such dealer shall be liable to pay tax under section 7 from the date of such contravention.

During test check of records of three[14] offices between February 2012 and June 2012 we noticed that three dealers, for the assessment year from 2006-07 to 2007-08, had opted for lump sum payment of tax. The permission granted for payment of lump sum tax (Form-215A) *inter alia* stipulated that the dealer should furnish the details of works contract in the form 216 within the time limit prescribed and should pay the amount of composition within the time prescribed. We noticed that the dealers had not complied with these conditions by non-filing of returns and by not paying the lump sum tax within time prescribed. In one case the dealer was allowed composition of tax prior to the date of his filing of application for composition. Hence, the permission granted for payment of lump sum tax was liable for cancellation due to non-compliance of the conditions by the dealers. The Department had not cancelled the permission and the dealers had availed the benefit of payment of lump sum tax. This resulted in short levy of tax of ₹ 2.59 crore including interest of ₹ 85.40 lakh.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.8 Short levy of VAT due to incorrect deduction of turnover

Section 2(23) (b) read with Section 7 of GVAT Act provide that transfer of property in goods involved in the execution of the works contract is taxable. Further, notification dated 11 August 2006, issued u/s 5(2) of the Act exempts whole of tax on sales of goods, if such goods are purchased from the registered dealer and used in the execution of works contract relating to processing of cotton textile fabrics including bleaching, dying and printing thereof.

During test check of records between March 2011 and June 2012 of 12 [15] offices, we noticed that 20 registered dealers in the assessment year from 2006-07 to 2008-09 had either i) incorrectly shown less turnover of sales than what was shown in their books of accounts or ii) had irregularly deducted the

[14] ACCT: 5 Ahmedabad, Gandhidham and 41 Vadodara.

[15] ACCT: 5, 6, 8, 16, 21 & 22 Ahmedabad, Mehsana, 40 and 41 Vadodara, 74 Vapi, 68 Surat
DCCT: Corporate-2, Ahmedabad

turnover as exempted item or iii) deducted the job work income from the total turnover which was not admissible. The incorrect exhibition of turnover or irregular deductions led to escapement of taxable turnover aggregating to ₹ 85.62 crore. This has resulted in short levy of tax amounting to ₹ 4.72 crore including interest of ₹ 1.74 crore.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.9 Non/short levy of VAT due to irregular deduction

Section 2(30) read with Section 7 of GVAT Act and Rule 18AA of GVAT Rules *inter alia*, provide for levy of tax on the taxable turnover of sales which remains after deducting there from, in case of sales in relation to works contract, the charges towards labour, service and other like charges at the rate set out against each of them in the Schedule II or Schedule III.

During test check of assessment records between March 2012 and May 2012 of three [16] offices, we noticed that a registered dealer during 2007-08 had deducted the value of imported materials as High Sea Sale (HSS) from gross taxable receipt of a project work which he was executing under a contract on Turn Key basis. The dealer had imported material for use in the project and also paid custom duty. Further, the dealer had received total amount of the project including the value of imported goods from the contractee. Thus, the deduction on account of HSS was irregular as the title to the goods was not transferred before the goods had crossed the customs frontier. Further, in two cases, the dealers had understated their receipts by incorrectly showing the amount of sales either by not reckoning the opening stock or by erroneously arriving at the amount of turnover. This has resulted in short levy of tax amounting to ₹ 70.13 lakh including interest of ₹ 24.28 lakh.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.10 Non-levy of tax due to non-assessment of Unregistered Dealer (URD)

Section 34(8) of Gujarat Value Added Tax Act, 2003 states that if the Commissioner is satisfied that any dealer who has been liable to pay tax, has failed to get himself registered, the Commissioner shall proceed to assess the dealer in respect of unregistered period.

During test check of records between January 2012 and February 2012 of two[17] offices, we noticed that three unregistered dealers got themselves registered in the midyear of the assessment year 2006-07. However, the

[16] ACCT: 24 Gandhinagar, 42 Vadodara and DCCT: Bharuch.

[17] ACCT: 8 Ahmedabad, 41 Vadodara

assessing authorities assessed the turnover of the dealers only for the period after their date of registration and had not assessed the tax on the turnover amounting to ₹ 5.94 crore made by them in the capacity of URD dealers prior to their registration. This resulted in non-levy of VAT of ₹ 26.94 lakh including interest of ₹ 1.32 lakh.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.14.11 Irregular allowance of ITC

Section 14(A) (2) and 14(3) of Gujarat Value Added Tax Act, 2003 prohibit for claiming any tax credit by lump sum certificate holder. Further, Rule 28(8) (vi-a) (3) of Gujarat Value Added Tax Rules, 2006 states that if such dealer has already claimed the tax credit of the goods held in stock on the date of effect of permission to make lump sum tax and such goods are going to be used in the works contract for which permission to pay lump sum is sought for, he shall reverse such input tax credit claimed.

During test check of records of six[18] offices between March 2011 and June 2012, we noticed that seven registered dealers for assessment period 2006-07 and 2007-08 had not reversed or short reversed the ITC claimed on the goods which was in stock at the time of granting permission to pay lump sum tax.

(₹ in lakh)

Sl. No.	No. of dealers	Nature of objection	Amount of ITC reversible	Short levy of tax including interest and penalty
1	05	The dealer did not reverse Input Tax Credit on purchase of goods proportionately at the time of granting permission to pay lump sum tax. The amount of goods on which ITC was reversible was ₹ 34.74 crore.	149.36	462.67
2	02	Input Tax Credit was allowable ₹ 32.74 lakh but the assessing officers allowed tax credit of ₹ 48.08 lakh.	15.34	24.07
	07	**Total**	**164.70**	**486.74**

Thus, the non-reversal or short reversal of ITC by the dealers resulted in short levy of tax of ₹ 4.87 crore including interest of ₹ 1.11 crore and penalty of ₹ 2.10 crore.

[18] ACCT: 9 & 10 Ahmedabad, Jamkhambalia, Gandhidham, Mehsana
DCCT: Bharuch.

The matter was reported to the Department and the Government in July 2012; their reply has not been received (September 2012).

2.15 Incorrect/excess grant of ITC on purchases

As per Section 11 of Gujarat Value Added Tax Act, 2003, a registered dealer who has purchased taxable goods shall be entitled to claim tax credit equal to the amount of tax paid. The tax credit shall be allowed on his purchase of taxable goods in the State which are intended for the purpose of sale or resale; sale in the course of inter State trade or commerce; branch transfer or consignment to other States; sales in the course of export out of territory of India; sales to SEZ, use as raw material in the manufacture of taxable goods and use as capital goods meant for use in manufacture of taxable goods.

2.15.1 During test check of the audit assessments/ self assessment cases of 35[19] offices between July 2010 and March 2012, we noticed in 68 assessments of 68 dealers finalised between January 2009 and November 2011 for the period between 2006-07 and 2007-08, the AA had allowed excess/ incorrect Input Tax Credit (ITC) of ₹ 8.19 crore on purchases made by the dealers. This resulted in incorrect/excess grant of ITC of ₹ 23.89 crore including interest of ₹ 3.46 crore and penalty of ₹ 12.24 crore. A few cases are illustrated below.

<table>
<tr><th>Sl. No.</th><th>Name of the office</th><th>Assessment year
Date of assessment</th><th>Nature of observation</th><th>Excess grant of ITC (₹ in lakh)</th></tr>
<tr><td>1</td><td>DCCT-7, Gandhinagar</td><td>2006-07
31.12.2010</td><td>ITC allowed on "fixed Assets/Capital goods" which are not plant & machinery and are not directly involved in the process of manufacturing.</td><td>7.53</td></tr>
<tr><td colspan="5">Remarks: Department while accepting the audit observations stated that revision order under Section 75 was passed on 07.05.12 and ITC of ₹ 7.53 lakh was disallowed.</td></tr>
<tr><td>2</td><td>DCCT-4, Ahmedabad</td><td>2006-07
28.03.2011</td><td>ITC allowed on consumable stores for manufacturing tax free goods.</td><td>11.00</td></tr>
<tr><td colspan="5">Remarks: Department while accepting the audit observations stated that detailed report would be submitted after issue of revision order.</td></tr>
<tr><td>3</td><td>DCCT-4, Ahmedabad</td><td>2007-08
01.12.2010</td><td>ITC allowed on purchases from the Ab-initio cancelled dealer</td><td>16.81</td></tr>
<tr><td colspan="5">Remarks: Department while accepting the audit observations passed reassessment order under Section 35 of GVAT Act, and raised demand of ₹ 16.81 lakh.</td></tr>
</table>

[19] ACCT: 1, 3, 5, 8, 11, 14, 16, 18, 20, 21 Ahmedabad, 1, Anand, Ankleshwar, 2, Bhavnagar, Gandhidham, Ghandhinagar, 1, Jamnagar, Morbi, 1, 2, Nadiad, 4 Rajkot, 1, 3, 4, 11, 12, Surat, and 5,7 Vadodara.
DCCT: 3, 4 Ahmedabad, Corporate Cell 3, Ahmedabad, Gandhidham, Gandhinagar, Nadiad, 17 Surat and Valsad

4	ACCT-14 Ahmedabad	2006-07 18.05.2011	ITC claimed by the assessee as per return was ₹ 42.56 lakh but the AA in AR allowed ₹ 43.71 lakh resulting in excess grant of ITC of ₹ 1.15 lakh.	1.15
Remarks: Department while accepting the audit observations stated that detail report will be submitted after receipt of report from concerned Joint Commissioner.				
5	DCCT-25, Gandhidham	2006-07 30.03.2011	Claim of ITC against revised return admitted, though revised return was filed after due date.	8.51
Remarks: Department while accepting the audit observations stated that detailed report would be submitted after issue of revision order.				

The above facts were brought to the notice of the Department between January and May 2012. The Department accepted the audit observations in 26 cases involving an amount of ₹ 6.11 crore and recovered ₹ 3.91 lakh in two cases. The particulars of the recovery in accepted cases and the replies of remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in 26 cases; the reply in the remaining cases had not been received (September 2012).

Under Section 11 of GVAT Act, 2003, a registered dealer who has purchased taxable goods shall be entitled to claim tax credit equal to the amount of tax paid. Under sub-Section 3(b) (iii) of Section 11 of the Act, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* of taxable turnover of the purchases of fuels used for the manufacture of goods. Further, the Gujarat Sales Tax Tribunal in its judgment in the case of M/s Mahavir Inductomelt P. Ltd. (Ship breaker) v/s the State of Gujarat held that dismantling of an unserviceable discarded ship is not a manufacturing process.

2.15.2 During test check of the records of four[20] offices, we noticed between June 2011 and January 2012 in 56 assessments of 48 dealers for the period between 2006-07 and 2007-08 finalised between May 2010 and April 2011 that the AOs had allowed excess ITC on fuel.

In case of nine assessments related to nine dealers, the AOs either did not deduct four *per cent* ITC on purchase of fuel or deducted it short, while in case of 47 assessments of 39 dealers, the AOs allowed them ITC on purchase of fuel (LPG) though the dealers were ship breakers and had used the fuel in the ship breaking activity. As the

[20] ACCT: 15 Ahmedabad and 4 Rajkot
DCCT: Bhavnagar

process of dismantling of ships is not a manufacturing activity as per the tribunal judgment cited above, no ITC was admissible on the fuel used in the dismantling of ships.

This has resulted in irregular/excess grant of ITC of ₹ 1.49 crore including interest of ₹ 55.84 lakh and penalty of ₹ 10.46 lakh.

The above facts were brought to the notice of the Department between April 2011 and May 2012. The Department in cases of 47 assessments of 39 dealers involving short levy of ₹ 1.20 crore stated that matter was pending before the Tribunal and the outcome of the cases would be informed accordingly and in six cases, the Department accepted the audit observations involving an amount of ₹ 17.32 lakh. The particulars of the recovery in accepted cases and the replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in six cases;the reply on the remaining cases had not been received (September 2012).

Under sub-Section 3(b) of Section 11 of the Act, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* of taxable turnover of the purchases

(i) of taxable goods consigned or dispatched for branch transfer or to his agent outside the state, or

(ii) of taxable goods which are used as raw material in the manufacture, or in the packing of goods which are dispatched outside the state in the course of branch transfer or consignment or to his agent outside the state.

2.15.3 During test check of the records of 12[21] offices, we noticed between June 2010 and March 2012 in the assessments of 13 dealers for the period 2006-07 that the AOs while finalising the assessments between July 2009 and March 2011 either did not reduce the ITC proportionately or reduced less ITC, though the dealers had availed ITC on purchased goods and had effected branch transfer of such goods or manufactured goods to other States. This resulted in excess grant of ITC of ₹ 95.73 lakh including interest of ₹ 23.18 lakh and penalty of ₹ 31.76 lakh.

The above facts were brought to the notice of the Department between February 2011 and May 2012. The Department accepted the audit observations in nine cases involving an amount of ₹ 60.02 lakh and recovered ₹ 4.34 lakh in three cases. The particulars of the recovery in accepted cases and replies of remaining cases had not been received (September 2012).

[21] ACCT: 1 and 19 Ahmedabad, Ankleshwar, Godhra, Kalol, 4 Rajkot, 3 Surat and 7 Vadodara.
DCCT: 6 Ahmedabad, 13 Nadiad, 22 Rajkot & 1 Vadodara.

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in nine cases; the replies on the remaining cases had not been received (September 2012).

Section 11(5) (g) of GVAT Act, 2003 stipulates that Input Tax Credit shall not be allowed on purchases of goods specified in the Schedule-I or the goods exempt from whole of tax by notification issued under Sub Section (2) of Section 5 of the Act, *ibid.* The Government of Gujarat, vide notification No.GHN-96 dated 02.09.2006 issued under Section 5(2) of the Act, notified that sales of Kerosene through Public Distribution System (PDS) was exempted from the payment of tax.

2.15.4 During test check of records of two[22] offices, we noticed between May and August 2011 in the assessment of eight dealers for the period 2006-07 finalised between May 2009 and March 2011 that the AOs had allowed ITC of ₹ 1.92 lakh on Kerosene purchased by Public Distribution System dealers after 2 September 2006, though it was declared tax free with effect from the date of notification. Since the amount of tax collected was in contravention of the Rule, it should have been forfeited under Section 31(3) of the Act, *ibid.* Thus, grant of ITC by the assessing authority was irregular. This has resulted in irregular grant of ITC of ₹ 8.24 lakh including interest of ₹ 2.56 lakh and penalty of ₹ 3.76 lakh.

The above facts were brought to the notice of the Department between April and May 2012. The Department accepted the audit observations in three cases involving an amount of ₹ 3.72 lakh. The particulars of the recovery in accepted cases and the replies of remaining cases have not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in three cases; the replies on the remaining cases had not been received (September 2012).

[22] ACCT: Amreli and Godhra

2.16 Incorrect grant of ITC due to incorrect credit on opening stock

Under Section 12 of the GVAT Act, 2003, read with rule 16 of the GVAT Rules 2006, all the dealers who are deemed to have been registered under Section 23, shall furnish in Form 108 to the authority a prescribed statement of such taxable goods under this Act held in stock on 31 March 2006, which were purchased during the period 2005-06 for which the dealer intends to claim tax credit. Further, under sub Section (7) of Section 12 of the Act ibid, a penalty equal to twice the amount of excess tax credit claimed than what he is entitled to is also leviable.

During test check of records of 15[23] offices, we noticed between August 2010 and March 2012 in the assessment of 28 dealers for the period 2006-07 finalised between March 2009 and March 2011 that the AOs had allowed excess ITC on opening stock as detailed below:

(₹ in lakh)

Sl. No.	No. of dealers	ITC allowed	ITC allowable	Excess ITC allowed	Short levy of tax including interest and penalty	Nature of Objection
1.	11	58.98	8.31	50.67	182.59	AO allowed ITC of ₹ 58.98 lakh on the opening stock, though as per VAT Audit Report and Balance sheet the dealers were entitled to ITC of ₹ 8.31 lakh.
2.	6	15.72	1.47	14.25	48.55	AOs allowed benefit of ITC on opening stock beyond September 2006 though it was not permissible under Rule 16 (6).
3.	4	3.62	0	3.62	3.62	AOs allowed ITC on opening stock without submission of the claim in the prescribed Form 108 which is irregular as per Section-12.
4.	2	7.73	2.33	5.40	19.81	As per the provision under Section 12 (2) of the Act, the ITC claim could not be enhanced but the AOs allowed the dealers to enhance their claim of ITC on opening stock through revised Form 108.
5.	2	28.35	25.81	2.54	8.81	Adoption of incorrect mode of calculation resulted in excess claim/allowance of ITC on opening stock.
6.	1	2.36	0.98	1.38	3.99	AO allowed ITC on opening stock at higher rate of tax than was admissible as per Rule.
7.	1	3.65	2.15	1.50	5.19	AO allowed ITC of ₹ 21.50 lakh on opening stock of inter-State purchase, though it was not allowable as per the Act.
8.	1	1.62	0	1.62	2.20	AO did not reduce ITC of ₹ 1.62 lakh proportionately on opening stock though the final product was Tax free goods.
Total	**28**	**122.03**	**41.05**	**80.98**	**274.76**	

[23] ACCT: 8, 13, 16, 21 and 22 Ahmedabad, Amreli, Ankleshwar, Bharuch, Godhra, 2 Nadiad, 5 Rajkot, 3 Surat,
DCCT: 4 Ahmedabad, 22 Rajkot, 17 Surat.

This resulted in excess allowance of ITC of ₹ 2.75 crore including interest of ₹ 50.78 lakh and penalty of ₹ 1.43 crore.

The above facts were brought to the notice of the Department between January and May 2012. The Department accepted the audit observations in 14 cases involving an amount of ₹ 20.80 lakh. The particulars of the recovery of the accepted cases and replies of remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in 14 cases;the replie s of the remaining cases had not been received (September 2012).

2.17 Excess ITC/Tax paid carried forward

As per column No.22 of PART-V of Annual Return in Form 205 and Assessment order in Form-304, amount of excess tax paid and/or excess ITC which remains after adjustment against tax payable, is carried forward to the subsequent year. As a prevalent procedure, the amount carried forward in the Annual Return/ monthly return of April of subsequent year is accepted as correct and allowed in the assessment order also. In case carried forward tax/ITC is less in assessment than claimed in Annual Return/monthly return of April of subsequent period, the deficit amount along with interest is treated as demand. The procedure is reasonably followed, because assessments are done in selected cases and for selected periods only and the dealers avail the carried forward amount in subsequent period before assessments are finalised. Further, as per Section 32 returns or revised returns furnished by the dealer in accordance with section 29 shall be subject to scrutiny by the commissioner.

During test check of monthly/ quarterly, and annual returns in six[24] offices we noticed between March 2011 and March 2012 in the assessments of 23 dealers for the period 2006-07 and 2007-08 finalised between August 2009 and March 2011 that the assessing authority allowed ₹ 109.20 lakh as against the admissible carry forwarded ITC of ₹ 74.86 lakh. This has resulted in excess carry forward of ITC of ₹ 34.34 lakh to the subsequent years.

The Department does not have any system in place to rectify the effect of reduction of ITC in subsequent years. The AOs had also not scrutinised the returns of the subsequent periods to ensure the effect of reduction of ITC. This resulted in excess carry forward of ITC of ₹ 56.26 lakh including interest of ₹ 21.87 lakh.

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[24] ACCT : 5 and 21 Ahmedabad, Ankleshwar, Gandhidham
DCCT: 4 Ahmedabad, 11 Vadodara

The above facts were brought to the notice of the Department between April and May 2012. The Department accepted the audit observations in 19 cases involving an amount of ₹ 49.79 lakh and recovered in four cases of ₹ 6.47 lakh. The particulars of the recovery of the accepted cases and replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in 19 cases;the re ply on the remaining cases had not been received (September 2012).

2.18 Application of incorrect rate of tax (VAT)

As per Section-7 of GVAT Act, 2003 there shall be levied a tax on the turnover of sales of goods specified in Schedule-II and Schedule-III at the rates set out against each of them. Further as per entry 87 of schedule-II specifies that all goods other than those specified in Schedule-II or III, tax at the rate of twelve and half *per cent* is leviable.

During test check of the records of 12[25] offices, we noticed between August 2010 and March 2012 in assessments of 20 dealers for the assessment period 2006-07 finalised between July 2009 and December 2011 that the AOs incorrectly assessed tax at lower rates. This resulted in short levy of tax of ₹ 341.16 lakh including interest of ₹ 77.15 lakh and penalty of ₹ 147.62 lakh as detailed below.

(₹ in lakh)

Sl. No.	No. of dealers	Commodity	Rate of tax		Short levy of tax including interest and penalty
			Leviable	Levied	
1	3	Pipe fittings	12.5	4	23.58
2	4	Valves	12.5	4	51.47
3	1	Fire safety instruments	12.5	4	5.07
4	1	Sawing machine parts	12.5	4	0.72
5	1	Oil engine parts	12.5	4	1.38
6	1	Trade rubber	12.5	4	5.48
7	1	Chemical fertilisers	4	0	1.37
8	1	Prilled Ammonium Nitrate	12.5	4	12.98
9	1	Cycle tyre &tubes	12.5	4	1.56
10	1	Electric goods	12.5	4	3.19
11	1	Plastic containers capacity more than 20 litres	12.5	4	91.22
12	1	Electronic capacitors	12.5	4	7.04
13	1	Crain, lifts etc.	12.5	4	91.42
14	1	Electronic goods	12.5	4	44.06
15	1	Tractor parts	12.5	4	0.62
	20			**Total**	**341.16**

[25] ACCT: 2, 6, 9, 11, 14, 19, 21, 22 and 23, Ahmedabad, Gondal, 12 Surat
DCCT: 11 Vadodara.

The above facts were brought to the notice of the Department between March and May 2012. In one case the Department did not accept the audit observation stating that Prilled Ammonium Nitrate was chemical and was levied to tax accordingly. The reply is not tenable as Prilled Ammonium Nitrate is not chemical rather it is an explosive which is used for the purpose of blasting of stones in quarries. The Department accepted the audit observations in six cases involving an amount of ₹ 45.33 lakh. The particulars of the recovery of the accepted cases and the replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in seven cases; the replies of the remaining cases had not been received (September 2012).

2.19 Avoidable payment of interest on refund

As per Rule 15(7) of the GVAT, Rules, 2006, in case of sales made in the course of export outside the territory of India and the amount of carried forward tax credit admissible under items (iv) and (v) of clause (a) of sub-section(3) of Section 11 of Gujarat Value Added Tax, Act, 2003 remains unadjusted, such amount of tax credit shall be refunded within the period of three months next following the end of the month in which such purchases were made. Further, as per Section-32 returns or revised returns furnished by the dealer in accordance with section 29 shall be subject to scrutiny by the commissioner.

During test check of records of seven[26] offices, we noticed between March 2011 and February 2012 in the assessment of 14 dealers for the period 2006-07 finalised between June 2009 and March 2011 that the AOs allowed payment of interest on refund. Payment of interest of ₹ 3.86 crore on refunds of ₹ 11.92 crore could have been avoided, if provisional assessment of tax had been done timely as per provisions stated above. This resulted in avoidable payment of interest of ₹ 3.86 crore.

This was brought to the notice of the Department between January and May 2012. We had not received replies (September 2012).

We reported the matter to the Government (June 2012), we had not received their replies (September 2012).

[26] ACCT : 5 and 11 Ahmedabad, 6 Vadodara, and 1 Vapi
DCCT: Corporate cell-2 and petro-1 Ahmedabad, Valsad

2.20 Short levy of VAT due to incorrect determination of turnover

As per Section 7 of Gujarat Value Added Tax Act, 2003 there shall be levied tax on the turnover of sales of goods at the rates specified in the Schedule II or III. Further, as per the instructions and guidelines issued by the Department from time to time, while finalising assessment proceedings assessing officers are expected to take into account the facts and figures contained in annual accounts and other papers etc, submitted by the dealer apart from the facts and figures mentioned in the periodical returns furnished by the dealer.

During test check of records of 15[27] offices, we noticed between January 2011 and March 2012, in 19 assessments of 18 dealers for the period from 2006-07 to 2007-08 finalised between July 2009 and March 2011, that the Assessing Officers did not include the amount of valuable consideration forming part of sale turnover, such as, sales of DEPB[28], warranty claim income, sales of plant and machinery. This resulted in short realisation of VAT of ₹ 2.84 crore including interest of ₹ 80.56 lakh and penalty of ₹ 87.98 lakh.

The above facts were brought to the notice of the Department between January and May 2012. The Department accepted the audit observations in eight cases involving an amount of ₹ 33.38 lakh and recovered ₹ 6.74 lakh in two cases. In one case, regarding the non-inclusion of turnover made by the dealer prior to his registration, the Department stated that such a type of turnover was effected by the unregistered dealer could be assessed within a period of eight years. In this case, the period would be available upto March 2015. Hence, the same would be assessed under intimation to audit. The particular of recoveries of accepted cases and replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in eleven cases;the replies on the remaining cases had not been received (September 2012).

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[27] ACCT: 5, 6, 10, 14, 20 and 22 Ahmedabad, 51 Anand, 1 Bhavnagar, 2 Nadiad, 5 Rajkot, 5 Vadodara and 2 Vapi
DCCT: 2 Ahmedabad, 19 Bhavnagar, 22 Rajkot

[28] Duty Entitlement Pass Book

2.21 Short levy of VAT due to misclassification

The GVAT Act, 2003 provides for levy of tax at the rates as prescribed in the schedules to the Act, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the schedule, general rate of tax given in residuary entry is applicable.

During test check of records of four[29] offices, we noticed between June 2011 and March 2012 that the AOs while finalising assessments between March 2010 and March 2011 allowed five dealers in their assessments to pay tax at lower rates due to incorrect classification of goods, such as chewing gum was classified as sweet and sweet meat, distilled water was treated as medicine, bio booster was treated as pesticides. These commodities fall under residuary entry and attract VAT at 12.5 *per cent*. This resulted in short levy of VAT of ₹ 2.42 crore including interest of ₹ 54.22 lakh and penalty of ₹ 1.11 crore.

The above facts were brought to the notice of the Department between April and May 2012. The Department accepted the audit observations in four cases involving an amount of ₹ 2.42 crore. The particulars of the recovery of accepted cases and the replies of remaining one case had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in four cases;the replies on the remaining one case had not been received (September 2012).

2.22 Non/short levy of interest (VAT)

Under Section 42(6) of the GVAT Act, 2003 where the amount of tax assessed or reassessed for any period exceeds the amount of tax already paid by a dealer for that period, the dealer shall pay simple interest at the rate of eighteen *per cent* per annum on the amount of tax remaining unpaid for the period of default. By virtue of Section 9 (2) of the CST Act, the above provisions apply to the assessments under the CST Act as well.

During test check of records of 13[30] offices, we noticed between June 2010 and February 2012 in the assessments of 17 dealers for the period 2006-07 finalised between July 2009 and April 2011 that AOs either did not levy interest or levied short on the amount of unpaid tax. This resulted in non/short levy of interest of ₹ 40.37 lakh.

[29] ACCT: 5,9 and 20 Ahmedabad,
DCCT: Range-18, Valsad

[30] ACCT: 6, 8 and 11 Ahmedabad, Ankleshwar Gandhidham, Porbandar, 5 Rajkot and Vyara
DCCT: Corporate 3 Ahmedabad, 13 Nadiad, 11 Vadodara, Enforcement and 15 Surat

We pointed this out to the Department between January 2011 and May 2012. The Department accepted the audit observations of nine cases of ₹ 26.90 lakh and recovered ₹ 1.48 lakh in three cases, particulars of recovery of accepted cases and replies on remaining cases were awaited (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in twelve cases; the replies on the remaining cases had not been received (September 2012).

2.23 Non/short levy of penalty (VAT)

Section 34 (12) of the GVAT Act, 2003 provides that where tax assessed or reassessed exceeds the amount of tax already paid with returns by the dealer by twenty five *per cent* of the amount of tax so paid, the dealer shall be required to pay penalty not exceeding one and half times the difference between the tax paid with returns and the amount so assessed or reassessed and Section 34 (7) provides that if the dealer has availed tax credit for which he is not eligible he shall be required to pay penalty not exceeding one and half times the tax assessed on account of the said reason.

Further Section 12 (7) of the GVAT Act, 2003 provides that if the Commissioner is satisfied that a dealer has claimed excess tax credit than what he is entitled to under section 11 or under this section, the Commissioner may, after giving the dealer an opportunity of being heard direct him to pay a penalty equal to twice the amount of tax credit so claimed.

During test check of the records of 14[31] offices, we noticed between January 2011 and March 2012 in the assessment of 26 dealers for the period from 2006-07 to 2008-09 that the difference between tax assessed and tax paid with returns exceeded by 25 *per cent* of the amount of tax paid, however, the AOs while finalising the assessments between August 2007 and April 2011 did not levy penalty or short levied the penalty in terms of aforesaid provisions. This resulted in non/ short levy of penalty of ₹ 11.07 crore.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in seven cases involving an amount of ₹ 33.67 lakh and recovered ₹ 3.78 lakh in one case. The particulars of the recovery of accepted cases and the replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in eight cases; the replies on the remaining cases had not been received (September 2012).

[31] ACCT: 2 , 6 Ahmedabad, Gandhidham, Jamkhambhaliya, Kalol, Palanpur, 4 Rajkot and 1 Vapi
DCCT: Enforcement-2 and Petro-2 Ahmedabad, 22 Rajkot, 16 and 17 Surat.
JCCT: Flying Squad Ahmedabad.

2.24 Non-levy of VAT on hiring charges

As per section 2(23)(d) of the Gujarat Value Added Tax Act, 2003 sales include transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration. Further, as per the instructions and guidelines issued by the Department from time to time, while finalising assessment proceedings, assessing officers are expected to take into account the facts and figures contained in annual accounts submitted by the dealer apart from the figures mentioned in the periodical returns furnished by the dealer.

During test check of records of two[32] offices, we noticed between November 2011 and March 2012 in the assessments of three dealers for the period 2006-07 finalised between March 2010 and March 2011 that AOs did not include sales considerations received as hiring charges in lieu of transfer of rights to use such as, lease of tankers, machinery and equipments etc. in the sales turnover for levying tax, even though it was evident from VAT Audit report/profit and loss account that the dealers had effected such transactions during the year. This resulted in non-levy of VAT on specified goods of ₹ 51.30 lakh including interest of ₹ 21.40 lakh.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in one case involving an amount of ₹ 42.70 lakh. The particulars of the recovery of accepted case and the replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in one case;the rep lies on the remaining cases had not been received (September 2012).

2.25 Short and belated payment of tax due to failure in return scrutiny

Section 33 of the GVAT Act, 2003, stipulates that where a dealer has furnished all the returns/ revised returns and annual return and paid the tax due according to such returns and the Commissioner is satisfied that returns are correct and complete and a notice for audit assessment has not been served on such dealer, such dealer shall be deemed to have been assessed for that year. Further, returns or revised returns furnished by the dealer are required to be scrutinised under Section 32 (1) of the Act.

During test check of the records of ACCT-8, Surat, we noticed in August 2011 in the case of one dealer for the period 2007-08 treated as deemed to have been assessed, that the dealer had paid ₹ 90.76 lakh as per the copies of challans available in the self assessed file against the tax payable of ₹ 1.17 crore leaving an

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[32] ACCT: 20 Ahmedabad, Gandhidham

unpaid balance of ₹ 26.51 lakh.

We further noticed delay in payment of tax that ranged between 34 days and 495 days and attracted interest of ₹ 9.74 lakh. Failure to scrutinise returns and non-inclusion of such a big tax payer in the list of audit assessment resulted in short and belated payment of tax of ₹ 36.25 lakh including interest of ₹ 9.74 lakh.

After being pointed out by us the concerned division informed that reassessment order has been passed in view of audit observation and a demand of ₹ 16.91 lakh was raised at the instance of audit.

This was brought to the notice of the Department (May 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

2.26 Irregular payment of Lump Sum Tax

Eatables are taxable at the rate of 12.5 *per cent* under the GVAT Act, 2003. However, section 14D of the Act read with Rule 28C of GVAT Rules stipulates that the Commissioner may permit payment of lump sum tax by way of composition at the rate of four *per cent* on sales of eatable made by hotels, restaurants etc; provided that they do not have in stock any eatable stock purchased from outside the state for the purpose of composition of tax. As per explanation provided below section 14D of the Act, eatable include alcoholic and non-alcoholic beverages.

2.26.1 During test check of the records of ACCT-1, Ahmedabad office, we noticed between March and July 2011 that a dealer engaged in the business of sales of eatables, opted for and was allowed by the assessing officer to pay lump sum tax by way of composition on his turnover during 2006-07. Scrutiny of records, however, revealed that the dealer had made inter-state purchase of liquor valued of ₹ 31.40 lakh which was in violation of the rule. The dealer was thus, required to be assessed to pay tax at 12.5 *per cent* on his taxable turnover of ₹ 82.50 lakh. However, the Assessing authority did not detect the mistake while finalising the assessment in January 2011 and levied tax at the rate of four *per cent.* This resulted in short realisation of tax of ₹ 11.82 lakh including interest of ₹ 4.82 lakh.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observation involving an amount of ₹ 10.82 lakh. The particulars of the recovery had not been received (September 2012).

The matter was reported to the Government (June 2012), the replies had not been received (September 2012).

Bakery items are taxable at the rate prescribed under section 7 of the GVAT Act. However, the Government vide notification No.24 dated 31 March 2006 permitted the dealers engaged in the manufacturer of Bakery items, to opt for payment of lump sum tax at the rate of two *per cent* of the sales turnover by way of composition.

Section 33(3) (b) of the Act stipulates that in the case of deemed assessment, the Commissioner should ensure at the time of submission of a return by a dealer that the returns furnished by the dealer are correct

2.26.2 During the test check of five self assessments of five dealers of ACCT-1, Surat for the period 2006-07, we noticed that the dealers engaged in the manufacture of bakery items had opted for and were allowed by the assessing authority for composition of tax for the period 2006-07. The dealers were liable to pay tax of ₹ 2.48 lakh on sales turnover of ₹ 123.98 lakh. However, they paid tax of one lakh after incorrectly deducting the sale of un-branded biscuits valued at ₹ 74.39 lakh from the sales turnover. The omission was not detected by the assessing authority at the time of submission of a return by a dealer resulting in short realisation of ₹ 4.70 lakh including interest of ₹ 2.23 lakh and penalty of ₹ 0.99 lakh.

This was brought to the notice of the Department (March 2012) and reported to the Government (June 2012);their reply has not been received (September 2012).

2.27 Incorrect deduction from sales turnover under GVAT Act

As per Section 2(30) of the GVAT Act, 2003 taxable turnover means the turnover of all sales or purchases of a dealer during the prescribed period in any year which remains after deducting there from:

a) The turnover of sales not subject to tax under the Act;

b) The turnover of goods declared exempt under sub section (1) of section 5 or under a notification under sub section (2) of section 5.

During test check of the records of three[33] offices, we noticed between April and December 2011 in the assessments of three dealers for the period 2006-07 finalised between December 2009 and March 2011 that the AOs allowed deductions on sales of Mobile phones and Maize oil cake treating the goods as tax free though the goods were not exempted from levy of tax. This resulted in incorrect deduction of turnover involving tax of ₹ 7.58 lakh including interest of ₹ 2.93 lakh.

[33] ACCT: 19 Ahmedabad, Morbi
DCCT: 1 Ahmedabad.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in one case involving an amount of ₹ 6.29 lakh. The particulars of the recovery in accepted case and the replies of remaining cases had not been received (September 2012).

The matter was reported (June 2012) to the Government and the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

2.28 Short levy of tax due to application of incorrect rate of tax (CST)

The Gujarat Sales Tax Act (GST), 1969 provides to levy tax at the rates as provided in the schedules to the Act, however, where the goods are not covered under any specific entry of schedule, rate of tax given for residuary entry is applicable. Further, under Section 8(1) of Central Sales Tax Act (CST), 1956, every dealer who in the course of inter-State trade or commerce sells to a registered dealer goods of the description referred to in sub-section 3 shall be liable to pay tax at the rate of four *per cent*. Explanation below section 8 of CST Act says that sale of any goods shall not be deemed to be exempt from tax generally payable under the sales tax law of the concerned State, if the sale of such goods is exempt only in specified circumstances or conditions.

During test check of records of nine[34] offices, we noticed between August 2010 and January 2012 in the seven CST assessments of seven dealers for the period from 2003-04 to 2006-07 finalised between March 2007 and February 2011 that the Assessing Officers incorrectly assessed tax on sales turnover of ₹ 14.29 crore of the commodities as mentioned below:

[34] ACCT: 15 Ahmedabad, Ankleshwar and 6 Vadodara, 2 Vapi.
DCCT: Corp-1, Corp.Cell-3, Petro-2 Ahmedabad, 14 Bharuch and 12 Vadodara

Sl. No.	No. of dealers	Commodity	Applicable rate of tax (%)	Rate applied	Turnover of sales (₹ in lakh)	Short levy of tax including interest and penalty (₹ in lakh)	Nature of audit observation
1.	1	LPG	15	14	645.42	24.78	Tax was leviable @15 *per cent* but was incorrectly levied at 14 *per cent*.
2.	4	S.S.*Patta Patti*	4	2	283.07	10.00	Tax at the rate of 2 *per cent* was applicable w.e.f. 02-08-2006 as per notification under Section 8 (5). In these four cases, sales was effected before 02-08-2006, hence tax leviable was at 4 *per cent (pre-revised rate).*
3	1	Cycle tube	4	1	233.07	12.45	The dealer paid Concessional rate of tax @ one *per cent* applicable to Tricycle, Rickshaw, Pedal Rickshaw instead of 4 *per cent* applicable to sale of parts of auto rickshaw.
4	1	Skimmed Milk Powder	4	2	267.57	16.12	The dealer had paid tax on sales of Skimmed Milk Powder at @ *per cent* on sales made prior to 02.08.06 instead of 4 *per cent*.
	7	**Total**			**1429.13**	**63.35**	

This resulted in short levy of tax of ₹ 63.35 lakh including interest of ₹ 15.87 lakh and penalty of ₹ 22.87 lakh.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in five cases involving an amount of ₹ 20.60 lakh. The particulars of the recovery in accepted cases and the replies of remaining cases had not been received (September 2012).

After we reported the matter in September 2012; the Government confirmed the reply of the Department in five cases; the replies in the remaining cases had not been received (September 2012).

2.29 Irregular grant of deduction against Form "I" for sales to SEZ unit

As per Section 8(6) of CST Act, 1956 read with rule 12 (11) of CST (Registration & Turnover) Rules, 1957 exemption of tax on sales of goods made in the course of inter State trade or commerce to SEZ units or developers is available to dealers who furnish Form 'I' duly filled in and signed by such units or developers.

During test check of records of ACCT-1, Surat, we noticed in March 2011 in the assessment of one dealer for the period 2006-07 finalised in July 2010, that the AO allowed deduction of ₹ 5.26 crore against Form 'I' for the transactions relating to the assessment period 2009-10. Detailed scrutiny of the assessment records revealed that the dealer had made intra state sale of fabrication material valued at ₹ 5.26 crore to M/s Reliance Petroleum Ltd, Jamnagar (in SEZ) in June 2009 against Form I. However, the dealer claimed the deduction against the Form I in the assessment year 2006-07 which was also incorrectly allowed by the AO. This omission on part of assessing officer resulted in irregular grant of exemption of ₹ 92.19 lakh including interest of ₹ 33.77 lakh.

This was brought to the notice of the Department (April 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

2.30 Incorrect allowance of deduction as inter-state sales

Section 6(2) of the CST Act, 1956 provides that where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of document of title of such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer shall be exempt from tax.

During test check of the records of three[35] offices between March 2010 and February 2012, we noticed in the assessments of three dealers for the period between 2005-06 and 2006-07, finalised between June 2008 and September 2010 that the AOs incorrectly granted exemption on the ineligible inter-state sales. In case of three dealers first sale was effected between two dealers situated within the State of Gujarat while in case of one dealer, the title of the goods passed to the buyer before movement of goods commenced. All the four cases were not eligible to get exemption in the light of the provision stated above. This resulted in non-levy of tax of ₹ 1.13 crore including interest ₹ 46.78 lakh.

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[35] ACCT: 8, 10 Ahmedabad and 1 Vapi.

The above facts were brought to the notice of the Department in April 2012. The Department accepted the audit observation in one case involving an amount of ₹ 5.46 lakh. The particulars of the recovery in accepted case and the replies of remaining cases had not been received (September 2012).

The matter was reported (June 2012) to the Government and the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

2.31 Irregular grant of deduction of High Seas Sales

Section 5(2) of the CST Act provides that a sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

During test check of the records of two[36] offices, we noticed between December 2009 and November 2010 in the assessment of two dealers for period from 2005-06 to 2006-07 finalised in November 2008 and May 2009 that the AOs allowed irregular deduction of high sea sales of ₹ 5.67 crore having a tax implication of ₹ 1.16 crore including interest of ₹ 26.07 lakh and penalty of ₹ 33.02 lakh as detailed below.

(i) In case of one dealer the prescribed documents *viz*. copy of agreement between the importer and purchaser, bill of entry endorsed in favour of the purchaser, sales bill, proof of payment of customs duty etc. were not found on record in support of the deduction.

When we pointed this out, the concerned Joint Commissioner informed that reassessment orders was passed and a demand of ₹ 1.14 crore was raised.

(ii) In the case of another dealer, date of purchase of stamp paper was after the date of agreement. We also noticed that the date of bill of entry was earlier than the date of agreement; the events being not in sequence leads to a suspicion that the transaction is fictitious.

This was brought to the notice of the Department between April and May 2012 and reported to the Government (June 2012); their reply has not been received (September 2012).

[36] ACCT: 14 Ahmedabad, 12 Surat.

2.32 Incorrect allowance of export deduction

Under Section 5 (3) of CST Act read with Rule 12 (10) of CST (Registration and turnover) Rules, last sale of goods preceding the sale occasioning the export of the goods out of territory of India shall also be in the course of such export (deemed export), if such last sale took place after, and was for the purpose of complying with, arrangement or order for or in relation to such export of the same goods. Further, the dealer has to furnish, a certificate in form H'duly filled in all details with evidence of export of such goods.

During test check of the records of six[37] offices, we noticed between September 2009 and March 2012 in 10 assessments of six dealers for the period from 1999-2000 to 2006-07 finalised between March 2007 and April 2011 that the AOs allowed incorrect claim of export of goods. In case of five assessments of three dealers, they allowed the deductions without production of proof of export such as 'H" forms and Bill of lading. In case of two dealers, the exported goods (copper pipes, wires etc.) were not the same. These were (sanitary and bathroom fittings) as claimed by the penultimate exporter still the claims of the dealers were admitted. In the remaining three assessments of one dealer, the name of final exporter as per bill of lading was different from the form H'produced. Allowance of irregular export sales resulted in short levy of tax of ₹ one crore including interest of ₹ 33.52 lakh and penalty of ₹ 14.40 lakh.

The above facts were brought to the notice of the Department between April and May 2012. The Department accepted the audit observations in one case involving an amount of ₹ 16.09 lakh. The particulars of the recovery in accepted case and the replies of remaining cases had not been received (September 2012).

After we reported the matter in June 2012; the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

[37] ACCT: 11, 15, 22 Ahmedabad, Gandhidham and 1 Junagadh
DCCT: 18 Valsad

2.33 Non/short levy of CST due to non-production of forms or acceptance of duplicate forms

Section 8 of the Central Sales Tax (CST) Act, 1956 provides for levy of tax at the rate of four *per cent* on inter-state sale of goods made against declaration in Form 'C'. Where the sale is not supported by declaration in Form 'C', tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher. In respect of declared goods where the sale is not supported by Form 'C', tax is leviable at twice the rate applicable. As per the decision of Honorable Supreme Court in the case of M/s. India Agency Vs. Addl. Commissioner of Sales Tax, Bangalore (139-STC-329) it is mandatory to submit original copy of declaration of Form 'C' to avail benefit of concession.

2.33.1 During test check of the records of nine offices[38], we noticed between June 2010 and January 2012 in 12 assessments of 10 dealers for the period from 2002-03 to 2006-07 finalised between March 2007 and March 2011 that AOs levied CST incorrectly on the sales valued of ₹ 13.06 crore though these were not supported by the declaration in Form 'C', so levying concessional rates of tax instead of appropriate rates of tax without obtaining the declaration in Form-C is irregular. This resulted in short levy of tax of ₹ 1.67 crore including interest of ₹ 35.24 lakh and penalty of ₹ 58.93 lakh.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in three cases involving an amount of ₹ 35.30 lakh and recovered in one case of ₹ 1.70 lakh. The particulars of the recovery in accepted cases and the replies of remaining cases had not been received (September 2012).

After we reported the matter in June 2012; the Government confirmed the reply of the Department in three cases;the replies on the remaining cases had not been received (September 2012).

2.33.2 During test check of the records of two offices[39], we noticed between October 2009 and September 2010 in two assessments of two dealers for the period 2004-05 finalised between June 2007 and June 2008 that sales of various goods were not supported with the original copy of declaration Form 'C'. However, AOs incorrectly levied concessional rates of tax instead of at appropriate rates. This resulted in short levy of tax of ₹ 12.22 lakh including interest of ₹ 2.13 lakh and penalty of ₹ 3.30 lakh.

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[38] ACCT: 5 and 16 Ahmedabad, Bhuj, Gandhidham ,Vijapur, Modasa, 7 and 12 Surat, DCCT: Enforcement Rajkot

[39] ACCT: 3 Jamnagar, 1 Junagadh

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observation in one case involving an amount of ₹ 24.20 lakh. The particulars of the recovery in accepted case and the replies of remaining one case had not been received (September 2012).

After we reported the matter in June 2012; the Government confirmed the reply of the Department in one case; the replies on the remaining case had not been received (September 2012)

2.34 Irregular set-off under Rule 44 adjusted against CST

Rule 44 of the GST Rules provides that the dealer who had paid tax on purchase of goods is eligible for set off from the tax payable on inter State sale of such goods. The rule further provides that no set off shall be granted where the vendor, who has sold the goods to the claimant, has not credited in Government treasury, the amount of tax on his sales for which set off is claimed. Further, excess set-off which remains after adjustment against GST demand is available for adjustment against CST demand.

During test check of the records of two[40] offices, we noticed between September and December 2010 in six assessments of three dealers for the period from 2004-05 to 2005-06 finalised between May 2008 and March 2009 that the dealers were irregularly granted set-off under Rule 44 which was adjusted against CST demand and the same was allowed by the assessing authority.

(i) In case of four assessments of two dealers, though the AOs finalised assessments to the best of their judgments, i.e. without obtaining the required records from the dealer as the dealers did not respond to the notices issued for assessments, still they were granted set-off under the rule without verification of the facts from the records.

(ii) In case of two assessments of one dealer, the AOs allowed set-off under this rule, though the dealer has used these goods in the manufacturing instead of reselling the purchased goods. So the allowance of set-off on resale of goods is irregular. This resulted in underassessment of CST of ₹ 43.78 lakh including interest of ₹ 9.80 lakh and penalty of ₹ 15.02 lakh.

The above facts were brought to the notice of the Department in May 2012. The Department accepted the audit observations in four assessments of two dealers involving an amount of ₹ 45.38 lakh. The particulars of the recovery in accepted cases and the replies on remaining cases had not been received (September 2012).

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[40] ACCT: 7 and 9 Ahmedabad.

After we reported the matter in June 2012; the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

2.35 Incorrect exemption/deferment under incentive scheme to new industries

The composite incentive scheme issued under sales tax regime allowed the eligible units to avail of tax exemption as well as tax deferment incentives simultaneously. Rule 18A (3) of the GVAT Rules provides that the eligible units availing of composite benefit under the earlier law could opt for either tax exemption or tax deferment incentive. Rule 18 D (5) stipulates that the eligible unit shall make payment of tax deferred in accordance with the provisions of the respective Government Resolutions (resolution). The resolution for composite incentive specified that the tax exemption under the scheme shall be guided by the notifications issued under the repealed Acts and that of tax deferment shall be guided by the respective resolution. The deferment incentive of 1995-2000 industrial incentive scheme was guided by the resolution issued (September 1995) by the Industries and Mines Department (I&MD). Under the provisions of the resolution, I&MD issued eligibility certificates to the dealers based on which, the commercial tax Department issued sanction certificate. The resolution on deferment incentive stipulates that the eligible units shall pay the deferred tax in six equal annual installments to the Government account, on completion of deferment period or amount of incentive, whichever is earlier. Accordingly, for the composite incentive holders who had exercised option for continuation of tax exemption under the GVAT Act, the scheme of deferment was completed on 31 March 2006. Therefore, as per the conditions laid down in the resolution GR for deferment incentive, they were required to start payment of deferred tax from April 2006, in six annual equal installments.

2.35.1 During test check of the records of two offices[41] we noticed between October 2011 and February 2012 in case of five eligible industrial units under composite incentive scheme under erstwhile GST Act had availed deferment incentive of ₹ 48.57 crore upto 31 March 2006 and opted for exemption under the GVAT Act. As per the stipulations of deferment incentive, the Department should have recovered ₹ 48.57 crore on annual basis from these units. The AOs did not initiate any action to recover the installments due. Interest was also recoverable at the rate of 18 *per cent* per annum for the delay in payment of installments. This resulted in non-recovery of ₹ 65.36 crore including interest of ₹ 16.79 crore.

[41] DCCT: Corporate-2, Ahmedabad, 25 Gandhidham.

This was brought to the notice of the Department between April and May 2012 and reported to the Government (June 2012); their reply has not been received (September 2012).

> Under the sales tax incentive scheme, the eligible units are required to remain in production continuously during the eligibility period mentioned in the eligibility certificate. In case of contravention of any of the conditions laid down for the eligible units, the exemption granted shall cease to operate and the entire availed amount would be recovered within 60 days. Further, an eligible unit is not entitled to deduction for sale against any certificate under Section 12 or 13 as the product is tax free under the scheme.

2.35.2 During test check of the records of three[42] offices, we noticed between November 2007 and January 2012, in the assessments of three dealers for the period from 1998-99 to 2004-05 and finalised between January 2005 and April 2008 that incorrect exemption of tax under sales tax incentive scheme was allowed.

(i) In case of one dealer, we observed that the dealer closed his business during the currency of eligibility period 11 February 1993 to 10 February 2002 without any permission of competent authority, yet the AO did not recover the availed amount of exemption.

(ii) In case of another dealer, the AO allowed in contravention of the conditions of sales of 'molasses' against Form 19 issued under clause B of Section 13 of GST Act, 1969.

(iii) In case of other one dealer, the AO applied lower rate of tax than it was applicable.

Total under assessment of tax in the above three cases worked out to ₹ 59.88 lakh. On this being pointed out the concerned Joint Commissioner, reassessed the case and raised a demand of ₹ 23.14 lakh.

The above facts were brought to the notice of the Department in March and May 2012. The Department accepted the audit observations in two cases in three assessments involving an amount of ₹ 38.56 lakh and recovered of ₹ 3.90 lakh in one case. The particular of the recovery in accepted cases and the replies on remaining case had not been received (September 2012).

After we reported the matter in June 2012; the Government confirmed the reply of the Department in two cases; the replies on the remaining case had not been received (September 2012).

[42] ACCT: Kalol and Morbi
DCCT: Valsad

2.36 Non-levy of purchase tax

Section 15-B of the GST Act, 1969 provides that where a dealer purchases directly or through commission agent any taxable goods other than declared goods and uses them as raw material, processing material or as consumable stores in the manufacture of taxable goods, purchase tax at prescribed rate is leviable on such goods. Purchase tax so levied is admissible as set off under the Rule 42E of the GST Rules, 1970 provided the goods manufactured are sold by the dealer within the State.

During test check of records of two[43] offices we noticed between August 2010 and April 2011 in the assessment of two dealers for the period 2004-05 &2005-06 finalised between December 2008 and August 2009 that the Assessing Officers either disallowed less set-off under Rule 42E or did not levy purchase tax under Section 15B of the Act as detailed below:

(₹ in crore)

Sl. No.	Name of Office	No. of dealers	Short levy of tax including interest and penalty	Nature of Observation
1	DCCT Corporate Cell-1, Ahmedabad	1	1.26	The AO made a arithmetical mistake in calculation of ratio of interstate branch transfer which resulted in disallowing proportionate set-off of ₹ 1.26 crore under Rule 42E.
2	ACCT, Godhra	1	1.12	The AO did not levy purchase tax under section 15B proportionately though the dealer branch transferred the manufactured goods. On being pointed out in audit the jurisdictional Joint Commissioner of Commercial Tax intimated that the case was reassessed and demand was raised at the instant of audit.
Total			**2.38**	

This resulted in short levy of tax of ₹ 2.38 crore including interest of ₹ 61.13 lakh and penalty of ₹ 64.02 lakh.

The above facts were brought to the notice of the Department in May 2012. The Department accepted the audit observations in both the two cases involving an amount of ₹ 2.38 crore. The particulars of the recovery had not been received (September 2012).

After the matter was reported in June 2012; the Government confirmed the reply of the Department in two cases.

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[43] ACCT: Godhra,
DCCT: Corporate Cell-1, Ahmedabad

2.37 Misclassification of goods under Gujarat Sales Tax Act

The GST Act provides for levy of tax at the rates as prescribed in the schedules to the Act, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the schedule, general rate of tax given in residuary entry is applicable.

During test check of records of three offices[44], we noticed between January 2011 and April 2012 that the AOs allowed three dealers to pay tax at lower rates due to incorrect classification of goods valued ₹ 12.22 crore during the period from 2004-05 to 2005-06 while finalising assessments between August 2008 and November 2009. In these cases the AO had not levied tax at appropriate rate on transformer for CFL, chewing gum and engine oils due to misclassification of goods. The difference between the rate of tax leviable and levied was ranging from 3 to11. This resulted in short realisation of tax of ₹ 1.24 crore including interest of ₹ 30.54 lakh and penalty of ₹ 33.94 lakh as given in the table below.

(₹ in lakh)

Sl. No.	Name of the goods	Turnover of sales	Rate of tax leviable	Rate of tax levied	Short levy of tax including interest and Penalty
1	Transformers for CFL	36.89	15	8	2.58
2	Chewing gum	973.81	12	6	105.32
3	Engine oils	66.80	15	4	15.73
	Total	**1,077.50**			**123.63**

The above facts were brought to the notice of the Department in March and May 2012. The Department accepted the audit observations in one case involving an amount of ₹ 6.68 lakh. The particulars of the recovery of accepted case and the replies on remaining cases had not been received (September 2012).

After the matter was reported in June 2012; the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

[44] ACCT: Morbi & Vadodara
DCCT: 5 Ahmedabad.

2.38 Short levy of sales tax due to incorrect deduction on turnover under Gujarat Sales Tax Act

As per Section 7 and 8 of Sales Tax Act, 1969 there shall be levied tax on the turnover of sales of goods at the rates specified in the Schedule II part A and Schedule-II part B respectively. Further, as per the instructions and guidelines issued by the Department from time to time, while finalising assessment proceedings assessing officers are expected to take into account the facts and figures contained in annual accounts and other papers etc, submitted by the dealer apart from the facts and figures mentioned in the periodical returns furnished by the dealer.

During test check of the records of five[45] offices, we noticed between April 2009 and April 2011 in the assessments of five dealers for the period from 1995-96 to 2005-06 finalised between December 2005 and December 2008, that the AOs did not include the amount of valuable considerations forming part of sales turnover such as, sales of plant and machinery, sales of DEPB[46] and DFRC[47], specified sales of DG set etc, though these information were available in Profit &Loss account, other income of tax audit report etc. Escapement of turnover of ₹ 14.05 crore thus resulted in short levy of tax of ₹ 77.69 lakh including interest of ₹ 18.40 lakh and penalty of ₹ 21.09 lakh.

The above facts were brought to the notice of the Department between March and May 2012. The Department accepted the audit observations in three cases involving an amount of ₹ 44.78 lakh. The particulars of the recovery of accepted cases and the replies on remaining cases had not been received (September 2012).

After the matter was reported (June 2012); the Government confirmed the reply of the Department in three cases;the replies on the remaining cases had not been received (September 2012).

2.39 Incorrect allowance of deduction as RD resale

As per Section 7 of the GST Act, 1969, on resale of goods purchased by a dealer from a registered dealer (RD), there shall not be levied sales tax.

During test check of records of two[48] offices we noticed between February and September 2011 in the assessments of two dealers for the period between 2004-05 and 2005-06 finalised between August 2009 and March 2010 that the AOs had incorrectly allowed deductions of RD resale from the total sales turnover as detailed below.

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45 ACCT:Godhra, Morbi, 1 Rajkot, 12 Surat and 6 Vadodara.

46 Duty Entitlement Pass Book

47 Duty Free Replenishment Certificate

48 ACCT : 8 Ahmedabad and 5 Vadodara

In case of one dealer, the AO finalised the assessment to the best of his judgement, as the dealer did not respond to the notice issued to him for a regular assessment. As the AO finalised the assessment order without obtaining the records, the correctness of claim for RD resales and allowance of the deduction could not be ascertained.

In case of another dealer, the AO allowed excess deduction of RD resale as the value of RD resale allowed by the AO exceeded the value of RD purchase plus value of opening stock of RD purchase and gross profit as per Trading, Profit and Loss Account. This resulted in total short levy of tax of ₹ 34.61 lakh including interest of ₹ 12.13 lakh.

This was brought to the notice of the Department (May 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

2.40 Non-entry of Demand in the Recovery Register

> As per the existing system, after finalisation of assessment of raid cases in Enforcement Division, a copy of demand notice is sent to the concerned units having jurisdiction over the respective dealers. On receipt of demand advice, amount of demand is to be entered in the Recovery Register in the said jurisdictional unit for watching recovery in the respective cases.

During test check of the records of DCCT (Enforcement) Bhavnagar, we noticed in November 2010 in the case of two dealers for the period from 2002-03 to 2003-04 finalised between January and December 2004 incorrect entry and omission of entry in the recovery register resulting in non monitoring of recovery of ₹ 28.63 lakh, though it was required to enter in the demand register of the concerned unit. This indicates the existence of weak monitoring system for the recovery of dues.

This was brought to the notice of the Department (May 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

2.41 Irregular grant of set-off

> Rule 44 of the GST Rules provides that the dealer who had paid tax on purchase of goods is eligible for set off from the tax payable on inter-state sale of such goods. The rule further provides that no set off shall be granted where the vendor, who has sold the goods to the claimant, has not credited in Government treasury, the amount of tax on his sales for which set off is claimed.

2.41.1 During test check of the records of two offices[49] between January 2009 and December 2010, we noticed in the assessments of two dealers for the period between 2004-05 and 2005-06, finalised between May 2008 and March 2009 that the AOs

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[49] ACCT: 9 Ahmedabad and 7 Vadodara.

allowed irregular set-off. In case of one dealer the AO allowed set-off on purchase of items which were not resold and in case of another dealer the AO allowed set-off under this rule, though he used the purchased goods in the manufacturing of other goods, instead of reselling the purchased goods. This resulted in irregular grant of set-off of ₹ 22.59 lakh including interest of ₹ 7.39 lakh.

The above facts were brought to the notice of the Department between April and May 2012. The Department accepted the audit observations in one case involving an amount of ₹ 12.62 lakh. The particulars of the recovery of accepted cases and the replies of remaining cases had not been received (September 2012).

After the matter was reported (June 2012) the Government confirmed the reply of the Department in one case; the replies on the remaining cases had not been received (September 2012).

> Condition no. 2 below Rule 42 G of GST Rules, 1970 specifies that the purchased goods on which set-off is being claimed should be used by the assessee in the state of Gujarat in the manufacture of goods described in entry 5 of schedule II-A.

2.41.2 During test check of the records of two[50] offices, we noticed between March and May 2011 in the assessments of two dealers for the assessment period 2005-06, finalised in March 2010, that the dealers manufactured (fully/partly) goods which fall under an entry other than entry 5 of Schedule IIA i.e. iron and steel. Hence, the condition was not fulfilled and attracted disallowance of set-off proportionately/fully. The AOs allowed set-off, though manufactured goods did not fall under the entry 5 of schedule II A of the Act. This resulted in irregular allowance of set-off of ₹ 18.17 lakh including interest of ₹ 6.37 lakh.

This was brought to the notice of the Department (April 2012) and reported to the Government (June 2012); their reply has not been received (September 2012).

> Rule 42 of GST Rules, 1970 provides that a dealer who has paid tax on the purchase of goods (other than prohibited goods) to be used as raw material or processing material or consumable stores in the manufacture of taxable goods, is allowed set-off at the rate applicable to the respective goods from the tax payable on the sale of manufactured goods subject to fulfillment of general conditions prescribed in Rule 47 of the Rules.

2.41.3 During test check of the records of two[51] offices, we noticed between December 2009 and March 2011 in the assessment of three dealers for the assessment period from 2004-05 to 2005-06, finalised between May 2008 and March 2009 that the AOs allowed excess set-off on purchase of goods as detailed below:

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[50] ACCT: 2 Bhavnagar and 5 Rajkot

[51] ACCT: 20 Ahmedabad, 1 Rajkot.

(₹ in lakh)

Sl. No.	Name of the office	No. of dealers	Short levy of tax including interest and penalty	Nature of observation
1	ACCT-20, Ahmedabad	1	3.81	Set-off was allowed on purchases of old buses though dismantling of condemned buses does not amount to manufacture.
2	ACCT-1, Rajkot	1	2.37	Set-off allowed on purchase of prohibited goods[52] i.e. chemical.
		2	**6.18**	

This resulted in irregular grant of set-off of tax of ₹ 6.18 lakh including interest of ₹ 1.93 lakh and penalty of ₹ 0.66 lakh.

The above facts were brought to the notice of the Department between September 2010 and May 2012. The Department accepted (June 2011) the audit observations in one case involving an amount of ₹ 2.36 lakh. The particulars of recovery of accepted case and the replies on remaining case had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department one case;the reply in the remaining one case had not been received (September 2012).

2.42 Non/short levy of Entry Tax

Under Section 3(1) read with Section 2(k) of the Gujarat Tax on Entry of Specified Goods into Local Area Act, 2001 (Amended by Gujarat Act No. 5 of 2006 dt. 1/4/06) there shall be levied and collected on the entry of specified goods into a local area a tax on the purchase value thereof at such rates as may be fixed by the State Government by notification not exceeding the maximum rates specified in column 3 of the schedule. The rate of tax on vehicles and cement attract entry tax at the rate of 12.5 *per cent* under Schedule-II of GVAT Act, 2003

During test check of records of two[53] offices we noticed between August 2011 and March 2012 in the assessments of two dealers for the period 2006-07 finalised in March and April 2011 that though the dealers had made Inter State purchases of vehicles, cement, the AOs in one case did not levy entry tax at the rate of 12.5 *per cent* on vehicles and in another case the assessing authority levied entry tax on cement at

[52] Prohibited goods:Section 2 (21) of the GST Act, 1969 specifies certain goods to be prohibited. These goods are called prohibited goods because they could not be purchased by registered dealer, free of tax against a certificate in Form 19 or that set off of tax paid on their purchases is not admissible under Rule 42, even though they may be required by him for use in manufacture of taxable goods.

[53] ACCT: Godhra
DCCT: 22 Rajkot

lower rate instead of appropriate rate i.e. eight *per cent*. This resulted in short levy of tax of ₹ 20.06 lakh including interest of ₹ 5.76 lakh and penalty of ₹ 6.27 lakh.

After this being pointed out, the concerned Joint Commissioner in one case involving ₹ 11.69 lakh passed reassessment order and raised the demand.

This was brought to the notice of the Department between April and May 2012 and reported to the Government (June 2012); their reply has not been received (September 2012).

2.43 Non-levy of purchase tax u/s 19B (GST)

Under Section 19B of GST Act, 1969, the turnover of purchases of oilseeds including groundnut purchased by a dealer is liable for payment of purchase tax under the Act. During 1 April 1993 to 8 November 1994, purchase tax was leviable at two *per cent*.

During test check of records of ACCT, Gondal, we noticed in August 2010 in the assessment of one dealer for the period 1993-94 finalised in October 2008 that the AO did not levy purchase tax on purchase of castor oilseeds for ₹ 1.48 crore. This resulted in under assessment of ₹ 6.84 lakh including interest of ₹ 2.12 lakh and penalty of ₹ 1.77 lakh.

The above facts were brought to the notice of the Department in May 2012. The Department accepted (June 2011) the audit observation in this case involving an amount of ₹ 6.84 lakh. The particulars of recovery in accepted case had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in this case.

2.44 Short levy of tax on hiring charges under Gujarat Sales Tax Act

Section 3A of the GST Act provides that any dealer, whose turnover of "Specified Sale" exceeds ₹ 50,000 in a year, is liable to pay tax. Section 2 (30C) provides that "Specified Sale" means the transfer of right to use any goods for any purpose for cash, deferred payment or other valuable consideration. Rate of tax on specified sale of goods in respect of plant and machinery, as per entry 8 of Schedule III to the Act is four *per cent.*

During test check of the records of ACCT, Godhra, we noticed in August 2011 in the assessment of one dealer for the period 2004-05 finalised in September 2008 that the AO allowed levy of sales tax on machinery hire charges at two *per cent* instead of at four *per cent*. This resulted in short levy of tax on specified sales of ₹ 5.89 lakh including interest of ₹ 1.30 lakh and penalty of ₹ 2.17 lakh.

This was brought to the notice of the Department between April and May 2012 and reported to the Government (June 2012); their reply has not been received (September 2012).

2.45 Short levy of Interest under GST and CST Act

Section 47(4A) of the GST Act, 1969 provides that if a dealer does not pay the amount of tax within the prescribed period and if the amount of tax assessed or reassessed exceeds the amount of tax already paid by more than ten *per cent,* simple interest at the rate of 24 *per cent* per annum for the period upto 31 August 2001 and at the rate of 18 *per cent* per annum thereafter is leviable on the amount of tax remaining unpaid for the period of default. By virtue of Section 9(2) of CST Act, the above provisions apply to assessments under the CST Act as well.

During test check of records of five[54] offices, we noticed between February 2010 and March 2011 in 20 assessments of 14 dealers for the period from 2002-03 to 2005-06 finalised between December 2007 and July 2009 that AOs either did not levy interest or levied it short on the amount of unpaid tax. This resulted in non/short levy of interest of ₹ 1.80 crore.

The above facts were brought to the notice of the Department in April 2012. The Department accepted the audit observation in 14 cases involving an amount of ₹ 1.22 crore. The particulars of recovery in accepted cases and the replies of the remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department in 14 cases; the reply in the remaining cases had not been received (September 2012).

[54] ACCT: 8 Ahmedabad, Deesa, Gandhidham, 5 Rajkot
DCCT: Enforcement -5 Surat

2.46 Non/short levy of penalty under GST and CST Act

Section 45(6) of the GST Act, 1969 provides that where the amount of tax assessed or reassessed exceeds the amount of tax paid with the returns by a dealer by more than 25 *per cent*, penalty not exceeding one and a half times of difference shall be levied. Further, the Commissioner vide public circular dated 3 June 1992 has laid down slab rates for levy of penalty. By virtue of section 9(2) of the CST Act, the above provisions apply to assessments under the CST Act as well.

During test check of the records of 10[55] offices, we noticed between November 2009 and January 2012 in 18 assessments of 12 dealers for the assessment period from 2001-02 to 2005-06 that the difference between tax assessed and tax paid with returns exceeded 25 *per cent* of the amount of tax paid. However, the AOs while finalising the assessments between October 2007 and December 2009 did not levy penalty or penalty was levied short as per provisions and Commissioner's circular of June 1992. This resulted in non/short levy penalty of ₹ 1.47 crore.

The above facts were brought to the notice of the Department between January and May 2012. The Department accepted the audit observations in six cases involving an amount of ₹ 1.06 crore. The particulars of the recovery in accepted cases and the replies on remaining cases had not been received (September 2012).

After we reported (June 2012) the matter, the Government confirmed the reply of the Department six cases; the replies on the remaining cases had not been received (September 2012).

[55] ACCT: 1 and Flying Squad, Ahmedabad, Ankleshwar, 6 Vadodara and Godhra
DCCT: Corporate-1 and Enforcement (Div-2) Ahmedabad and Enforcement Rajkot.

CHAPTER-III

EXECUTIVE SUMMARY

Trend of revenue

The actual receipts during 2007-08 to 2010-11 shows an increasing trend while for the year 2011-12, it declined considerably (17.42 *per cent*) from the previous year. The reason attributable to the decline in actual receipts was not furnished to audit.

Results of audits

Test check of records in the offices of Collectors, District Development Officers and *Mamlatdar* (LR) in the State during the year 2011-12 revealed under assessment of tax and other irregularities involving ₹ 183.40 crore in 136 cases.

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 8.84 crore in 60 cases of which six cases involving ₹ 5.60 crore were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 2.91 crore was recovered in 57 cases during the year 2011-12.

What we have highlighted in this Chapter

A performance audit report on "**Management of Government Land"** revealed the following:

- The Department did not have consolidated data of alienated and un-alienated land, the status of the alienation proposals received from the Collectors, approved, rejected and pending cases.

- Undervaluation of Government land due to incorrect computation of market value of land and non-recovery of additional market value for allotment of grazing land resulted in short recovery of occupancy price of ₹ 36.49 crore in 29 cases.

- Larsen & Toubro Limited was allotted Government land for manufacture of Super Critical Steam Generators and Forging Shop for Nuclear Power Plant .The price of the land was fixed by DLVC instead of SLVC rates. This resulted in loss of revenue of ₹ 128.71 crore.

- Allotment of land at concessional price to two ineligible trusts resulted in undue benefit to the trusts and subsequent short recovery of occupancy price of ₹ 25.05 crore.

- The delay in regularisation of encroached Government land coupled with levy of ad-hoc penalty at lesser rates in the case of Essar Steel Company Ltd. resulted in short recovery of ₹ 238.50 crore.

- Delay in finalisation of value of Government land resulted in blocking up of revenue to the tune ₹ 23.60 crore.

- Government land was not utilised for the purpose for which it was allotted and conditions of allotment was breached in five cases. The Departmental officials either failed to detect the cases or did not take corrective actions to vacate the land.

- Government Resolutions/Orders/instructions were not adhered to by the Collector which resulted in non/short levy of conversion tax and stamp duty aggregating ₹ 102.95 crore.

Other Observations

- During test check of records of five Collector offices, two Dy. Collector offices and District Development office, Amreli for the period 2008-09 to 2010-11, we noticed that there was non/short levy of premium price of ₹ 8.70 crore in 10 cases.

- During test check of records of three District Development offices for the period 2008-09 and 2009-10, we noticed that in seven cases, there was non/short levy of conversion tax amounting to ₹ 28.09 lakh.

Recommendations The Government may consider:

- developing at state level a database of the Government land (i) alienated; (ii) status of alienation proposals received, approved, rejected and pending, (iii) types and purpose of alienations and (iv) the considerations received from the alienations made so as to make the system more transparent;
- monitoring finalisation of the price of alienated Government land by framing a time schedule for each stage and prescribing returns to ascertain the compliance of time schedule;
- evolving a control mechanism to ensure the purpose for and the conditions under which land allotted are fulfilled and take punitive measures against the defaulters;and
- instructing SoS to co-ordinate with the Collectors to prevent the leakage of stamp duty. This may be done by putting in place a system by way of returns or by conducting periodical inspections by SoS.

CHAPTER-III
LAND REVENUE

3.1 Tax administration

The administration of Land Revenue Department vests with the Principal Secretary (Revenue). For the purpose of administration, the State is divided into 26 districts. Each district is further divided into *talukas* and villages.

The District Collectors are overall in charge and responsible for the administration of their respective districts. The *Mamlatdars* and Executive Magistrates are in charge of the administration of their respective *talukas* and exercise supervision and control on *talatis* who are entrusted with the work of collection of land revenue and other receipts including recovery of dues treated as arrears of land revenue. In addition, the Revenue Department has delegated powers to the *Panchayat* Officers (DDOs and TDOs) for recovery of dues treated as arrears of land revenue to facilitate the revenue administration.

3.2 Analysis of budget preparation

The Budget Estimates are furnished by the Revenue Department in the prescribed format to the Finance Department. While preparing the budget estimates, the Department is required to consider the income of previous year and the expected receipts during the financial year. The targets set by the Department are reported to the Finance Department which is responsible for preparation of the Budget estimates for the entire state.

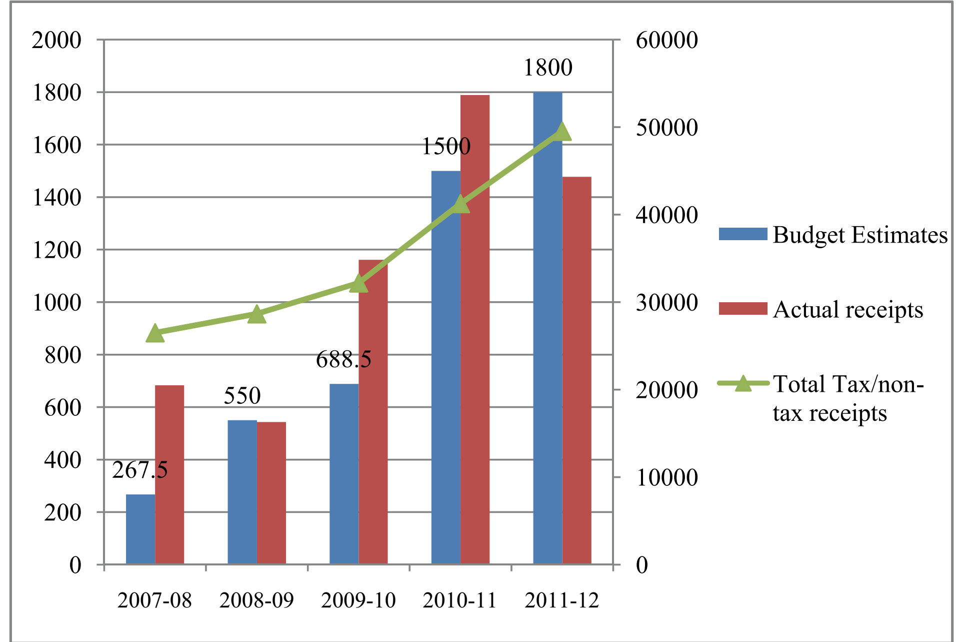
3.3 Trend of revenue

Actual receipts from Land Revenue during the last five years 2007-08 to 2011-12 along with the total tax and non-tax receipts during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess(+)/ shortfall (-)	Percentage of variation	Total tax and non tax receipts of the State	Percentage of actual receipts *vis-à-vis* total tax and non-tax receipts
2007-08	267.50	683.09	(+)415.59	(+)155.36	26,494.88	2.58
2008-09	550.00	543.50	(-) 6.50	(-) 1.18	28,656.35	1.90
2009-10	688.50	1,161.20	(+)472.70	(+)68.66	32,191.94	3.61
2010-11	1,500.00	1,788.78	(+)288.78	(+)19.25	41,253.65	4.34
2011-12	1,800.00	1,477.18	(-) 322.82	(-) 17.93	49,528.81	2.98

Sources:Budget publicati ons and Finance Accounts.



It could be seen from the above that there was substantial variation between the actual receipts and the budget estimates except in 2008-09. This indicates that the budget estimates were not prepared on realistic and scientific basis. Further, the actual receipts during 2007-08 to 2010-11 shows an increasing trend while for the year 2011-12, it declined considerably (17.42 *per cent*) from the previous year. The reason attributable to the decline in actual receipts was not furnished to audit.

3.4 Results of audit

Test check of records in the offices of Collectors, District Development Officers and *Mamlatdar* (LR) in the State during the year 2011-12 revealed under assessment of tax and other irregularities involving ₹ 183.40 crore in 136 cases, which fall under the following categories:

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1.	**Performance Audit on Management of Government Land**	1	142.18
2.	Non/short recovery of occupancy price/premium price	18	33.34
3.	Non/short recovery of NAA, non/short levy of NAA at revised rate, non-raising NAA demand	21	1.65
4.	Non/short recovery of conversion tax	30	4.06
5.	Other irregularities	50	1.88
6.	Non-levy of measurement fee	16	0.29
	Total	**136**	**183.40**

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 8.84 crore in 60 cases of which six cases involving ₹ 5.60 crore were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 2.91 crore was recovered in 57 cases during the year 2011-12.

A performance audit report on "**Management of Government Land"** involving ₹ 142.18 crore and a few illustrative cases involving ₹ 9.52 crore are mentioned in the following paragraphs:

3.5 Performance Audit on "Management of Government Land"

Highlights

The Department did not have consolidated data of alienated and un-alienated land, the status of the alienation proposals received from the Collectors, approved, rejected and pending cases.

(Paragraph 3.5.8)

Undervaluation of Government land due to incorrect computation of market value of land and non recovery of additional market value for allotment of grazing land resulted in short recovery of occupancy price of ₹ 36.49 crore in 29 cases.

(Paragraph 3.5.9.1)

Larsen & Toubro Limited was allotted Government land for manufacture of Super Critical Steam Generators and Forging Shop for Nuclear Power Plant. The price of the land was fixed by DLVC instead of SLVC rates. This resulted in forgoing of revenue of ₹ 128.71 crore.

(Paragraph 3.5.9.4)

Allotment of land at concessional price to two ineligible trusts resulted in undue benefit to the trusts and subsequent short recovery of occupancy price of ₹ 25.05 crore.

(Paragraph 3.5.9.5)

The delay in regularisation of encroached Government land coupled with levy of ad-hoc penalty at lesser rates in the case of Essar Steel Company Ltd. resulted in short recovery of ₹ 238.50 crore.

(Paragraph 3.5.9.7)

Delay in finalisation of value of Government land resulted in blocking up of revenue to the tune ₹ 23.60 crore.

(Paragraph 3.5.10.1)

Government land was not utilised for the purpose for which it was allotted and conditions of allotment was breached in five cases. The Departmental officials either failed to detect the cases or did not take corrective actions to vacate the land.

(Paragraph 3.5.11.8)

Government Resolutions/Orders/instructions were not adhered to by the Collector which resulted in non/short levy of conversion tax and stamp duty aggregating ₹ 102.95 crore.

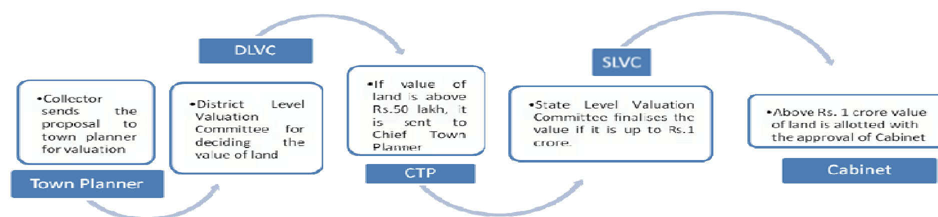
(Paragraph 3.5.11.9)

3.5.1 Introduction

The Bombay Land Revenue (BLR) Code, 1879 as applicable to Gujarat read with the Gujarat Land Revenue (GLR) Rules, 1972 provides for allotment of Government land on occupancy or leasehold rights either as revenue free or at the rates decided by the Government from time to time. The allotment of Government land is made by the Revenue Department on an application before the District Collector.

Further clause 12 of the Second Schedule under Rule 9 of the Gujarat Government Rules of Business, 1990, stipulates that where the value of the Government property exceeds the limit prescribed from time to time by the Government, the proposals for alienations by way of sale, grant or lease of Government property shall be placed before the Council of Ministers. The guidelines for assessment of value of Government land intended to be allotted/ granted for non agricultural purposes prepared by the Urban Development and Urban Housing Department (UDUHD) were adopted from September 2002.

The process of assessment of value of land was modified in October 2008. The Government constituted two committees for assessment of market value of Government land: the District Land Valuation Committee (DLVC) and State Land Valuation Committee (SLVC). In case the value of land as determined by the DLVC exceeds ₹ 50 lakh, the Revenue Department refers the case to SLVC for finalisation of value of the land. After finalisation of market value of the land by the SLVC, the case is put up before the Cabinet for approval. The limit of ₹ 50 lakh for the Cabinet approval was increased to ₹ one crore in 2010. The assessments of the land are made on the reports (called valuation reports) prepared by the concerned Town Planner and the Chief Town Planner. The hierarchy of valuation system is as depicted below:



3.5.2 Organisational set up

The administration of Land Revenue Department vests with the Principal Secretary (Revenue). For the purpose of administration, the State is divided into 26 districts. The District Collectors are responsible for the administration of their respective districts. Each district is further divided into *talukas* and villages. The *Mamlatdars* and Executive Magistrates are in charge of the administration of their respective *talukas* and exercise supervision and control

on *talatis* who are entrusted with the work of collection of land revenue and other receipts including recovery of dues treated as arrears of land revenue.

3.5.3 Audit objectives

The performance audit was conducted with a view to ascertain whether:

- the records relating to the Government land were properly maintained and were reliable;
- allotment/grant of land was as per the existing procedures and policies framed by the Government;
- the assessment and collection of conversion tax etc. were finalised according to the provisions of the Act/Rules issued from time to time;
- there exists appropriate monitoring and evaluation mechanism after allotment of land;and
- proper mechanism exists for timely detection and prevention of encroachment of Government land.

3.5.4 Audit criteria

The audit criteria are derived from the following Laws and the Rules made there under to govern the management of the Government land:

- the provisions of Bombay Land Revenue (BLR) Code, 1879 as applicable to the Gujarat ;
- Gujarat Land Revenue Rules, 1972;
- Gujarat Government Rules of Business, 1990;and
- The Notifications/Resolutions/Circulars/Orders issued by the Government.

3.5.5 Scope of audit, methodology and reasons for selection of the topic

We conducted the Performance Audit (PA) of the land records maintained in the office of the Pr. Secretary, Revenue Department and eight[56] out of 26 offices of District Collectors for the period from 2006-07 to 2010-11. Further, in order to ascertain the level of compliance at the *taluka* and village levels, we test checked the records in 16 *Mamlatdar* offices and 32 village *Talatis* of the eight District Collectors.

The districts were selected on the basis of their geographical location, topicality and maximum number of allotment of land made by the Government. One district was selected from each of the East, West, North, South and Central regions. In addition Gandhinagar being the capital and Rajkot falling in Saurashtra were selected. Dang was selected for having the

[56] Ahmedabad, Dang, Gandhinagar, Kutchch, Jamnagar, Palanpur, Rajkot and Surat.

maximum number of cases relating to tribal and weaker section. The PA was conducted from October 2011 to May 2012.

Land is a premium asset, the value of which always shows an increasing trend due to which it has an important impact on the economy of the State. The State has an important role to play in the land management and ensure that land is made available only for the purposes for which it was intended for and the grant is beneficial to the Government. A Review on 'Allotment of land for non-Governmental activities' was included in the Report of Comptroller and Auditor General of India (Civil) for the year ended 31 March 2006. The PA of this topic had not been done during the last six years. As such we thought it fit to conduct a PA on the subject.

3.5.6 Audit constraints

We obtained information from the office of the Pr. Secretary, Revenue Department and found that in 1,262 cases of allotment of land and regularisation of encroachment were approved by the Government during the period from 2006-07 to 2010-11. We called for all the case files, but only 594 case files were produced. The remaining 668 cases were not produced to audit. Reasons for non production, though called for (April 2012), were not furnished to us.

The category wise allotment and regularisation of cases produced are mentioned in the following table:

Sl. No.	Category of allotment/grant/ regularisation	Number of cases produced by the office of the Pr. Secretary	Number of cases produced by the District Collectors
1	Industrial use	93	59
2	Commercial use	31	18
3	Charitable institutions/trust	104	39
4	Government Departments/ Boards/ Corporations	55	68
5	Residential/other purposes	62	65
	Total	**345**	**249**

It would be seen from the above that 53 *per cent* of the cases were not produced to audit including a file relating to a company "GIFT". The matter relating to non-production of records was taken up with the Department and Government.

The above cases were examined by us and the results are mentioned in the succeeding paragraphs:

3.5.7 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation extended by the Department in completing the audit. We held an 'Entry Conference' with the Principal Secretary, Revenue Department in September 2011 to appraise the Department about the objectives, scope, criteria and methodology of audit. The performance audit report was sent to the Government in July 2012 for their response. The report was discussed with the Department in the Exit Conference held in July 2012. The replies furnished by

the Department have been considered and appropriately incorporated in the relevant paragraphs.

Audit findings

3.5.8 Inadequate maintenance of records

The software called '*E-dhara*' developed by National Informatics Centre (NIC) used in the computerisation of the land records (Government as well as private lands) in the Department started working in May 2005.

> As per Section 53 of BLR Code, 1879, a register shall be kept by the Collector in such form as may from time to time be prescribed by the State Government of all lands, the alienation of which has been established or recognised under the provisions of any law for the time being in force.

3.5.8.1 We found in the offices test checked that the land records namely Village Forms "6" (i.e. Record of rights [57]), "7/ 12" (i.e. Mutation entries[58]) and "8A" (i.e. land account of landowners[59]) were computerised at the village level only. However, the database of the Government land was not consolidated by the Department at the district level as such the consolidated database of the entire state was not available with the Department.

We also noticed that "Register of alienated lands" containing the details of the alienations[60] of Government land were maintained manually only in two districts Dang and Palanpur but these registers were not updated from time to time. Even some of the allotment cases pertaining to 2006-07 to 2010-11 were not found entered in the registers maintained in these districts. The other six districts had not maintained the registers at all. Due to the absence of the consolidated data, the position of land alienated from time to time could not be ascertained.

3.5.8.2 Lack of uniformity and transparency in allotment

Our scrutiny of land allotment records during the five years 2006-11 revealed that no orders/ instructions for determining the qualifications of allottees or for inviting applications were issued by the Department; instead allotments were considered in respect of only those who applied for allotment. The prices were fixed by various committees; the norms pr escribed for fixing the price of land were found to be unrealistic in some cases. It was also observed that these norms were not adhered to in some other cases. Thus, there was no uniformity in fixing the prices of the lands alienated. Further, the status of the

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[57] Record of rights is called *Hak Patrak* in Gujarati. It shows the basis for creation of rights of ownership.
[58] This form contains survey number wise ownership/rights of the persons.
[59] It shows total survey number wise land holdings of a person.
[60] Alienation means transfer of rights wholly or partially of Government land to the ownership of any other person.

applications, proposals received from the District Collectors for allotment of Government land during the period covered under audit was not available with the Department. Due to absence of this data, we could not ascertain the stage at which alienations were pending.

Correct valuation of the land proposed for alienation, inviting of application from the applicants and adoption of a uniform method of allotment are the essential elements to bring uniformity and transparency in the system of alienation of Government Land. This would not only give an equal opportunity to all similarly situated applicants to apply for the land and increase competition.

We recommend that the Government may consider developing at state level a database of the Government land (i) alienated; (ii) status of alienation proposals received, approved, rejected and pending; (iii) types and purpose of alienations; and (iv) the considerations received from the alienations made so as to make the system more transparent.

We brought the absence of a consolidated data base of alienated and un-alienated land to the notice of the Government (July 2012);their reply has not been received.

3.5.9 Government Resolutions not adhered to resulting in short realisation of revenue

3.5.9.1 Short recovery of occupancy price due to incorrect valuations

The guidelines for valuation of Government land issued vide Government Resolutions in September 2002 and revised in October 2008 *inter alia* stipulate that the value of the site proposed for allotment shall be arrived at after considering the average comparable sale value for similar type and area of land situated within a radius of 1 to 1.5 kms, as ascertained from the registered sale deeds during the last six months to one year.

Further, on the basis of various other parameters such as purpose of allotment, benefits of road approaches, growth nodes, nature of land etc, increments/deduction at the prescribed rates were required to be made on the average comparable sale value to work out the final value of the land by the valuation authorities.

Audit found that the ingredients / increments required to be added to the cost of land on account of various factors stipulated by the Government in their resolutions were not adhered to by the Department. Thus the market value of the land was fixed incorrectly granting undue financial benefit to the allottees. These are briefly mentioned in the following paragraph.

Our Scrutiny of valuation reports attached with the allotment orders approved by the Cabinet or by the Department revealed that additions on to the cost of land as per the guidelines were not made while fixing the price of the land.

This resulted in undervaluation of Government land and subsequent short recovery of occupancy price of ₹ 36.49 crore mentioned in the following 29 cases:

<table>
<tr><th rowspan="2">Sl. No.</th><th rowspan="2">Name of the allottee / purpose of allotment</th><th rowspan="2">Area (in sq. mt.)</th><th colspan="2">Rate of land (₹ per sq. mt.)</th><th rowspan="2">Short recovery of occupancy price (₹ in crore)</th></tr>
<tr><th>Leviable</th><th>Levied</th></tr>
<tr><td colspan="6">Land having pucca roads and allotted for industrial purposes</td></tr>
<tr><td>1</td><td>K. Raheja Corporation Pvt. Ltd. for IT Park in Gandhinagar District.</td><td>3,76,581</td><td>705</td><td>470</td><td>9.96</td></tr>
<tr><td colspan="6"><u>Nature of observation</u>: The guidelines issued for valuation of land by the Government in September 2002, provide for addition of 20 to 25 per cent for benefit of pucca road and addition of 30 to 40 per cent for industrial purpose to the average comparable sale value of the land. In addition to this 30 per cent of the total value (₹ 705 per sq. mt. in this case) was to be added in respect of the grazing land.

We noticed that SLVC fixed the sale value of the land as ₹ 470 per sq. mt. but did not add at least 20 and 30 per cent for pucca roads and for industrial area respectively. This resulted in short realisation of occupancy price of ₹ 9.96 crore[61] including grazing land of 1,57,004 sq. mt.

After this was pointed out, the Department/CTP replied (July 2012) that the rate (₹ 470 per sq. mt.) finalised by SLVC was 56 per cent higher than the rate (₹ 300 per sq. mt.) fixed by DLVC. Hence, even after addition of 20 per cent for road benefit and 30 per cent for industrial purpose, the price would be lesser than that fixed by SLVC. The reply is not relevant as the Department had not added 20 and 30 per cent for pucca roads and for industrial area to the value of the land fixed as per the guidelines while carrying out evaluation and consequently undervalued the value of the land to that extent.</td></tr>
<tr><td colspan="6">Land situated within the vicinity of Highway:-</td></tr>
<tr><td>2</td><td>Essar Power Gujarat Ltd. for power project in Jamnagar District</td><td>30,54,915</td><td>107</td><td>80</td><td>8.25</td></tr>
<tr><td colspan="6"><u>Nature of observation</u>: The guidelines for valuation of land issued by the Government in September 2002 provide for addition of 25 to 30 per cent to the average comparable sale value of the lands situated within the vicinity of State Highway road. The area of a piece of land below 1,500 sq. mt. was described in the guidelines as smaller areas and for working out the average sales value of smaller areas, 30 per cent deduction was allowed. The area of a piece of land above 1,500 sq. mt. was described in the guidelines as larger areas and no deduction was admissible in these cases. We noticed that the land was situated near the Highway No 6. Addition of 25 to 30 per cent to the cost of land required to be added was not made while working out the final market value of the land by the Department.

After this was pointed out, the Department/CTP accepted (June 2012) the mistake and added 30 per cent for highway approach. However, it deducted 30 per cent on account of sales value on the grounds that the land was of smaller area and stated that as such there was no price difference. The deduction of 30 per cent applied was not correct as the land was contiguous land and was not divided into plots. Besides all the pieces of land taken for valuation purposes surrounding the lands were large plots. Department had itself treated the plot as larger area in the first place and hence no deduction was admissible.</td></tr>
</table>

[61] (705-470) x 2,19,577 = 5.16
(917-611) x 157004 = 4.80
Total 9.96

Land allotted for industrial purposes

3	*Coastal Gujarat Power Ltd.* (CGPL) for power project in Kutchch District	50,25,941	15	11	1.83[62]
		21,83,917	16	12	0.98[63]
4	*Indian Oil Corporation Ltd.* for storage tank in Jamnagar District	48,664	539	415	0.60

<u>Nature of observation:</u> - We found that though the land was allotted for industrial purposes, addition of 30 to 40 *per cent* on the average comparable sale value as prescribed in the guideline was not applied while working out the final market value of the land.

After this was pointed out, the Department/CTP accepted (June 2012) the mistake in the case of CGPL and added 30 *per cent* for industrial purpose. However, it deducted 30 *per cent* on account of sales instances treating the areas as smaller areas and stated that as such there was no price difference.

The deduction of 30 *per cent* applied in the revaluation was incorrect as the plots sold are large plots i.e. exceeding 1,500 sq. mt., as the piece of land was contiguous and as such no deduction was admissible. No reply has been received in case of Sl. No. 4.

5	*Reliance Petroleum Ltd.* for housing colony for industrial workers in Jamnagar District	5,95,881	454	420	2.03

<u>Nature of observation:</u> - We found that though the land was allotted for industrial purpose, addition of 30 to 40 *per cent* on the average comparable sale value as prescribed in the guideline was not applied while working out the final market value of the land.

The Government replied (June 2012) in respect of case mentioned at Sl.No.5 that the land was allotted for housing colony and not under Section 65 (B) of LR Code and as such no addition was required to the sale value of the land. The reply is not acceptable as the purpose of housing colony for industrial workers is termed as industrial purpose under Section 65 (B) of the LR Code as such addition of 30 *per cent* was admissible.

Land allotted at lower rates

6	*Gujarat State Petronet Ltd.* for construction of Section valve station in Rajkot District	7,730	892	800	0.07
7	*Vivekanand Vikas Mandal* for School in Patan District	40,470	36	32.48	0.01

<u>Nature of observations:-</u> The guidelines provide that in case, no sale deed was executed during last six months or one year period, average comparable sale deeds of similar land for earlier period would be taken into consideration after increment of 12 *per cent* for each previous year. We noticed that sale deeds executed prior to one year were considered for working out the average comparable sale values. However, addition of 12 *per cent* was not applied on average comparable sale value to arrive at the final market value of the land. The matter was brought to the notice of Government (July 2012);no reply has been received.

[62] Occupancy price of ₹ 5.93 crore was paid at the rate of ₹ 11 per sq. mt. for 52,25,829 sq. mt. of land while Government finally allotted 50,25,941 sq. mt. only to the Company. The excess occupancy price of ₹ 0.24 crore was adjusted against the short levy.

[63] Including 30 *per cent* additional occupancy price for grazing land of 8,53,917 sq. mt.

<table>
<tr><td>8</td><td>13 Allotments (nine districts[64])</td><td>9,49,833</td><td>50.48</td><td>45.08</td><td>5.40</td></tr>
<tr><td colspan="6"><u>Nature of observation</u>: - Government instructed in May 2006 that in case allotment of land is made after one year from the date of valuation of land by DLVC, the market rate so fixed shall be increased by adding 12 per cent. We however noticed that in 13 cases (Nine: Private individuals/companies/enterprises; three- boards/authority; one bank) at the time of issue of allotment order by the Collectors, though more than one year had expired from the date of fixation of market rate by DLVC, increase of 12 per cent was not applied. This resulted in short levy of occupancy price of ₹ 5.40 crore.

After this was pointed out, the Department, while accepting the audit contention in four cases, stated that the District Collectors were instructed to recover an amount of ₹ 2.22 crore. In one case, the Department stated that there was no need for addition of 12 per cent to the value of the land, as one year had not expired from the date of valuation by SLVC. In another case, the Department stated that though order was issued in February/ September 2009, the decision of the Government was of 2006. The reply in both the cases is not in line with the instructions issued by the Government which stipulate charging of 12 per cent on the value of land after passage of one year from the date of valuation by DLVC. No reply has been received in the remaining cases.</td></tr>
<tr><td>9</td><td>9 Allotments (three districts[65])</td><td>2,95,693</td><td colspan="2">30 per cent of the value of the alienated land</td><td>7.36</td></tr>
<tr><td colspan="6"><u>Nature of observation:</u>- In January 1999, Government framed a policy for allotment of grazing land to industries at 30 per cent additional occupancy price of the land. We however noticed that 30 per cent additional market value was not recovered from the Companies. This has resulted in short levy of occupancy price of ₹ 7.36 crore. The matter was brought to the notice of the Government (July 2012);no reply has been received.</td></tr>
</table>

The above facts indicate that the Department is not following the Guidelines issued by the Government.

3.5.9.2 Loss of revenue due to undervaluation of the Government land

> Government in May 2006 instructed that the DLVC shall have to fix the market value of the land afresh if the allotment could not be made within two years from the date of DLVC's valuation.

In eight allotment cases of two Districts [66], we noticed that the Resolution issued by the Revenue Department or the order of allotment by the Collector was after expiry of two years from the date of fixation of market rate by DLVC. In accordance with the above mentioned instructions of Government, the cases were required to be considered for fresh valuation by DLVC. However, in contravention of the instructions, the Department allotted lands at the market rate prior to two years, which was lower than the market rate prevailing at the time of allotment. This resulted in undervaluation of Government land. The

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[64] Ahmedabad, Banaskantha, Bhavnagar, Jamnagar, Kheda, Kutchch, Rajkot, Sabarkundla and Surat

[65] Ahmedabad, Gandhinagar and Rajkot

[66] Kutchch and Surat

loss could not be quantified due to the absence of the current market rates of the land.

The matter was brought to the notice of the Government (July 2012);no reply had been received (September 2012).

3.5.9.3 Wide variation in assessment of land value

The Government had allotted (January 2010) 23,56,415 sq. mt. of land situated at Mota Kandagra, Taluka Mundra, District Kutchch to Coastal Gujarat Power Limited (CGPL) for construction of 4000 MW Ultra Mega Power Project (UMPP) with the approval of the Cabinet. The value of the land as fixed by town planner was ₹ 46 per sq. mt. Our scrutiny of the valuation sheet finalized in 2009 attached with the allotment order revealed that cost of land reported by various authorities as mentioned in the valuation sheet were at variance on as detailed below:

Name of the authority	Value of the land (₹ per sq. mt.)
Panchrojkam (fixed by the Sarpanch of the village)	500
Town planner (based on the sale deeds registered during the last one and a half year as per the guidelines)	46
Jantri prepared by Stamp and Registration Department	195
Dy. Collector of Bhuj and *Mamlatdar*, Mundra	225

Since the rates were at variance, the Government in July 2009 on the recommendation of SLVC fixed the rate of ₹ 145 per sq. mt. The valuation of the land was found to have been done by the CTP. However, the parameters on which this rate was finalised was not found on record.

We further found that, CGPL had also purchased land at Tunda and Kandagra at the rate of ₹ 296.51 per sq. mt. and ₹ 946.90 per sq. mt. respectively. SLVC did not adopt the rate citing the reason that the land purchased by CGPL was three kilometres away from the proposed site. The reasons for not adopting the rate are not correct as the purpose for purchase of land in both cases was the same.

After this was pointed out, the Department replied (June 2012) that the value of the land was decided by the authorities empowered to do so.

The value, as assessed by the various authorities and committees varied widely. The Department should put in place a system for fixing true market value of the properties and apply it uniformly.

3.5.9.4 Grant of land at concessional rate to *Larsen and Tourbo Ltd.*

(i) The Collector, Surat forwarded (July 2007) a proposal to the Revenue Department for allotment of land admeasuring 8,53,247sq.mt. at Hazira, Surat to *Larsen & Toubro Company Limited* (L &T) for the purpose of setting up facilities for manufacture of Super Critical Steam Generators and Forging Shop for Nuclear Power Plant. The DLVC had recommended the rate as

₹ 1,000/1,050[67] per sq. mt. The value of the land exceeded ₹ 50 lakh, as such Revenue Department sent the case to SLVC for valuation purposes. SLVC recommended the rate at ₹ 2,020 in September 2007 and the Revenue Department forwarded the proposal to the Cabinet prescribing the rate of ₹ 2,020 per sq. mt. for the land.

The Cabinet granted (February 2008) special concession of 30 *per cent* on the value of land fixed by DLVC and allotted the land at ₹ 700/735 per sq. mt. as it considered the project as Hi-tech, of national importance and of first of its kind in Gujarat.

It was seen from the above that concession was granted on the price of land recommended by DLVC. Thus, non-adoption of the value of land fixed by SLVC, resulted in loss of revenue of ₹ 60.66 crore even after granting 30 *per cent* concession on the final value of land fixed by SLVC. The percentage of concession worked out to 65.20 *per cent* on price fixed by SLVC.

(ii) The L & T again applied for 12.14 lakh sq. mt. of land for expansion of the above said project. The Collector forwarded (26 August 2009) the proposal to the Revenue Department along with the recommendation of DLVC's fixing the rate for the land at ₹ 2,800/2,500/2,400[68] per sq.mt.

The Pr. Secretary, Finance Dept and Chief Secretary in consultation with Revenue Department proposed that land shall be allotted either after fixation of price by SLVC or at ₹ 700[69] per sq.mt. i.e. at the same rate at which a part of the land was allotted to the Company plus 12 *per cent* addition due to passage.

Thus, instead of getting the rate approved by SLVC, which was the competent committee, a note was submitted before the Cabinet for allotment of the land at ₹ 700 per sq. mt. The Cabinet approved (March 2010) the proposal of the Revenue Department and accordingly 5,79,577 sq. mt. of land was allotted (March/July 2010) at ₹ 700 per sq. mt.

Even if the allotment was made after considering 30 *per cent* concession given by the cabinet on land allotted in first phase, the valuation of the land would have come to ₹ 1,960/1,750/1,680 per sq. mt. instead of ₹ 700 per sq.mt. This resulted in loss of revenue of ₹ 67.25 crore.

Further, it is pertinent to mention here that the land situated at survey number 498/1 was in the first phase allotted to the Company at ₹ 735 per sq. mt. after concession of 30 *per cent* on DLVC's price. The Revenue Department did not

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[67] ₹ 1,000 per sq. mt. for 7,79,148 sq. mt. of land falling under survey number 446/A and ₹ 1,050 per sq. mt. for 74,099 sq. mt. of land falling under survey number 498/1 of Suvali village, Taluka Choryasi, Hazira, Surat.

[68] ₹ 2,800 for survey number 498/1, ₹ 2,500 per sq.mt for survey number 446/A *paike* and ₹ 2,400 per sq. mt.for survey number 176/1/1/B in Suvali village, Taluka Choryasi, Hazira, Surat

[69] The rate at which the land was granted in February 2008 to L&T.

consider this aspect and proposed to the Cabinet to allot land admeasuring 2,56,875 sq. mt. situated at the said survey number also at ₹ 700 per sq. mt.

After this was pointed out, the Government replied (July 2012) that the project was a joint venture between L &T and Nuclear Power Corporation of India Ltd. In view of the project's national importance, the Cabinet had decided to allot the land at concessional value.

(iii) Government allotted (July 2005 and November 2006) land admeasuring 32,000 sq. mt. of Bopod and Ankhol villages at District Vadodara to Larsen and Toubro Limited (L &T) for the purpose of establishment of Technology Park. Scrutiny of the case file revealed that in Bopod village, rate of the land was fixed at ₹ 346 per sq.mt on the recommendations made by SLVC but in respect of Ankhol village no recommendations were sought from the SLVC though the comprehensive value of land to be allotted exceeded ₹ 50 lakh. The value of said land was fixed at ₹ 155 per sq. mt. by DLVC.

L &T requisitioned the piece of land at ₹ 134.55 per sq.mt on the ground that it had purchased (2002-03) private land from farmers in the vicinity at ₹ 134.55 per sq.mt on consent basis. And if higher price were paid for Government land, the farmers too would ask for the higher rates for their land. The Legal Department had however, opined for recovery of occupancy price at the market value was in consonance with the extant valuation policy of the Government.

The Government valued the land at ₹ 134.55 per sq. mt. *plus* value addition of 12 *per cent* for each subsequent year on the ground that the land was falling in between the private land already acquired by the company and therefore the said land could not be disposed of independently. The reasons stated are not tenable as in respect of village Bopod the Government had fixed the rate as ₹ 346 per sq. mt. while for Ankhol village which was also falling within the project the rate was fixed only at ₹ 155 per sq. mt. without reporting the matter to SLVC which was the competent authority to recommend on the value of the land. Additionally, the Government had also failed to recover the revenue due as per DLVC/SLVC rates fixed to the extent of ₹ 346 per sq. mt. Thus, non-adoption of the rate fixed for Bopod by SLVC resulted in undue financial benefit to the extent of ₹ 79.77 lakh[70] to the Company.

After this was pointed out, the Government replied (June 2012) that the decision to allot land at ₹ 134.55 per sq. mt. was taken by Cabinet. The fact however remains that the land has not been properly valued and has been granted at lesser rates.

[70] Ankhol Village 5565 sq. mt. x ₹ 155 (+12%) = ₹ 9.66 lakh + Bopod Village 26435 sq.mt. x ₹ 346 (+12%) = ₹ 1.02 crore + 30 % addition for grazing land admeasuring 26435 sq. mt. = ₹ 30.73 lakh. Total recoverable ₹ 1.43 crore. Recovered = ₹ 0.63 crore. Short recovery = ₹ 0.80 crore.

3.5.9.5 Allotment of land at concessional rates to Trusts

The Government Resolution dated 14 August 1991 stipulates that Government land can be allotted at 50 *per cent* of market value to those institutions, public trusts and NGOs which are engaged in good deeds of social upliftment such as educational, religious, press and hospitals.

(i) The Collector, Gandhinagar forwarded a proposal to the Revenue Department in August 2009 for allotment of Government land admeasuring 3,00,000 sq. mt. to a trust namely "School of Ultimate Leadership, Gandhinagar" (the institution) for establishing an institute for imparting leadership training, education and health services to the youth. The market rate of land recommended (September/ November 2009) by the DLVC and SLVC was ₹ 4,800 per sq. mt.

The Cabinet note submitted (February 2010) by the Revenue Department stated that the institution did not get approval from the Education Departments/councils and that the project report of the institution did not specify about the area of land required for purpose though the purpose of land was mentioned in the project report i.e. indoor games, restaurant, theatre and auditorium. Further, the trust was a newly established one and did not have any experience in the field. The Finance Department to whom the case was referred by the Revenue Department had opined that in the instant case the land should be allotted at current market value.

The Revenue Department proposed (February 2010) for allotment of land at 50 *per cent* of market value and the Cabinet initially (March 2010) approved allotment of 3,00,000 sq. mt. of land to the institution at 50 *per cent* of the value fixed by SLVC but as the institution could not arrange for the fund of ₹ 72 crore, it accepted only 1,00,000 sq.mt of land for ₹ 24 crore.

The Government allotted (June 2011) 1,00,000 sq.mt. of land after charging occupancy price of ₹ 25.20 crore being 50 *per cent* of the value as fixed by SLVC including interest amount of ₹ 1.20 crore for delayed payment.

We noticed that the Cabinet note clearly depicted the institution was neither recognised by the Education Department nor had any prior experience in the field. Further the activities mentioned in the project report also did not qualify it for allotment at concessional value with reference to the aspects mentioned in the GR. Hence, the allotment of land by the Government at concessional value to the institution instead of full occupancy price was irregular which resulted in short levy of occupancy price of ₹ 24 crore.

After this was pointed out, the Government replied (July 2012) that in view of the innovative prospects of the institution, the Cabinet had taken decision to allot land at 50 *per cent* concessional market value. The reply is not acceptable, as the institution did not apply for and get the approval of

Education Department. Besides, of 2/3rd portion of the land was not accepted by the Trust which revealed that either the project vision was erroneous or the project viability was doubtful.

The Government did not take into consideration these aspects while allotting the said land to the institution at concessional market value.

GR issued by Government in September 1999 stipulates the area of Government land which could be allotted to the Higher Educational Institutions and the extent of concession applicable on such allotment in continuance of the earlier Resolution of August 1991.

As per the Resolution, Colleges of Engineering, Pharmacy, Medical, Physiotherapy, Dental, Nursing, Polytechnic Training and Information Technology would be eligible to get Government land under the said policy. Management Courses and other purposes such as office buildings, staff quarters, etc. were not covered in the GR, hence were also not eligible for concessional allotment.

The area of land as stipulated by Educational Councils would be allotted to the institutions at concessional price of 50 *per cent* of the market value and the land in excess of 10 to 15 *per cent* of stipulated area shall be allotted at 75 *per cent* of the market value. If the requirement of land is more than that, the allotment shall be made after realisation of 100 *per cent* market value of the land.

(ii) As per the proposal of the Collector, Anand, Government allotted land admeasuring 1,82,115 sq.mt. in December 1999 to a Trust "Shree Charotar Moti Sattavis Patidar Kelavani Mandal" for establishing an Engineering College and allied facilities at the rates prescribed in the GR mentioned above. During 2003-04, the Trust again applied for allotment of land admeasuring 1,90,000 sq. mt. for establishment of a Deemed University and expansion of Engineering, Pharmacy and Management courses. The Collector, Anand forwarded the proposal to the Revenue Department along with DLVCs recommended rate of ₹ 80 per sq.mt. for the land.

Revenue Department proposed that cost may be recovered at 50 *per cent* of the ₹ 98 per sq. mt. recommendations of SLVC. The Cabinet approved the proposal of the Revenue Department in September 2006.

We noticed that as per the GR of 1999 that the trust was eligible to get only land of 20, 235 sq. mt. for Bachelor of Pharmacy programme at concessional rate of 50 *per cent* of market value.

For Engineering Colleges, the trust already been allotted the prescribed extant of land at concessional rates in December 1999 and hence was not eligible for further concession.

Management Courses and other purposes such as office buildings, staff quarters, etc. were not covered in the GR, hence were also not eligible for concessional allotment.

Further, as on the date of allotment, the institution had not obtained the approval from All India Council for Technical Education (AICTE).

In view of the above facts, the land admeasuring 1,69,765 sq.mt. (i.e. excluding the area of land measuring 20,235 sq. mt.) was required to be charged at full market value. However, the Government allotted 1,90,000 sq. mt. at concessional value of ₹ 0.93 crore instead of ₹ 1.98 crore. This resulted in less charging of occupancy price of ₹ 1.05 crore.

After this was pointed out, the Government replied (July 2012) that the Trust had utilised the land allotted to them earlier in a successful manner and hence Government decided to allot additional land at concessional rate of 50 *per cent*. Further, it was stated that the land was allotted for University and not for Engineering or Pharmacy College.

The reply, however, is not in line with the facts found on record as the land was found to have been allotted to the Trust for the purposes which were not eligible for concessional rate as per the GR dated September 1999.

3.5.9.6 Allotment of land to Ford India Private Limited without fixing the price of the land by SLVC

With a view to encourage and attract investments in innovative projects, Government in Industries and Mines Department had devised (December 2009) a scheme of assistance to Mega/Innovative Projects. A State Level Approval Committee (SLAC) under the chairmanship of Chief Secretary was constituted by Government (December 2009) for recommending the applications to Government for approval of assistance under the scheme.

Government allotted (August 2011) 18,63,687 sq. mt. of land valued at ₹ 205 crore to Ford India Private Limited (FIPL) for the purpose of establishment of mega project of automobile and engineering for manufacture of automobiles at the rate of ₹ 1,100 per sq. mt. fixed by SLAC.

We observed that though SLAC had been empowered to:

- recommend the application for assistance to Government and on approval of the application, the committee will also monitor the progress of the implementation of the Project for which assistance is sanctioned and
- prescribe the terms and conditions for implementation of the project

SLAC was not been empowered to fix the rate of land for allotment to mega projects. The value was required to be ascertained by DLVC/SLVC based

upon the valuation policy as determined by Government vide GR dated 22 October 2008.

After this was pointed out, the Government replied that SLAC had decided the value of land based on some concrete facts which is a practice with SLVC and the price was also approved by Cabinet. Finally, SLAC deliberated on the issue and took note of the GIDC land price in the nearby areas and allotted the land at ₹ 1,100 per sq. mt.

The reply is not acceptable as SLAC was not empowered for valuation of the land. It is desirable if the Government followed a uniform policy for allotment of Government land to safeguard its revenue and public interest at large.

3.5.9.7 Levy of penal occupancy price at lesser rates

As per Government Resolution dated 8 January 1980, the Government land encroached for commercial or industrial purpose shall be regularised after charging penal occupancy price at 2.5 times of the market value fixed by competent authority.

Government land admeasuring 7,24,897 sq. mt. was encroached (date was not available) by *Essar Steel Company Limited* (ESCL) in Hazira, Surat District. On request of ESCL, the Government decided (July 2009) to regularise the encroachment by levy of 2.5 *times* of ad-hoc value of land at ₹ 700 per sq. mt. on the ground that the land in nearby area was given to *Larsen and Toubro Ltd*, (L &T) at ₹ 700 per sq. mt. and the value of land encroached by ESCL had not been fixed by SLVC. Accordingly, total ad-hoc value of ₹ 127.50 crore worked out at 2.5 times was recovered from ESCL by the Government.

We noticed that ₹ 700 per sq. mt. considered by Government for working out the ad-hoc value was not justifiable as the rate was a concessional rate applied in the case of allotment of land to L &T. The actual rate of land ascertained in that case by SLVC was ₹ 2,020 per sq. mt. Hence, the full rate of ₹ 2,020 per sq. mt. should have been considered for recovery of ad-hoc value from ESCL. Further, it was also mentioned in the order of allotment of land to L &T that the concessional rate of ₹ 700 per sq. mt. would not be applicable in any other case. Thus, due to non-consideration of recovery of full rate of ₹ 2,020 per sq. mt. for the encroached land from the ESCL resulted in short recovery of ad-hoc occupancy price to the extent of ₹ 238.50 crore.

After this was pointed out, the Government replied (June 2012) that as the Company was incurring loss of ₹ 200 crore per day due to delay in completion of the project, ad-hoc price of ₹ 700 per sq. mt. was fixed based on the ground that land in the nearby area was given to L &T Ltd. at the rate of ₹ 700 per sq. mt. However, the Collector, Surat was instructed to send a formal proposal for regularisation of the said land. Further, Government stated that the matter was under the consideration of the Government and was premature.

However, the fact remains that more than three years have elapsed since the company applied for regularisation; it could have been done in line with Government Resolution dated 8 January 1980 and the penal occupancy price could have been recovered.

3.5.9.8 Absence of uniformity in levy of penal Occupancy price

In November 1989, by partial modification of the earlier policy decision of January 1980, Government decided to levy penal price of not less than one time and not more than 2.5 times of market value in case where encroachment of Government land was made by registered trusts for the purposes viz, schools, colleges, dispensaries etc.

We noticed 16 cases of encroachment of Government land by Gujarat Water and Sewerage Boards for construction of pump houses. These cases were regularised between October 2008 and September 2011.

Out of these, in four cases, penal occupancy price was levied at the rate of 2.5 times of the market value while in 12 cases, the Department levied one *time* penal price. There was nothing on the record to indicate why two rates of penalties were applied to the same Board. Non-levy of penalty at the maximum rate resulted in forgoing of revenue in shape of occupancy price of ₹ 4.05 crore.

After this was pointed out, the Government replied (June 2012) that the allotment was for public purpose and hence one time market value was charged from the Board. The reply is however silent about the non-levy of penal occupancy price at maximum rate i.e. 2.5 times of market value in all the cases.

3.5.10 Delay in finalisation of the price of the land

3.5.10.1 Premium not recovered due to non-finalisation of price of the land in respect of reconstitution of a Company

Government vide GR dated 6 June 2003 stipulated that prior permission of Collector/ Government shall be obtained whenever there is a change in the constitution of a partnership firm/Company to whom Government land is allotted or leased under new and restricted tenure[71]. While giving permission to reconstitute the partnership firm/Company, the Collector shall levy premium at 20 *per cent* of notional market value of the land.

Test check of records in the office of the Collector, Surat revealed that *Larsen & Toubro Ltd.* Hazira (L & T) was allotted (February 2008 and March 2010) Government land for manufacture of Supercritical Turbine Generators. L & T collaborated with *Mitsubishi Heavy Industries*, Japan to form two companies namely *L & T MHI Turbine Generators Pvt. Ltd.* and *L & T MHI Boilers Pvt. Ltd.* Accordingly, L & T had sought permission in May 2009 to lease part of the land allotted i.e. 88,062 sq.mt to the joint venture – L & T MHI Turbine Generators Pvt. Ltd. and 1,38,810 sq. mt. to *L & T MHI Boilers Pvt. Ltd.* The DLVC was held in August 2009 and fixed the rate at ₹ 2,800 per sq. mt. The case was sent by the Government to CTP for valuation as its value exceeded ₹ 50 lakh. The CTP however, stated that the cost of the land was not worked out correctly. Instead of working out the correct value of the land and sending the case to SLVC for approval;it returned the case to DLVC for afresh valuation in April 2010.

DLVC was again held in September 2011 and fixed ₹ 5,200 per sq.mt. as market value of the land. The value of premium chargeable at 20 *per cent* as worked out by DLVC was ₹ 23.60 crore. The value fixed by the DLVC was intimated to the Revenue Department by the Collector, Surat in September 2011. The SLVC/Government has not yet finalised the case till date. Non-finalisation of valuation resulted in blocking up of revenue due to non-levy of premium to the tune of ₹ 23.60 crore.

After the matter was pointed out, the Collector stated that the case was sent to the Government in September 2011 and was pending finalisation by the Government. However, the reply was silent about the delay of two years in his office.

The matter was brought to the notice of the Government (July 2012);no reply had been received.

[71] New and restricted tenure means the tenure of occupancy which is non-transferable and impartible without the prior approval of Collector.

3.5.10.2 Delay in finalisation of the price of land allotted to Boards and Corporations

Our scrutiny of allotment files revealed that the Government in May, 1997 had given advance possession of land admeasuring 1,14,611 sq. mt. to the Gujarat Industrial Development Corporation (GIDC) for establishment of Industrial Estate at Radhanpur. A reference for valuation of the land was made by the Government to CTP in May 1997 but no response was received till January 2002. The reasons for the delay of five years were neither found on record nor were the same furnished.

Thereafter the Collector referred the matter to the DLVC for valuation in pursuance of the directions (January 2002) issued from Revenue Department. The DLVC finalised the valuation in March 2006 and the Government issued (August 2006) a GR for allotment and valued the land at ₹ 1.26 crore. GIDC did not pay the value of the land or interest for delayed payment but forwarded representation to Government (June 2006) wherein it was stated that the land price decided by Government was on higher side and the Government should charge only consent price. The Government rejected the request of GIDC in October 2008 and issued notices for recovery of occupancy price which has not been paid till date.

Thus allotment was made after nine years from the date of giving advance possession of land. Non-recovery of occupancy price along with interest for delayed payment has resulted in blocking up of revenue to the tune of ₹ 3.01 crore[72]. The delay at each stage needs to be curtailed and steps need to be taken for recovering the amount.

The matter was brought to the notice of the Government (July 2012);no reply had been received.

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72 ₹ 1.26 crore occupancy price + ₹ 1.75 crore Interest (Interest calculated at 12 *per cent* from July 1997 to December 2003 @ 8 *per cent* from January 2004 to July 2011).

3.5.10.3 Valuation of cases of waste land allotted to Boards and Corporations not finalised

As per GR dated 7 January 2004, advance possession of land to Boards/Corporations shall be given subject to the conditions such as the value of land should be fixed by the DLVC within three months from the date of giving advance possession of land. The DLVC shall intimate the value fixed by it to the Board/Corporations immediately. In case of delay in payment by the Board/Corporation beyond three months from the date of intimation of value by the Collector, they shall be required to pay 8 *per cent* interest *per annum* for the delayed period of payment. Government in September 2009 instructed the Collectors to give advance possession of Government land to the Board/Corporations on recovery of value of land as per *jantri* rates subject to payment of differential value of land after valuation fixed by Government.

Test check of records revealed in 20 out of 40 cases of advance possession of land in three[73] Collector offices that the possession of Government land admeasuring 1,17,872 sq. mt. was handed over to three[74] Government Companies during August 2008 to March 2011. The Department recovered the value of land of ₹ 10.10 crore as per *jantri* rates but the valuation of the land by DLVC and SLVC was not carried out (March 2012). The reason for delay in conducting valuation was not intimated to audit. In absence of the valuation, the differential amount payable by the Companies and the blockage of revenue could not be ascertained. Further, as the valuation was not finalised and intimated to the Companies, Government cannot levy interest on the differential amount during the period from the date of advance possession to the date of intimation of final value of land.

The matter was brought to the notice of the Government (July 2012);no reply had been received.

3.5.10.4 Loss of interest due to delay in valuation

Scrutiny of seven other cases in Rajkot district revealed that value of land was not fixed within three months from the date of giving advance possession of land to Gujarat Energy Transmission Corporation (GETCO). The delay in valuation by DLVC ranged from 108 days to 429 days. No interest could be levied on delayed payment of occupancy price. Thus, non-adhering to the time schedule stipulated in the Government instructions, resulted in loss of interest of ₹ 12.08 lakh.[75]

The matter was brought to the notice of the Government (July 2012);no reply had been received.

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[73] Rajkot, Ahmedabad and Surat.

[74] Gujarat Energy Transmission Corporation (18 cases), Gujarat Agro Industries Ltd. (1 case) and Gujarat Gas Company Ltd. (1 case).

[75] Interest calculated at 8 *per cent* on the value of land for the number of days delayed in valuation of DLVC.

In view of the cases cited, the land value arrived at has rendered DLVC/SLVC procedure irrelevant**.**

The Government may consider monitoring finalisation of the price of alienated Government land by framing a time schedule for each stage and prescribing returns to ascertain the compliance of time schedule.

3.5.11 Lack of internal control

We noticed that data of land records was not maintained correctly by the Department. The survey numbers of the land allotted were different from those mentioned in the allotment orders. Discrepancies in maintaining the records, delay in eviction of encroachers from illegally occupied land were also noticed. These deficiencies indicated that the data available with the Department was unreliable, internal controls and monitoring mechanism of the Department were weak. A few cases are mentioned in the following paragraphs:

3.5.11.1 Discrepancies in survey numbers of the land alienated for various purposes

Test check of allotment cases in the office of the Collector, Rajkot, revealed that in one case, Government had accorded its approval (31 May 2007) for allotment of Government waste land admeasuring 40,470 sq. mt. situated at survey number 248 *paike* 27 *paike* 1 of *Taluka* Patdari to *Savjibhai Korat Education and Charitable Trust* (Trust) for the purpose of setting up an Engineering college. A few deficiencies noticed are mentioned below:

- The valuation of ₹ 104 per sq. mt. was done by DLVC in respect of land situated at 248 *paike* 27 *paike* 1. However, the Collector allotted land situated at 248 *paike* 22 for which no valuation was carried out.
- There was nothing on record that the Trust has been given approval by AICTE till date.
- As per the possession letter of the Circle Officer, Patdari, the possession of land was given at survey number 248 *paike* 2 instead of land at survey number 248 *paike* 27 *paike* 1 or 248 *paike* 22.
- The Village Form 7 and 12 revealed that the land allotted to the Trust was of survey number 248 *paike* 30. This is in contradiction to GR of Revenue Department, Collectors Order and *Panchrojkam.*

Thus, survey numbers of the land allotted were not the same for which possession given and mutation was carried out in a third survey number. This indicated that monitoring mechanism of the Department to ascertain the correct survey number was weak. The grant of land at the places other than those specified in the allotment orders has financial as well as legal implications. The Department needs to strengthen its internal control mechanisms to avoid such lapses.

The matter was brought to the notice of the Government (July 2012);no reply has been received.

3.5.11.2 Discrepancies in valuation due to incorrect survey numbers

The Government in February 2001 created a Rehabilitation Package No.1 for earthquake affected (Earthquake-2001) areas where the extent of damage was more than 70 *per cent* to facilitate resettlement and provisions of shelter to the severely affected population. Condition number 9 of the package stipulated that for reconstruction and rehabilitation, voluntary organisations, industrial houses, public sector enterprises could adopt villages or share the cost of reconstruction. The minimum contribution by NGOs (including corporate) and others shall be 50 *per cent* of the total cost.

The Collector, Kutchch had given advance possession of land admeasuring 2,95,431 sq. mt. to *Bhansari Trust* organised by *Gems & Jewellery National Relief Foundation*, Mumbai for rehabilitation and resettlement of earthquake affected people. The DLVC had fixed rupees six per sq. mt. for land admeasuring 1,01,175 sq.mt. of land situated at survey number 714 *paike* on 18 January 2002.

As per the records, no valuation had been done by the DLVC in respect of the remaining 1,94,256 sq. mt. at Chitrod village. However, the Collector, Kutchch charged occupancy price at the rate of rupees six per sq. mt. for the entire land of 2,95,431 sq. mt. and collected occupancy price of ₹ 8.86 lakh being 50 *per cent* of ₹ 17.73 lakh in September 2002. The Revenue Department's approval (19 April 2006) mentioned that the allotted land was situated at survey number 714 *paike* and 155 *paike*.

After this was pointed out, the Government replied (June 2012) that the land allotted was falling under survey number 714 *paike* only and survey number 155 *paike* was incorrectly mentioned in the Resolution. The fact, however, remains that the DLVC had valued the land admeasuring 1,01,175 sq. mt. and no valuation was carried out in respect of the remaining land of 1,94,256 sq. mt. Hence, the correct survey numbers need to be ascertained and the valuation done accordingly.

3.5.11.3 Incorrect mutation entries

In order to amend the Record of Rights and Mutation entries, the concerned *Talati* Circle Officer is required to put up the mutation case with evidence to the Dy. *Mamlatdar* for authorisation. Dy. *Mamlatdar* refers the same to *Mamlatdar* for final certification. *Mamlatdar,* after verification of documents and giving notices to the party involved in mutation, certifies the entry and accordingly mutation is carried out.

During test check of records of allotment in the office of the Collector, Gandhinagar, we noticed in one case that 3,76,581 sq. mt. of Government land situated at survey numbers 237, 238, 240 and 270 of Koba village, Gandhinagar was allotted to *Acqualine Properties Pvt. Ltd.* (erstwhile *Raheja Corporation Pvt. Ltd.*) in June 2006 for SEZ purpose. The said land was allotted with a condition that it would be held by the Company as new and restricted tenure land i.e. the rights of the land will remain with the

Government and no change in mutation will take place. However, on verification of Village Forms 6, 7, 12 and 8A, we noticed that instead of 3,76,581 sq. mt., 4,39,880 sq. mt. of land was shown as allotted to the Company. Further, mutation affecting the transfer of land was done in respect of survey numbers 236, 237, 238 and 242 besides showing it as old tenure land instead of new and restricted tenure.

The above facts reveal that in all Government land admeasuring 63,299 sq. mt. valuing ₹ 4.46 crore (₹ 705 per sq. mt.) was transferred without obtaining orders from the Government/Collector.

The matter was brought to the notice of the Government (July 2012);no reply had been received (September 2012).

3.5.11.4 Incorrect change of ownership of land

Collector, Rajkot under Section 38 of the BLR Code, 1879 reserved Government land admeasuring 40,000 sq. mt. for Warmi Compost Plant (*Ghankachara*) of Municipal Corporation, Morbi with the condition that the land would be used for the purpose and the ownership of the land would not be transferred to the Municipal Corporation. However, during verification of Village Forms 7, 12 and 8A, we have noticed that the name of Municipal Corporation was entered in both the village forms.

After this being pointed out, the Collector Rajkot, while accepting the audit contention, directed the concerned *Mamlatdar* to make necessary correction in the Village Forms.

3.5.11.5 Inadequate maintenance of records

Section 79A of the BLR Code, 1879 empowers the Collector to evict the person occupying Government land illegally. The BLR Code and rules made there under do not provide any time frame for eviction or settlement of Government land encroached illegally by private parties. Section 61 of the BLR Code, 1879 prescribes levy of penalties for unauthorised occupation of land and empowers the Collectors to evict encroachers and forfeit crops, buildings or other constructions raised in the land.

The Revenue Department had prescribed a Management Information System (MIS) under which information regarding encroachment was to be sent monthly by each Collector office to the Revenue Inspection Commissioner (RIC) office for scrutiny and compilation.

We noticed from the data compilation of encroachment cases in the RIC office that in most of the cases, area of encroachment, penalty levied etc. had not been entered in the proforma which resulted in inaccurate and non-reliable data consolidation of encroachment.

Further, no year-wise analysis of the data of encroachment cases was maintained in the District/*Taluka* offices and by RIC. In the absence of this

information, Audit could not ascertain the extent of timely action for eviction or regularisation of encroached land by the Department.

Besides, no data was made available regarding the cases where litigation was underway and present status of these cases. The facts indicate that the Department is not following its own instructions. Government may instruct the Department to follow the instructions strictly relating to maintenance of records and monitoring mechanism for collection of the revenue and for monitoring the court cases.

After this was pointed out, the Government replied (June 2012) that the information in this regard called for from RIC was awaited.

3.5.11.6 Delay in evacuation of encroached lands

During scrutiny of records in the office of the *Mamlatdar*, Kotada Sangani and Jasdan in Rajkot District, we noticed in 18 cases of encroachment of Government land admeasuring 23,494 sq. mt. that the land was encroached for the purpose of brick manufacturing (17 cases) and *gaushala* (1 case). The period of encroachments were ranging from seven to 35 years. The fact of encroachment was brought to the notice of the *Mamlatdar* during the period from April 2009 to June 2009 by the *Talati* of the respective villages. The *Mamlatdar* issued notices (July 2009) under the provisions of BLR Code, 1879 for eviction of encroachment. Further progress and recovery of revenue by way of forfeiting the stock in site were not on record.

We noticed from the Encroachment Registers maintained and notice issued to the encroachers by *Talaties/ Mamlatdar* that action for evacuation of the encroachments was taken by them after a very long period, which shows the weak monitoring mechanism.

The matter was brought to the notice of the Government (July 2012);no reply has been received.

3.5.11.7 Allotment of land by Collector in excess of his power

We found that the powers exercised by the Collectors beyond the limits prescribed by the Government from time to time and land records were not maintained correctly resulting in discrepancies in grant of land as mentioned in the following paragraphs:

Government of Gujarat *vide* GR dated 27 November 2000 has delegated the power to District Collectors for allotment of Government land for different purposes subject to the limits prescribed on the basis of area and value of land. Accordingly, Collector was empowered to allot Government land valuing ₹ 15 lakh or 20,000 sq. mt. for industrial purposes. Allotment of Government land in excess of stipulated area or value thereon should be forwarded to Government for approval.

(i) Test check of allotment cases in the office of the Collector, Rajkot revealed in eight cases that Government land admeasuring 4,48,335 sq. mt. were allotted by the Collector without the approval of the Government for Right to Use (ROU) to Gujarat State Petronet Ltd., for laying gas pipeline in the District.

Out of the eight cases, in five cases, the land allotted was in excess of two hectares and in one case, though area of land allotted was less than two hectares, the value of land fixed by DLVC exceeded ₹ 15 lakh. In remaining two cases, both area and the value of land exceeded the limit stipulated for allotment by Collector. Further, in three cases out of the eight cases, the value of land fixed by the DLVC exceeded ₹ 50 lakh and hence was required to be valued by the SLVC according to the valuation principles of the Government.

The matter was brought to the notice of the Government (July 2012);no reply had been received (September 2012).

(ii) In another case, the Collector, Rajkot allotted (October 2008) land admeasuring 7,374.26 sq. mt. situated at survey number 275 *paike* 39 *paike* 1 of Hadmatala Village, Kotda Sanghani *Taluka* to "Raghuvir Cotton Ginning and Pressing Pvt. Ltd" at an occupancy price of ₹ 14.38 lakh. However, while giving possession, it was noticed that survey number 275 *paike* 39 *paike* 1 had only 1,012 sq. mt. of land. Accordingly, the Collector vide his Order dated 4 December 2009 revised his earlier Order and allotted only land admeasuring 1,012 sq. mt. situated at the above mentioned survey number. And on the same day, land admeasuring 2789 sq. mt. situated at survey number 177 *paike* 2 of village Bharudi, *Taluka* Gondal was allotted to the Company in lieu of the shortfall. However, no valuation procedures were followed by the Collector while allotting land at Village Bharudi of Gondal Taluka. The Company again applied for allotment of land admeasuring 6,362.26 sq. mt. at survey number 275 *paike* 39 *paike* 1 of Hadmatala village, Kotda Sanghani. Collector issued Order of allotment (January 2010) of 3,573.26 and 2,789 sq. mt. of land from survey number 275 *paike*39 *paike*1. Thus allotment of land from the survey number that was stated to be having only 1,012 sq. mt. indicates that the land records are not maintained correctly. Thus, the Collector had allotted an area of 10,163.26 sq. mt. of land in all to the firm costing more than ₹ 15 lakh.

The above facts indicate that there is a need of putting in place an internal control system by way of submission of returns to ensure that the powers exercised by the Collectors do not exceed the limits prescribed by the

Government from time to time and land records are required to be maintained correctly so that correct survey numbers are known before alienation of land.

The matter was brought to the notice of the Government (July 2012);no reply has been received (September 2012).

3.5.11.8 Breach of conditions stipulated in the allotment order in respect of allotment of Government land

Government land is allotted subject to certain terms and conditions as may be put forth in the Order of the Collector. The terms and conditions include that the allottee/grantee shall start construction within six months and complete it before two years from the date of the Order. Further, the allottee/grantee shall use the land for the purpose for which it was allotted. In case of breach of the said terms and conditions by the allottee/grantee, the Collector is empowered to either levy penalty or shall take back the possession of the land so allotted/granted.

During the course of audit, we noticed in the following cases that either the allottees had not utilised the land for the purpose for which it was allotted or the time limit prescribed in the Order of allotment was not adhered to, resulting in breach of conditions of allotment. We noticed that Government did not detect the irregular use of Government land and had not taken any initiatives for penalising or taking back the land from the industries/institutions committing breach of conditions.

Sl. No.	Name of Company/ Institution	Month & Year of allotment	District	Land description	Purpose of allotment	Breach of conditions of allotment
1.	Gondal Nagarpalika	November 2009	Rajkot	1,00,000 sq. mt. Gondal Taluka.	Construction of 1775 houses for slum dwellers	Completed construction of only 1044 houses in March 2012.
2.	*Capital Industries*	May 1989	Rajkot	1470 sq. mt. Kotada Sangani.	Industrial	As per the records, the Industry is closed and no manufacturing is taking place.
3.	Jayantibhai Kodabhai Dafta	October 2007	Rajkot	1618.80 sq. mt. Kotada Sangani.	Industrial	No progress of work as per '*Panchrojkam*' in October 2008. Further no progress shown thereafter.
4.	*Atmadeep Charitable Trust*	June 2004	Rajkot	20234 sq. mt. Kotada Sangani	Plantation of trees bearing fruits	As per Shree Rajpara *Gram Panchayat Talati's* report (January 2010), the trust had constructed a house in the land. Further, due to lack of irrigation, the trust could not succeed in planting trees bearing fruits.
5.	*Mundra Port & SEZ Ltd.* (MPSEZ)	2005 to 2007	Kutchch	5.47 crore sq. mt. Mundra.	SEZ	Only 98.66 lakh sq. mt. were used by the Company till December 2011. 4.48 crore sq. Mt. of land is lying vacant.

The matter was brought to the notice of the Government (July 2012);no reply had been received (September 2012).

Government may consider evolving a control mechanism to ensure the purpose for and the conditions under which land allotted are fulfilled and take punitive measures against the defaulters.

3.5.11.9 Non/short levy of taxes and duties

There is lack of effective mechanism at district level to watch compliance of conditions of various resolutions, orders and instructions issued by the Government from time to time in respect of the conversion of the land for various use and monitoring the levy and collection of various receipts relating therewith. Absence of such mechanism leads to continuous shortfall in Government revenue.

Mention was also previously made in paragraph 3.5.16, 3.5.17 and 3.5.22 of the Report of the Comptroller and Auditor General of India (Revenue Receipt), Government of Gujarat for the year ended 31 March 2010 on the persistent leakage of revenue. It was also recommended that the Government might consider taking appropriate measures to prevent leakage of such revenue. However, we noticed that there was no preventive action initiated by the Department to stop the leakage. Our test check revealed non/short levy of revenue in the cases detailed below:

(i) Conversion tax not levied

Section 67A of the BLR Code, 1879 provides for the levy of conversion tax on change in the mode of use of the land from agricultural to non-agricultural (NA) purpose or from one non-agricultural purpose to another in respect of land situated in a city, town or village. Different rates of the conversion tax are prescribed for residential/ charitable and industrial/other purposes depending upon the population of the city/town/notified area/ village.

During the test check of the records of six[76] Districts, we noticed in 105 cases, conversion tax was either not levied or levied at incorrect rates by the District Collectors on Government land allotted for NA purposes where separate NA permission was not required. Though internal audit is being conducted by RIC, it did not point out the non/short levy of conversion tax. Further, there was no monitoring mechanism by way of periodical returns to be submitted to the Revenue Department by the Collectors to ascertain whether conversion tax was levied and collected before effecting the allotments by the Collectors. Thus lack of internal control resulted in non/short levy of conversion tax of ₹ 65.31crore.

After this was pointed out, the Collector, Kutchch recovered (October 2012) ₹ 89.82 lakh in 23 cases. In other four cases, the Department while accepting

[76] Ahmedabad, Gandhinagar, Kutchch, Rajkot, Jamnagar and Dang.

the audit contention instructed the District Collectors to take appropriate action to recover the conversion tax applicable. No reply has been received in the remaining cases.

(ii) Stamp duty not levied

According to Article 20 (a) of Schedule I read with Section 3A of Bombay Stamp Act, 1958, stamp duty on conveyance is chargeable at the applicable rate on the amount of consideration for such conveyance or, as the case may be, the market value of the property which is the subject matter of such conveyance whichever is greater. As per Government instruction the possession of land was to be handed over only on payment of appropriate amount of stamp duty.

Our test check of allotment of land cases finalised by eight Collectors revealed that in 84 cases, the land was handed over to the allottees without verifying whether the allottees had paid the applicable stamp duty. Out of 84 cases, in 24 cases, we noticed that stamp duty was levied on the occupancy price recovered by the Government instead of on the market value of the land. In the remaining 60 cases, no stamp duty was levied before handing over possession of the Government land. Further, in most of the cases, the condition of payment of stamp duty was not inserted in the allotment orders. Failure of the Revenue Authorities to observe the instructions of the Government to recover stamp duty before handing over the possession of the land has resulted in non-realisation of stamp duty of ₹ 37.64 crore. Though, non-payment of stamp duty has been pointed out by audit persistently in the audit reports, the mistakes continue.

Superintendent of Stamps (SoS) office is *inter alia* responsible for strict implementation of the provisions of the Stamp Act, recovery of proper stamp duty to safeguard the revenue interests of the State. However, we found that SoS had neither prescribed any return to watch the recovery of stamp duty by Collectors nor was any inspection conducted by them to ensure the correct payment of stamp duty. In absence of this co-ordination, SoS was ignorant about non-payment or short payment of the stamp duties by the allotees.

After this was pointed out, the Department while accepting the audit contention in six cases, stated that the District Collectors were instructed to recover an amount of ₹ 2.47 crore. Final reply had not been received in the remaining cases (September 2012).

We recommend in the interest of the State that Government may instruct SoS for co-ordinating with the Collectors to prevent the leakage of stamp duty. This may be done by putting in place a system by way of returns or by conducting periodical inspections by SoS.

3.5.11.10 Non/short levy of premium on transfer of land on lease in SEZ

Government vide GR dated 5 September 2008 decided to levy premium at the rate of 10 *per cent* of stamp duty in case a Special Economic Zone (SEZ) developer transfers Government land to other Units on lease within five years from the date of giving possession of land to SEZ developer and 20 *per cent* in case the land is transferred on lease by the developer after five years. For registration of leases by SEZ developers, no NOC of the Collector/ Government is produced before the Sub Registrar for registration of the Documents. Approval of the Ministry of Commerce and Industries and Development Commissioner is only sought for while presenting of the documents of SEZ leases to Sub Registrar.

(i) We scrutinised the records relating to allotment of Government land to *Mundra Port and SEZ Ltd.* (MPSEZ) during the period from July 2005 to June 2009 and subsequent grant of lease records in the office of the Collector, Kachchh, *Mamlatdar*, Mundra and Sub-Registrar, Mundra.

During the course of scrutiny, we noticed that permission was obtained by MPSEZ from Collector, Kachchh for leasing out 18,598 sq. mt. of land to *Eon Hinjewadi Infrastructure Pvt. Ltd*, Mumbai after payment of premium of ₹ 40,000.

On cross verification of registered documents with the Sub Registrar, Mundra we noticed that 14 lease deeds for an area of 4,84,326 sq. mt. in MPSEZ were registered during the period from December 2008 to November 2011. However, the Collector had given permission to only one unit as mentioned above. Accordingly, the transfer of land admeasuring 4,65,728 sq. mt. by way of lease in the remaining 13 cases were irregular. The irregular transfer of land thus resulted in non-levy of premium of ₹ 10.57 lakh.

We noticed that the Department did not have any mechanism to prevent such lapses which subsequently resulted in leakage of revenue. Consequently the lapse went un-noticed till pointed out by audit. The Department should issue instructions to all Sub Registrars for not registering the cases without ensuring submission of "Permission Letter" of Collector in respect of Government land.

The matter was brought to the notice of the Government (July 2012);no reply had been received (September 2012).

(ii) Government allotted (July 2007) 1,26,30,017 sq. mt. of land situated at Valipor and Sarod village of Jambusar *Taluka*, Bharuch District to *Sterling Erection and Infrastructure Pvt. Ltd*, (the Company) for development of SEZ in August 2007. The Ministry of Commerce and Industry had accorded its approval for development, operation and maintenance of the multi-product SEZ on October 2007 and issued Gazette on 9 January 2008 in this regard.

We noticed that the Company had entered into Memorandum of Understanding (MoU) with seven Units for lease of 18,93,000 sq. mt. of land in the SEZ area between March 2008 and May 2012. However, the Company did not obtain permission from Collector for transfer of land on MoU/lease. Accordingly, no premium amount was levied and collected from the Company for the transfer of land. The breach of conditions thus resulted in leakage of revenue to an extent of ₹ 37.69 lakh worked out on the basis of *jantri* rates.

The matter was brought to the notice of the Government (July 2012);no reply had been received (September 2012).

3.5.12 Other points of interest

3.5.12.1 Interest not levied on delayed payments

During scrutiny of land allotment cases in the office of the Pr. Secretary, Revenue Department, we noticed that in two cases, interest was not levied on the delayed payment of occupancy price/additional occupancy price and in one case interest was levied at incorrect rate. This has resulted in non-collection of interest of ₹ 1.70 crore.

(₹ in crore)

<table>
<tr><th>Sl. No.</th><th>Allottee</th><th>Area of land (in sq. mt.)</th><th>Occupancy price on which interest was chargeable</th><th>Delay period (in months)</th><th>Non/ short levy of interest</th><th>Nature of observation</th></tr>
<tr><td>1.</td><td>K. Raheja Corporation Pvt. Ltd, Gandhinagar.</td><td>1,57,004</td><td>2.21[77]</td><td>59</td><td>1.31</td><td>Demand of ₹ 2.21 crore on account of grazing land allotted in June 2006 was paid in May 2010, no interest was charged.</td></tr>
<tr><td>2.</td><td>Nirma Pvt. Ltd, Mahua, Bhavnagar.</td><td>16,88,652</td><td>2.40</td><td>10</td><td>0.24</td><td>Department did not levy and collect interest on the differential occupancy price of ₹ 239.76 lakh paid by the Company after a delay of ten months.</td></tr>
<tr><td colspan="7">In the first case demand of ₹ 2.21 crore on account of grazing land allotted in June 2006 was paid in May 2010, no interest was charged. After this was pointed out (January 2012), the Government replied (July 2012) that the Company paid 30 per cent of additional market value to the Village Panchayat on account of compromise amount and hence interest is not chargeable on the same. The reply is not correct as the interest could have been levied on the market value of the land, had there been a provision in the LR Code.
Recommendation:- A provision for charging of interest on delayed payments from the private companies may be made in the LR code</td></tr>
<tr><td rowspan="2">3.</td><td rowspan="2">Gujarat Power Corporation Limited, (GPCL) Rajula, Amreli.</td><td>59,617</td><td>0.42</td><td>88</td><td>0.08[78]</td><td rowspan="2">Government charged interest at 8 per cent instead of 12 per cent on the occupancy price from the date of advance possession to the date of actual payment by GPCL.</td></tr>
<tr><td>53,277</td><td>0.33</td><td>103</td><td>0.07</td></tr>
</table>

[77] 30 *per cent* of ₹ 7.38 crore (₹ 470 per sq. mt. for land admeasuring 1,57,004).

[78] Interest calculated at 12 *per cent* for the period up to January 2004 and thereafter at 8 *per cent* till the date of payment in November 2006.

Nature of observation: The facility of advance possession was also extended to a Government company namely Gujarat Power Corporation Limited (GPCL) by the Government in May 1996 with the condition that it will pay 12 % interest for the delay in payment of Occupancy price. However the Department charged interest at 8 *per cent* instead of 12 *per cent* on the occupancy price from the date of advance possession from April 1998 & July 1999 to the date of actual payment by GPCL i.e. November 2006 resulting in short payment of ₹ 15 lakh.

After this was pointed out (December 2011), the Department replied (March 2012) that the interest rate was changed from 12 *per cent* to 8 *per cent* vide GR dated 7 January 2004 and accordingly, the interest was collected from GPCL. The reply is not acceptable as the advance possession of land was given to GPCL during April 1998 and July 1999 and the rate of interest chargeable at that time was 12 *per cent*.

3.5.12.2 Non-agricultural assessment (NAA) not levied

The Government vide notification of August 2003 revised the rates of NAA and classified the areas in three categories i.e. A, B and C for levy of NAA. The Code provides for issue of a demand notice and distraint and sale of defaulters' movable/immovable property for recovery of arrears of land revenue. Further, as per Section 48 of the Code, NAA is leviable with effect from the commencement of the revenue year in which the land is used for NA purposes with or without the permission of the competent authority.

During test check of Demand and Collection Register of four[79] Collector offices, we noticed in 20 cases that the NAA of ₹ 90 lakh was not levied on Government land allotted for NA purposes. Since, it was Government land, no separate orders are issued for recovery of NAA. In absence of separate orders for NA permissions, the recovery of NAA remained out of the notice of *talaties*. This has resulted in non-levy of NAA of ₹ 94 lakh including one case in which NAA of ₹ 4 lakh was charged less. In case of private owners separate NA permissions are issued by the Collector and the Department can watch the recovery.

It is recommended that separate NA permissions may be issued by the Government in respect of the Government land as is being done for private land.

The matter was brought to the notice of the Government (July 2012); no reply had been received (September 2012).

[79] Ahmedabad, Gandhinagar, Rajkot and Porbandar.

3.5.13 Inconsistent decision to allot land at token amount

As per GR dated 23 August 2004, Boards/Corporations are entitled to get advance possession of Government land subject to the terms and conditions stipulated therein. This facility of advance possession of Government land has been extended to the Special Economic Zone (SEZ) developers vide GR dated 19 September 2006.

Gujarat Urban Development Company Limited (GUDC), a Government Company was authorised by Government in May 2007 to undertake the Gujarat International Finance City project (GIFT city) in a joint venture with Infrastructure Leasing & Financial Services Ltd. (IL &FS) [80] for setting up an International Finance City. Subsequently, a Company called GIFT Company Ltd, (the Company) was formed by IL &FS and GUDC as a joint venture.

As per the directions of the Government in Revenue Department, Collector, Gandhinagar handed over advance possession of Government land admeasuring 26,77,814 sq. mt. valued by the DLVC/SLVC during September 2007 to December 2008 at ₹ 500 crore[81] situated at fourteen survey numbers of four *Talukas* of Gandhinagar district to GUDC for setting up the GIFT city. The GUDC proposed (June 2007) to Government for relaxation in payment of occupancy price for the land. Chief Secretary, Principal Secretaries of Revenue Department, Finance Department and UDUHD opined that the land shall be allotted at market value as per the extant policy on valuation of Government land. However, moratorium period of two years shall be allowed for payment of 50 *per cent* of the value of land and remaining 50 *per cent* payable as a soft loan. Meanwhile, Ministry of Commerce and Industry, Govt. of India accorded a formal approval in January 2008 to GIFT Company Ltd, for the proposed Multi Services SEZ covering an area of 10,11,750 sq. mt. (250 acres).

As per GR dated 22.11.2004, if the allotment could not be made within completion of two years from the date of DLVC's valuation, it was to be refixed afresh. The land was allotted in April/June 2011 by Government to the Company after expiry of two years from the date of valuation of DLVC, though fresh valuation was not done. Scrutiny of Cabinet note indicated that Collector, Gandhinagar had stated that the value of the allotted land was approximately ₹ 2,760 crore. However, Cabinet allotted 10,11,744 sq. mt. of land to GIFT SEZ Ltd., and 16,66,070 sq. mt. to GIFT Company Ltd., for a nominal price of rupee one with the condition that during the first phase of the project, the surplus amount received by the developers shall be divided between Government and the two Companies in 50:50 ratio. During the

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[80] IL &FS is a private finance company with major shareholdings of Life Insurance Corporation of India, ORIX Corporation-Japan, Abu Dhabi Investment Authority, Housing Development Finance Corporation Ltd., Central Bank of India, State Bank of India etc.

[81] The value of ₹ 500 crore was arrived after considering the rate fixed by SLVC in 11 survey numbers and DLVC in three survey numbers.

execution of subsequent phases, the surplus amount which may be received over and above the base cost of the project shall be divided between Government and the GIFT Company Ltd, in 80:20 ratio.

We noticed that land was allotted without ascertaining its value as on the date of allotment. Advance possession of land was given to an organisation other than Boards/Corporations/SEZ in contravention of the Government policy. Land was allotted negating the views of Finance Department, Revenue Department and UDUHD without collecting occupancy price to a minimum extent of ₹ 500 crore as on the dates of advance possession of land.

After this was pointed out, the Government stated (July 2012) that it was a Public Private Partnership (PPP) project and development rights were only given and ownership rights vested with the Government. The reply is not acceptable as the Government land is allotted at new and restricted tenure wherein the allottee is not entitled to sell, transfer or mortgage the land without the permission of the Collector. However, in this case, the Government authorised the allottee to mortgage/lease the land without seeking permission from the Collector/Government. Further, the State Government has produced no records to indicate that allotment for the GIFT city was on the basis of PPP. The State Government despite repeated requests did not produce to audit the Joint Venture Agreement signed between Government/GUDC and IL & FS. Non production of the records to audit has the consequential effect of limiting the scope of audit.

3.5.14 Conclusion

The performance audit revealed a number of system and compliance deficiencies. Government did not adopt a uniform policy in alienation and allotment of land. Delay in finalisation of valuation also resulted in blocking up of revenue of the Government. There was no mechanism for review and revision of incorrect orders issued by the subordinate officers to safeguard Government revenue. No proper monitoring system exists in the Department to ascertain and vacate encroachment cases.

3.5.15 Summary of recommendations

The Government may consider:

- ***developing at state level a database of the Government land (i) alienated; (ii) status of alienation proposals received, approved, rejected and pending; (iii) types and purpose of alienations; and (iv) the considerations received from the alienations made so as to make the system more transparent;***

- ***monitoring finalisation of the price of alienated Government land by framing a time schedule for each stage and prescribing returns to ascertain the compliance of time schedule;***

- ***evolving a control mechanism to ensure the purpose for and the conditions under which land allotted are fulfilled and take punitive measures against the defaulters; and***

- ***instructing SoS to co-ordinate with the Collectors to prevent the leakage of stamp duty. This may be done by putting in place a system by way of returns or by conducting periodical inspections by SoS.***

3.6 Non/short levy of premium price

The Government of Gujarat decided vide Resolution dated 13 July 1983 to allow conversion of land from new and restricted tenure[82] to old tenure[83] for sale/transfer for agricultural purpose or non-agricultural purposes subject to payment of premium price at prescribed rates fixed by the Government from time to time. If the land after change of tenure is sold at a price higher than the market price decided by the Government, then the premium recoverable at 80 *per cent* of the differential value for the land to be used for non-agricultural purpose and at 50 *per cent* of the differential value for the land to be used for agricultural purpose. Any breach of condition(s) specified in the order of conversion of land under new and restricted tenure to old tenure attracts differential premium price at prescribed rates. Further, Government decided that new *jantri* as approved by the Government shall be applicable in all the cases for fixation of premium price from 1 April 2008.

During test check of records of five Collector offices[84], two Dy. Collector offices[85], District Development office, Amreli for the period 2008-09 to 2010-11, between September 2010 and December 2011, we noticed that there was non/short levy of premium price of ₹ 8.70 crore as detailed below:

Sl. No.	Location	Nature of objection
1	Viramgam, Godhra and Bharuch No. of cases:3 Short levy: ₹ 6.97 crore.	As per GR issued in July 1983 under the Bombay Tenancy and Agricultural Land Acts, 1959, when title of the land is intended to be changed from new tenure to old tenure, permission of the Collector shall be obtained after the payment of premium of 50 *per cent* and 80 *per cent* of the market value for agricultural and non agricultural use, respectively. A permission given for conversion of new and restricted tenure land for agricultural use shall be with the condition that the land holder would require to pay premium, if he intends to convert it again for non agricultural purpose. (i) A perusal of Village Form 6 and order of Collector revealed that a person "A" unathorisedly occupying a piece of new and

82 New and restricted tenure means the tenure of occupancy which is non- transferable and impartible without the prior approval of Collector.

83 Old tenure means land deemed to have been purchased by a tenant on Tillers Day, 1 April 1957, free from all encumbrances.

84 Bharuch, Dahod, Godhra, Surat and Surendranagar

85 Choryasi (Surat) and Viramgam (Ahmedabad).

		restricted tenure land admeasuring 3,258 sq. mt. applied for conversion of 1,629 sq. mt. into old tenure non-agricultural purpose. The Collector had given permission for conversion of tenure after collection of premium accordingly. However, the Collector failed to levy premium on 1,629 sq. mt. of land which was unauthorisedly transferred to 'A" for agricultural use before converting it into non agricultural use. This resulted in short levy of premium of ₹ 19.55 lakh[86]. (ii) In another case, Collector Godhra did not collect premium of ₹ 6.08 lakh on transfer of new and restricted tenure land admeasuring 4,047 sq. mt. to *Shri Swaminarayan Sanstha.* (iii) The Collector, Bharuch granted (February 2010) NA permission to convert the agricultural land to residential purpose on the land admeasuring 33,185 sq.mt. Of this 23,978 sq.mt. of land was new tenure land, which was required to be changed to old tenure before grant of NA permission. Thus, granting of NA permission without charging applicable premium price for change of tenure resulted in short realisation of revenue of ₹ 6.71crore[87] .
2.	Surendranagar No. of cases:1 Short levy: ₹ 1.13 crore	Land admeasuring 14,341 sq. mt. was allotted (October 2000) for residential purpose subject to fulfillment of conditions specified in the order of allotment. As per the condition of allotment, the allotee was required to commence the construction within six months and complete it within a period of two years. On the breach of condition, the land would be taken back by the Government. Pending commencement of the construction, the allotee in December 2003 applied for change of tenure of land from new tenure to old tenure to sell it partly for commercial and partly for residential purposes. Neither the allotee's request for conversion to old tenure was approved nor the allotee constructed the residence as per the condition of allotment of October 2000. Thus, the Department's failure to either take back the possession of the land or grant the approval for conversion of tenure resulted in non-realisation of premium price.
3	Surat No. of cases:5 Short levy: ₹ 53.03 lakh	The Government under their Resolution of January 2010 decided to levy premium price on the area of final plot, where form-F showing the area of final plot was issued by the Town Planner and also where draft town planning scheme has been declared but not approved. In case where area of final plot has not been finalised and form-F has not been issued, premium price is required to be levied on 65 *per cent* of area of land. In these cases, form-F showing the area of final plot was issued by the Town planner; but the area of final plot was not taken into consideration for levy of premium price as per the Government Resolution of January 2010.

[86] (1,629 sq. mt. x ₹ 2,400 x 50 *per cent*) = ₹ 19.55 lakh.
[87] (23,978 sq. mt. x ₹ 3500 x 80 *per cent*) = ₹ 6.71 crore.

4	Dahod No. of case :1 Short levy : ₹ 6.40 lakh	For conversion of land under new tenure to old tenure, premium was required to be levied as per new *jantri* effective from 1st April 2008. But in one case, Collector levied premium of ₹ 40,000 for land admeasuring 4,000 sq. mt. on market value fixed by Town Planner instead of ₹ 6.80 lakh leviable at *Jantri* rate resulting in short levy of premium of ₹ 6.40 lakh.
Total number of cases: 10 **Total short levy: ₹ 8.70 crore**		

This was pointed out to the Department in March and April 2012. The Department accepted objection of ₹ 1.20 crore in two cases. In other cases, particulars of recovery and replies had not been received (September 2012).

3.7 Non/short levy of conversion tax

Section 67A of Bombay Land Revenue Code, 1879 provides for the levy of conversion tax on change in the mode of use of land from agricultural to non-agricultural purpose or from one non-agricultural purpose to another in respect of land situated in a city, town or village. Different rates of conversion tax are prescribed for residential/charitable and industrial/other purposes, depending upon the population of the city/town/notified area/village. Conversion tax shall be paid in advance by *challan* in the Government treasury.

During test check of records of three District Development offices[88] for the period 2008-09 and 2009-10, between September 2010 and January 2011, we noticed that out of total seven cases, in one case, M/s Mahisagar Developers had purchased agricultural land and later sold plots developed for non agricultural purpose out of the same land to various parties. But, conversion tax was not levied. In the remaining six cases, conversion tax was levied at ₹ 2 per sq. mt. applicable to residential purpose instead of ₹ 6 per sq. mt. applicable to educational/any other purpose. This resulted in non/short levy of conversion tax amounting to ₹ 28.09 lakh.

This was pointed out to the Department in February 2011, March and April 2012. The Department accepted objection of ₹ 1.73 lakh in one case. In other cases, particulars of recovery and replies had not been received (September 2012).

[88] Anand, Surat and Surendranagar

3.8 Non/short levy of penalty

The Bombay Land Revenue Code, 1879 and the Rules made thereunder provide that no land can be used for any purpose other than the purpose for which it is assessed or held without prior permission of the competent authority. For any breach of condition/ unauthorised use of land, the occupant shall be liable to pay penalty not exceeding 40 times of non-agricultural assessment of the area of land.

During test check of records of two Collector offices [89] and three District Development offices[90] for the period 2008-09 and 2009-10, between March 2010 and January 2011, we noticed that in 35 cases, there was non/short levy of penalty amounting to ₹ 53.44 lakh as shown in the table below:

Sl. No.	Period of assessment	No. of cases	Nature of observation
i.	2009-10	15	The DDO adopted NAA rate of ₹ 0.10 per sq. mt. / ₹ 0.40 per sq. mt. / ₹ 0.60 per sq. mt. instead of ₹ 0.15 per sq. mt. / ₹ 1.00 per sq. mt. for the purpose of levying penalty for unauthorised use of land. The defaulters were liable to pay penalty of ₹ 11.83 lakh instead of ₹ 7.33 lakh. This resulted in short levy of penalty of ₹ 4.50 lakh.
ii.	2008-09	2	In one case, construction of school building was commenced on agricultural land without prior permission of competent authority. In another case, construction of store room was commenced without revised permission by the competent authority.
iii.	2008-10	3	Applicants had breached the condition twice: (a). The land was not used for the purpose for which permission was granted; and (b). The land was used for the purpose other than the purpose for which permission was granted without approval of the competent authority. In these cases, penalty was either not recovered or recovered for single breach of condition.
iv.	2009-10	1	The applicant had made breach of condition by not commencing work of construction of godown within prescribed time limit. Penalty was leviable at the rate of 40 times of NAA amounting to ₹ 23.38 lakh. But the case was finalised by recovery of penalty amounting to ₹ 0.46 lakh only.
v.	2009-10	7	The applicants had made breach of condition by not completing work of construction within prescribed time limit. The penalty was leviable at the rate of 40 times of NAA amounting to ₹ 27.25 lakh was leviable but penalty amounting to ₹ 5.37 lakh only was levied due to computation error.
vi.	2008-09	7	In seven cases, NA permission for residential use was granted in respect of land admeasuring 38,977 sq. mt. As the construction was not started within prescribed time period, Collector imposed penalty at the rate of 40 times of NAA amounting to ₹ 2.18 lakh. The land owner was required to deposit the amount of penalty within 30 days from the date of order. But no action was taken for recovery of penalty.

[89] Bhavnagar and Surendranagar
[90] Gandhinagar, Himatnagar and Navsari

This was pointed out to the Department in December 2010, February 2011, March and April 2012. The Department accepted objection of ₹ 4.14 lakh in 12 cases and recovered ₹ 2.18 lakh in seven cases. In other cases, particulars of recovery and replies had not been received (September 2012).

3.9 Non-observance of Government instructions on powers of attorney (PoA)

The Government instructed in September 2005 to invariably send copy of the Power of Attorney (PoA) presented as evidence in support of ownership of land for obtaining NA permission and authorising the attorney to act for sale of land, receiving consideration, signing the sale deed, etc. to the concerned DC (Valuation) for valuation and recovery of stamp duty in view of Article 45 (f) and (g) of Schedule I of the Bombay Stamp Act, 1958.

Test check of the records of the three Collectors[91] and DDO, Valsad for the year 2008-09 and 2009-10, between September 2010 and March 2011 revealed that in 13 cases, the revenue authorities had received the copies of PoA from the applicants (PoA holders) presented as evidence in support of ownership of land for obtaining permission of conversion of land and authorising the PoA holders to act in respect of sale of such land. However, the Collector had not forwarded it to the concerned Dy. Collector for valuation and levy of proper stamp duty. These PoA were required to be registered and stamp duty and registration fees were leviable as per conveyance deed. However, the same were not registered with the concerned registering authorities. Stamp duty and registration fees involved in these cases worked out to the extent of ₹ 13.24 lakh.

This was pointed out to the Department in March and April 2012, their replies had not been received (September 2012).

[91] Himatnagar, Rajkot and Surendranagar

3.10 Short levy of stamp duty

As per Article 20 of the Bombay Stamp Act, 1958, as applicable to Gujarat, stamp duty on conveyance is leviable on the market value of the property or consideration stated in the document, whichever is higher. As per provisions of Section 28 of the Act *ibid*, the consideration, market value and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable, shall be fully and truly set forth therein. Section 33 of the Act, ibid empowers every person in charge of a public office to impound any instrument produced before him in performance of his functions, if it appears that such instrument is not duly stamped. Superintendent of Stamps in their Circular of April 2005 had instructed that where purpose of purchase of property is clear, *jantri* rates of land shall be applicable according to purpose of purchase for levy of stamp duty. As per the guidelines issued for implementation of revised *jantri* effective from 1st April 2008, where agricultural land is purchased for non-agricultural purpose with the permission of competent authority, rates of developed land should be considered for levy of stamp duty.

During test check of records of Collector, Anand, Dy. Collector, Dholka and District Development Officer, Godhra for the period 2009-10 and 2010-11, between September 2010 and September 2011, we noticed that in seven cases of conversion of land from agricultural to non-agricultural purpose/ conversion of land from new to old tenure for non-agricultural purpose, copies of sale deeds/ powers of attorney were presented by applicants as evidence of ownership of land. Recitals of sale deeds/powers of attorney revealed that out of seven cases, in four cases, liability of payment of premium price for conversion of land from new to old tenure was passed by land owners to buyers. But the Registering authorities failed to include the amount of premium price payable in the consideration for levy of stamp duty. In one case, land was purchased by a trust (i.e. a non-agriculturist) for non agricultural (i.e. educational) purpose and permission was also granted by the competent authority under Bombay Tenancy Act. Though stamp duty was required to be levied as per *jantri* rates of non-agricultural land, it was levied as per *jantri* rates of agricultural land. In two cases, transfer of land was for non-agricultural purpose. Though stamp duty was required to be levied by adopting *jantri* rates of non-agricultural land, it was levied by adopting *jantri* rates of agricultural land. The Department failed to levy and recover stamp duty at correct rates. This resulted in short levy of stamp duty of ₹ 9.01 lakh.

This was pointed out to the Department in April 2012, their replies had not been received (September 2012).

3.11 Non/short levy of measurement fees

Settlement Commissioner and Director of Land Records, Gandhinagar vide orders dated 31 December, 2002 revised the rates of measurement fee from 1 February 2003. Accordingly, measurement fee is leviable at the rate of ₹ 1,200 for each development plan up to four plots and ₹ 300 for each additional plot.

During test check of records of four DDO offices[92] for the year 2008-09 and 2009-10, between September 2010 and May 2011, we noticed that in 73 cases, the revenue authorities granted permission to use land for various non-agricultural purposes as per approved plan. However, the Department did not recover measurement fees at the prescribed rates on number of plots as per approved layout plan. This resulted in non/short levy of measurement fee of ₹ 10.82 lakh.

This was pointed out to the Department in March and April 2012, their replies had not been received (September 2012).

[92] Palanpur, Rajpipla, Surat and Surendranagar

CHAPTER-IV
EXECUTIVE SUMMARY

Trend of revenue	The variation between the BEs and Actuals had increased from 16.16 *per cent* in 2010-11 to 18.18 *per cent* in 2011-12 indicating that the BEs were not prepared on realistic basis.
Revenue Impact of Audit Reports	During the last five years, we had pointed out audit observations with revenue implication of ₹ 369.60 crore in 22 paragraphs through the Audit Reports. Of these, the Department/ Government had accepted audit observations in 20 paragraphs involving ₹ 96.75 crore and had since recovered ₹ 12.65 crore. The recovery in accepted cases was very low (13.07 *per cent* of the accepted money value).
Results of audit	We test checked the records of offices of Commissioner of Transport, Regional Transport and Assistant Regional Transport Offices in the State during the year 2011-12 and noticed under assessment of tax and other irregularities involving ₹ 15.88 crore in 123 cases. During the course of the year, the Department accepted underassessment and other irregularities of ₹ 17.18 crore in 81 cases, of which seven cases involving ₹ 9.59 lakh were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 1.10 crore was realised in 41 cases during the year 2011-12 by the Department.
What we have highlighted in this Chapter	Operators of 1,697 omnibuses, who kept their vehicles for use exclusively as contract carriage and 1,436 vehicles used for transport of goods, had neither paid tax nor filed non-use declarations for various periods between 2008-09 and 2010-11. The Departmental officials failed to issue demand notices and initiate recovery action prescribed in the Act. This resulted in non-realisation of motor vehicles tax of ₹ 16.34 crore including interest of ₹ 1.30 crore and penalty of ₹ 1.71 crore.

CHAPTER-IV
TAXES ON VEHICLES

4.1 Tax administration

The State Commissioner of Transport (CoT) heads the Gujarat Motor Vehicle Department (GMVD) under the administrative control of the Additional Chief Secretary to the Government of Gujarat in the Ports and Transport Department. He is assisted by a Joint Commissioner and 82 officials at GMVD head office. There are 26 Regional Transport Offices (RTO). There are 10 permanent check posts[93] and three internal check-posts[94] working under 10 RTOs.

4.2 Trend of revenue

Budget Estimates (BEs) and Actual receipts from Motor Vehicle Tax during the last five years from 2007-08 to 2011-12 along with the total tax/non-tax receipts during the same period are exhibited in the following table.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax and non-tax receipts of the State	Percentage of actual receipts *vis-a vis* total tax/non-tax receipts
2007-08	1,284.00	1,310.09	(+) 26.09	(+) 2.03	26,494.88	4.94
2008-09	1,412.40	1,381.66	(-) 30.74	(-) 2.18	28,656.35	4.82
2009-10	1,450.00	1,542.64	(+) 92.64	(+) 6.39	32,191.94	4.79
2010-11	1725.00	2003.68	(+) 278.68	(+) 16.16	41,253.65	4.86
2011-12	1900.00	2251.03	(+) 351.03	(+) 18.48	49,528.81	4.54

Sources:Finance Accounts of the State.

As would be seen from the above the variation between the BEs and Actuals had increased from 16.16 *per cent* in 2010-11 to 18.18 *per cent* in 2011-12 indicating that the BEs were not prepared on realistic basis.

The reasons for variations though called for were not furnished by the Department (July 2012).

[93] Ambaji, Amirgarh, Bhilad, Dahod, Deesa, Shamlaji, Songarh, Tharad, Waghai and Zalod

[94] Budhel (Bhavnagar), Kavdi (Jamnagar) and Samkhiyali (Bhuj)

4.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2012 amounted to ₹ 105.19 crore. The following table depicts the position of arrears of revenue during the period 2007-08 to 2011-12.

(₹ in crore)

Year	Opening balance of arrears	Amount collected during the year	Closing balance of arrears
2007-08	89.54	59.73	75.73
2008-09	75.73	24.66	80.07
2009-10	80.07	26.36	96.06
2010-11	96.06	88.55	123.23
2011-12	123.23	18.04	105.19

Sources:Information furnished by Department.

The above table indicates that arrears of revenue increased from ₹ 89.54 crore to ₹ 105.19 crore during the period of five years. The Department did not furnish the reasons for increase arrears of revenue. The Department needs to take strict action against the defaulters for reduction of arrears.

4.4 Cost of collection

The gross collection in respect of receipts of taxes on vehicles and taxes on goods and passengers, expenditure incurred on its collection and the percentage of such expenditure to gross collection during the years 2009-10 to 2011-12 alongwith the relevant all India average percentage of expenditure on collection to gross collection for the preceding years are mentioned in the following table:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection for the preceding year
Taxes on vehicles and taxes on goods and passengers	2009-10	1,542.64	54.79	3.55	2.93
	2010-11	2,003.68	76.17	3.80	3.07
	2011-12	2,251.03	66.07	2.93	3.71

Source:Finance Accounts

Thus the cost of collection during 2009-10 and 2010-11 remained above the respective preceding years' all India average percentage, but during 2011-12, it was below all India average percentage.

4.5 Impact of Audit Reports - Revenue impact

During the last five years, we had pointed out audit observations with revenue implication of ₹ 369.60 crore in 22 paragraphs through the Audit Reports. Of these, the Department/Government had accepted audit observations in 20 paragraphs involving ₹ 96.75 crore and had since recovered ₹ 12.65 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit report	Paragraphs included		Paragraph accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2006-07	2	9.10	2	8.95	2	1.33
2007-08	1	83.08	1	36.56	1	7.37
2008-09	4	6.29	4	6.29	4	1.39
2009-10	8	221.36	7	19.29	4	1.51
2010-11	7	49.77	6	25.66	4	1.05
Total	**22**	**369.60**	**20**	**96.75**	**15**	**12.65**

The above table indicates that recovery in accepted cases was very low (13.07 *per cent* of the accepted money value).

4.6 Results of audit

We test checked the records of offices of Commissioner of Transport, Regional Transport and Assistant Regional Transport Offices in the State during the year 2011-12 and noticed under assessment of tax and other irregularities involving ₹ 15.88 crore in 123 cases, which fall under the following categories:

(₹ in crore)

Sr. No.	Category	No. of cases	Amount
1.	Non/short levy of motor vehicle tax	64	13.31
2.	Other irregularities	56	1.90
3.	Expenditure Audit	3	0.67
	Total	**123**	**15.88**

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 17.18 crore in 81 cases, of which seven cases involving ₹ 9.59 lakh were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 1.10 crore was realised in 41 cases during the year 2011-12 by the Department.

A few illustrative audit observations involving ₹ 17.67 crore are mentioned in the succeeding paragraphs.

4.7 Non-realisation of motor vehicle tax on transport vehicles

The Bombay Motor Vehicle Tax (BMVT) Act, 1958 prescribes that contract carriage and goods carriage vehicles are required to pay assessed tax on monthly/half yearly/ yearly basis respectively except for the period where the vehicles are not in use. In case of delay in payment, interest at the rate of one and half *per cent* per month and if the delay exceeds one month, a penalty at the rate of two *per cent* per month subject to a maximum of 25 *per cent* of tax is also chargeable. Section 12 of the Act ibid authorises the Department to recover unpaid tax as arrears of land revenue. Section 12 B empowers the Department to detain and keep in custody of the vehicles of those owners who defaulted in payment of Government dues.

During test check of Demand and Collection Registers of 18 taxation authorities[95] between September 2009 and March 2012, we noticed that operators of 1,697 omnibuses/maxi cabs, who kept their vehicles for use exclusively as contract carriage and 1,436 vehicles used for transport of goods, had neither paid tax nor filed non-use declarations for various periods between 2008-09 and 2010-11. There was no proper monitoring system to trace such vehicles in default. The Departmental officials failed to issue demand notices and take recovery action prescribed in the Act which is indicative of the existence of weak internal control system in the Department. The Department neither invoked provisions of Section 12 nor took action under Section 12B. This resulted in non-realisation of motor vehicles tax of ₹ 16.34 crore including interest of ₹ 1.30 crore and penalty of ₹ 1.71 crore.

After this was pointed out to the Department between March 2010 and May 2012, the Department accepted (July 2012) audit observations in 2,890 cases amounting to ₹ 15.64 crore. In 326 cases, the Department recovered an amount of ₹ 79.21 lakh. In other cases, particulars of recovery and replies had not been received (September 2012).

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[95] Ahmedabad, Amreli, Anand, Bardoli, Bhavnagar, Bharuch, Bhuj, Gandhinagar, Godhra, Himmatnagar, Jamnagar, Junagadh, Mehsana, Palanpur, Rajkot, Surat, Vadodara & Valsad.

4.8 Non-recovery of motor vehicle tax on non-transport vehicles

Section 3 and 4 of the BMVT Act, require owners of non-transport vehicles (cranes, compressors, rigs, excavators and loaders etc) to pay tax six monthly/annually in advance except for the period during which the vehicles are not in use. In case of delay in payment, interest at the rate of one and half *per cent* per month and if the delay exceeds one month, penalty at the rate of two *per cent* per month subject to a maximum of 25 *per cent* of tax is also chargeable.

During test check of registration and recovery register of 11 taxation authorities[96] between February 2010 and February 2012 we noticed that owners of 617 non-transport vehicles who used or kept for use their vehicles in the State had neither paid tax nor filed non-use declarations for the various periods between 2008-09 and 2010-11. The Departmental officials did not issue demand notices and initiate recovery action as contemplated in the Act. The Department also failed to invoke provisions of Section 12 and 12B of the Act. This resulted in non-realisation of motor vehicles tax of ₹ 56.39 lakh including interest of ₹ 7 lakh and penalty of ₹ 8.98 lakh.

After this was pointed out to the Department between September 2010 and May 2012, the Department accepted (July 2012) audit observations in 605 cases of ₹ 54.86 lakh and recovered an amount of ₹ 7.10 lakh in 60 cases. In other cases, particulars of recovery and replies had not been received (September 2012).

[96] Amreli, Anand, Bhuj, Godhra, Himatnagar, Jamnagar, Mehsana, Nadiad, Palanpur, Rajkot & Surat.

4.9 Short levy of motor vehicle tax on imported vehicles

As per the Circular of April 2007 issued by Commissioner of Tansport under Section 3 and 4 of the BMVT Act, 1958, six *per cent* of sales value is payable as tax on registration of indigenous four wheeled vehicles by individuals, local authorities, universities, educational and social institutions and for others the rate is double. In case of non-transport vehicles (Costruction Equipment Vehicles *viz.,* cranes, compressors, rigs, loaders, etc.), tax is payable at the prescibed rate based on the weight of the vehicle either half yearly or yearly. In case of imported vehicles, tax is payable at twice the above rates.

During the test check of registration records of the two taxation authorities[97], between March and September 2011, for the period 2009-10 to 2010-11, we noticed in six cases of imported vehicles, the tax was not levied at applicable rates. Of the six cases mentioned, in five cases, (i.e. four non-transport vehicles and one transport registered in the name of company/firm) taxes were leviable four times at rate applicable to indigenous vehicle and in the remaining one (i.e. non-transport vehicle registered in the name of an individual) tax was leviabe twice the rate applicable to indigenous vehicle. However, the Department levied tax at the rate 6 *per cent* resulting in short levy of MVT of ₹ 5.76 lakh including interest of ₹ 0.76 lakh and penalty of ₹ 0.99 lakh.

After this was pointed out to the Department in March and May 2012, the Department accepted (July 2012) audit observations of all the six cases and recovered ₹ 3.39 lakh in one case. In other cases, particulars of recovery had not been received (September 2012).

[97] Bhuj and Godhra

4.10 Short levy of lumpsum tax

As per the Circular of April 2007 issued by Commissioner of Transport under Section 3 and 4 of the BMVT Act, 1958, six *per cent* of sales value is payable as tax on registration of indigenous four wheeled vehicles by individuals, local authorities, universities, educational and social institutions and for others the rate is double. Further, the Circular stipulated for inclusion of other taxes but exclusion of VAT while arriving at sales price for levying lumpsum tax. In case of tractors used solely for agricultural purpose, rate of tax is 3.5 *per cent* of cost of vehicle.

During the test check of registration records of the three taxation authorities[98], between May 2010 and November 2011, for the period 2009-10 to 2010-11, we noticed that in 75 cases, there was total short levy of lumpsum tax, interest and penalty of ₹ 9.14 lakh as detailed below:

(₹ in lakh)

Sl. No.	Location	Period	No. of cases	Amount of short levy	Remarks
1	Surat, Valsad	2010-11	69	6.67	VAT paid in other states was not included in cost of vehicle for levy of tax.
2	Surat	2009-10	2	1.74	CST paid was not included in cost of vehicle for levy of tax.
3	Palanpur	2009-10	4	0.73	In three cases, tractors were purchased in the name of Director of Research of Agriculture University, but tax was levied at a lower rate of 3.5 *per cent* instead of 6 *per cent*. In one case, vehicle was registered in the name of director of a company, but tax was not levied at double rates (i.e. 12 *per cent*).
Total			**75**	**9.14**	

This was pointed out to the Department in December 2010 and May 2012. The Department in their reply had accepted (August 2012) the audit observations amounting to ₹ 2.46 lakh in six cases. On the remaining 69 cases, the Department did not accept the audit observation on the plea that of the VAT was not to be included in the sale price of vehicle for levy of tax as per Government Notification of April 2007.

The reply of the Department is not acceptable. The intention of the Department is to exclude only Gujarat VAT and not the VAT/CST levied by other states while calculating the sales price. Thereafter, on the basis of audit observation, the Department issued a circular in July 2011 instructing the field offices to include CST while calculating the sales price.

98 Palanpur, Surat and Valsad

4.11 Non/short realisation of lumpsum tax on goods vehicles

As per the Notification of March 2010 issued under Section 3 and 4 of the BMVT Act, 1958 by Ports and Transport Department, the goods vehicles the gross vehicle weight of which did not exceed 7,500 kg were liable to pay lumpsum tax. As per Circular issued in April 2010 by Commissioner of Transport, goods vehicles which were registered on or before 1st April 2010 and the gross vehicle weight of which were between 3,000 kg and 7,500 kg were required to pay lumpsum tax in two installments (i.e. on 20 April 2010 and 20 October 2010). Interest and penalty was also leviable for delay in payment of tax.

During the test check of registration records of the three taxation authorities[99], between August and November 2011, for the period 2010-11, we noticed that in case of 143 goods vehicles, whose gross vehicle weight was between 3000 kg and 7500 kg, either second installment or both the installments of lumpsum tax were not paid. This resulted in total non/ short realisation of lumpsum tax of ₹ 37.43 lakh including interest of ₹ 3.61 lakh and penalty of ₹ 5.20 lakh.

After this was pointed out in March and May 2012, the Department accepted (July 2012) the entire amount and reported recovery of ₹ 5.17 lakh in 14 cases. In remaining cases, particulars of recovery had not been received (September 2012).

4.12 Short recovery of entry tax

In terms of Notification dated 1st April 2008 issued under The Gujarat Tax on Entry of Specified Goods into Local Areas act, 2001, the Government of Gujarat fixed for levy of entry tax at the rate of 15 *per cent* on the purchase value of motor vehicles brought from other States in Gujarat within 15 months from the date of its registration. The Commissioner of Commercial Tax had requested (September 2003) the Commissioner of Transport not to release registration documents till payment of proper entry tax. The Departmental instructions (October 2003) provided that RTOs should verify payment of entry tax by demanding prescribed documents from the vehicles owners.

During test check of the registration records and other records of three taxation authorities[100] in November and December 2011, we noticed that in case of 86 registered vehicles brought from other states in 2010-11, the departmental officials levied entry tax at the lesser rates i.e. less than 15 *per cent* on the purchase value of vehicles. This resulted in short recovery entry tax of ₹ 24.06 lakh.

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99 Gandhinagar, Himatnagar and Palanpur

100 Bhavnagar, Surat and Valsad

After this was pointed out to the Department in May 2012, the Department accepted (September 2012) audit observations in 82 cases amounting to ₹ 18.86 lakh. Particulars of recovery and replies in remaining cases had not been received (September 2012).

4.13 Non-ascertaining of mailing address

> As per Rule 47 of Central Motor Vehicles Rule, 1989, an application for registration shall be accompanied by proof of address by way of any one of the documents referred to in Rule 4. As per Rule 75, each State Government shall maintain a State Register of motor vehicles in respect of motor vehicles registered in the State in Form 41 which inter *alia*, includes name and full address of the registered owner of the vehicle. The BMVT Act requires RTOs to issue Revenue Recovery Certificate (RRC) against defaulters after one month of non-payment of MVT. Several instances were noticed in which RRCs were issued after the prescribed time limit and often with improper mailing address. Before issuance of certificate of registration, RTO has to verify evidence of address from one of the documents specified in CMV Rules, 1989.

During test check of the records of four taxation authorities[101] between November 2010 and November 2011 for the period 2009-10 to 2010-11, we noticed that in 26 cases, the demand notices issued to vehicle owners for recovery of outstanding dues were returned due to incorrect address of vehicle owners. Failure on the part of the Department in ascertaining the correct address of the vehicle owner at the time of registration resulted in non-recovery of tax and penalty to the tune of ₹ 42.28 lakh.

After this being pointed out to the Department in March and May 2012, the Department accepted (August 2012) audit observations in 23 cases amounting to ₹ 18.80 lakh and recovered ₹ 0.34 lakh in one case. In three cases pertaining to RTO, Vadodara, the Department stated to have referred the cases to Police for necessary action. Particulars of recovery and replies in remaining cases had not been received (September 2012).

[101] Amreli, Bhuj, Nadiad and Vadodara

4.14 Non-realisation of motor vehicle tax due to improper issue of revenue recovery certificate (RRC)

Section 12 of the BMV Tax Act, 1958 and rules made thereunder provide that any tax due and not paid shall be recoverable in the same manner as arrears of land revenue. The Act also provides for levy of interest and penalty at prescribed rates on delayed payment of tax. The Act also empowers the taxation authority to detain and keep in custody the vehicles of owners who defaulted in payment of Government dues. In case the vehicle owner does not intend to use or keep for use the vehicle in the State, he may file a declaration in advance regarding its non-use subject to the approval by the taxation authority.

During test check of records of the office of the RTO, Vadodara, for the year 2010-11 we noticed that in one case, a vehicle was registered in the name of an individual and hypothecated to a finance company. The vehicle owner defaulted in payment of tax and the taxation authority issued RRC (September 2009) for recovery of tax and penalty for the period from December 2001 to September 2009. The vehicle owner stated that due to default in repayment of loan, possession of the vehicle was taken over by the finance company. The taxation authority again issued a RRC (August 2010) in the name of finance company for payment of tax of ₹ 19.38 lakh and penalty of ₹ 4.84 lakh for the period from December 2001 to October 2010. The finance company stated (September 2010) that the company was not liable to pay tax as the vehicle was registered in the name of loanee (vehicle owner) and the vehicle was released to the loanee as he had already paid the instalments of loan.

Neither the vehicle owner nor the finance company had filed the declaration in form-NT for non-use;hence tax and pe nalty were recoverable. The RRC was issued after a lapse of eight years. The fact whether the vehicle was in the custody of vehicle owner or the finance company was also not known. The RTO failed to initiate timely action for recovery of dues in non-realisation of tax and penalty of ₹ 24.22 lakh.

This was pointed out to the Department in November 2011. The Department in their reply stated (August 2012) that both owner of the vehicle and financier were covered under the definition of owner and therefore, RRC had been issued in the names of both owner and finance company.

However, the fact remains that the RRCs were issued to the owner and the finance company with a delay of more than eight years. Further financier is covered under the definition of owner only if the possession of the vehicle is with them. Thus, the possession of the vehicle during the period from December 2001 to September 2009 need to be ascertained. Further, the details of recovery had not been received (September 2012).

CHAPTER-V
EXECUTIVE SUMMARY

Revenue Impact of Audit Reports in respect of Stamp Duty and Registration Fees	During the last five years (excluding the current years̀ report), through the audit reports we had pointed out cases of non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc. with revenue implication of ₹ 524.71 crore in 42 cases. Of these, the Department/Government accepted audit observations in 13 cases involving ₹ 293.27 crore and had recovered ₹ 0.99 crore in seven cases only. The recovery in accepted cases was very low (0.34 *per cent* of the accepted money value).
Revenue Impact of Audit Reports in respect of Entertainments Tax, Luxury Tax and Electricity Duty	During the last five years, in our Audit Reports we had pointed out instances of Entertainments Tax, Luxury Tax and Electricity Duty with revenue implication of ₹ 43.39 crore in 20 paragraphs. Of these, the Department/ Government had accepted audit observations in 14 paragraphs involving ₹ 2.80 crore and had since recovered ₹ 1.36 crore. The recovery in accepted cases was 48.57 *per cent* of the accepted money value.
Results of audits	Test check of records in the offices of the Dy. Collectors of Stamp Duty (SDVO) and Sub-Registrars (SR) in the State and various departmental officers relating to Entertainments tax, Luxury tax and Electricity duty in the State during the year 2011-12 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 44.15 crore in 457 cases. During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 101.33 lakh in 67 cases, of which eight cases involving ₹ 7.35 lakh were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 72.82 lakh was recovered in 63 cases by the Department in respect of entertainments tax, luxury tax and electricity duty during the year 2011-12.

What we have highlighted in this Chapter	• In the office of the Additional Superintendent of Stamps, Gandhinagar, Collector, Vadodara, DC (SDVO), Valsad and 42 Sub-Registrar offices, incorrect determination of market value of properties in 258 cases resulted in short levy of stamp duty and registration fees of ₹ 11 crore. • In the office of the Additional Superintendent of Stamps, Gandhinagar and 30 Sub-Registrar offices, in case of 284 documents, the documents were classified on the basis of their titles, which resulted in misclassification of documents and resultant short levy of stamp duty of ₹ 1.74 crore. • In two Collector offices and Deputy Collector office, Anjar, luxury tax of ₹ 32.27 lakh including interest of ₹ 19.25 lakh was not levied/short levied from 14 hotel owners.

CHAPTER-V
STAMP DUTY AND REGISTRATION FEES, ENTERTAINMENTS TAX, LUXURY TAX AND ELECTRICITY DUTY

A. Stamp Duty and Registration Fees

5.1 Tax administration

The overall control on the levy and collection of stamp duty and registration fees rests with the Revenue Department. The Inspector General of Registration (IGR) and Superintendent of Stamps, Gandhinagar is the head of the Department. The IGR is assisted by the Sub-Registrar (at the district and *taluka* level) whereas the Superintendent of Stamps is assisted by the Deputy Collector (Stamp Duty Valuation Office) (DC) at the district level.

5.2 Analysis of budget preparation

The budget estimates are furnished by the IGR and Superintendent of Stamps, Gandhinagar in the prescribed format to the Finance Department. While preparing the budget estimates, the Department considers normal growth of the State economy, revenue of the previous year, inflation/recession factor and number of documents likely to be registered.

5.3 Cost of collection

The gross collection in respect of receipt of stamp duty and registration fees, expenditure incurred on its collection and the percentage of such expenditure to gross collection during the years 2009-10 to 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection of the preceding years are mentioned below:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection for the preceding year
Stamp duty and registration fees	2009-10	2,556.72	53.38	2.09	2.77
	2010-11	3,666.24	62.73	1.71	2.47
	2011-12	4,670.27	70.68	1.51	1.60

The cost of collection in respect of stamp duty and registration fees during last three years was lower than the respective preceding years' all India average.

5.4 Impact of Audit Report in respect of Stamp Duty and Registration Fees – Revenue impact

During the last five years (excluding the current year's report), through the audit reports we had pointed out cases of non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc. with revenue implication of ₹ 524.71 crore in 42 cases. Of these, the Department/Government accepted audit observations in 13 cases involving ₹ 293.27 crore and had recovered ₹ 0.99 crore in seven cases only. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2006-07	6	8.66	1	1.83	--	0.05
2007-08	15	148.91	7	9.63	3	0.83
2008-09	12	78.77	2	0.03	2	0.02
2009-10	8	6.64	2	0.05	1	0.04
2010-11	1	281.73	1	281.73	1	0.05
Total	**42**	**524.71**	**13**	**293.27**	**7**	**0.99**

The above table has been prepared taking into consideration the replies of the Department wherein they accepted the audit observations. No replies were received in respect of remaining paragraphs. The above table indicates that recovery in accepted cases was very low (0.34 *per cent* of the accepted money value).

We recommend that the Government may consider issuing suitable instructions to the Department for taking effective/speedy steps in recovering the amounts, especially in those cases which have been accepted by the Department.

5.5 Impact of Audit Report in respect of Entertainments Tax, Luxury Tax and Electricity Duty – Revenue impact

During the last five years, in our Audit Reports we had pointed out instances of Entertainments Tax, Luxury Tax and Electricity Duty with revenue implication of ₹ 43.39 crore in 20 paragraphs. Of these, the Department/ Government had accepted audit observations in 14 paragraphs involving ₹ 2.80 crore and had since recovered ₹ 1.36 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2006-07	1	0.11	1	0.11	1	0.05
2007-08	4	0.87	3	0.15	3	0.05
2008-09	7	24.58	3	0.44	3	0.22
2009-10	2	0.34	2	0.31	2	0.25
2010-11	6	17.49	5	1.79	2	0.79
Total	**20**	**43.39**	**14**	**2.80**	**11**	**1.36**

The above table indicates that recovery in accepted cases was 48.57 *per cent* of the accepted money value.

5.6 Results of audit

Test check of records in the offices of the Dy. Collectors of Stamp Duty (SDVO) and Sub-Registrars (SR) in the State, and various departmental officers relating to Entertainments tax, Luxury tax and Electricity duty in the State during the year 2011-12 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 44.15 crore in 457 cases, which fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
A.	**Stamp Duty and Registration Fees**		
1	Misclassification of documents	56	5.03
2	Undervaluation of property	99	10.95
3	Incorrect grant of exemption	9	0.24
4	Underassessment of stamp duty on instruments of mortgage deeds	21	0.58
5	Short levy of Stamp Duty and Registration Fees	150	24.51
6	Other irregularities	51	2.16
	Total	**386**	**43.47**
B.	**Entertainments tax, Luxury tax and electricity duty**		
	Electricity duty		
1	Non-levy of Electricity Duty	3	0.04
	Total	**3**	**0.04**
	Entertainments tax and Luxury tax		
1	Non recovery of Entertainment Tax on service charge, Non/short recovery of Entertainment Tax and interest from cinema houses/cable operators/ video parlours etc.	21	0.26
2	Luxury Tax and interest thereon and Retention of tax collected by hotel owners	47	0.38
	Total	**68**	**0.64**
	Grand total	**457**	**44.15**

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 101.33 lakh in 67 cases, of which eight cases involving ₹ 7.35 lakh were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 72.82 lakh was recovered in 63 cases by the Department in respect of entertainments tax, luxury tax and electricity duty during the year 2011-12.

A few illustrative cases involving ₹ 16.34 crore are mentioned in the succeeding paragraphs.

5.7 Short levy of stamp duty and registration fees due to undervaluation of properties

Section 32 A of the Bombay Stamp (BS) Act, 1958 (as applicable to the State of Gujarat) provides that if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall, before registering the document, refer the same to the Collector for determination of the market value of the property. The market value of the property is to be determined in accordance with the Bombay Stamp (Determination of Market Value of the Property) Rules, 1984, instruction and orders issued thereunder from time to time. As per the guidelines issued for implementation of revised *jantri* rates effective from 1st April 2008, developed land includes land which can be used for non-agriculture purpose, land wherein development can take place or which is capable of being developed e.g. land converted into non-agriculture, land included in development scheme (*vikas yojana*)/Town Planning (TP) scheme, land purchased under Section 63 A and 63 AA of the Bombay Tenancy Act, 1948 and land included in SEZ and IT parks. Where agricultural land is purchased for non-agricultural purposes with the permission of competent authority and total area of such land is more than 10,000 sq. mt., duty at concessional rate i.e. 20 *per cent* less than the effective rate of the duty is chargeable, if order of competent authority is presented at the time of registration. IGR in his circular 26 November 2007, instructed to all SRs to include area of common plot, internal road etc. in total area of land for arriving at the market value of property for the purpose of levy of stamp duty. As per Article 5(ga) Schedule I of BS Act, if any agreement gives authority or power to a promoter or developer, by whatever name called for construction or development of or sale or transfer (in any manner whatsoever) of any immovable property, stamp duty at the rate of 1 *per cent* is chargeable.

During test check of documents of Additional Superintendent of Stamps (SS), Gandhinagar, Collector, Vadodara, Deputy Collector (DC), Valsad and 42 Sub-Registrar (SR) offices registered between April 2006 and March 2011, we noticed that the market value of the properties was determined incorrectly in 258 documents, which resulted in short levy of stamp duty and registration fee of ₹ 11 crore as mentioned in the following table.

Sl. No.	Location of the registering authority/ No. of documents Short levy of stamp duty	Nature of irregularity
1.	Gandhidham, Gondal, Kamrej, Navsari, Palanpur, Viramgam 33 ₹ 88.06 lakh	In 33 documents, agricultural land was transferred to non-agriculturists for *bonafide* industrial purpose under Section 63AA of Bombay Tenancy Act or for other non-agricultural purposes with permission of competent authority. However, Registering Authorities (RA) adopted rates of agricultural land instead of non-agricultural rates for levy of stamp duty. In these cases, properties were registered for a consideration of ₹ 3.86 crore. The market value of the properties was ₹ 19.98 crore. Besides, liability of payment of premium price of the land amounting to ₹ 2.19 crore was passed onto purchasers in seven cases. Thus, these properties were

		required to be registered for a consideration of ₹ 22.17 crore instead of ₹ 3.86 crore resulting in short levy of stamp duty ₹ 88.06 lakh.
2.	Ahmedabad-II (Wadaj), Ahmedabad-VII (Odhav), Anand, Bhuj, Borsad, Gandhidham, Gandhinagar, Godhra, Jamnagar-I, Jamnagar-II, Mangrol, Olpad, Surat-II (Udhna), Vadodara-II (Danteshwar), Valsad 32 ₹ 294 lakh	In 32 documents, agricultural lands were transferred to company/businessmen/trust etc. (i.e. non-agriculturists) by way of conveyance/ Power of Attorney (PoA) with possession for various non-agricultural purposes. The lands were transferred to non-agriculturists and the purpose of transfer was also very clear. However, RAs adopted rates of agricultural land instead of developed/ non-agricultural rates for levy of stamp duty. In these cases, properties were registered for a consideration of ₹ 25.63 crore instead of ₹ 87.38 crore. This resulted in short levy of stamp duty of ₹ 2.94 crore.
3.	Ahmedabad-V (Narol), Ahmedabad-VI (Naroda), Ahmedabad-VII (Odhav), Jamnagar-I, Jamnagar-II, Kamrej, Navsari, Rajkot-IV, Surat-I (Athwa) 69 ₹ 463 lakh	As per guidelines the land situated in town planning is considered to be developed land. The value of the developed land is more than that of agricultural land. In 69 deeds, the land registered was covered under Town Planning (TP) scheme/City Survey. However, while registering the documents the stamp duty was levied at non-agricultural rate. In these cases, properties were registered for a consideration of ₹ 31.69 crore at agricultural rates instead of ₹ 134.95 crore at the developed land rates. This resulted in short levy of stamp duty of ₹ 4.63 crore.
4.	Anjar, Bhuj, Mehsana, Rajkot-IV, Vadodara-III (Akota) 27 ₹ 16.18 lakh	In 27 documents, while calculating the market value, the SRs excluded the area of common plot and internal road from the total area of properties. In these cases, properties were registered for a consideration of ₹ 6.16 crore. These properties were required to be registered for a consideration of ₹ 10.86 crore. The RAs did not ensure inclusion of area of common plot and internal roads in the total area for the purpose of levy of stamp duty. This resulted in short levy of stamp duty of ₹ 16.18 lakh.
5.	Rajkot-I and Surat-III (Navagam) 5 ₹ 3.69 lakh	As per the guidelines issued under Annual schedule of Rates 2008 *(Jantri)* 20 *per cent* deduction is permissible on the cost of construction of building and not on the cost of land for the purpose of levy of stamp duty. However, deduction was allowed on value of land in five cases. These properties were registered for a consideration of ₹ 2.14 crore instead of ₹ 3.81 crore, resulting in short levy of stamp duty of ₹ 3.69 lakh.
6.	Rajkot-II and Navsari 6 ₹ 4.61 lakh	The recitals of the six documents revealed that rates of stamp duty were levied incorrectly. The rates of land located in other zones were adopted. These properties were required to be registered for a consideration of ₹ 2.32 crore instead of ₹ 1.24 crore resulting in short levy of stamp duty of ₹ 4.61 lakh.
7.	Collector (NA), Vadodara 2 ₹ 4.36 lakh	In two cases of allotment of land, though stamp duty was required to be levied as per market value of ₹ 1.68 crore decided by the Collector, but the properties were registered for a consideration of ₹ 79.60 lakh. These properties were required to be registered for a consideration of ₹ 1.68 crore. The RA did not ensure that market value fixed by the Collector is adopted for levy of stamp duty. This resulted in short levy of stamp duty of ₹ 4.36 lakh.

8.	Ahmedabad-I (City) 2 ₹ 2.94 lakh	As per schedule of rates no depreciation is admissible on the building constructed within two years from its sale and thereafter depreciation depends upon the age of building. However, we noticed that in one case the building was sold within two years from the date of construction but depreciation (29 *per cent*) was allowed, while in another case RA allowed depreciation for 18 years instead of 11 years. These properties were required to be registered for a consideration of ₹ 2.98 crore instead of ₹ 1.79 crore resulting in short levy of stamp duty of ₹ 2.94 lakh.
9.	Ahmedabad-I, Surat-I (Athwa) and Veraval 4 ₹ 8.70 lakh	We noticed that in four cases the valuation of property was not done correctly. Of these undivided portion of the property was not included in the consideration, in another value of the land was not added to the building and assignment of leasehold property was undervalued. These properties were registered for a consideration of ₹ 54.94 lakh instead of ₹ 2.33 crore resulting in short levy of stamp duty of ₹ 8.70 lakh.
10.	Anand 3 ₹ 30.51 lakh	Scrutiny of three documents revealed that the properties were situated in commercial complexes, as such *jantri* rates of shops were leviable but they were incorrectly registered at lower rates as applicable to offices. These properties were registered for a consideration of ₹ 11.21 crore instead of ₹ 16.81 crore resulting in short levy of stamp duty of ₹ 30.51 lakh.
11.	Ahmedabad-VI (Naroda), Ahmedabad –V (Narol) and Ahmedabad-VII (Odhav), Kadi (Gandhinagar) and Vadodara-IV (Gorva), DC-Valsad and Addl. SS, Gandhinagar 8 ₹ 31.50 lakh	Scrutiny of eight documents revealed that the amounts aggregating to ₹ 6.89 crore received by confirming parties, premium and compensation, part of market value were not included in the consideration of deeds. In these cases, properties were registered for a consideration of ₹ 9.99 crore instead of ₹ 16.88 crore resulting in short levy of stamp duty of ₹ 31.50 lakh.
12.	Bhuj, Borsad, Deesa, Gandevi, Gandhidham, Gandhinagar, Godhra, Navsari, Porbandar, Vadodara-I (City) and Vadodara-II (Danteshwar) 52 ₹ 76.07 lakh	Our scrutiny of 52 documents revealed that in 15 cases RA has adopted incorrect rates i.e. of zones other than the zone in which property was situated, in 23 cases the rates were incorrectly applied of *Jantri*, while in 14 cases incorrect rates were applied due to incorrect survey number. These properties were registered for a consideration of ₹ 10.89 crore instead of ₹ 28.09 crore resulting in short levy of stamp duty of ₹ 76.07 lakh.
13.	Ahmedabad-III, Gandhinagar and Kamrej 5 ₹ 14.10 lakh	Scrutiny of total five documents revealed that, in two cases, land owners had executed development agreements in favour of developers, but *jantri* rates of developed/non-agricultural lands were not adopted for levy of stamp duty. In two cases, stamp duty was levied on the market value of the property as per *jantri* and not on the consideration set forth in the development agreement. In one case, land was already converted into non-agricultural land and included in Town Planning scheme, but *jantri* rates of agriculture land instead of developed land were adopted. In these cases, properties were registered for a consideration of ₹ 12.78 crore instead of ₹ 27.55 crore. The RA did not ensure correct application of rates for valuation of the land. This resulted in short levy of stamp duty of ₹ 14.10 lakh.

14.	Ahmedabad-V, (Narol), Bharuch, Vadodara-II (Danteshwar) 4 ₹ 44.61 lakh	Our scrutiny in four cases revealed that agreement of sale was entered in (August 2007, November 1992 and June 2008), while sale deeds were executed in (July 2009, February 2008 and January 2010), these properties were required to be registered for ₹ 10.17 crore new *jantri* rates but were incorrectly valued at ₹ 1.06 crore at old *jantri* rates. This resulted in short levy of stamp duty of ₹ 44.61 lakh.
15.	Savli 1 ₹ 4.14 lakh	In one case, the purchaser (developer) had availed exemption of SD on the instrument of conveyance in respect of land purchased in Industrial Park. The benefit was applicable subject to approval from Government for setting up of Industrial Park. The purchaser had applied for approval from Industrial Commissioner, Gandhinagar and Ministry of Commerce, New Delhi only a day before execution of sale deed. Thus grant of exemption before approvals was obtained from Government was incorrect. This resulted in short levy of stamp duty of ₹ 4.14 lakh.

This was pointed out to the Department between July 2010 and May 2012. The Department had accepted (July 2012) al l the audit observations and issued demand notices in all the cases, and recovered (July 2012) ₹ 30.32 lakh in 27 cases. Details of recoveries in remaining cases had not been received (September 2012).

5.8 Undervaluation of properties

Section 31 of the BS Act, 1958 provides that when any instrument, whether executed or not, is brought to the Collector, for his opinion as to the duty with which it is chargeable and pays the required fees, the Collector shall determine the duty with which, in his judgment, the instrument is chargeable. Section 32 A of the BS Act provides that if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall, before registering the document, refer the same to the DC for determination of the market value of the property. After payment of full duty, the Collector shall certify the same by endorsement on such document. Adjudication by the Collector is effective only if he certifies by endorsement on the document the fact of payment of full duty. If no such certificate is recorded, the adjudication is rendered useless in law[102].

Test check of records of DC-II, Surat and eight SR offices[103] for the year 2009 to 2011 revealed that in 198 cases, market value determined by DC under section 31 was much lower than the market value as per *jantri*, but these cases were not referred to the DC under section 32 A for determination of true market value and certificate of endorsement. This resulted in short levy of stamp duty of ₹ 10.41 crore.

[102] CCRA Vs. Dr. Manjunath Rai, (1976), 2 MLJ 279:AIR 1977 M 10 (FB)
[103] Gondal, Kamrej, Morbi, Rajkot-III, Surat-I, II, IV, Vadodara-II

This was pointed out to the Department between July 2010 and May 2012. The Department had referred (July 2012) all the cases to Chief Controlling Revenue Authority (CCRA) for their opinion. Details of recoveries had not been received (July 2012).

5.9 Short levy of stamp duty and registration fees due to misclassification of documents

> Under Section 3 of the BS Act, every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. As per various court judgments, at the time of registration of document, regard should be to the substance of the document and not to the description at the head of the document.

During test check of documents in the office of the Addl. SS, Gandhinagar and 30 SR offices, we noticed that 284 documents registered between 2007 and 2010 were classified on the basis of their titles and the stamp duty and registration fees were levied accordingly. Scrutiny of the recitals of these documents revealed that the documents were misclassified. This resulted in short levy of stamp duty and registration fees of ₹ 1.74 crore as mentioned in the following table:

(₹ in crore)

<table>
<tr><th>Sl. No.</th><th>Location of the registering authority</th><th>No. of documents Amount of loan</th><th>SD&RF leviable</th><th>SD & RF levied</th><th>Short levy of SD&RF</th></tr>
<tr><td>1</td><td>Additional Superintendent of Stamps, Gandhinagar and 27 SRs[104]</td><td>269
6,842.40</td><td>4.20</td><td>2.91</td><td>1.29</td></tr>
<tr><td colspan="6">Nature of observation: As per instructions issued by the IGR in July 1993, if documents styled as deposit of title deed contain recitals such as power of attorney, provision of payment of compound interest, any mention about execution of any writing or document etc. the documents are classifiable as mortgage deed. In these documents, recitals contained conditions such as payment of compound interest, penal interest in case of default, fixing of conditions by sanction letter etc. which clearly indicate creation of charge over properties. These documents were classified as equitable mortgage under Article 6 (1) (a) instead of mortgage under Article 36(b) of Schedule-I of BS Act. Thus, mortgage deed was misclassified as equitable mortgage.</td></tr>
<tr><td>2</td><td>Ahmedabad-I, II, IV, Bhuj, Rajkot-II and Surat-IV</td><td>11
6.91</td><td>0.38</td><td>0.05</td><td>0.33</td></tr>
<tr><td colspan="6">Nature of observation: Recitals of documents indicated that release of rights over properties was by one co-owner in favour of another co-owner. In two cases, stamp duty was chargeable as conveyance but stamp duty was levied at the rate applicable to partition deed. In one case, stamp duty was chargeable as conveyance but stamp duty was levied at the rate applicable to correction deed though the recitals indicated transfer of the properties. In one case, stamp duty was chargeable as conveyance but stamp duty was levied at the rate applicable to confirmation deed. Thus, release/conveyance deeds were misclassified as partition/ correction/confirmation deeds.</td></tr>
</table>

[104] Ahmedabad-I, II, III, IV, V , Anand, Akleshwar, Bhuj, Gandhidham, Gondal, Jamnagar-I, II, Kamrej, Mangrol, Porbandar, Rajkot-I, II, III, Surat-I, II, III, IV, Vadodara-I, II, III, IV, Valsad

3	Gandevi	1 0.30	0.02	Negligible	0.02
Nature of observation: Recitals reveal that possession of the property was handed over to the purchaser. Thus, conveyance was misclassified as agreement of sale instead of conveyance.					
4	Ahmedabad-III	1 0.46	0.03	Negligible	0.03
Nature of observation: Lessor had taken loan from an appointee to whom he was unable to pay back. Therefore, he had appointed the mortgagee as owner of the premise with right to collect rent and appropriate the same towards the loan. Thus, transfer of lease in favour of mortgagee was misclassified as agreement.					
5	Rajkot-I (City)	1 0.52	0.03	Negligible	0.03
Nature of observation: The property was transferred/distributed in favour of legal heirs by the owners of the property during their lifetime. Thus, settlement was misclassified as partition. The stamp duty was leviable at the rates applicable for conveyance.					
6	Himatnagar	1 0.66	0.04	Negligible	0.04
Nature of observation: Land was gifted to an edu cational trust. Thus, gift was misclassified as notice of gift instead conveyance deed.					
	Total	**284** **6,851.24**	**4.70**	**2.96**	**1.74**

After being pointed out by us (September 2010 and May 2012); the Department accepted audit observations and issued demand notices in all the cases and recovered (July 2012) ₹ 3.73 lakh in 4 cases. Details of recoveries in remaining cases had not been received (September 2012).

5.10 Stamp duty and registration fees on release of property by co-owners not levied

As per section 5 of the Bombay Stamp Act (as applicable to Gujarat) any instrument comprising of distinct transactions shall be chargeable with aggregate amount of duties with which separate instruments would be chargeable under the Act.

As per Explanation I under Section 2(g) of the BS Act, an instrument whereby a co-owner of any property, transfers his interest to another co-owner of the property and which is not an instrument of partition, shall be deemed to be an instrument by which property is transferred *inter-vivos* and is chargeable to duty as conveyance.

During test check of documents of seven SR Offices[105] for the period 2009 and 2010, we noticed from recitals of nine documents that there were two distinct transaction, one relating to release of property between co-owners and subsequent sale of property by transferee. While duty was paid on sale it was not paid on release of property by one co-owner in favour of another co-owner. The SRs did

[105] Ahmedabad-II, IV, Rajkot-II, III, Surat-II, Vadodara-II, III

not take cognisance of the recitals of the documents and verify the nature of transaction through the document. Stamp duty and registration fees forgone in these cases were ₹ 39.80 lakh.

After this being pointed out (January and October 2011) by us the Department accepted and issued demand notices (July 2012) in all the cases. Details of recoveries had not been received (September 2012).

5.11 Short levy of stamp duty and registration fees on loans taken from different banks

As per circular issued by the Superintendent of Stamps on 2nd April 2007, documents falling under the category of distinct matters under Section 5 of the BS Act would also include different transactions from different institutions/individuals/companies and if mortgage, conveyance etc. are executed in a single document, then as per Section 5, they are chargeable to duty considering the same as separate document. The rate of stamp duty is twenty five paise for every hundred rupees or part thereof of the amount of loan where the amount of loan does not exceed ₹ 10 crore subject to maximum of ₹ one lakh and fifty paise for every hundred rupees or part thereof of the amount of loan where the amount of loan exceeds ₹ 10 crore subject to maximum of ₹ three lakh.

During test check of documents registered with six SR offices[106] in 2010, it was noticed in 13 cases that loan of ₹ 2,929.09 crore was taken from banks by loanees. Out of these, in 12 cases, loan was taken from different banks and in one case, two loanees had availed loan from one bank. The registering authorities levied stamp duty and registration fees only on the total amount of loan taken from different banks, instead of levying separate stamp duty and registration fees on loan taken from each bank/loan taken by separate loanees treating this transaction under Section 5. This resulted in short levy of stamp duty and registration fees of ₹ 1.61 crore in 13 cases.

After this being pointed out (July and December 2011) by us the Department issued (July 2012) demand notices in all the cases. However, details of recoveries had not been received (September 2012).

[106] Ahmedabad-II, Anjar, Ankleshwar, Gandhidham, Rajkot-I and Surat-I

5.12 Short levy of stamp duty and registration fees on lease deeds due to incorrect computation

Article 30 of Schedule I to the BS Act provides for levy of stamp duty on lease at the rate applicable to conveyance deed. For calculation of consideration for the purpose of levy of stamp duty on lease deeds, average annual rent reserved depending on the period of lease is to be considered. Further, premium paid or money advanced is also to be added in the consideration.

During test check of the documents of seven[107] SR offices for the period 2009 and 2010, we noticed that out of total 20 cases, in seven lease documents, provision for escalation in rent at the rate of 15 *per cent* every three years, security deposit and taxes were not taken into consideration for the purpose of levy of duty. In two cases, security deposit and taxes were not included in average annual rent for levy of duty. In 10 cases, it was clearly mentioned in the terms and conditions that after expiry of lease term, the lease may be extended/ renewed for further periods as may be agreed upon between lessor and lessee, but it was nowhere mentioned that execution of new lease deed would be mandatory. However, periods of extension were not included in period of lease for levy of duty. In one case, one time transfer fees and land revenue were not included in total consideration for levy of registration fees. This resulted in short levy of stamp duty and registration fees of ₹ 16.81 lakh.

After this being pointed out (July 2010 and January 2012) by us the Department had issued (July 2012) demand notices in all the cases. Details of recoveries had not been received (September 2012).

5.13 Short levy of stamp duty and registration fees due to incorrect computation of consideration

As per Section 2(g) of the BS Act, conveyance on sale includes every instrument by which movable/ immovable property is transferred *inter vivos*. Thus, when movable property is sold or transferred, the total value of such property is to be taken for the purpose of levy of the stamp duty and registration fees.

During test check of the records of three[108] SR offices for the period 2009 and 2010, we noticed in three cases that properties were sold through auction by financial institutions to recover their outstanding dues. Recitals of document revealed that consideration of properties (i.e. plant, machinery, etc.) valued at ₹ 3.35 crore was not included in total sale consideration of properties for the purpose of levy of stamp duty and registration fees. This resulted in short levy of stamp duty and registration fees of ₹ 8.17 lakh.

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[107] Ahmedabad-I(City), II (Wadaj) and VII (Odhav), Gandhinagar, Jamnagar-I, Mehsana and Surat-I(Athwa)

[108] Kadi, Kalol and Narol (Ahmedabad)

After this being pointed out (March and August 2011) by us the Department had issued (July 2012) demand notices in all the cases. Details of recoveries had not been received (September 2012).

5.14 Short levy of stamp duty and registration fees on dissolution of partnership

As per Article 44(3) (a) of Schedule I to the BS Act where any immovable property is taken as share on dissolution of partnership by a partner other than a partner who brought that property as a share or contribution to partnership, stamp duty is chargeable at the rate applicable on a conveyance. As per Article 44 (3) (b), stamp duty payable on dissolution of partnership is ₹ 100.

During test check of records of five[109] SR offices for the period 2008 and 2010, we noticed that the recitals of the six documents indicated that the time of dissolution of partnerships the partners of firms distributed among themselves immovable property purchased by their respective firms, the Department did not levy stamp duty on the transfer of property by treating these as conveyance deeds. This resulted in non/short levy of stamp duty and registration fees of ₹ 19.04 lakh on consideration of ₹ 3.47 crore.

After this being pointed out to the Department between August 2009 and February 2012, the Department had issued (July 2012) demand notices in all the cases. Details of recoveries had not been received (September 2012).

[109] Jamnagar-II, Rajkot-I,III & IV and Vadodara-II

5.15 Stamp duty and registration fees not levied due to non-execution of conveyance deeds between owners and developers of properties

Stamp duty chargeable on Development agreement' is covered under Article 5(ga) and 45(g) of Schedule I of BS Act, 1958. As per Article 5(ga) agreement given to a promoter or developer, by whatever name called for construction or development of or sale or transfer (in any manner whatsoever) of any immovable property, stamp duty at the rate of one rupee for every hundred rupees or part thereof is chargeable on the market value of the property.

In case of development agreement, the owner of the land hands over the land to the developer and the developed property along with the right in land is sold to the buyer. Since the ownership of land is not transferred by the owner to the developer, the developer does not get the right to transfer the land to the buyer. It is necessary that after the development of property is completed, a proper conveyance deed is executed between the owner/s and the developer of property.

During test check of records of 17 SR offices[110], we noticed in 35 documents registered during 2004 to 2010 that consideration was already paid/ agreed to be paid by the developer to the land owner before the development of the property. The land owner also empowered the developer to sell the constructed/developed properties, along with the right in land and to receive its consideration. Since the power to sell the land cannot be transferred without the execution of conveyance deed for land, the parties in these development agreements should have executed separate conveyance deeds conveying the land to the developer. In one of these documents, it was clearly mentioned in the recitals of the agreement that if the vendor fails to execute the sale deed, the developers are at liberty to enforce the agreement and get the sale deed executed. Despite this, the Sub Registrar did not insist on the execution of conveyance deed for land. The Sub Registrars also could not confirm whether separate conveyance deeds were executed by the parties for land or not, in the absence of any system developed for watching registration of conveyance deeds.

Non-insistence of separate conveyance deed by the owners of land in favour of developers in such kind of transactions resulted in transfer of land without payment of proper stamp duty and registration fees. The stamp duty and registration fees foregone on consideration of ₹ 99.94 crore were to the tune of ₹ 4.40 crore in such cases.

This was pointed out to the Department between September 2009 and August 2011. The Department had issued (July 2012) demand notices in all the cases. Details of recoveries had not been received (September 2012).

[110] Ahmedabad-II, III, IV, V,VII, Bharuch, Bhavnagar-I, Dehgam, Gandhinagar, Mehsana, Pardi, Rajkot-I, II, IV, Vadodara-III, IV, Surat-I

5.16 Incorrect levy of stamp duty and registration fees on leave and licence agreements

Article 30A of Schedule I of BS Act provides for levy of stamp duty on leave and licence agreements relating to immovable property other than residential property at the rate of fifty paise for every hundred rupees or part thereof on the whole amount payable or deliverable plus the total amount of fine or premium or money advanced or to be advanced irrespective of the period for which such leave and licence agreement is executed.

During test check of documents registered with three SR offices[111] for the period 2007 to 2009, it was noticed that out of 10 documents registered as leave and licence agreement, in six cases, security deposit and maintenance charges were not included in the total amount payable/deliverable for levy of stamp duty. In one case, security deposit and maintenance charges were not included in the total amount payable/deliverable for levy of registration fees. In six cases, registration fees were levied at incorrect rates. This resulted in short levy of stamp duty and registration fees of ₹ 63.35 lakh in 10 cases.

After this being pointed out the Department between April 2009 and September 2010;the Department had issu ed (July 2012) demand notices in all the cases. Details of recoveries had not been received (September 2012).

5.17 Registration fees and stamp duty on partnership deeds levied short

As per revised registration fee table, registration fee on partnership deed, partition etc. is leviable on *ad valorem* scale at the rate of 1 *per cent* on the amount or value of property. As per Section 23 of the Indian Registration Act, documents have to be presented within four months from the date of execution.

As per Article 40 to Schedule I of BS Act, in case of partnership deed, stamp duty is leviable at the rate of one rupee for every hundred rupees or part thereof of the amount of the capital of partnership, subject to maximum of ₹ 10,000.

During test check of documents registered with three SR offices[112] for the period 2009 and 2010, it was noticed that in seven documents registered as partnership deed, registration fees were not levied/ short levied to the extent of ₹ 10.41 lakh due to adoption of incorrect market value of the property.

In one case, amount paid by a partner to another partner was not included in the deed. In two cases, RA adopted incorrect rate of *Jantri*. In two cases,

[111] Ahmedabad-IV, V and Vadodara-IV
[112] Ahmedabad-II, Gandhinagar and Surat-II

Jantri rates were not applied instead consideration mentioned in the deeds was taken into account for levy of RF.

Besides, in two cases, the amount of stamp duty of ₹ 20,000 was not levied. This resulted in short levy of stamp duty and registration fees of ₹ 10.61 lakh.

This was pointed out to the Department between September 2010 and August 2011. The Department had issued (July 2012) demand notices in all the cases. The Department had accepted and recovered ₹ 2.51 lakh in one case. Details of recoveries in remaining cases had not been received (September 2012).

ENTERTAINMENTS TAX

5.18 Non/short levy of entertainment tax and interest from cable operators

Section 6-B of Gujarat Entertainments Tax Act, 1977, provides that tax is leviable for exhibition of programmes with the aid of antenna or cable television. The tax shall be paid in advance in quarterly instalments.

During test check of the Demand and Collection Register and returns filed by cable operators of four Collector offices[113] relating to the period 2010-11, between May and December 2011, we noticed that 119 cable operators had neither paid the entertainment tax of ₹ 9.03 lakh (including interest of ₹ 0.35 lakh) during 2010-11 nor was it demanded by the Department.

After this being pointed out the Department in January, March and April 2012; the Department accepted (June 2012) audit observation involving money value of ₹ 7.72 lakh in 111 cases and recovered an amount of ₹ 5.89 lakh in 65 cases. In other cases, particulars of recovery had not been received (September 2012).

LUXURY TAX

5.19 Non/short levy of luxury tax and interest

Section 3(1) of Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 as amended in 2006 provides for levy of tax on luxury provided in a hotel in respect of a room under the occupation of a person at the specified rates on the basis of 50 *per cent* occupancy as per the average declared tariff. If the proprietor failed to pay the tax in time, interest at the rate of 18 *per cent per annum* for the period of delay is recoverable.

During test check of the Demand and Collection Register and returns filed by hotel owners of two Collector offices[114] and Deputy Collector office, Anjar relating to the period 2007-08 to 2010-11, between November 2008 and October 2011, we noticed that luxury tax of ₹ 32.27 lakh including interest of ₹ 19.25 lakh was not levied from 14 hotel owners.

After this being pointed out the Department in Septemebr 2009 and March 2012;the Department accepted (July 2012) audit observation involving money value of ₹ 31.45 lakh in all cases and recovered an amount of ₹ 4.77 lakh in one case (September 2012).

[113] Bharuch, Rajkot, Vadodara and Gandhinagar
[114] Ahmedabad and Bhuj

CHAPTER-VI
EXECUTIVE SUMMARY

Trend of revenue	The variation between budget estimates and actual receipts ranged from 3.16 to 33.56 *per cent.*
Revenue Impact of Audit Reports	Out of accepted audit observations of ₹ 549.79 crore, the Department recovered ₹ 13.61 crore during the period of five years which was very low (2.48 *per cent* of accepted money value).
Results of audits	Test check of records of offices of the District Geologists and Director of Petroleum in the State during the year 2011-12 revealed short realisation of tax and other irregularities involving ₹ 81.73 crore in 96 cases. During the course of the year, the Department accepted underassessment and other irregularities of ₹ 1.68 crore in 35 cases. An amount of ₹ 1.25 crore was realised in 32 cases during the year 2011-12.
What we have highlighted in this Chapter	Non/short levy of royalty and interest of ₹ 97.54 lakh was noticed in 46 cases in five Geologists during the period 2008-09 to 2010-11. Short levy of dead rent and interest of ₹ 1.28 crore was noticed in 187 cases in seven Geologist offices. In six district Geologist offices, surface rent was levied at incorrect rates resulting in short levy of ₹ 1.80 crore. Levy of licence fees at lesser rates resulted in short levy of license fee of ₹ 15.24 lakh.
Recommendations	• Government may speed up allocation of quarry leases by auction system to enhance transparency and ensure equal opportunity to all stake holders in order to increase the revenue from mining activities. • Government may ensure that the Mining/Qarry leases are renewed in time and in case of non-renewals the mine/quarry may be taken back by Government immediately to reallot the same to avoid loss of revenue.

CHAPTER-VI
NON-TAX RECEIPTS

INDUSTRIES AND MINES DEPARTMENT

6.1 Administration of mining activities

Two Departments of the Government of Gujarat (GoG), viz the Industries and Mines Department (IMD) and the Energy and Petrochemicals Department (EPD) control the activities of mining in the State. A separate Directorate of Petroleum was formed in 1997. Thereafter, EPD deals with the oil and natural gas and the IMD with the rest of the mineral wealth of the State. The IMD handles the regulation of general mines and minerals, grant of leases of mines/ quarries and the levy and collection of royalty and dead rent. It is headed at the Government level by a Principal Secretary and at the Department level, by the Commissioner of Geology and Mining (CGM). The CGM is assisted by the Additional Director (Development), Additional Director (Research), Assistant Director (Appeal and Flying Squad) and 24 District Geologists. The EPD handles the regulation of oil and natural gas. At Government level, the EPD is headed by a Principal Secretary and at the Department level by the Director of Petroleum (DoP).

6.2 Trend of revenue

Actual receipts from Geology and Mining during the last five years 2007-08 to 2011-12 along with the total tax/non-tax receipts during the same period is exhibited in the following table:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax/ non-tax receipts of the State	Percentage of actual receipts *vis-a vis* total tax/non-tax receipts
2007-08	2,150.00	2,082.14	(-) 67.86	3.16	26,494.88	7.86
2008-09	2,347.80	1,559.82	(-) 787.98	33.56	28,656.35	5.44
2009-10	1,679.00	2,138.97	(+) 459.97	27.40	32,191.94	6.64
2010-11	1,919.31	2,019.31	(+) 100.00	5.21	41,253.65	4.89
2011-12	2,020.00	1,819.64	(-) 200.36	9.92	49,528.81	3.67

The variation between budget estimates and actual receipts ranged from 3.16 to 33.56 *per cent.* Further, the actual receipts show a declining trend since 2009-10. The reason for the variations though called for in July 2010 were not furnished (September 2012).

6.3 Impact of Audit Reports - Revenue impact

The position of paragraphs included in the Audit Reports of the last five years, those accepted by the Department and the amount recovered is mentioned in the following table:

(₹ in crore)

Year of AR	Number of paragraphs included	Money value of the paragraphs	Money value of accepted paragraphs	Amount recovered during the year 2011-12	Cumulative position of recovery of accepted cases
2006-07	1	3.34	2.18	1.77	2.73
2007-08	1	1.41	1.29	0.45	0.80
2008-09	1	627.63	524.81	-	0.00
2009-10	7	19.15	18.45	1.67	7.02
2010-11	9	36.01	3.06	3.06	3.06
Total	**19**	**687.54**	**549.79**	**6.95**	**13.61**

Out of accepted audit observations of ₹ 549.79 crore, the Department recovered ₹ 13.61 crore during the period of five years which was very low (2.48 *per cent* of accepted money value).

We recommend the Department to consider taking steps for effecting recovery at least in those cases that have been accepted by the Department.

6.4 Results of audit

Test check of records of offices of the District Geologists and Director of Petroleum in the State during the year 2011-12 revealed short realisation of tax and other irregularities involving ₹ 81.73 crore in 96 cases, which fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1.	Non/short levy of dead rent/surface rent	20	2.70
2.	Non/short levy of royalty/ interest/penalty	18	6.39
3.	Other irregularities	45	65.24
4.	Non-levy of interest on belated payment of royalty/dead rent	7	0.93
5.	Loss of SD and RF/royalty/non-recovery of royalty, dead rent and surface rent	3	0.15
6.	Other irregularities	3	6.32
	Total	**96**	**81.73**

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 1.68 crore in 35 cases. An amount of ₹ 1.25 crore was realised in 32 cases during the year 2011-12.

A few illustrative audit observations involving ₹ 10.61 crore are mentioned in the succeeding paragraphs.

6.5 Non/short levy of royalty and interest

Section 9 of The Mines and Minerals (Development and Regulations) Act, 1957 and Rule 21 of the Gujarat Minor Mineral Rules, 1966 provide that a lessee is liable to pay royalty in respect of any mineral removed or consumed from the leased area at the prescribed rates in respect of each lease for major/minor mineral. The royalty is payable in advance and default in payment attracts simple interest at the rate prescribed.

The royalty was payable quarterly in advance based on the estimated quantity of minerals to be removed during the quarter by the lessee. During test check of Demand and Collection Register of five[115] Geologists for the period 2008-09 to 2010-11, we noticed irregularities in 46 cases involving royalty and interest of ₹ 97.54 lakh as detailed in the following paragraphs:

6.5.1 15 lease holders had removed major minerals (two cases of fire clay) and minor minerals (13 leases of black trap, quartzite, etc) from the leased area. As per the returns submitted by the leases royalty amounting to ₹ 124.80 lakh was leviable. However we noticed that the lessees had paid advance royalty of ₹ 91.90 lakh only. The short payment of royalty of ₹ 33.38 lakh (including interest of ₹ 0.48 lakh) was not demanded by the Department.

6.5.2 In eight cases, lease holders removed minor minerals (i.e. black trap, quartzite, and building stone) from the l eased area without payment of royalty. It was not demanded by the Department though the returns filed by the lessees were available with the Department. These clearly indicated that the lessees had extracted the material without the payment of royalty amounting to ₹ 14.38 lakh including interest of ₹ 1.46 lakh. This resulted in non-realisation of revenue to that extent.

After the above cases were pointed by us, the Department accepted the audit observations in 22 cases involving ₹ 44.20 lakh out which recovery ₹ 40.77 lakh was made in 19 cases.

For base metals like laterite dispatched for extraction of alumina and aluminium, the rates of royalty would continue to be linked to the international benchmark metal prices. However, in case of laterite dispatched for non metallurgical uses, royalty would be levied on *ad valorem* basis as per the national benchmark price published by Indian Bureau of Mines (IBM) i.e. during a month in any mine in that State.

6.5.3 During test check of Demand and Collection Register of Geologist, Bhuj for the period 2003-04 to 2008-09, we noticed that in two cases, leases for laterite and pozolanic clay were granted to a company. The company did not pay royalty of ₹ 41.30 lakh as discussed in the following paragraphs:

[115] Bhuj, Jamnagar, Palanpur, Surendranagar and Vadodara

- In one lease of laterite, royalty amounting to ₹ 109.40 lakh was levied instead of ₹ 111.46 lakh. The short realisation of royalty of ₹ 2.06 lakh leviable was due to application of lesser sale price than that published by Indian Bureau of Mines (IBM).
- In the case of pozzolanic clay, royalty amounting to ₹ 39.24 lakh was leviable at the rates published by Indian Bureau of Mines (IBM) from time to time. However, neither the company paid the royalty nor was it demanded by the Department though returns were submitted by the lessee. This resulted non-realisation royalty of ₹ 39.24 lakh.

After the above cases were pointed by us, the Department recovered the entire amount of ₹ 41.30 lakh

Brick manufacturing

Industries and Mines Department vide their Notification dated 16 June 1999 fixed lump sum rates of royalty for manufacturing of bricks. The rates were revised vide Notification dated 13 January 2010.

6.5.4 During test check of returns and DCR of Geologist, Godhra for the period 2010-11 in October 2011, we noticed that the District Geologist did not levy royalty of ₹ 8.26 lakh payable by 19 brick manufactures. Besides adoption of incorrect rates in the remaining two cases resulted in short levy of royalty of ₹ 0.22 lakh. This resulted in non-realisation of revenue of ₹ 8.48 lakh.

The matter was reported to the Department and to the Government in June 2012;their reply had not been received (September 2012).

6.6 Non/short levy of dead rent and interest

Under the Mines and Minerals (Development and Regulations) Act, 1957 if lease holders do not extract any mineral during the year or royalty paid on removal/ consumption of minerals extracted is less than dead rent payable, they are liable to pay dead rent or difference between dead rent payable and royalty actually paid. Government of Gujarat revised rates of dead rent in respect of minor minerals with effect from 15 January 2010. Default in payment of dead rent attracts simple interest at the rate of 18 *per cent* per annum.

During test check of Demand and Collection Register of office of seven District Geologists[116] for the period 2008-09 to 2010-11, we noticed short levy of dead rent in 187 cases involving ₹ 128.02 lakh. These are mentioned in following paragraphs:

6.6.1 In 96 cases, the lease holders did not extract any minerals from the leased area. They were liable to pay dead rent of ₹ 64.36 lakh. However, no demand for the same was raised by the Department. This resulted in non-levy of dead rent of ₹ 67.70 lakh including interest of ₹ 3.33 lakh as on 31 March 2011.

6.6.2 In 91 cases, the lessees paid royalty of ₹ 40.06 lakh on the mineral excavated. The dead rent of the area worked out to ₹ 100.38 lakh. However, the Departmental officials did not recover differential amount between dead rent and royalty. This resulted in short levy of dead rent of ₹ 60.32 lakh.

After this was pointed out by us between April 2010 and February 2012, the Department accepted (July 2012) our observations involving ₹ 57.20 lakh in 87 cases and recovered ₹ 24.66 lakh in 59 cases. Reply in the remaining cases and position of recovery in accepted cases have not been received (September 2012).

The matter was reported to the Government in June 2012;their reply had not been received (September 2012).

6.7 Non/short levy of surface rent

Rule 27 of the Mineral Concession Rule, 1960 and Rule 22 of Gujarat Minor Mineral Rules, 1966 provide that the lessee shall also pay surface rent at the rate prescribed by the Government from time to time to Government for the surface area leased to him. The rate of surface rent shall not exceed the rate of non-agricultural assessment prescribed by the Government.

6.7.1 During test check of the Demand and Collection Register of three District Geologists[117] for the period 2009-10 and 2010-11, we noticed that in 41 cases of leases of major

[116] Bharuch, Bhuj, Himatnagar, Jamnagar, Nadiad, Palanpur and Surat

[117] Jamnagar, Nadiad and Surat

minerals, though the lessees were liable to pay surface rent annually in respect of land occupied or used, the Department did not levy surface rent on area admeasuring 104 lakh sq. mt. This resulted in non-levy of surface rent of ₹ 15.74 lakh including interest of ₹ 0.26 lakh.

After this was pointed out by us between April to October 2011, the Department accepted (July 2012) our observations involving ₹ 4.44 lakh in nine cases and recovered the amount. Replies in the remaining cases have not been received (September 2012).

The matter was reported to the Government in June 2012; their reply had not been received (September 2012).

6.7.2 During test check of the records of the six[118] district Geologist Offices, we noticed that surface rent was being levied at the rate of ₹ 100 per hectare[119] as against the correct rate of the NAA as prescribed by the Revenue Department from time to time which was ₹ 1,000 per sq hectare. Thus, incorrect application of rate of surface rent in 3270 quarry/mining leases during 2009-10 to 2011-12 resulted in short levy surface rent of ₹ 1.80 crore.

This was brought to the notice of the Department in July 2012. The Department while accepting the audit observations stated (September 2012) that the recovery would be made under intimation to audit.

The matter was reported to the Government in June 2012; their reply had not been received (September 2012).

6.8 NAA and Conversion tax not realised

Section 66 of the Bombay Land Revenue Code, 1879 provides that land cannot be used for non-agricultural purposes without the permission of the Collector. NAA, conversion tax and penalty for unauthorised use, if any, of the land are leviable.

During test check of records of District Geologist, Bharuch, for the period 2010-11, we noticed that in five cases, registration/permissions were granted for possession/ storage of minerals including processed minerals for commercial/industrial purpose. Since the storing of mineral is a non-agricultural purpose, necessary permission from the District Collector was required to be obtained. However, in the above cases, the necessary permission for non-agricultural use was not obtained from the Collector. The District Geologist did not inform the concerned revenue authorities to initiate action to recover the NAA for non-agricultural use of land along with conversion tax and penalty. Thus, due to lack of co-ordination between the District Geologist and concerned district revenue authorities, there was a non-realisation of revenue to the tune of ₹ 6.14 lakh in the form of conversion tax, NAA and penalty.

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[118] Junagadh, Kutch-Bhuj, Rajkot, Sabarkantha, Surendranagar and Vadodara
[119] 1 Hectare = 10,000 sq.mtr

This was brought to the notice of the Department in February 2012 and to the Government in June 2012. Their reply had not been received (September 2012).

6.9 Non-levy/recovery of penalty

> Rule 34 of the erstwhile Gujarat Minor Minerals Rules, 1966 read with Rule 61 of the Gujarat Minor Mineral Concession Rules, 2010, provides for grant of quarry permit (QP). As per condition 14 of Form M (for quarry permits), prescribed under Rule 62(1) of the Gujarat Mineral Concession Rules, 2010 as soon as the removal of the material granted under the permit is over, the permit holder shall furnish to the competent officer a complete statement showing the quantities removed, details of transport and parties to whom this material had been sold, and prices obtained there for. Further, as per condition 12, if any excess quantity over that permitted is found to be removed, the material shall be confiscated and the permit holder shall be liable for punishment under the provisions of the Indian Penal Code and the Gujarat Minor Mineral Concession Rules, 2008.

During cross check of the QP data, provided by the Commissioner of Geology and Mining (CGM), with the QP files maintained at the offices of the two[120] Geologists/ Assistant Geologists, we noticed that one quarry permit holder, namely M/s Larsen and Toubro Ltd, (QP holder) was engaged in illegal / excessive excavation of ordinary earth and soft murram from the area granted under QP or the area other than area granted under QP on 10 occasions on different survey numbers (Sabarkantha: 1, Rajkot: 9) between December 2010 and March 2012. These are discussed in the following paragraphs:

6.9.1 At Sabarkantha the Mamlatdar, Modasa in his report dated 18 December 2010 submitted to CGM stated that the QP holder was granted a quarry permit on 13 May 2010, for a period of 90 days, for excavation of 30,000 MT of ordinary earth at village Tintoi, against which he excavated 2,14,320 MT of the mineral i.e. an excess of 1,84,320 MT. However, no penal action was found on record to have been taken by the Geologist.

6.9.2 At Rajkot, the QP holder was gr anted nine quarry permits for excavation of 4,60,000 MT of ordinary earth at different villages under two talukas (Maliya miyana and Tankara) on 27 January 2011, for a period of 90 days. However as per the quarterly returns submitted to CGM, QP holder had excavated 4,99,077 MT of the mineral i.e. excess of 39,077 MT. However, action was not initiated against the QP holder for breach of condition of the permit and recovery of the amount of penalty.

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[120] Rajkot and Sabarkantha

6.9.3 Further, in the said two district Geologist offices, we noticed that the QP holder had either not submitted the accounts or the accounts submitted were incomplete in respect of 20 QPs (Rajkot: 3, Surendranagar: 17), even after expiry of the period of the quarry permit. Out of the said 20 QPs, measurement was not done by the Department in case of nine QPs (Surendranagar:6, Rajkot:3) even after lapse of one year of the expiry of the QP. Further, in 11 cases where the measurement was done, the Department did not finalise the calculations to see deviations, if any.

The matter was reported to the Government in July 2012; their reply had not been received (September 2012).

6.10 Delay in disposal of applications/auction of blocks

As per Gujarat Minor Mineral Concession Rules, 2010, the application for the grant of a quarry lease can be made to the competent authority. Further, Gujarat State Mineral Policy, 2003 provides for time limit of six months for disposal of applications for quarry leases.

6.10.1 In five[121] District Geologist/Assistant Geologist offices, we found that 2,420 quarry lease applications for various[122] minerals, received between March 2009 and September 2011 were pending for disposal as on 31 March 2012. The Department did not dispose such application within the prescribed time limit of six months. The above applications involved 8,266.19 hectares of land with annual dead rent of ₹ 37.42 crore as detailed below:

(₹ in crore)

District	No. of applications pending	Area (in hectares)	Dead rent per annum
Vadodara	35	214.37	0.72
Junagadh	763	1,333.66	6.48
Sabarkantha	196	723.03	1.69
Surendranagar	474	1,450.90	5.82
Kutch-Bhuj	952	4,544.23	22.71
Total	**2420**	**8,266.19**	**37.42**

Due to delay on the part of the Department to dispose-off the application, the quarries remained idle, this resulted in foregoing of revenue in the form of dead rent.

The matter was reported to the Department and to the Government in July 2012; their reply had not been received (September 2012).

[121] Kutch-Bhuj, Junagadh, Sabarkantha, Surendranagar and Vadodara

[122] Blacktrap, Building lime stone, Murrum, Ordinary clay, Ordinary sand, Quartzite, Sand stone, Gravel, Bentonite and Granite

As per Rule 44 of the Gujarat Minor Minerals Rules, 1966 read with Rule 69 of the Gujarat Minor Mineral Concession Rules, 2010, *inter alia*, stipulate that it shall be lawful for a Competent Officer to sell by public auction or otherwise dispose of the right to remove any minor mineral or of collection of royalty thereon in such cases or class of cases and on such terms and conditions as the State Government may by a general or special order direct.

6.10.2 During test check of the records of the six[123] district Geologist offices we noticed that the Department had not exercised the option of allocation of quarry leases by auction of the minor minerals before 2010-11. The Department allotted the mines on priority basis[124] as per Rule 8 of the Gujarat Minor Minerals Concession Rules. Further, the Government (Industries and Mines Department) issued instructions on 15 May 2010 to the Commissioner of Geology and Mining (CGM) for identifying two to three prime locations involving 50 blocks[125] of sand in each district and approve the proposal for its disposal through auction at the earliest. We noticed delay in grant of approval for auction of 64 blocks of sand as discussed in the following paragraphs:-

- Five blocks admeasuring 6,21,464 sq. mt. at Vadodara district involving minimum bid price of ₹ 3.85 crore were pending (October 2012) for auction since March 2011 due to non-receipt of approval from the CGM.

- In Junagadh district, though approval was received from the CGM for three blocks admeasuring 3,40,000 sq. mt. having minimum bid price of ₹ 1.69 crore and 14 applications were received for grant of the same, Department failed to auction the same.

- Similarly, the Assistant Geologist, Surendranagar's proposals for auction of 56 blocks admeasuring 17,45,400 sq. mt. involving minimum bid price of ₹ 7.25 crore in June 2012 was pending (October 2012) for approval of the CGM.

- In the case of Rajkot district, though blocks for 'sand' were to be notified in two to three prime locations, the Assistant Geologist did not finalise any block to be granted through auction.

Government may speed up allocation of quarry leases by auction system to enhance transparency and ensure equal opportunity to all stake holders in order to increase the revenue from mining activities.

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123 Junagadh, Kutch-Bhuj, Rajkot, Sabarkantha, Surendranagar and Vadodara

124 The Rule provides for 'Priority' to be given to various applicants on the basis of various criteria viz type of entity, financial/technical resources etc. Since, in majority of the survey numbers (other than Blocks) single application was received, the Department was not required to consider Rule 8. In case there was more than one application, Department followed the Rule.

125 Cluster of mining areas under various survey numbers

6.11 Loss of revenue due to non-re-allotment of the expired/cancelled/surrendered quarry leases

The Government of Gujarat issued instructions on 24 May 2006 to all the district Geologists/ CGM to send proposals for re-allotment of the lease in all cases of cancellation, expiry and surrender on priority basis so as to prevent loss of revenue due to delay and to see that leases for such areas are re-allotted within 60 days.

We observed that in five[126] District Geologist offices, 726 quarry leases were due for renewal during the period 2009-10 and 2011-12, of which only 92 leases were renewed. Of the remaining 634 leases, 351 leases were pending for renewal at the CGM level.

Of the remaining 283 leases, non-availability of mineral was noticed in 23 leases, and notification for re-allotment of leases was made in 48 cases, in 212 leases no action for re-allotment was taken by the district offices till March 2012. District wise position is given as under:-

(₹ in lakh)

Sl. No.	Unit	No. of cases	Amount of dead rent
1	Vadodara	102	51.89
2	Junagadh	09	1.53
3	Sabarkantha	34	26.40
4	Surendranagar	08	2.39
5	Kutch-Bhuj	59	51.40
	Total	**212**	**133.61**

Thus, inaction on the part of these offices to re-allot the expired leases within the stipulated 60 days, led to forgoing of revenue of ₹ 133.61 lakh per year in the form of dead rent.

After this was pointed out, the Department stated (September 2012) that it was taking all possible steps to re-allot the expired/surrendered/cancelled leases. For this all the district officers had been strictly instructed to take necessary action to re-allot the area.

The matter was reported to the Government in July 2012;their reply had not been received (September 2012).

Government may ensure that the Mining/Quarry leases are renewed in time and in case of non-renewals the mine/quarry may be taken back by Government immediately to re-allot the same to avoid loss of revenue.

[126] Junagadh, Kutch-Bhuj, Sabarkantha, Surendranagar and Vadodara

6.12 Non-levy of penalty

As per Rule 42 of the Mineral Conservation and Development Rules (MCDR), 1988 every holder of a mining lease shall employ a whole-time or part-time mining engineer or a full time person permitted to be employed in terms of the provisions of the rules ibid. During test check of the records of the five[127] Geologists/Assistant Geologists, we noticed that out of 474 working mining leases, in 413 mining leases the lessees had not employed any mining engineer/prescribed person.

Further, Rule 45 of the Rules ibid as amended vide G.S.R. 75(E) dated 9 February 2011 provides that the owner of every mine shall cause himself to be registered with the Indian Bureau of Mines (IBM) within one month from the date of commencement of the G.S.R. However in 345 mining leases the lessees had not got themselves registered with the IBM.

This was brought to the notice of the Department and to the Government in July 2012 . Their reply has not been received (September 2012). For breach of conditions the Department is empowered to levy the penalty.

6.13 Non-cancellation of the lapsed leases

Major mineral

As per Section 4-A (4) of the Mines & Minerals (Development and Regulation) Act, 1957 where the holder of a mining lease of major minerals fails to undertake mining operations for a period of two years after the date of execution of the lease or having commenced mining operations, has discontinued the same for a period of two years, the lease shall lapse on the expiry of the period of two years from the date of execution of the lease or discontinuance of the mining operations, as the case may be.

6.13.1 During test check of the records of the six[128] Geologists/ Assistant Geologists, we noticed that in case of 117 mining leases of major minerals[129] (admeasuring 3991.1364 hectares), the lessees either had not submitted any returns or had shown nil production in their periodical returns for the last two/three years (2009-12). However, the Department did not take any action for cancellation of the above mining leases. Moreover, dead rent amounting to ₹ 13.48 lakh was pending for recovery as on 31 March 2012 in four[130] districts as shown below:

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127 Junagadh, Kutch-Bhuj, Rajkot, Sabarkantha and Surendranagar

128 Junagadh, Kutch-Bhuj, Rajkot, Sabarkantha, Surendranagar and Vadodara

129 Dolomite, lime stone, china clay, soap stone, calcite, pipe clay, fire clay, silica sand, Bauxite, white clay, moulding sand, ball clay, laterite and red ochre.

130 Junagadh, Sabarkantha, Surendranagar and Vadodara,

(₹ in lakh)

Sl. No.	Unit	No. of leases lapsed	Area in hectare	Amount of dead rent pending recovery
1	Vadodara	20	108.39	2.53
2	Junagadh	27	200.25	4.31
3	Sabarkantha	11	35.00	0.91
4	Surendranagar	31	151.69	5.73
5	Rajkot	3	3.80	Nil
6	Bhuj	25	3,492.00	Nil
	Total	**117**	**3,991.13**	**13.48**

Minor mineral

As per Rule 42 of the Gujarat Minor Mineral Concession Rules, 2010 the lease shall be liable to be cancelled if the lessee ceases to work in the quarry for a continuous period of one year.

6.13.2 During test check of the records of the six[131] Geologists/ Assistant Geologists, we noticed that in case of 177 minor minerals[132], mining leases admeasuring 454.605 hectares involving various the lessees either had not submitted any returns or had shown nil production in their periodical returns for the last two/three years (2009-12). However, no action for cancellation of the above quarry leases was initiated by the Department. Moreover, out of the lapsed leases admeasuring 454.605 hectares, the dead rent was collected by the Department in 1.99 hectares only in Rajkot district. Dead rent amounting to ₹ 6.80 crore was pending for recovery as on 31 March 2012 in the remaining five[133] districts as shown below:

(₹ in lakh)

Sl. No.	Unit	No. of leases lapsed	Area (in hectare)	Amount of royalty/ dead rent pending recovery
1	Vadodara	19	45.53	0.50
2	Junagadh	13	8.58	4.82
3	Sabarkantha	27	50.35	19.63
4	Surendranagar	31	76.70	90.80
5	Bhuj	85	271.45	564.71
6	Rajkot	02	1.99	Nil
	Total	**177**	**454.60**	**680.46**

Due to non-cancellation of the above lapsed mining/quarry leases, the scope for undertaking unaccounted mining activities in these mines/quarries cannot be ruled out. This was brought to the notice of the Department in July 2012 . The Department accepted the observations and stated (September 2012) that it would take appropriate action for lapsed leases. However the reply was silent about the recovery of dead rent payable by the lessees.

131 Junagadh, Kutch-Bhuj, Rajkot, Sabarkantha, Surendranagar and Vadodara

132 Ordinary sand, Gravel, Black trap, Quartzite, Building lime stone, Granite, Sand stone and Bentonite.

133 Junagadh, Kutch-Bhuj, Sabarkantha, Surendranagar and Vadodara,

The matter was reported to the Government in July 2012; their reply had not been received (September 2012).

Government should ensure prompt action for termination of leases on expiry of the period as stipulated in the Act/Rules ibid and also revamp its monitoring mechanism for recovery of Government revenue (dead rent).

ENERGY AND PETROCHEMICALS DEPARTMENT

6.14 Non-levy of stamp duty and registration fees due to non-execution of lease deeds after sanction of lease

Rule 5(ii) of the Petroleum and Natural Gas Rules, 1959 empower the State Government to grant a mining lease of petroleum and natural gas of any land within the State with the approval of the Central Government. Section 17(d) of the Registration Act, 1908 requires that deeds conveying leasehold rights for period beyond one year should be registered compulsorily. Section 27 read with Article 30 of Schedule I to the Bombay Stamp Act, 1958 as applicable to Gujarat, provides for levy of stamp duty in case of lease of mines in which royalty or share of produce is received as rent or part of a rent at the prescribed rate on average annual rent. The Superintendent of Stamps, Gujarat State has additionally issued instructions which provide for levy of stamp duty in case of lease of mines on aggregate of annual dead rent, annual royalty payable during the year, surface rent and deposit.

During test check of records of the Director of Petroleum (DoP), Gandhinagar, for the period 2010-11, we noticed that the DoP had re-granted mining lease on 11 existing mines with ONGC. One additional new mine was also leased to ONGC for exploitation of oil and natural gas under Rule 5 of PNG Rules, 1959.

As per the order for grant of lease, the lessee was required to execute lease deed within a period of 30 days from the date of issue of order i.e., during the year 2010-11 itself. However, the exploitation of the existing mines was continued by ONGC without execution of lease deeds. For the new mine also lease deed was not executed. This resulted in non-realisation of stamp duty and registration fees of ₹ 6.11 crore in 11 cases[134]. In one case, non-realisation of stamp duty and registration fees could not be quantified due to non-availability of details of estimated royalty.

After this was pointed out (January 2012), DoP stated (June 2012) that the Department had forwarded (September 2011) the matter to Revenue

[134] For calculating estimated royalty, the royalty actually paid in respect of a particular field in the month of April 2010 was taken as base. In the absence of details regarding the exact utilisation of the area by the lease holder, surface rent payable was calculated on the entire leased area.

Department to ascertain the methodology for calculation of stamp duty and the execution of lease deeds would be initiated after the outcome of their opinion. Further reply was awaited (September 2012).

6.15 Non-levy of surface rent on Petroleum

Under Rule 13(2) of Petroleum and Natural Gas (PNG) Rules, 1959, the lessee shall pay surface rent for the surface area, of the land actually used by him for the purpose of the operations conducted under the lease. The surface rent shall be payable at such rate, not exceeding the land revenue and cesses assessed or assessable on the land, as may be specified by the State Government with the approval of the Central Government. The Government of Gujarat in Industries, Mines and Power Department vide resolution dated 22nd August 1968 had fixed the rate of surface rent as ₹ 10,000 per sq. km. per annum (₹ 0.01 per sq. mt. per annum).

During test check of the records of the DOP, Gandhinagar for the period 2009-10 and 2010-11, we noticed that in seven cases, surface rent was not paid. This resulted in non-levy of surface rent of ₹ 7.22 lakh.

This was brought to the notice of the Department between November 2010 and January 2012. In three cases, Department accepted (June 2012) the audit contention of ₹ 2.20 lakh and also intimated the recovery of ₹ 0.21 lakh in one case. In remaining cases, particulars of recovery and replies have not been received (September 2012).

The matter was reported to the Government in June 2012;their reply had not been received (September 2012).

6.16 Short levy of licence fees

As per the provisions of Rule 11 (2) of the Petroleum and Natural Gas Rules, 1959, the licensee shall pay in advance by way of license fee in respect of his licence a sum calculated for each sq. km. or part thereof covered by the license at the prescribed rates. The licence fee structure was revised vide Ministry of Petroleum and Natural Gas notification dated 25 November 2009 as detailed below:

First year licence fees: ₹ 200 per sq. km.
Second year licence fees: ₹ 400 per sq. km.
Third year licence fees: ₹ 2,000 per sq. km.
Fourth year licence fees: ₹ 2,800 per sq. km.
Each subsequent renewal of licence:
₹ 4,000 per sq. km.

During test check of records of the DoP, Gandhinagar, for the period 2010-11, we noticed that Petroleum Exploration Licence (PEL) for area admeasuring 448 sq. km. in Bharuch district was granted to Gujarat State Petroleum Corporation (GSPC). During the renewal of licence for the fifth year, licence fees of ₹ 17.92 lakh were required to be levied at the rates ₹ 4,000 per sq. km., but

the lessee paid fee of ₹ 2.68 lakh levied at 2,800 per sq.km. This resulted in short levy of license fee of ₹ 15.24 lakh.

The matter was reported to the Government in June 2012; their reply had not been received (September 2012).

	(MEERA SWARUP)
Ahmedabad	**Principal Accountant General**
The	**(Economic & Revenue Sector Audit)**
	Gujarat

Countersigned

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