REPORT OF THE

COMPTROLLER AND AUDITOR GENERAL OF INDIA

ON

REVENUE SECTOR

FOR THE YEAR ENDED MARCH 2012

GOVERNMENT OF TAMIL NADU

Report No. 1 of 2013

TABLE OF CONTENTS

PREFACE

This Report for the year ended 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, stamp duty and registration fees, taxes on vehicles, electricity taxes and mines and minerals.

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 could not be included in the previous years' reports. Matters relating to the period subsequent to 2011-12 have been included, wherever necessary.

OVERVIEW

The Report contains 21 paragraphs including two performance audits relating to non/short levy of taxes, interest, penalty, etc., involving ₹ 549.40 crore. Some of the major findings are mentioned below:

I General

The total receipts of the State during 2011-12 were ₹ 85,202.14 crore, comprising tax revenue of ₹ 59,517.66 crore and non-tax revenue of ₹ 5,683.57 crore. ₹ 12,714.60 crore was received from the Government of India as State's share of divisible Union taxes and ₹ 7,286.31 crore as grants-in-aid. The revenue raised by the State Government in 2011-12 was 77 *per cent* of the total revenue receipts as compared to 75 *per cent* in 2010-11. Sales tax (₹ 36,288.90 crore) formed a major portion (61 *per cent*) of the tax revenue of the State. Interest receipts, dividends and profits (₹ 2,056.89 crore) accounted for 36 *per cent* of the non-tax revenue.

(Paragraph 1.1)

Test check of the records relating to commercial taxes, land revenue, motor vehicles tax, stamp duty and registration fees, electricity duty and mines and minerals during the year 2011-12 revealed underassessments, short levy, loss of revenue and other observations amounting to ₹ 852.86 crore in 2,330 cases.

(Paragraph 1.5.1)

II Sales Tax / Value Added Tax

Performance Audit on **"Implementation of Value Added Tax in Tamil Nadu"** revealed the following:

- Registration certificates were issued to dealers without exercising basic/vital checks and without obtaining PAN which was mandatory. This encouraged the bill trading activities by the dealers which was evidenced from the fact that the Department itself had identified 1,037 dealers as 'bill traders' and cancelled the RCs retrospectively.

(Paragraph 2.13.7)

- Absence of validation checks in the software rendered the information captured in the system unreliable.

(Paragraph 2.13.9.2)

- The TNVAT Act provides for selection of assessments for detailed scrutiny. There was delay both in selection of such cases and in completion of detailed scrutiny.

(Paragraph 2.13.10)

- The Commissioner of Commercial Taxes as Head of the Department had issued periodical instructions for scrutiny of returns and

verification of the ITC claims made by the dealers. However, huge claims of incorrect/inadmissible/fictitious ITC were made by the dealers. The ITC and penalty recoverable amounted to ₹ 280.64 crore.

(Paragraph 2.13.11)

- Application of incorrect rates of tax in 23 cases resulted in short levy of tax of ₹ 3.46 crore.

(Paragraph 2.13.12)

- Suppression of sales turnover by nine dealers resulted in non-levy of tax and penalty amounting to ₹ 19.96 crore

(Paragraph 2.13.13)

- Goods mentioned in the sixth schedule to the TNVAT Act require transit pass for passing through the State of Tamil Nadu. Transit passes issued for the transport of rubber (sixth schedule goods) at the entry check posts were not surrendered at the last exit check posts resulting in non-levy of tax and penalty amounting to ₹ 6.45 crore.

(Paragraph 2.13.14)

- TNVAT Act provides for levy of purchase tax on goods (the sale or purchase of which is liable to tax) in circumstances in which no tax was payable. Non-levy of purchase tax in respect of goods purchased by 24 dealers without payment of tax and consumed/used in manufacture amounted to ₹ 7.20 crore.

(Paragraph 2.13.15)

- TNVAT Act provides for levy of compounded rate of tax in respect of small dealers/works contractors. The Department failed to levy higher rate of tax amounting to ₹ 5.03 crore in respect of cases where the conditions for availing the compounded rates were violated.

(Paragraph 2.13.16)

- The Department identified iron and steel, timber etc as evasion prone commodities and also issued instructions for effective monitoring of claim of ITC in respect of such commodities. However, incorrect/excess/fictitious claim of ITC was made by iron and steel and timber dealers on which the tax and minimum penalty recoverable is ₹ 62.09 crore.

(Paragraph 2.13.17.1 (i), (ii) & (iii))

- Import purchases of timber were not accounted for by the dealers resulting in suppression of sales and consequent non levy of tax and penalty amounting to ₹ 10.55 crore.

(Paragraph 2.13.17.2)

Other observations

- Consignment sale of goods effected outside the state and supported by valid declaration in Form F is exempt from tax. However, consignment sales of cardamom/pepper effected by 11 dealers supported by invalid declaration forms were allowed exemption resulting in loss of revenue amounting to ₹4.37 crore.

(Paragraph 2.16.1)

- For transporting rubber outside the state, a dealer has to obtain declaration forms from the Rubber Board. A cross verification of the details obtained from the Rubber Board with the records in the assessment circles concerned revealed that the dealers had suppressed inter-State sales of rubber which resulted in non levy of tax and penalty amounting to ₹ 24.92 crore.

(Paragraph 2.16.4)

III State Excise

Performance Audit on **"Functioning of Prohibition and Excise Department"** revealed the following:

- Lack of transparency in granting privilege/license to new distilleries, IMFS and beer manufactories.

(Paragraph 3.7.8)

- Non-revision of privilege/license fee for manufacture of spirit, IMFS and beer for more than 10 years.

(Paragraph 3.7.9)

- FL2 and FL3 licensees (star hotels and clubs) were allowed to import IMFS. Though import fee was collected, vend fee amounting to ₹ 1.30 crore was not collected.

(Paragraph 3.7.13.1)

- There was short collection of enhanced privilege fee, license fee and special additional privilege fee from FL2, FL3 and FL 10 licensees amounting to ₹ 6.72 crore.

(Paragraph 3.7.13.2)

- Non-payment of brand renewal fee and label approval fee in respect of old brands resulted in non-collection of ₹ 94.60 lakh

(Paragraph 3.7.14)

IV Stamp duty and Registration fees

Misclassification of instruments of Power of Attorney for consideration as General Power of Attorney in eight cases resulted in short realisation of stamp duty and registration fees of ₹ 1.47 crore.

(Paragraph 4.9.1.1 to 4.9.1.5)

Misclassification of instruments of Conveyance as Cancellation Deed resulted in short realisation of stamp duty and registration fees of ₹ 1.96 crore.

(Paragraph 4.9.2)

Stamp duty and registration fees of ₹ 2.59 crore was short levied due to under valuation of properties in 25 instruments.

(Paragraph 4.9.5)

Failure to amend the Registration Act to make certificate of sale compulsorily registerable to enforce sufficiency in payment of stamp duty resulted in non-realisation stamp duty and registration fees of ₹ 2.09 crore in 109 cases.

(Paragraph 4.9.6)

Documents executed in favour of Co-operative House Building Societies were exempt from stamp duty provided the executants are members of such societies continuously for a period not less than two years. In 260 cases though the executants were not members/members for a period less than two years, exemption allowed on stamp duty and registration fee of ₹ 14.07 crore was irregular.

(Paragraph 4.9.7)

Properties registered in 17 Sub-Registries were undervalued by suppressing the fact of transfer of 297 wind mills commissioned in the landed properties through conveyance/lease deed. This resulted in short collection of stamp duty and registration fees of ₹ 41.78 crore.

(Paragraph 4.9.9.1)

In 10 Sub Registries there was excess allocation of transfer duty surcharge of ₹ 2.62 crore.

(Paragraph 4.9.10)

There was incorrect grant of exemption from payment of stamp duty of ₹ 8.68 crore in respect of 622 lease deeds executed in favour of individuals by two developers of Special Economic Zones.

(Paragraph 4.9.11)

V Other Tax Receipts

Electricity Taxes

There was non-collection of electricity tax of ₹ 13.44 crore on electricity sold by 11 licensees. Similarly electricity tax of ₹ 21.03 crore in respect of a licensee company for electricity captively consumed by it was not collected.

(Paragraph 5.8.1 & 5.8.2)

CHAPTER I

GENERAL

1.1 Trend of revenue receipts

1.1.1 Tax and non-tax revenue raised by the Government of Tamil Nadu during the year 2011-12, the State's share of net proceeds of divisible Union taxes and duties assigned to States and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are as 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	29,619.10	33,684.37	36,546.66	47,782.17	59,517.66
	• Non-tax revenue	3,304.37	5,712.33	5,027.05	4,651.45	5,683.57
	Total	**32,923.47**	**39,396.70**	**41,573.71**	**52,433.62**	**65,201.23**
2.	**Receipts from the Government of India**					
	• State's share of divisible Union taxes	8,065.27	8,510.80	8,756.20	10,913.98	12,714.60[1]
	• Grants-in-aid	6,531.77	7,135.01	5,514.22	6,840.02	7,286.31
	Total	**14,597.04**	**15,645.81**	**14,270.42**	**17,754.00**	**20,000.91**
3.	**Total receipts of the State Government (1 + 2)**	47,520.51	55,042.51	55,844.13	70,187.62	85,202.14
4.	**Percentage of 1 to 3**	**69**	**72**	**74**	**75**	**77**

The above table indicates that during the year 2011-12, the revenue raised by the State Government (₹ 65,201.23 crore) was 77 *per cent* of the total revenue receipts against 75 *per cent* in the preceding year. The balance 23 *per cent* of the receipts during 2011-12 was from the Government of India.

[1] For details please see Statement No. 11 – Detailed accounts of revenue by minor heads of the Finance Accounts of the Government of Tamil Nadu for the year 2011-12. Figures under the head '0021 – Taxes on income other than corporation tax – Share of net proceeds assigned to states' booked in the Finance Accounts under 'A – Tax revenue' have been excluded from the revenue raised by the state and included in 'State's share of divisible Union taxes' in this statement.

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

(₹ in crore)

Sl. No.	Head of revenue	2007-08	2008-09	2009-10	2010-11	2011-12	Percentage of increase (+)/ decrease (-) in 2011-12 over 2010-11
1.	Sales tax/VAT	18,156.36	20,674.70	22,661.52	28,614.23	36,288.90	(+) 26.82
2.	State excise	4,764.06	5,755.52	6,740.68	8,115.94	9,975.21	(+) 22.91
3.	Stamp duty and registration fees						
	Stamps – Judicial	76.87	79.58	78.63	98.08	105.65	(+) 7.72
	Stamps – non-judicial	3,124.92	3,127.28	3,019.98	3,817.57	5,505.56	(+) 44.22
	Registration fees	602.95	586.82	563.55	734.94	969.57	(+) 31.93
4.	Taxes on vehicles	1,483.21	1,709.57	2,024.64	2,660.05	3,101.09	(+)16.58
5.	Land revenue	78.03	207.73	116.66	113.28	87.21	(-) 23.01
6.	Taxes on immovable property other than agricultural land (urban land tax)	15.75	11.79	12.01	10.21	10.89	(+) 6.66
7.	Others	1,316.95	1,531.38	1,328.99	3,617.87	3,473.58	(-) 3.99
Total		**29,619.10**	**33,684.37**	**36,546.66**	**47,782.17**	**59,517.66**	

The following reasons for variation were reported by the concerned Departments:

Sales tax/VAT: The increase in revenue was due to levy of fresh taxes on beedi and edible oil. Also tax rates were increased in respect of commodities mentioned in Part B and C of first schedule of TNVAT Act, cell phone, tobacco products and sale of food and drinks by star hotels.

State excise: The increase in revenue was due to huge receipts under 'vend fee on foreign liquor and spirits', duty on beer and malt liquor.

Stamp duty and registration fees: The increase in revenue was due to increase in the sale of non-judicial stamp and fees for registering documents and also includes the increase in monetary value with effect from 12 July 2011 under Articles 6(1)(a), 35 and 48 of Schedule I of the Indian Stamp Act, 1899.

Taxes on vehicles: The increase in revenue was due to increase of ₹ 406.53 crore under 'receipts under the Tamil Nadu Motor Vehicles Taxation Act, 1974'.

Land Revenue: The decrease was due to fall in revenue under 'sale proceeds of waste lands and redemption of land tax' during the current year by ₹ 15.32 crore as compared to the previous year.

The other Departments did not furnish (December 2012) the reasons for variation despite being requested (July 2012).

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.	Head of revenue	2007-08	2008-09	2009-10	2010-11	2011-12	Percentage of increase (+)/ decrease (-) in 2011-12 over 2010-11
1.	Interest receipts, dividends and profits	1,282.20	1,501.09	1,845.61	1,689.78	2,056.89	(+) 21.73
2.	Crop husbandry	82.41	73.53	92.54	116.30	125.32	(+) 7.76
3.	Forestry and wild life	46.42	82.65	86.90	139.22	105.86	(-) 23.96
4.	Non-ferrous mining and metall-urgical industries	581.76	527.36	610.89	675.87	943.83	(+) 39.65
5.	Education, sports, art and culture	301.40	302.74	383.64	518.83	483.26	(-) 6.86
6.	Other receipts	1,010.18	3,224.96	2,007.47	1,511.45	1,968.41	(+) 30.23
Total		**3,304.37**	**5,712.33**	**5,027.05**	**4,651.45**	**5,683.57**	

The following reasons for variation were reported by the concerned Departments:

Interest receipts, dividends and profits: The increase in revenue was due to increase of interest realised under 'loans to municipalities and municipal corporations' except Chennai and interest received from local bodies and Tamil Nadu Urban Development Project.

Forestry and wild life: The decrease in revenue was due to decrease in sale of timber and other forest produce.

Non-ferrous mining and metallurgical industries: The increase in revenue was due to increase in receipts under mineral concession fees, rents and royalties and receipts from sand quarry operations.

The other Departments did not furnish (December 2012) the reasons for variation despite being requested (July 2012).

1.2 Response of the Departments/Government towards audit

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

The Principal Accountant General (Economic and Revenue Sector Audit), Tamil Nadu (PAG) conducts periodical inspection of Government Departments to test check the transactions and verify the maintenance of accounts and other records as prescribed in the rules and procedures. These inspections are followed up with inspection reports (IRs) bringing out 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 prompt corrective action. The heads of the offices/Government are required to comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial replies to the PAG within one month from the date of issue of the IRs. Serious financial irregularities are reported to the heads of the Departments and the Government.

We reviewed the IRs issued upto 31 December 2011 and found that 22,320 paragraphs involving ₹ 3,054.95 crore relating to 7,008 IRs remained outstanding at the end of June 2012 as mentioned below along with the corresponding figures for the preceding two years:

	June 2010	June 2011	June 2012
Number of outstanding IRs	7,204	7,101	7,008
Number of outstanding audit observations	23,636	23,075	22,320
Amount involved (₹ in crore)	3,442.72	3,424.21	3,054.95

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		Money value involved (₹ in crore)
			Inspection reports	Audit obser-vations	
1.	Commercial Taxes and Registration	Sales tax/Value added tax	2,952	13,427	1,153.34
		Stamp duty and registration fees	1,534	3,735	512.52
		Entry tax	164	295	5.82
		Entertainment tax	54	58	2.18
		Luxury tax	111	130	2.28
		Betting tax	12	23	0.09
2.	Revenue	Land revenue	882	2,184	465.71
		Urban land tax	214	567	41.90
		Taxes on agricultural income	72	175	81.03

3.	Home (Transport)	Taxes on vehicles	452	847	113.12
4.	Home (Prohibition and Excise)	State excise	211	248	80.62
5.	Industries	Mines and minerals	270	499	317.83
6.	Energy	Electricity duty	80	132	278.51
Total			**7,008**	**22,320**	**3,054.95**

Even the first replies required to be received from the heads of offices within one month from the date of issue of IRs were not received for 506 paragraphs issued upto December 2011. This large pendency of IRs due to non-receipt of the replies is indicative of the fact that the heads of offices and heads of the Departments did not initiate action to rectify the defects, omissions and irregularities pointed out by us in the IRs.

We recommend that the Government takes suitable steps to install an effective procedure for prompt and appropriate response to audit observations as well as take action against officials/officers who have not sent replies to the IRs/paragraphs as per the prescribed time schedules or did not take action to recover the loss/outstanding demand in a time bound manner.

1.2.2 Departmental Audit Committee Meetings

The Government set up Audit Committees (during various periods) to monitor and expedite the progress of settlement of paragraphs in the IRs.

To this end it is necessary that the Audit Committees meet regularly and ensure that final action is taken in respect of all the audit observations outstanding for more than a year. During the year 2011-12, six meetings were held in which 196 paragraphs involving a money value of ₹ 8.01 crore were settled.

We recommend that the Government suitably instructs the concerned Departments to come up with proposals for conduct of the Audit Committee meetings and takes rectificatory action on all audit observations, particularly those which are pending for a long time.

1.2.3 Non-production of records to audit for scrutiny

We draw up the programme of local audit of Commercial Tax Offices sufficiently in advance and issue intimations, usually one month before the local audit, to the Department to enable them to keep the relevant records ready for audit scrutiny.

During 2011-12, 19,263 sales tax assessment records relating to 171 offices were not made available for audit. Of these, 155 assessments pertain to two special circles (LTU I, Chennai and FTAC I, Coimbatore), where assessments of major dealers are dealt with.

The delay in production of records for audit would render audit scrutiny ineffective, as rectification of under assessments, if any, might become barred by limitation, by the time these files are produced to audit.

We brought the matter regarding non-production of records in each office and arrears in assessment to the notice of the Department through the local audit reports of the respective offices.

1.2.4 Response of the Departments to draft Audit Paragraphs

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

We forwarded 44 draft paragraphs (clubbed into 21 paragraphs including two Performance Audits) proposed to be included in the Report of the Comptroller and Auditor General of India for the year ended March 2012 to the Secretaries of the respective Departments between April and October 2012 through demi-official letters. The Secretaries of the Departments did not send replies to 26 draft paragraphs (including two Performance Audit reports). Thus, there was non-compliance of the above mentioned instructions of the Government. These paragraphs have, therefore, been included in the report without the response of the Secretaries of the Departments concerned.

1.2.5 Follow-up on Audit Reports

With a view to ensuring accountability of the executive in respect of the issues dealt with in the Audit Reports, the Public Accounts Committee (PAC) had directed that the Department concerned should furnish remedial Action Taken Notes (ATN) on the recommendations of PAC relating to the paragraphs contained in the Audit Reports within the prescribed time frame. We reviewed the outstanding ATNs as of 31 March 2012 on the paragraphs included in the Report of the Comptroller and Auditor General of India, Revenue Receipts, Government of Tamil Nadu and found that the Departments had not submitted the ATNs for 991 recommendations pertaining to 290 audit paragraphs discussed by PAC. Out of the pending 991 recommendations, ATNs have not been received in respect of 441 recommendations even once, the earliest of which relates to the Audit Report for the year 1986-87.

Further, PAC has laid down that necessary explanatory notes for those issues mentioned in the Audit Reports should be furnished to the Committee within a maximum period of two months from the date of placing of the Report before the Legislature. Though the Audit Reports for the years from 2001-02 to 2010-11 were placed before the Legislative Assembly between May 2003 and May 2012, the Departments are yet to submit explanatory notes for 127 paragraphs included in these reports.

1.2.6 Compliance with the earlier Audit Reports – Position of recovery of accepted cases

During the period from 2006-07 to 2010-11, the Departments/Government accepted audit observations involving ₹ 343.81 crore, of which ₹ 83.92 crore had been recovered till 31 October 2012 as mentioned below:

(₹ in crore)

Year of Audit Report	Total money value	Accepted money value	Collected
2006-07	151.38	91.56	64.68
2007-08	408.47	103.13	9.31
2008-09	337.40	115.99	2.22
2009-10*	239.97	13.13	6.52
2010-11	742.00	20.00	1.19
Total	**1879.22**	**343.81**	**83.92**
*** including a stand alone report on Registration Department**			

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

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 IRs/Audit Reports by the Departments/Government, action taken on the paragraphs and Performance Audits included in the Audit Reports of the last five years in respect of one Department is evaluated and included in each Audit Report.

Accordingly, the succeeding paragraphs 1.3.1 to 1.3.2.2 discuss the performance of the **Commercial Taxes and Registration Department (Stamp Duty and Registration Fees)** 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 2006-07 to 2010-11.

1.3.1 Position of Inspection Reports

The summarised position of IRs issued in respect of the Commercial Taxes and Registration Department (Stamp Duty and Registration Fees) during the

last five years, paragraphs included in these reports and their status as on 30 September 2012 are given in the following table:

(₹ in crore)

Year	Opening balance			Additions during the year			Clearance during the year			Closing balance		
	IRs	Para graphs	Money value	IRs	Para graphs	Money value	IRs	Para graphs	Money value	IRs	Para graphs	Money value
2006-07	903	1,480	140.86	315	523	28.47	230	471	22.64	988	1,532	146.69
2007-08	988	1,532	146.69	294	1,012	125.32	112	233	10.70	1,170	2,311	261.31
2008-09	1,170	2,311	261.31	224	771	58.03	155	447	59.02	1,239	2,635	260.32
2009-10	1,239	2,635	260.32	188	718	76.32	50	169	3.75	1,377	3,184	332.89
2010-11	1,377	3,184	332.89	252	868	152.95	194	632	32.30	1,435	3,420	453.54

The above position indicates that the action taken by the Department in clearance of the paragraphs is very minimal when compared to the additions of inspection reports and paragraphs every year.

We recommend that the Government may issue suitable instructions to the Department to take appropriate steps to clear the outstanding audit observations at the earliest.

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 in respect of the Commercial Taxes and Registration Department (Stamp Duty and Registration Fees) included in the Audit Reports of the last five years, those accepted by the Department and the amount recovered is mentioned below:

(₹ in crore)

Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted	Money value of accepted paragraphs	Amount recovered
2006-07	3	8.58	3	8.58	1.00
2007-08	12	42.63	5	19.72	6.95
2008-09	8	10.73	5	3.38	0.68
2009-10*	19	90.84	2	0.46	0.46
2010-11	5	3.48	3	1.74	0.24
Total	**47**	**156.26**	**18**	**33.88**	**9.33**
* Stand Alone Report					

The above table indicates that the overall percentage of recoveries of the accepted cases to the money value of the paragraphs included is less than six *per cent* which is very low.

The Government may institute a mechanism to monitor the position of recoveries pointed out in the Audit Reports.

1.3.2.2 Action taken on the recommendations accepted by the Department/Government

The draft Performance Audit Reports are forwarded to the concerned Department/Government for their information with a request to furnish their replies. These reports are also discussed in an Exit Conference and the Department's/Government's views are included while finalising the Performance Audit Reports.

The following table shows the issues highlighted in two Performance Audit Reports on the Commercial Taxes and Registration Department (Stamp Duty and Registration Fees) featured in the Audit Reports for the years 2007-08 and 2009-10 including the recommendations and the action taken by the Department on the recommendations accepted by it as well as the Government.

Year of Audit Report	Name of the review	Number of recommendations	Details of the recommendations accepted
2007-08	Computerisation of the Registration Department	3	---
2009-10	Stand Alone Report	8	---

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 annual parameters. Annual Audit Plan is prepared on the basis of such risk analysis which, *inter-alia*, include critical issues in Government Revenue 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 the past five years etc.

During the year 2011-12, the audit universe comprised 1,387 auditable units, of which 614 units were planned for audit. Out of this 583 units were audited during the year 2011-12 i.e., 42 *per cent* of the total auditable units. The details are shown in the annexure-I.

1.5 Results of audit

1.5.1 Position of local audit conducted during the year

We test checked the records of 583 units of commercial taxes, land revenue, state excise, motor vehicles tax, stamp duty and registration fees, electricity tax and mines and minerals in 2011-12 and found under assessments, short levy, loss of revenue and other observations amounting to ₹ 852.86 crore in 2,330 cases. During the year, the Departments accepted under assessments and other deficiencies in 795 cases involving ₹ 89.18 crore of which 214 cases

involving ₹ 62.00 crore were pointed out in 2011-12 and the rest in earlier years. As a result, the Departments collected ₹ 9.47 crore during 2011-12.

1.5.2 This Report

This Report contains 21 paragraphs including two Performance Audit Reports relating to non/short levy of taxes, duties, interest and penalties and other audit observations involving financial effect of ₹ 549.40 crore. The Departments/Government accepted the audit observations involving ₹ 82.45 crore, of which ₹ 5.37 crore has been recovered/adjusted by the Departments. We have not received replies in the remaining cases (December 2012). These are discussed in the succeeding chapters II to V.

Increase in tax collection	In 2011-12 the collection from sales tax/value added tax increased by 27 *per cent* over the previous year.
Internal audit	Internal audit of Commercial Taxes Department was conducted on an average of 29 *per cent* of the offices. The Department attributed lesser coverage of internal audit to shortage of man power in the Internal Audit Wing
Results of audit conducted by us in 2011-12	In 2011-12, we test checked the records of 171 units and found underassessment of tax and other irregularities amounting to ₹ 631.96 crore in 1,155 cases. The Department accepted underassessments and other deficiencies amounting to ₹ 40.99 crore in 628 cases, out of which, ₹ 38.22 crore involved in 186 cases were pointed out during the year and the rest in earlier years. Out of this, an amount of ₹ five crore has been collected.
What we have highlighted in this Chapter	In this chapter we present a Performance Audit on **"Implementation of Value Added Tax in Tamil Nadu"** involving money value of ₹ 395.39 crore and illustrative cases involving ₹ 32.15 crore. These cases were selected from observations noticed during our test check of records where we found that the provisions of the Acts/Rules were not observed. It is pertinent to mention that though similar omissions were pointed out by us in earlier years, the Department has not taken corrective action. These mistakes were continued as apparent from the records made available to us. In the present Performance Audit, we observed that the absence of provision for exercising vital checks before the issue of Registration Certificates (RCs) resulted in cancellation of the RCs in many cases after identifying them as 'bill traders'. This in turn, resulted in huge claim of fictitious ITC by such bill traders. Though the Department issued instructions for verification of the claim of ITC specifically with regard to evasion prone commodities, absence of effective monitoring mechanism to ensure adherence to the instructions led to huge loss of revenue to the exchequer. Instructions regarding implementation of the VAT audit reports within three months were also not followed by the lower authorities which is evidenced from the huge pendency in implementation of VAT audit reports. Lack of effective monitoring by the higher authorities resulted in continuation of such lapses. Absence of validation controls in the software made the information captured in the system unreliable.
Our conclusion	The Department needs to take rectificatory action in the cases pointed out by us and also to ensure that such mistakes do not occur again by strengthening internal controls including internal audit. In the interest of revenue, the Department may expedite collection of tax in accepted cases on priority.

CHAPTER II

SALES TAX/VALUE ADDED TAX

2.1 Tax administration

Assessment, levy and collection of sales tax, central sales tax and value added tax are governed by the erstwhile Tamil Nadu General Sales Tax Act, 1959 and the Rules made thereunder, the Central Sales Tax Act 1956 and the Rules made thereunder, the Tamil Nadu Value Added Tax Act, 2006 and the Tamil Nadu Value Added Tax Rules, 2007 respectively. Administration of the Department is vested with the Commissioner of Commercial Taxes. The State has been divided into 40 zones, comprising 323 assessment circles including four Large Taxpayers[2] Units (LTU) at Chennai and two Fast Track Assessment Circles (FTAC) at Coimbatore. Assessment, levy and collection of tax are done by the assessing authorities in charge of the assessment circles. Monitoring and control at the Government level is done by the Secretary, Commercial Taxes and Registration Department.

2.2 Trend of receipts

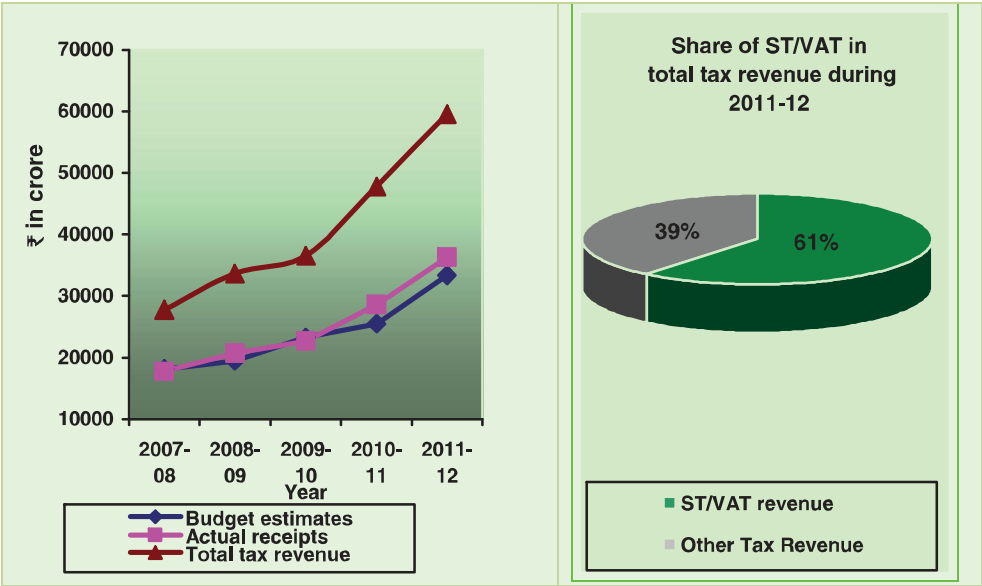
Actual receipts from sales tax/value added tax during the last five years from 2007-08 to 2011-12 along with the total tax receipts during the same period are exhibited in the following table:

(₹ in crore)

Year	Budget estimates	Actuals	Variation excess (+)/ short fall (-)	Percen-tage of variation	Total tax receipts of the State	Percentage of actual receipts *vis-à-vis* total tax receipts
2007-08	20,030.84	18,156.36	(-) 1,874.48	(-) 9.36	29,619.10	61
2008-09	19,417.74	20,674.70	(+) 1,256.96	(+) 6.47	33,684.37	61
2009-10	23,242.53	22,661.52	(-) 581.01	(-) 2.50	36,546.66	62
2010-11	25,504.65	28,614.23	(+) 3,109.58	(+) 12.19	47,782.17	60
2011-12	33,393.95	36,288.90	(+) 2,894.95	(+) 8.67	59,517.66	61

[2] Large taxpayers – Dealers whose taxable turnover for a year exceeds ₹ 200 crore.

A line graph of budget estimates, actual receipts and total receipts and a pie chart depicting the position of Sales Tax/VAT receipts in the total tax receipts are given below:



In 2011-12 the collection from sales tax/value added tax increased by 27 *per cent* over the previous year.

2.3 Analysis of arrears of revenue

As per the information furnished by the Department, arrears of revenue as on 31 March 2012 along with the figures for the preceding four years are given in the following table:

(₹ in crore)

Year	Opening balance	Addition	Total	Amount collected* during the year	Closing balance
2007-08	10,972.64	279.10	11,251.74	3,030.15	8,221.59
2008-09	8,221.59	2,429.37	10,650.96	779.61	9,871.35
2009-10	9,871.35	1,937.68	11,809.03	818.97	10,990.06
2010-11	10,990.06	211.61	11,201.67	1,069.33	10,132.34
2011-12	10,132.34	1,397.50	11,529.84	695.90	10,833.94
*includes demands eliminated, waived and written off					

Arrears as on 31 March 2012 includes ₹ 5,826.76 crore outstanding for more than five years. Demands amounting to ₹ 2,554.26 crore were covered under the Revenue Recovery Act. Demands amounting to ₹ 1,581.21 crore were stayed by the Government/High Court and other judicial/appellate fora and an amount of ₹ 474.85 crore was held up due to rectification/review applications. A sum of ₹ 51.60 crore could not be recovered on account of assessees becoming insolvent while a sum of ₹ 574.12 crore was likely to be written off/waived. An amount of ₹ 3,456.82 crore was covered under the deferral

scheme. An amount of ₹ 808.70 crore was proposed to be eliminated. A sum of ₹ 384.45 crore was covered under civil suits and Board for Industrial and Financial Reconstruction and a sum of ₹ 656.13 crore was under various stages of recovery. Further, as intimated by the Department an amount of ₹ 291.80 crore has since been collected between April and September 2012.

The above details indicate that the amount of uncollected revenue as on 31 March 2012 was nearly one third of the sales tax/VAT revenue realised by the Department during the year 2011-12 and substantial amounts were covered under the Revenue Recovery Act and on account of stays granted by the judicial/appellate fora.

We recommend that special efforts be made to get the stay orders vacated and cases involving litigation speeded up. We further recommend that the Government may consider fixing targets for collection of old arrears in a time bound manner and closely monitor the performance of the Departmental officers *vis-à-vis* the set targets.

2.4 Assessee profile

The number of registered dealers in 2011-12 was 5,93,061 comprising 5,90,927 VAT dealers and 2,134 non-VAT dealers. Of the above, large tax payers were 116 and the rest were classified as small tax payers. The number of dealers required to file returns during the year were 2,83,949 VAT dealers and 1,963 non-VAT dealers. The number of returns due from the dealers was 34,30,944 against which 26,94,588 returns were received. 7,24,561 and 11,795 returns were not received from VAT and non-VAT dealers respectively. These returns were due from 29,992 dealers.

The Department stated that notices were issued for cancellation of registration certificates to non-filers of returns. Details of the dealers whose registration certificates were cancelled for non-filing of returns were, however, not made available to us.

2.5 Collection of sales tax/VAT per assessee

Details on amount of sales tax/value added tax realised during the year, the number of assessees and the collection of sales tax/value added tax per assessee for the period from 2007-08 to 2011-12 as furnished by the Department are given in the following table:

Year	No. of assessees	Revenue (₹ in crore)	Revenue per assessee (₹ in lakh)
2007-08	2,24,074	18,156.36	8.10
2008-09	2,45,052	20,674.70	8.44
2009-10	2,70,159	22,661.52	8.39
2010-11	3,11,517	28,614.23	9.19
2011-12	3,63,462	36,288.90	9.98

2.6 Arrears in assessment

The number of cases pending for assessment at the beginning of the year 2011-12, due for assessment during the year, disposed during the year and pending at the end of the year 2011-12 along with the figures for the preceding four years as furnished by the Commercial Taxes Department are given in the following table:

Year	Opening balance	Cases which became due for assess-ment	Total	Cases disposed during the year	Cases pending at the end of the year	Percentage of disposal (Col.5 to 4)
1	2	3	4	5	6	7
2007-08	99,548	1,78,414	2,77,962	76,814	2,01,148	28
VAT	---	1,44,759	1,44,759	22,108	1,22,651	15
2008-09	2,01,148	---	2,01,148	55,381	1,45,767	28
VAT	1,22,651	1,85,270	3,07,921	95,047	2,12,874	31
2009-10	1,45,767	---	1,45,767	84,600	61,167	58
VAT	2,12,874	2,21,166	4,34,040	1,14,638	3,19,402	26
2010-11	61,167	---	61,167	36,122	25,045	59
VAT	3,19,402	2,37,073	5,56,475	1,63,957	3,92,518	29
2011-12	25,045	---	25,045	22,682	5,151	91
VAT	3,92,518	3,41,487	7,34,005	4,72,411	2,61,594	64

The percentage of completion of assessments has considerably increased compared to earlier years.

Still we recommend that the Government may issue appropriate instructions to ensure completion of assessments expeditiously.

2.7 Cost of collection

The gross collection in respect of sales tax/VAT, expenditure incurred on collection and percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the preceding years are given in the following table:

(₹ in crore)

Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the preceding years
Sales tax/ VAT	2009-10	22,661.52	205.10	0.91	0.88
	2010-11	28,614.23	219.30	0.77	0.96
	2011-12	36,288.90	224.05	0.62	0.75

The above table indicates that while the percentage of expenditure on collection was more than the all India average for the year 2009-10, it was less than the all India average for the years 2010-11 and 2011-12.

2.8 Analysis of collection

The break-up of total collection at the pre-assessment stage and after regular assessment of taxes on sales under the Tamil Nadu Value Added Tax Act for the years 2009-10, 2010-11 and 2011-12 as furnished by the Department are given in the following table:

(₹ in crore)

Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Penalties for delay in payment of taxes	Amount refunded	Net collection as per depart-ment	Net collection as per Finance Account	Percen-tage of col. 2 to 7
1	2	3	4	5	6	7	8
2009-10							
Sales Tax/	3,169.82	313.50	1,871.32	122.81	24,818.84	22,661.52	97
VAT	18,803.53	783.48					
2010-11							
Sales Tax/	4,442.83	89.03	86.88	625.58	30,491.00	28,614.23	108
VAT	26,399.77	98.07					
2011-12							
Sales Tax/	5,580.93	192.48	79.85	823.57	38,721.17	36,288.90	107
VAT	33,374.80	316.68					

The collection of revenue at pre-assessment stage to the net collection as per finance accounts was 107 *per cent* during 2011-12 as against 97 *per cent* in 2009-10.

2.9 Impact of Audit Reports

2.9.1 Revenue impact

During the last five years, we had pointed in our Audit Reports 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 ₹ 344.27 crore in 62 paragraphs. Of these, the Department/Government had accepted audit

observations involving ₹ 34.73 crore and has since recovered ₹ 9.34 crore. Details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Accepted money value	Amount recovered
	Number	Money value		
2006-07	10	64.54	12.16	0.69
2007-08	14	50.77	4.73	1.50
2008-09	12	72.52	3.12	1.07
2009-10	13	134.99	7.94	5.69
2010-11	13	21.45	6.78	0.39
Total	**62**	**344.27**	**34.73**	**9.34**

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

2.10 Amendments to the Acts/Rules/Notifications/Orders issued by the Government at the instance of audit

Audit suggested (Para 4.2.10 of the Audit Report 2008-09) to the Government to expand the scope of the definition of "entertainment" in order to bring the Indian Premier League (IPL) matches and Direct to Home (DTH) services under the ambit of the Tamil Nadu Entertainments Tax Act, 1939. Accepting the audit suggestions, the Government amended the Tamil Nadu Entertainments Tax Act, 1939 and brought cricket tournaments conducted by the IPL and DTH services under the tax net.

Audit pointed out (Paragraph 2.13.12 of the Audit Report 2010-11) lapses noticed in check post records in capturing the movement of petroleum products in large quantity from Tamil Nadu to Puducherry and the possibility of the goods having been sold within Tamil Nadu by camouflaging the local sale as inter State sale to take advantage of the huge difference in the rates of tax existing in these two States. Accepting the audit observation, the Government amended Section 70 and the sixth schedule to the TNVAT Act, 2006 and extended the transit pass system to petrol and diesel oil to curb the menace of mid-dropping of petroleum products.

2.11 Working of internal audit wing

The internal audit is organised in each CT district and consists of an Assistant Commissioner, one Commercial Tax Officer and four other supporting staff. Assessments finalised and refunds made in the preceding quarter are taken up for audit in the succeeding quarter. Details of the number of offices due for internal audit and those completed as furnished by the Department are given in the following table:

Year	Number of offices due	Number of offices completed	Balance	Percentage of col.3 to 2
1	2	3	4	5
2007-08	452	173	279	38
2008-09	452	155	297	34
2009-10	452	133	319	29
2010-11	443	83	360	19
2011-12	348	80	268	23

The Department attributed the reasons for less coverage of internal audit to vacancy in staff strength and stated that audit in respect of assessments finalised by assessing officers who were due for retirement and in respect of cases which would become time barred were only being conducted.

We recommend that the Government may consider strengthening the internal audit so that audit may be conducted for all the units due for audit.

2.12 Results of audit

We test checked the records of 171 units during the period from April 2011 to March 2012 and found underassessment of tax and other irregularities amounting to ₹ 631.96 crore in 1,155 cases, which broadly fall under the following categories.

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Performance audit on Implementation of VAT in Tamil Nadu	1	395.39
2	Incorrect exemption of tax	122	77.80
3	Incorrect rate of tax	125	31.56
4	Incorrect computation of taxable turnover	115	76.77
5	Non/short levy of tax	102	12.49
6	Non levy of penalty /interest	176	6.36
7	Affordal of incorrect input tax credit	383	22.85
8	Others	131	8.74
	Total	**1,155**	**631.96**

During the course of the year 2011-12, the Department accepted underassessments and other deficiencies amounting to ₹ 40.99 crore in 628 cases, out of which, ₹ 38.22 crore involved in 186 cases were pointed out during the year and the rest in earlier years. Out of this, an amount of ₹ five crore has been collected.

After the issue of draft paragraphs the Department collected an amount of ₹ 47.71 lakh.

2.13 Performance audit on "Implementation of Value Added Tax in Tamil Nadu"

Highlights

- **Registration certificates were issued to dealers without exercising basic/vital checks and without obtaining PAN which was mandatory. This encouraged the bill trading activities by the dealers which was evidenced from the fact that the Department itself had identified 1,037 dealers as 'bill traders' and cancelled the RCs retrospectively.**

(Paragraph 2.13.7)

- **Absence of validation checks in the software made the information captured in the system unreliable.**

(Paragraph 2.13.9.2)

- **The TNVAT Act provides for selection of assessments for detailed scrutiny. There was delay both in selection of such cases and in completion of detailed scrutiny.**

(Paragraph 2.13.10)

- **The head of the Department had issued periodical instructions for scrutiny of returns and verification of the ITC claims made by the dealers. However, huge claims of incorrect/inadmissible/fictitious ITC were made by the dealers. The ITC and penalty recoverable amounted to ₹ 280.64 crore.**

(Paragraph 2.13.11)

- **Application of incorrect rates of tax in 23 cases resulted in short levy of tax of ₹ 3.46 crore.**

(Paragraph 2.13.12)

- **Suppression of sales turnover by nine dealers resulted in non-levy of tax and penalty amounting to ₹ 19.96 crore**

(Paragraph 2.13.13)

- **Goods mentioned in the sixth schedule to the TNVAT Act require transit pass for passing through the State of Tamil Nadu. Transit passes issued for the transport of rubber (sixth schedule goods) at the entry check posts were not surrendered at the last exit check posts resulting in non-levy of tax and penalty amounting to ₹ 6.45 crore.**

(Paragraph 2.13.14)

- **TNVAT Act provides for levy of purchase tax on goods (the sale or purchase of which is liable to tax) in circumstances in which no tax was payable. Non-levy of purchase tax in respect of goods purchased by 24 dealers without payment of tax and consumed/used in manufacture amounted to ₹ 7.20 crore.**

(Paragraph 2.13.15)

- **TNVAT Act provides for levy of compounded rate of tax in respect of small dealers/works contractors. The Department failed to levy higher rate of tax amounting to ₹ 5.03 crore in respect of cases where the conditions for availing the compounded rates were violated.**

(Paragraph 2.13.16)

- **The Department identified iron and steel, timber etc as evasion prone commodities and also issued instructions for effective monitoring of claim of ITC in respect of such commodities. However, incorrect/excess/fictitious claim of ITC was made by iron and steel and timber dealers on which the tax and minimum penalty recoverable is ₹ 62.09 crore.**

(Paragraph 2.13.17.1 (i), (ii) & (iii))

- **Import purchases of timber were not accounted for by the dealers resulting in suppression of sales and consequent non levy of tax and penalty amounting to ₹ 10.55 crore.**

(Paragraph 2.13.17.2)

2.13.1 Introduction

The Government of India decided to introduce State Level Value Added Tax (VAT) in all the States and Union Territories with effect from 1 April 2003 on the basis of the decision taken by the Empowered Committee of States' Finance Ministers in its meeting held on 23 January 2002. The Committee submitted (January 2005) a white paper defining the basic designs of the State level VAT. The VAT system is a destination/consumption based tax system and has provisions for set-off of tax paid on the previous purchases. It seeks to address the problems like double taxation, multiplicity of taxes, surcharge additional sales tax, etc. in the sales tax structure that resulted in cascading tax burden on the buyers. The VAT system also aimed at widening the tax base besides envisaging fall in prices of commodities.

The Government of Tamil Nadu repealed the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) and enacted the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) effective from 1 January 2007. Under the TNVAT Act, the goods are categorised as 'vatable' and 'non-vatable'. Vatable goods are mentioned in the first schedule and are taxable at different rates. They are taxed at every stage with the provision to deduct the tax paid on purchases from the tax payable on sales. The non-vatable goods are enumerated in the second schedule to the Act.

As part of e-Governance initiatives in Commercial Taxes Department, the assessment circles, check-posts and other offices are connected with the Central Computer Centre through Tamil Nadu State Wide Area Network (TNSWAN) in September 2009. Computerisation is covered under two applications namely web based integrated application (intranet application) and internet application.

2.13.2 Organisational set up

The Commissioner of Commercial Taxes (CCT) is the head of the Department of Commercial Taxes (CT) and is assisted by Additional Commissioners (ADC), Joint Commissioners (JC) and territorial Deputy Commissioners (DC) who exercise administrative control. The Deputy Commissioners of Large Tax Payers Units (LTU), Fast Track Assessment Circles (FTAC), Assistant Commissioners (AC)/ Commercial Tax Officers (CTO) and Deputy Commercial Tax Officers (DCTO) are the assessing authorities responsible for levy and collection of tax and arrears thereof in the respective assessment circles. In addition, there is an Enforcement Wing, which has been formed for the purpose of conducting surprise inspections and unearthing evasion of tax. The monitoring and control at the Government level is done by the Secretary, Commercial Taxes and Registration Department.

2.13.3 Audit Objectives

Performance Audit was conducted with a view to ascertain and evaluate:

- Compliance to the provisions of the TNVAT Act and the Rules made thereunder in safeguarding the revenue of the State;
- Adequacy and effectiveness of the system and procedure in place to ensure the correctness of input tax credit and the use and effectiveness of computer application in implementation of the value added scheme of levy and
- Adequacy and effectiveness of internal control mechanism in preventing leakage of revenue.

2.13.4 Audit Criteria

The audit objectives are bench marked against the criteria drawn from the following sources:

- Tamil Nadu Value Added Tax Act, 2006;
- Tamil Nadu Value Added Tax Rules, 2007 and
- Instructions issued by the CCT from time to time.

2.13.5 Scope and methodology

There are 323 assessment circles in Tamil Nadu divided into 10 divisions. We conducted the performance audit in 93 assessment circles. Out of the 93 assessment circles, 66 circles were selected on random sampling method without replacement. The remaining 27 circles, which were considered as high risk areas, were identified on the basis of revenue generation and nature

of business. Besides, records in the office of the Commissioner of Commercial Taxes and at the Government Secretariat were scrutinised. Audit was conducted from July 2011 to May 2012 covering the transactions from 1 January 2007 to 31 December 2011 and data relating to the period from January 2007 to July 2011 were examined. Audit observations in the local audit reports were also considered.

2.13.6 Acknowledgement

An Entry Conference was held with the Secretary to the Government, Commercial Taxes and Registration Department in September 2011, in which we explained the audit objectives, scope and methodology. The statement of facts was forwarded to the Department and the Government in May 2012. The Exit Conference was held with the Secretary to the Government, Commercial Taxes and Registration Department in June 2012. The views expressed by the Government at the time of Exit Conference and at other times were considered and suitably incorporated in the performance audit report.

We acknowledge the co-operation extended by the Commercial Taxes Department in providing us the necessary records and information.

Audit findings

2.13.7 Registration of dealers

The object of registration is to keep complete records of all the dealers in the State. According to Section 38 of the TNVAT Act, every dealer who purchases goods within the State and effects sale of those goods within the State and whose total turnover in any year is not less than ₹ 10 lakh and every other dealer whose total turnover in a year is not less than ₹ five lakh shall get himself registered under this Act.

Section 39 of the Act *ibid* read with Rules 4 and 5 of the TNVAT Rules provide that every such dealer shall submit an application for registration to the registering authority within 30 days from the date of commencement of the Act. In case of any other dealer intending to commence business, the application shall be submitted within thirty days on reaching the said turnover.

As per Rule 5(1)(c) of the Rules *ibid*, if the Registration Certificate (RC) is not issued within 30 days from the date of receipt of the application or if no notice is issued by the registering authority within the said period, the applicant shall be deemed to have been duly registered.

2.13.7.1 We had commented in our Performance Audit Report on "Transition from Sales Tax to Value Added Tax" (Para 2.2.8.1 of the Audit Report 2008-09) of the ease with which RCs were granted to the applicants for registration, without verifying the veracity of the particulars furnished by them. We had suggested that the Act may be amended to enable the registering authority to exercise certain basic and vital checks to ensure the authenticity of the application for registration before granting RC.

The Department issued instructions only in

September 2010 in respect of new registrations relating to electrical goods and iron and steel (evasion prone commodities), that the registering authority shall take guidance of the territorial Deputy Commissioners (CT) who shall, in turn, satisfy the genuineness of the applicants with reference to (i) antecedents of the applicants, (ii) whether the applicant did business in other area and closed down (iii) whether the place of business is existing and genuine, (iv) whether the documents accompanying the application are genuine etc. The Department extended the procedure in respect of certain other commodities[3] identified as evasion prone, by issue of instructions in March 2011 and September 2011. In such cases, RCs could be issued only after making prior inspection at the place of business by the Enforcement Wing. However, this procedure was not extended to the dealers dealing in commodities other than evasion prone commodities.

We noticed during audit that as on 31 January 2012, 1,037 dealers had been identified by the Department itself as 'bill traders[4]' and their RCs were cancelled with retrospective effect, i.e. from the date of registration. We scrutinised the e-returns filed by those dealers. Such scrutiny revealed that 63 dealers had passed on fictitious ITC to the tune of ₹ 82.15 crore, before being identified as bill traders by the Department, thereby causing huge drain on the State exchequer.

Absence of statutory provisions in the Act for necessary enquiry by the registering authorities before the grant of RCs resulted in the above lapses.

We reiterate our recommendation, made vide Para 2.2.8.1 of the Audit Report for the year ended March 2009, for incorporation of a specific provision in the Act to enable the registering authority to exercise basic and vital checks before granting registration to ensure the authenticity of the application for registration.

As per the TNVAT Rules, as amended in April 2010, furnishing of Permanent Account Number (PAN) was made mandatory for obtaining new registration. The existing registered dealers were also required to furnish PAN within three months from the date of coming into force of the amended rule.

2.13.7.2 We noticed during audit that PAN in respect of only 49 *per cent* of the registered dealers were available with the Department (March 2011).

An analysis of the dealer master data obtained from the Commercial Taxes Department revealed that in 31,286 cases, two or more RCs were obtained by the dealers using the same PAN.

[3] Tiles and marbles, timber, edible oil and granites.

[4] A bill trader is one who issues bills without entering into genuine transactions involving transfer of goods

As the roll out of the Goods and Services Tax would involve issue of PAN linked TIN to the dealers, it is imperative that the Department updates the database of PAN of all the registered dealers and also rectify the errors therein.

2.13.8 Deficiencies in the format of the returns

Section 21 of the TNVAT Act requires the dealers to file their returns in the prescribed form.

According to Rule 7 of the TNVAT Rules, every registered dealer liable to pay tax other than a dealer who opted to pay tax under section 3(4) or section 6 or section 8 shall file return in Form I. Return in Form J and Statement in Form M are prescribed for the dealers liable to pay tax under section 3(5) and for the Department of Government respectively.

The basis for levy and collection of tax under the VAT system is the filing of correct and complete return by the dealers. The returns form the basis for determination of eligible ITC and the quantum of tax payable by the dealers. It is, therefore, necessary that the returns should be prescribed in such a manner as to capture all the relevant information. We observed several deficiencies in the format of the returns prescribed.

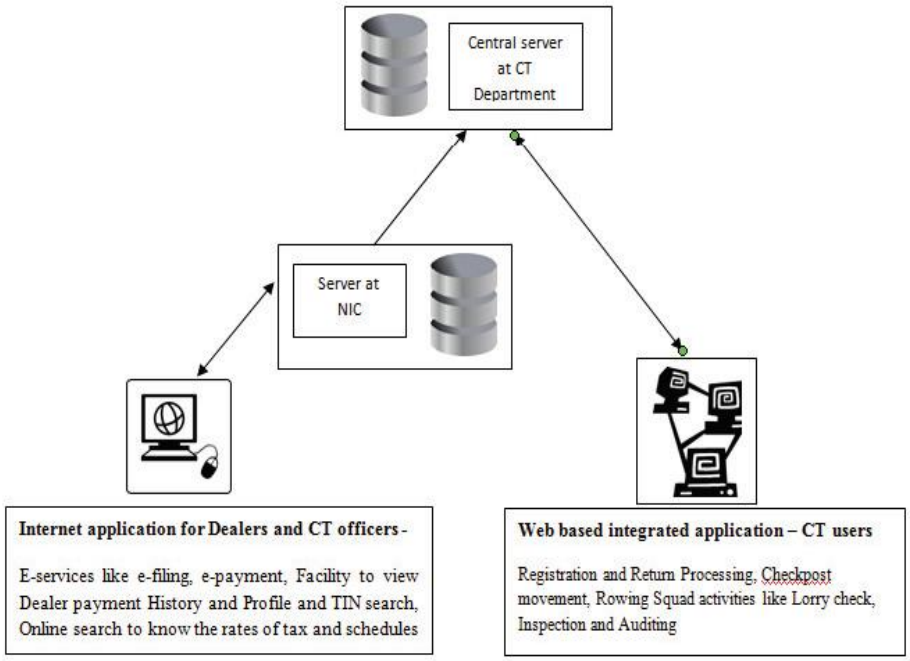
- Under the TNVAT Act, sale of petroleum products by one oil company to another oil company shall not be deemed to be the first sale in the State and is exempt. The oil companies are required to file a return in Form 'J' meant for goods mentioned in the second schedule to the Act. The return, however, does not contain provision to exhibit essential details like period of sale, sale value, name of the purchaser relating to the sale of petroleum products amongst the oil companies. In the absence of these details, the correctness of the claim of exemption by the oil companies could not be verified at the time of scrutiny of returns.
- Goods mentioned in Part C of the first schedule to the TNVAT Act have unique commodity code and are taxable at 12.5 *per cent*. If used as industrial inputs, these goods are taxable at the concessional rate of four *per cent,* under entry 67 of Part B of the first schedule. Industrial inputs are codified with a commodity code 2067. We noticed that in Annexure I to the monthly return (Form I), instead of mentioning the actual commodity code of the goods purchased, the general code 2067 is being mentioned when they were purchased as industrial inputs. As a result, the nature of goods purchased by the assessee and the correctness of purchase of those goods at concessional rate are not ascertainable from the returns.
- Rule 7(4) of the TNVAT Rules provides that every Department of the Government liable to pay tax under the Act shall file a statement in Form M showing the total and taxable turnover for each quarter on or before the 20th of the month succeeding the quarter along with proof of payment of tax. However, the Form M does not require the Government Departments to furnish the details regarding name and

TIN of the buyers, period and value of goods sold etc. as the Form M does not contain any column to provide these details. In the absence of these details, the claim of ITC by the dealers in respect of the purchases effected from the Government Departments is not susceptible of verification.

We recommend that the Government may consider modifying the prescribed format of the return in order to make it compatible with the Act/Rule provisions.

2.13.9 Computerisation

Computerisation in CT Department is covered under two applications namely (i) Web based integrated application (Intranet application) for Department use and (ii) Internet application for Department and dealers' use.



The intranet application has been completely implemented (September 2010). Internet application has been completed to cover e-services like online application for allotment of TIN, e-filing of returns, e-payment of taxes through five banks, dealer payment history and profile, TIN search, online search to know the rates of tax and schedules of the commodities. The other services like online issue of statutory forms, online dealer registration/cancellation, e-assessment order, e-refund and automatic notice generation and delivery through e-mail and SMS are yet to be completed (June 2012).

2.13.9.1 e-filing of monthly returns

(i) e-filing of returns was made mandatory for all the dealers with effect from December 2010. However, 62,303 out of 3,28,559 dealers have not filed their monthly returns (as of October 2011) electronically. Prior to December 2010, the dealers were filing the monthly returns manually and the details in the returns were entered into the computer system. We scrutinised the monthly performance statistics of the Department for the month of March 2011 and found that out of 35.56 lakh returns pertaining to the period from 2006-07 to 2008-09, data entry of 6.79 lakh returns (19 *per cent*) was yet to be made as on 31 March 2011. In the absence of such data entry, it would not be possible for the Department to ensure the genuineness of the claim of ITC in respect of purchases effected from the dealers whose return details have not yet been entered in the system.

(ii) Though Rule 7(9) of the TNVAT Rules provides for filing of revised return, filing of such revised return in electronic mode is not possible and the dealers have to resort to manual filing of the revised returns. Further, the annual return in Form I-1 meant for registered dealers who are not liable to pay tax under the Act is not capable of being filed in electronic mode. Thus, the full benefits of computerisation viz., tracking the trail of transactions and conducting effective scrutiny of returns to detect evasion is not being achieved.

2.13.9.2 Validation controls

White Paper on State Level Value Added Tax prepared by the Empowered Committee of States' Finance Ministers envisaged that "computerised system should compare constantly State VAT system and those of Central Excise and Income Tax to reduce tax evasion". While going in for such a comprehensive system of cross-checking, the correctness and completeness of the information captured in the VAT database should be ensured.

e-filing of returns facilitates the dealers to file monthly returns electronically. According to Section 21 of the TNVAT Act, a dealer has to file monthly return containing the information like TIN, name of the dealer, month of return, ITC brought forward, purchase value, claim of ITC, sale value, output tax payable etc.

The monthly return in Form I, should consist of two annexures viz. Annexure-I containing the details of purchases made by the dealer like seller TIN, name, invoice number, date etc. and Annexure-II containing the details of sales made by the dealer like buyer TIN, name, invoice number, date etc.

We analysed the returns data for the period from January 2007 to July 2011 in respect of 1,32,18,282 returns pertaining to 4,25,538 dealers provided by the Department and observed that lack of validation controls in the computer applications led to the following deficiencies.

- A comparison of the consolidated ITC claimed in the monthly returns (Form I) with the break up details of ITC furnished in Annexure I revealed that in 60,446 returns filed by 24,705 dealers, there was difference between the two sets of figures.

- In 2,36,423 returns filed by 56,789 dealers, there was difference between the consolidated tax payable as per monthly returns and the details of tax payable furnished in Annexure II of the returns.

- While entering the details in Form I, the system allows the dealers to enter sale value in the column provided for each slab rate of tax. The dealer has to enter the tax amount also manually instead of the system automatically calculating the tax. As a result, in 1,23,614 returns filed by 39,953 dealers, there was difference between the actual tax due and the tax manually entered, amounting to ₹ 5,706 crore. Similarly, there was difference between the actual tax due and the output tax calculated in Annexure II of the returns, amounting to ₹ 8.14 crore, filed by 869 dealers along with 2,063 returns.

- While furnishing the e-returns, system necessitates the dealer to enter the ITC brought forward from the previous month instead of automatically capturing the details from previous month. In 51,774 returns pertaining to 35,826 dealers, the ITC brought forward to succeeding month was more than the closing balance of the previous month. Similarly, the ITC brought forward to succeeding month was less than the closing balance of the previous month in 1,16,796 returns pertaining to 49,943 dealers.

- The Taxpayer Identification Number (TIN) is a new unique registration number that is used for identification of dealers registered under VAT. It consists of 11 digit numerals and will be unique throughout the country. The first two digits represent the State code. The States are codified from '01' to '35'. Accordingly, the first two digits cannot be more than '35'. We analysed the correctness of information furnished by the dealers in Annexure I of the returns and found that in 744 returns filed by 447 dealers, ITC of ₹ 4.39 crore was claimed providing the State codes beyond 35.

- 56,186 dealers have claimed ITC in 1,56,698 returns for the goods purchased from the dealers whose TIN does not exist in dealer master database relating to registered dealers.

- In 73,677 returns, the purchase details contained invalid seller TIN like '0', '-', 'Applied' etc. for which ITC has been claimed to the tune of ₹ 2,876.70 crore.

- Furnishing of invoice-wise information was made mandatory from September 2009. We analysed the data to ensure whether this rule was mapped with the system and found in 33,554 returns filed by 26,520 dealers, the purchase details did not contain invoice information.

After we pointed out the above, the Department replied that all validations which were made available initially were removed subsequently due to

difficulties faced by the dealers. The Department further stated that all the validation checks will form part of online filing of returns in the upcoming MMP-CT Project.[5]

Though the Department accepted the non-availability of validation checks in the existing software and stated that the validation will be part of the upcoming project, the reply of the Department is silent with regard to rectifying the deficiencies in the existing applications. In the absence of such validation checks, the Department would not be in a position to check the correctness of information furnished in the returns and also ensure the correctness of the revenue collection.

2.13.10 Delay in selection of cases for detailed scrutiny and completion of scrutiny

As per section 22(2) of the TNVAT Act, the assessing authority shall accept the returns filed by the dealers accompanied by proof of payment of tax and the documents prescribed and on such acceptance shall pass an assessment order. According to section 22(3) of the TNVAT Act, not exceeding 20 *per cent* of the total number of self assessments shall be selected by the CCT for the purpose of detailed scrutiny to ensure correctness of the returns submitted by the dealers. However, the TNVAT Act does not stipulate any time limit within which the scrutiny has to be completed by the assessing authority.

Selection of cases for scrutiny could be taken up only on passing of self assessment orders by the assessing authorities. We had pointed out in the Performance Audit on "Transition from sales tax to VAT" in the Audit Report 2008-09, of the huge pendency in finalisation of assessments under TNVAT Act. The delay in passing self assessment orders in turn delayed the selection of cases for scrutiny.

As per the details furnished by the Department, 61,681 assessments were selected for detailed scrutiny out of 3.08 lakh self assessments on three different dates between July 2008 and September 2010, for the period 2006-07 and 2007-08. Selection of assessments for detailed scrutiny has not been made thereafter. Further, out of the 61,681 assessments selected, scrutiny had been completed only in respect of 11,933 assessment cases (19 *per cent)* as at the end of January 2012. Selection of self assessments for scrutiny pertaining to the years 2008-09 (2,21,166 assessments), 2009-10 (2,37,073 assessments) and 2010-11 (4,72,411 assessments) has not been made.

When we pointed this out (November 2011), the Department attributed the reason for delay in completion of the assessments to the existing vacancies both in official and clerical cadres and due to deployment of all the man power in achievement of the revenue target.

[5] MMP-CT project means Mission Mode Project for Commercial Taxes Department. This is sponsored by Government of India (GoI) under e-Governance scheme.

During the Exit Conference (June 2012) the Secretary assured that executive instructions would be issued for completion of the scrutiny cases within a fixed time period followed by proper monitoring.

We recommend that the Government may consider introducing a suitable provision in the TNVAT Act/Rules for fixing a time limit for completing the scrutiny.

2.13.11 Input Tax Credit

The most important feature that distinguishes the VAT System from the erstwhile General Sales Tax is the concept of input tax credit (ITC). Section 19 (1) of the TNVAT Act provides for ITC of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the first schedule.

2.13.11.1 Irregularities in the claim of ITC

As per Section 19(1) of the TNVAT Act, a registered dealer shall be entitled to ITC of the amount of tax paid or payable under this Act to the seller on his purchase of taxable goods specified in the first schedule.

During Audit, we noticed in 18 assessment circles that there were irregularities in the claim of ITC in respect of 47 assessees as detailed in the following paragraphs.

Section 19(2) of the TNVAT Act provides that ITC shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of use as input in manufacturing or processing of goods in the State or use as capital goods in the manufacture of taxable goods. The term, 'capital goods', has been defined in Section 2(11) of the Act.

According to Section 19(16) of the Act, *ibid*, the ITC availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to it to be incorrect, incomplete or otherwise not in order.

In the case of wrong availment of ITC at the first instance, penalty at the rate of 50 *per cent* of the ITC is also leviable as per section 27(4) of the TNVAT Act.

The CCT had clarified that generator sets are not eligible for ITC as capital goods.

(i) Earthmoving equipments, personal protection/safety wears, generator sets and fire fighting equipments which are neither used as inputs nor defined as capital goods under the TNVAT Act are not eligible for claim of ITC. We noticed in four assessment circles[6] that eight dealers had claimed ITC of ₹ 40.51 lakh in respect of purchase of the above goods during the period from 2006-07 to 2010-11. The ITC of ₹ 40.51 lakh claimed by the assessees has to be reversed and a penalty of ₹ 20.25 lakh is leviable.

After we pointed this out, the assessing authority, Tirupur (Rural) assessment circle reversed (March 2011) the ITC of ₹ 1.28 lakh besides levying penalty of ₹ 0.64 lakh. We are awaiting the reply of the Department in the remaining cases (December 2012).

Section 3(3) of the Act provides that the tax payable by a registered dealer shall be reduced to the extent of the tax paid on his purchase of goods specified in Part B or Part C of the first schedule. Gold falls under Part A of the first schedule.

In the case of wrong availment of ITC at the first instance, penalty at the rate of 50 *per cent* of the ITC is also leviable as per section 27(4) of the TNVAT Act.

(ii) We noticed that a manufacturer of needles in Coonoor assessment circle had claimed ITC, during the period from 2007-08 to 2010-11, on the purchase of gold which was used in the manufacture of needles. The assessee had adjusted the ITC of ₹ 2.94 lakh being the tax paid by him on the purchase of gold against the output tax payable by him on the sale of needles. As gold is included under Part A of the first schedule, the adjustment of ITC availed on the purchase of gold against the output tax payable by the assessee on the sale of needles was not in order. The wrongly adjusted ITC of ₹ 2.94 lakh has to be reversed. Penalty at 50 *per cent* amounting to ₹ 1.47 lakh is also leviable.

Rule 7(9) of the TNVAT Rules introduced with effect from May 2010 provides that if a dealer having filed a return, finds any omission or error therein, other than as a result of an inspection or audit or receipt of any other information or evidence by the assessing authority, he shall file a revised return rectifying the omission or error within a period of six months from the last day of the relevant period to which the return relates. Where, as a result of such revised return, the tax payable by the dealer increases, the dealer shall furnish along with such revised return, proof of payment of tax and interest due thereon.

(iii) We noticed in three assessment circles[7] that four dealers had filed revised returns during the period from February 2008 to November 2008 and claimed ITC of ₹ 56.55 lakh, which the Department has also accepted. As the provision for filing revised returns was introduced with effect

[6] Nandanam, Royapettah-II, Sriperumbudur & Tirupur (Rural)
[7] Kallakurichi, Karur (West) and Namakkal (Rural).

from May 2010 only, the claim of ITC by these dealers by filing revised returns was not in order.

Section 19(11) of the TNVAT Act provides that the claim of ITC shall be made before the end of the financial year or before 90 days from the date of purchase whichever is later.

(iv) We noticed in Chokkikulam and Sriperumbudur assessment circles that two dealers had claimed ITC of ₹ 6.36 lakh beyond the time limit prescribed under the Act. The assessing officers failed to notice this aspect and allowed the claim of ITC while passing the assessment orders.

After we pointed this out, the assessing officer in Chokkikulam assessment circle accepted the audit observation and reversed the ITC of ₹ 5.05 lakh. We are awaiting the reply of the Department in the remaining case (December 2012).

Section 9 of the TNVAT Act, pertaining to levy of tax on bullion and jewellery, provides that the dealer who pays tax under this section shall be entitled to ITC on the goods specified in the first schedule, purchased by him in the State. There is no specific provision in the Act to adjust the ITC against the output tax payable in respect of goods falling under Part A of the first schedule. Gold falls under Part A of the first schedule.

(v) We noticed that 30 dealers (jewellers) pertaining to six assessment circles[8] had adjusted the ITC of ₹ 48.77 crore, being the tax paid on the purchase of goods falling under Part A of the first schedule against the output tax payable by them, which is against the provisions of the Act. The assessing officers also failed to notice the above mistake. This resulted in incorrect adjustment of ITC amounting to ₹ 48.77 crore.

The TNVAT Act provides for ITC of the amount of tax paid or payable under the Act, by the registered dealer to the seller on his purchase of taxable goods specified in the first schedule.

(vi) We noticed in Adyar I and Annasalai II assessment circles that two assessees claimed ITC of ₹ 21.43 crore as against the entitled ITC of ₹ 19.64 crore. The assessing officers also failed to notice this mistake while passing the assessment orders. This resulted in excess claim of ITC of ₹ 1.78 crore**.** The ITC of ₹ 1.78 crore has to be reversed besides levy of penalty ₹ 0.51 crore.

[8] Hosur (North), Mahal, Peddunaickenpet (North), Sowcarpet III, T. Nagar (South) & Villupuram I.

After we pointed this out, the Department revised the assessment (March 2012) in respect of an assessee pertaining to Annasalai II assessment circle by reversing the ITC to the tune of ₹ 1.06 crore besides levying penalty of ₹ 15.30 lakh. We are awaiting reply in respect of the other case (December 2012).

2.13.11.2 Reversal of ITC

As per section 19(5)(c) of the TNVAT Act, no ITC shall be available on the purchase of goods if those goods are sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce, if such sales are not covered by valid declarations in Form 'C'.
As per section 19(4) of the TNVAT Act, ITC in excess of three *per cent* (four *per cent* upto 31 March 2007) is available when the goods purchased locally are either transferred to a place outside the State as such or used in the manufacture of other goods and such manufactured goods are transferred to a place outside the State otherwise than by way of sale, subject to the condition that such transfer is supported by Form 'F' declarations.

(i) We noticed in 12 assessment circles[9] that 22 dealers had either sold the goods in inter-State without declaration forms or sent the goods on stock transfer to other states during the period from 2006-07 to 2009-10. Such sale/transfer of goods warrants reversal of ITC claimed by the assessees which was omitted to be noticed by the assessing officer. This resulted in non-reversal of ITC of ₹ 2.12 crore.

After we pointed this out, the assessing authorities accepted the audit observation in nine cases and reversed the ITC of ₹ 1.32 crore. We are awaiting the reply in respect of the remaining cases (December 2012).

According to Section 19(5)(a) of the TNVAT Act, no ITC shall be allowed in respect of sale of goods exempted under Section 15 of the TNVAT Act.

(ii) We noticed that in 15 assessment circles[10], in respect of 24 dealers, reversal of ITC of ₹ 2.02 crore was not made in respect of sale of exempted goods made by the dealers during the period from 2006-07 to 2009-10.

After we pointed this out, the assessing authorities accepted the audit observation and reversed the ITC of ₹ 1.35 crore by revision of assessments. We are awaiting the reply in the remaining cases (December 2012).

---

9 Adyar I, Anna Salai II, Avinashi, Egmore I, Kilpauk, Palladam, Saligramam, Rockfort, Mooremarket (South), Podanur, T. Nagar (South) and Tiruvanmiyur

10 Amaindakarai, Chepauk, Egmore II, Kilpauk, Loansquare II, Mylapore, Palladam, Saidapet, Sowcarpet II, Sowcarpet III, Singanallur, Sriperumbudur, Srivilliputhur, Tirupur (North) & Valluvarkottam.

2.13.11.3 Cross verification of the claim of ITC

According to Section 19(1) of the TNVAT Act, a registered dealer is eligible for ITC of the amount of tax paid or payable to the seller on his purchase of taxable goods specified in the first schedule.

The monthly return in Form I require the assessees to furnish the details of purchases and sales effected by them in Annexure-I and Annexure-II thereto respectively.

CCT had issued instructions in December 2008 that by way of scrutiny of returns, cross check references have to be issued in all cases by e-mail correspondence to the other end, where the claim of ITC exceeds ₹ 5,000 in a month and verification work has to be completed before the next month of the return date by the assessing officer. The instructions further stipulate that 25 *per cent* of such cross check references have to be monitored and verified by the concerned territorial Deputy Commissioner. The CCT had issued instructions in August 2009 regarding the checks to be exercised by the assessing officers and enforcement officers in respect of the returns filed by the dealers under the e-filing system. The CCT had further issued instructions in September 2010 that in order to make the scrutiny of returns more effective and result oriented, the territorial Joint Commissioners and Deputy Commissioners should also scrutinise the ITC claims pertaining to evasion prone commodities.

We undertook the exercise of ascertaining the genuineness of the claim of ITC by cross verifying the ITC relating to the purchase of goods disclosed in the Annexure I of the monthly returns of the purchasing dealers with the details of sales disclosed in Annexure II of the monthly returns filed by the selling dealers from whom the goods were purchased. Such cross verification revealed incorrect claim of ITC of ₹ 149.44 crore for which penalty of ₹ 74.72 crore was also leviable. They fall under the following categories:

(i) Claim of ITC in respect of purchases from dealers who were identified by the Department as bogus dealers

Section 27(2) of the TNVAT Act provides that where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of ITC, the assessing authority shall reverse the ITC availed and determine the tax due. Section 27(4) provides for levy of penalty at 50 *per cent* of the tax due in respect of such claim.

We noticed in 70 assessment circles[11] that 314 dealers availed ITC of ₹ 90.87 crore during the period from August 2009 to October 2011 in respect of purchases effected from 141 dealers, who were identified as 'bill traders' by the Department and whose RCs were cancelled with retrospective effect, i.e. from the date of registration. Inasmuch as the selling dealers were identified as 'bill traders' by the Department itself, there is no possibility of the purchasers having entered into genuine transactions of purchases with these selling dealers. The assessing authorities should have reversed the ITC of ₹ 90.87 crore availed by the dealers and collected the same along with penalty ₹ 45.44 crore as prescribed under Section 27(4) of the TNVAT Act.

(ii) Claim of ITC in respect of purchases effected from dealers whose RCs were cancelled

Section 19 (15) of the TNVAT Act provides that where a registered dealer has purchased any taxable goods from another dealer and has availed ITC in respect of the said goods and if the RC of the selling dealer was cancelled by the appropriate registering authority, such registered dealer who has availed ITC shall pay the ITC availed on the date from which the order of cancellation of the RC takes effect, along with interest.
According to Section 27(4) of the TNVAT Act, where a dealer wrongly availed ITC, he shall pay penalty in addition to reversal of such ITC.

A cross verification of the ITC claim of the dealers available in the data provided by the Department with the registration status of the selling dealers revealed that in 280 assessment circles, in respect of 23,811 returns, 3,022 dealers had claimed ITC in respect of purchases effected from the dealers after the date of cancellation of their RCs.

[11] Adyar I, Adyar II, Amaindakarai, Ambattur, Anna Salai III, Anna Salai-I, Ashok Nagar, Ayanavaram, Chengalpet, Chepauk, Chindadripet, Chokkikulam, Choolai, Esplanade –, Ganapathy, Gandhipuram, Godown, Guindy, Harbour I, Harbour II, Harbour III, Harbour IV, Harbour V, Kilpauk, Kongunagar, Korattur, Kothwalchavadi, Koyambedu, Mailamchandai I, Mannady (East), Mannady (West), Moore Market (South), Mylapore, Nandanam, Nungambakkam, Park Town II, Peddunaickenpet (North), Peddunaikenpet (South), Peelamedu (North), Periamet, Ponneri, Purasawakkam, Rattanbazaar, Rockfort, Royapuram, Saidapet, Saligramam, Sowcarpet II, Sowcarpet III, Sriperumpudur, Srirangam, T.Nagar (East), T.Nagar (North), T.Nagar (South), Tallakulam, Tambaram I, Tambaram II, Thudiyalur, Tirupur (Rural), Tiruverambur, Tiruvottiyur, Tondiarpet, Triplicane I, Vadapalani I, Vallalarnagar, Velacherry, Vepery, Villivakkam, Washermenpet and Woraiyur

We noticed during scrutiny that 422 dealers of 78 assessment circles[12] had availed ITC of ₹ 22.57 crore in respect of purchases effected from 407 dealers whose RCs were cancelled by the appropriate registering authority. The claim of ITC in respect of purchases effected from cancelled dealers is not in order. Thus, the amount of ₹ 22.57 crore was recoverable from the dealers along with a penalty of ₹ 11.28 crore. The assessing authorities, however, failed to initiate action to levy tax and penalty as prescribed under the Act.

(iii) Claim of ITC in respect of purchases effected from the dealers who had not filed returns

Section 21 of the TNVAT Act provides that every dealer registered under the Act shall file return, in the prescribed form showing the total and taxable turnover within the prescribed period in the prescribed manner, along with proof of payment of tax.

We noticed during Audit that 34 dealers of 21 assessment circles[13] had claimed ITC of ₹ 7.30 crore in respect of purchases effected from 56 dealers. The selling dealers had not filed any returns and had not paid tax to the Department. The ITC amount of ₹ 7.30 crore was recoverable along with a penalty of ₹ 3.65 crore.

After we pointed this out, the assessing authority, Mandaveli assessment circle, revised the assessment in one case (May 2012) and raised an additional demand of ₹ 67.86 lakh besides levying penalty of ₹ 33.93 lakh. We are awaiting reply of the assessing authorities in the remaining cases (December 2012).

(iv) Claim of fictitious ITC

We cross verified the details of purchases reported by 69 dealers of 28 assessment circles[14], during the period from 2007-08 to 2011-12 (upto December 2011), with the sales details reported by 122 selling dealers and

---

12 Adyar I, Adyar II, Amaindakarai, Anna Salai-I, Anna Salai-II, Aruppukottai, Ashok Nagar, Chenglepet, Chepauk, Chintadripet, Chokkikulam, Choolai, Egmore II, Esplanade I, FTAC I Coimbatore, Ganapathy, Gandhimarket, Gandhipuram, Harbour I , Harbour II, Harbour III, Harbour IV, Hosur (North), Karaikudi, Karur (West), Kilpauk, Kongunagar, Korattur, Koyambedu, Kumbakonam I, Lalgudi, Loansquare _, Mailamchandai I, Mailamchandai _, Mannady (East), Mannady (West), Moore market (South), Nandanam, Nungambakkam, Palakarai I, Palakarai II, Park Town II, Peddunaickenper(South), Peddunaickenpet (North), Peelamedu (North), Pollachi (East), Ponneri, Purasawakkam, Ramnad, Ramnagar, Rattanbazaar, Rockfort, Saidapet, Singarathope, Sowcarpet II, Sowcarpet III, Sriperumpudur, Srirangam, T.Nagar(South), Tambaram I, Tambaram II, Thudiyalur, Tirupur (Rural), Tiruvarur, Tiruverambur, Tiruvottiyur, Trichy Road, Triplicane II, Tuticorin II, Tuticorin III, Vallalarnagar, Valluvarkottam, Velacherry, Vepery, Villivakkam, Washermenpet I, West Veli Street and Woraiyur

13 Arakonam, Chepauk, Chintadripet, Choolai, Egmore II, Harbour I, Korattur, LTU I,Chennai, Mandaveli, Moore market (South), Peddunaickenpet(North), Ponneri, Purasawakkam, Royapuram, Thiruvottiyur, Tnagar(North), Udumalpet (South), Vallalarnagar, Vellore (North), Villivakkam and West Veli Street

14 Chepauk, Chintadripet, Choolai, Harbour I , Harbour II, Harbour IV, Kallakurichi, Kilpauk, Kongunagar, LTU I, Chennai, Mannady (West), Moore Market (South), Peddunaickenpet (South), Peddunaickenpet (North), Purasawakkam, Royapettah I_, Royapettah-I , Royapuram, Saligramam, Sowcarpet II, T Nagar (East), T.Nagar (South), Thiruvottiyur, Tiruvanmiyur, Triplicane II, Vallalarnagar, Vepery, Villivakkam.

found that they had claimed ITC of ₹ 28.70 crore in respect of the purchases. The selling dealers, however, had not effected any sales to the said purchasing dealers or the sales made by them was not commensurate with the amount of ITC claimed by the purchasing dealers. This indicates that the claim of ITC was fictitious, warranting reversal of ₹ 28.70 crore along with penalty of ₹ 14.35 crore.

Had instructions of the CCT regarding the scrutiny of returns, the procedure to be followed by the assessing authorities regarding the huge claim of ITC and issue of cross check references been duly complied with by the assessing authorities, the above mentioned cases of ineligible claim of ITC by the dealers could have been easily identified by the Department. This indicates the lack of monitoring on adherence to the instructions issued in this regard.

2.13.11.4 Absence of provision to restrict claim of ITC in specific cases

Inter-State sales to registered dealers covered by declarations in Form 'C' are taxable at two *per cent* under the Central Sales Tax Act, 1956, with effect from June 2008. The assessees avail ITC at four/12.5 *per cent* on the purchase of goods within the State and pay tax at two *per cent* on their inter-State sales, if such sales are covered by declaration forms, resulting in accumulation of ITC

Goods sold as industrial inputs within the State are taxable at four *per cent* under entry 67 of Part B of the first schedule to the Act. Accumulation of ITC occurs in these cases also, where the goods purchased at 12.5 *per cent* are sold, within the State as industrial inputs.

Inter-State sale of goods against declaration forms and sale of goods as industrial inputs within the State results in accumulation of ITC in cases where the goods are purchased at a higher rate and sold at lesser rate. We noticed during scrutiny of returns that by effecting inter-State sales out of locally purchased goods, the assessees accumulated ITC disproportionate to the value of closing stock. To avoid such accumulation of ITC, an enabling provision may be incorporated in the VAT Act for reversal of ITC. (In Gujarat, notifications were issued (June and September 2010) restricting the ITC on certain goods in the event of those goods being sold in the course of inter-State trade).

During the Exit Conference (June 2012), the Secretary to the Government stated that the suggestion made by audit would be considered.

2.13.11.5 Goods held in stock at the time of stoppage of business

Section 19(19) of the TNVAT Act provides that where a dealer has availed ITC and has goods remaining unsold at the time of stoppage or closure of business, the amount of ITC availed has to be reversed on the date of stoppage or closure of such business and recovered.

As on 31 March 2012, 62,080 dealers had closed their business. Out of this, 18,188 dealers had done so in 85 assessment circles test checked by us. However, we noticed that the provisions of the TNVAT Act regarding the reversal of ITC in respect of goods held in stock at the time of stoppage of business was not given effect to in such cases. In this circumstance, the possibility of the stock held at the time of stoppage of business being sold subsequently thereby causing loss of revenue to the Government on account of non-reversal of ITC and non-payment of tax cannot be ruled out.

We recommend that the Government may consider evolving a system to ascertain the closing stock held by the dealers at the time of cancellation of their RCs, either due to closure of business or otherwise and to reverse the ITC availed thereon.

2.13.12 Application of incorrect rates of tax

Under the TNVAT Act, sale of goods is taxable at the rates specified in the schedules to the Act.

2.13.12.1 We noticed during our scrutiny that four assessees, in four assessment circles[15], paid tax at rates lesser than the rates prescribed, on the sale of fashion jewellery, digital linear tapes, rubber vulcanizing solution and centering materials effected by them during the period from 2006-07 to 2008-09 (i.e. one *per cent* instead of four *per cent* on fashion jewellery and four *per cent* instead of 12.5 *per cent* on the other three commodities). The assessing officers who finalised the assessments also failed to notice this mistake and assess the above turnover at the correct rate of tax. Application of incorrect rates of tax resulted in short levy of tax of ₹ 23.51 lakh.

After we pointed this out, the assessing officers, Ayanavaram and Thiruvanmiyur assessment circles revised (July 2011 and February 2012) the assessments and raised additional demand of ₹ 3.00 lakh; of which an amount of ₹ 1.13 lakh was collected. We are awaiting the reply in the remaining cases (December 2012).

[15] Ashoknagar, Ayanavaram, Nandanam and Thiruvanmiyur

As per Section 7(1)(a) of TNVAT Act, 2006, every dealer shall pay tax on the sale of ready to eat unbranded foods including sweets, savouries, unbranded non-alcoholic drinks and beverages served in or catered indoors or outdoors by star hotels recognised as such by the Tourism Department of the State Government or the Government of India and restaurants attached to such hotels at the rate of 12.5 *per cent* of the taxable turnover.

2.13.12.2 We noticed in 13 assessment circles[16] that 19 hoteliers, who were recognised as star hotels by the Tourism Department of the Government of India paid tax at the rate of two *per cent* on the sales turnover of ₹ 35.31 crore during the period from 2006-07 to 2011-12, though they were liable to pay tax at 12.5 *per cent* which resulted in short payment of tax ₹ 3.22 crore.

After we pointed this out, the assessing authorities issued notices proposing revision of assessments. We are awaiting further report (December 2012).

2.13.13 Suppression of sales turnover

As per Section 27 of the TNVAT Act, if any part of the turnover of a dealer has escaped assessment to tax, the assessing authority may determine to the best of his judgement the turnover which has escaped assessment and assess the tax on such turnover.

Under section 27(3) of the TNVAT Act, besides tax, penalty at 150 *per cent* of the tax due on the turnover escaped assessment is also leviable.

2.13.13.1 Scrutiny of monthly returns revealed that five dealers of Chintadripet and Vallalarnagar assessment circles had purchased and sold goods amongst themselves. All the five dealers had not furnished the details of dealer-wise sales in Annexure II of the returns filed by them in electronic mode. We found during cross verification that the total claim of ITC relating to purchase of goods by others from these five dealers was in excess of the output tax disclosed by these dealers in their monthly returns. The dealers had disclosed a sales turnover of ₹ 122.34 crore involving an output tax of ₹ 10.13 crore in the Form I returns filed by them during 2009-10 & 2010-11. We, however, found that ITC of ₹ 16.72 crore was claimed in respect of purchases of goods valuing ₹ 184.41 crore having been effected from the five dealers during 2009-10 and 2010-11. Thus, it is evident that the dealers had suppressed the sales turnover of ₹ 62.07 crore involving tax of ₹ 6.59 crore and a penalty of ₹ 9.88 crore.

[16] Arisipalayam, Egmore II, Gudalur, Ooty (South) Pollachi (West), Rajapalayam II, Salem (Town) (North), Thanjavur I, Tirunelveli (Junction), Trichy Road, Vadapalani I, Valluvarkottam & West Veli Street

As per entry 63 of Part C of the first schedule to the TNVAT Act, standing trees were taxable at the rate of 12.5 *per cent* upto 11 July 2012.

2.13.13.2 We noticed during scrutiny of assessment files and other records for the years 2007-08 to 2010-11 that a dealer in Nagercoil (Rural) assessment circle had not reported sales turnover relating to rubber trees amounting to ₹ 11.01 crore in the monthly returns. This resulted in non levy of tax of ₹ 1.38 crore and penalty of ₹ 2.06 crore

As per entry 119 of Part B of the first schedule to the TNVAT Act, rubber, raw rubber, latex etc. were taxable at the rate of four *per cent* upto 11 July 2012.

2.13.13.3 We noticed during cross verification of the details obtained from Rubber Board check post at Kavalkinaru, with the assessment records of three assessees in Thukalay assessment circle that the local sales of rubber amounting to ₹ 54.43 lakh was not reported by the assessees in their monthly returns. This resulted in non levy of tax and penalty amounting to ₹ 5.44 lakh.

2.13.14 Non-surrendering of Transit Pass

Section 70 of the TNVAT Act, 2006 provides that the person in charge of a goods vehicle carrying goods mentioned in the sixth schedule from any place outside the State and bound for any other place outside the State shall obtain a transit pass from the check post officer of the first check post after entry into the State and surrender the same to the check post officer of the last check post before exit out of the State. In case of failure to surrender the transit passes, the Act provides for levy of tax and penalty as if the goods were sold within the State.

As per Rule 15(17)(f) of the TNVAT Rules, 2007, the officer in-charge of the last check post shall intimate the delivery of transit pass to the officer in-charge of the first check post who issued the transit pass.

Raw rubber being included under the sixth schedule to the Act requires transit pass for passing through the State of Tamil Nadu.

We noticed during Audit that in respect of transit passes issued by the check post officers, Kaliyakkavillai and Puliyarai ('first' check posts after entry into the State) during the years from 2007-08 to 2010-11 for movement of rubber amounting to ₹ 242.23 crore through Tamil Nadu to other States, confirmation of surrender of the transit passes at the last check posts ('last' check post before exit out of the State) were not received for 1,507 transit passes to ensure that the goods were moved out of the State.

We cross verified with the records of Hosur check post ('last' check post) which

revealed that 388 transit passes issued by the 'first' check post, during the years 2009-10 and 2010-11, for transport of rubber amounting to ₹ 64.51 crore were not surrendered at the 'last' check post. Hence, the goods should be deemed to have been sold within the State. The check post officer, however, failed to initiate action to recover the tax and penalty as provided in the Act. The tax and penalty leviable worked out to ₹ 2.58 crore and ₹ 3.87 crore respectively.

2.13.15 Levy of purchase tax

Section 12 of the TNVAT Act provides that every dealer who purchases goods (the sale or purchase of which is liable to tax under the Act) in circumstances in which no tax was payable and consumes or uses such goods in or for the manufacture of other goods for sale, shall pay tax on the turnover relating to the purchase at the rate specified in the schedule to the Act.

We noticed during scrutiny that 20 dealers of 15 assessment circles[17] had purchased vegetable oil, chillies and chilly powder, peas and peas dhal and pulses and grams without payment of tax during the period from 2007-08 to 2010-11 and used or consumed the same in manufacture. The sale of the above goods is exempt from tax upto a prescribed turnover limit. As the exemption under the Act is conditional, the purchase of these commodities without payment of tax and use in manufacture would attract purchase tax. The dealers were liable to pay purchase tax of ₹ 4.05 crore as provided under Section 12 of the Act.

Similarly, four dealers of Nagercoil (Town) and Thuckalay assessment circles had purchased rubber logs and raw rubber from unregistered dealers during the period from 2007-08 to 2010-11 and utilised the same for the manufacture of packing cases and rubber gloves. As the goods were purchased without payment of tax and used in manufacture, purchase tax amounting to ₹ 3.15 crore was payable.

In the above two instances, the dealers had not paid the purchase tax under Section 12 of the Act. The assessing authorities failed to levy and collect the same.

After we pointed this out, the assessing authority, Thuckalay assessment circle revised the assessments in two cases and raised (November 2012) demand of ₹ 2.64 crore. We are awaiting the reply in respect of the other cases (December 2012).

[17] Alandur, Egmore I, Egmore II, Hosur (North), Kilpauk, LTU I, LTU III, Mandaveli, Mylapore, Perambur II, Royapettah-II, T.Nagar East, Tiruparankundram, Tiruvanmiyur & Vadapalani-I

2.13.16 Admissibility of levy of tax at compound rates

Based on the nature of trade and quantum of turnover, the Act contemplates two kinds of taxation viz (i) tax on actual turnover with provision for set off and (ii) compounding tax without provision for set off.

2.13.16.1 Compounded rate of tax for small dealers

Section 3(4) of the TNVAT Act provides that small traders effecting second and subsequent sales of goods purchased within the State and whose turnover is less than ₹ 50 lakh for a year may, at their option, pay tax at compounded rate. These dealers are required to file the monthly returns in Form 'K'. The Act further provides that such dealer whose turnover has reached ₹ 50 lakh during the previous year shall not be entitled to exercise such option for subsequent years.

Accordingly, dealers whose annual turnover is not less than ₹ 50 lakh during the current year or previous year and the dealers who purchases/sells goods from/to other States are not eligible for paying tax at compounded rates.

(i) We noticed during scrutiny of returns that 55 dealers pertaining to 31 assessment circles[18] whose turnover for the year was in excess of ₹ 50 lakh paid tax at compounded rate. The short payment of tax due to incorrect adoption of the compounding rate, for the period from 2006-07 to 2011-12, worked out to ₹ 2.70 crore.

After we pointed this out, the assessing authority, Vellore (Rural) assessment circle revised (March 2012) the assessment of a dealer and raised an additional demand of ₹ 6.79 lakh. We are awaiting the reply in respect of the remaining cases (December 2012).

Had the recommendation made by audit in the Audit Report 2008-09 to provide a column in the Form 'K' return to exhibit the cumulative monthly turnover been implemented, assessing authorities could have detected the incorrect claim of compounded rate of tax by the assessees.

As per Section 3(4)(a) of the TNVAT Act, 2006, every dealer who effects second and subsequent sale of goods purchased within the State may opt to pay tax at compounded rate.

(ii) A cross verification of the check post data of the Department revealed that 365 dealers purchased goods from outside the state and paid tax at compounded rates by filing Form K which is not in order.

[18] Adyar I, Amaidakarai, Anna Salai I, Brough Road, Coonoor, Egmore II, Kallakurichi, Karaikudi, Karur (North), Karur (West), Kumbakonam I, Mannady (West), Mahal, Namakkal (Rural), Westveli Street, Park Town I, Peddunaickenpet (North), Pollachi (East), Rockfort, Saidapet, Salem (Rural), Sankarankoil, Thanjavur II, Tiruvanmiyur, Tiruverumbur, Tiruvottiyur, T. Nagar (East), T. Nagar (South), Tuticorin I, Vellore (Rural) and Villupuram I

We test checked the above cases and found that 55 dealers pertaining to 23 assessment circles[19] who purchased/sold goods from/to other States had paid tax at compounded rates. The short payment of tax by these dealers, for the period from 2006-07 to 2011-12, worked out to ₹ 1.38 crore.

2.13.16.2 Compounded rate of tax for works contractors

As per Section 6 of the TNVAT Act, every dealer (works contractor), other than the dealer who purchases goods from outside the State or imports goods from outside the country, may at his option, pay tax at compounded rate of two or four *per cent* of the total contract value of the civil works and all other works respectively, executed by them.

(i) We noticed in nine assessment circles[20] that 18 contractors involved in civil works, paid tax at the compounded rate of two *per cent* on the total value of works executed by them, during the period from 2006-07 to 2010-11. As there was evidence of inter-state purchase of goods effected by them during the corresponding period, adoption of the compounding rate of tax was not in order. The minimum short levy of tax on the value of transfer of materials as provided in the TNVAT Rules, worked out to ₹ 0.95 crore.

Similarly, we also noticed that 19 dealers pertaining to 13 assessment circles who were involved in other than civil works contracts had paid tax at compounded rate of four *per cent*, though they were not eligible to do so as they purchased goods from outside the State.

We ascertained the details of inter State purchases from the check post module of the intranet website of the Department. The assessing authorities, however, failed to utilise the information available in the website to ensure due adherence to the provisions of the Act and thereby safeguarding the interest of revenue. These cases, therefore, remained undetected by the assessing authorities.

(ii) As per the provisions of the TNVAT Act a works contractor cannot opt for compounded rate of tax on individual contracts as the option for payment of tax at compounded rate has to be exercised in respect of all the contracts executed by him during the assessment year.

---

19 Coonoor, Chokkikulam, Dharapuram, Egmore II, Hosur (North), Mannady (West), Namakkal (Rural), Kallakurichi, Kilpauk, Kumbakonam I, Oppanakara Street, Peddunaickenpet (North), Pollachi (East), Ponneri, Royapettah II, Sathyamangalam, Sowcarpet III, Tirupur (Rural), Tiruvellore, Vellore (North), Villivakkam, Villupuram I & West Veli Street.

20 Brough Road (Erode), Hosur (North), Peelamedu (North), Sowcarpet III, Tirupur (Rural) T. Nagar (East), Trichy Road, Virudhunagar III & West Veli Street.

We noticed during scrutiny in eight assessment circles[21] that 10 dealers filed returns both in Form I and Form L and paid tax at compounded rate for some works contracts and also paid tax at schedule rates on the deemed sale value of goods transferred during the execution of some contracts as well, instead of paying tax at compounded rate on all the works contracts executed by them during the year. This was not in accordance with the provisions of the Act.

2.13.16.3 Absence of penal provisions

In the cases mentioned in paras 2.13.12.2, 2.13.16.1 and 2.13.16.2, the payment of tax at lesser/compounded rate was subject to the fulfilment of conditions prescribed in the respective sections. Though the assessees contravened the provisions of the Act, they continued to pay the tax at lesser rates. However, no penal provision has been stipulated in the Act against violation of conditions prescribed in the Act for availing the compounded rate of tax. Introduction of a penal provision may act as a deterrent and the tax at applicable rate would be realised by the Government in time.

After we pointed this out, the Secretary to the Government during the Exit Conference (June 2012) assured that the suggestion of audit for inclusion of penal provisions in such cases would be considered.

2.13.17 Evasion prone commodities

2.13.17.1 The Department identified certain commodities like iron and steel, rubber, electrical goods, tiles and marbles, timber, edible oil and granites as evasion prone commodities and had issued instructions on various aspects including prior inspection of the intended place of business of the applicant, by the Enforcement Wing, before issue of new RCs.

The CCT had issued instructions in December 2008 regarding scrutiny of returns in respect of evasion prone commodities. The Territorial Joint Commissioners and Deputy Commissioners were also instructed to supervise the scrutiny of returns by the assessing authorities. The CCT had also issued instructions (between September 2010 and September 2011) regarding procedure to be followed in respect of issue of new registration for dealers dealing in commodities identified as evasion prone.

We reviewed the transactions of the dealers of iron and steel and timber to ensure the correctness of the information furnished by the dealers in the returns. The findings are given in the following paragraphs:

[21] Alandur, Ashok Nagar, Hosur (North), Loansquare II, Peelamedu (North), Pollachi (East), T.Nagar (North) & T.Nagar (South)

(i) Claim of fictitious ITC

As per Section 19(1) of the TNVAT Act, there shall be ITC of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the first schedule, provided that the registered dealer establish that the tax due on such purchase has been paid by him in the manner prescribed.

According to Section 27(4) of the TNVAT Act, where a dealer wrongly availed ITC, he shall pay penalty in addition to reversal of such ITC.

We cross verified the claim of ITC made by the dealers in iron and steel with the corresponding sales reported by the sellers in Annexure-II of the VAT returns filed by them online and found that the ITC amounting to ₹ 27.74 crore was claimed fictitiously, for the years from 2009-10 to 2011-12, by 37 dealers who formed a group and reported fictitious purchases amongst themselves only for the purpose of claiming ITC. The penalty leviable at 50 *per cent* worked out to ₹ 13.87 crore. Out of the said 37 dealers, 32 dealers became inactive as on April 2012.

In respect of the above 37 dealers, we, further noticed that ITC of ₹ 19.71 crore was claimed by them for the years 2007-08 and 2008-09. We made an attempt to cross verify the correctness of the ITC claimed by the dealers. As complete set of records was not made available by the Department to audit, the correctness of the claim of ITC could not be vouchsafed.

Had instructions issued by the CCT in September 2010, March and September 2011 been followed scrupulously, such fictitious transactions/claim of ITC could have been detected by the Department.

(ii) Incorrect claim of ITC made by dealers in iron and steel

We cross verified the claim of ITC made by 19 dealers of iron and steel in nine assessment circles[22], during the period from 2009-10 to 2011-12 with the corresponding sales reported by the sellers in Annexure-II of the VAT returns filed by them and noticed that no corresponding sales turnover have been reported by the sellers. However, ITC amounting to ₹ 8.68 crore was incorrectly claimed by the dealers. The incorrect claim of ITC warrants levy of a minimum penalty of ₹ 4.34 crore besides reversal of the ITC claimed.

[22] Ayanavaram, Chengalpet, Harbour-I, Manali, Tambaram-I, Tambaram-II, Tondiarpet, Tiruvottiyur and Villivakkam

(iii) Excess claim of ITC made by dealers in timber

We cross verified the claim of ITC made by 39 dealers in timber in 21 assessment circles[23], during the period from 2007-08 to 2011-12, with the corresponding sales reported by the sellers in Annexure-II of the VAT returns filed by them and noticed that in all the cases the sales turnover were not reported by the sellers. This resulted in incorrect claim of ITC amounting to ₹ 4.97 crore. The incorrect claim of ITC has to be reversed along with a minimum penalty of ₹ 2.49 crore.

We recommend that the Government may consider incorporating a provision in the TNVAT Act requiring the assessing authorities to undertake scrutiny of all tax returns.

2.13.17.2 Non-accounting of import of timber

As per Section 27 of the TNVAT Act, if any part of the turnover of a dealer has escaped assessment to tax, the assessing authority may determine to the best of his judgement the turnover which has escaped assessment and assess the tax on such turnover.

According to Section 27(4) of the TNVAT Act, where a dealer wrongly availed ITC, he shall pay penalty in addition to reversal of such ITC.

We cross verified the import details of timber obtained from the Customs Department, for the period from 2007-08 to 2010-11, with the assessment records available in the concerned assessment circles and found that 27 dealers pertaining to six assessment circles[24] had not accounted for the imports made by them amounting to ₹ 51.19 crore resulting in sales suppression of ₹ 56.30 crore and consequent non-levy of tax of ₹ 7.04 crore and penalty of ₹ 3.51 crore.

2.13.17.3 Non-reporting of imports / purchases

As per the TNVAT Act, the dealers who are claiming ITC are required to file monthly returns in Form-I along with purchase/sales details in Annexures-I and II. In Annexure-I, the details of all the purchases including import have to be furnished by the dealers.

We cross verified the import details of iron and steel effected by the dealers, obtained from the Customs Department and the purchase details obtained from Tamil Nadu Electricity Board with the monthly returns filed by them in the concerned assessment circles and found that 55 dealers pertaining to 28 assessment circles failed to report their imports of iron and steel valued at ₹ 132.90 crore in the Annexure-I of the

[23] Chengalpet, Choolai, Dindigul-V, Egmore-I, Egmore-II, Korattur, Kuzhithurai, Manali, Nagercoil (Rural), Nungambakkam, Pollachi (Rural), Porur, Senkattah, Tambaram-II, Tenkasi-II, Thankkalai, Thiruverumbur, Tuticorin-I, Tuticorin-II, Vallalarnagar and Veperi

[24] Mylapore, Palayamkottai, Senkottah, Tenkasi,Tuticorin-III and Veperi.

returns during the period 2008-09 and 2009-10. Similarly, in 32 assessment circles 50 dealers did not report their purchases of iron and steel from the Tamil Nadu Electricity Board amounting to ₹ 13.52 crore during the period from 2007-08 to 2011-12.

In respect of timber also we obtained the details of imports from the Customs Department and inter-State purchase details from Commercial Taxes Department check posts and on verification found that in 24 assessment circles, 95 dealers did not report/short reported the imports of timber amounting to ₹ 413.35 crore in the Annexure-I of their VAT returns. Similarly, 68 dealers pertaining to 26 assessment circles did not report their purchases of timber from other States amounting to ₹ 87.98 crore.

Even though the Annexure-I of the Form I return requires reporting of all the purchases including imports, the assessing authorities did not ensure the correctness of the details furnished in the Annexure-I of the returns, by scrutiny of returns as per the instructions issued by the Department. In these cases, the possibility of the sales suppression could not be ruled out.

2.13.17.4 Import of timber by unregistered dealers

Rule 4 of the TNVAT Rules, 2007, contemplates that every dealer who intends to commence business in this State is required to submit an application for registration under the TNVAT Act to the registering authority in whose jurisdiction the principal place of business is situated.

We cross verified the importers' details like name, address, PAN etc., given in the bills of entry, with the registration data provided by the Department and found that there was no corresponding TIN available in registration data in respect of 26 importers. In the absence of registration under the Act, assessment, levy and collection of tax may not be possible on the total value of timber/plywood imported to the tune of ₹ 93.76 crore effected by these dealers.

We recommend that the Government may consider taking up the issue with the Union Government for providing a column in the bill of entry to mention the TIN of the importing dealer which would enable the Department to identify the importers.

After we pointed this out, the Department during the Exit Conference agreed (June 2012) to take up the issue with the Union Government.

2.13.17.5 Import of timber by other State dealers

We have already commented in paragraph 2.12.7.1 of the Audit Report for the year 2009-10 that capturing of details of movement of vehicles passing through the check posts was very low.

We noticed from data obtained from the Customs Department that 612 importers from other States had imported timber for a value of ₹ 880.17 crore during the period from 2007-08 to 2010-11. We cross verified the movement

of these goods to other State through the check post movement records details available in the CT Department. We, however, found that no documentary evidence in support of their movement to other States were captured or available in the check post records. Timber being an evasion prone commodity, the possibility of disposal of timber within the State could not be ruled out.

We recommend that the Government may consider including timber under the ambit of transit pass system to check the evasion of tax. We also recommend capturing the movement of all vehicles passing through the check posts.

2.13.18 Internal control system

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and Departmental instructions. Monitoring is a key component of the internal control system. The existence of continuous and effective monitoring system is essential to secure the success of the internal control system.

- Internal audit is an integral part of internal control to enable an organisation to assure itself that the prescribed systems are functioning reasonably well. However, internal audit is not being undertaken on a regular basis and the details provided by the Department indicated that, only 30 *per cent* of the total number of 1,799 units planned for audit for the period from 2007-08 to 2010-11 has been completed.
- The assessing authorities issue pre revision notices whenever they find defects in the completed assessments. The Department has no mechanism to watch whether action has been taken on such notices issued by the assessing authorities.
- Detailed instructions have been issued regarding the time limit within which the VAT audit reports have to be finalised. As per the instructions of the CCT (June 2010), VAT audit reports should be implemented by the assessing authorities within three months from the date of receipt of such reports. Despite these instructions, 4,332 VAT audit reports are pending implementation as at 31 March 2011. Absence of proper control mechanism has made the internal control system weak.
- In order to ensure effective tax management, CCT issues regular instructions to the field formations regarding the scrutiny of returns, the procedure to be followed by the assessing authorities regarding the huge claim of ITC in respect of evasion prone commodities, issue of cross check references etc. However, non-adherence to such instructions by the field formations and non-monitoring of its compliance by the higher authorities is indicative of weak control mechanism.

Enforcement Wing

> Section 64(4) of the TNVAT Act provides that the CCT may order for audit (VAT audit) of the business of any registered dealer. Section 65 (1) of the Act provides that any officer prescribed by the Government in this regard may for the purposes of this Act require any dealer to produce before him the accounts, registers, records and other documents and to furnish any other information relating to his business.

The Enforcement Wing headed by a Joint Commissioner (CT) has eight Divisions and it conducts inspection at the place of business of the dealers to detect evasion of tax and also conducts field audits (VAT audits) to verify the accounts of the dealers in their business premises.

The CCT authorises the Enforcement officers for conduct of field audit at the place of business of the dealers. The selection of VAT audit is based on the risk assessment criterion. Dealers defaulting on payment of VAT, defaulting on filing of returns, delayed filing of returns, claim of huge exemption, ITC or refunds are classified as high risk category. The CCT has selected cases for field audit during January 2009 only, after a lapse of two years since the implementation of the TNVAT Act in the State.

On completion of VAT audit, the Enforcement Wing forwards its findings in the form of reports to the assessing officers concerned for implementation. The CCT had issued instructions in June 2010 that VAT audit reports/inspection proposals should be implemented by the assessing authorities within three months from the date of receipt of such reports/proposals.

Monthly Performance Review Report of the Department indicates that 3,812 VAT audit reports were pending implementation, for more than three months, as at 31 March 2011. We noticed during Audit in 49 assessment circles that out of 1,526 VAT Audit Reports received by the assessment circles, only 473 reports were implemented. Despite instructions issued by the CCT for implementation of VAT audit reports within three months, there was a huge pendency which indicated lack of monitoring by higher authorities.

2.13.19 Other points of interest

2.13.19.1 Issue of Form 'S' certificate in violation of the provisions of the Act

According to Section 13 of the TNVAT Act, every person responsible for paying any sum to any dealer for execution of works contract shall, at the time of making payment, deduct tax at prescribed rates from the total amount payable to the dealer.

As per Section 13(1)(c) of the Act, if the dealer furnishes a certificate, in Form S, issued by the assessing authority to the effect that he has no liability to pay or had paid the tax, no such deduction shall be made from him.

The TNVAT Act provides for issue of Form S certificate only in cases where assessing officer is satisfied that there is no tax liability or the assessee had paid the tax due.

We noticed in Omalur assessment circle that during the period 2010-11 and 2011-12 in respect of 253 dealers, Form 'S' certificates were issued by the assessing authority by collecting 0.4 *per cent* of the total value of the contracts executed by them. Action of the assessing officer was in contravention of the provisions of the Act.

We reported the above matters to the Department and the Government in May and June 2012 and are awaiting their replies (December 2012).

2.13.20 Conclusion

VAT is a significant component of the State revenues. Any leakage from the VAT revenue base will have a serious impact on the Governments and their ability to balance budgets. Therefore a sound internal control system is essential for successful implementation of any taxation system.

Performance Audit of the implementation of VAT system in Tamilnadu revealed that the process involved in the registration of dealers, computerisation service provided by the Department and the effectiveness of internal control are some of the areas which require immediate attention. Registration Certificates are issued without due veracity of the applications for registration which paved the way for 'bill trading' activities. This in turn, resulted in huge claims of fictitious ITC by such bill traders.

Though the Department issued instructions with regard to evasion prone commodities, absence of effective monitoring mechanism to ensure adherence to the instructions led to huge revenue loss to the exchequer.

There was delay in selection of assessments for scrutiny and also delay in completion of scrutiny. Absence of validation controls in the e-filing module resulted in incorrect data being fed into the system which in turn hampered the scrutiny of returns. Instructions on implementation of the VAT audit reports

within three months were also not followed by the lower authorities which is evidenced from the huge pendency in implementation of VAT audit reports. The overall internal control mechanism was weak as evidenced by the above deficiencies and absence of vital checks. Lack of effective monitoring by the higher authorities resulted in such lapses.

2.13.21 Recommendations

The Government may consider

- incorporating a provision in the TNVAT Act to enable the registering authorities to exercise certain basic/vital checks before granting registration certificates to ensure the authenticity of the application for registration;
- modifying the prescribed format of the returns in order to make them more compatible with the provisions of the Act/Rules;
- providing necessary validation checks in the software to ensure error free database;
- incorporating a provision in the Act requiring the assessing authorities to exercise scrutiny of all the tax returns;
- introducing a suitable provision in the TNVAT Act/Rules for fixing a time limit for completing the detailed scrutiny;
- incorporating a penal provision in the Act for violation of conditions for availing compounding rate of tax;
- providing a column in the bill of entry form for indicating the TIN of the importing dealers, in consultation with the Central Government, which could enable the Department to easily identify the importers;
- to include timber under the ambit of transit pass system to check evasion of tax;
- putting in place a suitable mechanism to enforce the surrender of transit passes at the 'out' check posts; and
- revisiting the penalty provisions to ensure that they have a truly deterrent effect, particularly in cases of bill trading, fraudulent claims of ITC, etc. in view of the scope and prevalence of large scale evasion of tax under the TNVAT Act.

2.14 Other audit observations

We scrutinised the records in the offices of the Commercial Taxes Department and noticed several cases of non-observance of provisions of the Acts/Rules, resulting in incorrect grant of exemption, incorrect computation of tax, application of incorrect rate of tax, incorrect allowance of concessional rate of tax, non-levy of additional sales tax and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and based on test checks carried out by us. Although such omissions are pointed out every year, the irregularities persist. There is a need for the Government to consider directing the Department to improve the internal control systems including strengthening of internal audit so that such omissions can be avoided, detected and corrected.

2.15 Non-compliance of the provisions of the VAT Act/Rules

The Tamil Nadu Value Added Tax (TNVAT) Act and the Rules made thereunder provide for:

(i) Levy of tax as per the rates prescribed in the schedules to the Act: and

(ii) Scrutiny of returns by the assessing officers to determine the tax payable by the dealer in the event of filing of incorrect/incomplete returns by the dealers.

We noticed non-compliance of the provisions of the Act/Rules in some cases involving non/short realisation of ₹58.15 lakh. These cases are mentioned in paragraphs 2.15.1 and 2.15.2.

2.15.1 Incorrect grant of exemption

Sale of goods not specified in any of the schedules to the TNVAT Act was taxable at 12.5 *per cent* at every point of sale in the State from 1.1.07 to 11.7.07 under Part C of the first schedule to the Act. Accordingly, LPG being an item not specified in any of the schedules to the Act was taxable at 12.5 *per cent* under Part C of the first schedule.

By a notification issued under section 30 of the Act, the tax payable on the second and subsequent sales of LPG for domestic use to the consumer by any distributor was granted exemption with effect from 1 January 2007. Accordingly, LPG for commercial purpose, not being covered under the notification, was taxable at the rate of 12.5 *per cent* under Part C of the first schedule to TNVAT Act.

2.15.1.1 In Kilpauk assessment circle, we noticed that a dealer had claimed exemption on the sale of LPG used as fuel for vehicles on a turnover of ₹ 1.20 crore by filing return in Form J for the year 2006-07 (January 2007 to March 2007), which was also accepted by the assessing officer. The assessing officer, however, failed to notice the incorrect claim of exemption. This resulted in non-levy of tax of ₹ 15 lakh.

After we pointed this out (August 2011), the assessing authority revised (November 2011) the assessment and raised an additional demand of ₹ 15 lakh. We are awaiting collection particulars (December 2012).

As per entry 69 of Part-C of the first schedule to the Act, goods not specified in any of the schedules were taxable at 12.5 *per cent* from 12 July 2007. Shoe lace, an item not specified in any of the schedules to the Act, was taxable at 12.5 *per cent*

2.15.1.2 We noticed during audit (July 2011) in Chintadripet assessment circle that three dealers wrongly claimed exemption from levy of value added tax on the sale of shoe laces for ₹ 98.82 lakh during the years 2007-08 and 2008-09 in their monthly returns. The assessment was finalised accepting the returns, though shoe lace was taxable at 12.5 *per cent*. This resulted in non-levy of tax amounting to ₹ 12.35 lakh.

After we pointed this out (July 2011), the assessing authority replied (July 2011) that shoe laces are braided cords only and would fall under Entry 61(iii) of Part B of the fourth schedule to the Act and exempt from tax.

The reply is not tenable as shoe laces are not braided cords but classifiable as accessories to shoes and hence taxable at 12.5 *per cent.* Further, the Commissioner of Commercial Taxes had also clarified (February 2008) that shoe laces are taxable at 12.5 *per cent*. We are awaiting further reply (December 2012).

2.15.2 Incorrect computation of tax

As per Section 25 of the TNVAT Act, if the return submitted by the dealer appears to the assessing authority to be incomplete or incorrect, the assessing authority may determine the tax payable by the dealer to the best of its judgement.

We noticed during the scrutiny (January 2012 and March 2011) in Annasalai II and T. Nagar (East) assessment circles that though the tax payable by two dealers during the period 2006-07 and 2007-08 on the basis of the monthly returns filed by them worked out to ₹ 542.96 lakh, tax was incorrectly computed as ₹ 512.16 lakh and paid by them resulting in short payment of tax amounting to ₹ 30.80 lakh.

After we pointed this out, the assessing authorities revised (March 2011 and March 2012) the assessments in both the cases and raised additional demand as suggested by audit; of which an amount of ₹ 2.08 lakh pertaining to T. Nagar (East) assessment circle had been collected (March 2011).

2.16 Non-compliance of the provisions of the Sales Tax Act/Rules

The Tamil Nadu General Sales Tax (TNGST) Act, 1959, the Central Sales Tax (CST) Act, 1956 and the Rules made thereunder provide for:

(i) Payment of tax on sale or purchase of goods at the rates prescribed in the Rules/Schedules to the Acts; and

(ii) Payment of tax on the turnover reported in the returns and in case of default, payment of penalty/interest at the rates prescribed in the Act.

We noticed non-compliance of the provisions of the Act/Rules in some cases involving non/short realisation of ₹ 31.57 crore. These cases are mentioned in paragraphs 2.16.1 to 2.16.4.

2.16.1 Incorrect grant of exemption

According to erstwhile Section 8(2)(b) of the CST Act, 1956, the tax payable by any dealer on his inter-State sales, not covered by declaration forms shall be calculated at the rate of 10 *per cent* or at the rate applicable to the sale inside the appropriate State, whichever is higher.

According to Section 16(2) of the TNGST Act, 1959, read with Section 9(2-A) of the CST Act, 1956 penalty was leviable at 150 *per cent* of the tax due on the assessable turnover that was willfully not disclosed, if the tax due on such turnover was more than 50 *per cent* of the tax paid as per the return.

As per entries 12 & 58/Part B of first schedule to the TNGST Act, cardamom and pepper were taxable at the rate of four *per cent*. Inter-State sales of these goods not covered by 'C' form declarations were taxable at 10 *per cent.*

Section 6A of the CST Act, provides for exemption where movement of goods from one State to another was occasioned by reason of transfer of such goods to other State otherwise than by way of sale. The burden of proving that the movement of those goods was so occasioned shall be on the dealer. For this purpose, the dealer shall produce declaration in Form 'F' prescribed in Rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules, 1957, duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be.

We noticed (November 2010 – July 2011) in Bodinayakanur assessment circle that 11 assessees claimed exemption on the goods sent on consignment basis, valued at ₹ 17.48 crore by producing 19 declarations in Form 'F'. Our cross

verification of these declarations with the Delhi and Karnataka sales tax authorities revealed that the said consignment transactions were not genuine as the declaration forms produced by the assessees in support of their claim of exemption were found to be either not printed by the sales tax Department concerned or not issued by the concerned office or issued to some other dealers. The assessing authority failed to cross verify the genuineness of the transactions while finalising the assessments. This resulted in non-levy of tax amounting to ₹ 1.75 crore. Besides, a penalty of ₹ 2.62 crore was also leviable.

The Department should evolve a system to ensure genuineness of exemption claimed on inter-State sale of goods in the guise of consignment sales/stock transfer. This would guard against the leakage of revenue.

We communicated the matter (June 2012) to the Government and are awaiting their reply (December 2012).

2.16.2 Application of incorrect rate of tax

As per section 16(1)(b) of the erstwhile TNGST Act, 1959, where for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it was assessable, the assessing authority may, at any time within a period of five years from the date of order of final assessment by the assessing authority, reassess the tax due.

Under entry 20 of Part G of the first schedule to the Act *ibid*, aerated waters including soft drinks sold under brand name and the maximum retail price (MRP) of which was ₹ 29 and above per litre was taxable at the rate 20 *per cent*. The said goods were taxable at the rate of 12 *per cent* if the MRP was below ₹ 29 per litre, as per entry 2(i) of Part DD of first Schedule.

We noticed during audit (July 2011) of Large Tax Payers Unit-I, Chennai that the assessing authority while finalising (October 2010) the assessment of a dealer for the year 2000-01, incorrectly assessed the sales turnover of the soft drinks (branded) amounting to ₹ 12.74 crore, the MRP of which was ₹ 29 and above per litre, at the rate of 12 *per cent* instead of at the rate of 20 *per cent.* The adoption of incorrect rate of tax resulted in short levy of tax of ₹ 1.02 crore.

After we pointed this out (August 2011), the Department revised (November 2011) the assessment. We are awaiting further report (December 2012).

We communicated the matter (March 2012) to the Government and are awaiting their reply (December 2012).

2.16.3 Incorrect grant of concessional rate of tax

Section 3(3) of the erstwhile TNGST Act, 1959, provided for levy of concessional rate of tax of three *per cent* on first sale of any goods including consumables, packing material and labels but excluding plant and machinery to another dealer for use by the latter in the manufacture, and assembling, packing or labeling in connection with such manufacture in the State subject to certain conditions and production of declaration in Form XVII obtained from the purchaser.

In terms of Section 3(5) of the Act *ibid*, the concessional rate was also extended to sale of generators, machineries and certain other goods mentioned in eighth schedule.

As per entry 22(vi) of Part-D of the first schedule to the Act, concrete mixer lorries were taxable at the rate of 12 *per cent* at the point of first sale in the State upto 31 December 2006. Under sub-entry (iv) of the said entry, all varieties of trailers by whatever name known, other than trailers of tractors were also taxable at the rate of 12 *per cent* at the point of first sale in the State.

2.16.3.1 We noticed (August 2011) during audit in Sriperumbudur assessment circle that the assessing authority while finalising the assessment (August 2010 and February 2011) of a dealer, for the years 2005-06 and 2006-07, allowed concessional rate of tax of three *per cent* on sale of concrete mixer lorries and mobile concrete trailer pumps amounting to ₹ 2.97 crore and ₹ 5.16 crore for the years 2005-06 and 2006-07 respectively. As the above mentioned goods did not fall under the eighth Schedule but included under entry 8 of Part D of the first Schedule, the concessional rate of tax allowed by assessing authority was not in order. This resulted in short levy of tax and surcharge of ₹ 73.22 lakh and ₹ 3.66 lakh respectively.

After we pointed this out (August 2011) the assessing officer, Sriperumbudur assessment circle, citing certain judicial decisions[25], equated the concrete mixer lorry to special packing material, since it enables the reinforced cement concrete (RCC) marketable, by preventing solidification during its transit to the customers' site and contended that since manufacture could not be said to be complete at the factory, the lorry would be eligible to be sold under Section 3(3) of the Act. The assessing officer also invited reference to another judicial decision[26] and stated that the seller has to accept the declaration in form XVII furnished by the buyer.

The reply of the assessing officer was not acceptable for the following reasons:

---

25 (a) Indian Copper Corporation Ltd. Vs Commissioner of Commercial Taxes 16 STC 259.
(b) Commissioner of Sales Tax Vs Kolhapur Electric Supply Co. – 37 STC 587.

26 Sri Murugan Engineering Vs CTO / 148 STC 419.

- The concrete mixer lorry is a vehicle used for transportation of RCC. As it is a capital asset, it cannot be equated to packing material. Hence, it was not eligible for concessional rate under Section 3(3) of the Act. Further, the concessional rate cannot be extended under Section 3(5) also as the commodity was specifically mentioned in the first schedule and it does not fall under the eighth schedule. In view of this, the decision of the Madras High Court reported in 148 STC could not be applied in this case.
- The judicial decisions cited in 16 STC and 37 STC are also not applicable to the present case as the judgments relate to application of the provisions of the Central Sales Tax Act and Bombay Sales Tax Act.

Under Section 8(1) of the Central Sales Tax Act, 1956, tax was leviable at the rate of four *per cent* on sale of goods to Government Departments, upto 31 December 2006, if the sales were covered by valid declarations in Form 'D'.

As per the Section 8 (2) (b) of the Act, ibid, if such sales were not covered by valid declarations, tax shall be calculated at the rate of 10 *per cent* or at the rate applicable to the sale inside the appropriate State, whichever is higher.

2.16.3.2 We noticed during audit (June 2011) in Annasalai-III assessment circle that in respect of a dealer, the sale of printed materials amounting to ₹ 17.17 lakh to I.I.T., Kanpur during 2004-05 was taxed at four *per cent* on the strength of declarations furnished in Form D. Since, I.I.T. Kanpur is an autonomous body and not a Government Department, the concession allowed was not in order. This resulted in short levy of tax of ₹ 1.12 lakh.

After we pointed this out (June 2011), the Department revised the assessment and raised an additional demand of ₹ 1.12 lakh (May 2012).

We communicated the matter to the Government (December 2011) and are awaiting their reply (December 2012).

2.16.4 Non-disclosure of inter-State transactions

As per Rule 5(1) of the Central Sales Tax (Tamil Nadu) Rules, 1957, the provisions of the Tamil Nadu Value Added Tax Act, 2006 and Rules made thereunder shall apply, mutatis mutandis, for the purpose of making provisional assessment, best of judgement assessment, final assessment, re-assessment and payment of tax under the CST Act, 1956.

As per entry 119 of Part-B of the first schedule to the Tamil Nadu Value Added Tax Act 2006, rubber including raw rubber and dry ribbed sheets are taxable at the rate of four *per cent*.

Under Rule 43-B of the Rubber Rules, 1955, no person shall transport or cause to be transported rubber from one State or Union Territory to another State or UT without being accompanied by a valid declaration in the prescribed Form issued by the Rubber Board to such person.

As per the details of inter-State transactions of raw rubber obtained from the Rubber Board, 37 dealers in Tamil Nadu transported rubber for a value of ₹ 375.55 crore during the years 2009-10 and 2010-11 to other States.

We cross verified (February 2012 to May 2012) the details with the assessment records viz. monthly returns filed by these dealers under the CST Act, 1956 with the Commercial Taxes Department.

We noticed during such cross verification in Sattur assessment circle that in respect of one dealer, the inter-State sales turnover of rubber was assessed to tax on a turnover of ₹ 5.90 crore for the year 2010-11, even though the dealer had transported rubber for a value of ₹ 13.21 crore as per the details obtained from the Rubber Board. The tax and penalty leviable on the turnover of ₹ 7.31 crore omitted to be assessed worked out to ₹ 29.23 lakh and ₹ 43.84 lakh respectively.

Similarly, we noticed from the details obtained from the Rubber Board that 21 dealers transported raw rubber amounting to ₹ 281.17 crore to various places in other States by using declaration forms obtained from the Rubber Board. We observed from the monthly returns filed by these dealers in Thucklay and Kuzhithurai assessment circles that they had reported a sales turnover of ₹ 11.42 crore only against the turnover of ₹ 281.17 crore for the years 2009-10 and 2010-11. The tax and penalty leviable on the suppressed turnover worked out to ₹ 10.79 crore and ₹ 16.19 crore respectively.

After we pointed this out, the assessing authority, Thuckalay assessment circle replied during audit that the transactions were undertaken without the knowledge of the CT department and that the information furnished by audit would be considered. After getting full details from the Rubber Board, further action would be taken. The said assessing authority subsequently assessed (October/November 2012), after examining the accounts, the sales turnover not reported by 20 dealers and raised additional demand of ₹ 24.19 crore (tax ₹ 9.67 crore and penalty of ₹ 14.52 crore), as against the tax and penalty of ₹ 26.98 crore pointed out in audit. We await the collection details in respect of these cases and reply in respect of the remaining cases from Sattur and Kuzhithurai assessment circles.

Evolving an effective mechanism to interact with other Departments, Boards etc. would help the Commercial Taxes Department to unearth suppression of sales by the dealers and finally to curb tax evasion.

We communicated the matter (June 2012) to the Government and are awaiting their reply (December 2012).

Executive Summary

Increase in tax collection	In 2011-12 the collection of revenue from state excise increased by 23 *per cent* over the previous year which was attributed by the Department to huge receipts under "vend fee on foreign liquor and spirits", duty on beer and malt liquor.
Internal audit	No arrears in the conduct of internal audit has been reported
Results of audit conducted by us in 2011-12	In 2011-12 we test checked the records of 29 units and found underassessment of tax, fees and other observations amounting to ₹ 12.35 crore in 27 cases. The Department accepted underassessments and other deficiencies amounting to ₹ 7.07 crore in eight cases, out of which, ₹ 3.56 lakh involved in two cases were pointed out during the year and the rest in earlier years.
What we have highlighted in this Chapter	In this chapter we present a Performance Audit on **"Functioning of Prohibition and Excise Department"**. This Audit brought out absence of a transparent system in granting privilege/license to new manufactories, non-revision of privilege fee/license fee for over 10 years though there was multifold increase in the volume/value of sales, compliance deficiencies involving a money value of ₹ 10.82 crore.
Our conclusion	There was no transparency in granting privilege/license for setting up a new manufactory and revision of privilege fee and license fee for new distilleries, IMFS and beer manufactories. Fixation of privilege fee for expansion units was also not considered. Non-compliance of the provisions of the Acts and Rules and defects in notifications resulted in leakage of revenue. Internal audit and flying squad were not functioning effectively as there was no proper planning and adequate staff strength. We noticed that while objections raised by audit were accepted by the Department, the same was omitted to be detected by the internal audit.

CHAPTER III
STATE EXCISE

3.1 Tax administration

The Commissioner (Prohibition & Excise) is the head of the Department who administers the Tamil Nadu Prohibition Act, 1937 and various other Acts/rules. He is under the administrative control of the Principal Secretary, Home, Prohibition and Excise Department. He is assisted by two Joint Commissioners and five Assistant Commissioners at Headquarters level and Distillery Officers, Excise Supervisory Officers at distilleries and breweries (at manufactory level). A Financial Controller, deputed from the Finance Department, helps the Commissioner in controlling the financial matters. The District Collectors supervise the excise administration at district level, assisted by Deputy/Assistant Commissioners of Excise.

3.2 Analysis of arrears of revenue

Arrears of revenue as on 31 March 2012 along with the figures for the preceding four years as furnished by the Department are mentioned below:

(₹ in crore)

Year	Opening balance	Addition	Total	Amount collected during the year	Closing balance
2007-08	39.87	0.00	39.87	1.05	38.82
2008-09	38.82	0.00	38.82	0.15	38.67
2009-10	38.67	0.00	38.67	0.92	37.75
2010-11	37.75	0.00	37.75	0.50	37.25
2011-12	37.25	0.00	37.25	0.52	36.73

The entire arrears as on 31 March 2012 were outstanding for more than five years. Demands of ₹ 17.62 crore were covered under the Revenue Recovery Act. Demands of ₹ 1.25 crore were stayed by the High Court and other judicial authorities. A sum of ₹ 4.82 crore is outstanding as defaulters' whereabouts not known and ₹ 1.71 crore is outstanding due to defaulters having no properties. A sum of ₹ 5.80 crore is likely to be written off while ₹ 5.01 crore was under various stages of collection. An amount of ₹ 0.52 crore has since been collected.

3.3 Cost of collection

The gross collection in respect of state excise, expenditure incurred on collection and percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12 along with the preceding years' relevant all India average percentage of expenditure on collection to gross collection for preceding years are given in the following table:

(₹ in crore)

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the preceding years
2009-10	6,740.68	NA	NA	----
2010-11	8,115.94	64.07	0.79	3.64
2011-12	9,975.21	72.84	0.73	3.05

The above table indicates that the percentage of expenditure on collection was less than the all India average in all the years.

3.4 Impact of Audit Reports

3.4.1 Revenue impact

During the last five years, we had pointed out through our Audit Reports under assessment of duty, fees, penalty, loss of revenue with revenue implication of ₹ 70.73 crore. Of these, the Department/Government accepted audit observations involving ₹ 70.23 crore and since recovered ₹ 55.33 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Accepted money value	Amount recovered
	Number	Money value		
2006-07	4	70.36	69.86	55.32
2007-08	---	---	---	---
2008-09	---	---	---	---
2009-10	1	0.37	0.37	0.01
2010-11	---	---	---	---
Total	**5**	**70.73**	**70.23**	**55.33**

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

3.5 Working of internal audit wing

The internal audit in the Department functions under the control of Financial Controller. It consists of one audit party. As per the information furnished by the Department there is no arrears in the conduct of internal audit.

3.6 Results of audit

We test checked the records of 29 Departmental offices during the period from April 2011 to March 2012 and pointed out non/short collection of excise duty, licence fees and other observations amounting to ₹ 12.35 crore in 27 cases, which broadly fall under the following categories.

(₹ in lakh)

Sl. No.	Category	No. of cases	Amount
1	A performance audit on **Functioning of Prohibition and Excise Department**	1	10.82
2	Non levy/short levy of excise duty	1	0.14
3	Non/short collection of licence fee/privilege fee	9	0.31
4	Non/short collection of Administrative service fee	12	0.08
5	Non/short collection of penalty and interest	4	1.00
	Total	**27**	**12.35**

During the course of the year 2011-12, the Department accepted under assessments and other deficiencies amounting to ₹ 7.07 crore in eight cases, out of which, ₹ 3.56 lakh involved in two cases were pointed out during the year and the rest in earlier years.

3.7 Performance Audit on Functioning of Prohibition and Excise Department

Highlights

- **Lack of transparency in granting privilege/license to new distilleries, IMFS and beer manufactories.**

(Paragraph 3.7.8)

- **Non-revision of privilege/license fee for manufacture of spirit, IMFS and beer for more than 10 years.**

(Paragraph 3.7.9)

- **FL2 and FL3 licensees (star hotels and clubs) were allowed to import IMFS. Though import fee was collected, vend fee amounting to ₹ 1.30 crore was not collected.**

(Paragraph 3.7.13.1)

- **There was short collection of enhanced privilege fee, license fee and special additional privilege fee from FL2, FL3 and FL10 licensees amounting to ₹ 6.72 crore.**

(Paragraph 3.7.13.2)

- **Non-payment of brand renewal fee and label approval fee in respect of old brands resulted in non-collection of ₹ 94.60 lakh**

(Paragraph 3.7.14)

3.7.1 Introduction

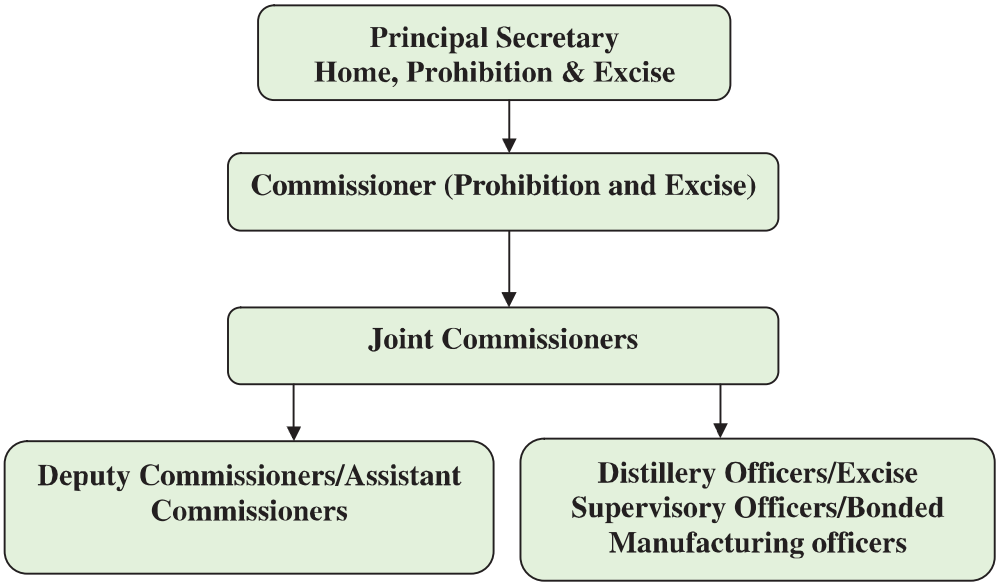
The Tamil Nadu Prohibition Act, 1937 and the rules made thereunder provide for the levy of excise duty, administrative service fee, vend fee, special privilege fee, license fee etc. The State Excise is the second largest source of tax revenue of the State. The Commissioner (Prohibition and Excise) enforces the various Acts/Rules and also regulates the activities of the distilleries and the production, storage, distribution, import, export and sale of IMFL and beer in the State besides collection of revenue. Nearly 98 *per cent* of the total excise revenue is realised through Tamil Nadu State Marketing Corporation (TASMAC).

In Tamil Nadu, TASMAC was given the monopoly in wholesale trading of alcohol from 2001. In order to completely eliminate the sale of contraband, spurious and non-duty paid liquor in licensed premises of retail vending by private persons and wide spread violations of maximum retail price (MRP), TASMAC became the sole retail vendor of alcohol from November 2003. Liquor is also supplied by the Star/non-star hotels and non proprietary clubs to its members after obtaining licenses. The levy and collection of the duties and

fees is monitored by various Acts[27]. The Department plays a dual role of enforcing prohibition of arrack and toddy and regulation of manufacturing and trading of Indian Made Foreign Liquor (IMFL).

3.7.2 Organisational set up

The Commissioner (Prohibition & Excise) is the head of the Department under the administrative control of the Principal Secretary, Home, Prohibition and Excise who administers various Acts and Rules relating to state excise. He is assisted by two Joint Commissioners and five Assistant Commissioners at Headquarters level and Distillery Officers, Excise Supervisory Officers at distilleries and breweries. A Financial Controller, deputed from the Finance Department, helps the Commissioner in controlling the financial matters. The District Collectors supervise the excise administration at district level, assisted by Deputy Commissioners of Excise (Chennai and Coimbatore)/Assistant Commissioners of Excise (other districts).



3.7.3 Audit objectives

Performance Audit was taken up with the objectives of ascertaining whether:

- Provisions/system for regulating the levy and collection of excise duty, fees etc under various Acts and Rules administered by the Excise Department were being complied with and implemented effectively; and

[27] Tamil Nadu Prohibition Act 1937, Tamil Nadu Indian Made Foreign Liquor (Manufacture) Rules 1981, Tamil Nadu Distillery Rules 1981, Tamil Nadu Brewery Rules 1983, Tamil Nadu Indian Made Foreign Spirits (Supply by Wholesale) Rules 1983, Tamil Nadu Liquor (License and Permit) Rules 1981, etc.

- Internal control mechanism was adequate and effective in preventing leakage of revenue and for ensuring compliance with all rules and regulations.

3.7.4 Audit criteria

The audit objectives were bench marked against the criteria drawn from the following sources:

- Tamil Nadu Prohibition Act, 1937,
- Tamil Nadu Molasses Control and Regulation Rules, 1958;
- Tamil Nadu Distillery Rules, 1981;
- Tamil Nadu Indian Made Foreign Spirits (Manufacture) Rules, 1981;
- Tamil Nadu Liquor (License & Permit) Rules, 1981;
- Tamil Nadu Brewery Rules, 1983;
- Tamil Nadu Indian Made Foreign Spirits (Supply by Wholesale) Rules, 1983;
- Tamil Nadu Rectified Rules, 2000;
- Tamil Nadu (Retail Vending) Rules, 2003; and
- Tamil Nadu Wine (Manufacture) Rules, 2006.

3.7.5 Scope and methodology

There are 17 distilleries, 11 IMFL and four beer units and 45 sugar mills in the State. We covered all the IMFL and beer units in the performance audit. We also selected nine distilleries, 12 sugar mills, two Deputy Commissioners and 10 Assistant Commissioners of Excise Offices at the district level using random sampling without replacement method. Besides, the offices of the Commissioner (Prohibition and Excise) and the Principal Secretary, Home, Prohibition and Excise at the Government level were also visited. We scrutinised the records in the units/offices for the period from 2006-07 to 2010-11 between February 2012 and June 2012. The aspects of production, procurement, storage, sale, monitoring and enforcement measures taken by the Department were examined in the performance audit.

3.7.6 Acknowledgement

An Entry Conference was held with the Principal Secretary to the Government, Home, Prohibition and Excise Department in January 2012, in which we explained the audit objectives, scope and methodology. The statement of facts was forwarded to the Department and the Government in June 2012. The Exit Conference was held with the Principal Secretary to the Government in August 2012. The response of the Government/Department during the Exit Conference and replies received at other times have been appropriately incorporated in the performance audit report.

We acknowledge the co-operation extended by the Home, Prohibition and Excise Department in providing us the necessary records and information.

3.7.7 Trend of Revenue

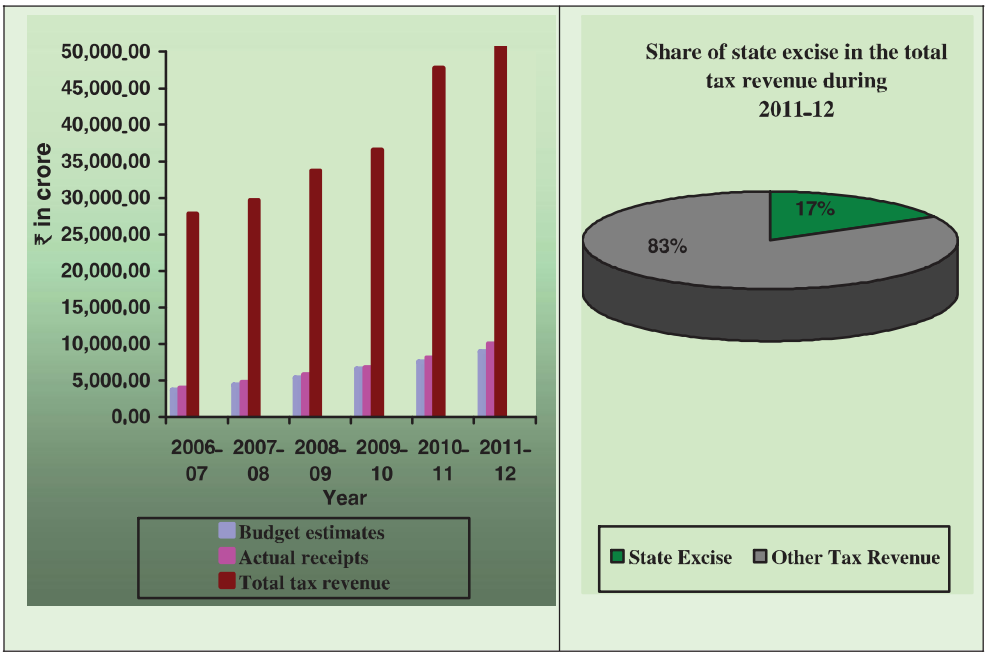
The total tax revenue and state excise revenue of the Government of Tamil Nadu during the period from 2006-07 to 2011-12 are as given in the following table:

(₹ in crore)

Year	Budget estimates	Actuals	Variation excess (+)/ short fall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts *vis-à-vis* total tax receipts
2006-07	3,673.26	3,986.42	(+) 313.16	(+) 9	27,771.15	14
2007-08	4,370.12	4,764.06	(+) 393.94	(+) 9	29,619.10	16
2008-09	5,329.60	5,755.52	(+) 425.92	(+) 8	33,684.37	17
2009-10	6,565.55	6,740.68	(+) 175.13	(+) 3	36,546.66	18
2010-11	7,508.18	8,115.94	(+) 607.76	(+) 8	47,782.17	17
2011-12	8,935.03	9,975.21	(+) 1,040.18	(+) 12	59,517.66	17

Source: Finance accounts and Annual financial statement for the respective years

A bar diagram depicting the budget estimates, actual receipts and total receipts for six years and a pie chart depicting the share of state excise receipts in the total tax revenue during 2011-12 are shown below:



In 2011-12 the collection of revenue from state excise increased by 23 *per cent* over the previous year which was attributed by the Department to huge receipts under vend fee on foreign liquor and spirits, duty on beer and malt liquor.

Audit findings

3.7.8 Lack of transparency in granting privilege/license to new manufactories

As per the policy notes for the years between 2008-09 and 2010-11 privilege/distillery licenses were given for setting up of new distillery for six applicants and permission was granted to eight distilleries to expand their production capacity by 207.80 KLPD. Privilege/Letter of Intent (LoI)/license were also given for four new IMFL manufactories, five brewery units and one wine manufactory unit.

We observed that the distilleries, IMFS and beer manufactory licenses were granted based on the applications received from the intended persons/ companies without adopting any other procedure like inviting application through public notice/issue of notification. The auctioning of these licenses was also not done and there was lack of transparency in granting of licenses. Further there is no provision in the Act/Rules for levy of fee for expansion of the existing production capacity.

In Andhra Pradesh, the Government issues notifications from time to time for grant of LoI for establishment of new manufactory or expansion of existing RS/IMFL manufacturing units and distilleries. Further, for expansion of the existing production capacity of IMFL manufacturing units the licensees have to pay ₹ 12 crore as non refundable deposit and the distilleries have to pay a special fee of ₹ 20 lakh for obtaining LoI.

We recommend that a transparent system may be evolved for issue of privilege and license for new manufactory and fixation of privilege fee for expansion units.

3.7.9 Non-revision of privilege/license fee for new distilleries, IMFS and beer manufactories

According to Rule 3 of the Tamil Nadu Distillery Rules 1981, every person to get grant of the privilege for manufacture of spirit and licence to establish a distillery shall make an application with an application fee of ₹ 400, a privilege fee of ₹ two lakh and a licence fee of ₹ 4,000.

As per Rule 4 of the Tamil Nadu Indian Made Foreign Spirit (Manufacture) Rules 1981, any person desirous of getting the privilege of manufacturing IMFS and license shall make an application with an application fee of ₹ 2,000, a privilege fee of ₹ four lakh and a licence fee of ₹ 10,000.

As per Rule 4 of the Tamil Nadu Brewery Rules 1983, any person desirous of getting the privilege of manufacturing beer and license for brewery shall make an application to the Commissioner within six months from the date of letter of intent (LoI) given by the Government with an application fee of ₹ 2,000, fee of ₹ four lakh and a licence fee of ₹ 10,000.

The privilege fee for distilleries was fixed in the year 2000 and for IMFS and beer manufactories in the year 1999. Though there was more than four fold increase in the volume of sales and five fold increase in value, the fees fixed in the years 1999/2000 are continued to be collected every year till date without any revision.

Further, there is no provision in the Act/Rules for revision of privilege and license fee.

In the neighbouring State of Andhra Pradesh, LoI is obtained after payment of a (i) special fee of ₹ 20 lakh by distilleries and (ii) non refundable fee ₹ 12 crore by IMFL units alongwith the application.

In Tamil Nadu, the fee structure, however, remains the same from 1999-2000 without any revision.

We recommend that Government may consider revising the privilege and license fee for distilleries, IMFS and beer manufactory units.

3.7.10 Non-implementation of the policy decision to export liquor to other States

The cabinet decided (August 2010) that considering the potential of export of IMFS to other States by the manufacturers of IMFS in the State with possibilities of additional revenue to Government by way of excise duty/export fee on exports and increasing local requirement, the existing policy may be revised so that privilege and licence for new IMFS units may be considered on merits.

We observed that the decision of the cabinet was not implemented by the Government by issuing notification/order inviting applications for grant of licenses to even existing units for export of IMFL to other States, thereby depriving additional revenue in spite of the fact that the existing units were equipped to produce enhanced quantity. We scrutinised the production capacity viz.a.viz. the demand made by the TASMAC from six IMFS units in the State for the period from September 2010 to March 2011. The details are given in the following table:

Sl. No.	Name of the distillery	Monthly production capacity (in cases)	Percentage of demand varied between
1	Tvl. Midas Golden Distilleries Pvt. Ltd.	7,42,500	29.65 and 51.06
2	Tvl. Southern Agri Furane Pvt. Ltd.	4,13,100	54.96 and 78.46
3	Tvl. Empee Distrilleries	4,19,400	74.99 and 100
4	Tvl. Mohan Breweries and Distilleries Ltd.	6,55,300	29.07 and 48.24
5	Tvl. Shiva Distilleries	9,25,000	50.22 and 63.45
6	Tvl. United Spirits	9,90,000	71.43 and 100
For remaining five IMFS units the production capacity has not been fixed.			
Source : As per statements given by the licensees			

From the above table, it is clear that the demand made by TASMAC ranged between 29.07 and 78.46 *per cent* of the production capacity (except in two cases where the demand ranged between 71.43 and 100 *per cent*), which is indicative that the remaining capacity can be utilised for export.

As the decision of the cabinet was not implemented, the Government was deprived of additional revenue in spite of the fact that the existing units were equipped to export liquor to other states.

3.7.11 Non-production of ethanol for blending with petrol

As per the Government of India notification issued in September 2002, sale of five *per cent* ethanol blended petrol was implemented in nine districts of Tamil Nadu, with effect from May 2004.

The Government granted prior permission (October 2006) to eight[28] units to produce ethanol. 11,000 kilo litres of ethanol were produced and sold to oil companies upto November 2006. The Commissioner (Prohibition and Excise), however, in his letter (December 2006) addressed to the Ethanol Co-ordinator had stated that as there was shortage of spirit even for IMFS manufacturing units for potable purpose, due to closure of many distilleries, the usage of spirit for other purposes has been stopped from November 2006. The Commissioner further stated that the Department was not in a position to spare spirit for ethanol till March 2007.

We scrutinised the details of stock of molasses furnished by the Commissioner (Prohibition and Excise) and noticed that there was stock of molasses in excess of consumption ranging from 2.95 lakh MT to 4.10 lakh MT for the years 2006-07 to 2010-11 as detailed in the following table:

(in lakh MT)

Year	Opening balance	Production	Total availability	Consumption for spirit etc	Closing balance
2006-07	2.92	11.45	14.37	10.27	4.10
2007-08	4.10	12.46	16.56	13.61	2.95
2008-09	2.95	9.79	12.74	9.46	3.28
2009-10	3.28	7.93	11.21	7.66	3.55
2010-11	3.55	7.86	11.41	8.08	3.33
Source: As furnished by the Department					

Analysis by audit revealed that:

- As per the formula furnished by the Commissioner one metric tonne of molasses will yield 170 to 260 litres of RS based on the Total Reducing Sugar (TRS) content in molasses. Applying this formula for the minimum closing balance of 2.95 lakh M.T. of molasses, the production of RS would be in the range of 5.02 crore litres and 7.67 crore litres.
- The maximum demand for molasses for the production of spirit during the period from 2006-07 to 2010-11 was 24.73 *per cent* (1.13 lakh M.T.) of the available stock (closing stock of previous month plus production during the month) which could produce spirit ranging between 1.92 crore litres and 2.94 crore litres. As such the balance stock of molasses could have been diverted for production of ethanol.

[28] Tvl. Thiru Aarooran Sugars and Chemicals Limited, Tvl. Sakthi Sugars Limited, Tvl. Rajshree Sugars and Chemicals Limited, Tvl. Dharani Sugars and Chemicals Limited, Tvl. EID Parry (India) Limited, Tvl. Kothari Sugars and Chemicals limited, Tvl. Salem Cooperative Sugar Mills Limited and Tvl. Amaravathy Cooperative Sugar Mills Limited.

From the above it could be seen that even though there was enough stock of molasses, the position was not reviewed after March 2007. Further, no concurrence was obtained by the Commissioner (Prohibition and Excise) from the State Government/Government of India for stoppage of supply of sprit for production of ethanol.

Though the use of ethanol blended petrol would reduce the pollution level and save foreign exchange, the Government did not review the decision taken by the Commissioner (Prohibition and Excise) and restore the supply of spirit for production of ethanol.

3.7.12 Non-adoption of 'per case rate' for levy of special fee

The Government issued orders in July 2008 fixing the rate of special fee at ₹ 280.16 per proof litre for premium brand wine.

We observed from the files in Commissionerate, Chennai, that the Government proposed to introduce special fee for the import of IMFS, wine and beer in lieu of excise duty and import license fee levied (₹ 705.36 per case) and called for proposals from TASMAC. TASMAC in September 2007 forwarded the proposals for a special fee of ₹ 706 per case in respect of premium wine. The proposal by TASMAC was based on 28 degree proof strength and the rate for premium brand wine was arrived at as ₹ 280.16

The proposed 'per case' special fee was converted as 'per proof litre' basis in respect of IMFS and wine and 'per bulk litre' basis in respect of beer. Though the above proposal was accepted by the Government, the special fee was simply fixed at ₹ 280.16 per proof litre and the indication that the working was based on 28 degree proof strength as stated by TASMAC was not included in the order (July 2008). TASMAC also imports wine with different proof strengths of 28, 24.5 and 21 degrees. As a result, even though the proposal is for a special fee of ₹ 706 per case, rate on 'proof litre basis' reduced the fee to ₹ 617.76[29] for 24.5 degree and to ₹ 529.50[30] for 21 degree per case containing nine bulk litres.

We observed that during the period from November 2008 to March 2011, 11,270 cases (cases containing 375 & 750 ml bottles) and 98,790 cases (cases containing 180 ml bottles) were imported. Had the rate of special fee been fixed correctly either on bulk litre or at the appropriate rate according to the proof strength, the Government would have earned the same revenue as it was earning before the issue of the order. The adoption of revised rate without proportionate levy for different degree of proof strength in the order issued by the Government resulted in short realisation of special fee of ₹ 98.10 lakh. It is also pertinent to note that the excise duty on the wine manufactured locally was fixed on 'bulk litre' basis only.

[29] 9 Bulk litres X 24.5/100 = 2.25 proof litres X 280.16 = ₹ 617.76 per case

[30] 9 Bulk litres X 21/100 = 1.89 proof litres X 280.16 = ₹ 529.50 per case

3.7.13 Non/short collection of fee

3.7.13.1 Non-collection of vend fee

The IMFS/ beer import permits are issued to FL2, FL3 and FL10 licensees after collecting special fee prescribed under Rule 13 of the Tamil Nadu IMFS (Supply by Wholesale) Rules, 1983 as there is no specific provision in the Tamil Nadu Liquor (License and Permit) Rules, 1981. In addition to special fee, for import the licensee has to pay vend fee at ₹ 142 per case in respect of IMFS and ₹ 36 per case in respect of beer under Rule 15 of the Rule *ibid.*

We observed from the records in Commissionerate, Chennai, that 4,821 import permits were issued during the period from 2006-07 to 2010-11 in which 84,948 cases of IMFS and 26,406 cases of beer were imported. However, no vend fee was collected resulting in non-realisation of revenue to an extent of ₹ 1.30 crore as detailed below:

Year	Import of IMFS (in cases)	Vend fee at ₹ 142 per case (₹ in lakh)	Import of beer (in cases)	Vend fee at ₹ 36 per case (₹ in lakh)
2006-07	9,891	14.05	1,152	0.41
2007-08	17,983	25.54	5,784	2.08
2008-09	15,777[31]	22.40	5,463	1.97
2009-10	16,866	23.95	7,073	2.55
2010-11	24,431	34.69	6,934	2.50
Total	**84,948**	**120.63**	**26,406**	**9.51**
Source: As furnished by the Department				

After we pointed this out, the Department replied during audit that the vend fee was collected from TASMAC as they were wholesalers as well as retailers; whereas FL licensees were only retailers and hence only the special fee was collected.

The reply is not tenable since the Department collected special fee under Rule 13 of the Tamil Nadu IMFS (Supply by Wholesale) Rules, 1983 in respect of retailers like FL licensees and, therefore, vend fee was also to be collected from those licensees under Rule 15 of the said Rules.

[31] Excluding December 2008 - As the details of import was furnished as 2,76,997 cases appeared to be exorbitant and actual figures not available.

3.7.13.2 Short collection of enhanced privilege fee and license fee and special additional privilege fee

As per Rule 17 of the Tamil Nadu Liquor (License and Permit) Rules, 1981, FL2, FL3, FL3AA and FL10 licensees have to pay privilege fee and license fee annually. As per Rule 17(b) II and III of the rules ibid, FL2 and FL3 licensees have to pay special additional privilege fee at 10 *per cent* on the existing privilege fee subject to a minimum of ₹ 10,000 for sale of draught beer.

The Government issued notification in December 2008 increasing the privilege fee (PF) and license fee (LF) in respect of these licensees which was published in the official gazette on 31 December 2008.

We noticed during test check of the records in the Commissionerate, Chennai in January 2010 that only the differential fee for the period from December 2008 to March 2009 was collected from 619 licensees (PF & LF) and 52 licensees (SPF) though the fees were required to be collected for the whole year of 2008-09. This resulted in short collection of fee to the extent of ₹ 6.72 crore.

After we pointed this out, the Department issued instructions in February 2011 to collect the differential privilege fee and license fee as pointed out in audit.

3.7.14 Non-payment of brand renewal fee and label approval fee

As per Rules 13 and 16 of the Tamil Nadu Wine (Manufacture) Rules, 2006, a renewal fee of ₹ two lakh and ₹ 5,000 is payable for brand renewal and label approval respectively. The Government vide order issued in October 2002 extended the levy per annum to old brands also.

We observed from the scrutiny of the license renewal and brand renewal files of three[32] IMFS units that 13 brand names were not renewed for the period ranging from one year to six years. The Department failed to levy the brand renewal fee and label approval fee for the brands upto the year in which deletion proposals were sent and also for the brands not renewed. This resulted in non-realisation of revenue of ₹ 94.60 lakh.

After we pointed this out, the Department in December 2012 accepted the audit observation in one case and raised a demand of ₹ 8.60 lakh. We are awaiting further report (December 2012).

[32] M/s Empee Distilleries (IMFS) unit, M/s. Mohan Breweries Distillery Ltd (IMFS unit) and M/s. Southern Agri Furane Ltd.

3.7.15 Internal control mechanism

3.7.15.1 Absence of supervisory mechanism

As per Rule 24 of the Tamil Nadu IMFS (Manufacture) Rules 1981, the manufactory officer shall be responsible for the correct maintenance of stock of bottled IMFS in the finished stores room and for the collection of proper excise duty on such stocks, before their release from the manufactory.

We observed during the check of records of three[33] units (one brewery unit, one wine unit and one distillery unit) that though the units had started their production between February 2011 and April 2011, no regular posting of Excise Supervisory Officer and supporting staff was made till date.

The Commissioner (Prohibition and Excise) in November 2011 stated that in a brewery unit, the consignment meant for a particular place was unloaded at an unauthorized place and also stressed the responsibility of the ESO to verify the stocks and payment of excise duty/vend fee. Liquor manufacturing units without regular ESO/Brewery Officer and supporting staff would give scope for such irregularities not being rectified.

We recommend that the Government may ensure that the post of officers required in key areas be filled up for effective monitoring and control.

3.7.15.2 Functioning of internal audit wing

Internal audit wing in the Department functions under the head of Financial Controller. It consists of one audit party. A programme for the internal audit is drawn up by him with the approval of the Commissioner to ensure the upto date completion of Audit and it is his duty to see that the programme is completed in time

We observed on a scrutiny of data files and records of internal audit wing that no annual audit plan was prepared for the year of audit. We also observed that only 38 observations were issued for the period 2009-10 and 2010-11. No money value para was raised by internal audit during our audit period of 2006-07 to 2010-11.

After we pointed this out, the Department stated that no internal audit manual has been prescribed and no training has been given for the staff.

The absence of annual audit plan and non-imparting of training for audit personnel renders the internal audit weak.

[33] M/s. Golden Vats, M/s. Cumbum Valley Wines and M/s. SNJ Brewery

3.7.15.3 Computerisation of the functions of the Department

It was decided by the Government in 1999-2000 to computerise the Department. Scrutiny of the records of the Department revealed that even after a lapse of 11 years, functions like licensing, regulation of alcohol, tax collection, budget, staff details etc., were not maintained in the form of database. Consequently, the Department did not have the previous year's records/data in a complete shape for effective control and future plans.

3.7.15.4 Functioning of flying squad

The functions of the flying squad, which is under the direct control of the Commissioner of Prohibition and Excise, is to inspect the IMFL retail shops, TASMAC godowns, distilleries, FL2 and FL3 licensees and all other licensed premises.

We observed from the records in the Commissionerate, Chennai, that the flying squad is functioning with 50 *per cent* of the staff strength only. For the years 2009-10 and 2010-11, only 42 IMFL retail shops and 14 distilleries were inspected. TASMAC godowns, FL2, FL3 licensees and RL licensees were not inspected by the flying squad during 2009-10 and 2010-11. In respect of the preceding years, details were not readily traceable by the Department. Though several incidents of selling of liquor at higher prices at the retail shops were noticed at district level, the flying squad, whose primary function is to conduct surprise checks, have reported only three cases. This leads to sale of liquors at a rate more than the MRP besides sale of spurious and adulterated liquor.

3.7.15.5 Missing Excise Labels - Loss of revenue

The Government vide orders issued in (D) No.287 Revenue Ser 2(2) Dept. dated 21 September 2011, determined the loss of revenue for the missing labels as ₹ 6.04 lakh towards excise duty and ₹ 6.25 lakh towards sales tax and also directed that the loss of revenue be collected from the distillery concerned.

We observed from the records of Excise Supervisory Officer, M/s. Mohan Breweries and Distilleries Ltd., that the Department raised a demand for the cost of the labels only instead of the actual loss of ₹ 12.29 lakh. This resulted in non-realisation of revenue of ₹ 12.29 lakh.

After we pointed this out, the Department in December 2012 accepted the audit observation and directed the distillery to remit the amount as stated in the Government order. We are awaiting the collection details (December 2012).

3.7.16 Other points of interest

3.7.16.1 Non-levy of penalty for short fall in the yield of spirit

As per Rule 39 of the Tamil Nadu Distillery Rules, 1981, when the yield is lower than the rate specified by the Commissioner, the licensee shall pay penalty at the rate of ₹ 16 per proof litre on the difference.

We noticed (June 2011) during scrutiny of the records of the Salem Cooperative Sugar Mills Limited and statements relating to molasses consumption, production of spirit, yield rate and the reports of Total Reducing Sugar (TRS) content that the rate of yield was lower than the rate specified by the Commissioner in 10 months by 3.46 lakh proof litre (2.08 lakh bulk litre) between the period from April 2006 and February 2011. However, penalty of ₹ 55.29 lakh for the shortfall was not levied.

3.7.16.2 Non-registration of lease deeds

As per Section 17 (d) of the Registration Act, 1908, lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent is a compulsorily registrable document with a fee of ₹ 5,000. As per Article 35 of the Indian Stamp Act, where the period of lease is below 30 years, stamp duty is payable at one *per cent* on the amount of rent payable.

We noticed (between February and June 2012) from license renewal file in the Commissionerate, Chennai, that 13 lease deeds executed between February 2003 and January 2010 by licensees were not registered with the Registration Department even though the period of lease was more than one year and the total lease rent was ₹ 18.94 crore. The Prohibition and Excise Department also did not ensure that the lease deeds are executed on the requisite stamp paper and registered by the licensees. The loss of revenue due to non-registration of the lease deeds in these 13 cases amounted to ₹ 19.60 lakh.

3.7.16.3 Location of retail shops

The Government of India, in October 2007 and December 2011 issued instructions to State Governments for removal of liquor shops along the National Highways (NH) and no fresh licenses should be issued to open shops along the NHs.

We noticed during our audit that 504 retail shops were located along NHs excluding the shops located in important State highways. In May 2012, the TASMAC opened a new premium brand liquor shop on the NH at Villupuram. Thus, instructions of the Central Government regarding removal of shops and non-issue of fresh license to open shops along the NHs were not followed.

After we pointed this out, the Principal Secretary during Exit Conference accepted the audit observation and informed that a policy would be arrived with regard to relocation of shops in NHs.

3.7.17 Conclusion

There was no transparency in granting privilege/license for setting up a new manufactory. Revision of privilege fee and license fee for new distilleries, IMFS and beer manufactories was not done for more than 10 years and fixation of privilege fee for expansion units was also not considered. Non-compliance of the provisions of the Acts and Rules and defects in notifications resulted in leakage of revenue. Though the use of ethanol blended petrol would reduce pollution level, the Department did not take steps to restore production of ethanol for blending with petrol. Internal audit and flying squad were not functioning effectively as there was no proper planning and adequate staff strength.

3.7.18 Recommendations

The Government may consider

- evolving a transparent system for grant of new licenses;
- revising the privilege/license fee for new distillery and beer manufactory and also fixing of privilege fee for expansion units ;
- restoring the use of ethanol blended petrol as it would reduce the pollution level and
- strengthening the internal audit wing and flying squad by posting adequate staff and imparting necessary training.

Executive Summary

Appreciable increase in tax collection	In 2011-12 the collection of revenue from stamp duty and registration fees increased appreciably by 42 *per cent* over the previous year which was attributed by the Department to increase in sale of non-judicial stamps and fees for registering documents and increase in monetary value with effect from 12 July 2011 under Articles 6(1) (a), 35 and 48 of Schedule I of the Indian Stamp Act, 1899.
Arrears of revenue	Out of the arrears of ₹ 246.19 crore pending as on 31 March 2012, ₹ 245.16 crore, i.e. 99 *per cent* were covered under the Revenue Recovery Act.
Cost of collection	In all the three years from 2009-10 to 2011-12, the expenditure incurred on collection was more than the all India average cost of collection in the preceding years.
Internal audit	There was short fall in the conduct of internal audit in the past few years due to shortage of staff in the internal audit wing. This resultantly had its impact in terms of the weak internal controls in the Department. It also led to the omissions on the part of the registering officers till the conduct of our audit.
Results of audit conducted by us in 2011-12	In 2011-12 we test checked the records of 237 units and found undervaluation of duty and other irregularities amounting to ₹ 128.92 crore in 717 cases. The Department accepted underassessments and other deficiencies amounting to ₹ 5.70 crore in 87 cases, out of which, ₹ 3.34 crore involved in 14 cases were pointed out during the year and the rest in earlier years. Out of the above, an amount of ₹ 3.51 crore has been collected.
What we have highlighted in this Chapter	In this chapter we present illustrative audit observations of ₹ 76.58 crore selected from the observations relating to misclassification of instruments, undervaluation of properties, etc. noticed during our test check of records in the registration offices, where we found that the provisions of the Acts/Rules were not observed. It is pertinent to mention that though similar omissions have been pointed out by us in earlier years, the Department had not taken corrective action despite the fact that such mistakes were apparent from the records made available to us.
Our conclusion	The Department needs to improve the internal control system including strengthening of internal audit so that the weaknesses in the system are addressed and omission of the nature pointed by Audit are avoided in future. It also needs to initiate action to recover non/short levies and under valuations pointed out by us. The cost of collection in the State is higher than the all India average cost of collection and thus the Department needs to take action to reduce the cost of collection.

CHAPTER IV

STAMP DUTY AND REGISTRATION FEES

4.1 Tax administration

The Registration Department administers the Indian Stamp Act, 1899 and the Registration Act, 1908 and the Rules made thereunder. The administration of the Department is vested with the Inspector General of Registration. There are 50 registration districts comprising 568 registration offices in the State. The levy and collection of stamp duty and registration fees are done by the registering authorities. The monitoring and control at the Government level is done by the Secretary, Commercial Taxes and Registration Department.

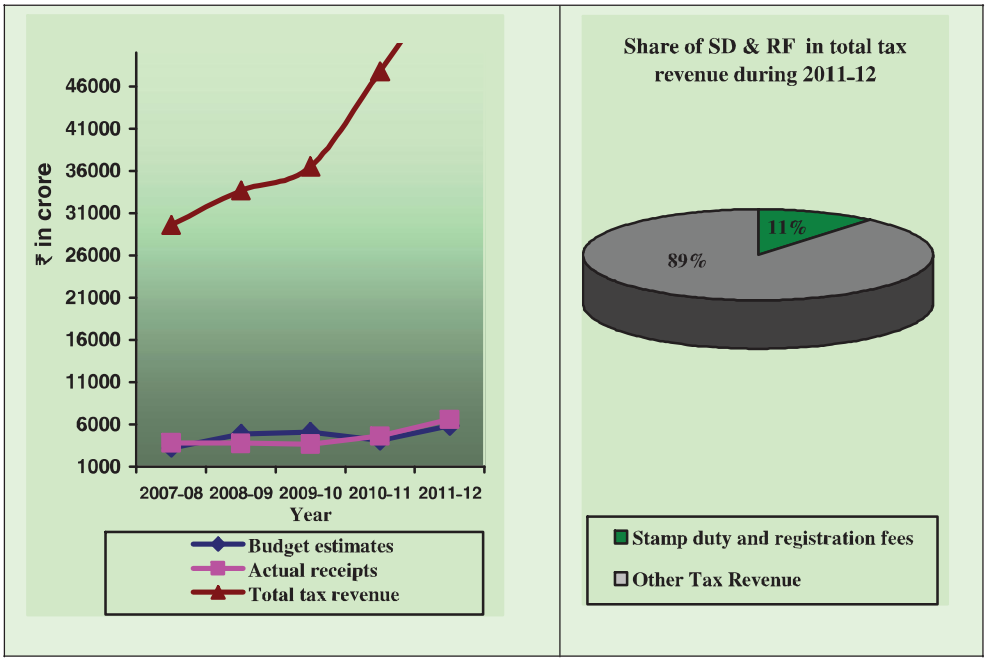
4.2 Trend of revenue

Actual receipts from stamp duty and registration fees during the last five years from 2007-08 to 2011-12 along with the total tax revenue during the same period are exhibited in the following table:

(₹ in crore)

Year	Budget estimates	Actuals	Variation excess (+)/ short fall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts *vis-à-vis* total tax receipts
2007-08	3,258.88	3,804.74	(+) 545.86	(+) 17	29,619.10	13
2008-09	4,888.90	3,793.68	(-) 1,095.22	(-) 22	33,684.37	11
2009-10	5,093.99	3,662.16	(-) 1,431.83	(-) 28	36,546.66	10
2010-11	4,096.18	4,650.59	(+) 554.41	(+) 14	47,782.17	10
2011-12	5,856.07	6,580.78	(+) 724.71	(+) 12	59,517.66	11

A line graph of budget estimates, actual receipts and total receipts and a pie chart depicting the position of stamp duty and registration fees receipts in the total tax receipts are given below:



In 2011-12 the collection of revenue from stamp duty and registration fees increased by 42 *per cent* over the previous year which was attributed by the Department to increase in sale of non-judicial stamps and fees for registering documents and also includes the increase in monetary value with effect from 12 July 2011 under Articles 6(1) (a), 35 and 48 of Schedule I of the Indian Stamp Act, 1899.

4.3 Analysis of arrears of revenue

Arrears of revenue as on 31 March 2012 along with the figures for the preceding four years as furnished by the Department are given in the following table:

(₹ in crore)

Year	Opening balance	Addition	Total	Amount collected during the year	Closing balance
2007-08	160.35	17.99	178.34	29.53	148.81
2008-09	148.81	29.93	178.74	30.86	147.88
2009-10	147.88	65.37	213.25	15.75	197.50
2010-11	197.50	37.15	234.65	20.73	213.92
2011-12	213.92	72.91	286.83	40.64	246.19

Arrears as on 31 March 2012 includes ₹ 148.81 crore outstanding for more than five years. Demands amounting to ₹ 245.16 crore were covered under the

Revenue Recovery Act. Demands of ₹ 1.03 crore were stayed by the High Court and other judicial authorities.

The above details indicate that substantial amounts were covered under the Revenue Recovery Act.

We recommend that the Government may consider fixing targets for collection of old arrears in a time bound manner and closely monitor the performance of the Departmental officers *vis-à-vis* the set targets.

4.4 Cost of collection

The gross collection in respect of stamp duty and registration fees, expenditure incurred on collection and percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the preceding years are given in the following table:

(₹ in crore)

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the preceding years
2009-10	3,662.16	162.10	4.43	2.77
2010-11	4,650.59	177.06	3.81	2.47
2011-12	6,580.78	186.47	2.83	1.60

The above table indicates that the percentage of expenditure on collection was more than the all India average in all the years.

The Government needs to take appropriate measures to bring down the cost of collection.

4.5 Impact of Audit Reports

4.5.1 Revenue impact

During the last five years, we had pointed out through our Audit Reports under valuation of properties, misclassification of instruments and other irregularities, with revenue implication of ₹ 156.26 crore in 29 paragraphs. Of these, the Department/Government had accepted audit observations involving ₹ 33.88 crore and had since recovered ₹ 9.33 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Accepted money value	Amount recovered
	Number	Money value		
2006-07	3	8.58	8.58	1.00
2007-08	12	42.63	19.72	6.95
2008-09	8	10.73	3.38	0.68
2009-10*	1	90.84	0.46	0.46
2010-11	5	3.48	1.74	0.24
Total	**29**	**156.26**	**33.88**	**9.33**
*** Stand alone report on Registration Department.**				

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

4.6 Working of internal audit wing

The details of the number of offices due for internal audit and those completed, as furnished by the Department are given in the following table:

Year	Number of offices due	Number of offices completed	Balance	Percentage of col.3 to 2
1	2	3	4	5
2007-08	832	832	----	100
2008-09	881	859	22	97.50
2009-10	1,005	879	126	87.46
2010-11	991	563	428	56.81
2011-12	935	624	311	66.74

The Department attributed the reasons for shortfall in conducting internal audit to vacancy in staff strength and stated that special audit for cases handled by officials who were retiring and in respect of cases which would become time barred were only being conducted by engaging other registering officers. It was further stated that the vacancies have since been filled up and the arrears would be minimised in future.

4.7 Results of Audit

We test checked the records of 237 Departmental offices during the period from April 2011 to March 2012 which revealed under valuation of tax and other irregularities amounting to ₹ 128.92 crore in 717 cases, which broadly fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Under valuation of properties	147	57.09
2	Misclassification of instruments	344	58.66
3	Other observations	226	13.17
	Total	**717**	**128.92**

During the course of the year 2011-12, the Department accepted under assessments and other deficiencies amounting to ₹ 5.70 crore in 87 cases, out of which, ₹ 3.34 crore involved in 14 cases were pointed out during the year and the rest in earlier years. Out of the above, an amount of ₹ 3.51 crore has been collected.

After the issue of draft paragraph, the Department recovered an amount of ₹16.17 lakh.

A few illustrative cases involving ₹ 76.42 crore are mentioned in the following paragraphs:

4.8 Audit observations

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

4.9 Non-compliance of the provisions of the Acts/Rules

The provisions of the Indian Stamp Act, 1899, the Registration Act, 1908 and the Rules made thereunder require payment of stamp duty and registration fees at the time of executing and registering the documents viz., Conveyance Deed, Power of Attorney for consideration, Sale Agreements, etc., as per the rates prescribed in the schedule to the Act.

We noticed non-compliance of the provisions of the Acts/Rules in some cases as mentioned in paragraphs 4.9.1 to 4.9.11 which resulted in non/short realisation of revenue of ₹ ***76.42 crore***.

4.9.1 Misclassification of instrument of Power of Attorney for consideration as General Power of Attorney

As per Article 48(e) of Schedule I of the Indian Stamp Act, 1899 (IS Act), when a Power of Attorney was given for consideration and authorising the attorney to sell any immovable property, stamp duty is to be levied at the rate of four *per cent* on the market value equal to the amount of consideration.

As per Section 27 of the IS Act, the consideration, the market value and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth therein.

As per Section 33A of the Act *ibid*, if, after the registration of any instrument, it is found that proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, be recovered from the person liable to pay the duty, as an arrear of land revenue.

As per the second proviso under Section 33A, no inquiry for recovery of deficit stamp duty shall be commenced after the expiry of three years from the date of registration of the instrument.

4.9.1.1 We observed during test check (August 2011) of the documents in Sub Registry, Dhamal that through a deed of exchange executed in February 2008 and registered in April 2008 a Trust exchanged land measuring 187 cents with its Power of Attorney agent 'A' for a consideration of a non refundable deposit of ₹ 12.92 crore paid in August/September 2006 and land measuring 10.43 acres comprised in various survey numbers in Uzhakolpattu Village, Kancheepuram District.

We further observed during scrutiny of documents in the Sub-Registry, Mylapore that an instrument of Power of Attorney was executed and registered in September 2006. The recitals of the instrument revealed that the Trust had appointed its Power of Attorney agent 'A' to execute and register necessary deeds of gift or other conveyance of open space reservation to take up integrated and greater development of the land measuring 187 cents in Tirumangalam village. In the document it was stated that no consideration was received. The document was classified as General Power of Attorney and stamp duty and registration fees aggregating ₹ 150 was collected. However, as per the deed of exchange, the non refundable deposit of ₹ 12.92 crore was paid by the power holder to the Trust prior to the execution of the deed of Power of Attorney. Though, it was evident from the above fact that the Trust had executed the instrument of Power of Attorney in September 2006 in favour of

the power holder only after obtaining the consideration, the deed was misclassified as General Power of Attorney instead of Power of Attorney for consideration. This resulted in loss of revenue by way of stamp duty and registration fees of ₹ 64.60 lakh.

We pointed this out to the Department (August 2011) and to the Government in (June 2012). The Government in July 2012 replied that in order to treat the document as Power of Attorney for consideration, there must be a specific mention in the deed of Power of Attorney that the amount of consideration has been received. Further, the time factor has to be proved by the Department if compliant is to be filed under Section 27 and the onus is not on the part of the registrants.

The reply is not tenable since, as per Section 27, factors affecting the chargeability of the instrument should be fully and truly disclosed by the registrants. Further, from the exchange deed, it could have been ascertained by the registering authority that the non-refundable deposit has been received as consideration for the Power of Attorney. The Registering officer failed to notice the above facts and take action as provided under Section 33A for recovery of the deficit stamp duty. We are awaiting further report (December 2012).

4.9.1.2 We observed during test check (July 2011) of the documents in the office of the Sub Registry, Gandhipuram that through an instrument of Power of Attorney executed on 27 April 2007 and registered on 03 May 2007 in the Sub Registry, Peelamedu, two persons 'A' and 'B' appointed the representatives of a company 'C', as their Power of Attorney Agent (POA) to transfer their land. The document was classified as General Power of Attorney and stamp duty and registration fees of ₹ 150 was collected.

We also observed on a scrutiny of the sale deed executed and registered in 27 April 2010 by 'A' and 'B' (vendors) in favour of a company 'D' with 'C' as confirming party, that the vendors have entered into a sale agreement with the confirming party on 27 April 2007 i.e., the date on which they were appointed as POA and had also received a sum of ₹ 7.00 crore as sales consideration. As the date of instrument of Power of Attorney and the date on which the sale agreement was entered into by the same parties are one and the same, the power should have been treated as power for consideration, instead of General Power of Attorney. The misclassification resulted in short realisation of stamp duty and registration fees of ₹ 35 lakh.

After we pointed this out to the Department in September 2011 and to the Government in May 2012, the Government replied in September 2012 that as both the documents have been executed on the same day, the registrants can always say that the deed of Power of Attorney was executed first and after registration of the same they had received the consideration and hence the document is General Power of Attorney only.

The reply is not tenable since as per Section 27, factors affecting the chargeability of the instrument should be fully and truly disclosed by the registrants. As both the documents have been executed on the same date, the Power of Attorney should have been treated as power for consideration based on the facts available with the Department which was suppressed by the parties initially. The Registering officer failed to notice the above facts and take action as provided under Section 33A for recovery of deficit stamp duty. We are awaiting further report (December 2012).

4.9.1.3 We observed during test check of the records (October 2008) in the office of the Sub Registry, Thiruporur that two Development Agreements were executed and registered in February 2008. The agreements were entered into between (i) 11 persons with a company 'A' for development of 18.50 acres and (ii) eight persons with two individuals ('B' and 'C') for development of 8.70 acres. The agreements were for development of the land as residential/multi storey commercial complex. As per the recitals in both the agreements, it was agreed that the owners shall have right, title and interest in 32.5 *per cent* of the schedule property and the superstructure to be constructed thereon and the right, title and interest in the balance 67.5 *per cent* of the schedule property and the superstructure shall belong to the developers. The developers had also deposited a sum of ₹ 19.00 lakh with the owners as interest free security deposit.

Further, the owners had simultaneously, as agreed in the Development Agreement, executed two instruments of Power of Atorney appointing the developers, 'A' and 'B' respectively as their Power of Attorney and registered them in February 2008, to sell, convey, assign, alienate transfer and deal with or dispose of the 67.5 *per cent* of the super built up area and the proportionate undivided share in the property. As the owners had given power to the developers to deal with the property including sale, transfer etc, to an extent of 67.5 *per cent* of the undivided share of land with the super structure thereon (Developer's share) in consideration of development of 32.5 *per cent* of the undivided share of the land held by the owners, the instruments of Power of Attorney should have been classified as instruments of Power of Attorney for consideration under Article 48(e) and stamp duty and registration fees was required to be levied at five per cent on the value of 67.5 *per cent* of undivided share of land. The misclassification resulted in short levy of stamp duty and registration fees of ₹ 27.55 lakh[34].

After we pointed this out to the Department (October 2008) and to the Government (June 2012), the Government replied in September 2012 that when a question arises, whether a document is chargeable to duty, the first thing to be looked into is the recital in the document in order to determine the character thereof and in the document, as it has been explicitly recited that no consideration was paid, the instrument has to be treated as General Power of Attorney. Further, the deposit is a refundable deposit.

---

[34] Total extent = 18.50 + 9.20 = 27.20 acres
67.5 *per cent* of 27.20 acres = 18.36 acres
Value of the property = 18.36 X ₹ 30,00,000 per acre = ₹ Rs.5.51 crore
Stamp duty and Registration Fee at 5 *per cent* = ₹ 27.55 lakh.

The reply is not tenable since it is clear from the development agreements that in consideration of the superstructure to be built on the 32.5 *per cent* of the land, Power of Attorney was given for the remaining 67.5 *per cent* of the land. Hence the document is to be treated as Power of Attorney for consideration. The Registering officer failed to notice the above facts and also to classify the deeds of Power of Attorney under Article 48(e) and recover the deficit stamp duty as provided for in Section 33A of the Act. We are awaiting further report (December 2012).

4.9.1.4 We observed during test check (February 2012) of documents in the office of the Sub Registry, Thiruporur, that principal 'A' had executed and registered a General Power of Attorney in February 2011 appointing 'B' as his lawful Power of Attorney agent to deal with the land measuring 2.17 acres, including sale of the said land. It was also stated that no consideration was received and the deed was irrevocable.

We further observed that the above parties had entered into an agreement for sale in respect of the said property and registered it on the same day of registration of the power document in February 2011. An amount of ₹ 2.65 crore was received as advance, on various dates, prior to the execution of the agreement for sale/power document, against the total consideration of ₹ 2.84 crore by principal 'A' from Power of Attorney agent 'B'. This fact was suppressed in the deed of Power of Attorney and registered as General Power of Attorney. The Registering officer also failed to notice the above fact which resulted in misclassification of Power of Attorney for consideration as General Power of Attorney and consequent short levy of stamp duty and registration fees of ₹ 13.23 lakh.

After we pointed this out (March 2012), the Department replied that as per the instrument of Power of Attorney, no consideration was received. Further, the two instruments viz, the power deed and sale agreement were separate instruments and the registering authority could not link the different deeds for the purpose of chargeability of the instruments.

The reply is not tenable since as per the registered agreement for sale between the above parties, the Principal had already received a consideration of ₹ 2.65 crore from the Agent. This fact was suppressed by the parties in the instrument of Power of Attorney, thereby violating the provisions of Section 27 of the IS Act. Further, as both the instruments were registered on the same date, the argument that the sub registrar could not link the two documents is also not acceptable. The instrument of Power of Attorney should have been classified as power for consideration under Article 48(e). We are awaiting further report (December 2012).

4.9.1.5 We observed during (January 2012) test check of records in the office of the Sub Registry, Thiruvottiyur that through three instruments of General Power of Attorney executed and registered in August and September 2010, Power of Attorney Agents were appointed by the vendors to deal with the property including sale, in respect of land measuring 5.08 acres and 1.24 acres comprised in various survey numbers at Vallur village and Thiruvottiyur village respectively. It was also stated that no consideration was received.

We further observed that they had entered into agreements for sale of the same properties with the power agent/one of the power agents and the agreements were registered in August and September 2010. The vendors had received a sum of ₹ 1.25 crore as advance (24 August 2010 and 2 September 2010), out of the total consideration of ₹ 3 crore. From the above it was evident that the instruments of Power of Attorney were executed on receiving the consideration of ₹ 1.25 crore and were classifiable under Article 48(e) as power for consideration. This fact was suppressed by the parties in the instruments of Power of Attorney by stating that "no consideration was received" which resulted in short levy of stamp duty and registration fees of ₹ 6.25 lakh.

After we pointed this out to the Department in February 2012 and to the Government (between November 2011 and March 2012), the Government replied in September 2012 that as the documents were executed on the same day, the opinion of the Government Pleader was sought and it was opined that the registrants can always say that the power was executed first and after registration of power, they had received the consideration and hence the document is a General Power of Attorney only.

The reply is not tenable since both the documents have been executed on the same date and the Power of Attorney should have been treated as power for consideration based on the facts available with the Department which was suppressed by the parties initially. The Registering Officer also failed to notice the above fact and initiate action for recovery of deficit stamp duty as provided for in Section 33A of the Act. We are awaiting further report (December 2012).

4.9.2 Misclassification of instruments of Conveyance as Cancellation Deeds

According to Section 2(10) of the IS Act conveyance includes a conveyance on sale and every instrument by which property whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I.

As per Article 23, in the case of conveyance of an immovable property, stamp duty is leviable at the rate of eight *per cent* including transfer duty surcharge on the market value of the property. As per Article 17 of the Schedule I of the IS Act, for Instrument of Cancellation, if attested and not otherwise provided for, stamp duty of ₹ 50 is to be levied on the same.

It was judicially held (cf Emperror Vs Rameshardoss 32 All 171 SIC 697) that there can be no such thing as cancellation of a conveyance under which right of property has already been passed. Property can be retransferred only by re-conveyance. Further, it was held (W.A.Nos.592 & 938 of 2009, in Latif Estate Line India Ltd., Vs. Registration Department) by the Madras High Court that cancellation of a Sale Deed by a Deed of Cancellation can be effected only when a condition that title will pass on payment of consideration, was included in the original Sale Deed.

We observed during test check of records in 30[35] Sub Registries (between December 2009 and February 2012) that conveyance of properties effected through 192 Sale Deeds were cancelled by executing and registering Cancellation Deeds subsequently, on the ground that consideration was not received and possession not handed over or the properties were not in absolute ownership of the original vendor. The cancellation was effected:

i) within one year in 45 cases,

ii) between one year and five years in 140 cases and

iii) more than five years in seven cases.

[35] Anna Nagar, Aruppukottai, Avinashi, Cheyyur, Joint-II Dindigul, Guduvancherry, Kanniakumari, Joint-II Karur, Kodambakkam, Konnur, Kottaram, Madhukkarai, Mannachanallur, Manavalanagar, Neelankarai, Pallipalayam, Ponneri, Red Hills, Jt-II Saidapet, Sathyamangalam, Sooramangalam, Surampatti, Tambaram, Teppakulam, Thirupporur, Thiruvallore, Vadavalli, Vepur, Virugambakkam and Woraiyur

The reasons for cancellations are given in the following table:

Sl. No.	Reasons for cancellation	As per the original sale deed	No.of cases involved
1	Consideration not received/ possession not given	Consideration received and possession given	119
2	Both parties agreed mutually to cancel the sale		34
3	Cancelled due to various mistakes like mentioning of wrong plot no., wrong address, wrong ownership	-----	14
4	Miscellaneous cases like i) change of circumstances, ii) parties not acted as per the sale deed, etc.	------	25
	Total		**192**

Since the vendors had re-acquired the right and interest over the properties from the original purchasers through Cancellation Deeds, these deeds were to be treated as Conveyance Deeds. Accordingly, stamp duty and registration fees amounting ₹1.96 crore was required to be levied on the market value of the properties of ₹ 21.79 crore against which ₹ 0.29 lakh was collected by the Department. Thus, even considering the value of property as on the date of original Sale Deed, there was a short collection of stamp duty and registration fees of ₹ 1.96 crore due to misclassification of Conveyance Deeds as Cancellation Deeds.

After we pointed this out (between January 2010 and March 2012), the Department replied that as the relevant Sale Deeds registered previously were cancelled, it has to be treated as 'Cancellation Deeds' only and would fall under Article 17 of the IS Act. Hence there was no loss of revenue.

The reply is not tenable since as per the judicial decision cited there cannot be cancellation of conveyance under which right of property has already been passed. Property can be transferred only by a re-conveyance. Further, the cancellation of a Sale Deed can be effected only when there was a specific condition in the original deed for cancellation for non-receipt of consideration. There was no such condition in any of the original Sale Deeds. Therefore, these Sale Deeds cannot be cancelled by executing Cancellation Deeds under Article 17.

We reported the matter to the Government (between October 2011 and March 2012) and are awaiting their reply (December 2012).

4.9.3 Misclassification of instruments dual in nature as a single instrument

As per Section 5 of the IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

As per Article 23 of the Schedule I of the IS Act, in the case of conveyance of immovable property, stamp duty shall be levied at the rate of eight *per cent*, including surcharge, on the market value of the property which is the subject matter of conveyance.

As per Article 55A of the Schedule I of the IS Act, when a person renounces a claim against any specified property, stamp duty at one per cent of the market value of the property subject to a maximum of ₹ 10,000 and registration fees at one per cent as per the Registration Act, 1908, is leviable.

We observed during test check of records (February 2011 and March 2012) in four Sub Registries[36] that through ten instruments, the confirming parties involved in the execution of sale deeds received consideration for releasing their contractual and litigation rights in favour of the purchasers. As such, the instruments should have been classified as dual in nature viz., conveyance and release (among non family members) and stamp duty and registration fees were to be levied on both the documents. However, stamp duty and registration fees were collected under Article 23 of Schedule I, for conveyance only and not for release under Article 55A of Schedule I. This resulted in short levy of stamp duty and registration fees of ₹ 13.95 lakh.

After we pointed this out (between October 2011 and March 2012), the Department replied (February 2012) that the Registering officer could not go beyond the recitals of the instrument. The party who is having an agreement to sell with the vendor can act as confirming party. The confirming party was included by way of abundant caution. The sale was confirmed by the confirming party by signing in the instrument and this cannot be termed as release of rights. The release of rights over the properties by the parties are incidental for which no additional duty can be levied since higher duty for sale was levied and collected.

The reply requires reconsideration for the reason that it is clear from the recitals of the documents that the confirming parties had entered into sale agreement with the vendors in respect of the schedule properties and thereby having purchasing right over the properties. Subsequently, the properties were sold to the ultimate purchasers and the vendors excuted the sale deeds and the sale agreement holders also sign the sale deeds in their capacity as confirming

[36] SR Thiruporur, SR Thiruvottiyur, Joint-II SR Thousand Lights and SR Walajabad.

parties in order to release their purchasing rights, so that the purchasers would get a clear and complete title to the properties conveyed and the amount was also paid to confirming parties. Thus, it is clearly evident that the confirming parties have relinquished their contractual rights and hence the instruments have to be classified as dual in nature.

We reported the matter to the Government (March 2012) and are awaiting their reply (December 2012).

4.9.4 Misclassification of instrument of Conveyance as Certificate of Sale

As per sections 3 and 17 of the IS Act, every instrument mentioned in Schedule I is liable for stamp duty. As per Article 23 of the Schedule I of the IS Act, in the case of conveyance of an immovable property, stamp duty is leviable at the rate of eight *per cent* including transfer duty surcharge (TDS) on the market value of the property.

As per Article 18 of Schedule I of the IS Act, on sale of any property through public auction by a Civil Court or Revenue Court or Collector or other revenue officer in respect of which a certificate of sale is issued to the purchasers, stamp duty at the rate of six *per cent* is leviable on the market value equal to the consideration. However, their registration is optional as per section 18 of the Registration Act.

We observed during test check (March 2011) of the documents in the Sub Registry, Thiruvottiyur that in two cases, Certificates of Sale were issued (October 2007 and September 2009), by persons (Banks under SARFAESI[37] Act) not empowered to issue Certificate of Sale. Even though the instruments were not registered, intimation regarding one case was sent by the bank to the Registering Officer and in another case, we, through cross verification of subsequently registered Sale Deed, were able to establish that the Certificate of Sale was issued by bank previously in respect of that property. The Registering Officer failed to notice the above information available with him and take appropriate action. The instruments were to be classified as Conveyance Deeds and stamp duty was leviable on the market value of ₹ 4.84 crore. The misclassification of the instruments resulted in short levy of stamp duty and registration fees of ₹ 43.56 lakh.

After we pointed this out (April 2011), the Department replied (March/July 2011) that the certificate of sale issued under the SARFAESI Act, by commercial banks are classifiable under Article 18 and are not compulsorily registrable. The Department further replied that the Hon'ble Supreme Court of India in its judgement had held that there was no need to read the term "Revenue Officer" in any restricted sense and it was wide and comprehensive

[37] Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002.

enough to include the Tax Recovery Officer who effects a compulsory sale for the recovery of income tax demand. Hence, the Certificate of Sale issued by the authorised officer of a bank shall also be deemed to be issued by the revenue officer.

The reply is not tenable since the judgement quoted in the reply relates to recovery of income tax due to the Government. The same is not applicable in the instant case. Further, under the SARFAESI Act, even though banks are allowed to recover the dues from debtors through public auction by the authorised officer, he is not specifically termed as "Revenue Officer" for the purpose of Stamp Act and Registration Act. It has been judicially held[38] that as far as the certificate issued by the authorised officer is concerned, it cannot be equated with the certificate issued by the revenue or civil court. In view of this, the certificate of sale issued by the banks do not come under the purview of Article 18 of the IS Act.

We reported the matter to the Government (February 2012) and are awaiting their reply (December 2012).

4.9.5 Short levy due to undervaluation of properties

As per Article 23 of Schedule I of the IS Act, in the case of conveyance of immovable property, stamp duty shall be levied at the rate of eight *per cent*, including surcharge, on the market value of the property which is the subject matter of conveyance.

According to Section 27 of the IS Act, the consideration, the market value and all other facts and circumstances affecting the chargeability of the instrument with duty or the amount of duty with which it is chargeable shall be fully and truly set forth therein.

4.9.5.1 It has been judicially held[39] that the guideline value will only afford a prima facie basis to ascertain the true or correct market value. The guideline value is not sacrosanct, but only a factor to be taken note of in respect of an area in which the property transferred lies. Therefore, for the purpose of Stamp Act, guideline value alone is not a factor to determine the value of a property.

(i) We observed (February 2012) during test check of the documents in Sub Registry, Thiruporur that through three sale deeds executed and registered in July 2010, land measuring 686 cents was conveyed for a total consideration of ₹ 6.17 crore stating that the nature of land was agricultural land.

We, however, observed from the subsequent sale deed executed and registered in August 2010 by the vendor (purchaser in the earlier document) alongwith another vendor (second vendor) that vacant house sites measuring 2.25 lakh sq.ft were conveyed for a consideration of ₹ 17.71 crore in favour of a society

[38] WP No.12934 of 2009 in the High Court of Madras dated 9.6.2010.
[39] Sai Bharathi v/s J.Jayalalitha – 2003 – AIR SCW 6249

at the rate of ₹ 787 per sq.ft. As per the recitals of the document, the vendor had entered into a sale agreement with the purchaser society to develop and convey the approved land measuring 24.70 acres including the above mentioned land. Accordingly, layout sanction plan, vide DTP No.68/2009 was obtained from the Director of Town and Country Planning Authority and the entire land was developed as house site and was named as IT Highway Co-operative Nagar. From the above, it is evident that on the date of execution of the said three sale deeds in July 2010, the land measuring 634 cents (52 cents comprised in S.No.722/1B has not been included in the entire extent of 24.70 acres) was fully developed as house site.

Thus, the parties suppressed the nature of land and undervalued the property conveyed in July 2010 to avoid payment of higher stamp duty. The Registering authority also failed to notice the suppression of facts regarding the nature of land. This resulted in undervaluation of land measuring 634 cents by ₹ 16.04 crore involving stamp duty and registration fees of ₹ 1.44 crore.

After we pointed this out, the registering authority replied (February 2012) that stamp duty was payable on the instrument presented for registration and not on any other previous instrument. The higher price fetched in a later transaction could not be applied to the earlier transactions.

The reply requires reconsideration since as seen from the recitals of the documents through which the vendor had purchased the lands and the instrument through which he conveyed a part of it, brings to light suppression of facts regarding the nature of land and the market value of the property. It is also evident that the land was developed as house site on the date of execution of these sale instruments. We are awaiting further reply (December 2012).

(ii) We observed during the test check (June 2011) of the documents in the office of the Sub Registry, Kottaram, that through a sale document executed and presented in December 2007 and registered in August 2009, a land property was conveyed for a consideration of ₹ 10.37 lakh. We further observed that through four documents registered earlier in May 2006, the same property along with building and coconut trees etc. was conveyed for a consideration of ₹ 94.37 lakh. The said documents were cancelled in September 2007. The same property was conveyed again, however, for a lesser value as stated above. Thus, there was undervaluation of the property by ₹ 84.00 lakh and consequent short levy of stamp duty and registration fees of ₹ 7.56 lakh.

We pointed this out to the Department (June 2011 and February 2012) and are awaiting their reply (December 2012).

Guidelines are supplied to the Registering Officers to arrive at the market value of the land.

The Central Valuation Committee for Guide Line Value decided in September, 2007 that if any document has been registered for a particular survey number/street/nagar with a higher value before 01 August 2007, the same should be taken into account for registering a document on or after 01 August 2007 in respect of that survey number/street/nagar.

4.9.5.2(i) We observed during test check of documents (February & December 2011) in the office of the Sub Registry, Konnur that through a document registered in May 2006, vacant land in Mugappair village was conveyed adopting the value of the land at ₹ 1,877 per sq.ft. However, in respect of seven instruments of sale executed and registered between September 2009 and March 2011 the value of the land was adopted at the rate ranging between ₹ 1,000 and ₹ 1,500 in respect of the same survey numbers. The Department did not take into cognizance the decision of the Central Valuation Committee and adopt the rate of ₹ 1,877 per sq.ft adopted in May 2006 itself. The non adoption of correct rate resulted in undervaluation of land by ₹ 5.85 crore and consequent short levy of stamp duty and registration fees of ₹ 52.63 lakh.

After we pointed this out (February 2011), the Department in August 2011 replied that the two instruments registered in December 2009 were referred to the District Revenue Officer (Stamps), Chennai for determination of market value of the property. We are awaiting further report in respect of the two cases and reply in respect of the other cases (December 2012).

(ii) We observed during test check of documents in the office of the Sub Registry, Anna Nagar (December 2009) that through a document registered in June 2007, a property in Jawaharlal Nehru Road in Koyambedu village was conveyed adopting the value of the house site at ₹ 6,346 per sq.ft. However, in respect of 10 instruments executed between April 2008 and March 2009 the value of the land was adopted at the rate ranging between ₹ 4,156 and ₹ 4,750 per sq.ft. The Department did not take into cognizance the decision of the Central Valuation Committee and adopt the rate of ₹ 6,346 per sq.ft adopted in June 2007 itself in respect of the same survey number. This resulted in under valuation of land by ₹ 2.94 crore and consequent short levy of stamp duty and registration fees of ₹ 26.47 lakh.

After we pointed this out (January 2010), the Department replied (June 2010) that the value adopted in the document registered before 01 August 2007 was a fancy value and that cannot be adopted for all the properties lying in Jawaharlal Nehru Road. The Department further replied that as per the orders of the Government, higher rate need not be adopted till the next Guideline value revision.

The reply is not tenable as the higher rate adopted in June 2007 may be a fancy value for that period and not for subsequent period wherein revision has

come into effect (01 August 2007) and the orders of the committee are binding on the Department. Further, the order of the Government mentioned in the reply has not been produced to audit. We are awaiting further report (December 2012).

(iii) We observed during test check (October 2008) of the documents in the office of the Sub Registry, Thiruporur that through two sale deeds executed and registered on the same date i.e., 13 March 2008, land measuring one acre and 1.26 acre respectively were conveyed, adopting the value of ₹ 2.72 lakh per Cent and ₹ 2.15 lakh per Cent respectively. Though, the properties were situated in the same survey number, two different rates were adopted. This resulted in undervaluation of the property by ₹ 71.82 lakh in the second document and consequent short levy of stamp duty and registration fees of ₹ 6.46 lakh.

After we pointed this out (December 2008), the Department replied that as per the resolution dated 11 September 2007 of the Central Valuation Committee, the higher value recorded after 01 August 2007 (the date of revision of guideline value) need not be taken into account and the document was registered adopting a value higher than the guideline value and hence there was no undervaluation.

The reply is not tenable since the properties are situated in the same survey number and therefore the higher rate at which the first property was conveyed should have been adopted for the conveyance of the second property also. It is further reiterated that stamp duty is leviable on the market value of the property and if the guideline value is less than the market value, the same should not be considered. We are awaiting further report (December 2012).

We reported the matter to the Government (between November 2011 and March 2012) and are awaiting their reply (December 2012).

According to Section 47A(1) of the IS Act, if the registering officer has reason to believe that the market value of the property which is the subject matter of conveyance, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of the property and the proper duty payable thereon.

4.9.5.3(i) We observed during test check (June 2011) of the documents in the office of the District Registry, Vellore that in four instruments of sale registered between November 2010 and March 2011, properties were conveyed for ₹ 1.03 crore. Though all the four instruments were marked for reference under Section 47A(1), as there was undervaluation of properties, they were not referred to the Special Deputy Collector (Stamps), Vellore for determination of the market value of the properties and also the duty payable thereon. The market value of the property as per guideline value worked out to ₹ 2.61 crore as against ₹ 1.03 crore set forth in the documents. The deficit stamp duty and registration fees payable on ₹ 1.58 crore would be ₹ 14.27 lakh.

After we pointed this out (July 2011) the Department replied (April 2012) that the instruments were referred to Special Deputy Collector (Stamps), Vellore in August 2011. Out of the four documents, two documents registered in the year 2010 were cleared under Samadhan Scheme 2011, after collecting the deficit stamp duty and registration fees aggregating ₹ 8.27 lakh as against the collectable amount of ₹ 12.34 lakh. We are awaiting the collection details of ₹ 1.93 lakh in respect of the remaining two documents (December 2012).

(ii) We observed during test check of records (January 2010) in the office of the Sub Registry, Guduvancherry, that through an instrument of conveyance executed and registered in April 2008, land admeasuring 3.01 acres was conveyed for a consideration of ₹ 15.07 lakh. The same property was again sold within 10 days in May 2008 for a consideration of ₹ 96.32 lakh. It is evident that the parties suppressed the actual market value of the property in the sale deed registered in April 2008 to avoid payment of higher stamp duty and registration fees. This resulted in under valuation of property by ₹ 81.25 lakh involving stamp duty and registration fees of ₹ 7.31 lakh.

After we pointed this out in February 2010, the Department replied (March 2010) that the market value differs from person to person and day to day and the discretionary power vested with the Registering Officer u/s 47A shall be exercised only in bonafide cases and no instrument shall be construed as undervalued based on the enhanced market value found in the subsequent instrument and hence no loss of revenue to the Government.

The reply requires reconsideration for the reason that though the property was again conveyed within 10 days for a value which was more than six times of the value set forth in the earlier document, the Registering Officer failed to notice the undervaluation in the document registered earlier and to take necessary action to determine the correct market value of the property and to collect the deficit stamp duty.

After we reported the matter to the Government in June 2012, the Government replied (September 2012) that the District Registrar has been directed to refer the document under Section 47(A)(3) in order to determine the correct market value. We are awaiting further report (December 2012).

4.9.6 Short levy due to insufficient stamping of Certificates of Sale issued by Debt Recovery Tribunal

As per Article 18 of Schedule I of the IS Act, on sale of any property through public auction by a Civil Court or Revenue Court or Collector or other revenue officer in respect of which a Certificate of Sale is issued to the purchasers, stamp duty at the rate of six *per cent* is leviable on the market value equal to the consideration. However, their registration is optional as per section 18 of the Registration Act.

As per Section 2(12) read with Section 3 of the IS Act, execution used with reference to instruments means "signed" and "signature" and shall be chargeable to duty when it is executed in India on or after the first day of July, 1899.

As per Section 29(f) of the IS Act, in the case of certificate of sale, duty is to be paid by the purchaser of the property to which such certificate relates.

As per Section 89(4) of the Registration Act, every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his book No.1 or get it scanned (also provided for in Section 55(2) of the Registration Act).

As the registration of these documents is optional, the sufferance of stamp duty which is mandatory could not be verified, if the parties chose not to get these types of documents registered.

Mention was made in Para 2.5.1 of Audit Report 2009-10 (on Registration Department) regarding short realisation of stamp duty on acquisition of property through Certificate of Sale. We recommended to amend the Registration Act to make registration of Certificate of Sale compulsory. Subsequent to our observation, the Inspector General of Registration instructed the DRTs to issue the Certificates of Sales only on stamp papers.

We observed from all the five Debt Recovery Tribunals (DRT) of Tamil Nadu (between July 2011 and January 2012) that 759 Certificates of Sale were issued during the period from 2006-07 to 2010-11 for transferring properties for a bid value of ₹ 294.81 crore.

The details of the certificates were referred by us (between October 2011 and January 2012) to the nine[40] registration zones functioning under the control of the Deputy Inspectors General (DIG) to ensure sufficiency of stamp duty. We also visited 32[41] registering offices during the said period.

We ascertained from verification of the records that 109 Certificates of Sale, involving a bid value of ₹ 34.85 crore, were not registered. A stamp duty of ₹ 8,180 only was realised at the time of issue of Certificate of Sale as against ₹ 2.09 crore realisable. This resulted in non-realisation of revenue of ₹ 2.09 crore.

We reported the matter to the Department and to the Government (March 2012) and are awaiting their replies (December 2012).

4.9.7 Incorrect exemption to societies

According to the notification dated 29 June 1966, issued under the Co-operative Societies Act, remission of stamp duty chargeable under the IS Act is admissible in respect of instruments executed by a member of a registered co-operative society in favour of the society, provided the executant was a member of such society continuously for a period of not less than two years immediately before the date of execution of the sale deed.

We observed during test check of the documents in 13 registering offices that in respect of 260 documents registered in favour of co-operative societies between June 2005 and November 2010, exemption from payment of stamp duty was granted on the ground that the executants were members of the societies. We, however, observed that the executants were either not members of the concerned society or members for a period less than two years. In view of this, the documents were not eligible for exemption and as such, stamp duty was leviable. This resulted in non-realisation of stamp duty of ₹ 14.07 crore. The details are given in the following table:

[40] Chennai, Coimbatore, Cuddalore, Madurai, Salem, Thanjavur, Tirunelveli, Trichy and Vellore.

[41] SR Ambattur, SR Ambur, SR Arni (at Periyapalayam), DR Arakkonam, SR Avadi, DR Chennai (Central, North & South), SR Chetput, JT II SR Cuddalore, SR Gummidipoondi, SR Kadampuliyur, JT V Kancheepuram, SR Konnur, SR K.Sathanur, JT II SR Namakkal, SR Pallavaram, SR Pammal, SR Ponneri, SR Poonamallee, SR Redhills, SR Royapuram, SR Sembium, SR Sowcarpet, SR Tambaram, JT I SR Thanjavur, SR T. Nagar, JT III SR Trichy, JT II SR Tiruvannamalai, SR Vanniyambadi, SR Villivakkam and SR Virugambakkam,

(₹ in crore)

Sl. No.	Name of the Sub-Registry	Nature of irregularity	Amount involved
1	**Five**[42]	Through 15 instruments of sale registered between April 2008 and November 2010, 3.09 lakh sq.ft. of land was conveyed in favour of five societies[43] for ₹ 14.89 crore. Remission of stamp duty was allowed treating the transactions as that of between members of the societies and the said societies. We however observed that the vendors were not members of the societies and therefore are not eligible for exemption. This resulted in incorrect remission of stamp duty of ₹ 1.19 crore	**1.19**
After we pointed this out (between November 2008 and February 2012), the Department replied during audit and at other times (between March 2009 and August 2011) that in respect of the case pertaining to Thiruporur, the membership number of the second vendor might have been omitted to be mentioned in the instrument and this would be verified and detailed reply furnished shortly. Reply of the Registering officer requires reconsideration for the reason that it was ascertained by audit from the society that the second vendor was not a member of the society. We are awaiting further report (December 2012). We reported the matter to the Government between November 2011 and June 2012. We are awaiting their reply (December 2012).			
2	**Eleven**[44]	Through 173 deeds of conveyance executed and registered between 2007 and August 2011, lands comprised in various survey numbers were conveyed in favour of Co-operative Housing/Building Societies, by persons who were members of the society for a period less than two years or by persons who were non members. The market value of the properties as set forth in the documents was ₹ 140.40 crore. The societies were given exemption from payment of stamp duty. Since the period of membership of the vendors was less than two years or the vendors were not members of the society/ies, the sale deeds executed by the vendors in favour of the Co-operative societies were not eligible for exemption from payment of stamp duty. This resulted in incorrect allowance of remission of stamp duty of ₹ 10.88 crore.	**10.88**
After we pointed this out (between November 2008 and February 2012), the Department replied during audit and at other times (between March 2009 and August 2011) that as per the Government Order and the instructions of Inspector General of Registration, the period of two years membership is applicable only in the case of Co-operative House Construction Societies. Since, these societies are Co-operative Housing Societies, the condition of two years is not applicable. The reply is not tenable as the second proviso of the notification clearly indicates that exemption is admissible only to those members who are in continuous membership of two years or more and is applicable to all the Registered Societies and not to the House Construction Society alone. We reported the matter to the Government between November 2011 and June 2012. We are awaiting their reply (December 2012).			

[42] Ambattur, Joint II Chengleput, Redhills, Sriperumbudur and Thiruporur

[43] Commercial Employees Co-operative Building Society, Rangarajapuram Co-operative Building Society Ltd., The Adyar Co-operative Building Society Ltd, The Mambalam Co-operative Housing Society Ltd. and Theyagaraya Nagar Co-operative Building Society Ltd.,

[44] Ambattur, Arcot, Joint II Chengleput, Dhamal, Guduvancherry, Kancheepuram, Katpadi, Kundrathur, Madurantagam, Sriperumbudur and Walajabad

5	**One (Chingleput)**	As per the records of the a Co-operative House Building Society in Chengleput, the society had purchased agricultural land measuring 71.39 acres situated at Panangattur village, Chengleput taluk from its members represented by their power holders through 78 instruments registered between June and September 2005 for a total consideration of ₹ 8.57 crore. The market value of the property was ₹ 11.73 crore. Stamp duty was exempted and registration fees of ₹ 11.73 lakh was collected on the market value of the property. We, however, observed from the instruments that one of the power holders had entered into an agreement with the purchaser society in May 2005 to act as a promoter and developer of the project. Accordingly, the promoter had developed (vide DTCP approval No.86/2005) the lands into house sites in June 2005 and collected development charges of ₹ 11.80 crore from the society. As the lands were converted into house sites before the execution of sale deeds in favour of the co-operative society, the development charges paid to the developer have also to be considered for arriving at the market value of the land. This fact was suppressed by the society at the time of execution of the instruments. If the development charges paid to the developer are included, the actual market value of the property would be ₹ 23.53 crore as against ₹ 11.73 crore set forth in the sale deeds. Further, the vendors had become members of the society in June 2005 only. Since the period of membership of the vendors was less than two years, the sale deeds executed by the vendors in favour of the co-operative society were not eligible for exemption from payment of stamp duty. This resulted in non collection of stamp duty of ₹ 1.88 crore and short collection of registration fees of ₹ 11.80 lakh.	**2.00**
We reported the matter to the Department in November 2011 and to the Government in December 2011. We are awaiting their replies (December 2012).			

4.9.8 Non/short collection of registration fees

According to the proviso under clause 'l' of Item 1 of the Table of Fees prescribed under Section 78 of the Registration Act, 1908, the registration fees of one *per cent* is leviable on the intended sale consideration in the case of an agreement to sell, where possession is handed over or is to be handed over.

4.9.8.1 We observed during test check (March 2010) of the documents in District Registry, Tirupur that through a sale agreement executed in March, 2008 and registered in July, 2008, two companies 'A' and 'B' entered into an agreement to sell the land measuring an extent of 19.36 acres situated in Tirupur town for a total consideration of ₹ 50 crore.

An advance of ₹ 18.50 crore was given on executing the agreement. In pursuance and part performance of the sale agreement the first party

(prospective seller) has transferred possession of part of the land for the purpose of joint development, to the second party (prospective purchaser) on the date of execution of the sale agreement. Therefore, registration fees of ₹ 50 lakh was required to be collected on the total consideration of ₹ 50 crore. However, only an amount of ₹ 18.50 lakh was collected on the advance amount of ₹ 18.50 crore by the Registering Authority. This resulted in short collection of registration fees of ₹ 31.50 lakh.

According to the proviso under clause 'o' of Item 1 of the Table of Fees prescribed under Section 78 of the Registration Act, 1908, in the case of cancellation of an agreement to sell, the registration fees of one *per cent* is also leviable on the intended sale consideration as expressed in the original deed of agreement to sell, where possession is handed over.

As per Section 5 of the IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments each comprising or relating to one of such matters would be chargeable under the Act.

4.9.8.2 We noticed in the District Registry, Tirupur that a mortgage deed was executed by the companies 'A' and 'B' (as mentioned in para 4.9.8.1) and registered in February 2009 in which land measuring 4.865 acres (being a part of the land stated in the earlier document viz., agreement to sell) situated in Tirupur was mortgaged, for an advance of ₹ 18 crore paid by the mortgagee to the mortgagor. It was also agreed by the parties in the mortgage deed that this deed of mortgage superseded the terms and conditions of agreement to sell executed and registered in July 2008 through which a portion of land was handed over and the agreed sale consideration for a total extent of 19.36 acres was ₹ 50 crore. Therefore, this instrument was to be treated as dual in nature as mortgage deed and cancellation of sale agreement involving handing over possession of land. Accordingly, registration fees of ₹ 50 lakh on the agreed sale consideration of ₹ 50 crore (as stated in the original agreement to sell vide document No.7297/2008) was required to be collected. The Registering Officer failed to notice the nature of the documents as dual and collected only ₹ 5,000 treating the instrument as mortgage deed only. This resulted in non collection of registration fees of ₹ 50 lakh.

After we pointed this out (April 2010), the Department accepted the audit observation (June 2011) and stated that instructions have been issued to initiate action under section 80A of the Registration Act to collect registration fees in respect of both the documents.

We reported the matter to the Government (January, 2012) and are awaiting their reply (December 2012).

4.9.9 Short levy/collection of stamp duty and registration fees due to suppression of facts in the registered documents

As per Article 23 of the Schedule 1 to the IS Act, in the case of conveyance of immovable property, stamp duty including transfer duty surcharge is leviable at the rate of eight per cent on the market value of the property which is the subject matter of conveyance.

According to Section 27 of the Act, the consideration, market value and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

As per the Registration Act, 1908, immovable property, *inter-alia,* includes land, buildings and things attached to the earth or permanently fastened to anything which is attached to the earth. Any transfer of rights having money value of ₹ 100 and above in immovable property is compulsorily registerable.

4.9.9.1 We observed during test check of records (March 2011) relating to transfer of lands by conveyance and lease in 17 Sub-Registries[45] and name transfer records maintained by Tamil Nadu Electricity Board, in connection with the transfer of commissioned windmills, that the conveyance of 297 windmills valued at ₹ 464.23 crore which were commissioned on the lands conveyed/leased out was not disclosed in the registered documents. The consequential non-levy of stamp duty and registration fees on the value of these windmills worked out to ₹ 41.78 crore.

When we pointed this out, the Department replied that stamp duty and registration fees were collected for the value declared in the documents and hence there was no short collection. The Department also stated that the Government had clarified that the wind mills are movable properties and no stamp duty and registration fee were leviable if they were not included in the schedule of property. The Madurai Bench of The Honourable Madras High Court also accepted the above views of the Government and decided that windmills are movable properties and no stamp duty and registration fee were leviable, and also directed to refund the stamp duty and registration fees already collected in this regard.

[45] Dharapuram, _daikal, Kaniyur, Kayathar, Keeranur, Negamam, Palladam, Panangudi, Ponpozhil, Radhapuram, Sulur, Surandai, Tenkasi, Thovalai, Udumalpet, Uthumalai and Veerasigamani,

The reply requires reconsideration for the following reasons:

- The audit objection was raised specifically to point out non-collection of stamp duty and registration fee due to suppression of facts in the registered documents.

- Secondly, in the judicial case cited, the petitioner had contended that there was no sale of windmills and it was stated by the Department that stamp duty was demanded as per directions received from the Inspector General of Registration (IGR), which was subsequently withdrawn since it was decided by the Government that the windmills were movable properties. Considering all these facts, the Court directed to refund the additional stamp duty and registration fees paid under protest, after quashing the proceedings of the respondent Sub-Registrars as it was ultra vires to the stand taken by the Government/IGR.

- Thirdly, for determination of what is immovable property, the object of purchase should also be looked into. In the instant case, the land was purchased with the prime reason of generating electricity from the windmills embedded in the said lands.

- Further in some of the invoices, the mode of transfer is "as it where it stands" basis which clearly indicates the nature of the property and the intention of the purchaser.

- Further it has been judicially held[46] that "when a land is conveyed alongwith plant and machinery in 'as is where is basis' the drafting of the document to convey the land alone is an attempt to reduce the market value of the property". In the instant cases it has been established by audit that the land was purchased for the purpose of continued generation of electricity from windmill that are erected and functioning in the said lands, from the records furnished by the Tamil Nadu Electricity Board such as invoices, name transfer orders, etc.

The decision of the Government to treat windmills as movable properties is contrary to the definition of immovable property given in the Registration Act 1908. The erected and installed windmills are immovable properties according to the definition and hence compulsorily registrable.

We reported the matter to the Government in April 2011 and are awaiting their reply (December 2012).

[46] Duncans Industries Ltd., vs. State of U.P. and others – Supreme Court of India.

As per clause 'l' of Item 1 of the Table of Fees prescribed under Section 78 of the Registration Act, 1908, the registration fees is leviable on the advance amount in the case of an agreement to sell.

As per Article 23 of the Schedule 1 of the IS Act, in the case of conveyance of immovable property, stamp duty including transfer duty surcharge is leviable at the rate of eight per cent on the market value of the property which is the subject matter of conveyance.

According to Section 27 of the Act, the consideration, market value and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

4.9.9.2 We observed during test check (August 2011) of the documents in the office of the Joint II Sub Registry, Thousand Lights that through an instrument of sale agreement executed and registered in September 2009, an agreement for sale of 9,100 sq.ft. of undivided share of land for ₹ 4.28 crore was entered into and an advance of ₹ 25 lakh was paid through a cheque in June 2009.

We further observed from the sale deed subsequently executed and registered in May 2010 that a total extent of 12,231 sq.ft of undivided share of land including the land measuring 9,100 sq.ft mentioned in the sale agreement was conveyed by the vendors to the purchaser for a total consideration of ₹ 5.75 crore. As per the recital of the sale deed, the entire sale consideration was paid through three cheques in July and August 2009[47]. From the above it was evident that the vendors had received the entire sale consideration, including the consideration for additional extent of land, before execution of the sale agreement in September 2009 but suppressed these facts in the sale agreement. The registration fees collectable in respect of the sale agreement registered in September 2009 would be ₹ 4.28 lakh since the entire sale consideration of ₹ 4.28 crore was received, instead of ₹ 25,000 collected. This resulted in short collection of registration fees of ₹ 4.03 lakh.

Further, the advance of ₹ 25 lakh paid by the intended purchaser to the vendor as per the sale agreement registered in September 2009 had not been taken into account in the sale deed registered in May 2010. If this was considered, the total consideration received would be ₹ 6.00 crore instead of ₹ 5.75 crore set forth in the sale deed. This resulted in short collection of stamp duty and registration fees of ₹ 2.25 lakh.

---

[47] ₹ 200.00 lakh on 18.07.2009
₹ 300.00 lakh on 24.07.2009
₹ 74.86 lakh on 18.08.2009

Total ₹ 574.86 lakh

The overall short collection of stamp duty and registration fees amounted to ₹ 6.28 lakh.

After we pointed this out (September 2011), the Department stated during audit that the reply would be sent after verifying the facts.

We reported the matter to the Government (February 2012) and are awaiting their reply (December 2012).

4.9.10 Excess allocation of transfer duty surcharge

According to Section 94 of the Tamil Nadu Urban Local Bodies Act, 1998 and Section 175 of the Tamil Nadu Panchayat Act, 1994, a duty shall be levied and collected on the following classes of transfer of immovable property in the form of surcharge on the duty imposed under the IS Act, viz., sale, exchange, gift, mortgage with possession and lease in perpetuity. It shall be levied and collected at the rate of two per cent on the market value of the property involved, along with the stamp duty and subsequently allocated to concerned local bodies.

We observed during test check of the surcharge register and monthly periodicals in 10 Sub-Registries[48] between February and November 2011 that though a sum of ₹ 0.29 crore was actually collected towards transfer duty surcharge, ₹ 2.62 crore was allocated to the local bodies due to clerical error. This resulted in excess allocation of ₹ 2.33 crore to local bodies, out of the revenue due to the Government.

After we pointed this out to the Department between February 2011 and December 2011 and to the Government between October 2011 and March 2012, the Department/Government replied between July 2011 and September 2012 that in respect of seven[49] Sub Registries, the excess allocation of TDS of ₹ 1.51 crore was adjusted subsequently. In respect of the remaining cases we are awaiting further reply (December 2012).

[48] Aruppukottai, Gandhipuram, Guduvancherry, Katpadi, Kodambakkam, Madhukkarai, Joint-II Saidapet, Tambaram, Joint-II Thousand Lights and Ambattur

[49] Ambattur,Gandhipuram, Katpadi, Kodambakkam, Madukkarai, Tambaram and Thousand lights

4.9.11 Irregular execution of lease deeds in contravention of the provisions of the SEZ Act/Rules

The Special Economic Zone Act, 2005 (Central Act 28 of 2005) provides for establishment, development and management of the Special Economic Zones (SEZ) for generation of additional economic activity, promotion of exports, promotion of investment, creation of employment opportunities, development of infrastructure facilities, etc and for matters connected therewith or incidental thereto. Section 7 read with section 26 (1) (a) of the Act provides for exemption from payment of taxes, duties or cess under all enactments specified in the first schedule (Central taxes and levies such as customs duty, excise duty, service tax, security transaction tax, etc.).

Part III of the Act provides for exemption from stamp duty to the developers and the units located in the SEZ.

Section 12(1)(a) of the Tamil Nadu Special Economic Zone Act, 2005 provides for exemption to every developer from payment of State levies. viz., sales tax, additional sales tax, electricity tax, entertainments tax, luxury tax, entry tax, etc.

As per Rule 11(10) of the SEZ Rules, 2006 as amended from time to time, no vacant land in the non-processing area shall be leased for business and social purposes such as residential complexes to any person except to a co-developer approved by the Board.

Infrastructure facility has been defined in the SEZ Act to include social infrastructure necessary for the development of a SEZ. The zones are demarcated into processing and non processing zones. Manufacturing and trading activities are carried out in the processing zone and social infrastructure including housing for the management, staff and workers of the SEZ are created in the non processing zone.

The Government of India, Ministry of Commerce and Industries in its instructions issued in July 2009 (instruction no.18) have stated that sale of lands in SEZ to units or other persons or entities are not allowed. Similarly, conveyance of land, buildings, premises, etc., by lease or otherwise (but not by sale) in the SEZ can be made only to the units in the SEZ or entities permitted to carry out operations within the SEZ areas. In such cases, the concession of stamp duty exemption will be allowed.

The conventional practice of owning the housing accommodation either on freehold or leasehold by the employer and allotting the accommodation to the employees on license conditions is to ensure that the accommodation is occupied by the employee as long as he was in the services of the employer.

We noticed (between May and July 2012) during audit that instruments pertaining to transfer (lease) of the land and buildings situated in SEZ developed by two developers were executed and registered at Sub Registries, Chinglepet (Joint II) and Cheyyur during the period from October 2009 to March 2012. The instruments though violated the letter and spirit of the law relating to the SEZ in the manner discussed in the following paragraphs, exemption from payment of stamp duty was allowed.

4.9.11.1 The Ministry of Commerce and Industry, Government of India granted permission for development and operation of SEZ to the New Chennai Township Private Limited (developer) at Cheyyur Taluk through two notifications dated 28 September 2007 and 23 November 2007.

We noticed that the developer through 612 lease deeds, leased the lands in SEZ in favour of individuals, transferring residential units along with undivided share of land in the non-processing area. In respect of the above documents, stamp duty exemption of ₹ 7.71 crore was allowed.

Our scrutiny of the documents registered with the Sub-Registrar's Office, Cheyyur revealed the following:

i) The 'lease' was in the name of individuals in 610 cases and two in the name of companies which are not connected with the SEZ

ii) In all the cases the lease was for a period of 99 years and one time lease amount was collected.

iii) In cases registered after 4 June 2010 the documents provide for automatic renewal for a further period of 99 years on similar or identical terms.

iv) In all the cases the leases entitle the lessees to mortgage the properties with financial institutions for availing loans. We found 314 cases of such mortgage. The financial institutions, in the event of default by the lessees, can auction the property to any persons or entities not authorised for operation within the SEZ.

If the residential units were intended to be used as support infrastructure for the processing zone, the 'leases' would not be in the names of individuals but rather, in the names of the companies set up in the SEZ. Also, leases for residential units need to be co-terminus with the lease for the units in the processing zone. However, the terms of the registered documents clearly indicate that the housing units have been 'sold' to individuals in the guise of 'lease'.

4.9.11.2 M/s. Mahindra World City Developers Limited (formerly M/s. Mahindra Industrial Park Limited) was granted approval to set up an SEZ in Chinglepet Taluk on 8 September 2004 vide three notifications all dated 26 October 2004.

We noticed that the developer transferred on lease an extent of 21.15 acres of land to one of its co-developers, viz., M/s. Mahindra Lifespace Developers Limited (formerly M/s. Mahindra Gesco Developers Limited).

We further noticed that the co-developer transferred the SEZ land to 10 individuals with the completed residential unit infrastructure during the period from January 2010 to November 2011 and stamp duty exemption was allowed for these cases on the ground that housing is one of the permitted activities within the SEZ. The exemption of stamp duty on these cases was ₹ 96.84 lakh.

Our scrutiny of 104 documents registered with Sub-Registrar's Office, Chingleput revealed that

i) all the leases were on 'perpetual' basis and one time lease amount was collected;

ii) of these, 90 lease documents pertained to transfer of vacant land in the form of undivided share to individuals in contravention of provisions of the rules;

iii) in 10 cases, land with constructed residential units (Villa and Semi bungalow) was 'leased' to individuals;

iv) in none of the cases there was restriction on further sub-leasing or transfer of lease, if agreed to by the lessor. If the permission was not accorded within seven working days, the permission shall be deemed to have been given;

v) all the lease deeds provide for mortgage of lease hold rights with various financial institutions covered by the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) by the lessees. In the case of default, the financial institution can auction the property. We found three such cases of mortgage.

The lessees enjoyed succession rights. In one case, on the demise of the lessee, two of the legal heirs of the lessee relinquished their rights over the property in favour of another legal heir of the lessee which would not have been admissible had it been license.

vi) in 13 cases, the lessees 'sold' the residential building constructed over the land in SEZ to other individuals for consideration, with the co-developer joining the execution as a confirming party stating that they do not have any substantive right over the scheduled mentioned property.

Thus by leasing the land in SEZ 'perpetually' on collection of one time lease amount without specifying the terms and conditions for termination of lease period and permitting the lessee to transfer the land unilaterally, the right over the land was virtually relinquished. This is in violation of the SEZ Rules, 2006.

Thus, in both the SEZs, vacant land or land with constructed residential unit was 'sold' to private individuals in the guise of 'lease'. The concessions enjoyed by the SEZ developers in the form of exemption of stamp duty and registration fees alone amounted to ₹ 8.68 crore. In addition, benefits in the form of exemption of VAT, CENVAT, Service Tax, Customs duty and Income Tax are also enjoyed by the developers.

We reported the matter to the Department and to the Government (between July and September 2012) and are awaiting their reply (December 2012).

We recommend that the Government may take required steps to set right the irregularities which resulted in violation of SEZ Rules and to recover the undue benefits that have been availed by the developers/co-developers of SEZs.

Executive Summary

Decrease in tax collection	In 2011-12 the collection of revenue from Electricity Taxes decreased by 40 *per cent* over the previous year.
Results of audit conducted by us in 2011-12	In 2011-12 we test checked the records of 12 units and found underassessment of electricity tax, non-levy of interest and other observations amounting to ₹ 14.42 crore in 25 cases. The Department accepted under assessments and other deficiencies amounting to ₹ 34.48 crore in nine cases, out of which, ₹ 13.44 crore involved in three cases were pointed out during 2011-12 and the rest in earlier years. Out of the above, an amount of ₹ 1.67 lakh has been collected.
What we have highlighted in this Chapter	In this chapter we present illustrative cases of ₹ 34.46 crore selected from observations like non/short collection of electricity tax, etc. noticed during our test check of records in the Electrical Inspectors' offices, where we found that the provisions of the Act/Rules were not observed. It is pertinent to mention that though similar omissions have been pointed out by Audit in earlier years, the Department had not taken corrective action despite the fact that these mistakes were apparent from the records made available to us.
Our conclusion	The Department needs to initiate action to recover the non/short levies pointed out by Audit.

CHAPTER V
OTHER TAX RECEIPTS
ELECTRICITY TAXES

5.1 Tax administration

The Chief Electrical Inspector, who also acts as the Director of Electricity Tax administers the Tamil Nadu Tax on Consumption or Sale of Electricity Act 2003 and the Rules made thereunder. He is assisted by Senior Electrical Inspectors and Electrical Inspectors, Chief Accountants, Administrative Officers and Superintendents. The overall control is vested with the Secretary to the Government, Energy Department.

5.2 Trend of revenue

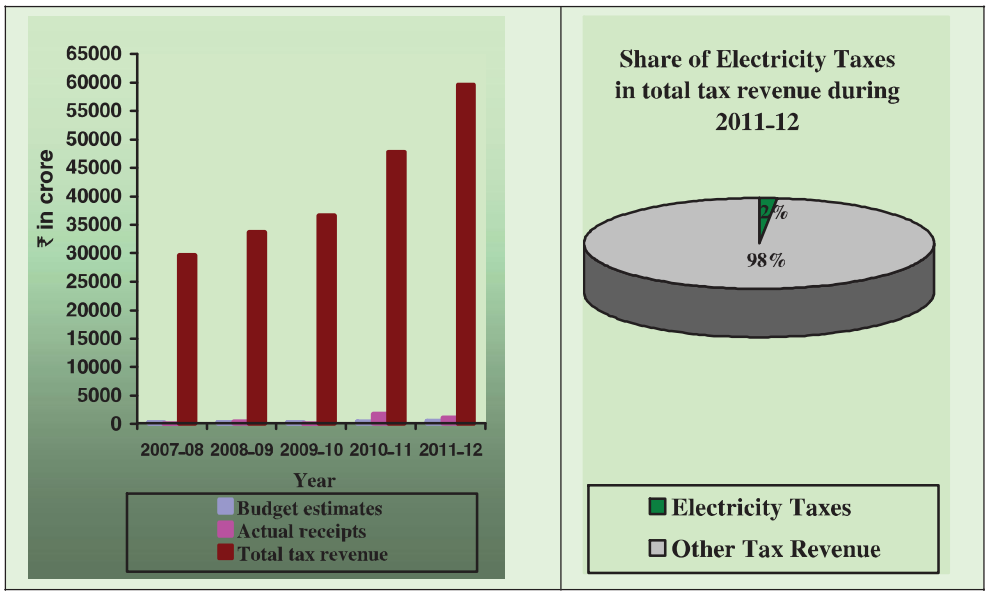
Actual receipts from electricity tax during the period from 2007-08 to 2011-12 along with the total tax receipts during the same period are exhibited in the following table:

(₹ in crore)

Year	Budget estimates	Actuals	Variation excess (+)/ short fall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts *vis-à-vis* total tax receipts
2007-08	250.00	37.21	(-) 212.78	(-) 85.11	29,619.10	---
2008-09	250.09	355.69	(+) 105.60	(+) 42.22	33,684.37	1
2009-10	361.78	37.06	(-) 324.72	(-) 89.76	36,546.66	---
2010-11	528.73	1,745.43	(+) 1,216.70	(+) 230.12	47,782.17	4
2011-12	532.03	1,040.20	(+) 508.17	(+) 95.52	59,517.66	2

The Department attributed the reasons for the decrease in the actuals to non-receipt of payments from the erstwhile Tamil Nadu Electricity Board and for the increase in actual receipts over the estimates in the year 2010-11, to remittance of a sum of ₹ 1,602.84 crore made by Tamil Nadu Generation and Distribution Corporation Limited towards electricity tax in March 2011 for the dues from November 2006 to April 2010.

A bar chart of budget estimates, actual receipts and total receipts and a pie chart depicting the position of electricity tax receipts in the total tax receipts are given below:



In 2011-12 the collection of revenue from Electricity Taxes decreased by 40 *per cent* over the previous year. The Department attributed the reasons for the decrease in the actuals to non-receipt of payments from the erstwhile Tamil Nadu Electricity Board.

5.3 Arrears of revenue

The arrears of revenue as on 31 March 2012 though called for (July/December 2012) has not been furnished by the Department (December 2012).

5.4 Impact of Audit Reports

5.4.1 Revenue impact

We had pointed out three paragraphs on non levy of tax/interest with revenue implication of ₹ 270.78 crore through our Audit Report for the year 2010-11 and the Department/Government had accepted the audit observation in respect of one paragraph involving a money value of ₹10.71 crore and collected an amount of ₹ 5.00 lakh.

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

5.5 Working of internal audit wing

The details of the number of offices due for internal audit and those completed, as furnished by the Department, are given in the following table:

Year	Number of offices due	Number of offices completed	Balance	Percentage of col.3 to 2
1	2	3	4	5
2008-09	24	24	0	100
2009-10	24	24	0	100
2010-11	24	24	0	100
2011-12 (upto January 2012)	24	24	0	100

The Department stated that the internal audit is in progress for the months of February and March 2012. It also stated that there is no support staff for Audit wing and only one Chief Accountant's post is operated.

5.6 Results of audit

We test checked the records of 12 Departmental offices during the period from April 2011 to March 2012 which revealed under assessment of electricity tax, duty and other observations amounting to ₹ 1,442.33 lakh in 25 cases, which broadly fall under the following categories.

(₹ in lakh)

Sl. No.	Category	No. of cases	Amount
1	Non levy/collection of electricity tax, duty and additional tax	11	1417.16
2	Non levy/collection of inspection fees, testing fees, fine and penalty	10	24.77
3	Non-renewal/collection of licence fees under Lift Act, 1997	4	0.40
	Total	**25**	**1442.33**

During the course of the year 2011-12, the Department accepted under assessments and other deficiencies amounting to ₹ 34.48 crore in nine cases, out of which, ₹ 13.44 crore involved in three cases were pointed out during the year and the rest in earlier years. Out of this an amount of ₹ 1.67 lakh has been collected.

A few illustrative cases involving ₹ 34.46 crore are mentioned in the following paragraphs:

5.7 Audit observations

We test checked the records in the offices of the Energy Department relating to revenue received from electricity duty/ tax, etc. and noticed several cases of non-observance of the provisions of the Act/Rules resulting in non/short levy of tax and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and based on test checks carried out by us. Although such omissions are pointed out every year, the irregularities continue to persist and remain undetected till the next audit is conducted.

5.8 Non-compliance of the provisions of the Act/Rules

The provisions of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 and the Rules made thereunder require payment of electricity tax at the time of sale or consumption of electricity as per the rates provided in the Act.

We noticed non-compliance of the provisions of the Act/Rules in some cases as mentioned in paragraphs 5.8.1 and 5.8.2 which resulted in non/short realisation of ₹34.46 crore.

5.8.1 Non-collection of electricity tax

As per Section 3 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003, every licensee and every person other than a licensee shall pay every month to the Government, a tax on the electricity sold or consumed during the previous month. The Government notified vide order G.O.Ms.No.51, Energy (B1) dated 13 June 2003 the rate of tax on electricity sold by the licensees who are captive generating plants as five *per cent* of the "consumption charge[50]". As per the Proviso to Section 3 of the Act, no tax shall be payable on the sale of electricity to the Tamil Nadu Electricity Board (Board).

5.8.1.1 We observed during test check of the records in the offices of the Electrical Inspector, Namakkal and Trichy that 10 licensees[51] sold 48.17 crore units of electricity to third parties/ companies for the period from January 2009 to March 2011 at various rates. The total value of electricity sold worked out to ₹ 245.60 crore on which electricity tax at five *per cent* is leviable. However, electricity tax was not paid by the above licensees and the Department has also not demanded the tax. This

[50] Consumption charge means the amount charged by a licensee for the supply of electricity to a consumer before deduction of rebate, if any, allowed by the licensee for payment on or before such date as may be specified by the licensee.

[51] M/s Dalmia Cements (Bharat) Ltd., Dalmiapuram, M/s Chettinad Cement Corporation Limited, (Chennai and Puliyur), M/s Shree Ambica Sugars Ltd, M/s Auro Mira Bio Energy Pudukottai India Ltd, M/s Kothari Sugars & Chemicals Ltd., M/s EID Parry India Limited, (Pudukottai and Pugalur), M/s Shriram Non-Conventional Energy Ltd. and M/s TNPL, Kagithapuram,

resulted in non collection of electricity tax to the extent of ₹ 12.28 crore for the years 2009-10 and 2010-11.

After we pointed this out (September/October 2011), the Department raised demand of ₹ 11.53 crore in respect of nine licensees between October 2011 and August 2012. We are awaiting further report (December 2012).

The matter was reported to the Government (between November 2011 and March 2012). The Government in reply (April 2012) stated that one of the licensees viz., M/s Auro Mira Bio Energy Pudukkottai India Limited had filed a writ petition and obtained interim injunction for a period of eight weeks on 17 June 2011 for the demand raised. This was extended for a further period of three weeks from 15 December 2011. However, the Honourable High Court of Madras dismissed (June 2012) all the writ petitions filed by the licensees. We are awaiting further report (December 2012).

As per Section 3 of the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003, every licensee and every person other than a licensee shall pay every month to the Government, a tax on the electricity sold or consumed during the previous month. The Government notified in GO Ms.No.51, Energy (B1) dated 13 June 2003, the rate of tax on electricity sold by the licensees who are captive generating plants as five *per cent* of the "consumption charge". As per the Proviso to Section 3 of the Act, no tax shall be payable on the sale of electricity to the Tamil Nadu Electricity Board (Board).

According to Section 3(b) of the said Act read with the G.O stated above, every licensee shall pay every month to the Government in the prescribed manner a tax on the Electricity captively consumed during the previous month at the rate of 10 paise per unit.

5.8.1.2 We noticed in the office of the Electrical Inspector, Trichy, that a licensee sold 12.33 crore units of electricity to 13 companies from April 2006 to August 2008 and April 2009 to August 2010 and paid electricity tax of ₹1.01 crore at 10 paise per unit on 10.09 crore units, as if the electricity was captively consumed. Further, the licensee did not pay electricity tax on 2.24 crore units sold to these companies for the period from September 2008 to March 2009 and from September 2010 to March 2011 but claimed exemption from payment of tax citing two Government Orders (GOs)[52]. However, the exemption granted in the two GOs are applicable only for own consumption of electricity by captive power generating plants and not for sale of electricity by such plants. As such, the licensee was liable to pay electricity tax of ₹ 2.16 crore for the above periods at five *per cent* of the consumption charges against

[52] G.O.Ms No.106 dated 4.9.2008 and G.O.Ms No.85 dated 9.9.2010

which only an amount of ₹1.01 crore was paid. The Department also has not raised demand for the correct amount of tax. This resulted in non/short collection of tax amounting to ₹ 1.15 crore.

After we pointed this out (September 2011), the Department replied that the licensee would be addressed to remit the electricity tax as pointed out by audit. We are awaiting further reply (December 2012).

We reported the matter to the Government (January/May 2012). We are awaiting their reply (December 2012).

5.8.2 Non-collection of electricity tax on captive consumption

According to Section 3(b) of the Tamil Nadu Tax on Consumption or Sale of Electricity Act 2003, read with GO Ms.No.51, Energy (B1) dated 13 June 2003, every licensee shall pay every month to the Government in the prescribed manner a tax on the electricity captively consumed during the previous month at the rate of 10 paise per unit.

As per Section 9 of the Act, if no return is submitted by a licensee or if the return submitted is incomplete or incorrect, the Electrical Inspector assess to the best of his judgement the amount of electricity tax payable under the Act by such licensee or person.

As per Section 9(3) of the Act, no assessment shall be made after the expiry of four years.

We observed during test check of records in the office of the Electrical Inspector, Salem (January 2011), that M/s Madras Aluminium Company Ltd., a licensee having captive power generating plants (CPP) did not pay tax on 210.37 crore units of electricity generated and captively consumed during the years 2005-06 to 2007-08. The Department also failed to raise the demand and collect the electricity tax due. This resulted in non-collection of electricity tax of ₹ 21.03 crore.

After we pointed this out (January 2011), the Department replied (February, 2012) that demand notice for ₹ 21.04 crore was issued in March 2011 and the party had filed writ petition against the demand and obtained stay order from the Hon'ble High Court of Chennai for the collection of tax. It is pertinent to mention that though the assessments were made for all the years i.e., from 2005-06 to 2007-08 in March 2011, the assessment made for the year 2005-06 is against the provisions of the Act as no assessment could be made after the expiry of four years. We are awaiting further report (December 2012).

We reported the matter to the Government (March 2012) and are awaiting their reply (December 2012).

Chennai
Dated 25 Feb 2013

(SUBHASHINI SRINIVASAN)
Principal Accountant General
(Economic and Revenue Sector Audit)
Tamil Nadu

Countersigned

New Delhi
Dated 26 Feb 2013

(VINOD RAI)
Comptroller and Auditor General of India

ANNEXURE - 1
(Refer to Paragraph 1.4 of Chapter I)

Sl.No.	Name of the Department	Nature of receipts	Auditable units	Units planned	Units audited
1.	Commercial Taxes and Registration	Sales Tax	353	222	171
		Stamp duty and Registration fee	577	207	237
2.	Revenue	Land revenue	220	70	66
		Urban Land Tax	53	19	14
3.	Home (Transport)	Taxes on vehicles	68	34	34
4.	Home (Prohibition and Excise)	State Excise	63	30	29
5.	Industries	Mines and minerals	29	20	20
6.	Energy	Electricity duty	24	12	12
Total			**1387**	**614**	**583**

List of Abbreviations

AC	Assistant Commissioner
ADC	Additional Commissioner
ATN	Action Taken Note
CCT	Commissioner of Commercial Taxes
CPP	Captive Power generating Plant
CST	Central Sales Tax
CT	Commercial Taxes
CTO	Commercial Tax Officer
DC	Deputy Commissioner
DCTO	Deputy Commercial Tax Officer
DIG	Deputy Inspector General
DRT	Debt Recovery Tribunal
DTH	Direct to Home
ESO	Excise Supervisory Officer
FTAC	Fast Track Assessment Circle
GO	Government Order
IGR	Inspector General of Registration
IMFL	Indian Made Foreign Liquor
IMFS	Indian Made Foreign Spirit
IPL	Indian Premier League
IR	Inspection Reports
ITC	Input Tax Credit
JC	Joint Commissioner
KLPD	Kilo Litre Per Day
LF	License Fee
LOI	Letter of Intent
LPG	Liquified Petroleum Gas
LTU	Large Taxpayers Unit
MRP	Maximum Retail Price
MT	Metric Tonne
NH	National Highway
PAC	Public Accounts Committee
PAN	Permanent Account Number
PF	Privilege Fee
POA	Power of Attorney
RC	Registration Certificate
RCC	Reinforced Cement Concrete
RS	Rectified Spirit
SARFAESI	Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002
SEZ	Special Economic Zone
SPF	Special Privilege Fee
TASMAC	Tamil Nadu State Marketing Corporation
TDS	Transfer Duty Surcharge
TIN	Taxpayers Identification Number
TNGST	Tamil Nadu General Sales Tax
TNSWAN	Tamil Nadu State Wide Area Network
TNVAT	Tamil Nadu Value Added Tax
TRS	Total Reducing Sugar
UT	Union Territory
VAT	Value Added Tax