2.2 Performance Audit of "Maharashtra Vikrikar Automation System (MAHAVIKAS)"

Highlights

Only 11 out of the 22 modules planned were in use even after a period of seven years and incurring an expenditure of ` 127.18 crore.

(Paragraph 2.2.10.1)

Absence of necessary validation checks to prevent entry of duplicate PAN records resulted in multiple registrations of 1,138 PAN holder-dealers and in 3,970 cases blank/incomplete/incorrect PAN was recorded.

(Paragraph 2.2.11.1)

Irregular claim of excess credit amounting to ` 1,059.03 crore in 54,513 returns remained undetected in the system due to lack of validation checks.

(Paragraph 2.2.11.2)

Credit brought forward in 43,466 returns under Maharashtra Value Added Tax Act, 2002 (MVAT Act)/Central Sales Tax Act, 1956 (CST Act) was claimed in excess by ` 184.81 crore from the returns of the preceding periods.

(Paragraph 2.2.11.3)

Absence of cross-linkage of returns in the system resulted in non-detection of claims of excess tax credits of ` 200.04 crore in 6,755 returns.

(Paragraph 2.2.11.4)

Absence of appropriate MIS reports resulted in non-detection of claims of inter-state transactions amounting ` 2,364.85 crore in 3,773 returns filed by dealers registered under the MVAT Act but not registered under the CST Act.

(Paragraph 2.2.11.5)

Absence of a system for detection and rejection of more than one refund application for the same period resulted in 294 dealers filing multiple refund applications amounting to ` 434.54 crore.

(Paragraph 2.2.11.7)

Absence of facility to verify the authenticity of refund adjustments claimed by the dealers in their returns and Refund Adjustment Orders (RAOs) issued by the Department resulted in claims of refund adjustments aggregating ` 154.04 crore in 5,973 returns remaining unverified with the data of issued RAOs available in the system.

(Paragraph 2.2.11.8)

Failure to timely implement the required programme to generate interest on delayed payment of tax and failure to issue demand notices where interest was generated by the system resulted in non-realisation of ` 238.16 crore.

(Paragraph 2.2.11.9)

Refund claims aggregating ` 3,809.01 crore in respect of 25,372 applications were pending in the system for periods ranging from 19 to 40 months.

(Paragraph 2.2.11.13)

Objective of providing better services to the dealers was affected as the system did not reconcile payments with the tax liability of the dealers.

(Paragraph 2.2.11.15)

Security measures adopted were not adequate as 2,193 generic users had accessed the system to enter/modify data.

(Paragraph 2.2.12.2)

Internal control of the system was weak as MIS reports for monitoring data integrity and security was not designed covering all the vital areas.

(Paragraph 2.2.14)

2.2.1 Introduction

Sales Tax Department (STD) is a major revenue earning Department of the State. The Government of Maharashtra (GoM) implemented the Maharashtra Value Added Tax Act, 2002 (MVAT Act) with effect from 1 April 2005.

The revenue collected by the STD during the years 2008-09 to 2012-13 as per the Finance Accounts is as follows:

(` in crore)

Year	Amount[10]
2008-09	30,680.53
2009-10	32,676.02
2010-11	42,482.72
2011-12	50,596.36
2012-13	60,079.72

2.2.2 Organisational setup

The STD functions under the administrative control of the Principal Secretary, Finance Department (FD) at the Government level. At the departmental level the Commissioner of Sales Tax heads the STD and is assisted by Additional Commissioners/Joint Commissioners (JCs)/Deputy Commissioners (DCs)/Assistant Commissioners (ACs) and Sales Tax Officers (STOs) at various levels. VAT is being implemented in Maharashtra with functional jurisdiction unlike the repealed Bombay Sales tax Act, 1959 which was being administered with territorial jurisdiction. The State is divided into 13 Divisions headed by JCs except Mumbai and Pune where separate JC level officers are heading each functional branch.

2.2.3 MAHAVIKAS system

Maharashtra Vikrikar Automation System (MAHAVIKAS) is a web based integrated intranet application for Departments' use. STD had initiated the development of application software in 2001 and same was implemented from 2006-07. The broad objectives were to (i) provide speedy and better services

[10] Source: Finance Accounts

to the dealers (ii) provide online information to the dealers (iii) provide facility for electronic filing of tax returns (iv) prevent evasion of tax and ensure better compliance (v) enhance Sales Tax/VAT revenue (vi) bring about transparency in operation (vii) provide a reliable, responsive and flexible computer application and (viii) provide easily accessible management and executive information through efficient and appropriate reporting mechanism and interfaces. Dealers use the web portal namely MAHAVAT for submission of returns, audit report, various applications and making payments electronically and the data is transferred to MAHAVIKAS on a daily basis.

MAHAVIKAS is a three tier web based application with Web sphere 6.0.2 as the front end, DB2 as the RDBMS on AIX 5.3L platform. The central server is located in Mumbai and connected to 42 locations covering all the offices across the state.

2.2.4 Funding for computerisation project

The computerisation project was initially funded by the State Government and subsequently by the Central Government from 2010 onwards under Mission Mode Project for Computerisation of Commercial Taxes (MMPCT) as part of National e-Governance plan. For implementation of the project the STD has received an amount ` 138.68 crore (Central share of ` 95.18 crore and State share of ` 43.50 crore) during the period from 2010 to March 2013. An amount of ` 43.50 crore was incurred up to 2010 by the State Government and the same was treated as State share.

2.2.5 Agencies for project planning and management

The State Government appointed three agencies for the project planning and management. These were (i) M/s Mastek Ltd., for development of the application software MAHAVIKAS (payment made ` 9.05 crore during the period 2001 to March 2013) (ii) M/s PricewaterhouseCoopers (PwC), as a consultant for automation of the Department (payment made ` 2.11 crore for the period from December 2010 to 2012) and (iii) M/s Electronic Corporation of India Ltd. (ECIL), for setting up IT infrastructure (payment made ` 108.84 crore for the period from 2006-07 to March 2013).

2.2.6 Audit objectives

The Performance Audit was taken up with a view to ascertain whether:

(i) the system has achieved its intended objectives, supports the business process and ensures compliance with applicable rules and regulations;

(ii) necessary organisational controls were in place for effective management of the system;

(iii) the system documentation incorporated user requirements for smooth and continuous operation of the system;

(iv) the input, processing and output controls were adequate to ensure integrity of the system and that it complied with the rules and procedures;

(v) reliable controls were in place to ensure data security and necessary audit trails have been incorporated in the system; and

(vi) system provides for checks to be carried out by the internal audit wing.

2.2.7 Audit scope and methodology

Audit of the MAHAVIKAS system was conducted between March 2013 and July 2013 involving analysis of data for the period April 2005 to March 2013. Four[11] of the 13 Divisional offices were selected on the basis of simple random sampling. MAHAVIKAS wing of the STD was selected for reviewing the planning, implementation and monitoring of the computerisation work.

Data analysis was done relating to Registration, Return and Refund module with the help of Computer Assisted Audit Techniques (CAATs).

An entry conference was held on 5 July 2013 with the Principal Secretary (Finance) and the Commissioner of Sales Tax, Maharashtra State (Commissioner) in which the objectives, scope and methodology of audit were discussed. The STD explained the background, achievements and benefits of computerization. The draft Performance Audit Report was forwarded to the Government and Department in August 2013. The reply has not been received from the Government/Department.

However, the audit findings and recommendations were discussed in the exit conference held in November 2013. The Commissioner and other senior officers from the STD attended the meeting. The replies given during the exit conference and at other points of time have been appropriately included in the relevant paragraphs.

2.2.8 Audit criteria

The planning and implementation of the MAHAVIKAS system, methodology for development of the application packages, data management and monitoring were examined with reference to-

* the agreements made with the Agencies;
* guidelines on Mission Mode Project for Computerization of Commercial Taxes administrations issued by Ministry of Finance, Government of India;
* the Maharashtra Value Added Tax Act, 2002 (MVAT Act):
* the Maharashtra Value Added Tax Rules, 2005 (MVAT Rules); and
* Departmental Manuals.

[11] Aurangabad, Mumbai, Nashik and Pune.

2.2.9 Acknowledgement

We acknowledge the co-operation of STD in providing the necessary information and records to audit.

Audit observations

2.2.10 General controls

We examined the general controls relating to system development, strategy and policies, documentation, project monitoring associated with the IT system. Weaknesses noticed in audit are discussed as follows.

Planning and management

2.2.10.1 Completeness of the system

The contracts for software development with respect to project of automation of STD and for providing infrastructure support were awarded to M/s. Mastek Ltd. and M/s. ECIL in 2001 and 2005 respectively.

Information received from the Department revealed that in all 22 software modules were developed and these modules were to be implemented in a phased manner from 2006. The total expenditure incurred for computerization up to March 2013 was ` 127.18 crore.

In the Explanatory memorandum received (June 2013) from the FD with respect to the paragraph 2.3.7.3 relating to the computerization of the STD in the Review on "Transition from Sales Tax to VAT" [Audit Report (Revenue Receipts-Government of Maharashtra) for the year ended 31 March 2009] it was stated that out of 22 modules developed 19 were fully operational and three were partly operational. Verification (April to July 2013) of the information furnished by the Department revealed that 11 modules were still not operational (**Appendix I**).

Thus, even after a period of seven years after implementation of the system and incurring an expenditure of ` 127.18 crore, the non-operationalisation of the 11 modules for monitoring Package Scheme of Incentives, Recovery, Legal, Tribunal, Legislative Assembly Questions, Complaints, Grievances, Enforcement, Rewards, Survey and Advisory Visit resulted in under achievement of the desired objectives of computerisation for increased transparency and increased accountability. The vulnerability due to continuing with the manual system for incentives given to dealers through the Package Scheme of Incentives (PSI) was highlighted in our review "Sales Tax incentives under Package Scheme of Incentives" for the year 2008-09 wherein (paragraph 2.2.6) we had observed that a database of unit-wise incentives sanctioned, progressive incentives availed of by the units, units closed prematurely, incentives availed of by the closed units, recoveries effected from these closed units and recoveries made from the deferral units after the moratorium period provided under the schemes was most vital to keep a proper watch on the implementation of the PSI schemes. However, the

Sales Tax Department had not maintained a database in this regard, in the absence of which it could not monitor the performance of the PSI units effectively.

The recovery branch is to recover arrears by taking recovery actions in the cases referred to it under all Acts administered by the Department. In our Performance audit on Arrears of Sales Tax for the year 2009-10 we had commented (paragraph 3.5) that large accumulation of arrears was a result of lack of follow up action for recovery, failure in attaching property, delay in auctioning the attached property, absence of coordination with their counterparts in other States, delay in pursuing the matter with the other agencies and lack of monitoring at the higher levels. Due to non-implementation of the Recovery Module, the Department could not effectively use the information technology to achieve the objective of enhancing the Sales Tax/Vat revenue. Thus, the objective of automation of the VAT functions which has a vital role in effective implementation of VAT was hindered.

In the exit conference the Commissioner stated that during the implementation of the MAHAVIKAS system, it was decided to focus on the core functions such as Registration, Returns, Refund etc. and the modules not implemented were ancillary to VAT functions. However, it may be mentioned here that the other modules of the system are equally important and their non-implementation has resulted in non-achievement of the objectives for which MAHAVIKAS was launched.

2.2.10.2 System implementation and performance assessment

The amount received by STD under National e-Governance Plan (NeGP) was for the period from 2009-10 to 2012-13 according to the guidelines for implementation of the project issued in March 2010 by the Department of Revenue, Ministry of Finance, Government of India. The guidelines, inter alia, advised the following:

(i) an advisory committee comprising of users and stake holders to determine services to be provided and service levels for each of such service was required to be set up by the State Government (Item 4.4).

(ii) to get the performance of the service delivery assessed on annual basis by an external agency and put up the findings in the public domain preferably the state portal itself (item 4.6).

Audit observed that these guidelines were not followed. JC, MAHAVIKAS (June 2013) stated that advisory committee/working group consisting of members of trade, practitioners and MSTD officers is formed for taking decisions about various e-services at the time of introduction of any new e-service. As regards assessment of performance of service delivery by an external agency it was stated that the same has not been assigned till date.

In the exit conference, the Commissioner stated that a working group consisting of members of trade, practitioners and departmental officers has been constituted and meetings held have also been minuted, however, assessment of performance of service delivery by an external agency had not been carried out.

The fact remains that till date the Department has not assessed the performance of the service though they were supposed to do it annually from 2009-10. Further the records relating to the working group as well as the minutes of the meetings, though called for, have not been made available to audit.

2.2.10.3 Quality of software not tested by independent agency

The guidelines issued by the Department of Revenue, Ministry of Finance, Government of India advised that application software was required to be tested by an independent agency like Standardisation Testing and Quality Certification (STQC) as soon as the application was ready for use (item no. 3.5).

Audit observed that software was not tested by an independent agency. JC, MAHAVIKAS stated (June 2013) that the re-architecture of the MAHAVIKAS application was under proposal and since the present application will not be used after developing new application, it has been decided that the certification by agency like STQC will not be done for the present application.

In the exit conference, the Commissioner accepted that the software had not been tested by STQC. He stated that development of the software is a continuous process and that the most important change requests are taken into consideration. He further stated that the Department had sought exemption of such testing from the Government of India. This exemption by Government of India has not been made available to audit.

The fact remains that the Government of India guidelines have not been followed and the quality of the application software has not been tested.

Documentation

2.2.10.4 Deficiencies in documentation

As per the agreement with the system developer M/s Mastek Ltd., documentation at various stages of system design and development was to be prepared and handed over to the STD. The documentations should *inter alia* include the following:

(i) Requirement Definition Document (RDD) relating to user requirements of VAT system which would ultimately form the basis and design of software (clause 8.1.1 of agreement with M/s Mastek Ltd.).

(ii) Technical Software Documentation[12] (TSD) such as Entity Relation Diagrams[13] (ERD) etc., should comply with the Institute of Electrical

[12] Technical Software Documentation includes ERDs, Data dependencies, Programming conventions etc.

[13] Entity Relation Diagram describes a database and shows relation between data stored in different data tables.

and Electronics Engineers (IEEE[14]) specifications. The documentation should sufficiently explain the step by step functionality of the system.

(iii) Data dictionary[15] containing the definitions of all the schema objects in the database such as tables, views, indexes, etc.

The documentation relating to TSD and Data Dictionary were furnished to audit and we observed that-

* Though a soft copy of the ERD was made available, it did not show the linkage between the different data tables in a module. For instances, the ERD of Refund module did not show the relation between refund applications and refunds sanctioned The list of all the tables relating to Refund and their relation is not shown. This will have an effect on future use and maintenance of the application by the Department and all other stakeholders.

* Data Dictionary showed that though Table Name and fields in short form under the table were listed, the description of the fields were not mentioned. For example, table RET_CALC_DET_TB relating to return is having field name AMOUNT_1 to AMOUNT_156, which is not having description of the related amount in the return form. In the absence of details of data stored in a particular field, the use of this data and the maintenance of application will be difficult.

Further, a hard copy of the fully updated software documentation was not made available to audit. A report prepared by M/s. PwC on the review of documentation also confirmed the fact that the documentations were not according to the agreed IEEE standards.

In the absence of proper documentations relating to various stages of system development, the extent to which the user requirements were incorporated in the system could not be ascertained. Lack of documentation would not only result in dependency on the system developer but also pose a major risk for the future maintenance of the application system, system upgradation by other agencies and usage of data.

In the exit conference, the JC, MAHAVIKAS stated that the consultant M/s PwC had reviewed the system documentation and based upon their findings, Mastek had provided revised documentation.

A scrutiny of the revised documentation (December 2013) revealed that the deficiencies still remained.

2.2.11 Application controls

Application controls pertain to specific computer applications. They consist of Input, Output and Processing controls and help to ensure rule mapping, proper authorisation, completeness, accuracy and validity of transaction.

[14] The Institute of Electrical and Electronics Engineers (IEEE) is one of the leading standards making organisations.

[15] Data dictionary defines all objects relating to a database including data tables, views etc. It is mainly used by designers, Administrators and users for information.

Input Controls

Input controls ensure that the data entered is complete and accurate. The accuracy of data input in a system could be controlled by imposing computerised validity checks. Weaknesses in the input controls noticed in audit are discussed below:

2.2.11.1 Multiple Registrations

According to Rule 8 (3) of the MVAT Rules, a dealer who has more than one place of business within the State, shall make a single application in respect of all such places. Further, as per Rule 8(12) a dealer or a person applying for registration, shall submit his Permanent Account Number (PAN) to the registering authority at the time of making the application. The Department made it mandatory from October 2009 for dealers to file their application for registration electronically. In Maharashtra 7,19,255 dealers are registered under the MVAT Act.

Scrutiny of the database relating to Registration, revealed that during the period 2005 to 2012, under MVAT, 2,299 registration numbers were allotted to 1,138 PAN holder-dealers. The multiple registrations were due to data entry errors. The breakup of the instances of multiple registrations is as follows:

Instances of registrations	No. of PAN holders	Total No. of registrations
2	1,121	2,242
3	12	36
4	4	16
5	1	5
Total	**1,138**	**2,299**

Further, in respect of 3,970 dealers cases of blank/ incomplete/incorrect PAN were recorded.

This indicated that the necessary validation checks to prevent entry of duplicate/incorrect/blank PAN records were not present in the system. The cases found are just an illustration that these control risks exists.

On this being pointed out (July 2013) JC, Pune stated that the system permits issuing of another registration number for the same PAN.

The fact remains that multiple registrations against the same PAN could have been avoided had necessary validation checks existed in the system. The absence of these checks can render the Department susceptible to business risks such as incorrect claim admittance, short collection of revenue etc. Further, splitting up of transactions between multiple registration numbers may help the dealer to avoid audit by CA/ICWA and submission of audit report as the turnover of sales amounting to ` 60 lakh in a year and liable for audit could be suppressed.

The Department needs to address these control weaknesses in the system to plug the possibility of exploitation of this vulnerability by both internal and external stakeholders.

The reply of the Department is silent on the aspect of incorrect/blank PAN recorded in the system, which should not have been processed by the application. This indicates weak input controls with inadequate validation leading to vulnerability in the system.

In the exit conference the Commissioner stated that the identified cases of duplicate registrations were being resolved and the system had been modified and it no longer allowed more than one registration number against the same PAN.

The cases pointed out by us are illustrative, hence the Department may identify all the cases of duplicate registration for remedial action.

Processing controls

Process controls inbuilt in the system must ensure that process was complete and accurate and processed data was updated in the relevant files. Data analysis revealed the following weaknesses:-

Inadequate validation checks for compliance to rules

2.2.11.2 Non-detection of claims of excess credit by the system

Section 20(1) of the MVAT Act provides for registered dealers to file correct, complete and self-consistent returns and defect notice is to be intimated to the dealer within four months of the date of filing the return. Further, Rule 20(2) of MVAT Rules provides for amount of excess credit carried forward and amount of excess credit claimed as refund to be filled in their appropriate places and the returns should be arithmetically self-consistent. Also, Section 50(2) of the Act requires that the dealer has to claim refund at the end of the financial year and cannot carry it forward to the next year. However, the Commissioner of Sales Tax has, through Trade Circulars, (18T of 2006, 41T of 2007, 15T of 2010, 6T of 2011 and 6T of 2012) permitted the carrying forward of excess credits across financial years between 2005-06 and 2007-08 and for excess credits up to 1 lakh across financial years between 2009-10 and 2012-13.

After the introduction of MVAT Act, the dealer filed returns manually (physical returns) for the periods 2005-06 and 2007-08 and the data in those returns was transferred to MAHAVIKAS. From April 2008, the facility to file returns through the system (electronic returns) was introduced. These electronic returns comprised of templates in MS Excel provided by the Department to ensure arithmetical accuracy of the return. The returns uploaded by the dealers in the MAHAVAT website are transferred to MAHAVIKAS. With effect from October 2008, the filing of electronic returns was made mandatory, even for filing revised return for a return filed physically prior to October 2008.

The system does not provide for detection of incorrect returns with regard to excess credits brought forward irregularly from the last return of the previous financial year and to issue defect notices for the same. This indicates that business rules in this regard have not been validated in the system.

We scrutinised the returns of period commencing April of a financial year and the observations in this regard are discussed below:

i) Excess credit brought forward in April Returns filed under MVAT Act amounting to ` 1,049.26 crore

Analysis of data in respect of Physical and Electronic returns filed under the MVAT Act, revealed that in 53,692 instances, amounts aggregating ` 1,049.26 crore had been brought forward in the returns in violation of Rule 20(2) of MVAT Rules and Section 20(1) of MVAT Act for the month of April from the returns for the month of March of the preceding financial year.
The year-wise details are as follows:

(` in crore)

Excess credit brought forward in April of the years	Physical returns		Electronic returns		Total	
	Number of returns	Amount brought forward	Number of returns	Amount brought forward	Number of returns	Amount brought forward
2005-06	3,190	35.45	349[16]	5.04	3,539	40.49
2008-09	10,046	60.89	13,350	213.65	23,396	274.54
2009-10	4	0.00[17]	20,810	258.63	20,814	258.63
2010-11	--	--	2,080	188.87	2,080	188.87
2011-12	--	--	1,971	147.05	1,971	147.05
2012-13	--	--	1,892	139.68	1,892	139.68
Total	**13,240**	**96.34**	**40,452**	**952.92**	**53,692**	**1,049.26**

(ii) Excess credit brought forward in April Returns filed under CST Act amounting to ` 9.77 crore

There is no provision of credits in the CST Act and the return prescribed under the CST Act allows for adjustment of tax payable under the CST Act for any period against the credits available under the MVAT Act for the same period. If the credits are more than the tax payable, the return in the CST Act exhibits a credit balance in that case.

Analysis of data in respect of Physical and Electronic returns filed under the CST Act, revealed that in 821 instances amounts aggregating ` 9.77 crore had been brought forward in the returns for the month of April from the returns from the month of March of the preceding financial year contrary to the instructions issued in the Trade circulars and provisions of the MVAT Act.
The year-wise details are as follows:

[16] Returns/revised returns submitted after the introduction of electronic returns.
[17] Actual amount is ` 12,308.

(` in crore)

Excess credit brought forward in April of the years	Physical returns		Electronic returns		Total	
	Number of returns	Amount brought forward	Number of returns	Amount brought forward	Number of returns	Amount brought forward
2005-06	2	0.11	2[18]	0.00[19]	4	0.11
2008-09	131	0.50	219	1.35	350	1.85
2009-10	--	--	380	2.48	380	2.48
2010-11	--	--	20	0.75	20	0.75
2011-12	--	--	27	1.08	27	1.08
2012-13	--	--	40	3.50	40	3.50
Total	**133**	**0.61**	**688**	**9.16**	**821**	**9.77**

The carrying forward of excess tax credit is not only irregular but also provides for such tax credits to escape scrutiny by the Department in view of the fact that had the said amounts been claimed as refund, the cases would have been audited by the Department as per the regulations governing refunds.

This has also led to one of the objective of computerisation to prevent evasion of tax and ensuring better tax compliance not being fully achieved even after seven years.

In the exit conference, the Commissioner agreed that the system does not have validations to prevent claims of excess credit and stated that the necessary validation controls will be put in place in the new system which is under consideration.

2.2.11.3 Credit brought forward in April returns more than the balance credit available in the previous return

Credit brought forward by a dealer in April returns should not be more than the balance credit available in his previous return. We noticed that there is no provision in the system to cross-validate the correctness of excess credit carried forward from any one period to subsequent period.

We compared the returns of period ending March of a year with the returns of period commencing from April of the subsequent year and the observations in this regard are discussed below:

(i) Extra credit of ` 183.53 crore claimed under the MVAT Act

In the returns for the month of April during the years 2006-07, 2007-08 and 2010-11 to 2012-13, ` 395.52 crore pertaining to 42,468 cases were brought forward as against a credit of ` 211.99 crore available for carrying forward from the returns for the year ending March of the corresponding preceding years. This resulted in amounts aggregating ` 183.53 crore being incorrectly brought forward and claimed. This also included 21,155 cases wherein no

[18] Returns/revised returns submitted after the introduction of electronic returns
[19] Actual amount is ` 10,000.

amounts were available in the year ending March of the corresponding preceding years. An illustrative example of a dealer with registration number 27920281615V, showed that even though there was no amount of excess credit to be carried forward in the return for the period ending March 2012, the dealer had brought forward an amount of ` 99,724 in the return for the period beginning April 2012.

The year-wise details of cases of excess claims are as shown as follows:

(` in crore)

Excess credit brought forward in April of the years	Physical returns		Electronic returns		Total	
	Number of returns	Difference in amount brought forward and excess credit of previous period	Number of returns	Difference in amount brought forward and excess credit of previous period	Number of returns	Difference in amount brought forward and excess credit of previous period
2006-07	7,545	65.93	93	0.48	7,638	66.41
2007-08	8,846	74.26	326	5.28	9,172	79.54
2010-11	3	0.00[20]	6,215	8.68	6,218	8.68
2011-12	--	--	7,873	11.79	7,873	11.79
2012-13	--	--	11,567	17.11	11,567	17.11
Total	**16,394**	**140.19**	**26,074**	**43.34**	**42,468**	**183.53**

The above mismatch of credit balances indicates necessary validation checks have not been incorporated in the system to detect such cases.

(ii) Extra credit of ` 1.28 crore claimed under the CST Act

In the returns filed under CST Act for the month of April during the years 2006-07, 2007-08 and 2010-11 to 2012-13, ` 1.39 crore pertaining to 998 cases were brought forward as against ` 0.11 crore credits available for carrying forward from the returns for the year ending March of the corresponding preceding years. This resulted in amounts aggregating ` 1.28 crore being incorrectly brought forward and claimed. This also included 821 cases wherein no amounts were available in the year ending March of the corresponding preceding years.

The year-wise details of excess claims are as shown as follows:

[20] Actual amount is ` 8,139

(` in lakh)

Excess credit brought forward in April of the years	Physical returns		Electronic returns		Total	
	Number of returns	Difference in Amount brought forward and excess credit of previous period	Number of returns	Difference in Amount brought forward and excess credit of previous period	Number of returns	Difference in Amount brought forward and excess credit of previous period
2006-07	1	0.07	1	0.01	2	0.08
2007-08	17	1.61	7	0.76	24	2.37
2010-11	--	--	264	35.68	264	35.68
2011-12	--	--	311	39.40	311	39.40
2012-13	--	--	397	50.19	397	50.19
Total	**18**	**1.68**	**980**	**126.04**	**998**	**127.72**

This indicates that the system lacked the facility to verify the correctness of extra credit brought forward. The Department failed to detect such cases and initiate necessary action.

In the exit conference, the Commissioner agreed with the observations and stated that the matter would be taken care of in the new system.

2.2.11.4 Availment of excess credit across return forms

The registered dealers, depending upon their category and business activity, file returns using different forms prescribed under rule 17 of MVAT Rules. Dealers opting for composition scheme use Form 232[21], other dealers executing works contract and leasing business use Form 233, dealers under Package Scheme of Incentives (PSI) use Form 234 and notified oil companies use Form 235. Returns in Form 231 are used by dealers as enumerated under the above said Rules. The dealers under PSI having more than one type of business activity are permitted to file more than one return using different forms for the same period. The excess credit in one type of return was permitted to be adjusted against the tax payable in any other type of return.

We analysed the data of dealers who had claimed adjustment of liabilities in Form 231 or Form 233 against credits available in Form 234, for the same period. We found that either there were no corresponding returns in Form 234 or the tax credits claimed in Form 231 or 233 was more than the tax credit in the corresponding Form 234. This resulted in excess claim of credits aggregating ` 200.04 crore in 6,755 cases as detailed as follows:

[21] Corresponding to the Forms 231 to 235, Forms 221 to 225 were in use prior to 14 March 2008.

(` in crore)

Year	Tax credit adjusted across					
	Forms 231 and 234		Forms 233 and 234		Total	
	Number of returns	Excess tax credit claimed	Number of returns	Excess tax credit claimed	Number of returns	Excess tax credit claimed
2005-06	41	2.37	9	0.52	50	2.89
2006-07	69	1.38	16	0.44	85	1.82
2007-08	370	16.92	84	2.28	454	19.20
2008-09	1,203	16.93	217	4.90	1,420	21.83
2009-10	982	34.34	248	4.44	1,230	38.78
2010-11	1,345	30.92	255	20.18	1,600	51.10
2011-12	1,203	24.61	241	16.78	1,444	41.39
2012-13	403	5.91	69	17.12	472	23.03
Total	**5,616**	**133.38**	**1,139**	**66.66**	**6,755**	**200.04**

The system should have provided for cross-linkage of the returns which would have enabled necessary checks to be applied for detection of incorrect adjustment of credits made in the returns by the dealers in order to prevent circumvention of the prescribed rules.

The Department should consider enforcement of validation checks in the system to ensure correctness of the dealers' claims of credits across the forms.

In the exit conference, the Commissioner agreed with the audit observation.

Lack of verification of transactions against master files

2.2.11.5 Dealers not registered under the CST Act claimed deduction of inter-state transactions in VAT returns

As per the provisions of Section 8(1) of the MVAT Act, for sales/ branch transfers etc. outside the state, the dealer is required to get registration under the CST Act and file separate returns. We found that the dealers who had claimed deductions of turnover of sales under the CST Act from MVAT returns were not found to have been separately registered under the CST Act and as such had not filed returns under this Act. Due to absence of appropriate cross validation, the system had no means to check the validity of the claim of deductions before admitting the same. Providing for such a check in the system would have ensured that the turnover of sales for which deductions are claimed do not escape taxation.

Analysis of data relating to MVAT returns revealed that dealers had claimed deductions towards interstate transactions amounting to ` 2,364.85 crore in respect of 3,773 returns though the details regarding the registration of these dealers under the CST Act as well as payment of taxes thereunder was not available in the system. The year-wise details of deductions claimed on account of inter-state transactions is as shown below:

(` in crore)

Year	Physical returns		Electronic returns		Total	
	Number of returns	Inter-state transactions claimed	Number of returns	Inter-state transactions claimed	Number of returns	Inter-state transactions claimed
2005-06	18	104.22	15	0.63	33	104.85
2006-07	54	85.21	44	2.43	98	87.64
2007-08	192	54.94	126	122.89	318	177.83
2008-09	174	37.64	497	185.04	671	222.68
2009-10	--	--	740	485.91	740	485.91
2010-11	--	--	781	453.58	781	453.58
2011-12	--	--	734	523.11	734	523.11
2012-13	--	--	398	309.25	398	309.25
Total	**438**	**282.01**	**3,335**	**2,082.84**	**3,773**	**2,364.85**

Under the circumstances the deductions claimed under MVAT returns were inadmissible. Detection of such irregular claims in the returns would have come to light had provisions been made in the system for generating MIS reports in respect of the same. This also reflected weakness in the system's design.

Absence of MIS Reports and inadequate monitoring

2.2.11.6 Incorrect availment of benefits by claiming refunds and also bringing forward the same into the next financial year

Section 50 of MVAT Act, provides for the registered dealer to adjust the refund due to him against the amount due as per any return in the said year. The dealer cannot carry forward the excess credit to the next financial year. Further, as per refund audit manual, a certificate should be obtained from the dealer at the time of processing of refund, certifying that, no dues are outstanding against him and he has not carried forward this refund in any of the earlier or subsequent year's returns. Certified copy of the return of immediate next period should also be obtained from the dealer to confirm the excess credit is not carried forward. Further, as per Section 20(4) of MVAT Act, a dealer is required to revise the returns in case of any omission or incorrect statement.

We found that necessary checks are not present in the system to restrict the sanctioning of refund where the dealer has also brought forward the said amount as excess credit in the subsequent returns. Further, neither the requisite certificate nor certified copy of the return were being obtained from the dealer before sanctioning the refund.

We noticed in audit that at least in four cases where dealers had claimed refund aggregating ` 88.07 lakh in the returns for the year 2007-08 (three cases) and 2010-11 (one case), the Department had sanctioned refund of ` 87.68 lakh (in two cases Refund Adjustment Orders were issued and in two cases the refund was paid to the dealer) between June 2011 and December 2012. Scrutiny of the returns in respect of these dealers for the subsequent

years revealed that these amounts had also been brought forward (**Appendix II**). Thus, by irregularly bringing forward the excess credit to the next year, the liability of the dealers towards payment of tax got reduced to that extent for that year.

In two cases where RAOs had been issued and in one case where the dealer had repaid the irregularly claimed excess credit at a later stage, revised returns to show the correct liability was required to be filed by these dealers. As the returns had not been revised (July 2013), the correct tax liability of the dealers were not reflected in their returns resulting in their interest liability not being calculated by the system. The undue benefit availed by the dealers would also entail recovery of dues along with interest corresponding to the sanctioned refund of ` 47.90 lakh.

This indicates that the dealers availing the same benefits twice, once by claiming the refunds and again by carrying forward the same to the subsequent financial year.

In the exit conference, the Commissioner agreed that the system lacked the functionality to prevent such cases of incorrect availment of benefits and they would try to resolve the problem.

2.2.11.7 Improper monitoring of allocation of refund applications

As per the Refund and Refund Audit Manual, the concerned JCs, Refund and Refund Audit (R&RA) are responsible for overall management of R&RA for a division. They are also required to ensure that the audit and sanctioning of refund claims are being carried out in an effective manner, which includes maintenance of prescribed registers such as centralised register for acceptance of refund application in Form 501 (Register no. R&RA-1). From October 2009 it is made mandatory to file refund applications electronically. Refund application received electronically in the MAHAVIKAS system is auto allocated to the respective refund authorities.

The first level of check should be an input validation which is linked to refund application filed by a dealer for a defined period. The system should not be accepting multiple refund applications. We found control weakness in terms of both absence of validations while accepting refund application and also non-designing of MIS report in lieu of a centralised register.

Test check of records of four divisions revealed that the centralised register was not maintained by the respective JCs. The comparison between the Refund Auto Allocation Report generated from the system and Register No. R & RA-1 revealed that the report contains only details of refund application and its allocation but details like refund sanction number, date and amount of refund sanctioned and details of its payment etc. were not available.

Detailed analysis of data of refund applications for the period from January 2010 to March 2013 revealed that due to these application control weakness, the system allowed 242 dealers to file multiple refund applications (amounting to ` 425.38 crore) ranging from two to five times for the same periods which were allocated to same Desks[22]. Similarly, 52 dealers had filed refund

[22] The term "Desk" denotes the charge to which the refund application is finally allotted.

applications (amounting to ` 9.16 crore) twice for the same period which were allocated to different Desks.

These examples in audit are given to substantiate that control weaknesses exist.

Absence of proper system for detection and rejection of receipts of additional refund applications for the same period may have implications relating to risk of granting more than one refund against the same application. Also, absence of supporting MIS reports from MAHAVIKAS indicated that the receipt and allocation of refund applications was not properly monitored. The Department therefore needs to address these control weaknesses in the system to plug the possibility of further exploitation of this vulnerability by both internal and external stakeholders.

In the exit conference, the Commissioner stated that the matter is being verified.

2.2.11.8 Refund Adjustments claimed in returns

The Refund Adjustment Order (RAO) in Form 506 issued by the Department stipulates that any dealer filing a return should attach the RAO along with the return to be furnished by him for the period against which the adjustment is sought. However, dealers filing e-returns in forms 231 to 235 are required to furnish the details of the RAO wherever applicable instead of physically submitting the RAO. The correctness of adjustments made in the e-Returns with respect to the RAOs issued is to be checked by the return branches concerned.

In the manual system, the dealer had to attach the RAO along with the return. In the electronic system, whenever the dealer quotes the RAO number, this should be matched by the system with the RAO database. As the system is not verifying the authenticity of refund adjustments claimed in return, it is reflective of absence of control which could lead to a business/revenue risk. For this we compared the data available in the system with respect to the e-Returns with the RAOs issued by the Department and noticed that during the period 2005-06 to 2012-13 the adjustments actually carried out in the individual e-Returns varied with the RAOs issued to the extent of ` 154.04 crore in 5,973 returns as follows:

(` in crore)

Year	No. of returns	Amount of RAO
2005-06	87	2.61
2006-07	125	5.01
2007-08	407	9.64
2008-09	1,517	30.71
2009-10	1,728	43.51
2010-11	1,052	26.76
2011-12	743	24.72
2012-13	314	11.08
Total	**5,973**	**154.04**

This indicated possible adjustments in excess of what was admissible.

After this being pointed out in audit, the Department (Pune Division) stated that at present no procedure is being followed by the Return branch in respect of verification of refund adjustments claimed in the e-Return. Further, no Controls/MIS reports are available in the MAHAVIKAS for reconciliation of refund adjustments claimed in the returns and RAOs issued by the Department.

The above situation is reflective of deficiencies in controls in the electronic system against the manual system.

The Department should maintain in the system a complete record of RAOs issued so as to enable the Department to authenticate the refund adjustments claimed in the returns by the dealers.

Under-utilisation of system

2.2.11.9 Non-levy of interest on delayed payment of tax

As per Section 30(2) of the MVAT Act, a registered dealer becomes liable for payment of interest on delayed payment of tax. As per the Manual of Procedure of Return Branch, 2007 a Register of interest orders is to be maintained to record the demand notices issued to dealers for such interest. A facility to generate orders for such interest is also available in the system. As per the departmental instructions (2007) interest orders are to be generated centrally through MAHAVIKAS which would be available to the divisional offices for serving demand notices in order to effect recovery from the dealers.

A test check carried out in four divisions namely, Aurangabad, Mumbai, Nashik and Pune to ascertain the levy and recovery of interest on delayed payment of tax by field offices and maintenance of Interest Order Registers revealed that only Nashik division had maintained the said registers up to 2007-08 and manual procedure of maintaining registers has been discontinued. As per the procedure prescribed in the Manual of Procedure of Return Branch, 2007, the interest orders should be generated on MAHAVIKAS and issued to the dealers. We, however, noticed that such notices were not generated for the period 2008-09 to 2010-11. Further, though the notices were generated for 2011-12 and 2012-13 they were not issued to the dealers. Our analysis of the cases[23] relating to payment made against VAT returns revealed that for the period 2008-09 to 2010-11 the interest leviable worked out to ` 125.03 crore as shown below :

[23] We calculated the interest leviable only in respect of returns where dealer has not indicated any interest liability for delayed payment of tax and has filed returns for a period using single forms. The due dates of payment were calculated on the basis of the dealer's returns frequency as given in the MAHAVIKAS database and tax payments matching the prescribed periodicity of dealer's returns were considered. The interest was calculated for the number of months or part of a month of delay at the prescribed rate of one quarter per cent for each month or part thereof of delay.

(` in crore)

Financial Year	No. of delayed payments	Interest amount
2008-09	15,962	27.36
2009-10	13,286	61.41
2010-11	17,136	36.26
Total	**46,384**	**125.03**

The Department had not calculated the interest leviable for issue of demand notices.

We also noticed that though interest amounting to ` 113.13 crore on delayed payments pertaining to various returns (VAT and CST) for the years 2011-12 and 2012-13 had been processed in the MAHAVIKAS system, no demand notices had been generated and issued as detailed below:

(` in crore)

Financial Year	No. of delayed payments	Interest amount
2011-12	1,10,902	54.15
2012-13	1,66,689	58.98
Total	**2,77,591**	**113.13**

Failure of the Department to utilise the facility provided in the system fully resulted in non-raising of demand amounting to ` 238.16 crore.

2.2.11.10 Non-usage of Unilateral Assessment Order facility of MAHAVIKAS

Section 23 of the MVAT Act empowers an assessing authority to assess a dealer to the best of his judgment by passing a Unilateral Assessment Order (UAO) in the event of the dealer not filing returns (non-filer) or not complying with the terms of notice issued to him. MAHAVIKAS provides a facility to generate UAOs through its Returns module.

We noticed from the Returns branch of Aurangabad, Mumbai, Nashik and Pune that in respect of non-filers, the UAOs still continued to be prepared by manually calculating the amounts recoverable, despite the fact that the facility to prepare these UAOs was available in MAHAVIKAS itself. After we pointed out this issue JC (VAT Admn), Pune Division, stated that due to the sluggish response of the system the same could not be utilized for creating the UAOs.

The non-utilisation of this facility will lead to preparation of UAOs manually with probable risks such as incorrect tax liabilities being assessed, delayed generation of UAOs, cases being selected at the discretion of the assessing authority, etc. Further, this would also amount to utilisation of manpower in repetitive tasks. Thus, the system was deficient in meeting the objectives to that extent.

In the exit conference, the Commissioner agreed with the audit observation and stated that systemic deficiencies in this regard would be set right and it would be made mandatory for assessing authorities to use this facility.

Output controls

Output controls ensure that computer output is complete and accurate. Weaknesses in the output controls noticed in audit are discussed below:

2.2.11.11 Reconciliation of online payments

Electronic payment (e-Payment) of VAT was introduced in February 2010 and it was made mandatory for all dealers from April 2011. Such e-Payments are subsequently transferred by the authorised banks into Reserve Bank of India and data transferred to MAHAVIKAS.

Scrutiny of reconciliation reports furnished to audit, revealed that during certain periods between September 2011 and January 2013 the amounts transferred to MAHAVIKAS was less by ` 6.56 crore as compared to the amounts credited into RBI. Further, during certain other periods between May 2011 and January 2013 the amounts transferred to MAHAVIKAS was more by ` 1.10 crore as compared to amounts credited into RBI.

Reconciliation needs to be carried out and a provision in the application for corrective action to update the dealers' payment details as a result of reconciliation should also be provided for.

In the exit conference the Commissioner stated that the facility for reconciliation of the payments is not available in MAHAVIKAS and the same will be considered in the proposed new application system.

2.2.11.12 Incomplete data

A computerised tax administration system should ensure that all necessary data should be captured correctly and any invalid data in this regard should be reconciled in a timely manner so as to provide a reliable and responsive system.

Dealers are required to make their payments into Government Treasury. E-payment facility was made mandatory from April 2011 whereby dealers could make payments either through the e-payment facility available in the MAHAVAT website or directly through the website of the authorised banks.

(i) Registration number not available in the dealer master

The payments made by the dealers should be against authorised registration numbers to avoid the risk of mismatch of payments and dealer registration numbers resulting in incorrect reflection of arrears.

Analysis of data relating to payments revealed that the dealers registration number quoted in the payment transaction is not available in the Master table of registered dealers in 4,507 cases amounting to ` 37.43 crore for the period 2005-06 to 2012-13 as shown below:

(` in crore)

Transaction year	Manual Payments		Electronic Payments		Total	
	Number of payments	Amount	Number of payments	Amount	Number of payments	Amount
-	70	0.11	-	-	70	0.11
2005-2006	26	0.18	-	-	26	0.18
2006-2007	639	3.30	-	-	639	3.30
2007-2008	1,752	7.18	-	-	1,752	7.18
2008-2009	2,015	7.24	-	-	2,015	7.24
2009-2010	1,337	5.39	2	0.00[24]	1,339	5.39
2010-2011	1,374	7.16	116	0.36	1,490	7.52
2011-2012	1,064	2.09	804	1.17	1,868	3.26
2012-2013	334	1.68	759	1.57	1,093	3.25
Total	**8,611**	**34.33**	**1,681**	**3.10**	**10,292**	**37.43**

The Department needs to introduce adequate validations in the system to ensure that payments are properly accounted for in the system.

(ii) Invalid payment dates

Apart from e-Payments, payments are continued to be made by the dealers through challans which are also entered into the system manually. Along with the amounts, the date of payment is also required to be entered into the system so that any delay in payment of tax could be identified for levy of interest.

We downloaded the data in April 2013 and noticed that in respect of 47,127 payment transactions involving amounts aggregating ` 487.85 crore, the challan dates which were recorded related either to periods prior to commencement of VAT (1-4-2005) or dates subsequent to the month in which MAHAVIKAS data was downloaded or were not recorded at all. This indicated that incorrect/incomplete data was being recorded in the system. The year-wise details are as shown below:

(` in crore)

Transaction Created Year	Nos. of payments	Total Amount
2006-2007	837	8.00
2007-2008	3,224	25.18
2008-2009	558	5.67
2009-2010	362	2.79
2010-2011	42,061	445.26
2011-2012	49	0.88
2012-2013	36	0.07
Total	**47,127**	**487.85**

[24] Actual Amount is ` 31,896

Under the circumstances the Department could not work out the correct amount of interest leviable in case of delayed payment of tax through the system. Appropriate provision should be made in the system to ensure that the actual payment dates are recorded and any deviation in recording the dates in the system is detected.

In the exit conference the Commissioner in respect of (i) and (ii) above stated that the matter is under verification.

Inadequate delivery of services to dealers

2.2.11.13 Pending refund applications

Section 51 of the MVAT Act provides for a registered dealer to make an application in the prescribed form (501) for grant of refund of the amount claimed in the return after the end of the year to which the return relates. The Commissioner shall grant refund under this section within 18 months from the end of the month in which the application relates. Further, in respect of cases taken up for assessment or where part refund payment has been granted, the Department generates Form 501 for granting refund after assessment or releasing the balance amount in respect of part payment.

Analysis of data relating to pending refund applications revealed the following observations:

(i) Refund applications filed by the dealer.

A total of 59,917 refund applications involving refund claim of ` 9,291.29 crore which were filed by the dealers were pending in the system as of 31 March 2013. Out of this, 25,372 applications involving ` 3,809.01 crore were pending in the system for periods ranging from 19 to 40 months i.e. beyond the prescribed period of 18 months.

(ii) Refund applications generated by the Department.

A total of 30,656 refund applications generated by the Department were pending in the system in respect of refunds aggregating ` 6,847.1 crore. Out of this 27,074 applications involving ` 3,698.35 crore were pending in the system for a period ranging from 19 to 95 from the month of their generation.

It was also observed that MIS reports to monitor the processing of refund applications were not available.

On this being pointed out (July 2013), the DC Nasik stated that due to huge pendency of refund applications it was not possible to issue refund within the prescribed period of 18 months.

This indicated that the objective of computerisation for efficient delivery of services to the stakeholders was not fully achieved. Further, the delay in processing of refunds may also result in extra expenditure to the Government by way of payment of interest on such delays.

In the exit conference the Commissioner stated that due to adoption of stringent measures for processing of refunds, the grant of refunds was delayed.

2.2.11.14 Non-clearance of dues from MAHAVIKAS despite recoveries having been made

As per Section 50 of MVAT Act any refund arising out of the returns for any period may be adjusted against any dues recoverable from the dealer. These adjustments are carried out by passing RAOs. The system provides for sensitizing the departmental authorities towards the recoverable dues in respect of a dealer whenever refund orders are to be issued with respect to the excess credit shown in his return.

Test check of refund records maintained manually with the data available in the system in four divisions for the year 2012-13 revealed that though the system provides a list of recoverable dues in respect of the dealers same continues to remain in the system even after these dues are adjusted by the Department through RAOs. A few illustrative cases are given in **Appendix III.**

This indicated deficiency in the system relating to linking of recoveries with the dues. This has implications relating to issue of demand notices despite the liability being discharged and also inflation in figures relating to arrears of recoverable tax. Immediate steps may be taken to rectify the above defects.

In the exit conference, the Commissioner agreed with the audit observation and stated that a functionality to clear such dues from the system was being tested and was proposed to be implemented within a month.

2.2.11.15 Incorrect Tax arrears of dealers

Section 32 of the MVAT Act requires a dealer to make payments at prescribed intervals. Rule 46 of MVAT Rules mandates the Department to issue notices in Form 213 to dealers with tax dues (short-filers[25]). A MIS report is also available in the system for listing out the short-filers and their tax due for a return period. Further, monitoring of tax demands raised against dealers by individual offices is through a prescribed monthly consolidated report known as Key Key Performance Indicator (KKPI) indicating the total number and amount of tax demands raised against dealers in a month and the total amount of tax arrears. A comparison of short-filer data of March 2013 generated through the MIS report and the KKPI report pertaining to the same month in Aurangabad, Pune and Nashik showed huge variation in the tax arrears reported as shown below-

(` in crore)

Location	Amount involved with short filers as per MAHAVIKAS MIS report	Arrears of tax recoverable as per KKPI statement	Excess of MIS figures over KKPI figures
Aurangabad	498.62	117.31	381.31
Pune	1,490.23	1,345.61	144.62
Nashik	267.47	59.72	207.75
Total	**2,256.32**	**1,522.64**	**733.68**

[25] Short filers are dealers who have not paid their tax dues fully.

The huge variation in figures between the MIS and KKPI reports needs to be addressed as one is related to monitoring the performance of the Department and the other to the stakeholders. In this regard, the fact that the Aurangabad office was in receipt of numerous representations from the dealers claiming that though they had made payment of tax towards a particular amount due, they were continued to be wrongly projected as short-filers towards the said dues. This was on account of the payments not being matched with the dues as per the returns.

On this being pointed out (July 2013), the JC(LTU-2), Pune stated that the mismatch in figures is either due to the dealer indicating invalid periods in the payment challans or making payments against wrong registration numbers or under different Act or with wrong periodicity. KKPI information regarding short filers for the entire State for March 2013 was thereafter sought from the Commissionerate (July 2013) and in reply it was stated that the KKPI is prepared manually on the basis of the MIS report of short filers generated through MAHAVIKAS.

Thus, it is evident that the prescribed periodicity of payment according to business rule is not enforced at the time of making payments. The return and payment data is reconciled in the MAHAVIKAS system at the time of identifying short-filers. Adjustments of payments against the dues does not take place in case the dealers payments does not match the periodicity of the return even though the payment pertains to that financial year.

By depicting dealers who had no tax dues as short-filers, the objective of the MAHAVIKAS system to provide better service to the dealers as well as reduce the official-dealer interface has not been fully achieved.

In the exit conference, the Commissioner agreed with the audit observation and stated that a proposal to enforce filing of returns and payments by dealers as per their prescribed periodicity was under consideration.

2.2.12 IT security

Every organisation is required to adopt an IT security policy clearly identifying the organisation's priorities and necessary controls need to be based on the IT security policy.

2.2.12.1 Incomplete IT security policy

It is of importance to protect Information assets. By way of enunciating an IT security policy, the organisation demonstrates its ability to reasonably protect all business critical information and related information processing assets from loss, damage; aims to enhance the trust and confidence between organisations, and external agencies as well as within the organisation and assure conformity to applicable contractual and regulatory requirements. There should be specific statements in an IT security policy indicating minimum standards and compliance requirements for specific areas such as assets classification, data security, personal security, physical, logical and environmental security, communications security, contractual requirements, business continuity planning, security awareness and training, security breach detection and reporting requirements.

The Department has a Business Continuity and Disaster Recovery Plans. A primary data centre is in Mumbai and a secondary data centre has been established at Hyderabad.

We noticed that STD has formulated IT security policy only for the vendor (M/s. ECIL), but did not have an approved security policy for its employees and third parties having access and usage rights to STD's Information Systems.

IT security policy for all the concerned stakeholders , has not been formulated resulting in the staff members of the Department using the computer systems not being adequately aware of their role and responsibility in safeguarding IT assets due to which safety and security of IT assets were at high risk.

In the exit conference, the Commissioner agreed with the audit observation and stated that the IT security would be implemented.

2.2.12.2 Generic users

In the computerised system, access to data was required to be restricted to authorised individual users only. We found 2,193 instances of use of generic user IDs where in users with generic names, such as, VACANT, VACANT_A VACANT_B, VACANT_C and VACANT_E had entered/modified the data in the system as detailed below:

Name of the Module	Name of the Task	No. of transactions done with generic user ID
Registration	Registration	2
Main Scroll	Returns	1,085
Case Transfer	Case transfer	1
Maker Checker	Case transfer	1,087
Registration	Case transfer	18
Total		**2,193**

The above is indicative of violations of the security system leading to creation of User IDs that could not be linked to individuals responsible for transactions.

In the exit conference, the Commissioner stated that users executing transactions should be identifiable and necessary changes would be made in the system to prevent creation of generic users.

2.2.12.3 Audit trail

Audit trails depict the flow of transactions necessary in a system in order to track the history of transactions, changes/modifications in data, system failures, erroneous transactions, etc. It was observed that audit trails available in the system were not adequate as detailed below:

(i) Audit trail of front end changes made in Payment challans and Returns data

Returns module has a tool namely, "Ind validate" to carry out the changes in VAT returns and payment challans. This tool is made use of in cases where the

returns and payment challans could not be co-related due to mismatch of information such as dealer registration numbers (TINs) and period of returns. Data in returns, such as figures in the returns including tax liability, TIN, period of Return and date of challan excluding challan number could be changed. Similarly data in the payment challans such as the TIN number, period of challan and date of challan excluding amount and challan number could be changed.

We observed that there is no session based user logs for recording the details of users making these changes and generation of MIS reports which could be utilised for monitoring the authenticity and correctness of the changes carried out.

The JC, MAHAVIKAS stated that the officers up to the rank of Joint Commissioner are authorised to carry out these changes and neither history sheet of changes made is being maintained nor any MIS report in this regard is available in the system.

(ii) Audit trail of backend modifications

Auditing log is to be enabled for recording audit trail of important events in the database such as deleting or modifying sensitive data through the backend and it could be useful for gathering historical data for particular database activities. Data relating to MAHAVIKAS in the DB2 database, which is a database system that stores data, can be accessed indirectly through by low level modification of the data (e.g. through SQL commands) than by application programme**.**

We observed that auditing log is not enabled in the DB2 database. Hence important events were not being recorded which increased the risk of unauthorised system actions, such as deleting or modifying sensitive data.

These discrepancies indicated lack of audit trails and controls over modification and deletion of data. Thus, the system was insecure and vulnerable to manipulation.

In the exit conference, the Commissioner agreed with the audit observation and said that the Department would try to resolve the issues raised.

2.2.13 Audit module

Internal audit system both in the manual as well as computerised environment is to provide assurance that the controls are in place. It is important to embed electronic controls and digital trails at the design stage. Further, as per the guidelines of Mission Mode Project for Computerisation of Commercial Taxes administrations, the computerised system should be capable of 'Internal audit'.

We observed that audit query module to enable the audit in computerised environment was not designed and internal audit was not involved in the development of the application software.

This indicates that though internal audit is an intrinsic part of a system, the requirements of audit for facilitation of audit of electronic data were not elicited and incorporated in the system.

In the exit conference, the Commissioner accepted the audit observation and agreed to implement the same in the proposed new system.

2.2.14 Internal Control

Every department is required to institute appropriate internal control for its efficient functioning by ensuring proper enforcement of laws, rules and departmental instructions. It helps in creation of reliable financial and Management Information System which could act as a tool at the senior management level to monitor the tax administration and take remedial action. For this the application system should provide for various Management Information System (MIS) reports and access to MIS reports relating to data security could be limited to those who need to review the same.

We observed that crucial MIS report to monitor data integrity and data security was not designed with respect to duplicate registration, irregular claim of excess credit, dealers effecting inter-state transactions but not obtaining registration under the CST Act, delay in processing of refund applications, allotment of duplicate refund applications, RAOs claimed in returns, changes made in payment challans and returns, etc. Due to non-availability of MIS reports in this regard, the Department could not monitor exceptional data entries, inaccurate data and unauthorised data intervention.

We may also recommend that the access to certain kinds of MIS reports can be limited to those who need to review data security, etc.

In the exit conference, the Commissioner accepted the audit observation and agreed to implement the same for both internal and external auditors in the proposed new system.

The Government may direct the Department to identify the MIS reports required so that data integrity and data security could be monitored.

2.2.15 Conclusion

The MAHAVIKAS System has been implemented since 2006 with a view to provide a reliable and responsible computer application. However, many modules of the system still continued to be under development even after seven years of computerisation and incurring a total expenditure of ` 127.18 crore. Many deficiencies persist primarily due to poor documentation and weak implementation thus making the system not fully reliable. Deficient mapping of business rules and validation checks resulting in large number of cases of availment of tax benefits in violation of Tax rules remained undetected in the system. There were huge amount of tax arrears shown wrongly pending against the dealers due to non-reconciliation of tax liability in the returns and payments. Inadequate IT Security especially for facilities for audit and audit trails made the system vulnerable to manipulation.

2.2.16 Recommendations

STD may consider-

* reviewing and modifying the application system with reference to provisions of the Act and the user requirements/business rules;
* introducing a mechanism to monitor the implementation and utilisation of various modules of the application system;
* enforcement of validation checks in the system to ensure reliability of data and prevent revenue loss;
* analyze the requirement of MIS reports and audit and design appropriate MIS to make effective use of the system; and
* creation of audit trails to track changes made in the data and configure the database logs to record modifications of data through back-end.

In the exit conference, the Commissioner accepted all the recommendations.

2.3 Other audit observations

Our scrutiny of the assessment records finalised under Bombay Sales Tax Act, 1959 (BST Act), Maharashtra Value Added Tax, 2002 (MVAT Act), Central Sales Tax Act, 1956 (CST Act) and Maharashtra Tax on Luxury Act, 1987 (MTL Act) in the Sales Tax Department revealed cases of non-observance of provisions of Acts/Rules, non/short levy of tax, irregular grant of exemptions and other cases as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till we conduct audit. There is need for the Government to improve the internal control system including strengthening of internal audit.

2.4 Non-observance of the provisions of Acts/Rules

The BST/MVAT/CST/MTL Acts and Rules empower/provide for:

(i) levy of tax/interest/penalty at the rates prescribed in the Acts;

(ii) adjustment of refunds under MVAT Act against dues under CST Act.

(iii) Recovery of arrears of tax.

We noticed that the AAs, did not observe some of the provisions of the Act/Rules and notification issued thereunder while finalising the assessments, as mentioned in the paragraphs 2.4.1 to 2.4.14.

Maharashtra Value Added Tax Act, 2002

2.4.1 Short levy of tax on works contract transaction

DCST E-602, Large Tax Payer's Unit, Mazgaon division

Under the provisions of Section 42(3) of the MVAT Act, a dealer can discharge his liability towards payment of tax, in lump-sum by way of composition, in lieu of amount of tax payable on the sales effected by way of transfer of property in goods involved in the execution of a Works Contract, whether in respect of the entire turnover of sales or in respect of any portion of the turnover. However, no deduction shall be allowed from the total contract value except the amount payable towards sub-contract. Further, as per Rule 57(1) of the MVAT Rules, a registered dealer may be allowed deduction in respect of sales tax not separately collected from the sale price of the goods equal to the sum collected calculated in accordance with the formula provided in the said Rule.

During test check (September 2011) of a case closed in Business Audit (October 2010) and detailed scrutiny of documents received in July 2012, we noticed that in respect of a dealer engaged in civil contracts, for the period 2008-09, the net turnover of sales (TOS) under works contract after deduction of job work receipts, sale value of fixed assets, etc., was at ` 34,014 lakh. Out of this, TOS of ` 26,116.54 lakh was considered for levy of tax under the

composition scheme. However, as against the admissible deductions of tax collected separately at of ` 273.24 lakh, deduction of ` 1,242.01 lakh was incorrectly allowed resulting in excess deduction of ` 968.77 lakh. Thus further resulted in short levy of composition tax of ` 72.05 lakh including interest of ` 23.61 lakh under Sections 30(3) and 30(4).

After we pointed out the case in September 2012, the Department accepted the observation in June 2013 and raised additional demand of ` 72.05 lakh including interest of ` 23.61 lakh. A report on recovery is awaited.

We reported the matter to the Government in August 2013; their reply is awaited (January 2014).

2.4.2 Allowance of excess set-off

Deputy Commissioner of Sales Tax E-001, Large Taxpayer's Unit, Kolhapur Division

Under the provisions of Rule 54(l) of the MVAT Rules, no set-off or refund as provided by any rules made under this Act shall be granted to any dealer in respect of purchases of electrical installation by a claimant dealer during the period commencing from 1 April 2005 and ending on 7 September 2006 if such goods purchased are treated by the claimant dealer as capital assets and the claimant dealer is not engaged in the business of transferring the right to use the said goods.

During test check of assessment and other related records in June 2009 we noticed in respect of a dealer, engaged in manufacture of iron castings etc. that set-off was allowed @12.5 *per cent* on purchases of electrical installations valued at ` 14.48 lakh which were capitalised during 2005-06. However, these items are enumerated in the list of goods on which no set-off is admissible. This resulted in excess allowance of set-off of ` 5.11 lakh including interest and penalty.

After the case was pointed out in July 2009, the Department accepted the observation and passed an assessment order (August 2011) raising additional demand of ` 5.11 lakh including interest at ` 1.49 lakh and penalty at ` 1.81 lakh. A report on the recovery is awaited.

We reported the matter to the Government in April 2013; their reply is awaited (January 2014).

2.4.3 Non/short levy of penalty

(a) DCST, Large Tax Payer's Unit E-014, Mumbai division

Under Section 29(3) of the MVAT Act, while passing any order under this Act, in respect of a dealer, the Commissioner, on noticing or being brought to his notice, that the dealer has concealed the particulars or has knowingly furnished inaccurate particulars of any transaction liable to tax, may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose upon him, in addition to any tax due from him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

Test check (September 2010) of the assessment records, for the period 2005-06, indicated that the dealer was engaged in the manufacture of non-ferrous metal powder in his units at Tamil Nadu and Madhya Pradesh which was received by way of branch/stock transfer in his Mumbai unit for sale. Scrutiny of the best judgment assessment order passed in March 2010 revealed that during Business Audit conducted earlier as well as during assessment the Department had noticed discrepancies in the accounts/returns, such as –

1) short reflection of branch transfer of ` 1.02 crore in the return filed by the dealer as compared to the Audit Report furnished by the chartered accountant in Form 704,
2) variance in the figures of branch transfers received and sent as per the Trial Balances of the manufacturing units for the relevant period, and
3) payment of tax at a lower rate (four *per cent*) on certain sales though tax was leviable at 12.5 *per cent*.

The dealer could not explain the above discrepancies during the hearing due to which the highest turnover amongst all the Trial Balances submitted by the dealer was taken for assessment of tax under Section 23(2) which resulted in differential dues of ` 97.58 lakh. We noticed that though the dealer had furnished inaccurate particulars, concealed the turnover, etc., no notice for levy of penalty under Section 29(3) was issued by the assessing authority to the dealer in this regard. This resulted in non-levy of penalty of ` 97.58 lakh.

After we pointed out the case in October 2010, the Department accepted the audit observation and raised demand ` 97.58 lakh (May 2013). However, the dealer has appealed against the original assessment order dated March 2010 and subsequent assessment order dated May 2013.

We reported the matter to the Government in August 2013. In reply the Government communicated (October 2013) that the concerned appellate authority had granted an interim stay on recovery of the dues of the dealer up to September 2013. Further progress in the matter is awaited (January 2014).

(b) Deputy Commissioner, Investigation E-001, Raigad division

During test check of the records of the unit in March 2010, we noticed in the assessment of a dealer finalised in April 2007, for the period August-

September 2005, dealing in medical care equipment that penalty was levied at ` 3.52 lakh as against the dues of ` 10.62 lakh. The dealer had evaded tax on sales of ` 85 lakh claiming it as high sea sales but due to non-production of any documentary evidence the assessing officer had levied tax at ` 10.62 lakh. Therefore, penalty should have also been levied equal to the amount of tax i.e. at ` 10.62 lakh. This resulted in short recovery of penalty of ` 7.10 lakh.

After we pointed out the case in April 2010, the Department accepted the audit observation and rectified the mistake by increasing the penalty from ` 3.52 lakh to ` 10.62 lakh while finalizing the appeal order in September 2011. A report on recovery is awaited.

We reported the matter to the Government in April 2013; their reply is awaited (January 2014).

2.4.4 Incorrect adjustment of MVAT refund against CST dues

Deputy Commissioner of Sales Tax E-024, Business Audit and Deputy Commissioner of Sales tax E-025, Business Audit, Pune Division

Every dealer is required to furnish separate returns in respect of the local sales under MVAT Act and inter-State transactions under the CST Act. Further, a dealer whose turnover of sales or purchases exceeds ` 40 lakh in a year is required to submit an audit report in form 704 prepared by a chartered accountant.

As per rule 55 of the MVAT Rules, if the dealer has claimed refund in the MVAT returns and dues in respect of inter-State transaction in the CST returns then the refund under MVAT can be adjusted against the dues under CST provided a refund adjustment order for the amount adjustable is issued in respect of that period.

Mention was made in paragraph 2.4.4 of the Report of the Comptroller and Auditor General of India for the year ending 31 March 2012 regarding incorrect adjustment of MVAT refund against CST dues. No action has been taken in this regard (November 2013) even though the irregularity continues as discussed below.

During test check of the business audit files in December 2011 and January 2012, we noticed that for the periods 2005-06, 2006-07 and 2007-08, audit reports in form 704 prepared by chartered accountants indicated refunds aggregating ` 71.06 lakh in respect of 15 dealers under MVAT Act. In all these cases the dealers concerned had shown dues in the returns filed under the CST Act for the corresponding periods. While passing the assessment orders of the dealers under the CST Act, between June 2010 and August 2010, the Department had adjusted the refunds payable under MVAT Act aggregating ` 71.06 lakh against their corresponding dues under CST Act. However, in none of these cases the business audits had been completed or refund adjustment orders had been passed as prescribed in the rules. This resulted in incorrect adjustment of refunds aggregating ` 71.06 lakh under MVAT Act against the tax payable under the CST Act.

After we pointed out the cases in January 2012, the Dy. Commissioner E-024 stated that the allowance of adjustment of refunds against CST dues was correct as per internal circular issued by the Commissioner of Sales Tax.

The reply is not tenable as Rule 55 of MVAT Rules require refund adjustment order to be passed before adjustment of refund against the dues which are invariably to be followed.

We reported the matter to the Government in May 2013; their reply is awaited (January 2014).

Bombay Sales Tax Act, 1959

2.4.5 Short levy of tax

Deputy Commissioner of Sales Tax B-231, Kolhapur division

Under the provisions of the BST Act, the rate of tax applicable on any commodity is determined with reference to the relevant entry in schedule 'B' or 'C' of the Act. Further, the Government, by notification from time to time, exempts certain sales or purchases from payment of tax in full or any part thereof, which are payable under the provisions of the Act, subject to such conditions as are prescribed. Besides, turnover tax (TOT), surcharge (SC) and interest are also leviable as per the provisions of the Act. Further, resale tax at the rate of 0.5 *per cent* is also leviable on the turnover of resale of goods specified in Schedule C where the goods resold were purchased from a registered dealer with effect from 1 May 2002.
The Commissioner of Sales Tax, as per determination order dated 31 January 2003 issued under Section 52 of the BST Act, had held medicinal oxygen liable for tax @13 *per cent*, along with surcharge @ 10 *per cent* of the tax amount and turnover tax @ one *per cent* of the sale turnover.

During test check (November-December 2008) of the assessment and other related records of a dealer engaged in the manufacture of gases, we noticed in the assessment for the period 2004-05 (finalized in December 2007), that on sale of gases like Argon, Nitrogen and Oxygen valued at ` 2.51 crore, tax was levied at the rate of 5.4 *per cent* against the applicable rate of 15.3 *per cent.* Also sales of medical oxygen valued at ` 24.22 lakh tax was levied at the rate of 9 *per cent* instead of 15.3 *per cent*. Further, no resale tax was levied on the resale of these gases valued at ` 2.90 crore. This resulted in short levy of tax of ` 39.55 lakh including interest.

After we pointed out the case in January 2009, the Department revised the assessment in December 2012 raising additional demand of ` 39.55 lakh including interest of ` 11.70 lakh. A report on the recovery is awaited.

We reported the matter to the Government in April 2013; their reply is awaited (January 2014).

2.4.6 Short levy of Turnover Tax (TOT)

Deputy Commissioner of Sales Tax M-67, Pune and Assistant Commissioner of Sales Tax C-901, Aurangabad

Under the provisions of Section 9 of the BST Act, turnover of taxable sales of Schedule C goods exceeding ` 12 lakh was liable for levy of turnover tax at the rate of one *per cent* as per amendment of 31 March 1999. Further, it was leviable at the rate of one and half *per cent* with effect from 1 May 2002 if the tax liability of the dealer exceeded ` one crore in the immediate preceding year or in the current year. Besides, interest at the prescribed rate was also leviable under the provisions of the Act.

During test check of the assessment and other relevant records, between September 2009 and February 2010, we noticed in the assessments finalized between September 2008 and January 2009, that there was non/short levy of TOT in two cases as shown below:

Assessing Authority	Date of audit	Activity of dealer and Period of assessment	Nature of irregularity	Short levy (` in lakh)
Deputy Commissioner of Sales Tax M-67, Pune Division	February 2010	Manufacture of auto parts 2004-05	Turnover tax was levied @ 1 *per cent* on turnover of goods of ` 12.76 crore instead of 1.5 *per cent* although the tax liability of the dealer had exceeded ` 1 crore	6.38
The Department in May 2010 raised additional demand of ` 7.81 lakh. Report on the recovery is awaited.				
Assistant Commissioner of Sales Tax C-901, Aurangabad Division	September 2009	Manufacture of auto parts 2002-03 2003-04	Turnover tax was not levied on turnover of sale of ` 4.53 crore.	4.92
The Department in November 2010 raised additional demand of ` 4.92 lakh. Report on the recovery is awaited.				

We reported the matter to the Government in April 2013; their reply is awaited (January 2014).

2.4.7 Excess allowance of deferment

Deputy Commissioner of Sales Tax B-101, Nariman Point Division

Under the provisions of the BST Act and the rules made thereunder, an industrial unit which is registered under the Act and which has been certified as an eligible industrial unit in the Eligibility Certificate (EC) granted by the Maharashtra Energy Development Agency (MEDA) under the Power Generation Promotion Policy, 1998 is permitted to defer the payment of purchase tax payable on purchase of raw materials and sales tax payable on sales of finished products, as mentioned in Eligibility Certificate, which are manufactured in the said unit, up to the period by which monetary ceiling, specified in Entitlement Certificate, gets exhausted or till the last date of the period mentioned in the Entitlement Certificate whichever event occurs first.

During test check of assessment and other related records in May 2009 we noticed that a dealer, who was granted EC by MEDA in respect of his two units engaged in the manufacture of adhesives, chemicals, dyes and pigments, with a monetary ceiling of ` 23 lakh for each unit, had claimed deferment of tax of ` 23.00 lakh and ` 16.93 lakh against the respective tax liabilities of ` 32.00 lakh and ` 16.93 lakh for the two units for the assessment year 2001-02. However the AA in his order allowed deferment tax of ` 46 lakh for both the units considering the monetary ceiling of the units put together. This was not correct as the monetary ceilings of both units were to be considered separately and the deferment of one unit was to be restricted to ` 16.93 lakh only. This resulted in excess grant of deferment of ` 6.07 lakh.

After the case was pointed out in June 2009, the appellate authority who was hearing the appeal of the dealer, withdrew (March 2012) the excess benefit of deferral granted to the dealer at ` 8.25 lakh including interest of ` 2.18 lakh and directed the AA to recover the dues.

We reported the matter to the Government in April 2013. The Government communicated (September 2013) that the dues have been recovered from the dealer.

2.4.8 Non-recovery of sales tax dues due to belated assessment, ineffective recovery proceeding, etc.

Under the BST Act, tax assessed was required to be paid by the assessee in a manner and within the time specified in the notice of demand. In case of failure on the part of the assessee to pay the amount within the date mentioned in the demand notice, the Department could recover the amount which remains unpaid as if it was arrears of land revenue. Any dealer not satisfied with the demand could prefer an appeal with the Appellate Authority or in a Court of law.

(i) During test check of recovery files in Nashik Division in September 2012, we noticed that a dealer company was in arrears of assessed sales tax dues of ` 3.58

crore for the periods from 1997-98 to 2000-01. The assessment orders for the said periods were passed *ex-parte* in October and November 2008 i.e. after a delay of seven to ten years. As per report submitted by the Sales Tax Inspector in November 2008 the company was already closed in February 2002 and sold out by State Bank of India, Dindori Branch in August 2005 through auction. Thereafter, the Department requested the Tahsildar, Dindori in August 2009 and March 2011 to record the sales tax dues on the "7/12 extract"[26] of the dealer's factory plot as auction of the said plot was to be initiated under the Maharashtra Land Revenue Code, 1966 (MLR Code). The Talathi intimated (March 2011) that the factory premises of the dealer was already sold to another party in 2005 in auction and hence no action was possible on that plot.

The Department in July 2009 and November 2010 issued notices to the Directors of the company for payment of sales tax dues through registered post. In February 2012, the Department requested the Vani Police Station, Nasik to trace the whereabouts of Directors of the company so as to facilitate recovery of sales tax dues.

Thus belated action in assessing the dealer and ineffective follow up action of recovery proceedings resulted in non-recovery of arrears of ` 3.58 crore.

(ii) During test check of recovery files in Thane Division in August 2012, we noticed that Private Limited Company, an importer and reseller of automobiles and spares, was in arrears of assessed sales tax dues of ` 2.64 crore for the period 1997-98 to 2001-02. The assessment orders for the said periods were passed *ex-parte* in between July 2004 and February 2007 as shown in the table below-

(` in lakh)

Period	Additional demand raised (` in lakh)	Dates of Assessment	Delay (in years)
1997-98	41.76	21/07/2004	6
1998-99	41.28	17/03/2006	7
1999-00	43.48	23/03/2006	6
2000-01	26.79	23/03/2006	5
2001-02	110.60	28/02/2007	5
Total	**263.91**		

Meanwhile, the dealer had closed his business in June 2003 and left the place of business without intimating the Department. The Department in March 2004 intimated the Directors of the company that they would become liable for action under Sections 406 and 409 of the Indian Penal Code for non-payment of sales tax which was already collected by them but not paid into Government account.

Later, the Department issued order under Section 62A of the BST Act in March 2005 and July 2011 to the Directors of the company prohibiting them from transfer of assets of the business. However, the same order could not be

[26] Record indicating the occupant of the land and the purpose for which the land is utilised.

served upon the Directors as they had left the place of business. Again in July 2012 a letter was written to the Sr. Police Inspector, Kharghar police station to trace out the Directors at their residential address at Kharghar.

Thus, non-assessment of the dealer immediately after closure of business, non-initiation of recovery proceeding under the MLR Code and absence of follow up of recovery action has resulted in non-realisation of sales tax dues of ` 2.64 crore.

(iii) During test check of recovery files in Andheri Division in July 2012, we noticed that a dealer company, a manufacturer and reseller in automobile parts, stainless steel utensils and plastic goods was in arrears of sales tax dues of ` 3.60 crore for the periods 1999-00 and 2000-01. The assessment order for the period 1999-00 was not available on the record hence date of assessment, etc., could not be ascertained. The period 2000-01 was initially assessed *ex-parte* in March 2008 which was subsequently reassessed in April 2011.

Detailed scrutiny of the recovery file revealed that according to the visit report (15 March 2005) of the Sales Tax Inspector, the dealer had already closed his business and the factory premises at Vasai, District Thane was sealed by the Bank of India and the investigation of the dealer was going on. Despite being aware of this fact, the Department had not intimated the bank to lay claim on its dues as amount payable to the Government formed the first charge on the property of the dealer. Even the notice for recovery under the MLR Code was issued almost after six years in January 2011 and that too for recovery of dues of ` 1.52 crore pertaining to the year 1999-00.

From the above facts it is clear that the Department had not kept track of the dealers activities, delayed assessing the dealer, did not stake claim with the bank which had sealed the property and followed up the matter in a routine manner placing the revenue of ` 3.60 crore due to Government at risk.

(iv) During test check of recovery files in Andheri Division in July 2012, we noticed that a dealer company was in arrears of assessed sales tax dues of ` 68.75 lakh for the periods 2000-01 and 2001-02. The assessment orders for the said periods were passed *ex-parte* in December 2006 i.e. after delays ranging from 21 to 33 months. The dealer had filed appeal against the above orders which were dismissed in December 2008 by Appellate Authorities with a direction to recover the balance dues after confirming the part payment made in appeal. In January 2011, i.e. two years later, the person from the Department deputed to serve the demand notice at the address of the dealer noticed that the dealer had left the place of business as well as his residence. Meanwhile, ICICI Bank had attached the place of business and residence respectively and sold it to third parties. The Jt. Commissioner of Sales Tax, Andheri Division finally issued RRC and referred the same to Jt. Commissioner of Sales Tax, Pune Division for taking recovery action under MLR Code in April 2011 as the dealer's factory and another residential address was at Pune. A reminder to Jt. Commissioner of Sales Tax, Pune Division was issued only in July 2012, i.e. after 14 months. Thereafter no action has been taken by the Department.

Thus, delay in assessing the case and not taking timely action for recovery resulted in the Department losing possession of part of the property for auction etc., to the bank and jeopardising the recovery of dues of ` 68.75 lakh.

(v) During test check of recovery files in Nashik Division in September 2012, we noticed that a dealer dealing in manufacturer of plates, couplers, girders and span etc., was in arrears of assessed sales tax dues of ` 55.02 lakh for the period 1998-99 to 1999-00 and 2001-02 to 2003-04. The assessment orders for the said periods were passed *ex-parte* in January 2009 except for the period 2000-01 which was assessed in March 2006.

We noticed that though the dealer held an entitlement certificate, the Department did not keep track of the returns filed by the dealer and the assessments were done after five to ten years instead of on priority basis. After doing *ex-parte* assessments in January 2009 i.e. after a delay of five to ten years, the demand notices were pasted on the premises of the dealer's manufacturing unit in February 2009 and Sales Tax Inspector (STI) reported that the business was already closed long back. The Department did not initiate recovery proceedings till February 2012. In March 2012, a letter was issued to the Manager, Sinnar Taluka. Audyogik Sahakari Vasahat Maryadit, for claim of plot No. 79, the place of business of the dealer. In reply, it was stated that the aforesaid plot was already transferred to another party in February 2004.

From the above facts it is clear that the Department had failed to monitor the case. Further, delay in assessment and initiating timely recovery proceedings resulted in loss of its claim over properties of the dealer and non-realisation of ` 55.02 lakh.

(vi) During test check of recovery files in Nashik Division in October 2012, we noticed that a reseller in medicine and pharmaceuticals was in arrears of assessed sales tax dues of ` 4.39 crore for the period 2000-01 to 2003-04. We noticed that assessment proceedings were initiated in March 2003, however, assessment orders were passed in February 2009 after a lapse of six years. In the assessment order it was stated that the dealer was absconding since last two years. When, after assessment, the dealer was not found at the place of business, the Department lodged a police complaint against the dealer. The police informed the Department that the dealer had already sold his assets and absconded two years before the police complaint was lodged.

Thus, belated action in assessing the dealer and ineffective follow up action of recovery proceedings resulted in non-recovery of arrears of ` 4.39 crore.

(vii) During test check of recovery files in Borivali Division in December 2012, we noticed that a reseller of chemicals and oils, was in arrears of sales tax dues of ` 16.13 lakh for the period April 1989 to August 1989. The assessment of the dealer for the said period was passed in April 1996 i.e. after a lapse of seven years. For effecting this outstanding recovery a proposal for prosecution was put up by the assessing authority to AC (Admn), Borivali Divison in April 1999. The same was returned by AC (Admn) in June 1999 with instructions to put up the same to the appropriate authority. However,

after the prosecution proposal was returned, no further action was taken by the Department to effect the outstanding recovery of ` 16.13 lakh.

Thus, inaction by the Department in assessing the dealer on priority and pursuing the recovery matter resulted in non-recovery of sales tax dues.

We reported the above cases to the Government in May 2013; their reply is awaited (January 2014).

2.4.9 Non-recovery of sales tax dues due to improper follow up of RRC case

Sales Tax Officer, D-1122, Andheri Division

Under the BST Act, tax assessed was required to be paid by the assessees in a manner and within the time specified in the notice of demand. Any dealer not satisfied with the demand could prefer an appeal with the Appellate Authority or in a Court of law. In case of failure on the part of the assessees to pay the amount within the date mentioned in the demand notice, the Department can recover the amount which remains unpaid as if it was arrears of land revenue.

In cases where the defaulters do not own any property in the state but have property in some other state then the concerned assessing authority is required to address the revenue authority of the other state for collecting the arrears as per the provisions of the Revenue Recovery Act, 1890. For this, the Revenue Recovery Certificates (RRC) are required to be forwarded to the Collectors of the districts of the states in which the defaulters possess properties.

During test check (December 2012) of recovery files in Andheri Division ,we noticed that an importer and reseller of soaps, detergents and manufacturer of poly set PVC-oriented yarn and chemicals was in arrears of assessed sales tax dues of ` 13.83 crore for the periods 1996-97 and 1997-98. On scrutiny of recovery files it was noticed that assessments for the years 1996-97 and 1997-98 were completed in March 2003. However, as the dealer had closed the place of business and left, notice of demand was pasted on the premises of the dealer in May 2003.

In September 2003, demand notices for recovery were sent to dealer's Delhi address as it had come to notice that the dealer had shifted his business to Delhi. However, the recovery notices were returned unserved. Hence, RRC was issued and sent to Assistant Collector, New Delhi in April 2004. Reminders were issued in August 2006 and January 2011. No further action has been taken by the Department.

From the above details it could be seen that after RRC was issued in April 2004, till the date of audit only two reminders were issued during the last eight and a half years. Considering the huge amount of recovery involved (` 13.83 crore), regular follow up was required to be done at higher level. However, the same was not done resulting in non-realisation of arrears.

We reported the matter to the Government in May 2013; their reply is awaited (January 2014).

2.4.10 Non-recovery of sales tax dues due to non-follow up of case with BIFR

Assistant Commissioner of Sales Tax, C-464, Andheri Division

As per the Sick Industrial Companies (Special Provision Act) Act, 1985, (SIC Act) where a reference for declaration as sick unit is filed and proceedings thereon are pending before the Board for Industrial and Financial Reconstruction (BIFR), no suit for recovery or enforcement of any dues against the company shall lie or be proceeded further, except with the consent of the Board. Where a Company has been declared sick by the Board, the Department has to ensure inclusion of all the arrears in the statement of liabilities of the Company furnished to the Board.

During test check of recovery files in Andheri Division in July 2012, we noticed that a pharmaceutical company was in arrears of assessed sales tax dues of ` 2.21 crore for the periods 1984-85 to 1999-00. The details of assessments were not available on record. In February 2004 the Department made a reference to the dealer for recovery of admitted dues and tax collected but not yet paid in Government treasury. In reply, the dealer stated that the company's financial position had become so weak that it had already been declared sick under SIC Act and it was under rehabilitation programme of BIFR vide case no. 79/2002.

Despite being aware of the facts as early as in February 2004 that the dealer was declared a sick firm and registered with BIFR since 2002, the Department sent only one letter to the BIFR in May 2011 after lapse of seven years enquiring about the current status of the case and that letter too was returned back unserved for reasons not available on record. Thereafter no further action has been taken by the Department to recover the dues.

We enquired (July 2012) for comments and further action taken in the matter of recovery. The response of the Department is awaited.

We reported the matter to the Government in May 2013; their reply is awaited (January 2014).

Central Sales Tax, 1956

2.4.11 Short levy of Central Sales Tax

Under the provisions of Section 8(1) (b) of the CST Act and rules made thereunder, tax on sales in the course of inter-State trade or commerce, supported by valid declarations in form "C", is leviable at the rate of four *per cent* (three *percent* from 1 April 2007 and two *per cent* from 1 June 2008) of the sale price. Otherwise, according to sub-Sections (2) (a) & (b) of Section 8, tax is leviable at twice the rate applicable to the sales inside the state in respect of declared goods and on goods other than declared goods at 10 *per cent* or at the rate of tax applicable to the sale or purchase of such goods inside the state, whichever is higher. Further, according to Rule 12(1) of the CST (Registration and Turnover) Rules, 1957 the purchasing dealer or his representative should have signed the declaration form. Besides, interest is also leviable as per Section 30(3) of the MVAT Act.

Our scrutiny of the assessment records in four offices between September 2008 and August 2012 revealed the following instances of short levy of Central Sales Tax on account of various reasons:

Assessing Authority	Date of audit	Activity of dealer and Period of assessment	Nature of irregularity	Short levy of Central Sales Tax (` in lakh)
1	2	3	4	5
Deputy Commissioner of Sales Tax E-010, Refund & Refund Audit, Nasik Division	August 2012	Manufacture of machine tools 2007-08	Sale of ` 68.11 lakh was not supported with C Form and sales of ` 8.60 lakh were allowed on photocopies of C Forms	7.29
The Department in December 2012 raised additional demand of ` 7.16 lakh and deferred the same.				
Assistant Commissioner of Sales Tax C-456 Andheri Division	June 2011	Manufacture of perfumes 2004-05	Sales of ` 16.65 lakh to M/s C. D. India, Mehrauli, New Delhi, the "C" Form was not authenticated by the purchaser but by the seller himself	5.90
The Department in May 2012 raised additional demand of ` 6.54 lakh. We brought the matter to the notice of the Government in April 2013. In reply the Government stated that (September 2013) that dealer had appealed against the order and obtained stay on the recovery of dues till the finalisation of the appeal. Further progress in the matter is awaited (January 2014).				

1	2	3	4	5
Sr. Deputy Commissioner of Sales Tax A-08, Worli Division	September 2008	Manufacture of pharmaceutical goods, bulk drugs animal feeds, cosmetics, etc. 2001-02	Sale amounting to ` 362.60 lakh was taxed @10 *per cent* being not supported with form C, however, the products sold were diagnostics and other than notified chemicals which were taxable @15.3 *per cent* within the State	19.22
The Department in May 2012 raised additional demand of ` 99.86 lakh including interest of ` 47.92 lakh. We brought the matter to the notice of the Government in April 2013. In reply the Government stated that (September 2013) that dealer had appealed against the order in the Tribunal. Further progress in the matter is awaited.				
Assistant Commissioner of Sales Tax C-472, Andheri Division	November 2009	Manufacturer of moulds 2003-04	Sale amounting to ` 35.04 lakh was allowed against duplicate form 'C' in contravention of the provisions of the CST Act	7.02
The Department in July 2011 raised additional demand of ` 7.16 lakh including interest of ` 3.06 lakh and penalty of ` 0.14 lakh. We reported the matter to the Government in April 2013. The Government endorsed (September 2013) the reply of the Department which stated the dealer had gone in appeal against the order of additional demand and the appellate authority concerned had granted stay on the recoveries till the case is finalised. Further progress in the matter is awaited.				

We reported the matter to the Government in April 2013; their reply is awaited (January 2014).

2.4.12 Incorrect allowance of export

As per the provisions of Section 5(1) of the CST Act, sale or purchase of goods shall be deemed to have been taken in the course of export of goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods such as bill of lading, dock warrant, railway receipt etc., after the goods have crossed the customs frontiers of India.

Our scrutiny of assessment records in two offices between November 2009 and June 2010 revealed instances of incorrect allowance of export claims as shown in the following table.

Assessing Authority Period	Date of audit	Nature of irregularity	Short levy of Central Sales Tax (` in lakh)
Assistant Commissioner of Sales Tax C-472, Andheri Division 2003-04	November 2009	Deduction of ` 1.08 crore was allowed on account of sales in the course of export, although no documents were on record for support of such claim	10.81
The Department revised the assessment (July 2011) raising additional demand of ` 29.91 lakh including interest of ` 12.77 lakh and penalty of ` 61,000. A report on the recovery is awaited. We reported the matter to the Government in April 2013. The Government endorsed (September 2013) the reply of the Department which stated the dealer had gone in appeal against the order of additional demand and the appellate authority concerned had granted stay on the recoveries till the case is finalised. Further progress in the matter is awaited.			
Sr. Dy. Commissioner of Sales Tax A-21, Pune Division 2004-05	June 2010	Fifty *per cent* of claim of sales in the course of export of ` 1.79 crore was allowed although there were no documents to support the claim. The reasons for allowing even 50 *per cent* of the export without requisite documents were also not recorded by the assessing officer.	24.75
The Department allowed (out of the fifty per cent claim of ` 89.52 lakh allowed by the assessing officer) the export claim of ` 55.36 lakh on the basis of documents produced by the dealer, disallowed the balance claim of ` 34.16 lakh and raised a demand under the CST Act of ` 9.44 lakh including interest at ` 4.05 lakh. A report on the recovery is awaited.			

We reported the matter to the Government in April 2013; their reply is awaited (January 2014).

2.4.13 Incorrect grant of exemption from payment of tax on sales in the course of export

(i) Sales to a local exporter

(a) Deputy Commissioner of Sales Tax B-130, Nariman Point division

Under the provisions of Section 5(3) of the CST Act read with Rule 21A of the BST Act, sale in the course of exports is exempt from tax provided the sale or purchase is preceded by an agreement or order from a foreign buyer for or in relation to such export. The selling dealer is required to produce a certificate in Form 14B duly filled in and signed by the exporter along with evidence of export of goods for claiming exemption of tax on sales.

During test check of assessment and other related records in December 2008, we noticed in respect of a dealer engaged in ship-breaking and selling business that sales valued at ` 41.69 lakh for the period 2004-05 was exempted from payment of tax as sales in the course of exports. For this, the selling dealer was required to obtain a certificate in form '14B' and

other documents to confirm that there was a pre-existing order from the foreign buyer and that the goods were actually exported. Our scrutiny revealed that the foreign buyer's agreement order was subsequent to the purchase order of local exporter. This resulted in underassessment of tax of ` 6.38 lakh. Besides, interest of ` 1.97 lakh was also leviable.

After the case was pointed out in January 2009, the Department revised the assessment (May 2012) raising additional demand at ` 8.30 lakh including interest of ` 1.97 lakh and penalty of ` 2,000.

We reported the matter to the Government in April 2013. The Government communicated (September 2013) that the dealer had appealed against the revision order and the Tribunal had granted stay on recovery of dues till the finalisation of the appeal.

(b) Assistant Commissioner of Sales Tax C-802, Nashik Division

During test check(December 2008) of the assessments(August 2007) and other related records of a dealer, engaged in the manufacture of ball pen tips, for the periods 2003-04 and 2004-05, we noticed that, sales aggregating ` 107.24 lakh were allowed as exempt from payment of tax on the basis of certificates in Form "14B" issued by the purchaser-exporter. Detailed scrutiny of these certificates revealed that in respect of sales valued at ` 79.28 lakh, the agreement orders of the foreign buyers were subsequent to the date on which the purchase order was placed by the exporter. Thus, in the absence of a pre-existing order from the foreign buyer the condition set forth in Section 5(3) of the CST Act for claiming exemption from tax was not fulfilled. This resulted in under assessment of tax of ` 6.08 lakh including interest of ` 1.85 lakh.

After we pointed out the case in January 2009, the Department accepted the observation and revised the assessments in July and August 2012 raising additional demands totalling ` 6.08 lakh including interest of ` 1.85 lakh. A report on recovery is awaited.

We reported the matter to the Government in July 2013; their reply has not been received (January 2014).

(ii) Sales to an exporter located outside the state

Assistant Commissioner of Sales Tax C-472, Andheri Division

Under the provisions of Section 5(3) of the CST Act and the Rules made thereunder, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India is deemed to be in the course of export and is exempt from tax, provided, the last sale or purchase took place after, and was for the purpose of complying with a pre-existing agreement or order for or in relation to such export. Also, the selling dealer is required to produce a certificate in form 'H' duly filled in and signed by the exporter along with the evidence of export of goods.

During test check of assessment and other related records in November 2009, we noticed in respect of a dealer engaged in manufacture of moulds that sales valued at ` 44.39 lakh for the period 2003-04 was exempted from payment of tax as sales in the course of

exports. For this, the selling dealer was required to obtain a certificate in form 'H' and other documents to confirm that there was a pre-existing order from the foreign buyer and that the goods were actually exported. Our scrutiny revealed that the declarations in form 'H' were kept in duplicate instead of original and details like dates of foreign buyer's agreement order and local buyer's purchase order were not on record. Therefore, the allowance of deemed export was not in accordance with the provisions of the Act and Rules which resulted in underassessment of tax of ` 12.04 lakh including interest of ` 5.25 lakh.

After the case was pointed out in December 2009, the Department revised (July 2011) the assessment raising additional demand at ` 12.29 lakh including interest of ` 5.25 lakh and penalty of ` 25,000.

We reported the matter to the Government in April 2013. The Government forwarded (September 2013) the reply of the Department which stated that the dealer had gone in appeal against the order of additional demand and the appellate authority concerned had granted stay on the recoveries till the case is finalised. Further progress in the matter is awaited (January 2014).

Maharashtra Tax on Luxury Act

2.4.14 Loss of revenue due to issue of circular *ultra vires* to the provision of the Act

Assistant Commissioner of Sales Tax C-368, Nariman Point division

Under the provisions of the Maharashtra Tax on Luxury Act, 1987 there shall be levied a tax on the turnover of receipts in respect of luxuries provided in a hotel. The luxury provided in a hotel means accommodation and other services provided in a hotel, the rates or charges for which including the charges for air-conditioning, telephone, television, radio, music, entertainment, extra beds and the like, exceed rupees two hundred or more, per day per residential accommodation.

During test check of assessment and other related records in February 2012 we noticed that two dealers, engaged in hotel[27] business had received charges of ` 53.37 crore for laundry sales, membership, executive centre, internet sales, banquet sales, internet services, conference hall, telephone, audio visual equipment, secretariat services, etc., in the hotel during the year 2007-08. Though these receipts form part of the turnover of receipts

[27] Section 2(e) defines "hotel" as a residential accommodation, a club, a lodging house, an inn, a public house or a building or part of a building, where a residential accommodation is provided by way of **business**;
Section 2(b) defines "business" as the activity of providing residential accommodation and any other service in connection with or incidental or ancillary to such activity of providing residential accommodation, by a hotelier for monetary consideration;
Whether or not such activity, other services or supply is carried on with a motive to make a gain or profit and whether or not any gain or profit accrues from such activity, other services or supply.

for levy of tax, same was not included in the turnover of receipts. This resulted in short levy of tax ` 5.34 crore.

After the case was pointed out in March 2012, the Department stated that these charges were not included in the turnover of receipt as per the Commissioner's circular 20 T of 2005 dated 23 September 2005.

The reply of the Department is not tenable as the Act provides for levy of tax on the accommodation and other services provided in the hotel which are in connection with or incidental or ancillary to the activity of providing residential accommodation by a hotelier for monetary consideration, whether or not such other services is carried on with a motive to make a gain or profit and whether or not any gain or profit accrues from such other services.

We reported the matter to the Government in June 2013; their reply is awaited (January 2014).