

CHAPTER – II

SALES TAX

2.1 Results of Audit

Test check of records in various Sales Tax Offices conducted in audit during the year 2003-04 revealed under assessment of Rs.348.19 crore in 579 cases, which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1	Incorrect rate of tax and mistake in computation	70	6.64
2	Incorrect grant of set-off	58	2.30
3	Incorrect concession/exemption	37	48.19
4	Non/short levy of interest & Penalty	229	41.98
5	Other irregularities	184	25.06
6	Review on Receipt, issue and use of declaration forms	01	224.02
	Total	579	348.19

During the year 2003-04, the Department has accepted under assessment of Rs.99.60 lakh in 77 cases and recovered Rs.122.80 lakh in 106 cases, of which 37 cases involving Rs.53.40 lakh were pointed out during the year 2003-04 and rest in earlier years.

A few illustrative cases involving important audit observations and review on **Utilisation of declaration forms prescribed under Gujarat Sales Tax Act, 1969 and Central Sales Tax Act, 1956** involving Rs.270.51 crore, are discussed in the following paragraphs.

2.2 Utilisation of declaration forms prescribed under Gujarat Sales Tax Act, 1969 and Central Sales Tax Act, 1956

Highlights

Purchase tax of Rs.139.67 crore was not levied due to breach of recitals of certificate.

(Para 2.2.7)

Cross verification of sales valued Rs.284.30 crore with various declarations/certificates was not done.

(Para 2.2.8)

Short levy of tax of Rs.3.17 crore due to deductions allowed against declarations without keeping details/forms was noticed.

(Para 2.2.9)

Due to incorrect allowance of deductions against Form, tax of Rs.1.50 crore was short levied.

(Para 2.2.10)

Incorrect acceptance of incomplete declarations/details for branch transfer of goods valued at Rs.1,563.19 crore involving tax effect of Rs.32.91 crore was noticed.

(Para 2.2.13)

There was short recovery of tax of Rs.14.85 crore due to incorrect levy of concessional rates of tax against Form C and Form D.

(Para 2.2.14)

Due to irregular allowance of deductions of goods exported without Form H or incomplete Form H, tax of Rs.12.54 crore was short levied.

(Para 2.2.15)

Incorrect allowance of deduction without furnishing of the requisite forms in inter-state sale of goods resulted in short levy of tax of Rs.5.35 crore.

(Para 2.2.17)

Internal audit was found to be deficient.

(Para 2.2.19)

Introduction

2.2.1 Gujarat Sales Tax Act, 1969 (GST Act) provides certain facilities to the registered dealers. They are entitled to purchase goods without payment of tax or at concessional rates, if the goods so purchased are for resale or for use in the manufacture of goods for sale, provided the purchasing dealer furnishes prescribed declaration forms/certificates to the selling dealer. The GST Act also provides for grant of licence, recognition and permits to those registered dealers, who specifically opt for such facility and they can also enjoy the benefits of notification issued under Section 49(2) of the Act, either for exemption from payment of tax or for concessional rate of tax, in respect of sale or purchase of goods as per conditions enumerated in declarations under relevant provisions of Act/notifications.

Under Central Sales Tax Act, 1956 (CST Act), registered dealers are eligible to certain exemptions and concessions of tax on inter-state sales on the strength of prescribed declarations such as Forms C, D, E-I, E-II, F, H.

Organisational set up

2.2.2 The Commissioner of Sales Tax is the head of the Department and is assisted by Special Commissioner of Sales Tax (SCT) (Enforcement) and Additional Commissioner of Sales Tax (ACT) (Vigilance). The State is divided into seven divisions, each headed by a Deputy Commissioner (DC) of Sales Tax. The divisions are sub-divided into circles (Ranges), each headed by an Assistant Commissioner of Sales Tax (ACST). The circles are further divided into units which are supervised by the Sales Tax Officers (STOs). Validity and correctness of various exemptions and concessions claimed by the dealers are checked by the concerned ACST or STO during finalisation of assessments.

Scope of Audit

2.2.3 Records maintained in the offices of the Commissioner of Sales Tax, five[#] out of seven DCs and 32^{**} out of 128 Sales Tax units for the period from

[#] DCST-Division-1-Ahmedabad, DCST-Division-2-Ahmedabad, DCST-Division-6-Bhavnagar, DCST-Division-3-Gandhinagar and DCST-Division-4-Vadodara.

^{**} ACST-Circle-3-Ahmedabad, ACST-Circle-6-Ahmedabad, ACST-Circle-14-Bharuch, ACST-Circle-19-Bhavnagar, ACST-Circle-7-Gandhinagar, ACST-Circle-8-Mehsana, ACST-Circle-13-Nadiad, ACST-Circle-9-Palanpur, ACST-Circle-23-Rajkot, ACST-Circle-20-Surendranagar, ACST-Circle-16-Surat, ACST-Circle-11-Vadodara, ACST-Circle-12-Vadodara, STO-Unit-21-Ahmedabad, STO-Unit-22-Ahmedabad, STO-Unit-2-Anand, STO-Unit-1-Bhavnagar, STO-Bharuch, STO-Gandhinagar, STO-Kalol, STO-Kadi, STO-Mehsana, STO-Palanpur, STO-Unit-1-Surendranagar, STO-Unit-2-Surendranagar, STO-Unjha, STO-Unit-1-Vapi, STO-Unit-2-Vapi, STO-Unit-7-Vadodara, STO-Vijapur, STO-Viramgam and STO-Visnagar.

2000-01 to 2002-03 were test checked in audit between May 2003 and December 2003.

Audit Objectives

2.2.4 The review was conducted with a view to:

- evaluate the adequacy, reliability and effectiveness of the system of use of declaration forms/certificates,
- ascertain whether statutory provisions of the Rules were adhered to,
- examine whether deductions granted against declarations under different Sections of the Act were properly documented and
- review the efficacy of internal control to ascertain whether sufficient internal controls exist to ensure proper use of the forms in order to avoid leakage of revenue.

Internal Control

2.2.5 Internal Controls are intended to provide reasonable assurance of proper enforcement of laws, rules and Departmental instructions. These also help in prevention and detection of frauds and other irregularities. The internal controls also help in creation of reliable financial and management information system for prompt and efficient services and for adequate safe guards against evasion of taxes. It is, therefore, the responsibility of department to ensure that a proper internal control structure is instituted, reviewed and updated to keep it effective.

During the course of audit, it was noticed that lack of proper internal controls and monitoring of assessment cases finalised by the assessing authorities, resulted in non-observance of the provisions of the Act and Rules and Departmental instructions in regard to verification of declarations submitted by the dealers for claiming exemption or concessions in the assessments, are focused in the succeeding paragraphs.

2.2.6 Under the Gujarat Sales Tax Rules, 1970, various declarations/ forms prescribed under the GST Act and CST Act shall be obtained by the dealer from the registering authority (by whom these are kept in safe custody) on payment of requisite fee. Further, on cancellation of registration certificate, licence or permit, the dealer is required to surrender within two working days from the date of such cancellation any unused forms of declaration to the registering authority. There is no penal provision in the Act/ Rules to deal with the cases of non surrendering of forms within the prescribed time limit.

A new section 30(A) was introduced with effect from 1 September 2001 in the GST Act under which it was decided to issue new computerised registration numbers to all registered dealers. The existing dealers were required to apply afresh for new registration certificate till 31 March 2002. New registration numbers came into force with effect from 1 July 2002. The registration certificates of the dealers who had not applied for new registration certificates were cancelled.

It was noticed that though registration certificates of 142 dealers in the offices test checked had been cancelled during the period 2000-01 to 2002-03, the dealers had not surrendered the declaration forms. The Department also did not take any action to obtain the account of forms used and get back the unused forms from such dealers.

The Commissioner of Sales Tax directed in June 2002 to spot verify all cases who had not applied for registration afresh. However, verification had not been done in any of the cases so far. Scrutiny of cases of these dealers revealed that no accounts of utilisation had been furnished in respect of 7848^Σ declarations/certificates.

The department had not issued any notification invalidating such forms for which accounts of use had not been furnished. In the absence of putting the validating period in the certificates/declarations for which no provision exists, misuse of such forms by the dealers, could not be ruled out.

Non levy of purchase tax despite breach of recitals of declaration forms

2.2.7 A dealer can purchase goods against a declaration prescribed under entries notified under Section 49(2) of the GST Act at concessional rate for using them as raw or processing materials or consumable stores in the manufacture of taxable goods for sale in the State of Gujarat subject to prescribed conditions. In the event of breach of the recitals of the declaration, the dealer would become liable to pay purchase tax. Interest and penalty would also be leviable. The Supreme Court[#] has held that natural gas used as fuel in the manufacture of paper and paper products is not a consumable.

During test check of records of nine^{*} ACST and three[@] STOs, it was noticed in the assessment of 24 dealers for the periods between 1996-97 and 2001-02 (finalised between July 2001 to March 2003) that the dealers had committed breach of recitals of prescribed conditions. This resulted in non/short levy of tax of Rs.139.67 crore including interest and penalty as detailed below:

^Σ Form 17-A, 75, 17 B-1306, 17 BB-150, 19-111, 20-35, 24 A-100, 24 B-3525, 26-375, LL-218, C-1810, F-72, E1-71.

[#] In the case of M/s. Coastal Chemical Vs. State of Andhra Pradesh (117-STC-12).

^{*} Ahmedabad Circle 3 & 6, Ankleshwar, Bharuch, Gandhinagar, Rajkot Circle 23, Surendranagar, Surat Circle 25 and Vadodara Circle 12.

[@] Bharuch, Kalol and Vadodara.

Sl. No.	Location and No. of dealers	<u>Period of assessment</u> Month/Year of assessment	Tax (Rs. in lakh)	Nature of irregularities.
1	20 dealers [♦]	Between 1998-99 and <u>2001-02</u> July 2001 to March 2003	13290.88	In view of Supreme Court's judgement, purchase of fuel against Form 26/40 at concessional rate of 0.25 <i>per cent</i> and adjustment of tax saved against the monetary limit was irregular.
2	1 dealer of Surat	<u>1998-99</u> January 2002	11.08	Since 8.63 <i>per cent</i> of manufactured goods were branch transferred out side the State, purchase tax to the extent of tax saved was leviable for breach of declaration in Form 36.
3	1 dealer of Kalol	<u>1997-98</u> May 2002	1.01	As against levy of purchase tax of Rs.3.34 lakh for breach of recitals of Form LL on account of branch transfer of manufactured goods, purchase tax of Rs.2.75 lakh was levied in the assessment.
4	1 dealer of Vadodara	<u>1996-97</u> February 2002	0.46	HDPE [♦] granules valued Rs.2.88 lakh purchased against Form 34 were used in the manufacture of tax free goods contrary to the conditions of notification issued under section 49(2) of the Act.
5	1 dealer of Bharuch	<u>1998-99</u> March 2003	663.47	50.21 <i>per cent</i> of electricity generated was sold to other units in contravention of condition of Form-40 against which Naphtha valued Rs.44.07 crore was purchased at concessional rate of tax.
Total			13,966.90	(Say Rs.139.67 crore)

After this was pointed out, the Department replied between May 2003 and June 2004 that in the cases of 20 dealers at Sr. No.1, as per public circular of 19 February 2001 issued by the CST, the judgement of Supreme Court would not apply to consumable stores as defined under GST Act and Rules. The

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- ♦ Six of Bharuch, five of Gandhinagar, three of Ahmedabad, two of Vadodara, one each of Ankleshwar, Rajkot and Surendranagar. Further in case of one dealer (one assessment was finalised by A.C., Surendranagar and two assessments were finalised by D.C. Flying Squad, Ahmedabad).
 - ♦ High Density Poly Ethylene.

reply is not tenable for the reasons that in the said judgement, the Supreme Court has held that the words in a notification derive its meaning from the adjacent words and by applying the principle of association of words, the term 'consumable stores' read with the terms 'raw material and processing material' would include only material which is used as input in a manufacturing process but is not identifiable in the final product by virtue of the reason that it has got consumed therein. Accordingly purchase of light diesel oil, furnace oil, lignite and natural gas against declarations for use as fuel by the industrial units was unauthorised.

In the case at Sr.No.3, the Department partly accepted the audit observation in June 2004. In remaining cases the facts were brought to the notice of the Department between February 2003 and November 2003; the reply has not been received (August 2004).

Non-observance of the system of cross verification of sales/purchases against declaration form

2.2.8 Under GST Act and notifications issued thereunder, a registered dealer is entitled to purchase goods without payment of tax or at concessional rate of tax against production of prescribed declaration forms. In order to prevent evasion of tax, Department has issued instructions for cross verification of such sales and purchases against forms and also prescribed Registers for the purpose of control of such cross verifications. In the event of furnishing false certificate the dealer is liable to be punished with simple imprisonment upto six months and/ or fine upto Rs.20,000/-. In the case of selling dealer interest and penalty would be leviable.

- During test check of the records of four[#] ACST and six^{##} STOs it was noticed in the assessment of 32 dealers for the period 1994-95 to 2000-2001 (finalised between April 2000 and March 2003) that cross verification in respect of sales of goods valued Rs.284.30 crore against various declarations/ certificates involving tax of Rs.13.16 crore was not done. Registers prescribed for the purpose to follow up of cross checks received from and issued to other assessing authorities were also not maintained in any of the offices. In the absence of provision for submission of returns periodically in this respect to higher authorities, the Commissioner of Sales Tax was not able to monitor the compliance of the result of cross checks.

- During test check of the records of ACST, Surendranagar and STOs, Mehsana and unit 22, Ahmedabad, it was noticed in the assessment of five dealers for the period 1998-99 and 2001-02 finalised between July 2000 and March 2003 that deduction against Form 24B was allowed in excess of Rs.12.67 lakh from what had been claimed by the dealer and deduction of Rs.2.98 crore was allowed against fake/unauthorised forms. Failure on the part

[#] Bharuch , Bhavnagar, Palanpur and Vadodara.

^{##} Bhavnagar Unit 1, Bharuch, Surendranagar Unit 1 and 2, Vapi Unit 2 and Visnagar.

of the assessing officers to scrutinise the claim and cross check resulted in short levy of tax of Rs.14.61 lakh including interest and penalty.

- Further, based on specific information, the inspections carried out by the Department in June 2000 in Unjha of Mehsana District could detect misuse of certificate in Form 24 B for Rs.30.82 crore. The tax effect involved in this case was Rs.3.05 crore.

The above facts reveal that the mechanism of cross verification of transactions made against declarations by dealers needs to be strengthened so that revenue loss can be averted. The Department should devise a method and detailed instructions to be followed by the assessing officers in ensuring cross verification.

After this was pointed out (October-December 2002), the Department accepted in April 2004, the audit observation involving an amount of Rs.0.99 lakh and recovered the amount in one case. Particulars of recovery, if any and reply in remaining cases has not been received (August 2004).

Deduction allowed against declarations without details/forms

2.2.9 According to notification issued under Section 49(2) of the GST Act, a specified manufacturer is allowed to purchase raw materials, processing materials or consumable stores on production of Form 20 and 26 respectively for which rate of tax leviable is 0.25 *per cent*. The tax saved is to be adjusted against the exemption limit. The details of sales against declarations are to be kept in the assessment file for cross verification of transactions.

During test check of records of assessment of ACST, Nadiad and Circle 16, Surat and STO, Petlad, it was noticed in the assessments of three dealers for the periods between 1995-96 and 1998-99 finalised between May 2001 and July 2002 that on sales of goods valued Rs.22.92 crore made against Form 20 and Form 26, tax at concessional rate of 0.25 *per cent* was levied. However, neither the details of such sales nor the forms were kept on record to verify the correctness and validity of the claim. The amount of tax involved worked out to Rs.3.17 crore including interest and penalty.

The facts were brought to the notice of the Department between February and December 2003. The Department accepted the audit observation involving tax of Rs.0.47 lakh. Reply in the remaining cases has not been received (August 2004).

Incorrect allowance of deductions against Form

2.2.10 Under the GST Act, sales or purchases of prohibited^{&&} goods against certificate in Form 19 is not permissible.

During test check of the records of three* ACST and nine^{##} STOs it was noticed in the assessments of 15 dealers for the period between 1993-94 and 2000-01 finalised between April 2000 and March 2003 that deductions on sales of goods valued Rs.15.24 crore against Form 19 were allowed though the dealer had either not furnished Form 19/furnished invalid form in five cases and purchased or sold prohibited goods in ten cases. This resulted in short levy of tax of Rs.1.50 crore including interest and penalty.

After this was pointed out, the ACST, Mehsana replied in May 2003 that Gujarat Sales Tax Tribunal[#] while relying on the judgement of High Court[@] of Madras observed that monetary limit in respect of more than one transactions for an individual Form C would at the most be a directory requirement and held that the transactions exceeding the monetary limit covered in a single Form C were entitled to concessional rate of tax in the same financial year. The principle laid down in the judgement had been followed in accepting Form 19.

The reply is not tenable for the reasons that the said judgement pertained to the transactions exceeding the monetary limit covered in a single Form C whereas in this case, the Form 19 furnished by the dealer was invalid. Replies in remaining cases have not been received (August 2004).

2.2.11 Under the GST Act and the Rules made thereunder, goods falling under Schedule IIB to the Act can be purchased against certificate in Form 17B. With effect from 1 August 1995, Jira (Cumin seeds) was removed from Schedule IIB and included in Schedule IIA.

During test check of the records of STO, Rajkot, it was noticed in the assessments of two dealers for the periods 1995-96 to 1998-99 finalised in May 2002 that sales of Jira valued Rs.5.80 crore against Form 17B was incorrectly deducted from sales turnover. This resulted in non-levy of tax of Rs.31.53 lakh including interest and penalty.

^{&&} Goods which are notified as prohibited for certain purposes under Section 2(21) of the GST Act.

^{*} Bharuch, Mehsana and Nadiad.

^{##} Unit-6 Ahmedabad, Anand, Bharuch, Morbi, Unit-1 Rajkot, Visnagar, Unit-5 and 7 Vadodara, and Vyara.

[#] M/s. Hidnustan Ciba Giegy Ltd., 2002 –Pt-I-STC.1 dated 17 January 2002.

[@] M/s. Bimetal Bearings Ltd., 1993-90-STC-128 dated 17 June 1992.

Incorrect acceptance of declaration Form 21 without obtaining proof of payment of tax

2.2.12 As per Section 22(2) of the GST Act, if the principal on whose behalf the commission agent has sold the goods shows to the satisfaction of the assessing authority that tax has been paid by his commission agent on such goods, the principal shall not be liable to pay tax again in respect of the same transaction. It has also been decided by Sales Tax Tribunal* that unless the principal establishes the fact of payment of tax by the commission agent he would be liable to pay tax even on such sales in respect of which a certificate in Form 21 has been produced by the commission agent.

During test check of the records of ACST, Ahmedabad, it was noticed in the assessment of one dealer for the period 1999-2000 (finalised in August 2002), that deductions for sale of goods valued Rs.23.22 crore to the commission agent against Form 21 were allowed. However, Form 21 and fact of payment of tax by the commission agent had not been obtained from the principal. The tax benefit of Rs.9.72 lakh including interest and penalty allowed to the principal in absence of above details was inadmissible.

Incorrect allowance of deductions against branch transfer/consignment of goods for sale outside the State against Form F

2.2.13 Under the provisions of the CST Act, the burden of proof in case of movement of goods from one State to another on consignment basis shall be on the dealer claiming the deduction. In order to claim deduction on branch transfer of goods, the dealer has to furnish either declaration in Form F alongwith proof of dispatch or other circumstantial evidences of transfer of goods.

During test check of nine* ACST and eight[†] STOs, it was noticed in the assessment of 34 dealers for the assessment period between 1995-96 and 2001-02 (finalised between March 2000 and March 2003), that the Assessing Authority had accepted incomplete declarations/details for branch transfer of goods valued Rs.1,563.19 crore. This has resulted in incorrect deduction of the turnover having a tax effect of Rs.32.91 crore including interest and penalty.

Incorrect levy of concessional rate of tax against Form C and D

2.2.14 Under the CST Act, production of Form C and Form D is mandatory for availing the benefit of concessional rate of tax. In the event of failure to

* In the case of M/s. Parekh Purshottam Prabhudas 1978 GSTB 462

† Circle 3 & 6 Ahmedabad, Bharuch, Circle-14, Gandhinagar, Nadiad, Surendranagar, Circle-16 Surat, Circle 11 & 12 Vadodara.

[‡] Unit 21 & 22 Ahmedabad, Unit-2 Anand, Bharuch, Gandhinagar, Kadi, Unit 7 Vadodara and Vijapur.

produce Form C/D, tax shall be levied at the rates specified in the Act. Further, as per the CST Rules, in the event of loss or destruction of Form C/D, a duplicate Form C/D alongwith indemnity bond is required to be furnished.

During test check of the records of ACST and STOs as shown in the table below, it was noticed that concessional rates were levied in 44 cases though the declarations had either not been produced or produced by the dealers were defective and/ or incomplete. This resulted in short levy of tax of Rs.14.85 crore including interest and penalty.

(Rupees in crore)

Sl. No.	Name of office No. of dealers	Period of assess- ment	Month/ Year of assessment	Value of goods	Short levy including interest and Penalty	Nature of Irregularity
1	<u>7 offices*</u> 12	1994-95 to 2001-02	May 2000 to March 2003	33.06	3.53	Concessional rate of tax allowed against duplicate counter foil instead of original counterfoil without indemnity bond.
2	AC Circle 7, <u>Gandhinagar</u> 01	1996-97 and 2001-02	May 2001 and February 2003	0.48	0.05	Concessional rate of tax allowed against xerox copies of Form C.
3	<u>11 offices#</u> 20	1996-97 to 2001-02	May 2000 to March 2003	27.57	1.98	Concessional rate of tax allowed on unauthorised/invalid/incomplete Form C.
4	STO Unit21, <u>Ahmedabad</u> 01	1997-98	January 2003	0.50	0.05	Concessional rate of tax allowed against xerox/unsigned copies of Form D.
5	<u>STO Unit 2, Vapi</u> 01	1998-99	March 2003	0.55	0.04	On inter-state sales without Form C tax was levied at 10 <i>per cent</i> instead of 12 per cent.

* A.C. Circle-7, Gandhinagar and STO Mehsana, Kadi, Gandhinagar, A.C.Circle-12, Vadodara, STO Unit-1, Bhavnagar, STO Unit-22, Ahmedabad.

ACs Gandhinagar & Mehsana, STO Mehsana, A.C.Circle-12, Vadodara, A.C.Surendrangar, STO Unit-1, Bhavnagar, A.C.Circle-11, Vadodara, A.C.Circle-16, Surat, STO Unit-13, 14 and 21, Ahmedabad.

6	STO Unit 17, Ahme- dabad 08	02	1996-97	October 2001 and December 2001	21.53	1.51	On inter-state sales of cotton and steel without Form C tax was levied @ four <i>per cent</i> instead of eight <i>per cent</i> .
		06	1996-97 to 1999- 2000	March 2001 to March 2002	110.26	7.50	The benefit is not admissible to dealers as they were not having any place of business in the State of Gujarat.
7	STO Unit 7, Ahmedabad 01		1994-95	May 2001	1.17	0.19	On inter-state sales of detergent powder without From C tax was levied at the rate of 1.25 <i>per cent</i> .
Total		44			195.12	14.85	

Acceptance of incomplete certificate in Form H for the export sales

2.2.15 As per the CST (Registration and Turnover) Rules, 1957, in support of his claim for export, the dealer has to furnish to the prescribed authority, a certificate in Form H, duly filled in all details viz. agreement for order, No. and date for or relating to such export, particulars of goods, means through which the goods have been exported alongwith its receipt No. and date and signed by the exporter alongwith evidence of export of such goods.

During test check of the assessment records of five[&] ACST and seven^{*} STOs, it was noticed in the assessment of 28 dealers for the periods between 1994-95 and 2001-02 finalised between March 2000 and March 2003, that in the case of 27 dealers the assessing authority had accepted incomplete certificates in Form H for export sales valued Rs.108.56 crore. No details/documents of exports were obtained and kept in the assessment records. In the remaining one case, deduction of Rs.47.22 lakh was allowed for sale of goods though Form H was not obtained and kept on the records. The tax involved in these cases was Rs.12.54 crore including interest and penalty.

2.2.16 Honorable Supreme Court^{**} had held that penultimate sale made against Form H to the exporter would be exempted from payment of tax provided the goods were exported by the purchaser in the same form in which these were purchased.

[&] Ahmedabad, Gandhinagar, Mehsana, Surendranagar and Vadodara.

^{*} Unit-22 & 23 Ahmedabad, Kalol, Kadi, Mehsana, Unjha and Unit-1 Vapi.

^{**} Vijayalakshmi Cashew Co. and others V/s. Tax Officer (100 STC P. 571).

During test check of the assessment records of four dealers of Visnagar, Ahmedabad, Bharuch and Junagadh for the periods 1995-96, 1998-99 and 1999-2000 finalised between January 2001 and March 2003, it was noticed that export of castor oil valued Rs.3.63 crore was not made in the same Form in which penultimate sale was made against Form H. This resulted in short levy of tax of Rs.30.82 lakh including interest and penalty.

After this was pointed out, STO, Visnagar replied that the transactions had taken place during 1995-96. As per the circular dated 9 December 2000 issued by the Commissioner of Sales Tax, the judgement of Supreme Court[⊗] holding that exemption from payment of tax would not be available, if the castor oil purchased against Form H is exported after refining, was effective from the date of judgement. The view taken by the Department is not tenable for the reasons that the judgement of September 1998 was only clarificatory and hence the judgement of December 1995 that the clearance of goods at the penultimate point of sale without payment of tax is permissible only in cases where the goods are exported in the same form in which it was purchased holds good from transactions originated from December 1995. The reply in the remaining cases, has not been received (August 2004).

Incorrect allowance of deductions against transfer of documents during inter-state sales against Forms E-I, E-II and C

2.2.17 In the course of inter-state sales of goods, if the purchasing dealer effects any subsequent sales during movement of goods, no tax is payable, provided the dealer claiming exemption produces a declaration in Form E-I or E-II secured from his selling dealer and declaration in Form C or D from his purchaser.

During test check of the records of Sales Tax Office, Unit 3, Surat, it was noticed in the assessment of a dealer for the period 1998-99 (finalised in September 2000) that inter-state sale of goods valued Rs.26.74 crore was exempted from the payment of tax though the dealer had not furnished the prescribed declaration forms. This resulted in short levy of tax of Rs.5.35 crore including interest and penalty.

2.2.18 Non prescription of physical verification and returns

Although physical verification of cash value document like form 'C' was an important instrument of control, fixed periodicity had not been prescribed for physical verification of stock of form 'C' and also other forms issued by the Department. The Department had also not prescribed any periodical returns on receipt, issue and utilisation of declaration forms. Vital control measures for minimising the risk of misuse of cash value documents viz. physical

[⊗] B.P. Oil Mills Ltd. V/s Sales Tax Tribunal (UP) (111 STC 188)

verification, surprise check and submission of periodical returns was not being used.

Internal Audit

2.2.19 Internal audit is generally defined as control of all controls or key internal control used to assess whether various prescribed systems were functioning reasonably well in the organisation.

Internal audit wing has been functioning within the Department since 1960 and detailed instructions to be followed on assessments by the Assessing Officers have been circulated. There is no regular system of monitoring by higher authorities whether these instructions are scrupulously followed except internal audit. The Commissioner of Sales Tax has prescribed 12,650 number of assessments to be checked in internal audit. This itself shows that only 3.6 *per cent* of total registered dealers (3.5 lakh dealers) are seen in internal audit. The mechanism of checking the quality of assessments and its monitoring is thus grossly inadequate.

The above facts were brought to the notice of the Government in April 2004; the reply has not been received (August 2004).

Recommendations

2.2.20 Government may consider taking the following steps to:

- prescribe validity period of various Forms prescribed under the CST Act to avoid their misuse;
- ensure that the assessing officers comply scrupulously with the provisions of the Rules while allowing deductions, exemptions against various forms;
- ensure that the assessing authorities account for properly unused declaration forms received back on cancellation of registration certificates so as to minimise misuse against them; and
- ensure that the Department minimise the number of forms of deduction and evolve a sound mechanism of their scrutiny and cross verification and strengthen the tax administration in this vital area.

2.3 Incorrect grant of benefits under sales tax incentive schemes

2.3.1 According to Sales Tax Incentive Schemes 1986-90, 1990-95 and 1996-2000, the eligible unit shall have to remain in production continuously during the period of eligibility for availing the benefit of Sales Tax Incentive Schemes mentioned in the eligibility certificate. If the eligible unit

discontinues commercial production at any time within the period of exemption for a period exceeding 12 months, entire amount of tax exempted is recoverable within a period of 60 days from the date of expiry of aforesaid period of 12 months. On failure to do so, the said amount shall be recovered from the eligible unit as arrears of land revenue. Further, if the eligible unit transfers any of its assets within a period of five years from the date of commencement of production, the exemption ceases to operate and the entire amount of tax exemption benefit availed is to be paid within a period of 60 days alongwith interest.

During test check of the records of Assistant Commissioner, Anand and three* STOs, it was noticed between January and April 2003 in four assessments finalised between May 2001 and March 2003, that a dealer holding eligibility certificate for the period from April 1995 to March 2001 had availed tax exemption of Rs.26.20 lakh even though the production was discontinued by him in November 1999. Other three dealers holding eligibility certificates for the periods from June 1993 to June 2003 had availed tax exemption of Rs.7.71 crore between 1997-98 and 1999-2000. The above dealers had disposed of/transferred their assets between 1997-98 and 1999-2000 within a period of five years of commencement of their production. However no action was taken to recover entire tax exemption availed of by these units as stipulated in these schemes. Non observance of the conditions incorporated in schemes by assessing officers resulted in incorrect availment of tax exemption benefit of Rs.7.97 crore including interest and penalty.

The above facts were brought to the notice of the Department between February and July 2003 and of the Government in March 2004; replies have not been received (August 2004).

2.3.2 Under the Sales Tax Incentive Schemes, the units which opt for deferment benefit are allowed to collect and retain the tax and pay it after a specified period. The deferred amount of tax is recoverable in six annual instalments beginning from the financial year subsequent to the year in which the unit exhausts the limit of incentive granted to it under the scheme or after the expiry of relevant period or time limit during which deferment is available, whichever is earlier. Further, as per Resolution of 17 February 1990, Government granted a package of concessions to various sick textile mills from 1984 onwards by way of deferment of sales tax. In the event of default in payment of tax deferred, interest at the rate of 24 per cent was leviable.

During test check of the records, of five* STOs, it was noticed between August 2002 and November 2003 from the register maintained for cases of deferment certificate holders who opted for availing deferment benefit, that in the case of two dealers the instalments of deferred tax of Rs.73.00 lakh were paid late ranging between 12 months and 29 months. In the case of three dealers, the deferred tax of Rs.31.73 lakh was neither paid by them nor demanded by the Department and in one more case the dealer had availed excess deferment benefit of Rs.2.77 lakh. However the Assessing Authorities have failed either

* Ahmedabad, Junagadh and Surat.

* Two of Gandhinagar, one each of Ahmedabad, Junagadh and Valsad.

to recover interest or tax and interest in these cases. This resulted in non recovery of tax of Rs.1.32 crore including interest/penalty.

The above facts were brought to the notice of the Department between January and October 2003 and of the Government in March 2004. The Department accepted between March and December 2003 the audit observations involving an amount of Rs.1.30 crore in case of five dealers and recovered an amount of Rs.83.28 lakh in case of three dealers. Further particulars of recovery in case of two dealers and reply in remaining one case has not been received (August 2004).

2.3.3 Under the Sales Tax Incentive Schemes, the goods manufactured by an eligible unit are to be sold within the State of Gujarat. In the event of transfer of the manufactured goods by an eligible unit to its branch or to the place of business of its agent outside the State, 4 *per cent* of the sale price of the goods so transferred is to be adjusted against the total tax exemption/deferment limit admissible.

During test check of the records of three[#] Assistant Commissioners and STO, Vapi, it was noticed between January and October 2003 in the assessment of four dealers for the periods between 1994-95 and 1999-2000 finalised between October 2001 and March 2003 that though they had consigned/transferred manufactured goods worth Rs.16.53 crore to their branches outside the States, 4 *per cent* of the sale price of the goods so transferred was not adjusted against the ceiling limit. This resulted in short adjustment of tax of Rs.63.69 lakh including interest and penalty.

The above facts were brought to the notice of the Department between January and September 2003 and of the Government in March 2004. The Department accepted between January and March 2004 the audit observations involving Rs.16.20 lakh and adjusted Rs.14.54 lakh against the ceiling limit in case of two dealers; replies in the remaining cases have not been received (August 2004).

2.3.4 The benefit of sales tax exemption/deferment is admissible in respect of such goods which are specified in the eligibility certificates issued by the Industries Department to the units. Benefit of tax exemption/deferment availed on sale of goods not specified in the eligibility certificate is required to be recovered along with interest and penalty.

During test check of the records of STO, Kalol, it was noticed in September 2003 that while finalising the assessments between June 2002 and March 2003 in the case of two dealers for the years between 1995-96 and 1998-99, the Assessing Authorities allowed sales tax exemption of Rs.15.27 lakh on sale of goods valued at Rs.2.32 crore and adjusted against ceiling limit in respect of such goods which were not specified in the eligibility certificate issued by the Industries Department. The amount of tax so adjusted was required to be recovered along with interest and penalty which worked out to Rs.34.92 lakh.

[#] Two of Vadodara and one of Bharuch.

The above facts were brought to the notice of the Department in November 2003 and of the Government in March 2004; replies have not been received (August 2004).

2.3.5 According to Sales Tax Incentive Schemes, the eligible units holding exemption certificate are allowed to purchase raw materials, processing/packing materials and consumable stores against declarations on payment of tax at the rate of 0.25 *per cent* of the tax payable. The balance of tax saved on purchases with reference to different rates as prescribed in the schedules to the Act is adjusted against the ceiling limit of exemption. Similarly, tax saved on sale of manufactured goods is also adjusted against the ceiling limit of exemption.

During test check of the records of two Assistant Commissioners of Surendranagar and 11[#] STOs, it was noticed between January 2001 and September 2003 in the assessment of fifteen dealers for the periods between 1995-96 and 2001-02 (finalised between March 2001 and March 2003) that tax saved on purchases of chlorine gas, HDPE woven sacks, chemicals, frit, mango pulp, MS roll printing and granules valued at Rs.4.38 crore against declarations, was computed at incorrect rates in case of eight dealers. Similarly tax on sale of manufactured goods i.e., medicines, cement blocks and pipes, audio cassettes, drugs, sanitary wares, chemicals and yarn valued at Rs.3.11 crore was also computed at incorrect rates in the case of seven dealers. Application of incorrect rate of tax resulted in short adjustment of tax of Rs.24.16 lakh.

The above facts were brought to the notice of the Department between January 2002 and November 2003 and of the Government in March 2004. The Department accepted between May 2003 and July 2004 the audit observations and recovered Rs.22.20 lakh in case of ten dealers; replies in the remaining cases have not been received (August 2004).

2.3.6 According to Sales Tax Incentive Schemes, a specified manufacturer is allowed exemption from payment of tax in respect of goods manufactured by him subject to conditions laid down in the respective schemes. One of the conditions was that as sale of manufactured goods are exempt from payment of tax, deduction from turnover against certificates shall not be allowed. The tax so exempted is adjusted against the ceiling limit fixed by the competent authority. The GST Act also did not authorise for adjustment of purchase tax leviable under Section 15-B of the Act against the exemption ceiling limit.

During test check of the records of Assistant Commissioner, Bharuch it was noticed in October 2003 in the assessment of a dealer for the periods 1997-98 and 2000-01 finalised between April and May 2002 that though purchase tax was payable by the dealer under the GST Act in cash, it was incorrectly adjusted against the exemption ceiling limit which was irregular. This resulted in short levy of Rs.26.03 lakh including interest and penalty.

[#] Four of Vadodara, two of Bharuch, two of Kalol and one each of Ahmedabad, Gandhinagar and Surat.

The above facts were brought to the notice of the Department in November 2003 and of the Government in March 2004. Reply has not been received (August 2004).

2.4 Non levy of purchase tax

Under Section 15 of the GST Act, where a dealer purchases any goods specified in Schedule-II from an unregistered dealer, unless the goods so purchased are resold, purchase tax is leviable at the prescribed rates. Ginning activity to obtain cotton and cotton seeds (by-product) is not a manufacturing activity as decided by Gujarat Sales Tax Tribunal. The Supreme Court[&] held that where a subsidiary product is continuously processed in the course of manufacture and sold regularly, an intention can be attributed to the manufacturer to manufacture and sell not merely the main item manufactured but also the subsidiary products.

During test check of the records of two Assistant Commissioners, Ahmedabad and 20^{*} STOs, it was noticed between December 2001 and November 2003 in the assessment of 140 dealers for the periods between 1994-95 and 2001-2002 finalised between June 2000 and March 2003 that the dealers procured unginning cotton valued at Rs.210.65 crore from farmers (unregistered dealers) to obtain cotton and cotton seeds through ginning process. Cotton seeds were further used to obtain oil and oil cakes which was a manufacturing activity and thus, liable to purchase tax, which was not levied. This resulted in non levy of purchase tax of Rs.13.07 crore including interest and penalty.

The above facts were brought to the notice of the Department between February 2002 and December 2003 and of the Government in March 2004; the Department accepted in June 2004 the audit observations involving an amount of Rs.0.86 lakh in case of one dealer. However, Government's reply is awaited (August 2004).

2.5 Non/short levy of tax due to mis-classification of goods

Under the GST Act, tax is leviable at the rates as indicated in the Schedules to the Act, depending upon the classification of goods. However, where goods are not covered under any of the Schedules, general rate of tax is applicable.

During test check of the records of three[#] Assistant Commissioners and three^{*} STOs, it was noticed between February and August 2003 in the assessment of six dealers for the periods between 1995-96 and 2001-2002 finalised between April 1999 and March 2003 that the Assessing Officers levied tax at incorrect

[&] Commissioner of Sales Tax, Bombay Vs. Bharat Petroleum Corporation Ltd. 1995(77)ELT790(SC).

^{*} Four of Ahmedabad, three of Rajkot, two each of Mehsana, Kadi, Surendranagar and one each of Botad, Himatnagar, Morbi, Palanpur, Porbandar, Vadodara and Visnagar.

[#] Surat, Surendranagar, Vadodara.

^{*} Junagadh, Mehsana and Surendranagar.

rates on sales of various goods valued at Rs.33.87 crore due to misclassification of goods. This resulted in non/short levy of tax of Rs.4.02 crore as detailed below:

(Rupees in lakh)				
Sl. No.	No. of dealers (Location)	Name of commodity	<u>Rate of tax leviable</u> <u>Rate of tax levied</u> (per cent)	Tax short levied.
1	One dealer (Surat)	Machinery, Electric goods, Electric Motors, and Pipes	$\frac{8.8}{4.4}$	185.92
2	One dealer (Mehsana)	Laminated HDPE Woven sacks	$\frac{6}{2}$	31.29
3	Two dealers (Junagadh and Surendranagar)	Briquettes	$\frac{12 \text{ and } 14}{\text{Nil}}$	100.92
4	One dealer (Surendranagar)	Phenyl	$\frac{12}{2}$	3.87
5	One dealer (Vadodara)	Ceramic glaze mixture	$\frac{12 \text{ and } 14}{6}$	79.95
			Total	401.95

The above facts were brought to the notice of the Department between March and September 2003 and of the Government in February 2004. The Department accepted in June 2004 the audit observations involving an amount of Rs.11.71 lakh in the case of one dealer. Particulars of recovery and replies in the remaining cases have not been received (August 2004).

2.6 Application of incorrect rate of tax

Under the GST Act, sales tax is leviable at the rates as indicated in the Schedules to the Act. The goods not covered under any of the Schedules are taxed at the general rate.

During the test check of the records of five[&] Assistant Commissioners and eight* STOs, it was noticed between May 2002 and December 2003 in the assessment of 13 dealers for the periods between 1993-94 and 2001-2002 finalised between September 2000 and March 2003 that sales turnover of Rs.19.28 crore of various goods were taxed at incorrect rates. This resulted in short levy of tax of Rs.1.12 crore including interest and penalty as given below:

[&] Two of Ahmedabad and one each of Ankleshwar, Gandhidham and Godhra.

* Two of Ahmedabad, two of Surat and one each of Billimora, Kalol, Rajkot and Vapi.

(Rupees in lakh)

Sl. No.	No. of dealers (Location)	Name of commodity	Rate of tax leviable/ Rate of tax levied (per cent)	Turnover	Tax short levied
1	One dealer (Surat)	Edible oil	$\frac{4.4}{2.2}$	49.60	1.63
2	One dealer (Bilimora)	Ayurvedic medicine	$\frac{5}{4}$	30.25	0.59
3	One dealer (Rajkot)	Castor oil	$\frac{5}{4}$	1235.99	42.74
4	One dealer (Ahmedabad)	Windmill part	$\frac{8}{4}$	137.46	11.17
5	One dealer (Ahmedabad)	Motor vehicle	$\frac{12}{5}$	24.52	1.77
6	One dealer (Gandhidham)	Recycled agglomerate sheet & LDPE	$\frac{12}{4}$	54.11	26.93
7	One dealer (Ahmedabad)	Body built on chasis of motor vehicle	$\frac{12}{4}$	21.62	2.29
8	One dealer (Vapi)	Metal	$\frac{12}{4}$	12.64	1.42
9	One dealer of (Kalol)	Computer stationery	$\frac{12}{4}$	45.95	4.48
10	One dealer (Ahmedabad)	Bulk drugs "dextrose anhydrous and calcium gluconate"	$\frac{10}{4}$	198.53	15.51
11	One dealer (Surat)	Tooth brush	$\frac{12}{10}$	17.50	0.60
12	One dealer (Ankleshwar)	Plasticizer	$\frac{6}{5}$	53.52	0.89
13	One dealer (Godhra)	Copper scrap	$\frac{6}{4}$	45.83	1.84
		Total		1927.52	111.86

The above facts were brought to the notice of the Department between February and November 2003 and of the Government in March 2004. The Department accepted between May 2003 and July 2004 the audit observations involving an amount of Rs.9.18 lakh in case of seven dealers and recovered Rs.5.13 lakh in case of five dealers; particulars of recovery and replies in the remaining cases have not been received (August 2004).

2.7 Non/short levy of turnover tax

Under the GST Act, where the sales turnover of a dealer, liable to pay tax, first exceeds Rs.50 lakh, the dealer is liable to pay turnover tax at prescribed rate on the turnover of sales of goods other than declared goods after allowing permissible deduction under the Act. From April 1993, sales made against various declarations and sales exempted from tax, were excluded from the permissible deductions making such sales liable to turnover tax. While working out the liability and applicability of rate of turnover tax, the taxable sales turnover in aggregate of all the branches of the dealer within the State is to be considered.

During test check of the records of the Deputy Commissioner of Sales Tax (Flying Squad), Ahmedabad, eight* Assistant Commissioners and 17** STOs, it was noticed between November 2002 and October 2003 in the assessment of 29 dealers for the periods between 1993-94 and 1996-97 finalised between July 2000 and March 2003 that turnover tax was either not levied/short levied or levied at incorrect rates on turnover of Rs.154.61 crore. This resulted in short/non levy of turnover tax of Rs.1.65 crore.

The above facts were brought to the notice of the Department between February and November 2003 and of the Government in February 2004. The Department accepted between May 2003 and June 2004 audit observations involving an amount of Rs.15.89 lakh in the case of fourteen dealers and recovered Rs.6.76 lakh in the case of five dealers. Particulars of recovery and replies in the remaining cases have not been received (August 2004).

2.8 Incorrect grant of set-off

2.8.1 While assessing the tax payable by a manufacturer registered under the GST Act, the Commissioner shall, subject to general condition of Rule 47 and further conditions specified under Rule 42 of GST Rules, grant him set-off of the whole or any part of the tax in respect of purchases of goods (other than prohibited goods) used by him in the manufacture. Conditions inter alia provided for reduction of four per cent of sale price of manufactured goods consigned/branch transferred out side the state from the amount of set-off worked out.

During the test check of the records of eight# Assistant Commissioners and 10& STOs, it was noticed between January and December 2003, in the assessments of 22 dealers for the periods between 1993-94 and 2002-03 finalised between May 2001 and March 2003 that excess set-off of Rs.65.16 lakh including interest and penalty was allowed as detailed below:

* Four of Surat, three of Ahmedabad, one of Gandhidham.

** Two each of Godhra, Rajkot, Visnagar and one each of Ahmedabad, Gandhidham, Jamnagar, Junagadh, Kalol, Mehsana, Mahuva, Surat, Vadodara, Vapi and Vyara.

Five of Ahmedabad and one each of Ankleshwar, Bhavnagar and Gandhinagar.

& Five of Ahmedabad, two of Kalol and one each of Anand, Modasa and Vadodara.

Sl. No.	No. of dealers (Location)	Nature of irregularity	Excess set-off allowed (Rs. In lakh)
1	15*	Set-off was allowed on LDO/LPG used as fuel though these were not consumables.	56.29
2	3 (Kalol, Surendranagar and Vadodara)	Set-off was allowed on edible oil, vanaspathi ghee, mineral water, jam-jelly, hardware, bulk drugs, sand etc. at incorrect rates.	4.25
3	3 Modasa-2 and Ahmedabad-1	Set-off was allowed on the purchase of prohibited goods i.e. C.I. steel castings, S.S. castings and bearings.	1.74
4	1 Ahmedabad	Set-off was not admissible as the condition of Rule 47 of maintenance of the account was not satisfied.	2.88
Total	22		65.16

The above facts were brought to the notice of the Department between February and December 2003 and of the Government in May 2004. The Department accepted between September 2003 and May 2004 the audit observations involving an amount of Rs.3.17 lakh in case of four dealers and recovered Rs.0.91 lakh in case of one dealer. Particulars of recovery and replies in the remaining cases have not been received. (August 2004).

2.8.2 Under GST Act, where a dealer purchases any taxable goods other than declared goods and uses them as raw materials processing material or as consumable stores in the manufacture of taxable goods, purchase tax at prescribed rate is leviable. Purchase tax so levied is admissible as set-off under GST Rules, provided the goods manufactured are sold by the dealer in the State of Gujarat.

During test check of three ** Assistant Commissioners and seven *** STOs, it was noticed between February 2002 and September 2003 in the assessment of 10 dealers for the period between 1993-94 and 1999-2000 finalised between June 1999 and March 2003 that though the dealers had transferred the manufactured goods either to their branches, consigned out side the State or sold through commission agents, set-off of purchase tax was not disallowed proportionately. This resulted in excess grant of set-off of Rs.46.89 lakh including interest and penalty.

* Ten of Ahmedabad, one each of Ankleshwar, Anand, Bhavnagar, Gandhinagar and Kalol.

** Gandhidham, Jamnagar and Surat.

*** Two of Vapi, one each of Ahmedabad, Kalol, Mehsana, Vadodara and Vyara.

The above facts were brought to the notice of the Department between April 2002 and November 2003 and of the Government in January and February 2004. The Department accepted between May 2003 and April 2004 the audit observations involving an amount of Rs.12.48 lakh in case of two dealers and recovered Rs.9.35 lakh in case of one dealer. Particulars of recovery and replies in the remaining cases have not been received (August 2004).

2.8.3 According to the GST Rules, no set-off shall be granted where the vendor who has sold the goods to the claimant has not credited in the Government treasury, the amount of tax on his sales for which set-off is claimed. Further, the GST Act provides that where a dealer to whom incentives by way of deferment of sales tax or purchase tax or both have been granted by virtue of an eligibility certificate granted by the Commissioner of Industries and where a loan liability equal to the amount of any such tax payable by such dealer has been raised by the GIIC^{\$} or GSFC[&], then such tax shall be deemed, in public interest, to have been paid.

During test check of the records of Assistant Commissioner, Ahmedabad and three[#] STOs, it was noticed between February and November 2003 in the assessment of four dealers for the periods between 1993-94 and 1999-2000 finalised between May 2001 and January 2003 that in the case of two dealers set-off was allowed on purchases of goods from dealers holding deferment certificate where conditions for deemed payment were not satisfied. In the case of one dealer set-off was allowed without obtaining any proof of tax having been paid by him and in one more case the dealer was allowed excess set-off due to calculation error. This resulted in incorrect grant of set-off of Rs.43.11 lakh including interest and penalty.

The above facts were brought to the notice of the Department between April and December 2003 and of the Government in February 2004; replies have not been received (August 2004).

2.9 Incorrect allowance of deduction

Under the GST Act, resale of tax paid goods purchased from a registered dealer and the sales made on certain declarations are allowed without payment of tax subject to fulfillment of prescribed conditions. Such sales and purchases are deducted from the gross turnover to compute taxable turnover. Sale of prohibited[^] goods against declaration in Form 19 is not permissible.

During the test check of the records of the Assistant Commissioner, Ahmedabad and four^{*} STOs, it was noticed between December 1999 and June 2003 in the assessment of six dealers for the periods between 1992-93 and

^{\$} Gujarat Industrial Investment Corporation.

[&] Gujarat State Financial Corporation.

[#] Two of Ahmedabad, one of Vadodara.

[^] Goods which are notified as prohibited for certain purposes under section 2(21) of the GST Act, 1969.

^{*} Bhavnagar, Modasa, Surat and Surendranagar.

1999-2000 finalised between March 1999 and May 2002, that claims of deductions were incorrectly allowed from the gross turnover. Omission on the part of Assessing Officer resulted in non-levy of tax of Rs.63.06 lakh as detailed below:

(Rupees in lakh)

Sl. No.	No. of dealers (Location)	Period/Month/ Year of assessment	Taxable turnover/ Short levy	Nature of irregularity
1	One dealer (Bhavnagar)	1998-99 and 1999-2000/ April and May 2001	<u>144.48</u> 38.11	The dealer was engaged in the manufacture of profile cuttings from iron scrap which though amounted to manufacture was allowed as RD ^s resales.
2	One dealer (Ahmedabad)	1993-94 and 1996-97/ August 1999 and October 2001	<u>182.44</u> 13.24	Master batch granules being prohibited goods, sale against Form 19 was irregular.
3	One dealer (Surat)	1997-98/ November 1999	<u>42.58</u> 6.21	Deductions from turn over was allowed in support of which Form 19 was not produced and kept on records.
4	Two dealers (Modasa)	1998-99 and 1999-2000/ May 2002 and October 2001	<u>45.12</u> 4.06	As per certified copy of the Balance Sheet and Profit and Loss account, there was no closing balance of finished goods including branch office, deduction allowed as branch transfer was irregular and tax was leviable in case of one dealer. In another case though the sale or purchase of de-oil cake was leviable to tax at the rate of two <i>per cent</i> upto December 1999 and four <i>per cent</i> thereafter, sales value of de-oil cake was deducted from the sales turnover without levying any tax.
5	One dealer (Surendranagar)	1992-93/ March 1999	<u>12.49</u> 1.44	Sales of oil cakes effected between April and June 1992 against Form 24A prior to the date of registration on 15 September 1992 of the purchasing dealer was incorrect and hence the deduction allowed from gross turnover on such sales was not permissible.
		Total	<u>427.11</u> 63.06	

The above facts were brought to the notice of the Department between March 2001 and March 2003 and of the Government in March 2004. The Department accepted between February 2002 and May 2004 the audit observations involving an amount of Rs.43.12 lakh in case of four dealers and recovered

^s Registered dealer.

Rs.2.25 lakh in case of three dealers. Particulars of recovery and replies in the remaining cases have not been received (August 2004).

2.10 Non-levy of tax

Under the GST Act, goods of incorporal or intangible character like patents, trade marks, import licence etc., and sales by transfer of right to use the goods are chargeable to tax at the prescribed rates in schedule II and III respectively.

During test check of the records of two* Assistant Commissioners, and seven# STOs, it was noticed between December 2002 and August 2003 in the assessment of ten dealers for the periods between 1995-96 and 2000-01 finalised between August 2000 and August 2003 that no tax was levied on Rs.686.90 crore on account of sale of advance licence, import licence, Duty Entitlement Pass Book (DEPB) licence etc in nine cases. Tax was short levied in the remaining one case due to computation error. This resulted in non-levy of tax of Rs.55.10 lakh including interest and penalty.

The above facts were brought to the notice of the Department between May and November 2003 and of the Government in March 2004. The Department accepted between April and May 2004 the audit observation involving an amount of Rs.13.47 lakh in case of four dealers and recovered Rs.0.76 lakh in case of two dealers. Particulars of recovery and replies in the remaining cases have not been received (August 2004).

2.11 Short levy due to computation error

Under the GST Act, tax is leviable at different rates as laid down in Schedules to the Act.

During test check of the records of the Assistant Commissioner, Godhra and four* STOs, it was noticed between January and July 2003 in the assessment of five dealers for the periods between 1992-93 and 1998-99 finalised between January and July 2003 that two dealers had been allowed excess credit of tax of Rs.2.51 lakh, in one case the dealer had paid tax short by Rs.0.72 lakh, in another case tax was incorrectly computed as Rs.8.48 lakh instead of Rs.10.48 lakh and in the remaining one case, opening balance of incentive benefit of Rs.4.01 lakh for 1995-96 was incorrectly carried forward as opening balance of 1996-97. This resulted in short levy of tax of Rs.9.24 lakh including interest and penalty.

The above facts were brought to the notice of the Department between February and August 2003 and of the Government in March 2004. The Department accepted between August 2003 and May 2004 the audit

* Gandhidham and Vadodara.

Two of Ahmedabad and one each of Billimora, Junagadh, Kalol, Surat and Vapi,

* Ahmedabad, Porbandar, Surat and Vadodara.

observations involving an amount of Rs.6.56 lakh in case of three dealers and recovered the amount of Rs.2 lakh in case of one dealer. Particulars of recovery and replies in the remaining cases have not been received (August 2004).

2.12 Non levy of additional tax

Under the GST Act, every dealer liable to pay tax on sale or purchase of goods under Section 3 or 3A of the Act, is liable to pay an additional tax at the rate of 10 per cent on such tax with effect from April 2000.

During test check of the records of Assistant Commissioners, Gandhinagar and Vadodara and three^{\$} STOs, it was noticed (between December 2002 and December 2003) in the assessment of five dealers for the periods between 1989-90 and 2001-2002 (finalised between April 2001 and March 2003) that additional tax was not levied. This resulted in non-levy of additional tax of Rs.6.05 lakh including interest and penalty.

The above facts were brought to the notice of the Department between February 2003 and January 2004 and of the Government in February 2004. The Department accepted between April and May 2004 the audit observations involving an amount of Rs.3.70 lakh in case of four dealers and recovered Rs.0.67 lakh in case of one dealer. Particulars of recovery and replies in the remaining cases have not been received (August 2004).

2.13 Non levy of penalty

Under the GST Act, where the amount of tax assessed or reassessed exceeds the amount of tax paid with the return by a dealer by more than 25 per cent, a penalty not exceeding one and one half times of the difference shall be levied. Further as per the Commissioner's circular issued in June 1992 and November 1996, in cases where additional tax liability arises due to seizure of books of accounts by enforcement branch or where evasion of tax is detected, penalty is to be levied after adding 50 per cent of penalty so calculated.

During test check of the records of the Dy. Commissioner of Sales Tax, Ahmedabad, 18^{*} Assistant Commissioners and 27[#] STOs, it was noticed between February 2002 and December 2003 in the assessment of 46 dealers for assessment periods between 1994-95 and 2001-02 (finalised between April 2001 and March 2003) that the penalty was not levied at prescribed rate where difference of tax exceeded by twenty five per cent in forty four cases and

^{\$} Anand, Godhra and Visnagar.

^{*} Five of Gandhinagar, four of Ahmedabad two each of Gandhidham, Surat, Vadodara, one each of Godhra, Valsad and Vapi.

[#] Five each of Ahmedabad and Nadiad, three each of Bharuch and Vapi, one each of Botad, Godhra, Himatnagar, Jetpur, Junagadh, Modasa, Nadiad, Porbandar, Rajkot, Valsad and Vyara.

penalty at enhanced rate was not levied on the concealed sales tax detected during raids in two cases. This resulted in non-levy of penalty of Rs.4.34 crore.

The above cases were brought to the notice of the Department between March and November 2003 and of the Government in January 2004. The Department accepted between July 2003 and June 2004 the audit observations involving an amount of Rs. 1.20 crore in case of 19 dealers and recovered the amount of Rs.1.51 lakh in case of three dealers. Particulars of recovery and replies in the remaining cases have not been received (August 2004).

2.14 Non/short levy of interest

Under the GST Act, if a dealer does not pay the amount of tax within the prescribed time limit, simple interest at the rate of 24 *per cent* per annum upto 31 August 2001 and at 18 *per cent* thereafter is leviable on the amount of tax remaining unpaid for the period of default.

During test check of the records of the Deputy Commissioner of Sales Tax, Ahmedabad, 23* Assistant Commissioners and 16[§] STOs, it was noticed in the assessment of 40 dealers for the periods between 1990-91 and 2001-02 finalised between March 2000 and March 2003 that interest amounting to Rs.8.63 crore was either not levied or levied short on the amount of unpaid tax.

The above facts were brought to the notice of the Department between July 2001 and January 2004 and of the Government in February 2004. The Department accepted between September 2003 and June 2004 the audit observations involving an amount of Rs.32.46 lakh in case of 16 dealers and recovered an amount of Rs.7.21 lakh in case of five dealers. Particulars of recovery and replies in the remaining cases have not been received (August 2004).

The above matters were followed up with reminders to the Principal Secretary in April/June and Chief Secretary in July 2004. However, replies were received in few cases only.

* Eight of Ahmedabad, five of Gandhinagar, three of Vadodara, two each of Bhavnagar, Godhra and one each of Bharuch, Vapi and Surendranagar.

§ Three each of Ahmedabad, Vadodara, two each of Junagadh, Kalol, Porbandar, and one each of Godhra, Surat, Valsad and Vyara.

