CHAPTER II : SALES TAX

2.1 Results of audit

Test check of the records of the Sales Tax Department conducted during the year 2006-07, revealed under assessment/short levy/loss of revenue amounting to Rs. 13.08 crore in 633 cases, which broadly fell under the following categories:

(Rupees in crore)

Sl. no.	Category	No. of cases	Amount
1.	Non/short levy of tax	315	4.51
2.	Incorrect allowance of set-off	156	1.37
3.	Non/short levy of interest/penalty	27	0.17
4.	Omission to forfeit tax collected in excess	11	0.09
5.	Other irregularities	124	6.94
	Total	**633**	**13.08**

During 2006-07, the department accepted under assessments and other deficiencies involving Rs. 15.55 crore in 1,032 cases, out of which 89 cases involving Rs. 26 lakh were pointed out during 2006-07 and the rest during the earlier years. The department recovered Rs. 2.96 crore. In 11 other cases involving revenue of Rs. 7.14 lakh, action was stated to be time barred.

A few illustrative cases involving a financial effect of Rs. 8.97 crore are mentioned in the following paragraphs against which an amount of Rs. 14.52 lakh had been recovered upto October 2007.

2.2 Short levy of tax under the Works Contract Tax Act

2.2.1 Under the provisions of the Maharashtra Sales Tax on the transfer of property in goods involved in the execution of the Works Contracts Tax (WCT) (Re-enacted) Act, 1989 and the Rules made thereunder, the rate of composition tax was two *per cent* from May 1998 (one *per cent* for April 1998) of the total contract value in respect of construction contracts[1] and three *per cent* of the total contract value for other contracts. The composition tax in respect of all types of contracts was revised to three *per cent* for the year 2000-01 and four *per cent* thereafter. Besides, interest and penalty were also leviable as per the provisions of the BST Act.

During test check of the records of three divisions[2] between September 2002 and September 2006, it was noticed in the assessments of four dealers finalised between September 2001 and December 2005 for the period between 1998-99 and 2001-02 that due to incorrect application of rate of composition tax, there was under assessment of tax of Rs. 2.44 crore including interest.

After the cases were pointed out, the department revised the assessments/ rectified the mistakes between February 2006 and February 2007, raising additional demands including penalty. A report on recovery had not been received (October 2007).

The matter was reported to the Government in April and May 2007; their reply had not been received (October 2007).

2.2.2 Under the provisions of the WCT Act and the Rules made thereunder, every dealer was required to obtain a certificate of registration under the Act if the turnover of sales or purchases exceeded Rs. 2 lakh in a year. Tax at the rate specified in the schedule to the Act was leviable on the turnover of sales involving transfer of property of goods in the execution of works contracts. Besides, interest and penalty were leviable as per the provisions of the BST Act.

Scrutiny of the records of Ghatkopar division in March 2004 revealed that a dealer registered under the BST Act, purchased taxable goods valued as Rs. 36.40 lakh during 1998-99 to 2001-02 for utilisation in job work. Further scrutiny, however, revealed that the dealer was not registered under the WCT Act and no action was taken by the assessing officer (AO) to register him and assess the tax payable on the basis of the particulars of purchases available in the records of the dealer submitted under the BST Act. Thus, goods valued as Rs. 36.40 lakh escaped tax amounting to Rs. 7.42 lakh including interest.

After the case was pointed out, the department accepted the audit observation and assessed the dealer in November 2006 raising an additional demand of Rs. 7.59 lakh including penalty, against which the dealer filed an appeal. The

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[1] Construction contracts include contracts for buildings, roads, runways, bridges, flyover bridges, railway overbridges, dams, tunnels, canals, barrages, diversions, rail tracks, causeways, subways, water supply schemes, sewerage works, drainage works, swimming pools, water purification plants etc.

[2] Andheri, Bandra and Nariman Point (2).

report on development in respect of the appeal had not been received (October 2007).

The matter was reported to the Government in May 2007; their reply had not been received (October 2007).

2.3 Incorrect grant of set-off

2.3.1 According to the Bombay Sales Tax (BST) Act, 1959 and Rule 41D of BST Rules, 1959, a manufacturer who had paid tax on purchase of goods specified in entry 6 of Schedule 'B' and Schedule 'C' to the Act and used them within the State in the manufacture of taxable goods for sale or export or in the packing of goods so manufactured, was allowed set-off of tax paid on purchases at the prescribed rates. Where the manufactured goods were transferred to the branches otherwise than as sale, set-off was to be allowed proportionately. Besides, interest and penalty were leviable as per the relevant provisions of the BST Act.

2.3.1.1 During test check of the records of 12 divisions[3] between March 2003 and June 2006, it was noticed that in the assessments finalised between March 2002 and January 2006 of 24 dealers for the period between 1996-97 and 2002-03, set-off was incorrectly granted either on purchases which did not qualify for set-off or due to mistakes in computation. This resulted in under assessment of tax of Rs. 95.24 lakh, including interest. A few illustrative cases are mentioned in the following table:

(Rupees in lakh)

Sl. no.	Division / No. of dealer	Period / Month of assessment	Nature of irregularity	Under assessment including interest
1.	Andheri / 1	1999-2000 / August 2004	Set-off was incorrectly allowed without verifying the purchase invoices and details of tax paid purchases from the books of accounts of the dealer.	58.77
2.	Nashik / 1	1999-2000 / March 2003	Set-off on manufactured goods transferred to branches outside Maharashtra was incorrectly calculated, resulting in excess set-off.	7.73
3.	Bandra / 1	1999-2000 / April 2003	Set-off was incorrectly allowed without identification of goods purchased against form '31'* or on surcharge and turnover tax.	5.22

[3] Andheri (4), Bandra (2), Borivali, Ghatkopar, Kolhapur, Mazgaon, Nashik (2), Nariman Point, Pune-I (4), Pune-II (5), Thane and Worli.

* A certificate issued by the selling dealer confirming that sale price is inclusive of the tax leviable.

2.3.1.2 During test check of the records of the Sales Tax Officer (STO), Yavatmal, it was noticed in May 2005 that while finalising (March 2004) assessment of a dealer manufacturing sugar for the period 1999-2000, set-off of Rs. 15.97 lakh on purchase of goods valued as Rs. 74.88 lakh was allowed by the AO though a certificate in form '31' had not been furnished by the dealer in support of the payment of tax. This incorrect grant of set-off resulted in under assessment of tax of Rs. 17.17 lakh, including interest.

After the cases were pointed out, the department revised the assessments or reassessed the dealers between February 2005 and January 2007 and raised additional demands totalling Rs. 1.13 crore including penalty. Two dealers paid Rs. 2.08 lakh. A report on recovery in the remaining cases had not been received (October 2007).

The matter was reported to the Government in April and May 2007; their reply has not been received (October 2007).

2.3.2 According to Rule 43C of the BST Rules, a registered dealer was entitled to set-off of taxes paid on the turnover of purchases of goods from other dealers registered in Maharashtra provided the goods so purchased are resold within a period of nine months from the dates of their purchase in the same form in which they were purchased, either in the course of export or in the course of inter State trade or commerce. Besides, interest and penalty were leviable as per the relevant provisions of the State Act.

During test check of the records of four divisions[4] between May 2003 and March 2006, it was noticed in the assessments of eight dealers, finalised between August 2002 and April 2005 for the period between 1999-2000 and 2002-03, that set-off was incorrectly allowed on purchases which did not qualify for set-off or were incorrectly computed. This resulted in under assessment of tax of Rs. 55.65 lakh, including interest.

After the cases were pointed out, the department revised/rectified the assessments between August 2004 and January 2007, raising additional demands totalling Rs. 55.67 lakh including penalty. Against this, two dealers paid Rs. 1.58 lakh. A report on recovery in the remaining cases had not been received (October 2007).

The matter was reported to the Government in April 2007; their reply had not been received (October 2007).

2.3.3 Under the provisions of Rule 42L of the BST Rules, a dealer was entitled to set-off of tax paid on purchases effected from 1 May 2000 in respect of Indian made foreign liquor and from 1 April 2002 in respect of fermented liquor (beer) as specified in entry 22 in Part II of Schedule C. Besides, interest and penalty were leviable as per the relevant provisions of the State Act.

During test check of the records of three divisions[5] between January 2004 and November 2005, it was noticed in the assessments finalised between December 2002 and April 2004 of five dealers for the period 2000-01 to 2001-02 that set-off was incorrectly allowed on purchases which did not qualify for

[4] Andheri (2), Borivali (3), Churchgate and Nariman Point (2).
[5] Ghatkopar, Thane (2) and Worli (2).

set-off or set-off was incorrectly calculated. This resulted in under assessment of tax of Rs. 10.23 lakh, including interest.

After the cases were pointed out, the department rectified the mistakes between November 2004 and December 2006 and raised additional demands totalling Rs. 10.24 lakh, including penalty. Against this, two dealers paid Rs. 4.23 lakh. A report on recovery in respect of the remaining cases had not been received (October 2007).

The matter was reported to the Government in May 2007; their reply had not been received (October 2007).

2.3.4 Under the provisions of Rule 41F of the BST Rules, a manufacturer was entitled to full set-off of tax paid on purchases of goods used by him within the State in the manufacture of specified goods for sale. Besides, interest and penalty were leviable as per the relevant provisions of the State Act.

During test check of the records of three divisions[6] between April 2004 and March 2005, it was noticed in the assessments of three dealers, finalised between April 2003 and January 2004 for the period between 1997-98 and 2001-02, that set-off was either incorrectly computed or allowed on purchases used in the manufacture of goods such as IV[7] sets, lead sheets and lead ingots which did not fall under the category of specified goods. This resulted in under assessment of tax of Rs. 7.29 lakh, including interest.

After the cases were pointed out, the department revised the assessment orders between October 2005 and January 2007, raising additional demands totalling Rs. 7.32 lakh, including interest and penalty. A report on recovery had not been received (October 2007).

The matter was reported to the Government in May 2007; their reply had not been received (October 2007).

2.3.5 Under the provisions of Rule 42H of the BST Rules, a dealer having turnover of sales in excess of Rs. 1 crore (Rs. 50 lakh from 1 October 1996 and Rs. 40 lakh from 15 May 1997) was entitled to set-off of tax paid on the purchase of goods. With effect from 1 April 1999, a dealer holding a trade mark or patent in respect of goods sold by him was entitled to set-off of tax paid on the purchases. Besides, interest and penalty were leviable as per the relevant provisions of the State Act.

During test check of the records of four divisions[8] between December 2003 and February 2006, it was noticed in the assessments finalised between August 2002 and January 2005 of four dealers for periods falling between 1 April 1996 and 31 March 2001 that set-off was allowed in excess due to mistake in computation of purchases consumed in sales. This resulted in under assessment of tax of Rs. 5.63 lakh, including interest.

After the cases were pointed out, the department rectified/revised the assessments between July 2005 and January 2007 and raised additional

[6] Andheri, Mandvi and Nashik.
[7] Intravenous sets
[8] Andheri, Bandra, Ghatkopar and Pune-I.

demands totalling Rs. 5.68 lakh, including interest and penalty. A report on recovery had not been received (October 2007).

The matter was reported to the Government in April 2007; their reply had not been received (October 2007).

2.4 Non-levy of purchase tax

2.4.1 Under the provisions of the BST Act and the Rules made thereunder, where a dealer purchased any goods specified in Schedule B or C from an unregistered dealer, then unless the goods so purchased were resold, purchase tax was leviable on the turnover of such purchases at the rates set out against each good in the schedules to the Act. Besides, interest/penalty was payable as per the provisions of the Act.

During test check of the records of Mumbai Enforcement B and Nariman Point divisions in August 2003 and June 2004, it was noticed in the assessments of two dealers finalised in July 2002 and March 2004 for the period 1 April 1998 to 31 March 1999, that on the turnover of purchases of Rs. 7.75 crore effected from unregistered dealers which were not resold, purchase tax which was leviable was not levied. This resulted in under assessment of tax of Rs. 1.13 crore, including interest.

After the cases were pointed out, the department rectified the assessments in May and August 2006, raising additional demands totalling Rs. 1.13 crore, including interest and penalty. In one case, the department issued a revenue recovery certificate (RRC) under the Maharashtra Land Revenue (MLR) Code for the recovery of dues. A report on recovery had not been received (October 2007).

The matter was reported to the Government in April 2007; their reply had not been received (October 2007).

2.4.2 Under the provisions of the BST Act, the Government, by a notification issued in October 1995, exempted certain classes of purchases from payment of tax, subject to certain conditions. If the conditions were not complied with, purchase tax was leviable on the purchase price of the goods at the rates specified in the schedule to the Act. The amount of tax paid on such purchases was to be set-off against the purchase tax so leviable. Besides, surcharge and interest at prescribed rates were also leviable as per the provisions of the Act.

During test check of the records of Andheri division between September 2003 and July 2004, it was noticed in the assessments of a dealer finalised in February 2003 and June 2003 for the period 1999-2000 and 2000-01 that raw material worth Rs. 2.28 crore purchased by a manufacturer on declarations in form G[9] were exempted from payment of tax. Further scrutiny revealed that these goods were not used within the SEEPZ in the manufacture of goods for export outside the territory of India as required under the notification. Thus, the tax exemption allowed was incorrect, resulting in non-levy of purchase tax of Rs. 15.31 lakh including surcharge and interest.

[9] Form G entitles a registered dealer in Santacruz Electronic Export Processing Zone (SEEPZ) to purchase goods without payment of tax subject to certain conditions.

After the case was pointed out, the department revised the assessments in January 2006, raising an additional demand of Rs. 23.05 lakh including surcharge with interest and penalty. A report on recovery had not been received (October 2007).

The matter was reported to the Government in April 2007; their reply had not been received (October 2007).

2.4.3 Under the provisions of the BST Act, if a dealer had purchased any goods specified in Part I of Schedule C of the Act and used such goods in the manufacture of taxable goods and had despatched those manufactured goods to his own place of business or to his agent's place of business situated outside the State within India, then such a dealer was liable to pay purchase tax at the rate of two *per cent* on the turnover of such purchases with effect from 1 October 1995. Besides, surcharge and interest were leviable as per the provisions of the Act.

During test check of the records of Ghatkopar, Nariman Point and Nashik divisions between December 2002 and May 2005, it was noticed in the assessments of three dealers finalised between May 2001 and March 2005, that purchase tax was not levied on purchase of goods valued as Rs. 4.31 crore during the period falling between 1 April 1998 and 31 March 2002. This resulted in under assessment of tax of Rs. 9.21 lakh including interest.

After the cases were pointed out, the department rectified/revised the assessments in two cases and reassessed the third dealer between May 2005 and May 2006, raising additional demands totalling Rs. 9.21 lakh, including interest. In one case, the department adjusted Rs. 34,000 against the refund payable. A report on recovery in the remaining cases had not been received (October 2007).

The matter was reported to the Government in April 2007; their reply had not been received (October 2007).

2.5 Non/short levy of interest/penalty

Under the BST Act, if any tax remained unpaid on the date prescribed for filing of the last return in respect of the period of assessment, the dealer was required to pay simple interest at the rate of two *per cent* (1.25 *per cent* with effect from July 2004) of the amount of tax for each month or part thereof from the date following the date of the period of assessment till the date of payment or the order of assessment, whichever was earlier. The Act also provided for levy of penalty if a dealer concealed the particulars of any transaction liable to tax. If the amount of tax paid by the dealer was found to be less than 80 *per cent* of the amount of tax assessed, then he was deemed to have concealed the turnover liable to tax and penalty not exceeding the amount of tax due was leviable. The provisions were also applicable for levy of interest and penalty under the Central Sales Tax (CST) Act.

During test check of the records of Borivali and Nariman Point divisions between June 2004 and January 2006, it was noticed in the assessments of three dealers finalised between October 2003 and March 2005 for the period between 1995-96 and 1998-99, that two dealers paid tax of Rs. 2.38 crore

belatedly. The delays ranged between 82 and 91 months, for which interest was either not levied or levied short. In another case, the dealer concealed turnover of Rs. 24.19 lakh, being purchases from unregistered dealers during the period 1998-99 and also paid less than 80 *per cent* of the total tax levied for which penalty upto Rs. 53.86 lakh was leviable but was not levied. This resulted in non/short levy of interest of Rs. 67.01 lakh and penalty upto Rs. 53.86 lakh.

After the cases were pointed out, the department levied interest and penalty of Rs. 67.01 lakh and Rs. 28.60 lakh respectively. Of this, in one case, the department issued an RRC to recover the dues under the MLR Code. A report on recovery had not been received (October 2007).

The matter was reported to the Government in April and May 2007; their reply had not been received (October 2007).

2.6 Short levy of sales tax

Under the provisions of the BST Act, the rate of tax leviable on any commodity was determined with reference to the relevant entry in Schedule B or C of the Act. Further, the State Government, by notification from time to time, exempted certain sales or purchases from payment of tax in full or any part thereof, which was payable under the provisions of the Act, subject to such conditions as were prescribed. Besides, turnover tax, surcharge and interest were also leviable as per the provisions of the Act.

During test check of the records of 11 divisions[10] between July 2001 and March 2006, it was noticed in the assessments of 30 dealers finalised between March 2001 and March 2005, for the period between 1996-97 and 2002-03, that there was under assessment of tax of Rs. 94.46 lakh, due to application of incorrect rates of tax, incorrect exemptions, non-levy of tax, incorrect levy of concessional rates of tax and incorrect deductions from the turnover of sales. A few illustrative cases are mentioned in the following table:

[10] Andheri (4), Bandra (4), Churchgate (2), Ghatkopar (2), Mandvi (2), Nashik (2), Nariman Point (5), Pune-I (2), Pune-II (4), Thane and Worli (2).

(Rupees in lakh)

Sl. no.	Division No. of dealer	Period Month of assessment	Name of commodity	Nature of irregularity	Taxable turnover	Rate of tax		Under assessment			Total
						Leviable	Levied	Tax	SC	Interest	
1.	Nariman Point 1	1997-98 March 2001	Cakes and pastries	Counter sales of cakes and pastries in a five star hotel were taxed at eight *per cent* instead of 20 *per cent.*	199.16	20	8	23.90	--	2.84	26.74
2.	Mandvi 1	2000-01 and 2001-02 April 2003	Lead sheets	Incorrect classification of a commodity led to tax being levied at a lower rate.	81.08	13	4	7.30	0.73	1.81	9.84
3.	Ghatkopar 1	1998-99 and April 1999 to February 2000 July 2001	Indian made foreign liquor (IMFL)	Payment of tax at reduced rates was incorrectly allowed to unregistered dealers instead of the full rate of tax.	55.29	20	8	6.63	--	9.66	16.29
4.	Nashik 1	18.3.99 to 31.3.99 and April 1999 to July 1999 November 2003	Country liquor, Wine, IMFL		14.31 1.27 15.87	13 8 20	Nil Nil 8	1.86 0.10 1.91	-- -- --	-- -- 3.44	1.86 0.10 5.35
5.	Pune-I 1	1999-2000 June 2003	Mouth freshener	Mouth freshener was incorrectly classified as 'raw saunf' and taxed at four *per cent*.	43.63	13	4	3.93	0.39	1.64	5.96
				Total							**66.14**

After the cases were pointed out, the department rectified/revised the assessments or reassessed the dealers between July 2005 and January 2007, raising additional demands totalling Rs. 95.80 lakh, including interest, penalty and forfeiture of tax, against which one dealer paid Rs. 41,000 while three dealers filed appeals. A report on recovery in respect of the remaining cases and the developments in the cases in appeal had not been received (October 2007).

The matter was reported to the Government in April 2007; their reply had not been received (October 2007).

2.7 Irregular exemption on sales against form 14B/H

Under the provisions of the CST Act, the last sale or purchase of any goods preceding the sale 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 takes place and is for the purpose of complying with the agreement or order for such export and the selling dealer produces a certificate in form 'H' (form 14B in case of a dealer within the State) duly filled in and signed by the exporter, along with evidence of export of such goods. Further, it has been judicially[11] held that packing material which is used as the ordinary mode for packing and transportation of goods is not the subject matter of export and hence is not eligible for exemption from tax.

During test check of the records of 10 divisions[12] during July 2002 and January 2006, it was noticed in the assessments of 15 dealers finalised between June 2001 and August 2004 for the period between 1994-95 and 2002-03, that sale of goods of Rs. 7.50 crore were exempted from levy of tax though the claims were not supported by the prescribed certificates/complete certificates or documentary evidence in relation to the exports. In respect of one dealer, packing materials used as the ordinary mode for packing of goods to be exported out of India were incorrectly exempted from tax. This resulted in under assessment of tax of Rs. 76.68 lakh including interest.

After the cases were pointed out, the department raised between July 2004 and January 2007, additional demands totalling Rs. 76.73 lakh including penalty. Three dealers paid Rs. 5.41 lakh under the amnesty scheme while three dealers filed appeals. The reports on the developments in the appeal cases and recovery in the remaining cases had not been received (October 2007).

The matter was reported to the Government in April and May 2007; their reply had not been received (October 2007).

2.8 Non/short levy of turnover tax/surcharge

Under the provisions of the BST Act, as amended on 31 March 1999, turnover tax at the rate of one *per cent* on the turnover of sale of goods specified in Schedule C after deducting resale of goods from such turnover and surcharge at the rate of 10 *per cent* of the tax payable where the aggregate of taxes payable by a dealer exceeded Rs. 1 lakh in any year were leviable. From 1 April 2001, surcharge at the rate of 10 *per cent* of the taxes payable was leviable in all cases. Turnover tax was also leviable on the turnover of sales supported by declarations under the BST Act. Besides, interest and penalty were leviable as per the provisions of the Act.

During test check of the records of six divisions[13] between November 2003 and February 2006, it was noticed in the assessments of eight dealers, finalised between January 2003 and September 2004 for the period between 1999-2000 and 2001-02, that turnover tax and surcharge were either not levied or levied

[11] Packwell Industries Pvt. Ltd v/s State of Tamil Nadu (51 STC 329)
[12] Andheri, Bandra (2), Borivali (2), Enforcement A, Ghatkopar (3), Mandvi, Nariman Point, Pune-II, Thane (2) and Worli.
[13] Borivali, Ghatkopar (2), Nashik, Nariman Point, Pune-II (2) and Thane.

short. This resulted in under assessment of tax of Rs. 36.57 lakh including interest.

After the cases were pointed out, the department revised the assessments/ reassessed the dealers between May 2005 and September 2006, raising additional demands totalling Rs. 36.63 lakh, including penalty. A report on recovery had not been received (October 2007).

The matter was reported to the Government in April and May 2007; their reply had not been received (October 2007).

2.9 Short levy of central sales tax

Under the provisions of the CST Act, 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* of the sale price. Otherwise, tax is leviable at twice the rate applicable to the sales inside the State in respect of declared goods and in respect of 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. Besides, interest and penalty are leviable as per the relevant provisions of the State Act.

During test check of the records of eight divisions[14] between July 2002 and February 2006, it was noticed in the assessments of 11 dealers finalised between October 2001 and March 2005 for the period between 1997-98 and 2003-04 that inter State sales of Rs. 2.95 crore were subjected to tax at concessional rate though these were either not supported by declarations or were supported by invalid declarations. This resulted in under assessment of tax of Rs. 13.71 lakh including interest.

After the cases were pointed out, the department rectified the assessments between January 2005 and February 2007 and raised additional demands totalling Rs. 13.73 lakh including penalty, against which one dealer paid Rs. 47,000. A report on recovery in the remaining cases had not been received (October 2007).

The matter was reported to the Government in April and May 2007; their reply had not been received (October 2007).

2.10 Incorrect summary assessment

Under the provisions of the BST Act, an AO was empowered to make a summary assessment in respect of a dealer by accepting his returns and satisfying himself that the returns furnished were correct and complete.

During test check of the records of Bandra and Ghatkopar divisions in April 2005 and February 2006, it was noticed in the returns of two dealers accepted for summary assessments in October 2002 and October 2004 for the period between 1998-99 and 2002-03 that there were anomalies in the claims on account of resales/taxable sales as compared to the purchases from the registered dealers during the relevant periods.

[14] Andheri, Bandra (3), Churchgate (2), Ghatkopar, Mazgaon, Nariman Point, Thane and Worli.

After the cases were pointed out, the department accepted the audit observation and revised/rectified the assessments in June and December 2006, raising additional demands totalling Rs. 14.95 lakh, including interest. A report on recovery had not been received (October 2007).

The matter was reported to the Government in April and May 2007; their reply had not been received (October 2007).

2.11 Claim for compensation of loss of revenue due to introduction of Value Added Tax

2.11.1 Introduction

Value added tax (VAT) was implemented in Maharashtra with effect from April 2005. The Government of India (GOI) agreed to compensate the State Government for loss of revenue consequent to the implementation of VAT and issued guidelines in June 2006 on the modalities for calculation of compensation claims. As per the guidelines, VAT receipts were to be compared with the revenue of the pre-VAT period, suitably extrapolated on the basis of the average growth of the rate of revenue of the previous five years. Further, motor spirit tax (MST) receipts, tax on liquor and credits on account of input tax (ITC) under VAT adjusted against CST were to be excluded while computing the receipts. These amounts were to be deducted from the total revenue collection for the year 2005-06. The resultant net revenue was to be compared with the projected tax revenue for 2005-06 to arrive at the loss due to the introduction of VAT. The compensation was allowable at 100 *per cent* of such loss of revenue during the year 2005-06. The State Government preferred (September 2006) their final compensation claim of Rs. 3,548.42 crore for the year 2005-06, against which the GOI sanctioned Rs. 1,374.64 crore upto September 2006.

The refunds granted and MST (non-VAT revenue) allowed as per the returns relating to the period from April 2005 to March 2006 in the Nariman Point (Mumbai) and Pune divisions (outside Mumbai) were scrutinised in audit between December 2006 and February 2007. The total amount of refund involved in the compensation claims under VAT was Rs. 1,637.33 crore, of which Rs. 423.46 crore was involved in 719 cases which were test checked in audit. Besides, receipts of Rs. 5,818.53 crore relating to MST in the case of eight oil companies were also test checked.

The important audit findings are mentioned below :

2.11.2 Inclusion of inadmissible refunds in the claim

2.11.2.1 According to the modalities prescribed by the GOI, tax refunds allowed by the department relating to VAT items only are to be taken into consideration for claiming compensation.

The Government of Maharashtra considered the total refunds of Rs. 1,637.33 crore allowed during 2005-06 for compensation. Of this, Rs. 554.80 crore[15]

[15] Total refunds granted by the Pay and Accounts Office, Mumbai were Rs. 684.23 crore against which Rs. 129.43 crore pertaining to Raigad division have been excluded.

related to nine divisions[16] of Mumbai and Rs. 410.64 crore related to Pune division. However, as per the information furnished to Audit by the Sales Tax Department, the refunds relating to VAT amounted to Rs. 203.44 crore for Mumbai division and Rs. 375.64 crore for Pune division. This indicated that in these divisions, a total amount of Rs. 386.36 crore[$] related to refunds granted under the Bombay Sales Tax (BST) Act, 1959 which was ineligible for compensation.

In reply, the department stated (March 2007), that refunds were allowed from the total receipts of the department, which included both VAT and BST. These receipts were not separately classified into VAT receipts and BST receipts, because that was neither feasible nor cost effective. The department further stated that this view had been accepted by the GOI. The reply of the department is not tenable as this test check was conducted only after the GOI requested Audit in November 2006 to offer comments on the compensation claim preferred by the Government of Maharashtra. In addition, according to the modalities prescribed by the GOI, only tax refunds relating to VAT items are to be taken into consideration for claiming compensation. The Government of Maharashtra belatedly opened a separate detailed head (00) (02) under sub-head 102 to account for the receipts under VAT in August 2006. Belated opening of the detailed head of account for the VAT receipts led to deposit of tax under both BST and VAT Acts in the same head of account during the period from April 2005 to July 2006.

2.11.2.2 In two cases in Pune division, refunds of Rs. 11.98 lakh for the period from April 2005 to December 2005 and October 2005 to February 2006 were made in January 2006 and March 2006 respectively. Since the refunds were due to the set-off allowed on the purchase of liquor which was a non-VAT item, the refund considered for compensation was incorrect.

The department, while agreeing with the audit observation, stated that the amount involved was negligible. The reply is not tenable as these irregularities were noticed as a result of test check of records of only two divisions. Further reply has not been received (October 2007).

2.11.2.3 In the case of a dealer of Nariman Point division, it was noticed that exemption on branch transfer of Rs. 1.22 crore was allowed under the CST Act. However, as per the CST Act, production of form 'F' had been made mandatory from May 2002. Thus the branch transfer of jewellery of Rs. 1.22 crore, not supported with form 'F', should have been treated as inter State sales and taxed at the scheduled rate of one *per cent*. This resulted in short levy of tax of Rs. 1.22 lakh.

The department, while agreeing with the audit observation, stated that the amount involved was negligible. The reply is not tenable as this irregularity was noticed as a result of test check of records of only two divisions. A report on recovery had not been received (October 2007).

[16] Andheri, Bandra, Borivali, Churchgate, Ghatkopar, Mandvi, Mazgaon, Nariman Point and Worli.

[$] Ineligible amount = Rs. (554.80 - 203.44) crore + Rs. (410.64 - 375.64) crore = Rs. 386.36 crore

2.11.3 Incorrect adjustment of non-VAT tax revenue items

According to the guidelines of the GOI, receipts on account of MST, are to be excluded while computing the compensation claims. The compensation claim preferred by the State Government included a deduction of Rs. 5,818.53 crore on account of MST receipts in respect of eight oil companies, from the total VAT receipts of Rs. 17,229.46 crore during the year 2005-06. Scrutiny of the returns of two companies[17] revealed that as against receipts of Rs. 1,854.24 crore shown in the return, Rs. 1,871.78 crore had been considered for deduction. This resulted in excess deduction of Rs. 17.54 crore from the VAT receipts, leading to an excess claim of compensation to that extent.

After the cases were pointed out, the department accepted the audit observation. A report on final adjustment had not been received (October 2007).

[17] Hindustan Petroleum Corporation Ltd (HPCL) and Indo Burma Petroleum Company (IBP Co.).