

## CHAPTER VI

### REVENUE RECEIPTS

#### 6.1 Trend of Revenue Receipt

6.1.1 The tax and non-tax revenue raised by the State Government, State's Share of divisible Union Taxes and Grants-in-aid from Government of India during the year 2000-01 alongwith the corresponding figures for the preceding two years are given below:

**Table-6.1**

		1998-99	1999-00	2000-01**
		<i>(Rupees in lakh)</i>		
<b>I</b>	<b>Revenue raised by the State Government</b>			
(a)	Tax Revenue	4675.67	4907.04	6538.96
(b)	Non-Tax Revenue*	102091.57 (4291.57)	104274.77 (6478.44)	28902.34 (6563.22)
	<b>TOTAL</b>	<b>106767.24</b>	<b>109181.81</b>	<b>35441.30</b>
<b>II</b>	<b>Receipts from the Government of India</b>			
(a)	State's share of divisible Union taxes	9221.00	9954.00	7220.00
(b)	Grants-in-aid	28077.95	32047.29	43598.36
	<b>TOTAL</b>	<b>37298.95</b>	<b>42001.29</b>	<b>50818.36</b>
<b>III</b>	<b>Total receipts of the State (I+II)</b>	<b>144066.19</b>	<b>151183.10</b>	<b>86259.66</b>
<b>IV</b>	<b>Percentage of I to III</b>	<b>74</b>	<b>72</b>	<b>41</b>

\* Figures in brackets indicate net receipts after deducting Rs. 978.00 crore, Rs. 977.96 crore and Rs. 223.39 crore on account of expenditure towards State Lotteries during 1998-99, 1999-00 and 2000-01 respectively. The steep decrease in Non-Tax Revenue was due to decrease in receipts from State Lotteries, which in turn was on account of introduction of Lottery Prohibition Bill.

\*\* For details, please see 'Statement No. 10-Detailed Accounts of Revenue by Minor Heads' in the Finance Accounts of the Government of Sikkim.

#### *Tax revenue raised by the State*

6.1.2 Receipts from tax revenue constituted 18 per cent of the total revenue raised by the State during 2000-01. An analysis of the tax revenue for the year 2000-01 and the preceding two years is given below:

**Table-6.2**

Sl. No.	Tax Revenue	1998-99	1999-00	2000-01	Increase (+) / Decrease (-) (in 2000-01 over 1999-00)	Percentage of variation
		<i>(Rupees in lakh)</i>				
1	State Excise	1185.89	1339.40	1761.13	(+) 421.73	31
2	Taxes on Income other than Corporation Taxes	1832.41	1784.38	1928.57	(+) 144.19	08
3	Sales Tax	1306.22	1363.75	2450.39	(+) 1086.64	80
4	Taxes on vehicles	151.38	169.04	154.40	(-) 14.64	(-) 09
5	Stamps & Registration Fees	50.92	61.70	50.07	(-) 11.63	(-) 19
6	Land Revenue	12.15	53.73	21.66	(-) 32.07	(-) 60
7	Other Taxes and Duties on Commodities and Services	136.70	135.04	172.74	(+) 37.70	28
	<b>TOTAL</b>	<b>4675.67</b>	<b>4907.04</b>	<b>6538.96</b>	<b>(+) 1631.92</b>	

6.1.3 During 2000-01, tax revenue increased by Rs.16.32 crore (33 per cent). The increase of Rs.10.87 crore under 'Sales Tax' and Rs.1.14 crore under 'Taxes on Income other than Corporation Taxes' was due to the introduction of better monitoring mechanism and follow up action on backlog cases and the increase on Rs.4.22 crore under 'State Excise' was due to upward revision of Excise duty and better management of revenue collection.

6.1.4 The reasons for variation in respect of the remaining heads of revenue have not been received (October 2001).

***Non-tax revenue raised by the State***

6.1.5 Lotteries, Road Transport Service, Power, Forest, Interest, Plantations, Police and Public Works were the principal sources of non-tax revenue of the State. Receipts from non-tax revenue during the year 2000-01 constituted 68 per cent of the revenue raised by the State. An analysis of non-tax revenue under the principal heads for the years 1998-99 to 2000-01 is given below:

**Table-6.3**

Sl. No.	Non-Tax Revenue	1998-99	1999-00	2000-01	Increase (+) / Decrease (-) in 2000-01 with reference to 1999-00	Percentage of variation
1	Road Transport	749.15	1189.16	1190.44	(+) 1.28	0.1
2	Power	644.03	833.03	1003.91	(+) 170.88	21
3	Forestry and Wild Life	159.63	489.69	639.32	(+) 149.63	31
4	Interest Receipts	26.15	51.33	448.17	(+) 396.84	773
5	Plantations	222.00	235.00	239.23	(+) 4.23	2
6	Dividends and Profits	123.05	72.39	1.58	(-) 70.81	(-) 98
7	Police	344.91	283.69	583.77	(+) 300.08	106
8	Public Works	51.01	44.83	124.76	(+) 79.93	178
9	Tourism	39.44	40.39	38.72	(-) 1.67	(-) 4
10	Crop Husbandry	20.85	20.29	47.36	(+) 27.07	133
11	Stationery and Printing	94.81	95.84	85.95	(-) 9.89	(-) 10
12	Village & Small Industries	49.58	48.85	65.67	(+) 16.82	34
13	Animal Husbandry	14.13	15.54	15.80	(+) 0.26	2
14	Industries	10.95	-	-	-	-
15	Medical and Public Health	41.84	14.08	36.59	(+) 22.51	160
16	State Lotteries*	1502.62	2790.25	1720.79	(-) 1069.46	(-) 38
17	Others	197.42	254.08	321.16	(+) 67.08	26
	<b>TOTAL</b>	<b>4291.57</b>	<b>6478.44</b>	<b>6563.22</b>	<b>(+) 84.78</b>	<b>1.3</b>

\* Excludes Rs. 978.00 crore, Rs. 977.96 crore and Rs. 223.39 crore on account of expenditure towards State Lotteries during 1998-99, 1999-00 and 2000-01 respectively which has been taken in the Finance Accounts for the purpose of calculating the non-tax revenue during the respective years. The decrease in receipts from State Lotteries was due to introduction of Lottery Prohibition Bill.

6.1.6 During 2000-01, non-tax revenue increased by Rs. 84.78 lakh (1.3 per cent). The increase of Rs. 1.50 crore under 'Forestry and Wild Life' was due to streamlining of machineries; Rs.79.93 lakh under 'Public Works' was due to the increase in rate of tender forms and due to increase in the number of forms sold.

6.1.7 The reasons for variation in respect of the remaining heads of revenue have not been received (October 2001).

## 6.2 Variation between the budget estimates and actuals

6.2.1 The variation between the budget estimates and actuals of tax and non-tax revenue during the year 2000-01 is given below:

**Table-6.4**

	Budget (Revised) (Rupees in lakh)	Actuals	Variation increase(+) decrease (-) (percentage)
Tax-Revenue	5477.35	6538.96	(+) 1061.61 (19)
Non-Tax Revenue	42427.58	28902.34	(-) 13525.24 (32)
<b>TOTAL</b>	<b>47904.93</b>	<b>35441.30</b>	(-) <b>12463.63</b> (26)

6.2.2 In respect of the following principal heads of revenue, the variation between budget estimates and actual receipts for the year 2000-01 were more than 10 per cent.

**Table-6.5**

Sl. No.	Head of Revenue	Budget estimates	Actuals	Variation Increase(+) / Decrease(-) (Percentage)
		(Rupees in lakh)		
<b>A</b>	<b>Tax Revenue</b>			
1	Land Revenue	12.50	21.66	(+) 9.16 (73)
2	State Excise	1567.85	1761.13	(+) 193.28 (12)
3	Taxes on Sales, Trade etc.	1650.00	2450.39	(+) 800.39 (49)
<b>B</b>	<b>Non-Tax Revenue</b>			
4	Public Works	74.45	124.76	(+) 50.31 (68)
5	Education, Sports, Art and Culture	75.10	48.03	(-) 27.07 (36)
6	Medical and Public Health	20.00	36.59	(+) 16.59 (83)
7	Information and Publicity	5.00	13.50	(+) 8.50 (170)
8	Labours and Employment	3.00	4.27	(+) 1.27 (42)
9	Crop Husbandry	32.00	47.36	(+) 15.36 (48)
10	Animal Husbandry	30.00	15.80	(-) 14.20 (47)
11	Fisheries	1.20	0.49	(-) 0.71 (59)
12	Forestry and Wild Life	145.00	639.32	(+) 494.32 (341)
13	Food Storage and Warehousing	1.80	7.33	(+) 5.53 (307)
14	Other Rural Development Programme	1.50	6.03	(+) 4.53 (302)
15	Industries	21.01	Nil	(-) 21.01 (100)
16	Non Ferrous, Mining & Metallurgical Industries	2.00	5.00	(+) 3.00 (150)
17	Village and Small Industries	50.00	65.67	(+) 15.67 (31)
18	Interest Receipts	30.00	448.17	(+) 418.17 (1394)
19	Dividend and profit	100.00	1.58	(-) 98.42 (98)
20	Public Service Commission	0.55	0.64	(+) 0.09 (16)
21	Police	712.35	583.77	(-) 128.58 (18)
22	Water Supply and Sanitation	26.50	37.95	(+) 11.45 (43)
23	Housing	15.55	17.86	(+) 2.31 (15)
24	Minor Irrigation	1.50	22.60	(+) 21.10 (1407)
25	Other General Economic Services	3.00	2.10	(+) 0.90 (30)

6.2.3 The reason for increase of Rs. 800.39 lakh under 'Sales Tax' as attributed by the Department to the introduction of better monitoring mechanism and follow up action on backlog cases was not correct in view of the findings vide paragraphs 6.14.5, 6.14.6, 6.14.7 and 6.14.8 of this Chapter;

Rs.4.94 crore under 'Forestry and Wild Life' was due to streamlining of machineries; Rs. 50.31 lakh under 'Public Works' was due to the increase in rate of tender forms and due to increase in the number of forms sold.

6.2.4 The decrease of Rs.1.29 crore under 'Police' was due to non-receipt of reimbursement of expenditure from Ministry of Home Affairs, Government of India.

6.2.5 The reasons for variation in respect of the remaining heads of revenue have not been received (October 2001).

### **6.3 Cost of collection**

6.3.1 Expenditure incurred on collection of revenue under the principal heads during the years 1998-99 to 2000-01 is given below:

**Table-6.6**

Sl. No.	Head of Revenue	Year	Gross collection	Expenditure on gross collection	Percentage of expenditure to gross collection	All India average percentage for the year 1999-2000
			<i>(Rupees in lakh)</i>			
1	State Excise	1998-99	1185.89	146.18	12	3.31
		1999-00	1339.40	119.81	09	
		2000-01	1761.13	106.57	06	
2	Sales Tax	1998-99	1306.22	56.36	04	1.56
		1999-00	1363.75	58.17	04	
		2000-01	2450.39	64.67	03	
3	Taxes on vehicles	1998-99	151.38	40.47	27	3.56
		1999-00	169.04	27.05	16	
		2000-01	154.40	23.56	15	

6.3.2 It would be seen from the table that the percentage of expenditure to gross collection during 2000-01 as compared to the corresponding All India Average Percentage for 1999-00 was very high.

### **6.4 Outstanding Inspection Reports**

6.4.1 Audit observations on irregularities and defects in assessment, demand and collection of State receipts noticed during local audit are intimated through Inspection Reports (IRs) to the departmental officers, heads of departments and also to the Government where necessary. The points mentioned in the IRs are to be settled as expeditiously as possible and first replies should be sent within four weeks from the date of receipt of the IRs by the departments.

6.4.2 The position of IRs in respect of revenue receipts issued to the end of December 2000 but remaining outstanding as at the end of June 2001 was as under:

**Table-6.7**

Sl. No.		At the end of		
		June 1999	June 2000	June 2001
1	Number of outstanding IRs.	154	161	110
2	Number of outstanding Audit objections	381	377	281
3	Money value of the objections (Rupees in crore)	27.35	32.51	49.20

6.4.3 Receipt-wise break-up of the IRs and objections (with money value) is given below:

**Table-6.8**

Sl. No.	Head of Receipts	No. of Inspection Reports	No. of Audit Objection	Amount (Rupees in crore)
1	Sales Tax	06	16	8.77
2	Income Tax	11	46	15.26
3	Forests	34	71	0.85
4	Land Revenue	30	70	1.95
5	Motor Vehicle	07	10	0.30
6	State Excise	11	26	6.15
7	Urban Development & Housing Department	06	07	0.32
8	Power	05	35	15.60
	<b>TOTAL</b>	<b>110</b>	<b>281</b>	<b>49.20</b>

6.4.4 Out of 110 IRs pending settlement, even first replies had not been received (June 2001) in respect of 40 reports containing 135 audit objections.

6.4.5 The position of outstanding paras and objections has been brought to the notice of the Chief Secretary to the State Government (November 2001).

## **6.5 Results of Audit**

6.5.1 Test check of the records of Finance, Forest, Land Revenue, Motor Vehicle, State Excise, Power and Urban Development and Housing Departments conducted during the year 2000-01 revealed under-assessment/short levy/loss of revenue amounting to Rs. 2.40 crore in 13 cases. A review highlighting “Internal Controls and System of Registration, Assessment and Collection of Sales Tax” in respect of Sales Tax Department and a few illustrative cases involving Rs.11.43 crore highlighting important audit observations are mentioned in Sections A and B respectively of this Chapter.

**CHAPTER-VI**  
**REVENUE RECEIPTS**  
*SECTION – A*  
**(AUDIT REVIEW)**

**SALES TAX DEPARTMENT**

**6.6 Internal Controls and the System of Registration,  
 Assessment and Collection of Sales Tax**

**Highlights**

*Sales tax constitutes about 29 per cent of the total tax revenue of the State. Despite its importance, the procedures and controls for effective monitoring of registration of dealers, assessing them for tax, and realising tax dues from them are woefully lacking. The Sales Tax Department has no mechanism to ensure that all dealers liable for tax are being assessed. There are no records to monitor cases awaiting registration or determine the extent of registrations cancelled. The Department has no control over the submission of returns by assesses. Only a small percentage of total registered dealers are assessed each year and no norms have been laid down for the number of assessments to be done by each assessing authority at various levels. There is no assurance that all assessments are made in accordance with law and there were a number of instances of incorrect assessments resulting in huge loss of Government revenue.*

**No norms had been prescribed in the State for conducting regular market surveys to detect unregistered dealers.**

**(Paragraph 6.6.10)**

**Registration records were not being maintained properly with the result that no check could be exercised to ascertain overall picture of new registrations, their pendency and the cancellation of registrations.**

**(Paragraph 6.6.12)**

**There was non-maintenance of return records and absence of internal control mechanism to monitor the timely submission of quarterly returns.**

**(Paragraph 6.6.14)**

**No norms have been laid down for the assessment of registered dealers of the state and huge backlogs in assessments are piling up every year leading to possible evasion of sales tax from year to year.**

**(Paragraph 6.6.18)**

**Under assessment of sales tax on liquor, cardamom and other goods resulted in revenue loss of Rs. 5.82 crore.**

**(Paragraphs 6.6.16 to 6.6.28)**

**Non-assessment of sales tax on lottery sales resulted in revenue loss of Rs. 182.62 crore.**

**(Paragraph 6.6.29)**

**Loss of revenue of Rs. 2.38 crore due to irregular allowance of deductions and exemptions.**

**(Paragraph 6.6.30)**

**Non-recovery of assessed tax of Rs. 2.41 crore due to lack of initiative on the part of Department.**

**(Paragraphs 6.6.39 to 6.6.42)**

**Injudicious extension to deposit tax of Rs.82.33 lakh was granted against the financial interest of the State.**

**(Paragraph 6.6.43)**

**There were instances of fraudulent use of concessional Form 'C' by three registered dealers and possible fraudulent use of Form 'C' in 2 other cases.**

**(Paragraphs 6.6.46 and 6.6.48)**

## **Introduction**

6.6.1 Sales Tax is an indirect tax. The dealer acts as an agent for collection of the tax from the consumers and crediting it into the Government accounts. Sales Tax is one of the major sources of revenue in the State. It constituted 29.03 per cent of the total tax revenue raised by the State during 1996-97 to 2000-2001. The Sales Tax Department operates under the provisions of the following Acts and Rules:

- (i) Sikkim Sales Tax (SST) Act 1983.
- (ii) Sikkim Sales Tax (SST) Rules 1983.
- (iii) Central Sales Tax (CST) Act 1956.
- (iv) Central Sales Tax (Sikkim) Rule 1983.
- (v) Sikkim (Collection of Taxes and Prevention of Evasion of Payment of Tax) Act 1987.

6.6.2 The position of Sales Tax vis-à-vis the total tax revenue of the State during the last five years is shown below:

**Table-6.9**

Year	Sales Tax	Total tax revenue	Percentage of Sales Tax to total tax revenue
	<i>(Rupees in lakh)</i>		
1997-97	822.53	2991.17	27.49
1997-98	1271.06	3649.62	34.83
1998-99	1306.22	4675.67	27.94
1999-00	1363.75	4907.04	27.79
2000-01	2450.39	13758.96	17.81

### **Organisational Set-up**

6.6.3 The Commissioner of the Commercial Taxes (Secretary, Finance Department), Sikkim is the Head of the Department and is assisted by one Additional Secretary, two Joint Commissioners and two Deputy Commissioners of the two different circles (North/East and South/West). In each of the two circles, the Deputy Commissioners and four Assistant Commissioners are entrusted with the duties of granting registration as well as cancellation of such registration certificates, and assessment and realisation of tax payable by the dealer. In addition, there are 4 checkpost offices, at Rangpo and Reshi under North/East circle and Melli and Ramrang under South/West circle.

### **Scope of Audit and Audit Coverage**

6.6.4 The review was conducted between February and April 2001, with reference to the records from 1996-97 to 2000-2001 maintained at the Head Office at Gangtok, one Circle Office at Jorethang, Office of the Assistant Commissioner at Rangpo and three check posts located at Rangpo, Melli and Reshi. A sample check of 20-25 per cent was done in respect of Registration, Assessment and Exemption cases, to review the effectiveness of functioning of the internal controls and monitoring system in the Sales Tax Department.

### **Trend of Sales Tax Receipts**

6.6.5 The receipts on account of Sales Tax with reference to the budget estimates during the last 5 years were as under:



**Table- 6.10**

*(Rupees in crore)*

Year	Estimated Sales Tax	Actuals	Shortfall w.r.t. Estimates	Increase w.r.t. previous year	Percentage of increase
1996-97	9.75	8.23	1.52 (16)	0.84	11
1997-98	13.00	12.71	0.29 (02)	4.48	54
1998-99	15.50	13.06	2.44 (16)	0.35	03
1999-00	16.00	13.64	2.36 (15)	0.58	04
2000-01	16.50	24.50	Nil	10.86	80

Note: Figure in the brackets indicated percentage of shortfall to the budget estimates.

6.6.6 It would be seen from the above that except during 2000-01, the actual receipt from Sales Tax persistently fell short of the estimates ranging from 2 (1997-98) to 16 per cent (1996-97/1998-99).

### Registration of dealers

#### *Growth of registered dealers*

6.6.7 As per information furnished by the Department, the number of dealers in the State registered under SST Act 1983 and CST Act 1956 during 1996-97 to 2000-2001 was as under:

**Table-6.11**

Year	Act	No. of registered dealers at the beginning of the year	No. of dealers registered during the year	No. of dealers whose registration was cancelled during the year	No. of dealers at the end of the year
1996-97	SST Act.	1728	110	Nil	1838 (6.37)
	CST Act.	1811	105	Nil	1916 (5.80)
1997-98	SST Act.	1838	177	Nil	2015 (9.63)
	CST Act.	1916	173	Nil	2089 (9.03)
1998-99	SST Act.	2015	165	Nil	2180 (8.19)
	CST Act.	2089	145	Nil	2234 (6.94)
1999-00	SST Act.	2180	146	Nil	2326 (6.70)
	CST Act.	2234	139	Nil	2373 (6.22)
2000-01	SST Act.	2326	141	Nil	2467 (6.06)
	CST Act.	2373	141	Nil	2514 (5.94)

Note: The figure in the brackets represents percentage increase over the previous year.

6.6.8 The increase in the number of registered dealers between 1996-97 and 2000-01 ranged from 5.94 to 9.64 per cent per year both under the SST Act and CST Act. However, the Department did not have consolidated information about the number of applications received for registration, applications

rejected and cancelled during the last five years ending 31 March 2001. It was ascertained in South/West Circle that registration certificates of 75 registered dealers had been cancelled during the above period though this information was not available at the Head-office. This points to fact that there was no proper management information system and consequently the effective and efficient functioning of the Department suffered to this extent.

#### ***Lack of market survey for registration***

6.6.9 Suitable machinery for carrying out regular market surveys is required to detect the dealers carrying on business without registration. The Department had no consolidated information about the number of applications received for registration, applications rejected and applications finally accepted during the last five years ending 31 March 2001. However, there was no such machinery for conducting periodical market surveys in the State. The Department stated (May 2001) that there was no system of regular market survey for detection of such dealers due to shortage of field staff and the registration was done on the basis of applications made by the dealer. This pointed to the possibility of dealers remaining unregistered with consequential evasion of tax.

#### ***Registration of contractor dealer***

6.6.10 Under the provisions of the SST Act, 1983, if the transfer of property in goods is involved in the execution of works contract of the contractor dealer, he is liable to pay tax under the Act after getting himself registered and assessed. Information obtained from some works executing Departments and cross checking the same with reference to the records of the Sales Tax Department revealed that there were 128 unregistered contractor dealers executing works in those Departments. Sales Tax Department had not taken any initiative to get these contractor dealers registered. Further, the Sales Tax Department had never assessed 173 registered contractor dealers since the imposition of Sales Tax on the works contract. Although, the Department issued the declaration forms to the registered contractor dealers, neither any return was filed nor the dealers paid any tax. In the absence of information on value of works executed, the amount of revenue loss could not be worked out.

#### ***Non-maintenance of registers***

6.6.11 Various registers like Register of Dealers, Register of Security Deposit, Register of Registration and Cancellation of Registration Certificate etc. were either not maintained or improperly maintained. In the absence of important registers, audit could not ascertain the number of cancellation of registration certificates, surrender of unused declaration forms by the dealers whose registration certificates were cancelled and actual arrears/tax due etc. Further, it was seen that there was no register/report for recording year-wise centralised information in the Sales Tax Department, Gangtok, about the total number of application received for registration under the different Acts, the

number of such applications cancelled or rejected and finally the total number of registration certificates granted. In the absence of any register/record in this regard, the disposal vis-à-vis pendency of application for registration and also time taken in granting registration certificate to the dealer, could not be verified in audit.

## **Returns**

6.6.12 Sales Tax provisions are largely based on the principle of self-assessment. According to Rule 12 of the SST Rules, 1983, the registered dealers are to submit periodical returns (quarterly) within one month following the month of the quarter to which it relates. Various control records are to be maintained to facilitate the monitoring of timely receipt of returns.

### ***Inadequate monitoring of Quarterly Returns***

6.6.13 Under the provisions of the SST Act, 1983 a dealer is liable to pay penalty if he fails to furnish the required returns within the prescribed period, at the rate not exceeding Rs.5.00 for each day of delay. Due to non-maintenance of periodical return registers, the Department had no mechanism to detect cases of late filing or non-filing of quarterly returns by dealers. Similarly, in the absence of any prescribed norms, the penalties were not levied uniformly and ranged between Re. 1.00 and Rs. 5.00 per day and were not commensurate with the delay in filing of quarterly returns.

### ***Lack of monitoring of bank receipts***

6.6.14 In order to keep effective control over the remittance of taxes, a bank receipt register with a separate folio for each dealer was to be maintained for cross verification of remittances at the time of assessment. The Department had not maintained any such register. As a result, the assessing authority had to solely rely on the information furnished by the dealer and had no means of cross verifying the amount of tax paid, which was deducted from the assessed tax, to arrive at net tax due from a dealer.

### ***Non-levy of penalty***

6.6.15 Thirty nine Small Scale Industries (SSI) were registered in the State between 1982-83 and 2000-2001. These Industries had not submitted returns (SST and CST) since their date of registration. The Department did not take any effective steps to get the returns filled by these SSIs and realise the penalty.

### Assessment of Sales Tax

6.6.16 An effective and efficient tax collecting system must ensure proper and timely assessment, prompt recovery of the assessed tax and correct accountal and deposit of collected revenues to the Government treasury. The internal controls should be so designed to ensure correct application of law so that scope for leakage of Government revenue due to incorrect assessments is minimised. The assessment mechanism in the Sales Tax Department of Sikkim was beset with several lacunae viz., inadequate monitoring of cases due for assessment, underassessment, non-assessment, irregular and incorrect deductions/exemption etc., which manifested in various shortcomings in individual assessments, resulting eventually in substantial loss to the State exchequer. These varied from huge arrears in assessment, incorrect application of rates, irregular grant of exemptions and poor recovery of assessed tax.

### Inadequate monitoring of cases due for assessment

6.6.17 Assessment of sales tax was being done by Assistant Commissioners, Deputy Commissioners and in some cases Joint Commissioners of the Department but no norms had ever been prescribed by the Department for the completion of assessment by an individual assessing authority. The Department did not even have the data on the number of assessments pending at the beginning of the year and number of assessments due for completion in a particular year. As a result large number of dealers remained un-assessed. The total number of assessments made were woefully low in comparison to the total number of registered dealers as shown below:

**Table- 6.12**

Year	Number of registered dealers at the end of the year	Assessments done during the year	Percentage of assessments done to the total
1996-97	3754	325	8.66
1997-98	4194	471	11.23
1998-99	4414	557	12.62
1999-00	4699	546	11.62
2000-01	4981	440	8.83

6.6.18 As would be seen from above, there was huge backlog of cases pending assessment during all the years covered under review. This indicated that the assessing authority could neither persuade the dealers to come forward for assessment nor assess the cases on the basis of their best judgment. This not only resulted in delay in realisation of the unassessed tax but also retention of Government dues to that extent with the dealer. Moreover, this indicates the poor ability of the Department to cope with the work.

**Under assessment and non-assessment**

*Losses on assessment of inter-state sales*

6.6.19 Under the CST Act, 1956 and rules made there-under, inter-state sales of goods other than declared goods to registered dealers are taxable at the concessional rate of 4 per cent, if such sales are supported by prescribed declarations from the purchasing dealers. Otherwise, tax is to be levied at the normal rate of 10 per cent or the rate of tax applicable under the State Act, whichever is higher. In the following cases, the Department assessed the tax on inter-state sales incorrectly causing a revenue loss of Rs. 5.72 crore to the State.

6.6.20 While making assessment of a dealer (M/s Sikkim Distilleries Limited) for the year ended March 1997, the Department allowed the claim for concessional rate of tax at 4 per cent on Rs. 56.43 crore for the period from April 1983 to March 1997 (except 1991-92 and 1992-93). However, an amount of Rs. 51.68 crore out of this claim was neither covered by prescribed declaration forms 'C' nor were the forms available in the relevant record of the Sales Tax Department. This allowance of concessional rate on Rs. 51.68 crore resulted in under assessment of tax by Rs. 3.10 crore.

6.6.21 As per notification issued in January 1991, tax (first point) on the inter-state sale of cardamom (big) is leviable at the concessional rate of 3 per cent. For advance realisation of tax on such sale, the Department fixed the sale price per kilogram of cardamom provisionally at Rs. 65.00 prior to 4 August 1999, Rs. 85.00, Rs. 125.00 and Rs. 170.00 from 4 August 1999, 19 January 2000 and 01 January 2001 respectively. Separate price fixation for sales tax purposes was not covered under any provision of the Act and Rules. As against this, the average market price per kilogram of cardamom in Sikkim at the time of harvesting, collected from the Central Spices Board, Gangtok, was Rs. 68.28 in 1997-98, Rs. 82.51 in 1998-99 and Rs. 217.50 in 1999-2000. This incorrect fixation of market price of cardamom resulted in loss of revenue amounting to Rs.1.19 crore as detailed below:

**Table- 6.13**

Circle	Year	Quantity involved in interstate trade (Kg. in lakh)	Value at the Central Spices Board rate	CST on the said value @3%	Actual CST realised	Difference
		(In lakhs of rupees)				
Rangpoo	97-98	31.78	2170.22	65.11	61.98	3.13
	98-99	24.92	2056.09	61.68	48.59	13.09
	99-00	19.92	4288.96	128.67	51.87	76.80
Jorethang (Melli)	97-98	6.97	475.72	14.27	13.16	1.11
	98-99	7.20	594.13	17.82	12.69	5.13
	99-00	5.10	1110.24	33.31	13.35	19.96
<b>Total short collection</b>						<b>119.22</b>

6.6.22 The Department stated (June 2001) that the observation of the audit is being brought to the notice of the Government. The decision and order in respect of revision of rates of CST and SST will be intimated.

6.6.23 As per Supreme Court's decision, in case producing state reduces the tax, without 'C' form, on the inter-state sale to a very low rate and maintains high rate of tax under the local Sales Tax Act, it will be detrimental to the revenue interest of the other States and is, therefore, not legal (Indian Cement Vs State of Andhra Pradesh – 1988). This implied that goods produced inside the state could not be taxed at a lower rate in CST (inter-state transaction) than the rate applicable in case of SST. This had, however, happened in the case of cardamom, ginger and orange as shown below:

**Table-6.14**

Goods	Rate of CST	Rate under SST	Remark
Cardamom	i. 2 per cent with effect from 20.03.90	i. 2 per cent with effect from 21.03.90	Up to 16.1.2000, the prevalent rates were correct. From, 17.1.2000, the rate of CST became lower.
	ii. 3 per cent with effect from 9.1.97.	ii. 3 per cent with effect from 9.1.97	
	iii. 3 per cent even from 17.1.2000	iii. 4 per cent with effect from 17.1.2000	
Ginger, Orange	i. 3 per cent with effect from 15.01.91	i. 3 per cent with effect from 15.01.91	-do-
	ii. 3 per cent even from 7.1.2000.	ii. 4 per cent with effect from 17.1.2000.	

6.6.24 Hence, undue benefits were extended to the dealers in inter-state business on cardamom, ginger and orange with effect from 17 January 2000 due to non-revision of CST rate. This also resulted in loss of revenue to the tune of Rs. 45.33 lakh. On this being pointed out, the Department stated (June 2001) that action for revision of the CST rate or that of the SST rate is being initiated and decision of the Government is awaited (October 2001).

6.6.25 A dealer is liable to pay tax under CST Act on sale of any goods affected by him in the course of inter state trade or commerce notwithstanding that no tax would have been leviable under the sales tax law/rules of the appropriate state if the sale had taken place inside that state. The dealer, M/s Himal Laboratories (P) Ltd, had been dealing with the business of manufacture of ayurvedic medicines. Goods valued at Rs. 24.28 crore were sold during 1983-84 to 1990-91 in the course of inter state trade. The assessing authority, while finalising the assessment, did not levy tax on the sale of such goods. This resulted in non-realisation of tax of Rs. 97.13 lakh. In the absence of prescribed declaration form 'C', the dealer was liable to pay tax of Rs.2.43 crore. On this being pointed out, the Department stated (June 2001) that during the period of sale, the same was not brought to the purview of local sales tax. Reply is not tenable as sale of such goods is not exempted under CST Act, 1956.

### *Concealment of turnover*

6.6.26 M/s Yuksom Engineering Works, Gangtok disclosed the turnover of Rs.40.74 lakh for the year 1991-92 and Rs. 87.83 lakh for the year 1992-93. Considering the said disclosed turnover, tax to the tune of Rs. 1.63 lakh and Rs.3.64 lakh was assessed (May 1995) for the year 1991-92 and 1992-93 respectively. On crosschecking with the records of the supplies made to the Power Department, it was noticed that the assessee had concealed the turnover of Rs.21.31 lakh and Rs.1.38 crore for the year 1991-92 and 1992-93 respectively. This concealment of turnover led to short collection of tax of Rs.6.37 lakh, excluding penalty and interest.

6.6.27 In four other cases, cross verification of assessment records of registered dealers with the tax deducted at source records of Government departments for supplies received from these dealers for the period from 1993-94 to 1998-99 revealed that there was incorrect determination of turnover by Rs.59.06 lakh. This resulted in short levy of tax of Rs.3.54 lakh (**APPENDIX-VIII**).

### *Non-realisation of sales tax on sale of lottery tickets*

6.6.28 The scheme of state lotteries was introduced by the Government of Sikkim in April 1978. Explanation to Section 2 of the CST Act states that a Government which, whether or not in the course of business, buys and sells, supplies or distribute goods directly or otherwise, for cash or deferred payment or for commission, remuneration or other valuable consideration, shall be deemed to be a **dealer**. Hence, the Lottery Department of the Government is deemed to be a dealer and subject to assessment. Further, lottery tickets were considered as "Goods" in terms of Supreme Court decision (M. Anraj Vs Government of Tamil Nadu - 1986) and, therefore, came within the definition of "Goods" under Section 2(d) of the CST Act. Therefore, both CST and SST were applicable for the inter and intra state sale. From 1994 to March 2000, the Lottery Department sold tickets to the tune of Rs.4515.44 crore to two different distributors residing in other states without charging CST. This resulted in a huge revenue loss of Rs. 182.62 crore to the Government of Sikkim.

### **Irregular/incorrect deduction and exemption**

6.6.29 Besides non-assessments and under assessments, there were several instances where ineligible exemptions or deductions were granted to the assesses resulting in short levy of tax. The total revenue loss in such cases detected during the course of audit was Rs. 2.38 crore.

6.6.30 As per notification issued on 07 May 1983, sales of liquor attract tax at the stage of first point sale. However, while assessing a dealer, M/s Sikkim

Distilleries Limited, for the period ending March 1995, the dealer's sales aggregating Rs. 30.35 crore for the period from April 1991 to March 1995 were allowed as deduction treating the same as Bond Sales effected within Sikkim. As liquor attracts tax at the first point of sale, it was liable to be assessed for such sales. Incorrect allowance of deduction from turnover resulted in under assessment of tax of Rs. 1.74 crore.

6.6.31 Under the SST Act, 1983 and Rules made thereunder, deduction for CSD commission and broken bottles is not covered. While assessing M/s Sikkim Distilleries Limited for the years 1983-84 to 1996-97, the turnover of CSD commission and broken bottles aggregating Rs. 92.82 lakh was deducted from taxable turnover. This resulted in under assessment of tax of Rs. 4.59 lakh. The Department stated (June 2001) that action is being taken against the dealer. Further development is awaited (October 2001).

6.6.32 In terms of Section 2(h) and Section 2(j) of the CST Act, 1956 and read with Supreme Court decision the freight charges incurred on transportation of goods from the place of production to the place of storage or sale form part of the price and hence subject to sales tax (Dyer Meakin Breweries Ltd. Vs State of Kerala – 1970). It was noticed that in assessing two dealers namely, Sikkim Distilleries Limited (SDL) and Yuksum Breweries Limited (YBL), for the year ending March 1997, freight and insurance charges of Rs. 3.92 crore in respect of SDL and Rs. 1.57 crore in respect of YBL for the period from 1984-85 to 1996-97 and 1987-88 to 1996-97 respectively were allowed as deductions. This resulted in under assessment of tax of Rs.21.96 lakh.

6.6.33 According to the SST Act, Total Turnover (TTO) is arrived at after allowing deduction from the Gross Turnover (GTO) for the sale of goods listed in Schedule-I as tax-free goods. However, deduction of Rs. 6.04 crore from GTO was allowed to two dealers for the assessment period 1986-87 to 1999-2000 in respect of the items/goods not specified in Schedule I. Thus, due to incorrect grant of exemption, the above amounts escaped assessment and the Government sustained a loss of Rs 30.22 lakh.

6.6.34 Under the CST Act, 1956, a sale or purchase of goods will be deemed to have taken place in the course of export of the goods out of the territory of India if such sales or purchases are effected by a transfer of documents of title to the goods after they have crossed the customs frontiers of India. Test check of assessment records for the years 1984-85 to 1996-97 of M/s Sikkim Distilleries Limited revealed that sales amounting to Rs. 22.45 lakh were exempted from levy of tax considering them as sales in the course of export out of India. But the sales were neither supported by prescribed declaration form 'H' nor by any document of export and custom clearance. These sales were, therefore, to be treated as inter-state sale not supported by prescribed declarations. Accordingly CST at the rate of 10 per cent was leviable. This incorrect exemption resulted in non-levy of tax amounting to Rs. 2.24 lakh.



6.6.35 A registered dealer under the CST Act, 1956 can purchase goods intended for being used as fuel, raw materials etc. for manufacture of goods for sale. All goods, which are to be directly used in the manufacturing process, can be purchased at concessional rate of tax. Accordingly, Government of India prepared a model list of goods with reference to certain industries that could be purchased at concessional rate of tax. A sample check of the CST and SST assessments of six dealers engaged in manufacturing and processing activities revealed that in the case of two dealers, the Department included certain items like cement, rods, office furniture etc. in the respective Certificates of Registration. The details of such ineligible purchases at the concessional rates of 4 per cent were as under:

**Table-6.15**

Name of the manufacturer	Eligible goods as per the notification of the Government of India for inclusion in the Certificate of Registration	Ineligible goods brought into the territory of Sikkim at the concessional rate of tax of 4 per cent	Cost of the ineligible goods (Rs. in lakh)
M/s STP Pharmaceutical (P) Ltd.	Fuels, Lubricating Materials, Minerals and metals excluding coal	Kota stones, furniture, plywood, cement, rods.	8.71
M/s Yuksum Breweries	Fuels, lubricating materials, basic materials such as barley, molasses, hops, mahua and others, if any, chemicals	Furniture and fixtures, motor vehicles, office equipments, computers, building materials.	84.20
<b>TOTAL</b>			<b>92.91</b>

6.6.36 As a result of inclusion of ineligible goods in the Certificate of Registration and availing the concessional rate of tax in procuring them from outside the state, undue CST benefit was given to the dealers to the tune of Rs.5.30 lakh. On this being pointed out, the Department stated (June 2001) that necessary amendment and setting right of the previously granted certificates of the Registration is being taken up. Further development is awaited (October 2001).

**Non-recovery of assessed tax or delay in recovery of assessed tax**

6.6.37 In addition to the loss of revenue due to incorrect assessments, there were shortcomings in the collection mechanism too. Review of recovery cases reflected an inadequate recovery mechanism resulting in nil or low recovery in some cases caused by factors varying from inordinate delay in assessment, ineffective pursuance of recovery in court, and lackadaisical approach to collection of assessed tax. The instances listed below highlighted these flaws, which resulted in an amount of Rs. 2.41 crore remaining unrecovered.

6.6.38 Assessment records of the Sales Tax Office, Jorethang revealed (March 2001) that in the case of an assessee M/s Sikkim Vanaspati Limited, Manpur, dealing in manufacture of Vanaspati and its by-products, the final

assessment for the years 1988-89 to 1990-91 was made in March 2000 after a lapse of about 11 years. Demands of Rs. 2.01 crore under CST and Rs. 4.16 lakh under SST were raised in March 2000. The dealer in the meantime had closed down his business (February 1995) and sold out the plant and machineries through auction. Thus, delay in assessment resulted in non-recovery of Government dues amounting to Rs. 2.05 crore. While accepting the fact, Department stated (June 2001) that the recovery proceedings had been initiated through the Court of Law.

6.6.39 An assessee dealing in Bata Shoes and Hosiery goods was assessed (November 2000) to tax of Rs 12.73 lakh for the years 1992-93 to 1999-00. The demand of Rs.10.60 lakh was raised but the dealer had not paid the assessed tax till date (April 2001). The Department did not initiate any recovery proceedings against the errant dealer. Thus non-pursuance of the assessment in time resulted in non-realisation of tax to the tune of Rs 10.60 lakh.

6.6.40 Section 21(2)(a) of the SST Act, 1983 prohibits entertainment of any appeal unless it is accompanied by a proof of payment of the amount of tax admitted by the dealer to be due from him and 10 per cent of the difference between such amount and the amount of the tax including penalty and interest assessed. A dealer in Gangtok, M/s Denzong Automobiles Private Limited, was assessed in April 1990 for the years 1984-85 to 1988-89 and in January 1992 for the year 1989-90. Notices of demand of Rs. 4.77 lakh for 1984-85 to 1989-90 were issued. The dealer did not submit any appeal or application against these assessments. However, aggrieved upon subsequently the assessed tax of Rs. 13.19 lakh for the year 1990-91 and for the year 1991-92 of Rs.7.05 lakh the dealer filed appeals on 21 May 1992 and 8 September 1992 respectively under Section 21(1) of the SST Act, 1983 without depositing the tax as required under the law. At this appellate stage, the Deputy Commissioner re-assessed the dealer for the year 1984-85 to 1991-92 and a fresh demand notice of reassessed tax of Rs. 13.12 lakh was issued to the dealer on 23 March 1996 imposing a penalty of Rs. 3.85 lakh for the years 1990-91 to 1991-92 on the ground that the dealer had not remitted the tax amount within the stipulated time as mandatory under the provisions of the SST Act. Again, aggrieved by the appellate assessment order and notice of demand, the dealer applied on 19 April 1996 for reconsideration. Accordingly, the case was re-examined and tax re-assessed and notice of demand for re-assessed tax of Rs. 9.33 lakh was served to the dealer on 31 August 1996. Against the said demand of Rs. 9.33 lakh, the dealer deposited Rs. 1.50 lakh leaving a balance of Rs. 7.83 lakh which was increased to Rs.8.28 lakh by the Additional Secretary of the Department unpaid till date (April 2001). No legal proceedings to realize the tax had been taken so far (April 2001). Thus, ineffective pursuance of the recovery case deprived the Department of a revenue of Rs.12.05 lakh, including interest upto 31 March 2001.

6.6.41 As per law, if the sales tax dues (including interest, penalty etc) are not paid by the dealer within the time specified in the demand notice, the assessing authority may apply to the Magistrate of the First Class for recovery of the Government dues as if it were fine imposed by him. A dealer, M/s Bata Shoe Company, was assessed during December 1991 and August 1993 to tax of Rs.11.28 lakh for the years 1988-89 to 1989-90 and from 1990-91 to 1992-93 respectively. According to the assessments, the dealer was to deposit the tax within one month from the date of issue of the demand notice. On his failure to pay the dues of Rs. 12.16 lakh, including penalty and interest, within the stipulated period, recovery proceedings were started by the Department on 5 March 1994 under Section 14(4) of the SST Act. The dealer filed a petition on the last date of hearing praying that he might be allowed to pay the decreed dues in monthly installments of Rs. 0.10 lakh until the recovery of the entire decreed dues was completed. Accordingly, the Court fixed the monthly installment at Rs. 0.15 lakh for one month i.e. July 1994, and the balance at monthly installments of Rs. 0.17 lakh until the dues were fully recovered. Consequently, the dealer paid an amount of Rs. 3.21 lakh up to 29 July 1996 leaving a balance of Rs. 8.96 lakh unpaid. Adding interest on the unpaid arrears of tax for the period from 30 July 1996 to 31 March 2001, the total non-recovery of dues amounted to Rs. 13.15 lakh. The Department has not initiated any further steps to recover the amount. On this being pointed out, the Department stated (June 2001) that direction has been issued to the dealer to settle the dues within 15 days. Further development is awaited (October 2001).

6.6.42 In terms of notification issued in May 1983, sale of beer attract tax at the stage of first point sale. A dealer of South Sikkim was granted extension to deposit the tax amount of Rs. 82.33 lakh for the period 1990-91 to 1995-96 to allow him to clear the interest and the principle amount of loan obtained from IDBI, ICICI, IFCI Bank etc. The delay in deposit of tax ranged from more than 2 years to 4 years. Since the tax stood charged and collected by the assessee from the consumer, such an attempt to withhold the tax beyond the due date of deposit amounted to utilisation of Government money for private purposes. The injudicious grant of extension in depositing tax resulted in undue financial benefit to the assessee.

### **Other points**

#### ***Sale and purchase of goods not covered under SST Registration***

6.6.43 Section 10(2) of the SST Act stipulates that no dealer should sell or purchase goods unless he possesses a valid Certificate of Registration granted to him by a prescribed authority. Section 23(1)(a) further lays down that if a dealer took part in sales or purchases of goods, in contravention of the above section of the SST Act should be punished with imprisonment upto a maximum period of one year or with a fine upto ten thousand rupees and if the

offence was a continuing one a daily fine not exceeding one hundred rupees during the period of the offence continued should be imposed. Assessment records of three dealers revealed that tax was assessed for specific items of goods valued at Rs. 2.15 crore not included in their Certificate of Registration. They were, therefore, liable to pay penalty and fine amounting to Rs.10.16 lakh (APPENDIX-IX). The Department however failed to impose any penalty or fine, as specified in the act, on the dealers.

6.6.44 In terms of Central Sales Tax Rules, Form 'C' is to be obtained by the registered dealer of the State from the Sales Tax authority to avail concessional rate of 4 per cent of CST instead of 10 per cent for inter-State trade. Cross verification of some of the Forms 'C' produced by the registered dealers of the State during inter-state purchases with the Forms 'C' issued by the Sales Tax authority revealed the following cases of discrepancies where dealers made concessional purchases against Form 'C' that were never issued from Sales Tax Office, Gangtok:

- M/s Calcutta Hardware Stores, Gangtok purchased cement worth Rs. 17.73 lakh during 1995-96 against Forms 'C' numbered 016844 and 016815.
- M/s Sarda Radio Company, Gangtok purchased cement worth Rs.0.92 lakh during 1994-95 against Form 'C' numbered HH 050849.
- M/s Ramanand Prasad, Gangtok purchased materials worth Rs.6.85 lakh during 1998-99 against Form 'C' numbered 802434.

6.6.45 Evasion of 6 per cent CST in above cases led to a revenue loss of Rs.1.53 lakh. Further, production of false declaration forms amounted to a criminal offence and was punishable with imposition of penalty and imprisonment as per Sales Tax Rules.

6.6.46 In addition to the above aberrations, the Department could not confirm the issuance of Forms 'C' from the Sales Tax Office, Gangtok in the following cases:

- State Trading Corporation of Sikkim (STCS), Gangtok, which purchased cement worth Rs. 43.74 lakh during 1994-95 and 1995-96 against Forms 'C' numbered 025192, 025210, 127831 and 127987.
- M/s Universal Shipping and Trading Co, Gangtok, which purchased cement worth Rs. 25.44 lakh during 1994-95 against Forms 'C' numbered 003651 to 003659, 003661 to 003662 and 003664 to 003667.

6.6.47 Thus, the possibility of CST evasion of Rs.4.15 lakh in the above two cases could not be ruled out.

**CHAPTER-VI**  
**REVENUE RECEIPTS**  
**SECTION – B**  
**(AUDIT PARAS)**

**EXCISE DEPARTMENT**

**6.7 Non-recovery of full rate of Excise duty**

**Despite non-production of ‘excise verification certificates’ in support of delivery of goods at the destinations, the Department did not levy/collect full rate of excise duty.**

6.7.1 In terms of Rule 17(3) and 17(6) of the Sikkim Foreign Liquor (Import, Export and Transport) Rules, 1993, the exporter is bound to deliver the consignment at the “importing place” and obtain the ‘excise verification certificate’ (EVC) against the export pass. Failing this, the excise officer may levy on such consignment the full rates of excise duty applicable at that point of time in the State of Sikkim.

6.7.2 In four cases, the consignments during March 1998 to November 1999 from two Sikkim based companies did not reach their destinations and no EVC was produced to that effect by the companies till the date of audit (November 2000). Due to non-levy of applicable excise duty the Government suffered a loss of Rs.6.64 lakh.

6.7.3 While accepting the facts, the Department stated (June 2001) that out of the four cases, it had received EVCs in two cases (Rs.0.70 lakh) and in respect of the remaining two (Rs.5.94 lakh), the matter was under investigation with Sub-Judicial Magistrate, Jalpaiguri.

6.7.4 Scrutiny of copies of the EVCs furnished to audit revealed that one consignment of 1000 cases of beer (bearing Export Pass No. 3511 dated 04 March 1998) involving excise duty of Rs.0.42 lakh was shown to have been delivered at Delhi on 13 March 1998. However, the stated consignment was in fact seized by the Indian Customs Authority and was not released till 26 April 1999. According to the letter written by Yuksom Breweries Ltd. on 26 April 1999 to the Commissioner of Excise (Abkari) Department, the Breweries decided not to take back the seized materials as the shelf life of the beer had already expired. Therefore, the EVC against the Export Pass No. 3511 was not genuine.

**6.8 Non-imposition of full rate of excise duty on sale not covered under the rules**

**Exemption from the levy of excise duty on the export of beer to foreign countries by M/s Yuksom Breweries Ltd. between 1994-95 to 1999-00 was beyond the scope of the rules and resulted in non-recovery of Rs. 2.91 crore.**

6.8.1 Sikkim Foreign Liquor (Import, Export and Transport) Rules, 1993 provide exemption from the levy of excise duty on consignments of liquor exported to places outside the State of Sikkim. Only an 'export pass' fee, at prescribed rates for different types of liquors, is required to be paid under Rule 12. For the purposes of these Rules, "importing place" is defined in Rule 1(j) as any *place in India* outside the State of Sikkim to which the foreign liquor is to be sent from the State of Sikkim.

6.8.2 A brewery in Sikkim, M/s Yuksom Breweries Limited, exported 828,000 cases of beer to *countries outside India* (USA and Bhutan) during the period 1994-95 to 1999-2000, paying only Rs. 12.70 lakh as 'export pass' fee during the years 1997-98 to 1999-2000. No excise duty was assessed by the Excise Department on this sale, treating it as an export within the meaning of the Rules *ibid*, even though these transactions were beyond the scope of Rule 1(j). Further, as per clause 19A (ii) of the license issued by the Department to the breweries, the sales were to be restricted to other States within India. However, verification of concerned assessment records in the Sales Tax Department revealed that these sales were treated as export of goods out of territory of India and Central Sales Tax was also not paid against these sales. The total excise duty liability worked out to Rs. 3.04 crore at the applicable rates.

6.8.3 Thus, the irregular exemption resulted in non-realisation of excise duty amounting to Rs. 2.91 crore – obtained after netting the amount paid as 'export pass' fee applicable for inter state transaction from the leviable duty.

6.8.4 The Department stated (June 2001) that the State of Sikkim having no jurisdiction to impose Excise Duty on exports to the United States of America, the export was made under the Central Excise Rules 1944. Regarding the export of beer to Bhutan, the Department stated that the export fell under the Sales Tax and Excise Duty Exemption list of the Indo Bhutan Trade Agreement. The reply was not tenable as duties of excise on alcoholic liquors for human consumption are included in the State List (List II) under the Seventh Schedule (Article 246) of the Constitution. Hence, the State Legislature had the exclusive jurisdiction for imposing duties on alcoholic liquors. Regarding the sale of beer to Bhutan, the Brewery has availed of irregular exemption not covered under the applicable State Act.

## FOREST DEPARTMENT

### 6.9 Loss of revenue due to irregular disposal of seized timber

**Owing to non-imposition of appropriate penalty as compensation and non-realisation of value of seized timbers from the offenders and buyers in auction, the Government sustained a total loss of Rs 6.65 lakh.**

6.9.1 As per Sikkim Forests, Water Courses and Road Reserve (Preservation and Protection) Act 1988, any person who committed any forest offence shall be liable to pay penalty a sum equivalent to twice the value of the property involved by way of compensation. The confiscated property shall be put to auction or shall be released to the person after payment of the value of the forest produce as notified by the Government.

6.9.2 Scrutiny of records (March 2000) of the Divisional Forest Officer (Territorial), North District revealed that 1029 cft. of timber log valued at Rs. 2.10 lakh was seized from 6 offenders. The offenders were liable to pay an amount of Rs.6.33 lakh (compensation : Rs. 4.22 lakh + value : Rs. 2.11 lakh). However, the timber log was released to the same persons after realizing only an amount of Rs.0.88 lakh resulting in short realisation of Rs. 5.45 lakh.

6.9.3 Similarly, 544 cft. of timber seized from 3 offenders were sold through auction and the Department instead of realising Rs. 2.18 lakh, realised only Rs.0.98 lakh resulting into short realisation of Rs. 1.20 lakh.

6.9.4 Thus, due to non-imposition of appropriate penalty as compensation and non-realisation of value of seized timbers from the offenders and buyers in auction, the Government sustained a loss of Rs. 6.65 lakh.

6.9.5 The Department replied (June 2001) that the market value of the forest produce seized following commission of the forest offence was to be determined by the compounding or auctioning officer, according to the Notification issued on 10 August 1998 by the Government of Sikkim. The Department further stated that the utilisation rate of finished timber cannot be applied in the remote areas where forest produce was seized in the form of trees, logs etc. Further, the price of the timber varied from time to time and depended on the purchasing power of the local people.

6.9.6 The reply was not acceptable on the following ground:

- (a) Out of the 9 cases under reference, 3 cases occurred before the issue of the Notification dated 10 August 1998. Further, 6 cases related to seizure of timbers and balance 3 related to logs.

- (b) In terms of Notification dated 25 April 1998, the “value” of forest produce was to be as notified by the Government. Audit had taken the value as notified by the Department for computation of the loss.
- (c) The Notification dated 10 August 1998 vests the compounding or auctioning authority with absolute discretion in determining the market value. The actual realised value was only 13.97 per cent of the sale value notified by the Department in cases where timbers/logs were released to the offenders and 45.17 per cent in the case of auction of timbers. This left enough margin with offenders to make a profit even after paying the penalty, by selling the timbers/logs etc. in urban areas after incurring expenditure towards transportation and permit fees. It may be mentioned that the Department had not notified any separate rate/value for the districts/remote areas.

6.9.7 Thus, the prevailing practice adopted by the Department indicated inadequacy of the system in collection of revenue arising out of commission of forest offences in pursuance of the enacted law on the subject.

## **6.10 Loss of Government revenue**

**Realisation of its share of cardamom much below the average yields from individuals to whom forest lands had been leased out for its cultivation, resulted in a loss of Rs.83.52 lakh.**

6.10.1 The Forest Department had been leasing out forest land in the State to private individuals for cultivation of cardamom since 1987. One of the conditions in the agreement executed between the Department and the individuals stipulated the delivery of 25 per cent of the total production of cardamom per annum by the lessees to the Department as Government of Sikkim’s share. While the Department had never undertaken any survey to ascertain the yield of cardamom in the leased areas to satisfy itself that it was receiving its rightful share, Audit independently verified the average district-wise production of cardamom during the two years from the Regional Office, Central Spices Board (CSB), Gangtok.

6.10.2 Audit scrutiny revealed that during the years 1998-99 and 1999-2000, as compared with the actual production surveyed by the CSB for the years 1998-99 and 1999-2000, the Department realised 72178.25 kg. less than what it should have actually realised (74642 kg.) in all the four districts. The revenue loss to the Government on this count worked out to Rs.83.52 lakh for 72178.25 kg. of cardamom. The Department did not have the details pertaining to the years prior to 1998-99, regarding either the dates of leasing out the forest land to various individuals or the Government share realised from the individual lessees.



6.10.3 Thus, the lack of internal control which manifested in the failure of the Department to monitor the actual production of cardamom in leased out forest lands resulted in an abysmally low share accruing to the Government causing a revenue loss of Rs.83.52 lakh during 1998-99 and 1999-2000.

6.10.4 The Department replied (August 2001) that it was leasing out land for the cultivation of cardamom to people who were unemployed or did not have a steady source of income. It could not wind up these fields due to the policy of the Government to retain them for the benefit of the lessees and due to poor site quality of the departmental cardamom fields, high yield was not possible. Further, the quality of yield was not at par with those produced by private growers who tended their crops better. It was further stated that the assessment by the CSB was based on ideal field situation.

6.10.5 While the reply did not address the issue of ascertaining the yield of cardamom in the leased out areas with reference to the statistics of CSB at Gangtok, the difference sought to be imputed between the private growers and the growers in leased out areas was invalid as the lessees of forest lands were also private individuals. Further, the report of the CSB was based on the existing field situation for the whole State and not on selected field areas or ideal field situation.

## INCOME TAX AND SALES TAX DEPARTMENT

### 6.11 Irregular exemption of income tax to the tune of Rs.55.64 lakh

**Despite clear notification on levy of income tax, the Department irregularly exempted income tax and sustained consequential loss of revenue to the tune of Rs.55.64 lakh.**

6.11.1 As per the State Government Notification No. 2/TIC dated 16 February 1974, the industries shall be exempted from paying income tax for 5 years from the date the industry goes into production. Clause VII of the said notification regarding participation stipulated that the guiding principle for such exemption would be that the majority share in any new enterprise should be that of the Government of Sikkim. Such participation should, however, be open for negotiation depending on the merits of each case and in case of small industries, the majority share should be of Sikkimese people if that was to be undertaken with the collaboration of outside entrepreneurs.

6.11.2 Scrutiny of records (October 2000) revealed that M/s Yuksom Breweries Limited, Melli, which neither had a majority Government share nor fell under the category of small industries was exempted from paying income tax for the period of 5 years from May 1987 to March 1992 by the Department

on the strength of the aforesaid notification. This resulted in an irregular exemption of income tax and consequential loss of revenue to the tune of Rs. 55.64 lakh.

6.11.3 The Department stated (July 2001) that the Government of Sikkim had an investment of Rs.3 lakh in equity shares of Rs.10 each in the company and the rest of the shares were held by the Sikkimese. The reply was not acceptable as no documentary evidence in support of the stated investment could be shown to Audit. Further, such investment was also not reflected in the Finance Accounts of the State Government.

## **6.12 Irregular grant of rebate on Income Tax**

**Despite PAC's recommendation to maintain the grant of 25 percent rebate on Income Tax, the Department irregularly granted rebate of 90 to 97.50 per cent resulting in loss of revenue to the tune of Rs 1.26 crore.**

6.12.1 The Sikkim Income Tax Manual 1948 does not provide for any rebate in Income Tax. Based on the representations of the petroleum dealers in Sikkim for rebate in Income Tax, the erstwhile Chogyal of Sikkim had approved (July 1969) that petroleum dealers be given 25 per cent rebate on Income Tax.

6.12.2 Mention was made in the Audit Report (1988-89 and 1990-91) about the irregular grant of rebate on income tax to the petroleum dealers. The Public Accounts Committee (PAC) in its 11<sup>th</sup> Report (1992-93) observed that there was no provision in the Income Tax Manual 1948 for grant of rebate and had recommended that the existing law should be maintained and if any concession was considered justified, it could be provided in the shape of suitable compensation without overstepping jurisdiction. The PAC in its 25<sup>th</sup> Report (1995-96) insisted upon the recommendation made in its 11<sup>th</sup> Report.

6.12.3 The PAC recommendation to maintain 25 per cent rebate on Income Tax, notwithstanding, the Department irregularly granted rebate of 90 per cent in 9 cases and 97.5 per cent in 1 case on the tax assessed for the assessment years from 1991-92 to 1998-99. This resulted in irregular grant of relief and eventual loss of revenue to the tune of Rs 1.26 crore.

6.12.4 The Department stated (July 2001) that the rebate of 90 per cent was allowed to preserve the sustainability of the business and the rationality of the tax structure. The reply was not tenable as the Department had overstepped its jurisdiction in allowing rebate beyond 25 per cent. Further, the Department was silent in the case where the rebate of 97.5 per cent was allowed.

**6.13 Non-realisation of Income Tax from house property****Non-assessment of income from house property led to non-realisation of Income Tax of Rs 2.67 lakh.**

6.13.1 As per notification issued by the Income and Sales Tax Department in April 1970, income arising or accruing directly or indirectly from the properties situated in the Bazaar areas will be assessed to income tax at the prescribed rate after allowing a standard deduction of 20 per cent on account of maintenance.

6.13.2 Further, a mention was made in para 6.9 of the Audit Report 1996-97 for non-recovery of income tax on house property and Public Accounts Committee (PAC) in its 39<sup>th</sup> Report recommended that the departmental organisation should be properly equipped to detect cases of non-assessment on its own. While replying to the PAC, Department stated that if assessee failed to make payment of income tax, the Department would take recourse to recovery proceeding as per the law.

6.13.3 Test check of records of Income Tax Department relating to the assesses of Bazaar area in Gangtok revealed (October 2000) that the Department had still neither collected nor prepared any comprehensive list of persons having house property. Only after the observation in the Audit Report and recommendation of PAC thereto, the Department had started assessing individual cases on pick and choose basis and assessed Rs. 2.67 lakh in respect of 37 cases. It was further seen that most of the cases so assessed had remained unassessed for a long period as under:

**Table-6.16**

Sl. No.	No. of cases	Year upto which assessed	Number of years remaining unassessed upto 1999-2000
1	01	1990-91	9
2	03	1993-94	6
3	06	1994-95	5
4	10	1995-96	4
5	05	1996-97	3
6	07	1997-98	2
7	05	1998-99	1
<b>TOTAL</b>	<b>37</b>		

6.13.4 The reason for not assessing the cases for such a long period was not on record. No amount was realised from either any of the individuals already mentioned in earlier Audit Report or the 37 cases mentioned above. Thus, the Department failed to initiate any action for recovery of taxes under the provision of the Sikkim (Collection of Taxes and Prevention of Evasion of Payment of Taxes) Act, 1987. Besides resulting in non-realisation of government revenue to the tune of Rs. 2.67 lakh, it showed that lacunae still persisted in the system of assessment and collection of income tax.

6.13.5 The Department attributed (July 2001) the failure to realise Income Tax from House Property to the absence of clear cut demarcation of Bazaar area. It further stated that a proposal to demarcate the boundary of 'Bazaar area' for the purpose of House Property Tax was being moved. The reply was not tenable as the areas falling under Gangtok Town and Bazaars were already notified vide Local Self Government and Housing Department's notification dated 07 November 1985 followed by Urban Development and Housing Department's Notification dated 15 July 1992.

#### 6.14 Loss of revenue

**An executive decision to reduce the rate of taxation, besides being extra-constitutional, caused a loss of Rs.5.71 crore in five cases alone.**

6.14.1 It is an established principle of jurisprudence that any amendment to a law can only be made by the appropriate legislature. The Sikkim Income Tax Manual, 1948 provides the framework for levying and collecting income tax in the State of Sikkim. After the merger of Sikkim with India in 1975, the State Income Tax Manual obtained the force of law, which could be amended or repealed by a competent legislature only.

6.14.2 Notwithstanding the above, the Finance Department had been allowing tax concessions in individual cases in the past and in May 1998, the Finance Minister of Sikkim approved a slab rate of taxation. Against the statutory rate of 3 per cent per annum leviable on the gross sale proceeds beyond Rs.10 lakh (Rs.23,230 on sale proceeds upto Rs.10 lakh) of the previous year, the slab approved laid the rate of tax as 3 per cent for gross turnover of up to Rs.30.00 lakh, 2 per cent for gross turnover between Rs. 30.00 lakh and Rs.1.00 crore and 1 per cent for gross turnover above Rs. 1 crore.

6.14.3 In five cases test-checked in Audit, the application of reduced rates resulted in short levy of income tax to the tune of Rs.5.71 crore as detailed below:

**Table-6.17**

Sl. No.	Name of Assesse	Year of Accounts assessed	Total Turnover	Tax leviable	Tax levied	Short levy
<i>(Rupees in crore)</i>						
1	M/s Kamala Traders	1995-96 to 1998-99	77.70	2.33	0.36	1.97
2	M/s Parasal Traders	-do-	37.71	1.13	0.27	0.86
3	M/s Mittal General Stores	1995-96 to 1999-2000	3.54	0.10	0.07	0.03
4	M/s Yuksom Breweries Ltd.	1992-93 to 1998-99	98.76	2.96	0.99	1.97
5	M/s Krishna Company	1990-91 to 1998-99	44.10	1.32	0.44	0.88
<b>TOTAL</b>			<b>261.81</b>	<b>7.84</b>	<b>2.13</b>	<b>5.71</b>

Note: Figures in the bracket indicate the percentage on which tax as assessed on turnover.

6.14.4 The executive decision of the Government to reduce the rate of taxation is not only causing huge loss to Government revenues, but is also without jurisdiction and legally untenable.

6.14.5 The matter was referred to the Department (December 2000 and May 2001); no reply has been received.