

CHAPTER II

SALES TAX

2.1 Results of Audit

Test check of the records of departmental offices conducted during the period from April 2006 to March 2007 revealed underassessments, non-levy of penalty and other observations amounting to Rs.158.54 crore in 3,455 cases, which broadly fall under the following categories.

(Rupees in crore)

Sl.No.	Categories	No. of cases	Amount
1.	“Assessment, levy and collection of sales tax including arrears” (A review)	1	37.00
2.	Incorrect exemption from levy of tax	303	48.29
3.	Application of incorrect rate of tax	476	31.22
4.	Non-levy of penalty/interest	670	29.66
5.	Incorrect computation of taxable turnover	306	11.16
6.	Escapement of taxable turnover	2	0.22
7.	Others	1,697	0.99
	Total	3,455	158.54

During the course of the year 2006-2007, the department accepted underassessments and other deficiencies amounting to Rs.5.70 crore in 358 cases, out of which, Rs.1.13 crore involved in 245 cases were pointed out during the year and the rest in earlier years. Of these, the department recovered Rs.99 lakh during the year.

After issue of the draft paragraphs, the department recovered Rs.19.47 lakh in seven cases.

A review of **Assessment, levy and collection of sales tax including arrears** and a few illustrative cases involving Rs.64.54 crore are discussed in this chapter.

2.2 Assessment, levy and collection of sales tax including arrears

- Absence of a time limit for finalisation of assessments under the TNGST Act and failure to follow the standing orders led to large pendency of assessment cases.

(Paragraph 2.2.6)

- Lack of a prescribed time limit for implementation of the D3 proposals led to large pendency. 6,757 'D3 proposals' involving money value of Rs.3,604.19 crore were pending implementation as on 31 March 2006.

(Paragraph 2.2.7)

- Lack of a prescribed time limit for finalisation of the remand cases under the TNGST Act resulted in huge pendency. 1,719 remanded cases involving value of Rs.167.04 crore were pending re-assessment as on 31 March 2006.

(Paragraph 2.2.8)

- Lack of a system for the CCT to monitor disposal of cases pending decision with various appellate/judicial fora resulted in pendency of 4,635 court cases involving a sum of Rs.1,679.68 crore.

(Paragraph 2.2.11)

- Non-adherence to the codal provisions for levy of interest on unpaid tax resulted in short levy of interest of Rs.27.93 crore in 22 cases.

(Paragraph 2.2.14)

- Issue of clarifications without verifying the nature of goods involved led to short realisation of Rs.2.56 crore in four assessment circles.

(Paragraph 2.2.15)

- In 10 assessment circles, there was non/short levy of additional sales tax of Rs.1.96 crore.

(Paragraph 2.2.16)

- In 32 assessment circles, though there was shortfall in payment of tax by 82 dealers, penalty of Rs.1.93 crore was not levied.

(Paragraph 2.2.17)

2.2.1 Introduction

The Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) and the Tamil Nadu General Sales Tax Rules made thereunder provide for levy and collection of sales tax from dealers whose annual turnover exceeds the limit prescribed under the Act. According to Rule 18(2) of the TNGST Rules, the dealers have to submit monthly returns showing the total and taxable turnover and the amount of tax collected during the month. The dealers whose taxable turnover exceeds Rs.200 crore in the preceeding year have to submit the return on or before the 12th of the succeeding month. All other dealers have to submit the monthly returns on or before the 20th of the succeeding month.

The tax demanded as per the final assessment order is payable within 30 days from the date of service of the demand notice. In case of failure on the part of the assessee to pay the amount demanded within the prescribed date, the department may recover the amount through any of the following methods:

- as arrears of land revenue under the Revenue Recovery Act (RR Act)/Central Revenue Recovery Act (CRR Act);
- by application to the magistrate for recovery as a fine; and
- by a demand on any person owing money to the assessee by issue of notice.

The above provisions also apply to assessments finalised under the Central Sales Tax Act, 1956 (CST Act).

A review of the system of assessment, levy and collection of sales tax including arrears was conducted by audit. It revealed a number of system and compliance deficiencies which have been discussed in the subsequent paragraphs.

2.2.2 Organisational set-up

The Commissioner of Commercial Taxes (CCT) is the head of the department of Commercial Taxes and is assisted by Joint Commissioners (JC), Deputy Commissioners (DC) and Territorial Assistant Commissioners (AC) who exercise administrative control. The Assistant Commissioners of Fast Track Assessment Circles (FTAC), Commercial Tax Officers (CTO)/Deputy Commercial Tax Officers (DCTO) and Assistant Commercial Tax Officers (ACTO) are the assessing authorities (AA) who are responsible for the levy and collection of sales tax and arrears thereof in the respective assessment circles. In addition, there is also an Enforcement Wing, which has been formed for the purpose of conducting surprise inspections and unearthing of suppression of turnover to prevent leakage of revenue. The monitoring and control at the Government level is done by the Secretary, Commercial Taxes and Registration Department.

2.2.3 Audit objectives

The review was conducted with a view to examine:

- the efficiency and effectiveness of the existing system of assessments, levy and collection of tax and pursuance thereof;
- the extent of compliance with the provisions of the TNGST Act and Rules governing the assessment and collection of tax;
- the efficiency and effectiveness of the system to collect the arrears of tax; and
- whether there was any lacuna in the Act/Rules or absence of any norm that hindered the collection of the Government revenue.

2.2.4 Scope and methodology of audit

The assessment records relating to the period 2001-02 to 2005-06 were test checked in 112 out of 323 assessment circles during the period from August 2006 to April 2007. Besides, records in the offices of CCT and DCs were also scrutinised. The selection of the units was done on the basis of the maximum revenue collection and geographical location.

2.2.5 Acknowledgment

Indian Audit and Accounts Department acknowledges the co-operation of the Finance Department and the Commercial Tax Department in providing necessary information and records for audit. The draft review report was forwarded to the Government and department in May 2007 and was discussed in the Audit Review Committee (ARC) meeting held in July 2007. The views expressed by the Government/Department at the meeting have been considered and incorporated appropriately.

Audit findings

System deficiencies

2.2.6 Absence of time limit for finalisation of the assessment

The TNGST Act does not prescribe any time limit for the finalisation of the assessments. However, standing order 20(H) of the Tamil Nadu Commercial Taxes Manual Volume I provides for finalising the assessments before the end of January of the year following the submission of the returns and should not in any case, be postponed beyond 31 July of the following year. **Audit scrutiny revealed that the department had failed to follow its own standing orders.** This has resulted in large pendency of assessment cases which is discussed in the succeeding paragraphs.

2.2.6.1 Pendency of assessment cases

The number of pending cases at the beginning of the year, due for assessment during the year, disposed during the year and pending at the end of the year as furnished by the Department of Commercial Taxes for the period from 2001-02 to 2005-06 are mentioned below:

Year	Opening balance of cases	New cases due for assessment	Total cases due for assessment	Cases disposed	Balance of cases at the end of the year
2001-02	24,707	1,39,404	1,64,111	1,30,903	33,208
2002-03	33,208	1,38,048	1,71,256	1,22,757	48,499
2003-04	48,499	1,64,397	2,12,896	1,59,363	53,533
2004-05	53,533	1,71,052	2,24,585	1,70,293	54,292
2005-06	54,292	1,77,496	2,31,788	1,62,872	68,916

Thus, pendency in assessments has been steadily rising every year. The number of pending cases has risen by 179 *per cent* from 24,707 in 2001-02 to 68,916 cases in 2005-06.

2.2.6.2 Pendency of assessment in the Fast Track Assessment Circles (FTAC)

The FTACs were formed with a view to finalise high value assessment cases expeditiously for timely realisation of revenue. The FTACs are headed by the ACs, who are the assessing authorities. There are six FTACs, four in Chennai and two in Coimbatore.

The pendency in assessments in the four FTACs at Chennai as furnished by the department is mentioned below:

Year	Opening balance of cases	New cases due for assessment	Total	Number of assessments finalised	Closing balance of cases	Percentage of disposal
2001-02	489	148	637	136	501	21
2002-03	501	179	680	122	558	18
2003-04	558	142	700	57	643	8
2004-05	643	147	790	73	717	9
2005-06	717	181	898	134	764	15

Thus, the pendency in assessments in the FTACs have also been rising steadily every year. The number of pending cases have risen by 56 *per cent* from 489 cases in 2001-02 to 764 cases in 2005-06. Disposal of the cases ranged between eight and 21 *per cent* only during this five year period. Out of the 764 cases pending at the end of 2005-06 in four FTACs, 363 cases were possible¹ cases. Of these, 74 cases were pending for more than five years

¹ Free from any litigation

while 172 cases were pending for more than three years. The ever rising and heavy pendency in finalisation of the assessments has defeated the very objective of formation of the FTACs.

In the ARC meeting, the JC (Audit) while agreeing with the audit observation, stated that the situation was now being monitored by six JCs and efforts would be made for early finalisation of the assessments.

It is recommended that a statutory time limit be prescribed in the Act for finalisation of the assessments. Adherence to this should be closely monitored to avoid accumulation of assessment cases.

2.2.7 Delay in implementation of the taxation proposals

The Enforcement Wing, after inspection of the premises of the assessee, forwards its findings in the form of proposals, known as 'D3 proposals' (taxation proposals) to the AAs for implementation. Whenever such D3 proposals are received from the Enforcement Wing, the AA is required to take prompt action to implement the proposal and finalise the assessment. The CCT had issued instructions in September 2002 that on receipt of the D3 proposal, the AA should give top priority for calling the accounts, check them and complete the assessments. If any arrears are allowed to become irrecoverable or assessment cannot be completed in the absence of the whereabouts of the dealers, the AA as well as the Enforcement Wing officers are to be dealt with severely. **No time limit for implementation of the D3 proposals has been prescribed by the Government. Audit noticed large pendency in implementation of the D3 proposals which indicates lack of effective monitoring of the disposal of the D3 proposals.**

Audit scrutiny of the monthly performance statistics of the department revealed that 6,757 'D3 proposals' involving money value of Rs.3,604.19 crore were pending for implementation as on 31 March 2006. Out of these 1,046 'D3 proposals' involving Rs.2,729.19 crore were more than 5 years old. Of these, 427 proposals involving Rs.174.97 crore were shown as 'possible cases' and the remaining 619 cases as 'not possible cases'.

2.2.7.1 It was noticed in 13 assessment circles² that 76 'D3 proposals' pertaining to the years 1985-86 to 2003-04 received during the period between 1988 and 2005 were not implemented. This resulted in blocking of Government revenue of Rs.290.56 crore. The reason for non-implementation of the 'D3 proposals' was non-finalisation of the original assessments, though all these cases were stated to be possible cases. A few such cases are illustrated below:

² Dr. Nanjappa Road, Coimbatore, FTAC-I to IV (Chennai), FTAC-I & II (Coimbatore), Madurai (Rural) (South), Nethaji Road (Erode), Nungambakkam, Peelamedu, Perur and Trichy Road (Coimbatore).

(Rupees in crore)

Sl. No.	Assessment Circle	Year	Month of receipt of proposal	Amount	Remarks
1	FTAC-IV Chennai	1993-94 to 1995-96	October 1998	4.92	D3 proposal received in October 1998 is yet to be implemented even after the lapse of eight years as the original assessments are pending.
2	FTAC-I, Coimbatore	1997-98 to 2000-01	March 2001	4.51	D3 proposal received in March 2001 is yet to be implemented even after a lapse of five years as the original assessments are pending.
3	FTAC-II, Chennai	1997-98 to 2003-04	Between March 1999 and March 2004.	27.61	D3 proposals were received between March 1999 and March 2004. The proposals are yet to be implemented.
4	FTAC-II, Chennai	1985-86 to 1988-89	Between September 1988 and July 1997	16.41	D3 proposals were received between September 1988 and July 1997. The proposals are yet to be implemented.

2.2.7.2 In FTAC-II, Chennai, two ‘D3 proposals’ in respect of an assessee for the year 1999-2000 involving Rs.9.42 lakh and Rs.20.64 crore were received in May 2000 and February 2003 respectively. The D3 proposal involving Rs.9.42 lakh alone was implemented during finalisation of the assessment in June 2005 and the other proposal involving Rs.20.64 crore was not implemented. However, the entries in the register meant for watching implementation of the D3 proposals were deleted as if both the proposals had been implemented. This resulted in non-realisation of revenue of Rs.20.64 crore.

The large pendency in the implementation of the D3 proposals shows lack of effective control and monitoring of the receipt and disposal. Delay in finalisation of D3 proposals adversely affects the collection of the Government dues and in some cases delayed finalisation results in the dues becoming irrecoverable. **Thus, to reduce the pendency of such cases and expedite the revenue collection it is recommended that a time limit be prescribed for finalising the D3 proposals and monitoring should be made effective to ensure that no proposal escapes implementation beyond the prescribed time.**

2.2.8 Delay in finalisation of the remanded cases

An assessee aggrieved by an order passed by the assessing officer/appellate authority may file an appeal to the appellate authority/higher appellate forum concerned within the prescribed period from the date of receipt of assessment/appeal order. The appellate authority/forum may reject or accept the appeal and allow the relief sought for or remand the case back to the assessing officer for reassessment. **No time limit for finalisation of the remand cases has been prescribed in the TNGST Act. Audit noticed large pendency in finalisation of the remand cases which indicates lack of effective system for monitoring such cases.**

The position of receipt, disposal and closing balance of the remanded cases as on 31 March 2006 as furnished by the department is mentioned below:

(Rupees in lakh)

Details		2001-02	2002-03	2003-04	2004-05	2005-06
Opening Balance	No.of cases	2,540	2,938	2,527	1,956	1,738
	Amount	8,134.90	13,423.38	14,576.77	15,527.66	16,360.20
Cases received during the year	No.of cases	4,554	2,780	1,691	1,708	1,836
	Amount	6,495.66	2,650.30	2,470.30	2,308.66	3,992.57
Total	No.of cases	7,094	5,718	4,218	3,664	3,574
	Amount	14,630.56	16,073.66	17,047.07	17,836.32	20,352.77
Disposal	No.of cases	4,156	3,191	2,262	1,926	1,855
	Amount	1,207.18	1,496.91	1,519.41	1,476.12	3,649.08
Closing balance	No.of cases	2,938	2,527	1,956	1,738	1,719
	Amount	13,423.38	14,576.77	15,527.66	16,360.20	16,703.69

Thus, 1,719 remanded cases involving revenue of Rs.167.04 crore were pending reassessment as on 31 March 2006. Out of these, 684 cases are more than five years old.

2.2.8.1 Laxity on the part of the department is evident from the following seven illustrative remanded cases involving revenue of Rs.57.54 crore noticed in six assessment circles. The reassessment in these cases is yet to be made by the AAs even after the lapse of two to six years.

(Rupees in crore)

Sl. No.	Assessment Circle/ (No. of dealers)	Year	Month/ Year of remand order	Amount	Remarks
1	FTAC-IV, Chennai (1)	1995-96	4/2002	0.85	The appeal was preferred by the assessee in April 2000. The case was remanded in April 2002 with direction to pass fresh orders within three months. But assessment is yet to be made.
2	FTAC-II, Chennai (1)	1992-93 1996-97	12/2000 1/2002	44.35	The assessments were remanded in December 2000 and January 2002 for fresh disposal, on appeal preferred by the assessee. Fresh assessment orders are yet to be passed even after the lapse of five years.
3	FTAC-I, Chennai (1)	1987-88 1989-90 1993-94	6/2004 12/2000 5/2001	4.30	The assessments were remanded between December 2000 and June 2004 for passing fresh orders. However, fresh assessment orders are yet to be passed.
4	Peelamedu (North) (1)	1989-90 1990-91	3/2005	2.52	The appeal was filed in 2003. The case was remanded in March 2005. The case is yet to be finalised.
5	Avinashi Road, Coimbatore (2)	1994-95 1995-96	1/2001	3.19	The assessments were remanded in January 2001. Fresh assessment orders are yet to be passed even after a lapse of more than six years.
6	Nungambakkam (1)	1991-92 1992-93 1993-94	8/1999 12/1999	2.33	The cases were remanded as early as in August/December 1999. However, remand orders were stated to have been received in June 2004 only. Fresh assessments are yet to be made.
	Total			57.54	

2.2.8.2 Deletion of confirmed demand

During audit, it was noticed in FTAC-II, Chennai and Big Bazaar Street assessment circle, Coimbatore that in six cases where assessments relating to the years 1992-93, 1995-96 and 1997-98 were partly remanded and partly confirmed by the appellate authorities during 1999 to 2004, the amount of tax of Rs.20.46 crore confirmed by the appellate authorities was eliminated from the concerned registers by the AAs.

Such elimination of demands which were confirmed in appeal would lead to losing the track of recovery in future and foregoing of interest, which in the case of confirmed demand is leviable from the date of the original assessment order. Delay in assessment of the remand cases adversely affects the collection of the Government dues and in some cases delayed finalisation results in the dues becoming irrecoverable. Thus, it is imperative on the part of the Government to evolve a strong surveillance system to keep a strict vigil on the finalisation of remand cases.

It is recommended that a statutory time limit be prescribed for finalising the remanded cases. Adherence to such limit has to be closely monitored to avoid pendency and to expedite revenue collection.

2.2.9 Delay in reassessment to rectify the errors noticed in the assessments

The TNGST Act provides for revision of the assessment at any time within a period of five years from the date of passing of the original assessment order. Such revision which has the effect of increase of tax or penalty can, however, be made only after the issue of the revised notice of assessment and on expiry of the notice period. **No register has been prescribed for watching the disposal of revision cases wherein the details of issue of prerevision notices could be entered to ensure timely action by the AAs.**

Test check of the records in eight³ assessment circles revealed that prerevision notices involving additional revenue of Rs.4.20 crore were issued by the AAs between June 2004 and March 2006 in 56 cases. Thereafter, the AAs had neither revised the assessments nor recorded any reason for not having revised the assessments even after the lapse of one to three years from the issue of the prerevision notices.

It is recommended that a suitable register be prescribed for recording the details of issue of prerevision notices for monitoring timely finalisation of the revision cases.

2.2.10 Uncollected revenue (arrears)

Registers F3⁴ and F3A⁵ are maintained in the assessment circles to watch the collection of arrears. Arrears pending at the end of March of the preceding year as per the Register F3A are brought forward to the F3 Register at the beginning of April of each year. Audit test checked the collection of arrears and the deficiencies noticed are mentioned in the following paragraphs:

³ Ambattur, Attur (Rural), Brough Road (Erode), Choolai, Koyambedu, Nungambakkam, Sriperumbudur and Tiruvanmiyur.

⁴ A register to record the amount of collection of old arrears.

⁵ A register to record month wise the revenue realised on account of tax.

The amount of sales tax revenue and arrears thereof during the past five years is mentioned below:

(Rupees in crore)

Year	Opening Balance	Arrears added during the year	Arrears collected during the year	Cumulative arrears at the end of the year	Sales tax revenue	Percentage of cumulative arrears to the revenue of the year
2001-02	7,197.00	4,173.91	2,900.23	8,470.68	8,385.59	101
2002-03	8,470.68	3,519.18	3,271.27	8,718.59	9,589.60	91
2003-04	8,718.59	1,815.68	4,005.15	6,529.12	11,004.63	59
2004-05	6,529.12	4,131.38	3,554.08	7,106.42	12,996.18	55
2005-06	7,106.42	8,089.31	4,688.21	10,507.52	15,554.69	68

Thus, arrears which showed an improvement in 2003-04, have steadily increased in the subsequent years and the balance as on 31 March 2006 stood at Rs.10,507.52 crore.

The category wise break up of the arrears at the end of March 2006 is as mentioned below:

(Rupees in crore)

Pending for recovery under the RR Act	3,898.78
Pending under deferral ⁶ /BIFR	3,881.99
Stayed by Government /High Court, etc.	1,850.00
Pending for write off/waiver	565.20
Held up due to rectification/revision	276.91
Amount since collected	34.64
Cumulative arrears as on 31 March 2006	10,507.52

Recovery of the bulk of the arrears is held up either due to litigation or because of revenue recovery and BIFR (Board for Industrial and Financial Reconstruction) proceedings.

2.2.11 Delay in pursuance of Court cases

Wherever appeals are filed by the assessee against the assessments before the appellate/judicial fora, it is imperative that the AAs initiate prompt action to vacate stay, if any, granted by the appellate fora or to file the counter affidavits so as to facilitate early disposal of the cases and realisation of the revenue. **Audit noticed that no system existed for the CCT to monitor disposal of the cases pending with various appellate/judicial fora. No return to monitor filing of counter affidavits/stay vacation petitions wherever needed has been prescribed by the CCT.**

⁶ Amount pending under deferral, though shown as arrears by the department is not due for collection during the current year and would become payable only on the expiry of the deferral period.

As per the monthly performance statistics of the department 4,635 court cases involving revenue of Rs.1,679.68 crore were pending recovery as on 31 March 2006 due to stay granted by various judicial/appellate fora as mentioned below:

(Rupees in crore)

Sl. No.	Cases pending in	Number	Amount of arrears
1	Supreme Court	352	19.75
2	High Court	1,444	1,322.31
3	Sales Tax Appellate Tribunal	582	83.11
4	Tamil Nadu Taxation Special Tribunal	258	25.22
5	DC (Appeal)	77	146.33
6	Appellate Assistant Commissioner	1,922	82.96
	Total	4,635	1,679.68

2.2.11.1 Test check of the records in 11⁷ circles revealed that 16 disputed cases involving revenue of Rs.439.47 crore were pending with the judicial/appellate forums. The department had not taken any action to file the counter affidavits or vacation petitions to expedite disposal of the cases or for vacation of stays granted against collection of tax. A few illustrative cases are mentioned below:

(Rupees in crore)

Sl. No.	Assessment circle	Assessment year Amount	Remarks
1	2	3	4
1	FTAC-II, Coimbatore	1997-98 to 1999-00 159.72	The assessee filed writ petition in 2004 and the High Court ordered interim stay in March 2004. The department is yet to file the counter affidavit even after the lapse of two years.
After the case was pointed out, the department stated (June 2007) that counter affidavit was prepared by the Additional Government Pleader on 28 November 2006. The fact of actual filing of the counter affidavit has not been confirmed, despite request.			

⁷ Avinashi Road (Coimbatore), Chingleput, FTAC-II & IV (Chennai), FTAC-II (Coimbatore), Nandanam, Park Road (Erode), Perur, R.S. Puram (West), Sriperumbudur and Tiruvanmiyur.

1	2	3	4
2	FTAC-IV, Chennai	1989-90 to <u>1994-95</u> 11.94	The Madras High Court rejected the claim of an assessee for waiver of tax. The Supreme Court admitted the special leave petition filed by the assessee and ordered the department in May 2001 to file counter affidavit within four weeks. The counter affidavit was, however, filed by the department only in June 2003. The Special Government Pleader had opined in November 2003 that there was no stay for collection of arrears. However, action for recovery was initiated by the department only in December 2004 and Rs.1 crore was collected in January 2006 i.e. after a delay of two years and two months. The failure of the department to take timely action has resulted in blocking of revenue of Rs.10.94 crore.
		<u>1992-93</u> 283.67	The assessee filed an appeal against the assessment order before the DC (Appeal) and a writ petition before the Madras High Court in 1998. The High Court in an interim order in August 2003 allowed the AA to finalise the assessment but restrained the department from taking any coercive action for collection of tax. However, no assessment was made by the AA. In addition, no counter affidavit was filed by the department against the writ petition. The failure of the department to file the counter affidavit even after the lapse of more than eight years has resulted in blocking of revenue of Rs.283.67 crore.
3	Perur	<u>1996-97</u> 9.22	The High Court ordered that counter affidavit should be filed by the department by 14 June 2004. The CCT in his letter dated 4 July 2005 had also directed the Special Government Pleader to prepare and send the draft counter affidavit and stay vacation petition early. However, the counter affidavit is yet to be filed. The failure of the department to file the counter affidavit even after the lapse of more than two years has resulted in blocking of revenue of Rs.9.22 crore.
4	Tiruvanmiyur	1989-90 1998-99 <u>1999-00</u> 4.61	Writ petitions were filed by the dealer in 2003 and 2004. Interim stays were granted by the Madras High Court in these cases between September 2003 and July 2004. The department had not filed counter affidavits in these cases and, the interim stay granted in respect of 1998-99 was made absolute by the Madras High Court. The failure of the department to file the counter affidavit even after the lapse of more than four years has resulted in the non-realisation of Rs.4.61 crore.
5	Sriperumbudur	<u>1998-99</u> 44.31	A writ petition was filed by the dealer. The High Court ordered interim stay in November 2004. The department is yet to file the counter affidavit. The failure of the department to file the counter affidavit even after the lapse of more than two years has resulted in blocking of revenue of Rs.44.31 crore.
After the case was pointed out, the AA replied (June 2007) that the delay was on the part of the Government Pleader and he would be addressed to expedite the matter.			

2.2.11.2 In the FTAC II and IV, Chennai, assessments of three dealers in petroleum products were kept pending on the ground that the writ petition filed by the dealers before the Madras High Court in 1988 was pending. The assessments involved levy of purchase tax of Rs.104.48 crore on the value of excise duty relating to the clearance of petroleum products from warehouses. The levy of purchase tax was confirmed⁸ by the Supreme Court in 1996 itself in the case of the same two assessees relating to the FTAC II & IV, Chennai. **However, the department failed to bring the facts to the notice of the Madras High Court for speedy disposal of the pending writ petition.** This has resulted in blocking of revenue of Rs.104.48 crore besides foregoing of interest leviable thereon.

It is recommended that a system be evolved to monitor all the cases pending in various appellate/judicial fora to prevent failures to file counter affidavits/stay vacation petitions, etc. Suitable returns in this regard may also be prescribed.

2.2.12 Deficiencies in pursuance of the cases pending before the Board for Industrial and Financial Reconstruction (BIFR)

As per the Sick Industrial Companies (Special Provision) Act, 1985, where a reference for declaration as sick unit is filed and proceedings thereon are pending before the BIFR, no suit for recovery of money or enforcement of any dues against the company shall lie or be proceeded with further, except with the consent of the Board. Where a company has been declared 'sick' by the Board, the department has to ensure inclusion of all the arrears in the 'statement of liabilities' of the company furnished to the Board. The CCT had issued instructions in 2001 that AAs should ensure the correctness of the amount of arrear furnished to BIFR; check up the rehabilitation package drafted by the operating agency so as to ensure that it covered the sales tax liabilities; and initiate action for recovery of the amount not covered by the sanction of BIFR. **No return was, however, prescribed by the department to ensure that the instructions of the CCT were being followed. Audit noticed a wide variation between the actual dues and those dues reported to BIFR which is indicative of failure in the functioning of the system. This also indicated that the department was not following its own instructions.**

Test check of the records in eight assessment circles revealed that eight cases were pending before the BIFR after the assessees had declared themselves as 'sick'. The failure of the department to check underreporting of arrears, monitor the progress of the cases in BIFR, etc. resulted in non-realisation of Rs.85.82 crore as mentioned below:

⁸ Hindustan Petroleum Corporation & Indian Oil Corporation Vs. State of Kerala (1996) 118 STC P.311 (SC)

(Rupees in crore)

Sl. No.	Assessment Circle	Amount	Remarks
1	2	3	4
1	FTAC-II, Chennai	78.07	The assessee had shown only Rs.3.98 crore as sales tax arrears in the statement filed before the Board in March 2002 as against the actual arrears of Rs.82.05 crore. The department had not taken up the matter with BIFR.
2	FTAC-I, Coimbatore	0.25	Pursuant to the rehabilitation package ordered by the AAIFR ⁹ , the Government granted in November 1997, deferral of sales tax for three years, subject to payment of the outstanding arrears. The arrears were wrongly determined as Rs.56,000, which was paid in October 2000, as against the correct amount of Rs.25.24 lakh. This resulted in non-realisation of arrears of Rs.24.68 lakh.
3	Tallakulam	0.66	The interest recoverable from the assessee for violation of the conditions of deferral was incorrectly worked out by the department as Rs.5.76 lakh and it was intimated to the operating agency appointed by the Board. The correct amount of interest recoverable was Rs.72.06 lakh. This has resulted in understatement of arrears by the department.
4	Tirupparankundram	0.41	The interest recoverable from the assessee for violation of the conditions of deferral was not shown as arrears in the 'statement of liabilities' furnished to the BIFR.
5	Alandur	0.23	Arrears of Rs.23 lakh had accrued subsequent to the filing of the petition before the BIFR in July 1998. The amount was recoverable from the assessee in December 2000. However, no action was initiated by the department till September 2005 for recovery of the arrears.
6	Nungambakkam	2.14	The department had neither ascertained whether the reporting of sales tax arrears by the assessee company to the BIFR was correct nor had it kept itself informed of the developments of the case before the BIFR, with the result that when the department addressed the BIFR in 2006, it was informed that orders for winding up of the company were issued in October 2001. As a result, Rs.2.14 crore has not been realised.

⁹ Appellate Authority for Industrial and Financial Reconstruction.

1	2	3	4
7	Mandaveli	0.20	BIFR ordered the winding up of the company with effect from 1 December 2001. The claim petition had not been filed by the department with the official liquidator even after the lapse of more than five years.
8	Egmore-II	3.86	The cut off date fixed by the BIFR was 31 March 1996. The arrears of Rs.3.86 crore had accrued subsequent to the cut off date. The department had however not initiated any action for recovery of the arrears even after a lapse of 10 years.
	Total	85.82	

The wide variation between the actual dues and that reported to BIFR is indicative of failure in the functioning of the system and non-observance of the instructions of the CCT.

In the ARC meeting, the CCT assured that due importance would be given to this aspect. The CCT also informed that DCs and ACs had been instructed to process these cases properly and handling of the BIFR cases would be streamlined.

2.2.13 Revenue Recovery under the Revenue Recovery Act

As per the information furnished by the department, Rs.3,898.78 crore is pending collection under the RR Act. **No time limit has been fixed by the Government for disposal of the certificate cases under the RR Act. No targets were set for collection of the arrears and for evaluating the performance of the AAs. This has resulted in delay in disposal of certificate cases as mentioned below.**

2.2.13.1 Lack of effective action under the State Revenue Recovery Act

According to the Standing Order 30A(1)(b) of the TNCT Manual Volume I, when a defaulter does not own any movable or immovable property in a district and enquiries show that he has properties in other districts, requisition (other district requisition – ODR) should be sent to the assessment circle of the other district where the defaulter owns property to effect the recovery of arrears. On receipt of such requisition, action has to be taken to collect the arrears as if the arrears had accrued in that district.

It was noticed in 15 assessment circles¹⁰ that requisitions for collection of arrears of Rs.18.19 crore pertaining to 23 defaulters were sent to the other districts where the properties of the defaulters were situated. But even after

¹⁰ Alandur, Avinashi Road, Dindigul-III, Gandhipuram, Karur (West), Nandanam, Peelamedu (North) & (South), P.N. Palayam, Salem (Rural), Tallakulam, Thudiyalur, Tiruvanmiyur, Trichy Road (Coimbatore) and Velachery.

the lapse of 2 to 13 years, arrears of Rs.18.19 crore remained uncollected due either to the lack of response from the departmental officers in the other districts or lack of concerted efforts and co-ordination among the officers of the department. A few illustrative cases are mentioned below:

(Rupees in lakh)

Sl. No.	Assessment circle	Year	Amount	Remarks
1	Trichy Road, Coimbatore	1992-93 1994-95	158.40	The ODR was issued to the CTO Mettupalayam Road Circle, Coimbatore in May 2002. However, no action was taken by the CTO Mettupalayam on the ODR even after the lapse of more than five years.
2	Alandur	1989-90 to 1991-92 1993-94 to 1996-97	95.89	The ODR was sent to the CTO Adyar I in July 2001 as the residential property of the defaulter was located in that jurisdiction. The said property was sold by the Indian Bank and the sale proceeds were appropriated against their dues. The department failed to secure the interest of the Government in preference to the other secured creditors with the result that the amount remained uncollected.
3	Tiruvanmiyur	1996-97	21.31	The ODR was sent to the CTO Triplicane I in September 2001 and reminders were issued only in September 2006 and October 2006 for collection. The CTO Triplicane I replied in November 2006 that the above mentioned ODR was not received and hence fresh ODR was sent in December 2006. Thus, the department failed to take adequate follow up action.
4	Peelamedu (North)	1997-98 to 1999-00	28.88	The ODR was issued to the CTO Singanallur in December 2002 and followed by reminders, but these were not responded to even after the lapse of four years.
5	P.N.Palayam	1996-97 1997-98	15.96	The ODRs were issued in respect of two partners. All efforts to recover the arrears from the two partners proved futile. However, no action was taken to recover the arrears from the third partner who is running a business on his own and has immovable property.

The large amounts blocked under the RR Act indicate that concerted and effective efforts are not being made towards recovery of the arrears.

2.2.13.2 Lack of proper action under the Central Revenue Recovery Act

When the defaulters do not own any property in the State and if the AA is satisfied that they have properties in the other State, the revenue authorities of the other States may be addressed for collecting the arrears under the CRR Act. For this purpose, the AC (CT) should address the DC giving full details of the defaulter, his address, the arrears due for recovery and the action taken, if any, for collection. A certificate (revenue recovery certificate – RRC) that the arrear is not recoverable in the district should be enclosed with the report. On receipt of the report, the DC shall address the revenue authorities of the other States for enforcing collection.

It was noticed in five assessment circles that in respect of eight assessees, arrears of Rs.4.11 crore pertaining to the years 1993-94 to 1999-2000 remained uncollected. This was mainly due to furnishing of incorrect/incomplete details to the revenue authorities, lack of co-ordination and delay in obtaining the RRC from the revenue authorities concerned as mentioned below:

(Rupees in lakh)

Sl. No.	Assessment circle (No. of dealers)	Year	Amount	Remarks
1	2	3	4	5
1	Alandur Koyambedu (4)	1996-97 to 1999-00	100.95	As per the departmental records, the assessees after closing their businesses in Tamil Nadu had settled in Bhopal, Haryana, Uttar Pradesh and New Delhi. The department requested the District Collectors, Tiruvellore and Kancheepuram between March 2001 and February 2003 to issue the RRCs. The department, however, failed to follow up the matter with the District Collectors and the RRCs are yet to be obtained from the District Collectors. The failure to obtain the RRC even after the lapse of six years has resulted in the arrears remaining uncollected.
2	Alandur (1)	1993-94 to 1996-97	17.00	The RRC was obtained in December 2000 from the District Collector, Tiruvellore under whose jurisdiction Alandur falls. However, the RRC was not forwarded to the revenue authority at Mumbai, where the assessee was ascertained to be residing, to effect recovery.

1	2	3	4	5
3	Avniashi Road, Coimbatore (1)	1998-99	6.11	As per the departmental records, the assessee after closing his business in Tamil Nadu is stated to be residing in Bangalore. Hence the department requested the District Collector, Coimbatore to issue the RRC in November 2000. The RRC issued by the District Collector, Coimbatore in 2001 did not contain the office seal. Though the District Collector was addressed in this regard but the rectified RRC with office seal is yet to be obtained.
4	Chitrakara Street, Madurai (1)	1988-89	17.09	The original RRC issued to the District Collector, Rabi district, Rajasthan was returned in November 2002 as the address of the defaulter was found to be incorrect. The revised RRC with correct address is yet to be issued.
5	Nungambakkam (1)	1992-93 to 1993-94	270.21	The assessee was a public limited company having registered office at Chennai and factory at Andhra Pradesh. The company had closed down their business without paying the arrears. Action was not taken under the RR Act to attach the factory premises of the company at Andhra Pradesh. The arrears remain uncollected.
Total			411.36	

Thus, there is no coordination between the revenue authorities to facilitate early realisation of the arrears locked up under revenue recovery proceedings. **It is recommended that suitable mechanism be evolved to ensure proper co-ordination between the departmental officers and revenue authorities to facilitate early realisation of the arrears locked up under revenue recovery proceedings. It is further recommended that targets may be set for collection of the old arrears and the performance of the AAs be closely monitored and measured against such targets.**

Compliance deficiencies

2.2.14 Non-levy of interest

As per the provisions of Section 17A of the TNGST Act, the territorial ACs were empowered to issue sanction of interest free sales tax (IFST) deferral to manufacturers specifying the amount, subject to fulfillment of certain conditions. In case of any violation of the condition, the entire amount of sales tax deferred is recoverable in lumpsum alongwith interest. Under the provision of the TNGST Act, on any amount remaining unpaid after the due date specified for its payment, the dealer or person shall pay, in addition to the amount due, interest at the rate of two *per cent* per month of such amount for the period of default.

2.2.14.1 It was noticed that in five¹¹ assessment circles, in respect of 10 cases, while forwarding the requisition for recovery of the arrears under the RR Act, interest of Rs.17.61 crore which had accrued upto the date of requisition was not included in the requisition leading to loss of revenue to the Government.

2.2.14.2 Test check of the records revealed that in six¹² circles, in respect of seven assessee companies which had gone into liquidation, the claim petitions preferred by the department to the official liquidators did not include the interest accrued upto the date of filing of the claim. The failure of the AAs resulted in non-realisation of interest of Rs.7.44 crore.

2.2.14.3 It was noticed in five¹³ assessment circles that five dealers were allowed to avail of deferral of tax of Rs.2.23 crore during the period from April 1994 to June 2004. The dealers had, however, stopped production continuously for a period of more than six months during the period of availing of the deferral. Though the ACs raised a demand for recovery of the deferred amount of tax aggregating to Rs.2.23 crore, no action was taken to recover the interest of Rs.2.88 crore.

In the ARC meeting, the CCT stated that the action would be considered for levy of interest under the rules.

2.2.15 Loss of revenue due to issue of incorrect clarification

Under the provisions of Section 28-A of the TNGST Act, the CCT is empowered to issue clarification for the purpose of uniformity in assessment and collection of tax. The CCT may clarify any point concerning the rate of tax or the procedure relating to assessment and collection of tax under this Act. All persons working under the control of the CCT shall observe and follow the clarifications.

It was noticed in four assessment circles that incorrect issue of clarification without verifying the nature of goods involved led to short realisation of revenue of Rs.2.56 crore as mentioned below:

¹¹ Chitrakara Street (Madurai), Dindigul-IV, Koyambedu, Mandaveli and Nungambakkam.

¹² FTAC-I Coimbatore, Ganapathy Circle (Coimbatore), Kangeyam, Porur, Singanallur and Tiruvanmiyur.

¹³ Alandur, Kovilpatti-II, Nungambakkam, Tallakulam and Villivakkam.

(Rupees in lakh)							
Sl. No.	Office (No. of dealers)	Commodity	Year	Date of clarification	Rate of Tax (per cent)		Amount of short levy
					Applicable	Applied	
1	FTAC-IV, Chennai FTAC-II, Chennai Ambattur (Three)	Coffee, tea premix	2001-02 2002-03	9.8.2004	16	12	101.06
As per entry 3 of Part E of the first schedule to the TNGST Act, sale of non-alcoholic beverages is liable to tax at 16 per cent. Coffee/tea premix is a beverage containing instant coffee/tea, milk, sugar, etc. used in coffee/tea vending machine. The assessee company had also marketed its product as a beverage, but it was incorrectly clarified as taxable at 12 per cent as a residuary commodity.							
2	FTAC-IV, Chennai (One)	Halls	2002-03	2.1.2004	12	4	139.27
As per the Central Excise Tribunal's decision reported in 42 ELT 33 (1989), 'Halls', an ice mint tablet used for refreshing the mouth and also for cooling and soothing the throat was classified as confectionery item as its major content is sugar. As per entry 5(iii) of Part D of the first schedule to the TNGST Act, confectionery is taxable at 12 per cent. But 'Halls' was incorrectly clarified by CCT as an ayurvedic medicine attracting tax of four per cent.							
3	Namakkal (Rural) (Two)	Shell grit	2002-03 2003-04 2004-05	11.10.1999	12	8	15.33
Shell grit is a powdered form of sea shells. Sea shells and shell grit are different commercial commodities having different usages. While sea shell is used for making ornamental articles, shell grit is used as raw material for manufacturing white cement, poultry feed, etc. But shell grit was incorrectly clarified as sea shell and exempted from levy of tax under Part B of the third schedule.							
Total							255.66

The reply of the department in respect of the above mentioned cases has not been received (October 2007).

2.2.16 Non-levy of additional sales tax

As per the provisions of the Tamil Nadu Additional Sales Tax Act, 1970, (TNAST Act) every dealer whose taxable turnover for a year exceeds Rs.10 crore is liable to pay additional sales tax at the prescribed rate on such turnover. The levy was subject to the condition that the aggregate of sales tax and additional sales tax on the declared goods should not exceed four per cent.

In 10¹⁴ assessment circles, while finalising the assessments of 40 dealers for the years 1999-2000 to 2004-05 between November 2002 and March 2006, additional sales tax of Rs.1.96 crore was either short levied or omitted to be levied.

¹⁴ Anna Salai III, Chingleput, Egmore II, FTAC I & III (Chennai), Kothawalchavadi, Koyambedu, Sriperumbudur, Tiruppur (Central)-I and Tiruvanmiyur.

After the cases were pointed out between June 2006 and April 2007, the department revised the assessments in two cases in June 2006/August 2006 and collected the additional demand of Rs.5.96 lakh. The reply of the department in respect of the remaining cases has not been received (September 2007). Two specific cases in which the department has not agreed to the audit observation are discussed below:

2.2.16.1 According to Section 2(p) of the TNGST Act, “taxable turnover” means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover. Further, under Section 3(2-A) of the TNGST Act, in the case of cement mentioned in the fifth schedule, the tax shall be payable by a dealer at the rate and at the point specified therein on the turnover in each year relating to such goods. Thus, the turnover relating to sale of cement other than the first point of sale, on which tax is levied under the TNGST Act is also a taxable turnover and is therefore subject to levy of AST.

In Egmore II assessment circle, while finalising the assessments of a dealer for the years 2002-03 and 2003-04 in March 2004 and February 2005 respectively, the turnover of sale of cement amounting to Rs.22.06 crore assessed to tax at other than the first point of sale was omitted to be considered as taxable turnover for the purpose of levy of AST. This resulted in short levy of AST of Rs.23.52 lakh.

After the case was pointed out in December 2006, the AA replied (June 2007) that AST was leviable only on the first sales turnover and the ambiguity had arisen on account of non-incorporation of Section 3(2-A) in the explanation under TNGST Act which provided for exclusion of various turnovers. The AA further stated that the matter would be brought to the notice of the head of the department for clarification.

The reply is not tenable as the TNGST Act provides for the levy of AST on the taxable turnover of a dealer and not on the first sales turnover and the TNGST Act does not provide for exclusion of turnover relating to sale of cement other than the first point of sale.

2.2.16.2 By notifications issued under Section 17 of the TNGST Act, exemptions were granted in respect of tax and additional tax payable by a dealer on sale of goods to M/s. Hyundai Motors Limited and Ford India Limited.

Test check of the records revealed that in five¹⁵ assessment circles, the taxable turnover of 35 dealers exceeded Rs.10 crore and as such all these dealers were liable to pay AST of Rs.1.62 crore except on the sales made to M/s. Hyundai Limited and Ford India Limited. The AAs, while finalising the assessments of the dealers for the years 1999-2000 to 2004-05, however, treated the turnover relating to the sale of goods to M/s. Hyundai Motors Limited and Ford India Limited as non-taxable turnover and did not consider the same for the purpose of levy of AST. This resulted in non/short levy of AST of Rs.1.62 crore.

¹⁵ Chingleput, FTAC-I, Chennai, Koyambedu, Sriperumbudur and Tiruvanmiyur.

After the cases were pointed out, the AAs stated that the dealers were not liable to pay AST as the sales made to Hyundai Motors Limited and Ford India Limited were not a part of taxable turnover. After the exclusion of these sales, the dealers were either not liable to pay AST or were liable to pay AST at lower rates.

The reply is not tenable as the turnover representing sale of goods to the firms was not an exempted turnover but only the tax and additional tax thereon were exempted. If the turnover relating to the sales made to M/s. Hyundai Motors Limited and Ford India Limited were an exempted turnover, then there would not be a necessity for issue of specific notification exempting the AST payable on such turnover. This indicates that AST is to be calculated on the entire turnover and thereafter exemption is to be given in respect of AST relating to the sales to M/s. Hyundai Motors Limited and Ford India Limited.

2.2.17 Non-levy of penalty

Under the provisions of Section 12(3)(b) of the TNGST Act as amended from time to time, if there is any short fall in the payment of tax by the assessee at the time of final assessment, the AA shall levy penalty at the prescribed rate on the difference between the tax assessed and the tax paid as per the returns.

It was noticed in 32 assessment circles that though there was short fall in payment of tax by 82 dealers, whose assessments were finalised between February 2004 and March 2006 for the years 2002-03 and 2003-04, penalty amounting to Rs.1.93 crore was not levied.

After the cases were pointed out, the AAs accepted (June 2007) the audit observations in eight cases and levied penalty of Rs.5.28 lakh of which Rs.1.97 lakh was also collected. A reply in respect of the other cases has not been received (October 2007).

2.2.18 Raising of incorrect demand

It was noticed in four circles that in the case of four assesseees, the amount of revenue due to be recovered from the defaulters was incorrectly reckoned resulting in short raising of demand of Rs.76.29 lakh as mentioned below:

(Rupees in lakh)						
Sl. No	Assessment circle	Year	Actual amount	Amount demanded	Amount under-stated	Remarks
1	2	3	4	5	6	7
1	Ambattur	1994-95	14.76	1.48	13.28	The penalty payable for the year 1994-95 amounting to Rs.14.76 lakh was incorrectly reckoned as Rs.1.48 lakh.
After the case was pointed out in January 2007, the department issued a revised notice. A report on collection has not been received (October 2007).						

1	2	3	4	5	6	7
2	Chithode, Erode	1995-96 to 1997-98	146.18	103.04	43.14	The amounts were incorrectly reckoned.
After the cases were pointed out, the assessing officer issued revised demand notice in March 2007. A report on recovery has not been received (October 2007).						
3	Koyam- bedu	1995-96 and 1996-97	30.59	19.88	10.71	As against the amount of Rs.30.59 lakh actually due, the RRC was sent to the District Collector, Goa, under Section 3(1) of the CRR Act for Rs.19.88 lakh only.
After the case was pointed out, the department agreed to issue fresh RRC for Rs.30.59 lakh.						
4	Tiruvan- miyur	1982-83 1986-87 and 1991-92	10.36	1.20	9.16	The tax dues were transferred from Alandur assessment circle to Tiruvanmiyur assessment circle for recovery under the RR Act; as the assessee had shifted his business to that place. Only Rs.1.20 lakh was demanded and the balance amount was omitted to be included in the arrear certificate issued to the assessee. The case had already been settled.
After the case was pointed out, the department agreed to examine the issue. Further report has not been received (October 2007).						
Total			201.89	125.60	76.29	

2.2.19 Conclusion

Audit noticed that in the absence of a prescribed time limit for finalisation of the assessments and due to ineffective monitoring, the pendency of the assessment cases has increased. The purpose behind creation of FTACs has also not been served. Non-finalisation of the assessments has also led to non-implementation of the taxation proposals (D3 proposals) involving large amounts of revenue. Lack of a system for the CCT to monitor all the cases pending in various appellate/judicial fora resulted in large pendency due to failure to file counter affidavits/stay vacation petitions, etc. Lack of a suitable mechanism to ensure co-ordination between the departmental officers and revenue authorities to facilitate early realisation of the arrears resulted in revenue being locked up under revenue recovery proceedings.

2.2.20 Summary of recommendations

The Government may consider taking the following action for rectifying the system and other issues:

- prescribing a time limit in the Act for finalisation of the assessments. Adherence to this should be closely monitored to avoid accumulation of assessment cases;
- prescribing a time limit for finalising the D3 proposals and monitoring should be made effective to ensure that no proposal escapes implementation beyond the prescribed time;
- prescribing a time limit for finalising the remanded cases. Adherence to such limit should be closely monitored to avoid pendency and to expedite revenue collection;
- prescribing a suitable register for recording the details of issue of prerevision notices for monitoring timely finalisation of the revision cases;
- evolving a system to monitor all the cases pending in various appellate/judicial fora to prevent failures to file counter affidavits/stay vacation petitions, etc. Suitable returns in this regard may also be prescribed; and
- evolving a suitable mechanism to ensure proper co-ordination between the departmental officers and revenue authorities to facilitate early realisation of the arrears locked up under revenue recovery proceedings. Targets may be set for collection of the old arrears and the performance of the AAs be closely monitored and measured against such targets.

2.3 Incorrect grant of exemption from levy of tax

According to Section 8(2-A) of the Central Sales tax Act, 1956 (CST Act), inter-state sale of goods is exempted from the levy of tax if the same is generally exempted under the local Act. If the goods under the local Act are exempted only in specified circumstances or under specified conditions, the inter-state sale of such goods will not be eligible for exemption. As per entry 6(viii) of the second schedule to the TNGST Act, coconut including *copra* is taxable at the rate of four *per cent* at the point of last purchase in the State by a dealer for crushing oil. Under entry 17 of Part B of the third schedule to the Act, coconut, other than those falling under the second schedule, is exempt.

The notification issued under the CST Act prescribes a reduced rate of two *per cent* on inter-state sale of coconut with or without 'C' forms. Consequent to the amendment of the CST Act with effect from May 2002, the reduced rate would be applicable only if the transactions are covered by 'C' forms and

inter-state sale of coconut not covered by 'C' forms is assessable to tax at double the local rate, viz., eight *per cent*.

In six¹⁶ assessment circles, while finalising the assessments of 34 dealers for the years 2002-03 to 2004-05 between April 2004 and March 2006, the AAs levied tax at reduced rates on the turnover of Rs.29.82 crore which represented inter-state sales of coconut not covered by declarations in 'C' form. In 10¹⁷ assessment circles, the AAs, while finalising the assessments of 61 dealers for the years 2002-03 to 2004-05 between April 2005 and June 2006, allowed exemption on inter-state sales turnover of coconut amounting to Rs.89.13 crore. The adoption of reduced rate of tax and the incorrect allowance of exemption resulted in short/non-levy of tax of Rs.9.06 crore.

After the cases were pointed out in audit between November 2005 and February 2007, the AAs contended that the commodity sold was watery coconuts which was generally exempt from the levy of tax under the local Act and hence inter-state sales was also exempt. The reply is not tenable as watery coconut is coconut and coconut is only conditionally exempted under the local Act. This view has also been affirmed by the Madras High Court which has held¹⁸ that exemption granted to coconut under the local Act is not general but a conditional exemption.

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

2.4 Application of incorrect rate of tax

2.4.1 Under entry 11(ii) of Part D of the first schedule to the TNGST Act, wet dates were taxable at the rate of 12 *per cent* at the point of first sale in the State with effect from 27 March 2002. By a notification issued in February 2004, the rate of tax on the sale of wet dates was reduced from 12 to four *per cent*. Under entry 9 of the XI schedule to the TNGST Act, imported goods falling under Parts D and E of the first schedule were taxable at 20 *per cent* at the point of first sale in the State. Imported wet dates were, therefore, taxable at 20 *per cent*.

Test check of the records in the Rock Fort assessment circle, Trichy, revealed that while finalising the assessments of two dealers for the years 2003-04 and 2004-05 in July 2005 and March 2006 respectively, turnover of Rs.20.21 crore representing first sale of imported dates for the period from 12 February 2004 to 31 March 2005 was assessed to tax at the reduced rate of four *per cent*,

¹⁶ Attur (Town), Erode (Rural), Karur (West), Salem (Rural), Tirumangalam and Vaniyambadi.

¹⁷ Dindigul-V, Erode(Rural), Krishnagiri, Madurai(Rural-South), Mailamchandai I & II, Omalur, Rajapalayam, Srirangam and Vaniyambadi.

¹⁸ N.Jagannathan & Sons Vs. DCTO Vaniyambadi and other – 7 VST 57 (Madras)

instead of 20 *per cent*. The application of incorrect rate of tax resulted in short levy of tax of Rs.3.40 crore including surcharge.

After the cases were pointed out in November 2006, the AA stated that the wet dates were imported in bulk and were repacked in small quantities and sold under the Indian brand name “Lion Dates” registered under the Trade and Merchandise Marks Act without mention of the origin of the goods and hence would not attract tax at higher rate.

The reply is not tenable as the goods were imported and were, therefore, liable to tax at 20 *per cent*. The CCT in specific clarifications addressed to the dealer himself in January 2003 and July 2004, had stated that wet dates of foreign origin whether imported directly from other countries or purchased from other States were liable to tax at 20 *per cent*. Thus, charging of lesser rate of tax was incorrect.

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

2.4.2 The TNGST Act provides for the levy of tax on sale or purchase of goods at the rates and at the points mentioned in the relevant schedules to the Act. According to the provisions of the CST Act, on inter-state sale of goods other than declared goods, not covered by valid declarations in form ‘C’, tax is leviable at 10 *per cent* or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher.

2.4.2.1 In exercise of the powers conferred under Section 8(5) of the CST Act, the Government issued a notification dated 5 March 1997 stipulating that the tax payable by a dealer on inter-state sale of man made staple fibre yarn be reduced to two *per cent*, provided the dealer had not effected any branch transfer or consignment transfer of goods during the year.

Scrutiny of the annual returns and monthly returns filed by two assesseees in Tallakulam and Mandaveli assessment circles revealed that the dealers had effected stock and consignment transfer of goods during the years 2000-01 and 2001-02. The dealers were, therefore, not entitled to the reduced rate of tax specified in the notification. The AA, however, allowed the reduced rate of tax on inter-state sale of polyester yarn and nylon monofilament yarn amounting to Rs.14.24 crore. The adoption of incorrect rate of tax resulted in short levy of tax of Rs.1.14 crore.

After the cases were pointed out, the AA, Mandaveli assessment circle stated in November 2006 that the stock transfer was entirely of a different commodity and the reduced rate of tax allowed on inter-state sale of monofilament yarn was in order. The reply is not tenable as the notification allowed reduced rate of tax only to those dealers who had not effected any branch transfer or consignment transfer of goods during the year. This view was also upheld¹⁹ by the Tamil Nadu Taxation Special Tribunal (TNTST),

¹⁹ Shri Ramalinga Mills Ltd. Vs. Secretary to the Government, CT&RE Department – (2001) 122 STC P.365 (TNTST)

which held that dealers who had effected branch transfer of different commodity also are not eligible for the reduced rate of tax. Reply of the department in respect of the other case has not been received.

The matter was reported to the Government in October 2006 and February 2007; their reply has not been received (October 2007).

2.4.2.2 In nine²⁰ assessment circles, while finalising the assessments of 10 dealers for the years 2002-03 to 2004-05 between January 2004 and March 2006, tax was levied short due to application of incorrect rates of tax on a turnover of Rs.33.98 crore. The short levy of tax worked out to Rs.3.99 crore.

A few illustrative cases are mentioned below:

(Rupees in lakh)							
Sl. No.	Assessment circle (No. of dealers)	Year of transaction (Month/Year of assessment)	Commodity	Taxable turn-over	Rate of tax (per cent)		Amount short levied
					Appliable	Applied	
1	2	3	4	5	6	7	8
1	Egmore II Godown (2)	2002-03 to 2004-05 (between March 2004 and February 2006)	Sweets and savouries sold under a brand name	2,033.88	16	2	297.91
<p>After the cases were pointed out in December 2006, the department replied that the goods were not covered by any registered trade mark and the name of the business of the dealers cannot be construed as brand name since it was not inscribed on the products. The reply is not tenable as the sweets were sold by the dealers in packages with the names inscribed within distinct emblems. Further, the sweets and savouries manufactured by the dealers are identified by the public by their specific names and the sale should, therefore, be taxed at 16 per cent as sale of branded sweets and savouries.</p>							
2	Anna-salai-III (1)	2003-04 (February 2005)	Imported aircraft	576.94	20	12	48.46
<p>After the case was pointed out in March 2006, the department revised the assessment in November 2006 and raised the additional demand of Rs.48.46 lakh; the collection particulars of which have not been received (October 2007).</p>							

²⁰ Annasalai-III, Coonoor, Egmore-II, Godown, Koyambedu, Mylapore, Sowcarpet-II, Sriperumbudur and Vellore (Rural).

1	2	3	4	5	6	7	8
3	Mylapore (1)	2002-03 2003-04 (January 2004/March 2005)	Cinematographic films	584.37	10	4	36.82
The case was pointed out to the department in August 2006; their reply has not been received (October 2007).							
4	Vellore (Rural) (1)	2003-04 2004-05 (September 2005)	Air conditioner parts, viz., aluminium grilles and diffusers	104.58	20	12	8.78
The case was pointed out to the department in December 2006; their reply has not been received (October 2007).							

After the cases were pointed out, the department revised the assessments in five cases between October 2006 and December 2006 and raised an additional demand of Rs.53.67 lakh; the collection particulars of which have not been received (October 2007). Reply of the department in the remaining cases has not been received (October 2007).

The matter was reported to the Government between April 2006 and May 2007; their reply has not been received (October 2007).

2.5 Erroneous treatment of contract of sale as works contract

According to Section 3(2) of the TNGST Act, tax is leviable on the sale of goods at the rates mentioned in the relevant schedules to the Act. According to Section 7 C of the Act, in respect of works contract, a dealer is given the option of paying tax at four *per cent* of the total contract value of the works executed.

The Supreme Court has held²¹ that if the thing to be delivered has any individual existence before the delivery as the sole property of the party who is to deliver it, then it is a sale. If the major component of the end product is the material consumed in producing the chattel to be delivered and skill and labour are employed for converting the main components into the end products but the skill and labour are only incidentally used then the delivery of the end product by the seller to the buyer would constitute a sale.

²¹ Hindustan Shipyard Ltd. Vs. State of Andhra Pradesh – 119 STC P.533 (SC)
State of Andhra Pradesh Vs. Kone Elevators – 140 STC P.22 (SC)

During the course of audit, it was noticed between July 2006 and November 2006 that AAs while finalising between December 2004 and March 2006 the assessments of 13 dealers for the years 2002-03 to 2004-05, incorrectly treated the contracts of sale as contracts for work. This resulted in short levy of tax of Rs.3.17 crore (inclusive of surcharge) as mentioned below:

(Rupees in lakh)

Sl. No.	Assessment circle (No. of dealers)	Year of transaction (Month/Year of assessment)	Nature of transaction	Taxable turn over	Rate of tax (per cent)		Amount short levied
					Applicable	Applied	
1	2	3	4	5	6	7	8
1	Tiruvanmiyur Velachery (6)	2003-04 2004-05 (between May 2005 and March 2006)	Contracts for supply and erection of communication towers.	996.08	12	4	83.67
<p>After the cases were pointed out, the AA Tiruvanmiyur assessment circle stated in December 2006 that the assessments treating the transactions as one of works contract were in order as the Supreme Court decision was known only in April 2005, after the finalisation of the assessments. The reply is not tenable as the assessments were finalised between May 2005 and March 2006, i.e. subsequent to the decision of the Supreme Court.</p> <p>In Velachery, the AA did not accept the audit observation and stated that the dealer was involved in the fabrication of transmission towers according to the specifications of the customers and, therefore, it was a works contract. The reply is not tenable as the assessee had utilised his own material in the fabrication of the transmission towers, which had existed as the property of the assessee before transfer to the customers. As such it should have been treated as sale and taxed accordingly.</p>							
2	Velachery (1)	2003-04 (March 2006)	Contract for supply and erection of electronic process control system.	176.53	12	4	14.83
<p>After the case was pointed out, the department contended in November 2006 that the transaction was one of works contract and the material purchased by the dealers were used in execution of the works contract and since there was no manufacturing activity, there cannot be any predominant element of sale. The reply is not tenable as the predominant part of the agreement was for supply of electronic process control system and erection was only incidental to such supply. Further, the dealer had also supplied electronic process control system in intra/inter-state and such transactions were treated as sales and taxed accordingly. As such in this case also, though the dealer had supplied electronic process control system to companies on their specifications, it had its separate existence as in other cases and, therefore, it is taxable as sale.</p>							

1	2	3	4	5	6	7	8
3	Alwarpet Saligramam Velachery (3)	2002-03 (December 2004) 2003-04 2004-05 (October 2005/ March 2006) 2004-05 (January 2006)	Contract for design, manufacture, supply, erection and commissioning of generator sets Contract for supply and erection of vertical turbine pumps	1,619.03 68.73	16 10	4 4	208.32
<p>The AAs in the cases relating to Alwarpet and Saligramam stated that the transactions were one of works contract, while the AA in the other case contended that the dealer had entered into an agreement for supply, installation and erection of motor pumps under the works contract and tax was levied at four <i>per cent</i> as the dealer had exercised option to pay tax under Section 7C.</p> <p>The reply is not tenable as the major portion of contracts involved supply of generator sets/pumps and installation was only incidental. The transactions should, therefore, have been treated as sale and taxed accordingly.</p>							
4	Koyambedu Tiruvan- miyur (3)	2003-04 (July 2005/ November 2005) 2004-05 (February 2006)	Fabrication and supply of aluminium/ steel doors and windows.	115.74	12	4	9.72
<p>After the cases were pointed out in July/October 2006, the AA, Koyambedu assessment circle contended that the assessments were in accordance with the clarification of the CCT issued in 2001 that erection of aluminium doors and windows fall under the category of other works contract and was liable to tax at four <i>per cent</i>. The AA, Tiruvanmiyur circle contended that the assessment was made at four <i>per cent</i> as the tribunal²² in a similar case had held that transaction to be works contract.</p> <p>The decision of the Tribunal and the clarification of the CCT are not applicable as the assessee had purchased and utilised their own raw materials in the manufacture of aluminium doors and windows and which, therefore, had existed as the sole property of the assessee before delivery to the building contractors. The subsequent erection or installation was only incidental. As such the transactions had all ingredients of a sales contract and were liable to tax accordingly.</p>							
Total				2,976.11			316.54

The cases were reported to the Government between December 2006 and March 2007; their reply has not been received (October 2007).

²² STA Tribunal (Main Bench) Madras in Tax appeal No.357/2000 and 469/2000 dated 30.5.2001

2.6 Cross verification of records in other departments

2.6.1 Customs Department

According to Rule 18-B of the TNGST Rules, every department of a Government liable to pay tax under the Act shall submit a quarterly return in Form A-10 before the 25th of the month succeeding the quarter showing the total and taxable turnover and the amount actually collected by it by way of tax during the quarter. The return shall be scrutinised by the concerned AA. If the rates of tax charged and the amount collected by way of tax are found to be incorrect, the AA shall intimate the correct rate applicable and the amount of tax to be collected to the department concerned to rectify the mistake and remit the correct tax due under the Act.

Scrutiny of the records in the office of the Commissioner (Sea Port) Chennai revealed that the Customs Department had not charged the correct rate of tax in respect of goods sold through retail shops and through auction sales during the period from 1 July 2002 to 31 March 2006. The short collection of tax amounted to Rs.52.56 lakh. The Customs Department had not filed the quarterly returns for several years. The short realisation of tax could have been detected much earlier had the AA of the concerned assessment circle, viz., Mannady (East) insisted upon the Customs Department to file the quarterly returns within the stipulated time.

2.6.2 Geology and Mining Department

Cross verification of the records in the offices of the Assistant Director of Geology and Mining relating to issue of permits to quarries with the connected assessment records in the Commercial Taxes Department revealed evasion of sales tax amounting to Rs.84.78 lakh (including penalty) due to suppression of sales turnover of granite as mentioned below:

(Rupees in lakh)

Sl. No.	Assessment circle (No. of dealers)	Assessment year/ (Month & Year of assessment)	Quantity suppressed (cu.m.)/ Value	Nature of observations	Amount of tax including penalty
1	2	3	4	5	6
1	Krishnagiri (1)	2001-02 (March 2003) 2002-03 (October 2003)	242.193/ 58.12 513.571/ 115.55	The assessee had quarried 242.193 cu.m of granite during 2001-02 and 513.571 cu.m of granite during 2002-03 but it was not disclosed in the returns and the assessments were finalised as 'O' case, i.e 'nil' assessments.	15.98 34.67

1	2	3	4	5	6
2	Pudukottai (1)	2002-03 (November 2003)	443.506/ 66.53	The assessee had quarried 6,961.592 cu.m of granite during the years 2002-03 and 2003-04 but the quantity that was brought to assessment during the years was 6,068.211 cu.m. The accounts filed by the assessee also disclosed the opening and closing balances as 'Nil'.	19.96
		2003-04 (October 2004)	449.875/ 44.99		14.17
Total					84.78

The cases were pointed out to the department in November 2006 and January 2007; their reply has not been received (October 2007).

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

2.7 Non/short levy of tax

2.7.1 Under the TNGST Act, every dealer who in the course of his business purchases from a registered dealer or from any other person any goods (the sale or purchase of which is liable to tax under the Act) in circumstances in which no tax is payable and despatches them to a place outside the State, except as a direct result of sale or purchase in the course of inter-state trade or commerce is liable to pay purchase tax at the prescribed rates.

As per entry 81 of the Third Schedule to the Act, chillies, *jaggery* and turmeric for sale by any dealer whose total turnover in respect of each commodity does not exceed Rs.300 crore in a year are exempt.

The TNTST has observed that the exemption was intended for dealers whose total turnover was below Rs.300 crore and the goods could not be said to be non-taxable goods and has upheld²³ the levy of purchase tax in respect of stock transfer of goods outside the State which had not suffered tax in the State.

Scrutiny of the records in six²⁴ assessment circles revealed that 18 dealers had sent chillies, *jaggery* and turmeric to places outside the State on consignment basis. As the goods had not suffered tax earlier in the State, purchase tax was leviable. However, the AAs while finalising the assessments of the dealers for the years 2001-02 to 2004-05 between December 2002 and March 2006 omitted to levy tax. This resulted in non-levy of purchase tax of Rs.54.69 lakh.

²³ Ruchi Soya Industries Ltd. Vs. CTO Harbour III and another – 139 STC P.294.

²⁴ Ariyalur, Pollachi (East) & (West), Park Road (Erode), Mettupalayam and Theni.

After the cases were pointed out between July 2004 and February 2007, the AAs stated that the commodities were exempt from the levy of tax upto Rs.300 crore and as such purchase tax was not leviable. The reply is not tenable as the exemption was admissible only if the commodities are sold by a dealer. In these cases, the goods have not been sold but have been sent outside the State on consignment basis and purchase tax is leviable. This view has also been upheld by the decision of the TNTST mentioned above.

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

2.7.2 Section 3(3) of the TNGST Act, provides for purchase of goods at concessional tax rate of three *per cent* for use in manufacture of any goods for sale, subject to the furnishing of declaration in form XVII by the purchaser. The Act further provides that the purchasing dealer shall be liable to pay the difference of tax payable on the turnover relating to sale of such goods, at the prescribed rate and three *per cent*, if he fails to make use of the goods so purchased for the purpose specified in the declaration.

The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai held²⁵ in October 2005 that the process of conversion of wet blue leather (semi finished leather) into finished leather does not involve manufacture and upheld the levy of differential rate of tax in respect of chemicals purchased at concessional tax rate and used in such conversion.

In four²⁶ assessment circles, four dealers had purchased goods, viz., chemicals/imported chemicals at concessional rate by furnishing form XVII declarations for Rs.3.43 crore and utilised the chemicals for processing of wet blue/semi finished leather into finished leather. The AAs while finalising/revising the assessments for the years 2002-03 to 2004-05 between May 2005 and March 2006 failed to levy the differential rate of tax though no manufacturing activity was undertaken by the assessee. The omission resulted in non levy of tax of Rs.30.93 lakh (inclusive of surcharge).

2.7.3 In Guindy assessment circle, a dealer had purchased corrugated boxes and stickers at concessional rate by furnishing form XVII declarations for Rs.22.96 lakh for repacking of *agarbathis* received on branch transfer from his head office. As no manufacturing activity was undertaken by the assessee, the purchase of goods at concessional rate was not in order. The AA while finalising the assessment of the dealer for the year 2003-04 in May 2005, failed to levy the differential rate of tax. The omission resulted in non-levy of tax of Rs.1.77 lakh (inclusive of surcharge).

²⁵ State of Tamil Nadu Vs. Tvl. A. Ahmed & Co. – STA No.298/04 TINTSAT(AB), Chennai

²⁶ Adyar-II, Tambaram-I & II and Tiruvanmiyur.

After the cases were pointed out between August 2006 and December 2006, the department revised the assessment in one case in August 2006 and raised an additional demand of Rs.1.77 lakh towards tax and Rs.2.66 lakh towards penalty, out of which the dealer is stated to have paid 25 *per cent* of the amount of tax and obtained stay for the remaining amount. Reply of the department in respect of the remaining cases has not been received (October 2007).

The matter was reported to the Government between December 2006 and March 2007; their reply has not been received (October 2007).

2.7.4 Section 3(4) of the TNGST Act provides that a dealer who after purchasing goods at concessional rate, does not sell the goods so manufactured, but despatches them to a place outside the State either by branch transfer or transfer to an agent or in any other manner, except as a direct result of inter-state sale or purchase, shall be liable to pay tax at one *per cent* of the value of goods so purchased.

In three²⁷ assessment circles, three dealers had purchased goods at concessional rate during the years 2002-03 and 2003-04 and exported/sent on stock transfer the manufactured goods outside the State. The AAs while finalising the assessments of the dealers between May 2005 and March 2006, however, omitted to consider the export sale and stock transfers for determining the liability under Section 3(4) of the Act. This resulted in non/short levy of tax of Rs.5.17 lakh.

After the cases were pointed out in November 2006, the department revised the assessment in one case and collected Rs.70,000. Reply of the department in respect of the remaining two cases has not been received (October 2007).

The cases were reported to the Government in December 2006. The Government accepted the audit observations in two cases in August 2007. Reply in respect of the remaining case has not been received (October 2007).

2.8 Incorrect computation of taxable turnover

Under the TNGST Act, tax is leviable on the sale of goods at the rates and at the points specified in the schedules to the Act. Under Section 3B of the TNGST Act, deduction towards 'labour and other like charges' not involving any transfer of property in goods is admissible to the extent of the amount calculated at the rates specified in the table mentioned in the section, if the actual amounts incurred in connection with the execution of works contract are not ascertainable from the books of accounts. The Act also provided for assessment of escaped turnover at any time within a period of five years from the date of order of the final assessment.

²⁷ Adyar-I, Podanur and Tiruvanmiyur.

2.8.1 In two assessment circles, incorrect computation of taxable turnover of two assesseees resulted in short levy of tax of Rs.7.68 lakh as mentioned below:

(Rupees in lakh)

Sl. No.	Assessment circle (No. of dealers)	Year of transaction/ (Month and Year of assessment)	Nature of irregularity	Turn-over	Rate of tax (per cent)	Amount of short levy
1	Koyambedu (1)	2003-04 (June 2005)	Supply of stone ballast to Railways was omitted to be included in the turnover.	110.67	4	4.65
After the case was pointed out in October 2006, the AA issued pre revision notice to the assessee. Further report has not been received (October 2007).						
2	Tiruvanmiyur (1)	2003-04 (March 2006)	Out of the first sale turnover of DEPB ²⁸ licence amounting to Rs.2.18 crore, Rs.72.05 lakh shown as 'claims receivable' was omitted to be assessed to tax.	72.05	4	3.03
After the case was pointed out in August 2006, the AA issued pre revision notice to the assessee. Further report has not been received (October 2007).						
Total				182.72		7.68

The matter was reported to the Government between December 2006 and March 2007; their reply has not been received (October 2007).

2.8.2 In Fast Track Assessment Circle-III, Chennai, while finalising the assessment of a dealer for the year 1996-97 in February 2000, deduction towards labour in respect of works contract executed by an assessee was allowed to the extent of Rs.68.31 lakh, though separate accounts were not maintained indicating the actual labour charges incurred by the assessee. The admissible amount of deduction towards labour charges calculated at the rates specified in the Section amounted to Rs.30.85 lakh. The excess allowance of deduction resulted in short levy of tax of Rs.5.80 lakh.

After the case was pointed out in December 2003, the AA revised the assessment in January 2006 and raised an additional demand of Rs.5.80 lakh. Collection particulars have not been received (October 2007).

²⁸ Duty entitlement pass book.

2.9 Affording of excess credit

According to the Commercial Taxes Manual, assessment registers, also called 'D2' ledgers are to be maintained for each year in the assessment circles to show the tax paid by the assessee. The ledger shows the details of the taxable turnover, tax due thereon, tax paid, etc.

A scrutiny of the registers in Tuticorin-III and Triplicane-I assessment circles, revealed that in one case as against the amount of Rs.19.65 lakh paid by the assessee, credit was afforded for Rs.26.43 lakh; while in the other case, Rs.1.68 lakh due on account of interest though not paid was incorrectly credited to the account of the dealer. This resulted in affording of excess credit of Rs.8.46 lakh.

After the cases were pointed out in July 2006/August 2006, the AA in one case accepted the audit observation, but stated that a legal dispute was pending before the Madras High Court regarding the assessment and the excess credit would be adjusted after disposal of the dispute. Reply of the department in respect of the other case has not been received (October 2007).

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

2.10 Short levy of resale tax

Section 3-H of the TNGST Act, provides for the levy of resale tax at one *per cent* on the turnover of resale of goods specified in the first schedule, at a point other than the point of levy specified therein in respect of every dealer liable to pay tax under Section 3(2) and whose total turnover was not less than Rs.10 lakh for the year.

In Anna Salai II assessment circle, while finalising the assessments of a dealer for the years 2002-03 to 2004-05 between June 2005 and January 2006, the AA levied resale tax on the amount of Rs.39.46 crore financed by the assessee on resale of machinery and motor vehicles on hire purchase basis but omitted to levy such tax on the amount of Rs.6.88 crore initially paid by the purchasers. This resulted in short levy of resale tax of Rs.6.88 lakh.

The case was reported to the department in January 2007 and to the Government in March 2007; their replies have not been received (October 2007).

2.11 Non/short levy of interest

According to sub section 2 of Section 13 of the TNGST Act, the tax shall become due without any notice of demand to the dealer on the date of receipt of the return or on the last due date prescribed, whichever is later. According to Section 24(3) of the TNGST Act, on any amount remaining unpaid after

the date specified for its payment, the dealer or person shall pay, in addition to the tax amount due, interest at two *per cent* per month of such amount, for the entire period of default.

In six²⁹ assessment circles, tax of Rs.1.01 crore relating to assessment years 1987-88, 1991-92, 1993-94, 1994-95 and 2002-03 was paid belatedly by six dealers between April 2000 and January 2006; the delays ranging from 1 month and 10 days to 164 months and 7 days. As against the interest of Rs.31.73 lakh leviable for such belated payment of tax, the AAs had levied interest of Rs.51,000 in only one case. This resulted in non/short levy of interest of Rs.31.22 lakh.

After the cases were pointed out between November 2004 and September 2006, the department levied interest of Rs.23.98 lakh in three cases in June 2005/September 2006; of which Rs.23.59 lakh was either collected or adjusted from the excess tax available at the credit of the dealer. Report on recovery of the balance amount has not been received (October 2007). The AA in one case involving interest of Rs.3.83 lakh stated that delay in payment was due to dishonouring of cheques and was beyond the control of assessee and it did not appear a valid decision to levy interest. The reply is not tenable as the assessee was liable to pay interest on the unpaid amount under the provisions of the Act and the AA has no discretion in this regard. Reply of the department in respect of the remaining cases has not been received (October 2007).

The matter was reported to the Government between December 2006 and March 2007; their reply has not been received (October 2007).

²⁹ Esplanade-I, FTAC-II & IV Chennai, Sivakasi-IV, Sriperumbudur and T.Nagar (East).