PREFACE

This Report for the year ended 31 March 2009 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This Report presents the results of audit of receipts comprising sales tax, land revenue, taxes on vehicles, stamp duty and registration fees and other tax and non-tax receipts.

The cases mentioned in this report are among those which came to notice in the course of test audit of records during the year 2008-09 as well as those noticed in earlier years but could not be covered in the previous years' reports.

OVERVIEW

This Report contains 47 paragraphs including three reviews relating to non/short levy of tax, penalty, interest etc. involving Rs. 5,743.47 crore. Some of the major findings are mentioned below.

I) General

The total revenue receipts of the Government of Gujarat in 2008-09 were Rs. 38,675.71 crore as against Rs. 35,689.85 crore during 2007-08. The revenue raised by the State from tax receipts during 2008-09 was Rs. 23,557.03 crore and from non-tax receipt was Rs. 5,099.32 crore. State's share of divisible Union taxes and grants-in-aid from the Government of India were Rs. 5,725.86 crore and Rs. 4,293.50 crore, respectively. Thus the revenue raised by the State Government was 74 *per cent* of the total revenue receipts. The main source of tax revenue during 2008-09 was sales tax/VAT (Rs. 16,810.65 crore) and taxes and duties on electricity (Rs. 2,369.91 crore). The main receipt under non-tax revenue was from non-ferrous mining and metallurgical industries (Rs. 1,559.82 crore).

(Paragraph 1.1)

The arrears of revenue aggregating Rs. 9,609.38 crore remained unrealised under some principal heads of revenue at the end of 2008-09. The arrears were mainly in respect of sales tax and electricity duty.

(Paragraph 1.5)

Test check of the records of sales tax/VAT, land revenue, state excise, motor vehicles tax, stamp duty and registration fees, electricity duty, other tax receipts, forest receipts and other non-tax receipts conducted during the year 2008-09 revealed underassessment/short levy/loss of revenue amounting to Rs. 6,023.46 crore in 1,418 cases. During the year, the departments accepted underassessment of Rs. 15.97 crore in 358 cases and recovered Rs. 5.45 crore in 233 cases pointed out in 2008-09 and earlier years.

(Paragraph 1.14)

II) Sales Tax/Value Added Tax

A review of **Transition from Sales tax to VAT** disclosed the following:

- The State Legislature introduced levy of additional tax under the Gujarat Value Added Tax Act, 2003 with effect from April 2008, though the policy paper on Value Added Tax specifically discouraged levy of additional tax.

(Paragraph 2.2.6.1)

- By allowing the exemption incentive holders to collect and retain the output tax, Government had not only made the taxing statute discriminatory towards the incentive holders but also allowed undue enrichment of Rs. 6,376.58 crore to the exemption incentive holders.

(Paragraph 2.2.12.2)

- Failure to recover deferred tax from the composite incentive holders who opted exemption incentive under the GVAT Act, had resulted in non-recovery of Rs. 4,774.98 crore upto March 2009, including interest of Rs. 1,263.96 crore.

(Paragraph 2.2.12.4)

- The actual receipts could not be confirmed in absence of the system for verification of the treasury schedules with *challan.* Cross check in audit revealed misclassification of Rs. 39.20 crore in three cases. Misclassification adversely affects reports on receipts and budget estimates submitted to the State Legislature.

(Paragraph 2.2.17.2)

Central sales tax of Rs. 58.55 crore was allowed to be adjusted against exemption/deferment limit irregularly in case of 18 dealers under incentive scheme for economic development of Kutchh district, either without issue of notification under Section 8(5) of the CST Act or provision in Government Resolution.

(Paragraph 2.4.1)

Incorrect classification of goods resulted in underassessment of Rs. 21.51 crore in the case of 54 dealers.

(Paragraph 2.5)

Concession of Rs. 57.35 crore was allowed to 180 dealers without obtaining the required declaration/certificates as required under the Central Sales Tax Act, 1956.

(Paragraph 2.6)

III) Land Revenue

Premium for conversion of land from new and restricted tenure to old tenure was recovered from the land holders on final plots after deduction of specified area though compensation was paid for that area of land, resulting in short levy of premium of Rs. 14.59 crore.

(Paragraph 3.3.1)

Conversion tax was either not levied or levied at incorrect rate on change in mode of land use in 166 cases resulting in non-realisation of Rs. 3.64 crore.

(Paragraph 3.4)

IV) Taxes on Vehicles

Information Technology review of computerisation of issue of driving licence and registration of vehicles revealed the following:

- The Government of India, in order to have a national registry of registered vehicles and licences issued, had asked all State governments to implement the *Vahan* and *Sarathi* software developed by National Informatics Centre in 2001. The Gujarat Motor Vehicles Department implemented these systems in only one of the 27 regional transport office/assistant regional transport

office though eight years have lapsed. The *Vahan* system implemented in regional transport office, Ahmedabad covered only non-commercial vehicles. The *Sarathi* system covered only issue of learner licence and did not cover issue of permanent licence.

(Paragraph 4.2.6.1)

- Data analysis of the *Vahan* system implemented in regional transport office, Ahmedabad revealed inadequate input and process controls resulting in short levy of tax amounting to Rs. 36.79 lakh.

(Paragraph 4.2.6.3)

- The system has been implemented only in seven regional transport office/assistant regional transport offices out of the 27 regional transport office/assistant regional transport offices/inspector offices.

(Paragraph 4.2.7.2)

- The system design of smart card based vehicle registration system was not complete and did not have provision for entry and calculation of motor vehicles tax, monitoring tax collection, issue of national or state permits, offences registered, stolen vehicles, wanted vehicles *etc*. The present system of vehicles registration has data of just five *per cent* of the total registered vehicles.

(Paragraph 4.2.7.3)

- Hand held terminals purchased for Rs. 61.43 lakh were not used. A server costing Rs. 1.94 crore purchased in December 2001 for creation of a central data repository was not installed. A database of all the registered vehicles and driving licences issued had not been created.

(Paragraph 4.2.7.4)

Though the operators of 317 omnibuses and 338 vehicles for transport of goods had neither paid tax nor filed non-use declarations, the departmental officials failed to issue demand notices and initiate recovery proceeding, resulting in non-realisation of tax of Rs. 5.11 crore.

(Paragraph 4.4.1)

V) Stamp Duty and Registration Fees

The department did not set up any system to levy stamp duty and registration fees on cash/delivery based transactions by the brokers/agents of shares, raising of funds through IPO/FPO, allotment of shares etc., resulting in non/short levy of stamp duty of Rs. 35.88 crore.

(Paragraph 5.3)

In 459 cases of delivery orders for clearance of the imported goods valued at Rs. 1,948.51 crore, stamp duty and registration fees was not/short levied resulting in non/short realisation of Rs. 9.66 crore.

(Paragraph 5.4)

In case of 251 documents comprising several distinct matters of immovable properties valued at Rs. 120.99 crore, stamp duty and registration fees were charged for only one matter/transaction, resulting in short levy of stamp duty and registration fees of Rs. 8.48 crore.

(Paragraph 5.5)

VI) Other tax receipts

Though the proprietors of the multiplexes had failed to comply with the court order, the department had not initiated action for realisation of the dues of Rs. 22.86 crore.

(Paragraph 6.3)

VII) Non-tax receipts

A review of **Levy and collection of royalty, dead rent and surface rent from mines and quarries** disclosed the following:

- The Industries and Mines and the Energy and Petrochemicals Department prepared the annual budget estimates without reference to the past trends and future potential.

(Paragraph 7.2.6)

- Due to the absence of a system for the execution of lease deeds, the Director of Petroleum could not get the lease deeds executed for 15 oil and natural gas sites after sanction of lease or after the expiry of lease period. Test check indicated non-realisation of stamp duty of Rs. 18.13 crore on that account.

(Paragraph 7.2.7)

- Absence of a system of cross verification of production tally statement with the royalty returns, resulted in non-detection of usage of condensate for value added product without the payment of royalty by the Oil and Natural Gas Corporation Limited. Consequently, there was non-realisation of royalty of Rs. 6.20 crore.

(Paragraph 7.2.8.1)

- There was short levy of royalty of Rs. 5.72 crore on account of double deduction of base, sediment and water.

(Paragraph 7.2.8.2)

- Due to the absence of a system to review the rates of surface rent at periodic intervals, there was no revision in the rate of surface rent for more than 40 years. Taking the rates of non-agricultural assessment as a comparator, the revenue foregone on that account alone would amount to Rs. 3.57 crore.

(Paragraph 7.2.9)

- The internal control mechanism was weak in both, the Director of Petroleum as well as the Energy and Petrochemicals Department. Non-inspection of 178 leases in operation has serious implications on the

supervisory functions. The Director of Petroleum did not prescribe any system or procedure for inspection of the leases of oil and natural gas.

(Paragraph 7.2.10.1)

- There was no internal audit arrangement in Director of Petroleum and the Energy and Petrochemicals Department to audit the management of mining receipts from oil and natural gas.

(Paragraph 7.2.11)

- Lack of co-ordination with the Public Works Departments of the State and Central Government regarding receipts of royalty on minerals used by the contractors resulted in unrealised royalty receipts of Rs. 28.38 crore.

(Paragraph 7.2.15)

- Internal controls were weak, especially relating to supervision of illegal mining activities. Even in cases where the department had detected illegal mining, CGM could not recover the dues for long periods. As a result, 44 cases of illegal mining could not be detected timely and revenue of Rs. 490.43 crore could not be realised.

(Paragraph 7.2.16)

- Proposal for the issue of gazette notification of the availability of the area for regrant of leases was not sent to the Collector soon after the expiry, cancellation, surrender or revocation of leases resulting in potential loss of revenue of Rs. 6 crore.

(Paragraph 7.2.23)

CHAPTER I - GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Gujarat, the State's share of divisible Union Taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are as given below.

(Rupees in crore)

Sl. no.	Particular	2004-05	2005-06	2006-07	2007-08	2008-09
I	**Revenue raised by the State Government**					
	• Tax revenue	12,957.70	15,698.11	18,464.63	21,885.57	23,557.03
	• Non-tax revenue	3,090.50	3,353.37	4,948.78	4,609.31	5,099.32
	Total	**16,048.20**	**19,051.48**	**23,413.41**	**26,494.88**	**28,656.35**
II	**Receipts from the Government of India**					
	• State's share of divisible Union Taxes	2,219.30	3,372.43	4,425.95	5,426.09	5,725.86
	• Grants-in-aid	1,997.45	2,642.96	3,162.86	3,768.88	4,293.50
	Total	**4,216.75**	**6,015.39**	**7,588.81**	**9,194.97**	**10,019.36**
III	**Total receipts of the State**	**20,264.95**	**25,066.87**	**31,002.22**	**35,689.85**	**38,675.71**[1]
IV	**Percentage of I to III**	**79**	**76**	**76**	**74**	**74**

The above table indicates that during the year 2008-09, the revenue raised by the State Government was 74 *per cent* of the total revenue receipts (Rs. 38,675.71 crore). The balance 26 *per cent* of the receipts was from the Government of India.

1.1.2 The following table presents the details of tax revenue raised by the State during the period from 2004-05 to 2008-09.

[1] For details, please see statement No. 11, Detailed Accounts of revenue by minor heads in the Finance Accounts of the Government of Gujarat for the year 2008-09. Figures under the Heads "0020 - Corporation tax, 0021 - Taxes on Income other than corporation tax, 0028 - Other taxes on income and expenditure, 0032 - Taxes on wealth, 0037 - Customs, 0038 - Union excise duties, 0044 - Service tax, 0045 - Other taxes and duties on commodities and services", - share of net proceeds assigned to states booked in the Finance Accounts under A - 'Tax Revenue', have been excluded from revenue raised by the State and included in State's share of divisible union taxes in this statement.

(Rupees in crore)

Sl. no.	Heads of revenue	2004-05	2005-06	2006-07	2007-08	2008-09	Percentage of increase (+) or decrease (-) in 2008-09 over 2007-08
1.	Sales tax/VAT	6,702.03	8,646.13	10,886.21	13,199.04	15,143.86	(+) 14.73
	Central sales tax	1,606.59	1,915.21	1,931.25	1,905.50	1,666.79	(-) 12.53
2.	State excise	47.09	48.06	41.94	47.20	48.71	(+) 3.20
3.	Stamp duty and registration fees	962.80	1,153.16	1,425.03	2,018.43	1,728.50	(-) 14.36
4.	Taxes and duties on electricity	1,829.07	1,899.68	2,087.77	2,046.52	2,369.91	(+) 15.80
5.	Taxes on vehicles	1,060.93	1,153.97	1,191.15	1,310.09	1,381.66	(+) 5.46
6.	Taxes on goods and passengers	160.11	156.30	5.96	151.62	169.35	(+) 11.69
7.	Other taxes on income and expenditure	132.91	119.32	131.07	149.67	185.84	(+) 24.17
8.	Other taxes and duties on commodities and services	221.29	226.05	265.54	374.41	318.91	(-) 14.82
9.	Land revenue	234.88	380.23	498.71	683.09	543.50	(-) 20.44
Total		**12,957.70**	**15,698.11**	**18,464.63**	**21,885.57**	**23,557.03**	**(+)7.64**

The reasons for variations in the receipts during the year 2008-09 from those of 2007-08 as reported by the concerned departments are mentioned below.

Sales tax/VAT: The upward revision in price of petroleum products on two occasions during the year 2008-09 contributed mainly to the increase in sales tax/VAT.

Electricity duty: The increase was due to increase in both electricity charges and the sale of electricity.

The other departments did not inform (November 2009) the reasons for variations despite being requested (April 2009).

1.1.3 The following table presents the details of non-tax revenue raised by the State during the period from 2004-05 to 2008-09:

(Rupees in crore)

Sl. no.	Heads of revenue	2004-05	2005-06	2006-07	2007-08	2008-09	Percentage of increase (+) or decrease (-) in 2008-09 over 2007-08
1.	Interest receipts	469.72	130.91	283.07	329.88	567.81	(+) 72.13
2.	Dairy development	0.45	0.45	0.48	0.45	0.56	(+) 24.44
3.	Other non-tax receipts	474.58	607.86	914.20	870.55	1,309.72	(+) 50.45
4.	Forestry and wild life	42.39	42.76	36.91	35.08	40.51	(+) 15.48
5.	Non-ferrous mining and metallurgical industries	1,422.42	1,880.18	2,173.76	2,082.14	1,559.82	(-) 25.09
6.	Miscellaneous general services	174.26	217.57	968.96	588.53	643.29	(+) 9.30
7.	Power	52.13	21.26	0.06	6.57	77.52	(+) 1079.91
8.	Major and medium irrigation	207.09	248.62	330.61	452.82	455.77	(+) 0.65
9.	Medical and public health	48.87	53.83	66.68	66.25	126.50	(+) 90.94
10.	Co-operation	14.94	16.55	16.18	15.68	19.25	(+) 22.76
11.	Public works	30.92	26.99	30.64	27.19	31.69	(+) 16.55
12.	Police	48.85	71.28	90.66	86.24	77.44	(-) 10.20
13.	Other administrative services	103.88	35.11	36.57	47.93	189.44	(+) 295.24
Total		**3,090.50**	**3,353.37**	**4,948.78**	**4,609.31**	**5,099.32**	**(+) 10.63**

The concerned departments did not furnish (November 2009) the reasons for variations despite being requested (April 2009).

1.2 Variations between the budget estimates and actuals

The variations between the budget estimates and actuals of revenue receipts for the year 2008-09 in respect of the principal heads of tax and non-tax revenue are as mentioned below:

(Rupees in crore)

Sl. no.	Heads of revenue	Budget estimates	Actuals	Variation excess (+) or short fall (-)	Percentage of variation
Tax revenue					
1.	Sales tax/VAT/ Central sales tax	17,023.00	16,810.65	(-) 212.35	(-) 1.25
2.	Taxes and duties on electricity	2,260.00	2,369.91	(+) 109.91	(+) 4.86
3.	Stamp duty and registration fees	1,658.00	1,728.50	(+) 70.50	(+) 4.25
4.	Taxes on vehicles	1,412.40	1,381.66	(-) 30.74	(-) 2.18
5.	Taxes on goods and passengers	238.00	169.35	(-) 68.65	(-) 28.84
6.	Land revenue	550.00	543.50	(-) 6.50	(-) 1.18
7.	State excise	50.00	48.71	(-) 1.29	(-) 2.58
8.	Other taxes on income and expenditure	145.00	185.84	(+) 40.84	(+) 28.17
Non-tax revenue					
9.	Non-ferrous mining and metallurgical industries	2,347.80	1,559.82	(-) 787.98	(-) 33.56
10.	Interest receipts	207.00	567.81	(+) 360.81	(+) 174.30
11.	Major and medium irrigation	461.15	455.77	(-) 5.38	(-) 1.17
12.	Medical and public health	82.78	126.50	(+) 43.72	(+) 52.81
13.	Forestry and wild life	53.35	40.51	(-) 12.84	(-) 24.07
14.	Education, sports, arts and culture	62.06	155.91	(+) 93.85	(+)151.22
15.	Police	99.75	77.44	(-) 22.31	(-) 22.37
16.	Public works	33.60	31.69	(-) 1.91	(-) 5.68
17.	Miscellaneous general services	433.57	643.29	(+) 209.72	(+) 48.37

The reasons for the variations between budget estimates and actual receipts as reported by the concerned departments are mentioned below.

Sales tax/VAT/Central sales tax: The reduction of Central sales tax rate from three to two *per cent* with effect from 1 June 2008 resulted in decrease in collection against estimates.

Electricity duty: The increase was due to increase in both electricity charges and the sale of electricity.

The other departments did not inform (November 2009) the reasons for variations despite being requested (April 2009).

1.3 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of sales tax and motor spirit tax for the year 2008-09 and the corresponding figures for the preceding two years as furnished by the department is mentioned below.

(Rupees in crore)

Heads of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount refunded	Net collection	Percent-age of column 3 to 7
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales tax/VAT	2006-07	12,463.47	397.57	630.76	12,230.28	102
	2007-08	14,918.87	447.05	712.85	14,659.07	102
	2008-09	15,793.59	186.40	1,338.19	14,641.80	108
Motor spirit tax	2006-07	587.18	-	-	587.18	100
	2007-08	451.47	-	-	451.47	100
	2008-09	526.35	-	-	526.35	100

Thus, the percentage of collection of revenue at pre-assessment stage ranged between 102 and 108 *per cent* under sales tax/VAT during the years 2006-07 to 2008-09 and was 100 *per cent* under the motor spirit tax.

1.4 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2006-07, 2007-08 and 2008-09 alongwith the relevant all India average percentage of expenditure on collection to gross collection for 2007-08 are mentioned below.

(Rupees in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection for the year 2007-08
Sales tax/VAT/Central sales tax	2006-07	12,817.46	83.03	0.65	0.83
	2007-08	15,104.54	98.43	0.65	
	2008-09	16,810.65	99.51	0.59	
Taxes on vehicles	2006-07	1,191.15	26.15	2.20	2.58
	2007-08	1,310.09	38.57	2.94	
	2008-09	1,381.66	43.43	3.14	
Stamp duty and registration fees	2006-07	1,425.03	25.02	1.76	2.09
	2007-08	2,018.44	26.23	1.30	
	2008-09	1,728.50	42.16	2.44	
State excise	2006-07	41.94	5.06	12.06	3.27
	2007-08	47.20	7.65	16.21	
	2008-09	48.71	6.88	14.12	

The cost of collection in respect of sales tax/VAT/central sales tax was lower than the all India average. In respect of stamp duty and registration fees, while the cost of collection was lower than the all India average during 2006-07 and 2007-08, it was marginally higher in 2008-09. The cost of collection of state excise was much higher than the all India average, while in case of taxes on vehicles, it was marginally higher.

The abnormal increase in the collection charges in respect of stamp duty and registration fees in 2008-09 is mainly due to sharp increase in the expenditure on Direction and Administration.

The Government needs to take appropriate measures to bring down the cost of collection.

1.5 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2009 in respect of some principal heads of revenue amounted to Rs. 9,609.38 crore, of which Rs. 3,162.62 crore was outstanding for more than five years as mentioned below.

(Rupees in crore)

Sl. no.	Heads of revenue	Amount outstanding as on 31 March 2009	Amount outstanding for more than 5 years as on 31 March 2009	Remarks
1.	Sales tax	8,853.90	2,839.06	Of the total outstanding amount, Rs. 932.13 crore is covered by recovery certificate. Recovery of Rs. 2,440.40 crore has been stayed by the High

				Court of Gujarat and other judicial authorities. Recovery of Rs. 254.90 crore is held up due to the dealers being insolvent. Rs. 454.52 crore is unlikely to be recovered and hence proposed to be written off and Rs. 4,771.95 crore is under various stages of recovery.
2.	Electricity duty	675.41	277.36	Out of Rs. 675.41 crore, recovery of Rs. 617.05 crore is covered by stay orders of the High Court and other judicial authorities. The remaining amount of Rs. 58.36 crore is under various stages of recovery.
3.	Taxes on vehicles	80.07	46.20	Out of Rs. 80.07 crore, demand of Rs. 46.63 crore is covered by recovery certificate and Rs. 33.87 crore is under various stages of recovery.
Total		**9,609.38**	**3,162.62**	

1.6 Arrears in assessments

The number of cases pending for assessment at the beginning of the year 2008-09, due for assessment during the year, disposed during the year and pending at the end of the year 2008-09 alongwith the figures for the preceding four years as furnished by the Commercial Tax Department[2] are mentioned below.

(No. of cases)

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Clearance during the year	Closing balance at the end of the year(4-5)	Percentage of column 6 to 4
1	**2**	**3**	**4**	**5**	**6**	**7**
2004-05	8,35,675	3,86,757	12,22,432	2,91,089	9,31,343	76
2005-06	9,31,343	4,58,817	13,90,160	7,07,451	6,82,709	49
2006-07	6,82,709	4,24,113	11,06,822	3,78,420	7,28,402	66
2007-08	7,28,402	3,84,961	11,13,363	4,00,588	7,12,775	64
2008-09	3,46,922[3]	1,08,174	4,55,096	1,27,315	3,27,781	72

Thus, the percentage of closing balance at the end of each year during 2004-05 to 2008-09 to total cases becoming due for assessment ranged between 49 and 76 *per cent*. The gradual decrease in cases due for assessment was due to the introduction of the Gujarat Value Added Tax Act, 2003 with effect from 1 April 2006 in place of the Gujarat Sales Tax Act, 1969. Under the GVAT Act, only cases selected for scrutiny are classified as due for assessment as against returns filed by all the dealers considered due for assessment under the GST Act.

[2] In respect of sales tax/VAT, profession tax, purchase tax on sugarcane, lease tax, luxury tax and tax on works contracts.

[3] Differs from the closing balance of 7,12,775 reported by the department for 2007-08.

1.7 Evasion of tax

The details of cases of evasion of tax detected by the Commercial Tax, Motor Vehicles and Stamp Duty and Registration Fees Departments, cases finalised and the demands for additional tax raised as reported by the departments are as mentioned below.

Sl. no.	Name of tax/duty	Cases pending as on 31 March 2008	Cases detected during 2008-09	Total	No. of cases in which assessments/ investigations completed and additional demand including penalty *etc.*, raised		No. of cases pending as on 31 March 2009
					No. of cases	Amount of additional demand (Rupees in crore)	
1.	Sales tax/VAT	780	204	984	266	926.11	718
2.	Motor vehicles tax	69,161	26,634	95,795	26,511	24.66	69,284
3.	Stamp duty and registration fees	1,11,773	30,547	1,42,320	32,280	34.27	1,10,040

The large amount of additional demand amounting to Rs. 926.11 crore, which is Rs. 718.16 crore more than the corresponding amount of Rs. 207.95 crore reported in the Audit Report for 2007-08, reflects concerted efforts of the respective departments in detecting evasion of tax. However, such high incidence of evasion is a matter of concern for the State Government in the wake of implementation of VAT in the State as there is very little scope for taking up assessments of majority of the dealers.

In case of motor vehicles tax and stamp duty and registration, the numbers of pending cases continue to be almost at the same level as the previous year. It is necessary to finalise these cases at the earliest to minimise the risk of loss of revenue.

1.8 Refunds

The number of refund cases pending at the beginning of the year 2008-09, claims received during the year, refunds allowed during the year and cases pending at the close of the year 2008-09, as reported by the Commercial Tax Department are as mentioned below.

(Rupees in crore)

Sl. no.	Category	Sales tax/VAT	
		No. of cases	Amount
1.	Claims outstanding at the beginning of the year 2008-09	2,660	200.03
2.	Claims received during the year	2,863	762.81

3.	Refunds made during the year	3,222	666.25
4.	Balance outstanding at the end of the year	2,301	296.59

1.9 Failure to enforce accountability and protect interest of Government

Principal Accountant General (Commercial and Receipt Audit) (PAG), Gujarat, arranges to conduct periodical inspection of the Government departments to test check the transactions and verify the maintenance of important accounting and other records as per the prescribed rules and procedures. These inspections are followed up with inspection reports (IRs). When important irregularities detected during inspection are not settled on the spot, these IRs are issued to the heads of the offices inspected with a copy to the next higher authority. The heads of offices and the respective next higher authorities are required to ensure compliance with the observations contained in the IRs and rectify the defects and omissions promptly and report their compliance to the PAG. Serious irregularities are also brought to the notice of the heads of the departments by the office of the PAG through draft paragraphs. A half yearly report of the pending IRs and audit observations is sent to the Secretary of the concerned department to facilitate monitoring of the audit observations in the pending IRs.

The number of IRs and audit observations relating to revenue receipts issued upto 31 December 2008 and pending settlement by the departments as on 30 June 2009 alongwith the corresponding figures for the preceding two years is mentioned below.

Particulars	As at the end of		
	June 2007	June 2008	June 2009
Number of outstanding inspection reports	3,548	3,794	4,035
Number of outstanding audit observations	9,493	10,607	11,426
Amount of revenue involved (Rupees in crore)	3,447.39	4,120.45	4,987.77

IRs issued up to December 2008 pertaining to the offices of sales tax/ commercial tax, profession tax, forest, land revenue, motor vehicles tax, stamp duty and registration fees, entertainment tax and luxury tax disclosed that 11,426 observations relating to 4,035 IRs remained outstanding at the end of June 2009. Of these, 1,089 IRs containing 2,668 observations had not been settled for more than seven years. Even the initial replies which were required to be received from the heads of offices within one month from the date of issue were not received in respect of the 199 IRs issued during the year 2008-09. As a result, serious irregularities commented upon in these IRs had not been settled as of June 2009.

The departmentwise break up of IRs and audit observations pending as on 30 June 2009 is detailed in Annexure-I.

1.10 Departmental audit committee meetings

In order to expedite the settlement of outstanding audit observations contained in the IRs, departmental audit committees are constituted in all the departments of the Government. These committees are chaired by Secretaries of the concerned administrative departments and attended by the concerned officers of the State Government and officers of the PAG (C&RA), Ahmedabad/ Accountant General (Civil Audit), Rajkot.

In order to expedite the clearance of the outstanding audit observations, it is necessary that the audit committees meet regularly and ensure that final action is taken on all audit observations outstanding for more than a year, leading to their settlement. The information regarding number of audit committee meetings held, IRs and paragraphs settled during the year 2008-09 is mentioned below.

(Rupees in lakh)

Sl. no.	Name of the department	No. of audit committee meetings held	No. of IRs/paragraphs settled		Money value of paragraphs settled
			IRs	Paragraphs	
1.	Sales tax	6	--	403	19.83
2.	Land revenue	There was no response from these departments to the request for holding audit committee meeting during 2008-09.			
3.	Stamp duty and registration fees				
4.	Motor vehicles tax				
5.	Geology and Mining				
6.	Luxury tax				

1.11 Response of the departments to draft audit paragraphs

According to the hand book of instructions for speedy settlement of draft paragraphs issued by the Finance Department on 12 March 1992, results of verification of facts contained in the draft paragraphs are required to be communicated to the Accountant General (AG) within six weeks from the date of their receipt. In exceptional cases where it is not possible to furnish the final reply to the draft paragraph within the above time limit, an interim reply should be given to the AG.

Seventy three draft paragraphs (clubbed into 47 paragraphs) proposed for inclusion in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2009 (Revenue Receipts) were forwarded to the Secretaries of the respective departments between April and October 2009 through demi-official letters. The Secretaries of the respective departments did not reply to the draft paragraphs except in case of two reviews. The paragraphs of the reviews have been included in this report after incorporating the response of the secretaries of the concerned departments.

1.12 Follow up on Audit Reports - summarised position

As per instructions issued by the Finance Department on 12 March 1992, administrative departments are required to submit explanatory notes on paragraphs and reviews included in the Audit Reports (AR) within three

months of presentation of the ARs to the Legislature, without waiting for any notice or call from the Public Accounts Committee, duly indicating the action taken or proposed to be taken.

The ARs for the years 2006-07 and 2007-08 were presented to the State Legislature on 29 September 2008 and 28 July 2009 respectively. Explanatory notes in respect of paragraphs included in AR 2006-07 and 2007-08 were not yet furnished by the departments as mentioned below (November 2009).

Name of the Department	2006-07	2007-08	Total
Finance			
(Sales tax)	13	13	26
Revenue			
(Stamp duty)	06	16	22
(Land revenue)	07	05	12
Port and Transport			
(Transport)	03	02	05
Information and Broadcasting			
(Entertainment tax and Luxury tax)	01	05	06
Industries and Mines & Energy and Petrochemicals			
(Mining receipts)	02	01	03
Home			
(Police receipts)	02	---	02
Total	**34**	**42**	**76**

1.13 Compliance with the earlier Audit Reports

During the years between 2003-04 and 2007-08, the department/Government accepted audit observations involving Rs. 821.15 crore of which an amount of Rs. 45.75 crore had been recovered till 31 March 2009 as mentioned below:

(Rupees in crore)

Year of Audit Report	Total money value	Accepted money value	Recovery made
2003-04	1,076.89	151.93	13.71
2004-05	247.14	131.34	6.96
2005-06	441.53	427.76	21.94
2006-07	94.53	23.84	1.74
2007-08	304.96	86.28	1.40
Total	**2,165.05**	**821.15**	**45.75**

The recovery in respect of the accepted cases was very low (six *per cent* of the accepted money value). Besides, there has not been any further recovery in respect of the cases relating to years 2003-04 to 2006-07 and the figures of recovery in respect of these years have remained static as compared to those reported in the last Audit Report.

The Government may advise the concerned departments to take necessary steps for speedy recovery.

1.14 Results of audit

Test check of the records of sales tax, land revenue, state excise, motor vehicles tax, stamp duty and registration fees, electricity duty, other tax receipts, forest receipts and other non-tax receipts conducted during the year 2008-09 revealed under assessment/short levy/loss of revenue amounting to Rs. 6,023.46 crore in 1,418 cases. During the year, the departments accepted under assessment of Rs. 15.97 crore in 358 cases and recovered Rs. 5.45 crore in 233 cases pointed out in 2008-09 and earlier years.

This report contains 47 paragraphs including three reviews relating to non/short levy of taxes, duties, interest and penalties involving Rs. 5,743.47 crore. The departments/Government accepted audit observations involving Rs. 46.98 crore of which Rs. 2.21 crore had been recovered. These are discussed in the succeeding chapters II to VII.

CHAPTER-II: SALES TAX/VALUE ADDED TAX

2.1 Results of audit

Test check of the records in various Commercial Tax Offices conducted in audit during the year 2008-09 revealed underassessment of Rs. 5,009.24 crore in 630 cases which broadly falls under the following categories:

(Rupees in crore)

Sl. no	Category	No. of cases	Amount
1.	**Transition from Sales Tax to VAT (A review)**	1	4,775.62
2.	Irregular concessions/exemptions	66	56.82
3.	Non/short levy of tax, interest and penalty	274	40.88
4.	Incorrect rate of tax and mistake in computation	79	25.61
5.	Irregular grant of set-off	71	4.30
6.	Other irregularities	139	106.01
Total		**630**	**5,009.24**

During the year 2008-09, the department has accepted underassessment of Rs. 10.01 crore in 252 cases and recovered Rs. 4.34 crore in 144 cases of which 36 cases involving Rs. 15.24 lakh were pointed out during the year 2008-09 and rest in earlier years.

A review on **Transition from Sales Tax to VAT** involving Rs. 4,775.62 crore and few illustrative audit observations involving Rs. 238.34 crore are discussed in the succeeding paragraphs.

2.2 Transition from Sales Tax to VAT

Highlights

- The State Legislature introduced levy of additional tax under the Gujarat Value Added Tax Act, 2003 with effect from April 2008, though the policy paper on Value Added Tax specifically discouraged levy of additional tax.

(Paragraph 2.2.6.1)

- By allowing the exemption incentive holders to collect and retain the output tax, the Government had not only made the taxing statute discriminatory towards the incentive holders but also allowed undue enrichment of Rs. 6,376.58 crore to the exemption incentive holders.

(Paragraph 2.2.12.2)

- Failure to recover deferred tax from the composite incentive holders who opted exemption incentive under the GVAT Act, had resulted in non-recovery of Rs. 4,774.98 crore upto March 2009, including interest of Rs. 1,263.96 crore.

(Paragraph 2.2.12.4)

- The actual receipts could not be confirmed in absence of the system for verification of the treasury schedules with *challan*. Cross check in audit revealed misclassification of Rs. 39.20 crore in three cases. Misclassification adversely affects reports on receipts and budget estimates submitted to the State Legislature.

(Paragraph 2.2.17.2)

2.2.1 Introduction

The Union Government in Ministry of Finance had constituted an Empowered Committee of State Finance Ministers (empowered committee), to resolve the variations in the State Sales Tax Acts and to introduce state level Value Added Tax (VAT). The empowered committee, after deliberations, had issued a white paper (January 2005) defining the basic designs of state level VAT. The white paper, however, allowed the states to adopt appropriate variations in their VAT Acts, consistent with the basic design. The major designs put forth in the white paper were as follows:

- The manufacturers and traders (dealers) will be given input tax credit for purchase of inputs - including that on the capital goods - meant for use in manufacture or resale.
- Input tax credit, remaining unadjusted till the end of second year; and also on exports will be refunded to the dealers.
- The dealers will submit self assessment returns declaring their tax liability under the state level VAT. The Government will consider these self assessment returns as deemed assessment, except where the notice for the audit of books of accounts of the dealer was issued within the prescribed period.

- Audit of books of accounts of the dealer will be delinked from tax collection wing to remove any bias.
- The existing incentive schemes will be continued in a manner deemed appropriate by the Sate, after ensuring that the VAT chain is not affected.
- Taxes such as turnover tax, surcharge, additional surcharge and special additional tax would be abolished.

In Gujarat, before implementation of the VAT system, the levy of tax on sales and purchases of movable goods were governed by the Gujarat Sales Tax Act, 1969 (GST Act), the Bombay Sales of Motor Spirit Taxation Act, 1958 (MST Act), and the Gujarat Purchase Tax on Sugarcane Act, 1989 (Sugarcane Act). The State Legislature had passed the Gujarat Value Added Tax Bill in March 2003. Upon receiving assent from the President of India on 17 January 2005; the bill was enacted as the Gujarat Value Added Tax Act, 2003 (GVAT Act), thereby repealing the existing Acts on sales and purchases of movable goods. The major variations in the repealed Acts (GST Act, MST Act and Sugarcane Act) with the GVAT Act were as follows:

- The repealed Acts provided for the levy of tax at the first stage of sale/ purchase or at the last stage on selected goods. The GVAT Act provided for the levy of tax at each stage on value addition and the input tax credit on purchases to nullify the cascading effect.
- The repealed Acts provided for compulsory assessment in all cases; whereas, under the GVAT Act more reliance was placed on self assessment returns. In place of the scrutiny assessment provided in the repealed Acts, the GVAT Act allowed powers to audit the books of accounts maintained by the dealers on selective basis.
- Various forms prescribed for concessions or exemptions under the repealed Acts were abolished on introduction of the GVAT Act.

The GVAT Act, implemented with effect from 1 April 2006, contains 100 sections and three schedules. Under Section 98 of the GVAT Act, the State Government had notified (March 2006) the Gujarat Value Added Tax Rules, 2006 (GVAT Rules), prescribing the procedures to be followed while implementing the Act.

The white paper provided for basic rates of four *per cent*, 12.5 *per cent* and on special category one *per cent*. Consistent with the white paper, the rate of tax under the GVAT Act given in schedule II was four *per cent* on majority of goods, 12.5 *per cent* on goods other than those specified anywhere in the schedule and one *per cent* on precious metals.

However, the said schedule II provided tax at the rate of 60 *per cent* on country liquors, 25 *per cent* on kerosene, 20 *per cent* on lignite, 16 *per cent* on naphtha, 15 *per cent* on low sulphur heavy stock and lubricants. The rate of tax on the MST goods covered under schedule III of the GVAT Act ranged between 13 and 38 *per cent.* Further, with effect from 1 April 2008, the State had introduced an additional tax at the rate of one *per cent* in general and two and half *per cent* on selected goods, excluding declared goods.

Under the repealed Acts, every registered dealer was allotted with a separate registration number. Before implementation of the GVAT Act, these dealers were allotted (November 2005) with tax payer's identification number (TIN) containing eleven digits. The new dealers under the GVAT Act were also issued with the TIN.

The GVAT Act also provides for payment of a lump sum amount as composition in lieu of the tax. This was allowed to the dealers whose total turnover in a financial year had not exceeded Rs. 50 lakh, works contractors, traders of agricultural produces, dealers engaged in transfer of right to use of goods, hotel owners, caterers *etc.*

The transitional process from sales tax to VAT in Gujarat was reviewed by Audit, which revealed a number of deficiencies in the process and also lacunae in the GVAT Act and Rules, as discussed in the succeeding paragraphs.

2.2.2 Organisational set up

The repealed Acts as well as the GVAT Act are implemented by the Commercial Tax Department under the administrative control of the Finance Department (FD) of the State Government. The Commercial Tax Department (department) is headed by the Commissioner of Commercial Tax (Commissioner), who is assisted by a Special Commissioner and an Additional Commissioner. The department is geographically organised into seven administrative divisions, each headed by an additional/joint commissioner (Addl/JC). A division has `circles', each headed by a Deputy Commissioner (DC); there are 25 circles in the State. A circle has assessment units each headed by Assistant Commissioner/Commercial Tax Officer (AC/CTO); there are 103 units in the State. In addition, there are 10 permanent, 16 seasonal and 38 temporary check posts headed by AC/CTO. Besides, there are staff positions in the department's head office for administration, audit, legal, appeal, enforcement, e-governance, internal inspection *etc*.., headed by Addl/JC or DC.

2.2.3 Audit objectives

The review was aimed to check the status of system after being in place for three years and to ascertain whether:

- planning for implementation and the transition from the sales tax act to VAT Act was effected timely and efficiently;
- organisational structure was adequate and effective;
- the provisions of the VAT Act and Rules made thereunder, were adequate and enforced properly to safeguard the revenue of the State; and
- an internal control mechanism existed in the department and was adequate and effective to prevent leakage of revenue.

2.2.4 Scope and methodology of audit

During the review, audit verified documents related to the planning and formulation of the GVAT Act. Audit selected various branches[4] in the head office of the department, one administrative division viz., Division-1, Ahmedabad and twelve units[5] under the said division, so as to analyse implementation of the GVAT Act. The review was conducted during the period between 15 May and 20 July 2009; and covered documents for the period from 2004-05 to 2008-09. Audit criteria considered were the GVAT Act, repealed Acts, notifications/circulars/orders issued under the said Acts and judicial pronouncements.

2.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the cooperation of the FD and the department in providing information and records for audit. The entry conference with the department was held on 8 May 2009 and with the FD on 11 May 2009, in which the scope and methodology of audit was discussed. The review was sent to the Government/department in August 2009 for their response. The audit findings and the recommendations were discussed in an exit conference held in December 2009. Representative of the FD and the department attended the meeting. The replies of the FD and the department furnished during the exit conference and at other points of time have been appropriately incorporated in respective paragraphs of the review.

Audit findings

2.2.6 Trend of revenue

The comparative position of pre-VAT sales tax collection (2003-04 to 2005-06), post-VAT tax collection (2006-07 to 2008-09) and growth rate of tax collection in each of the year is furnished below:

Pre-VAT and post-VAT tax analysis

(Rupees in crore)

Pre-VAT				Post-VAT			
Period	**Budget estimates**	**Actual receipts**	**Percentage variation compared to previous year**	**Period**	**Budget estimates**	**Actual receipts**	**Percentage variation compared to previous year**
2003-04	6,500.00	7,169.58	14.67	2006-07	10,900.00	12,817.46	21.36
2004-05	7,902.00	8,308.62	15.89	2007-08	15,080.00	15,104.54	17.84
2005-06	9,000.00	10,561.34	27.11	2008-09	17,023.00	16,810.63	11.30

Source: CAG's Audit Reports (Revenue Receipts) – Government of Gujarat and information furnished by the Commercial Tax Department.

After implementation of the GVAT Act, though the receipts increased, in absolute terms, the percent growth rate of receipt was constantly declining.

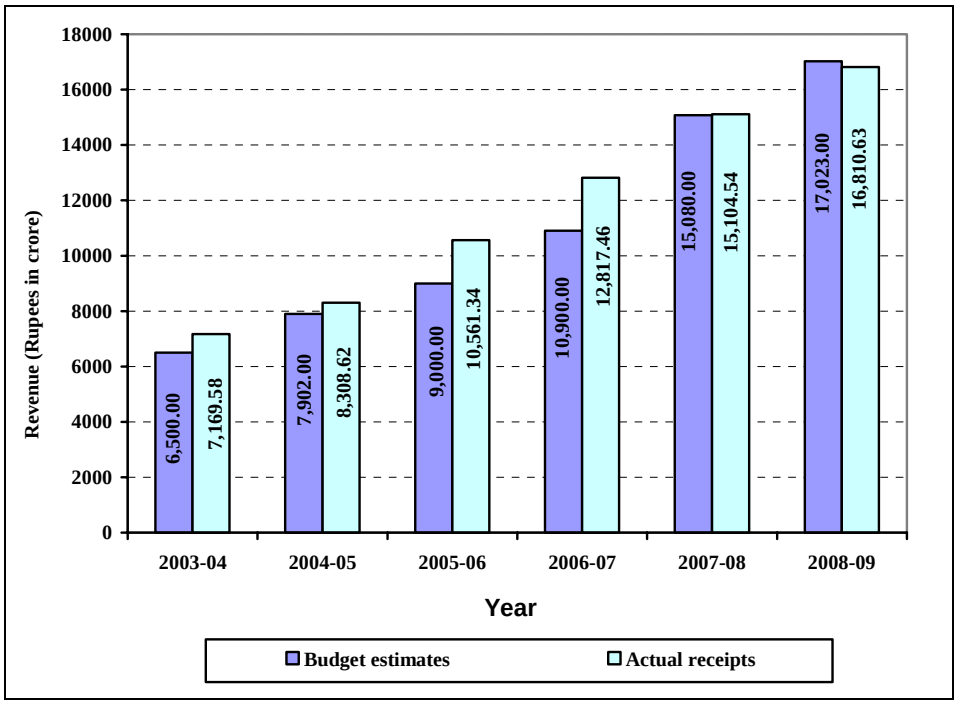
[4] Administration, Appeal, Audit, e-Governance, Enforcement, Internal Inspection, and Legal.

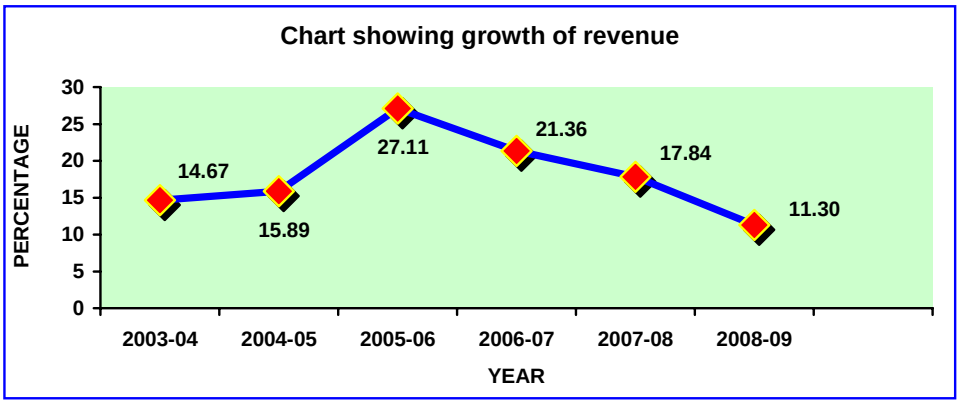
[5] Unit-1 to 11, Ahmedabad and Unit-Viramgam.

The major reason for the same was reduction in the rate of the central sales tax (CST) from four *per cent* up to 2006-07 to three *per cent* in 2007-08 and two *per cent* in 2008-09.

The Union Government had introduced a scheme for compensating the revenue loss due to reduction of rate of CST. Under the scheme the State Government had claimed Rs. 766.57 crore and Rs. 1,022.40 crore for the year 2007-08 and 2008-09 respectively from the Union Government.

The following chart gives the comparative picture on the budget estimates and actual collection of tax during the period between 2003-04 and 2008-09.





The table and chart above read with the audit observations in the following paragraphs revealed that the percentage growth after implementation of the GVAT Act did not reach the desired level though the white paper envisaged higher revenue growth after implementation of VAT. Audit noticed the following deficiencies in augmentation of tax under the GVAT Act.

2.2.6.1 The white paper issued by the empowered committee *vide* paragraph 2.16 specifically discouraged levies of other taxes viz., turnover tax, surcharge, additional surcharge and special additional tax under VAT system. This was suggested to avoid multiple types of taxes and to have more simplified tax structure under the VAT. However, the State Government introduced the levy of additional tax at the rate of one *per cent* in general and two and half *per cent* on selected goods, (excluding on declared goods) under the GVAT Act with effect from April 2008 so as to raise additional financial resources. **The additional tax introduced by the State was in contravention to the basic concept of the state level VAT**.

The Government stated (December 2009) that the white paper has no sanctity after enactment of the Vat and the State VAT Act has provision for the levy of an additional tax.

The white paper envisaged that any deviation from the basic concept would require approval of the EPC. The reply was silent about the above aspect.

2.2.6.2 Section 9 of the GVAT Act prescribed for the levy of purchase tax on the turnover of the purchases of taxable goods made from a person who is not a registered dealer. Section 2(32) of the Act defined the word turnover of purchases, which did not cover the price paid by the dealer for transfer of right to the use of goods. **Therefore, purchase tax could not be levied on the price payable by the dealer to a person who is not a registered dealer for transfer of right to use of goods**. Insufficient provision thus resulted in loss of potential revenue.

The Government stated (December 2009) that the definition of the 'purchase price' under the VAT Act as well as under the repealed Act does not include such purchases.

The government may consider inserting 'transfer of rights to use of goods' under the definition of purchase as is prevalent in some other states like Maharashtra, Himachal Pradesh *etc*., in the interest of the revenue.

2.2.6.3 Under Section 69(1) of the GVAT Act, where a vehicle coming from any place outside the State is bound for any other place outside the State, the driver or person in-charge of the vehicle should obtain a transit pass for such vehicle from the entry check post and deliver it at the exit check post. As per Section 69(2), if the driver or person in charge of the vehicle fails to deliver such transit pass at the exit check post, it shall be presumed that the goods contained in the vehicle are sold within the State and he shall be liable to pay the tax at the applicable rates. Section 69 of the GVAT Act read with Rule 52 of GVAT Rules provides for levy of penalty up to 150 *per cent* of the tax. In the system devised for watching transportation of goods through the state of Gujarat, the following deficiencies were noticed:

- Non-surrendering of transit pass at the exit check post could be identified by the entry check post only after considerable lapse of time, by which, the whereabouts of the goods could not be ascertained.

- The provisions of the GVAT Act could not be invoked as the seller, driver, person in charge of the vehicle, purchaser *etc*., are located outside the state of Gujarat.

Thus, complexities in the implementation and deficiencies in the provisions of the GVAT Act made the system of issue and surrender of transit pass ineffective and it could not generate any revenue.

The Government stated (December 2009) that at the time of issue of the transit pass full details of the transporters including name and address are collected. If the vehicle does not produce the transit pass at the exit check post, follow up could be made based on the details. However, the department could not furnish information about the amount recovered during the period between April 2006 and March 2009 from the defaulting transporters.

2.2.6.4 Under the GVAT Act output tax is leviable on sales including deemed sale. If the sales turnover is related to job work, no tax is leviable. There could be instances where the dealer uses his own raw material while executing job work for others. Similarly, goods sent for job work may not be received back by the dealer. In such cases, either output tax is leviable or ITC is required to be disallowed. **However, the department had not prescribed any system to watch job work activities.**

The Government stated (December 2009) that for the inter-State movement of goods, form `F' is prescribed under the CST Act whereas for the local movement of goods, no form is required. However, the Government had not justified absence of the control mechanism in local movement of goods for the job work.

2.2.6.5 The department had not finalised (July 2009) the issues related to sale price of goods sold through `company owned company operated' pumps of petroleum companies and gas supplied through pipeline of gas companies, even after the lapse of three years of the implementation of the GVAT Act.

The Government stated (December 2009) that the issue would be looked into. Further reply is awaited (December 2009).

2.2.6.6 Under the CST Act, various declarations are prescribed for allowing concessional rate of tax or exemption from the levy of tax on purchases. These statutory declarations were issued by the department to the dealers, based on requisitions from them. **However, details of actual utilisation of these forms are obtained from the dealers at the time of requisition for new declarations.**

The Government stated (December 2009) that with effect from 1 July 2008, the previous system was discontinued and the declarations were issued only after capturing utilisation details in the VATIS. However, even after introduction of the new system, the department has not restricted the use of declarations issued in the previous system.

The department should obtain the unutilised declarations lying with the dealers and notify them as cancelled.

2.2.6.7 Due to initial organisational difficulties, the empowered committee decided not to levy tax on additional excise duty items viz., sugar, textile and

tobacco. As per paragraph 2.19 of the white paper, the decision for the levy of VAT on these items was to be reviewed after one year. However, further clarification on the issue has not been received (November 2009).

The Government stated (December 2009) that the VAT on Tobacco has been imposed and for other items consultation is under process with Government of India. Further reply is awaited (December 2009).

The Government may consider initiating action to augment revenue through available and untapped resources instead of the levy of additional tax. Amendment to the provisions of the GVAT Act related to the turnover of purchases and transit pass could generate additional revenue to the State. Looking at the substantial share of revenue generated from petroleum and gas companies, Government needs to take immediate action on finalisation of the sale price.

2.2.7 Preparedness and transitional process

The GVAT bill was presented before the State Legislature after considering the suggestions received from public such as the Confederation of Indian Industries, Chamber of Commerce *etc.* The State Legislature had passed the GVAT Bill on 26 March 2003 and the same was sent to the Union Government for obtaining assent to the bill from the President of India. Assent to the GVAT Act was received from the President of India on 17 January 2005 and the Act was published in official gazette on 25 January 2005. In the meantime, the empowered committee had issued the white paper on state level VAT on 17 January 2005. Keeping in view the common points of convergence and the white paper, the State had amended the GVAT Act at times.

2.2.7.1 The State felt that the state level VAT should be simultaneously implemented by all the states of the Union so as to avoid problems in implementation as well as to the trade and industry. Hence, the implementation of the GVAT Act was kept in abeyance by the State. **Though majority of the states had implemented VAT from April 2005, in Gujarat the GVAT Act was implemented with a delay of one year, i.e. from 1 April 2006.**

2.2.7.2 Implementation of the GVAT Act was assigned to the department, which made concentrated efforts to create awareness of the new Act among the stake holders *viz.*, the dealers. They had issued booklets outlining the GVAT law to all dealers. An accounting tool covering the requirements of GVAT law was also developed and distributed free of cost to the dealers on requisition.

2.2.7.3 The total staff strength of the department and vacancy position for the period from 2004-05 to 2008-09 is tabulated below.

Vacancy position in CTD

Period	Sanctioned strength	Men-in position	Vacancy position	Percentage of column (4) to column (2)	Vacancy position of ACCT/CTO/ CTI/clerks	Percentage of column (6) to column (4)
1	**2**	**3**	**4**	**5**	**6**	**7**
2004-05	5,004	4,123	881	17.61	759	86.15

2005-06	4,968	3,923	1,045	21.03	910	87.08
2006-07	4,971	3,963	1,008	20.28	818	81.15
2007-08	4,972	3,899	1,073	21.58	880	82.01
2008-09	4,970	3,806	1,164	23.42	945	81.19

Source: Commercial Tax Department

The vacancy position increased from 881 in 2004-05 to 1,164 in 2008-09. **Further, maximum vacancies were noticed in the cadre of ACCT, CTO, CTI and clerks, who are crucial in implementation of the Acts at the unit level.**

The Government replied (December 2009) that action has been initiated for filling up the vacancies in higher cadres through promotion. It was also stated that in the cadre of CTI and clerks out of 1,575 and 1,231 posts, 1,175 and 1,023 posts respectively were filled up. Audit verification of staff position as on 1 December 2009 revealed that the total vacancy position had increased to 1,177 and that in crucial cadre of ACCT, CTO, CTI and Clerks had increased to 963.

The Government needs to devolve a system to fill up the vacancies on regular interval either through promotion or recruitment.

2.2.7.4 The field level implementation of repealed Acts and the GVAT Act are carried out by the units. On implementation of the GVAT Act, the work load of units had reduced due to the abolition of concessional forms prescribed under the repealed Acts and provision for self assessment[6] (deemed assessment) in majority of the cases. These necessitated redefining the responsibilities of various authorities under the department. However, at the same time, the GVAT Act envisaged the levy of tax as well as extending input tax credit at each stage of value addition. This required timely documentation and scrutiny of all periodical returns submitted by the dealers, so as to ensure its correctness. Apart from this, the units are responsible for completing pending assessments and effecting recoveries under the repealed Acts. Thus, after implementation of the GVAT Act, the work load of units had increased substantially. In this background, e-governance had become extremely important for documentation and revenue analysis under the GVAT system. These necessitated redefining the responsibilities of various authorities under the department.

The department proposed (February 2006) its restructuring on account of implementation of the GVAT Act, which was not approved by the State Government. **Audit scrutiny revealed that the General Administration Department of Government of Gujarat had raised (March 2006) certain queries on the proposal, which were not complied with by the department (June 2009).** Further, the proposal forwarded was deficient as it failed to properly address the issues related to documentation, return scrutiny, revenue analysis, own technical staff for e-governance *etc*.

[6] As per Section 33 of GVAT Act, where a dealer had furnished all the self assessed returns by the date prescribed, paid the amount of tax according to such returns and the Commissioner is satisfied that the returns furnished are correct and complete; and notice for audit assessment had not been served within the prescribed period, such dealer shall be deemed to have been assessed for that year.

2.2.7.5 In the absence of the administrative restructuring, the department continued with the existing system. Under the system, ACCT was the administrative head of the unit. He was responsible for issuing new registration and had overall control of the dealers paying annual tax of rupees two lakh and above. The criteria adopted to allot work among CTOs of the units were based on registration number. The overall control of the registered dealers under the unit, except those falling under the jurisdiction of the ACCT, was divided into clusters and distributed among the CTOs.

Audit scrutiny of 12 units under Division-1, Ahmedabad revealed that the system deployed was not justifiable. In the existing system, the number of dealers under the control of each ACCT as per management information system (MIS) report for March 2009 ranged between 110 and 426; whereas the number of dealers allotted to each CTO ranged between 237 and 2,075. Distribution of live dealers among the CTOs within the unit was also uneven, as in unit-1, Ahmedabad, CTO-1 was given the control of 237 live dealers; whereas CTO-3 was to manage 2,075 live dealers. Further, in four[7] units, four CTOs were having control of 'not-came dealers'[8] only. Since, the assessments of such dealers were already completed and whereabouts of these dealers were not known, the work allotted to the CTOs was insignificant.

The Government stated (December 2009) that the job charts redefining the duties of CTIs and Clerks were issued and the duties of ACs and CTOs have been rearranged since then. It was also stated that other administrative reforms were in the process of initiation. **Audit scrutiny revealed that the job charts redefining the duties of CTIs and Clerks working in units was issued in July 2009 and that of administrative headquarter sections were yet to be issued (December 2009).** Further, specific reply to uneven work distribution among the officials of the same cadre was not furnished.

2.2.7.6 Integrated application software called Value Added Tax Information System (VATIS) was developed by Tata Consultancy Services Limited (TCS) to computerise the entire operations of the department. The project aimed to achieve a set of objectives, such as, improving the quality of the services to the VAT dealers, enabling better tax administration to identify the tax defaulters speedily, taking effective steps for recovery of tax dues, enabling the selection of cases for detailed audit based on risk parameters, monitoring the movement of goods vehicles at inter-state borders as well as within the State, exploiting the power of networking and advancement towards an efficient tax administration, leaving little scope for tax evasion.

Under the VATIS, 20 modules were proposed to be developed of which 14 modules had been fully implemented till July 2009. The department had effectively implemented (July 2008) the system to issue declarations under the CST Act through VATIS and also encouraged the registered dealers to file their periodical returns under GVAT Act through VATIS (e-return). The

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7 Unit-1 to 4, Ahmedabad.

8 CTD had allotted 10 digit computerised registration number to the dealers in 2002; against the existing eight digit registration number. The registered dealers, who had not applied for new computerised registration number, were identified as `Not came dealers'; and the pending assessment and recovery from such dealers were watched separately by each jurisdictional unit.

number of e-returns filed increased from 9,820 in 2006-07 to 4,40,521 in 2008-09. Under e-governance, Audit examined the VATIS and its requirements under the GVAT Act. Major deficiencies noticed are given below:

- The application software did not insist the user to change their initial default password compulsorily, though it was required as a prudent security policy.

The Government stated (December 2009) that several users have changed the default passwords. However, fact remains that the system did not insist for compulsory change of the default password.

- Till January 2009, the entry of detailed data in VATIS was done by the outsourced data entry operators. Due to the voluminous nature of data, responsible centres could not assure the correctness of the data entered in the system. Audit scrutiny of the online data and the physical returns revealed inconsistency in the data available in VATIS and that on physical documents. Besides, there was lack of monitoring by the department of the data entered into the system by the outsourced staff. Thus, **the department could not solely rely on the data available in the system for decision making, which rendered the entire process of input of data by outsourced staff and the expenditure incurred thereon futile and infructuous.**

The Government stated (December 2009) that full fledged data entry tender has been finalised with explicitly defined quality standards and penalty clauses. However, the fact remains that the existing data of more than three years is unreliable.

- The department obtained specific MIS reports from the unit offices on monthly basis. Though the relevant data were available in the VATIS, these MIS reports were prepared by the units manually due to lack of output controls.

The Government replied (December 2009) that periodical meetings were held based on the reports generated through VATIS. However, justification for continuing the system of obtaining manual reports from the units was not furnished.

- The VATIS have provision to generate the reports as per the existing manual registers limited to registration and return. Similar reports on the other modules were yet (October 2009) to be incorporated.

The Government stated (December 2009) that the provisions to incorporate other registers were being done gradually. However, reasons for not defining the same in user requirement specifications (URS) at the time of development of the software remained unexplained.

- The module on audit was yet (October 2009) to be developed; modules on enforcement and recovery were being tested. The module on check posts was implemented partially.

The Government stated (December 2009) that the procedure to develop Audit module had been started, enforcement as well as check posts modules had been implemented and recovery module was at the final testing stage.

- Due to frequent interruptions in network connectivity, the field units could not utilise the system to its optimum, and the main server could not update its centralised data timely from the local servers.

The Government stated (December 2009) that efforts were being continuously made for proper connectivity and the system had stabilised to a large extent now. However, the system could not be used optimally due to the delay in the corrective measures.

- The data management under the VATIS was done by the TCS and the department had outsourced the management of the system at different server points to junior programmers. **The department had not implemented any long term policy to have its own IT professionals for successful management of the online system.**

The Government stated (December 2009) that a study on VATIS was underway and appropriate decision would be taken based on the study report.

- Though the VATIS was implemented from April 2006, the manual system of maintenance of controlling registers could not be discontinued.

The Government stated (December 2009) that efforts were being made to discontinue the manual registers in a phased manner.

- Though the computerisation was taken up in 2002, i.e. well before implementation of the GVAT Act, **the department did not have a defined hardware policy.** It was reported (July 2009) that the proposal to appoint an agency for the purpose was being processed.

The Government stated (December 2009) that the IT committee had already appointed an agency for review of the progress of computerisation of the Department.

- Rule 20(5) of GVAT Rules stipulates that the registered dealer, whose total turnover exceeds Rupees one crore shall furnish e-return within three months. However, the department could not furnish the information regarding number of dealers required to file e-return.

The delayed action to identify the requirements affected the implementation of the VATIS and resulted in non-utilisation of the system to its optimum level. The Department should analyse its IT needs in advance and timely pursue the requirements for successful implementation of e-governance.

2.2.7.7 Successful implementation of any Act requires a defined system in place and proper training of the staff. The duties and functions of the implementing authorities are required to be codified in the departmental manuals. **Though the department had imparted training on the GVAT Act to all the staff, they had not prepared any manual for the guidance of its officials.**

The Government stated (December 2009) that after introduction of VAT, the activities like registration, returns, forms, assessments *etc.,* were computerised for which user manual existed. However, the Government should initiate action to prepare departmental manual containing procedures to be followed in day-to-day functioning of the various authorities.

2.2.7.8 Early completion of pending assessments under the repealed Acts was necessary to ensure that the dealers and the Government would be in a position to spare more time and energy for the implementation of the GVAT Act. To achieve this, the Government had introduced simple assessment scheme in March 2007, under which the assessing officers (AOs) had cleared majority of the assessments in which the dealers had paid tax up to rupees five lakh. However, the MIS report of Division-1, Ahmedabad for March 2009 revealed that there were 191 assessments of the repealed Acts which were pending with the various AOs of the division.

The Government stated (December 2009) that, these cases were pending due to litigation.

2.2.7.9 The State Government had introduced the Sales Tax Amnesty scheme in 2006 and 2007 for speedy recovery of the outstanding taxes. The scheme provided for waiver of interest and penalty, if the entire outstanding tax was paid by the dealer. The MIS report of Division-1, Ahmedabad for March 2009 revealed that Rs. 951.75 crore was outstanding for recovery in 10,125 cases falling under the division. Of this, Rs. 431.78 crore in 5,836 cases was classified as non-recoverable. **Audit analysis revealed that the outstanding tax of Rs. 431.78 crore was recoverable from 'not-came dealers', whose whereabouts were not known.**

The Government stated (December 2009) that a drive had been undertaken to recover the outstanding dues by taking various steps, including bank attachment, stock attachment, third party recovery, auction of property *etc*. However, the special drive initiated now may not be fruitful as the whereabouts of these dealers were not known.

The Government may consider restructuring of the department to be in consonance with the changed scenario. On e-governance, the Government may evolve long term policies on security, staff, hardware as well as connectivity. Also, the department may analyse the dues classified as non-recoverable and initiate suitable action.

2.2.8 Registration

The number of registered dealers during the period from 2004-05 to 2008-09 vis-à-vis receipt per dealer is tabulated below:

Number of registered dealers and receipts per dealer

Period	Number of dealers	Percentage increase (+)/decrease(-) of dealers with reference to previous year	Actual receipts (Rupees in crore)	Receipts per dealer (Rupees in lakh)
2004-05	2,42,753	(-) 24.09	8,308.62	3.42
2005-06	3,55,818	(+) 46.58	10,561.34	2.97
2006-07	3,68,855	(+) 3.66	12,817.46	3.47
2007-08	3,66,676	(-) 0.59	15,104.54	4.12
2008-09	3,66,747	(+) 0.01	16,810.63	4.58

Source: Commercial Tax Department

It could be seen from above that after implementation of the GVAT Act, there was an increase in VAT receipts and receipts per dealer. However, the number of registered dealers remained almost static.

The department had an information technology system developed by National Informatics Centre (NIC) under the repealed Acts. The registration data of the dealers under the repealed Acts were maintained in the said system. On implementation of the VATIS under the GVAT Act, the existing registration data in the NIC module was migrated to the VATIS, thereby confirming availability of the database of the registered dealers. Section 21 of the GVAT Act provides for registration of the dealers whose total turnover exceeds the threshold[9] of turnover. Section 22 of the GVAT Act provides that a dealer having a fixed regular place of business in the State and whose total turnover may not exceed the threshold limits could obtain voluntary registration. The department updated the registration data in the VATIS on day-to-day basis, while issuing new registration and cancelling or suspending the existing one.

2.2.8.1 At the time of introduction of the GVAT Act, the department had undertaken a drive to identify dealers who were liable to be registered under the GVAT Act. **However, it had not continued the system but limited the activity to specific complaints received.**

The Government stated (December 2009) that similar drive to identify such dealers would be carried out as and when needed.

2.2.8.2 Section 3(2) of the GVAT Act stipulates that a casual dealer or an auctioneer shall be liable to be registered if his taxable turnover of sales exceeds Rs.10,000. **However, the department had not prescribed a system to grant registration to casual dealers or auctioneers; hence the control mechanism and monitoring of tax collection from the said dealers could not be confirmed.**

The Government stated (December 2009) that the casual dealers and auctioneers were monitored by the enforcement wing and tax was collected from them as and when the occasion arose. The reply is not tenable. The taxable turnover limit in such cases necessitates deployment of more

[9] Under Section 3 of GVAT Act, threshold of turnover means total turnover exceeding rupees five lakh and taxable turnover exceeding Rs.10,000 in a year.

manpower to identify such dealers. The duty of enforcement wing is to keep a watch on evasion of tax and the casual dealers are spread all over the State.

2.2.8.3 Rule 19(6) of the GVAT Rules provides that a dealer not having fixed or regular place of business in the State but who has been registered by the CTO, Ahmedabad shall furnish periodical returns to the CTO, Ahmedabad. Such dealers are categorised as Non-Localised Dealers (NLD); though the GVAT Act did not define the word NLD. **However, the department is geographically divided into seven divisions for effective implementation of the Act and commercial activities of the NLDs are not limited to Ahmedabad.**

The Government stated (December 2009) that the number of dealers obtaining NLD registration was limited and for the sake of uniformity and monitoring, such dealers were kept under one unit. The reply is not tenable. In the absence of definition for NLDs in the Act, they should be considered at par with the casual dealers.

2.2.8.4 The registration number under the GVAT Act could be cancelled by the department for the failure of the dealer to adhere to the provisions of the Act. In such cases, if the dealer continued his business even after cancellation of his registration, the department initiated action only on receipt of specific complaints. **The department had not devised any system to identify such dealers to protect Government revenue.**

The Government stated (December 2009) that periodic survey and discrete enquiry was carried out to identify the unregistered dealers. Also, the VAT structure discouraged non-registration as ITC would not be available to other registered dealers on such transaction. The reply is untenable as the proviso to Section 11 allows grant of ITC on such purchases effected from unregistered dealers.

2.2.8.5 Section 23 of the GVAT Act stipulates that every dealer registered under the repealed Acts or the CST Act is deemed to be registered under Section 21 with effect from 1 April 2006. The repealed Acts were not specific about obtaining security from the dealers, and it was obtained by the controlling authorities at their own discretion. Absence of such provision to obtain security from the existing registered dealers of repealed Acts was discriminatory as all dealers applying for new registration under the GVAT Act were required to submit security.

The Government stated that it did not require security from the existing dealers as they were proven dealers.

However, by restricting the ambit of security applicable to new registration only, the department has given rise to anomalous situation of a distinction being created between the new and old dealers. Further, in the event of failure to pay the tax, the department has nothing to fall back upon. Had the department obtained the same amount of security of Rs. 10,000 from the existing 3,55,818 dealers registered under the repealed Act, it would have received Rs. 355.82 crore.

The Government may consider reviewing sufficiency of the documents for securing government revenue and prescribing a system to identify the casual dealers and dealers who continued business without registration.

The NLDs may be considered at par with the casual dealers defined under Section 2(10)(b) and the control over such dealers may be given to the jurisdictional officer of the respective place of business for effective revenue generation.

2.2.9 Returns

Section 29 of the GVAT Act provides for furnishing of correct and complete periodical returns by the registered dealers. Rule 19 of the GVAT Rules prescribes the procedure and periodicity of returns to be furnished under the Act. Sub-rule (2) of Rule 19 stipulates that every dealer other than those covered under sub-rule 3, 3A, 3B and 3C shall furnish monthly returns. The dealers covered under sub-rule 3, 3A and 3B are liable to furnish quarterly returns. The dealers covered under sub-rule 3C are required to furnish half yearly returns. All the dealers are liable to furnish annual returns.

2.2.9.1 Under Rule 19 of the GVAT Rules, the dealers who are not engaged in manufacturing activity as well as activities covered under the CST Act are required to furnish the quarterly returns. The dealers whose tax liability is less than Rs. 60,000 are also required to furnish the quarterly return. If any dealer effects transactions not satisfying the stipulations, he is liable to furnish the monthly returns from that period. Further, the co-operative societies engaged in manufacturing of sugar or khandsari are required to file half yearly returns. Audit was not informed about the logic behind such categorisation. **By categorising the dealers under different sub-rules and providing varying periodicity for furnishing returns, the GVAT Rules had made VAT implementation more inconvenient.**

The Government stated (December 2009) that the periodicity of submission of returns was prescribed after analysis of needs and it was not practical to have uniformity in periodicity. The reply is not tenable as under the present system the dealers will have difficulties in filing of return as the periodicity changes with reference to the quantum of tax payable. Also, the complexity necessitates changes in categorisation of the dealers in VATIS with reference to return submission.

2.2.9.2 Paragraphs 2.11 and 2.12 of the white paper highlighted the importance of periodical returns under the VAT. The policy paper stated that the VAT liability would be self assessed by the dealers themselves in their returns. There should not be compulsory assessment at the end of each year as existed in the repealed Acts. Further, it was specified that every return furnished by the dealers was to be scrutinised expeditiously within the prescribed time limit from the date of filing the return so as to safeguard Government revenue. The concept paper suggested the inclusion of a provision for self assessment in the state VAT Acts. Section 32 and 33 of the GVAT Act provide for return scrutiny and self assessment, respectively.

The department had not prescribed any time limit for scrutiny of the returns. Any register for watching the progress of such scrutiny had also not been prescribed. The controlling officers carried out return scrutiny of only five dealers per month selected from top 100 tax payers. The following table, related to the 12 units falling under Division-1, Ahmedabad, shows estimated number of returns which were to be scrutinised as per the policy

paper and the number of returns selected for scrutiny under the existing system.

Analysis of return scrutiny

Period	Number of registered dealers at the beginning of the year		Number of returns receivable		Total returns to be scruti-nised	Estimated number of returns scrutinised	Percen-tage of returns selected for scrutiny
	M	Q	M	Q			
1	2[10]	3[11]	4	5	6	7	8
2006-07	8,233	38,059	98,796	1,52,236	2,51,032	3,660	1.46
2007-08	7,870	42,553	94,440	1,70,212	2,64,652	3,660	1.38
2008-09	10,010	38,995	1,20,120	1,55,980	2,76,100	3,660	1.33

M = Monthly; Q = Quarterly

Thus, under the present system of return scrutiny, the number of returns selected are negligible as compared with the total number of returns received.

Further, as the top tax payers are covered under audit assessment, limiting the return scrutiny to such dealers only, left the dealers covered under self assessment from return scrutiny.

The Government stated (December 2009) that the activity was also monitored during monthly review meetings. However, specific reply to the audit observation was awaited.

The department should fix a time limit for expeditious scrutiny of all the periodical returns and should introduce control registers to watch the progress.

2.2.9.3 Under the CST Act, declarations and certificates viz., Form 'C', 'E-I' and 'E-II', 'F' and 'H', are prescribed for concessional or nil rate of tax on inter-state trade and commerce as well as exports. Rule 12(7) of the CST (Registration and Turnover) Rules, 1957 provides that the dealers shall furnish the declarations and certificates to the assessing authority within three months after completion of the relevant tax period.

Audit noticed that the department had not obtained the supporting declarations and certificates from the dealers within the prescribed period. The department relaxed the prescribed period for submitting the declarations and certificates by issue of circulars in February 2009 and June 2009. Through the circulars, the department directed the dealers to submit a list of declarations and certificates available with them for the transactions of 2006-07 and 2007-08, till 16 March 2009 and 30 June 2009, respectively. **Apart from the delayed action, these circulars were issued in contravention of the CST (R&T) Rules as amended from October 2005.**

The Government stated (December 2009) that the Department had resolved the problems of amendments in CST Rules by issuing public circulars

[10] Number of dealers required to submit monthly returns.

[11] Number of dealers required to submit quarterly returns.

extending the period to produce the declarations with returns. It was also stated that there were difficulties experienced by the dealers in obtaining statutory forms from other States and list of forms were insisted upon to avoid bulk of documents. The reply is not tenable as the amendment in CST Rules was made intentionally with a view to protect Government revenue and periodical submission of the declarations was mandatory.

The Government may consider keeping uniformity in submission of the returns from all the dealers, which would facilitate better control over submission of the returns. The department may redefine the system on scrutiny of the returns and submission of declarations under the CST Act.

2.2.10 Tax audit

Section 33 of the GVAT Act read with Rule 30 of the GVAT Rules provides that where the dealers had not received notice for audit assessment within a period of two years from the closure of the year for which the tax is assessable, such dealers shall be deemed to have been assessed for that year based on their annual returns (deemed assessment). However, the Section authorised the Commissioner to finalise such cases under audit assessment[12] within three years of the closure of the year for which the tax is assessable. Thus, the dealers who had not received notice for audit assessment for the period of 2006-07 before 31 March 2009 were deemed to have been assessed for that period by the end of March 2009.

2.2.10.1 None of the 12 units selected for review had furnished data on the number of deemed assessments for the period 2006-07 as on March 2009. Eight units[13] intimated, the total number of live dealers of that period under them as 29,983. Remaining four units[14] had not furnished (November 2009) the information called for (June 2009).

2.2.10.2 Audit noticed that, in the cases where notice for audit assessment was not issued, scrutiny of the self assessment returns was in progress with the controlling officers based on the instructions (April 2009) from the Commissioner. **Delayed action to scrutinise the self assessment returns of 2006-07 may result in delay in realisation of revenue due for that period and the scrutiny of annual returns of subsequent periods.**

The Government stated (December 2009) that the time limit for issuing notices for audit assessment for the year 2006-07 would end on 31.3.2010 and cases not selected for audit assessment could be given the benefit of self assessment thereafter. The reply is not tenable. The notices for audit assessments for the period 2006-07 were to be issued by 31.3.2009. Further, the reply was silent about expeditious completion of the scrutiny of returns.

2.2.10.3 Section 34 of the GVAT Act provides for finalisation of audit assessments after scrutiny of the books of accounts of the dealers. Out of the selected 12 units, six units[15] reported the total number of live dealers for the year 2006-07 as 23,077. Of this, 7,684 cases (33 *per cent)* were selected for

[12] Audit assessment means, assessments finalised by verifying the records maintained by the dealer.

[13] Unit-1, 2, 3, 4, 8, 10, 11 of Ahmedabad and unit-Viramgam.

[14] Unit-5, 6, 7 and 9 of Ahmedabad.

[15] Unit-2, 3, 4, 10, 11 of Ahmedabad and unit-Viramgam.

audit assessments including 259 cases finalised up to 31 March 2009. Similar information related to six units[16] was not furnished (November 2009).

2.2.10.4 The department had not furnished information on the total number of cases, number of cases selected for audit assessments, number of cases assessed under scrutiny assessment of the repealed acts and details of criteria adopted for the selection of cases for audit assessment. In absence of these, the data on audit assessment could not be compared with scrutiny assessment of the repealed Acts. Also, the sufficiency of criteria adopted for the selection of audit assessment could not be verified.

The information furnished (December 2009) by the Government revealed that in 1,32,622 cases pertaining 2006-07 notices for audit or provision assessments were issued under GVAT Act. However, in absence of similar information on the repealed Acts, the same could not be compared with scrutiny assessment of the repealed Acts.

2.2.10.5 The change in taxation law required the issue of guidelines to the AOs regarding records to be kept in the assessment files. **The department had not issued any guidelines in the matter (November 2009) and the AOs followed the system that prevailed under the repealed acts.**

The Government stated (December 2009) that the audit assessment was to be carried out through the computer system, which contained check list and hearing details for the assessments. Also, the system was provided with hyperlinks for cross checks and way bills. However, the reply was silent about the records to be kept in the assessment files.

The inability of units reveals absence of internal control and monitoring mechanism. The department may initiate action to analyse such areas to evolve the required system. Also, the department may stipulate period for expeditious completion of the return scrutiny.

2.2.11 Input tax credit

The white paper in paragraph 2.2 states that the essence of VAT is in providing set off of the tax paid earlier. This set off is given effect through the concept of the input tax credit. The input tax credit (ITC) means setting off the amount of input tax paid by a registered dealer against the amount of his output tax. Section 11 of the GVAT Act read with Rule 15 of the GVAT Rules, provides for the ITC and the method to be adopted for allowing the ITC. During analysis of the provisions given for granting the ITC, the following deficiencies were noticed.

2.2.11.1 Section 11(3) of the GVAT Act prescribes grant of the ITC involved in the purchase of capital goods. Rule 15(2) of GVAT Rules stipulates that a registered dealer could claim ITC in a tax period in which he records the purchases in his books of accounts. **However, the ITC on capital goods neither relate to its installation nor its utilisation in manufacture.** Further, the stipulations did not contain any condition for disallowing the ITC on capital goods, if the dealer had claimed depreciation on the tax element under Section 32 of the Income Tax Act, 1961.

[16] Unit-1, 5, 6, 7, 8 and 9 of Ahmedabad.

2.2.11.2 Under the GVAT Act, utilisation of the ITC is not related to actual utilisation of the goods. The dealer can utilise the ITC against his liability of output tax, even if the goods are lying in stock. Rule 35 of GVAT Rules provides for remission of tax payable in respect of any period, if such dealer had suffered financially on account of natural calamity or extra ordinary circumstances beyond his control. **Lack of stipulation in Rule 35 to correlate the ITC with its utilisation allows unintended benefit to such dealers.** Also, whether the ITC allowed on capital goods is required to be withdrawn proportionately in such cases has not been clarified (November 2009).

The reply furnished by the Government did not touch upon the issue raised by audit.

2.2.11.3 There is no provision to levy interest in the cases of excess or fraudulent availing of the ITC. Also, stipulations should be considered with regard to the ITC involved in obsolescence, rejections, returns, shortage and actual receipt of the goods.

2.2.11.4 Section 11(8) stipulates that if the capital goods are not used continuously for a period of five years, the ITC shall be reduced proportionately. However, in the periodical returns the ITC on capital goods is clubbed with that on raw material and none of the units covered by review could furnish the information relating to the ITC on capital goods. Rule 15(6) allows refund of the unutilised ITC (other than on capital goods) before completion of two years. **Absence of a system to watch ITC on capital goods and raw material separately may result in the refund of ITC on capital goods within two years.**

The Government had agreed (December 2009) to review the format of the periodical returns so as to strengthen the monitoring mechanism for ITC on capital goods.

The Government may prescribe a system to file a separate declaration on the intention of the dealer to claim the ITC on capital goods and put a system to watch the said ITC separately with reference to continued utilisation. Further, the Government may consider introducing provisions for the levy of interest against fraudulent availing and utilisation of ITC.

2.2.12 Incentives

Under the repealed Acts, the State Government implemented various incentive schemes in the form of tax exemption, tax deferment or composite incentives. These incentives were allowed to industrial units, tourism units, wind power generation units as well as *khadi* and village industries commission (KVIC) units. Section 5(2)(b) of the GVAT Act authorises the State Government to continue such exemption granted to the industrial units under the repealed GST Act, with such modifications, subject to such conditions and for such period as may be prescribed. Under the said powers, the State Government had prescribed a system for regulating incentives vide Rule 18A to 18D of the GVAT Rules. The rules contain provisions for continuation of incentives in the form of exemption as well as deferment. On implementation of the GVAT Act, the dealers under composite scheme of the repealed Acts were allowed

either exemption or deferment, at their option. The incentive scheme prescribed under the GVAT Act and Rules had following deficiencies.

2.2.12.1 The provision did not cover the incentives available to tourism units, wind power generation units and KVIC units. Further, limited provisions in the Act to extend exemption incentive to goods covered under the GST Act created disparity between the dealers who were enjoying incentives under the MST Act and the Sugarcane Act.

The Government stated (December 2009) that the MST Act and Sugarcane Act were merged with the GVAT Act and the exemption to tourism units was covered under the GVAT Act through Government Resolution dated 23 July 2008. The reply requires reconsideration. Section 5(2)(b) of the GVAT Act provide for continuation of incentives given under the GST Act and does not mention about the MST Act and the Sugarcane Act. In absence of the required provisions in the GVAT Act, exemption allowed to the dealers on goods covered under the repealed MST Act and the Sugarcane Act was irregular.

2.2.12.2 Rule 18A and Rule 18B of the GVAT Rules extended the incentive in the form of exemption, where the tax paid by the dealers on their purchases were refunded and the output tax was allowed to be collected on the sales by the dealers and was allowed to be retained by them. Against such output tax retained by the dealer, the Government prescribed issue of remission orders. Under the repealed Acts, the exemption holders were neither allowed to collect the tax and nor pay such tax on their sales. The leading principle in allowing exemption incentive was that the dealer could survive in the competitive market by reduced price on their products due to non-levy and non-payment of tax. **Thus, by allowing the dealers to collect and retain the output tax, the Government had deviated from the basic principle and also allowed undue enrichment to the exemption incentive holders at the cost of general public.**

Under the deferment incentive scheme, the dealers are allowed to collect tax on their sales, which is to be paid into Government account after stipulated period. Thus, the Government had made not only the taxing statute discriminatory towards the incentive holders but also allowed undue enrichment of Rs. 6,376.58 crore being the remission amount for the period from April 2006 to March 2009.

Instead, the Government could have allowed the exemption holders to continue their sales without recovering the output tax and by allowing the purchasers to avail the ITC at notional basis which could have ensured that the VAT chain is not affected.

The Government stated (December 2009) that the exemption holders were allowed to collect and retain the tax so as to avoid distortion of the VAT chain. Further, it stated that by adoption of the system, the Government had ensured earlier completion of the incentives. However, reasons for deviating from the basic principle of the exemption scheme as well as discrimination made between the deferment incentive holders and exemption holders were not clarified.

2.2.12.3 Rule 18B(3) of the GVAT Rules stipulates that the eligible unit availing exemption incentive shall collect the tax on their sales and shall not

pay the same to the Government. Rule 18D states that while calculating the aggregate amount of remission, tax payable on inter-state sales under the provision of the CST Act is also to be considered. Section 9(2) of the CST Act authorises sales tax authorities of the State to follow the procedural stipulations made in sales tax law of the State on specified areas. **In absence of provision to allow remission under the CST Act, the rules made under the GVAT Act, suffer legal infirmity in view of Supreme Court judgement[17] in the case of M/s. India Carbon Limited holding that since the Central Act did not contain specific provision for levy of interest on delayed payment of tax, interest cannot be levied even though it existed in the State Act.**

The Government stated (December 2009) that the section 9(2) of CST Act includes refunds and remission was a kind of refund. The reply is untenable as the words remission and refunds have different meanings.

2.2.12.4 The composite incentive scheme under earlier law allowed the eligible units to avail of tax exemption as well as tax deferment incentives simultaneously. Rule 18A(3) of the GVAT Rules provides that the eligible units availing of composite benefit under the earlier law could opt for either tax exemption or tax deferment incentive. Rule 18D(5) stipulates that the eligible unit shall make payment of tax deferred in accordance with the provisions of the respective Government Resolutions (resolution). The resolution for composite incentive specified that, the tax exemption under the scheme shall be guided by the notifications issued under the repealed Acts and that of tax deferment shall be guided by the respective resolution. The deferment incentive of 1995-2000 industrial incentive scheme was guided by the resolution issued (September 1995) by the Industries and Mines Department (I&MD). Under the provisions of the resolution, I&MD issued eligibility certificates to the dealers based on which, the commercial tax department issued sanction certificate. The resolution on deferment incentive stipulate that the eligible units shall pay the deferred tax in six equal annual installments to the Government account, on completion of deferment period or amount of incentive, whichever is earlier. Accordingly, for the composite incentive holders who had exercised option for exemption under the GVAT Act, the scheme of deferment was completed on 31 March 2006. Therefore, as per the conditions laid down in the resolution GR for deferment incentive, they were required to start payment of deferred tax from April 2006, in six annual equal installments.

Audit scrutiny revealed that 13 eligible industrial units under composite incentive scheme of earlier law had availed deferment incentive of Rs. 7,022.03 crore up to 31 March 2006 and opted for exemption under the GVAT Act. As per the stipulations of deferment incentive, the department should have recovered Rs. 1,170.34 crore on annual basis from these units. **The department did not initiate any action to recover the instalments due.** Interest was also recoverable at the rate of 18 *per cent* per annum on the delay in payment of instalment. This resulted in non-recovery of Rs. 4,774.98 crore up to March 2009, including interest of Rs. 1,263.96 crore.

[17] M/s. India Carbon Limited Vs. the State of Assam (1997) 106 STC 460 (SC).

The Government stated (December 2009) that there was no provision to recover the amount of deferment from the composite units which availed of exemption under the GVAT Act. It added that as per the Government Resolutions under which eligibility certificates were issued, the amounts deferred were to be recovered only after completion of the time limit or monetary ceiling limit, whichever was earlier. The reply is not tenable as the deferment incentive of composition holders are covered under the GR issued for the deferment scheme and the GR on deferment scheme stipulates that recovery is to be effected on completion of the deferment period or monetary limit, whichever is earlier. In the instant cases, while the dealers had opted for exemption under the GVAT Act, their period of deferment incentive was completed. Therefore, they are liable to pay the deferred amount in instalments with effect from April 2006.

The Government may reconsider the issue of tax collection by exemption holders. The Government should initiate action to recover the deferred tax including interest, from the composite holders as per the resolution, who opted for exemption incentive under the GVAT Act.

2.2.13 Cross verification

Successful implementation of the taxation law requires in-built control mechanism to confirm the correctness of details furnished by the dealers. Under the GVAT law, cross verification of records of purchasing/selling dealers, cross check of data available with other taxation departments *etc*. were of utmost importance to confirm proper realisation of Government revenue. Scrutiny of the control mechanism existed in the department for cross verification revealed following deficiencies.

2.2.13.1 With a view to help the commercial tax departments of various States and Union Territories in monitoring the sales/purchases made in the course of interstate trade and commerce, the Empowered Committee of State Finance Ministers had recommended for maintaining database on interstate dealers commonly known as TINXSYS (Taxation Information Exchange System).

Verification of the TINXSYS revealed availability of the data of Gujarat Commercial Tax Department. However, the GSWAN connectivity provided in the department did not allow access to the TINXSYS database. Due to this, the department officials could not utilise the information.

The Government stated (December 2009) that the matter would be referred to the IT committee for further analysis.

The Government may consider providing access to TINXSYS website to the assessing officers and also make it mandatory to verify the information available in the site before allowing concession/exemption of tax to the dealers.

2.2.14 Tax deduction at source

Section 59B of the GVAT Act provide for deduction of tax at source by persons responsible for paying specified sale price to a contractor or sub-contractor. Under Sub-Section 14 of Section 59B, the person deducting tax is required to furnish return in prescribed form. Section also provides for

levy of penalty on the persons, who did not deduct the tax or after deducting the tax failed to pay it to the Government account. The penalty so leviable shall not exceed 25 *per cent* of the amount required to be deducted.

Audit analysis revealed that the department had not devised any system to identify the persons who are liable to deduct the tax at source. Further, no system existed to monitor receipt and scrutiny of these returns. In absence of the system, proper compliance of the provisions of the GVAT Act could not be ensured.

The Government stated (December 2009) that with effect from August 2009, provision for Tax Deduction Account Number (TDN) had been incorporated in the GVAT Act so as to identify the works contractors.

The Government may consider setting up a well defined follow up system.

2.2.15 Internal controls

2.2.15.1 The offices working under the department had maintained various manual registers prescribed under earlier law. Though the GVAT Act was implemented from April 2006, neither the sufficiency of the registers prescribed under the earlier law were analysed nor instructions to continue the maintenance of such registers under the GVAT law was issued by the department. In absence of these, the unit offices continued to maintain the registers under earlier law, according to their own convenience. **Thus, there was no control mechanism in respect of important areas under the GVAT law such as the ITC on capital goods, return scrutiny, submission of audited accounts, self/deemed assessments, option to pay lump sum amount in lieu of tax *etc*.**

The Government stated (December 2009) that most of the activities like Registration, Returns, Payments, Forms, *etc* were monitored through VATIS, which generated various MIS reports. It was also stated that separate manual registers were being maintained for incentives and recovery. However, the reply was silent on the monitoring system adopted for areas specified in above paragraph.

2.2.15.2 The internal inspection of various offices of the department, viz. divisions, circles, units, check-posts, enforcement, appeal, audit *etc*., are conducted by the internal inspection wing headed by the DC (Inspection). The offices, which are not inspected during the year by the DC (Inspection), are to be inspected by the next higher controlling officers in a manner that internal inspection of all the offices of the department gets conducted in each year. Under internal inspection, the records other than pre and post audit assessments are checked for conformity of the system. The information on target and achievement of internal inspection and status of observations made by internal inspection during the period from 2004-05 to 2008-09 is mentioned below.

Performance of internal inspection

Period	Offices to be inspected[18]	DC (Inspection)			Inspections conducted by other officers	Shortfall in inspection (Column 2-3-6)	Percentage of shortfall
		Inspections conducted	Observa-tions issued	Outstanding observations			
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**
2004-05	151	15	1,019	366	50	86	57
2005-06	151	15	845	270	47	89	59
2006-07	151	15	658	223	40	96	64
2007-08	151	15	792	653	50	86	57
2008-09	151	15	889	861	52	84	56

Source: Commercial Tax Department.

The information furnished by the department revealed the following deficiencies in the working of internal inspection.

- **The shortfall in internal inspection ranged between 56 and 64 *per cent.***
- Compliance to large number of observations issued by the DC (Inspection) remained pending due to which the intended purpose of inspection was defeated.

The Government stated (December 2009) that subordinate offices were not given specific targets for inspection as they were supposed to carry out inspection of all the remaining offices and Commissioner office monitors this activity through periodical reports. It was further stated that compliance reports on remaining observations were obtained from the head of the office and these were disposed after considering the merit of its compliance. The reply is not tenable as the subordinate offices had not completed the internal audit cycle and there were inordinate delays in disposal of inspection reports.

The department may devise a monitoring system under DC (Inspection) to complete internal inspection of all offices of the department every year and may fix a time limit for final compliance to the observations.

2.2.16 Internal audit

2.2.16.1 The internal audit wing of the department was looking after pre and post audit of assessments under repealed Acts. **Audit had called for (June 2009) information related to the working of the internal audit wing after implementation of the GVAT Act.**

The information received (December 2009) revealed that the policy regarding scope and criteria for internal audit under GVAT Act have not been finalised.

2.2.16.2 The white paper *vide* paragraph 2.13 stipulated that self assessment returns of certain percentage of the dealers selected on scientific basis should be audited by a separate wing so as to safeguard Government revenue. The work was to be completed within six months. **However, internal audit wing**

[18] 103 units, 25 circles, 10 check posts, seven divisions, six branches in HO (administration, audit, appeal, e-governance, enforcement and legal).

of the department had not framed any programme for checking self assessment returns till October 2009 and the work of audit assessment was allotted to the controlling officers of the units.

The Government stated (December 2009) that the audit assessments of dealers for the period 2006-07 were selected on the basis of criteria such as output tax, turnover, industrial incentives, works contracts *etc*., and was assigned to the Deputy Commissioners, Assistant Commissioners and Commercial Tax Officers. The reply did not clarify on the separation of audit assessment from jurisdictional controlling officers and also audit of self assessment cases.

In view of the policy paper, the department may separate audit assessment from controlling officers.

Compliance deficiencies

2.2.17 Other topics of interest

2.2.17.1 The State Legislature had approved levy of additional tax under the GVAT Act, with effect from 1 April 2008. The State Government proposed levy of additional tax to meet with the priority of development of human resources, infrastructural development for balanced economic and social growth and acceleration of the process of development. The Government estimated revenue of Rs. 880 crore through the proposed additional tax.

Audit scrutiny revealed that the State Government had not opened a separate minor head to identify the revenue generation on account of additional tax. Hence, the Director of Accounts and Treasury could not exhibit it in their records.

The Government stated (December 2009) that the separate minor head was not opened as additional tax could be adjusted against the output tax liability.

However the fact remains that the actual receipt through additional tax could not be identified against the estimates. In the absence of any record, audit also could not verify whether such receipts were utilised for the intended purposes.

2.2.17.2 The details of the *challans* as and when received from the dealers by the units were to be noted in the register No. 6 under earlier Act on a day-to-day basis. The details of *challans* noted in the register were to be verified with the treasury schedules by the units for confirming the authenticity of tax payment. This activity is known as Verification with the Treasury Schedules (VTS). On an audit query regarding the system of the VTS followed under the GVAT Act, the department stated (July 2009) that the VATIS software developed included the facility for VTS. However, in absence of data from treasury offices in required format, this could not be made functional except for Ahmedabad.

Cross check of 59 *challans* involving revenue of Rs. 3,069.97 crore pertaining to Ahmedabad for the year 2007-08 with the treasury records revealed that in three cases payment of Rs. 39.20 crore made under the Entry Tax Act was incorrectly accounted under the GVAT Act**. Thus, absence of adequate system for VTS activity resulted not only in non-confirmation of revenue reported by the units with the treasury receipts but also in incorrect reporting of actual receipts under various heads to the State Legislature.**

This also affects the annual plan of the State Government as budget estimates are based on actual receipts of the previous year.

The Government stated (December 2009) that in the cases of treasuries situated outside Ahmedabad, information were obtained by the nodal officers and VTS was planned accordingly. It added that ITC under the GVAT Act was allowable on entry tax and the income under entry tax as well as VAT were credited to the same major head. The reply is untenable. The misclassification of entry tax as VAT income reveals vulnerability in VTS conducted on the soft copy of data received from the Ahmedabad treasury. Also, the entry tax and the VAT are collected under different minor heads with reference to separate Acts.

2.2.17.3 Under Section 69 of the GVAT Act, in cases of vehicles coming from any place outside the State and bound for any other place outside the State, transit passes are issued at entry check post which are required to be surrendered at the exit check post by the driver or person in charge of the vehicle. On failure to do so, it shall be presumed that the goods contained in the vehicle were sold within the State and tax at the applicable rates alongwith penalty up to 150 *per cent* of the tax is leviable on the goods.

During test check of the records of two offices,[19] it was noticed that 103 transit passes issued by two check posts[20] were not surrendered at the exit check posts/barriers even after the lapse of six to 17 months. However, the AOs did not take any action to assess and recover the tax of Rs. 63.84 lakh including penalty of Rs. 23.07 lakh.

2.2.18 Conclusion

Analysis of the transitional process from sales tax to VAT revealed various deficiencies in the process and lacunae in the GVAT Act and Rules. Though the white paper issued by the empowered committee discouraged it specifically, Government had resorted to levy of additional tax instead of tapping potential areas of revenue. Even after three years of implementation of the Act, the department had not finalised the issue of sale price of major revenue goods viz., petrol and gas sold through company owned outlets and pipelines. The department could not satisfactorily address the issues related to e-governance and manpower deployment. The existing provisions and system for registration and the ITC lacked clarification. Delayed and inadequate return scrutiny left enough scope for the leakage of revenue. The procedure prescribed for continuation of the incentives under the GVAT law was against the spirit of the original schemes and resulted in undue enrichment to the incentive holders. Failure to recover the deferred tax from the incentive holders and dues from defaulters resulted in non-realisation of revenue. The department could not furnish the required information to Audit. Internal control and monitoring mechanism were weak as evidenced from the above and also absence of control register and weaknesses in the functioning of the internal inspection wing.

[19] CTO: Dahod and ACCT: Palanpur.
[20] Amigarh and Dahod.

2.2.19 Summary of recommendations

The State Government may consider implementing the recommendations noted under the paragraphs included in the review with special attention to the following for rectifying the system and compliance issues.

- initiate action to remove the deficiencies and contradictions in the Gujarat Value Added Tax Act, 2003;
- analyse and identify the areas from where additional revenue could be augmented;
- issue instructions for deployment of manpower of the department prudently and for setting up of proper system to watch input tax credit and expeditious scrutiny of returns; and
- issue instructions for addressing the system deficiencies in e-governance, particularly on the issues of net work connectivity, hardware management and own technical staff.

2.3 Other audit observations

Scrutiny of the records of the various Commercial Tax offices revealed several cases of non-compliance with the provisions of the Gujarat Sales Tax Act, 1969, the Bombay Sales of Motor Spirit Taxation Act, 1958, the Gujarat Sales Tax Rules, 1970, the Central Sales Tax Act, 1956 etc., and Government notifications and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year however the irregularities not only persist; but also remain undetected till Government audit is conducted in the next year. There is need for the Government to improve the internal control system and internal audit.

2.4 Incorrect grant of benefits under the sales tax incentive schemes

2.4.1 The Government of Gujarat issued a notification vide entry 140 under Section 49 (2) of the GST Act, 1969 for granting benefit of exemption to the eligible unit under the incentive scheme for economic development of Kutchh District. The Government of Gujarat also, vide Finance Department resolution of June 2002, decided to allow deferment of sales tax, general sales tax and additional tax within the ceiling limit of the eligibility certificate. The levy and collection of central sales tax in Gujarat is governed by the Central Sales Tax Act, 1956 (CST Act). The CST Act provides for grant of an exemption through issue of a notification under Section 8(5) of the CST Act published in the official gazette. The Government has not issued any notification under Section 8(5) of the CST Act.

During test check of the records of three offices[21] between December 2008 and January 2009, it was noticed from the assessments of six dealers for the period between 2002-03 and 2005-06 that the AOs allowed deferment of central sales tax of Rs. 42.34 crore against the deferment limit available. In another 12 cases, the AOs incorrectly adjusted the central sales tax of Rs. 16.21 crore against the exemption limit available to the dealers. However, in the absence of a notification for availing of incentives under the CST Act and provision for availing of the deferment in Government Resolution, the central sales tax of Rs. 58.55 crore was required to be levied and collected in cash. This resulted in irregular grant of deferment and exemption of central sales tax of Rs. 58.55 crore.

This was brought to the notice of the department (April 2009) and the Government (May 2009); their reply has not been received (November 2009).

2.4.2 Under the conditions of the Incentive scheme for economic development of Kutchh District, new industrial units established in the District of Kutchh during the operative period of the scheme *i.e.* from 31 July 2001 to 31 October 2004 were eligible for the incentive at the rate of 100 *per cent* of the eligible capital investment. The scheme provided that the expenditure incurred on the purchase of the plant and machinery shall be considered for arriving at the limit of the eligibility for issue of the eligibility certificate by the Industries

[21] DCCT Gandhidham.
ACCT Bhuj, Gandhidham.

Department. Based on the eligibility certificates issued by the Industries Department, the Sales Tax Department issued the certificate of sales tax exemption or deferment.

Scrutiny of the records of the office of the Industries Commissioner, Gandhinagar in November 2008 revealed that the Industries Department issued an eligibility certificate to M/s Sumangal Glass Industries Pvt. Ltd. in November 2006 for exemption under the scheme within the limit of Rs. 10.47 crore for the period from 31 December 2005 to 30 December 2012. The limit of eligibility was fixed considering the expenditure incurred on the capital investment made by the unit upto 31 December 2005. It was noticed from the balance sheet of the unit for the year ended 31 March 2007 that the unit had deducted Rs. 72.82 lakh from the fixed assets on account of excise duty/service tax. While capitalising the plant and machinery, the elements of excise duty/service tax were included as capital expenditure. Subsequently, on account of availing of cenvat credit, the amount was deducted from the capitalised fixed assets of the plant and machinery. The amount of excise duty/service tax paid on the plant not capitalised cannot form part of the expenditure allowed for working out the eligibility limit. This excess grant of eligibility limit resulted in excess grant of exemption of tax of Rs. 72.82 lakh.

After the case was pointed out (April 2009), the department accepted (August 2009) the audit observation and issued show cause notice to the unit. Further development has not been reported (November 2009).

The matter was reported to the Government (May 2009); their reply has not been received (November 2009).

2.4.3 The incentive scheme for economic development of Kutchh District provided that the eligible unit shall have to remain in production continuously during the eligibility period mentioned in the eligibility certificate.

Scrutiny revealed that the DCCT, Gandhidham issued a certificate of exemption to a dealer, M/s Shreeji Food and Fun Industries, based on an adhoc eligibility certificate issued by the District Industries Centre, Bhuj for the period from 16 April 2002 to 15 April 2007 with tax exemption limit of Rs. 9 lakh. The Industries Department did not issue final eligibility certificate to the unit.

Further verification of the records of the commercial tax office, Bhuj in December 2008 revealed that the unit had stopped production from January 2005. However, while finalising the assessments for the period 2003-04 and 2004-05 in April 2007, the AO adjusted the tax payable amount of Rs. 1.46 lakh, Rs. 6.61 lakh and Rs. 91,000 during the years 2002-03, 2003-04 and 2004-05 respectively against the exemption limit available. As the dealer had stopped the production during the currency of the eligibility certificate, the adjustment of tax of Rs. 8.98 lakh was irregular. The unit was thus liable to pay tax of Rs. 15.31 lakh including interest of Rs. 6.33 lakh.

This was brought to the notice of the department (April 2009) and Government (May 2009); their reply has not been received (November 2009).

2.4.4 Section 45(6) of the GST Act provides that where the amount of tax assessed or reassessed exceeds the amount of tax paid with the returns by a dealer by more than 25 *per cent*, penalty not exceeding one and half times of

the difference shall be levied. Further, the Commissioner vide public circular dated 3 June 1992 has laid down slab rates for levy of penalty.

During test check of the records of the ACCT, Gandhidham in December 2008, it was noticed that two dealers, holding sales tax incentive certificates for exemption under entry 140 of the notification issued under Section 49(2) of the GST Act, were assessed for the period 2002-03 and 2003-04 in May 2004 and March 2008. While completing the assessment, the AO adjusted, either the tax on turnover of the sales prior to the effective date of commencement of exemption period or computed the tax at incorrect rate, against the available limit of incentive specified in the certificate. This resulted in non/short levy of sales tax of Rs. 8.23 lakh including interest of Rs. 1.98 lakh and penalty of Rs. 2.21 lakh.

The matter was brought to the notice of the department (April 2009) and Government (May 2009); their reply has not been received (November 2009).

2.4.5 Under the sales tax incentive schemes[22], the units which opt for deferment incentives are allowed to collect and retain the tax and pay it after a specified period into the Government account. The deferred amount of tax is recoverable in six annual installments beginning from the financial year subsequent to the year in which the unit exhausts the limit of incentive granted to it under the scheme or after the expiry of relevant period during which deferment is available, whichever is earlier. In the event of default in payment of deferred tax, interest is leviable at the rate of 24 *per cent* up to 31 August 2001 and 18 *per cent* thereafter.

During test check of the records of office of CTO, Idar in July 2008, it was noticed in case of two dealers who opted for deferment incentives that in one case, the dealer did not pay any installment of deferred tax of Rs. 3.29 crore though the six installments of deferred tax were due between 1 April 1997 and 1 March 2003. In case of the other dealer, the first installment of deferred tax was due on 1 April 2007. The dealer paid deferred tax of Rs. 60.67 lakh belatedly, with delay ranging between 74 days and 205 days. The AO did not initiate action to recover the tax and interest in these cases resulting in non-recovery of tax of Rs. 8.16 crore including interest of Rs. 4.87 crore.

After the cases were pointed out (December 2008), the department accepted the audit observation and recovered Rs. 4.42 lakh in case of one dealer. Reply in the other case has not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

2.4.6 Under the sales tax incentive schemes, eligible units are allowed to purchase raw materials, processing material, consumable stores and packing materials against declaration on payment of tax at the rate of 0.25 *per cent.* Balance tax on purchases is calculated at the prescribed rates and adjusted against the ceiling limit of exemption. Similarly, tax saved on sale of manufactured goods is also adjusted against the ceiling limit of exemption.

[22] Schemes implemented by Department of Industries of Government of Gujarat in four cluster over a 20 year period from 1980-81 to 1999-2000 which provided for grant of sales tax incentives in the form of exemption, deferment and composition of tax.

During test check of the records of 12 offices[23] between May 2007 and October 2008, it was noticed in the assessment of 18 dealers for the period between 2000-01 and 2005-06 that the AOs computed the tax at incorrect rates and either adjusted against the ceiling limit available or recovered in cash. This resulted in under assessment of tax of Rs. 1.94 crore.

After the cases were pointed out, the department accepted the audit observation involving Rs. 34.26 lakh in case of five dealers and adjusted tax of Rs. 3.01 lakh against the exemption limit available. Reply in the remaining cases had not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

2.4.7 Section 4A of the GST Act specifies that additional tax (AT) at the rate of 10 *per cent* of sales tax, general sales tax or purchase tax shall be levied from 1 April 2000 to 28 February 2003 on every dealer liable to pay tax under Section 3, 3A or 4 of the Act. Under sales tax incentive schemes 1990-95 and 1995-2000, there was no provision to adjust AT against tax exemption limit[24]. In accordance with notification of 3 March 2001, AT was allowed to be adjusted against exemption limit. Therefore, the AT on purchase tax and sales tax was to be paid in cash by dealers holding exemption certificate up to 2 March 2001. Besides, delay in payment of tax attracts interest and penalty under the provisions of the GST Act.

During test check of the records of three offices[25] between April 2007 and May 2008, it was noticed from assessment of three dealers for the year 2000-01 that in one case, the AO allowed incorrect adjustment against the ceiling limit instead of recovering in cash. In two cases, though the AOs levied additional tax in reassessment, they did not levy interest and penalty. This resulted in short levy of tax of Rs. 50.72 lakh including interest of Rs. 24.30 lakh and penalty of Rs. 25.67 lakh.

After the cases were pointed out (between August 2007 and July 2008), the department accepted the audit observation and recovered Rs. 35,111 in case of one dealer. Reply in the remaining cases had not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

2.4.8 According to the Government Resolution (GR) of 20 April 1998 of the Industries and Mines Department, an industrial unit with project costing more than Rs. 10 crore and availing sales tax incentive under New Incentive Policy of 1995-2000 scheme shall have to contribute two *per cent* of sales tax in case of exemption and three *per cent* of sales tax in case of deferment availed during the year for *Gokul Gram Yojna* (GGY) by 30 June of subsequent

[23] ACCT: Billimora, Gandhidham, Gondal, Himatnagar, 3 Jamnagar. 1 Nadiad, 4 and 5 Rajkot, 2 Surat and 1 Surendranagar.
DCCT: 24 Jamnagar.
CTO : Prantij.

[24] Exemption limit means an aggregate amount of tax payable by the eligible unit which is allowed to be adjusted against sanctioned amount for a specified period.

[25] ACCT: 4 Rajkot and 6 Vadodara.
DCCT : Bharuch.

financial year. In case of failure to contribute the amount on due date, the AO was to suspend the incentive with effect from 1 July. Such suspension could be cancelled if the dealer paid interest at the rate of two *per cent* per month on the contribution amount for the period of delay.

During test check of the records of DCCT-24, Jamnagar, it was noticed that a unit was required to pay Rs. 2.70 crore towards GGY contribution. However, the dealers paid only Rs. 2.42 crore. While finalising the assessment of the dealer for the year 2003-04 in September 2007, the AO did not take any action to recover the short contribution and suspend the incentive, resulting in short realisation of revenue of Rs. 49.43 lakh including interest of Rs. 21.43 lakh.

The above facts were brought to the notice of the department (July 2008) and Government (May 2009); their reply has not been received (November 2009).

2.4.9 Under the sales tax incentive schemes, an eligible unit shall be entitled for exemption from the tax to the extent of monetary limit and within the limit specified in the eligibility certificate issued by the Industries Department. The aggregate amount of tax including additional tax[26], leviable under Section 15B of the GST Act shall be considered for the purpose of arriving at the limit of exemption. High Court of Gujarat[27] held that the dealer is liable to pay purchase tax under Section 15B of the Act on the purchase of raw materials by the dealer from sales tax exemption holders and on their use in the manufacture of goods which are generally taxable goods under the Act though they may be exempted from payment of sales tax pursuant to the notification under Section 49(2) of the Act.

During test check of the records of two offices[28] between January 2007 and September 2008, it was noticed from the assessment of two dealers for the assessment period between 1997-98 and 2003-04 that the dealers had consigned/transferred the manufactured goods valued of Rs. 137.04 crore to their branches outside the State. However, the AOs did not include raw materials purchased from the dealers holding exemption certificate while calculating purchase tax under Section 15B of the GST Act in respect of proportionate value of the manufactured goods consigned/branch transferred to other state for sale. This resulted in short adjustment of tax of Rs. 35.90 lakh including interest of Rs. 26,721 and penalty of Rs. 1.43 lakh.

After the cases were pointed out (between May 2007 and November 2008), the department accepted the audit observation involving Rs. 95,657 in case of one dealer. Reply in the remaining cases had not been received (November 2009).

The matter was reported to Government (May 2009); their reply has not been received (November 2009).

2.4.10 Sales tax incentive schemes provide that the eligible unit[29] shall remain in production continuously during the period mentioned in the eligibility

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26 Additional tax is adjustable from 3 March 2001 onwards.

27 M/s Madhu Silica (85 STC 258) and M/s Cheminova India Ltd (2001-GSTB-286).

28 ACCT: Nadiad.
DCCT: 7 Gandhinagar.

29 Eligible unit means a unit permitted by Industries Department to avail sales tax incentives of either exemption or deferment of tax.

certificate. The eligible unit shall also furnish to the Commercial Tax Department details regarding production, availment of benefit *etc*. as provided in the GST Act and rules made thereunder. If the eligible unit contravenes any of the conditions, the incentive shall cease to operate. Accordingly, the entire amount of tax that would have been payable on sale and purchase effected by the eligible unit shall be paid by the unit within a period of 60 days from the date of contravention. If the unit failed to do so, the AO shall recover the amount from the eligible unit as an arrear of land revenue.

During test check of the records of ACCT-1, Junagadh, in September 2008, it was noticed that a unit enjoying sales tax exemption had discontinued his business from March 2004. While finalising the assessments for the period 2001-02 and 2002-03 in July 2006 and September 2007, though entire amount of tax exemption benefit alongwith interest was recoverable from the dealer for breach of conditions, the AO, however, incorrectly adjusted the tax of Rs. 13.54 lakh against the exemption limit. The AO failed to observe the provisions of the incentive scheme and did not take any action under the provisions of the Bombay Land Revenue Code to recover the benefit availed of by the dealer as arrears of land revenue. This resulted in non-realisation tax of Rs. 20.85 lakh including interest of Rs. 7.31 lakh.

The above facts were brought to the notice of department (December 2008) and Government (May 2009); their reply has not been received (November 2009).

2.5 Non/short levy of tax due to incorrect classification of goods

2.5.1 The Supreme Court of India held[30] that PP/HDPE fabrics will be classified as plastic instead of textile material for the purpose of levy of central excise duty. **It was noticed in audit that the earlier determination order passed by the Commissioner treating the HDPE fabrics as exempted goods, though the tax on HDPE fabrics was leviable at the rate of eight *per cent* treating it as 'plastic', was not withdrawn/revised in view of the Supreme Court judgment. The practice, therefore, continued.** Further, Section 8 of the CST Act provides for levy of tax on interstate sale of goods not supported by form C, at 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher.

During test check of the records of 16 offices[31] between October 2007 and October 2008, it was noticed from the assessments of 28 dealers under the GST Act and six dealers under the CST Act that the AOs did not levy tax on sale of HDPE fabrics though tax was leviable in view of the above judgement. Incorrect classification resulted in underassessment of Rs. 7.92 crore under the GST Act and Rs. 2.80 crore under the CST Act, aggregating to Rs. 10.72 crore.

After the cases were pointed out (between May 2008 and January 2009), the department did not accept the audit observations stating that the classification was correctly made under fabric as per the orders of the GST Tribunal. The

30 Union of India Vs Pramact Plastic Pvt. Ltd. 2000 (119) ELT-A173 (SC).

31 DCCT: 7 Gandhinagar and 8 Mehsana.
ACCT: 7, 9, 11, 18, 19 and 22 Ahmedabad, 2 Anand, Bharuch, 1 Jamnagar, Jetpur, Kadi, 5 Rajkot, 2 Vadodara and 12 Surat.

reply is not acceptable as the judgment by Supreme Court was pronounced after the decision of the Tribunal.

The government may consider issuing orders in view of apex court's verdict in the interest of revenues of the State.

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

2.5.2 The GST Act provides for levy of tax at the rates as prescribed in the schedules to the Act, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the schedule, general rate of tax given for residuary item is applicable. Further, Section 8 of the CST Act provides for the levy of tax on interstate sale of goods not supported by form C, at 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher.

During test check of the records of 16 offices[32] between May 2007 and August 2008, it was noticed that 20 dealers paid tax at lower rates due to incorrect classification of goods during the period between 1997-98 and 2005-06. While finalising the assessments between January 2006 and January 2008, the AOs also failed to assess the tax at correct rates. This resulted in short realisation of tax of Rs. 6.17 crore including interest of Rs. 85.88 lakh and penalty of Rs. 2.19 crore under GST Act, and Rs. 4.62 crore including interest of Rs. 1.60 crore and penalty of Rs. 34.90 lakh under CST Act, aggregating to Rs. 10.79 crore.

After the cases were pointed out (between May and December 2008), the department accepted the audit observations involving Rs. 10.96 lakh in three cases. Reply in the remaining cases have not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

2.6 Non/short levy of central sales tax

2.6.1 Rule 12(10) of the Central Sales Tax (Registration and Turnover) Rules, 1957, provides that the dealer has to furnish to the prescribed authority, a certificate in form H giving all details *viz*. agreement number and date relating to such export, particulars of goods alongwith the evidence of export of such goods in support of his claim for export. If the dealer fails to produce the evidence, such sales are to be treated as interstate sales without C forms and are liable to tax at applicable rate.

During test check of the records of 16 offices[33] between December 2007 and August 2008, it was noticed from the assessments of 63 dealers for the period between 1995-96 and 2005-06 that the AOs allowed export sales valued at Rs. 501.78 crore either without production of form H/bill of lading or against incomplete certificates in form 'H'. This resulted in underassessment of

[32] DCCT: 5 Ahmadabad, Corp.Cell-III Ahmedabad and 12 Vadodara.
ACCT: 9, 13, 16, 19, 20 and 23 Ahmedabad, 1 Bhavnagar, 3 Jamnagar, 2 Junagadh, Kadi, 2 Vapi, Valsad and Vyara.

[33] DCCT: Bharuch and 8 Mehsana.
ACCT: 5, 6, 7, 15 and 22 Ahmedabad, 2 Anand, Bharuch, Gandhidham, Gondal, Himatnagar, Kadi, 4 Rajkot, Valsad and 1 Vapi.

Rs. 31.51 crore including interest of Rs. 70.74 lakh and penalty of Rs. 88.81 lakh.

The matter was reported to the department (between November and December 2008) and the Government (April 2009); their reply has not been received (November 2009).

2.6.2 Section 5(2) of the CST Act provides that a sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the custom frontiers of India. Further, Section 41(3) of GST Act provides that the assessing authority after considering all the evidence which may be produced in support of the declaration made by the dealer shall assess the amount of tax due from the dealer and as per the orders of the commissioner issued in April 2004, these evidence are to be retained in the case records.

During test check of the records of six offices[34] between December 2007 and May 2008, it was noticed from the assessments of 41 dealers for the period between 2001-02 and 2005-06 that the AOs allowed deduction of high sea sales[35] of Rs. 200.44 crore but did not keep the prescribed documentary evidence *viz.* copy of agreement between the importer and purchaser, bill of entry endorsed in favour of the purchaser, sales bill, proof of payment of customs duty *etc*. on record in support of the deduction despite the orders of the commissioner. Before allowing the deduction of high sea sales, the AOs should have considered and kept the prescribed documents on record as evidence in support of the deduction. In the absence of the relevant documents, the correctness of deduction allowed from the turnover could not be verified. The tax involved in these transactions worked out to Rs. 10.18 crore.

After the cases were pointed out (between May and July 2008), the department stated that necessary evidence had now been procured and kept on the records in case of two dealers. However the reply did not explain the reasons for not keeping the documents on record. Reply in the remaining cases had not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

2.6.3 The CST Act and Rules made thereunder provide that where any dealer transfers goods from one state to another not by reason of sale, he shall furnish to the AO, a declaration in form 'F', duly filled and signed by the principal officer of the other place of business, alongwith the evidence of dispatch of such goods. If the dealer fails to furnish such declaration, the movement of such goods shall be deemed to have been occasioned as a result of sale.

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[34] ACCT: 22 Ahmedabad, 1, 2 Surat and Gandhidham.
DCCT: Bharuch and 18 Valsad.

[35] Sales of goods before crossing the custom frontiers of India, by endorsing the import documents in favour of the purchaser by importer.

During test check of the records of seven offices[36] between December 2007 and October 2008, it was noticed in the assessment of ten dealers for the period between 2000-01 and 2005-06 that the AOs allowed claim of transfer of goods to other place of business without any declaration or evidence for dispatch of such transfer. This resulted in short levy of tax of Rs. 9.32 crore including interest of Rs. 2.01 crore and penalty of Rs. 2.50 crore.

After the cases were pointed out (between May 2008 and January 2009), the department accepted the audit observation involving Rs. 33,427 and recovered Rs. 10,000 in case of one dealer. Reply in remaining cases has not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

2.6.4 Section 8(1) of the CST Act provides for levy of tax at the rate of four *per cent* on inter-state sale of goods made against declaration in form 'C'. Where the sale is not supported by form 'C', tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher. In respect of declared goods where the sale is not supported by form 'C', tax is leviable at twice the rate applicable. In respect of the dealers availing of tax exemption benefit under entry 69 or 255 of the notification issued under Section 49(2) of the GST Act (between March 1992 and July 1996), concessional rate of four *per cent* without the production of 'C' form would be available only on production of form 29 or 43 or tax shall have to be computed at the higher rates as applicable. However, as per the provision of the CST Act (as amended in June 2002), production of 'C' form is mandatory for claiming exemption under Section 8(5) of the CST Act.

During test check of the records of 26 offices[37] between December 2007 and October 2008, it was noticed in the assessment of 60 dealers for the period 1997-98 and 2005-06 that sales of various goods valued at Rs. 43.66 crore were not supported by form 'C'. However, AOs incorrectly levied concessional rates of tax instead of the appropriate rates. This resulted in short levy of tax of Rs. 4.94 crore including interest of Rs. 1.02 crore and penalty of Rs. 1.36 crore.

After the cases were pointed out (between May 2008 and January 2009), the department accepted the audit observations involving Rs. 14.38 lakh in case of eight dealers and recovered Rs. 3.04 lakh in case of four dealers. Reply in the remaining cases had not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

2.6.5 Section 6(2) of the CST Act stipulates that in the course of inter-state sales of goods, if the purchasing dealer effects any subsequent sales during the

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[36] ACCT: 5, 9 Ahmedabad, Gandhidham, 1 Junagadh, Kadi and 1 Vapi.
DCCT: Petro-I Ahmedabad.

[37] DCCT : Jamnagar and 16 Surat.
ACCT : 3, 5, 6, 7, 9, 15, 16, 18 and 20 Ahmedabad, Deesa, Gandhidham, Himatnagar, 3 Jamnagar, 1 Junagadh, Porbandar, 4 Rajkot, 5 and 7 Surat, 1 and 2 Vadodara, Vyara and Unjha.
CTO: Kapadwanj and Idar.

movement of goods, no tax is payable, provided the dealer claiming exemption produces a declaration in Form E-I or E-II obtained from the selling dealer and declaration in form C from the purchaser. Section 41(3) of the GST Act also provides that the assessing authority, after considering all the evidence which may be produced in support of the declaration made by the dealer, shall assess the amount of tax due from the dealer.

During test check of the records of four offices[38] between January and October 2008, it was noticed from the assessment of six dealers for the period between 1996-97 and 2005-06 that the AOs did not levy tax on sales though sales were not supported by the prescribed forms. This resulted in non-levy of tax of Rs. 1.40 crore including interest of Rs. 29.38 lakh and penalty of Rs. 41.40 lakh.

After the cases were pointed out (between June and December 2008), the department accepted the audit observations involving Rs. 1.35 lakh in case of one dealer. Reply in the remaining cases had not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

2.7 Non/short levy of purchase tax

2.7.1 Section 15B of the GST Act provides that where a dealer purchases directly or through a commission agent any taxable goods other than declared goods and uses them as raw material, processing material or as consumable stores in the manufacture of taxable goods, purchase tax at the prescribed rate is leviable on such goods. Purchase tax so levied is admissible as set off under the Rule 42E of the GST Rules, 1970 provided the goods manufactured are sold by the dealer in the State. The High Court of Gujarat[39] held that the dealer is liable to pay the purchase tax under Section 15B of the Act on the purchase of raw material from sales tax exemption holders and on their use in the manufacture of goods which are generally taxable goods under the Act though they may be exempted from the payment of sales tax pursuant to the notification under Section 49(2) of the Act.

During test check of the records of 13 offices[40] between May 2006 and September 2008, it was noticed from the assessment of 15 dealers for the periods between 1992-93 and 2005-06 that the AOs either did not levy or levy lesser amount of purchase tax on purchases made from exemption holders or purchases used in goods consigned outside the state. This resulted in underassessment of tax of Rs. 1.18 crore including interest of Rs. 20.05 lakh and penalty of Rs. 8.51 lakh.

After the cases were pointed out (between June and December 2008), the department accepted the audit observations involving Rs. 8.68 lakh in case of six dealers and recovered Rs. 2.26 lakh in three cases. Reply in the remaining cases had not been received (November 2009).

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38 ACCT: 6 and 19 Ahmedabad, 2 Anand and 7 surat.

39 M/s Madhu Silica (85 STC 258) and M/s Cheminova India Ltd. (2001-GSTB-286).

40 DCCT: Corp. Cell-I Ahmedabad, Bharuch, 7 Gandhinagar, 24 Jamnagar, 12 Vadodara and 18 Valsad.
ACCT: 20, 23 Ahmedabad, Ankleshwar, 1 Junagadh, Kadi and 1 Nadiad.
CTO: Idar.

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

2.7.2 Section 13 of the GST Act provides that a registered dealer, on production of certificate in Form 19, can purchase goods (other than prohibited goods) without the payment of tax for use by him as raw material or processing material or consumable stores in the manufacture of taxable goods for sale within the State. In the event of breach of condition of declarations, the dealer is liable to pay purchase tax at the prescribed rates with interest and penalty, under section 16 of the Act.

During test check of the records of two offices[41] in January 2008, it was noticed from the assessment of four dealers for the period between 2002-03 and 2005-06 that the dealers had purchased material valued at Rs. 3.89 crore against form 19 and used for purposes contrary to the conditions of form 19. In three cases, the dealers had utilised material in manufacture of tax free goods and in one case the dealer had consigned/branch transferred manufactured goods to other state for sale. For these breach of conditions of the declarations of form 19, the AOs either did not levy purchase tax or levied it short. This resulted in non/short levy of purchase tax of Rs. 40.54 lakh including interest of Rs. 6.71 lakh and penalty of Rs. 13.11 lakh.

After the cases were pointed out (between May and June 2008), the department accepted (April 2009) the audit observation involving Rs. 7.81 lakh in one case. Reply in the remaining cases had not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

2.8 Non/short levy of turnover tax

Section 10A of the GST Act provides for the levy of turnover tax at the prescribed rate on the turnover of sales of goods other than declared goods after allowing permissible deduction under the Act, where the turnover of a dealer liable to pay tax, first exceeds Rs. 50 lakh. From April 1993, sales made against various declarations and sales exempted from tax under Section 49 were excluded from the permissible deductions making such sales liable to turnover tax.

During test check of the records of two offices[42] in November 2007 and February 2008, it was noticed from the assessments of two dealers for the periods between 1991-92 and 1996-97, that the AOs either did not levy tax on the turnover exceeding the prescribed limit or levied lesser amount of tax by applying incorrect rate. This resulted in short realisation of turnover tax of Rs. 1.02 crore including interest of Rs. 2.13 lakh and penalty of Rs. 1.77 lakh.

The above facts were brought to the notice of the department (May and June 2008) and the Government (April 2009); their reply has not been received (November 2009).

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41 ACCT: 23 Ahmedabad and 3 Surat.

42 DCCT : 5 Ahmedabad.
ACCT : 1 Surendranagar.

2.9 Irregular/excess grant of set off

2.9.1 Rule 42 of the GST Rules provides that a dealer who has paid tax on the purchase of goods (other than prohibited goods) to be used as raw or processing material or consumable stores in the manufacture of taxable goods, is allowed set off at the rate applicable to the respective goods from the tax payable on the sale of manufactured goods subject to fulfillment of general conditions prescribed in Rule 47 of the Rules.

During test check of the records of 19 offices[43] between October 2007 and October 2008, it was noticed in the assessments of 28 dealers for the assessment period between 1996-97 and 2005-06 that the AOs allowed excess set off either on the purchase of prohibited goods or incorrectly without ascertaining the fulfillment of the prescribed conditions. This resulted in excess grant of set off of tax of Rs. 1.34 crore including interest of Rs. 28.12 lakh and penalty of Rs. 32.10 lakh.

After the cases were pointed out (between June 2008 and January 2009), the department accepted the audit observations involving Rs. 6.29 lakh in the cases of eight dealers and recovered Rs. 3 lakh from three dealers. Reply in the remaining cases have not been received (November 2009).

The matter was reported to Government (May 2009); their reply has not been received (November 2009).

2.9.2 Rule 45 of the GST Rules provides that the dealer who has paid tax on the purchase of goods, is allowed set off from the tax payable on interstate sale of such goods provided that the assessee proves to the satisfaction of the Commissioner that the relevant tax has been paid or became payable on an earlier transaction on the same goods and produces a certificate issued by the dealer from whom the goods were purchased.

During test check of the records of two offices[44] in February and March 2008, it was noticed from the assessment of two dealers for the assessment period 2001-02 and 2002-03 that the AOs allowed excess set off without ascertaining the fulfillment of the prescribed condition. This resulted in incorrect/excess grant of set off amounting to Rs. 78.53 lakh.

This was brought to the notice of the department (June 2008) and the Government (May 2009); their reply has not been received (November 2009).

2.9.3 Rule 44 of the GST Rules provides that the dealer who had paid tax on the purchase of goods is eligible for set off from the tax payable on the interstate sale of such goods. The Rules further provide that no set off shall be granted where the vendor who has sold the goods to the claimant has not credited it in the Government treasury, the amount of tax on his sales for which set off is claimed. The department has also issued instructions in June 2004 to verify the payment of tax before grant of set off.

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[43] ACCT: 11, 13, 18, 19, 20 and 22 Ahmedabad, 2 Anand, Dhoraji, Gondal, 1 Jamnagar, Mehsana, 3 Rajkot and Surendranagar.
DCCT: Corp cell-1 Ahmedabad, Jamnagar, Mehsana, Nadiad and Surat.
CTO : Dhrangadhra.

[44] ACCT: 3 Ahmedabad and 1 Surendranagar.

During test check of the records of four offices[45] between January and July 2008, it was noticed from the assessments of four dealers for the period between 2000-01 and 2002-03 that the AOs allowed excess set off of Rs. 18.95 lakh without obtaining any proof of the tax having been paid by the selling dealers. This resulted in excess grant of set off of Rs. 36.78 lakh including interest of Rs. 9.02 lakh and penalty of Rs. 8.81 lakh.

After the cases were pointed out (between June and November 2008), the department accepted (March 2009) the audit observations involving Rs. 57,200 and recovered the amount in the case of one dealer. Reply in the remaining cases have not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

2.10 Non/short levy of interest

Section 47(4A) of the GST Act provides that if a dealer does not pay the amount of tax within the prescribed period and if the amount of tax assessed or reassessed exceeds the amount of tax already paid by more than 10 *per cent,* simple interest at the rate of 24 *per cent* per annum for the period upto 31 August 2001 and at 18 *per cent* per annum there after is leviable on the amount of tax remaining unpaid for the period of default. The Gujarat Motor Spirit Cess Act, 2001 and the Rules made thereunder provide for the levy of simple interest at the rate of 24 *per cent* per annum on the amount of cess remaining unpaid for the period of default. By virtue of Section 9(2) of the CST Act, the above provisions apply to the assessments under the CST Act as well.

During test check of the records of seven offices[46] between May 2006 and October 2008, it was noticed from the assessment of eight dealers for the period between 1995-96 and 2005-06 that the AOs either did not levy interest or levied it short on the amount of unpaid tax. This resulted in non/short levy of interest of Rs. 32.07 lakh.

After the cases were pointed out (between June 2008 and January 2009), the department accepted the audit observations involving Rs. 30.52 lakh in the cases of five dealers. A report on recovery and reply in the remaining cases have not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (October 2009).

2.11 Non/short levy of penalty

Section 45(6) of the GST Act provides that where the amount of tax assessed or reassessed exceeds the amount of tax paid with the returns by a dealer by more than 25 *per cent*, penalty not exceeding one and half times of the difference shall be levied. Further, the Commissioner *vide* public circular dated 3 June 1992 has laid down slab rates for levy of penalty. By virtue of

[45] ACCT: 7, 15, 23 Ahmedabad and Bharuch.

[46] DCCT: Petro I Ahmedabad, 7 Gandhinagar and Nadiad.
ACCT: 7 Ahmedabad, Godhra and Vyara.
CTO : Petlad.

Section 9(2) of the CST Act, the above provisions apply to the assessments under the CST Act as well.

During test check of the records of 17 offices[47], between January 2006 and October 2008, it was noticed from the assessments of 23 dealers for the assessment periods between 1994-95 and 2003-04 that the difference between tax assessed and tax paid with returns exceeded by 25 *per cent* of the amount of tax paid. However, the AOs while finalising the assessments between March 2005 and October 2008, did not levy penalty in terms of Commissioner's circular of June 1992. This resulted in non/short levy of penalty of Rs. 1.47 crore.

After the cases were pointed out (between June 2008 and January 2009), the department accepted the audit observations involving Rs. 37.34 lakh in the cases of 11 dealers and recovered Rs. 1.33 lakh from one dealer. A report on the recovery of the balance amount and reply in the remaining cases have not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

2.12 Application of incorrect rate of tax

The GST Act provides for levy of tax at the rates as provided in the schedules to the Act, However, where the goods are not covered under any specific entry of the schedule, rate of tax given for residuary entry is applicable.

During test check of the records of 14 offices[48] between December 2006 and September 2008, it was noticed from the assessments of 14 dealers for the period between 2001-02 and 2005-06 that the AOs taxed turnover of Rs. 13.35 crore of various goods at incorrect rates. This resulted in short levy of tax of Rs. 1.01 crore including interest of Rs. 23.04 lakh and penalty of Rs. 28.11 lakh.

After the cases were pointed out (between April 2007 and December 2008), the department accepted audit observations involving Rs. 2.36 lakh in the cases of three dealers and recovered Rs. 35,444 from one dealer. A report on the recovery of the balance amount and reply in the remaining cases have not been received (November 2009).

The matter was reported to the Government (May 2009); their reply has not been received (November 2009).

2.13 Non/short levy of tax on works contract

Section 55 A of the GST Act provides that a dealer engaged in works contract may opt to pay, in lieu of tax, a lump sum amount by way of composition, at the rate fixed by the Government from time to time on the total value of the

[47] ACCT: 4, 11 and 20 Ahmedabad, 2 Anand, Bharuch, Dahod, Deesa, Gandhidham, Godhara, 1 Nadiad, 4 Rajkot, 12 Surat, 1 Vadodara and Vyara.
DCCT: 24 Jamnagar and 15 Surat.
CTO: Petlad.

[48] ACCT : 4, 9, 11, 18 and 23 Ahmedabad, Bharuch, 1, 10 and 12 Surat and 1 Vapi.
DCCT : 2 Ahmedabad, Corp. Cell-3 Ahmedabad and 17 Surat.
CTO: Khambhat.

contract. As per judicial decisions[49], the property of material such as chemicals and dyes used in the process of dyeing and printing are passed on to the fabrics of the customers and such passing of property of material is a deemed sale and tax is leviable on such material.

During test check of the records of six offices[50] between May 2006 and September 2008, it was noticed from the assessments of 11 dealers for the period 2000-01 and 2005-06 that in case of three dealers, the AOs allowed composition tax at incorrect rates. In case of eight dealers, the AOs did not levy composition tax on works contract of dyeing and printing though the tax was leviable in view of the judicial decisions. This resulted in non/short levy of composition tax of Rs. 11.05 crore including interest of Rs. 2.69 crore and penalty of Rs. 3.06 crore.

After the cases were pointed out (between May 2006 and September 2008), the department accepted the audit observations involving Rs. 54.73 lakh in five cases. A report on recovery in these cases and reply in the remaining cases have not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

2.14 Turnover escaping assessment

According to Section 2(29) of the GST Act, `sale price` includes the amount of valuable consideration paid or payable to a dealer for any sale. Further, if the Commissioner has reason to believe that any turnover of sales of any goods chargeable to tax has escaped assessment; he may reassess the amount of tax due from such dealer within the time prescribed and recover the dues on such turnover.

During test check of the records of six offices[51] between May 2006 and September 2008, it was noticed from the assessments of six dealers for the periods between 2001-02 and 2005-06 that the AOs did not include the amount of valuable consideration forming part of 'sale price'. This resulted in short realisation of tax of Rs. 52.96 lakh including interest of Rs. 4.04 lakh and penalty of Rs. 8.25 lakh.

After the cases were pointed out (between October and December 2008), the department accepted the audit observations involving Rs. 15.65 lakh in case of two dealers and recovered Rs. 6.34 lakh in case of one dealer. A report on the recovery and reply in the remaining cases have not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

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49 M/s Mathu Shree Textile Industries Ltd. (132-STC-539).
M/s Teaktex processing Complex Ltd. (136-STC-435).
M/s Bijoy Processing Industries. (92-STC-503).

50 ACCT-9, 20 Ahmedabad, Jetpur, 12 Surat, 1 Vadodara.
DCCT Corp Cell-1 Ahmedabad.

51 ACCT: 13, 20 Ahmedabad, Anand and Godhra.
DCCT: Junagadh and Mehsana.

2.15 Incorrect allowance of deduction from sales

Resale for the purpose of Sections 7, 8, 15 and 19B of the GST Act, means a sale of purchased goods in the same form in which they were purchased or without doing anything to them which amounts to or results in manufacture. Section 41(3) of the GST Act further provides that the AO after considering all the evidences which may be produced in support of the declaration made by the dealer, shall assess the amount of tax due from the dealer. Further, the Commissioner issued instructions on 15 April 2004 that the copies of trading account, profit and loss account, audit report, registration details of selling dealers *etc*. shall be kept in the assessment record.

During test check of the records of 22 offices[52], it was noticed between October 2007 and January 2009 from the assessments of 123 dealers finalised between August 2004 and August 2007 that 121 dealers made purchases from registered dealers (RD) and claimed deduction as resale though no evidence in support of RD purchases were available on record. In the assessments of other two dealers, the AOs allowed deduction as resale though the dealer had made purchase from unregistered dealers (URD) in one case and the purchase was made from outside Gujarat State (OGS) in other case. The AOs failed to observe the provisions of the Act/Rules and instructions issued by the Commissioner. This also indicates that there was no internal control mechanism to watch compliance of the instructions issued by the department. Total tax involved worked out to Rs. 73.97 crore.

After the cases were pointed out (between May 2008 and January 2009), the department accepted (between March and June 2009) audit observations involving Rs. 1.38 crore in five cases and stated that necessary evidence in support of RD purchases have been obtained and kept on record after verification. While the relevant records are yet to be verified by audit, the reply does not highlight the reasons for allowing deduction without supporting documents which is mandatory as per the order of the Commissioner. Reply in the remaining cases has not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

2.16 Incorrect allowance of deduction against forms

2.16.1 Section 13(A) (ii) of the GST Act provides that the deduction from turnover can be allowed for sale against form 17-B[53] for the goods specified in schedule II B. Section 19-B of the GST Act provides that the deduction from turnover can be allowed for sale against form 24-B[54] for sale of oil-seeds. Section 41(3) of the GST Act further provides that the AO after considering

[52] DCCT: 2 Ahmedabad, Corp cell -I Ahmedabad, 24 Jamnagar, 21 Junagadh and 8 Mehsana.
ACCT: 3, 5, 9, 19 Ahmedabad, Ankleshwar, Bharuch, Deesa, Gandhidham, 2 Junagadh, Mehsana, 3 Rajkot, 1, 2, 3, 6 Surat, Unja and 1 Vapi.

[53] Form 17-B Certificate by a Licenced Dealer purchasing goods for the purpose of clause (A) (ii) (a) of Section 13 of the GST Act.

[54] Form 24-B Certificate by a registered dealer purchasing oilseeds for the purpose of clause (i) of Sub-Section (1) of Section 19 B of the GST Act.

all the evidence in support of declaration made by the dealer shall assess the amount of tax due from the dealer.

During test check of the records of two offices[55] in December 2007 and August 2008, it was noticed from the assessments of two dealers for the period between 2004-05 and 2005-06 that the AOs incorrectly allowed deduction either without ascertaining the genuineness of the forms placed on record or without production of the forms. This resulted in non-levy of tax of Rs. 1.68 crore including interest of Rs. 23.06 lakh and penalty of Rs. 44.59 lakh.

After the cases were pointed out (between May and November 2008), the department accepted audit observation of Rs. 4.11 lakh and stated (July 2009) that the counter foils of the forms has been checked and kept on record in case of one dealer. While the counter foils of forms are yet to be verified by audit, the reply does not highlight the reasons for allowing deduction of sales without production of prescribed declarations. Reply in the remaining cases has not been received (November 2009).

The matter was reported to Government (May 2009); their reply has not been received (November 2009).

2.16.2 The GST Act provides that the sales made on certain declarations are allowed without payment of tax subject to fulfillment of the prescribed conditions. Sales of prohibited goods against declaration in Form 19 are not permissible.

During test check of the records of seven offices[56] between January and September 2008, it was noticed from the assessment of nine dealers for the period between 1996-97 and 2005-06 that the AOs either incorrectly allowed sale of prohibited goods made against declaration in Form 19 or allowed it on invalid forms/without forms as deduction from the sales turnover. This resulted in non-levy of tax of Rs. 46.83 lakh including interest of Rs. 12.30 lakh and penalty of Rs. 3.64 lakh.

After the cases were pointed out (between May and November 2008), the department accepted audit observations of Rs. 33.23 lakh in case of three dealers and recovered Rs. 1.79 lakh in case of one dealer. A report on recovery on the remaining cases and reply in remaining cases had not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

2.17 Non/short levy of additional tax

Section 4A of the GST Act provides that every dealer liable to pay the tax on the sale or purchase of the goods under Section 3 or Section 3A of the Act is liable to pay additional tax at the rate of 10 *per cent* on such tax with effect from 1 April 2000.

[55] ACCT: Porbandar and DCCT 11 Vadadora.

[56] ACCT: 2 Anand, Gandhidham,7 Surat and 1 Vadodara.
DCCT: 24 Jamnagar, 17 Surat and 18 Valsad.

During test check of the records of three offices[57] between December 2005 and July 2008, it was noticed from four assessments of three dealers (three assessments under the CST Act and one under the GST Act) for the period between 2000-01 and 2002-03 that the AOs either did not levy additional tax or levied it short. This resulted in non/short levy of Rs. 10.78 lakh including interest of Rs. 3.40 lakh and penalty of Rs. 32,157.

After the cases were pointed out (between October 2008 and January 2009), the department accepted the audit observations involving Rs. 9.93 lakh in case of two dealers. A report on recovery in these cases and reply in the remaining case had not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

2.18 Non-levy of tax on sale of trademark

Section 3 of the GST Act, provides that subject to the other provisions contained in the Act, every dealer is liable to pay sales tax under the Act on all sales made by him.

During scrutiny of the records of DCCT-3, Ahmedabad in December 2007, it was noticed from the assessment of a dealer for the period 2000-01 that the AO did not levy the tax on the sale of trademark on the ground that the sale of trademark was deemed sale under Section 3A of the GST Act and the agreement for the sale was executed in New Delhi. As the dealer had agreed for outright sale of trademark and not the right to use the trademark, tax was leviable under Section 3 of the Act and *situs* of the sale would be the place where the contract of sale was executed. Further, the head office as well as the corporate office of the dealer is situated in Gujarat. The AO did not collect and place on record the evidence to prove that the sale agreement was executed in the other state and tax liability was discharged. This resulted in short realisation of tax of Rs. 2.77 crore including interest of Rs. 71.67 lakh and penalty of Rs. 76.82 lakh.

The matter of non-levy of tax on sales of trademark was brought to the notice of the department (June 2008) and the Government (May 2009); their reply has not been received (November 2009).

2.19 Non-maintenance of 'P' register

Section 42 of the GST Act provides that the order of assessment can not be passed at any time after the expiry of three years from the end of the year in which the last return is filed. The department, vide its circular dated 17 March 1997 prescribed various registers. Of these, Register No. 11 i.e. 'P' register is important for assessment and collection of tax. Dealerwise information on the status of assessment is noted in the register. The AO shall enter alphabet 'P' against the period of pending assessment of each dealer on completion of the assessment year. On completion of the assessment, the AO shall close the entry in the register by indicating date of assessment and put his signature.

[57] ACCT: 2-Surat, 1-Vadodara and Vyara.

During test check of the records of 10 offices[58] between December 2007 and July 2008, it was noticed that 'P' register of the AOs were not closed and summarised properly. Further scrutiny of the registers disclosed that the AOs did not complete assessments in 7,669 cases and those assessments were barred by law of limitation. Audit could not quantify the possible loss of revenue to the Government due to non-availability of complete records.

This was brought to the notice of the department (between February and November 2008) and to the Government (May 2009); their reply has not been received (November 2009).

[58] ACCT: 3 and 15 Ahmedabad, Billimora, 24 Gandhinagar, 1 and 3 Jamnagar, Mehsana, 1 Nadiad, 2 Surat and 2 Vadodara .

CHAPTER-III: LAND REVENUE

3.1 Results of audit

Test check of the assessment records in the offices of the Collector/Deputy Collector/*Mamlatdar* and District Development Officer conducted during the year 2008-09 disclosed non/short recovery and loss of revenue amounting to Rs. 34.64 crore in 149 cases which broadly fall under the following categories.

(Rupees in crore)

Sr. no.	Category	No. of cases	Amount
1.	Non/short recovery of conversion tax	37	14.72
2.	Non/short recovery of occupancy price/premium price	23	13.53
3.	Non/short recovery of non-agriculture assessment, non/short levy of non-agriculture assessment at revised rate, non-raising non-agriculture assessment demand	16	0.48
4.	Other irregularities	73	5.91
Total		**149**	**34.64**

During the year 2008-09, the department accepted under assessment of Rs. 26.22 lakh in 14 cases and recovered Rs. 17.39 lakh in 12 cases including cases pertaining to earlier years.

A few illustrative audit observations involving Rs. 25.85 crore are mentioned in the succeeding paragraphs.

3.2 Audit observations

Scrutiny of the records of various land revenue offices revealed several cases of non-compliance of the provisions of the Bombay Land Revenue Code, 1879, Gujarat Land Revenue Rules, 1972 and Government notifications as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year, however, not only do the irregularities persist, but these remain undetected till an audit is conducted in the next year. There is need for the Government to improve the internal control system and internal audit.

3.3 Short levy of premium price

The Government of Gujarat decided in July 1983 and September 1984 to permit the land holders holding the land under new and restricted tenure[59] to convert their land to old tenure[60] and to sell/transfer the same subject to payment of the premium computed on the difference between the estimated sale price of the land and the occupancy price recovered at the time of allotment of land at the prescribed rates. This was further subject to payment of the difference on the actual sale price. The premium recoverable is 70/50 *per cent* of the difference, if the land is held for more than 20 years and is permitted to be sold for non-agricultural or agricultural purpose respectively.

3.3.1 During test check of the cases finalised by the Collector, Ahmedabad for the year 2006-07 in February 2008, it was noticed that in 15 cases, the Ahmedabad Urban Development Authority (AUDA) deducted area of land measuring 1,39,283 square meters for development under the town planning scheme (TPS) finalised by the Government from the total area of land held by the occupants of land under new and restricted tenure. AUDA allotted the final plots alongwith prescribed form F[61] and duly authorised and approved NA plan after deduction of specified area for development under TPS for which compensation was paid to the occupants of the land. While allowing conversion of the new and restricted tenure land in these cases, the Government considered the final plots only and recovered the premium thereon. Though the information of deduction of land by the AUDA from these land owners was available with the Government at the time of conversion, it did not take any action to ascertain the amount paid by the AUDA as compensation and levy premium on it. Thus, as against the premium of Rs. 32.53 crore recoverable in these cases, the authority recovered premium of Rs. 17.94 crore. This resulted in short levy of premium of Rs. 14.59 crore.

This was pointed out to the department (September 2008) and to the Government (April 2009); their replies have not been received (November 2009).

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59 New and restricted tenure means the tenure of occupancy which is non-transferable and impartible without the previous sanction of Collector.

60 Old tenure means land deemed to have been purchased by a tenant on tillers' day, 1 April 1957 free of all encumbrances.

61 Form prescribed under Rule 21 and 35 of the Gujarat Town Planning and Urban Development Rules, 1979.

3.3.2 During test check of the records of four collector offices[62] and Deputy Collector, Viramgam between February and April 2008, it was noticed that in 12 cases, land measuring 1.85 lakh square meters held under new and restricted tenure was allowed to be sold/transferred (between March 2005 and June 2007), but premium at the prescribed rate was either not recovered or was recovered on lower market value or at incorrect rates. This resulted in non/short recovery of premium of Rs. 3.32 crore.

After this was brought to the notice of the department (between July and September 2008), the department accepted the audit observations involving Rs. 11.21 lakh in two cases and recovered Rs. 11.16 lakh. A report on recovery of the balance amount and replies in the remaining cases have not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

3.4 Non/short levy of conversion tax

Section 67A of the Bombay Land Revenue Code, 1879 provides for the levy of a conversion tax on change in the mode of use of the land from agricultural to non-agricultural purposes or from a non-agricultural purpose to another in respect of land situated in a city, town or village. Different rates of the conversion tax are prescribed for residential/charitable and industrial/other purposes, depending upon the population of the city/town/notified area/village. The conversion tax shall be paid in advance by a challan in the Government treasury.

During test check of the records of six collector offices[63]/Deputy Collector, Ahmedabad and three district development offices[64] between October 2007 and May 2008, it was noticed that in 166 cases relating to the period 2005-06 and 2006-07, though the conversion tax for change in mode of use of 38.07 lakh square metres of land was leviable, the departmental officials either did not levy the tax or levied it at incorrect rate. This resulted in non/short levy of the conversion tax amounting to Rs. 3.64 crore.

After this was brought to the notice of department (between June and September 2008), the department accepted the audit observations involving Rs. 9.72 lakh in seven cases and recovered Rs. 1.87 lakh in three cases. Report on recovery of the balance amount and replies in the remaining cases have not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

3.5 Non-levy of service charges

Section 46(2) of the Bombay Stamp Act, 1958 as applicable to Gujarat, provides that all duties, penalties, interest and other dues required to be paid under the Act may be recovered by the collector as arrears of the land revenue. Further, Rule 117C of the Gujarat Land Revenue Rules, 1972 provides for the

[62] Ahmedabad, Bharuch, Mehsana and Navsari.
[63] Ahmedabad, Amreli, Gandhinagar, Jamnagar, Mehsana and Narmada.
[64] Mehsana, Narmada and Surat.

levy of service charges at the rate of five *per cent* on the recovery made as arrears of the land revenue.

During test check of the records of nine deputy collectors, Valuation of Property (VoP)[65] between September 2006 and July 2008, it was noticed that the *Mamlatdars* (Recovery) had realised Rs. 60.54 crore in 74,906 cases during the period 2005-06 to 2007-08 as arrears of the land revenue from the defaulters, but did not levy the service charges. This resulted in non-levy of the service charge of Rs. 3.03 crore.

After this was brought to the notice of the department (between March 2007 and December 2008), the department accepted the audit observations and stated that all the deputy collectors had been instructed to take action for recovery. A report on recovery has not been received (November 2009).

The matter was reported to the Government (May 2009); their reply has not been received (November 2009).

3.6 Non/short realisation of non-agricultural assessment

Bombay Land Revenue Code, 1879 and the Rules made thereunder provides for levy of non-agricultural assessment (NAA) on land used for non-agricultural purposes at the rates prescribed in the notification issued by the Government from time to time. Different rates depending on the use of the land are prescribed for each class of city/town/village. The Government vide notification of August 2003 revised the rates of NAA and classified the areas in three categories i.e. A, B & C for the levy of NAA. The Code provides for issue of a demand notice and distraint and sale of defaulter's movable/immovable property for recovery of arrears of the land revenue.

During test check of the records of four collector offices[66], Deputy Collector, Ahmedabad and three district development offices[67] between October 2007 and May 2008, it was noticed that in 127 cases, on land measuring 61.50 lakh square meters used for non-agricultural purposes during the period 2002-03 and 2006-07, the departmental officials either did not realise NAA or realised it at incorrect rates. This resulted in non/short realisation of NAA of Rs. 98.61 lakh.

After this was brought to the notice of the department (between June and September 2008), the department accepted and recovered Rs. 76,548 in one case. Replies in the remaining cases have not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

3.7 Non-realisation of penalty

The Bombay Land Revenue Code, 1879 (Code) and the Rules made thereunder provide that agricultural land cannot be used for non-agricultural purposes without prior permission of the collector. The Code also provides for

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65 Bhavnagar, Godhra, Jamnagar, Kheda at Nadiad, Surat I, II, Surendranagar, Vadodara I and Valsad.

66 Amreli, Gandhinagar, Narmada and Surendranagar.

67 Ahmedabad, Surat and Surendranagar.

eviction of the encroacher on its detection by the revenue authorities. In case of unauthorised non-agricultural use, a fine not exceeding 40 times the amount of non-agricultural assessment is leviable. In August 1980, the Government had prescribed the amount of fine to be levied for different types of unauthorised use of land.

During test check of the records of the Deputy Collector (NA), Ahmedabad in February 2008, it was noticed that in 19 cases, the revenue authorities detected unauthorised use of land measuring 1.16 lakh square meters and levied penalty of Rs. 28.80 lakh. The Collector had also ordered (between August 2006 and June 2007) to evict the occupiers to make the land open. The concerned officials, however, failed to recover the penalty and evict the unauthorised occupiers. This resulted in non-realisation of penalty of Rs. 28.80 lakh, in addition to the continued unauthorised occupation on 1.16 lakh square meters of land.

This was brought to the notice of the department (July 2008) and to the Government (April 2009); their replies have not been received (November 2009).

CHAPTER-IV: TAXES ON VEHICLES

4.1 Results of audit

Test check of the records in the offices of the Commissioner of Transport, regional transport and assistant regional transport offices in the State during the year 2008-09 disclosed underassessments and other deficiencies amounting to Rs. 256.90 crore in 136 cases which broadly fall under the following categories.

(Rupees in crore)

Sr. no.	Category	No. of cases	Amount
1.	**Computerisation of issue of driving licence and registration of vehicles (An IT review)**	1	0.37
2.	Non/short levy of motor vehicles tax	42	6.72
3.	Other irregularities	93	249.81
Total		**136**	**256.90**

During the year 2008-09, the department accepted under assessment of Rs. 1.71 crore in 27 cases and recovered Rs. 29.47 lakh in 24 cases including cases pertaining to the earlier years.

An IT review of **Computerisation of issue of driving licence and registration of vehicles** and a few illustrative audit observations involving Rs. 6.29 crore are mentioned in the succeeding paragraphs.

4.2 Computerisation of issue of driving licence and registration of vehicles

Highlights

- The Government of India, in order to have a national registry of registered vehicles and licences issued, had asked all State governments to implement the *Vahan* and *Sarathi* software developed by National Informatics Centre in 2001. The Gujarat Motor Vehicles Department implemented these systems in only one of the 27 regional transport office/assistant regional transport office though eight years have lapsed. The *Vahan* system implemented in regional transport office, Ahmedabad covered only non-commercial vehicles. The *Sarathi* system covered only issue of learner licence and did not cover issue of permanent licence.

(Paragraph 4.2.6.1)

- Data analysis of the *Vahan* system implemented in regional transport office, Ahmedabad revealed inadequate input and process controls resulting in short levy of tax amounting to Rs. 36.79 lakh.

(Paragraph 4.2.6.3)

- The system has been implemented only in seven regional transport office/assistant regional transport offices out of the 27 regional transport office/assistant regional transport offices/inspector offices.

(Paragraph 4.2.7.2)

- The system of smart card based vehicle registration was not complete and did not have provision for entry and calculation of motor vehicles tax, monitoring tax collection, issue of national or state permits, offences registered, stolen vehicles, wanted vehicles *etc*. The present system of vehicles registration has data of just five *per cent* of the total registered vehicles.

(Paragraph 4.2.7.3)

- Hand held terminals purchased for Rs. 61.43 lakh were not used. A server costing Rs. 1.94 crore purchased in December 2001 for creation of a central data repository was not installed. A database of all the registered vehicles and driving licences issued had not been created.

(Paragraph 4.2.7.4)

4.2.1 Introduction

The Bombay Motor Vehicles Tax Act, 1958 (BMVT Act) and the Bombay Motor Vehicles Tax Rules, 1959 (BMVT Rules), as applicable to Gujarat regulates the levy and collection of taxes on motor vehicles in Gujarat. Besides this, the Motor Vehicles Act, 1988 (MV Act) and the rules made by the Central and the State Governments govern the levy of licence fees, registration fees, permit fees *etc*., collectively called the Motor Vehicle Tax (MVT). BMVT Act authorises the Gujarat Motor Vehicle Department

(GMVD) to recover unpaid tax dues as arrears of land revenue under Bombay Land Revenue Code, 1879.

The Government of India, in order to have a national registry of registered vehicles and driving licences issued to provide valuable data for the centre and state security agencies asked all the State governments in the year 2001 to implement the *Vahan* and *Sarathi* software systems developed by the National Informatics Center. The GMVD started the *Vahan* system for vehicles registration on pilot basis only in March 2008. The *Sarathi* system for driving licence was implemented in November 2006.

Before this, the GMVD had introduced a locally developed software for issue of smart card based driving licence from May 1999 and smart card based vehicles' registration from December 2001. The smart card based vehicles' registration is operational in seven regional transport offices/assistant regional transport offices and smart card based driving licence in 24 regional transport offices/assistant regional transport offices out of the total 27 regional transport offices/assistant regional transport offices/Inspector's offices.

4.2.2 Organisational set up

The State Commissioner of Transport heads the GMVD. The Commissioner of Transport is under the administrative control of the Secretary, Ports and Transport Department, Government of Gujarat. The Commissioner is assisted by a Joint Director and a total staff of 129 gazetted and 1,140 non-gazetted officials. There are 25 regional transport offices/assistant regional transport offices and two Inspector offices for as many districts in Gujarat, except Dang.

4.2.3 Audit objectives

The review was conducted with a view to assess:

- the extent to which the objectives of the computerisation project had been achieved;
- whether the information technology controls were adequate to ensure integrity, reliability and confidentiality of the data maintained in the transport department;
- whether adequate system and data security policies have been framed and implemented for accessibility, retrieval and security of the data; and
- whether adequate system continuity and disaster recovery plan have been framed and implemented.

4.2.4 Audit scope and methodology

Audit analysed the records in the office of the Commissioner of Transport, Gandhinagar and field offices for the period from May 1999 (when the computerisation project was started) to March 2009. Data analysis was done using IDEA software on data obtained from Commissioner of Transport, Gandhinagar and application controls were also analysed. In case of registration through *Vahan,* entire data of 1.14 lakh vehicles, which was entered during the period March 2008 to March 2009 was analysed.

4.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Commissioner of Transport office in providing the necessary information and records for audit. An entry conference was held in March 2009 in which the scope and methodology of audit was explained to the department/Government. The Commissioner of Transport, Joint Director, Regional Transport Officer, Ahmedabad and Director, National Informatics Centre attended the meeting. Audit findings of the review were reported to the Government in October 2009. The exit conference could not be held due to the pre-occupation of the departmental officers. Replies of the Government and the department have not been received (November 2009).

Audit findings

4.2.6 *Vahan* and *Sarathi* System

4.2.6.1 Delay in implementation

The Government of India, in order to have a national database of registered vehicles and driving licences to provide valuable data for the centre and state security agencies, asked all the State Governments in 2001 to implement the *Vahan* and *Sarathi* software designed by the National Informatics Centre (NIC). The main objective was to have a uniform format and standardised software for issue of registration certificates by the transport departments of all the States and to have a national registry of registered motor vehicles and driving licences. It was planned to implement the system fully in all the States during the Tenth Plan (2002-07). The final target date was extended up to 31 March 2008. As on July 2009, out of 35 States and Union territories, 26 have already implemented the system.

The GMVD introduced the *Sarathi* system in November 2006 and *Vahan* system in March 2008 initially at the regional transport office, Ahmedabad. The system has not yet been implemented in the rest of the regional transport offices and assistant regional transport offices. The Government of India had repeatedly asked the GMVD to expedite the implementation. However, all the modules of the system are yet to be implemented by the GMVD except two modules though eight years have lapsed.

The *Vahan* system covers the module on the registration of non-commercial vehicles only. Similarly, the *Sarathi* system covers the module for issue of learning driving licences only.

The data from the present smart card based vehicle registration system (SCVR) and smart card based driving licence system (SCDL) have not been exported to *Sarathi* and *Vahan* system due to non-resolution of the problems reported by the third party service provider.

The Government needs to take effective steps for earliest implementation of both the system in all the regional transport offices for a national registry of registered motor vehicles and driving licences in the interest of national security.

4.2.6.2 Inadequate application controls in *Vahan* system

In data processing systems, adequate input, processing and output controls need to be designed to ensure data integrity and reliability. Analysis of the data of 1.14 lakh vehicles entered in *Vahan* system in regional transport office, Ahmedabad from March 2008 to March 2009 revealed inadequacies in applications control of the system as mentioned below.

- In 1,033 cases, the engine numbers for different vehicles registered were the same. Further, in 255 cases, the engine number and the chassis number were same. The basic input control check for uniqueness of the engine and chassis number was not present in the system.
- In 139 cases, the registration date was prior to the purchase date indicating that there was no validation check on these date fields.
- In eight cases, the receipt number of the registration fee received was same for different chassis numbers.
- In 29 cases, the date of inspection of the vehicle had been entered as a day which was Sunday. In three cases, the inspection day mentioned was a national holiday *i.e.* 26 January 2009. Obviously, the input validation control on these date fields had not been enforced.
- In 20 cases, it was observed that there were duplicate insurance cover notes. In 14,195 records, the insurance cover note details were blank. Entry of a valid insurance cover note number was not made mandatory in the system.
- As per the Form 20 - Rule 47, every purchaser of vehicle had to submit his Permanent Account Number (PAN) at the time of registration of the vehicle, the details of which are periodically sent to the Income Tax office. It was, however, observed from the data that out of 1.14 lakh vehicle entries, in 1.07 lakh entries, PAN was blank. In 1,089 cases, the PAN was invalid.

4.2.6.3 Short levy of motor vehicles tax on imported vehicles

As per the notification dated April 2007 issued under the BMVT Act, six *per cent* of sales value is payable as tax on registration of indigenous four wheeled vehicles by individuals, local authorities, universities, educational and social welfare institutions and for others the rate is 12 *per cent*.

Audit analysis revealed that in eight cases, the rate of tax of indigenous vehicles was applied for imported vehicles, resulting in short recovery of tax of Rs. 36.79 lakh as mentioned in the table below.

(Rupees in lakh)

Registration no. and date	Maker model	Amount on which tax to be levied	Rate of tax/ amount of tax calculated on sale amount	Rate of tax/ amount of tax to be levied on market value	Short levy of tax
GJ01HR1415/ 26.05.08	Mercedez Benz 350	79.00	-- 0.38	24% 18.96	18.58
Sale value was left blank and tax was calculated arbitrarily. The vehicle was registered by a private limited company and hence tax at 24 *per cent* was applicable.					

GJ01HQ9103/ 05.09.08	Audi A8 4.2 FSI Automatic	72.50	--	--	5.39
The sale value was taken as Rs. 27.56 lakh instead of the market value of Rs. 72.50 lakh.					
GJ01HS3409/ 20.03.09	AUDI A 4.2.0 TDI	25.42	6% 1.53	12% 3.05	1.52
GJ01HR6431/ 18.12.08	AUDI A 4.2.0 TDI	26.67	6% 1.60	12% 3.20	1.60
GJ01HR6753/ 24.12.08	AUDI A 4.2.0 TDI	31.30	12% 3.76	24% 7.52	3.76
GJ01HS3917/ 31.03.09	AUDI A6 3.2 FSI Quattro Tiptro	31.85	6% 1.91	12% 3.82	1.91
GJ01HQ3587/ 28.05.08	BMW 525I PETROL	36.00	6% 2.16	12% 4.32	2.16
GJ01HR6408/ 18.12.08	BMW CKD 520 D EURO III	31.22	6% 1.87	12% 3.74	1.87
In cases of imported vehicles the rate applicable is 12 *per cent* for individuals, local authorities, universities, educational and social welfare institutions and 24 *per cent* for others**.**					
Total					**48.82**

Thus, the department short realised tax of Rs. 36.79 lakh by giving undue benefits to the owner of these vehicles.

4.2.6.4 Input and processing controls in *Sarathi* system

The *Sarathi* system implemented in the regional transport office, Ahmedabad covers the issue of learner's licence. Every applicant, after payment of the fee and submission of the requisite documents, is required to take a computer based examination in the regional transport office for evaluation of the knowledge of the traffic rules. The system poses up to 15 multiple choice questions. If the applicant answers at least 11 questions correctly, he is marked as passed by the system.

In the analysis of the data of 2.37 lakh learner licence entered in the *Sarathi* system in the regional transport office, Ahmedabad from November 2006 to March 2009, the following lapses were observed in the input and processing controls.

- In 158 cases, the number of questions answered was more than the number of question posed by the system.
- In nine cases, the number of questions answered was less than 11 but still the candidate was declared 'pass'.
- In the time taken field, it was observed that in six cases it was before 6:00 hours and in 40 cases it was beyond 18:00 hours. Out of these 40 cases, in 16 cases the examination time was at midnight after 23:00 hrs (11:00 pm) and in 19 cases, the examination date was Sunday.
- For answering each question, a maximum of 48 seconds was allowed and the test had to be completed in 12 minutes. In 17 cases, it was observed that the applicants had taken 13 to 15 minutes, but they were declared 'pass'.

The above raises grave doubts about the manner in which licences were being granted.

4.2.6.5 Lack of training of personnel

The *Vahan* and *Sarathi* software system's front desk operation is to be directly handled by the regional transport office personnel. The system is also to be implemented and maintained by the regional transport office staff with the support of the National Informatics Centre. Both the systems have been implemented (*Vahan:* March 2008; *Sarathi:* October 2006) at the regional transport office, Ahmedabad. But training has not been provided to the regional transport office staff in operation of these systems. As a result, the department is still dependent on the third party outsourcing agency.

Considering the importance of the driving licence, being a nationwide valid document of identity, in the interest of national security it is recommended that the training of staff may be undertaken on priority basis. This will also reduce dependency on the third party outsourcing agency and it will be in the interest of the overall safety of general public.

4.2.7 Smart card based vehicle registration and driving licence

Earlier to the *Vahan* and *Sarathi* system, the GMVD had introduced locally developed software for smart card based driving licence from May 1999 and smart card based vehicles' registration from December 2001.

The main objectives were establishing a central registry for management information system, ensuring the efficiency and transparency in the departmental activities and checking the use of forged and fake documents in respect of the motor vehicles. The implementation and operation of the smart card based driving licence system was outsourced to M/s Smart Chip Limited in May 1999. The smart card based vehicles registration system was outsourced to M/s Shonkh Technologies International Ltd., in December 2001.

4.2.7.1 Inadequate system design in SCVR and SCDL

Evasion of revenue can be checked by incorporating tax collection module in the software. In smart card system introduced for driving licence and registration of vehicles, the system had a provision for preparing a smart card for the licence issued or vehicle registered only. The system did not have any provision to process tax/fee/penalty collection *etc*., and these were performed manually. Also, the system design of smart card based vehicle registration did not have any provision for monitoring of tax collection, issue of national or state permits, offences registered, stolen vehicles, wanted vehicles *etc*.

4.2.7.2 Partial introduction of the smart card system

The system of smart card based vehicle registration has been introduced in the year 2001 and implemented in only seven out of 27 regional transport office/assistant regional transport office/Inspector offices though more than eight years have lapsed. As per Article 6(iii) of the contract entered into with the third party service provider (M/s Shonkh Technologies), the service provider had to enter the data of registered vehicles prior to 2001 and also the data of registered vehicles for which smart card was not issued to make the

database complete. However, data of 14.49 lakh vehicles has been entered in the database by the third party service provider against the total 109.99 lakh registered vehicles. Further, the data entry done by the vendor was not being authenticated and validated by the departmental personnel.

Similarly, the smart card based driving licence system was introduced in 24 out of the 27 regional transport offices/assistant regional transport offices/Inspector offices since 1999. The system remained unimplemented in three assistant regional transport office/Inspector offices. In case of the regional transport office, Mehsana, the system of smart card based vehicle registration was stopped in December 2006. In case of the regional transport office, Mehsana, Joint Director (transport), Gandhinagar stated (July 2009) that adequate applications were not received for smart card based vehicle registration.

In Assistant Regional Transport Office, Dahod, it was noticed that the system was operated for less than a year (1999-2000). The office issued 400 smart card licence and thereafter the system stopped due to lack of infrastructure facility.

4.2.7.3 Incomplete database of licences issued and vehicles registered

Though the smart card based driving licence system and smart card based vehicle registration system was introduced in May 1999 and December 2001, the Government of Gujarat did not make the use of smart cards compulsory by issue of Government resolution exercising the powers conferred under the Motor Vehicles Act. Since availing of smart cards for licence and registration of vehicles was not made compulsory, the database did not have the data of all the licences issued and vehicles registered. This also defeated the very purpose of having a complete database of all the licences issued and vehicles registered. Under the smart card based vehicles registration system, only 5.50 lakh smart cards have been issued which covers only five *per cent* of the total 109.99 lakh vehicles that were registered till 2008-09.

4.2.7.4 Non-utilisation of hand held terminals

As per the computerisation project of smart card based driving licence system and smart card based vehicle registration system, driving licences and registration certificates were to be issued on smart cards. A smart card is a pocket sized plastic card embedded with a computer chip. A special hand held terminal (HHT) instrument is required for reading the information stored in the computer chip and generating challans. The purpose of networking of the HHTs was to daily update the data related to driving offences at the regional transport office's local server. The purpose of creation of the hot list was to prevent re-issue of a driving licence in cases where they had been impounded by the Transport Department. Audit observed that 192 HHTs purchased in March 2000 valued at Rs. 61.43 lakh for reading the smart cards were not distributed to the enforcement personnel and were lying unutilised in the regional transport offices. Failure to utilise the HHTs and update the smart cards regularly had rendered the smart cards as mere plastic cards defeating the objectives of the smart card based computerisation project. Also, due to non-utilisation of the HHTs, objectives of the computerisation project such as

networking of these terminals with the local server of regional transport office and creation of the hot list were not achieved. Further, as against 1k memory of present smart card, the proposed new smart card will have 4k memory.

A central database server was proposed to be set up (September 2001) in Ahmedabad for storing the data of smart cards of licence issued from all regional transport office/assistant regional transport offices in Gujarat. For this purpose, computer server costing Rs. 1.94 crore was purchased in December 2001. However, the server has not been installed and is still lying idle (July 2009).

4.2.7.5 Lack of network infrastructure

For the system to be fully functional, networks for inter connectivity between the Commissioner of Transport and regional transport offices was required; but this networking has not been done. Audit also observed that the permission could not be obtained from the Science & Technology Department for wide area network for inter-connectivity with the Commissioner of Transport and regional transport offices. Further, 11 check posts alone were inter-connected by *Bharat Sanchar Nigam* Limited lease line. However, intra-network connectivity between the Commissioner of Transport and regional transport offices was not implemented (November 2009).

4.2.7.6 Inadequate preparedness for facing adverse circumstances

It was observed in audit that the department did not have a formal business continuity and disaster recovery plan for continuation of the departmental activities in the event of a disaster. In all the field offices audited, backup of the data was not being taken on an external media so that it could be stored in an offsite fire safe location and could be readily available when needed. Since there is no central database, in the event of data loss, field offices would have nothing to restore the data. It was also observed that the backup/standby servers were not installed in the field offices so as to immediately resume the work in case of server failure due to fault or crash as evident from the following examples.

In case of regional transport office, Vadodara, a fire took place in January 2007. The computerised system had stopped and the regional transport office, Vadadora had reverted to the manual system. The computer system was reintroduced after a lapse of two years in that office. Thus, it is essential that the computer hardware, software and data are kept under strict fire safety measures. In the regional transport offices/assistant regional transport offices, fire safety measures were found inadequate as fire extinguishers, fire alarm and smoke detection systems were not in place in any of the offices audited.

4.2.7.7 Lack of proper documentation and system development controls

Before developing any computer system, user requirement specifications (URS) and software requirement specifications (SRS), which give the complete description of the system to be developed, should be approved by the management so that the vendor understands the need of the organisation. Also, documentation such as URS, SRS, detail design, data flow diagram, data dictionary, relationship between tables *etc*., is crucial for continuity of the

computerisation project. It is all the more necessary in the GMVD since the work of processing and issue of smart cards for driving licence and registration of vehicles has been outsourced. Subsequent vendor, who is awarded the contract, needs to have proper documentation to understand the existing application and effective discharge of the functions. Audit noticed that the proper written and authenticated documentation for these systems were not available.

A formal system to test and accept the modules developed by the vendor before they were implemented in the field offices had not been put in place. A formal change management policy or formal procedure for making changes to the software was not framed. Log of changes made to the application software has also not been maintained.

4.2.8 Conclusion

The GMVD has not implemented *Vahan* and *Sarathi* system as asked for by the Government of India even after a lapse of eight years. It has not made any plan to implement the same in the near future. Even the locally developed softwares have neither been fully implemented nor have served their purposes fully. There are many loop holes in the present systems. Non-preparation of business continuity and disaster recovery plan have exposed the system to risk of complete loss of data in the event of a natural calamity or system failure.

4.2.9 Summary of recommendations

The Government may consider implementing the following recommendations to rectify the deficiencies and improve the system.

- Taking immediate measures to fully implement *Vahan* and *Sarathi* systems developed by National Informatics Centre;
- taking urgent steps to set up a central server and maintain centralised data bank of registered vehicles and driving licence. Steps should also be taken for utilisation of hand held terminals; and
- framing and implementing business continuity plans, train departmental staff to reduce dependency of outside agencies for its front desk operations.

4.3 Other Audit observations

Scrutiny of the records of various regional transport offices revealed several cases of non-compliance of the provisions of the Bombay Motor Vehicles Tax Act,1958, the Motor Vehicles Act, 1988, the Central Motor Vehicles Rules, 1989, etc., and the Government notifications and other rules as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year; however, not only do the irregularities persist, these also remain undetected till an audit is conducted in the next year. Persistence of irregularities despite being repeatedly pointed out by audit is indicative of systemic flaws in the internal control procedures and internal audit systems of the department leading to continued short fall in state revenues. There is need for the Government to improve the internal control procedures and system.

4.4 Non-compliance of the provisions of Acts/Rules

Section 3 of the Bombay Motor Vehicle Tax Act, 1958 (BMVT Act) as applicable to Gujarat empowers the State Government to levy and collect tax, not exceeding the maximum rates specified in schedules. The Motor Vehicles Act, 1988 (MV Act) prohibits plying vehicles on roads without valid fitness certificate. The Central Motor Vehicles Rules, 1989 (CMV Rules) provides that every transport vehicle has to obtain a certificate of fitness annually by payment of prescribed fees after completion of two years of registration. The CMV Rules also provides that motor vehicles shall not be loaded in such a manner that the load or any part of the load extends beyond prescribed limits.

The taxation authorities failed to observe some of the above provisions resulting in non/short levy/realisation of tax as discussed in paragraphs 4.4.1 to 4.4.4.

4.4.1 Non/short realisation of motor vehicles tax on transport vehicles

As per the BMVT Act (as adopted), contract carriage and goods carriage vehicles shall pay assessed tax on monthly and half yearly basis respectively except for the period the vehicles are not in use. In case of default in payment of the tax, interest at the rate of two *per cent* per month; and penalty at the rate of two *per cent* per month subject to maximum of 25 *per cent* of tax, is leviable till the date of the payment. The BMVT Act empowers the taxation authority to detain and to keep in custody the vehicles of the owners who defaulted in payment of the Government dues till unpaid tax is paid. The BMVT Act also authorises the department to recover tax dues as arrears of land revenue.

During test check of the records of 14 taxation authorities[68] (between September 2006 and July 2008), it was noticed that operators of 317 omnibuses, who kept their vehicles for use exclusively as contract carriage and 338 vehicles used for transport of goods had neither paid tax nor filed non-use

[68] Anand, Amreli, Bharuch, Bhavnagar, Bhuj, Godhra, Jamnagar, Mehsana, Narmada, Palanpur, Porbandar, Rajkot, Vadodara and Valsad.

declarations for various periods between 2004-05 and 2007-08. The departmental officials failed to issue demand notices and initiate recovery proceedings as prescribed in the Act. This resulted in non-realisation of motor vehicles tax of Rs. 5.11 crore including interest of Rs. 55.08 lakh and penalty of Rs. 51.49 lakh.

After the cases were brought to the notice of the department (between February 2007 and December 2008), the department accepted (between March 2007 and February 2009) the audit observations involving Rs. 1.68 crore in 431 cases and recovered Rs. 26.68 lakh in 161 cases**.** A report on the recovery of the balance amount and replies in the remaining cases had not been received (November 2009).

The matter was reported to the Government (May 2009); their reply has not been received (November 2009).

4.4.2 Non-renewal of fitness certificate led to compromising road safety, besides non-realisation of revenue

Rule 62 and 81 of CMV Rules provide that the owners of the transport vehicles shall produce their vehicles for inspection annually after completion of two years of registration and to pay the prescribed fees for inspection and renewal of the fitness certificate. Section 56 of the MV Act prohibits plying of vehicles on road without valid fitness certificate and also stipulates that vehicles without valid certificates of fitness shall not be deemed to be validly registered for the purpose of Section 39 of the Act. Further, Section 192 of the MV Act provides for levy of minimum fine of Rs. 2,000 for using vehicle without registration.

Test check of the records of the assistant regional transport office, Anand (May 2008) revealed that though the owners of 2,934 transport vehicles did not present their vehicles for inspection and renewal of fitness certificate, the assistant regional transport officer did not issue any notice to them. There was no structured mechanism to record and follow up the requirement of obtaining the fitness certificate. Non-inspection of the motor vehicles not only resulted in the vehicles plying without valid fitness certificate with serious implications on the road safety, but also non-realisation of revenue of Rs.7.92 lakh. Besides, minimum fine of Rs. 58.68 lakh was also leviable.

This was brought to the notice of the department (December 2008) and the Government (May 2009); their replies have not been received (November 2009).

4.4.3 Non/short levy of lump sum tax

As per the BMVT Act (as adopted), fixed rates of one time tax (lump sum tax) are leviable on all non-transport and transport vehicles of unladen weight upto 2,250 kgs and registered laden weight upto 3,000 kgs, respectively. Lump sum tax is leviable with reference to the cost of the vehicles.

During test check of the records of six taxation authorities[69] (between September 2007 and July 2008), it was noticed that in case of 170 vehicles, the

[69] Anand, Bharuch, Mehsana, Palanpur, Patan and Surendranagar.

departmental officials levied lesser amount of lump sum tax either due to incorrect determination of cost of the vehicles or incorrect application of rate. In one case, lump sum tax was not levied due to incorrect exemption from tax. This resulted in non/short levy of lump sum tax of Rs. 9.74 lakh including interest and penalty.

After the cases were brought to the notice of the department (between October and December 2008), the department accepted (December 2008 and February 2009) and recovered Rs. 95,734 in three cases. Replies in remaining cases have not been received (November 2009).

The matter was reported to the Government (May 2009); their reply has not been received (November 2009).

4.4.4 Short levy of compounding fees in respect of goods vehicles carrying over dimensional goods

The GMVD's instruction of 24 June 2003 prescribed the rates of compounding fees for compounding offences of vehicles carrying goods of over dimensional length/height/width *etc*. Different rates of compounding fees had been prescribed for over dimension of the consignment goods and the goods other than consignment goods. The word 'consignment' has neither been defined in the MV Act/Rules nor clarified in the above instructions. Ordinarily, consignment means 'the act of consigning or sending property to an agent or correspondent in another place by one conveyance or two/three conveyances'.

During test check of the records of taxation authority, Bhilad (January 2008), it was noticed that in 61 cases, the departmental officials levied compounding fees at lower rate applicable to other than consignment goods though the goods were consigned to an agent or correspondent in another place. Incorrect application of rates of compounding fees resulted in short levy of Rs. 5.06 lakh.

This was brought to the notice of the department (July 2008) and the Government (May 2009); their replies have not been received (November 2009).

CHAPTER-V: STAMP DUTY AND REGISTRATION FEES

5.1 Results of audit

Test check of the records in the registration offices and offices of the Collector of Stamp Duty (Valuation of Property) in the State, conducted in audit during the year 2008-09 disclosed short realisation of stamp duty and registration fees amounting to Rs. 44.39 crore in 285 cases, which broadly fall under the following categories.

(Rupees in crore)

Sr. no.	Category	No. of cases	Amount
1.	Underassessment of stamp duty on instruments of mortgage deeds	10	6.43
2.	Misclassification of documents	56	3.31
3.	Undervaluation of property	27	0.74
4.	Irregular acceptance of time barred cases postponement of realisation of Government duty	5	0.19
5.	Other irregularities	187	33.72
Total		**285**	**44.39**

During the year 2008-09, the department accepted underassessment of Rs. 3.11 crore in 21 cases and recovered Rs. 7.94 lakh in 10 cases including cases pertaining to the earlier years.

A few illustrative audit observations involving Rs. 77.23 crore are mentioned in the following paragraphs.

5.2 Audit observations

Scrutiny of the records of various registration offices and offices of the Collector of Stamp Duty (Valuation of Property) revealed several cases of non-compliance of the provisions of the Registration Act, 1908, the Bombay Stamp Act, 1958, the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 etc., and the Government notifications and other rules as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year, however, not only do the irregularities persist; these remain undetected till an audit is conducted in the next year. There is need for the Government to improve the internal control system and internal audit so that such omissions can be detected and prevented in future.

5.3 Non/short levy of stamp duty on notes sent by brokers/agents for purchase or sale of shares and allotment of shares through IPO/FPO

The Bombay Stamp Act, 1958 (as applicable to the state of Gujarat) provides for the levy of stamp duty at the prescribed rates on note or memorandum sent by a broker/agent to his principal intimating the purchase or sale on account of such principal in respect of any share, scrip, stock, bond, debenture stock or other marketable security. Further, the Act also provides for the levy of stamp duty on the letter of allotment or renunciation of shares in any company or certificate or other document evidencing the right or title of the holder to any share, stock or scrip.

Test check of the records of the office of the Superintendent of Stamps, Gandhinagar and Additional Superintendent of Stamps, Gandhinagar in February and April 2009 revealed that in nine cases, though the brokers/agents of shares carried out cash/delivery based transactions and forwarded contracts worth Rs. 2,91,487.08 crore on account of their principals, the departmental officials either did not recover the stamp duty or recovered it at an incorrect rate. Further, in seven cases, the companies registered in Gujarat had raised funds through Initial Public Offer (IPO)/Follow on Public Offer (FPO). These companies neither remitted the consolidated stamp duty payable on the allotment of shares nor did the department raise any demand for the stamp duty. **Audit observed that the department did not have any system to capture such revenue.** This has resulted in non/short levy of stamp duty of Rs. 35.88 crore.

This was brought to the notice of the department and the Government (April 2009); their replies have not been received (November 2009).

The Government may consider taking appropriate measures to prevent leakage of such revenue.

5.4 Short levy of stamp duty on delivery order of imported goods

The Bombay Stamp Act (as applicable to the state of Gujarat) provides for the levy of stamp duty at the prescribed rate on the instruments entitling any person to a delivery of any goods lying in any dock or port, or in any

warehouse in which the goods are stored. The Superintendent of Stamps, Gandhinagar issued instructions in April 2006 to levy stamp duty on gross value of the goods shown in the delivery orders.

During test check of the records of the office of Deputy Collectors, Valuation of Property (VoP), Bhavnagar and Surat II and Additional Superintendent of Stamps, Gandhinagar in February 2008 and February 2009, it was noticed that in 411 cases, the departmental officials did not levy stamp duty on the delivery orders for clearance of the imported goods valued at Rs. 1,454.90 crore from the Ship Breaking Yard, Bhavnagar and Inland Container Depot, Sabarmati, Ahmedabad. Further, in case of 48 delivery orders involving goods valued at Rs. 493.61 crore, the departmental officials levied stamp duty of Rs. 47 lakh instead of Rs. 49 lakh due to non-inclusion of the element of customs duty in the assessable value of the goods delivered which was contrary to the instructions of the Superintendent of Stamps. This resulted in non/short levy of stamp duty amounting to Rs. 9.66 crore.

This was brought to the notice of the department (June 2008 and April 2009) and the Government (April 2009); their replies have not been received (November 2009).

5.5 Short levy of stamp duty and registration fees on instruments comprising several distinct matters

Under the Section 5 of the Bombay Stamp Act (as applicable to the state of Gujarat) any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties for which such separate instrument would be chargeable under the Act.

During test check of the records of 31 sub-registrar offices[70] between September 2006 and October 2008, it was noticed that 251 documents comprising several distinct matters of immovable properties valued at Rs. 120.99 crore were charged to stamp duty and registration fees for only one matter/transaction. This resulted in short levy of stamp duty and registration fees of Rs. 8.48 crore as given in the table below.

(Rupees in lakh)

Sr. no.	Location	No. of docum-ents	Value of property	Short levy	Nature of irregularity
1.	Ahmedabad II, IV, V, Gandhinagar, Junagadh,Kalol, Navsari, Surat I, II, Vadodara I, III, IV	75	6,022.10	530.12	The documents contained two distinct matters (i) deemed conveyance between vendor and developer for entire property and (ii) present conveyance of property by vendor and developer to the ultimate purchaser. Stamp duty and registration fees were not levied on the first matter.

[70] Ahmedabad II, IV, V, Anand, Ankleshwar, Bardoli, Bhavnagar II, Gandhinagar, Junagadh, Jamnagar I, II, Kadi, Kalol, Mahuva, Mangrol, Morbi, Navsari, Pardi, Porbandar, Rajkot I, II, III, IV, Surat I, II, III, Vadodara I, III, IV, Valsad and Veraval.

2.	Ahmedabad II, IV, V, Anand, Ankleshwar, Bardoli, Bhavnagar II, Junagadh, Jamnagar I, II, Kadi, Kalol, Mahuva, Morbi,Pardi, Porbander, Rajkot I, II, III, IV, Surat I, II, Vadodara III, Valsad, Veraval	154	4,455.92	290.79	The documents contained two distinct matters (i) deemed conveyance between mortgagor (the defaulting company) and mortgagee (the bank) and (ii) present conveyance of the property by the Bank through auction to the purchaser. Stamp duty and registration fees were not levied on the first matter.
3.	Ahmedabad V, Mangrol, Morbi, Veraval	14	153.52	9.30	The documents contained two distinct matters (i) execution of power of attorney for consideration and (ii) present conveyance of land. Stamp duty and registration fees were not levied on the first matter.

This was brought to the notice of the department (between March 2007 and January 2009) and the Government (April 2009); their replies have not been received (November 2009).

5.6 Short levy of stamp duty and registration fees due to misclassification of deeds

Under the Section 3 of the Bombay Stamp Act (as applicable to the state of Gujarat), every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. For the purpose of levy of the stamp duty, an instrument is required to be classified on the basis of its recitals given in the document and not on the basis of its title. Registration fees on such documents are also to be charged *ad valorem* on the amount of the purchase money/loans.

During test check of the records of 33 sub-registrar offices[71] between May 2006 and October 2008, it was noticed that 241 documents registered between 2005 and 2007 were classified on the basis of their titles and the stamp duty and registration fees were levied accordingly. Scrutiny of the recitals of these documents revealed that these were misclassified. This resulted in short levy of stamp duty and registration fees of Rs. 6.22 crore of which important cases are mentioned in the table below.

[71] Ahmedabad II, III, IV, V, VII, Anjar, Bharuch, Bhavnagar I, II, Gandhinagar, Gandhidham, Himatnagar, Jamnagar I, II, Junagadh, Kalol, Mehsana, Morbi, Pardi, Porbander, Rajkot I, II, III, IV, Surat I, III, Talaja, Vadodara I, II, III, IV, Valsad and Veraval.

(Rupees in crore)

Sr. no.	Location	No. of Docu-ments	Consider-ation/ amount of loan	Short levy	Nature of objection
1.	Ahmedabad II, IV, VII, Bharuch, Bhavnagar I, Gandhinagar, Jamnagar I, II, Kalol, Mehsana, Pardi, Surat I, Vadodara I, III, IV	40	43.80	3.08	Recitals, such as handing over the possession, payment of the consideration to the land owners, acceptance of money by the developers from the prospective buyers, payment of all taxes by the developers after execution of the agreement, giving irrevocable power of attorney to the developers *etc*. clearly indicated conveyance of property, but stamp duty was levied as development agreements.
2.	Ahmedabad IV, V, Anjar, Bhavnagar I, II, Gandhinagar, Rajkot IV, Vadodara I, III, IV.	56	20.05	1.95	Agreements contained recitals such as "possession is being handed over, henceforth all taxes will be borne by the purchasers, seller executed irrevocable power of attorney in favour of purchaser" *etc*., but stamp duty was levied as agreement instead of conveyance.
3.	Ahmedabad VII, Morbi, Surat I, III, Rajkot I, II, IV, Vadodara I, III, IV	57	73.62	0.20	Recitals contained conditions such as payment of compound interest, handing over the demand promissory note, power of attorney, fixing of conditions by sanction letter, *etc*., clearly indicating creation of charge over properties, but the document was classified as equitable mortgage instead of mortgage.

This was brought to the notice of the department (between May 2006 and June 2008) and the Government (April 2009); their replies have not been received (November 2009).

5.7 Short levy of stamp duty due to undervaluation of properties

Section 32A of the Bombay Stamp Act (as applicable to the state of Gujarat) provides that if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall, before registering the document, refer it to the Collector (VoP) for determining the market value of

the property. The market value of the property is to be determined in accordance with the Bombay Stamp (Determination of Market Value of the Property) Rules, 1984.

During test check of the records of 23 sub-registrar offices and Deputy Collector (VoP), Rajkot between September 2006 and November 2008, it was noticed that the market value of the property was determined incorrectly in 192 documents registered between 2004 and 2007, which resulted in short levy of stamp duty and registration fees of Rs. 4.71 crore as mentioned in the table below.

(Rupees in lakh)

Sr. no.	Location	No. of docum-ents	Short levy	Nature of irregularity
1.	Ahmedabad V, Ankleshwar, Gandhinagar, Kamrej, Jamnagar II, Navsari, Rajkot III, Surat I, IV, Vadodara III, IV and Valsad	88	367.94	The Government has prescribed *jantri*[72] for determining the market value of the land and properties respectively. Instead of adopting the *jantri*, lesser value of the properties as shown in the document was accepted.
2.	Kalol	3	2.81	While calculating the market value, the rates prescribed in *jantri* were not adopted.
3.	Bhuj	11	2.10	While calculating the market value, the sub-registrar adopted *jantri* rate prescribed for agricultural land instead of commercial/ residential land.
4.	Anjar, Nakhtrana	28	77.26	While calculating the market value, the sub-registrar adopted the rate of agricultural land instead of industrial land.
5.	Surat III	1	0.46	While calculating the market value, premium paid has not been taken into consideration for market value.
6.	Vadodara III	1	5.91	While calculating the market value, the sub-registrar excluded the value of land for road set back instead of taking value of entire land.

[72] Statement issued by the Government showing the rates for the purpose of determination of value of land and levy of stamp duty.

7.	DC, (VoP)-I Rajkot	1	0.59	While calculating the market value of flat, the sub-registrar did not include the value of terrace.
8.	Anjar, Botad, Mandvi (Bhuj), Morbi, Rajkot II, III, Surat II	57	11.96	While calculating the market value of land, the sub-registrar excluded value of the common plot.
9.	Ahmedabad II	2	1.99	While calculating the market value of the land, the sub-registrar did not consider the value determined by the committee for recovering premium on conversion of land from new tenure to old tenure.
Total		**192**	**471.03**	

This was brought to the notice of the department (between March 2007 and January 2009) and the Government (April 2009); their replies have not been received (November 2009).

5.8 Non-levy of stamp duty on instruments of amalgamation of companies

The Bombay Stamp Act (as applicable to the state of Gujarat), provides for the levy of stamp duty at prescribed rate on any instrument which relates to reconstruction or amalgamation of companies by an order of the High Court under the Section 394 of the Companies Act, 1956. The stamp duty is leviable on the market value of the shares or immovable property situated in Gujarat, whichever is higher, on the appointed date mentioned in the scheme of amalgamation and is payable on the next working day of approval of merger/amalgamation by High court. The Companies Act provides that every amalgamation order of the High Court is to be filed with the Registrar of Companies within 30 days for registration of the amalgamated company.

Test check of the records of the Additional Superintendent of Stamps, Gandhinagar in December 2008 revealed that out of 34 cases of amalgamation in 2007-08, in 25 cases, the transferor companies did not pay stamp duty and registration fees on orders issued for reconstruction or amalgamation as these orders were never presented before the Superintendent of Stamps for adjudication. **Audit observed that the department did not have any system for obtaining periodical information of the amalgamation of the companies to capture the revenue.** This resulted in non-levy of stamp duty and registration fees of Rs. 4.52 crore in 18 cases. In the remaining seven cases, non-levy could not be quantified as the details of the consideration paid or market value of the property transferred were not available.

This was brought to the notice of the department and the Government (April 2009); their replies have not been received (November 2009).

The Government may consider instituting a system to obtain periodical information of the amalgamation of companies in the interest of revenue.

5.9 Non-levy of stamp duty on allotment of Government land

As per an amendment to the Bombay Stamp Act in 2002 (as applicable to the state of Gujarat), every instrument executed by or on behalf of the Government is chargeable to stamp duty at the rates specified in the Act. Accordingly, Revenue Department instructed (April 2002) all competent authorities allotting Government land to the State undertakings, corporations, companies, private parties to insert condition of payment of proper stamp duty in allotment letters.

During test check of the records of the offices of the Collectors at Gandhinagar and Jamnagar in April and May 2008, it was noticed that in 24 cases of allotment of Government land measuring 37.08 lakh square meters valuing Rs. 73.23 crore relating to the periods 2005-06 and 2006-07, the condition of payment of the stamp duty was neither inserted in the allotment letters nor in the *Sanads*[73]. Possession of the land was also handed over without realising proper stamp duty. This resulted in non-levy of stamp duty of Rs. 4.36 crore.

This was brought to the notice of the department (July 2008) and the Government (April 2009); their replies have not been received (November 2009).

5.10 Delay in realisation of stamp duty due to acceptance of time barred appeal applications

Under the Section 32-B of the Bombay Stamp Act (as applicable to the state of Gujarat), any person aggrieved by an order passed by the Collector (VoP) under Section 31 or 32-A determining the market value, may represent his case to the Chief Controlling Revenue Authority (CCRA) through the Collector (VoP), within the prescribed period (60 days upto 10 June 2004 and 90 days there after) from the date of order passed by the Collector (VoP). For this purpose, he has to pay 25 *per cent* of the differential amount of duty assessed by the Collector. The Section 53(1) (a) of the Act further provides that the CCRA shall not entertain an appeal application made by a person unless such an application is presented within the prescribed period. Further, Superintendent of Stamps has issued a circular on 19 June 2004 instructing all the deputy collectors (VoP) not to entertain time barred appeal applications and to recover deficit stamp duty as per their orders as the legal department has opined that deputy collectors (VoP) are not legally empowered to entertain time barred appeal applications and have no authority to condone delay even for sufficient causes.

During test check of the records of seven deputy collectors (VoP)[74] between September 2006 and May 2008, it was noticed that in 632 cases the aggrieved parties filed appeals after expiry of the prescribed period of 60/90 days. Though applications in 444 cases were time barred, the deputy collectors entertained these applications and referred these documents to the CCRA. Of these, 188 cases were returned by the CCRA with/without assigning

[73] *Sanad* is an agreement in prescribed form containing condition and restrictions of usage of land.

[74] Ahmedabad I, Gandhinagar, Godhra, Jamnagar, Rajkot I, Surat I and Vadodara I.

reasons of being time barred. Acceptance of appeal applications submitted beyond the stipulated time specified in the Act was beyond the powers vested in the deputy collectors under the Act. This resulted in delay in realisation of stamp duty of Rs. 1.54 crore.

After this was reported to the department (between March 2007 and December 2008), the department did not accept the audit observation and stated that the CCRA had returned these time barred appeal cases to the concerned deputy collectors. Instructions had been issued to the deputy collectors to recover the deficit stamp duty, interest and penalty at the prescribed rate and there was no loss of revenue. The report on recovery is awaited (November 2009). However, the fact remains that accepting appeals in time barred cases resulted in delay in realisation of revenue.

The matter was reported to the Government (May 2009); their reply has not been received (November 2009).

5.11 Escaping of stamp duty and registration fees due to non-impounding of unregistered/unduly stamped documents

Section 17 of the Registration Act, 1908, provides that registration of every document of sale, mortgage, lease or exchange of property of the value of Rs. 100 or more is compulsory. Further, Section 33 of the Bombay Stamp Act (as applicable to the state of Gujarat) empowers every person in charge of a public office to impound any instrument, produced before him in performance of his functions, if it appears that such instrument is not duly stamped.

5.11.1 During test check of the records of seven offices[75] of Collector, Deputy Collector, Ahmedabad, *Mamlatdar*, Vadodara and three district development offices[76] between February and April 2008, it was noticed that in 27 cases, the parties had submitted unregistered/unstamped power of attorneys for grant of permission for non-agricultural use of the land. In four cases, the land was granted on annual rent basis without getting the lease deed registered. In another case, the lease holder was granted permission for non-agricultural use of the land though the lease deed produced as evidence was not duly stamped. In one case, the sale deed produced as evidence was not properly stamped due to non-inclusion of liability passed on to the purchaser in the value of the property. The concerned officers did not impound those documents of properties valued at Rs. 22.77 crore produced by the parties before them and failed to exercise the powers conferred upon them under the Act. This resulted in non-realisation of revenue in the form of stamp duty and registration fees amounting to Rs. 1.57 crore.

After this was brought to the notice of the department (between July and September 2008), the department accepted the audit observation of Rs. 1.84 lakh in 10 cases and recovered an amount of Rs. 91,695 in six cases. Replies in the remaining cases have not been received (November 2009).

The Government may consider issuing instructions to the public officers to be more vigilant to ensure that document produced before them are

[75] Ahmedabad, Amreli, Bharuch, Mehsana, Navsari, Vadodara and Valsad.

[76] Mehsana, Narmada and Navsari.

duly stamped and if not, to take prompt action to impound the cases for proper realisation of stamp duty and registration fees.

5.11.2 During test check of the records of nine sub-registrar offices[77] and Chief Operation Manager, Vadinar, Jamnagar between June 2007 and September 2008, it was noticed that in 63 cases, recitals of the documents indicated the execution of another document, registration of which was compulsory. The executants of those documents did not register their documents with the registering authority. In two cases, the recitals of the documents indicated that the transfer of property on previous occasion was affected without execution of the documents. In one case, the document was executed after six month of the completion of sale of property in auction and taking over possession. **The department did not have a system for detection of such cases.** This resulted in escaping of stamp duty and registration fees of Rs. 1.14 crore.

This was brought to the notice of the department (between December 2007 and January 2009) and the Government (April 2009); their reply has not been received (November 2009).

The Government may consider issuing necessary instructions for in-depth scrutiny of the recitals to arrest cases of evasion of duty.

5.11.3 During test check of the records of three offices of the superintendent of prohibition and excise[78] between June and September 2008, it was noticed that 13 documents were presented during the period 2003-04 to 2007-08 for obtaining licence. These documents were executed in the presence of the Notary or were self attested. However, these documents were not presented to the sub-registrar for registration. The departmental officials failed to impound the documents. This resulted in non-realisation of stamp duty and registration fees amounting to Rs. 16.70 lakh.

In reply, the Superintendent of Prohibition and Excise stated that the documents pointed out in audit would be sent to the deputy collector (VoP) for taking necessary action.

After the above facts were brought to the notice of the department (between December 2008 and January 2009), the department stated (June 2009) that collection of stamp duty was the responsibility of revenue department and not the Home Department. However, all officers of this department have been instructed to refer the cases to the deputy collector (VoP) for verification of stamp duty liabilities. The reply is not acceptable as the Bombay Stamp Act casts a duty on the public officers to impound the documents not duly stamped and forward it to the proper officer for recovery of appropriate amount of stamp duty.

The above cases reported to the Government (April 2009); their reply has not been received (November 2009).

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[77] Ahmedabad II, V, Gandevi, Jamnagar I, II, Porbander, Rajkot I, IV and Visnagar.

[78] Ahmedabad, Surat and Vadodara.

5.12 Short levy of stamp duty and registration fees on lease deed due to incorrect computation of annual rent/value

The Bombay Stamp Act (as applicable to the state of Gujarat) provides for levy of the stamp duty on lease at the rate applicable to conveyance deed. For calculating consideration of the lease, amount of average annual rent reserved depending on the period of the lease is to be considered. Further, premium paid or money advanced is also to be added in the consideration.

During test check of the records of 10 sub-registrar offices[79] between February 2006 and June 2008, it was noticed that in 14 documents of lease deeds, the annual rent reserved was not determined properly for levy of the stamp duty. In one case, security deposit paid by the lessee was not included in annual value. This resulted in short levy of stamp duty and registration fees of Rs. 23.90 lakh.

After this was brought to the notice of the department (between May 2006 and December 2008), the department accepted the audit observation in one case in October 2009 and recovered Rs. 55,163. Reply in the remaining cases has not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

5.13 Short levy of stamp duty and registration fees due to incorrect computation of consideration

The Bombay Stamp Act (as applicable to the state of Gujarat) provides that 'conveyance' includes a conveyance on sale and every instrument by which property, movable or immovable is transferred. Thus, when property is sold or transferred, the total value of such property is to be taken as consideration for the purpose of levy of the stamp duty and registration fees.

During test check of the records of five sub-registrar offices[80] between May 2007 and July 2008, it was noticed in 31 documents of conveyance deeds executed between January 2005 and August 2007 that the departmental officials either did not consider the value of movable property, passing of liability to purchaser or cost of development charge in computing the value of the property for levy of stamp duty. This resulted in short levy of stamp duty and registration fees of Rs. 20.49 lakh.

This was brought to the notice of the department (between March 2007 and December 2008) and the Government (April 2009); their replies have not been received (November 2009).

5.14 Non-levy of stamp duty on advertisement agreement

The Bombay Stamp Act (as applicable to the state of Gujarat) provides for levy of the stamp duty at the prescribed rates on agreement relating to advertisement on radio, television, cinema, cable network or any media other

[79] Ahmedabad II, V, Anand, Bardoli, Dhrangadhra, Savli, Surat I, II, IV and Wagra.
[80] Ahmedabad IV, V, Kalol, Sanand and Rajkot II.

than newspaper, not exceeding Rs. 25,000 upto March 2006 and Rs. 3 lakh thereafter.

Cross check of the information collected from four offices[81] located at Ahmedabad with those of three deputy collectors (VoP)[82] in February 2009 revealed that the agreements for advertisements of Rs. 33.09 crore were executed with 717 agencies but the stamp duty was not paid on them. **The department did not have a system for detection of such cases.** This resulted in non-levy of stamp duty amounting to Rs. 7.52 lakh.

This was brought to the notice of the department in April 2009 and the Government in April 2009; their replies have not been received (October 2009).

The Government may consider setting up a mechanism for gathering information from these organisations to prevent leakage of revenue.

[81] Municipal Corporation, *Akashwani*, *Doordarshan* and Gujarat State Road Transport Corporation.

[82] Ahmedabad I, Rajkot I and Surat I.

CHAPTER-VI: OTHER TAX RECEIPTS

6.1 Results of audit

Test check of the assessment records in various departmental offices relating to the following receipts conducted in audit during 2008-09 disclosed underassessment, non/short recovery and loss of revenue amounting to Rs. 27.58 crore in 114 cases which fall under the following categories.

(Rupees in crore)

Sr. no.	Category	No. of cases	Amount
1.	Entertainments tax	60	17.95
2.	Electricity duty	19	7.23
3.	Luxury tax	27	2.15
4.	Prohibition and Excise	8	0.25
Total		**114**	**27.58**

During the year 2008-09, the departments accepted underassessment of Rs. 80.09 lakh in 43 cases and recovered Rs. 49.24 lakh in 42 cases including the cases pertaining to the earlier years.

A few illustrative audit observations involving Rs. 24.08 crore are mentioned in the succeeding paragraphs.

6.2 Audit observations

Scrutiny of the records of various offices of the Collector, Mamlatdar, Assistant Electrical Inspector, Superintendent of Prohibition and Excise revealed several cases of non-compliance of the provisions of the Gujarat Entertainments Tax Act, 1977, the Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977, the Bombay Electricity Duty Act, 1958 (as adopted in the State of Gujarat) etc., and Government notifications and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year, however, not only do the irregularities persist; these remain undetected till Government audit is conducted in the next year. There is need for the Government to improve the internal control system and internal audit so that such omissions can be detected, prevented and avoided in future.

ENTERTAINMENTS TAX

6.3 Non-compliance of court order and consequential loss of entertainments tax

The Gujarat Entertainments Tax Act, 1977 and the Rules made thereunder provide for collection and payment of entertainments tax. In case of delay in payment of tax, simple interest at the rate of 24 *per cent* is leviable for the period of delay. The Act empowers the Government to recover any sum due on account of tax, penalty or interest as arrears of land revenue. Section 29 of the Act empowers the Government to exempt any entertainment from payment of tax by a notification in the official gazette subject to such conditions as specified in the notification.

During test check of the records of two Collector offices[83] during March and May 2008, it was noticed that the proprietors of multiplexes had approached[84] the High Court of Gujarat in the matter of chargeability of tax on the amount of admission recovered by them. The High Court directed (October 2005) that 75 *per cent* of the tax demanded by the State Government be deposited and on such deposit, balance recovery would be stayed and the State would be restrained from taking any coercive action. Against this order, the proprietors of multiplexes approached the Supreme Court. Ultimately, the Supreme Court dismissed the petition on their submission dated 18 November 2005 that they would be approaching the High Court for clarification of its order with regard to the quantum. The High Court of Gujarat as per its order dated 30 November 2005 directed the proprietors of the multiplex cinema to pay 50 *per cent* of tax collected for availing of the order of stay. The Court ordered the multiplex proprietors to pay 20 *per cent* on or before 15 December 2005 and balance 30 *per cent* in monthly instalment of 10 *per cent* each by 15 January 2006, 15 February 2006 and 15 March 2006. The Court further clarified that the order shall loose its efficacy if 20 *per cent* of tax amount is not paid on or before 15 December 2005 and the State, through its officers, would take steps to recover the dues. It was noticed that the owners of the five multiplex theatres had not

[83] Ahmedabad and Jamnagar.

[84] CA No. 11707/05 in Special CA No. 5391/04.

deposited Rs. 25.36 crore, the tax payable in installments as stated in the order of the Court. Of this, Rs. 12.68 crore being 50 *per cent* of tax of Rs. 25.36 crore collected was required to be deposited, but Rs. 2.50 crore only was deposited. The department did not take any action for realisation of the entire balance amount of Rs. 22.86 crore which was recoverable due to violation of the court order.

After this matter was brought to the notice of the department (July and October 2008), the department stated that the Court had orally ordered for not taking coercive steps for recovery. The reply is not tenable and the department should have raised the demand for the balance tax due when the multiplex owners failed to comply with the condition of the Court order.

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

6.4 Loss of revenue due to incorrect exemption of entertainments tax on discotheque

As per item 2 of Schedule III to the Gujarat Entertainments Tax Act, all kinds of musical programmes, dances, dramas and plays, circus, puppet shows, *lok natya etc*., are exempted from payment of the entertainments tax.

Audit observed that in the recent years, owners of multiplexes have been arranging dance parties and establishing discotheques[85] as an adjunct to their commercial activities; and have been availing of entertainments tax exemptions. Since dance parties and discotheques were not included in the item 2 of Schedule III to the aforesaid Act, exemption allowed was irregular and inadmissible. The department itself had noticed this anomaly and had estimated the annual revenue loss to Rs. 25 lakh considering entry fee ranging between Rs. 200 to Rs. 500 per person. It is pertinent to mention that in some other states, such as Maharashtra, entertainments tax is levied on discotheques. This resulted in foregoing of revenue of Rs. 50 lakh for the year 2007-08 and 2008-09.

After this was brought to the notice of the department (July 2008), the department replied (August 2008) that a proposal for levy of entertainment tax was made to the Government through budget estimates for the year 2007-08 by the Commissioner of Entertainments Tax which was not considered. Hence the audit observation did not hold good in view of the notification dated 1 September 1998. The reply is not tenable as the item 2 of schedule III specifically mentions about all kinds of musical programmes, dramas and plays, circus, puppet shows *etc*., and does not include discotheques. Further, activities undertaken at multiplexes are taxable under the entertainments Act unless specifically exempted. Thus, entertainments tax can be levied on discotheques under the existing provisions.

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

[85] Discotheque is a place where people dance on the tunes of english/hindi audio/video songs being played by a person called disc jockey.

The Government may immediately issue orders to the assessing officers for levying and collecting entertainment tax from the multiplex owners in the interest of revenue.

6.5 Non/short levy of entertainments tax and interest from cable operators

Section 6-B of the Gujarat Entertainments Tax Act provides that the tax is leviable for exhibition of the programmes with the aid of antenna or cable television. The Gujarat Entertainments Tax (exhibition by means of cable television and antenna) Rules, 1993, provides that each operator has to register with the department and file quarterly return in advance accompanied by copies of challan for payment of the tax. The department is required to assess the return before commencement of the succeeding quarter and raise the demands for non/short payment of tax. For non-payment of tax within the prescribed time, the Act provides for levy of interest at the rate of 24 *per cent* per annum.

During test check of the records of four collector offices[86] between May and August 2008, it was noticed that 84 cable operators did not pay the tax alongwith the returns, 43 cable operators paid the tax short and three cable operators had paid the tax belatedly, aggregating Rs. 23.03 lakh including interest of Rs. 3.13 lakh. The officials concerned did not initiate action to recover the tax and interest.

After this was brought to the notice of the department (between July 2008 and January 2009), the department accepted the audit observation of Rs. 23.03 lakh in 130 cases and recovered Rs. 4.59 lakh in 37 cases. Report on recovery in the remaining cases has not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

6.6 Non/short levy of entertainments tax from video parlour/ cinema owner

The Gujarat Entertainments Tax Act and Rules made thereunder provide that the entertainments tax shall be paid by the proprietor of a cinema house weekly within 14 days of the end of the week and by the proprietor of video parlour in advance every month by the 15th day of the month preceding the month to which the tax relates. For non-payment of the tax within the prescribed time, Section 10(2) of the Act provides for levy of interest at the rate of 24 *per cent* per annum.

During test check of the records of three collector offices[87] and *Mamlatdars*, Choryasi (Surat) and Patan between February 2006 and June 2008, it was noticed that 205 owners of video parlour had paid less tax and nine owners of video parlour and one cinema owner had not paid any tax. The departmental officials did not initiate action to recover the tax. This resulted in non/short levy of tax of Rs. 15.17 lakh including interest of Rs. 2.31 lakh.

[86] Ahmedabad, Bharuch, Rajkot and Vadodara.
[87] Ahmedabad, Bhavnagar and Surat.

After this was brought to the notice of the department (between June 2006 and July 2008), the department accepted underassessment of Rs. 9.31 lakh in 213 cases and recovered Rs. 8.22 lakh in 206 cases. It was also stated that in one case of Ahmedabad, the matter was taken up with the higher authorities to regularise the licence and in one case at Bhavnagar, the video parlour was closed but necessary entries were not made in the relevant register. The reply in respect of the case of Ahmedabad is not tenable as the video parlour had exhibited the film using hard disc through projector and was required to charge admission at the rate applicable to the cinema. In case of closure of the video parlour of Bhavnagar, the date on which it was closed was not verifiable. Further replies had not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

LUXURY TAX

6.7 Non/short levy of luxury tax due to incorrect permission

Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 provides for levy of tax on luxury provided in a hotel in respect of a room under the occupation of a person at the specified rates on the basis of 50 *per cent* occupancy as per the average declared tariff.

During test check of the records of the Collector, Vadodara in August 2008, it was noticed that the owners of three hotels had applied for grant of permission for keeping the room out of inventory due to repair/renovation and to be allowed to pay luxury tax on reduced rooms which was granted. Scrutiny of the guest register, however, revealed that the rooms which were shown under repairs/renovation were given on rent to the customers. The hotel owners had collected room rent, alongwith the tax from the customers. The departmental officials failed to verify the correctness of the returns with the inventory and did not initiate action to recover tax on the rooms kept outside inventory. This resulted in short levy of tax of Rs. 9.04 lakh including interest of Rs. 78,000.

After this was brought to the notice of the department (January 2009), the department accepted the audit observations of Rs. 7.34 lakh in two cases and stated that one room permitted for renovation was given on rent by mistake in one case. The fact, however, remains that the owner of the hotel had asked for permission for renovation of room which was given on rent as per the guest register and moreover, there was no provision for reduction in the number of rooms in cases where the owner had opted for payment of luxury tax on the basis of 50 *per cent* occupancy. A report on recovery has not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

ELECTRICITY DUTY

6.8 Irregular exemption of electricity duty

The Bombay Electricity duty Act, 1958 (as adopted in the State of Gujarat) and the Rules made thereunder provide that the electricity duty shall not be leviable on the units of energy consumed for motive power and lighting included in respect of the premises used by an industrial undertaking for the industrial purpose until the expiry of five years from the commencement date or the date on which the industrial undertaking commences production of goods for the first time whichever is later. A new industrial undertaking means any such industrial undertaking which is not formed by splitting up or reconstruction of a business or undertaking already in existence in the State.

During test check of the records of DGVCL, O&M (Rural) Division, Navsari in November 2008, it was noticed that the Collector of Electricity Duty, Gandhinagar granted exemption to M/s. Gandhitex Multiplex Ltd, (consumer No.37049, HTP-I) from payment of electricity duty for a period from 5 December 2001 to 4 December 2006 vide certificate dated 18 April 2002 for manufacture of craft board paper. The company had already availed of exemption for five years. The company changed its name to M/s. Premium Paper and Board Industries Ltd with effect from 17 January 2007. However, the Collector of electricity duty granted duty exemption provisionally to it for the period from 6 March 2007 to 3 December 2011, limiting up to 31 March 2008, with year to year extension, considering it as a new undertaking vide exemption certificate dated 18 September 2007. As the benefit of exemption was already availed of by M/s. Gandhitex Multiplex Ltd, sanctioning the exemption to M/s Premium Paper and Board Industries Ltd, on mere name change was irregular. Incorrect exemption resulted in non-realisation of revenue of Rs. 55.07 lakh including interest of Rs. 3.15 lakh.

After this was brought to the notice of the department (January 2009), the department stated that the exemption was allowed for diversified product on installation of a separate meter. The firm had changed the name subsequent to starting manufacturing of diversified product on 4 December 2006. The reply is not tenable as M/s Gandhitex Multiplex Ltd had already availed of benefit of exemption for five years and it could not be treated as 'a new industrial undertaking' as that company was already in existence in the State on the date of starting of manufacturing of the diversified product.

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

6.9 Non-realisation of inspection fee

According to the provisions of the Indian Electricity Rules, 1956 and Government notifications issued thereunder, inspectors are required to inspect all high tension, extra high tension and medium voltage installations and low voltage electrical installations in the factory premises and in the public places of amusements including cinemas/theatres *etc*. once in a year. Inspection fee at the prescribed rates is required to be recovered in advance in respect of such inspections carried out by the departmental officers.

During test check of the records of seven assistant electrical inspectors[88] between January and September 2008, it was noticed that in 346 cases, though the inspections had been carried out by the inspectors, inspection fee for the period 2003-04 to 2007-08 amounting to Rs. 19.65 lakh had not been recovered.

After this was brought to the notice of the department (between July 2008 and January 2009), the department accepted the audit observations between September 2008 and July 2009 and recovered Rs. 16.50 lakh in 277 cases. Reply in the remaining cases has not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

[88] Bharuch, Jamnagar, Nadiad, Rajkot, Surat, Vadodara and Valsad.

CHAPTER VII: NON-TAX RECEIPTS

7.1 Results of audit

Test check of the records in the office of the Director of Petroleum, Commissioner of Geology and Mining and the offices of the Geologists and Assistant Geologists in the State during the year 2008-09 disclosed non/short recovery of receipts amounting to Rs. 650.71 crore in 104 cases as mentioned below.

(Rupees in crore)

Sr. no.	Category	No. of cases	Amount
1.	**Levy and collection of royalty, dead rent and surface rent from mines and quarries (A review)**	1	596.06
2.	Non/short levy of royalty, dead rent *etc*.	103	54.65
Total		**104**	**650.71**

During the year 2008-09, the department of Industries and Mines accepted and recovered Rs. 8.39 lakh in one case pertaining to earlier year.

A review on the **Levy and collection of royalty, dead rent and surface rent from mines and quarries** involving Rs. 596.06 crore is mentioned in the succeeding paragraphs.

MINING RECEIPTS

7.2 Levy and collection of royalty, dead rent and surface rent from mines and quarries

Highlights

- The Industries and Mines and the Energy and Petrochemicals Department prepared the annual budget estimates without reference to the past trends and future potential.

(Paragraph 7.2.6)

- Due to the absence of a system for the execution of lease deeds, the Director of Petroleum could not get the lease deeds executed for 15 oil and natural gas sites after sanction of lease or after the expiry of lease period. Test check indicated non-realisation of stamp duty of Rs. 18.13 crore on that account.

(Paragraph 7.2.7)

- Absence of a system of cross verification of production tally statement with the royalty returns, resulted in non-detection of usage of condensate for value added product without the payment of royalty by the Oil and Natural Gas Corporation Limited. Consequently, there was non-realisation of royalty of Rs. 6.20 crore.

(Paragraph 7.2.8.1)

- There was short levy of the royalty of Rs. 5.72 crore on account of double deduction of base, sediment and water.

(Paragraph 7.2.8.2)

- The internal control mechanism was weak in both, the Director of Petroleum as well as the Energy and Petrochemicals Department. Non-inspection of 178 leases in operation has serious implications on the supervisory functions. The Director of Petroleum did not prescribe any system or procedure for inspection of the leases of oil and natural gas.

(Paragraph 7.2.10.1)

- There was no internal audit arrangement in Director of Petroleum and the Energy and Petrochemicals Department to audit the management of mining receipts from oil and natural gas.

(Paragraph 7.2.11)

- Due to the absence of a system to review the rates of surface rent at periodic intervals, there was no revision in the rate of surface rent for more than 40 years. Taking the rates of non-agricultural assessment as a comparator, the revenue foregone on that account alone would amount to Rs. 3.57 crore.

(Paragraph 7.2.9)

- Lack of co-ordination with the Public Works Departments of the State and Central Government regarding receipts of royalty on minerals used by the contractors resulted in unrealised royalty receipts of Rs. 28.38 crore.

(Paragraph 7.2.15)

- Internal controls were weak, especially relating to supervision of illegal mining activities. Even in cases where the department had detected illegal mining, the CGM could not recover the dues for long periods. As a result, 44 cases of illegal mining could not be detected timely and revenue of Rs. 490.43 crore could not be realised.

(Paragraph 7.2.16)

- Proposal for the issue of gazette notification of the availability of the area for regrant of leases was not sent to the Collector soon after the expiry, cancellation, surrender or revocation of leases resulting in potential loss of revenue of Rs. six crore.

(Paragraph 7.2.23)

7.2.1 Introduction

For conservation, systematic development and regulation of mining activities in India, the Government of India (GoI) has enacted the Mines and Minerals (Development and Regulation) (MMD&R) Act, 1957, the Mineral Concession Rules (MCR), 1960, the Mineral Conservation and Development Rules, 1988, the Granite Conservation and Development Rules, 1999, the Marble Development Rules, 2002 and the Colliery Control Rules, 2004. The mining activities in Gujarat are governed under all the above Acts as well as under the Gujarat Minor Mineral Rules, 1966 framed by the State Government in exercise of the powers derived under the MMD&R Act. The levy and collection of royalty, dead rent, surface rent on minerals are regulated under the above cited Acts/Rules. The conservation, development and extraction of oil and natural gas are regulated under the Oilfield (Regulation and Development) (ORD) Act, 1948, and the Petroleum and Natural Gas (PNG) Rules, 1959.

In Gujarat, mining receipts including royalty on oil and natural gas is an important state revenue receipts (the second largest during 2006-07 and 2007-08), and is the largest non-tax receipts (NTR).

Audit conducted a review of levy and collection of royalty, dead rent and surface rent from mines and quarries covering the period from 2003-04 to 2007-08 which revealed a number of system and compliance deficiencies as discussed in the succeeding paragraphs.

7.2.2 Organisational set up

Two departments of the Government of Gujarat (GoG), viz. the Industries and Mines Department (IMD) and the Energy and Petrochemicals Department (EPD) control the activities of mining in the State. A separate Directorate of Petroleum was formed in 1997. Thereafter, EPD deals with the oil and natural gas and the IMD with the rest of the mineral wealth of the State, consisting mainly of bauxite, laterite, china clay, lignite, fire clay, chalk, limestone

(superior quality), gypsum, pozzolanic clay, red clay, dolomite, manganese, sand stone, granite, building stone *etc*.

The IMD handles the regulation of general mines and minerals, grant of leases of mines/quarries and the levy and collection of royalty and dead rent. It is headed at the Government level by a Principal Secretary and at the department level, by the Commissioner of Geology and Mining (CGM). The CGM is assisted by the Additional Director (Development), Additional Director (Research), Assistant Director (Appeal and Flying Squad) and 24 District Geologists.

The EPD handles the regulation of oil and natural gas. At Government level, the EPD is headed by a Principle Secretary and at the Department level by the Director of Petroleum (DoP). The Director is assisted by three Geologists, one Accounts Officer and one Accountant.

7.2.3 Audit objectives

The review was conducted to ascertain whether:

- a system was in place and observed for proper levy and collection of royalty, dead rent and surface rent including interest and penalty;
- the provisions of the Act/Rules and the departmental instructions were properly observed;
- adequate internal control measures including internal audit were in place to monitor assessment and collection and to check leakage of revenue.

7.2.4 Scope of audit and methodology

Audit test checked the records of DoP, CGM and all the 24 district Geologist offices, relating to the period 2003-04 to 2007-08 during June 2008 to March 2009.

The records relating to levy and collection of royalty, dead rent and surface rent, demand and collection register (DCR), challans showing payment made into treasury and lease files sanctioned relating to the aforesaid period were scrutinised.

7.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the CGM, DoP, IMD and EPD in providing the necessary information and records for audit. An entry conference was held in February 2009 which was attended by the CGM and the DoP in which the audit objectives and scope of audit were explained. The draft review report was forwarded to the CGM, DoP and Government in June 2009 for their response. The exit conference was held in September 2009 with the CGM, Deputy Secretary, Industries and Mines Department, and the DoP in which the results of audit and the recommendations were discussed. The views of the departments/Government have been appropriately incorporated in the review report.

7.2.6 Financial performance

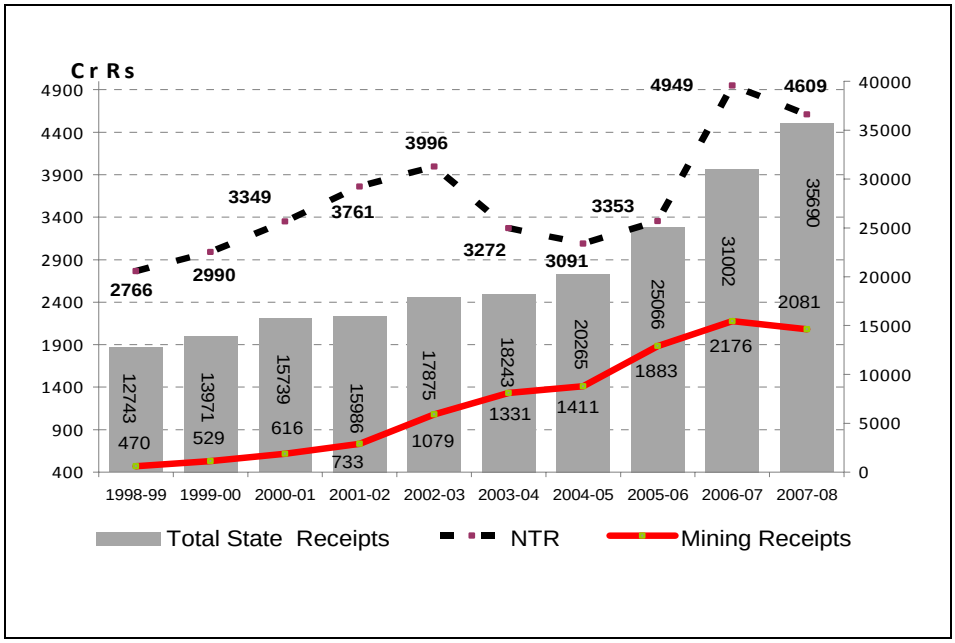
Table and Chart below show the Gujarat's mining receipts in a 10 year time series up to 2007-08 relative to total state receipts and non-tax receipts.

Mining Receipts in perspective

Year	Total State receipts (TSR)	Non-tax revenue (NTR)	Oil & NG Royalty[89]	Other mining receipts[90]	Total mining receipts (MR)	Total MR as percent-age of TSR	Total MR as percent-age of NTR
	(Rupees in crore)						
1998-99	12,742.74	2,766.49	384.89	85.10	469.99	3.69	16.99
1999-00	13,971.44	2,990.37	434.56	94.80	529.36	3.79	17.70
2000-01	15,738.59	3,349.14	508.16	107.86	616.02	3.91	18.39
2001-02	15,986.06	3,760.94	589.62	143.11	732.73	4.58	19.48
2002-03	17,875.34	3,995.58	906.20	172.88	1,079.08	6.04	27.01
2003-04	18,247.52	3,271.96	1,113.00	218.12	1,331.12	7.30	40.68
2004-05	20,264.95	3,090.50	1,171.76	238.99	1,410.75	6.96	45.65
2005-06	25,066.87	3,353.37	1,577.17	306.13	1,883.30	7.51	56.16
2006-07	31,002.22	4,948.78	1,882.14	294.28	2,176.42	7.02	43.98
2007-08	35,689.85	4,609.31	1,717.00	363.57	2,080.57	5.83	45.14

Source: TSR and NTR – Audit Report,
Oil & Natural gas royalty – DoP,
Other MR - CGM

Movement of Mining Receipts



The share of total mining receipts which was around seven *per cent* of the total State receipts between 2003-04 to 2006-07 fell to 5.83 *per cent* in 2007-08. The percentage share of total mining receipts in the non-tax receipts which had

89 Administered by EPD.
90 Administered by IMD.

been increasing steadily every year and had reached 56.16 *per cent* in 2005-06 had declined to the level of 44-45 *per cent* in the subsequent years.

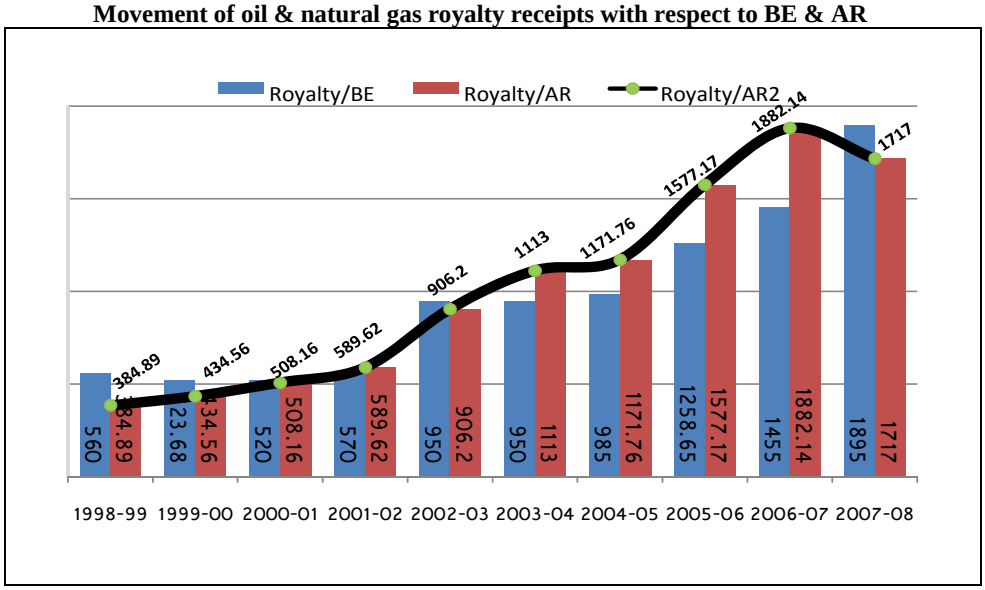
The table and chart below show the actual receipts in respect of oil and natural gas *vis-a-vis* budget estimates over 10 year time series up to 2007-08.

Budget estimates vis-à-vis actual receipts in respect of oil and natural gas

Period	Budget estimates	Actual receipts	Variation (+) excess (-) shortfall	Percentage variation	Royalty as percentage of TSR	Royalty as percentage of NTR
	(Rupees in crore)					
1998-99	560.00	384.89	(-) 175.11	(-) 31.27	3.02	13.91
1999-2000	523.68	434.56	(-) 89.12	(-) 17.02	3.11	14.53
2000-01	520.00	508.16	(-) 11.84	(-) 2.28	3.23	15.17
2001-02	570.00	589.62	(+) 19.62	(+) 3.44	3.69	15.68
2002-03	950.00	906.20	(-) 43.80	(-) 4.61	5.07	22.68
2003-04	950.00	1,113.00	(+) 163.00	(+) 17.16	6.10	34.02
2004-05	985.00	1,171.76	(+) 186.76	(+) 18.96	5.78	37.91
2005-06	1,258.65	1,577.17	(+) 318.52	(+) 25.31	6.29	47.03
2006-07	1,455.00	1,882.14	(+) 427.14	(+) 29.36	6.07	38.03
2007-08	1,895.00	1,717.00	(-) 178.00	(-) 9.39	4.81	37.25

Source: Budget estimates publications and DoP.

Movement of oil & natural gas royalty receipts with respect to BE & AR



The share of royalty receipts which was around six *per cent* of the total State receipts between 2003-04 to 2006-07 fell to 4.81 *per cent* in 2007-08. The percentage share of royalty receipts in the non-tax receipts which had been increasing steadily every year and had reached 47.03 *per cent* in 2005-06 had declined to the level of 37-38 *per cent* in the subsequent years.

The table and chart below show the financials of royalty receipts other than oil and natural gas over a period of 10 year time series up to 2007-08.

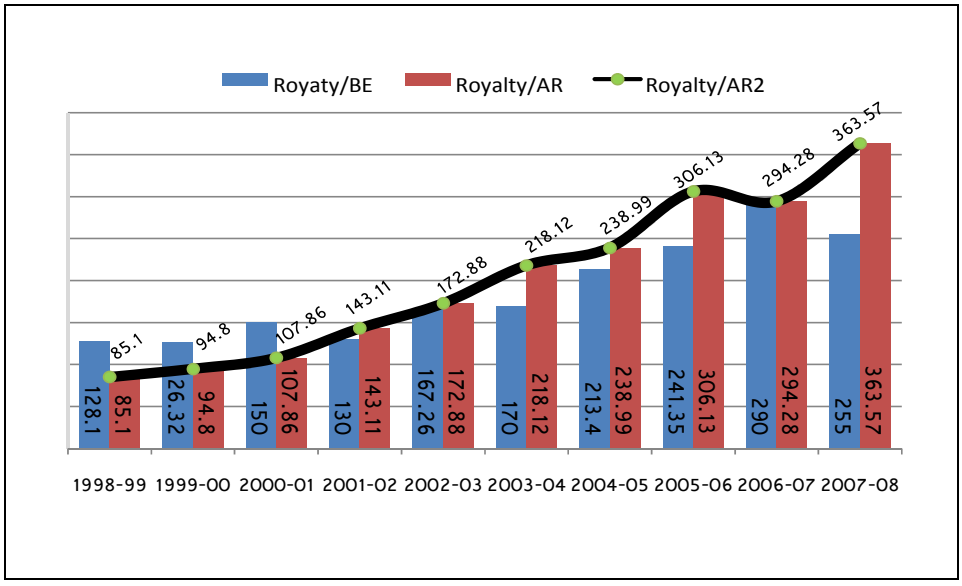
Budget estimates *vis-a-vis* actual receipts in respect of royalty receipts other than oil and natural gas

(Rupees in crore)

Period	Budget estimates	Actual receipts	Variation (+) excess (-) shortfall	Percentage variation	Royalty as percentage of TSR	Royalty as percentage of NTR
1998-99	128.10	85.10	(-) 43.00	(-) 33.57	0.67	3.08
1999-2000	126.32	94.80	(-) 31.52	(-) 24.95	0.68	3.17
2000-01	150.00	107.86	(-) 42.14	(-) 28.09	0.69	3.22
2001-02	130.00	143.11	(+) 13.11	(+) 10.08	0.90	3.80
2002-03	167.26	172.88	(+) 5.62	(+) 3.36	0.97	4.33
2003-04	170.00	218.12	(+) 48.12	(+) 28.31	1.20	6.67
2004-05	213.40	238.99	(+) 25.59	(+) 11.99	1.18	7.73
2005-06	241.35	306.13	(+) 64.78	(+) 26.84	1.22	9.13
2006-07	290.00	294.28	(+) 4.28	(+) 1.48	0.95	5.95
2007-08	255.00	363.57	(+) 108.57	(+) 42.58	1.02	7.89

Source: Budget estimates and CGM.

Movement of royalty (other than oil and natural gas) receipts with respect to BE & AR



The share of other mining receipts (administered by the IMD) remained around one *per cent* of the total State receipts between 2003-04 to 2007-08. The percentage share of other mining receipts in the non-tax receipts had been increasing steadily every year and had reached 9.13 *per cent* in 2005-06. After declining to the level of six *per cent* in 2006-07 it again went up to 7.89 *per cent* in the subsequent year.

The wide variations between the budget estimates and actual receipts in most of the years indicate that the respective administrative departments did not determine the BEs with reference to the past trends and future potential. The Finance Department also did not ensure that the budget

estimates of mining receipts were prepared by the concerned departments in a scientific manner.

Audit findings

The observations in respect of the EPD and IMD are discussed separately in the following paragraphs.

Energy and Petrochemicals Department

System deficiencies

7.2.7 Non-execution of lease deed after sanction of lease

The PNG Rules empower the State Government to grant a mining lease of petroleum and natural gas on land within the State, with the approval of the Central Government. The Registration Act, 1908 requires that the deeds conveying lease hold rights for the period beyond one year should be registered compulsorily. The Bombay Stamp Act, 1958 applicable to Gujarat provides for the levy of stamp duty in case of lease of mines in which royalty or share of produce is received as rent or part of rent at the prescribed rate on average annual royalty.

Mention was made in paragraph 5.3 of the Report of the Comptroller and Auditor General of India (Revenue Receipts), Government of Gujarat for the year ended 31 March 2008 regarding non-execution of lease deed after the sanction of leases of oil and natural gas. **Further scrutiny of the records of the DoP for the period 2003-04 to 2007-08 revealed that the system for the execution of lease deed was not yet set up**. In 13 cases, non-execution of lease deed had resulted in non-realisation of stamp duty[91] of Rs. 8.67 crore.

Further, in 11 cases, the lease holders had applied (between September 1993 and October 2007) for renewal of the leases and continued mining operation, awaiting approval of the Government of India (GoI) and a formal sanction of the GoG. Failure of the State Government to pursue the cases with GoI and lack of a system for execution of lease deed deprived the State Government revenue by way of stamp duty of Rs. 9.46 crore in respect of two cases only where the details of royalty payable were available.

After this was brought to the notice, the Government stated (September 2009) that draft lease deed had been sent to the Ministry of Petroleum and Natural Gas (MoPNG) for approval long back. The MoPNG has clarified only now that there was no need for such approval. The Government further stated that execution of lease deed would be completed shortly. Further progress has not been reported (November 2009).

The Government may consider setting up a proper system for execution of lease deed.

[91] Rate of stamp duty 4.9 *per cent ad-valorem.*

7.2.8 Assessment of royalty without obtaining important data from leaseholders

The Oilfield (Regulation and Development) Act, and the Rules made thereunder provide for levy of royalty in respect of oil and natural gas extracted from the leased area at the prescribed rates. The Rules also provide that a lease holder of oil and natural gas shall furnish full and proper return showing the quantity of crude oil, condensate and natural gas obtained by him during the preceding month from the mining operations conducted in pursuance of the lease. The Petroleum and Natural Gas Rules provide that royalty is not payable on gas and crude oil which is unavoidably lost or is returned to the reservoir or is used for drilling or other operations relating to the production of petroleum or gas or both.

During scrutiny of the records of the Director of Petroleum, Gandhinagar, it was observed that royalty was finalised on the basis of monthly returns of the lease holders and there was no system prescribed for calling, collecting and cross-linking the following important details/data essential for the correct assessment.

- Annual quantity tally statement for oil and natural gas separately lease wise;
- Trading and manufacturing account;
- Profit and loss accounts and balance sheet wherever required;
- Monthly details of opening stock, gross production, details of dispatch; internal use (purpose wise); transit losses; wastages, losses due to human errors; losses due to theft; closing stock *etc*.

In the absence of the above details, the correctness of assessment finalised in all cases could not be verified. A few cases of short levy of royalty noticed in audit are discussed in the succeeding paragraphs.

7.2.8.1 Non-levy of royalty on condensate used for value added product

During test check of the records of the Director of Petroleum, Gandhinagar, it was noticed that the GoG sanctioned 48 leases of crude oil and natural gas in favour of the Oil and Natural Gas Corporation Limited, falling within the area of Ankleshwar asset during the period 2003-04 to 2007-08. During the year 2003-04, the Oil and Natural Gas Corporation Limited paid royalty on 19,49,177 MT of crude oil and condensate extracted from the leases sanctioned in this area. A scrutiny of the annual production tally statement of the Oil and Natural Gas Corporation Limited, Ankleshwar asset for 2003-04 revealed that Oil and Natural Gas Corporation Limited had used 45,895 MT of condensate for value added products. As the condensate is not used for extraction of oil or natural gas, royalty was payable on it. However, Oil and Natural Gas Corporation Limited did not pay royalty on it. **The department failed to collect and cross verify the annual production tally statements with the royalty/production returns which resulted in non-levy of royalty of Rs. 6.20 crore.**

After this was brought to its notice, the Government stated (September 2009) that the matter has been taken up with the Oil and Natural Gas Corporation Limited. Further progress has not been reported (November 2009).

7.2.8.2 Short levy of royalty on account of double deduction of base, sediment and water

During test check of the records of the Director of Petroleum, Gandhinagar, it was noticed that the GoG had sanctioned 40 leases of crude oil and natural gas in favour of the Oil and Natural Gas Corporation Limited, Mehsana asset. A cross check of the annual production tally statement of the lease holder with their production returns revealed that during 2003-04 and 2004-05 (upto December 2004), royalty was paid on the net production after double deduction of B, S and W[92]. **The department failed to cross check the production returns with annual production tally statements which resulted in short levy of royalty of Rs. 5.72 crore.**

After this was brought to its notice, the Government agreed (September 2009) to verify the relevant records and disallow double deduction of B, S and W. Further progress in the matter has not been reported (November 2009).

The Government may consider prescribing a system for collecting and cross verifying annual production statements of the lease holders with the royalty/production returns.

7.2.8.3 Short levy of royalty due to non-reconciliation of monthly royalty and production returns

The royalty on natural gas was prescribed at 10 *per cent* of the value of the natural gas obtained at wellhead. The lessee is required to furnish every month a production return and a royalty return in respect of quantity of oil and natural gas obtained and royalty payable during the month.

Test check of the records of the Director of Petroleum, Gandhinagar revealed that during 2003-04 to 2007-08, the GoG had sanctioned 40 and 16 leases of oil and natural gas in favour of the Oil and Natural Gas Corporation Limited, Mehsana and Cambay assets. A scrutiny of the monthly returns of the lessee revealed that the production of gas as shown in the monthly royalty returns and production returns did not agree with each other. The quantity on which the royalty was paid was less than production of gas as per the production returns. **The failure of the department to reconcile the production returns with royalty returns resulted in non-detection of the difference and consequently there was short levy of the royalty of Rs. 16.98 lakh.**

After this was brought to its notice, the Government agreed (September 2009) to ascertain the correct position. Further progress has not been reported (November 2009).

[92] Base, sediment and water content which are impurities contained in the crude oil commonly known as B, S & W.

7.2.9 Revenue foregone due to non-revision of rates of surface rent

Rule 13(2) of the Petroleum and Natural Gas Rules provides that the lessee shall pay surface rent not exceeding the land revenue for the surface area of the land actually used by him for the purpose of the operations conducted under the lease. The GoG had fixed the rate of surface rent at the rate of Rs. 10, 000 per sq km *per annum* (one *paisa* per one square meter) in August 1968 with the approval of the Ministry of Petroleum and Natural Gas (MoPNG) which was at par with the land revenue at that time. **It was, however, noticed that GoG did not have a system of periodically reviewing and revising the surface rent to keep aligned with the land revenue rates**.

Test check of the records of the Director of Petroleum, Gandhinagar revealed that 178 leases of oil and natural gas covering area of 5,287.9621 square km of land at various places were in operation in the state during 2003-04 to 2007-08. The lease holders paid surface rent at the rate fixed in 1968 on land actually used by them for mining purpose. The Government did not initiate any action to revise the rates even though it had revised the rates of land revenue from time to time. Revenue foregone due to non-revision of rates of surface rent for the period from 2003-04 to 2007-08 calculated at the prevailing rates of land revenue of non-agriculture land actually used for mining operation lease area worked out to Rs. 3.57 crore as shown in the table below.

Revenue foregone due to non-revision of surface rent rates

(Rupees in crore)

Period	Days	Rate of NAA[93] /sq Km	Area under mining operations (km)	Surface rent leviable @ NAA on total lease area	Surface rent levied (2003-04 to 2007-08)	Revenue foregone
1.8.2003 to 31.12.2003	153	0.15	57.27	0.36	0.02	0.34
1.1.2004 to 31.12.2004	365	0.15	59.53	0.89	0.06	0.83
1.1.2005 to 31.12.2005	365	0.15	58.89	0.88	0.05	0.83
1.1.2006 to 31.12.2006	365	0.15	55.24	0.83	0.06	0.77
1.1.2007 to 31.7.2007	212	0.15	56.14	0.49	0.06	0.67
1.8.2007 to 31.12.2007	153	0.10	56.14	0.24		
1.1.2008 to 31.3.2008	91	0.10	56.82	0.14	0.01	0.13
Total				**3.83**	**0.26**	**3.57**

After this was brought to its notice, the Government accepted (September 2009) that rates had not been revised since 1968 and needed a revision. Further progress has not been reported (November 2009).

[93] Non-agricultural assessment.

The Government may consider undertaking periodical review of surface rent rates for the leases of oil and natural gas.

7.2.10 Internal controls in DoP and EPD

Internal controls are processes by which an organisation directs its activities to effectively achieve its objectives. The internal control mechanism was weak in both DoP as well as EPD, as might be seen from the forgoing paragraphs and the following observations.

7.2.10.1 Non-inspection of leases of oil and natural gas

The Oilfield (Regulation and Development) Act and the Rules made thereunder empower the State Government to sanction lease of oil and natural gas on the land vested in the State with prior approval of the Central Government. It is the inherent responsibility of the State Government to ensure that the mineral surveillance is adequately exercised for systematic development and regulation of the minerals in the State as well as exploration of the minerals in lawful manner as per the terms and conditions of lease with adequate protection of environment and human life.

Audit observed that the DoP did not prescribe any system or procedure for inspection of the leases of oil and natural gas. None of the 178 leases in operation was inspected at any time during 2003-04 to 2007-08. Non-inspection of leases is fraught with the risk of non-detection of whether:

- exploration activities were carried out in lawful manner as per provisions of ORD Act and the Rules made thereunder as per the terms and conditions of lease agreement;
- adequate measures were adopted for preservation, conservation and development of oil and natural gas, other minerals, if available, from the lease areas and natural resources available therein and exploration activities were carried out without excessive wastage of minerals; and
- the quantity of oil, natural gas and other major/minor minerals excavated were correctly reflected in the monthly production returns submitted by the lease holder and royalty, dead rent and surface rent were correctly paid thereon.

After this was brought to its notice, the Government stated (September 2009) that the Directorate of Petroleum was created by State Government in 1997. However, due to staff shortage and in the absence of vehicles, Director of Petroleum could not undertake more effective monitoring or inspection of mining lease.

The Government may consider developing a system for periodic inspection of each lease.

7.2.10.2 Non-maintenance of control register

A Demand and Collection Register (DCR) is a key control document, required to be maintained at the geologist's office for the effective monitoring of and control over the assessment and collection of royalty, dead rent and related government dues and control over other important areas of lease management

such as sanctioning of the lease, its expiry/renewal/surrender/ cancellation *etc*. It contains particulars such as the name of the lease holder, survey number and area of lease, name of village, *taluka* and district, sanction number and date of lease, lease period, date of commencement of mining operation, month wise opening balance, production, dispatches and closing balance of mineral, royalty payable and paid with challan number and date.

Audit scrutiny revealed that though a DCR had been prescribed by the Industries and Mines Department and maintained by each District Geologist working under IMD, the EPD had not prescribed it yet. Thus, the Geologists working under DoP did not maintain the DCR or any other control register. The DoP did not also install any alternative system to monitor the assessment, levy and collection of royalty, dead rent, surface rent and interest in respect of any lease.

After this was brought to its notice, the Government stated (September 2009) that the department intended to move towards a paperless office by computerisation of all the documents. However, the fact remains that DCR in any form, even after a lapse of 11 years since formation of Directorate has not been prescribed.

The Government may consider taking immediate steps to prescribe a control register in electronic form having required fields like the DCR for effective monitoring of the leases and realisation of revenues therefrom.

7.2.11 Internal audit

An independent and effective internal audit under the direct control of the Head of the Department is essential for ensuring compliance of the provisions of the Acts/Rules and the Government instructions regarding assessment of revenue, prompt raising of demands, collection and accounting thereof and for overall functioning of the administration effectively, efficiently and economically.

Audit noticed that there was no internal audit arrangement in the DoP and EPD for scrutinising the management of mining receipts from oil and natural gas. The records of the DoP were not internally audited and remedial action in respect of irregularities discussed in the succeeding paragraphs 7.2.12 to 7.2.14 could not be taken.

The Government may consider setting up an internal audit wing in DoP and EDP.

Compliance deficiencies

7.2.12 Non-levy of interest on delay in payment of royalty

The Oil field (Regulation and Development) Act and the Rules made thereunder provide that the lessee shall pay royalty in respect of any mineral oil mined, quarried, excavated or collected by him from the leased area at the rates specified in the schedule of the Act. The royalty is to be paid on monthly basis on the last day of the month succeeding the period in respect of which it is payable. The PNG Rules further provides that all licence fees, lease fees, royalties and other payment shall, if not paid within the time specified for such

payment, be increased by a penal rate of 200 basis points over the prime lending rate of State Bank India (SBI) for the delayed period.

Test check of the records of Director of Petroleum, Gandhinagar revealed that the Oil and Natural Gas Corporation Limited had paid the royalty for the period January 2008 to March 2008 after deducting discount given to the Oil India Limited for non-recovery/under recoveries[94]. The royalty on discounts so deducted were adjusted and the differential royalty paid subsequently in the month of July 2008. However, the department did not levy and demand interest at penal rate on the amount of royalty paid subsequently for the period of delay. This resulted in non-levy of interest of Rs. 16.65 crore as detailed in the table below.

Non-levy of interest for delay in payment of royalty

(Rupees in crore)

Month	Royalty belatedly paid	Due date	Date of actual payment	Delay in payment of royalty (days)	Interest leviable @ 14.75 *per cent*
January 2008	185.91	29.2.2008	3.7.2008	125	9.39
February 2008	180.81	31.3.2008	3.7.2008	94	6.86
March 2008	15.54	30.4.2008	3.7.2008	64	0.40
Total					**16.65**

After this was brought to its notice, the Government stated (September 2009) that in July 2008, the Oil and Natural Gas Corporation Limited had released the royalty deducted during January 2008 to May 2008. However, the Oil and Natural Gas Corporation Limited had not released royalty for the subsequent months from June 2008 onwards. So, after recovery of royalty for that period, the matter for recovery of interest would be taken up. However, it was observed that the interest recoverable under the provisions of the Petroleum and Natural Gas Rules on delayed payment of royalty has not even been demanded from the Oil and Natural Gas Corporation Limited. Further progress has not been reported (November 2009).

7.2.13 Short levy of royalty due to non-adoption of amended provisions

The Government of India introduced a 'new scheme' for levy of royalty on crude oil with effect from 1 April 1998 which, *inter alia*, provides that royalty on crude oil in respect of all such leases shall be payable on *ad valorem* basis at the rate of 20 *per cent* of wellhead price after deduction of 7.5 *per cent* as production cost. The royalty was to be worked out on cum-royalty basis[95]. The scheme was partially amended in August 2007. As per the amended provisions, the royalty in respect of the blocks other than the nominated blocks was to be computed on ex-royalty[96] basis instead of cum-royalty basis. The deduction on account of production cost was to be allowed on the basis of actual post wellhead expenditure reported in the audited accounts of the previous year.

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94 Discount is on account of fragment of subsidy on the product distributed.

95 Cum-royalty = $\frac{\text{well head price x rate of royalty}}{100 + \text{rate of royalty}}$

96 Ex-royalty = well head price x rate of royalty.

Test check of the records of the Director of Petroleum, Gandhinagar revealed that in two leases operated by private parties (CB-ON-3 (Unava) and CB-ON-7 (Palej), in joint venture with the Oil and Natural Gas Corporation Limited, the royalty was worked out on cum-royalty basis instead of ex-royalty basis for the months of August to November 2007 and January to March 2008. This resulted in the short levy of royalty of Rs. 61.75 lakh. Further, in respect of lease CB-ON-7(Palej), the actual post wellhead expenditure was not calculated and deduction at the rate of 7.5 *per cent* on that account was continued to be allowed. Short levy of the royalty due to irregular allowance of post wellhead expenditure could not be quantified in the absence of details.

After this was brought to its notice, the Government accepted (September 2009) the observation and stated that Oil and Natural Gas Corporation Limited had made payments of Rs. 17.34 lakh in respect of CB-ON-3 and Rs. 79.81 lakh of CB-ON-7 in March 2009 for the year 2007-08.

7.2.14 Flaring of gas – non-levy of royalty

The PNG Rules provides that the lessee shall pay royalty to the Government on crude oil and natural gas obtained from the leased area. The Rules further provide that royalty is not payable on gas which is unavoidably lost or is returned to the reservoir or is used for drilling or other operations relating to the production of petroleum or gas or both.

During test check of the records of Director of Petroleum, Gandhinagar, it was noticed that the GoG had sanctioned 154 leases in favour of Oil and Natural Gas Corporation Limited during the period 2003-04 to 2007-08. Scrutiny of the annual production statement of the Oil and Natural Gas Corporation Limited, (Cambay and Mehsana assets) revealed that during the above period, natural gas of 208.42 lakh MT was flared up during oil exploration carried out in these two assets of Oil and Natural Gas Corporation Limited either due to isolated flaring or non-utilisation due to lack of facility or non-availability of customers. This was allowed as wastage from gross production for the purpose of levy of the royalty. As the gas flared up could not be treated as unavoidably lost, royalty was chargeable thereon. However, the department did not levy royalty of Rs. 41.59 lakh.

After this was brought to its notice, the Government stated (September 2009) that majority of the mining lease were combined fields where both the crude oil and associated natural gas were produced. Depending upon the location and quality of associated natural gas produced and on availability of the consumer, it was sold or flared. However, the fact remained that 1,97,51,401 MT of gas flared up, due to lack of customers or isolated flaring, did not fall within the scope of 'unavoidably lost'. Further, the lessee itself had described the flaring of 10,91,034 MT of gas due to avoidable reasons. Further reply has not been received (November 2009).

Industries and Mines Department

System deficiencies

7.2.15 Loss of revenue due to lack of coordination with the works departments

The GoG instructed (May 1994) that Executive Engineers/Deputy Executive Engineers (EEs/DEEs) of the Departments/*Nigams*/*Panchayats* dealing with public (civil) works and the District Geologists shall work in co-ordination to ensure that in respect of all works carried out by the respective Department/*Nigam*/*Panchayat*, royalty is received from the contractors on the minerals used in the civil works. Instructions further stipulated that a copy of the final bill of the contractor would be sent to the District Geologist by the EEs and DEEs along with the material consumption statement.

Scrutiny of the records of the CGM and various Geologists revealed that the IMD did not set up effective mechanism for furnishing periodic reports/returns by the works divisions to the district geologists for the monitoring and recovery of royalty. The District Geologists were not aware of the total number of civil works carried out by the departments/ *Nigam*/*Panchayats* in the district. Further, in 9,999 cases, the works departments of the State Government did not furnish the complete details such as material consumption statement to the concerned District Geologists. Also, the instructions issued by the Government did not apply to the works contractors of the Central Government departments. Thus, verification of payment of royalty in respect of minerals used by the works contractors could not be ascertained by the Geologists. A test check of the records at the office of CGM and District Geologists revealed that in 7,257 cases during the year 2003-04 to 2007-08, royalty was yet to be recovered from the works contractors as shown in the table below.

Non-recovery of royalty from works contractors

(Rupees in crore)

From whom recoverable	District where the work was executed	No. of cases	Amount of royalty		
			Due	Recov-ered	Recover-able
Works contractors of State Government departments/ *Nigams/Panchayats etc*.	All over the State	7,212	10.67	5.53	5.14
Works contractors of Ahmedabad Urban Development Authority (AUDA)	Ahmedabad	22	25.48	3.59	21.89
Works contractors of Central Public Works Department (CPWD)	Bhuj	23	1.35	0	1.35
Total		**7,257**	**37.50**	**9.12**	**28.38**

After this was brought to its notice, the Government stated (September 2009) that in respect of 7,212 cases, the royalty was paid on dispatch/consumption/sale of the minerals from the leased area and

instructions of May 1994 was issued for cross verification of the royalty on the minerals used in the public works. The details of 9,999 cases would be obtained and royalty would be worked out only in those cases. However, the reply did not highlight the position of outstanding demands of royalty of Rs. 5.14 crore. In 22 cases of AUDA, the work contractors have preferred appeal to the CGM, Gandhinagar which had not been decided. In 22 out of 23 cases of CPWD, Rs. 17.44 lakh has been recovered. Further progress has not been reported (November 2009).

The Government may consider prescribing a mechanism for periodic reconciliation between District Geologist and Works Departments of the Central and the State Government/*Nigams/Panchayats* and introducing the system of deduction of royalty on material utilised in advance from contractor's bills.

7.2.16 Lack of control over the illegal mining

The MMD&R Act empowers the State Government to make rules for prevention of illegal excavation, storage and transportation of minerals by issue of a notification. The CGM issued instructions in January 2005 that in case of illegal mining, the concerned person had to pay the value of mineral excavated illegally.

Audit scrutiny of the records of the CGM and various Geologists revealed that the department has not established any check post or weigh-bridge in the State. Non-inspection of lease areas has also been pointed out in paragraphs 7.2.10.1 and 7.2.18.1. Thus, due to inadequate surveillance of the illegal mining activities, 44 cases of illegal mining of 155.04 lakh MT minerals (36 cases of limestone and eight cases bauxite) in Jamnagar and Porbandar districts could not be detected timely and consequently revenue of Rs. 490.43 crore could not be realised.

After this was brought to its notice, the Government agreed to initiate action under the provisions of MMDR Act and the Rules made thereunder. Further progress has not been reported (November 2009).

The Government may consider identifying areas which are prone to illegal mining and setting up of check posts and weigh-bridges there. A mechanism for periodical inspection of leased areas also need to be installed.

7.2.17 Delay in processing of lease applications

The Government of Gujarat introduced the Gujarat Mineral Policy (The policy), 2003. The policy provides that a lease application for a mining and quarry lease shall be disposed off within a period of one year and three months respectively.

Scrutiny of the records of the office of the CGM revealed that though the Government has provided the maximum time limit for disposal of a lease application, they have not prescribed any mechanism for monitoring the disposal of leases starting from receipt upto disposal. Due to this, inordinate delays at various stages of disposal process remained

unnoticed by the department/Government. The pendency in processing of lease applications is shown in the table below.

Position of pending lease applications

Year	Opening balance of application	Application received during the year	Applications processed during the year	Applications pending at the end of the year	Percentage of pendency
2003-04	9,004	9,431	10,731	7,704	41.80
2004-05	7,684	10,860	10,102	8,442	45.52
2005-06	8,576	13,343	14,369	7,550	34.45
2006-07	7,605	16,384	15,657	8,330	34.72
2007-08	8,308	13,101	10,824	10,595	38.81

Source: CGM

The position of pendency at the end of every year, however, did not tally with that of opening balance of the next year as per the details furnished by the department.

The CGM attributed (September 2009) the reasons for pendency to the shortage of staff. Audit did not, however, find evidence of any exercise being carried out by CGM to determine the appropriate resource-mix (including application of information technology) to tackle the serious problem of pendency of undecided lease applications. The CGM had also no system to determine the loss of annual receipts due to the lease applications remaining undecided.

After this was pointed out, Government stated that a coordination cum empowered committee had been constituted in September 2009 to monitor and minimise delay in grant of lease. Further progress has not been reported (November 2009).

The Government may consider devising a mechanism including monitoring of its functions for speedy and time bound disposal of the lease applications.

7.2.18 Internal controls in CGM and IMD

The internal control mechanism was weak, as is clear from the various instances cited in the foregoing paragraphs**.** Though the field offices have been provided with the computers, connectivity with the head office was not established and hence the facility was not used as a cost effective and efficient tool of internal control. Also, the details furnished by the field offices were not reconciled/checked at the CGM office. The other instances indicative of weak internal control are as follows.

7.2.18.1 Inadequate inspection of leases

As per the instructions issued (July 1986) by the CGM, the District Geologists are required to inspect every mine and quarry at least once in a year. Inadequate inspection of mines and quarries has revenue implications as the concerned officers will be unable to ascertain whether:

- the boundaries of lease area were marked as provided in the lease agreement and excavation was restricted within the lease area only;
- the mining activities were carried out without excessive wastage of the minerals;
- the mining activities in respect of leases were carried out as per the approved mining plans; and
- quantity excavated and dispatched with the returns filed was susceptible of verification with the required infrastructure like weigh-bridges and check posts being in place and whether the quantities were being linked with the assessment of royalty.

The number of inspections to be carried out, actually conducted and percentage of shortfall during the five years ended 2007-08 is shown in the table below.

Shortfall in inspection of leases

Year	No. of lease inspections required to be carried out during the year	No. of lease inspections carried out during the year	No of lease inspections pending	Percentage of shortfall
2003-04	6,521	3,520	3,001	46
2004-05	6,355	3,610	2,745	43
2005-06	6,376	3,587	2,789	44
2006-07	6,437	2,754	3,683	57
2007-08	6,644	2,452	4,192	63

After this was brought to its notice, the Government stated that it has been decided to outsource the inspection activities of lease by a system audit through Chartered Accountants. The reply does not clarify how the field work vested with the departmental officers will be done by the Chartered Accountants. Further progress has not been reported (November 2009).

The Government needs to develop an effective system for inspecting the leases.

7.2.18.2 Non-preparation of departmental manual

A departmental manual would be a good beginning point to take up business process reengineering as a precursor to computerisation. **Audit observed that the CGM does not have any departmental manual setting out the functions and the responsibilities of staff of all categories in accordance with the instructions issued by Government/department, which could act as a key document for perspective planning, reference, and internal control.**

After this was brought to its notice, Government stated that the department needed departmental and field (technical) manuals for the functioning of staff of all categories. It has prepared the details of the functions and responsibilities of staff of all categories and a field manual. However, the

reply does not mention whether the details have been prepared in the form of a manual. Further progress has not been reported (November 2009).

The Government may consider compiling all such orders detailing functions and responsibilities of departmental staff and make a departmental manual.

7.2.18.3 Internal audit

An independent and effective internal audit under the direct control of the head of the department is essential for ensuring compliance with the rules and procedure; prompt raising of the demands, collection of the receipts and proper accounting thereof and overall functioning of the mineral administration in the state. The report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2003 (vide paragraph 7.3.29) had brought these facts to the notice of the department/ Government. **Audit noticed that the department had not yet acted upon the recommendation of audit for setting-up an internal audit wing.** Control is exercised by CGM through monthly meetings with the District Geologists.

After the matter was brought to its notice, the Government stated that the internal audit could not be strengthened due to shortage of man power. However, system audit through Chartered Accountants and services of GMRDS society would be utilised for evasion of royalty. Further progress has not been reported (November 2009).

In addition to the recommendations under paragraph 7.2.11, the Government may also consider setting up an internal audit wing.

Compliance deficiencies

7.2.19 Non-realisation of royalty and interest due to inadequate follow up of court order

Section 4 of the MMD&R Act stipulates that no person shall undertake any mining operation in any area, except in accordance with the terms and conditions of the mining lease granted under the Act.

Mention was made in paragraph 7.3.24 of the Audit Report for the year ended 31 March 2003, Government of Gujarat regarding detection of illegal mining of dolomite by the Geologist, Vadodara between February 1999 and March 2000 and issue of notices to the lease holders for such illegal mining. On the petitions filed by the lease holders, the Gujarat High Court directed (April 2002) the Geologist to issue fresh show cause notice to each lease holder separately indicating the period for which royalty was sought to be recovered within a period of two months from 15 April 2002. Inordinate delay on the part of the Geologist to issue show cause notices was commented upon in the paragraph.

Scrutiny of the records of the Geologist, Vadodara during the course of this review revealed that the department could not issue fresh notices and prayed for extension of two months from the court which was granted in November 2002. Further, the department received the certified copy of the judgment in

March 2003. Meanwhile records were destroyed in January 2003 in a fire and the department could not serve fresh notices. Lack of timely action in issuing notices, thus resulted in non-realisation of royalty of Rs. 8.92 crore. Interest of Rs. 12.50 crore was also leviable.

After the matter was brought to its notice, the Government stated that action has been initiated to obtain further extension of time from the Gujarat High Court for issuing notices to the defaulters. The reply does not explain the inordinate delay in issuing demand notices to the departments after the Court's orders and why it took more than seven years for the Government to initiate action in the matter. Further progress has not been reported (November 2009).

7.2.20 Short levy of stamp duty on lease deed

Section 3 of the Bombay Stamp Act provides that any document of lease shall be chargeable to stamp duty at the prescribed rate depending on the period of the lease and average annual rent reserved. Further, Section 27 of the Act provides that in case of lease of mining in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to estimate the royalty or the value of share. The Superintendent of Stamps has issued (September 1979) instruction to levy stamp duty on aggregate of annual dead rent, annual royalty (estimated), surface rent and deposit, payable during the first year.

During test check of the records of the Geologists, Palanpur and Vadodara, it was noticed that in 71 cases of mining leases, the concerned Geologist either did not levy stamp duty or levied it short. This resulted in short levy of stamp duty of Rs. 1.46 crore.

After the matter was brought to its notice, the Government agreed to recover stamp duty at the time of execution of renewal lease deeds. Further report on recovery has not been received (November 2009).

7.2.21 Short recovery of royalty on Marl

The CGM, Gandhinagar revised (October 2006) the rate of royalty of marl[97] from Rs. 4 per MT to Rs. 20 per MT retrospectively, effective from 1 April 2003. Against the above order, the lessees approached the Gujarat High Court. The court ordered (February 2008) the lessees to pay royalty at the provisional rate of Rs. 12 per MT and 50 *per cent* of arrears till further order. The lessees filed a 'Letters Patent Appeal' in September 2008 which was admitted by the High Court and an ad-interim stay was granted on recovery to the extent of payment of the above arrears only. Thus, royalty was required to be collected at the provisional rate of Rs. 12 per MT from February 2008 till further order of the court.

During test check of the records of the Geologist, Junagadh, it was noticed that in spite of the order of the court to recover royalty at the rate of Rs. 12 per MT on marl, the Geologist recovered royalty at the rate of Rs. 4 per MT even after February 2008. The fact that the Geologist did not comply with the orders of the court and the department had no means to discover this mistake, is

[97] A crumbly mixture of clays, calcium and magnesium carbonates, which is a prominent mineral found and used in cement industry in the state.

indicative of weak internal control procedures of the department. This resulted in short recovery of royalty of Rs. 46.60 lakh.

After the matter was brought to its notice, the Government stated (October 2009) that the department had initiated action to recover royalty by issue of notices through the District Geologist, Junagadh. Further progress has not been reported (November 2009).

7.2.22 Irregular sanction of lease on *gauchar* land

The CGM issued instructions in November 1991 that a mining lease/quarry can be sanctioned in respect of *Gauchar*[98] land after obtaining 'No Objection Certificate' (NOC) from the concerned *Gram Panchayat* authority and ascertaining that such land is surplus considering the number of animals in the village.

Test check of the records of the Geologist, Surat revealed that a lease for the mining of lignite in 964.44.01 hectares (96,44,401 square meters) of land at various survey numbers at village-Tadkeshwar, *Taluka*-Mandvi, was granted (November 2005) by the GoG to the Gujarat Mineral Development Corporation (GMDC) for a period of 30 years. The area consisted of *gauchar* land of 73.01.11 hectares (7,30,111 square meters). The concerned Geologist did not obtain and place on record the NOC of Tadkeshwar *Gram Panchayat* and evidence of the land being surplus land. In absence of the prescribed approvals, sanction of lease on *gauchar* land was irregular.

After this was brought to its notice, the Government stated (October 2009) that the Rules provided for obtaining of consent of the owner for starting mining operation in lease area after execution of the lease deed but before entry into the lease area. The lease holder had to seek necessary permission/NOC from concerned *Gram Panchayat*. The Government stand is in contradiction of the instructions of the Commissioner.

7.2.23 Loss of revenue due to non-issue/delay in issue of gazette notification

The MMD&R Act and the rules made thereunder by the Central and State Governments provide for regrant of leases for major and minor minerals after the issue of notification of availability of the area. The GoG issued instructions (May 2006 and October 2008) to all the district Geologists/CGM to send the proposals for regrant of the lease at the earliest in all cases of cancellation, expiry and surrender on priority basis so as to prevent loss of revenue due to delay and to see that leases for such areas are regranted within 60 days. Sand is the mineral which is deposited along the river/dam side every year during monsoon causing reduction in the flowing capacity of rivers and storage capacity of dams and leases of sand need to be granted regularly.

Scrutiny of the records of offices of 11 district Geologists[99] revealed that in 580 cases, leases of sand and other minor minerals had either expired, or had been cancelled or terminated by the department or were surrendered by the

[98] Grassland.

[99] Amreli, Bharuch, Jamnagar, Junagadh, Kutchh, Mehsana, Navsari, Porbander, Surat, Vadodara and Valsad.

leaseholders during the period 2003-04 to 2007-08. However, proposals for issue of gazette notification to the Collector in respect of regrant of leases was either not sent at all or sent with delay in spite of specific orders of the State Government. This resulted in loss of revenue of Rs. 6 crore, worked out on the basis of minimum dead rent payable for the leases on regrant. Moreover, immediate action, in coordination with the Narmada, Water Resources, Water supply and Kalpsar Department for survey of river/damside areas and offering them for leases of sand, was not taken by the department.

After the matter was brought to its notice, the Government stated (October 2009) that the delay in notifying the area was on account of obtaining the opinion of revenue/forest department and surveying the availability of minerals in that particular area.

The Government may consider setting up a system for prompt sending of the proposal for issue of gazette notification for availability of area in the cases of expiry, cancellation, termination or surrender of lease. In respect of sand, the Government may consider a survey of river/damside areas after every monsoon and prompt issue of leases for sand.

7.2.24 Conclusion

The review revealed a number of system and compliance deficiencies. The budget estimates prepared by both the departments were without taking into consideration the past trends and future potential. The overall management of leases was very poor. There were many cases of non-execution of lease deeds after sanction of the leases and large number of lease applications were pending due to delay in disposal. There was leakage of revenue due to the absence of a mechanism to collect details of civil works carried out by various government departments and local self government bodies. The GOG did not have a system of periodically reviewing and revising the surface rent to keep it aligned with the land revenue rates which deprived the Government of additional resources. The internal controls in both the EPD and IMD were weak as evidenced by absence of a system or procedure for inspection of the leases of oil and natural gas, non-maintenance of control registers, non-availability of departmental manuals. Besides, there was no internal audit wing in any of the two departments leading to non-detection of the deficiencies in the departments some of which have been pointed out in this review.

7.2.25 Summary of recommendations

Government may consider the following recommendations to rectify the system and compliance deficiencies.

- devise and implement effective internal control procedures and internal audit systems with the assistance of appropriate information technology applications to plug leakage and loss of revenue and for better surveillance over mining operations;
- review the rate of surface rent periodically;
- devise a proper mechanism for execution and registration of lease deeds in respect of leases of oil and natural gas in co-ordination with revenue department;

- devise a system for receipt and scrutiny of the production and related records of the lease holders and finalise royalty assessments after linking and cross verifying them with monthly returns of the lessees;
- set up a system for prompt sending proposals for issue of gazette notification for availability of area in the case of expiry, cancellations, terminations or surrender of lease. A system for conducting survey of river/damside areas after every monsoon for prompt issue of leases for extraction of sand may also be installed;
- develop coordination between District Geologists and public works departments, *Nigam* and *Panchayats* for ensuring payment of royalty on the mineral used by the contractors; and
- install an effective system of inspection to identify areas which are prone to theft, illegal mining; and establish check posts and weigh-bridges for checking of illegal mining.

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Ahmedabad,
The

Countersigned

(VINOD RAI)
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New Delhi,
The

ANNEXURE – I
(Chapter I)
(Reference Paragraph 1.9)
Department-wise break up of inspections reports and audit observations pending as on 30 June 2009

(Rupees in crore)

Sl. no.	Department	Inspection reports	Paragraphs	Amount involved	Years to which observation relate	No. of IRs to which first replies have not been received
1.	Sales Tax	1,323	4,632	2,392.72	1993-94 to 12/08	70
2.	Stamp Duty and Registration Fees	916	2,367	862.82	1992-93 to 12/08	82
3.	Land Revenue	368	675	119.94	2000-01 to 12/08	6
4.	Motor Vehicles Tax	345	1,433	789.75	1991-92 to 12/08	3
5.	Entertainments Tax	434	778	158.05	1992-93 to 12/08	12
6.	Geology and Mining	218	691	448.16	1995-96 to 12/08	11
7.	Valuation of property	193	439	53.95	1994-95 to 12/08	8
8.	Forest	76	118	7.21	1993-94 to 12/08	-
9.	Luxury Tax	76	157	12.70	1996-97 to 12/08	3
10.	Electricity Duty	56	86	142.13	1992-93 to 12/08	4
11.	Profession Tax	16	27	0.04	2000-01 to 12/08	-
12.	Prohibition and Excise	14	23	0.30	1997-98 to 12/08	-
Total		**4,035**	**11,426**	**4,987.77**		**199**