

CHAPTER II: SALES TAX

2.1 Introduction

2.1.1 Tax revenue administration

Levy and collection of receipts under the Sales Tax are regulated by the Maharashtra Value Added Tax (MVAT) Act, 2002 and MVAT Rules, 2005, read with notifications issued by the Government from time to time as well as circular instructions issued by the Sales Tax Department. The Act, Rules and instructions are implemented by the Commissioner of Sales Tax under the overall control of the Principal Secretary to the Government in Finance Department, assisted by the Zonal Additional Commissioners of Sales Tax, Joint Commissioners of Sales Tax in respect of functional branches and Deputy Commissioners of Sales Tax and other officers at divisional level. The Sales Tax receipts mainly comprise of tax on sales, trade, etc. The Sales Tax Department is also in the process of completing the pending assessment under the erstwhile Bombay Sales Tax Act and allied Acts.

2.1.2 Trend of receipts

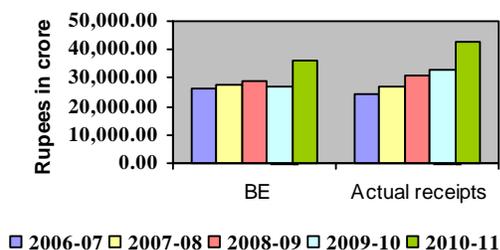
Actual receipts from Sales tax, Value Added Tax (VAT), etc., during the years 2006-07 to 2010-11 alongwith the total tax receipts during the same period is exhibited in the following table and graphs:

(₹ in crore)

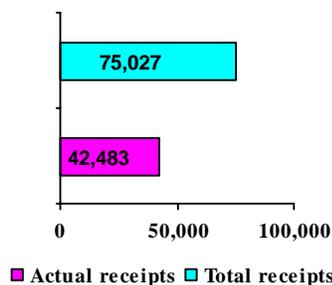
Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2006-07	26,314.51	24,130.72	(-) 2,183.79	(-) 8.30	40,099.24	60.18
2007-08	27,465.00	26,752.80	(-) 712.20	(-) 2.59	47,528.41	56.29
2008-09	29,039.00	30,680.53	(+) 1,641.53	(+) 5.65	52,029.94	58.97
2009-10	27,006.00	32,676.02	(+) 5,670.02	(+) 21.00	59,106.33	55.28
2010-11	35,986.18	42,482.72	(+) 6,496.54	(+) 18.05	75,027.09	56.62

As can be seen from the above table, the revenue collection under VAT increased by 76 per cent in 2010-11 as compared to 2006-07.

Trend of receipts 2006-07 to 2010-11



Trend of receipts 2010-11



The variation between the budget estimates and actual receipts for the year 2010-11 was 18 per cent which indicates that the budget estimates were not realistic.

2.1.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2011 in respect of Sales Tax/VAT as furnished by the Department amounted to ₹ 36,328.09 crore, of which ₹ 3,260.69 crore had been outstanding for more than five years, as mentioned in the following table:

(₹ in crore)

Sl. no.	Head of revenue	Amount outstanding as on 31 March 2011	Amount outstanding for more than five years as on 31 March 2011	Remarks
1.	Sales Tax, etc.	36,328.09	3,260.69	Stay orders were granted by the appellate authorities for ₹ 22,062.42 crore; recovery proceedings for ₹ 3,214.67 crore were not initiated as the time limit was not over and the remaining amount was in different stages of recovery.

2.1.4 Arrears in assessment

The following table shows the details of assessment cases pending for the years 2008-09, 2009-10 and 2010-11 as furnished by the Sales Tax Department:

Year	Opening balance	New cases due for assessment	Total assessments due	Disposal			Balance at the end of the year	Percentage of column 8 to 4
				Cases not to be assessed ¹	Cases disposed off	Total		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Sales tax								
2008-09	5,37,115	91,024	6,28,139	3,04,881	1,39,266	4,44,147	1,83,992	29
2009-10	1,83,992	1,20,248	3,04,240	91,524	1,29,990	2,21,514	82,726	27
2010-11	82,726	45,935	1,28,661	24,743	80,877	1,05,620	23,041	18
Motor Spirit Tax								
2008-09	6,776	102	6,878	2,384	152	2,536	4,342	63
2009-10	4,342	86	4,428	1,037	142	1,179	3,249	73
2010-11	3,249	77	3,326	1,998	199	2,197	1,129	34
Purchase Tax on sugarcane								
2008-09	644	313	957	9	67	76	881	92
2009-10	881	144	1,025	51	57	108	917	89
2010-11	917	75	992	115	179	294	698	70
Entry Tax								
2008-09	53	96	149	34	50	84	65	44
2009-10	65	308	373	36	259	295	78	21
2010-11	78	175	253	10	193	203	50	20
Lease Tax								
2008-09	4,754	407	5,161	477	448	925	4,236	82
2009-10	4,236	363	4,599	1,015	448	1,463	3,136	68
2010-11	3,136	284	3,420	1,596	600	2,196	1,224	36

¹ These cases were not to be assessed according to the Government Resolution dated 5 January 2007.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Luxury tax								
2008-09	6,143	3,547	9,690	1,455	2,040	3,495	6,195	64
2009-10	6,195	2,113	8,308	1,168	2,397	3,565	4,743	57
2010-11	4,743	1,730	6,473	1,030	2,125	3,155	3,318	51
Tax on works contracts								
2008-09	1,41,215	4,814	1,46,029	17,159	6,362	23,521	1,22,508	84
2009-10	1,22,508	13,311	1,35,819	31,833	15,707	47,540	88,279	65
2010-11	88,279	10,424	98,703	41,568	21,238	62,806	35,897	36
Total								
2008-09	6,96,700	1,00,303	7,97,003	3,26,399	1,48,385	4,74,784	3,22,219	40
2009-10	3,22,219	1,36,573	4,58,792	1,26,664	1,49,000	2,75,664	1,83,128	40
2010-11	1,83,128	58,700	2,41,828	71,060	1,05,411	1,76,471	65,357	27

Though six years have passed since the introduction of VAT, 65,357 assessments pertaining to erstwhile Bombay Sales Tax Act and allied Acts are still pending. Immediate steps may be taken to complete these assessments within a definite time frame so that the recovery of dues does not get difficult with the passage of time.

2.1.4.1 Returns filed under VAT

The pendency of cases under the Business Audit, Refund and Refund Audit and Large Taxpayers Units branches of the Sales Tax Department is shown in the following tables:

Business Audit

Period	Cases selected	Cases closed	Cases pending	Percentage of column 4 to 2
1	2	3	4	5
2009-10	38,059	13,774	24,285	63.81
2010-11	41,144	13,330	27,814	67.60

As seen from the above table 63.81 and 67.60 *per cent* of the cases allotted for business audit branch during the years 2009-10 and 2010-11 were pending completion. The Department attributed the pendency to diversion of manpower for implementation of various e-services introduced during the period.

Refund and Refund Audit

(₹ in crore)

Period	Cases selected	Cases closed	Cases pending	Amount	Percentage of column 4 to 2
1	2	3	4	5	6
2009-10	34,868	11,161	23,707	2,024.22	67.99
2010-11	37,095	5,534	31,561	2,957.12	85.08

As seen from the above table 67.99 and 85.08 *per cent* of the cases allotted for refund and refund audit branch during the years 2009-10 and 2010-11 were pending completions. The Department attributed the delay in granting refunds to pendency in confirmation of payment of tax into the treasury by the vendors of the claimant dealers. Since refund of tax results from claim of set-off, such cross check is essential and this takes time.

Large Taxpayers Unit

Period	Cases selected	Cases closed	Cases pending	Percentage of column 4 to 2
1	2	3	4	5
2009-10	5,358	1,122	4,236	79.06
2010-11	6,409	948	5,461	85.21

As seen from the above table 79.06 and 85.21 per cent of the cases allotted to LTU Branch during the years 2009-10 and 2010-11 were pending completion.

The Department may draw up an Action Plan to complete the business audit cases and expedite the pending refund cases as well as set benchmarks and time frames for sanctioning of refunds.

2.1.5 Assessee Profile

During the year 2010-11 the position regarding number of dealers and the dealers who failed to file returns in time and action taken by the Department was as under:

No of dealers	No of defaulters	Action Taken			Pending Action	Penalty levied No. of cases
		Show cause notice ² issued	Unilateral Assessment Order passed	Prose-cution lodged		
5,67,061	93,344	45,289	10,178	21	-	2,73,172

2.1.6 Cost of collection

The gross collection in respect of Value Added Tax, the expenditure incurred on their collection and the percentage of such expenditure to the gross collection during the years 2008-09, 2009-10 and 2010-11 alongwith the relevant all India average percentage of expenditure on collection to gross collection for the year 2007-08 to 2009-10 are given in the following table:

(₹ in crore)

Sl. no.	Head of revenue	Year	Gross collection ³	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the year preceding the year shown in column 3
1	2	3	4	5	6	7
1	Sales tax/ VAT	2008-09	30,680.53	216.38	0.71	0.83
		2009-10	32,676.02	283.65	0.87	0.88
		2010-11	42,482.72	298.08	0.70	0.96

As seen from the above, the cost of collection in the State of Maharashtra, during the periods 2008-09 to 2010-11 is less as compared to the all India average for the corresponding preceding years.

2.1.7 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessments of Sales Tax, Entry Tax and Luxury Tax for the year

² Depending upon the periodicity of returns, namely: monthly, quarterly or six monthly.

³ Figures as per the Finance Accounts.

2010-11 and the corresponding figures for the preceding two years as furnished by the Department is as mentioned in the following table:

(₹ in crore)

Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Penalties for delay in payment of taxes and duties	Amount refunded	Net collection (col 3 + col 4 – col 6)	Percentage of column 3 to 7
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Finance Department							
Sales tax/ VAT, etc.	2008-09	32,234.87	248.10	--	2,057.84	30,425.13	106
	2009-10	34,438.67	660.30	--	2,616.14	32,482.83	106
	2010-11	41,572.13	88.93 ⁴	--	3,190.30	38,470.76	108
Entry tax	2008-09	5.04	0.20	--	Nil	5.24	96
	2009-10	6.65	2.66	--	Nil	9.31	71
	2010-11	12.77	0.44	--	Nil	13.21	97
Luxury tax	2008-09	261.48	1.18	--	Nil	262.66	100
	2009-10	211.41	3.27	--	Nil	214.68	98
	2010-11	267.86	1.07	--	Nil	268.93	100

The above table shows that collection of revenue at the pre-assessment stage in respect of Sales Tax/VAT ranged between 106 and 108 *per cent* during 2008-09 to 2010-11. This indicates that the VAT collection is mainly through voluntary compliance. During the period 2008-09 to 2010-11, the amount collected at the pre-assessment stage was more than the amount due to the Government resulting in refunds aggregating ₹ 3190.30 crore. The revenue collected after regular assessment was quite low.

2.1.8 Impact of Audit Reports

Revenue impact

During the last five years, 2005-06 to 2009-10, we had pointed out cases of underassessments/non/short levy/loss of revenue of Sales Tax, etc., interest and other irregularities with revenue implication of ₹ 1,885.18 crore in 1,028 cases. Of these, the Department had accepted audit observations in 436 cases involving ₹ 519.19 crore and had recovered ₹ 1.91 crore in 103 cases. The details are shown in the following table:

(₹ in crore)

Year	Amount objected		Amount accepted		Amount recovered	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2005-06	171	19.60	110	11.90	60	1.35
2006-07	83	8.97	83	8.97	28	0.52
2007-08	187	41.74	167	9.21	15	0.04
2008-09	577	1,814.22	66	488.46	-	-
2009-10	10	0.65	10	0.65	-	-
Total	1,028	1,885.18	436	519.19	103	1.91

The Government may consider issuing instructions to the Department to recover the amount involved in accepted cases on priority.

⁴ Figure includes penalties for delay in payment of sales tax, etc. bifurcation of which was not made available.

2.1.9 Results of audit

We reported underassessment/short levy/loss of revenue and potential tax revenue, etc., amounting to ₹ 60.67 crore in 571 cases as shown below on the basis of test check of the records of the Sales Tax Department conducted during the year 2010-11:

(₹ in crore)			
Sl. no.	Category	No. of cases	Amount
1.	Cross verification of Declaration forms used in Inter-State Trade (A Performance Audit)	1	11.32
2.	Non/short levy of tax	237	22.95
3.	Incorrect grant of set off	108	6.97
4.	Non/short levy of interest/penalty	88	1.50
5.	Non-forfeiture of excess collection of tax	11	0.33
6.	Other irregularities	126	17.60
Total		571	60.67

In response to our observations made in the local audit reports during the year 2010-11 as well as during earlier years, the Department accepted underassessments/other deficiencies involving ₹ 3.72 crore in 180 cases. Out of this, 25 cases involving ₹ 0.17 crore were pointed out during 2010-11 and the rest during earlier years. During the year 2010-11, the Department recovered ₹ 1.20 crore in 108 cases out of which ₹ 17,961 in 4 cases were pointed out during 2010-11 and the rest in earlier years.

A performance audit on “**Cross verification of Declaration forms used in Inter-State trade**” with total financial effect of ₹ 11.32 crore and a few audit observations involving ₹ 2.92 crore are mentioned in the succeeding paragraphs.

2.2 Performance Audit on “Cross verification of Declaration forms used in inter-State trade”

The Central Sales Tax (CST) Act, 1956 and the rules framed there under provide for concessional rate of tax in respect of inter-State sales of goods and exemption from tax in respect of branch transfers and export sales. These concessions/exemptions are subject to furnishing of Declarations in the prescribed forms viz. 'C' and 'F', etc. Failure to furnish the Declarations or submission of defective or incomplete Declaration forms will make the transactions liable to tax as applicable to sale in the appropriate State.

We conducted cross verification of Declaration forms used in inter-State trade to check the genuineness of these Declarations. All the information collected was verified with the Commercial/Sales Tax Departments (STD) of other States and we found various irregularities as mentioned below:

Highlights

We noticed that though the Department cancelled 20,542 Declaration forms during the period 2005-06 to 2009-10, these cancelled forms were not forwarded to the Record Section for cancellations and for notifying in the official Gazette, to prevent their misuse.

(Paragraph 2.2.8.4)

We observed that the Department did not keep a sample of the colour, design and format of the forms prevailing in different States for comparison in order to identify the fake or forged Declaration forms.

(Paragraph 2.2.8.6)

Internal audit of stationery branch, central repository wing and cross verification cell was not conducted.

(Paragraph 2.2.8.7)

We noticed that inter-State sales valued at ₹ 354.20 lakh were allowed at the concessional rate on invalid 'C' forms furnished by the purchasing dealers which did not contain the details of registration number and date. Assessments were finalised belatedly either without Declaration forms or on the basis of duplicate forms. Branch transfers were allowed by the Assessing Officers on 'F' forms which did not indicate goods received by the transferee in nine cases and in three cases irregular acceptance of 'F' forms pertaining to more than one calendar month resulted in non levy of tax of ₹ 4.15 crore.

(Paragraphs 2.2.9.2, 2.2.9.3 and 2.2.9.4)

Cross verification of transactions of goods sold/purchased and stocks transferred in and out of the State on 'C' and 'F' forms, respectively revealed issuance of fake forms, variation in nature of commodity, variation in name of the dealers etc., excess accountal/suppression of sales/purchase turnover involving potential tax revenue of ₹ 6.94 crore in respect of 516 Declaration forms.

(Paragraph 2.2.10)

2.2.1 Introduction

Under the CST Act, 1956, registered dealers are eligible to certain concessions and exemptions of tax on inter-State transactions on submission of prescribed Declarations in Forms 'C' and 'F'. The State Governments grant these incentives to dealers for furtherance of trade and commerce, on production of these Declaration forms. It is the responsibility of the STD to ensure proper accountal of Declaration forms and to take adequate safeguards against misutilisation of Declaration forms/certificates on which tax relief is allowed involving large amount of revenue to the State exchequer. The statutory forms issued by the STD in respect of inter-State transactions are as under:

Form 'C'

Under the provisions of the CST Act, every dealer, who in the course of inter-State trade, sells to a registered dealer, goods specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of four *per cent* (three *per cent* with effect from 01 April 2007 and two *per cent* with effect from 01 June 2008) of such turnover provided such sales are supported by Declarations in form 'C'.

Form 'F'

Under Section 6A(1) of the CST Act, 1956, no tax is payable by a dealer on movement of goods to other States which is not by way of sale but by reason of transfer of stock to other places of his business or to his agent or principal. For claiming exemption, the dealer should furnish to the assessing authority a Declaration in form 'F' duly filled in and signed by the Principal officer of the other place of business or his agent as the case may be alongwith evidence of despatch of the goods. Further, as per the CST (Registration and Turnover) Rules, 1957, a single Declaration in Form 'F' is required for transfer of goods effected during a period of one calendar month.

2.2.2 Organisational set up

The STD functions under the administrative control of the Principal Secretary, Finance Department at Government level. The Commissioner of Sales Tax, Maharashtra State, Mumbai is the head of the STD who is assisted by four Additional Commissioners in charge of each zone at Mumbai, Nagpur, Nashik and Pune, 13 Joint Commissioners⁵ at the divisional level and Dy. Commissioners, Assistant Commissioners and Sales Tax Officers at different levels. The Dy Commissioner of Sales Tax (TINXSYS) heads the cell for cross verification.

2.2.3 Audit Objectives

We conducted the Performance Audit with a view to ascertain whether:

- there existed a foolproof system for custody and issue of Declaration forms;
- exemption/concession of tax granted by the assessing authorities was supported by the original Declaration forms;

⁵ Amravati, Aurangabad, Dhule, Kolhapur, Mumbai, Nagpur, Nanded, Nashik, Palghar, Pune, Raigad, Solapur and Thane.

- there was a system of uploading the particulars of the forms in the TINXSYS website and the data available there was utilised for cross verifying the correctness of the forms;
- appropriate steps were taken for detection of fake, invalid and defective (without proper or insufficient details) forms; and
- there existed an effective and adequate internal control mechanism.

2.2.4 Audit Criteria

We adopted the following criteria in conducting the Performance Audit:-

- CST Act, 1956 and the rules made there under;
- CST (Registration and Turnover) Rules, 1957;
- CST (Bombay) Rules, 1957;
- Notifications issued by the Government of India and by Government of Maharashtra from time to time; and
- Manual of “Central Repository”.

2.2.5 Methodology and scope of audit

We conducted Performance Audit on cross verification of Declaration Forms (‘C’ and ‘F’) relating to 79 units (51 BST units and 28 VAT units) falling under the jurisdiction of 10 divisions⁶ between November 2010 and July 2011. We collected Declaration Forms on statistical sampling basis in respect of the assessments finalised/ completed during the periods from 2007-08 to 2009-10 and sent them for cross verification to the concerned Commercial Taxes Department of the States from which these were issued. Similarly we received Declaration Forms from other States and cross verified the same with the records of the purchasing dealers of Maharashtra that had issued the Declaration Forms as mentioned in the following table:-

Category of Forms	Received from other States for verification	Verified ⁷ and sent back to the concerned States	Sent ⁸ to other States for verification	Received from other States after verification
‘C’	17,780	4,199	957	768
‘F’	2,856	1,543	787	737
Total	20,636	5,742	1,744	1,505

⁶ Amravati, Aurangabad, Dhule, Kolhapur, Mumbai, Nagpur, Nashik, Raigad, Solapur and Thane.

⁷ Declaration Forms above ₹ 25 lakh were checked.

⁸ Declaration forms above ₹ 25 lakh were selected.

2.2.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the cooperation of the STD for providing necessary information and records for audit. An Entry Conference for the Performance Audit was held in December 2010 and the executive was informed about selection of units and scope and methodology of audit. The Additional Commissioner of Sales Tax (Headquarters), Joint Commissioner of the divisions and Deputy Commissioners jointly explained the procedure relating to issue and utilisation of Declaration forms. The draft Performance Audit Report was forwarded to the Government and the Department in September 2011 and audit conclusions and recommendations were discussed in the Exit conference held in November 2011. The Commissioner of Sales Tax, Deputy Secretary, Finance Department and other senior officers from the Sales Tax Department attended the meeting. The replies given during the Exit conference and at other times have been appropriately included in the relevant paragraphs.

2.2.7 Trend of revenue under CST

The budget estimates (BEs), actuals and percentage increase/decrease of revenue for the periods 2006-07 to 2010-11 are given below:

(₹ in crore)

Year	Budget estimates*	Actuals*	Variation excess (+) shortfall (-)	Percentage of variation
2006-07	2,770.00	2,547.66	(-) 222.34	(-) 8.03
2007-08	2,075.00	2,384.58	(+) 309.58	(+) 14.92
2008-09	2,016.00	2,875.23	(+) 859.23	(+) 42.62
2009-10	1,210.00	2,505.32	(+) 1,295.32	(+) 107.05
2010-11	3,081.13	3,548.25	(+) 467.12	(+) 15.16

* The figures are adopted from Finance Accounts.

As would be seen from the above, the actual collection was more than the BEs except for the year 2006-07. The percentage of variation was the highest (107.05 percent) in 2009-10, indicating that the BEs were not prepared on realistic basis.

After this was pointed by us, the Department Stated that the budget estimates for the years 2007-08, 2008-09 and 2009-10 were less than the actuals of the corresponding preceding years 2006-07, 2007-08 and 2008-09 as the Central Government had reduced the rates of Central Sales tax from four per cent (2006-07) to three per cent (2007-08) and further reduced the rate in 2008-09 to two per cent.

In respect of the budget estimates for the year 2009-10, it was stated that the concessional rate of tax under the CST Act was scheduled to be reduced from two to one per cent, however, the same was not done. Further, financial melt down was observed in the month of January 2009 and the collection in February and March 2009 was expected to go down substantially.

However, the fact remains that there has been wide variation between the BEs and the Actuals during the last four years. Since BEs is an important part of

financial planning, it is desired that the BEs are prepared by the Department on scientific basis.

We recommend that the Department may consider taking steps for framing of BEs on scientific basis so that these are close to actuals.

Audit findings

System deficiencies

Rule 4 of the CST (Bombay) Rules, 1957 and Rule 12 of the CST (R&T) Rules, 1957, stipulate the process of custody, utilisation and maintenance of forms. Scrutiny of the records revealed the following:

2.2.8 Printing, custody and issue of Declaration forms

2.2.8.1 The Central Printing Press (CPP), Mumbai is the authorised agency for printing of Declaration forms used in the inter-State trade and commerce. All the forms are being checked and verified by the officials of the STD after printing. The procedure of printing was found satisfactory. The printed forms are received in the stationery branch from where it is sent to the Central Repositories concerned.

2.2.8.2 As per the circular instructions issued by the Department in January 2009, on receipt of online application from the dealer, an e-mail or SMS is required to be sent to the dealer within seven working days, regarding approval, rejection or holding the Declaration Forms. Once the application is approved the dealer should get Declaration Forms in another ten days by post or courier.

During test check of the 'Issue Register' maintained by the Sales Tax Officer of Central Repository, Mumbai, we noticed that between 1 and 11 October 2010, 330 Declaration forms were issued by the Central Repository with delays ranging from 14 to 235 days over and above the stipulated period of 17 days from the date of receipt of the applications. This indicated that the Department was not following its own instructions resulting in delay in rendering the timely services in relation to issue of Declaration forms.

2.2.8.3 Cross verification on TINXSYS

Tax Information Exchange System (TINXSYS) is a centralised exchange of all inter-State dealers spread across the various States and Union territories of India. TINXSYS is an exchange, authored by the Empowered Committee (EC) of State Finance Ministers as a repository of inter-State transactions taking place among various States and Union Territories. The website was designed to help the STD of various States and Union Territories to effectively monitor the inter-State trade.

TINXSYS can be used by any dealer to verify the counterpart inter-State dealer in any other State. Apart from dealer verification, STD officials use TINXSYS for verification of central statutory forms issued by other State STDs and submitted to them by the dealers in support of claim for concessions. TINXSYS also provides Management Information System (MIS) and Business Intelligence Reports to the STD to monitor inter-State trade

movements and enables the EC to monitor the trends in inter-State trade. It is essential for every State to send the information to the Finance Ministry for uploading in the website of TINXSYS for easy verification of forms by any user.

It was intimated that the Department was not sending the information of these statutory forms to the Finance Ministry; however, from February 2009 automatic updating facility to upload the data about dealers and CST Declaration on TINXSYS website has been set up by the Department.

As per a report extracted by us on 8 July,2011 from the TINXSYS, 3,065 records out of 5990 Declaration forms uploaded in the website showed “error Records” indicating that the information relating to these forms was incomplete. The details are mentioned in the following table:-

Category of forms	Extracted count as on	Total extracted records	Correct records	Error records	Percentage of error
‘C’ forms	23-6-2011	5,418	2,639	2,779	51
‘F’ forms	23-6-2011	572	286	286	50
Total		5,990	2,925	3,065	51

Thus it would be seen from the above that 51 *per cent* of the data of CST Declaration forms uploaded by the Department on the TINXSYS website was incomplete and as such the verification of Declaration under CST Act in these cases was not possible.

2.2.8.4 Non-observance of the procedure laid down in Manual in respect of cancellation of forms

Clause 4.10 and 4.11 of the Manual of “Central Repository” read with Rule 4(A) of the Central Sales Tax (Bombay) Rules, 1957, lays down that the un-issued Declaration Forms containing printing error or any other error will be cancelled and entry in this regard shall be made in register of “forms not issued and cancelled” by the officer and sent to the record section after approval from the officer concerned. It further provides that once Declaration forms are cancelled, these should be forwarded to the record section after getting approval of the officer concerned and should be notified in the official Gazette to prevent their misuse.

During scrutiny of the Registers relating to receipts, issue and cancellation in the Central Repository, Mumbai, we noticed that 20,542 Declaration forms were cancelled during the periods 2005-06 to 2009-10; however, these cancelled forms were not forwarded to the record section for cancellations and for notifying in the official Gazette to prevent their misuse.

We called for (February 2011) the information regarding disposal of unused Declaration forms issued prior to introduction of VAT (1 April 2005). However the same was not furnished (August 2011), as such the safe custody of the forms could not be ascertained by us.

2.2.8.5 Enforcement measures

An inter-State cross verification cell (Cell) is in existence in the Department. Upto August 2008, this Cell was functioning under the Enforcement Branch. From September 2008 onwards, the functioning of the Cell was brought under the Joint Commissioner of Sales Tax (MAHAVIKAS), Mumbai. In this Cell, the cases relating to inter-State transactions on Declaration forms which are selected during Business Audit/Refund and Refund Audit (BA/R&RA) and which could not be verified from TINXSYS are received. The Cell rechecks these cases from TINXSYS and doubtful cases are sent to other States for cross verification.

Information received from the Cell revealed that no criteria for selection of cases relating to inter-State transactions on Declaration forms for cross check by BA/R&RA/Large Taxpayers' Unit (LTU) wings was laid down by the Department. In the absence of any criteria or percentage of check, the extent of cross verification to be carried out is solely at the discretion of the assessing officer. Further, the Cell was not required to select any case *suo moto* but was dependant on the cases referred to it by BA/R&RA/LTU wings only.

Till September 2011, 713 cases⁹ were received for cross verification in the Cell from BA/R&RA/LTU wings out of which 606 cases were referred to other States for verification. Further, 439 cases were received from other States for cross verification out of which 314 cases were sent to the respective assessing authorities in the State for verification. With effect from September 2008 to July 2011, the Cell had detected 337 "bogus" 'C' forms and 203 bogus 'F' forms. These forms have either been sent to the concerned branches in the State for corrective action or to the Commercial Tax Departments of the State concerned. No information on the extent of corrective action taken and revenue realised there from was available with the Cell. The status report of verification of Declaration forms received from other States along with the fraudulent sale to evade the tax was not furnished (October 2011) to us despite being requested.

No system was put in place to prepare a list of dealers who were detected by the Department for indulging in transactions involving invalid or fake forms and circulating the same amongst the assessing authorities.

The Government may consider strengthening the functions of the cross verification cell so that action taken by the assessing authorities till recovery on the bogus Declaration forms is watched and also introduce a system for selection of Declaration forms for cross verification and pursuance through effective follow-up.

2.2.8.6 Samples of current and obsolete Declaration forms of other States not kept by the Department

According to Rule 4A of CST (Bombay) Rules 1957, the Commissioner may by notification declare that Declaration form of a particular series, design or colour shall be deemed as obsolete and invalid with effect from such date as

⁹ Includes several Declaration forms of 'C' and 'F'.

may be specified in the notification and a copy of such notification may be sent to other State Governments for publication in their official gazette.

We observed that the Department did not keep a sample of the colour, design and format of the forms prevailing in different States for comparison in order to identify the fake or forged Declaration forms which may lead to evasion of tax.

In the Exit Conference the Commissioner of Sales Tax stated that keeping samples of forms may not be of use as the States are going electronic.

As all the States have not adopted electronic issue of Declaration forms, keeping of such samples till all the States start issuing electronic forms fully, would help detection of 'bogus' Declaration forms.

The Government may consider keeping sample of Declaration forms from other States for reference to ascertain the genuineness at the time of assessment of cases.

2.2.8.7 Internal Control mechanism

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and Departmental instructions. They help in prevention of fraud and other irregularities. In the STD, an Internal Audit Wing (IAW) is in existence which is headed by a JCST stationed at Mumbai who is assisted by 10 DCSTs, six at Mumbai, one at Thane, two at Pune and one at Nagpur.

It is noticed that the IAW had not conducted internal audit of the Stationery wing, Central Repository wing, and cross verification cell since its inception.

We recommend that the Government may consider issuing directions to the Commissionerate for conducting internal audit of the stationery branch, central repository wing and cross verification cell.

2.2.9 Compliance deficiencies

2.2.9.1 Irregular grant of concession/exemption on invalid forms

Under Section 8 of the Central Sales Tax Act, 1956, tax on sales in the course of inter-State trade or commerce, supported by valid Declarations in form 'C', is leviable at the concessional rate of four *per cent* of the sale price. Otherwise, tax at twice the rate applicable to the sales inside the State in respect of "declared goods" and in respect of goods "other than declared goods" at 10 *per cent* or at the rate of tax applicable to the sale or purchase of goods, inside the State, under the local Act whichever is higher is leviable. Besides, interest and penalty is also leviable as per the provisions of the local Act.

2.2.9.2 Grant of incorrect concession of tax on sales of goods on incomplete/not supported by 'C' forms

During test check of the assessments and other related records of six dealers of Mumbai, Nashik and Thane Divisions relating to the period 2002-03 to 2005-06, finalised between September 2009 and March 2010 we noticed that inter-State sales valued at ₹ 354.20 lakh were allowed at the concessional rate,

however, the 'C' forms furnished by the purchasing dealers did not contain the details of registration number and date.

Further, in case of three dealers, relating to the period 2002-03 to 2006-07, assessed between September 2009 and January 2010, the assessing authority allowed sales valued at ₹ 51.81 lakh at concessional rate of four *per cent* without Declaration forms. Hence levy of tax at concessional rate was incorrect and resulted in underassessment of tax of ₹ 30.61 lakh. Besides, interest of ₹ 27.37 lakh and penalty was also leviable.

After we pointed out these cases, the Department stated that observations would be verified. Report on action taken has not been received (February 2012).

2.2.9.3 Incorrect grant of concession/exemption of tax on duplicate copy of Declaration forms

The Declaration forms are prepared in triplicate out of which one copy (counterfoil) is retained by the issuing dealer and the copies marked as 'original' and 'duplicate' are sent to the selling dealer while making purchases.

It has been judicially held¹⁰ that production of 'original' 'C' form is mandatory for claiming concessional rate of tax. During test check of the assessments and allied records of Aurangabad, Nashik and Pune Divisions, we noticed that in case of three dealers, relating to the period 2002-03 to 2005-06, finalised between August 2009 and March 2010 inter-State sales valued at ₹ 54.84 lakh was allowed at concessional rate of tax on form 'C' furnished by the purchasing dealer. However, scrutiny of form 'C' revealed that it was the duplicate portion of the said form which was irregular. Hence levy of tax at concessional rate was incorrect. Tax of ₹ 6.06 lakh and interest of ₹ 4.46 lakh was leviable/recoverable, besides penalty.

After we pointed out these cases, the Department stated that the original copies of forms would be provided to us. No further reply has been received (February 2012).

Delay in assessment and acceptance of duplicate 'F' form

During test check of the assessment and other relevant documents of Nashik division, we noticed that in one case, relating to the period 2001-02, assessed during the year 2009-10, goods valued at ₹ 40.26 lakh were transferred to its branch in Rajasthan for which Declaration in form 'F' was received from the branch. However, our scrutiny of the Declaration form revealed that there was considerable delay in finalisation of the assessment; further exemption from payment of tax was granted on the duplicate portion of the 'F' form. Acceptance of duplicate 'F' form for the purpose of granting exemption from payment of tax was irregular.

¹⁰ Commissioner, Sales Tax Vs. M/s.Prabhudayal Prem Narayan (1988) 71 (SC); M/s.Delhi Automobiles Private Limited Vs. Commissioner of Sales Tax (1997) 104 STC 75.

After we pointed out this case, the Department stated (December 2010) that the original copies of forms would be provided. No further reply has been received (February 2012).

2.2.9.4 Incorrect allowance of branch transfer

During test check of the assessments and other related records and documents of Dhule, Mumbai, Nashik, Pune and Thane divisions, we noticed that four dealers assessed during 2009-10, relating to various periods between 2003-04 and 2006-07, transferred goods valued at ₹ 23.35 crore to their branches without Declarations in form 'F'.

In respect of another five dealers, relating to the periods 2001-02 to 2006-07, assessed between March 2009 to March 2010 goods valued at ₹ 13.33 crore were transferred to their branches. However, the form 'F' furnished in support of branch transfer did not indicate nature of goods received by the transferee.

Rule 12 of CST (Registration and Turnover) Rules, 1957 stipulates that a single Declaration may cover transfer of goods by a dealer to any other place of his business affected during a period of one calendar month.

We noticed in three cases, relating to the period 2004-05 that Declaration form 'F' produced in support of branch transfer of goods valued at ₹ 1.49 crore contained transactions pertaining to more than one calendar month. As such, allowance of branch transfer by the assessing authority as exempt from tax in these 12 cases aggregating ₹ 38.17 crore was incorrect. Tax of ₹ 4.15 crore and interest of ₹ 2.88 crore was leviable.

After we pointed out, the Department stated that observation made would be verified. Report on action taken has not been received (February 2012).

2.2.10 Cross verification of Declaration forms

With a view to verify the genuineness of the inter-State transactions relating to sale, purchase, goods transferred/received to and from, other States on forms 'C' and 'F', details of transactions made on such forms were collected from the dealers' record maintained by the Department and same were cross verified with the dealers' records of the other States. Similar data was also collected from the dealers' records in other States and same was utilised for cross verification in the State of Maharashtra.

Cross verification of the data revealed that there were cases relating to issue of fake 'C' and 'F' forms, variation in the nature of commodity sold and purchased, variation in the name of purchasing dealers mentioned in the forms and the dealers who received the goods and excess or short accounting of goods sold/purchased.

We found discrepancies in 434 'C' forms involving potential revenue of ₹ 5.34 crore in respect of 289 dealers and of 82 'F' forms involving potential revenue of ₹ 1.60 crore in respect of 30 dealers as detailed in **Annexure II**. These are discussed in the following paragraphs 2.2.10.1 to 2.2.10.14.

2.2.10.1 Grant of concessional rate of tax on inter-State sales on fake forms

Mumbai Division

We collected information in respect of three dealers one each from Aurangabad, Kolhapur and Raigad division and found that the dealers had made inter-State sales aggregating ₹ 1.46 crore for the periods from 2002-03 to 2004-05 and assessed during 2009-10. These sales were assessed at concessional rate of tax on the basis of three 'C' forms furnished by the purchasing dealer of Madhya Pradesh and New Delhi. We cross verified these three 'C' forms with the STD of Madhya Pradesh and New Delhi and found that none of the 'C' forms were issued by the STDs of the concerned States. Therefore, the 'C' forms were not genuine and should have been rejected. However, in absence of cross verification, the Assessing Authorities (AAs) incorrectly accepted/allowed concessional rate of tax. The differential rate of tax involved on these fake forms worked out to ₹ 8.78 lakh.

Nagpur Division

We collected information in respect of four dealers of Nagpur division and found that the dealers had made inter-State sales aggregating ₹ 11.88 crore for the period 2004-05 and assessed during 2008-09 and 2009-10. These sales were assessed at concessional rate of tax on the basis of six 'C' forms furnished by the purchasing dealers of Arunachal Pradesh, Chhattisgarh and Uttar Pradesh. We found on cross verification of these sales with the STDs of the concerned States, that the 'C' forms were not issued by them. This was also confirmed by the respective STDs of these States, as such, the 'C' forms were not genuine and should have been rejected. However, in absence of cross verification, the AA incorrectly accepted / allowed concessional rate of tax. The differential rate of tax involved on these fake forms worked out to ₹ 74.28 lakh.

We recommend that the Department may investigate the matter and effect the recovery in all the inter-State Sales supported by fake Declaration Forms as well as penalty due.

2.2.10.2 Inter-State purchases on fake forms

Mumbai

We collected data in respect of the purchases made by purchasing dealers of the State from the STDs of Andhra Pradesh, Kerala, Rajasthan Tamil Nadu and found that four dealers had made purchases valued at ₹ 58.37 lakh during the periods 2007-08 to 2009-10. The inter-State purchases were made on the basis of four 'C' forms provided by the purchasing dealers of Maharashtra to the dealers of these States.

We found on cross verification of the details of these purchasers with the data maintained by the Commissioner of Sales Tax, Mumbai that the series as well

as the serial numbers of these 'C' forms were not issued by the STD of this State. This indicated that the purchases were not made on authentic 'C' forms by the dealers of this State. Though there is no loss of revenue to this State, but purchases on these fake forms needs investigation.

Nagpur Division

We collected data from the STDs of 13 States¹¹ and found that 111 dealers of Maharashtra in 218 cases had purchased goods valued at ₹ 42.51 crore during the period 2002-03 to 2009-10. The inter-State purchases were made on the basis of 218 'C' forms provided to these dealers by the purchasing dealers of Maharashtra.

We found on cross verification of the details of these purchases from the Stock Register and the related files maintained by the Central Repository in the Divisional offices at Aurangabad, Dhule, Nagpur and Nashik that these 'C' forms were not issued by the STD of this State. This fact was confirmed by the respective divisions also. This indicated that the purchases were not made on authentic 'C' forms by the dealers in this State. Though there is no loss of revenue to this State, but issue of fake forms needs investigation.

2.2.10.3 Excess accounting of sales turnover on 'C' forms.

Mumbai Division

We noticed during test check of the records of nine dealers of Mumbai, Nashik and Thane divisions that goods valued at ₹ 10.29 crore were sold between the periods 2004-05 and 2009-10, to purchasing dealers in Assam, Chhattisgarh, Gujarat, Madhya Pradesh and New Delhi on the basis of nine 'C' forms received from the dealers of those States. However, cross verification of these forms with the assessment records of the dealers by the STDs of the concerned States revealed that only ₹ 3.82 crore were accounted for by the purchasing dealers. This resulted in excess accounting of sales to the tune of ₹ 6.47 crore by these dealers. The matter needs investigation as potential tax revenue involved in these transactions worked out to ₹ 51.88 lakh.

Nagpur Division

Our cross verification of 'C' form issued during 2003-04 by a purchasing dealer of Uttar Pradesh to the selling dealer in Nagpur revealed that purchasing dealer had issued one 'C' form valued at ₹ 1.02 crore for the purchase of iron and steel. However, result of verification received from the STD, Uttar Pradesh revealed that the purchasing dealer had accounted for goods worth ₹ 7.74 lakh. This resulted in excess accounting of sales of ₹ 94.66 lakh. The matter needs investigation as the potential tax revenue involved in this transaction worked out to ₹ 5.68 lakh; besides, penalty was also leviable.

¹¹ Andhra Pradesh, Assam, Chhattisgarh, Goa, Gujarat, Jammu and Kashmir, Karnataka, Kerala, Rajasthan, Tamil Nadu, Manipur, Orissa, Uttarakhand.

2.2.10.4 Suppression of purchases turnover

We collected data from the assessment records of STDs at Delhi, Goa, Gujarat, Haryana, Jammu and Kashmir, Karnataka, Tamil Nadu and West Bengal which revealed that purchases aggregating ₹ 44.84 crore were made by 34 dealers of Maharashtra State, during different periods between 2005-06 and 2007-08, on 50 'C' forms. Our cross verification of these details with the data maintained by the Commissioner of Sales Tax, Mumbai revealed that only purchases for ₹ 7.54 crore were accounted for by the dealers in Maharashtra. This resulted in suppression of purchases valued at ₹ 37.30 crore involving tax effect of ₹ 3.83 crore.

2.2.10.5 Suppression of sales turnover

We found that three registered dealers of the State had sold goods valued at ₹ 1.77 crore to three dealers of Himachal Pradesh, Gujarat and Kerala and submitted three 'C' forms in support of inter-State sales and claimed concessional rate of tax. Cross verification of these sales from Maharashtra with the assessment records maintained by STDs at Himachal Pradesh and Gujarat and Kerala revealed that the purchasing dealers had accounted for goods valued at ₹ 3.66 crore in their accounts against these forms.

This resulted in suppression of sales turnover by the dealers in Maharashtra to the tune of ₹ 1.89 crore involving a tax effect of ₹ 10.10 lakh as mentioned in the following table:

(₹ in lakh)

Name of the Division	Name of the goods sold/ Assessment year	Value of the goods shown by the selling dealer/ Name of the State	Value of the goods as per the assessment records of purchasing dealers	Difference in sales / tax effect
Nashik	Air conditioners /2006-07	32.49/ Himachal Pradesh	58.06	25.57/ 3.20
Mumbai	Packing material /2004-05	16.47/ Gujarat	25.35	8.88/ 0.88
Amravati	Cotton bales and cotton seeds /2004-05	128.00/ Kerala	283.00	155/ 6.20
Total		176.96	366.41	189.45/ 10.28

After we pointed out the case, the Dy. Commissioner of Sales Tax, Amravati division accepted the observation and stated (August 2011) that action to revise the assessment would be taken.

2.2.10.6 Excess accounting of purchase turnover

Our scrutiny of the data collected from the assessment records of STDs at Gujarat, Haryana, Orissa, Punjab and Tamil Nadu revealed that purchases aggregating ₹ 8.44 crore were made by 12 dealers, during various periods between 2004-05 and 2007-08, on 13 'C' forms issued by the dealers of Maharashtra to the dealers of these States. We cross verified the details with the data maintained by the Commissioner of Sales Tax, Mumbai which revealed that ₹ 16.09 crore were accounted for by the dealers in Maharashtra. This resulted in excess accounting of turnover of purchases to the tune of ₹ 7.65 crore.

Though there is no loss of revenue but in view of the difference in sales the matter needs investigation by the Department.

2.2.10.7 Variation in the commodity sold and purchased against form 'C'

Mumbai Division

Our scrutiny of the data collected from the assessment records of the STDs at Gujarat and Tamil Nadu revealed that goods, such as packing material and cotton yarn valued at ₹ 47.42 lakh and ₹ 1.10 crore, respectively were purchased by two dealers, during the periods between 2006-07 and 2008-09, on two 'C' forms issued by the dealer of Maharashtra to the dealers of those States. We cross verified the details with the data maintained by the Commissioner of Sales Tax, Mumbai which revealed that as against the above, the goods received were *uniquin* and ceramic glazed tiles, respectively.

We found that a dealer of Pune division, sold scooter valued at ₹ 1.05 crore to a dealer of Madhya Pradesh on one 'C' form during the period 2004-05. On cross verification of the details with the data maintained by the STD at Madhya Pradesh, it was revealed that as against scooter, the goods received were paste glazes.

Nagpur Division

Our scrutiny of the data collected from the assessment records of the STDs at Goa, Karnataka, Rajasthan and Tamil Nadu indicated that the goods valued at ₹ 3.91 crore were purchased by six dealers of these States, during the period between 2005-06 and 2009-10, by furnishing Declaration in eight 'C' forms. Our cross verification of details with the data maintained by the Divisional offices at Nagpur, Nashik and Dhule revealed that as against these purchases, the goods received were not of the same commodity for which 'C' forms were issued by the dealers.

The matter needs investigation by the Department since the sales were on concessional rates.

2.2.10.8 Variation in the names of the purchasing and selling dealers

Form 'C' issued by Maharashtra dealers

Mumbai Division

Our scrutiny of the data collected from the assessment records of the STDs at Goa, Gujarat, Haryana, Jammu and Kashmir, Tamil Nadu and West Bengal revealed that 21 dealers had purchased goods valued at ₹ 15.27 crore on 27 'C' forms, issued by the purchasing dealers of Maharashtra during the period between 2004-05 and 2009-10. During cross verification we noticed that the names of the purchasing and selling dealers in the data maintained by the Commissioner of Sales Tax did not tally with the respective 'C' forms. The correctness of transactions on these 'C' forms is required to be verified by the Department for any possible evasion of tax.

Nagpur Division

Our scrutiny of the data from the assessment records of the STDs at Andhra Pradesh, Bihar, Goa, Gujarat, Karnataka, Rajasthan and Tamil Nadu revealed that goods valued at ₹ 12.71 crore were purchased by 77 dealers in Maharashtra State on 88 'C' forms during the periods, between 2002-03 and 2009-10,. We cross verified these details with the data maintained by the Divisional offices at Aurangabad, Dhule and Nagpur and found that these 'C' forms were issued to the dealers other than those mentioned in form 'C'. The correctness of transaction on these 'C' forms is required to be verified by the Department for any possible evasion of tax.

The matter needs investigation by the Department since the sales were on concessional rates.

Form 'C' issued by Chhattisgarh dealer

We noticed that in one case, goods valued at ₹ 60.59 lakh were sold by a dealer in Maharashtra to a dealer in Chhattisgarh on one 'C' form during 2009-10. Cross verification by us from the records maintained by the STD at Chhattisgarh revealed that the name of the purchasing dealer mentioned in 'C' form was different from the name of the dealer to whom the form was issued. The correctness of transaction on these 'C' forms is required to be verified by the Department for any possible evasion of tax.

2.2.10.9 Branch transfer by dealers of this State - 'F' forms not genuine

Mumbai Division

We found that two dealers of Mumbai division had transferred goods valued at ₹ 2.07 crore to their branches at Gujarat and Uttarakhand during the year 2005-06 to 2007-08. The transfers were supported by Declarations in six 'F' forms. Our cross verification of these branch transfers with the STD at Gujarat and Uttarakhand, revealed that these 'F' forms were not issued by the STDs of these States. Thus these 'F' forms were not genuine and liable to be rejected.

Hence, the exemption from tax allowed to the two dealers in Maharashtra was incorrect. The tax involved was ₹ 10.11 lakh.

Nagpur Division

We found a dealer in Nagpur region had transferred paper and chemicals valued at ₹ 5.11 crore during the year 2004-05 to its branch at Secunderabad in Andhra Pradesh on 12 'F' forms. Cross verification by us from the STD at Andhra Pradesh revealed that the said 'F' forms were not issued by them. Thus the 'F' forms produced were not genuine and liable to be rejected. Hence, the exemption from tax allowed to the dealer in Maharashtra was incorrect. The tax involved was ₹ 52.67 lakh.

After we pointed out the case, the Department stated (July 2011) that action would be taken after ascertaining the facts.

2.2.10.10 Branch transfer by dealers of other States - 'F' forms not genuine

Mumbai Division

Our scrutiny of the data collected from the STDs at Andhra Pradesh and Chhattisgarh revealed that branch transfer of edible oil valued at ₹ 6.86 crore were made by three dealers, during the year 2004-05 and 2005-06, on the basis of 18 'F' forms issued to the dealers of those States. On cross verification of the details of these branch transfers with the data maintained by the Commissioner of Sales Tax, Mumbai, we found that these 'F' forms were not issued by the STD of Maharashtra State. Thus the 'F' forms produced were not genuine and liable to be rejected.

After these cases were pointed out by us, the Department confirmed (August 2011) that the forms 'F' were not issued by the State.

Nagpur Division

Our scrutiny of the data collected from the STDs of eight States¹² revealed that branch transfer of goods valued at ₹ 5.53 crore were made by 14 dealers, during 2003-04 to 2009-10 on the basis of 28 'F' forms issued to the dealers of those States. On cross verification of details of these branch transfers with the data maintained by the Divisional offices at Aurangabad, Dhule, Nagpur and Nashik revealed that these 'F' forms were not issued by the STDs of Maharashtra State. Thus the forms 'F' produced were not genuine and liable to be rejected.

The matter needs investigation by the Department since the branch transfers were allowed as exempt from tax.

After these cases were pointed out by us, the Department confirmed (May, June 2011) that the 'F' forms were not issued by the State.

2.2.10.11 Short accounting of branch transfer

Our scrutiny of the data collected from the STDs at Gujarat, Jammu and Kashmir, Tamil Nadu and Uttar Pradesh revealed that value of goods aggregating ₹ 5.53 crore were transferred to branch by five dealers during the

¹² Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Goa, Tamil Nadu and Uttar Pradesh.

various periods between 2005-06 and 2008-09, on the basis of eight 'F' forms issued to the dealers of these States. On cross verification of the details with the data maintained by the Commissioner of Sales Tax, Mumbai we found that only ₹ 2.80 crore were accounted for against these branch transfers by the dealers in Maharashtra. This resulted in short accounting of branch transfers of ₹ 2.73 crore. The tax revenue involved in these transactions worked out to ₹ 21.01 lakh.

The matter needs investigation by the Department since the sales were exempted.

2.2.10.12 Excess accounting of branch transfer

Our scrutiny of the data collected from the STD at Uttar Pradesh revealed that goods valued at ₹ 4.19 crore were transferred to branch by a dealer during the year 2007-08, on the basis of five 'F' forms issued to the dealer of that State. On cross verification of the details with the data maintained by the Commissioner of Sales Tax, Mumbai we found that ₹ 4.77 crore were accounted for by the dealers in Maharashtra. This resulted in excess accounting of goods valued at ₹ 0.58 crore. The potential tax revenue involved in these transactions worked out to ₹ 7.28 lakh.

The matter needs investigation by the Department since the sales were exempted.

2.2.10.13 Variation in the name of transferee on form 'F'

We found that two dealers of Mumbai and Nashik Divisions had transferred goods to branch valued at ₹ 1.05 crore during the year 2004-05 to 2009-10 to the dealers of West Bengal on three 'F' forms.

Cross verification of these branch transfer by us revealed that the name of the transferee to whom the goods were sent differed from the name of the transferee to whom the 'F' forms were issued. Hence the correctness of transactions on these 'F' forms was required to be verified by the Department for any possible evasion of tax.

The matter needs investigation by the Department since the sales were exempted.

2.2.10.14 Excess accounting of branch transfer

We found that two dealers in Nagpur division transferred cement, washing machine and its parts valued at ₹ 1.25 crore and ₹ 3.08 crore, to their branches at Uttar Pradesh and Orissa on two 'F' forms, respectively during the year 2003-04 and 2004-05.

Our cross verification of these details from the records maintained by STDs of these States revealed that the value of goods accounted for by the dealer in Uttar Pradesh was ₹ 83.10 lakh as against ₹ 1.25 crore and the dealer in Orissa had accounted for ₹ 42.18 lakh against ₹ 3.08 crore. This resulted in excess accounting of stock of ₹ 3.08 crore by the dealers in Maharashtra. The tax potential involved is ₹ 69.02 lakh; besides, penalty was also leviable.

The matter needs investigation by the Department since the sales were exempted.

After we pointed out these cases, the Department Stated (July 2011) that action to modify the assessment orders would be taken after verification.

In the Exit Conference the Commissioner of Sales Tax stated that in respect of the individual observation made in the Performance Audit in paragraphs 2.2.9.2 to 2.2.9.4 and 2.2.10.1 to 2.2.10.14, relating to invalid/'bogus' Declaration forms, excess/ short accounting of sales or purchases, variation in nature of commodity and variation in names of dealers, detailed verification would be done after receiving the photostat copies of the Declaration forms and after confirming the details with the issuing authorities.

2.2.11 Conclusion

We noticed that though a cross verification cell was in existence in the Department, complete information up to recovery of tax, in respect of cases where invalid/bogus forms were used for claiming exemption/concession of tax was not available. The Department did not collect the samples of Declaration forms from other States for detection of invalid/bogus forms. No system was prescribed for selection of Declaration forms for cross verification on a scientific basis. No internal audit of the Stationery and Central Repository wings were being conducted. The Assessing Officer had not only delayed assessments under the CST Act, but had also not exercised due diligence before accepting Declaration forms and allowed concessional rates of tax against the interest of revenue. System of cross verification, despite existence of the Special Cell was woefully inadequate on part of the assessing machinery.

2.2.12 Recommendations

The Government may consider:

- **issuing of Declaration forms electronically and for ensuring full utilisation of the TINXSYS website for cross verification. For this, the TINXSYS website may be updated as quickly as possible. Further, the TINXSYS system may be strengthened and MIS reports on TINXSYS be introduced;**
- **strengthening the functions of the Cross Verification Cell so that action taken by the assessing authorities till recovery on the bogus Declaration forms is watched and also introduce a system for selection of Declaration forms for cross verification and pursuance through effective follow-up;**
- **advising Assessing officers to exercise due diligence before accepting Declaration forms;**
- **keeping samples of Declaration forms from other States for reference to ascertain the genuineness at the time of assessment of cases till the Department becomes completely electronic; and**
- **issuing directions to the Commissionerate for conducting internal audit of the Stationery wing, Central Repository wing and Cross Verification Cell.**

2.3 Other audit observations

Our scrutiny of the assessment records of 11 offices finalised under Byes Tax (Value Added Tax) and Central Byes Tax maintained in Byes Tax Department revealed cases of non-observance of provisions of Acts/Rules, non-short levy of tax, irregular grant of exemptions 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 by us. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till we conduct audit. There is need for the Government to improve the internal control system including strengthening of internal audit.

2.4 Non-observance of the provisions of Acts/Rules

The MVAT Acts and Rules provide for:

- (i) allowance of set-off as admissible under MVAT Acts;
- (ii) exemption of tax on deemed export branch transfers subject to submission of the prescribed Declarations/certificates;
- (iii) levy of turnover tax/charge/interest at the prescribed rate;
- (iv) computation of turnover of sales; and
- (v) grant of interest on refund.

We noticed that the AAs, while finalising the assessments, did not observe some of the provisions of the Act/Rules and notification issued thereunder in cases mentioned in the paragraphs 2.4.1 to 2.4.11. These mistakes resulted in non-short levy/non-realisation of tax/interest/cess/grant of set-off, etc., of ₹2.2 crore.

2.4.1 Excess grant of set-off under MVAT Act

Deputy Commissioner of Sales Tax, Refund and Refund Audit [DCST (R&RA)]-20, Pune Division

Under the provisions of MVAT Act, 2002 and rules made under section 52 read with section 48 (5), set-off shall be allowed to the claimant dealer of taxes collected separately from him by the other registered dealer on purchases of capital assets and goods, the purchases of which are debited to profit and loss account by the claimant dealer. However, in no case the amount of set-off on any purchases of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government treasury. Scraps of plastic, iron and steel are taxable at the rate of four per cent.

Our scrutiny of the refund and refund audit files in January 2009 revealed that a dealer had collected tax of ₹ 6.09 lakh (at the rate of four per cent) on the purchase of raw material (scrap material) valued at ₹ 1.52 crore from January to March 2006. However, in the return filed by him in

August 2007 he claimed set-off of ₹ 19.03 lakh (at the rate of 12.5 per cent) on these purchases. The Assistant Commissioner of Sales Tax (R&RA) Pune did

not point out the mistake at the time of accepting the return, resulting in excess grant of set-off of ₹ 12.94 lakh. Besides, interest of ₹ 9.22 lakh and penalty of ₹ 12.94 lakh were also leviable.

After we pointed out the case in January 2009, the Department rectified the mistake by passing an assessment order in November 2010 withdrawing the excess set-off and raising additional demand of ₹ 35.08 lakh including interest of ₹ 9.22 lakh and penalty of ₹ 12.93 lakh. A report on recovery has not been received (February 2012).

We reported the matter to the Government in May 2011; their reply is awaited (February 2012).

2.4.2 Non-levy of interest u/s 30(4) of the MVAT Act

Deputy Commissioner, Large Tax payers Unit E-001, Pune Division

As per sub-section 4 of section 30 of the MVAT Act, 2002, after the commencement of audit of the business of the dealer in respect of any period and he files one or more returns or, as the case may be, revised return in respect of the said period, then he shall be liable to pay by way of interest, in addition to the amount of tax, if any, payable as per the return or, as the case may be, revised return, a sum equal to 25 *per cent* of the additional tax payable as per the return.

During test check of the business audit records of the unit in June 2010, we noticed that while conducting the business audit of a reseller in motorcars in September 2009, for the periods from 2005-06, 2006-07 and 2007-08, additional demands of ₹ 14.23 lakh, ₹ 12.05 lakh and

₹ 15.10 lakh, respectively were raised. In all these three periods the dealer had not disclosed the quantum of tax payable correctly in the return and on the basis of the letter issued by the Department, the dealer had filed revised returns. However, interest at 25 *per cent* of the additional demand raised was not levied by the AA as required under sub-section 4 of section 30 of the MVAT Act. Non-levy of interest for these three periods worked out to ₹ 10.35 lakh. Failure of the AA to consider the amendment made in section 30 resulted in non-levy of interest aggregating ₹ 10.35 lakh for the periods 2005-06, 2006-07 and 2007-08.

After we pointed out the case in June 2010, the Department accepted the observations and rectified the order passed during business audit in September 2011, raising additional demands aggregating ₹ 10.35 lakh for the periods 2005-06, 2006-07 and 2007-08. A report on recovery has not been received (February 2012).

We reported the matter to the Government in November 2011; their reply is awaited (February 2012).

2.4.3 Irregular grant of exemption from payment of tax against form 'H'

Sr. Deputy Commissioner of Sales Tax, A-14, Thane Division (Sr.DC), Thane and Assistant Commissioner of Sales Tax, C-488, Borivali Division, Mumbai (AC)

Under the provisions of the CST Act and the Rules made thereunder, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India is deemed to be in the course of export and is exempt from tax, provided, the last sale or purchase took place after, and was for the purpose of complying with the agreement or order for or in relation to such export. Also, the selling dealer is required to produce a certificate in form 'H' duly filled in and signed by the exporter along with the evidence of export of goods.

2.4.3.1 During test check of the assessment and other relevant records of the Sr. DC in November 2009, we noticed in the assessment for the period 2002-03 (assessed in September 2008) of a dealer¹³ covered under Package scheme of Incentives (Deferral mode), who was engaged in the manufacture of packing material, had sales valued at ₹ 3.57 crore which were exempted from payment of tax in the course of export on the support of form 'H'

issued by purchasing dealers. Our scrutiny revealed that neither the details of the agreement orders from the foreign buyer and the details of purchase order were mentioned in form 'H' nor was this information furnished separately by him. In the absence of these details, the conditions under which sales were allowed as exempt from tax could not have been said to be fulfilled. Hence the sales of ₹ 3.57 crore were liable to tax at 10 *per cent*. Non-levy of tax resulted in under-assessment of tax of ₹ 35.71 lakh.

After we pointed out the case in December 2009, the Department accepted the audit observation and rectified the assessment order in September 2010 raising an additional demand of ₹ 35.30 lakh.

2.4.3.2 In another case, during the test check of the assessment and related records of the AC in June 2008, we noticed in the assessment for the period 2002-03 (assessed in January 2008) of a dealer¹⁴ engaged in the manufacture of packing material, that sales valued at ₹ 57.63 lakh were made in the course of exports on certificates in form 'H' which were issued by the purchasing dealers. Scrutiny revealed that these dealers had not furnished copies of the agreement order from the foreign buyer and purchase order of the local dealer in support of their claim for export. In the absence of these documents the exemption granted was irregular and the sales were liable to be taxed. Non-levy of tax resulted in underassessment of tax of ₹ 14.48 lakh including interest of ₹ 8.72 lakh.

¹³ M/s Essel Propack Ltd.

¹⁴ M/s JBL Sacks Pvt. Ltd.

After we pointed out the case in July 2008, the Department rectified the assessment in January 2010 raising additional demand of ₹ 14.48 lakh including interest of ₹ 7.92 lakh and penalty of ₹ 80,000. A report on recovery has not been received (February 2012).

We reported the matter to the Government in April and May 2011; their reply is awaited (February 2012).

2.4.4 Incorrect grant of set-off under the BST Act

Sr. Deputy Commissioner of Sales Tax, A-14, Thane Division, Thane (Sr.DC) and Assistant Commissioner of Sales Tax, C-489, Borivali Division, Mumbai (AC)

According to the BST Act and Rule 41 D of BST Rules, a manufacturer who pays tax on purchase of goods specified in entry 6 of Schedule 'B' or Schedule 'C' to the Act and uses those goods within the State in the manufacture of goods for sale or exports or in packing of goods so manufactured is allowed set-off of tax paid on the purchases after reducing a certain percentage of purchase price as is provided in the Rules from time to time. In respect of manufactured goods which are transferred by a dealer to its own branches or commission agents outside the State, the set-off is to be reduced by a sum equal to three *per cent* of local purchases plus three *per cent* of purchases from outside the State as compared to six *per cent* of local purchases of raw materials, whichever is higher. Besides, interest is also leviable as per the provisions of the Act.

2.4.4.1 During test check of the assessments and related records of the Sr.DC in November 2009, we noticed in the assessment for the period 2002-03 (finalised in September 2008) of a dealer¹⁵ covered under the Package Scheme of Incentives (deferral mode) and engaged in the manufacture of multi layer collapsible tubes, that set-off of ₹ 54.25 lakh was allowed on the purchase of raw material treating the purchases as taxed at 15.3 *per cent* (including turnover tax and

surcharge). Our scrutiny revealed that the raw material purchased were caps and corrugated boxes on which the rate of tax payable was 5.4 *per cent* (including turnover tax and surcharge). Further, there was an error in computation of the set-off by the assessing authority. On reworking, we noticed that the set-off on these purchases was admissible at ₹ 26.37 lakh only. This resulted in excess grant of set-off of ₹ 27.88 lakh.

After we pointed out the case in December 2009, the Department accepted the audit observation and rectified the assessment order in September 2010 raising an additional demand of ₹ 27.88 lakh. Since the dealer was covered under the Package Scheme of Incentives (deferral mode), the additional demand was adjusted against the monetary limit prescribed under the scheme.

¹⁵ M/s Essel Propack Ltd.

2.4.4.2 In another case, during test check of the assessments and related records of the AC in June 2008, we noticed in the assessment for the period 2004-05 (finalised in December 2007) of a dealer¹⁶ engaged in the manufacture of kitchen furniture and accessories that set-off of ₹ 12.81 lakh was allowed on the purchase of raw material. Our scrutiny revealed that the set-off was computed incorrectly and actual set-off admissible was ₹ 7.79 lakh. This mistake in arithmetical calculation resulted in excess grant of set-off of ₹ 5.02 lakh. Further interest of ₹ 4.29 lakh was also leviable as per the provisions of the Act.

After we pointed out the case in July 2008, the Department rectified the case in April 2010 raising additional demand of ₹ 8.85 lakh. A report on recovery has not been received (February 2012).

We reported the matter to the Government in April 2011; their reply is awaited (February 2012).

Under the provisions of BST Rules, the liquor vendor is entitled to full set off of sales tax paid on the basis of original invoices evidencing payment of sales tax. If the vendor subsequently avails discounts on the basis of credit notes then the amount of discount should be considered by the assessing authority for proportionate reduction of set off.

2.4.4.3 During test check of the assessments and related records the Deputy Commissioner of Sales Tax (DCST), B-253, Nagpur in January 2009, we noticed that in the assessment of M/s.Vidharbha Distillers for the year 2002-03 and

2003-04, finalised in August 2007, the dealer was granted deduction of ₹ 47.74 lakh and ₹ 50.31 lakh respectively in payment of sales tax on discounts granted by him to liquor vendors. However, the assessing officer did not cross verify whether the liquor vendors had reduced their purchases by the amount of discount received by them while claiming set-off. We noticed from cross verification of six liquor vendors to whom the dealer had given discount that four out of six liquor vendors had claimed set off on full tax paid on the original invoice without taking into consideration the discount received by them through credit notes. Thus, lack of coordination amongst various units in Sales Tax Department in Nagpur division and lack of cross verification resulted in grant of excess set off amounting ₹ 29.24 lakh.

After we pointed out the case in January 2009, the DCST (Asstt.), B-253, Nagpur agreed to cross-check the records of the purchasers through the Joint Commissioner of Sales Tax (BST-PT), Nagpur and accepted (March 2010) that the Department allowed irregular set-off of ₹ 70.87 lakh to 11 dealers out of 18 who had received credit notes from M/s.Vidharbha Distillers during 2002-04. A report on recovery had not been received (February 2012).

We reported the matter to the Government in June 2011; their reply is awaited (February 2012).

¹⁶ M/s. Chandan Enterprises.

2.4.5 Short levy of Sales Tax due to incorrect determination of taxable turnover

Sr. Deputy Commissioner of Sales Tax, A-12, Andheri Division, Mumbai

Under the provisions of the BST Act, the turnover of sales means the aggregate of the amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period. Further, the rate of tax on any commodity was determined with reference to the relevant entry in the Schedule 'B' or 'C' of the Act. Besides, turnover tax, surcharge and interest were also leviable as per the provision of the Act.

During test check of annual accounts and assessment order of the unit in June 2008, we noticed that for the period 2002-03, in the assessment (March 2008) of a dealer, miscellaneous sales amounting to ₹ 2.5 crore shown in the annual accounts of the dealer, for

the year ended 31 March 2003, were not included in the sales turnover of the dealer. Non-inclusion had resulted in underassessment of tax of ₹ 39.52 lakh.

After we pointed out the case in July 2008, the Department accepted our observation and rectified the assessment in September 2010 raising additional demand of ₹ 34.74 lakh against ₹ 39.52 lakh pointed out by us. The AA allowed exemption of sales from payment of tax of ₹ 4.78 lakh on account of sales valued at ₹ 30.29 lakh made by other branches of the dealer. A report on recovery is awaited (February 2012).

We reported the matter to the Government in April 2011; their reply is awaited (February 2012).

2.4.6 Acceptance of invalid Declaration for stock transfer

Sr. Deputy Commissioner of Sales Tax, A-14, Thane Division, Thane

Under Section 6A(1) of the CST Act, no tax is payable by a dealer on movement of goods to other States which is not by way of sale but by reason of transfer of stock to other places of his business or to his agent or principal. For claiming exemption, the dealer may furnish to the assessing authority a Declaration in form 'F' duly filled in and signed by the Principal Officer of the other place of business or his agent as the case may be along with evidence of dispatch of the goods. Further, as per the CST (Registration and Transfer) Rules, 1957, a single Declaration in form 'F' is required for transfer of goods effected during a period of one calendar month.

During test check of the assessment and related records in November 2009, we noticed in the assessment for the period 2002-03 (finalised in March 2009) of a dealer engaged in the manufacture of industrial gas cylinders that goods valued at ₹ 1.79 crore were allowed as branch transfer to Gujarat State. It was, however, noticed that a single Declaration in form 'F' was furnished by the branch at Gujarat covering the transactions for the whole year. As form 'F' was

required to be furnished for branch transfer for each calendar month,

allowance of branch transfer of ₹ 1.74 crore as exempt from tax which was beyond the period of one calendar month was irregular and was liable to tax. This resulted in underassessment of tax of ₹ 37.49 lakh including interest of ₹ 9.92 lakh.

After we pointed out the case in December 2009, the Department accepted the observation and rectified the assessment in September 2010 levying tax on transaction of ₹ 1.34 crore (after allowing ₹ 44.73 lakh as exempt from tax being the highest value of branch transfer for a month) and raised additional demand of ₹ 28.78 lakh including interest of ₹ 7.62 lakh. A report on recovery has not been received (February 2012).

We reported the matter to the Government in May 2011; their reply is awaited (February 2012).

2.4.7 Loss of revenue due to non-finalisation of assessment within prescribed time limit

Deputy Commissioner of Sales Tax, B-202, Pune Division, Pune

As per the provisions of sub-section 4A of section 4 of the BST Act, where all the returns other than the annual return are filed by a Registered dealer for any year within one month of the end the year to which such returns relate, no order of assessment in respect of that year shall be made after the expiry of three years from the end of the said year. Further, as per section 4-1B notwithstanding anything contained in sub-section (4A), in respect of the returns relating to any period commencing on or after 1 April 1999 and ending on 31 March 2003, the period of limitation of three years laid down in sub-section (4A) for making assessment shall be of five years.

During test check of the assessment and related records in August 2008, we noticed that in the assessment of a dealer, for the period 2000-01, finalised on 10 April 2006, demands of ₹ 12.35 lakh (BST) and ₹ 9.11 lakh (CST) under the BST Act and CST Act respectively were raised. The

dealer did not pay the dues aggregating ₹ 21.46 lakh but instead filed an appeal before the Joint Commissioner of Sales Tax (Appeals) in 2006-07 with a plea that the assessment order may be set aside, as it was passed beyond the limitation period of five years i.e. 31 March 2006. The Appellate authority set aside the assessment order in August 2006 and directed the assessing officer to take action as per law. Non-finalisation of assessments in time resulted in non-recovery of dues of ₹ 21.46 lakh.

After we pointed out (September 2008) the Deputy Commissioner of Sales Tax (Administration), Maharashtra State, Mumbai Stated (May 2011) that an Enquiry Committee set up for this purpose by the Department had held the assessing officer guilty. As a consequence of this, the Government (Finance Department) dismissed the erring officer from service as per the order issued in March 2011. A reference was made by us to the Commissioner of Sales Tax in June 2011 regarding the loss of revenue of ₹ 21.46 lakh to the Government and as to how it would be recovered. No reply has been received from the Commissionerate (February 2012).

We reported the matter to the Government in April and June 2011; their reply is awaited (February 2012).

2.4.8 Short levy of Sales Tax due to suppression of sales

Deputy Commissioner of Sales Tax (DCST), B-252, Nagpur

As per provisions of BST Act, where any dealer or person knowingly issues or produces a false bill, cash memorandum, vouchers, Declaration certificate or other document by reason of which transaction of sale or purchase effected by him or by any other dealer is not liable to be taxed or is liable to be taxed at a reduced rate, then the Commissioner may, after giving such dealer or person a reasonable opportunity of being heard, by order in writing, impose on him, in addition to tax, a penalty not exceeding the tax due in respect of such transaction.

During test check of the assessment and related records in February 2009, we noticed that the dealer company was holding entitlement certificate under the 1988 scheme, for deferral mode of expansion capacity at the rate of 54 per cent for the period from April 1991 to March 1999 with monetary limit of ₹ 5.08 crore; therefore, only 46 per cent was liable for tax.

The dealer (having branch at Nagpur, Raipur and Bhilai) had disclosed the sales of ₹ 115.81 crore in certified accounts of March 1997. As per Raipur branch assessment order for the period April 1996 to March 1997, gross turn over was ₹ 35.27 crore whereas in the profit and loss account ended on 31st March 1997 it was shown as ₹ 28.22 crore (excluding the trial production sales of ₹ 7.07 crore). Therefore the effective sales booked in respect of Raipur branch was not ₹ 30.22 crore as shown at the time of assessment but only ₹ 28.22 crore. Hence, there was a difference of sales of ₹ 2 crore. Thus, the dealer had inflated the sales of Raipur branch to that extent and suppressed the sales from Nagpur unit. As the dealer did not produce any documentary evidence for the branch transfer of ₹ 2 crore, the same was liable for tax at the rate of four per cent which works out to ₹ 8 lakh. Penalty of ₹ 8 lakh was also leviable.

After we pointed out the case, the Commissioner of Sales Tax, Mumbai accepted the omission (February, 2010). A report on recovery is awaited. (February 2012).

The matter was reported to the Government in June 2011; their reply has not been received (February 2012).

2.4.9 Incorrect grant of exemption from payment of tax on intra-State sales

Sales Tax Officer, E-322, Nasik Division, Nasik

Under the provisions of the CST Act and the Rules made thereunder, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India is deemed to be in the course of export and is exempt from tax, provided, the last sale or purchase took place after, and was for the purpose of complying with the agreement or order for or in relation to such export. Also, the selling dealer is required to produce a certificate in form '14B' duly filled in and signed by the exporter along with the evidence of export of goods.

During test check of the assessment and related records in February 2009, we noticed in respect of a dealer engaged in the manufacture of engineering goods that sales valued at ₹ 35.45 lakh, for the period 2000-01 (assessed in November 2007), was exempted from tax, as sales in the course of

exports. For this the selling dealer was required to obtain a certificate in form '14B' and other documents to confirm that there was a pre-existing order from the foreign buyer and that the goods were actually exported. Our scrutiny revealed that the dealer had not furnished the documents in support of the claim for export.

Failure of the AA to ascertain whether documents in support of the sales claimed as exempt from tax were produced by the selling dealer resulted in underassessment of tax of ₹ 5.42 lakh. Besides, interest of ₹ 6.93 lakh was also leviable.

After the case was pointed out in March 2009, the Department accepted the audit observation and rectified the mistake in November 2010 raising additional demand of ₹ 12.35 lakh. A report on recovery has not been received (February 2012).

We reported the matter to the Government in May 2011; their reply is awaited (February 2012).

2.4.10 Incorrect/excess grant on interest on refund

Sr. Deputy Commissioner of Sales Tax, A-08, Worli Division, Mumbai

Under section 43(A) of BST Act, if a dealer is entitled for refund of any tax in respect of any period of assessment commencing on or after 1 April 1995, then he shall be entitled to receive, in addition to the refund, simple interest at the rate of 12 per cent (six per cent w.e.f. 1 July 2004) per annum for the period commencing on the next date following the last date of the period of assessment to which such order relates and ending on the date of such order or for a period of eighteen months, whichever is less. The interest shall be calculated on the amount of refund due to the dealer in respect of the said period after deducting therefrom the amount of penalty and interest, if any, charged in respect of the said period and also the amount of refund, if any, adjusted towards any recovery under this Act or, as the case may be, under the CST Act.

2.4.10.1 During test check of assessment and related records of the unit in January 2010, we noticed in the assessment of a dealer engaged in the manufacture of fertiliser, animal feeds, poultry feeds, agricultural implements, etc. finalised in March 2009, for the period 2003-04, that interest on refund of ₹ 81.32 lakh was worked out from April 2004 to September 2005, at 18 per cent per annum instead of at 12 per cent from April 2004 to June 2004 and six per cent from July 2004 to September 2005. Thus, interest of ₹ 14.64 lakh was granted instead of ₹ 8.54 lakh. This resulted in excess

grant of interest of ₹ 6.10 lakh.

After we pointed out the case, in January 2010, the Department accepted the audit observation and rectified the mistake in March 2011 raising additional demand of ₹ 6.10 lakh. A report on recovery has not been received (February 2012).

2.4.10.2 In another case, during test check of the same unit in January 2010, we noticed in the assessments of another dealer engaged in the manufacture/resale of insecticides, pesticides and industrial input chemicals, finalised in March 2009 for the period 2003-04, that on refund of ₹ 60.08 lakh under the BST Act, interest of ₹ 5.40 lakh was granted. However, as the assessment under the CST Act, for the same period, has resulted in dues of ₹ 3.81 crore, the refund arising out of BST assessment should have been adjusted against the dues under the CST Act. Failure to do so resulted in incorrect grant of interest of ₹ 5.40 lakh.

After we pointed out the case, in January 2010, the Department rectified the mistake in March 2011, withdrawing the interest of ₹ 5.40 lakh on refund incorrectly granted under the BST Act and also adjusted the refund against the dues under the CST Act raising additional demand of ₹ 6.74 lakh including interest of ₹ 1.34 lakh. A report on recovery has not been received (February 2012).

We reported these cases to the Government in June 2011; their reply is awaited (February 2012).

2.4.11 Short levy of interest

Deputy Commissioner of Sales Tax, B-193, Thane Division, Thane

Under the provisions of Section 36(3)(b) of the Bombay Sales Tax Act, 1959, if any tax has remained unpaid for any period of assessment, then the dealer is liable to pay by way of simple interest at the rate of two *per cent* (1.25 *per cent* with effect from July 2004) of such tax for each month or part thereof from the date immediately following the date on which the period for which the dealer has been assessed expires till the date of order of assessment and where any payment of such unpaid tax whether in full or part is made on or before the date of order of assessment, the amount of such interest shall be calculated by taking into consideration the amount and the date of such payment.

During test check of the assessment and related records of the unit in May 2010, we noticed in the assessments of a dealer, finalised in March 2010, for the period 2003-04, that dues totalling ₹ 36.30 lakh, as a result of assessment, were not paid by the dealer for a period of 72 months, from the period of assessment till the date of order of assessment. In this case the AA had levied the interest of

₹ 27.22 lakh on the unpaid dues. Our scrutiny, however, revealed that the interest of ₹ 33.48 lakh should have been levied. This resulted in short levy of interest of ₹ 6.26 lakh.

After we pointed out the case, in June 2010, the Department accepted the audit observation and rectified the mistake in August 2010 raising additional demand of ₹ 6.26 lakh. The DCST (Assessment) stated (July 2011) that the dealer had filed an appeal against the rectification order passed by the Department and the appellate authority had granted stay on the recovery.

We reported the matter to the Government in May 2011; their reply is awaited (February 2012).